

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

MARCUS LOPEZ ORTIZ,

Plaintiff,

v.

BRAD LIVINGSTON, *ET AL.*,

Defendants.

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CIVIL ACTION No. H-16-3749

ORDER OF DISMISSAL

Plaintiff, a state inmate proceeding *pro se* and seeking leave to proceed *in forma pauperis*, filed this section 1983 lawsuit against prison officials for alleged violations of his constitutional rights.

The Court notes that plaintiff recently filed a complaint raising these same claims in *Ortiz v. Livingston*, C.A. No. H-16-3449 (S.D. Tex. 2016). The Court dismissed that lawsuit pursuant to the “three strikes” provision of section 1915(g), and found that plaintiff did not demonstrate that he was in imminent danger of serious physical injury at the time the complaint was filed. The Court further noted that at least one federal district court had entered monetary sanctions and a preclusion order against him for his abuse of the judicial system, citing *Ortiz v. Livingston*, C.A. No. 3:13-CV-0330 (S.D. Tex. 2013), and that the monetary sanctions remained unpaid.

Because the instant lawsuit raises the same claims as were raised in C.A. No. H-16-3449, the instant lawsuit is DISMISSED WITHOUT PREJUDICE AS MALICIOUS AND DUPLICATIVE. Although plaintiff argues that his earlier lawsuit was dismissed “without prejudice,” it was dismissed without prejudice *subject to* his payment of the full filing fee and prior sanctions. Plaintiff is not entitled to continue re-filing his lawsuit in hopes that a different court might grant him leave to proceed *in forma pauperis*.

This case is FURTHER DISMISSED WITHOUT PREJUDICE pursuant to the preclusion order entered in *Ortiz v. Livingston*, C.A. No. 3:13-CV-0330 (S.D. Tex. 2013). To the extent plaintiff seeks authorization under the preclusion order to file the instant lawsuit and without payment of the monetary sanctions, his request is DENIED.

This case is FURTHER DISMISSED WITHOUT PREJUDICE pursuant to the “three strikes” provision of section 1915(g). All pending motions are DENIED AS MOOT. Plaintiff may move to reinstate this case upon payment of the full \$400.00 filing fee and proof of payment of all outstanding monetary sanctions within twenty-eight days from date of this order. Upon expiration of the twenty-eight days, plaintiff may file a lawsuit raising these claims only upon payment of the full filing fee and proof that all prior monetary sanctions entered against him have been paid.

Signed at Houston, Texas on December 30, 2016.



Gray H. Miller
United States District Judge