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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MATTHEW L. JOHNSON,
12 Plaintiff,
13 v.
14 DARR, Correctional Officer,
15 Captain of the Prison,
16 Defendant.

Case No.: 10cv2334-WQH-POR

ORDER

17 HAYES, Judge:

18 The matter before the Court is the motion to vacate filing fees filed by Plaintiff
19 Matthew L. Johnson. (ECF No. 43).

20 **BACKGROUND**

21 Plaintiff, a prisoner proceeding pro se, initiated this action on November 10, 2010
22 by filing a Complaint and motion to proceed in forma pauperis. (ECF Nos. 1, 2). In the
23 motion to proceed in forma pauperis, Plaintiff states, "I also understand that this fee will
24 be debited from my account regardless of the outcome of this action." (ECF No. 2 at 5).
25 The Court granted the motion to proceed in forma pauperis and stated:

26 The Court finds that Plaintiff has no available funds from which to pay filing
27 fees at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event
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1 shall a prisoner be prohibited from bringing a civil action or appealing a civil
2 action or criminal judgment for the reason that the prisoner has no assets and
3 no means by which to pay the initial partial filing fee.”); *Taylor*, 281 F.3d at
4 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing
5 dismissal of a prisoner’s IFP case based solely on a “failure to pay ... due to
6 the lack of funds available to him when payment is ordered.”). Therefore, the
7 Court **GRANTS** Plaintiff’s Motion to Proceed IFP [Doc. No. 2] and assesses
8 no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire
\$350 balance of the filing fees mandated shall be collected and forwarded to
the Clerk of the Court pursuant to the installment payment provisions set forth
in 28 U.S.C. § 1915(b)(1).

9 (ECF No. 4). On September 16, 2011, the Court dismissed the action without prejudice
10 for failure to exhaust administrative remedies. (ECF No. 21)

11 **MOTION TO VACATE FILING FEES**

12 On August 14, 2018, Plaintiff filed a “motion to vacate fine from filing fees.” (ECF
13 No. 43). Plaintiff moves the Court to “waive all fees . . . currently being imposed upon
14 Petitioner from cases . . . well over TEN (10) years old.” *Id.* at 2. Plaintiff asserts that he
15 remains incarcerated and is “serving a sentence of 78 YEARS TO LIFE.” *Id.* Plaintiff
16 states that these fees are a significant hardship, that he lacks “outside support to pay such
17 fees,” and that there is “no way [Plaintiff] can or will be able to pay these fees, and support
18 hi[m]self.” *Id.* Plaintiff asks that the Court discontinue the fees because he cannot support
19 himself on his remaining income after restitution and filing fees are taken from his monthly
20 pay.

21 Under 28 U.S.C. § 1915(b)(1):

22 [I]f a prisoner brings a civil action or files an appeal in forma pauperis, *the*
23 *prisoner shall be required to pay the full amount of a filing fee.* The court shall
24 assess and, when funds exist, collect, as a partial payment of any court fees
required by law, an initial partial filing fee of 20 percent of the greater of—

25 (A) the average monthly deposits to the prisoner’s account; or

26 (B) the average monthly balance in the prisoner’s account for the 6—monthly
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1 period immediately proceeding the filing of the complaint or notice of appeal.

2 *Id.* (emphasis added). Subsection (b)(2) further requires that:

3 After payment of the initial partial filing fee, the prisoner shall be required to
4 make monthly payments of 20 percent of the preceding month's income
5 credited to the prisoner's account. The agency having custody of the prisoner
6 shall forward payments from the prisoner's account to the clerk of the court
each time the amount in the account exceeds \$10 until the filing fees are paid.

7 28 U.S.C. § 1915(b)(2).

8 While “[i]n no event shall the filing fee collected exceed the amount of fees
9 permitted by statute for the commencement of a civil action,” *id.* § 1915(b)(3), and “[i]n
10 no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that
11 the prisoner has no assets and no means by which to pay the initial partial filing fee,” *id.* §
12 1915(b)(4); *see also Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002) (finding that
13 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP
14 case based solely on a “failure to pay . . . due to the lack of funds available.”), nothing in
15 Title 28 section 1915 provides any authority or mechanism by which the Court may waive
16 the full payment of the filing fee as required by § 1915(b)(1), or return any portion of the
17 filing fee he has already paid, after his civil action has been dismissed. *See Avery v.*
18 *Paramo*, No. 13CV2261 BTM DHB, 2015 WL 5228034, at *3 (S.D. Cal. Sept. 8, 2015);
19 *Wilson v. California Dep’t of Corrections*, No. 13cv1455 BTM (JLB) (S.D. Cal. October
20 30, 2014); *Adams v. Maricopa County Sheriff’s Office*, 2010 WL 4269528 at *1-2 (D. Ariz.
21 2010) (denying prisoner’s motion to stop withdrawal of monies from his trust account
22 pursuant to 28 U.S.C. § 1915(b) and noting that “[t]he decision to file and prosecute this
23 case was made by Plaintiff before he filed [his] case. Having filed [it], [he] and the Court
24 are both statutorily limited by the strictures of 28 U.S.C. § 1915.”).

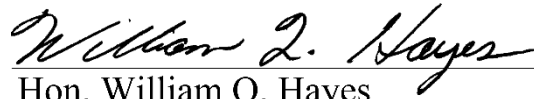
25 Moreover, in *Taylor*, the Ninth Circuit found that because § 1915(b)’s filing fee
26 requirements are “rationally related” to Congress’s legitimate interest in “detering
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1 meritless prisoner filings in the federal courts,” the statute does not violate a prisoner’s
2 right to meaningful access to the courts or his right to equal protection under the law.
3 *Taylor*, 281 F.3d at 848–50.

4 In this case, the law does not provide the Court with any mechanism by which it can
5 waive the filing fee obligations Plaintiff incurred when he was granted IFP status as an
6 individual in custody. *See* 28 U.S.C. § 1915(b).

7 IT IS HEREBY ORDERED that the motion to vacate filing fees is DENIED. (ECF
8 No. 43).

9 Dated: August 31, 2018

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11 Hon. William Q. Hayes
12 United States District Court
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