

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ROBERT TROY McCLURE,	§	
TDCJ NO. 1420457,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-14-1754
	§	
BRAD LIVINGSTON, et al.,	§	
	§	
Defendants.	§	

**MEMORANDUM OPINION AND ORDER**

Robert Troy McClure, a TDCJ inmate with a history of frivolous litigation, has filed a civil rights complaint alleging that he was subjected to living in a heated cell without a fan while incarcerated at the TDCJ Ferguson Unit. McClure filed an identical suit that was dismissed as barred pursuant to 28 U.S.C. § 1915(g). McClure v. Livingston, No. H-14-1749 (S.D. Tex. 2014). In dismissing the case the district court found that McClure was not in imminent danger, which would entitle him to an exception to § 1915(g)'s three-strikes rule. Id. The court also found that McClure had failed to exhaust the available administrative remedies. See 42 U.S.C. § 1997e.

The current complaint is McClure's second filing alleging heated cell conditions at the Ferguson Unit. Maintenance of the

instant action would be redundant and a waste of judicial resources. See Mayfield v. Collins, 918 F.2d 560, 561-62 (5th Cir. 1990). A prisoner's civil rights suit is malicious as a matter of law and is subject to dismissal where the suit raises claims that are duplicative of a prior suit filed by the same prisoner in federal court. See Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993). See also Blakely v. Evans, - F. App'x -, 2014 WL 2924920, \*1 (5th Cir. June 30, 2014), citing Pittman. This prisoner action will be dismissed as malicious under 28 U.S.C. § 1915(e). Wilson v. Lynaugh, 878 F.2d 846 (5th Cir. 1989) (IFP complaints may be dismissed under § 1915(d) if they attempt to relitigate claims which have already been submitted by the plaintiff and rejected by the courts), citing Bailey v. Johnson, 846 F.2d 1019 (5th Cir. 1988).

### Conclusion

Accordingly, based on the foregoing, the court **ORDERS** as follows:

1. The complaint ("Emergency" Motion to Proceed I.F.P. Under imminent danger exception of § 1915(g), Docket Entry No. 1) is **DISMISSED WITH PREJUDICE** as malicious. 28 U.S.C. § 1915(e).
2. The "Emergency" Order to Show Cause for an Preliminary Injunction & a Temporary Restraining Order (Docket Entry No. 2) is **DENIED**.
3. The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the parties; the

TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas 78711, Fax Number 512-936-2159; and the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

**SIGNED** at Houston, Texas, on this the 17th day of July, 2014.

A handwritten signature in black ink, appearing to read 'S. Lake', written over a horizontal line.

SIM LAKE  
UNITED STATES DISTRICT JUDGE