REGINA ROBINSON AND CHARLES HARRIS,

Plaintiffs/Appellants,

v.

JERSEY CITY BOARD OF EDUCATION; NORMA FERNANDEZ, both individually and as the Superintendent of the Jersey City School District; EDWIN RIVERA, both individually and as the Director of Human Resources of the Jersey City School District; NATALIA IOFFE, both individually and as a member of the Jersey City Board of Education; GINA VERDIBELLO, both individually and as a member of the Jersey City Board of Education; ALEXANDER HAMILTON, both individually and as a member of the Jersey City Board of Education; YOUNASS MOHAMED BARKOUCH; both individually and as a member of the Jersey City Board of Education; PAULA JONES-WATSON, both individually and as a member of the Jersey City Board of Education; NOEMI VELAZQUEZ, both individually and as a member of the Jersey City Board of Education; LORENZO RICHARDSON, both individually and as a member of the Jersey City Board of Education; and LEKENDRICK SHAW, both individually and as a member of the Jersey City Board of Education,

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000327-24

Civil Action

ON APPEAL FROM

SUPERIOR COURT, LAW DIVISION
HUDSON COUNTY

Honorable Kimberly Espinales-Maloney, J.S.C.

# PLAINTIFFS/APPELLANTS' AMENDED BRIEF AND APPENDIX

Stephen J. Edelstein, Esq.
Attorney ID No. 285031972
WEINER LAW GROUP LLP
629 Parsippany Road
P.O. Box 438
Parsippany, New Jersey 07054-0438
Phone: (973)403-1100/Fax: (973)403-0100
Attorneys for Plaintiffs/Appellants

On the Brief:
Stephen J. Edelstein, Esq.

Dated: January 13, 2025

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## PRELIMINARY STATEMENT

Regina Robinson ("Robinson"), a non-Latino black female, is the tenured Business Administrator of the Jersey City Board of Education. She is currently suspended. Robinson has alleged that the Defendants engaged in discrimination, harassment and retaliation in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. ("LAD") and the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq. ("CEPA").

Robinson's Complaint is directed to three categories of Defendants: (1) the employer (the Jersey City Board of Education ("Board")); (2) senior-level administrators at the school district (Norma Fernandez, Superintendent, and Edwin Rivera, Director of Human Resources); and (3) those elected Board members who took discriminatory and retaliatory action against her.

Robinson, as the tenured Business Administrator of the Jersey City Public Schools since 2017, serves in a statutorily-mandated position. See, N.J.S.A. 18A17-14.1. Because of her consistent mistreatment by the Defendants, between approximately July 2021 through March 2022, she submitted a series of internal written complaints alleging that she had been the victim of discrimination and retaliation. Pa41- Pa44. Defendants Norma Fernandez ("Fernandez"), who serves as the Superintendent of the School District, and Edwin Rivera ("Rivera"), who is

the Director of Human Resources, were most heavily involved in this campaign of discrimination, harassment and retaliation. Pa42.

In addition to allegations of discrimination, the Complaint contains allegations of "whistleblower" retaliation. Pa48. For example, Plaintiff also alleged that she was subjected to a hostile work environment and retaliated against for complaining about the Administration's attempt to make improper payments to a District vendor and also about the District practice of selling sick days to non-retiring employees.

As a result, Robinson suffered from work-related stress and anxiety due to Defendants' discrimination, harassment and retaliation. Pa37.

Claims of this nature are especially inappropriate for summary judgment, as set forth throughout this Brief. Robinson has never had the opportunity to prove that her claims are true.

## PROCEDURAL HISTORY

This matter was commenced with the filing of a Complaint and Jury Demand by Regina Robinson on June 30, 2022. Pa37. Defendants filed an Answer on September 13, 2022. Pa51.

On November 28, 2022, Judge Espinales-Maloney dismissed without prejudice the claims against the individually named Defendants "in their individual capacities." Pa64.

On May 22, 2024, Defendants filed a Motion for Summary Judgement directed at all Counts of the Complaint, Pa67, and on July 17, 2023, Defendants filed a Motion to "Strike Plaintiffs' Late Served Document Production." Pa150a. Robinson opposed both Motions, producing a lengthy log of over 1,200 documents which had been produced, Pa113.

On August 5, 2024, the Court granted the Motion for Summary Judgment, Pa160, refusing to consider the "late served" documents. See, Pa170. Consequently, the Motion to Strike was denied as moot. Pa154.

On August 26, 2024, Robinson filed a timely Motion for Reconsideration, Pa172, supported by many of the documents which had been referred to in the previously submitted log. See, Pa 180 – Pa256. However, on September 13, 2024, the Court denied that Motion.

The Notice of Appeal references both Orders. See, Pa22.

## STATEMENT OF FACTS

Regina Robinson ("Robinson") is the tenured Business Administrator of the Jersey City Public Schools. She resides in Roselle, New Jersey. Robinson is a non-

Latino black female. Pa38. Charles Harris ("Harris") is the spouse of Regina Robinson, living with her as husband and wife. Pa38.

The Jersey City Board of Education ("the JCBOE") is a body politic and corporate, organized and existing by virtue of the laws of the State of New Jersey, N.J.S.A. 18A:11-1, and is entrusted with maintaining and conducting the public schools of Jersey City. Pa38. Norma Fernandez ("Fernandez") is the Acting Superintendent of the Jersey City Public Schools. Pa38. Edwin Rivera is the Director of Human Resources of the Jersey City Public Schools. Pa38.

Natalia Ioffe ("Ioffe"), Gina Verdibello ("Verdibello"), Alexander Hamilton ("Hamilton"), Paula Jones-Watson ("Jones-Watson"), Younass Mohamed Barkouch ("Mohamed Barkouch"), Noemi Velazquez ("Velazquez"), Lorenzo Richardson ("Richardson"), and Lekendrick Shaw ("Shaw") are all members of the JCBOE. Pa38 – Pa39.

The JCBOE consists of nine (9) members, all of whom are elected. In 1989, because of the JCBOE's multiple failures, the State of New Jersey Department of Education took over the operation of the Jersey City School System. Pa39. In 2017, Robinson was hired by the JCBOE to serve as its Business Administrator, a position statutorily mandated pursuant to N.J.S.A. 18A:17-14.1. Pa39. According to N.J.S.A. 18A:17-14.2, the School Business Administrator must hold an appropriate certificate as prescribed by the New Jersey State Board of Education, and "no person

shall act as a school business administrator or perform the duties of a school business administrator, as prescribed by the rules and regulations of the state board, unless he holds such a certificate." Robinson holds the required certificate, and, by operation of law, she is now tenured in the position. Pa40.

Pursuant to Board Policy 1320, the duties of the School Business Administrator include, but are not limited to the following:

i. Supervises the management of the financial affairs of the schools.

ii. Assumes responsibility for budget development and long-range financial planning.

iii. Establishes and supervises a program of accounting adequate to record in detail all money and credit transactions.

iv. Supervises all accounting operations.

v. Acts as payroll officer for the district.

vi. Supervises the collection, safekeeping, and distribution of all funds.

vii. Manages the district's real estate and insurance programs.

viii. Supervises the district's supporting services, through the Directors of property services, transportation, purchasing, food services, and business services.

ix. Develops a facility expansion program and supervise plan construction.

x. Administers a budget control system for the district.

xi. Acts as advisor to the Superintendent on all questions relating to the business and financial affairs of the district.

xii. Assist in recruiting, hiring, training, supervising and evaluating all clerical, financial and support staff personnel.

xiii. Arranges for the internal auditing of school accounts.

xiv. Interprets the financial concerns of the district to the community.

xv. Custodian of Records.

xvi. Official Purchasing Agent.

xvii. Notifies Board members of regular and special meetings.

xviii. Records all proceedings of Board meetings, prepares the official minutes, and handles all correspondence of the Board.

xix. Presides at the annual organization meeting, until a President is elected.

xx. Performs other tasks as assigned.

Pa40 – Pa41. Throughout her employment with the JCBOE, Robinson has consistently performed her job duties excellently, although she has never been formally evaluated.[1] Pa41.

In 2018, the State returned full local control to the JCBOE and, unburdened by State supervision, the JCBOE has returned a system of cronyism, harassment, and discrimination. Robinson has been a victim of this unlawful employment culture. To cite only a few examples, not at all by way of limitation:

a. Because of her sex and her race, Robinson is compensated at a lower rate than her male, Latino predecessor.

b. The defendant board members and especially defendants Fernandez and Rivera, have repeatedly discriminated and continue to discriminate against Robinson because she is non-Latino black and female, in contrast to Latino and/or male.

c. Repeatedly, the defendants have acted so as to prevent Robinson from being able to perform her job duties, as outlined in Paragraph 19, supra.

d. On or about July 15, 2021, Robinson filed an internal Human Resources/Affirmative Action complaint based on her inequitable

[1] She may have been evaluated one time, in her first year. She has not been evaluated since.

pay. Because of that and other complaints by Robinson, the Administration, spearheaded by defendant Rivera and now by Fernandez herself, and supported by the defendant board members, have engaged in a continuous course of retaliation against her.

e. On or about October 5, 2021, Robinson filed an Affirmative Action "Discrimination/Harassment Complaint Form." The Complaint alleged that she is subject to "continuous mistreatment" by Rivera. The defendants have retaliated against Robinson for filing that Complaint.

f. On or about December 1, 2021 Robinson complained to then-Superintendent Walker that she was subjected to a hostile work environment because she is a black female. The defendants have retaliated against Robinson for complaining.

g. On or about December 3, 2021, Robinson asserted in writing to Fernandez her opposition to Fernandez attempting to pay additional monies to a vendor for services that the vendor could not render. The defendants have retaliated against Robinson for making that accusation.

h. On multiple occasions during since 2021, Robinson complained that she is unable to fill positions required for the Business Office and is

unable even to have those positions posted, due to hostility from Rivera and Fernandez, who prefer to fill unnecessary positions with their cronies. The defendants have retaliated against Robinson for these complaints.

i. On or about December 13, 2021, Robinson reported, in writing, that she was suffering from work related stress because of the Superintendent and the Human Resources Director. Defendants have retaliated against Robinson for this claim.

j. In or about February of 2022, Robinson filed an EEOC complaint alleging hostile work environment and discrimination, for which the defendants have retaliated against her even further.

k. On or about March 18, 2022, Robinson complained, in writing, about the improper, board and administration sanctioned practice of selling sick days to non-retiring employees. The defendants have retaliated against Robinson for this complaint.

l. Repeatedly, Robinson has been excluded by the Administration from discussions regarding the staffing of her own Department, all in retaliation for protected conduct and also as independent acts of discrimination against her because of her sex and her race.

m. When Fernandez, together with Rivera, recommended and appointed a Coordinator of Contractual Operations, a position which was not needed and out of the ordinary and leapfrogged positions which the Business Office needed in order to be adequately staffed, Robinson complained that the action was based on considerations other than District needs. For this, Robinson has been subjected to further retaliation by the defendants.

n. While Robinson was trying to do her job professionally, Rivera intentionally interfered and undermined her with the leadership of the Jersey City Education Association. He was motivated to do this by discriminatory motives, improperly preferring Latino candidates and employees over black candidates and employees.

o. Acting Superintendent Fernandez has consistently displayed hostility towards Robinson, and the stress associated with the harassment she experiences in the hostile work environment that the defendants have created has literally made her ill.

See, Pa41; Pa180 – Pa257.

As a tenured employee of the JCBOE, Robinson is protected by N.J.S.A. 19A:6-10, which provides that she may not be dismissed or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct, or other just cause, and

then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided."

Despite the fact that because of N.J.S.A. 19A:6-10 the JCBOE had no legal ability whatsoever to take such action, on April 28, 2022, the JCBOE heavy-handedly refused to renew Robinson's contract or approve a salary adjustment, with none of the named board member defendants voting for renewal. Even though Robinson has demanded that the discrimination against her because of her sex and her race, the oppressive, severe, and pervasive hostile work environment, and the retaliation against her for the exercise of protected rights and whistle blowing activity cease, all of this conduct has continued unabated. Pa44 – Pa45.

The Complaint is organized in Six Counts:

First Count: Discrimination based on sex (female), in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 et seq.

Second Count: Discrimination based on her race (black non-Latina), in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 et seq.

Third Count: Retaliation for protected activity, in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 et seq.

Fourth Count: A severe and pervasive hostile work environment, in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 et seq.

Fifth Count: Retaliation for whistleblowing activity, in violation of the New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1 et seq.

Sixth Count: Per Quod on behalf of Charles Harris.

## STANDARD OF REVIEW

The review of a trial court's grant or denial of a motion for summary judgment is de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73 (2022); Stewart v. N.J. Tpk. Auth./Garden State Parkway, 249 N.J. 642, 655 (2022); Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). The appellate court considers "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

## LEGAL ARGUMENT

## POINT I

## THE SUMMARY JUDGMENT STANDARD IS NOT MET

## (Opinion or Ruling at Pa10 – Pa12)

Summary judgment is appropriate only where there is no genuine issue of material fact. Specifically, R. 4:46-2 provides, in part, as follows with respect to a motion for summary judgment:

> The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any show that there is no genuine issue as to any material fact challenged and that the party is entitled to a judgment or order as a matter of law.

A court should deny a summary motion judgment where the party opposing the motion has, as here, come forward with evidence that creates a "genuine issue as to any material fact challenged." Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995). A dispute of fact is genuine if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with legitimate inferences therefrom, could sustain a judgment in favor of the non-moving party. Id. at 530.

Accordingly, a court must decide after weighing the evidence adduced in light of the burden of persuasion, "whether the evidence presents a sufficient

disagreement to require submission to a jury, or whether it is so one-sided that one party must prevail as a matter of law." Id. at 533. The trial judge's function is not to determine the truth of the matter, but to determine whether there is a genuine issue for trial. Id. at 536.

The burden of establishing a prima facie case of discrimination is met by showing (1) that Robinson belongs to a protected class (which is undisputed), (2) that she was performing her job prior to an adverse action (which is undisputed), (3) that she suffered an adverse employment action.

It is only this final point that is challenged by the Defendants, but they ignore entirely the fact that Ms. Robinson was suspended in 2022 and remains suspended until today. That is the most adverse action that can be taken short of termination. In addition, there have been adverse actions demonstrated through the Complaint, in the log of more than 1,200 documents produced in response to Defendants' discovery, and in the Certification of Regina Robinson (and attached exhibits) submitted in connection with the Motion for Reconsideration. See, Point II, infra.

The Complaint sufficiently alleges that Plaintiff Regina Robinson suffered an adverse employment action when she was suspended in 2022. When determining whether the adverse employment element has been met, our courts have held that "[t]he factors to be considered include an 'employee's loss of status, a clouding of

job responsibilities, diminution in authority, disadvantageous transfers or assignments, and toleration of harassment by other employees.'" Richter v. Oakland Board of Education, 459 N.J. Super. 400, 417 (App. Div. 2019), affirmed as modified, 246 N.J. 507 (2021) (emphasis added).

Richter cited a passage from a federal court decision, Marrero v. Camden County Board of Social Services, 164 F.Supp.2d 455, 472 (D.N.J. 2001), which held that an adverse employment action was conduct that would "limit, segregate or classify the plaintiff in a way which would tend to deprive her of employment opportunities or otherwise affect her status as an employee." (emphasis added). Richter, 459 N.J. Super. at 417.

All of this happened here.

The continual, cumulative pattern of tortious conduct, evidenced here as well as the well-demonstrated refusal of the Administration and Board to give her the tools she needed for her job, and the overt hostility of the Administration are all present in this case. Whether there were individual acts of discrimination or harassment or retaliation, and whether together they constituted a hostile environment, are obviously fact-sensitive issues, and this applies to all of the allegations of discrimination. They are documented in the internal complaint which Ms. Robinson filed, in her EEOC complaint, and in the more than 1,000 documents

produced in response to Defendant's' requests and incorporated here, and it is not up to the Court, on a Motion for Summary Judgment, to resolve factual disputes.

Similarly, in addition to her discrimination claims, Ms. Robinson's CEPA claims must survive. CEPA requires only that an employee "reasonably believed that his or her employer's conduct was violating either a law, rule or regulation promulgated pursuant to law, or a clear mandate of public policy[.]" Dzwonar v. McDevitt, 177 N.J. 451, 462 (2003)(emphasis added). Ms. Robinson has alleged that she complained in writing because Superintendent Fernandez "was attempting to pay additional monies to a vendor for services that the vendor could not render." Pa44. Those alleged facts would establish the misappropriation of public funds and would certainly enable Robinson to have formed a reasonable belief that a law or regulation had been violated. In the same vein, Robison has also alleged that she complained in writing because sick days were being sold to employees who were not retiring from Board employment. Pa43. As stated in Robinson's email dated March 18, 2022, to Board counsel, which is referenced in the Complaint, Pa43, she complained because N.J.S.A. 18A:30-3.5 only permitted the sick days to be paid at the time of retirement. Based upon those factual allegations, Robinson formed a reasonable belief that Board funds were being misused or mismanaged in violation of law, more than sufficient for the purpose of surviving a summary judgment motion.

The Court's reasoning in granting summary judgment was that "there are no triable issues of material fact." Pa10. This conclusion rests entirely on the fact that, rather than annex 1,200 documents it the opposition, counsel annexed a log of the 1,200 documents. The court held that while "a party must use 'competent evidential material' to demonstrate the existence of a genuine issue of material fact," citing Merchants Exp. Money Order Co v. Sun Nat. Bank, 374 N.J. Super. 556, 563 (App. Div. 2005), "[S]peculation does not meet the evidential requirements" to defeat a summary judgment motion. Apparently critical to this conclusion was the Court's decision that it would "not consider Plaintiffs' late-served document production for purposes of this motion." The Court reached this conclusion even though there had never been a discovery motion filed in this case until after the 1200 documents were produced, and with the Court ever requesting to see the documents themselves in advance of argument. The Court called the Plaintiffs' argument "speculation," which, of course, it was not.

## POINT II

## THE TRIAL COURT ERRED IN CONCLUDING THAT THE STANDARD FOR RECONSIDERATION HAD NOT BEEN MET

**(Opinion or Ruling at Pa14 – Pa15)**

The Court having apparently based its grant of summary judgment on the submission by the Plaintiff only of an extensive index and not of the actual documents, Plaintiff moved for reconsideration to place the key documents before it. See, Pa180 – Pa257. It was (and remains) the position of the Plaintiff that the documents certainly existed, and because all the documents placed before the Court had been in the possession of the School District since 2022 or earlier, there was no prejudice to the Defendants if the Court considers them, in the interest of justice.

In short, the documents and Ms. Robinsons' sworn statements support the arguments that she was compensated at a lower rate than her male, Latino predecessor, that she was compensated at a lower rate than her counterparts in other Districts, that the Board subjected her to repeated adverse employment actions, that she was repeatedly subjected to mistreatment and harassment, especially by the Superintendent and the Director of Human Resources, that her office was understaffed, which is itself an adverse action, that she documented the adverse impact of the stress which was caused by ongoing harassment, that she filed both

internal and external complaints of discrimination, and that she blew thew whistle on unlawful District practices. All of this was verified by Robinson's statements both in her Certification and in real time, in the exhibits. She asserts repeatedly that she was not only harassed by also was the victim of retaliation, which is always inferential but, in this case, more than plausible. She certainly raised contested issues of fact in all of these areas.

R. 4:49-2 governs. The Rule requires that a motion should be made with specificity, showing the basis on which it is made and include "… a statement of the matters or the controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49-2. Here, that is accomplished with more than sufficient specificity by the Robinson Certification of August 26, 2024, and by the attached exhibits.

Reconsideration is within the sound discretion of the Court, and it is to be exercised in the interests of justice. Reconsideration is particularly appropriate where the Court either did not consider, or failed to appreciate, the significance of probative, competent evidence. Cummings v. Bahr, 295 N.J. Super 374, 384 (App. Div. 1996). This is not to accuse the Court of ignoring evidence, since, here, the Court found that the evidence, enumerated by Index, was not before it in a clear enough fashion. Whether that was or was not the case then, the very same evidence

was then clearly before the Court, and the interests of justice required that the Court give it fair consideration, rather than, as it did, ignore it all.

Again, granting a motion for a rehearing or reconsideration is made within the sound discretion of the Court, which is to be exercised in the interests of justice. [emphasis added] See R. 4:49-2; Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987). In Johnson, Judge Pressler emphasized that the Court should exercise its discretion for good cause shown to serve justice. Id. To obtain relief, the moving party must demonstrate that enforcement of the judgment or order would be unjust, oppressive or inequitable. Id. at 264. Given the volume of clear evidence, that is the case here, and the motion should have been granted. Once granted, upon reconsideration the summary judgement motion should have been denied (as it should have been in the first instance).

## CONCLUSION

For all the reasons set forth in this Brief, the Trial Court's Orders must be reversed, summary judgement denied, and this matter returned to the calendar.

Respectfully submitted,

WEINER LAW GROUP LLP
Attorneys for Plaintiffs/Appellants
Regina Robinson and Charles Harris

Date: January 13, 2025

By: */s/ Stephen J. Edelstein*
STEPHEN J. EDELSTEIN
A Member of the Firm

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| REGINA ROBINSON and CHARLES HARRIS<br><br>Plaintiffs/Appellants,<br><br>v.<br><br>JERSEY CITY BOARD OF EDUCATION; NORMA FERNANDEZ, both individually and as the Superintendent of the Jersey City School District; EDWIN RIVERA, both individually and as the Director of Human Resources of the Jersey City School District; NATALIA IOFFE, both individually and as a member of the Jersey City Board of Education; GINA VERDIBELLO, both individually and as a member of the Jersey City Board of Education; ALEXANDER HAMILTON, both individually and as a member of the Jersey City Board of Education; YOUNASS MOHAMED-BARKOUCH; both individually and as a member of the Jersey City Board of Education; PAULA JONES-WATSON, both individually and as a member of the Jersey City Board of Education; NOEMI VELAZQUEZ, both individually and as a member of the Jersey City Board of Education; LORENZO RICHARDSON, both individually and as a member of the Jersey City Board of Education; and LEKENDRICK SHAW, both individually and as a member of the Jersey City Board of Education,<br><br>Defendants/Respondents. | SUPERIOR COURT OF NEW JERSEY: APPELLATE DIVISION<br><br>DOCKET NO.: A-000327-24<br><br>Civil Action<br><br>ON APPEAL FROM ORDERS ENTERED BY THE SUPERIOR COURT OF NEW JERSEY, HUDSON COUNTY<br><br>DOCKET NO.: HUD-L-2155-22<br><br>Sat Below:<br>HON. KIMBERLY ESPINALES-MALONEY, J.S.C. |

# DEFENDANT/RESPONDENT JERSEY CITY BOARD OF EDUCATION'S BRIEF IN OPPOSITION TO PLAINTIFF'S APPEAL

**ADAMS LATTIBOUDERE CROOT & HERMAN, LLC**
Woodbridge Towers
555 Route 1 South, Suite 240
Iselin, New Jersey 08830
(973) 735-2742
Attorneys for Defendant-Respondent, Jersey City Board of Education

Cherie L. Adams, Esq. (Attorney ID #: 008001986)
cadams@alch-law.com
*Of Counsel and On the Brief*

Date of Submission: March 19, 2025

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## PRELIMINARY STATEMENT

The Court correctly granted Defendant Jersey City Board of Education's motion for summary judgment as Plaintiffs Regina Robinson and Charles Harris ("Plaintiffs") offered no competent evidence to support the discrimination claims. Plaintiffs had not responded to Defendants' discovery requests and had not provided any discovery whatsoever to District Defendant during the discovery period. Defendant offered a Statement of Material Facts with supporting evidence to support its Motion for Summary Judgment. Plaintiff admitted most of the stated facts and offered no affidavit or competent evidence in support of Plaintiff's claim in opposition to the motion. Instead, Plaintiff submitted simply an "index" of documents that were just supplied to Defendant after the motion for summary judgment was filed and relied on allegations in the complaint.

Initially, the undisputed material facts demonstrated that Plaintiff Regina Robinson ("Robinson") could not establish prima facie claims of race, and/or gender discrimination under the New Jersey Law Against Discrimination ("NJLAD") against District Defendant. Similarly, Robinson could not establish a prima facie claim pursuant to the Conscientious Employee Protection Act ("CEPA"). Both laws require as a part of a prima facie case that there be evidence of adverse employment action as a result of the alleged violations.

Here, at no time prior to the filing of the 2022 Complaint in this matter did Plaintiff Regina Robinson ("Robinson") suffer from an adverse employment action within the meaning of the NJLAD. Robinson had at all times maintained her current salary and benefits, even when she had not reported to work while on medical or administrative leave. The fact that Robinson may have wanted additional positions created within the business office cannot establish adverse action within the meaning of the NJLAD or CEPA. In fact, the allegations of the Complaint show only that Robinson simply disagreed with the rules and procedures created by District Defendant to effect the hiring process. Moreover, Plaintiffs failed to provide any evidence whatsoever of her time-barred salary claims pursuant to the Equal Pay Act, N.J.S.A. 10:5-12(t), et seq. Finally, Plaintiffs offered no competent evidence in opposing the motion for summary judgment to raise a genuine issue of fact that could support the claim that any action taken was based on race, gender or in retaliation for her filing an internal complaint. Plaintiffs relied solely on speculation and baseless allegations to oppose the motion; the trial court correctly rejected this effort and properly granted summary judgment in favor of the Defendant dismissing the complaint in its entirety.

Similarly, the trial court properly denied Plaintiffs' motion for reconsideration of the Court's August 5, 2024 Order and Memorandum of Decision granting District

Defendant's motion for summary judgment. Again, Plaintiffs failed to prosecute their claims and failed to present any new evidence or something the Court overlooked in its initial ruling to support any prima facie claim against District Defendant. Rather, Plaintiffs attempted to have a "second bite of the apple" by presenting documentation that was never supplied in discovery or even in Plaintiffs' response to the summary judgment motion. Plaintiffs cannot claim a "do-over" of their opposition to District Defendant's motion for summary judgment by presenting other documentation for the Court's consideration in a motion for reconsideration, documentation which was subject to a prior motion to bar as it was not supplied during discovery. Further, even the documentation and Certification of Robinson included for the first time in Plaintiffs' motion for reconsideration failed to supply any competent evidence to support a prima facie claim against District Defendant and provide no basis upon which to "reconsider" the granting of summary judgment as District Defendant was entitled to judgment dismissing the Complaint. Moreover, Plaintiffs failed to meet the standards set forth in R. 1:7-4, R. 4:49, and R. 4:50-1 regarding the amendment or alteration of a Court's decision; thus, Plaintiffs' motion for reconsideration was correctly denied by the trial court.

Defendant Appellee respectfully requests that the decision below dismissing the complaint with prejudice, be affirmed.

## PROCEDURAL HISTORY

On June 30, 2022, Robinson filed a Complaint against District Defendant alleging that she had been discriminated against on the basis of gender and race, retaliated against, and that she has been subjected to a hostile work environment, in violation of the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1, et seq. [37a]. Count 1 of the Complaint alleges sex discrimination against Robinson under NJLAD. [45a]. Count 2 alleges race discrimination against Robinson under NJLAD. [45a]. In Count 3, Plaintiff Robinson alleges she has suffered retaliation under NJLAD for protected activity. [46a].

In Count 4, Robinson alleges hostile work environment under NJLAD. [47a].

Count 5 of the Complaint alleges that that Robinson engaged in protected whistleblowing activity and that she has suffered retaliation for making a complaint under the CEPA, N.J.S.A. 34:19-1, et seq. [48a].

In Count 6, Harris makes a per quod claim for loss of consortium. [49a].

Plaintiffs also sued Defendants Norma Fernandez, both individually and as the Superintendent of the Jersey City School District; Edwin Rivera, both individually and as the Director of Human Resources of the Jersey City School District; Natalia Ioffe, both individually and as a member of the Jersey City

Board of Education; Gina Verdibello, both individually and as a member of the Jersey City Board of Education; Alexander Hamilton, both individually and as a member of the Jersey City Board of Education; Younass Mohamed-Barkouch; both individually and as a member of the Jersey City Board of Education; Paula Jones-Watson, both individually and as a member of the Jersey City Board of Education; Noemi Velazquez, both individually and as a member of the Jersey City Board of Education; Lorenzo Richardson, both individually and as a member of the Jersey City Board of Education; and Lekendrick Shaw, both individually and as a member of the Jersey City Board of Education. [37a-39a]. On September 13, 2022, Defendants filed an Answer to Plaintiffs' allegations. [51a-63a].

On October 5, 2022, Defendants filed a Motion to Dismiss Plaintiffs' Complaint for failure to state a claim as to the individual defendants, pursuant to R. 4:6-2(e). [64a-66a; 91a]. This motion was granted on November 28, 2022 and the claims against the individuals were dismissed. [64a-66a.] There are no remaining claims as to the defendants in their individual capacities. [Ibid.]

Discovery was concluded on April 15, 2024; Plaintiffs provided no discovery responses and no documentation to support their claims at any time prior to that date. On May 22, 2024, District Defendant filed a Motion for summary judgment based upon the original trial date scheduled for July 22,

2024. [67a-68a]. This motion was returnable on June 20, 2024 with Plaintiffs' response due by June 13, 2024. [Da3]. Plaintiffs provided no opposition to the motion and no documentation to Defendants by the due date of June 13, 2024. [Da3]. Instead, after the response was due, on June 18, 2024, Plaintiffs initially requested an adjournment of the return date. [Ibid.] Once again, no discovery had been supplied by Plaintiffs by that date. [Id.] After Plaintiffs' counsel's requests for an adjournment of District Defendant's motion, the summary judgment motion was adjourned to August 2, 2024. [Da4]. The original trial date of July 22, 2024 was adjourned to December 9, 2024. [Ibid.]

On June 24, 2024, more than 2 months after the close of discovery, Plaintiffs' counsel e-mailed to defense counsel for the first time Plaintiffs' "document production" in response to District Defendant's document demand. [Id.] Plaintiffs' document production comprises approximately 1,292 pages. [Id.] Counsel for District Defendant responded to Plaintiffs' counsel that District Defendant would object to any use of this information in responding to the summary judgment and/or in any trial in the matter as it was submitted long after discovery was closed. [Id.]

This June 24, 2024 document production was Plaintiffs' only response to District Defendant's discovery requests. [Id.] District Defendant previously

served Plaintiffs with interrogatories and document production requests, as well as a notice of deposition for Plaintiff.

On July 17, 2024, District Defendant filed a motion to strike Plaintiffs' late-served document production. [150a-151a].

On July 23, 2024, Plaintiffs filed a cross-motion to amend and supplement their Complaint and to re-open and extend discovery. [152a].

On August 5, 2024, after having heard oral argument by the parties, the Court granted District Defendant's motion for summary judgment. [1a-12a].[1] On the same date, the Court denied Plaintiffs' motion to amend their Complaint and to re-open discovery. [156a-158a]. Also, on the same date, the Court denied District Defendant's motion to bar/strike Plaintiffs' late-served document production as moot in light of the dismissal of the complaint. [154a-155a].

On August 26, 2024, Plaintiffs filed their motion for reconsideration. [172a-173a]. On September 13, 2024, the Court denied Plaintiffs' motion for reconsideration and subsequently filed this appeal.[2] [13a-15a].

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[1] Defendant moved to bar the use or consideration of the documents referenced in the index which were submitted by Plaintiff long after the close of discovery; the trial court denied the motion as moot in light of the granting of summary judgment.

[2] Appellant does not challenge the November 2022 Order below which dismissed the claims as to the individual defendants and similarly makes no argument seeking to reinstate the per quod claim dismissed by the Court as to Plaintiff Charles Harris.

## STATEMENT OF FACTS

Robinson is the tenured School Business Administrator of the Jersey City Public Schools. [70a]. Robinson is a non-Latino Black female. [Id.] Harris is Robinson's spouse. [Id.]

District Defendant is a body politic organized and existing by virtue of the laws of the State of New Jersey, and is entrusted with maintaining and conducting the public schools of Jersey City. [Id.]

In 2017, Robinson accepted employment and was hired by District Defendant to serve as the School Business Administrator. [70a]. The District Policy states that the School Business Administrator "shall work cooperatively with the district administrative staff to administer the business affairs of the district in such a way as to provide the best possible educational services with the financial resources available." [98a].

The District Policy states that the School Business Administrator performs "duties at the district level in the areas of financial budget planning and administration, financial accounting and reporting, insurance/risk administration, and purchasing." [98a]. The District Policy states that The School Business Administrator engages "in facilities planning, construction and maintenance, personnel administration, administration of transportation and food services, and central data processing management." [Id.]

According to N.J.S.A. 18A:17-14.2, the School Business Administrator must hold an appropriate certificate as prescribed by the New Jersey State Board of Education, and "no person shall act as a school business administrator or perform the duties of a school business administrator, as prescribed by the rules and regulations of the state board, unless he holds such a certificate." [40a; 100a-101a]. Robinson holds the required certificate, and, by operation of law, she is now tenured in the position. [71a].

**A. Robinson's October 5, 2021 Discrimination Complaint**

The Complaint alleges that on or about October 5, 2021, Robinson filed an Affirmative Action "Discrimination/Harassment Complaint Form." [42a]. The Complaint alleges that the October 5 AA Complaint stated that Robinson was subject to "continuous mistreatment" by Edwin Rivera ("Rivera"), Director of Human Resources. [Id.] Robinson failed to provide any competent evidence to support this claim during the discovery period, which had expired by the time District Defendant filed its motion for summary judgment. [71a]

**B. Robinson's Complaints**

The Complaint alleges that on or about December 1, 2021, Robinson complained to then-Superintendent Franklin Walker ("Walker") that she was subject to a hostile work environment because she is a Black female. [42a].

Robinson failed to provide any competent evidence to support this claim during the discovery period, which had expired. [72a]

**C. Robinson's Opposition to Vendor Payment**

The Complaint alleges that on or about December 3, 2021, Robinson asserted in writing to Norma Fernandez ("Dr. Fernandez"), current Superintendent, her opposition to Fernandez attempting to pay additional monies to a vendor for services that the vendor could not render. [42a]. Robinson failed to provide any competent evidence to support this allegation during the discovery period which had expired. [72a]

**D. District Defendant's Hiring Process**

The Complaint alleges that on multiple occasions during/since 2021, Robinson was unable to fill positions required for the Business Office and was unable even to have those positions posted. [43a]. Robinson claims in the Complaint that this was due to discrimination and/or retaliation; however Plaintiff failed to provide any competent evidence to support this allegation during the discovery period, which had expired. [72a]

**E. Robinson's Leave**

According to the Complaint, on or about December 13, 2021, Robinson reported to Sabrina Harrold ("Harrold"), Affirmative Action Officer, in writing, that she was suffering from work-related stress. [43a]._The Complaint alleges

that on January 18, 2022, Robinson e-mailed to Dr. Fernandez that she was still under her doctor's care and had provided a doctor's note to the District. [103a-106a]. Robinson continued to receive her full pay and benefits while out on he approved medical leave from her position at all times prior to the filing of the Complaint. [72a][3]

**F. Robinson's Administrative Leave**

Robinson was placed on administrative leave, with pay and benefits, effective August 26, 2022. [108a].

## LEGAL ARGUMENT

## POINT I

## THE TRIAL COURT CORRECTLY GRANTED THE DISTRICT DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (raised below, 1a-12a)

The trial court correctly decided that there were no genuine issues of material fact that preclude the granting of its motion for summary judgment. [10a].

[3] Although Appellant refers to Plaintiff as being "suspended", this is a complete mischaracterization of the record. Plaintiff was initially on a paid medical leave at her request and then was on paid administrative leave with full salary and benefits while the District conducted an external review of the business office. Plaintiff remained on leave until tenure charges were certified after this external review was completed, in or around May 2024, long after this complaint was filed (June 2022) and having no relevance to the instant complaint.

The standard of appellate review for a summary judgment motion is de novo. See Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). The appellate court will use the same standard as "used by the trial court." Samolyk v. Berthe, 251 N.J. 73, 78 (2022). A "key aim 'of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.'" Friedman v. Martinez, 242 N.J. 449, 472 (2018) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986).

A trial court is encouraged to grant a motion for summary judgment when "the proper circumstances present themselves." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541 (1995). A motion for summary judgment can save judicial resources and facilities for cases that "meritoriously command attention." Brill, 142 N.J. at 542 (quoting Robbins v. Jersey City, 23 N.J. 229, 240 (1957).

Here, the trial court specifically stated the facts and reasoning for its decisions for dismissing Plaintiff's claims against District Defendant. The trial court clearly must state its factual findings and tie in the relevant legal conclusions so that the litigants and the appellate courts are notified of the trial court's rationale for its conclusions. Estate of McClenton, 2019 N.J. Super. Unpub. LEXIS 2632, *11 (citing Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 594 (App. Div. 2016) (alterations in original). An appellate court cannot

engage in meaningful review unless the trial court provides the reasoning for its opinion. Estate of McClenton, 2019 N.J. Super. Unpub. LEXIS 2632, *12 (citing Giarusso v. Giarusso, 455 N.J. Super. 42, 53-54 (App. Div. 2018)).

As the trial court noted in its opinion in favor of District Defendant's motion for summary judgment, "[e]vidence presented to support or defeat a summary judgment motion 'should be the best there is[,] short of live testimony…'" [10a]. See Fargas v. Gorham, 276 N.J. Super. 135, 140 (Law Div. 1994). In this matter, Plaintiffs admitted most of the material facts noted by Defendant and offered no affidavit or competent evidence to support their suggestion that a genuine issue of fact existed to warrant a trial on their claims. Instead, they simply referenced and attached an "index" of documents they provided to Defendants just days earlier and long after discovery was closed. [10a] Plaintiffs did not try to analyze or discuss what this index provided in terms of evidence to support the claims, instead relying upon a recitation of the "allegations" in the complaint itself to suggest that summary judgment could not be granted based on those allegations alone, despite the lack of evidence. Plaintiff's index was insufficient evidence to support Plaintiff's opposition to the summary judgment motion, and Defendants were entitled to judgment dismissing the claims. [11a]. The trial court should not "lower the threshold of acceptable evidence" for a summary judgment motion. See Fargas, 276 N.J.

Super. at 140. Speculation should not be considered when deciding a summary judgment motion. [10a]. See Merchants Exp. Money Order Co. v. Sun Nat. Bank, 374 N.J. Super. 556, 563 (App. Div. 2005).

The trial court specifically noted that "Plaintiffs' response to the District Defendant's Statement of Undisputed Material Facts did not deny many of the factual statements, stated that their Complaint speaks for itself, and made vague references to the employment policy." [11a]. Plaintiffs "failed to provide specific citations to the record in their opposition brief and in response to the District Defendant's [sic] Statement of Material Facts." [Ibid.] Plaintiffs also failed to provide citations in their opposition brief to support their claims. [Id.]

The trial court also correctly found that Plaintiffs' late-served document production should not be considered in support of its opposition to the summary judgment motion. [Id.] The trial court found that Plaintiffs only utilized their Complaint, Plaintiff Regina Robinson's internal complaint, an EEOC Inquiry Information form, and an index of their late-served document production in support of its opposition. [Id.] The trial court found that "[t]hese documents are mere argument and speculation and do not constitute competent and persuasive evidence that support Plaintiffs' claims." [Id.]

The Court recognized that Plaintiffs offered nothing in their opposition beyond argument and mere speculation. In defending against a summary judgment

motion under R. 4:46-1, the party opposing the motion must file a responsive statement either admitting or denying each of the facts included in the Statement of Material Facts submitted by the moving party. R. 4:46-2(b) Plaintiff admitted most of Defendant's statement of material facts, supported by the record, and they should be deemed admitted for purposes of this motion for summary judgment under R. 4:46-2(b). Moreover. Plaintiff failed to offer competent evidence of additional material facts supported by the record which would suggest a genuine issue of fact warranting trial as required.

Under R. 4:46-2(c), Defendant was entitled to judgment as a matter of law if the pleadings, evidence and affidavits on file show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Here, Plaintiff provided no evidence or affidavit to counter the Defendant's statement of material facts in response to Defendant's motion for summary judgment that would raise a genuine issue of material fact or suggest that Defendant's are not entitled to judgment as a matter of law. Plaintiffs' unsupported arguments do not create a genuine issue of fact or even support their claims.

At the time the District Defendant filed its summary judgment motion, Plaintiffs had not provided any written discovery or documentary evidence to support their claims. [91a]. The District Defendant filed its summary judgment motion on May 22, 2024 and the discovery end date was April 15, 2024. [67a; Da3].

The only discovery provided was from District Defendant. [91a]. Plaintiffs failed to provide any responses to District Defendant's written discovery requests, despite several extensions of discovery. [Da3]. Instead, in opposition to the District Defendant's motion, Plaintiffs provided for the first time simply an index of their own self-serving summaries of documents they produced to defense counsel on June 24, 2024, after the initial return date of the motion for summary judgment and approximately 2.5 months after the discovery end date. [113a-147a; Da3-Da4]. Accordingly, the only documentary evidence in this matter were the documents provided by District Defendant.

In addition, Plaintiffs offered no sworn affidavit in their opposition or any other competent evidence to support their claims. [11a]. The trial court could not consider or rely upon a self-serving index of Plaintiffs' document production for this motion; Plaintiffs' self-serving index of documents did not constitute credible evidence that could raise a genuine issue of material fact to support their claims. [Id.] It is Plaintiffs' obligation to set forth competent evidence in support of their claims to raise a genuine issue of material facts and to piece together their proofs for the Court's consideration, rather than asking the Court to sift through an index of Plaintiffs' documents to see if an issue of fact is revealed. [10a].

Plaintiffs merely asserted in their opposition below that the examples of alleged discrimination asserted in Plaintiffs' Complaint and its document production

index is sufficient evidence to defeat the District Defendant's summary judgment motion. However, Plaintiffs are misguided on this point, and it shows utter disregard of the court rules and summary judgment process. None of these documents go beyond mere argument and speculation and certainly none of them constituted competent evidence to support Plaintiffs' claims.

## A. COUNTS ONE AND TWO OF PLAINTIFFS' COMPLAINT: DISCRIMINATION BASED ON RACE OR GENDER UNDER NJLAD WERE PROPERLY DISMISSED.

The trial court correctly found that District Defendant's motion for summary judgment motion should be granted as to Counts One and Two of Plaintiffs' Complaint.

New Jersey courts have traditionally employed the three-step burden shifting analysis found in McDonnell Douglas when deciding cases under the NJLAD. Under that standard, the first step requires a plaintiff to present a prima facie case of discrimination. Goodman v. London Metals Exchange, Inc., 86 N.J. 19, 31 (1981) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)). The second step shifts the burden of production (but not the ultimate burden of persuasion) to the employer to allow evidence of a legitimate, nondiscriminatory basis for the employment action. Id. The third and final step requires the plaintiff to prove "by a preponderance of the evidence that the legitimate nondiscriminatory reason

articulated by the defendant was not the true reason for the employment decision but was merely a pretext for discrimination." Id.

Robinson bore the initial burden of establishing a prima facie case of disparate treatment discrimination. Robinson would have to show that: (1) she belonged to a protected class; (2) she was performing her job prior to termination or an adverse employment action; (3) she was terminated from that position or suffered an adverse employment action; and that (4) the employer sought to, or did fill the position with a similarly-qualified person. See Zive v. Stanley Roberts, Inc., 182 N.J. 436, 454-55 (2005); Viscik v. Fowler Equipment Co., 173 N.J. 1, 14 (2002); Andersen v. Exxon Co., U.S.A., 89 N.J. 483, 491 (1982).

To be considered an adverse employment action, "the act must affect 'the terms, conditions, compensation, or benefits of her employment or [have] prejudiced her ability to take advantage of future employment opportunities.'" Colello v. Bayshore Cmty. Health Servs., No. A-3423-08T1, 2010 N.J. Super. Unpub. LEXIS 934 (App. Div. Apr. 28, 2010) (quoting Hargrave v. County of Atl., 262 F. Supp. 2d 393, 427 (D.N.J. 2003). The Superior Court of New Jersey, Appellate Division, elaborated on what constitutes an adverse employment action:

> [A]n employer's adverse employment action must rise above something that makes an employee unhappy, resentful or otherwise cause an incidental workplace dissatisfaction. Clearly, actions that affect wages, benefits, or result in direct economic harm qualify. So too, noneconomic actions that cause a significant, non-temporary adverse

> change in employment status or the terms and conditions of employment would suffice.

See Stonnell v. State, No. A-3005-18, 2022 N.J. Super. Unpub. LEXIS 880, *17 (App. Div. May 23, 2022) (quoting Victor v. State, 401 N.J. Super. 596, 616 (App. Div. 2008), aff'd as mod. on other grounds, 203 N.J. 383 (2010)).

Emotional factors alone are not considered an adverse employment action. See Canale v. State, No. A-0104-12T2, 2013 N.J. Super. Unpub. LEXIS 1801, *18 (App. Div. July 19, 2013) (quoting Shepherd v. Hunterdon Developmental Ctr., 336 N.J. Super. 395, 420 (App. Div. 2001), aff'd in part, rev'd in part, 174 N.J. (2002)).

The Superior Court of New Jersey, Appellate Division (the "Appellate Division"), found that the definition of an adverse employment action under the LAD does not abide by a "bright-line rule." See Richter v. Oakland Bd. of Educ., 459 N.J. Super. 400, 417 (App. Div. 2019). When considering whether a certain action is considered an adverse employment action, the Court should consider an "employee's loss of status, a clouding of job responsibilities, diminution in authority, disadvantageous transfers or assignments, and toleration of harassment by other employees." Id. (quoting Mancini v. Township of Teaneck, 349 N.J. Super. 527, 564 (App. 2002)).

Here, Robinson has not offered any competent evidence to establish that she suffered from an adverse employment action within the meaning of NJLAD or that any decision with respect to her employment was affected by her race or gender. As set forth in the Statement of Material Facts, Robinson went on paid medical leave

by request beginning in December 2021. See Exhibit A, ¶ 22(i). See Exhibit D. She continued to receive her salary and benefits during that leave. She was not reporting to work thereafter so Plaintiffs cannot claim any other type of adverse employment action supporting the Complaint. Plaintiff did not experience any changes in her rate of pay. She continued to receive the contractual benefits of her employment at District Defendant at all times prior to the complaint being filed.

Robinson's speculative claim that she deserved a salary increase to be on par with sister school districts does not raise a genuine issue of material fact in support of Robinson's NJLAD claim. Obviously, Robinson negotiated her initial salary in 2017 with the Superintendent at the time and accepted that salary in connection with her appointment. Any challenge to that would have been time-barred in this Complaint. The salaries paid in a public school district are publicly available. Robinson cannot now use her claim that she should have received a salary increase that was "market value" and on par with other separate districts years later to support a NJLAD claim against the Jersey City School District. Moreover, no evidence whatsoever was offered to show that decisions relating to Robinson's compensation were affected by her race or gender. There is no competent evidence in the record that supports a prima facie claim under NJLAD, and the trial court correctly dismissed Counts 1 and 2.

## B. COUNT THREE: RETALIATION UNDER NJLAD

The trial court correctly found that District Defendant's motion for summary judgment motion should be granted as to Count Three of Plaintiffs' Complaint.

A retaliation claim under the NJLAD, which is also known as a "reprisal" claim, requires a plaintiff to prove the following elements: (1) plaintiff was in a protected class; (2) plaintiff engaged in a protected activity, such as making a complaint about discrimination; (3) the plaintiff had a good faith, reasonable basis for complaining about the employer's actions; (4) the protected activity was known to the employer; (5) plaintiff was thereafter subjected to an adverse employment action, such as termination, suspension or demotion; and (6) there was a causal link between the protected activity and the adverse employment action. Victor v. State, 203 N.J. 383, 409 (2010); Tartaglia v. UBS Paine Webber, Inc., 197 N.J. 81, 125 (2008); Carmona v. Resorts International Hotel, Inc., 189 N.J. 354, 371-374 (2007).

If a plaintiff establishes the prima facie elements of a retaliation claim, a defendant must then articulate a legitimate, non-retaliatory reason for its employment decision. Thereafter, the plaintiff must come forward with evidence of a retaliatory motive and prove that the employer's stated reason for its action was a pretext for an underlying retaliatory motive. Battaglia v. United Parcel Service, Inc., 214 N.J. 518, 547-547 (2013); Young v. Hobart West Group, 385 N.J. Super. 448, 465 (App. Div. 2005); Romano v. Brown & Williamson Tobacco Corp., 284 N.J. Super. 543, 548-549 (App. Div. 1995).

Here, again, Robinson cannot point to an adverse employment action against her because none was taken against her prior to the filing of the complaint at hand. Robinson was paid her contractual salary and received other employment benefits at all times relevant to this Complaint. See Sanders v. Div. of Children & Family Servs., No. A-2211-19, 2021 N.J. Super. Unpub. LEXIS 958 (App. Div. May 20, 2021) (rejecting complainant's retaliation claim because complainant "lost no wages, and had no change in schedule" and "was granted an accommodation request for intermittent leave."). Robinson requested and was granted a paid medical leave of absence with full salary and benefits. Plaintiff offered no competent evidence in opposing Defendant's motion to suggest otherwise or to suggest any connection to her filing of an internal complaint. Thus, Robinson failed to demonstrate a causal link between her alleged protected activity and an adverse employment action and the trial court appropriately dismissed the claim.

Further, while Robinson made speculative allegations in the Complaint that she made general complaints in July 2021, October 2021 and December 2021 alleging discrimination and hostile work environment and that she was retaliated against in connection with those complaints, Plaintiffs provided no evidence whatsoever in response to the motion for summary judgment to support these claims, other than the conclusory allegations in the Complaint, nor did Plaintiffs offer

anything which would have created a genuine issue of fact requiring a trial as to the claim of retaliation under NJLAD.

In support of the retaliation claim, Robinson referenced without any specifics that defendants "retaliated against Robinson" for filing complaints, yet no competent credible evidence was presented by Robinson to support this claim. That Robinson apparently did not like the rules and procedures of the District with respect to staffing and filling positions in no way provides evidence to support a retaliation claim. Similarly, Robinson's claims that she was not included in all discussions does not establish a basis to support a retaliation claim. As Robinson failed to provide any competent evidence to support the claims in Count 3, the trial court correctly granted District Defendant's motion for summary judgment on the NJLAD retaliation claim in Count 3.

### C. COUNT FOUR: HOSTILE WORK ENVIRONMENT UNDER NJLAD

The trial court correctly found that District Defendant's motion for summary judgment motion should be granted as to Count Four of Plaintiffs' Complaint.

Count 4 of the Complaint again alleges in conclusory fashion that District Defendant has created a severe and pervasive hostile work environment as to Robinson. To establish a prima facie case for hostile work environment, the employee must demonstrate that "the complained-of conduct (1) would not have occurred but for the employee's race or gender; and it was (2) severe or

pervasive enough to make a (3) reasonable [person] believe that (4) the conditions of employment are altered and the working environment is hostile or abusive. See Griffin v. City of East Orange, 225 N.J. 400, 413 (2016) (quoting Lehmann, 132 N.J. at 603).

"A hostile work environment claim is comprised of a series of separate acts that collectively constitute one 'unlawful employment practice.'" Shepherd v. Hunterdon Development Ctr., 174 N.J. 1, 20 (2001) (internal citation omitted). "Such claims are based on the cumulative [e]ffect of individual acts." Id. at 19.

In opposing Defendant's motion for summary judgment below, Robinson offered no competent evidence that could establish that a hostile work environment existed. All Robinson suggested, without evidentiary support, was that Robinson was frustrated by the rules and procedures of District Defendant as to how she could complete her job duties and was not able to get things done in the manner she would have liked. There was no evidence offered other than speculation of specific events that would support a claim of "hostile work environment" based upon race or gender under the NJLAD and Robinson was not able to meet the requirements of a prima facie case to move forward on this claim. Therefore, the trial court properly granted District Defendant's motion for summary judgment and dismissed Count Four of the Complaint.

**D. COUNT FIVE: CEPA**

The trial court correctly found that District Defendant's motion for summary judgment motion should be granted as to Count Five of Plaintiffs' Complaint.

CEPA is intended to "protect employees who report illegal or unethical work-place activities." Higgins v. Pascack Valley Hospital, 158 N.J. 404, 418 (1999), (citing Barratt v. Cushman & Wakefield, 144 N.J. 120, 127 (1996). "CEPA's legislative purpose is to protect and encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employers from engaging in such conduct." Thomas v. Kenyon, 2018 WL 3031091 (App. Div. 2018). This statutory protection was, however, crafted in a very specific manner by the Legislature and it requires a detailed and precise explanation of the facts in order to determine whether the required elements of such a claim have been established. CEPA dictates that:

> An employer shall not take any retaliatory action against an employee because the employee does any of the following:
>
> a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer…that the employee reasonably believes:
>
> (1) Is in violation of a law, or a rule or regulation promulgated pursuant to law…; or
>
> (2) Is fraudulent or criminal…;
>
> b. Provides information to, or testifies before, any public body conducting an investigation…into any violation of law, or a rule or regulation promulgated pursuant to law by the employer…; or

> c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:
>
> (1) is in violation of the law, or a rule or regulation promulgated pursuant to law…;
> (2) is fraudulent or criminal…; or
>
> (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

N.J.S.A. 34:19-3.

In order to state a prima facie case under CEPA, a plaintiff must establish "that 1) the aggrieved employee reasonably believed that the employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy; 2) he or she performed a whistle-blowing activity; 3) an adverse employment action was taken against him; and 4) a causal connection exists between the whistle blowing activity and the adverse employment action." Parker v. Atlantic City Board of Education, 2018 WL 1378696 (D.N.J. 2018); Dzwonar v. McDevitt, 177 N.J. 451, 462 (2007); Lippman v. Ethicon, Inc. 222 N.J. 362, 380 (2015). "The complained of activity must have public ramifications and … the dispute between the employer and employee must be more than a private disagreement." Parker v. Atlantic City Board of Education, 2018 WL 1378696 at 3; Maw v. Advanced Clinical Commc'ns, Inc. 179 N.J. 439, 445 (2004).

"The Court will decide as a matter of law, "whether or not a plaintiff has carried his or her burden of demonstrating the elements of the prima facie case and

those elements are not part of the proofs at trial for reconsideration by the jury." Tegler v. Global Spectrum, 291 F.Supp 3d 265, 580 (D.N.J. 2018); Tartaglia v. Douglas Corp v. Green 197 N.J. 81, 125 (2008).

"In determining whether a CEPA plaintiff has offered sufficient evidence to prove his claim, courts apply the McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973) burden-shifting test when the claim depends on circumstantial evidence." Tegler v. Global Spectrum, 291 F.Supp 3d at 581; Walsh v. Bril–Jil Enterprises, Inc., No. 15–0872, 2016 WL6246764, *11 (D.N.J. Oct. 24, 2016) (citing Bocobo v. Radiology Consultants of South Jersey, P.A., 477 Fed.Appx. 890, 900 (3d Cir. 2012). After the plaintiff has made the requisite showing of the elements of the prima facie case, the burden of production of evidence shifts to the employer to present a legitimate, non-retaliatory reason for having taken the adverse action. If the employer advances such a reason, the burden shift backs to the plaintiff to demonstrate that the employer's proffered explanation was false, and that retaliation was the real reason for the adverse employment action. Although the burden of production of evidence shifts back and forth, the plaintiff has the ultimate burden of persuasion at all times. Daniels v. Sch. Dist. of Philadelphia, 776 F.3d 181, 193 (3d Cir. 2015).

In evaluating the first element, a plaintiff must show that she reasonably believed that the employer violated law, regulation, rule or public policy that relates

to the conduct he complained about. Tegler v. Global Spectrum, 291 F.Supp 3d 265, citing Dzwonar v. McDevitt, 177 N.J. at 467. The Court must then determine whether a substantial nexus between the conduct and law exist. Tegler v. Global Spectrum, 291 F.Supp 3d 265, 581.

Here, Robinson alleged race and gender discrimination and filed internal complaints. See Exhibit A, Plaintiffs' Complaint, ¶¶ 22(d) and 22(e). However, Robinson has not offered any evidence whatsoever other than mere speculation and most importantly, has offered no evidence to even raise a genuine issue of fact to support her claim that an adverse employment action was taken against her in retaliation for filing those complaints. Robinson continued as an employee without reduction in salary or benefits following each of those complaints. No evidentiary connection was offered between her internal complaints and any negative action by Defendants. As with her NJLAD claims, that Robinson apparently did not like the rules and procedures of the District with respect to staffing and filling positions in no way provides competent evidence to support a CEPA retaliation claim. Similarly, Robinson's unsupported and speculative claims that she was not included in all administrative discussions does not establish adverse action to support a retaliation claim. Once again, no evidence whatsoever was presented to the Court by Plaintiff to counter Defendant's motion for summary judgment. Therefore, the Court should affirm the trial court's order dismissing Count 5.

## POINT II

## THE TRIAL COURT CORRECTLY DENIED PLAINTIFFS' MOTION FOR RECONSIDERATION (raised below, 13a-15a)

The trial court correctly denied Plaintiffs' motion for reconsideration under R. 4:49 since Plaintiffs fail to establish any basis for overturning of the Court's August 5, 2024 Order and Memorandum of Decision granting District Defendant's motion for summary judgment. Plaintiffs were merely dissatisfied with the Court's decision and attempted to have a "second bite of the apple" by presenting "evidence" the trial court stated should have been included in their opposition to the summary judgment motion.

Plaintiffs failed to meet the demanding standard required to obtain reconsideration under R. 4:49. A Court must consider the interplay of several Court Rules when considering a motion for reconsideration. It is well-established that "[r]econsideration is a matter within the sound discretion of the Court, to be exercised in the interest of justice." Cummings v. Bahr, 295 N.J.Super. 374, 384 (App. Div. 1996). Pursuant to R. 4:49-2,

> Except as otherwise provided by R. 1:13-1 (clerical errors), a motion for rehearing or reconsideration seeking to alter or amend a judgment or final order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or as to which it had erred, and shall have annexed thereto a copy of the

> judgment or final order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

Rule 4:49 provides that a motion for reconsideration "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred[.]" While reconsideration is within the sound discretion of the Court, "[i]t is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion[.]" Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Rather, a motion for reconsideration should be utilized only for those cases in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence. Palombi, 414 N.J. Super. at 288 (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). See Cummings, 295 N.J. Super. at 384; Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008). As the court explained in D'Atria, "a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the reconsideration process." 242 N.J. Super. at 401.

When filing a motion for reconsideration, the moving party must identify with specificity the evidence or controlling principles of law which she believes

the court overlooked. Id. at 381; R. 4:49-2. Where, as here, a litigant is sought reconsideration only because she was dissatisfied with the decision against herself, the motion should be rejected out of hand in order to prevent "repetitive bites at the apple" where an appeal is instead the appropriate recourse. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Initially, the trial court was correct in finding that there were no triable issues of material fact; therefore, District Defendant's summary judgment motion was granted. [10a]. In awarding summary judgment to Defendant, the Court found that Plaintiffs did not include their document production for the Court's review and did not provide a sworn affidavit or other competent evidence to support their claims. Id. The rules applicable to summary judgment motions specifically require the non-moving party opposing a motion for summary judgment to supply actual competent evidence to support the claim and create a genuine issue of material fact. Plaintiffs had the burden of proof on their claims. Plaintiffs' submissions did nothing more than reiterate the allegations of the Complaint without any evidentiary support. Moreover, even Robinson's certification provided for the first time with the motion for reconsideration offered no evidence that would preclude summary judgment; most significantly, it did not establish that Robinson suffered any adverse employment action during the relevant time period but simply reiterates her

conclusory allegations of certain actions without any evidence connecting these to any form of discrimination or retaliation. [180a-185a].

Plaintiffs, having failed to supply evidence to support their claims sufficient to warrant a trial, attempted to have a "do-over" of their opposition. There was no legal basis to reconsider the court's well-reasoned Order dismissing the claims. Significantly, the trial court also noted that Plaintiffs' response to District Defendant's Statement of Undisputed Material Facts did not include any denials of District Defendant's facts, and, again, Plaintiffs failed to provide any competent evidence to support their claims or to rebut District Defendant's facts. [11a] Plaintiffs failed to provide any citations to the record to support their opposition, and merely requested that the Court rely on its Complaint and self-serving index. See Id.

The trial court also correctly decided that Plaintiffs' late-served document production should not be considered as part of Plaintiffs' opposition to District Defendant's summary judgment motion. Id. District Defendant filed its motion to strike Plaintiff's late-served document production since it was prejudiced by the late-served document production. District Defendant could not further investigate the additional information contained in Plaintiffs' late-served document production since the discovery period has already expired, and trial was scheduled for December 9, 2024. Plaintiffs provided their document

production approximately 2.5 months after the discovery end date and over a month after District Defendant filed a motion for summary judgment. Plaintiffs did not provide any statement or argument to explain the late service of their document production.

The trial court found that "[s]pecifically, there is no competent and persuasive evidence in the record from which a reasonable jury could find in favor of Plaintiffs on Counts One through Six of the Complaint. Accordingly, all claims within Plaintiffs' Complaint against the District Defendants are hereby dismissed with prejudice." [12a].

The standard of appellate review for a motion for reconsideration is abuse of discretion. See Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Kornbleuth v. Westover, 241 N.J. 289, 301 (2020). An abuse of discretion is when "'a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Kornbleuth, 241 N.J. at 302 (Pitney Bowes Bank v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). The appellate court will "accord substantial deference to the trial court's findings of fact provided that they are 'supported by adequate, substantial and credible evidence[,]' and also give deference to the trial court's conclusions and 'discretionary determinations that flow from them.'" Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super.

378, 382-83 (App. Div. 2015) (quoting in part Cosme v. Borough of East Newark Twp. Comm., 304 N.J. Super. 191, 202 (App. Div. 1997), certif. denied, 156 N.J. 381(1998). Here, the trial court did not abuse its discretion in denying Plaintiffs' motion for reconsideration since there was no basis to reconsider its decision on District Defendant's motion for summary judgment.

Plaintiffs' motion for reconsideration was appropriately denied since Plaintiffs fail to establish any of the bases for overturning of the Court's August 5, 2024 Order and Memorandum of Decision granting District Defendant's motion for summary judgment.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the trial court did not err in any manner in its handling of District Defendant's motion for summary judgment and Plaintiffs' motion for reconsideration. Plaintiffs' appeal should be denied and the dismissal of Plaintiffs' complaint should be affirmed.

Respectfully submitted,

**ADAMS LATTIBOUDERE CROOT & HERMAN, LLC**
Attorneys for Defendant-Respondent, Jersey City Board of Education

***/s/ Cherie L. Adams***
By:_____
Cherie L. Adams, Esq.

Date: March 19, 2025

**Superior Court of New Jersey**
**Appellate Division**
Docket No. A-00327-24

REGINA ROBINSON AND
CHARLES HARRIS,

*Plaintiff*,

v.

JERSEY CITY BOARD OF EDUCATION; NORMA FERNANDEZ, both individually and as the Superintendent of the Jersey City School District; EDWIN RIVERA, both individually and as the Director of Human Resources of the Jersey City School District; NATALIAIOFFE, both individually and as a member of the Jersey City Board of Education; GWA VERDIBELLO, both individually and as a member of the Jersey City Board of Education; ALEXANDER HAMILTON, both individually and as a member of the Jersey City Board of Education; YOUNASS MOHAMED BARKOUCH; both individually and as a member of the Jersey City Board of Education; PAULA JONES-WATSON, both individually and as a member of the Jersey City Board of Education; NOEMI VELAZQUEZ, both individually and as a member of the Jersey City Board of Education; LORENZO RICHARDSON, both individually and as a member of the Jersey City Board of Education; and

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT, LAW DIVISION
HUDSON COUNTY

HON. Kimberly Espinales-Maloney, J.S.C.

LEKENDRICK SHAW, both
individually and as a member of the
Jersey City Board of Education,

*Defendants*

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**PLAINTIFFS/APPELLANTS MOTION FOR LEAVE TO FILE REPLY BRIEF IN RESPONSE TO DEFENDANT, JERSEY CITY BOARD OF EDUCATION'S BRIEF IN OPPOSITION TO PLAINTIFF'S AMENDED BRIEF ON APPEAL**

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DESHA JACKSON, ESQ.
DESHA JACKSON LAW GROUP, LLC
ATTORNEY ID # 014591996
4400 Route 9 South, Suite 1000
Freehold, NJ 07728
Phone: 732-409-5172
Fax: 201-603-1800
djackson@dljlawgroup.com
Attorney for Plaintiffs/Appellants

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## PRELIMINARY STATEMENT

Plaintiff/Appellant hereby incorporates the Preliminary Statement that was included in its Amended Brief, filed on January 28, 2025, with the exception that Plaintiff/Appellant argues that its counsel at the time of the lower court case failed to complete discovery. Plaintiff/Appellant's counsel conducted no depositions and no written discovery. Therefore, entry of summary judgment was premature and entered in error.

## PROCEDURAL HISTORY

This matter was commenced with the filing of a Complaint and Jury Demand by Regina Robinson on June 30, 2022. Pa37. Defendants filed an Answer on September 13, 2022. Pa51.

On November 28, 2022, Judge Espinales-Maloney dismissed without prejudice the claims against the individually named Defendants "in their individual capacities." Pa64.

On May 22, 2024, Defendants filed a Motion for Summary Judgement directed at all Counts of the Complaint, Pa67, and on July 17,2023, Defendants filed a Motion to "Strike Plaintiffs' Late Served Document Production." Pa150a. Robinson opposed both Motions, producing a lengthy log of over 1,200 documents which had been produced, Pa113. However, as should be noted, counsel for

Robinson failed to complete discovery timely, which ultimately hurt and prejudiced Robinson.

On August 5, 2024, the Court granted the Motion for Summary Judgment, Pa160, refusing to consider the "late served" documents. See, Pa170. Consequently, the Motion to Strike was denied as moot. Pa154. As Robinson's counsel failed to conduct discovery, the decision of the lower court to grant the Summary Judgment was premature and in error. In depositions were conducted by Robinson's counsel and no documents were exchanged between the parties. As such, there could not possibly have been an assessment of all the facts.

On August 26, 2024, Robinson filed a timely Motion for Reconsideration, Pa172, supported by many of the documents which had been referred to in the previously submitted log. See, Pa 180 - Pa256. However, on September 13, 2024, the Court denied that Motion.

The Notice of Appeal references both Orders. See, Pa22. On January 28, 2025, the Plaintiff/Appellant, filed its Amended Brief and Appendix. On March 19, 2025, the Defendant/Respondent filed its Brief in Opposition to Plaintiff's Appeal. Inexpicably, counsel for the Plaintiff filed a letter on April 1, 2025, indicating that no reply brief would be filed. As such, this motion is acting as Plaintiff's Reply Brief.

## ARGUMENT

### I. PLAINTIFF/APPELLANT SHOULD BE GIVEN LEAVE TO FILE A REPLY BRIEF

Pursuant to R. 2:8-1, "[e]very motion shall be accompanied by a brief." An opposing party is provided an opportunity to submit papers in opposition to a motion within ten days of service, R. 2:8-1; however, the rule provides that "[n]o other papers shall be filed by either party without leave of court."

Here, Plaintiff/Appellant's prior counsel has unilaterally caused prejudice to the Plaintiff by failing to file a Reply Brief. The Plaintiff was not consulted and was unaware that her prior counsel did not file a reply brief. Plaintiff's prior counsel failed to conduct timely discovery in the lower court case and has now failed to timely file a reply brief. This Court has not made a ruling on Plaintiff's initial brief, and as such, there would be no prejudice in allowing the Plaintiff leave to file a Reply Brief.

Accordingly, the Court should grant leave for the submission of a late reply brief so that the Court will have a complete and balanced understanding of what occurred at the lower court level.

### II. THE LOWER COURT RULING ON SUMMARY JUDGMENT WAS PREMATURE AND ENTERED IN ERROR AS PLAINTIFF'S COUNSEL FAILED TO COMPLETE DISCOVERY.

"Generally, summary judgment is premature when the opposing party has not yet had an opportunity to conduct discovery and develop facts on which it intends to base its claims." Friedman v. Martinez, 242 N.J. 449, 472 (2020).

A motion for summary judgment is inappropriate prior to the completion of discovery. See Lederman v. Prudential Life Ins., 358 N.J. Super. 324, 337 (App. Div.), certif. denied, 188 N.J. 353 (2006); Wellington v. Estate of Wellington, 359 N.J. Super. 484, 496 (App. Div.), certif. denied, 177 N.J. 493 (2003); Auster v. Kinoian, 153 N.J. Super. 52, 56 (App. Div. 1977) ("Ordinarily summary judgment dismissing the complaint should not be granted until the plaintiff has had a reasonable opportunity for discovery.").

"A motion for summary judgment is not premature merely because discovery has not been completed, unless plaintiff is able to 'demonstrate with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action.'" Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015) (quoting Auster v. Kinoian, 153 N.J. Super. 52, 56 (App. Div. 1997)).

Here, on May 22, 2024, Defendants filed a Motion for Summary Judgement directed at all Counts of the Complaint, Pa67, and on July 17,2023, Defendants filed a Motion to "Strike Plaintiffs' Late Served Document Production." Pa150a. Robinson opposed both Motions, arguing that summary judgment was premature with the pending discovery requests outstanding.

On August 5, 2024, the Court granted the Motion for Summary Judgment, Pa160, refusing to consider the "late served" documents, thereby prejudicing the Plaintiff/Appellant. As discovery was not complete and document requests remained outstanding, it was a premature for the lower court to grant summary judgment.

Plaintiff/Appellant's Complaint contained six counts, all based upon discrimination and retaliation. Completing discovery was paramount to develop the facts on which Plaintiff based its claims.

In regard to the Motion for Summary Judgment, a court should deny a summary motion judgment where the party opposing the motion has, as here, come forward with evidence that creates a "genuine issue as to any material fact challenged." Brill v. Guardian Life Ins. Co., 142 NJ. 520(1995). A dispute of fact is genuine if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with legitimate inferences therefrom, could sustain a judgment in favor of the non-moving party. Id.at 530.

The burden of establishing a prima facie case of discrimination is met by showing (1) that Robinson belongs to a protected class (which is undisputed), (2) that she was performing her job prior to an adverse action (which is undisputed), (3) that she suffered an adverse employment action. It is only this final point which was challenged by the Defendants.

Had Plaintiff's counsel been able to complete discovery, Plaintiff would have been able to demonstrate the missing elements that would have prevented the granting of the motion for summary judgment.

The burden of establishing a prima facie case of discrimination is met by showing (1) that Robinson belongs to a protected class (which is undisputed), (2) that she was performing her job prior to an adverse action (which is undisputed), (3) that she suffered an adverse employment action. This final element would have been directly established had Plaintiff been able to complete discovery.

## CONCLUSION

Based on the foregoing reasons, Plaintiff/Appellant, Regina Robinson, by and through the undersigned counsel, respectfully submits this Brief as a Reply Brief to Defendant, Jersey City Board of Education's Appellate Brief in Opposition regarding the August 5, 2024 Order, and requests that Plaintiff's Appeal be granted in full.

Respectfully Submitted,

/s/ Desha Jackson

_____

Desha Jackson, Esq.
Attorney for
Plaintiff/Appellant,
Regina Robinson