[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-10042

Non-Argument Calendar

ODEIU JOY POWERS,
BP (MINOR CHILD),
PP (MINOR CHILD),

Plaintiffs-Appellants,

versus

U.S. HOMELAND SECURITY,
ACTING SECRETARY KEVIN MCALEENAN,
U.S. DEPARTMENT OF LABOR,

Defendants-Appellees.

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before GRANT, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:19-cv-62967-AHS

Before GRANT, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Odeiu Joy Powers, proceeding pro se, and her minor children, proceeding separately through counsel, appeal the district court's orders denying their motion for default judgment and granting the defendants' motion to dismiss their amended complaint alleging employment discrimination and retaliation. We conclude that the district court did not abuse its discretion in declining to enter a default judgment after two years of litigation or in granting the motion to dismiss after the plaintiffs refused to respond to the motion as required by the district court's order and local rules. We therefore affirm.

I.

In February 2019, Powers filed a complaint in the Northern District of Georgia against the Department of Homeland Security and its Secretary alleging harassment, discrimination, and retaliation based on race in violation of Title VII of the Civil Rights Act. The defendants filed a motion to dismiss for improper venue. The district court denied the motion and transferred the case to the Southern District of Florida.

In the transferee court, the defendants filed an answer to Powers's complaint, denying liability and asserting various defenses. After a complicated procedural course that included Powers's interlocutory appeal from an order denying her motion for injunctive relief (which we summarily affirmed) and her appeal from an order granting judgment on the pleadings (which we vacated and remanded), the district court granted Powers leave to file an amended complaint and directed her to do so within 21 days. Twenty-two days later, Powers filed an amended complaint against the Department of Homeland Security and the Department of Labor.

The defendants responded by moving to dismiss the amended complaint, and Powers moved to amend her pleading a second time. The district court granted Powers's motion to amend and instructed the defendants to respond to the second amended complaint within 14 days "after its filing."

Powers filed a second amended complaint on August 6, 2021, and it was entered on the docket three days later. The second amended complaint joined Powers's minor children, B.P. and P.P., as plaintiffs with respect to one claim and named the Secretary of the Department of Homeland Security and the Secretary of the Department of Labor as defendants. In total, the second amended complaint alleged 14 claims under state and federal law, all arising from Powers's nine-month period of employment as an auditor for the Department of Homeland Security. On August 23, 2021—14 days after the second amended complaint was docketed, and 17

days after it was filed—the defendants moved to dismiss the second amended complaint.

The same day, Powers filed a motion for default judgment against the defendants on the ground that their motion to dismiss was filed after the response deadline set by the court. The district court denied the motion, explaining that default judgment was not appropriate where the defendants had appeared and defended the case for more than two years, and where the motion to dismiss, though untimely, was filed within a few days after the deadline with no prejudice to the plaintiffs. The district court stated its intention to decide the case on the merits and directed the plaintiffs to respond to the motion to dismiss.

Instead of responding as directed, Powers filed a notice of appeal from the denial of the motion for default judgment and moved for a stay of the district court proceedings until the appeal was resolved. The district court granted the motion for a stay. Eventually, this Court dismissed the appeal for lack of jurisdiction. The district court then lifted its stay and ordered the plaintiffs to respond to the defendants' motion to dismiss the second amended complaint by December 3, 2021. Again, the plaintiffs failed to respond by the court's deadline.

On December 7, 2021, Powers filed a document titled "Acknowledgement of Order," in which she acknowledged the district court's order instructing the plaintiffs to respond to the defendants' motion to dismiss but declined (on behalf of herself and her two minor children) to comply. Powers asserted that

responding to the motion to dismiss "would be prejudicial against our case" because it would be inconsistent with the plaintiffs' motion for reconsideration of this Court's dismissal of her appeal and would "establish the legitimacy of Defense's late-filed response."

The district court dismissed the second amended complaint without prejudice for two alternative reasons. First, it concluded that dismissal was appropriate for the plaintiffs' willful failure to comply with a court order. Second, it determined that the defendants' motion to dismiss should be granted by default under the local rules of court. Powers and her children now appeal the denial of the motion for default judgment and the dismissal of the second amended complaint.

II.

We review a district court's orders denying a motion for default judgment for abuse of discretion. *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1244 (11th Cir. 2015). We also review a district court's enforcement of its orders or its local rules for abuse of discretion, and we give "great deference" to the court's interpretation of its local rules. *Foudy v. Indian River Cnty. Sheriff's Off.*, 845 F.3d 1117, 1122 (11th Cir. 2017); *Reese v. Herbert*, 527 F.3d 1253, 1267 n.22 (11th Cir. 2008) (citation omitted).

A.

Powers argues that the district court should have granted the motion for default judgment because the defendants failed to respond to the second amended complaint within the deadline set by the court, failed to request an extension of time to respond, and

failed to provide any excuse for missing the response deadline. She argues that the district court lacked the discretion to deny the motion for default judgment under these circumstances.

We disagree. A district court may enter a default judgment when a party "has failed to plead or otherwise defend," but it also has the discretion to deny a motion for default judgment. *Mitchell v. Brown & Williamson Tobacco Corp.*, 294 F.3d 1309, 1316–17 (11th Cir. 2002); *see* Fed. R. Civ. P. 55(a)–(b). "A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous." *Surtain*, 789 F.3d at 1244 (citation omitted).

The district court made none of those errors here. We have previously explained that a district court acts within its discretion in denying a motion for default judgment where the defendant made an appearance in the case before the motion was filed and filed a motion to dismiss "a short time after the deadline" for filing the responsive pleading, with no prejudice to the plaintiffs. *Mitchell*, 294 F.3d at 1317. The defendants here filed their motion to dismiss within three days—one business day—after the deadline, and the plaintiffs have not shown that they were prejudiced in any way by the short delay. And before Powers filed the motion for default judgment, the defendants had diligently responded to Powers's prior complaints, motions, and appeals spanning more than two years of litigation. Under the circumstances, the district court did

not abuse its discretion in denying the motion for default judgment.

B.

All three plaintiffs challenge the district court's dismissal of the second amended complaint. Primarily, the plaintiffs argue that the motion to dismiss was invalid because it was untimely, and that the district court lacked the discretion to accept the untimely filing absent a motion by the defendants and a showing of excusable neglect. *See* Fed. R. Civ. P. 6(b). The minor children add that in light of Powers's pro se status, the district court should have construed the "acknowledgement" she filed as a response to the motion to dismiss.

Again, we disagree. We have already explained that the district court acted within its discretion in denying the motion for default judgment. The discretion to deny a motion for default judgment necessarily carries with it the discretion to accept the untimely responsive pleading. *Cf. Mitchell*, 294 F.3d at 1316–17; *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985). Moreover, contrary to plaintiffs' arguments, the defendants' motion was untimely only under the deadline set by the district court—the motion was filed within the time provided by the Federal Rules of Civil Procedure.[1]

[1] Though her pleading did not include the required certificate of service, Powers claimed to have served the defendants with the second amended complaint by mail on August 4, 2021. Under Rules 15(a)(3) and 6(d), the response deadline would have been August 21, 2021 (14 days from service plus 3 days' mail time). But because that day was a Saturday, the deadline would have been

Because the district court's acceptance of the late-filed motion to dismiss was a natural corollary to its denial of the motion for default and was not prohibited by any statute or rule, the decision was within the court's inherent authority to manage its docket. *See Dietz v. Bouldin*, 579 U.S. 40, 45–46 (2016) (district courts possess inherent authority to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases," so long as the exercise of that authority is a "reasonable response" to the issue before the court and is not "contrary to any express grant of or limitation on the district court's power contained in a rule or statute" (citations omitted)). Indeed, the district court exercised that authority in Powers's favor when it accepted her late-filed first amended complaint, and the court implied that it would have considered accepting a late-filed response to the defendants' motion to dismiss.

But the plaintiffs' "acknowledgement" of the court's order to respond to the motion to dismiss was not simply a late-filed response—and the court could not have construed it as one in the name of reading pro se filings liberally. The leniency traditionally accorded to pro se litigants "does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (citation omitted). To construe the plaintiffs' "acknowledgement" as a response to the motion to dismiss, the district court would have had to ignore their

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extended to Monday, August 23, 2021—the day the defendants filed their motion—under Rule 6(a)(1)(C).

clear and explicit statements refusing to respond to the motion to dismiss or to address its merits.

Instead, the plaintiffs chose to rest on their assertion that the district court should not have accepted the motion to dismiss because of its late filing. Thus, the district court had before it a motion to dismiss, which it had accepted and ordered the plaintiffs to answer, and a filing in which the plaintiffs expressly stated that they would not respond to the motion to dismiss. The district court's local rules warn that the failure to respond in opposition to another party's motion "may be deemed sufficient cause for granting the motion by default." S.D. Fla. L. R. 7.1(c)(1). The district court instructed Powers early in the litigation that she must comply with the local rules or face sanctions, and Local Rule 7.1 expressly warned her that the failure to respond to a motion could result in the court granting the motion. We cannot say that the district court abused its discretion in enforcing this rule against the plaintiffs in the face of their outright refusal to comply with the court's order to respond to the motion to dismiss.

III.

The district court's denial of the plaintiffs' motion for default judgment is consistent with the strong preference in this Circuit for deciding cases on their merits rather than by default, and its decision was not an abuse of discretion. *See Surtain*, 789 F.3d at 1244–45. Unfortunately, the plaintiffs refused to proceed with the litigation by responding to the defendants' motion to dismiss, even after the district court ordered them to do so. Faced with the plaintiffs'

explicit refusal to respond to the motion to dismiss, the district court did not abuse its discretion in granting the motion, as provided in the court's local rules. We therefore affirm.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 19, 2023

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-10042-JJ
Case Style: Odeiu Powers, et al v. U.S. Homeland Security, et al
District Court Docket No: 0:19-cv-62967-AHS

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers
General Information: 404-335-6100 Attorney Admissions: 404-335-6122

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before GRANT, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-62967-CIV-SINGHAL/VALLE

ODEIU JOY POWERS,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on a *sua sponte* review of the record. The timeline of filings in this case is critical to understanding the Court's ruling in this Order. *Pro se* Plaintiff filed her first Complaint (DE [1]) in this case in February 2019. On August 6, 2021, Plaintiff filed the operative Second Amended Complaint (DE [95]), which Defendants moved to dismiss on August 23, 2021 (DE [98]). Notably, this generated a deadline of September 7, 2021, for Plaintiff to respond to the Motion to Dismiss.

Because Defendants untimely filed their Motion to Dismiss, however, Plaintiff moved for a default judgment against them on the same day (DE [101]). The Court denied Plaintiff's Motion for Default judgment, noting that the Motion to Dismiss was timely and that Defendants had previously moved to dismiss the prior amended complaint (DE [103]). Plaintiff moved for reconsideration of that Order (DE [105]). The Court granted Plaintiff's Motion for Reconsideration but again denied her Motion for Default Judgment, finding that Defendants have appeared and defended this action for more than two years (DE [107]). The Court also noted that the Eleventh Circuit favors deciding

Case Administration: 404-335-6135 Capital Cases: 404-335-6200
CM/ECF Help Desk: 404-335-6125 Cases Set for Oral Argument: 404-335-6141

OPIN-1 Ntc of Issuance of Opinion

cases on the merits. *Id.*

On September 7, 2021—the day Plaintiff's response to the Motion to Dismiss was due—Plaintiff appealed the Court's non-final, non-appealable paperless orders denying her Motion for Default Judgment (DE [110]).[1] Plaintiff also moved for a stay of her response deadline pending appeal, which the Court granted (DE [115]).

On November 19, 2021, the Eleventh Circuit issued its mandate dismissing Plaintiff's most recent appeal for lack of jurisdiction (DE [118]). On November 24, 2021, this Court lifted the stay and ordered Plaintiff to file her response to Defendants' Motion to Dismiss by December 3, 2021 (DE [119], [120]). Plaintiff failed to comply by the Court-ordered deadline. Instead of granting the Motion to Dismiss by default on December 4—as this Court has the authority to do under Local Rule 7.1(c)(1)—the Court decided to wait and see if Plaintiff would untimely file her response.

She did not. Instead, on December 6, 2021, Plaintiff filed a document styled "Acknowledgement of Order" (DE [121]). Plaintiff proclaims in this filing that she "respectfully cannot comply" with the Court's Order requiring her to respond to the Motion to Dismiss by December 3. *Id.* at 1. She rehashes her arguments that Defendants untimely filed their Motion to Dismiss and that ordering her response "would establish the legitimacy of [Defendants'] late-filed" responsive pleading. *Id.* at 2. She also characterizes her most recent appeal as a matter that "remains pending before the Eleventh Circuit," which is not "fully settled" because she is "pursu[ing]" reconsideration of the Eleventh Circuit's opinion. *See id.* She also claims that this Court is acting beyond its jurisdiction in ordering her to respond "after the case has already been closed and

[1] This appeal was Plaintiff's third appeal so far in this case. *See* (DE [52], [69], [110]).

without an explanation or request by [Defendants]" for their failure to timely respond. *Id.* at 3. Plaintiff also notes that this case has not been set for trial since the Eleventh Circuit's second mandate of reversal issued in April 2021. *Id.* at 3; *see* (DE [74]). Lastly, Plaintiff concludes her filing by stating that she "cannot respond as ordered." (DE [121], at 3). She does not request an extension of time to file her response to the Motion to Dismiss.

The Court does not know where to begin. Simply put, Plaintiff has willfully failed to comply with a Court Order. What's more, all her reasons for non-compliance are unjustified and without merit. First, she takes issue with the Court's 10-day deadline to respond to the Motion to Dismiss, which was entered shortly before the Thanksgiving holiday. Notably, these 10 days are an *additional* 10 days from when the original 14-day deadline to respond to the Motion to Dismiss had almost passed, not counting the elapsed period of more than two months while the most recent appeal was pending. It is true that the Court stayed the response deadline during the appeal. But Plaintiff makes it seem like the Court has not given her enough time to respond. This is not the case. She has had since August 23, 2021—more than 100 days—to evaluate Defendants' arguments in their Motion to Dismiss and formulate a response.

Second, she seems to think that this Court lacks jurisdiction to take any further action in this case. It does not. Plaintiff cites case law referring to a court's order granting a motion to dismiss with leave to amend, which becomes final after the time for amendment passes with no action by plaintiff. *See, e.g.*, *Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 720 (11th Cir. 2020); *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126, 1132 (11th Cir. 1994). That situation is not present here; no dismissal order or final judgment has been entered as to the most recent Motion

to Dismiss. The Court still has the power to hear this case.

Third, Plaintiff seems to think that her appeal of the Court's November 24 Order denying her Motion for Default Judgment is still pending before the Eleventh Circuit. It is not. The Eleventh Circuit issued its mandate on November 19, 2021. Federal Rule of Appellate Procedure 41(c) provides that "[t]he mandate is effective when issued." In no uncertain terms, this means that Plaintiff's appeal is no longer pending; it has been dismissed for lack of jurisdiction. That she plans to move for reconsideration does not change this fact. There is no longer a stay in place in this Court, and the briefing schedule has resumed.

Fourth, Plaintiff apparently takes issue with the lack of a scheduling order in this case. *See* Fed. R. Civ. P. 16(b)(2) ("The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared."). But she can't have it both ways. Either she wants this case to move forward, or she wants it to be stayed.

Regardless, the Court has not erred in failing to enter a scheduling order after the second appellate mandate issued in April 2021. Defendants filed a motion to dismiss the amended complaint in June 2021, which was mooted by Plaintiff's filing of a Second Amended Complaint in August 2021. Defendants have now moved to dismiss the Second Amended Complaint by challenging the legal sufficiency of Plaintiff's claims. *See* (DE [98]). As the Eleventh Circuit has held, "[f]acial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before discovery begins." *Chudasama v. Mazda Motor Corp.*, 123

F.3d 1353, 1367 (11th Cir. 1997) (footnote omitted). "Such a dispute always presents a purely legal question; there are no issues of fact because the allegations contained in the pleading are presumed to be true." *Id.* "Allowing a case to proceed to discovery on a facially invalid claim 'does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system.'" *In re Smith*, 849 F. App'x 867, 872 (11th Cir. 2021) (quoting *Chudasama*, 123 F.3d at 1368). Consequently, the Court is following Eleventh Circuit case law in not allowing discovery to proceed until the Court rules on the Motion to Dismiss.

The Court is now faced with the question of how to proceed in light of Plaintiff's willful failure to comply with a Court Order. As the record stands, Defendants have filed a Motion to Dismiss, albeit untimely, and Plaintiff is *choosing* to violate a Court Order and not file a response. Notably, she does not request an extension of time; she simply says she "cannot" comply. In the sole appeal in which Plaintiff prevailed, the Eleventh Circuit—despite recognizing that a district court cannot serve as *de facto* counsel for a *pro se* party—instructed this Court to "advise [Plaintiff] of the deficiencies in her complaint and give her an opportunity to amend." *Powers v. Sec'y, U.S. Homeland Sec.*, 846 F. App'x 754, 759 (11th Cir. 2021). This Court did so. *See* (DE [76]). By moving to dismiss the Second Amended Complaint, Defendants have determined that it is still legally insufficient. Curiously, Plaintiff is literally refusing to take the opportunity to explain to this Court why she should prevail.

Plaintiff maintains that a default judgment should be entered against Defendants

for their untimely filed Motion to Dismiss, which is one of the reasons why she does not want to respond to the Motion to Dismiss. But Plaintiff perhaps doesn't realize that, when presented with a motion for default judgment, the Court must still independently determine that the plaintiff's well-pleaded complaint adequately states a claim for the defendant's liability. *See Singleton v. Dean*, 611 F. App'x 671, 671 (11th Cir. 2015) ("[E]ntry of default judgment is only warranted when there is a sufficient basis in the pleadings for the judgment entered, with the standard for 'a sufficient basis' for the judgment being akin to that necessary to survive a motion to dismiss for failure to state a claim." (quoting *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1244–45 (11th Cir. 2015))). So Plaintiff is not *automatically* entitled to judgment against Defendants just because their Motion was untimely. The Court is unwilling to re-write the law and would still be required to independently determine that Plaintiff's Second Amended Complaint adequately states a claim.

The Court is no longer willing to tolerate Plaintiff's delay tactics in this case. Under Federal Rule of Civil Procedure 41(b), "a district court may *sua sponte* dismiss a plaintiff's action for failure to comply with the [Federal Rules of Civil Procedure] or **any** order of the court." *Owens v. Pinellas Cty. Sheriff's Dep't*, 331 F. App'x 654, 656 (11th Cir. 2009) (bold emphasis added) (citing *Lopez v. Aransas County Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978)). Although *pro se* litigants are entitled to leniency, a *pro se* party—like any other litigant—is subject to sanctions for failure to comply with court orders. *See Haji v. NCR Corp.*, 834 F. App'x 562, 563 (11th Cir. 2020) (citations omitted). "To dismiss a complaint under Rule 41(b), a district court must find: (1) a clear record of delay or willful contempt; and (2) that lesser sanctions would not suffice." *Id.* (citing *Goforth v. Owens*,

766 F.2d 1533, 1535 (11th Cir. 1985)).

Both *Haji* factors are satisfied here. The Court need not recount the detailed procedural history of this case. Suffice it to say, Plaintiff filed this case in February 2019, has already appealed three orders, and refuses to comply with the Court's Order to respond to Defendants' pending Motion to Dismiss. This demonstrates a clear record of delay and willful contempt.[2] The Court also finds that sanctions less than dismissal will not suffice. Plaintiff is *pro se*, so the Court finds that monetary sanctions would be inappropriate. The Court has expended considerable time and resources—diverted from other cases—to rule on Plaintiff's filings. This action cannot remain on the Court's docket at the pleading stage forever. "A district court has inherent authority to manage its own docket so as to achieve the orderly and expeditious disposition of cases." *Riddell v. Florida*, 702 F. App'x 869, 871 (11th Cir. 2017) (quoting *Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc.*, 556 F.3d 1232, 1240 (11th Cir. 2009)). Accordingly, a Rule 41(b) dismissal without prejudice for failure to comply with the Court's November 24, 2021 Order is warranted here.[3] Alternatively, the Court finds an independent basis to grant by default Defendant's Motion to Dismiss (DE [98]) under Southern District of Florida Local Rule 7.1(c)(1). It is therefore

[2] It does not escape the Court's attention that Defendants missed the deadline to file their most recent Motion to Dismiss, and Plaintiff here has also missed her deadline to file the response. But the situations are different. Plaintiff has expressly stated in a filing to the Court that she will not comply with the Court's Order, nor does she seek an extension of time. While the Court ultimately received a responsive pleading from Defendants, the Court has not received even an untimely response from Plaintiff.

[3] The Court notes that Defendants' Motion to Dismiss (DE [98]) raises the untimeliness of Plaintiff's claims. The Court also acknowledges case law holding that "where a dismissal without prejudice has the effect of precluding the plaintiff from re-filing [her] claim due to the running of the statute of limitations, it is tantamount to a dismissal with prejudice." *Powell v. Harris*, 2017 WL 9249661, at *1 (11th Cir. Nov. 27, 2017) (citing *Justice v. United States*, 6 F.3d 1474, 1482 & n.15 (11th Cir. 1993)). The Court makes no ruling on the merits of Defendants' arguments regarding whether Plaintiff's claims are barred by the statute of limitations.

ORDERED AND ADJUDGED that this action is **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b). The Clerk of Court is directed to **CLOSE** this case and **DENY AS MOOT** any pending motions.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 9th day of December 2021.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel via CM/ECF and to Plaintiff, *pro se*, via U.S. Mail