

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JOSEPH KEN WILLIAMS,	)	CIV. NO. 08-00457 DAE-LEK
	)	
Plaintiff,	)	
	)	ORDER GRANTING IN FORMA
vs.	)	PAUPERIS APPLICATION AND
	)	DIRECTING SERVICE OF COMPLAINT
DR. PADERES and HCF MEDICAL	)	
UNIT STAFF,	)	
	)	
Defendants.	)	
_____	)	
	)	
	)	

**ORDER GRANTING IN FORMA PAUPERIS APPLICATION AND DIRECTING SERVICE OF COMPLAINT**

On October 10, 2008, pro se Plaintiff Joseph Ken Williams, an inmate incarcerated at Halawa Correctional Facility in Aiea, Hawaii, brought this prisoner civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has filed a sufficient *in forma pauperis* ("IFP") application, showing that he is a pauper within the meaning of the statute. Accordingly, the IFP application is GRANTED. The court has screened the Complaint pursuant to 28 U.S.C. § 1915(e)(2) & § 1915A, and has determined that it sufficiently states a claim to proceed. Pursuant to 28 U.S.C. § 1915(b)(1), as a prisoner, Plaintiff is still required to pay the statutory filing fee of \$350.00 for this civil rights action.

At the time he submitted his application, the prison certified that Plaintiff had no money in his prison trust

account. Accordingly, the court will not assess an initial partial filing fee at this time. **As soon as funds become available in Plaintiff's account**, however, the prison is directed to make monthly payments of 20 percent of the preceding month's income credited to Plaintiff's prison trust account. **These payments shall be withdrawn before Plaintiff is allowed to make commissary or other non-essential purposes.** These payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court each time the amount in Plaintiff's account exceeds \$10.00, until the filing fee in all of Plaintiff's actions are paid in full. 28 U.S.C. § 1915(b)(2).

#### CONCLUSION

IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed *in forma pauperis* is GRANTED.
2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. **The Director of the Hawaii Department of Public Safety, or his designee, is ordered to collect payments each month in an amount equal to twenty percent of the preceding month's income credited to Plaintiff's prison account. The Director of the Hawaii Department of Public Safety or his designee shall forward those payments to the Clerk of the Court when the amount in the account exceeds \$10.00, in**

accordance with 28 U.S.C. § 1915(b)(2), until a total of **\$350.00** for this action has been collected and forwarded to the Clerk of the Court. THE PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION. It is the Department of Public Safety's responsibility to ensure that these payments are made, and to ensure that these payments do not exceed the \$350.00 owed for this action. See 28 U.S.C. § 1915(a)(2-3).

3. The Clerk shall send a copy of this order to **Plaintiff**, to the **Director of the Hawaii Department of Public Safety**, or his designee, **Thomas Read, Department of Public Safety Offender Management Administrator**, at 919 Ala Moana Blvd., 4th Floor, Honolulu, Hawaii 96814, and to **Halawa Warden Francis Sequeira**, at Halawa Correctional Facility, 99-902 Moanalua Rd., Aiea, Hawaii, 96701.

4. The Clerk is directed to send Plaintiff one [1] summonses, one [1] USM-285 form, one [1] Notice of Lawsuit and Request for Waiver of Service for Summons form (AO 398), one [1] Waiver of Service of Summons form (AO 399), with their instruction sheets, and a copy of the endorsed Complaint (if a copy of the endorsed Complaint has not already been sent to Plaintiff). Plaintiff shall then complete the forms as directed below and submit the following documents to the United States Marshals Service:

a. **For defendants who are employees of the Department**

**of Public Safety ("DPS"):** A completed USM-285 form, a copy of the endorsed Amended Complaint, and a summons, which is sufficient for all DPS defendants. Plaintiff should complete separate Notice of Lawsuit and Request for Waiver of Service forms (AO 398), and Waiver of Service of Summons forms (AO 399) for each named DPS defendant. These documents shall be addressed to Thomas Read, DPS Offender Management Administrator, 919 Ala Moana Blvd., 4th Floor Honolulu, HI 96814. **Mr. Read is authorized to accept a single complaint, summons, and USM 285 form for all DPS defendants.**

5. Upon receipt of these documents and a copy of this order, the United States Marshal shall serve a copy of the endorsed Complaint, completed Notice of Lawsuit and Request for Waiver of Service form (AO 398) and completed Waiver of Service of Summons form (AO 399), for each named defendant, upon Defendant(s), as directed by Plaintiff pursuant to Rule 4 of the Federal Rules of Civil Procedure without payment of costs.

6. The United States Marshal is directed to retain the sealed summons and a copy of the complaint in their file for future use. The United States Marshal shall file returned Waiver of Service of Summons forms as well as any requests for waivers that are returned as undeliverable, **as soon as they are received.**

7. If a Waiver of Service of Summons form is not returned by a defendant within sixty days **from the date the Marshal mailed the request for waiver**, the United States Marshal shall:

a. Personally serve the defendant with the above-described documents pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c) and shall command all necessary assistance from the Department of Public Safety to execute this Order.

b. Within ten days after personal service is effected, the United States Marshall shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of summons and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and Amended Complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Fed. R. Civ. P. 4(d)(2).

9. Defendant(s) shall file an answer or other responsive pleading to Plaintiff's Complaint **within sixty [60] days after the date on which the Marshal sent the request for waiver of service (if formal service is waived), or twenty [20] days if service is not waived.** Failure to do so may result in the entry of default judgment.

10. Plaintiff shall keep the court informed of any change of address. Such notice shall be titled "NOTICE OF CHANGE OF ADDRESS." The notice shall contain only information about the change of address, and its effective date. The notice shall not include any requests for any other relief. Failure to file the notice may result in the dismissal of the action for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure.

11. Plaintiff shall serve a copy of all further pleadings or documents submitted to the court upon the Defendant(s) or

their attorney(s). Plaintiff shall include, with any original paper to be filed with the Clerk of Court, a certificate stating the date that an exact copy of the document was mailed to the defendants or their counsel. Any paper received by a District or Magistrate Judge which has not been filed with the Clerk of Court or which does not include a certificate of service will be disregarded.

12. Plaintiff is **NOTIFIED** that, until service of the Complaint has been effected, Plaintiff should not file motions or other documents with the court. Plaintiff is further **NOTIFIED** that he must comply with the Federal Rules of Civil Procedure and the Local Rules for the District of Hawaii. Documents that are filed before the Complaint has been served on Defendants, or are not in compliance with the Federal and Local Rules, will be STRICKEN.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, October 15, 2008.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States Magistrate Judge

*Williams v. Paderes, et al.*, Civ. No. 08-00457 DAE-LEK; ORDER GRANTING IN FORMA PAUPERIS AND DIRECTING SERVICE; hmg\IFP 08\Williams 08-457 DAE (grt IFP and dir ser)