

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

WASEEM DAKER,	:	
	:	
Plaintiff,	:	
	:	
VS.	:	NO. 5:22-CV-00341-MTT-CHW
	:	
COMMISSIONER TIMOTHY WARD, <i>et al.</i>,	:	
	:	
Defendants.	:	
	:	

RECOMMENDATION OF DISMISSAL

Presently pending before the Court is a Complaint filed by *pro se* Plaintiff Waseem Daker, an inmate presently confined in the Smith State Prison in Glennville, Georgia, seeking relief pursuant to 42 U.S.C. § 1983 (ECF No. 1). For the following reasons, it is **RECOMMENDED** that Plaintiff’s Complaint be **DISMISSED without prejudice** for his bad faith failure to comply with the permanent injunction entered by the United States District Court for the Northern District of Georgia and affirmed by the Eleventh Circuit Court of Appeals.

DISCUSSION

“Federal courts possess an inherent power to dismiss a complaint for failure to comply with a court order.” *Foudy v. Indian River Cnty. Sheriff’s Office*, 845 F.3d 1117, 1126 (11th Cir. 2017); *see also Zocaras v. Castro*, 465 F.3d 479, 483 (11th Cir. 2006) (“[A] court . . . has the inherent ability to dismiss a claim in light of its authority to enforce its orders and provide for the efficient disposition of litigation.”). The Court may also *sua*

sponte dismiss a claim for failure to obey court orders and rules pursuant to Federal Rule of Civil Procedure 41(b). *Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337 (11th Cir. 2005). The Eleventh Circuit has repeatedly held that, “[a]lthough [dismissal] is a severe sanction, its imposition is justified when a party chooses to disregard the sound and proper directions of the district court.” *Friedlander v. Nims*, 755 F.2d 810, 813 (11th Cir. 1985); *Zocaras*, 465 F.3d at 483 (“Rule 41(b) makes clear that a trial court has discretion to impose sanctions on a party who fails to adhere to court rules.”); *see also Balawajder v. Scott*, 160 F.3d 1066, 1067-68 (5th Cir. 1998) (affirming dismissal of case based upon district’s local order permitting court to enforce sanctions imposed by other federal district courts); *Martin-Trigona v. Acton Corp.*, 600 F. Supp. 1193, 1200 (D.D.C. Dec. 13, 1984), *aff’d* 818 F.2d 95 (D.C. Cir. 1987) (finding that failure to comply with order entered by a different district court was sufficient grounds to dismiss action). Moreover, “dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989). “That’s so even where less drastic sanctions are available.” *Amerson v. Comm’r*, No. 20-11179, 2022 WL 628418, at *3 (11th Cir. Mar. 4, 2022) (internal quotation marks omitted); *see also Daker v. Dozier*, No. 19-11213, 2022 WL 2154114, at *1 (11th Cir. June 15, 2022) (per curiam) (dismissal without prejudice generally not an abuse of discretion).

A civil action filed by a prisoner “seek[ing] redress from a governmental entity or officer or employee of a governmental entity” is also subject to dismissal under 28 U.S.C.

§ 1915A if it is “frivolous, malicious, or fails to state a claim upon which relief may be granted[.]” 28 U.S.C. § 1915(b)(1). The Eleventh Circuit has upheld dismissals under § 1915A and the similar screening provisions of 28 U.S.C. § 1915(e) where a plaintiff acts maliciously by engaging in bad faith litigiousness or manipulative tactics. *Attwood v. Singletary*, 105 F.3d 610, 613 (11th Cir. 1997) (per curiam) (holding that “[a] finding that the plaintiff engaged in bad faith litigiousness or manipulative tactics warrants dismissal” under § 1915(d)).¹ “[C]omplaints that are plainly part of a longstanding pattern of abusive and repetitious lawsuits” may also be considered “malicious” for purposes of §§ 1915A or 1915(e). *Horsey v. Asher*, 741 F.2d 209, 213 (8th Cir. 1984).

Plaintiff is notorious as an “extraordinarily prolific serial litigant” who has “clogged the federal courts with frivolous litigation.” *Daker v. Ward*, 999 F.3d 1300, 1302 (11th Cir. 2021) (internal quotation marks omitted). State and federal courts at all levels have documented Plaintiff’s repeated abuses of the judicial process. *See, e.g., Daker v. Toole*, 138 S. Ct. 234 (Oct. 2, 2017) (finding that Plaintiff “has repeatedly abused this Court’s process” and directing clerk “not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and petition

¹ 28 U.S.C. § 1915(d) is the predecessor of § 1915(e)(2)(B)(ii). Both statutes contain a provision allowing the Court to determine whether a complaint is subject to dismissal as being frivolous or malicious, although dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii) is now mandatory if such a finding is made. *See, e.g., Bilal v. Driver*, 251 F.3d 1346, 1348-49 (11th Cir. 2001). 28 U.S.C. § 1915A also requires the Court to dismiss a complaint filed by a “prisoner seek[ing] redress from a governmental entity or officer or employee of a governmental entity” if the complaint (or any portion thereof) is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(a), (b)(1).

submitted in compliance with Rule 33.1”); *Daker v. Head*, No. 19-13101, 2022 WL 2903410, at *3 (11th Cir. July 22, 2022) (holding that “Daker’s repeated decisions to pursue IFP status no matter if he is indigent shows a blatant history of abuse of the judicial system”); *Daker v. Deal*, Civil Action No. 1:18-CV-5243-WMR, 2020 WL 5792472, at *2 (N.D. Ga. Aug. 4, 2020) (observing that Plaintiff “has significantly abused the judicial system” and “that opinion is shared by numerous other judges that have presided over his cases”); *Daker v. Dozier*, Civil Action No. 6:17-cv-110, 2018 WL 582581, at *4 (S.D. Ga. Jan. 29, 2018) (adopting recommendation to dismiss for abuse of the judicial process where Plaintiff “exhibited bad faith and an overall lack of candor before the Court”); *Daker v. Owens*, ECF No. 388 at 12 in Case No. 5:12-cv-00459-CAR-MSH (M.D. Ga. May 8, 2017) (dismissing amended complaint as a sanction under Federal Rule of Civil Procedure 41(b) due to Plaintiff’s “blatant disregard for the Court’s orders, procedures, and resources”); *Allen v. Daker*, 311 Ga. 485, 505-06 (2021) (noting that it had previously placed filing restrictions on Plaintiff based his filing of “over 100 cases in this Court, virtually all lacking in merit and often showing a willingness to ignore or attempt to evade this Court’s rules”).

In an effort to curb Plaintiff’s abusive filings, the Northern District of Georgia entered a permanent injunction imposing filing restrictions on Plaintiff. *Daker v. Deal*, Order 11, ECF No. 57 in Case No. 1:18-cv-05243-SDG (N.D. Ga. Aug. 4, 2020) (“*Daker I*”) (determining that Plaintiff’s “abusive activities have been significant”). This order states that Plaintiff is “**PERMANENTLY ENJOINED** from filing or attempting to file any new lawsuit or petition in this Court without first posting a \$1,500.00 contempt bond

in addition to paying the required filing fee.” *Id.* at 17-18. In addition, Plaintiff was informed that he “**MUST INCLUDE** with every lawsuit he files *in this or any other federal court* (1) a copy of this order, and (2) a list of each and every lawsuit, habeas corpus petition, and appeal that he has filed in any federal court along with the final disposition of each lawsuit, petition or appeal.” *Id.* at 19 (emphasis in original). The Northern District’s order further advised Plaintiff that any complaint he filed in that court without this information, or without posting the contempt bond, would “be summarily dismissed.” *Id.*²

On appeal, Plaintiff sought vacatur of the permanent injunction. *Daker v. Deal*, Appellant’s Br. 72, ECF No. 25 in No. 20-13602 (11th Cir. Nov. 24, 2021). Among other things, Plaintiff challenged the Northern District’s requirements to attach copies of the injunction itself and his litigation history to any new cases filed in any court. *Id.* at 72-73. On April 13, 2022, the Eleventh Circuit affirmed the entry of the injunction. *Daker v. Governor of Ga.*, No. 20-13602, 2022 WL 1102015, at *1 (11th Cir. Apr. 13, 2022) (unpublished opinion) (per curiam). The Eleventh Circuit specifically upheld that portion of the order directing Plaintiff to report his litigation history to courts outside of the Northern District. *Id.* at *2 (holding that “reporting litigation history to other tribunals ensures enforcement of the injunction, which ‘operate[s] continuously and perpetually

² The Northern District had previously entered a permanent injunction with these filing restrictions, but the Eleventh Circuit vacated and remanded so that the court could give Plaintiff notice and an opportunity to be heard before the injunction was imposed. *Daker v. Governor*, 796 F. App’x 720, 721 (11th Cir. 2020) (per curiam).

upon’ and is ‘binding upon [Daker] . . . throughout the United States’” (quoting *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 451 (1932)). Plaintiff’s Complaint in this case was filed more than three months later. Attach. 1 to Compl. 40, ECF No. 1-1 (signed July 31, 2022). Despite knowing of the Northern District’s injunction (and its affirmance by the Eleventh Circuit Court of Appeals), Plaintiff failed to include a copy of the injunction or a complete listing of his litigation history when he filed his Complaint in this case.

Plaintiff’s blatant disregard of the Northern District’s orders in this case is yet another example of Plaintiff’s bad faith efforts to abuse and manipulate the judicial process. Plaintiff currently has more than 325 actions or appeals available on PACER comprising thousands of individual docket entries. *See, e.g., Daker v. Head*, 6:14-cv-00047-RSB-BWC (S.D. Ga. May 19, 2014) (more than 500 docket entries); *Daker v. Owens*, 5:12-cv-00459-CAR-MSH (M.D. Ga. Nov. 20, 2012) (more than 400 docket entries); *Daker v. Warren*, 1:10-cv-02084-SDG (N.D. Ga. July 2, 2010) (almost 450 docket entries). The fact that Plaintiff is subject to a filing injunction is thus not readily apparent from a cursory review of PACER. It follows that requiring Plaintiff to submit a copy of the injunction with any future-filed cases serves to put other courts on notice of his misconduct. Plaintiff’s omission can therefore only be viewed as a deliberate effort to conceal this misconduct and to avoid any consequences resulting therefrom. The Eleventh Circuit has upheld *sua sponte* dismissals under factually analogous circumstances. *See, e.g., Kendrick v. Sec’y*, No. 21-12686, 2022 WL 2388425, at *3 (11th Cir. July 1, 2022) (per

curiam) (affirming dismissal of complaint where prisoner omitted cases from litigation history because “[a] plaintiff’s bad-faith litigiousness or manipulative tactics, which include lying about one’s litigation history, warrant dismissal under § 1915” and pro se litigants “owe the same duty of candor to the court as imposed on any other litigant”); *Redmon v. Lake Cnty. Sheriff’s Office*, 414 F. App’x 221, 225 (11th Cir. 2011) (per curiam) (holding district court did not abuse its discretion by dismissing complaint as sanction for prisoner’s failure to disclose previously filed lawsuit in response to form complaint requesting such disclosure); *Dawson v. Lennon*, 797 F.2d 934, 935 (11th Cir. 1986) (per curiam) (affirming dismissal with prejudice of complaint where plaintiff acted in bad faith by “attempting to claim indigent status while failing to draw the court’s attention to previous authoritative determinations of his lack of indigency”); *see also Daker v. Head*, No. 19-13101, 2022 WL 2903410, at *4 (11th Cir. July 22, 2022) (per curiam) (holding that Plaintiff’s “concealment of funds and history of misleading courts and pursuing vexatious litigation tactics was sufficient for the court to find bad faith”).

Plaintiff has had multiple actions dismissed for failure to comply with a court’s orders and instructions, so he is certainly aware of the consequences of this course of action. *See, e.g., Daker v. Bryson*, 841 F. App’x 115, 123 (11th Cir. 2020) (per curiam) (affirming dismissal of Plaintiff’s case for failing to file an amended complaint that complied with district court’s orders and instructions); *Daker v. Owens*, 850 F. App’x 731, 733-34 (11th Cir. 2021) (per curiam) (same); *Daker v. Daker*, No. 20-12298, 2021 WL 4852416 at *2-3 (11th Cir. Oct. 19, 2021) (per curiam) (same). And even if Plaintiff were

to submit the required documents in response to this Order and Recommendation, permitting Plaintiff to “acknowledge what he should have disclosed earlier would serve to overlook his abuse of the judicial process.” *Hood v. Tompkins*, 197 F. App’x 818, 819 (11th Cir. 2006) (per curiam). In short, Plaintiff’s willful misconduct in this case, coupled with his extensive history of abusing the judicial process, demonstrates that dismissal of this action is both appropriate and necessary to deter further misconduct. *See Zocaras*, 465 F.3d at 483 (holding that “[d]ismissal with prejudice is not proper unless the district court finds a clear record of delay or willful conduct and that lesser sanctions are inadequate to correct such conduct” (internal quotation marks omitted)); *Moon*, 863 F.2d at 839 (holding that district court did not abuse its discretion in dismissing case where plaintiff “had been repeatedly and stubbornly defiant” and his “conduct and words evidence[d] a refusal to acknowledge the authority of the magistrate and indicate[d] no willingness to comply with court orders”). “Permitting the plaintiff to pursue his claim would take the punch out of the punishment for pummeling the probity of the judicial system.” *Zocaras*, 465 F.3d at 484. It is therefore recommended that Plaintiff’s Complaint be dismissed without prejudice pursuant to Rule 41, the Court’s inherent authority, and/or 28 U.S.C. § 1915A.

CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Plaintiff’s Complaint be **DISMISSED without prejudice** pursuant to Federal Rule of Civil Procedure 41, the Court’s inherent authority, and/or as malicious under 28 U.S.C. § 1915A.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation with the Honorable Marc T. Treadwell, Chief United States District Judge, **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Recommendation. Any objection is limited in length to **TWENTY (20) PAGES**. *See* M.D. Ga. L.R. 7.4. The parties may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. *See* 11th Cir. R. 3-1.

SO RECOMMENDED, this 31st day of January, 2023.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge