

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>PAULA KAY HEDGEPEETH, <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>Civil No. 15-cv-0067-CG-C</b>
	)	
<b>ROBERT BENTLEY, <i>et al.</i>,</b>	)	
	)	
<b>Defendants.</b>	)	

**RESPONSE OF CHIEF JUSTICE ROY MOORE  
TO PLAINTIFFS’ MOTION TO DISMISS  
WITH REQUEST TO DISMISS WITH PREJUDICE**

**I. Procedural History**

On March 17, 2015, Defendant Chief Justice Roy Moore filed a motion to dismiss (doc. 27) and a brief in support (doc. 28). On March 19, 2015, this Court ordered the Plaintiffs to file a response to the Chief Justice’s motion to dismiss by April 9, 2015. (Doc. 32.) On March 24, 2015, prior to expiration of the time to respond to the Chief Justice’s motion to dismiss, the Plaintiffs filed a motion to dismiss of their own. (Doc. 34.) On March 26, 2015, this Court stated that in the absence of objections by Chief Justice Moore or Attorney General Strange to the Plaintiffs’ motion to dismiss, this case would be dismissed without prejudice on April 2, 2015, pursuant to Rule 41(a)(2), Fed. R. Civ. P. (Doc. 35.)

## II. Argument

If the Plaintiffs' filing of their own motion to dismiss is deemed to be a waiver of their opportunity to file a response to the Chief Justice's motion to dismiss, then the Chief Justice's motion should be considered as unopposed. In that event, because the Chief Justice has briefed the merits, the dismissal should be with prejudice.<sup>1</sup> “[W]ith prejudice’ is an acceptable form of shorthand for ‘an adjudication on the merits.’” *Semtek Int’l, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001) (quoting 9 Wright & Miller, *Fed. Prac. & Proc.* § 2373 (1981)). See also *Versa Products, Inc. v. Home Depot USA, Inc.*, 387 F.3d 1325, 1327 (11th Cir. 2004) (noting that a dismissal with prejudice “goes to the merits of the case”) (quoting *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 603 (5th Cir. 1976)).

When the Plaintiffs failed timely to respond to Governor Bentley’s motion to dismiss, the Governor on March 20, 2015, requested this Court to deem his motion to

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<sup>1</sup>In his Brief in Support of Motion to Dismiss, (doc. 28, at 7-10), the Chief Justice demonstrated that the Plaintiffs had failed to state a claim upon which relief could be granted. See Rule 12(b)(6), Fed. R. Civ. P. This merits argument explained that the complaint was inadequate on its face to state a claim under the prevailing *Twombly/Iqbal* standard because it contained only a brief conclusory allegation devoid of factual enhancement. Further, the Chief Justice explained that, as a matter of fact, the Administrative Order of February 8, 2015, correctly stated that the Alabama probate judges were not bound by this Court’s orders of January 23 and January 28, 2015. Thus, the plain language of the Administrative Order refuted the allegation in the complaint that the Chief Justice “issued an order directing the Probate Courts to disobey this Court’s orders.”

dismiss to be unopposed and to grant him a dismissal with prejudice. (Doc. 33). This Court granted that motion on March 26, 2015 (doc. 35), even though the Plaintiffs had filed their motion to dismiss on March 24, 2015.

Additionally, the same day the Plaintiffs filed their motion to dismiss in this case, they also filed a similarly-styled motion to dismiss in *Searcy v. Davis*, No. 1:15-cv-104 (S.D. Ala.) (“*Searcy II*”). (*Searcy II* Doc. 34). The day after that filing, Defendant Don Davis filed a response that requested dismissal with prejudice. (*Searcy II* Doc. 35.) In that response Judge Davis argued that the cross-motion to dismiss rendered his own motion to dismiss unopposed and warranted a dismissal with prejudice. In support of this result, Judge Davis quoted the following authority:

“Granting an unopposed motion is similar to granting a default judgment against a defendant who fails to respond. See Fed. R. Civ. P. 55. And default judgments are treated as conclusive and final adjudications that are given the same effect as a judgment rendered on the merits.” *Hosseinzadeh v. Green Point Mortg. Funding, Inc.*, 577 Fed. Appx. 925, 929 (11th Cir. 2014).

(*Searcy II* Doc. 35, at 3.) The day after Judge Davis filed his response to Plaintiffs’ motion to dismiss in *Searcy v. Davis*, this Court granted his request and dismissed that case with prejudice. (*Searcy II* Doc. 36.)

Consistent with this Court’s actions in granting Governor Bentley a dismissal with prejudice in this case and granting Judge Davis a dismissal with prejudice in *Searcy v. Davis*, the Plaintiffs’ cross-motion to dismiss in this case should be

construed as a waiver of opposition to Chief Justice Moore's motion to dismiss, thus warranting a dismissal with prejudice.

### **III. Conclusion**

For the reasons set forth above, Chief Justice Roy Moore requests that the Plaintiffs' claims against him in this case be dismissed with prejudice.

Respectfully submitted this 2<sup>nd</sup> day of April, 2015.

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### **Certificate of Service**

I hereby certify that on this 2<sup>nd</sup> day of April, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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