

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LUIS M. RODRIGUEZ,)
)
 Plaintiff)
)
 v.) Civil No. 01-117-P-C
)
 SWANSON SERVICES CORP.)
)
 Defendants)

RECOMMENDED DECISION DISMISSING COMPLAINT

Plaintiff, Luis Rodriguez, is an inmate at the Cumberland County Jail, Portland, Maine. He has filed a 28 U.S.C. § 1983 civil rights complaint. (Docket No. 2.) He has also filed a motion for leave to proceed *in forma pauperis*, (Docket No. 1) that I now **GRANT**. I have further reviewed his complaint pursuant to the requirements of 28 U.S.C. § 1915 and I now recommend that the Court **DISMISS** the complaint in its entirety.

Discussion

Rodriguez’s complaint alleges that the general inmate population at the Cumberland County Jail is discontent with “the gross over pricing” of the items on the inmate commissary list. The defendant, Swanson Services Corporation, is the Boston-based distributor. According to Rodriguez, the inmates have independently contacted several local distributors for the purposes of comparing prices. He alleges that the prices asked by Swanson are significantly in excess of ten percent over wholesale cost and also exceed local retail prices. With respect to redress, Rodriguez seeks a correction of prices and reimbursement for past overcharges. He also wants the court to enjoin Swanson from billing inmates for out-of-stock items. Rodriguez attaches a handwritten copy of excerpts from the “Detention and Correctional Standards for

Counties and Municipalities” that describes the correctional facility’s responsibility to make arrangements to provide commissary services, with the items sold not to be priced more than ten percent above wholesale or the average retail price for the area. This Department of Corrections policy also designates that the profits from commissary sale should go into an inmate benefit fund and requires record keeping, including an annual audit.

These allegations do not state a cognizable § 1983 claim.¹ Rodriguez does not state under what constitutional theory he pleads his case. However, the First Circuit has construed a similar challenge to a prison commissary system under the Fourteenth Amendment Due Process clause. French v. Butterworth, 614 F.2d 23, 24 (1st Cir. 1980); see also id. at 24 n. 1 (concluding that such a challenge could not be cognizable under the First, Fourth, Fifth, or Eighth Amendments). The court affirmed summary dismissal of a complaint by a prisoner that, among other things, challenged commissary prices. It expressly rejected the notion that the plaintiff and his fellow inmates, had “a constitutionally protected interest in buying food as cheaply as possible.” Id. at 25. It stated, “there is simply no legal basis for a demand that inmates be offered items for purchase at or near cost.” Id. at 25. See also Bagwell v. Brewington-Carr, 2000 WL 1239960, *2 -*3 (D. Del. 2000) (rejecting similar constitutional challenge on a summary judgment record, stating that “an inmate has no constitutionally protected right to purchase food or other items as cheaply as possible through the prison commissary”); Acree v. Peterson, 2000

¹ This is a complaint about prison conditions and 42 U.S.C. § 1997e provides that [n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other federal law, by a prisoner confined in a jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Rodriguez states in his complaint that he addressed his concerns about pricing to the commissary and was told that the prices were set by the Department of Correction. He states that he wrote a letter to Major Newton, a prison authority, and is awaiting a response. From this bare description on the form-§ 1983 complaint it is not clear whether there is a set procedure available for exhaustion at the prison or whether Rodriguez’s letter to Newton is the proper course to follow. However, even in the absence of exhaustion the court can dismiss Rodriguez’s complaint if it determines it is frivolous, fails to state a claim upon which relief can be granted, or seeks monetary damages from a defendant who is immune from suit. Id. at § 1997(e)(c)(2). For the reason stated below, this is the appropriate course.

WL 1141587, *7 (D. Or. 2000) (“Plaintiff has no protected property interest to purchase commissary items.”); Bennett v. Sheahan, 1999 WL 967534, * 4 (N.D. Ill. 1999)(“Commissary prices implicate no constitutional right. Because the county provided for the plaintiff’s basic necessities (food, shelter, clothing, medical care, etc.), he had no protected property or liberty interest in commissary privileges.”). Therefore, I conclude that this complaint should be dismissed forthwith. See 28 U.S.C. § 1915(e)(2)(B)(ii) (directing that when reviewing an *in forma pauperis* complaint “the court shall dismiss the case at any time if the court determines that ... the action ... fails to state a claim on which relief may be granted”); see also § 1997(e)(c)(2).

Conclusion

Accordingly, I **GRANT** Rodriguez’s **MOTION** to proceed ***IN FORMA PAUPERIS***. Further, I **RECOMMEND** that this § 1983 action be **DISMISSED** for **FAILURE TO STATE A CLAIM** for which § 1983 relief can be granted.

NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1993) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court’s order.

May 11, 2001.

Margaret J. Kravchuk
U.S. Magistrate Judge

BANGOR PR1983

U.S. District Court
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 01-CV-117

RODRIGUEZ v. SWANSON SERVICES COR, et al Filed: 04/25/01

Assigned to: JUDGE GENE CARTER

Demand: \$0,000

Nature of Suit: 550

Lead Docket: None

Jurisdiction: Federal Question

Dkt # in USDC, Portland, ME : is 00cv356pc

Cause: 42:1983 Prisoner Civil Rights

LUIS M RODRIGUEZ

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plaintiff

[COR LD NTC pse] [PRO SE]

MCC

P.O. BOX 250

SO. WINDHAM, ME 04082-0250

v.

SWANSON SERVICES CORPORATION

defendant

BOSTON SERVICE CENTER

defendant