

No. 19-5573

ORIGINAL

Supreme Court, U.S.
FILED

AUG 06 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

MONTE WHITEHEAD — PETITIONER
(Your Name)

VS.

GREGG MARCANTEL, et al. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO

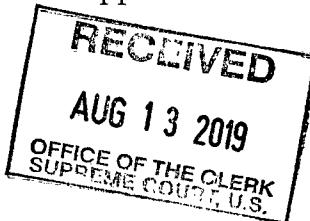
Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

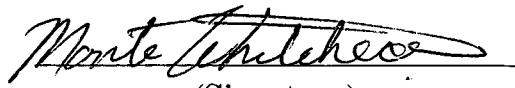
Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____
_____, or

a copy of the order of appointment is appended.





(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Monte Whitehead, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>30.00</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Self-employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Gifts	\$ <u>50.00</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Alimony	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Child Support	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify):	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Total monthly income:	\$ <u>80.00</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NM DOC	Santa Fe, N.M.	2008 - Present	\$ ~ 30.00
↓	↓		\$ ↓
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
↓	↓	↓	\$ ↓
			\$

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
0	\$ 0	\$ 0
0	\$ 0	\$ 0
0	\$ 0	\$ 0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home

Value N/A

Other real estate

Value N/A

Motor Vehicle #1

Year, make & model N/A

Motor Vehicle #2

Year, make & model N/A

Value N/A

Value N/A

Other assets

Description N/A

Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ 0	\$ 0
N/A	\$ 0	\$ 0
N/A	\$ 0	\$ 0

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
None	N/A	N/A
None	N/A	N/A
None	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0	\$ N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 0	\$ N/A
Home maintenance (repairs and upkeep)	\$ 0	\$ N/A
Food/Hygiene	\$ 50.00	\$ N/A
Clothing	\$ 10.00	\$ N/A
Laundry and dry-cleaning	\$ 0	\$ N/A
Medical and dental expenses	\$ 0	\$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u>N/A</u>
Life	\$ <u>0</u>	\$ <u>N/A</u>
Health	\$ <u>0</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Other: _____	\$ <u>0</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ <u>N/A</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>0</u>	\$ <u>N/A</u>
Department store(s)	\$ <u>0</u>	\$ <u>N/A</u>
Other: _____	\$ <u>0</u>	\$ <u>N/A</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>N/A</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): <u>10th Cir. Ct. of Appeals</u> <u>Postage</u>	\$ <u>10.00</u> <u>10.00</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>80.00</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? N/A

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I have been incarcerated for the past 13 years

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 31, 2019, 2019


(Signature)

06/15/2017	<u>57</u>	SUMMONS Returned Executed by Monte Whitehead; Larry Monk served on 6/14/2017, answer due 7/5/2017. (mjr) (Entered: 06/15/2017)
06/19/2017	<u>58</u>	REPLY to Response to Motion re <u>23</u> MOTION to Amend the Complaint filed by Monte Whitehead. (mjr) (Entered: 06/19/2017)
06/19/2017	<u>59</u>	NOTICE of Error by Monte Whitehead (mjr) (Entered: 06/19/2017)
06/19/2017	<u>60</u>	MOTION for Supplement the Pleadings by Monte Whitehead. (mjr) (Entered: 06/19/2017)
06/19/2017	<u>61</u>	MOTION to Produce Addresses for Service of Summons and Complaint by Monte Whitehead. (mjr) (Entered: 06/19/2017)
06/19/2017	<u>62</u>	FACTS AND MEMORANDUM in Support re <u>61</u> MOTION to Produce Addresses filed by Monte Whitehead. (mjr) (Entered: 06/19/2017)
06/19/2017	<u>63</u>	SUPPLEMENT to the Original Complaint from the <u>1</u> Notice of Removal, by Monte Whitehead. (mjr) (Entered: 06/19/2017)
06/27/2017	<u>64</u>	MOTION by Monte Whitehead for Extension of Time to File Response as to <u>54</u> Answer Brief. (mjr) (Entered: 06/27/2017)
06/28/2017	<u>65</u>	REPLY filed by Monte Whitehead to <u>54</u> MTC's Answer. (mjr) (Entered: 06/29/2017)
06/30/2017	<u>66</u>	ORDER by Magistrate Judge Kirtan Khalsa granting <u>64</u> Motion for Extension of Time. Plaintiff has an extension of time of seven (7) days to file his reply to Defendant MTC's answer to Plaintiff's Complaint. (kc) (Entered: 06/30/2017)
07/05/2017	<u>67</u>	<i>Defendant Larry Monks' ANSWER Brief to Plaintiff's Complaint for Damages and Violations of Civil and Constitutional Rights and for Declaratory and Injunctive Relief</i> , filed by Larry Monk. Related document: <u>1</u> Notice of Removal, filed by Otero County Board of Commissioners. (Johnson, Andrew) (Entered: 07/05/2017)
08/02/2017	<u>68</u>	MOTION for Order Preventing GCCF from Interfering with Receipt of Mail by Monte Whitehead. (mjr) (Entered: 08/02/2017)
08/04/2017	<u>69</u>	Request for Clarification of Local Rules by Monte Whitehead (mjr) (Entered: 08/07/2017)
08/04/2017	<u>70</u>	MOTION for Order to Accept Application to Proceed Without Prepayment of Fees or Costs by Monte Whitehead. (Attachments: # <u>1</u> Affidavit) (mjr) (Entered: 08/07/2017)
08/04/2017	<u>71</u>	MOTION to Extend Time to Serve defendants by Monte Whitehead. (mjr) (Entered: 08/07/2017)
08/04/2017	<u>72</u>	MOTION Requesting Documents and for an Extension of Time to Respond to these documents by Monte Whitehead. (mjr) (Entered: 08/07/2017)
08/09/2017	<u>73</u>	ORDER by Magistrate Judge Kirtan Khalsa granting <u>43</u> Motion for Free Process; granting <u>70</u> Motion to Accept Plaintiff's Application to Proceed In District Court Without Prepaying Fees or Costs as Timely Filed; finding as moot <u>39</u> Motion for Extension of Time to Serve Summons and Complaint on Defendant Monks; finding as moot <u>40</u> Motion for Extension of Time to Serve Summons and Complaint on Defendant Phillips; finding as moot <u>41</u> Motion for Extension of Time to Serve Summons and Complaint on Defendant Marcantel; finding as moot <u>42</u> Motion for Extension of Time to Serve Summons and Complaint on Defendant Crus; finding as moot <u>61</u> Motion to Produce Addresses for Service of Process; finding as moot <u>69</u> Request for Clarification; and findings as moot <u>71</u> Motion to Extension of Time. (kc) (Entered: 08/09/2017)
08/09/2017	<u>74</u>	ORDER by Magistrate Judge Kirtan Khalsa granting <u>72</u> Motion Requesting Documents and for an Extension of Time to Respond to Those Documents. The Clerk is directed to send Plaintiff Whitehead copies of Docs. 52, 53, 55, 56 and 67 at his address of record. Plaintiff may file a reply to Docs. 52 and 53, and a response to Doc. 55 within twenty-one (21) days from the date Docs. 52, 53, 55, 56, and 67 are mailed to Plaintiff by the Clerk. Defendants are directed to ensure that all filings made by Defendants in this case are served on Plaintiff Whitehead in compliance with Fed. R. Civ. P. 5. (kc) (Entered: 08/09/2017)

08/16/2017	<u>75</u>	NOTICE OF ERROR by Monte Whitehead re <u>1</u> Notice of Removal. (mjr) (Entered: 08/16/2017)
08/18/2017	<u>76</u>	MOTION for Order to be Allowed to Include Exhibits by Monte Whitehead. (mjr) (Entered: 08/18/2017)
08/29/2017	<u>77</u>	REPLY to Response to Motion re <u>46</u> MOTION for Order filed by Monte Whitehead. (mjr) (Entered: 08/29/2017)
08/30/2017	<u>78</u>	REPLY to Response to Motion re <u>44</u> MOTION for Hearing filed by Monte Whitehead. (mjr) (Entered: 08/30/2017)
08/30/2017	<u>79</u>	RESPONSE to <u>55</u> MOTION to Dismiss filed by Monte Whitehead. (mjr) (Entered: 08/30/2017)
08/31/2017	<u>80</u>	RESPONSE re <u>67</u> Larry Monk's Answer filed by Monte Whitehead. (mjr) (Entered: 08/31/2017)
09/01/2017	<u>81</u>	RESPONSE in Opposition re <u>76</u> MOTION for Order to <i>Allow Plaintiff to Include the Attached Exhibits Which Further Substantiate Plaintiff's Complaint</i> filed by Management and Training Corporation. (Gooch, Christina) (Entered: 09/01/2017)
09/01/2017	<u>82</u>	MOTION to Withdraw as Attorney <i>and Substitute Counsel</i> by Management and Training Corporation. (Gooch, Christina) (Entered: 09/01/2017)
09/01/2017	<u>83</u>	ERRATA re <u>82</u> MOTION to Withdraw as Attorney <i>and Substitute Counsel</i> by Management and Training Corporation (Gooch, Christina) (Entered: 09/01/2017)
09/13/2017	<u>84</u>	REPLY to Response to Motion re <u>55</u> MOTION to Dismiss filed by Keefe Corporation. (Hughes, Robert) (Entered: 09/13/2017)
09/14/2017	<u>85</u>	NOTICE of Briefing Complete by Keefe Corporation re <u>55</u> MOTION to Dismiss filed by Keefe Corporation (Hughes, Robert) (Entered: 09/14/2017)
09/20/2017	<u>86</u>	MOTION for Order to Cure Deficiency in Affidavits by Perry Koehne and Timothy Brock by Monte Whitehead. (mjr) (Entered: 09/20/2017)
09/20/2017	<u>87</u>	REPLY filed by Monte Whitehead to Response to <u>76</u> MOTION for Order to Include Exhibits. (mjr) (Entered: 09/20/2017)
09/22/2017	<u>88</u>	MOTION for Preliminary Injunction and Temporary Restraining Order by Monte Whitehead. (mjr) (Entered: 09/22/2017)
09/22/2017	<u>89</u>	NOTICE of Briefing Complete by FNU Boyd, James Frawner, Management and Training Corporation, Richard Martinez, Larry Monk, C. Pascole, FNU Prospero, FNU Smith, FNU Waters re <u>82</u> MOTION to Withdraw as Attorney <i>and Substitute Counsel</i> filed by Management and Training Corporation (Attachments: # <u>1</u> Exhibit A. Proposed Order) (Gooch, Christina) (Entered: 09/22/2017)
09/25/2017	<u>90</u>	ORDER by Magistrate Judge Kirtan Khalsa Approving Withdrawal and Substitution of Counsel. Keleher & McLeod, P.A. is terminated as counsel for OCPF Defendants. (kc) (Entered: 09/25/2017)
09/27/2017	<u>91</u>	MEMORANDUM OPINION AND ORDER by District Judge Robert A. Junell; This case is Remanded to the Twelfth Judicial District; See Order for specifics. (mjr) (Entered: 09/27/2017)
09/28/2017	<u>92</u>	Letter to the 12th Judicial State District Court Re; Remand. (mjr) (Entered: 09/28/2017)
10/19/2017	<u>93</u>	MOTION for Reconsideration re <u>91</u> Memorandum Opinion and Order by Monte Whitehead. (mjr) (Entered: 10/19/2017)
11/01/2017	<u>94</u>	RESPONSE in Opposition re <u>93</u> MOTION for Reconsideration re <u>91</u> Memorandum Opinion and Order filed by FNU Boyd, James Frawner, Management and Training Corporation, Richard Martinez, FNU Moreno, FNU Prospero, FNU Smith, FNU Waters. (Gooch, Christina) (Entered: 11/01/2017)
11/02/2017	<u>95</u>	RESPONSE to Motion re <u>93</u> MOTION for Reconsideration re <u>91</u> Memorandum Opinion and Order filed by Otero County Board of Commissioners. (Martinez,

Case: 2:17-cv-00275 As of: 05/08/2018 03:00 PM MDT 11 of 11

		Damian) (Entered: 11/02/2017)
11/02/2017	<u>96</u>	RESPONSE to Motion re <u>93</u> MOTION for Reconsideration re <u>91</u> Memorandum Opinion and Order filed by Keefe Corporation. (Hughes, Robert) (Entered: 11/02/2017)
11/15/2017	<u>97</u>	REPLY by Monte Whitehead to Response to <u>93</u> MOTION for Reconsideration re <u>91</u> Memorandum Opinion and Order. (mjr) (Entered: 11/15/2017)
01/16/2018	<u>98</u>	MEMORANDUM OPINION AND ORDER by District Judge Robert A. Junell; IT IS ORDERED that Plaintiff Monte Whitehead's Motion to Reconsider Order to Dismiss <u>93</u> is DENIED. (mjr) (Entered: 01/16/2018)
02/12/2018	<u>99</u>	NOTICE OF APPEAL as to <u>98</u> Memorandum Opinion and Order by Monte Whitehead. (Appeal Fee Not Paid.) (jn) (Entered: 02/12/2018)
02/12/2018	<u>100</u>	MOTION for Leave to Appeal in forma pauperis by Monte Whitehead. (jn) (Entered: 02/12/2018)
02/13/2018	<u>101</u>	Transmission of Preliminary Record to US Court of Appeals re <u>99</u> Notice of Appeal (jjs) (Entered: 02/13/2018)
02/13/2018	<u>102</u>	USCA Information Letter with Case Number 18-2021 for <u>99</u> Notice of Appeal filed by Monte Whitehead. (mjr) (Entered: 02/13/2018)
03/06/2018	<u>103</u>	ORDER by Magistrate Judge Kirtan Khalsa granting <u>100</u> Motion for Leave to Appeal in forma pauperis. (tkl) (Entered: 03/06/2018)
03/07/2018	<u>104</u>	LETTER from USCA re <u>99</u> Notice of Appeal. (mjr) (Entered: 03/07/2018)
03/29/2018	<u>105</u>	NOTICE of Docketing Record on Appeal from USCA re <u>99</u> Notice of Appeal filed by Monte Whitehead; USCA Case Number 18-2021 [THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] (mjr) (Entered: 03/29/2018)

*Motion for Leave to Appeal
In forma Pauperis*

*Dec 100
2-12-18*



United States District Court
District of New Mexico
Office of the Clerk
Document Summary Page

Date: February 12, 2018 04:00 PM MST

To: Monte Whitehead

Case: Whitehead v. Marcantel et al

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

CM/ECF Support Email: cmecl@nmcourt.fed.us

Comments: Case#2:17-cv-00275-RJ-KK Document#100 Filed:02/12/2018

Job: 63d33302-f8f4-40d0-9204-314ce0d8f835

MOTION for Leave to Appeal in forma pauperis by Monte Whitehead. (jn)

NOTE: In an effort to reduce paper and postage costs, the Notice of Electronic Filing (NEF) will not be included with this transmission. To obtain a copy of the complete NEF, please visit us online at <http://www.nmd.uscourts.gov> and login to either our CM/ECF or PACER account. You may also view the NEFs at one of our public terminals located at the courthouses in Albuquerque, Las Cruces, and Santa Fe.

FEB 12 2018

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MONTE WHITEHEAD
Plaintiff/Appellant

v.

Cause No: 2:17-cv-00275-RJ-KK

GREGG MARCANTEL, et al.
Defendants

MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS

Comes now Plaintiff/Appellant, Monte Whitehead, pro se and requests this honorable court allow him to proceed on appeal without prepayment of fees. This motion is pursuant to 10th Cir. R. 24(a)(1), and Mr. Whitehead has entitlement to redress. Plaintiff states the following in support of this motion.

1. Mr. Whitehead is an inmate incarcerated in the New Mexico Department of Corrections and has been incarcerated since January 13, 2006.
2. Plaintiff has already been determined indigent in the present case. See document 73.
3. Plaintiff has included with this motion Form 4 (Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis).

4. Mr. Whitehead contends that this honorable courts decisions are in error of clearly established law, and he appeals the decisions to prevent manifest injustice. He requests that the Tenth Cir. Court of Appeals address whether the district court erred in determining that:

- (a) Plaintiff/Appellant failed to raise any claims that could amount to violations of his United States Constitutional rights;
- (b) the prison, state, and their named defendants did not violate Plaintiff's First Amendment rights when they denied him Internet and newspaper articles which thwarted his attempts to write an article about private prisons and start a political activist group of people on the outside (not incarcerated). This very issue of First Amendment violations is currently under review by the New Mexico Supreme Court in Monte Whitehead v. New Mexico Department of Corrections, O.C.P. F. and James Fraenier, Warden, S-1-SC-3675;
- (c) the use of approved vendors for information and books and the banning of hardbound books from book clubs, publishers and vendors does not violate Plaintiff's First Amendment rights. These issues are also under review in the

above named case;

- (d) Plaintiff's claim of First Amendment violations failed because he did not state the prison had no clear penological objective reason for the rejection in his arguments over denial of literature. Plaintiff believes he did make such an argument, but if he did not, he is not required to make such a statement in his complaint or Memorandum;
- (e) the prison and other named defendants did not violate Plaintiff's Eighth Amendment right by deliberate indifference when Plaintiff had a documented serious medical condition and prison staff denied him access to see the doctor for several weeks after he had a medical crisis and the defendants tried to coerce Plaintiff into taking a medication he believed precipitated the medical crisis;
- (f) the state, prison, and Keefe Commissary Network (KCN) does not violate Plaintiff's and other inmates Fourteenth Amendment rights when they only charge inmates (sex offenders - a politically undesirable group) detained at Otero County Prison Facility sales tax on commissary and not charge inmates in all other facilities in the state sales tax on commissary. All prisons that hold state prisoners are under obligation to the state to provide commissary through (KCN)

of which the state receives thirty (30) percent of all sales. Furthermore, the commissary for the prisoners in question comes from an out of state vendor and location. Therefore, this tax on sex offenders at this prison also violates the commerce clause. This is not a question about a right to commissary but of the state's, prisons, and KCN's unequal treatment of sex offenders;

(g) Strip searches before visits do not violate Plaintiff's limited Fourth Amendment rights. At no time has the state or prison expressed or shown reasonable suspicion that Plaintiff or other inmates try to sneak contraband out of prison. Neither have they referred to cases in support of strip searches before visits or shown where an inmate was caught sneaking contraband out of prison. Plaintiff makes no other claim concerning Fourth Amendment rights;

(h) state officials are not liable to suite under § 1983 concluding that Plaintiff only named them in the suit in their official capacity when Plaintiff clearly states he is suing certain state officials in their individual capacity in the complaint

(i) Not allowing Plaintiff to amend the complaint when

he made a motion to do so several months before the court handed down its final judgment. Defendants argued against the motion to amend because Plaintiff did not follow proper procedure, since he failed to attach the proposed amendment. The court did not respond to the motion until its final judgment. Petitioner should have been allowed to amend the complaint and correct deficits.

(3) this case does not present a novel question of law concerning the PRLA's requirement of the grievance procedure before being allowed to pursue litigation while in prison. Because the grievance procedure is now a bar to access of the courts and redress of grievances that no other Americans have to go through, can prisons be held liable when an inmate can show prison officials use and abuse the grievance exhaustion procedure to thwart and frustrate inmates attempts to correct or handle constitutional violations at the prison level and use the grievance process to cause inmates to give up on pursuing remedies with the courts?

Wherefore, Plaintiff/Appellant asks this honorable court allow him leave to proceed in forma pauperis on his appeal to the Tenth Circuit Court of Appeals.

PROOF OF SERVICE

I certify that on this 9th day of February, 2018,
I served a copy of this Motion to Proceed In Forma
Pauperis on the following parties:

Holt McNatt Martinez, P.C.
Damien Martinez
P.O. Box 2699
Las Cruces NM. 88004-2699

Sutin, Thayer & Brown
Christina Muscarella Goesch, Esq.
6100 Uptown Boulevard N.E Suite 400
Albuquerque NM. 87110

Silva and Associates
Benjamin Silva Jr.
201 Third St. N.W. Suite 1720
Albuquerque NM. 87103-100

Office of the Attorney General
Hector Balderas
P.O. Drawer 1508
Santa Fe NM. 87504

Motion to Proceed In Forma Pauperis and Proof of Service
are respectfully submitted.

Monte Whitehead
Monte Whitehead
GCCF H2E 113
P.O. Box 520
Santa Rosa NM. 88435.

February 5 2018
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MONTE WHITEHEAD
Plaintiff/Appellant

v.

Cause No: 2:17-CV-00275-RJ-KK

GREGG MARCANTEL et al.
Defendants

AFFIDAVIT ACCOMPANYING MOTION
FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion

Instructions

I swear or affirm under penalty of perjury that, because of my poverty, I not prepay the docket fees of my seal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: 2-6-2018

Signed: Monte Whitehead

My issues on appeal are: See attached preceding Motion to Proceed
In Forma Pauperis

For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	Amount expected next month
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FRAP Form 4, Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis

	You	Spouse	You	Spouse
Employment	\$ <u>16.00</u>	\$ <u>0</u>	\$ <u>16.00</u>	\$ <u>0</u>
Self-employment	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Income from real property (such as rental income)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Interest and dividends	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Gifts	\$ <u>60.00</u>	\$ <u>0</u>	\$ <u>60.00</u>	\$ <u>0</u>
Alimony	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Child support	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Unemployment payments	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Total monthly income:	\$ <u>16.00</u>	\$ <u>0</u>	\$ <u>16.00</u>	\$ <u>0</u>

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
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New Mexico Dept. of Corr. Santa Fe NM 2008 to present \$20.00 (current)

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
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N/A no spouse

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
<u>N/A</u>		\$ <u>0</u>	\$ <u>0</u>
		\$ <u>0</u>	\$ <u>0</u>
		\$ <u>0</u>	\$ <u>0</u>

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one

see attached

FRAP Form 4, Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis

certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value) Other real (Value) Motor vehicle #1 (Value)
estate

0 0 Make & year: N/A
0 0 Model: N/A
0 0 Registration #: N/A

Motor vehicle #2 (Value) Other assets (Value) Other assets (Value)

Make & year: N/A Model: N/A Registration #: N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money Amount owed to you Amount owed to your spouse

none

0

0

7. State the persons who rely on you or your spouse for support. (child support)

Name	Relationship	Age
<u>T.W.</u>	<u>Daughter</u>	<u>16</u>
<u>*57401</u>		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ <u>N/A</u>
Are real-estate taxes included? [] Yes [] No		
Is property insurance included? [] Yes [] No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	\$ <u> </u>	\$ <u> </u>
Home maintenance (repairs and upkeep)	\$ <u> </u>	\$ <u> </u>
Food	\$ <u> </u>	\$ <u> </u>
Clothing	\$ <u> </u>	\$ <u> </u>
Laundry and dry-cleaning	\$ <u> </u>	\$ <u> </u>
Medical and dental expenses	\$ <u> </u>	\$ <u> </u>
Transportation (not including motor vehicle payments)	\$ <u> </u>	\$ <u> </u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u> </u>	\$ <u> </u>

FRAP Form 4, Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis

Insurance (not deducted from wages or included in Mortgage payments)	\$ <u>0</u>	\$ <u>N/A</u>
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	\$ _____	\$ _____
Installment payments	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Credit card (name): _____	\$ _____	\$ _____
Department store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support *57402 paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ <u>0</u>	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

[] Yes No If yes, describe on an attached sheet.

10. Have you paid--or will you be paying--an attorney any money for services in connection with this case, including the completion of this form? Yes

If yes, how much? \$ _____

If yes, state the attorney's name, address, and telephone number:

N/A

11. Have you paid--or will you be paying--anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

[] Yes No

If yes, how much? \$ _____

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal. *The only income I receive is twenty cents an hour from my prison job and the support my mother sends me. Occasionally my sister will also send me some money.*

FRAP Form 4, Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis

1 State the address of your legal residence.

GCCF, H2E 113; P.O. Box 520; Santa Rosa New Mexico

Your daytime phone number: 414

Your age: 48 Your years of schooling: 20

Your social-security number: 4220 (last four digits)

CREDIT(S)

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

<General Materials (GM) - References, Annotations, or Tables>

FINANCIAL CERTIFICATE
(Initial filing or appeal/IFP application)

Monte Whitehead
INMATE NAME
(please print)

67194
INMATE NUMBER

U.S.DISTRICT COURT CASE NUMBER: 2:17-cv-00275-RJ-KK

1. Inmate's average monthly DEPOSITS for six preceding months: \$ 175.50.
2. Inmate's average monthly BALANCE for six preceding months: \$ 80⁰⁰.
3. CURRENT ACCOUNT BALANCE:

Funds accessible to inmate as of 1-25-18 (date), including amount in savings account, in excess of minimum amount that must be maintained:
\$ 325.61.

4. Attached hereto is a copy of the inmate's financial transactions for the six preceding months.

I hereby certify that as of this date, the above financial information is accurate for the above-named inmate, and that a copy of this certificate is being provided to the above-named inmate.

B. Adcox
AUTHORIZED OFFICER

Inmate account Clerk
TITLE

1-25-18
DATE

Date 01/25/2018

New Mexico Corrections Department
Inmate Trust AccountingPage 1 of 4
cordb371**Account Transaction History**
From 06/01/2017 To 01/25/2018

Offender Name	NMCD # Account Description		Account Number
WHITEHEAD, MONTE C	67194 INMATE REGULAR SPENDING		38640
Transaction ID	Date	Description	Amount
	06/01/2017	Beginning Balance	25.28
2613290	06/06/2017	Commissary Purchase; Invoice 305489	-24.43
2618485	06/13/2017	Commissary Purchase; Invoice 305986	-.81
2619794	06/13/2017	GCCF MAY - GCCF-DAY ORD H2E-1	15.20
2620317	06/13/2017	AUTOMATIC CVR DEDUCTION	-2.28
2620318	06/13/2017	Automatic Savings Deduction	-.76
2620319	06/13/2017	MONTHLY FOR CHRISTIAN ENGLISH BIBLE	-5.00
2620320	06/13/2017	MONTHLY FOR MEN OF FAITH	-1.00
2621940	06/14/2017	GCCF COPIES	-.25
2622053	06/14/2017	Cash Receipt - RATHGEBER, PARLA	30.00
2625706	06/16/2017	Cash Receipt - WHITEHEAD, IRENE	50.00
2626505	06/20/2017	GCCF COMMISSARY PURCHASE MAY 16, 2017	-35.14
2626652	06/20/2017	Commissary Purchase; Invoice 306784	-24.41
2626792	06/21/2017	Commissary Purchase; Invoice 306928	-21.81
2627847	06/27/2017	Commissary Purchase; Invoice 307437	-4.57
2627873	06/27/2017	Cash Receipt - WHITEHEAD, IRENE	100.00
2627996	06/27/2017	GCCF COPIES	-1.00
2628659	07/03/2017	Commissary Purchase; Invoice 307733	-59.62
2633444	07/11/2017	Cash Receipt - RATHGEBER, PARLA	50.00
2634394	07/11/2017	Commissary Purchase; Invoice 308135	-38.97
2635158	07/12/2017	GCCF JUNE 17 PAY - GCCF-DAY ORD H2E-1	15.20
2635690	07/12/2017	AUTOMATIC CVR DEDUCTION	-2.28
2635691	07/12/2017	Automatic Savings Deduction	-.76
2641865	07/17/2017	GCCF-POSTAGE	-3.75
2641934	07/17/2017	Check 821409 - CHRIST COMMUNITY CHURCH	-2.00
2642029	07/17/2017	GCCF-NOTARY	-1.00
2642135	07/18/2017	Commissary Purchase; Invoice 308654	-22.33
2643075	07/20/2017	GCCF-POSTAGE	-7.60
2643708	07/25/2017	Commissary Purchase; Invoice 309030	-25.17
2644456	07/28/2017	Cash Receipt - WHITEHEAD, IRENE	100.00
2644777	08/01/2017	Commissary Purchase; Invoice 309345	-24.34
2644868	08/01/2017	GCCF-COPIES	-.25
2645032	08/02/2017	Cash Receipt - WHITEHEAD, IRENE	50.00
2646764	08/08/2017	Commissary Purchase; Invoice 309727	-10.72

Date 01/25/2018

New Mexico Corrections Department
Inmate Trust AccountingPage 2 of 4
cordb371Account Transaction History
From 06/01/2017 To 01/25/2018

Offender Name	NMCD #	Account Description	Account Number
WHITEHEAD, MONTE C	67194 INMATE REGULAR SPENDING		
			38640
Transaction ID	Date	Description	Amount
2646871	08/08/2017	Cash Receipt - RATHGEBER, PARLA	25.00
2653341	08/10/2017	GCCF JULY 17 PAY - GCCF-DAY ORD H2E-1	16.80
2653867	08/10/2017	AUTOMATIC CVR DEDUCTION	-2.52
2653868	08/10/2017	Automatic Savings Deduction	-.84
2655790	08/11/2017	GCCF-NOTARY	-1.00
2655794	08/11/2017	GCCF-COPIES/POLICIES	-1.50
2655794	08/11/2017	GCCF-COPIES /POLICIES	-1.00
2659334	08/15/2017	Commissary Purchase; Invoice 310205	-25.74
2663596	08/21/2017	Check 821516 - ERHBC	-11.40
2663623	08/21/2017	Cash Receipt - WHITEHEAD, IRENE	70.00
2663638	08/21/2017	AUTOMATIC CVR DEDUCTION	-10.50
2663639	08/21/2017	Automatic Savings Deduction	-3.50
2663859	08/22/2017	Commissary Purchase; Invoice 310884	-63.54
2663985	08/22/2017	GCCF-COPIES	-.50
2664055	08/23/2017	GCCF-POSTAGE	-2.00
2665521	08/30/2017	GCCF CVR CORRECTION FOR MONEY ORDER ON 8/21/17	10.50
2665644	08/31/2017	Commissary Purchase; Invoice 311257	-31.24
2665674	08/31/2017	Commissary Purchase; Invoice 311587	-5.00
2666010	09/05/2017	Commissary Return; Invoice 310884	3.48
2666060	09/05/2017	Commissary Purchase; Invoice 311937	-38.11
2666775	09/07/2017	GCCF-COPIES	-4.75
2666775	09/07/2017	GCCF-COPIES	-.25
2671269	09/11/2017	Commissary Purchase; Invoice 312321	-23.36
2673607	09/13/2017	GCCF AUGUST 17 PAY - GCCF-DAY ORD H2E-1	18.40
2674187	09/13/2017	AUTOMATIC CVR DEDUCTION	-2.76
2674188	09/13/2017	Automatic Savings Deduction	-.92
2679934	09/19/2017	Commissary Purchase; Invoice 313138	-28.06
2680008	09/19/2017	Cash Receipt - WHITEHEAD, IRENE	70.00
2680135	09/20/2017	GCCF COPIES	-.50
2680177	09/20/2017	Check 821605 - TRIARCO ARTS & CRAFTS, INC	-43.60
2680263	09/20/2017	GCCF WEAVING COFFEE CLUB	-13.00
2680592	09/22/2017	Cash Receipt - RATHGEBER, PARLA	40.00
2682236	10/03/2017	Commissary Purchase; Invoice 313565	-35.62

Date 01/25/2018

New Mexico Corrections Department
Inmate Trust AccountingPage 3 of 4
cordb371**Account Transaction History**
From 06/01/2017 To 01/25/2018

Offender Name	NMCD #	Account Description	Account Number
WHITEHEAD, MONTE C	67194 INMATE REGULAR SPENDING		
			38640
Transaction ID	Date	Description	Amount
2684646	10/10/2017	GCCF SEPT 2017 PAY - GCCF-DAY ORD H2E-1	13.60
2685186	10/10/2017	AUTOMATIC CVR DEDUCTION	-2.04
2685187	10/10/2017	Automatic Savings Deduction	-.68
2685724	10/10/2017	Commissary Purchase; Invoice 313909	-5.53
2695043	10/17/2017	Commissary Purchase; Invoice 314480	-21.86
2695076	10/17/2017	Cash Receipt - WHITEHEAD, IRENE	70.00
2696184	10/19/2017	Cash Receipt - RATHGEBER, PARLA	30.00
2696908	10/25/2017	Commissary Purchase; Invoice 314854	-58.25
2697734	10/30/2017	Commissary Purchase; Invoice 315182	-34.67
2697763	10/31/2017	GCCF COPIES	-2.25
2697763	10/31/2017	GCCF COPIES	-1.00
2699011	11/07/2017	Commissary Purchase; Invoice 315572	-5.62
2704887	11/13/2017	Cash Receipt - WHITEHEAD, IRENE	70.00
2705080	11/13/2017	GCCF OCT 2017 PAY - GCCF-DAY ORD H2E-1	11.20
2705080	11/13/2017	GCCF OCT 2017 PAY - GCCF-TRAY ORD 1	4.20
2705599	11/13/2017	AUTOMATIC CVR DEDUCTION	-1.68
2705600	11/13/2017	Automatic Savings Deduction	-.56
2705601	11/13/2017	AUTOMATIC CVR DEDUCTION	-.63
2705602	11/13/2017	Automatic Savings Deduction	-.21
2708211	11/14/2017	Commissary Purchase; Invoice 315936	-63.28
2713507	11/28/2017	Commissary Purchase; Invoice 316789	-15.75
2714587	12/01/2017	GCCF NOTARY	-1.00
2715084	12/05/2017	Commissary Purchase; Invoice 317103	-2.02
2722059	12/12/2017	Commissary Purchase; Invoice 317533	-.29
2725579	12/14/2017	GCCF NOVEMBER 17 PAY - GCCF-TRAY ORD 1	16.60
2726079	12/14/2017	AUTOMATIC CVR DEDUCTION	-2.49
2726080	12/14/2017	Automatic Savings Deduction	-.83
2728587	12/19/2017	Commissary Purchase; Invoice 318081	-13.02
2728975	12/20/2017	Cash Receipt - WHITEHEAD, IRENE	60.00
2729208	12/21/2017	GCCF WEAVING COFFEE CLUB	-2.50
2729611	12/26/2017	Commissary Purchase; Invoice 318331	-45.37
2729939	12/28/2017	GCCF COPIES	-.50
2730322	01/02/2018	Commissary Purchase; Invoice 318689	-11.58
2739615	01/12/2018	GCCF DEC 2017 PAY - GCCF-TRAY ORD 1	16.80
			17.19

Date 01/25/2018

New Mexico Corrections Department
Inmate Trust AccountingPage 4 of 4
cordb371**Account Transaction History**
From 06/01/2017 To 01/25/2018

Offender Name	NMCD #	Account Description	Account Number
WHITEHEAD, MONTE C	67194 INMATE REGULAR SPENDING		
Transaction ID	Date	Description	Amount
2740153	01/12/2018	AUTOMATIC CVR DEDUCTION	-2.52
2740154	01/12/2018	Automatic Savings Deduction	-.84
2741794	01/12/2018	Cash Receipt - RATHGEBER, PARLA	40.00
2741919	01/12/2018	GCCF POSTAGE	-13.60
2741919	01/12/2018	GCCF POSTAGE	-14.60
2742523	01/16/2018	Commissary Purchase; Invoice 319667	-25.26
2744968	01/23/2018	Cash Receipt - WHITEHEAD, IRENE	70.00
	01/25/2018	Ending Balance	70.37

Order Granting Motion to Proceed
In Forma Pauperis on Appeal

3-6-2018

Doc 103



United States District Court
District of New Mexico
Office of the Clerk
Document Summary Page

Date: March 06, 2018 04:20 PM MST

To: Monte Whitehead

Case: Whitehead v. Marcantel et al

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

CM/ECF Support Email: cmeccf@nmcourt.fed.us

Comments: Case#2:17-cv-00275-RJ-KK Document#103 Filed:03/06/2018

Job: 81a4c29b-2d55-4a85-b41c-f03dd31a79e5

ORDER by Magistrate Judge Kirtan Khalsa granting [100] Motion for Leave to Appeal in forma pauperis. (tkl)

NOTE: In an effort to reduce paper and postage costs, the Notice of Electronic Filing (NEF) will not be included with this transmission. To obtain a copy of the complete NEF, please visit us online at <http://www.nmd.uscourts.gov> and login to either your CM/ECF or PACER account. You may also view the NEFs at one of our public terminals located at the courthouses in Albuquerque, Las Cruces, and Santa Fe.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MONTE WHITEHEAD,

Plaintiff,

vs.

No. CV 17-00275 RJ/KK

GREGG MARCANTEL, et al.,

Defendants.

**ORDER GRANTING LEAVE TO PROCEED
PURSUANT TO 28 U.S.C. § 1915(b) ON APPEAL,
AND TO MAKE PAYMENTS OR SHOW CAUSE**

This matter is before the Court on the Motion for Leave to Proceed in Forma Pauperis on appeal filed by Plaintiff, Monte Whitehead, on February 12, 2018 (Doc. 100). Pursuant to § 1915(b)(1), Plaintiff is required to make installment payments until the full amount of the filing fee on appeal is paid. Based on analysis under § 1915(b)(1) of Plaintiff's inmate account statement (Doc. 100 at 13-16), the Court finds that Plaintiff owes an initial partial payment of \$23.15.

IT IS THEREFORE ORDERED that the Motion for Leave to Proceed in Forma Pauperis on appeal filed by Plaintiff, Monte Whitehead, on February 12, 2018 (Doc. 100) is GRANTED;

IT IS FURTHER ORDERED that, within thirty (30) days of entry of this Order, Plaintiff send to the Clerk an initial partial payment of \$23.15 or show cause why payment should be excused;

IT IS FURTHER ORDERED that the Clerk is directed to provide Plaintiff with two copies of this Order, and that Plaintiff make the necessary arrangements to attach one copy of this Order to the check in the \$23.15 amount of the initial partial payment;

IT IS FINALLY ORDERED that, after payment of the \$23.15 initial partial fee, Plaintiff make monthly payments of twenty per cent (20%) of the preceding month's income credited to his account or show cause why the designated payments should be excused.


Kutan Khalsa
UNITED STATES MAGISTRATE JUDGE