

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

DAVID ITALIANO,

Plaintiff,

vs.

No. CIV 18-0241 JB/KRS

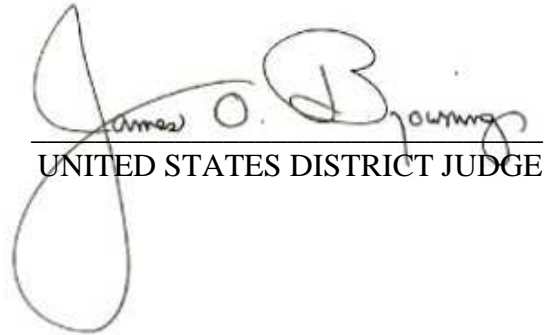
FNU LNU,

Defendant.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL WITHOUT PREJUDICE**

**THIS MATTER** comes before the Court on the Honorable Kevin R. Sweazea, United States Magistrate Judge’s Order to Cure Deficiency, filed March 14, 2018 (Doc. 3)(“Order”). In the Order, Magistrate Judge Sweazea ordered Plaintiff David Italiano either to pay the \$400.00 filing fee for this civil action or to file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form). See Order at 1. Magistrate Judge Sweazea warned Italiano that failure to comply with the Court’s Order “may result in dismissal of this case without prejudice.” Order at 1. Italiano’s response was due on or before April 5, 2018, but as of that date, Italiano had not filed a response. Because Italiano has failed to comply with Magistrate Judge Sweazea’s Order, the Court will dismiss Italiano’s 42 USC Sect. # 1983 Action at Law Civil Rights Complaint, filed March 7, 2018 (Doc. 1), without prejudice pursuant to rule 41(b) of the Federal Rules of Civil Procedure. See Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)(noting that rule 41(b) permits “courts to dismiss actions sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders”).

**IT IS ORDERED** that: (i) Plaintiff David Italiano's 42 USC Sect. # 1983 Action at Law Civil Rights Complaint, filed March 7, 2018 (Doc. 1), is dismissed without prejudice; and (ii) Final Judgment will be entered.



James O. Downing  
UNITED STATES DISTRICT JUDGE

*Parties:*

David Italiano  
Alamogordo, New Mexico

*Plaintiff pro se*