APPENDIX TABLE OF CONTENTS

APPENDIX A—Federal Circuit Opinion (June 8, 2026) 2a

APPENDIX B—Court of Federal Claims Opinion and Order (September 11, 2025) 10a

APPENDIX C—Court of Federal Claims Judgment (September 12, 2025) 14a

APPENDIX D—Order Denying Rehearing (July 23, 2026) 15a

APPENDIX E—Federal Circuit Judgment (June 8, 2026) 17a

APPENDIX F—Constitutional and Statutory Provisions 18a

APPENDIX G—First Amended Complaint Excerpts (C.A. App. 25–26, 33) 21a

APPENDIX H—Recruitment Service Agreement and Official Job Offer (C.A. App. 48–49) 24a

APPENDIX I—VHA Handbook 1100.19 and CTVHCS Bylaws Excerpts (C.A. App. 164–165, 197) 26a

APPENDIX J—Realignment, OPPE, and Privileges Email (C.A. App. 55) 29a

APPENDIX K—Preappointment Recruitment and Whole Health Timeline Excerpts (C.A. App. 28–31, 34) 30a

APPENDIX L—Realignment Approval and Notice (C.A. App. 57–58) 36a

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

KOSHY MATHAI, Plaintiff-Appellant,

v.

UNITED STATES, Defendant-Appellee.

No. 2026-1041

Appeal from the United States Court of Federal Claims in No. 1:24-cv-01954-SSS, Judge Stephen S. Schwartz.

Decided: June 8, 2026

NOTE: This disposition is nonprecedential.

Before DYK and TARANTO, Circuit Judges, and MOORE, District Judge.[1]

PER CURIAM.

In 2020, Koshy Mathai began employment with the Department of Veterans Affairs (VA) as a physician specializing in pain management, and about two years later, he requested a retention bonus. VA denied the request. Dr. Mathai then filed this action in the United States Court of Federal Claims (Claims Court), alleging that VA's denial of a retention bonus, combined with an organizational change regarding the Pain Management Section of the VA facility at which he worked, effected a taking of his medical services labor without compensation, in violation of the Takings Clause of the Fifth Amendment to the United States Constitution. The Claims Court dismissed the action for failure to state a claim. *Mathai v. United States*, No. 24-1954C, 2025 WL 2622178, at *1 (Fed. Cl. Sept. 11, 2025) (Decision). We now affirm.

I

Because the case was decided on a motion to dismiss, we accept for purposes of the appeal Dr. Mathai's allegations in his complaint, as amended, and documents deemed incorporated. Appointed to a VA physician position in 2019, Dr. Mathai began his service in the VA Central Texas Health Care System (Texas facility) in March 2020. Appx. 49.[2] Dr. Mathai's specialization was pain management. Id. Before beginning service, he discussed the terms and compensation of the position with several officials at VA. Appx. 28–30. Specifically, Dr. Mathai was informed by the Chief of Staff at the Texas facility that a retention bonus may be offered after two years of service. Appx. 29. Dr. Mathai acknowledged that VA did not guarantee the retention bonus. Appx. 29; see Appx. 35 (Dr. Mathai's contemporaneous notes stating that a retention bonus after the first two years of service was "likely but not promised"). Dr. Mathai signed the Recruitment Service Agreement, agreeing to work for VA for two years in exchange for a recruitment payment of $50,003, Appx. 48, and annual pay of $320,000, Appx. 39–42. The annual pay included (1) base pay under 38 U.S.C. § 7431(b), and (2) market pay under id. § 7431(c). Appx. 39–42; see also Appx. 26 (Dr. Mathai's acknowledgement that his pay is governed by statute).

In September 2020, VA made an organizational change, moving the Pain Management Section of the Texas facility from the Surgical Service Line to a new Whole Health Service Line. Appx. 57–58. Dr. Mathai opposed that change. Appx. 31. In February 2022, VA made another organizational change, moving the Pain Management Section to the Anesthesiology Department. Appx. 31, 75, 116.

In January 2022, as his two-year mark was approaching, Dr. Mathai requested a retention bonus and a market pay increase from VA. Appx. 64–65. Dr. Mathai also sent an email to the Chief of Staff asking several questions about his pay and bonuses, and the Chief of Staff responded that she "asked the [Whole Health] Service to fill out the request [form], as is customarily done," and indicated that she would "not be responding directly to [his] other [bonus-related] questions at this time." Appx. 63–64. VA then declined to offer Dr. Mathai a retention bonus. Appx. 27.

In 2024, Dr. Mathai filed suit in the Claims Court, seeking, under the Fifth Amendment, compensation for an allegedly uncompensated taking. See Appx. 8. After the government timely filed a motion to dismiss, Dr. Mathai amended his complaint, alleging that what VA took was his "labor of providing Interventional Pain specialty." Appx. 26. Dr. Mathai reasoned that the denial of the retention incentive bonus and "repurposing of [his] labor" by the organizational changes established that VA engaged in a "cohesive pattern of action and inaction that functionally appropriated [his] labor." Appx. 26; see Appx. 33. Dr. Mathai explained that he was thus seeking compensation for his "lost earnings differentials valued at $9,100,000 and $2,785,000" from other "concrete job opportunities" that he could have taken instead of the VA position. Appx. 26. Dr. Mathai then made clear that he was not making a claim for "a Retention Incentive." Appx. 33. The government renewed its motion to dismiss, arguing that the amended complaint did not state a claim upon which relief may be granted.[3]

In September 2025, the Claims Court granted the motion and dismissed the action. Decision, at *1. The Claims Court reasoned that Dr. Mathai's "expectations about the terms and compensation of his employment . . . are not property and cannot be the subject of a claim for just compensation under the Takings Clause" as his compensation was "governed exclusively by statute" and his "prior expectations [about the terms of his employment] have no legal force" because such terms "are entirely contingent on the legal structure governing the appointment." Id. at *2 (citing *Adams v. United States*, 391 F.3d 1212, 1221 (Fed. Cir. 2004) (internal quotation marks omitted)).

The Claims Court entered a final judgment, and Dr. Mathai timely appealed. Appx. 4, 10. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

II

"Whether a taking under the Fifth Amendment has occurred is a question of law with factual underpinnings." *Cary v. United States*, 552 F.3d 1373, 1376 (Fed. Cir. 2009) (citing *Alves v. United States*, 133 F.3d 1454, 1456 (Fed. Cir. 1998)). We review de novo the Claims Court's dismissal of a suit for failure to state a claim. *112 Genesee Street, LLC v. United States*, 166 F.4th 1017, 1028 (Fed. Cir. 2026). "We take all factual allegations in the complaint as true and construe the facts in the light most favorable to the non-moving party." *Jones v. United States*, 846 F.3d 1343, 1351 (Fed. Cir. 2017). "To withstand a motion to dismiss under Rule 12(b)(6) of the [Claims Court], a complaint must contain 'enough facts to state a claim to relief that is plausible on its face.'" *Frankel v. United States*, 842

F.3d 1246, 1249 (Fed. Cir. 2016) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

The Fifth Amendment requires the government to pay just compensation to an individual if his property was taken by the government for a public use. U.S. Const. amend. V. To determine if a taking under the Fifth Amendment has occurred, we first consider "whether the claimant has identified a cognizable Fifth Amendment property interest that is asserted to be the subject of the taking," and, if we "conclude[] that a cognizable property interest exists," then we "determine[] whether that property interest was 'taken.'" *Acceptance Insurance Companies, Inc. v. United States*, 583 F.3d 849, 854 (Fed. Cir. 2009). We agree with the Claims Court that both Dr. Mathai's expectation of a retention bonus from VA and his expectation of not being assigned particular duties associated with the organizational-chart change for the Pain Management Section are not cognizable property interests protected by the Fifth Amendment. Decision, at *1–2; see Appx. 24–33. This determination is sufficient to affirm the dismissal of Dr. Mathai's case.

To establish a cognizable interest, Dr. Mathai must identify a source of law independent of the Fifth Amendment, "such as state, federal, or common law," that gives rise to "the requisite property rights." *Air Pegasus of D.C., Inc. v. United States*, 424 F.3d 1206, 1213 (Fed. Cir. 2005) (internal citation and quotation marks omitted). Here, like the federal-employee appellants in *Adams v. United States*, Dr. Mathai "served by appointment" and had not "entered into any separate agreement with the Government, express or implied" regarding his

compensation or employment terms, so his compensation and employment terms "were governed exclusively by statute, not contract." 391 F.3d at 1221. No source of law gives Dr. Mathai a property right protected by the Takings Clause in either of the two respects he invokes for this action.

Dr. Mathai contends that his "labor (medical services)" was taken by VA as a result of VA's decision not to offer Dr. Mathai a retention bonus, following his alleged discussions with VA, prior to his employment, that he may be eligible for such a bonus. See Appx. 25, 29, 35, 92. But Dr. Mathai, like the *Adams* appellants, possessed only a "unilateral expectation to receive" a retention bonus. 391 F.3d at 1221. Congress established that the annual pay of a physician employed by VA is composed of both base pay and market pay, 38 U.S.C. § 7431(a), with the latter concerning pay "intended to reflect the recruitment and retention needs for the specialty or assignment . . . of a particular physician . . . in a facility of [VA]," id. § 7431(c)(2). VA has also adopted certain standards relevant here. Appx. 31–32, 76 (referring to VA Handbook 5007/58). It is undisputed that VA Handbook 5007/58 authorizes VA officials to exercise discretion in determining whether to award an employee a retention bonus. Appx. 31–32, 76. Thus, the statute and VA standards do not give physicians a right to a retention bonus. Cf. Appellant Informal Opening Br. at 45. That is enough to defeat Dr. Mathai's claim of a Takings Clause property right in a retention bonus, even without relying on the full scope of the precedent rejecting Takings Clause protection for a federal employee's asserted specific statutory right to be paid. See *Adams*, 391 F.3d at 1225.

Dr. Mathai also argues that VA's shifting of his working group to a different place in the organizational structure was a taking because it resulted in VA "push[ing] an agenda of Addictionology practice," which Dr. Mathai found "incongruent" with his specialty. Appx. 26; see Appellant Informal Opening Br. at 53–55. He ties this contention to the allegation that VA assigned him (or asked him to provide) addiction-related treatment, "a task outside [his] hired-for specialty need" when it moved the Pain Management Section to the Whole Health Service Line. Appx. 33; see also Appx. 26–27, 31. We see no plausible basis for a takings claim in this allegation.

VA, in its capacity as an employer, may exercise managerial discretion to meet the needs of the agency by, for instance, reassigning employees or even eliminating employees' positions through a reduction in force. See *Frey v. Department of Labor*, 359 F.3d 1355, 1357, 1360 (Fed. Cir. 2004); *Cross v. Department of Transportation*, 127 F.3d 1443, 1447 (Fed. Cir. 1997). Dr. Mathai cites no law or regulation that would exempt federal employees like him from providing particular medical services assigned by VA in its managerial discretion. Appellant Informal Opening Br. at 30–31; see id. at 53–56. It makes no difference that the managerial decision was allegedly "premeditated." Id. at 14, 31, 55. In this respect, Dr. Mathai lacks the "essential" property right necessary to state a claim cognizable under the Takings Clause. See *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 673 (1999) (internal citation and quotation marks omitted).

III

We have considered Dr. Mathai's remaining arguments but find them unpersuasive. For the foregoing reasons, we affirm the judgment of the Claims Court.

The parties shall bear their own costs.

AFFIRMED

[1] Honorable K. Michael Moore, District Judge, United States District Court for the Southern District of Florida, sitting by designation.

[2] "Appx." refers to the appendix submitted with Dr. Mathai's informal opening brief.

[3] When Dr. Mathai then moved for leave to file under seal a sur-reply with exhibits, the Claims Court ordered him to show cause why such a filing should be permitted and eventually denied the motion. The Claims Court explained that Dr. Mathai's reasons for seeking to file under seal were "too generic to justify confidentiality" and further observed that many of his exhibits were also public records. Decision, at *1. The Claims Court permitted the motion to remain under seal but did not "consider[] the proposed sur-reply or its exhibits." Id.

APPENDIX B

UNITED STATES COURT OF FEDERAL CLAIMS

KOSHY MATHAI, M.D., Plaintiff,

v.

THE UNITED STATES, Defendant.

No. 24-1954 C

Filed: September 11, 2025

OPINION AND ORDER

Plaintiff Koshy Mathai, proceeding pro se, claims that the United States has taken his property—specifically, his work as a doctor for the Department of Veterans Affairs—without just compensation. See Am. Compl. (ECF 13). The government has moved to dismiss for failure to state a claim upon which relief can be granted. See Mot. (ECF 14); Resp. (ECF 15); Reply (ECF 16); see also RCFC 12(b)(6). Plaintiff has moved for leave to file a surreply under seal. See Mot. for Leave (ECF 18). The motion to dismiss (ECF 14) is GRANTED. The motion for leave to file a surreply under seal (ECF 18) is DENIED.

To begin with the surreply, Plaintiff argues that filing certain exhibits publicly "risks harm and prejudice to parallel administrative proceedings where witnesses' testimony and documentary evidence are still forthcoming." See Resp. to Show Cause Order (ECF 19). That explanation is too generic to justify confidentiality for particular documents presented to the Court. In addition, "desire to prevent the use of [one case's] record in other proceedings is simply not an adequate justification for its sealing." *Wilson v. American Motors Corp.*, 759 F.2d 1568, 1571 (11th Cir. 1985);

see also *In re Fort Totten Metrorail Cases*, 960 F. Supp. 2d 2, 10 (D.D.C. 2013). And the documents attached to the surreply appear to be government documents, many of which are public records that cannot be sealed when considered by the Court. See *Air Borealis Ltd. Partnership v. United States*, 167 Fed. Cl. 370, 370 n.* (2023). Plaintiff's explanation is therefore insufficient to justify filing a surreply under seal. Because I have not considered the proposed surreply or its exhibits, the motion for leave (ECF 18) may remain under seal.

To survive a motion to dismiss for failure to state a claim, Plaintiff must sufficiently "plead[] facts upon which a valid claim can rest." *El Bey v. United States*, 152 Fed. Cl. 777, 780 (2021) (quoting *Stroughter v. United States*, 89 Fed. Cl. 755, 760 (2009)); see *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Taking the Amended Complaint's well-pleaded facts as true, see *Iqbal*, 556 U.S. at 678, Plaintiff has alleged that he accepted employment in a particular department of the Veterans Affairs ("VA") healthcare system, having been told that he would be eligible for a "retention incentive" as part of his compensation. Am. Compl. at 4. After a "realignment" in the system, he found himself working in a different department, and was not paid the retention incentive. Id. at 3–4, 8. He therefore alleges that he was brought into the VA "for [a] purpose other than what [he] was hired for." Id. at 10. He seeks compensation based on what he would have been paid if he had made "other job choices ... over the life of [his] career[.]" Id. at 3.

The Takings Clause of the Fifth Amendment provides that when the government takes property

for public use, it must pay just compensation. See U.S. Const. amend. V. This Court has jurisdiction to consider such claims. *Jan's Helicopter Service, Inc. v. F.A.A.*, 525 F.3d 1299, 1309 (Fed. Cir. 2008). But the Federal Circuit has explained that federal employment, and its associated salary and benefits, are not property for constitutional purposes:

> [A] statutory right to be paid money, at least in the context of federal employee compensation and benefit entitlement statutes, is not a property interest for purposes of the Takings Clause. ... We decline to treat a statutory right to be paid money as a legally-recognized property interest, as we would real property, physical property, or intellectual property.

Adams v. United States, 391 F.3d 1212, 1225 (Fed. Cir. 2004). Plaintiff's expectations about the terms and compensation of his employment therefore are not property and cannot be the subject of a claim for just compensation under the Takings Clause.

Plaintiff may mean to argue that the government breached obligations to him by denying the employment setting and retention incentive he was allegedly told to expect. But Plaintiff's employment was "governed exclusively by statute," not by contract or other external sources of law. *Adams*, 391 F.3d at 1221; see also *Collier v. United States*, 56 Fed. Cl. 354, 356 (2003), aff'd, 379 F.3d 1330 (Fed. Cir. 2004); *Brockmeier v. United States*, No. 21-917C, 2021 WL 2555489, at *2 (Fed. Cl. June 22, 2021) (citing *Butler v. Pennsylvania*, 51 U.S. 402, 416 (1850)). Contract-based claims by government appointees, for example, must be dismissed under RCFC 12(b)(1) for lack of jurisdiction. *Hamlet v. United States*, 63 F.3d 1097, 1101 (Fed. Cir. 1995). A

federal employee's expectations of particular terms of employment are entirely contingent on the legal structure governing the appointment. As long as the government follows the law in setting and changing terms of employment, the employee's prior expectations have no legal force. *Shaw v. United States*, 226 Ct. Cl. 240, 251 (1981). Though Plaintiff believes he deserved a retention incentive, Plaintiff appears to waive any claim that the government violated the law. See Am. Compl. at 3 ("This deprivation did not stem from unlawful conduct[.]").

CONCLUSION

Defendant's Motion to Dismiss (ECF 14) is GRANTED, and Plaintiff's Motion for Leave to File Sur-reply Under Seal (ECF 18) is DENIED. The case is DISMISSED for failure to state a claim.

The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

s/ Stephen S. Schwartz

STEPHEN S. SCHWARTZ

Judge

APPENDIX C

UNITED STATES COURT OF FEDERAL CLAIMS

KOSHY MATHAI, M.D., Plaintiff,

v.

THE UNITED STATES, Defendant.

No. 24-1954 C

Filed: September 12, 2025

JUDGMENT

Pursuant to the court's Opinion and Order, filed September 11, 2025, granting defendant's motion to dismiss,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's complaint is dismissed for failure to state a claim.

Lisa L. Reyes

Clerk of Court

By: Ashley Reams

Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

KOSHY MATHAI, Plaintiff-Appellant,

v.

UNITED STATES, Defendant-Appellee.

No. 2026-1041

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Filed: July 23, 2026

NOTE: This order is nonprecedential.

Before MOORE, Chief Judge, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, STARK, Circuit Judges,[1] and MOORE, District Judge.[2]

PER CURIAM.

ORDER

On June 18, 2026, Koshy Mathai filed a combined petition for panel rehearing and rehearing en banc [ECF No. 40]. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

July 23, 2026

[1] Circuit Judge Newman did not participate.

[2] Honorable K. Michael Moore, District Judge, United States District Court for the Southern District of Florida, sitting by designation, participated only in the decision on the petition for panel rehearing.

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

KOSHY MATHAI, Plaintiff-Appellant,

v.

UNITED STATES, Defendant-Appellee.

No. 2026-1041

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

June 8, 2026

APPENDIX F

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONST. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; **nor shall private property be taken for public use, without just compensation.**

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1491(a)(1)

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy

Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

38 U.S.C. § 7401 (pertinent part)

There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

(1) Physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries.

38 U.S.C. § 7402(b)(1) (pertinent part)

(b)(1) Physician.—To be eligible to be appointed to a physician position, a person must—

(A) hold the degree of doctor of medicine or of doctor of osteopathy from a college or university approved by the Secretary,

(B) have completed an internship satisfactory to the Secretary, and

(C) be licensed to practice medicine, surgery, or osteopathy in a State.

38 U.S.C. § 7431 (pertinent parts)

(a) Elements of Pay.—Pay of physicians, podiatrists, optometrists, and dentists in the Veterans Health Administration shall consist of three elements as follows:

(1) Base pay as provided for under subsection (b).

(2) Market pay as provided for under subsection (c).

(3) Performance pay as provided under subsection (d).

(c) Market Pay.—

(1) Each physician, podiatrist, optometrist, and dentist is eligible for market pay.

(2) Market pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment (as defined by the Secretary) of a particular physician, podiatrist, optometrist, or dentist in a facility of the Department of Veterans Affairs.

(4) The determination of the amount of market pay of a physician, podiatrist, optometrist, or dentist shall take into account—

(A) the level of experience of the physician, podiatrist, optometrist, or dentist in the specialty or assignment of the physician, podiatrist, optometrist, or dentist;

(B) the need for the specialty or assignment of the physician, podiatrist, optometrist, or dentist at the medical facility of the Department concerned;

(C) the health care labor market for the specialty or assignment of the physician, podiatrist, optometrist, or dentist, which may cover any geographic area the Secretary considers appropriate for the specialty or assignment;

(D) the board certifications, if any, of the physician, podiatrist, optometrist, or dentist;

(E) the prior experience, if any, of the physician, podiatrist, optometrist, or dentist as an employee of the Veterans Health Administration; and

(F) such other considerations as the Secretary considers appropriate.

APPENDIX G
FIRST AMENDED COMPLAINT EXCERPTS
C.A. App. 25

STATEMENT OF THE CLAIM

I am bringing 1 claim to the Court of Federal Claims:

Claim #1: A Fifth amendment Takings claim: My labor (medical services) was my property taken from me by VA, with my choice(s) of employment serving as support upon which relief can be granted.

[The balance of this page consists of form matter and is omitted.]

APPENDIX G - Continued
FIRST AMENDED COMPLAINT EXCERPTS
C.A. App. 26

(1) Though employment in the federal service may be construed as voluntary, the protections of the Takings Clause do not turn on whether a person is free to resign, but on whether the government has appropriated a vested economic interest for public use without just compensation.

This deprivation did not stem from unlawful conduct, but from a prior-to-hire plan, actioned via an authorized repurposing of my labor, which constitutes a taking of a recognized property interest: my labor of providing Interventional Pain specialty medical care.

[Material concerning retention incentives and alleged economic loss omitted.]

I concede the validity of the government's statutory authority under 38 U.S.C. §§ 7401 and 7431 to hire specified personnel as needed for veterans' care and to address pay consistent with the market for the specialty of each particular physician.

That authority was exercised resulting in a taking of my labor value, not because the government acted unlawfully, but because it appropriated or redirected the use and economic benefit of my labor for a pre-existing purpose only made inconsistent with my appointment post-onboarding.

APPENDIX G - Continued
FIRST AMENDED COMPLAINT EXCERPTS
C.A. App. 33

[Paragraphs 40-41 omitted.]

(42) This is not a claim for a Retention Incentive. Instead, I have presented this timeline and the facts surrounding the handling of the Retention Incentive by Agency officials so as to buttress the Claim that I was seemingly brought to Central Texas VA for purpose other than what I was hired for. Labor/services is/are property in Texas.

(43) My state of mind was not a "mere unilateral expectation"; the record establishes a reasonable basis for a reasonable person to conclude that criteria were met for a Retention Incentive (RI) to be awarded under VA policy and statute.

[Intervening material omitted.]

It is this departure from the "typical" as conveyed which casts the abrupt realignment of my section under Whole Health (for which an Addictionologist was hired to lead), coupled with the Addictionologist's (my 2nd-level supervisor's) repeated efforts to compel my Pain section to treat addiction and the timeline of hiring activities pertaining to me and the Addictionologist-a task outside my hired-for specialty need-in a light that makes probable a predetermined plan to take my labor from me.

APPENDIX H
RECRUITMENT SERVICE AGREEMENT AND OFFICIAL JOB OFFER

Recruitment Service Agreement excerpt, C.A. App. 48

RECRUITMENT SERVICE AGREEMENT

As a condition of being paid a recruitment incentive of $50,003 in connection with my appointment on a full-time basis, to the position of a Staff Physician (Pain Management) effective March 15, 2020, I agree to serve 52 bi-weekly pay periods of employment with Surgical Service, Central Texas Veterans Health Care System (CTVHCS) Temple, Texas.

This recruitment incentive is site specific: should I relocate to another service/location/position within or outside of CTVHCS, I understand that the incentive will be redeemed. Service in a non-pay status will not count towards satisfying this obligation. Any time in a non-pay status will merely postpone the service obligation to VA and will extend the period of obligated service by an equal number of days.

I understand that VA may unilaterally terminate this agreement based solely on the management needs of VA. I will be entitled to all of the incentive payments that are attributable to completed service and to retain any portion of an incentive payment received that is attributable to uncompleted service.

[Payment timing, repayment provisions, and signatures omitted.]

APPENDIX H - Continued
OFFICIAL JOB OFFER
C.A. App. 49

From: usastaffingoffice@opm.gov
Sent: Tuesday, December 17, 2019, 3:51 PM
To: koshymmathai@gmail.com
Subject: Official Job Offer for Physician (Pain Management) with VA Central Texas Health Care System at Temple, Texas

Congratulations Koshy Mathai! It is our pleasure to confirm your selection for the position of Physician (Pain Management) at the VM-15 level with the US Department of Veterans Affairs at the VA Central Texas Health Care System.

The following information reflects the pertinent details regarding your selection:

Duty Location: Temple, Texas
Starting Grade, Step, and Salary: VM-15 Step 1 at $320,000 per year
Recruitment Incentive: $50,003 with a 2 year obligation
Proposed Effective Date of Appointment: 03/29/2020
Reporting Date: March 30, 2020
Type of Appointment: Excepted Appointment
Work Schedule: Full-Time
Service (Activity/Unit/Office): Pain Management Section/Surgical Service
Supervisor: Raja E. Shehadi at Raja.Shehadi@va.gov

[Onboarding, benefits, and contact information omitted.]

APPENDIX I
VHA HANDBOOK 1100.19 AND CTVHCS BYLAWS EXCERPTS

VHA Handbook 1100.19 (Oct. 2, 2007), C.A. App. 164

3. DEFINITIONS

a. Appointment. The term "appointment" refers to the Medical Staff. It does not refer to appointment as a VA employee (unless clearly specified), but is based on having an appropriate personnel appointment action, scarce medical specialty contract, or other authority for providing patient care services at the facility. Both VA employees and contractors may receive appointments to the Medical Staff.

e. Clinical Privileging. The term "clinical privileging" is defined as the process by which a practitioner, licensed for independent practice (i.e., without supervision, direction, required sponsor, preceptor, mandatory collaboration, etc.), is permitted by law and the facility to practice independently, to provide specified medical or other patient care services within the scope of the individual's license, based on the individual's clinical competence as determined by peer references, professional experience, health status, education, training, and licensure. Clinical privileges must be facility-specific and provider-specific.

[Other definitions omitted.]

APPENDIX I - Continued
VHA HANDBOOK 1100.19 EXCERPTS
VHA Handbook 1100.19 (Oct. 2, 2007), C.A. App. 165

4.e. Service Chiefs. Service chiefs are responsible for:

(1) Recommending the criteria for clinical privileges that are relevant to the care provided in the service;

(2) Reviewing all credentials and requested clinical privileges, and for making recommendations regarding appointment and privileging action; and

(3) A continuous surveillance of the professional performance of those who provide patient care services with delineated clinical privileges. NOTE: The title Service Chief applies to Service Line Directors, Product Line Chiefs, and any other equivalent titles.

5. CREDENTIALING (i.e., the Initial Appointment, Reappointment, or Reappointment after a Break in Service)

a. Provisions. Health care professionals must be fully credentialed and privileged prior to initial appointment or reappointment, except as identified in subparagraphs 5o, 6e, and 6f.

b. Procedures. Credentialing is required to ensure an applicant has the required education, training, experience, physical and mental health, and skill to fulfill the requirements of the position and to support the requested clinical privileges.

[Remainder omitted.]

APPENDIX I - Continued
CENTRAL TEXAS VETERANS HEALTH CARE SYSTEM MEDICAL STAFF BYLAWS & RULES
Section 2, C.A. App. 197
Section 2. PROCESS AND REQUIREMENTS FOR REQUESTING CLINICAL PRIVILEGES

a. Burden of proof. The practitioner requesting clinical privileges or scope of practice must furnish all information needed for a proper evaluation of professional competence, conduct, ethics, and other qualifications. The information must be complete and verifiable. The practitioner is responsible for furnishing information that will help resolve any doubts concerning such qualifications. Failure to provide necessary information via VETPRO and written credentials packet within 21 days of a request may serve as a basis for denying clinical privileges or scope of practice.

b. All practitioners request for clinical privileges or delineation of scope of practice must be made in writing and at a minimum include a request for Core Privileges for the medical discipline assigned or scope of practice "within well-defined limits" (i.e., privileges may be delineated by level of training and experience, and/or patient risk categories, and/or using lists of procedures or treatments, etc.) in a format approved by the Medical Staff Executive Council.

[Unrelated provisions on faculty appointments, telemedicine, and deployment status omitted.]

APPENDIX J
REALIGNMENT, OPPE, AND PRIVILEGES EMAIL
C.A. App. 55

From: Fields, Wanda J.
Subject: RE: Pain Section
[Recipient fields omitted.]

Hi Dr. Fashina/Dr. Johnson,

Dr. Lee asked that I write the memos for Dr. Fashina's signature on these realignment notification memos for the Pain Section. Please see attached. If you want changes to the memos, please let me know or Kristina can make the changes.

Thanks,
Wanda J. Fields, MHA, MHRM
Administrative Officer, Surgical Service

From: Fashina, Olawale O. <Olawale.Fashina@va.gov>
Sent: Thursday, September 10, 2020, 8:34 AM
To: Lee, Edward S.; Fields, Wanda J.; Davis, Sheletha M.; Johnson, Alan J.; Washington, Adrienne M.
Cc: Lovrien-Moore, Awbrey
Subject: RE: Pain Section

Wait until the realignment is complete before touching the OPPE's and privileges

Olawale Fashina, MD, MHSA

APPENDIX K
PREAPPOINTMENT RECRUITMENT AND WHOLE HEALTH TIMELINE EXCERPTS
First Amended Complaint, C.A. App. 28

(5) On June 10, 2019, at 0754: Dr. Raja Shehadi wrote me following my application to CTVHCS: "Thank you for your interest in the position for Interventional Pain Management at the CTVHCS, Temple, Texas. I am the chief of the Pain Management Section at the CTVHCS. I would like to contact you by phone. Please supply me with a good telephone number to call you and let me know when would it be best for me to call." (EXHIBIT 1).

[Paragraphs 6–8 omitted.]

(9) On August 16, 2019, I received an email: "You have been tentatively selected for the position of Physician (Pain Management) at the VM-15 level with the VA Central Texas Health Care System at the Temple, Texas location. Before we can proceed with a formal offer, we invite you to start the On-boarding process by responding to this tentative offer."

[Paragraph 10 omitted.]

(11) On August 19, 2019 at 1542, on Market Pay Review and Approval Form 10-0432A, Dr. Alan Johnson, ACOS Surgical Service, signed his recommendation for Market Pay in the amount of $197,000, which per the HR Technical Review gave a Total compensation of $311,843.00.

(12) On August 19, 2019 at 1551, on Market Pay Review and Approval Form 10-0432A, Ms. Henderson signed off on that same HR Technical Review.

APPENDIX K - Continued
PREAPPOINTMENT RECRUITMENT AND WHOLE HEALTH TIMELINE EXCERPTS
First Amended Complaint, C.A. App. 29

[Paragraphs 13–18 omitted.]

(19) On August 23, 2019, as seen on Market Pay Review and Approval Form 10-0432A, Dr. Fashina signed in a slot titled "Part D: Signature(s) of Concurring Official(s) as locally required." He further included in the Comments section: "I recommend $320,000 Fashina Ok recruitment 50K 25K/yr x 2yr" (EXHIBIT 4).

(20) On August 23, 2019, on Market Pay Review and Approval Form 10-0432A, Mr. Michael Kiefer is noted to have signed his approval at the bottom of the page.

(21) On August 26, 2019, Central Texas VA opened a Job posting on USAJOBS.com titled: "Supervisory Recreation Therapist - Director of Whole Health and Integrated Services"

(22) On September 6, 2019, Central Texas VA closed the Job posting on USAJOBS.com titled: "Supervisory Recreation Therapist - Director of Whole Health and Integrated Services"

[Paragraph 23 continued on the following page.]

APPENDIX K - Continued
PREAPPOINTMENT RECRUITMENT AND WHOLE HEALTH TIMELINE EXCERPTS
First Amended Complaint, C.A. App. 30

[Paragraphs 23–25 omitted.]

(26) On December 16, 2019, Central Texas VA's Job Announcement for "Physician - Whole Health & Integrated Health Service (WH&IHS) Clinical Director" closed. (EXHIBIT 5).

(27) On December 17, 2019 at 0943, after having been informed that we were cleared to start, Ms. Henderson sent me a copy of a Recruitment Service Agreement, which she instructed me to sign and return. She noted, "Once I received signed copy I will send Firm offer."

(28) On December 17, 2019 at 1215, I sent it back, signed. The other signatories were: Alan Johnson, MD, ACOS, Surgical Service; James Apley, Human Resources Officer; Michael Kiefer, MHA, FACHE; Dr. Fashina was not listed as a signatory. (EXHIBITS 6, 7).

(29) On December 17, 2019 at 1551, I received an email, "Official Job Offer for Physician (Pain Management) with VA Central Texas Health Care System at Temple, Texas" (EXHIBIT 8).

APPENDIX K - Continued
PREAPPOINTMENT RECRUITMENT AND WHOLE HEALTH TIMELINE EXCERPTS
First Amended Complaint, C.A. App. 30
continued

(30) On December 18, 2019 at 0722, I wrote back: "Hello all, Did my acceptance of the job on Usajobs come through?"

(31) On December 18, 2019 at 0736, Ms. Henderson wrote back: "Yes. Thank you." (EXHIBIT 9).

(32) On December 18, 2019 at 1212, I wrote the WVU Neurosurgery Department Chairman, Dr. Mark Lee, and Mr. Keith Mullens, Neurosurgery Department administrator: "Hello Dr. Lee and Mr. Mullens, Please see attached resignation letter. My wife and I will be moving to Texas! I believe this would make my last day of employment March 17, 2020... please correct me if I am wrong." (EXHIBIT 10).

APPENDIX K - Continued
PREAPPOINTMENT RECRUITMENT AND WHOLE HEALTH TIMELINE EXCERPTS
First Amended Complaint, C.A. App. 31

(33) On September 10, 2020 at 0834, after I had joined CTVHCS, Dr. Fashina sent Dr. Edward Lee, the newly-hired Whole Health Clinical Director, an email in which Dr. Fashina wrote: "Wait until the realignment is complete before touching the OPPE's and privileges" (EXHIBIT 11).

(34) By later September 2020, I and my Pain section colleagues, were being notified of our being "Realigned" under the Whole Health Service, which houses Complementary and Alternative Medicine in VA. (EXHIBIT 12).

(35) I had no input into the Realignment decision noted above, and I had no intention of being any other kind of doctor. I had applied for and was selected to do Interventional Pain for CTVHCS, not some other discipline or type of practice. Ultimately, events unfolded so as to Realign the Pain Section out from under the Whole Health Service and back under a different, traditional medicine Service (Anesthesia Service).

[Paragraphs 36–39 omitted.]

APPENDIX K - Continued
INTERVENTIONAL PAIN RECRUITMENT EMAIL
C.A. App. 34

From: Shehadi, Raja E. <Raja.Shehadi@va.gov>
Sent: Monday, June 10, 2019, 7:54 AM
To: koshymmathai@gmail.com
Subject: Interventional Pain Position in Temple, TX

Dear Dr. Mathai,

Thank you for your interest in the position for Interventional Pain Management at the CTVHCS, Temple, Texas. I am the chief of the Pain Management Section at the CTVHCS. I would like to contact you by phone. Please supply me with a good telephone number to call you and let me know when would it be best for me to call.

Sincerely,

Raja Shehadi, MD
Chief, Pain Management Section
Surgical Services, CTVHCS

APPENDIX L
REALIGNMENT APPROVAL EMAIL
C.A. App. 57

From: Fashina, Olawale O <Olawale.Fashina@va.gov>
Sent: Tuesday, September 8, 2020, 12:33 PM
To: Davis, Sheletha M.; Johnson, Alan J.; Lee, Edward S.
Cc: Fields, Wanda J.; Lovrien-Moore, Awbrey
Subject: Pain Section

Facility Leadership has approved realignment of the Pain Section from Surgery Service to Whole Health Service

Sheletha: Please advise the Services on further actions to effect this decision. Some things I remember: HR notification. AFGE notification. HR paperwork. Facility notification etc

Olawale Fashina, MD, MHSA
Chief of Staff
Central Texas Veterans Health Care System

[Intervening implementation correspondence omitted.]

APPENDIX L - Continued
SERVICE REALIGNMENT NOTICE
C.A. App. 58
DEPARTMENT OF VETERANS AFFAIRS

Date: September 15, 2020
From: Chief of Staff (674/011)
Subject: Service Realignment and Change in Supervisor and Rater
To: Koshy Mathai, MD, Pain Management Section

This is to inform you that effective October 11, 2020, the Pain Management Section will be realigned to the Whole Health Service. Your supervisor, rater of record and service chief will change to Edward S. Lee, MD, Associate Chief of Staff, Whole Health Service. Your tour of duty and pay will remain the same. You will remain in your current space at this time.

Olawale O. Fashina, MD