

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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TERRENCE ANTHONY,

Plaintiff,

v.

9:18-CV-0849  
(GLS/CFH)

THE STATE OF NEW YORK et al.,

Defendants.

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APPEARANCES:

TERRENCE ANTHONY  
17-A-1847  
Plaintiff, Pro Se  
Great Meadow Correctional Facility  
Box 51  
Comstock, NY 12821

GARY L. SHARPE  
Senior United States District Judge

**DECISION and ORDER**

**I. INTRODUCTION**

On or about June 21, 2018, plaintiff Terrence Anthony submitted a pro se civil rights complaint for filing, together with an application to proceed in forma pauperis (IFP), and a motion for a preliminary injunction. Dkt. Nos. 1, 2, 3. On July 19, 2018, the action was administratively closed based on plaintiff's failure to comply with the filing fee requirement and submit the required Inmate Authorization Form. Dkt. No. 4 ("July 2018 Order"). Plaintiff was advised in the July 2018 Order that if he desires to pursue this action he must so notify the Court within thirty (30) days and either (1) pay the \$400.00 filing fee in full, or (2) submit a

completed and signed IFP application and a signed Authorization Form. *Id.* at 2.

Thereafter, in lieu of paying the filing fee, plaintiff filed a second application to proceed IFP, along with the Inmate Authorization required in this District. Dkt. No. 5 ("Second IFP Application"); Dkt. No. 6 ("Inmate Authorization Form"). In light of his submissions, the Clerk was directed to reopen this action and restore it to the Court's active docket. Dkt. No. 7.

By Decision and Order filed August 7, 2018, plaintiff's Second IFP Application was denied as incomplete, and plaintiff was afforded a final opportunity to comply with the July 2018 Order. Dkt. No. 8 ("August 2018 Order"). Presently before the Court is plaintiff's letter motion seeking a default judgment based on defendants' failure to respond to the complaint. Dkt. No. 9. Plaintiff has yet to comply with the August 2018 Order.

## **II. DISCUSSION**

Plaintiff has moved for entry of default even though he has not been granted IFP status and his complaint has not been served. His motion is inappropriate and denied as premature.

However, in light of plaintiff's pro se status and filing of the motion for default judgment, the Court will afford him one **final** opportunity to timely comply with the July 2018 Order and the August 2018 Order.<sup>1</sup> The Court will not consider any further submissions from plaintiff unless and until he complies with the filing fee requirements. If plaintiff fails to timely

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<sup>1</sup> As noted in the August 2018 Order, the Second IFP Application was not certified by an appropriate official at plaintiff's facility, nor were copies of plaintiff's inmate account statements provided with the application. In addition, plaintiff has yet to submit a completed and signed Inmate Authorization form. In order for the Court to consider plaintiff's complaint, he must either pay the \$400.00 filing fee, or submit a completed and signed Inmate Authorization form along with a proper IFP application that is properly certified, or accompanied by account statements for the six-month period immediately preceding the filing of the complaint. See 28 U.S.C. § 1915(a)(2).

comply, this action will be dismissed without prejudice without further Order of the Court.

Because plaintiff has not complied with either the July 2018 Order or the August 2018 Order, plaintiff's request for injunctive relief (Dkt. No. 3) is denied without prejudice at this time. In the event plaintiff timely complies with the Court's Orders, the Court will consider the merits of plaintiff's request for injunctive relief.

### III. CONCLUSION

**WHEREFORE**, it is hereby

**ORDERED** that plaintiff's motion for a default judgment (Dkt. No. 9) is **DENIED**; and it is further

**ORDERED** that plaintiff's request for injunctive relief (Dkt. No. 3) is **DENIED without prejudice** based on plaintiff's failure to comply with the July 2018 Order and the August 2018 Order; and it is further

**ORDERED** that plaintiff must, **within thirty (30) days** of the filing date of this Decision and Order, either (1) pay the \$400.00 filing fee in full, or (2) submit an IFP application which has been completed and signed by him and which has been certified by an appropriate official at his facility, together with a completed and signed Inmate Authorization form<sup>2</sup>; and it is further

**ORDERED** that, in the event plaintiff fails to timely comply with the filing fee requirements set forth in this Decision and Order, this action will be **dismissed without prejudice without further Order of this Court** and the Clerk shall close the case; and it is further

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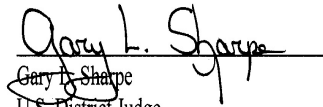
<sup>2</sup> As noted, certified account statements may be submitted in lieu of the completed Certificate portion of the IFP application. See 28 U.S.C. § 1915(a)(2).

**ORDERED** that, upon plaintiff's compliance with this Decision and Order, the file shall be returned to the Court for further review, and plaintiff's request for injunctive relief (Dkt. No. 3) shall be re-opened for consideration on the merits; and it is further

**ORDERED** that the Clerk shall serve a copy of this Decision and Order on plaintiff along with a blank IFP application and blank Inmate Authorization form.

**IT IS SO ORDERED.**

November 16, 2018  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge