

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:14-CV-160-BO

NEAL ADVIN POWELL,)
)
 Plaintiff,)
 v.)
)
 CAPE FEAR VALLEY HOSPITAL,)
)
 Defendant.)
 _____)

ORDER

This matter is before the Court on plaintiff's motion to vacate the filing fee. [DE 12]. For the following reasons, the motion is GRANTED and the filing fee is VACATED.

BACKGROUND

Plaintiff, an inmate at the Cumberland Detention Center in Fayetteville, North Carolina filed a complaint alleging negligence and medical malpractice against Cape Fear Valley Hospital, a private hospital, on March 18, 2014. After conducting a frivolity review pursuant to 28 U.S.C. § 1915(e)(2), Magistrate Judge Webb filed his M&R on April 23, 2014 and recommended that the complaint be dismissed for lack of subject matter jurisdiction. Plaintiff did not object to the M&R, and the Court adopted Magistrate Judge Webb's M&R on June 3, 2014 and dismissed the case. In October 2014, plaintiff contacted the Court to inquire why his prisoner trust fund account was still being debited for the filing fee since the case had been dismissed. He then filed his request to the Court to vacate the requirement to pay the filing fee in this case.

DISCUSSION

Plaintiff does not have a history of filing frivolous claims in this Court. A review of the Court's records reveal that the instant matter was the first case plaintiff had filed in this Court

and since its dismissal, plaintiff has not filed any other case. Plaintiff's claim was dismissed because there was no diversity jurisdiction and plaintiff's complaint stated no cognizable federal claim. Plaintiff did not expend the Court's time with unnecessary and meritless filings. For these reasons, the Court finds it appropriate to relieve Mr. Powell of his obligation to pay for the filing fee in this matter.

Accordingly, the Clerk of Court is DIRECTED to notify the proper prison official and to credit Mr. Powell with any deduction from his trust fund account for this suit. No further deductions from his trust fund account for this suit are allowed.

SO ORDERED,

this 23 day of November, 2014.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE