IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

THOMAS DUANE STRAWDER also known as James T. Hall,

Plaintiff,

4:16CV3161

VS.

STATE OF NEBRASKA, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff's Motion to Dismiss (Filing No. 47), which the court liberally construes as a motion to voluntarily dismiss pursuant to Federal Rule of Civil Procedure 41. Rule 41(a) states that a plaintiff may dismiss an action without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). In addition, Rule 41(a)(2) provides that an action may be dismissed at the plaintiff's request "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Here, Plaintiff asks the court to dismiss this action and Defendants have not been served with process. Accordingly,

IT IS THEREFORE ORDERED that:

- 1. Plaintiff's request for dismissal of this action (<u>Filing No. 47</u>) is granted. Accordingly, this matter is dismissed without prejudice.
- 2. Plaintiff's Motion for Leave to File a Second Amended Complaint (Filing No. 46) is denied as moot.

2. A separate judgment will be entered in accordance with this Memorandum and Order.

Dated this 7th day of February, 2017.

BY THE COURT:

s/ *Richard G. Kopf*Senior United States District Judge