

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00273-BNB

RICHARD PADILLA,

Plaintiff,

v.

TERESA CARTER, and
CORRECTIONAL CORPORATION OF AMERICA,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Richard Padilla, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Padilla initiated this action by filing *pro se* a letter (ECF No. 1) complaining that his civil rights have been violated. The instant action was commenced and, on January 30, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. Padilla to cure certain deficiencies if he wished to pursue his claims in this action. Specifically, Magistrate Judge Boland directed Mr. Padilla to file on the court-approved form a Prisoner Complaint and either to pay filing and administrative fees totaling \$400.00 or to file on the court-approved form a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 along with a certified copy of his inmate trust fund account statement and an authorization to calculate and disburse filing fee payments. Mr. Padilla was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days. On February 27, 2014, Magistrate Judge Boland entered a minute order granting Mr. Padilla's request for an

extension of time to obtain the necessary forms and cure the deficiencies.

On March 28, 2014, Mr. Padilla filed a pleading captioned “28 U.S.C. § 1343 and 42 U.S.C. § 1983 State Prisoner Complaint” (ECF No. 6), a “Motion to Proceed In Forma Pauperis Pursuant to §13-17.5-103 C.R.S.” (ECF No. 7), a letter to the clerk of the Court (ECF No. 8), and a packet of summonses (ECF No. 8). Attached to the “Motion to Proceed In Forma Pauperis Pursuant to §13-17.5-103 C.R.S.” is a certified copy of Mr. Padilla’s inmate trust fund account statement. However, Mr. Padilla has failed to cure all of the deficiencies as directed because he has failed to submit an authorization to calculate and disburse filing fee payments and he did not use the court-approved forms to file the complaint and motion to proceed *in forma pauperis*. Therefore, the action will be dismissed without prejudice for failure to cure all of 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 \$505 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 complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Padilla failed to cure all of the deficiencies as directed. It is

FURTHER ORDERED that the “Motion to Proceed In Forma Pauperis Pursuant

to §13-17.5-103 C.R.S.” (ECF No. 7) is denied as moot. 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 11th day of April, 2014.

BY THE COURT:

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