

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02287-GPG

(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.)

SOFI DARRELL DONAT,

Plaintiff,

v.

JOHN OLIVER, Warden, individually and in his official capacity;
B. TRUE, Associate Warden, individually and in his official capacity;
M. SANISTENVAN, S.I.S. Guard, individually and in his official capacity;
T. GOMEZ, Unit Manager, individually and in his official capacity;
C. SYNSVOLL, Supervisory Attorney, individually and in his official capacity; and
MUNOZ, Guard, individually and in his official capacity,

Defendants.

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

Plaintiff, Sofi Darrell Donat, is a federal prisoner currently incarcerated at the ADMAX Penitentiary in Florence, Colorado. Plaintiff filed *pro se* a Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2) and a Prisoner Complaint. He has also filed a Motion for Appointment of Counsel (ECF No. 3).

The Court will deny the § 1915 motion because Plaintiff does not qualify for *in forma pauperis* status. Subsection (a)(1) of 28 U.S.C. § 1915 allows a litigant to commence a lawsuit without prepayment of fees or security therefor. However, “[t]here is no absolute right to proceed in court without paying a filing fee in civil matters.” *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir. 1988); *see also* 28 U.S.C. § 1914(a). Proceeding *in forma pauperis* pursuant to § 1915, *i.e.* without paying a filing fee under § 1914, is a privilege extended to individuals unable to pay such a fee. *See Holmes*, 852

F.2d at 153.

Plaintiff's § 1915 motion shows that his national 6-month average in his account was \$3,680.75 and that he has an available balance of \$739.49 in his inmate trust fund account. Therefore, the Court finds that Plaintiff has sufficient funds to pay the \$400.00 filing fee (\$350.00 filing fee and \$50.00 general administrative fee). The § 1915 motion will be denied. Plaintiff will be directed to pay the \$400.00 filing fee required pursuant to 28 U.S.C. § 1914 and the District of Colorado schedule of fees at www.cod.uscourts.gov if he wishes to pursue his claims in this action. Accordingly, it is

ORDERED that the Prisoner's Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2) is denied. It is

FURTHER ORDERED that Plaintiff shall pay the full **\$400.00** filing fee **within thirty (30) days from the date of this order** if he wishes to pursue his claims in this action. It is

FURTHER ORDERED that if Plaintiff fails to pay the \$400.00 filing fee within the time allowed the action will be dismissed without further notice. It is

FURTHER ORDERED that Plaintiff's Motion for Appointment of Counsel (ECF No. 3) is **DENIED** as premature.

DATED at Denver, Colorado, this 24th day of November, 2015.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court