

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

JESUS TREVINO a/k/a ADALID
MONTIEL FIGUEROA

PLAINTIFF

v.

Case No. 2:12-CV-05157

UNITED STATES MAGISTRATE JUDGE
ERIN L. SETSER; ATTORNEY ROBERT L.
BEARD, JR.; and DEPUTY COREY COGGIN

DEFENDANTS

ORDER

Currently before the Court is the Report and Recommendation (Doc. 3) filed in this case on July 19, 2012, by the Honorable James R. Marschewski, Chief United States Magistrate for the Western District of Arkansas. The objection period has passed with no objections being filed by any party. Plaintiff has, however, filed a Motion for Voluntary Dismissal (Doc. 4), and the Court has considered the contents of that Motion in its review of the Report and Recommendation.

Having reviewed Plaintiff's Motion, the Court finds that Plaintiff offers neither law nor fact requiring departure from the Magistrate's findings. Plaintiff argues that this case is at an early stage of litigation, such that his request for voluntary dismissal should be granted. Plaintiff also appears to take issue with the Magistrate's finding that the instant suit is subject to dismissal under the three strikes rule set forth in 28 U.S.C. § 1915(b). Assuming *arguendo*, that the dismissal of Plaintiff's previous actions did not qualify as strikes against him under section 1915(g), Plaintiff's claims are still subject to dismissal as they are frivolous. Because the case has been reviewed on the merits and recommended for dismissal, and the undersigned finds that dismissal is appropriate, Plaintiff's Motion for Voluntary Dismissal without prejudice will be denied. Dismissing the instant case without prejudice would serve no purpose other than to allow Plaintiff to re-file a complaint that has

already been reviewed and found to be without merit.

The Court, being well and sufficiently advised, finds as follows: The Report and Recommendation is proper and should be and hereby is **ADOPTED IN ITS ENTIRETY**. Accordingly, for the reasons stated in the Magistrate Judge's Report and Recommendation, Plaintiff's Application for Leave to proceed *in forma pauperis* (Doc. 2) is **DENIED** and Plaintiff's Complaint is **DISMISSED WITH PREJUDICE** on the grounds that his claims are frivolous, fail to state claims, and seek relief against defendants who are immune from suit.

IT IS FURTHER ORDERED that Plaintiff's Motion for Dismissal (Doc. 4) is **DENIED**.

IT IS SO ORDERED this 15th day of November, 2012.

/s/ P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE