

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DYLAN J. MAHO,

Plaintiff,

v.

No. 16-CV-00796-KG-KRS

BERNALILLO COUNTY METROPOLITAN
DETENTION CENTER,

Defendant.

**ORDER DENYING MOTION FOR SUMMARY JUDGMENT
AND REQUIRING PLAINTIFF TO SHOW CAUSE**

This matter is before the Court on Plaintiff Dylan J. Maho's Motion For Summary Judgment [Doc. 19], filed on May 9, 2017. For the reasons explained below, Plaintiff's motion for summary judgment will be denied and Plaintiff will be required to file an amended complaint that complies with the Court's April 19, 2017, Memorandum Opinion and Order or to show cause why this action should not be dismissed.

On July 7, 2016, Plaintiff filed a Prisoner's Civil Rights Complaint against Defendant Bernalillo County Metropolitan Detention Center (BCMDC). [Doc. 1] On April 11, 2017, Plaintiff filed a motion for summary judgment, asking for "summary judgment on the proven claims in the Complaint . . . pursuant to Fed. R. Civ. P. 56" because "Defense has not responded to any issues Plaintiff raised, it appears the defendant has no defense." [Doc. 16]

On April 19, 2017, the Court issued a Memorandum Opinion and Order denying Plaintiff's motion for summary judgment, dismissing Plaintiff's complaint without prejudice, and granting Plaintiff thirty days in which to file an amended complaint. [Doc. 17] Specifically, the

Court denied Plaintiff's motion for summary judgment because it failed to comply with the Federal Rules of Civil Procedure or the Local Civil Rules of the United States District Court for the District of New Mexico. Additionally, the Court dismissed Plaintiff's claims against Defendant BCMDC with prejudice because BCMDC "is a governmental sub-unit and, as such, it is not a person or legally created entity capable of being sued" under § 1983. [Doc. 17 at 6 (internal quotation marks and citation omitted)] Because Plaintiff's complaint did not contain any colorable claims against any cognizable defendants, the Court dismissed the remainder of Plaintiff's complaint without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and granted Plaintiff thirty days in which to file an amended complaint that "identifies the 'persons' responsible for the alleged constitutional violations under § 1983." [Doc. 17 at 8] The Court informed Plaintiff that his amended complaint "must explain what each defendant did to him . . . ; when the defendant did it; how the defendant's action harmed him. . . ; and what specific legal right the plaintiff believes the defendant violated." [Doc. 17 at 9 (internal quotation marks and citation omitted)] The Court notified Plaintiff that "[f]ailure to timely file an amended complaint that complies with the standards set forth above may result in the dismissal of this action without further notice." [*Id.*]

The thirty-day deadline for the submission of an amended complaint has expired and, as of this date, Plaintiff has failed to submit an amended complaint that identifies the "persons" responsible for the alleged constitutional violations. Plaintiff has, however, filed the present motion for summary judgment, requesting relief "on the proven claims in the Complaint" because "Defense has not responded to any of the issues Plaintiff raised." [Doc. 19 at 1]

Plaintiff's motion for summary judgment, like his prior motion, fails to comply with the Federal Rules of Civil Procedure or the Local Rules of the United States District Court for the

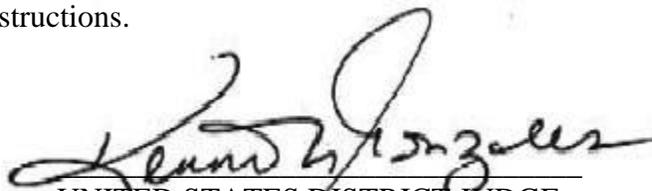
District of New Mexico. More importantly, however, Plaintiff's civil rights complaint has been dismissed and, as such, there are no pending claims against any named or unnamed defendant(s). Therefore, Plaintiff's motion for summary judgment will be denied.

In light of Plaintiff's failure to file an amended complaint in compliance with the Court's April 19, 2017, Memorandum Opinion and Order, the Court will require Plaintiff to show cause, within thirty (30) days of the date of this order, why this action should not be dismissed without prejudice. *See* Fed. R. Civ. P. 41(b) (providing for involuntary dismissal "[i]f the plaintiff fails to prosecute or comply with these rules or a court order"). Failure to file, within thirty (30) days of the date of this order, an amended complaint that complies with the standards set forth in the Court's April 19, 2017, Memorandum Opinion and Order, or to show cause, will result in the dismissal of this action without prejudice without further notice.

IT IS THEREFORE ORDERED that Plaintiff's Summary Judgment Motion [Doc. 19] is DENIED;

IT IS FURTHER ORDERED that, within thirty (30) days of the date of this order, Plaintiff submit an amended complaint that complies with the standards set forth in the Court's April 19, 2017, Memorandum Opinion and Order or show cause why this action should not be dismissed;

IT IS FURTHER ORDERED that the Clerk of the Court is directed to mail to Plaintiff, together with a copy of this Order, a copy of the Court's April 19, 2017, Memorandum Opinion and Order and a form § 1983 complaint, with instructions.


UNITED STATES DISTRICT JUDGE