

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BRYAN BEHRENS,)
)
 Plaintiff,)
)
 v.)
)
 GMAC MORTGAGE, LLC,)
)
 Defendant.)

8:13CV72

**MEMORANDUM
AND ORDER**

This matter is before the court on reconsideration of the court’s calculation of Plaintiff’s initial partial filing fee. Pursuant to [28 U.S.C. § 1915\(b\)\(1\)](#), Plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of Plaintiff’s average monthly account balance or average monthly deposits for the six months preceding the filing of the complaint. On March 19, 2013, the court assessed an initial partial filing fee in the amount of \$112.40 “based on average monthly deposits of \$562.00” for the six months preceding the filing of Plaintiff’s Complaint. (Filing No. [9](#).) Upon further review of Plaintiff’s inmate trust account statement, the court notes that \$562.00 was the total amount deposited in Plaintiff’s account, not the average monthly amount. (See Filing No. [5](#).) Accordingly, the court finds that the initial partial filing fee is \$18.73 based on average monthly deposits of \$93.67.

Also pending is Plaintiff’s Notice of “Interlocutory Appeal,” which the court liberally construes as a Motion for Interlocutory Appeal. (Filing No. [10](#).) In light of the court’s reconsideration of the calculation of the initial partial filing fee in this matter, Plaintiff’s Motion for Interlocutory Appeal is denied as moot. In the alternative, Plaintiff’s Motion for Interlocutory Appeal is denied because the decision he seeks to appeal does not involve a controlling question of law. See [28 U.S.C. § 1292\(b\)](#) (stating interlocutory appeal may be taken if the district court certifies that an otherwise unappealable order involves a controlling question of law as to which there is substantial ground for difference of opinion, and immediate appeal may materially advance the ultimate termination of the litigation).

IT IS THEREFORE ORDERED that:

1. Upon careful consideration, the court's March 19, 2013, Memorandum and Order (Filing No. [9](#)) is amended in two respects. First, the initial partial filing fee is \$18.73 (not \$112.40 as set forth in the March 19 order). Second, Plaintiff is granted an extension of time until May 20, 2013, to pay his initial partial filing fee.

2. The clerk's office is directed to send a copy of this Memorandum and Order to the appropriate financial official at Plaintiff's institution.

3. Plaintiff's Notice of Interlocutory Appeal, which the court liberally construes as a Motion for Interlocutory Appeal, is denied as moot. (Filing No. [10](#).)

DATED this 12th day of April, 2013.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge

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