

**IN THE SUPERIOR COURT OF NEW JERSEY**

**APPELLATE DIVISION**

**DOCKET NO. A-000190-24T1**

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**SAAD AHMED SHAIKH,**

**Appellant.**

**v.**

**DISCOVER BANK,**

**Respondent,**

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**APPELLANT'S BRIEF**

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**Saad Ahmed Shaikh**

**Pro se**

869 Pavonia Ave, Unit 1

Jersey City, NJ 07306

Date: May 10, 2025

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**IN THE SUPERIOR COURT OF NEW JERSEY**  
**APPELLATE DIVISION**

<b>SAAD AHMED SHAIKH,</b>		
<b>Appellant.</b>		
<b>V</b>		<b>DOCKET NO. A-000190-24T1</b>
<b>DISCOVER BANK,</b>		<b>APPELLANT'S BRIEF</b>
<b>Respondent</b>		
<b>.000</b>		

COMES NOW Saad Ahmed Shaikh, Appellant, and respectfully submits this appellate brief pursuant to New Jersey Court Rules, seeking reversal of the trial court's judgment and other relief as set forth below.

**PRELIMINARY STATEMENT**

1. This appeal arises from the trial court's fundamentally flawed decision to grant summary judgment in favor of Respondent, Discover Bank, for an alleged credit card debt of \$7,221.39. The trial court's ruling was based exclusively on Respondent's submission of account statements, without requiring foundational evidence to substantiate the claim. This lack of evidentiary support represents a significant departure from established legal standards and has caused undue prejudice to Appellant.

### **Lack of Foundational Evidence**

2. Respondent failed to produce a signed credit agreement or any documentation establishing the existence of a contractual relationship between the parties.

Instead, the trial court relied on unverified and unauthenticated account statements. This omission directly contravenes New Jersey case law, which mandates that a creditor must substantiate its claims with foundational evidence, such as a signed agreement or detailed account history. By allowing Respondent to bypass this requirement, the trial court denied Appellant the opportunity to meaningfully challenge the validity of the alleged debt.

### **3. Prejudice to Appellant**

The trial court's reliance on incomplete and insufficient evidence has caused significant prejudice to Appellant. The erroneous grant of summary judgment deprived Appellant of due process, while the wage garnishment application threatened Appellant's limited financial resources. These actions have caused undue financial and emotional stress, undermining the principles of fairness and justice that are central to New Jersey's judicial system.

### **PROCEDURAL HISTORY**

4. **April 15, 2024:** Respondent initiated this action by filing a complaint in the Superior Court of New Jersey, Special Civil Part, Hudson County, seeking \$7,221.39 in alleged credit card debt. The complaint relied solely on account statements without providing foundational documentation to establish the debt or a contractual relationship. (Da1)

5. **May 9, 2024:** Appellant timely filed an answer disputing the validity of the alleged debt. Appellant also served discovery requests, seeking foundational documents, including the signed credit agreement, account terms, and a detailed history of transactions. Respondent failed to provide these documents, obstructing Appellant's ability to prepare a defense. (Da10)
6. **July 17, 2024:** Respondent filed a motion for summary judgment. The motion was based exclusively on account statements, which were unauthenticated and lacked any evidentiary basis to link Appellant to the alleged debt. Respondent did not address Appellant's discovery requests or provide any contractual agreement to substantiate its claims. (Da30)
7. **August 2, 2024:** The trial court granted summary judgment in favor of Respondent. The court relied solely on Respondent's unverified account statements and did not consider the lack of foundational evidence or Respondent's failure to respond to discovery. This ruling effectively dismissed Appellant's defenses without a proper adjudication on the merits. (Da120)
8. **November 15, 2024:** Appellant filed this appeal to challenge both the trial court's grant of summary judgment and the improper wage garnishment application. This appeal seeks to address the procedural and substantive errors that have caused significant prejudice to Appellant. (Da130)

## STATEMENT OF FACTS

**9. Initiation of the Lawsuit:** On April 15, 2024, Respondent Discover Bank filed a complaint in the Superior Court of New Jersey, Special Civil Part, Hudson County, alleging that Appellant owed \$7,221.39 on a credit card account. Despite initiating this claim, Respondent failed to produce foundational documentation establishing liability. Specifically, Respondent did not provide a signed credit card agreement, transaction history, or any contractual documentation that linked Appellant to the alleged debt. Under New Jersey case law, a plaintiff in a debt collection action must provide sufficient evidence to establish the existence of a contract. See *Cavalry SPV I, LLC v. Schaffer*, 441 N.J. Super. 484, 494 (App. Div. 2015). Without such evidence, the claim lacks merit. (Da1)<sup>1</sup>

**10. Discovery Issues:** During the discovery phase, Appellant submitted formal requests seeking foundational documents to validate Respondent's claim. These requests included a signed credit card agreement, the terms and conditions governing the alleged account, and any evidence connecting Appellant to the debt. Respondent ignored these requests and instead relied solely on unauthenticated account statements. In *Cortez v. Gindhart*, 435 N.J. Super. 589,

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<sup>1</sup> *Cavalry SPV I, LLC v. Schaffer*, 441 N.J. Super. 484, 494 (App. Div. 2015) This decision underscores the evidentiary burden borne by creditors in debt collection proceedings. The Appellate Division explicitly held that a creditor must produce competent evidence establishing the existence of a valid contractual obligation between the parties, such as a signed agreement or other legally binding documentation. Reliance solely on unverified account statements or conclusory allegations is inadequate to meet this burden. The trial court's acceptance of Respondent's account statements, absent foundational evidence, is patently inconsistent with the principles delineated in *Cavalry SPV*.

605 (App. Div. 2014),<sup>2</sup> the court emphasized that discovery is essential for ensuring fairness and preventing trial by ambush. By refusing to comply with discovery obligations, Respondent effectively denied Appellant the opportunity to mount an adequate defense. This failure constitutes a violation of Rule 4:18-1, which governs the production of documents in civil litigation. (Da10)

**11. Summary Judgment:** On August 2, 2024, the trial court granted summary judgment in favor of Respondent based on incomplete and insufficient evidence. The court's decision relied solely on Respondent's submission of account statements, which lacked authentication and failed to address the absence of a signed credit agreement or any contractual documentation. The New Jersey Supreme Court in *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540 (1995),<sup>3</sup> held that summary judgment is only appropriate when there are no genuine issues of material fact. Here, material factual disputes existed regarding the validity of the alleged debt and the procedural deficiencies in Respondent's case. The trial court's decision to grant summary judgment

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<sup>2</sup> Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) Cortez reinforces the principle that summary judgment is inappropriate where material factual disputes remain unresolved. The Appellate Division emphasized that factual disputes must be adjudicated through trial, as summary judgment is reserved for cases where the evidence permits only one reasonable conclusion. Here, Respondent's failure to produce a signed agreement or detailed account history created unresolved material factual disputes regarding the existence and terms of the alleged obligation, necessitating reversal.

<sup>3</sup> Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) In Brill, the New Jersey Supreme Court articulated the definitive standard governing motions for summary judgment pursuant to R. 4:46-2. The Court held that summary judgment is appropriate only where the moving party demonstrates, by competent evidentiary material, the absence of any genuine issue as to a material fact and entitlement to judgment as a matter of law. It further emphasized that all legitimate inferences must be drawn in favor of the non-moving party. This precedent underscores that the trial court, in granting summary judgment here, improperly resolved disputed material facts in favor of the Respondent, thereby exceeding its procedural mandate.

deprived Appellant of due process and failed to adhere to the evidentiary standards required under New Jersey law. (Da120).

## LEGAL ARGUMENT

### A. The Trial Court Erred in Granting Summary Judgment (Not Raised Below)

**12.Lack of Foundational Evidence:** Under New Jersey law, a creditor must establish liability by providing evidence of a valid contract and the defendant's obligations under that contract. This requirement ensures that claims are supported by credible, legally sufficient evidence, thereby protecting defendants from baseless allegations. In *Cavalry SPVI, LLC v. Schaffer*, 441 N.J. Super. 484, 494 (App. Div. 2015),<sup>4</sup> the court emphasized that mere account statements, absent a signed agreement or other foundational documents, are insufficient to prove the existence of a binding contractual relationship.

**13.**In the present case, Respondent Discover Bank failed to produce a signed credit agreement or any terms and conditions that explicitly linked Appellant to the alleged debt. Instead, Respondent relied exclusively on unauthenticated account statements to substantiate its claims. These statements, standing alone, lack the evidentiary weight required to establish liability. As the Appellate Division held

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<sup>4</sup> *Cavalry SPV I, LLC v. Schaffer*, 441 N.J. Super. 484, 494 (App. Div. 2015) This decision underscores the evidentiary burden borne by creditors in debt collection proceedings. The Appellate Division explicitly held that a creditor must produce competent evidence establishing the existence of a valid contractual obligation between the parties, such as a signed agreement or other legally binding documentation. Reliance solely on unverified account statements or conclusory allegations is inadequate to meet this burden. The trial court's acceptance of Respondent's account statements, absent foundational evidence, is patently inconsistent with the principles delineated in *Cavalry SPV*.

in *Cavalry SPV*, creditors must provide more than generic documentation to satisfy their burden of proof.

14. The trial court compounded this error by disregarding the evidentiary principles

established in *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540 (1995).<sup>5</sup>

In *Brill*, the New Jersey Supreme Court held that summary judgment is only appropriate when there are no genuine issues of material fact and the moving party has met its burden of proof. By granting summary judgment based solely on insufficient and incomplete evidence, the trial court effectively denied Appellant the opportunity to dispute the validity of the alleged debt.

15. Furthermore, Respondent's failure to produce foundational evidence raises

significant questions about the validity and enforceability of the alleged contract. Without a signed agreement or documentation outlining the terms of the alleged obligation, it is impossible to verify whether Appellant agreed to the debt, the terms under which it was incurred, or whether Respondent accurately calculated the amount claimed.

16. This lack of foundational evidence violates both procedural and substantive

legal standards, warranting reversal of the trial court's decision. Courts must demand that creditors meet their evidentiary obligations, particularly when

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<sup>5</sup> *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540 (1995) In *Brill*, the New Jersey Supreme Court articulated the definitive standard governing motions for summary judgment pursuant to R. 4:46-2. The Court held that summary judgment is appropriate only where the moving party demonstrates, by competent evidentiary material, the absence of any genuine issue as to a material fact and entitlement to judgment as a matter of law. It further emphasized that all legitimate inferences must be drawn in favor of the non-moving party. This precedent underscores that the trial court, in granting summary judgment here, improperly resolved disputed material facts in favor of the Respondent, thereby exceeding its procedural mandate.

seeking summary judgment, to ensure the integrity of the judicial process and protect defendants from baseless claims.

**17. Material Factual Disputes:** The absence of foundational documents raises genuine issues of material fact, precluding summary judgment. Summary judgment is intended to resolve cases where there is no dispute over material facts and where one party is entitled to judgment as a matter of law. However, when critical facts remain in contention, as they do here, the remedy is inappropriate. See *Cortez v. Gindhart*, 435 N.J. Super. 589, 605 (App. Div. 2014).<sup>6</sup>

**18.** In the present case, Respondent failed to provide a signed credit agreement, detailed account statements, or any corroborative evidence linking the alleged debt to Appellant. This lack of documentation leaves unresolved factual disputes concerning:

- a. The existence of a contractual relationship between the parties;
- b. The authenticity of the debt amount claimed by Respondent;
- c. The accuracy and applicability of the purported account statements.

**19.** Under *Cortez*, the existence of these unresolved factual disputes necessitates a full evidentiary hearing where both parties can present and challenge evidence.

By granting summary judgment in the absence of such a hearing, the trial court

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<sup>6</sup> *Cortez v. Gindhart*, 435 N.J. Super. 589, 605 (App. Div. 2014) *Cortez* reinforces the principle that summary judgment is inappropriate where material factual disputes remain unresolved. The Appellate Division emphasized that factual disputes must be adjudicated through trial, as summary judgment is reserved for cases where the evidence permits only one reasonable conclusion. Here, Respondent's failure to produce a signed agreement or detailed account history created unresolved material factual disputes regarding the existence and terms of the alleged obligation, necessitating reversal.

effectively deprived Appellant of the opportunity to contest Respondent's claims, in violation of fundamental principles of due process.

20. The New Jersey Supreme Court has consistently held that summary judgment must be denied when genuine issues of material fact exist. In this case, the court failed to acknowledge the disputed factual issues and instead improperly resolved them in Respondent's favor without the benefit of a trial. As a result, Appellant was denied the opportunity to present evidence and cross-examine witnesses, further compounding the prejudicial effects of the trial court's ruling.

21. The unresolved factual disputes in this case—particularly concerning the validity and enforceability of the alleged debt—underscore the necessity of reversing the trial court's decision. Proper adjudication requires a trial, where material factual disputes can be resolved based on a complete evidentiary record.

22. **Misapplication of the Burden of Proof:** The trial court improperly shifted the burden of proof to the Appellant, disregarding established legal principles governing summary judgment. In *Celotex Corp. v. Catrett*, the United States Supreme Court held that the burden of proof in a summary judgment motion lies squarely with the movant, who must demonstrate the absence of any genuine issue of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).<sup>7</sup>

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<sup>7</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) In this seminal U.S. Supreme Court decision, the Court clarified the procedural framework for summary judgment motions under Fed. R. Civ. P. 56. The Court held that the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Once this burden is

23. In this case, Respondent failed to satisfy this burden. By relying solely on account statements—unsubstantiated by foundational evidence, such as a signed credit agreement or detailed account history—Respondent presented insufficient proof to eliminate genuine factual disputes. The trial court’s acceptance of these statements as definitive evidence of liability improperly shifted the burden to Appellant to disprove the allegations, contradicting the core principles articulated in *Celotex*.

24. Moreover, the trial court’s approach undermines the protective function of summary judgment, which is intended to resolve only those cases where no material facts are in dispute. By allowing Respondent to prevail without producing adequate evidence, the court effectively denied Appellant the opportunity to challenge the validity of the alleged debt through proper discovery and evidentiary proceedings. This error necessitates reversal, as it represents a significant deviation from established legal standards and procedural fairness.

**B. Sanctions Against Respondent Are Warranted (Not Raised Below)**

25. **Litigation Misconduct:** Respondent’s conduct throughout this litigation demonstrates a clear pattern of bad faith and abuse of the judicial process, warranting sanctions under N.J. Ct. R. 1:4-8. The rule is designed to deter

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satisfied, the non-moving party must respond with specific evidentiary materials establishing a triable issue. Respondent’s failure to meet its initial burden by providing foundational documentation undermines the validity of the trial court’s summary judgment order.

parties from engaging in frivolous or abusive litigation practices, ensuring the integrity of judicial proceedings.

**26.**In this case, Respondent made false statements in its filings, including the wage garnishment application, where it misrepresented Appellant's employment status. Such statements were not only inaccurate but also calculated to mislead the court and secure an improper financial advantage. Additionally, Respondent's failure to provide foundational evidence, such as a signed credit agreement or corroborative documents, demonstrates a deliberate disregard for procedural and evidentiary rules.

**27.**The New Jersey Supreme Court in *Rosenblum v. Adler* highlighted that bad faith conduct, including false statements and procedural abuses, undermines the fairness of judicial proceedings and justifies the imposition of sanctions. See *Rosenblum v. Adler*, 93 N.J. 324, 327 (1983).<sup>8</sup> Here, Respondent's actions have caused unnecessary delays and increased litigation costs, further prejudicing Appellant.

**28.**Sanctions are necessary not only to address the harm caused to Appellant but also to deter Respondent and similarly situated parties from engaging in comparable misconduct in the future. By imposing sanctions, this Court can

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<sup>8</sup> *Rosenblum v. Adler*, 93 N.J. 324, 327 (1983) *Rosenblum* establishes that litigants who engage in bad faith conduct or abuse procedural mechanisms are subject to sanctions under N.J. Ct. R. 1:4-8. The Court held that procedural integrity is paramount, and bad faith actions that result in unnecessary litigation costs and delays must be addressed through punitive measures. Respondent's procedural misconduct, including false assertions in its garnishment application, exemplifies the type of behavior warranting sanctions under this authority.

uphold the principles of fairness and accountability central to the New Jersey judicial system.

**29. Detering Abusive Practices:** Imposing sanctions is essential not only to address the specific misconduct in this case but also to deter Respondent from engaging in similar practices in the future. Litigation misconduct undermines the judicial process, wasting judicial resources and placing an unfair burden on litigants forced to respond to improper actions. As recognized by the New Jersey Supreme Court in *McKeown-Brand v. Trump Castle Hotel & Casino*, sanctions serve as a critical mechanism to uphold the integrity of the judicial process. See *McKeown-Brand v. Trump Castle Hotel & Casino*, 132 N.J. 546, 561 (1993).<sup>9</sup>

**30.** In this case, Respondent's repeated procedural abuses—including filing a wage garnishment application based on false information and failing to provide foundational evidence for its claims—demonstrate a pattern of bad faith behavior. Specifically, Respondent's actions represent not isolated incidents but rather a systematic approach to leveraging procedural shortcuts and misrepresentations to gain an unfair advantage in litigation.

**31.** The wage garnishment application, which falsely claimed Appellant's employment status, exemplifies the extent of Respondent's disregard for legal

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<sup>9</sup> *McKeown-Brand v. Trump Castle Hotel & Casino*, 132 N.J. 546, 561 (1993) The New Jersey Supreme Court in *McKeown-Brand* articulated the necessity of imposing sanctions to deter procedural abuses and uphold judicial integrity. The Court recognized that sanctions serve a dual purpose: penalizing the offending party and deterring future misconduct. Given Respondent's repeated misrepresentations and disregard for procedural rules, the imposition of sanctions is warranted to preserve the fairness and efficiency of judicial proceedings.

standards. This misrepresentation not only placed an undue burden on Appellant to correct these inaccuracies but also threatened Appellant's exempt unemployment benefits, violating protections under both New Jersey law and federal statutes such as the Consumer Credit Protection Act, 15 U.S.C. § 1673.<sup>10</sup>

**32.** Additionally, Respondent's failure to produce foundational evidence, such as a signed credit agreement or accurate account records, is indicative of a broader pattern of neglect for evidentiary requirements. Such practices not only harm individual litigants but also erode public trust in the fairness and efficiency of the judicial process. Allowing these actions to go unchecked risks setting a dangerous precedent where litigants feel emboldened to exploit procedural loopholes without consequence.

**33.** By imposing appropriate sanctions, this Court can send a clear and unequivocal message that litigation misconduct will not be tolerated. Sanctions serve as a deterrent, ensuring that Respondent and similarly situated parties adhere to ethical standards and procedural rules. Moreover, enforcing sanctions reinforces the judiciary's commitment to fairness, safeguarding the integrity of the legal system and ensuring that all litigants are treated equitably.

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<sup>10</sup> 15 U.S.C. § 1673 Part of the Consumer Credit Protection Act, this federal statute imposes strict limitations on the garnishment of disposable earnings. It specifically includes unemployment benefits within its protections, underscoring Congress's intent to shield these funds from creditor claims. Respondent's garnishment application contravenes these protections, evidencing both a substantive and procedural violation.

34. In conclusion, imposing sanctions against Respondent is necessary not only to address the specific harms in this case but also to uphold the broader principles of justice and accountability that underpin the judicial system.

## CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's grant of summary judgment, deny Respondent's wage garnishment application, and impose sanctions against Respondent for its egregious litigation misconduct. Specifically, the Court should:

- i. **Reverse the Trial Court's Grant of Summary Judgment:** The trial court's decision to grant summary judgment without requiring foundational evidence deprived Appellant of the opportunity to meaningfully contest Respondent's claims. Reversing this decision is necessary to uphold the procedural safeguards intended to ensure fairness and justice in civil litigation.

In seeking this relief, Appellant emphasizes the importance of rectifying the errors and abuses in the proceedings below and restoring fairness to this litigation.

Appellant further submits that granting this relief will affirm the principles of due process and judicial integrity that form the cornerstone of our legal system.

**Date: April 10, 2025**

DISCOVER BANK,

Plaintiff/Respondent

v.

SAAD SHAIKH

Defendant/Appellant

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO. A-000190-24

ON APPEAL FROM  
Order of the Superior Court  
Of New Jersey, Law Division  
HUDSON COUNTY

SAT BELOW:  
Hon. Kimberly Espinales-Maloney, J.S.C.

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AMENDED BRIEF FOR PLAINTIFF-RESPONDENT  
CAPITAL ONE, N.A., successor by merger to DISCOVER BANK

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Dated: September 2, 2025

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## COUNTERSTATEMENT OF FACTS

Plaintiff respectfully requests that this Court affirm the August 2, 2024 Order for Summary Judgment on appeal (the “Order”) by the Hon. Kimberly Espinales-Maloney, J.S.C. (hereinafter “Judge Maloney”, shortened for the sake of brevity and not intended as any sign of disrespect).

This appeal is important because it provides this Court with an opportunity to affirm a) the dispositive nature of a motion for summary judgment and, b) that a trial court should not hesitate to grant a motion for summary judgment when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.

This case is a collection suit on a charged-off credit card account by the original creditor. Plaintiff filed its Complaint for an amount due on the charged-off account within one (1) year after the last payment on the account on or about April 1, 2024. PA-0001; PA-0089, ¶ 9. Defendant filed an Answer, which asserted, by checking boxes on the court form that: the claim or the amount of the claim is unfair. PA-0006. Defendant further asserted that Defendant had disputed this account with credit reporting agencies and annexed copies of those disputes wherein Defendant requested a copy of the signed application for the subject account. Critically, Defendant did not expressly deny liability for the subject account. PA-0006 to PA-0022.

The parties engaged in discovery. Defendant's responses to Plaintiff's discovery referenced Defendant's Answer numerous times and asserted multiple times that the subject account was "unverified". PA-0131 to PA-0139. Defendant asserted once that Defendant did not "ask[] or appl[y] for Discover credit card" as part of those responses. PA-0137. Defendant confirmed two (2) addresses for Defendant for the period of January 8, 2023 to December 31, 2023:

- 1) 869 Pavonia Ave., Unit 1, Jersey City, NJ 07306; and,
- 2) 74 Woodbridge Terrace., Apt. B, Woodbridge, NJ 07095. PA-0137.

Plaintiff responded to Defendant's discovery. PA-0141 to PA-0149. Defendant did not make any motion regarding discovery during the discovery period or thereafter.

After the parties exchanged discovery, but prior to the discovery end date, Plaintiff filed its motion for summary judgment and Defendant filed opposition. PA-0023 to PA-0152; PA-0153 to PA0174, respectively. The gravamen of Defendant's opposition was that Plaintiff did not include the "original credit card application" as part of that motion. PA-0155 to PA-0158. Defendant further asserted that the account statements were insufficient to demonstrate Defendant's liability for the subject account. PA-0155 to PA-0158. Defendant also asserted that Plaintiff's discovery responses to Defendant's interrogatories were insufficient. PA-0156 to PA-0158. Finally, Defendant included correspondence from

Ticketmaster dated July 17, 2024 that referenced a data breach between April 2, 2024 and May 18, 2024 to imply that Defendant was the victim of identity theft. PA-0167 to PA-0170.

Plaintiff emphasizes critically that Defendant did not once as part of that opposition deny that Defendant was liable for the subject credit card account. PA-0153 to PA-0174. Rather, Defendant's opposition asserted that the subject account was "unverified" and that Plaintiff failed to demonstrate Defendant's liability for same because Plaintiff did not provide the "original signed credit card application". PA-0155 to PA-0158.

Judge Maloney held oral argument on August 2, 2024 and permitted both parties to set forth their arguments after noting that the Court had reviewed the submissions of the parties. See generally, Transcript. Judge Maloney examined the submission of the parties during oral argument, noting the addresses on the account statements and the span of the account statements submitted by Plaintiff. T7-11 to T8-1; T8-18 to T11-3. Judge Maloney indicated that the Ticketmaster correspondence, and Defendant's implicit assertion of identity theft, was entirely irrelevant because the subject account had already been charged-off during the data breach referenced in the Ticketmaster correspondence. T11-5 to T12-1. The Court ultimately concluded that Defendant's self-serving statements were insufficient to overcome Plaintiff's *prima facie* case for summary judgment. T12-4 to T15-3.

Accordingly, Judge Maloney granted Plaintiff's Motion for Summary Judgment by Order dated August 2, 2024, which is the subject of this appeal. PA-0175.

## STANDARD OF REVIEW

Appellate review of an order for summary judgment is *de novo* and is governed by the same standard as the trial court. Templo Fuente De Vida Corp. v. National Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016)(citation omitted). The standard for summary judgment is pursuant to R. 4:46-2(c):

That standard mandates that summary judgment be granted ‘if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment or order as a matter of law.

Templo Fuente De Vida Corp., 224 N.J. at 199 (quoting R. 4:46-2(c)).

“Accordingly, when the movant is the plaintiff, the motion court must view the record with all legitimate inferences drawn in the defendant’s favor and decide whether a reasonable factfinder could determine that the plaintiff has not met its burden of proof.” Globe Motor Co. v. Igdalev, 225 N.J. 469, 481 (2016)(citations omitted). It is a search to determine if there is but one factual scenario and the motion must be granted if those facts and the governing law favor the entry of judgment to the movant.

Appellate review is limited to the record that was before the trial court on the motion for summary judgment. “Whether a summary judgment motion is granted, denied, or granted in part and denied in part, an appellate court is limited to an examination of ‘the original summary judgment record.’” Noren v. Heartland

Pavement Systems, Inc., 449 N.J. Super. 193, 196 (App. Div. 2017)(citations omitted).

Related, Plaintiff notes that Defendant's status as a *pro se* litigant is of no effect on Defendant's requirements to comply with the Court Rules. As this Court has previously stated:

Litigants are free to represent themselves if they so choose, but in exercising that choice they must understand that they are required to follow accepted rules of procedure promulgated by the Supreme Court to guarantee an orderly process. Such litigants are also presumed to know, and are required to follow, the statutory law of this State.

Tuckey v. Harleysville Inc. Co., 236 N.J. Super. 221, 224 (App. Div. 1989). This Court reiterated that principle in Rosenblum v. Borough of Closter, 285 N.J. Super. 230 (App. Div. 1995), stating, “[p]rocedural rules are not abrogated or abridged by plaintiff's *pro se* status.” Rosenblum, 285 N.J. Super. at 241.

Plaintiff will first discuss why Judge Maloney's Order should be affirmed and then will address Defendant's arguments.

### LEGAL ARGUMENT

#### I. JUDGE MALONEY'S GRANT OF SUMMARY JUDGMENT IN PLAINTIFF'S FAVOR SHOULD BE AFFIRMED BECAUSE PLAINTIFF SET FORTH A FACTUALLY SUPPORTED, *PRIMA FACIE*, CAUSE OF ACTION ON THIS CHARGED-OFF CREDIT CARD ACCOUNT

Plaintiff respectfully submits that this Court should affirm the Order because Judge Maloney correctly determined that Plaintiff set forth a *prima facie* case for

collection on this charged-off credit card account. As set forth by this Court in New Century Financial Services, Inc. v. Oughla, 437 N.J. Super. 299 (App. Div. 2014) a plaintiff “suing on assigned, charged-off credit cards must prove two things: ownership of the defendant’s charged-off debt and the amount due the card issuer when it charged off the account.” Oughla, 437 N.J. Super. at 304.<sup>1</sup> Here Plaintiff is the original creditor, but the proofs remain the same. Plaintiff is the owner. PA-0025. The balance on the periodic statement for the last billing cycle prior to charge-off is *prima facie* proof of the amount due at charge-off. See Oughla, 437 N.J. Super. at 304 (“[A]n electronic copy of the periodic billing statement for the last billing cycle is prima facie proof of the amount due on the account at charge off.”).

Included as part of Plaintiff’s Motion for Summary Judgment was Plaintiff’s Certification in Support of Summary Judgment. PA-0025 to PA-0085. Plaintiff certified to being the original creditor of the subject account, which Plaintiff respectfully submits demonstrated its ownership of the account as required by PA-0025; See Oughla, 437 N.J. Super. at 304. Plaintiff also included numerous account statements for the subject account. PA-0030 to PA-0085. Most notably, Plaintiff included the periodic statement for the last billing cycle prior to charge-

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<sup>1</sup> A trial court adjudicating a motion for summary judgment on a revolving credit card account must meet the requirements of R. 6:6-3(a) for a default judgment, which Plaintiff respectfully

off (closing date of December 31, 2023 in the final amount of \$7,221.39), which is *prima facie* proof of the amount due at charge-off. PA-0084 to PA-0085; See Oughla, 437 N.J. Super. at 304. As a result, Plaintiff set forth its *prima facie* case under Oughla, supra, and the burden shifted to Defendant to demonstrate a genuine issue of material fact warranting trial to defeat Plaintiff's Motion.

There are no facts in dispute. Defendant's appeal is predicated on the insufficiency of Plaintiff's proofs. As discussed further below, Defendant's arguments, however, are either incorrect as a matter of law or factually unsupported. If Defendant sought to deny liability for this account, Defendant had an opportunity to do so in Defendant's pleading or by amending same during the course of discovery. Defendant did neither. As such, Judge Maloney properly resolved this litigation by way of Plaintiff's Motion. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 537 (1995)(noting that trials exist to resolve factual, not legal, disputes and a trial court disposes of the case by way of rendering judgment in favor of the appropriate party based on those facts).

Accordingly, Plaintiff respectfully submits that it set forth a *prima facie* case. Oughla, 437 N.J. Super. at 304. As such, the burden shifted to Defendant to demonstrate a genuine issue of material fact warranting trial to defeat Plaintiff's Motion.

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submits is necessarily encapsulated by Oughla. See LVNV Funding, L.L.C. v. Colvell, 421 N.J.

II. THIS COURT SHOULD AFFIRM JUDGE MALONEY’S ORDER FOR SUMMARY JUDGMENT BECAUSE DEFENDANT’S OPPOSITION FAILED TO CREATE A GENUINE ISSUE OF MATERIAL FACT WARRANTING TRIAL

Plaintiff further respectfully submits that this Court should affirm the order on appeal because Defendant’s opposition was insufficient to create a genuine issue of material fact warranting trial. There is an affirmative burden on the opponent to file competent opposition to the motion. Polzo v. County of Essex, 196 N.J. 569, 586 (2008)(citations omitted). The party opposing summary judgment bears an affirmative burden “to make a complete and comprehensive showing why summary judgment should not be entered.” Lombardi v. Masso, 207 N.J. 517, 556 (2011)(Rivera-Soto, J., dissenting).

What constitutes competent opposition to a motion for summary judgment is well-settled. A party does not create a genuine issue of material fact simply by offering a sworn statement. Carroll v. N.J. Transit, 366 N.J. Super. 380, 388 (App. Div. 2004). “Competent opposition requires competent evidential material beyond mere speculation and fanciful arguments.” Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014)(quoting Hoffman v. Asseenontv Com, Inc., 404 N.J. Super. 415, 425-26 (App. Div. 2009)).

Here, Plaintiff set forth is *prima facie* case in its Motion for Summary Judgment. The burden shifted to Defendant to demonstrate the existence of a

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Super. 1, 6-8 (App. Div. 2011).

genuine issue of material fact warranting trial. Judge Maloney determined Defendant did not. PA-0175; T14-21 to T15-3. Plaintiff agrees with Judge Maloney.

A. DEFENDANT'S WRITTEN OPPOSITION FAILED TO CREATE A GENUINE ISSUE OF MATERIAL FACT WARRANTING TRIAL

As noted above, Defendant's main contention in written opposition to Plaintiff's Motion for Summary Judgment was that Plaintiff did not provide the original signed credit card application as part of the Motion. PA-0155 to PA-0156. Yet, this is not required as reflected by this Court's own precedent. Oughla, 427 N.J. Super. at 324 ("The account statements would establish a direct contractual relationship between [the cardholder and original creditor].") (citing Novack v Cities Serv. Oil Co., 149 N.J. Super. 542, 428 (Law Div. 1977)).

From the "plastic revolution" of the 1960's to now, we have all come to know that there are no signed, written contracts that form a credit card account. Of this, Plaintiff asks the Court to take judicial notice. See N.J.R.E. 201(b)(permitting a court to take judicial notice of facts which are so generalized or commonly known that they cannot reasonably be the subject of dispute); See also In re Ward, 857 F.2d. 1082, 1087 (6th Cir. 1988)(noting that several state courts, including New Jersey, have held that "a contract is not formed when a credit card is issued but rather unilateral contracts are formed each time the card is used.")(citing Novack v. Cities Service Oil Co., 149 N.J. Super. 542). Defendant's assertion that

the original signed application was required is incorrect as a matter of law. PA-0155 to PA-0156; Oughla, 427 N.J. Super. at 304.

Defendant further argued that the some of the account statements included with Plaintiff's Certification creates a genuine issue of material facts because they are missing his apartment number. PA-0156. Judge Maloney acknowledged this allegation on the record during oral argument, but she also confirmed that the periodic statement for the last billing cycle did not contain the same alleged deficiency. T11-7 to T11-15. That is, the periodic statement for the last billing cycle accurately reflects Defendant's full home address. PA-0084. Judge Maloney properly determined that Defendant received this account statement, at a minimum. T11-7 to T11-15.

Defendant argued that the Ticketmaster correspondence was suggestive that the subject account was fraudulent. PA-0158, ¶ 11. Judge Maloney expressly discussed this potential issue during oral argument, as discussed below, in which Judge Maloney made the factually supported determination that the data breach identified in the Ticketmaster correspondence occurred **after** the subject account was charged-off. T11-16 to T11-18. Accordingly, Judge Maloney properly determined that the Ticketmaster correspondence was entirely irrelevant to the subject account.

Plaintiff respectfully submits that Defendant's written opposition failed to create a genuine issue of material fact warranting trial and that Judge Maloney properly granted Plaintiff summary judgment. Plaintiff further respectfully submits that Defendant's arguments, raised at oral argument, were insufficient to create a genuine issue of material fact warranting trial.

B. DEFENDANT'S ARGUMENTS AT ORAL ARGUMENT WERE INSUFFICIENT TO CREATE A GENUINE ISSUE OF MATERIAL FACT WARRANTING TRIAL

Plaintiff further respectfully submits that Defendant's contentions at oral argument were insufficient to create a genuine issue of material fact warranting trial. Plaintiff's counsel began oral argument by elucidating the material facts and legal arguments in support of the motion. T3-20 to T4-21. Next, Judge Maloney asked Defendant for a response. T5-2 to T5-3. Defendant indicated that he believes that he provided enough proof to establish that Plaintiff never issued him a credit card, emphasizing that Plaintiff never provided a signed credit card application. T5-7 to T6-7.

But as discussed above, under New Jersey Appellate Division precedent, Plaintiff need only produce the periodic statement for the last billing cycle showing the amount due at charge-off, and demonstrate ownership of the account, in order to establish its *prima facie* case, which is sufficient for the entry of judgment absent a genuine issue of material fact. Oughla, 427 N.J. Super. at 304. The burden

of proof then shifts to the consumer to come forward with sufficient facts and evidence in support of a viable legal defense, or to challenge the validity of the creditor's proofs. Here, Defendant did not challenge the validity of Plaintiff's proofs (thereby waiving this issue on appeal). Rather, he erroneously believed more proof was required. T5-7 to T6-7. A denial based on this erroneous belief, is not a statement of fact at all, let alone a genuine dispute of fact. Defendant merely refused to admit to the subject account, failing to present any evidence or precedent justifying Defendant's position.

Defendant later asserted that he did not receive any monthly account statements, but this self-serving allegation is belied by the record reflecting that the statements contain his former and current home addresses. In addition, his purported non-receipt of the monthly statements would only indicate that he did not receive them – not that the account did not belong to him.

Further, Defendant claimed that he neither had knowledge of the charges nor remembered if he applied for a Discover Bank credit card account. Because he cannot remember, Defendant did not provide any facts to contradict the documentary evidence that he opened, used, and is obligated to pay the obligation associated with the account. Defendant's allegations are not supported by sufficient facts and/or evidence that would constitute "competent opposition" to a motion for summary judgment. Polzo, 196 N.J. at 586.

Defendant failed to demonstrate actual material inaccuracies in Plaintiff's proofs. Defendant must show that the information being challenged was actually inaccurate, otherwise a plaintiff in a credit card collection action will bear a weightier burden of proof, and will have to expend significant resources on unnecessary trials. The only material evidence – as opposed to conclusory and self-serving allegations – is that Plaintiff issued Defendant a credit card account, that Defendant utilized the account, that Defendant defaulted, that Plaintiff is the owner of the account, and that the periodic statement for the last billing cycle shows an amount due at charge-off that matches the amount sought in the complaint. PA-0084 to PA-0085; T14-4 to T15-3. Judge Maloney thus properly surmised that Plaintiff met its burden and Defendant failed to create a genuine issue of fact in dispute. T14-4 to T15-3. The result was the trial court's proper grant of summary judgment in favor of Plaintiff and against Defendant. PA-0175.

C. DEFENDANT FAILED TO DISPUTE THE VALIDITY OF PLAINTIFF'S PROOFS AT THE TRIAL COURT LEVEL, THUS WAIVING THE ISSUE ON APPEAL

Defendant argues, for the first time on appeal that the account statements presented by Plaintiff in support of its Motion for Summary Judgment were not "authenticated", which Plaintiff interprets to be a dispute as to the admissibility of those account statements. Db5, Db7-9. Defendant did not raise that issue to the

trial court below. Plaintiff notes that a party must object to the admissibility of evidence at the trial court to preserve that issue on appeal.

“For the purpose of reserving questions for review or appeal relating to rulings or order of the court [...] a party, at the time the ruling or order is made or sought, shall make known to the court specifically the action which the party desires the court to take or the party’s objection to the action taken and the grounds therefor.” R. 1:7-2.

“The primary policy justification for the requirement of a timely objection is to enable the trial court to take appropriate curative action, if possible, where an error has been made.” Waterson v. GM Corp., 111 N.J. 238, 250 (1988) (citations omitted). “[A party] may not, on appeal, rely upon alleged inadmissibly testimony as a ground for reversal when at the time of its introduction no objection was made thereto.” Springdale Park, Inc. v. Andriotis, 30 N.J. Super. 257, 265 (App. Div. 1954). “[T]he rule is that no ruling relating to the reception or rejection of evidence will be reviewed unless the record discloses that an objection to such ruling was duly made or such ruling otherwise challenged at the time of the ruling.” Kargman v. Carlo, 85 N.J.L. 632, 635 (E&A 1914); See also Golden v. Casa Per Sacerdoti Vecchi Ed Invalidi, 30 N.J. Super. 242, 247 (App. Div. 1954)(“The question as to the admissibility of this testimony is discussed in the briefs, but the circumstance

that no objection was taken below as to the matter of admissibility is passed by counsel, and hence we shall do likewise.”)(citations omitted).

The record before this Court is bereft of **any** objection by Defendant before the trial court to contest the admissibility of the account statements. See PA-0153 to PA-0174. Plaintiff respectfully submits that Defendant waived any objection to the admissibility of the account statements on appeal by failing to preserve it below. This Court should not revisit that issue for the first time on appeal based on precedent. R. 1:7-2; Waterson, 111 N.J. at 250; Springdale Park, Inc., 30 N.J. Super. at 265; Kargman, 85 N.J.L. at 635; Golden, 30 N.J. Super. at 247.

III. THIS COURT PREVIOUSLY STRUCK THE PORTIONS OF APPELLANT’S BRIEF THAT REQUESTED SANCTIONS, BECAUSE IT IS OUTSIDE THE SCOPE OF THIS APPEAL AND SHOULD NOT BE CONSIDERED

On March 27, 2025, the Honorable Lisa Rose, J.A.D., entered an order striking portions of appellant’s brief. PA-0189. The portions stricken from the brief pertain to alleged misrepresentation, the propriety of Plaintiff’s pursuit of a wage execution, and the imposition of sanctions. PA-0189. On April 24, 2025, the Honorable Jessica R. Mayer, P.J.A.D. entered an order denying Appellant’s motion to amend brief. PA-0190. This order provides in part that Appellant shall file a second corrected brief and appendix consistent with the March 27, 2025 order. PA-0190. Specifically, “Appellant shall remove all material in his brief and appendix identified in respondent’s motion to strike.” PA-0190.

Next, Appellant filed his final Appellant Brief on May 13, 2025, but it still contains arguments about misrepresentation, Plaintiff's application for a wage execution, and the imposition of sanctions. Db13 to Db17. Plaintiff respectfully submits that it is improper for Appellant to continue to raise these previously stricken arguments that neither advance the arguments of his appeal nor add meritorious arguments for the Court's consideration. These portions of the brief are directed to issues not raised below and are sufficiently beyond the scope of whether Judge Maloney's summary judgment ruling was proper. See Park Crest Cleaners, LLC v. A Plus Cleaners & Alterations Corp., 458 N.J. Super. 465, 472 (App. Div. 2019)(citation omitted)("A party's failure to seek review of cognizable trial court orders or determinations – by identifying them in the notice of appeal – is largely fatal."). See also Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)(citation omitted)("[O]ur appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the question so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'"). None of these arguments go to the trial court's jurisdiction or concern matters of great public interest.

Accordingly, Plaintiff respectfully submits that the portions of the Appellant's Brief about misrepresentation, Plaintiff's wage execution, and the

imposition of sanctions for litigation misconduct are beyond the scope of this appeal, and thus should not be considered by this Court.

CONCLUSION

Based on the foregoing, the motion court's evidentiary rulings were sufficiently supported by the record and, therefore represent the valid exercise of its discretion. Plaintiff respectfully requests that this Court affirm Judge Maloney's ruling granting summary judgment in favor of Plaintiff and against Defendant upon review of Plaintiff's summary judgment motion. The evidence presented is so one-sided in favor of Plaintiff that it sufficiently establishes Defendant's liability on the credit card account and Plaintiff's ownership, without any *bona fide* dispute to create a genuine issue of material fact warranting reversal.

PRESSLER, FELT & WARSHAW, LLP

Dated: September 2, 2025

By: /s/ Michael J. Peters  
Michael J. Peters, Esq.  
NJ Bar Id: 024012009

**DISCOVER BANK,**

**Respondent.**

**V.**

**SAAD SHAIKH,**

**Appellant (Pro Se),**

**DOCKET No. A-000190-24**

**APPELLANT'S BRIEF REPLY**

**TO: Capital One c/o Pressler, Felt & Warshaw, LLP**

**7 Entin Road**

**Parsippany, NJ 07054-5020**

**REPLY TO: Respondent Response Brief filed on or before September 02,  
2025**

**Saad Shaikh**

**October 14, 2025**

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**REPLY BRIEF IN SUPPORT OF APPEAL**

**PRELIMINARY STATEMENT**

This Reply Brief responds to Capital Ones response brief, filed on or before September 2<sup>nd</sup>, 2025, in the appeal from the trial courts judgment in Discover Bank v. Saad Shaikh, Docket No. HUD-DC-005241-24. As a pro se appellant, Plaintiff asserts in their reply to brief preliminary statement that Defendant Confirms the addresses which is not true and false statement, account statements don't prove ownership in fact Plaintiff statements have another address **16 Anderson Way Monmouth Junction, NJ 08852**. which they didn't care to explain, Similarly when asked for Contract between Discover Bank vs. Saad Ahmed Shaikh, plaintiff took evasive measures, if the Plaintiff claims the breach of Contract as presented in Summons they must provide the contract which they never did, Trial court Erred as their was no contract produced, solely relying on account statements supported by an unauthorized affidavit which was from a third Party did not worked at Discover Bank but FDIC Insured who has no personal knowledge nor custodian of records was produced which does not qualify under Business Record Exception. The affidavit was clearly made solely for the purpose of litigation and was not notarized. Furthermore, Plaintiff has introduced a new Party Capital One which I don't have any contractual relationship with either I thought I was sued by Discover Bank, Capital one has not provided any chain of title nor is it supported by any assignments transferred under my name. This is a pure violation of judicial process, FDCPA 15 U.S.C. § 1692 et

seq and NJCFA N.J.S.A. 56:8-1 et seq, this has been brought multiple times in this honorable court and Defendant demand Legal proof and explanation with complete documentation and not just Hearsay.

**LEGAL ARGUMENT & AUTHENTICITY OF PLAINTIFF LEGAL  
DOCUMENTS**

I assert that Capital Ones brief fails to remedy the fundamental legal defects in its chain of title and standing, requiring reversal of the trial court's decision, which was based solely on a charged-off account statement and the inadmissible certification of Patrick Sayers. Capital One's egregious mid-appeal entry, despite my having no contract or relationship with them and no Standing to sue me, further undermines their position. The appellate standard of review is de novo, meaning the Appellate Division must independently evaluate the legal issues and the trial courts application of law to the undisputed facts without deference to the trial courts conclusions. This standard applies to questions of law, including standing, interpretation of court rules, and admissibility of evidence, as established in *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, (1995)*, where the court held that de novo review is appropriate for legal determinations. Similarly, *Templo Fuente De Vida Corp. v. National Union Fire Ins. Co. of Pittsburgh, 224 N.J. (2014)*, reaffirmed that de novo review is the proper standard for assessing whether a party has met its legal burden, such as proving standing by providing Signed Contract, assignments

under Defendants Name & chain of title. This standard ensures a fresh examination of the record, particularly relevant here given the trial courts' errors in burden-shifting and reliance on inadmissible evidence according to Plain Error Rule N.J.R.E 2:10-2 The Standard articulated in State v. Macon, 57 N.J. 325 (1971). Debt Collector solely relying on Certification is not a certification but Affidavit according to their own witness, which was not from custodian of records, was never notarized, sworn nor in personal knowledge which is questionable and not following court rules and procedures. Also, it doesn't qualify for business record exception N.J.R.E 803(c)(6) which clearly states that **Records of a Regularly Conducted Activity**, A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make such writing or other record.

This exception does not apply if the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

This Reply Brief seeks to reverse the judgment and dismiss Capital Ones claim, highlighting the legal and factual deficiencies in the proceedings below.

**I. CAPITAL ONE / DISCOVER FORGED THE BUSINESS RECORDS EXCEPTION**

**A. Inadmissibility of Patrick Sayers Certification:** The certification by Patrick Sayers, which is in fact an Affidavit, dated July 1, 2024, submitted with Discover

Banks summary judgment motion on July 17, 2024, is clear legal & plain error and inadmissible. Created 3 months after litigation started (around April 2<sup>nd</sup>, 2024) for the sake of Summary Judgment and was not authenticated, the affidavit was drafted on the letterhead of Pressler, Felt & Warshaw, LLP, located at 7 Entin Road, Parsippany, NJ 07054, with the signature appearing to be from someone in the attorney's office rather than Sayers himself. It was neither notarized, sworn, or in Personal Knowledge nor from a Custodian of records as required by N.J.R.E 803(c)(6) and F.R.E 803(6)

HEARSAY Exception, violating R. 1:6-6, which requires proper authentication of affidavits. Sayers, identified as a FIC-Insured Delaware State Bank Coordinator who doesn't even work for plaintiff and Not a Custodian of Record, provided his affidavit lacked personal knowledge of the 7,221.39 debt, violating N.J.R.E 602 & N.J.R.E 1:6-6, which mandates that a witness has personal knowledge to record keeping, constituting hearsay upon hearsay under N.J.R.E.803(c)(6). Should have been VOID and inadmissible. **SEE APPENDIX PA-0025**

Adding to its unreliability, included are the account statements attached to the Affidavit on which plaintiff asserted upon with a generic card member agreement available on Discover Banks website. This fake affidavit should be considered misleading and misconduct in the eyes of NJ and Federal Ruled, and plaintiff should be sanctioned as Defendant was harmed in this whole process.

Furthermore, Plaintiff has submitted certification from Robert Adkins whose position is unclear States Litigation Support Specialist or Custodian of Records,

which are not the same. **SEE APPENDIX PA-0149**

**B. Account Statements Do Not Prove Ownership:** The trial court erred by relying solely on a charged-off account statement submitted by Fake affidavit of Patrick Sayers after 3 months of litigation started, which does not establish ownership. Capital Ones reliance on such statements and payment histories to establish standing is misplaced under New Jersey law: standing must be proven independently of the debt per *Brill v. Guardian Life Ins. Co. of Am., 142 N.J. (1995)*; business records reflect activity, not ownership; a complete chain of title is required regardless of account history. Furthermore, account statements are forged and has 3 addresses and 2 of them were unverified. 1<sup>st</sup> ever Statement is generated has addresses 16 Anderson Way Monmouth Junction and 74 Woodbridge Terrace Woodbridge NJ, UNKNOWN to Defendant. Only one address matched which Plaintiff Forged as it is on the account Statements. Furthermore, the statements were generated from PO Box 70176 Philadelphia PA, 19176-0176.

**SEE APPENDIX: PA-0030, PA-0034, PA-0036, PA-0042, PA-0048, PA-0052, PA-0056, PA-0062, PA-0070 and PA-0076**

**II. CAPITAL ONES “SUCCESSOR IN INTEREST” CLAIM IS LEGALLY DEFICIENT**

Capital One (debt Collector) Cannot Establish Complete Chain of Title Capital Ones response ignore the broken chain of title outlined in my opening brief, consistent with *New Century Financial Services, Inc. v. Oughla, 437 N.J. Super. 299 (App. Div. 2014)*.

The record lacks: assignment document under my name with original contract (as original summons indicates Breach of Contract) (Missing) showing transfer from Discover Bank to Capital One or any intermediate entity; no proof of a valid succession mechanism supporting the “successor in interest” label; no evidence of intermediate assignments. Under N.J.S.A. 12A:9-406, the filing of an assignment is ineffective without proper documentation, rendering Capital Ones claim baseless. violation of Federal and State Laws.

### III. CAPITAL ONES UNLAWFUL MID-APPEAL ENTRY

A. No Contract or Relationship with Capital One Capital One’s mid-appeal intervention is a blatant overreach. I have no contract, agreement, or prior relationship with Capital One, making their claim as successor in interest wholly illegitimate. This violates R. 4:26-4 (joinder of parties) and R. 4:5-1 (pleadings and parties), as well as Fed. R. Civ. P. 15 (amended and supplemental pleadings) and Fed. R. Civ. P. 24 (intervention), which mandate timely and justified motions for such actions, none of which were filed.

B. Procedural Unfairness Capital Ones late entry mid-appeal breaches R. 2:8-3(b), denying me fair notice and an opportunity to defend against a new party. Furthermore, no notice was filed in the Appellate Court as required by **Rule 4:11-4**, nor was there compliance with **Fed. R. Civ. P. 25 (substitution of parties)**, which requires formal motion and court approval for substitution, exacerbating this procedural violation and necessitating immediate reversal in this appeal.

IV. **USE OF MULTIPLE BUSSINESS ADDRESSES FOR SAKE OF LITIGATION**

From Plaintiff original complaint address for conducting its business was:

**SEE APPENDIX: PA-0001**

Then surprisingly in the interrogatories answering the 1<sup>st</sup> question it changed from New Albany OH to Greenwood DE which are 2 different places See DA 1-9.

**SEE APPENDIX: PA-0144 - PA-0149**

Discover Bank Headquarter is in Riverwoods, IL according to Plaintiff Website <https://jobs.discover.com/working-at-discover/locations/>

Trial court erred to verify this keen information provided by plaintiff which harmed Defendant credit score and financial situation and demands explanation.

V. **VIOLATION OF DISCOVERY OBLIGATIONS, EVASIVE ANSWERS AND CONTRACTUAL DOCUMENTATION**

A. **Evasive answer to discovery = Failure to Respond to Discovery** Under **Rule 4:23-1(b)** The plaintiff asserts I should have filed discovery, yet I did file discovery requests, to which they responded with objections, claiming they lack the account information. Which is Sanctionable under Rule 4:23-1. This refusal to provide substantive answers undermines their case and violates their discovery obligations under New Jersey court rules. Additionally, the plaintiff used Three Different addresses as their mainly conducted business how is it even possible?

Greenwood DE address in discovery answers which contradicts to the New Albany, OH address. Furthermore, the discovery was answered by Robert Adkins who is in Whitehall OH, His Job title is very questionable as he is someone to be Litigation support specialist OR Custodian of records, he doesn't even know what his role is in discover bank. Plaintiff indulged in practices during the litigation which has harmed the Defendant and did not provide genuine and authentic facts and material, but fake affidavits and documentations all appeared to be made on Attorneys letter head. Furthermore, these documents need verification If Robert Adkins is Litigation Specialist, then who is Patrick Sayers in Delaware? Three different principal business addresses raise questions about the authenticity of the certifications and documents.

**SEE APPENDIX: PA-0144 - PA-0149**

B. Plaintiff used evasive techniques to answer discovery questions. While neglecting the major requirements of NJCFA and FDCPA. During the answer Plaintiff admit that they don't have possessions of the documents and the documents lie with 3<sup>rd</sup> parties

**SEE APPENDIX: PA-0142 - PA-0143**

Which raises questions if the Plaintiff ever had right had to sue me without proof.

N.J.S.A. 2A:25-1, NJCFA and FDCPA violations and did not provide me the contract without which plaintiff didn't have any right to sue me as the original complaint and summons was contract dispute so, Plaintiffs' plastic revolution quotations doesn't apply here. Absence of Specific Contractual Agreement Discover Bank alleges an agreement with me but has failed to produce any

documentation, including my specific contract agreement, offering only a generic card member agreement. This violates N.J.S.A. 2A:25-1, which requires clear evidence of a contractual relationship

to support a claim, rendering their case legally deficient. According to the plaintiff they don't have the Documents Non-Compliance with Rule 4:17 Discover Bank and Capital One violated **Rule 4:17**, which mandates timely and complete responses to discovery requests. Their failure to provide the requested account information or contractual documentation within the prescribed timeframe constitutes a breach of this rule, further prejudicing my ability to defend against their claims.

#### VI. TRIAL COURTS BURDEN-SHIFTING ERROR

A. Capital One Bore the Burden to Prove Standing The trial court erred by shifting the burden to me to disprove ownership, violating due process under N.J. Const. Art. I, Para. 1. **Midland Funding LLC v. Thiel**, 442 N.J. Super. 452 (App. Div. 2015), holds that Plaintiff has failed to prove there remains a genuine issue of fact, placing the burden on Capital One. The plaintiff asserts that I deny liability for the subject credit card account; however, the original lawsuit concerned an account, not a debt, and my repeated denials in my answer reflect my disagreement, not an obligation to disprove. It is the plaintiff's burden to establish liability, not mine, as supported by Fed. R. Civ. P. 56(a), which requires the moving party to show no genuine dispute of material fact, and N.J. Court Rule 4:46-2(c), which mandates that summary judgment be granted only if the moving party demonstrates entitlement to judgment as a matter of law. I requested

documentation to substantiate their claim, which the plaintiff never provided, further evidencing their failure to meet this burden.

B. "Successor in Interest" Does Not Cure Standing The "successor in interest" label does not bypass the need for complete assignment documentation. "**Oughla**" requires; identification of the original creditor; proof that the term does not automatically confer standing; full succession documentation, which Capital One lacks.

## VII. FEDERAL FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) VIOLATIONS

A. Debt Collector Status and Mini Miranda Use Capital One and Discover Bankact as debt collectors, as evidenced by their inclusion of the Mini Miranda warning, indicating **an attempt to collect a debt**. *Heintz v. Jenkins, 514 U.S. 291, 294 (1995)*,

confirms that litigation activities by debt collectors fall under FDCPA scrutiny. Their failure to identify as creditors attempting to collect debts, instead using deceptive forms, violates *15 U.S.C. § 1692e(10)*, which prohibits deceptive practices, and *15 U.S.C. § 1692f*, which bars unfair collection methods.

B. Deceptive Forms and Lack of Creditor Disclosure The use of forms that omit their status as creditors and misrepresent the debt collection process constitutes a violation of *15 U.S.C. § 1692e(2)(A)*, which prohibits false representations of the character or amount of a debt. *Jerman v. Carlisle, McNellie, Rini, Kramer Ulrich*

LPA, 559 U.S. 573, 604-05 (2010), holds that even unintentional misrepresentations by debt collectors can trigger FDCPA liability. Additionally, Clark v. Capital Credit Collection Servs., Inc, 460 F.3d 1162, 1175 (9th Cir. 2006), supports that failing to clearly disclose creditor status in communications is deceptive under the FDCPA.

C. Creditors or this case Debt Collector retain the account contract unless the debt is sold to or purchased from a third party. Discover Bank and Capital One, lacking my specific contract and relying on a generic card member agreement, are debt collectors, not creditors. This status further supports their FDCPA violations under 15 U.S.C. § 1692a(6), which defines a debt collector as one who collects debts owed or due another, and their actions align with Ruth v. Triumph Partnerships, 577 F.3d 790, 797 (7th Cir. 2009), where third-party debt buyers were held to FDCPA standards. No Signed Contract between the parties exist. SEE APPENDIX PA-0026 – PA-0029

D. Violation of Validation Notice Requirement Under 15 U.S.C. § 1692g(b), debt collectors must cease collection efforts if a consumer disputes the debt in writing within 30 days of receiving the initial validation notice, unless they provide verification. Discover Bank and Capital One never provided me with a validation notice, and they failed to cease efforts after my dispute, constituting a clear violation of this provision, as upheld in Mahala v. Credit Collections Inc., 198 F.3d 246, 250 (7th Cir. 1999).

## **VIII. CAPITAL ONES FACTUAL ARGUMENTS FAIL ON APPEAL AND HAS NO STANDING IN THIS CASE**

A. No New Evidence Permitted Capital Ones new factual arguments are improper, as appellate review focuses on legal errors, not new facts, per R. 2:5-4.

B. Legal Errors Require Reversal The trial court erred by: allowing Capital One to proceed without proving ownership; misapplying the business records exception for standing; failing to require chain of title documentation; shifting the burden to me on standing; relying solely on the inadmissible charged-off account statement and Patrick Sayers certification; and violating R. 4:46-2 by granting summary judgment without competent evidence.

## **IX. LEGAL ERRORS**

A. Reliance on Inadmissible Affidavit The trial court committed a legal error by admitting Patrick Sayers' affidavit, which violates *N.J.R.E. 602 and R. 1:6-6* due to lack of personal knowledge and improper authentication, respectively, as detailed above.

B. **Burden-Shifting Error:** The court improperly shifted the burden of proof to me, contravening *Midland Funding LLC v. Thiel, 442 N.J. Super. 452 (App. Div. 2015), and N.J. Const. Art. I, Para. 1.*

C. **Failure to Establish Prima Facie Case:** This is not a prima facie case, as the plaintiff failed to present sufficient evidence to establish a legally cognizable claim,

violating **N.J. Court Rule 4:46-2(c)** and **Fed. R. Civ. P. 56(a)**, which require the moving party to demonstrate an absence of genuine issues of material fact and entitlement to judgment as a matter of law.

### **CONCLUSION AND RELIEF REQUESTED**

Capital Ones response confirms the fatal defects in its chain of title, mirroring the plaintiff in “**Oughla**” that owns nothing without valid assignment evidence. The trial courts reliance on a charged-off account statement and the inadmissible and in question certification of Patrick Sayers who doesn’t work for discover nor custodian of record (Major requirements of Business Record Exceptions)—created on attorney letterhead, signed by an office member, not under oath, lacking personal knowledge—further invalidates its judgment. Capital Ones unlawful mid-appeal entry, despite my complete lack of any contract or relationship with them, Plaintiff never provided any debt validation or succession documents are deceptive under 15 U.S.C. § 1692e(10) and the absence of notice under Rule 4:11-4 and compliance with Fed. R. Civ. P. 15, 24, and 25, compounds this injustice. Additionally, Capital Ones and Discover Banks actions violate the FDCPA by attempting to collect a debt without legal authority and using deceptive forms. I respectfully request reverse the trial courts judgment; remand with instructions to dismiss Discover Banks complaint for lack of standing; award costs to me as Appellant; grant other relief deemed just.

## CERTIFICATION OF APPELLANT

I, Saad Shaikh, certify pursuant to R. 1:6-5:

1. I am the Appellant, proceeding pro se.
2. On October 14 2025, I filed a timely Notice of Appeal
3. The statements herein are true to the best of my knowledge, subject to punishment for willful falsehood.

Dated: Oct 14, 2025,

Saad Shaikh