IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IVIN CORNELIOUS, Plaintiff, v. DETECTIVES MACNAMARA, PHELPS, JAMES WIGGINS and UNKNOWN OFFICERS and CITY OF WILMINGTON, DELAWARE, Defendants.	Civil Action No. 23-659-GBW

MEMORANDUM ORDER

Pending before the Court is Plaintiff's Motion to Compel Defendants to Answer Plaintiff's Interrogatory Questions Addressed to Defendants (D.I. 48) (the "Motion"), which is fully briefed (*see* D.I. 48; D.I. 49; D.I. 50). For the following reasons, the Court denies the Motion.[1]

I. LEGAL STANDARD

A. Federal Rule of Civil Procedure 37

"Federal Rule of Civil Procedure 37 applies to motions to compel discovery, providing that '[o]n notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery.'" *Am. Bottling Co. Inc. v. Vital Pharms., Inc.*, No. CV 20-1268 (TMH), 2021 WL 9599683, at *1 (D. Del. Sept. 27, 2021) (alteration in original) (quoting Fed. R. Civ. P. 37(a)(1)).

"Generally, '[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case.'" *Id.* (alteration

[1] The Court writes for the benefit of the parties and assumes familiarity with the case.

in original) (quoting Fed. R. Civ. P. 26(b)(1)). "For [the] purposes of discovery, relevancy is broadly construed." *Id.* (quoting *Inventio AG v. ThyssenKrupp Elevator Am. Corp.*, 662 F. Supp. 2d 375, 380 (D. Del. 2009)). "However, while it is well-settled that the scope of discovery is broad, it is not without limits." *Id.* (citing *Bayer AG v. Betachem, Inc.*, 173 F.3d 188, 191 (3d Cir. 1999)).

"A party moving to compel discovery bears the burden of demonstrating the relevance of the requested information." *Id.* (citing *Inventio AG*, 662 F. Supp. 2d at 381).

II. DISCUSSION

Plaintiff's Motion seeks "to compel defendants to answer Plaintiff's interrogatory questions." D.I. 48 at 1.[2] Defendants' primary reason for opposing discovery is that "[t]he Court's July 11, 2024 Memorandum Opinion dismissed the Complaint against Defendants, subject to Plaintiff seeking leave to file an amended complaint." D.I. 49 ¶ 1. Defendants contend that "discovery is not appropriate" because currently "there is no operative Complaint." D.I. 49 ¶ 3. As explained below, the Court agrees with Defendants that Plaintiff is not entitled to discovery at this time.

"An interrogatory may relate to any matter that may be inquired into under Rule 26(b)." Fed. R. Civ. P. 33(a)(2). Under Rule 26(b), "[u]nless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely

[2] The discovery requests are found at D.I. 40-1. *See* D.I. 48 ¶¶ 10, 16.

benefit." Fed. R. Civ. P. 26(b)(1); *see United States ex rel. Customs Fraud Investigations, LLC. v. Victaulic Co.*, 839 F.3d 242, 259 (3d Cir. 2016).

"It is a basic, default rule of civil litigation that discovery may only be obtained on matters relating to pending—not dismissed—claims." *Act Now to Stop War & End Racism Coal. v. D.C.*, 286 F.R.D. 117, 131 n.7 (D.D.C. 2012) (collecting cases), *vacated in part on other grounds*, 846 F.3d 391 (D.C. Cir. 2017); *see In re German Auto. Manufacturers Antitrust Litig.*, 335 F.R.D. 407, 409 (N.D. Cal. 2020) ("Supreme Court and Ninth Circuit precedent prevents this Court from allowing discovery related to dismissed claims."). Thus, "dismissal of a claim will ordinarily work a prejudice on the party asserting the claim, in that the dismissal will remove the claim from the litigation and prohibit the party from pursuing discovery with respect to the dismissed claim[.]" *Gen. Motors Corp. v. New A.C. Chevrolet, Inc.*, 263 F.3d 296, 329 (3d Cir. 2001); *see Paul Rudolph Found., Inc. v. Paul Rudolph Heritage Found.*, No. 20CIV8180CMSLC, 2023 WL 3558857, at *2 (S.D.N.Y. Apr. 27, 2023) ("[T]he Rules do not permit discovery regarding a claim—here, a Counterclaim—that is no longer in the action.") (collecting cases).

As Defendants correctly note, *see* D.I. 49 ¶ 1, "the Court dismisse[d] Mr. Comelious' Complaint without prejudice to his ability to move for leave to amend." *Cornelious v. MacNamara*, No. CV 23-659-GBW, 2024 U.S. Dist. LEXIS 122395, at *12 (D. Del. July 11, 2024). Considering that the Court has not ruled on Plaintiff's opposed motion to amend his complaint (*see* D.I. 33), there are no pending claims in this action.

In this instance, considering that Plaintiff has provided no legal authority to support departing from the "default rule of civil litigation that discovery may only be obtained on matters relating to pending—not dismissed—claims,"[3] the Court finds that Plaintiff has failed to meet his

[3] *Act Now*, 286 F.R.D. at 131 n.7.

"initial burden of establishing the relevance of the requested information." *Thompson-El v. Greater Dover Boys & Girls Club*, No. CV 18-1426-RGA, 2022 WL 606700, at *2 (D. Del. Jan. 28, 2022).

Moreover, even assuming *arguendo* that Plaintiff did carry his initial burden, the Court would nevertheless exercise its discretion to deny Plaintiff's Motion, because Defendants have persuaded the Court that "the outcome of [] [Plaintiff's] motion [(D.I. 33)] could impact whether and the extent to which discovery is permitted." *Allied World Ins. Co. v. Keating*, No. 22-1996, 2023 WL 1463391, at *4 (3d Cir. Feb. 2, 2023) (nonprecedential) ("The order denying the motion to compel noted that Sian's motion to dismiss was then pending. While the District Court could have required discovery to proceed, it was reasonable to limit discovery while a Rule 12(b)(6) motion was pending[.]").

III. CONCLUSION

For the foregoing reasons, the Court denies the Motion.

* * *

WHEREFORE, at Wilmington this 12th day of August 2025, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel Defendants to Answer Plaintiff's Interrogatory Questions Addressed to Defendants (D.I. 48) is **DENIED**.

GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE

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FOR THE DISTRICT OF DELAWARE

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ORDER

When applying for admission *pro hac vice*, Plaintiff's counsel Mr. Joseph S. Oxman "certif[ied] that [he] [is] generally familiar with this Court's Local Rules." D.I. 6 at 2. Yet, the Court has received unsolicited, ex parte communications from Mr. Oxman and filings from Plaintiff that are not compliant with this Court's Local Rules (*see, e.g.*, D.I. 44; D.I. 47). For example, on August 12, 2025, Mr. Oxman telephoned Chambers and berated the Court's staff after the Court issued its Memorandum Order (D.I. 51) denying Plaintiff's motion to compel (D.I. 48).

This "Court does not accept ex parte communications." *Vilox Techs., LLC v. Oracle Corp.*, No. CV 23-302, D.I. 21 (D. Del. May 30, 2023). Under this Court's Local Rules, "[s]ubject to such modifications as may be required or permitted by federal statute, court rule, or decision, all attorneys admitted or authorized to practice before this Court, including attorneys admitted on motion or otherwise, shall be governed by the Model Rules of Professional Conduct of the American Bar Association ('Model Rules')." D. Del. LR 83.6(d).

Rule 3.5 of the Model Rules states that "[a] lawyer shall not: (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law; (b) communicate ex parte

with such a person during the proceeding unless authorized to do so by law or court order; . . . or (d) engage in conduct intended to disrupt a tribunal." *See* Ellen J. Bennett et al., *Annotated Model Rules of Professional Conduct* § 3.5, Ctr. for Prof. Resp. (10th ed. 2023).

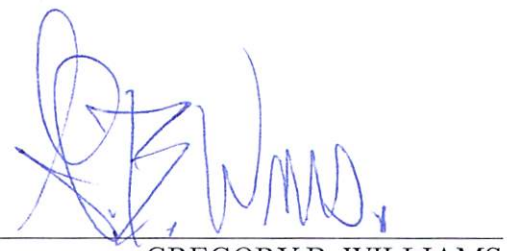
"Mr. [Oxman] shall treat the court staff and opposing counsel with respect and in a professional manner." *Doscher v. Swift Transp. Co.*, No. C10-5545RBL, 2010 WL 3655941, at *2 (W.D. Wash. Sept. 16, 2010). Mr. Oxman "is advised that future disregard of Court orders and future displays of disrespect to the Court's staff may result in disciplinary action." *Gonzalez v. San Antonio Water Sys.*, No. CV SA-04-CA-218X, 2004 WL 2889873, at *1 n.1 (W.D. Tex. Dec. 13, 2004); *see Doscher*, 2010 WL 3655941, at *2 ("If Mr. Doscher continues to be abusive of those he deals with in this matter, the Court will take further actions.").

As a special master once remarked, "it is a privilege for an attorney to be admitted to practice *pro hac vice* before the Delaware District Court." *LG. Philips LCD Co. v. Tatung Co.*, No. CV 04-343 JJF, 2005 WL 8170100, at *23 (D. Del. Aug. 16, 2005), *report and recommendation adopted*, 2006 WL 8452351 (D. Del. Sept. 29, 2006). Should Mr. Oxman continue to attempt to engage in unsolicited ex parte communications with the Court, or continue to berate the Court's staff, such behavior "may call into question whether counsel's *pro hac vice* privilege should be revoked" and/or other sanctions imposed. *Unite Here Loc. 217 v. Sage Hosp. Res.*, No. CV 10-05 S, 2010 WL 4142218, at *1 (D.R.I. Oct. 21, 2010).

* * *

WHEREFORE, at Wilmington this 13th day of August 2025, **IT IS HEREBY ORDERED** that, going forward, Plaintiff's counsel, Mr. Oxman, shall comply with the Local Rules of Civil Practice and Procedure of the United States District Court for the District of

Delaware or his pro hac vice admission shall be revoked and/or other sanctions imposed. Delaware counsel for Plaintiff, Mr. Mondross, who sponsored Mr. Oxman's pro hac vice admission, is advised of the same.



GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE