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8 **UNITED STATES DISTRICT COURT**

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10 **EASTERN DISTRICT OF CALIFORNIA**

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12 TERRENCE MCCREA,) Case No. 1:17-cv-01329-SAB (PC)
13 Plaintiff,)
14 v.) ORDER REGARDING PLAINTIFF'S
15 LESNIAK, et al.,) REQUEST TO ALLOW RULE 67 TO BE
16 Defendants.) IMPLEMENTED
17) [ECF No. 7]
18)

19 Plaintiff Terrence McCrea is a state prisoner proceeding pro se and in forma pauperis in
20 this civil action pursuant to 42 U.S.C. § 1983. On October 20, 2017, Plaintiff consented to the
21 jurisdiction of a United States Magistrate Judge. 28 U.S.C. § 636(c); Local Rule 302.

22 Currently before the Court is Plaintiff's motion titled, "motion requesting the court to
23 allow Rule 67 to be implemented, lien on the judgment to pay filing fee," filed on October 30,
24 2017. (ECF No. 7.) Plaintiff's motion is not entirely clear, but he appears to seek to be allowed to
25 proceed without prepaying the filing fee for this action. Plaintiff also states that if the Court finds
26 he must prepay the filing fee for this action, then a lien for the amount of the fees should be
27 placed on any judgment in this action, pursuant to Federal Rule of Civil Procedure 67, so that his
28 action is not dismissed for non-payment.

1 Federal Rule of Civil Procedure 67(a) authorizes a court to accept deposits of money and
2 other personal assets in cases where such assets are genuinely at issue in the case. See e.g.
3 Alstom Caribe, Inc. v. Geo. P. Reintjes Co., 484 F.3d 106, 113 (1st Cir. 2007) (“The core
4 purpose of Rule 67 is to relieve a party who holds a contested fund from responsibility for
5 disbursement of that fund amount those claiming some entitlement thereto.”). In other words, the
6 moving party under Rule 67 makes a request to deposit a disputed amount or asset with a court
7 until the court determines how such funds should be divided among the parties. Here, Plaintiff
8 has not offered to tender any funds or assets that are in dispute between the parties. Rule 67 is
9 inapplicable to his request regarding the payment of his filing fee, which is his responsibility
10 alone.

11 Second, Plaintiff has been granted leave to proceed in forma pauperis in this matter, and
12 thus is not currently required to pre-pay the filing fee in this case. (ECF No. 5.) As discussed in
13 this Court’s October 11, 2017 order, Plaintiff is required to pay the statutory filing fee of \$350
14 for this action by making monthly payments in the amount of twenty percent of the proceeding
15 month’s income credited to his trust account each time the amount in the account exceeds \$10,
16 until the statutory filing fee is paid in full. Thus, Plaintiff’s request to be allowed to proceed in
17 this action without prepaying the filing fee is unnecessary.

18 For these reasons, Plaintiff’s motion to implement Rule 67 to pay the filing fee in this
19 case is **HEREBY DENIED**.

20
21 IT IS SO ORDERED.

22 Dated: **October 31, 2017**


UNITED STATES MAGISTRATE JUDGE