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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESS RICHARD SMITH,

Plaintiff(s),

v.

SGT. ELLIS et al.,

Defendant(s).

CASE NO. 3:18-cv-05427-TL

ORDER ON PLAINTIFF'S MOTION
TO TERMINATE FILING FEES

This matter is before the Court on Plaintiff Jess R. Smith's motion to terminate filing fees and for the reimbursement of collected payments (the "Motion"). Dkt. No. 72. Plaintiff, an incarcerated individual, brings a civil rights action under 42 U.S.C. § 1983 against individual Defendants for alleged violations of his constitutional rights arising out of certain incidents during his incarceration. Having considered the relevant record, the Court DENIES the Motion.

The Court previously issued a judgment dismissing Plaintiff's action. Dkt. No. 62. Plaintiff appealed to the Ninth Circuit. Dkt. No. 63 (Case No. 22-35352). Upon Defendant-Appellees' motion, the Ninth Circuit revoked Plaintiff-Appellant's *in forma pauperis* status,

1 finding that Plaintiff-Appellant had at least three “strikes” under 28 U.S.C. § 1915(g). Dkt. No.
2 68. This statutory provision of the Prison Litigation Reform Act (“PLRA”) bars incarcerated
3 individuals from filing suits after accumulating three or more dismissals (or “strikes”) on the
4 grounds of frivolousness, maliciousness, or failure to state a claim upon which relief can be
5 granted, except in certain circumstances not applicable here. *See* 28 U.S.C. § 1915(g); *see also*
6 Dkt. No. 68 (finding Plaintiff has not alleged imminent danger of serious physical injury). The
7 Ninth Circuit subsequently dismissed Plaintiff’s appeal. Dkt. No. 76. Plaintiff has a pending
8 petition for a writ of certiorari before the United States Supreme Court. Dkt. No. 77.

9 Plaintiff now moves the Court to waive and reimburse all court filing fees from this
10 action, on the basis that the Court should have barred his complaint “at initial screening.” Dkt.
11 No. 72 at 3–4. He states that he is owed \$350 for the filing fee to this Court, \$505 for his appeal
12 to the Ninth Circuit, \$9.55 in postage costs, and \$78.33 in “copy cost,” for a total of \$1,007.88.
13 *Id.* at 9. Defendants oppose, arguing that the PLRA requires the imposition of filing fees on
14 incarcerated plaintiffs and that, in any case, Plaintiff is not entitled to any equitable
15 considerations in his favor because he has litigated this matter extensively and also failed to
16 identify his prior § 1915 strikes in his complaint. Dkt. No. 74.

17 As an initial matter, Plaintiff claims that the district court should have barred his
18 Complaint at initial screening. But at the time Plaintiff’s motion to proceed *in forma pauperis*
19 was granted in August 2018, one of the three prior cases that the Ninth Circuit counted as a
20 “strike” had not yet been dismissed. *See* Dkt. Nos. 4, 68. Therefore, the three-strike rule did not
21 apply to Plaintiff at the time he initiated this case.

22 Filing fees for initiating a lawsuit in district court are authorized by 28 U.S.C. § 1914 and
23 are part of the costs of litigation. *E.g., Duclairon v. LGBTQ Cmty. & Grace Cmty. Church Klan,*
24 No. C18-1095, 2018 WL 5085754, at *1 (D. Or. Oct. 17, 2018) (declining to reimburse filing fee

1 despite plaintiff's voluntary dismissal prior to service of process). Indeed, Plaintiff has used
2 court resources by litigating this case through summary judgment and two levels of appeals.
3 Further, "[n]othing in the statute, or any other statute, provides for the refund of a filing fee for
4 any reason." *Id.* The same is true of parties who appeal to a court of appeals. *See, e.g., Porter v.*
5 *Dep't of Treasury*, 564 F.3d 176, 179 (3d Cir. 2009) ("In addition to covering some of the costs
6 associated with opening a case, these fixed fees also serve to deter the filing of frivolous
7 appeals . . ."). The PLRA also specifically requires that a prisoner plaintiff "shall be required to
8 pay the full amount of a filing fee," even if he "brings a civil action or files an appeal in forma
9 pauperis." 28 U.S.C. § 1915(b)(1). Therefore, the Court lacks the authority to refund or waive
10 Plaintiff's filing fee obligations. The Court is also unaware of any authority providing for the
11 refund of postage and copying costs from the Court—nor does Plaintiff provide any.

12 The Court further notes that Plaintiff does not appear to have actually paid the vast
13 majority of the filing fees that he requests be refunded. The July 21, 2022, statement of his trust
14 account appears to show that \$350 was owed to this Court, none of which were paid, and
15 \$498.57 owed to the Ninth Circuit, of which only \$6.43 were paid. *See id.* at 12 (U.S. District
16 Court filing fee entry for "C18-5427 RBL"); *id.* (U.S. District Court filing fee entry for "22-
17 35352," the case number for Plaintiff's Ninth Circuit appeal).

18 Finally, to the extent that Plaintiff asks this Court to reverse the Ninth Circuit's decision
19 revoking his *in forma pauperis* status, this Court lacks the authority to do so.

20 Accordingly, the Court DENIES Plaintiff's Motion (Dkt. No. 72).

21 Dated this 27th day of January 2023.

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Tana Lin
United States District Judge