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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HARVEY EUGENE LARSON,

Plaintiff,

v.

JOHN DOE, et al.,

Defendants.

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

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DENYING
PLAINTIFF’S REQUEST FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

(Doc. 17).

Plaintiff Harvey Eugene Larson (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On February 18, 2009, the Magistrate Judge filed a [Findings and Recommendations](#) herein which was served on plaintiff and which contained notice to plaintiff that any objection to the Findings and Recommendations was to be filed within fifteen days. Plaintiff filed an [Objection](#) to the Findings and Recommendations on March 6, 2009.¹

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings

¹ On March 19, 2009, Plaintiff filed a [Notice of Appeal](#) of this court’s order vacating an order granting Plaintiff leave to proceed in forma pauperis. (Docs. 18, 20). "When a Notice of Appeal is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction to the appellate court, and so the ordinary rule that the district court cannot act until the mandate has issued on the appeal does not apply." *Nascimento v. Dummer*, 508 F.3d 905, 908 (9th Cir. 2007). Because no appeal lies from an order vacating a previous order, this action shall proceed despite the filing of the March 19, 2009 Notice of Appeal.

1 and Recommendations to be supported by the record and by proper analysis.

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. The [Findings and Recommendations](#), filed February 18, 2009 is adopted in full;
- 4 2. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is denied leave to proceed in forma
5 pauperis;
- 6 3. Plaintiff is ordered to submit the \$350.00 filing fee in full within fifteen (15) days;
7 and
- 8 4. If Plaintiff fails to pay the \$350.00 filing fee in full within fifteen (15) days, this
9 action shall be dismissed, without prejudice.

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11 IT IS SO ORDERED.

12 **Dated:** April 17, 2009

13 /s/ Anthony W. Ishii
14 CHIEF UNITED STATES DISTRICT JUDGE
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