UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL ALAN CROOKER, Plaintiff,	)	
v.	)	C.A. No. 08-10382-EFH
MERCHANTS CR GUIDE COMPANY, Defendant.	)	

MEMORANDUM AND ORDER

HARRINGTON, S.J.

For the reasons stated below, this action is DISMISSED with prejudice as a sanction, and plaintiff Michael Alan Crooker is hereby ENJOINED from filing, either directly or indirectly any new civil action unless he first satisfies the filing fee obligations or obtains prior permission of the Court.

BACKGROUND

On March 7, 2008, the defendant, Merchants CR Guide Company, filed a notice of removal from the Suffolk County Superior Court, in the case Crooker v. Merchants CR Guide Copmany, and paid the removal fee. The action involves a claim by *pro se* prisoner Michael Alan Crooker ("Crooker") under the Fair Debt Collection Practices Act, ("FDCPA"), 15 U.S.C. § 1692k(d). The case was assigned in this district as Civil Action No. 08-10382-EFH.

In addition to this civil action, within the past year, Crooker has filed a number of other civil actions in the state courts in the Commonwealth of Massachusetts, which later were removed by the defendants to this Court. See Crooker v. FMA Alliance Limited, Civil Action No. 08-10375-GAO (removed from Suffolk County Superior Court on Mar. 11, 2008); Crooker v. Merchants CR Guide Co., Civil Action No. 08-10382-EFH (removed from Suffolk County Superior Court on Mar. 7, 2008); Crooker v. Arrow Financial Services, Civil Action No. 08-10262-JLT (removed from Norfolk County Superior Court on Feb. 14, 2008); Crooker v.

Wachovia Bank, N.A., Civil Action No. 08-10227-RGS (removed from Norfolk County Superior Court on Feb. 11, 2008); Crooker v. Atlantic Credit & Finance, Inc., Civil Action No. 08-10221-RCL (removed from Norfolk County Superior Court on Feb. 11, 2008 (stipulation of dismissal filed Mar. 10, 2008); Crooker v. Midland Credit Management, Inc., Civil Action No. 08-10189-RCL (removed from Suffolk County Superior Court on Feb. 6, 2008; Crooker v. Northland Collection Services, Civil Action No. 08-10167-RGS (removed from Suffolk County Superior Court on Feb. 4, 2008); Crooker v. United States of America, Civil Action No. 08-10149-PBS (removed from Suffolk County Superior Court on Jan. 31, 2008); Crooker v. Minafo, Civil Action No. 07-30077-MAP (removed from Suffolk County Superior Court on May 11, 2007); Crooker v. Condon, Civil Action No. 07-30068-MAP (removed from Hampden County Superior Court Apr. 26, 2007); Crooker v. Microsoft Corporation, Civil Action No. 07-10403-JGD (removed from Suffolk County Superior Court on Feb. 27, 2007); Crooker v. City of Agawam, Civil Action No. 07-30029-MAP (removed from Hampden County Superior Court Feb. 27, 2007); Crooker v. Spellacy, et al., Civil Action No. 07-30022-MAP (removed from Suffolk County Superior Court on Feb. 12, 2007); Crooker v. Swanson, Civil Action No. 07-30007-MAP (removed from Suffolk County Superior Court on Jan. 12, 2007); Crooker v. Heffner, Civil Action No. 07-30008-MAP (removed from Suffolk County Superior Court on Jan. 12, 2007).[1]

[1]In addition to the cases noted above, Crooker has filed numerous other actions in state courts, which were thereafter removed to this Court. See Crooker v. Dailey, et al., Civil Action No. 06-30214-MAP; Crooker v. Shink, Civil Action No. 06-30213-MAP; Crooker v. Burns, Civil Action No. 06-30187-MAP. Other removed cases include: Crooker v. Hickey, et al., Civil Action No. 93-30216-MAP; Crooker v. Dawson, et al., Civil Action No. 93-11706-DPW; Crooker v. Desmond, et al., Civil Action No.93-11707-DPW; Crooker v. Dawson, et al., Civil Action No. 93-11865-DPW; Crooker v. Desmond, et al., Civil Action No. 93-11866-DPW; Crooker v. Flynn, Civil Action No.93-11902-EFH; Crooker v. Reardon, et al., Civil Action No. 93-12206-DPW; Crooker v. United States Marshal, et al., Civil Action No. 93-12303-DPW;

DISCUSSION

I. Crooker is a Three Strikes Litigant Under 28 U.S.C. § 1915(g)

A review of the public records reveals that Crooker is a frequent filer, with at least 75 civil actions filed in this and other courts across the United States, since the mid-1980's. These cases have included habeas petitions as well as cases involving the Freedom of Information Act, the FDCPA, and the Federal Tort Claims Act, as well as cases involving prisoner civil rights, products liability, and other sundry civil actions. Many of his actions have been dismissed with and without prejudice, settled, or summary judgment has entered against Crooker.

On numerous occasions, Crooker sought *in forma pauperis* status pursuant to 28 U.S.C. § 1915 seeking a waiver of the filing fee for civil actions (now $350.00), and he was granted *in forma pauperis* status. However, at some point in the 1990's, it appears Crooker may have been determined by some court to have been a "three strikes" litigant under 28 U.S.C. § 1915(g),[2] as evidenced by Crooker's filing in the case Crooker v. United States, Civil Action No. 1:97-00402-SJM-SPB in the United States District Court for the Western District of Pennsylvania (Erie) (filed Dec. 22, 1997). In that action Crooker filed, on February 2, 1998, a Motion as to the non-applicability of 28 U.S.C. § 1915(g) Three Strikes Provision (Docket No. 7). On June 5, 1998, an Order issued granting Crooker's motion for the purpose of permitting him to proceed *in forma pauperis*, accepting as true Crooker's allegation that he was in imminent danger of serious physical injury. The Court also permitted the action to proceed even though Crooker may have

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Crooker v. United States, et al., Civil Action No. 93-30210-FHF, and Crooker v. Varriale, Civil Action No. 96-30143-FHF.

[2]Under section 1915(g), a prisoner may be denied *in forma pauperis* status if he has, on three or more prior occasions, had an action or appeal dismissed on the ground that it was frivolous, malicious, or failed to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). Where a prisoner has "three strikes," he may only proceed *in forma pauperis* if he is "under imminent danger of serious physical injury." Id.

had more than three prior lawsuits dismissed as frivolous. See Order (Docket No. 12).

A search of the PACER public records does not readily reveal the three underlying cases which formed the basis for the determination that Crooker was a three-strikes litigant under § 1915(g), nor are there documents from other districts available for viewing electronically. Thus, absent an extensive archival search, this Court is unable to uncover the civil cases which may have been considered as strikes under § 1915(g) and which may have led Crooker to file his motion in December 1997 as to the non-applicability of § 1915(g).

Notwithstanding this lack of information concerning those three cases forming the basis for holding Crooker to be a three-strike litigant under § 1915(g), this Court has, independently, reviewed the public dockets and has determined that Crooker has had three or more cases, dismissed on the merits, which are encompassed within the parameters of § 1915(g).[3] These cases include: Crooker v. United States, Civil Action No. 00-6004 R (AIJx) (United States District Court for the Central District of California) (dismissing complaint on Oct. 18, 2000, with prejudice, after hearing on defendant's motion to dismiss (Order, Docket No. 21)); Crooker v. Magaw, et al., Civil Action No. 94-02766-RMU (United States District Court for the District of Columbia (Washington, D.C.) (Order (Docket No. 4) entered Feb. 7, 1995 dismissing case with

[3]For purposes of the three-strikes determination, this Court has not considered dismissals of habeas petitions, nor those civil actions in which Crooker's cases were dismissed without prejudice or dismissed without a finding on the merits, or in which summary judgment was entered against Crooker. See Ramsey v. Goord, 2007 WL 1199573, *2 (W.D.N.Y. Apr. 19, 2007) (discussing that "not every dismissal of an action constitutes a dismissal for purposes of the three-strikes rule and noting that a dismissal on summary judgment is generally not considered within the parameters of the three-strikes rule's requirement that the actions be dismissed as frivolous, malicious, or for failure to state a claim"; citing Angelle v. Gibson, 253 F.3d 704 (5th Cir. 2001)). See also Weber v. Gathers, 2006 WL 2796374, *3 (D.S.C. 2006); Walker v. Kirschner, 1997 WL 698190, *2 (S.D.N.Y. 1997) (plain language of § 1915(g) speaks in terms of dismissals based on frivolousness, maliciousness, and failure to state a claim, but the statute is silent as to summary judgment). Further, in making the three-strikes determination, the Court presumes that Crooker was a "prisoner" as defined in 28 U.S.C. § 1915(h).

prejudice), aff'd Crooker v. Magaw, No. 95-5344 (D.C. Cir. 1996); Crooker v. ATF, et al., Civil Action No. 94-00685-RMU (United States District Court for the District of Columbia (Washington, D.C.) (Order (Docket No. 17) entered Mar. 22, 1995) (granting defendants' motion to dismiss case); Crooker v. U.S. Parole Commission, Civil Action No. 86-00352-TFH (United States District Court for the District of Columbia (Washington, D.C.) (Order (Docket No. 10), entered Apr. 16, 1986, granting defendants' motion to dismiss case); Crooker, et al., v. Vidosh, et al., Civil Action No. 96-00364-SJM-SPB (United States District Court for the Western District of Pennsylvania (Erie)) (Amended Memorandum Order entered Sept. 4, 1997 dismissing amended complaints); and Crooker v. United States Marshal, et al., Civil Action No. 93-12303-DPW (United States District Court for the District of Massachusetts (Boston)) (Order entered June 8, 1994 granting defendants' motion to dismiss for failure to state a claim upon which relief may be granted because Crooker did not complain of an injury to himself, and because deputy marshals are authorized by federal law to carry firearms), aff'd Crooker v. United States Marshal, et al., No. 94-1665 (1st Cir. 1994).[4]

In light of the above, the Court finds Crooker to be a three-strikes litigant under 28 U.S.C. § 1915(g) and therefore is not eligible to proceed *in forma pauperis* in this Court (unless

[4]The fact that the dismissals of some of Crooker's actions may have occurred prior to the effective date of the Prison Litigation Reform Act ("PLRA") does not impact whether the dismissals may be counted for purposes of strike determinations. See Ramsey v. Goord, 2007 WL 1199573, *2 (W.D.N.Y. Apr. 19, 2007, citing Welch v. Galie, 207 F.3d 130, 132 (2d Cir. 2000) (holding that "pre-§ 1915(g) dismissals for frivolousness, maliciousness, or failure to state a claim count as 'strikes' for purposes of § 1915(g)."); Patton v. Jefferson Correctional Center, 136 F.3d 458 (5th Cir. 1998). Moreover the Court may raise the three-strikes issue *sua sponte* (*i.e.*, defendants are not required to assert the three-strikes rule as an affirmative defense). Ramsey, 2007 WL 1199573, *2 citing McFadden v. Parpan, 16 F. Supp. 2d 246, 247 (E.D.N.Y. 1998) (citing Witzke v. Killer, 966 F. Supp. 538, 539 (E.D. Mich.1997) (dismissing complaint *sua sponte* under three-strikes rule where complaint was filed prior to PLRA's effective date)).

he is under imminent danger of serious physical injury).[5] Therefore, as practical matter, as a three-strikes litigant, Crooker is obligated to pay the entire $350.00 filing fee up-front in order to proceed with any civil action he files in this Court.

II. Crooker's Pleading Practices are Abusive

Crooker's litigation history, as outlined above, leaves little room for doubt that he has developed a repeated litigation practice in order to circumvent the three-strikes rule of § 1915(g). Specifically, Crooker files his civil actions in the Massachusetts state courts, knowing those actions will be removed by the defendant(s) to this Court. This is true particularly where he is asserting federal claims. This scheme accomplishes several purposes for Crooker. First, because Crooker appears to be indigent (based on past litigation) he would be unable to pay the $350.00 filing fee up-front, and therefore could not proceed with a civil action in federal court. By filing in state court instead (knowing the action would likely be removed by the defendant), he manages to circumvent the filing fee requirements of this Court and, essentially, to eviscerate the affect of the three-strikes rule on him, since the removal fee is paid by the defendant(s). Second, by not proceeding *in forma pauperis*, he avoids a preliminary screening on the merits, pursuant to 28 U.S.C. § 1915(e).[6]

While this Court considers that the three-strikes rule of § 1915(g) is silent as to the application to removal cases *(i.e.*, cases instituted in the state courts), this does not mean that Crooker may continue abusive pleading practices with impunity, merely because he has found a

[5]Crooker's status as a three-strike litigant does not, *per se*, impact the question whether Crooker may proceed on the merits; rather, § 1915(g) merely addresses whether a three-strikes prisoner is eligible for *in forma pauperis* status under 28 U.S.C. § 1915.

[6]Because Crooker's three-strikes status was not clear up until this point, he could have sought leave to proceed *in forma pauperis* under 28 U.S.C. § 1915 in his earlier cases.

way to sidestep the requirements of the Prison Litigation Reform Act and particularly the filing fee requirements and restrictions of 28 U.S.C. § 1915 (the *in forma pauperis* statute).

Recently, Magistrate Judge Neiman commented about Crooker's pleading practices in his Report and Recommendation in connection with Civil Action Nos. 06-30187-MAP; 06-30213-MAP; 06-30214-MAP; 07-30007-MAP; 07-30008-MAP; 07-30065-MAP; 07-30068-MAP; and 07-30077-MAP. In that document, Magistrate Judge Neiman stated, in relevant part:

> [T]he court is compelled to register its concern for what appears to be a disturbing litigation strategy on Plaintiff's part. While none of Plaintiff's actions to date lead the court to suggest sua sponte dismissal on grounds of maliciousness or frivolousness, see 28 U.S.C. § 1915A(b)(1), three aspects of Plaintiff's efforts are particularly troublesome. First, the record suggests that Plaintiff brought these lawsuits in state court solely to put the Government to the burden of removing them to federal court. If true, Plaintiff's ulterior motives raise significant concerns. *Cf. Pfingston v. Ronan Eng'g Co.* , 284 F.3d 999, 1006 (9th Cir. 2002) (noting that a civil action will be deemed "clearly vexatious or brought primarily for purposes of harassment when the plaintiff pursues the litigation with an improper purpose, such as to annoy or embarrass the defendant") (citation and internal quotation marks omitted). Second, by initiating at least ten individual lawsuits in state court, knowing they would have to be removed by the Government, Plaintiff has successfully evaded the $350 filing fee for each case (approximately $3,500 total). To be sure, it appears that Plaintiff filed Affidavits of Indigency and Requests for Waiver in state court, thereby allowing him to file there at no cost. (*See, e.g., Heffner* Document No. 4, Exhibit.) As Plaintiff is no doubt aware, however, he is a likely federal "three strikes" candidate under 28 U.S.C. § 1915(g) (conceivably having had three or more civil actions since April of 1996 dismissed on the merits), and, therefore, potentially ineligible for *in forma pauperis* status here. Third, by bringing his lawsuits in state court, Plaintiff appears to have successfully sidestepped the preliminary screening mechanism of 28 U.S.C. § 1915, another provision of the PLRA which allows for dismissal of *in forma pauperis* complaints that are "frivolous" or "malicious." 28 U.S.C. § 1915(e)(2)(B). Of course, as indicated earlier in this report and recommendation, the Government's removal does not prevent the court from screening Plaintiff's complaints under section 1915A. Still, by filing in state court, summonses have issued without section 1915 screening. In summary, Plaintiff's maneuvering and apparent evasions have heightened the court's suspicion of these proceedings.

Report and Recommendation (Docket No. 12 in Civil Action No. 06-30213-MAP, at 9-10; dated Aug. 15, 2007).

This Court not only agrees with the consternation expressed by Magistrate Judge Neiman concerning Crooker's pleading practices, but considers that some corrective measures may be warranted. The Court cannot sit idly by and permit such unfettered practices to continue without consequence. Of significance in the finding that Crooker's pleading practices are abusive is the consideration that he could not have good faith basis for filing the myriad of actions in state court, particularly where the cases involved either federal defendants and/or federal claims. It is simply incomprehensible that Crooker could not have known or intended that each action would be removed to federal court. Rather, the Court deems that, by filing his various actions in state court, Crooker has, with deliberation and intent, devised a strategy to: (1) circumvent his filing fee obligations under 28 U.S.C. § 1915; (2) circumvent the three-strikes rule of 28 U.S.C. § 1915(g); and (3) avoid a preliminary screening on the merits pursuant to 28 U.S.C. § 1915(e).[7]

Because Crooker is appearing *pro se* in this action, some leeway is afforded to him, recognizing that he lacks formal legal training. However, Crooker's *pro se* status cannot shield him from the consequences of what amounts to purposeful bad faith litigation practices.[8]

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[7]While a preliminary screening is authorized under 28 U.S.C. § 1915A, this only applies to civil actions in which claims are made against governmental entities or employees. Where, as in many cases, Crooker is suing a private individual or private entity, neither a § 1915(e) nor a § 1915A screening is authorized.

[8]Crooker may contend that since he is foreclosed from filing cases in federal court under § 1915(g), he simply took advantage of the opportunity to pursue the litigation in the state courts, where he is not foreclosed (and where he may receive *in forma pauperis* status), and therefore he should not be penalized for filing in state court. He may also contend that the defendants elected to remove these cases to federal court, but that this was their choice, not his. Recognizing that as a general matter, a litigant has a right to choose his forum where several options are available, the issue for this Court is whether there was an improper purpose in filing his cases in the state court, so as to circumvent the requirements of the Prison Litigation Reform Act. Based on Crooker's substantial litigation history, the reasonable inference drawn by this Court is that there has been an intentional abusive pleading practice.

III. Sanctions are Warranted

Under Rule 11, a Court may impose sanctions on an unrepresented party if he or she submits a pleading for an improper purpose or if the claims within it are frivolous or malicious. See Fed. R. Civ. P. 11(b)(1),(2); Eagle Eye Fishing Corp. v. U.S. Department of Commerce, 20 F.3d 503, 506 (1st Cir. 1994) (*pro se* parties, like all parties and counsel, are required to comply with the Federal Rules of Civil Procedure); Pronav Charter II, Inc. v. Nolan, 206 F. Supp. 2d 46, 53 (D. Mass. 2002) (Rule 11 applies to *pro se* litigants) (citation omitted). Rule 11 exists, in part, to protect defendants and the Court from wasteful, frivolous and harassing lawsuits, and provides for sanctions as a deterrent. See Navarro-Ayala v. Nunez, 968 F.2d 1421, 1426 (1st Cir. 1992). In addition to the authority under Rule 11, section 1927 of Title 28 provides for the imposition of costs and expenses, including attorneys' fees, against a person for unreasonable and vexatious litigation. See 28 U.S.C. § 1927. Moreover, apart from the authority under Rule 11 and section 1927, a district court has the inherent power to manage its own proceedings and to control the conduct of litigants who appear before it through orders or the issuance of monetary sanctions for bad faith, vexatious, wanton or oppressive behavior.[9]

While at this time the Court is not prepared to say that Crooker's cases are frivolous on

[9]See Chambers v. NASCO, Inc., 501 U.S. 32, 46-50 (1991); accord United States v. Kouri-Perez, 187 F.3d 1, 6-8 (1st Cir. 1999) (same); John's Insulation, Inc. v. L. Addison and Assocs. Inc., 156 F.3d 101, 109 (1st Cir. 1998) (district court did not abuse its discretion in ordering dismissal of complaint and default judgment as a sanction for plaintiff's protracted delay and repeated violation of court's order under inherent powers rather than Rule 41); Alexander v. United States, 121 F.3d 312, 315-316 (7th Cir. 1997) (sanctioning inmate in the amount of $500 pursuant to court's inherent authority for repetitious, meritless litigation). This inherent authority includes the power to enjoin litigants who abuse the court system by filing groundless and vexatious litigation. Elbery v. Louison, 201 F.3d 427 (1st Cir. 1999) (*per curiam*) (citing Cok v. Family Court of Rhode Island, 985 F.2d 32, 34 (1st Cir. 1993) for the proposition that "[f]ederal courts... possess discretionary powers to regulate the conduct of abusive litigants" and Castro v. United States, 775 F.2d 399, 408 (1st Cir. 1985) (*per curiam*) for the power to enjoin a party from filing "frivolous and vexatious lawsuits" pursuant to such authority)).

the merits, again, there is little room for doubt that his repeated pleading practices are, in any event, abusive and malicious, to the prejudice of the defendant. In light of this, sanctions are warranted. In considering what sanctions are proper and least restrictive, the Court has determined that a dismissal of this action with prejudice is warranted; however, Crooker may seek leave to re-open this action provided he pays $350.00 (after which, the removal fee shall be refunded to the defendant).

Additionally, the Court has considered whether other sanctions should also be imposed to stop Crooker's abusive pleading practices and to send a message to him that this type of litigation strategy will not be tolerated further. The Court finds that at this time the only way to obtain this result is to enjoin Crooker from proceeding with any new civil action in this Court, either directly or indirectly, unless he satisfies the filing fee obligations in this Court, or obtains leave of Court to proceed otherwise. The specific parameters of the sanctions imposed are set forth below.

CONCLUSION

Based on the foregoing, it is hereby ORDERED:

1. This action is DISMISSED with prejudice as a sanction against Michael Alan Crooker. He may seek leave to re-open this action within 30 days of the date of this Memorandum and Order provided he also pays $350.00, after which, the removal fee shall be refunded to the defendant by the Court;

2. Michael Alan Crooker is ENJOINED, as a sanction, from instituting in this Court any other lawsuit, either directly or indirectly (*i.e.*, by filing a Complaint in this Court or by the removal of a civil action from a Massachusetts state court by any defendant(s)), unless Crooker first satisfies the filing fee requirements for commencing a lawsuit in this Court. This means Crooker must either pay the $350.00 filing fee for each civil action, or, in the case of any removed action, he must pay the $350.00 removal fee to the Court (after which, the Court shall reimburse the defendant(s) for any removal fee paid).[10] Failure of

[10]If Crooker is a prevailing party in any future lawsuit, he may seek costs of payment of the filing fee or removal fee he was required to pay pursuant to this Memorandum and Order. The Court considers that the shifting of the burden to pay the filing or the removal fee as a

Crooker to satisfy the filing fee obligations set forth above within 30 days after case opening in the Court, will result in a dismissal of any newly-filed civil action by him, or of any removed action. In the alternative, within 30 days after case opening in the Court, Crooker may seek leave to proceed with his civil action upon permission of a judicial officer of this Court, upon a motion and good cause shown. A copy of this Memorandum and Order shall be submitted along with any Motion for Leave to Institute Lawsuit or any other similar pleading which may be filed by Crooker; and

3. Courtesy copies of this Memorandum and Order shall be sent to the district judges and magistrate judges of this Court.

SO ORDERED.

/s/ Edward F. Harrington
SENIOR DISTRICT JUDGE

DATED: March 24, 2008

sanction is the least restrictive sanction which serves to balance the equities: Crooker is not barred entirely from filing suit in the future, and the harm to the defendant(s) (in incurring a removal expense) is minimized.