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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 SHAWN LEE RIVES,

9 Plaintiff,

10 v.

11 MATEVOUSIAN, et al.,

12 Defendants.
13

1:17-cv-00347-SAB (PC)

ORDER REGARDING PLAINTIFF'S MOTION
TO WITHDRAW CASE AND FOR WAIVER
OF FILING FEE

(ECF No. 16)

14 Plaintiff Shawn Lee Rives is a federal prisoner proceeding pro se in this civil rights action
15 pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971). Plaintiff has consented to
16 magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c). (ECF No. 5.)

17 Currently before the Court is Plaintiff's motion to withdraw this case, stating that Plaintiff
18 seeks to have this action dismissed upon the filing of the instant motion. (ECF No. 16.)

19 "[U]nder Rule 41(a)(1)(A)(i), 'a plaintiff has an absolute right to voluntarily dismiss his
20 action prior to service by the defendant of an answer or a motion for summary judgment.' "
21 Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999)
22 (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). The Ninth Circuit has
23 held that Rule 41(a) allows a plaintiff to dismiss without a court order any defendant who has yet
24 to serve an answer or motion for summary judgment. Pedrina v. Chun, 987 F.2d 608, 609 (9th
25 Cir. 1993).

26 "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the
27 parties are left as though no action had been brought, the defendant can't complain, and the
28 district court lacks jurisdiction to do anything about it." Commercial Space Mgmt. Co., Inc., 193

1 F.3d at 1078. In this action, no complaint has been served, no defendant has appeared, and no
2 defendant has filed any answer or motion for summary judgment. Therefore, this action will be
3 dismissed and the Clerk of the Court will be ordered to close this case.

4 Plaintiff also seeks to have the Court waive the filing fee for this action based on his
5 voluntary dismissal, stating that he was ignorant of the law and mistakenly brought this action
6 based on the erroneous advice of another inmate.

7 As set forth in the Court's order granting Plaintiff's application to proceed in forma
8 pauperis, he is obligated to pay the statutory filing fee of \$350.00 for this action, in monthly
9 payments of twenty percent of the proceedings month's income credited to his trust account.
10 (ECF No. 7) The fee is not discretionary. The entire \$350.00 filing fee for this action is statutorily
11 required, and must be collected from Plaintiff's institutional account, regardless of the outcome of
12 this action and even if Plaintiff elects to voluntarily dismiss this action. See, e.g., Vartanpour v.
13 Neven, No. 215-CV-00951-JAD-CWH, 2016 WL 589669, at *1 (D. Nev. Feb. 10, 2016). As a
14 result, Plaintiff's request for the Court to waive the collection of the filing fee must be denied.
15 The Court makes no finding on whether Plaintiff was provided erroneous legal advice.

16 Accordingly, it is HEREBY ORDERED that:

- 17 1. Plaintiff's request to waive the filing fee in this case is denied; and
18 2. The Clerk of the Court is directed to close the file in this case and adjust the docket
19 to reflect voluntary dismissal of this action pursuant to Rule 41(a).

20 IT IS SO ORDERED.

21 Dated: October 25, 2017

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23 UNITED STATES MAGISTRATE JUDGE