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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA
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9 CECIL MESSER,) 1:13-cv-01239-BAM (PC)
10 Plaintiff,)
11 v.) ORDER GRANTING PLAINTIFF’S
12 MIGUEL CHAVEZ,) REQUEST FOR VOLUNTARY DISMISSAL
13 Defendant.) (ECF No. 8)
14)
15) ORDER DENYING REQUEST FOR
16) RELEASE FROM PAYMENT OF FILING
17) FEE
18)
19) ORDER DIRECTING CLERK OF COURT
20) TO CLOSE CASE AND ADJUST DOCKET
21) TO REFLECT VOLUNTARY DISMISSAL
22)

23 Plaintiff Cecil Messer (“Plaintiff”) is a federal prisoner proceeding pro se and in forma
24 pauperis in this civil rights action filed pursuant to Bivens v. Six Unknown Named Agents of
25 Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971). Plaintiff filed his complaint
26 on August 9, 2013. On January 6, 2013, Plaintiff filed a notice of voluntary dismissal, which
27 included a request for release from payment of the remaining filing fee in this action. (ECF No.
28 8.)

“[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his
action prior to service by the defendant of an answer or a motion for summary judgment.”
Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)
(quotation and citation omitted). “[A] dismissal under Rule 41(a)(1) is effective on filing, no
court order is required, the parties are left as though no action had been brought, the defendant

1 can't complain, and the district court lacks jurisdiction to do anything about it." Id. at 1078. In
2 this action, no defendant has been served and no defendant has filed an answer or other
3 responsive pleading. Accordingly, the Clerk of the Court shall be ordered to close the file in this
4 case and adjust the docket to reflect voluntary dismissal of this action pursuant to Rule 41(a).

5 To the extent that Plaintiff requests release from the remainder of the payments for the
6 filing fee, his request shall be denied. The filing fee is collected by the Court as payment for
7 filing the case. This action was filed on August 9, 2013, and Plaintiff's subsequent request for
8 dismissal of the action does not change the fact that the case was filed. Therefore, Plaintiff is not
9 entitled to release from payment of the filing fee in this case.

10 Based on the above, IT IS HEREBY ORDERED as follows:

- 11 1. The Clerk of the Court shall CLOSE the file in this case and adjust the docket to
12 reflect voluntary dismissal of this action pursuant to Rule 41(a); and
- 13 2. Plaintiff's request for release from payment of the remaining filing fee is DENIED.

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15 IT IS SO ORDERED.

16 Dated: January 13, 2014

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE