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

Deborah E. Habtetsion,
Plaintiff,
vs.
Maricopa County Sheriff's Office, et. al,
Defendants.

No. CV 06-0936-PHX-DGC (JRI)
ORDER

Plaintiff, currently confined in the Estrella Jail in Phoenix, Arizona, has filed a *pro se* Complaint pursuant to § 1983. Plaintiff has not paid the \$250.00 filing fee, nor has she properly applied to proceed *in forma pauperis*.

A. Payment of Filing Fee

Pursuant to 28 U.S.C. § 1915(b)(1), Plaintiff must pay the \$250.00 filing fee when she files a civil action. If granted the privilege of proceeding *in forma pauperis*, she will be permitted to pay the fee incrementally instead of in a lump sum. To apply to proceed *in forma pauperis*, a prisoner must submit an affidavit of indigence, a consent to collection of fees from the prisoner's trust account, and a certified copy of her trust account statement for the six months preceding the filing of the Complaint. If Plaintiff was held at more than one institution for the six months preceding the filing of the Complaint, she must include a certified account statement from an appropriate official at each of the institutions where she was confined.

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1 The Court then shall assess and, when funds exist, collect an initial partial filing fee
2 of 20% of the greater amount of either the average monthly deposits or the average monthly
3 balance in Plaintiff's account for the six months immediately preceding the filing. 28 U.S.C.
4 § 1915(b)(1). After payment of the initial partial filing fee, Plaintiff shall be required to
5 make monthly payments equaling 20% of the preceding month's income credited to her
6 account. 28 U.S.C. § 1915(b)(2). The agency having custody of Plaintiff will forward
7 payments from her account to the Clerk of Court each time the amount in the account
8 exceeds \$10.00 until the filing fee is paid. Id.

9 **B. Application Fails to Comply With Statute**

10 Plaintiff has submitted an affidavit of indigence and a consent to collection of fees
11 from her trust account. She has not, however, submitted a *certified* copy of her trust account
12 statement. She submitted an Inmate Account Statement without having the proper official
13 fill out the Certificate of Correctional Official as to Status of Applicant's Trust Account. In
14 light of this deficiency, Plaintiff will be permitted 30 days to file a properly *certified* six-
15 month trust account statement.

16 **C. Warning of Possible Dismissal Pursuant to Rule 41**

17 Plaintiff should take notice that if she fails to timely comply with every provision of
18 this Order, or any order entered in this matter, this action will be dismissed pursuant to Rule
19 41(b) of the Federal Rules of Civil Procedure. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-
20 61 (9th Cir.) (district court may dismiss action for failure to comply with any order of the
21 Court), *cert. denied*, 506 U.S. 915 (1992).

22 **IT IS THEREFORE ORDERED THAT:**

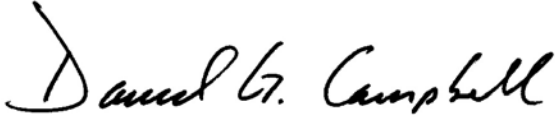
23 (1) Plaintiff shall have **30 days** from the date this Order is filed in which to either pay
24 the \$250.00 filing fee or properly apply to proceed *in forma pauperis* as described in this
25 Order.

26 (2) The Clerk of Court is directed to enter dismissal of this action without prejudice
27 and without further notice to Plaintiff if Plaintiff fails to comply within 30 days.
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(3) The Clerk of Court shall send Plaintiff an Application to Proceed *In Forma Pauperis* by a Prisoner Civil (Non-Habeas).

DATED this 13th day of April, 2006.



David G. Campbell
United States District Judge

**Instructions for Prisoners Applying for Leave to Proceed *in Forma Pauperis*
Pursuant to 28 U.S.C. § 1915 in a Civil Action (Non-habeas) in Federal Court**

You must pay the full filing fee of \$250.00 for a civil action. If you later file an appeal, you will be obligated to pay the \$255.00 filing fee for the appeal.

If you have enough money to pay the full filing fee, you should send a cashier's check or money order payable to the Clerk of the Court with your complaint, petition, or notice of appeal.

If you do not have enough money to pay the full filing fee, you can file the action without prepaying the filing fee. However, the court will assess an initial partial filing fee. The initial partial filing fee will be the greater of 20% of the average monthly deposits or 20% of the average monthly balance in your prison or jail account for the six months immediately preceding the filing of the lawsuit. The court will order the agency that has custody of you to withdraw the initial partial filing fee from your prison or jail account as soon as funds are available and to forward the money to the court.

After the initial partial filing fee has been paid, you will owe the balance of the filing fee. Until the filing fee is paid in full, each month you will owe 20% of your preceding month's income. The agency that holds you in custody will collect that money and forward it to the court any time the amount in your account exceeds \$10.00. The balance of the filing fee may be collected even if the action is later dismissed, summary judgment is granted against you, or you fail to prevail at trial.

To file an action without prepaying the filing fee, and to proceed with an action *in forma pauperis*, you must complete the attached form and return it to the court with your complaint. You must have a prison or jail official complete the certificate on the bottom of the form and attach a certified copy of your prison or jail account statement for the last six months. If you were incarcerated in a different institution during any part of the past six months, you must attach a certificate and a certified copy of your account statement from each institution at which you were confined. If you submit an incomplete form or do not submit a prison or jail account statement with the form, your request to proceed *in forma pauperis* will be denied.

Even if some or all of the filing fee has been paid, the court is required to dismiss your action if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief can be granted; or (4) your complaint makes a claim against a defendant for money damages and that defendant is immune from liability for money damages.

If you file more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, you will be prohibited from filing any other action *in forma pauperis* unless you are in imminent danger of serious physical injury.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

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

_____)	CASE NO. _____
Plaintiff,)	
)	
vs.)	APPLICATION TO PROCEED
)	<i>IN FORMA PAUPERIS</i>
_____)	BY A PRISONER
Defendant(s).)	CIVIL (NON-HABEAS)
_____)	

I, _____, declare, in support of my request to proceed in the above entitled case without prepayment of fees under 28 U.S.C. § 1915, that I am unable to pay the fees for these proceedings or to give security therefor and that I believe I am entitled to relief.

In support of this application, I answer the following questions under penalty of perjury:

- Have you ever before brought an action or appeal in a federal court while you were incarcerated or detained? Yes No If "Yes," how many have you filed? _____.
Were any of the actions or appeals dismissed because they were frivolous, malicious, or failed to state a claim upon which relief may be granted? Yes No If "Yes," how many of them? _____.
- Are you currently employed at the institution where you are confined? Yes No
If "Yes," state the amount of your pay and where you work. _____

- Do you receive any other payments from the institution where you are confined? Yes No
If "Yes," state the source and amount of the payments. _____

- Do you have any other sources of income, savings, or assets either inside or outside of the institution where

you are confined?

Yes

No

If "Yes," state the sources and amounts of the income, savings, or assets. _____

I declare under penalty of perjury that the above information is true and correct.

DATE

SIGNATURE OF APPLICANT

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, _____, hereby consent to having the designated correctional officials at this institution release to the Court my trust account information. I further consent to having the designated correctional officials at this institution withdraw from my trust account the funds required to comply with the order of this Court for the payment of filing fees in accordance with 28 U.S.C. § 1915(b).

My consent includes withdrawal from my account by correctional officials of partial initial payments to this Court equal to 20% of the greater of:

- (A) the average monthly deposits to my account for the six-month period preceding my filing of this action, or
- (B) the average monthly balance in my account for the six-month period preceding my filing of this action.

My consent also includes monthly withdrawals from my account by correctional officials of an amount equal to 20% of each month's income. Whenever the amount in my account reaches \$10, correctional officials will withdraw that amount and forward it to the Court until the required filing fee is paid in full. I understand that I am liable for paying the entire fee, even if my case is dismissed by the Court before the fee is fully paid.

DATE

SIGNATURE OF APPLICANT

CERTIFICATE OF CORRECTIONAL OFFICIAL
AS TO STATUS OF APPLICANT'S TRUST ACCOUNT

I, _____, certify that as of the date applicant signed this application:
(Printed name of official)

The applicant's trust account balance at this institution is: \$ _____

The applicant's average monthly deposits during the prior six months is: \$ _____

The applicant's average monthly balance during the prior six months is: \$ _____

The attached certified account statement accurately reflects the status of the applicant's account.

DATE

AUTHORIZED SIGNATURE

TITLE/ID NUMBER

INSTITUTION