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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS JOHN HEILMAN,
Plaintiff,
v.
MICHAEL VOJKUFKA, et al.,
Defendants.

No. 2:08-cv-2788-KJM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The case settled on September 5, 2013, but the parties now dispute whether the California Department of Corrections and Rehabilitation (“CDCR”) properly debited the entire amount of the settlement from plaintiff’s trust account for payment toward filing fees owed by plaintiff from the filing of five separate actions. Plaintiff asks the court to compel the CDCR to reimburse him all but 20% of the settlement sum. ECF Nos. 164, 177. The court previously granted defendants’ request to stay the case pending the U.S. Supreme Court’s determination in *Bruce v. Samuels*, Case No. 14-844. ECF Nos. 178, 179. That case has now been decided and compels denial of plaintiff’s motion.

I. Background

Plaintiff was granted leave to proceed in forma pauperis in this case, which allowed him to litigate the case without prepayment of the \$350 filing fee pursuant to 28 U.S.C. § 1915(a).

1 ECF No. 7. Under § 1915(b), however, plaintiff was obligated to pay the full filing fee through
2 an initial partial payment and subsequent monthly payments of 20% of the preceding month's
3 income in his trust account.

4 When the case settled for \$1000 (ECF No. 139) and CDCR deposited that amount into
5 plaintiff's trust account, prison officials immediately debited the entire amount to forward to
6 various courts for filing fees in five actions in which plaintiff had an outstanding obligation under
7 § 1915. This was done under the assumption that 20% of the \$1000 could be assessed for each
8 case for which plaintiff owed a fee (so, 20% of \$1000, or \$200, was assessed for five cases, using
9 up the entire \$1000). At the time, the Courts of Appeals were split as to whether 20% may be
10 assessed for each case each month, as was done here (known as the "per case" approach), or 20%
11 may be taken only toward one case's fee each month (the "per prisoner" approach). Plaintiff
12 argues for the latter and asks the court to compel defendants to reimburse him \$800.

13 **II. Fee Assessment Under 28 U.S.C. § 1915(b)(2)**

14 Section 1915(b) provides in full:

- 15 (1) Notwithstanding subsection (a), if a prisoner brings a civil action or files
16 an appeal in forma pauperis, the prisoner shall be required to pay the full
17 amount of a filing fee. The court shall assess and, when funds exist,
18 collect, as a partial payment of any court fees required by law, an initial
19 partial filing fee of 20 percent of the greater of—
20 (A) the average monthly deposits to the prisoner's account; or
21 (B) the average monthly balance in the prisoner's account for the 6-
22 month period immediately preceding the filing of the complaint or
23 notice of appeal.
- 24 (2) After payment of the initial partial filing fee, the prisoner shall be required
25 to make monthly payments of 20 percent of the preceding month's income
26 credited to the prisoner's account. The agency having custody of the
27 prisoner shall forward payments from the prisoner's account to the clerk
28 of the court each time the amount in the account exceeds \$10 until the
filing fees are paid.
- (3) In no event shall the filing fee collected exceed the amount of fees
permitted by statute for the commencement of a civil action or an appeal
of a civil action or criminal judgment.
- (4) In no event shall a prisoner be prohibited from bringing a civil action or
appealing a civil or criminal judgment for the reason that the prisoner has
no assets and no means by which to pay the initial partial filing fee.

1 Before *Bruce*, courts were divided on how to collect partial fees under § 1915(b)(2) where the
2 prisoner owed fees in multiple cases. The District of Columbia Circuit described the conflict as
3 follows:

4 The Second and Fourth Circuits interpret § 1915(b) to cap the monthly exaction
5 of fees at twenty percent of a prisoner's monthly income, regardless of the
6 number of cases for which he owes filing fees. *Torres v. O'Quinn*, 612 F.3d 237,
7 252 (4th Cir. 2010); *Whitfield v. Scully*, 241 F.3d 264, 277 (2d Cir. 2001). Under
8 that "per prisoner" cap, a prisoner would satisfy his obligations sequentially, first
9 fully satisfying his obligation for his earliest case before moving on to the next
10 one, at no time making any payment that would take his cumulative payments for
11 that month beyond an overarching twenty-percent ceiling. By contrast, the Fifth,
12 Seventh, Eighth, and Tenth Circuits have held that § 1915(b) requires a prisoner
13 to make a separate installment payment for each filing fee incurred as long as no
14 individual payment exceeds twenty percent of his monthly income. *Christensen*
15 *v. Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 F. App'x 821, 833 (10th Cir. 2010);
16 *Atchison v. Collins*, 288 F.3d 177, 180 (5th Cir. 2002); *Lefkowitz v. Citi-Equity*
17 *Grp.*, 146 F.3d 609, 612 (8th Cir. 1998); *Newlin v. Helman*, 123 F.3d 429, 436
18 (7th Cir. 1997), overruled in part on other grounds by *Lee v. Clinton*, 209 F.3d
19 1025 (7th Cir. 2000), and *Walker v. O'Brien*, 216 F.3d 626 (7th Cir. 2000).
20 Under that "per case" cap, a prisoner simultaneously makes payments towards
21 satisfaction of all of his existing obligations.

22 *Pinson v. Samuels*, 761 F.3d 1, 7-8 (D.C. Cir. 2014). The U.S. Supreme Court has resolved the
23 conflict in *Bruce*, adopting the "per case" approach. No. 14-844, 577 U.S. ___, 2016 U.S. LEXIS
24 620 (Jan. 12, 2016). Accordingly, CDCR's action in debiting plaintiff's account simultaneously
25 for fees for all of his active cases was consistent with § 1915(b) as interpreted in *Bruce*, and the
26 court must deny plaintiff's motion to compel reimbursement of funds that were properly taken to
27 pay court fees.

28 **III. Conclusion and Recommendation**

For the above stated reasons, it is recommended that plaintiff's September 28, 2015
motion (ECF No. 177) be denied.

These findings and recommendations are submitted to the United States District Judge
assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
after being served with these findings and recommendations, any party may file written
objections with the court and serve a copy on all parties. Such a document should be captioned
"Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

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1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: February 24, 2016.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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