

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION**

DAN SCHMIDT,

Plaintiff,

v.

CASE NO. 5:12-cv-00305-MP-CJK

KRISTA NAVARRO, et al.,

Defendants.

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**ORDER**

This matter is before the Court on Doc. 13, the Report and Recommendation of the Magistrate Judge, recommending that this case be dismissed for plaintiff's failure to identify two prior federal cases which had been dismissed with prejudice prior to service, *Schmidt v. Arnold, et al.*, Case Number 5:95cv50021/RV and dismissed for abuse of the judicial process, *Schmidt v. Wade, et al.*, Case Number 5:95cv50215/RV. On the form provided by the Court for Mr. Schmidt's current case, he was warned that "FAILURE TO DISCLOSE ALL PRIOR CIVIL CASES MAY RESULT IN THE DISMISSAL OF THIS CASE. IF YOU ARE UNSURE OF ANY PRIOR CASES YOU HAVE FILED. THAT FACT MUST BE DISCLOSED AS WELL." Additionally, Mr. Schmidt signed his name after the following statement: "I declare under penalty of perjury that the foregoing statements of fact, including all continuation pages, are true and correct." Thus, his argument in his objections, Doc. 14, that he did not receive due process is without merit. He also admitted to the existence of these cases in his objections and the subsequent "supplements" to those objections, but claims to have simply forgotten them because of their age. Upon consideration, the Court finds that dismissal without

prejudice is the proper sanction for the plaintiff's lack of candor. Simply allowing the plaintiff to inaccurately portray his prior history and then amend his pleading if his prior suits are detected would be ineffective to deter such conduct. Rivera v. Allin, 144 F.3d 719, 731 (11th Cir.1998).

Accordingly, it is hereby

**ORDERED AND ADJUDGED:**

1. The Report and Recommendation of the Magistrate Judge is accepted and incorporated herein.
2. This case is DISMISSED WITHOUT PREJUDICE as malicious under 28 U.S.C. §1915(e)(2)(B)(i) for plaintiff's abuse of the judicial process.
3. All pending motions are DENIED as MOOT, and the Clerk is directed to close the file.

**DONE AND ORDERED** this 6th day of March, 2013

*s/Maurice M. Paul*  
Maurice M. Paul, Senior District Judge