

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DANIEL ANGEL ARREOLA,

Plaintiff,

vs.

No. CV 17-00407 JCH/GBW

R.C. SMITH AS GEO CORPORATION,
J.W. BEAIRD, RUSSE, GOMEZ,
SUSANA MARTINEZ AS NMDOC,
UNKNOWN OFFICERS,

Defendants.

MEMORANDUM OPINION AND FINAL ORDER OF DISMISSAL

THIS MATTER is before the Court under Fed. R. Civ. P. 12(b)(6), 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A on the Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 filed by Plaintiff Daniel Angel Arriola (Doc. 1) (“Complaint”). The Court dismissed Plaintiff Arreola’s Complaint without prejudice for failure to state a claim for relief, but granted Arreola leave to file an amended complaint. The deadline for Arreola to amend has expired and Arreola has neither filed an amended complaint nor responded to the Court’s Memorandum Opinion and Order. The Court will now dismiss Arreola’s Complaint with prejudice and enter final judgment.

Plaintiff Arreola is incarcerated at Northeast New Mexico Detention Facility. (Doc. 2 at 1). He is proceeding pro se and *in forma pauperis*. Arreola filed his Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 on April 3, 2017 (Doc. 1). On October 25, 2018, the Court dismissed Arreola’s Complaint without prejudice for failure to state a claim for relief. (Doc. 9). The Court dismissed Plaintiff Arreola’s Complaint on four grounds:

- (1) Arreola does not clearly identify any constitutional right that he claims was violated, nor does he specify how any of the alleged conduct by Defendant Beard was in violation of a constitutional right. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009);

(2) Arreola provides no factual support that any claimed strip search was constitutionally unreasonable. *Foote v. Spiegel*, 118 F.3d 1416, 1425 (10th Cir. 1997);


(3) Arreola does not have a constitutional right to copies of grievance documents and his claims that Defendants have not been responsive to his request for copies fails to factually allege a constitutional claim. *Fogle v. Bonner*, 2009 WL 1765643, at *2 (D. Colo. 2009); and

(4) Claims against Governor Martinez in her official capacity are claims against the State of New Mexico, the State is not a “person” within the meaning of 42 U.S.C. § 1983 and there is no remedy against the State under § 1983. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 67, 71 (1989).

(Doc. 9 at 4-9).

The Court also allowed Arreola the opportunity to remedy defects in his pleading. *Reynoldson v. Shillinger*, 907 F.2d 124, 126 (10th Cir. 1990). The Court granted Arreola 30 days from October 25, 2018 to file an amended complaint. (Doc. 9 at 9). More than 30 days has elapsed and Arreola has not submitted an amended complaint or responded to the Court’s October 25, 2018 Memorandum Opinion and Order. Plaintiff Arreola’s Complaint is factually and legally insufficient to state a claim for relief and Arreola has failed to amend to remedy the defects in the Complaint. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Therefore, the Court will dismiss Arreola’s Complaint with prejudice for failure to state a claim for relief and will enter final judgment. Fed. R. Civ. P. 12(b)(6); 28 U.S.C. § 1915(e)(2)(B).

IT IS ORDERED that the Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 filed by Plaintiff Daniel Angel Arriola (Doc. 1) is **DISMISSED** with prejudice and final judgment will be entered.


UNITED STATES DISTRICT JUDGE