

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

JAMES C. SPENCER,)
)
)
 Plaintiff,)
)
)
 vs.)
)
)
 THE TIMES DAILY and)
 TOM SMITH,)
)
)
 Defendants.)

Case No. 5:15-cv-00099-AKK-HGD

MEMORANDUM OPINION

The magistrate judge filed a report and recommendation on October 13, 2015, recommending that this action filed pursuant to 42 U.S.C. §1983 be dismissed under 28 U.S.C. §1915A(b) for failing to state a claim upon which relief may be granted. Doc. 10. The plaintiff filed objections to the report and recommendation on October 21, 2015. Doc. 11.

The plaintiff does not complain about the magistrate judge’s recommendation that this action be dismissed for failing state a claim. Rather, the plaintiff takes great issue with the fact that the court assessed a \$23.06 initial partial filing fee for him to initiate this action and required him to sign a Prisoner Consent Form in which he

agreed to pay the remainder of the \$350.00 filing fee. *Id.* The plaintiff argues that the court “deceived” him and “dishonestly and [unethically] cheated” him out of \$350.00 “knowing that his complaint was void, worthless and that this court held no jurisdiction over this matter.” *Id.* at 1. The plaintiff requests that the court refund him the initial partial filing fee of \$23.06 and waive the remainder of the \$350.00 filing fee.¹ *Id.*

On March 19, 2015, the court received the plaintiff’s signed Prisoner Consent Form. (Doc. 6). By signing the Prisoner Consent Form, the plaintiff acknowledged the following:

I understand that even if I am allowed to proceed *in forma pauperis* (in other words, without having to prepay the full filing fee) and even if my action is later dismissed for any reason, I am obligated to pay the District Court Clerk the amount of the filing fee **I**

¹ On January 29, 2015, the magistrate judge ordered the plaintiff to pay an initial partial filing fee of \$23.06 and to sign and return the Prisoner Consent Form signifying that he wished to proceed with this action by making monthly installment payments toward the full filing fee of \$350.00. Doc. 3. The plaintiff responded that he did not have funds to pay the \$23.06 partial filing fee and requested that the filing fee be waived in its entirety. Doc. 4. The magistrate judge notified the plaintiff that the partial filing fee was based on a certified copy of his account statement and was in accordance with the statutory formula provided by 28 U.S.C. § 1915(b)(1-2). Doc. 5. The magistrate judge advised the plaintiff that the court could not waive the filing fee pursuant to 28 U.S.C. §1915(b) and that, at a minimum, he must sign and return the Prisoner Consent Form if he wished to proceed with this action. *Id.* at 2-3. On March 19, 2015, the plaintiff returned a signed Prisoner Consent Form. Doc. 6. On April 10, 2015, the magistrate judge directed the warden to deduct the partial filing fee of \$23.06 from the plaintiff’s prison account and, thereafter, deduct monthly payments from the plaintiff’s prison account until a total of \$350.00 has been withheld and paid to the Clerk of Court. Doc. 7. As of this date, no payments have been deducted from the plaintiff’s prison account and sent to the Clerk of Court for payment towards the filing fee.

UNDERSTAND THAT MY OBLIGATION TO PAY THE FILING FEE IN FULL SHALL REMAIN IN FULL FORCE AND EFFECT, NOTWITHSTANDING ANY DISMISSAL OR TERMINATION OF THE LAWSUIT, UNTIL THE FULL FILING FEE OF \$350.00 HAS BEEN PAID.

Id. (capitalization and emphasis in original). Based on the plaintiff's signed Prisoner Consent Form, the plaintiff's assertion that the court "cheated" him out of the \$350.00 filing fee is frivolous and without merit.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and the recommendation is **ACCEPTED**. Accordingly, the complaint is due to be **DISMISSED** pursuant to 28 U.S.C. §1915A(b) for failing to state a claim upon which relief may be granted. A Final Judgment will be entered.

DATED this 2nd day of December, 2015.



ABDUL K. KALLON

UNITED STATES DISTRICT JUDGE