

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

THOMAS D. SAILORS,

Plaintiff,

vs.

MAXWELL HUBKA, City of Lincoln Police  
Ofc. #1655, in their individual capacities;  
COLE JENNINGS, City of Lincoln Police  
Ofc. #1650, in their individual capacities;  
DANIEL KEYES, Special Administrator of  
the Estate of Paul Keyes, US Marshal  
#3483, in their individual capacities;  
UNITED STATES OF AMERICA, UNITED  
STATES MARSHAL SERVICE, and  
UNITED STATES ATTORNEY GENERAL,

Defendants.

**8:18CV189**

**ORDER**

This matter comes before the Court on the plaintiff's Motion to Dismiss defendants Maxwell Hubka and Cole Jennings, [Filing No. 99](#). There is presently pending a motion for a summary judgment of dismissal as to those defendants. [Filing No. 74](#). The defendants have been granted an extension of time to March 16, 2020, to file a reply to defendants Hubka's and Jennings's opposition to the motion. [Filing No. 98](#), text order. The plaintiff seeks a dismissal without prejudice.

Leave of court is required for a voluntary dismissal by the plaintiff after an answer or motion for summary judgment is filed by a defendant. [Fed. R. Civ. P. 41\(a\)\(1\)](#) & (2). Ordinarily such a dismissal is without prejudice. [Fed. R. Civ. P. \(a\)\(2\)](#). Granting the motion to dismiss without prejudice will obviate the need for the defendants to reply to the plaintiff's opposition to their motion. Also pending is a motion to strike portions of defendant Hubka's affidavit, also rendered moot by the dismissal. [Filing No. 90](#). As well

as a pending motion to strike portions of defendant Jennings's affidavit, also rendered moot by the dismissal. [Filing No. 89](#). Under the circumstances, the Court finds it appropriate to grant the plaintiff's motion, without prejudice to defendants Hubka's and Jennings's right to object to the dismissal without prejudice within seven days of the date of this order. Accordingly,

IT IS THEREFORE ORDERED that:

1. The plaintiff's motion to dismiss defendants Maxwell Hubka and Cole Jennings ([Filing No. 99](#)) is granted.

2. The plaintiff's claims against defendants Maxwell Hubka and Cole Jennings are dismissed without prejudice.

3. Defendants Maxwell Hubka and Cole Jennings have seven days from the date of this order to object to a dismissal without prejudice.

3. Absent objection by defendants Maxwell Hubka and Cole Jennings, the pending motions directed at these defendants ([Filing No. 74](#), 89, and 90) are denied as moot.

Dated this 4<sup>th</sup> day of March, 2020.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge