

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOSEPH WITCHARD,

Plaintiff,

v.

Case No: 6:14-cv-2042-Orl-41TBS

JEFFREY MORALES and J. PEREZ,

Defendants.

ORDER

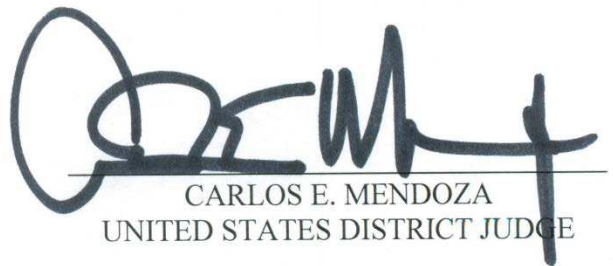
THIS CAUSE is before the Court on Plaintiff Joseph Witchard's Motion Requesting that the Court Rescind or Vacate its Previous Imposed Order Assessing the \$505.00 Appellate Filing and Docket Fees ("Motion to Rescind," Doc. 95) and Motion for Nunc Pro Tunc Thus Requesting the Court to Rescind and/or Vacate Its Previously Imposed Order Assessing the \$505.00 Appellate Filing Fee ("Second Motion to Rescind," Doc. 99). Plaintiff is asking the Court to vacate the September 29, 2017, Order denying his Motion for Leave to Appeal *In Forma Pauperis* (Doc. 87) and requiring him to pay the full appellate filing fee. (Doc. 89). Plaintiff states that his interlocutory appeal (Doc. 86) was dismissed for lack of jurisdiction; therefore, he contends that he should not be required to pay the appellate filing fee. (Doc. Nos. 95 at 1-2; 99 at 1-2).

Federal law provides that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of the filing fee." 18 U.S.C. § 1915(b)(1). Federal courts have concluded that pursuant to the plain language of § 1915(b)(1), appellate fees must "be assessed at the moment the appeal is filed, regardless of whether the appeal is later dismissed." *Williams v. Roberts*, 116 F.3d 1126, 1128 (5th Cir. 1997); *see also Porter v. Dep't of Treasury*, 564 F.3d 176, 179 (3d Cir. 2009); *Muhammad v. Storr*, No. No. 4:97-CV-

00383-MP, 2014 WL 1613937, at *1 (N.D. Fla. Apr. 22, 2014). Consequently, Plaintiff was required to pay the full filing fee when he filed his notice of interlocutory appeal, notwithstanding the fact that the appeal was later dismissed.

Accordingly, it is **ORDERED** and **ADJUDGED** that Plaintiff's Motions (Doc. Nos. 95 and 99) are **DENIED**.

DONE and **ORDERED** in Orlando, Florida on May 15, 2018.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party