

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

SC

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

David Torrez,)	No. CV 10-0116-PHX-MHM (MHB)
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
Corrections Corp. of America, et al.,)	
)	
Defendants.)	

David Torrez and four other inmates confined in the La Palma Corrections Center (LPCC), a Corrections Corporation of America (CCA) facility in Eloy, Arizona, filed a joint *pro se* Civil Rights Complaint by a Prisoner under 28 U.S.C. § 1983, Torrez v. Corrections Corp. of America, No. CV09-2298-PHX-MHM (MHB), doc.# 1.¹ Torrez filed the first page of the court-approved form Application to Proceed *In Forma Pauperis* and a motion for appointment of person to serve process. (Id., 3, 4.) In an Order filed January 21, 2010, the Court severed that action into separate cases and ordered that Torrez’s *in forma pauperis* application and motion for appointment of person to serve process be filed in his case. (Doc.# 4.) Torrez, Plaintiff in this case, has since filed a First Amended Complaint and a motion to certify this case as a class action. (Doc.# 8, 9.) Plaintiff has not paid the \$350.00 civil action filing fee or filed a proper Application to Proceed *In Forma Pauperis*. The Court will give Plaintiff 30 days to pay the fee or file a completed Application to Proceed *In Forma Pauperis*. The Court will deny Plaintiff’s motions.

¹ “Doc.#” refers to the docket number of filings in this case unless otherwise indicated.

1 **I. Payment of Filing Fee**

2 When bringing an action, a prisoner must either pay the \$350.00 filing fee in a lump
3 sum or, if granted the privilege of proceeding *in forma pauperis*, pay the fee incrementally
4 as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed *in forma pauperis* requires
5 an affidavit of indigence and a *certified* copy of the inmate’s trust account statement for the
6 six months preceding the filing of the Complaint. 28 U.S.C. § 1915(a)(2). An inmate must
7 submit statements from each institution where he was confined during the six-month period.
8 Id. To assist prisoners in meeting these requirements, the Court requires use of a form
9 application. LRCiv 3.4(a).

10 If a prisoner is granted leave to proceed *in forma pauperis*, the Court will assess an
11 initial partial filing fee of 20% of either the average monthly deposits or the average monthly
12 balance in Plaintiff’s account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial
13 partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The
14 balance of the fee will be collected in monthly payments of 20% of the preceding month’s
15 income credited to an inmate’s account, each time the amount in the account exceeds \$10.00.
16 28 U.S.C. § 1915(b)(2).

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

18 Plaintiff has submitted only the first page of the court-approved form Application to
19 Proceed *In Forma Pauperis*. (Doc.# 2.) Plaintiff must submit a properly completed *in forma*
20 *pauperis* application. That is, the “Consent to Collection of Fees from Trust Account”
21 section must be filled out, signed, and dated. Plaintiff must also have the “Certificate of
22 Correctional Official as to Status of Applicant’s Trust Account” section completed and
23 Plaintiff must submit a certified six-month trust account statement. In light of the
24 deficiencies in the submitted application, Plaintiff will be permitted 30 days to either pay the
25 \$350.00 filing fee or file a complete Application to Proceed *In Forma Pauperis*.

26 **III. Motion for Appointment of Person to Serve Process**

27 Plaintiff has filed a motion to appoint a person to serve process. (Doc.# 3.) As noted
28

1 above, Plaintiff has not submitted a properly complete Application to Proceed *In Forma*
2 *Pauperis*. If Plaintiff is granted leave to proceed *in forma pauperis*, service will be ordered
3 by the Court.

4 **IV. Motion to Certify a Class**

5 Plaintiff has also filed a motion to certify this case as a class action. (Doc.# 9.)
6 Plaintiff has not shown that the four prerequisites to a class action under Rule 23(a),
7 Fed.R.Civ.P., *i.e.*, numerosity, typicality, commonality, and adequacy of representation, are
8 met in this case. Moreover, although Plaintiff may appear on his own behalf, he may not
9 appear as an attorney for other persons in a class action. McShane v. United States, 366 F.2d
10 286, 288 (9th Cir. 1966) (non-lawyer had no authority to appear as an attorney for other
11 persons in a purported class action); Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir.
12 1975) (plain error to permit an inmate proceeding pro se to represent fellow inmates in a
13 class action). “This rule is an outgrowth not only of the belief that a layman, untutored in the
14 law, cannot ‘adequately represent’ the interests of the members of the ‘class,’ but also out
15 of the long-standing general prohibition against even attorneys acting as both class
16 representative and counsel for the class.” Huddleston v. Duckworth, 97 F.R.D. 512, 514
17 (N.D. Ind. 1983). Accordingly, Plaintiff’s motion to certify a class will be denied.

18 **V. Warnings**

19 **A. Address Changes**

20 Plaintiff must file and serve a notice of a change of address in accordance with Rule
21 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
22 relief with a notice of change of address. Failure to comply may result in dismissal of this
23 action.

24 **B. Copies**

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

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Possible Dismissal

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

IT IS ORDERED:

(1) Plaintiff's Application to Proceed *In Forma Pauperis* is **denied without prejudice**. (Doc.# 2.)

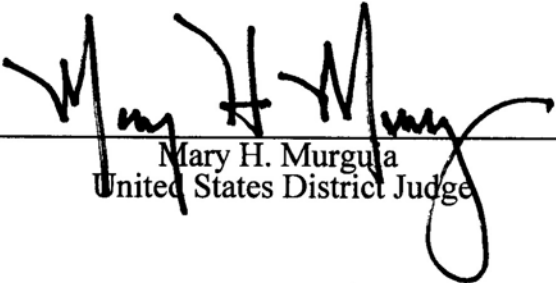
(2) Within 30 days of the date this Order is filed, Plaintiff must either pay the \$350.00 filing fee **or** file a completed Application to Proceed *In Forma Pauperis* and a certified six-month trust account statement.

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

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

(5) Plaintiff's motions for appointment of person to serve process and to certify a case are **denied**. (Doc.# 3, 9.)

DATED this 4th day of March, 2010.



Mary H. Murgula
United States District Judge