

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01969-BNB

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

GABRIEL B. ATSEPOYI,

OCT 22 2010

Plaintiff,

GREGORY C. LANGHAM
CLERK

v.

CARLS JR.,
AMBER SANDERS, and
FIREMAN'S FUND INSURANCE COMPANY,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Gabriel B. Atsepoyi, currently resides in Andover, Massachusetts. Mr. Atsepoyi initiated the instant action on August 5, 2010, by submitting a Complaint to the Court. Magistrate Judge Boyd N. Boland entered an order on August 18, 2010, directing Mr. Atsepoyi to file his claims on a Court-approved form used by *pro se* litigants in filing civil complaints and to submit a properly completed affidavit in a 28 U.S.C. § 1915 motion. Mr. Atsepoyi was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On August 24, 2010, the envelope in which the August 18 Order was mailed to Mr. Atsepoyi was returned to the Court marked "Return to Sender Insufficient Address Unable to Forward Return to Sender." Mr. Atsepoyi filed a Notice of Change of Address

on August 18 Order. On August 25, 2010, Magistrate Judge Boland entered a minute order instructing the Clerk of the Court to resend the August 18 Order and necessary forms to Mr. Atsepoyi at the new address. On September 14, 2010, the Court received an Amended Complaint and a § 1915 Motion and Affidavit. Inadvertently, however, incorrect forms had been sent to Mr. Atsepoyi, and the forms he filed were for use by prisoners who seek to file a complaint *pro se* and leave to proceed pursuant to § 1915. Magistrate Judge Boland entered a second minute order instructing the Clerk of the Court to send the proper Court-approved forms to Mr. Atsepoyi and allowing him an additional thirty days to file his claims on a proper Court-approved form and to submit a complete § 1915 motion and affidavit.

On October 18, 2010, Mr. Atsepoyi filed his claims on a proper form, with an attached supplement, but failed to submit a properly completed § 1915 motion and affidavit form used by nonprisoner litigants. Mr. Atsepoyi also failed to file the Complaint form within the time allowed. Pursuant to the Minute Order of September 15, 2010, Mr. Atsepoyi was required to file the proper Complaint form and the § 1915 motion and affidavit form by October 15, 2010. Although Mr. Atsepoyi signed the Complaint on October 15, 2010, the Complaint was not presented to the Court for filing until October 18, 2010. Furthermore, even if Mr. Atsepoyi now were to file a properly completed § 1915 motion and affidavit, the motion and affidavit would not be filed within the time allowed. As a result, Mr. Atsepoyi has failed to cure all of the deficiencies within the time allowed. Accordingly, it is

ORDERED that the Complaint and action are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to cure the deficiencies.

DATED at Denver, Colorado, this 22nd day of October, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

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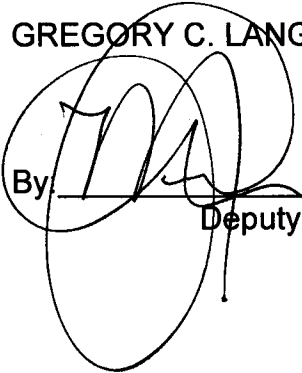
CERTIFICATE OF MAILING

Civil Action No. 10-cv-01969-BNB

Gabriel B. Atsepoyi
500 Federal Street
Andover, MA 01810

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 10/22/10

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk