

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

PHILIP BERRYMAN

Plaintiff,

vs.

Case No. 1:10-cv-12169  
HON. Thomas L. Ludington

BARBARA SAMPSON, et al.,

Defendant,

**ORDER GRANTING FORMER PLAINTIFF MARVIN HOLDEN'S REQUEST FOR  
CLARIFICATION AND DENYING FORMER PLAINTIFF MARVIN HOLDEN'S  
REQUEST FOR AN ORDER WAIVING FILING FEE PAYMENT RESPONSIBILITY**

On June 2, 2010, Plaintiffs David Lytal, Philip Berryman, Cory Hudson, Michael Davis, Maurice Newson, and Marvin Holden filed a pro se civil rights complaint under 42 U.S.C. § 1983 against members of the Michigan Parole Board and several correctional officials [Dkt. #1]. On June 21, 2010, former plaintiff Marvin Holden filed a motion to withdraw from the instant complaint [Dkt. #9]. The Court granted Holden's motion on August 26, 2010 [Dkt. #14]. On September 17, 2010, Plaintiff Philip Berryman filed a motion requesting leave to amend the complaint before service and requesting, in part, that the plaintiffs who were dismissed be ordered to pay the assessed one-sixth portion of the filing fee so service could be made on Defendants [Dkt. #16]. The Court granted Plaintiff Berryman's motion in part [Dkt. #17], and ordered the dismissed plaintiffs to pay the one-sixth portion of the filing fee for which each is individually responsible [Dkt. #18; Dkt. #19; Dkt. #20; Dkt. #21; Dkt. #22].

Now before the Court is Holden's motion for clarification of the Court's October 13, 2010, order [Dkt. #17] and the related order directing filing fee payment [Dkt. #22]. Holden also requests an order providing that he is not responsible for any partial filing fee payment because he withdrew

before service of process.

The Court **GRANTS** former plaintiff Marvin Holden's request for clarification and for the reasons stated below **DENIES** his request for an order that he does not have to pay any partial filing fees.

As stated in relevant part in the Court's October 13, 2010, order [Dkt. # 17], an inmate's responsibility to pay the required filing fees is not eliminated even by a voluntary dismissal of a complaint because § 1915(b)(1) "compels the payment of the respective fees at the moment the complaint or notice of appeal is filed." *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1133 (6th Cir. 1997). "Any subsequent dismissal of the case, even if voluntary, does not negate this financial responsibility." *Id.* at 1133-34. Where multiple inmates choose to join in the prosecution of the case, each prisoner is proportionally liable for any fees and costs that may be assessed. *Id.* at 1138. As a result, any fees and costs imposed by the court are equally divided among all the inmates. *Id.*

At the time of filing, the filing fee of \$350 was equally divided among the six plaintiffs who signed the complaint, resulting in each individual plaintiff being responsible for \$58.34 of the filing fee. Despite withdrawing before service was made on Defendants, former plaintiff Marvin Holden became responsible for his one-sixth portion of the filing fee at the time the complaint was filed. Holden's voluntary withdrawal thus does not negate his responsibility to pay his one-sixth portion of the filing fee.

According, it is **ORDERED** that Marvin Holden's request for an order to waive his filing fee payment responsibility is **DENIED**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: December 8, 2010

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 8, 2010.

s/Tracy A. Jacobs  
TRACY A. JACOBS