UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF:
ATTORNEY JOHN ROBERT BEASON, III
_____/

Administrative Order
No. 25-AD-017

ORDER OF ASSIGNMENT OF
A THREE-JUDGE PANEL TO
CONSIDER POSSIBLE DISCIPLINE

Plaintiff Brandi Crawford-Johnson in a case that the undersigned dismissed on March 15, 2024, Case No. 1:23-cv-580, sent a correspondence (Exhibit A) with numerous attachments (Exhibit A1) to this Court on February 25, 2025, asserting various allegations of professional and ethical misconduct by her one-time attorney, John R. Beason, III. Mr. Beason has been listed as counsel of record in 22 cases filed in this Court since 2019. Currently, eight of those cases remain pending and assigned to the undersigned or to the other District Judges of this Court.

Separate and apart from the recent allegations Ms. Crawford-Johnson makes against Mr. Beason, the undersigned sanctioned Mr. Beason in Ms. Crawford-Johnson's case in orders dated April 10, 2024, and October 30, 2024 (Exhibits B, B1). Those sanctions dealt with violations of Rule 11(b)(3) of the Federal Rules of Civil Procedure. Specifically, Mr. Beason failed to conduct his duty of reasonable inquiry before presenting allegations in the complaint that lacked factual support or were false.

Generally, targeted sanctions within the applicable case are preferred, rather than a separate disciplinary proceeding. In this case, however, findings by the undersigned and other judges in this Court, as well as allegations made by Ms. Crawford-Johnson, all weigh in favor of convening a three-judge panel to determine whether any further discipline is appropriate, not simply to

address past infractions already subject to sanctions, but to also protect against possible future misconduct. Specifically for the three-judge panel's consideration are findings made by the undersigned in Plaintiff Crawford-Johnson's case noted above; her recent allegations of misconduct; other sanctions issued by the undersigned in Case No. 1:22-cv-186 on March 27, 2024 (Exhibit C) for pleading frivolous and unfounded claims;[1] and sanctions taken by another member of this Court on May 14, 2024 in Case No. 1:23-cv-274 (Exhibit D) for discovery related violations.

The undersigned takes no position on what, if any, further sanctions or discipline are warranted. That will be up to the three-judge panel. That panel will also have plenary authority to convene any hearings and to receive any testimony or exhibits it deems appropriate. The sole role of the undersigned is to determine that the matter warrants further consideration by a three-judge panel.

Accordingly, **IT IS ORDERED** that the following three Judges are hereby appointed

HONORABLE PHILLIP J. GREEN, CHAIR
HONORABLE RAY KENT
HONORABLE SCOTT W. DALES

to review this matter and determine Mr. Beason's suitability for continued admission to the practicing bar of the Western District of Michigan. Pursuant to this Court's Procedures Regarding the Attorney Admission Process, the decision of a majority of the panel will be final and binding.

[1] After the Court sanctioned Mr. Beason in Case No. 1:22-cv-186, the defendant withdrew its request for attorney fees and costs because the parties indicated they had executed a release and settlement resolving the issue (Exhibit C1).

A copy of this Order shall be served upon Attorney Beason by the Attorney Admissions Clerk.

IT IS SO ORDERED.

FOR THE COURT:

Dated: February 28, 2025

HALA Y. JARBOU
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT A

Anna Seymore

From: Brandi Crawford-Johnson <bcrawfordkc@gmail.com>
Sent: Tuesday, February 25, 2025 9:50 AM
To: USDC MI-W Jarbou Chambers
Subject: Case- 1:23-cv-00580
Attachments: IMG_9759.png; IMG_9756.jpeg; IMG_9758.jpeg; IMG_9760.jpeg; IMG_9757.jpeg; IMG_9749.jpeg; IMG_9748.jpeg; IMG_9747.jpeg; IMG_9750.jpeg; IMG_9751.jpeg; IMG_9743.jpeg; IMG_9742.jpeg; IMG_9745.jpeg; IMG_9746.jpeg; IMG_9741.jpeg

Judge Jarbou,

I am writing to you to let you know I did not give permission to Attorney John Beason III to appeal sanctions or any of your orders. I did not pay a filing fee.

I do not think the court is racist or bias.

I did not recieve a copy of the original lawsuit until after it was filed. I then realized Mr. Beason did not fact check, and was completely off topic on many subjects and defendants he chose to sue.

I will be attaching some communications between Mr. Beason and I so you can better understand what is going on. I am no longer represented by him.

Mr. Beason also misinformed Graphic Packaging's attorneys that we agreed to sign a release without talking to any of the plaintiffs, including myself. No one agreed to sign anything. I believe him filing these appeals will upset the defendant in another case where I am lead plaintiff. I fought very hard to protect my community and Mr. Beason is using me as a pawn.

I have asked Mr. Beason to not attach my name to any motions he files with the court because this case is dismissed. I was unaware until reading your responses that Mr. Beason missed appeal deadlines as well.

Mr. Beason is very unprofessional and posts himself publicly online with semi automatic handguns. I believe he does that to intimidate folks.

Please disregard any motions or appeals filed with the name, Brandi Crawford by Attorney John Beason III.

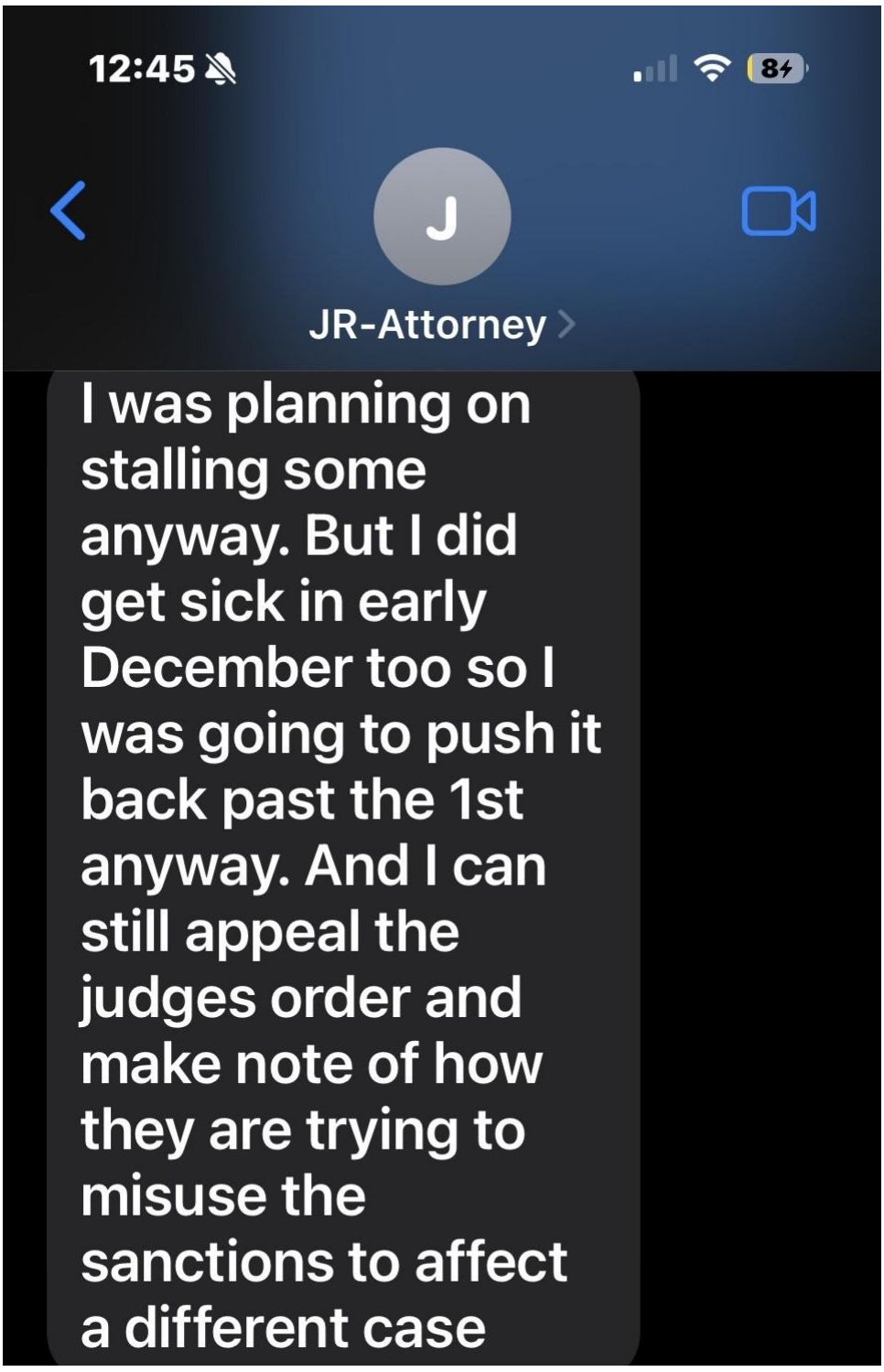
I will be willing to come talk to you in person at a hearing, if you would like.

I am sorry to bother you with this. I know you are very busy upholding justice and I respect you very much.

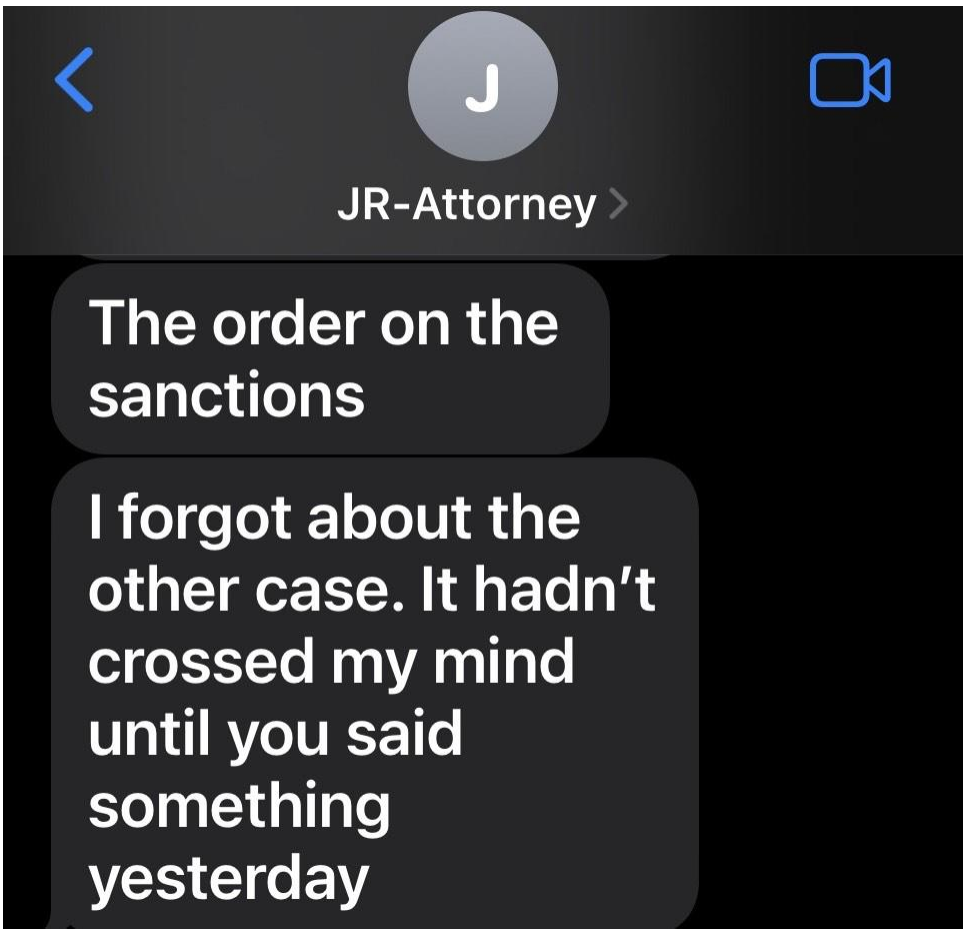
Thank you,
Brandi Crawford

EXHIBIT A1

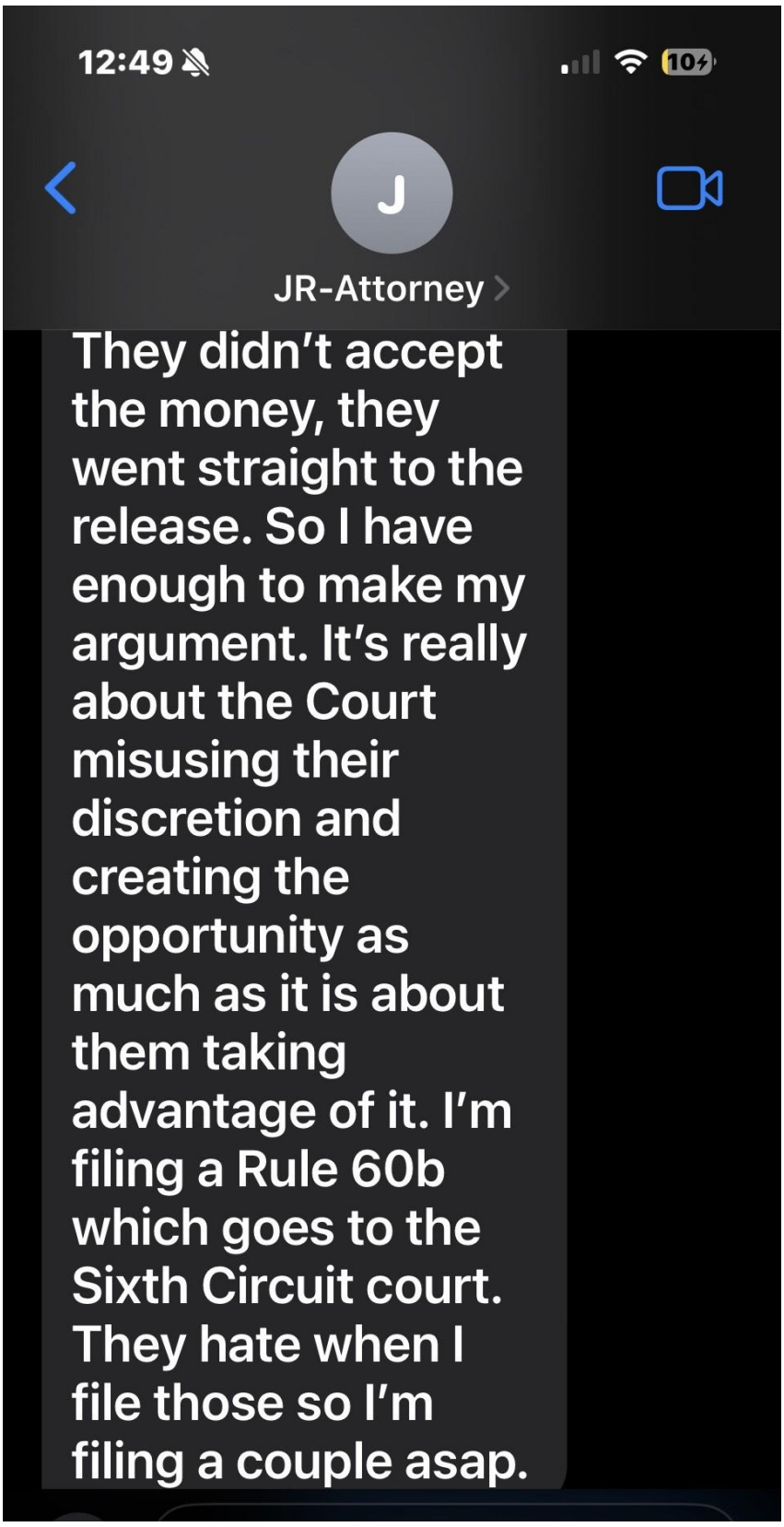
IMG_9741



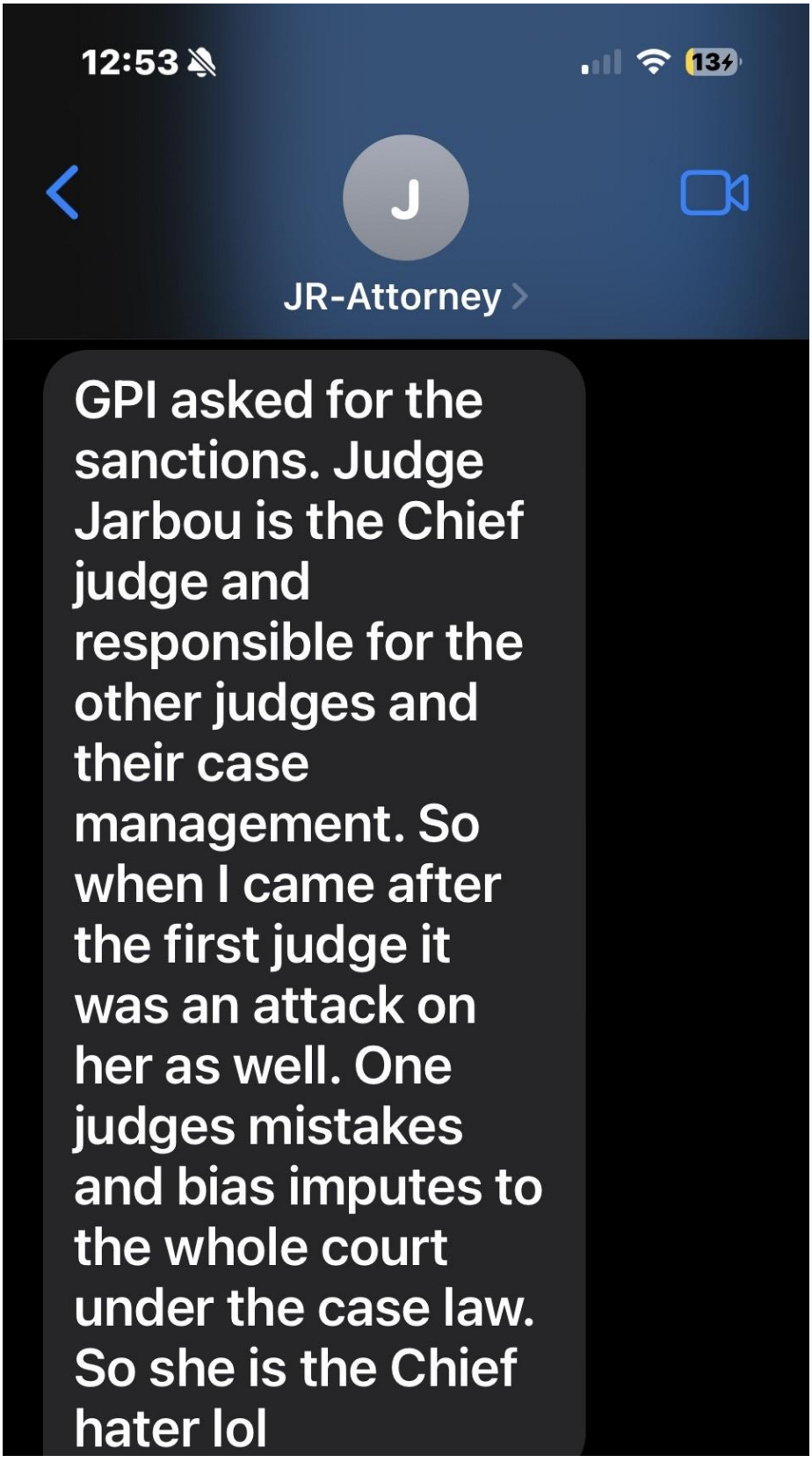
IMG_9742


J
JR-Attorney
The order on the sanctions
I forgot about the other case. It hadn't crossed my mind until you said something yesterday

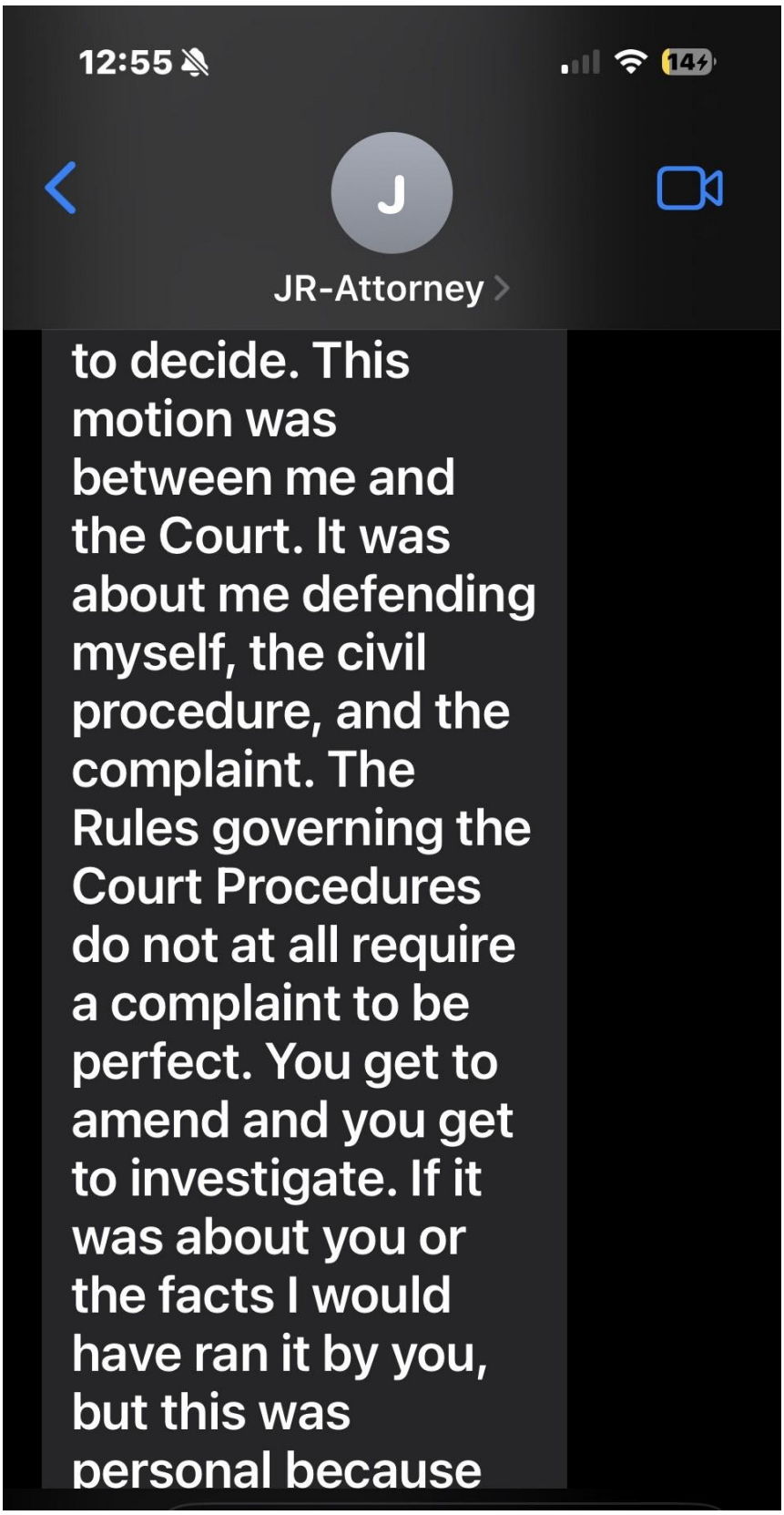
IMG_9743


12:49
J
JR-Attorney
They didn't accept the money, they went straight to the release. So I have enough to make my argument. It's really about the Court misusing their discretion and creating the opportunity as much as it is about them taking advantage of it. I'm filing a Rule 60b which goes to the Sixth Circuit court. They hate when I file those so I'm filing a couple asap.

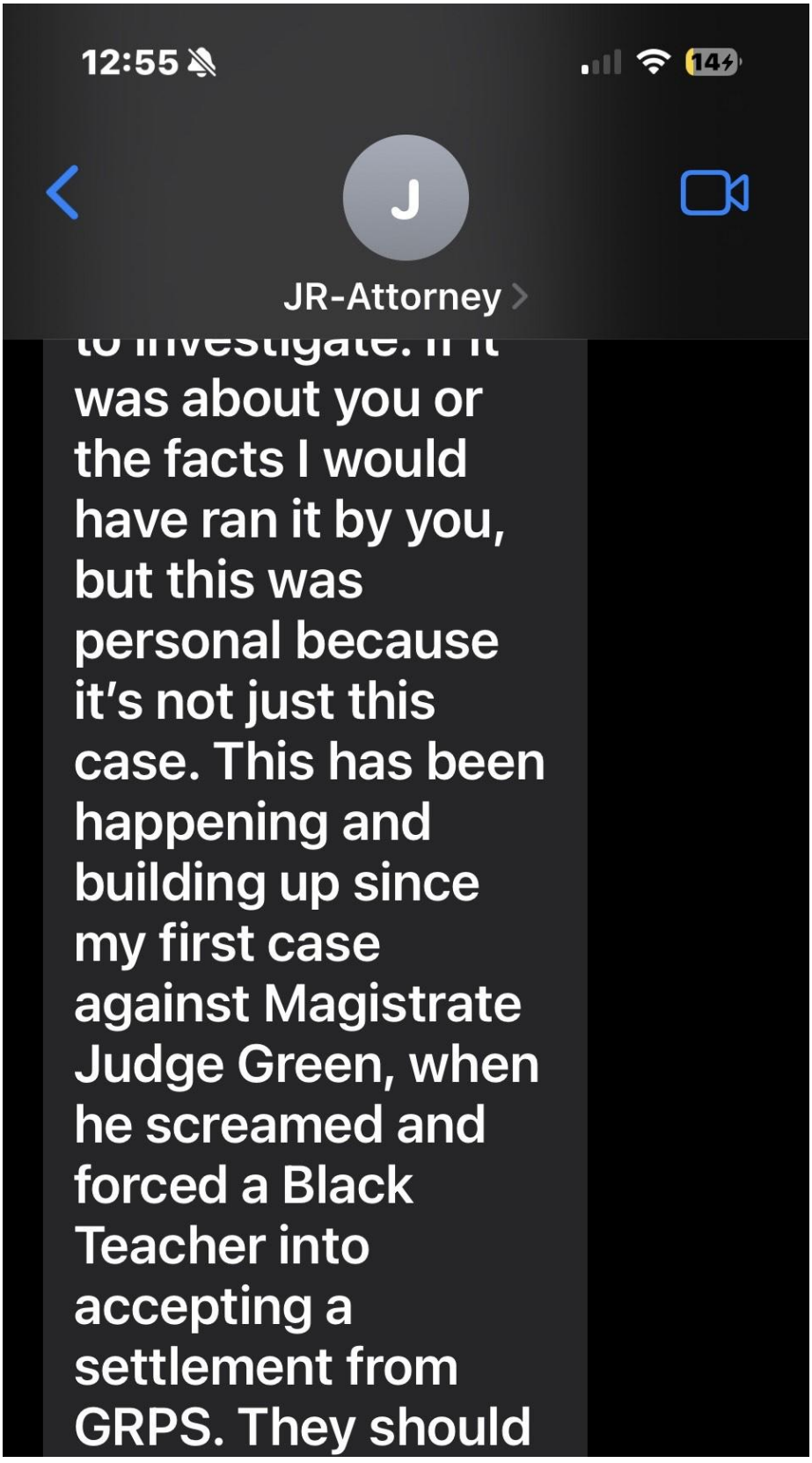
IMG_9745


12:53
134
J
JR-Attorney
GPI asked for the sanctions. Judge Jarbou is the Chief judge and responsible for the other judges and their case management. So when I came after the first judge it was an attack on her as well. One judges mistakes and bias imputes to the whole court under the case law. So she is the Chief hater lol

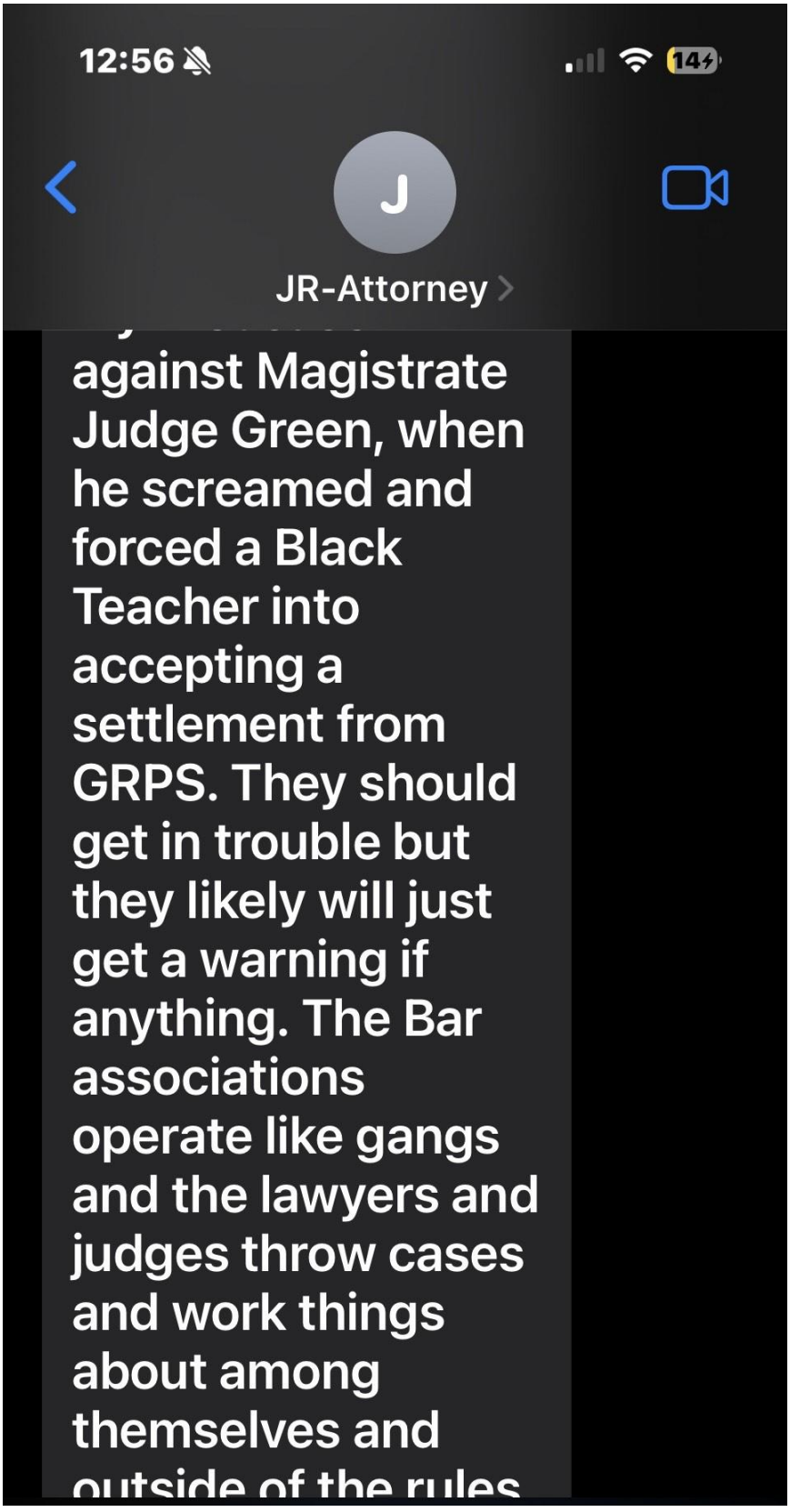
IMG_9746


12:55
J
JR-Attorney
to decide. This motion was between me and the Court. It was about me defending myself, the civil procedure, and the complaint. The Rules governing the Court Procedures do not at all require a complaint to be perfect. You get to amend and you get to investigate. If it was about you or the facts I would have ran it by you, but this was personal because

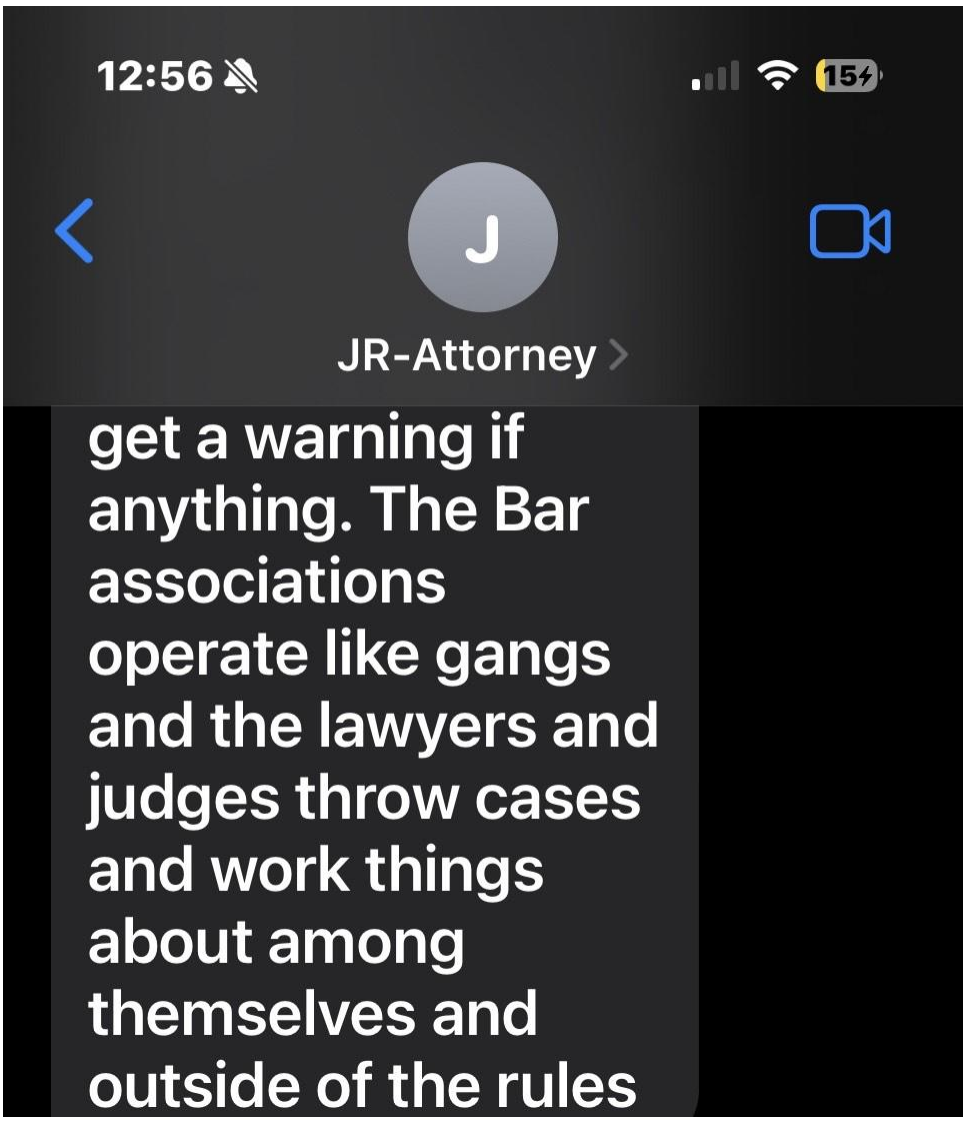
IMG_9747


12:55
J
JR-Attorney
was about you or the facts I would have ran it by you, but this was personal because it's not just this case. This has been happening and building up since my first case against Magistrate Judge Green, when he screamed and forced a Black Teacher into accepting a settlement from GRPS. They should

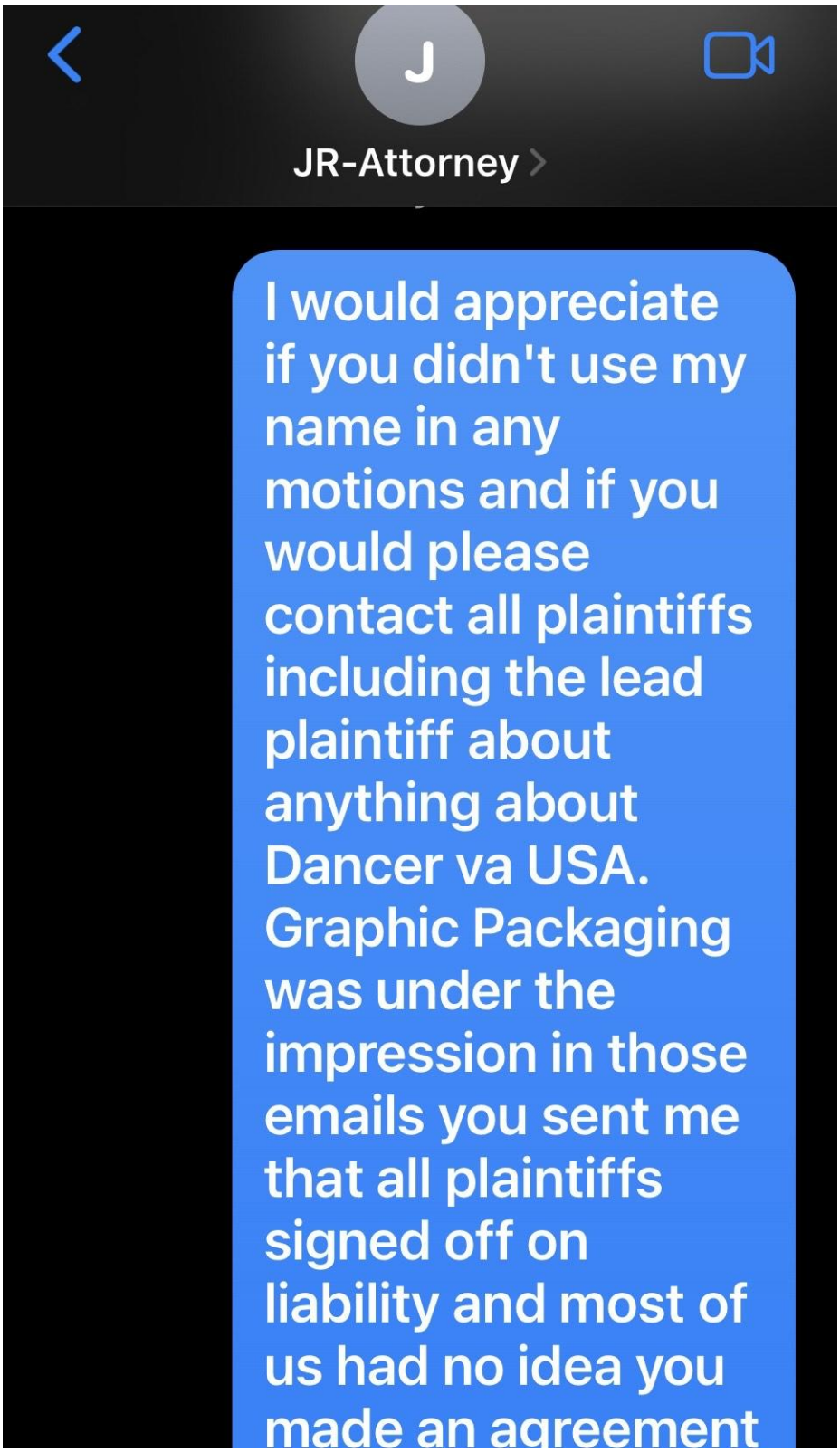
IMG_9748


12:56
J
JR-Attorney
against Magistrate Judge Green, when he screamed and forced a Black Teacher into accepting a settlement from GRPS. They should get in trouble but they likely will just get a warning if anything. The Bar associations operate like gangs and the lawyers and judges throw cases and work things about among themselves and outside of the rules

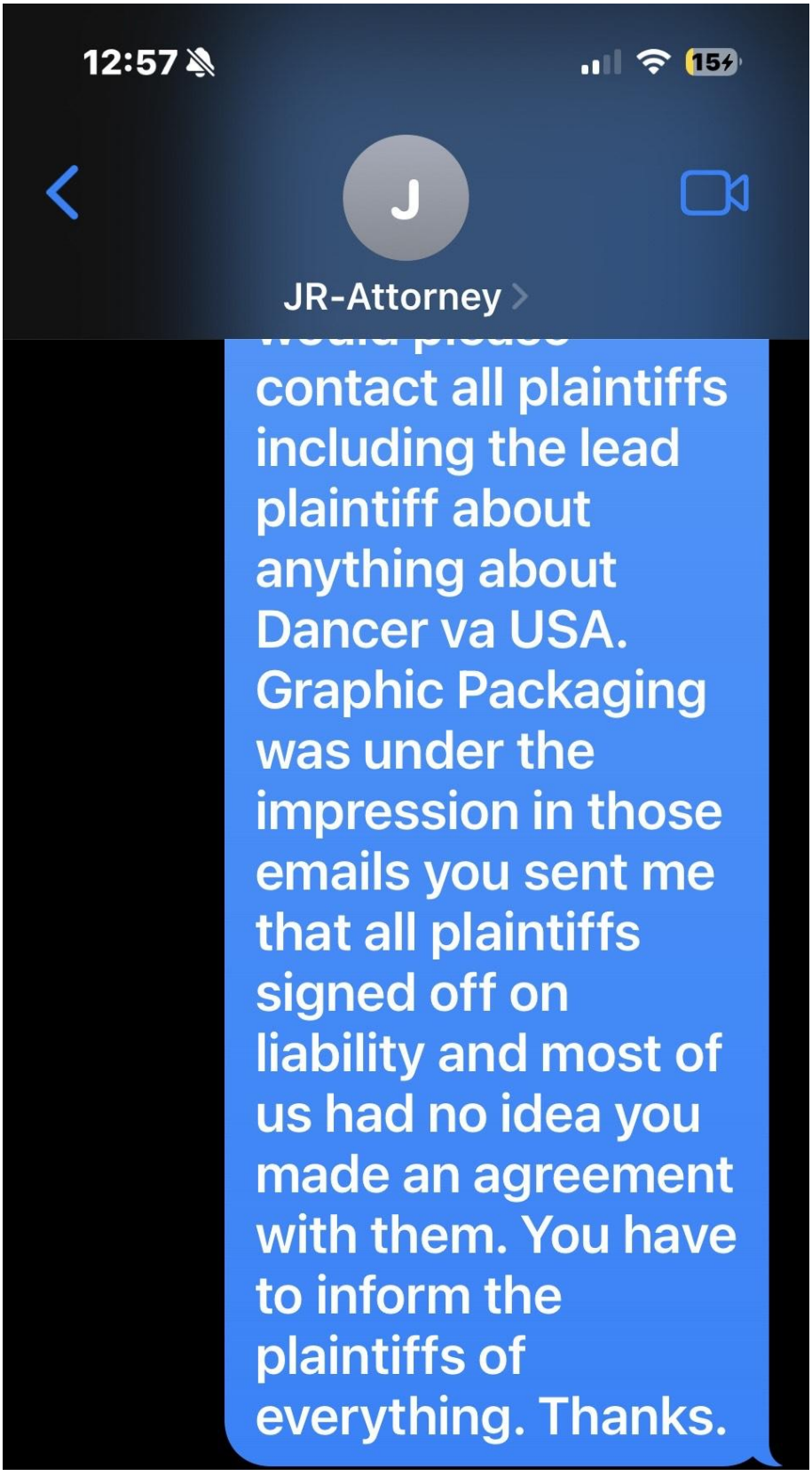
IMG_9749


12:56
J
JR-Attorney
get a warning if anything. The Bar associations operate like gangs and the lawyers and judges throw cases and work things about among themselves and outside of the rules

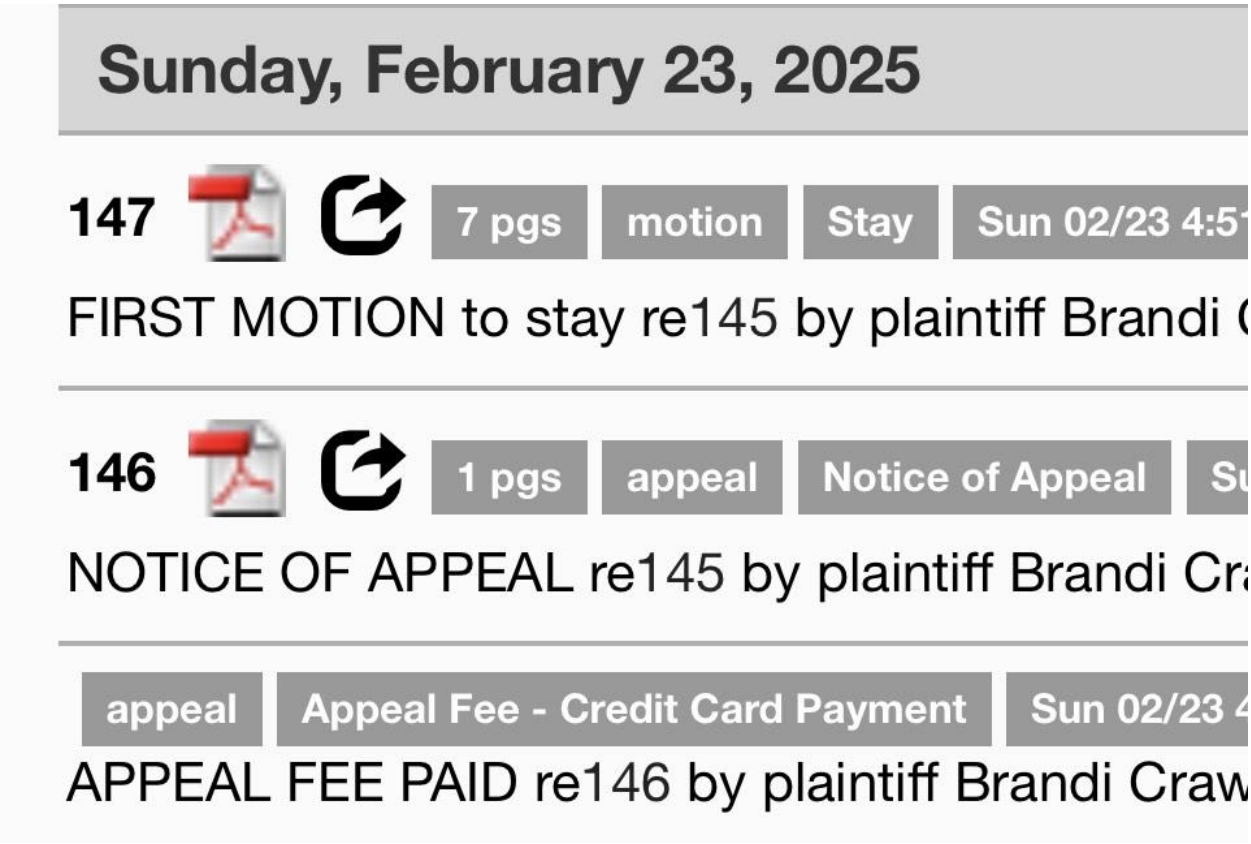
IMG_9750


J
JR-Attorney
I would appreciate if you didn't use my name in any motions and if you would please contact all plaintiffs including the lead plaintiff about anything about Dancer va USA. Graphic Packaging was under the impression in those emails you sent me that all plaintiffs signed off on liability and most of us had no idea you made an agreement

IMG_9751


12:57
15
J
JR-Attorney
contact all plaintiffs including the lead plaintiff about anything about Dancer va USA. Graphic Packaging was under the impression in those emails you sent me that all plaintiffs signed off on liability and most of us had no idea you made an agreement with them. You have to inform the plaintiffs of everything. Thanks.

IMG_9756


Sunday, February 23, 2025
147
7 pgs
motion
Stay
Sun 02/23 4:51
FIRST MOTION to stay re145 by plaintiff Brandi
146
1 pgs
appeal
Notice of Appeal
NOTICE OF APPEAL re145 by plaintiff Brandi Cra
appeal
Appeal Fee - Credit Card Payment
Sun 02/23
APPEAL FEE PAID re146 by plaintiff Brandi Craw

IMG_9757


Dec 23, 2024
to John
From Brandi Crawford
bcrawfordkc@gmail.com
To John Beason
jrbeasonconsulting@gmail.com
Date Dec 23, 2024 at 2:41 PM
John,
I don't feel comfortable signing this release.
Thanks,
Brandi Crawford-Johnson

IMG_9758

Gmail John Beason <jrbeasonconsulting@gmail.com>

Sanctions Payment Agreement

14 messages

John Beason <jrbeasonconsulting@gmail.com> Fri, Nov 15, 2024 at 10:40 AM
To: "Miller, Mark" <Mark.Miller@btlaw.com>

Good morning Mark,

Happy Friday! I hope your week has been well. I was able to get permission from my clients to drop the State claims against GPI and would like to accept the offer to resolve the attorney fees. Thanks for your helping getting this taking care of.

Kind regards,

John R. Beason III, Esq.

Miller, Mark <Mark.Miller@btlaw.com> Mon, Nov 18, 2024 at 11:49 AM
To: John Beason <jrbeasonconsulting@gmail.com>

John – Thanks for your email. Let me draft a release and send it your way for review, which will insure we're on the same page.

Regards,

Mark

Mark Miller | Partner
Barnes & Thornburg LLP
One North Wacker Drive Suite 4400, Chicago, IL 60606
Direct: (312) 214-5606 | Mobile: (847) 912-1972

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New York | Ohio | Philadelphia | Raleigh | Salt Lake City | South Florida | Texas | Washington, D.C.

Visit our Subscription Center to sign up for legal insights and events.

From: John Beason <jrbeasonconsulting@gmail.com>
Sent: Friday, November 15, 2024 9:41 AM
To: Miller, Mark <Mark.Miller@btlaw.com>
Subject: [EXTERNAL] Sanctions Payment Agreement

Caution: This email originated from outside the Firm.

[Quoted text hidden]

John Beason <jrbeasonconsulting@gmail.com> Mon, Nov 18, 2024 at 12:28 PM
To: "Miller, Mark" <Mark.Miller@btlaw.com>

Okay that sound good. Thanks Mark.

John R. Beason III, Esq.
[Quoted text hidden]

IMG_9759

more time and effort to accomplish – I certainly do not expect you to be able to complete that by November 29. If you could obtain the signatures before Christmas, that would be helpful. Sound okay?

8:42 88

Thanks and regards,

[Quoted text hidden]
[Quoted text hidden]

John Beason <jrbeasonconsulting@gmail.com> Mon, Nov 25, 2024 at 5:27 PM
To: "Miller, Mark" <Mark.Miller@btlaw.com>

Thanks for that clarification. I appreciate your understanding on the timing. I do not have a problem with getting the signatures, but will need some time to retrieve them. Also, when we initially spoke on the phone we talked about state law claims but the agreement includes federal law claims as well. Are federal claims a deal breaker? I understand the goal is to get this litigation finalized so I presume so, but I just wanted be able to be definite with my clients about what there options are. I believe that I will be able to get the signatures together before Christmas. I appreciate your understanding and flexibility. Thanks Mark.

Kind regards,

John R. Beason III, Esq.
[Quoted text hidden]

Miller, Mark <Mark.Miller@btlaw.com> Mon, Nov 25, 2024 at 5:40 PM
To: John Beason <jrbeasonconsulting@gmail.com>

John – Given that the court dismissed the federal claims last March and there was no timely appeal, there really are no existing federal claims (and those federal claims were especially hard to make out against a private entity like GPI anyway). But, for the sake of completeness, especially in regards to insuring that we have covered the

waterfront on potential state claims, GPI is insisting upon the language in the release.

I hope that answers your question, but if not, please let me know.

Thanks and have a Happy Thanksgiving.

[Quoted text hidden]
[Quoted text hidden]

John Beason <jrbeasonconsulting@gmail.com> Mon, Nov 25, 2024 at 6:04 PM
To: "Miller, Mark" <Mark.Miller@btlaw.com>

Thanks again Mark, I am definitely over thinking. For some reason I thought I might I have missed something when you specified state claims. Makes perfect sense. I appreciate you taking the time to clear that up for me.

Kind regards,

John R. Beason III, Esq.
[Quoted text hidden]

John Beason <jrbeasonconsulting@gmail.com> Sun, Dec 22, 2024 at 10:00 AM
To: Brandi Crawford <bcrawfordkc@gmail.com>

Let me know if the entire convo doesn't come through and I will download as pdf

Regards,

John R. Beason III, Esq.

[Quoted text hidden]

Brandi Crawford <bcrawfordkc@gmail.com> Sun, Dec 22, 2024 at 10:02 AM
To: John Beason <jrbeasonconsulting@gmail.com>

It didn't come through. Only what you said to them.
[Quoted text hidden]

IMG_9760

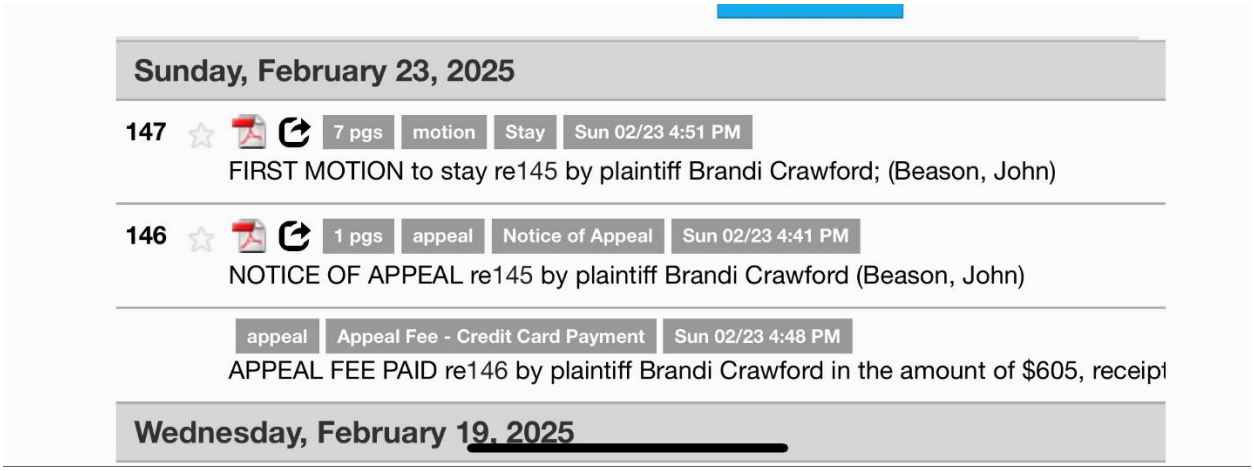
Sunday, February 23, 2025
147
7 pgs
motion
Stay
Sun 02/23 4:51 PM
FIRST MOTION to stay re145 by plaintiff Brandi Crawford; (Beason, John)
146
1 pgs
appeal
Notice of Appeal
Sun 02/23 4:41 PM
NOTICE OF APPEAL re145 by plaintiff Brandi Crawford (Beason, John)
appeal
Appeal Fee - Credit Card Payment
Sun 02/23 4:48 PM
APPEAL FEE PAID re146 by plaintiff Brandi Crawford in the amount of $605, receipt
Wednesday, February 19, 2025

Exhibit B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYLER DANCER, et al.,

Plaintiffs,

Case No. 1:23-cv-580

v.

Hon. Hala Y. Jarbou

UNITED STATES OF AMERICA, et al.,

Defendants.
_____/

ORDER

On March 15, 2023, the Court directed Plaintiffs' counsel, John Robert Beason, III, to show cause why he should not be sanctioned for his failure to comply with Rule 11(b)(3) of the Federal Rules of Civil Procedure. Under that rule, an attorney presenting a pleading to the Court represents that "to the best of the [attorney's] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the factual contentions have evidentiary support." Fed. R. Civ. P. 11(b)(3). As the Court explained in a previous opinion, Plaintiffs' complaint contained dubious, impertinent, and immaterial allegations about Defendants Graphic Packaging International ("GPI"), Graphic Packaging Holding Co. ("GPH"), and Paul McCann (collectively, "GPI Defendants"). In short, the complaint alleged "a family relationship between Paul McCann and Senator Sean McCann and secret financial dealings by them"; it also contained "frivolous accusations of racist beliefs held by GPI and its employees." (3/15/2024 Op. 22, ECF No. 133.) Because these allegations lacked factual support (or were false, in the case of Paul McCann's relationship to Sean McCann), GPI Defendants asked Plaintiffs to withdraw the allegations. Plaintiffs refused to do so. GPI Defendants then moved to strike them. Plaintiffs opposed Defendants' motion.

When pressed on the allegations at a hearing on the motion to strike, Plaintiffs' counsel could offer nothing to support them. The Court then granted Defendants' motion, striking the aforementioned allegations from the complaint. (10/18/2023 Order, ECF No. 100.)

Plaintiffs' counsel subsequently filed a motion for reconsideration, wherein he attempted and failed to provide a justification for including the stricken allegations in the complaint. Although Plaintiffs finally conceded to withdraw their allegations about Paul McCann, Plaintiffs asked the Court to reverse its decision to strike the other allegations from the complaint. (*See* Pls.' Mot. to Reconsid., ECF No. 103.) In that motion, counsel contended that he had relied on his clients' assertions about GPI and GPH, even though he thought it foreseeable that they would "manufacture erroneous theories" to support their claims. (*Id.* at 12.) The Court denied the motion for reconsideration, noting that Plaintiffs' newly offered evidence did not provide plausible support for racist beliefs or practices by GPI or GPH; indeed, that evidence had no plausible connection to any conduct at issue in the complaint. (3/15/2024 Op. 20-21.) Accordingly, Plaintiffs' motion reinforced the Court's earlier conclusion that Plaintiffs' counsel had not conducted the reasonable inquiry required by Rule 11 to verify the stricken allegations before filing the complaint. (*Id.* at 21.) The Court ordered Plaintiffs' counsel to show cause why the Court should not sanction him for his failure to comply with Rule 11 (ECF No. 134). Counsel has not responded to that order.

Rule 11 permits the Court to sanction an attorney who has violated that rule. Fed. R. Civ. P. 11(c). "An attorney violates the rule directly by 'presenting' an offending pleading to the court, such as 'by signing, filing, submitting, or later advocating it.'" *King v. Whitmer*, 71 F.4th 511, 531 (6th Cir. 2023) (quoting Fed. R. Civ. P. 11(b)). Here, Plaintiffs' counsel violated Rule 11(b)(3) by submitting a complaint containing allegations for which he did not conduct an adequate prefiling inquiry to ensure that they had some evidentiary support.

Rule 11(c) provides a safe-harbor period to protect an attorney for "hasty mistakes." *King*, 71 F.4th at 529. Counsel does not contend that he is entitled to that safe harbor, as he has not responded to the Court's order to show cause. Moreover, according to GPI Defendants, they gave Plaintiffs notice of the defects in their complaint before filing the motion to strike, yet counsel refused to withdraw the allegations. He also opposed the motion to strike in writing and at the motion hearing. Thus, the safe harbor does not apply and sanctions are warranted.

The Court "must limit any award of attorney's fees to only 'those expenses directly caused' by the sanctionable conduct." *Id.* at 532 (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 406-07 (1990)). In other words, where a filing is only partially sanctionable, the Court must limit the award to "fees incurred in responding to the sanctionable parts." *Id.* Here, the Court will award Defendants GPI, GPH, and Paul McCann their reasonable attorney's fees and other expenses for responding to the stricken allegations in the complaint, such as their fees and expenses for the motion to strike, for the hearing on that motion, and for responding to Plaintiffs' motion for reconsideration. Accordingly,

IT IS ORDERED that Plaintiffs' counsel, John Robert Beason, III, must pay Defendants GPI, GPH, and Paul McCann their reasonable attorney's fees and other expenses for responding to the stricken allegations in the complaint.

IT IS FURTHER ORDERED that Defendants GPI, GPH, and Paul McCann shall submit a certified statement or affidavit of their applicable fees and expenses within fourteen days of this date. Any objections by Plaintiffs' counsel to the amount requested must be filed within fourteen days after Defendants' filing. Defendants may reply to those objections within seven days after they are filed.

Dated: April 10, 2024

/s/ Hala Y. Jarbou
HALA Y. JARBOU
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT B1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYLER DANCER, et al.,

Plaintiffs,

Case No. 1:23-cv-580

v.

Hon. Hala Y. Jarbou

UNITED STATES OF AMERICA, et al.,

Defendants.
_____/

ORDER

After entering a judgment dismissing Plaintiffs' complaint, the Court sanctioned Plaintiffs' counsel by awarding Defendants Graphic Packaging International ("GPI"), Graphic Packaging Holding Co. ("GPH"), and Paul McCann their "reasonable attorney's fees and other expenses for responding to the stricken allegations in the complaint, such as their fees and expenses for the motion to strike, for the hearing on that motion, and for responding to Plaintiffs' motion for reconsideration." (4/10/2024 Order, ECF No. 136.) The Court directed GPI, GPH, and McCann to file a statement of fees and expenses. They have done so, and Plaintiffs have responded with objections.

Notably, Plaintiffs' objections do not address Defendants' statement of attorneys' fees. Instead, the objections make general assertions about Rule 11 sanctions that the Court has already considered. Those objections are not persuasive. In addition, they are not timely. The Court gave Plaintiffs' counsel an opportunity to show cause why sanctions should not be ordered. Counsel forfeited that opportunity by not responding. Thus, Plaintiffs' objections are improper.

Defendants seek an award of approximately $70,000 in fees for 110 hours of work by four attorneys charging rates ranging from $445 to $725 per hour. Defendants also seek $205.03 in costs for mailing a Rule 11 letter to Plaintiffs' counsel and preparing a transcript for the hearing

regarding Defendants' motion to strike Plaintiffs' frivolous and improper allegations. The Court will allow the costs.

As to the attorneys' fees, the Court uses the "lodestar" approach, which assesses "'the proven number of hours reasonably expended on the case by an attorney, multiplied by his court-ascertained reasonable hourly rate.'" *Corbin v. Steak 'n Shake, Inc.*, 861 F. App'x 639, 649 (6th Cir. 2021) (quoting *Waldo v. Consumers Energy Co.*, 726 F.3d 802, 821 (6th Cir. 2013)). "The reasonable hourly rate accords with the 'prevailing market rate in the relevant community.'" *Id.* (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). A reasonable number of hours does not include "excessive, redundant, or otherwise unnecessary" hours. *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). Finally, "[w]here reductions to the requested number of hours reasonably expended on the litigation are appropriate, a court has the discretion to utilize a simple across-the-board reduction by a certain percentage as an alternative to line-by-line reductions." *Project Vote v. Blackwell*, No. 06-CV-1629, 2009 WL 917737, at *6 (N.D. Ohio Mar. 31, 2009) (citing *All. Int'l v. U.S. Customs Serv.*, 155 F. App'x 226, 228 (6th Cir. 2005)).

Approximately half of the attorneys' time (about 55 hours) was devoted to preparing, discussing, and reviewing a Rule 11 letter to send to Plaintiffs' counsel. Fifty-five hours of time drafting and reviewing a Rule 11 letter is excessive. The Court will reduce that amount to 15 hours.

Most of the remaining hours reflect time expended by several attorneys preparing and reviewing briefing regarding the motion to strike and Plaintiffs' motion for reconsideration. The involvement of multiple experienced attorneys on such relatively simple matters leads to duplication of effort and is excessive. The Court will reduce the remaining time to 25 hours.

As to the hourly rate, Defendants' attorneys are highly experienced. They are all partners and each has many years of experience. Three of them practice in Grand Rapids, Michigan, billing

at rates of $725, $550, and $445, respectively. The other practices in Chicago, billing a $650 hourly rate.

According to the State Bar of Michigan's 2023 Economics of Law Survey, attorneys in the 75th percentile in Grand Rapids bill at a rate of $450. The median rate for Grand Rapids is $350. For environmental law practitioners in Michigan, the hourly rate in the 75th percentile is $490 and the median rate is $413. The Court will use the 75th percentile in light of Plaintiffs' attorneys' extensive experience. A reasonable combined hourly rate for the attorneys in this case is $475.

For 40 hours at $475 per hour, the total reasonable fee is $19,000.00.

Accordingly,

IT IS ORDERED that within 30 days of the date of this Order, Plaintiffs' counsel, John Robert Beason, III, must pay Defendants GPI, GPH, and Paul McCann a total of $19,205.03.

Dated: October 30, 2024

/s/ Hala Y. Jarbou
HALA Y. JARBOU
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE GRANT, et al.,

Plaintiffs,

Case No. 1:22-cv-186

v.

Hon. Hala Y. Jarbou

UNITED STATES OF AMERICA, et al.,

Defendants.
_____/

OPINION

Plaintiffs brought this action based on harm they allegedly suffered from the presence of lead in the City of Benton Harbor's water system. Defendants filed motions to dismiss the complaint and the magistrate judge recommended that the Court grant those motions. The Court adopted that report and recommendation ("R&R") and dismissed the case on September 28, 2023. Before the Court is Plaintiffs' motion for relief from judgment (ECF No. 177) and a motion by Defendant F&V Resource Management Inc. ("FV") for attorney's fees and costs (ECF No. 174). The Court will deny Plaintiffs' motion and grant FV's motion in part.

I. RELIEF FROM JUDGMENT

Rule 59(e) of the Federal Rules of Civil Procedure permits a party to ask the Court to alter or amend its judgment within 28 days of entry of that judgment. Generally, such a motion may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or a need to prevent manifest injustice. *ACLU v. McCreary Cnty.*, 607 F.3d 439, 450 (6th Cir. 2010).

> The Rule gives a district court the chance to rectify its own mistakes in the period immediately following its decision. In keeping with that corrective function, federal courts generally have used Rule 59(e) only to reconsider matters properly

> encompassed in a decision on the merits. In particular, courts will not address new arguments or evidence that the moving party could have raised before the decision issued. The motion is therefore tightly tied to the underlying judgment.

Banister v. Davis, 140 S. Ct. 1698, 1703 (2020) (internal citations and quotations marks omitted).

First, Plaintiffs argue that the Court erred in rejecting their contention that they failed to state a claim under the Magnuson-Moss Warranty Act (MMWA) or the Consumer Product Safety Act (CPSA). The Court discerns no error in that conclusion. Plaintiffs apparently raised these statutes as a basis for their claims for the first time in their objections to the R&R. The Court cannot find any reference to them elsewhere in the record, which is not surprising given that the complaint contains no mention of warranties or CPSA rules. Although Plaintiffs now contend that the water they received is a consumer product and that Defendants somehow attached a warranty to it, Plaintiffs cannot possibly expect Defendants or the Court to scour the law to determine what theories or claims Plaintiffs could raise on the facts alleged without any hint from Plaintiffs either in the complaint or in their responses to the motion to dismiss that these legal claims were at issue. Defendants sought dismissal of all claims in the complaint. In their responses, Plaintiffs did not mention that they were pursuing claims under the MMWA or the CPSA. Had they done so, Defendants could have responded to that argument and the magistrate judge could have ruled on it. Plaintiffs' objections were not the proper place to raise those arguments for the first time. *See Murr v. United States*, 200 F.3d 895, 902 (6th Cir. 2000) ("[A]bsent compelling reasons, [the Magistrate Judge Act] does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate.").

At any rate, as the Court discussed in its opinion, Plaintiffs do not state a claim under either statute. A claim under the MMWA requires the plaintiff to allege, among other things, (1) the existence of a warranty on a consumer product distributed in commerce, (2) nonconformance with the warranty, and (3) the seller's failure to cure defects after given a reasonable opportunity to do

so. *Kuns v. Ford Motor Co.*, 543 F. App'x 572, 576 (6th Cir. 2013). Plaintiffs have not alleged any of the foregoing. There is no mention of a warranty, express or implied, anywhere in the complaint. Also, the Court is not persuaded that municipal water is a consumer product distributed in commerce. Plaintiffs' reliance on *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979) and *Sporhase v. Nebraska*, 458 US. 941 (1982) is unavailing as neither of those decisions discusses or interprets the MMWA.

The CPSA permits a cause of action by a person who sustains injury "by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission[.]" 15 U.S.C. § 2072. Plaintiffs do not allege a violation of a consumer product safety rule; the complaint does not identify such a rule.

Next, Plaintiffs contend that the Court improperly construed their unjust enrichment claim to be a claim arising under state law. But that construal is consistent with Plaintiffs' complaint. (*See* Am. Compl. 63, ECF No. 75 ("For any state that recognizes the cause of action, the typical elements of a state-law claim for unjust enrichment are . . . .").) They cannot fault the Court for following their construction. Plaintiffs argue that this claim arises under 42 U.S.C. § 1983, but they offer no authority recognizing such a claim under § 1983. Indeed, claims under § 1983 can only be brought for "deprivations of rights secured by the Constitution and laws of the United States." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982). An unjust enrichment claim is based on state law. Section 1983 does not provide redress for a violation of a state law. *Pyles v. Raisor*, 60 F.3d 1211, 1215 (6th Cir. 1995).

Plaintiffs also rely on 42 U.S.C. § 1981, which Plaintiffs have never raised as a basis for their claims until now. They waived this argument by not raising it to the magistrate judge in the first instance. Furthermore, Plaintiffs do not state a claim under § 1981. "Section 1981 offers

relief when racial discrimination blocks the creation of a contractual relationship, as well as when racial discrimination impairs an existing contractual relationship." *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006). Plaintiffs have not alleged that racial discrimination blocked or impaired a contractual relationship.

Next, Plaintiffs critique the magistrate judge for comparing their case to the Flint water case, even though Plaintiffs did the same in their complaint. (*See* Am. Compl. 31, 38 (citing *Guertin v. Michigan*, 912 F.3d 907 (6th Cir. 2019) and alleging that "Plaintiffs . . . are analogous to city residents in the In re Flint Water Cases").) Regardless, the Court cannot discern any error in the disposition of their claims. Plaintiffs apparently contend that their case is different from that one because Plaintiffs rely upon contractual rights (or implied contractual rights) between them and the providers of their water. But those rights are not asserted in the complaint. And in any case, those rights do not impact the resolution of Plaintiffs' federal claims. Contractual rights derive from state law. The Court declined to exercise supplemental jurisdiction over all of Plaintiff's state law claims. Thus, claims based on contractual rights, if any, were properly dismissed.

Plaintiffs also argue that state and federal laws violate the Constitution to the extent they allow for the sale of water that is not fit for consumption. They are mistaken. There is no constitutional right to safe drinking water, and Plaintiffs' disagreement with those laws does not give rise to a claim against Defendants.

As they did in their objections to the R&R, Plaintiffs assert that Michigan state law provides exceptions for governmental immunity. But those exceptions do not apply to Plaintiffs' federal claims, or to any issues addressed by the Court. Plaintiffs again misinterpret the Court's rulings, believing that it held that the state and city defendants are entitled to immunity, even

though the Court has repeatedly said otherwise. Plaintiffs apparently urge the Court to create its own remedy to address the "implied warranty breaches and product liability injuries" Plaintiffs have suffered, but the Court declines to do so. (*See* Pls.' Mot. 18, ECF No. 177.)

Plaintiffs also argue that the Court should reopen the case due to newly discovered evidence, including (1) an inspector general report detailing failures by the EPA to comply with its own policies and to protect Plaintiffs, and (2) a coded email that Governor Whitmer received purportedly detailing the "dangerous nature of continuing to sell water in Benton Harbor, as it was out of compliance." (Pls.' Mot. 19.) However, Plaintiffs do not explain how this new evidence would support any of their claims. The inspector general report is not helpful because the EPA is immune from suit for Plaintiffs' claims, and its employees' failure to act generally does not give rise to a federal claim against them. The email to Governor Whitmer simply indicates that she may have been aware of Benton Harbor's problems, which does not give rise to a federal claim against her.[1] The email does not, as Plaintiffs contend, support viable conspiracy claims against Defendants.

Plaintiffs also rely on the Tucker Act, arguing that it abrogates sovereign immunity. They did not raise this argument to the magistrate judge, thereby waiving it. And as discussed in the Court's previous opinion, the Little Tucker Act does not apply to claims over $10,000, like the ones at issue here. (*See* 9/28/2023 Op. 6-7, ECF No. 171.) Moreover, the Big Tucker Act assigns jurisdiction to the Court of Federal Claims. *United States v. Bormes*, 568 U.S. 6, 10 n.2 (2012). Thus, it does not apply here.

[1] According to the news article provided by Plaintiffs (ECF No. 177-3), that email became public when filed in *Braziel v. Whitmer*, No. 1:21-cv-960 (W.D. Mich.), another case where residents of Benton Harbor brought suit for the lead in their water. The email did not save the claims against Whitmer in that case.

In short, Plaintiffs have not demonstrated that they are entitled to relief from judgment. Accordingly, the Court will deny their motion.

II. ATTORNEY FEES & COSTS

Defendant FV seeks an award of attorney fees and costs under 42 U.S.C. § 1988 and 28 U.S.C. § 1927. Plaintiffs have not responded to FV's motion.

A. Section 1988

Section 1988 permits the Court, "in its discretion," to award reasonable attorney's fees to the "prevailing party" in an action under 42 U.S.C. § 1983. 42 U.S.C. § 1988(b). Plaintiffs sued FV under § 1983 for allegedly violating Plaintiffs' rights to equal protection, substantive due process, and the free exercise of their religion. (Am. Compl. 30, 36, 68.) The Court dismissed these claims for failure to state a claim.[2]

Section 1988 permits an award for a prevailing defendant "upon a finding [by the district court] that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." *Kidis v. Reid*, 976 F.3d 708, 721-22 (6th Cir. 2020) (quoting *Mich. Flyer LLC v. Wayne Cnty. Airport Auth.*, 860 F.3d 425, 433 (6th Cir. 2017)). "Prevailing § 1983 defendants face a higher bar than their prevailing plaintiff counterparts." *Id.* at 722. Awarding attorney fees against a losing civil rights plaintiff is an "extreme sanction" that is typically warranted only in "truly egregious cases of misconduct." *Id.* (quoting *Sagan v. Sumner Cnty. Bd. of Educ.*, 501 F. App'x 537, 541 (6th Cir. 2012)). The Court must be careful not to "'engage in *post hoc* reasoning' that an unsuccessful plaintiff's decision to pursue the 'action must have been unreasonable or without foundation.'" *Id.* (quoting *Wayne v. Vill. of Sebring*, 36 F.3d 517, 530 (6th Cir. 1994)).

[2] Plaintiffs also failed to state a viable claim against FV for violation of the Safe Drinking Water Act (SDWA), but the Court will not discuss that claim because FV's motion focuses on Plaintiffs' claims under § 1983.

Here, Plaintiffs alleged that Benton Harbor contracted with FV in 2018 (after high lead levels were discovered in the city's municipal water) to assist with the maintenance and management of a water plan, to provide advice and guidance regarding compliance with state and federal regulations, and to conduct a follow-up study. Plaintiffs also alleged that FV did not implement an effective corrosion control treatment to the city's water within a reasonable period of time.

The Court concluded that Plaintiffs failed to allege facts from which to infer that FV was a "state actor" subject to suit under § 1983, and that Plaintiffs failed to state equal protection, free exercise, and substantive due process claims against any defendant. The Court then declined to exercise supplemental jurisdiction over Plaintiffs' claims arising under state law.

Plaintiffs' equal protection and free exercise claims were plainly meritless and lacking in foundation. As to their free exercise claim, Plaintiffs failed to allege any facts about their individual circumstances, such as their religious beliefs or practices and any hindrance to those practices. They relied instead on a general assertion that "Abrahamic faiths dominate this Plaintiff class community" and that clean water is necessary for certain religious practices. (Am. Compl. 69.) Regarding their equal protection claim, Plaintiffs did not allege facts from which to infer that any defendant, let alone FV, had intentionally discriminated against them because of their race through their involvement in the supply of water to an entire municipality. Such claims were patently unreasonable, yet Plaintiffs attempted to buttress their equal protection claim by making the unfounded contention that Defendants practiced a "eugenics-based racial animus and discrimination against 'Black-American' communities." (*Id.* at 73.)

Plaintiffs' substantive due process claim was also frivolous, especially against FV. In their complaint, Plaintiffs cited *Guertin*, which provided the relevant standard for their substantive due

process claim. Had they examined that decision, they would have known that (1) there is no constitutional right to safe drinking water as they contended in their complaint (*see* Am. Compl. 31-33, 71-72), (2) they needed to do more than allege a failure by Defendants to adequately address the lead-contaminated water in Benton Harbor, and (3) the right to substantive due process protects against conduct *by the government*, not conduct by private parties like FV. Their allegations missed the mark in all of these areas.

Nevertheless, considering the extreme nature of a sanction that shifts attorney's fees to civil rights plaintiffs, the Court concludes that this sanction is not warranted here because Plaintiffs' conduct does not rise to the level of truly egregious misconduct.

B. Sanctions

FV also relies upon 28 U.S.C. § 1927, which permits the Court to "award sanctions against an attorney who 'multiplies the proceedings in any case unreasonably and vexatiously.'" *King v. Whitmer*, 71 F.4th 511, 530 (6th Cir. 2023). "'The purpose' of imposing sanctions under § 1927 'is to deter dilatory litigation practices and to punish aggressive tactics that far exceed zealous advocacy.'" *FemHealth USA, Inc. v. Williams*, 83 F.4th 551, 559 (6th Cir. 2023) (quoting *Red Carpet Studios Div. of Source Advantage, Ltd. v. Sater*, 465 F.3d 642, 646 (6th Cir. 2006)). It "imposes an objective standard of conduct and does not require a finding of bad faith[.]" *FemHealth USA*, 83 F.4th at 559. "'[T]here must be some conduct' that 'falls short of the obligations owed by a member of the bar to the court *and which, as a result, causes additional expense to the opposing party*.'" *Id.* at 560-61 (quoting *Ridder v. City of Springfield*, 109 F.3d 288, 298 (6th Cir. 1997) (emphasis in original)). For instance, it permits sanctions "'when an attorney knows or reasonably should know that a claim pursued is frivolous' and yet continues to litigate it." *King*, 71 F.4th at 530 (quoting *Waeschle v. Dragovic*, 687 F.3d 292, 296 (6th Cir. 2012)).

Here, Plaintiffs' counsel filed a rambling, poorly-organized, and confusing 85-page complaint that relied heavily on broad, conclusory statements about Defendants collectively, rather than specific facts about what each Defendant did to violate Plaintiffs' constitutional rights. As the magistrate judge observed in his R&R, "Plaintiffs expended little effort to provide 'a short and plain statement of the claim[s] showing that [Plaintiffs are] entitled to relief." (R&R 2, ECF No. 162.) All Defendants then filed motions to dismiss the complaint.

In their motions, Defendants made clear that Plaintiffs had not alleged facts plausibly suggesting that Defendants had discriminated against Plaintiffs because of race, hindered Plaintiffs' right to the free exercise of their religions, or deprived them of their right to substantive due process. Moreover, as FV explained in its motion, to state a claim against it under § 1983, Plaintiffs needed to allege facts from which to infer that the FV was a state actor. (FV's Br. in Supp. of Mot. to Dismiss 8-12, ECF No. 86.) Citing *Simescu v. Emmet County Department of Social Services*, 942 F.2d 372 (6th Cir. 1991), and *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982), FV pointed out that performing a services contract for a state entity generally does not suffice to make a private entity a state actor.

Despite the obvious flaws in Plaintiffs' complaint as described in Defendants' motions, Plaintiffs' counsel doubled down on frivolous legal arguments and factual assertions. For instance, when responding to FV's motion to dismiss the equal protection claim, counsel reiterated Plaintiffs' baseless contention that FV was involved in "eugenics-based animus and discrimination against 'Black-American' communities" when performing its contract. (Pls.' Resp. to FV's Mot. to Dismiss 8, ECF No. 113.)

In response to FV's argument that its contract with the city was not sufficient to deem it a state actor under § 1983, Plaintiffs' counsel relied on *Simescu*, which clearly undermines

Plaintiffs' argument. *See Simescu*, 942 F.2d at 375 ("The mere existence of a contract between a governmental agency and a private party is insufficient to create state action."). To make matters worse, counsel misquoted *Simescu*, contending it states that a contract for services "directly related to any legal obligation of the state" would make private parties liable as state actors under § 1983. (Pls.' Resp. to FV's Mot. to Dismiss 2.) That statement is not in *Simescu*, and no other court opinion makes such a contention so far as the Court is aware.[3] Nevertheless, counsel relied almost entirely on this false representation to support his argument that § 1983 applied to FV; he did not attempt to meaningfully grapple with any of the different legal tests for when private conduct can amount to state action. (*See id.* at 3 ("Because the movants contracted to address a State legal duty, there is no need to analyze their relationships with other Defendants and this Court should proceed to discovery.").) And he did not address the principle found in *Simescu* itself that a private party's performance of a contract with a state actor generally does not suffice to give rise to a claim against that private party under § 1983.

In the R&R, the magistrate judge rejected Plaintiffs' arguments that FV was a state actor, citing *Rendell-Baker*, 457 U.S. at 841 ("Acts of [] private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts."), and noting that Plaintiffs failed to articulate a valid basis for concluding that FV was subject to suit under § 1983. However, Plaintiffs' counsel persisted.

In Plaintiffs' objections to the R&R, counsel again relied upon the non-existent quote from *Simescu*. (Pls.' Objs. 40, ECF No. 163.) He also made many arguments that were not relevant to any issue decided by the magistrate judge. In fact, he spent little time addressing any of the

[3] The quoted phrase is found only in *Wolotsky v. Huhn*, 960 F.2d 1331 (6th Cir. 1992), which held that a defendant was *not* a state actor because its "personnel decisions were not directly related to any legal obligation of the state." *Id.* at 1337. That holding is far afield from Plaintiffs' argument that one who contracts to perform a state's legal obligation is a state actor.

reasoning in the R&R, opting instead to make conclusory and irrelevant statements like the following:

> Plaintiffs assert that the Private Contractor Defendants assumed the role of the State, were working on the parameters set by the State, and the State was responsible for their conduct. Nevertheless, if the Court concludes that these Private Contractor Defendants are not state actors, then they are third-party actors who enacted violence upon this Plaintiff Class by exposing them to unknown concoctions of chemicals designed to stop lead leaching in pipes. These Defendants participated in the State Created Danger caused by their co-defendants' failures to act out their non-discretionary duties for several years[.]
>
> . . .
>
> Plaintiffs assert that the remediation and maintenance of the public water works building in Benton Harbor Michigan was an exclusive duty of the State under "public buildings" exception to governmental immunity . . . .

(*See id.* at 39-41.) These objections were irrelevant because Plaintiffs' complaint did not allege that FV exposed Plaintiffs to "unknown concoctions of chemicals" in their municipal water, let alone that Plaintiffs suffered harm from such conduct. Furthermore, a state law exception to governmental immunity could not possibly make FV a state actor. Meritless objections like these added unnecessary expense to the litigation of Plaintiffs' frivolous civil rights claims against FV, which filed a response to the objections.

On the whole, counsel's conduct fell well below the obligations owed by a member of the bar to the Court. He should have known at the outset that the federal claims against FV, as pled, were frivolous and unfounded. He did not have a reasonable basis for pursuing those claims through multiple stages of this case. By doing so, he added to FV's expense. Accordingly, the Court will sanction Plaintiffs' counsel by awarding FV its reasonable costs and attorney's fees for responding to Plaintiffs' civil rights claims. The Court will direct FV to submit evidence of such fees and costs within fourteen days.

III. CONCLUSION

For the reasons discussed, the Court will deny Plaintiffs' motion to alter or amend judgment and grant FV's motion for attorney's fees and costs under 28 U.S.C. § 1927. The Court will enter an order in accordance with this Opinion.

Dated: March 27, 2024

/s/ Hala Y. Jarbou
HALA Y. JARBOU
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE GRANT, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.
_____/

Case No. 1:22-cv-186

Hon. Hala Y. Jarbou

ORDER

In accordance with the opinion entered this date:

IT IS ORDERED that Plaintiffs' motion to alter or amend judgment (ECF No. 177) is **DENIED**.

IT IS FURTHER ORDERED that Defendant F&V Resource Management Inc's motion for attorney fees and costs (ECF No. 174) is **GRANTED IN PART** under 28 U.S.C. § 1927.

IT IS FURTHER ORDERED that Defendant F&V Resource Management Inc. is directed to submit evidence of its attorney fees and costs for responding to Plaintiffs' federal civil rights claims within fourteen days of the date of this Order.

Dated: March 27, 2024

/s/ Hala Y. Jarbou
HALA Y. JARBOU
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT C1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE GRANT, individually and as Next Friend for D.G., et al.,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,

Defendants.

_____/

Hon. Hala Y. Jarboe
Hon. Phillip J. Green

Case No. 1:22-cv-0186

NOTICE OF WITHDRAWAL OF THE MOTION ON BEHALF OF THE DEFENDANT F&V OPERATIONS AND RESOURCE MANAGEMENT, INC., FOR AN AWARD OF COSTS AND ATTORNEY FEES PURSUANT TO *42 U.S.C. §1988(b)* AND *28 U.S.C. §1927* [ECF NO. 174] AND WITHDRAWAL OF THE DOCUMENTATION ESTABLISHING COSTS AND FEES [ECF NO. 181] AS ORDERED BY THE COURT ON MARCH 27, 2024 [ECF NO. 180]

NOW COMES the Defendant, F&V Operations and Resource Management, Inc. ("F&V"), by and through its attorneys, and, hereby withdraws its Motion for an Award of Costs and Attorney Fees sought pursuant to *42 U.S.C. §1988(b)* and *28 U.S.C. §1927* [ECF No. 174] and withdraws the Documentation Establishing the Costs and Fees [ECF No. 181] as ordered by the Court on March 24, 2024, as the parties have executed a Release and Settlement Agreement resolving their disputes in this matter.

Respectfully submitted,

/s/ Michelle A. Thomas

DICKIE, McCAMEY & CHILCOTE, P.C.
Attorneys for F&V Operations and Resource Management, Inc.
120 Kercheval Avenue, Suite 200
Grosse Pointe Farms, MI 48236
313.308.2041 (phone)/ 888.811.7144 (fax)
mathomas@dmclaw.com
P35135

Dated: June 6, 2024

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2024, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to all parties of record.

/s/ Michelle A. Thomas
Michelle A. Thomas (P35135)
DICKIE, McCAMEY & CHILCOTE, P.C.
Attorneys for F&V Operations and Resource Management, Inc.
mathomas@dmclaw.com

31545550.1

EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

TROY WHITE, et al.,

Plaintiffs,

v. Hon. Jane M. Beckering

OPEN DOORS KALAMAZOO, et al., Case No. 1:23-cv-274

Defendants.

ORDER

This matter is before the Court on Plaintiffs' Motion to Amend Admission and Request for Sanctions (ECF No. 48), Defendant's Motion to Compel and for Order to Show Cause as to Why Plaintiffs Should Not Be Held in Contempt for Failing to Comply with the Court's Order Granting Attorneys' Fees (ECF No. 55), and Defendant's Motion to File Reply Brief Regarding its Previously Filed Motion to Compel and for Order to Show Cause (ECF No. 63). For the reasons stated on the record at the hearing held May 13, 2024, the Court's ruling is as follows:

Plaintiffs' motion (ECF No. 48) is denied.

Defendant's Motion to Compel and for Order to Show Cause as to Why Plaintiffs Should Not Be Held in Contempt for Failing to Comply with the Court's Order Granting Attorneys' Fees (ECF No. 55) is granted. Plaintiffs' counsel, Attorney John R. Beason, III,[1] is ordered to pay Defendant Open Doors Kalamazoo $7,332.75 by May 20, 2024.

[1] In this Court's original order requiring payment of reasonable expenses, the order had mistakenly named "Plaintiffs" as being responsible for the payment of those expenses. (ECF No. 43, PageID.616.) Because the basis for the award of expenses was counsel's conduct, not his clients', the Court had intended to require Plaintiffs' counsel to pay those reasonable expenses. Fed. R. Civ. P. 36(a)(6) and 37(a)(5)(A). This order corrects that error.

Defendant Open Doors Kalamazoo is invited to file an affidavit setting out fees and costs incurred in relation to its response to Plaintiffs' Motion to Amend Admission and Request for Sanctions (ECF No. 48) and its Motion to Compel and for Order to Show Cause (ECF No. 55). That affidavit may be filed within seven days of this order. Plaintiff will have seven days from the date of the affidavit's filing to file any objections.

Defendant's motion to file a reply brief (ECF No. 63) is granted. The Clerk shall accept for filing Defendant's Reply Brief (ECF No. 63-2).

IT IS SO ORDERED.

Dated: May 14, 2024

/s/ Sally J. Berens
SALLY J. BERENS
U.S. Magistrate Judge