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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MANUEL M. SOARES,
12 CDCR #F-39579,

13 Plaintiff,

14 vs.

15 DANIEL PARAMO, et al.,

16 Defendants.
17

Case No.: 3:13-cv-02971-BTM-RBB

**ORDER DENYING MOTION FOR
WAIVER OF FILING FEE**

[ECF No. 166]

18 On September 11, 2018, the parties in this case reached a final settlement, the
19 terms of which were read into the record during proceedings held before the Honorable
20 United States Magistrate Judge Ruben B. Brooks. *See* ECF No. 165. Judge Brooks
21 entered a Minute Order following the mandatory settlement conference, and scheduled a
22 follow-up telephonic settlement disposition for October 11, 2018, unless a signed joint
23 motion to dismiss was e-filed, and a proposed Order granting the joint motion was e-
24 mailed to this Court before then.¹ *Id.*
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28 ¹ Judge Brooks has since vacated the October 11, 2018 settlement disposition conference,
and has re-scheduled it for December 11, 2018. *See* ECF No. 169.

1 The parties agreed to settle the case for a total of \$15,236.39, payable to Plaintiff,
2 but “subject to offsets and deductions for outstanding restitution orders/fines and other
3 amounts” owed by Plaintiff as reflected in his CDCR Inmate Statement Report. *See* Decl.
4 of Sean M. Sullivan, ECF No. 166-2 & Ex. A. “That balance includes [the] \$350 filing
5 fee for this action.” *See* ECF No. 166-1 at 2, ECF No. 166-2 at 2 ¶ 3. However, “[a]s part
6 of the final settlement read into the record on September 11th, Defendants agreed not to
7 oppose any request or motion by Plaintiff to request that the lawsuit filing fee in this
8 action be waived.” *See* ECF No. 166-2 at 2 ¶ 6.

9 On September 21, 2018, Plaintiff filed a “Motion for an Order Waiving the Filing
10 Fee” [ECF No. 166].

11 **I. Motion to Waive Filing Fee**

12 On October 4, 2014, this Court granted Plaintiff’s Motion for Leave to Proceed In
13 Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a), and directed the United States
14 Marshal to effect service on his behalf pursuant to 28 U.S.C. § 1915(d) and Fed. R.
15 Civ. P. 4(c)(3). *See* ECF No. 9. Pursuant to 28 U.S.C. § 1915(b)(1), no initial partial
16 filing fee was assessed, but Plaintiff was expressly advised that as a prisoner bringing a
17 civil action in forma pauperis, he was “required to pay the full amount of a filing fee,”
18 albeit in installments as available pursuant to the formula provided by 28 U.S.C.
19 § 1915(b)(2), and regardless of outcome. *See* ECF No. 9 at 3 (citing 28 U.S.C.
20 § 1915(b)(1) & 2; *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002)).

21 Plaintiff now requests that the Court “waive” the \$350 filing fee owed in this case
22 “in the interests of justice in light of his historical indigen[ce], unemployed status and for
23 purposes of achieving an equitable resolution for this litigation.” *See* ECF No. 166-1 at 3.
24 In support of this request, Plaintiff cites *Olivares v. Marshall*, 59 F.3d 109 (9th Cir.
25 1995), which authorized the partial payment of filing fees under 28 U.S.C. § 1915, and
26 the noted the federal court’s “power to waive all fees” so as not to “take the prisoner’s
27 last dollar.” *Id.* at 111-12. But *Olivares* pre-dates the Prison Litigation Reform Act’s
28 (“PLRA”) amendments to 28 U.S.C. § 1915(b).

1 “Reacting to ‘a sharp rise in prisoner litigation,’ *Woodford v. Ngo*, 548 U.S. 81, 84
2 (2006), Congress in 1996 enacted the PLRA, which installed a variety of measures
3 ‘designed to filter out the bad claims [filed by prisoners] and facilitate consideration of
4 the good,’ *Coleman v. Tollefson*, 575 U.S. ___, ___, 135 S. Ct. 1759, 1762 (2015) (quoting
5 *Jones v. Bock*, 549 U.S. 199, 204 (2007) (alteration in original).” *Bruce v. Samuels*, 136
6 S. Ct. 627, 629-30 (2016).

7 “Among those measures, Congress required prisoners to pay filing fees for the
8 suits or appeals they launch.” *Id.* at 630. “The provisions on fee payment, set forth in
9 1915(b), read:

10 (1) ... [I]f a prisoner brings a civil action or files an appeal in forma pauperis,
11 *the prisoner shall be required to pay the full amount of a filing fee*. The court
12 shall assess and, when funds exist, collect, as a partial payment of any court
13 fees required by law, an initial partial filing fee of 20 percent of the greater
14 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-month
17 period immediately preceding the filing of the complaint or notice of appeal.

18 (2) After payment of the initial partial filing fee, the prisoner shall be required
19 to make monthly payments of 20 percent of the preceding month’s income
20 credited to the prisoner’s account. The agency having custody of the prisoner
21 shall forward payments from the prisoner’s account to the clerk of the court
22 each time the amount in the account exceeds \$10 until the filing fees are paid.

23 *Id.* (citing 28 U.S.C. § 1915(b)(1), (2) (emphasis added)). “The monthly installment
24 scheme described in § 1915(b)(2) also applies to costs awarded against prisoners when
25 they are judgment losers.” *Id.* (citing § 1915(f)(2)(B)).

26 Thus, § 1915 no longer provides any authority for courts to waive full payment of
27 the filing fee required by § 1915(b)(1), or return any portion of the filing fee he has
28 already paid, after the civil action has been consolidated, settled, or dismissed for any
reason. *See e.g., Johnson v. Darr*, No. 3:10-CV-2334-WQH-POR, 2018 WL 5246597, at

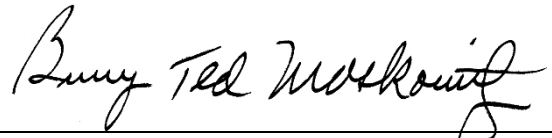
1 *2 (S.D. Cal. Oct. 22, 2018); *Avery v. Paramo*, No. 3:13-CV-2261 BTM DHB, 2015 WL
2 5228034, at *3 (S.D. Cal. Sept. 8, 2015); *Wilson v. Calif. Dep't of Corrs.*, No. 3:13-cv-
3 1455 BTM (JLB) (S.D. Cal. Oct. 30, 2014); *Adams v. Maricopa Cty. Sheriff's Office*,
4 2010 WL 4269528 at *1–2 (D. Ariz. Oct. 25, 2010) (denying prisoner's motion to stop
5 withdrawal of trust account funds pursuant to § 1915(b) and noting that “[t]he decision to
6 file and prosecute this case was made by Plaintiff before he filed [his] case. Having filed
7 [it], [he] and the Court are both statutorily limited by the strictures of 28 U.S.C.
8 § 1915.”).

9 **II. Conclusion and Order**

10 Accordingly, Plaintiff's Motion for an Order Waiving the Filing Fee due in this
11 case must be **DENIED** (ECF No. 166).

12 **IT IS SO ORDERED.**

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14 Dated: November 13, 2018



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16 Hon. Barry Ted Moskowitz, Chief Judge
17 United States District Court
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