UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MICHAEL ALAN CROOKER	:	
	:	
v.	:	C.A. No. 11-229L
	:	
GLOBAL TEL LINK		:

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Plaintiff Michael Alan Crooker commenced this action in state court on April 28, 2011. Defendant Global Tel Link ("GTL") removed to this Court on June 6, 2011 asserting the existence of federal question jurisdiction because Plaintiff's Complaint alleges a violation of federal law, i.e., the Sherman Antitrust Act, 15 U.S.C. § 1, et seq. (Document No. 1 at ¶ 4). Plaintiff filed this action while a pretrial detainee at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island ("Wyatt"). (Document No. 11 at p. 2). He is currently a federal prison inmate serving a lengthy federal sentence at FCI Ray Brook in New York. See United States v. Crooker, No. 3:07-cr-30038-DPW (D. Mass.). In this case, Plaintiff alleges that GTL, the "exclusive detainee telephone service" at Wyatt, charged him "exorbitant" rates for telephone calls resulting from an unlawful conspiracy between GTL and Wyatt's owner/operator, the Central Falls Detention Facility Corporation, to establish a monopoly for GTL to provide telephone service to pretrial detainees at inflated rates in return for a percentage of the revenue generated by detainee telephone calls "also known as 'kickbacks' or 'bribes'" according to Plaintiff. (Document No. 11 at p. 3). GTL has moved to dismiss Plaintiff's Amended Complaint. (Document No. 13). This Motion has been referred to me

by Senior District Judge Lagueux for preliminary review, findings and recommended disposition. 28 U.S.C. § 636(b)(1)(B); Local Rule Cv 72(a).[1]

On September 14, 2011, the Court issued an Order to Plaintiff to Show Cause why this action should not be dismissed with prejudice pursuant to 28 U.S.C. § 1915(g) (the so-called "three-strikes rule" applicable to prisoner litigants) or, alternatively, dismissed absent prompt payment by Plaintiff of the $350.00 civil case filing fee. (Document No. 19). Plaintiff filed a timely response on September 23, 2011. (Document No. 24). For the reasons discussed herein, Plaintiff's response has not convinced the Court that this case is not subject to the "three-strikes rule."

Discussion

Plaintiff is "no stranger to the Federal Courts" and has been the plaintiff in "over one hundred civil actions in Federal District courts across the Nation, including courts in Massachusetts, California, the District of Columbia, and [ ] Pennsylvania." Crooker v. United States, Civil No. 3:2009-206, 2009 U.S. Dist. LEXIS 126460 at *2 (W.D. Pa. Nov. 20, 2009). While detained at Wyatt for a short period in 2010 and 2011, Plaintiff has litigated three cases as plaintiff in this Court including this antitrust case. See also Crooker v. Murphy, C.A. No. 1:11-cv-00016-M (Petition for Writ of Habeas Corpus); and Crooker v. Portfolio Recovery Assocs., LLC, C.A. No. 1:11-cv-00185-L (Fair Debt Collection Practices Act claim removed from state court).

Prison inmates, such as Plaintiff, are generally subject to the three-strikes rule under 28 U.S.C. § 1915(g). In particular, Section 1915(g) prohibits a prisoner from proceeding in forma pauperis in a civil case "if the prisoner has, on 3 or more prior occasions, while incarcerated or

[1] Also pending and referred to me for consideration are Plaintiff's Motion for Class Certification and Appointment of Pro Bono Class Counsel (Document No. 6), Motion for Leave to File Rebuttal (Document No. 20), and Second Motion to Hold Defense Counsel in Contempt (Document No. 21).

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."

Plaintiff does not allege any threat of physical injury and therefore the "imminent danger" exception to the three-strikes rule is inapplicable. Other Districts have concluded that Plaintiff qualifies as a three-strikes litigant under 28 U.S.C. § 1915(g) because of his history of meritless lawsuits and have taken various steps to address his "abusive" pleading practices. See Crooker v. United States, supra at *10; and Crooker v. Merch. CR Guide Co., C.A. No. 08-10382-EFH, 2008 U.S. Dist. LEXIS 56852 at *6 (D. Mass. March 24, 2008). In fact, in Crooker v. Burns, C.A. No. 3:06-cv-30187-PBS (D. Mass.), Plaintiff described himself as a "PLRA three-striker" in a pleading filed on October 21, 2010. (Document No. 38). He also refers to himself as such in this case. (Document No. 24 at p. 2). Accordingly, I find that Plaintiff is precluded by the PLRA's three-strikes rule, 28 U.S.C. § 1915(g), from bringing a civil action in federal court without payment of the $350.00 civil case filing fee.

In Crooker v. Merch. CR Guide Co., the Court succinctly summarized Plaintiff's litigation strategy to avoid the three-strikes rule and other procedural hurdles contained in the Prison Litigation Reform Act ("PLRA").[2] Specifically, Plaintiff initially files his claim in state court. Because he asserts a federal question in the lawsuit, he is "virtually assured that the defendant will remove the case" to federal court and the removing defendant, and not Plaintiff, "pays the filing fee as each case is removed to the Federal Court." Crooker v. United States, supra at *12. The Court

[2] In Crooker v. Burns, C.A. No. 3:06-cv-30213-PBS, Document No. 12 at pp. 9-11 (D. Mass. Aug. 15, 2007), Magistrate Judge Neiman of the District of Massachusetts felt "compelled to register [his] concern for what appears to be a disturbing litigation strategy on Plaintiff's part" to evade 28 U.S.C. § 1915. He also identified Plaintiff in 2007 as "a likely federal 'three strikes' candidate under 28 U.S.C. § 1915(g)." Id. at 10.

concluded that Plaintiff's strategy is deliberately intended 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)." Crooker v. Merch., supra at *15. As a sanction, the Court dismissed Plaintiff's Complaint with prejudice, with permission to seek leave to reopen, conditioned on paying the $350.00 filing fee, and enjoined him from filing any new lawsuits, either directly in federal court or indirectly by removal, unless he pays the $350.00 filing fee or reimburses the $350.00 removal fee paid by any removing defendant. Id. at **19-21. See also Crooker v. United States, supra at **29-30 (requiring Plaintiff to obtain leave of Court prior to filing any new lawsuits in the Western District of Pennsylvania).

Plaintiff is employing the same strategy in this District to avoid the PLRA.[3] In this case, he filed a federal claim (Sherman Antitrust Act) against an out-of-state defendant in state court. Predictably, the out-of-state Defendant, GTL, promptly removed the claim to this Court and paid the $350.00 removal fee. In view of Plaintiff's documented litigation history and the actions taken by other Districts to address his abusive litigation practices, I recommend that this Court take similar action to prevent Plaintiff from circumventing the requirements placed by Congress on prisoner litigants in the PLRA. In particular, I recommend that this case be DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1915(g) and for failure to pay the civil case filing fee, subject to reinstatement if Plaintiff pays the full amount of the $350.00 civil case filing fee within thirty (30) days of the issuance of the Dismissal Order. See Brown v. United States, 88 Fed. Cl. 795, 799 (2009).

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[3] Plaintiff's strategy is plainly revealed in paragraphs 39 and 40 of his Amended Complaint (Document No. 11) in which he states: "[s]tate court filed lawsuits are not subject to the Prison Litigation Act's administrative remedy exhaustion requirement which is a federal law [, 42 U.S.C. § 1997e,] applicable to lawsuits filed by prisoners only in federal court" and "[t]he present lawsuit [,alleging a violation of a federal statute,] was a state court filed lawsuit."

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
January 6, 2012