

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02589-REB-KLM

MICHAEL BACOTE JR,

Plaintiff,

v.

WARDEN D. BERKEBILE,  
SIA D. KRIST,  
CAPTAIN R. KRIST,  
CORRECTIONAL OFFICER A. BALSICK,  
CORRECTIONAL OFFICER G. SANDUSKY,

Defendants.

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MINUTE ORDER

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ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Response to Motion [#21] [#25]**<sup>1</sup>, which seeks clarification of the Court's January 2, 2014 Minute Order (the "Clarification Motion"), and Plaintiff's **Motion for Leave to File an Amended Complaint [#20]** (the "Motion to Amend").

**A. The Clarification Motion**

On January 2, 2014, the Court entered its Minute Order (the "Minute Order") denying as moot Plaintiff's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 [#21]. *See generally Minute Order [#23]*. As the Court explained in the Minute Order, the Court previously granted Plaintiff's prior motion seeking the same relief. *See Minute Order [#23]* at 1; *see generally Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915* (the "1915 Order") [#5]. In the Minute Order, the Court also ordered the Clerk of the Court to mail a copy of the 1915 Order to Plaintiff. *Minute Order [#23]* at 1. As noted in the 1915 Order, the Court previously granted Plaintiff's request that he proceed in this matter pursuant to 28 U.S.C. § 1915. *1915 Order [#5]* at 1-2. In the 1915 Order, the Court stated:

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<sup>1</sup> "[#25]" is an example of the convention I use to identify the docket number assigned to a specific paper by the Court's case management and electronic case filing system (CM/ECF). I use this convention throughout this Minute Order.

Based on the information about Plaintiff's financial status, the Court finds that Plaintiff is able to pay an initial partial filing fee of \$8.00 pursuant to 28 U.S.C. § 1915(b)(1). Plaintiff has consented to disbursement of partial payments of the filing fee from his prison account. **Plaintiff is 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.**

*1915 Order* [#5] at 1 (emphasis added).

In his Clarification Motion, Plaintiff states that he “payed [his] partial filing fee of \$8.00 2 times.” *Clarification Motion* [#26] at 2. The Court received a payment of \$8.00 on October 17, 2013 [#15] and another payment of \$8.00 on October 21, 2014 [#16]. The Court has not received any other payments from Plaintiff. The fact that an \$8.00 charge was taken from Plaintiff's prisoner account and another \$8.00 payment was made by money order a few days later is not something the Court has any ability to control. In addition, Plaintiff may misunderstand the 1915 Order. The 1915 Order allows Plaintiff to pay the \$350.00 filing fee in monthly installments rather than in one lump sum when he filed the lawsuit. Plaintiffs who are not granted the right to pay the filing fee in monthly installments must pay the full filing fee when they first file their lawsuits. Many plaintiffs proceeding pursuant to 28 U.S.C. § 1915 choose to make additional payments to satisfy the filing fee more quickly. Therefore, the Court would not have any reason to question Plaintiff's additional \$8.00 payment made on October 21, 2013. Furthermore, the second payment was a payment of money owed to the Court.

In addition, Plaintiff is reminded that pursuant to 28 U.S.C. § 1915(b)(2) and the 1915 Order, if Plaintiff's prisoner account exceeds \$10.00, the prison will forward “20 percent of the preceding month's income credited to the prisoner's account” to the Court to be paid toward the \$350.00 filing fee until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

## **B. The Motion to Amend**

In the Motion to Amend [#20], Plaintiff asks the Court to allow him to file his Amended Complaint [#20-1]. Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiff may amend his pleading “with the opposing party's written consent . . .” On January 9, 2014, Defendants filed a Response [#28] to the Motion to Amend [#20]. In the Response, Defendants state that they do not oppose the Motion to Amend but, if the Motion to Amend is granted, they anticipate filing a motion requesting an extension of time to respond the Amended Complaint. *Response* [#28] at 1.

**C. Conclusion**

IT IS HEREBY **ORDERED** that the Clarification Motion [#25] is **GRANTED** to the extent it seeks clarification of the Court's Minute Order [#23].

IT IS FURTHER **ORDERED** that the Motion to Amend [#20] is **GRANTED**. Accordingly,

IT IS FURTHER **ORDERED** that Plaintiff's Amended Complaint [#20-1] is accepted for filing as of the date of this Minute Order.

IT IS FURTHER **ORDERED** that those Defendants who have already been served and entered their appearances in this case shall answer or otherwise respond to Plaintiffs' Amended Complaint [#20-1] on or before **February 7, 2014**.

Dated: January 10, 2014