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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 STEWART MANAGO,

7 Plaintiff,

8 vs.

9 K. HOLLAND, et al.,

10 Defendants.
11

1:13-cv-01523-AWI-GSA-PC

ORDER DENYING REQUEST FOR
SPECIAL HEARING, GRANTING
MOTION TO VACATE ORDER
COLLECTING PAYMENT OF FILING
FEE, AND DENYING MOTION FOR
REFUND OF PARTIAL FILING FEE
PAID
(Doc. 17.)

**ORDER VACATING COURT'S
OCTOBER 8, 2013 ORDER
DIRECTING CDCR TO SEND
PAYMENTS FOR THE FILING FEE
IN THIS CASE
(Doc. 6.)**

ORDER FOR CLERK TO SERVE
COPY OF THIS ORDER ON CDCR
AND FINANCIAL DEPARTMENT
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18 **I. BACKGROUND**

19 Stewart Manago ("Plaintiff") is a state prisoner proceeding pro se with this civil rights
20 action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action
21 on September 20, 2013. (Doc. 1.) On September 30, 2013, Plaintiff filed motion to proceed in
22 forma pauperis under 28 U.S.C. § 1915. (Doc. 4.) On October 8, 2013, the court issued an
23 order granting Plaintiff leave to proceed in forma pauperis and directing the California
24 Department of Corrections and Rehabilitation (CDCR) to collect monthly payments from
25 Plaintiff's inmate trust account until the filing fee is paid in full. (Doc. 6.)

26 On January 14, 2015, the court issued an order revoking Plaintiff's in forma pauperis
27 status pursuant to 28 U.S.C. § 1915(g) and dismissing this case, without prejudice to refileing
28 the case with submission of the \$400 filing fee in full. (Doc. 12.)

1 On March 26, 2015, Plaintiff filed a motion for a special hearing to stop prison officials
2 from continuing to collect funds for the filing fee for this case, and for a refund of the partial
3 filing fee paid to date. (Doc. 17.) Plaintiff's motion is now before the court.

4 **II. PLAINTIFF'S MOTION**

5 Plaintiff argues that he should not be required to pay the filing fee for this case, because
6 the court revoked his in forma pauperis status and dismissed this case without prejudice to
7 refiling the case with payment of the filing fee in full. Plaintiff argues that he is entitled to a
8 refund because the court has not allowed him to litigate this action.

9 **Discussion**

10 Plaintiff was notified in the First Informational Order issued on September 23, 2013 in
11 this case that "[a]ll pre-trial motions [in this prisoner civil rights case] will be submitted for
12 decision based solely upon the written papers and *without a hearing*. Local Rule 230(l)." (Doc.
13 2 at ¶VI.) (emphasis added.) Local Rule 230(l) provides that "[a]ll motions, except motions to
14 dismiss for lack of prosecution, filed in actions wherein one party is incarcerated and
15 proceeding in propria persona, shall be submitted upon the record without oral argument unless
16 otherwise ordered by the Court [and s]uch motions need not be noticed on the motion
17 calendar." L.R. 230(l). Therefore, the court shall not schedule a hearing for this motion, and
18 Plaintiff's request for a special hearing is denied.

19 With respect to the filing fee, Plaintiff is advised that the court continues to collect
20 monthly payments from a plaintiff proceeding in forma pauperis, even after the plaintiff's case
21 has been dismissed. This is because the filing fee is collected by the court as payment for filing
22 the case, and subsequent proceedings in a case do not change the fact that the case was filed. A
23 plaintiff proceeding in forma pauperis, without prepayment of the filing fee, is required to make
24 payments until the filing fee is paid in full. 28 U.S.C. 1915(a)(2).

25 In this case, Plaintiff proceeded in forma pauperis until January 14, 2015, when the
26 court revoked his in forma pauperis status. (Doc. 12.) To date, the court has received three
27 payments for the filing fee in this case: \$30.00 on 2/10/14; \$20.00 on 8/25/14; and \$10.00 on
28 11/17/14. (Court Financial Record.) All of these payments were made before January 14,

1 2015, while Plaintiff was proceeding in forma pauperis and therefore, Plaintiff is not entitled to
2 a refund of these payments. However, in light of the fact that Plaintiff is not presently
3 proceeding in forma pauperis and has been granted leave to refile this case with payment of the
4 filing fee in full, the court shall vacate its payment order directed to the CDCR for this case.

5 **III. CONCLUSION**

6 Based on the foregoing, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's request for a special hearing is DENIED;
- 8 2. Plaintiff's motion for refund of the partial filing fee paid for this action is
9 DENIED;
- 10 3. Plaintiff's motion for the court to cease further collection of the filing fee for
11 this action is GRANTED;
- 12 **4. The court's order of October 8, 2013, directing the CDCR to deduct funds
13 from Plaintiff's prison trust account for payment of the filing fee for this
14 case is VACATED; and**
- 15 5. The Clerk of Court is directed to serve a copy of this order on:
 - 16 (1) the Director of the CDCR, via CM/ECF; and
 - 17 (2) the Financial Department, U.S. District Court, Eastern District of
18 California, Fresno Division.

19
20 IT IS SO ORDERED.

21 Dated: March 31, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE