

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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**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 SHERIFF 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.

¹Lizana v. United States Copyright, No. 3:10-CV-307, 2011 WL 3652205 at *3, n.4 (S.D. Miss. 2011) (unpublished) (citing Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) ("section 1915(e) applies to all *in forma pauperis* complaints, not just those filed by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 Michau v. Charleston County, S.C., 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.")); Mays v. Wyandotte Cnty. Sheriff's Dept., 419 Fed.Appx. 794, 795 n.1 (10th Cir. 2011) (unpublished) (distinguishing screening of *in forma pauperis* proceedings under § 1915(e) from screening of suits by prisoners under § 1915a).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 23rd day of April, 2013.

ELIZABETH ERNY FOOTE
UNITED STATES DISTRICT JUDGE

