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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAMEIN DION SPRUIELL,
Plaintiff,
v.
JOHN DOES 1-4,
Defendants.

Case No. [17-cv-00427-DMR](#) (PR)

**ORDER ACKNOWLEDGING
PLAINTIFF’S VOLUNTARY
DISMISSAL OF THIS ACTION;
AND DENYING HIS REQUEST
TO WAIVE FILING FEE**

Plaintiff Damein Dion Spruiell, a state prisoner, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983 stemming from his incarceration at Pelican Bay State Prison (“PBSP”). Plaintiff has consented to magistrate judge jurisdiction, and this matter has been assigned to the undersigned Magistrate Judge. Dkt. 3.

In a letter filed on August 1, 2017, Plaintiff states that he seeks “voluntary withdraw[al]” of the instant action. Dkt. 10 at 1. He also requests that the court waive “any filing fees.” *Id.*

A plaintiff has the absolute right to dismiss his or her action by filing a notice of dismissal “at any time before service by the adverse party of an answer or of a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Said dismissal may be with or without prejudice, but unless plaintiff’s notice of dismissal states otherwise, it is deemed to be “without prejudice.” *See* Fed. R. Civ. P. 41(a)(1); *Humphreys v. United States*, 272 F.2d 411, 412 (9th Cir. 1959). No court order is required. Plaintiff’s notice of dismissal is effective by itself to terminate the action: “[A]n action may be dismissed by the plaintiff without order of the court . . . by filing a notice of dismissal.” Fed. R. Civ. P. 41(a)(1); *see also Hamilton v. Shearson-Lehman American Exp. Inc.*, 813 F.2d 1532, 1534-36 (9th Cir. 1987) (rule 41(a)(1)(A)(i) does not require leave of court to dismiss the action).

1 Plaintiff's request for voluntary dismissal was filed before service by the adverse party of
2 an answer. Therefore, the court finds that Plaintiff has the absolute right to dismiss his action
3 voluntarily. *See* Fed. R. Civ. P. 41(a)(1)(A)(i). Based on Plaintiff's request for voluntary
4 dismissal, the court acknowledges that this action is DISMISSED without prejudice. *See id.*

5 As mentioned above, Plaintiff also requests that the court waive all filing fees. Dkt. 10 at
6 1. Ordinarily, a petitioner/plaintiff is permitted to file a civil action in federal court without
7 prepayment of fees or security if he makes affidavit that he is unable to pay such fees or give
8 security therefor. *See* 28 U.S.C. § 1915(a). The filing fee for a civil rights action is \$400.00 (i.e.,
9 the \$350.00 filing fee plus the \$50.00 administrative fee). On July 19, 2017, the court denied
10 Plaintiff's application to proceed *in forma pauperis* because his trust account documents revealed
11 that he had more than adequate funds to pay the filing fee. Dkt. 8. Plaintiff was instructed that
12 that the fee shall be paid within twenty-eight days of its July 19, 2017 Order. *Id.* To date,
13 Plaintiff has not paid the full filing fee. Instead, he now requests that the court waive the filing
14 fee. Plaintiff's request is DENIED on the ground that the court has no authority to waive the filing
15 fee. Notwithstanding the voluntary dismissal of this action, the court's Finance Department may
16 still collect the \$400.00 filing fee from Plaintiff, which is due on August 16, 2017.

17 The Clerk of the Court shall close the file and terminate all pending motions.

18 IT IS SO ORDERED.

19 Dated: August 11, 2017



DONNA M. RYU
United States Magistrate Judge

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 DAMEIN DION SPRUIELL,
4 Plaintiff,
5
6 v.
7 JOHN DOE,
8 Defendant.

Case No. [4:17-cv-00427-DMR](#)

CERTIFICATE OF SERVICE

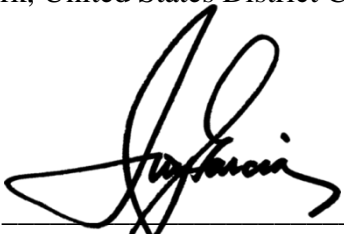
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11 That on August 11, 2017, I SERVED a true and correct copy(ies) of the attached, by
12 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
13 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle located in the Clerk's office.

15
16 Damein Dion Spruiell ID: T-70693
17 Pelican Bay State Prison
18 P.O. Box 7500
19 Crescent City, CA 95531

20 Dated: August 11, 2017

21 Susan Y. Soong
22 Clerk, United States District Court

23
24 
25 By: _____
26 Ivy Lerma Garcia, Deputy Clerk to the
27 Honorable DONNA M. RYU
28

United States District Court
Northern District of California