

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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STEPHEN PAUL McCARY, #246 384	*	
Plaintiff,	*	
v.	*	2:09-CV-405-WHA (WO)
LT. STEELE, <i>et al.</i> ,	*	
Defendants.	*	

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**RECOMMENDATION OF THE MAGISTRATE JUDGE**

Plaintiff, a prison inmate, filed this complaint on May 4, 2009. On May 22, 2009 and July 27, 2009 the court directed Defendants to file an answer and written report addressing Plaintiff's claims for relief as presented in the complaint, as amended. In compliance with the court's order, Defendants submitted answers and written reports on October 2, 2009 and October 8, 2009 which contained relevant evidentiary materials refuting the allegations presented in the instant complaint. The court then issued an order directing Plaintiff to file a response to Defendants' answers and written reports. (*Doc. No. 43.*) Plaintiff was advised that his failure to respond to Defendants' answers and written reports would be treated by the court **"as an abandonment of the claims set forth in the complaint and as a failure to prosecute this action."** (*Id.*) (emphasis in original). Additionally, Plaintiff was **"specifically cautioned that [his failure] to file a response in compliance with the directives of this order"** would result in the dismissal of this case. (*Id.*)

The time allotted Plaintiff for the filing of a response expired on November 3, 2009. As of the present date, Plaintiff has filed nothing in opposition to Defendants' answers and written reports as required by order filed October 14, 2009. In light of the foregoing, the court concludes that this case should be dismissed.

The court has reviewed the file in this case to determine whether less drastic sanctions than dismissal are appropriate. After such review, it is clear that dismissal of this case is the proper sanction. Plaintiff is an indigent state inmate. Thus, the imposition of monetary or other punitive sanctions against him would be ineffectual. Additionally, Plaintiff has exhibited a lack of respect for this court and its authority as he has failed to comply with the directives of the orders entered in this case. It is, therefore, apparent that any additional effort by this court to secure Plaintiff's compliance would be unavailing. Consequently, the court concludes that Plaintiff's abandonment of his claims, his failure to comply with the orders of this court, and his failure to properly prosecute this cause of action warrant dismissal of this case. *See Link v. Wabash R.R.*, 370 U.S. 626, 630 (1962) (interpreting Rule 41(b) not to restrict the court's inherent authority to dismiss *sua sponte* an action for lack of prosecution); *World Thrust Films, Inc., v. International Family Entertainment, Inc.*, 41 F.3d 1454, 1456-57 (11<sup>th</sup> Cir. 1995).

For the foregoing reasons, it is the RECOMMENDATION of the Magistrate Judge that this case be DISMISSED without prejudice.

It is further

ORDERED that the parties are DIRECTED to file any objections to the

