



Igor Danchenko . . . .” Mot. to Compel at 3. Neither method was permissible. First, Mr. Danchenko was not (and still is not) registered with the Court’s electronic filing system so he could not be served by electronic filing pursuant to Fed. R. Civ. P. 5(b)(2)(E). *See* Local Civ. R. 5.4(d)(1) (permitting service on pro se *parties* who have CM/ECF accounts).

Second, service on a person’s attorney is only effective if that person is a *party* to the action. *See* Fed. R. Civ. P. 5(b)(1) (emphasis added) (“If a *party* is represented by an attorney, service under this rule must be made on the attorney . . . .”). Rule 5(b)(1) “is inapplicable to [non-parties], because the rule expressly applies only to parties.” *Lehman v. Kornblau*, 206 F.R.D. 345, 347 (E.D.N.Y. 2001) (discussing service of a subpoena); *see also Inland Waters Pollution Control, Inc. v. Jigawon, Inc.*, No. 05-cv-74785, 2008 WL 11357838, at \*2 (E.D. Mich. Feb. 21, 2008) (“Fisher is not a party. Rule 5 does not apply . . . .”). Although the case law concerning service of motions on non-parties is limited, the plain language of Rule 5 is clear. Furthermore, the federal rules of procedure routinely impose a different and heightened standard for serving papers on non-parties. *See, e.g., Fariss v. Lynchburg Foundry*, 769 F.2d 958, 962 (4th Cir. 1985) (discussing Fed. R. App. P. 25) (“[A] party may be served through his attorney, Fed. R. Civ. P. 5(b), but nonparties must be personally served.”); *cf.* Fed. R. Civ. P. 45(b)(1) (“Serving a subpoena requires delivering a copy to the named person . . . .”). Because Mr. Danchenko is not a party, Rule 5(b)(1) does not authorize service of papers on him through counsel. Instead, service must be made pursuant to Rule 5(b)(2).<sup>1</sup>

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<sup>1</sup> Emailing the Motion to Mark E. Schamel does not satisfy Rule 5(b)(2)(F) because neither Mr. Schamel nor Mr. Danchenko consented in writing to accept service in that manner. Notably, Plaintiffs’ counsel recognizes that Mr. Schamel “never did” formally accept service of the Motion. Decl. of A. Lewis in Support of Proposed Order (“Lewis Decl.”) at 3 ¶ 12, ECF No. 119-1. Indeed, Plaintiffs’ counsel asked Mr. Schamel on November 30, 2020, whether Mr. Schamel would “accept service of the motion” or whether he is “not be representing Mr. Danchenko.” Lewis

**2. Mr. Danchenko Hereby Conditionally Consents to Accept Service of the Motion.**

Notwithstanding Plaintiffs' improper and ineffective attempt to serve Mr. Danchenko, Mr. Danchenko is willing to voluntarily accept service of Plaintiffs' Motion to Compel, pursuant to Fed. R. Civ. P. 5(b)(2)(F), should the Court grant his Motion to Strike and Hold in Abeyance. In that case, Mr. Danchenko would have fourteen days from the date of the Court's order to file a response to Plaintiffs Motion to Compel. *See* Fed. R. Civ. P. 6(a); Local Civ. R. 7(b). Notwithstanding Mr. Danchenko's conditional consent to accept service of the pending Motion to Compel, he reserves all rights to be properly served with all future filings pursuant to Fed. R. Civ. P. 5(b)(2)(A)-(E).

Date: January 8, 2021

Respectfully submitted,

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Decl., Ex. A, ECF No. 119-2. Plaintiffs acknowledge that "Mr. Schamel did not respond to [that] email." Lewis Decl. at 3 ¶ 13.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2021, I caused a copy of the foregoing to be sent via the Court's CM/ECF system to all counsel of record who have entered an appearance in this case.

/s/ Mark E. Schamel  
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