

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

BARRY S. JAMESON,

Plaintiff,

v.

SCOTT P. RAWERS, et al.,

Defendants.

CASE NO. 1:03-cv-05593-LJO-YNP PC

ORDER DENYING MOTIONS

(Doc. 51, 52)

Plaintiff Barry S. Jameson ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has filed two motions requesting a refund for the overpayment of his filing fee for this action. For the reasons set forth below, the Court finds that Plaintiff is not entitled to a refund on the grounds that he sets forth in his motions. However, the Court finds that Plaintiff's in forma pauperis status was erroneously denied. Because Plaintiff should not have been directed to pay the filing fee for this action in full, the Court will refund the \$150.00 filing fee it received from Plaintiff and allow Plaintiff to proceed in forma pauperis.

**I. Plaintiff's Motions for a Refund**

Plaintiff claims that he has overpaid for his filing fee and demands a refund of the excess amount. The filing fee for this action was \$150.00. Plaintiff's application to proceed in forma pauperis was initially granted by the Court and Plaintiff was allowed to proceed without paying the filing fee in full. (Doc. #6.) Plaintiff was instead allowed to make partial payments from his prison trust account until the filing fee was paid. The Court received an initial payment of \$44.30 from Plaintiff's trust account. However, the Court thereafter issued an order to show cause noting that

1 Plaintiff had, on three prior occasions, brought civil actions challenging the conditions of his  
2 confinement that were dismissed as frivolous or for failing to state a claim upon which relief can be  
3 granted. (Doc. #33.) A prisoner with three “strikes” may not proceed in forma pauperis under 28  
4 U.S.C. § 1915(g). A findings and recommendations was issued recommending the denial of  
5 Plaintiff’s in forma pauperis status (doc. #34) which was adopted on August 2, 2007 (doc. #39).  
6 Plaintiff was directed to pay the \$150.00 filing fee in full. Plaintiff claims his brother attempted to  
7 pay the remaining balance of \$105.70 on Plaintiff’s behalf after Plaintiff’s in forma pauperis status  
8 was denied. However, Plaintiff’s brother contacted the Court and was told that Plaintiff owed the  
9 entire \$150.00 balance. Plaintiff’s brother submitted a payment of \$150.00. In investigating what  
10 went wrong, Plaintiff claims that he was told that his initial \$44.30 payment was applied toward the  
11 filing fee for his Ninth Circuit appeal. The filing fee for Plaintiff’s appeal was \$455.00. Plaintiff  
12 claims that he did not authorize the Court to apply the \$44.30 payment towards the filing fee for his  
13 appeal. Plaintiff demands that the Court issue a refund for the \$44.30 “overpayment” that was  
14 erroneously applied toward his Ninth Circuit appeal.

15 The Court advises Plaintiff that his obligated to pay both filing fees. The payments for both  
16 filing fees must be forwarded to the district court. Thus, Plaintiff’s payment was not an  
17 “overpayment” because Plaintiff was obligated to pay a total of \$605.00 to the district court for both  
18 filing fees. Plaintiff is not entitled to a refund of \$44.30 and on that basis Plaintiff’s motions will  
19 be denied.

## 20 **II. Plaintiff’s In Forma Pauperis Status**

21 While Plaintiff is not entitled to a refund of \$44.30 as an “overpayment,” the Court finds that  
22 Plaintiff should be granted leave to proceed in forma pauperis and should not have been required to  
23 pay the \$150.00 filing fee for this action in full. Plaintiff appealed this Court’s denial of his in forma  
24 pauperis status to the Ninth Circuit. The Ninth Circuit reversed this Court’s decision to deny  
25 Plaintiff leave to proceed in forma pauperis in this action. (Doc. #53.) Plaintiff’s in forma pauperis  
26 status for this action should be reinstated. Additionally, because Plaintiff’s in forma pauperis status  
27 should not have been denied, Plaintiff should not have been directed to pay the \$150.00 filing fee

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1 in full. The Court will order that Plaintiff be issued a refund of the \$150.00 he has paid out-of-  
2 pocket in response to the Court's order.

3 **III. Conclusion and Order**

4 Plaintiff is not entitled to a refund of \$44.30 due to an "overpayment." Plaintiff is obligated  
5 to pay both the \$150.00 filing fee for this action and the \$455.00 filing fee for his appeal. Plaintiff  
6 has thus far paid \$194.30. After issuing the \$150.00 refund, Plaintiff will have paid \$44.30.<sup>1</sup>

7 Plaintiff has been given leave to proceed in forma pauperis for his Ninth Circuit appeal.  
8 Plaintiff will also be given leave to proceed in forma pauperis in this action. Plaintiff is obligated  
9 to make monthly payments in the amount of twenty percent of the proceeding month's income  
10 credited to Plaintiff's trust account. The California Department of Corrections is required to send  
11 to the Clerk of the Court payments from Plaintiff's account each time the amount in the account  
12 exceeds \$10.00, until the statutory filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

13 Plaintiff's motion requested that the Court issue a refund to his brother. However, because  
14 Plaintiff is entitled to a refund on different grounds, the Court will decline to forward the refund to  
15 Plaintiff's brother on Plaintiff's behalf. The Court will direct that the refund of \$150.00 be sent to  
16 Plaintiff at the address that the Court has on file.

17 Accordingly, it is HEREBY ORDERED that:

- 18 1. Plaintiff's motions, filed on July 6, 2009, and August 6, 2009, are DENIED;
- 19 2. Plaintiff will be given leave to proceed in forma pauperis;
- 20 3. **The Director of the California Department of Corrections or his designee shall**  
21 **collect payments from Plaintiff's prison trust account in an amount equal to**  
22 **twenty percent (20%) of the preceding month's income credited to the**  
23 **prisoner's trust account and shall forward those payments to the Clerk of the**  
24 **Court each time the amount in the account exceeds \$10.00, in accordance with**  
25 **28 U.S.C. § 1915(b)(2), until the total balance remaining for both of Plaintiff's**  
26 **filing fees has been collected and forwarded to the Clerk of the Court. The**

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28 <sup>1</sup>This figure does not include any costs awarded to Plaintiff by the Ninth Circuit applied toward his  
appellate filing fee.

**payments shall be clearly identified by the name and case number assigned to this action;**

4. The Clerk of the Court is directed to serve a copy of this order on the Director of the California Department of Corrections, via the Court's electronic case filing system (CM/ECF); and
5. The Clerk of the Court is directed to serve a copy of this order on the Financial Department, U.S. District Court, Eastern District of California, Fresno Division.
6. The Financial Department for the U.S. District Court, Eastern District of California, Fresno Division is directed to issue a refund of \$150.00 to Plaintiff.

IT IS SO ORDERED.

**Dated: February 5, 2010**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE