No. 19-1372

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

AISHEF SHAFFER,

Plaintiff-Appellant,

v.

JACQUELINE LASHBROOK, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Illinois (East St. Louis)
No. 3:16-cv-00784-MJR-GCS, Chief Judge Michael J. Reagan

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT AISHEF SHAFFER

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December 18, 2019

ORAL ARGUMENT REQUESTED

CIRCUIT RULE 26.1 DISCLOSURE STATEMENTS

Appellate Court No. 19-1372

Short Caption: Aishef Shaffer v. Jacqueline Lashbrook et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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Aishef Shaffer

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the District Court or before an administrative agency) or are expected to appear for the party in this court:

Jenner & Block Supreme Court and Appellate Clinic at The University of Chicago Law School;
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i) Identify all of its parent corporations, if any; and

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ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

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(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature s/ Sarah M. Konsky Date: December 18, 2019

Attorney's Printed Name: Sarah M. Konsky

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** __

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENTS

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature s/ David A. Strauss Date: December 18, 2019

Attorney's Printed Name: David A. Strauss

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes __ No X**

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENTS

Appellate Court No. 19-1372

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N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature s/ Matthew S. Hellman Date: December 18, 2019

Attorney's Printed Name: Matthew S. Hellman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** __ **No X**

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JURISDICTIONAL STATEMENT

The United States District Court for the Southern District of Illinois had jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiff-Appellant Aishef Shaffer asserts violations of his Eighth Amendment rights against cruel and unusual punishment by various Illinois Department of Corrections officials and medical providers. He seeks relief under 42 U.S.C. § 1983.

This Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. § 1291. The district court dismissed this case with prejudice for lack of prosecution on April 12, 2018. Dkt. 83, A9–11. Judgment was entered on April 13, 2018. Dkt. 84, A7–8. Mr. Shaffer moved for reconsideration of the judgment pursuant to Fed. R. Civ. P. 60(b) on July 16, 2018 (Dkt. 90, SA1–33) and again on October 4, 2018 (Dkt. 93). On February 1, 2019, the district court denied Mr. Shaffer's motions for reconsideration and other pending motions. Dkt. 105, A1–6. Mr. Shaffer timely appealed on February 28, 2019. Dkt. 106.

STATEMENT OF ISSUE

Whether the district court erred in denying Mr. Shaffer's motion to reconsider its dismissal with prejudice for failure to prosecute, where the district court failed to issue an order to show cause or otherwise warn Mr. Shaffer it was considering that sanction, and Mr. Shaffer provided an explanation for and remedied his single alleged misstep.

STATEMENT OF THE CASE

On July 13, 2016, Mr. Shaffer filed a pro se action seeking damages and injunctive relief for deprivations of his constitutional rights by various officials and medical providers of the Illinois Department of Corrections (IDOC) pursuant to 42 U.S.C. § 1983. Dkt. 1.[1] Mr. Shaffer alleged in his complaint that while he was incarcerated in Illinois's Pinckneyville Correctional Center, prison officials assaulted him during a fight in which he was an innocent bystander. Dkt. 1, pp. 9–13. He further alleged that the assault caused him severe pain, but prison officials summarily denied his repeated requests for adequate medical care, disciplined him for seeking medical attention, and later denied him access to prescribed physical therapy services. *Id.*, pp. 14–21.

The district court screened the pro se complaint on preliminary review pursuant to 28 U.S.C. § 1915A. Dkt. 10, p. 2, A13. In a September 22, 2016 order, the court divided the complaint into seven counts and found that five were sufficiently well-pleaded to survive threshold review because they stated plausible claims for relief and were not frivolous. A17–19, A26–27. The district court's 18-page order concluded with nearly four pages of dispositions and orders. A26–29. On the final page, the order stated that Mr. Shaffer was "under a continuing obligation to keep the Clerk of [the] Court and each opposing party informed of any change in his address …. not later than **7 days** after a transfer or other change in address occurs," and that failure to do so "will

[1] Citations to "Dkt. __" are to the district court docket in the case below, *Aishef Shaffer v. Jacqueline Lashbrook et al.,* No. 3:16-cv-00784-MJR-GCS (S.D. Ill.).

cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution." A29 (citing Fed R. Civ. P. 41(b)).

As the district court later stated, "[t]he case proceeded along the normal course from September 2016 through March 2018, during which time the complaint was answered, discovery was conducted, and the Court considered injunctive relief, among other things." *See* Dkt. 105, p.2, A2 (memo and order denying reconsideration and all pending motions). Prosecuting his case pro se, Mr. Shaffer made 28 separate filings, including discovery requests and other discovery-related filings. Dkts. 1–4; 8; 12; 13; 26–31; 41; 45; 47; 48; 50; 51; 56–58; 60–63; 68; 72. He also moved for the appointment of counsel five times, but the district court denied those motions. Dkt. 3; Dkt. 26 (renewal of motion); Dkt. 42 (order denying counsel); Dkt. 57 (motion to reconsider order denying counsel) Dkt. 61 (renewal of motion); Dkt. 62 (same); Dkt. 66 (order denying motions for counsel); *see* Dkts. 86; 87 (renewal of motion for counsel); Dkt. 89 (order finding as moot motion to appoint counsel). On August 29, 2017, officials at the Pinckneyville facility scanned Mr. Shaffer's Motion for an Order Compelling Disclosures and e-mailed it to the district court on Mr. Shaffer's behalf for filing. Dkt. 72. That motion was filed on September 5, 2017. *Id.*

Days earlier, on August 31, 2017, Mr. Shaffer was released from the Pinckneyville Correctional Center and placed on supervised release. Dkt. 90,

SA1–33. As discussed further below, Mr. Shaffer stated in a sworn affidavit that he promptly mailed Defendants notice of his new address. SA5.

On October 4, 2017, Defendants jointly moved for an "Order to Show Cause Why Plaintiff's Complaint Should Not Be Dismissed for Failure to Update His Address." Dkt. 80. The sole basis for the motion was that "[m]ailings sent to Plaintiff have been returned to sender" and that Defendants had not received an updated address from Mr. Shaffer since his release from the Pinckneyville facility. *Id.*, p. 2. On March 1, 2018, Defendant Dr. Vipin Shah filed a motion requesting, on the same grounds, to reset the discovery schedule in the case or in the alternative the dismissal of the case. Dkt. 81. The district court did not issue an order to show cause, as Defendants had requested. While these motions were pending, the district court also did not warn Mr. Shaffer that dismissal or other sanctions were under consideration, order Mr. Shaffer to respond in any way, or order him to do anything else.

Instead, the district court dismissed the case with prejudice for failure to prosecute under Fed. R. Civ. P. 41(b) on April 12, 2018. Dkt. 83, A9–11. The district court stated in its memorandum and order that, since being released from the Pinckneyville facility, Mr. Shaffer had not updated his address or made other docket filings. A10. The district court also stated that it had instructed Mr. Shaffer at the outset of the case to notify the court of any address updates. *Id.* It stated: "At the time the Court reviewed Plaintiff's complaint, he was reminded that he was under a continuing obligation to keep the Court informed of any change in his address (Doc. 10, p. 18). Plaintiff was

warned that a failure to update the Court on his address may ultimately result in a dismissal of his claims." *Id.* Based on these facts, the district court held that it could "presume[ ]…that [Mr. Shaffer] is no longer interested in pursuing his claims." A11. It dismissed the case with prejudice. *Id.*

Mr. Shaffer did not receive notice of Defendants' motions or the district court's order at this time. SA3. About six weeks later, on May 29, 2018, Mr. Shaffer filed a notice of another change of address, informing the court and Defendants that he had been reincarcerated at the Stateville Correctional Center. SA5. He also filed a renewed motion requesting appointment of counsel and notification that he had another new address on June 26, 2018, and a motion seeking a status hearing and update on his case on July 5, 2018. Dkts. 86; 87; 88. On July 6, 2018, the district court entered a minute entry finding these motions moot and ordering the Clerk to mail Mr. Shaffer notice of Defendants' motion, the order dismissing the case, the judgment, and the docket sheet. Dkt. 89.

After receiving these documents, on July 16, 2018, Mr. Shaffer filed a pro se motion for reconsideration, citing Federal Rule of Civil Procedure 60(b). SA1–33. In his motion, Mr. Shaffer explained that he had complied with the district court's instructions to update his address, that he had not received notice of Defendants' motion or the court's order, and that "clearly, there has been a clerical error" that resulted in his case's premature dismissal. SA3. In a sworn affidavit attached to his motion, Mr. Shaffer attested that promptly after beginning his supervised release on September 6, 2017, he sent a notice of his

change of address to Defendants' counsel via the U.S. Postal Service. SA5. Mr. Shaffer also attested that he was aware of a mail "forwarding Policy," by which "mail sent to offender's parent facility…is to be forwarded to offender's current…place of residency." SA4. Also attached to the motion was a document he titled a "Certificate of Appealability," in which he argued that he should not be "held accountable" for the apparent "clerical error." SA17–19. Mr. Shaffer subsequently filed a number of other documents seeking to reinstate his case. *See* Dkts. 91; 93; 94; 95; 98; 102; 103.

On February 1, 2019, the district court denied the motion to reconsider (and all other pending motions). A1–6. The district court held that "the requests for reconsideration lack merit because [Mr. Shaffer] has failed to credibly prove that he attempted to update the Court or the Defendants with his mailing address upon release to parole in August 2017." A5. While it acknowledged that Mr. Shaffer had submitted a sworn affidavit attesting that he had in fact sent such notice, it characterized the affidavit as "self-serving." *Id.* The district court further found that "[t]he excuse that the United States mail service must have failed to deliver two separate documents (one to the Court and one to Defendants) in September 2017 is simply not plausible." A6. The district court therefore held that Mr. Shaffer "has not established that his failure to update the parties as to his address was a byproduct of mistake, excusable neglect, or other grounds covered by Rule 60" and denied his motion for reconsideration. *Id.*

Mr. Shaffer filed a timely notice of appeal to this Court on February 28, 2019. Dkt. 106.

SUMMARY OF ARGUMENT

After nearly two years of pursuing his case, Mr. Shaffer suddenly faced the "'extraordinarily harsh sanction"' of dismissal with prejudice for lack of prosecution for a single alleged misstep. *Kasalo v. Harris & Harris, Ltd.*, 656 F.3d 557, 561 (7th Cir. 2011) (citation omitted). This Court has instructed that such a sanction must be reserved only for egregious cases involving dilatory conduct, a pattern of disobeying court orders, or willful misconduct. Thus, this Court has consistently held that dismissing with prejudice upon the occurrence of the first problem, without any consideration of less drastic solutions, is reversible error, particularly when the litigant's mistake is not serious or repeated. *Johnson v. Chicago Bd. of Educ.*, 718 F.3d 731, 733 (7th Cir. 2013) (per curiam).

This case involves no dilatory conduct, pattern of disobeying court orders, or willful misconduct. Mr. Shaffer actively litigated his case pro se for nearly two years without incident. The district court dismissed his case with prejudice following a single alleged misstep: Defendants and the district court did not receive a notice of Mr. Shaffer's first change of address. Upon learning of the dismissal with prejudice, Mr. Shaffer promptly submitted a motion for reconsideration and a sworn affidavit attesting that he had in fact promptly mailed notice of his first change of address, just as he did upon his subsequent changes of address, and that he had understood that his mail would be

forwarded to him. *See* SA1–33. Mr. Shaffer's motion for reconsideration also made clear that he had not received notice that there was an issue with his case and had not intended to abandon his case. *See id.*

The district court abused its discretion by dismissing Mr. Shaffer's case with prejudice in the first instance. Prior to dismissing this case with prejudice, the district court neither warned Mr. Shaffer that it was contemplating dismissal of the case, nor issued an order to show cause as Defendants had requested, nor dismissed the case without prejudice. The district court instead jumped straight to dismissing the case with prejudice. Compounding this error, the district court failed to consider in its dismissal order whether Mr. Shaffer's purported mistake was egregious, whether it had a detrimental effect on the court's docket, or whether it caused prejudice to Defendants—essential factors that this Court has instructed district courts to consider before dismissing a case for failure to prosecute. *See, e.g., Sroga v. Huberman*, 722 F.3d 980, 982 (7th Cir. 2013). Each of these errors alone could constitute an abuse of discretion under this circuit's precedent; together they make clear that the district court's disproportionate and bare-bones response to Mr. Shaffer's alleged misstep was an abuse of its discretion.

The district court's denial of Mr. Shaffer's timely Rule 60(b) motion for reconsideration similarly was an abuse of discretion. Under this circuit's precedent, a lower court's denial of a Rule 60(b) motion to reconsider cannot stand if it presents a "'substantial danger that the underlying judgment was unjust."' *Del Carmen v. Emerson Elec. Co.,* 908 F.2d 158, 161 (7th Cir. 1990)

(citation omitted). In *Sroga v. Huberman*, for example, this Court reversed and remanded a dismissal for want of prosecution on review of a Rule 60(b) motion because the underlying dismissal was wrong in the first instance, the plaintiff alleged he did not receive notice, and the court failed to adequately address the plaintiff's plausible explanation for not receiving notice. 722 F.3d 980, 982–83 (7th Cir. 2013). The same is true in this case, and the result here therefore should be the same.

The district court's abrupt resolution of this case was fundamentally unjust, runs afoul of this Court's precedent, and constituted an abuse of discretion. This Court should therefore reverse the denial of the motion to reconsider, reverse the judgment of dismissal, and remand to the district court with instructions to reopen the case.

STANDARD OF REVIEW

The standard of review of a district court's dismissal with prejudice for failure to prosecute is abuse of discretion. *Sroga*, 722 F.3d at 982. The standard of review for a district court's denial of a motion to reconsider is abuse of discretion. *Del Carmen*, 908 F.2d at 161.

ARGUMENT

I. Under this circuit's precedent, dismissal with prejudice is an extreme sanction reserved for cases of egregious and repeated misconduct.

"Dismissal for want of prosecution 'is an extraordinarily harsh sanction that should be used only in extreme situations[.]'" *Kasalo*, 656 F.3d at 561 (quoting *Gabriel v. Hamlin*, 514 F.3d 734, 736 (7th Cir. 2008)). This Court has

held that "[i]n the absence of contumacious conduct or a clear record of disobeying court orders, it is an abuse of discretion to dismiss without first firing a warning shot or imposing other lesser sanctions." *Beyer v. Cormier*, 235 F.3d 1039, 1041 (7th Cir. 2000); *see also Sroga*, 722 F.3d at 982.

Because dismissal with prejudice for lack of prosecution is an "extreme" sanction, this Court has placed significant restrictions on its use absent a strong justification. *Kasalo*, 656 F.3d at 561. Even under the abuse of discretion standard of review, it is "legal error" to dismiss a suit "'immediately after the first problem, without exploring other options."' *Sroga*, 722 F.3d at 982 (citation omitted). To advance these principles, this Court has established a set of "essential factors" a district court must consider before dismissing in failure to prosecute cases and held that "fail[ure] to consider an essential factor" is an abuse of discretion. *Kruger v. Apfel*, 214 F.3d 784, 786 (7th Cir. 2000); *see also Sroga*, 722 F.3d at 982 (the factors include "the frequency and egregiousness of the plaintiff's failure to comply with deadlines, the effect of delay on the court's calendar, and the prejudice resulting to the defendants"). Taken together, this Court's relevant precedents "stand for the proposition that the punishment must fit the crime." *Johnson*, 718 F.3d at 733 (citing *Ball v. Chicago*, 2 F.3d 752 (7th Cir. 1993)).

Since "sanctions should fit the misconduct," the Court also has "held repeatedly that . . . dismissal is not the appropriate response to a litigant's errors (or even misconduct) that do not appear to be serious or repeated." *Id. at* 732-33. For example, in *Johnson*, a pro se plaintiff failed to appear at a status

hearing after the court order setting the hearing date warned her that failure to appear could result in immediate dismissal of her case. *Id.* at 732. The Seventh Circuit held that the district court's dismissal was an error because it should have first considered alternative sanctions, even though the court had warned the plaintiff about the importance of attending that very status hearing. *See id.* at 732–33. This Court reversed because dismissing a case "immediately after the first problem, without exploring other options or saying why they would not be fruitful" was an abuse of discretion. *Id.* at 733.

Indeed, in every case cited or referenced by the district court in its dismissal order in this case, the Seventh Circuit *reversed* a district court's dismissal because the conduct was not sufficiently egregious to warrant dismissal. *See Sroga* 722 F.3d at 981–82 (reversing dismissal and remanding after a pro se plaintiff missed a status hearing and failed to respond to a letter from the U.S. Marshal's Office); *Johnson*, 718 F.3d at 732 (reversing dismissal and remanding when plaintiff missed a status hearing); *Kruger*, 214 F.3d at 786 (vacating dismissal and remanding when plaintiff and plaintiff's counsel requested a deadline extension, failed to file his brief by the new deadline, waited more than a month after the original deadline to request his second extension, and filed untimely objections to a magistrate's recommendation to dismiss).

II. Dismissal with prejudice was an abuse of discretion because a single alleged failure to update an address is not an "extreme" situation of misconduct or dilatory behavior.

Defendants in this case alleged the occurrence of a single misstep: that they did not receive notice of Mr. Shaffer's first change in address. This is not a case in which there had been a pattern of dilatory conduct or egregious misconduct. To the contrary, as the district court stated in its reconsideration order, "[t]he case proceeded along the normal course from September 2016 through March 2018, during which time the complaint was answered, discovery was conducted, and the Court considered injunctive relief, among other things." *See* A2. The sole ground for the dismissal with prejudice was that, following his release from the Pinckneyville facility, Mr. Shaffer allegedly had not provided notice of his first new address or made other docket filings. A1–6.

This also is not a case in which the plaintiff disregarded a contemporaneous court warning or violated a contemporaneous court order. While Defendants asked for an order to show cause why the case should not be dismissed for failure to prosecute (*see* Dkt. 80), the district court never entered an order to show cause or any other order directed to Mr. Shaffer. Nor did it enter any other warning at that time. Rather, the district court concluded in its dismissal order that it had sufficiently warned Mr. Shaffer by including, nearly two years earlier in an 18-page order, the statement that failure to update his address "will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution." A29. These

circumstances do not constitute the sort of "'extreme situation[ ]"' this Court requires before a case may be dismissed with prejudice. *Kasalo*, 656 F.3d at 561 (citation omitted). *See* A29. Rather, the district court's dismissal with prejudice upon the occurrence of a single alleged misstep was a fundamentally unjust abuse of discretion warranting reversal. After nearly two years of Mr. Shaffer's diligent litigation conduct, this punishment dwarfed the severity of his purported "crime." *Johnson*, 718 F.3d at 733.

The district court's dismissal with prejudice in this case was an abuse of discretion under this circuit's precedent for a number of different reasons—each of which, even standing alone, constitutes an abuse of discretion in this case. First, Mr. Shaffer displayed nothing that resembled "serious or repeated" conduct—and certainly nothing that approached misconduct—justifying the court's "presum[ption]…that [Mr. Shaffer was] no longer interested in pursuing his claims." A11. Just as in *Johnson*, what Defendants alleged here was no more than a "first problem." This Court has long since rejected the proposition that a first misstep is sufficient for dismissal with prejudice.

Moreover, like the district court in *Johnson*, the district court here abused its discretion by dismissing the case with prejudice "without exploring other options or saying why they would not be fruitful[.]" 718 F.3d at 733. While this Court has instructed lower courts to "consider other sanctions before dismissal" and "warn a plaintiff that she is on thin ice before the case is thrown out," the district court here did no such thing in its order. *Kasalo*, 656 F.3d at 562. It did not even issue an order to show cause to Mr. Shaffer, as

Defendants had requested as the relief in their motion. In fact, the district court did not order Mr. Shaffer to do anything at all, and there were no docket entries from the district court between the filing of Defendants' motion in October 2017 and the dismissal order in April 2018.

The district court's failure to "fir[e] a warning shot" before dismissing the case with prejudice similarly ran afoul of this Court's precedents. *See Beyer*, 235 F.3d at 1041. Mr. Shaffer actively prosecuted his case for nearly two years, before the alleged misstep. Instead of entering a contemporaneous warning to Mr. Shaffer, the district court relied on its general advisement, issued nearly two years prior to the dismissal in an 18-page document. This Court has held, however, that violations of stronger and more contemporaneous orders are insufficient to warrant dismissal—for example, holding in *Johnson* that the court's warning to plaintiff that failure to appear at an upcoming status hearing could result in immediate dismissal was not sufficient. 718 F.3d at 732. Thus, when faced with what was at most a first misstep, the district court erred by failing to issue a contemporaneous warning that it was contemplating dismissal with prejudice, and by instead relying on its general advisement issued at the outset of the litigation.

The district court further failed to weigh any of the "essential factors" this Court has cautioned lower courts to consider before dismissing cases for failure to prosecute. *Sroga*, 722 F.3d at 982 (alteration and internal quotation marks omitted). If it had, it would have found that Mr. Shaffer had no history of misbehavior, unattended hearings, or missed deadlines. Rather, Mr. Shaffer

had actively prosecuted his case, filing numerous discovery-related motions and documents, repeated requests for appointment of counsel, and multiple other filings. *See* Dkts. 1–4; 8; 12; 13; 26–31; 41; 45; 47; 48; 50; 51; 56–58; 60–63; 68; 72. Nor did the district court discuss whether the delay might have harmed the court or prejudiced Defendants *at all*, especially when Defendants had requested the alternative relief of an order to show cause or an order resetting the discovery schedule, and Mr. Shaffer cured the alleged defect shortly after the Court's order. *See Kruger*, 214 F.3d at 786 ("fail[ure] to consider an essential factor" is an abuse of discretion).

In sum, under any of this Court's precedents, dismissal with prejudice in this case was an abuse of discretion.[2] Because the district court dismissed the case upon the occurrence of a single problem, without firing a "warning shot," without considering other sanctions, without weighing the "essential factors," and without matching the extremity of the sanction to the severity of the alleged problem, the district court's dismissal with prejudice was an abuse of its discretion.

[2] The district court's order was particularly unwarranted considering Mr. Shaffer's *pro se* status. This Court has repeatedly noted that "[t]he need for the district court to exercise discretion in deciding among alternative sanctions [is] especially great" for pro se plaintiffs. *Schilling v. Walworth Cty. Park & Planning Comm'n*, 805 F.2d 272, 277 (7th Cir. 1986).

III. The district court's denial of Mr. Shaffer's timely motion to reconsider exacerbated its initial error and ran afoul of this Court's precedents.

This Court's recent decision in *Sroga* makes clear that the denial of Mr. Shaffer's motion for reconsideration was an abuse of discretion. In *Sroga*, a plaintiff whose case had been dismissed with prejudice after he failed to attend a status hearing filed a motion to "vacate the judgment under Federal Rule of Civil Procedure 60(b), asserting that he was unaware that the District Court had made any rulings." 722 F.3d at 982 (internal quotation marks omitted). The plaintiff alleged that he had not received notice of the missed status hearing, either because he was out of town for work or because his mother kept his mail from him. *Id*. This Court held that the dismissal was an abuse of discretion in its own right because the district court issued it without adequate warning and without ensuring the "punishment 'fit[ ] the crime.'" *Id.* (quoting *Johnson*, 718 F.3d at 733). In addition, this Court found it was an abuse of discretion to discredit "reasons [in the Rule 60(b) motion suggesting] that [the plaintiff] was not intentionally delaying proceedings or disobeying court orders….without explaining why he doubted [the plaintiff's] explanation." *Id*. at 983. The posture of this case is materially identical to *Sroga*, and the result here should be the same.

In this case, too, Mr. Shaffer made clear in his motion to reconsider that he was not intentionally delaying proceedings or disobeying court orders, had not received notice of Defendants' motions, and intended to continue prosecuting his case. In addition, Mr. Shaffer's Rule 60(b) motion similarly

offered a plausible explanation for the alleged issue, stating under oath both that he had mailed the required change of address notice, and that he had understood the prison would forward case-related mail to him. SA4–5. Mr. Shaffer's filing thus satisfies the requirements for relief under Rule 60(b), including on the grounds of excusable neglect under Rule 60(b)(1), a void judgment due to lack of notice under Rule 60(b)(4), and other reasons justifying relief under Rule 60(b)(6). *See, e.g., Del Carmen*, 908 F.3d at 161–63.

The district court's sole basis for denying the reconsideration motion was that it found Mr. Shaffer's sworn statement that he had mailed notice of his first address change "self-serving" and not "plausible." The district court erred in disregarding the other information in Mr. Shaffer's motion for reconsideration and supporting affidavit: that Mr. Shaffer believed the prison would forward to him any case-related mail, that Mr. Shaffer did not receive notice of Defendants' motion, and that Mr. Shaffer intended to continue to prosecute his case. *See* SA1–33. These facts alone underscore that the dismissal with prejudice was an inappropriate and premature sanction in this case. *See, e.g., Sroga*, 722 F.3d at 982–83.

Moreover, the district court's summary rejection of Mr. Shaffer's sworn explanation that he in fact had updated his address was an abuse of discretion. In failure to prosecute cases in particular, district courts must address and explain why they disbelieve a "plausible reason" offered by the party moving for reconsideration. *Sroga*, 722 F.3d at 982–83. In *Sroga*, for example, this Court explained that it was an abuse of discretion to be "not

persuaded" by a motion for reconsideration "without explaining why [the judge] doubted [the plaintiff's] explanations." *Id.* at 983; *see also Bell v. Kay*, 847 F.3d 866, 868 (7th Cir. 2017) (holding that it was error to "never address[ ] [the plaintiff's] post-dismissal explanation that he never even received the order" to which he never responded and which caused him eventually to miss a deadline).

Mr. Shaffer's explanation for the alleged misstep, which he gave under penalty of perjury, was objectively plausible: that the change-of-address mailings he had sent to the district court and Defendants had not reached them for reasons outside of his control, perhaps after having been lost in the mail. The district court abused its discretion in rejecting this sworn statement as "self-serving." Nearly all documents filed in litigation are self-serving; that alone is no reason to discredit a filing, especially when the alternative is avoiding the "extreme" sanction of dismissal with prejudice. *Kasalo*, 656 F.3d at 561; *accord Widmar v. Sun Chem. Corp.*, 772 F.3d 457, 459–60 & n.1 (7th Cir. 2014) (holding that "[s]elf-serving affidavits can indeed be a legitimate method of introducing facts" and noting the Seventh Circuit's attempts to "rid our circuit's opinions of language critical of the 'self-serving affidavit'"); *see also Hill v. Tangherlini*, 724 F.3d 965, 967–68 (7th Cir. 2013) ("the term 'selfserving' must not be used to denigrate perfectly admissible evidence through which a party tries to present its side of the story…").

The district court similarly abused its discretion by resting on its conclusory statement that it was "simply not plausible" that mail might not

reach its recipients. The district court did not provide any other reason for disbelieving Mr. Shaffer or finding him untrustworthy. It is plausible that a single set of mail sent at the same time may have been lost, for example by the United States Postal Service in processing. *See, e.g., Smykiene v. Holder,* 707 F.3d 785, 787 (7th Cir. 2013) ("'the fact that the intended recipient did not actually receive notice does not contradict evidence that delivery was attempted . . . .'") (citation omitted).[3] And even if the district court had good reasons to disbelieve this explanation, its failure to adequately explain those reasons was an abuse of discretion. *See, e.g., Sroga*, 722 F.3d at 983; *Bell*, 847 F.3d at 868.

The district court's failure to reconsider the dismissal in accordance with this Court's precedents was therefore an abuse of discretion warranting reversal. Consistent with the framework this Court established in *Sroga*, the fundamental injustice of the district court's dismissal, coupled with its improper handling of Mr. Shaffer's Rule 60(b) motion, require reversal in this case.

[3] The United States Postal Service in fact has a webpage dedicated to helping senders and recipients with information and resources about missing mail. *See https://www.usps.com/help/missing-mail.htm* (last visited Dec. 18, 2019).

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's denial of Mr. Shaffer's motion to reconsider, reverse the district court's judgment of dismissal, and remand with instructions to reopen the case.

Respectfully submitted,

s/ Sarah M. Konsky

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Dated: December 18, 2019

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)

1. This Brief complies with the page limitation of Rule 32(a)(7)(A) of the Federal Rules of Appellate Procedure because it does not exceed 30 pages.

2. This Brief complies with the typeface and type style requirements in Rules 32(a)(5) and (6) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 12-point Bookman Old Style font for the main text and 11-point Bookman Old Style font for footnotes.

Dated: December 18, 2019

s/ Sarah M. Konsky
Sarah M. Konsky

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), I, Sarah M. Konsky, an attorney, certify that all materials required by Circuit Rule 30(a) and (b) are included in Plaintiff-Appellant's required short appendix and separate appendix respectively.

Dated: December 18, 2019

s/ Sarah M. Konsky
Sarah M. Konsky

CERTIFICATE OF SERVICE

I, Sarah M. Konsky, an attorney, hereby certify that on December 18, 2019, I caused the foregoing **Brief and Required Short Appendix of Plaintiff-Appellant Aishef Shaffer** and **Separate Appendix** to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Pursuant to ECF Procedure (h)(2) and Circuit Rule 31(b), and upon notice of this Court's acceptance of the electronic brief for filing, I certify that I will cause 15 copies of the **Brief and Required Short Appendix of Plaintiff-Appellant Aishef Shaffer** and 10 copies of the **Separate Appendix** to be transmitted to the Court via hand delivery within 7 days of that notice date.

Dated: December 18, 2019

s/ Sarah M. Konsky
Sarah M. Konsky

INDEX OF REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT AISHEF SHAFFER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

AISHEF SHAFFER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 16-cv-0784-MJR-GCS**
	)	
JACQUELINE LASHBROOK,	)	
C/O KBAT,	)	
A CACIOPPO,	)	
LT BAKER,	)	
C/O McDONALD,	)	
C/O BELFORD,	)	
VIPEN K SHAH,	)	
CHRISTINE BROWN,	)	
C/O JOHN DOE,	)	
	)	
Defendants.	)	

MEMORANDUM & ORDER

REAGAN, Chief Judge:

I. Introduction

On April 12, 2018, the undersigned dismissed this case with prejudice for failure to prosecute because Plaintiff (a former Illinois Department of Corrections inmate) failed to stay in touch with the Court upon his release from prison (Doc. 83). In the early stages of the case, Plaintiff was informed of his obligation to keep the Court on notice if his address changed (*See* Doc. 10 at 18). After his case had been dismissed, on May 29, 2018, Plaintiff filed a notice of change of address (Doc. 85) wherein he told the Court he was incarcerated at Stateville Correctional Center. On June 26, 2018, he filed another letter notifying the Court of his move to Lawrence Correctional Center, and requesting assistance of counsel (Doc. 86). The Court found

the two notices moot and sent Plaintiff copies of documents showing dismissal of the case for failure to prosecute (Dkt. txt. 89). In response, Plaintiff filed numerous motions for reconsideration (Docs. 90, 91, 93, 94, 95, 102, 103). The motions are now ripe for the Court's consideration.

II. Facts

Plaintiff initiated this Section 1983 lawsuit on July 13, 2016 (Doc. 1). The Court promptly screened the complaint and determined that Plaintiff was bringing claims for an alleged assault by a prison guard, and subsequent inadequacies in responsive medical care (Doc. 10). The Court: parsed the Complaint into five counts; assessed an initial partial filing fee; directed service of process; and, informed the Plaintiff of his obligation to keep the Court informed of his whereabouts. (*Id.* at 15-18). Specifically, the Order stated:

> Plaintiff is ADVISED that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than 7 days after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution.

(*Id.* at 18).

The case proceeded along the normal course from September 2016 until March 2018, during which time the complaint was answered, discovery was conducted, and the Court considered injunctive relief, among other things. On October 4, 2017, Defendants moved for an order to show cause as to why Plaintiff had failed to update his mailing address (Doc. 80). In the motion, Defendants stated that they had sent numerous discovery mailings to the Plaintiff's last known address (Pinckneyville Correctional

Center), but that the documents had been returned as undeliverable (*Id.* at 2). Upon investigating the matter, Defendants learned that Plaintiff had been paroled on August 31, 2017 (*Id.*). Based on this information, and the Court's earlier directive that Plaintiff must keep a current address on file, Defendants moved for dismissal for want of prosecution (*Id.*). By Memorandum and Order, the undersigned granted Defendants' request and dismissed the matter (Doc. 83).

Subsequently, on May 29, 2018 (Doc. 85) and June 26, 2018 (Doc. 86), Plaintiff twice notified the Court of new addresses of incarceration. The Court informed Plaintiff the matter had been dismissed (Dkt. txt. 89). On July 16, 2018, Plaintiff filed his first motion to reconsider (Doc. 90). In the motion he alleges that upon release from IDOC custody to mandatory supervised release on August 31, 2017, he believed IDOC would forward his mail (*Id.* at 1-2). Despite not receiving any forwarded mail, he alleges that he knew of his obligation to notify defense counsel and the Court of his change in address (*Id.* at 2). He alleges that he did so via written correspondence on September 6, 2017 (*Id.*). He was subsequently reincarcerted in May of 2018, at which time he again complied with his obligation to inform the parties of his whereabouts (*Id.* at 2-3). Plaintiff appended his own "sworn affidavit" and a purported copy of the handwritten change of address letter that he sent to defense counsel and the Court in September of 2017 (*Id.* at 4-10). His filing also included a request for a certificate of appealability and a single page about Rule 60 reconsideration (*Id.* at 17-19 and 31).

On September 20, 2018, Plaintiff filed a motion for status (Doc. 91), inquiring as to the receipt of his earlier filings. On October 4, 2018, he sent the Court a letter dated

"September 6, 2017" that stated he had been released from Pinckneyville and would be at a Chicago address (Doc. 92). On October 4, 2018, Plaintiff filed a document labeled a "Federal Rule of Civil Procedure 60(b)" that contained the same written allegations as his motion to reconsider (*See* Docs. 90, 93). On the same date, he filed an identical document labeled a "Certificate of Appealability" (*See* Docs. 90, 94). On October 11, 2018, Plaintiff moved for a status hearing on his Rule 60(b) motion (Doc. 95). Again on December 27, 2018, and January 15, 2019, Plaintiff sought status updates on his pending motions (Docs. 102, 103).

Amidst Plaintiff's many filings, Defendant Vipin Shah responded to the Rule 60(b) motion and certificate of appealability motion (Docs. 93, 94, 96, 97). As to Rule 60, Defendant claims that Plaintiff does not qualify for any of the six enumerated grounds for relief because neither he nor the Court received a change of address notification in September 2017 (Doc. 96). As to the certificate of appealability issue, Defendant contends it is irrelevant because such a certificate is only required in habeas corpus matters (Doc. 97).

Plaintiff replied on October 25, 2018 (Doc. 98). In his reply, Plaintiff argues that he should not lose the opportunity to pursue his case because the United States mail service did not complete delivery of his September 2017 change of address notifications (*Id.*). He also requests the assistance of counsel to proceed with his litigation (*Id.*). Plaintiff appended a copy of his "affidavit" wherein he avers that he sent a change of address to Defendants and the Court in September 2017.

III. Applicable Law

A motion challenging the merits of a district court order will automatically be considered as having been filed pursuant to either Rule 59(e) or Rule 60(b). ***See, e.g., Mares v. Busby*, 34 F.3d 533, 535 (7th Cir. 1994).** Different time-tables and standards govern these motions.

Rule 59(e) permits a court to amend a judgment only if the movant demonstrates a manifest error of law or fact or presents newly discovered evidence that was not previously available. ***See, e.g., Sigsworth v. City of Aurora*, 487 F.3d 506, 511-12 (7th Cir. 2007).** Rule 60(b) permits a court to relieve a party from an order or judgment based on such grounds as mistake, surprise or excusable neglect by the movant; fraud or misconduct by the opposing party; a judgment that is void or has been discharged; or newly discovered evidence that could not have been discovered within the 28-day deadline for filing a Rule 59(e) motion. However, the reasons offered by a movant for setting aside a judgment under Rule 60(b) must be something that could not have been employed to obtain a reversal by direct appeal. ***See, e.g., Bell v. Eastman Kodak Co.*, 214 F.3d 798, 801 (7th Cir. 2000).**

A certificate of appealability is commonly required in habeas corpus proceedings—those requesting an immediate release from custody. ***See* FED. R. APP. PRO. 22(b).**

IV. Analysis

Here, the Court finds that the requests for reconsideration lack merit because Plaintiff has failed to credibly prove that he attempted to update the Court or the Defendants with his mailing address upon release to parole in August 2017. He conveniently provided the Court with numerous copies of an affidavit wherein he swore to having sent notice of his change of address on September 6, 2017, but these documents are self-serving. The addition of a copy of the alleged

"letter" on numerous occasions is no more helpful. Since he was reincarcerated, Plaintiff has updated his address multiple times. The excuse that the United States mail service must have failed to deliver two separate documents (one to the Court and one to Defendants) in September 2017 is simply not plausible. Plaintiff has not established that his failure to update the parties as to his address was a byproduct of mistake, excusable neglect, or other grounds covered by Rule 60. Accordingly, the Court concludes that Plaintiff has not met the standards for reconsideration under Rule 60(b).

Additionally, he will not receive a certificate of appealability, because those only pertain to habeas matters. He could have appealed the April 2018 dismissal of his case to the appellate court in due course had he been keeping proper tabs on his case. By failing to verify that he was in contact with the Court or parties, he surrendered the opportunity to appeal the judgment of dismissal within 30 days of that Order. ***See* FED. R. APP. PRO. 4.**

V. Conclusion

Based on the foregoing analysis, the Court finds it appropriate to **DENY** all pending motions (Docs. 90, 91, 93, 94, 95, 102, 103).

IT IS SO ORDERED.

DATED: February 1, 2019

s/ Michael J. Reagan
Michael J. Reagan
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

AISHEF SHAFFER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case Number: 16-cv-0784-MJR-SCW**
	)	
JACQUELINE LASHBROOK,	)	
C/O KBAT,	)	
A. CACIOPPO,	)	
LT. BAKER,	)	
C/O McDONALD,	)	
C/O BELFORD,	)	
VIPIN SHAH,	)	
C/O JOHN DOE and	)	
CHRISTINE BROWN,	)	
	)	
Defendants.	)	

JUDGMENT IN A CIVIL ACTION

IT IS ORDERED AND ADJUDGED:

By Order dated September 22, 2016, Defendants LT. FURLOW, C. WHEELAN, D. FLATT, WEXFORD HEALTH SERVICES, INC., BRUCE RAUNER, JOHN BALDWIN, DR. LOUIS SCHICKER, COUNSELOR SELBY, and Unknown Party JANE DOES 1-3, were dismissed without prejudice on threshold review under 28 U.S.C. 1915A.

By Order dated April 12, 2018, Defendants JACQUELINE LASHBROOK, C/O KBAT, A. CACIOPPO, LT. BAKER, C/O McDONALD, C/O BELFORD, VIPIN SHAH, C/O JOHN DOE, and CHRISTINE BROWN were dismissed with prejudice for want of prosecution, pursuant to Federal Rule of Civil Procedure 41(b).

Judgment is **HEREBY ENTERED** in favor of Defendants LASHBROOK, KBAT, CACIOPPO, BAKER, McDONALD, BELFORD, SHAH, JOHN DOE, and BROWN and against Plaintiff AISHEF SHAFFER.

Dated: April 13, 2018

Justine Flanagan, Acting Clerk of Court
s/ Reid Hermann
Deputy Clerk

Approved: *s/ Michael J. Reagan*
MICHAEL J. REAGAN
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

AISHEF SHAFFER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 16-cv-0784-MJR-SCW**
	)	
JACQUELINE LASHBROOK,	)	
C/O KBAT,	)	
A. CACIOPPO,	)	
LT. BAKER,	)	
C/O McDONALD,	)	
C/O BELFORD,	)	
VIPIN SHAH,	)	
C/O JOHN DOE, and	)	
CHRISTINE BROWN,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

REAGAN, CHIEF Judge:

Pursuant to 42 U.S.C. § 1983, *pro se* Plaintiff Aishef Shaffer filed his complaint for excessive force and assault and battery against C/O Kbat, deliberate indifference against A. Cacioppo, Jacqueline Lashbrook, Lt. Baker, C/O McDonald, and C/O Belford for refusing to get him medical treatment following Kbat's assault, deliberate indifference against Vipin Shah for failing to treat his injuries following the assault, and a claim against a John Doe defendant who intentionally misreported that Plaintiff refused physical therapy. This matter is currently before the Court on Defendants' motion for

order to show cause why Plaintiff's complaint should not be dismissed (Doc. 80), which was filed on October 4, 2017. Defendants indicate that they sent Plaintiff discovery and court filings to his last known address, Pinckneyville Correctional Center, but those documents were returned as Plaintiff was paroled on August 31, 2017.

At the time the Court reviewed Plaintiff's complaint, he was reminded that he was under a continuing obligation to keep the Court informed of any change in his address (Doc. 10, p. 18). Plaintiff was warned that a failure to update the Court on his address may ultimately result in a dismissal of his claims. He has not done so since his parole from IDOC custody, nor has he responded to Defendants' motion. The Court finds that dismissal of Plaintiff's case is appropriate for his lack of prosecution.

Federal Rule of Civil Procedure 41(b) provides that "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." In dismissing a case for lack of prosecution, the Seventh Circuit has indicated that a district court commits legal error "when it dismisses a suit 'immediately after the first problem, without exploring other options or saying why they would not be fruitful.'" ***Sroga v. Huberman*, 722 F.3d 980, 982 (7th Cir. 2013) (quoting *Johnson v. Chi. Bd. of Educ.*, 718 F.3d 731, 732-33 (7th Cir. 2013)).** The Seventh Circuit has suggested that in addition to a warning to the plaintiff, the court must consider essential factors such as "the frequency and egregiousness of the plaintiff's failure to comply with other deadlines, the effect of the delay on the court's calendar, and the prejudice resulting to the defendants." ***Id.* (citing *Kruger v. Apfel*, 214**

F.3d 784, 786-87 (7th Cir. 2000)).

Here, the Court finds that Plaintiff has failed to prosecute his case. Plaintiff was reminded of his continuing obligation to inform the Court of his current whereabouts, yet he failed to update the Court on his release from prison August 31, 2017. Nor did he provide the Court with a current address. While the Court received a motion to compel from Plaintiff on September 5, 2017 (Doc. 72) that motion indicates that it was scanned at Pinckneyville Correctional Center on August 29, 2017, prior to Plaintiff's release. The Court has not received any filings from Plaintiff since his release from custody. Plaintiff has also failed to respond to Defendants' motion. The Court presumes by Plaintiff's failure to participate in any way in this case since his release from prison, that he is no longer interested in pursuing his claims.

As such, the Court **DISMISSES with prejudice** Plaintiff's remaining claims against all Defendants for failure to prosecute. Judgment shall enter consistent with this Order. The Clerk's office is DIRECTED to close this case as no claims remain.

IT IS SO ORDERED.

DATED: April 12, 2018

s/ Michael J. Reagan
Michael J. Reagan
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

AISHEF SHAFFER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 16−cv−0784−MJR**
	)	
JACQUELINE LASHBROOK,	)	
KBAT,	)	
A. CACIOPPO,	)	
BAKER,	)	
FURLOW,	)	
MCDONALD,	)	
BELFORD,	)	
C. WHEELAN,	)	
SELBY,	)	
D. FLATT,	)	
JOHN DOE,	)	
WEXFORD HEALTH SOURCES,	)	
CHRISTINE BROWN,	)	
JANE DOE 1,	)	
JANE DOE 2,	)	
JANE DOE 3,	)	
BRUCE RAUNER,	)	
JOHN BALDWIN, and	)	
LOUIS SHICKER	)	
	)	
Defendants.		

MEMORANDUM AND ORDER

REAGAN, Chief District Judge:

Plaintiff Aishef Shaffer, an inmate in Pickneyville Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. He seeks declarative, nominal, compensatory, and punitive damages, as well as injunctive

relief. (Doc. 1, p. 1). This case is now before the Court for a preliminary review of the Complaint pursuant to 28 U.S.C. § 1915A, which provides:

> (a) **Screening** – The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
>
> (b) **Grounds for Dismissal**– On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–
>
> (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

An action or claim is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolousness is an objective standard that refers to a claim that any reasonable person would find meritless. *Lee v. Clinton,* 209 F.3d 1025, 1026-27 (7th Cir. 2000). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross "the line between possibility and plausibility." *Id*. at 557. At this juncture, the factual allegations of the *pro se* Complaint are to be liberally construed. *See Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

Upon careful review of the Complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; portions of this action are subject to summary dismissal.

The Complaint

On November 5, 2015, Kbat was working as a transport officer, responsible for moving inmates to and from the chow hall. (Doc. 1, p. 9). At approximately 9:30 am that day, a fight broke out between two inmates as housing unit R3- A wing was leaving the housing unit for chow. (Doc. 1, p. 9). McDonald, who was also working transport, called a 10-10, and told all inmates to sit on the ground. (Doc. 1, p. 9). Plaintiff fully complied with that order. (Doc. 1, p. 10). McDonald and Cacioppo broke up the fight, and the inmates involved were cuffed and taken to segregation. (Doc. 1, p. 10). Belford then arrived on the scene. (Doc. 1, p. 10).

Suddenly, without warning, Kbat ran up behind Plaintiff and kicked him repeatedly while waiving a can of mace in his face and threatening Plaintiff. (Doc. 1, p. 10). Kbat said "you mutha fucka [sic] don't want to fuck with me today. I'll knock you the fuck out." Cacioppo, Belford, McDonald, and Baker were all present at that time. (Doc. 1, p. 10). Plaintiff alleges that he was not causing a disturbance and was following all IDOC rules and policies. (Doc. 1, p. 10). He further alleges that as a result of the assault, he experienced severe pain in his back. (Doc. 1, p. 10).

Plaintiff requested medical attention from Cacioppo, McDonald, and Baker, but they refused to take him to the health care unit. Cacioppo stated "If you can breath [sic] your [sic] alright," and then laughed and walked away. (Doc. 1, p. 11). Several other inmates told Baker and Cacioppo that Kbat kicked Plaintiff, but the guards ignored them. (Doc. 1, p. 11). Plaintiff had difficulty walking to chow due to the pain in his back; he told Belford, but Belford ignored Plaintiff's request for medical attention. (Doc.

1, p. 12). Once back at his housing unit, Plaintiff repeated his request for medical attention to Baker and Cacioppo again, but Baker told him, "your [sic] be fine write a grievance." (Doc. 1, p. 12). Plaintiff continued to be ignored by Cacioppo. (Doc. 1, p. 13).

In the afternoon on the same day, Plaintiff reported to internal affairs to speak to Lt. Furlow. (Doc. 1, p. 13). Plaintiff reported Kbat's assault. (Doc. 1, p. 14). Furlow reviewed the video recordings and confirmed the events, but downplayed the assault, saying "It ain't like you were stump out, that's nothing." (Doc. 1, p. 14).

Plaintiff convinced Furlow to take him to health care unit for his injuries at approximately 3:00 pm. (Doc. 1, p. 15). The Jane Doe nurse in the health care unit allegedly refused to evaluate Plaintiff and did not give him any medication. (Doc. 1, p. 15). Medical records submitted by Plaintiff show that a nurse filled out an injury report for Plaintiff on November 5, 2015, and the report was noted in his medical records. (Doc. 1-1, p. 2-3). The nurse further noted no redness, bruising, or swelling, normal vitals, and that Plaintiff was able bend over without difficulty. (Doc. 1-1, p. 3). Plaintiff was directed to follow-up with nurse sick call. (Doc. 1-1, p. 3).

Plaintiff reported to nurse sick call the next day on November 6, 2015 at 11:00 am. (Doc. 1, p. 15). Plaintiff was told that he could not see a doctor until he submitted two more nurse sick call slips. (Doc. 1, p. 15-16). Plaintiff's medical records show that he was referred to the MD on November 6, 2015 at the 11 am visit without having to submit further sick call slips. (Doc. 1-1, p. 5). The medical record also shows that

Plaintiff previously had a history of back pain caused by a gunshot wound and an injury he sustained while working out. (Doc. 1-1, p. 5). The records further note that due to his chronic back pain, Plaintiff had received 60, 600 mg prescription ibuprofens on October 20, 2015, two weeks prior to the incident. (Doc. 1-1, p. 5). The nurse also instructed Plaintiff on general strengthening exercises and to avoid heavy sport activities. (Doc. 1-1, p. 5). Plaintiff also reported at this time that his back pain was not new, but rather ongoing. (Doc. 1-1, p. 6). Plaintiff alleges that he continually tried to get attention for his medical needs in the days following, and was ignored. (Doc. 1, p. 16).

Plaintiff saw Dr. Shah on November 10, 2015 at 11:05 am. (Doc. 1, p. 16). Plaintiff alleges that Shah refused to perform an examination, take x-rays, or prescribe any medication for Plaintiff's back pain and lack of mobility. (Doc. 1, p. 16). The medical records show that Shah conducted an examination. (Doc. 1-1, p. 7). Plaintiff alleges that Shah told him he'd be fine if he just drank water. (Doc. 1, p. 16).

Plaintiff alleges that Shah's denial of medical care aggravated his injuries, that he could not walk without difficulty and discomfort, and that he experienced consistent chronic pain. (Doc. 1, p. 17). Plaintiff continued to submit nurse sick call slips, and after he submitted three more, he was seen again by Shah on November 24, 2015. (Doc. 1, p. 17). Shah became angry at Plaintiff and sent him away without any treatment. (Doc. 1, p. 18). He also wrote Plaintiff a disciplinary ticket for insolence, allegedly to discourage and obstruct Plaintiff from receiving treatment. (Doc. 1, p. 18).

Plaintiff began grieving his condition. (Doc. 1, p. 18). He alleges that some of the grievances were never responded to, and that Flatt and Wheelan ultimately told Plaintiff to stop filing grievances. (Doc. 1, p. 18). Plaintiff also wrote to Brown about the denial of medical care, but got no response. (Doc. 1, p. 19).

Plaintiff continued to submit sick call requests. (Doc. 1, p. 19). On January 19, 2016, he was examined by Dr. Scott. (Doc. 1, p. 19). Scott prescribed Mobic, Diclofenac, Robacin, and physical therapy. (Doc. 1, p. 20). Plaintiff alleges that the Defendants then conspired to keep him from receiving the benefits of Scott's orders because Plaintiff was scheduled to see the physical therapist on February 29, 2016, but a John Doe guard falsified records to show that Plaintiff refused the visit. (Doc. 1, p. 20). Plaintiff continued complaining about his health on a daily basis. (Doc. 1, p. 20).

Plaintiff further alleges that Rauner, Baldwin and Shicker, acted with deliberate indifference to systematic deficiencies in the IDOC health care system, as detailed in the expert report in *Lippert v. Godinez*, No. 10-cv-4603

Discussion

Based on the allegations of the Complaint, the Court finds it convenient to divide the pro se action into seven counts. The parties and the Court will use these designations in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. The following claims survive threshold review:

Count 1: Eight Amendment excessive force claim against Defendant Kbat for allegedly assaulting Plaintiff on November 5, 2015;

Count 2: Assault and battery claim pursuant to Illinois state law against Defendant Kbat for allegedly assaulting Plaintiff on November 5, 2015;

Count 3: Eighth Amendment deliberate indifference claim against Lashbrook, Cacioppo, Baker, McDonald, Belford, and Furlow to Plaintiff's serious medical needs when they refused to get him medical attention following the assault.

Count 4: Eighth Amendment deliberate indifference claim against Jane Does 1-3, Shah, and Brown for failure to treat Plaintiff's serious medical needs after the alleged assault.

Count 5: **John Doe 1 conspired to interfere with Dr. Scott's medical orders when he intentionally misreported that Plaintiff had refused his physical therapy appointment on February 29, 2016**

Plaintiff has also attempted to bring other Counts, but for the reasons elucidated below, these claims do not survive threshold review.

Count 6: Wheelan, Shelby, Flatt, and Lashbrook, individually and in conspiracy, violated Plaintiff's Fourteenth Amendment due process rights when they denied his grievances for the purpose of denying him access to the courts

Count 7: Eight Amendment deliberate indifference claim against Rauner, Baldwin, Shicker, and Wexford Health Sources, Inc. for implementing certain policies.

As to Plaintiff's **Count 1**, it has long been recognized that the "core requirement" of the claim under the Eighth Amendment is that the defendant "used force not in a good-faith effort to maintain or restore discipline, but maliciously and sadistically to cause harm." *Hendrickson v. Cooper*, 589 F.3d 887, 890 (7th Cir. 2009) (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)). *See also Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992); *Santiago v. Walls*, 599 F.3d 749, 757 (7th Cir. 2010). Factors that guide the Court's analysis of whether an officer's use of excessive force was legitimate or malicious are the need for an application of force, the amount of force used, the threat an officer reasonably

perceived, the effort made to temper the severity of the force used, and the extent of the injury suffered by the prisoner. *Hudson*, 503 U.S. at 7; *Hendrickson*, 589 F.3d at 890; *Fillmore v. Page*, 358 F.3d 496, 504 (7th Cir. 2004). The allegations in the Complaint suggest there was no need for the use of force during the November 5, 2015 incident. Plaintiff alleges that he was following orders and sitting on the floor when Kbat kicked him out of the blue. If Plaintiff's allegations are true, this is a clear-cut case of excessive force.

The same logic holds true for Plaintiff's state law claims in **Count 2.** Under Illinois state law, "[a] battery occurs when one 'intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.'" *Smith v. City of Chicago*, 242 F.3d 737, 744 (7th Cir. 2001) (quoting 720 ILL. COMP. STAT. 5/12–3(a)). Plaintiff has pleaded sufficient facts to meet this standard, and **Count 2** shall be permitted to proceed. However, the Court notes that although Plaintiff has used two distinct legal theories, they are based on the same set of facts, and Plaintiff will only be permitted one recovery under the law for the same harm.

Turning now to **Count 3**, in order to state a deliberate indifference claim, an inmate must show that he (1) suffered from an objectively serious medical condition; and (2) that the defendant was deliberately indifferent to a risk of serious harm from that condition. "Deliberate indifference is proven by demonstrating that a prison official knows of a substantial risk of harm to an inmate and either acts or fails to act in

disregard of that risk. Delaying treatment may constitute deliberate indifference if such delay exacerbated the injury or unnecessarily prolonged an inmate's pain." *Gomez v. Randle,* 680 F.3d 859, 865 (7th Cir.2012) (internal citations and quotations omitted). *See also Farmer v. Brennan,* 511 U.S. 825, 842 (1994); *Perez v. Fenoglio,* 792 F.3d 768, 777–78 (7th Cir.2015).

Plaintiff alleges that he told Cacioppo, Baker, McDonald, and Belford, that he needed medical attention after the assault and they all declined to take him to health care. That is sufficient to state a claim against those defendants. However, Plaintiff attempts to bring a similar claim against Furlow. Plaintiff's Complaint states that when he told Furlow about the assault, Furlow made a report and took Plaintiff to heath care. Furlow was the one guard who did as Plaintiff requested. Having alleged that Furlow took him to the health care unit, Plaintiff states no claim against him for deliberate indifference to serious medical needs. Therefore, Furlow will be dismissed without prejudice from this case.

Plaintiff also alleges that Lashbrook knew of his condition and refused to intervene. Although Plaintiff does not allege that he spoke to her in person, he does attach some grievances he filed as emergencies. Lashbrook determined that the grievances were not emergencies. Although this claim is thin, the grievances are sufficient to make Plaintiff's allegation that Laskbrook may have known of his serious medical need and refused to intervene plausible. Therefore, **Count 3** will proceed against Lashbrook at this time.

Plaintiff's claim against Shah in **Count 4** is that he refused to evaluate, order x-rays, or prescribe any medication for Plaintiff's chronic back pain. Shah allegedly ignored Plaintiff's complaints of pain, and told him to drink water. The Complaint further alleges that when Plaintiff returned to Shah, Shah explicitly told him he was not interested in his complaints or treating him. Plaintiff also alleges that Shah wrote him up for insolence in lieu of treating him. Plaintiff submitted Shah's notes for that day as an exhibit, but they are nearly impossible to read. Plaintiff's allegations that Shah did nothing but tell Plaintiff to drink water when confronted with Plaintiff's complaints are sufficient to state a claim for deliberate indifference, **Count 4** shall proceed against Shah.

Evaluating Plaintiff's remaining claims in **Count 4** is made more difficult by the rampant contradictions between Plaintiff's statement of events and the medical documents he submitted as exhibits to the Complaint. However, "[t]o the extent that an exhibit attached to or referenced by the complaint contradicts the complaint's allegations, the exhibit takes precedence." *Phillips v. Prudential Ins. Co. of Am.*, 714 F.3d 1017, 1020 (7th Cir. 2013). It is possible for a plaintiff to plead himself out of court by including exhibits to the complaint that show he is not entitled to the relief he seeks. *Centers v. Centennial Mortg. Inc.*, 398 F.3d 930, 933 (7th Cir. 2005). The Court will therefore credit the medical records, rather than Plaintiff's statements in the Complaint, to the extent they conflict.

As to Jane Doe 1, Plaintiff alleges that she refused to conduct an examination or give him medication. But that account is contradicted by the records Plaintiff submitted. Those records show that the nurse documented Plaintiff's injury, as well as his account of how it happened. The records also show that Plaintiff was already taking prescription pain medication at that time. As the nurse is not authorized to prescribe medication, it is likely that she could not have given Plaintiff anything stronger than the prescription he already had. Plaintiff's exhibits show that Plaintiff is not entitled to any relief against Jane Doe 1, because contrary to his claims, she did examine him and she was not in a position to change his prescription medication. Jane Doe 1 will be dismissed without prejudice.

Plaintiff also tries to bring claims against Jane Doe 2 and Jane Doe 3, who the Complaint identifies as nurses working on November 18 and November 13, respectively. Plaintiff's Complaint alleges that he was seen by a nurse on sick call on those days after Shah provided Plaintiff with inadequate treatment on November 10th. The medical record from November 13 indicate that Jane Doe 3 conducted a full examination for back pain, took Plaintiff's vitals, recorded his statement that his condition worsened when he was kicked in the back a week prior, and provided him with ibuprofen because Plaintiff indicated that his prescription ibuprofen had run out. Plaintiff's Complaint vaguely states that Jane Doe 3 failed to diagnose or treat his condition, but his exhibit establishes that she evaluated him for back pain and gave him ibuprofen. Therefore, Plaintiff's claims against Jane Doe 3 must be dismissed without

prejudice at this time, because Plaintiff's exhibit establishes that she took the steps that Plaintiff alleges she failed to take.

The same pattern repeats itself with respect to Jane Doe 2. Plaintiff's Complaint vaguely states that she failed to diagnose or treat his condition, without providing further details. Yet Plaintiff's exhibits show that Jane Doe 2 comprehensively evaluated Plaintiff's back pain on November 18, 2015 and that she gave him acetaminophen when he reported that the ibuprofen was not working. Jane Doe 2 both evaluated and treated Plaintiff's back pain according to Plaintiff's exhibits, which supersede the Complaint. Plaintiff's claims against Jane Doe 2 will likewise be dismissed without prejudice.

Plaintiff's only allegation against Brown is that he told her about the denial of medical treatment by Shah and received no response from her department. The exhibits contain one grievance to which C. Brown responded. In some cases, a grievance can suggest that a defendant had the requisite knowledge of a serious medical condition, *Perez v. Fenoglio*, 792 F.3d 768, 781 (7th Cir. 2015), Plaintiff's allegations are sufficient in light of *Perez* for a deliberate indifference claim against Brown to proceed.

As to **Count 5**, Plaintiff's claim that an unknown John Doe Defendant was deliberately indifferent to his serious medical needs when he falsified a medical services refusal form that kept Plaintiff from a physical therapy appointment shall proceed. However, despite using the term "conspiracy" Plaintiff has neither identified nor described any other defendants in connection the false refusal. He makes a vague and

conclusory statement that other defendants have obstructed and inferred with Scott's orders. A conspiracy requires more than one person, as there must be agreement to commit the unlawful act. ***Cooney v. Casady*, 735 F.3d 514, 518 (7th Cir. 2013) (citing *Lewis v. Mills*, 677 F.3d 324, 333 (7th Cir. 2012))**. Plaintiff's allegations do not rise to that level. Because Plaintiff has not identified or described any other member of the conspiracy, or described any other conduct in furtherance of the conspiracy, Plaintiff has failed to meet the pleading standards in *Iqbal* and *Twombly*. His allegations are simply too vague. To the extent that Count 5 attempts to bring a conspiracy claim, it will be dismissed. Count 5 proceeds as an individual claim against John Doe 1.

Count 6 must be dismissed in its entirety. Plaintiff's Complaint is very clear that he is attempting to state a due process claim, not implicate the grievance defendants in his other medical deliberate indifference claims. But Plaintiff has no due process claim based on the grievance procedures. Prison grievance procedures are not constitutionally mandated and thus do not implicate the Due Process Clause per se. As such, the alleged mishandling of grievances "by persons who otherwise did not cause or participate in the underlying conduct states no claim." *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011). *See also Grieveson v. Anderson*, 538 F.3d 763, 772 n.3 (7th Cir. 2008); *George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007); *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996). Therefore **Count 5** will be dismissed with prejudice.

Finally, **Count 7** must also be dismissed without prejudice. Plaintiff alleges that the state defendants (Rauner, Baldwin, and Shicker) and Wexford Health Sources were

deliberately indifferent towards health care vacancies throughout the IDOC. He bases this allegation on conclusions reached by experts in the Northern District case, *Lippert v. Godinez*, 10-cv-4603. Plaintiff has not alleged that he was harmed by any of the specific deficiencies identified in the report. Moreover, the Court has reviewed the report, and Plaintiff's case is not specifically mentioned therein.

The Supreme Court has held that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). *See also Wynn v. Southward*, 251 F.3d 588, 592 (7th Cir. 2001) (Eleventh Amendment bars suits against states in federal court for money damages); *Billman v. Ind. Dep't of Corr.*, 56 F.3d 785, 788 (7th Cir. 1995) (state Department of Corrections is immune from suit by virtue of Eleventh Amendment); *Hughes v. Joliet Corr. Ctr.*, 931 F.2d 425, 427 (7th Cir. 1991) (same); *Santiago v. Lane*, 894 F.2d 219, 220 n. 3 (7th Cir. 1990) (same). A prisoner may bring a claim against an officer in his official capacity if the constitutional deprivations were the result of an official policy, custom, or practice. *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 691 (1978); *see also Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751, 765 (7th Cir. 2006). That is, the unconstitutional policy must have caused the deprivation. *See Roe v. Elyea*, 631 F.3d 843, 863–64 (7th Cir. 2011).

Plaintiff has alleged that the care provided to him by the various defendants was deliberately indifferent to his chronic back pain, and that the guards did not bother to provide him with any health care when they knew that he needed it. This is too tenuous a connection to the allegations against the state defendants and Wexford. Even

taking Plaintiff's allegations as true—that the *Lippert* report identifies staffing deficiencies throughout the IDOC prison system—there is no causal connection between that conclusion and the events of which Plaintiff complains. Plaintiff has not alleged that he did not get care because positions were not staffed. He has alleged that the individual defendants were deliberately indifferent. Plaintiff's claim against the state defendants fails and will be dismissed without prejudice because he has not made a plausible allegation that the policy he identified caused his harm.

Pending Motions

Plaintiff has filed a Motion for Recruitment of Counsel (Doc. 3), a Motion for Service at Government Expense, (Doc. 4), and a Motion to Appoint a Special Master. (Doc. 8). The Motion for Recruitment of Counsel and the Motion to Appoint a Special Master will be referred to the Magistrate Judge assigned to this case. The Motion for Service of Process is unnecessary for a party who has been granted leave to proceed IFP, and Plaintiff's motion requesting it is therefore **MOOT**. (Doc. 4).

Disposition

IT IS HEREBY ORDERED that **COUNTS 1-5** survive threshold review against Defendants Kbat, Lashbrook, Cacioppo, Baker, McDonald, Belford, John Doe, and Brown. However, Defendants Furlow and Jane Does 1-3 will be **dismissed without prejudice** because Plaintiff has failed to state a claim against those Defendants.

IT IS HEREBY ORDERED that **COUNTS 6** and **7** fail to state a claim upon which relief may be granted. **COUNT 6** is dismissed **with prejudice** and **COUNT 7** is

DISMISSED without prejudice. Defendants Wheelan, Selby, and Flatt are **DISMISSED with prejudice** and Defendants Wexford Health Sources, Rauner, Baldwin and Shicker are **DISMISSED** from this action **without prejudice**.

IT IS ORDERED that the Clerk of Court shall prepare for Defendants Kbat, Lashbrook, Cacioppo, Baker, McDonald, Belford, John Doe, and Brown: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the complaint, and this Memorandum and Order to each Defendant's place of employment as identified by Plaintiff. If a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

Service shall not be made on the Unknown John Doe Defendant until such time as Plaintiff has identified them by name in a properly filed amended complaint. Plaintiff is **ADVISED** that it is Plaintiff's responsibility to provide the Court with the names and service addresses for these individuals.

IT IS FURTHER ORDERED that, with respect to a Defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the Defendant's current work address, or, if not known, the Defendant's last-known address. This information shall be used only for sending the forms as directed

above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

IT IS FURTHER ORDERED that Plaintiff shall serve upon Defendants (or upon defense counsel once an appearance is entered), a copy of every pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed a certificate stating the date on which a true and correct copy of the document was served on Defendants or counsel. Any paper received by a district judge or magistrate judge that has not been filed with the Clerk or that fails to include a certificate of service will be disregarded by the Court.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is **REFERRED** to United States Magistrate Judge Stephen C. Williams for further pre-trial proceedings.

Further, this entire matter is **REFERRED** to United States Magistrate Judge Williams for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

IT IS FURTHER ORDERED that if judgment is rendered against Plaintiff, and the judgment includes the payment of costs under Section 1915, Plaintiff will be required to pay the full amount of the costs, notwithstanding that his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Plaintiff is **ADVISED** that at the time application was made under 28 U.S.C. § 1915 for leave to commence this civil action without being required to prepay fees and costs or give security for the same, the applicant and his or her attorney were deemed to have entered into a stipulation that the recovery, if any, secured in the action shall be paid to the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against plaintiff and remit the balance to plaintiff. Local Rule 3.1(c)(1)

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: September 22, 2016

s/ MICHAEL J. REAGAN
U.S. Chief District Judge