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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 request to consolidate filing fees filed by Plaintiff  
19 Matthew L. Johnson. (ECF No. 46).

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  
27 to pay filing fees at this time . . . . Therefore, the Court **GRANTS**

1 Plaintiff's Motion to Proceed IFP [Doc. No. 2] and assesses no  
2 initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the  
3 entire \$350 balance of the filing fees mandated shall be collected  
4 and forwarded to the Clerk of the Court pursuant to the  
5 installment payment provisions set forth in 28 U.S.C. §  
6 1915(b)(1).

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

### 9 **REQUEST TO CLARIFY AND CONSOLIDATE FEE OBLIGATIONS**

10 On September 21, 2018, Plaintiff filed a letter requesting the Court to clarify his fee  
11 obligations and "consolidate all fees into one action and FEE to be paid in the sums of 20%  
12 of Petitioner's wages instead of 60%." (ECF No. 46 at 2.) Plaintiff asserts that he "fully  
13 accept[s] his obligations to pay such Fees." *Id.* at 1. Plaintiff asserts that he pays three  
14 "seperate Fees for one case." *Id.* Plaintiff asserts that fees for this case "as well as case  
15 number 08-cv-00080-DMS-POR, CASE TITLE: 'Johnson v. DARR,'" amount to "almost  
16 \$1,000 in Filing fees," and "60% of [his] monthly wages." *Id.* Plaintiff asserts that he  
17 "makes around about \$48.00 monthly to take care and support himself," and that after  
18 deductions of \$26.40 for his conviction restitution and \$16.10 for filing fees, he is left with  
19 "\$10.00 a month." *Id.*

20 Under 28 U.S.C. § 1915(b)(1):

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

26 (A) the average monthly deposits to the prisoner's account; or

27 (B) the average monthly balance in the prisoner's account for the  
28 6-month period immediately preceding the filing of the  
complaint or notice of appeal.

1 § 1915(b)(1) (emphasis added). Subsection (b)(2) further requires that:

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3 After payment of the initial partial filing fee, the prisoner shall  
4 be required to make monthly payments of 20 percent of the  
5 preceding month's income credited to the prisoner's account.  
6 The agency having custody of the prisoner shall forward  
7 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.

8 § 1915(b)(2). The statute further indicates that "[i]n no event shall the filing fee collected  
9 exceed the amount of fees permitted by statute for the commencement of a civil action,"  
10 and that "[i]n no event shall a prisoner be prohibited from bringing a civil action . . . for  
11 the reason that the prisoner has no assets and no means by which to pay the initial partial  
12 filing fee." §§ 1915(b)(3)–(4); *see also Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir.  
13 2002) (finding that § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a  
14 prisoner's IFP case for "failure to pay . . . due to the lack of funds available.").

15 Nothing in § 1915 provides any authority for courts to waive full payment of the  
16 filing fee required by § 1915(b)(1), or return any portion of the filing fee he has already  
17 paid, after the civil action has been dismissed. *See Avery v. Paramo*, No. 13CV2261 BTM  
18 DHB, 2015 WL 5228034, at \*3 (S.D. Cal. Sept. 8, 2015); *Wilson v. Calif. Dep't of Corrs.*,  
19 No. 13cv1455 BTM (JLB) (S.D. Cal. Oct. 30, 2014); *Adams v. Maricopa Cty. Sheriff's*  
20 *Office*, 2010 WL 4269528 at \*1–2 (D. Ariz. Oct. 25, 2010) (denying prisoner's motion to  
21 stop withdrawal of trust account funds pursuant to § 1915(b) and noting that "[t]he decision  
22 to file and prosecute this case was made by Plaintiff before he filed [his] case. Having filed  
23 [it], [he] and the Court are both statutorily limited by the strictures of 28 U.S.C. § 1915.").

24 The Supreme Court has held that the payment of filing fees in prisoner IFP cases  
25 requires a "per case" approach. *Bruce v. Samuels*, 136 S. Ct. 627, 632 (2016).

26 Just as § 1915(b)(1) calls for assessment of "*an* initial partial  
27 filing fee" each time a prisoner brings "*a* civil action or files *an*

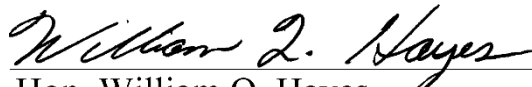
1 appeal” (emphasis added) so its allied provision, § 1915(b)(2),  
2 triggered immediately after, calls for “monthly payments of 20  
3 percent of the preceding month’s income” simultaneously for  
4 each action pursued.

5 *Id.* The Supreme Court held that this interpretation “better comports with the purpose of  
6 the PLRA to deter frivolous suits,” while § 1915(b)(4)’s “safety-valve provision . . . ensures  
7 against denial of access to federal courts.” *Id.* at 632–33.

8 In this case, the relevant dockets show that Plaintiff is required to pay the full \$350  
9 initial filing fee for both cases. *See* 10-cv-2334 at ECF No. 4; 08-cv-080 at ECF No. 3.  
10 The dockets also show that Plaintiff is required to pay the \$455 appellate filing fee due as  
11 a result of his filing a notice of appeal in both cases. *See* 10-cv-2334 at ECF No. 37 for  
12 Appeal No. 12-55532; 08-cv-080 at ECF No. 22 for Appeal No. 09-55490. Plaintiff’s total  
13 fees are \$1,600. Plaintiff asks the Court to “consolidate all fees into one action” so that  
14 only 20 percent of his monthly wages are garnished for all of his cases. However, the Court  
15 concludes that no provision of § 1915 authorizes the Court to waive the filing fee  
16 obligations Plaintiff incurred when he was granted IFP status as an individual in custody.  
17 *See* § 1915(b).

18 IT IS HEREBY ORDERED that the request to consolidate filing fees is DENIED.  
19 (ECF No. 46.)

20 Dated: October 22, 2018

21   
22 Hon. William Q. Hayes  
23 United States District Court  
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