

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-01778-ZLW-KLM

EDWIN G. ALMEYDA,

Plaintiff,

v.

TOM PETERSON,

Defendant.

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**ORDER DIRECTING PLAINTIFF TO MAKE MONTHLY FILING FEE PAYMENT OR  
TO SHOW CAUSE**

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**ORDER ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX**

By Order entered August 20, 2008 [Docket No. 2], Plaintiff was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Pursuant to § 1915(b)(2), Plaintiff is required to make “monthly payments of 20 percent of the **preceding** month’s income credited to his account” until the filing fee is paid in full, provided the prisoner’s account exceeds \$10.00. This provision requires the prisoner to make the payment at the time his account is credited, before the prisoner engages in other, discretionary spending. *Harris v. Colo. Dep’t of Corr.*, 2000 WL 33193816, at \*1 (D.Colo. Dec. 19, 2000).

In the Order granting Plaintiff leave to proceed *in forma pauperis*, Plaintiff was instructed either to make the required monthly payments or to show cause **each month** why he has no assets and no means by which to make the monthly payment. In order to show cause, Plaintiff was also directed to file a certified copy of his inmate trust fund account statement. Plaintiff was warned that a failure to comply with the requirements of § 1915(b)(2) would result in dismissal of this civil action.

Despite the clear language of the August 20, 2008 Order, Plaintiff has complied with his filing fee obligations only once [Docket No. 12; Filed October 7, 2008]. Other than for the month of September, Plaintiff has failed to file any inmate trust fund account statements, pay any other portion of his filing fee, or show cause why he cannot. Therefore, on or before **February 18, 2009**, Plaintiff must either make the required monthly payments for October, November, and December or show cause why he cannot.

It is not acceptable for Plaintiff to meet his monthly obligations only when specifically called upon by the Court through an order to pay or show cause. Such a procedure unreasonably burdens the Court. Consequently, hereafter I will require Plaintiff, by the **15<sup>th</sup> day of each** month and without any further notice from or order of the Court, either to make the required monthly payment for each preceding month or to file a certified copy of his inmate trust fund account statement for the preceding month demonstrating that he has no assets and no means by which to make the monthly payment. Plaintiff is further advised that making purchases at the canteen in lieu of making his required monthly payments fails to demonstrate good cause for his nonpayment. See *Cosby v. Meadors*, 351 F.3d 1324, 1327 (10th Cir. 2003) (noting that “when a prisoner has sufficient income to pay a monthly partial filing fee and instead spends his money on amenities at the prison canteen, he cannot be excused for failing to make the required partial payments”). If Plaintiff fails hereafter to comply with this requirement in any month prior to the date on which the filing fee is paid in full, I will recommend that the case be dismissed for failure to comply with this Order and with the Order allowing Plaintiff to proceed *in forma pauperis* entered October 3, 2008.

IT IS HEREBY **ORDERED** that on or before **February 18, 2009**, Plaintiff shall make

the required monthly payments or show cause why he has no assets and no means by which to make the monthly payments for the months of October, November, and December.

IT IS FURTHER **ORDERED** that by the 15<sup>th</sup> day of each month hereafter, starting on February 15, 2009, for the month of January, Plaintiff shall either make the requirement monthly payment for each month or file a certified copy of his inmate trust fund account statement for the month demonstrating that he is not required pursuant to 28 U.S.C. § 1915(b)(2) to make a monthly payment. Furthermore, if payment is made for the preceding month, in order to verify that the appropriate amount is being paid, Plaintiff must file a certified copy of his trust fund account statement for that month. The civil action number should be noted on all payments as well as on any trust fund statements that are filed with the court.

IT IS FURTHER **ORDERED** that if Plaintiff fails to comply with this Order, the Court may recommend that the complaint and this civil action be dismissed without further notice.

BY THE COURT:

s/ Kristen L. Mix

United States Magistrate Judge

Dated: February 5, 2009