

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Nathan E. Jacobs,)	C/A No. 0:15-2514-SB-PJG
)	
Plaintiff,)	
)	ORDER
v.)	
)	
Berrios, Mr., Unit Manager; Vialapanda,)	
Mr., Unit Manager; Whalen, Mr., Case)	
Manager,)	
)	
Defendants.)	
_____)	

This is a civil action filed by a federal prisoner. Therefore, in the event that a limitations issue arises, Plaintiff shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner’s pleading was filed at the moment of delivery to prison authorities for forwarding to District Court). Under Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

By order issued on July 16, 2015 the court allowed Plaintiff an opportunity to bring this case into proper form for initial review. (ECF No. 12.) Plaintiff partially complied with the court’s order.

MOTION FOR DEFAULT JUDGMENT AND MOTION FOR RELIEF SOUGHT:

Plaintiff files a motion (ECF No. 21) seeking (1) a default judgment against the defendants and (2) the relief sought in the Amended Complaint. Under Rule 55 of the Federal Rules of Civil Procedure, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” In this case, the issuance and service of process has not been authorized and the defendants have not been served with the Amended Complaint. Thus, Plaintiff’s motion for default judgment is premature. Moreover, in a separately docketed Report and Recommendation, the court recommends summary dismissal of this case. Accordingly, Plaintiff’s motion for default judgment and motion for relief sought are denied at this time. (ECF No. 21.)

PAYMENT OF THE FILING FEE:

By filing this case, Plaintiff has incurred a debt to the United States of America in the amount of \$350.¹ See 28 U.S.C. § 1914. This debt is not dischargeable in the event Plaintiff seeks relief

¹ Effective May 1, 2013, an administrative fee of \$50 is added to the filing fee of \$350. The \$50 administrative fee, however, is not applicable to *in forma pauperis* cases.

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under the bankruptcy provisions of the United States Code. *See* 11 U.S.C. § 523(a)(17). The Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996), permits a prisoner to file a civil action without **prepayment** of fees or security, but requires the prisoner “to pay the full amount of the filing fee” as funds are available. *See* 28 U.S.C. § 1915(a), (b). As the court grants Plaintiff permission to proceed *in forma pauperis* below, **the agency having custody of Plaintiff shall collect payments from Plaintiff’s prisoner trust account in accordance with 28 U.S.C. § 1915(b)(1) and (2), until the full \$350 filing fee is paid.** *See Torres v. O’Quinn*, 612 F.3d 237, 252 (4th Cir. 2010) (“We hold that 28 U.S.C. § 1915(b)(2) caps the amount of funds that may be withdrawn from an inmate’s trust account at a maximum of twenty percent *regardless of the number of cases or appeals the inmate has filed.*”) (emphasis in original).

Plaintiff has submitted an Application to Proceed in District Court Without Prepaying Fees or Costs (Form AO 240) and a Financial Certificate, which are construed as a Motion for Leave to Proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(a)(1), (2). A review of the Motion reveals that Plaintiff may have some funds available to pay an initial installment of the filing fee. However, no money has yet been received by the court. Therefore, the amount due from Plaintiff is currently \$350.

Plaintiff’s Motion for Leave to Proceed *in forma pauperis* is granted. (ECF No. 2.)

TO THE CLERK OF COURT:

This case is subject to summary dismissal based on an initial screening conducted pursuant to 28 U.S.C. §1915 and/or 28 U.S.C. § 1915A. Therefore, the Clerk of Court shall ***not*** issue the summonses or forward this matter to the United States Marshal for service of process at this time.

IT IS SO ORDERED.



Paige J. Gossett

UNITED STATES MAGISTRATE JUDGE

October 7, 2015
Columbia, South Carolina