

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00591-BNB

JESSE JOHNSON,

Plaintiff,

v.

G.E.O. GROUP, INC.,
JOE D. DRIVER, and
TAMI ANDING,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Jesse Johnson, is a prisoner who currently is incarcerated at the correctional center in Hudson, Colorado. Plaintiff, acting *pro se*, initiated this action in the United States District Court for the District of Alaska (District of Alaska) by filing a Prisoner Complaint (ECF No. 3) and a Prisoner's Declaration and Application to Proceed *In Forma Pauperis* (ECF No. 1, ex. 12). The District of Alaska granted him leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 (ECF No. 1, ex. 19).

On January 31, 2013, the District of Alaska entered an order (ECF No. 1, ex. 20) directing Mr. Johnson to file an amended complaint in order to state a cognizable case against appropriate defendants in federal court. On March 7, 2013, Plaintiff filed a motion (ECF No. 1, ex. 21) to transfer the case to this Court. Also on March 7, the District of Alaska entered an order (ECF No. 1) granting the motion and transferring the case to this Court.

On March 11, 2013, Magistrate Judge Boyd N. Boland, after conducting a review

pursuant to D.C.COLO.LCivR 8.2, determined that the submitted Prisoner Complaint was deficient and directed Mr. Johnson to file within thirty days an amended complaint that complied with the order to amend complaint (ECF No. 1, ex. 20) entered by the District of Alaska. See ECF No. 5 at 2. The Court further ordered Mr. Johnson to obtain the Court-approved form for filing a Prisoner Complaint (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov, and use that form in curing the designated deficiency by filing an amended Prisoner Complaint as directed.

On April 12, 2013, Mr. Johnson filed an amended Prisoner Complaint (ECF No. 6). On April 22, 2013, Magistrate Judge Boland entered an order (ECF No. 7) directing Mr. Johnson to file a second and final amended Prisoner Complaint if he wished to pursue his claims in this action. The April 22 order noted that the amended Prisoner Complaint Mr. Johnson filed on April 12 was not on the Court-approved Prisoner Complaint form and did not comply with the directives of the District of Alaska's order to amend (ECF No. 1, ex. 20) to provide specific information as to his claims and not refer to the initial complaint or other extraneous documents. ECF No. 1, ex. 20 at 8-9. The April 22 order also pointed out that the amended Prisoner Complaint failed to comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure, appeared to sue an improper party, and failed to allege the personal participation of each named defendant. However, the amended Prisoner Complaint Mr. Johnson filed on April 12 was not dismissed for those reasons. Instead, Mr. Johnson was afforded a final opportunity to file a second and final amended Prisoner Complaint in this Court within thirty days. In the April 22 order, Magistrate Judge Boland warned Mr. Johnson

that the action would be dismissed without further notice if he failed within the time allowed to file a second and final amended Prisoner Complaint as directed.

On May 20, 2013, Plaintiff filed a motion (ECF No. 8) to transfer venue to a California federal court where one of the defendants had relocated. However, Mr. Johnson has failed within the time allowed to file a second and final amended Prisoner Complaint as directed in the April 22 order or a motion for an extension of time to do so. Therefore, the amended Prisoner Complaint and the action will be dismissed for Mr. Johnson's failure to file a second and final amended Prisoner Complaint as directed within the time allowed.

Finally, the Court certifies pursuant to § 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 Mr. Johnson files a notice of appeal he 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 Prisoner Complaint (ECF No. 6) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Jesse Johnson, within the time allowed, to file a second and final amended Prisoner Complaint as directed in the order of April 22, 2013 (ECF No. 7). It is

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

FURTHER ORDERED that the motion (ECF No. 8) to transfer venue and any other pending motions are denied as moot.

DATED at Denver, Colorado, this 30th day of May, 2013.

BY THE COURT:

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