

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Phillip Douglas Jacobs, :
 :
Plaintiff : Civil Action 2:09-cv-00282
 :
v. : Judge Marbley
 :
Terry J. Collins, *et al.*, : Magistrate Judge Abel
 :
Defendants :

Order

Plaintiff Jacobs, a prisoner incarcerated at the Marion Correctional Institution, brings this action under 42 U.S.C. § 1983 alleging that defendants have interfered with his legal mail. This matter is before the Court on Jacobs' July 8, 2009 objections to Magistrate Judge Abel's July 1, 2009 Report and Recommendation that defendants' June 18, 2009 motion to vacate the April 17, 2009 order granting plaintiff's application to proceed *in forma pauperis* (doc. 8.) be granted.

Upon *de novo* review as required by 28 U.S.C. § 636(b)(1)(B), the objections are OVERRULED and the Report and Recommendation is ADOPTED. Plaintiff argues that some claims in at least 2 of the 3 suits relied on to find that leave to proceed *in forma pauperis* is unavailable under 28 U.S.C. § 1915(g) involved claims that were dismissed without prejudice because prison administrative remedies had not been exhausted. However, each involved at least one claim dismissed for failure to state a claim and judgment was entered on the merits dismissing those claims. Consequently, each case

counts as a strike under § 1915(g). *Pointer v. Wilkinson*, 502 F.3d 369, 377 (6th Cir. 2007). Further, plaintiff fails to offer any explanation why he did not list the cases dismissed for failure to state a claim on his application supporting leave to proceed *in forma pauperis*. Given that he has filed at least 27 suits in the Ohio federal courts, he clearly intended to mislead the Court by failing to honestly answer that portion of the form application to proceed *in forma pauperis*.

Accordingly, defendants' June 18, 2009 motion to vacate the April 17, 2009 order granting plaintiff's application to proceed *in forma pauperis* (doc. 8.) is GRANTED. Plaintiff Phillip Douglas Jacobs's application to proceed *in forma pauperis* is DENIED under 28 U.S.C. §1915(g). Plaintiff Jacobs is ORDERED to pay the Court's \$350 filing fee **within thirty (30) days of the date of this Order**. See, *In re Jacta Est Alea*, 286 F.3d 378, 381 (6th Cir. 2002).

s/Algenon L. Marbley
Algenon L. Marbley, Judge
United States District Court