

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

<p>DUANE EARL FANNING, III,</p> <p>#263799,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>vs.</p> <p>CAPTAIN HOWARD,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL ACTION 13-0537-CG-N</p>
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ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed, the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(A) is **ADOPTED** as the opinion of this Court. It is **ORDERED** that plaintiff’s motion to proceed without prepayment of fees (Doc. 5) be **DENIED**, this action be **DISMISSED** without prejudice as malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), and that the action be counted as strike under 28 U.S.C. § 1915(g).

The Clerk is **DIRECTED** to send to the Commissioner of the Alabama Department of Corrections a copy of the report and recommendation recommending the dismissal of this action, this order adopting the report and recommendation, and the judgment dismissing this action.

DONE and ORDERED this 3rd day of July, 2014.

/s/ Callie V. S. Granade

 UNITED STATES DISTRICT JUDGE