

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01397-BNB

MICHAEL D. REA, II, and
ANTHONY L. JIMENEZ, SR.,

Plaintiffs,

v.

MICHELLE RUFFINI, AVCF Mailroom,
COLO. DEPT. OF CORRECTIONS,
RICK RAMISH,
WARDEN RANDY LIND, et al.,
STEVE LUCERO, "STG" Coordinator,
SECURITY MJR. HOUSTON, and
ATTORNEY GENERAL JOHN SUTHERS, et al.,

Defendants.

ORDER OF DISMISSAL

Plaintiffs are prisoners in the custody of the Colorado Department of Corrections. Plaintiffs initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1) and a document titled "Notice of Entry of Appearance and Potential Class Action Status Fed. Civ. R. 23 (ECF No. 3). On May 16, 2014, Magistrate Judge Boyd N. Boland entered an order directing Plaintiffs to cure certain deficiencies if they wished to pursue their claims. Specifically, Magistrate Judge Boland directed Plaintiffs either to pay filing and administrative fees totaling \$400.00 or to file individual motions seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 along with a certified copy of each inmate's trust fund account statement and an authorization from each inmate to calculate and disburse filing fee payments. Magistrate Judge Boland also noted that

Plaintiffs improperly used “et al.” in the caption of the Prisoner Complaint rather than listing each named Defendant. Magistrate Judge Boland warned Plaintiffs that any Plaintiff who failed to cure the deficiencies within the time allowed would be dismissed as a party to this action without further notice.

On May 23, 2014, each Plaintiff filed a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a 42 U.S.C. § 1983 Action. (See ECF Nos. 5 & 6.) Plaintiffs also filed on May 23, 2014, a “Motion for Leave to Correct Caption and Cure Deficiencies as per Order Dated May 19, 2014, by Honorable J., Boyd N. Boland” (ECF No. 7). Plaintiffs attached to this motion certified copies of their inmate trust fund account statements. (See ECF No. 7 at 3-5.) Plaintiffs also have filed other papers in this action (see ECF Nos. 8-12), but neither Plaintiff has submitted an authorization to calculate and disburse filing fee payments as directed. Therefore, the action will be dismissed without prejudice because Plaintiffs failed 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 either 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 action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Plaintiffs failed to cure all of 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.

FURTHER ORDERED that the pending motions are denied as moot.

DATED at Denver, Colorado, this 27th day of June, 2014.

BY THE COURT:

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