

1 account exceeds \$10.00, in accordance with 28 U.S.C. § 1915(b)(2), until a total of
2 \$350.00 has been collected and forwarded to the Clerk of Court. (ECF No. 11.)

3 Plaintiff has now filed a motion requesting he not be required to pay the \$350.00
4 fee. (ECF No. 12.) That request will be denied.

5 Section 1915 allows an indigent prisoner to file a civil action without paying the
6 filing fee upfront. 28 U.S.C. §§ 1915(a)(1) and (2). It does not eliminate the filing fee
7 altogether; rather, it allows the prisoner to pay the filing fee in monthly installments.

8 Under the in forma pauperis statute, a prisoner proceeding in forma pauperis
9 “shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The
10 Court must collect, as partial payment, an initial partial filing fee of 20 percent of the
11 greater of:

- 12 (A) the average monthly deposits to the prisoner's account; or
- 13 (B) the average monthly balance in the prisoner's account for the 6-month period
14 immediately preceding the filing of the complaint or notice of appeal.

15 Id. Additionally, “[a]fter payment of the initial partial filing fee, the prisoner shall be
16 required to make monthly payments of 20 percent of the preceding month's income
17 credited to the prisoner's account.” 28 U.S.C. § 1915(b)(2). However, “in no event shall
18 a prisoner be prohibited from bringing a civil action or appealing a civil or criminal
19 judgment for the reason that the prisoner has no assets and no means by which to pay
20 the initial partial filing fee.” 28 U.S.C. § 1915(b)(4).

21 Therefore, to the extent Plaintiff has or will have funds available in his prisoner
22 trust fund account, the Court is authorized to collect a portion of those funds to cover
23 Plaintiff's filing fee. If, however, Plaintiff has no funds available, his case will not be
24 barred solely on those grounds.

25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. Plaintiff's request that the \$350.00 filing fee be waived (ECF No. 12) is
27 DENIED.
- 28 2. Plaintiff will proceed in forma pauperis.

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3. The Sheriff of the Fresno County Jail or his designee shall collect payments from Plaintiff's trust account in accordance with the Court's June 15, 2016 order. (ECF No. 11.)

IT IS SO ORDERED.

Dated: June 26, 2016

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE