

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02207-BNB

JOSE MEDINA ESCOBAR,

Plaintiff,

v.

WARDEN JONES,
CAPTAIN K. FOSTER,
LIEUTENANT MARTZ,
LIEUTENANT CHAVEZ,
SERGEANT A. LUNA,
SERGEANT BINDER,
SERGEANT J. WEST,
SERGEANT HARDRICK,
SERGEANT VAN DYKE,
SERGEANT HUDSPETH,
C/O D. GALLAGHER,
C/O BRYANT,
C/O A. DALTON,
C/O R. MARTINEZ,
DOCTOR WRIGHT,
NURSE N. WALKER,
C/O V. PASARO,
DIRECTOR B. ZALMAN,
SERGEANT KELEMAN, and
CAPTAIN LOGAN,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 15 2009

GREGORY C. LANGHAM
CLERK

ORDER TO DISCHARGE SHOW-CAUSE ORDER

Plaintiff, Jose Medina Escobar, is a prisoner in the custody of the Colorado Department of Corrections at the Colorado State Penitentiary in Cañon City, Colorado. Mr. Escobar initiated this action by filing *pro se* a Prisoner Complaint. On October 16, 2009, Mr. Escobar filed an amended Prisoner Complaint. On November 19, 2009, Mr.

Escobar filed a second amended Prisoner Complaint. Mr. Escobar claims in this action that his rights under the United States Constitution have been violated. On November 30, 2009, the court ordered Mr. Escobar to show cause why this action should not be dismissed for failure to comply with the filing fee payment requirements of 28 U.S.C. § 1915(b)(2). On December 14, 2009, Mr. Escobar filed his Response to Order to Show Cause.

Mr. Escobar was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action in an order filed on September 15, 2009, and he was directed to pay the \$350.00 filing fee in installments. Pursuant to § 1915(b)(2), Mr. Escobar 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. In the court's September 15 order, Mr. Escobar 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, Mr. Escobar was directed to file a current certified copy of his inmate trust fund account statement that demonstrates his inability to make a monthly filing fee payment. Mr. Escobar was warned that a failure either to make monthly payments or to show cause each month why he is unable to make a monthly payment could result in the dismissal of this action. The court noted in the November 30 order to show cause that Mr. Escobar had not made any monthly filing fee payments and he had failed to show cause why he was unable to make any monthly filing fee payments.

Mr. Escobar alleges in his Response to Order to Show Cause that, although he receives \$5.06 each month for hygiene supplies, he has had a negative account

balance and has been unable to make any monthly filing fee payments. Mr. Escobar attaches to his Response to Order to Show Cause a certified copy of his inmate trust fund account statement that demonstrates he has had a negative balance in his account. Mr. Escobar does not explain his failure to submit a certified copy of his inmate trust fund account statement each month in order to show cause why he is unable to make a monthly filing fee payment.

Based on the account statement submitted to the court on December 14, the court agrees that Mr. Escobar has not had sufficient funds to make any monthly filing fee payments. Therefore, the Order to Show Cause will be discharged. However, Mr. Escobar is reminded that, even if he is unable to make monthly filing fee payments in the future, he still must submit a certified copy of his inmate trust fund account statement each month in order to show cause why he is unable to make a monthly filing fee payment. Accordingly, it is

ORDERED that the court's Order to Show Cause filed in this action on November 30, 2009, is discharged.

DATED December 15, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-02207-BNB

Jose Medina Escobar
Prisoner No. 48895
Colorado State Penitentiary
PO Box 777 - A4-11
Cañon City, CO 81215-0777

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 12/15/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk