

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DAVID BAKER, JR. ,

Plaintiff,

v.

Case No: 2:18-cv-198-FtM-99CM

ARMANDO CRUZ,

Defendant.

OPINION AND ORDER¹

This matter comes before the Court on initial review of the file. Plaintiff David Baker, Jr., who is an inmate in the Lee County Jail, initiated this action by filing a Complaint against Armando Cruz for false imprisonment and slander. ([Doc. 1](#), "Complaint"). Plaintiff accompanied the filing of his Complaint with a request to proceed in forma pauperis ([Doc. 2](#)). The Complaint is not on the approved form and in reality is nothing more than a "Notice of Pendency of Other Actions" form from another case filed by Plaintiff against the Lee County Sheriff's Office. ([Doc. 1](#)). Nonetheless, it would be futile to direct Plaintiff to file an amended complaint on the approved form because Plaintiff is a three-strike litigant. Thus, the Court will dismiss the Complaint. If Plaintiff should re-

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file the complaint in a new action, it must be accompanied with the requisite \$400 filing fee.

In pertinent part, The Prison Litigation Reform Act (PLRA) contains the following subsection:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

[28 U.S.C. § 1915\(g\)](#). The Court takes judicial notice of the following filings brought by Plaintiff in a federal court that qualify as a dismissal under § 1915(g):

- David Baker, Jr. v. John J. McDougall, et al., Case No. 2:99-cv-328-25D, (M.D. Fla. July 15, 1999) (dismissing case for failure to exhaust administrative remedies);²
- David Baker, Jr. v. Keefe Commissary Network Sales, Case No. 2:99-cv-406-24D, (M.D. Fla. Aug. 16, 1999) (dismissing complaint as sanction for Plaintiff providing false statements on complaint form);³
- David Baker, Jr. v. John J. McDougal et al., Case No. 2:99-cv-405-25D, (M.D. Fla. Aug. 19, 1999) (dismissing complaint as sanction for Plaintiff providing false statements on complaint form);
- David Baker, Jr. v. Lee County Sheriff John J. McDougal et al., Case No. 2:99-cv-389-23D, (M.D. Fla. Aug. 31, 1999) (dismissing complaint as “frivolous”);
- David Baker, Jr. v. John J. McDougall, et al., Case No. 2:99-cv-431-18, (M.D. Fla. Sept. 22, 1999) (dismissing case a “frivolous”).

Because Plaintiff is incarcerated, has had three or more qualifying dismissals, and is not under imminent danger of serious physical injury, this action will be dismissed

² Dismissal for failure to exhaust administrative remedies is “tantamount to one that fails to state a claim upon which relief may be granted.” [Rivera v. Allin](#), 144 F.3d 719, 731 (11th Cir. 1998) (abrogated on other grounds by [Jones v. Bock](#), 549 U.S. 199 (2007)).

³ Dismissal for lying under penalty of perjury on complaint form about existence of prior lawsuit constitutes “abuse of the judicial process” and counts as a strike under [28 U.S.C. § 1915\(g\)](#). [Rivera](#), 144 F.3d at 731.

without prejudice to Plaintiff filing a new civil rights complaint form and paying the full \$400 filing fee when the complaint is filed.

Accordingly, it is now

ORDERED:

1. This case is **DISMISSED** without prejudice under [28 U.S.C. § 1915\(g\)](#).
2. The **Clerk of Court** is directed to terminate any pending motions, close this case, and enter judgment accordingly.

DONE and **ORDERED** in Fort Myers, Florida this 3rd day of April, 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies:
All Parties of Record
SA: FTMP-2