

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ANTHONY HARDEN, # N-90639,

Plaintiff,

vs.

SALVADOR GODINEZ,

Defendant.

Case No. 13-cv-1091-JPG

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court for case management. On November 15, 2013, Plaintiff, who has incurred three “strikes” under 28 U.S.C. § 1915(g), was ordered to pay the \$400.00 filing fee for this case no later than December 5, 2013 (Doc. 7). Plaintiff was clearly warned that failure to pay the filing fee would result in dismissal of this case.

The date to pay the filing fee has passed, and Plaintiff has failed to pay. As a result, this action is **DISMISSED** without prejudice, for failure to comply with an Order of this Court. FED. R. CIV. P. 41(b). *See generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). Plaintiff’s obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$400.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

The agency having custody of the Plaintiff is directed to remit the \$400.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$400.00 in his account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher. Thereafter, Plaintiff shall make

monthly payments of 20% of the preceding month's income credited to Plaintiff's prison trust fund account (including all deposits to the inmate account from any source) until the \$400.00 filing fee is paid in full. The agency having custody of Plaintiff shall forward these payments from the Plaintiff's trust fund account to the Clerk of this Court each time the Plaintiff's account exceeds \$10.00, until the \$400.00 fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202. The Clerk is **DIRECTED** to mail a copy of this order to the Trust Fund Officer at Menard Correctional Center upon entry of this Order.

Plaintiff is again **WARNED** that if he files any future lawsuit while he is incarcerated, and fails to disclose his three-strike status in his complaint, his case shall be subject to immediate dismissal.

All pending motions are **DENIED AS MOOT**.

IT IS SO ORDERED.

DATED: January 28, 2014

s/J. Phil Gilbert
United States District Judge