

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02323-BNB

THERESA GARCIA,

Plaintiff,

v.

ALVIN LaCABE,
DEPUTY SHERIFF KESSLER,
DEPUTY SHERIFF CASADOS,
DEPUTY SHERIFF GONZALEZ,
JANE DOES I THROUGH X,
JOHN DOES I THROUGH X, and
BILL LIVINGIER,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 15 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO SUBMIT AMENDED MOTION
FOR LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

At the time Plaintiff, Theresa Garcia, initiated the instant action, she was in the custody of the Colorado Department of Corrections and was incarcerated at the LaVista Correctional Facility in Pueblo, Colorado. On October 14, 2009, Ms. Garcia submitted to the Court a Notice of Change of Address indicating that she no longer is incarcerated and is residing in Denver, Colorado.

Ms. Garcia's continuing obligation to pay the filing fee is to be determined, like any nonprisoner, solely on the basis of whether she qualifies for *in forma pauperis* status. *See Whitney v. New Mexico*, 113 F.3d 1170, 1171 n.1 (10th Cir. 1997); *see also McGore v. Wrigglesworth*, 114 F.3d 601, 612-13 (6th Cir. 1997); *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1138-39 (6th Cir. 1997); *McGann v.*

Commissioner, Soc. Sec. Admin., 96 F.3d 28, 29-30 (2^d Cir. 1996). Therefore, Ms. Garcia will be ordered to submit an Amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Alternatively, Ms. Garcia may elect to pay the \$350.00 filing fee to pursue her claims in this action. Accordingly, it is

ORDERED that within thirty days from the date of this Order Ms. Garcia submit to the Court an Amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Alternatively, Ms. Garcia may elect to pay the \$350.00 filing fee to pursue her claims in this action. It is

FURTHER ORDERED that the Clerk of the Court mail to Ms. Garcia, together with a copy of this Order, two copies of the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 form used by nonprisoners in submitting requests to proceed pursuant to § 1915. It is

FURTHER ORDERED that if Ms. Garcia fails to comply with the instant Order, within thirty days of the date of the Order, the Complaint and action will be dismissed without further notice.

DATED October 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

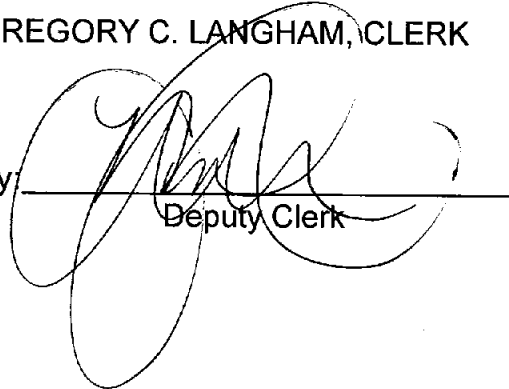
Civil Action No.09-cv-02323-BNB

Theresa Garcia
3000 W. Yale Apt. 904
Denver, CO 80219

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915** to the above-named individuals on 10/15/09

GREGORY C. LANGHAM, CLERK

By



Deputy Clerk