

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01928-BNB

LOUNGER ENTERTAINMENT L.L.C.,

Plaintiff,

v.

PUEBLO COUNTY JUDICIAL DEPARTMENT,

Defendant.

SECOND ORDER TO CURE DEFICIENCIES

Fernando L. Carrillo initiated this action on July 10, 2014, by filing *pro se* a Complaint (ECF No. 1), a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2), and an Application to Proceed in District Court Without Prepaying Fees or Costs (ECF No. 3). Mr. Carrillo is an inmate at the Pueblo County Jail in Pueblo, Colorado. He did not name himself as Plaintiff in the documents filed on July 10.

On July 14, 2014, the court entered an order directing Mr. Carrillo to cure certain deficiencies if he wishes to pursue any claims in this action. In particular, the court directed Mr. Carrillo to file on the proper form a Prisoner Complaint and to file a signed 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. The court also advised Mr. Carrillo that a business entity may not appear in court without counsel. On August 18, 2014, the court entered a minute order directing the clerk of the court to mail

to Mr. Carrillo the necessary forms to cure the deficiencies. Mr. Carrillo was directed to cure the deficiencies within thirty days.

On August 19, 2014, Mr. Carrillo filed on the proper form a Prisoner Complaint (ECF No. 9) naming himself as Plaintiff. On August 21, 2014, Mr. Carrillo filed a copy of his inmate trust fund account statement. On September 4, 2014, Mr. Carrillo filed a letter to the court (ECF No. 13), another Prisoner Complaint (ECF No. 12), and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 11) along with a certified copy of his inmate trust fund account statement. Although Mr. Carrillo signed both the Prisoner Complaint (ECF No. 12) and the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 11) filed on September 4, the only Plaintiff listed in the caption of those documents is Lounger Entertainment L.L.C.

The Prisoner Complaint (ECF No. 12) and the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 11) filed on September 4 will be stricken because Lounger Entertainment L.L.C. may not appear in court unless it is represented by counsel. *See Harrison v. Wahatoyas, LLC*, 253 F.3d 552, 556 (10th Cir. 2001) ("As a general matter, a corporation or other business entity can only appear in court through an attorney and not through a non-attorney corporate officer appearing pro se.") The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2) and the Application to Proceed in District Court Without Prepaying Fees or Costs (ECF No. 3) filed on July 10, 2014, also will be stricken for the same reason.

The Court will consider Mr. Carrillo's claims set forth in the Prisoner Complaint

(ECF 9) filed on August 19, 2014. However, Mr. Carrillo still has not filed a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in his own name. He will be given one final opportunity to cure this remaining deficiency. In order to cure the remaining deficiency, Mr. Carrillo must file on the proper 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 a signed authorization to calculate and disburse filing fee payments. Accordingly, it is

ORDERED that Plaintiff cure the remaining deficiencies specified in this order **within thirty (30) days from the date of this order.** It is

FURTHER ORDERED that Plaintiff shall obtain the proper, court-approved Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 form (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov. It is

FURTHER ORDERED that, if Plaintiff fails to cure the remaining deficiencies within the time allowed, the action will be dismissed without further notice. The dismissal shall be without prejudice. It is

FURTHER ORDERED that the Prisoner Complaint (ECF No. 12), the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 11), the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2), and the Application to Proceed in District Court Without Prepaying Fees or Costs (ECF No. 3) are stricken.

DATED September 24, 2014, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge