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MAY 08 2012  
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CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

GILBERT O. CROW EAGLE, \* CIV 12-3012-RAL

Plaintiff, \*

vs. \*

UNITED STATES MARSHAL'S \*  
SERVICE; PAUL SCHORDER, Chief \*  
of Police; CHIP SCHORDER, Sheriff; \*  
LORI KALENDA, Jail Administrator; \*  
SGT. RICHARD BERTRAM; ALL CITY \*  
COMMISSIONERS; ALL COUNTY \*  
COMMISSIONERS; WINNER CITY; \*  
TRIPP COUNTY; and MAYOR JESS \*  
KESSE, \*

Defendants. \*

ORDER AND  
JUDGMENT OF DISMISSAL

Plaintiff Gilbert O. Crow Eagle filed a Complaint (Doc. 1) and Application to Proceed without payment of filing fee (Doc. 2). Plaintiff now has filed Plaintiff's Motion to Withdraw Civil Rights Complaint by a Prisoner (Doc. 5).

Crow Eagle is indigent and this Court grants his application to proceed without prepayment of filing fees. The Prison Litigation Reform Act, 28 U.S.C. § 1915, requires prisoners to make an initial partial filing payment where possible and to pay the filing fee in full over time. "[I]f a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). There appears to be no exception to this requirement to pay the filing fee for instances where the prisoner chooses to voluntarily withdraw his Complaint.

Determination of the partial filing fee is calculated according to 28 U.S.C. § 1915(b)(1), which requires 20 percent of the greater of: (a) the average monthly deposits to the prisoner's account; (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding

the filing of the complaint or notice of appeal. Crow Eagle's application represents that he has no funds whatsoever in any inmate trust account. (Doc. 2). Under Section 1915(b)(4), no prisoner shall be prohibited from bringing a civil action by reason of the prisoner having no assets and no means to make an initial partial filing fee. However, Crow Eagle will have to pay the entire \$350 filing fee over the course of time, regardless of the fact that this Court is not granting any relief in this action. Therefore, it is hereby

ORDERED that Crow Eagle's application to proceed without prepayment of filing fees (Doc. 2) is granted. It is further

ORDERED that the institution having custody of Crow Eagle is hereby directed that whenever the amount in Crow Eagle's trust account exceeds \$10.00, monthly payments that equal 20 percent of the funds credited to the account the preceding month be forwarded to the United States District Court Clerk, 225 South Pierre Street, Pierre, South Dakota 57501, pursuant to 28 U.S.C. § 1915(b)(2), until Crow Eagle has paid the \$350.00 filing fee in full. It is further

ORDERED that the Motion to Withdraw Civil Rights Complaint by a Prisoner (Doc. 5) is granted. It is further

ORDERED that Crow Eagle's Complaint is dismissed on its merits and with prejudice and that judgment of dismissal hereby enter under Rules 54 and 58 of the Federal Rules of Civil Procedure.

Dated May 8, 2012.

BY THE COURT:

  
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ROBERTO A. LANGE  
UNITED STATES DISTRICT JUDGE