

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JOEL PLAZA, JR., :
Plaintiff, :
:
v. : **CIVIL ACTION NO. 22-cv-4587**
:
TANASIYA PRESBURY, et al. :
Defendants. :

O R D E R

AND NOW, this 17th day of January, 2023, upon consideration of Plaintiff Joel Plaza, Jr.'s Motion to Proceed *In Forma Pauperis* (ECF No. 6), Prisoner Trust Fund Account Statement (ECF No. 7), and *pro se* Complaint (ECF No. 1), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Joel Plaza, Jr., #13-4607, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Lancaster County Prison or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Plaza's inmate account; or (b) the average monthly balance in Plaza's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Plaza's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Plaza's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Warden of Lancaster County Prison.

4. The Complaint is **DEEMED** filed.

5. The following claims in the Complaint are **DISMISSED** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons stated in the Court's Memorandum:

- a. All official capacity claims asserted against LPN Tanasiya Presbury and RN Bryan are **DISMISSED WITH PREJUDICE**.
- b. All official capacity and individual capacity claims asserted against Mr. Sorentino and Mr. Tenuto and the individual capacity claims asserted against Bryan are **DISMISSED WITHOUT PREJUDICE**.

6. The Clerk of Court is **DIRECTED** to send Plaza a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.¹

7. Plaza is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible deliberate indifference claim against Sergeant Sorentino, Sergeant Tenuto, or RN Bryan. Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Plaza's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 22-4587. If Plaza files an amended complaint, his amended complaint must be a complete document that includes all of the bases for

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmC1983f.pdf>.

Plaza's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims. **For example, Plaza must include in his amended complaint the allegations supporting his denial of medical care claim against Tanasiya Presbury, which has not been dismissed at this time, if Plaza seeks to proceed on that claim.** Claims that are not included in the amended complaint will not be considered part of this case. When drafting his amended complaint, Plaza should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

8. If Plaza does not file an amended complaint the Court will direct service of his initial Complaint on Defendant Tanasiya Presbury only. Plaza may also notify the Court that he seeks to proceed on the claim against Presbury rather than file an amended complaint. If he files such a notice, Plaza is reminded to include the case number for this case, 22-4587.

9. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.
United States District Judge