

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 09-cv-01574-PAB

OSIEL RODRIGUEZ,

Plaintiff,

v.

R. WILEY, Warden, and
MR. COOPER,
Supervisor/Director of FCC Florence Financial Management Department,

Defendants.

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge (the "Recommendation") [Docket No. 32]. Magistrate Judge Michael J. Watanabe recommends that the Court dismiss plaintiff's amended prisoner complaint [Docket No. 9]. Plaintiff filed timely objections to the Recommendation [Docket No. 34]. The Court, therefore, will conduct a *de novo* review. See Fed. R. Civ. P. 72(b)(3). In so doing, the Court construes plaintiff's filings liberally because he is a pro se litigant. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

This case arises out of two cases plaintiff brought in the United States District Court for the Eastern District of California. In those cases, plaintiff was granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. The federal court in California

ordered the plaintiff to make monthly payments toward the filing fees in those cases and that the federal penitentiary housing plaintiff collect and forward the allocated amounts when the balance of plaintiff's prisoner account exceeds ten dollars, as provided by 28 U.S.C. § 1915(b)(2).

In his complaint, plaintiff contends that defendants are violating the court's orders and 28 U.S.C. § 1915(b)(2) by withdrawing funds from his prisoner account when the balance is below ten dollars. He invokes *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), which recognized an implied private right of action for damages arising from constitutional violations by federal officers. However, the Court concurs with the Recommendation that plaintiff's complaint does not allege a constitutional violation. Rather, plaintiff complains of defendants' failure to comply with a court order issued in another jurisdiction and, therefore, the "relief plaintiff seeks should be sought from the court that issued the order." Docket No. 32 at 5.

Consequently, it is

ORDERED that the Recommendation of United States Magistrate Judge [Docket No. 32] is ACCEPTED. It is further

ORDERED that defendant Cooper's motion to dismiss [Docket No. 24] is GRANTED. It is further

ORDERED that the amended prisoner complaint [Docket No. 9] is dismissed with respect to unserved defendant Wiley pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). It is further

ORDERED that judgment shall enter in favor of defendants and against plaintiff.

DATED November 30, 2010.

BY THE COURT:

s/ Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge