

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02068-BNB

ANTOINE BRUCE,

Plaintiff,

v.

JOHN T. RATHMAN,
ALEJO BORRERO-HERNANDE,
LEE H. GREEN,
JOSE A. SANTANA,
DAVID A. BERKEBILE,
PAUL M. LAIRD,
HARRELL WATTS,
L. ROBINSON, and
S. CEDENO,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Antoine Bruce, is in the custody of the Federal Bureau of Prisons at ADX in Florence, Colorado. Plaintiff initiated this action by filing *pro se* a Prisoner Complaint pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Magistrate Judge Boyd N. Boland reviewed the Complaint and the § 1915 motion, determined the filings were deficient, and directed Plaintiff to cure the deficiencies. Plaintiff cured the deficiencies in part on August 14, 2014. He also filed a Motion to Compel, a Motion to File First Amended Complaint, and a Motion for a Supplemental Complaint. Magistrate Judge Boland granted Plaintiff's § 1915 Motion and denied the various motions either as moot or unnecessary.

Magistrate Judge Boland also found that the Complaint failed to comply with Rule 8 and the joinder requirements of the Federal Rules of Civil Procedure and directed Plaintiff to file an Amended Complaint. On October 14, 2014, Plaintiff filed a Motion for Extension of Time to file an amended complaint. Plaintiff stated in the Motion that he needed the additional time because he was attempting to mail to the Court an “order for (preliminary injunction) and a (temporary restraining order) against defendants.” Mot. for Ext., ECF No. 19, at 1.

Previous to filing the Motion for Extension of Time, Plaintiff had filed several lengthy pleadings that he titled as a “Motion to Amend” or as a “Motion of Compelment [sic].” Magistrate Judge Boland denied these motions as moot, because Plaintiff had been directed to amend, and told Plaintiff that the only proper filing at this time is an amended complaint. Therefore, when Plaintiff filed the motion for extension of time and stated he needed additional time to prepare a motion for preliminary injunction or a temporary restraining order, Magistrate Judge Boland denied the request for an extension and directed Plaintiff to comply by October 24, 2014, with the September 8, 2014 Order to Amend.

Magistrate Judge Boland also found Plaintiff’s claim that he is being denied ink, paper, stamps, and the ability to send out his legal mail did not support a granting of an extension of time to amend. Plaintiff did not need an ink pen or paper to submit his claims on a Prisoner Complaint form; and Plaintiff’s alleged inability to send out his legal mail, specifically to the Court for filing, is belied by his ability to submit the Motion for an Extension of Time.

The Court finds Magistrate Judge Boland correctly determined that Plaintiff failed to comply with Rule 8 and the rules of joinder and ordered him to amend. Furthermore,

Magistrate Judge Boland's denial of an extension of time is appropriate when Plaintiff seeks an extension for meritless reasons. Because Plaintiff now has failed to comply with Magistrate Judge Boland's September 8, 2014 Order within the time allowed, the action will be dismissed.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma paupers* status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he must also pay the full \$505 appellate filing fee or file a motion to proceed *in forma pampers* in the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Application is denied and the action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to file an Amended Complaint and for failure to prosecute. It is

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

DATED at Denver, Colorado, this 14th day of November, 2014.

BY THE COURT:

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