

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02272-BNB

MY PHI,

Plaintiff,

v.

RIVERWALK HOLDINGS, LTD., and  
NELSON & KENNARD,

Defendants.

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ORDER OF DISMISSAL

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Plaintiff, My Phi, initiated this action by filing *pro se* a complaint titled "FDCPA and Fraud Complaint" (ECF No. 1) and a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3). The Court reviewed the submitted documents, found that they were deficient, and ordered Plaintiff within thirty days to cure certain deficiencies, including but not limited to filing a complaint and attachment that were legible.

On September 13, 2012, Ms. Phi filed an amended complaint (ECF No. 5) and amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. On September 14, 2012, Magistrate Judge Boyd N. Boland entered an order (ECF No. 8) granting Ms. Phi leave to proceed pursuant to § 1915 and directing her to file within thirty days a second amended complaint that complied with Rule 10.1 of the Local Rules of Practice for this Court and Rule 8 of the Federal Rules of Civil Procedure, and explained why venue is proper in the District of Colorado. The September 14 order

warned Ms. Phi that, if she failed to file the second amended complaint as directed within the time allowed, the amended complaint and the action would be dismissed without further notice.

Ms. Phi has failed, within the time allowed, to file the second amended complaint as directed, or otherwise to communicate with the Court in any way. Therefore, the amended complaint and the action will be dismissed.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Ms. Phi files a notice of appeal she also must pay the full \$455.00 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the amended complaint (ECF No. 5) and the action are dismissed without prejudice pursuant to Rule 10.1 of the Local Rules of Practice for this Court and Rules 8 and 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, My Phi, to file a second amended complaint that is legible and complies with the pleading requirements of Rule 8 and the directives of the order of September 14, 2012 (ECF No. 8), and for her failure to prosecute. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied. It is

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 23<sup>rd</sup> day of October, 2012.

BY THE COURT:

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