

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

LAMAR BURNO,

Plaintiff,

Case No. 5:15-cv-93-J-34PRL

vs.

LAKE COUNTY, FLORIDA,

Defendant.

ORDER

THIS CAUSE is before the Court on the Motion of Defendant, Lake County, to Dismiss Amended Complaint and Memorandum of Law (Doc. 30; Motion to Dismiss). In response, Plaintiff filed Plaintiff[’s] Response to Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint (Doc. 34; Response). Although Plaintiff states at the beginning of his Response that he is responding “in opposition to the [Motion to Dismiss],” he later states that he “understands that Lake County can[]not be held liable for the actions of the Sheriff and/or his deputies,” and requests “that Defendant’s Motion to Dismiss be granted as to Defendant, Lake County.” See Response at 1–3. In light of these statements, the Court will grant the Motion to Dismiss and dismiss the claims against Lake County without prejudice.

In addition to asking that the Motion to Dismiss be granted, in the body of the Response, Plaintiff seeks leave to file an amended complaint to “add the proper Defendants.” See id. at 3. The Court takes the opportunity to advise Plaintiff that the inclusion of his request for affirmative relief within the Response, rather than filing a motion,

is improper. See Rule 7(b)(1), Federal Rules of Civil Procedure (Rules(s)); see also Rosenberg v. Gould, 554 F.3d 962, 967 (11th Cir. 2009) (“Where a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly.”) (quoting Posner v. Essex Ins. Co., 178 F.3d 1209, 1222 (11th Cir. 1999)). Moreover, Plaintiff has failed to comply with Rule 3.01(g), Local Rules, United States District Court, Middle District of Florida (Local Rules(s)), with respect to the request to file an amended complaint. Accordingly, the request to file an amended complaint is not properly before the Court at this time. Plaintiff shall have up to and including May 31, 2016, to file a motion for leave to file an amended complaint. Plaintiff is cautioned that he must include his proposed amended complaint as an attachment to his motion for leave to file an amended complaint. See Long v. Satz, 181 F.3d 1275, 1279–80 (11th Cir. 1999).

In light of the foregoing, it is hereby **ORDERED**:

1. To the extent that Plaintiff’s Response to Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint (Doc. 34) seeks leave to file an amended complaint, such request is **DENIED, without prejudice**.
2. Plaintiff shall have up to and including **MAY 31, 2016** to file a proper motion seeking leave to file an amended complaint, if necessary, after complying with Local Rule 3.01(g).

3. Motion of Defendant, Lake County, to Dismiss Amended Complaint and Memorandum of Law (Doc. 30) is **GRANTED** and the claims against Defendant Lake County, Florida are **DISMISSED without prejudice**.

DONE AND ORDERED in Chambers this 28th day of April, 2016.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:
Pro se party
Counsel of Record