

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

BRIANNA BOE, et al.,)
)
)
Plaintiffs,)
)
and)
)
UNITED STATES OF AMERICA,)
)
Plaintiff-Intervenor,)
)
v.)
)
STEVE MARSHALL, in his official)
capacity as Attorney General of the)
State of Alabama, et al.,)
)
Defendants.

Case No.: 2:22-cv-184-LCB

**RESPONDENT ASAF ORR’S SUBMISSION REGARDING OTHER
RESPONDENTS’ ORDER TO SHOW CAUSE BRIEFS**

The Court’s May 1, 2024 Supplemental Order to Show Cause orders Respondent Asaf Orr (“Respondent” or “Mr. Orr”) to “identify those portions of all other Respondents’ briefs with which he agrees or disagrees.” ECF No. 482 at 13.

First, Mr. Orr generally agrees with the portions of other Respondents’ briefs applicable to Mr. Orr. *See* ECF Nos. 514, 515, 516, 517, 518, 520, 521.

Second, Mr. Orr has not identified any portion of another Respondent's show cause brief applicable to him with which he disagrees. *See* ECF Nos. 514, 515, 516, 517, 518, 520, 521. No one, for example, has suggested that Mr. Orr was a decision-maker in connection with the dismissal of *Ladinsky* or the filing of a new case in the Middle District.

In particular, counsel for Mr. Orr clarifies that Respondent Asaf Orr's Response to Supplemental Order to Show Cause ("Response") mistakenly used the term "circuit split" when discussing that even as a non-decision-maker, Mr. Orr had reasonable grounds to believe "that dismissing *Ladinsky* under Rule 41 was a reasonable and permissible decision for the leaders to make." ECF No. 513 at 21. Counsel for Mr. Orr clarifies that counsel is not aware of any decision by a Circuit Court upholding sanctions against an attorney for a voluntary dismissal under Rule 41(a)(1) based on the identity of the judge. The Response meant to emphasize that even if a circuit split existed as the Court suggested at the November 2, 2023 and March 19, 2024 hearings,¹ the *Ladinsky* team still would have had reasonable grounds to believe that dismissal under Rule 41 was permitted. This is particularly true, given the weight of Circuit Court authority holding that Rule 41 authorizes such dismissals and that therefore, such dismissals are necessarily not sanctionable. *See, e.g., Bechuck v. Home Depot U.S.A., Inc.,*

¹ *See* Nov. 2, 2023, Hearing at 71:24–72:4, ECF No. 354; Mar. 19, 2024 Hearing at 61:2-11.

814 F.3d 287, 290 (5th Cir. 2016); *Wolters Kluwer Fin. Servs., Inc. v. Scivantage*, 564 F.3d 110, 114-15 (2d Cir. 2009); *Adams v. USAA Cas. Ins. Co.*, 863 F.3d 1069, 1080-81 (8th Cir. 2017).

Further, Mr. Orr agrees with the discussion of the case law regarding voluntary dismissals under Rule 41 set forth in in the Order to Show Cause briefs filed by his co-counsel in *Ladinsky* and *Eknes-Tucker*. See ECF No. 514 at 23-45 (Section I(B)); ECF No. 515 at 2 n.1; ECF 516 at 41-51 (Section III); ECF No. 520 at 44-57 (Section II(B) and Section II(D)). Specifically, Mr. Orr agrees with Respondents Melody Eagan and Jeffrey Doss's response to the Court's suggestion at the March 19, 2024 hearing that a circuit split may exist. See ECF No. 514 at 40-41 n.9; see also ECF No. 516 at 45-46 n.19; ECF No. 520 at 56 n.12.

As set forth in Mr. Orr's Response to Supplemental Order to Show Cause (ECF No. 513), Mr. Orr respectfully requests that the Court decline to adopt any findings of misconduct regarding him and excuse him from these disciplinary proceedings without sanction.

Respectfully submitted this 21st day of May, 2024,

/s/ John M. Ugai

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CERTIFICATE OF SERVICE

I certify that, on May 21, 2024, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will provide notice of such filing to all counsel of record.

/s/ John M. Ugai