

Appendix 1

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Appendix 2

**APPENDIX A - DENY the petition for rehearing
(SIXTH CIRCUIT 06/27/2025.)**

**No. 24-1249 UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT LESLY
POMPY, President, Interventional Pain**

Management Associates, P.C., Petitioner-Appellant,

**v. ORDER FIRST MERCHANTS BANK, fka
Monroe Bank & Trust, Defendant, and MARC
SHIELD OF MICHIGAN, Defendants-Appellees.**

**MOORE, Lt., MANTIS; BRIAN BISHOP, Agent,
Diversion Investigator, DEA; BLUE CROSS BLUE
SHIELD OF MICHIGAN, Defendants-Appellees.)**

Before: SUHRHEINRICH, BATCHELDER, and

LARSEN, Circuit Judges. Dr. Lesly Pompy,

**pro se, has filed a petition for rehearing of
this court's order of May 23, 2025, affirming the**

**MOORE, Lt., MANTIS; BRIAN BISHOP, Agent,
Diversion Investigator, DEA; BLUE CROSS BLUE
SHIELD OF MICHIGAN, Defendants-Appellees.)**

Before: SUHRHEINRICH, BATCHELDER, and

Appendix 3

district court's order dismissing his action filed under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968; Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); 42 U.S.C. § 1983; other federal

statutes; and state law. Upon consideration, this

Appendix 3

panel concludes that it did not misapprehend or

overlook any point of law or fact when it issued its

order. See Fed. R. App. P. 40(b)(1)(A). Case: 24-1249

Act, 18 U.S.C. § 1983; other federal; and state law. Document: 26-1 Filed: 06/27/2025 Page: 2 (2 of 3) No.

United States Court of Appeals for the Sixth Circuit
24-1249 - 2 - We therefore DENY the petition for

rehearing. ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk Powered by TCPDF

panel concludes that it did not misapprehend or
(www.tcpdf.org) Case: 24-1249 Document: 26-2 Filed:

06/27/2025 Page: 1 (3 of 3) United States Court of

Appeals for the Sixth Circuit U.S. Mail Notice of

Docket Activity The following transaction was filed

on 06/27/2025. Case Name: Lesly Pompy v. First

United States Court of Appeals for the Sixth Circuit

Kelly L. Stephens, Clerk Powered by TCPDF

Case: 24-1249 Document: 26-2 Filed:

06/27/2025 Page: 1 (3 of 3) United States Court of

Appendix 4

Merchants Bank, et al Case Number: 24-1249 Docket

Text: ORDER filed: We DENY the petition for panel

rehearing [7363277-2]. Richard F. Suhrheinrich,

Circuit Judge; Alice M. Batchelder, Circuit Judge

and Joan L. Larsen, Circuit Judge. The following

documents(s) are associated with this transaction:

Appendix 4

Document Description: Order Notice will be sent to:

Mr. Lesly Pompy 533 N. Monroe Street Monroe, MI

48162 A copy of this notice will be issued to: Ms.

Kyla L Barranco Mr. Bradley H. Darling Mr. Phillip

J. DeRosier Ms. Kinikia D. Essix Mr. Scott R. Knapp

and Joan L. Larsen, Circuit Judge. The following

documents(s) are associated with this transaction:

Document Description: Order Notice will be sent to:

Mr. Lesly Pompy 533 N. Monroe Street Monroe, MI

48162 A copy of this notice will be issued to: Ms.

Kyla L Barranco Mr. Bradley H. Darling Mr. Phillip

J. DeRosier Ms. Kinikia D. Essix Mr. Scott R. Knapp

Appendix 5

APPENDIX B - Eastern District of Michigan
affirmed by SIXTH CIRCUIT 06/27/2025
Case: 24-1249 Document: 23-1 Filed: 05/23/2025
Page: 1 (1 of 19) NOT RECOMMENDED FOR
PUBLICATION No. 24-1249 UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT
LESLY POMPY, President, Interventional Pain
Management Associates, P.C., Plaintiff-Appellant, v.
FIRST MERCHANTS BANK, fka Monroe Bank &
Trust, Defendant, ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN and MARC
MOORE, Lt., MANTIS; BRIAN BISHOP, Agent,
Diversion Investigator, DEA; BLUE CROSS BLUE
Mercantile Association, LLC, Plaintiff-Appellant, v.
First Merchants Bank, fka Monroe Bank & Trust, Defendant, ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE

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SHIELD OF MICHIGAN, Defendants-Appellees. O

R D E R Before: SUHRHEINRICH, BATCHELDER,

and LARSEN, Circuit Judges. Dr. Lesly Pompy,

proceeding pro se, appeals the district court's

judgment dismissing his action filed under the

Racketeer Influenced and Corrupt Organizations Act

~~§ 1961 et seq.~~

(RICO), 18 U.S.C. §§ 1961-1968; Bivens v. Six

~~United States Attorneys, et al.~~ Unknown Named Agents of Federal Bureau of

~~the Federal Bureau of Narcotics and Dangerous Drugs, et al.~~ Narcotics, 403 U.S. 388 (1971); 42 U.S.C. § 1983;

~~and all other civil, criminal, and administrative~~ other federal statutes; and state law. This case has

~~been referred to a panel of the court that, upon~~

~~consideration of the record and after oral argument, unanimously agrees that oral~~

~~argument is not needed. See Fed. R. App. P. 34(a). As~~

~~discussed below, we affirm. Case: 24-1249 Document:~~

~~23-1 Filed: 05/23/2025 Page: 2 (2 of 19) No. 24-1249 -~~

~~2 - Pompy's Allegations Pompy, a physician board-~~

~~certified in pain management, anesthesia, and~~

~~addiction management, established and operated~~

~~an organization, which mainly treats pain and~~

~~addiction, and named Dr. Lesly Pompy, D.O., as its~~

~~treasurer and treasurer, was filed in Case: 24-1249 Document:~~

~~23-1 Filed: 05/23/2025 Page: 2 (2 of 19) No. 24-1249 -~~

Appendix 7

Interventional Pain Management Associates, P.C. (IPMA) in Monroe, Michigan. In November 2015, Blue Cross Blue Shield of Michigan (BCBSM) allegedly began conspiring with Michigan State Police Detective Lieutenant Marc Moore, the officer in charge of the Monroe Area Narcotics Team Investigative Services (MANTIS), a multi-jurisdictional drug task force team, to obtain the assets of Pompy and IPMA "under the guise of 'restitution' to BCBSM and 'asset forfeiture' that Moore could tout for career advancement." According

to Pompy, BCBSM sought "to (a) unlawfully recover medical expenses rightly paid to doctors for services rendered; and (b) wrongfully deter other doctors from serving patients or prescribing medications that are

too expensive." For these purposes, "BCBSM and Moore began a joint 'investigation' into Dr. Pompy's

prescription of controlled substances, treatment and to Pompy, BCBSM sought "to (a) unlawfully recover medical expenses rightly paid to doctors for services rendered; and (b) wrongfully deter other doctors from serving patients or prescribe medications that are

Appendix 8

testing methods, and billing practices.” In January

2016, BCBSM sent employee James Howell to IPMA

to pose as a patient named “James Stewart” to

investigate Pompy’s prescription and billing

practices. BCBSM provided Howell with a fake

Michigan driver’s license, a fake BCBSM insurance

card, and a fabricated referral from Dr. J. Alan

Robertson, a BCBSM physician. After a few

appointments, Pompy began prescribing controlled

substances for Howell. Howell in turn gave the pain

medication to Lieutenant Moore. With Moore’s

knowledge, BCBSM allegedly “provided materially

false, misleading, and/or incomplete information” to

Monroe County Sheriff’s Office Detective Robert

Blair, also assigned to MANTIS, to prepare affidavits

for search warrant applications. On September 21,

Monroe County Magistrate Tina Todd issued a

warrant for the search and seizure of Pompy’s and

“false, misleading, and/or incomplete information” to

Monroe County Sheriff’s Office Detective Robert

Blair, also assigned to MANTIS, to prepare affidavits

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IPMA's financial information at MBT Financial Corp., doing business as Monroe Bank and Trust (MBT). On September 23, Magistrate Jessica Chaffin issued a warrant for the search and seizure of Pompy's and IPMA's business records and Pompy's home and place of business. These warrants were executed on September 26 by MANTIS members that included Case: 24-1249 Document: 23-1 Filed:

05/23/2025 Page: 3 (3 of 19) No. 24-1249 - 3 -
Lieutenant Moore, Detective Blair, and DEA Task

Force Officer Shawn Kotsch. Pompy was not permitted to leave or call his attorney during the search of his office. DEA Diversion Investigator

Brian Bishop did not participate in MANTIS's search of Pompy's home that morning. He instead entered the home later that day "without an additional

search warrant," searched Pompy's belongings without his consent, and seized "property." Pompy

was not permitted to leave or call his attorney during the search of his office. The seized amount was \$10,000.

Brian Bishop did not participate in MANTIS's search of Pompy's home that morning. He instead seized

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was not home at the time. On September 27, Magistrate Chaffin issued a new warrant, based on Detective Blair's affidavit, for the search and seizure of financial accounts at MBT. On September 28, Judge Jack Vitale issued warrants for the search and seizure of accounts at M3CU, E*Trade, and Merrill Lynch in Michigan, New Jersey, and Florida. And on

August 15, 2017, Blair faxed to IPatientCare a

search warrant for medical records for Pompy's

patients; Blair allegedly later admitted that the

warrant was fake. News reporter Ray Kisonas

subsequently published articles that allegedly

contained false information regarding Pompy and his

Lynch in Michigan, New Jersey, and Florida. And on

Michigan Bureau of Professional Licensing (BPL)

issued a summary suspension of Pompy's medical

license, and a federal grand jury indicted Pompy on

charges related to distribution of controlled

subsequently published articles that allegedly

contained false information regarding Pompy and his

medical practice. As a result of the investigation, the

Michigan Bureau of Professional Licensing (BPL)

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substances and health care fraud. Original Complaint In 2019, before Pompy's criminal trial occurred, he and IPMA filed a lengthy pro se complaint against MBT, its employees, and numerous others connected to the criminal investigation. The district court dismissed IPMA Appendix 11 because a corporate entity may not proceed pro se. In 2020, a magistrate judge recommended dismissing Michigan Compiled Laws § 487.691 against the MBT defendants, dismissing without prejudice the remainder of the claims for failure to comply with Federal Rule of Civil Procedure 8, and granting Pompy leave to file an amended complaint. No one objected, and the district court adopted the magistrate judge's report and recommendation. Case: 24-1249 Document: 23-1 Filed: 05/23/2025 Page: 4 (4 of 19) No. 24-1249 - 4 - First Amended Complaint In pursuant to the claims for which he originally filed. Federal Rule of Civil Procedure 8, and granting Pompy leave to file an amended complaint. The court dismissed the claims for which he originally filed.

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his pro se amended complaint, Pompy sued MBT and

MBT employees Susan Mehregan and Thomas Scott;

Monroe County officials—Magistrate Todd,

Magistrate Chaffin, Judge Vitale, Officer Jon

LaSotta, and Detective Blair; state officials—

Lieutenant Moore and several BPL officials; federal

officials—Investigator Bishop and Officer Kotsch;

Blue Cross entities and employees—BCBSM, Blue

Blue Cross Blue Shield of Michigan Mutual Insurance Co.

(BCBSMMIC), Blue Cross Complete of Michigan,

Blue Cross Complete of Michigan LLC, Howell, Dr.

Robertson, Dr. Carl Christensen, and other

individuals; and reporter Kisonas. Pompy raised a

litany of claims, asserting, among other things, civil

rights violations, negligence, defamation, false claim,

breach of contract, false arrest, false imprisonment,

and violations of RICO and other federal acts. The

Blue Cross Complete of Michigan LLC, Howell, Dr.

Robertson, Dr. Carl Christensen, and other

individuals; and reporter Kisonas. Pompy raised a

litany of claims, asserting, among other things, civil

rights violations, negligence, defamation, false claim,

Appendix 13

Kisonas, and the Monroe County defendants moved to dismiss the complaint for failure to state a claim.

See Fed. R. Civ. P. 12(b)(6). The state and federal

defendants filed answers. Rulings on Motions by

Blue Cross Defendants, MBT Defendants, and

Kisonas MBT Defendants The magistrate judge

recommended dismissing all claims against the MBT

defendants with prejudice. The Gramm-Leach-Bliley

Act, 15 U.S.C. § 6801, et seq., does not permit a

private cause of action, and Pompy failed to state a

claim under the Right to Financial Privacy Act, 12

U.S.C. § 3401, et seq., because he did not allege that

Detective Blair was acting on the behalf of a federal

agency when obtaining and executing the search

warrants for MBT records. Lastly, Pompy did not

sufficiently plead claims against Mehregan and Scott

for gross negligence and breach of fiduciary duty and

a claim against MBT for a violation of the Michigan

Right to Privacy, where he argued that Pompy did not

Detective Blair was acting on the behalf of a federal

agency when obtaining and executing the search

warrants for MBT records. Lastly, Pompy did not

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Consumer Protection Act, Michigan Compiled Laws §

445.903. Blue Cross Defendants and Kisonas As to

the Blue Cross defendants, the magistrate judge

found it “hard to dissent” from their argument that

the amended complaint, like the original one, failed

to comply with Rule 8. Case: 24-1249 Document: 23-1

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Nonetheless, the magistrate judge provided the

following analysis of Pompy’s claims. Under state

law, the defendants had statutory immunity from

suing it “hard to dissent” from their argument that

enforcement in the investigation because Pompy did

not sufficiently allege that the defendants provided

information that was knowingly false or with

reckless disregard as to its truth. See Mich. Comp.

Laws § 500.4509(3). Although the defendants were

not entitled to immunity for alleged actions taken

during their own investigation—using false

information in the investigation, Pompy did

not sufficiently allege that the defendants provided

information that was knowingly false or with

reckless disregard as to its truth. See Mich. Comp.

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identification, failing to submit claims to a peer review process before starting an investigation into Pompy's billing, and evaluating his billing practices as an anesthesiologist instead of as a pain

management doctor—these allegations did “not

readily point to a specific cause of action.” The

magistrate judge further concluded that lack of

supplemental jurisdiction provided cause to dismiss

a claim that BCBSM breached its provider

agreement with Pompy by failing to give him notice

of amendments that would have allowed him to carry

less professional liability insurance. Pompy did not

state a viable breach-of-contract claim pertaining to

the peer group used for revenue comparison in

BCBSM's investigation because his allegations were

ambiguous. No civil rights claim was stated under §

1983 due to Pompy's failure to indicate the right

allegedly violated. According to the magistrate judge,

Pompy did not

state a viable breach-of-contract claim pertaining to

the peer group used for revenue comparison in

BCBSM's investigation because his allegations were

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a state law claim that Howell, the BCBSM employee who posed as a patient, committed abuse of process by videotaping Pompy and his office was subject to dismissal for failure to allege that Howell had availed himself of a proper legal procedure for an ulterior purpose. A claim that Howell committed ~~theft of services and property~~ was not a civil cause of action, and allegations of unauthorized videotaping did not alternatively state a claim for conversion. ~~Howell's diversion of prescription medicines to Detective Blair and claim of overbilling also were not civil causes of action. The magistrate judge concluded that Pompy's mere listing of claims of "lack of qualified immunity, gross negligence, malice, ~~conspiracy, forgery, [and] breach of contract~~" against the Blue Cross defendants was inadequate to state any plausible claim. As to a claim of civil fraud, Detective Blair and other Blue Cross defendants, Pompy did not plead facts demonstrating that the civil causes of action. The magistrate judge concluded that Pompy's mere listing of claims of "lack of qualified immunity, gross negligence, malice, ~~conspiracy, forgery, [and] breach of contract~~" against~~

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Blue Cross defendants used the identification documents Case: 24-1249 Document: 23-1 Filed: 05/23/2025 Page: 6 (6 of 19) No. 24-1249 - 6 - for "James Stewart" (Howell's undercover guise) with an intent to defraud. A claim of civil conspiracy failed for lack of an underlying tort. Vague claims that the

Blue Cross defendants violated antitrust law, engaged in unfair competition, and violated RICO did not satisfy Rule 8(a)(2)'s requirement of a short and plain statement showing entitlement to relief.

Finally, the magistrate judge recommended ~~incentive defendant. A claim of civil conspiracy failed~~ ~~dismissing the claims against reporter Kisonas for lack of an underlying tort. Vague claims that the~~ ~~without prejudice for improper service. The Blue~~ ~~Cross defendants objected to the recommendation to~~ ~~dismiss the breach-of-contract claim without~~ ~~prejudice, and Pompy filed an "answer" to the~~

~~and to file a defense. The court rejected the defense and~~ ~~overruled the objections by the Blue Cross~~ ~~defendants. The court rejected the defense and~~ ~~dismissed the breach-of-contract claim without~~ ~~prejudice for improper service. The Blue~~ ~~Cross defendants objected to the recommendation to~~ ~~dismiss the breach-of-contract claim without~~

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defendants, construed Pompy's "answer" as raising non-specific objections that did not preserve his right to challenge the magistrate judge's recommendation, and adopted the magistrate judge's report. Ruling on

Monroe County Defendants' Motion; Pompy's

Acquittal With respect to the Monroe County

~~Defendants~~

defendants, the magistrate judge recommended

~~dismissing all claims against Magistrate Todd,~~

~~Magistrate Chaffin, and Judge Vitale because they~~

~~were entitled to absolute judicial immunity;~~

~~and rejected the magistrate judge's report. Ruling on~~

~~dismissing claims against Detective Blair and Officer~~

~~LaSotta for their actions in the search and seizure of~~

~~Acquittal With respect to the Monroe County~~

~~medical records from Pompy's home and office and of~~

~~defendants, the magistrate judge recommended~~

~~his financial records because they were entitled to~~

~~qualified immunity; and staying claims against Blair~~

~~Magistrate Chaffin, and Judge Vitale because they~~

~~were entitled to absolute judicial immunity;~~

~~and rejected the magistrate judge's report. Ruling on~~

~~dismissing claims against Detective Blair and Officer~~

~~LaSotta for their conduct in the search and seizure of~~

~~medical records from Pompy's home and office and of~~

~~his financial records because they were entitled to~~

~~qualified immunity; and staying claims against Blair~~

Appendix 19

When none of the parties objected, the district court adopted the magistrate judge's report and recommendation. In 2022, the district court stayed the civil action pending the outcome of Pompy's criminal proceedings. In January 2023, Pompy was acquitted of all charges. Second Amended Complaint and Related Motions Following his acquittal, Pompy

obtained counsel and, with leave of court, filed a second amended complaint, adding IPMA back in as a plaintiff and naming BCBSM, Lieutenant Moore, and Investigator Bishop as defendants. The plaintiffs asserted that (1) BCBSM and Lieutenant 1Pompy

engaged in all that the Second Amended Complaint later stipulated to the dismissal of Detective Blair and Officer LaSotta without prejudice. Case: 24-1249

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Second Amended Complaint, adding IPMA back in as No. 24-1249 - 7 - Moore conspired to injure IPMA's

business and property, in violation of 18 U.S.C. § 1962(d); (2) BCBSM and Moore engaged in

asserted that (1) BCBSM and Lieutenant 1Pompy

have conspired to the detriment of Detective Blair

and Officer LaSotta without prejudice. Case: 24-1249

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racketeering and injured IPMA's business and property, in violation of § 1962(c); (3) Moore conspired with BCBSM to deprive the plaintiffs of their right to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment;

(4) Moore "knew of, consented to, and/or directed [Detective] Blair to prepare [search warrant]

affidavits with information Moore knew to be

materially false and/or misleading and with material

omissions" and thereby fraudulently obtained

"search warrants authorizing the seizure of

Plaintiffs' bank and securities accounts," in violation

of the Fourth Amendment; (5) BCBSM breached its

contract with Pompy, giving him the right to provide

covered services to its members, and its contract

with IPMA, giving it the right to receive payments

for services rendered by Pompy, and giving both

"plaintiffs a right to appeal adverse claim and audit

Plaintiffs' bank and securities accounts," in violation

of the Fourth Amendment; (6) BCBSM breached its

contract with Pompy, giving him the right to provide

covered services to its members, and its contract

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determinations; (6) BCBSM and Moore tortiously interfered with the plaintiffs' business relationships with other healthcare insurers; and (7) Investigator Bishop's search of Pompy's home violated his Fourth Amendment rights. BCBSM moved to strike the claims against it in the second amended complaint because the claims had been previously dismissed.

Investigator Bishop moved to dismiss the sole claim

against him for lack of subject-matter jurisdiction and failure to state a claim. See Fed. R. Civ. P.

12(b)(1), (b)(6). In his affidavit, Bishop stated that he had accompanied MANTIS team members when they returned to Pompy's home to retrieve prescription

drugs that had been left behind. Bishop denied

personally searching Pompy's home or seizing any

property. Lieutenant Moore moved to dismiss the

complaint for failure to state a claim. While the

motions to dismiss were pending, the plaintiffs

had accompanied MANTIS team members when they

returned to Pompy's home to retrieve prescription

drugs that had been left behind, seized and

destroyed prescription drugs by mixing them

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moved for relief from the district court's dismissal of Pompy's RICO claims against BCBSM and for leave to file a third amended complaint. The plaintiffs sought to have Pompy joined as a plaintiff in Counts 1 and 2 of the second amended complaint and to supplement those counts, to have BCBSM joined as a defendant in Counts 3 and 4, and to add a trespass claim against Investigator Bishop as Count 8. Case:

24-1249 Document: 23-1 Filed: 05/23/2025 Page: 8 (8

of 19) No. 24-1249 - 8 - Order Granting Motions to

Dismiss and Denying Other Motions Motions to

Dismiss and to Amend On review of the motions to

dismiss, the court concluded that Counts 1

through 4 and 6 through 8 in the second amended

complaint failed to state a claim against BCBSM,

Lieutenant Moore, and Investigator Bishop, see Fed.

R. Civ. P. 12(b)(6), as discussed in the following

paragraphs. (Count 5 is discussed separately)

Dismissed and to Amend On review of the motions to

dismiss, the court concluded that Counts 1

through 4 and 6 through 8 in the second amended

complaint failed to state a claim against BCBSM,

Appendix 23

afterwards.) Counts 1 and 2: RICO Violations by BCBSM and Lieutenant Moore Counts 1 and 2 asserted RICO violations by BCBSM and Lieutenant Moore for conspiring to injure IPMA's business and property and by engaging in racketeering to do so.

The district court dismissed the claims because the plaintiffs failed to establish an association-in-fact enterprise and the existence of racketeering activity through wire fraud and mail fraud. As for the plaintiffs' proposal to supplement the RICO claims to assert that Howell had committed a racketeering

prosecutor and by engaging in racketeering to do an activity by engaging in identity theft in violation of federal law, the court concluded that the claim would fail because Howell's presentation of fake documents was not done without lawful authority but in connection with the criminal investigation by

MANTIS, a law enforcement agency under the direction of the Michigan State Police. The court activity by conspiring to defraud and in violation of federal law, the court concluded that the claim would fail because Howell's presentation of fake documents was not done without lawful authority but in

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denied leave to amend Counts 1 and 2 to add Pompy individually as a plaintiff. Counts 3 and 4: § 1983

Claims for Fourth Amendment Violations by BCBSM

and Moore Count 3 asserted that BCBSM and

Lieutenant Moore conspired to violate the plaintiffs'

Fourth Amendment rights by obtaining search

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warrants supported by false and misleading

statements in the affidavits and by then seizing

financial accounts. Count 4 asserted that Moore

violated the plaintiffs' Fourth Amendment rights by

and Moore Count 3 asserted that BCBSM and consenting to, or directing Detective Blair to prepare,

Detective Blair conspired to violate the plaintiffs' the false affidavits. As examples of falsity, the

plaintiffs pointed to (1) Blair's comparison of data on

the volume of prescriptions that Pompy wrote as a

comparison to the volume written by other leading

anesthesiologists and (2) his accusation that Pompy

inflated billable time even though the applicable

Medicare provision did not tie billing codes to the

the false affidavits to create the falsity. The

plaintiffs pointed to (1) Blair's comparison of data on

the volume of prescriptions that Pompy wrote as a

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length of a visit but looked to other Case: 24-1249

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No. 24-1249 - 9 - factors. In support of these examples, the plaintiffs relied solely on Blair's affidavit for the September 27, 2016, search warrant

issued by Magistrate Chaffin. The district court concluded that the § 1983 claims failed because

Moore had not violated the Constitution, even if he

acted under color of state law. See *West v. Atkins*,

487 U.S. 42, 48 (1988). Blair's affidavit2 contained

facts, other than the alleged falsehoods, establishing

probable cause that Pompy was issuing illicit

prescriptions for controlled substances. Among other

things, the affidavit discussed: Howell's ten visits to

Pompy's clinic for prescriptions; patient Ricky

Bryant's receipt of recurring prescriptions for a

fentanyl spray, two-thirds of which was given to

Joshua and Vanessa Cangialosi to sell; and Dr.

of all because that particular listing

prescriptions for controlled substances. Among other

things, the affidavit discussed Howell's ten visits to

Pompy's clinic for prescriptions; patient Ricky

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Christensen's assessment, based on Howell's patient history with Pompy, that the prescriptions for pain medication for Howell were not medically justified.

Because Count 3 and 4 failed, the court denied leave to amend the claims to join BCBSM as a defendant.

Count 6: Tortious Interference by BCBSM and Moore

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In Count 6, the plaintiffs asserted that BCBSM and

~~BCBSM and Lieutenant Moore tortiously interfered with the business relations with other healthcare~~
~~insurers by conducting the wrongful criminal~~

~~investigation, which allegedly caused the other~~

~~insurers to cancel their contracts with the plaintiffs.~~

~~The district court dismissed the claim. Pompy~~

~~In Count 6, the plaintiffs asserted that BCBSM and~~
~~incorrectly alleged that the search warrants were~~

~~improper, and the other insurers did not terminate~~

~~the contracts because of the search warrants but~~

~~insurers terminated the contracts~~
~~because of Pompy's arrest on criminal charges and~~

~~the suspension of his license. Count 7 and Proposed~~

~~Proposed 8 alleged that the plaintiffs with the~~

~~The plaintiffs asserted that Pompy~~

~~incorrectly alleged that the search warrants were~~

~~incorrect, and the other insurers did not terminate~~

Appendix 27

**Count 8: Bivens Violation and Trespass by
Investigator Bishop In his seventh count, Pompy
asserted that, after MANTIS had executed a search
warrant on his home on September 26, 2016, and
had left, Investigator Bishop unlawfully entered the
home without a warrant “[l]ater that same day,”
Appendix 27
searched Pompy’s belongings, and seized property.**

**The district court concluded that relief was not
available under Bivens because the claim presented
a new Bivens context, i.e., one different from those in**

**which the Supreme Court has implied a 2 The
had left, Investigator Bishop unlawfully entered the home without a warrant “[l]ater that same day,”
district court mistakenly attributed Blair’s affidavit
to Moore. Case: 24-1249 Document: 23-1 Filed:**

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**damages action under Bivens, and the executive
branch had set up alternative remedies for the
alleged constitutional violation. The proposed
trespass count against Bishop failed because the
district court mistakenly attributed Blair’s affidavit
to Moore. Case: 24-1249 Document: 23-1 Filed:**

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damages action under Bivens, and the executive

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Westfall Act, officially known as the Federal Employees Liability Reform and Tort Compensation Act of 1988, 28 U.S.C. § 2679, provided him with immunity from suit for common-law tort claims.

Plaintiffs' Motion for Relief and for Leave to Amend

Complaint Construing the motion for relief as a

motion to reconsider under Federal Rule of Civil

Procedure 54(b), which provides for relief from an

interlocutory order, the district court declined to

reconsider its dismissal of the counts against

BCBSM. The court also denied leave to amend. The

plaintiffs failed to state a claim "against any of the

defendants named either presently or formerly," and

they had "not presented any good grounds" to revisit

the dismissal without prejudice of the breach-of-

contract claim against BCBSM, which was reiterated

as Count 5 in the second amended complaint.

BCBSM'S Motion to Strike Finally, the district court

denied the plaintiff's motion to amend. The court

defended named either presently or formerly," and

they had "not presented any good grounds" to revisit

the original complaint and either of the two docu-

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denied BCBSM's motion to strike as moot because no claim against it survived after the denial of the motion for relief and leave to amend the complaint.

Pompy's Appeal In his pro se appeal, Pompy asserts that: (1) Lieutenant Moore, Investigator Bishop,

Detective Blair, BCBSMMIC, and Prosecutor

William Nichols engaged in a RICO conspiracy to

obtain Pompy's money through forfeiture; (2) Moore

and Blair are liable under § 1983 for violating the

Fourth Amendment by conducting searches based on

warrants that were facially defective and lacked

probable cause; (3) a Bivens action may be

maintained against Bishop for an unreasonable

search and seizure because no new context exists; (4)

the state trespass claim against Bishop is permitted

under the Westfall Act; (5) the district court erred by

denying his motions to reconsider and for leave to file

a third amended complaint; Case: 24-1249

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No. 24-1249 - 11 - (6) BCBSMMIC violated the Corporate Transparency Act, 31 U.S.C. § 5336(d)(1);

(7) the defendants denied him the right to counsel during a custodial interrogation, in violation of the

Sixth Amendment; (8) the presentation of false

documents to the district court by licensed attorneys

violated Michigan Rules of Professional Conduct 3.3

and 4.1; and (9) BCBSMMIC violated the "Equitable

Sharing Act"3 by participating in a joint action with

(7) the defendants denied him the right to counsel and a government entity. Standard of Review We review

de novo a district court's dismissal of claims under

Rule 12(b)(6). Wesley v. Campbell, 779 F.3d 421, 428

(6th Cir. 2015). In determining whether a complaint

violated Michigan Rule of Professional Conduct 3.3 states a claim, a court must construe the complaint

and a complaint under the "light most favorable to the plaintiff, accept all

the factual allegations as true, and determine

whether the complaint contains "enough facts to

state a claim under the Michigan Rule of Professional Conduct 3.3.

Rule 12(b)(6). Wesley v. Campbell, 779 F.3d 421, 428

(6th Cir. 2015). In determining whether a complaint

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state a claim to relief that is plausible on its face.”

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Consideration of documents attached to a motion to

dismiss or matters of public record is permissible

when the documents are referred to in the complaint

and are integral to the pleadings; this consideration

~~is proper in this case~~

does not convert the motion into a summary-

~~judgment motion under Federal Rule of Civil~~

~~Procedure 56. See Bassett v. Nat'l Collegiate Athletic~~

~~Ass'n~~, 528 F.3d 426, 430 (6th Cir. 2008). Preliminary

~~Matters Issues raised in the district court but not on~~

~~appeal are considered abandoned and are not~~

~~and are not reviewable. Ogbonna-McGruder v. Austin Peay State~~

~~Univ.~~, 91 F.4th 833, 843 (6th Cir.), cert. denied, 144

~~S. Ct. 2689 (2024). “Moreover, ‘issues adverted to in a~~

~~perfunctory manner, unaccompanied by some effort~~

~~at developed argumentation,’ are forfeited.” Id.~~

~~(quoting Strickland v. City of Detroit, 995 F.3d 495,~~

~~“Issues not considered, mentioned and adverted~~

~~to without some effort to develop them, are~~

~~forfeited. Ogbonna-McGruder v. Austin Peay State~~

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511 (6th Cir. 2021)). 3Pompy appears to be referring to the Equitable Sharing Program that distributes a portion of federally forfeited proceeds to state, local, and tribal law enforcement agencies. Case: 24-1249 Document: 23-1 Filed: 05/23/2025 Page: 12 (12 of 19)

No. 24-1249 - 12 - We decline to consider claims that are raised for the first time on appeal. These claims

include Pompy's assertions that: BCBSMMIC violated the Corporate Transparency Act; the defendants denied him the right to counsel;

attorneys violated Michigan Rules of Professional

Conduct; and BCBSMMIC violated the "Equitable

Sharing Act." Pompy forfeited these claims because

he did not raise them below, and no exceptional

circumstances exist that merit their consideration.

See *Cash-Darling v. Recycling Equip., Inc.*, 62 F.4th

969, 975 (6th Cir. 2023); *Scottsdale Ins. v. Flowers*,

513 F.3d 546, 552 (6th Cir. 2008). RICO Pompy

Conduct and LOHSM410 violated the Equitable

Sharing Act. These claims are forfeited. The defendants

did not raise them below, and no exceptional

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asserts that Lieutenant Moore, Investigator Bishop,

Detective Blair, BCBSMMIC, and Prosecutor

William Nichols engaged in a RICO conspiracy to

obtain Pompy's money through forfeiture. Pompy

alleges that a pattern of predicate acts would be

revealed from a search of sealed documents of OMNI,

the predecessor to MANTIS. To state a claim for a

RICO violation, a plaintiff must allege: 1) that there

were two or more predicate offenses; 2) that an

"enterprise" existed; 3) that there was a nexus

between the pattern of racketeering activity and the

enterprise; and 4) that an injury to business or

property occurred as a result of the above three

factors. *VanDenBroeck v. CommonPoint Mortg. Co.*,

210 F.3d 696, 699 (6th Cir. 2000), overruled in part

on other grounds by *Bridge v. Phoenix Bond &*

Indem. Co., 553 U.S. 639 (2008). An "enterprise"

includes any individual, partnership, corporation,

association, or other entity or entities

which, if combined as a result of the above three

factors, would have a single ownership, management,

or control. *VanDenBroeck v. CommonPoint Mortg. Co.*,

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association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4) (emphasis added).

An association-in-fact enterprise can be proven by showing: (1) an ongoing organization with some sort of framework or superstructure for making and carrying out decisions; (2) that the members of the

enterprise functioned as a continuing unit with established duties; and (3) that the enterprise was separate and distinct from the pattern of racketeering activity in which it engaged. *Ouwinga*

v. Benistar Plan Servs., Inc., 694 F.3d 783, 793 (6th Cir. 2012). Pompy's RICO claim on appeal adds

new defendants (Bishop, Blair, BCBSMMIC, and Nichols) and new allegations regarding predicate acts (actions by OMNI). We decline to consider Case:

24-1249 Document: 23-1 Filed: 05/23/2025 Page: 13

(13 of 19) No. 24-1249 - 13 - any new allegations in

Case: Bishop, Blair, BCBSMMIC, and Nichols (6th Cir. 2012). Pompy's RICO claim on appeal adds

new defendants (Bishop, Blair, BCBSMMIC, and Nichols) and new allegations regarding predicate acts (actions by OMNI). We decline to consider Case:

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support of this or other claims. The appellate court's function is to review the case presented below, rather than a better case fashioned after an unfavorable ruling. *DaimlerChrysler Corp. Healthcare Benefits Plan v. Durden*, 448 F.3d 918, 922 (6th Cir. 2006).

We conclude that the district court properly

determined that the RICO conspiracy claim, as

pleaded in the second amended complaint, failed to

state a claim. Although Pompy argued that an

enterprise existed because BCBM associated with

MANTIS by assigning Howell to work with MANTIS,

Pompy did not allege that the enterprise "existed for

a purpose separate and distinct from the pattern of

racketeering." *Ouwinga*, 694 F.3d at 793. Challenges

to Search Warrants Pompy argues that the searches

performed by Lieutenant Moore and Detective Blair

violated the Fourth Amendment because the

warrants were facially defective and lacked probable

Pompy did not allege that the enterprise "existed for

a purpose separate and distinct from the pattern of

racketeering." *Ouwinga*, 694 F.3d at 793. Challenges

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cause. According to Pompy, Blair executed a September 21, 2016, warrant to seize the “Bank Account of the Administrative Service of Monroe,” which was dormant and therefore “could not possibly represent probable cause of a crime.” On September 23, 2016, Magistrates Chaffin and Todd and Judge Vitale issued a warrant to seize records at IPatientCare, which was allegedly defective because the warrant lacked the court seal and a time stamp; the name of the court was whited out; and the company was domiciled in New Jersey, outside the jurisdiction of the Monroe District Court. Moreover, Blair had used false documents in the affidavit, and IPatientCare allegedly was not listed as the place to be searched. On May 14, 2017, Blair obtained a second search warrant for medical records held at IPatientCare allegedly because of his doubts as to the validity of the prior warrant. Pompy argues that

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warrants issued September 28, 2016, for the seizure of accounts at E*TRADE, located in New Jersey, and against Merrill Lynch, located in Florida, were outside the jurisdiction of the Monroe District Court and that the warrants presumed pecuniary gain for the defendants by requiring an immediate tally of the value of the accounts. Without specifying the warrants at issue, Pompy asserts error because

Detective Blair did not certify Dr. Christensen as a reliable expert and Christensen's trial testimony showed that he Case: 24-1249 Document: 23-1 Filed: 05/23/2025 Page: 14 (14 of 19) No. 24-1249 - 14 - was not a reliable medical witness. And Ricky Bryant and Joshua and Vanessa Cangialosi were not called to testify at trial. Pompy also asserts that Judge Vitale and the magistrates were biased against him, and

that Magistrate Chaffin "enjoyed a close family relationship" with the President "Dough Chaffin" of

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MBT. The Fourth Amendment The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and that “no Warrants shall issue, but upon probable cause.” “A probable cause determination requires the magistrate issuing the warrant to decide, based on the affidavit, if ‘there is a fair probability that contraband or evidence of a crime will be in a particular place.’ *United States v. Ward*, 967 F.3d 550, 553-54 (6th Cir. 2020) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Law enforcement officers who rely on a magistrate judge’s warrant have qualified immunity from suit unless “(1) the officers knowingly or recklessly made false statements or significant omissions” to obtain the warrant, “and (2) those ‘statements or omissions were material, or necessary, to the finding of probable cause.’” *Novak*

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v. City of Parma, 33 F.4th 296, 306 (6th Cir. 2022) (quoting Sykes v. Anderson, 625 F.3d 294, 305 (6th Cir. 2010)); see also Tlapanco v. Elges, 969 F.3d 638, 649 (6th Cir. 2020). Detective Blair and Judicial Officers We conclude that Pompy waived his right to have us review his claims against Detective Blair for his actions taken during the search and seizure of Pompy's financial records and of medical records in Pompy's home and office. This is so because Pompy did not object to the magistrate judge's report recommending dismissal of the claims despite a warning that failure to do so would result in waiving his right to appeal. See Thomas v. Arn, 474 U.S. 140, 142 (1985); Miller v. Currie, 50 F.3d 373, 380 (6th Cir. 1995). We decline to consider all other allegations against Blair, including those involving IPatientCare records, because Pompy stipulated to Blair's dismissal. Because Pompy did not file right to appeal. See Thomas v. Arn, 474 U.S. 140, 142 (1985); Miller v. Currie, 50 F.3d 373, 380 (6th Cir. 1995).

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objections, he also has waived his right to appeal any claims that he may be attempting to reassert against the judicial officers. His new assertion of judicial bias is conclusory and is premised on judicial rulings, which almost never serve as a valid basis Case: 24-1249 Document: 23-1 Filed: 05/23/2025 Page: 15 (15 of 19) No. 24-1249 - 15 - for recusal. See *Liteky v.*

United States, 510 U.S. 540, 555 (1994); *Burley v.*

Gagacki, 834 F.3d 606, 615-16 (6th Cir. 2016).

Lieutenant Moore Because Count 4 of the Second

Amended Complaint challenged only Detective

Blair's September 27, 2016, affidavit for the search

warrant for MBT's financial accounts and did so

based only on Blair's statements regarding Pompy's

comparative prescription statistics and billable time,

we decline to consider any additional assertions of

error regarding that affidavit and any claims about

other warrants. Based on this affidavit, we conclude

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that Pompy has failed to state a Fourth Amendment claim against Lieutenant Moore. Blair averred that he received the information regarding Pompy's comparative prescription statistics and billable time from BCBSM; there is no allegation that Moore provided this information. Because Moore did not make the allegedly false statements, he is entitled to qualified immunity. See Novak, 33 F.4th at 306.

In his seventh count, Pompy asserted that, after MANTIS had executed a search warrant on his home on September 26, 2016, and had left, Investigator Bishop unlawfully entered the home without a warrant "[l]ater that same day," searched Pompy's belongings without his consent, and "seized property." The Supreme Court has recognized a Bivens right of action for money damages against

federal officials as to (1) a Fourth Amendment claim

against federal narcotics agents for entering and

Investigator Bishop unlawfully entered the home

without a warrant "[l]ater that same day," searched

Pompy's belongings without his consent, and seized

property." The Court has further recognized a

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searching a residence and arresting a man without a

warrant, *Bivens*, 403 U.S. at 389; (2) a Fifth

Amendment claim by a congressional staff member

against a Congressman for discharging her on the

basis of her sex, *Davis v. Passman*, 442 U.S. 228

(1979); and (3) an Eighth Amendment claim against

federal prison officials for inadequate medical care,

Carlson v. Green, 446 U.S. 14 (1980). See *Egbert v.*

Boule, 596 U.S. 482, 490-91 (2022). We may not

recognize a new cause of action under *Bivens* if a

case presents “a new *Bivens* context”—i.e., it is

different in a meaningful way from the

forementioned cases and “if there are ‘special

factors’ indicating that the Judiciary Case: 24-1249

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No. 24-1249 - 16 - is at least arguably less equipped

than Congress to ‘weigh the costs and benefits of

allowing a damages action to proceed.” *Id.* at 492

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(quoting *Ziglar v. Abbasi*, 582 U.S. 120, 136 (2017)).

We agree that the claim presents a new Bivens context. In Bivens, federal narcotics agents entered the petitioner's home without a warrant and arrested him on narcotics charges. 403 U.S. at 389. "The agents manacled petitioner in front of his wife and children, and threatened to arrest the entire family.

They searched the apartment from stem to stern" and thereafter transported him to a federal courthouse "where he was interrogated, booked, and subjected to a visual strip search." Id. Here, Pompy was not present and therefore was not arrested by Investigator Bishop or anyone else during the search.

See *Quinones-Pimentel v. Cannon*, 85 F.4th 63, 71 (1st Cir. 2023); *Wynn v. Starnes*, No. 5:21-cv-01292, 2023 WL 6276587, at *4 (N.D. Ohio Sept. 26, 2023); *Ahmed v. Weyker*, 984 F.3d 564, 569 (8th Cir. 2020).

Next, a search warrant had been obtained for a residence and documents had been seized by Investigator Bishop or anyone else during the search. The information seized is Plaintiff, Defendant, Plaintiff, and

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search of Pompy's home. Although other officers had earlier conducted a search based on the warrant and the district court did not determine whether Bishop's entry into the house was a reasonable continuation of that search, see *United States v. Keszthelyi*, 308 F.3d 557, 569 (6th Cir. 2002), the existence of the warrant nonetheless factually distinguishes the context from *Bivens*. See *Quinones-Pimentel*, 85 F.4th at 72; *Wynn*, 2023 WL 6276587, at *4; *Cain v. Rinehart*, No. 22 1893, 2023 WL 6439438, at *3 (6th Cir. July 25, 2023). Lastly, Bishop's alleged seizure consisted of unspecified property, rather than an arrest and a strip search. See *Wynn*, 2023 WL 6276587, at *4. We also conclude that special factors exist because Congress has provided an alternative remedy. See *Egbert*, 596 U.S. at 493. Under 31 U.S.C. § 3724, the Attorney General may "settle certain claims for personal injury, death, or property

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damage caused by a law enforcement officer employed by the Department of Justice acting within the scope of employment.” Cain, 2023 WL 6439438,

at *4. Because a new context is present and special factors exist, a Bivens remedy is not available to

Pompy. Case: 24-1249 Document: 23-1 Filed:

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Proposed Trespass Claim In his proposed eighth

claim, Pompy asserted that he was entitled to relief

under the Westfall Act because Investigator Bishop

trespassed in violation of state law by searching his

fastened cabin, a Bivens remedy is not available to
home and removing property and that the trespass

constituted a warrantless search and seizure in

violation of the Fourth Amendment. Pompy relies on

Judge Walker’s concurring opinion in Buchanan v.

Barr, 71 F.4th 1003, 1012-13 (D.C. Cir. 2023),

interpreting the Westfall Act’s constitutional-tort

exception at 28 U.S.C. § 2679(b)(2)(A). The Westfall

exception does not apply to a claim for damages for

constitutional or unconstitutional search and seizure in

violation of the Fourth Amendment. Pompy relies on

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Act makes the Federal Tort Claims Act the exclusive remedy for injuries caused by a federal employee acting within the scope of his employment. See 28

U.S.C. § 2679(b)(1); Dolan v. United States, 514 F.3d 587, 592 (6th Cir. 2008). The constitutional-tort

exception at § 2679(b)(2)(A) provides that subsection (b)(1) does not “extend or apply to a civil action

against” a federal employee “which is brought for a

violation of the Constitution.” Pompy’s claim fails

because the Westfall Act immunizes federal

employees from individual common-law tort claims

that arise while those employees were acting within

the scope of their employment and Pompy does not

contend that Bishop was acting outside the scope of

his employment. See Laible v. Lanter, 91 F.4th 438,

441 (6th Cir. 2024). Furthermore, although Judge

Walker’s concurrence in Buchanan posited that §

2679(b)(2)(A), if read broadly, could permit a state

claim against a federal employee, that claim would

not extend to the claim against Pompy. Consequently,

the argument that Pompy’s claim is not

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trespass claim to “proceed if its goal was to remedy an unconstitutional search,” Judge Walker acknowledged that “[t]he Supreme Court has said the exception ‘simply left Bivens where it found it,’ ensuring that Bivens actions weren’t precluded by the Westfall Act.” 71 F.4th at 1016 (Walker, J., concurring) (quoting Hernandez v. Mesa, 589 U.S. 93, 111 n.9 (2020)). Additionally, lower courts have rejected Judge Walker’s view. See Black Lives Matter D.C. v. Barr, No. 20-cv-1469, 2024 WL 3300158, at *4-9 (D.D.C. July 4, 2024); Mellein v. United States, No. 23-cv-7970, 2024 WL 1601802, at *5 (C.D. Cal. Mar. 14, 2024); Quinonez v. United States, No. 22-cv-03195, 2023 WL 5663156, at *3 (N.D. Cal. Aug. 30, 2023). Case: 24-1249 Document: 23-1 Filed: 05/23/2025 Page: 18 (18 of 19) No. 24-1249 - 18 - Denial of Motions for Relief and Leave to File Third Amended Complaint Pompy argues that

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the district court erred by denying his Rule 54(b) motion to reconsider its dismissal of claims against BCBSM and his motion for leave to file a third amended complaint. In the motion to amend, the plaintiffs sought to have Pompy joined as a plaintiff in Counts 1 and 2 of the second amended complaint and to supplement those counts, to have BCBSM joined as a defendant in Counts 3 and 4, and to add a trespass claim against Investigator Bishop as Count

8. We review for an abuse of discretion a district court's denial of a Rule 54(b) motion to reconsider.

Luna v. Bell, 887 F.3d 290, 297 (6th Cir. 2018).

District courts may reconsider an interlocutory order when "there is (1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct a clear error or prevent manifest injustice." *Id.* (quoting *Louisville/Jefferson Cnty. Metro. Gov't v. Hotels.com, L.P.*, 590 F.3d 381, 389 (5th Cir. 2010)).

Luna v. Bell, 887 F.3d 290, 297 (6th Cir. 2018).

This is, of course, not the case here. There is no change of controlling law. There is no new evidence. There is no clear error or manifest injustice.

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(6th Cir. 2009)). Because none of these factors was present, the district court did not abuse its discretion by denying the motion. Likewise, we review the denial of a motion to amend a complaint for an abuse of discretion. *Greer v. Strange Honey Farm, LLC*, 114 F.4th 605, 617 (6th Cir. 2024). A district court should freely grant leave to amend “when justice so requires,” Fed. R. Civ. P. 15(a)(2), but may deny leave “when the reason for amendment is improper, such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.” *Greer*, 114 F.4th at 617 (quoting *Skatemore, Inc. v. Whitmer*, 40 F.4th 727, 737 (6th Cir. 2022)).

No abuse of discretion occurred. The requested

amendments were futile because they would not

change any finding of fact previously allowed.

“An amendment to the complaint may not be allowed

if it does not controvert any finding of fact made in the

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have prevented the dismissal of any claim or added

any meritorious claim. For these reasons, we

AFFIRM the district court's judgment. ENTERED

BY ORDER OF THE COURT Powered by TCPDF

(www.tcpdf.org) Kelly L. Stephens, Clerk Case: 24-

1249 Document: 23-2 Filed: 05/23/2025 Page: 1 (19 of

19) United States Court of Appeals for the Sixth

Circuit U.S. Mail Notice of Docket Activity The

following transaction was filed on 05/23/2025. Case

Name: Lesly Pompy v. First Merchants Bank, et al

Case Number: 24-1249 Docket Text: ORDER filed :

We **AFFIRM** the district court's judgment Mandate

to issue., decision not for publication, pursuant to

FRAP 34(a)(2)(C). Richard F. Suhrheinrich, Circuit

Judge; Alice M. Batchelder, Circuit Judge and Joan

L. Larsen, Circuit Judge. The following documents(s)

are associated with this transaction: Document

Description: Order Notice will be sent to: Mr. Lesly

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Pompy 533 N. Monroe Street Monroe, MI 48162 A

copy of this notice will be issued to: Ms. Kyla L

Barranco Mr. Bradley H. Darling Mr. Phillip J.

DeRosier Ms. Kinikia D. Essix Mr. Scott R. Knapp

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APPENDIX C – US District E.D Michigan

dismissal (February 28, 2024)

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

**LESLY POMPY and INTERVENTIONAL
PAIN MANAGEMENT ASSOCIATES, P.C.,**

Plaintiffs, v. Defendants, Case Number 19-10334

v. Honorable David M. Lawson

MARC MOORE, BRIAN BISHOP, and

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendants.

Plaintiffs,

Case Number 19-10334

**OPINION AND ORDER GRANTING MOTIONS TO
DISMISS, DENYING MOTION TO STRIKE, AND**

WITNESS, MICHIGAN, FEBRUARY 28, 2024.

David M. Lawson

Appendix 53

**DENYING MOTION FOR RELIEF FROM ORDER
AND MOTION TO FILE A THIRD AMENDED
COMPLAINT**

Plaintiff Lesly Pompy, a medical doctor who specializes in anesthesiology and pain management, was indicted by a federal grand jury for controlled substance and health care fraud crimes, for which he was acquitted at trial. He had filed the present action against his antagonists who steered the investigation, without the assistance of a lawyer. The case was stayed when the indictment was returned.

After the jury's favorable verdict, the stay was lifted,

Dr. Pompy retained counsel, and a second amended complaint was filed. Defendant Blue Cross Blue

Shield of Michigan had been dismissed from the case near its outset but was added back in the second

amended complaint. Blue Cross now has moved to strike the re-pledged allegations against it from the

after the jury's favorable verdict, the stay was lifted

Dr. Pompy retained counsel, and a second amended complaint was filed. Defendant Blue Cross Blue

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second amended complaint. Defendants Marc Moore and Brian Bishop — investigators in the underlying criminal proceeding — have moved to dismiss the case against them. And the plaintiff has moved for relief from the earlier order dismissing the claims against Blue Cross and seeks leave to file a third amended complaint. The proposed third amended complaint would include Dr. Pompy individually as a plaintiff in the Racketeering claims in Counts 1 and 2 against Blue Cross and Moore, beef up the allegations against defendant Moore in Count 2, join Blue Cross as a defendant in Counts 3 and 4 (alleging civil conspiracy and civil rights violations under federal law), and add a count of common law trespass against Bishop. The Court heard oral argument on the motions on February 21, 2024. The defendants' motions raise several procedural and technical defenses. However, after reviewing the

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allegations in the second amended complaint and the proposed third amended complaint, it is apparent that the plaintiffs have not pleaded, and will not be able to plead, facts in support of the theories of recovery that they posit. Therefore, the Court will grant Moore's and Bishop's motions to dismiss, deny the plaintiffs' motion for relief from the order

dismissing the claims against Blue Cross and for leave to amend the pleadings further, and deny Blue Cross's motion to strike as moot.

I. Facts and Proceedings
The facts recited below are drawn from the second amended complaint, except where, as noted, they include claims and facts stated in the proposed third amended complaint.

A. The Parties

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Plaintiff Lesley Pompy formerly was a licensed physician in the State of Michigan. He was the sole principal of plaintiff Interventional Pain Management Associates, P.C. (IPMA), which operated a pain management clinic in Southfield, Michigan. After graduating from New York Medical School in 1986 and obtaining his medical license, he eventually moved to Monroe County, Michigan, where he was the chief of anesthesiology at Mercy Memorial Hospital from 1991 through 2002. Between 1990 and 2014, he was board certified in anesthesiology, pain management, and addiction management. In 2002, Pompy decided to step down from his hospital post, and he then established IPMA as a private clinic offering pain management to patients with difficult cases who were referred by various area physicians.

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Defendant Marc Moore is an investigator with the Michigan State Police holding the rank of detective lieutenant. During the operative timeframe he was the officer in charge of the Monroe Area Narcotics Team and Investigative Services (MANTIS), which is a "drug task force team under the direction of the Michigan State Police, comprised of investigators from the Michigan State Police, Monroe County Sheriff's Office, and the Monroe City Police Department." 2d Am. Compl. ¶ 5, ECF No. 146, PageID.2300.

Defendant Brian Bishop is an investigator with the United States Department of Homeland Security. During the operative timeframe he was assigned as a "diversion investigator" for the Drug Enforcement Administration.

Defendant Blue Cross Blue Shield of Michigan is one of the largest private health care insurers in the

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State of Michigan, insuring more than 4.5 million persons.

B. The Criminal Prosecution

The claims in the second amended and proposed third amended complaints all arise from an investigation of the prescribing practices at Dr. Pompy's pain management clinic, which in late 2016 culminated in the issuance of search warrants and the seizure of narcotics and documents from his offices, as well as seizures of his financial assets. Dr. Pompy subsequently was charged in an indictment filed in this district with 22 counts of distributing controlled substances, 21 U.S.C. § 841(a)(1), 15 counts of health care fraud, 18 U.S.C. § 1347, and two counts of maintaining drug involved premises, 21 U.S.C. § 856(a)(1). See United States v. Lesly Pompy, No. 18-20454 (E.D. Mich.). The indictment charged Dr. Pompy with distributing narcotics by

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issuing bogus prescriptions to patients over a span of years from 2012 through October 2016. The indictment alleged that Dr. Pompy's clinics served on average 60 patients per day, and on some days as many as 200 to 300 patients, and that his medical practices issued more than 4.2 million dosages of Schedule II controlled substances over the charged timeframe, in addition to more than 6 million prescriptions for various other controlled substances.

Dr. Pompy's clinic also billed Medicare, Medicaid, and Blue Cross for many of the prescriptions and related services, which the indictment said either were medically unnecessary or not performed as claimed. Dr. Pompy proceeded to trial, and on January 11, 2023 a jury acquitted him on all counts.

C. Theories of Liability

Dr. Pompy alleges in his complaints that the investigation and prosecution were instigated by

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Blue Cross and MANTIS (principally through Lt. Moore), in an effort to discredit Dr. Pompy and obtain windfall proceeds via restitution and forfeiture, which Blue Cross and Moore hoped would be forthcoming from the criminal proceedings.

According to Dr. Pompy, the defendants' zeal was a

product of intersecting interests — on Blue Cross's

part, the desire to curtail the practices of doctors who

prescribed expensive medical procedures and

prescriptions when treating patients suffering from

intractable chronic pain; on Moore's part the desire

to obtain "easy wins" and achieve career

advancement through high profile raids of physicians

who were publicly tarred as running "pill mill"

operations fueling the rampant abuse of opioid drugs

that has afflicted communities throughout the

country, particularly in economically depressed

regions such as the rural communities of Monroe

to obtain "easy wins" and achieve career

advancement through high profile raids of physicians

who were publicly tarred as running "pill mill"