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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT JOHN BUSTILLOS,  
Plaintiff,  
v.  
HERNANDEZ, et al.,  
Defendants.

No. 1:23-cv-01365-SAB (PC)  
ORDER DENYING PLAINTIFF’S MOTION  
TO VOLUNTARILY DISMISS ACTION,  
WITHOUT PREJUDICE  
(ECF No. 9)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion to voluntarily dismiss the action and stop the collection of the filing fee, filed November 13, 2023.

“[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 can't complain, and the district court lacks jurisdiction to do anything about it.” Id. at 1078. No defendant has been served in this action and no defendant has filed an answer or motion for summary judgment.

1           However, Plaintiff is advised that voluntary dismissal does not entitle a litigant to a refund  
2 of the filing and docketing fees. Porter v. Dep't of Treasury, 51 V.I. 1212, 1216 (3d Cir. 2009).  
3 Under the PLRA, once a prisoner is granted leave to proceed in forma pauperis, the prisoner is  
4 obligated to pay the fees in full. Porter, 51 V.I. at 1218 n.4. The filing fee is assessed for the  
5 privilege of initiating the matter, without regard to the subsequent disposition. Williams v.  
6 Roberts, 116 F.3d 1126, 1127 (5th Cir. 1997), as revised (July 23, 1997). In fact, “[a]  
7 congressional objective in enacting the PLRA was to ‘mak[e] all prisoners seeking to bring  
8 lawsuits or appeals feel the deterrent effect created by liability for filing fees.’ ” Goins v. Decaro,  
9 241 F.3d 260, 261 (2d Cir. 2001). Plaintiff filed this action which triggered the obligation to pay  
10 a filing fee cannot be discharged because he subsequently wishes to voluntarily dismiss the  
11 action. Here, the Court granted Plaintiff’s request for leave to proceed in forma pauperis,  
12 obligating him to pay the filing fee in full through monthly payments. (ECF No. 6); 28 U.S.C. §  
13 1915(b)(1). Accordingly, the Court cannot stop the collection of the filing fee. Inasmuch as  
14 Plaintiff’s motion to dismiss is contingent upon the filing fee payment, Plaintiff’s motion to  
15 voluntarily dismiss the action is denied, without prejudice, to re-filing if so desired.

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17 IT IS SO ORDERED.

18 Dated: November 14, 2023

  
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UNITED STATES MAGISTRATE JUDGE