THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

April 8, 2025

Judicial Misconduct Complaint No. 07-24-90109
(United States Court of International Trade No. CIT-24-90002)

IN RE COMPLAINT AGAINST JUDGE STEPHEN A. VADEN

ORDER

For the reasons set forth in the attached memorandum decision, this complaint is dismissed pursuant to 28 U.S.C. § 354(a)(1)(B).

The complainant may petition the Judicial Conference for review of this decision and order by filing a brief written statement with the Committee on Judicial Conduct and Disability within 42 days of the date of this order. *See* 28 U.S.C. § 357(a); RULES FOR JUD.-CONDUCT AND JUD.-DISABILITY PROCEEDINGS, r. 21(b)(1), 22. Rule 22 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings* explains the procedure for filing a petition for review.

For the Council

Diane S. Sykes
Chief Judge

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MEMORANDUM DECISION

Chief Justice Roberts transferred this judicial misconduct complaint from the United States Court of International Trade to the judicial council of this circuit under Rule 26 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. The complaint relates to a hiring boycott instituted by 13 federal judges against law-clerk candidates affiliated with Columbia University. The allegations center on a letter the judges sent to the university's president announcing the boycott. Judge Stephen A. Vaden of the Court of International Trade signed the boycott letter and is the subject of the complaint.

After receiving the transferred complaint, we referred it to a special committee. The committee unanimously recommended that we dismiss the complaint. We agree and dismiss the complaint in full. *See* 28 U.S.C. § 354(a)(1)(B).

I. Background

A. The Complaint

As noted, the transferred complaint concerns a hiring boycott initiated by 13 federal judges, including Judge Vaden, against law-clerk candidates affiliated with Columbia University. The catalyst was the university's response to campus disturbances by protesters opposed to Israeli military actions in Gaza after the Hamas terrorist attacks in Israel on October 7, 2023. The judges announced their boycott in a letter to Columbia's president dated May 6, 2024, and copied to the dean of Columbia's law school.

The letter, which received widespread publicity, is attached to the complaint and forms the basis of the misconduct allegations against Judge Vaden. It begins as follows: "Since the October 7 terrorist attacks by Hamas, Columbia University has become ground zero for the explosion of student disruptions, antisemitism, and hatred for diverse viewpoints on campuses across the Nation." The letter goes on to identify

shortcomings in the university's response to the campus unrest, including the administration's failure to enforce university rules concerning threats against members of the university community and vandalism and misuse of campus buildings and public spaces. Characterizing Columbia as "an incubator of bigotry" that has "disqualified itself from educating the future leaders of our country," the judges explained that they have "lost confidence in Columbia as an institution of higher education."

The letter also accused the university of applying "double standards when it comes to free speech and student misconduct" by favoring "certain viewpoints over others based on their popularity and acceptance in certain circles." Finally, the judges criticized Columbia's faculty and staff: "Both professors and administrators are on the front lines of the campus disruptions, encouraging the virulent spread of antisemitism and bigotry." Calling for "dramatic change" in the faculty and administration, the judges urged the university to adhere to "[n]eutrality and nondiscrimination in the protection of freedom of speech and the enforcement of rules of campus conduct." The judges closed the letter by announcing the hiring boycott: "[A]bsent extraordinary change, we will not hire anyone who joins the Columbia University community—whether as undergraduates or law students—beginning with the entering class of 2024."

The letter was signed by 13 federal judges: 11 circuit and district judges (eight from the Fifth Circuit, one from the Eighth Circuit, and two from the Eleventh Circuit); one judge from the Court of Federal Claims; and Judge Vaden from the Court of International Trade.

On June 6, 2024, the complainant[1] filed a misconduct complaint in the Court of International Trade alleging that Judge's Vaden's participation in the boycott and his statements in the May 6 letter amounted to judicial misconduct under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–64. We gather from the available record that the complainant filed misconduct complaints against all the judges who signed the letter. Though misconduct proceedings are generally confidential, final dispositional orders are public. *Id.* § 360(a)–(b). The chief judges of the Fifth Circuit, the Eleventh Circuit, and the Court of Federal Claims dismissed misconduct complaints filed against other judges who signed the May 6 letter. Their respective judicial councils affirmed, and the dismissal orders are publicly available.

Based on the content of the dismissal orders, the other complaints appear to be materially the same as the one at issue here. *See* Order of Chief Judge Pryor, Nos. 11-24-

[1] The complainant is serving a sentence in a state prison after a jury found him guilty of arson, terrorism, and other crimes stemming from his role in firebombing and vandalizing Jewish houses of worship. His complaint against Judge Vaden is dated May 29, 2024, but it was filed on June 6, 2024.

90106 and 11-24-90107 (June 18, 2024) ("Pryor Order"); Order of Chief Judge Richman, Nos. 05-24-90083 to 05-24-90090 (June 21, 2024) ("Richman Order"); Order of Chief Judge Kaplan, Nos. CL-24-90395 and CL-24-90406 (October 1, 2024) ("Kaplan Order"). We have benefited from the reasoning of the chief judges who have already addressed materially identical misconduct allegations.

The complainant alleges that Judge Vaden's participation in the boycott and the statements the judges made in the Columbia letter violated Rule 4(a) of the *Judicial-Conduct Rules* in the following ways:

(1) The judge used his judicial office "to obtain special treatment for friends" in violation of Rule 4(a)(1)(A);

(2) The judge engaged in partisan political activity or made inappropriate partisan statements in violation of Rule 4(a)(1)(D);

(3) The judge engaged in "abusive behavior" in violation of Rule 4(a)(2)(B) in that his statements in the Columbia letter demonstrate that he "presently is and will be treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner";

(4) The judge used the Columbia University community as "a proxy to discriminate against various races, religions, and national origins that may share in the views of his targeted community" in violation of Rule 4(a)(3); and

(5) The judge engaged in extrajudicial conduct that is likely to cause "a substantial and widespread lowering of public confidence in the courts among reasonable people" in violation of Rule 4(a)(7).

Compl. at 2.

The complainant also alleges that the Columbia letter was the product of collaboration between the judges and "outside organizations or foreign governments," and he suggests that Judge Vaden is "possibly a foreign agent masquerading as a federal judge." *Id*. at 2–3. He further alleges that the judge has "effectively disqualified himself" from any cases involving a litigant or attorney who has publicly taken a position on the Israeli-Palestinian conflict because a reasonable person would have "every reason to believe" that the judge "would be biased against those supporting Palestinians and would favor those supporting Israelis." *Id*. at 3.

Finally, the complainant claims that Judge Vaden has disqualified himself from any cases involving members of the Columbia University community as well as graduates of the "hundreds" of other colleges and universities at which anti-Israeli

protests have occurred. *Id*. He contends that Judge Vaden's conduct "requires his removal from office." *Id.*

B. Procedural History

Chief Judge Barnett of the Court of International Trade conducted an initial review of the complaint and invited a response from the judge. Based on his review of the allegations and Judge Vaden's response, Chief Judge Barnett declined to dismiss the complaint or conclude the proceeding under 28 U.S.C. § 352(b)(1) or (2). Instead, on September 9, 2024, he wrote to Chief Justice Roberts requesting that he transfer the complaint to another judicial council under Rule 26 of the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*.

Rule 26 authorizes a chief judge or judicial council to ask the chief justice to transfer a misconduct complaint to another circuit's judicial council in exceptional circumstances. A transfer may be appropriate when multiple members of the original judicial council are disqualified; when the issue has generated a high degree of public interest, and disposition by the local council may diminish public confidence in the process; or when the potential for internal tensions on the original council make "disposition by a less involved council appropriate." RULES FOR JUD.-CONDUCT AND JUD.-DISABILITY PROCEEDINGS, r. 26 cmt.

Chief Judge Barnett gave several reasons for requesting a transfer, including the small size of his court, which serves as its own judicial council, and the possibility of multiple disqualifications and internal tensions within the court. He also explained his view that while some of the allegations in the complaint could be dismissed as frivolous or lacking sufficient evidence to infer misconduct, *see* 28 U.S.C. § 352(b)(1)(A)(iii), some allegations warranted referral to a special committee, *see id.* § 353(a). However, because he had determined to request a transfer under Rule 26, he declined to partially dismiss the complaint, leaving it to the transferee judicial council to resolve the entire matter in a single proceeding.

On September 20, 2024, Chief Justice Roberts granted the transfer request and designated this circuit's council to accept the transfer and exercise the powers of a judicial council with respect to the complaint and any related matters.

After receiving a transferred complaint, the transferee judicial council must decide the proper stage at which to begin its review—*i.e.*, whether to (1) refer the complaint to the chief judge for initial review and possible dismissal under 28 U.S.C. § 352(a) or (b); or (2) proceed to the appointment of a special committee under § 353. RULES FOR JUD.-CONDUCT PROCEEDINGS, r. 26 cmt.; *see also id.* r. 11, 12. After reviewing the complaint and the record received from the Court of International Trade, we opted to refer the matter to a special committee.

In accordance with the Act and rules, Chief Judge Diane S. Sykes appointed Circuit Judge Amy J. St. Eve and District Judge Manish S. Shah to serve with her as the special committee, and she designated herself as the presiding officer. *See* § 353(a)(1); RULES FOR JUD.-CONDUCT PROCEEDINGS, r. 12(a)–(b). The committee invited the complainant to submit any additional evidence or argument in writing by December 10, 2024. *See id.* r. 16(b)–(c). He did not do so.

The committee also invited Judge Vaden to submit a written argument and to present oral argument if he wished, as is his right under the rules. *Id.* r. 15(d). On January 17, 2025, Judge Vaden's counsel submitted a lengthy written argument addressing the judicial-conduct standards in the Act, the rules, and the Code of Conduct for United States Judges. Counsel argued that the complaint should be dismissed because neither the law-clerk hiring boycott nor the Columbia letter violated any established standard of judicial ethics. Counsel also argued that the imposition of any disciplinary sanction against Judge Vaden would raise serious constitutional concerns—namely, a possible infringement of the judge's First Amendment and due-process rights to free speech and fair notice. Judge Vaden also accepted the opportunity to present oral argument through his counsel, which took place on February 10, 2025.

There is one more procedural detail: Judge Vaden waived confidentiality and consented to public disclosure of his identity as the subject judge; he requested Chief Judge Sykes's consent as well, as required by the Act. *See* § 360(a)(3). She granted that request. We concur. *See* RULES FOR JUD.-CONDUCT PROCEEDINGS, r. 24(a)(2). Judge Vaden also requested permission to disclose the complainant's identity, or at least to disclose non-identifying information about the complainant. As contemplated by the rules, Chief Judge Sykes sought the complainant's consent before responding to that request. *See id.* r. 23 cmt. The complainant declined to consent to the disclosure of his identity. Accordingly, as the commentary to Rule 23 permits, *see id.*, Chief Judge Sykes determined that although the complainant's identity will remain confidential, his confidentiality interests extend only to his identity as the complainant; non-identifying information about him need not be kept confidential. Judges St. Eve and Shah concurred in that determination.

II. Discussion

The Judicial Conduct and Disability Act establishes the procedures and substantive standards that govern misconduct complaints against federal judges. The Act provides that "any person" may file a written complaint "alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." § 351(a). This is obviously a broad and imprecise standard; the Act does not define or otherwise elaborate on it.

The Judicial Conference has adopted rules interpreting the statutory standard. Rule 4(a) of the *Rules for Judicial-Conduct Proceedings* provides a nonexhaustive list of conduct that may be cognizable as misconduct under the Act. As relevant to this complaint, the list includes abusive or harassing conduct; intentional discrimination on a prohibited ground; and violations of rules or standards found in other sources of law and ethical norms (*e.g.*, constitutional and statutory requirements, decisional law, and the Code of Conduct for United States Judges). RULES FOR JUD.-CONDUCT PROCEEDINGS, r. 4(a)(1)–(3).

Cognizable misconduct also extends to "conduct occurring outside the performance of official duties if the conduct is reasonably likely to have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people." *Id*. r. 4(a)(7).

The circuit judicial councils have the responsibility to decide whether a judge has engaged in conduct that violates the statutory standard, subject to review by the Judicial Conference as specified in the Act. *See generally* §§ 354–55, 357. We may draw on the rules, the Code of Conduct, and other sources of ethical norms to guide the determination, but the ethical canons in the Code—while instructive—are not dispositive. RULES FOR JUD.-CONDUCT PROCEEDINGS, r. 4 cmt.

When a misconduct complaint is referred to a special committee, the committee determines whether factual investigation is necessary, and if so, the nature and extent of the investigation. § 353(c); RULES FOR JUD.-CONDUCT PROCEEDINGS, r. 13. Because the allegations here rest solely on the judges' letter to Columbia's president—a widely available document that the complainant attached to his complaint—the committee decided that no factual investigation was needed. We agree. No factual issues required development. The only questions are whether the actions that form the basis of the complaint—Judge Vaden's hiring boycott and statements in the Columbia letter—violate any established ethical requirements or norms, and if so, whether the violation amounts to "conduct prejudicial to the effective and expeditious administration of the business of the courts." § 351(a).

A. Frivolous and Wholly Unsupported Allegations

We begin with the allegations that require little discussion. As we've noted, the complainant alleges that the hiring boycott and the Columbia letter demonstrate that Judge Vaden "us[es] his office to obtain special treatment for friends" in violation of Rule 4(a)(1)(A); engages in "abusive conduct" by "treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner" in violation of Rule 4(a)(2)(B); and "discriminate[s] against various races, religions, and national origins" in violation of Rule 4(a)(3). Compl. at 2.

There is no factual basis for any of these allegations. Neither the hiring boycott nor the Columbia letter supports the complainant's assertion that Judge Vaden engages in abusive or discriminatory conduct or uses his office to obtain favors for friends.

Likewise, not much needs to be said about the complainant's baseless hypothesis that the judges who signed the letter may have conspired with foreign governments or outside organizations and that Judge Vaden might be "a foreign agent masquerading as a federal judge." These rash allegations are frivolous.

A misconduct complaint may be summarily dismissed if the allegations are either frivolous or "lack[] sufficient evidence to raise an inference that misconduct has occurred." § 352(b)(1)(A)(iii). When misconduct allegations are "facially incredible or so lacking in indicia of reliability that no further inquiry is warranted," summary dismissal under § 352(b)(1)(A)(iii) is proper. RULES FOR JUD.-CONDUCT PROCEEDINGS, r. 11(c)(1)(C) cmt. These allegations can be dismissed without further analysis.

B. Remaining Claims

Only two claims remain. The complainant alleges that Judge Vaden's participation in the hiring boycott and the Columbia letter amounts to inappropriate partisan political activity in violation of Rule 4(a)(1)(D). Compl. at 2. Last, he claims that the hiring boycott and the Columbia letter are likely to cause a substantial and widespread lowering of public confidence in the courts in violation of Rule 4(a)(7). *Id.*

i. Partisan or political activity?

Rule 4(a)(1)(D) provides that cognizable misconduct includes "engaging in partisan political activity or making inappropriately partisan statements." Nothing about the judges' hiring boycott is partisan, and their letter to Columbia's president contains no partisan statements. Judge Vaden did not violate this rule.

For completeness we have also considered whether the boycott or the Columbia letter violates Canon 5 of the Code of Conduct, which is broader than Rule 4(a)(1)(D) and describes a set of ethical norms under the general heading "A Judge Should Refrain From Political Activity." CODE OF CONDUCT FOR UNITED STATES JUDGES, Canon 5. Sections A and B of Canon 5 provide greater specificity. Section A says that a judge should not hold any official position in a political organization; make speeches for, or publicly endorse or oppose, a political organization or candidate; or solicit or make financial contributions to a political organization or candidate. *Id.* Canon 5A(1)–(3). Section B says that a judge should resign from judicial office before becoming a candidate for election to any other office. *Id.* Canon 5B. These sections of Canon 5 do not apply here.

Section C is a catchall provision. It states very generally that "[a] judge should not engage in any other political activity." *Id.* Canon 5C. But there is a qualifier. Section

C also states: "This provision does not prevent a judge from engaging in activities described in Canon 4." *Id.* Canon 4, in turn, permits judges to "speak, write, lecture, and teach on both law-related and nonlegal subjects"—provided, however, that these activities are not inconsistent with the obligations of judicial office. *Id.* Canon 4.

Section C of Canon 5 is arguably relevant here, but its general caution against "any other political activity" should be understood against the backdrop of the language in Sections A and B, which cover specific activities related to political parties, candidates, and elections. Though its language sweeps far more broadly than the provisions that come before it, Section C—like all the conduct canons—is a rule of reason and should be applied as such. At its most expansive, the phrase "any other political activity" could reach conduct no one thinks a federal judge must avoid (*e.g.*, voting, attending a mayoral candidate's speech at the local Rotary Club, or supporting the parent-teacher association at her child's school). Moreover, any application of Section C must account for the First Amendment rights of federal judges, which makes line drawing both sensitive and difficult in this area. The safe harbor for activities permitted by Canon 4 does some of the work of cabining the broad scope of Section C, but by no means all.

Resolving this complaint does not require us to clarify the boundaries of Canon 5C or to strike a balance between the free-speech rights of federal judges and the ethical obligations of the judicial office. Nor is there any need to demarcate the line between permissible Canon 4 activities and prohibited Canon 5C activities. The hiring boycott and the Columbia letter do not cross into impermissible political territory in violation of Canon 5C.

To be sure, the issues underlying and surrounding the Columbia protests have been politicized, but the letter to Columbia's president focused on the university's response to the campus disruptions and did not weigh in on the war in Gaza or the Israeli-Palestinian conflict. The letter referred to the assaults, threatening behavior, property damage and occupation of university buildings and public spaces that had occurred on campus. The letter also drew attention to what the judges viewed as a double standard in the enforcement of university rules regarding the use of campus facilities, threats against members of the university community, and the protection of free-speech rights. The letter expressed disdain for the antisemitism, bigotry, and lawlessness that the judges believed Columbia had not adequately punished or curtailed, but it did not take a position on any of the issues underlying the protests. And the criticism of the university's administration was directed at explaining why the judges had lost confidence in Columbia as a source of law-clerk candidates.

As Chief Judge Kaplan noted in dismissing identical misconduct allegations, the fact that "elected officials and others *politicized* [these] issues does not mean that the

judges were engaged in improper *political activity* when they wrote to the university to explain their loss of confidence in it as an institution of higher learning and what changes they believe[] [are] necessary to restore the university's reputation." Kaplan Order at 4 (emphasis in original). *See also* Richman Order at 4 ("While the subject of the protesters' cause has been viewed as highly political, the judges' reasoning behind their boycott is not."). We agree. Judge Vaden did not engage in inappropriate partisan or political activity.

ii. Likely to diminish public confidence in the federal courts?

Finally, the complainant alleges that Judge Vaden violated Rule 4(a)(7), which provides that cognizable misconduct includes "conduct outside the performance of official duties if the conduct is reasonably likely to … [cause] a substantial and widespread lowering of public confidence in the courts among reasonable people." On its face, this rule pertains to conduct *outside* a judge's official duties. Hiring law clerks is an official duty, so the rule doesn't directly apply here. Still, the rule reflects a general concern that a judge's conduct, wherever it occurs, may affect the integrity and public perception of the courts or the obligations of the judicial office. That same general concern animates Canons 1, 2, 3, and 4 of the Code of Conduct, so we have reviewed those ethical canons to determine whether either the law-clerk hiring boycott or the Columbia letter violates the statutory misconduct standard.

a. The law-clerk hiring boycott

Law clerks are integral to the work of the federal judiciary, so hiring clerks is a vitally important task for all federal judges. Because law clerks are directly involved in the decisional work of the court, the job entails access to sensitive and highly confidential information and requires a high degree of discretion in addition to legal acumen and sound judgment. For these reasons, the professional relationship between judges and their law clerks is ordinarily quite close and requires trust and confidence in the clerk's ability to carry out the unique requirements of the role. Commensurate with the importance and sensitivity of the position, judges have broad discretion in the selection of their law clerks.

Other than rules governing human-resources matters—*e.g.*, length of tenure, compensation and benefits, background checks, and the like—the Judicial Conference has prescribed few requirements or criteria for choosing among otherwise qualified law-clerk candidates. A judge cannot make selection decisions that violate affirmative prohibitions codified in the rules—notably, rules against discrimination on the basis of race, national origin, sex, or religion (among other improper grounds), and anti-nepotism rules. *See* RULES OF JUD.-CONDUCT PROCEEDINGS, r. 4(a)(3); *id*. r. 4(a)(1)(A) (explaining that cognizable misconduct includes "using the judge's office to obtain special treatment for friends or relatives"). Canon 3B(3) of the Code likewise proscribes

discrimination and nepotism, and more broadly provides that "a judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism." CODE OF CONDUCT, Canon 3B(3).

Except to the extent prohibited by these regulations and guidelines, judges have wide discretion to establish their own screening and selection criteria in appointing law clerks. This latitude permits judges to make distinctions among applicants based on their own determinations of the relevant criteria or qualifications, including where the applicants were educated. Some judges only hire graduates of certain law schools. Some tailor their preferences to the specific needs of their court or chambers—for example, by looking for candidates from law schools with excellent writing or trial advocacy programs or strong core curricula in relevant subject areas. Relatedly, some judges only consider candidates with a GPA in the top 10 or 20 percent of their law-school class (or some other academic cutoff). Some require membership in the law review or moot-court team. Others prioritize candidates from law schools in their state or circuit.

In the same way, a judge may refuse to hire law clerks from a law school or university that has, in the judge's view, failed to foster important aspects of higher education like civility in discourse, respect for freedom of speech, and viewpoint nondiscrimination. Accordingly, the law-clerk hiring boycott is neither inconsistent with the integrity of the judicial office nor likely to diminish public confidence in the judiciary.

b. The Columbia letter

We turn now to the letter to Columbia's president explaining the reasons for the boycott. In a broad sense, Canons 1, 2, and 4 are at least arguably relevant here. Canon 1 says that judges "should maintain and enforce high standards of conduct and should personally observe those standards so that the integrity and independence of the judiciary may be preserved." *Id.* Canon 1. Canon 2A provides that judges should "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"; Canon 2B provides that judges should not "lend the prestige of the judicial office to advance the private interests of the judge or others." *Id.* Canon 2A–B. Canon 4, as we've noted, states that judges "may speak, write, lecture, and teach on both law-related and nonlegal subjects," *provided that* these activities do not "detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, [or] lead to frequent disqualification." *Id.* Canon 4.

We see no conflict between the Columbia letter and any of these conduct norms. The letter falls within the boundaries of permissible writing on law-related—or at least law-adjacent—subjects under Canon 4. *See* Richman Order at 4–6; Pryor Order at 6–8; Kaplan Order at 2–6. The judges addressed the academic environment and pedagogical

qualities they think are necessary for universities and law schools to produce capable law clerks. They advocated in favor of an academic environment that promotes tolerance for different viewpoints, enforces free-speech rights evenhandedly, and protects students and other members of the university community against violence, bigotry, intimidation, and lawlessness. The broad goal of the letter—to improve the quality of legal education and the law clerks that serve the courts—concerns the law more generally and not the judges' private interests or the private interests of others.

True, the letter uses strong language. But it is not inflammatory when measured against the objective standards of the Code. It's worth repeating that the canons are rules of reason. The question is not whether someone might take issue with Judge Vaden's forceful criticism of the university. The question is whether the letter is likely to lead to substantial and widespread lowering of public confidence in the courts among reasonable people. On this understanding, the strong rhetorical style of the letter does not violate the canons.

In short, the Columbia letter does not detract from the dignity of the judicial office, diminish public perception of the courts, or cast doubt on Judge Vaden's impartiality in the treatment of litigants, attorneys, and legal issues that come before his court. Accordingly, the letter does not undermine the effective administration of the business of the court.

III. Conclusion

For these reasons, we dismiss the complaint pursuant to § 354(a)(1)(B).