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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)

ORDER VACATING ORDER GRANTING
PLAINTIFF LEAVE TO PROCEED IN
FORMA PAUPERIS AND ORDER
DIRECTING COLLECTION OF FILING FEE
FROM PLAINTIFF’S TRUST ACCOUNT

(Doc. 5)

ORDER DIRECTING CLERK’S OFFICE TO
REFUND TO PLAINTIFF THE PORTION OF
THE FILING FEE COLLECTED TO DATE

I. Order

Plaintiff Harvey Eugene Larson (“Plaintiff”) is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. On August 25, 2008, the Court by order granted Plaintiff leave to proceed in forma pauperis and directed the California Department of Corrections to begin collecting payments from Plaintiff’s trust account until the \$350.00 filing fee has been paid in full. Court records reveal that pursuant to 28 U.S.C. § 1915(g), Plaintiff is ineligible to proceed in forma pauperis and should be required to submit the filing fee in full in order to proceed with this action.¹ Therefore, by this order, the Court will vacate the order

¹ 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

1 granting Plaintiff leave to proceed in forma pauperis. In a Findings and Recommendations
2 issued concurrently with this order, the Court recommends that Plaintiff be denied leave to
3 proceed in forma pauperis and that this action be dismissed if Plaintiff fails to pay the \$350.00
4 filing fee in full within fifteen days from the date of service of the district court judge's order
5 addressing the Findings and Recommendations.

6 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 7 1. The Court's August 25, 2008 order granting Plaintiff leave to proceed in forma
8 pauperis is VACATED;
- 9 2. The Court's August 25, 2008 order directing the collection of the filing fee from
10 Plaintiff's trust account is VACATED and the California Department of
11 Corrections should cease collecting partial payments from Plaintiff's account for
12 this action; and
- 13 3. The Clerk's Office shall review its records and refund to Plaintiff the portion of
14 the filing fee that has been collected from Plaintiff to date.

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16 IT IS SO ORDERED.

17 **Dated: February 18, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious injury." 28 U.S.C.
§ 1915(g).