NOT RECOMMENDED FOR PUBLICATION

No. 23-1395

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DERRICK HILLS, Plaintiff-Appellant, v. RICHARD A. ROBLE; AARON GARCIA; JOHN DOE, 1-6, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER

Before: SUHRHEINRICH, MOORE, and GILMAN, Circuit Judges.

Pro se litigant Derrick Hills appeals the denial of his motion for relief from judgment in his civil suit against federal officials involved in his arrest and prosecution. He also moves for the appointment of counsel. This case has been referred to a panel that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the reasons set forth below, we affirm the district court's order. And because Hills cites no exceptional circumstances justifying appointment of counsel, *see, e.g.*, *Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993), we deny his motion.

A federal jury convicted Hills on several counts of criminal contempt of court for repeatedly violating the orders of a bankruptcy judge. The district court sentenced him to 46 months in prison. *See United States v. Hills*, No. 14-1361, slip op. at 2 (6th Cir. Nov. 5, 2015). Hills did not voluntarily appear for sentencing, so, on the district court's order, the U.S. Marshals Service arrested him, and he started serving his sentence.

In 2015, Hills sued Special Assistant U.S. Attorney Richard Roble, Deputy U.S. Marshal Aaron, and six unnamed Deputy U.S. Marshals under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), claiming that Roble prosecuted him without due process and the marshals used excessive force in arresting him. The district court dismissed the claim against Roble as meritless, leaving only the excessive-force claim against the marshals to proceed to discovery.

Defendants' counsel scheduled Hills's deposition for November 15, 2021, a date that Hills told counsel he was available, but Hills responded that he would not attend without a court order. Counsel informed him that he did not need a court order under Federal Rule of Civil Procedure 30(a), but Hills nevertheless did not attend; defendants' counsel then moved to compel his attendance for a remote deposition on December 16, 2021. The district court granted the motion and ordered Hills to attend his deposition via Zoom on December 16, 2021; the court also warned Hills that his case may be dismissed under Federal Rule of Civil Procedure 37 if he failed to appear or otherwise violated discovery rules.

Hills appeared for his deposition while driving a semi-truck. After Hills was sworn in as a witness, defense counsel asked him several questions about his current situation, including if he was driving and if he was able to pull over, but Hills refused to answer the questions. Defendants' counsel ended the deposition and moved to dismiss the case for failing to cooperate with the discovery order. A magistrate judge recommended dismissing the case, concluding that Hills had acted in bad faith and disobeyed the court's discovery order. The district court agreed, adding that Hills likely violated Michigan law by appearing on a Zoom call while driving.

Hills then moved for relief from judgment under Federal Rule of Civil Procedure 60(b), arguing that the district court applied incorrect facts and law when it dismissed his complaint. The district court denied the motion, concluding that Hills did not identify any mistake of fact or law and that he rehashed previously rejected arguments. Hills now appeals, reiterating his arguments from below.

We review the denial of a Rule 60(b) motion under the abuse-of-discretion standard. *Franklin v. Jenkins*, 839 F.3d 465, 472 (6th Cir. 2016). "We recognize an 'abuse of discretion'

when our review leaves us with 'a definite and firm conviction that the trial court committed a clear error of judgment.'" *Id.* (quoting *Burrell v. Henderson*, 434 F.3d 826, 831 (6th Cir. 2006)). "Relief under Rule 60(b) is the exception, not the rule, and we are guided by the constraints imposed by a 'public policy favoring finality of judgments and termination of litigation.'" *Id.* (quoting *Waifersong, Ltd. Inc. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992)).

The district court construed Hills's motion as brought under Rule 60(b)(1), which neither party challenges on appeal. Rule 60(b)(1) allows relief from judgment for "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). A party is entitled to relief under Rule 60(b)(1) "when the judge has made a substantive mistake of law or fact in the final judgment or order." *Penney v. United States*, 870 F.3d 459, 461 (6th Cir. 2017) (quoting *United States v. Reyes*, 307 F.3d 451, 455 (6th Cir. 2002)).

Hills argues that the district court erred by concluding that he had failed to cooperate in the discovery process and by dismissing his complaint without considering alternative sanctions. District courts consider several factors when determining whether to dismiss a complaint for failure to comply with discovery obligations, including whether the party's failure was "due to willfulness, bad faith, or fault" and "whether less drastic sanctions were imposed and considered before dismissal was ordered." *Mager v. Wis. Cent. Ltd.*, 924 F.3d 831, 837 (6th Cir. 2019) (quoting *Reyes*, 307 F.3d at 458).

Hills did not attend a scheduled deposition, claiming that he was not ordered to by the court. But Rule 30(a)(1) provides that a party can be deposed without leave of court. Hills then attended his subsequent deposition as ordered by the court but did so while driving a truck and unable to give his full attention to the deposition. Hills then refused to answer nearly every question while under oath at the deposition. This included basic questions about whether he was driving a truck during the deposition, his mailing address, and whether he received an email about where counsel could send exhibits prior to the deposition. His contention that he did not answer questions he deemed irrelevant is not persuasive, because that is not a valid reason under Rule 30(c)(2).

Hills also argues that the district court wrongly interpreted state law, claiming that he was permitted to operate a cellphone as a commercial truck driver so long as he did not hold the phone in his hands. But that is irrelevant. The district court did not hinge its decision on whether Hills broke the law, rather it noted that Hills's attitude toward the discovery process was reflected by his operating a large truck during his deposition, likely breaking the law to do so and also flippantly refusing to answer questions. The district court was within its discretion to conclude that Hills failed to cooperate with the discovery process.

Finally, the record reflects that the district court indeed considered alternative sanctions but nevertheless concluded that Hills's actions in obstructing discovery in his own case warranted dismissal. *See Mager*, 924 F.3d at 840.

For these reasons, we **AFFIRM** the district court's order and **DENY** the motion for the appointment of counsel.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 23-1395

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DERRICK HILLS, Plaintiff-Appellant, v. RICHARD A. ROBLE; AARON GARCIA; JOHN DOE, 1-6, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

AMENDED
ORDER

Before: SUHRHEINRICH, MOORE, and GILMAN, Circuit Judges.

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A federal jury convicted Hills on several counts of criminal contempt of court for repeatedly violating the orders of a bankruptcy judge. The district court sentenced him to 46 months in prison. *See United States v. Hills*, No. 14-1361, slip op. at 2 (6th Cir. Nov. 5, 2015). Hills did not voluntarily appear for sentencing, so, on the district court's order, the U.S. Marshals Service arrested him, and he started serving his sentence.

In 2015, Hills sued Special Assistant U.S. Attorney Richard Roble, Deputy U.S. Marshal Aaron, and six unnamed Deputy U.S. Marshals under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), claiming that Roble prosecuted him without due process and the marshals used excessive force in arresting him. The district court dismissed the claim against Roble as meritless, leaving only the excessive-force claim against the marshals to proceed to discovery.

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Hills appeared for his deposition while driving a semi-truck. After Hills was sworn in as a witness, defense counsel asked him several questions about his current situation, including if he was driving and if he was able to pull over, but Hills refused to answer the questions. Defendants' counsel ended the deposition and moved to dismiss the case for failing to cooperate with the discovery order. A magistrate judge recommended dismissing the case, concluding, among other findings, that Hills had acted in bad faith and disobeyed the court's discovery order. The district court agreed, adding that Hills likely violated Michigan law by appearing on a Zoom call while driving.

Hills then moved for relief from judgment under Federal Rule of Civil Procedure 60(b),[1] arguing that the district court applied incorrect facts and law when it dismissed his complaint. The district court denied the motion, concluding that Hills did not identify any mistake of fact or law

[1] The district court construed Hills's motion as brought under Rule 60(b)(1), which neither party challenges on appeal.

and that he rehashed previously rejected arguments. Hills now appeals, reiterating his arguments from below.

We review the denial of a Rule 60(b) motion under the abuse-of-discretion standard. *Franklin v. Jenkins*, 839 F.3d 465, 472 (6th Cir. 2016). "We recognize an 'abuse of discretion' when our review leaves us with 'a definite and firm conviction that the trial court committed a clear error of judgment.'" *Id.* (quoting *Burrell v. Henderson*, 434 F.3d 826, 831 (6th Cir. 2006)). "Relief under Rule 60(b) is the exception, not the rule, and we are guided by the constraints imposed by a 'public policy favoring finality of judgments and termination of litigation.'" *Id.* (quoting *Waifersong, Ltd. Inc. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992)).

Rule 60(b)(1) allows relief from judgment for "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). A party is entitled to relief under Rule 60(b)(1) "when the judge has made a substantive mistake of law or fact in the final judgment or order." *Penney v. United States*, 870 F.3d 459, 461 (6th Cir. 2017) (quoting *United States v. Reyes*, 307 F.3d 451, 455 (6th Cir. 2002)).

Hills argues that the district court erred by concluding that he had failed to cooperate in the discovery process and by dismissing his complaint without considering alternative sanctions. Rule 37 provides that sanctions for failing to obey a discovery order "may include . . . dismissing the action or proceeding in whole or in part." Fed. R. Civ. P. 37(b)(2)(A)(v). Before imposing such a sanction, district courts must consider these factors:

> (1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered. Although no one factor is dispositive, dismissal is proper if the record demonstrates delay or contumacious conduct.

Mager v. Wis. Cent. Ltd., 924 F.3d 831, 837 (6th Cir. 2019) (citation omitted) (quoting *Reyes*, 307 F.3d at 458).

On the first factor, the district court rightly found that Hills's failure to comply with his discovery obligations was willful and in bad faith. Hills did not attend a scheduled deposition,

claiming that he was not ordered to by the court. But Rule 30(a)(1) provides that a party can be deposed without leave of court. Hills then attended his subsequent deposition as ordered by the court, but he did so while driving a truck and unable to give his full attention to the deposition. Hills then refused to answer nearly every question while under oath at the deposition. This included basic questions about whether he was driving a truck during the deposition, his mailing address, and whether he received an email about where counsel could send exhibits prior to the deposition. His contention that he did not answer questions he deemed irrelevant is not persuasive, because that is not a valid reason under Rule 30(c)(2).

As for the second factor, the district court correctly noted that the defendants were prejudiced by Hills's conduct because it prevented them "from obtaining evidence essential to the preparation of [their] defense." *Universal Health Grp. v. Allstate Ins.*, 703 F.3d 953, 956 (6th Cir. 2013). The defendants also "waste[d] time, money, and effort in pursuit of cooperation which [the plaintiff] was legally obligated to provide," because they had to file a motion to compel when Hills refused to sit for the first deposition and then had to pay for various services to take the later aborted deposition. *Schafer v. City of Defiance Police Dep't*, 529 F.3d 731, 739 (6th Cir. 2008) (alterations in original) (quoting *Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 368 (6th Cir. 1997)).

After Hills refused to appear for his originally scheduled deposition and the defendants moved to compel his attendance, the magistrate judge ordered him to appear and warned him in bold print that "[i]f he fails to appear or otherwise violates the discovery rules, his case may be dismissed under Rule 37 or the Court's inherent authority." Thus, the district court correctly held that Hills had been appropriately warned and that the third factor weighed in favor of sanctioning him with dismissal.

And the same is true for the fourth factor. In ordering Hills to attend his deposition, the magistrate judge explained that, when a party fails to attend a deposition or respond to discovery requests, financial sanctions were usually appropriate but greater sanctions were available, including dismissal of the case. The district court noted that the magistrate judge imposed no sanctions at that time and instead let Hills off with a warning. Thus, before dismissing Hills's case, the district court not only considered but applied less drastic measures.

Finally, the district court correctly found that Hills's behavior was contumacious and therefore warranted dismissal of his case. Hills refused to attend the first deposition, was warned that he would be sanctioned if he did not fulfill his discovery obligations, and when he finally appeared for his deposition, he did so while driving a truck and then refused to answer basic questions. His conduct was "perverse in resisting authority and stubbornly disobedient." *Mager*, 924 F.3d at 837 (quoting *Carpenter v. City of Flint*, 723 F.3d 700, 705 (6th Cir. 2013)).

Hills argues that the district court wrongly interpreted state law, claiming that he was permitted to operate a cellphone as a commercial truck driver so long as he did not hold the phone in his hands. But that is irrelevant. The district court did not hinge its decision on whether Hills broke the law, rather it noted that Hills's attitude toward the discovery process was reflected by his operating a large truck during his deposition, likely breaking the law to do so, and also flippantly refusing to answer questions. The district court was within its discretion to conclude that Hills failed to cooperate with the discovery process.

In short, the district court reviewed the appropriate factors and made the correct findings before dismissing Hills's case, and Hills does not show that the court abused its discretion in denying his motion for relief from that decision.

For these reasons, we **AFFIRM** the district court's order and **DENY** the motion for the appointment of counsel.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-1395

DERRICK HILLS,

Plaintiff-Appellant,

v.

RICHARD A. ROBLE; AARON GARCIA; JOHN DOE, 1-6,

Defendants-Appellees.

Before: SUHRHEINRICH, MOORE, and GILMAN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 03/15/2024.

Case Name: Derrick Hills v. Richard Roble, et al
Case Number: 23-1395

Docket Text:
AMENDED ORDER filed: For these reasons, we AFFIRM the district court's order and DENY the motion for the appointment of counsel [6990103-2]. Mandate to issue, pursuant to FRAP 34(a)(2)(C), decision not for publication. Richard F. Suhrheinrich, Circuit Judge; Karen Nelson Moore, Circuit Judge and Ronald Lee Gilman, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Mr. Derrick Hills
1401 W. Fort Street
Number 32030
Detroit, MI 48232

A copy of this notice will be issued to:

Mr. Bradley H. Darling
Ms. Kinikia D. Essix

No. 23-1395

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 6, 2024
KELLY L. STEPHENS, Clerk

DERRICK HILLS,

Plaintiff-Appellant,

v.

RICHARD A. ROBLE; AARON GARCIA; JOHN DOE, 1-6,

Defendants-Appellees.

ORDER

BEFORE: SUHRHEINRICH, MOORE, and GILMAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

*Judge Davis recused herself from participation in this ruling.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
Kelly L. Stephens
Clerk
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988
Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: May 06, 2024

Mr. Derrick Hills
1401 W. Fort Street
Number 32030
Detroit, MI 48232

Re: Case No. 23-1395, *Derrick Hills v. Richard Roble, et al*
Originating Case No.: 2:15-cv-12148

Dear Mr. Hills,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. Bradley H. Darling

Enclosure

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK HILLS, Plaintiff, v. AARON GARCIA, Defendant.	Case No. 15-12148 Honorable David M. Lawson Magistrate Judge Elizabeth A. Stafford

REPORT AND RECOMMENDATION TO GRANT DEFENDANT'S MOTION TO DISMISS (ECF NO. 55)

I. Introduction and Background

Plaintiff Derrick Hills, proceeding pro se, sues Deputy U.S. Marshal Aaron Garcia for alleged excessive force under 28 U.S.C. § 1343 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). ECF No. 1.[1] Garcia served Hills with a notice of his deposition, but Hills said in an email that he required "an order from the court directing [him] to appear at this and any and all other depositions." ECF No. 53-2, PageID.539; ECF No. 53-3, PageID.542. Garcia's counsel,

[1] The Honorable David M. Lawson referred the case to the undersigned for all pretrial matters under 28 U.S.C. § 636(b)(1). ECF No. 62.

Bradley Darling, told Hills that he did not need a court order, citing Federal Rule of Civil Procedure 30(a). *Id.* But Hills did not show for his deposition, so Garcia moved to compel him to appear for his deposition. ECF No. 53.

The Court granted Garcia's motion in a December 2021 order, stating:

> Garcia's counsel is right that he did not need leave of court to depose Hills. Rule 30(a)(1). Generally, parties are expected to engage in cooperative discovery with one another and request court involvement only when a party violates the discovery rules or when the parties have a genuine dispute about what the rules require. Fed. R. Civ. P. 1, 26-37. In most cases, when a court grants a motion to compel discovery, the possible sanctions are financial. Rule 37(a)(5)(A). But a party's failure to attend his own deposition or respond to discovery requests exposes him to greater sanctions, including the dismissal of the action. Rule 37(d).
>
> In other words, Hills' failure to attend his deposition is a serious violation of the discovery rules. Although Hills is acting pro se, he must comply with federal and local rules of procedure. *Matthews v. Copeland*, 286 F. Supp. 3d 912, 916 (M.D. Tenn. 2017).

ECF No. 54, PageID.554. The Court ordered Hills to attend his deposition and warned him, "**If he fails to appear or otherwise violates the discovery rules, his case may be dismissed under Rule 37 or the Court's inherent authority**." *Id.* (emphasis in original).

Garcia now moves for dismissal, alleging that Hills did not properly appear for his court-ordered deposition. ECF No. 55. Darling said during the deposition that Hills appeared to be driving a truck. ECF No. 55-2,

PageID.580-581. Hills refused to answer Darling's questions about where he was or whether he was driving a truck. *Id.* Darling asked Hills if he could pull to the side of the road so that they could complete the deposition. *Id.*, PageID.581. Hills responded, "If I were to say yes or no, I would be answering your question, which I have declined to answer. So I'm not answering that question either." *Id.*

Hills also refused to answer whether his address was a post office box. *Id.*, PageID.582. And though Darling had emailed Hills asking for an address to which Darling could send a binder of exhibits, Hills failed to respond to the email or to Darling's deposition question about the email. *Id.*; ECF No. 55-3. Darling then told Hills that he was terminating the deposition and would be moving to dismiss. ECF No. 55-2, PageID.582. Hills responded, "Good luck." *Id.*, PageID.582-583.

As promised, Garcia moved to dismiss Hills' complaint. ECF No. 55. The motion should be granted.

II. Analysis

Federal Rule of Civil Procedure 37(d)(3) permits a court to impose the sanctions described in Rule 37(b)(2)(A)(i)-(vi) when a party fails to attend his deposition. Rule 37(b)(2)(A)(v) allows the Court to dismiss the action. "The use of dismissal as a sanction for failing to comply with

discovery has been upheld because it accomplishes the dual purpose of punishing the offending party and deterring similar litigants from such misconduct in the future." *Bass v. Jostens, Inc.*, 71 F.3d 237, 241 (6th Cir. 1995). Dismissal is also an available sanction when a party violates a discovery order. Rule 37(b)(2)(A)(v).

To determine whether dismissal is warranted, the Court must consider four factors:

> (1) whether the party's failure to cooperate in discovery is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's failure to cooperate in discovery; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Harmon v. CSX Transp., Inc., 110 F.3d 364, 366-67 (6th Cir. 1997) (citation and quotation marks omitted); *see also Vance v. Sec'y, U.S. Dep't of Veterans Affs.*, 289 F.R.D. 254, 256 (S.D. Ohio 2013). Evaluation of these factors favors dismissal with prejudice.

Willfulness, Bad Faith, or Fault

To qualify as "bad faith, willfulness, or fault," a party's conduct "must display either an intent to thwart judicial proceedings or a reckless disregard for the effect of [his] conduct on those proceedings." *Mulbah v. Detroit Bd. of Educ.*, 261 F.3d 586, 591 (6th Cir. 2001) (quoting *Shepard*

Claims Serv. v. William Darrah & Assocs., 796 F.2d 190, 194 (6th Cir.1986)). There must be "a clear record of delay or contumacious conduct" that is "perverse in resisting authority and stubbornly disobedient." *Carpenter v. City of Flint*, 723 F.3d 700, 704-705 (6th Cir. 2013) (internal citations and quotations omitted).

The record here shows that Hills has been stubbornly disobedient. Darling referred Hills to Rule 30(a), which allows a party to depose a person without leave of court, but Hills did not show for his deposition. ECF No. 53-2, PageID.539; ECF No. 53-3, PageID.542. The Court then ordered Hills to attend his deposition and emphasized that his failure to do so was "a serious violation of the discovery rules." ECF No. 54, PageID.554. And the Court warned him that his case could be dismissed if he failed to appear at the deposition or otherwise violated the discovery rules. *Id.*

Despite this warning, Hills showed for the deposition while driving a truck and then refused to answer questions. A party may refuse to answer questions during a deposition "only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)." Rule 30(c)(2). Hills' appearance while driving a truck, his flippant refusals to answer questions, and his mocking bid of "good luck" to

Darling defied this Court's warning that his failure to attend his deposition was a serious violation of the discovery rules.

In his terse responsive brief, Hills asserts that he appeared for his deposition. ECF No. 57, PageID.588. But his appearance was a pretense that met none of the aims of a deposition. "Depositions most commonly are conducted to discover information the deponent knows about fact, opinions, and documents relating to the claims and defenses of the case." Introduction, *Fundamentals of Litigation Practice*, Ch. 15 (2021 ed.). One of the most basic obligations of a plaintiff suing for relief is that he sit for his own deposition. Hills' bad faith disregard of that obligation supports the dismissal of his claim.

Prejudice to Adversary

The prejudice factor requires a showing that the moving party was "required to waste time, money, and effort in pursuit of cooperation which [the plaintiff] was legally obligated to provide." *Harmon*, 110 F.3d at 368. In *Harmon*, the court recognized that the defendant had suffered prejudice from the plaintiff's failure to respond to interrogatories because the defendant was unable to obtain information and had wasted time, money, and effort in pursuit of the plaintiff's cooperation. *Id.*

Garcia has been unable to depose Hills and has wasted time, money, and effort in pursuit of a most basic discovery obligation, and Hills responded to Garcia's efforts with mockery. This factor supports Garcia's motion to dismiss.

Prior Warnings and Consideration of Lesser Sanctions

A prior warning is necessary before an involuntary dismissal only if there is no evidence of bad faith or contumacious conduct. *Harmon*, 110 F.3d at 368; *Freeland v. Amigo*, 103 F.3d 1271, 1277 (6th Cir. 1997). As already described, Hills has engaged in bad faith and contumacious conduct. And this Court *did* warn Hills that his complaint could be dismissed if he failed to attend his deposition or violated other discovery rules. ECF No. 54, PageID.554.

"Clearly it is difficult to define the quantity or quality of the misconduct which may justify dismissal with prejudice as the first and only sanction." *Harmon*, 110 F.3d at 368. But when a party has engaged in contumacious conduct, a district court is not "without power to dismiss a complaint, as the first and only sanction, solely on the basis of the plaintiff's counsel's neglect." *Id.* "Presented with a record of sufficiently egregious conduct, then, this court need not hesitate to conclude that a district court has not abused its discretion by ordering dismissal as the first and only

sanction." *Id.* at 369. Hills' pretense of an appearance and conduct during his deposition, so closely following this Court's warning, were egregious enough to warrant dismissal.

III. Conclusion

The Court **RECOMMENDS** that Garcia's motion to dismiss, ECF No. 55, be **GRANTED**.

s/Elizabeth A. Stafford
ELIZABETH A. STAFFORD
United States Magistrate Judge

Dated: April 11, 2022

NOTICE TO THE PARTIES ABOUT OBJECTIONS

Within 14 days of being served with this report and recommendation, any party may serve and file specific written objections to this Court's findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). If a party fails to timely file specific objections, any further appeal is waived. *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991). And only the specific objections to this report and recommendation are preserved for appeal; all other objections are waived. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991).

Each **objection must be labeled** as "Objection #1," "Objection #2," etc., and **must specify** precisely the provision of this report and recommendation to which it pertains. Within 14 days after service of objections, **any non-objecting party must file a response** to the objections, specifically addressing each issue raised in the objections in the same order and labeled as "Response to Objection #1," "Response to Objection #2," etc. The response must be **concise and proportionate in length and complexity to the objections**, but there is otherwise no page limitation. If the Court determines that any objections are without merit, it may rule without awaiting the response.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 11, 2022.

s/Marlena Williams
MARLENA WILLIAMS
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK HILLS,

Plaintiff,

v.

AARON GARCIA and JOHN DOES #1-6,

Defendants.
_____/

Case Number 15-12148
Honorable David M. Lawson
Magistrate Judge Elizabeth A. Stafford

ORDER ADOPTING REPORT AND RECOMMENDATION, OVERRULING PLAINTIFF'S OBJECTIONS, GRANTING DEFENDANTS' MOTION TO DISMISS, AND DISMISSING CASE WITH PREJUDICE

Plaintiff Derrick Hills filed a complaint *pro se* alleging that Deputy United States Marshal Aaron Garcia and six other unnamed U.S. Marshals used excessive force when effectuating an arrest on February 21, 2014. He brought claims under the Fourth and Fifth Amendments to the United States Constitution and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). After the case was reassigned to the undersigned due to the untimely passing of the Honorable Arthur J. Tarnow, the Court referred the matter to Magistrate Judge Elizabeth A. Stafford to conduct pretrial proceedings. After the plaintiff failed to appear for a duly noticed deposition, Judge Elizabeth A. Stafford granted the defendants' motion to compel discovery and ordered the plaintiff to appear for a deposition. Thereafter, the defendants moved to dismiss the case, alleging that the plaintiff refused to participate in his deposition in good faith and refused to answer questions. On April 11, 2022, Judge Stafford filed a report recommending that the motion be granted, and the case be dismissed. The plaintiff filed objections to the report and recommendation, and the motion is before the Court for fresh review. The Court agrees with the magistrate judge that the plaintiff refused to comply in good faith with the order compelling his

deposition and that dismissal is an appropriate sanction. The Court will overrule the objections and grant the motion to dismiss.

I.

Hills filed his complaint on June 11, 2015, naming Aaron Garcia, Richard Robel, and six John Does as defendants. On September 22, 2015, Hills moved for administrative closure of the case pending the resolution of a separate but related criminal appeal. Judge Tarnow granted the motion on October 15, 2015, and later reopened the case on July 17, 2019 on the plaintiff's motion. Judge Tarnow then granted in part the defendants' renewed motion to dismiss and dismissed some of the plaintiff's claims and dismissed the case against Robel in its entirety. Hills's excessive force claims against Garcia and the John Doe defendants were allowed to proceed.

Thereafter, the assistant United States attorney (AUSA) who appeared for the defendants attempted to schedule Hills's deposition. On October 28, 2021, AUSA Bradley Darling sent an email to Hills requesting times in November of last year for the deposition. Hills initially provided Darling with a list of dates and times but then informed Darling that he required "an order from the court directing [Hills] to appear at this and all-other depositions." Darling informed Hills, correctly, that since Hills was a party in the case, he was required to appear for a deposition according to Federal Rule of Civil Procedure 30(a) without a court order. Darling then chose one of the dates Hills had given and scheduled the deposition to take place remotely. He told Hills that he would need a quiet room with a computer or phone connection for the Zoom feed. Darling then sent Hills a deposition notice on November 2, 2021 by email.

Hills never appeared for the deposition, nor does it appear that he made any attempts to connect to the provided Zoom link. Darling then filed a motion to compel Hills to appear for his deposition. Hills did not respond to the motion.

On December 3, 2021, Judge Elizabeth Stafford granted the motion to compel and ordered Hills to appear for his deposition on December 16, 2021 by Zoom. In her order, Judge Stafford informed Hills that defense counsel was correct that he did not need the court's leave to depose Hills and that typically parties only request the court to intervene in discovery when the discovery rules have been violated or when "parties have a genuine dispute about what the rules require." Order, ECF No. 54, PageID.554. Judge Stafford also included a bolded statement warning that if Hills "fails to appear [for his deposition] or otherwise violate[s] the discovery rule, his case may be dismissed under Rule 37 or the Court's inherent authority." *Ibid.*

Hills accessed the Zoom link for his deposition on the assigned date, but things did not go smoothly after that. The defendants assert that Hills made the connection while in the cab of a semi-tractor truck. The transcript of the deposition demonstrates that, after introducing himself, Darling asked Hills if he was currently driving a truck. Darling states that from the background in the video, it appeared that Hills was doing just that. Hills refused to answer this question several times, responding with several variations of the statement "I don't want to answer that question. It's not relevant to this deposition." Darling then asked Hills to "pull over to the side of the road and park so that we can complete this deposition." Hills responded "[i]f I were to say yes or no, I would be answering your question, which I have declined to answer. So I'm not answering that question either." Hills said that he was prepared to continue with the deposition, but he refused to answer questions about whether he had received certain emails sent by Darling, whether Hills had received Darling's request for an address to mail a binder of exhibits, and several questions about Hills' provided mailing address. After those refusals, Darling informed Hills that he was terminating the deposition and would be filing a motion to dismiss the case, which he did.

Hills provided a one-page response to the defendants' motion to dismiss, simply stating that he did in fact attend the deposition and that he was prepared to continue with the deposition. Hills did not provide any reasons for refusing to answer Darling's questions.

In her report recommending that the motion to dismiss be granted, Judge Stafford relied on the authority of Federal Rule of Civil Procedure 37(d), which allows the court to impose sanctions, including dismissal, for a party's failure to attend their own deposition and Rule 37(b), which authorizes a dismissal sanction for the violation of a discovery order. She determined that Hills violated the court order to appear for and cooperate in giving a deposition. Judge Stafford considered the four factors discussed below that guide the type of sanctions that should be imposed and found that they all favored dismissal.

After the report was filed, an attorney appeared for the plaintiff and filed objections to the report and recommendation. One day later, Hills filed his own objection to the report and recommendations *pro se*. The two sets of objections are largely repetitive and can be addressed as one.

II.

When a party files an objection to a recommendation and report, the Court must "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667 (1980); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). This fresh review requires the court to re-examine all of the relevant evidence previously reviewed by the magistrate judge in order to determine whether the recommendation should be accepted, rejected, or modified in whole or in part. 28 U.S.C. § 636(b)(1).

This review is not plenary, however. "The filing of objections provides the district court with the opportunity to consider the specific contentions of the parties and to correct any errors immediately," *Walters*, 638 F.2d at 950, enabling the court "to focus attention on those issues — factual and legal — that are at the heart of the parties' dispute," *Thomas v. Arn*, 474 U.S. 140, 147 (1985). As a result, "[o]nly those specific objections to the magistrate's report made to the district court will be preserved for appellate review; making some objections but failing to raise others will not preserve all the objections a party may have." *McClanahan v. Comm'r of Soc. Sec.*, 474 F.3d 830, 837 (6th Cir. 2006) (quoting *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987)).

In his objections, Hills acknowledged that he appeared for the Zoom deposition in a semi-tractor truck. However, he contends first that the record fails to demonstrate that he had engaged in a pattern of egregious conduct, insisting that he actually complied with the court order by attending his deposition. Second, he says that the magistrate judge did not define the concept of bad faith and should not have focused on his conduct during the deposition. Finally, he contends that the magistrate judge failed to consider lesser sanctions before recommending dismissal.

No one disputes that the Court's authority to dismiss a case as a sanction for certain discovery violations. Rule 37(d) authorizes dismissal when a party fails to attend his own deposition. Fed. R. Civ. P. 37(d)(1)(A)(i), (3). And Rule 37(b)(2) authorizes courts to impose the same sanctions when a party "fails to obey an order to provide or permit discovery." Fed. R. Civ. P. 37(b)(2)(A). It should be noted that Hills was proceeding *pro se* at the time of the discovery violations, and that *pro se* litigants may be entitled to some latitude before the Court. But there is no cause to extend such latitude to "straightforward procedural requirements . . . that a layperson could comprehend as easily as a lawyer." *Muldrow v. Federal Exp. Corp.*, 81 F.3d 161, 1996 WL

125042, at *1 (6th Cir. Mar. 20, 1996) (unpublished table decision) (citing *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991)).

Although a pattern of egregious conduct certainly may justify dismissal as a discovery sanction, such a finding is neither a necessary nor a sufficient prerequisite. Instead, courts weigh four factors taken together:

> (1) Whether the party's failure to cooperate in discovery is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's failure to cooperate in discovery; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Mager v. Wisconsin Cent. LTD., 924 F.3d 831, 837 (6th Cir. 2019) (quoting *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002)). None of the four factors individually are dispositive; dismissal is appropriate when there is a clear record that "demonstrates delay or contumacious conduct." *Ibid.* (quoting *Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 366-67 (6th Cir. 1997)). Contumacious conduct is defined as "behavior that is perverse in resisting authority and stubbornly disobedient." *Ibid.* (quoting *Carpenter v. City of Flint*, 723 F.3d 700, 705 (6th Cir. 2013)).

A.

A finding of willfulness and bad faith is appropriate when a party's conduct "display[s] either an intent to thwart judicial proceedings or a reckless disregard for the effect of [their] conduct on those proceedings." *Mager*, 924 F.3d at 837 (quoting *Carpenter*, 723 F.3d at 705). This case maps onto the facts in *Mager* neatly. There, the plaintiff was required by the court to submit to an interview by a doctor as part of an independent medical examination. *Id.* at 834-35. Although the plaintiff physically attended the interview, he "repeatedly declined to answer relevant questions about his condition, his medications, and how [his] injury occurred." *Id.* at 835. The court of appeals found that the plaintiff's actions were "deliberate and calculated to circumvent

the order requiring him to submit to an interview as part of the IME." *Id.* at 838. The court therefore found that the first factor favored dismissal because the conduct was the sort that was motivated by an intent to thwart judicial proceedings "or at least [demonstrated] a reckless disregard for the effect of that conduct on the proceedings." *Id.* at 839-40.

Similarly, in *Smith v. MPIRE Holdings, LLC*, No. 08-549, 2011 WL 4449650 (M.D. Tenn. Sept. 26, 2011), two individual plaintiffs appeared for their depositions but deliberately obfuscated many of their answers and refused to answer other questions. The district court held that the plaintiffs' conduct during their depositions constituted "textbook bad faith" under the first factor. *Id.* at *6.

Hills's conduct in this case is nearly the same. He initially failed to attend his properly noticed deposition. When he connected online for his court-ordered deposition, he did so while driving a semi-tractor truck and repeatedly refused to answer questions. A deponent may refuse to answer questions during a deposition "only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)." Fed. R. Civ. P. 30(c)(2). Nothing in the record suggests that Hills's repeated refusals were for reasons listed in Rule 30(c)(2). Rather, Hills's conduct demonstrated the kind of reckless disregard for judicial proceedings that constitutes bad faith, willfulness, or fault that the court of appeals called out in *Mager*.

Further evidence of Hills's cavalier approach to his discovery obligations is found in his decision to access the Zoom link with his phone while driving a truck. It is illegal in Michigan to use a cell phone while operating a commercial vehicle. Mich. Comp. Laws § 257.602(b)(3) ("[A] person shall not use a hand-held mobile telephone to conduct a voice communication while operating a commercial motor vehicle . . . on a highway, including while temporarily stationary

due to traffic, a traffic control device, or other momentary delays."). Hills apparently ignored attorney Darling's request to pull over to complete the deposition. When Hills was fencing with Darling over legitimate deposition questions while driving a semitruck, he was breaking Michigan motor vehicle laws.

Judge Stafford correctly concluded that this factor favors dismissal, and the plaintiff's objection challenging that finding will be overruled.

B.

A party's failure or refusal to cooperate with discovery causes prejudice when the requesting party is "unable to secure the information requested" and has "wasted time, money, and effort in pursuit of cooperation which the [other party] was legally obligated to provide." *Norris v. MK Holdings, Inc.*, 734 F. App'x 950, 958 (6th Cir. 2018) (quoting *Harmon*, 110 F.3d at 368). It is clear in this case that the defendants were not able to obtain any information during the scuttled deposition of the plaintiff. The defendants allege that they spent significant time and effort to obtain Hills's deposition, and that included the extra step of filing a motion to compel when Hills refused to attend his deposition when it was first noticed. The defendants arranged for and paid court reporters, prepared exhibit binders, and blocked off time for the missed depositions. That amounts to prejudice, *Norris*, 734 F. App'x at 958-59, and the second factor weighs in favor of dismissal.

C.

Hills was duly warned that failing to cooperate with giving his deposition could result in the dismissal of his case. The magistrate judge spelled that out for him explicitly and in bold print in her order warning Hills that "if he fails to appear or otherwise violates the discovery rules, his

case may be dismissed under Rule 37 or the Court's inherent authority." Order, ECF No. 54, PageID.554. The third factor weighs in favor of dismissal.

D.

Factor four addresses alternate sanctions, asking if they were imposed or considered. Hills says in his objections that the magistrate judge's rush to the ultimate sanction is fatal to her ruling.

At the outset, it must be remembered that the Sixth Circuit explicitly has noted that it has never held that "a district court is without power to dismiss a complaint, as the first and only sanction." *Harmon*, 110 F.3d at 368. Instead, dismissal is appropriate when a plaintiff engages in contumacious conduct that is "sufficiently egregious." *Id.* at 369. It also is noteworthy that the magistrate judge plainly considered lesser sanctions when she wrote that "[i]n most cases, when a court grants a motion to compel discovery, the possible sanctions are financial. But a party's failure to attend his own deposition or to respond to discovery requests exposes him to greater sanctions, including dismissal of the action." Order, ECF No. 54, PageID.554.

The guidance that focuses on contemplation of lesser sanctions embraces the twin concepts of incremental punishment and the notion that the punishment must fit the crime. In *Carpenter*, for instance, the court stated that violations such as "repeated noncompliance with local filing rules and a delayed response to defendant's motions to strike" do not rise to the level of egregiousness required to constitute contumacious conduct. *Carpenter*, 723 F.3d at 705. But violations such as failing to appear at scheduled pretrial conferences, failure to respond to discovery requests, or acting "in contempt of a court order compelling cooperation with such requests" would constitute contumacious conduct. *Ibid.*

Hills resisted the lawful attempts to take his deposition from the outset. First, he told defense counsel that he would not sit for a deposition without a court order. When counsel pointed

out that a court order was not required and referred him to Rule 30(a), Hills persisted in his refusal and ignored the notice scheduling the deposition for one of the days Hills himself had approved. That conduct prompted the motion to compel, which Hills did not answer. Rather than dismiss the case at that point, the magistrate judge ordered Hills to give his deposition, plainly and explicitly warning of the consequences of noncompliance.

Hills's conduct thereafter — accessing the Zoom link and attending his deposition while driving a semi-tractor truck and "flippantly" refusing to answer questions — can only be viewed as defying the court order and treating it with contempt. It is difficult to see what else the magistrate judge could have done to impress upon the plaintiff that he had an obligation to abide by the rules of procedure when he filed his lawsuit, and that gamesmanship would not be tolerated. The magistrate judge could have imposed a monetary sanction when she granted the defendants' motion to compel the deposition. She apparently believed that a stern warning would have sufficed to persuade the plaintiff to cooperate and adhere to the rules. Instead, she was confronted with the sort of stubborn disobedience and perversity in resisting authority that the Sixth Circuit characterized as contumacious conduct in *Mager*. She concluded properly that dismissal was the only appropriate sanction under all the circumstances.

III.

The magistrate judge correctly applied the governing law to the accurately determined facts of the case as presented in the motion papers. The plaintiff's refusal to submit to discovery warrants the dismissal of his case as a sanction under Federal rule of Civil Procedure 37(d). The plaintiff's objections to the report and recommendation lack merit. An earlier report recommending that the John Doe defendants be dismissed will be rejected as moot.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation (ECF No. 63) is **ADOPTED**.

It is further **ORDERED** that the plaintiff's objections (ECF No. 66, 67) are **OVERRULED**.

It is further **ORDERED** that the defendants' motion to dismiss (ECF No. 55) is **GRANTED**.

It is further **ORDERED** that the report and recommendation concerning the dismissal of the John Doe defendants (ECF No. 48) is **REJECTED as moot**.

It is further **ORDERED** that the complaint is **DISMISSED WITH PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: September 20, 2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK HILLS,

Plaintiff,

v.

AARON GARCIA and JOHN DOES #1-6,

Defendants.
_____/

Case Number 15-12148
Honorable David M. Lawson
Magistrate Judge Elizabeth A. Stafford

JUDGMENT

In accordance with the opinion and order entered on this date, it is **ORDERED AND ADJUDGED** that the complaint is **DISMISSED WITH PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: September 20, 2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK HILLS,

Plaintiff,

v.

Case Number 15-12148
Honorable David M. Lawson

AARON GARCIA and JOHN DOES #1-6,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT

On September 20, 2022, the Court entered an opinion and judgment dismissing the complaint with prejudice, after the Court found that dismissal was an appropriate sanction for the plaintiff's refusal to comply with his discovery obligations in this matter and his failure or refusal to comply with other orders of the Court. On February 21, 2023, the plaintiff filed a motion under Federal Rule of Civil Procedure 60(b) seeking relief from the judgment dismissing the case for failure to comply with the orders of the Court. After reviewing the record of the proceedings and considering the motion, the Court finds that the plaintiff has not established good grounds for relief from the judgment of dismissal. The motion therefore will be denied.

The motion for relief does not specify the subsection of Rule 60(b) under which relief is sought. However, from the substance of the motion, it is plain that Rule 60(b)(1) is the only subsection that conceivably could apply. Under Federal Rule of Civil Procedure 60(b), "the court may relieve a party or its legal representative from a final judgment, order, or proceeding for [several] reasons [including] mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). However, Rule 60(b)(1) "is intended to provide relief in only two situations: (1) when a party has made an excusable mistake or an attorney has acted without authority, or (2) when the

judge has made a substantive mistake of law or fact in the final judgment or order." *United States v. Reyes*, 307 F.3d 451, 455 (6th Cir. 2002). The Court finds that the plaintiff has not shown that his conduct that prompted the dismissal of the case constituted "excusable neglect," and he has not identified any substantive mistake of fact or law in the Court's prior ruling. Moreover, the present motion merely rehashes arguments previously considered and rejected by the Court. "Rule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor by presenting new explanations, legal theories, or proof," *Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 385 (6th Cir. 2001), nor is it "an occasion to relitigate [the] case," *General Universal Systems, Inc. v. Lee*, 379 F.3d 131, 157 (5th Cir. 2004). The present motion offers nothing new, and there was no error in the Court's determination that dismissal was an appropriate response to a persistent record of neglect and disregard for the requirements that the plaintiff participate actively in the case, properly pursue the litigation of his claims, and timely respond to the lawful demands of opposing parties and the Court.

Accordingly, it is **ORDERED** that the plaintiff's motions for relief from judgment (ECF No. 74, 75) are **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: March 1, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK HILLS,

Plaintiff,

v.

Case Number 15-12148
Honorable David M. Lawson

AARON GARCIA and JOHN DOES #1-6,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT AND MOTIONS FOR CLARIFICATION

On September 20, 2022, the Court entered an opinion and judgment dismissing the complaint with prejudice, after the Court found that dismissal was an appropriate sanction for the plaintiff's refusal to comply with his discovery obligations in this matter and his failure or refusal to comply with other orders of the Court. On February 21, 2023, the plaintiff filed two motions under Federal Rule of Civil Procedure 60(b) seeking relief from the judgment dismissing the case for failure to comply with the orders of the Court. After reviewing the record of the proceedings and considering the motion, the Court found that the plaintiff had not established good grounds for relief from the judgment of dismissal. On March 1, 2023, the motions were denied.

Between April 3, 2023 and May 3, 2023, the plaintiff filed three additional post-judgment motions seeking "relief" from the judgment of dismissal and "clarification" of the Court's prior rulings. In substance the motion for "relief" from the Court's prior rulings amounts to a request for reconsideration of the order denying the plaintiff's earlier motions for relief from the judgment. "Motions for reconsideration of non-final orders are disfavored . . . and may be brought only upon the following grounds: (A) The court made a mistake, correcting the mistake changes the outcome of the prior decision, and the mistake was based on the record and law before the court at the time

of its prior decision; (B) An intervening change in controlling law warrants a different outcome; or (C) New facts warrant a different outcome and the new facts could not have been discovered with reasonable diligence before the prior decision." E.D. Mich. LR 7.1(h)(2). The present motion has not identified any new facts or law calling into question the prior ruling. The motion offers nothing new and merely rehashes arguments already considered and rejected by the Court. The plaintiff has not identified any outcome determinative mistake of fact or law in the Court's prior rulings. Moreover, the motion is untimely because it was filed more than 14 days after entry of the Court's order denying the plaintiff's two previous motions for relief from judgment. *Ibid.* The plaintiff's motions for "clarification" of the Court's prior ruling are without merit because they do not present any legal grounds for the relief sought, and they do not identify any point of ambiguity in the Court's prior rulings that warrants clarification.

Accordingly, it is **ORDERED** that the plaintiff's motion for relief (ECF No. 77) and motions for clarification (ECF No. 78, 82) are **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: May 4, 2023