

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

Case No. 18-4011-DDC-GEB

DERRICK HOWARD,)
)
)
Plaintiff,)
)
v.)
)
FARMERS INSURANCE)
COMPANY, INC., et al.,)
)
Defendants.)
)

ORDER

This matter is before the Court on Plaintiff's Motion to Proceed Without Prepayment of Fees (ECF No. 5). As outlined below, Plaintiff's Motion to Proceed without Prepayment of Fees (**ECF No. 5**) is **taken under advisement**, pending Plaintiff's submission of an initial partial filing fee.

Background

Plaintiff Derrick Howard brings this civil action for breach of contract, as well as other tort claims, against two insurance companies and their representatives. Generally, Plaintiff alleges the companies insured two residential properties he owns in Missouri, and seeks damages for the companies' failure to pay damage claims on those properties, as well as damages incurred for what he alleges to be the companies' fraudulent actions and conspiracy to deny him insurance proceeds due under the policies. Plaintiff is a prisoner held in federal custody in the state of Florida, and asserts this Court possesses diversity jurisdiction over his claims under 28 U.S.C. § 1332(a) because the parties are

citizens of different states, and he seeks more than \$75,000 in damages from Defendants.

Plaintiff proceeds pro se and seeks leave to proceed *in forma pauperis*.

Motion to Proceed *In Forma Pauperis* (ECF No. 2)

This motion is governed by 28 U.S.C. § 1915(b). Because Plaintiff is a prisoner, he must pay the full filing fee in installment payments taken from his prison trust account when he “brings a civil action or files an appeal in forma pauperis[.]”¹ Pursuant to § 1915(b)(1), the court must assess, and collect when funds exist, an initial partial filing fee calculated upon the greater of (1) the average monthly deposit in his account or (2) the average monthly balance in the account for the six-month period preceding the filing of the complaint. Thereafter, Plaintiff must make monthly payments of twenty percent of the preceding month’s income in his institutional account.² However, a prisoner shall not be prohibited from bringing a civil action or appeal because he has no means to pay the initial partial filing fee.³

Here, Plaintiff’s average monthly deposit is \$12.50, and the average balance is \$5.98. The Court therefore assesses an initial partial filing fee of \$2.50, which is twenty percent of the average monthly deposit.

IT IS, THEREFORE, BY THE COURT ORDERED that on or before **May 18, 2018**, Plaintiff shall submit an initial partial filing fee of \$2.50 to the clerk of the court.⁴ Any objection to this order must be filed on or before the date payment is due. The failure

¹ § 1915(b)(1).

² § 1915(b)(2).

³ § 1915(b)(4).

⁴ Plaintiff will be required to pay the balance of the \$350.00 filing fee in installments calculated pursuant to 28 U.S.C. § 1915(b)(2).

to file a timely response may result in the dismissal of this action without prejudice and without additional prior notice to Plaintiff.

A copy of this order shall be transmitted to Plaintiff by regular U.S. mail.

IT IS SO ORDERED.

Dated April 13, 2018, at Wichita, Kansas.

s/ Gwynne E. Birzer
GWYNNE E. BIRZER
U.S. Magistrate Judge