

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.**

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**ORDER**

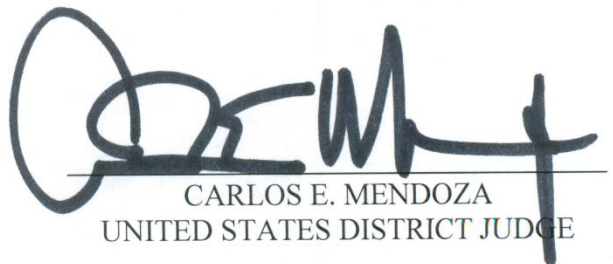
THIS CAUSE is before the Court on Plaintiff Joseph Witchard's Motion Requesting that the Court Rescind or Vacate its Previous Imposed Order Assessing the \$505.00 Appellate Filing and Docket Fees ("Motion to Rescind," Doc. 95) and Motion for Nunc Pro Tunc Thus Requesting the Court to Rescind and/or Vacate 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