

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02656-BNB

BRIAN M. GROSS,

Plaintiff,

v.

TOM CLEMENTS,
JOHN DAVIS,
ELLEN BLACKMORE,
MARY CARTER,
THOMAS FISHER,
MARY BETH KALYMER,
KERRY BARONI,
MARCIA MORTIN,
ARISTEDES ZARVARES,
SM VICALVI,
P. LASTRELL,
JOHN DOE,
JANE DOE, and
ANTHONY DeCESARO,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Brian M. Gross, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Buena Vista Correctional Complex in Buena Vista, Colorado. On October 12, 2011, Mr. Gross submitted to the Court a **pro se** Prisoner Complaint pursuant to 42 U.S.C. § 1983 and a Motion and Affidavit for Leave to Proceed Under 28 U.S.C. § 1915. On October 17, 2011, Magistrate Judge Boyd N. Boland directed Plaintiff to cure certain deficiencies. Specifically, he directed Mr. Gross to submit a certified copy of his inmate trust fund statement for the six month

period immediately preceding the filing. Mr. Gross submitted a certified copy of his inmate trust fund statement on October 27, 2011. Magistrate Judge Boland granted Mr. Gross leave to proceed pursuant to 28 U.S.C. § 1915 by order dated October 31, 2011.

The October 31 Order requires Mr. Gross to pay the full amount of the \$350.00 filing fee in installments and directs him to pay an initial partial filing fee of \$20.00 within thirty days or to show cause why he has no assets and no means to pay the initial fee by filing a current certified copy of his trust fund account statement. The Order warns Mr. Gross that if he fails to have the initial partial filing fee sent to the Clerk of the Court by the designated deadline or to show cause why he has no assets and no means by which to pay the initial fee the Complaint would be dismissed without further notice.

Mr. Gross has failed either to pay the initial partial filing fee within the time allowed, as designated in the October 31 Order, or in the alternative to show cause why he has no assets and no means by which to pay the designated fee. Further, he has not communicated with the Court since October 27, 2011. Accordingly, it is

ORDERED that the Prisoner Complaint and the action are dismissed without prejudice for Mr. Gross's failure either to pay an initial partial filing fee of \$20.00 or to show cause why he has no assets and no means by which to pay the designated fee. It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 8th day of December, 2011.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court