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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK J. VANDENBURGH,

Plaintiff,

No. 2:08-cv-2068-RCF(P)

vs.

LIEUTENANT MARSH, et al,

Defendants.

ORDER GRANTING MOTION TO  
VOLUNTARILY DISMISS AND DENYING  
REQUEST TO WAIVE REMAINDER OF THE  
FILING FEE

\_\_\_\_\_ /

Plaintiff Mark J. Vandenburg is a state prisoner proceeding pro se and in forma pauperis under 28 U.S.C. § 1915. On August 3, 2009, plaintiff filed a motion to voluntarily dismiss the complaint without prejudice under Federal Rule of Civil Procedure (Fed. R. Civ. P.) 41(a). Plaintiff also requested that the Court waive the remainder of the filing fee (Doc. #22). Plaintiff's motion to dismiss will be granted and this action will be dismissed without prejudice, but plaintiff's request to waive the remainder of the filing fee will be denied.

Under Fed. R. Civ. P. 41(a), a plaintiff may dismiss an action without order of the Court by filing a notice of dismissal at any time before service of an answer or motion for summary judgment. No answer or motion for summary judgment has been served in this case. Plaintiff's right to voluntarily dismiss under these circumstances is therefore absolute. *See*

1 *Commercial Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1077 (9th Cir. 1999). Voluntary  
2 dismissal, however, does not alleviate the responsibility to pay the filing fee. All prisoners who  
3 bring a civil action “shall be required to pay the full amount of the filing fee.” 28 U.S.C. §  
4 1915(b)(1); *see Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff’s motion to voluntarily dismiss the complaint without prejudice is  
7 GRANTED; and  
8 2. Plaintiff’s request that the Court waive the remainder of the filing fee is DENIED.  
9 IT IS FURTHER ORDERED that the Clerk of Court must terminate this action.

10 DATED: August 5, 2009

11 /s/ Raymond C. Fisher  
12 Raymond C. Fisher,  
13 United States Circuit Judge  
14 Sitting by Designation  
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