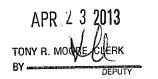
U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
RECEIVED



UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

HUEY P. GARDNER

CIVIL ACTION NO. 12-1916

VERSUS

JUDGE ELIZABETH ERNY FOOTE

CADDO PARISH SHERRIF OFFICE, ET. AL.

MAGISTRATE JUDGE HAYES

ORDER

Plaintiff has filed a second motion to vacate [Record Document 35]. This second motion rests on the same grounds as the first. Therefore, this Court **DENIES** the second motion for the same reason it denied the first. Whether plaintiff was a prisoner or not at the time he filed suit is irrelevant to the question of whether his action *in forma pauperis* is frivolous and fails to state a claim on which relief may be granted under 28 U.S.C. § 1915(e)(2) (2012).¹ This Court has made clear that plaintiff is not currently a prisoner and was not a prisoner when he filed suit. Plaintiff is cautioned against filing further frivolous motions.

^{&#}x27;<u>Lizana v. United States Copyright</u>, No. 3:10-CV-307, 2011 WL 3652205 at *3, n.4 (S.D. Miss. 2011) (unpublished) (citing <u>Lopez v. Smith</u>, 203 F.3d 1122, 1129 (9th Cir. 2000) ("section 1915(e) applies to all *in forma pauperis complaints*, not just those filed by prisoners") and <u>Michau v. Charleston County, S.C.</u>, 434 F.3d 725, 728 (4th Cir. 2006) ("That the PLRA is inapplicable, however, does not require us to reverse the district court's dismissal of Michau's complaints. Under 28 U.S.C.A. § 1915(e), which governs IFP filings in addition to complaints filed by prisoners, a district court must dismiss an action that the court finds to be frivolous or malicious or that fails to state a claim.")); <u>Mays v. Wyandotte Cnty. Sheriff's Dept.</u>, 419 Fed.Appx. 794, 795 n.1 (10th Cir. 2011) (unpublished) (distinguishing screening of *in forma pauperis* proceedings under § 1915(e) from screening of suits by prisoners under § 1915a).

For the foregoing reasons, IT IS ORDERED that plaintiff's Motion to Vacate Judgment and Amend [Record Document 35] be and is hereby **DENIED**.

THUS DONE AND SIGNED in Shreveport, Louisiana, this day of April, 2013.

ELIZABETH ERNY FOOTE UNITED STATES DISTRICT JUDGE