

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MATTHEW KALMAN,

Plaintiff,

No. 26-cv-00619

v.

ORDER

AARON P. SEVIGNY, *et al.*,

Defendants.

THIS MATTER comes before the Court upon the Motion of Defendants to Disqualify Plaintiff's Counsel, Matthew Kalman, Esq. ("Kalman"), from acting as both a proposed class representative and counsel prosecuting the putative class claims. (ECF No. 36). Kalman filed opposition primarily arguing the motion is premature because no motion for class certification has yet been filed. (ECF No. 39); and

WHEREAS, although questions of class certification ordinarily should await discovery and a motion for certification and an adequate factual record, particularly with respect to issues of typicality and numerosity, the Third Circuit has expressly recognized the exceptional case in which the complaint itself establishes a defect that further discovery cannot cure. *Landsman & Funk PC v. Skinder-Strauss Assocs.*, 640 F.3d 72, 93 n.30 (3d Cir. 2011), *opinion reinstated in part*, No. 09-3105, 2012 WL 2052685 (3d Cir. Apr. 17, 2012); and

WHEREAS, Third Circuit precedent, *Kramer v. Sci. Control Corp.*, 534 F.2d 1085, 1090 (3d Cir. 1976), firmly establishes that in a class action that may result in a fund from which attorneys' fees may be awarded, the plaintiff class representative may not also serve as class counsel; and

WHEREAS, this case therefore presents exactly such an exceptional case in which issues related to class certification may be considered prior to discovery and a motion for class certification. The relevant circumstances are undisputed: Kalman is the proposed class representative, Kalman presently serves as counsel prosecuting the putative class claims, and the action seeks monetary class relief and attorneys' fees. No discovery could alter those facts or the conclusion that such representation is improper; and

WHEREAS, unlike issues of predominance and/or typicality which ordinarily require a factual record developed through discovery, waiting to address the instant issue until a certification motion is filed would serve no meaningful purpose since no facts material to the issue could be developed through discovery, and waiting would merely postpone adjudication of a structural conflict already apparent on the face of the pleadings. *See Landsman*, 640 F.3d at 93 n.30; *McPeak v. S-L Distrib. Co.*, No. 12-348, 2014 WL 4388562, at *4, 7 (D.N.J. Sept. 5, 2014) (recognizing that courts may grant a motion to strike class allegations before discovery and a certification motion if no amount of discovery could cure a defect that is apparent from the pleadings); *Missud v. Oakland Coliseum Joint Venture*, No. 12-02967, 2013 WL 812428, at *25–26 (N.D. Cal. Mar. 5, 2013) (striking class allegations at pleading stage where class counsel was both counsel and a class representative despite allegation in complaint that co-counsel would be retained because the defect was evident from the complaint); but

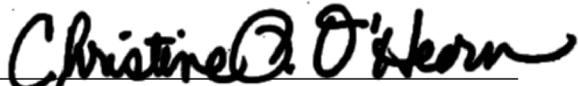
WHEREAS, the relief sought by Defendants to wholly disqualify Kalman is overbroad and contrary to Kalman's right to represent himself *pro se* in this case as permitted by the Third Circuit. *See Kramer*, 534 F.2d at 1089; therefore,

IT IS HEREBY on this 10th day of August 2026,

ORDERED that Defendants' Motion, (ECF No. 36), is hereby **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED that all class allegations are hereby **STRICKEN** without prejudice; and it is finally

ORDERED an amended pleading containing class allegations may be filed within thirty (30) days **only** if alternative counsel enters an appearance and Kalman withdraws his appearance in its entirety or on behalf of anyone other than himself.


Honorable Christine P. O'Hearn, U.S.D.J.