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TARIQ ROBINSON	:	SUPERIOR COURT OF NEW
	:	JERSEY - APPELLATE DIVISION
Plaintiff-Appellant,	:	
vs.	:	Docket: A-002314-24
	:	
TYREIK T. HAMMOND,	:	On Appeal From Order of the
SHAVON KENNEDY-RIOS AND	:	Superior Court, Law Division,
LUCAS OTONIEL OLIVEIRA	:	Middlesex County
	:	MID-L-2805-23
Defendants-Respondents.	:	
	:	Sat Below:
	:	Hon. Anna C. Viscomi, J.S.C.
	:	
	:	<u>Civil Action</u>
	:	
	:	

PLAINTIFF-APPELLANT'S BRIEF AND APPENDIX
(Date Submitted: August 20, 2025)

On the Brief:
Michael R. Paglione, Esq.

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	4
STATEMENT OF FACTS.....	4
LEGAL ARGUMENT	7
STANDARD OF REVIEW.....	7
POINT I.....	8
<p>DEFENDANT CANNOT CLAIM IRREPARABLE PREJUDICE FROM THE SETTLEMENT AND DISMISSAL OF A CO-DEFENDANT BECAUSE HE RETAINS AMPLE PROCEDURAL MECHANISMS TO OBTAIN DISCOVERY OR SEEK CONTRIBUTION (The trial court’s opinion relating to irreparable prejudice may be found at 2T, P. 11-17)</p>	
A. DEFENDANT HAS AVAILABLE PROCEDURES TO BRING THE DISMISSED PARTY BACK INTO THE CASE FOR PURPOSES OF DISCOVERY AND CONTRIBUTION.....	9
B. IN THE ALTERNATIVE, DEFENDANT, OLIVEIRA, CAN OBTAIN DISCOVERY FROM THE DISMISSED PARTY BY SUBPOENA	11
C. DEFENDANT’S PREJUDICE ARGUMENT IS SPECULATIVE AND DOES NOT JUSTIFY DENIAL OF REINSTATEMENT	12
CONCLUSION	13

TABLE OF ORDERS BEING APPEALED

	<u>Page</u>
Judge Viscomi’s Order granting defendant, Lucas Otoniel Oliveira’s Motion for Reconsideration and vacating her previous Order reinstating Plaintiff’s Complaint dated January 31, 2025	Pa0042

TABLE OF CONTENTS OF APPENDIX

Trial court dismissed Plaintiff’s complaint without prejudice against Defendant Lucas Oliveira for lack of Prosecution Pursuant to Rule 1:13-7	Pa0001
Order of Consolidation	Pa0002
Email from Mr. Throckmorton agreeing to accept service on behalf of Defendant, Lucas Oliveira	Pa0004
First page of filed Answer	Pa0006
Court notice rejecting defendant Lucas Otoniel Oliveira’s Answer	Pa0007
Order to Vacate Rule 1:13-7 dismissal and reinstate Plaintiff’s Complaint as to defendant, Lucas Otoniel Oliveira only	Pa0009
Email to Mr. Throckmorton with Judge Viscomi’s Order Reinstating Plaintiff’s Complaint against Lucas Otoniel Oliveira.....	Pa0012
Defendant Lucas Otoniel Oliveira Notice of Motion for Reconsideration filed on October 18, 2024.....	Pa0013
Appendix A (intentionally omitted)	
Appendix B -	
Case Law: Lawson v. Dewar, 256 A. 3d 388 (2021).....	Pa0016
Case Law: Cummings v. Bahr, 295 N.J. Super. 374 (1996).....	Pa0017
Case Law: D’Atria v. D’atria, 576 A. 2d 957 (1990).....	Pa0027
Case Law: Ford v. Weisman, 458 A.2d 142 (1983).....	Pa0035

Affidavit of Non-Service regarding Defendant Lucas Otoniel Oliveira
272 Southfield Street, Kissimmee, Florida 34747 address. Pa0038

Affidavit of Non-Service regarding alternate address for Defendant
Lucas Otoniel Oliveira - 9419 Royal Vista Avenue, Clermont,
Florida 34711-8637 Pa0040

Affidavit of Non-Service regarding alternate address for Defendant
Lucas Otoniel Oliveira - 1725 Peregrine Falcons Way, Apt. 301,
Orlando, Florida 32837 Pa0041

Judge Viscomi’s Order granting defendant, Lucas Otoniel Oliveira’s
Motion for Reconsideration and vacating her previous Order reinstating
Plaintiff’s Complaint dated January 31, 2025 Pa0042

Notice of Appeal..... Pa0044

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Achacoso-Sanchez v. Immigration & Naturalization Serv.</i> , 779 F.2d 1260 (7 th Cir. 1985).....	8
<i>Baskett v. Cheung</i> , 422 N.J. Super. 377 (App. Div. 2011)	12,13
<i>Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi</i> , 398 N.J. Super. 299 (App. Div. 2008)	8
<i>Cummings v Bahr</i> , 295 N.J. Super. 374 (App. Div. 1996).....	7,8
<i>D’Atria v. D’Atria</i> , 242 N.J. Super. 392 (Ch. Div. 1990).....	7,8
<i>Flagg v. Essex Cnty. Prosecutor</i> , 171 N.J. 561 (2002).....	8
<i>Manalapan Realty, L.P. v. Twp. Comm. Of Manalapan</i> , 140 N.J. 366 (1995).....	8
<i>Mason v. Nabisco Brands, Inc.</i> , 233 N.J. Super. 263 (App. Div. 1989).....	13
<i>Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment</i> , N.J. Super. 378 (App. Div. 2015)	7
<i>Rivera v. Atl. Coast Rehab. & Health Care Ctr.</i> , 321 N.J. Super. 340 (App. Div. 1999).....	12,13
<i>Shankman v. State</i> , 184 N.J. 187 (2005)	11
<i>State v. R.Y.</i> , 242 N.J. 48 (2020)	8
<i>Young v. Latta</i> , 123 N.J. 584 (1991)	9,12

Statutes

Rule 1:9-1 11

Rule 1:13-7 1,5,10,12,13,14

Rule 4:8-1 9

Rule 4:8-1(a)..... 9

Rule 4:14-7 11

Rule 4:49-2 7,12

N.J.S.A. 2A:53A-1 to 5..... 11

N.J.S.A. 2A:15-5.1 to 5.3..... 11

PRELIMINARY STATEMENT

This matter arises out of a motor vehicle accident which occurred on May 20, 2021. Plaintiff was a passenger in a vehicle owned by Shevon Kennedy-Rios, which was being driven by Tareik T. Hammond. Plaintiff-Appellant filed his Complaint against Defendants, Tareik T. Hammond, Shevon Kennedy-Rios, and the drivers of two other vehicles involved in the accident, Lucas Oliveira and Danyelle Marshall. Guaranteed Subpoena was engaged to serve a Summons and copy of the Complaint on all defendants. Notwithstanding, and after numerous attempts, Defendant, Lucas Oliveira, was never successfully served. Consequently, the trial court dismissed the complaint, without prejudice, as against Lucas Oliveira for lack of prosecution pursuant to Rule 1:13-7 on December 1, 2023. (See Pa0001)

On November 3, 2023, the trial Court ordered that Plaintiff-Appellant's Complaint be consolidated with two other plaintiff cases arising out of the same motor vehicle accident, namely Jeroni Candido Araujo bearing docket number MID-L-005401-22, and Danyelle Marshall bearing docket number MID-L-002016-23. (See Pa0002 – Order of Consolidation) As a result of the consolidation of all three cases, it was learned that attorney, Andrew Throckmorton, Esq., from the law firm of Hohn & Scheuerle, had entered his appearance on behalf of Defendant, Oliveira, in the Araujo and Marshall matters.

On December 18, 2023, Andrew Throckmorton, Esq., was contacted by Plaintiff's attorney requesting that he accept service on behalf of his client, Oliveira. Mr. Throckmorton graciously agreed, asking for a 60-day extension to file his Answer. (See Pa0004 - email from Mr. Throckmorton agreeing to accept service on behalf of Defendant, Lucas Oliveira, and first page of filed Answer)

However, on March 1, 2024, Mr. Throckmorton's attempted e-filing of his Answer was rejected by the court indicating "Please be advised Lucas Otoniel Oliveira is dismissed without prejudice, due to lack of prosecution on 12/1/23". (See Pa0007)

Thereafter, Plaintiff moved to reinstate his Complaint against the Defendant, Lucas Oliveira, on September 11, 2024. Said motion was granted by the Honorable Anna C. Viscomi, J.S.C. on October 1, 2024. (See Pa0009) A copy of Judge Viscomi's Order reinstating Plaintiff's Complaint as against Lucas Oliveira was forwarded to attorney Throckmorton on October 1, 2024, requesting that he file his Answer thereto. (See Pa0012)

On October 18, 2024, Mr. Throckmorton filed a Notice of Motion for Reconsideration of the October 1, 2024 Order reinstating Plaintiff's Complaint, alleging Lucas Oliveira suffered incurable prejudice because Plaintiff settled his claim against Defendant, Tareik T. Hammond by execution of a general release on October 7, 2024 and a Stipulation of Dismissal with prejudice was filed shortly

thereafter. Mr. Oliveira claimed said settlement precluded his ability to conduct discovery as against Mr. Hammond. (See Pa0013)

**STATEMENT OF PROCEDURAL HISTORY¹
AND STATEMENT OF FACTS²**

This matter arises out of a motor vehicle accident which occurred on May 20, 2021. By way of procedural history, Plaintiff filed his Complaint on May 17, 2023, against Defendants, Tareik T. Hammond, Shevon Kennedy, Lucas Oliveira, and Danyelle Marshall. Subsequent to the filing the Complaint, on May 18, 2023, Guaranteed Subpoena was engaged to serve a Summons and copy of the Complaint on Defendant, Lucas Oliveira, at the address listed on the police report, namely, 272 Southfield Street, Kissimmee, Florida 34747. On May 26, 2023, Plaintiff's attorney's office received notice from Guaranteed Subpoena that the Defendant did not reside at the property and that the address was an Airbnb. (See Pa0038 - Affidavit of Non-Service.)

Plaintiff's attorney's office then conducted a search via TLOxp in an attempt to locate a current address for Defendant, Oliveira. This search provided an alternate address of 9419 Royal Vista Avenue, Clermont, Florida 34711-8637. Guaranteed Subpoena was again requested to attempt service on Defendant, Oliveira, at that alternate address. However, Guaranteed Subpoena advised there was no response from their three attempts to effectuate service on June 24th, June 28th, and July 6, 2023. (See Pa0040 - Affidavit of Non-Service.)

¹ 1T is the January 17, 2025 transcript. 2T is the January 31, 2025 transcript.

² The Statement of Facts and the Procedural History are basically the same as all facts apply to the procedural history.

Guaranteed Subpoena was then requested to attempt service at an address given on Defendant, Oliveira's driver's license which was provided on the TLOxp Search, namely, 1725 Peregrine Falcons Way, Apt. 301, Orlando, Florida 32837. Three attempts for service on October 25th, October 27th and November 1, 2023 were unsuccessful at that address as well. (See Pa0041 - Affidavit of Non-Service.)

Consequently, due to the inability to effect service on the Defendant, Oliveira, an Order dismissing Plaintiff's Complaint without prejudice was issued on December 1, 2023, for lack of prosecution pursuant to R. 1:13-7 as against Defendant, Oliveira only. (See Pa0001 - Dismissal Order)

On November 3, 2023, the trial Court ordered that Plaintiff's Complaint be consolidated with two other plaintiff cases arising out of the same motor vehicle accident, namely Jeroni Candido Araujo bearing docket number MID-L-005401-22, and Danyelle Marshall bearing docket number MID-L-002016-23. (See Pa0002 - Order of Consolidation) As a result of the consolidation of the three cases, Plaintiff learned that attorney Andrew Throckmorton, Esq. from the law firm of Hohn & Scheuerle, LLC, had entered his appearance on behalf of Defendant, Oliveira, in the Araujo and Marshall matters.

On December 18, 2023, Plaintiff's attorney's office emailed Andrew Throckmorton, Esq., requesting that he accept service on behalf of his client, Oliveira. Mr. Throckmorton graciously agreed, asking for a 60-day extension to

file his Answer to Plaintiff's Complaint. A copy of the filed Complaint was sent to Mr. Throckmorton via email. On February 26, 2024, Mr. Throckmorton attempted to file an Answer to Plaintiff, Tariq Robinson's Complaint. (See Pa0004 - email from Mr. Throckmorton agreeing to accept service on behalf of Defendant, Lucas Oliveira & first page of filed Answer)

On March 1, 2024, in response to Mr. Throckmorton's attempted e-filing of his Answer, a Clerk Notice was uploaded by the Court stating, "Please be advised Lucas Otoniel Oliveira is dismissed without prejudice, due to lack of prosecution on 12/1/23". (See Pa0007)

Thereafter, Plaintiff moved to reinstate his Complaint against the defendant, Lucas Oliveira, on September 11, 2024. Said motion was granted by the Honorable Anna C. Viscomi, J.S.C. on October 1, 2024. (See Pa009) A copy of Judge Viscomi's Order reinstating Plaintiff's Complaint as against Lucas Oliveira was forwarded to attorney Throckmorton on October 1, 2024, requesting that he file his Answer thereto. (See Pa0012)

On October 18, 2024, Mr. Throckmorton filed a Notice of Motion for Reconsideration of the October 1, 2024 Order. Oral argument took place on two court dates, January 17, and January 31, 2025.

On January 31, 2025, Judge Viscomi entered an Order granting Defendant, Oliveira's motion for reconsideration, and further, ordered that her previous Order reinstating Plaintiff's complaint be vacated. (See Pa0042)

A timely Notice of Appeal was filed by Plaintiff on April 3, 2025. (See Pa044).

LEGAL ARGUMENT

Standard of Review

The standard of review for an order granting or denying a motion for reconsideration is limited and deferential to the trial court, but reversal is warranted where the court's decision is based on a clearly mistaken exercise of discretion or a failure to apply the correct legal principles.

A motion for reconsideration in the Law Division is governed by Rule 4:49-2. The standard is "a limited one" and is intended to correct only those orders "based upon a palpably incorrect or irrational basis," or where "the court either did not consider, or failed to appreciate the significance of probative, competent evidence." *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

The Appellate Division's review of a trial court's decision to grant or deny reconsideration is correspondingly narrow. Such determinations are reviewed for abuse of discretion. *Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment*, 440

N.J. Super. 378, 382 (App. Div. 2015); *Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi*, 398 N.J. Super. 299, 310 (App. Div. 2008). An abuse of discretion occurs when a decision is “made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.” *Flagg v. Essex Cnty. Prosecutor*, 171 N.J. 561, 571 (2002) (quoting *Achacoso-Sanchez v. Immigration & Naturalization Serv.*, 779 F.2d 1260, 1265 (7th Cir. 1985)).

While the abuse of discretion standard is deferential, it is not toothless. The Appellate Division will intervene where the trial court “misapplies the law to the facts” or fails to apply the proper legal framework. *State v. R.Y.*, 242 N.J. 48, 65 (2020); *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (1995). In the reconsideration context, the trial court must faithfully apply the *Cummings/D’Atria* standard and may not substitute a new rationale untethered from the original motion record.

In the present case, the trial court’s decision to grant Defendant’s motion for reconsideration and vacate its reinstatement order is reviewable under this abuse of discretion framework.

POINT I

DEFENDANT CANNOT CLAIM IRREPARABLE PREJUDICE FROM THE SETTLEMENT AND DISMISSAL OF A CO-DEFENDANT BECAUSE HE RETAINS AMPLE PROCEDURAL MECHANISMS TO OBTAIN DISCOVERY OR SEEK CONTRIBUTION

(The trial court’s opinion relating to irreparable prejudice may be found at 2T, P. 11-17.)

A. Defendant has available procedures to bring the dismissed party back into the case for purposes of discovery and contribution.

Defendant, Oliveira argues that reinstatement of Plaintiff's Complaint is prejudicial because Plaintiff previously settled with and dismissed the co-defendant, Hammond under a general release and stipulation of dismissal. Defendant asserts, therefore, he is now deprived of the ability to pursue the dismissed defendant for contribution or to obtain discovery from him. This argument is unfounded.

A defendant who believes a dismissed or settling party bears responsibility for a plaintiff's damages is not without remedy. A defendant may file a third-party complaint under Rule 4:8-1 for contribution or indemnification against the dismissed co-defendant. The rule expressly permits impleader of "a person not a party to the action who is or may be liable to the third-party plaintiff." See *Young v. Latta*, 123 N.J. 584, 593 (1991) (recognizing impleader promotes judicial economy and fairness in apportioning liability). Once Plaintiff's Complaint is reinstated, Oliveira would have 90 days within which to file his Third-Party Complaint against Hammond.

Rule 4:8-1(a) states as follows: Procedure for Bringing in Third Party; As of Right or on Order. Within 90 days after the service of the original answer, a defendant, as third-party plaintiff, may file and serve a summons and third-party

complaint, together with a copy of plaintiff's complaint, upon a person not a party to the action who is or may be liable to defendant for all or part of the plaintiff's claim against defendant and may also assert any claim which defendant has against the third-party defendant involving a common question of law or fact arising out of the same transaction or series of transactions as the plaintiff's claim. The third-party plaintiff shall serve a copy of the third-party complaint upon the plaintiff within 5 days after service thereof upon the third-party defendant. After the expiration of such 90 day period, a defendant may serve such summons and third-party complaint upon a third-party defendant only by leave of court, on notice to the plaintiff, annexing a copy of the proposed third-party complaint to the notice of motion.

Defendant argues he filed his Answer to Plaintiff's Complaint and is now beyond the 90 day period to file a third-party complaint against Hammond. However, he filed his Answer to a complaint that was already administratively dismissed under Rule 1:13-7. If the court deems Oliveira's Answer to the dismissed complaint validly filed and served on the Plaintiff, Oliveira could still move before the court for leave to file his Third-Party Complaint against Hammond pursuant to the Rule as set forth above. It seems unlikely the court would not afford such relief under the totality of the circumstances in the case at bar.

Thus, contrary to Defendant's assertion, settlement between Plaintiff and another tortfeasor does not foreclose Defendant's right to seek contribution under the Joint Tortfeasors Contribution Law, *N.J.S.A.* 2A:53A-1 to -5, or comparative fault allocation under the Comparative Negligence Act, *N.J.S.A.* 2A:15-5.1 to -5.3. Defendant remains free to implead the dismissed party if he wishes to preserve those claims.

B. In the alternative, Defendant, Oliveira, can obtain discovery from the dismissed party by subpoena, and it is conceded that the settling Defendant must be included on the verdict sheet for allocation of fault.

Even absent impleader, Defendant, Oliveira, has full access to discovery tools to obtain testimony or documents from the dismissed co-defendant. Pursuant to Rule 4:14-7 and Rule 1:9-1, Oliveira may serve a subpoena compelling Hammond's deposition or the production of relevant documents. A dismissal with prejudice as between Plaintiff and the settling defendant, Hammond, does not insulate that individual from being compelled to testify as a witness. See *Shankman v. State*, 184 N.J. 187, 206 (2005) (recognizing the "broad reach" of discovery in civil actions to ensure full development of the facts).

In addition thereto, it is conceded that the settling defendant must remain on the verdict sheet so the jury can allocate fault among all alleged tortfeasors. Under New Jersey's Comparative Negligence Act, *N.J.S.A.* 2A:15-5.2, a jury is required

to assess liability among all parties and persons claimed to be liable, including those who have settled. *Young v. Latta*, 123 N.J. 584 (1991)

Accordingly, Defendant is not “irreparably prejudiced” by Hammond’s dismissal. Oliveira retains the same ability to obtain testimony from Hammond as any other witness, and Hammond must remain on the verdict sheet.

C. Defendant’s prejudice argument is speculative and does not justify denial of reinstatement.

New Jersey courts have consistently rejected prejudice arguments that are speculative or unsupported by concrete evidence. *See Baskett v. Cheung*, 422 N.J. Super. 377, 382 (App. Div. 2011) (no prejudice where defendant could still conduct discovery); *Rivera v. Atl. Coast Rehab. & Health Care Ctr.*, 321 N.J. Super. 340, 346 (App. Div. 1999) (same).

Here, Defendant cannot credibly claim that reinstatement of Plaintiff’s complaint deprives him of rights he still retains by rule and statute. Both third-party practice and subpoena power ensure that he may pursue discovery and allocate liability appropriately. At most, Defendant’s arguments reflect litigation strategy considerations, not irreparable prejudice. Same fall far short of the standard necessary to deny reinstatement under Rule 1:13-7 or to justify reconsideration under Rule 4:49-2.

CONCLUSION

New Jersey courts have long emphasized that litigation should be decided on the merits rather than on procedural technicalities. *See, e.g., Baskett v. Cheung*, 422 N.J. Super. 377, 381–82 (App. Div. 2011) (noting reinstatement of complaints dismissed under Rule 1:13-7 should be “liberally granted” consistent with the policy of adjudicating disputes on the merits); *Mason v. Nabisco Brands, Inc.*, 233 N.J. Super. 263, 267 (App. Div. 1989) (purpose of Rule 1:13-7 dismissal is administrative efficiency, not substantive disposition of claims).

This policy reflects fundamental fairness: a litigant who pursues his claim with diligence should not forfeit his right to a judicial determination merely because of a procedural misstep or administrative dismissal. *See Rivera v. Atl. Coast Rehab. & Health Care Ctr.*, 321 N.J. Super. 340, 346 (App. Div. 1999). Courts have accordingly treated reinstatement motions liberally, recognizing that the absence of prejudice to the defendant weighs heavily in favor of reinstatement. Here, Plaintiff’s motion to reinstate was timely and meritorious, and Defendant has failed to demonstrate actual prejudice. Defendant retains full access to discovery tools, including subpoena power, and may implead the dismissed co-defendant if contribution is sought. Any claim of prejudice is therefore speculative at best. To uphold dismissal under these circumstances would elevate form over substance and undermine the judiciary’s commitment to resolving disputes on their merits.

For the foregoing reasons, Plaintiff-Appellant respectfully requests this Honorable Court reverse trial Court's Order vacating reinstatement and restore Plaintiff's Complaint to the active trial calendar. Doing so vindicates the remedial purpose of Rule 1:13-7, protects the parties' rights to a fair adjudication, and reaffirms New Jersey's strong public policy favoring the resolution of claims on their merits.

**SZAFERMAN, LAKIND,
BLUMSTEIN & BLADER, P.C.**

By: /s/ Michael R. Paglione
Michael R. Paglione, Esq.

Dated: August 20, 2025

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TARIO ROBINSON
Plaintiff-Appellant,

v.

TYREIK T. HAMMOND and
SHAVON KENNEDY-RIOS and
LUCAS OTONIEL OLIVEIRA
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: DIVISION
: MIDDLESEX COUNTY
:
: No. MID-L-002805-23
:
: Sat Below:
: Hon. Anna C. Viscomi, J.S.C.

BRIEF FOR
RESPONDENT LUCAS OTONIEL OLIVEIRA

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF JUDGMENTS, ORDERS, AND RULINGS.....	ii
TABLE OF APPENDIX.....	iii
TABLE OF AUTHORITIES.....	vi
PRELIMINARY STATEMENT.....	1
PROCEDURAL HISTORY.....	2
STATEMENT OF FACTS.....	3
ARGUMENT.....	6
I. STANDARD OF REVIEW.....	6
II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT THE EVIDENCE PRESENTED WAS PROBATIVE OF IRREPARABLE PREJUDICE TO DEFENDANT OLIVEIRA.....	8
A. Defendant does not have procedures available to bring the dismissed defendants back into the case.....	8
B. A subpoena compelling settling Defendants’ depositions and discovery is prejudicial not only to Defendant Oliveira but settling Defendants.....	11
C. The prejudice is blatant and justifies the denial of reinstatement.....	13
III. THE MOTION FOR RECONSIDERATION WAS PROPERLY GRANTED.....	15
CONCLUSION.....	16

TABLE OF JUDGMENTS, ORDERS AND RULINGS

Page

Order granting Defendant, Lucas Otoniel Oliveira’s Motion for
Reconsideration and vacating previous Order reinstating Plaintiff’s
Complaint, dated January 31, 2025.....D020

TABLE OF APPENDIX

<u>Appendix document</u>	<u>Appendix page number</u>
September 30, 2023, dismissal notice.....	D001
Plaintiff’s Motion to Reinstate the Complaint.....	D002
October 1, 2024, Court Order granting Plaintiff’s Motion to Reinstate the Complaint.....	D012
December 2, 2023, Court Order dismissing Defendant Oliveira.....	D015
Defendant Oliveira’s Motion for Reconsideration.....	D016
Stipulation of Dismissal With Prejudice as to Defendants Hammond and Kennedy-Rois.....	D018
Court Order granting Defendant Oliveira’s Motion for Reconsideration.....	D020
December 7, 2024, dismissal warning as to Defendant Marshall.....	D021
February 8, 2025, Court Order dismissing Defendant Marshall.....	D022
November 11, 2023, Court Order consolidating cases.....	D023
February 26, 2024, Defendant Oliveira’s Answer to Plaintiff’s Complaint – First Page Only.....	D024
June 12, 2024, Defendant Oliveira’s Answer to Plaintiff’s Complaint – First Page Only.....	D025

TABLE OF AUTHORITIES

Authority **Brief page number**

Court Rules:

Rule 1:9-1.....12

Rule 4:8-1.....8, 11, 12

Rule 4:14-7.....12

Rule 4:18-1.....12

Rule 4:30A.....9, 10

Rule 4:49-2.....7, 8, 15

Case Law:

Ajamian v. Schlanger, 14 N.J. A.2d 9, cert. denied, 348
U.S. 835, 75 S. Ct. 58, 99 L. Ed. 659 (1954)9

Arena v. Borough of Jamesburg, Middlesex Cty., 309
N.J. Super. 106 (App. Div. 1998)9

Berrie v. Berrie, 188 N.J. Super. 274, 282 (Super. Ct. 1983)12

Branch v. Cream-O-Land Dairy, 244 N.J. 567 (2021)7

Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7 (1989)10

Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996)7, 16

D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990)7, 15

Hoover v. Wetzler, 472 N.J. Super. 230 (App. Div. 2022)7

Kaselaan & D’Angelo Assocs., Inc. v. Soffian, 290
N.J. Super. 293, 299 (App.Div.1996)9

Kornbleuth v. Westover, 241 N.J. 289 (2020)7

Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440

N.J. Super. 378 (App. Div. 2015)	7
<i>Velasquez v. Franz</i> , 123 N.J. 498 (1991)	11
<i>Watkins v. Resorts Int'l Hotel & Casino, Inc.</i> , 124 N.J. 398 (1991).....	9
<i>Treatises:</i>	
Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022).....	8

PRELIMINARY STATEMENT

This matter arises out of a motor vehicle accident that occurred on or about May 20, 2021. On May 17, 2023, Plaintiff filed his Complaint against Defendants, Tareik T. Hammond, Shevon Kennedy, Lucas Otoniel Oliveira, Danyelle Marshall, John/Jane Doe Phantom Vehicle #1, John/Jane Doe 1-100, ABC Corporation 1-100, and XYZ Partnership 1-100.

Defendant, Lucas Otoniel Oliveira was never successfully served, therefore the trial court dismissed the Complaint without prejudice against Defendant Oliveira for lack of prosecution. (*See D001*). Nine (9) months later, after discovery was exchanged, depositions occurred and alleged tortfeasors, Defendants Hammond and Kennedy-Rios, settled their claims and were dismissed with prejudice, Plaintiff filed a Motion to Reinstate the Complaint against Defendant Oliveira on September 11, 2024. (*See D002*). Said motion was granted on October 1, 2024. (*See D012*). On October 18, 2024, counsel for Defendant Oliveira filed a Motion for Reconsideration of the October 1, 2024, Order reinstating Plaintiff's Complaint. Following two (2) days of oral argument wherein Defendant Oliveira's counsel detailed the prejudice afforded thereto were he to be reinstated in the case, the trial court vacated its October 1, 2024, Order and granted Defendant Oliveira's Motion for Reconsideration.

Therefore, Defendant Oliveira respectfully requests that this court uphold the trial court's decision to grant Defendant Oliveira's Motion for Reconsideration.

PROCEDURAL HISTORY

This matter arises out of a motor vehicle accident that occurred on or about May 20, 2021. On May 17, 2023, Plaintiff, a passenger in Defendant Hammond's vehicle, filed his Complaint against Defendants, Tareik T. Hammond (driver of Defendant Kennedy's vehicle), Shevon Kennedy (owner of the vehicle Defendant Hammond was operating), Lucas Otoniel Oliveira (driver of a separate vehicle), Danyelle Marshall (driver of a separate vehicle), John/Jane Doe Phantom Vehicle #1, John/Jane Doe 1-100, ABC Corporation 1-100, and XYZ Partnership 1-100. On September 30, 2023, the Superior Court in Middlesex County issued a dismissal notice indicating that in sixty (60) days from the date of the notice, the court would dismiss Lucas Otoniel Oliveira without prejudice for lack of prosecution. (*See D001*). Plaintiff did not effect service on Defendant Oliveira within the allotted time and on December 2, 2023, the court entered an order dismissing Defendant Oliveira from the case without prejudice. (*See D015*).

On November 3, 2023, the Trial Court ordered that Plaintiff's Complaint be consolidated with two other cases arising from the same motor vehicle accident.

On September 11, 2024, Plaintiff filed a Motion to Reinstate the Complaint against Defendant Oliveira. (*See D002*). Said motion was granted by the Honorable Anna C. Viscomi, J.S.C. on October 1, 2024. (*See D012*). Due to his dismissal and lack of service, Defendant Oliveira was not notified by the Court of this Motion and, therefore, did not have the opportunity to timely object to the reinstatement. Therefore, on October 18, 2024, Defendant Oliveira filed a Motion for Reconsideration of the October 1, 2024, Order. (*See D016*). Oral argument took place on January 17 and January 31, 2025.

In the meantime, on October 24, 2024, Plaintiff settled with Defendants Hammond and Kennedy-Rois and dismissed them from this matter with prejudice. (*See D018*).

On January 31, 2025, following the conclusion of oral argument, Judge Viscomi entered an Order granting Defendant Oliveira's Motion for Reconsideration and further ordered that her previous Order reinstating Plaintiff's Complaint be vacated. (*See D020*).

Plaintiff then filed this appeal.

STATEMENT OF FACTS

On or about May 20, 2021, Defendant, Lucas Otoneil Oliveira was driving a motor vehicle when he was involved in a three-car accident with motor

vehicles driven by Defendant Hammond and Defendant Marshall. Plaintiff was a passenger in the vehicle operated by Defendant Hammond.

By way of background, there were three separate lawsuits involving this accident which were consolidated on November 3, 2023. (*See D023*). Defendant Oliveira was a named defendant in two out of three of the lawsuits. In the first lawsuit, docket number MID-L-005401-22, undersigned counsel's office was representing Defendant Oliveira in a suit filed by Plaintiff, Jeroni Candido Araujo. Tariq Robinson was another named Defendant in this matter. Defendant Oliveira was a participant in that litigation as he was properly served. Defendant Oliveira was not a named defendant in the second lawsuit, docket number MID-L-002916-23. In the third lawsuit, which is the subject of this appeal, Defendant Oliveira was a named defendant, however he was not properly served and therefore, the court dismissed him without prejudice for lack of prosecution. (*See D015*).

On December 2, 2023, Defendant Oliveira was dismissed as a party by the court due to lack of prosecution. (*See D015*). As previously stated, Defendant Oliveira was a defendant in the first of the companion matters and was represented by undersigned counsel. Prior to consolidation, Defendant Oliveira was not aware of the subject lawsuit in which he was a named defendant. However, Plaintiff was aware of not only his own involvement in this litigation,

but Defendant Oliveira's as well. Following consolidation and a request from Plaintiff, undersigned counsel agreed to accept service on behalf of Defendant Oliveira. (*See Pa0004*). Despite this, Plaintiff did not attempt to reinstate the Complaint until after nine (9) months of discovery had already occurred.

Defendant Oliveira made two (2) attempts to file an Answer to the Complaint; both Answers were rejected by the court clerk indicating that Defendant was a dismissed party. (*See D024 and D025*). Defendant Oliveira also made multiple attempts to communicate with the parties that he was dismissed from this case and to confirm whether a motion was filed, or would be filed, to reinstate the Complaint so that he could exercise his right to participate in discovery and depositions. Despite Defendant Oliveira's counsel's good faith attempts, no response was ever received until nine (9) months later.

During this time, discovery was exchanged between the parties and Plaintiff's deposition occurred on September 10, 2024. As of that date, the motion to reinstate the Complaint against Defendant Oliveira had not been filed. Due to the lack of service/reinstatement and any response regarding the same, Defendant Oliveira's counsel indicated in good faith to the parties that he would not be attending Plaintiff's deposition nor participating in discovery. Despite this good faith due diligence to confirm whether he should attend the deposition,

Plaintiff gave no indication that a motion to reinstate would be filed the next day. The deposition proceeded without Defendant Oliveira being present to examine the deponent under oath.

Plaintiff filed his Motion to Reinstate the Complaint on September 11, 2024. (*See D002*). Due to Defendant Oliveira's status as a dismissed defendant, the motion was not obtained within the applicable response time and therefore, no timely opposition could be filed.

On October 18, 2024, Defendant Oliveira filed a Motion for Reconsideration. (*See D016*). Following two (2) days of oral argument, on January 28, 2025, Defendant Oliveira's Motion for Reconsideration was granted. (*See D020*). Plaintiff then filed this appeal. During this time, on October 24, 2025, Plaintiff dismissed Defendants Hammond and Kennedy-Rois with prejudice. (*See D018*).

Further, it is noteworthy that on December 7, 2024, the Court issued a dismissal warning for lack of prosecution as to Defendant Marshall. (*D021*). On February 8, 2025, the Trial Court dismissed Defendant Marshall without prejudice for lack of prosecution. (*D022*).

ARGUMENT

I. STANDARD OF REVIEW

Reconsideration is left to the sound discretion of the court and is to be exercised in the interests of justice. *See eg, D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990) (citing *Johnson v. Cyclop Strapping Corp.*, 220 N.J. Super. 250 (App. Div. 1987)). Reconsideration is warranted if a court's decision is based on plainly incorrect reasoning, if it has failed to consider evidence, or if there is good reason for it to consider new information. *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996). Here, there was new information on prejudice unknown to the court which prompted the trial court to grant the Motion for Reconsideration and vacate its previous order.

New Jersey's appellate courts hold that reconsideration is necessary if, "(1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence." *D'Atria*, 242 N.J. Super., at 401.

Rule 4:49-2 governs the Appellate Division's review of a trial judge's decision on a Motion for Reconsideration for an abuse of discretion. *Branch v. Cream-O-Land Dairy*, 244 N.J. 567, 582 (2021); *Kornbleuth v. Westover*, 241 N.J. 289, 301 (2020); *Hoover v. Wetzler*, 472 N.J. Super. 230, 235 (App. Div. 2022); *Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment*, 440 N.J. Super. 378, 382 (App. Div. 2015). "The rule applies when the court's decision represents a

clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022).

In the present case, the Trial Court's decision to grant Defendant's Motion for Reconsideration and vacate its reinstatement Order was proper and should be upheld.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT THE EVIDENCE PRESENTED WAS PROBATIVE OF IRREPARABLE PREJUDICE TO DEFENDANT OLIVEIRA.

A. Defendant Oliveira does not have procedures available to bring the dismissed defendants back into the case.

The prejudice to Defendant Oliveira in this case is obvious. He was a dismissed defendant for over nine (9) months while the active parties exchanged discovery, conducted depositions, and ultimately settled the claims in regard to two of the alleged tortfeasors, Defendants Hammond and Kennedy-Rios.

Appellant argues that Defendant Oliveira can file a third-party complaint under Rule 4:8-1 for contribution or indemnification against the dismissed co-defendants, however this is inaccurate. If Mr. Hammond was dismissed without prejudice from this matter, Defendant Oliveira would have this option. A dismissal with prejudice, however, is a final adjudication on the merits, triggering res judicata and the Entire Controversy Doctrine. Here, Defendant

Oliveira will be barred from bringing a third-party complaint against Mr. Hammond as the claims have already been finally adjudicated.

Rule 4:30A details the Entire Controversy Doctrine and states in relevant part as follows: “Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine...” *Id.*

“The entire controversy doctrine bars a subsequent action only when a prior action based on the same transactional facts has been tried to judgment or settled.” See *Arena v. Borough of Jamesburg, Middlesex Cty.*, 309 N.J. Super. 106, 111 (App. Div. 1998); see also *Kaselaan & D'Angelo Assocs., Inc. v. Soffian*, 290 N.J. Super. 293, 299 (App.Div.1996); accord *Rycoline Prods., Inc. v. C & W Unlimited*, 109 F.3d 883, 887-89 (3d Cir.1997); see also *Watkins v. Resorts Int'l Hotel & Casino, Inc.*, 124 N.J. 398, 415, 591 A.2d 592 (1991) (noting that “[o]nly a judgment 'on the merits' will preclude a later action on the same claim.”)

Defendant Oliveira cannot implead Mr. Hammond as the Entire Controversy Doctrine applies to all claims. The rule has been extended to include all affirmative claims that a party might have against another party, including counterclaims and cross-claims, *Ajamian v. Schlanger*, 14 N.J. 483, 487-89, 103 A.2d 9, *cert. denied*, 348 U.S. 835, 75 S. Ct. 58, 99 L. Ed. 659

(1954), as well as joinder of all parties with a material interest in the controversy, *i.e.*, those who can affect or be affected by the judicial outcome of the controversy. *Cogdell v. Hosp. Ctr. at Orange*, 116 N.J. 7, 23 (1989); R. 4:30A. The Entire Controversy Doctrine only bars those claims that are known at the time of the original action. The subject lawsuit occurred due to a three-car accident. Defendant Oliveira was originally named in the lawsuit but was dismissed without prejudice for lack of prosecution. During the nine (9) months of which Defendant Oliveira was a dismissed defendant, Plaintiff and Defendants Hammond and Kennedy-Rios exchanged discovery, conducted depositions, and ultimately settled their claims. It was open and obvious to the parties that there would be relevant and factually similar claims involving Defendant Oliveira arising out of the same transaction or occurrence.

Plaintiff settled with Defendants Hammond and Kennedy-Rois and dismissed them with prejudice. Defendant Oliveira was not privy to the claims or settlement as he was a dismissed defendant. Therefore, Defendant Oliveira is unable to bring Defendant Hammond back into this matter as a third-party defendant. Defendant Hammond's liability to Plaintiff, of which Defendant Oliveira's claims against Defendant Hammond derive from, have been settled. Defendant Oliveira does not have an avenue to bring claims arising from the same transaction or occurrence against Defendant Hammond.

Plaintiff cites Rule 4:8-1 when stating that Defendant Oliveira may file a third-party complaint, however this rule specifically states in relevant part that "... [A] defendant, as third-party plaintiff, may file and serve a summons and third-party complaint, together with a copy of plaintiff's complaint, **upon a person not a party to the action** who is or may be liable to defendant..." N.J. Court Rules, R. 4:8-1 (emphasis added). In this case, the third-party defendant was previously a party to the action who was dismissed with prejudice while Defendant Oliveira was a dismissed defendant.

B. A subpoena compelling settling Defendants' depositions and discovery is prejudicial not only to Defendant Oliveira but settling Defendants.

A dismissal with prejudice is a final adjudication which releases the dismissed party from any further obligations regarding the case, including discovery burdens. A dismissal specifying that it is "with prejudice constitutes an adjudication on the merits 'as fully and completely as if the order had been entered after trial.'" *Velasquez v. Franz*, 123 N.J. 498, 507, 589 A.2d 143 (1991) (quoting *Gambocz v. Yelencsics*, 468 F.2d 837, 840 (3d Cir. 1972)). Permitting an active defendant to subpoena a previously dismissed defendant reopens litigation burdens that the settlement and dismissal was meant to resolve. It is prejudicial, contrary to the principles of judicial economy, and inconsistent with New Jersey's discovery rules.

Defendant Hammond is no longer a party to the case. Despite the subpoena power available against a nonparty under Rule 4:14-7 and Rule 1:9-1, Defendant Oliveira cannot use party discovery mechanisms (e.g., interrogatories, requests for production, or request for admissions) directed to Defendant Hammond that would have been available under Rule 4:18-1 when Defendant Hammond was an active party. While Defendant Oliveira was the dismissed defendant, Plaintiff conducted party discovery with Defendant Hammond. The asymmetry of discovery tools unfairly prejudices Defendant Oliveira.

New Jersey courts have held that despite all discovery imposing some burdens, “when the burdens outweigh the benefits[,] the tools of discovery become, intentionally or unintentionally, weapons of oppression.” *Berrie v. Berrie*, 188 N.J. Super. 274, 282 (Super. Ct. 1983). The court went on to note that when a nonparty is involved, this test “deserves close scrutiny with respect to the interests of a nonparty. Each application to allow or restrict discovery is addressed to the discretion of the court and requires a balancing of these considerations.” *Id.* at 283.

In the case at hand, Defendant Oliveira is oppressed as he would have no choice but to conduct limited nonparty discovery of Mr. Hammond. Had Plaintiff reinstated the Complaint against Defendant Oliveira prior to settling

his claims against Defendant Hammond and dismissing him with prejudice, Defendant Oliveira would have had ample opportunity to conduct appropriate discovery involving the alleged tortfeasor.

Additionally, Mr. Hammond, after being dismissed with prejudice, would endure additional cost and burden regarding a matter in which he reasonably believed was resolved. Plaintiff argues that Defendant Oliveira should circumvent the dismissal with prejudice by relabeling further litigation as “third-party defendant” which as stated above, is not applicable in this case.

Plaintiff concedes that settling Defendant Hammond must be included on the verdict sheet for allocation of fault, however this does not resolve the prejudice that Defendant Oliveira is facing. Should this case go to trial, Defendant Oliveira would be tasked with presenting a case against a phantom defendant of whom no additional liability can be imposed. Further, Defendant Oliveira would be tasked with proving his case against Mr. Hammond for allocation of fault with minimal nonparty discovery.

C. The prejudice is blatant and justifies the denial of reinstatement.

Plaintiff argues that reinstating Defendant Oliveira into this case when co-defendant, and alleged tortfeasor, Mr. Hammond has already been dismissed with prejudice is not prejudicial to Respondent. The prejudice that Defendant Oliveira would incur from being reinstated into this case is blatant.

First, Defendant Oliveira's subpoena power is limited due to Defendant Hammond's status as a nonparty as he was dismissed with prejudice. Second, if the matter were to proceed to trial, Defendant Oliveira will be unable to present essential defenses to the jury relating to cross-claims, causation, liability and apportionment of damages against Mr. Hammond.

The prejudice was entirely avoidable by Plaintiff who was inactive for more than nine (9) months between December 13, 2023, when Mr. Oliveira was dismissed as a party due to lack of prosecution, and September 11, 2024, when Plaintiff sought reinstatement. In between Defendant Oliveira being dismissed and Plaintiff seeking reinstatement, Plaintiff's deposition occurred on September 10, 2024. Defendant Oliveira was not present for the deposition, nor was he informed prior to the deposition, when he indicated that he would not be participating due to his status as a dismissed defendant, that Plaintiff was going to seek reinstatement the following day. Defendant Oliveira, despite his dismissed status, continued to inquire regarding reinstatement. With no response from Plaintiff indicating that reinstatement was forthcoming, Defendant Oliveira was not a participant in crucial stages of the litigation through no fault of his own.

Balanced with the clear prejudice to Defendant Oliveira is the evidence of good faith efforts by Defendant Oliveira to participate in the litigation. In

balancing the interests of the parties, it is of note that this uncurable prejudice would not have occurred if (1) Plaintiff had acted promptly in moving to reinstate Mr. Oliveira during the over nine (9) months following his dismissal and/or (2) if Plaintiff had not dismissed the co-defendant Hammond with prejudice prior to Defendant Oliveira's involvement, thereby depriving Defendant Oliveira of contribution and apportionment rights.

III. THE MOTION FOR RECONSIDERATION WAS PROPERLY GRANTED.

As this Court is aware, New Jersey's appellate courts hold that reconsideration is necessary if, "(1) the Court has expressed its decision based on a palpably incorrect basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence." *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Rule 4:49-2 states that an Appellate Division's review of a trial judge's decision on a Motion for Reconsideration is under an abuse of discretion. No evidence has been presented which leads to the conclusion that the trial court abused their discretion in granting Defendant Oliveira's Motion for Reconsideration. In the oral argument that followed Defendant Oliveira's Motion for Reconsideration and Plaintiff's opposition, the trial court was presented with the same evidence and arguments that are before this Court today. In recognizing the blatant prejudice sustained by Defendant Oliveira, the trial

court reversed its own Order, granted Defendant Oliveira's Motion for Reconsideration, and dismissed him with prejudice. Plaintiff has not provided any evidence that the trial court's ruling granting the Motion for Reconsideration was a clear abuse of discretion based on plainly incorrect reasoning, failure to consider evidence, or a good reason for the court to reconsider new information. *See Cummings* at 384.

Plaintiff notes that New Jersey Courts have recognized the longstanding policy that a litigant who pursues his claim with due diligence should not forfeit his right to a judicial determination merely because of a procedural misstep or administrative dismissal. *See Appellant's Brief at page 12*. However, Plaintiff did not diligently pursue his claim against Defendant Oliveira. Plaintiff's Complaint was not reinstated until after nine (9) months of discovery, depositions and a dismissal with prejudice of a co-defendant was conducted without Defendant Oliveira's involvement.

CONCLUSION

The Trial Court did not abuse its discretion in vacating its original Order and granting Defendant Oliveira's Motion for Reconsideration. The Entire Controversy Doctrine bars any claims Defendant Oliveira has against Defendant Hammond due to his dismissal with prejudice. Defendant Oliveira is unable to bring Defendant Hammond back into this matter as a third-party defendant.

Additionally, a subpoena for dismissed defendant's cooperation is not only prejudicial to Defendant Oliveira but dismissed defendant himself. The prejudice in this case is blatant. The Trial Court properly vacated its own Order, granting Defendant Oliveira's Motion for Reconsideration. Therefore, Defendant Oliveira respectfully requests that this Court uphold the Trial Court's ruling.

Respectfully submitted,

HOHN & SCHEUERLE, LLC

/s/ Kristen Rogers
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Dated: October 3, 2025