

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02409-BNB

CLIFFORD E. SCHUETT,

Plaintiff,

v.

GOVERNOR, STATE OF COLORADO,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Clifford E. Schuett, is incarcerated at the Nevada Southern Detention Center in Pahrump, Nevada. Mr. Schuett initiated this action by filing *pro se* a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2) and a Prisoner Complaint (ECF No. 1) pursuant to 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). This civil action was commenced and, on September 2, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. Schuett to cure certain deficiencies if he wished to pursue any claims. Magistrate Judge Boland specifically advised Mr. Schuett that he failed to submit a certified copy of his inmate trust fund account statement and that the Complaint was not legible. Mr. Schuett was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Schuett has failed to cure the deficiencies within the time alleged and has not responded in any way to Magistrate Judge Boland's September 2 order. Therefore, the

action will be dismissed without prejudice for failure to cure 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 Prisoner Complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Schuett has 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. It is

FURTHER ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2) is denied as moot.

DATED at Denver, Colorado, this 9th day of October, 2014.

BY THE COURT:

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