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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MICHAEL LEE HAGER,	)	**Civil Action No. 7:15-cv-00685**
Plaintiff,	)	
	)	
v.	)	**MEMORANDUM OPINION**
	)	
COMMONWEALTH OF VIRGINIA	)	
DOC,	)	**By: Hon. Jackson L. Kiser**
Defendant.	)	**Senior United States District Judge**

Michael Lee Hager, a Virginia inmate proceeding pro se, filed a motion for a preliminary injunction, naming the Commonwealth of Virginia DOC as the sole defendant. Although Plaintiff invokes the Federal Tort Claims Act, his action is more properly construed as arising under 42 U.S.C. § 1983 due to the nature of his claims about a disciplinary conviction and classification in a state prison.

I must dismiss any action or claim filed by an inmate if I determine that the action or claim is frivolous, meaning it is based upon "an indisputably meritless legal theory," "claims of infringement of a legal interest which clearly does not exist," or claims where the "factual contentions are clearly baseless." Neitzke v. Williams, 490 U.S. 319, 327 (1989); see 28 U.S.C. §§ 1915(e)(2), 1915A(b)(1); 42 U.S.C. § 1997e(c). Neither the Commonwealth of Virginia nor its Department of Corrections is a "person" for purposes of 42 U.S.C. § 1983. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 70 (1989) (stating states and governmental entities that are considered arms of the state are not persons under § 1983). Accordingly, Plaintiff pursues an indisputably meritless legal theory against the Commonwealth of Virginia DOC, and the complaint is dismissed without prejudice as frivolous.

ENTER: This 4th day of January, 2016.

Jackson L. Kiser
Senior United States District Judge