

United States Court of Appeals
For the Eighth Circuit

No. 21-1260

Lee Michael Pederson

Plaintiff - Appellant

v.

Phillip Frost; CoCrystal Pharma, Inc.; Daniel Fisher

Defendants - Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: December 23, 2021

Filed: December 29, 2021

[Unpublished]

Before BENTON, KELLY, and KOBES, Circuit Judges.

PER CURIAM.

Lee Pederson appeals the district court's¹ dismissal of his pro se diversity action for lack of personal jurisdiction. Upon de novo review, see Whaley v. Esebag,

¹The Honorable Joan N. Erickson, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable David T. Schultz, United States Magistrate Judge for the District of Minnesota.

946 F.3d 447, 451 (8th Cir. 2020) (standard of review), we affirm. We find that Pederson is precluded from relitigating whether his telephone and email contact with, and prior legal representation of, defendants or their agents constituted sufficient minimum contacts to establish personal jurisdiction over them in the District of Minnesota, as this court previously decided they were not. See Pederson v. Frost, 951 F.3d 977, 980-81 (8th Cir. 2020) (holding these contacts were insufficient to establish constitutionally required minimum contacts); Pohlmann v. Bil-Jax, Inc., 176 F.3d 1110, 1112 (8th Cir. 1999) (applying issue preclusion to questions of personal jurisdiction). We find that defendants' other contacts with Minnesota--their settlement of a California real estate lawsuit, which allegedly harmed Pederson in Minnesota, and their alleged participation in nationwide securities schemes--were also insufficient to establish personal jurisdiction. See Bristol-Myers Squibb Co. v. Superior Ct. of Cal., 137 S. Ct. 1773, 1781 (2017) (absent connection between forum and underlying controversy, specific personal jurisdiction is lacking, regardless of extent of defendant's unconnected activities in state); Walden v. Fiore, 571 U.S. 277, 290 (2014) (proper question is not where plaintiff experienced injury, but whether defendant's conduct connects him to forum in meaningful way); Whaley, 946 F.3d at 452 (factors considered in determining whether defendant's contacts with forum are sufficient). As Pederson does not meaningfully argue the district court's imposition of sanctions under Federal Rule of Civil Procedure 11, he has waived the issue. See United States v. Pacheco-Poo, 952 F.3d 950, 953-54 (8th Cir. 2020) (appellant waived argument, as he failed to cite any case or detail any facts in support thereof).

The judgment is affirmed. See 8th Cir. R. 47B. We deny the parties' pending motions to supplement the record.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Lee Michael Pederson,

Plaintiff,

v.

Case No. 19-cv-1777 (JNE/DTS)
ORDER

Phillip Frost, CoCrystal Pharma, Inc., and
Daniel Fisher,

Defendants.

This matter is before the Court on a Report and Recommendation (“R&R”) dated November 19, 2020, by the Honorable David T. Schultz, United States Magistrate Judge. ECF No. 115. Magistrate Judge Shultz recommends that the Court dismiss the case without prejudice under Federal Rule of Civil Procedure 12(b)(2) and grant Defendant Frost’s and Defendant Fisher’s Motions for Sanctions under Rule 11. Magistrate Judge Schultz further recommends that the Court restrict Plaintiff from filing any other actions in the District of Minnesota against Defendants on the same or similar allegations as those in this lawsuit, unless Plaintiff is represented by counsel or obtains prior court approval.

Plaintiff objects to portions of the R&R, which the Court has reviewed de novo. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); LR 72.2(b)(3). Based on a de novo review of the record, the Court adopts the R&R.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Defendants Frost and CoCrystal Pharma's Motion to Dismiss the Amended Complaint [ECF No. 80] is GRANTED.
2. Defendants Frost and CoCrystal Pharma's Motion to Dismiss the Complaint [ECF No. 45] is DENIED AS MOOT.
3. Defendant Fisher's Motion to Dismiss the Amended Complaint [ECF No. 90] is GRANTED.
4. Defendant Fisher's Motion to Dismiss the Complaint [ECF No. 61] is DENIED AS MOOT.
5. The Amended Complaint is DISMISSED WITHOUT PREJUDICE for lack of personal jurisdiction.
6. Defendant Frost's Motion for Sanctions under Rule 11 [ECF No. 36] is GRANTED. Plaintiff is ordered to pay \$5,000 to Defendant Frost.
7. Defendant Fisher's Motion for Sanctions under Rule 11 [ECF No. 96] is GRANTED. Plaintiff is ordered to pay \$5,000 to Defendant Fisher.
8. Plaintiff Lee Michael Pederson is restricted from filing new cases against Defendants based on the same or similar allegations as those in this lawsuit in the District of Minnesota, unless he is represented by counsel or obtains prior written authorization to file an action from a judicial officer of this District.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 4, 2021

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Lee Michael Pederson,

Case No. 19-cv-1777 (JNE/DTS)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Phillip Frost, CoCrystal Pharma, Inc.,
and Daniel Fisher,

Defendants.

Lee Michael Pederson, *Pro Se* Plaintiff

Edward Spiro, Robert Anello, Alethea Huyser, Joseph Dixon III, and John Pavelko for
Defendant Phillip Frost

Michael Sherman, Alethea Huyser, Joseph Dixon III, and John Pavelko for Defendant
CoCrystal Pharma, Inc.

Vytas Rimas for Defendant Daniel Fisher

Lee Michael Pederson, a patent lawyer, brought this lawsuit as a *pro se* plaintiff in 2019 alleging causes of action for tortious interference with a prospective economic advantage and quasi-contract/unjust enrichment and quantum meruit against former business associates. A substantially similar lawsuit brought by Pederson was dismissed for lack of personal jurisdiction in 2018, and the Eighth Circuit affirmed the dismissal in 2020. Defendants move to dismiss this lawsuit and for Rule 11 sanctions. The Court finds that Pederson has not alleged any new facts to support the exercise of personal jurisdiction or change the jurisdictional analysis in the second lawsuit, and therefore recommends that Defendants' motions be granted.

FINDINGS OF FACT

Pederson's previous lawsuit against Phillip Frost, Brian Keller, OPKO Health, Inc., and CoCrystal Pharma, Inc. (*Pederson I*) was dismissed for lack of personal jurisdiction. *Pederson v. Frost*, No. 17-cv-5580, 2018 WL 4901086 (D. Minn. July 11, 2018), *report and recommendation adopted*, 2018 WL 4358193 (Sept. 13, 2018). The parties are familiar with the background facts and the alleged contacts with Minnesota, which are set forth in the R&R, 2018 WL 4901086, at *1-2; the order adopting the R&R, 2018 WL 4358193, at *1; and the Eighth Circuit's opinion, *Pederson v. Frost*, 951 F.3d 977, 978-79 (8th Cir. 2020).

On July 8, 2019, while his appeal of *Pederson I* to the Eighth Circuit was pending, Pederson filed the present lawsuit (*Pederson II*) against two of the same defendants, Frost and CoCrystal, and a new one, Daniel Fisher. Docket No. 1. His 75-page complaint alleges breach of fiduciary duty against Frost, tortious interference with a prospective economic advantage against Frost and CoCrystal, and quasi-contract/unjust enrichment and quantum meruit against Fisher. On September 12, 2019 the Court stayed this case pending resolution of the *Pederson I* appeal to avoid wasting judicial resources. Order 2, Docket No. 24. The Order specifically noted:

Pederson agrees with Frost "that the personal jurisdiction analysis is essentially the same" for both complaints. Pl.'s Mem. 9. The outcome of the appeal thus bears directly on the Court's analysis of personal jurisdiction over the Defendants in this action.

Id.

On March 10, 2020 the Eighth Circuit denied Pederson's appeal, affirmed the dismissal of *Pederson I* for lack of personal jurisdiction, and on April 14, 2020 denied Pederson's requests for rehearing and rehearing en banc. *Pederson v. Frost*, 951 F.3d

977 (8th Cir. 2020), *re'hrg and re'hrg en banc denied* (Apr. 14, 2020). The Eighth Circuit stated:

[T]he district court concluded that the connection between the defendants and Minnesota was too tenuous to exercise personal jurisdiction. We affirm because Pederson is the only connection between Minnesota and the underlying dispute.

Id. at 978.

On April 14, 2020, the same day the Eighth Circuit denied rehearing, counsel for Frost wrote a letter to Pederson asking him to voluntarily dismiss his complaint without prejudice. Docket No. 39-1. Pederson did not do so.

Pederson advised the Court that he intended to seek Supreme Court review of the Eighth Circuit's decision. Letter (Apr. 20, 2020), Docket No. 30. Three months later the Court ordered him to provide a status report [Docket No. 35], to which he responded that he had abandoned his efforts for Supreme Court review. Status Report (Aug. 12, 2020) at 6, Docket No. 60.

Shortly thereafter, on August 27, 2020 Pederson filed a 134-page Amended Complaint that attached 1,193 pages of exhibits. Docket Nos. 76, 76-1 to 76-43. The amended pleading deleted his claim against Frost for breach of fiduciary duty [see ¶¶ 369-76] but retained his other causes of action for tortious interference with a prospective economic advantage against Frost and CoCrystal [¶¶ 377-86] and quasi-contract/unjust enrichment and quantum meruit against Fisher [¶¶ 387-97]. In the meantime, Defendants had filed motions to dismiss Pederson's original Complaint and for Rule 11 sanctions. Docket Nos. 36, 45, 61. Post-amendment, they moved to dismiss the Amended Complaint and for Rule 11 sanctions. Docket Nos. 80, 90, 96. A hearing on the motions was held on October 14, 2020. Docket No. 113.

CONCLUSIONS OF LAW

I. Motions to Dismiss for Lack of Personal Jurisdiction

The standard of review for a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2) is thoroughly set forth in Magistrate Judge Thorson's R&R in *Pederson I*. See 2018 WL 4901086, at *3-4. The parties are also familiar with the jurisdictional analysis of the District Court and the Eighth Circuit in *Pederson I* which concluded there was no specific personal jurisdiction over Frost, Keller, OPKO Health, or CoCrystal Pharma. See *id.* at *4-6; *Pederson I*, 951 F.3d at 980-81.

The Eighth Circuit summarized Defendants' lack of contacts with Minnesota as follows:

For years, Pederson served as outside counsel to a California corporation called BioZone. When he first began representing BioZone, he was a resident of California. He later moved to Minnesota, however, and by the time of the alleged fraud, Pederson was a Minnesota attorney working out of a Minnesota office.

According to Pederson's complaint, one of BioZone's co-founders, Brian Keller, induced him to continue representing the company through repeated promises of either an in-house position or increased compensation once the company's financial picture improved. In that regard, Keller sought out potential investors, the most promising of which was Phillip Frost, CEO of OPKO Health, Inc. Rather than following through on his pledge to invest in BioZone, however, Frost and his allies "took control" of the company and began engaging in securities fraud. During this time, Keller and Frost manipulated Pederson into continuing his work through more false promises. Pederson eventually discovered the fraud and quit.

Nearly all of these events occurred outside Minnesota. The meetings between Pederson, Keller, Frost, and others took place in Florida and New Jersey. Although Pederson alleges that he received "hundreds of telephone and email contacts" related to BioZone in his Minnesota office, there is no allegation that any of the defendants ever resided or set foot in Minnesota.

Even so, Pederson filed a lawsuit against the defendants in Minnesota state court for common-law fraud and tortious interference with prospective economic advantage to recover for the various losses that he allegedly

suffered. The defendants removed the case to federal court and immediately filed a motion to dismiss for lack of personal jurisdiction.

951 F.3d at 978-79.

Before he lost his appeal to the Eighth Circuit, Pederson admitted to this Court that the jurisdictional analysis in this case is “essentially the same” as in *Pederson I*. When the Court was considering whether to grant a stay pending the Eighth Circuit’s decision, Pederson said the following in his September 10, 2019 brief:

In his Memorandum of Law, Frost admits that, “the new complaint [pvf2] does not assert any new facts that would affect the personal jurisdiction analysis.” **Pederson agrees that the personal jurisdiction analysis is essentially the same for both pvf1 and pvf2.**

Pl. Mem. in Response to Mtn. to Stay at 9 (emphasis supplied), Docket No. 19.

Pederson I established that directing calls and emails to Pederson in his Minnesota office; allegations that he suffered harm in Minnesota; “vague assertion[s]” that a Defendant “conducted business within” Minnesota; and hiring him as an attorney licensed and located in Minnesota were insufficient to demonstrate personal jurisdiction. See *Pederson I*, 952 F.3d at 980-81; Order, 2018 WL 4358193, at *3.

This second lawsuit adds a new defendant, Fisher, but Pederson does not dispute that Fisher is a resident of California who has never been to Minnesota. See Fisher Decl., Docket No. 65; see gen’ly Pl. Oppo. Briefs, Docket Nos. 104, 108. Thus, simply adding him to the lawsuit does not change the jurisdictional analysis.

Pederson relies solely on a theory of specific, not general, personal jurisdiction,¹ so Defendants must “have sufficient ‘suit-related’ contacts to ‘create a substantial connection with’ Minnesota.” See *Pederson I*, 951 F.3d at 980 (quoting *Walden v. Fiore*,

¹ He confirmed at oral argument that he does not contend general jurisdiction exists.

571 U.S. 277, 284 (2014)). Pederson's only new factual allegations regarding a connection with Minnesota are that Frost, Fisher, and CoCrystal are part of a "nationwide securities fraud enterprise" that targeted him in Minnesota. His Amended Complaint states:

¶ 120.1. In affirming the dismissal of *pvf1* for lack of personal jurisdiction, the 8th Circuit stated, "We affirm because Pederson is the only connection between Minnesota and the underlying dispute." (Exhibit 10)

¶ 120.2. The acts of the Defendants that form the basis of this Amended Complaint in *pvf2*: (a) are connected to Minnesota because they are all directly related to a **nationwide securities fraud enterprise involving the Defendants and Minnesota**; and (b) are connected to Minnesota because the **Defendants targeted Pederson in Minnesota** for the purposes of concealing the acts of the nationwide securities fraud enterprise.

Am. Compl. ¶¶ 120.1, 120.2 (emphasis supplied), Docket No. 76.

But Pederson does not assert any causes of action under securities laws, nor does he seek to recover for the purchase or sale of any securities. Rather, he alleges only state law causes of action for tortious interference with a prospective economic advantage against Frost and CoCrystal [Am. Compl. ¶¶ 377-86, Docket No. 76] and quasi-contract/unjust enrichment and quantum meruit against Fisher [*id.* ¶¶ 387-97]. His Amended Complaint offers no facts that demonstrate any connection between Minnesota and these state law claims. His assertion that Defendants "targeted" him in Minnesota simply recycles the argument that was rejected in *Pederson I* in which he contended his own presence in the state (where he received calls and emails, performed legal services, and suffered harm) established personal jurisdiction over Defendants.

Instead of jurisdictional facts, Pederson offers "context" and "background" regarding the "nationwide securities fraud enterprise" that Defendants allegedly engaged in. See Pl. Br. 3 (asserting Frost's "[m]otion is groundless . . . [but] does allow Plaintiff an

opportunity to provide more information to the Court about the background of the present case. Please see Pederson's first-person narrative . . ."), 4 ("Pederson realized that he could strengthen his jurisdictional argument by supplementing it with additional context by introducing newly emerged facts . . . making it explicitly clear that Frost directed and participated in a nationwide securities fraud enterprise including Minnesota"), Docket No. 70. But background information detailing the scope of his grievances against Defendants is not a substitute for jurisdictional facts. His general assertions that Defendants' "nationwide securities fraud enterprise" harmed some unidentified Minnesota investors are likewise irrelevant because they have nothing to do with Pederson or with the causes of action in this lawsuit.² Regardless of the merits of Pederson's grievances, they are not "suit-related" facts that create a "substantial connection" with Minnesota so as to support personal jurisdiction.

Pederson has not cited any legal authority that holds or even suggests that his additional "nationwide securities fraud enterprise" allegations in this lawsuit are sufficient for specific personal jurisdiction, either by themselves or when added to the factual allegations that fell short in *Pederson I*. See Docket Nos. 70, 104, 108. He cites no legal authority *at all* regarding personal jurisdiction, except for citations regarding general

² For example, the Amended Complaint's 19-page section on "Jurisdiction, Venue and Standing" [¶¶ 120.1 to 182.11] is filled with allegations such as "the securities frauds harmed Minnesotans" and "Frost specifically targeted Pederson in Minnesota to carry out aspects of his frauds" [¶ 125]; "components of the . . . securities fraud enterprise [] operate and/or have effects on a national level" [¶ 126.2]; "As part of the conspiracy, Frost enabled other gang members and associates to illegally profit from trading shares in the United States securities market, including Minnesota." [¶ 132]; "stock promotion communications were received by investors in Minnesota" [¶ 139]; "Cocrystal was a party to the . . . nationwide securities fraud enterprise" [¶ 166]; "[b]y initiating litigation against Pederson in California, Fisher became a party to the Frost gang's nationwide program" [¶ 173.3]. See also Pl. Br. 15-18, Docket No. 104.

propositions relating to pleading standards and Minnesota's long-arm statute. See Pl. Br. 13-18, Docket No. 104.

Accordingly, the Court recommends granting Defendants' motions to dismiss the Amended Complaint under Rule 12(b)(2) for lack of personal jurisdiction. Because of this recommended disposition, the Court does not address the other grounds for dismissal asserted by Defendants.

II. Rule 11 Sanctions

Frost and Fisher brought motions for sanctions under Rule 11 asserting that Pederson lacked a reasonable basis in law and in fact to believe personal jurisdiction exists in this lawsuit. Docket Nos. 36, 96.³ The Court agrees and recommends that their motions be granted.

Rule 11 of the Federal Rules of Civil Procedure provides, in relevant part:

(b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for

³ Frost filed his motion on August 7, 2020 [Docket No. 36] before Pederson filed his Amended Complaint on August 27, 2020 [Docket No. 76]. Pederson filed an opposition to Frost's motion on August 16, 2020 [Docket No. 70] in which he specifically refers to his soon-to-be-filed Amended Complaint. Pederson later filed a Declaration on September 29, 2020 [Docket No. 102] to support his opposition to Frost's and Fisher's motions for sanctions and to all Defendants' motions to dismiss. The Court finds the arguments in Frost's sanctions motion to be equally applicable to the Amended Complaint, and Pederson treated them as such, and thus Frost's motion is not mooted by the filing of the Amended Complaint.

extending, modifying, or reversing existing law or for establishing new law.

If the Court determines that Rule 11(b) has been violated, it may impose an appropriate sanction on any attorney, law firm or party that violated the rule. Rule 11(c)(1). Such sanctions may include nonmonetary directives, an order to pay a penalty into the court, or an order to pay reasonable attorney's fees incurred in bringing a sanctions motion, or to pay part or all of the reasonable attorney's fees and other expenses directly resulting from the violation. Rule 11(c)(2), (4).

The primary purpose of Rule 11 sanctions is to deter attorney and litigant misconduct, not to compensate the opposing party for all of its costs in defending a lawsuit. *Vallejo v. Amgen, Inc.*, 903 F.3d 733, 747 (8th Cir. 2018). The Court considers which sanction will adequately deter the undesirable conduct. *Id.* Rule 11 operates in part on the assumption that, before filing a lawsuit, a reasonable inquiry has been conducted into the legal and factual basis for the allegations in the complaint. *Id.* Pederson brings this action as a *pro se* plaintiff, but he is a licensed patent attorney admitted to the Minnesota bar who previously was admitted to the California bar. See *Pederson I*, 951 F.3d at 978-79.

The straightforward issue here is personal jurisdiction, and specifically whether Pederson alleges any new or different suit-related jurisdictional facts that overcome the lack of personal jurisdiction that resulted in the dismissal of *Pederson I*. Yet despite filing hundreds of pages of complaints, exhibits, memoranda, declarations, letters, status reports, and slides, Pederson has not alleged a single additional suit-related jurisdictional fact, nor raised a single legal argument to support personal jurisdiction over Frost, CoCrystal, or Fisher. He offers not even a pretense that his "contentions are warranted

by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.” See Rule 11(b)(2). He recycles previously rejected jurisdictional allegations and adds conclusory statements that personal jurisdiction exists. His second lawsuit is frivolous and his actions in filing and maintaining it demonstrate bad faith.

The claims in this lawsuit are substantially the same as *Pederson I*. Pederson added Fisher as a defendant but failed to allege any jurisdictional facts to connect him to Minnesota. He also failed to plead any new suit-related jurisdictional facts against Frost or CoCrystal.

The Court stayed this lawsuit pending resolution of the *Pederson I* appeal with the expectation that the Eighth Circuit’s decision would be dispositive on personal jurisdiction. This expectation was based on representations from the parties, specifically including Pederson, that the personal jurisdictional analysis is “essentially the same” as in *Pederson I*. Yet even after the Eighth Circuit affirmed the dismissal of *Pederson I* for lack of personal jurisdiction and even after he abandoned his months-long pursuit of Supreme Court review, he did not dismiss this second lawsuit but instead filed an Amended Complaint double in size to the previous one, to which he attached 1,193 pages of exhibits consisting largely of pleadings and other materials pertaining to various lawsuits around the country. Defendants filed multiple motions to dismiss and for sanctions, both before and after Pederson filed his amended pleading.

Pederson insists that he had and continues to have a “good faith belief” that personal jurisdiction exists. Pl. Br. 4 (“Pederson has always had a good faith basis to proceed with [the second lawsuit] in Minnesota District Court.” . . . Even after the 8th Circuit decision, Pederson still had a good faith belief in his jurisdictional argument, and

he planned to take his argument to the United States Supreme Court."), Docket No. 70. But "subjective 'good faith'" is not the standard under Rule 11, see *Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir. 1987), and in any event the Court does not find his assertion of good faith to be credible. Rather, it appears to the Court that Pederson is motivated by one or more improper purposes "such as to harass . . . or needlessly increase the cost of litigation." See Rule 11(b)(1).

Instead of focusing on the dispositive jurisdictional issue, Pederson bombards the Court and Defendants with stream-of-consciousness ramblings, narrations of non-jurisdictional events, and diatribes filled with childish name-calling. For example, one of his filings, an 8-page opposition brief, begins:

I have a ton of empathy with Dan Fisher. Both of us got bamboozled by the same bunch of con men, and both of us have had our lives severely disrupted for almost a decade because of the frauds of Phillip Frost and the Frost gang. If it wasn't for the Frost persona, both Dan and I would have smelled the rats in the Frost gang much sooner (especially the stench of one particularly odious rodent), and the fraudulent takeover of BioZone would probably never have occurred. But that's all water under the bridge now.

Pederson Oppo Br. 1-2, Docket No. 108.⁴ The pages that follow are no better, taking the Court and the Defendants on a ride through Pederson's bitter commentary, postings from Internet chat rooms and message boards, and his inner monologues and speculation about various deeds and misdeeds ranging from "federal crimes" to "murder," bolstered by quotations from lurid New York Daily News headlines. And while some of his other Court filings are less egregious, they are permeated with the same themes, buzzwords, and insults (beyond simply colorful or descriptive language) which Pederson packages

⁴ Pederson filed this screed with the Court not once but twice. See Docket Nos. 108, 109 (apparently identical text except for an additional final paragraph in the opposition brief).

as "context" and "background" for his lawsuit. The Court can discern little or no legitimate litigation purpose in this onslaught. It does nothing to establish a connection with Minnesota sufficient to exercise specific personal jurisdiction over Defendants.

Accordingly, the Court recommends granting the motions for Rule 11 sanctions. To deter future violations, the Court recommends Pederson pay \$5,000 to Frost and \$5,000 to Fisher for costs and attorney's fees they incurred in the second lawsuit, and that Pederson be enjoined from filing any other actions in the District of Minnesota against Fisher, Frost, or CoCrystal Pharma based on the same or similar allegations as those in this lawsuit, unless he has first obtained written permission from a judicial officer in this District.⁵

RECOMMENDATION

For the reasons set forth above, the Court RECOMMENDS THAT:

1. Defendants Frost and CoCrystal Pharma's Motion to Dismiss the Amended Complaint [Docket Nos. 80] be GRANTED, and their Motion to Dismiss the Complaint [Docket No. 45] be DENIED AS MOOT.
2. Defendant Fisher's Motion to Dismiss the Amended Complaint [Docket Nos. 90] be GRANTED, and his Motion to Dismiss the Complaint [Docket No. 61] be DENIED AS MOOT.
3. The Amended Complaint be DISMISSED WITHOUT PREJUDICE for lack of personal jurisdiction.

⁵ The Court will also entertain an appropriate sanctions motion in the event Pederson brings the same lawsuit in state court which Defendants remove to federal court on the basis of diversity jurisdiction.

4. Defendants Frost and Fisher's Motions for Sanctions Under Rule 11 [Docket Nos. 36 and 96] be GRANTED.

Dated: November 19, 2020

s/ David T. Schultz
DAVID T. SCHULTZ
U.S. Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-1260

Lee Michael Pederson

Appellant

v.

Phillip Frost, et al.

Appellees

Appeal from U.S. District Court for the District of Minnesota
(0:19-cv-01777-JNE)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 08, 2022

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX D: PETITION FOR REHEARING DENIED

UNITED STATES DISTRICT COURT
District of Minnesota

Lee Michael Pederson

JUDGMENT IN A CIVIL CASE

Plaintiff(s),

v.

Case Number: 19-cv-01777-JNE-DTS

Phillip Frost, Cocrystal Pharma, Inc., Daniel Fisher

Defendant(s).

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Defendants Frost and CoCrystal Pharma's Motion to Dismiss the Amended Complaint [ECF No. 80] is GRANTED.
2. Defendants Frost and CoCrystal Pharma's Motion to Dismiss the Complaint [ECF No. 45] is DENIED AS MOOT.
3. Defendant Fisher's Motion to Dismiss the Amended Complaint [ECF No. 90] is GRANTED.
4. Defendant Fisher's Motion to Dismiss the Complaint [ECF No. 61] is DENIED AS MOOT.
5. The Amended Complaint is DISMISSED WITHOUT PREJUDICE for lack of personal jurisdiction.
6. Defendant Frost's Motion for Sanctions under Rule 11 [ECF No. 36] is GRANTED. Plaintiff is ordered to pay \$5,000 to Defendant Frost.
7. Defendant Fisher's Motion for Sanctions under Rule 11 [ECF No. 96] is GRANTED. Plaintiff is ordered to pay \$5,000 to Defendant Fisher.
8. Plaintiff Lee Michael Pederson is restricted from filing new cases against Defendants based on the same or similar allegations as those in this lawsuit in the District of Minnesota, unless he is represented by counsel or obtains prior written authorization to file an action from a judicial officer of this District.

Date: 1/6/2021

KATE M. FOGARTY, CLERK