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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-5558

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL C. SULLIVAN, Plaintiff-Appellant, v. UNITED STATES FOREST SERVICE, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

ORDER

Before: GUY, STRANCH, and LARSEN, Circuit Judges.

Michael C. Sullivan, a West Virginia resident proceeding pro se, appeals a district court's judgment dismissing his civil suit filed pursuant to the doctrine announced in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671-2680; the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; and Tennessee state law. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

I. BACKGROUND

On June 24, 2012, Sullivan was arrested and jailed after a traffic stop in the Cherokee National Forest in the Eastern District of Tennessee. Although a police dog alerted to drugs and field tests on items in the car indicated the presence of drugs, further testing did not. A federal citation for a seat-belt violation was subsequently dismissed, as were state drug charges.

*** APPENDIX A : 1**

Feeling wronged, Sullivan began seeking relief. However, the United States Forest Service ("Forest Service") denied Sullivan's FOIA request for a copy of the incident video on April 16, 2013, and, allegedly, refused to produce the video despite a subpoena issued on June 16, 2015. Likewise, Sullivan's administrative claim against the Forest Service, filed on June 25, 2013, was denied on or about March 1, 2016.

Sullivan also sought relief in federal court. His first suit, brought against the county sheriff and his officers, was dismissed after the district court concluded that probable cause existed for Sullivan's arrest. *Sullivan v. Anderson*, No. 2:13-CV-173, 2015 WL 3949308 (E.D. Tenn. June 29, 2015) (opinion). His second suit, brought against the manufacturer of the field drug-test kits, was dismissed by stipulation of the parties. *Sullivan v. Safariland, LLC*, No. 2:13-CV-174 (E.D. Tenn. May 8, 2015) (stipulation of dismissal). Sullivan did not appeal from either judgment.

On August 22, 2016, Sullivan filed the current suit against the Forest Service and ten of its agents in their individual and official capacities. Sullivan thereafter filed an amended complaint to correct typographical errors. Seeking monetary relief, he primarily challenged his arrest, detainment, and prosecution. He further asserted that the Forest Service had failed to train and supervise its agents adequately. The defendants moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1), (b)(5), and (b)(6).

Upon review, the district court observed that it "had difficulty discerning the precise nature of the plaintiff's claims" but noted that they all related to Sullivan's arrest due to allegedly faulty drug-test kits. The court then concluded that the complaint was subject to dismissal for numerous reasons. First, the court lacked subject-matter jurisdiction over any new FTCA claims not raised in Sullivan's administrative complaint. *See* Fed. R. Civ. P. 12(b)(1). Second, Sullivan did not properly serve the individual defendants in their individual capacities. *See* Fed. R. Civ. P. 12(b)(5). Third, the complaint failed to state a claim because: (a) any *Bivens* claims were barred by the applicable statute of limitations; (b) the individual defendants were entitled to qualified immunity; (c) claims relating to the search and seizure were barred by the doctrine of

*** APPENDIX A : 1**

collateral estoppel; (d) the lack of an underlying state tort precluded claims under the FTCA; and (e) venue over the FOIA claim was improper. *See* Fed. R. Civ. P. 12(b)(6). Noting that the defects in the complaint could not be cured, the district court also granted a request by the defendants to accept certification that the parties had, as ordered by the court, discussed the pleadings in an attempt to cure defects.

On appeal, Sullivan contests all bases for the district court's decision and its grant of certification. He newly argues that the defendants were negligent of duty, honor, and training in violation of various laws, including Title 5 of the Code of Federal Regulations. He also requests the court to simultaneously decide a separately filed judicial complaint against the district court and to grant summary judgment in his favor.

II. ANALYSIS

As an initial matter, we decline to review any new claims that Sullivan is attempting to raise, such as his claim of negligence of duty, because no exceptional circumstances exist that merit their consideration for the first time on appeal. *See Dealer Comput. Servs., Inc. v. Dub Herring Ford*, 623 F.3d 348, 357 (6th Cir. 2010). We also observe that we may affirm a district court's dismissal for reasons other than those stated by the district court. *Hamdi ex rel. Hamdi v. Napolitano*, 620 F.3d 615, 620 (6th Cir. 2010).

A. Subject-matter jurisdiction

A district court's decision to dismiss a case for lack of subject matter jurisdiction under Rule 12(b)(1) is subject to de novo review. *Cartwright v. Garner*, 751 F.3d 752, 760 (6th Cir. 2014).

An FTCA action naming only an agency and individual employees fails to bestow jurisdiction. 28 U.S.C. § 2679; *see Good v. Ohio Edison Co.*, 149 F.3d 413, 418 (6th Cir. 1998); *Allgeier v. United States*, 909 F.2d 869, 871 (6th Cir. 1990). Suing individual employees in their official capacity does not cure the deficiency. *See Jones v. Johnson*, 707 F. App'x 321, 331 (6th Cir. 2017). Because Sullivan's FTCA claims fail on this basis, we need not address whether the

FTCA claims were properly exhausted or whether they were supported by an underlying state tort.

B. Service of process

We review a dismissal of a complaint for failure to serve the defendant under an abuse-of-discretion standard. *Nafziger v. McDermott Int'l, Inc.*, 467 F.3d 514, 521 (6th Cir. 2006); *see also Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996). To serve a federal officer or employee sued in an individual capacity for an action taken in connection with official duties, the plaintiff must serve both: (1) the United States by specified ways which include sending a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States at Washington, D.C., and (2) the officer or employee by a means specified in Federal Rule of Civil Procedure 4(e), (f), or (g). *See* Fed. R. Civ. P. 4(i)(1), (i)(3). Where a plaintiff fails to serve the defendant within ninety days after the complaint is filed, the district court "must dismiss the action without prejudice against that defendant," "order that service be made within a specified time," or extend the time for good cause shown. *See* Fed. R. Civ. P. 4(m).

Review of the record demonstrates that Sullivan sent a summons and complaint by priority mail to the "US Attorney Generals Office" in Washington, D.C., that the Postal Service delivered the mail, and that someone signed for the mail. What the record does not explicitly demonstrate is that Sullivan sent the documents by registered or certified mail, and he cites no authority indicating that his documents prove that he has done so. Sullivan argues that he properly served the individual defendants in their individual capacities by priority mail, which he contends is the same as registered, certified mail, relying on an alleged quotation from the Postal Service that certified mail is available for priority mail as well as first-class mail. While "strict enforcement of Rule 4's technical requirements for service of process" may be "nonsensical" and lead to wasted judicial resources, we must follow the Rule and may not consider whether an error was harmless. *King v. Taylor*, 694 F.3d 650, 656 n.1 (6th Cir. 2012). Consequently, a defendant's "full awareness that he had been sued makes no legal difference to the question whether he was properly served." *Id.* at 655-56. Thus, the district court did not abuse its

discretion by concluding that Sullivan failed to effect service properly against the individual defendants in their individual capacities. *See* Fed. R. Civ. P. 12(b)(5); *Nafziger*, 467 F.3d at 521.

However, because Sullivan did not properly serve the individual defendants in their individual capacities, the district court lacked jurisdiction to consider the merits of the claims against them and should have dismissed the defendants without prejudice. *See* Fed. R. Civ. P. 4(m); *King*, 694 F.3d at 655. Accordingly, we may not consider whether the *Bivens* claims were barred by the statute of limitations, whether the individual defendants were entitled to qualified immunity, and whether claims relating to the search and seizure were barred by the doctrine of collateral estoppel. Additionally, we conclude that the *Bivens* claims may not proceed against the Forest Service because a plaintiff may not bring a *Bivens* action against a federal agency. *See FDIC v. Meyer*, 510 U.S. 471, 486 (1994).

C. Venue and FOIA claim

We next consider Sullivan's FOIA claim regarding the incident video. The district court dismissed this claim based on the Forest Service's assertion that venue was improper because Sullivan did not reside in the Eastern District of Tennessee and the agency records were not located there.

We review de novo a district court's "determination of whether a case is filed in an improper venue." *Kerobo v. Sw. Clean Fuels, Corp.*, 285 F.3d 531, 533 (6th Cir. 2002). If venue is improper, the district court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). A district court's decision on whether to dismiss or transfer a complaint for improper venue is reviewed for an abuse of discretion. *Kerobo*, 285 F.3d at 533.

A FOIA claim may be brought in the district where the complainant resides or has his principal place of business, where the agency records are located, or in the District of Columbia. 5 U.S.C. § 552(a)(4)(B). Here, it cannot be determined whether venue is proper in the Eastern District of Tennessee because the available record does not indicate the physical location of the incident video. *See United States v. Pugh*, 69 F. App'x 628, 630 (4th Cir. 2003). Thus, the

Forest Service's objection to venue was insufficient, and the district court retained jurisdiction over the claim. *See* 28 U.S.C. § 1406(b).

Nonetheless, we conclude that the district court's dismissal of the claim should be affirmed. The FOIA claim against the Forest Service was subject to dismissal because FOIA does not authorize an action for damages, and Sullivan sought only monetary relief. *See* 5 U.S.C. § 552(a)(4)(B); *Hajro v. U.S. Citizenship & Immigration Servs.*, 811 F.3d 1086, 1100 n.9 (9th Cir. 2016); *Cornucopia Inst. v. U.S. Dep't of Agric.*, 560 F.3d 673, 675 n.1 (7th Cir. 2009).

D. Meet and confer certification

Finally, Sullivan argues that the district court erred by granting the defendants' request to accept certification that the parties had discussed the pleadings in an attempt to cure defects. Sullivan contends that adequate discussion did not occur.

We conclude that the district court acted within its broad discretion to manage its courtroom by granting certification. *See Miller v. Am. President Lines, Ltd.*, 989 F.2d 1450, 1467 (6th Cir. 1993); *CBS Inc. v. Young*, 522 F.2d 234, 241 (6th Cir. 1975). We further note that Sullivan does not point out any defects in his complaint that would have been cured by additional discussion.

III. CONCLUSION

Accordingly, we **VACATE** the district court's judgment in part and **REMAND** the action so that the district court may correct its judgment to indicate that the individual defendants are dismissed without prejudice to the extent that they were sued in their individual capacities. The district court's judgment is **AFFIRMED** in all other respects, and all pending motions are **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

*** APPENDIX A : 1**

No. 20-5666

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL C. SULLIVAN,)
)
Plaintiff-Appellant,)
)
v.) ORDER
)
UNITED STATES FOREST SERVICE, et al.,)
)
Defendants-Appellees.)

Before: MURPHY, Circuit Judge.

Michael C. Sullivan, a pro se West Virginia resident, moves the court to grant him permission to proceed in forma pauperis on appeal from a district court's judgment dismissing his civil claims under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962, 1964; the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671-2680; the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; 42 U.S.C. §§ 1983, 1986, and 1988; and state law. Sullivan also asserted an official-capacity claim against the defendants under *Westfall v. Erwin*, 484 U.S. 292 (1988), which held that the judicially created doctrine of official immunity does not provide absolute immunity to government employees for torts committed in the scope of their employment. *See* Fed. R. App. P. 24(a)(5).

Sullivan's current complaint continues his longstanding attempt to seek relief for alleged violations of his rights following his June 2012 arrest and confinement in jail after officers of the United States Forest Service ("Forest Service") initiated a traffic stop in the Cherokee National Forest in Tennessee. Although a police dog alerted to items in Sullivan's car and field tests on Sullivan indicated the presence of drugs, further testing did not. So the federal seatbelt citation and state drug charges were dismissed.

*** APPENDIX A : 2**

Sullivan began seeking relief. But the Forest Service denied Sullivan's FOIA request for a copy of the incident video on April 16, 2013, and allegedly refused to produce the video despite a subpoena issued on June 16, 2015. He then filed an administrative claim against the Forest Service, which was denied on or about March 1, 2016. Sullivan did not appeal from either ruling.

Sullivan then sought relief in federal court. Sullivan's first lawsuit, filed against the county sheriff and officers, was dismissed after the district court concluded that probable cause existed for Sullivan's arrest. *Sullivan v. Anderson*, 2015 WL 3949308 (E.D. Tenn. June 29, 2015). Sullivan's second lawsuit, filed against the manufacturer of the field drug-test kits, was dismissed by stipulation of the parties. *Sullivan v. Safariland, LLC*, No. 2:13-CV-174 (E.D. Tenn. May 8, 2015).

In August 2016, Sullivan filed his third complaint against the Forest Service and ten of its agents in their individual and official capacities. Seeking monetary relief, Sullivan primarily challenged his arrest, detainment, and prosecution. He also claimed that the Forest Service had failed to adequately train and supervise its agents. The district court dismissed the complaint because: (1) it lacked subject-matter jurisdiction over any new FTCA claims not raised in Sullivan's administrative complaint, *see* Fed. R. Civ. P. 12(b)(1); (2) Sullivan failed to properly serve the individual defendants in their individual capacities, *see* Fed. R. Civ. P. 12(b)(5); (3) the complaint failed to state a claim because: (a) any *Bivens* claims were barred by the applicable statute of limitations; (b) the individual defendants were entitled to qualified immunity; (c) claims relating to the search and seizure were barred by the doctrine of collateral estoppel; (d) the lack of an underlying state tort precluded claims under the FTCA; and (e) venue over the FOIA claim was improper, *see* Fed. R. Civ. P. 12(b)(6). *See Sullivan v. U.S. Forest Serv.*, No. 2:16-cv-273 (E.D. Tenn. March 19, 2018). This court vacated the district court's judgment in part and remanded the case to permit the district court to correct its judgment to indicate that the individual defendants are dismissed without prejudice to the extent that they were sued in their individual capacities and improperly served; the judgment was otherwise affirmed. *Sullivan v. U.S. Forest Serv.*, No. 18-5558 (6th Cir. Jan. 3, 2019) (order).

*** APPENDIX A : 2**

In April 2019, Sullivan filed his current 65-page complaint, again claiming that the defendants violated his rights in connection with his arrest by allegedly using faulty drug-test kits, negligently failing to train employees, engaging in fraudulent and racketeering activity, conspiring to violate his rights, and failing to provide him with a copy of a body cam video in violation of FOIA. Sullivan named the same Forest Service agents he previously sued, Forest Service Director Karen Carrington, and Forest Service Deputy Director Christopher Boehm. The district court liberally construed the complaint as asserting: (1) *Bivens* and *Westfall* claims alleging that the defendants violated his First, Fourth, Fifth, Sixth, Eighth, Tenth, and Fourteenth Amendment rights, the RICO Act, and the FTCA; (2) *Bivens* and *Westfall* claims alleging that the defendants negligently failed to train and supervise their employees; and (3) claims alleging that the defendants' conduct violated 42 U.S.C. §§ 1983, 1986, 1988, and state law.

A magistrate judge recommended dismissing the complaint under 28 U.S.C. § 1915(e)(2)(B) for the following reasons: (1) Sullivan's FTCA and state-law claims for false arrest, illegal imprisonment, and illegal arrest are meritless and also barred by res judicata because the district court previously determined that law enforcement officers had probable cause to arrest him; (2) Sullivan failed to allege specific facts to state a *Bivens* claim against the federal officials and, in any event, any *Bivens* claim is also barred by the applicable one-year statute of limitations; (3) the federal officials are entitled to qualified immunity for Sullivan's *Westfall* claim because he failed to allege specific facts establishing that the these officials violated his constitutional rights; (4) Sullivan's FOIA claim is barred by res judicata because the district court previously dismissed the claim with prejudice—a ruling that was affirmed on appeal because FOIA does not authorize actions for monetary relief only; (5) Sullivan failed to allege specific facts to state a RICO claim; and (6) the court lacks subject-matter jurisdiction over Sullivan's negligence-of-duty claim under 28 U.S.C. § 2675 because he did not allege negligence in his administrative claim and any administrative claim would now be time-barred. The district court rejected Sullivan's objections, adopted the magistrate judge's report, and dismissed the complaint. The district court also rejected

*** APPENDIX A : 2**

Sullivan's request that the court recuse the magistrate judge based on alleged bias exhibited in the report and recommendation. Sullivan appealed and moves to proceed in forma pauperis.

For the reasons expressed by the district court and magistrate judge, an appeal in this case would be frivolous—i.e., it would lack an arguable basis in law. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Callihan v. Schneider*, 178 F.3d 800, 804 (6th Cir. 1999).

Accordingly, the motion to proceed in forma pauperis is **DENIED**. Unless Sullivan pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

*** APPENDIX A : 2**

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

MICHAEL C. SULLIVAN	)	
	)	
v.	)	No. 2:16-CV-273
	)	
UNITED STATES FOREST SERVICE, *ET AL.*	)	

JUDGMENT

This case came before the Court on a motion to dismiss filed by Defendants. The Honorable J. Ronnie Greer, United States District Judge, having rendered a decision on the motion, it is **ORDERED** and **ADJUDGED** that the plaintiff take nothing and that the plaintiff's action be **DISMISSED WITH PREJUDICE**.

ENTER:

s/ *John L. Medearis*
District Court Clerk

*** APPENDIX B : 3**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

MICHAEL SULLIVAN Plaintiff, vs. UNITED STATES FOREST SERVICE *et al.* Defendants.	)	2:16-CV-00273-JRG-MCLC

ORDER

This matter comes before the undersigned pursuant to 28 U.S.C. § 636(b) and standing orders of the District Court for consideration of Plaintiff's Application To Proceed *In Forma Pauperis* [Doc. 38] to appeal this case to the Sixth Circuit Court of Appeals as provided for in Fed.R.App.P. 24(a). The motion [Doc. 38] is GRANTED.

The undersigned has reviewed the application and finds Plaintiff lacks the ability to pay or to give security for fees and costs. Interpreting his application liberally, the Court believes Plaintiff is alleging that he is entitled to redress "for wrongful arrest of [sic] assorted damages." [Doc. 38, pg. 1]. While this is not specific, the Court will interpret this as compliance with Fed.R.Crim.P. 24(a)(1)(A)-(C)'s requirements. Accordingly, the Court GRANTS the Plaintiff's motion to proceed *in forma pauperis* and Plaintiff is permitted to proceed on appeal without prepaying or giving security for fees and costs.

SO ORDERED:

s/Clifton L. Corker
United States Magistrate Judge

*** APPENDIX B : 4**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

MICHAEL C. SULLIVAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:16-CV-000273-JRG-CLC
	)	
UNITED STATES FOREST SERVICE *et al.*,	)	
	)	
Defendants.	)	

AMENDED JUDGMENT

Pursuant to the instructions of the Court of Appeals for the Sixth Circuit in its January 3, 2019 Order [Doc. 41], the Court's prior judgment [Doc. 33] is hereby **AMENDED**, and it is **ORDERED** and **ADJUDGED** that Defendants in their individual capacities are **DISMISSED WITHOUT PREJUDICE** and this action is **DISMISSED WITH PREJUDICE** in all other respects.

ENTER:

s/ *John L. Medearis*
District Court Clerk

*** APPENDIX B : 5**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

MICHAEL C. SULLIVAN, Plaintiff, vs. KAREN CARRINGTON, DIRECTOR, UNITED STATES FOREST SERVICE U.S. OFFICE OF GENERAL COUNSEL et al., Defendants	)	2:19-CV-00049-DCLC

JUDGMENT

This case came before the Court on Plaintiff's Motion for Leave to Proceed *in forma pauperis* [Doc. 1] and Magistrate Judge Cynthia R. Wyrick's Report and Recommendation [Doc. 6]. For the reasons stated in the Court's Order adopting Judge Wyrick's Report and Recommendation, it is **ORDERED AND ADJUGED** that this action be, and hereby is, **DISMISSED WITH PREJUDICE**. Accordingly, the Clerk is **DIRECTED** to close the case. The Court certifies that any appeal from this action would not be taken in good faith and would be totally frivolous. *See* Fed. R. App. P. 24(a)(3)(A).

SO ORDERED:

s/ Clifton L. Corker
United States District Judge

ENTERED AS A JUDGMENT:

s/ John Medearis
Clerk of Court

*** APPENDIX B : 6**

No. 20-5666

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 11, 2021
DEBORAH S. HUNT, Clerk

MICHAEL C. SULLIVAN,

Plaintiff-Appellant,

v.

KAREN CARRINGTON, Director, United States Forest Service U.S Office of General Counsel, et al.,

Defendants-Appellees.

ORDER

The plaintiff moves to hold this case in abeyance pending rulings on his two judicial complaints. Both the district court and this court denied the plaintiff pauper status on appeal and the appellate filing fee remains outstanding.

The motion to hold this appeal in abeyance is **DENIED**. In view of this ruling, the plaintiff is afforded one final opportunity to pay the $505 appellate filing fee to the district court no later than **Tuesday, May 25, 2021**. Further, the plaintiff is cautioned that failure to comply with this deadline may be grounds for dismissal for want of prosecution without further notice.

ENTERED PURSUANT TO RULE 45(a)
RULES OF THE SIXTH CIRCUIT

Deborah S. Hunt, Clerk

*** APPENDIX B : 7**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

MICHAEL C SULLIVAN,	)	
	)	
Plaintiff,	)	2:19-CV-00049-DCLC
	)	
vs.	)	
	)	
KAREN CARRINGTON, *et al.*,	)	
	)	
Defendants.	)	
	)	

ORDER

Plaintiff Michael Sullivan ("Plaintiff") filed a Notice of Appeal [Doc. 11] following the Court's order and judgment dismissing this case with prejudice [Docs. 9, 10]. On February 2, 2021, the United States Court of Appeals for the Sixth Circuit denied Plaintiff's motion to proceed in forma pauperis [Doc. 13] and directed Plaintiff to pay the $505 filing fee within thirty days. Plaintiff did not timely pay the filing fee, and on June 8, 2021 the Sixth Circuit dismissed the case for want of prosecution [Doc. 19].

In light of the dismissal on appeal, Plaintiff's pending motion for substitution [Doc. 14] and motion to stay proceedings and for extension of time [Doc. 17] are **DENIED** as moot.

SO ORDERED:

s/Clifton L. Corker
United States District Judge

*** APPENDIX B : 8**

No. 20-5666

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL C. SULLIVAN,

Plaintiff-Appellant,

v.

UNITED STATES FOREST SERVICE, et al.,

Defendants-Appellees.

ORDER

Before: KETHLEDGE, DONALD, and LARSEN, Circuit Judges.

Michael C. Sullivan, a *pro se* West Virginia resident, moves for reconsideration of our order denying him *in forma pauperis* status in his appeal from a district court judgment dismissing his civil suit filed pursuant to the doctrine announced in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1962, 1964; the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680; the Freedom of Information Act, 5 U.S.C. § 552; 42 U.S.C. §§ 1983, 1986, and 1988; and state law.

In his motion for reconsideration, Sullivan argues that an appeal would be taken in good faith because this Court partially vacated the dismissal of his prior complaint and remanded the case to the district court. He also argues that the district court judge and the magistrate judge exhibited bias when they summarily dismissed his current claims, and that they should thus be disqualified. We conclude that the Court did not act under any misapprehension of law or fact in its prior order denying Sullivan's motion to proceed *in forma pauperis*. *See* Fed. R. App. P. 40(a).

Accordingly, we **DENY** the motion for reconsideration.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

*** APPENDIX C : 9**

Case No. 20-5666

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

MICHAEL C. SULLIVAN

Plaintiff - Appellant

v.

KAREN CARRINGTON, Director, United States Forest Service U.S Office of General Counsel; CHRISTOPHER BOEHM, Deputy Director, United States Forest Service; ELIZABETH ANNE MARCHAK; JOAN M. RIZKALLAH; JAVIER VALLES; IRA SMITH; DAVID FERRELL; JOSEPH L. PARHAM; STEPHEN RUPPERT; ROBERT S. O'NEILL; LUCAS A. JOHNSON; ANDERSON E. HARRIS; UNITED STATES FOREST SERVICE

Defendants - Appellees

Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by May 25, 2021.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk

Issued: June 08, 2021

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

MICHAEL C. SULLIVAN, Plaintiff, vs. KAREN CARRINGTON, DIRECTOR, UNITED STATES FOREST SERVICE U.S. OFFICE OF GENERAL COUNSEL et al., Defendants	)	2:19-CV-00049-DCLC

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the objections of Plaintiff Michael Sullivan ("Sullivan") [Doc. 7] to the Report and Recommendation of the United States Magistrate Judge [Doc. 6] and Sullivan's Motion for Substitution [Doc. 8], seeking to substitute United States Magistrate Judge Cynthia R. Wyrick. Sullivan filed this cause of action along with an *in forma pauperis* (IFP) application [Docs. 1, 2]. The magistrate judge screened his complaint and application for IFP and approved his IFP status. In screening the case, the magistrate judge reviewed Sullivan's complaint and has recommended it be dismissed in its entirety pursuant to 28 U.S.C. § 1915(e)(2). For the foregoing reasons, this Court agrees with the Report and Recommendation filed by Magistrate Judge Wyrick and hereby adopts the same as the judgment of the Court. Further, the Court finds Sullivan's Motion for Substitution is without merit and is denied.

I. BACKGROUND

On June 24, 2012, Sullivan County Deputy Sheriff Jeremiah Lane ("Deputy Lane") was called out to the Cherokee National Forest, where officers with the United States Forestry Service ("USFS") were detaining Sullivan for not wearing a seatbelt. After a canine alerted on Sullivan's

vehicle, officers searched his car and discovered several white substances, which field-tests indicated were controlled substances. When Deputy Lane arrived, he also field-tested the substances, and after the results indicated controlled substances, he arrested Sullivan. Ultimately, the Tennessee Bureau of Investigation's lab tested the substances and determined they were not controlled substances.

On June 21, 2013, Sullivan filed his first federal lawsuit stemming from this arrest. He sued Wayne Anderson, the Sheriff of Sullivan County, Tennessee, individually and in his official capacity; two sheriff deputies, Jeremiah Lane and Jeff Dotson, individually and in their official capacities; Sullivan County Mayor Steve Godsey, individually and in his official capacity; and Sullivan County, Tennessee. *See Sullivan v. Anderson, et al.*, No. 2:13-CV-173 (E.D. Tenn. June 29, 2015). Sullivan's first count was a § 1983 action against Deputy Lane, alleging Lane had wrongfully arrested him for drug offenses on the false-positive drug results obtained from using an out-of-date drug field-test kit. The court dismissed the § 1983 claim as to Anderson, Dotson, and Godsey for failure to state a claim. It also dismissed this claim as to Deputy Lane, finding that "Lane had ample probable cause to arrest the plaintiff at the time of the arrest." *Sullivan v. Anderson, et al.*, No. 2:13-CV-173 [Doc. 50, pg. 12]. Count Two alleged Sullivan County had failed to properly train and supervise its law enforcement personnel, also in violation of § 1983. The district court found Sullivan "had failed to produce sufficient evidence that the officers' training programs were inadequate" and dismissed Sullivan County from the suit [*Id.* at pg. 13]. The district court then dismissed all of Sullivan's state-law claims without prejudice, declining to exercise supplemental jurisdiction over them [*Id.* at pg. 14]. On July 27, 2015, Sullivan, representing himself, entered a "Stipulation of Dismissal with Prejudice," stating that "all matters in controversy in this cause of action have been fully compromised and settled by and through

agreement of the parties and that this matter should be dismissed with prejudice." *Sullivan v. Anderson, et al.*, No. 2:13-CV-173 [Doc. 53].

Also, on June 21, 2013, Sullivan filed another federal lawsuit against, among others, Safariland, LLC, the manufacturer of field-testing kits marketed under the "NIK Public Safety" name. *See Sullivan v. Safariland, LLC, et al.*, No. 2:13-CV-174 (E.D. Tenn. May 8, 2015). On May 8, 2015, the parties entered a Stipulation of Dismissal, dismissing Sullivan's claims "with full prejudice against refiling." *Sullivan v. Safariland, LLC, et al.*, No. 2:13-CV-174 [Doc. 49].

On August 22, 2016, Sullivan filed his third federal lawsuit—a 56-page complaint—stemming from his July 2012 arrest. In this case, he turned his attention to the United States Forestry Service, ("USFS"), suing the USFS and ten of its agents. *See Sullivan v. U.S. Forestry Serv., et al.*, No. 2:16-CV-273 (E.D. Tenn. Mar. 19, 2018), *vacated in part*, No. 18-5558 (6th Cir. Jan. 3, 2019). The district court found that any *Bivens* claims,[1] if they did exist, were barred by the one-year statute of limitations. *Sullivan v. U.S. Forestry Serv., et al.*, No. 2:16-CV-273 [Doc. 32, pg. 10]. Any cause of action would have arisen on June 24, 2012, and the suit against the federal agents was not filed until August 22, 2016. The district court also found collateral estoppel applied because it had previously determined on the merits that the law enforcement officers had probable cause to arrest Sullivan. [*Id.* at pg. 13]. Sullivan appealed the dismissal to the Sixth Circuit.

The Sixth Circuit vacated the portion of the district court's decision regarding the claims against the individual defendants and remanded the action:

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[1] "A *Bivens* claim, named after a landmark 1971 Supreme Court decision that established it, is a claim for money for injuries sustained as a result of a federal agent's violation of the constitution while acting under his federal authority." *Dolan v. United States*, 514 F.3d 587, 594 n.2 (6th Cir. 2008).

> [B]ecause Sullivan did not properly serve the individual defendants in their individual capacities, the district court lacked jurisdiction to consider the merits of the claims against them and should have dismissed the defendants without prejudice. *See* Fed. R. Civ. P. 4(m); *King* [*v. Taylor*, 694 F.3d 650], 655 [(6th Cir. 2012)]. Accordingly, we may not consider whether the *Bivens* claims were barred by the statute of limitations, whether the individual defendants were entitled to qualified immunity, and whether claims relating to the search and seizure were barred by the doctrine of collateral estoppel. Additionally, we conclude that the *Bivens* claims may not proceed against the Forest Service because a plaintiff may not bring a *Bivens* action against a federal agency. *See FDIC v. Meyer*, 510 U.S. 471, 486 (1994).

Sullivan v. U.S. Forestry Serv., et al., No. 2:16-CV-273 [Doc. 41, pg. 4]. Concerning Sullivan's Freedom of Information Act (FOIA) claim, the Sixth Circuit, in affirming the district court's dismissal of the claim, found that "[t]he FOIA claim against the Forest Service was subject to dismissal because FOIA does not authorize an action for damages, and Sullivan sought only monetary relief" [*Id.* at pg. 6]. The only claims that survived the Sixth Circuit's ruling were Sullivan's claims against the individual defendants.

On April 1, 2019, Sullivan filed the present action; this time, his complaint consists of 65 pages, and, in addition to naming the USFS agents he sued previously, he has added Karen Carrington, the Director of the USFS, and Christopher Boehm, its Deputy Director. He again recites the same factual allegations concerning his 2012 arrest. For his first cause of action, he claims violations of "the First, Fourth, Fifth, Sixth, Eighth, Tenth, and Fourteenth Amendments to the U.S. Constitution. *Bivens*, 403 U.S. 388; *Westfall*,[2] 484 U.S. 292; [Racketeer Influenced and Corrupt Organizations Act (RICO)], 18 U.S.C. §§ 1962, 1964; [Federal Tort Claims Act (FTCA)],

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[2] In *Westfall v. Erwin*, 484 U.S. 292 (1988), the Supreme Court recognized the viability of state-law tort claims against federal officials. In response to that decision, however, Congress passed the Westfall Act, 28 U.S.C. § 2679, which makes the Federal Tort Claims Act (FTCA) "the exclusive remedy for most claims against Government employees arising out of their official conduct." *Hernandez v. Mesa*, 140 S. Ct. 735, 748 (2020) (quoting *Hui v. Castaneda*, 559 U.S. 799, 806 (2010)).

28 U.S.C. § 1346" [Doc. 2, pg. 56] (punctuation added). Count Two deals with "Failure to train, supervise and reform. *Bivens*, 403 U.S. 388; *Westfall*, 484 U.S. 292; RICO, 18 U.S.C. § 1964; FTCA, 28 U.S.C. § 1346" [*Id.* at pg. 57] (punctuation added). Count Three deals with "Pendant State claims, 42 U.S.C. §§ 1983, 1986, 1988" [*Id.*]. All his claims relate to the July 2012 arrest.

II. STANDARD OF REVIEW

As an initial matter, Sullivan's case is in a different procedural posture than his immediately preceding case against the USFS filed in 2016. *See Sullivan v. U.S. Forestry Serv., et al.*, No. 2:16-CV-273. In that case, the court denied Sullivan's IFP application [Doc. 6], and he paid the filing fee. He then failed to properly serve the individual defendants in their individual capacities. When the district court dismissed the case, the Sixth Circuit vacated in part and remanded, finding the court lacked jurisdiction to address the merits of the defendants' motion to dismiss for failure to state a claim as it pertained to the individual defendants. *Sullivan v. U.S. Forestry Serv., et al.*, No. 2:16-CV-273 [Doc. 41, pg. 6].

The present case is in a different procedural posture. Here, Sullivan has again claimed indigency and filed an IFP application [Doc. 1], and the magistrate judge granted the IFP application [Doc. 6, pg. 2]. Because Sullivan is indigent, 28 U.S.C. § 1915(e)(2) requires the Court to conduct an initial review of his complaint and to dismiss it if it is facially frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief. In reviewing the complaint to determine whether it states a plausible claim, "a district court must (1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true." *Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009) (citing *Gunasekera v. Irwin*, 551 F.3d 461, 466 (6th Cir. 2009) (citations omitted)). A *pro se* pleading must be liberally construed

and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

III. MAGISTRATE JUDGE'S RECOMMENDATION

Consistent with the requirements of § 1915(e)(2), the magistrate judge screened Sullivan's complaint. She noted that notwithstanding the fact that Sullivan referenced "several cases, constitutional amendments, and statutes," he failed to "[plead] any specific facts to show that the Defendants violated his constitutional rights as to any issue which has not already been disposed of by the Court in a manner unfavorable to him" [Doc. 6, pg. 4-5]. She then interpreted Sullivan's complaint to include a cause of action under the Federal Torts Claim Act, 28 U.S.C. § 1346(b). She found this cause of action unviable for two reasons. First, she noted that for Sullivan's state-law claims of false arrest, false imprisonment, or illegal arrest to have any merit, the officers must have lacked probable cause for arresting him. Because the district court previously found probable cause supported Sullivan's arrest, no "underlying state tort" had been committed [*Id.* at pg. 5]. Second, she found this claim was barred by the doctrine of *res judicata* [*Id.*].

The magistrate judge also analyzed Sullivan's *Bivens* claim and found he failed to allege facts that would entitle him to relief [*Id.* at pg. 5]. She also noted Sullivan filed his claim outside the one-year statute of limitations [*Id.* at pg. 5-6]. His arrest took place on June 24, 2012, but he did not file his *Bivens* claim against the USFS officers until August 22, 2016 [*Id.* at pg. 6]. Next, the magistrate judge analyzed Sullivan's *Westfall* claim and found Sullivan failed to allege any facts beyond vague conclusions [*Id.* at pg. 6-7]. Further, she found the USFS officers are entitled to qualified immunity [*Id.*].

The magistrate judge then examined Sullivan's FOIA claim against Elizabeth Marchak. She explained the claim pertains to a video Sullivan requested and noted Sullivan curiously left

out of his complaint the fact that he has already received the video. Nevertheless, she found the claim is barred by the doctrine of *res judicata* because the Sixth Circuit affirmed the district court's dismissal of the claim [Doc. 6, pg. 7-8]. The Sixth Circuit explained that "FOIA does not authorize an action for damages, and Sullivan sought only monetary relief." *Sullivan v. U.S. Forestry Serv., et al.*, No. 2:16-CV-273 [Doc. 41, pg. 6]. Once again, Sullivan only sought monetary relief.

The magistrate judge then addressed Sullivan's RICO claim, in which he claimed the USFS agents violated 18 U.S.C. §§ 1962 and 1964. She could find no allegations in Sullivan's complaint "to support the allegation of racketeering or the collection of any unlawful debt [or] a conspiracy to do so" [Doc. 6, pg. 8]. She found no cause of action under § 1962 and accordingly found Sullivan is not entitled to any remedies under § 1964. She next addressed Sullivan's negligence claim, in which Sullivan stated that "the direct causation actions of defendants where [sic] done in reckless negligence of training and duty . . ." [*Id.*]. She found this claim is without merit because Sullivan did not allege negligence in his administrative claim, and the claim is otherwise time-barred [*Id.* at pg. 9]. Therefore, the magistrate judge recommended the complaint be dismissed with prejudice.

IV. ANALYSIS

A. Sullivan's Objections to the Magistrate Judge's Report and Recommendation

Sullivan has objected to the magistrate judge's recommendation with a 21-page response [Doc. 7]. Sullivan spends a great deal of his objection simply restating his complaint rather than directly responding to the magistrate judge's analysis. Sullivan begins by noting the timing of the magistrate judge's recommendation to dismiss prior to serving the complaint on the Defendants. What Sullivan is missing here is that he paid the filing fee in his last case, but he claimed indigency in this one. Therefore, the Court had the obligation under § 1915(e) to screen the case, allowing

it to reach the merits of the case. In Sullivan's prior suit, service had to be accomplished first. Next, Sullivan appears to object to the magistrate judge's conclusion about his adding Karen Carrington as a defendant for the first time in this suit. Sullivan claims Director Carrington and Deputy Director Boehm should have "[remedied] them for public safety and personal wellbeing" [*Id.* at pg. 3]. The Court finds Sullivan's position in this regard is not an objection.

Sullivan also apparently objects to the magistrate judge applying *res judicata* to bar his claims because, he contends, the district court dismissed the state claims "without prejudice" and he entered into a "Stipulated Agreement" with the state officers involved in his favor [*Id.* at pg. 5]. Contrary to Sullivan's arguments, the district court reached the merits of Sullivan's claims against Deputy Lane. In dismissing those claims, it found that "Lane had ample probable cause to arrest the plaintiff at the time of the arrest." *Sullivan v. Anderson, et al.*, No. 2:13-CV-173 [Doc. 50, pg. 12]. To be sure, the district court declined to exercise supplemental jurisdiction over the state-law claims against the state officers, but it reached the probable cause issue in dismissing Sullivan's FTCA claims.

Sullivan next argues that his June 24, 2012 detention and arrest were in violation of the *Aguilar-Spinelli* test, arguing that because the grand jury returned a no true bill, there was *ipso facto* no probable cause. In addition to the fact that the Supreme Court has abandoned the *Aguilar-Spinelli* test, *Illinois v. Gates*, 462 U.S. 213, 238 (1983), Sullivan misses the point here. He was stopped for not wearing a seatbelt, and then the canine alerted on his car. Federal officers searched his car and discovered what field-tested positive for narcotics. These are the facts the district court recited in finding probable cause. That the substances were ultimately not narcotics does not change the analysis. Sullivan claims the Sixth Circuit reversed the district court for reaching the merits of the case, so *res judicata* cannot apply. However, Sullivan does not address the district

court's finding in ruling on Deputy Lane's motion for summary judgment in his previous lawsuit that probable cause supported his arrest. In any event, this claim is without merit because state officers were the ones who arrested him, not the USFS officers named in the present case.

Sullivan next objects to the magistrate judge recommending that his FTCA claim be dismissed, stating the Sixth Circuit dismissed his FTCA claim without prejudice because he had not served the defendants [Doc. 7, pg. 9]. The Court has already addressed this argument. The magistrate judge screened the present complaint pursuant to § 1915. Therefore, unlike Sullivan's previous lawsuit in which he paid the filing fee, service of process on the Defendants is not necessary for the Court to reach the merits of the present case because Sullivan has elected to pursue this case without prepayment of costs. *See* 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).

Next, Sullivan objects to the magistrate judge finding the statute of limitations applied to bar his *Bivens* claims. Pursuant to Tenn. Code Ann. § 28-3-104(a), a one-year statute of limitations period is applicable to *Bivens* actions brought in Tennessee. The incident giving rise to Sullivan's *Bivens* claim occurred on July 24, 2012. "[T]he statute of limitations begins to run when the plaintiff knows or has reason to know of the injury which is the basis of his action." *Mason v. Dep't of Justice*, 39 F. App'x 205, 207 (6th Cir. 2002). Sullivan initially filed this claim on August 22, 2016—more than one year after the accrual of any cause of action he would have against the federal agents. *Sullivan v. U.S. Forestry Serv., et al.*, No. 2:16-CV-273 [Doc. 1].

Sullivan next objects to the magistrate judge's analysis concerning his *Westfall* claim, arguing qualified immunity does not apply to shield the USFS officers from liability [Doc. 7, pg. 12]. Without any substantive analysis, he attempts to argue the agents' actions were not personal discretionary actions [*Id.*]. "[T]he Court has held that Government officials are entitled to qualified immunity with respect to 'discretionary functions' performed in their official

capacities." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1866 (2017). "To establish a § 1983 [or *Bivens*] claim against a public official in his personal capacity, a plaintiff must show that the official either actively participated in the alleged unconstitutional conduct or 'implicitly authorized, approved or knowingly acquiesced in the alleged unconstitutional conduct of an offending subordinate.'" *Webb v. United States*, 789 F.3d 647, 659 (6th Cir. 2015) (citation omitted). "There are two general steps to a qualified immunity analysis. The court must determine whether the facts alleged show the officer's conduct violated a constitutional right and whether that right was clearly established." *Robertson v. Lucas*, 753 F.3d 606, 615 (6th Cir. 2014).

In *Robertson*, the Sixth Circuit explained that "to prevail on their false arrest claims, appellants were required to prove that the officers lacked probable cause to arrest them." *Id.* at 615; *see also Voyticky v. Village of Timberlake*, 412 F.3d 669, 677 (6th Cir. 2005) ("A false arrest claim under federal law requires a plaintiff to prove that the arresting officer lacked probable cause to arrest the plaintiff."). It further explained that "[g]overnment officials, including police officers, are immune from civil liability unless, in the course of performing their discretionary functions, they violate the plaintiff's clearly established constitutional rights." *Id.* (citing *Jones v. Byrnes*, 585 F.3d 971, 974 (6th Cir. 2009)). As previously noted, Sullivan has not demonstrated any unconstitutional conduct. The district court already found the state officer had probable cause to arrest him. *Sullivan v. Anderson, et al.*, No. 2:13-CV-173 [Doc. 50, pg. 12]. The federal officers clearly had a reasonable basis to stop him because of a seatbelt violation. *See, e.g.*, *United States v. Canipe*, 569 F.3d 597, 601 (6th Cir. 2009) (holding that because the officer "possessed probable cause to believe that a traffic violation occurred when he observed [the defendant] not wearing a seatbelt, [the officer's] motivation for making the stop (suspicion of unlawful possession of a

firearm) did not undermine [the constitutionality of the stop]"). Thus, Sullivan's *Bivens* claim necessarily fails.

Sullivan further objects to the magistrate judge's treatment of his FOIA claim [Doc. 7, pg. 13]. The Sixth Circuit has already addressed this matter, stating that "[t]he FOIA claim against the Forest Service was subject to dismissal because FOIA does not authorize an action for damages, and Sullivan sought only monetary relief." *Sullivan v. U.S. Forestry Serv., et al.*, No. 2:16-CV-273 [Doc. 41, pg. 6]. Sullivan again requests "in excess of ten million dollars" for this claim [Doc. 1, pg. 57-60]. Because Sullivan is again requesting monetary relief, there is no reason to address this claim any differently than the Sixth Circuit.

Next, Sullivan objects to the magistrate judge's analysis of his RICO claim [Doc. 7, pg. 14-17]. Sullivan states the USFS agents were a "pirate street gang swat team racketeering enterprise" [*Id.* at pg. 15]. "To state a § 1962(c) RICO claim . . . a plaintiff must plead a person's '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Hager v. ABX Air, Inc.*, No. 2:07-CV-317, 2008 WL 819293, at *3 (S.D. Ohio Mar. 25, 2008) (citing *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985)). Sullivan has not sufficiently pled any of these elements. He simply claims he was arrested improperly, his car was searched illegally, and he was arrested in violation of the constitution. These facts go to a specific incident. Sullivan does not attempt to plausibly allege a "pattern of racketeering activity" sufficient to satisfy § 1962. Thus, his RICO claim fails.

Finally, Sullivan objects to the magistrate judge's treatment of his negligence claim [Doc. 7, pg. 17-19]. He really does not make any coherent argument in this regard. Nevertheless, this claim is barred because Sullivan did not first raise it administratively. To the extent the claim is brought against the Defendants in their official capacities, the claim must first be brought

administratively against the United States under the FTCA. 28 U.S.C. §§ 2675(a) and 2679. To the extent the claim is brought against the Defendants in their individual capacities, the claim is time-barred, and the Defendants are entitled to qualified immunity [Doc. 6, pg. 6-7, 9].

B. Sullivan's Motion to Recuse the Magistrate Judge

In addition to objecting to the Report and Recommendation, Sullivan goes one step further and asks this Court to substitute Magistrate Judge Wyrick [Doc. 8]. Sullivan alleges the Report and Recommendation was biased, as it was issued before the Defendants answered his complaint [Doc. 8, pg. 1]. As already noted, however, § 1915 provides in pertinent part: "[T]he court shall dismiss the case *at any time* if the court determines that . . . the action . . . is frivolous or malicious [or] fails to state a claim on which relief may be granted . . . ." 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) (emphasis added). Thus, it was not improper for the Magistrate Judge to recommend that the Court dismiss Sullivan's complaint prior to a response from the Defendants. The Court finds no evidence Magistrate Judge Wyrick was in any way biased or partial in her Report and Recommendation. Therefore, Sullivan's motion is denied.

V. CONCLUSION

After careful consideration of the record as a whole and the Report and Recommendation of the United States Magistrate Judge, and for the reasons set out in that Report and Recommendation which are incorporated by reference herein, it is hereby **ORDERED** that the Report and Recommendation [Doc. 6] is **ADOPTED**, and this action is **DISMISSED WITH PREJUDICE**. Plaintiff's Motion for Substitution [Doc. 8] is **DENIED**. The Court certifies that any appeal from this action would not be taken in good faith and would be totally frivolous. *See* Fed. R. App. P. 24(a)(3)(A).

SO ORDERED:

s/ Clifton L. Corker
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

GREENEVILLE DIVISION

MICHAEL C. SULLIVAN,	)	
	)	
Plaintiff,	)	2:19-CV-49
	)	
vs.	)	
	)	
KAREN CARRINGTON, et al.,	)	
	)	
Defendants.	)	

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND REPORT AND RECOMMENDATION

I. *In forma pauperis* Motion

Plaintiff Michael C. Sullivan has filed a Motion [Doc. 1] to proceed *in forma pauperis.* The Motion is before the United States Magistrate Judge pursuant to 28 U.S.C. § 636, and the standing orders of this Court. Mr. Sullivan is representing himself in this action.

The purpose of 28 U.S.C. § 1915 is to ensure that indigent litigants have meaningful access to the courts. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342, 69 S.Ct. 85 (1948); *Neitzke v. Williams*, 490 U.S. 319, 324, 109 S.Ct. 1827 (1989). As such, the statute allows a litigant to commence a civil or criminal action in federal court without paying the administrative costs of the lawsuit. *Denton v. Hernandez*, 504 U.S. 25, 27, 112 S.Ct. 1728 (1992).

The Court's review of an *in forma pauperis* application is normally based solely on the affidavit of indigence. *See Gibson v. R.G. Smith Co.*, 915 F.2d 260, 262-63 (6th Cir. 1990). To proceed *in forma pauperis*, the petitioner must show, by affidavit, the inability to pay court fees and costs. 28 U.S.C. §1915(a). At the same time, one need not be absolutely destitute to enjoy the benefit of proceeding *in forma pauperis*. *Adkins,* 335 U.S. at 342, 69 S.Ct. at 90. An affidavit

to proceed *in forma pauperis* is sufficient if it demonstrates that the petitioner cannot, because of poverty, afford to pay for the costs of litigation and still pay for the necessities of life. *Id.* at 339, 69 S.Ct. at 89. The decision to grant or deny such an application lies within the sound discretion of the Court. *Phipps v. King*, 866 F.2d 824, 825 (6th Cir. 1988).

In the present case, petitioner's Application to Proceed Without Prepayment of Fees and petitioner's economic status have been considered in making the decision of whether to grant leave to proceed *in forma pauperis*. The application sets forth grounds for so proceeding; thus, the Application to Proceed Without Prepayment of Fees [Doc. 1] is **GRANTED**.

The Clerk is **DIRECTED** to file the complaint without prepayment of costs or fees. *Gibson*, 915 F.2d at 262-63; *see Harris v. Johnson*, 784 F.2d 222 (6th Cir. 1986). At the same time, for the reasons set forth below, **the Clerk shall not issue process at this time.**

II. Screening Standard

Pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii), the district court may dismiss a complaint because it is frivolous or if it fails to state a claim upon which relief can be granted. *See also Neitzke*, 490 U.S. 319, 109 S.Ct. 1827. [1]

A. Background

This case arises from Plaintiff's arrest on June 24, 2012 after a traffic stop in the Cherokee National Forest in the Eastern District of Tennessee. The state drug charges were subsequently dismissed as was the federal citation for a seat-belt violation. Plaintiff sought relief by filing an administrative claim against the Forest Service on June 25, 2013, which was denied on or about

[1] Plaintiff herein is not a prisoner; however, 28 U.S.C. § 1915, despite its references to prisoners, is not limited to prisoner suits. *United States v. Floyd*, 105 F.3d 274, 36 Fed. R. Serv. 3d 1330 (6th Cir. 1997) and *Powell v. Hoover*, 956 F. Supp. 564 (M.D.Pa. 1997).

March 1, 2016. Plaintiff also filed suit in federal court, bringing a complaint against the county sheriff and officers, which was dismissed after the district court concluded that there was probable cause for Plaintiff's arrest. *Sullivan v. Anderson*, No. 2:13-CV-173, 2015 WL 3949308 (E.D. Tenn. June 29, 2015) (opinion). Additionally, Plaintiff filed suit against the manufacturer of the field drug-test kits which was dismissed by stipulation of the parties. *Sullivan v. Safariland, LLC*, No. 2:13- CV-174 (E.D. Tenn. May 8, 2015) (stipulation of dismissal). Plaintiff did not appeal these judgments.

Plaintiff then filed a civil claim against all of these same named Defendants except for Karen Carrington, who was added as a defendant for the first time to that action. *Sullivan v. United States Forest Service, et al.*, No. 2:16-CV-273 (E.D. Tenn. February 28, 2019). That case was dismissed with prejudice by the Honorable Ronnie J. Greer. *Id.* [Doc. 33]. Plaintiff appealed the dismissal and the United States Court of Appeals issued a judgment vacating the dismissal order in part and affirming it in part. *Id.* [Doc. 41]. Specifically, the United States Court of Appeals dismissed the complaints against Defendants in their individual capacities without prejudice, but affirmed the judgment of the District Court in all other respects. Plaintiff then filed this complaint on April 1, 2019 [Doc. 2], seeking an award of damages in the amount of $10,000,000.00 against Defendants, United States Forest Service and twelve agents of the Service. [Doc. 2, Attachment 4, pg. 1].

B. Analysis

The Complaint is composed in such a manner as to make it difficult for the Court to determine the exact nature of Plaintiff's claims. Plaintiff has cited several cases, constitutional amendments, and statutes as the basis for his causes of action without alleging facts to support an award pursuant to the cited authority. Plaintiff makes broad, conclusory statements regarding each

Defendant without alleging specific facts and circumstances to support his legal conclusions. He also continues to assert that there was no probable cause for his arrest, which is in direct conflict with the Court's previous findings in *Sullivan v. Anderson, et al.*, 2:13-CV-173 (E.D. Tenn. 2015) ("Based upon the totality of the circumstances, including the information Lane received from Forest Service officers, as well as Lane's additional drug field tests, Lane had ample probable cause to arrest the plaintiff at the time of the arrest.") [Doc 50, pg. 12].

In reviewing Plaintiff's complaint, the Court must first consider the very conclusory allegations made against Defendants, except for those claims alleging that Defendants acted without probable cause in arresting him and also acted improperly with regard to the procedure they followed with regard to said arrest and testing what they found in his possession. As noted above, those factual allegations have already been addressed by the Court and were found to be without merit. In *Twombly*, the Court stated it need not "accept as true a legal conclusion couched as a factual allegation." 550 U.S. at 555. Moreover, as *Iqbal* demonstrates, conclusory assertions are not entitled to any presumption of truth. 556 U.S. at 678-79. Since the Supreme Court's decision in *Iqbal*, the Sixth Circuit Court of Appeals has dismissed constitutional claims supported only be conclusory allegations. *See, e.g., Rondigo*, 641 F.3d at 682, 684 (criticizing district court for accepting plaintiff's conclusory allegations of unlawful discrimination and its failure to identify "a single fact allegation of ... discriminatory animus by any of the five state defendants"); *Nali v. Ekman*, 355 F. App'x 909, 913 (6th Cir. 2009) (affirming dismissal of equal protection claim brought under § 1985, concluding that plaintiff failed to show anything more than conclusory allegations of discriminatory intent). Here, Plaintiff has not pled any specific facts to show that the Defendants violated his constitutional rights as to any issue which has not already been disposed

of by the Court in a manner unfavorable to him. Still, the Court will individually address the merits of each of Plaintiff's causes of action.

1. Federal Torts Claim Act

Construing the complaint liberally since Plaintiff is pro se, it appears that Plaintiff alleges a cause of action under the Federal Torts Claim Act (FTCA) 28 U.S.C.A. § 2674. The FTCA requires an allegation of a tort under state law, which in the instant action would appear to be related to Plaintiff's arrest. *See* 28 U.S.C. § 2674. Under Tennessee law, if there is probable cause, then there is no tort for false arrest, illegal imprisonment, or illegal arrest. *See Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 54-55 (Tenn. Ct. App. 2013). This Court has previously determined on the merits that there was probable cause for Plaintiff's arrest, and Plaintiff has had full and fair opportunity to litigate the matter but did so unsuccessfully. That decision is final. *See Sullivan v. Anderson*, et al., 2:13-CV-173 (E.D. Tenn. 2015) [Docs. 50 and 51].

Because this Court has already determined that there was probable cause for Plaintiff's arrest, there is no underlying state tort; therefore, Plaintiff cannot demonstrate entitlement to relief under the FTCA. The Court further finds that this claim is also barred under the doctrine of *res judicata. See Sullivan v. United States Forest Service, et al.*, No. 2:16-CV-273 (E.D. Tenn. February 28, 2019) [Docs. 32 and 33].

2. Bivens Claim

Plaintiff alleges a cause of action against only the named Defendants within their individual capacity under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff again makes general allegations against named Defendants, but fails to allege specific facts which indicate that he is entitled to relief. Further, Plaintiff has failed to file a claim against the federal officials within the statute of limitations applicable for a *Bivens* claim. In Tennessee, the applicable statute of limitations for *Bivens* claims is one year." *Zundel v. Holder*,

687 F.3d 271, 281 (6th Cir. 2012) (citing Tenn. Code Ann. § 28-3-104(a)(3); *Mason v. Dep't of Justice*, 39 F. App'x 205, 10 207 (6th Cir. 2002)). "This one-year statute of limitations applies to claims filed against federal defendants pursuant to Bivens." *Mason*, 39 F. App'x at 207. "[T]he statute of limitations begins to run when the plaintiff knows or has reason to know of the injury which is the basis of his action." *Id.* Plaintiff's alleges that the conduct at issue took place on June 24, 2012, the date Plaintiff and his belongings were searched, and he was arrested. Plaintiff initially chose to file suit only against the state officials who arrested him and did not file any claims against federal officers until August 22, 2016. The immediate suit was filed on April 1, 2019, six years beyond the one-year statute of limitations. As such, any *Bivens* claims against individual federal defendants are barred by the statute of limitations.

3. Westfall Claim

Plaintiff also alleges a vague cause of action against all Defendants in their official capacities under *Westfall v. Erwin*, 484 U.S. 292 (1988). In his complaint, Plaintiff asserts that Defendants have no Qualified Immunity [Doc. 2, pg. 13]. Plaintiff states that "Defendants actions described herein were so excessive malicious abuse of power and displayed with reckless zeolous [sic] indifference to their sworn code of duty training, inregards [sic] to the rights, safety and well-being of Plaintiff, that imposition of special compensatory is warranted." [Doc. 2, pg. 57]. Because qualified immunity is "an immunity from suit rather than a mere defense to liability," *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985), the Supreme Court "repeatedly ha[s] stressed" that courts should resolve the issue "at the earliest possible stage in litigation." *Hunter v. Bryant*, 502 U.S. 224 (1991); *Rondigo v. Twp. of Richmond*, 641 F.3d 673, 681 (6th Cir. 2011) (explaining that the purpose of qualified immunity is to "ensure that insubstantial claims against government officials are resolved at the earliest possible stages of litigation"). If a plaintiff fails to state a claim sufficient

to overcome immunity, the action should be dismissed at the outset without allowing discovery. *Mitchell*, 472 U.S. at 526; *Ashcroft v. Iqbal*, 556 U.S. 662, 672, 686 (2009); *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009); *Reilly v. Vadlamudi*, 680 F.3d 617, 628 (6th Cir. 2012).

Federal officials are entitled to qualified immunity "unless a plaintiff pleads facts showing" (1) whether a constitutional right has been violated; and (2) whether that right was clearly established. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (emphasis added); see also *Rondigo*, 641 F. 3d at 681 (explaining that when the qualified immunity defense is raised at the pleading stage, the court must determine whether the complaint adequately alleges the commission of acts that violate clearly established law). To satisfy the first prong of the qualified immunity analysis, a plaintiff must allege specific acts by which a particular individual defendant personally violated a plaintiff's constitutional rights. *See Iqbal*, 556 U.S. at 676.

Here, Plaintiff fails to allege any such facts beyond vague conclusions, and the individual federal Defendants are entitled to qualified immunity based on the deficient allegations in the Complaint. Plaintiff also fails to note that he was arrested by state officers, and that he has dismissed the lawsuits against them and the manufacturer of the drug kit at issue. *See, Sullivan v. Safariland*, 2:13-CV-174 and *Sullivan v. Anderson*, 2:13- CV-173.

4. FOIA Claim

Plaintiff has alleged violations of the Freedom of Information Act only against Defendant Elizabeth A. Marchak. These allegations stem from the acquisition of a video that Plaintiff requested. In making this claim, Plaintiff fails to include the fact that he has already acquired the video he was seeking. Further, the claim is barred by the doctrine of *res judicata* since the claim was dismissed with prejudice by this court *Sullivan v. United States Forest Service, et al.*, No. 2:16-CV-273 (E.D. Tenn. February 28, 2019) [Docs. 32 and 33]. The Sixth Circuit Court of

Appeals affirmed the dismissal and concluded that the "FOIA does not authorize an action for damages, and Sullivan sought only monetary relief." *Id.* [Doc. 41, pg. 6].

5. RICO Claim

Plaintiff has also alleged violations of 18 U.S.C. §§ 1962 & 1964 against all Defendants. In support of that allegation Plaintiff provides the following basis for his claim: "Government enterprise causation coercion terrorist obstructions of justice" [Doc. 2, pg. 5]. Plaintiff appears to be attempting to allege a conspiracy against him by Defendants, but it is unclear from the pleadings how he alleges the RICO statute would be implicated in this case. The Court can find no factual allegations in Plaintiff's Complaint to support the allegation of racketeering or the collection of any unlawful debt of a conspiracy to do so. Further, it is not clear that even if the claims were properly pled, conspiracy can apply to agents clearly operating within scope of employment for a common agency due to the intra corporate conspiracy doctrine, which has been held to apply to governmental entities. *See generally Grider v. City of Auburn, Alabama*, 618 F.3d 1240, 1261-1262 (11th Cir. 2010).

Plaintiff attempts to justify his monetary request for relief in the amount of $10,000,000.00 using 18 U.S.C. § 1964; however, these civil remedies only apply when a person is injured in his business or property by reason of a violation under 18 U.S.C. § 1962. Given that there is no cause of action under 18 U.S.C. § 1962, there cannot be entitlement to civil remedies under 18 U.S.C. § 1964.

6. Negligence of Duty Claim

Plaintiff asserts that "[t]he direct causation actions of defendants where [sic] done in reckless negligence of training and duty..." [Doc. 2, pg. 5]. The Court notes that this negligence claim was not raised by Plaintiff in the administrative claim he filed.

Title 28 United States Code section 2675 states in pertinent part:

> (a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, crossclaim, or counterclaim.
>
> (b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

28 U.S.C. § 2675(a) and (b) (2018). Because Plaintiff did not allege negligence in his administrative claim, the Court lacks subject matter jurisdiction over the claim. The claim also cannot be brought administratively at this juncture as it would be time-barred.

III. Conclusion

Plaintiff's specific claims against Defendants are either barred by the statute of limitations, barred by the doctrine of *res judicata*, barred due to lack of subject matter jurisdiction, or a combination thereof. Plaintiff has alleged no claims, either specifically or generally, for which this Court is able to grant relief.

Accordingly, it is **RECOMMENDED** that the complaint be **DISMISSED with prejudice** for the reasons listed above.

This matter is to be presented to the District Judge pursuant to this Report and Recommendation under the authority of *Gibson v. R.G. Smith Co.*, 195 F.2d 260, 262-63 (6th Cir.

1990), which provides that such matters proceed automatically to a district judge for examination of the complaint after a magistrate judge has granted the petition to proceed *in forma pauperis*.[2]

Respectfully submitted,

s/ Cynthia Richardson Wyrick
UNITED STATES MAGISTRATE JUDGE

[2] Any objections to this report and recommendation must be served and filed within fourteen (14) days after service of a copy of this recommended disposition on the objecting party. Fed. R. Crim. P. 59(b)(2). Failure to file objections within the time specified waives the right to review by the District Court. Fed. R. Crim. P. 59(b)(2); *see United States v. Branch*, 537 F.3d 582 (6th Cir. 2008); *see also Thomas v. Arn*, 474 U.S. 140, 155 (1985) (providing the failure to file objections in compliance with the time period waives the right to appeal the District Court's order). The District Court need not provide *de novo* review where objections to this report and recommendation are frivolous, conclusive, or general. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986). Only specific objections are reserved for appellate review. *Smith v. Detroit Federation of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

Complaint of Judicial Misconduct or Disability

Brief Statement of Facts

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(1) In reference to Tn civil case 2:16-CV-273 and adjoining cases. Plaintiff has the right for the complaints to be addressed by an Impartial Judge, who abides by his own orders of proceedings. In regards to TN Rule 10 : Code of Judicial Conduct and Federal Rules of Civil Procedures Title 28 U.S. Code § 455, in regards to disqualification of justice, judge, or magistrate judge.

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(2) Reference is made to Federal Rules of Civil Procedure: Title VII Judgement : Rule 63. In regards to judge's inability to proceed. and Tn 6th Circuit Federal Court Title 28, Section 351 governing complaints of Judicial Misconduct or Disability.
(Complaint is included as : Exhibit A11)

(3) In Tumey v. Ohio, 273 U.S. 510, the Supreme Court explained why it is important for judges to be impartial : "It certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct personal, substantial pecuniary interest in reaching a conclusion against him in his case"

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(5) A defendant may challenge a biased judge for cause. Generally, each state will promulgate rules laying out the exact grounds for a defendant's challenge of a judge for cause. If the matter requires a hearing, the hearing should be conducted by a second judge who has no interest in the outcome of the potential recusal. A judge also has the responsibility to take affirmative action to remove the appearance of impropriety or bias.

(6) Once a complaint has been filed, with a statement indicating that the judge is so biased "that the moving party cannot have a fair and impartial trial or hearing", the judge ordinarily has no choice but to disqualify himself. The peremptory challenge right is "automatic". A good faith belief in the judge's bias is alone sufficient to insure that the challenged judge will no longer be permitted to sit.

(7) There are strong evident grounds for this judicial complaint with certain reference to Judge Greers order to confer (Doc 4) and his response order (Doc 32) to defendants motion for dismissal (Doc 23) in Tn civil case 2:16-CV-273. Plaintiff is currently in communication with assorted TN Civil Action Attorneys, who are more qualified to address this judicial complaint. Plaintiff is also currently in communication with Atty Troy L Bowlin, who originated this same civil action with cross claims (FRCP 13g), that by all normal legitimate court proceedings should have all been addressed in full by Judge Greer as valid cross claims as stated in the plaintiff's response (Doc. 25)

(8) Federal Rules of Civil Procedure (FRCP) : Rule 13 (g) : A cross claim is proper, if it relates to a matter of original jurisdiction. Proper jurisdiction is determined by a finding of whether the suit that is being initiated arises from the same transaction or occurrence that is the subject matter of the suit.

(9) Rule 13 (g) : Cross claim against a co-party : A pleading may state as a cross claim any claim by one party against a co-party if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counter claim, or if the claim relates to any property that is the subject matter of the original action. The cross

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claim may include a claim that the co-party is or may be liable to the cross claimant for all or part of a claim asserted in the action against the cross claimant.

(10) Judge Greer as of Feb 16, 2018, intends to retire on June 30, 2018 and there are concerns that Judge Greer may have health issues and is not acting as a neutral impartial judge, in addressing the assorted disputed and undisputed evidence and claims of the complaint. Judge Greer alludes from addressing "**ALL**" of the stated claim issues within this civil action and only briefs a few issues in a partial manner.

(11) By Judge Greers own admission of this undisputed faulty bogus arrest and prosecution by negligent USFS employees using faulty drug field test kits, in direct cause of damaging plaintiffs personal property and reputation. Judge Greer does not address the damages to plaintiffs personal property and well being, as reference to plaintiffs 4th amendment rights of privacy and 5th amendment rights of just compensation for damages and wrong doing. Judge Greer does not correct the known negligent malicious behavior of the US Forest Service employees, named within this complaint and further he fails in his attempt to justify the known misbehavior with bias invalid notions.

(12) By Judge Greer's own admission, he stated in his response (Doc 32) in regards to the proper complaint and summons service : Stated by Judge Greer in response (Doc 32) : "Service of the complaint by "Certified" or "Registered" mail is a valid service. Plaintiff's proof of service (Doc 19) confirms a valid service, as "**Priority Mail**" is "**Certified**" and "**Registered**" USPS mail. Plaintiffs complaint with summons service to all parties was confirmed valid "**USPS Priority Certified Registered Mail**", by all standards of Federal Rules of Civil Procedure and the United States Postal Service.

(13) Judge Greer without having the knowledge that 'Priority' mail is valid 'Registered' and 'Certified' Mail, with a new type of online registered tracking number with certified 'Electronic Notification' confirmation of delivery. Judge Greer bias notions this service is invalid, in regards to the US Attorney defendant claim, it may not be valid, when both parties should have known it was valid service.

(14) Plaintiff demanded a conference call on this frivolous service matter on July 21,

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2017, in plaintiffs response (Doc 26) to defendants motion for dismissal (Doc 23). Plaintiff further spoke with Judge Greer's, Deputy Hobson on approximate Aug of 2017, Whereby he informed Deputy Hobson of his attempt to confer with US Attorney Nancy Harr, as ordered by Judge Greer (Doc 4). Plaintiff reported to Deputy Hobson, that Attorney Harr acted unfit about legal matters and refused to confer with plaintiff and therefore plaintiff requested a judges conference call with parties to address the defendants attorney's frivolous nuisance evading behavior for an efficient settlement. Deputy Hobson informed plaintiff, she would inform Judge Greer of this matter and the plaintiff's request for a conference call. Deputy Hobson then stated to plaintiff, that plaintiff would be receiving a pre-scheduling order within a couple weeks.

(15) Plaintiff has verified in (Doc 19) proof of legitimate federal rules of civil procedure service, The service to all parties was legitimate priority registered certified service by all standards of the US Postal Service. Priority service is certified registered mail, with a tracking number and electronic signed confirmation of service, as proven and stated in plaintiffs proof of service. (Doc 19).

(16) As stated by US Postal Service : "Registered mail is a mail service offered by postal services in many countries, which allows the sender proof of mailing via a mailing receipt, as example of an electronic verification that an article was delivered or that a delivery attempt was made.

(17) Registered Mail has a chain of custody, where the posted item has its details recorded in a register, to enable its location to be tracked. Registered Mail has a return receipt, called an Avis de réception, which provides an "**Electronic Notification**" with the date of delivery and recipient signature.

(18) All plaintiff summonses with complaint service is valid Federal Rules of Civil Procedure service. All parties by their Attorney's own admission (Doc 21) had received the summons and complaint and answered the complaint (Doc 23) in a frivolous alluding manner of guilt, being in full knowledge of the complaint and addressing it.

(19) Certified Mail allows the sender proof of mailing via a mailing receipt, as an

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electronic verification, that an article was delivered or that a delivery attempt was made. Certified Mail is only available for **"Priority Mail"** and First Class Mail, within the United States and its territories. Each piece of Certified Mail is assigned a unique tracking label number which serves as an official record of mailing of item by USPS.

(20) U.S. certified mail began in 1955, originated by Assistant U.S. Postmaster General Joseph Cooper. It is also acceptable to send U.S. Government classified information at the confidential level using the certified priority mail service. Certified mail may be selected for many reasons, not just for important business mailings. It is used by anyone who needs or wishes to provide a "tracking number" to the receiver as proof of mailing. It also allows the receiver to track their package/envelope through the online system at usps.com using the unique tracking number provided by the mailer.

(21) Certified Mail can be done either with or without "return receipt requested", often called "RRR", Today the USPS new Return Receipt Electronic (RRE) provides electronic proof of delivery information. When the letter reaches its final delivery destination the letter carrier captures the signature of the person that accepts the letter and the information is electronically stored. As indicated by the online tracking number electronic return receipt, either the addressee or the addressee's 'agent' may sign for the document.

(22) Registered mail service is offered by the United States Postal Service as an extra service for Priority Mail. Registered Mail provides end-to-end security with an electronic tracking number. Registered Mail custody tracking records are maintained.

(23) Judge Greer did not address the full complaint in its entirety, as example he did not address the damages to plaintiff's personal property, with reference to civil procedures and plaintiff's 5th amendment rights of just compensation for the negligent wrong doing of all parties named within the complaint, in regards to this malicious faulty bogus arrest.

(24) Judge Greer made statements in his response, that are not valid and do not abide by his own order for all parties to confer, before filing for a dismissal, Plaintiff **'NEVER'** conferred with defendants, nor did plaintiff and defendants sign any **'CERTIFICATION'**

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that they had conferred, in regards to addressing all of the direct issues of the complaint.

(25) Judge Greer in his response (Doc 32) makes statements that are **'NOT'** verified **'UNDISPUTED'** between parties. and therefore the parties have to address **'ALL'** of these disputed evident facts, to remedy all the valid undisputed issues of this complaint.

(26) As example Judge Greer with bias stated it was undisputed that the faulty test kits where supplied by "US Agriculture" and further Judge Greer acting on behalf of defendants show no evidence to verify and prove this disputed issue. It is known to all parties named within the complaint, including Judge Greer, that the true "Undisputed" evidence of the US Forest Service video clearly proves the true fact that : USFS "Joan Rizkallah", by her own admission, supplied the faulty test kits. Judge Greers statement is bias and not accurate, nor is it verified by any proven verified evidence to be true. (Doc 25, Doc 26 ; DVD Exhibit A7 - 9A, 9B, 9C .. Video 3 @ 10:41) Rizkallah states to her supervisor ; "That she brought $300. dollars worth of drug field test kits with her from her home and they where new drug field test kits"

(27) Further Judge Greer addressed the probable cause of an adjoining case (Sullivan vs Sullivan County 2:13-cv- 173). on April 14, 2015 by "Totality of Circumstances". Judge Greer did not address the case with the proper Tn sovereign probable cause statute, being "Aguilar - Spinelli", at the time of the criminal court probable cause hearing and civil action claim. Plaintiff was proven to be of "No" wrong doings, with personal damages to address in the civil action before Judge Greer, who addressed the civil action complaint improper in using "Totality of Circumstances" during this time when "Aguilar - Spinelli" was the active Tn sovereign probable cause statute to address the case properly. Plaintiff, finding the judges decision "Not Fit" therefore settled the case with Sullivan county as noted to (Doc. 45 of the Sullivan County civil Action). Judge Greer further addresses this civil action (Sullivan vs US Forest service 2:16-cv-273) with this same mistaken probable cause statute, arising the invalid notion it is the main cause of action of this complaint. The main cause of action of this complaint is the USFS negligence of duty, in regards to their illegitimate stop, illegitimate k9 sniff, damaging search, illegitimate drug field testing, damaging property, peyote false incrimination, false court oath testimony,

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and withholding incriminating evidence as the USFS video of plaintiffs FOIA requests and Attorney Troy Bowlin's numerous court ordered subpoenas. Let us address the true cause of action of this complaint (Doc 9) for an efficient remedy of 'ALL' claims stated.

(28) Judge Greer stated in his response (Doc 32) : "The Court has had difficulty discerning the precise nature of plaintiff's claims." Plaintiff is a professional writer and educator with an online charter school affiliate website for child education. Plaintiff writes in clarity, whereby a three (3) year old can understand the written text. Therefore plaintiff in simple elementary school verse, will explain once again to this court, the undisputed evident facts that this complaint addresses before this court for remedy relief.

***Federal Torts Claim Act (FTCA) Bivens and Westfall Negligence of Duty :**

(a) USFS initiated incident and upon custody transfer gave false incriminating illegitimate information to the arresting officer. As example USFS told the Sullivan County arresting deputy, that plaintiff had confessed that ginger root in his car was peyote.

(b) USFS k9 officer gave proven false oath testimony, in regards to his illegitimate k9 alert and this is all undisputed with a USFS video and court audio testimony verification.

(c) USFS k9 officer gave proven false oath testimony, about the illegitimate faulty drug field testing and this is all undisputed with a USFS video and court audio testimony.

(d) USFS officers used expired NIK drug field test kits and carried out illegitimate improper testing procedures as verified undisputed by NIK adjoining case management.

(e) USFS officer gave undisputed false oath testimony, about his illegitimate traffic stop as verified by court audio testimony and the federal court traffic citation dismissal.

(f) USFS denied plaintiff, legitimate FOIA evidence, as example, the incriminating incident video that plaintiff FOIA requested and his Attorney subpoena's numerous times.

(g) USFS management reviewed all proven undisputed USFS illegitimate behavior, and justify allude it, rather than correct it and apology with remedy due to plaintiff, for

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damages in regards to their undisputed known illegitimate behavior stated above.

(f) USFS caused harm to plaintiff's physical, emotional, financial and spiritual well being.

***Negligence** : Conduct that falls below the standard of behavior established by laws for the protection of others against unreasonable risk of harm. A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances. In order to establish negligence as a cause of action under laws of torts, a plaintiff must prove that the defendants had a duty to the plaintiff, the defendants breached that duty by failing to conform to the required standard of conduct, the defendants negligent conduct was the cause of the harm to the plaintiff and the plaintiff was in fact harmed or damaged.

***Malley vs Briggs**, 475 U.S. 335 (1986) : This shield of immunity is a objective test designed to protect all but the "plainly incompetent", being those not having or showing the necessary skills to do something successfully or those who knowingly violate the law. *Kalina vs Fletcher, 522 U.S. 118 (1997)

***Janet Lee vs Philadelphia**, Civil action No 05-CV-6661 ; filed Dec 20, 2005, Janet Lee was arrested and drug field tests where used as the probable cause of arrest, and these drug field tests proved false, Philadelphia admitted to wrong doing, with a $180,000. relief settlement in favor of Janet Lee.

***Plaintiff's Case** has proven undisputed to be a lot more extreme, in regards to the similar Janet Lee drug field test faulty bogus arrest. Therefore a greater relief remedy for the wrong doing and damages to plaintiff, by USFS malicious negligence behavior is due.

(29) As stated above, there are very strong grounds for this Judicial complaint. It is believed by the complainant that Judge Greer is acting extremely bias to the Pro Se plaintiff and is acting haphazardly and "NOT" acting neutral Impartial while addressing the complaints. Plaintiff now has No Faith in Law and believes Judge Greer is bias in favor of the US Attorneys Office or he has a Disability effecting his knowledge and decisions.Thank you for addressing this Judicial Complaint in its entirety.

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Truly Sincere,

Michael C Sullivan
Angel Hill Farm
146 Rosedale Rd.
Stumptown, WV 25267
Phone : (304) 354-7529

x Michael C. Sullivan
April 16, 2018

CERTIFICATE OF SERVICE : I hereby certify as, Michael C Sullivan, that a true and exact copy of : "Complaint of Judicial Misconduct or Disability", has been duly forwarded to Greeneville Federal Court , by deposit of same in the U.S. Mail, prepaid :

To : United States District Court
220 West Depot Street
Suite 200
Greeneville, Tn. 37743
Attn. Richard Tipton
Phone : (423) 639-3105

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JUDICIAL COUNCIL
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Judicial Conduct and Disability Complaint
Petition : No. # 06-18-90028

Petitioner : Michael C Sullivan
Angel Hill Farm
146 Rosedale Rd.
Stumptown, WV 25267
Phone : (304) 354-7529

Judicial Conduct and Disability Petition

I. Michael C Sullivan, hereby petition the Judicial Council to review Complaint # 06-18-90028. Pursuant to Chief Judge Cole's Memorandum and Order of this same judicial complaint, dated Nov. 5, 2018, in regards to Judicial Conduct and Disability (JCJD) Article III : Review and Dismissal Rule 11 (c) (1) (B) being directly related to the merits of a decision ; and (C) being frivolous. A dismissal under Rule 11(c)(1)(C) will generally occur without any inquiry beyond the face of the complaint, if allegations are incapable of being established through investigation.

(1) Complainant agrees with Chief Judge Cole's opinion, pursuant to JCJD Rule 11 (c) (1) (B) Merits, that the complaint relates to the merits of subject Judge Greer's erred (Tn Doc 32), dismiss order. The erred matters of factual evidence and federal and Tn sovereign statutory laws, of the dismiss order is currently being addressed within the 6th Circuit Court of Appeals Case # 18-5558. Complainant agrees that the complaint does not contain evident cognizable misconduct matter, as defined in JCJD Misconduct Rule 3 (h) (1-3) (B-I).

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(2) Complainant does have concern for a judicial council review and investigation of "Cognizable Misconduct Preferential Treatment", as defined in JCJD Rule 3 (h) (1) (A) of subject Judge Greer, using the office to obtain special treatment for the Tn US attorney's office. As evident of the violated (Tn Doc 4) confer order of this complaint and the numerous delay extensions of time granted Atty. Anderson, who evaded truthfully answering the complaint.

(3) This judiciary confer proclamation (Tn Doc 4) was disrespectfully violated by the US Attorney's office and also by Judge Greer himself, who did not abide by the stated court order, of all conferring parties signed certification, prior to filing a motion to dismiss. Further numerous extensions of time where granted to Atty Anderson's filings and when plaintiff just requested an efficient conference call between all parties, with Judge Greer, in order to clarify these frivolous matters of Atty Anderson's evading delays, from answering the complaint. Plaintiff with bias was denied this efficient conference call being scheduled, and instead was informed by Judge Greer's Deputy Hobson, that plaintiff would be receiving a pre-scheduling order, within two (2) weeks, which plaintiff never received. These stated factual matters of complaint and case files, clearly show evident dishonorable behavior of preferential treatment for the Tn US Atty's office.

(4) Complainant has concern for a judicial council review, pursuant to JCJD Rule 3 (e) Disability. The complaint subject matter addresses assorted errors of common judiciary knowledge that reflect bias behavior or an impairment disability, of subject Judge Greer.

(5) Rule 3 (e) : "Disability" is a temporary or permanent impairment, physical or mental, rendering a judge unable to discharge the duties of the particular judicial office. Examples of disability include substance abuse, the inability to stay awake during court proceedings, or impairment of cognitive abilities that renders the judge unable to function effectively.

(6) The Judicial Complaint # 06-18-90028, of this petition, was filed on April 16, 2018, pursuant to 28 U.S.C. 351. The complaint addresses evident factual and statutory law errors reflecting the unfit behavior of eastern Tn US district court subject Judge J. Ronnie Greer. The evident subject matter of the complaint, is in regards to Judge Greer's misguiding order granting a frivolous motion to dismiss of Tn civil action case no. 2:16-CV-273, on March 19, 2018.

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(7) The grounds of Judge Greer's dismissal order (Tn Doc. 32) is a variety of incorrect facial statutory laws and factual evident merit matters with misleading jurisdiction and untimeliness. These judgemental errors of misinterpreted federal and sovereign Tn statutory laws, should all be common knowledge to any legitimate Tn judiciary system. As plaintiff further states in depth, in addressing the merit matters within the adjoining 6th Circuit Appeals case # 18-5558.

(8) The dismissal order is a supporting mimic of defendant Atty. Anderson's frivolous motion to dismiss, in an attempt to evade from truthfully answering the complaint. In bias behavior Judge Greer's errors mimic Atty. Anderson's errors. Including, but not limited to an evident fraud SF-95 document he filed, along with the invalid source of the USFS drug field test kits. The unfit dismiss order clearly reflects impairment disability, bias, deceit or ignorance of federal and sovereign Tn statutory law. This misguided order does not in anyway address the plaintiff's true cause civil action complaint, in order to remedy the federal code of conduct of self righteous, very dangerous egocentric fraud behavior of government employee's named within the complaint.

(9) As example of the assorted common knowledge judiciary errors, as fully stated in adjoining 6th circuit appeals case # 18-5558. Judge Greer even errors his Tn probable cause statutory determinations, pursuant to Tn Constitution Article 1 Section 7 statute of probable cause determinations, being the Aquilar-Spinelli test. This test being the proper Tn probable cause statute, at the time of the incident and adjoining cases. If law enforcement cannot establish both prongs of the Aquilar-Spinelli test, a impartial judge dismisses the case for lack of probable cause. The USFS and Sullivan County Sheriff's office probable cause did "Not" pass this Tn test. The Aquilar-Spinelli two (2) prong test is : (1) Creditable reliable probable cause information. (2) Proper probable cause circumstances relied on.

(10) Further evidence of common knowledge impairment, is Judge Greer did not even recognize and address proper venue and jurisdiction, as example of FRCP 13 (g) coparty cross-claims of corrupted withheld and subpoenaed FOIA incriminating evidence, that was subpoenaed in Judge Greer's FTCA 28 USC§1367 district court jurisdiction to be addressed as party to the same civil action controversy being addressed in this same jurisdiction venue.

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(11) Therefore, Judicial Conduct and Disability (JCJD) Rule 3(e) relates to disability and provides only the most general definition, recognizing that a fact-specific approach is the only one available. A mental disability could involve cognitive impairment or any psychiatric or psychological condition that renders the judge unable to discharge the duties of office. Such duties may include those that are administrative.

(12) Chief Justice Roberts warned that : "Judges are no longer drawn primarily from among the best lawyers in the practicing bar" and "If judicial appointment ceases to be the capstone of a distinguished career and instead becomes a stepping stone to a lucrative position in private practice, the Framers' goal of a truly independent judiciary will be placed in serious jeopardy."

(13) Pursuant to Article II & III appointment clauses in United States Constitution. It is known that party politics plays a key role in appointment of federal judges, being party to legislation objectives. Our common day, President Trump has therefore initiated party politics, to appoint impartial judges who truly represent our forefathers bipartisan constitutional rights, rather than the assorted stray bias party political puppets of law enforcement manipulations of our judiciary system. As noted self righteous legislation parties who seek to control public behavior, that is known by few as militant Martial Law or suspension of civil law, civil rights, and habeas corpus.

(14) One should clearly note our true judiciary system is an impartial neutral jurisprudence agency, separate from legislation and assorted law enforcement departments, as is our intelligence agencies, whom observe the proper behavior of assorted government agencies. Therefore as our constitution, there are proper codes of conduct, rules and regulations to abide, in guiding all government agencies, within their true objective of public servitude.

(15) It is the legal opinion of the complainant, that Judge Greer erred haphazardly, in so many vast areas of common federal and Tn. sovereign judiciary law regulations, along with not even considering or addressing the true reality factual merit matters of plaintiff's civil action. Thus there is no other option for personal well being and public safety, than an inquiry investigation into potential judicial impairment disabilities or bias behavior, in carrying out the proper duties of an impartial federal judge, sworn to uphold the integrity of the US federal courts.

*** APPENDIX D : 11**

(16) The originating civil action of this judiciary complaint, was a simple just compensation remedy recovery for damages, over a no-suspicion, bogus, faulty, very dangerous evading law enforcement arrest by USFS misfits, with code of conduct violations. Their dangerous improper actions are now being justified and supported by an unfit bias OGC and Tn judicial system.

(17) As example of the originating case evidence, of the SF-95 Office of General Counsel (OGC), egocentric, bias, non-communication with plaintiff, for an efficient settlement agreement of just compensation for damages. Whereby, OGC Atty Karen Carrington, known for illegally withholding legitimate FOIA evidence (see... Kowak v. USFS, 9th Circuit, No. 12–35864), was more concerned with losing vast amounts of government new deal raisin cartel revenue, than a simple efficient communicating settlement with this complainant. These OGC judiciary actions corrupted an efficient settlement agreement, leading to this civil action and further this now judicial complaint of bias, impairment disability behavior. Chief Justice John Roberts affirmed in the OGC raisin case of "Horne v. Department of Agriculture", that the Fifth (5th) Amendment requires the government and its agencies to pay just compensation for wrong doings.

(18) An example of judiciary integrity corruption of gov. employee's, is referenced to subject Judge Greer's confer order (Tn Doc 4) of this complaints evidence. This judiciary proclamation was disrespectfully violated by the US Attorney's office and by subject Judge Greer himself, who did not abide by the stated court order of signed certification of "All" conferring parties.

Code of Conduct for United States Federal Judges : *The Code of Conduct for United States Judges includes the ethical canons that apply to federal judges and provides guidance on their performance of official duties and engagement in a variety of outside activities*

Canon 1 : *A Judge Should Uphold the Integrity and Independence of the Judiciary.*

*An independent and honorable judiciary is indispensable to justice in our society. **"A judge should maintain and enforce high standards of conduct and should personally observe those standards"**, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.*

***Canon 2 :** A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities*

(A) Respect for Law. "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2A : An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. "Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code."

(19) Pursuant to Judicial Conduct and Disability (JCJD) Rule 18. Complainant therefore in good faith of law, files this "Petition to the Judicial Council", to review all of the evident facts of the judicial complaint # 06-18-90028, reflecting improper behavior, in order to initiate a proper investigation of this important matter of judiciary disability or bias, pursuant to JCJD Rule 19 (b) Judicial Council Disposition of Petition for Review.

Truly Sincere,

Michael C Sullivan
Angel Hill Farm
146 Rosedale Rd.
Stumptown, WV 25267
Phone : (304) 354-7529

x Michael C. Sullivan
Dec. 07, 2018
M.C.S.

*** APPENDIX D : 11**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. # 20-5666

APPELLANT : MICHAEL C. SULLIVAN

Vs

APPELLEE : UNITED STATES FOREST SERVICE, et al

On Appeal from the United States District Court for the :
Eastern District of Tennessee : Case No : 2:19-CV-00049

Plaintiff / Appellant : Michael C Sullivan
Angel Hill Farm
146 Rosedale Rd.
Stumptown, WV 25267
Phone : (304) 354-7529

Judicial Complaint

As stated by appellant in (*6th cir. 20-5666 docs. 4, 5*), forma pauperis application.

And further stated in his appeal brief (*6th cir. 20-5666 doc. 6*).

(1) *Pursuant to US Judge Canon Code 3 (C)(1)(e)* : District Judge Corker is disqualified inregards to addressing : (*Tn 2:19-cv-00049 doc 9*), order to dismiss with "bad faith prejudice", of this same (*6th circuit 20-5666 appeal*), pursuant to 6th circuit remand order issuance of summons service to defendants, whereby all defendants answer complaint for judgement to address the merit matters.

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Judge Murphy and Corker did not address the "Canon Code 3 (C)(1)(e) Disqualification" :

Pursuant to Title 28 U.S.C. § 455, which provides the standards for judicial disqualification or recusal, whereby Section 455, captioned : "Disqualification of justice, judge, or magistrate judge", provides that a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned". The section also provides that a judge is disqualified" where he has a personal "bias or prejudice concerning a party", or personal knowledge of disputed evidentiary facts concerning the proceeding" ; when the judge has previously served as a lawyer or witness concerning the same case or has "expressed an opinion concerning its outcome" and 28 U.S.C. § 47 provides that.* *"No judge shall hear or determine an appeal from the decision of a case or issue tried by him."***

Judge Canon Code 3 : A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently. : (C) Disqualification. ; (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which :* *(e) The judge has served in governmental employment and in that capacity "participated as a judge in a previous judicial position, counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy".***

(2) Judge Greer and Magistrate Corker, expressed an opinion in (*Tn 2:16-cv-00273 doc 33*), in regards to the dismiss "with prejudice" order. This prejudice order is of the same Tn case appeal of the (*6th cir 18-5558 doc 11*), remand mandate order of (*Tn 2:16-cv-000273 doc 43*). This all being of the same subject matter controversy of this de nova : (*Tn 2:19-cv-00049 doc 2*), civil action of the (*6th cir appeal 20-5666*), in regards to this Corker disqualification judicial complaint.

(3) Magistrate Corker also stated his forma pauperis opinion in: (*Tn 2:16-cv-00273 doc 40*), and he granted good faith forma pauperis to proceed in appeal (6th cir 18-5558), This same assigned magistrate Corker (*Tn 2:16-cv-00273 doc 40*), forma pauperis "good faith" order being the same subject matter of this 6th circuit remanded de nova (*Tn 2:19-cv-00049, of 6th cir. appeal 20-5666*).

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. # 20-5666

APPELLANT : MICHAEL C. SULLIVAN

Vs

APPELLEE : UNITED STATES FOREST SERVICE, et al

On Appeal from the United States District Court for the :
Eastern District of Tennessee : Case No : 2:19-CV-00049

Plaintiff / Appellant : Michael C Sullivan
Angel Hill Farm
146 Rosedale Rd.
Stumptown, WV 25267
Phone : (304) 354-7529

Judicial Complaint

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(1) *Pursuant to US Judge Canon Code 3 (C)(1)(e)* : Circuit Judge Larsen is disqualified in regards to addressing : (*6th cir. 20-5666 : doc 12-2 : order*), denying appellants motion for reconsideration, (*6th cir 20-5666 : doc 10 : petition for rehearing*). The originating eastern district of Tn case being (*Tn 2:19-cv-00049*), is the de novo same subject matter remand case of (*6th cir 18-5558 : doc 11 ; Larsen remand order*)

*** APPENDIX D : 13**

(2) Judge Larsen , expressed an opinion in (*6th cir 18-5558 ; doc 11 : order*), *Accordingly, we VACATE the district court's judgment in part and REMAND the action so that the district court may correct its judgment to indicate that the individual defendants are dismissed without prejudice to the extent that they were sued in their individual capacities. The district court's judgment is AFFIRMED in all other respects, and all pending motions are DENIED.*

(3) Judge Larsen further states an opinion in, (*6th cir. 20-5666 ; doc 12-2 : order*), denying appellants motion for reconsideration. *We conclude that the court did not act under any misapprehension of law or fact in its prior order denying Sullivan's motion to proceed in forma pauperis. see Fed.R.App.P.40(a). Accordingly, we DENY the motion for reconsideration.*

(4) The (*6th cir 20-5666*) case is the remanded de novo case of the same subject matter controversy of her above stated remand order opinion in (*6th cir. 18-5558 : doc 11*). Therefore :

Judge Larsen is "Canon Code 3 (C)(1)(e) Disqualified" to address (6th cir 20-5666).

Pursuant to Title 28 U.S.C. § 455, which provides the standards for judicial disqualification or recusal, whereby Section 455, captioned : "Disqualification of justice, judge, or magistrate judge", provides that a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned". The section also provides that a judge is disqualified" where he has a personal "bias or prejudice concerning a party", or personal knowledge of disputed evidentiary facts concerning the proceeding" ; when the judge has previously served as a lawyer or witness concerning the same case or has "expressed an opinion concerning its outcome" and 28 U.S.C. § 47 provides that.* *"No judge shall hear or determine an appeal from the decision of a case or issue tried by him."***

Judge Canon Code 3 : A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently. : (C) Disqualification. ; (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which :* *(e) The judge has served in governmental employment and in that capacity "participated as a judge in a previous judicial position, counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy".***

Appellant in "Good Faith" demands a "6th circuit Judge Larsen disqualification order" ; Pursuant to Judiciary Judge Canon Code 3 (C)(1)(e).

(5) Tn Judges GREER, CORKER, WYRICK and 6th circuit. Judges MURPHY, KETHLEDGE, DONALD, LARSEN, GUY and STRANCH, now all qualify for a Judge Disqualification Order : ***Pursuant to Judiciary Judge Canon Code 3 (C)(1)(e), all expressed a opinion of the case.***

(6) Judge Greer and assigned Corker have expressed an opinion in (*Tn 2:16-cv-00273 ; doc 43*). This case being of the same subject matter controversy of (*6th Cir Appeal 18-5558*). being the same de novo of (*Tn 2:19-cv-00049 : doc 9 : order)* that disqualified Corker has further stated his opinion, ordering the remanded good faith complaint dismissed with "bad faith prejudice".

(7) *Pursuant to : US Judge Canon Code 3 (C)(1)(e)* : District Judge Corker was disqualified in regards to addressing : (*Tn 2:19-cv-00049 doc 9*), order to dismiss with "bad faith prejudice", Appellant demands Judge Corkers dismiss order be stricken from the record and this appeal be remanded in "**Good Faith**", to be addressed properly by the Tn district court, with US Marshal summons service to all named defendants. Whereby judgement, whether it be district or circuit court can properly address the facial and factual merit matters of this civil action, after the defendants have been US Marshal served and answer the complaint, in good faith of law.

Chief Justice John Roberts affirmed in the OGC case of "Horne v. USDA", that the Fifth (5th) Amendment requires the government and its agencies to pay just compensation for wrong doings.

Truly Sincere,

Michael C Sullivan
Angel Hill Farm
146 Rosedale Rd.
Stumptown, WV 25267
Phone : (304) 354-7529

x Michael C. Sullivan

May 01, 2021

M.C.S.

*** APPENDIX D : 13**