

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

ALFREDO VEGA,

Plaintiff,

v.

LUCAS WEBER and LINDSEY WALKER,

Defendants.

ORDER

Case No. 17-cv-116-jdp

Plaintiff Alfredo Vega, a prisoner in the custody of the Wisconsin Department of Corrections, has submitted a proposed civil action under 42 U.S.C. § 1983. Plaintiff has filed a certified copy of a trust fund account statement in support of his request for leave to proceed without prepaying the fee. After considering the supporting documentation, the court concludes that plaintiff qualifies for indigent status.

Even when a prisoner litigant qualifies for indigent status, the litigant must pay a portion of the fee returned by the formula set forth in 28 U.S.C. § 1915(b)(1). Using information for the relevant time period from plaintiff's trust fund account statement, I conclude plaintiff's initial partial filing fee to be \$81.18. For this case to proceed, plaintiff must submit this amount on or before March 17, 2017.

Plaintiff has also filed a motion for use release account funds to pay the \$81.18 initial partial filing fee. Dkt. #2. Pursuant to 28 U.S.C. § 1915(b)(1), prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). Therefore, if sufficient funds do not exist in plaintiff's regular account to pay his initial partial payment, he should be allowed to use his release account to pay some or all of the assessed amount of \$104.06.

ORDER

IT IS ORDERED that:

1. Plaintiff Alfredo Vega's motion for use of release account funds to pay the \$81.18 initial partial filing fee is GRANTED. Plaintiff is to submit a check or money order made payable to the clerk of court in the amount of \$81.18 or advise the court in writing why plaintiff is not able to pay on or before March 17, 2017.

2. If by March 17, 2017, plaintiff fails to pay the \$81.18 initial partial filing fee or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff filing this case at a later date.

Entered this 23rd day of February, 2017.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge