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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

JORDAN ZAHLER,	:
Plaintiff,	:
	:
v.	: Civil No.: 5:25-cv-
	04215-JMG
	:
JACKSON LEWIS P.C., et al,	:
Defendants.	:

ORDER

AND NOW, this 9th day of March, 2026, upon consideration of Defendants' Motion to Dismiss (ECF No. 27) and the Court's Order dated February 11, 2026 (ECF No. 47) granting the Motion to Dismiss in part and permitting Plaintiff to file an Amended Complaint as to the claims dismissed without prejudice, and it appearing that Plaintiff has failed to file an Amended Complaint within the time permitted, IT IS HEREBY ORDERED that all claims previously dismissed without prejudice are DISMISSED WITH PREJUDICE for failure to amend by the Court-ordered deadline.

IT IS FURTHER ORDERED that the Clerk of Court shall CLOSE this case.

BY THE COURT:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

JORDAN ZAHLER,	:
Plaintiff,	:
	:
v.	: Civil No.: 5:25-cv-
	04215-JMG
	:
JACKSON LEWIS P.C., et al,	:
Defendants.	:

MEMORANDUM OPINION

Gallagher, J. February 11, 2026

I. BACKGROUND

Plaintiff Jordan Zahler (“Plaintiff”) alleges nine causes of action against Defendants Gregory Alvarez (“Alvarez”) and his law firm, Jackson Lewis P.C. (“Jackson Lewis”) (collectively, “Defendants”). Plaintiff’s claims include whistleblower retaliation under the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. § 5567 (Count I); violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) (Count II); civil conspiracy (Count III); unauthorized practice of law (Count IV); tortious interference with business relations (Count V); defamation (Count VI); fraud (Count VII), false advertising under the Lanham Act (Count VIII); and for declaratory judgment (Count IX). Plaintiff alleges

that the action arises from Defendants' knowing representation of a phantom entity, Dejavoo Systems LLC ("Dejavoo").

Before filing this action, Plaintiff was employed by Dejavoo, and Defendants served as Dejavoo's legal counsel. In March 2024, while Plaintiff was still employed by Dejavoo, questions arose regarding whether certain credit card transactions within Dejavoo's system were properly encrypted. Compl. ¶¶ 18-21. Plaintiff asserts that his purported whistleblower status stems from this encryption issue. Defendants, however, maintain that the Complaint and its exhibits show that Dejavoo raised the encryption concern with Plaintiff and other employees, not the other way around.

Shortly after, Plaintiff's employment with Dejavoo terminated. Although Plaintiff alleges that he was fired by Dejavoo for threatening to report the encryption issue, Defendants argue that the documents attached to the Complaint contradict that narrative. Compl. ¶¶ 23-24, 40-41; *see e.g.*, Exhibit AB (April 25, 2024, Dejavoo letter advising Plaintiff that he had "failed to return to work, effectively resigning voluntarily and abandoning [his] position.>").

Plaintiff initiated two administrative proceedings arising from his termination: a whistleblower retaliation claim under the CFPA before an Occupational Safety and Health Administration ("OSHA") tribunal, and an unemployment compensation claim before the Pennsylvania Department of Labor. Compl. Exhibits AC, AB-3.

Defendants first contend that all of Plaintiff's claims are barred under the Noerr-Pennington

doctrine because they arise from Defendants' representation of Dejavoo in litigation or pre-litigation contexts. Defendants further argue that independent of Noerr-Pennington, each of Plaintiff's individual causes of action fail to state claims upon which relief can be granted. In the alternative, Defendants request that the Court stay this action pending resolution of Plaintiff's retaliatory discharge proceeding before an OSHA tribunal, asserting that the issues raised in the administrative matter substantially overlap with those presented here.

II. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "Although the plausibility standard does not impose a probability requirement, it does require a pleading to show more than a sheer possibility that a defendant has acted unlawfully." *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 786 (3d Cir. 2016) (internal quotations and citations omitted).

"Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Twombly*, 550 U.S. at 555). A court is "not compelled to accept unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation." *Wheeler v.*

Wheeler, 639 F. App'x 147, 149 (3d Cir. 2016) (quoting *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013)).

III. DISCUSSION

A. CFPA Whistleblower Retaliation Claim

Plaintiff alleges that he was improperly fired for being a whistleblower. According to Plaintiff, Defendants are liable for whistleblower retaliation under the CFPA because they participated in Plaintiff's termination, "declaring [Plaintiff's] warnings false and defamatory one day after security breaches while possessing proof of their accuracy." Compl. ¶ 40. However, Plaintiff's claim is flawed because he did not work for Jackson Lewis or Alvarez, and neither Defendant fired him. To establish a claim for whistleblower retaliation, an employee must prove, among other elements, that his employer took unfavorable action against him.

Plaintiff's claim fails as a matter of law because he has not sued a proper party here. Section 5567 of the CFPA imposes liability on a "covered person" or "service provider" that employs the whistleblower and takes adverse action against them. 12 U.S.C. 5567(a).¹ Plaintiff, however, does not sue his former employer in this suit. He instead brings this claim

¹The CFPA defines a "covered person" as one who offers or provides consumer-financial products or services, and a "service provider" as one who provides material services in connection with such products or services. 12 U.S.C. §§ 5481(6), (26). Legal representation in litigation does not constitute the offering or provision of consumer-financial services, nor does it qualify as a material service connected to such products. Accordingly, outside counsel for an employer does not fall within either statutory category and cannot be held liable under § 5567's whistleblower-retaliation provision.

against his former employer's counsel. Defendants were not his employer, did not supervise him, and did not take any employment-related action against him. Indeed, Plaintiff worked for Dejavoo (not Defendants) and was terminated by Dejavoo (not Defendants).² Because the CFPA's whistleblower does not create liability for an employer's attorneys, Plaintiff cannot satisfy the statutory elements of a Section 5567 claim and his claim for whistleblower retaliation is dismissed with prejudice.

B. RICO Claim

Plaintiff's RICO claim seeks to damages for his alleged retaliatory firing, claiming damages of loss of employment and its benefits. Defendant argues that Plaintiff does not have standing to bring a RICO claim based on his alleged retaliatory discharge because discharge from employment, even if wrongful and actionable on some other basis, is not "racketeering" activity. Defendants further argue that, even if Plaintiff had standing, he fails to plead the required racketeering activity element.

Courts have consistently held that in order for a plaintiff to assert standing, a defendant's RICO violation must have caused the plaintiff's injury. For example, in *Beck v. Prupis*, 529 U.S. 494, 505 (2000), an individual was terminated after reporting to authorities that certain company directors were

²Plaintiff attached a termination letter to his Complaint. The termination letter further establishes that Dejavoo terminated Plaintiff from his employment with Dejavoo. See Exhibit AB to Compl. The letter is addressed to Plaintiff on Dejavoo letterhead, it is signed by Dejavoo's human resources coordinator, and writes "to confirm that [Plaintiff's] employment with Dejavoo Systems, LLC has ended.").

engaged in fraud. The plaintiff in *Beck* alleged that his termination constituted an overt act in furtherance of a RICO conspiracy and thus supported a civil RICO claim. The Supreme Court, however, rejected that argument, holding that only a direct violation of Section 1962 (i.e., an actual act of racketeering) can serve as the predicate for a civil RICO cause of action. *See Beck v. Prupis*, 529 U.S. 494, 505 (2000); *see also Johnson v. Hoffa*, 196 Fed. App'x 88, 90 (3d Cir. 2006) ("An allegation that a plaintiff is injured merely by a non-racketeering act in furtherance of a broader RICO conspiracy is insufficient to confer standing under the statute.").

All RICO plaintiffs must satisfy RICO's standing provision. Section 1964(c) requires a RICO plaintiff to allege (1) an injury to the plaintiff's business or property (2) proximately caused by the defendant's RICO violation. *See In re Avandia Marketing, Sales Practices & Prod. Liab. Litig.*, 804 F.3d 633, 638 (3d Cir. 2015). Case law makes clear that "a plaintiff fired for complaining about or reporting allegedly illegal acts cannot bring a RICO claim; the plaintiff must be a direct victim of an act of racketeering." *DiGiglio v. U.S. Xpress, Inc.*, 293 F. Supp. 3d 522, 526 (E.D. Pa. 2018); *see also Beck v. Prupis*, 529 U.S. 494, 505 (2000) ("[W]e conclude that injury caused by an overt act that is not an act of racketeering or otherwise wrongful under RICO is not sufficient to give rise to a cause of action... As at common law, a civil conspiracy plaintiff cannot bring suit under RICO based on injury caused by any act in furtherance of a conspiracy that might have caused the plaintiff injury."); *Johnson v. Hoffa*, 196 Fed. App'x 88, 90 (3d Cir. 2006) ("For an overt act to qualify

as "an act of racketeering or otherwise wrongful under RICO," that act must be "independently wrongful" under some "substantive provision" of the RICO statute. An allegation that a plaintiff is injured "merely by a non-racketeering act in furtherance of a broader RICO conspiracy is insufficient to confer standing.").

This Court agrees with Defendants that Plaintiff's theory runs afoul of the rule requiring a RICO plaintiff to allege injury proximately caused by racketeering, insofar as the termination of employment is not, as a matter of law, a racketeering act. Plaintiff has likewise failed to allege any other qualifying predicate act. Under 18 U.S.C. § 1961, "racketeering activity" is limited to a defined set of federal offenses and to certain serious state-law crimes, including "murder, kidnapping, gambling, arson, robbery, bribery, [and] extortion," among others. 18 U.S.C. § 1961(1)(A). The acts Plaintiff identifies (identity theft, purported Lanham Act violations, and alleged "acquisition fraud") do not fall within the statutory definition and therefore cannot serve as predicate acts for purposes of RICO.

Plaintiff also claims obstruction of justice under 18 U.S.C. § 1503 as a predicate act, but that does not apply here. Section 1503 is directed to interference with jurors and court officers, and the facts alleged in the Complaint do not fall within its scope. 18 U.S.C. § 1503(a) (prohibiting corrupt efforts to "influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States"). Plaintiff further attempts to rely on mail and wire fraud as predicate acts. Allegations of mail or wire fraud, however, must satisfy "the heightened

pleading requirement of Federal Rule of Civil Procedure 9(b),” which demand that a plaintiff plead the “who, what, when, and where” of the alleged fraudulent conduct. *Bonavitacola Elec. Contractor, Inc. v. Boro Developers, Inc.*, 87 Fed. Appx. 227, 231 (3d Cir. 2003). Plaintiff’s Complaint provides none of these particulars and therefore fails to state mail or wire fraud as predicate acts. Simply asserting that Defendant used the mail or wires in connection with an allegedly wrongful act is insufficient.

Plaintiff’s remaining alleged predicate acts are even more attenuated. He points to Dejavoo’s purported “phantom” existence, alleged money laundering, unspecified impropriety involving PPP loans, and the submission of a position statement in an ongoing OSHA matter. Yet, Plaintiff never explains how any of these allegations relate to his claims or how they could plausibly constitute predicate acts capable of supporting a RICO cause of action, let alone how they proximately caused him any injury. The Complaint offers no coherent theory connecting these assertions to a cognizable RICO violation. Because Plaintiff fails to bridge these gaps, his RICO claim cannot stand and must be dismissed without prejudice.³

C. Civil Conspiracy Claim

Plaintiff alleges that Defendants conspired to “represent non-existent entities; conceal \$477,764 in

³Because Plaintiff is proceeding pro se, the Court permits him to amend his RICO claim unless doing so would be futile. Should Plaintiff choose to amend, he must attempt to fill the gaps in his allegations and present a coherent theory that connects his assertions to a cognizable claim.

PPP fraud; retaliate against a protected whistleblower; and obstruct federal OSHA proceedings.” Compl. ¶ 61. He further asserts that this purported conspiracy impaired his ability to pursue innovations with national-security implications, resulting in irreparable harm to himself and the public interest. *Id.* Defendants respond that the conspiracy claim fails for two independent reasons: first, an entity cannot conspire with itself; and second, Plaintiff has not identified any viable underlying tort that could support a civil conspiracy claim.

A civil conspiracy claim has three essential elements: (i) two or more persons acting in concert; (ii) an agreement between them; (iii) with the intent to commit an unlawful act or to commit a lawful act by unlawful means. *See Malmros v. Jones*, 2004 WL 632726, at *6 (E.D. Pa. Feb. 27, 2004). The first element is not satisfied where the alleged conspirators are a corporation and its officers or employees. Although “corporations and other corporate entities... are separate and legally distinct from the people they employ,” they “can only act through their officers and employees,” and thus, “the intra-company conspiracy doctrine treats allegations that a corporation and its employee conspired as really alleging that a single, corporate entity has conspired with itself. *Houser v. Feldman*, 600 F. Supp. 3d 550, 570 (E.D. Pa. 2022). Therefore, Plaintiff’s allegations that an entity has conspired with its employees fails to meet the first requirement of a civil conspiracy. Because Defendants and their board cannot, as a matter of law, conspire with one another, Plaintiff has not plausibly alleged the first element of

a civil conspiracy, and the claim must be dismissed with prejudice.⁴

D. Unauthorized Practice of Law Claim

Plaintiff asserts a claim against Alvarez for the alleged unauthorized practice of law arising from Defendants' participation in an unemployment compensation hearing and an OSHA administrative proceeding. Compl. ¶¶ 67-69. Defendant contends that the claim fails for three reasons. First, Alvarez did not engage in the authorized practice of law by representing Dejavoo in an unemployment compensation hearing because such representation does not constitute the practice of law. Second, Alvarez did not engage in the unauthorized practice of law by representing Dejavoo in the OSHA administrative hearing because participation in such a proceeding likewise is not the practice of law and does not require attorney representation. Third, a non-client has no cause of action for unauthorized practice, as violations of ethical rules governing the practice of law do not give rise to private liability. Defs.' Mot. to Dismiss, ECF No. 27.

Plaintiff's unauthorized practice of law claim fails as a matter of law because a non-client has no

⁴The conspiracy claim fails for a second, independent reason: Plaintiff has not alleged any viable underlying tort. A civil conspiracy is not a standalone cause of action but a vehicle for imposing vicarious liability for an underlying tort. *Levin v. Upper Makefield Twp.*, 2003 WL 21652301, at *11 (E.D. Pa. Feb. 25, 2003). Thus, "as a prerequisite to civil conspiracy liability, the plaintiff must prove that the defendants have some underlying tort liability." *Id.* Because Plaintiff's accompanying tort claims are subject to dismissal, the conspiracy claim necessarily fails as well.

private cause of action for such a violation. The Pennsylvania statute governing the unauthorized practice of law, 42 Pa. C.S.A. § 2524(c), authorizes criminal penalties and permits courts to issue injunctive relief, but it does not create an independent civil remedy for damages on behalf of non-clients based solely on an alleged breach of ethical or licensing rules. As Plaintiff is not, and never was, Defendant's client, and he identifies no separate actionable tort or statutory violation beyond the alleged unauthorized practice itself, the Court need not reach the substance of the claim, and it will be dismissed with prejudice.

E. Tortious Interference with Business Relations Claim

Plaintiff next asserts a claim for tortious interference with business relations. He alleges that he had secured "federal contractor registrations, joining the US Faster Payment Council's QR Code Interface Working Group" and was "leveraging his licensed camera-less QR code technology," but these efforts were "systematically undermined by Defendants' ongoing retaliation." Compl. ¶ 73. He further contends that Defendants intentionally interfered with his business prospects by "publishing false statements about Plaintiff's disclosures; facilitating wrongful termination; destroying Plaintiff's professional reputation; and causing financial hardship," which he claims resulted in the loss of key industry relationships, innovation partnerships, and opportunities to engage with other stakeholders. *Id.* at ¶ 74. According to Plaintiff, these actions caused him to lose business opportunities and suffer economic harm.

To state a claim for tortious interference with contractual relations, a plaintiff must allege: (1) existing or prospective contractual relations with a third party; (2) purposeful action by the defendant intended to harm that relation or prevent it from occurring; (3) the absence of privilege or justification; and (4) actual legal damage as a proximate result of defendant's conduct. *Maverick Steel Co. v. Dick Corp./Barton Malow*, 54 A.3d 352, 355 (Pa. Super. 2012). Where the claims involve a prospective contractual relationship, the plaintiff must show "something more than a mere hope," specifically "an objectively reasonable probability that such a contract would arise." *UniStrip Techs., LLC v. LifeScan, Inc.*, 153 F. Supp. 3d 728, 742 (E.D. Pa. 2015). This requires demonstrating that, absent the alleged interference, a contract likely would have been formed. *Id.*

Plaintiff's claim for tortious interference must be dismissed because the Complaint does not adequately plead the elements of the cause of action. Plaintiff contends that his "federal contractor status and provisional patents constituted concrete business prospects destroyed by Defendant's actions." Pl.'s Opp'n to Defs.' Mot. to Dismiss, ECF No. 30. This conclusory allegation does not remedy the deficiencies in Plaintiff's Complaint. Plaintiff identifies no specific business relationships or prospective contractual opportunities, nor does he plausibly allege how Defendants' conduct intentionally or improperly interfered with any such identified relationships. Without factual allegations describing the particular opportunities purportedly lost and the manner in which Defendants' conduct caused that loss, Plaintiff

has not stated a viable claim for tortious interference.⁵

F. Defamation Claim

Plaintiff brings a claim for defamation per se, alleging that “Defendant Jackson Lewis published to third parties that Plaintiff’s security warnings were false and defamatory.” Compl. ¶ 78. Plaintiff contends that these statements were untrue, asserting that Defendants possessed reports corroborating the accuracy of his warnings and that, only weeks later, Defendants’ client, Dejavoo, acquired a company to replace the very technology Plaintiff had identified. In Plaintiff’s view, the acquisition of replacement technology so soon after labeling his warnings “false” demonstrates that the warnings were, in fact, accurate. Plaintiff further alleges that Defendants’ statements harmed him by prejudicing third parties against him, damaging his professional reputation, and causing actual reputational and economic injury. He also asserts that Defendants acted with actual malice, claiming that they knew the statements were false when made.

Defendants contend the defamation claim must be dismissed because the challenged statements were directed to Plaintiff’s attorney, not to Plaintiff. The email containing the alleged defamation reflects that Plaintiff’s former attorney, Tucker Hull (“Hull”), sent

⁵Plaintiff’s claim for tortious interference with business relations is dismissed without prejudice, and Plaintiff is granted leave to amend. Should he choose to amend, he must adequately plead the elements of the claim by identifying specific business relationships or prospective contractual opportunities and alleging how Defendants’ conduct intentionally or improperly interfered with those identified relationships.

correspondence to Alvarez, and the allegedly defamatory statements appeared in Alvarez's response to Hull's email.⁶ As Defendants note, the email was addressed and sent to Hull, and it begins by stating "[W]e are appalled by your [Hull's] letter that is replete with false and defamatory allegations." Defs.' Mot. to Dismiss, Exhibit 4. Defendants argue that the alleged defamation was directed to Hull, and not to Plaintiff. In addition, Defendants contend that, even if the alleged defamation applied to Plaintiff, it is protected by the litigation privilege and not actionable as a matter of law.

To state a claim for defamation, a plaintiff must allege: (1) the defamatory character of the communication; (2) its publication by the defendant; (3) that the communication applies to the plaintiff; (4) that the recipient understood its defamatory meaning; (5) that the recipient understood it as referring to the plaintiff; and (6) special harm resulting to the plaintiff for its publication. *See* 42 Pa. C.S.A. § 8343(a); *Syngy, Inc. v. Scott-Levin, Inc.*, 51 F. Supp. 2d 570, 579–80 (E.D. Pa. 1999). A claim for defamation per se further requires that the challenged words impute one of the following: (1) a criminal offense, (2) a loathsome disease, (3) business misconduct, or (4) serious sexual misconduct.

⁶Plaintiff attached only a portion of this email as Exhibit X to his Complaint. The full email chain was provided by Defendants and attached to their Motion to Dismiss as Exhibit 4. The Court relies on this email because, as here, when a document attached to a Motion to Dismiss "is integral or explicitly relied upon" in Plaintiff's Complaint, the document may be considered. *Douglas v. Kensington Cmty. Corp. for Individual Dignity*, 775 F. Supp. 3d 881, 891 (E.D. Pa. 2025).

Clemente v. Espinosa, 749 F. Supp. 672, 677 (E.D. Pa. 1990).

The litigation privilege confers immunity on communications made in connection with judicial proceedings that are “pertinent and material to the redress or relief sought.” *Ralston v. Garabedian*, 676 F. Supp. 3d 325, 340 (E.D. Pa. 2021). This privilege extends beyond statements made in open court to encompass pleadings and informal communications, including “preliminary conferences and correspondence between counsel undertaken in furtherance of the client’s interest.” *Weiser Law Firm, P.C. v. Hartleib*, 665 F. Supp. 3d 647, 663 (E.D. Pa. 2023) (citing *Richmond v. McHale*, 35 A.3d 779, 785 (Pa. Super. Ct. 2012)). Courts have consistently held that “statements by judges, attorneys, witnesses and parties in the course of or pertinent to any stage of judicial proceedings are absolutely privileged and, therefore, cannot form the basis for liability for defamation.” See *Richmond v. McHale*, 35 A.3d 779, 785 (Pa. Super. Ct. 2012); *Binder v. Triangle Publications, Inc.*, 442 Pa. 319, 275 A.2d 53 (1971); *Post v. Mendel*, 510 Pa. 213, 507 A.2d 351 (1986); *Triester v. 191 Tenants Association*, 272 Pa. Super. 271, 415 A.2d 698 (1979). The privilege likewise applies to pre-litigation communications, or those made “prior to the institution of proceedings,” when they are “pertinent and material” to the dispute and issued in the ordinary course of preparing for contemplated proceedings. *Greenberg v. McGraw*, 161 A.3d 976, 982 (Pa. Super. 2017); see also *Milliner v. Enck*, 709 A.2d 417, 420 (Pa. Super. 1998) (“It is clear that an allegedly defamatory communication is absolutely privileged when it is published prior to a

judicial proceeding as long as that communication has a bearing on the subject matter of the litigation.”).

Plaintiff's defamation claim must be dismissed because Defendants' alleged statements are barred by the litigation privilege. The email at issue was a communication between attorneys concerning the subject matter of an ongoing dispute and was made in furtherance of their respective clients' interests. Such communications, even if made in an informal email exchange between counsel, are absolutely privileged so long as they are pertinent to the contemplated or ongoing proceedings. The characterization of Plaintiff's warnings as “false and defamatory” falls squarely within this protection. Because the privilege applies even to pre-litigation communications that are material to the dispute and made in the ordinary course of preparing for litigation, the statements here cannot, as a matter of law, form the basis of a defamation claim. Accordingly, Plaintiff's defamation claim is dismissed with prejudice.

G. Fraud Claim

Plaintiff alleges Defendants committed fraud by materially misrepresenting that “[Dejavoo] was a legitimate entity,” that “Plaintiff's warnings were false,” and “that their client [Dejavoo] did not violate consumer protection laws.” Compl. ¶ 84. He further asserts that these statements were fraudulent because they “were made to induce reliance by tribunals and third parties.” *Id.* at ¶ 86. Defendants contend that the fraud claim must be dismissed because Plaintiff has not alleged that he relied on any purported misrepresentation and has not satisfied the heightened pleading requirements applicable to fraud. Defendants note that Plaintiff appears to

concede the reliance deficiency, pointing out that Plaintiff stated, “Regarding fraud, the relevant reliance was by tribunals and agencies who accepted Defendants’ false representations about phantom entities,” rather than by Plaintiff himself. Pl.’s Opp’n to Defs.’ Mot. to Dismiss, ECF No. 30.

A fraud claim requires a plaintiff to allege: (1) a misrepresentation; (2) the materiality of that misrepresentation; (3) its falsity; (4) an intent to mislead; (5) justifiable reliance; and (6) resulting injury proximately caused by that reliance. *Santana Prods. Inc. v. Bobrick Washroom Equip., Inc.*, 401 F.3d 123, 136 (3d Cir. 2005). Particularly relevant here, a plaintiff must show that it “justifiably relied on the misrepresentation” to state a fraud claim. *N. Penn Towns, LP v. Concert Golf Partners, LLC*, 554 F. Supp. 3d 665, 708 (E.D. Pa. 2021). Fraud allegations are also subject to Rule 9(b)’s heightened pleading standard, which requires a party to “state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). Because Plaintiff acknowledged that he has not alleged one of the essential elements of fraud, the claim cannot stand and must be dismissed with prejudice.

H. Lanham Act False Advertising Claim

Plaintiff’s Lanham Act false-advertising claim is based on the allegation that Dejavoo falsely represented that its transactions were encrypted. Compl. ¶¶ 90-93. Defendants contend that the claim fails as to them because the challenged advertising was created and disseminated by their client, Dejavoo, not by Defendants themselves. They note that the Complaint contains no factual allegations showing that Defendants participated in, contributed

to, or had any role in the alleged advertising. Defendants further contend that Plaintiff's only attempt to link Defendants to this claim is Plaintiff's assertion that the representation, "published more than a year after Plaintiff's termination" occurred while Defendants continued representing Dejavoo. Compl. ¶ 91. Defendants argue that the Lanham Act does not impose liability for another party's advertising, and because Plaintiff has not alleged that they engaged in any actionable advertising conduct, he has failed to plead the elements of a false-advertising claim against them.

The Court agrees. While Plaintiff argues that Defendants were "active participants in commercial fraud" because of their "defense of" Dejavoo's allegedly false advertising, the law is clear. A Lanham Act false advertising claim requires that a defendant has made "false or misleading statements." *Johnson & Johnson-Merck Consumer Pharmaceuticals Co. v. Rhone-Poulenc Rorer Pharmaceuticals, Inc.*, 19 F.3d 125, 129 (3d Cir. 1994). Plaintiff has not alleged that Defendants made any false or misleading statements about a product, intended to deceive consumers, or to influence purchasing decisions in interstate commerce, nor has he alleged injury of the type the Lanham Act protects, such as diminished sales or loss of good will. *Warner-Lambert Co. v. Breathasure, Inc.*, 204 F.3d 87, 91-92 (3d Cir. 2000). This claim is therefore dismissed.⁷

⁷Plaintiff's false advertising claim is dismissed without prejudice, and he is granted leave to amend. Should he choose to amend, he must specifically plead the elements of the claim, including identifying the particular false or misleading statements allegedly made by Defendants.

I. Declaratory Judgment

Plaintiff seeks a series of declarations, including that he is a protected whistleblower under the CFPA; that Dejavoo Systems, LLC does not exist in New York; that Defendants violated federal and state law, obstructed justice, committed fraud, and engaged in racketeering activity; and that Alvarez engaged in the unauthorized practice of law while Jackson Lewis represented “phantom entities.” Defendants contend that the declaratory judgment claim must be dismissed because the relief requested is duplicative of Plaintiff’s other claims. This Court agrees.

The Court declines to issue declaratory relief and dismisses the declaratory judgment claim. Declaratory relief is discretionary, and courts routinely decline to entertain such claims where the requested declaration would merely duplicate the relief available through other causes of action. *LM Gen. Ins. Co. v. LeBrun*, 470 F. Supp. 3d 440, 455 (E.D. Pa. 2020). When adjudication of the remaining claims will necessarily resolve the issues underlying the request for declaratory judgment, such relief serves no useful purpose. Accordingly, because Plaintiff’s request for a declaration rests on the same facts and legal theories as his other claims, the declaratory judgment claim is dismissed.⁸

⁸As noted, Plaintiff’s request for declaratory relief is based on the same facts and legal theories underlying his substantive claims and therefore cannot stand independently. While this claim is dismissed without prejudice, and Plaintiff may amend his claim, he may not seek declaratory relief premised on any causes of action dismissed with prejudice.

J. Noerr-Pennington Doctrine

Defendants assert that Plaintiff's claims are also barred by the Noerr-Pennington doctrine. They maintain that they are immune from liability because each allegation of misconduct arises from their legal representation of Plaintiff's former employer, Dejavoo, including their communications with Plaintiff and his former counsel regarding Plaintiff's false-advertising allegations and termination, their representation of Dejavoo in OSHA and unemployment proceedings, and their settlement discussions with Plaintiff. They argue that, as a matter of law, all of the conduct alleged as wrongdoing constitutes protected petitioning activity and is therefore immune from liability.

Notwithstanding the extensive briefing on this issue, the Court need not address the merits of the Noerr-Pennington doctrine at this stage. The applicability of the doctrine, along with the competing arguments concerning the sham-litigation exception, need not be resolved because the Court dismisses Plaintiff's claims on independent grounds. Specifically, as set forth above, each of the challenged claims fails to state a claim upon which relief can be granted under Rule 12(b)(6). Accordingly, at this time, further analysis of the Noerr-Pennington argument is unnecessary to the disposition of this matter.

IV. CONCLUSION

This case reaches its end with the simple absence of any viable claim.⁹ For the foregoing reasons, each of Plaintiff's claims fails to state a legally cognizable cause of action. Defendant's Motion to Dismiss (ECF No. 27) is therefore GRANTED. An appropriate Order follows.

BY THE COURT:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge

⁹As a final matter, the Court acknowledges that Plaintiff has filed a Petition for Writ of Mandamus with the Third Circuit and, in this Court's view, that petition lacks merit. Moreover, despite the pendency of that petition, Plaintiff has not sought a stay of these proceedings, and the Court sees no basis on which such a request would be granted. The Court therefore issues its ruling on Defendants' Motion to Dismiss notwithstanding the Petition for Writ of Mandamus.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

JORDAN ZAHLER,	:
Plaintiff,	:
	:
v.	: Civil No.: 5:25-cv-
	04215-JMG
	:
JACKSON LEWIS P.C., et al,	:
Defendants.	:

ORDER

AND NOW, this 11th day of February, 2026, upon consideration of Defendants' Motion to Dismiss (ECF No. 27), Plaintiff's Opposition to Defendants' Motion to Dismiss (ECF No. 30), and Defendants' Response in Support of its Motion to Dismiss (ECF No. 32), IT IS HEREBY ORDERED that, for the reasons set forth in the accompanying Memorandum:

1. Defendants' Motion to Dismiss is GRANTED;
2. Plaintiff's claims for whistleblower retaliation under the Consumer Financial Protection Act, civil conspiracy, unauthorized practice of law, defamation, and fraud are DISMISSED WITH PREJUDICE;
3. Plaintiff's claims for violations of the Racketeer Influenced and Corrupt

Organizations Act, tortious interference with business relations, false advertising, and declaratory judgment are **DISMISSED WITHOUT PREJUDICE**;

4. If Plaintiff wishes to file an Amended Complaint, he must do so on or before Wednesday, March 4, 2026, as to those claims dismissed without prejudice.

BY THE COURT:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge

ALD-083 NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 26-1201

In re: JORDAN ZAHLER,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Eastern District
of Pennsylvania

(Related to E.D. Pa. Civ. No. 5:25-cv-04215)

Submitted Pursuant to Rule 21, Fed. R. App. P.
February 12, 2026

Before: SHWARTZ, FREEMAN, and CHUNG,
Circuit Judges

(Opinion filed: February 25, 2026)

OPINION*

PER CURIAM

Pro se petitioner Jordan Zahler seeks a writ of mandamus asking us to intervene in his civil action filed in the District Court. We decline to issue the requested writ.

Zahler brought a civil action against Gregory Alvarez, Jackson Lewis P.C., and unnamed members of that law firm's Board of Directors. The law firm represented Zahler's former employer. The named defendants moved to dismiss the complaint or, alternatively, to stay the proceeding. Zahler opposed the motion. He also requested entry of default

*This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

judgment against the named defendants because they did not file an answer, and they did not meet and confer with Zahler before moving to dismiss.

Meanwhile, Zahler twice moved for the recusal of the assigned District Court Judges. The District Court granted the first motion, and the case was reassigned. The basis for the second recusal motion was that one of the law firm's attorneys was appearing before the newly assigned District Court Judge in a different case. That same attorney had represented Zahler's former employer in Zahler's unemployment compensation appeal hearing. The District Court denied the motion. Zahler filed a motion for reconsideration, which the District Court also denied. Then, the District Court granted the defendants' motion to dismiss, offering Zahler leave to amend some of his claims.

Zahler has filed a mandamus petition requesting that we 1) direct the District Court Clerk to enter default judgment against the named defendants; 2) reassign the civil action to a different Judge; and 3) "[r]efer this matter to the Judicial Council of the Third Circuit for review of the repeated assignment of conflicted judges to this case[.]"

"The writ of mandamus is an extreme remedy reserved for only the most extraordinary situations." *In re Abbott Lab's*, 96 F.4th 371, 379 (3d Cir. 2024) (citation modified). The petitioner must show: "(1) a clear and indisputable abuse of discretion or error of law, (2) a lack of an alternate avenue for adequate relief, and (3) a likelihood of irreparable injury." *Id.* (citation omitted). A writ of mandamus may be warranted where "undue delay is tantamount to a

failure to exercise jurisdiction.” *Madden v. Myers*, 102 F.3d 74, 79 (3d Cir. 1996).

Zahler has not demonstrated his entitlement to such extraordinary relief. *See Abbott Lab’s*, 96 F.4th at 379. To the extent that Zahler’s mandamus petition could be construed as seeking an order compelling the District Court’s adjudication of the defendants’ motion to dismiss, that request is now moot. *See Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698–99 (3d Cir. 1996). Further, there is no reason why Zahler cannot challenge the District Court’s decision to grant the defendants’ motion to dismiss, or its implicit decision not to enter default judgment against the defendants, on appeal. *See Abbott Lab’s*, 96 F.4th at 379.¹

We also will not disturb the District Court Judge’s decision not to recuse under 28 U.S.C. § 455(a). *See Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 163 (3d Cir. 1993) (explaining that our mandamus power includes authority to review a district court judge’s refusal to recuse under § 455(a)). We review that decision for an abuse of discretion. *See In re Kensington Int’l Ltd.*, 368 F.3d 289, 300–01 (3d Cir. 2004). A judge should disqualify herself if a reasonable person who is aware of all the facts might reasonably question her impartiality. *See id.* at 301–02. Here, the District Court properly explained that the attorney’s involvement in an unrelated case did not create an appearance of impropriety or provide a

¹To the extent that the District Court’s order granting the defendants’ motion to dismiss did not implicitly reject Zahler’s request for default judgment, any delay in adjudicating that request has not approached a failure to exercise jurisdiction. *See Madden*, 102 F.3d at 79.

reasonable basis to question the District Court Judge's impartiality.

Furthermore, we decline to refer this matter to the Judicial Council because there is no evidence of repeated assignment of conflicted judges, and Zahler has provided no other basis for referral. For these reasons, we will deny the mandamus petition.²

²To the extent that Zahler asks us to “[s]tay the District Court’s ... Order” granting the defendants’ motion to dismiss, “including the ... amendment deadline,” we conclude that relief is not warranted.

ALD-083

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 26-1201

In re: JORDAN ZAHLER,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Eastern District
of Pennsylvania

(Related to E.D. Pa. Civ. No. 5:25-cv-04215)

Submitted Pursuant to Rule 21, Fed. R. App. P.
February 12, 2026

Before: SHWARTZ, FREEMAN, and CHUNG,
Circuit Judges

ORDER

PER CURIAM:

This cause came to be considered on a petition for writ of mandamus submitted on February 12, 2026. On consideration whereof, it is now hereby

ORDERED by this Court that the petition for writ of mandamus be, and the same is, denied. All of the above in accordance with the opinion of the Court.

DATED: February 25, 2026

cc: Jordan Zahler

All Counsel of Record

Patricia S. Dodszeit, Clerk

No. 26-1201
**IN THE UNITED STATES COURT OF
APPEALS
FOR THE THIRD CIRCUIT
IN RE JORDAN ZAHLER,
Petitioner.**

Related District Court Case: **Zahler v. Jackson
Lewis P.C., et al.**
Civil Action No. 5:25-cv-04215-JMG
United States District Court for the Eastern District
of Pennsylvania

**EMERGENCY SUPPLEMENTAL NOTICE IN
SUPPORT OF
PENDING PETITION FOR WRIT OF
MANDAMUS**

**I. POST-PETITION DISTRICT COURT
ACTIONS**

January 22, 2026: Judge Gallagher denies Petitioner's Motion for Recusal applying a subjective "routine" standard. (Dkt. 41). Petitioner files a Motion for Reconsideration the same day identifying the legal error and citing this Court's objective standard under *In re Kensington International Ltd.*, 368 F.3d 289, 301 (3d Cir. 2004). (Dkt. 42).

January 29, 2026: Petitioner files this Emergency Petition for Writ of Mandamus.

January 30, 2026, 9:41 AM: The Petition is uploaded to the District Court docket as Document 44.

January 30, 2026, 11:53 AM: Two hours and twelve minutes later, Judge Gallagher denies Petitioner's Motion for Reconsideration. (Dkt. 45). The original recusal motion had been pending sixteen

days. The reconsideration motion had been pending eight days. Judge Gallagher ruled within two hours and twelve minutes of the mandamus appearing on his docket.

February 11, 2026: Judge Gallagher issues a 17-page Memorandum Opinion dismissing the entire case. (Dkt. 46, 47). Five claims dismissed with prejudice. Four dismissed without prejudice with leave to amend by March 4, 2026. In footnote 9, Judge Gallagher opines that this pending Petition “lacks merit.”

II. THE PROCEDURALLY DEFICIENT MOTION

The Petition informed this Court that Judge Gallagher’s own Policies and Procedures state: “The Court will deny a 12(b)(6) motion that does not meet these requirements.” (Petition, ¶¶ 16, 42). Defendants’ admitted they did not meet them. (Dkt. 38).

On February 11, Judge Gallagher granted the motion his own published policy requires him to deny. The Opinion does not mention the meet-and-confer requirement. It does not address Defendants’ admission. It does not explain why his published policy does not apply.

The Opinion concludes: “This case reaches its end with the simple absence of any viable claim.” (Dkt. 46, p. 17). The Complaint was filed on July 22, 2025. The motion to dismiss was filed on September 8, 2025. The motion remained pending for 156 days. The ruling issued thirteen days after the mandamus petition appeared on the docket.

The District Court’s post-Petition actions confirm the question presented in Issue 1 of the

Petition: whether mandatory duties under federal law remain mandatory, or whether they become optional when the party seeking enforcement proceeds pro se and the defendant is an Am Law 100 firm. (Petition, Issue 1).

III. THIS COURT'S RECUSAL STANDARD

This Court's recusal standard is objective: whether "a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *In re Kensington Int'l Ltd.*, 368 F.3d 289, 301 (3d Cir. 2004); *United States v. Wecht*, 484 F.3d 194, 213 (3d Cir. 2007).

Judge Gallagher applied a subjective standard in Document 41. Petitioner identified the error in Document 42, citing *Kensington* and *Wecht*. Two hours and twelve minutes after the mandamus appeared on his docket, Judge Gallagher repeated the same error in Document 45—citing *Liljeberg* while applying *Liteky* to reach a subjective conclusion. He was given the opportunity to correct the error. He declined. Twelve days later, he dismissed the entire case.

On January 29, 2026, the Petition informed this Court that Judge Gallagher was not following his own published rules and was not applying this Court's binding recusal standard. Since that date, Judge Gallagher has denied reconsideration of his recusal denial within two hours of the Petition appearing on his docket, dismissed the entire case, and opined in footnote 9 that the Petition "lacks merit."

If a district judge can decline to apply this Court's binding recusal standard, and then issue a case-ending order before this Court can review that

refusal, then the mandamus remedy is nullified and this Court's recusal precedent is unenforceable. A recusal standard that a district judge can circumvent by dismissing the case before appellate review occurs is not a standard at all.

IV. FOOTNOTE 9

In its entirety, footnote 9 of the Memorandum Opinion states:

As a final matter, the Court acknowledges that Plaintiff has filed a Petition for Writ of Mandamus with the Third Circuit and, in this Court's view, that petition lacks merit. Moreover, despite the pendency of that petition, Plaintiff has not sought a stay of these proceedings, and the Court sees no basis on which such a request would be granted. The Court therefore issues its ruling on Defendants' Motion to Dismiss notwithstanding the Petition for Writ of Mandamus.

(Dkt. 46, n.9).

The footnote contains three statements. First, the District Court opined that the Petition requesting its recusal "lacks merit." Second, the District Court noted that Petitioner had not sought a stay. Third, the District Court stated that it "sees no basis on which such a request would be granted"—a pre-determination of a motion that was never filed.

The District Court acknowledged the pendency of the mandamus. It acknowledged that the mandamus requests its recusal. It then ruled to dismiss the entire case, stating that the absence of a

stay request permitted it to proceed—while simultaneously stating that any such request would have been denied.

Footnote 9 independently establishes grounds for recusal under 28 U.S.C. § 455(a). A district judge subject to a mandamus petition requesting his recusal publicly declared that petition to be without merit, pre-denied a stay motion that was never filed, and issued a case-ending ruling—all in the same document. The appearance of impropriety that *Liljeberg* instructs courts to avoid “whenever possible”—which Judge Gallagher himself cited in Document 45—is precisely what footnote 9 creates.

V. THE THRESHOLD QUESTION

This Petition presents a prerequisite to Noerr-Pennington immunity: whether an entity not legally authorized to exist in a jurisdiction possesses the First Amendment right to petition tribunals in that jurisdiction. (Petition, ¶¶ 68–77).

In Section J of the Memorandum Opinion, Judge Gallagher declined to address Noerr-Pennington, dismissing all claims on independent 12(b)(6) grounds. (Dkt. 46, p. 16).

In Section D, Judge Gallagher dismissed Petitioner’s unauthorized practice of law claim on standing—holding that a non-client has no private cause of action—without reaching whether Defendants’ attorneys were authorized to appear in Pennsylvania. (Dkt. 46, pp. 8–9). The Court stated it “need not reach the substance of the claim.” (Dkt. 46, p. 9).

OSHA is a federal agency within the United States Department of Labor. Defendants represented

“Dejavoo Systems LLC” before OSHA and at Petitioner’s Pennsylvania unemployment compensation hearing. (Complaint, Exhibits AD, 10 p. 11). “Dejavoo Systems LLC” does not appear in New York Department of State records. (Complaint, Exhibit AL).

The 17-page Memorandum Opinion dismissed the entire case without addressing whether Defendants’ representation of a legally nonexistent entity before a federal agency constitutes protected petitioning activity under the First Amendment.

VI. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

- (a) Stay the District Court’s February 11, 2026 Order (Dkt. 47), including the March 4, 2026 amendment deadline, pending resolution of the Petition for Writ of Mandamus;
- (b) Consider Documents 45, 46, and 47 as additional grounds in support of the pending Petition;
- (c) Grant the relief requested in the Petition; and
- (d) Grant such other relief as this Court deems appropriate.

Respectfully submitted,

/s/ Jordan Zahler
Jordan Zahler
P.O. Box 151

Wind Gap, PA 18091
Telephone: (610) 360-5944
Email: jzahler1@gmail.com
Petitioner, Pro Se
Dated: February 12, 2026

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2026, I served a copy of this Emergency Supplemental Notice on counsel for Defendants by first-class mail and electronic mail:

George M. Vinci, Jr., Esq.
Neal R. Troum, Esq.
Spector Gadon Rosen Vinci P.C.
1635 Market Street, 7th Floor
Philadelphia, PA 19103
gvinci@sgrvlaw.com
ntroum@sgrvlaw.com

/s/ Jordan Zahler
Jordan Zahler, Petitioner Pro Se

Dated: February 12, 2026

**CERTIFICATION REGARDING GENERATIVE
AI**

I certify that generative artificial intelligence was used in the preparation of this document. All citations, legal authorities, and factual statements have been independently verified by the undersigned for accuracy.

/s/ Jordan Zahler
Jordan Zahler, Petitioner Pro Se
Dated: February 12, 2026

**IN THE UNITED STATES COURT OF
APPEALS
FOR THE THIRD CIRCUIT**

IN RE JORDAN ZAHLER,
Petitioner.

Related District Court Case: **Zahler v. Jackson
Lewis P.C., et al.**
Civil Action No. 5:25-cv-04215-JMG
United States District Court for the Eastern District
of Pennsylvania

**EMERGENCY PETITION FOR WRIT OF
MANDAMUS**

Jordan Zahler, Petitioner Pro Se
P.O. Box 151
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Telephone: (610) 360-5944
Email: jzahler1@gmail.com

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit Local Appellate Rule 26.1.1, Petitioner Jordan Zahler states:

1. Petitioner is an individual appearing pro se.
2. Petitioner is the sole member and owner of SEQRE LLC, a single-member limited liability company organized under the laws of the State of Wyoming.
3. No publicly held corporation owns 10% or more of SEQRE LLC's membership interest.
4. No publicly held corporation has a financial interest in the outcome of this litigation.

Dated: January 29, 2026

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INTRODUCTION AND RELIEF SOUGHT

Petitioner Jordan Zahler petitions this Court pursuant to Federal Rule of Appellate Procedure 21 and 28 U.S.C. § 1651 for a writ of mandamus.

This case was filed on July 22, 2025. Six months later, there is no answer on the docket and no default has been entered.

Defendant Jackson Lewis P.C. is an Am Law 100 firm, represented in this action by Spector Gadon Rosen Vinci P.C. On January 6, 2026, defense counsel admitted in writing that Defendants violated the mandatory meet-and-confer requirement. (Dkt. 38). In the same filing, defense counsel characterized compliance with court rules as “futile.”

Judge Gallagher’s own Policies and Procedures state: “The Court will deny a 12(b)(6) motion that does not meet these requirements.” He has not done so. The motion has remained on the docket for 144 days.

The Clerk’s own PACER system shows the September 8, 2025 answer deadline as “Unsatisfied” and “Not Terminated.” (Exhibit A). On January 20, 2026, Petitioner filed a formal Demand for Entry of Default giving the Clerk 72 hours to perform his mandatory duty under Fed. R. Civ. P. 55(a). (Dkt. 40). The Clerk took no action and provided no explanation.

Two judges have been assigned to this case. The first recused within 48 hours of Petitioner documenting his conflict. (Dkt. 33, 34). The second was assigned 155 minutes later. (Dkt. 35). That judge has an undisclosed conflict with an attorney named in Petitioner’s Complaint and denied recusal using a subjective standard rather than the objective standard required by this Circuit. (Dkt. 39, 41, 42).

Petitioner, proceeding pro se, has complied with every procedural requirement. Defendant Jackson Lewis P.C. has not—including misdating the certifications on their two most recent filings (Dkt. 38, Dkt. 43) as 2025 despite filing them in January 2026.

Petitioner requests that this Court: (a) direct Clerk George V. Wylesol to enter default against Defendants Jackson Lewis P.C. and Gregory Alvarez pursuant to Fed. R. Civ. P. 55(a); (b) order reassignment to a judge with no professional relationship to Jackson Lewis P.C., Spector Gadon Rosen Vinci P.C., or any individual named in Petitioner's Complaint; and (c) refer this matter to the Judicial Council of the Third Circuit.

ISSUES PRESENTED

1. Whether mandatory duties under federal law—including 28 U.S.C. § 455(a), Fed. R. Civ. P. 55(a), and Local Rule meet-and-confer requirements—remain mandatory, or whether they become optional when the party seeking enforcement proceeds pro se and the defendant is an Am Law 100 firm.
2. Whether a clerk's failure for 143 days to enter default as required by the mandatory language of Fed. R. Civ. P. 55(a)—“the clerk must enter the party's default”—warrants mandamus relief.
3. Whether the District Court applied the incorrect legal standard in denying recusal under 28 U.S.C. § 455(a) by using a subjective “routine” standard rather than the objective standard required by *In re Kensington International Ltd.*, 368 F.3d 289, 301 (3d Cir.

2004), and *United States v. Wecht*, 484 F.3d 194, 213 (3d Cir. 2007).

4. Whether Noerr-Pennington immunity applies when the attorney's client operates in a jurisdiction where it is not legally authorized to exist.

STATEMENT OF FACTS

A. The Phantom Entity

5. Petitioner filed a RICO action against Jackson Lewis P.C., an Am Law 100 firm, and Gregory Alvarez on July 22, 2025. (Dkt. 1).
6. "Dejavoo Systems LLC" does not appear in New York Department of State records despite claiming a Mineola, New York address. (Complaint, Exhibit AL).
7. "Dejavoo Systems LLC" received \$477,764 in PPP loans despite having no legal existence in New York State records. (Complaint, Exhibit BW).
8. Defendant Jackson Lewis P.C., through Defendant Gregory Alvarez and attorney Christopher Zamlout, filed a position statement with OSHA on behalf of "Dejavoo Systems LLC" on September 4, 2024. (Complaint, Exhibit AD). Neither Alvarez nor Zamlout is licensed in Pennsylvania.
9. Defendant Jackson Lewis P.C., through Attorney Erica Shikunov, represented "Dejavoo Systems LLC" at Petitioner's Pennsylvania Unemployment Compensation appeal hearing on September 17, 2024. (Complaint, 10, p. 11).

10. The underlying dispute arises from Petitioner's termination in April 2024 after reporting security vulnerabilities involving approximately 450 million unencrypted payment transactions at his former employer. (Complaint, ¶¶ 18-21).
11. Defendant Jackson Lewis P.C. characterized Petitioner's security warnings as "false and defamatory." (Complaint, 23). Fifty-four days later, the employer acquired an Israeli gateway company to replace the vulnerable system Petitioner had identified. (Complaint, 32).
12. The underlying RICO action alleges non-disclosure of approximately 450 million unencrypted payment transactions to regulators.

B. The Default

13. Judge Leeson's Order (Dkt. 24) established September 8, 2025 as the deadline for Defendants to answer or otherwise respond.
14. The Initial Procedural Order required a meet-and-confer conference at least five days before filing any motion. (Dkt. 25).
15. On September 8, 2025, Defendants filed a Motion to Dismiss (Dkt. 27) without conducting the required meet-and-confer conference.
16. On January 6, 2026, Defendants admitted: "Defendants concede that Judge Leeson's Initial Procedural Order required Defendants to confer with Plaintiff prior to filing their motion to dismiss... and that Defendants failed to do so." (Dkt. 38) (Exhibit B). In the same filing, Defendants characterized compliance with the meet-and-confer requirement as

“futile” and attached a pre-drafted Order (Dkt. 38-1) requesting that the Court strike Petitioner’s Notice of Procedural Default— notwithstanding Defendants’ admission and notwithstanding the Court’s published policy requiring denial of non-compliant motions. Defendants cited Judge Gallagher’s Policies and Procedures in their filing but omitted the mandatory denial language.

17. The PACER Deadlines/Hearings record, as of January 29, 2026, shows the September 8, 2025 “Answer due” deadline as “Unsatisfied” and “Not Terminated.” (Exhibit A).
18. Federal Rule of Civil Procedure 55(a) provides: “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, **the clerk must enter the party’s default.**”
19. On January 20, 2026, Petitioner filed a Demand for Entry of Default (Dkt. 40) giving Clerk George V. Wylesol 72 hours to enter default or provide a written explanation.
20. The 72-hour deadline expired on January 23, 2026. The Clerk did not enter default. The Clerk did not provide an explanation.
21. As of this filing, 143 days have elapsed since the September 8, 2025 deadline.

C. The Judicial Conflicts

22. Attorney Erica Shikunov is named in Petitioner’s Complaint as having represented a phantom entity at Petitioner’s Pennsylvania Unemployment Compensation appeal hearing. (Complaint, 10, p. 11).

23. Since May 15, 2025, Attorney Shikunov has been appearing before Judge Gallagher in *Rosario v. Allied Personnel Services, Inc. et al.*, No. 5:24-cv-06756-JMG (Rosario, Dkt. 24).
24. This case was initially assigned to Judge Joseph F. Leeson, Jr.
25. Plaintiff filed a Motion for Recusal on September 22, 2025. (Dkt 33)
26. Judge Leeson's recusal order (Dkt. 34) was received by Petitioner through an automated ECF notification at 8:55 AM on September 24, 2025.
27. Chief Judge Beetlestone signed an Order reassigning this case to Judge Gallagher that was received by Petitioner through an automated ECF notification at 11:30 AM the same day—155 minutes later. (Dkt. 35).
28. On November 17, 2025, Judge Gallagher denied Petitioner's Motion for Disclosure of Potential Conflicts (Dkt. 28) as moot, stating "no further action on Plaintiff's Motion is required." (Dkt. 36). Attorney Shikunov was appearing before Judge Gallagher in Rosario at that time.
29. Judge Gallagher, Defendant Jackson Lewis P.C., and defense counsel Spector Gadon Rosen Vinci P.C. did not disclose this conflict.

D. The Recusal Motion

30. On January 6, 2026, Petitioner filed a Motion for Recusal (Dkt. 39) documenting Judge Gallagher's conflict with Attorney Shikunov.
31. The Motion requested referral to the Judicial Council of the Third Circuit. (Dkt. 39, Relief Requested (d)).

32. Judge Gallagher issued a one-page Order denying recusal on January 22, 2026—16 days later. (Dkt. 41).
33. The Order stated: “The mere fact that an attorney employed by Defendant has appeared before the Court in an unrelated proceeding does not, standing alone, constitute a basis for recusal. Such routine professional interactions do not create an appearance of impropriety.” (Dkt. 41, n.1).
34. The Order characterized Attorney Shikunov as “an attorney employed by Defendant.” (Dkt. 41, n.1). The Order did not acknowledge that Attorney Shikunov is named in the Complaint as having represented a phantom entity.
35. The Order did not address Petitioner’s request for referral to the Judicial Council.
36. Chief Judge Beetlestone sits on the Judicial Council of the Third Circuit.
37. On January 22, 2026, Petitioner filed a Motion for Reconsideration (Dkt. 42) within two hours of the denial, identifying the legal errors in the Order. Both documents bear the same docket date.
38. The Motion for Reconsideration named Chief Judge Beetlestone. (Dkt. 42, 20).

E. The Response to the Default Demand

39. On January 26, 2026, while Petitioner’s Motion for Reconsideration (Dkt. 42) remained pending before Judge Gallagher, Defendants filed an Opposition to Petitioner’s Demand for Entry of Default. (Dkt. 43).
40. Defendants’ Opposition (Dkt. 43) argued that their September 8, 2025 Motion to Dismiss

- constituted “otherwise defend[ing]” under Rule 55(a), precluding entry of default.
41. This argument directly contradicted Defendants’ admission twenty days earlier: “Defendants concede that Judge Leeson’s Initial Procedural Order required Defendants to confer with Plaintiff prior to filing their motion to dismiss... and that Defendants failed to do so.” (Dkt. 38).
 42. Judge Gallagher’s own Policies and Procedures state: “The Court will deny a 12(b)(6) motion that does not meet these requirements.” Judge Gallagher was assigned this case on September 24, 2025. He has not done so.
 43. Defendants’ Opposition (Dkt. 43) included a pre-drafted Order for Judge Gallagher to sign striking Petitioner’s Demand. (Dkt. 43, p. 1). This is the second pre-drafted order Defendants have submitted to Judge Gallagher. (See Dkt. 38-1).
 44. Petitioner’s Demand for Entry of Default (Dkt. 40) was directed to Clerk George V. Wylesol, not to Defendants. Entry of default under Rule 55(a) is a ministerial act performed by the Clerk. Defendants have no standing to oppose a demand directed to the Clerk to perform a mandatory ministerial duty. Entry of default is a prerequisite for default judgment. The Clerk’s duty is ministerial. Defendants’ opposition to a ministerial act is a procedural nullity.
 45. In this RICO action against a law firm: Defendants admitted violating the mandatory meet-and-confer requirement (Dkt. 38); the

- Clerk has not entered default for 143 days despite Rule 55(a)'s mandate; and no judge has disclosed a conflict under 28 U.S.C. § 455(a).
46. The Court has permitted a procedurally void Motion to Dismiss to remain on the docket for 144 days while PACER's own Deadlines/Hearings report shows the September 8, 2025 answer deadline as unsatisfied. (Exhibit A).

REASONS WHY THE WRIT SHOULD ISSUE

A. Mandamus Standard

47. Mandamus is appropriate to compel performance of a ministerial duty. *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380 (2004).
48. Entry of default under Rule 55(a) is a ministerial act. The rule states the clerk "must" enter default. The Clerk has no discretion when the requirements are met.
49. The requirements are met:
- (a) Defendants' deadline was September 8, 2025 (Dkt. 24);
 - (b) Defendants filed a Motion to Dismiss without the required meet-and-confer (Dkt. 27);
 - (c) Defendants admitted this violation (Dkt. 38);
 - (d) Judge Gallagher's Policies and Procedures state: "The Court will deny a 12(b)(6) motion that does not meet these requirements";
 - (e) PACER shows the deadline "Unsatisfied" and "Not Terminated" (Exhibit A);
 - (f) 143 days have elapsed;

- (g) Petitioner demanded entry of default (Dkt. 40);
 - (h) The Clerk did not enter default;
 - (i) The Clerk did not provide an explanation.
50. A motion filed in violation of mandatory procedural prerequisites is a nullity. Defendants admitted violating those prerequisites. (Dkt. 38). A nullity cannot constitute “otherwise defend[ing]” under Rule 55(a). The Court’s own PACER system confirms this: the answer deadline remains “Unsatisfied” and “Not Terminated.” (Exhibit A). The Clerk does not adjudicate legal questions. The Clerk reads the docket. The docket shows “Unsatisfied.” Either the Clerk is not performing his mandatory duty, or PACER—the system used by every federal court in the nation—is inaccurate.

B. No Alternative Remedy

51. The presiding judge has a documented conflict. A Motion for Reconsideration is pending. (Dkt. 42).
52. Chief Judge Beetlestone is named in Petitioner’s Motion for Reconsideration. (Dkt. 42, 20).
53. Chief Judge Beetlestone signed the reassignment Order (Dkt. 35) stating it was “in accordance with the court’s procedure for random reassignment.” The Order was signed 155 minutes after Judge Leeson’s recusal and attested by Clerk George V. Wylesol.
54. Chief Judge Beetlestone sits on the Judicial Council of the Third Circuit.

55. The Clerk has not entered default for 143 days and did not respond to Petitioner's 72-hour demand.
56. Judge Leeson received Petitioner's Motion for Disclosure of Potential Conflicts (Dkt. 28) and took no action for fourteen days. Petitioner filed a Motion for Recusal (Dkt. 33). Judge Leeson recused within 48 hours (Dkt. 34).
57. The Motion for Disclosure of Potential Conflicts remained on the docket after reassignment. Judge Gallagher denied it as moot (Dkt. 36) without disclosing his conflict with Attorney Shikunov.
58. The Clerk was notified of default on December 28, 2025 (Dkt. 37). The Clerk received Petitioner's formal Demand for Entry of Default on January 20, 2026 (Dkt. 40). The Clerk took no action. The Clerk's own PACER system shows the September 8, 2025 deadline as "Unsatisfied" and "Not Terminated" (Exhibit A).
59. Defendants have not disclosed the Shikunov conflict.
60. Petitioner has no alternative remedy within the District Court.
61. On January 26, 2026, Defendants submitted a pre-drafted Order for Judge Gallagher to sign striking Petitioner's Demand for Entry of Default (Dkt. 43, p. 1), while Petitioner's Motion for Reconsideration (Dkt. 42) remained pending.

C. The Recusal Order Applied the Incorrect Legal Standard

62. 28 U.S.C. § 455(a) requires disqualification where a judge's "impartiality might reasonably be questioned."
63. The standard is objective: whether "a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *In re Kensington Int'l Ltd.*, 368 F.3d 289, 301 (3d Cir. 2004).
64. The inquiry is what an "objective, disinterested observer would conclude." *United States v. Wecht*, 484 F.3d 194, 213 (3d Cir. 2007).
65. The Order applied a subjective standard. The Order concluded, from the Court's own perspective, that the interactions were "routine." (Dkt. 41, n.1).
66. The inquiry under § 455(a) is what an objective observer would conclude.
67. An objective observer would know the following facts:
 - (a) Attorney Shikunov is named in the Complaint;
 - (b) Attorney Shikunov represented a phantom entity at Petitioner's unemployment hearing;
 - (c) Attorney Shikunov has been appearing before Judge Gallagher since May 15, 2025;
 - (d) Judge Gallagher was assigned this case 155 minutes after Judge Leeson's recusal;
 - (e) Judge Gallagher denied Plaintiff's Motion for Disclosure of Potential Conflicts as moot (Dkt. 36) without disclosing his own conflict with Attorney Shikunov;

- (f) Neither the Court nor defense counsel disclosed the conflict.

D. The Noerr-Pennington Question

68. Defendants' Motion to Dismiss (Dkt. 27) asserted Noerr-Pennington immunity as a defense.
69. The Motion to Dismiss was filed without the required meet-and-confer. Defendants admitted this violation. (Dkt. 38).
70. Defendant Jackson Lewis P.C. represented "Dejavoo Systems LLC" to OSHA and the Pennsylvania Unemployment Compensation Board.
71. Dejavoo Systems LLC does not appear in New York Department of State records. (Complaint, Exhibit AL).
72. "Dejavoo Systems LLC" received \$477,764 in PPP loans. (Complaint, Exhibit BW).
73. This case presents a question of first impression not addressed by this Circuit: Whether Noerr-Pennington immunity applies when the attorney's client operates in a jurisdiction where it is not legally authorized to exist.
74. Noerr-Pennington immunity derives from the client's First Amendment right to petition. *Eastern R.R. Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). The attorney acts as agent. The client is the principal.
75. Agency requires a principal with legal existence. An entity operating in a jurisdiction

- where it is not legally authorized to exist cannot petition tribunals in that jurisdiction.
76. An entity not legally authorized to exist in a jurisdiction has no standing to petition tribunals in that jurisdiction. Without standing to petition, there is no predicate for Noerr-Pennington protection.
77. Default has not been entered. Defendants have not answered. The question has not been adjudicated.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court:

- (a) Issue a writ of mandamus directing Clerk George V. Wylesol to enter default against Defendants Jackson Lewis P.C. and Gregory Alvarez pursuant to Fed. R. Civ. P. 55(a);
- (b) Order reassignment to a judge with no professional relationship to Jackson Lewis P.C., Spector Gadon Rosen Vinci P.C., or any individual named in Petitioner's Complaint;
- (c) Refer this matter to the Judicial Council of the Third Circuit for review of the repeated assignment of conflicted judges to this case;
- (d) Grant such other relief as this Court deems appropriate.

Respectfully submitted,

/s/ Jordan Zahler
Jordan Zahler
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Wind Gap, PA 18091
Telephone: (610) 360-5944
Email: jzahler1@gmail.com
Petitioner, Pro Se
Dated: January 29, 2026

**CERTIFICATE OF COMPLIANCE WITH TYPE-
VOLUME LIMIT**

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this petition complies with the type-volume limitation of Fed. R. App. P. 21(d)(1).

1. This petition contains 2,899 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(f) and the accompanying documents required by Fed. R. App. P. 21(a)(2)(C).
2. This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: January 29, 2026

/s/ Jordan Zahler
Jordan Zahler, Petitioner Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2026, I caused a copy of this Emergency Petition for Writ of Mandamus and all accompanying exhibits to be served as follows:

By Hand Delivery:

George V. Wylesol
Clerk of Court
United States District Court
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106

The Honorable John M. Gallagher
United States District Judge
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106
(copy provided pursuant to Fed. R. App. P. 21(a)(1))

The Honorable Wendy Beetlestone
Chief United States District Judge
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106
(named in Petition)

By First-Class Mail and Electronic Mail:

George M. Vinci, Jr., Esq.
Neal R. Troum, Esq.
Spector Gadon Rosen Vinci P.C.
1635 Market Street, 7th Floor
Philadelphia, PA 19103

gvinci@sgrvlaw.com
ntroum@sgrvlaw.com

/s/ Jordan Zahler
Jordan Zahler, Petitioner Pro Se
Dated: January 29, 2026

**CERTIFICATION REGARDING GENERATIVE
AI**

I certify that generative artificial intelligence was used in the preparation of this document. All citations, legal authorities, and factual statements have been independently verified by the undersigned for accuracy.

/s/ Jordan Zahler
Jordan Zahler, Petitioner Pro Se

Dated: January 29, 2026

EXHIBITS

Exhibit A: PACER Deadlines/Hearings Screenshot
(January 29, 2026)

Exhibit B: Defendants' Admission of Rule Violation
(Dkt. 38, January 6, 2026)

EXHIBIT A

PACER Deadlines/Hearings Screenshot
(Dated: January 29, 2026)

5:25-cv-04215-JMG ZAHLER v. JACKSON LEWIS
P.C. et al
JOHN M. GALLAGHER, presiding
Date filed: 07/22/2025
Date of last filing: 01/26/2026

Deadlines/Hearings

Doc No.	Deadline/H earing	Event Filed	Due/Se t	Satisf ied	Termi nated
1	△ Answer due	07/22/20 25	09/08/20 25		
1	△ Answer due	07/22/20 25	09/08/20 25		
10	△ Service Deadline	07/29/20 25	10/27/20 25		

PACER Service Center
Transaction Receipt
01/29/2026 06:36:36
PACER Login: jzahler1
Description: Deadline/Hearings
Search Criteria: 5:25-cv-04215-JMG
Billable Pages: 1
Cost: 0.10

EXHIBIT B
Defendants' Admission of Rule Violation
(Dkt. 38, January 6, 2026)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

JORDAN ZAHLER,
Plaintiff,

v.

Civil Action No.: 5:25-cv-
04215

JACKSON LEWIS P.C.,
et al.,
Defendants.

**Defendants' Opposition to Plaintiff's Notice of
Procedural Default**

I. Introduction

Pro se Plaintiff, Jordan Zahler, a self-described "whistleblower," filed a 53-page Complaint against Defendants Gregory Alvarez and his law firm, Jackson Lewis P.C., relating to their representation of Zahler's prior employer. The Complaint contains nine causes of action, ranging from conspiracy to RICO to defamation to false advertising to fraud. Plaintiff brought this lawsuit after filing two administrative proceedings against his former employer, an unemployment claim (which was denied) and an OSHA whistleblower retaliation claim (which remains pending).

Defendants filed a motion to dismiss Plaintiff's claims or, in the alternative, to stay this proceeding pending resolution of the ongoing OSHA proceeding (which addresses the same facts and law). (Docket 27.) As set forth in Defendants' motion papers, even accepting as true Plaintiff's wild accusations and

convoluted conspiracy theories, Plaintiff has failed to state any legal claims for relief and his Complaint must be dismissed (or, in the alternative, should be stayed).

In his response, Plaintiff Zahler did not agree to dismiss any of his claims, to correct any flaws in his pleading, or to stay this litigation. (Docket 30.) Rather, Plaintiff doubled down on the core factual allegations that lie at the heart of his Complaint (e.g., that his former employer does not really exist, that it received loans it was not entitled to, that it engages in false advertising, etc.). Zahler failed to address, let alone counter, any of the controlling law or arguments in Defendants' motion demonstrating that dismissal (or stay) of Plaintiff's claims was required.

The motion-to-dismiss briefing was completed in mid-September, 2025, and that motion remains pending before the Court. Now, three and a half months later, Plaintiff has filed what he has styled as a "Notice of Procedural Default Regarding Defendants' Motion to Dismiss." (Docket 37.) Therein, Plaintiff asks the Court to deny Defendants' motion to dismiss for failure to meet and confer prior to filing. In essence, Plaintiff has filed an untimely sur-reply purporting to provide additional support for his opposition to Defendants' motion.

As set forth below, Plaintiff's notice is improper and without merit, and it should be stricken from the record. The Court should consider Defendants' pending motion to dismiss on the merits and dismiss (or stay) Plaintiff's claims.

II. Argument

As an initial matter, Defendants concede that Judge Leeson's Initial Procedural Order required

Defendants to confer with Plaintiff prior to filing their motion to dismiss, (docket 25), and that Defendants failed to do so. Defendants apologize for this oversight. However, Defendants respectfully submit that this should not be grounds for denial of Defendants' motion to dismiss, and that the Court should consider the pending motion to dismiss on the merits.

First, the required conference would have been futile. As Judge Leeson's Order states, "[w]ith respect to motions to dismiss under Rule 12(b)(6) in particular, the Court intends for this conference to afford a defendant an opportunity to point out any perceived flaws in a plaintiff's pleading that are susceptible to being cured through an amendment, eliminating the burden of preparing a formal motion for that purpose." (Order, docket 25, at 1 n.2.) But Plaintiff would not have cured any perceived flaws or sought to amend his pleading. Indeed, in response to Defendants' motion to dismiss, Plaintiff did not concede any point, dismiss any cause of action, or cure any flaw via amendment or otherwise. (Nor, as discussed further below, did Plaintiff make any reference in his opposition to the fact that the parties had not conferred prior to the motion being filed.) Instead, Plaintiff's opposition expanded on his conspiracy theories to include wrongdoing and "persistent obstruction" by OSHA, continued to impugn Defendants and question their good faith representation of their client, and attached fifty more pages of documents allegedly supporting Plaintiff's claims of conspiracy (in addition to the 72 pages already attached to the Complaint). Further, when Defendants had previously requested a routine

extension to respond to the Complaint, Plaintiff refused, requiring Defendants to file a motion seeking additional time, (docket 20), and then opposing that motion, (docket 23). Judge Leeson's Order (like Your Honor's Policies and Procedures) required a pre-filing conference to potentially avoid the need for motion practice; in this case, however, such a conference would not have resulted in Plaintiff acknowledging or correcting any flaws in his Complaint, and would not have changed the motion-to-dismiss briefing in any way. And, of course, the Court has the inherent discretion to consider the pending motion to dismiss on the merits, despite the lack of conference, "in the interests of justice and for efficiency." *Runway Records Productions, LLC v. Franciscan University of Steubenville*, 2023 WL 3344163, at *1 n.1 (W.D. Pa. 2023).

Second, for the Court to deny Defendants' motion to dismiss for failure to confer would be inefficient and waste time and resources. As set forth at length in the pending motion papers, Plaintiff's claims are not merely without legal merit but improperly seek to impose liability on Mr. Alvarez and his law firm for merely representing their client. Plaintiff's response to this motion lacks any legal support or argument demonstrating that these claims are somehow viable. If the Court were to deny Defendants' motion for failure to confer (and not permit Defendants to refile), Defendants would file an answer and a motion for judgment on the pleadings with the same legal arguments – arguments that Defendants respectfully assert demonstrate that Plaintiff's claims lack merit and fail to state a claim as a matter of law. To require Defendants to do so

would be inefficient and wasteful. *Cf. Value Drug Co. v. Only One Hub, Inc.*, 2023 WL 9063701, at *2 (W.D. Pa. 2023) (dismissing Rule 12(b)(6) motion without prejudice and allowing defendant to refile).

Third, while Plaintiff asks the Court to deny Defendants' motion to dismiss for alleged "procedural" error, Plaintiff's own Notice is improper and not contemplated by the Federal Rules. Default is governed by Federal Rule of Civil Procedure 55, which, by its terms, is inapplicable here. Plaintiff has provided no authority that "default" is an appropriate remedy for failure to confer, and Defendants are aware of none. As noted above, Plaintiff's "Notice" is really a sur-reply purporting to provide further argument in opposition to Defendants' motion to dismiss. Your Honor's Policies and Procedures provide that sur-replies are not permitted without leave of Court, however, and further require that they be "filed as soon as practicable, but in any event, no later than seven days after the previous filing." Plaintiff's request was filed over 100 days after the briefing on Defendants' motion to dismiss was complete. Such delay highlights the bad-faith, "gotcha" nature of Plaintiff's request. Plaintiff could have raised the lack of conference in his opposition to Defendants' motion, but instead waited more than three months. And Plaintiff has not claimed that, had a conference taken place, he would have corrected errors or amended his pleading, or that any aspect of the motion-to-dismiss briefing would have been different if the parties had conferred. Plaintiff does not make this claim because he cannot; there can be no argument that a meet and confer would have made any difference here.

Defendants thus respectfully assert that the best and most efficient way to streamline what will otherwise be protracted and unnecessary litigation is for the Court to consider Defendants' pending motion to dismiss on its merits and to deny Plaintiff's requested "default."

III. Conclusion

For the foregoing reasons, Defendants, Jackson Lewis P.C. and Gregory Alvarez, Esquire, respectfully request that the Court strike Plaintiff's Notice of Procedural Default, deny the relief requested therein, and decide Defendants' motion to dismiss on its merits.

Respectfully submitted,

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*Attorneys for Defendants,
Jackson Lewis P.C. and Gregory Alvarez*

Dated: January 6, 2025

PAED Court Schedule

Court Schedule: Thursday, January 01, 2026 –
Saturday, February 28, 2026

Duty Magistrate Judge

Week of February 2, 2026: **Magistrate Judge Wells**

Week of February 9, 2026: **Magistrate Judge Reid**

Note: Court schedules are subject to change.

Filter: DISTRICT JUDGE GALLAGHER

Time	Case Number and Caption	City	Courtr oom	Hearing Type
01/07/ 2026 09:30 AM	25-cv-0424: CANTA v. CHUCK'S AUTO SALVAGE	Allento wn	Cahn 4B	Final Pretrial Conference
01/07/ 2026 09:30 AM	25-cr-0405: USA v. RODRIGU EZ	Allento wn	Cahn 4B	Final Pretrial Conference
01/16/ 2026 09:00 AM	25-cv-0424: CANTA v. CHUCK'S AUTO SALVAGE	Philade lphia	Philade lphia	Jury Selection
01/20/ 2026 09:00 AM	25-cv-0424: CANTA v. CHUCK'S	Allento wn	Cahn 4B	Trial Date

	AUTO SALVAGE			
01/27/ 2026 09:30 AM	24-cr-0277: USA v. MCPHERS ON II	Allento wn	Cahn 4B	Sentencing
01/29/ 2026 09:30 AM	25-cv-5266: WOLFE v. KINSLEY CONSTRU CTION	Allento wn	Cahn 4B	Final Pretrial Conference
02/24/ 2026 01:00P M	25-cv-5743: Smith v. Fritsche et al	Allento wn	Cahn 4B	Pretrial Conference/ Hearing
02/26/ 2026 09:30 AM	25-cv-5293: Klodowski v. KIA AMERICA, INC	Allento wn	Cahn 4B	Pretrial Conference/ Hearing
02/26/ 2026 01:30P M	25-cr-0166: USA v. FERNAND ES	Allento wn	Cahn 4B	Motion Hearing

*[Screenshot captured February 12, 2026 at 3:42 PM
from PAED Court Schedule system at
ecf.paed.uscourts.gov]*