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24-1210
No. ______

Supreme Court, U.S.
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In The Supreme Court of the United States

BRENT ANDREW BRACKETT ARBOGAST,

Petitioner,

v.

PFIZER, INC., as successor to Wyeth Pharmaceuticals; SHEEHAN, PHINNEY, BASS & GREEN, P.A.; JOHN BRACK; KERRI LEWANDOWSKI; LEIGH COWDRICK; MICHAEL J. LAMBERT; THOMAS M. CLOSSON,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

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PETITION FOR WRIT OF CERTIORARI

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May 14, 2025

Questions Presented

1. Does the Fifth Amendment require appellate courts to rule on a petitioner's briefed arguments and alleged facts rather than unraised theories and facts?

2. Can a defendant employer dismiss a claim brought under the Fair Labor Standards Act (FLSA) by filing an unsigned Rule 41(a)(1) stipulation of dismissal without plaintiff's consent?

Opinions Below

1. *Brent Andrew Brackett Arbogast v. Pfizer, Inc., et al.*, No. 22-cv-10156-DJC, United States District Court for the District of Massachusetts.

   Memorandum and Order dismissing all claims entered February 9, 2023 (ECF No. 85, Pg. xii-xxxvii).

2. *Brent Andrew Brackett Arbogast v. Pfizer, Inc., et al.*, No. 23-1481, United States Court of Appeals for the First Circuit.

   Judgment affirming dismissal entered June 20, 2024 (ECF No. 6650132, unreported, Pg. xxxviii-xliv). Rehearing en banc denied October 4, 2024 (ECF No. 6672565, Pg. xlv-xlvi).

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Statement of Jurisdiction

The First Circuit had appellate jurisdiction under 28 U.S.C. § 1291 to review a final decision by the U.S. District Court of Massachusetts in *Brent Andrew Brackett Arbogast v. Pfizer, Inc., et al.*, No. 22-cv-10156-DJC. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the First Circuit's judgment entered on June 20, 2024 (ECF No. 6650132, unreported, Pg. xxxviii-xliv). The First Circuit denied rehearing en banc on October 4, 2024 (ECF No. 6672565, Pg. xlv-xlvi). This Court extended the filing deadline for filing a petition for a writ of certiorari to March 3, 2025, by prior order, and the petition was filed on that date. On March 17, 2025, this Court ordered the petitioner to file an appropriately formatted petition within 60 days. This amended petition is timely filed on or before May 16, 2025; 60 days after that order.

Constitutional Provisions, Statutes, and Rules

Fifth Amendment to the U.S. Constitution:

> "No person shall ... be deprived of life, liberty, or property, without due process of law"

Excerpts of Authorities in Appendix Page

I. Statement of the Case

A. Background

In 2004, Petitioner began working at Wyeth (now Pfizer), expecting a professional role exempt from overtime under the FLSA, 29 U.S.C. § 213. Wyeth misclassified him as a professional, denied overtime pay, and fired him for objecting. Following his grievance, the U.S. Department of Labor (DOL) investigated and ordered Wyeth to pay back wages to him and 156 coworkers. Wyeth refused to comply with the order and worked to cover up the investigation and findings.

In 2006, Michael Lambert of Sheehan, Phinney, Bass & Green, P.A., filed *Arbogast v. Wyeth* (D. Mass. No. 06-cv-10333-PBS) on Petitioner's behalf without his knowledge or consent. Petitioner had never met or communicated with Lambert. A month later, Thomas Closson—whom Petitioner trusted due to a personal connection—disclosed the suit and presented a contingent fee agreement (CFA) promising advocacy by both Closson and Lambert. Petitioner signed, not knowing that Closson, Lambert, and Sheehan, Phinney, Bass & Green, P.A. (collectively the "Sheehan Defendants") were conspiring with Wyeth in the coverup of the DOL investigation.

After Petitioner signed the CFA, the Sheehan Defendants told Wyeth—not him—that he wrongly believed they were his advocates. Wyeth then filed an Answer with scandalous and defamatory allegations against Petitioner. The Sheehan Defendants concealed Wyeth's Answer, denying

Petitioner the opportunity to defend himself. This 2006 suit, a non-adversarial proceeding, spawned lasting harm. Before hiring Petitioner, Wyeth required him to release his civil court history, a common practice among employers. Wyeth's uncontested filings in the case, publicly accessible, act as a scarlet letter undermining Petitioner's career. This present case is intended, in part, to provide Petitioner with an opportunity to expose Wyeth's filings to the adversarial scrutiny which they have unfairly evaded thus far.

The record is clear: *Arbogast v. Wyeth* was a fraud on the court through collusion. Lambert limited his representation without disclosure, violating the CFA, while Closson falsely presented himself as authorized to practice law in Massachusetts. The Sheehan Defendants withheld dispositive DOL findings from Petitioner and the court, notably omitting them from a mediation statement intended to reflect his strongest case. They forged Petitioner's signature on filings the court requires clients to sign to ensure meaningful participation. Wyeth served papers falsely naming Closson as attorney of record, enhancing the deceit. Wyeth and the Sheehan Defendants worked together to conceal Petitioner's personnel records, which evidenced widespread labor violations, and other misconduct. These were not coincidental happenings.

The Sheehan Defendants hid from Petitioner a Rule 68 offer in which Wyeth admitted liability, then they falsely told him his claims lacked merit. They warned he would be liable to Wyeth for pressing a frivolous suit if he rejected a discounted settlement. They had him sign a stipulation indicating he prevailed on his wage claim, then allowed Wyeth to file a version stating Wyeth prevailed, which included terms completely contrary to the agreement. This filing was concealed from Petitioner.

In 2018, Lambert disclosed that his representation in the case had been limited, prompting Petitioner to investigate. He uncovered documents previously withheld by the Sheehan Defendants, including Wyeth's harmful Answer and the Rule 68 offer. It took a Freedom of Information Act (FOIA) request for Petitioner to learn about the DOL's investigation and back-wages order in favor of him and 156 coworkers. Despite Closson's firm assertion—made in a settlement agreement closing the case—that all Wyeth files were destroyed or returned, many withheld documents later surfaced from his possession. The actual stipulation of dismissal Petitioner signed remains missing.

B. Procedural History

In 2022, Petitioner filed *Arbogast v. Pfizer, Inc., et al.*, (D. Mass. No. 22-cv-10156-DJC), asserting an independent action for relief from the procedures in *Arbogast v. Wyeth* pursuant to Fed. R. Civ. P. 60(d)(3). He also alleged claims of racketeering under 18 U.S.C. § 1964(c). The court exercised supplemental jurisdiction over state law claims, including fraud, under 28 U.S.C. § 1367(a). He started with a pro se complaint—178 pages, 292 exhibit pages, and a 20-page table. The defendants contested it via a motion to strike, and before the court's ruling, Petitioner submitted a new version, that was over 230 pages shorter. (ECF No. 22) The District Court struck both for violating Rule 8(a), while providing little guidance. (ECF No. 34, 37)

Facing a May 11, 2022, deadline to amend, Petitioner requested an extension (ECF No. 42), but with no timely ruling, he hurriedly filed the now-operative second amended complaint. A nunc pro tunc order later granted the extension, too late to benefit him. (ECF No. 55)

The District Court dismissed all claims under Rule 12(b)(6). (ECF No. 85) It wrongly tied Petitioner to the 2007 stipulation and barred his claims against Pfizer via res judicata. It dismissed his fraud claims for lack of detail under *Massachusetts* Rules of Civil Procedure, and misapplied a reasonable diligence requirement to the fraudulent concealment doctrine under Mass. Gen. Laws ch. 260, § 12. Petitioner's only motion to amend was denied without explanation.

On appeal, Petitioner argued the 2007 stipulation's invalidity voided res judicata, Mass. Gen. Laws ch. 260, § 12 tolled limits, dismissal required summary judgment review, the extension ruling breached due process, amendment denial was an abuse, and equitable estoppel barred a statute of limitations defense. The First Circuit issued a judgment without addressing any of Petitioner's arguments. Instead, it misattributed to him an unraised "discovery rule" argument and affirmed on that basis. (ECF No. 6650132 at 2)

II. Reasons for Granting Petition

A. Fifth Amendment Requires Ruling on the Arguments and Facts Presented

1. Court of Appeals Ignored Petitioner's Primary Legal Argument

In the District Court, Petitioner's core argument against defendants' motions to dismiss was firm: Mass. Gen. Laws ch. 260, § 12 tolled time limitations until his 2018 discovery of concealed claims. In Oppositions to Pfizer (ECF No. 53 at 1, 13-14), Closson (ECF No. 54 at 1, 10-11), and Lambert/Sheehan (ECF No. 56 at 1) he asserted his claims accrued in 2018, citing § 12 and *Demoulas v. Demoulas Super Markets, Inc.*, 424 Mass. 501, 519-20 (1997), for an actual-knowledge standard when fiduciaries hide facts. When the Sheehan Defendants sought to file a Reply, clouding the issue, he objected: "The Reply... confuses the issue through false statements of law... and contradictory quotations from inapposite caselaw." (ECF No. 60 at 1)—the confusion later materialized. The District Court recognized the § 12 statute but used a diligence test and disregarded his post-judgment plea that: "The Court applied the wrong equitable tolling standard".

On appeal, Petitioner pressed § 12's plain text in his brief (ECF No. 6596686 at 68-69) and Reply to Sheehan Defendants (ECF No. 6608417 at 16-17)—tolling depends on knowledge, not diligence. The First Circuit ignored the statute and *Demoulas,* 424 Mass. p. 519-20. Instead, it pinned dismissal on an unraised "discovery rule," quoting it as his own despite his rejection of that theory.[1] Petitioner's other arguments—res judicata's invalid basis, Rule 12(b)(6) conversion need, due process from the extension denial, amendment refusal, and equitable estoppel—were threshold issues foundational to the record, yet all were left unaddressed.

Petitioner sought relief through three post-judgment motions: a Motion for Reconsideration and Correction of the Record (ECF No. 6651293), an Emergency Motion to Correct the Record (ECF No. 6651866), and a Petition for Rehearing En Banc (ECF No. 6652658). In the Emergency Motion, he stated, "While the court asserted that [he] argued the discovery rule tolled his claims, he made no such argument" (ECF No. 6651866, p. 15). The First Circuit denied rehearing en banc without addressing the discrepancies in the record. (ECF No. 6672565).

2. Petitioner's Factual Allegations Were Disregarded

The First Circuit did not accept Petitioner's factual allegations. It misquoted his 80-page complaint as alleging a "cheap" settlement and swapped well-pleaded facts for fictions—like "Closson engaged Lambert as 'local counsel,'" (ECF No. 6650132 at 2) a claim he never made, disputed,

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[1] The excerpts of *Demoulas* 424 Mass. pp. 519–20 that Petitioner cited in his appeal filings are included in the appendix (App. pp. lvi-lvii). In the excerpts, the Massachusetts Supreme Judicial Court emphasizes the distinction between the statutorily derived fraudulent concealment doctrine Petitioner argued for, and the common law discovery rule the appeals court wrongly attributed to Petitioner. They have different requirements for tolling and can lead to different outcomes.

and vowed to disprove. This whitewashing unfairly anchored further inferences in the defendants' favor. Furthermore, the record is rife with judicially noticeable facts that preclude the possibility of any "local counsel" arrangement.

Though Petitioner detailed over 20 acts of fraud with the particularity required by Fed. R. Civ. P. 9(b)—including concealment of DOL findings and Wyeth's Rule 68 offer admitting liability—the court dismissed them as "rank speculation." (*Id.* at 3) By leaving res judicata undisturbed, the court validated an unauthorized and unsigned stipulation of dismissal filed by an employer defending FLSA claims.

3. Due Process Requires Addressing the Facts and Arguments Presented

The First Circuit's refusal to engage Petitioner's briefed arguments and well-pleaded facts—opting instead to affirm dismissal on a misattributed and unraised theory—strikes at the heart of Fifth Amendment due process. This Court has long held that due process demands a meaningful opportunity to be heard (*Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970)), rooted in the judiciary's duty to "say what the law is" (*Marbury v. Madison*, 5 U.S. 137, 177 (1803)) and to accept factual allegations as true at the pleading stage (*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). By ignoring the plain text of Mass. Gen. Laws ch. 260, § 12—which tolls limitations until discovery of fraud—and inventing a "discovery rule" Petitioner disavowed, the First Circuit abdicated its role as interpreter of law (*Osborn v. Bank of U.S.*, 22 U.S. 738, 866 (1824)) and denied him a fair hearing. When statutes are clear, courts must enforce them as written (*Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009)). Here, the court defied that mandate, neglecting to even recognize the statute's existence.

Petitioner was denied due process in violation of the Fifth Amendment, leaving him without a remedy for fraud that continues to hurt his employability and reputation. With due process standards ripe for clarification, this Court should grant certiorari to clarify that sidelining a litigant's arguments and facts falls below the constitutional floor. The public will lose faith in the courts if this type of process stands as the result of acceptable mistakes inherent in an imperfect system.

B. Rule 41(a)(1) and the FLSA Require Plaintiff-Authorized Dismissals

1. Raised Stakes Under FLSA Warrant Oversight of Dismissals

The FLSA, 29 U.S.C. §§ 201 et seq., aims to ensure fair labor conditions, mandating under §207 that employers pay covered employees 1.5 times their regular rate for hours worked beyond forty per week. This overtime premium, as this Court explained, is not a reward for long hours, but an incentive for employers to increase hiring instead of extending shifts. (*Barrentine v. Arkansas-Best Freight Sys.*, 450 U.S. 728, 739 (1981)). Workers traditionally earned pay for all hours, but FLSA exemptions (§ 213) now allow employers to avoid overtime for some. This coupled with the National Labor Relations Board's reliance on exempt status in approving bargaining units (29 U.S.C. § 159(b)), fuels an unhealthy focus on FLSA classification by employers.

The FLSA's enforcement mechanism includes § 215's "hot goods" ban, blocking interstate commerce of goods made in violation of §§ 206-207, potentially costing firms like Wyeth millions (*Citicorp Indus. Credit, Inc. v. Brock*, 483 U.S. 27, 36 (1987)). Workers are considered "private attorneys general" under § 216, which authorizes collective suits securing liquidated damages and attorney's fees for prevailing parties. Clearly, the FLSA has dramatically raised the stakes of relatively minor wage disputes beyond the comprehension of most employees.

The power imbalance between employers and employees, compounded by the FLSA's high stakes, has led this Court to outlaw waiver of FLSA rights, warning of a "rush to the bottom" that erodes protections (*Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 704 (1945)). In light of all this, the Second, Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits require judicial or DOL supervision of private FLSA settlements to prevent such waivers and ensure the absence of fraud or collusion (*Samake v. Thunder Lube, Inc.*, 24 F.4th 804, 810 (2d Cir. 2022); *Taylor v. Progress Energy, Inc.*, 493 F.3d 454, 460 (4th Cir. 2007); *Martin v. Spring Break '83 Prods., LLC*, 688 F.3d 247, 255-56 (5th Cir. 2012); *McConnell v. Applied Performance Techs., Inc.*, 98 F. App'x 397, 398 (6th Cir. 2004); *Walton v. United Consumers Club, Inc.*, 786 F.2d 303, 306 (7th Cir. 1986); *Seminiano v. Xyris Enter., Inc.*, 602 F. App'x 682, 683 (9th Cir. 2015); *Lynn's Food Stores, Inc. v. United States,* 679 F.2d 1350 (11th Cir. 1982)).

Courts in the District of Massachusetts have aligned themselves with this protective stance, holding that "parties seeking to privately settle FLSA claims require the approval of either the DOL or the district court" and must show a "fair and reasonable" resolution under a "totality of the circumstances" test—including "the possibility of fraud or collusion" (*Drexler v. Tel Nexx, Inc.,* Civil Action No. 13-cv-13009-ADB, slip op. at 2 (D. Mass. Aug. 21, 2019); accord *Singleton v. AT&T Mobility Servs., LLC,* 146 F. Supp. 3d 258, 260 (D. Mass. 2015)).

Unfortunately, the District Court in *Arbogast v. Wyeth* not only flouted these protections, but allowed an employer defending an FLSA claim to file an unsigned stipulation of dismissal with prejudice, on behalf of the plaintiff, in defiance of Rule 41(a)(1)'s plain text and this Court's precedent (*Business Guides v. Chromatic Comm. Enterprises,* 498 U.S. 533, 540-41 (1991)). The employer did not even attempt to meet its obligation to plead facts justifying its exempt classifications as required under *Reich v. Newspapers of New Eng., Inc.*, 44 F.3d 1060, 1070 (1st Cir. 1995). In addition, the District Court neglected to enforce basic protections under the Civil Justice Reform Act.[2]

These errors were compounded in the present case when the District Court deemed the dastardly

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[2] Intended to thwart discovery abuses by powerful litigants like Wyeth (S. Rep. No. 101-416, at 1 (1990); see also 28 U.S.C. § 473(a)(2)(C)), CJRA protections failed when the judge permitted no discovery before scheduling conference, mediation or dismissal with prejudice.

stipulation of dismissal a valid judgment—mischaracterizing it as Petitioner's despite his disavowal—thus depriving him of his agency. The First Circuit's implicit approval contrasts with other circuits who strictly enforce Rule 41(a)(1)(A)(ii)'s signature rule, and void unsigned stipulations, leaving claims pending without appellate jurisdiction for want of final judgment (*City of Jacksonville v. Jacksonville Hosp. Holdings*, L.P., 82 F.4th 1031, 1034 (11th Cir. 2023); *Greer v. Strange Honey Farm, LLC*, 114 F.4th 605, 611 (6th Cir. 2024) (citing *Anderson-Tully Co. v. Fed. Ins.*, 347 F. App'x 171, 176 (6th Cir. 2009))).

2. Unsigned FLSA Dismissal Filed by Employer is Not Valid

This Court should reverse the lower courts' validation of the defendant-filed, unsigned stipulation in *Arbogast v. Wyeth*, declare that original case pending, and permit Petitioner to amend the complaint to include all claims encompassed in the present suit (pursuant to 28 U.S.C. § 1367(d), statutes of limitations are tolled while claims are pending). This timeframe for an FLSA case is not unprecedented; *Reich*, supra p. 10, was pending in district court for over 12 years.

An attorney must not file suit for a stranger, posing as lead counsel to coax consent later—especially when supposedly "authorized" by an unlicensed attorney, intending no competent representation. The concealment from their client of court filings and critical evidence, including a law enforcement investigation, mark this as fraud condemned in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245-46 (1944).

Concealment of the Rule 68 offer and sham stipulation removes any doubt. Petitioner filed a Rule 60(d) motion in *Arbogast v. Wyeth*, but the District Court denied it as untimely. Acting pro se, he did not appeal, lacking time and funds for dual cases. Rule 60(d)(3) permits an independent action to address the fraud. No final judgment exists in that case and the courts in this case did not even acknowledge Petitioner's independent action for fraud on the court.

To uphold judicial integrity and deter future abuses, this Court should waive any statute of limitations and fulfill *Hazel-Atlas's* mandate that "public justice" not tolerate courts as "mute and helpless victims" (322 U.S. at 246). At the same time the Court can resolve a troubling split among federal courts on the requirements for a lawful FLSA settlement. This Court must act to prevent an apparent "rush to the bottom" as warned about in *Brooklyn Savings Bank.*