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

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| **TIMOTHY DENVER GUMM,** | : | |
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| **Plaintiff,** | : | |
| | : | |
| **v.** | : | **Case No. 5:15-cv-00041-MTT-CHW** |
| | : | |
| **RICK JACOBS,** ***et al.*****,** | : | |
| | : | **Proceedings Under 42 U.S.C. § 1983** |
| **Defendants.** | : | **Before the U.S. Magistrate Judge** |

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**REPORT AND RECOMMENDATION**

Presently before the Court is Waseem Daker's Motion to Intervene (Doc. 80) in this case. Because Daker may not use intervention as a means to bypass the requirements of the Prison Litigation Reform Act ("PLRA"), does not have a right to intervene, and is not entitled to permissive intervention, it is **RECOMMENDED** that his Motion to Intervene be **DENIED.**

Plaintiff Timothy Gumm, who is confined "Tier III" segregation in the Special Management Unit (SMU) at Georgia Diagnostic and Classification Prison in Jackson, Georgia, filed this suit on February 12, 2015. Doc. 1. The Defendants' Motion to Dismiss (Doc. 16) was denied regarding Plaintiff's "due process claims related to his confinement in the SMU on and after August 1, 2013," and service was made on Defendants Washington, Bishop, Logan, and Williams. Doc. 35, p. 4-5. In September of 2016, Plaintiff's case was stayed because eleven separate cases with similar claims and fact patterns were filed in this Court.[1] Since that time,

[1] Those cases are: 5:15-cv-2, Rodriguez v. Chatman; 5:15-cv-41, McCoy v. Chatman; 5:15-cv-276, Brooks v. Bryson; 5:15-cv-267, Coleman v. Danforth; 5:15-cv-387, Rodriques v. Chatman; 5:15-cv-331, Emberson v. Chatman; 5:15-cv-384, Ruffin v. McCloud; 5:15-cv-374, Garcia v. Chatman; 5:15-cv-355, Salgado v. Chatman; 5:15-cv-338, Diaz v. Chatman.

Counsel has been appointed in Plaintiff's case. Doc. 66. The parties have begun discovery and are proceeding according to their scheduling order. Doc. 72. Plaintiff has also filed a Motion to Certify Class. Doc. 76.

Daker filed this Motion to Intervene on March 20, 2017. Doc. 80. Daker contends that following his sentence from a Cobb County Superior Court in October 2012, he was transferred to GDCP and placed in the Special Management Unit. *Id.* at p. 2. On April 7, 2014, Daker was transferred to Georgia State Prison ("GSP") in Reidsville, Georgia, and placed in the Tier II program. *Id.* at 4-5. Daker has alleged that the conditions of the Tier II Segregation are severe and identical to the conditions of Tier III SMU. *Id.* at 7-9. Daker contends that he should be allowed to intervene in this case as of right. *Id.* at 7-9. In the alternative, Daker argues that he is entitled to permissive intervention in Plaintiff's case. *Id.* at 10.

**1. The Prison Litigation Reform Act and the Three Strikes Restriction**

The record indicates that Daker seeks to intervene in this and numerous other cases in an effort to circumvent the provisions of the Prison Litigation Reform Act ("PLRA") related to abusive litigation. The PLRA contains a provision that prohibits prisoners who have received "three strikes" from bringing a civil law suit *in forma pauperis.* 28 U.S.C. § 1915(g). The provision states:

> if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Daker has filed numerous actions or appeals in this Court and courts around the country that have been dismissed on the grounds named above:

1. *Daker v. Mokwa,* Order Denying Leave to Proceed IFP, Doc. 2 in Case No. 2:14-cv-00395-UA-MRW (C.D. Cal. Feb. 4, 2014) (denying leave to proceed *in forma pauperis* and dismissing case after conducting screening under 28 U.S.C. § 1915(e)(2)(B) and finding claims were frivolous and failed to state a claim upon which relief may be granted);
2. *Daker v. Warren*, Order Dismissing Appeal, Case No. 13-11630 (11th Cir. Mar. 4, 2014) (three-judge panel dismissal of appeal on grounds that appeal was frivolous);
3. *Daker v. Warden*, Order Dismissing Appeal, Case No. 15-13148 (11th Cir. May 26, 2016) (three-judge panel dismissing appeal as frivolous);
4. *Daker v. Commissioner*, Order Dismissing Appeal, Case No. 15-11266 (11th Cir. Oct. 7, 2016) (three-judge panel dismissing appeal as frivolous);
5. *Daker v. Ferrero*, Order Dismissing Appeal, Case No. 15-13176 (11th Cir. Nov. 3, 2016) (three-judge panel dismissing appeal as frivolous);
6. Order Dismissing Appeal, *Daker v. Governor*, Case No. 15-13179 (11th Cir. Dec. 19, 2016) (three-judge panel dismissing appeal as frivolous).

The Eleventh Circuit has noted that Daker "is a serial litigant who has clogged the federal courts with frivolous litigation." *Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1281 (11th Cir. 2016), *cert. denied sub nom. Daker v. Bryson*, 137 S. Ct. 1227, 197 L. Ed. 2d 467 (2017), *reh'g denied,* No. 16-7414, 2017 WL 2507360 (U.S. June 12, 2017).

Because Daker has by now accrued more than three "strikes" for purposes of § 1915(g), he appears to be attempting to use the intervention provisions of Rule 24 to circumvent the restrictions of the PLRA. Following a prisoner's third meritless suit, "the prisoner must pay the full filing fee at the time he initiates suit." *Vanderberg v. Donaldson*, 259 F.3d 1321, 1324 (11th

Cir. 2001). Additionally, a purpose of the PLRA was to force *each* prisoner to pay the full filing fee. *Hubbard v. Haley*, 262 F.3d 1194, 1198 (11th Cir. 2001).[2]

Daker has filed similar motions to intervene in several cases in this Court, without paying a filing fee or moving for *in forma pauperis* status. Those cases are as follows: *Gumm v. Jacobs,* 5:15-cv-41(MTT), Doc. 80; *Smith v. Owens,* 5:12-cv-26 (WLS), Doc. 155; *Nolley v. Nelson*, 5:15-cv-75 (CAR), Doc. 109; *Sterling v. Sellers*, 5:16-cv-13, Doc. 40.

The PLRA's bar of Daker's motion to intervene would supersede any right he has to intervene. Daker does not have a right to intervene, as discussed below, but insofar as Rule 24 would allow intervention as of right or permissive intervention, the PLRA requirement overrides Rule 24. *Hubbard*, 262 F.3d at 1198 ( holding where there are any conflicts between a rule and the requirements of the PLRA "the statute repeals the Rule"; *Mitchell v. Farcass*, 112 F.3d 1483, 1489 (11th Cir. 1997). Accordingly, the PLRA bars Daker's intervention, and it is **RECOMMENDED** that Daker's Motion to Intervene be **DENIED**.

**2. Intervention of Right**

In addition to the PLRA restrictions, Daker is not entitled to intervention as a matter of right under Rule 24. Courts must allow a non-party to intervene in a case where the non-party files a timely motion and:

> (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

[2] *See* 141 Cong. Rec. S7526 (daily ed. May 25, 1995) (statement of Sen. Kyl) ("Section 2 will require prisoners to pay a very small share of the large burden they place on the federal judicial system by paying a small filing fee upon commencement of lawsuits. In doing so, the provision will deter frivolous inmate lawsuits. The modest monetary outlay will force prisoners to think twice about the case and not just file reflexively.").

Fed. R. Civ. P. 24(a). A party seeking to intervene must demonstrate that:

> (1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit.

*Loyd v. Alabama Dep't of Corr.*, 176 F.3d 1336, 1339–40 (11th Cir. 1999); *Chiles v.Thornburgh,* 865 F.2d 1197, 1213 (11th Cir.1989); *Lisle Co. v. CH2M Hill Constructors, Inc.*, No. 4:15-CV-159 (CDL), 2016 WL 6948690, at *3 (M.D. Ga. Jan. 25, 2016); *see Daker v. Donals*, No. 04-12447, Case 1:01-cv-03257-RWS Doc. 256, p. 2.

Daker cannot demonstrate that he has an interest relating to the property or transaction at hand in this case. Plaintiff Gumm has been allowed to proceed with his due process claims regarding his confinement in Tier III SMU at GDCP. Daker was previously confined in Tier III SMU, but is no longer confined there. Doc. 80, pp. 4-5. In his motion, Daker appears to challenge the conditions of confinement in Tier II at Georgia State Prison and the *possibility of his future* confinement in Tier III SMU at GDCP. *Id.* at 7-9. The difference in prisons and Tier levels creates an inherently different interest in the subject at hand. Additionally, Daker does not have an interest in Plaintiff's claim based on the *mere possibility* that Defendants could "return him to GDCP/SMU at any time." *Id.* at 6. Absent an actual interest with the subject matter at hand, Daker does not have a right to intervene. Accordingly, Daker is not entitled to intervention as a right.

**3. Permissive Intervention**

Permissive intervention is also not warranted. Upon a timely motion, a Court *may* allow intervention by a non-party who:

**(A)** is given a conditional right to intervene by a federal statute; or

> **(B)** has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24(b)(1). Here, no federal statute provides Daker with a conditional right to intervene. Additionally, Daker is in a different Tier level and prison than Plaintiff. These differences do not create a common question of law or fact to persuade this Court, in its discretion, to allow Daker to permissively intervene in this case.

## CONCLUSION

For the reasons set forth above, it is **RECOMMENDED** that Daker's Motion to Intervene (Doc. 80) be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, **WITHIN FOURTEEN (14) DAYS** after being served with a copy thereof. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

**SO RECOMMENDED**, the 20th day of July, 2017.

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