No. _____

IN THE

Supreme Court of the United States

MICHAEL ANGELO, PETITIONER,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In a *qui tam* action brought under the False Claims Act ("FCA"), a relator may not seek dismissal of the action without the Government's consent. 31 U.S.C. § 3730(b)(1). Such consent is also required when a relator enters into a settlement agreement with a defendant that agrees to dismiss or release the Government's *qui tam* claims.

However, the applicable standards governing the enforceability of such agreements depends on whether they are executed prior to filing of the *qui tam* complaint or after the filing of the *qui tam* complaint. Four circuits have held that, for pre-filing settlement agreements, the Government's consent is not required if the Government has prior knowledge of the underlying fraud. However, the circuits are divided on the standard for post-filing settlement agreements. The majority, which previously included the Sixth Circuit, have held that, for a post-filing agreement, the Government has the absolute right to veto the agreement, and post-filing agreements unilaterally executed by the relator are unenforceable. In the decision below, which involved a post-filing settlement agreement, the Sixth Circuit departed from the majority position that it previously espoused, thereby further fracturing the circuits.

The question presented is:

Whether a private release agreement between a relator and a *qui tam* defendant, executed after the filing of the *qui tam* action, is enforceable when the Government did not have the opportunity to veto the agreement before its execution and where the Government received none of the consideration given pursuant to the release.

PARTIES TO THE PROCEEDINGS

Petitioner Michael Angelo was the defendant before the district court and appellant before the court of appeals. Respondents State Farm Mutual Automobile Insurance was the plaintiff in the district court and appellee in the court of appeals.

RELATED PROCEEDINGS

United States District Court (E.D. Mich.):

State Farm Mut. Auto. Ins. v. Angelo, No. 19-10669 (Feb. 28, 2022, May 2, 2022, Mar. 30, 2023, Apr. 14, 2023)

United States Court of Appeals (6th Cir.):

State Farm Mut. Auto. Ins. Co. v. Angelo, Nos. 22-1409/23-1340 (Mar. 5, 2024)

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OPINIONS BELOW

The opinion of the court of appeals (App. 1a–30a) is published at 95 F.4th 419. The court's order denying rehearing *en banc* (App. 93a–94a) is available at 2024 WL 1794393.

The district court's order granting Respondent's Motion to Enforce Settlement Agreement (App. 31a–51a) is available at 587 F.Supp.3d 611. The order denying Petitioner's Motion for Reconsideration and terminating as moot Petitioner's Motion for Stay (App. 52a–65a) is available at 2022 WL 1308818. The order Granting Respondent's Motion to Enforce May 2, 2022 Order (App. 66a–80a) is available at 2023 WL 2711567. The order denying Petitioner's Motion for Reconsideration or in the Alternative Motion to Amend the Order (App. 81a–92a) is available at 2023 WL 2957472.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on March 5, 2024. App. App. 1a–30a. The court of appeals denied a timely petition for rehearing *en banc* on April 5, 2024. App. 93a–94a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Section 3730 of the FCA, 31 U.S.C. §§ 3729–3733, is reproduced at App. 95a–104a.

STATEMENT OF THE CASE

This case presents a square and acknowledged conflict over a question central to the *qui tam* provision of the False Claims Act ("FCA"): Whether a defendant can give direct consideration to a relator in exchange for a promise to cease prosecuting and seek dismissal of a pending FCA action.

In the decision below, the Sixth Circuit held that an agreement by a relator to abandon an ongoing *qui tam* action "poses no threat to the FCA" when "the government had knowledge of the fraud at the time the release was signed" because, the Court reasoned, "[t]he primary goals of the FCA are to incentivize private individuals to bring suit and to alert the government to potential fraud." App. 17a–18a.

This holding severely undermines 31 U.S.C. § 3730(b)(1) and fails to consider the well-recognized public policy supporting private prosecution of the Government's fraud claims. The Sixth Circuit found that "enforcing the Settlement Agreement would be problematic only to the extent that private parties would be permitted to bargain away the Government's ability to prosecute fraud upon the Government." App. 20a. However, Congress found that encouraging relators to litigate on the Government's behalf is a key part of the Government's ability to prosecute fraud.

Without robust private prosecution, the Government's interests are insufficiently protected. Enforcing a post-filing agreement to cease prosecution and seek dismissal of a *qui tam* action allows a defendant to entice a relator with private gain in exchange for bargaining away a critical component of the Government's ability to prosecute fraud.

This case satisfies the criteria for this Court's review. The conflict at issue has now fractured the circuits, with the two circuits applying idiosyncratic standards contrary to majority rule. Further development of this issue in the lower courts would be futile: The arguments have been squarely raised and briefed across the divided circuits, and there is no realistic prospect the divisions will be reconciled. This issue was also dispositive in the proceedings below; it was raised and resolved by the Sixth Circuit; and there are no obstacles to resolving it in this Court.

The question presented raises an issue of fundamental importance, and its correct disposition is essential to the purposes of the FCA. Because this case presents an optimal vehicle for resolving this significant issue, the petition should be granted.

A. Legal Background

1. The FCA provides that a *qui tam* action "may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." 31 U.S.C. § 3730(b)(1). This consent requirement arises from the fact that FCA claims belong to the Government. See *U.S. ex rel. Charte v. Am. Tutor, Inc.*, 934 F.3d 346, 353 (3d Cir. 2019) ("[*Q*]*ui tam* claims belong to the Government, not to relators.").

In *Vt. Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000), the Court concluded, in the context of analyzing a relator's standing to maintain a suit under the FCA, that "[t]he FCA can reasonably be regarded as effecting a partial assignment" from the Government to the *qui tam* relator. *Id.* at 773. However, the Court emphasized

that this partial assignment was only "of the Government's damages claim." *Id.* Moreover, the Court noted that "[a] *qui tam* relator has suffered no . . . invasion" of a "legally protected right," *id.* at 772–773, and emphasized that "the 'right' he seeks to vindicate does not even fully materialize until the litigation is completed and the relator prevails," *id.* at 773. Further, the Court characterized "the relator's suit" as one simply for "bounty," *id.*, and distinguished between "a bounty and an express cause of action," *id.* at 777.

As a result, several circuits have interpreted the Court's language in *Vt. Agency*, to conclude that "while the [FCA] permits relators to control the [FCA] litigation, the claim itself belongs to the United States." *U.S. ex rel. Mergent Serv. v. Flaherty*, 540 F.3d 89, 93 (2d Cir. 2008); see also A*jjahnon v. St. Joseph's Univ. Med. Ctr.*, 840 F. App'x 667, 668 (3d Cir. 2020) (following Second Circuit); *United States v. Eli Lilly & Co., Inc.*, 4 F.4th 255, 262 (5th Cir. 2021); *Stoner v. Santa Clara Cnty. Off. of Educ.*, 502 F.3d 1116, 1126 (9th Cir. 2007); *Hawkins v. Cintas Corp.*, 32 F.4th 625, 631–32 (6th Cir. 2022) (following Ninth Circuit); *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1309–11 (11th Cir. 2021); *U.S. ex rel. Ritchie v. Lockheed Martin Corp.*, 558 F.3d 1161, 1173 (10th Cir. 2009) (Briscoe, J, concurring and dissenting).

Moreover, the Court has explained that this is true even when the Government declines to intervene, as the Government remains the "real party in interest", *i.e.*, the party with the "substantive right" who is represented by another. *U.S. ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 934 (2009); see also

Flaherty, 540 F.3d at 93; *Yates*, 21 F.4th at 1309–11 *U.S. ex rel. Milam v. Univ. of Tx. M.D. Anderson Cancer Ctr.*, 961 F.2d 46, 48–49 (4th Cir. 1992); *U.S. ex rel. Michaels v. Agape Senior Cmty., Inc.*, 848 F.3d 330, 340 (4th Cir. 2017) (following the Fourth Circuit); *Stoner*, 502 F.3d at 1126 (same); *United States v. Health Possibilities, P.S.C.* ("*Health Possibilities*"), 207 F.3d 335, 341 (6th Cir. 2000) (same); *Searcy v. Philips Elecs. N. Am. Corp.,* 117 F.3d 154, 156 (5th Cir. 1997) (same).

Relatedly, nearly every circuit has held that a relator cannot proceed with a *qui tam* action pro se because "the case, albeit controlled and litigated by the relator, is not the relator's 'own case' . . . , nor one in which he has 'an interest personal to him.'" *Flaherty*, 540 F.3d at 93; see also *Timson v. Sampson*, 518 F.3d 870, 873 (11th Cir. 2008) (same); *Wojcicki v. SCANA/SCE&G*, 947 F.3d 240, 244 (4th Cir. 2020) ("If we were to allow a *qui tam* plaintiff to proceed pro se, the government could be bound by an adverse judgment in the action."); *Gunn v. Credit Suisse Grp. AG*, 610 F. App'x 155, 157 (3d Cir. 2015) (same); *U.S. ex rel. Brooks v. Ormsby*, 869 F.3d 356, 357 (5th Cir. 2017) ("[A relator] is not representing himself when he brings an action solely as relator for another non-intervening party.").

2. Several circuits have recognized that 31 U.S.C. § 3730(b)(1) also applies to settlement agreements between relators and *qui tam* defendants that agree to dismiss or release the Government's *qui tam* claims. See *U.S. ex rel. El-Amin v. George Washington Univ.*, 2007 WL 1302597, at *6 (D.D.C. May 2, 2007) ("To allow a relator to release his or her claims against the defendant would amount, in substance, to a

voluntary dismissal of the action without the Court's or the Attorney General's written consent."). However, these courts have recognized that different standards apply to such settlement agreements depending on whether the *qui tam* complaint has been filed at the time of execution. See *U.S. ex rel. Gohil v. Sanofi-Aventis U.S. Inc.*, 96 F. Supp. 3d 504, 515 (E.D. Pa. 2015) ("The critical issue becomes: when did relator sign the release—before or after filing the *qui tam* action?").

a. For pre-filing settlement agreements, four circuits have held that the Government's consent is not required if the Government has prior knowledge of the underlying fraud. See *U.S. ex. rel. Radcliffe v. Purdue Pharma L.P.* ("*Radcliffe II*"), 600 F.3d 319, 330–33 (4th Cir. 2010); *U.S. ex rel. Hall v. Teledyne Wah Chang Albany,* 104 F.3d 230, 233 (9th Cir. 1997); *Ritchie*, 558 F.3d at 1170. These courts, applying *Town of Newton v. Rumery*, 480 U.S. 386 (1987), concluded that public policy did not otherwise outweigh enforcement of a release when the Government was aware of and had the opportunity to investigate the claims raised by the prospective relator. See *Radcliffe II*, 600 F.3d at 329–30; *Ritchie*, 558 F.3d at 1168–69; *Hall*, 104 F.3d at 231–33.

b. For post-filing settlement agreements, the Ninth Circuit alone has held that the Government has unreviewable veto authority of a settlement only during the seal period following the filing of a *qui tam* action, during which the Government has the opportunity to elect whether to intervene. *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 722 (9th Cir. 1994). When the Government has not intervened, the Ninth Circuit only permits the Government to

object with "good cause" to a proposed settlement and obtain a hearing. *Id*. at 723–25.

By contrast, every other circuit to consider the question since has rejected the Ninth Circuit's view, holding that the Government has an absolute veto power over voluntary settlements in *qui tam* actions. See, e.g., *Michaels*, 848 F.3d at 339; *Searcy,* 117 F.3d at 160; *Health Possibilities*, 207 F.3d at 339; *Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 931 n.8 (10th Cir. 2005); see also *Charte*, 934 F.3d at 353 ("[*Q*]*ui tam* claims belong to the Government, not to relators. . . . To . . . hold that the settlement agreement precludes this *qui tam* action would essentially be to endorse the opposite: that the *qui tam* action belonged to [relator] and thus, that she could unilaterally negotiate, settle, and dismiss the *qui tam* claims during the Government's investigatory period.").

This has led several circuits to conclude that the Government's consent is required *before* a post-filing settlement agreement is executed. See, e.g., *U.S. ex rel. Longhi v. United States* ("*Longhi II*"), 575 F.3d 458, 474 (5th Cir. 2009) (concluding "even if the release and indemnification were valid, [relator] could not have entered into it at the time he did without the express knowledge and consent of the United States" when the seal period was still in effect); *Ridenour*, 397 F.3d at 931 n.8 (10th Cir. 2005) ("[R]elators are required to obtain government approval prior to entering a settlement[.]").

3. Notably, courts have identified several public policy rationales that outweigh enforcement of post-filing settlement agreements. The important policy goals of the FCA do not end once a relator reports fraud. "'Congress has let loose a posse of ad hoc

deputies to uncover and prosecute frauds against the government.'" *U.S. ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1042 (6th Cir. 1994) (quoting *Milam*, 961 F.2d at 49) (Congress "gave the Executive Branch the option to allocate its resources elsewhere and permit the relator to prosecute the action on its behalf."); see also *U.S. ex rel. Radcliffe v. Purdue Pharma, L.P.* ("*Radcliffe I*"), 582 F. Supp. 2d 766, 782 (W.D. Va. 2008) ("[W]hen the release was executed there was no guarantee that the government would end up prosecuting based on the relator's allegations. The public interest in Radcliffe maintaining the ability to supplement federal enforcement of the FCA by prosecuting these allegations on behalf of the government remains.").

Congress sought to motivate relators to prosecute a case even after the Government declines to intervene, and even then, the Government retains the right to intervene at any time. 31 U.S.C. § 3730(c)(3); see also S. Rep. 99-345, at 26–27 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5291–92 ("Conceivably, new evidence discovered after [the Government declines intervention] could escalate the magnitude or complexity of the fraud, causing the Government to reevaluate its initial assessment or making it difficult for the *qui tam* relator to litigate alone. In those situations where new and significant evidence is found . . . the court may allow the Government to take over the suit.").

"The goal of the FCA's *qui tam* provisions is to prevent and rectify frauds . . . by incentivizing private individuals to uncover and prosecute FCA claims." *U.S. ex rel. Ladas v. Exelis, Inc.*, 824 F.3d 16, 23 (2d Cir. 2016). Hence, Congress increased the monetary

incentive for relators to "shoulder the burden of prosecution." *Radcliffe I*, 582 F. Supp. 2d at 780; see also 31 U.S.C. § 3730(d)(1)–(2). Central to this policy is the fact that *qui tam* cases enforce the Government's claims. Relators are motivated by the promise of a bounty. However, Congress explicitly tied a relator's gain directly to what the Government recovers by setting the relator fee as a percentage of the total recovery.

The purpose and goals of the FCA are not fully satisfied merely through the disclosure of allegations. The Government has limited resources, and "there is 'little purpose' to [the] *qui tam* framework if [the] government is forced to pursue all meritorious claims." *Health Possibilities*, 207 F.3d at 343 n.6 (citing *U.S. ex rel. Berge v. Bd. of Trustees of the Univ. of Ala.*, 104 F.3d 1453, 1458 (4th Cir. 1997)).

As such, several circuits have recognized that enforcing post-filing settlement agreements "would encourage individuals guilty of defrauding the United States to insulate themselves from the reach of the FCA by simply forcing . . . relators to sign general agreements invoking release and indemnification from . . . suit." *Longhi II*, 575 F.3d at 474; *see also Charte*, 934 F.3d at 353. And courts have expressed concerns that "relators can manipulate settlements in ways that unfairly enrich them and reduce benefits to the government", as "there is a danger that a relator can boost the value of settlement by bargaining away claims on behalf of the United States." *Searcy*, 117 F.3d at 160. "The potential for such profiteering is exacerbated when . . . a relator couples FCA claims with personal claims." *Health Possibilities*, 207 F.3d at 341.

Indeed, the Court observed that relators "are motivated primarily by prospects of monetary reward." *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 949 (1997). The FCA's *qui tam* feature and the availability of treble damages serve "to quicken the self-interest of some private plaintiff who can spot violations and start litigating to compensate the Government, while benefitting himself as well." *Cook Cnty. v. U.S. ex rel. Chandler*, 538 U.S. 119, 131 (2003); see also *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am.*, 474 F. Supp. 2d 75, 87 (D.D.C. 2007) ("The *qui tam* provisions enlist private individuals, often motivated largely by self-interest, to report and prosecute alleged false claims. Those provisions seek to strike a balance between the interests of the government and the self-interest of relators.").

Additionally, other courts have observed that "[a] release signed during [the seal period] would eviscerate congressional intent affording the United States the opportunity to investigate—for sixty days at a minimum—in peace." *U.S. ex rel. Longhi v. Lithium Power Techs., Inc.* ("*Longhi I*"), 481 F. Supp. 2d 815, 822 (S.D. Tex. 2007) ("To allow the nullification of the relator—either voluntary or involuntary—clearly violates the public policy objectives [of the FCA], as well as the broad power to reject a settlement granted to the United States in *qui tam* actions."). Even when a settlement does not "prevent a relator from voluntarily participating in the government's investigation, it does nullify the financial incentives created by Congress to encourage participation." *El-Amin*, 2007 WL 1302597, at *5.

("'[E]ffective fraud investigation' would, as a result, 'be acutely compromised.'")

The relator's bounty is a "financial incentive" that not only "encourages the relator to inform the government of the alleged fraud" but also "encourages the relator to actively participate in the case." *El-Amin*, 2007 WL 1302697, at *7. Thus, "[e]nforcing a release entered into before the government decides to intervene would frustrate the financial incentives designed to encourage relator participation." *Id.*; see also *U.S. ex rel. Keeler v. Eisai, Inc.*, 2011 WL 13099033, at *4 (S.D. Fla. June 21, 2011).

B. Facts & Procedural History

1. On March 6, 2019, Petitioner Michael Angelo, the owner of several healthcare businesses, was sued by Defendant State Farm Mutual Automobile Insurance Company under, *inter alia,* the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, for the alleged submission of fraudulent medical bills for patients involved in automobile accidents that qualified for no-fault benefits under Respondent's policies. See App. 31a.

2. On July 24, 2019, Petitioner filed a *qui tam* complaint under seal against Respondent, alleging that Respondent defrauded the Government by submitting false reports in violation of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. See App. 35a, 56a n.3. The *qui tam* complaint remained under seal for nearly two years at the

request of the Government, pursuant to 31 U.S.C. § 3730(b)(2).[1]

3.a. On February 19, 2021, during the *qui tam* seal period, Petitioner and Respondent entered into a settlement agreement, wherein Petitioner agreed "to take all steps necessary to settle, discontinue *with prejudice*, and to secure the discontinuance of, any lawsuits, arbitrations, appeals, claims, and other proceedings" against Respondent "in any forum, arising from . . . the allegations asserted or that could have been asserted" in Respondent's RICO action "and/or" from the medical services provided by Petitioner's businesses to any of Respondent's insureds. App. 33a (emphasis added). Petitioner also agreed to "release and discharge" Respondent "from any and all judgments, claims, demands, losses, liabilities, costs, actions, causes of action, or suits of any kind whatsoever, whether in law or equity, known or unknown, foreseen or unforeseen," that Petitioner "has now or may have had" against Respondent "arising from . . . the allegations asserted or could have been asserted in" Respondent's RICO "and/or" from the medical services provided by Petitioner's businesses to any of Respondent's insureds. App. 34a.

b. On April 6, 2021, the *qui tam* complaint was unsealed. See App. 35a. On April 29, 2021, Respondent filed a motion to enforce the settlement agreement, seeking an order requiring Petitioner to

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[1] During the pendency of this instant appeal, the district court in the *qui tam* action dismissed the complaint with prejudice. See CM/ECF for E.D. Mich., Case No. 19-12165, ECF No. 490. The relators, including Petitioner, have since appealed this order. See *id*., ECF No. 491.

"immediately cease and desist from taking any further action to prosecute the *Qui Tam* Lawsuit" and "take all necessary steps to secure dismissal of the *Qui Tam* Complaint." App. 36a. Before the district court ruled on the motion, Petitioner amended the *qui tam* complaint, "add[ing] a new relator; new *qui tam* causes of action on behalf of other states; and several new defendants, including other State Farm entities." *Id*.

c. After supplemental briefing, on February 28, 2022, the district court granted the motion to enforce. See App 31a–51a. The district court found that the *qui tam* action fell within the scope of the settlement agreement and rejected Petitioner's arguments that the settlement agreement was unenforceable as against public policy. App. 37a–42a. The district court ordered that Petitioner, "proceeding in good faith and undertaking no contrary or inconsistent act, must forthwith solicit the government's consent to dismiss the instant *Qui Tam* Action against" Respondent. App. 51a.

d. On March 14, 2022, Petitioner filed a motion for reconsideration, contending, *inter alia*, that "the court's interpretation" of the settlement agreement "runs contrary to public policy and renders the settlement agreement unenforceable." App. 55a. On May 2, 2022, the district court denied the motion, again ordering Petitioner to "solicit the government's consent to dismiss the instant *Qui Tam* Action against" Respondent. App. 65a. On May 4, 2022, Petitioner filed a notice of appeal from the district court's February 28, 2022, and May 2, 2022, orders.

e. Following this order, as set forth in two sworn declarations, Petitioner's counsel spoke to the

Government on May 16, 2022; to advise them that Petitioner "is to request from the government the dismissal of" Respondent "from the *Qui Tam* action". App. 69a. The "government responded by saying that" Petitioner "has no authority to dismiss the government claims against" Respondent "and maintains the same position in allowing for prosecution of the *Qui tam* claims against" Respondent. App. 69a–70a.

4.a. On June 16, 2022, Respondent filed a motion to enforce the district court's May 2, 2022, order, challenging the actions undertaken by Petitioner's counsel and asking the court to direct Petititioner "to file a motion for voluntary dismissal in the qui tam action" or "such alternative means, if any, as will formally solicit the Government's written consent to dismissal." App. 70a.

b. After oral argument and supplemental briefing afforded to Respondent only, on March 30, 2023, the district court granted the motion. See App. 67a. While the district court initially observed it appeared that Petitioner complied with the district court's orders and the Government did not approve of dismissal, it found that, in light of alleged discrepancies raised by Respondent regarding Petitioner's counsel's first declaration, Petitioner had not acted "consistent with the court's order that Angelo proceed in good faith." App. 72a, 78a. Accordingly, the district court ordered Petitioner to "to file a request for consent to voluntary

dismissal" in the form of a Respondent-drafted proposed filing. App. 79a.[2, 3]

c. On April 3, 2023, Petitioner filed a motion for reconsideration. See App. 82a. On April 14, 2023, the district court denied the motion. See App. 81a–92a. That day, Petitioner filed a notice of appeal from the district court's March 30, 2023, and April 14, 2024, orders.

4.a. The Sixth Circuit affirmed the district court's orders in a published decision. See App. 1a–30a. As relevant here, the Sixth Circuit observed that its case law does not prevent a district court ordering a relator

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[2] On April 22, 2023, Petitioner filed the Respondent-drafted request for consent. See CM/ECF for E.D. Mich., Case No. 19-12165, ECF No. 455. On May 5, 2023, the Government consented to dismissal of *Petitioner's* claims asserted against Respondent, but did not consent to dismissing Respondent as a defendant. See *id*., ECF No. 468. The district court in the *qui tam* action never provided its consent to Petitioner's request for consent, as required by 31 U.S.C. § 3730(b)(1). Should the *qui tam* action be remanded after appeal, the district court in the *qui tam* action will undoubtedly need to decide whether to give its consent. Remand would also provide reason for the district court to reconsider its dismissal *with prejudice,* as the district court cited the orders in this case as a basis to deny relators' attempt to file an amended complaint.

[3] Since the filing of the Respondent-drafted request for consent and the Government's notice of consent, Respondent has sought attorney fees and costs against Petitioner, invoking the indemnification provisions of the settlement agreement, which the district ruled below was applicable to the *qui tam* action based on the district court's February 28, 2022, order. See CM/ECF for E.D. Mich, Case No. 19-10669, ECF Nos. 197, 207. Respondent's request for $1.3 million in fees is still pending before the district court.

to cease prosecution of and seek consent to dismiss a *qui tam* action, as required under a settlement agreement. See App. at 15a. The Sixth Circuit also concluded that it would not adopt a rule that release agreements executed after the filing of an FCA case are per se unenforceable, as this would read in words to the statute, which is silent as to settlement agreements. App. at 16a–17a. Last, the Sixth Circuit found that enforcing the settlement agreement would not violate public policy because the Government knew of and had been investigating the alleged fraud; Petitioner was not deterred from filing the *qui tam* action; and that it was improbable for a *qui tam* defendant to "smoke out" relators. App. at 17a–22a.

b. The Sixth Circuit denied a timely petition for rehearing *en banc*. See App. 93a–94a.

REASONS FOR GRANTING THE PETITION

The decision below presents a further fracturing of the circuits on the applicable standard for the enforceability of post-filing settlement agreements between relators and *qui tam* defendants executed without the Government's consent. The Sixth Circuit has now gone on its own path. As it stands, district courts in different circuits are bound to apply starkly differing standards in determining whether a post-filing settlement agreement is enforceable, which inherently encourages venue shopping. The positions on the sides of the fractured circuits are clear; the question is cleanly presented; and this case offers the ideal vehicle for the Court to resolve it. Moreover, the decision below has profound implications for *qui tam* litigation as it only serves to undermine the purposes of the FCA and the relationship between relators and

the Government. Accordingly, the Court should grant the petition.

I. THE COURTS OF APPEALS ARE DIVIDED ON THE STANDARD FOR THE ENFORCEABILITY OF POST-FILING SETTLEMENT AGREEMENTS

Four circuits, including previously the Sixth Circuit, have held that post-filing settlement agreements are unenforceable when the Government had not been given an opportunity to exercise its veto, prior to its execution. The Ninth Circuit has held that this unreviewable veto authority only applies during the seal period and that, should the Government decline to intervene, it must show good cause to object. And now, the Sixth Circuit, in the decision below, has held that post-filing settlement agreements are *per se* enforceable if the Government knew of and investigated the underlying fraud.

A. Four Circuits, Including Previously the Sixth Circuit, Have Held that Post-Filing Releases Are Unenforceable When the Government Has Had No Opportunity to Exercise Its Veto

The majority of the circuits to address the enforceability of post-filing settlement agreements have taken the view that the Government possesses absolute veto power over them at any stage of a *qui tam* action and must be given an opportunity to do so. At least two of these circuits have concluded that the Government must be afforded the opportunity to exercise this veto before the settlement agreement is executed.

1. The decision below conflicts with settled law in the Fifth Circuit. In *Searcy*, the relator alleged that a

foreign electronics manufacturer had illegally concealed from the Government an executive decision to withdraw from the U.S. market and to abandon its U.S. dealers, despite the Government relying on the manufacturer's continuing presence in the U.S. market to buy and lease electronic equipment. 117 F.3d at 155. After a 90-day extension of the 60-day seal period, the Government declined to intervene. *Ibid*. After a year of discovery and three days of trial, a settlement was reached, in which the court would enter a judgment of $1 million dollars against the electronics manufacturer and the relator would get 30% of the award, in addition to $300,000 in attorney fees. *Ibid*. The Government objected to the settlement because, while it had investigated the claims that the relator raised in his *qui tam* complaint, the settlement released all claims arising out of the transactions and occurrences that were the subject matter of the *qui tam* action. *Ibid*. The district court denied the objection. *Id*. at 155–56.

On appeal, the Fifth Circuit held, in relevant part, that the FCA grants the Government "an absolute veto power over voluntary settlements." *Id*. at 158–60. In so doing, it rejected the Ninth Circuit's opinion in *Killingsworth* (discussed below), taking issue with the Ninth Circuit's analysis of the FCA's legislative history, observing that the consent requirement in § 3730(b)(1) was the only means for the Government to control *qui tam* actions until 1943. *Id*. at 159. The Fifth Circuit also observed that, in subsequent amendments, Congress continued its policy of encouraging the Government to step in when a relator was not acting in the public's best interest and concluded that the Government's power to veto

settlements did not conflict with the relator's statutory right to control the litigation. *Id*. at 159–60. Moreover, the Fifth Circuit noted that "relators can manipulate settlements in ways that unfairly enrich them and reduce benefits to the government" and observed that "[t]his case presents a relator who allegedly wants to trade on the defendants' desire to maximize preclusive effects" by "promising that the [Government] will not make further claims against" the defendant. *Id*. at 160.

The Fifth Circuit has reaffirmed this holding over nearly three decades. For example, in *Longhi II*, the relator filed a *qui tam* action, alleging that his former employer engaged in an elaborate pattern of false statements to secure research grants from the Government. 575 F.3d at 461–63. Eleven days after the filing of the *qui tam* complaint under seal, the relator entered a stock sale agreement with his employer, which contained a provision stating that he personally agreed to release and indemnify his employer from pending claims or lawsuits, and received $80,000 for the stock. *Id*. at 463, 473. After the Government elected to intervene, the district court granted summary judgment. *Id*. at 463–65.

On appeal, the Fifth Circuit held, in relevant part, that the release and indemnification clauses are invalid under the plain language of the FCA and that the relator "*could not have entered into* [the agreement] at the time he did without the express knowledge and consent of the" Government "because the statutory sixty-day review window still governed." *Id*. at 474 (emphasis added). The Fifth Circuit also held that the interest in enforcing the release and indemnification clauses were outweighed by public

policy concerns, namely (1) the Government's ability to obtain information from relators; and (2) encouraging individuals guilty of defrauding the Government "to insulate themselves from the reach of the FCA by simply forcing potential relators to sign general agreements invoking release and indemnification from future suit." *Ibid.*

2. The decision below also squarely conflicts with previously established law in the Sixth Circuit. In *Health Possibilities*, relators brought a *qui tam* action against their former employer, a medical services provider, alleging that the provider illegally sought reimbursement for physician assistant services. 207 F.3d at 336–37. Prior to the *qui tam* action, one of the relators filed a defamation suit in state court against a co-worker, a supervisor, and the provider. *Id.* at 337. After the Government declined to intervene, the relators and the defendants subsequently reached a settlement agreement encompassing the *qui tam* action and the defamation action. *Ibid.* The relators agreed to release defendants from all claims related to their submission of Medicare and other federal health care reimbursement program claims in exchange for $150,000 in attorney fees, and relators additionally received $150,000 in damages and $50,000 for attorney fees for settling the defamation action. *Id.* at 337–38. The Government objected to the settlement, and the district court permitted the Government to intervene to challenge the scope of the agreement but not the monetary terms. *Id.* at 338. After the relators and defendants modified the release language, the district court approved the settlement agreement and dismissed the action. *Ibid.*

On appeal, the Sixth Circuit held that a relator may not seek voluntary dismissal of any *qui tam* action without the Government's consent. *Id.* at 339. In so doing, the Sixth Circuit rejected *Killingsworth* and adopted *Searcy*. *Ibid.* The Sixth Circuit explained that § 3730(b)(1) was not limited to the 60-day intervention period and that the FCA's purpose, structure, and legislative history supported this conclusion, as Congress wanted to ensure that the Government retains significant authority over outcomes of *qui tam* actions, given that "private opportunism and public good do not always overlap." *Id.* at 339–40. The Sixth Circuit explained that "[t]he FCA is not designed to serve the parochial interests of relators, but to vindicate civic interests in avoiding fraud against public monies" and echoed *Searcy*'s concern over relators manipulating settlements for their personal gain, especially when "a relator couples FCA claims with personal claims." *Id.* at 340–41. Moreover, the Sixth Circuit observed that "[t]he right of the United States to veto a settlement purportedly made on its behalf is entirely consistent with an intention to foster *qui tam* litigation." *Id.* at 343.

3. The decision below also squarely conflicts with established law in the Tenth Circuit. In *Ridenour*, relators filed a *qui tam* complaint against contractors in charge of security at a former nuclear weapon manufacturing facility, alleging that they were paid for security measures they either did not provide or provided below acceptable levels. 397 F.3d at 929–30. The Government declined to intervene and moved to dismiss under § 3730(c), which the district court granted. On appeal, the Tenth Circuit affirmed. As relevant here, in discussing the FCA's purpose and

provisions, the Tenth Circuit concluded that [e]ven where the Government has declined to intervene, relators are required to *obtain government approval prior to* entering a settlement[.]" 397 F.3d at 931 n.8 (citing *Searcy*, 117 F.3d at 155; *Health Possibilities*, 207 F.3d at 339) (emphasis added).

4. The decision below also conflicts with established law in the Fourth Circuit. In *Michaels*, relators, former employees of an elder care facility, brought a *qui tam* action against 23 affiliated elder care facilities, alleging the facilities fraudulently billed Medicare and other federal health care programs. 848 F.3d at 333. While the Government declined to intervene, it objected to a proposed settlement between the relators and the elder care facility, and the district court rejected the agreement. *Ibid*.

On interlocutory appeal, the Fourth Circuit observed that, while it had previously noted that a non-intervened case may not be settled without the Government's consent, it had not squarely confronted the extent of the Government's veto power over settlements. *Id*. at 337 & n.5 (quoting *Milam*, 961 F.2d at 49). The Fourth Circuit held, in relevant part, that the Government possessed "an absolute veto power over voluntary settlements", rejecting *Killingsworth* and following *Searcy* and *Health Possibilities*. *Id*. at 339. The Fourth Circuit explained that the relator's right to conduct the action does not necessarily include the unfettered right to settle the claim and that consent-for-dismissal provision is not temporally qualified or explicitly limited in any other manner. *Id*. at 339–40. Additionally, the Fourth Circuit concluded that the Government's veto authority was entirely

consistent with the statutory scheme of the FCA, because the Government was the real party in interest and, "[i]nstead of freeing relators to maximize their own rewards at the public's expense, Congress has granted the [Government] the broad and unqualified right to veto *proposed* settlements of *qui tam* actions." *Id*. at 340 (emphasis added).

B. The Ninth Circuit Alone Holds that the Government Has Unreviewable Veto Authority of a Post-Filing Settlement Agreement Only During the Seal Period

In contrast with the majority rule, the Ninth Circuit stands alone in the standard it applies to post-filing settlement agreements. The Ninth Circuit's idiosyncratic position is that the Government possesses absolute veto power only during the seal period but, if it declines to intervene, the Government can only object for good cause.

1. In *Killingsworth*, a relator brought a *qui tam* action against his former employer, a weapons manufacturer, for allegedly improperly inflating cost estimates for missile contract proposals to the Government. 25 F.3d at 718. After the Government declined to intervene, the relator amended the complaint to include a wrongful termination claim. *Ibid*. Subsequently, the relator and the manufacturer entered into a modified settlement agreement, wherein the relator would receive $1.5 million for the FCA claim and $2.7 million for the wrongful termination claim including attorney fees. *Ibid*. When the relator moved for approval of the agreement and to have the case dismissed, the Government objected. *Ibid*. The district court entered on order for dismissal over the Government's objection. *Ibid*.

On appeal, the Ninth Circuit held, in relevant part, that, in light of the legislative history of the FCA, the Government did not have an absolute right to block a settlement, as Congress intended to place full responsibility for FCA litigation on private parties absent intervention by the Government. *Id.* at 721–22. The Ninth Circuit explained that § 3730(b)(1) had to be read in conjunction with other provisions of the FCA and concluded that the consent provision contained in § 3730(b)(1) applied only during the initial 60-day (or extended) seal period or when the Government was an intervenor. *Id.* at 722. The Ninth Circuit further observed that the relator's right to conduct the action when the Government does not intervene includes the right to settle the action. *Id.* at 722–23. However, the Ninth Circuit held that, when the Government does not choose to intervene, it still retains the right, upon a showing of good cause, to object to a proposed settlement and to a hearing. *Id.* at 723–25.

C. The Sixth Circuit Now Holds that Post-Filing Settlement Agreements Are Per Se Enforceable When the Government Has Knowledge of and Investigated the Underlying Fraud

Further compounding the fracturing of the circuits, the Sixth Circuit in the decision below set forth a brand-new standard for the enforceability of post-filing settlement agreements. The Sixth Circuit now holds that post-filing settlement agreements are per se enforceable when the Government simply has knowledge of and investigated the underlying fraud.

1. In the decision below, the Sixth Circuit rejected Petitioner's argument that *Health Possibilities* and its

progeny prohibited him from soliciting the Government's consent to dismiss the *qui tam* action against Respondent.[4] App. 15a–16a. The Sixth Circuit reasoned that, while this case law stands for the proposition that the FCA statute demands Government consent before a relator can dismiss an FCA claim, it did not prevent a district court from ordering a relator to cease prosecution of and seek consent to dismiss pursuant to a settlement agreement. *Id*. Next, the Sixth Circuit refused to adopt a rule that release agreements executed after the filing of an FCA case are per se unenforceable, as this would read words into § 3730(b)(1), which is silent on the issue of settlement agreements. App. 16a–17a.

Moreover, the Sixth Circuit concluded that enforcing the settlement agreement would not violate the public policy rationale behind the FCA. App. 17a. Specifically, the Sixth Circuit observed that "[t]he primary goals of the FCA are to incentivize private individuals to bring suit and to alert the government to potential fraud." *Id*. Relying <u>*exclusively*</u> on the pre-filing cases *Hall*, *Ritchie*, and *Radcliffe II*, the Sixth Circuit concluded that "where, as in this case, the government has pre-existing knowledge of the fraud, then no risk to the FCA's goals exists" and that "[t]he FCA is especially unimpeded where the government

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[4] Notably absent from the Sixth Circuit's decision below is any reference to the Fifth Circuit holding in *Searcy* that the Sixth Circuit adopted in *Health Possibilities*: "'For more than 130 years, Congress has instructed courts to let the government stand on the sidelines and veto a voluntary settlement.'" *Health Possibilities*, 207 F.3d at 344 (quoting Searcy 117 F.3d at 160).

had knowledge of the fraud at the time the release was signed." App. 18a.

Accordingly, the Sixth Circuit concluded that, considering Petitioner had filed the *qui tam* complaint and the Government had been investigating the alleged fraud for over a year before the execution of the settlement agreement, it was "unlikely, if not impossible, that [Petitioner] was deterred from bringing his FCA claim as a result of" the agreement, which occurred after the filing of the *qui tam* complaint. App. 18a–19a. The Sixth Circuit also concluded that enforcement of the agreement did not threaten the Government's interest in prosecuting fraud, as the Government "had knowledge of the fraud and ample time to investigate" before the district court's order. App. 20a. The Sixth Circuit, relying on *Hall*, observed further that the Government was not bound by the agreement and could still bring claims under the FCA against Respondent. *Id.*

Last, the Sixth Circuit rejected the position, espoused by the Third Circuit in *Charte*, that enforcing the agreement would encourage FCA defendants to "smoke out" relators and settle a relator's private claims to bar a *qui tam* action. App. 20a–21a. In particular, the Sixth Circuit concluded that "[t]his speculative chain of events strain[ed] credulity" and "seem[ed] unlikely to occur" when *qui tam* complaints are filed under seal. App. 21a.

II. THE SIXTH CIRCUIT'S NEW HOLDING UNDERMINES THE PURPOSES & POLICIES OF THE FCA

The Sixth Circuit's new holding that post-filing settlement agreements are per se enforceable when

the Government has knowledge of and investigated the underlying fraud entirely neglects a major and fundamental purpose of the FCA: the encouragement of private prosecution of *qui tam* actions by relators. This glaring omission in the Sixth Circuit's consideration of the FCA's purposes is reinforced by its singular reliance on the pre-filing cases *Hall*, *Ritchie*, and *Radcliffe II*, wherein relators had not yet begun prosecuting the action. The importance of the Government's prior knowledge of fraud is only relevant when the action has not yet commenced; it is a *fait accompli* after the filing of the *qui tam* complaint.

This is why the majority rule prioritizes the Government's opportunity to veto: when the Government's claims are the subject of litigation, the real party in interest must have a say before a relator's settlement agreement is enforced. This is especially true when, as here, the agreement is executed during the seal period, when the Government is investigating the claim and determining whether to intervene. By failing to follow the majority rule, the decision below only serves to undermine the ability of the Government to prosecute fraud through private enforcement and encourages relators and *qui tam* defendants to jeopardize the Government's claims in exchange for their personal gain.

1. According to Congress, the purpose of the FCA is to successfully combat "sophisticated and widespread fraud" that threatens the federal treasury and national security through "a coordinated effort of both the Government and the citizenry." S. Rep. No. 99-345, at 2–3. The clear overall intent was "to

encourage more private enforcement suits," above and beyond the first step of bringing allegations to light. *Id*. at 23–24. The Sixth Circuit's new standard grants Defendants a nearly unfettered opportunity to entice or intimidate relators to abandon the role as "private attorneys general." *U.S., ex rel. Branhan v. Mercy Health Sys. of Sw. Ohio*, 188 F.3d 510 (6th Cir. 1999).

2. As Sixth Circuit judges recognized in earlier decisions, "providing . . . evidence is just the beginning." *United States v. Cmty. Health Sys., Inc.*, 666 F. App'x 410, 420 (6th Cir. 2015) (Stranch, J., concurring). The goal of the FCA is "to increase the recovery of public monies." *Id.* It is undisputed that the Government has limited resources, and "there is '*little purpose*' to [the] *qui tam* framework if [the] government is *forced to pursue all meritorious claims*." *Health Possibilities,* 207 F.3d at 343 n.6 (quoting *Berge.*, 104 F.3d at 1458) (emphasis added). Thus, the goal of the FCA can be achieved "only [through] a coordinated effort of both the Government and the citizenry[.]." *U.S. ex rel. Bryant v. Cmty. Health Sys., Inc.*, 24 F.4th 1024, 1035 (6th Cir. 2022) (quoting S. Rep. No. 99-345, at 2) ("[The FCA] increases incentives, financial and otherwise, for private individuals to bring suits on behalf of the Government.").

a. In holding that the settlement agreement poses no threat to the goals of the FCA, the Sixth Circuit gravely diminished the significance of the *qui tam* sections of the statute. The Sixth Circuit described the "other primary goal of the FCA" as "the government's interest in prosecuting fraud," and held that the Settlement "could not and did not threaten [this interest] because . . . any action was predicated upon

the government's consent . . . [and] the government could still bring claims under the FCA." App. 20a. However, Congress undoubtedly found an important interest in relators "shoulder[ing] the burden of prosecution." *Radcliffe I*, 582 F. Supp. 2d at 780. This interest is in addition to protecting the Government's ability to intervene and prosecute claims itself.

This is evident by Congress bestowing upon the relator the authority to conduct that case, which would not otherwise exist. The importance of this policy goal is further shown by Congress increasing the relator's bounty in exchange for the relator agreeing to prosecute the case herself, and increasing that bounty on a sliding scale depending on the extent of the relator's contributions. See 31 U.S.C. § 3730(d)(1)–(2). This incentive has been extremely successful. In 2022, relators recovered nearly $1.2 billion dollars for the government in cases where the government declined to intervene.[5] That amounts to 54 percent of the government's total FCA recoveries—*qui tam* and non-*qui tam*—for the year.

As the Court has observed, relators "are motivated primarily by prospects of monetary reward." *Schumer*, 520 U.S. at 949. Thus, the *qui tam* provisions exist "to quicken the self-interest of some private plaintiff who can spot violations and start litigating to compensate the Government, while benefitting himself as well." *Chandler*, 538 U.S. at 131. The Sixth Circuit's new

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[5] See U.S. Dep't of Just., *False Claims Act Settlements and Judgments Exceed $2 Billion in Fiscal Year 2022* (Feb. 7, 2023), https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022.

position gives defendants the opportunity to nullify the purpose of this provision.

In *Gohil*, the defendant suggested that a contractual relationship with the relator "is only effective as to [the relator], and it would not object to dismissal without prejudice to allow the Government to take over the case." 96 F. Supp. 3d at 516. But the *Gohil* court rejected this proposal because "it ignores the clear congressional intent of encouraging private enforcement of the FCA." *Id*. In the decision below, the Sixth Circuit neglected this clear Congressional intent.

b. Beyond implicating the distinct goal of encouraging private prosecution, the decision below negatively affects the Government's interests. While the Government may not be directly bound by the settlement agreement, enforcing the agreement "would amount, in substance, to a voluntary dismissal of the action without the Court's or the Attorney General's written consent." *El-Amin*, 2007 WL 1302597, at *6. The district court's order that the relator must cease prosecution of the *qui tam* action and take no action that is inconsistent with its dismissal risks an adverse ruling that would extinguish even the Government's claims. See *Stoner*, 502 F.3d at 1126 ("[T]the United States is bound by the relator's actions for purposes of res judicata and collateral estoppel."); *Wojcicki*, 947 F.3d at 244 ("[T]he government could be bound by an adverse judgment in the action.").

Under the majority rule, when a relator wants to end the case through settlement, she must first get approval from the Government to do so. If an agreement executed without this prior approval were

enforced, as in the decision below, "effective fraud investigation" and prosecution "would, as a result, be acutely compromised." *El-Amin*, 2007 WL 1302597, at *6.

This is precisely why the Fifth Circuit held in *Longhi II* that a relator must have the express knowledge and consent of the Government prior to execution of a settlement. 575 F.3d at 474; see also *Ridenour*, 397 F.3d 925 at n.8. *Health Possibilities* suggests the same: "Without the power to consent to a *proposed* settlement of an FCA action, the public interest would be largely beholden to the private relator, who . . . would retain sole authority to broadly bargain away government claims." 207 F.3d at 341 (emphasis added).

3.a. A relator is given "the right to conduct the action" only after "the government elects not to proceed with the action." 31 U.S.C. § 3730(c)(3). This statutory grant of power is made pursuant to a "partial assignment" of the Government's claim. *Vt. Agency*., 529 U.S. at 773. However, the relator's entitlement to a bounty is not boundless. The underlying claim unequivocally remains the Government's, especially, as here, when the settlement agreement was entered during the seal period when Petitioner was not yet authorized to conduct the case.

Even if, as the Sixth Circuit held, the FCA puts no explicit restrictions on the relator's private agreements, it surely defies the clear objectives of the statute to allow a defendant to buy the relator's silence or allegiance at the direct expense of the Government. This new rule creates an unavoidable rift in the "coordinated effort" between relators and

the Government and thereby discourages "private enforcement suits." S. Rep. No. 99-345, at 2–3, 23–24.

b. The Sixth Circuit's new rule allows a defendant to cut the Government out of the entire recovery. When a relator conducts the action, the potential bounty increases, but the "lion's share of the recovery [belongs] to the federal treasury." *El-Amin*, 2007 WL 1302597, at *6; see also *Health Possibilities*, 207 F.3d at 338 ("While § 3730(d)(2) of the FCA ensures that the United States receives at least 70% of any FCA settlement, the government did not receive any damages here because the FCA suit was settled for fees and injunctive relief."). Private release agreements overtly circumvent this requirement by allowing defendants to give consideration directly to the relator, cutting the Government out entirely. In other words, under the Sixth Circuit's new rule, defendants and relators both win at the expense of the Government, if the Government simply has knowledge of the underlying fraud.

III. THIS CASE IS AN IDEAL VEHICLE FOR REVIEWING THIS IMPORTANT QUESTION

1. The question presented is of exceptional legal and practical importance. The conflict over the standards governing post-filing settlement agreements has now reached five circuits, with the decision below creating yet another fracture between the circuits. The standard for how courts should approach the enforceability of post-filing settlement agreements should be uniform, especially when application of that standard has case-ending consequences for claims of fraud against the Government. Relators, *qui tam* defendants, and the Government need to know whether and under what

conditions an agreement between a relator and a *qui tam* defendant that settles or releases the Government's claims will indeed be enforceable. There is no basis for leaving an issue so consequential to *qui tam* litigation to the happenstance of where a *qui tam* action is brought. To leave the circuits so fractured only serves to encourage venue shopping by relators and *qui tam* defendants alike, who may, for example, flock to the Sixth or Ninth Circuits to enrich themselves at the Government's expense.

2. This case is an ideal vehicle for deciding this significant question. The dispute turns on a pure question of law: The proper standard for enforcing post-fling settlement agreements between relators and *qui tam* defendants.

This issue was dispositive in the case below. There is no alternative route to reinstating Petitioners' case. The Sixth Circuit rejected the majority standard in its published decision, which now binds every district court within the Circuit and every subsequent Sixth Circuit panel. See *Rutherford v. Columbia Gas*, 575 F.3d 616, 619 (6th Cir. 2009) ("A published prior panel decision remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting *en banc* overrules the prior decision." (internal quotation marks and citation omitted)). And its decision was outcome-determinative: Petitioners' case would not have been dismissed under the majority rule. Had the majority standard been applied, the district court's order enforcing the settlement agreement would have constituted a clear abuse of discretion. Neither the Sixth Circuit nor the district court found that the Government had an

opportunity to exercise its veto prior to the settlement agreement's enforcement. No one disputes that, had the Government been afforded that opportunity at the outset, the district court would not have had to rule on enforcement at all; the Government would have conclusively decided. Had this case arisen in a majority circuit, the district court would have considered whether the Government had been given the opportunity to veto.

The decision below also thoroughly considered the question presented. The Sixth Circuit surveyed the public policy considerations in favor and against enforcement. See App. 17a–22a. The Sixth Circuit concluded that the Government's knowledge and opportunity to investigate were the only touchstones for a post-filing settlement agreement's enforceability and rejected the majority standard it had previously adopted. *Id*.

Further deliberation in the lower courts will not aid this Court's consideration of these important questions regarding the enforceability of post-filing settlement agreements, where the public policy implications of such agreements have been flushed out in detail. This case cleanly presents the issue and provides an ideal vehicle for resolving the circuit conflict.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JULY 2024

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED MARCH 5, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 22-1409/23-1340

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellee,

v.

MICHAEL ANGELO,

Defendant-Appellant,

ORTHOPEDIC, P.C., *et al.*,

Defendants.

Appeal from the United States District Court for the Eastern District of Michigan at Port Huron. No. 3:19-cv-10669—Robert H. Cleland, District Judge.

February 1, 2024, Argued;
March 5, 2024, Decided;
March 5, 2024, Filed

Appendix A

Before: SUTTON, Chief Judge; CLAY and BLOOMEKATZ, Circuit Judges.

OPINION

CLAY, Circuit Judge. Defendant Michael Angelo appeals several district court orders enforcing a settlement agreement he entered into with Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") in this action alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* The district court orders compelled Angelo to solicit the government's consent to dismiss his claims against State Farm in a separate action under the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.* Angelo argues that the district court orders violated the FCA, Sixth Circuit precedent, and his First Amendment rights.

For the reasons set forth below, we **AFFIRM** the district court's orders in full.

I. BACKGROUND

A. Factual Background

In March 2019, State Farm sued Angelo, alleging that Angelo submitted fraudulent bills in violation of RICO (hereinafter "RICO Action"). State Farm claimed, in relevant part, that Angelo was the "primary driver" of a "scheme" to "fraudulently obtain money from State Farm." Compl., R. 1, Page ID #2. According to State Farm, the scheme went something like

this: Angelo took advantage of Michigan's "No-Fault insurance environment" by operating 1-800 numbers and advertisements in order "to reach potential patients who have been involved in automobile accidents." *Id.* at Page ID #2-3. Angelo then recruited doctors to prescribe for those patients medically unnecessary opioids, which were frequently filled by a pharmacy Angelo owned, and to require medically unnecessary urine testing, which was frequently conducted by a lab Angelo owned. Following the unnecessary prescriptions and/or tests, Angelo would submit bills for these services to State Farm, which alleged fraud because many of the billed-for services were either not performed or were performed despite not being medically necessary.

In February 2021, the parties entered into a settlement agreement (hereinafter the "Settlement Agreement").[1] Pursuant to the Settlement Agreement, Angelo avoided any potential RICO liability by agreeing to take "all steps necessary" to release certain claims against State Farm. R. 118-2, Page ID #6704. Accordingly, he dismissed 347 claims against State Farm. A lingering 348th claim, however, is the subject of the instant appeal.

In July 2019, while the RICO Action was still being litigated and two years prior to the Settlement Agreement, Angelo brought suit against State Farm under the FCA (hereinafter "FCA Action").[2] Angelo's FCA complaint

1. The parties agreed that the district court would retain jurisdiction to enforce any term of the Settlement Agreement.

2. Section 3730 of the FCA permits private individuals, known as relators, to bring suits alleging fraudulent claims on behalf of

alleged that State Farm exploited Michigan's auto insurance law "to avoid paying medical benefits to motor vehicle accident victims it insured," which caused "the government to pick up the expenses without being reimbursed by Defendant." R. 118-3, Page ID #6719. Because *qui tam* complaints must be filed under seal, State Farm was unaware of the FCA Action until the complaint was unsealed and served on State Farm on April 6, 2021, six weeks after the Settlement Agreement was signed.

B. Procedural History

i. *State Farm's Motion to Enforce the Settlement Agreement*

Shortly after receiving service in the unsealed FCA Action, State Farm moved in the district court to enforce the Settlement Agreement, arguing that the Agreement's dismissal and release clauses required Angelo to dismiss the FCA Action. In response, Angelo argued that the Settlement Agreement did not apply to the FCA Action because the FCA claims were unrelated to the settled RICO claims. To underscore the differences between the RICO Action and the FCA Action, Angelo then filed

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the government in the hopes of retaining a portion of the proceeds. *United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 342 F.3d 634, 640 (6th Cir. 2003). These *qui tam* complaints are filed under seal while the government decides whether to intervene. *Id.* If the government does not intervene, the relator may still proceed with the suit, and the government maintains some interest in the action. *Id.* In this case, the government elected not to intervene in Angelo's FCA Action.

an amended complaint in the FCA Action, adding a new relator ("MSP"), new *qui tam* causes of action, and new defendants, including other State Farm entities. Angelo also argued that he could not dismiss his claims against State Farm in the FCA Action because a provision in the FCA prohibited relators from doing so without the government's consent.

The district court granted State Farm's motion, finding that the FCA Action was within the scope of the Settlement Agreement. As a result, Angelo was contractually bound to take "all steps necessary" to dismiss his FCA claims against State Farm. R. 149, Page ID #8078. While the FCA requires government consent for a relator to dismiss claims in a *qui tam* case, the district court held that there was nothing preventing it from ordering Angelo to request that consent. But, the district court held, if the government does not consent to dismissal, "then that is the end of the matter." *Id.* at Page ID #8079. Specifically, the district court ordered "that [Angelo], proceeding in good faith and undertaking no contrary or inconsistent acts, must forthwith solicit the government's consent to dismiss the instant [FCA] Action against" State Farm. *Id.* at Page ID #8081.

Angelo moved for reconsideration, reiterating many of the arguments he made in opposition to State Farm's motion to enforce the Settlement Agreement. Angelo also contended, for the first time, that the district court's order amounted to unconstitutional compelled speech in violation of his First Amendment rights. The district court denied this motion, and again mandated that Angelo seek the

government's consent to dismiss Angelo's claims against State Farm from the FCA Action.

ii. *Counsels' Discussions with the AUSA*

In an apparent effort to comply with the district court's order, Angelo's counsel called John Postulka, the Assistant U.S. Attorney ("AUSA") in charge of the FCA Action. Angelo's counsel "advised that State Farm is seeking dismissal of the *Qui Tam* claims," and "advised the government that Judge Cleland ruled that although Angelo cannot seek dismissal of the government claims with the Court . . . Angelo is to request from the government the dismissal of State Farm from the *Qui Tam* action." R. 162, Page ID #8327-28. According to counsel, the government responded that "Angelo has no authority to dismiss the government claims against State Farm" and therefore withheld its consent to dismiss the case. *Id.*

State Farm, finding this conversation to be insufficient to satisfy Angelo's obligations under the Settlement Agreement and the enforcement order, filed a second motion to enforce. In particular, State Farm argued that Angelo did not act in good faith when his counsel: (1) erroneously stated that State Farm, rather than Angelo, sought dismissal of the FCA Action, (2) erroneously stated that Angelo cannot seek dismissal of the government claims with the court, and (3) erroneously requested the government's dismissal of State Farm from the FCA Action rather than affirmatively soliciting the government's *consent* to dismiss Angelo's claims against

State Farm. As a result, Angelo failed to take "all steps necessary" and act in good faith as required by both the Settlement Agreement and the district court's order enforcing the Agreement. To ensure Angelo's compliance, State Farm urged the district court to enter an order requiring Angelo to file a motion to voluntarily dismiss its claims against State Farm in the FCA Action, contingent on the government's written consent to that motion.

Angelo's counsel then filed another declaration with the district court, attesting to a second conversation with the AUSA, in which "the Government pointed out that there is also another, independent co-relator—MSP[]—who has not sought dismissal, and that the Government again maintains its position to allow the *Qui Tam* matter to proceed against State Farm." R. 171, Page ID #8607.

Believing that Angelo's counsel misled the AUSA, State Farm then initiated its own conversation with AUSA. According to State Farm's counsel, the AUSA stated that he was unaware that MSP was an assignee of Angelo and that "the only basis for the United States to even consider withholding dismissal consent in the [FCA] Action would be the objection of an independent co-relator." R. 175-2, Page ID #8750. Further, the government "agreed that filing a dismissal request in a *qui tam* matter is the typical procedure used by a relator to solicit the United States' consent for dismissal" and, importantly, stated that "the United States would have no objection to this Court directing Angelo to file such a dismissal request." *Id.*

In response to this back-and-forth, the district court ordered a hearing between the parties and supplemental briefing from State Farm as to MSP's independence.[3] State Farm argued that MSP is not independent from Angelo because, among other reasons, MSP represented in the FCA Action that it is the assignee of Angelo; Angelo's counsel in the RICO Action also represents MSP in the FCA Action; and MSP's proposed second amended complaint includes Angelo as a co-relator and is signed by "Attorneys for Relators MSP WB, LLC and Michael Angelo." R.175, Page ID #8735.

State Farm's ultimate argument boiled down to this: if the only thing stopping the government from consenting to the dismissal of Angelo's claims against State Farm was the existence of an independent co-relator in MSP, and if the AUSA knew that MSP was in fact not independent from Angelo, then the government would consent to Angelo's voluntary dismissal of his claims against State Farm.[4] And if Angelo misled the government as to MSP's

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3. Angelo argues that it was an abuse of discretion for the district court to allow State Farm to file supplemental briefing on the issue of MSP's independence without allowing Angelo to respond. We disagree. State Farm's supplemental briefing covered no new ground regarding MSP's independence, which the parties debated in great detail at the hearing. Angelo therefore had an opportunity to respond to State Farm's arguments regarding MSP's independence at that hearing. Further, "[m]atters of docket control and conduct of discovery are committed to the sound discretion of the district court." *In re Air Crash Disaster*, 86 F.3d 498, 516 (6th Cir. 1996) (citation omitted).

4. State Farm also persuasively argued that Angelo's counsel's discussion with the AUSA did not and could not provide the required

independence, then he was in noncompliance with the order's mandate to act in good faith in dismissing the FCA Action against State Farm.

iii. *The District Court's Order Requiring Angelo to Move for Voluntary Dismissal*

The district court granted State Farm's second motion to enforce due to Angelo's dubious compliance with the enforcement order and the Settlement Agreement. Finding sufficient evidence to doubt whether MSP was independent from Angelo and whether Angelo acted in good faith, and viewing "any further attempts to attain consent informally to be futile," the district court ordered Angelo to file in the FCA Action a proposed motion for voluntary dismissal consistent with the suggested filing that State Farm attached as an exhibit to its briefing. R. 176, Page ID #8860-61.

Angelo timely appealed the district court's enforcement orders. To avoid complying with them pending appeal, Angelo moved for an administrative stay from this Court. We denied Angelo's request, finding that the Settlement Agreement appeared to cover the FCA Action and seeing no merit in Angelo's First Amendment arguments. Finally out of cards to play, Angelo subsequently filed a notice of voluntary dismissal of his claims against State Farm in the FCA Action. The government consented to the dismissal

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opportunity for state governments like Michigan to "appear and oppose" dismissal, and therefore a formal motion of voluntary dismissal was required. Mich. Comp. Laws § 400.610a(1).

of Angelo's claims against State Farm (and associated entities), but specified that such consent is "limited only to the dismissal of Relator Angelo's claims against the State Farm Defendants in this case." FCA Action, No. 2:19-cv-12165, R. 468, Page ID #8143.[5] Specifically, the government stated that it "previously has not taken and currently takes no position on the merits of any arguments regarding the other relator in this case, MSP[]." FCA Action, No. 2:19-cv-12165, R. 480, Page ID #8262. The FCA court has yet to rule on that motion. If the district court were to grant Angelo's dismissal motion, MSP's claims against State Farm, and Angelo's claims against other FCA defendants, would likely continue.

II. DISCUSSION

A. Mootness

As a preliminary matter, we must address whether we have jurisdiction over Angelo's challenge to the district court's enforcement orders. *See Watkins v. Healy*, 986 F.3d 648, 657 (6th Cir. 2021). The issue is whether this case was rendered moot by Angelo's eventual compliance with the district court's orders—and, importantly, by the government's consent to the dismissal of Angelo's FCA claims against State Farm. After careful consideration, we find this case justiciable. The FCA court has yet to rule on Angelo's voluntary dismissal notice. A favorable ruling from this Court that the district court's orders were in

5. Michigan also consented to the voluntary dismissal of Angelo's claims against State Farm.

error would enable Angelo to withdraw his motion and pursue his claims against State Farm. Because we can grant the relief that Angelo seeks, we can hear his claims. *See Chafin v. Chafin*, 568 U.S. 165, 172, 133 S. Ct. 1017, 185 L. Ed. 2d 1 (2013) ("A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. . . . As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." (cleaned up)).

B. The Settlement Agreement's Application to the FCA Action

We next consider whether the Settlement Agreement encompasses the FCA Action such that Angelo was required to dismiss his FCA claims against State Farm. We review the interpretation of a settlement agreement *de novo*. *In re Auto. Parts Antitrust Litig.*, 997 F.3d 677, 681 (6th Cir. 2021). However, where "contractual language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact subject to review for clear error." *Id.* (citation omitted).

The Settlement Agreement's dismissal clause reads as follows:

> In addition, within seven (7) days of the date this Confidential Agreement is signed, the Michael Angelo Entities shall take all steps necessary to settle, discontinue with prejudice, and to secure the discontinuance of, any lawsuits, arbitrations, appeals, claims, and

> other proceedings brought by any Michael Angelo Entity pending against State Farm Mutual and/or any individual insured by State Farm Mutual ("State Farm Mutual Insured"), in any forum, arising from (a) the allegations asserted or that could have been asserted in the Litigation; and/or (b) MVA Related Health Care Services, as hereinafter defined, provided by any Michael Angelo Entity(s) to any State Farm Mutual Insured on or before the Effective Date, and to waive all rights to all remedies and costs relating to such matters, including attorney's fees.

R. 118-2, Page ID #6704. The Settlement Agreement also includes a release provision:

> The Michael Angelo Entities hereby release and discharge State Farm Mutual from any and all judgments, claims, demands, losses, liabilities, costs, actions, causes of action, or suits of any kind whatsoever, whether in law or equity, known or unknown, foreseen or unforeseen, that any Michael Angelo Entity has now or may have had against State Farm Mutual, arising from (a) the allegations asserted or that could have been asserted in the Litigation; and/or (b) MVA Related Health Care Services provided by any Michael Angelo Entity(s) to any State Farm Mutual Insured on or before the Effective Date.

Id. at Page ID #6706-07. "MVA Related Health Care Services" refers to bills to State Farm for "any good or service related to any accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle as defined under the Michigan No-Fault Automobile Insurance Act." R. 149, Page ID #8066 n.1.

This language clearly encompasses the FCA Action. The Settlement Agreement required Angelo to dismiss any claim that involved a bill to State Farm for a service related to an injury arising out of the use of a vehicle, as defined under the Michigan insurance law. The FCA Action specifically alleged that State Farm improperly and fraudulently refused to pay such bills, forcing the government to pick up the tab. The FCA Action therefore falls squarely within the Settlement Agreement's express language, meaning Angelo was required to take "all steps necessary" to "secure the discontinuance of" that claim. R. 118-2, Page ID #6704.

Angelo's first argument to the contrary maintains that there could have been no "meeting of the minds" as to the inclusion of the FCA claims in the Settlement Agreement. Appellant Br., ECF No. 44, 14. Angelo claims that because the FCA Action was under seal and therefore unknown to State Farm when the Settlement Agreement was executed, the parties could not enter into an agreement that applied to the FCA Action. But the release clause contemplates claims "known or unknown," making State Farm's awareness of a potentially covered claim irrelevant. R. 118-2, Page ID #6706.

Angelo next argues that the FCA claims do not "arise from" the claims defined in the Settlement Agreement because they do not originate or stem from "bills to State Farm." Appellant Br., ECF No. 44, 17-18. Angelo characterizes the FCA Action as "involv[ing] fraudulent submissions to the Government, not claims involving bills" to State Farm. *Id.* at 19. But this is a distinction without a difference. Contrary to Angelo's characterization, the alleged fraudulent submissions *are* bills to State Farm. The FCA complaint references "claims submitted by Mr. Angelo" for "accident-related medical expenses" that State Farm "summarily denied." R. 145, Page ID # 7871, ¶ 471. These claims that State Farm denied are unquestionably bills to State Farm, and "accident-related medical expenses" is encompassed by the "MVA Related Health Care Services" language in the Settlement Agreement. R. 149, Page ID #8066 n.1. The FCA Action therefore involves the exact claims covered by the dismissal and release clauses. The district court did not err in holding that the Settlement Agreement applied to the FCA Action.

C. The First Enforcement Order

Having concluded that the dismissal clause required Angelo to take "all steps necessary" to secure the dismissal of the FCA Action, R. 118-2, Page ID #6704, we next proceed to what the language "all steps necessary" requires. The district court found that "all steps necessary" required Angelo to seek the government's consent, as mandated by the FCA, to dismiss his FCA claims against State Farm, and accordingly ordered him to do so.

We review a district court's decision on a motion to enforce a settlement agreement for an abuse of discretion. *Therma-Scan, Inc. v. Thermoscan, Inc.*, 217 F.3d 414, 419 (6th Cir. 2000). "A district court abuses its discretion when it applies the incorrect legal standard, misapplies the correct legal standard, or relies upon clearly erroneous findings of fact." *In re Auto. Parts Antitrust Litig.*, 997 F.3d at 681 (citation omitted). And we review a district court's interpretation of a statute *de novo. United States v. Health Possibilities, P.S.C.*, 207 F.3d 335, 338 (6th Cir. 2000).

The district court ordered Angelo to "proceed[] in good faith and undertak[e] no contrary or inconsistent acts" and to "solicit the government's consent to dismiss the instant *Qui Tam* Action against" State Farm. R. 149, Page ID #8081. On appeal, Angelo makes three arguments that this decision was in error. First, Angelo reiterates his claim below that this Court's decisions in *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335 (6th Cir. 2000), and *United States ex rel. Smith v. Lampers*, 69 F. App'x 719, 722 (6th Cir. 2003), prohibit the district court from granting such relief. In *Health Possibilities*, this Court held that, under § 3730 of the FCA, a relator cannot unilaterally settle FCA claims without the government's consent, even after the government's 60-day intervention period had elapsed. 207 F.3d at 339. In *Lampers*, we reiterated the government consent requirement and held that it superseded the district court's finding that the relator had adequately represented the government's interests. 69 F. App'x at 722-23.

These cases stand for the proposition that the FCA statute demands government consent before a *qui tam* relator can dismiss an FCA claim—something neither party disputes. But neither these cases nor other Sixth Circuit case law prevents a relator from *seeking* the required consent or prohibits a district court from ordering a relator to seek such consent. Further, unlike in the instant case, the government in both *Health Possibilities* and *Lampers* objected to the dismissal of the *qui tam* actions. Angelo, meanwhile, was required to merely *seek* the government's consent—rather than dismiss his claims in the absence of such consent, which would violate § 3730—and the government ultimately granted such consent. Our case law would therefore seem to endorse, rather than prohibit, the district court's order in this case.

Angelo next raises the argument that release agreements executed after the filing of an FCA case are per se unenforceable. *See, e.g., United States ex rel. Stipe v. Powell Cty. Fiscal Ct.*, No. 5:16-CV-446, 2018 U.S. Dist. LEXIS 103948, 2018 WL 3078764, at *3 n.1 (E.D. Ky. June 21, 2018) ("It is undisputed that a post-filing release of *qui tam* claims is unenforceable."). But we have not adopted that rule, and have no cause to do so here.

Establishing such a rule would read words into the FCA that are not there. The plain text of the statute does not state that all release agreements entered into after the filing of an FCA action are per se unenforceable against that action. Instead, the statute mandates that the action "may be dismissed only if the court and the Attorney

General give written consent to the dismissal and their reasons for consenting." 31 U.S.C. § 3730(b)(1). Notably, the statute is silent on the issue of settlement agreements. We will not embellish the text of the statute to create a broad rule that such agreements are *per se* unenforceable against *qui tam* actions. *See Bates v. United States*, 522 U.S. 23, 29, 118 S. Ct. 285, 139 L. Ed. 2d 215 (1997) ("[W]e ordinarily resist reading words or elements into a statute that do not appear on its face."); *Keene Corp. v. United States*, 508 U.S. 200, 208, 113 S. Ct. 2035, 124 L. Ed. 2d 118 (1993) (observing that courts have a "duty to refrain from reading a phrase into the statute when Congress has left it out").

Last, Angelo claims that enforcing the Settlement Agreement in this case would violate the public policy rationale behind the FCA. Generally, we will find a promise unenforceable if "the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement." *Town of Newton v. Rumery*, 480 U.S. 386, 392, 107 S. Ct. 1187, 94 L. Ed. 2d 405 (1987); *see also United States v. Northrop Corp.*, 59 F.3d 953, 962-68 (9th Cir. 1995) (applying this test to the question of whether a settlement agreement should be enforced against an FCA claim). But the enforcement mechanism in this case—an order requiring Angelo to seek the government's consent to dismiss his claims—poses no threat to the FCA's policy.

The primary goals of the FCA are to incentivize private individuals to bring suit and to alert the government to potential fraud. *See, e.g., Health Possibilities*, 207 F.3d

at 340; *Northrop*, 59 F.3d at 963. Some courts consider whether enforcement of settlement agreements against *qui tam* claims would disincentivize potential relators from bringing FCA suits, thereby undermining a key goal of the FCA. *See, e.g., Northrop*, 59 F.3d at 965 (holding that enforcing a prefiling release of a *qui tam* claim would "dilute significantly the incentives" of the FCA and deprive a party of the "right or reason to file a *qui tam* claim"). Courts have also recognized that where, as in this case, the government has pre-existing knowledge of the fraud, then no risk to the FCA's goals exists. *See, e.g., United States ex rel. Hall v. Teledyne Wah Chang Albany*, 104 F.3d 230, 233 (9th Cir. 1997) (noting that the federal government's awareness of the FCA allegations meant that enforcement of an agreement did not impair the public interest in whistleblowing); *United States v. Purdue Pharma L.P.*, 600 F.3d 319, 330-33 (4th Cir. 2010). The FCA is especially unimpeded where the government had knowledge of the fraud at the time the release was signed. *See Hall*, 104 F.3d at 233 (enforcing a release clause where the federal government had already investigated the allegations prior to the settlement); *United States ex rel. Ritchie v. Lockheed Martin Corp.*, 558 F.3d 1161, 1170 (10th Cir. 2009) (same); *Cf. United States ex rel. McNulty v. Reddy Ice Holdings, Inc.*, 835 F. Supp. 2d 341, 360 (E.D. Mich. 2011) ("[T]he issue is not what the government knew at the time the *qui tam* action was filed but what the government knew at the time the release was signed.").

In this case, State Farm brought its RICO claims against Angelo in March 2019. Angelo filed his FCA Action, under seal, against State Farm in July 2019. Nearly two

years later, State Farm and Angelo subsequently signed a Settlement Agreement in February 2021. The government had been investigating the alleged fraud for over a year before Angelo signed the Settlement Agreement.

Given this timeline, the district court's order did not upset any FCA policy. First, the order of events makes it unlikely, if not impossible, that Angelo was deterred from bringing his FCA claim as a result of the Settlement Agreement. Angelo filed the FCA complaint *prior to* signing the Settlement Agreement and its applicable release clause; he could not have been deterred from performing a task he had already completed.[6] The general concern that enforcing settlement agreements against FCA claims might deter potential relators from sounding the alarm on fraud therefore is not applicable to this case. If anything, had Angelo predicted that the district court would require him to seek the government's consent to dismiss the FCA Action, he may have been deterred from settling, which would undermine a different but frequently recognized policy goal of the federal courts. *See Ford Motor Co. v. Mustangs Unlimited, Inc.*, 487 F.3d 465,

6. One can even envision a scenario in which enforcing a settlement agreement against an FCA claim that *postdates* the agreement does not deter a relator from bringing an FCA claim. The FCA's government consent requirement would still apply, limiting enforcement to, as in this case, soliciting the government's consent. In that case, an undeterred relator may be inclined to roll the dice, bring the claim, solicit the required consent, and hope that the government does not consent. Both the FCA claim and the policy rationale encouraging whistleblowing would survive enforcement in such a case.

469 (6th Cir. 2007) (quoting *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1372 (6th Cir. 1976)) ("Public policy strongly favors settlement of disputes without litigation. . . . Settlement agreements should therefore be upheld whenever equitable and policy considerations so permit.").

Nor could enforcement, by this timeline, threaten the other primary goal of the FCA—protecting the government's interest in prosecuting fraud. The government had knowledge of the fraud and ample time to investigate before the district court ordered Angelo to comply with the Settlement Agreement and take "all steps necessary" to dismiss his FCA claims. Moreover, enforcing the Settlement Agreement would be problematic only to the extent that private parties would be permitted to bargain away the government's ability to prosecute fraud upon the government. But the district court's order required Angelo only to seek the government's consent, not to unilaterally dismiss the case. The order could not and did not threaten the government's interest in prosecuting fraud because, according to the order's terms, any action was predicated upon the government's consent. Further, because the government was obviously not bound by the Settlement Agreement, the government could still bring claims under the FCA against State Farm. *See Hall*, 104 F.3d at 233 ("The government, of course, was not a party to the release, and is therefore not barred by it from pursuing a claim against [the *qui tam* defendant].").

Angelo's assertion that enforcing the Settlement Agreement would upset the policy goals of the FCA by encouraging malfeasance on the part of FCA defendants

is similarly unavailing. Angelo argues that upholding the district court's decision would "incentivize potential FCA defendants to 'smoke out' *qui tam* actions by suing potential relators and then quickly settling those private claims with the sole purpose of subsequently relying on that settlement to bar a *qui tam* action." Appellant Br., ECF No. 44, 25 (quoting *United States ex rel. Charte v. Am. Tutor, Inc.*, 934 F.3d 346, 353 (3d Cir. 2019)). This speculative chain of events strains credulity. Angelo's theory relies on a *qui tam* defendant anticipating an FCA suit against it—despite the requirement that FCA claims are filed under seal—and then manufacturing a private suit against a potential *qui tam* relator. Even further, the manufactured suit must be meritorious enough to secure the signing of a settlement agreement with a release clause that would apply to a pending or future FCA suit. This hypothetical situation seems unlikely to occur, and this case illustrates why. The requirement that *qui tam* complaints are filed under seal makes it improbable that any "smoking out" occurred. State Farm had no knowledge of the FCA Action until the FCA court lifted the seal in April 2021, six weeks after the Settlement Agreement was signed and more than two years after State Farm originally brought suit against Angelo. State Farm could not have known that a *qui tam* suit was lying in wait, or that it should immunize itself with a settlement agreement.

Angelo asks us to allow him to enjoy the benefit of the Settlement Agreement (the dismissal of State Farm's RICO claims against him) without providing the bargain (the dismissal of his FCA claims against State Farm).

The policy behind the FCA does not require us to reach such a result—particularly when the district court's order only required Angelo to seek the government's consent, a relatively minor burden compared to the complete dismissal of the RICO claims against him. When ordering enforcement of a release agreement poses no threat to the goals of the FCA but failing to do so would undermine other policy goals, courts favor enforcement. *See Hall*, 104 F.3d at 233; *Ritchie*, 558 F.3d at 1171. Therefore, we affirm the district court's order enforcing the Settlement Agreement with respect to Angelo's FCA claims against State Farm and requiring him to seek the government's consent to dismiss those claims.

D. The Second Enforcement Order

The first enforcement order, unfortunately, was not the end of the story. Angelo's subsequent attempts to comply with the order, State Farm alleged, violated Angelo's duty to act in good faith. The district court agreed and, per State Farm's request, ordered Angelo to file a formal notice of voluntary dismissal of his claims against State Farm in the FCA Action, contingent on the government's consent. Angelo argues that this was an abuse of discretion, but we disagree.

Angelo first contests the district court's finding that Angelo's counsel's first conversation with the AUSA was deficient. But the district court was correct. The district court's first enforcement order required Angelo to "proceed[] in good faith and undertak[e] no contrary or inconsistent acts" and "solicit the government's consent

to dismiss the instant [FCA] Action against" State Farm R. 149, Page ID #8081. Angelo failed to do so when he attributed the desire to dismiss the action to State Farm, rather than himself. Further, Angelo's counsel attributed to Judge Cleland the misleading statement that "Angelo cannot seek dismissal of the government claims with the Court." R. 162, Page ID #8328. Angelo may not be able to unilaterally dismiss a *qui tam* suit under the FCA, as discussed *ad nauseum*, but Angelo *could* seek the government's consent to dismiss his own claims against State Farm. Angelo's misstatement of this authority amounts to a failure to act in good faith. Finally, as the district court noted, Angelo's counsel's statement that "Angelo is to request from the government the dismissal of State Farm from the [FCA] action," also misrepresented Angelo's clearly prescribed duty under the Settlement Agreement: to request the government's consent for him to dismiss the claims he was bringing against State Farm. *Id.*; R. 176, Page ID #8860. Given these misrepresentations, the district court did not err in holding that Angelo's counsel's first conversation with the AUSA failed to meet Angelo's burdens under the Settlement Agreement and the first order to enforce, because the misrepresentations violated Angelo's duty to act in good faith in soliciting such consent.

In addition, Angelo contests the district court's characterization of the second conversation, particularly the district court's discussion of its doubts surrounding MSP's independence. The district court expressed "concern that Angelo mischaracterized the 'independent' nature of MSP in his conversations with AUSA Postulka,"

rendering him noncompliant with the enforcement orders. R. 176, Page ID #8860. To be clear, the district court made no specific finding on MSP's independence, and we need not either. Rather, the question of MSP's independence is relevant to the extent that Angelo's statements to the government violated his obligations under the order and Settlement Agreement.

State Farm presents several reasons to doubt MSP's independence, including but not limited to the fact that MSP represented itself as Angelo's assignee and that the same attorneys represent MSP and Angelo in the FCA Action. Angelo does not persuasively deny these allegations; he argues only that the assignment agreement between Angelo and MSP is "irrelevant." Appellant Br., ECF No. 44, 41. Even if true, this claim alone is insufficient to defeat State Farm's well-taken allegations that Angelo and MSP are not as independent as Angelo represented and as the government apparently believed when it withheld consent. The AUSA wrote to Angelo's counsel that "if Relator Angelo moved to dismiss and there was no other valid relator who wanted to continue with the case, then the government would likely consent to dismissal." R.178-2, Page ID #8917. And if an independent co-relator was the only thing stopping the government from consenting—as State Farm argued and as the government averred—then Angelo's misrepresentations about the independent co-relator were misleading about a material fact. The government's apparent lack of awareness about MSP's status as an assignee gave the district court reason to doubt that Angelo was acting in good faith—especially when coupled with his counsel's other misrepresentations

to the government. Against this backdrop of confusion and misrepresentation, an order requiring a formal motion, less susceptible to miscommunication, was an appropriate remedy. We therefore find that the district court did not abuse its discretion in finding that Angelo was noncompliant, nor in ordering a clearer consent solicitation as a result.

Angelo next opposes this second enforcement order on the grounds that it misapplied the FCA statute. While § 3730 mandates that a *qui tam* "action may be dismissed only if the court and the Attorney General give written consent to the dismissal," Angelo argues that this provision does not require that the relator seek such consent through a formal filing. 31 U.S.C. § 3730(b)(1). This argument misinterprets the district court's order. The district court never claimed that the statute *required* a formal filing. Instead, the district court correctly noted that nothing in Sixth Circuit case law interpreting the statute *prohibited* seeking consent through a formal filing. The district court only required that Angelo seek consent formally because Angelo's counsel's informal solicitations had proven "futile." R. 176, Page ID #8861.

As State Farm correctly points out, courts can and have allowed a relator to seek the government's consent to dismiss *qui tam* claims via formal filing. *See, e.g., United States v. PNC Fin. Servs. Grp., Inc.*, No. 1:14-CV-1097, 2016 U.S. Dist. LEXIS 55254, 2016 WL 1637440 (W.D. Mich. Apr. 26, 2016), *aff'd sub nom. United States ex rel. Tingley v. PNC Fin. Servs. Grp., Inc.*, 705 F. App'x 342 (6th Cir. 2017); *United States ex rel. Quesenberry v.*

Alarm Mgmt., II, et al., No. 2:20-cv-12561 (E.D. Mich. Sept. 7, 2021). Angelo, in response, points to cases where relators have informally sought the government's consent and then filed joint stipulations of voluntary dismissal with the government. *See, e.g., United States ex rel. Barrett v. Premier Med. and Rehab. Grp., et al.*, No. 17-cv-13215 (E.D. Mich. Sept. 10, 2021); *United States ex rel. Henson v. Midwest Fam. Prac., PLC, et al.*, No. 2:13-cv-14579 (E.D. Mich. Sept. 21, 2016). But, as far as the FCA is concerned, one method is not more appropriate or more lawful than the other. Where one remedy has led to such confusion as to lead the district court to deem it "futile," it is not an abuse of discretion to order the other.

Angelo also argues that seeking consent through a motion for voluntary dismissal violated Sixth Circuit precedent. Angelo points to *Health Possibilities*' statement that "the relator's obligation to receive the Attorney General's consent is a precondition that must be satisfied before a voluntary dismissal motion is properly presented to the court." 207 F.3d at 344. Angelo argues that this sentence requires the government to consent to dismissal before the relator even makes a motion before the court. As a result, Angelo claims the district court's remedy ordering such a motion before Angelo received the government's consent was improper. But three points counsel against invoking *Health Possibilities* for this proposition.

First, *Health Possibilities* involved a district court, over the government's opposition, granting a voluntary dismissal based on an erroneous interpretation of the

FCA. But no such governmental opposition occurred here, and in fact the government later *consented* to the dismissal on the FCA Action docket. It would therefore be misguided to apply dicta from *Health Possibilities* to a case with inapposite facts. Second, even after *Health Possibilities*, courts have allowed voluntary dismissal motions to be filed before the government grants or denies consent, because district courts can grant or deny such motions based on the government's reply. *See, e.g., PNC*, 2016 U.S. Dist. LEXIS 55254, 2016 WL 1637440, at *3; *United States v. Bon Secours Cottage Health Servs.*, 665 F. Supp. 2d 782, 783 (E.D. Mich. 2008). We decline to overread *Health Possibilities* to establish a rule that would call into question the motions in these cases, which were proper at the time they were filed and remain so today. Third, the district court, though it was under no obligation to do so, tried to comply with the order of operations contemplated in *Health Possibilities* by, in its first order, requiring Angelo to seek the government's consent before filing any motion. It was only when Angelo's counsel's communications with the government proved ambiguous and misleading that the district court required a formal motion, which itself was contingent on the government's consent, as contemplated by *Health Possibilities*' holding.

Therefore, the district court did not err in ordering Angelo to file a motion to voluntarily dismiss his FCA claims against Angelo contingent on the government's consent. The defects in Angelo's counsel's second conversation with the AUSA raised doubts about the adequacy of that method of soliciting the government's consent, as required by the Settlement Agreement and the

FCA. And neither the FCA nor Sixth Circuit precedent prohibits seeking government consent via a formal filing. It is difficult to see how the district court's order somehow ran afoul of the FCA or our precedent, particularly where the government eventually consented to dismissal of the claims. We therefore affirm the district court's second enforcement order.

E. Angelo's First Amendment Claim

The final issue before us concerns Angelo's claim that the district court's first enforcement order was "unconstitutional for violating the First Amendment Compelled Speech Doctrine." R. 150, Page ID #8108. Because Angelo raised this claim for the first time on a motion for reconsideration, we must first consider whether his claim is forfeited. We conclude that it was, so we need not reach the merits of his claim.

We review a district court's denial of a motion for reconsideration for an abuse of discretion. *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009). Motions for reconsideration are "not an opportunity to re-argue a case," and "should not be used liberally to get a second bite at the apple." *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998) (citation omitted); *United States v. Lamar*, No. 19-cr-20515, 2022 U.S. Dist. LEXIS 20231, 2022 WL 327711, at *1 (E.D. Mich. Feb. 3, 2022) (citation omitted).

The district court did not abuse its discretion in denying Angelo's motion for reconsideration. The district

court made no mistake in noting that Angelo could have raised this claim earlier, and there was no intervening change in the law or new facts since the decision. Still seeking to raise his First Amendment argument before us, Angelo concedes that "[a]rguments raised for the first time in a motion for reconsideration are untimely and forfeited on appeal," but he points out that this Court deviates from this general rule when certain factors are satisfied. Appellant Br., ECF No. 44, 29 (quoting *Johnson v. Ford Motor Co.*, 13 F.4th 493, 503 (6th Cir. 2021)). Those factors are "(1) whether the issue newly raised on appeal is a question of law, or whether it requires or necessitates a determination of facts; (2) whether the proper resolution of the new issue is clear and beyond doubt; (3) whether failure to take up the issue for the first time on appeal will result in a miscarriage of justice or a denial of substantial justice; and (4) the parties' right under our judicial system to have the issues in their suit considered by both a district judge and an appellate court." *Johnson*, 13 F.4th at 504 (citation omitted).

We "rarely exercise[]" our discretion to excuse forfeiture, and this case presents us with no reason to do so. *Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 552 (6th Cir. 2008). While Angelo's First Amendment claim is undoubtedly a question of law, its "proper resolution" is not "beyond doubt." *Id.* (citation omitted). Though we decline to rule on the what the "proper resolution" of this claim might be, we note briefly that our case law establishes that a party's First Amendment rights are not violated where that party voluntarily enters into a bargained-for agreement that happens to implicate some burden on

speech. *See Ostergren v. Frick*, 856 F. App'x 562, 569 (6th Cir. 2021) (collecting cases). Therefore, the "resolution" that Angelo urges is far from clear. And failing to hear Angelo's untimely First Amendment claim will not result in a miscarriage of justice for much the same reason.

Because we hold that Angelo has forfeited his First Amendment claim by failing to raise it in a timely fashion, we need not proceed to consider whether his claim succeeds on the merits. *See Johnson*, 13 F.4th at 503. We therefore affirm the district court's rejection of Angelo's First Amendment claim.

III. CONCLUSION

For the above reasons, the district court did not err in in enforcing the parties' Settlement Agreement with respect to Angelo's FCA claims against State Farm, nor did it err in requiring him to seek the government's consent to dismiss such claims. We also affirm the district court's rejection of Angelo's First Amendment claim. We therefore **AFFIRM** the district court's orders in full.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED FEBRUARY 28, 2022

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Case No. 19-10669

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

v.

MICHAEL ANGELO, *et al.*,

Defendants.

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

Plaintiff State Farm Mutual Automobile Insurance Company brought this action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c) and (d), also asserting state law claims of fraud and unjust enrichment. (ECF No. 1, PageID.55-63.) Plaintiff, an automobile insurance company, alleged that Defendant Michael Angelo submitted fraudulent bills for medically unnecessary services and prescriptions rendered to patients involved in automobile accidents. (*Id.*, PageID.2, 4, 54.)

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After extensive litigation fraught with discovery disputes, the parties entered into a settlement agreement. (ECF No. 118, PageID.6676; ECF No. 126, PageID.7132.) Before the court is Plaintiff's motion to enforce this settlement agreement. (ECF No. 118.) Plaintiff seeks to enforce provisions that require Defendant to dismiss ("Dismissal Provision") or release ("Release Provision") particular categories of claims against Plaintiff. (*Id.*, PageID.6691-97.) Plaintiff contends that Defendant is in breach of these provisions by virtue of his role as a relator in a *qui tam* action against Plaintiff brought under the False Claims Act ("FCA").

I. BACKGROUND

A. Settlement Agreement

Plaintiff brought this action alleging that Defendant Michael Angelo, as the "primary driver of the scheme," and through several entities that he owns or controls, fraudulently submitted bills and supporting documentation for services purportedly rendered to patients who were involved in automobile accidents and thereby qualified for no-fault benefits under Plaintiff's policies. (ECF No. 1, PageID.2.) According to Plaintiff, these services were either not performed or were performed regardless of whether they were medically necessary. (*Id.*) Plaintiff sought compensatory damages as well as a declaratory judgment against Defendant's entities finding that Plaintiff is "not liable for any pending bills or bills that Defendants have submitted, and caused to be submitted." (*Id.*, PageID.5, 55-63.)

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After litigating the case for approximately two years, the parties ultimately resolved the matter and entered into a settlement agreement on February 19, 2021. (ECF No. 118-2; ECF No. 118, PageID.6680.) Two provisions of their agreement are relevant to the present dispute. First, the agreement's Dismissal Provision provides:

> [W]ithin seven (7) days of the date this Confidential Agreement is signed, the Michael Angelo Entities shall take all steps necessary to settle, discontinue with prejudice, and to secure the discontinuance of, any lawsuits, arbitrations, appeals, claims, and other proceedings brought by any Michael Angelo Entity pending against State Farm Mutual and/or any individual insured by State Farm Mutual ("State Farm Mutual Insured"), in any forum, arising from (a) the allegations asserted or that could have been asserted in the Litigation; and/or (b) MVA Related Health Care Services,[1] as hereinafter defined, provided by any Michael Angelo Entity(s) to any State Farm Mutual Insured on or before the Effective Date, and to waive all rights to all remedies and costs relating to such matters, including attorney's fees.

(ECF No 118-2, PageID.6704-05.) This provision also includes an indemnification clause. (*Id.*)

1. "MVA Related Health Care Services" are defined as those relating to "any good or service related to any accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle as defined under the Michigan No-Fault Automobile Insurance Act." (ECF No. 118, PageID.6681.)

Second, the Release Provision states:

> The Michael Angelo Entities hereby release and discharge State Farm Mutual from any and all judgments, claims, demands, losses, liabilities, costs, actions, causes of action, or suits of any kind whatsoever, whether in law or equity, known or unknown, foreseen or unforeseen, that any Michael Angelo Entity has now or may have had against State Farm Mutual, arising from (a) the allegations asserted or that could have been asserted in the Litigation; and/or (b) MVA Related Health Care Services provided by any Michael Angelo Entity(s) to any State Farm Mutual insured on or before the Effective Date. Furthermore, each Michael Angelo Entity agrees not to attempt to collect such bills submitted for benefits under personal injury protection coverage for which charges may remain due from any State Farm Mutual Insureds to whom such goods or services have been provided by Michael Angelo Entity(s).

(*Id.*, PageID.6706-07.) Like the Dismissal Provision, the Release Provision also requires Defendant to indemnify Plaintiff in the event that Defendant fails to comply. (*Id.*)

On March 4, 2021, the court entered a Stipulated Order of Dismissal dismissing Defendant from the action. (ECF No.114, PageID.6173-76.) The order also provided that the court retains jurisdiction to enforce the terms of the settlement agreement. (*Id.*, PageID.6176.)

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B. The *Qui Tam* Action

On April 6, 2021, roughly six weeks after the parties entered into the settlement agreement, a *qui tam* FCA complaint ("*Qui Tam* Action") in the Eastern District of Michigan was unsealed; Defendant had filed the action as a relator, naming Plaintiff as a defendant. (ECF No. 118-3, PageID.6718-79; *United States ex rel. Michael Angelo v. State Farm Mut. Auto. Ins. Co.*, No. 19-12165, ECF No. 1.) The *Qui Tam* Action, originally filed on July 24, 2019, alleges that Plaintiff "exploited and circumvented the Medicare Secondary Payer Act, and Michigan auto insurance law—the No Fault Act—to avoid paying medical benefits to motor vehicle accident victims it insured, thus causing the government to pick up the expenses without being reimbursed by [State Farm]." (ECF No. 118-3, PageID.6719.) The complaint explains further, "[State Farm] has engaged in an elaborate and sophisticated fraudulent scheme that has caused the government to sustain significant financial loss by paying out sums of money that should have been paid by [State Farm] pertaining to motor vehicle injured victims." (ECF No. 118-3, PageID.6719.) The *Qui Tam* Action also asserts that "[State Farm] . . . knowingly presented, or caused to be presented, false or fraudulent information which causes payment or approval from the United States and/or the State of Michigan." (*Id.*) The United States and the State of Michigan declined to intervene in the lawsuit on March 9, 2021. (ECF No. 118-6.)

Plaintiff subsequently brought the present motion before the court, contending that, because Defendant

filed the *Qui Tam* Action, Defendant is in breach of the parties' settlement agreement. (ECF No. 118.) Plaintiff sought, *inter alia*, an order requiring Defendant Michael Angelo to "immediately cease and desist from taking any further action to prosecute the Quit Tam Lawsuit" and "take all necessary steps to secure dismissal of the Qui Tam Complaint." (*Id.*, PageID.6668.) Defendant opposed the motion on various grounds. (ECF No. 126.) Defendant explained that it would soon file an amended complaint in the *Qui Tam* Action which would demonstrate that the action falls outside of the scope of the Dismissal and Release Provisions and render Plaintiff's motion moot. (ECF No. 126, PageID.7155-56.)

Defendant filed an amended complaint in the *Qui Tam* Action that appeared substantially different from the original as it added a new relator; new *qui tam* causes of action on behalf of other states; and several new defendants, including other State Farm entities. (ECF No. 145-1.) The parties' submitted supplemental briefing to update the court on the allegations within the amended complaint. (ECF Nos. 145, 146, 147.) The parties dispute the implications of the amended complaint on Plaintiff's motion to enforce the settlement agreement, particularly as to whether the amended complaint falls within the scope of the agreement's relevant provisions.

II. DISCUSSION

Plaintiff asks the court to declare that Defendant is in breach of the parties' settlement agreement. Plaintiff's motion turns on two questions: first, whether the *Qui Tam* Action falls within the scope of the Dismissal and/

or Release Provisions, and second, if it does fall within the scope of the settlement agreement, whether the court can grant the relief that Plaintiff requests.

A. The *Qui Tam* Action Falls Within the Scope of Settlement Agreement

Defendant first argues that the original complaint in the *Qui Tam* Action does not relate to either "allegations asserted or that could have been asserted in the Litigation" or "MVA Related Health Care Services provided by any Michael Angelo Entity(s) to any State Farm Mutual insured" and therefore falls outside the scope of the settlement agreement, particularly because it "only pertained to Government claims." (ECF No. 126, PageID.7155.) However, the court agrees with Plaintiff that the original complaint falls squarely within the settlement agreement. The language of the Dismissal and Release Provisions is quite broad, encompassing any lawsuits, proceedings, claims, actions, and "suits of any kind whatsoever . . . arising from . . . MVA Related Health Care Services provided by any Michael Angelo Entity(s) to any [State Farm] Insured."[2] (ECF No. 118-2, PageID.6704, 6707-8.) The original complaint clearly relates to MVA Related Health Care Services provided by Defendant and his entities—in its introduction, Defendant explains that the allegations against Plaintiff relate to Plaintiff circumventing and exploiting the Michigan No Fault Act "to avoid paying medical benefits to motor vehicle accident victims it insured, thus, causing the government

2. Plaintiff does not argue that Defendant could have asserted the FCA claims in this litigation.

to pick up the expenses without being reimbursed by Defendant." (No. 118-3, PageID.6719.) While the original *qui tam* complaint naturally relates to the government recovering lost federal funds, the action arises from the Defendant's own experiences with Plaintiff's handling of his insurance claims. For example, among the allegations of the complaint are that Plaintiff's "insureds who are involved in accidents or car crashes but are arbitrarily and illegally denied and/or prevented from obtaining coverage by Defendant are then compelled to use their Medicaid/ Medicare to fill prescriptions, submit urine analyses, and/ or otherwise receive reasonable and necessary medical services from [Angelo's] Facilities." (ECF No. 118-3, PageID.6747.) As Plaintiff points out, both cases require a court to assess the propriety of treatment that Defendant or his facilities rendered to insured patients and whether the bills are legitimate. (*See id.*, PageID.6749-67 (listing patients who received treatment at Defendant's facilities and filed claims with Plaintiff).) Indeed, the original *qui tam* complaint directly refers to the present RICO action to support its FCA claims. (*Id.*, PageID.6773.) In short, the original complaint falls within the scope of the agreement.

However, Defendant argues that even if the original complaint does fall within the scope of the settlement agreement, the amended complaint is now the operative complaint. (ECF No. 146, PageID.8035.) Moreover, according to Defendant, because the amended complaint does not involve "any matter within the scope of the agreement," and instead focuses on "State Farm's nationwide fraud against the Government," the *Qui Tam* action is not subject to the Dismissal or Release Provisions. (ECF No. 126, PageID.7155.)

The court agrees with Defendant insofar as it argues that "[a]n amended complaint supersedes an earlier complaint for all purposes." *In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 589 (6th Cir. 2013). Thus, there is at least some merit to Defendant's position that the court should look to only the amended complaint in determining whether there has been a breach of parties' settlement agreement. Plaintiff argues in rebuttal that the amended complaint is irrelevant because the very act of amending the complaint instead of taking steps to secure dismissal of the *Qui Tam* Action constitutes a breach of the settlement agreement—particularly because the Dismissal Provision applies to "pending" lawsuits. (ECF No. 130, PageID.7336; ECF No. 148, PageID.8051.)

Even if the court accepted Defendant's position and looked only to the amended complaint, the *Qui Tam* Action still appears to stem from allegations "arising from . . MVA Related Health Care Services . . . provided by" Defendant and his entities.[3] (ECF No. 118-2, PageID.6704.) Defendant contends that the "*Qui Tam* Action does not involve any bill or claim relating to any Angelo entity."

3. Notably, in Defendant's attempt to argue that the amended complaint is the only relevant complaint in the *Qui Tam* Action, he explains that the amended complaint "relates back" to the original through Federal Rule of Civil Procedure 15(c)(1)(B). (ECF No. 126, PageID.7155; ECF No. 146, PageID.8035.) The rule states that an amendment relates back to the original when "the amendment asserts a claim or defense that *arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading*." Fed. R. Civ. P. 15(c)(1)(B) (emphasis added). Defendant therefore impliedly concedes the original and amended complaint are derived from at least some of the same factual allegations.

(ECF No. 146, PageID.8028.) Defendant further argues that there are now over three hundred defendants and nine plaintiffs, demonstrating "how totally unrelated the government's claims are to the instant action." (ECF No. 146, PageID.8022.) But this does not change the fact that, despite Defendant's assertions to the contrary, the amended complaint still features claims against Plaintiff that arise from the provision of medical services to individuals insured by Plaintiff. The amended complaint makes clear that Plaintiff had "direct knowledge of Medicare and/or Medicaid beneficiaries that are also insureds of [State Farm][4] or claimants [who] are entitled to coverage under Michigan law, who sought treatment at his or other facilities, but for whom the [State Farm] refused to pay their claims." (ECF No. 145-1, PageID.7883.) Defendant cannot argue that the *Qui Tam* Action involves "beneficiaries that were not treated by any entity affiliated with Angelo" (ECF No. 146, PageID.8035), when in fact the amended complaint clarifies that "[a]s a business practice, Mr. Angelo's facilities would not turn patients away, but instead would treat them and then seek payment through other channels." (ECF No. 145-1, PageID.7884.) Although Defendant repeatedly argues that "not a single bill or claim relating to any Angelo entity, or any patient that treated at one of Angelo's entities is at issue in the Amended Complaint," the amended complaint nonetheless criticizes Plaintiff's denial of claims "submitted by Mr. Angelo." (ECF No. 146, PageID.8015.)

4. The amended complaint refers to the actions of "Primary Plans," which collectively encompasses a large group of insurance companies, including State Farm.

To be sure, the particular cause of action alleged against Plaintiff in the *Qui Tam* Action is rooted in Medicare and Medicaid fraud. However, the settlement agreement contemplates dismissal or release from *any suits* of *any kind whatsoever*, so long as it is for MVA Related Health Care Services. *Cf. United States ex rel. Radcliffe v. Purdue Pharma L.P.*, 600 F.3d 319, 328 (4th Cir. 2010) (finding that a party's FCA claim was a "legally cognizable claim subject to the terms" of a release agreement); *Watson Wyatt & Co. v. SBC Holdings, Inc.*, 513 F.3d 646, 650-52 (6th Cir. 2008) (quoting *Highlands Wellmont Health Network, Inc. v. John Deere Health Plan, Inc.*, 350 F.3d 568, 577 (6th Cir. 2003)) (explaining that where an arbitration agreement uses "broadly written" language to encompass "all claims 'arising from or in connection with . . . the services provided by'" a party, "only an express provision excluding a specific dispute," will remove the action from the scope of the agreement").

Thus, the factual allegations of the amended complaint still fall within the scope of the settlement agreement—the facts supporting Defendant's claims in the *Qui Tam* Action "arise from" what he learned when he provided medical services to patients suffering accidental bodily injury "arising out of the ownership, operation, maintenance, or use of a motor vehicle." (ECF No. 125-1, PageID.7095.) In fact, Defendant's "exemplar" patient in the amended complaint was "insured by State Farm Group . . . [and] entitled to no-fault coverage" when he was "injured in an automobile accident." (No. 145-1, PageID.7885.) This checks all the boxes of the Dismissal and Release Provisions: an automobile accident patient, insured by

Plaintiff, who is seeking no-fault coverage and receives treatment from Defendant or his entities. Defendant appears to put significant weight on the fact that his facilities "do not accept Medicare or Medicaid insurance" (*See, e.g.*, ECF No. 146, PageID.8027), but this has no bearing on whether the settlement agreement applies. The fact that the cause of action may relate to both no-fault injury claims *and* Medicare or Medicaid fraud does not exempt the action from the scope of the settlement agreement; the settlement agreement contemplates claims of any nature with no exclusions for particular causes of action. The only prerequisite is that, as relevant here, the claim arises out of the provision of MVA Related Health Care Services. Defendant's claims in the *Qui Tam* Action against Plaintiff fall within the scope of the Dismissal and Release Provisions.

B. The Court Can Require "Necessary Steps" to Dismiss

Defendant's main argument is that, as a relator in a *Qui Tam* action, he is a "mere whistleblower" and "does not own those claims" because they are brought in the name of the government. (ECF No. 126, PageID.7140-41.) He maintains, depending on Sixth Circuit case law, that "the government is the real party in interest" under the FCA, and that "the harms redressed by the FCA belong to the government." (ECF No. 126, PageID.7144 (quoting *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335, 344 (6th Cir. 2000)).) Hence, Defendant argues that "a relator is without authority to unilaterally settle a qui tam suit because it would be 'akin to impermissibly

bargaining away the rights of a third party.'" (*Id.*, PageID.7145 (quoting *Health Possibilities*, 207 F.3d at 341).) In Defendant's view, Plaintiff has failed "to provide any authority whatsoever that would explain how the Settlement Agreement could possibly serve to bar Angelo from acting on behalf of the Government to pursue claims belonging to the Government." (ECF No. 146, PageID.8034.)

As an initial matter, the court disagrees with Defendant that a relator possesses absolutely no interest in a *qui tam* action such that its claims may never be subject to a dismissal or release agreement. Other courts have rejected Defendant's position. *Radcliffe*, 600 F.3d at 328-29 ("Because Radcliffe possessed a presently enforceable claim at the time he signed the Release, the plain terms of the Release encompassed his FCA claims."); *United States ex rel. Class v. Bayada Home Health Care, Inc.*, No. CV 16-680, 2018 U.S. Dist. LEXIS 162692, 2018 WL 4566157, at *6 (E.D. Pa. Sept. 24, 2018) (citing *Radcliffe*, 600 F.3d at 328). Even if the government is the "real party in interest," the Supreme Court has made clear that the FCA "gives the relator himself an interest in the *lawsuit*, and not merely the right to retain a fee out of the recovery," evinced in part by the fact that the statute permits a civil action "*for the person and for the United States Government*." *See Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 772, 120 S. Ct. 1858, 146 L. Ed. 2d 836 (2000) (citing 31 U.S.C. § 3730(b)); *see also Radcliffe*, 600 F.3d at 327-29 (disagreeing with party that a release agreement cannot be enforced simply because the "*qui tam* claims belong

to the government, not the relator"). As Plaintiff notes, a relator is not a passive witness once the whistle has been blown—the relator has "the right to conduct the action." 31 U.S.C. § 3730(c)(3). In the present case, for example, it was not the government that amended the complaint for itself; rather, it was Plaintiff as the relator who made the changes and brought additional allegations.

Furthermore, Defendant argues that public policy weighs in favor of nonenforcement of the settlement agreement. He claims that Congress, through the FCA, has expressed a strong federal interest in encouraging private citizens to come forward and inform the government of any uncovered fraud. (ECF No. 126, PageID.7149-54.) And Defendant is correct to the extent that such an interest exists. *See, e.g.*, *United States v. Northrop Corp.*, 59 F.3d 953, 967 (9th Cir. 1995) ("[T]he very purpose of the Act's *qui tam* provisions is to create incentives for relators to supplement government enforcement."); *United States ex rel. McNulty v. Reddy Ice Holdings*, Inc., 835 F. Supp. 2d 341, 360 (E.D. Mich. 2011) ("Where the government has no knowledge of the claims that form the basis for a *qui tam* complaint prior to the time that the relator signs the release, enforcement of the release interferes with and frustrates the FCA's goals of incentivizing individuals to reveal fraudulent conduct to the government."); *Bayada Home Health Care*, 2018 U.S. Dist. LEXIS 162692, 2018 WL 4566157, at *7 (quoting *United States ex rel. Hall v. Teledyne Wah Chang Albany*, 104 F.3d 230, 233 (9th Cir. 1997)) (explaining that the public policy recognized in *qui tam* cases is to "set up incentives to supplement government enforcement" by "encouraging insiders privy to fraud on the government to blow the whistle on the

crime"). Certainly, one of the major overarching purposes of the FCA's *qui tam* provisions is to incentivize citizens to bring fraud claims to the attention of the government.

Consistent with this underlying policy interest, Defendant maintains that where a relator enters into a release of claims after the filing of a *qui tam* action, the release is unenforceable as to the pending *qui tam* claim. (ECF No. 126, PageID.7145.) Defendant cites several cases in support of this proposition. *See, e.g.*, *United States ex rel. Stipe v. Powell Cty. Fiscal Ct.*, No. 5:16-CV-446-KKC, 2018 U.S. Dist. LEXIS 103948, 2018 WL 3078764, at *3 (E.D. Ky. June 21, 2018) ("It is undisputed that a post-filing release of *qui tam* claims is unenforceable."); *Bayada Home Health Care*, 2018 U.S. Dist. LEXIS 162692, 2018 WL 4566157, at *4 ("It is well known that a relator may not enter into an enforceable settlement or release of *qui tam* claims after the filing of an FCA action."); *United States ex rel. Nowak v. Medtronic, Inc.*, 806 F. Supp. 2d 310, 336 (D. Mass. 2011) ("A relator may not enter into an enforceable settlement or release of *qui tam* claims after filing a False Claims Act action."); *McNulty*, 835 F. Supp. 2d at 358-59 (explaining that the FCA prohibits "a relator from entering into an enforceable settlement agreement or release of a *qui tam* claim after the filing of a FCA action"); *United States ex rel. Davis v. Lockheed Martin Corp.*, No. 4:09-CV-645-Y, 2010 U.S. Dist. LEXIS 120730, 2010 WL 4607411, at *4 (N.D. Tex. Nov. 15, 2010) ("[B]ecause Davis signed the release after he filed the complaint and because this is a qui-tam action, the release cannot be enforced to dismiss Davis's action without the consent of the attorney general and this Court."). But each of the cases that Defendant cites add nothing more

to what the plain language of the FCA already tells us. Indeed, in every case cited above, the courts rely on the same provision of the FCA, 31 U.S.C. § 3730(b)(1). Those courts held, in prohibiting a post-filing release agreement, that a party cannot *unilaterally* dismiss a *qui tam* action. In this regard, the plain language of the statute is clear: "The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." 31 U.S.C. § 3730(b)(1). Accordingly, it is evident from the statute that if the government objects to the voluntary dismissal of a defendant, the relator is out of luck. This is true even where, as here, the government has already "affirmatively decline[d] to intervene in the action." *United States ex rel. Smith v. Lampers*, 69 F. App'x 719, 721-22 (6th Cir. 2003). The cases cited by Defendant merely restate that idea.[5]

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5. Even the Sixth Circuit's central holding in *Health Possibilities* serves to simply reiterate the plain language of the FCA and to clarify that the consent provision is not limited to the sixty-day intervention period: "Section 3730(b)(1) unqualifiedly provides that a qui tam action 'may be dismissed only if the court and Attorney General give written consent.' This language clearly does not limit the consent provision to the sixty-day intervention period. If Congress wanted to limit the consent requirement to the period before the United States makes its initial intervention decision, we presume that it knew the words to do so. . . . Accordingly, we conclude that the policies served by the veto power are entirely consistent with the conclusion compelled by § 3730(b)(1)'s plain meaning: that a relator may not settle any qui tam action without the Attorney General's consent." 207 F.3d at 339-41; *accord Lampers*, 69 F. App'x at 721 ("As we found in *Health Possibilities*, this language [of § 3730(b)(1)] means that a relator may not seek a voluntary dismissal of any *qui tam* action under the FCA without the government's consent.").

Thus, while Defendant's position is adequately supported, that position is off-point. The key to resolving this matter is to keep in mind precisely what relief Plaintiff seeks; the difference appears minor, but one request would flout the plain language of the FCA, while the other would be consistent with it. Plaintiff does not request the court to order Defendant to voluntarily dismiss the *Qui Tam* Action against Plaintiff. As the statute makes clear, to accomplish a voluntary dismissal, the government's consent is required. Rather, Plaintiff maintains that Defendant must, pursuant to the settlement agreement, "take all steps necessary" to "secure the discontinuance of" the *Qui Tam* Action brought by Defendant. (ECF No. 118, PageID.6695; ECF No 118-2, PageID.6704-05.) Plaintiff contends—and the court agrees—that taking "all necessary steps," in this context, amounts to simply asking the government for consent to dismiss Plaintiff from the *Qui Tam* Action. (ECF No. 118, PageID.6695-96; ECF No. 130, PageID.7334.)

Plaintiff has presented no authority standing for the notion that a court lacks the ability to require a party merely to *seek* the government for consent to end an FCA claim, and the court finds a dearth of caselaw on this precise question. Yet, nothing in either the text of the FCA or FCA caselaw prohibits district courts from dismissing *qui tam* claims against a given party once the government has consented to it. *See, e.g.*, *United States v. HCA, Inc.*, No. 1:08-CV-71, 2012 U.S. Dist. LEXIS 170373, 2012 WL 5997952, at *1 (E.D. Tenn. 2012) (describing a voluntary dismissal that was agreed upon by the government, and the relator). As some courts have

recognized, "the government's power to block settlements does not mean that the relator will never be the person settling the claim," which means that a relator may still settle a claim on the government's behalf once consent is acquired. *See Searcy v. Philips Elecs. N. Am. Corp.*, 117 F.3d 154, 160 (5th Cir. 1997); *accord United States ex rel. Michaels v. Agape Senior Cmty., Inc.*, 848 F.3d 330, 338-39 (4th Cir. 2017). Thus, the court finds that it has the authority to require Defendant to take "all steps necessary" to dismiss the *Qui Tam* Action—here, in context and under the language of the Dismissal and Release Provisions, that means Defendant must at least *request the government's consent* to dismiss the claims against Plaintiff and its "subsidiaries, affiliates, officers, directors, and employees." (ECF No.118-2, PageID.6702.) If, upon request, the government decides it does not consent to dismissal, then that is the end of the matter. *See Health Possibilities*, 207 F.3d at 339-41. The court lacks authority under the FCA to mandate anything further.

This is a narrow holding that does not conflict with the underlying public policies of the FCA. Defendant argues that the FCA's goals would be frustrated by enforcement of the agreement, and it is well-established that "a promise is unenforceable if the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement." *Town of Newton v. Rumery*, 480 U.S. 386, 392, 107 S. Ct. 1187, 94 L. Ed. 2d 405 (1987). Defendant relies in part on *McNulty*, which recognized in a pre-filing release case that "[w]here the government has no knowledge of the claims that form the basis for a *qui tam* complaint prior to the time that the relator signs the release, enforcement

of the release interferes with and frustrates the FCA's goals of incentivizing individuals to reveal fraudulent conduct to the government." 835 F. Supp. 2d at 360. The *McNulty* court declined to enforce a release agreement because at the time the release was signed, "McNulty had not yet approached the government about the . . . scheme (let alone about any suspected fraud on the government)." *Id.* Here, by contrast, it is undisputed that Defendant approached the government and informed it of potential fraud involving Plaintiff in July 2019, giving the government a significant period of time to fully investigate Plaintiff's claims; the parties entered into a settlement agreement a year and a half later in February 2021. (ECF No. 118, PageID.6680; ECF No. 118-2; ECF No. 118-3.) The settlement agreement does not frustrate the incentive of individuals to reveal fraudulent conduct to the government considering Plaintiff had already done so. Nor does this particular settlement agreement encourage guilty individuals to "insulate themselves from the reach of the FCA by simply forcing potential relators to sign general agreements invoking release and indemnification from future suit." *United States ex rel. Longhi v. United States*, 575 F.3d 458, 474 (5th Cir. 2009). This particular agreement's scope is limited to claims that could have been raised in this litigation or MVA Related Health Care Services and thus does not constitute a "general release" of claims. But more importantly, it still comports with the plain language of the FCA: Defendant can be dismissed from the *Qui Tam* Action only if the government consents. *See In re Pharm. Indus. Average Wholesale Price Litig.*, No. 08-11200-PBS, 2012 U.S. Dist. LEXIS 12972, 2012 WL 366599, at *4 (D. Mass. Jan. 26, 2012) (recognizing that the FCA's plain language under § 3730(b)(1) protects

against overly broad releases of claims by allowing the government to withhold consent from dismissal of claims). Merely requiring Plaintiff to ask the government's consent to dismiss the action is not contrary to the FCA as the government still has the final word on whether the relator must continue to prosecute the action on the government's behalf.[6]

III. CONCLUSION

The FCA makes clear that the court could not enforce the settlement agreement by mandating dismissal of Plaintiff from the *Qui Tam* Action. *Health Possibilities*, 207 F.3d at 339-41; *Lampers*, 69 F. App'x at 721-22. However, the FCA's text and purpose is not offended by requiring Defendant, in accordance with the settlement agreement, "to take all necessary steps . . . to secure the discontinuance of" the *Qui Tam* Action brought by Defendant. The court's narrow holding is only that, consistent with the FCA, Defendant must request the federal government's consent to dismiss Plaintiff. Accordingly,

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6. Plaintiff argues in passing that if the government does not consent to dismissal of the claims against it, Defendant must indemnify Plaintiff for its costs and liabilities resulting from the *Qui Tam* Action, as required by settlement agreement. (ECF No. 118, PageID.6696.) At this juncture, the parties do "not know whether the government would agree to dismissal of the *Qui Tam* Lawsuit because [Defendant] . . . has not asked." (ECF No. 130, PageID.7334.) The indemnity issue is therefore premature. Plaintiff may seek to raise that issue by motion at the proper time.

Appendix B

IT IS ORDERED that Plaintiff's "Motion to Enforce Settlement Agreement" (ECF No. 118) is GRANTED. Accordingly,

IT IS ORDERED that Defendant, proceeding in good faith and undertaking no contrary or inconsistent acts, must forthwith solicit the government's consent to dismiss the instant *Qui Tam* Action against Plaintiff, along with its subsidiaries, affiliates, officers, directors, and employees, and must act on this obligation not later than **Monday, March 14, 2022**.

/s/ Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 28, 2022

APPENDIX C — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED MAY 2, 2022

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Case No. 19-10669

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

v.

MICHAEL ANGELO, *et al.*,

Defendants.

OPINION AND ORDER DENYING DEFENDANT MICHAEL ANGELO'S MOTION FOR RECONSIDERATION AND TERMINATING AS MOOT MOTION FOR STAY

Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") brought this action under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) and (d), and also asserted state law claims of fraud and unjust enrichment. (ECF No. 1, PageID.55-63.) State Farm alleged that Defendant Michael Angelo and others submitted fraudulent bills for medically unnecessary services and prescriptions

rendered to patients involved in automobile accidents. (*Id.*, PageID.2, 4, 54.)

After extensive litigation, the parties entered into a settlement agreement, requiring, among other provisions, Angelo to dismiss or release particular categories of claims against State Farm. (ECF No. 118, PageID.6676; ECF No. 126, PageID.7132.) The court retained jurisdiction to enforce the terms of their agreement. (ECF No. 114, PageID.6176.) State Farm subsequently filed a motion to enforce the parties' settlement agreement. (ECF No. 118.) State Farm argued that Angelo was in breach of their agreement by virtue of his role as a relator in a *qui tam* action against State Farm brought under the False Claims Act ("FCA"). State Farm argued that Angelo must "immediately cease and desist from taking any further action to prosecute the *Qui Tam* Lawsuit" and "take all necessary steps to secure dismissal of the *Qui Tam* Complaint." (ECF No. 118, PageID.6668.) The court found that the *Qui Tam* Action fell within the scope of the settlement agreement and held that the agreement required Angelo to "'take all necessary steps . . . to secure the discontinuance of' the *Qui Tam* Action" as against State Farm. (ECF No. 149, PageID.8080-81.) The opinion's ultimate, narrow holding was that Angelo must "solicit the government's consent to dismiss" State Farm from the *Qui Tam* Action. (*Id.*, PageID.8081.) The court made clear that if "the government decides it does not consent to dismissal, then that is the end of the matter," as the court would not have authority to mandate anything further. (*Id.*, PageID.8079.) Now before the court is Angelo's "Motion for Reconsideration, or in the Alternative, Motion

to Amend the Order."[1] (ECF No. 150.) The motion has been fully briefed (ECF Nos. 150, 153, 154), and a hearing is unnecessary. E.D. Mich. LR 7.1(f)(1)-(2).

Under Eastern District of Michigan Local Rule 7.1(h)(2), a party may move for reconsideration of a non-final order, although they are "disfavored" and may be brought only upon specific grounds. Angelo advances his motion under Rule 7.1(h)(2)(A), which requires a three-part showing that: "[t]he 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." *See Burn Hookah Bar, Inc. v. City of Southfield*, No. 2:19-CV-11413, 2022 U.S. Dist. LEXIS 43295, 2022 WL 730634, at *1 (E.D. Mich. Mar. 10, 2022) (Murphy, J.). Motions for reconsideration "should not be used liberally to get a second bite at the apple." *United States v. Lamar*, No. 19-CR-20515, 2022 U.S. Dist. LEXIS 20231, 2022 WL 327711, at *1 (E.D. Mich. Feb. 3, 2022) (Goldsmith, J.) (quoting *Oswald v. BAE Indus., Inc.*, No. 10-12660, 2010 U.S. Dist. LEXIS 137584, 2010 WL 5464271, at *1 (E.D. Mich. Dec. 30, 2010)). They are "not an opportunity to re-argue a case" or "'raise [new] arguments which could, and should, have been made' earlier." *See Burn Hookah Bar*, 2022 U.S. Dist. LEXIS 43295, 2022 WL 730634, at *1 (alteration in original) (quoting *Bills v. Klee*, No. 15-cv-11414, 2022 U.S. Dist. LEXIS 26608, 2022 WL 447060, at *1 (E.D. Mich. Feb.

1. Angelo also filed a motion to stay the court's previous order pending the resolution of the motion for reconsideration. (ECF No. 151.) Because the court will address the motion for reconsideration first, the court will deny that motion as moot.

14, 2022)); *cf. Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998) (citing *FDIC v. World Univ. Inc.*, 978 F.2d 10, 16 (1st Cir.1992)) (explaining that a Rule 59(e) motion to alter or amend a judgment is "not an opportunity to re-argue a case" and is aimed at reconsideration, not initial consideration).

Angelo makes five arguments: (1) the court misinterpreted the settlement agreement, (2) the court's prescribed action is not within the scope of the agreement to "take all steps necessary," (3) the court's interpretation runs contrary to public policy and renders the settlement agreement unenforceable, (4) the order is unconstitutional under the compelled speech doctrine, and (5) the proper venue to adjudicate the *Qui Tam* Action is before the *Qui Tam* Action's judge.

First, the court already determined that the *Qui Tam* Action falls within the scope of the settlement agreement—thus, although Angelo contends the court made a "mistake," his arguments largely reflect a mere disagreement with the court's interpretation of the settlement agreement.[2] (*See* ECF No. 149, PageID.8069-72.) Indeed, Angelo advances the same arguments that he did before, particularly as it pertains to the court's interpretation of the phrase "arising from"

2. Angelo also recasts his arguments that the claims in the *Qui Tam* Action were not contemplated by the parties and otherwise belong to the government, with Angelo serving as a mere agent in his capacity as a relator. (ECF No. 150, PageID.8098-103.) The court has already addressed and rejected these contentions. (ECF No. 149, PageID.8072-75.)

as written in the settlement agreement. (*See, e.g.*, ECF No. 146, PageID.8019, 8032, 8035.) The court considered these arguments and disagreed. While Angelo may have had additional sources of knowledge for the claims advanced in the *Qui Tam* Action, the court has already discussed why the original and amended complaint "arise from" the particular services specified in the settlement agreement; although Angelo for a second time attempts to refute it, reading the complaints as a whole demonstrates a causal connection between the *Qui Tam* Action and services rendered by Angelo to State Farm insureds. (ECF No. 149, PageID.8071-72.) As the court previously explained, the amended complaint establishes that the claims "arise from the provision of medical services to individuals insured by [State Farm]," further showing that Angelo had "direct knowledge of Medicare and/or Medicaid beneficiaries that are also insureds of [State Farm] or claimants [who] are entitled to coverage under Michigan law, who sought treatment at his or other facilities, but for whom the [State Farm] refused to pay claims." (*Id.*, PageID.8071-72.) Now, to rebut this, Angelo relies heavily on his argument that an exemplar patient, R.S., was actually a "claimant" and not an "insured," thus falling outside of the settlement agreement's terms.[3] But even

3. To be sure, the amended complaint alleges that R.S. was entitled to no-fault coverage under a driver's State Farm no-fault policy because the *vehicle that struck him* was "insured" by State Farm—R.S. himself was not insured by State Farm. (ECF No. 145-1, PageID.7885.) However, State Farm points out that a State Farm "insured" in this context includes individuals like R.S. under the policies relevant to this action. As summarized by State Farm, the "SFMAIC 6126NE Amendatory Endorsement, which is part of

if this were true, R.S. was only one example of a patient that would trigger the settlement agreement's Dismissal and Release provisions. Thus, "correcting the mistake" would not "change[] the outcome of the prior decision." E.D. Mich. L.R. 7.1(h)(2)(A).

In any event, as noted in the court's order enforcing the settlement agreement, Angelo has advanced positions that apparently contradict. The court found that the *Qui Tam* Action's original complaint clearly fell within the scope of the settlement agreement, particularly where both this case and the *Qui Tam* Action's original complaint "require a court to assess the propriety of treatment that [Angelo] or his facilities rendered to insured patients and whether the bills are legitimate." (ECF No. 149, PageID.8070.) To avoid

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the policy terms that were at issue in this action, explicitly provides that '*Insured* for Personal Injury Protection Coverage means: . . . any other *person* who sustained *bodily injury* and is entitled to Personal Injury Protective Coverage benefits under this policy pursuant to the Michigan Insurance Code.'" (ECF No. 153, PageID.8220-21.) *Cf. Mary Free Bed Rehab. Hosp. v. Farmers Ins. Grp. of Cos.*, No. 321328, 2015 Mich. App. LEXIS 2440, 2015 WL 9317979, at *5 (Mich. Ct. App. Dec. 22, 2015) (noting that an insurance policy expanded the definition of an "insured" person to include the claimant who was injured as an occupant of the vehicle). Additionally, in the *Qui Tam* Action's amended complaint, Angelo specifically points to R.S. as evidence of State Farm's alleged failure to report "insureds" or delaying or denying coverage to "insureds." (ECF No. 145-1, PageID.7886-87 ("Mr. Angelo's exemplar further illustrates that [the *Qui Tam* Action defendants] fail to report their insureds under Section 111 reporting and fail to make payments for medical expenses incurred (by delaying or denying coverage to the insureds), thus forcing Government Healthcare Programs to make the payments without being reimbursed.").)

dismissal, Angelo argued in his supplemental briefing that there was no relationship between the original complaint and the amended complaint and thus the new, operative complaint was not subject to the settlement agreement. But, at the same time, relying on Federal Rule of Civil Procedure 15(c)(1)(B), Angelo argued that the amended complaint was the only relevant complaint and "relates back" to the original. (ECF No. 146, PageID.8035-36.) This rule states that an amendment relates back to the original when "the amendment asserts a claim or defense that *arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading*." Fed. R. Civ. P. 15(c)(1)(B) (emphasis added). Thus, Angelo apparently conceded that at least some of the factual allegations within the amended complaint "arise out of" the facts alleged in the original complaint.[4] (ECF No. 149, PageID.8071 n.3.)

Second, Angelo essentially argues the court's determination requiring him to "at least request the government's consent to dismiss the claims against [State Farm]" constituted an improper interpretation of the settlement agreement. Angelo's arguments essentially rehash prior arguments and express disagreement with the court's interpretation, as opposed to contending that the court made a "mistake" based on the record and law

4. The court need not address whether the very act of amending the original complaint—instead of immediately taking reasonable steps to dismiss it—would constitute a breach under the settlement agreement due to its applicability to "pending" lawsuits. (ECF No 118-2, PageID.6704-05.) The court did not definitively resolve this question in its previous order.

before it. (ECF No. 150, PageID.8103-05.) While Angelo maintains that requesting the government's consent to dismiss the *Qui Tam* Action would not be "necessary" as defined under the settlement agreement, the court disagrees, as already explained in its previous order. (ECF No. 149, PageID.8077-78.)

Next, Angelo makes new public policy and constitutional arguments, all of which could have and should have been made earlier. Indeed, the court considered the public policy implications at stake and found that its holding would "not conflict with the underlying public policies of the FCA." (ECF No. 149, PageID.8079-80.) Now, Angelo claims, *inter alia*, that enforcement of the settlement agreement is tantamount to concealing a crime or stifling a prosecution, which renders the agreement void; Angelo even suggests that following the court's order would subject him to criminal liability under Mich. Comp. Laws § 750.149. (ECF No. 150, PageID.8106-08.) Even if the court considered these supplemental arguments, nothing in the court's order restricted Angelo's ability to offer "cooperation, evidence, or assistance" in a criminal prosecution as he contends. (*Id.*, PageID.8108.) Rather, the court's order required Angelo to request the government's consent to dismiss the *Qui Tam* Action against State Farm, which is a *civil action* brought by Angelo as the relator. *See, e.g., Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 404 (2011) (noting that the FCA "authorizes *qui tam* suits," brought by private plaintiffs and in which private parties "bring civil actions" in the government's name); *Sanders v. Allison Engine Co.*, 703 F.3d 930, 942-43, 948 (6th Cir. 2012) (discussing how

the FCA is a civil remedy found under a civil statutory scheme, and ultimately provides for civil penalties, not criminal sanctions). In no way would Angelo be disrupting a criminal prosecution under 18 U.S.C. § 287—or any other criminal statute—which is separate from a civil *qui tam* proceeding, and this conclusion is amplified by the fact that Angelo was already required to serve the government with a "copy of the complaint and written disclosure of substantially all material evidence and information the person possesses" upon initiating the action. *See* 31 U.S.C § 3730(b)(1) ("A person may bring a *civil action for a violation of section 3729* for the person and for the United States Government." (emphasis added)); *see also id.* § 3730(b)(2).

Angelo also contends—for the first time—that following the court's order would violate the First Amendment because it is "unambiguously an order to speak in a way that Angelo disapproves and is therefore unconstitutional." (ECF No. 150, PageID.8112.) He maintains that he should not be required to "express a position to the Department of Justice to which he opposes." (ECF No. 155, PageID.8265.) But again, he cannot use his motion as an opportunity to advance new arguments in support of his position, especially where they could have been raised beforehand. *Sault Ste. Marie Tribe of Chippewa Indians*, 146 F.3d at 374 ("A motion under Rule 59(e) is not an opportunity to re-argue a case."); *Burn Hookah Bar*, 2022 U.S. Dist. LEXIS 43295, 2022 WL 730634, at *1. Nor can Angelo legitimately claim that the court's order came as a surprise, which would prevent him from making a First Amendment argument

earlier. In this regard, Angelo maintains that State Farm was *always* seeking an order requiring Angelo, on his own, to dismiss State Farm from the *Qui Tam* Action, rather than one requiring him to request the government's consent to dismiss the case. (ECF No. 155, PageID.8260-61.) However, State Farm made clear in the briefing of its motion that that, under the FCA, it could "not seek a voluntary dismissal of any action . . . without the Attorney General's consent," effectively conceding that the only way the agreement could be enforced is by Angelo requesting the government's consent to dismiss the case. (ECF No. 118, PageID.6695 (citing *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335, 336 (6th Cir. 2000)).) Moreover, in its briefing, State Farm (1) argued that the parties' settlement agreement was breached by failing "to seek the government's consent to file a voluntary dismissal," (2) explained how both the United States and State of Michigan contemplated this possibility, and (3) specifically asserted that it was "unaware of any evidence that Angelo has solicited the written consent of the government, filed a proposed notice of voluntary dismissal in the *Qui Tam* Lawsuit requesting that the Court solicit the government's consent, or taken any other steps necessary to secure any consent or provide any notice." (*Id.*, PageID.6695-96.) Additionally, State Farm reiterated this position in its reply brief, explaining how it "does not need to show that the government's claims can be dismissed here without the government's consent," and it further noted that "Angelo does not know whether the government would agree to dismissal of the *Qui Tam* Lawsuit because he, in breach of the Settlement Agreement, has not asked." (ECF No. 130,

PageID.7333-34.) Because Angelo had ample notice and opportunity to refute State Farm's arguments, including through the use of his supplemental brief, Angelo's First Amendment arguments are not timely.[5]

Finally, Angelo—again, for the first time—argues that this is not the proper court to consider the dismissal of the *Qui Tam* Action against State Farm; he asks, invoking

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5. Insofar as Angelo argues that such the First Amendment mandates relief under Rule 60(b)(5), the court disagrees. Angelo *voluntarily* undertook a duty to "take all steps necessary" to dismiss any pending actions against State Farm. (ECF No 118-2, PageID.6704-05.) *Cf. Ostergren v. Frick*, 856 F. App'x 562, 569 (6th Cir. 2021) (rejecting a First Amendment challenge to a non-disclosure agreement in a contract because the parties voluntarily undertake a duty not to speak). The fact that he is now ordered to communicate this duty to the government in the *Qui Tam* Action only incidentally burdens any "speech." *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567, 131 S. Ct. 2653, 180 L. Ed. 2d 544 (2011) ("It is also true that the First Amendment does not prevent . . . imposing incidental burdens on speech."); *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 62, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006) (explaining that the freedom of speech is not implicated where conduct at issue is "in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."); *accord Country Mill Farms, LLC v. City of E. Lansing*, 280 F. Supp. 3d 1029, 1043-44 (W.D. Mich. 2017). Angelo premises his First Amendment challenge on "being forced to express a message that he disagrees with"—that is, soliciting the government's consent to dismiss the claims against State Farm despite "knowing . . . that State Farm has engaged in massive nationwide fraud." (ECF No. 155, PageID.8260.) But nothing about the court's order compels Angelo to communicate a belief that State Farm is *innocent* of such conduct or that he *endorses* such conduct—it requires only that he follow through with a *duty* that he voluntarily assumed.

the "first-to-file rule," that the court "defer determination of the dismissal of the Government's claims against State Farm" to the court presiding over the *Qui Tam* Action. (ECF No. 150, PageID.8113.) Even assuming this issue was raised in a timely manner, the court does not find it to be applicable. The first-to-file rule provides that "when actions involving nearly identical parties and issues have been filed in two different district courts, 'the court in which the first suit was filed should *generally* proceed to judgment.'" *Baatz v. Columbia Gas Transmission*, LLC, 814 F.3d 785, 789 (6th Cir. 2016) (quoting *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 551 (6th Cir. 2007)). Three factors are generally relevant: "(1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake." *Id.* If the factors support application of the rule, the court must also determine whether any "equitable considerations, such as evidence of 'inequitable conduct, bad faith, anticipatory suits, [or] forum shopping,' merit not applying the first-to-file rule in a particular case." *Id.* (quoting *Certified Restoration*, 511 F.3d at 551-52).

Here, the very first factor is lacking, as the "dates to compare for chronology purposes of the first-to-file rule are when the relevant complaints are filed." *See id.* at 790 (citing *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 96 n.3 (9th Cir. 1982)). Both State Farm's complaint and motion to enforce the settlement agreement in this case were filed before the *Qui Tam* Action and before any motion to dismiss was filed therein, and this court retained jurisdiction specifically to enforce the terms of the parties'

settlement agreement. (ECF No. 114, PageID.6174.) Furthermore, even if all of the factors supported Angelo's position, it appears that equitable considerations would demand rejecting the first-to-file doctrine. Indeed, Angelo knew that this court retained jurisdiction to enforce the settlement agreement, and he raised this issue only after unsuccessfully litigating the motion to enforce it, demonstrating a bad faith attempt to potentially achieve a more favorable result from a different judge.

In summary, the issues raised in Angelo's motion for reconsideration do not warrant relief. To the extent Angelo argues, in the alternative, to "alter or amend" the order under Rule 59(e) or Rule 60(b), the court will also deny his motion. Angelo presents nothing new to the court that suggests there has been a "clear error of law" or the potential for "manifest injustice." The court weighed the public policy considerations at stake when it issued its order on State Farm's motion to enforce the settlement agreement. For the same reasons, relief under Rule 60(b) is unwarranted. There has been no mistake, inadvertence, surprise, or excusable neglect, nor would it be inequitable to enforce; the court's previous order already explained why the order conforms to the plain language of the FCA and the underlying policies at stake. Accordingly,

IT IS ORDERED that Angelo's "Motion for Reconsideration, or in the Alternative, Motion to Amend the Order" (ECF No. 150) is DENIED.

IT IS FURTHER ORDERED that Angelo's "Motion to Stay" (ECF No. 151) is TERMINATED AS MOOT.

Finally, IT IS ORDERED that Angelo, proceeding in good faith and undertaking no contrary or inconsistent acts, must forthwith solicit the government's consent to dismiss the instant *Qui Tam* Action against State Farm, along with its subsidiaries, affiliates, officers, directors, and employees, and must act on this obligation not later than **Monday, May 16, 2022**.

/s/ Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 2, 2022

APPENDIX D — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED MARCH 30, 2023

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Case No. 19-cv-10669

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

v.

MICHAEL ANGELO, *et al.*,

Defendants.

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE MAY 2, 2022 ORDER

After extensive litigation, this multi-defendant Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c) and (d), action now resides in a post-settlement posture with respect to Defendant Michael Angelo ("Angelo"). Pending before the court is Plaintiff State Farm Mutual Automobile Insurance Company's ("State Farm") "Motion to Enforce May 2, 2022 Order (ECF No. 157)," filed June 16, 2022 (ECF No. 163). The motion has been fully briefed. On March 21,

2023, the court held a hearing, during which it permitted State Farm to file a supplemental brief. That supplemental briefing has since been received and reviewed. (ECF No. 175.)

There was a time in which the court was hopeful that the settlement between these parties would be predictive of cooperative behavior undertaken in good faith, and that a direction to comply with the court's order to rapidly effectuate a bargained-for dismissal of the pending *qui tam* action would in turn rapidly terminate the dispute. The court's expectation was not to be. A more formal approach, it is now clear, is required. Therefore, for reasons explained below, the court will grant State Farm's motion to enforce.

I. BACKGROUND

Asserting RICO claims and state law claims of fraud and unjust enrichment, State Farm brought this action in March of 2019, alleging that Angelo and others submitted fraudulent bills for medically unnecessary services and prescriptions rendered to patients involved in automobile accidents. (ECF No. 1, PageID.2, 4, 54-63.) Following substantial discovery, on or about March 4, 2021, the parties entered into a settlement agreement. Among other provisions, Angelo was required to dismiss or release particular categories of claims against State Farm. (ECF No. 114; ECF No. 118, PageID.6676; ECF No. 126, PageID.7132.) The court retained jurisdiction to enforce the terms of their agreement. (ECF No. 114, PageID.6176.)

Appendix D

On April 29, 2021, State Farm filed a motion to enforce the parties' settlement agreement. (ECF No. 118.) State Farm argued that Angelo was in breach of their agreement by virtue of his role as a relator in a *qui tam* action against State Farm brought under the False Claims Act ("FCA"), 31 U.S.C. §§ 3729-3733. (Id.) State Farm demanded that Angelo "immediately cease and desist from taking any further action to prosecute the *Qui Tam* Lawsuit" and "take all necessary steps to secure dismissal of the *Qui Tam* Complaint." (ECF No. 118, PageID.6668.) The court found that the *qui tam* action fell within the scope of the settlement agreement and held that the agreement required Angelo to "'take all necessary steps . . . to secure the discontinuance of' the *Qui Tam* Action" as against State Farm. (ECF No. 149, PageID.8080-81.) The opinion's ultimate, narrow holding was that Angelo must "solicit the government's consent to dismiss" State Farm from the *qui tam* action. (Id. at PageID.8081.) The court made clear that if "the government decides it does not consent to dismissal, then that is the end of the matter," as the court would not have authority to mandate anything further. (Id. at PageID.8079.)

The very same ruling was reiterated when the court denied Angelo's subsequent motion for reconsideration. (ECF Nos. 150, 157.) The May 2, 2022 order again required Angelo, "proceeding in good faith and undertaking no contrary or inconsistent acts, [to] forthwith solicit the government's consent to dismiss the instant Qui Tam Action against State Farm, along with its subsidiaries, affiliates, officers, directors, and employees, and must act

on this obligation not later than Monday, May 16, 2022."[1] (ECF No. 157.) To that end, Angelo filed a "Declaration of Shereef H. Akeel, Esq," wherein Mr. Akeel, acting in his capacity as Angelo's counsel, attested to conferring with government counsel, Assistant United States Attorney (AUSA) John Postulka, in the *qui tam* action. (ECF No. 162.) In relevant part, Mr. Akeel indicated:

> 11. On May 16, 2022, I spoke with the government and advised that State Farm is seeking dismissal of the *Qui Tam* claims against it in the *Qui Tam* action.
>
> 12. I further advised the government that Judge Cleland ruled that although Angelo cannot seek dismissal of the government claims with the Court, based on the settlement agreement Angelo entered into with State Farm in the RICO action, Angelo is to request from the government the dismissal of State Farm from the *Qui Tam* action.
>
> 13. I advised the government as well that Angelo has filed his Notice of Appeal on this issue.
>
> 14. The government responded by saying that Angelo has no authority to dismiss the government claims against State Farm and

1. The court further declined Angelo's request to stay entry of its order pending his appeal. (ECF Nos. 160, 161.)

> maintains the same position in allowing for prosecution of the Qui tam claims against State Farm.

(Id.)

Now pending before the court is State Farm's "Motion to Enforce May 2, 2022 Order (ECF No. 157)." (ECF No. 163.) State Farm challenges the actions undertaken by Mr. Akeel, arguing that his conversation with government counsel was insufficient to discharge Angelo's obligations under the court's May 2nd order. (Id. at PageID.8332.) More specifically, State Farm primarily asks the court to direct Angelo to file a motion for voluntary dismissal in the *qui tam* action or "such alternative means, if any, as will formally solicit the Government's written consent to dismissal pursuant to 31 U.S.C. § 3730(b)(1)." (Id. at PageID.8333-34.) On June 30, 2022, Angelo filed his response, arguing that his obligations are fulfilled. (ECF No. 165.) On July 7, 2022, State Farm filed its reply.[2] (ECF No. 166.)

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2. As part of its reply, State Farm included as an exhibit the Declaration of Douglas W. Baruch, State Farm's counsel in the *qui tam* action. (ECF No. 166-2, PageID.8488-92.) That declaration then became the subject of a motion to strike or disregard filed by Angelo. (ECF No. 167.) Ultimately, with the consent of Angelo, the court terminated the motion as moot at the March 21, 2023 hearing in light of new information received by the court, namely the Second Declaration of Shereef H. Akeel, Esq (ECF No. 171) filed by Angelo. (*See* Bench Order, ECF No. 173; ECF No. 174, PageID.8666-67.)

On March 9, 2023, the court set the motion for hearing. Prompted by the court's notice, on March 14, 2023, Angelo filed a Second Declaration of Shereef H. Akeel, Esq. (ECF No. 171, PageID.8606-07.) In response, on March 20, 2023, State Farm filed a "Motion for Leave to File Supplemental Brief in Support of Motion to Enforce May 2, 2022 Order or, in the Alternative, to Strike the Declaration of Shereef Akeel, Esq. (ECF No. 171)." (ECF No. 172.) At the March 21, 2023 hearing, the court heard from both parties and, in lieu of striking Mr. Akeel's second declaration, granted State Farm's motion to file a supplemental brief. (Bench Order, ECF No. 173.) The court has since received State Farm's supplemental brief (ECF No. 175) and does not find a response from Angelo necessary to resolve State Farm's pending motion to enforce.[3]

II. DISCUSSION

The parties empowered the court to retain jurisdiction with respect to enforcing the terms of their settlement agreement. (ECF No. 118-2, PageID.6711-12.) The court has since rendered two decisions regarding the settlement agreement, both of which required Angelo, in good faith

3. After thoroughly reviewing State Farm's supplemental brief (ECF No. 175) and the transcript from the motion hearing (ECF No. 174), the court finds that the supplement contains no new material information that was not already presented at the motion hearing. Rather, the supplemental brief is at most a reorganization of State Farm's oral argument with minimally different points of emphasis. As such, the court finds that Angelo has had a full and fair opportunity to respond to the arguments presented more formally in State Farm's supplemental brief.

and undertaking no contrary or inconsistent acts, to solicit the government's consent to dismiss State Farm from the *qui tam* action pending before the Honorable Denise Page Hood.[4] (ECF Nos. 149, 157.) Angelo purported to have done just that when he filed the Declaration of Shereef H. Akeel, Esq. (ECF No. 162.) However, as noted by the court at the motion hearing, the declaration missed the mark. It does not plainly state that the government did not give Angelo its consent to dismiss State Farm from the *qui tam* action. Had it done so, State Farm may not have filed its enforcement motion. Nonetheless, this finding does not resolve the pending motion before the court because Angelo saw fit to file a Second Declaration of Shereef H. Akeel, Esq. (ECF No. 171, PageID.8604-08.) And on its face, this second declaration makes clear what was not before: the government did not approve Angelo's request for State Farm's dismissal from the *qui tam* action. (Id.)

When asked at the motion hearing whether the second declaration resolved its pending motion, State Farm indicated it did not. (Mot. Hr'g Tr., ECF No. 174, PageID.8668.) Rather, State Farm argued, as it did in its motion, that the law requires Angelo to file a motion under Federal Rule of Civil Procedure 41 to voluntary dismiss State Farm from the qui tam lawsuit. Plaintiff chiefly relies on *U.S. ex rel. Smith v. Lampers*, 69 F. App'x 719 (6th Cir. 2003), and certain state law statutes. (Id. at PageID.8669-72; *see also* ECF No. 163, PageID.8348-53.) Angelo rejected this position, relying on *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335, 339 (6th Cir.

4. Case number 19-cv-12165.

2000), as well as *Lampers*, 69 F. App'x at 721, to argue that obtaining government consent is a precondition to filing for voluntary dismissal. (ECF No. 174, PageID.8682-85; ECF No. 165, PageID.8377-80.) Angelo contends that Mr. Akeel's second declaration reflects his attempt to fulfill the consent precondition and, because consent was not given, he is not legally empowered to file a voluntary dismissal motion. (Id.)

The court concluded in its February 28, 2022 opinion and order (ECF No. 149) following State Farm's first motion to enforce (ECF No. 118) as follows:

> The key to resolving this matter is to keep in mind precisely what relief Plaintiff seeks; the difference appears minor, but one request would flout the plain language of the FCA, while the other would be consistent with it. Plaintiff does not request the court to order Defendant to voluntarily dismiss the Qui Tam Action against Plaintiff. As the statute makes clear, to accomplish a voluntary dismissal, the government's consent is required. Rather, Plaintiff maintains that Defendant must, pursuant to the settlement agreement, "take all steps necessary" to "secure the discontinuance of " the Qui Tam Action brought by Defendant. (ECF No. 118, PageID.6695; ECF No 118-2, PageID.6704-05.) Plaintiff contends—and the court agrees—that taking "all necessary steps," in this context, amounts to simply asking the government for consent to dismiss Plaintiff

from the Qui Tam Action. (ECF No. 118, PageID.6695-96; ECF No. 130, PageID.7334.)

(ECF No. 149, PageID.8077-78.) Under the circumstances at the time, the court did not contemplate a method so formal as a voluntary dismissal motion to solicit the government's consent. Rather, it envisioned the parties informally working together to resolve the consent question, just as they had the underlying RICO action. Angelo, unilaterally it seems, chose to fulfill his obligations under the court's February 28, 2022 and May 2, 2022 orders by telephonically conferring with AUSA Postulka and submitting declarations authored by his counsel attesting as to substance of the discussions had. (ECF Nos. 162, 171.)

However, as the court already indicated, Mr. Akeel's first declaration is facially deficient because it does not reflect an unequivocal refusal by the government at Angelo's behest to permit State Farm's dismissal from the *qui tam* action. (*See* ECF No. 162, PageID.8328.) Rather, the declaration indicates that "[t]he government responded by saying that Angelo has no authority to dismiss the government claims against State Farm"—an unsurprising point that the parties and the court already acknowledged (ECF No. 149; ECF No. 174, PageID.8685-86)—"and maintains the same position in allowing for prosecution of the Qui tam claims against State Farm." (ECF No. 162, PageID.8327-28.) This cannot legitimately be viewed as a plain refusal to permit State Farm's dismissal. Yet, at first blush, Mr. Akeel's second declaration appears to cure the fault with his first. Specifically, Mr. Akeel indicates:

> 20. On March 13, 2023, the undersigned contacted the assigned AUSA to the State Farm qui tam action to inform him of the upcoming hearing. In this conversation, the AUSA reaffirmed that the Government does not approve the request for a dismissal—through Mr. Angelo—as is being sought and requested by State Farm. Further, the Government pointed out that there is also another, independent co-relator—MSP WB—who has not sought dismissal, and that the Government again maintains its position to allow the Qui Tam matter to proceed against State Farm in the normal fashion before Judge Hood. This conversation was memorialized in another email, to which the AUSA responded confirming its accuracy. See Exhibit A—March 13, 2023 Email Conversation.

(ECF No. 171, PageID.8607.) Further review of the referenced email conversation between Mr. Akeel and AUSA Postulka reflects that AUSA Postulka confirmed the same. (ECF No. 171-1, PageID.8608.) Thus, facially, Angelo's obligations under the court's May 2, 2022 order may appear satisfied.

Nonetheless, in light of arguments raised in State Farm's motion to supplement (ECF No. 172) and expounded upon at the motion hearing (ECF No. 174, PageID.8673-81), the court permitted State Farm the opportunity to more formally present challenges to the authenticity of the representations in Mr. Akeel's second

declaration. State Farm has since done so by filing a supplement to its motion to enforce that materially restates its oral argument. (ECF No. 175.) The briefing chiefly contends that Mr. Akeel's second declaration is insufficient to discharge Angelo's obligations under the court's May 2, 2022 order because AUSA Postulka did not have all the relevant information presented to him with respect to the independence of Angelo's co-relator, MSP WB, LLC ("MSP"). (ECF No. 175, PageID.8728-35.) State Farm asserts that AUSA Postulka would not oppose its dismissal if MSP gave its consent. (Id. at PageID.8729.) It further contends that Angelo misrepresented the state of MSP's alleged independence as a co-relator in its March 13, 2023 email correspondence with AUSA Postulka (ECF No. 171-1, PageID.8608). (ECF No. 175, PageID.8729.) Rather, State Farm maintains that MSP is acting on Angelo's behalf in the *qui tam* action as his assignee—a fact unknown to AUSA Postulka. (Id.)

In support of that contention, State Farm points to: (1) MSP's representation in the *qui tam* action that is the assignee of Angelo (ECF No. 175-3, PageID.8755); (2) the fact that MSP's ability to pursue the *qui tam* action and participate as a co-relator derives from Angelo's amendment to his initial complaint in the *qui tam* action[5], as any attempt to file a separate *qui tam* suit would have been barred under the "first-to-file" rule, 31 U.S.C. § 3730(e)(4); (3) the fact that Angelo's counsel in the instant case also represent MSP in the *qui tam* action with

5. This amendment occurred after entry of the parties' settlement agreement in this case.

one of those attorneys, John Ruiz, having an ownership and managerial interest in MSP; (4) Angelo's continued involvement in the *qui tam* suit, as evinced by the fact the MSP's proposed second amended complaint in the *qui tam* suit includes Angelo as a relator in the case caption, defines Angelo as a co-relator, and is signed by "Attorneys for Relators MSP WB, LLC and Michael Angelo" (ECF No. 175-3); and (5) the fact that Mr. Akeel's second declaration was filed in the *qui tam* action as a supplemental authority to support allowing MSP to file its second amended complaint. ECF No. 175, PageID.8728-35.)

At the motion hearing, Angelo maintained that MSP is an independent co-relator intent on prosecuting State Farm in the *qui tam* action. He repeatedly indicated that MSP is not his assignee except as it relates to a co-relator fee agreement (ECF No. 174, PageID.8693, 8695-97), despite being confronted with the information that MSP has formally identified itself as an assignee of Angelo in the *qui tam* action (ECF No. 175-3, PageID.8755.). Angelo further argued that the question of MSP's independence as a co-relator was already answered when the Honorable Stephen J. Murphy III determined that MSP had standing to bring suit in a separate *qui tam* action involving Allstate despite being added as a co-relator by amendment to the complaint.[6] (ECF No. 174, PageID.8696, 8721.) Angelo also denied any continued involvement in the *qui tam* suit since May of 2022. (Id. at PageID.8701-02.)

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6. *United States ex rel. Angelo v. Allstate Ins. Co.*, No. 2:19-cv-11615, 2022 U.S. Dist. LEXIS 140919, 2022 WL 3213529, at *4-5 (E.D. Mich. Aug. 9, 2022).

Having reviewed the supplement and the motion hearing transcript, the court finds that State Farm has sufficiently challenged the authenticity of Mr. Akeel's second declaration to warrant further action from Angelo under the court's February 28, 2022 and May 2, 2022 orders. (ECF Nos. 149, 157.) At this juncture, particularly in light of the apparent discrepancies surrounding Mr. Akeel's first declaration (*see* ECF No. 174, PageID.8685-87), the court harbors a concern that Angelo mischaracterized the "independent" nature of MSP in his conversations with AUSA Postulka. Such behavior is not consistent with the court's order that Angelo proceed in good faith. The court is reminded indeed of Angelo's failure to represent to AUSA Postulka that *he*, specifically, was seeking the government's consent for dismissal. (ECF No. 162, PageID.8327; ECF No.171, PageID.8607.) Rather, he misleadingly indicated that *State Farm* sought the dismissal, all contrary to the court's orders.

The court further finds that the mechanism used thus far to solicit the government's consent—namely separate telephonic conversations between the parties' attorneys and AUSA Postulka—has led to inconsistent results and confusion. Moreover, while the circumstances at the time of the court's orders appeared to reflect an ability between the parties to informally solicit the government's consent, time has proven that false. Practically, the court views any further attempts to attain consent informally to be futile. While Sixth Circuit precedent may not allow the filing of a formal motion for voluntary dismissal until a *qui tam* relator has obtained consent from the government, it

does not specify that this precondition must be satisfied informally.[7] As such, the court grants State Farm's motion to enforce to the extent that Angelo will be required to formally file a request for consent to voluntary dismissal consistent with that proposed by State Farm in ECF No. 175-1.

III. CONCLUSION

For the reasons explained above, State Farm's "Motion to Enforce May 2, 2022 Order (ECF No. 157)" (ECF No. 163.) is granted to the extent that Angelo will be required to file the proposed "Form of Dismissal Filing" presented by State Farm in the *qui tam* action, 19-cv-12165, within seven days. (ECF No. 175-1.) The form dismissal shall use the language of "Request for Consent to Dismiss State Farm Mutual Automobile Insurance Company and Affiliate Defendants Only." Once the request is filed and addressed to completion by Judge Hood, the court will deem Angelo's obligations under its February 28, 2022 and May 2, 2022 orders fulfilled. (ECF Nos. 149, 157.) Accordingly,

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7. To the extent that the parties dispute whether a motion under Federal Rule of Civil Procedure 41 or instead Rule 21 (misjoinder) is more appropriate to achieve the specific dismissal of State Farm, (ECF No. 166, PageID.8481; ECF No. 174, PageID.8710), the court has little interest in such a discussion. The court views the dismissal of a party in a multi-defendant *qui tam* action to require government approval where the government has declined to intervene. Thus, consent must be sought.

Appendix D

IT IS ORDERED that Plaintiff State Farm's "Motion to Enforce May 2, 2022 Order (ECF No. 157)" (ECF No. 163) is GRANTED.

IT IS FURTHER ORDERED that, within seven days of this order, Defendant Angelo shall file the request for consent to dismiss, as it appears in ECF No. 175-1 with the court's aforementioned caveats, in Case Number 19-cv-12165.

/s/ Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: March 30, 2023

APPENDIX E — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED APRIL 14, 2023

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

Case No. 19-cv-10669

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

v.

MICHAEL ANGELO, *et al.*,

Defendants.

OPINION AND ORDER DENYING DEFENDANT MICHAEL ANGELO'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE MOTION TO AMEND THE ORDER AND LIFTING STAY OF ECF NO. 176

At this juncture, Defendant Michael Angelo ("Angelo") has thrice been ordered to solicit the government's consent to dismiss Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") and its affiliates from *Angelo et al. v. State Farm Mutual Automobile Insurance*

Company et al., Case No. 19-cv-12165[1]. (ECF Nos. 149, 157, 176.) The court's most recent order, issued March 30, 2023, specifically directed Angelo to formally file a request for consent to dismiss in the *qui tam* action by April 7, 2023. (ECF No. 176, PageID.8861-62.) The court deemed this action warranted because the informal mechanism used by Angelo thus far to ask for the government's consent led to inconsistent results and confusion. (Id. at PageID.8860.) Specifically, the court has been supplied with dueling declarations (ECF Nos. 162, 166-2, 171, 175-2), wherein the parties gave conflicting reports on their conversations with the government that left the court with concerns that Angelo was not proceeding in good faith as required. (Id.)

In response, on April 3, 2023, Angelo filed two motions: (1) "Defendant's Emergency Motion to Stay Injunction Pending Appeal and/or Reconsideration of This Court's February 28, 2022, May 2, 2022, and March 30, 2023 Opinions and Orders" (ECF No. 177) and (2) "Defendant's Motion for Reconsideration, or in the Alternative, Motion to Amend the Order" (ECF No. 178). On April 4, 2023, the court issued a temporary stay of its March 30th order and requested responsive briefing from State Farm as to Angelo's reconsideration motion, which asks the court to reconsider its March 30, 2023 opinion and order or,

1. That lawsuit is a *qui tam* action pending before the Honorable Denise Page Hood, in which Angelo is currently a co-relator and State Farm is one of many defendants. Whether and to what extent the parties' settlement agreement requires Angelo to discontinue that litigation against State Farm has been the primary subject of the court's post-settlement orders in the suit at bar. (*See* ECF Nos. 149, 157, 176.)

in the alternative, to amend that opinion under Rule 59(e) and under Rule 60(b)(1), (5) and (6) (ECF No. 178, PageID.8897-98). (ECF No. 179.) On April 10, 2023, State Farm complied. (ECF No. 180.) The court finds further briefing and a hearing unnecessary. *See* E.D. Mich. LRs 7.1(f)(1)-(2), (h)(3), 59.1. For the reasons stated below, the court will deny Angelo's pending motion, lift the stay of its March 30th opinion, and order Angelo to file a request for consent to dismiss State Farm and its affiliates in Case Number 19-cv-12165 by April 15, 2023 at 5:00 p.m.

I. STANDARD

Under Eastern District of Michigan Local Rule 7.1(h)(1), reconsideration of a final order is not permitted. Rather, "[p]arties seeking reconsideration of final orders or judgments must file a motion under Federal Rule of Civil Procedure 59(e) or 60(b)." E.D. Mich. LR 7.1(h)(1). As a decision on the merits, the court's March 30, 2023 opinion was a final order for purposes of Local Rule 7.1(h)(1). *See Slep-Tone Ent. Corp. v. Karaoke Kandy Store, Inc.*, 782 F.3d 712, 715 (6th Cir. 2015). Thus, reconsideration is not an available avenue of relief for Angelo, and the court will only consider Angelo's request for relief under Rule 59(e) and/or 60(b).

Federal Rule of Civil Procedure 59(e) permits the filing of "[a] motion to alter or amend a judgment." Fed. R. Civ. P. 59(e). To prevail under Rule 59(e), the moving party must demonstrate: "'(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest

injustice.'" *Betts v. Costco Wholesale Corp.*, 558 F.3d 461, 474 (6th Cir. 2009) (quoting *Henderson v. Walled Lake Consol. Sch.*, 469 F.3d 479, 496 (6th Cir. 2006)). Critically, "'[a] motion under Rule 59(e) is not an opportunity to re-argue a case.'" *Mich. Flyer LLC v. Wayne Cnty. Airport Auth.*, 860 F.3d 425, 431 (6th Cir. 2017) (quoting *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998)).

Likewise, "'[r]elief under Rule 60(b) is circumscribed by public policy favoring finality of judgments and termination of litigation.'" *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir. 2008) (quoting *Blue Diamond Coal Co. v. Trs. of UMWA Combined Benefit Fund*, 249 F.3d 519, 524 (6th Cir. 2001)). "Accordingly, the party seeking relief under Rule 60(b) bears the burden of establishing the grounds for such relief by clear and convincing evidence." *Id.* The rule itself specifically provides:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> > (1) mistake, inadvertence, surprise, or excusable neglect;
> >
> > (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b).

II. DISCUSSION

Angelo's motion makes no clear attempt to show that the standards of Rule 59(e) and/or Rule 60(b) are met. Instead, Angelo offers the court the same overarching position: his obligations under the court's February 28, 2022 and May 2, 2022 orders (ECF Nos. 149, 157) have been satisfied. Angelo claims that, as reflected in his attorney's declarations (ECF Nos. 162, 171), the government, through United States Attorney ("AUSA"), John Postulka, did not give its consent to dismiss State Farm from the *qui tam* action when asked by Angelo. (ECF No. 178, PageID.8892.) Thus, he should not now be made to file a request for consent in the *qui tam* action.

Appendix E

In challenging the court's March 30th opinion that found otherwise, Angelo makes three arguments. (Id. at PageID.8898-8911.) First, Angelo challenges the court's consideration of his co-relator's, MSP WB, LLC's ("MSP"), independence. (ECF No. 178, PageID.8890-91, 8898-8904.) Second, Angelo contends that the court's opinion offends Sixth Circuit authorities by requiring him to file a request for consent that is ineffectual and procedurally improper. (ECF No. 178, PageID.8904-06.) Finally, Angelo claims that the court's opinion implicates the First Amendment's protection against compelled speech. (ECF No. 178, PageID.8906-11.) The court will evaluate each argument in turn.

A. MSP's Independence

Angelo first attempts to relitigate the issue of his co-relator MSP's independence, arguing that MSP's independence is neither relevant nor reasonably disputable. (ECF No. 178, PageID.8890-91, 8898-8904.) He contends that "the only reason the focus has now turned to MSP WB's 'independence' is because State Farm and Douglas Baruch have blatantly misrepresented the facts to this Court." (Id. at PageID.8899.) In so arguing, Angelo attempts to distinguish MSP's "independence" from its "validity" as a co-relator. He then asserts that AUSA Postulka is only concerned with the latter and that MSP's relator status is presumptively valid until proven otherwise. (Id. at PageID.8899-8901.) He further claims that:

> It is wholly irrelevant whether (1) MSP WB described itself as Angelo's assignee in a Proposed Second Amended Complaint, (2) MSP WB was brought into the qui tam action through Angelo's amendment of the qui tam Complaint, (3) MSP WB and Angelo are represented by the same counsel and the ownership and managerial interest structure of MSP WB, (4) MSP WB's filings in the qui tam action maintains the status quo with regard to Angelo's status as a relator, and (5) MSP WB complied with Judge Hood's explicit instruction to file with that court any updates or developments from this action by filing Mr. Akeel's Second Declaration. None of those, even if true, implicates MSP WB's status as a valid relator. Further, AUSA Postulka and the DOJ were made fully aware of the facts surrounding each of these points.

(Id. at PageID.8901-02.)

Angelo alternatively contends that, even if the court were persuaded that MSP's independence is necessary, MSP is independent. (ECF No. 178, PageID.8901-02.) He claims that the only "assignment" between Angelo and MSP is a co-relator fee agreement executed before the parties entered into the settlement agreement in this case. (Id.) And that co-relator fee agreement reflects that MSP had its own claims separate from Angelo's. (Id. at PageID.8902-03.) Further, per Angelo, the government specifically allowed him and MSP to work together in the *qui tam* action while it was under seal. (Id.) Angelo also

insinuates that the government agrees with his position as it refused to issue a written statement to this court at State Farm's request following the March 21, 2023 hearing. (Id. at PageID.8904.) Angelo characterizes this as additional evidence that the government does not consent to State Farm's dismissal. (Id.)

Though seemingly attempting to provide clarity, Angelo has only further muddied the waters regarding whether or not he has received AUSA Postulka's consent to dismiss State Farm from the *qui tam* action. Indeed, the court is astonished that Angelo would now call the subject of MSP's independence "irrelevant" when his own attorney used the word "independent" to describe MSP in his correspondence with the government and in his declaration to the court. (ECF No. 171-1, PageID.8608; ECF No. 171, PageID.8607.) Moreover, contrary to Angelo's assertion, MSP's independence matters. The correspondence between Angelo's attorney and the government indicates that MSP's objection to State Farm's dismissal from the *qui tam* suit is a barrier to the government providing its consent. And if MSP is in some form or another an assignee of Angelo or so intertwined that one essentially controls the other, as State Farm strongly suggests, then the terms of the parties' settlement agreement may very well require MSP to relinquish its objection.

To be clear, the court has made no specific finding as to MSP's independence.[2] Rather, the court has only

2. Nor, frankly, has any court. Though Plaintiff argues that the Honorable Stephen J. Murphy III answered this question

found that State Farm has sufficiently challenged the authenticity of Angelo's attorney's second declaration (ECF No. 171), warranting the formalization of the parties' positions with respect to State Farm's dismissal on the record in the *qui tam* suit. (ECF No. 176, PageID.8860.) In any event, Angelo has certainly failed to show by clear and convincing evidence that the court was mistaken about whether or not he—in good faith[3]—asked for and received AUSA Postulka's consent to dismiss State Farm from the *qui tam* action. *Info-Hold, Inc.*, 538 F.3d at 454. Thus, denial of his motion on this ground is warranted.

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definitively in *United States ex rel. Angelo v. Allstate Ins. Co.*, No. 2:19-cv-11615, 2022 U.S. Dist. LEXIS 140919, 2022 WL 3213529, at *4-5 (E.D. Mich. Aug. 9, 2022), Judge Murphy did not evaluate the relationship between Angelo and MSP, presumably because Angelo does not have a settlement agreement with Allstate like he does with State Farm. The court is not readily convinced that there is a real distinction between the terms "independent" and "valid" as being used by Angelo here. However, to the extent that there is a difference, the parties' settlement agreement may complicate the landscape for MSP's litigation against State Farm and its affiliates.

3. Indeed, the court has greater reservations now. While Angelo attempts to use additional correspondence between his attorneys and AUSA Postulka as evidence that MSP's independence is irrelevant, it reveals quite clearly to the court how Angelo has not pursued the government's consent in good faith. (ECF No. 178-2, PageID.8916-18.) By indicating to AUSA Postulka that "Angelo is being forced by State Farm" to seek dismissal "because they are claiming the government claims were part of his private settlement agreement" and that there could not be "any such authority, and this is simply against sixth circuit [sic] law," Angelo runs blatantly afoul of the court's prior orders to proceed in good faith (ECF Nos. 149, 157). (Id.)

Appendix E

B. Procedural Basis

Next, Angelo contends that the court's "novel" order runs contrary to Sixth Circuit binding precedent. (ECF No. 178, PageID.8904-06.) He claims that the court's order will force him to improperly treat Judge Hood's docket "like a clearinghouse to communicate with the Department of Justice." (Id. at PageID.8905.) In essence, Angelo posits that the notice required to be filed by the court's March 30th opinion would serve no objective on Judge Hood's docket and would be without any procedural basis. (Id.)

In so arguing, Angelo ignores the plain language of the request he has been ordered to file. (ECF No. 175-1; ECF No. 180-1, PageID.8964-67.) The procedural bases for this request are clear: (1) Section 3730(b)(1) of the False Claims Act, 31 U.S.C. § 3730(b)(1); (2) the government's "Notice of Election to Decline Intervention," filed in the *qui tam* action (19-cv-12165, ECF No. 17); and (3) the *qui tam* court's related order (19-cv-12165, ECF No.18, PageID.329-30) requiring *the court* to solicit written consent of the government "should the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued." Thus, the request does serve a legitimate objective—notifying Judge Hood of Angelo's wish to dismiss State Farm from the lawsuit and seek the government's consent. As this court previously indicated, the dismissal of a party in a multi-defendant *qui tam* action requires government approval where the government has declined to intervene as part of the "otherwise discontinued" caveat. Thus, Angelo's argument has no merit.

Appendix E

C. Compelled Speech Doctrine

Finally, Angelo recycles his constitutional challenge under the compelled speech doctrine, arguing that the court's order requiring him to solicit the government's consent to dismiss is unconstitutional because it demands that Angelo speak in a way that he disapproves. (ECF No. 178, PageID.8906-11.) The court previously considered and rejected this exact argument. (ECF No. 157, PageID.8297-99.) As such, no extended discussion is required to reject it again. *Mich. Flyer LLC v. Wayne Cnty. Airport Auth.*, 860 F.3d 425, 431 (6th Cir. 2017); *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998).

III. CONCLUSION

Collectively, Angelo's arguments again miss the mark. In granting State Farm's most recent enforcement motion, the court was foremost concerned that Angelo had still failed to solicit the government's consent for State Farm's dismissal in good faith. That concern decidedly remains. As such, his Motion for Reconsideration, or in the Alternative, Motion to Amend the Order (ECF No. 178) must be denied. The court will further deny Angelo's request that the court stay entry of its March 30, 2023 order pending resolution of his current appeal (ECF No. 177), as it is effectively itself a ploy for reconsideration of the court's decision denying Angelo's initial request for a stay pending appeal (ECF No. 161). The court already provided ample reasoning under Federal Rule of Civil Procedure 62(d) for denying a stay in its prior order. (ECF

No. 161.) It will not do so again. Moreover, there is no legitimate basis to continue the stay. As such, the court's temporary stay of its March 30th order will be lifted, and Angelo will be ordered to file the request for consent to dismiss, in the form provided in ECF No. 180-1[4], no later than 5:00 p.m. on April 15, 2023. Accordingly,

IT IS ORDERED that Defendant Angelo's "Motion for Reconsideration, or in the Alternative, Motion to Amend the Order" (ECF No. 178) is DENIED.

IT IS FURTHER ORDERED that the stay of the court's March 30, 2023 opinion and order (ECF No. 176) is hereby LIFTED.

IT IS FURTHER ORDERED that, ***no later than 5:00 p.m. on April 15, 2023***, Angelo shall file the request for consent to dismiss, as it appears in ECF No. 180-1, in Case Number 19-cv-12165.

/s/ Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 14, 2023

4. The court previously ordered Angelo to file the request for consent to dismiss as it appears in ECF No. 175-1 with certain language changes. State Farm revised the request so that it now reflects the court's revisions. (*See* ECF No. 180-1.)

APPENDIX F — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED APRIL 5, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 22-1409/23-1340

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellee,

v.

MICHAEL ANGELO,

Defendant-Appellant,

ORTHOPEDIC, P.C., *et al.*,

Defendants.

ORDER

BEFORE: SUTTON, Chief Judge; CLAY and BLOOMEKATZ, 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 cases. 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

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

*. Judge Davis recused herself from participation in this ruling.

APPENDIX G — RELEVANT STATUTORY PROVISIONS

31 U.S.C.A. § 3730

§ 3730. Civil actions for false claims

Effective: December 27, 2022

(a) Responsibilities of the Attorney General.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by private persons.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure.[1] The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene

1. See, now, Rule 4(i) of the Federal Rules of Civil Procedure.

and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to qui tam actions.—(1) If the Government proceeds with the action, it shall have

the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's

investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to qui tam plaintiff.—(1) If the Government proceeds with an action brought by a person under

subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting[2] Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid

2. So in original. Probably should be "Accountability".

out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain Actions Barred.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 13103(f) of title 5.

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2)[3] who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

(f) Government not liable for certain expenses.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and expenses to prevailing defendant.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

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3. So in original. Probably should be "or (ii) has".

(h) Relief from retaliatory actions.—

(1) In general.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

(2) Relief.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

(3) Limitation on bringing civil action.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.