

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00115-GPG

LEROY W. BAKER,

Plaintiff,

v.

RICK RAEMISCH, Director of Dept. of Corrections,
JAMES FAULK, Warden, Sterling Correctional Facility,
LT. HOFFMAN, Officer, Sterling Correctional Facility,
ZACHARY AUCOIN, Officer, Sterling Correctional Facility,

Defendants.

ORDER OF DISMISSAL

Plaintiff Leroy Walter Baker is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Sterling Correctional Facility in Sterling, Colorado. Plaintiff initiated this action by filing *pro se* a Prisoner Complaint pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 1343, and the Federal Tort Claims Act (FTCA).

Subsequently, Plaintiff submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, which was granted.

On March 17, 2015, the Court entered an order that dismissed Defendant Lieutenant Hoffman and other unnamed officers because the specific claims Plaintiff asserted against them: (1) the taking of his property; (2) threats and discriminatory remarks; (3) administrative regulation violations; and (4) state criminal statute violations, are all legally frivolous. Plaintiff further was told that his reliance on the FTCA as jurisdiction for his claims is misplaced because named defendants are not federal employees.

The only remaining claim, as a result of the March 17 Order, is that Plaintiff has been retaliated against for filing civil causes of action. Plaintiff was directed to amend

the Complaint and state specifically what remaining Defendants did to violate this alleged constitutional violation. Magistrate Judge Gallagher warned Plaintiff that if he failed to comply with the Order to Amend within the time allowed the Court would dismiss the action without further notice.

Plaintiff now has failed to comply with the March 17, 2015 Order within the time allowed. The Court finds Magistrate Judge Gallagher correctly required Plaintiff to amend the Complaint and state personal participation by remaining Defendants. The Court, therefore, will dismiss the action for failure to comply with a Court order and to prosecute.

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 Complaint and action are 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 22nd day of April, 2015.

BY THE COURT:

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