



## Marner v. Melegnano et al

2015 | Cited 0 times | D. Colorado | November 19, 2015

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01985-GPG ZACHARY LOUIS MARNER, Plaintiff, v. TOM MELEGRANO, Compri Consulting Executive, COMPRI CONSULTING, BOEING CORPORATION, D/B/A JEPPESEN SANDERSON, MARK VAN TINE, Boeing Corporation, D/B/A Jeppesen Sanderson Executive, Defendants.

### ORDER OF DISMISSAL

Plaintiff, Zachary Louis Marner, initiated this action by filing pro se a Complaint (ECF No. 1) on September 10, 2015. On September 15, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Mr. Marner to cure certain deficiencies if he wished to pursue his claims. (ECF No. 3). Specifically, Magistrate Judge Gallagher directed Mr. Marner to either pay the filing fee or submit an Application to Proceed in District Court Without Prepaying Fees or Costs. Additionally, Magistrate Judge Gallagher directed Mr. Marner to file his complaint on the current court-approved form as required by the local rules for the District of Colorado and that the names in the caption should match the names in the text of the Complaint. Mr. Marner was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days. In response, Mr. Marner filed two Applications to Proceed in District Court Without Prepayment of Fees or Costs (Long Form) (ECF Nos. 4 and 5). However, he failed to file a complaint on the current court-approved form. On October 26, 2015, Magistrate Judge Gallagher issued a Second Order to Cure Deficiencies and directed Mr. Marner to file a complaint on the current court-approved form and that the names in the caption of the complaint should match the names in the text of the complaint. Mr. Marner was again warned that if he failed to cure the designated deficiencies within twenty-one days, the action would be dismissed without further notice.

Mr. Marner has failed to cure the deficiencies within the time allowed and he has failed to respond in any way to Magistrate Judge Gallagher's October 26, 2015 order. Therefore, the action will be dismissed without prejudice for failure to prosecute and 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



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Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is ORDERED that the Complaint (ECF No. 1) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Marner failed to prosecute and 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 Applications to Proceed in District Court Without Prepayment of Fees or Costs (Long Form) (ECF Nos. 4 and 5) are DENIED as moot. DATED at Denver, Colorado, this 19 th

day of November , 2015. BY THE COURT:

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

