No. 26-1615

IN THE

United States Court of Appeals
for the Eighth Circuit

JOSEPH KIRCHNER,
Plaintiff-Appellant,

v.

KEITH ELLISON,
in his official capacity as Attorney General of the State of Minnesota,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Minnesota
No. 0:26-cv-00726-PJS-ECW (Hon. Patrick J. Schiltz)

APPELLANT'S OPENING BRIEF

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOSEPH KIRCHNER, *Plaintiff-Appellant,* v. KEITH ELLISON, in his official capacity as Attorney General of the State of Minnesota, *Defendant-Appellee.*	**No. 26-1615** **APPELLANT'S OPENING BRIEF**

SUMMARY OF THE CASE

This is a pro se civil rights appeal under 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, from the District of Minnesota's dismissal of an Amended Complaint under Federal Rule of Civil Procedure 8(a)(2). The underlying action alleged that the Minnesota Attorney General denied Appellant's criminal referral through a demonstrably false statement of law — that the Legislature "did not delegate" investigative authority that Minnesota Statutes Chapter 8 mandatorily confers — and raised related federal claims concerning state peace-officer discipline procedures and the federal enforcement context. The district court dismissed the Amended Complaint on Rule 8(a)(2) grounds with a sanctions warning, without addressing any of the six counts, the statutory analysis, the three express severability provisions, or the standing analysis under *Bond v. United States*, 564 U.S. 211 (2011).

This appeal is procedural in scope. Appellant has separately refiled the substantive Chapter 8 claims as a new action in the District of Minnesota and seeks only procedural relief on appeal: vacatur of the dismissal order, and either a holding that the dismissal lacks preclusive effect under *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001), or remand for entry of a without-prejudice dismissal consistent with this Court's binding precedent in *Michaelis v. Nebraska State Bar Ass'n*, 717 F.2d 437 (8th Cir. 1983) (per curiam).

The principal issues raised on appeal are: (1) whether the district court abused its discretion by dismissing the Amended Complaint without addressing three express severability provisions or applying Federal Rule of Civil Procedure 21; (2) whether the court erred in concluding standing was "obviously" lacking without engaging *Bond*; (3) whether the court erred in conflating declaratory relief with injunctive relief; (4) whether the sanctions warning was issued without procedural foundation under Rule 11(c)(2)–(3) and *In re Tyler*, 839 F.2d 1290 (8th Cir. 1988); and (5) whether the dismissal order's silence on prejudice should be corrected under Rule 41(b), *Semtek*, and *Michaelis*.

Appellant respectfully requests **fifteen (15) minutes per side** for oral argument. Argument would assist the Court in addressing the interaction among these issues and the proper disposition where binding Circuit precedent (*Michaelis*) ordinarily required a without-prejudice dismissal.

CORPORATE DISCLOSURE STATEMENT

No corporate disclosure statement is required. Appellant is an individual proceeding pro se.

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I. JURISDICTIONAL STATEMENT

A. District Court Jurisdiction

1. The district court had subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) and (4) (civil rights). The Amended Complaint alleged violations of the First and Fourteenth Amendments to the United States Constitution, enforceable through 42 U.S.C. § 1983, and sought declaratory relief under 28 U.S.C. § 2201.

B. Appellate Jurisdiction

2. This Court has jurisdiction under 28 U.S.C. § 1291. The district court entered a final order dismissing the Amended Complaint and disposing of all parties' claims on March 30, 2026 (ECF No. 29). The Notice of Appeal was filed on April 1, 2026 (ECF No. 31), within thirty days of the entry of the order, as required by Federal Rule of Appellate Procedure 4(a)(1)(A).

II. STATEMENT OF THE ISSUES

A. Issue One: Failure to Address Severability

3. Whether the district court abused its discretion by dismissing the entire Amended Complaint on Rule 8(a)(2) grounds without addressing three separate severability provisions (at Paragraphs 54, 208, and 255, including a dedicated subsection in the Prayer for Relief) that requested independent evaluation of the state-law Chapter 8 claims — claims that concerned only Defendant's own conduct under Minnesota law, required no federal party, and occupied sixty-five paragraphs of statutory analysis.

Apposite cases: Topchian v. JPMorgan Chase Bank, 760 F.3d 843 (8th Cir. 2014); Weiland v. Palm Beach County Sheriff's Office, 792 F.3d 1313 (11th Cir. 2015).

B. Issue Two: Standing Under Bond v. United States

4. Whether the district court erred in concluding that Appellant "obviously lacks standing" without addressing Appellant's primary standing authority (*Bond v. United States*, 564 U.S. 211 (2011)) or evaluating traditional Article III standing on the Chapter 8 claims, where the Amended Complaint alleged concrete, particularized injury — a criminal referral denied through a demonstrably false statement of law — directly traceable to Defendant's own conduct and redressable by relief against Defendant alone.

Apposite cases: Bond v. United States, 564 U.S. 211 (2011); Susan B. Anthony List v. Driehaus, 573 U.S. 149 (2014); Heckler v. Chaney, 470 U.S. 821 (1985).

C. Issue Three: Declaratory Relief Under Marbury v. Madison

5. Whether the district court erred in characterizing Appellant's request for declaratory relief regarding 28 U.S.C. § 2101(f) as impermissible relief that "binds the Supreme Court," when declaratory relief interprets the law without binding any party, and in using this characterization as a basis for dismissing the entire complaint — including the Chapter 8 claims that sought no relief concerning the Supreme Court.

Apposite cases: Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803); Steffel v. Thompson, 415 U.S. 452 (1974).

D. Issue Four: Sanctions Warning Without Procedural Foundation

6. Whether the district court abused its discretion by issuing a sanctions warning for filing "frivolous complaints or other papers" on Appellant's first procedurally proper amendment — without complying with Federal Rule of Civil Procedure 11(c)(2)'s safe-harbor requirement or Rule 11(c)(3)'s show-cause procedure, without a finding of subjective bad faith required for inherent-authority sanctions, and without the pattern of frivolous or harassing filings required for filing restrictions under *In re Tyler*, 839 F.2d 1290 (8th Cir. 1988).

Apposite cases: In re Tyler, 839 F.2d 1290 (8th Cir. 1988); Fed. R. Civ. P. 11(c)(2)-(3).

E. Issue Five: Rule 41(b) Prejudice Ambiguity

7. Whether the dismissal order's failure to specify whether dismissal was with or without prejudice should be corrected — by a holding under Federal Rule of Civil Procedure 41(b) and *Semtek International Inc. v. Lockheed Martin Corp.*, 531

U.S. 497 (2001), that the dismissal does not operate as an adjudication on the merits, or by remand for entry of dismissal without prejudice consistent with this Circuit's binding precedent in *Michaelis v. Nebraska State Bar Ass'n*, 717 F.2d 437 (8th Cir. 1983) (per curiam) — where the dismissal order addressed none of the six counts, no statutory provisions, and no severability requests, and contains no merits analysis.

Apposite cases: Semtek International Inc. v. Lockheed Martin Corp., 531 U.S. 497 (2001); Michaelis v. Nebraska State Bar Ass'n, 717 F.2d 437 (8th Cir. 1983) (per curiam); Fed. R. Civ. P. 41(b).

III. STATEMENT OF THE CASE

A. Nature of the Case

8. Appellant Joseph Kirchner, a resident of Edina, Minnesota, filed a pro se complaint alleging that Defendant Keith Ellison, in his capacity as Attorney General of Minnesota, falsely disclaimed his office's mandatory statutory authority under Minnesota Statutes Chapter 8 to deny Appellant's criminal referral. The Amended Complaint presented six counts directed at Defendant alone, with the primary claims (Counts I through IV) arising from a demonstrably false statement of law contradicted by the plain text of Section 8.31 and by Defendant's own sworn congressional testimony six days later.

9. The Amended Complaint also raised claims concerning the constitutionality of Minnesota Statute Section 626.89 (the state's peace officer discipline procedures act) and the federal enforcement context in which the Attorney General's abdication operates. The complaint was structured to make the broader federal claims severable from the primary state-law claims, with three separate severability provisions requesting that the court evaluate the Chapter 8 claims independently if it determined that the broader relief exceeded its jurisdiction. The Amended Complaint's introductory section stated explicitly:

> The primary claims against Defendant Ellison (Sections V and VI) stand independently and require no federal party.

(ECF No. 26, Section VII Introduction; *see* Addendum at E.)

B. Procedural History

10. January 27, 2026: Appellant filed the original Petition. (ECF No. 1.)

11. January 29-30, 2026: Two judges recused in succession. Judge Jerry W. Blackwell recused on January 29 (ECF No. 12), and Judge Jeffrey M. Bryan recused on January 30 (ECF No. 13). The case was reassigned to Chief Judge Patrick J. Schiltz.

12. February 23, 2026: Chief Judge Schiltz issued a scheduling order staying proceedings and directing Defendant to file a motion to dismiss with briefing per D. Minn. L.R. 7.1(c). (ECF No. 17.)

13. March 9, 2026: Defendant filed a Motion to Dismiss (ECF No. 19) with a Memorandum in Support (ECF No. 21), arguing that the original complaint violated Rule 8. The Memorandum did not address Minnesota Statutes Sections 8.01 or 8.31, the false denial letter, or Defendant's congressional testimony — despite Appellant having warned Defendant's counsel about these precise statutory arguments in a March 6 email during the meet-and-confer.

14. March 26, 2026: Appellant filed a letter requesting permission to exceed word limits for Memorandum C, explaining that the excess was "proportional to the scope" of a filing "that challenges the constitutional legitimacy of the single most consequential judicial doctrine in civil rights law." (ECF No. 24; *see* Addendum at H.)

15. March 27, 2026: The word-limit request was denied. (ECF No. 25.)

16. March 27, 2026: Appellant filed the Amended Complaint as of right under Federal Rule of Civil Procedure 15(a)(1)(B) (ECF No. 26) — eighteen days after the Motion to Dismiss and within the twenty-one-day amendment window. The Amended Complaint was 120 pages with approximately 500 pages of attachments, including 11 exhibits and three memoranda of law. It contained six counts, all directed at Defendant alone, and included three separate severability provisions (Paragraphs 54, 208, and 255) requesting the court sever the state-law Chapter 8 claims from the broader federal declaratory relief.

17. March 30, 2026: Chief Judge Schiltz issued a three-page order dismissing the Amended Complaint with a sanctions warning. (ECF No. 29.) The order issued on the first business day after Friday's late-afternoon filing.

18. Subsequent refiling of substantive claims. Following the dismissal, Appellant separately refiled the Chapter 8 substantive claims as a new action in the District of Minnesota. *Kirchner v. Ellison*, Civ. No. ____ (D. Minn.) (filed May 12, 2026). The Clerk of the District of Minnesota accepted the refiled action for filing on May 12, 2026; case number assignment is pending as of the date of this brief. Documents evidencing acceptance for filing — stamped first pages of the complaint and the filing fee receipt — are reproduced at Addendum I. Appellant will provide the assigned case number to this Court by separate notice promptly upon its assignment by the District Court. The refiled action presents only the four Chapter 8 counts (Counts I–IV of the Amended Complaint) directed at Defendant alone, omitting the broader federal declaratory relief the district court characterized as "wide-ranging and disparate." Because the dismissal order did not reach the merits of any claim, *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505–06 (2001), claim preclusion does not bar the refiled action. This appeal is procedural in scope; Appellant does not request that this Court remand the substantive Chapter 8 claims to the original proceeding.

C. The Dismissal Order (ECF No. 29)

19. The order devoted its first paragraph to describing the superseded original Petition (ECF No. 1) — a complaint that was without legal effect after the filing of the Amended Complaint. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005) (an amended complaint supersedes the original). The order used the superseded complaint to frame a narrative of escalation, characterizing the Amended Complaint as "even more egregiously" violating Rule 8(a)(2). (ECF No. 29 at 3.)

20. The order stated that Rule 8 deficiencies had "already" been "pointed out to" Appellant. (ECF No. 29 at 3.) In fact, no court order had addressed Rule 8. No order had directed Appellant to shorten the complaint. No order had identified any pleading deficiency. The only document that raised Rule 8 was Defendant's adversarial Memorandum in Support of the Motion to Dismiss (ECF No. 21) — opposing counsel's argument, not judicial guidance.

21. The order did not address any of the six counts in the Amended Complaint. It did not mention Minnesota Statutes Chapter 8, the false denial letter, the congressional testimony, the 50-state survey, or any of the three severability requests.

22. The order's sole reference to the Chapter 8 claims appeared in a single clause on page 2:

> "Once again, Kirchner seeks wide-ranging and disparate forms of relief, including relief against Ellison for purportedly misstating the law and declaratory relief concerning the Supreme Court's use of interlocutory orders, the legality of qualified immunity, and similar broad statements of law."

(ECF No. 29 at 2.) This sentence compressed four counts, sixty-five paragraphs of statutory analysis, a criminal referral, a denial letter, sworn congressional testimony, and a 50-state survey into nine words — "relief against Ellison for purportedly misstating the law" — and listed them as the first item in a series alongside claims about "the legality of qualified immunity" and "similar broad statements of law," as if they were equivalent in scope and merit.

23. The word "purportedly" editorializes. The Amended Complaint did not allege that Defendant *purportedly* misstated the law. It alleged he *demonstrably* misstated the law — proven by the plain text of Section 8.31, by his own congressional testimony six days later, and by a 50-state survey showing Minnesota as the sole outlier. "Purportedly" introduces doubt that the complaint's evidence does not support.

24. The order stated that "Kirchner obviously lacks standing to seek virtually all of the relief he requests." (ECF No. 29 at 2.) The order did not address *Bond v. United States*, 564 U.S. 211 (2011), did not evaluate traditional Article III standing on the Chapter 8 claims, and did not explain why standing was "obviously" lacking. The qualifier "virtually all" — rather than "all" — concedes that some claims possess standing, yet the court dismissed those claims without identifying or addressing them.

25. The order stated that "a federal district court cannot issue relief that binds the Supreme Court." (ECF No. 29 at 2.) The Amended Complaint did not seek injunctive relief against the Supreme Court. It sought declaratory relief — a judicial declaration of what 28 U.S.C. Section 2101(f) means.

26. The order warned that sanctions may be imposed for filing "frivolous complaints or other papers." (ECF No. 29 at 3.) The phrase "or other papers" extends the threat beyond complaints to any filing — motions, notices, responses, or appeals-related documents. The court did not identify which claims it considered frivolous, did not follow the procedural requirements of Rule 11(c)(2) or (3), and issued the warning on Appellant's first procedurally proper amendment with no prior sanctions history in any court.

D. Relevant Facts Underlying the Chapter 8 Claims

27. On February 10, 2026, Appellant hand-delivered a criminal referral to the Office of the Minnesota Attorney General, documenting consumer fraud, computer crimes, and corporate misconduct, supported by approximately 285 exhibits comprising roughly 63,000 forensic files. The referral cited the Prevention of Consumer Fraud Act, Minnesota Statutes Sections 325F.68 through 325F.70.

28. On February 26, 2026, Defendant's office issued a letter denying the criminal referral, stating: "the Minnesota Legislature delegated the authority to prosecute criminal matters to the county attorney. It did not delegate any such authority to this Office, nor did it delegate the authority to investigate criminal matters to this Office."

29. That statement is false. Minnesota Statutes Section 8.31, Subdivision 1 provides: "The attorney general *shall investigate* violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively... the Prevention of Consumer Fraud Act (sections 325F.68 to 325F.70)...." Under Minnesota law, "shall" imposes a mandatory duty. Minn. Stat. § 645.44, Subd. 16 ("'Shall' is mandatory.").

30. Section 8.31, Subdivision 2 further provides that the Attorney General "shall have power to investigate... and to take such steps as are necessary to cause the arrest and prosecution of any such person for the violation of any such law."

31. Section 8.06 establishes that county attorneys act "under the direction of the attorney general" and "shall, when requested by the attorney general... aid and assist in the prosecution." The statutory hierarchy places the Attorney General above, not below, the county attorneys.

32. On March 4, 2026 — six days after the denial letter — Defendant testified under oath before the United States House Committee on Oversight and Government Reform that his office prosecutes fraud "every single day" and claimed credit for fifty-seven criminal convictions in the Feeding Our Future child nutrition fraud prosecution — a prosecution conducted under the same Chapter 8 authority the February 26 letter claimed the Legislature "did not delegate."

33. A 50-state survey of official state attorney general websites showed Minnesota as the sole state whose Attorney General affirmatively disclaims criminal investigation authority that its own statutes grant.

34. Neither the February 26 denial letter, nor Defendant's 16-page Memorandum in Support of the Motion to Dismiss, nor the district court's three-page dismissal order cited a single statute that withholds, limits, or revokes the authority Chapter 8 grants.

IV. SUMMARY OF THE ARGUMENT

35. The district court dismissed the entire Amended Complaint without engaging with any of its substantive claims, any of its statutory arguments, or any of its three severability requests. This appeal challenges three specific procedural errors in that disposition. **Appellant has separately refiled the substantive Chapter 8 claims and seeks only procedural relief on appeal.**

36. First, the Amended Complaint included three separate severability provisions — including a dedicated subsection in the Prayer for Relief — requesting that the court evaluate the state-law Chapter 8 claims independently from the broader federal declaratory relief. The third severability provision stated:

> Plaintiff requests that the Court treat each item of relief as severable. If the Court determines it lacks jurisdiction to grant certain relief — particularly relief directed at federal conduct — Plaintiff requests that the Court proceed with relief against Defendant on the state law claims, which stand independently.

(ECF No. 26 at ¶255; *see* Addendum at D.) The district court dismissed the entire complaint as "wide-ranging and disparate" without acknowledging any severability request. This Court has held that pro se complaints must be liberally construed and that courts must identify viable claims even when the pleading is imperfect, *Topchian v. JPMorgan Chase Bank*, 760 F.3d 843, 848 (8th Cir. 2014), and that Rule 8 dismissals should "ordinarily" be with leave to amend absent persistence and adequate warning, *Michaelis v. Nebraska State Bar Ass'n*, 717 F.2d 437, 439 (8th Cir. 1983) (per curiam). Dismissing the entire complaint with prejudice — without evaluating severability, without identifying any viable claim, without prior warning, and without leave to amend — was an abuse of discretion.

37. Second, the district court concluded that Appellant "obviously lacks standing" without addressing *Bond v. United States*, 564 U.S. 211 (2011) — the primary standing authority cited in the Amended Complaint — and without evaluating traditional Article III standing on the Chapter 8 claims. The Amended Complaint alleged concrete, particularized injury: a criminal referral denied through a demonstrably false statement of law. Appellant also satisfies *Bond*'s concomitant injury framework, under which the cost of redress forced upon a citizen by an enforcement void — here, the 63,000 forensic files, 50-state survey, and federal litigation required to redress a mandatory statutory violation no institutional actor will correct — is itself cognizable injury. *Bond*, 564 U.S. at 225. The qualifier "virtually all" in the order concedes that some claims possess standing, yet the court dismissed those claims without identifying or addressing them. Standing is a question of law reviewed de novo; the district court's failure to provide any analysis was error.

38. Third, the district court stated that "a federal district court cannot issue relief that binds the Supreme Court" and used this characterization to dismiss the entire complaint — including the Chapter 8 claims that sought no relief concerning the Supreme Court. The Amended Complaint sought declaratory relief interpreting 28 U.S.C. § 2101(f), not injunctive relief against the Supreme Court. Declaratory relief interprets the law; it does not bind any party. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Conflating declaratory relief with injunctive relief, and using that conflation to dismiss independently viable claims, was legal error.

V. ARGUMENT

A. Standard of Review

39. A district court's dismissal for failure to comply with Rule 8(a)(2) is reviewed for abuse of discretion. *Mangan v. Weinberger*, 848 F.2d 909, 911 (8th Cir. 1988). Standing is a question of law reviewed de novo. *Curtis Lumber Co. v. La. Pac. Corp.*, 618 F.3d 762, 770 (8th Cir. 2010). Questions of law are reviewed de novo, and the distinction between declaratory and injunctive relief is a question of law. *See Steffel v. Thompson*, 415 U.S. 452, 466 (1974) (distinguishing declaratory from injunctive relief).

40. Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Eighth Circuit requires liberal construction of pro se complaints and identification of viable claims even when the pleading is imperfect. *Topchian v. JPMorgan Chase Bank*, 760 F.3d 843, 848 (8th Cir. 2014). "A pro se complaint must be liberally construed, and pro se litigants are held to a lesser pleading standard than other parties." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004). A court should not dismiss a pro se complaint "for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

B. The District Court Abused Its Discretion by Dismissing the Entire Complaint Without Addressing Severability

1. The Amended Complaint Included Three Separate Severability Provisions

41. The Amended Complaint included three separate provisions requesting the court sever the state-law Chapter 8 claims from the broader federal declaratory relief:

Paragraph 54 stated: "Each cause of action concerns Defendant's own conduct. Complete relief is available against Defendant alone. The severability provision in the Prayer for Relief (Section XI.E) confirms that state claims stand independently." (*See* Addendum at B.)

Paragraph 208 stated: "Each cause of action concerns Defendant's own conduct. Complete relief is available against Defendant alone. The Court can declare what Minnesota law requires, order correction of false statements, and enjoin continued selective enforcement — all without any federal party. The severability provision in Section XI.E confirms that state claims stand independently." (*See* Addendum at C.)

Paragraph 255 — the dedicated Severability and *Bond* Standing section — stated: "Plaintiff requests that the Court treat each item of relief as severable. If the Court determines it lacks jurisdiction to grant certain relief — particularly relief directed at federal conduct — Plaintiff requests that the Court proceed with relief against

Defendant on the state law claims, which stand independently. The state claims (Minnesota Statute § 626.89, Chapter 8 statutory duties, First Amendment petition violation, Equal Protection selective enforcement) require no federal party and are fully justiciable against Defendant alone." (*See* Addendum at D.)

42. These were not buried in a footnote. They were stated three times across 201 paragraphs, culminating in a dedicated subsection of the Prayer for Relief. The Amended Complaint was structured around the expectation that the court might sever — and invited it to do so.

2. The Chapter 8 Claims Were Structurally Independent

43. The Chapter 8 claims were not derivative of the broader federal claims. They concerned only Defendant's own conduct under Minnesota law. They required no federal party. They occupied sixty-five paragraphs of detailed statutory analysis. They cited specific statutory provisions — Sections 8.01, 8.03, 8.06, and 8.31 — and alleged a specific false statement contradicted by the plain text of those statutes and by Defendant's own sworn testimony. The complaint itself told the court that the Chapter 8 sections "stand independently and require no federal party." (ECF No. 26, Section VII Introduction; *see* Addendum at E.)

3. Rule 21 Requires Severance, Not Dismissal, for "Wide-Ranging and Disparate" Claims

44. The district court's stated reason for dismissal was that the Amended Complaint sought "wide-ranging and disparate forms of relief." (ECF No. 29 at 2.)

This is functionally a ruling that the complaint joined too many claims — the precise situation Federal Rule of Civil Procedure 21 addresses.

45. Rule 21 provides: "Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." Fed. R. Civ. P. 21. The rule is explicit: misjoinder — or, equivalently, "wide-ranging and disparate" claims — is *not a ground for dismissal*. The remedy is severance.

46. The text of Rule 21 is dispositive of the question: when claims are joined too broadly or a complaint's scope is disparate, the remedy is severance, not dismissal of the entire action. Although this Court has not squarely addressed the application of Rule 21 to a Rule 8(a)(2) dismissal in the pro se context, other circuits have read the rule's text as the rule itself requires. The Seventh Circuit has held that "[u]nrelated claims against different defendants belong in different suits" and that the proper mechanism for resolving improper joinder is severance under Rule 21, not wholesale dismissal of the entire action. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). The Eleventh Circuit requires a claim-by-claim analysis before dismissal: a complaint may be dismissed under Rule 8(a)(2) only when it is "virtually impossible to know which allegations of fact are intended to support which claims for relief." *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1320-23 (11th Cir. 2015). The *Weiland* court reversed the district court's dismissal of counts that were "informative enough to permit a court to readily determine if they state a claim upon which relief can be granted" — even in a complaint the court criticized as a "shotgun pleading." *Id.* at 1323.

47. The Amended Complaint here was not a shotgun pleading. Each count was separately stated. The Chapter 8 claims were organized in dedicated sections with detailed statutory analysis. And the complaint told the court — three times — exactly how to resolve the length concern: sever the independent state claims and evaluate them on their own terms. The district court had before it both the diagnosis (the complaint is long) and the cure (the plaintiff requests severance of independent claims). It adopted the diagnosis and ignored the cure.

4. The District Court Dismissed the Entire Complaint Without Acknowledging Severability

48. The district court dismissed the entire Amended Complaint as "wide-ranging and disparate" (ECF No. 29 at 2) without acknowledging that severability had been requested three times and without evaluating whether the Chapter 8 claims independently satisfied Rule 8(a)(2). The court used the broader federal relief — which was expressly declared severable — as the primary basis for characterizing and dismissing the complaint, including the claims that stood independently.

49. This is precisely what the severability provisions were designed to prevent. Appellant anticipated that the broader federal claims might be challenged.

Appellant identified the problem before the court did. Appellant provided the Rule 21 remedy — severance — in the complaint itself. The court ignored the remedy and imposed the one sanction Rule 21 says is unavailable: dismissal of the entire action.

5. The Eighth Circuit Requires Liberal Construction and Identification of Viable Claims

50. This Court's Rule 8 precedent is clear: dismissal on Rule 8 grounds "ordinarily" must be with leave to amend, not with prejudice. *Michaelis v. Nebraska State Bar Ass'n*, 717 F.2d 437, 439 (8th Cir. 1983) (per curiam) (citing *Koll v. Wayzata State Bank*, 397 F.2d 124, 127 (8th Cir. 1968)). This default is reinforced by the broader requirement that pro se complaints be liberally construed and that courts identify viable claims even when the pleading is imperfect. *Topchian*, 760 F.3d at 848; *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004); *Haines*, 404 U.S. at 520. Dismissal with prejudice under Rule 8 is reserved for the narrow circumstance where a plaintiff "has persisted in violating Rule 8" after "adequate warning from the district court and sufficient opportunity" to cure the defect. *Michaelis*, 717 F.2d at 439; *see also Micklus v. Greer*, 705 F.2d 314, 317 n.3 (8th Cir. 1983). The three-part *Michaelis* standard — persistence, warning, opportunity — is the binding law of this Circuit and the standard against which the district court's dismissal order must be measured.

51. None of the three *Michaelis* preconditions is satisfied in this case. **Persistence.** The Amended Complaint was Appellant's first and only amendment, filed as of right under Rule 15(a)(1)(B) within the twenty-one-day window the Rules provide. One original complaint and one as-of-right amendment is the minimum litigation activity possible — the opposite of persistent noncompliance. **Warning.** No order of the district court addressed Rule 8 before the dismissal. The only document that raised Rule 8 was Defendant's adversarial Memorandum in Support of the Motion to Dismiss (ECF No. 21) — opposing counsel's argument, not judicial guidance. The dismissal order's assertion that Rule 8 deficiencies had "already" been "pointed out to" Appellant (ECF No. 29 at 3) treats an adversary's litigation position as if it were prior judicial instruction. *Michaelis*'s "adequate warning" requirement contemplates warning from the court, not from the opposing party. **Opportunity.** The dismissal did not grant leave to amend, did not identify any pleading deficiency, did not set a page or word limit, and did not set a deadline for compliance. Appellant received zero opportunity to cure any defect the court might have identified. Each of these omissions — persistence absent, warning absent, opportunity absent — independently renders the with-prejudice dismissal an abuse of discretion under this Court's binding precedent.

52. The *Michaelis* rule reflects a consensus among the federal circuits. The Second Circuit holds that "dismissal for noncompliance with Rule 8 without leave to amend [is] an abuse of discretion." *Salahuddin v. Cuomo*, 861 F.2d 40, 42-43 (2d Cir. 1988). The Seventh Circuit construes Rule 15(a)(2) "to require, in most cases, that a plaintiff whose complaint has been dismissed under Fed. R. Civ. P. 12(b)(6) be given at least one opportunity to amend the complaint." *Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 519 (7th Cir. 2015). The Ninth Circuit, sitting en banc, holds that "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). The Eleventh Circuit requires claim-by-claim futility analysis before any with-prejudice dismissal. *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313, 1320-23 (11th Cir. 2015). The Eighth Circuit has applied the same rule in the analogous sanction-dismissal context: a district court must consider whether lesser sanctions would suffice before imposing the ultimate sanction of dismissal. *Akins v. S. Glazer's Wine & Spirits of Ark., LLC*, No. 18-1957 (8th Cir. Aug. 29, 2019) (per curiam) (unpublished) (reversing dismissal for failure to consider whether lesser sanctions would suffice). Here, the district court considered no lesser alternative — no page limit, no motion for more definite statement, no leave to amend with instructions, no Rule 21 severance. Five federal circuits — including this one — impose the same substantive rule: pro se complaints dismissed under Rule 8 or

12(b)(6) must ordinarily be dismissed with leave to amend, with with-prejudice dismissal reserved for cases of futility or persistent noncompliance after warning. The district court's disposition departs from the settled law of this Circuit and the consensus of the federal courts of appeals.

C. The District Court Erred in Its Standing Analysis

1. The District Court Dismissed Standing Without Analysis

53. The district court stated that "Kirchner obviously lacks standing to seek virtually all of the relief he requests." (ECF No. 29 at 2.) This conclusion was reached without addressing *Bond v. United States*, 564 U.S. 211 (2011), which the Amended Complaint cited as its primary standing authority, and without evaluating traditional Article III standing on the Chapter 8 claims.

54. The word "obviously" appears twice in the order without analysis either time. If standing were obviously lacking, the analysis would be obvious too — and the court would provide it. The absence of analysis is itself evidence that the conclusion does not withstand scrutiny. The Amended Complaint established standing on three independent grounds, addressed in turn below: traditional Article III injury-in-fact (Section C.2), *Bond*'s structural-violation framework (Section C.3), and *Bond*'s concomitant injury principle (Section C.4).

2. Traditional Article III Standing is Satisfied

55. The Amended Complaint alleged all three elements of traditional Article III standing on the Chapter 8 claims:

(a) **Injury in fact** — a criminal referral denied through a demonstrably false statement of law. This is not a generalized grievance about government. It is a specific denial of a specific referral by a specific official through a specific false statement. The false statement chilled Appellant's exercise of his right to petition the government for redress. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-64 (2014) (government action that chills the exercise of First Amendment rights constitutes cognizable injury). The denial left Appellant without any law enforcement remedy for documented crimes — the Attorney General directed Appellant to the FBI, the same agency that had disconnected Appellant's calls twelve times.

(b) **Causation** — the injury is directly traceable to Defendant's February 26, 2026 letter, issued on official letterhead, falsely disclaiming authority that Section 8.31 expressly grants. This is not a discretionary non-enforcement decision entitled to deference under *Heckler v. Chaney*, 470 U.S. 821, 832-33 & n.4 (1985) — it is a false statement of law that foreclosed Appellant's petition without evaluating it on the merits. *See Heckler*, 470 U.S. at 833 n.4 (distinguishing discretionary non-enforcement from denial of statutory authority). This is the most direct causal connection possible: the official who received, denied, and continues to disclaim the authority at issue.

(c) **Redressability** — through declaratory judgment establishing what Section 8.31 means, injunctive relief requiring Defendant to correct the false statement on the Attorney General's website and process the referral under lawful procedures, and compensatory damages under 42 U.S.C. § 1983. Complete relief is available against Defendant alone.

56. The qualifier "virtually all" in the district court's order concedes that some claims possess standing. Yet the court dismissed those claims without identifying them or explaining why they fail.

3. Bond v. United States Supports Standing

57. *Bond* held unanimously that individuals have standing to challenge government action that exceeds constitutional and statutory limits. 564 U.S. at 221-22. The Amended Complaint invoked *Bond* because the Chapter 8 claims alleged precisely this: a state official denying a citizen's referral by falsely claiming that the Legislature "did not delegate" authority that the Legislature plainly did delegate. The order did not cite *Bond*, distinguish *Bond*, or explain why *Bond* does not apply.

4. Appellant Also Satisfies Bond's Concomitant Injury Framework

58. *Bond* recognized that "[t]he unconstitutional action can cause concomitant injury to persons in individual cases." 564 U.S. at 225. "Concomitant" means necessarily accompanying — the injury arises from the structural violation itself, including the injury created by the need for redress. When no institutional actor will enforce the text of a mandatory statute, the citizen who investigates and petitions bears the cost of enforcement the legal structure assigned elsewhere. That cost is the concomitant injury *Bond* describes.

59. This is not novel doctrine. Courts routinely recognize injuries that arise in the course of seeking judicial remedy — attorney's fees under 42 U.S.C. § 1988, investigation costs, and litigation expenses are all cognizable even though they do not precede the lawsuit. The costs borne by a citizen who pursues redress for a structural violation no institution will correct are doctrinally identical, and if anything more compelling, because the costs were forced upon the citizen by the enforcement void rather than voluntarily undertaken.

60. The concomitant injury framework resolves the floodgate concern that traditionally motivates restrictive standing doctrine. Only the citizen who actually bears the cost of redress — who investigates, documents, and litigates where no institution will — suffers the concomitant injury. Citizens who could identify a mandatory textual violation but do not act have no concomitant injury and no standing. The framework is self-regulating: the more serious the enforcement void, the higher the cost of redress, and the fewer citizens willing to bear it.

61. Appellant's concomitant injury is concrete and substantial. The criminal referral submitted to Defendant's office documented consumer fraud, computer crimes, and corporate misconduct, supported by approximately 285 exhibits comprising roughly 63,000 forensic files. When Defendant denied the referral through a false statement of law, Appellant bore the cost of statutory research establishing that "shall investigate" is mandatory under Minnesota law, Minn. Stat. § 645.44, Subd. 16 ("'Shall' is mandatory."); the 50-state comparative survey showing Minnesota as the sole outlier; the analysis of Defendant's March 4, 2026 congressional testimony demonstrating the contradiction; and the preparation and prosecution of federal litigation to establish what the statute plainly requires. Under traditional standing doctrine, these costs are cognizable injuries in themselves. Under *Bond*'s concomitant injury framework, they are the paradigm example of injuries arising concomitant to the pursuit of judicial remedy for a structural violation that no institutional actor will correct.

62. Standing is reviewed de novo. This Court should hold that the district court erred in concluding standing was "obviously" lacking without engaging with traditional Article III, *Bond*, or *Bond*'s concomitant injury framework — each of which independently establishes standing on the Chapter 8 claims.

D. The District Court Erred in Conflating Declaratory Relief With Injunctive Relief

1. The Amended Complaint Sought Declaratory Relief, Not Injunctive Relief

63. The district court stated parenthetically that "a federal district court cannot issue relief that binds the Supreme Court." (ECF No. 29 at 2.) The Amended Complaint did not seek injunctive relief against the Supreme Court. It sought declaratory relief — a judicial declaration of what 28 U.S.C. Section 2101(f) means.

64. The Declaratory Judgment Act, 28 U.S.C. § 2201, authorizes federal courts to "declare the rights and other legal relations of any interested party seeking such declaration" in cases of actual controversy. Congress enacted the DJA precisely to provide a remedy that clarifies legal relations without the coercive force of an injunction. The Supreme Court has recognized this distinction since the Act's earliest interpretation. In *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 240-41 (1937), upholding the Act, the Court explained that the controversy must be "real and substantial... admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." The DJA is "styled 'creation of a remedy'" — "an enabling Act, which confers a discretion on the courts" — and is procedural, not jurisdictional. *Public Service Commission v. Wycoff Co.*, 344 U.S. 237, 240 (1952).

Declaratory judgments adjudicate controversies between the parties; they do not expand the scope of judicial power beyond those parties.

2. Declaratory Relief is Non-Coercive by Definition

65. The Supreme Court has consistently held that declaratory relief is fundamentally different from injunctive relief. In *Nashville, Chattanooga & St. Louis Railway v. Wallace*, 288 U.S. 249, 264 (1933), the Court explained that declaratory judgments are "neither combative in purpose nor coercive in operation" — they "declare rights" without commanding any party to act or refrain from acting.

66. In *Steffel v. Thompson*, 415 U.S. 452, 466-67 (1974), the Court emphasized that "Congress plainly intended declaratory relief to act as an alternative to the strong medicine of the injunction." The Court further held that a declaratory judgment is "a much milder form of relief than an injunction" and that the two remedies are not equivalent: declaratory relief is available even in circumstances where injunctive relief would not be. *Id.* at 471.

67. In *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-27 (2007), the Court confirmed that declaratory judgment operates to "clarif[y] the legal relations at issue" without imposing coercive consequences on any party.

68. The district court's characterization of declaratory relief as "relief that binds the Supreme Court" conflates the two remedies that Congress and the Supreme

Court have consistently held are distinct. A declaration of what Section 2101(f) means no more "binds" the Supreme Court than *Nashville Railway*'s declaration of a taxpayer's rights "bound" the State of Tennessee. It declares the law. It commands nothing.

69. Beyond its non-coercive character, a declaratory judgment is also party-specific in scope. "A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings." *Martin v. Wilks*, 490 U.S. 755, 762 (1989); *see also Chase Nat'l Bank v. Norwalk*, 291 U.S. 431, 441 (1934); *Taylor v. Sturgell*, 553 U.S. 880, 892-94 (2008) (rule against non-party preclusion is deeply rooted). The Supreme Court is not a party to this action and would not be bound by any declaration entered here. A declaration by the district court that 28 U.S.C. § 2101(f) limits stays to final judgments — entered between Appellant and Defendant Ellison, neither of whom is the Supreme Court — would produce no coercive effect on the Supreme Court's docket or on its conduct. Other courts, including the Supreme Court, might find the district court's reasoning persuasive or unpersuasive; they would not be bound by it.

70. The binding effect of a declaratory judgment on the parties is analytical, not coercive. A declaration establishes between the parties what the law is, precluding them from relitigating that question against each other. It does not command either party to take or refrain from any specific action. Contempt proceedings cannot lie on a declaration alone; there is no directive to violate. The district court's characterization of a declaration as relief that would "bind the Supreme Court" conflates two different meanings of the word — the analytical binding of parties through issue preclusion and the coercive binding of parties (or non-parties) through injunctive command. Only the latter would be impermissible against a non-party; the former applies only to those actually before the court.

3. There is No Existing Interpretation for the Declaration to Contradict

71. Even if declaratory judgments could theoretically create tension with another tribunal's pronouncements, that concern arises only when two declarations directly contradict each other. Here, there is no declaration to contradict. Appellant has identified no Supreme Court opinion interpreting the scope of 28 U.S.C. § 2101(f), nor any judicial decision at any level addressing whether the phrase "final judgment or decree" in § 2101(f) encompasses preliminary injunctions — interlocutory orders that are, by definition, not final — nor any judicial decision or scholarly analysis addressing the plain-text incongruence between the statute's limitation and the Court's shadow docket practice. The declaration Appellant sought would not contradict an existing holding. It would address a question to which Appellant has located no prior judicial answer.

72. A declaratory judgment cannot "bind" a tribunal that has never spoken on the subject. The district court's premise — that declaring what § 2101(f) means would impermissibly bind the Supreme Court — presupposes an existing Supreme Court interpretation of § 2101(f) that the declaration would override. No such interpretation exists. The requested relief would have been the first judicial pronouncement on the statute's plain meaning — precisely the kind of statutory interpretation the Declaratory Judgment Act was enacted to authorize.

73. The district court's reasoning, if accepted, would produce a constitutional impossibility. If no court may declare what § 2101(f) means because doing so might carry implications for the Supreme Court's conduct, then the Supreme Court becomes the sole interpreter of the statute that limits its own power — and since it has chosen never to address that statute, the limitation becomes permanently unenforceable. Congress enacted § 2101(f) to constrain judicial power. Under the district court's logic, the subject of that constraint is shielded from having the constraint articulated, while the citizen who seeks to invoke the statute Congress wrote is silenced. This inverts the constitutional order. When one entity is immunized from having the law declared because the declaration might affect its conduct, that entity is not merely above the courts — it is above the law. The Constitution does not permit this result for any branch of government. *Marbury v.*

Madison exists precisely to ensure that no governmental actor occupies a position where the law governing its conduct may not be spoken.

4. Declaring What a Statute Means is the Core Judicial Function

74. Declaring what a statute means is the core judicial function established in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803): "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury* itself demonstrates the principle the district court resisted. When Chief Justice Marshall held that Section 13 of the Judiciary Act of 1789 could not constitutionally expand the Supreme Court's original jurisdiction, the declaration bound the parties before the Court — Marbury could not obtain his commission from the Court, and Madison could not be compelled by the Court to issue it — but it did not command Congress, a non-party, to repeal Section 13, nor did it command the President, another non-party, to take any action. Congress was not bound coercively; it was merely informed what the Constitution meant. Every subsequent declaration that a federal statute is unconstitutional has followed the same pattern: a judgment between parties that declares what the law is, without ordering non-party branches of government to conform. A declaration that 28 U.S.C. § 2101(f) limits stays to "final judgment or decree" would operate identically — resolving the case before the court, declaring what Congress's statute means, and leaving non-parties (including the Supreme Court) to their own judgment about whether to follow the district court's reasoning. Were the district court's premise correct — that a declaration of a federal statute's meaning impermissibly "binds" entities not made parties — *Marbury v. Madison* itself would have been unconstitutional, and the entire edifice of American constitutional judicial review would rest on an impermissible foundation. The district court cannot invoke *Marbury* for the proposition that declaring the law is the judicial function while simultaneously refusing to perform that function on the ground that a declaration would "bind" a non-party. The invocation is self-contradicting. A declaration that Section 2101(f) limits stays to "final judgment or decree" does not enjoin the Supreme Court any more than a declaration that the Fourth Amendment prohibits unreasonable searches enjoins law enforcement, or any more than *Marbury*'s declaration that Section 13 exceeded Article III enjoined Congress. It states what the law is.

5. The Conflation Infected the Dismissal of Unrelated Claims

75. The district court conflated declaratory relief with injunctive relief and used this conflation as a basis for dismissing the entire complaint — including the Chapter 8 claims (Counts I through IV) that sought no relief concerning the Supreme Court. The Chapter 8 claims sought declaratory judgment that Section 8.31 grants mandatory investigation authority, injunctive relief requiring correction of the false statement on the Attorney General's website, and an order to process

Appellant's referral under lawful procedures. None of this relief concerned the Supreme Court.

76. Even if the district court had discretion to decline the Section 2101(f) declaratory relief — as *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995), recognizes for declaratory actions — that discretion requires *evaluation*, not conflation with injunctive relief. And it certainly cannot justify dismissing the Chapter 8 claims, which sought entirely different relief on entirely different legal grounds.

77. The severability provisions existed precisely for this situation: if the broader federal relief exceeded the court's jurisdiction, the state-law claims were to proceed independently. The court conflated the two categories of relief and dismissed both, accomplishing through judicial shorthand what the severability provisions were designed to prevent.

E. The Sanctions Warning Lacked Procedural and Factual Foundation

1. The Complaint's Analytical Depth Was Deliberate and Explained

78. The district court appears to have equated length with frivolousness. But the Amended Complaint explained its own structure. Each memorandum's analytical depth was proportional to the seriousness of the doctrine being challenged — a challenge to forty-four years of qualified immunity jurisprudence requires more than a paragraph — and each memorandum's analysis reduced to dispositive questions that could be engaged directly. The word-limit letter (ECF No. 24) told the court that the length "represents the minimum necessary to present eight independent constitutional arguments, each supported by authority." (*See* Addendum at F (memoranda framework — analysis reduces to dispositive inquiries); G (proportionality of relief); H (word-limit letter).)

79. The comprehensive record existed so that the court and the defendant would not have to search. It was an act of respect for the tribunal and for the gravity of the issues, not an act of abuse. The district court's characterization of the case as "an obvious abuse of the Court's already strained resources" — when the case consumed a scheduling order, a one-sentence word limit denial, and a three-page dismissal, with no hearings, no conferences, and no discovery disputes — does not withstand comparison to the record.

2. The Sanctions Warning Lacked Procedural Basis

80. The order warned that sanctions may be imposed for filing "frivolous complaints or other papers." (ECF No. 29 at 3.) This warning was issued:

(a) Without following Rule 11(c)(2), which requires a 21-day safe harbor period — Defendant never filed a Rule 11 motion;

(b) Without following Rule 11(c)(3), which requires a show-cause order describing the specific conduct when a court initiates sanctions sua sponte;

(c) Without a finding of subjective bad faith required for inherent authority sanctions;

(d) Without a finding of a pattern of frivolous or harassing filings required for filing restrictions under *In re Tyler*, 839 F.2d 1290, 1292 (8th Cir. 1988) — one complaint and one as-of-right amendment is the minimum litigation activity possible, not a pattern;

(e) On Appellant's first procedurally proper amendment — an amendment filed as of right under Federal Rule of Civil Procedure 15(a)(1)(B), exercising a right the Rules guarantee — with no prior sanctions in any court.

3. The Sanctions Warning Lacked Factual Foundation

81. The warning's implicit characterization of the Chapter 8 claims as frivolous also lacks any record foundation. Neither the February 26 denial letter, nor Defendant's 16-page Memorandum in Support of the Motion to Dismiss (ECF No. 21), nor the district court's three-page dismissal order (ECF No. 29) cited a single statute that withholds, limits, or revokes the authority Chapter 8 grants. Five opportunities to identify such a statute. Zero citations. If Defendant's claim were true — that the Legislature "did not delegate" investigative authority — proving the claim frivolous would require one sentence: "Section [X] provides that the authority granted by Chapter 8 does not extend to [Y]." That sentence does not appear anywhere in the record because no such statute exists. A sanctions warning premised on frivolousness, when neither Defendant nor the district court articulated why the claim fails, has no factual foundation in the record.

4. The Combined Effect is Constitutionally Problematic

82. The sanctions warning, combined with the ambiguous dismissal status, operates as a blanket deterrent against all further filings — including filings necessary to preserve appellate rights. The order states the case is "DISMISSED" without specifying with or without prejudice. If with prejudice, the court was obligated to address the merits of each claim — which it did not. If without prejudice, the sanctions warning is disproportionate: it threatens punishment for refiling claims the court never evaluated.

F. The Dismissal Order's Failure to Specify Prejudice Should be Corrected

1. Rule 41(b)'s Default Rule Creates Preclusion Risk

83. Federal Rule of Civil Procedure 41(b) provides that any dismissal "other than a dismissal for lack of jurisdiction, improper venue, or failure to join a party under Rule 19" operates as an "adjudication on the merits" unless the dismissal order specifies otherwise. Fed. R. Civ. P. 41(b). Dismissals under Rule 8(a)(2) do not fall within Rule 41(b)'s enumerated exceptions. Absent express designation as "without prejudice," the rule's default treats the dismissal as a merits resolution.

84. The dismissal order here states that the Amended Complaint "is DISMISSED" (ECF No. 29 at 3) without specifying with or without prejudice.

The accompanying Judgment (ECF No. 30) likewise does not designate the prejudice status. Under the Rule 41(b) default, this silence creates serious preclusion risk: a subsequent court could read the unqualified "DISMISSED" as a merits-resolving disposition — even though the order addressed none of the six counts, none of the statutory provisions, and none of the three severability requests, and contains no merits analysis whatsoever.

2. Michaelis and Semtek Foreclose Preclusive Effect

85. This Court's binding precedent in *Michaelis v. Nebraska State Bar Ass'n*, 717 F.2d 437, 439 (8th Cir. 1983) (per curiam), forecloses a merits-default reading of this dismissal. As Section V.B above demonstrates, *Michaelis* holds that Rule 8 dismissals "ordinarily" must be with leave to amend — that is, without prejudice — absent persistence, warning, and opportunity. None of the three *Michaelis* preconditions is satisfied here. Under this Circuit's settled rule, the proper disposition was a without-prejudice dismissal. The district court's failure to enter that disposition explicitly does not transform what *Michaelis* required to be a procedural dismissal into a merits adjudication.

86. The Supreme Court's decision in *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505-06 (2001), reinforces this conclusion. *Semtek* held that Rule 41(b)'s "adjudication on the merits" language governs only the same-court refiling bar; the preclusive effect of a federal dismissal in a subsequent proceeding is determined by federal common law, which requires actual adjudication of the claim asserted. Because the dismissal order here adjudicated no claim on the merits — disclaiming engagement with any of the six counts, the statutory analysis, the severability requests, the standing analysis under *Bond*, and the declaratory-injunctive distinction — federal common law preclusion does not bar Appellant's refiled Chapter 8 claims under *Semtek*'s standard.

3. The Court Should Correct the Ambiguity

87. Two avenues are available to this Court to neutralize the preclusion risk created by the dismissal order's ambiguity. First, this Court can hold expressly that under Rule 41(b), *Semtek*, and *Michaelis*, the dismissal does not operate as an adjudication on the merits and has no preclusive effect on Appellant's substantive claims under Minnesota Statutes Chapter 8. Second, this Court can remand with instructions that the district court enter dismissal without prejudice consistent with *Michaelis*. Either disposition corrects the procedural defect without addressing the merits of any underlying claim. The relief requested in Section VI(b) and (c) reflects both alternatives.

VI. CONCLUSION

88. For the foregoing reasons, Appellant respectfully requests that this Court:

(a) **Vacate** the district court's order of dismissal (ECF No. 29) and the accompanying Judgment (ECF No. 30) as procedurally defective for the reasons set forth in Sections V.B–V.F of this Brief;

(b) **Hold** that the dismissal does not operate as an adjudication on the merits under Federal Rule of Civil Procedure 41(b) and has no preclusive effect on Appellant's substantive claims under Minnesota Statutes Chapter 8, which Appellant has refiled as a separate action;

(c) In the alternative to subsection (b), **remand** for the limited purpose of entering dismissal of the Amended Complaint without prejudice, consistent with this Court's binding precedent in *Michaelis v. Nebraska State Bar Ass'n*, 717 F.2d 437, 439 (8th Cir. 1983) (per curiam). Appellant has separately refiled the substantive Chapter 8 claims in *Kirchner v. Ellison*, Civ. No. ____ (D. Minn.) (filed May 12, 2026; case number pending as of the date of this brief — *see* ¶18 *supra* and Addendum at I), and seeks no further proceedings in the original action; and

(d) **Consider directing** that the case be reassigned to a different judge for entry of the without-prejudice dismissal, given the sanctions warning issued without procedural basis on Appellant's first procedurally proper amendment, the mischaracterization of the procedural record, and the sub-one-business-day disposition of a 120-page filing with 500 pages of attachments without engaging with any claim or severability request.

Respectfully submitted,

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Dated: May 12, 2026

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 9,281 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/ Joseph Kirchner____________
JOSEPH KIRCHNER

Dated: May 12, 2026

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated above, a true and correct copy of the foregoing Appellant's Opening Brief was served upon counsel for Defendant-Appellee by electronic mail, addressed to:

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Dated: May 12, 2026

VIRUS CERTIFICATION

Pursuant to Eighth Circuit Rule 28A(h), I hereby certify that the electronic version of this brief and the addendum have been scanned for viruses and are virus-free.

/s/ Joseph Kirchner_____________
Dated: May 12, 2026

ADDENDUM

See ADDENDUM TO APPELLANT'S OPENING BRIEF (containing Doc 29 and record excerpts per 8th Cir. R. 28A(g)) **[Filed as separate PDF pursuant to 8th Cir. R. 28A(g)(4)]**.