

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

MICHAEL F. DISCH, # 03398-424,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 16-cv-1343-JPG
)	
HEARTLAND REGIONAL MEDICAL)	
CENTER,)	
BYRON WILLIAMSON,)	
DR. DOOLITTLE, SR.,)	
RANDY BALMFORTH,)	
and DENIS KUZELJ,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court on Plaintiff’s Motion to Dismiss Complaint. (Doc. 11). Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, voluntary withdrawal of his complaint is Plaintiff’s right. Accordingly, the motion is **GRANTED**, and this action is **DISMISSED WITHOUT PREJUDICE**. All other pending motions are **DENIED AS MOOT**.

This dismissal shall not count as a “strike” under 28 U.S.C. § 1915(g).

As Plaintiff was notified in the Order at Doc. 10, he incurred the obligation to pay the \$400.00 filing fee for this case when the action was filed. This obligation continues regardless of dismissal of the suit. See 28 U.S.C. § 1915(b)(1), (e)(2); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

To that end, 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 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 the United States Penitentiary at Marion upon entry of this Order.

The Clerk shall **CLOSE THIS CASE** and enter judgment accordingly.

If Plaintiff wishes to appeal this dismissal, his notice of appeal must be filed with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* should set forth the issues Plaintiff plans to present on appeal. See FED. R. APP. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. See FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another "strike." A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline

cannot be extended.

IT IS SO ORDERED.

DATED: April 3, 2017

s/J. Phil Gilbert
United States District Judge