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

Emmanuel R. Torres,
Plaintiff,
vs.
Joseph M. Arapio, et al.,
Defendants.

No. CV 09-1570-PHX-RCB (JRI)

ORDER

Plaintiff Emmanuel R. Torres, who is confined in the Maricopa County Durango Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. #1). Plaintiff has not paid the \$350.00 civil action filing fee but has filed a deficient Application to Proceed *In Forma Pauperis* (Doc. #3). The Court will deny the Application to Proceed *In Forma Pauperis* without prejudice and give Plaintiff 30 days to pay the fee or file a new, completed Application to Proceed *In Forma Pauperis* and a certified six-month trust account statement.

I. Payment of Filing Fee

When bringing an action, a prisoner must either pay the \$350.00 filing fee in a lump sum or, if granted the privilege of proceeding *in forma pauperis*, pay the fee incrementally as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed *in forma pauperis* requires an affidavit of indigence and a *certified* copy of the inmate’s trust account statement for the

1 six months preceding the filing of the Complaint. 28 U.S.C. § 1915(a)(2). An inmate must
2 submit statements from each institution where he was confined during the six-month period.
3 Id. To assist prisoners in meeting these requirements, the Court requires use of a form
4 application. LRCiv 3.4(a).

5 If a prisoner is granted leave to proceed *in forma pauperis*, the Court will assess an
6 initial partial filing fee of 20% of either the average monthly deposits or the average monthly
7 balance in Plaintiff's account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial
8 partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The
9 balance of the fee will be collected in monthly payments of 20% of the preceding month's
10 income credited to an inmate's account, each time the amount in the account exceeds \$10.00.
11 28 U.S.C. § 1915(b)(2).

12 **II. Application Fails to Comply With Statute**

13 Plaintiff has used the court-approved Application to Proceed *In Forma Pauperis* form,
14 but the "Certificate of Correctional Official as to Status of Applicant's Trust Account"
15 section has not been filled out or signed and dated by an authorized correctional official.
16 Plaintiff has also failed to submit a certified six-month trust account statement. In light of
17 these deficiencies, Plaintiff's Application to Proceed *In Forma Pauperis* will be denied
18 without prejudice and Plaintiff will be permitted 30 days to either pay the \$350.00 filing fee
19 or file a new, completed Application to Proceed *In Forma Pauperis* and a certified six-month
20 trust account statement.

21 **III. Warnings**

22 **A. Address Changes**

23 Plaintiff must file and serve a notice of a change of address in accordance with Rule
24 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
25 relief with a notice of change of address. Failure to comply may result in dismissal of this
26 action.

27 **B. Copies**

28 Plaintiff must submit an additional copy of every filing for use by the Court. See

1 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
2 to Plaintiff.

3 **C. Possible Dismissal**

4 If Plaintiff fails to timely comply with every provision of this Order, including these
5 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
6 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
7 comply with any order of the Court).

8 **IT IS ORDERED:**


9 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. #3) is **denied**
10 **without prejudice**.

11 (2) Within **30 days** of the date this Order is filed, Plaintiff **must either** pay the
12 \$350.00 filing fee **or** file a new, completed Application to Proceed *In Forma Pauperis* and
13 a certified six-month trust account statement.

14 (3) **If** Plaintiff fails to either pay the \$350.00 filing fee or file a completed
15 Application to Proceed *In Forma Pauperis* within 30 days, the Clerk of Court must enter a
16 judgment of dismissal of this action without prejudice and without further notice to Plaintiff.

17 (4) The Clerk of the Court **must mail** Plaintiff a court-approved form for filing
18 an Application to Proceed *In Forma Pauperis* (Non-Habeas).

19 Dated this 9th day of December, 2009.

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22 _____
23 Robert C. Broomfield
24 Senior United States District Judge
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