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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY FRANCIS FISHER,  
Plaintiff,  
v.  
UNKNOWN,  
Defendant.

No. 2:14-cv-1925 KJM AC P

ORDER


On December 18, 2014, the undersigned issued Findings and Recommendations that recommended that plaintiff be barred from proceeding in forma pauperis because of the “three strikes” provisions of 28 U.S.C. § 1915(g). ECF No. 31. However, on the same day, plaintiff filed a document stating “I close this case under 41(a)(1) no IFPs. I do not have that right to receive ‘IFPs,’” which the court interprets to be a voluntary dismissal under Fed. R. Civ. P. 41(a). ECF No. 33. Accordingly, pursuant to the voluntary dismissal, the case was closed on December 23, 2014, and the Findings and Recommendations were not adopted or otherwise acted upon. ECF No. 34.

On December 29, 2014, plaintiff filed a “Motion to be excused of the 3 strike provision.” ECF No. 35. However, since plaintiff has already voluntarily dismissed this case, and the Findings and Recommendations were not adopted or otherwise acted upon, there is nothing from which plaintiff can be “excused.”

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Accordingly, IT IS HEREBY ORDERED that plaintiff's motion (ECF No. 35), is DENIED as moot.

DATED: January 20, 2015

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE