

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ESTELITO BENJAMIN JR. AND
KIMBERLY JO OF THE HOUSE OF
CASTILLON, INDIVIDUALLY AND
ON BEHALF OF THE HEIRS OF
THE HOUSE OF CASTILLON AND
THEIR ESTATES,

Plaintiffs,

vs.

JPMORGAN CHASE BANK, *et al.*,

Defendants.

CIV. NO. 16-00675 DKW-KJM
[formerly MC 16-000359 DKW-KJM]

ORDER DISMISSING CASE

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On December 19, 2016, Plaintiffs Estelito Benjamin Jr. and Kimberly Jo of the House of Castillon, proceeding pro se, filed a new action entitled in part, “Judicial Notice/Admissions: Affidavit and Complaint/Writ of Assistance and Expedition/Writ of Safe Passage” and paid a \$47 filing fee.¹ On December 29, 2016, the Court converted the miscellaneous case to a civil case, and issued a Deficiency Order. Dkt. No. 3. That same day, the Court mailed the Deficiency

¹The Court incorrectly identified the amount of the filing fee as \$58 in the December 29, 2016 Deficiency Order. Of the \$58 paid by Plaintiffs on December 19, 2016, \$47 represented the filing fee and \$11 represented a document certification fee.

Order and an application to proceed *in forma pauperis* (“IFP”) to Plaintiffs at the address provided.

The Deficiency Order granted Plaintiffs leave to take one of the following actions by January 27, 2017: (a) pay the balance of the \$400 filing fee; (b) file a Notice of Withdrawal of this action and obtain reimbursement of the filing fee they have already paid to the Clerk’s Office; or (c) submit a completed and executed IFP application on the form provided by the Court with the Deficiency Order.

The Deficiency Order cautioned Plaintiffs that failure to take one of these actions by January 27, 2017 will result in the automatic dismissal of this case for failure to prosecute or otherwise follow a court order. *See* Fed. R. Civ. P. 41(b); *Olivares v. Marshall*, 59 F.3d 109, 112 (9th Cir. 1995) (stating that the district court has authority to dismiss the complaint for failure to pay partial filing fee); *In re Perroton*, 958 F.2d 889, 890 (9th Cir. 1992) (affirming dismissal of appeal of pro se litigant for failure to pay required filing fees).

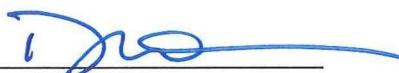
Because Plaintiffs have not paid the proper filing fee, filed a Notice of Withdrawal of the civil action, or filed an IFP application, the Court DISMISSES the civil action, Civil No. 16-00675 DKW-KJM (formerly Misc. No. 16-00359

DKW-KJM). The Clerk of Court is directed to refund to Plaintiffs the full amount of the filing fee paid on December 19, 2016.

IT IS SO ORDERED.

DATED: January 30, 2017 at Honolulu, Hawaii.




Derrick K. Watson
United States District Judge