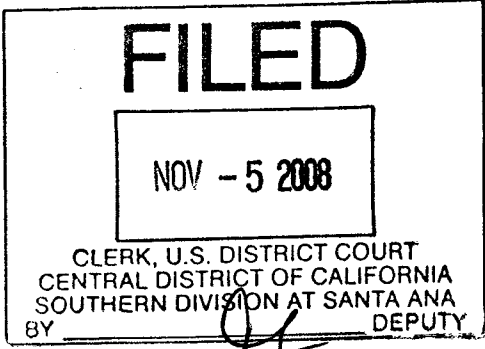


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7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
9 **EASTERN DIVISION**

10 JESSE WAGNER AND BRIAN CRONIN, )  
11 Plaintiffs, )  
12 v. )  
13 RYAN PEPPLER, et al., )  
14 Defendants. )  
15 \_\_\_\_\_ )

Case No. EDCV 07-1537-CJC (MLG)  
MEMORANDUM OPINION AND ORDER

16  
17 **I. Procedural Background**

18 Plaintiffs Jesse Wagner ("Wagner") and Brian Cronin ("Cronin")  
19 (collectively "Plaintiffs") are inmates at the Sierra Conservation  
20 Center State Prison in Jamestown, California. They have brought this  
21 *pro se* civil rights action pursuant to 42 U.S.C. § 1983 for the  
22 alleged unlawful seizure and sale, on separate occasions years apart,  
23 of their respective motor vehicles. On November 21, 2007,<sup>1</sup> Plaintiffs  
24 lodged a complaint naming as defendants: the County of San  
25 Bernardino, the San Bernardino County Sheriff's Office, as well as  
26 San Bernardino County Sheriff Ryan Pepler, Deputies Gary Penrod and  
27 \_\_\_\_\_

28 <sup>1</sup> Plaintiffs' complaint was lodged on November 21, 2007 and filed by the Clerk of the United States District Court, Central District of California on January 17, 2008.

1 Marguerite Finneran, United Towing, Inc., and Denco Lien Sales, Inc.  
2 The Defendants are sued in their individual and official capacities.  
3 (Compl. at 2.).

4 Wagner alleges four claims in the complaint (Counts 1 through 4):  
5 (1) Defendants violated his Fourth Amendment right against  
6 unreasonable search and seizure in 2003 by seizing his vehicle  
7 incident to a lawful arrest; (Compl. ¶ 11); (2) Defendants did not  
8 comply with California vehicle storage laws in violation of the Fifth  
9 and Fourteenth Amendments (Compl. ¶ 17); (3) Defendants' lien sale of  
10 his car constituted a taking without just compensation in violation  
11 of the Fifth Amendment (Compl. ¶ 20); and (4) United Towing and Denco  
12 fraudulently took possession of Wagner's car contrary to various state  
13 criminal and civil statutes (Compl. ¶ 23). Wagner seeks compensatory  
14 damages against Defendants Finneran, Peppler, United Towing and Denco  
15 in the amount of \$15,000; punitive damages in the amount of \$45,000  
16 against all Defendants except the County of San Bernardino; and treble  
17 damages against all Defendants in the amount of \$15,000. (Compl. ¶¶  
18 12, 18 and 24).

19 Cronin alleges two claims in the complaint (Counts 5 and 6).  
20 These claims allege that the governmental defendants violated his  
21 Fourth Amendment right against unreasonable search and seizure, as  
22 well as his Fifth and Fourteenth Amendment rights, by seizing his  
23 vehicle in 2006, incident to a lawful arrest. (Compl. ¶¶ 32, 39).  
24 Cronin seeks compensatory damages against Defendants Penrod, the San  
25 Bernardino County Sheriff's Office, and the County of San Bernardino  
26 in an amount to be determined at trial, as well as punitive damages  
27 in an amount to be determined at trial against all Defendants except  
28 the County of San Bernardino. (Compl. ¶¶ 33, 40).

1 **II. Plaintiffs' Claims Shall Be Dismissed for Failure to Pay the**  
2 **Required Filing Fees**

3 On November 21, 2007, Plaintiffs filed Requests for Leave to  
4 Proceed Without Prepayment of Filing Fees. 28 U.S.C. § 1915(a)(2). On  
5 December 4, 2007, the request was granted as to Cronin, who was  
6 directed to make a partial payment of \$108.00 within 30 days of that  
7 order.<sup>2</sup> On January 2, 2008, the request to proceed without prepayment  
8 of fees was denied as to Wagner, and he was terminated from the action  
9 on January 17, 2008. Despite his termination from the action, Wagner  
10 continued to file pleadings in this case. Cronin failed to pay the  
11 partial filing fee as required by the Court's order. On September 25,  
12 2008, Magistrate Judge Marc L. Goldman issued an order directing  
13 Wagner to show cause, on or before October 8, 2008, why all pleadings  
14 filed by him should not be stricken because he is not a party to this  
15 action. Magistrate Judge Goldman also ordered Cronin to show cause,  
16 on or before October 8, 2008, why this action should not be dismissed  
17 for failure to pay the \$108.00 filing fee as required by the Court's  
18 December 4, 2007 order. Plaintiffs failed to respond to the orders to  
19 show cause.<sup>3</sup>

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23 <sup>2</sup> At the time he filed this action, Cronin's average monthly  
24 balance in his prison trust account for the previous six months was  
25 \$539.81. Under 28 U.S.C. § 1915(b)(1)(A), the Court was required to  
assess an initial payment of 20% of that amount.

26 <sup>3</sup> Plaintiffs did not stop litigating this cause of action. On  
27 September 15, 2008, after conducting discovery, the County Defendants  
28 filed a motion for summary judgment. Plaintiffs filed an opposition on  
October 9, 2008. Because the case must be dismissed because of  
Plaintiffs' failure to pay the filing fees, the Court will not address  
the motion for summary judgment.

1       **A. Wagner's Claims Shall Be Dismissed for Failure to Obtain**  
2       **Leave to File the Complaint Without Prepayment of Filing**  
3       **Fees or Alternatively, to Pay the Filing Fee**

4       A person may be allowed to proceed with a civil action without  
5 prepayment of the filing fee upon submission of an affidavit stating  
6 that he or she is unable to pay such fee, the nature of the action,  
7 and the belief that he or she is entitled to redress. 28 U.S.C. §  
8 1915(a)(1). A prisoner seeking to bring a civil action without  
9 prepayment of fees must submit a certified copy of the prisoner's  
10 trust fund account statement for the 6-month period immediately  
11 preceding the filing of the complaint in addition to filing an  
12 affidavit. 28 U.S.C. § 1915(a), (b). Wagner has not filed an  
13 application to proceed *in forma pauperis* with a certified copy of his  
14 prisoner trust fund account, nor has he paid the \$350.00 filing fee,  
15 despite being ordered by this Court to do so. Therefore, as a result  
16 of his failure to pay the required filing fee or file the certified  
17 copy of the prison trust fund account, Wagner is not, and has never  
18 been, a party to this action. All pleadings filed by Wagner shall be  
19 stricken and the action brought by him shall be dismissed.

20       **B. Cronin's Claims are Dismissed for Failure to Pay the**  
21       **Partial Filing Fee**

22       Courts have discretion to impose partial filing fees under the  
23 *in forma pauperis* statute. 28 U.S.C. § 1915(b)(1), *Olivares v.*  
24 *Marshall*, 59 F.3d 109, 111 (9th Cir. 1995). A court may dismiss a  
25 prisoner's § 1983 claim for failure to pay a partial filing fee. *Id.*  
26 at 112. Although Cronin was granted leave to proceed without  
27 prepayment of the entire filing fee, he has failed to pay the \$108.00  
28 partial filing fee ordered by this Court and ignored the order to show

1 cause. Therefore, Cronin's claims shall be dismissed for failure to  
2 pay the partial filing fee.

3

4 **III. Conclusion**

5 Because Plaintiffs have failed to comply with the requirements  
6 of 28 U.S.C. § 1915 and have failed to respond to the order to show  
7 cause, IT IS ORDERED that Wagner's pleadings be STRICKEN and the  
8 action be DISMISSED as to all Defendants.

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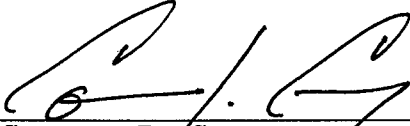
10 Dated: November 4, 2008

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Cormac J. Carney  
United States District Judge

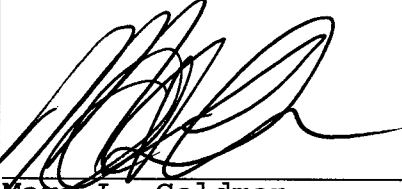
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16 Presented by:

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Marc L. Goldman  
United States Magistrate Judge

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