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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

DAVID JOHNSON, JR.,)	No. CV-F-97-6173 OWW/HGB P
)	
)	MEMORANDUM DECISION AND
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	MOTION TO BE AWARDED COSTS
vs.)	AND FEES (Doc. 13)
)	
GEORGE GALAZA, et al.,)	
)	
Defendants.)	
)	

On December 2, 1997, Plaintiff David Johnson, Jr., a state prisoner proceeding *in pro per*, filed an action against the California Department of Corrections, and George Galaza pursuant to 42 U.S.C. § 1983. By Order filed on January 28, 1998, Plaintiff was required to pay a \$150.00 filing fee. Plaintiff filed a First Amended Complaint against these defendants on April 7, 1998, alleging:

George M. Galaza with knowledge of, knowingly deprived plaintiff of procedural due process relied upon to ensure equal protection of plaintiff's vested rights to: freedom from secondary smoke and access to courts. George

1 M. Galaza with knowledge the [sic] herein
2 acts complained of at the time the acts were
3 committed knowingly affirmed temporary
4 deprivation of plaintiff's rights,
privileges, and immunities secured by the US
Const. 14 amend. And [sic] US laws, while in
his official capacity as a warden.

5 On January 8, 1999, United States Magistrate Judge Beck filed
6 Findings and Recommendations that this action be dismissed for
7 failure to state a claim upon which relief can be granted. (Doc.
8 10). Plaintiff did not file objections to the Findings and
9 Recommendation. By Order filed on March 16, 1999, the Court
10 adopted the Findings and Recommendation and dismissed the action.
11 (Doc. 11). Judgment for Defendants was entered on March 17,
12 1999. Plaintiff did not file a Notice of Appeal.

13 On December 8, 2008, Plaintiff, again proceeding *in pro per*,
14 filed a "Motion To Be Awarded Court Fees and Costs." (Doc. 13).
15 Petitioner's motion asserts:

16 Problem

17 (3) Jan. 28, 98, the court issued 'Order for
18 Payment of Inmate Filing Fee

19 (4) Petitioners [sic] cause of action has
20 prevailed, petitioner sought damages
including Court Cost.

21 (5) Nov. 23, 2008, CDC issued a trust
22 statement with \$150.00 hold by U.S. Eastern
District

23 Action Requested

24 (6) After the July 1, 2005 decision banning
25 all smoking and tobacco products in C.D.C.
the court failed to waive the hold or award
any damages.

26 (7) Petitioner requests clerk of court award

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petitioner cost \$150.00 [sic].

(8) Petitioner requests clerk of court the [sic] forms needed, such as an 'Application For Waiver Of Fee and Cost' [sic] or, Whatever terms the court deems proper.

Plaintiff's motion is DENIED. Plaintiff did not prevail in this action and Judgment was entered against him and in favor of Defendants long ago. Plaintiff is not entitled to any award of damages or costs in this action. That the CDC some years after Plaintiff's action was dismissed changed its policy regarding smoking in state prisons does not entitle Plaintiff to relief from the Court ordered filing fee in this action.

IT IS SO ORDERED.

Dated: September 18, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE