**No. 25-1516**

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

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BRANDON TIMMONS,
*Plaintiff-Appellant,*

v.

BOHINSKI,
*Defendant-Appellee.*

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On Appeal from the United States District Court for the
Middle District of Pennsylvania, No. 1:21-cv-02157
Before the Hon. Yvette Kane, District Judge

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# APPELLANT'S OPENING BRIEF AND APPENDIX VOLUME I of II (Pages A1-A14)

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## INTRODUCTION

The Prison Litigation Reform Act (PLRA) limits the circumstances under which incarcerated individuals may challenge the conditions of their incarceration in federal court, including by requiring them to exhaust available administrative remedies before doing so. But the PLRA does not alter the burden on nonmoving incarcerated plaintiffs to defeat summary judgment. So, under the well-worn summary-judgment standard, when a plaintiff—even an incarcerated one—opposes summary judgment with a declaration containing specific facts based on his personal knowledge, the district court must, in evaluating whether the plaintiff has raised genuine disputes of material fact, believe his evidence, draw reasonable inferences in his favor, and leave any weighing of the evidence or credibility determinations to the factfinder at an appropriate stage of the proceedings.

That is not what happened here. Brandon Timmons, concerned that prison employees he had previously sued might retaliate against him, approached a prison supervisor to discuss his concerns. That supervisor, Defendant Bohinski, responded to Mr. Timmons's concerns by "intentionally" calling him "a rat" and a "snitch[]" in front of other incarcerated individuals, putting Mr. Timmons at serious risk of physical harm. A39 (Timmons Declaration). Defendant Bohinski would later tell Mr. Timmons that he had hoped calling him a rat and snitch in front of his peers would deter him from filing future lawsuits. A40.

Mr. Timmons attempted to file a grievance about this incident, but the prison guard to whom he submitted his grievance read it, discarded it, and threatened Mr. Timmons that "inmates who file grievances [against] Bohinski get[] the shit beat out of them." *Id.* Days later, another guard told him that the next time he attempted to file a grievance against Defendant Bohinski, other prisoners would "jump[]" him. *Id.* These threats deterred Mr. Timmons from further pursuing his facility's grievance process about this issue.

Mr. Timmons described these events in a declaration attached to his opposition to Defendant Bohinski's motion for summary judgment for failure to exhaust administrative remedies. Based on a proper application of the summary-judgment standard, this declaration should have sufficed to defeat Defendant Bohinski's motion, because it raised a genuine dispute of material fact as to whether the unavailability of administrative remedies excused Mr. Timmons from the PLRA's exhaustion requirement. Yet the district court rejected Mr. Timmons's declaration out of hand, deeming it "conclusory" and "self-serving" and thus insufficient to withstand summary judgment. A8.

That was error. A conclusory affidavit is one that lacks specific facts based on the declarant's personal knowledge—which was not the case with Mr. Timmons's declaration. And in denigrating it as "self-serving," the district court appears to have effectively determined the declaration was not credible because it

was filed by an incarcerated plaintiff in support of his own case. But that is flatly incompatible with the rules governing summary judgment, as this Court and others have consistently recognized. In holding that Mr. Timmons's declaration failed to establish a genuine dispute of material fact as to whether administrative remedies were available to him, the district court failed to treat Mr. Timmons the way courts must treat all nonmoving parties at summary judgment: Instead of believing Mr. Timmons's evidence and drawing reasonable inferences from it, the district court effectively applied a ratcheted-up version of the applicable standard without any basis for doing so.

This Court should, in a published decision to ensure future pro se incarcerated litigants are not subjected to the same treatment, reverse and remand for further proceedings.

## STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983. The district court entered a final order granting summary judgment against Mr. Timmons on February 6, 2024. A9 (ECF No. 77, Order); A10 (ECF No. 78, Judgment). Mr. Timmons timely appealed on March 20, 2025. A11 (ECF No. 79, Notice of Appeal). This Court has jurisdiction under 28 U.S.C. § 1291.

## ISSUE PRESENTED

Whether the district court erred in granting summary judgment against Mr. Timmons on exhaustion grounds, where Mr. Timmons presented, via sworn declaration, a plausible and uncontested explanation that the jail's grievance process was unavailable to him under *Ross v. Blake*, 578 U.S. 632, 642 (2016), but the district court disregarded that explanation on the ground that the declaration was "conclusory" and "self-serving"—even though the declaration contained specific facts based on Mr. Timmons's personal knowledge. *See* A39-A40; A8.

## STATEMENT OF RELATED CASES

There are no prior or related cases.

## STATEMENT OF THE CASE

### I. Factual Background[1]

#### A. Defendant Bohinski calls Mr. Timmons a "rat" and a "snitch" intentionally so that other incarcerated individuals can hear.

On June 16, 2021, Brandon Timmons was incarcerated in Dallas State Correctional Institution (SCI-Dallas). A39 (Timmons Declaration). At that time, he had three civil lawsuits pending against Pennsylvania's Department of Corrections and over forty of its employees—including two employed at SCI-Dallas. A40. He

[1] The facts here are primarily drawn from the summary-judgment record and the district court's recitation of facts, which itself drew from the Third Amended Complaint. A2.

was concerned about retaliation by prison staff, and he shared this concern with Defendant Bohinski, a supervisor and deputy superintendent at SCI-Dallas. A39. Defendant Bohinski then—instead of assuring Mr. Timmons that prison staff would not countenance any retaliation—called Mr. Timmons "a rat" and a "snitch[]" and did so "intentionally" "to other inmates" on Mr. Timmons's block and on his tier, exposing him to a great risk of physical harm.[2] *Id.*

Later, Defendant Bohinski told Mr. Timmons that he had publicly called him a rat and a snitch because Mr. Timmons "liked to … sue staff," and "maybe [his] peers calling [him] a snitch would stop [him] from suing." A40.

### B. Prison staff threaten Mr. Timmons when he attempts to avail himself of the facility's grievance process.

The same day Defendant Bohinski publicly called Mr. Timmons a rat and a snitch, Mr. Timmons attempted to file a grievance about that incident. The prison officer to whom Mr. Timmons submitted his grievance "did not turn [it] in"; instead, he "read it and discarded it and stated … that inmates who file grievances [against] Bohinski get[] the shit beat out of them." A39. "This intimidated [Mr. Timmons],"

[2] Over the next eighteen months, Mr. Timmons "experienced inmates spreading the lie" that he was "a rat" and "a snitch," as Defendant Bohinski had told them. A40. During that time, many of Mr. Timmons's fellow prisoners treated him with "hostil[ity]." *Id.*

deterring him from attempting again to file a grievance against Defendant Bohinski. *Id.*

The intimidation did not stop there. About ten days after the initial incident, a second officer, who was not wearing a name tag, told Mr. Timmons that the next time he attempted to file a grievance against Defendant Bohinski, other prisoners would jump him. *Id.* This second threat further scared and discouraged Mr. Timmons from filing a grievance against Defendant Bohinski. *Id.*

## II. Procedural Background

Mr. Timmons filed his third amended complaint, the operative pleading, in March 2023. Dist. Ct. Doc. No. 38-1. He advanced three constitutional claims under 42 U.S.C. § 1983: retaliation in violation of the First Amendment; cruel and unusual punishment in violation of the Eighth Amendment; and denial of equal protection in violation of the Fourteenth Amendment. *Id.*

Defendant Bohinski moved for summary judgment. He argued both that Mr. Timmons failed to exhaust administrative remedies and that his claims failed on the merits. Dist. Ct. Doc. No. 69. Mr. Timmons opposed the motion, arguing—as relevant here—that administrative remedies had not been available to him, excusing him from the requirement to exhaust those remedies. Dist. Ct. Doc. No. 73. In support of that argument, Mr. Timmons submitted a declaration swearing, under

penalty of perjury, that he had been threatened by prison staff both when he had attempted to submit a grievance and again ten days later, as described above. A40.

The district court granted Defendant Bohinski's motion for summary judgment on exhaustion grounds. According to the district court, "it [was] clear that Timmons failed to exhaust administrative remedies." A7. As a result, the burden shifted to Mr. Timmons to establish that the grievance process was unavailable to him. And "[t]he only evidence" he "offered to establish unavailability" was his declaration asserting that two John Doe correctional officers threatened him about filing a grievance against Defendant Bohinski. *Id.* The court found this declaration "insufficient to survive Bohinski's motion for summary judgment." A8. The district court acknowledged that Mr. Timmons had "assert[ed] that he attempted to file grievances against Bohinski" and "was dissuaded from doing so by threats from unnamed correctional officers," but the court faulted Mr. Timmons for failing to "specif[y] what was written in the grievances he attempted to file," "show[] that he attempted to learn the identity of the unknown correctional officers through the discovery process," or "offer any other evidence that could establish the veracity of his declaration." *Id.* Ultimately, the court deemed the declaration "conclusory, unsupported, and self-serving" and thus "insufficient to create a genuine dispute of material fact as to whether the grievance process was unavailable to him." *Id.* The court therefore entered summary judgment for Defendant Bohinski. *Id.*

This timely appeal followed.

## STANDARD OF REVIEW

This Court reviews *de novo* a district court's grant of summary judgment. *Giles v. Kearney*, 571 F.3d 318, 322 (3d Cir. 2009). A court may grant summary judgment only when, taking the evidence of the non-movant as truth and drawing "all justifiable inferences" in favor of the nonmoving party, the record "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.*; Fed. R. Civ. P. 56(a). The PLRA does not alter the Rule 56 standard in prisoner litigation. *See generally* 42 U.S.C. § 1997e; *cf. Jones v. Bock*, 549 U.S. 199, 216 (2007) (rejecting deviation from typical civil procedure in PLRA case because "when Congress meant to depart from the usual procedural requirements, it did so expressly"); *see also Perttu v. Richards*, 605 U.S. 460, 469-70 (2025). This Court also reviews *de novo* a district court's determination of failure to exhaust. *Small v. Camden County*, 728 F.3d 265, 268 (3d Cir. 2013).

## SUMMARY OF ARGUMENT

The district court erred in entering summary judgment against Mr. Timmons on the ground that he failed to exhaust available administrative remedies. Mr. Timmons submitted a sworn declaration in opposing Defendant Bohinski's motion for summary judgment; that declaration contained specific facts, based on Mr. Timmons's own personal knowledge, that raised a genuine dispute of material fact

as to whether administrative remedies were available to him. That evidence required the district court to deny summary judgment.

The PLRA requires incarcerated individuals to exhaust available administrative remedies before challenging the conditions of their confinement in federal court. 42 U.S.C. § 1997e(a); *Rinaldi v. United States*, 904 F.3d 257, 268 (3d Cir. 2018). "[A]dministrative remedies are not 'available' under the PLRA where a prison official inhibits an inmate from resorting to them through serious threats of retaliation and bodily harm." 904 F.3d at 267; *see also Perttu*, 605 U.S. at 465 ("'[E]xhaustion is not required' when a prison administrator 'threaten[s] individual inmates so as to prevent their use of otherwise proper procedures.'" (quoting *Ross*, 578 U.S. at 644)).

Mr. Timmons's declaration offered sufficient facts to establish a genuine dispute as to whether prison employees' threats inhibited him from submitting a grievance, such that administrative remedies were unavailable to him. The declaration describes a one-two punch of threats, both immediately after he attempted to file a grievance and ten days later, by two different prison guards, that actually prevented him from filing a grievance and would have deterred other reasonable prisoners from doing the same. Nothing in the summary-judgment record specifically refutes Mr. Timmons's account. Nonetheless, the district court

determined that Mr. Timmons had failed to establish a genuine dispute of material fact as to the availability of administrative remedies.

That was error. First, the district court wrongly characterized the declaration as "conclusory" and rejected it on that basis. A8. A conclusory declaration is one that sets forth opinions or conclusions rather than specific facts as to which the declarant has personal knowledge, and it cannot sustain the nonmoving party's summary-judgment burden. *See Blair v. Scott Specialty Gases*, 283 F.3d 595, 608 (3d Cir. 2002); Fed. R. Civ. P. 56(e). But Mr. Timmons's declaration *did* set forth specific facts from his personal knowledge that, if true, would support his theory that administrative remedies were unavailable to him. It did not merely restate the legal standard, for instance, or draw conjectural inferences from record materials, like the declarations this Court has deemed conclusory and thus insufficient for summary-judgment purposes.

Second, the district court improperly discredited the declaration as "self-serving." A8. That characterization may be descriptively true—that is, Mr. Timmons's declaration on his own behalf does support his case. But that is not a basis for discarding it, as this Court has made perfectly clear, both through explicit statements to that effect and by finding genuine disputes of material fact on exhaustion issues based on plaintiffs' self-serving declarations.

In rejecting Mr. Timmons's declaration as conclusory and self-serving, the district court effectively applied a ratcheted-up version of the summary-judgment standard in which it refused to believe Mr. Timmons's evidence and draw reasonable inferences from it, as is required at this stage in the proceedings. *See, e.g.*, *Pearson v. Prison Health Serv.*, 850 F.3d 526, 533, 541 n.5 (3d Cir. 2017). Had the district court given Mr. Timmons's declaration the treatment to which it was entitled, for instance, it would not have held it against Mr. Timmons that he did not specifically restate the contents of his thwarted grievance. Instead, it would have drawn the reasonable inference from the fact that the prison guard read the grievance and then told Mr. Timmons that prisoners who file grievances against Defendant Bohinski "get[] the shit beat out of them," A39, that the grievance was in fact about Mr. Timmons's encounter with Defendant Bohinski.

The district court's application of a heightened summary-judgment standard would not be appropriate in any context, but "rejecting" the declaration of a pro se incarcerated plaintiff "as a matter of law based on [his] inability to corroborate [his] claim" is particularly concerning. *Lupyan v. Corinthian Colls. Inc.*, 761 F.3d 314, 321 (3d Cir. 2014); *see Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244-45 (3d Cir. 2013) ("We are especially likely to be flexible when dealing with imprisoned pro se litigants. Such litigants often lack the resources and freedom necessary to comply with the technical rules of modern litigation."). This Court should issue a

published decision reversing the district court's grant of summary judgment on exhaustion grounds and remand for further proceedings.

## ARGUMENT

### I. The District Court Erred in Granting Summary Judgment for Failure to Exhaust Administrative Remedies.

#### A. Mr. Timmons Raised a Genuine Dispute of Material Fact as to Whether Administrative Remedies Were "Available" to Him.

Mr. Timmons introduced sufficient evidence via his declaration to establish that a genuine dispute of material fact existed as to whether administrative remedies were "available" to him (and so whether he exhausted all available administrative remedies, as required under the PLRA). "A material fact is a fact that might affect the outcome of the suit under the governing law." *Off. Comm. of Unsecured Creditors v. Baldwin (In re Lemington Home for Aged)*, 659 F.3d 282, 290 (3d Cir. 2011) (alterations and internal quotation marks omitted). And for a dispute to be genuine, "all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Id.*

Thus, for example, in *Illes v. Deparlos*, this Court determined that a genuine dispute of material fact existed as to whether the plaintiff had exhausted available administrative remedies where he submitted an affidavit stating that prison staff had "told him there were no grievance procedures." 447 F. App'x 391, 394 (3d Cir.

2011). The Court noted that this fact "ha[d] not been refuted by the defendants," who instead argued that the plaintiff had received a handbook containing the grievance procedures during an earlier period of incarceration. *Id.* But "regardless" of whether or not the defendants specifically refuted the plaintiff's affidavit, the Court explained that it was required to view the specific factual statements in the affidavit "in [the plaintiff]s favor" under the summary-judgment standard. *Id.* And those factual statements "support[ed] [the plaintiff's] contention that … administrative remedies were unavailable because he was misinformed by prison staff about the existence and/or scope of those remedies." *Id.* That, in turn, established a genuine dispute of material fact sufficient to warrant reversing the district court's grant of summary judgment in the defendants' favor.

Mr. Timmons's declaration, when properly considered, has the same effect. That is, the contents of that declaration sufficed to establish that a genuine dispute of material fact exists as to whether administrative remedies were available to him. "[A]dministrative remedies are not 'available' under the PLRA where a prison official inhibits an inmate from resorting to them through serious threats of retaliation and bodily harm." *Rinaldi*, 904 F.3d at 267; *see also Perttu*, 605 U.S. at 465 ("'[E]xhaustion is not required' when a prison administrator 'threaten[s] individual inmates so as to prevent their use of otherwise proper procedures.'" (quoting *Ross*, 578 U.S. at 644)). That is because "threats made by prison officials

that inhibit an inmate from utilizing an administrative process 'disrupt the operation and frustrate the purposes of the administrative remedies process enough that the PLRA's exhaustion requirement does not allow them' and thus lift the exhaustion requirement as to that part of the process." *Rinaldi*, 904 F.3d at 267 (quoting *Tuckel v. Grover*, 660 F.3d 1249, 1253 (10th Cir. 2011)). This understanding is "faithful to the underlying purposes of the PLRA," *Tuckel*, 660 F.3d at 1253, as it "reduces any incentive that prison officials otherwise might have to use threats to prevent inmates from exhausting their administrative remedies" and "thereby safeguards the benefits of the administrative review process for everyone," *Turner v. Burnside*, 541 F.3d 1077, 1085 (11th Cir. 2008).

To establish that intimidation rendered administrative remedies unavailable, a plaintiff must show that a threat "actually did deter the plaintiff inmate from lodging a grievance" and that "the threat is one that would deter a reasonable inmate of ordinary firmness and fortitude from lodging a grievance." *Rinaldi*, 904 F.3d at 268 (quoting *Turner*, 541 F.3d at 1085). Mr. Timmons satisfied both of these requirements. His declaration establishes two separate threats, one made immediately after he attempted to file a grievance and the other ten days later, by two different prison guards, actually prevented him from filing a grievance. A39. And those threats, as described in the declaration, "would deter a reasonable inmate of ordinary firmness and fortitude from lodging a grievance": One prison guard,

after reading and physically discarding Mr. Timmons's grievance, told him that "inmates who file grievances on Bohinski get[] the shit beat out of them," and another made that threat even more concrete by saying that "the next time" Mr. Timmons attempted to file a grievance against Defendant Bohinski he "would be jumped by other inmates." *Id.*; *cf.*, *e.g.*, *Himmelreich v. Fed. Bureau of Prisons*, 766 F.3d 576, 577-78 (6th Cir. 2014) (holding that "a reasonable jury could conclude" that prison guard's statement that if plaintiff "continued with his grievances" she would "personally see" to his transfer "to a penitentiary," where he would "more than likely be attacked," "would deter a person of ordinary firmness from continuing with the grievance process"), *aff'd and remanded sub nom. Simmons v. Himmelreich*, 578 U.S. 621 (2016).

Defendant Bohinski did not raise any evidence at summary judgment that contradicts Mr. Timmons's declaration. Defendant Bohinski's statement of material facts states only that Mr. Timmons successfully filed four grievances in June 2021, none of which included a claim about being called a "rat." A31-A34. In other words, Defendant Bohinski simply pointed out that Mr. Timmons did not file a grievance related to this issue. That is not disputed. But Defendant Bohinski had nothing to say regarding the threats that Mr. Timmons received—in other words, nothing to dispute the facts showing that Mr. Timmons was thwarted from filing a grievance on this issue. For example, nothing in Defendant Bohinski's statement of material

facts contradicts Mr. Timmons's account of the officers' threats. Nor did Defendant Bohinski introduce any information regarding the prison guards on duty on June 16 (the day of the underlying incident and Mr. Timmons's attempt to file a grievance) or June 27 (the day he was threatened by a second prison guard) refuting Mr. Timmons's account—and certainly no evidence from those or any other witnesses.

The district court thus should have recognized that Mr. Timmons's declaration included sufficient facts to establish a plausible alternative narrative from that advanced by Defendant Bohinski that could only be resolved by weighing the evidence and making credibility determinations—that is, a genuine dispute of material fact. *See In re Lemington Home for Aged*, 659 F.3d at 290.

The Supreme Court's recent decision in *Perttu v. Richards* confirms that Mr. Timmons's evidence establishes a genuine dispute of material fact on the availability of administrative remedies. Like Defendant Bohinski, the defendant prison employee there argued, based on evidence that no pertinent grievances were on file with the prison, that the prisoner plaintiffs had not exhausted their claims against him. *Perttu*, 605 U.S. at 466. The plaintiffs introduced evidence that the defendant "had intercepted and destroyed" the grievances they had attempted to file "and had warned them not to file more." *Id.* On the basis of that evidence, the district court concluded there was "a genuine issue of fact as to whether Plaintiffs were excused from properly exhausting their claims due to interference by [the defendant] and that

the issue was appropriate for resolution during an evidentiary hearing." *Id.* (internal quotation marks omitted). The Supreme Court confirmed that the plaintiffs' evidence was sufficient not just to defeat summary judgment but to be evaluated by a jury in a trial on the defendant's failure-to-exhaust defense. *Id.* at 479. Mr. Timmons has established a genuine dispute of material fact no less than the plaintiffs in *Perttu*.

### B. The District Court Improperly Rejected Mr. Timmons's Declaration Based on a Misapplication of the Summary-Judgment Standard.

The district court's conclusion that Mr. Timmons failed to raise a genuine dispute of material fact as to whether administrative remedies were available to him was erroneous. That conclusion rested on the district court's characterization of Mr. Timmons's declaration as conclusory and self-serving—but the declaration was not conclusory, and the fact that it was self-serving does not provide a basis for refusing to consider it. The district court improperly refused to believe, for purposes of summary judgment, the specific factual statements in Mr. Timmons's nonconclusory declaration and to draw all reasonable inferences in his favor therefrom. Instead, the district court applied a heightened version of the summary-judgment standard. There is no justification for such a deviation from the Federal Rules of Civil Procedure.

**1. Mr. Timmons's declaration is not conclusory.**

"In order to satisfy the standard for summary judgment," a declarant "must ordinarily set forth facts, rather than opinions or conclusions." *Blair*, 283 F.3d at 608; *see also* Fed. R. Civ. P. 56(c)(1), (4). A conclusory declaration—one that sets forth opinions or conclusions rather than specific facts as to which the declarant has personal knowledge—cannot sustain this burden. *See Blair*, 283 F.3d at 608. For example, in *Maldonado v. Ramirez*, this Court deemed a statement in an affidavit to be "conclusory," and thus insufficient to establish a genuine dispute of material fact, where the "affidavit fail[ed] to show any personal knowledge by [the affiant]," and the statement at issue was instead merely a conjectural inference drawn from the exhibits attached to the affidavit. 757 F.2d 48, 51 (3d Cir. 1985). Similarly, in *Drexel v. Union Prescription Centers, Inc.*, the Court declined to find a genuine dispute of material fact based on an affidavit that essentially recited the elements as legal conclusions, without providing the facts that would support such conclusions. 582 F.2d 781, 789-90 (3d Cir. 1978).

By contrast, in *Kirleis v. Dickie, McCamney & Chilcote, P.C.*, 560 F.3d 156, 161 (3d Cir. 2009), this Court rejected the defendant's argument that the plaintiff's declaration was "conclusory" and so failed to establish a genuine dispute of material fact as to whether she had "agreed to arbitrate." "Far from a conclusory statement that she never agreed to arbitrate," the plaintiff's affidavit "detail[ed] the specific

circumstances that rendered the formation of an agreement to arbitrate impossible," including that she had never received or signed the relevant documents. *Id.* Having deemed the factual statements in the plaintiff's affidavit "sufficiently specific," the Court went on to note that even if the affidavit's contents were contested—which they were not—"the task of weighing the evidence and choosing which side to believe would have been for a jury." *Id.* at 162.

Mr. Timmons's declaration, like the declaration in *Kirleis*, was not conclusory. It "detail[ed] the specific circumstances that rendered" administrative remedies unavailable to him, *id.* at 161. When he submitted his grievance on the same day of the underlying incident, a corrections officer discarded it in front of him and threatened him. A39. Later, another corrections officer reiterated that threat. *Id.* These specific facts are from Mr. Timmons's personal knowledge; they are not conjectural. *Contra Maldonado*, 757 F.2d at 51. Nor does Mr. Timmons's declaration consist of conclusory statements restating the legal standard, like "administrative remedies were not available to me," or "I exhausted all administrative remedies that were available to me." *Contra Drexel*, 582 F.2d at 789. Instead, Mr. Timmons's declaration is based on his personal knowledge and contains specific facts directed at why he was not in a position to exhaust administrative remedies.

The district court faulted Mr. Timmons for not describing the contents of the grievance he attempted to submit. A8. Of course, Mr. Timmons *did* describe the contents of his grievance, in that his declaration makes clear it was about the incident in which Defendant Bohinski called him a rat and a snitch in front of other incarcerated individuals. A39. But in any event, to establish that administrative remedies were not available to him, Mr. Timmons was not required to regurgitate the contents of his unsuccessfully submitted grievance. The declaration adequately supported that Mr. Timmons attempted to file a grievance against Defendant Bohinski and that he was thwarted in his efforts to do so: The obvious inference—one the district court was required to make—is that, since the prison guard to whom Mr. Timmons handed the grievance read it and then "stated … that inmates who file grievances [against] Bohinski get[] the shit beat out of them," the grievance was in fact against Defendant Bohinski. *Id.*

This Court's precedents are clear that a "single, non-conclusory" declaration like that of Mr. Timmons, "when based on personal knowledge and directed at a material issue, is sufficient to defeat summary judgment." *Lupyan*, 761 F.3d at 320-21. In holding otherwise, the district court cited a case, *Gonzalez v. Secretary of Department of Homeland Security*, 678 F.3d 254 (3d Cir. 2012), that is not relevant here. In *Gonzalez*, the plaintiff introduced an affidavit to show that he did not have knowledge of a particular fact, where his "state of mind [was] the key issue on the

merits." *See id.* at 264. This Court explained that while "under certain circumstances, a sworn assertion of an absence of knowledge can suffice to create a genuine issue of material fact," "a bare but sworn assertion of a claimant's lack of knowledge will not suffice to create a material dispute of fact where that assertion is impeached by a well supported showing to the contrary." *Id.* at 263 (internal quotation marks omitted). The Court went on to describe extensive circumstantial evidence undercutting the plaintiff's sworn lack of knowledge, concluding that this evidence "outweigh[ed] [the plaintiff's] claim of ignorance." *Id.* at 264. As a result, the Court could "say with confidence that a rational trier of fact could not credit [the plaintiff's] denial." *Id.*

This situation is different. Unlike the plaintiff in *Gonzalez*, Mr. Timmons does not rely on his declaration to establish his knowledge as to any material issue. And in any event, the overwhelming contradictory evidence that was dispositive in *Gonzalez* is absent here. *Gonzalez*'s relevance to this case, then, is solely its articulation of the uncontroversial principle that conclusory declarations cannot defeat summary judgment. *See id.* at 263. Mr. Timmons does not contest that. But his declaration was not conclusory.

**2. To the extent Mr. Timmons's declaration is "self-serving," that is not a basis for discounting it.**

The district court repeatedly described Mr. Timmons's declaration as "self-serving" and rejected it in part on that basis. A8. True, the declaration is "self-

serving" in the sense that it supports Mr. Timmons's case. But that is no reason to reject the declaration. A nonconclusory declaration is competent evidence to withstand a summary-judgment motion "even if the [declaration] is 'self[-]serving.'" *Lupyan*, 761 F.3d at 321 & n.2.

As this Court has explained, "[a]s with any other kind of evidence, [a] declarant's interest in the outcome is merely one factor for the ultimate finder of fact to weigh in determining the reliability of [their declaration]. It is not a reason to automatically reject the evidence." *Id.* at 321 n.2; *see also Kaba v. Stepp*, 458 F.3d 678, 681 (7th Cir. 2006) (cautioning defendants against "fall[ing] into the trap of trying to discredit [the prisoner plaintiff's] affidavits as 'self-serving'" and noting that all "[s]worn affidavits, particularly those that are detailed, specific, and based on personal knowledge are 'competent evidence to rebut [a] motion for summary judgment'" (fourth alteration in original)). Indeed, "the testimony of a litigant will almost always be self[-]serving since few litigants will knowingly volunteer statements that are prejudicial to their case.... [T]hat has never meant that a litigant's evidence must be categorically rejected by the fact finder." *Lupyan*, 761 F.3d at 321 n.2.

In fact, the opposite is true. Declarations just like that of Mr. Timmons have always been viewed by this Court as competent to establish the unavailability of administrative remedies (or at least the existence of a genuine dispute of material

fact on that issue). In *Illes v. Deparlos*, as discussed above, this Court found a genuine dispute of material fact on availability of administrative remedies based on the plaintiff's affidavit describing what prison staff had told him about grievance procedures. 447 F. App'x at 394. And in *Brown v. Croak*, the Court similarly rejected the defendants' attempt to invoke failure to exhaust as an affirmative defense, finding instead—based on the plaintiff's declaration about what prison staff had led him to believe about grievance procedures—that the plaintiff had raised a factual question as to the availability of administrative remedies that must be resolved by a factfinder, not as a matter of law. 312 F.3d 109, 112 (3d Cir. 2002).

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Given that Mr. Timmons's declaration contained specific facts, based on his personal knowledge, the district court was not permitted to discard it wholesale as conclusory and self-serving. And because Mr. Timmons—the nonmoving party—offered "more than [a] conclusory affidavit[]," the district court was required to "believe[]" his evidence, draw reasonable inferences in his favor, and leave any "credibility determinations … to the [factfinder]." *Pearson*, 850 F.3d at 533, 541 n.5.

But it failed to do so, instead effectively imposing a heightened version of the summary-judgment standard untethered from the Federal Rules of Civil Procedure—or, for that matter, the PLRA. As the Supreme Court has made clear,

unless "expressly" stated otherwise by Congress, the "usual procedural requirements" apply in prisoner litigation. *Jones*, 549 U.S. at 216; *accord Perttu*, 605 U.S. at 469-70. It is never appropriate to impose heightened burdens at summary judgment, but it was particularly problematic for the district court to apply such an unduly strict approach to a pro se prisoner litigant. This Court has instructed that courts should not hold a party's "inability to corroborate [their] claim" against them, *Lupyan*, 761 F.3d at 321, and that concern is at its apex when it comes to litigants proceeding without counsel and subject to the constraints of the institutions in which they are incarcerated, *see Mala*, 704 F.3d at 244-45.

## CONCLUSION

This Court should, in a published decision, reverse the district court's grant of summary judgment in favor of Defendants and remand for further proceedings.

Dated: September 10, 2025

Respectfully submitted,

*s/ Lindsay C. Harrison*

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## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a), I certify that this brief complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 5,433 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: September 10, 2025

*s/ Lindsay C. Harrison*
Lindsay C. Harrison

## CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Third Circuit Local Appellate Rule 28.3(d), I, the undersigned counsel, hereby certify that I have been admitted before the bar of the United States Court of Appeals for the Third Circuit, and that I am a member in good standing of the court.

Dated: September 10, 2025

*s/ Lindsay C. Harrison*
Lindsay C. Harrison

## CERTIFICATE OF VIRUS SCAN

Pursuant to the Third Circuit Local Appellate Rule 31.1(c), I hereby certify that a virus detection program was performed on this electronic brief/file using CrowdStrike, version 7.28.20006.0, and that no virus was detected.

Dated: September 10, 2025

*s/ Lindsay C. Harrison*
Lindsay C. Harrison

## CERTIFICATE OF IDENTICAL COMPLIANCE OF BRIEFS

Pursuant to the Third Circuit Local Appellate Rule 31.1(c), I hereby certify that the text of the electronic brief is identical to the text in the hard, paper copies of the brief.

Dated: September 10, 2025

*s/ Lindsay C. Harrison*
Lindsay C. Harrison

## CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2025, I electronically filed the foregoing Opening Brief of Appellant, Appendix Volume I of II, and Appendix Volume II of II with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 10, 2025

*s/ Lindsay C. Harrison*
Lindsay C. Harrison

**No. 25-1516**

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

BRANDON TIMMONS,
*Plaintiff-Appellant,*

v.

BOHINSKI,
*Defendant-Appellee.*

On Appeal from the United States District Court for the Middle District of Pennsylvania, No. 1:21-cv-02157
Before the Hon. Yvette Kane, District Judge

## APPELLANT'S APPENDIX: VOLUME I of II (pages A1-A14)

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**VOLUME II**

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

| | | |
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| **BRANDON TIMMONS,** | : | |
| **Plaintiff** | : | |
| | : | **No. 1:21-cv-02157** |
| **v.** | : | |
| | : | **(Judge Kane)** |
| **BOHINSKI,** | : | |
| **Defendant** | : | |

**MEMORANDUM**

This is a prisoner civil rights case in which pro se Plaintiff Brandon Timmons ("Timmons") alleges that Defendant Bohinski ("Bohinski") violated his civil rights by calling him a "rat" and a "snitch" in front of other inmates and therefore creating a risk that he would be assaulted. Presently before the Court is Bohinski's motion for summary judgment. (Doc. No. 67.) For the following reasons, the Court will grant the motion for summary judgment and close this case.

## I. BACKGROUND AND PROCEDURAL HISTORY

Timmons initiated this case through the filing of a complaint against Bohinski and several other Defendants on December 28, 2021. (Doc. No. 1.) He amended his complaint on February 22, 2022, and April 20, 2022. (Doc. Nos. 9, 14.) On February 10, 2023, the Court granted Defendants' motion to dismiss, dismissed Timmons's claims against all Defendants other than Bohinski and John Doe as misjoined in violation of Federal Rule of Civil Procedure 20, dismissed the claims against Bohinski and John Doe without prejudice, and granted Timmons leave to file a third amended complaint against Bohinski and John Doe. (Doc. Nos. 33–34.) Timmons subsequently filed a third amended complaint asserting claims against Bohinski only. (Doc. No. 49.) Bohinski moved to dismiss the third amended complaint for failure to exhaust administrative remedies, but the Court denied the motion on November 3,

2023, concluding that the issue of administrative exhaustion could not be decided at the pleading stage in this case. (Doc. Nos. 52–53.) Bohinski answered the third amended complaint on November 16, 2023, and filed a motion for partial judgment on the pleadings on the same date, seeking judgment as to Timmons's equal protection claim and request for compensatory damages. (Doc. Nos. 54–55.) The Court granted the motion for partial judgment on the pleadings on June 28, 2024, allowing the case to proceed as to Timmons's retaliation, cruel and unusual punishment, and supervisory liability claims against Bohinski. (Doc. Nos. 64–65.)

According to the allegations in the third amended complaint, which remains the operative complaint, Timmons was incarcerated in Dallas State Correctional Institution ("SCI-Dallas") on June 16, 2021, when Bohinski, a deputy superintendent, called him a "rat" in front of other inmates and told other inmates that he was a "snitch." (Doc. No. 49 at 2.) The accusations that Timmons was a "rat" and a "snitch" began to spread throughout the prison, allegedly placing Timmons at risk of assault by other inmates. (Id.) Timmons later asked Bohinski why he had told other inmates that he was a rat and a snitch, and Bohinski purportedly stated that it was because Timmons had previously filed lawsuits against prison staff and that other inmates hearing that Timmons was a rat and a snitch would stop Timmons from filing lawsuits. (Id.)

Bohinski filed the instant motion for summary judgment on July 19, 2024, along with a supporting brief and a statement of material facts as required by Local Rule 56.1. (Doc. Nos. 67–69.) Timmons responded to the motion on September 13, 2024, and Bohinski filed a reply brief in support of the motion on September 18, 2024. (Doc. Nos. 73–75.) The motion is accordingly ripe for judicial review.

## II. MATERIAL FACTS[1]

Under the Pennsylvania Department of Corrections' grievance policy, DC-ADM 804, a prisoner seeking to exhaust administrative remedies for a complaint regarding his prison conditions must first submit a written grievance within fifteen (15) working days from the date of the incident. See (DC-ADM 804 § 1(A)(8), (Doc. No. 68-5 at 6)). DC-ADM 804 provides that the grievance must include "a statement of the facts relevant to the claim," "identify individuals directly involved in the events," and "specifically state any claims [the inmate] wishes to make concerning violations of Department directives, regulations, court orders, or other law." See (id. § 1(A)(11), (Doc. No. 68-5 at 6)). Next, the prisoner must submit a written appeal to an intermediate review level within fifteen (15) working days. See (id. § 2(A)(1)(a), (Doc. No. 68-5 at 16)). Finally, the inmate must submit an appeal to the Secretary's Office of Inmate Grievances and Appeals within fifteen (15) working days. See (id. § 2(B)(1)(b), (Doc. No. 68-5 at 19)).

Timmons filed four grievances during the relevant period in June and July of 2021: grievance numbers 930039, 930047, 931226, and 931254. (Doc. No. 68 ¶¶ 19–22; Doc. No. 74 ¶¶ 19–22.)[2] None of these grievances name Bohinski or advance any of the claims at issue in this lawsuit against Bohinski. (Doc. No. 68 ¶¶ 23–41; Doc. No. 74 ¶¶ 23–41.)

[1] Unless otherwise noted, the background herein is derived from Bohinski's Rule 56.1 statement of facts and Timmons's response to the statement. (Doc. Nos. 68, 74.) Because the Court ultimately grants summary judgment on the basis of Timmons's failure to exhaust administrative remedies, this section focuses only on facts pertaining to that issue.

[2] Timmons asserts that he "filed more than 4 inmate grievances in June 2021," that he "attempted to file other grievances in June 2021," and that he "attempted to file grievances in July 2021," but he offers no documentary proof of any other grievances being filed during this period. (Doc. No. 72 ¶¶ 19–22.) The Court accordingly deems undisputed the fact that he filed only four grievances during the relevant period.

Timmons has attached to his brief in opposition to the motion for summary judgment a declaration from himself in which he states that he attempted to file a grievance against Bohinski on June 16, 2021, but that a "John Doe" correctional officer did not submit it and instead "read it and discarded it" and told Timmons that inmates "who file grievances on Bohinski get[] the shit beat out of them." (Doc. No. 73-1 at 1.) The declaration also states that on June 27, 2021, a "John Doe officer who was not wearing a name tag" told Timmons that the "next time" he filed a grievance against Bohinski he "would be jumped by other inmates." (Id.) The declaration is the only evidence Timmons has produced in opposition to Bohinski's motion for summary judgment.

## III. LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) requires the Court to render summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." See Fed. R. Civ. P. 56(a). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986). A disputed fact is "material" if proof of its existence would affect the outcome of the case under applicable substantive law. See id. at 248; Gray v. York Newspapers, Inc., 957 F.2d 1070, 1078 (3d Cir. 1992). A dispute of material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson, 477 U.S. at 257; Brenner v. Local 514, United Bhd. of Carpenters & Joiners of Am., 927 F.2d 1283, 1287–88 (3d Cir. 1991).

When determining whether there is a genuine dispute of material fact, the Court must view the facts and all reasonable inferences in favor of the nonmoving party. See Moore v.

Tartler, 986 F.2d 682 (3d Cir. 1993); Clement v. Consol. Rail Corp., 963 F.2d 599, 600 (3d Cir. 1992); White v. Westinghouse Elec. Co., 862 F.2d 56, 59 (3d Cir. 1988). To avoid summary judgment, however, the nonmoving party may not rest on the unsubstantiated allegations of his or her pleadings. When the party seeking summary judgment satisfies its burden under Rule 56 of identifying evidence that demonstrates the absence of a genuine dispute of material fact, the nonmoving party is required to go beyond his pleadings with affidavits, depositions, answers to interrogatories, or the like in order to demonstrate specific material facts that give rise to a genuine dispute. See Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The party opposing the motion "must do more than simply show that there is some metaphysical doubt as to the material facts." See Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586 (1986). When Rule 56 shifts the burden of production to the nonmoving party, that party must produce evidence to show the existence of every element essential to its case that it bears the burden of proving at trial, for "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." See Celotex, 477 U.S. at 323; see also Harter v. G.A.F. Corp., 967 F.2d 846, 851 (3d Cir. 1992).

In determining whether a dispute of material fact exists, the Court must consider the evidence in the light most favorable to the nonmoving party. See White, 862 F.2d at 59. In doing so, the Court must accept the nonmovant's allegations as true and resolve any conflicts in his favor. See id. (citations omitted). However, a party opposing a summary judgment motion must comply with Local Rule 56.1, which specifically directs the oppositional party to submit a "statement of the material facts, responding to the numbered paragraphs set forth in the statement required [to be filed by the movant], as to which it is contended that there exists a genuine issue to be tried"; if the nonmovant fails to do so, "[a]ll material facts set forth in the statement

required to be served by the moving party will be deemed to be admitted." See L.R. 56.1. The Rule further requires the inclusion of references to the parts of the record that support the statements. See id.

A party cannot evade these litigation responsibilities in this regard simply by citing the fact that he is a pro se litigant. These rules apply with equal force to all parties. See Sanders v. Beard, No. 09-cv-01384, 2010 WL 2853261, at *5 (M.D. Pa. July 20, 2010) (stating that pro se parties "are not excused from complying with court orders and the local rules of court"); Thomas v. Norris, No. 02-cv-01854, 2006 WL 2590488, at *4 (M.D. Pa. Sept. 8, 2006) (explaining that pro se parties must follow the Federal Rules of Civil Procedure).

## IV. DISCUSSION

Bohinski argues that he is entitled to summary judgment because Timmons failed to exhaust administrative remedies and because Timmons's claims fail on their merits. (Doc. No. 69.) The Court begins its analysis with Bohinski's exhaustion argument, and because the Court ultimately concludes that Bohinski is entitled to summary judgment on the basis of failure to exhaust, it does not reach his merits argument.

Under the Prison Litigation Reform Act ("PLRA"), prisoner plaintiffs must exhaust all available administrative remedies before they may challenge the conditions of their confinement in federal court. See 42 U.S.C. § 1997e(a); Downey v. Pa. Dep't of Corr., 968 F.3d 299, 304 (3d Cir. 2020). The statute requires "proper exhaustion," meaning the prisoner must complete the administrative review process in accordance with the procedural rules set by the prison. See id. at 305 (citing Woodford v. Ngo, 548 U.S. 81, 88 (2006)). The failure to exhaust available administrative remedies is an affirmative defense. See Jones v. Bock, 549 U.S. 199, 216 (2007). Accordingly, "the burden to plead and prove failure to exhaust as an affirmative defense rests on

the defendant." See Rinaldi v. United States, 904 F.3d 257, 268 (2018) (citing Ray v. Kertes, 285 F.3d 287, 295 (3d Cir. 2002)).

A prisoner is only required to exhaust administrative remedies that are "available." See id. at 266 (citing Woodford, 548 U.S. at 93). An administrative remedy is unavailable, and administrative exhaustion is thus excused, in three situations: "(1) when 'it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates'; (2) when it is 'so opaque that it becomes, practically speaking, incapable of use,' such as when no ordinary prisoner can discern or navigate it; or (3) when 'prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.'" See id. at 266–67 (quoting Ross v. Blake, 578 U.S. 632, 643–44 (2016)). If a defendant establishes that the plaintiff failed to exhaust administrative remedies, the burden shifts to the plaintiff to show that the administrative process was unavailable to him. See id. at 268.

In this case, it is clear that Timmons failed to exhaust administrative remedies. The undisputed factual record shows that Timmons filed four grievances during the relevant period and that none of these grievances named Bohinski or advanced any of the claims against him that Timmons advances in this case. (Doc. No. 68 ¶¶ 19–41; Doc. No. 74 ¶¶ 19–41.) The burden accordingly shifts to Timmons to show that the grievance process was unavailable to him. See Rinaldi, 904 F.3d at 268.

The only evidence Timmons has offered to establish unavailability is a declaration in which he asserts that a John Doe correctional officer threatened that he would get "the shit beat out of" him if he filed a grievance against Bohinski and that another John Doe correctional officer threatened that he would get "jumped" if he did so. (Doc. No. 73-1 at 1.)

The Court finds Timmons's declaration insufficient to survive Bohinski's motion for summary judgment. "As a general proposition, 'conclusory, self-serving affidavits are insufficient to withstand a motion for summary judgment.'" Gonzalez v. Sec'y of Dep't of Homeland Sec., 678 F.3d 254, 263 (3d Cir. 2012) (quoting Kirleis v. Dickie, McCarney & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009)). The purpose of summary judgment proceedings "is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit." See Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990). Timmons asserts that he attempted to file grievances against Bohinski but was dissuaded from doing so by threats from unnamed correctional officers, but he has not specified what was written in the grievances he attempted to file, nor has he shown that he attempted to learn the identity of the unknown correctional officers through the discovery process or offered any other evidence that could establish the veracity of his declaration. The Court is thus left with nothing other than Timmons's conclusory, unsupported, and self-serving affidavit, which the Court finds insufficient to create a genuine dispute of material fact as to whether the grievance process was unavailable to him. See Gonzalez, 678 F.3d at 263. The Court will accordingly grant summary judgment in favor of Bohinski on the basis of Timmons's failure to exhaust administrative remedies.

## V. CONCLUSION

For the foregoing reasons, the Court will grant Bohinski's motion for summary judgment and close this case. An appropriate Order follows.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

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

| | | |
|---|---|---|
| **BRANDON TIMMONS,** | : | |
| **Plaintiff** | : | |
| | : | **No. 1:21-cv-02157** |
| **v.** | : | |
| | : | **(Judge Kane)** |
| **BOHINSKI,** | : | |
| **Defendant** | : | |

**ORDER**

**AND NOW**, on this 11th day of February 2025, in accordance with the Memorandum issued concurrently with this Order, **IT IS ORDERED THAT**:

1. Defendant's motion for summary judgment (Doc. No. 67) is **GRANTED**; and

2. The Clerk of Court is directed to enter judgment in favor of Defendant and **CLOSE** this case.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

AO 450 (Rev. 11/11) Judgment in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Middle District of Pennsylvania

BRANDON TIMMONS,
*Plaintiff*
v.
BOHINSKI,
*Defendant*

Civil Action No. 1:21-cv-02157

## JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

❒ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($ _____ ), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

❒ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____ .

☑ other: Judgment is entered in favor of Defendant and against Plaintiff. See Memorandum and Order (Docs. 76 and 77).

This action was *(check one)*:

❒ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

❒ tried by Judge _____ without a jury and the above decision was reached.

☑ decided by Judge Yvette Kane, U.S. District Judge

Date: 2/11/25

*CLERK OF COURT*

s/ Dawn McNew
*Signature of Clerk or Deputy Clerk*

IN THE U.S. DISTRICT COURT FOR MIDDLE DISTRICT OF PENNSYLVANIA

[*insert name of court; for example, United States District Court for the District of Minnesota*]

BRANDON TIMMONS, Plaintiff

v.

BOHINSKI, Defendant

Case No. 1:21-CV-2157

I am an inmate confined in an institution. Today, 3-5-25 [*insert date*], I am depositing the NOTICE OF APPEAL [*insert title of document; for example, "notice of appeal"*] in this case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Sign your name here _____

Signed on 3-5-25 [*insert date*]

[***Note to inmate filers:*** *If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(C).*]

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**Form 1A**

**Notice of Appeal to a Court of Appeals From a Judgment of a District Court**

United States District Court for the MIDDLE
District of PENNSYLVANIA
Docket Number 1:21-CV-2157

BRANDON TIMMONS, Plaintiff

v.

BOHINSKI, Defendant

Notice of Appeal

BRANDON TIMMONS (name all parties taking the appeal)* appeal to the United States Court of Appeals for the 3 Circuit from the final judgment entered on 2-11-25 (state the date the judgment was entered).

(s) BRANDON TIMMONS #LS-7735
*Attorney for* [redacted] 301 MOREA RD
*Address*: FRACKVILLE PA 17931

[***Note to inmate filers:*** *If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration with this Notice of Appeal.*]

* See Rule 3(c) for permissible ways of identifying appellants.

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

| | | |
|---|---|---|
| **BRANDON TIMMONS,** | : | |
| **Plaintiff** | : | |
| | : | **No. 1:21-cv-02157** |
| **v.** | : | |
| | : | **(Judge Kane)** |
| **BOHINSKI,** | : | |
| **Defendant** | : | |

**ORDER**

**AND NOW**, on this 11th day of February 2025, in accordance with the Memorandum issued concurrently with this Order, **IT IS ORDERED THAT**:

1. Defendant's motion for summary judgment (Doc. No. 67) is **GRANTED**; and

2. The Clerk of Court is directed to enter judgment in favor of Defendant and **CLOSE** this case.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

Smart Communications/PADOC

SCI- WAYNART

Name BRANDON T. TIMMONS

Number LJ-7735

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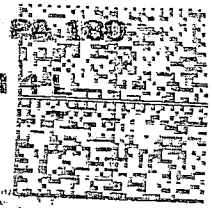

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