

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL JACOBSEN,

 Plaintiff,

 v.

DIAZ, et al.,

 Defendants.

Case No. 1:18-cv-00199-SKO (PC)

**ORDER DENYING PLAINTIFF’S
MOTIONS TO POSTPONE
PROCEEDINGS AND FOR
REIMBURSEMENT OF FILING FEES**

(Docs. 8, 9)

Plaintiff, Michael Jacobsen, is a Fresno County Jail (“FCJ”) inmate proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On March 5, 2018, Plaintiff filed two motions seeking to: (1) postpone all proceedings in this action until he is released and can obtain counsel to represent him (Doc. 8); and (2) be reimbursed for monies removed from his FCJ trust account (Doc. 9).

In the motion to postpone all proceedings, Plaintiff indicates that he will be released from custody on March 11, 2018, and that his sister is in the process of locating an attorney for him from the Southern California area. (Doc. 8.) Plaintiff requests that all proceedings in this action be placed on hold until April 11, 2018, to allow him to secure an attorney to represent him in this action. (*Id.*) However, there are currently no deadlines for Plaintiff to do anything in this action. The Complaint is in line to be screened pursuant to 28 U.S.C. § 1915A(a) ; thus, Plaintiff’s request for a hold/postponement of all proceedings in this action is premature.

In the motion for reimbursement of monies removed from Plaintiff’s FCJ trust account, Plaintiff states that the present action is based on claims which were dismissed without prejudice

1 from Plaintiff's prior action, case number 1:14-cv-00108-JLT. (Doc. 9.) Plaintiff states that he
2 was granted *in forma pauperis* status in case number 1:14-cv-00108-JLT and the present action.
3 (*Id.*) Plaintiff also states that no monies were ever withdrawn from his FCJ account to make
4 payments on his filing fee in case number 1:14-cv-00108-JLT, but that monies are being
5 withdrawn to make filing fee payments in the present action. (*Id.*) Plaintiff is under the mistaken
6 impression that "If an inmate is not granted *in forma pauperis*, then the 20% a month is taken
7 from his CDC income." (*Id.*, p. 2.)

8 A party instituting a civil action is required to pay a filing fee of \$350. 28 U.S.C. § 1914.
9 A party who cannot afford to pay that amount in a lump sum, may apply for *in forma pauperis*
10 status under 28 U.S.C. § 1915. Subsection (b) of § 1915 requires:

11 . . . if a prisoner brings a civil action or files an appeal *in forma pauperis*, the
12 prisoner shall be required to pay the full amount of a filing fee. The court shall
13 assess and, when funds exist, collect, as a partial payment of any court fees
14 required by law, an initial partial filing fee of 20 percent of the greater of --
15 (A) the average monthly deposits to the prisoner's account; or
16 (B) the average monthly balance in the prisoner's account for the 6-
17 month period immediately preceding the filing of the complaint or notice of
18 appeal.

19 28 U.S.C. § 1915 (b)(1)(A),(B). The *in forma pauperis* status does not waive the filing fee for
20 incarcerated plaintiffs; it instead allows an incarcerated plaintiff to make payments on the filing
21 fee until it is paid in full.

22 Accordingly, Plaintiff's incarceration and *in forma pauperis* status require that 20% of his
23 FJC account be withdrawn for payment of his filing fees for case number 1:14-cv-00108-JLT and
24 the present action. Withdrawals will continue until Plaintiff's filing fees in case number 1:14-cv-
25 00108-JLT and the present action are paid in full. If Plaintiff had not been granted *in forma*
26 *pauperis* status, he would have been required to pay the filing fee in full to avoid dismissal of the
27 actions.

28 The Court was not aware, but has confirmed, that withdrawals were not taken from
Plaintiff's FCJ trust account toward Plaintiff's filing fee in case number 1:14-cv-00108-JLT.
Plaintiff is required to ultimately pay the filing fees in both case number 1:14-cv-00108-JLT and
the present action. Withdrawals from Plaintiff's FCJ account will continue until the filing fee for

1 both of Plaintiff's actions are paid in full.

2 Accordingly, it is HEREBY ORDERED that:

- 3 (1) Plaintiff's motion to postpone all proceedings in this action, filed on March 5,
4 2018, (Doc. 8), is DENIED as premature;
- 5 (2) Plaintiff's motion for reimbursement of monies removed from his FCJ account as
6 payment towards the filing fee in this action is DENIED; and
- 7 (3) The Clerk of the Court is directed to serve another copy of the order granting
8 Plaintiff's *in forma pauperis* application in this action (Doc. 4), as well as the
9 order granting Plaintiff *in forma pauperis* status in 1:14-cv-00108-JLT (Doc. 9),
10 on both the Fresno County Sheriff's Department, via the court's electronic case
11 filing system (CM/ECF), and the Financial Department, U.S. District Court,
12 Eastern District of California, Sacramento Division.

13 IT IS SO ORDERED.

14 Dated: March 7, 2018

15 /s/ Sheila K. Olerto
16 UNITED STATES MAGISTRATE JUDGE

17
18
19
20
21
22
23
24
25
26
27
28