UNITED STATES OF AMERICA UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

MARTIN L. MANLEY,

Plaintiff, Case No. 1:11-cv-957

v. Honorable Paul L. Maloney

UNKNOWN FILSINGER et al.,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. On September 26, 2011, the Court issued an opinion and order (docket ##3, 4) denying Plaintiff leave to proceed *in forma pauperis* because he was barred by the "three-strikes" rule of 28 U.S.C. § 1915(g). The Court required Plaintiff to pay the \$350.00 civil action filing fee within twenty-eight days, and the Court warned that his case would be dismissed without prejudice should he fail to pay. The Court also warned that Plaintiff would be responsible for payment of the \$350.00 filing fee in accordance with *In re Alea*, 286 F.3d 378, 380-81 (6th Cir. 2002).

More than twenty-eight days have elapsed since the Court's order requiring Plaintiff to pay the filing fee, and Plaintiff has not paid the fee. Plaintiff has failed to comply with the order; therefore, dismissal of this action without prejudice is appropriate. Because the obligation to pay the full filing fee arises at the time the civil complaint is filed in the Court, Plaintiff remains liable for payment of the civil action filing fee despite the dismissal of his action. *See In re Alea*, 286 F.3d at 381. Not to require payment of the full filing fee would permit a prisoner subject to the three-strikes rule to continue to file frivolous civil complaints without financial consequence. *Id.*

Accordingly, the agency having custody of Plaintiff shall collect the \$350.00 civil action filing fee

and remit the funds to the Clerk of this Court. The check or money order shall be payable to "Clerk,

U.S. District Court" and must indicate the case number in which the payment is made.

Therefore, in accordance with this Order, the Court will issue a Judgment dismissing

the complaint without prejudice for lack of prosecution. Further,

IT IS ORDERED that the agency having custody of Plaintiff shall collect the

\$350.00 civil action filing fee and remit the funds to the Clerk of this Court.

IT IS ALSO ORDERED that for the same reasons that the Court dismisses the

action, the Court discerns no good-faith basis for an appeal. See 28 U.S.C. § 1915(a)(3); McGore

v. Wrigglesworth, 114 F.3d 601, 611 (6th Cir. 1997). Further, should Plaintiff appeal this decision,

he must pay the \$455.00 appellate filing fee in a lump sum, because he is prohibited from

proceeding in forma pauperis on appeal by 28 U.S.C. § 1915(g).

Dated: October 28, 2011

/s/ Paul L. Maloney

Paul L. Maloney

Chief United States District Judge

- 2 -