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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK F. MILAZO,

Plaintiff,

No. C 08-1147 PJH (PR)

vs.

**ORDER DENYING
PLAINTIFF'S MOTION FOR
RELIEF FROM JUDGMENT**JAMES TILTON, Secretary, CDCR; N.
GRANNIS, Chief, Inmate Appeals
Division; P. DELVILLAR; MICHAEL
EVANS; G. A. NEOTTI; K. JONES; R.
A. KESSLER; G. LEWIS; P. ROGUE; G.
R. SALAZAR; N. CLARK; A. KUHNERT;
A. VILLALOBOS; Sergeant HOGDAN;
and Lieutenant MAJIEA,Defendants.
_____ /

This pro se civil rights action filed by a state prisoner. Plaintiff was granted leave to proceed in forma pauperis ("IFP") in an order entered on October 3, 2008, and ordered to pay a partial initial filing fee of \$128.00 within thirty days. See 28 U.S.C. § 1915(b)(1) (requiring district courts to assess and collect partial initial filing fees from prisoners allowed to proceed IFP). He did not pay the partial filing fee. On December 4, 2008, the court dismissed the case for failure to comply with its order to pay a partial filing fee.

On March 16, 2009, plaintiff wrote to the court saying that the prison had failed to send the partial filing fee in time, causing his case to be dismissed, and that despite its being dismissed, was continuing to take money out of his account. He asked the court to order the prison to return any money it had taken and that the court return any of the filing fee it had received. Later he wrote another letter reiterating the same points.

Plaintiff now has filed a motion for relief from judgment pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. He emphasizes that he does not want the case

1 reinstated, but just wants his money back. The court now has received the entire \$350
2 filing fee.

3 Plaintiff misunderstands how in forma pauperis status works. Being granted that
4 status forgives only *prepayment* of the filing fee, that is, the obligation to pay upon filing.
5 The filing fee is owed once the case is filed, and prisoners are required to pay the full
6 amount by way of an installment payment plan, as indeed plaintiff has. See 28 U.S.C.
7 § 1915(b)(1). The filing fee is not forgiven just because the case has been dismissed; it is
8 a fee for filing, not a fee for continuing. The motion for relief from judgment (document
9 number 12 on the docket) is **DENIED**.

10 **IT IS SO ORDERED.**

11 Dated: September 13, 2011.



PHYLLIS J. HAMILTON
United States District Judge