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

Philip Choi Gai,
Plaintiff,
vs.
Charles L. Ryan,
Defendant.

No. CV 09-1816-PHX-MHM (ECV)

ORDER

Plaintiff Philip Choi Gai, who is confined in the Arizona State Prison-Phoenix, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and Application to Proceed *In Forma Pauperis*. On October 6, 2009, the Court denied the Application to Proceed, with leave to re-file, because Plaintiff did not submit a certified six-month trust account statement. On October 30, 2009, Plaintiff filed a new Application to Proceed (Doc. #5) that is also deficient. The Court will give Plaintiff a final 30 days to pay the fee or file a completed Application to Proceed *In Forma Pauperis* and 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 did not use the court-approved form provided with the Court's last order to
14 file his new Application to Proceed, but instead used the Application intended for habeas
15 actions. Because Plaintiff has filed a civil rights Complaint, Plaintiff must use the court-
16 approved Application form for civil rights cases. Further, Plaintiff has not submitted a
17 certified six-month trust account statement. In light of these deficiencies, Plaintiff will be
18 permitted a final 30 days to either pay the \$350.00 filing fee or file a complete Application
19 to Proceed *In Forma Pauperis* **and certified six-month trust account statement.**

20 The Arizona Department of Corrections ("ADOC") has notified the Court that a
21 certified trust fund account statement showing deposits and average monthly balances is
22 available from the ADOC's Central Office. *Accordingly, Plaintiff must obtain the certified*
23 *copy of his ADOC trust fund account statement for the six months immediately preceding*
24 *the filing of the Complaint from the ADOC's Central Office.*

25 **III. Warnings**

26 **A. Address Changes**

27 Plaintiff must file and serve a notice of a change of address in accordance with Rule
28 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other

1 relief with a notice of change of address. Failure to comply may result in dismissal of this
2 action.

3 **B. Copies**

4 Plaintiff must submit an additional copy of every filing for use by the Court. See
5 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
6 to Plaintiff.

7 **C. Possible Dismissal**

8 If Plaintiff fails to timely comply with every provision of this Order, including these
9 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,
10 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
11 comply with any order of the Court).

12 **IT IS ORDERED:**

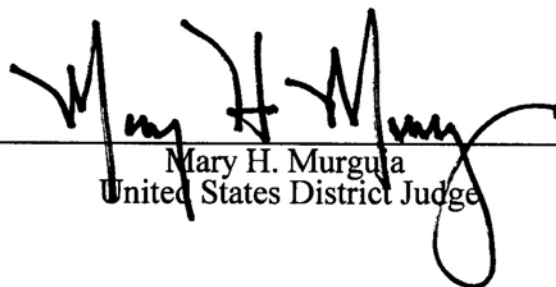
13 (1) Plaintiff's October 30, 2009 Application to Proceed *In Forma Pauperis* (Doc.
14 #5) is **denied without prejudice**.

15 (2) Within 30 days of the date this Order is filed, Plaintiff must either pay the
16 \$350.00 filing fee **or** file a completed Application to Proceed *In Forma Pauperis* **and a**
17 **certified six-month trust account statement from the ADOC's Central Office**.

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

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

23 DATED this 16th day of December, 2009.

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27 _____
28 Mary H. Murgula
United States District Judge