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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HARVEY EUGENE LARSON,

Plaintiff,

v.

CARRASCO, et al.,

Defendants.

CASE NO. 1:08-cv-00998-AWI-DLB PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENIAL OF PLAINTIFF’S
REQUEST FOR LEAVE TO PROCEED IN
FORMA PAUPERIS

OBJECTIONS DUE WITHIN 15 DAYS

I. Findings and Recommendations

Plaintiff Harvey Eugene Larson (“Plaintiff”) is a prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the original complaint in this action on July 14, 2008 and the Court granted Plaintiff leave to proceed in forma pauperis by order filed on August 25, 2008. Plaintiff filed an amended complaint on October 30, 2008.

The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious injury.” 28 U.S.C. § 1915(g). A review of the record of actions filed by Plaintiff in the United States District Court for the Eastern District of California reveals that Plaintiff filed three or more actions that were dismissed as frivolous, as malicious, or for failing to state a claim upon which relief may be

1 granted.¹ Thus, on October 15, 2007, the date of the third dismissal, Plaintiff became subject to
2 28 U.S.C. § 1915(g) and is precluded from proceeding in forma pauperis unless Plaintiff is under
3 imminent danger of serious physical injury. In the instant action, Plaintiff has not alleged any
4 facts to suggest that he is under imminent danger of serious physical injury. Thus, Plaintiff is not
5 eligible to proceed in forma pauperis, and should be required to submit the appropriate filing fee
6 in full in order to proceed with this action. In a separate order issued concurrently with this
7 order, the Court vacated the orders granting Plaintiff leave to proceed in forma pauperis and
8 directing the collection of the filing fee from Plaintiff's trust account, and the Court directed the
9 Clerk of the Court to return to Plaintiff the portion of the filing, if any, that has been collected to
10 date.

11 Accordingly, based on the foregoing, the Court HEREBY RECOMMENDS that:

- 12 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff be denied leave to proceed in forma
13 pauperis;
- 14 2. Plaintiff be ordered to submit the \$350.00 filing fee in full within fifteen (15)
15 days; and
- 16 3. If Plaintiff fails to pay the \$350.00 filing fee in full within fifteen (15) days, this
17 action be dismissed, without prejudice.

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26 ¹ See 2:04-cv-02738-GEB-CMK PC, *Larson v. Schwarzenegger* (dismissed on October 24, 2005); 2:06-cv-
27 00940-GEB-GGH PC, *Larson v. Runnels, et al.* (dismissed on January 9, 2007); 2:07-cv-01043-FCD-JFM PC, *Larson*
28 *v. Patton, et al.* (dismissed on October 15, 2007); 2:07-cv-00806-FCD-DAD PC, *Larson v. Runnels, et al.* (dismissed
on February 4, 2008); 2:06-cv-01985-LKK-KJM PC, *Larson v. Runnels* (February 12, 2008); 2:08-cv-00348-MCE-KJM
PC, *Larson v. Runnels, et al.* (dismissed on March 20, 2008); and 2:07-cv-00512-FCD-GGH PC, *Larson v. McDonald,*
et al. (dismissed on June 25, 2008).

