

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOSE SOTO,

Plaintiff,

v.

DALIA SULIENE, LILLIAN TENEBRUSO,
CAPTAIN MORGAN, JANEL NICKLE,
STEVE HELGERSON, C.O.2 HAAG and
JANE DOE NURSE "K",

Defendants.

ORDER

11-cv-567-slc

Plaintiff Jose Soto, a prisoner at the Columbia Correctional Institution, has submitted a proposed complaint and requests leave to proceed *in forma pauperis*. Because plaintiff is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether plaintiff can proceed with his complaint *in forma pauperis*, he will have to make an initial partial payment of the filing fee.

The initial partial payment is calculated by using the method established in 28 U.S.C. § 1915, that is, by figuring 20% of the greater of the average monthly balance or the average monthly deposits to the plaintiff's trust fund account statement. From the trust fund account statement that plaintiff has submitted, the greater of these two amounts is the average monthly balance, which is \$184.98. From the trust fund account statement plaintiff has submitted, I calculate his initial partial payment to be \$37.00.

Also, plaintiff must pay the remainder of the fee in monthly installments even if his request for leave to proceed is denied. If plaintiff does not have the money in his regular account to make the initial partial payment, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. This does not mean that plaintiff is free to ask prison authorities to pay *all* of his filing fee from his release account. The only amount plaintiff

must pay at this time is the \$37.00 initial partial payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to insure that they are aware that they should send plaintiff's initial partial payment to this court.

ORDER

IT IS ORDERED that plaintiff Jose Soto is assessed \$37.00 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$37.00 on or before September 5, 2011. If, by September 5, 2011, plaintiff fails to make the initial partial payment or show cause for his failure to do so, then he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to plaintiff's filing his case at a later date.

Entered this 16th day of August, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge