No. 18-1459

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MICHAEL JOHNSON,
Plaintiff-Appellant,

v.

JASON DALKE, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Western Division
Case No. 17-CV-50384
The Honorable Philip G. Reinhard

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT MICHAEL JOHNSON

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DISCLOSURE STATEMENT

I, the undersigned counsel for the Plaintiff-Appellant, Michael Johnson, furnish the following list in compliance with Fed. R. App. P. 26.1 and Cir. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case: Michael Johnson.

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court:

Sarah O'Rourke Schrup (attorney of record) and Arian Soroush (senior law student) of the Bluhm Legal Clinic at the Northwestern Pritzker School of Law.

4. The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear:

N/A

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d): **Yes**

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INTRODUCTION

Prisoners in the United States regularly endure harsh conditions of confinement, and every now and then those conditions violate the Eighth Amendment. To obtain redress for those constitutional violations, however, prisoners must clear many hurdles. These litigation obstacles have become particularly pronounced since 1996 when Congress enacted the Prisoner Litigation Reform Act (PLRA), an act meant to curb the volume of prisoner lawsuits. Under the PLRA, after a prisoner has first exhausted all possible administrative remedies, he may try to proceed with an action in court. If a prisoner does so but cannot afford to pay court filing fees, he may proceed with his claims *in forma pauperis*. In order to prevent non-meritorious litigation, however, the PLRA will not allow a prisoner to proceed *in forma pauperis* if he has previously had three cases dismissed as frivolous, malicious, or for failure to state a claim. *See* 28 U.S.C. § 1915(g). To aid the courts' enforcement of the PLRA's "three-strike rule," prisoners seeking to proceed *in forma pauperis* must disclose their prior litigation history in the complaint. *Hoskins v. Dart*, 633 F.3d 541, 544 (7th Cir. 2011).

Michael Johnson is a prisoner who tried to do everything he could to overcome the PLRA hurdles and have his case heard in court. He had exhausted all available administrative remedies; he did not skip any required portion of the complaint form; and he disclosed, to the best of his memory, his prior lawsuits—all while suffering mental illness and with very limited help and resources. Yet the district court denied Mr. Johnson the opportunity to litigate his claims because it

presumed that Mr. Johnson's failure to disclose two previous lawsuits—neither of which was active nor resulted in a "strike" under the PLRA—constituted fraud on the court and warranted dismissal with prejudice as a sanction.

This Court should clarify a standard under which district courts cannot presume fraud merely from a prisoner's failure to disclose his entire litigation history in the court-provided form. Such a per se presumption of fraud vastly expands the PLRA beyond its purpose and also ignores the realities that prisoners face when attempting to file meritorious claims. Given the lack of legal resources in prison, some prisoners will undoubtedly fall short in disclosing their prior litigation histories simply because they have difficulty accessing online databases that contain the relevant information. Many prisoners do not have records of their prior litigation matters and must recite this information from memory. Other prisoners might simply have a difficult time understanding the form and its requirements. If this Court affirms the district court's finding of fraud from an innocent clerical error, thousands of prisoners may be barred from bringing meritorious claims due to no fault of their own.

JURISDICTIONAL STATEMENT

The United States District Court for the Northern District of Illinois had subject matter jurisdiction over Michael Johnson's § 1983 complaint pursuant to 28 U.S.C. § 1331. The district court entered a final order dismissing Mr. Johnson's complaint with prejudice on February 15, 2018. (A.12.) Mr. Johnson filed a timely notice of appeal in the United States Court of Appeals for the Seventh Circuit on February 28, 2018. (R.10.) This Court has jurisdiction to review the district court's dismissal of Mr. Johnson's suit pursuant to 28 U.S.C. § 1291, which grants jurisdiction of "all final decisions of the district courts of the United States" to the courts of appeal.

STATEMENT OF THE ISSUES

I. Whether the district court clearly erred in finding that a pro se prisoner requesting *in forma pauperis* status committed fraud on the court when he filed a complaint that disclosed eight prior lawsuits to which he was a plaintiff and omitted two prior lawsuits that he was not actively litigating and that did not result in a strike under the PLRA three-strike rule, and when the prisoner, who had not "struck out" under the PLRA, attributed those omissions to an unintentional mistake.

II. Whether the district court abused its discretion in dismissing a pro se prisoner's case with prejudice as a sanction for fraud given that pro se prisoner-plaintiffs are afforded liberal pleading standards, the extreme sanction of dismissal with prejudice is reserved only for the most serious abuses of the judicial process, and the prisoner had nothing to gain by omitting the cases that he did.

STATEMENT OF THE CASE

On December 18, 2017, Michael Johnson, an inmate now at the Joliet Treatment Center, filed a civil complaint against nine Illinois Department of Corrections (IDOC) correctional officers in their individual capacities. (R.1 at 3–5.) Mr. Johnson alleged Eighth Amendment violations related to his conditions of confinement while at the Dixon Correctional Center: prison officials repeatedly refused Mr. Johnson's requests for a sanitary mattress, forcing him to sleep on one that caused him sores and rashes all along his face, neck, arms, chest, and back; officials also repeatedly denied Mr. Johnson's requests for dental hygiene—refusing to even provide him with toothpaste for eight months—causing Mr. Johnson to suffer bleeding gums and gingivitis. (R.1 at 16–20.) These conditions also exacerbated Mr. Johnson's suffering from mental illness. (R.1 at 18–19.) Mr. Johnson supported his allegations with detailed affidavits and medical records. (R.1 at 22–45.) In addition to his complaint, Mr. Johnson also filed a motion to proceed *in forma pauperis* and a motion for recruitment of counsel. (R.5.)

In the section of Mr. Johnson's complaint eliciting information about his prior litigation history, Mr. Johnson listed eight prior and pending cases to which he has been or is currently a plaintiff. (A.1–8.) *Johnson v. Buchenau*, Case No. 12 CV 1127 (C.D. Ill. Sept. 11, 2013) (section 1983 claim dismissed on summary judgment without prejudice; holding Mr. Johnson did not exhaust administrative remedies); *Johnson v. Stuck*, Case No. 13 CV 00185 (S.D. Ill. Dec. 20, 2013) (section 1983 claim dismissed on summary judgment without prejudice; holding Mr. Johnson did not

exhaust administrative remedies); *Johnson v. Moss*, Case No. 14 CV 1207 (C.D. Ill. Sept. 26, 2014) (section 1983 claim dismissed at merit review stage without prejudice); *Johnson v. Sullivan*, Case No. 14 CV 1216 (C.D. Ill. Nov. 24, 2015) (section 1983 claim; verdict in favor of defendants after jury trial); *Johnson v. Prentice*, Case No. 16 CV 1244 (C.D. Ill. filed June 30, 2016) (pending § 1983 claim; Defendant moved for summary judgment); *Johnson v. Blanchard*, Case No. 17 CV 01146 (C.D. Ill. July 31, 2018) (section 1983 claim pending at the time of complaint, but later voluntarily dismissed by Mr. Johnson); *Johnson, Jr. v. Halfacre*, Case No. 17 CV 50248 (N.D. Ill. filed Aug. 18, 2017) (pending § 1983 claim); *Johnson v. Pyle*,[1] Case No. 17 CV 01326 (C.D. Ill. Jan. 27, 2016) (voluntarily discontinued due to inability to litigate). The extent of detail he provided for each case varied because Mr. Johnson noted for some cases that he did not recall the docket number or name of the judge assigned to the case. (A.1–8.)

The district court granted Mr. Johnson's motion to proceed *in forma pauperis*, but did not let Mr. Johnson's case proceed any further. (A.9.) Although the district court noted the eight cases listed on Mr. Johnson's complaint, it claimed to have found at least three other lawsuits that Mr. Johnson did not disclose. (A.10) (citing *Johnson v. Dalke*, Case No. 17 CV 50265 (N.D. Ill. Nov. 6, 2017); *Johnson v. Bennet*, Case No. 14 CV 1210 (C.D. Ill. Apr. 14, 2016); *Turner v. Wexford*, Case No. 13 CV 3072 (C.D. Ill. Mar. 14, 2013)). The district court, without any further examination into the natures or dispositions of those cases, labeled

[1] Mr. Johnson listed this case name as "Johnson v. Zook?"—Zook was a different defendant named in the same case.

Mr. Johnson's failure to disclose them as "fraud" on the court. (A.10.) The court ordered that Mr. Johnson show good cause in writing why it should not summarily dismiss his complaint on initial review for failure to fully disclose his prior litigation. (A.10.)

None of the three cases the court found, however, would have resulted in a strike for Mr. Johnson under the PLRA. *Turner v. Wexford* was a case to which Mr. Johnson was never even a party—he was named in the complaint but never signed his name, so the judge terminated Mr. Johnson as a plaintiff immediately upon its filing. Case No. 13 CV 3072 (C.D. Ill. Mar. 14, 2013). *Johnson v. Dalke*[2] was voluntarily discontinued by Mr. Johnson due to his inability to litigate. Case No. 17 CV 50265 (N.D. Ill. Nov. 6, 2017). *Johnson v. Bennett* was voluntarily discontinued for the same reason. Case No. 14 CV 1210 (C.D. Ill. Apr. 14, 2016).

In response to the district court's request for a reason why Mr. Johnson failed to disclose his prior litigation history, Mr. Johnson responded with a letter explaining that he simply made a mistake, and that his failure to provide information for additional cases was unintentional. (A.11.) Mr. Johnson emphasized that, despite having filed multiple suits over many years in prison, he was not an "experienced" litigant. (A.11.) In apologizing, Mr. Johnson referenced an additional

[2] This case presented the same cause of action and alleged the same facts as the current complaint. Mr. Johnson seems to have merely re-filed the same complaint with the same forms.

case that he filed on the same day as the complaint in issue. *Johnson v. Haenitsch*, Case No. 17 CV 50383 (N.D. Ill. Feb. 15, 2018).[3] (A.11.)

Despite Mr. Johnson's response letter, the district court dismissed Mr. Johnson's case for fraud, finding his explanations inadequate. (A.12.) The court reasoned that listing all cases should not have been difficult, particularly because "two of the missing four cases were filed at or around the same time as several of the listed cases, another case was filed within weeks of this complaint, and the fourth case was filed contemporaneously with this complaint."[4] (A.13.) It also pointed to Mr. Johnson's "significant litigation history" as evidence that Mr. Johnson has experience with court filing and understands the importance of providing complete information. (A.13.) Mr. Johnson's omissions, it noted, "put[] the onus on the court to research online databases" and determine whether any prior filings precluded Mr. Johnson's motion to proceed *in forma pauperis*. (A.13.) In order to "send a strong message" to future prisoner-litigants about this ethical obligation, the district court dismissed Mr. Johnson's complaint with prejudice. (A.13.) Mr. Johnson thus remains unable to seek relief for his rashes, sores, dental bleeding, and psychological anguish.

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[3] The district court did not mention this case in its initial order, and Mr. Johnson did not list it in the complaint. This lawsuit, however, was not filed prior to the case at issue but rather contemporaneously. And as the district court itself noted, Mr. Johnson was only required to identify "all of his *previously* filed cases." (A.13) (emphasis added).

[4] In this second order, the court was still counting the *Turner v. Wexford* case, to which Mr. Johnson was never even a party. Case No. 13 CV 3072 (C.D. Ill. Mar. 4, 2013). It also counted *Johnson v. Haenitsch*, Case No. 17 CV 50383 (N.D. Ill. Feb. 15, 2018), which was not a lawsuit filed *prior* to the current complaint as noted above. *See supra* note 3. Without these two, Mr. Johnson actually only omitted two "prior lawsuits."

SUMMARY OF THE ARGUMENT

The district court clearly erred in finding that Mr. Johnson committed fraud. First, Mr. Johnson's non-disclosures did not conceal any prior "strikes" that he accrued under the PLRA, and so they had no bearing on his *in forma pauperis* eligibility. The plaintiffs who usually have their cases dismissed for fraudulently omitting litigation history are those who try to proceed *in forma pauperis* despite having already "struck out" under the PLRA three-strike rule. Because Mr. Johnson had no strikeout to hide, Mr. Johnson's omissions could not have been intended to defraud the court; he would have been able to proceed *in forma pauperis* even with full disclosure.

Second, although Mr. Johnson did not disclose *some* prior litigation, he did disclose *most* of it. Mr. Johnson disclosed eight cases, demonstrating intent to disclose—not to omit. Mr. Johnson disclosed all of his previously filed lawsuits that he was still actively litigating, as well as every suit that ever actually reached a final disposition. On the other hand, he was not actively litigating either of the cases that he failed to disclose, and they never reached a final disposition—he had voluntarily discontinued both. Thus, it was plausible that he simply forgot to include them.

In addition to clearly erring in its finding of fraud, the district court abused its discretion in dismissing Mr. Johnson's case with prejudice. The district court was required to apply liberal pleading standards to Mr. Johnson's pro se complaint and subsequent show-cause letter, interpreting them in the light most favorable to

Mr. Johnson. Instead, the court unreasonably inferred deceit and bad faith when alternative, innocent explanations were readily perceivable and expressly alleged. If it were wary of taking Mr. Johnson's allegations of mistake as true in the first instance, the district court should have at least provided Mr. Johnson a meaningful opportunity to substantiate his explanations—even a brief telephonic hearing would have sufficed.

In any case, Mr. Johnson's conduct did not rise to the level of willful misconduct that warrants dismissal with prejudice. Such a sanction is reserved for the most egregious efforts to interfere with the judicial process, not for innocent clerical errors. Lesser sanctions were available, such as dismissal without prejudice, which would have allowed Mr. Johnson to remedy his mistaken omissions and re-file a more thoroughly completed complaint. Instead, Mr. Johnson is now barred from litigating the serious claims alleged in his complaint.

ARGUMENT

I. The district court clearly erred in finding that Mr. Johnson committed fraud on the court in disclosing most but not all of his prior litigation because Mr. Johnson's partial omission did not conceal any prior "strikes" under the PLRA three-strike rule and so was not aimed toward manipulating the court.

Under the Prison Litigation Reform Act (PLRA), a prisoner cannot bring a suit *in forma pauperis* (IFP) when a district court has previously dismissed three of the prisoner's prior complaints as frivolous, malicious, or for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). To aid courts in enforcing the PLRA's "three-strike rule," prisoners seeking to proceed IFP must disclose their prior litigation history in the complaint. *Hoskins v. Dart*, 633 F.3d 541, 544 (7th Cir. 2011). A prisoner seeking to proceed IFP commits fraud on the court when he intentionally and materially omits some or all of his prior litigation in his complaint in an attempt to manipulate the court. *Hoskins*, 633 F.3d at 543 (holding that an omission of prior litigation history is fraudulent if it is both material and intentional); *Sloan v. Lesza*, 181 F.3d 867, 859 (7th Cir. 1999) (warning litigants against "effort[s] to bamboozle the court"). In particular, an inmate's omission is fraudulent if he conceals a prior "strikeout" that he accrued under the PLRA. *Sloan,* 181 F.3d at 859. This Court reviews a district court's finding of fraud for clear error. *Hoskins*, 633 F.3d at 543.

Fraud on the court is an extreme finding meant to apply to the most egregious conduct by litigants. *See Kennedy v. Schneider Electric*, 893 F.3d 414, 420 (7th Cir. 2018) (explaining this Court's high bar for what qualifies as fraud on the court). This Court has described fraud on the court as fraud "directed to the judicial

machinery itself." *Id.* at 419. Common examples of fraud on the court are when a litigant bribes a judge or presents falsified evidence. *Id.*

In line with the high bar for fraud generally, findings of fraud in the PLRA context are usually reserved for plaintiffs who try to proceed *in forma pauperis* despite already having struck out under the PLRA and who therefore conceal their previous strikes—in other words, plaintiffs who conceal their IFP ineligibility. For example, in *Sloan v. Lesza*, this Court affirmed the dismissal of a prisoner's claim as a sanction for fraud when several prior judges had found that the prisoner had struck out under the PLRA, yet the prisoner failed to disclose his strikeout in his complaint. 181 F.3d at 859. Usually, like in *Sloan*, these plaintiffs are on notice that they have already struck out because previous judges have warned them. *See, e.g.*, *Ammons v. Gerlinger,* 547 F.3d 724, 725 (7th Cir. 2008) (per curiam) (holding that a prisoner who was found by a previous court to have struck out under the PLRA acted fraudulently when he failed to disclose the three strikes in a motion to appeal *in forma pauperis*). These cases evince a deliberate intent to manipulate the court—deceptively attempting to avoid paying litigation fees—and so rise to the level of misconduct warranting a finding of fraud.

Innocent omissions by plaintiffs with no strikeout to hide, however, do not rise to the level of fraud. *See Montague v. Williams*, No. 16 C 2609, 2017 WL 2345561, at *1 (N.D. Ill. May 30, 2017); *Hines v. Thomas*, 604 F. App'x 796, 800 (11th Cir. 2015). In *Montague*, for example, the district court found that a prisoner-plaintiff's complaint was not fraudulent even though the prisoner omitted

four of his five past lawsuits in his complaint. *Montague*, No. 16 C 2609, 2017 WL 2345561, at *2. The court emphasized that the purpose of the litigation history disclosure requirement is to track PLRA strikes. *Id.* It looked at the nature of the undisclosed cases and determined that none counted as a strike. *Id.* The court held that because the plaintiff was not hiding any strikes in his undisclosed lawsuits, he could not have intended the omission as fraud on the court. *Id.*; *see also Hines*, 604 F. App'x at 797, 799–801 (holding that a prisoner-plaintiff's failure to disclose some prior litigation in a complaint does not necessarily indicate that he is trying to avoid a three-strikes dismissal and can be attributed to an honest mistake). In other words, when a plaintiff has nothing to gain by hiding his prior litigation, his omissions are not an intentional effort to defraud the court.

A plaintiff's omission of prior litigation is even more likely to be inadvertent when he does disclose at least some of his prior lawsuits. *See Montague*, No. 16 C 2609, 2017 WL 2345561, at *2. In *Montague*, the fact that the plaintiff disclosed one of his five prior lawsuits only strengthened the court's belief that the omissions were not intentional or deceitful. *Id.*; *see also Hines*, 604 F. App'x at 797–801 (holding that the omission of some prior lawsuits was not fraudulent when the plaintiff did disclose one prior lawsuit). After all, there are many reasons why a pro se prisoner-plaintiff might be unable to fully report his litigation history: lost or inaccessible legal papers, no access to PACER, mental limitations, or simple forgetfulness over time.

In the vast majority of cases—consistent with the purpose of the disclosure requirement and relevant policy considerations—courts limit findings of fraud to circumstances in which litigants hide their strikeouts. In only one case, *Hoskins v. Dart*, has this Court found fraud wholly independent of the strikeout inquiry. 633 F.3d at 543. That case, however, is an outlier that turned on two distinctive facts: the plaintiff was actively litigating the cases he omitted and he deliberately ignored the entire prior litigation section of the complaint. The prisoner in *Hoskins* brought five separate but contemporaneous suits under 42 U.S.C. § 1983, alleging various civil rights violations by the Sheriff of Cook County and some prison officers. *Id.* at 542. One year earlier, the prisoner had filed three similar civil rights suits. *Id.* at 543. He was still litigating those claims at the time he filed the five new suits. *Id.* He did not, however, disclose any of those three prior suits in his five new complaint forms. *Id.* He claimed that another inmate told him that he could ignore the portion of the complaint form asking for his prior litigation. *Id.* The district court discovered the undisclosed cases, found their omission to be fraudulent, and dismissed each of the five cases for fraud. *Id.*

On appeal, this Court upheld the finding of fraud. *Id.* It held the omissions to be both material and intentional, and thus fraudulent. *Id.* Although at first blush *Hoskins* appears to stand for the proposition that a fraud dismissal is warranted for omissions completely independent of IFP eligibility, that would be an over-generalization of what happened in that case. In its reasoning, this Court emphasized that the prisoner was actively litigating the three prior cases at the

time of filing the new complaints, and so had not forgotten about them. *Id.* Additionally, the Court highlighted that the litigant had acknowledged the portion of the form asking for prior litigation, but upon the advice of another inmate, deliberately ignored the entire section. *Id.* Based on these facts, the Court found the omissions to be intentional.[5] *Id.*

Since this Court's ruling in *Hoskins*, it has indeed affirmed dismissal in other cases where a prisoner-litigant failed to disclose prior litigation. In every one of those cases, however, just like in all of the cases that preceded *Hoskins*, the litigant had concealed actual strikes. *See, e.g.*, *Ozsusamlar v. Szoke*, 669 F. App'x 795, 796 (7th Cir. 2016); *Postlewaite v. Duncan*, 668 F. App'x 162, 163–64 (7th Cir. 2016); *Ramirez v. Barsanti*, 654 F. App'x 822, 823 (7th Cir. 2016); *Thompson v. Taylor*, 473 F. App'x 507, 509 (7th Cir. 2012).

The district court erred in finding Mr. Johnson to have committed fraud on the court because Mr. Johnson's omissions did not conceal any prior strikes that he accrued under the PLRA three-strike rule. He made a clear effort to disclose, listing eight cases, and none of the cases he failed to disclose counted as strikes against him. There is only one case in his entire litigation history that might count as a strike,[6] and Mr. Johnson disclosed that case in his complaint. Unlike the litigant in

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[5] This Court in *Hoskins* did not articulate precise standards to govern when an omission actually *is* material and intentional, nor did it delineate examples of when an omission would *not* be fraudulent. In short, it did not provide any guidance to the inquiry beyond its facts.

[6] *Johnson v. Moss* was dismissed with leave to replead as to certain claims, but dismissed with prejudice as to other claims. Case No. 14 CV 1207 (C.D. Ill. Sept. 26, 2014). The court, in its order, made no explicit reference to Mr. Johnson accruing a strike. *See* Merit Review Order, *Johnson v. Moss*, Case No. 14 CV 1207 (C.D. Ill. June 17, 2014).

Sloan who tried to trick the court into granting him IFP status, Mr. Johnson had nothing to gain by omitting the cases that he did. To the contrary, Mr. Johnson only stood to gain from honest disclosure—had he fully disclosed, he would have been equally able to proceed IFP. It would not be savvy or even logical for such a prisoner to risk the outcome that Mr. Johnson finds himself in today: completely barred from litigating facially meritorious Eighth Amendment claims. The district court clearly erred in interpreting Mr. Johnson's omissions as anything but innocent.

Mr. Johnson's case is also distinguishable from *Hoskins* in some key respects. First, unlike the plaintiff in *Hoskins* who did not list any of his previous cases, Mr. Johnson did list most of his previous cases. These disclosures show that he intended to disclose his litigation history, unlike the plaintiff in *Hoskins* who deliberately chose to skip that portion of the form.[7] Moreover, the court in *Hoskins* emphasized the fact that the plaintiff was actively litigating the cases that he failed to disclose, and so was unlikely to have innocently forgotten about them. Mr. Johnson, however, was not actively litigating any of the cases that he omitted at the time of filing the complaint at issue. It is more plausible that Mr. Johnson simply forgot to include his undisclosed cases—one of which he had voluntarily dismissed more than a year earlier and the other of which he had voluntarily dismissed before filing this case. *See Johnson v. Bennett* and *Johnson v. Dalke*, *supra* page 7.[8]

[7] Mr. Johnson's eight disclosures also outnumber the one single disclosure by the plaintiff in *Montague*, which was found to be sufficient to rebut any finding of fraud.

[8] As noted above, the district court also erroneously named two additional cases even though Mr. Johnson was not obligated to disclose either. *See Turner v. Wexford*,

As explained above, the facts in the present case materially differ from those in *Hoskins*, and the lower court should have distinguished *Hoskins* just as other courts have done. *See Montague*, No. 16 C 2609, 2017 WL 2345561, at *2. The Eleventh Circuit, too, has recognized that a plaintiff alleging an honest mistake may rebut a finding fraud, *Hines*, 604 F. App'x at 800–01; it would be appropriate for this Court to do so in Mr. Johnson's case as well. Indeed, if Mr. Johnson's claim of mistake is not sufficient then virtually no explanation would be. The district court essentially created a per se finding of fraud whenever a pro se prisoner-litigant fails to perfectly complete his complaint, and it relied on *Hoskins* to do so. But this could not have been the intended legacy of *Hoskins*. It may be that a plaintiff commits fraud in the rare, exceptional circumstance where he admits to intentionally omitting ongoing cases, like in *Hoskins*. Otherwise, fraud is best limited to situations where a prisoner-litigant conceals that he has struck out under the PLRA three-strike rule—a standard consistent with all of this Court's decisions before and after *Hoskins*.

Case No. 13 CV 3072 (C.D. Ill. Mar. 4, 2013) (Mr. Johnson was named but never agreed to be a plaintiff in this complaint and the court immediately terminated him as one upon receiving the complaint); *Johnson v. Haenitsch*, Case No. 13 CV 3072 (C.D. Ill. Feb. 15, 2018) (not filed prior to the complaint at issue).

II. The district court abused its discretion in dismissing Mr. Johnson's case with prejudice because it did not liberally construe his pleadings and improperly disregarded Mr. Johnson's plausible explanations for why he failed to disclose all prior cases.

The district court should have liberally interpreted Mr. Johnson's complaint and subsequent show-cause letter and, had it done so, could not have dismissed Mr. Johnson's case for fraud. Documents filed by pro se litigants must be liberally construed and held to less stringent standards than otherwise apply. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Accordingly, when a district judge assesses a pro se prisoner-plaintiff's complaint, it should not infer deceit and bad faith when alternative, plausible, innocent explanations exist. Here, the court below failed to apply this requirement on two occasions: (1) when assessing the disclosures in the initial complaint; and (2) when deciding whether to credit Mr. Johnson's explanations for his omissions in his show-cause letter. This Court reviews a district court's decision to dismiss a case as a sanction for an abuse of discretion. *Hoskins*, 633 F.3d at 543.

The district court erroneously construed Mr. Johnson's complaint to be intentionally deceitful, simply because a portion of the form was not technically completed in its entirety. People routinely make mistakes when completing forms: they are forgetful; they misinterpret instructions; they lose the underlying substantiating paperwork. In prison, these challenges and missteps are more pronounced, as prisoners lack resources, experience, and assistance. *See* Benjamin R. Dryden, Note, *Technological Leaps and Bounds: Pro Se Prisoner Litigation in the Internet Age*, 10 PA. J. CONST. L. 819, 821–22 (2008) (explaining the barriers

prisoners face in accessing dockets, legal research, and other materials). The district court certainly could have suspected that Mr. Johnson's omission might have been accidental, and such a view was reinforced when the court found the missing cases from his complaint form—none counting as a strike. Yet, instead, the court used these isolated, undisclosed non-strikes as a basis for dismissal.

Beyond Mr. Johnson's initial complaint, the district court also misinterpreted Mr. Johnson's later pleadings. His show-cause letter is a perfect example of a filing that the district court should have—but did not—construe liberally.[9] In the letter, Mr. Johnson alleged several facts: that he "simply made a mistake"; that he "unintentionally" "forgot" to include the proper information; that he, contrary to the court's assertion, is not an experienced litigant. The liberal interpretation—crediting Mr. Johnson's motives and explicit explanation—should have prevailed. But rather than liberally credit or even investigate via additional proceedings the explanations the court had ordered Mr. Johnson to provide, it simply ignored them. *See Sanders v. Melvin*, 873 F.3d 957, 960–61 (7th Cir. 2017) (holding that a district court cannot disregard out of hand the statements made by a prisoner-litigant prior to merit review); *see also id.* at 961 ("[I]f a claim . . . seems fishy to the judge, it must be supported by . . . affidavits or, if appropriate, hearings.").

[9] Notably, the district court in *Hoskins* never asked for a show-cause letter before dismissing his case, *cf.* Fed. R. Civ. P. 11(c)(1) (requiring the court to provide a party "notice and reasonable opportunity to respond"), and treated the plaintiff's letter explaining the omissions as a post-judgment motion. *See* Minute Entry, *Hoskins v. Dart*, Case No. 10 CV 703 (N.D. Ill. Feb. 26, 2010); Minute Entry, *Hoskins v. Dart*, Case No. 10 CV 703 (N.D. Ill. Mar. 17, 2010).

Such an opportunity to substantiate allegations through additional proceedings is especially important for prisoner-plaintiffs seeking to proceed *in forma pauperis* under the PLRA. Litigating IFP is one of the very limited avenues for prisoners seeking redress for abhorrent prison conditions and other violations of constitutional rights. Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Enters Adulthood*, 5 UC IRVINE L. REV. 153, 155 (2015). Litigating IFP also means that the prisoner has already exhausted all administrative remedies, and so litigation is his last chance. *See* Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1627–28 (2003) (explaining the high bar of administrative remedy exhaustion for prisoner-litigants). Meanwhile, dismissal with prejudice is the most extreme sanction that effectively bars plaintiffs from litigating their civil rights without ever even reaching the merits of their claims. Thus, a court should make sure that dismissal is warranted prior to administering the sanction.

In Mr. Johnson's case, the district court could have ascertained the truth of Mr. Johnson's explanations for his omissions at minimal cost, literally with just a few minutes' time. The court had already discovered the cases it claimed Mr. Johnson did not disclose. It could have taken the extra step of checking the outcomes of those cases to determine whether any were strikes that Mr. Johnson was attempting to hide. If they were not strikes, then it could have reasonably deduced that Mr. Johnson had no reason to lie and so his explanation of mistake was plausible. Further, it could have allowed Mr. Johnson a telephonic hearing to explain himself. *See* Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555,

1630 (2003) (explaining how the PLRA requires judges to obtain inmate participation in pretrial proceedings through telephone, video conference, or other telecommunications technology). Dismissals for fraud turn on the dishonesty of a plaintiff; it is difficult to imagine how a judge could discredit a plaintiff's facially reasonable explanations against fraud without any probing of his credibility via live questioning. In short, some additional truth-finding step was required before the district court could resort to such a harsh sanction of dismissal with prejudice.

III. The district court abused its discretion in dismissing Mr. Johnson's case with prejudice because Mr. Johnson's conduct was not aimed toward manipulating the court and so does not rise to the level of willful misconduct that warrants the harsh sanction of dismissal with prejudice.

Dismissal with prejudice is an extreme sanction that is only appropriate when a litigant has willfully abused the judicial process, conducted litigation in bad faith, or demonstrated fault. *Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 776, 782 (7th Cir. 2016), *cert. denied*, 138 S. Ct. 116 (2017) (holding that bribing a witness constituted a deliberate attempt to deceive the court). This Court has made it clear that district judges must consider other sanctions before resorting to dismissal as a sanction for fraud, *Rivera v. Drake*, 767 F.3d 685, 686–87 (7th Cir. 2014), even though dismissal with prejudice remains an option for a district court in its prudent exercise of discretion, *Hoskins*, 633 F.3d at 544. Other circuits have fleshed out the standard for dismissal with prejudice by employing factors to guide their decision-making. *Chavez v. City of Albuquerque*, 402 F.3d 1039, 1044 (10th Cir. 2005) (considering: (1) the degree of actual prejudice to the defendant; (2) the amount of interference with the judicial process; (3) the culpability of the litigant; (4) whether

the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions).

To the extent that dismissal with prejudice was appropriate in *Hoskins*, that was because, as this Court noted, the plaintiff deliberately chose to ignore the portion of the form asking for prior litigation history and had been actively litigating suits that would be nearly impossible to simply "forget." 633 F.3d at 543. Thus, Hoskins evinced more willful conduct than Mr. Johnson, who did try to complete that portion of the complaint rather than deliberately ignore it. Mr. Johnson, moreover, was not actively litigating the suits that he did not disclose and so it is more plausible that he innocently forgot to include them. And were this Court to look to the factors used by other courts to ascertain whether dismissal with prejudice is appropriate, it would only fortify the conclusion that such a sanction was not appropriate in Mr. Johnson's case. The only factor that truly cuts against Mr. Johnson is that he was warned in advance that failure to disclose could result in dismissal of his case, as this warning was apparently included on the complaint form. All other factors, however, favor Mr. Johnson: His failure to disclose does not prejudice the defendant, but rather merely creates a minor inconvenience for the court. Even so, the burden on the court is low, as the judge or a clerk could have simply looked at the disposition of the undisclosed cases to see that none of them resulted in a strike. Any burden on the court is far outweighed by Mr. Johnson's need to protect his constitutional rights. Further, Mr. Johnson is a mentally ill prison inmate without real legal experience, and none of his undisclosed cases

would have revealed a strike, so his culpability in failing to disclose is low. Lastly, lesser sanctions were available. The court could have at least dismissed without prejudice. In short, Mr. Johnson did not exhibit any willful, malicious, bad faith, or faulty conduct, and his case should not have been dismissed so harshly with prejudice.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the district court's dismissal and remand for further proceedings.

Respectfully Submitted,

Michael Johnson
Plaintiff-Appellant

By: /s/ SARAH O'ROURKE SCHRUP
Attorney
ARIAN SOROUSH
Senior Law Student

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Counsel for Plaintiff-Appellant,
MICHAEL JOHNSON

CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)

1. This brief complies with the type volume limitations of Fed. R. App. P. 32(a)(7)(B) because the brief contains 5,911 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 12-point Century Schoolbook font with footnotes in 11-point Century Schoolbook font.

_____

/s/ SARAH O'ROURKE SCHRUP
Attorney

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Senior Law Student

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Phone: (312) 503-0063

Counsel for Plaintiff-Appellant,
MICHAEL JOHNSON

Dated: November 13, 2018

CERTIFICATE OF SERVICE

I, the undersigned, counsel for the Plaintiff-Appellant, Michael Johnson, hereby certify that I electronically filed this brief and appendix with the clerk of the Seventh Circuit Court of Appeals on November 13, 2018, which will send notice of the filing to counsel of record in the case.

_____

/s/ SARAH O'ROURKE SCHRUP
Attorney

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Phone: (312) 503-0063

Counsel for Plaintiff-Appellant,
MICHAEL JOHNSON

Dated: November 13, 2018

CIRCUIT RULE 30(d) STATEMENT

I, the undersigned, counsel for Plaintiff-Appellant, Michael Johnson, hereby state that all of the materials required by Circuit Rules 30(a) and 30(b) are included in the Appendix to this brief.

_____

/s/ SARAH O'ROURKE SCHRUP
Attorney

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Counsel for Plaintiff-Appellant,
MICHAEL JOHNSON

Dated: November 13, 2018

RULE 30(a) SHORT APPENDIX TABLE OF CONTENTS

IV. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court (including the Central and Southern Districts of Illinois):

A. Name of case and docket number: JOHNSON V. PRENTICE ET AL 1:16-CV-01244-CSB.

B. Approximate date of filing lawsuit: JUNE OR JULY OF 2016.

C. List all plaintiffs (if you had co-plaintiffs), including any aliases: MICHAEL JOHNSON.

D. List all defendants: SUSAN PRENTICE, ANDREA MOSS, KELLY HAAG, LINDA DUCKWORTH, OB. MORANO, SCOTT MCCORMICK, R. GOEDDE, STEPHEN LANTERMAN, ANDREW TILDEN, C/O DEVRIES, C/O MYERS, C/O HENKEL, SGT. GASPER, LT. BOLANO, MAJOR ~~HOOS~~ HASSALL, MS KELLY, TERRY KENNEDY, MICHAEL METVIN, WEXFORD.

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): U.S. DISTRICT COURT, CENTRAL DISTRICT, SPRINGFIELD

F. Name of judge to whom case was assigned: COLIN STERLING BRUCE.

G. Basic claim made: A TOTALITY OF CONDITIONS CLAIM WITH MULTIPLE ISSUES RAISING AN EIGHTH AMENDMENT CLAIM.

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): IT IS STILL PENDING.

I. Approximate date of disposition: N/A

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

IV. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court (including the Central and Southern Districts of Illinois):

A. Name of case and docket number: JOHNSON V. BLANCHARD et al 1:17-CV-01146-610

B. Approximate date of filing lawsuit: MARCH OR APRIL OF 2017

C. List all plaintiffs (if you had co-plaintiffs), including any aliases: MICHAEL JOHNSON

D. List all defendants: DILLON C. BLANCHARD, OFFICER BRITON, LIEUTENANT ROBINSON

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): U.S. DISTRICT COURT OF ILLINOIS, CENTRAL DISTRICT.

F. Name of judge to whom case was assigned: SARA DARROW

G. Basic claim made: EXCESSIVE USE OF FORCE 8TH AMENDMENT VIOLATION

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): STILL PENDING

I. Approximate date of disposition: N/A

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

IV. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court (including the Central and Southern Districts of Illinois):

A. Name of case and docket number: JOHNSON V. SULLIVAN DOCKET NUMBER NOT AVAILABLE

B. Approximate date of filing lawsuit: IN 2014 OR 2015

C. List all plaintiffs (if you had co-plaintiffs), including any aliases: MICHAEL JOHNSON

D. List all defendants: C/O SULLIVAN

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): U.S. DISTRICT COURT OF IL. IN ~~PEO~~ PEORIA

F. Name of judge to whom case was assigned: JAMES SHADID

G. Basic claim made: EXCESSIVE USE OF FORCE, VIOLATION OF 8th AMENDMENT RIGHT TO THE U.S. CONSTITUTION.

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): VERDICT IN FAVOR OF THE DEFENDANT IT WAS NOT APPEALED

I. Approximate date of disposition: N/A

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

III. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court in the United States:

A. Name of case and docket number: JOHNSON V. MOSS
DOCKET NUMBER NOT AVAILABLE

B. Approximate date of filing lawsuit: 2014

C. List all plaintiffs (if you had co-plaintiffs), including any aliases:
MICHAEL JOHNSON

D. List all defendants: ANOBEA MOSS, MICHAEL DEMPSEY, etc
ONE OR TWO I CAN'T REMEMBER

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): U.S. DISTRICT COURT ???

F. Name of judge to whom case was assigned: N/A - DON'T REMEMBER

G. Basic claim made: 8th AMENDMENT VIOLATION - DENIAL OF MENTAL HEALTH AND MEDICAL TREATMENT AMONGST OTHER THINGS

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): IT WAS DISMISSED AT THE MERIT REVIEW STAGE

I. Approximate date of disposition: N/A

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

IV. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court (including the Central and Southern Districts of Illinois):

A. Name of case and docket number: JOHNSON V. 200K = THINK ? DOCKET NUMBER UNKNOWN

B. Approximate date of filing lawsuit: 2014 OR 2015

C. List all plaintiffs (if you had co-plaintiffs), including any aliases: MICHAEL JOHNSON

D. List all defendants: ANDREA MOSS, LT. 200K, & ABOUT 3 OTHER CORRECTIONAL OFFICERS

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): CENTRAL DISTRICT ???

F. Name of judge to whom case was assigned: N/A

G. Basic claim made: EXCESSIVE USE OF FORCE & DENIAL OF MEDICAL TREATMENT IN VIOLATION OF THE 8TH AMENDMENT

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): I DISCONTINUED IT DUE TO MY INABILITY TO LITIGATE IT

I. Approximate date of disposition: N/A

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

IV. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court (including the Central and Southern Districts of Illinois):

A. Name of case and docket number: JOHNSON V. [redacted]/BUCHENAU?
CASE/DOCKET NUMBER UNKNOWN

B. Approximate date of filing lawsuit: 2012

C. List all plaintiffs (if you had co-plaintiffs), including any aliases:
MICHAEL JOHNSON

D. List all defendants: ZACHARY BUCHENAU? & OTHERS
MAYBE ONE OR TWO I DON'T REMEMBER.

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): U.S. DISTRICT COURT, CENTRAL DISTRICT

F. Name of judge to whom case was assigned: N/A DON'T REMEMBER

G. Basic claim made: EXCESSIVE USE OF FORCE - 8TH AMENDMENT VIOLATION AND DENIAL OF MEDICAL ATTENTION

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): IT WAS DISMISSED & I DIDN'T APPEAL BECAUSE I DID NOT KNOW WHAT I WAS DOING

I. Approximate date of disposition: N/A

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

A. NAME OF CASE AND DOCKET NUMBER: JOHNSON V. STUCK

B. APPROXIMATE DATE OF FILING LAWSUIT: 2013

C. LIST ALL PLAINTIFFS, INCLUDING ANY ALIASES:
MICHAEL JOHNSON

D. LIST ALL DEFENDANTS: LT. STUCK, & ABOUT 4 OR 5 OFFICERS & A NURSE OR TWO

E. COURT IN WHICH THE LAWSUIT WAS FILED: U.S. DISTRICT COURT, ~~EXACT DISTRICT~~ SOUTHERN DISTRICT

F. NAME OF JUDGE TO WHOM CASE WAS ASSIGNED:
N/A DON'T REMEMBER

G. BASIC CLAIM MADE: EXCESSIVE USE OF FORCE - 8th AMENDMENT VIOLATION AND DENIAL OF MEDICAL ATTENTION

H. DISPOSITION OF THIS CASE: IT WAS DISMISSED & I DIDN'T APPEAL BECAUSE I DID NOT KNOW WHAT I WAS DOING

I. APPROXIMATE DATE OF DISPOSITION: N/A

IV. **List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court (including the Central and Southern Districts of Illinois):**

A. Name of case and docket number: JOHNSON V. HAIFACHE, et al.

B. Approximate date of filing lawsuit: 9-20-17

C. List all plaintiffs (if you had co-plaintiffs), including any aliases: ~~Lt. Bell, AND PROBABLY ONE MORE BY MY LAWYERS 'AMENDED' COMPLAINT.~~ MICHAEL JOHNSON

D. List all defendants: Lt. Bell & PROBABLY ONE MORE IN MY LAWYERS AMENDED COMPLAINT.

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): NORTHERN DISTRICT, WESTERN DIVISION

F. Name of judge to whom case was assigned: Phillip G. REINHARD

G. Basic claim made: EXCESSIVE FORCE

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): N/A

I. Approximate date of disposition: N/A

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Michael Johnson (#R-63104),	)	
	)	
Plaintiff,	)	Case No. 17 CV 50384
	)	
v.	)	
	)	Judge Philip G. Reinhard
Jason Dalke, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's application for leave to proceed *in forma pauperis* is granted.[1] The court waives the initial partial filing fee and orders the trust fund officer at plaintiff's place of incarceration to make monthly deductions from plaintiff's trust fund account in accordance with this order. The Clerk of Court shall send a copy of this order to the trust fund officer at the Dixon Correctional Center. However, summonses shall not issue at this time. The court orders plaintiff to show good cause in writing why the court should not summarily dismiss this action on preliminary review in light of plaintiff's failure to disclose his prior litigation. Failure to show cause by February 16, 2018, will result in summary dismissal of this case for "fraud." The court at this time defers ruling on plaintiff's motion for attorney representation [5].

STATEMENT

Plaintiff Michael Johnson, a prisoner confined at the Dixon Correctional Center, brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he was subjected to unconstitutional conditions of confinement in the prison. Currently before the court are plaintiff's application to proceed *in forma pauperis*, his complaint for initial review under 28 U.S.C. § 1915A, his motion for service of process at government expense, and his motion for attorney representation.

Plaintiff's application for leave to proceed *in forma pauperis* demonstrates he cannot prepay the filing fee and is thus granted. Given plaintiff's negative balance in his prison trust fund account and lack of any significant recent deposits, the court waives the initial partial filing fee. *See* 28

[1] The court notes that plaintiff has filed two cases on the same day: this case (17CV50384), and case number 17CV50383. It appears documents for both cases were sent to the court in the same envelope. However, plaintiff filed only one application to proceed *in forma pauperis* – case number 17CV50383. While the court will accept the application to proceed *in forma pauperis* as to both cases, plaintiff should have known to file the application in each case as he is a frequently federal court filer in multiple divisions of the court.

U.S.C. § 1915(b)(4). Pursuant to 28 U.S.C. § 1915(b)(2), the court orders plaintiff to pay (and the facility having custody of him to automatically remit) to the Clerk of Court twenty percent of the money he receives for each calendar month during which he receives $10.00 or more, until the $350 filing fee is paid in full. The court directs the Clerk of Court to ensure that a copy of this order is mailed to each facility where plaintiff is housed until the filing fee has been paid in full. All payments shall be sent to the Clerk of Court, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and shall clearly identify plaintiff's name and the case number assigned to this case.

However, the court on its own motion orders plaintiff to show good cause in writing why the complaint should not be dismissed for "fraud" on the court. The complaint form plaintiff used asked, "List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court (including the Central and Southern Districts of Illinois)." [1 at p. 3]

While plaintiff listed eight lawsuits in his complaint form, plaintiff failed to disclose at least three additional lawsuits. *See Johnson v. Dalke*, Case No. 17 CV 50265 (N.D. Ill.); *Johnson v. Bennett*, Case No. 14 CV 1210 (C.D. Ill.) and *Turner v. Wexford*, Case No. 13 CV 3072 (C.D. Ill.). "Fraud" on the court justifies "immediate termination of the suit." *Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999). The U.S. Court of Appeals for the Seventh Circuit has affirmed dismissal for failure of an inmate plaintiff to divulge his litigation history. *See Hoskins v. Dart*, 633 F.3d 541, 543-44 (7th Cir. 2011).

For the foregoing reasons, the court grants plaintiff's application for leave to proceed *in forma pauperis*, but orders plaintiff to show good cause in writing why the court should not summarily dismiss his complaint on initial review for failure to fully disclose his prior litigation. Failure to show cause by the above deadline will result in summary dismissal of this case, with prejudice.

1/16/2018 ENTER:

Philip G. Reinhard

United States District Court Judge

Docketing to mail Notices. (LC)

2-7-18

DEAR Judge Phillip G. REINHARD,

I WRITE TO RESPOND TO WHY YOU SHOULD NOT DISMISS MY SUITS FOR FAILURE TO LIST ALL LAWSUITS FILED IN ANY STATE OR FEDERAL COURT. I SIMPLY MADE A MISTAKE & FORGOT TO PUT THE PROPER INFORMATION UNINTENTIONALLY. IT WAS NOT INTENTIONALLY. THAT GOES FOR BOTH THE JOHNSON V. Lt. HAENITSCH CASE NO. 17 CV 50383 & JOHNSON V. DALKE CASE NO. 17 CV 50384 CASES. I WAS NOT TRYING TO COMMIT FRAUD. I DON'T EVEN UNDERSTAND HOW THAT'S POSSIBLE. & JUST BECAUSE I'VE FILED MULTIPLE SUITS DOESN'T MAKE ME EXPERIENCED. I DON'T KNOW WHAT I WAS DOING ON ANY OF THOSE SUITS. MY RIGHTS WERE BEING VIOLATED & I MADE ATTEMPTS TO ADDRESS THEM THROUGH THE COURTS. I AM NO WHERE NEAR WHAT YOU MAY CALL "EXPERIENCED". I WOULD APPRECIATE IF YOU WOULD ALLOW MY SUITS TO PROCEED. I AM NOT PLAYING ANY GAMES WITH THIS COURT. KIND REGARDS IN CLOSING.

Michael Johnson

MICHAEL JOHNSON # R23104
DIXON CORR. CTR.
2600 N. BRINTON AVE.
DIXON, IL 61021

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Michael Johnson (#R-63104),	)	
	)	
Plaintiff,	)	Case No. 17 CV 50384
	)	
v.	)	
	)	Judge Philip G. Reinhard
Jason Dalke, et al.,	)	
	)	
Defendants.	)	

ORDER

The court is in receipt of correspondence from plaintiff in response to the court's order to "show cause" why plaintiff's case should not be dismissed for failure to disclose his prior litigation history [7]. Because the court does not find plaintiff's excuse for this failure acceptable, plaintiff's complaint is dismissed with prejudice. The court also denies plaintiff's motion for attorney representation [5] and motion for service of process [4] as moot. The Clerk of Court is directed to enter final judgment. This case is closed.

STATEMENT

Plaintiff Michael Johnson, a prisoner confined at the Dixon Correctional Center, brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he was subjected to unconstitutional conditions of confinement in the prison. On January 16, 2018, the court granted plaintiff's application to proceed *in forma pauperis* and further ordered plaintiff to show cause in writing why the court should not summarily dismiss his action on preliminary review in light of plaintiff's failure to disclose his complete prior litigation history [6]. On February 12, 2018, the court received a letter from plaintiff advising the court plaintiff "simply made a mistake [and] forgot to put the proper information unintentionally" [7].

The court's civil rights complaint form requires a plaintiff to "**List ALL lawsuits you . . . have filed in any state or federal court in the United States.**" [1] at 5 (emphasis in original). The form complaint also provides:

> **IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE.**

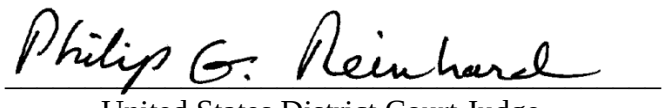
Id. (emphasis in original).

Plaintiff used the court's mandatory form complaint. *See* L.R.81.1. However, despite these admonishments, plaintiff failed to disclose at least three lawsuits. *See Johnson v. Dalke*, Case No. 17 CV 50265 (N.D. Ill.); *Johnson v. Bennett*, Case No. 14 CV 1210 (C.D. Ill.) and *Turner v. Wexford*, Case No. 13 CV 3072 (C.D. Ill.). Additionally, plaintiff did not disclose his suit that was filed contemporaneously with this case – *Johnson v. Haenitsch*, Case No. 17 CV 50383 (N.D. Ill.). Plaintiff was required to identify all of his previously filed cases and list them in his complaint. This task should not have been difficult, as two of the missing four cases were filed at or around the same time as several of the listed cases, another case was filed within weeks of this complaint, and the fourth case was filed contemporaneously with this complaint.

"[C]ourts may impose appropriate sanctions, including dismissal or default, against litigants who violate discovery rules and other rules and orders designed to enable judges to control their dockets and manage the flow of litigation." *Hoskins v. Dart*, 633 F.3d 541, 543 (7th Cir. 2011) (collecting cases). When an inmate fails to fully disclose his litigation history, the court has the discretion to dismiss the case as a sanction. *Id.* at 544 (affirming dismissal for failure of inmate plaintiff to fully disclose his litigation history); *see also Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999) (a "fraud" on the court warrants "immediate termination of the suit."). Plaintiff's significant litigation history informs the court that plaintiff is experienced in court filing and understands the importance of providing complete information, including information about prior cases. Therefore, the court is not persuaded by plaintiff's excuse that he "simply forgot" to include all of his previous cases. The failure here to disclose prior filings puts the onus on the court to research online databases to determine if any of the prior filings raise issue preclusion or show strikes which could preclude the current filing *in forma pauperis*. The court is compelled to conclude that the severe sanction of dismissal is warranted to send a strong message about the obligation to be truthful, ethical, and forthright during the litigation process. Accordingly, plaintiff's complaint is dismissed with prejudice based on plaintiff's failure to fully disclose his litigation history. Final judgment shall enter.

For the foregoing reasons, the case is summarily dismissed for perpetration of a fraud on the court. But having brought this action, the plaintiff remains obligated to pay the full filing fee. *See* 28 U.S.C. § 1915(b)(1); *Sloan*, 181 F.3d at 859. The case is closed.

Date: 2/15/2018 ENTER:



United States District Court Judge

Notices mailed by Judicial Staff. (LC)