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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 **SCOTT HERD,**

12 **Plaintiff,**

13 **v.**

14 **MATTHEW CATE,**

15 **Defendant.**

Case No. 1:13-cv-01639 AWI DLB PC

ORDER REGARDING PLAINTIFF'S
MOTION TO RESCIND FILING FEE
(Document 15)

ORDER VACATING ORDER DIRECTING
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION
TO COLLECT FILING FEE
(Document 11)

17 Plaintiff Scott Herd ("Plaintiff") is a California state prisoner proceeding pro se and in forma
18 pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on September
19 26, 2013, and it was transferred to this Court on October 10, 2013.

20 On November 18, 2013, Plaintiff filed a motion in which he disagreed with the Court's
21 decision to treat his September 26, 2013, letter as a complaint under section 1983. Plaintiff stated
22 that he had no intention of filing a section 1983 action, and that such an action would be prejudicial
23 because it may count as a strike against him. Plaintiff requested that the Court "return his legal
24 papers so that other/further criminal remedies can be pursued with federal prosecuting authorities."
25 The Court construed this as a request for voluntary dismissal and dismissed the action on November
26 21, 2013.

27 On October 30, 2014, Plaintiff filed a motion to rescind the collection of the \$350.00 filing
28 fee. He also requests that CDCR be provided with notice of the action.

1 Under the circumstances, as Plaintiff did not intend to file a section 1983 action, the Court
2 will VACATE the November 4, 2013, order requiring CDCR to collect payments for this action.

3 The Clerk of the Court is DIRECTED to serve a copy of this order on the Director of the
4 California Department of Corrections, via the Court's electronic case filing system (CM/ECF).

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6 IT IS SO ORDERED.

7 Dated: November 6, 2014

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE