UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ADAM KANUSZEWSKI, et al,
Plaintiffs,

v.

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al,
Defendants
_____/

Case No.: 18-cv-10472

Hon. Thomas L. Ludington,
District Court Judge

Hon. Patricia T. Morris,
Magistrate Judge

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RESPONSE TO DEFENDANT ANTONIO YANCEY'S TO DISMISS

QUESTION PRESENTED

I. Should Dr. Antonio Yancey, in his personal capacity, be dismissed from this case on the pleadings under Rule 12(b)(6)?

Note: Dr. Yancey is represented by two different sets of attorneys. In his personal capacity, he is represented by Wayne State University's Office of General Counsel. In his official capacity, he is represented by Pear Sperling Eggan & Daniels, PC. The current motion is filed and presented as to Dr. Antonio Yancey in his personal capacity as represented by attorney Thomas F. Cavalier.

MOST RELEVANT AUTHORITY

Fed R Civ P 12(b)(6)

Currier v. First Resolution Inv. Corp., 762 F.3d 529 (6th Cir. 2014)

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

Cruzan v Director, Mo. Dep't of Health, 497 U.S. 261 (1990)

Birchfield v. North Dakota, 579 U.S. __; 136 S. Ct. 2160 (2016)

BRIEF IN OPPOSITION

NOW COME Plaintiffs, by counsel, and oppose the motion to dismiss filed by Dr. Antonio Yancey in his personal capacity.[1] He argues he is an 'innocent' and 'uninvolved' man in this horrific case of stolen newborn blood, unobtained consent, and secret programs with the State Defendants. Or as he has put it, there is a "bereft of factual allegations showing Dr. Yancey's personal involvement in the alleged unconstitutional conduct." **ECF No. 34, Brief in Support, p. 2.** Dr. Yancey is wrong; he does have blood on his hands (or at least in his temperature-controlled Biobank). Evidence attached to the complaint minimally shows he is actively involved in the seizure, use, and sale of newborn blood samples taken as part of a general conspiracy and he has never sought or obtained permission from parents to use any newborn's blood. The motion to dismiss should be denied.

FACTS

This lawsuit is about a non-consensual infant blood collection and seizure program. Since 1984, the Michigan Department of Health and Human Services (MDHHS) and its officials, and later with the Michigan

[1] Dr. Yancey is represented by two different sets of attorneys. In his personal capacity, he is represented by Wayne State University's Office of General Counsel. **ECF No. 16.** In his official capacity, he is represented by Pear Sperling Eggan & Daniels, PC. **ECF Nos. 11-13.** The current motion is filed and presented as to Dr. Antonio Yancey in his personal capacity as represented by attorney Thomas F. Cavalier.

Neonatal Biobank and its director Dr. Antonio Yancey, have been quietly seizing, collecting, utilizing, indefinitely storing, and selling the blood samples of newborn Michiganders taken, without consent, shortly after the birth. **ECF No. 26, First Am. Compl., ¶¶1, 43, 77.** None of the defendants sought or obtained insufficient informed or actual consent from parents *before* taking the blood of newborns for use. ***Id.,* ¶¶44, 47.** In fact, no actual informed consent was obtained by Dr. Yancey afterwards either. ***Id.,* ¶49.** At best looking in the light most favor to Dr. Yancey[2], since approximately 2010, the State (and not Dr. Yancey) has sought (but did not obtain) consent *for the State* to use already seized blood for vague "research" purposes which has been grossly exceeded (if ever existing at all in the first place[3]). ***Id.,* ¶¶83, 98.**

After the Newborn Screening Program testing is complete, the Infants' blood spots are kept and then transferred to Biobank under the custody and control of Dr. Yancey. ***Id.,* ¶61.** No consent was sought to transfer blood samples to him or his private non-profit entity. ***Id.,* ¶¶43, 49, 98.** After the

[2] Of course, a Rule 12(b)(6) must be viewed in the light most favorable *to Plaintiffs*.

[3] Plaintiffs have specifically pled that "the Parents did not give any general or informed consent to Defendant MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES or any STATE OFFICIALS DEFENDANTS to transfer, convey, handover, or reassign the Infants' blood samples to a private, non-profit entity known as Defendant MICHIGAN NEONATAL BIOBANK (including its Board of Directors and/or Defendant DR. ANTONIO YANCEY) for the private entity's own disposition." **ECF No. 26, First Am. Compl., ¶43; see also *id*., ¶42.**

blood is given to him, Dr. Yancey and his Biobank sold 'stolen' blood samples to third-party medical researchers and businesses. ***Id.,* ¶70.** To keep this blood supply pool up, there is a general agreement among the defendants to purposely require hospitals and midwives to extract more blood than necessary to conduct non-consensual medical tests and then divvies up the remaining blood spots, via transfer, to the Michigan Neonatal Biobank under Dr. Yancey's control. **See *id.,* ¶61.** Dr. Yancey, in turn, uses and sells the blood samples to third parties. ***Id.,* ¶¶10, 29(c), 70.**[4]

The First Amended Complaint outlines the Orwellian processes of taking the blood through its sale or indefinite storage—as best it can be gleaned from public sources, including how blood is seized from newborns, without parental consent, and then sent to the State laboratory to conduct tests, also undertaken without parental consent. **ECF No. 26, First Am. Compl., ¶¶33-83.** Once testing is completed (usually on a single blood spot), the excess blood samples (usually the five remaining spots) are not returned or destroyed but are instead transferred to Dr. Yancey and his Michigan Neonatal Biobank. By the First Amended Complaint, Dr. Yancey is heavily involved. ***Id.*, ¶72.** There is a master agreement for the continuation of these

[4] Yet, oddly, the Michigan Department of Health and Human Services asserts "qualified ownership" over the blood spots while in the custody and control of Dr. Yancey. **ECF No. 26-3, Exhibit B**.

activities naming Dr. Yancey as the principal participant. **ECF No. 26-18, Exhibit Q, p. 42.** Exhibit I to the First Amended Complaint outlines how Dr. Yancey is trying *to sell* the newborns' blood. **ECF No. 26-19, Exhibit R; see also ECF No. 26-10, Exhibit I.** He also set the prices for the sale of stolen blood samples he is selling. **ECF No. 26-15, Exhibit N.** Dr. Yancey is very much part of and at the heart of the operations in the Biobank and part of the conspiracy to deprive Infants and their Parents of right of consent—both under the Fourth and Fourteenth Amendments to the United States Constitution. He is no passive adherent.

DR. YANCEY'S ARGUMENTS

In his motion to dismiss, Dr. Yancey argues he should be excused from this lawsuit because he was "not involved." There is no good way to say this: he is lying. The allegations made the First Amended Complaint and the exhibits attached thereto plausibly show—at this stage—the complete opposite. **ECF No. 26, First Am. Compl., ¶¶33-83.** Bottomline, he is actively involved by receiving, accepting, storing, and then using/selling the blood samples of newborns without consent from the parents of newborns. **ECF No. 26-19, Exhibit R; ECF No. 26-10, Exhibit I.** He is plausibly and actually involved. Discovery will further confirm his exact scope of his ongoing

participation, but the evidence publicly adduced that far paints a picture of active involvement.

The Pleading Standards

Dr. Yancey next suggests that the First Amended Complaint has not pled enough facts to make him liable. He misses the mark on what a pleading needs to do. A complaint only requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). "A complaint need not set down in detail all the particularities of a plaintiff's claim against a defendant." *Westlake v. Lucas*, 537 F.2d 857, 858 (6th Cir. 1976). "To survive a motion to dismiss, the plaintiff need only plead sufficient factual matter… to 'state a claim to relief that is plausible on its face' meaning that we can draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Currier v. First Resolution Inv. Corp.*, 762 F.3d 529, 533 (6th Cir. 2014). In other words, the complaint must show it is plausible (but not necessarily guarantee) that Dr. Yancey is liable. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-679 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Plaintiff need only plead sufficient factual matter, which we must accept as true, to 'state a claim to relief that is plausible on its face' meaning that we can draw the reasonable inference that the defendant is liable for the misconduct alleged." *Currier v. First Resolution Inv. Corp.*, 762 F.3d 529, 533

(6th Cir. 2014). A Rule 12(b)(6) motion is not a Rule 56 motion. Instead, Dr. Yancey himself must accept the complaint's factual allegations as true and the Court construes the complaint in the light most favorable to the plaintiffs. *Keys v. Humana, Inc.*, 684 F.3d 605, 608 (6th Cir. 2012). Here, Dr. Yancey is only named (at this time) as part of Counts II, IV, and V.

Counts IV and V

Count IV and V alleges that Dr. Yancey violated the Infants right to be free from unreasonable searches and seizures resulting in the later use of their taken blood samples. Piercing the skin and extracting blood for government-mandated testing and uses requires a warrant, or alternatively consent. See *Birchfield v. North Dakota*, 579 U.S. __; 136 S. Ct. 2160 (2016). While publicly available information suggests Dr. Yancey is not the person plunging the needle-prick into the skin of the newborns, he is searching and/or causing the searching of the newborns blood for information related to medical research. The extraction of information from blood—not the blood extraction itself—is also a search or seizure on even keel with heel-prick itself. In conducting (or authorizing the conducting of) these medical tests on the newborns' blood spots, Dr. Yancey failed to obtained any consent when he came into possession, uses, and/or sells the illegally seized blood

samples of newborns, and more specifically these Infants in joint concert with the State Defendants. **ECF No. 26, First Am. Compl., ¶¶98-99.**

"The Fourth Amendment provides in relevant part that the 'right of the people to be secure in their persons… against unreasonable searches and seizures… shall not be violated.'" *Florida v. Jardines*, 569 U.S. 1, 5 (2013). The Fourth Amendment's "basic purpose… is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Mun. Court of City & Cnty. of S.F.*, 387 U.S. 523, 528 (1967). Searches conducted outside the judicial process, without prior approval by judge or magistrate, are "*per se* unreasonable" under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions. *U.S. v Chambers*, 395 F.3d 563, 565 (6th Cir. 2005). "The first and most important principle is that searches must ordinarily be cleared *in advance* as a part of the judicial process" because the Founders "did not trust constables, sheriffs and other officers to decide for themselves..." *Id*. (emphasis added). The burden of proving an exception to the warrant requirement rests with Dr. Yancey. See *U.S. v. Jeffers*, 342 U.S. 48, 51 (1951).[5] A government-required blood draw for post-extraction testing

[5] There is a question on what test will be applied. *Birchfield* mandates a warrant is required when the government extracts blood samples. However, another test—the special government needs test—may apply if newborn blood searches are beyond the

and use requires a warrant (or at least actual sufficient consent). See *Birchfield, supra*, at 2173. In other words, it is not just the extraction that is a search; the actual testing itself is either a separate search or a continuation of the original search. See *Chandler v. Miller*, 520 U.S. 305, 313 (1997)(testing of bodily fluids, separate from mere extraction, constitutes a search subject to the demands of the Fourth Amendment). Either way, Dr. Yancey obtained neither.

A § 1983 claim has two elements: (1) that a plaintiff was deprived of a right secured by the Constitution or laws of the United States; and (2) that the deprivation was caused by a person acting under color of law. *Marcilis v. Twp. of Redford*, 693 F.3d 589, 595 (6th Cir. 2012). A named individual private party defendant can be liable directly for his or her own actions or via a conspiracy. A private party is directly liable when acting along with state officials. "Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of" § 1983. *Adickes v. SH Kress & Co*, 398 U.S. 144, 152 (1970); see also *Dennis v. Sparks*, 449 U.S.

normal need for law enforcement (though law enforcement is using blood information for its own uses, **ECF No. 26-13, Exhibit L**). The test under *Chandler* will require this Court to "undertake a context-specific inquiry, examining closely the competing private and public interests advanced by the parties." *Chandler, supra*, at 314 (emphasis added). Because Dr. Yancey did not raise or brief which test applies in light of law enforcement access to the blood data (see **ECF No. 26-13, Exhibit L**), Plaintiffs reserve further comment until he does.

24, 28-29 (1980) (holding that a private party may be liable for conspiring with state actors to violate civil rights). In addition, a person can be liable under § 1983 if acting in a civil conspiracy with a state actor. "If a private party has conspired with state officials to violate constitutional rights, then that party qualifies as a state actor and may be held liable pursuant to § 1983...." *Cooper v. Parrish*, 203 F.3d 937, 952 fn.2 (6th Cir. 2000). A civil conspiracy under § 1983 is "an agreement between two or more persons to injure another by unlawful action." *Bazzi v. City of Dearborn*, 658 F.3d 598, 602 (6th Cir. 2011). The Sixth Circuit has held that "plaintiffs ha[ve] successfully pled a § 1983 conspiracy by alleging that (1) a single plan existed, (2) the conspirators shared a conspiratorial objective to deprive the plaintiffs of their constitutional rights, and (3) an overt act was committed." *Revis v. Meldrum*, 489 F.3d 273, 290 (6th Cir. 2007). "Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy..." *Bazzi, supra*, at 602. This makes sense because "rarely in a conspiracy case will there be direct evidence of an express agreement among all the conspirators to conspire." *Weberg v. Franks*, 229 F.3d 514, 528 (6th Cir. 2000). Thusly, a plaintiff may rely on circumstantial evidence to establish an agreement among the conspirators. *Id.*; see also *Hensley v. Gassman*, 693 F.3d 681, 695 (6th Cir. 2012)(same). Moreover, each

conspirator need not have known all of the details of the illegal plan or all of the participants involved to still be part of an illegal conspiracy. *Bazzi, supra*, at 602.

As for Counts IV and V, Dr. Yancey is alleged to have "failed to have any consent or a legally-obtained judicial warrant signed by a neutral and detached magistrate to *indefinitely test, keep, store, and use* the blood of the Infants." **ECF No. 26, First Am. Compl., ¶110.**[6] In other words, he was part of a shared conspiratorial objective to illegally obtain newborn blood samples without a warrant or consent, and Dr. Yancey's conspiratorial role was to indefinitely store the blood samples unless or until the samples could be dispossessed of by sale (and at a profit). While his motion to dismiss hints that he did not know the details of how the blood was or was not taken (which is doubtful[7]), that is irrelevant because Dr. Yancey, as a co-conspirator, need not have known all of the details of the illegal plan or all of the participants involved. *Bazzi, supra*, at 602. Nevertheless, his fingerprints in this shared

[6] Dr. Yancey argues that "[t]here is not even an allegation that Dr. Yancey was aware that the Plaintiffs' blood was stored at the Biobank." **ECF No. 34, Brief in Support, p. 7.** What did he think was being stored at the Biobank under his directorship? The Biobank's own website—on the front page consisting of the first paragraph—states that its "[i]nventory includes over five million residual newborn screening dried blood spot specimens representing nearly every Michigan birth since October 1987." Michigan Neonatal Biobank, <https://mnb.wayne.edu> (last accessed June 19, 2018)(emphasis added). He cannot reasonably feign such blatant ignorance.

[7] See Footnote 6.

plan are already there. **ECF No. 26-10, Exhibit I; ECF No. 26-15, Exhibit N; ECF No. 26-19, Exhibit R.** This alone is likely enough to show conspiracy by circumstantial evidence. See *Hensley*, *supra*, at 695. But discovery will likely reveal so much more. As of current, Plaintiffs have alleged that Dr. Yancey's actions were done both individually (Count IV) and also via a plan with shared general conspiratorial objectives (Count V) to deprive the Infants of their constitutional rights to be free from illegal search-and-seizure under the Fourth Amendment in the form of an overt act of indefinitely causing the leftover blood from the Newborn Screening program to be not destroyed but instead seized and stored indefinitely without consent. **ECF No. 26, First Am. Compl., ¶113.** The details on that process are outlined in the General Allegations section of the First Amended Complaint. ***Id.*, ¶¶33-83.**

Both theories are plausible against Dr. Yancey. Plaintiffs have pled—which must be deemed true for the instant motion (see *Currier, supra*, at 533)—that Dr. Yancey "indefinitely store[s] the Infants' blood in a temperature and humidity-controlled facility in an area in or near Wayne State University known as Tech Town as [a] willful participant[] in joint action with the State and/or its agents…" **ECF No. 26, First Am. Compl., ¶75.** He is also alleged—which must be deemed true for the instant motion (see *Currier, supra*, at 533)—to have routinely and unlawfully caused the illegal

collection of samples of blood from all or nearly all newborn babies in Michigan at the time of birth and stored those samples or "spots" indefinitely for purposes of testing and later research unrelated to the purposes for which the infants' blood was originally drawn, without the knowing and/or informed consent of the Parents. **ECF No. 26, First Am. Compl., ¶33.** He is alleged—which must be deemed true for the instant motion (see *Currier, supra*, at 533)—to have done this **"**individually or in conspiratorial agreement" with State officials. ***Id.*** In concert with State officials, Dr. Yancey came into receipt of blood samples extracted from the small bodies of newborns and used those blood spots by his own participation in the joint enterprise, and exceeded any possible claim of consent for "research." **ECF No. 26, First Am. Compl., ¶83; see also *id.*, at ¶43.** At the time the blood extraction occurs, the Parents had not given any general or informed consent and as part of joint operation the blood samples were transferred, conveyed, handed-over, or reassigned the Infants' blood samples to Dr. Antonio Yancey for his Biobank. **ECF No. 26, First Am. Compl., ¶72.** Once in the Biobank, Dr. Yancey controls the blood samples' future, including their sale. He actively sets the price for the sale and profitable disposal of the illegally-obtained blood samples (see **ECF No. 26-10 Exhibit I** and **ECF No. 26-15, Exhibit N**), and then actively sold the samples to third-parties, **ECF No. 28-**

19, Exhibit R. The conspiratorial agreement was no accident; there is apparently a contract for the same**. ECF No. 26-18, Exhibit Q, p. 42;** see also *About Us*, Michigan Neonatal Biobank, <https://mnb.wayne.edu/about> (last accessed June 19, 2018) ("the Biobank *is contracted* to serve as the repository for storage and management of the samples in a temperature controlled facility at Wayne State University's Biobanking Center of Excellence in Tech Town.").[8,9] By this pleading and the supporting direct and circumstantial evidence (viewed in the light most favorable to Plaintiffs), there at least circumstantial (if not direct) evidence of an agreement for the ongoing illegal search, extraction, use, and disposal of blood samples without consent or a warrant in violation of the Fourth Amendment when a private party is acting under the color of law. Dr. Yancey's argument of a "bereft of factual allegations" is simply false. A plausible claim exists and dismissal under Rule 12(b)(6) is improper.

Count II

Count II also alleges that Dr. Yancey violated the liberty due process right to be entitled to informed consent and that Dr. Yancey, in selling the

[8] Discovery will reveal the actual contract if it is not already attached to the First Amended Complaint as Exhibit Q. See **ECF No. 26-18.**

[9] One defense Dr. Yancey might claim is that he is merely an agent of the Michigan Department of Health and Human Services following a custom or practice of the latter.. However, he has not made that argument.

blood of newborns, "far exceeded than any alleged consent received." **ECF No. 26, First Am. Compl., ¶98**. His actions of undertaking the nonconsensual receipt and use of the Infants' blood without proper informed consent of the Parents deprived the Infants their liberty interest in their guardians self-making informed personal and private medical procedure decisions without due process of law." ***Id.*, ¶99.** He cannot deny—when viewing the facts most favorable to Plaintiffs—that he was using, storing, and/or selling the newborns' blood without consent for medical related testing purposes and other uses. **ECF No. 26-19, Exhibit R; ECF No. 26-10, Exhibit I.** The Infants' blood samples were not his to store indefinitely without consent, and were not his to sell for further medical tests beyond any alleged consent received from the Parents. A competent person "has a constitutionally protected liberty interest in refusing unwanted medical treatment." *Cruzan v Director, Mo. Dep't of Health*, 497 U.S. 261, 278 (1990). The same goes for surrogates, i.e. parents when making decisions for their Infants. Both state and federal law recognize that "parents speak for their minor children in matters of medical treatment." *In re Rosebush*, 195 Mich. App. 675, 682 (1992); see also *Parham v JR*, 442 US 584 (1979); *Zoski v Gaines*, 271 Mich 1 (1935); *Bakker v Welsh*, 144 Mich 632 (1906). Blood tests and data extractions from blood are a form of medical treatment which

parents have the right to refuse and/or can only be undertaken with their consent.

Here, Dr. Yancey is alleged that he deprived the Infants their liberty interest in their guardians self-making informed personal and private medical procedure decisions, namely by causing the transfer of the newborns' blood samples to the Biobank and then sell the samples to third-party businesses, or third-party bio-sample brokers (see **ECF No. 26-19, Exhibit R**) for use by for profit companies and others far beyond any consent received (if any). **ECF No. 26, First Am. Compl., ¶¶98-99.** Any consent Dr. Yancey is alleged to have has been grossly exceeded. ***Id.,* ¶83.** By doing do, the blood of the Infants can be imminently and actively used by Defendants (and other third parties who have been sold the blood samples) contrary to the doctrine of parental informed consent and/or contrary to the desired personal and private medical directives of the Parents who have a constitutional right to refusing unwanted or undesired medical procedures. ***Id.,* ¶100.** This states a plausible claim.

Supervisory Role

Dr. Yancey also argues that he cannot be held civilly responsible merely because he is the director of a Michigan Neonatal Biobank. The Sixth Circuit in *Heyerman* tersely explained—without analysis—that § 1983 liability

does not extend *ipso facto* "when premised solely on a theory of respondeat superior, or the right to control employees." *Heyerman v. County of Calhoun*, 680 F.3d 642, 647 (6th Cir. 2012). Plaintiffs are not using either *Heyerman* theory. Dr. Yancey would be perhaps right if he was a mere hands-off administrator for the acts of this subordinates. However, he is far more than that—he has active involvement. One is responsible when one "directly participates in it." *Id.* The allegations and evidence in the First Amended Complaint (as outlined above) make Dr. Yancey an active participant in the seizure, collection, use, and sale of infant blood spots. As such, he enjoys no immunity on the theory of being the befuddled and unknowing supervisor of other subordinate employees' alleged illegal actions. His own actions are presented and alleged in this case—not anyone else's from the Biobank (at least yet).

Civil Conspiracy Pled with Specificity

Lastly, Dr. Yancey claims that the civil conspiracy claim (Count V) is not pled with enough specificity. He correctly recites that "conspiracy claims must be pled with *some degree of* specificity …," *Gutierrez v Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987), though *Gutierrez* does not explain how much specificity is required. For example, such a claim is not subject to the heightened pleading requirements of Federal Rule of Civil Procedure No. 9.

So what is enough to show "some degree of specificity?" Under *Revis,* "plaintiffs ha[ve] successfully pled a § 1983 conspiracy by alleging that (1) a single plan existed, (2) the conspirators shared a conspiratorial objective to deprive the plaintiffs of their constitutional rights, and (3) an overt act was committed." *Revis, supra*, at 290. An express written agreement is not required, *Bazzi, supra*, at 602, and circumstantial evidence is enough to establish an agreement among the conspirators, *Hensley, supra,* at 695.

Plaintiffs expressly pled Dr. Yancey was part of an existing plan with state officials with shared general conspiratorial objectives to deprive the Infants of their constitutional rights 1.) of the right to decide medical procedures including testing, and 2.) to be free from illegal search-and-seizure under the Fourth Amendment in the form of an overt act of indefinitely causing the leftover blood from the Newborn Screening program to be not destroyed but instead seized and stored indefinitely without consent. Plaintiffs offered initial proof in the form of the Master Agreement with Dr. Yancey named as the principal. **ECF No. 26-18, Exhibit Q, p. 42** (naming Dr. Yancey expressly). His emails show his clear involvement with state officials and others for the receipt, use, and ultimate sale of infant newborns' blood taken, used, and profited without consent. **ECF No. 26-10, Exhibit I; ECF No. 26-15, Exhibit N; ECF No. 26-19, Exhibit R.** Therefore, Plaintiffs

have clearly met their "some degree" of specificity required under *Gutierrez* contrary to Dr. Yancey's assertions otherwise. Plaintiffs have to be somewhat excused at this pre-discovery phase from knowing the *exact* depth of the astonishing conspiracy because Dr. Yancey has not made his brazen and likely improper involvement in the seizing, transfer, and storage/sale of newborn blood spots—utilized without knowledge or consent of the Parents—a matter of public record. A plausible claim has been pled and dismissal should be denied. Again, at this stage of the case, the only question is plausibility and not to be substituted for a Rule 56 motion.

RELIEF REQUESTED

Dr. Yancey must know better than undertaking medical procedures and processes without the consent of a patient. It is both a baseline principle in his profession and it is a constitutional baseline to be able to make or refuse medical decisions and free "to be secure in their persons" from "unreasonable searches and seizures." WHEREFORE, the motion to dismiss pursuant to Rule 12(b)(6) for the reasons raised by the Defendant Antonio Yancey should be denied.

Date: June 19, 2018

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

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CERTIFICATE OF SERVICE

I, the undersigned attorney of record, hereby certify that on the date stated below, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel or parties of record.

Date: June 19, 2018

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

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