

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 14 2011

GREGORY C. LANGHAM
CLERK

Civil Action No. 11-cv-00169-BNB

JOSE MEDINA ESCOBAR,

Plaintiff,

v.

CAPTAIN H. HUERTAS,
LIEUTENANT TITEMAN,
SERGEANT FRETWELL,
SERGEANT WEST,
C/O P. ARCHULETA,
C/O SUTER,
C/O J. ENGLEHART, and
C/O D/ JOHNSON,

Defendants.

ORDER ALLOWING PLAINTIFF TO PROCEED
WITHOUT PAYMENT OF INITIAL PARTIAL FILING FEE

In an order filed on February 24, 2011, the court granted Plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Pursuant to § 1915(b)(1), the court ordered Plaintiff either to pay an initial partial filing fee of \$9.00 or to show cause why he has no assets and no means by which to pay the initial partial filing fee. On March 10, 2011, Plaintiff submitted a certified copy of his inmate trust fund account statement that shows the available balance in his inmate account as of March 2, 2011, was \$2.67. Although the account statement indicates a deposit of \$50.00 into Plaintiff's account on February 12, 2011, the balance in his account was only \$3.72 on February 25, 2011, the day after Plaintiff was ordered to pay the initial partial filing fee in this

action. The affidavit Plaintiff previously submitted in support of his motion seeking leave to proceed *in forma pauperis* reveals no other assets.

Title 28 U.S.C. § 1915 requires a prisoner bringing a civil action “to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). However, “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” 28 U.S.C. § 1915(b)(4). Therefore, because he has demonstrated that he has no assets and no means by which to pay the initial partial filing fee, Plaintiff will be allowed to proceed in this action without payment of the initial partial filing fee designated in the court’s February 24 order. Plaintiff remains obligated to pay the full \$350.00 filing fee through monthly installments as directed in the court’s February 24 order and reiterated below. Accordingly, it is

ORDERED that Plaintiff may proceed in this action without payment of the initial partial filing fee designated in the court’s February 24, 2011 order because he has shown cause why he has no assets and no means by which to pay an initial partial filing fee. Plaintiff remains obligated to pay the full amount of the required \$350.00 filing fee pursuant to § 1915(b)(1). It is

FURTHER ORDERED that until the \$350.00 filing fee is paid in full, Plaintiff shall make monthly payments to the court of twenty (20) percent of the preceding month’s income credited to his account or show cause why he has no assets and no means by which to make each monthly payment. Plaintiff is directed to make the necessary arrangements to have the monthly payments identified by the civil action number on this order. In order to show cause, Plaintiff must file a current certified copy of his trust fund

account statement. It is

FURTHER ORDERED that if Plaintiff fails to have the appropriate payment sent to the clerk of the court each month or to show cause each month as directed above why he has no assets and no means by which to make the monthly payment, the complaint may be dismissed without prejudice and without further notice. It is

FURTHER ORDERED that the court may dismiss this action and may apply all or part of the filing fee payments tendered in this action to satisfy any filing fee debt the plaintiff may owe in a prior action or actions if the plaintiff fails to stay current with his payment obligations in the prior action or actions.

DATED March 14, 2011, 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. 11-cv-00169-BNB

Jose Medina Escobar
Prisoner No. 48895
Centennial Correctional Facility
PO Box 600
Canon City, CO 81215

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on March 14, 2011.

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk