

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOHN WAYNE EARL,

Plaintiff,

vs.

BRAD LIVINGSTON, *et al.*,

Defendants.

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CIVIL ACTION H-14-0195

MEMORANDUM AND OPINION

John Wayne Earl, a former Texas Department of Criminal Justice inmate, sued in January 2014, alleging a denial of due process. Earl, proceeding *pro se* and *in forma pauperis*, sues Brad Livingston, Executive Director of the Texas Department of Criminal Justice (“TDCJ”), and the Parole Division of the TDCJ. The threshold issue is whether this case must be dismissed as duplicative of another pending case.

Earl alleges that he was improperly subjected to sex-offender registration requirements. He was released to parole on January 30, 2004 after serving a sentence for an aggravated robbery conviction. Earl alleges that the sex offender statute enacted in 1981 did not apply to his conviction. He seeks \$10,000,000.00 in compensatory damages.

Under 28 U.S.C. § 1915(e), federal courts are authorized to dismiss a case filed *in forma pauperis* at any time if the court determines that the action or appeal is “frivolous or malicious,” fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

A complaint is frivolous if it lacks an arguable basis in law or fact. *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir. 2001) (citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). “A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist.” *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998) (quoting *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997)).

Earl raised virtually identical claims against the same defendants in Civil Action No. H-13-2092, which is currently pending. *In forma pauperis* complaints may be dismissed as frivolous or malicious if duplicate allegations in another pending federal lawsuit is filed by the same plaintiff. *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993).

Earl filed the instant case six months after filing Civil Action Number H-13-2092, which remains pending. The claims in the above-styled action are dismissed because they are duplicative of claims currently pending before the court.

Earl’s motion to proceed as a pauper, (Docket Entry No. 6), is granted. The action is dismissed.

SIGNED on April 14, 2014, at Houston, Texas.



Lee H. Rosenthal
United States District Judge