

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DANIEL HUMAN,)	
)	
Plaintiff,)	Case No. 4:24-cv-01177-MTS
)	
vs.)	
)	
FISHER INVESTMENTS, INC.)	
SMART ASSETS ADVISORS, LLC,)	
)	
Defendants.)	

PLAINTIFFS' RESPONSE TO ORDER TO SHOW CAUSE, DOC. 78

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Introduction

This case was filed by a 70-year-old consumer who lives on monthly social security payments of \$1,627.00 per month. See Exhibit A. This case originated as a Missouri State Class Action Complaint over the admitted no call telemarketer violations by Defendant Fisher under both the Missouri anti-telemarketing laws, Section 407.020 et seq., and the Telephone Consumers Protection Act – more commonly known as the “TCPA.” Doc. 1. Fisher has never denied making the calls nor have they ever provided a scintilla of evidence that they did so with the express written consent of the Plaintiff, Daniel Human. See Doc. 10. Fisher then requested and was granted phase discovery – which was not completed before the case in chief was disposed of by the Court with prejudice.

In the initial stage of bifurcated discovery, Plaintiff disclosed more than 480 pages of documents in accord with Fisher’s discovery requests. Fisher disclosed approximately 30 pages of discovery, objected to further discovery until a protective order was in place, then failed to supplement thousands of pages of discovery pursuant to Plaintiff’s document production requests. On January 22, 2025 the Court held a “status conference” via zoom as requested by Defendant Fisher through an email. The Court’s primary decision granted the Plaintiff’s motion for leave to File a First Amended Complaint – which was already on file and docketed that day. Doc. 33.¹

Though the Plaintiff filed a Motion to Stay all discovery pending a determination on the Motion for Leave to file a First Amended Complaint, and Service of Process on an

¹ As of January 22, 2025, the Operative Complaint was Doc. 33 – to which no party had answered and process had not been perfected on indispensable party Smart Asset Advisors, LLC. See Doc. 35, Notice of Intent to Use Special Process Server.

Indispensable Party, and answers being filed, which had not been adjudicated, Docs. 21-22, 25-26, each filed prior to the January 22, 2025 status conference; the Court denied the motions *totidem verbis without reason*, docket entry 32 and issued an Amended Case Management Order on an Operative Complaint with an indispensable party not receiving process and the operative complaint being unanswered being unserved on the new party and no answer being filed by any party. *Compare Doc. 33* (Operative Complaint filed 01/22/25), *Doc. 34*, (First Amended Case Management Order issued 01/22/25 directing Plaintiff to continue discovery under the threat of sanctions). Indeed, the summons for the indispensable party, Smart Asset Advisor, was not issued by the Clerk of the Court until January 24, 2025. See *Doc. 36*.

Plaintiff then requested that Counsel file a Notice of Voluntary dismissal considering these facts – which included the dismissal of unserved party, Smart Asset Advisors, LLC. Counsel filed the First Notice of Voluntary Dismissal on January 27, 2025 because neither party had filed an answer to the operative complaint nor a motion for summary judgment. *Doc. 37-38*. The Court ordered the Notice of Voluntary dismissal stricken within minutes of its filing without inquiring whether the Plaintiff had a proper explanation for his desire to dismiss. Plaintiff, attempting to mitigate the costs for all parties, then insisted that Counsel file a Notice of Dismissal with Prejudice. *Doc. 39*.² The Court again struck the Notice of Dismissal with prejudice without inquiry. *Doc. 40*.

On February 3, 2025, Plaintiff filed a Notice of Appeal to the Eighth Circuit Court of Appeals based on the District Courts Orders denying both the Motion to Stay all Discovery and Denying and Striking the Plaintiff's Notice of Dismissal of both Defendant

² Defendant Fisher refused to stipulate to a dismissal with prejudice and elected to needlessly increase its costs and attorney fees in this case.

Fisher and Smart Asset Advisors. See Docs. 32, 38, 40, 43. The Notice of Appeal specifically stated:

Notice is hereby given that Plaintiff, Daniel Human appeals to the United States Court of Appeals for the Eighth Circuit from the final Order entered in this action on the 27th day of January, 2025, denying both the Notice of Voluntary Dismissal (Docs. 37-38), the Notice of Voluntary Dismissal with Prejudice (Doc. 39, 40), and the Court's final Order of January 22, 2025, forcing Plaintiff to undergo discovery under the threat of sanctions in the absence of either party filing an Answer to the Operative Complaint and where a new party had yet to be served with the Operative Complaint (Doc. 31-32, reiterated in Docs. 38, 40).

See Doc. 43. On February 13, 2025, the Court of Appeals issued an Order and Judgment summarily dismissing the appeal *without permitting briefing*, stating specifically “[t]he Court has carefully reviewed the original file of the United States District Court and orders that this premature appeal be *dismissed for lack of jurisdiction*.” See Doc. 48. This Court, *sua sponte*, issued an order to show cause, why the notices of dismissal and notice of appeal did not violate Rule 11. See Doc. 78. This response follows:

Standard For Rule 11 Sanctions

“Judicial discretion is ‘the responsible exercise of official conscience on all the facts of a particular situation,’ taking into consideration the purpose of the exercised power.” *Wright v. Sargent*, 869 F.2d 1175, 1176 (8th Cir.1988) (quoting *Welsh v. Automatic Poultry Feeder Co.*, 439 F.2d 95, 97 (8th Cir.1971)). Part of the purpose of the sanctioning power, the power at issue here—is to control litigation and to preserve the integrity of the judicial process. *See DaimlerChrysler*, 251 F.3d at 695 (including integrity of court proceedings as one reason to uphold sanction).” *Nick v Morgan Foods, Inc.* 270 F.3d 590 (8th Cir. 2001).

“The primary purpose of Rule 11 sanctions is to deter attorney and litigant misconduct....” *Vallejo v. Amgen, Inc.*, 903 F.3d 733, 747 (8th Cir. 2018) (quotation and bracket omitted). Federal Rule of Civil Procedure 11(a) requires that “[e]very pleading, written motion,

and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented.” Relevant here, sanctions may be imposed under Rule 11 “when a pleading, written motion or other paper ... is submitted to the court for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; or ... if the allegations contained therein lack evidentiary support.” *R&A Small Engine, Inc. v. Midwest Stihl, Inc.*, 471 F. Supp. 2d 977, 978–79 (D. Minn. 2007) (citing Fed. R. Civ. P. 11(b) and *Clark v. United Parcel Serv., Inc.*, 460 F.3d 1004, 1008 (8th Cir. 2006)) (cleaned up). Before signing a document filed with the Court, Rule 11 requires counsel “to conduct a reasonable inquiry into the factual and legal basis for a claim.” *Id.* at 979 (citing *Coonts v. Potts*, 316 F.3d 745, 753 (8th Cir. 2003)); *Igbanugo v. Minn. Office of Lawyers Prof. Resp.*, 56 F.4th 561, 567 (8th Cir. 2022) (same).

The district court's determinations concerning Rule 11 under the abuse-of-discretion standard. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990). Rule 11 sanctions may be warranted when a pleading is “presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation,” Fed.R.Civ.P. 11(b)(1), contains allegations or factual contentions that lack evidentiary support, Fed.R.Civ.P. 11(b)(3), or contains denials of factual contentions that are not warranted on the evidence. Fed.R.Civ.P. 11(b)(4).” *Clark v. United Parcel Serv., Inc.*, 460 F.3d 1004, 1008 (8th Cir. 2006). “Such a sanction may, but need not, include payment of the other parties' expenses.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393, 110 S. Ct. 2447, 2454, 110 L. Ed. 2d 359 (1990).

“While it is true that courts have broad discretion in determining an appropriate sanction (where *some* sanction is required under Rule 11), and while appellate courts have

forcefully suggested that trial courts consider which sanction “constitutes the least severe sanction that will adequately deter the undesirable conduct,” *Pope v. Federal Express* 974 F.2d 982, 984 (8th Cir.1992), nevertheless old Rule 11 simply requires an “appropriate” sanction and does not mandate that the district court go through such an analysis, overtly or otherwise. This is in contrast with the language of the new Rule. True, the district court has *discretion* to impose non-monetary sanctions, but it is not required to do so. It is one thing for appellate courts to strongly suggest that the sanction chosen ***be the least severe*** necessary to achieve the objective of the sanction. *Kirk Cap. Corp. v. Bailey*, 16 F.3d 1485, 1490 (8th Cir. 1994). The primary purpose of Rule 11 sanctions is to deter attorney and litigant misconduct, not to compensate the opposing party for all its costs in defending. *Kirk Cap. Corp. v. Bailey*, 16 F.3d 1485, 1490 (8th Cir. 1994); citing *White v. General Motors*, 908 F.2d 675 (10th Cir. 1990).

“Rule 11 provides a specific procedure to be followed when sanctions are considered. A district court may impose Rule 11 sanctions on its own initiative, but it must ***first enter an order describing the specific conduct that appears to violate Rule 11(b)***, and direct the attorney to show cause why he has not violated the rule. Fed.R.Civ.P. 11(c)(1)(B); *see also Fuqua Homes, Inc. v. Beattie*, 388 F.3d 618, 623 (8th Cir.2004). Then, when imposing sanctions, the court is required to describe the conduct determined to constitute a violation of Rule 11, and explain the basis for the sanction chosen. Fed.R.Civ.P. 11(c)(3).” *Clark v. United Parcel Serv., Inc.*, 460 F.3d 1004 (8th Cir. 2006) @ 3 and 4.

I. **The Notice of Voluntary Dismissal and Voluntary Dismissal with Prejudice were filed in Good Faith, And Not for Any Dilatory Purpose, After A Reasonable Inquiry, And Had Been Previously Granted by The Eastern District of Missouri in a Similar Case.**

Rule 41 of the Federal Rules of Civil Procedure states in pertinent part:

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Considering the procedural posture of this case and Plaintiff's good faith desire to end this litigation to mitigate the costs for all parties involved, Mr. Human directed counsel to file a Notice of Voluntary Dismissal, and when stricken by the Court, a voluntary dismissal of all parties with prejudice. It is elementary that "[a]n attorney owes his client a duty of 'undivided loyalty.'" *United States v. Mendez*, 750 F. Supp. 3d 327, 330 (S.D.N.Y. 2024); Citing *Discotrade Ltd. v. Wyeth-Ayerst Int'l, Inc.*, 200 F. Supp. 2d 355, 358 (S.D.N.Y. 2002) (quoting *Cinema 5 Ltd. v. Cinerama, Inc.*, 528 F.2d 1384, 1386 (2d Cir. 1976)).

Under Rule 41, a plaintiff may dismiss his case "without a court order" if he serves "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Rule 41(a)(1)(A)(i). In our case, the Court has overlooked the fact that Defendant Fisher was not the only party to this suit. Indeed, Smart Asset Advisors, LLC

was added to the suit by the Court on January 22, 2025, and had not been served with the operative complaint or any complaint, nor filed an answer or moved for summary judgment, and thus Human's dismissal was effective without any court action. And given that this was the first time Mr. Human had dismissed these claims, his dismissal was presumptively “without prejudice.” Rule 41(a)(1)(B). *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001). *Waetzig v. Halliburton Energy Servs., Inc.*, 145 S. Ct. 690, 694 (2025). The Court struck this notice without inquiry.

If the rule is applied literally, Mr. Human had an absolute right to voluntarily dismiss the action as no defendant had served an Answer or moved for summary judgment. If Human had an absolute right to voluntarily dismiss the action, all prior orders are null and void, and there can be no sanctionable conduct. There is considerable precedent that Rule 41(a)(1)(A) is to be construed literally. *See, e.g., Safeguard Bus. Sys., Inc. v. Hoeffel*, 907 F.2d 861, 864 (8th Cir. 1990) (noting that the court has “declined to consider whether certain actions of the court or parties constitute the equivalent of an answer or a motion for summary judgment”); *Am. Soccer Co., Inc. v. Score First Enter., a Div. of Kevlar Indus.*, 187 F.3d 1108, 1112 (9th Cir. 1999) (“We agree that Rule 41 does not authorize a court to make a case-by-case evaluation of how far a lawsuit has advanced”); *ecoNugenics, Inc. v. Bioenergy Life Sci., Inc.*, 381 F. Supp. 3d 1082, 1090 (D. Minn. 2019), 2019 WL 10982132 (D. Minn. June 21, 2019).

The undersigned counsel investigated these facts and existing precedent considering the unserved defendant and Plaintiff’s apparent absolute right to voluntary dismiss. Whether the attorney's inquiry is reasonable may depend on factors such as whether counsel had to rely on a client for factual information, or whether the attorney depended on forwarding counsel or another member of the bar. The District Court must determine whether a reasonable and

competent attorney would believe in the merit of an argument. *Coonts*, 903 F.3d at 747. Counsel believes this was an objectively reasonable strategy given the state of the record and the presence of both a new and unserved party who had neither appeared nor filed an answer nor a motion for summary judgment.

The Court's published Order of January 27, 2025, relied on two cases which did not address the facts of our case, nor the inclusion of an unserved party who had not filed an answer or motion for summary judgment:

“This matter is before the Court on Plaintiff's “Notice of Voluntary Dismissal.” Doc. [37]. It purports to dismiss this action pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. *See id.* It does not do so. Pursuant to Rule 41(a)(1)(A), a plaintiff can dismiss an action without a court order via “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment” or by “a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A). Here, Defendant has filed an Answer in this action. *See* Doc. [10]; *see also* *Wilson v. Crouse-Hinds Co.*, 556 F.2d 870, 873 (8th Cir. 1977) (“A unilateral dismissal or amendment cannot be accomplished ... after an answer has been filed.”); *Welsh v. Correct Care, L.L.C.*, 915 F.3d 341, 344 (5th Cir. 2019) (filing of an amended complaint does not revive the plaintiff's absolute right to dismissal under Rule 41(a)(1)(A)(i) (citing *Armstrong v. Frostie Co.*, 453 F.2d 914, 916 (4th Cir. 1971)). Thus, this action remains live. To avoid confusion, the Court will instruct the Clerk of Court to strike the ineffective Notice of Voluntary Dismissal.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court is directed to **STRIKE** Plaintiff's Notice of Voluntary Dismissal. Doc. [37].

IT IS FURTHER ORDERED that Plaintiff must abide by the previously ordered deadlines. The failure to do so could result in sanctions as described in the First Amended Case Management Order. *See* Doc. [34].”

Hum. v. Fisher Invs., Inc., 2025 WL 304580, at *1 (E.D. Mo. Jan. 27, 2025). A cursory review of the cases relied on by the Court do not reveal that the Plaintiffs right to dismiss a new and unserved party is forfeited or foreclosed. Typically, in the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as a defendant. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.

344, 350 (1999) (citation omitted). However, “[c]ourts frequently extend the rationale utilized to dismiss served defendants to unserved defendants where [as here] the reasons for dismissal are applicable to the unserved parties.” *Schofield v. Wellstone Health Partners*, Civ. No. 19-0415, 2020 WL 4614819, at *4 (W.D. Tex. Mar. 2, 2020) (citing *Lewis v. Lynn*, 236 F.3d 766, 768 (5th Cir. 2001)) *Smith v. Barnett*, 2020 WL 6205760, at *7 (D.S.D. Oct. 22, 2020); And see *Blair v. City of Omaha*, 2009 WL 995149, at *3 (D. Neb. Apr. 10, 2009)(Plaintiff’s Motion to Dismiss Unserved Parties is granted and these unserved Defendants are dismissed from this matter without prejudice.). Had the District Court inquired of the Plaintiff’s reasons to voluntarily dismiss and voluntarily with prejudice, or had the Eighth Circuit Court of Appeals not later dismissed the appeal as premature and for a lack of jurisdiction, these meritorious issues would have been more fully briefed.

Finally, there is an existing decision and order within the United States District Court for the Eastern District of Missouri permitting the non-stipulated filing of a dismissal with prejudice.³ See *Human v. SelectQuote, et al.*, No. 4:23-cv-00826-SEP Docs. 79-80. Considering the District Court’s prior ruling, when a Plaintiff simply sought to terminate his participation in a case of this nature and mitigate further costs in this action, regardless of whether the Court deemed his behavior on the date of a device inspection suspicious, his motives were not dilatory and sought to prevent further costs and fees by both parties.⁴

³ Under Missouri law, Mr. Human is permitted to voluntarily dismiss any case prior to a jury being seated. Rule 67.02 (2001) provides “a civil action may be dismissed by the plaintiff without order of the court any time prior to the introduction of evidence at the trial.” Once a plaintiff files a voluntary dismissal pursuant to this rule, the trial court loses its jurisdiction as there is nothing before the court upon which to act. *State ex rel. Fisher v. McKenzie*, 754 S.W.2d 557, 560 (Mo.banc 1988). A voluntary dismissal is effective on the date it is filed with the court. *Thornton v. Deaconess Medical Center-West*, 929 S.W.2d 872, 873[3] (Mo.App.1996). *Kirby v. Gaub*, 75 S.W.3d 916, 917 (Mo. Ct. App. 2002).

⁴ Mr. Human attended the device inspection on January 27, 2025, and produced every item for inspection within his possession or control.

- I. **The Notice of Appeal Was filed in Good Faith, in that the District Court Was Showing the Defendant Partiality, Forcing the Plaintiff to Engage in Discovery under the Threat of Sanctions, where the Operative Complaint had not been served on an Indispensable Party and Neither Defendant Had Answered the Complaint. Thus, Filing A Notice of Appeal on the Denial of the Issue of Permissible Voluntary Dismissal and Voluntary Dismissal with Prejudice, and Refusing to Stay Discovery Pending Service and Answers Being Filed were filed in Good Faith, And Not for Any Dilatory Purpose, After A Reasonable Inquiry, And Had Been Previously Granted by The Eastern District of Missouri in a Similar Case.**

Although limiting its order to show cause and parsing out the statement of the Eighth Circuit, the Notice of Appeal was filed in good faith and not as a delay tactic, nor for any dilatory purpose. Indeed, the only party who suffered an increase in costs was Daniel Human, who has sustained the cost of a \$605.00 filing fee. The Defendants did not engage the appeal process, nor expend any resources.

On February 13, 2025, the Court of Appeals issued an Order and Judgment summarily dismissing the appeal *without permitting briefing*, stating specifically “[t]he Court has carefully reviewed the original file of the United States District Court and orders that this premature appeal be *dismissed for lack of jurisdiction*.” See Doc. 48. That is quite different from a dilatory motive or a frivolous appeal used as a delay tactic. A premature appeal is not based on a determination that it ultimately cannot succeed and thus cannot be considered frivolous. *Tafari*, 473 F.3d at 443.

As the Court requested in its order to show cause, an appeal, including an interlocutory appeal, “divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982). That *Griggs* principle reflects a longstanding tenet of American procedure. See *Hovey v. McDonald*, 109 U.S. 150, 157, 3 S.Ct. 136, 27 L.Ed. 888 (1883); see also *Price v.*

Dunn, 587 U. S. —, —, 139 S.Ct. 1533, 1537, 204 L.Ed.2d 238 (2019) (THOMAS, J., joined by ALITO and GORSUCH, JJ., concurring in denial of certiorari) (describing *Griggs* principle as “well settled”); *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985) (“In general, filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal”). In our case, though later remanding for lack of jurisdiction, the notice of appeal was filed in good faith and was not frivolous or for dilatory purposes.

Indeed, although the issues for appeal were undergoing focused research when the Appeal was dismissed for lack of jurisdiction, this Court issued a show cause order requiring the same briefing the Appellate Court determined it lacked jurisdiction to review. Had a brief been submitted, it would have presented valid questions about whether the Plaintiff was entitled to dismiss his case, in whole or part because the operative complaint had not been served on a new defendant and had not been answered by any defendant.

For example, the Amended Complaint was accepted and filed on January 22, 2025, which added indispensable party Smart Asset Advisors. As a matter of law, once the Court accepted and filed the Amended Complaint, the original complaint and all motions based on that Complaint are moot. “[I]t is well established that an amended complaint supersedes the original and renders it of no legal effect.” *Davis v. TXO Prod. Corp.*, 929 F.2d 1515, 1517 (10th Cir. 1991) (citation and internal quotation marks omitted); *see also* 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 1476 (3d ed. 2010) (“A pleading that has been amended ... supersedes the pleading it modifies.... Once an amended pleading is interposed, the original pleading no longer performs any function in the case....”).

Thus, any motion, discovery request, or order directed at the original complaint is rendered moot by the filing of an amended complaint. *See Mochama v. Zwetow*, 2015 WL 3843247, at *2 (D. Kan. June 22, 2015); *see also Camick v. Holladay*, 2018 WL 1523099, at *4 (D. Kan. Mar. 28, 2018); *Capital Sols., LLC v. Konica Minolta Bus. Sols. USA, Inc.*, 2008 WL 1901396, at *1 (D. Kan. Apr. 25, 2008). *Mercer v. Csiky*, 2010 WL 2671329, at *2 (E.D. Mich. June 30, 2010); *Lucas v. DeSilva Auto. Servs.*, 2018 WL 1558866, at *2 (S.D. Ohio Mar. 31, 2018); *Hayward v. Cleveland Clinic Foundation*, 759 F.3d 601, 617 (6th Cir. 2014); *Drake v. City of Detroit*, 266 F. App'x 444, 447-48 (6th Cir. 2008) (finding that the original “complaint is a nullity, because an amended complaint supercedes [sic] all prior complaints.”). *Fly Union LLC v. Smith*, 2022 WL 18570642, at *1 (S.D. Ohio June 17, 2022).

Instantly, Plaintiff had an unequivocal right to voluntarily dismiss his claims against Smart Asset Advisors because they had not been served with a Complaint, filed an answer, or a motion for summary judgment. Thus, there is no precedent which needs be overturned. There is considerable precedent that Rule 41(a)(1)(A) is to be construed literally. *See, e.g., Safeguard Bus. Sys., Inc. v. Hoeffel*, 907 F.2d 861, 864 (8th Cir. 1990) (noting that the court has “declined to consider whether certain actions of the court or parties constitute the equivalent of an answer or a motion for summary judgment”); *Am. Soccer Co., Inc. v. Score First Enter., a Div. of Kevlar Indus.*, 187 F.3d 1108, 1112 (9th Cir. 1999) (“We agree that Rule 41 does not authorize a court to make a case-by-case evaluation of how far a lawsuit has advanced”); *ecoNugenics, Inc. v. Bioenergy Life Sci., Inc.*, 381 F. Supp. 3d 1082, 1090 (D. Minn. 2019), 2019 WL 10982132 (D. Minn. June 21, 2019); *Waetzig v. Halliburton Energy Servs., Inc.*, 145 S. Ct. 690, 694 (2025).

Even if only partially correct in his assessment, filing a Notice of Appeal on the three issues presented should not be sanctionable conduct.

The Court failed to inquire of the Plaintiff's reasons for filing the dismissal, refused to stay discovery and was forcing the Plaintiff to engage in discovery on an inoperative complaint under the threat of sanctions. Considering the posture of this case, these factors constituted both good cause to stay all discovery pending service of process, answers of each defendant and the prospect of dispositive motions, *Realtek Semiconductor Corp. v. MediaTek, Inc.*, 732 F. Supp. 3d 1101, 1117–18 (N.D. Cal. 2024), and to seek appellate review of the Court's decisions.

Sanctions “must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4); *see Rickmyer v. Browne*, 995 F. Supp. 2d 989, 1031 (D. Minn. 2014) (“[D]eterrence is the primary purpose of Rule 11 sanctions.”) (citation omitted). For several reasons set forth above, Plaintiff suggests that there is no sanctionable conduct under Rule 11(b), and sanctions under Rule 11(c) would be inappropriate under the circumstances. *Plus One, LLC v. Cap. Relocation Servs., LLC*, 2025 WL 926484, at *4 (D. Minn. Mar. 27, 2025).

Respectfully submitted,

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A true copy of the above and foregoing was served on all counsels of record upon filing through the Court ECF/CM system.

/s/Edwin V. Butler
Edwin V. Butler Mo. 32489

AFFIDAVIT OF DANIEL HUMAN

Being duly sworn under my oath under 28 U.S.C. Sec 1746, I Daniel Human declare the following to be true and correct.

1. That I am a 69-year-old man living in St. Louis County, MO
2. That my sole source of actual income is the \$1,627.00 that I receive monthly from SSI.
3. I am not and have not been employed for the past two years.
4. I am without the financial means to defend myself or pay sanctions beyond the SSI that I receive monthly.
5. The only appreciable asset that I own is a 2019 Nissan Rogue that needs considerable repair and has 154,000 miles.



Daniel Human

4/11/25

Date