

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

FEB 22 2011

Civil Action No. 11-cv-00341-BNB

**(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)**

GREGORY C. LANGHAM  
CLERK

DAVID LEE BURKHART,

Plaintiff,

v.

WARDEN RAE TIMME, In her Official and Personal Capacity,  
CASE MANAGER ARTHUR TRAINOR, In his Official and Personal Capacity,  
ASSISTANT WARDEN RON WAGER, In his Official and Personal Capacity,  
CASE MANAGER III SHELLY ORTIZ, In her Official and Personal Capacity, and  
CORRECTIONAL OFFICER I MS. SEGURA, In her Personal and Professional  
Capacity,

Defendants.

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ORDER GRANTING LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

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Plaintiff, David Lee Burkhart, has submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, a "Motion Requesting Process of Service to be Made by the U.S. Marshalls [sic] Office" and a Prisoner Complaint. The Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 will be granted. Based on the information about the plaintiff's financial status, the court finds that the plaintiff is able to pay an initial partial filing fee of **\$1.00** pursuant to § 1915(b)(1). Accordingly, it is

ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 is granted. Plaintiff shall be required to pay the full

amount of the required \$350.00 filing fee pursuant to § 1915(b)(1) regardless of the outcome of this action. It is

FURTHER ORDERED that the plaintiff shall pay an initial partial filing fee of **\$1.00**. Plaintiff shall have **thirty (30) days from the date of this order** in which to have the designated fee sent to the clerk of the court or show cause why he has no assets and no means by which to pay the designated initial partial filing fee. In order to show cause, the plaintiff must file a current certified copy of his trust fund account statement. It is

FURTHER ORDERED that the clerk of the court shall provide the plaintiff with two copies of this order. Plaintiff is directed to make the necessary arrangements to have one copy of this order attached to the payment in the amount of the designated initial partial filing fee. It is

FURTHER ORDERED that the court will not review the merits of the Prisoner Complaint until the initial partial filing fee is paid or the plaintiff shows cause as directed above why he has no assets and no means by which to pay the designated initial partial filing fee. It is

FURTHER ORDERED that, after payment of the initial partial filing fee, the plaintiff shall be required to make monthly payments of twenty percent (20%) of the preceding month's income credited to his trust fund account or show cause each month as directed above why he has no assets and no means by which to make the monthly payment. Plaintiff is directed to make the necessary arrangements to have each monthly payment identified by the civil action number on this order. It is

FURTHER ORDERED that if within the time allowed the plaintiff fails to have the

designated initial partial filing fee or monthly payments sent to the clerk of the court or to show cause as directed above why he has no assets and no means by which to pay the designated initial partial filing fee or make the monthly payments, the Prisoner Complaint will be dismissed without further notice. It is

FURTHER ORDERED that Plaintiff's "Motion Requesting Process of Service to be Made by the U.S. Marshalls [sic] Office" (Doc. No. 3) filed on February 9, 2011, is denied. It is

FURTHER ORDERED that process shall not issue until further order of the court. 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 February 18, 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-00341-BNB

David Lee Burkhart  
Prisoner No. 146917  
Fremont Correctional Facility  
PO Box 999  
Canon City, CO 81215

I hereby certify that I have mailed **two copies of the ORDER** to the above-named individuals on February 22, 2011.

GREGORY C. LANGHAM, CLERK

By:   
Deputy Clerk