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28UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT LEE CARTER,

Plaintiff,

v.

DENTIST JOHN DOE, et al.,

Defendants.

Case No. 3:15-cv-00565-MMD-VPC

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On May 17, 2016, this Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty (30) days. (ECF No. 6 at 7). The thirty-day period has now expired, and Plaintiff has not filed an amended complaint. Instead, Plaintiff has filed a motion for return of his filing fee. (ECF No. 8.) Plaintiff's motion states he seeks his filing fee back and that he is choosing not to file an amended complaint. (*Id.* at 1.) In light of Plaintiff's election not to file an amended complaint, the Court will dismiss this action.

Plaintiff also requests return of his filing fee. Prior to the screening of his complaint, Plaintiff paid \$25.59 to the Court. (See ECF No. 4). This was done by Plaintiff of his own accord and not pursuant to any court order. 28 U.S.C. § 1915(b)(1) provides that a "prisoner *shall* be required to pay the full amount of the filing fee." 28 U.S.C. § 1915(b)(1) (emphasis added). Prisoners proceeding *in forma pauperis* ("IFP") must pay the filing fee as funds become available to them. See *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007). Prisoners who proceed *in forma pauperis* are not

1 excused from paying filing fees, they are only excused from *pre-paying* them in full. See
2 *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir. 2001). Accordingly, even if a case is
3 dismissed, a court will often require a litigant who is proceeding *in forma pauperis* to
4 continue to pay towards the filing fee until it is paid in full. Here, the Court deferred a
5 decision on Plaintiff's IFP application, as it often does, so that it may refer the case to
6 the early inmate mediation program once a plaintiff states a colorable § 1983 claim.
7 (See ECF No. 6.) Plaintiff did not proceed to that stage of litigation. Under the
8 circumstances of this case, the Court will grant Plaintiff's request for return of his filing
9 fee.

10 It is therefore ordered that this action is dismissed without prejudice.

11 It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 1) is
12 denied as moot.

13 It is further ordered that Plaintiff's motion for return of his filing fees (ECF No. 8)
14 is granted. The Clerk is instructed to return Plaintiff's filing fees and close this case.

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16 DATED THIS 23rd day of June 2016.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE