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

ANTONIO J. SMITH,

Plaintiff.

ORDER

v.

Case No. 18-cv-385-jdp

SGT. KOLBO, et al.,

Defendants.

Plaintiff Antonio J. Smith, a prisoner in the custody of the Wisconsin Department of Justice, 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 the motion for leave to proceed without prepaying the fee. After considering the motion and 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 \$178.22. For this case to proceed, plaintiff must submit this amount on or before July 10, 2018.

Plaintiff has also submitted a motion to use release account funds to pay the initial partial fee for filing this case. Dkt. #4. I will grant plaintiff's motion.

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 can use his release

account(s) to pay the initial partial payment balance.

**ORDER** 

IT IS ORDERED that,

1. Plaintiff Antonio J. Smith is assessed \$178.22 as an initial partial payment of

the \$350.00 fee for filing this case. Plaintiff Antonio J. Smith's motion to use his release

account funds to pay the \$178.22 initial partial filing fee, dkt. #4, is GRANTED.

2. Plaintiff is to submit a check or money order made payable to the clerk of court

in the amount of \$178.22 or advise the court in writing why plaintiff is not able to submit the

assessed amount on or before July 10, 2018.

3. If, by July 10, 2018, plaintiff fails to make the initial partial payment 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cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and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.

4. No further action will be taken in this case until the clerk's office receives

plaintiff's initial partial filing fee as directed above and the court has screened the complaint

as required by the Prisoner Litigation Reform Act, 28 U.S.C. § 1915A. Once the screening

process is complete, a separate order will issue.

Entered this 11th day of June, 2018.

BY THE COURT:

/s/

PETER OPPENEER

Magistrate Judge

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