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

RALPH EDWARD STEWART,

No. 2:12-CV-2464-CMK-P

Plaintiff,

vs.

ORDER

SCOTT JONES, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's motion for a refund of over payment (Doc. 6), and a motion to file an amended complaint (Doc. 7).

Pursuant to Federal Rule of Civil Procedure 15(a)(1), a party may amend his pleading once as a matter of right at any time before being served with a responsive pleading. A review of the docket reflects that no responsive pleading has been served. Therefore, plaintiff's motion will be denied as unnecessary. This action shall now proceed on the amended complaint, which supercedes the prior complaint. The amended complaint will be addressed by separate order.

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1 As to plaintiff's request for a refund, 28 U.S.C. § 1915(b)(1) requires the court to  
2 collect an initial partial filing fee in the amount of 20 percent of the greater of the average  
3 monthly deposits or the average monthly balance in the prisoner's trust account. After the initial  
4 partial filing fee, then monthly payments are required each time the amount in the account  
5 exceeds \$10.00. According to the trust account statement plaintiff submitted with his application  
6 to proceed in forma pauperis, plaintiff had a balance of \$206.23, with deposits equaling  
7 approximately \$700.00 between July and December 2011. For that five month period, the  
8 average monthly deposit would equal approximately \$140.00 per month. Thus, 20 percent of  
9 \$140 would equal \$28.00. Plaintiff complains that the institution deducted \$17.45 from his  
10 account. This amount is less than the court calculates would have been the appropriate initial  
11 partial filing fee. Thus, no overpayment was made, and no refund necessary.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's motion for refund (Doc. 6) is denied; and
- 14 2. Plaintiff's motion for leave to file an amended complaint (Doc. 7) is  
15 denied as unnecessary.

16  
17 DATED: September 16, 2013

18   
19 **CRAIG M. KELLISON**  
20 UNITED STATES MAGISTRATE JUDGE