

XI APPENDIX WITH LIST OF ATTACHED SUPPORTING EXHIBITS

- (1) WEXFORD DEFENDANTS' MOTION FOR EXTENSION OF TIME // EXHIBIT "A"
- (2) U.S. DISTRICT COURT'S 11/22/2023 SCHEDULING ORDER // EXHIBIT "B"
- (3) LETTER OF PETITIONER'S ATTORNEY THOMAS L. PLIURA (7/10/2023) WITH ATTACHMENTS // EXHIBIT "C"
- (4) PETITIONER'S PRO SE 12/14/2023 DISCOVERY DISCLOSURE LETTER // EXHIBIT "D"
- (5) CERTIFICATE OF SERVICE OF DISCOVERY DOCUMENTS BY RESPONDENTS' ATTYS DATED 4/1/2024 // EXHIBIT "E"
- (6) U.S. DISTRICT COURT'S ORDER OF DISMISSAL (8/15/2024) // EXHIBIT "F"
- (7) PETITIONER'S 7/10/2024 PRO SE SERVICE OF DISCOVERY LETTER TO RESPONDENTS' COUNSELS WITH ATTACHMENTS// EXHIBIT "WWW"
- (8) PETITIONER'S NOTICE OF APPEAL TO THE U.S. COURT OF APPEALS/SEVENTH CIRCUIT FROM THE 8/15/2024 ORDER OF DISMISSAL/ EXHIBIT "G"
- (9) ORDER OF THE U.S.COURT OF APPEALS/SEVENTH CIRCUIT (11/26/2024) /EXHIBIT "H"
- (10) ORDER OF THE U.S.COURT OF APPEALS/SEVENTH CIRCUIT (12/27/2024)/EXHIBIT" I"
- (11) PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS/ EXHIBIT "J"

E-FILED

Thursday, 15 August, 2024 10:22:50 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JOHN DOUGLAS,)
v.)
Plaintiff,)
v.)
WEXFORD HEALTH)
SOURCES, INC., et al.,)
Defendants.)
No.: 19-3098-SLD

ORDER

This cause is before the Court on Defendant Christy Smith and Wexford Health Sources, Inc.'s motion for sanctions.

Federal Rule of Civil Procedure 41(b) provides, in relevant part: "If 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." *Id.* The United States Court of Appeals for the Seventh Circuit has explained that "Rule 41(b) serves not only to protect defendants but also to aid courts in keeping administrative control over their own dockets and to deter other litigants from engaging in similar dilatory behavior. The rule is an expression of an inherent power . . . necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *3 Penny Theater Corp. v. Plitt Theaters, Inc.*, 812 F.2d 337, 340 (7th Cir. 1987) (internal quotations omitted).

In addition, Rule 16(f) authorizes the Court to sanction a party who "fails to obey a scheduling or other pretrial order." Fed. R. Civ. Pro. 16(f)(1)(C). And, the Rule further

states that the Court "may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii)," in the face of such noncompliance.

Finally, Federal Rule 37 authorizes a district court to dismiss a case for discovery violations or for bad faith conduct in litigation. *Greviskes v. Universities Research Ass'n, Inc.*, 417 F.3d 752, 759 (7th Cir. 2005) (citations omitted); *Brown v. Columbia Sussex Corp.*, 664 F.3d 182, 190 (7th Cir. 2011) (holding that a district court may dismiss a case pursuant to Federal Rule 37 when the court finds "willfulness, bad faith or fault on the part of the defaulting party"). A district court may also dismiss a cause under its inherent authority to manage its docket and an individual case. *Greviskes*, 417 F.3d at 759.

However, the sanction of dismissal must be "proportionate to the circumstances." *Collins v. Illinois*, 554 F.3d 693, 696 (7th Cir. 2009). Dismissal under Federal Rule 37 is a high bar. *Ford v. Larson*, 2021 WL 3513592, *1 (S.D. Ill. Aug. 10, 2021). Although "dismissal is a harsh sanction[,] the ability of a court to wield that authority is essential to the efficient management of heavy caseloads and the protection of all litigants." *Ashworth v. McNeely*, 2024 WL 1554842, *3 (S.D. Ill. Apr. 10, 2024); *McMahan v. Deutsche Bank AG*, 892 F.3d 926, 932 (7th Cir. 2018) ("There is no requirement to enter lesser sanctions before dismissing a case for lack of prosecution"); *McInnis v. Duncan*, 697 F.3d 661, 665 (7th Cir. 2012) ("[J]udges do not abuse their discretion by declining to employ 'progressive discipline.'").

In the instant case, Plaintiff John Douglas has failed to comply fully with his obligations to litigate this case that he filed. Specifically, Douglas has failed to make his initial disclosures as ordered by the Court in its Scheduling Order and as subsequently

ordered by the Court in its February 6, 2024 Order, in its June 11, 2024 Order, and in its July 8, 2024 Order. In addition, Douglas has failed to respond to Defendant Smith's interrogatories even though the Court granted Defendant Smith's motion to compel and ordered him to do so. Finally, Douglas has not produced the medical records to Defendants that he claims to have sent to Defendants.

The Court has warned Douglas in its Scheduling Order and in subsequent Orders that the Court may sanction him and may dismiss this case if he failed to comply with his discovery obligations and with his obligations described in the Court's Scheduling Order. In fact, Douglas was aware that the Court possesses the power to sanction him and that the Court is willing to use that power as evidenced by the fact that the Court has dismissed other Defendants in this case based upon Douglas' failure to engage properly in the discovery process with those Defendants. D/E 47.

Nevertheless, Douglas has failed to make his initial disclosures and has failed to respond to the moving Defendants' discovery requests fully and properly as ordered by the Court. The Court has given Douglas multiple opportunities to comply with the Federal Rules, with his discovery obligations, and with the Court's Orders, and he has failed or refused to do so. For this reason and contrary to his argument, the Court has no confidence that a lesser sanction – other than dismissal – will compel Douglas to comply with the Federal Rules, with his discovery obligations, and with the Court's Orders. Therefore, the Court will dismiss this case pursuant to Federal Rule 16(f), Federal Rule 37(b), Federal Rule 41(b), and as a sanction for failing to comply with the Court's Orders.

IT IS, THEREFORE, ORDERED:

1. Defendants' motion for leave to file a reply brief [63] is GRANTED, and the Clerk of the Court is directed to docket Defendants' reply brief that is attached to their motion for leave to file.
2. Defendants motion for an extension of time [61] is DENIED AS MOOT in light of this Order.
3. Defendants' motion to dismiss [59] is GRANTED.
4. Accordingly, this case is DISMISSED WITH PREJUDICE pursuant to Federal Rule of Civil Procedure 41(b), Rule 16(f), Rule 37(b), and for failure to comply with this Court's Orders.
5. The Clerk of the Court is directed to enter judgment, with prejudice, pursuant to Federal Rule of Civil Procedure 58 in all Defendants' favor and against Plaintiff.
6. All other pending motions are DENIED AS MOOT, and all entries on the Court's calendar are VACATED.
7. If he wishes to appeal this judgment, Plaintiff must file a notice of appeal with this Court within thirty (30) days of the entry of judgment. Fed. R. App. P. 4(a)(4).
8. If he wishes to proceed *in forma pauperis* on appeal, Plaintiff's motion for leave to appeal *in forma pauperis* must identify the issues that he will present on appeal to assist the Court in determining whether the appeal is taken in good faith. See Fed. R. App. P. 24(a)(1)(c); *Celske v. Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an

appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a responsible assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose . . . has some merit" from a legal perspective).

9. If he chooses to appeal, Plaintiff will be liable for the \$605.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 15th day of August, 2024

/s Sara L. Darrow
SARA L. DARROW
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



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PLRA C.R. 3(b) FINAL ORDER

December 27, 2024

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| No. 24-2545 | JOHN DOUGLAS, Plaintiff - Appellant v. WEXFORD HEALTH SOURCES, INC. and CHRISTY SMITH, Defendants - Appellees |
| Originating Case Information: District Court No: 3:19-cv-03098-SLD Central District of Illinois District Judge Sara Darrow | |

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on November 26, 2024 and was given fourteen (14) days to pay the \$605.00 filing fee. The pro se appellant has not paid the \$605.00 appellate fee. Accordingly, IT IS ORDERED that this appeal is DISMISSED for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of \$605.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of Section 1915(b). *Newlin v. Helman*, 123 F.3d 429, 433 (7th Cir. 1997).

form name: c7_PLRA_3bFinalOrder (form ID: 142)

Exhibit "I"

**Additional material
from this filing is
available in the
Clerk's Office.**