

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

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

Case No. 18-4011-DDC-GEB

ORDER

This matter is before the Court on Plaintiff’s Motion to Proceed Without Prepayment of Fees (**ECF No. 5**). In a prior Order (ECF No. 6), Plaintiff’s motion was taken under advisement, pending Plaintiff’s submission of an initial partial filing fee. Although Plaintiff failed to submit his partial filing fee prior to the deadline initially established by the Court, he did submit the fee without objection on the deadline later ordered (*see* Notice and Order to Show Cause, ECF No. 7). Therefore, the undersigned finds that Plaintiff has shown cause as ordered and submitted the partial fee as required under 28 U.S.C. § 1915(b).

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.

Motion to Proceed *In Forma Pauperis* (ECF No. 5)

As discussed in the prior order (ECF No. 6), 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

As previously demonstrated in Plaintiff's financial affidavit (ECF No. 5-1, sealed), his average monthly deposit is \$12.50, and the average balance is \$5.98. The Court previously assessed an initial partial filing fee of \$2.50—twenty percent of the average

¹ § 1915(b)(1).

² § 1915(b)(2).

³ § 1915(b)(4).

monthly deposit—which Plaintiff has now paid as directed.

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Proceed Without Prepayment of Fees is **GRANTED**. Plaintiff is advised that he remains obligated to pay the balance of the statutory filing fee of \$350.00 in this action.⁴ The Finance Office of the Coleman II U.S. Penitentiary in Coleman, Florida, is hereby directed to collect from plaintiff Derrick Howard’s account and pay to the clerk of the court twenty percent (20%) of the prior month’s income each time the amount in Plaintiff’s account exceeds ten dollars (\$10.00) until the filing fee has been paid in full.⁵ Plaintiff is directed to cooperate fully with his custodian in authorizing disbursements to satisfy the filing fee, including but not limited to providing any written authorization required by the custodian or any future custodian to disburse funds from his account.

IT IS FURTHER ORDERED that the clerk of the court shall prepare waiver of service forms for all named defendants pursuant to Fed. R. Civ. P. 4(d), to be served at no cost to Plaintiff absent a finding by the Court that Plaintiff is able to pay such costs.

A copy of this order shall be transmitted to Plaintiff and to the Finance Office of the facility where Plaintiff is incarcerated by regular U.S. mail.

IT IS SO ORDERED.

Dated June 6, 2018, at Wichita, Kansas.

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

⁴ 28 U.S.C. § 1915(b)(2).

⁵ See 28 U.S.C. § 1915(b).