

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

NICHOLAS MARTIN, #21562-040)
)
Plaintiff,)
)
vs.) **Case No. 21-cv-1497-SPM**
)
UNITED STATES PENITENTIARY)
MARION, et al)
)
Defendants.)

ORDER DISMISSING CASE

MCGLYNN, District Judge:

This case was opened on November 22, 2021 without the payment of a filing fee or the filing of a Motion for Leave to Proceed Without Prepaying Fees or Costs (“IFP Motion”). On November 29, 2021, Plaintiff was ordered to pay the filing fee of \$402.00 or to file an IFP Motion within thirty (30) days and was warned that failure to do so would result in dismissal of the case. He was also provided with a blank IFP Motion. (Doc. 3). To date, Plaintiff has not filed for IFP or paid the \$402.00 filing fee. Accordingly, this action is **DISMISSED** without prejudice for failure to comply with an Order of this Court. *See* FED. R. CIV. P. 41(b); *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 \$402.00 filing fee was incurred at the time the action was filed. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Therefore, **the agency having custody of Plaintiff is DIRECTED** to remit the \$402.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$402.00 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, the agency shall begin

forwarding monthly payments of 20% of the preceding month's income credited to Plaintiff's trust fund account (including all deposits to the inmate account from any source) until the statutory fee of \$402.00 is paid in its entirety.

The agency having custody of Plaintiff shall forward payments from his account to the Clerk of Court each time his account exceeds \$10.00 until the \$402.00 filing fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois. The Clerk is **DIRECTED** to mail a copy of this Order to the Trust Fund Officer at the Marion United States Penitentiary *upon entry of this Order*.

IT IS SO ORDERED.

DATED: January 7, 2021

s/ STEPHEN P. MCGLYNN
U.S. District Judge