independent longevity or existed in any way apart from the alleged pattern of racketeering activity.

The complaints at least vaguely allege the existence of a "common purpose." However, there are no facts alleged establishing that there was any longevity in the association between Blue Cross and the MANTIS task force. Based on the facts presented in the various complaints, nothing more has been described beyond a single transactional interaction between singular employees of two independent entities for the purpose of undertaking a single investigation of Dr. Pompy's medical practice. Moreover, no facts at all are stated in the pleadings demonstrating that there was any independent existence of the association apart from the discrete acts of "racketeering activity" described in the complaint. For instance, there are no facts alleged from which one could draw an inference that the association-in-

fact enterprise could "exist apart from the pattern of wrongdoing." *VanDenBroeck*, 210 F.3d at 699. Nor are there allegations suggesting "a certain amount of organizational structure which eliminates simple conspiracies from the Act's reach." *Ibid.* The complaint here plausibly describes nothing more than a conspiracy to commit the several acts of "fraud" narrated in the pleadings, and nothing has been alleged to demonstrate that Blue Cross, MANTIS, or Moore and Howell formed any association that "functioned as a continuous unit" for purposes other than the incidental conspiracy alleged in this case, or that there was an independent organizational structure to the supposed "enterprise."

At oral argument, plaintiffs' counsel stated that he could allege that MANTIS and Blue Cross investigated another physician. That allegation

would take the activity beyond this single alleged conspiracy. But there was no suggestion that either Blue Cross or MANTIS used any illegal means to conduct that investigation, or that there was anything untoward about it. Even accepting counsel at his word, none of the allegations — made, proposed, or promised — are sufficient to establish an association-in-fact enterprise under RICO.

The plaintiffs allege that MANTIS is itself an enterprise. But there are no allegations, other than conclusory allegations, that it itself engaged in a pattern of racketeering activity or that it committed other unlawful acts beyond the investigation of the plaintiffs.

The second amended and proposed third amended complaints do not allege facts sufficient to establish this element of a RICO claim.

2. Racketeering Activity

The plaintiffs contend that defendants Blue Cross and Moore engaged in "racketeering activity" in several forms, all of which are related to the investigation of Dr. Pompy's medical practice. First, the plaintiffs allege that the defendants committed "wire fraud" and "mail fraud" by transmitting the search warrants that Moore obtained to financial institutions, which proceeded in accordance with those warrants to impair the plaintiffs' assets. "Mail and wire fraud qualify as predicate acts under 18 U.S.C. § 1961." *Collier*, 818 F. App'x at 511 n.1 (citing 18 U.S.C. 1961(1), enumerating 18 U.S.C. § 1341 (mail fraud) and 18 U.S.C. § 1343 (wire fraud) as racketeering activity). The crime of wire fraud consists of three elements: "(1) that the defendant devised or willfully participated in a scheme to defraud; (2) that he used or caused to be used an

interstate wire communication in furtherance of the scheme; and (3) that he intended to deprive a victim of money or property." *United States v. Cunningham*, 679 F.3d 355, 370 (6th Cir. 2012) (cleaned up). "The crime of mail fraud has two elements: a scheme or artifice to defraud and a mailing for the purpose of executing the scheme." *Bender v. Southland Corp.*, 749 F.2d 1205, 1215-16 (6th Cir. 1984) (citing *Pereira v. United States*, 347 U.S. 1, 8 (1954)).

When pleading mail and wire fraud as underlying elements in the RICO context, the plaintiff must allege facts with particularity concerning the alleged misrepresentations. *Bender*, 749 F.2d at 1216 ("Moreover, [Federal Rule of Civil Procedure] 9(b) requires that fraud be pleaded with particularity. To satisfy [Rule] 9(b), a plaintiff must at minimum allege the time, place and contents of the misrepresentation(s).").

The plaintiffs' problem with this element is that, according to the pleaded facts, there were no "misrepresentations" involved in the specific communications described, which were confined to transmissions of the approved search warrants to the plaintiffs' financial institutions. That is because it is undisputed that the search warrants in fact were issued by a state court magistrate, and there is no allegation that the defendants concocted documents purporting to be search warrants that were not in fact duly authorized by a magistrate. The allegations in the pleadings instead focus on the defendants' preceding alleged misrepresentations made in the search warrant affidavits, which were submitted to the magistrate to obtain the warrants. But those allegations sound in malicious prosecution, not "wire fraud" or "mail fraud," and malicious prosecution is

not enumerated as an act of "racketeering activity" under RICO.

As one district court observed, after a survey of the decisions on point, "the overwhelming weight of authority bars a civil RICO claim based on the use of the mail or wire to conduct allegedly fraudulent litigation activities as predicate racketeering acts." *Carroll v. U.S. Equities Corp.*, No. 18–667, 2019 WL 4643786, at *12 (N.D.N.Y. Sept. 24, 2019). Numerous other federal courts similarly have held that malicious prosecution and other forms of litigation abuse do not constitute valid predicate acts for RICO conspiracy. *E.g., Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1088 (11th Cir. 2004) ("In United States v. Pendergraft, 297 F.3d 1198 (11th Cir. 2002), the defendants allegedly threatened to sue a county government by falsely claiming that the County Chairman had threatened violence against

their abortion clinic. We held that neither the threat to litigate nor the fabrication of evidence behind the lawsuit made the action 'wrongful' within the meaning of 18 U.S.C. § 1951 and therefore could not be a predicate act under RICO."); *Verschleiser v. Frydman*, No. 22-7909, 2023 WL 5835031, at *13 (S.D.N.Y. Sept. 7, 2023) ("[T]o the extent the plaintiff makes specific allegations of litigation abuse that relate to the alleged RICO scheme against him, those allegations are insufficient to support the predicate acts at issue.") (collecting cases); *Daddona v. Gaudio*, 156 F. Supp. 2d 153, 162 (D. Conn. 2000) ("These allegations at best amount to a vague abuse of process or malicious prosecution claim. Courts have found that allegations of malicious prosecution or abuse of process do not, on their own, suffice as predicate acts for a RICO violation.") (collecting cases).

Finally, for reasons discussed further below, there was nothing "fraudulent" about the procurement of the search warrants in the first instance, because the warrant affidavit attached to the second amended complaint discloses ample information establishing probable cause to search the plaintiffs' home and financial accounts for evidence of illegal drug distribution.

Finally, in his third amended complaint the plaintiffs propose to expand the RICO counts to allege further that Howell engaged in "identity theft" contrary to the Federal Identity Theft Act, 18 U.S.C. § 1028, violations of which also are an enumerated racketeering activity under 18 U.S.C. § 1961. The elements of identity theft are made out when a person "(1) knowingly transfers, possesses, or uses, (2) without lawful authority, (3) a means of identification of another person." *United States v.*

Jones, 817 F. App'x 138, 140 (6th Cir. 2020) (cleaned up). It is acknowledged in this case — and explicitly alleged in the pleadings — that Howell's presentation of the fabricated documents was done at the behest of Moore and in connection with the criminal investigation undertaken by the MANTIS task force, which allegedly is a law enforcement agency under the direction of the Michigan State Police. The pleadings therefore negate any conclusion that Howell's use of the identification was done "without lawful authority," and the plaintiffs' proposed amendment still fails to describe any valid predicate acts of racketeering.

The second amended and proposed third amended complaints do not contain factual allegations that make out an alleged violation of, or conspiracy to violate, the RICO Act.

B. Fourth Amendment Claim

The plaintiffs allege that defendants Blue Cross and Moore conspired to violate their constitutional rights under the Fourth Amendment by agreeing to fabricate probable cause for search warrants that, once issued by a magistrate, resulted in the seizure of assets belonging to Dr. Pompy and his medical practice. The plaintiffs invoke 42 U.S.C. § 1983. To state a claim under that statute, a plaintiff must allege a violation of a right secured by the Constitution or laws of the United States by a person acting under color of state law. *West v. Atkins*, 487 U. S. 42, 48 (1988).

The searches about which the plaintiffs complain were conducted with a warrant. Current law "offers a 'complete defense' against [] claims [of an unreasonable search] when officers relied on a magistrate judge's warrant," but "this defense has two exceptions." *Novak v. City of Parma, Ohio*, 33

F.4th 296, 305-06 (6th Cir. 2022) (citing *Sykes v. Anderson*, 625 F.3d 294, 305 (6th Cir. 2010); *Tlapanco v. Elges*, 969 F.3d 638, 649 (6th Cir. 2020)). "The first covers cases when an officer provides false information to obtain a warrant. To [avoid this exception], [the plaintiff] must show that (1) the officers knowingly or recklessly made false statements or significant omissions; and (2) those 'statements or omissions were material, or necessary, to the finding of probable cause.'" *Ibid.* (quoting *Sykes*, 625 F.3d at 305). "[T]he second exception . . . applies if 'the warrant is so lacking in indicia of probable cause, that official belief in the existence of probable cause is unreasonable.'" *Id.* at 306 (quoting *Yancey v. Carroll County*, 876 F.2d 1238, 1243 (6th Cir. 1989)).

The plaintiffs specifically identify only two discrete statements in the warrant affidavit that they says

were misleading. First, the plaintiffs say that statements indicating that Dr. Pompy's prescribing volume was unreasonably high were misleading because the comparators used for the volume analysis all were anesthesiologists, not doctors practicing in clinical pain management. Second, the plaintiffs say that statements that Dr. Pompy inflated billing codes for certain patient visits were misleading because applicable Medicare policy statements do not tie billing codes inflexibly to "minutes of face time" spent during a visit, but instead allow some discretion for billing code determination by the physician based on other factors.

The search warrant affidavit was attached as an exhibit to the second amended complaint, and it spans 27 pages replete with incriminating details uncovered during the defendants' investigation.

Search Warrant Aff., ECF No. 146-2, PageID.2360-87. Among other things, the affidavit documents the following.

First, defendant Moore attested that he had learned from records supplied by Blue Cross and records supplied by state and federal regulatory authorities that the plaintiff was a licensed medical doctor and the principal of plaintiff Interventional Pain Management Associates, and that various identified bank accounts were associated with the practice. Second, records indicated that the plaintiffs billed Blue Cross and other insurers for certain medical services purportedly furnished to pain management patients, and that Dr. Pompy also issued prescriptions for controlled substances including powerful narcotics. Third, the affidavit recounted narratives of ten visits that Blue Cross employee James Howell had at Dr.

where mostly family doctors or primary care physicians would send their hardest cases to him. On top of seeing - 3 Case 2:19-cv-10334-DML-APP ECF No. 188-2, PageID.3189 Filed 07/31/24 Page 5 of 11 patients daily and often late into the evening in his hospital office, Dr. Pompy worked two mornings each week at IPMA 's off-campus interventional center and one Saturday each month at a surgical outpatient center owned by other doctors. 16. Over many years of serving as a pain management doctor, Dr. Pompy came to learn that people turn to the streets to self-medicate and become addicted to illegal drugs when they can't obtain legitimate medical treatment for their pain. He saw the destruction that addiction causes and wanted to do something to help break the cycle of addiction and help these people live their best lives. So, in 2014, Dr. Pompy obtained his third board certification, this

Pompy's practice. Search Warrant Aff. at PageID.2363-2373. Those visits occurred on various dates from January 2, 2016 through May 17, 2016. The reports indicated that during several appointments, Howell was seen by Dr. Pompy face to face for around one minute or less, that Dr. Pompy conducted no physical examination of Howell, and that he nevertheless issued or renewed prescriptions for controlled substances including Norco, Lyrica, and Zanaflex.

Fourth, the affidavit recounted medical reviews of Howell's patient history with Dr. Pompy by Dr. Carl Christensen, identified as a "consultant" for defendant Blue Cross. Search Warrant Aff. at PageID.2373-75. Dr. Christensen opined that there were several indications that the issuance of prescriptions for pain medications were not medically justified including (1) Howell's exhibition

of "drug seeking behavior" in his repeated requests for refills and specific narcotics at the first visit and every following visit, (2) Howell's stated complaints of "stiffness" and "soreness" in his back which did not include any statements that he was suffering "pain," or any tangible indication of pain severity, (3) lack of any meaningful discussion between Howell and Dr. Pompy about any medical history of Howell's pain or possible causes of his back problems, (4) the lack of any physical examination performed by Dr. Pompy during visits when drugs were prescribed, (5) abnormal urine test results indicating the presence of several controlled substances that Howell had not reported having a prescription for, as well as the absence of metabolites from the drugs that Dr. Pompy had prescribed on prior occasions, and (6) lack of any discussion between Howell and Dr. Pompy about Howell's admissions to Dr. Pompy that

he was consuming alcohol to excess to manage his discomfort. Dr. Christensen opined that Dr. Pompy's conduct during each visit where medication was prescribed violated the applicable standard of care and that the prescriptions were being issued without any legitimate medical purpose, based on the above anomalies.

Fifth, the affidavit reported an investigation of another suspect, Joshua Cangialosi, which occurred in April 2016. Search Warrant Aff. at PageID.2375-76. Moore was informed that Cangialosi had contact another MANTIS investigator, Detective Sean Street, and had offered to sell Street various prescription drugs including Suboxone, Xanax, Fentanyl, and Morphine. Search Warrant Aff. at PageID.2376. Street eventually conducted a controlled buy with Cangialosi and obtained units of a prescription spray containing Fentanyl.

After the transaction, Street identified himself as a police officer and detained Cangialosi. He subsequently entered Cangialosi's residence with consent and found two other occupants present therein, Vanessa Cangialosi and Ricky Bryant. Joshua and Vanessa consented to a search of the residence and agreed to speak with Street after receiving Miranda warnings and waiving their rights to counsel. Vanessa told Street that Bryant was her father, and that he was prescribed various narcotics, most of which he gave to Vanessa and Joshua to sell for a profit. Bryant also consented to be interviewed and told Street that his physician, Dr. Pompy, had issued him recurring prescriptions for 120 units per refill of the Fentanyl spray. Bryant kept 40 of the units and passed on the other 80 units to be sold. Moore further attested that information from the manufacturer of the Subsys brand Fentanyl spray

Bryant was prescribed indicated that it was intended exclusively for use by cancer patients with established opioid tolerance suffering "breakthrough pain," such that their pain could not be controlled even by the heaviest safe regimen of daily Morphine. Furthermore, there were specific indications that the product was not to be used by any patients who were not on a continuous daily opioid regimen, due to the risk of fatal complications in non-opioid-tolerant patients. Bryant had told Street that he did not have cancer and was prescribed the Fentanyl spray based solely on his diagnosis of Chronic Obstructive Pulmonary Disease (COPD), which is a lung condition that causes breathing difficulty. The manufacturer's literature did not indicate that Subsys was appropriate for treatment of COPD. Moore further stated that Dr. Christensen had conducted a review of records relating to patients

whom Dr. Pompy had prescribed the Subsys Fentanyl spray for, and none indicated diagnostic codes associated with cancer. Dr. Christensen opined that "[t]he use of this potent opioid narcotic for patients without cancer, with the risk of addiction, overdose and death, is outside the standard of care." *Id.* at PageID.2378.

Finally, the affidavit recounted surveillance by other MANTIS investigators on various dates during July and August 2016 documenting several occasions on which Dr. Pompy was seen leaving his medical practice with packages or bags, which Dr. Pompy transported to his home apparently to sequester the contents in the residence.

Dr. Pompy has not pleaded any specific facts calling into question the veracity of any parts of the above narrative or the medical opinions stated by Dr. Christensen about the absence of medical

justification for narcotics prescriptions that were issued to Howell, Bryant, and other patients who had been seen by Dr. Pompy. In his pleadings, Dr. Pompy specifically takes issue only with those discrete statements that his "prescribing volume" was excessive for physicians in his area of practice and that he had used inflated billing codes based on the documented time spent with patients in certain visits. See Search Warrant Aff. at PageID.2383-84. This information, based on eyewitness accounts by two persons who visited Dr. Pompy's clinic and received prescriptions for powerful narcotic pain relievers, suffices to suggest a reasonable probability that Dr. Pompy was engaged in a pattern of issuing prescriptions for controlled substances without a legitimate medical purpose. The statements concerning Pompy's overall prescribing volume and billing code abuses are at worst merely

exaggerations about the significance of data reviewed by investigators. But even if they were outright falsehoods, "a court should set aside any false statement, or include any omission, in order to determine whether probable cause nonetheless exists, and an alleged misstatement or exaggeration of facts is insufficient to make a claim if other facts support the probable cause determination." *Buchanan v. Metz*, 647 F. App'x 659, 664 (6th Cir. 2016) (citing *Hill v. McIntyre*, 884 F.2d 271, 275 (6th Cir. 1989)).

After disregarding those discrete portions of the affidavit that the plaintiffs specifically challenge as misleading, the remainder of the unimpeached narrative amply supports a conclusion that probable cause was demonstrated to suspect Dr. Pompy of engaging in the issuance of illicit prescriptions for controlled substances. The plaintiffs do not challenge

the affidavit's establishment of a nexus to the places to be searched and assets to be seized, but the affidavit also sufficiently establishes reasonable grounds to believe that evidence of Dr. Pompy's illegal medical practices would be found at his clinic and his home, as well as in the records of financial accounts associated with the practice.

Considering the totality of the narrative in the search warrant affidavit, there was no deficiency in the probable cause showing, and the plaintiffs therefore cannot proceed on their claims of Fourth Amendment violations (Count 4). The allegedly improper procurement of search warrants is the sole basis for the civil conspiracy claim pleaded in Count 3, and that claim consequently fails due to the corresponding failure plausibly to make out any claim of an underlying constitutional violation. "In the absence of a viable underlying [constitutional]

claim, [the plaintiff's] associated [] conspiracy claim necessarily fails." *Spearman v. Williams*, No. 22-1309, 2023 WL 7000971, at *5 (6th Cir. July 17, 2023) (citing *Stricker v. Township of Cambridge*, 710 F.3d 350, 365 (6th Cir. 2013); *Wiley v. Oberlin Police Dep't*, 330 F. App'x 524, 530 (6th Cir. 2009) (holding that a plaintiff cannot succeed on a conspiracy claim where "there was no underlying constitutional violation that injured her")).

C. Tortious Interference Claim

The plaintiffs allege that defendants Blue Cross and Moore interfered with a valid business expectancy by causing Dr. Pompy's practice to be terminated from several other provider networks as a result of the issuance of the allegedly bogus search warrants. That claim is implausible because, (1) as discussed above, there was nothing improper about the issuance of the search warrants in the first instance,

and (2) in any event the documentation attached to the complaints conclusively shows that the termination of provider relationships was not caused by the issuance or execution of any search warrants, but instead by Dr. Pompy's arrest on criminal charges of controlled substances distribution.

Under Michigan law, the elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy, (2) the defendant's knowledge of the relationship or expectancy, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to the plaintiff. *Cedroni Ass'n, Inc. v. Tomblinson, Harburn Assocs., Architects & Planners Inc.*, 492 Mich. 40, 45, 821 N.W.2d 1, 3 (2012) (citing *Dalley v. Dykema Gossett, PLLC*, 287 Mich. App. 296, 323, 788 N.W.2d

679, 696 (2010)). For the first element, the plaintiff must show that the expectancy was "a reasonable likelihood or probability, not mere wishful thinking." *Cedroni*, 492 Mich. at 45, 821 N.W.2d at 3 (citing *Trepel v. Pontiac Osteopathic Hosp.*, 135 Mich. App. 361, 377, 354 N.W.2d 341, 348 (1984)) (quotation marks omitted). The third element requires a plausible allegation of an "intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Formall, Inc. v. Cmty. Nat. Bank of Pontiac*, 166 Mich. App. 772, 779, 421 N.W.2d 289, 292 (1988) (quotation marks and citations omitted). The "plaintiff must demonstrate, with specificity, affirmative acts by the interferer which corroborate the unlawful purpose of the interference." *Id.* at 292-93.

The pleadings here do not plausibly describe the doing of any "per se wrongful act" or the commission of any "lawful act with malicious intent," because nothing more is alleged than that the defendants procured and executed search warrants that were supported by probable cause. Moreover, Dr. Pompy conspicuously does not challenge the basis of probable cause for his arrest on federal charges of drug and health care fraud offenses. Nor could he advance any such challenge at this point, since he was charged in an indictment issued by a grand jury on a finding of probable cause. See *Parnell v. City of Detroit, Michigan*, 786 F. App'x 43, 47 (6th Cir. 2019) ("[A] bindover determination after a preliminary hearing, or a grand jury indictment, proves the existence of probable cause sufficient to call for trial on the charge and forecloses a claim for malicious

prosecution.") (citing *King v. Harwood*, 852 F.3d 568, 587-88 (6th Cir. 2017)).

The specimens of termination letters that were attached to the complaint disclose that Dr. Pompy's medical practice was suspended from other provider networks due to his "arrest"; no mention is made of any "search"— either proper or improper — which is the entire focus of the instant litigation. See Letter dated Oct. 3, 2016 ("This summary suspension is pursuant to Policy No. CR18; Summary Suspension. HAP may initiate an immediate summary suspension against a HAP provider when the Chair of the Credentialing Committee is made aware that the provider has *been arrested or charged with a felony* and HAP believes that the provider's charges endanger the public health, safety or welfare of our members.") (emphasis added).

It also is axiomatic that causation is an inherent element of every claim of intentional tort, including interference with a business expectancy. *Vista Prop. Grp., LLC v. Schulte*, No. 347471, 2020 WL 5581751, at *7 (Mich. Ct. App. Sept. 17, 2020) ("[T]he third element of tortious interference . . . requires [a] showing of causation."). The pleadings in this case affirmatively demonstrate that the alleged harm of other providers' terminations of their relationships with the plaintiffs' medical practice was not caused by any allegedly wrongful conduct described in any version of the complaints.

The plaintiffs have failed to plead plausibly any underlying tortious act and also have failed adequately to plead facts to establish causation to support the claims for tortious interference (Count 6).

For these reasons, Count 3, Count 4, and Count 6 of the second amended and proposed third amended complaints do not state claims upon which relief can be granted. Moore's motion to dismiss will be granted, and the motion to amend to add Dr. Pompy individually as a plaintiff in the Racketeering claims in Counts 1 and 2 against Blue Cross and Moore and join Blue Cross as a defendant in Counts 3 and 4 will be denied.

IV. Plaintiffs' Motion for Relief from Order Dismissing Claims Against Blue Cross and for Leave to File a Third Amended Complaint

The Court previously ordered that all the claims against defendant Blue Cross in Dr. Pompy's *pro se* first amended complaint be dismissed. *See* ECF No. 105, discussed at PageID.1612-16. He moves for relief from that order under Federal Rule of Civil Procedure 60(b), although he now concedes that the

motion should be decided under Rule 54(b), since the previous order was interlocutory. Rule 15(a) applies to the motion to amend the second amended complaint.

"District courts have authority both under common law and Rule 54(b) to reconsider interlocutory orders and to reopen any part of a case before entry of final judgment." *Rodriguez v. Tennessee Laborers Health and Welfare Fund*, 89 F. App'x 949, 959 (6th Cir. 2004) (citations omitted). A party seeking that relief generally must show "(1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct a clear error or prevent manifest injustice." *Ibid.* Motions to amend before trial are governed by Rule 15(a). Rule 15(a)(2) requires a party seeking to amend its pleadings at this stage of the proceedings to obtain leave of court. Although Rule 15(a)(2) says that "[t]he court should freely give

leave [to amend] when justice so requires," leave may be denied for several reasons, including the futility of the proposed new claim. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Duggins v. Steak 'N Shake, Inc.*, 195 F.3d 828, 834 (6th Cir. 1999); *Fisher v. Roberts*, 125 F.3d 974, 977 (6th Cir. 1997).

For all of the reasons discussed at length above in connection with the motions to dismiss by defendants Bishop and Moore, the plaintiffs have failed plausibly to plead any viable claims against any of the defendants named in this suit either presently or formerly.

The one claim that was not discussed is the breach of contract claim in Count 5. The Court previously held that it lacked jurisdiction over that claim and dismissed it without prejudice. ECF No. 105, PageID.1617-18. Blue Cross argued at the time that that the amended complaint did not state a valid

breach of contract claim. But to reach that conclusion, the Court must have the authority to address the merits. Because the contract claim was a purely state-law claim between non-diverse parties, and it was not "related" within the meaning of section 1367(a) to a pleaded claim over which this Court has subject matter jurisdiction, the Court dismissed that claim without prejudice. The plaintiffs have not presented any good grounds either to revisit that ruling or to permit the resurrection of the previously dismissed claim in the current posture of the case, where no viable claims for any other causes of action remain.

The plaintiffs' motion for relief from the prior dismissal orders and for leave to further amend the pleadings will be denied.

V. Defendant Blue Cross's Motion to Strike

Defendant Blue Cross argues that all of the claims in the second amended complaint pleaded against it should be stricken under Federal Rule of Civil Procedure 12(f) because (1) the Court dismissed all of the claims against Blue Cross with prejudice more than three years before the second amended complaint was filed, (2) when the magistrate judge held a conference with counsel for the remaining parties and subsequently granted leave to file a second amended complaint, he evidently intended to allow Dr. Pompy to bolster the pleadings against the surviving defendants, not to resurrect claims which had been dismissed years prior, and (3) Blue Cross did not consent to the filing of the second amended complaint, nor was leave granted by the Court to file a second amended complaint adding previously dismissed claims.

The plaintiffs respond that (1) nothing in the Court's April 2023 order "limited" or "conditioned" the scope of an amended pleading in any way, and the plaintiffs assumed therefore that they were free to replead any claims against any party that were not previously dismissed with prejudice, (2) the repleaded claims for RICO and civil conspiracy are brought solely by IPMA, which had its claims dismissed without prejudice due to its inability to retain counsel, unlike Dr. Pompy's claims, which were dismissed with prejudice, and (3) counsel's representation that he was working on winnowing claims against "remaining defendants" did not "rule out" the possibility that he also was considering resurrecting claims against previously dismissed parties. The plaintiffs further argue that none of the cases cited by the defendant involved pro se parties, and the Court should not punish Dr. Pompy for his

inability to previously retain counsel, which was caused by the defendants' allegedly wrongful seizure of his assets. The plaintiffs also contend that Rule 15(a) does not preclude renaming previously dismissed parties where leave to amend properly is granted, because the order of partial dismissal was not a "final order" under Rule 54, and therefore Blue Cross remained a party to the case after that order was entered.

All of the points argued in the plaintiffs' opposition to this motion are subsumed by the arguments in support of their combined motion for relief from the order dismissing claims against Blue Cross and for leave to file a third amended complaint rejoining BCBSM as a defendant and reasserting all of the previously dismissed claims. The Court addressed the merits of the claims in the proposed third amended complaint when it denied that motion,

above. The claims against defendant Blue Cross do not survive. No further relief can be granted to this defendant by striking any pleadings. Therefore, this motion will be denied as moot.

VI. Conclusion

After reviewing the allegations in the second amended complaint and the proposed third amended complaint, the Court must conclude that the plaintiffs have not pleaded, and will not be able to plead, facts in support of the theories of recovery that they outline in those pleadings.

Accordingly, it is ORDERED that the plaintiffs' motion for relief from order dismissing claims against Blue Cross and for leave to file a third amended complaint (ECF No. 171) is DENIED.

It is further ORDERED that the motions to dismiss by defendants Bishop and Moore (ECF No. 156, 157) are GRANTED.

It is further ORDERED that defendant Blue Cross Blue Shield's motion to strike (ECF No. 155) is DENIED as moot.

It is further ORDERED that all claims in the second amended complaint are DISMISSED WITH PREJUDICE, except the claim for breach of contract (Count 5), which is DISMISSED WITHOUT PREJUDICE.

s/David M. Lawson

DAVID M. LAWSON

United States District Judge

Date: February 28, 2024

APPENDIX D

STATE OF MICHIGAN WAYNE COUNTY CIRCUIT COURT LESLY POMPY, and INTERVENTIONAL PAIN MANAGEMENT ASSOCIATES, P.C., Plaintiffs, v. Case No. 24 HON. -------CB JURY DEMAND BLUE CROSS BLUE SHIELD OF MICHIGAN, Defendant. BUTZEL George B. Donnini (P66793) Joseph E. Richotte (P70902 Steven R. Eatherly (P81180) Columbia Center 201 W. Big Beaver Rd. #1200 Troy, MI 48084 (248) 258-1616 donnini@butzel.com richotte@butzel.com eatherly@butzel.com Counselfor Plaintiffs 1. COMPLAINT BUSINESS COURT ELIGIBLE MCL 600.8031(1)(c)(i)-(ii) MCL 600.8031(2)(d) Notice of Related Action. A civil action between these parties arising out of the transactions or occurrences alleged in this complaint was

previously filed in the United States District Court for the Eastern District of Michigan, where it was styled Pompy v Monroe Bank & Trust, et al., given case number 2:19-cv-10334, and assigned to U.S. District Judge David M. Lawson ("Pompy I"). The contract claim asserted in this complaint was dismissed without prejudice for want of subject-matter jurisdiction. Id., at R.182, PageID.3144. Federal law authorizes the claim to be refiled in this Court for adjudication on the merits. 28 USC 1367(d). - 1 Case 2:19-cv-10334-DML-APP ECF No. 188-2, PageID.3187 Filed 07/31/24 Page 3 of 11 PARTIES 2. Plaintiff Lesly Pompy is a citizen of the United States of American and a citizen of the State of Michigan. He is domiciled at 533 North Monroe Street in Monroe, Michigan 48162. He is the sole shareholder of PlaintiffInterventional Pain Management Associates, P.C. 3. Plaintiff

Interventional Pain Management Associates, P.C. ("IPMA"), is a professional corporation organized under the laws of the State of Michigan with a registered office at 400 Galleria Officenter, Suite 500, in Southfield, Michigan 48034. IPMA is a business enterprise under the Business Court Act. MCL 600.8031(b). 4. Defendant Blue Cross Blue Shield of Michigan ("BCBSM") is a mutual insurance company organized under the laws of the State of Michigan with headquarters at 600 East Lafayette Boulevard in Detroit, Michigan 48226. BCBSM is a business enterprise under the Business Court Act. MCL 600.8031(b). JURISDICTION AND VENUE 5. The circuit court has original subject matter jurisdiction over this dispute because the amount in controversy exceeds $25,000. Const (1963), art. 6, § 13; MCL 600.601(1)(a); MCL 600.605. Accord MCL 600.8301(1). 6. The Court has territorial jurisdiction

over Wayne County, MCL 600.504, and Wayne County is the proper venue for this action because BCBSM has a place of business and conducts business in the City of Detroit, a municipal corporation located within Wayne County. MCL 600.1621(a). 7. This action is eligible for assignment to the business court docket because it: (a) involves a business dispute between business enterprises and the sole natural party is a current shareholder of one of the business enterprises, MCL 600.8031(1)(c); and (b) arises out of a contractual agreement, MCL 600.8031(2)(d). 8. The Court has general personal jurisdiction over Dr. Pompy by consent, MCL 600. 701(3), general personal jurisdiction over IPMA because it was incorporated under the laws - 2 Case 2:19-cv-10334-DML-APP ECF No. 188-2, PageID.3188 Filed 07/31/24 Page 4 of 11 of this state and by consent, MCL 600. 711(1)-(2), and general

personal jurisdiction over BCBSM because it was incorporated under the laws of this state and because it carries on a continuous and systematic part of its general business within this state. MCL 600. 711 (1), (3). BACKGROUND 9. Dr. Pompy's Credentials and Career. Dr. Pompy lawfully immigrated to the United States with his family when he was 12 years old. The Pompys settled in Bedford-Stuyvesant, a small community in Brooklyn, New York After watching many neighborhood kids fall into drugs and gang violence, Dr. Pompy decided to pursue a vocation in medicine. 10. In 1986, after graduating from City College of New York, Dr. Pompy received a scholarship to medical school and was admitted to an accelerated program, graduating from New York Medical School. 11. After medical school, Dr. Pompy pursued anesthesia training as a resident at SUNY Brooklyn. He then performed a two-year fellowship

in cardiac anesthesia at the prestigious Cleveland Clinic. Dr. Pompy thereafter passed his anesthesia boards and became a board-certified anesthesiologist by the American Board of Anesthesiology. 12. In 1991, Dr. Pompy moved to Monroe, Michigan, to become the chief of anesthesia at Mercy Memorial Hospital. 13. By the mid-1990s, Dr. Pompy had been encountering more patients suffering from long term, chronic pain. He wanted to help those patients better manage their pain, so he obtained his second board certification, this time in pain management, from the American Board of Pain Medicine in 1996. 14. By 2002, Dr. Pompy decided to step down as chief of anesthesiology at Mercy Memorial Hospital to open IPMA. He bought an office suite in the hospital's office building and opened his doors to the medically underserved people of Monroe County. 15. Dr. Pompy built a referral-only specialty practice at IPMA,

time in addiction medicine the American Society of Addiction Medicine. 17. BCBSM Contract. Dr. Pompy and BCBSM were parties to the "Blue Cross and Blue Shield of Michigan Trust Network Practitioner Affiliation Agreement" (revised Jan. 2012), which constitutes a contract between Dr. Pompy and BCBSM (the "Contract"). PX 1, Contract, Cff7.10. IPMA was at least an intended third-party beneficiary to the Contract. See id., at Cff3.4f (requiring Dr. Pompyto notifyBCBSM of any changes to his business-i.e., IPMA); MCL 600.1405. The Contract designates Dr. Pompy as "an approved non-exclusive preferred provider" of covered services to members of BCBSM. Id., at Cff2.1. Under the Contract, Dr. Pompy had a contractual right to provide covered services to BCBSM members. Id., at Cff3.4d. 18. On information and belief, IPMA and BCBSM were also parties to a separate agreement

under which IPMA had a right to receive payments from BCBSM due for services rendered by Dr. Pompy under the Contract. Plaintiffs are unable to locate a copy of the agreement but offer a "Provider Electronic Funds Transfer" printout from BCBSM, which was produced by the United States in the criminal case against Dr. Pompy. PX 2, BCBSM Provider Electronic Funds Transfer. Plaintiffs believe BCBSM has a copy of the separate agreement in its records. 19. BCBSM had a contractual duty to pay, and Plaintiffs had a contractual right to be paid, for covered services that Dr. Pompy rendered to BCBSM members under the Contract. 20. The Contract contemplates that disputes may arise between BCBSM and Plaintiffs over the validity of a claim for payment for covered services and provides a comprehensive claims - 4 Case 2:19-cv-10334-DML-APP ECF No. 188-2, PageID.3190 Filed 07/31/24

Page 6 of 11 dispute and appeals process. BCBSM had a right to audit claims for payment. Plaintiffs had a right to appeal adverse claim and audit determinations through BCBSM's internal process, with a right to further appeal to an independent review panel for a binding determination as to the validity of a disputed claim. Id. At

APPENDIX E: MOTION TO RECALL MANDATE

Case No. 24-1249

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT LESLY POMPY, M.D., Plaintiff-Appellant, v. FIRST MERCHANTS BANK, et al., Defendants-Appellees. Case No. 24-1249

MOTION TO RECALL MANDATE Pursuant to Federal Rule of Appellate Procedure 41(d), Plaintiff-Appellant Lesly Pompy respectfully moves this Court to recall its mandate issued of July 9, 2025. The recall is proper on the grounds that "the Court's decision rests on a clear factual misapprehension under FRAP 40(a)(2)." The record clearly shows misused of federal funds, yet the Court erroneously failed to see the misuse of federal funds. The Court clearly misunderstood a dispositive issue. Additionally, the denial of rehearing (Doc. 26-1) ignored Petitioner's pro arguments on the use of

misuse of federal funds. Such denial violates Erickson v. Pardus, 551 U.S. 89 (2007)" and demonstrates manifest injustice. QUESTIONS PRESENTED 1. Whether recipients of federal funds (including Medicare, Medicaid, Equitable Sharing Program, and Bureau of Justice Assistance grants) may evade liability for civil rights violations committed under color of law, where such violations render their receipt of funds impermissible under: 2 o 42 U.S.C. § 1983 (constitutional deprivations); o 18 U.S.C. § 242 (criminal civil rights violations); o 28 C.F.R. Part 42 (DOJ nondiscrimination regulations); and o Executive Order 14119 (prohibiting regulatory weaponization). 2. Whether the Sixth Circuit erred in dismissing RICO claims against a private corporation (Blue Cross Blue Shield of Michigan) and state actors who conspired to misuse federal forfeiture funds and healthcare program payments to

target Petitioner, in violation of: o 31 U.S.C. § 5316 (Equitable Sharing Act compliance); o 42 U.S.C. § 1320a-7b (Medicare/Medicaid anti-kickback rules); and o 34 U.S.C. § 10151 (Bureau of Justice Assistance grant conditions). II. FEDERAL FUNDING VIOLATIONS NULLIFY IMMUNITY AND WARRANT REVERSAL OF MANDATE A. BCBSM and Lt. Moore's Conduct Violated Federal Funding Conditions 1. Medicare/Medicaid Fraud (42 U.S.C. § 1320a-7b) o BCBSM's fabrication of billing "violations" to justify seizures violated: ▪ Anti-Kickback Statute: Payments to Moore's task force for referrals (Doc. 9, pp. 4, 15). 3 ▪ False Claims Act: Submission of fraudulent warrants to seize assets reimbursed by Medicare (31 U.S.C. § 3729). o Precedent: Universal Health Servs. v. U.S. ex rel. Escobar, 579 U.S. 176 (2016) (material falsity voids payments). 2. Equitable Sharing Act Violations (31

U.S.C. § 5316) o Moore and BCBSM diverted forfeiture proceed to punish Pompy, violating DOJ's "clean hands" policy (28 C.F.R. § 9.5). The court relied on the search warrant affidavit but ignored evidence that it contained knowingly false statements (e.g., Howell's fabricated identity.) o Evidence: Post-raid fund transfers to MANTIS (Doc. 9, p. 15) and BCBSM's "profit-sharing" under Health Endowment Act (Doc. 9, p. 17). 3. Bureau of Justice Assistance (BJA) Grant Abuse (34 U.S.C. § 10151) o MANTIS used BJA Grant No. 2011-PM-BX-K002 (Operation Gateway) to fund raids targeting Pompy, violating: ▪ Civil Rights Act of 1964 (Title VI): Discriminatory enforcement (42 U.S.C. § 2000d). ▪ DOJ Guidelines: Prohibiting use of funds for unconstitutional searches (28 C.F.R. § 42.107). B. The Sixth Circuit Ignored the Jurisdictional Implications of Funding Violations 1. 42 U.S.C. §

1983 Supersedes Qualified Immunity 4 State actors who accept federal funds waive immunity for civil rights violations. See Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 28 (1981). Here: Moore's task force received Equitable Sharing funds, subjecting him to § 1983 liability for Fourth Amendment violations. 2. RICO's Nexus to Federal Programs o BCBSM's Medicare/Medicaid fraud and Moore's forfeiture abuses constitute predicate acts under RICO (18 U.S.C. § 1961(1)(B)). o Precedent: Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639 (2008) (fraudulent use of federal programs satisfies RICO). 3. Whether the panel's refusal to permit amendment of pleadings—despite evidence of fraudulent concealment by Blue Cross and continuous torts (e.g., reputational harm from license suspension)—violates this Court's precedent on equitable tolling (Irwin v. VA, 498 U.S. 89 (1990))

and conflicts with circuits allowing amendments to cure defects in pro se filings (Erickson v. Pardus, 551 U.S. 89 (2007)).** *(Reply Brief at 19–21; Rehearing Denial, Doc. 26-1.)* C. Executive Order 14119 Reinforces Funding-Based Liability • § 4(d): Criminal enforcement of unpublished regulatory offenses (e.g., BCBSM's secret billing rules) is "strongly discouraged" if funded by federal programs. • Preamble: Condemns "weaponization" of federally subsidized enforcement. 5 III. CONCUSION The Court completely failed to review, any of the impact of misuse of federal funding on : 1) qualified immunity, and 2) : the RICO claims against a private corporation (Blue Cross Blue Shield of Michigan), and state actors who conspired to misuse federal forfeiture funds and healthcare program payments to target Appellant. RELIEF REQUESTED 1. Declare that BCBSM and Moore's conduct violated federal

funding conditions, voiding their immunity. 2. Reverse dismissal of RICO claims predicated on Medicare/Medicaid and Equitable Sharing Act violations. 3. Remand for discovery on: o BCBSM's Medicare fraud (42 U.S.C. § 1320a-7b); o MANTIS's misuse of BJA grants (34 U.S.C. § 10151).

Respectfully submitted, /s/ Lesly Pompy Lesly Pompy M.D. 533 N. Monroe St. Monroe, MI 48162 734-819-0634 -pompypain@gmail.com

APPENDIX F: Executive Order 14294 of May 9, 2025. Fighting Overcriminalization in Federal Regulations

Executive Order 14294 of May 9, 2025

Fighting Overcriminalization in Federal Regulations

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1 . *Purpose.* The United States is drastically overregulated. The Code of Federal Regulations contains over 48,000 sections, stretching over 175,000 pages—far more than any citizen can possibly read, let alone fully understand. Worse, many carry potential criminal penalties for violations. The situation has become so dire that no one—likely including those charged with enforcing

our criminal laws at the Department of Justice—knows how many separate criminal offenses are contained in the Code of Federal Regulations, with at least one source estimating hundreds of thousands of such crimes. Many of these regulatory crimes are "strict liability" offenses, meaning that citizens need not have a guilty mental state to be convicted of a crime.

This status quo is absurd and unjust. It allows the executive branch to write the law, in addition to executing it. That situation can lend itself to abuse and weaponization by providing Government officials tools to target unwitting individuals. It privileges large corporations, which can afford to hire expensive legal teams to navigate complex regulatory schemes and fence out new market entrants, over average Americans.

The purpose of this order is to ease the regulatory burden on everyday Americans and ensure no American is transformed into a criminal for violating a regulation they have no reason to know exists.

Sec. 2 . *Policy*. It is the policy of the United States that:

(a) Criminal enforcement of criminal regulatory offenses is disfavored.

(b) Prosecution of criminal regulatory offenses is most appropriate for persons who know or can be presumed to know what is prohibited or required by the regulation and willingly choose not to comply, thereby causing or risking substantial public harm. Prosecutions of criminal regulatory offenses should focus on matters where a putative defendant is alleged to have known his conduct was unlawful.

(c) Strict liability offenses are "generally disfavored." *United States* v. *United States Gypsum, Co.*, 438 U.S. 422, 438 (1978). Where enforcement is appropriate, agencies should consider civil rather than criminal enforcement of strict liability regulatory offenses or, if appropriate and consistent with due process and the right to jury trial, *see* *Jarkesy* v. *Securities and Exchange Commission*, 603 U.S. 109 (2024), administrative enforcement.

(d) Agencies promulgating regulations potentially subject to criminal enforcement should explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to those offenses.

Sec. 3 . *Definitions.* For purposes of this order:

(a) "Agency" has the meaning given to "Executive agency" in section 105 of title 5, United States Code;

(b) "Criminal regulatory offense" means a Federal regulation that is enforceable by a criminal penalty; and

(c) "Mens rea" means the state of mind that by law must be proven to convict a particular defendant of a particular crime.

Sec. 4 . *Report on Criminal Regulatory Offenses.* (a) Within 365 days of the date of this order, the head of each agency, in consultation with the Attorney General, shall provide to the Director of the Office of Management and Budget (OMB) a report containing:

(i) a list of all criminal regulatory offenses enforceable by the agency or the Department of Justice; and

(ii) for each criminal regulatory offense identified in subsection (a)(i) of this section, the range of potential criminal penalties for a violation and the applicable