Superior Court of New Jersey

Appellate Division

Docket No. A-002077-24T2

MARILYN CAPUTO, *Plaintiff-Respondent,* vs. ICGNEXT LLC, *Defendant-Respondent,* and INTELLECTUAL CAPITAL GROUP LLC, *Defendant-Appellant,* and LPL FINANCIAL LLC; MICHAEL BONEVENTO; SANDRA LASPINA; ABC CORPORATIONS 1-5 (fictitious names describing presently unidentified business entities); and JOHN DOES 1-5 (fictitious names of unidentified individuals), *Defendant-Respondents.*	CIVIL ACTION ON GRANT OF MOTION FOR LEAVE TO APPEAL FROM INTERLOCUTORY ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MONMOUTH COUNTY DOCKET NO. MON-L-2314-23 Sat Below: HON. CHAD N. CAGAN, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-APPELLANT INTELLECTUAL CAPITAL GROUP LLC

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Appellant Intellectual Capital Group LLC ("Intellectual") respectfully submits this brief in support of its appeal of the trial court's Orders entered on November 19, 2024 and February 14, 2025.

PRELIMINARY STATEMENT

This Court should, in the interest of justice, grant Intellectual's Appeal and reverse the trial court's November 19, 2024 Order Denying Motion to Dismiss the Second Amended Complaint With Prejudice as to Intellectual Only ("November 19, 2024 Order") and the trial court's February 14, 2025 Order Denying Motion for Reconsideration of the November 19, 2024 ("February 14, 2025 Order").

Indeed, the trial court completely misinterpreted the Revised Uniform Limited Liability Company Act, N.J.S.A. § 42:2C-1, *et seq.* ("RULLCA") and was led astray when it ruled that it could exercise jurisdiction over Intellectual after it had filed its Certificate of Dissolution and Termination ("Certificate of Termination") on November 9, 2023 and ceased to exist as a legal entity.

Not only did the trial court misinterpret the RULLCA, but it also ignored fundamental due process requirements when it ruled that it could exercise jurisdiction over a terminated limited liability company ("LLC") that was not served with the Summons and Second Amended Complaint until almost six months after the filing of its Certificate of Termination. In fact, it is well settled,

as a matter of law, that the *sine qua non* of obtaining personal jurisdiction over an entity is proper service of a summons and complaint, which was not accomplished here.

Intellectual is and has been a terminated entity that cannot sue or be sued, particularly since its Certificate of Termination has not been rescinded. Nevertheless, however, the trial court improperly concluded that it could exercise jurisdiction over Intellectual based on considerations beyond the jurisdictional facts, including the procedural history and the substantive allegations. Thus, the trial court's decision, based on misinterpretation of law and consideration of improper factors, cannot stand.

PROCEDURAL HISTORY

On July 25, 2023, Plaintiff filed a Complaint against Defendants ICGNext LLC ("ICGNext"), Michael Bonevento ("Bonevento"), and Sandra LaSpina ("LaSpina" and collectively, the "ICG Defendants") alleging claims for sexual harassment-hostile work environment and disparate treatment based on gender (Count One), retaliation/improper reprisal (Count Two), and negligent retention (Count Three). (Da013-033). Intellectual was not named as a party at that time. (Da013-16).

On September 29, 2023, the ICG Defendants moved to dismiss Plaintiff's Complaint for failure to state a claim pursuant to Rule 4:6-2(e). (Da035-036).

On October 24, 2023, Plaintiff filed a cross-motion to amend the Complaint to add Intellectual and LPL Financial LLC ("LPL") as defendants. (Da038-039). On December 15, 2023, the trial court denied the ICG Defendants' motion to dismiss as to all claims except for the disparate treatment claim, which it ruled was not viable. (Da096). The trial court also granted Plaintiff's cross-motion to amend the Complaint to add LPL and Intellectual as parties. (Da094).

Plaintiff then filed the First Amended Complaint on December 22, 2023, and improperly included the disparate treatment claim. (Da098-123). The ICG Defendants moved for reconsideration seeking clarification of the trial court's December 15, 2023 Order as to Plaintiff's disparate treatment claim. (Da125-126). On January 29, 2024, the trial court entered an Order clarifying that Plaintiff's cross-motion to amend was granted as to all claims except for the disparate treatment claim. (Da128-129).

Plaintiff corrected this error when she filed her Second Amended Complaint on January 30, 2024, which eliminated the disparate treatment claim. (Da131-156). On February 20, 2024, the ICG Defendants filed their Answer to the Second Amended Complaint. (Da158-184).

On May 1, 2024, Plaintiff improperly attempted to serve the Second Amended Complaint on Intellectual, a terminated, nonexistent entity. (Da197). On August 12, 2024, a default was entered against Intellectual. (Da217-218). By

Consent Order entered on September 3, 2024, the trial court vacated the default and extended the time for Intellectual to answer or otherwise move until September 15, 2024. (Da220-221).

On September 16, 2024, Intellectual filed a Motion to Dismiss the Second Amended Complaint With Prejudice as to Intellectual Only ("Motion to Dismiss") pursuant to Rule 4:6-2(b) for lack of jurisdiction over the person, which was opposed by Plaintiff. (Da223-224; Da009). On November 19, 2024, the trial court rendered an oral opinion denying Intellectual's Motion to Dismiss and contemporaneously entered the November 19, 2024 Order. (Da226-227; 1T).[1]

On December 9, 2024, Intellectual filed its Motion for Reconsideration of the November 19, 2024 Order ("Motion for Reconsideration"). (Da003-004). Plaintiff opposed the Motion for Reconsideration and, on February 14, 2025, the trial court heard oral argument, rendered an oral decision denying the motion and entered the February 14, 2025 Order. (Da001-002; 2T).

[1] Pursuant to Rule 2:6-8, the relevant transcripts are designated as follows: Transcript of Decision on the Record, dated November 19, 2024 (1T); Transcript of Motion Hearing and Decision, dated February 14, 2025 (2T); and Transcript of Motion Hearing, dated November 6, 2024 (3T).

STATEMENT OF FACTS

At the time Plaintiff filed this action, she did not include Intellectual as a party and, in fact, admitted in the original Complaint that from February 2019 through December 31, 2022, she had been employed by Craig Laday as is confirmed by Intellectual's records.[2] (Da17 at ¶ 14 and fn. 1; Da203-205; Da213-215). Plaintiff also admitted that ICGNext became her employer on January 1, 2023. (Da17 at ¶ 14 and fn. 1; Da199; Da207-208; Da210-211). Nowhere in her original Complaint did Plaintiff assert claims against Intellectual or allege that she was ever employed by Intellectual. (Da013-033).

In fact, as of December 31, 2022, Intellectual ceased operations and began the winding up process. (Da072, at ¶ 4). Following the cessation of operations, Intellectual's Operations Manager took the necessary steps to wind up the business and, when the winding up process was complete, she prepared and filed the Certificate of Termination on November 9, 2023. (Da072 at ¶¶ 5-7; Da074). At the time the winding up process began and, as of the date of the filing of the Certificate of Termination, no lawsuit had been filed against Intellectual.

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2 Although the facts related to Plaintiff's employment are wholly unrelated to the issue of jurisdiction which is the subject of the instant Appeal, Intellectual includes them because they were referenced in the trial court's opinions on both the Motion to Dismiss and the Motion for Reconsideration. (1T at 10-11, 14-15, 35-36; 2T at 29-30, 37-38, 42).

(Da098-123; Da131-156). In fact, Plaintiff did not even attempt to effectuate service on Intellectual until May 1, 2024. (Da197).

STANDARD OF REVIEW

The question of a court's jurisdiction over a party "is a mixed question of law and fact that must be resolved at the outset, before the matter may proceed." Rippon v. Smigel, 449 N.J. Super. 344, 359–60 (App. Div. 2017) (quoting Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996)).

On appeal, this Court examines whether a trial court's factual findings were supported by substantial credible evidence; however, whether those facts supported the court's conclusion that it has jurisdiction over a party is a question of law subject to de novo review. See Patel v. Karnavati Am., LLC, 437 N.J. Super. 415, 423 (App. Div. 2014); YA Glob. Invs., L.P. v. Cliff, 419 N.J. Super. 1, 8 (App. Div. 2011) (citing Mastondrea v. Occidental Hotels Mgmt., S.A., 391 N.J. Super. 261, 268 (App. Div. 2007)). Thus, the "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

In the instant case, the trial court erroneously concluded that it had jurisdiction over Intellectual, a terminated LLC at the time of the filing of the First Amended Complaint and the first attempted service of the Summons and

Second Amended Complaint. This conclusion is subject to de novo review by this Court and should be reversed because the trial court misapplied the RULLCA and relied on allegations that were not supported by substantial credible evidence in the record.

LEGAL ARGUMENT

THIS COURT SHOULD REVERSE THE TRIAL COURT'S ERRONEOUS CONCLUSION THAT IT HAD JURISDICTION OVER A TERMINATED LLC. (DA001-2; DA226-27)

Pursuant to Rule 4:6-2(b), a defendant, such as Intellectual here, may move to dismiss a complaint on the ground of "lack of jurisdiction over the person." When presented with a motion to dismiss for lack of jurisdiction, "it is only the jurisdictional allegations that are relevant, not the sufficiency of the allegations respecting the cause of action," because "[j]urisdictional allegations cannot be accepted on their face if they are disputed." Citibank, 290 N.J. Super. at 531-32.

A jurisdictional question may be resolved based on the "pleadings and certifications submitted to the trial court" where the record does not support "the existence of disputed or conflicting [jurisdictional] facts." See Rippon, 449 N.J. Super. at 359 (citing Reliance Nat. Ins. Co. In Liquidation v. Dana Transp., Inc., 376 N.J. Super. 537, 551 (App. Div. 2005)). If a trial court concludes that there

are disputed facts, it may direct that a hearing be conducted as to the jurisdiction only. Rippon, 449 N.J. Super. at 359 (citing Citibank, 290 N.J. Super. at 532).

In this case, the trial court ruled that there are no disputed facts requiring a hearing. The trial court went on to find that Bonevento had knowledge of Plaintiff's potential claims, and that such notice was sufficient to subject Intellectual to the jurisdiction of the court and require it to defend against the instant litigation, notwithstanding the lack of service of a filed Complaint on Intellectual before the filing of its Certificate of Termination. (1T at 32-33, 38; 2T at 41, 43-44).

The record below demonstrates that the trial court erred in concluding it had jurisdiction over Intellectual because it: (i) ignored that the RULLCA is unequivocal that a terminated entity cannot sue or be sued; (ii) misconstrued this Court's decision in Patel v. New Jersey Dep't of Treasury, Div. of Revenue & Enter. Servs., 479 N.J. Super. 26 (App. Div. 2024) as authority for it to exercise jurisdiction over Intellectual; (iii) incorrectly considered information and allegations beyond the jurisdictional facts to conclude that mere notice of a ***potential*** claim somehow vitiates the filing of the Certificate of Termination; (iv) disregarded the fundamental principle of due process embedded in our judicial system that precludes a court from exercising personal jurisdiction over a party that was not properly served with a summons; and (v) improperly

allowed this matter to proceed against a terminated entity instead of against its member as provided for under the RULLCA.

A. The Trial Court Misinterpreted the RULLCA by Permitting Plaintiff to Pursue Claims Against Intellectual (Da001-2; Da226-27)

The trial court erred when it required Intellectual, a terminated nonexistent LLC, to defend against Plaintiff's claims in contravention of the RULLCA and in reliance upon an inapposite case that does not address a jurisdictional issue.

It is axiomatic that a court cannot exercise jurisdiction over an entity, such as Intellectual, that does not exist. Indeed, an entity "which has been dissolved is as if it did not exist, and the result of the dissolution cannot be distinguished from the death of natural person in its effect." Oklahoma Nat. Gas Co. v. State of Oklahoma, 273 U.S. 257, 259 (1927); see also, Davis v. OneBeacon Ins. Grp., 721 F. Supp. 2d 329, 337 (D.N.J. 2010).

Pursuant to the RULLCA, a dissolved limited liability company "continues after dissolution ***only for the purpose of winding up***." N.J.S.A. § 42:2C-49(a) (emphasis added). Once the winding up process is concluded, the company is deemed to be "terminated" and must file a "statement of termination." See N.J.S.A. § 42:2C-49(b)(2)(f). After an entity has wound up its operations, it must file a combined "certificate of dissolution and

termination" to satisfy its obligations under N.J.S.A. §§ 42:2C-49(b)(2)(a) and (b)(2)(f); Patel, 479 N.J. Super. at 34, n. 6.

In the present case, Intellectual did precisely what was required under the RULLCA, and, as of the filing of its Certificate of Termination on November 9, 2023, could not be sued. See Chase Bank USA, N.A. v. Premier Investigation Servs., LLC, Civ. Action No. 18-9058, 2020 WL 13553688, at *1-2 (D.N.J. Feb. 26, 2020) (dismissing plaintiff's complaint against a terminated LLC because it was no longer a legal entity that could sue or be sued); see also, Richardson v. UN Empress Properties, LLC, No. A-4680-08T1, 2010 WL 1426495, at *3 (App. Div. Apr. 7, 2010). Although there is no dispute that Intellectual filed its Certificate of Termination before Plaintiff filed the First Amended Complaint on December 22, 2023, filed the Second Amended Complaint on January 30, 2024, and first attempted service on Intellectual on May 1, 2024, the trial court incorrectly ruled that it could exercise jurisdiction over Intellectual, a terminated LLC.

In reaching this result, the trial court was led astray when it relied on this Court's decision in Patel, 279 N.J. Super. 26, to conclude that the RULLCA requires Intellectual to defend against unasserted claims because Plaintiff filed her Complaint against Intellectual's ***member*** during the winding up period. (2T at 33-34). Critically, the trial court misconstrued the Patel decision, which

addressed whether the New Jersey Department of Treasury, Division of Revenue and Enterprise Services ("Division") had the authority to rescind a certificate of termination at the request of a member of the terminated LLC. Patel, 279 N.J. Super. 28.

Specifically, in Patel, this Court held that "there should be a clear avenue **for present members** of an LLC to pursue recission of an LLC's dissolution and termination on equitable grounds, in instances where the certificate has been filed improperly." Id. at 35 (emphasis added). The Patel Court ultimately concluded that, because the Division did not have the authority to make substantive decisions, the "appropriate mechanism to pursue recission is through a civil action in the trial court" by way of a hearing. Id. at 36-37.

It is evident, based upon the record below, that the trial court conflated the hearing considered by the Citibank Court (addressing whether jurisdictional discovery is necessary) with the hearing prescribed by the Patel Court on an application for rescission "to ascertain the *bona fides* of the request for rescission." Id. at 37. Indeed, aside from the fact that there was no application before the trial court to rescind Intellectual's Certificate of Termination, the trial court erroneously relied on Patel to conclude that it could exercise jurisdiction over Intellectual because Bonevento (and perhaps LaSpina) had notice of the

filing of the initial Complaint and the Motion to Amend prior to the filing of the Certificate of Termination. (1T at 20-25).

However, the Patel decision is clearly distinguishable from the instant matter for numerous reasons. First, nowhere in the Patel decision did this Court address the trial court's authority to exercise jurisdiction over a terminated entity. To the contrary, the Patel decision is limited to outlining the procedure for ***members of an LLC*** to rescind an erroneously filed certificate of termination. Id. It is also distinguishable because there has been no application in the present case to seek recission of the Certificate of Termination. In fact, the trial court did not comply with the detailed procedures outlined by this Court in Patel, including conducting a hearing to ascertain the *bona fides* of the request for recission and it also failed to make the required findings of fact or conclusions of law. Id. at 37. (1T at 32-33).

In sum, Intellectual was and is a terminated LLC that cannot sue or be sued, notwithstanding the trial court's erroneous finding that Plaintiff's lawsuit could proceed. See Chase, 2020 WL 13553688, at *1-2. Accordingly, the trial court's decision to force Intellectual to defend against claims asserted against it in the Second Amended Complaint, filed and served after it terminated on November 9, 2024, is simply incorrect as a matter of law.

B. The Trial Court Erred in Concluding That Notice of a Putative Lawsuit to Bonevento During the Winding Up Period Was Sufficient to Permit the Court to Exercise Jurisdiction Over Intellectual. (Da001-2; Da226-27)

The trial court's decision to allow Plaintiff's lawsuit to proceed against Intellectual based on its finding that Bonevento had notice of Plaintiff's potential claims against Intellectual prior to the filing of the Certificate of Termination is error for several reasons. (1T at 45; 2T at 42-45). This conclusion ignores that: (i) service of process, an essential component of jurisdiction, was not accomplished on Intellectual; (ii) notice of a ***putative*** lawsuit is not equivalent to notice of a filed lawsuit and does not vest a court with jurisdiction; and (iii) the jurisdictional facts in the record do not support that Bonevento had knowledge of the purported claims against Intellectual.

1. The Service of Process Necessary to Vest a Court with Jurisdiction Did Not Occur as to Intellectual. (Da001-2; Da226-27)

A court cannot exercise jurisdiction absent proper service of a summons upon a putative defendant. Thus, the trial court clearly erred with regard to the most basic issue of jurisdiction: it cannot "exercise power over a party the complaint names as defendant" in the absence of proper service. See Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350-51 (1999).

Indeed, "[i]n order to impose personal liability upon a defendant or obligate him or her in favor of a plaintiff, a court must be vested with jurisdiction

over the parties as well as subject matter jurisdiction. ***Notice of a claim is not sufficient.***" Ayres v. Jacobs & Crumplar, P.A., 99 F.3d 565, 69 (3d Cir. 1996) (emphasis added); see also, Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 778-79, (2000) ("if there is no jurisdiction there is no authority to sit in judgment of anything else"). "Before a . . . court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., 484 U.S. 97, 104 (1987). "In the absence of service of process . . ., a court ordinarily may not exercise power over a party the complaint names as defendant." Murphy Bros., 526 U.S. at 350-51.

In the present case, the Plaintiff never even attempted to serve the First Amended Complaint upon Intellectual and she also did not attempt to serve the Summons and Second Amended Complaint upon Intellectual until May 1, 2024, almost six months after Intellectual filed its Certificate of Termination. Because Intellectual was terminated as an LLC approximately six months prior to the purported date of service, the trial court erred in concluding it can exercise jurisdiction over it and this lawsuit can proceed against it.

2. Notice of a Putative Lawsuit is Not Equivalent to Notice of a Filed Lawsuit and is Insufficient to Vest a Court with Jurisdiction. (Da001-2; Da226-27)

The trial judge improperly imputed knowledge of a putative claim against Intellectual by Bonevento and LaSpina to Intellectual, notwithstanding the fact that they are separate parties and entities, and then incorrectly concluded that such notice vested it with jurisdiction over Intellectual.

First, the RULLCA makes clear that "[a] limited liability company is an entity distinct from its members." N.J.S.A. § 42:2C-4(a); see also Dougherty v. Snyder, 469 F. App'x 71, 72 (3d Cir. 2012) cert. denied 574 U.S. 963, (2014) ("even single-member LLCs have a legal identity separate from their members.") (internal citations omitted).

Notwithstanding this well-established legal principle, in its decision on Intellectual's initial Motion to Dismiss and the Motion for Reconsideration, the trial court erroneously focused on the fact that Bonevento, who was already a party, had knowledge that there could be a potential claim against Intellectual even though it was not named in the Complaint filed July 25, 2023. (1T at 34-38; 2T at 42-44). Thus, while ignoring the fact that Plaintiff never actually alleged that she was employed by Intellectual in any of her pleadings,[3] the trial

[3] Notably, Plaintiff admitted in her initial Complaint that she worked for Craig Laday and that Defendant Bonevento and James Costabile had "separately named practices" which did not "merge" until January 1, 2023. (Da017 at fn 1).

court leapt to the conclusion that, because Bonevento is the sole member of Intellectual and he is a named defendant, "he had notice of the allegations [against Intellectual] as of July 2023." (1T at 34-35; 2T at 42).

The trial court also expressed its concern that there were no cases "squarely on point with the facts here, where a co-defendant and member of an LLC allegedly had knowledge of potential claims against a dissolved entity prior to the filing of the complaint." (1T at 43). Thus, the trial judge ruled:

> I find that dismissal of this case would not only run counter to the statutory scheme that mandates that the LLC defend . . ., **but I also find that it would set precedent that would run counter to the spirit if not the express black-letter of that statute**, which would be, frankly, if a single-member receives notice that his entity is about to be sued for sexual harassment, run to file a certificate and that would insulate you from liability.

(1T at 43-44).

Following the trial court's decision on Intellectual's Motion to Dismiss, the United States District Court for the District of New Jersey, in Beniquez v. Atlantic Supply LLC, Civ. Action No. 22-06198, 2024 WL 4903599, *2, *5 (D.N.J. Nov. 25, 2024), addressed the precise issue raised by the trial court;

Then, in her First Amended Complaint, she admitted that she worked for the entity "Craig D. Laday Sole Proprietorship" and vaguely alleged that she commenced employment with the "Corporate Defendants", which she collectively referred to as ICGNext, Intellectual, and LPL. (Da098; Da103). Interestingly, Plaintiff conveniently did not name her actual employer prior to January 1, 2023, which was Craig Laday. (Da098-101).

namely, whether an LLC with notice of a claim prior to filing a certificate of termination was subject to the jurisdiction of a trial court. The District Court's ruling in refusing the enter a default judgment or, in other words, exercising jurisdiction over a terminated LLC, made clear that notice to the members of the LLC of a potential litigation did not impart jurisdiction on the trial court. Id. at *5-6. In fact, even though the uncontroverted evidence demonstrated that the defendant LLC was aware of and had notice of the potential claim by plaintiff, the District Court limited its analysis to whether it had jurisdiction over the defendant. Id. at *2-3.

Notwithstanding the fact that Intellectual argued in its Motion to Dismiss and Motion for Reconsideration that there was authority for the proposition that notice of a potential claim is irrelevant to determining whether a court had jurisdiction and, the only critical jurisdictional facts are the date of filing of the Certificate of Termination, the Complaint, and potential attempted service upon an LLC prior to its termination, the trial court did not even address that argument in the ruling on the Motion for Reconsideration. (2T at 11-12, 19-20). To the contrary, the trial court focused upon the fact that Bonevento who is, as a matter of law, deemed a separate legal entity from Intellectual, allegedly had knowledge of the potential claims against Intellectual.

Accordingly, the trial court erred in concluding that notice of putative claims against Intellectual by its member during the dissolution period was sufficient to vest the trial court with jurisdiction over Intellectual.

3. The Trial Court Incorrectly Considered Information and Made Assumptions Unrelated to the Jurisdictional Issue Before it. (Da001-2; Da226-27)

Although Intellectual agrees that the **jurisdictional facts are undisputed**; here, those facts are limited to the date Intellectual filed its Certificate of Termination, the date the First Amended Complaint was filed, and the date Plaintiff attempted to serve Intellectual with the Summons on May 1, 2024. (Da074; Da123; Da197).

However, it is clear, based upon the trial court's decision on the Motion to Dismiss and Motion for Reconsideration, that it went beyond these jurisdictional facts by considering the **procedural history and the substantive allegations** in this action, which were completely irrelevant to the issue of whether the trial court could exercise jurisdiction over Intellectual. Indeed, without a shred of competent evidence in the record, this Court imputed knowledge of the purported claims advanced by Plaintiff against Intellectual based upon nothing other than the fact that Bonevento, Intellectual's sole member, was a named defendant when the initial Complaint was filed on July 25, 2023. (1T at 343; 2T at 44).

Aside from the fact that, on a motion made pursuant to Rule 4:6-2(b), the trial court is expressly not permitted to consider the sufficiency of the substantive allegations, Citibank, 290 N.J. Super. at 531-32, none of the "facts" considered by the trial court are judicially noticeable or were admissible facts properly presented to the Court based upon personal knowledge to which any affiant was competent to testify. State v. Silva, 394 N.J. Super. 270 (2007) (a judge may not take notice "that a party's testimony must have been truthful"); see also, R. 1:6-6. In fact, in finding that Bonevento had knowledge of the allegations, the trial court proposed and rejected arguments that were not only unsupported by the record, but not even advanced by the party to whom they were attributed. (2T at 45).

Thus, the trial court erred when it relied on information and allegations beyond the undisputed jurisdictional facts to conclude that Bonevento had knowledge of the purported claims against Intellectual.

C. The Trial Court Erred in Allowing This Matter to Proceed as Any Attempt to Sue Intellectual is Moot as Bonevento is Already a Named Party. (Da001-2; Da226-27)

It is clear that the trial court attempted to exercise jurisdiction over Intellectual -- albeit improperly -- out of its concern that Plaintiff would be without a remedy. However, even though Intellectual is a terminated LLC, pursuant to N.J.S.A. § 42:2C-51(d) and N.J.S.A. § 42:2C-52, Plaintiff's remedy

is to pursue her claims against Bonevento, the sole member, to the extent of the distributed assets. Because Plaintiff already named Bonevento, Intellectual's sole member, in her original suit, her attempt to pursue claims against Intellectual is moot as Bonevento is already a party to this matter.

CONCLUSION

For the foregoing reasons, this Court should grant Intellectual's Appeal and reverse the denial of Intellectual's Motion to Dismiss the Second Amended Complaint with Prejudice as to Intellectual Only in accordance with Rule 4:6-2(b) for lack of personal jurisdiction.

Respectfully Submitted,

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Dated: May 12, 2025

By: *s/ Catherine P. Wells*

Catherine P. Wells, Esq.

MARILYN CAPUTO, Plaintiff, vs. ICGNEXT LLC; INTELLECTUAL CAPITAL GROUP LLC; LPL FINANCIAL LLC; MICHAEL BONEVENTO; SANDRA LASPINA; ABC CORPORATIONS 1-5 (fictitious names describing presently unidentified business entities); and JOHN DOES 1-5 (fictitious names of unidentified individuals), Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.:A-002077-24 (AM-318-24) On Grant of Motion For Leave To Appeal From: Superior Court of New Jersey Law Division – Monmouth County Docket No.: MON-L-2314-23 Sat Below: Hon. Chad N. Cagan J.S.C.

BRIEF IN OPPOSITION TO DEFENDANT/APPELLANT'S MOTION FOR APPEAL OF THE SUPERIOR COURT'S INTERLOCUTORY ORDER

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I. PRELIMINARY STATEMENT

This appeal is a transparent effort by Defendant Intellectual Capital Group LLC ("Defendant Intellectual" or "Defendant-Appellant Intellectual") to evade accountability by challenging the Trial Court's well-reasoned orders that properly exercised jurisdiction over a dissolved entity whose termination was orchestrated in direct response to impending litigation. The Appellate Division should deny Defendant Intellectual's appeal of the Trial Court's orders dated November 19, 2024, and February 14, 2025.

Defendant Intellectual's arguments are meritless, strategically self-serving, and have already been considered and rejected by the Trial Court on multiple occasions. Plaintiff's claims of sexual harassment, gender discrimination, and retaliation arise from her employment with both Defendant Intellectual and Defendant ICGNext LLC ("Defendant ICG") - entities controlled and operated by Individual Defendants Michael Bonevento and Sandra LaSpina (collectively, the "Individual Defendants").

These Individual Defendants were on notice of Plaintiff's sexual harassment complaints as early as October 2022, and formal complaints followed shortly thereafter. Plaintiff initiated this action in July 2023, after which the Individual Defendants were served and made fully aware of the legal claims asserted against their affiliated entities, including Defendant

Intellectual. In direct response, and with clear notice of the pending litigation, the Individual Defendants improperly dissolved Defendant Intellectual shortly after Plaintiff moved to formally name it as a party.

Despite this strategic dissolution, the Trial Court correctly held that it retains jurisdiction over Defendant Intellectual as a New Jersey entity under the Revised Uniform Limited Liability Company Act, N.J.S.A. § 42:2C-1, et seq. ("RULLCA"). The improper certification of termination - filed while litigation was active - does not shield Defendant Intellectual from suit, nor does it divest the Court of its authority.

Accordingly, the Trial Court properly denied Defendant Intellectual's Motion for Lack of Jurisdiction and its Motion to Reconsider. These decisions reflect a careful application of the law to facts that strongly indicate a deliberate attempt to circumvent legal process. Plaintiff respectfully submits that the Appellate Division should affirm the Trial Court's rulings and reject Defendant Intellectual's appeal in its entirety.

II. PROCEDURAL HISTORY (DA1-227) (PA1-2).

On July 25, 2023, Plaintiff filed her Complaint against Defendant ICG, Defendant Bonevento, and Defendant LaSpina (altogether referred to herein as the "ICG Defendants"). (DA13-33). Defendant Bonevento and Defendant LaSpina are agents of both Defendant ICG and Defendant-Appellant Intellectual. These

Individual Defendants were directly involved in the winding up process of Defendant Intellectual when Plaintiff filed her Complaint against Individual Defendants and the newly formed entity of Defendant ICG in July 2023. (DA71-92).

On September 29, 2023, ICG Defendants filed a Motion to Dismiss Plaintiff's Complaint (the "Dismissal Motion"), largely arguing they did not "employ" Plaintiff at the time of the sexual harassment. (DA35-36). On October 24, 2023, Plaintiff filed a Cross-Motion to Amend the Complaint (the "Cross Motion"), **which is the *factually* operative Complaint today**, that adds Defendant Intellectual and Defendant LPL Financial LLC ("Defendant LPL") as additional employers of Plaintiff during the sexual harassment allegations. (DA38-69). On October 30, 2023, ICG Defendants submitted a reply brief to Plaintiff's Opposition and Cross Motion again reiterating they did not "employ" Plaintiff "prior to January 2023." **The Dismissal Motion and Cross-Motion, which advised Individual Defendants of claims against their entity Defendant Intellectual, were originally returnable on November 3, 2023, before Defendant Intellectual's dated Certification of Termination on November 9, 2023.** (DA35, DA38, DA74).

On December 1, 2023, the Court heard oral arguments for the Dismissal Motion and Cross Motion. On December 15, 2023, the Court issued a formal decision on the record denying the Dismissal Motion and granting the Cross Motion. The Court memorialized its decision by entering two (2) orders. (DA94-96). On

December 22, 2023, Plaintiff filed her First Amended Complaint (the "FAC") based on the Court's directive. (DA98-123).

On January 3, 2024, ICG Defendants filed a Motion to Reconsider the rejected Dismissal Motion arguments (the "ICG Motion to Reconsider"). (DA125-DA126). Plaintiff filed an Opposition, and Cross Moved to Compel ICG Defendants' discovery (the "Motion to Compel"). Due to a typographical error regarding the disparate treatment count in the FAC, on January 30, 2024, Plaintiff refiled her amended Complaint and excluded the "disparate treatment" language. (DA128-156). On February 19, 2024, ICG Defendants filed an Answer to Plaintiff's Second Amended Complaint (the "SAC"). (DA158-184). After oral argument on the Motion to Reconsider and Cross Motion to Compel, on March 7, 2024, the Court denied ICG's Motion to Reconsider and granted Plaintiff's Cross Motion to Compel. (PR1-2).

Because of ICG Defendants' constant motion practice claiming they did not "employ" Plaintiff during her sexual harassment allegations, this delayed service of the Second Amended Complaint onto Defendant Intellectual until May 1, 2024. (DA197). When Defendant Intellectual failed to file a responsive pleading and counsel for ICG Defendants failed to advise Plaintiff of the apparent dissolving and termination of Defendant Intellectual during the then-pending motion practice between October 2023 through March 2024, Plaintiff had no choice but to request

to enter default on Defendant Intellectual. (DA217-218). Following the entry of default, Plaintiff and counsel for Defendant Intellectual entered a consent order withdrawing the default and allowing a responsive pleading to the SAC. (DA220-221).

On September 16, 2024, Defendant Intellectual filed a Motion to Dismiss Plaintiff's SAC for Lack of Personal Jurisdiction (the "PJ Motion"), claiming the entity could not be held accountable because it was "terminated." (DA223-224). On October 15, 2024, Plaintiff filed her opposition to Defendant Intellectual's PJ Motion, and on October 22, 2024, Defendant Intellectual filed a reply brief. On November 6, 2024, the Court heard oral arguments on Defendant Intellectual's PJ Motion. (3T). On November 19, 2024, the Court rendered a nearly two-hour decision on the record, rejecting Defendant Intellectual's PJ Motion based on the jurisdictional facts presented on the record and through counsel about Individual Defendants' actions surrounding the dissolving and terminating of the entity when Plaintiff's litigation was underway. (1T). The Court memorialized its decision in an order dated November 19, 2024. (DA226-227).

On December 9, 2024, Defendant Intellectual filed a Motion for Reconsideration of the PJ Motion (the "Reconsideration Motion"). (DA3-4). Following Plaintiff's opposition and Defendant Intellectual's reply, on February 14, 2025, the Court heard oral arguments on the Reconsideration Motion. (2T).

Ultimately, the Court again set forth its well-reasoned decision and rationale on the record for denying Defendant Intellectual's Reconsideration Motion, and the previously denied PJ Motion, based on the timeline of jurisdictional facts presented to the Court from the procedural history and representations/certifications submitted by counsel. Id. The Court memorialized this decision in an order dated February 14, 2025. (DA1-2).

III. FACTUAL BACKGROUND AS ALLEGED IN THE COMPLAINT (DA131-DA156).

Plaintiff's operating Complaint alleges Defendants (1) Intellectual; (2) ICGNext; (3) LPL; (4) Bonevento; and (5) LaSpina (collectively, the "Defendants") egregiously subjected Plaintiff to sexual harassment, hostile work environment gender discrimination, and retaliation in violation of the NJLAD. (DA131-156). Within the operating Complaint, Plaintiff outlines the specific business history of Corporate Defendants and the unlawful actions of its agents Defendant Bonevento and Defendant LaSpina through these entities. Id.

i. Defendants' Business Entities. (D136-137).

In or around November 2014, Plaintiff worked directly under Craig Laday ("Mr. Laday") under the entity Craig D. Laday Sole Proprietorship with the broker-dealer Ameriprise Financial. (DA136). At this time, Defendant Bonevento and James Costabile ("Mr. Costabile") were co-owners of Defendant Intellectual under the broker-dealer Ameriprise Financial. Id. **In February 2019, Plaintiff and her**

direct supervisor Mr. Laday joined forces with Defendant Bonevento and Mr. Costabile as Defendant Intellectual, who now utilized the new broker dealer Defendant LPL. Id. At this point, Plaintiff effectively commenced employment with Corporate Defendants as a Client Service Manager/Assistant to one of the now managing partners, Mr. Laday. Id.

On January 1, 2023, Defendant Intellectual's managing partners, Defendant Bonevento, Mr. Costabile, and Mr. Laday, "rebranded" the business entity of Defendant Intellectual to the shorter business acronym of Defendant ICG. (DA137). Although the business changed in name, the three (3) partners remained in a broker-dealer relationship together with Defendant LPL. Id. Plaintiff also maintained the same ICG email address, business cards, photograph and biography on the original Defendant Intellectual website despite the new business name change to Defendant ICG. Id.

ii. Defendant Bonevento' s Sexual Harassment. (DA138-139).

On October 4, 2022, Plaintiff and her colleagues had a work dinner at Brando's in Asbury Park, New Jersey. (DA138). At the event, Defendant Bonevento was heavily intoxicated. Id. In effort to avoid his intoxication, Plaintiff intentionally positioned herself next to two (2) female co-workers. Id. At one point, one of the coworkers went to use the restroom and Defendant Bonevento sat next to Plaintiff.

Id. Defendant Bonevento's proximity to Plaintiff allowed him to inappropriately engage her in communications. Id.

Specifically, Defendant Bonevento proceeded to offer Plaintiff details of his home and personal life, as he explained his wife was **"not in love with [him]"** and only **"loved [his] wallet now."** Id. The conversation turned to the subject of body pain, which prompted Defendant Bonevento to press Mr. Laday's shoulders and express how he "**[knew] all of the pressure points**." Id. Defendant Bonevento immediately turned to Plaintiff, stating, "Oh, I can show you, can I touch the top of your shoulder?" (DA139). Plaintiff reluctantly obliged, leading any inhibitions of Defendant Bonevento to vanish. Id. From there, **Defendant Bonevento began rubbing Plaintiff's leg and back, remarking, "[w]hen is the last time you had an orgasm?"** and **"I could rock your world."** Id. Defendant Bonevento pushed further as he detailed his own experience with **"threesomes"** and asked Plaintiff and another female employee if they were **"interested in a threesome."** Id. The conversation became so uncomfortable Plaintiff and the female employee excused themselves to use the restroom. Id.

Upon return, Plaintiff and the female employee went back to their seats. Id. Observing the discomfort of the ladies, another female employee approached them to intervene in the conversation so Defendant Bonevento would not make further

advances. Id. Unable to comprehend what had just occurred, Plaintiff left the restaurant immediately thereafter. Id.

iii. Plaintiff's Initial Reporting Of The Sexual Harassment. (DA140-141).

The following day, Mr. Laday called Plaintiff and asked if she felt alright. (DA140). Plaintiff told Mr. Laday she was not alright but did not provide details. Id. Sensing a problem, Mr. Laday summoned Plaintiff to his office the following in-person workday. Id. Here, Plaintiff complained to Mr. Laday about Defendant Bonevento's sexual harassment and inappropriate touching at the Brando's dinner on October 4, 2022, which included the rubbing of her legs and back and uncomfortable conversation about orgasms. Id. Mr. Laday initially brushed Plaintiff's concerns aside but later mentioned Defendant Bonevento wanted to apologize because he did not remember the events of the night due to his intoxication. Id. Plaintiff refused to see or speak with Defendant Bonevento due to the traumatic ordeal. Id.

Worse, Plaintiff recalled similar situations where Defendant Bonevento sexually harassed other employees at Corporate Defendants' establishment, which included: (1) a time where Defendant Bonevento grabbed a co-worker's testicles; and (2) a time where Defendant Bonevento made sexual comments toward another

female employee, Susan Maes, that resulted in litigation.[1] (DA140-141). For this reason, Plaintiff voiced frustration with Defendants' lack of action towards Defendant Bonevento considering his pattern of inappropriate behavior. (DA141). Mr. Laday meekly expressed "I know" but remained indifferent to Plaintiff's voiced concerns. Id.

iv. Plaintiff's Formal Complaints Lead To Defendants' Retaliatory Changes In Her Employment Terms. (DA141-DA147).

Acknowledging her verbal complaints fell on deaf ears, Plaintiff sent a formal complaint to the Office Manager, Defendant LaSpina, who happens to be Defendant Bonevento's sister-in-law. (D141). In the emailed complaint, dated February 9, 2023, Plaintiff detailed Defendant Bonevento's sexual harassment and expressed concern that her complaints were not taken seriously by management. (DA141-144). Although Defendant LaSpina initially assured Plaintiff her concerns would be addressed and reported to a third-party Human Resources, neither event occurred. (DA144).

Rather, Defendant LaSpina, Mr. Laday, and Mr. Costabile met with Plaintiff and discussed "workplace options." Id. In doing so, Defendant LaSpina and the two other partners of the company failed to outline consequences for Defendant

[1] The case is captioned Susan Maes v. ICG, Michael Bonevento, et. al., Docket No. MON-L-001123-20. According to the complaint, Defendant Bonevento made inappropriate comments and jokes of a sexual nature. For example, he would regularly refer to clients and competitors as "big swinging di**s." It is likewise alleged that Defendant Bonevento discriminated against Plaintiff Maes on account of her age.

Bonevento other than allegedly "banning" him from social events. Id. After the conversation, Plaintiff never heard from Defendants. Id.

In early June 2023, Plaintiff learned Defendant Bonevento would return to the New Jersey office[2] where Plaintiff worked in person. Id. At this point, Plaintiff followed up with Defendant LaSpina and the other partners to address her ongoing concerns about Defendant Bonevento's sexual harassment and now working alongside her harasser. Id. Upon meeting, Defendants offered Plaintiff reinstatement of her remote workdays, but this did not resolve the emerging hostile work environment Defendant Bonevento created for Plaintiff at Corporate Defendants' workplace. Id. Indeed, Defendant even attempted to switch Plaintiff to a 1099 independent contractor instead of a W2 employee around this time. (D145).

Adding insult to injury, Defendants then forced Plaintiff into isolation as she had no choice but to work remotely throughout the summer when Defendant Bonevento presented himself in the office until October 2023. Id. On July 17, 2023, Plaintiff sent another complaint to Defendant LaSpina expressing her dismay and emotional distress caused from Defendants' failure to address Defendant Bonevento's sexual harassment. (DA145-146). In response, Defendant LaSpina and Mr. Costabile held another meeting with Plaintiff where they again insisted they could not terminate Defendant Bonevento or address his conduct further, instead

[2] Defendant Bonevento worked remotely in Florida during parts of the year.

reiterating Plaintiff's options of: (1) continue to work remotely when Defendant Bonevento is in the office; (2) become a full-time remote employee until October when Defendant Bonevento returned to Florida; or (3) follow a "different road" to address Defendant Bonevento's behavior. (DA146).

From these limited options, Plaintiff had no choice but to remain in isolation to avoid Defendant Bonevento and his improprieties. (DA147). Much worse, in or around August 2023, Mr. Laday persistently requested Plaintiff's presence at an event where Defendant Bonevento would attend, in hopes she would acquiesce to the lackluster "remediation" by Defendants. Id. This caused Plaintiff additional mental anguish. Id.

v. Plaintiff's Continued Retaliation And Hostile Work Environment Presently. (DA147-149).

In or around September 27, 2023, Defendant LaSpina followed up with Plaintiff about her remote work "accommodation." Id. However, these circumstances only accommodated Defendant Bonevento and Plaintiff made that clear. Id. To be sure, Plaintiff continues to experience pushback and retaliation for her sexual harassment reports against Defendant Bonevento, such as (1) a lack of communication with her direct supervisor, Mr. Laday; (2) a withholding of client information from Plaintiff; (3) judgment from Defendants' employees and supervisors; and (4) further attempts to succumb to the sexual harassment and lack of redress in the workplace. (D147-149). Although Plaintiff continues to raise her

concerns about Defendants' retaliation and their failure to hold Defendant Bonevento responsible for his sexually harassing behavior, her complaints still fall on deaf ears. (DA148-149).

IV. ARGUMENT

1. THE APPELLATE DIVISION SHOULD DENY DEFENDANT INTELLECTUAL'S APPEAL BECAUSE THE TRIAL COURT PROPERLY CONCLUDED IT HAS PERSONAL JURISDICTION OVER THE ENTITY. (DA13-DA33, DA38-DA69, DA71-91).

As set forth in R. 4:6-2(b), a defendant may move to dismiss on the grounds of lack of jurisdiction over a person which is a "mixed question of law and fact." Rippon v. Smigel, 449 N.J. Super. 344, 359–60 (App. Div. 2017) (quoting Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996)). A jurisdictional question is resolved through "pleadings and certifications submitted to the trial court" but when "the record…support[s] the existence of disputed or conflicting facts," this warrants jurisdictional discovery. Rippon, 449 N.J. Super. at 359. Should a court observe the determination of jurisdiction cannot be permitted through the record of pleadings and certifications, the court must conduct a "preliminary evidential hearing after affording the parties an appropriate opportunity for discovery." Id. See also Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996).

When reviewing a motion to dismiss for lack of jurisdiction, the reviewing court **"must accept all of the plaintiff's allegations as true and construe disputed**

facts in favor of the plaintiff." Carteret Sav. Bank, FA v. Shushan, 954, F.2d 141, 142 (3d Cir. 1992) (emphasis added). Although the plaintiff bears the burden of demonstrating facts to support personal jurisdiction, courts can assist the plaintiff by allowing jurisdictional discovery through pleadings and certifications submitted. Rippon, 449 N.J. Super. at 359. See also Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 456 (3d Cir. 2003).

Here, Defendant-Appellant Intellectual's appeal should be rejected, and the Appellate Division should reaffirm the Trial Court's ruling of personal jurisdiction over Defendant Intellectual. The Trial Court correctly concluded through the pleadings and certifications submitted through Defendant Intellectual's managing agents that the Individual Defendants, who hold leadership roles in **both** Defendant Intellectual and Defendant ICG, had notice of Plaintiff's claims since July 2023 when they were named as parties but proceeded to terminate the entity to potentially avoid defending this claim as required by N.J.S.A. 42:2c-49. (1T 45:3-20).(DA13-33, DA38-69, DA71-91). In fact, at the Reconsideration Motion decision, the Trial Court reaffirmed this holding and held Defendant Intellectual's arguments were:

> **disingenuous, frankly…for [Defendant Intellectual] to contend that they had no -- notice of allegations.** Bonevento was a party in July 2023. He was -- as argued on November 6th, he was the ***sole member of Intellectual***…**for Intellectual to come here and say we had no notice of any allegations**

> **relating to Intellectual, the Court finds to -- to lack sincerity.** Bonevento was the principal of Intellectual. Bonevento was the owner of Intellectual. He knew what the allegations are. He was being sued individually.
> …
> **[for Defendants] Bonevento or LaSpina, who was also a named party here, to contend that Intellectual did not have notice of these allegations I find to be incorrect given that they were both named parties and -- as part of the original complaint in July 2023, well before, you know, the – the certificate of termination was filed.**

(2T 41:22-43:24).

Accordingly, Defendant Intellectual is only dissatisfied with the Trial Court's decision because its agents failed to circumvent the legal system by terminating the entity to avoid bearing the potential legal responsibility for Plaintiff's NJLAD claims. In doing so, Defendant-Appellant Intellectual now raises this appeal reasserting its repeatedly denied arguments that the Trial Court does not have jurisdiction because: (1) RULLCA indicates a terminated entity cannot be sued; (2) the Trial Court should not have relied on Patel v. N.J. Dep't of Treasury, Div. of Revenue & Enter. Servs., 479 N.J. Super. 26, 28 (App. Div. 2024); (3) the Trial Court considered information beyond jurisdictional facts; (4) the Complaint was not properly served onto Defendant Intellectual; and (5) the matter should now only proceed against Defendant Intellectual's agent, Defendant Benevento, under RULLCA. For the reasons outlined in greater detail

below, the Appellate Division should deny Defendant Intellectual's appeal and reaffirm the Trial Court's orders.

A. The Trial Court Correctly Concluded It Has Jurisdiction Over Defendant Intellectual Based On RULLCA And The Patel Case. (DA13-DA33, DA38-DA69, DA74).

i. The Trial Court Has Jurisdiction Pursuant To RULLCA.

The Trial Court correctly held Defendant Intellectual must defend against Plaintiff's claims pursuant to the laws set forth under RULLCA. Nonetheless, Defendant-Appellant Intellectual argues the Court cannot exercise jurisdiction because it is a terminated entity. Db9. This argument fails when considering the circumstances surrounding the procedural history of Plaintiff's matter and Individual Defendants' convenient filing of the Certification of Termination during that time.

Pursuant to RULLCA, dissolved limited liability companies ("LLC") "**shall** wind up its activities, and the company continues after dissolution only for the purpose of winding up." N.J.S.A. § 42:2C-49(a). In winding up its activities, an LLC *"***shall…prosecute and defend actions and proceedings, whether civil, criminal, or administrative…[and] settle disputes by mediation or arbitration."** N.J.S.A. § 42:2C-49(b)(2). Moreover, a claimant of a dissolved entity may commence a lawsuit against a dissolved entity

pursuant to N.J.S.A. § 42:2C-51 or **within five (5) years after the limited liability company was dissolved.** N.J.S.A. § 42:2C-52.

Importantly, the notes under N.J.S.A. § 42:2C-49 states **trial courts possess jurisdiction and authority to grant rescissions of certifications upon proper showing of justification by the applicant and notice to the interested parties for purposes of N.J.S.A. § 42:2C-24**. The N.J.S.A. § 42:2C-24 address liability against members of LLCs for filed records that contain inaccurate information and makes clear any filings submitted are "affirm[ing] under penalty of perjury that the information stated in the record is accurate." See also Patel, 2024 N.J. Super. LEXIS 49 (App.Div. June 18, 2024). Furthermore, notes under N.J.S.A. § 42:2C-23 for correcting filed records of LLCs state if **"the trial court concludes that rescission of the certificate of dissolution and termination is justified, the court shall also determine whether the rescission should be retroactive, in full or in part."** Id.

In the present case, Defendant-Appellant Intellectual argues they "did precisely what was required under the RULLCA, and, as of the filing of its Certificate of Termination on November 9, 2023, could not be sued." Db10. This argument is disingenuous.

Specifically, Defendant Intellectual had a required obligation to wind up its activities during the dissolution process which Defendant Bonevento, as Sole Managing Partner, and Defendant LaSpina, as Operations Manager, began on December 31, 2022, and ended on November 9, 2023, upon the Certification of Termination filing. (DA71-91). See also N.J.S.A. § 42:2C-49(b)(2). During that time, Individual Defendants had the responsibility of winding up its activities, and as N.J.S.A. § 42:2C-49(b)(2) mandates, **"shall…prosecute and defend actions and proceedings, whether civil, criminal, or administrative…[and/or] settle disputes by mediation or arbitration."** Acknowledging this black letter law set forth under RULLCA, Defendant Intellectual's agents had a responsibility to resolve Plaintiff's legal claims with Defendant Intellectual **before** terminating the entity. Because they failed to do so, Defendant LaSpina's filed Certification of Termination contains inaccurate information when she certified "the filing complies with State laws detailed in Title 42:2C." (DA74).

Indeed, Individual Defendants, as sole agents of Defendant Intellectual, were placed on notice of Plaintiff's sexual harassment claims against her employers, including Defendant Intellectual, on several occasions including:

1. On February 9, 2023, when Plaintiff complained directly to Defendant LaSpina about the sexual harassment in October 2022;

2. On July 17, 2023, when Plaintiff complained again directly to Defendant LaSpina about the sexual harassment in October 2022 and retaliation thereafter;

3. On July 28, 2023, when Plaintiff filed her Superior Court Complaint against ICG Defendants, including Defendant Bonevento and Defendant LaSpina; and

4. On October 24, 2023, when Plaintiff filed her Cross Motion Amending the Complaint to specifically include Defendant Intellectual as a party to this action.

(DA13-33, DA38-69).

These events occurred **during** Defendant Intellectual's winding up process wherein the Individual Defendants had continued notice of Plaintiff's claim but still refused to account for their mandatory responsibility to "defend [this] action and proceeding …[and/or] settle [the] dispute by mediation or arbitration" prior to terminating the entity under RULLCA. For these reasons, the Trial Court properly found it possessed jurisdiction and authority over Defendant Intellectual pursuant to N.J.S.A. § 42:2C because:

> **The dismissal of this case [against Defendant Intellectual]… would set precedent that would run counter to the spirit if not the express black-letter of the statute, which would be, frankly, if a single-member LLC receives notice that his entity is**

> **about to be sued for sex harassment, run to file a certificate of termination and that would insulate you from liability.** That arguably could be argued if the Court …were to grant this application and I find that that would run counter to the express language in the statute that says you have to, the -- the entity is required to settle disputes by mediation or arbitration and prosecute and defend actions and proceedings whether civil, criminal, or administrative. **Non-discretionary. The word "shall". They could have used "may". They used "shall."** (1T 43:10-44:2).

Moreover, the Court held:

> …this record reflects…that Bonevento, through Laspina, who was the acting agent here -- well, Bonevento was the sole member and so it -- it would suggest that he directed Laspina. But in any event, what the record shows is that Bonevento had notice of the allegations in July of 2023, he had notice of the spec -- specificity of Intellectual being alleged as her employer from 2019 to 2023 before being rebranded in -- in October of 2023, and then the certification of termination was filed by Laspina in November of 2023, the following month.
>
> **…I find the sequence of all this demonstrates that Bonevento had notice of this proceeding, Bonevento was aware of the allegations of this proceeding, and that…instead of defending…the proceeding, whether civil, criminal, or administrative, as required by N.J.S.A.42:2C-49, the notice of termination was filed**. And I find that runs counter to the statute…I find that the statute mandates that the --the action be defended. **So…under these circumstances presented before this Court, I find that the procedural history here, the sequence of the events here, and the knowledge of the pending action against the entity before the**

> **notice of termination was actually filed, mandates that the action be defended.** (1T 45:3-46:4)

Accordingly, based on the clear language in RULLCA, Defendant Intellectual did not do "precisely what was required" under the statute by ignoring Plaintiff's claims and filing for termination instead. Therefore, the Trial Court reached the correct decision by denying Defendant Intellectual's PJ Motion and Reconsideration Motion, affirming its jurisdiction over the entity based on the incorrect information filed with the state as described in N.J.S.A. § 42:2C.

ii. The Trial Court Has Jurisdiction Over Defendant Intellectual Based On The Patel Case. (DA13-DA33, DA38-DA69, DA74).

Defendant Intellectual now contends that the Trial Court "was led astray" by its reliance on Patel. Db10. This claim is particularly ironic, given that it was Defendant Intellectual who first introduced Patel in its own jurisdictional motion. Evidently, the case was persuasive - until Plaintiff demonstrated how its reasoning applied squarely against Defendant Intellectual. At that point, defense counsel promptly began retreating from their own authority, as if hoping the Court might forget who brought it up in the first place.

Significantly, the Patel court held **trial courts have jurisdiction and authority to rescind an entity's certification of dissolution and termination when a plaintiff properly shows justification for same and upon appropriate**

notice to interested or affected parties. 479 N.J. Super. 26, 28 (App. Div. 2024). In doing so, Patel first acknowledged RULLCA has a catchall provision that provides any "'record previously delivered by the company to the filing office and filed' may be corrected by 'filing a certificate of correction' 'if at the time of filing the record **contained inaccurate information** or was defectively signed.'" 479 N.J. Super. at 33. N.J.S.A. 42:2C-23(a). The court went on to quote subsection (c) which states, "'when filed by the filing office, a certificate of correction…is effective retroactively as of the effective date of the record the certificate corrects…'" Id. See also N.J.S.A. 42:2C-23(c). The Patel court then described a dissolved LLC will continue for purpose of winding up until a statement of termination is filed, leading the court to reason **RULLCA logically accommodates a mechanism for rescinding a certification of dissolution and termination that was improperly filed where such after-the-fact relief is supported by principles of equity**, **and such rescission is only through a civil action in the trial court.** Id. at 34-36.

Here, Defendant Intellectual first argues Patel is limited to outlining the procedure for present members of an LLC to rescind an erroneously filed certification of termination only. Db12. Such a painstaking restricted reading of Patel is illogical considering RULLCA and its relevant case law makes clear the statute is to be "liberally construed." 479 N.J. Super. at 32. Moreover, nowhere in Patel does the case cite this holding applies ***only*** to members of the LLC, as the case

particularly discusses the trial court has specific **"discretion in each individual case to ascertain who should receive notice" of such a dispute, which includes notifying "creditors, *claimants against the LLC*, taxing authorities…or other parties that might have an interest in the proceeding."** Id. This understanding of Patel shows the Trial Court has significant discretion in cases like the one presented here, and can include various entities or individuals when determining whether a rescission of a certification is necessary.

Defendant Intellectual then attempts to distinguish Patel by claiming the Court did not afford "a hearing to ascertain the bona fides of the request for rescission." Db12. To the contrary, however, the Trial Court did in fact pose the hearing question to defense about placing Defendant Bonevento under oath to "determine…if your client's principal had awareness of this action and he filed a notice of termination without defending…to avoid Intellectual being sued? Should we have that hearing?" (3T, 28:1-29:19). In response, defense counsel refused to answer the question directly, resorting to the position that no hearing should be conducted with Defendant Bonevento because he is not the "same entity" as Defendant Intellectual. Id.

Lastly, Defendant Intellectual argued the Trial Court, and now the Appellate Division, should rely on Chase Bank USA, N.A. v. Premier Investigation Servs., LLC instead of Patel because the former holds a terminated LLC is "no longer a

legal entity that could sue or be sued." No. 18-9058 (RMB/KMW), 2020 U.S. Dist. LEXIS 32516 (D.N.J. Feb. 26, 2020). Db12. However, this case is far cry from comparable to Plaintiff's matter. In fact, Chase Bank USA N.A. involved a case that was filed on **May 10, 2018**, but the defendant entity named in said suit was dissolved **and** terminated on **May 3 and 4, 2018, respectively,** ***without any prior notice of the legal claim beforehand.*** Id. In direct contrast, Plaintiff's matter against ICG Defendants, including Defendant Intellectual's agents, was filed on July 25, 2023, and Plaintiff's Cross Motion attaching the amended Complaint that named Defendant Intellectual as a party was filed on October 24, 2023; both dates occurred **before** Defendant Intellectual's agents, Defendant Bonevento and Defendant LaSpina, filed the Certification of Termination on November 9, 2023. (DA13-33, DA38-69, DA74). Accordingly, the Trial Court acknowledged this distinction on the record: "[T]he court in Chase said that it wound up prior to the filing of the suit. A…very substantial distinction from this case…This is not a case where the LLC wound up and terminated prior to the filing of the suit. Quite the contrary." (1T 41:6-14).

Based on the foregoing, Defendant Intellectual's claim that it cannot be sued because it was terminated by its agents, who happen to be the same Individual Defendants who had notice of this suit from its inception in July of 2023, is a self-serving and disingenuous argument that runs counter to both RULLCA and relevant

case law. Therefore, the Court should deny the appeal and reaffirm the Trial Court's decision.

iii. Persuasive Case Law Supports The Trial Court's Jurisdiction Over Defendant Intellectual. (DA13-DA33, DA38-DA69, DA74).

While both Plaintiff and Defendants' counsel acknowledged that no controlling case law squarely addresses the specific facts of this case - namely, agents of an LLC having actual notice of a legal claim against the entity and nonetheless filing a Certification of Termination without first resolving the dispute - this gap does not leave the Court without guidance. Persuasive authority, although not binding, offers meaningful insight into how such conduct should be viewed under the law. (3T 44:10–45:17).

In Capone v. LDH Mgmt. Holdings LLC, the plaintiffs raised a claim against the defendants about terminating/cancelling the defendant LLC without accounting for plaintiffs' contractual claims raised before the termination/cancellation took place. No. 11687-VCG, 2018 Del. Ch. LEXIS 131 (Ch. Apr. 25, 2018). Plaintiffs argued the defendants improperly wound up the defendant LLC and requested the court nullify the certification of cancellation so the plaintiffs could properly pursue their claims against the entity in New York court. Id. at 19. The trial court reviewed a synonymous law to RULLCA, being Section 18-804 of the LLC Act, where the law provided the dissolved LLC shall address any claims or obligations known to

the company before filing a certification of cancellation. Id. at 19-22. The Court ultimately found the LLC defendant, through its agents, were on notice of plaintiffs' claims before filing suit, and nullified the certification of cancellation based on their violation of Section 18-804 of the LLC Act, thus allowing plaintiffs to pursue their claims against the LLC defendant. Id. at 37.

Similarly, the Appellate Division may look to Capone for persuasive guidance and, in doing so, reaffirm the Trial Court's proper exercise of jurisdiction over Defendant Intellectual. As in Capone, the Individual Defendants in this case had clear and repeated notice of Plaintiff's claims - both at the time of the original Complaint and again during Plaintiff's Cross-Motion to amend the Complaint to specifically name Defendant Intellectual. (DA13–33, DA38–69, DA74). Despite this, the Individual Defendants proceeded to file a Certification of Termination on behalf of the entity, effectively attempting to cut off Plaintiff's claims mid-litigation. This conduct directly contravenes the obligations imposed by the RULLCA, which requires a company to wind up its business, including the resolution of known claims, before termination.

The parallels to Capone are not coincidental; they are instructive. In both cases, individuals with managerial authority attempted to sidestep liability by dissolving the business entity despite being aware of unresolved legal disputes. Such tactics cannot be permitted to succeed, lest the integrity of the judicial process and

the purpose of RULLCA be undermined. Accordingly, Defendant Intellectual's appeal should be denied, and the Trial Court's ruling should be affirmed.

B. The Trial Court Correctly Considered The Procedural History, Which Is Uncontested By Both Parties, To Determine The Jurisdictional Facts Surrounding Defendant Intellectual. (DA13-DA33, DA38-DA69, DA74).

Defendant-Appellant Intellectual also argues the Trial Court should have limited the jurisdictional facts to merely: (1) the date Defendant Intellectual filed its Termination; (2) the date the First Amended Complaint was filed; and (3) the date Plaintiff attempted service on Defendant Intellectual. Db18. Such limitation of the jurisdictional facts does not provide the necessary context set forth through the full procedural history of this case.

Defendant Intellectual's jurisdictional argument directly contradicts the well-established principles set forth in Rippon and Carteret Sav. Bank, FA. In Rippon, the court emphasized that jurisdictional determinations are to be made based on the "pleadings and certifications submitted to the trial court." 449 N.J. Super. at 359. Likewise, Carteret Sav. Bank, FA reinforces that, when evaluating a motion to dismiss for lack of jurisdiction, the trial court must accept all of the plaintiff's allegations as true and resolve any factual disputes in the plaintiff's favor. 954 F.2d at 142. Further, when the pleadings and certifications alone are insufficient to resolve the jurisdictional issue, the court is obligated to conduct a preliminary evidentiary hearing - after allowing the parties a fair opportunity for discovery. Id.; see also

Citibank, N.A., 290 N.J. Super. at 532. Defendant Intellectual's position ignores this framework entirely, relying instead on a selective and premature reading of the record. The trial court acted well within its discretion in asserting jurisdiction based on the evidentiary materials properly before it.

Although the Trial Court followed the abovementioned holdings by reviewing the procedural history and certifications submitted by defense counsel, Defendant Intellectual claims "the procedural history and the substantive allegations in this action" are irrelevant to exercise jurisdiction over the entity. Db18. Through this argumentation, Defendant Intellectual seemingly asserts the courts should have entirely ignored the basic procedural history and certifications and only look to three (3) very specific dates instead. Id. This is an absurd request when the full procedural history is necessary to understand the timeline of this matter, and that is precisely why the Trial Court further reviewed: (1) Plaintiff's filing of this action, which shows Individual Defendants had notice of the claims as early as 2022 and 2023 based on the pleading; (2) Individual Defendants' winding up time frame occurring during the same time frame when Plaintiff filed the sexual harassment claims against her employers, including Individual Defendants, in July 2023; and (3) Plaintiff's Cross Motion that gave notice of Defendant Intellectual's specific naming in this suit in October 2023 before the filed

Certification of Termination in November 2023. (DA13-33, DA38-69). In reviewing these jurisdictional facts, the Trial Court appropriately "accept all of the plaintiff's allegations as true and construe[d] disputed facts in favor of the plaintiff" for purposes of the analysis. Carteret Sav. Bank, FA, 954, F.2d at 142.

Evidently, the Trial Court correctly considered Plaintiff's claims and the procedural history as required by Rippon and Carteret Sav. Bank, FA. The inception of this case and the motion practice that followed are directly relevant to the jurisdictional facts here because of the novel situation where Defendant Intellectual's agents were placed on notice of a lawsuit against the entity by being named parties, but they still chose to terminate Defendant Intellectual conveniently when Plaintiff moved before the Court to include Defendant Intellectual as a defendant. (DA13-33, DA38-67, DA74). For these reasons, the Trial Court observed:

> the notion that Intellectual had no knowledge of these allegations because it had not yet been named a party when in fact the principal, the owner of the company [Defendant Bonevento], was a named party as of July 2023 and received service of the Notice of Motion to Amend with the amended pleading,…[is] without basis, the notion that Bonevento had no idea that Intellectual was being sued. It's very apparent.

(2T 29:2-10).

Additionally, the Trial Court noted there was no dispute of the jurisdictional timeline of this matter, demonstrating a preliminary hearing and

jurisdictional discovery required in Citibank, N.A. was not necessary. 290 N.J. Super. at 532. (1T 36:6-20; 2T 41:5-42:24). Defendant Intellectual's own brief concedes to this point. Db18. Therefore, the Trial Court properly reviewed the procedural history and the defense's submitted certifications to reach its holding that there is personal jurisdiction over Defendant Intellectual. The Appellate Division should reaffirm the Trial Court's conclusion based on this reasoning as well.

C. The Court Has Authority To Exercise Jurisdiction Over Intellectual Because Its Sole Owner, Defendant Benevento, And Its Operations Manager, Defendant LaSpina, Were Notified Of Defendant Intellectual's Role In The Litigation. (DA35-DA69, DA94-DA156, DA197 PA1-2).

Defendant Intellectual argues the Trial Court also ignored that "service of process…was not accomplished" onto Defendant Intellectual through the May 1, 2024 service of Plaintiff's operating Complaint, and that notice of a claim is not sufficient to impose personal liability on the entity. Db13-14. (D196-197). Both arguments are meritless.

Pursuant to R. 4:4-4(a), a party obtains in personam jurisdiction over a defendant in New Jersey by causing the summons and complaint to be personally served on an "officer or managing agent…" or "any officer, director, trustee, or managing or general agent…" Although Individual Defendants chose to terminate Defendant Intellectual when the contentious

motion practice revealed the entity would be named as a defendant, Plaintiff nonetheless properly served Defendant Intellectual's managing agent, Debbie Pica, on May 1, 2024, following the Trial Court's denials of ICG Defendants' Dismissal Motion and Motion to Reconsider. (DA96, DA125-126, DA197).

In response to this, Defendant Intellectual raises issue that the service occurred "almost six months after Intellectual filed its Certification of Termination," but of course, defense fails to consider the never-ending motion practice from September 2023 until March 2024 where ICG Defendants challenged the operating Complaint because they did not "employ" Plaintiff prior to January 1, 2023. Db14. (DA35-69, DA94-156, PA1-2) Regardless, Plaintiff properly served the Complaint onto Defendant Intellectual's managing agent as required through R. 4:4-4(a) following the resolution of these motions.

Moreover, Defendant-Appellant Intellectual also asserts "notice of a claim is not sufficient" to impose personal liability on the entity. Db13-14. Defense cites Ayres v. Jacobs & Crumplar, P.A., 99 F.3d 565 (3d Cir. 1996) and Vt. Agency of Nat. Res. v. United States ex rel. Stevens, 529 U.S. 765 (2000) to support this conclusion. However, this case law is once again factually inapplicable to the present matter. For instance, Ayres's rational stemmed from circumstances where service of process was improper based

on a lack of signature by the court clerk and a failure to contain the court seal, which are facts entirely irrelevant to Plaintiff's matter as there is no dispute the summons onto Defendant Intellectual itself was improper. 99 F.3d 565 (3d Cir. 1996). Further, in Vt. Agency of Nat. Res., this matter involved a suit brough against a state agency under the qui tam provisions of the False Claim Act, which again is entirely irrelevant to the facts here as Defendant Intellectual is and never was a state agency nor is this matter brought under the False Claim Act. 529 U.S. 765 (2000). Accordingly, Defendant Intellectual's arguments and "supported" case law for this position should hold no weight to the Appellate Division.

i. Plaintiff's Claims Against Defendant Intellectual Were Not Putative. (DA13-DA33, DA38-DA92, DA97-DA123, DA157-DA184).

Defendant Intellectual asserts that it should be absolved of liability because the Individual Defendants' knowledge of Plaintiff's claims is insufficient, given that they are allegedly "separate parties and entities." (Db15). By this logic, one wonders how Defendant Intellectual - a legal fiction incapable of independent thought or action - could ever be served with notice of a claim. The argument is as circular as it is unconvincing. Both Individual Defendants publicly identify themselves as managing agents of Defendant Intellectual, yet they now disavow notice of

Plaintiff's allegations - allegations that stem directly from their conduct while acting in that very representative capacity. (DA13–33, DA38–92).

In support of their failing argument, Defendant Intellectual claims Beniquez v. Atl. Supply, LLC addresses the "precise issue" raised in this matter. Civil Action No. 22-06198 (CPO), 2024 U.S. Dist. LEXIS 215967 (D.N.J. Nov. 25, 2024). Db16. In Beniquez, **the Court denied a plaintiff's motion for entry of default judgment because the court could not determine the exact date of termination for the defendant entity and whether it was before or after service of plaintiff's complaint.** Specifically, this plaintiff served the complaint onto said defendant on October 20, 2022, but the court only had knowledge the defendant entity was dissolved and terminated "as of 2022." Id. These facts are a far cry from Plaintiff's matter, wherein the Trial Court knew: (1) the **exact date** of Plaintiff's filed Complaint where Individual Defendants had notice of same; (2) the **exact date** of the amended Complaint filings where Individual Defendants had notice of same; (3) the **exact dates** in which Individual Defendants engaged in the winding up process of Defendant Intellectual; and (4) the **exact date** in which Individual Defendants terminated Defendant Intellectual as an entity, which occurred **after** Plaintiff's Complaint and proposed FAC named Defendant Intellectual as a party. (DA13-33, DA38-92, DA97-123, DA157-184). From these very clear timeframes, the Court properly determined:

> The company filed their certificate of termination on November 9, 2023… over one year after the alleged sexual harassment occurred in October of 2022. This is not an instance where there was a certificate of termination filed that preceded the alleged sexual harassment allegations or other wrongful conduct. Here, the certification of termination was filed…over one year; 13 months after the alleged sexual harassment in October of 2022 in Brando's Restaurant and with notice of the allegations contained in the initial Complaint, July 2023, and then in the Amended Complaint, where she specifically alleges she was an employee or associated under the employment of Intellectual when she filed the motion in…October of 2023, one month before filing the notice of – the certificate of termination.
>
> [T]hese dates are…undisputed. This is a case where [Defendant] Bonevento, the alleged offender -- and again, I'm calling everything alleged because these are allegations, but the alleged offender had notice of these allegations in the initial complaint of July 2023 before the certificate of termination. They also -- he also had notice of the more specific allegations, as I recounted in more detail, of the Amended Complaint…with the motion…for leave to amend, which was granted in October of 2023, one month **before** the filing of the certificate of termination.

(T135:14-36:5). Therefore, the Appellate Division should reaffirm the Trial Court's orders, and deny Defendant Intellectual's appeal.

D. The Trial Court Correctly Concluded Defendant Intellectual Must Prosecute And Defend All Claims Against It Based On Individual Defendants' Inaccurate Filings With The State. (DA13-DA33, DA38-DA69, DA74).

In a final attempt to sidestep accountability, Defendant-Appellant Intellectual contends that because it conveniently—if not strategically—filed

its Certification of Termination during the precise window in which Plaintiff sought to add it as a party, Plaintiff is now limited to pursuing her claims solely against "Defendant Bonevento, the sole member [of Defendant Intellectual]," under N.J.S.A. §§ 42:2C-51(d) and 42:2C-52. (Db19–20). This is not so much a legal argument as it is a disappearing act. The Appellate Division should see it for what it is and reject it accordingly.

Ordinarily, when an LLC is dissolved and terminated before it has any knowledge of a potential claim, N.J.S.A. §§ 42:2C-51(d) and 42:2C-52 might apply. But this isn't an ordinary case. The circumstances surrounding the dissolution of Defendant Intellectual are far murkier—and far less innocent. The procedural record and defense's own certifications suggest that Defendant Intellectual's agents, Bonevento and LaSpina, simply chose to disregard Plaintiff's pending claim and submitted a Certification of Termination to the State of New Jersey that conveniently omitted this detail. (DA13–33, DA38–69, DA74). In short, they didn't "wind up" anything, least of all their legal obligations under N.J.S.A. § 42:2C-24. This isn't a harmless oversight; it's a strategic omission and the Court should treat it accordingly.

In other words, Defendant Intellectual's proposition to simply move forward without holding Defendant Intellectual as an entity responsible for their agents' potentially furtive actions is an egregious position that must be denounced. The Trial

Court correctly observed these questionable actions of Defendant Intellectual and its agents, and unambiguously acknowledged releasing Defendant Intellectual based on the undisputed jurisdictional facts would set a dangerous precedent for future entities whose agents learn of impending claims to terminate the company beforehand to avoid liability. (1T 43:10-44:2). Therefore, the Appellate Division should deny Defendant Intellectual's appeal in this regard as well.

V. CONCLUSION

For the reasons set forth in greater detail above, the Appellate Division should reaffirm the Trial Court's interlocutory orders and deny all of Defendant Intellectual's arguments to reverse same.

Respectfully submitted,

/s/ Peter D. Valenzano
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Dated: June 11, 2025

Superior Court of New Jersey

Appellate Division

Docket No. A-002077-24T2

MARILYN CAPUTO, *Plaintiff-Respondent,* vs. ICGNEXT LLC, *Defendant-Respondent,* and INTELLECTUAL CAPITAL GROUP LLC, *Defendant-Appellant,* and LPL FINANCIAL LLC; MICHAEL BONEVENTO; SANDRA LASPINA; ABC CORPORATIONS 1-5 (fictitious names describing presently unidentified business entities); and JOHN DOES 1-5 (fictitious names of unidentified individuals), *Defendant-Respondents.*	CIVIL ACTION ON GRANT OF MOTION FOR LEAVE TO APPEAL FROM INTERLOCUTORY ORDERS OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MONMOUTH COUNTY DOCKET NO. MON-L-2314-23 Sat Below: HON. CHAD N. CAGAN, J.S.C.

REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT INTELLECTUAL CAPITAL GROUP LLC

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Appellant Intellectual Capital Group LLC ("Intellectual") respectfully submits this reply brief in support of its appeal of the trial court's November 19, 2024 and February 14, 2025 Orders.

PRELIMINARY STATEMENT

As explained in Intellectual's initial brief, the trial court misinterpreted the Revised Uniform Limited Liability Company Act, N.J.S.A. § 42:2C-1, *et seq.* ("RULLCA") when it ruled that it could exercise jurisdiction over Intellectual after it had filed its Certificate of Dissolution and Termination ("Certificate of Termination") on November 9, 2023 and ceased to exist.

In her opposition, Plaintiff argues that the trial court properly allowed her lawsuit to proceed against Intellectual based on its finding that its member, Defendant Michael Bonevento ("Bonevento"), had notice of Plaintiff's potential claims prior to the filing of the Certificate of Termination. Plaintiff does not cite any supporting authority and instead submits a false narrative that Bonevento engaged in intentional, strategic actions orchestrated to circumvent the legal system so that Intellectual could avoid Plaintiff's claims. These inflammatory allegations should be seen for what they are – an attempt to instill in this Court a bias against Intellectual and Bonevento as Plaintiff did with the trial court.

Indeed, Plaintiff's opposition ignores the firmly established law that recognizes the independent legal status of a limited liability company ("LLC")

which is distinct from its members. Plaintiff similarly ignores the legal mandate that a court cannot exercise jurisdiction over a party without proper service of a summons and complaint and that notice of a potential claim is insufficient to confer jurisdiction on a court. Instead, she misstates the law, relies on inapplicable statutes, and obfuscates the issues. Plaintiff's so-called arguments should be rejected and this Court should reverse the trial court's rulings and dismiss the Second Amended Complaint as to Intellectual only with prejudice.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Intellectual relies on the procedural history and statement of facts in its original brief in support of this appeal filed on May 12, 2025.

LEGAL ARGUMENT

I. There Cannot Be Jurisdiction Without Service. (Da001-2; Da226-27)

It is well-established that without proper service, a court cannot exercise jurisdiction over a party. See Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999). Indeed, "service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant." Id. Critically, Plaintiff admits that she did not attempt to serve Intellectual until May 1, 2025, almost six months after Intellectual filed its Certificate of Termination and ceased to exist as a legal entity. (Pb31; Da074).

See Chase Bank USA, N.A. v. Premier Invest. Servs., LLC, No. 18-9058, 2020 WL 13553688, at *1-2 (D.N.J. Feb. 26, 2020).

Despite this admission, Plaintiff resists the logical conclusion that Intellectual was never served with the Second Amended Complaint and claims that she properly served Intellectual's "managing agent, Debbie Pica," on May 1, 2024. (Pb31). This argument only serves to highlight that trial court could not properly exercise jurisdiction over Intellectual. Indeed, as of December 31, 2022, Intellectual had ceased all operations and had no employees or agents, and as of November 9, 2023 ceased to exist. (Da072). When Plaintiff served Pica (an employee of ICG Next, LLC), she could not have served Intellectual's agent.

Plaintiff also fails to offer any explanation as to why this Court should ignore the absence of effective service on Intellectual, a mandatory component of due process without which a court cannot exercise personal jurisdiction over a party. In the face of compelling legal authority to support Intellectual's position, Plaintiff erroneously argues that Ayres v. Jacobs & Crumplar, P.A., 99 F.3d 565 (3d Cir. 1996) and Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765 (2000) are somehow factually distinguishable, which they are not. The holdings in both cases reinforce the fundamental principle that without proper service a court cannot exercise jurisdiction to reach the merits of the case. Ayres, 99 F.3d at 569; Vermont

Agency of Natural Resources, 529 U.S. at 778-79. In fact, the Ayres Court specifically rejected the plaintiff's argument that the court ignore service of a defective summons because "the purpose of the service rule (i.e., to ensure notice) had been fulfilled." Ayres, 99 F.3d at 568. In affirming dismissal of the action, the Third Circuit noted that it had previously "made clear that 'notice cannot by itself validate an otherwise defective service.'" Id.

The failure to serve the specifically named defendant with a summons and complaint requires the same result. See Sanders v. United States, No. 14-7157, 2015 WL 248439, at *3 (D.N.J. Jan. 20, 2015) ("[w]here a plaintiff has failed to effectuate proper service, the Court is without jurisdiction over the defendants") (citing Ayres, *supra*); see also, Int'l Union of Operating Engineers, Loc. 68, AFL-CIO v. RAC Atl. City Holdings, LLC, No. 11-3932, 2013 WL 353211, at *5, *10 (D.N.J. Jan. 29, 2013) (concluding, upon the filing of a Certificate of Termination, the defendant LLC "was no longer amenable to service of process via its registered agent"). Thus, until such time as Plaintiff served a summons and complaint upon ***Intellectual***, which was first attempted ***after*** Intellectual filed its Certificate of Termination, no court could exercise jurisdiction.

II. Notice Is Insufficient to Confer Jurisdiction. (Da001-2; Da226-27)

Plaintiff continues to argue, without any legal support, that notice to Bonevento of Plaintiff's allegations against ***him*** personally was sufficient to vest

the trial court with jurisdiction over ***Intellectual***. In doing so, Plaintiff ignores two critical legal principles: (i) notice of a claim before service is meaningless; and (ii) Bonevento and Intellectual are separate legal entities.

As a matter of law, "[n]otice of a claim is not sufficient" to subject a party to the jurisdiction of a court. See Ayres, 99 F.3d at 569. In arguing that notice to Bonevento vests the court with jurisdiction, Plaintiff makes a veiled attempt to distinguish Beniquez v. Atlantic Supply LLC, No. 22-06198, 2024 WL 4903599, *2, *5 (D.N.J. Nov. 25, 2024). Plaintiff's sole argument as to Beniquez is predicated upon the fact that the record in that case was unclear as to the date of the filing of the Certificate of Termination, which is not the case here.

In Beniquez, prior to filing the lawsuit, counsel for the plaintiff served a pre-litigation demand letter to the defendant LLC on January 31, 2022, defendant's counsel confirmed representation and executed an agreement tolling all statutes of limitations that were set to expire on March 7, 2022, and thereafter engaged in settlement discussions. Beniquez, *supra*, at *2. The plaintiff filed suit on October 20, 2022 and subsequently sought a default judgment following alleged service on the defendant LLC via mail to its registered agent on February 23, 2023. Id. at *4. The Beniquez Court declined to enter a default judgment, concluding it did not have jurisdiction over the defendant LLC. Id. at *5. The court found that the plaintiff was "unable to satisfy his burden as to the validity

of service" because information in the record suggested that, at the time the Complaint was filed and service attempted, the defendant LLC was terminated, which, if true, would mean that the defendant LLC could not be sued. Id.

If the Beniquez Court had followed Plaintiff's suggested rationale, the defendant LLC's uncontroverted knowledge of the plaintiff's claims (through receipt a prelitigation demand letter, entrance into a tolling agreement, and engagement in settlement negotiations) would have permitted the District Court to exercise jurisdiction over the defendant LLC simply because it had notice of the potential claims as of January 31, 2022 – the date it first became aware of the claims. Not only did the District Court decline to find jurisdiction existed, but it only considered whether the defendant LLC had been terminated at the time the Complaint was filed and served. The defendant LLC's knowledge of potential claims was not a factor for consideration. Id. at *5-6.

Plaintiff also attempts to distinguish the Chase case, claiming that it is not comparable to this case because the action in Chase was filed after the defendant entity was dissolved and terminated, ***without any prior notice of the legal claim beforehand***. (Pb24) (emphasis in original). Plaintiff's argument, however, is belied by the allegations contained within the Complaint in Chase.[1] (Dra1-20).

[1] Pursuant to Rule 2:6-5, Intellectual submits a Reply Appendix to provide this Court with the documentation supporting Intellectual's response to an argument

A review of the Complaint in the Chase case reveals that, prior to instituting suit, the plaintiff "sent a formal cease and desist letter" to the defendant LLCs asserting its belief that they were engaging in fraudulent conduct to collect on accounts owned by the plaintiff. (Dra6-7). The sole member of both LLC defendants failed to send documents to the plaintiff as promised which prompted the plaintiff to respond on May 2, 2018, asserting that the member defendant intentionally misled the plaintiff during a prior conversation about the ownership of the LLC defendants. (Dra8-9). According to the Complaint, the sole member of the defendant LLCs filed Certificates of Termination dissolving both companies on May 3 and 4, 2018, immediately after being threatened with claims of fraud. (Dra9-10).

Like Beniquez, the Chase Court dismissed the plaintiff's claims against the terminated LLCs for lack of jurisdiction, notwithstanding the defendant LLCs' sole member's uncontroverted knowledge of the claims against the entities. Indeed, it appears that, unlike here, the sole member of the defendant LLCs intentionally and abruptly terminated both entities ***one day*** after the threat of a fraud claim, without engaging any winding up activities. Nevertheless, the knowledge of the anticipated claims did not factor into the Court's analysis in

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raised by Plaintiff for the first time in Brief In Opposition to Defendant/Appellant's Motion for Appeal of the Superior Court's Order.

any way; rather, the Court considered only whether the defendant LLCs were terminated when the Complaint was filed. See Chase, *supra* at *1-2.

Second, Plaintiff argues, without any supporting legal authority, that this Court should disregard the fact that Bonevento, LaSpina and Intellectual are separate parties and legal entities ostensibly because Intellectual, a terminated LLC, is "a legal fiction incapable of independent thought or action." (Pb32). Not surprisingly, Plaintiff overlooks the firmly established legal principle that "[a] limited liability company is an entity distinct from its members." See N.J.S.A. § 42:2C-4(a). Instead, Plaintiff confounds Bonevento's knowledge of Plaintiff's allegations against ***him*** individually with her claims against Intellectual, asserting that Intellectual's agents (Bonevento and LaSpina) had notice of a claim against "the entity" when Intellectual was terminated. (Pb25).

As set forth above, even though Bonevento had knowledge of Plaintiff's claims against him personally, it is inconceivable that Bonevento would believe Plaintiff would sue Intellectual as she was never employed by it. Plaintiff's allegation that she was employed by Intellectual is nothing more than a smokescreen to confuse the Court as evidenced by the vague claim that she and "her direct supervisor Mr. Laday joined forces" with Bonevento and her use of the term "Corporate Defendants" in the First Amended Complaint and Second Amended Complaint to lump all defendants together. (Pb7). Plaintiff's attempt

to rewrite history is apparent from a review of her initial Complaint, where she admitted that she "worked ***directly for Mr. Laday's practice*** and Defendant Bonevento and James Costabile, despite having ***separately named practices***, also worked ***alongside Mr. Laday's practice***" and that those practices did not "merge" until January 1, 2023. (Da017 at fn 1) (emphasis added). It is clear that Plaintiff is "playing fast and loose" with this Court as is further evidenced by the documentary evidence in the record, which confirms that Plaintiff was never an employee of Intellectual but was solely employed by Mr. Laday until January 1, 2023 when she became an employee of ICG Next, LLC. (Da199-215). Thus, even assuming that notice to Bonevento and LaSpina was sufficient to confer jurisdiction on Intellectual, which it is not as a matter of law, Bonevento would have no reason to suspect that an individual who was never employed by Intellectual would initiate a suit against it for employment discrimination.

III. Plaintiff's Reliance on Inapplicable Statutes and Misstatements of Law is Unpersuasive. (Da001-2; Da226-27)

Unable to cite to any authority supporting her arguments, Plaintiff resorts to relying on misstatements of law and inapplicable statutes, which are unpersuasive and should be summarily rejected by this Court.

A. This Court Need Not Accept Plaintiff's Allegations as True.

Plaintiff incorrectly argues that: (a) on a motion for lack of jurisdiction, this Court "must accept all of the plaintiff's allegations as true and construe

disputed facts in favor of the plaintiff"; and (b) that the full procedural history is relevant to the single jurisdictional issue presented on Intellectual. (Pb13-14; Pb27-29). Plaintiff erroneously relies upon Carteret Sav. Bank, FA v. Shushan, 954 F.2d 141 (3d Cir. 1992), which is inapposite inasmuch as the court noted that "once the defendant raises the question of personal jurisdiction, the plaintiff bears the burden to prove, by a preponderance of the evidence, facts sufficient to establish personal jurisdiction." Id. at 146; see also Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977) ("In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims."). Indeed, this Court has made clear that, on a motion to dismiss for lack of jurisdiction, only the jurisdictional facts are pertinent. See Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996).

Further, the jurisdictional issue turns on whether Intellectual existed as a legal entity subject to suit when Plaintiff filed the First Amended Complaint and attempted service of the Second Amended Complaint on Intellectual – not the procedural history before it was joined as a party and served. Quite simply, "[t]he recital of the arduous procedural history detailing plaintiff's efforts to join and serve parties and proceed with his suit is not necessary to our discussion of

whether New Jersey has jurisdiction over [defendant]"). See Patel v. Karnavati America, LLC, 437 N.J. Super. 415, 423 (App. Div. 2014).

B. The RULLCA Does Not Require Intellectual to Defend Against Putative Claims Against Other Entities.

Plaintiff argues that the trial court has jurisdiction over Intellectual pursuant to N.J.S.A. 42:2C-49, which requires an LLC to prosecute and defend actions as part of the winding up process. (Pb16). In doing so, Plaintiff falls back on her argument that notice to Bonevento is sufficient to require Intellectual to defend against an action to which it was not a party. Recognizing that this argument is doomed to fail (as there were no actions against Intellectual when it wound up and terminated), Plaintiff cites to multiple irrelevant provisions of the RULLCA, disregards this Court's comments in Patel,[2] and cites inapplicable statutes from another jurisdiction.

Plaintiff continues to erroneously argue that the trial court has jurisdiction to rescind Intellectual's Certificate of Termination because it allegedly contains inaccurate information. (Pb17-18) (citing N.J.S.A. 42:2C-23(a),(c); 42:2C-24). However, Plaintiff blatantly ignores this Court's comment in Patel that "[i]t is plain" that the rescission of a Certificate of Termination, "which would revive

[2] Plaintiff also misunderstands Intellectual's initial cite to Patel in its motion to dismiss, which was for the sole purpose of confirming the appropriateness of the filing of a combined Certificate of Dissolution and Termination. See Patel v. N.J. Dep't of Treasury, 479 N.J. Super. 26, n. 6 (App. Div. 2024).

a defunct LLC – would exceed a mere 'correction'… ." Patel, 479 N.J. Super. at 34.

Despite the clear language in Patel that rescission is not a mere correction, Plaintiff disingenuously cites the RULLCA's "catchall" provision allowing for correction of inaccurate information as further support for her argument that the trial court has jurisdiction over Intellectual. (Pb22). Plaintiff also blatantly misrepresents this Court's "ultimate conclusion," stating that it reasoned that the "RULLCA logically accommodates" a mechanism for rescinding a Certification of Termination that was "improperly filed" and claiming it intended the remedy to extend to adverse parties. Id. However, the Court stated:

> Here, a manifest purpose of the RULLCA is to assure that the filings with the Division concerning the status of an LLC are up-to-date and duly authorized. The statute ***imposes an ongoing obligation upon the LLC to promptly correct erroneous information*** that appears within the LLC's certificate of formation on file with the State. N.J.S.A. 42:2C-24. In that same vein, the statute logically should accommodate a mechanism for rescinding a certificate of dissolution and termination that was improperly filed and where such after-the-fact relief is supported by principles of equity.

See Patel, 479 N.J. Super. at 36. This illustrates that the ability to rescind a Certificate of Termination belongs only to an authorized ***member of the LLC***, and that only "duly authorized" members of an LLC can update its status.

Moreover, even if the Patel Court envisioned that an adverse party could seek rescission of a Certificate of Termination, that is completely irrelevant

inasmuch as Plaintiff never filed an application to seek recission of Intellectual's Certificate of Termination nor did the trial court ever rule that the Certificate of Termination should be rescinded. (Pb23).

Finally, in a desperation move, Plaintiff relies upon Capone v. LDH Mgmt. Holdings LLC, No. 11687-VCG, 2018 WL 1956282 (Del. Ch. Apr. 25, 2018), an unpublished case from a Delaware court interpreting a different statute with provisions that are materially different from New Jersey's RULLCA.[3] Indeed, the Capone Court addressed a single count of a Complaint seeking to revive a defunct LLC for the purpose of allowing a breach of contract claim to proceed. Id. at *7. Unlike here, the plaintiff's application was filed pursuant to a combination of two statutes – one that expressly authorizes the Delaware Chancery Court to nullify a certificate of cancellation and appoint a receiver to prosecute and defend suits, and another that requires LLCs to reserve funds for potential future suits. Id. at *7, n.106. In contrast to the New Jersey RULLCA, the Delaware law provides that as part of winding up, its members must:

> [M]ake such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or … are likely to arise or to become known … within 10 years after the date of dissolution.

[3] Plaintiff's citation to a case involving the Delaware statute is absurd given the United States District Court for the District of New Jersey's rejection of a comparison of that statute to the RULLCA. See Int'l Union of Operating Engineers, *supra*, at *10 (citing Chadwick Farms Owners Ass'n v. FHC LLC, 166 Wash. 2d 178, 182 (2009).

Id. (citing 6 Del. C. § 18-804(b)(3)). The Capone Court found that, the defendant members were aware of the plaintiff's claim for breach of the operating agreement when the defendant LLC filed its certificate of cancellation and failed to reserve reasonable funds, warranting nullification. Id. at *13-14. The Capone decision is completely irrelevant to the issues raised in this appeal as it interpreted a different law that is not aligned with the RULLCA.

There is, however, one point worth noting from Capone, namely, the hypothetical informing the reasonableness of an LLC's obligation to reserve at the time of cancellation. The court hypothesized: "[s]uppose a delusional individual who had never worked at [the LLC defendant] wrote a letter to [the LLC's] CEO, just before the winding-up process began," claiming that the LLC defendant owed him $1 million for services rendered as an employee. Id. at *12. The Court stated that "[a]ny claim stemming from such an allegation would be obviously frivolous so that a reserve of zero dollars would likely be sufficient to account for it." Id. Thus, even assuming the Delaware statute was somehow instructive, the Capone court made clear that, under the circumstances presented here, where the Plaintiff never worked for Intellectual, there would be no obligation to reserve, and it would not nullify Intellectual's termination.

Equally unpersuasive is Plaintiff's argument that her claims against Intellectual may proceed under N.J.S.A. 42:2C-52 because a claimant of a

dissolved entity may commence a lawsuit against the entity pursuant to N.J.S.A. 42:2C-51 or within five (5) years after the limited liability company was dissolved. (Pb16-17). Plaintiff's argument is simply wrong as it conflates the terms "dissolved" and "terminated" which are legally distinguishable as those terms are defined in the RULLCA. In addition, it also ignores the plain language of the statute which provides an exclusive remedy for claims against terminated entities that have already distributed their assets – the filing of a claim against the members, such as Bonevento, who is already a party to this action. See N.J.S.A. 42:2C-2; 42:2C-51; 42:2C-52; Chase, *supra* at *1-2.

Incredibly, Plaintiff simultaneously asserts that N.J.S.A. 42:2C-51 and 42:2C-52 do not apply as this "isn't an ordinary case," since Plaintiff claims that Bonevento and LaSpina had knowledge of potential claims against Intellectual. (Pb35). Plaintiff's argument is belied by the legal authority, including Beniquez and Chase, that those allegations are irrelevant to the issues raised in this appeal.

CONCLUSION

For these reasons, this Court should reverse the trial court's rulings and dismiss the Second Amended Complaint as to Intellectual only with prejudice.

Respectfully Submitted,

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Dated: June 25, 2025 By: *s/ Catherine P. Wells*