

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02154-GPG

DAVID SUBJACK,

Plaintiff,

v.

[NO DEFENDANTS NAMED],

Defendants.

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ORDER OF DISMISSAL

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Plaintiff, David Subjack, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Subjack submitted to the Court *pro se* a letter (ECF No. 1) asking to be placed in protective custody and seeking assistance in filing a lawsuit. This action was commenced and, on September 29, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Subjack to cure certain deficiencies if he wishes to pursue his claims. Specifically, Magistrate Judge Gallagher directed Mr. Subjack to file a Prisoner Complaint and either to pay filing and administrative fees totaling \$400.00 or to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 along with a certified copy of his inmate trust fund account statement and a signed authorization to calculate and disburse filing fee payments. Mr. Subjack was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. Subjack has failed to cure the deficiencies within the time allowed and he has

failed to respond in any way to Magistrate Judge Gallagher's September 29 order. Therefore, the action will be dismissed without prejudice for failure to cure the 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 action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Subjack 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.

DATED at Denver, Colorado, this 3<sup>rd</sup> day of November, 2015.

BY THE COURT:

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