

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-01710-GPG

DEAN D HACKBORN, Inmate No.130945,

Plaintiff,

v.

PAULA J. FRANZ, MD;  
CATHIE HOLST;  
BERNADETTE SCOTT, A.I.C. Coordinator;  
JOHN HICKENLOOPER, Governor of Colorado;  
RICK REAMISH, Executive Director of the Colorado Dept. of Corrections;  
COLORADO DEPT. OF CORRECTIONS; and  
COLORADO HEALTH PARTNERS,

Defendants.

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**ORDER OF DISMISSAL**

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Plaintiff, Dean D. Hackborn, is in the custody of the Colorado Department of Corrections, currently incarcerated at the Trinidad Correctional Facility in Model, Colorado. On August 7, 2015, Plaintiff initiated this action by filing *pro se* a Prisoner Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2). He has been granted leave to proceed *in forma pauperis*. (ECF No. 4).

On October 21, 2015, Magistrate Judge Gordon P. Gallagher directed Plaintiff to file an amended complaint. (ECF No. 10). Specifically, Magistrate Judge Gallagher directed Plaintiff to file an amended complaint that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and that asserted personal participation by properly named defendants.

In response, on December 16, 2015, Plaintiff filed an amended complaint. (ECF No. 13). However, after reviewing the amended complaint, Magistrate Judge Gallagher determined that it was still deficient. Therefore, on December 28, 2015, he directed Plaintiff to file a second amended complaint. (ECF No. 14). Again, he directed Plaintiff that his second amended complaint must comply with the pleading requirements of Fed. R. Civ. P. 8 and must allege personal participation against properly named defendants. Mr. Hackborn was warned that if he failed to file a second amended complaint as directed within the time allowed, the action would be dismissed without further notice.

Plaintiff has failed to file a second amended complaint within the time allowed as directed in the Court's December 28, 2015 Order. Instead of filing a second amended complaint, on February 1, 2016, Plaintiff filed a "Motion to Add Facts of False Arrest; Motion to Amend Defendants." (ECF No. 15). The motion appears to be an attempt by Plaintiff to add another claim to his complaint, but it does not constitute a second amended complaint and does not cure the deficiencies noted in the Court's December 28, 2015 Order. Therefore, the action will be dismissed without prejudice for failure to prosecute and comply with a court order.

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 amended complaint (ECF No. 13) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Hackborn failed to prosecute and comply with 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.

FURTHER ORDERED that Plaintiff's "Motion to Add Facts of False Arrest; Motion to Amend Defendants" (ECF No. 15) is DENIED as moot.

DATED at Denver, Colorado, this 23<sup>rd</sup> day of February, 2016.

BY THE COURT:

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