

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00682-BNB

DEMETRICK LEON SMITH,

Plaintiff,

v.

P. RANGEL, Unit Manager,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Demetrick Leon Smith, is a prisoner in the custody of the United States Bureau of Prisons at the United States Penitentiary, Administrative Maximum, in Florence, Colorado. Mr. Smith initiated this action by filing *pro se* a motion to compel (ECF No. 1) in which he complains that he is being subjected to cruel and unusual punishment. On March 15, 2013, Magistrate Judge Boyd N. Boland entered an order directing Mr. Smith to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland directed Mr. Smith to file a Prisoner Complaint and either to pay the \$350.00 filing fee or to file a properly supported motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Mr. Smith was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Smith has failed to cure the deficiencies within the time allowed and has failed to respond in any way to Magistrate Judge Boland's March 15 order. Therefore,

the action will be dismissed without prejudice for failure to cure the deficiencies.

Furthermore, 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 Plaintiff files a notice of appeal he also must pay the full \$455 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 motion to compel (ECF No. 1) is denied and the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Smith failed to cure the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 22nd day of April, 2013.

BY THE COURT:

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