

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ADRIAN MICHAEL REQUENA,

Plaintiff,

v.

CASE NO. 13-3043-SAC

RAY ROBERTS, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for temporary injunction (Doc. #40). By its order of September 22, 2017, the Court directed plaintiff to submit an initial partial appellate filing fee on or before October 23, 2017. In his present motion, plaintiff provides evidence that he attempted to have the payment submitted by the Kansas Department of Corrections. It appears the request initially was approved but later was denied due to previous encumbrances on plaintiff's institutional account. Having examined these materials, the Court will rescind the direction requiring plaintiff to submit the initial partial filing fee. See 28 U.S.C. §1915(b) (4) ("In no event shall a prisoner be prohibited from ... appealing a civil ... judgment for the reason that the prison has ... no means by which to pay the initial partial filing fee.") Plaintiff remains obligated to pay the full appellate filing fee of \$505.00. See 28 U.S.C. § 1915(b) (1) ("if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee").

IT IS, THEREFORE, BY THE COURT ORDERED the plaintiff's motion for temporary injunction (Doc. #40) is denied. The Court sets aside

that portion of its order entered on September 22, 2017, that directs the submission of the initial partial filing fee on or before October 23, 2017.

Copies of this order shall be transmitted to the plaintiff, the U.S. Court of Appeals for the Tenth Circuit, and the finance office of the facility where plaintiff is incarcerated.

IT IS SO ORDERED.

DATED: This 13th day of October, 2017, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge