

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CLARENCE LUKER,)	
AIS # 00313583,)	
)	
Plaintiff,)	
)	
vs.)	CIV. ACT. NO. 1:21-cv-451-TFM-N
)	
BC-911 CENTER AND LISA DUNBAR)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

On December 10, 2021, the Magistrate Judge entered a report and recommendation which recommends this action be dismissed without prejudice for failure to prosecute and to comply with the court’s orders. *See* Doc. 14. On December 20, 2021, Plaintiff filed a document entitled “Defendants Notice of Right to File Objections Motion to Amend.” *See* Doc. 15. The Court construes the document as Plaintiff’s objections to the Report and Recommendation.

Fed. R. Civ. P. 41(b) authorizes dismissal of a complaint for failure to prosecute or failure to comply with a court order or the federal rules. *Gratton v. Great Am. Commc’ns*, 178 F.3d 1373, 1374 (11th Cir. 1999). Further, such a dismissal may be done on motion of the defendant or *sua sponte* as an inherent power of the court. *Betty K Agencies, Ltd. v. M/V Monada*, 432 F.3d 1333, 1337 (11th Cir. 2005). “[D]ismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Vil v. Perimeter Mortg. Funding Corp.*, 715 F. App’x 912, 915 (quoting *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989)). “[E]ven a non-lawyer should realize the peril to [his] case, when [he] . . . ignores numerous notices” and fails to comply with court orders. *Anthony v. Marion Cty. Gen. Hosp.*, 617 F.2d 1164, 1169 (5th Cir. 1980); *see also Moon*, 863 F.2d at 837 (As a general rule, where a litigant has been forewarned,

dismissal for failure to obey a court order is not an abuse of discretion.). Therefore, the Court finds it appropriate to exercise its “inherent power” to “dismiss [Plaintiff’s claims] *sua sponte* for lack of prosecution.” *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962); *see also Betty K Agencies, Ltd.*, 432 F.3d at 1337 (describing the judicial power to dismiss *sua sponte* for failure to comply with court orders).

Plaintiff filed the complaint on October 13, 2021. *See* Doc. 1. On October 22, 2021, the Magistrate Judge entered an order directing Plaintiff to file the \$402 filing fee or file a motion to proceed *in forma pauperis*. *See* Doc. 4. Though Plaintiff has filed a flurry of various motions related to the case, Luker still failed to comply with the Court’s order to pay the filing fee or a motion to proceed *in forma pauperis*. Even after the Report and Recommendation was entered, Luker still did not comply. Reviewing the objections Luker filed, the Court finds no reference to the Report and Recommendation except for the word “objections” in the title along with a request to add defendants. None of this addresses the substance of the recommendation to dismiss for failure to pay the filing fee and obey the court’s order.

Accordingly, after due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Recommendation to which objection is made, the Report and Recommendation of the Magistrate Judge is **ADOPTED** and this action is **DISMISSED without prejudice** for failure to obey the Court’s orders.

However, instead of immediately entering a final judgment in accordance with Fed. R. Civ. P. 58, the Court will allow the Plaintiff one final chance to comply with the Court’s order to either pay the \$402.00 filing fee or submit a motion for leave to proceed *in forma pauperis*. The deadline to comply is **February 18, 2022**. The Clerk of Court is **DIRECTED** to send a copy of the Court’s

form motion to proceed *in forma pauperis* along with a copy of this Memorandum Opinion and Order.

Plaintiff Luker is advised that this is **the final opportunity** to comply with the Court's order in this case. Failure to comply by the deadline will result in the Court entering the Final Judgment in accordance with this Memorandum Opinion and Order.

DONE and ORDERED this 27th day of January, 2022.

/s/Terry F. Moorer
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE