

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**JOHN COLASURDO,
#K88438,**

Plaintiff,

vs.

**KIMBERLY BUTLER,
SGT. ZIEGLER,
and C/O WALTERS,**

Defendants.

Case No. 15-cv-00924-NJR

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

Plaintiff John Colasurdo is currently incarcerated at Menard Correctional Center. On August 19, 2015, he filed this action pursuant to 42 U.S.C. § 1983 (Doc. 1). In the complaint, Plaintiff alleges that several Menard officials deprived him of a protected liberty interest without due process of law under the Fourteenth Amendment when they placed him in segregation based on allegedly false disciplinary charges. The complaint currently awaits preliminary review pursuant to 28 U.S.C. § 1915A. Plaintiff also filed a motion seeking leave to proceed *in forma pauperis* (Doc. 2), and that motion is pending.

On August 24, 2015, Plaintiff filed a motion seeking voluntary dismissal of this action (Doc. 4). In the motion, he explains that this lawsuit was mistakenly filed. He presented the complaint, which was undated and in draft form, to the prison's trust fund officer at the time he requested his trust fund account statement. Rather than provide a certified copy of the statement to Plaintiff, the trust fund officer sent the complaint to the law library. The librarian transmitted the complaint to the Court for filing, and it was filed prematurely. Plaintiff asks the Court to

grant his motion for voluntary dismissal of this case and release him from his obligation to pay the filing fee for this action.

Plaintiff's obligation to pay the filing fee was incurred at the time the action was filed, and a filing fee of \$350.00¹ normally remains due and payable whether or not this action is voluntarily dismissed. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). In light of the circumstances described in the motion and the timely request to voluntarily dismiss this action, however, the Court will not assess a filing fee.

IT IS HEREBY ORDERED that Plaintiff's motion for voluntary dismissal (Doc. 4) is **GRANTED**, and this action is **DISMISSED without prejudice**. *See* FED. R. CIV. P. 41(a)(1)(A)(i). This dismissal shall *not* count as one of Plaintiff's allotted "strikes" under 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that Plaintiff's motion seeking leave to proceed *in forma pauperis* (Doc. 2) is **DENIED as moot**, and no filing fee is assessed for this case.

The Clerk's Office is **DIRECTED** to close this case and enter judgment accordingly.

IT IS SO ORDERED.

DATED: August 25, 2015

A handwritten signature in cursive script that reads "Nancy J. Rosenstengel". The signature is written in black ink and is positioned above a horizontal line. A faint circular seal is visible behind the signature.

NANCY J. ROSENSTENGEL
United States District Judge

¹ If a prisoner is not allowed to proceed *in forma pauperis*, an additional administrative fee of \$50.00 is assessed at the time of filing, resulting in a total filing and docketing fee of \$400.00.