

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00051-GPG

JIMMY SANTIAGO,

Plaintiff,

v.

BRIAN HOFFMAN, HSA,

DR. WEINPAHL, M.D.

JODI SINKER, Nurse III, R.N., and

MEDICAL BOARD OF DIRECTORS, at Colorado Springs,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Jimmy Santiago, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Santiago initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1). On January 12, 2015, Magistrate Judge Gordon P. Gallagher ordered Mr. Santiago to file an amended complaint that provides an address for each Defendant and that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure.

On March 5, 2015, Mr. Santiago filed an amended Prisoner Complaint (ECF No. 9). On March 16, 2015, Magistrate Judge Gallagher ordered Mr. Santiago to file a second amended complaint. Magistrate Judge Gallagher determined the amended Prisoner Complaint still did not comply with the pleading requirements of Rule 8 because Mr. Santiago still failed to provide a short and plain statement of his claims showing he is entitled to relief. Magistrate Judge Gallagher specifically noted that Mr.

Santiago failed to allege specific facts in support of his claims and that the combination of legal argument with a few vague and conclusory factual allegations of personal participation does not satisfy the pleading requirements of Rule 8. Although the amended Prisoner Complaint did not comply with Rule 8, Magistrate Judge Gallagher determined Mr. Santiago had made some effort to comply and should be given one more opportunity to file a proper pleading. Magistrate Judge Gallagher provided specific and detailed instructions to Mr. Santiago regarding the pleading requirements of Rule 8 and the factual allegations necessary to support the claims he is asserting. Mr. Santiago was warned that the action would be dismissed without further notice if he failed to file a second amended complaint within thirty days.

On April 20, 2015, Magistrate Judge Gallagher entered a minute order granting Mr. Santiago an extension of time until May 15, 2015, to file a second amended complaint. Magistrate Judge Gallagher reminded Mr. Santiago that the action would be dismissed without further notice if he failed to file a second amended complaint as directed within the time allowed.

Mr. Santiago has failed to file a second amended complaint within the time allowed. Furthermore, the Court agrees that the prior pleadings in this action do not provide a short and plain statement of Mr. Santiago's claims showing he is entitled to relief as required under Rule 8. Therefore, the action will be dismissed without prejudice for failure to prosecute and comply with the Federal Rules of Civil Procedure and a court order. The Court also 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 (ECF No. 1), the amended Prisoner Complaint (ECF No. 9), and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Santiago failed to prosecute and comply with the Federal Rules of Civil Procedure and a court order. 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 26th day of May, 2015.

BY THE COURT:

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