

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PAUL RODRIGUEZ-CERVANTES,	§	
Institutional ID No. 21920-180,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO.
v.	§	5:12-CV-00196-C
	§	
I. JULIAN, Correctional Officer, Giles	§	
W. Dalby Correctional Facility, <i>et al.</i> ,	§	
	§	
Defendants.	§	ECF

ORDER

Plaintiff Paul Rodriguez-Cervantes, acting *pro se*, filed a complaint pursuant to 42 U.S.C. § 1983 on February 19, 2013, and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(b). Plaintiff alleges that Defendant Julian filed a false disciplinary case against him, wrongly assigned him to the Special Housing Unit, and “punished” him beyond his original criminal sentence. Plaintiff seeks only monetary damages. The Defendants have not filed an answer.

On January 25, 2013, the complaint was transferred to the docket of the United States Magistrate Judge, who conducted an evidentiary hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1998) on March 28, 2013. Because Plaintiff failed to consent to the jurisdiction of the Magistrate Judge, she completed the preliminary screening pursuant to 28 U.S.C. §§ 1915 and 1915A, filed a Report and Recommendation on June 13, 2013, and transferred the complaint back to this Court. Plaintiff did not file a reply or objections to the Report and Recommendation.

The undersigned District Judge has made an independent examination of the record in this case and finds that the Magistrate Judge’s findings and conclusions should be ADOPTED.

The Court further notes that Plaintiff's request for monetary damages¹ from the Giles W. Dalby Correctional Facility and its employees is frivolous and fails to state a claim for which relief is available in this Court because the Dalby Facility is a private prison operated by the Management Training Corporation that contracts with the United States Bureau of Prisons to house federal prisoners and the Supreme Court has refused to extend civil rights liability to a private prison or its employees. *See Correctional Services Corporation v. Malesko*, 534 U.S. 61, 71 (2001) (stating that “[w]hether it makes sense to impose asymmetrical liability costs on private prison facilities alone is a question for Congress”) and *Minnecci v. Pollard*, ___ U.S. ___, 132 S.Ct. 617, 623 (2012) (refusing to extend 42 U.S.C. § 1983 liability for monetary damages to employees of a privately operated prison “when state tort law provides an ‘alternative, existing process’ capable of protecting the constitutional interests at stake”).

It is, therefore, **ORDERED**:

(1) Civil Action No. 5:12-CV-00196-C and all claims alleged therein are **DISMISSED** with prejudice as frivolous and for failure to state a claim.

(2) Any pending motions are **DENIED**.

(3) This dismissal shall count as a qualifying dismissal under 28 U.S.C. § 1915 and *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).

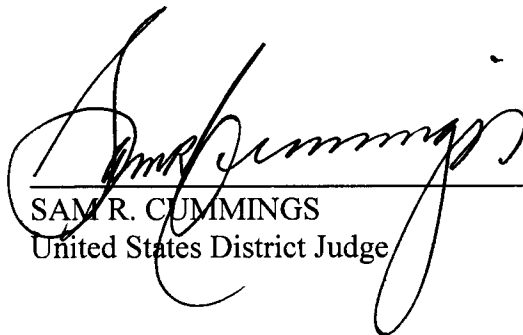
¹To the extent that Plaintiff's complaint is liberally construed to request injunctive relief, such request is moot because he was released from the Dalby Facility on August 23, 2013. *See* Exhibit 1, attached. *See also Cooper v. Sheriff, Lubbock County, Texas*, 929 F.2d 1078, 1084 (5th Cir. 1991) (holding that complaint requesting equitable relief for denial of meals at county jail was rendered moot when inmate was transferred to state prison); *Beck v. Lynaugh*, 842 F.2d 759, 762 (5th Cir. 1988) (holding that complaint requesting injunctive relief for unconstitutional prison conditions at state prison unit was rendered moot when inmate was transferred to another unit); and *Scott v. Jones*, 492 F.2d 131 (5th Cir. 1974) (holding that complaint requesting injunctive and declaratory relief for denial of psychiatric treatment at county jail was rendered moot when inmate was transferred to state prison).

(4) The dismissal of Plaintiff's complaint does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See* 28 U.S.C. § 1915(b)(1) ("Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner **shall be required to pay the full amount of a filing fee.**") (emphasis added); *Hatchet v. Nettles*, 201 F.3d 651, 654 (5th Cir. 2000) ("No relief from an order directing payment of the filing fee should be granted for a voluntary dismissal.").

(5) Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$505.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Judgment shall be entered accordingly.

Dated April 30, 2014.



SAM R. CUMMINGS
United States District Judge

EXHIBIT 1

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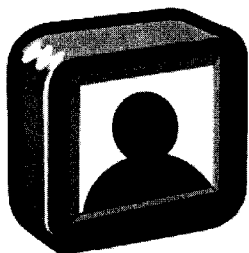
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Type of Number:
 Number:

Result using number **21920-180**



RAUL RODRIGUEZ-CERVANTES

Register Number: 21920-180

Age: 51
Race: White
Sex: Male

Released On: 08/23/2013

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