JAMES L. PFEIFFER, Plaintiff-Respondent, v. MATTHEW J. PLATKIN, Attorney General of New Jersey, and PHILLIP D. MURPHY, Governor of the State of New Jersey, Defendants-Appellants.	**SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION** Docket No. A-2403-24 CIVIL ACTION On Appeal from an Interlocutory Order of the Superior Court of New Jersey, Law Division, Mercer County Docket No.: MER-L-1029-24 Sat Below: Hon. Robert T. Lougy, A.J.S.C.

AMENDED BRIEF OF DEFENDANTS-APPELLANTS

Submitted: June 13, 2025

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex, P.O. Box 116
Trenton, New Jersey 08625
609-376-3232
ashleigh.shelton@law.njoag.gov
daniel.shehata@law.njoag.gov
Attorney for Defendants

Michael L. Zuckerman
Deputy Solicitor General
Of Counsel

Tim Sheehan
Assistant Attorney General
Of Counsel and on the Brief

Ashleigh B. Shelton (294162019)
Daniel S. Shehata (000362012)
Deputy Attorneys General
On the Brief

TABLE OF CONTENTS

Page(s)

TABLE OF ORDERS BEING APPEALED

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

PRELIMINARY STATEMENT

This Court should reject the novel theory of involuntary resignations accepted by the decision below, which held that one constitutional officer can state a claim to invalidate his resignation by alleging he was misled into resigning by another constitutional officer about a basic aspect of the removal process reflected in a one-sentence statute. New Jersey courts have never adopted such a freestanding misrepresentation claim, instead focusing on whether a plaintiff's ability to exercise his "free will" was overcome. Plaintiff cannot plausibly allege a misrepresentation claim in any event, as the cases on which he relies reject such claims brought by sophisticated plaintiffs, especially where the alleged misstatements relate to basic hearing rights. That is decisive: Plaintiff was a County Prosecutor and former Superior Court judge and thus would know of his hearing right and "would understand what due process in such a hearing would require." This Court should reverse the decision below that allowed this claim to proceed to discovery.

The Court can dispose of this claim under binding New Jersey law, which does not apply different standards depending on the means allegedly used to induce a resignation. Rather, New Jersey's flexible standard asks whether a reasonable person would have been prevented from exercising his free will under the circumstances, regardless of whether a plaintiff pleads his claim as

coercion or misrepresentation. See McBride v. Atlantic City, 146 N.J. Super. 498, 503, 506 (Law Div. 1974), aff'd o.b., 72 N.J. 201 (1976). This objective standard turns on the voluntariness of a resignation, and focuses on a plaintiff's personal and professional background. Here, a reasonable County Prosecutor would have been familiar with the single-sentence statute entitling him to a removal hearing and a final determination by the Governor, and he would not have accepted as true any statement to the contrary. That Plaintiff was the chief law enforcement officer of his county and was given nearly a full day to research the matter and consult counsel makes his misrepresentation-based claim all the more implausible. Plaintiff's claim fails as a matter of law under McBride.

His claim likewise fails under the federal cases that are tailored to misrepresentation-based challenges to resignations. Under those cases, which no high-ranking governmental officer in any jurisdiction has ever successfully invoked to Appellants' knowledge, a plaintiff must establish that he "reasonably relied" on a factual misstatement regarding the resignation. Courts applying this test consistently hold that a sophisticated professional like Plaintiff cannot, as a matter of law, have reasonably relied on misstatements relating to basic rights such as the right to a hearing. This Court should confirm that this theory fails on either basis as a matter of law and reverse that aspect of the ruling below.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

A. Plaintiff's Complaint.[2]

Defendant Governor Philip D. Murphy appointed Plaintiff as Acting Warren County Prosecutor on November 1, 2019. (Ma11 ¶ 4). Plaintiff was later nominated to serve as County Prosecutor, and confirmed by the Senate, for a five-year term that began on July 9, 2020. (Ibid.) During his tenure, Plaintiff was responsible for the Warren County Prosecutor's Office's (WCPO) budget. (Ma19 ¶ 25). In March 2022, members of his office filed complaints with the Office of Public Integrity & Accountability (OPIA), in the Department of Law & Public Safety. (Ma20 ¶ 31). OPIA began investigating Plaintiff that year. (Id. ¶ 36).

On April 5, 2024, the Governor directed Defendant Matthew J. Platkin, Attorney General of New Jersey, to supersede the WCPO in light of the misconduct OPIA had identified. (Ma96; Ma112). In his letter, the Governor stated, "I am seeking the removal of Prosecutor James Pfeiffer as the County Prosecutor for the County of Warren. Additionally, I am writing you to request

[1] These related sections have been combined for the Court's convenience.

[2] As required by the legal standard governing motions to dismiss, this discussion accepts the facts alleged in the Complaint as true. No aspect of this brief should be construed as agreeing with Plaintiff's account of events.

that you exercise your supersession authority over the Office of the Warren County Prosecutor[.]". (Ma112); see N.J.S.A. 52:17B-106.

On April 5, 2024, around 11:30 a.m., Plaintiff met with the Attorney General in his office in Trenton at the Attorney General's request. (Ma23 ¶ 49; Ma75 ¶ 1). The Attorney General informed Plaintiff that findings of serious misconduct had been sustained against him, that OAG had superseded the WCPO at the Governor's request, and that Plaintiff faced the choice of either resigning or being subject to a removal hearing. (Id. ¶¶ 49-51; Ex. B).

According to Plaintiff's account, the Attorney General told him, "if you do not resign things will get worse for you." (Ma24 ¶54). The Attorney General allegedly stated that he would select the hearing officer, would be able to make the final termination decision, and that his decision "had already been made on the information he had." (Id. ¶¶ 52-54). Plaintiff was given "until the end of the day" to make a decision. (Id. ¶ 57). Plaintiff claims he requested, but did not that day receive, what he refers to as a "complete" copy of OPIA's report—i.e., one containing the "exhibits referenced and the foundational investigation materials" detailing the sustained allegations of misconduct against him. (Ma23, 37 ¶¶ 55-56, 107(x)); see also (Ma80) (acknowledging that he received what he calls a "partial" report hours before making his decision). In accordance

with his statutory authority, the Attorney General that day also named an Acting Prosecutor, who was sworn in that afternoon. (Ma23 ¶¶ 66, 72; Ex. G).

At 5:08 p.m. that same day, Plaintiff verbally resigned by phone. (Ma24 ¶ 59). At 5:46 p.m., First Assistant Lyndsay Ruotolo called Plaintiff and asked him to confirm his resignation in writing. (Id. ¶ 59). At 5:55 p.m., Plaintiff sent the following text message to the First Assistant:

> Lyndsay, pursuant to our conversations, I am retiring from the Wcpo. My resignation from the office is effective today April 5, 2024. I thank you the General and the Governor, for the opportunity to serve Warren County as the Prosecutor. I wish you and the General success in the future. Thank you.
>
> (Id. ¶ 60; Ex. C).

OAG relayed this message to the Governor's Office, which accepted Plaintiff's resignation. (Ma64, Ex. E). OAG then issued a press release announcing Plaintiff's resignation, the supersession of the WCPO, and the appointment of an Acting County Prosecutor. (Ma28 ¶ 75; Ex. H). Plaintiff himself confirmed his resignation to the press that evening, stating in an email that he had "retired from the Warren County Prosecutor's Office effective today." (Ma134).[3] When Plaintiff purported to rescind his resignation five days

[3] This Court can take judicial notice of this article's content for its existence. See N.J.R.E. 201(b)(3); Cohen v. Cmty. Med. Ctr., 386 N.J. Super. 387, 396 n.4 (App. Div. 2006).

later in a letter to the Attorney General, (Ma60, Ex. D), the First Assistant explained in an email to Plaintiff's counsel (copying the Governor's Chief Counsel) that the attempt "to rescind" his resignation was "without effect" as the Governor's Office had already "accepted Mr. Pfeiffer's resignation." (Ma64; Ex. E). In later filings, but not in his Complaint, Plaintiff suggested that what precipitated his objections to the resignation was in fact the release of information "to the public and press" regarding his alleged misconduct at the WCPO, which he alleged "violated our agreement regarding not releasing information to the press regarding the investigation[.]" (Ma80; Ma89; Ma92).

B. Proceedings Below.

On May 23, 2024, Plaintiff filed a four-count Complaint against the Attorney General and the Governor. Count I alleges that Plaintiff's resignation was void for lack of valid acceptance by the Governor. (Ma30-32 ¶¶ 83-90). Count II alleges that Plaintiff was "unlawfully removed from office upon" the swearing-in of an Acting Prosecutor. (Ma32-34 ¶¶ 91-99). Count III—the Count at issue here—alleges that Plaintiff's resignation was improperly induced "by coercion, fraud and other illegal acts[.]" (Ma34-49 ¶¶ 100-13). Count IV, which Plaintiff later withdrew, alleged that there was no "legal authority" for the supersession. (Ma39-41 ¶¶ 114-118; Ma94).

On October 28, 2024, the trial court granted the motion to dismiss Counts II and III, but denied it as to Count I, holding that the pleadings did not suffice to establish acceptance as a matter of law. (Ma104). The Governor has since waived executive privilege as to an April 5 text exchange with his Chief Counsel, in which the Governor responded "Excellent" to news of Plaintiff's resignation, and Defendants have accordingly moved for summary judgment on Count I. In dismissing Count III, meanwhile, the trial court reasoned that, "[e]ven accepting as true Plaintiff's allegations," someone of his "professional experience and acumen," "as an attorney, judge, and chief law enforcement officer of the county," could not plausibly have been "overpowered" by "the Attorney General's alleged bluster" or misunderstood "what due process in … a hearing would require." (Ma108-09).

On November 18, 2024, Plaintiff moved for reconsideration, arguing that the trial court had sufficiently addressed only his "duress/coercion theory" of Count III, but not his "misrepresentation theory" of Count III, while arguing that the court had erred in dismissing the "duress/coercion theory" as well. (Ma3-4, 8-9). Defendants opposed his motion, arguing that the "theories" were intertwined (consistent with Plaintiff pleading them under a single count), that the standard for either is an objective one for a person in Plaintiff's shoes, and that given Plaintiff's status as a former judge and County Prosecutor, it was

impossible to conclude, as a matter of law, that he was reasonably fooled into resigning (as this theory alleges he was) by another constitutional officer.

On February 10, 2025, the trial court partially granted reconsideration, reinstating Count III limited to the "misrepresentation theory." (Ma2). The court reaffirmed its holding that Plaintiff did not plausibly plead that the Attorney General's alleged misstatements about the removal process coerced him to resign. (Ma7). But it permitted Plaintiff to proceed on a claim that he reasonably relied on those same alleged misstatements, while acknowledging this was a "novel" theory. (Ma8-9 & n.1). Appellants filed a motion for leave to appeal from this order, which this Court granted.

LEGAL ARGUMENT

POINT I

PLAINTIFF'S MISREPRESENTATION THEORY FAILS AS A MATTER OF BINDING STATE LAW (Ma7-Ma9).

Plaintiff's misrepresentation theory fails as a matter of binding precedent because it does not plausibly allege that Plaintiff's resignation was involuntary. Under New Jersey law, claims that a resignation was wrongfully induced must meet a demanding test: the employer's conduct must be "so oppressive under given circumstances as to constrain one to do what his free will would refuse." McBride v. Atlantic City, 146 N.J. Super. 498, 503 (Law Div. 1974) (quoting

Rubenstein v. Rubenstein, 20 N.J. 359, 367 (1956)), aff'd o.b., 72 N.J. 201 (1976). Courts undertaking that inquiry must consider a plaintiff's professional experience and other "surrounding circumstances, such as age, sex, capacity, state of health, temperament, situation and relation of parties." Id. at 506. Under that rubric, even a four-year veteran of a police force was presumed to know "his legal rights as to a hearing before discharge" and thus could not establish that being told he faced criminal charges if he did not resign overcame "his free will." Id. at 505-06; see also, e.g., Judge v. Shikellamy Sch. Dist., 905 F.3d 122, 126 (3d Cir. 2018) (finding that "any reasonable school principal in [plaintiff's] position would have understood the nature of her choice between resignation and charges followed by a pre-termination hearing.").

Plaintiff's claim fails as a matter of law under McBride, particularly in light of his background and experience. As the trial court correctly recognized in dismissing Plaintiff's coercion theory, Plaintiff was "an accomplished lawyer and law enforcement professional," who for three years "was a Judge of the Superior Court before becoming prosecutor." (Ma108). Even assuming the truth of Plaintiff's account of his exchange with the Attorney General given the procedural posture, the "Attorney General's alleged bluster" could not have overborne Plaintiff's "free will" since Plaintiff "knew of his right to a hearing and, as an attorney, judge, and chief law enforcement officer of the county,

would understand what due process in such a hearing would require." (Ma108-09); see McBride, 146 N.J. Super. at 503. Indeed, Plaintiff would have only needed to know the plain text of a one-sentence statute from the Criminal Justice Act of 1970, which provides that "a county prosecutor may be removed from office by the Governor for cause after a public hearing and upon due notice and an opportunity to be heard in his defense." N.J.S.A. 52:17B-110. Just as someone in Plaintiff's shoes could not have plausibly had his free will overborne by coercion through the alleged statements (as the trial court correctly held), someone so situated could not have had his free will overborne by being misled about his rights under this hardly obscure one-sentence statute either.

That several rounds of briefing in this litigation have not turned up a single New Jersey case where a high-ranking official successfully proved wrongful inducement on this kind of theory underscores the legal impossibility of Plaintiff's claim. Like McBride, even the out-of-state cases Plaintiff has relied upon involve line-level employees who alleged that their employers made factual misstatements whose veracity could not be easily verified. E.g., Scharf v. Dep't of the Air Force, 710 F.2d 1572, 1573-74 (Fed. Cir. 1983); see infra at 13-16. And even in those cases, plaintiffs rarely overcome the "presumption that when employees resign, they do so freely." Judge, 905 F.3d at 125; see also Boody v. Twp. of Cherry Hill, 997 F. Supp. 562, 571 (D.N.J. 1997) (rejecting

police officer's improper inducement claims against prosecutors). And while a handful of claims have gone forward in those other jurisdictions where line-level employees were plausibly led to misunderstand their rights by their employer's factual misstatements, no court in this State has ever approved a claim like Plaintiff's, brought by a County Prosecutor (and former judge) claiming to have been misled by an Attorney General about the meaning of a straightforward one-sentence removal statute. That makes particular sense given that the two do not even share a traditional employer-employee relationship: while the Attorney General is the State's chief law enforcement officer, he was not Plaintiff's employer, and thus could not terminate his employment, as any reasonable prosecutor would have known. See N.J.S.A. 52:17B-110.

In short, this Court can dispose of Count Three by applying longstanding New Jersey law, which requires wrongful-inducement claims like Plaintiff's to establish that the resignation was involuntary. See McBride, 146 N.J. Super. at 503, 506 (asking whether employee was "constrain[ed] to do what his free will would refuse" taking into account the "surrounding circumstances"). And under McBride, Plaintiff's claim fails as a matter of law, because he cannot plausibly allege that the Attorney General's statements stripped him of his "free will."

POINT II

MISREPRESENTATION ANALYSIS FROM OTHER JURISDICTIONS IS IN ACCORD. (Ma7-Ma9)

Even assuming for argument's sake that a hypothetical plaintiff could validly state a "misrepresentation" wrongful-inducement claim where his free will was not overborne (a proposition New Jersey courts have never adopted, see supra Point I), Plaintiff's specific misrepresentation theory would still fail as a matter of law. Under the out-of-state cases that Plaintiff invokes, a resignation is involuntary "if induced by an employee's reasonable reliance on an employer's misrepresentation of a material fact concerning the resignation." Stone v. Univ. of Maryland Med. Sys. Corp., 855 F.2d 167, 174 (4th Cir. 1988) (citations omitted). Even if this Court were to import this standard into New Jersey law, Count Three would still fail because Plaintiff cannot claim as a matter of law that he reasonably relied on the Attorney General's misrepresentations alleged in the Complaint.

To be sure, there are sound reasons this Court should not here adopt the distinct misrepresentation standard for which Plaintiff advocates. For one, it is unnecessary, given existing New Jersey law. The touchstone of McBride's test is the voluntariness of an employee's resignation, which does not turn on the particular means used to induce the resignation but rather the relationship

between the parties and the employee's circumstances. See 146 N.J. Super. at 503, 506. McBride's flexible test thus already takes into account the factors courts consider in assessing the reasonableness of an employee's reliance on alleged misrepresentations. As the U.S. Court of Appeals for the Fourth Circuit itself explained in Stone, "misrepresentation" and "coercion" should not be understood as divergent legal tests, but rather as two types of "situations in which the employer's conduct has prevented the employee from making a free and informed choice." 855 F.2d at 174. For another, any benefits a differential standard offers are not implicated here. While the standard is at least arguably better-suited to allegations by line-level employees against their employers, it is far afield from a case in which one constitutional officer claims he was misled into resigning by another constitutional officer—all the more so because, as noted, no traditional employer-employee relationship even exists between an Attorney General and a County Prosecutor, and the former cannot simply terminate the latter, as any reasonable County Prosecutor knows.

In any event, even if this Court were to adopt (or assume) the existence of the kind of distinct misrepresentation test Plaintiff urges, Plaintiff's own misrepresentation theory would still fail as a matter of law in this case. As the Fourth Circuit has explained, whether an employee has reasonably relied on "an employer's misrepresentation of a material fact concerning the resignation"

requires an objective analysis. Stone, 855 F.2d at 174. Thus, "[t]he reliance must be reasonable under the circumstances," and that inquiry looks objectively to the plaintiff's experience, sophistication, and access to information relevant to the resignation decision. See ibid.; Judge, 905 F.3d at 126 (asking whether a "reasonable school principal in [plaintiff's] position would have understood the nature of her choice between resignation and charges followed by a pre-termination hearing"); Scharf, 710 F.2d at 1575 (applying "an objective test" and asking whether "a reasonable person" would have been induced to resign under the circumstances).

Stone illustrates well how the element of reasonableness in the reliance will often be dispositive. There, the plaintiff was "a sophisticated and well-educated physician with over thirty years of service." Id. at 176. He alleged that "his superiors told him that they would discharge him from the medical staff [that] very afternoon … if he did not resign immediately," even though he was in fact entitled to notice and a hearing under his employing hospital's bylaws. Id. at 175. The court rejected Stone's misrepresentation claim, explaining that "a critical element" of that "theory is that he reasonably relied to his detriment on the asserted misrepresentation." Id. at 176. And the court had no trouble concluding that "he could not as a matter of law be found to have relied reasonably on any misrepresentation made by the defendants that they had the

power to expel him summarily," because it was "simply incredible that a person situated as was Stone could reasonably have accepted the asserted misrepresentation and relied on that basis." Ibid.

Like Stone, other courts have consistently found no reasonable reliance in actions by sophisticated plaintiffs where the alleged misstatements related to basic rights or procedures, such as the right to a pre-termination hearing. See, e.g., Judge, 905 F.3d at 126 ("any reasonable school principal in [plaintiff's] position would have understood the nature of her choice between resignation and charges followed by a pre-termination hearing" where her employment contract advised her of her hearing right."); Keyes v. D.C., 372 F.3d 434, 440-41 (D.C. Cir. 2004) (rejecting misrepresentation claim where "a government employee for twenty-seven years [who] had served in senior positions" was "in an unusually good position to know that the information [regarding her resignation] could not have been correct"); Zepp v. Rehrmann, 79 F.3d 381, 386-87 (4th Cir. 1996) (plaintiff "could not have reasonably relied on the defendants' purported misrepresentations" regarding his right to counsel because "he was a high-ranking deputy sheriff with over 30 years' experience"); McMillan v. Cumberland Cnty. Bd. of Educ., 734 F. App'x 836, 843-44 (4th Cir. 2018) (Ma114-23) (holding it was unreasonable for middle-school teacher to blindly accept superintendent's statements that he had made a "final" decision to

terminate her when the employee handbook "incorporated by reference" the statute establishing her right to a hearing); Forrester v. Solebury Twp., No. 20-4319, 2021 WL 662290, at *11 (E.D. Pa. Feb. 19, 2021) (Ma139-50); Sherman v. Univ. of N. Carolina at Wilmington, No. 07-cv-167, 2008 WL 11432185, at *8 (E.D.N.C. Dec. 18, 2008) (Ma125-33) (plaintiff could not have reasonably relied on alleged misstatements where he "had twenty-five years of experience in higher education," "was familiar with the rights of tenure," and "had easy access to the University Code sections detailing the procedures the University must follow before discharging a tenured professor").[4]

So too here. Indeed, if the plaintiffs in McMillan, Keyes, Zepp, and Judge could not establish reasonable reliance as a matter of law, then Plaintiff—"an accomplished lawyer and law enforcement professional, who was a Judge of the Superior Court before becoming prosecutor," (Ma108)—does not come close. As the trial court correctly recognized in dismissing Plaintiff's coercion/duress theory, Plaintiff was uniquely positioned to understand the alternatives to removal: he "knew of his right to a hearing and, as an attorney, judge, and chief law enforcement officer of the county, would understand what due process in such a hearing would require." (Ma108-09). That is especially so where all that

[4] A copy of McMillan, Forrester and Sherman are appended to this submission, and no contrary unpublished opinions are known to counsel. See R. 1:36-3.

Plaintiff would have had to reasonably know was the plain text of N.J.S.A. 52:17B-110, which provides that "a county prosecutor may be removed from office by the Governor for cause after a public hearing and upon due notice and an opportunity to be heard in his defense." See Judge, 905 F.3d at 126 (finding no reasonable reliance where "any reasonable school principal in [plaintiff's] position would have understood the nature of her choice between resignation and charges followed by a pre-termination hearing" given that her "own employment contract" confirmed her right to "notice and a hearing"). Even accepting Plaintiff's version of events as true, he could not have reasonably relied on "the Attorney General's alleged bluster." (Ma108).

The cases that the trial court cited for this general standard, meanwhile, are easily distinguished, because each involved lower-level employees who relied on factual misstatements that were reasonable to accept at face value. In Covington v. Dep't of Health & Hum. Servs., 750 F.2d 937, 939, 941 (Fed. Cir. 1984), a federal agency informed the plaintiff "that the agency was going to be abolished," that "his position would be abolished," and that he "had no right of assignment to another position." That notice was plainly incorrect, as "several functions of [the agency] were transferred to another agency," so the court held that the plaintiff retired involuntarily based on the agency's admitted "error." Id. at 942; see also Comm'r of Metro. Dist. Comm'n v. Civ. Serv. Comm'n, 25

Mass. App. Ct. 573, 575 (1988) (employee reasonably relied on misleading statement that his position was "being eliminated"); Scharf, 710 F.2d at 1573-74 (Air Force Commissary Officer reasonably relied on retirement advice from inexperienced agency counselor that led him to overlook retirement options). Here, by contrast, the trial court recognized that Plaintiff "knew of his right to a hearing and, as an attorney, judge, and chief law enforcement officer of the county, would understand what due process in such a hearing would require." (Ma109). That equally forecloses any claim of reasonable reliance by Plaintiff.

While the trial court suggested that Plaintiff may have lacked "avenues to verify, challenge, or dispute" the Attorney General's alleged misstatements, (Ma9), that overlooks crucial aspects of both Plaintiff's complaint and the law. First, as noted, the trial court had already correctly recognized that the pleadings are clear that Plaintiff already "knew of his right to a hearing and, as an attorney, judge, and chief law enforcement officer of the county, would understand what due process in such a hearing would require," (Ma80) so there was no need "to verify, challenge, or dispute" the statements. Second, Plaintiff did have such an opportunity—multiple hours, as he concedes, (Ma80), to re-read N.J.S.A. 52:17B-110 (a one-sentence statute), to consult his professional network, and to consider the charges against him. Cf. Stone, 855 F.2d at 171 (rejecting misrepresentation and coercion claims where professor had 30 minutes to decide

to resign); Abel v. Auglaize Cnty. Highway Dep't, 276 F. Supp. 2d 724, 730 (N.D. Ohio 2003) (rejecting duress claim where plaintiff was given five minutes to decide to resign). And third, Plaintiff has never explained how he could have been fooled by the alleged misstatements, focusing instead on his surprise when he found out that the findings of misconduct were not being kept secret—which notably is not a basis for the misrepresentation claim pleaded in his Complaint.[5] See (Ma80, Ex. H ¶¶ 53, 55; Ex. A to Ex. H).

It also bears noting that this would be an odd case indeed to recognize a distinct misrepresentation claim under New Jersey law, as Plaintiff's allegations do not include concrete statements of existing facts. He instead alleges that the Attorney General made vague predictions about the future, which are generally not actionable. See Zepp v. Rehrmann, 79 F.3d 381, 386-87 (4th Cir. 1996); Sherman v. Univ. of N. Carolina at Wilmington, No. 07-cv-167, 2008 WL 11432185, at *4 n.1 (E.D.N.C. Dec. 18, 2008) (statement that plaintiff had "no future" with employer was not material misrepresentation of fact); Abel, 276 F. Supp. 2d at 743 (statement that plaintiff would be prosecuted if he did not resign was a "representation concerning a future event" and could not support misrepresentation claim); cf. Suarez v. E. Int'l Coll., 428 N.J. Super. 10, 29

[5] Nor could it be. See infra at 21-23.

(App. Div. 2012) (confirming, in fraud context, that "[a]s to the claims of affirmative misrepresentation, plaintiff must show the misrepresentation of a fact that exists at or before the time the representation is made."). That further distinguishes this case from those where lower-level employees reasonably relied on factual misstatements—e.g., about a role being eliminated, or about how retirement benefits worked—that were reasonable to accept at face value.

Plaintiff, for his part, has sought to minimize the significance of his professional background by weighing it against the Attorney General's "superior position" and "oversight of County Prosecutors and [] substantial power and influence[.]" (Opp. to Mot. for Leave to Appeal at 3). But that misses the point; any plaintiff's employer is in a "superior position" to the plaintiff, but courts still must assess whether, considering the plaintiff's background and experience, a reasonable person in their position would have relied on the alleged misrepresentation. See Stone, 855 F.2d at 174; Judge, 905 F.3d at 126; Abel, 276 F. Supp. 2d at 730; see also McBride, 146 N.J. Super. at 503, 506. And here, any reasonable County Prosecutor—let alone one with decades of experience who had previously served as a Superior Court judge—would have known that he was not an employee of the Attorney General and that the Attorney General's "substantial power" did not include the power to unilaterally

remove a County Prosecutor or conduct sham removal proceedings. See N.J.S.A. 52:17B-110.

Similarly, Plaintiff's subjective belief is irrelevant in the analysis, as Plaintiff correctly conceded below. See (Ma80) (Plaintiff agreeing "the standard to be applied is not a subjective one but that of a reasonable person."). Thus, if Plaintiff was in fact unaware of the single-sentence text of N.J.S.A. 52:17B-110, then that lack of awareness was unreasonable. Cf. Drs. Bethea, Moustoukas & Weaver LLC v. St. Paul Guardian Ins. Co., 376 F.3d 399, 405 (5th Cir. 2004) ("Courts have found unreasonable reliance as a matter of law when a plaintiff relies on oral representations despite the law's insistence on certain formalities"). And if "Plaintiff's professional experience and acumen … alerted him to the due process issues inherent in the flawed hearing allegedly described by the Attorney General," (Ma9), then he did not rely on the Attorney General's alleged statements at all. Either way, he cannot state a valid a claim for wrongful inducement under a misrepresentation theory, just as the trial court correctly held that he could not under his coercion/duress theory.

Finally, Plaintiff's newfound theory that the Attorney General "promised that if [Plaintiff] resigned that day, he would not release anything about the investigation to the public" cannot support Plaintiff's misrepresentation theory. (Opp. to Mot. for Leave to Appeal at 1). Initially, the Court should disregard

this allegation, as the Complaint makes no allegation that the Attorney General agreed to suppress OPIA's sustained findings of misconduct, much less that Plaintiff resigned in reliance on such an agreement. See Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202 (App. Div. 2003) (to survive a motion to dismiss, "the legal requisites for [a] claim must be apparent from the complaint itself"); Rieder v. State Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (same). Further, any reasonable County Prosecutor would know that such an agreement is prohibited by state law and thus would not expect it to be enforced. As County Prosecutor, Plaintiff was charged with implementing the Attorney General's Internal Affairs Policy & Procedures (IAPP), see N.J.S.A. 40A:14-181 ("Every law enforcement agency shall adopt and implement guidelines . . . consistent with [the IAPP]"), which prohibits prosecutors and agencies from agreeing to "any non-disclosure agreement which seeks to conceal or prevent public review of the circumstances under which the officer separated … from the county [] agency." IAPP 9.11.3. Because no reasonable prosecutor would have resigned based on an unlawful agreement, even if Plaintiff had included these unpled allegations in his Complaint (which he did not), they could not support a misrepresentation-based claim. And for similar reasons, even if they somehow could support such a claim, the "unclean hands" doctrine and public policy would still foreclose reinstating him to the

Office of County Prosecutor on that basis. See Borough of Princeton v. Bd. of Chosen Freeholders of Cnty. of Mercer, 169 N.J. 135, 158 (2001) (confirming "a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit").

CONCLUSION

The Court should reverse the partial reinstatement of Count Three.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Ashleigh B. Shelton
Ashleigh B. Shelton (294162019)
Deputy Attorney General

Dated: May 27, 2025

Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-002403-24

CIVIL ACTION
ON APPEAL FROM

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY

DOCKET NO.: MER-L-1029-24

CIVIL ACTION

SAT BELOW

The Honorable Robert Lougy, A.J.S.C.

JAMES L. PFEIFFER,

Plaintiff/Respondent,

-vs-

MATTHEW J. PLATKIN, Attorney General of New Jersey, and PHILLIP D. MURPHY, Governor of the State of New Jersey

Defendants/Appellants.

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE FOR INTERLOCUTORY APPEAL

Russo Law Offices, LLC
Brad M. Russo, Esq.,
Attorney ID No. 034202007
633 Belvidere Road
Phillipsburg, NJ 08865

(908)454-0806
BradRusso@RussoLawLLC.com

Dated: July 21, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

Statutes and Rules:

PRELIMINARY STATEMENT

The narrow issue in this appeal is whether Plaintiff, a County Prosecutor, sets forth a claim for relief that his resignation was 'involuntary' because it was procured through the material misrepresentations of his superior - the Attorney General. At an in-person meeting established by the Attorney General, he advised Prosecutor Pfeiffer that an internal affairs investigation found sustained findings of misconduct against him. The AG demanded Pfeiffer's resignation by close of business that same day (a few hours) or face "removal proceedings". Although this would be a difficult decision for anyone, it only became 'involuntary' because of what the Attorney General said next. AG Platkin then told Pfeiffer that he would control the removal process - Pfeiffer could request a hearing, but that he (the AG) would personally select the hearing officer, and he (the AG) would make the ultimate decision and that a hearing would not change his mind because his "mind was made up based on the information he already had." AG Platkin then repeatedly told Pfeiffer that if he didn't immediately resign "things will get worse for you".

In personally stating that he would ensure any removal proceeding would be predetermined, AG Platkin vitiated Pfeiffer's statutory due process rights to a hearing for cause and left him with no alternative but to resign. Defendants support their appeal by repeatedly stating that Pfeiffer is a 'sophisticated person' who, as a matter of law, could not have been misled as to his rights or the process for removal.

Defendants also suggest that the removal statute is "one line" and should have been known to Pfeiffer. However, omitted from these arguments is the fact that even if Pfeiffer was 'sophisticated' enough to have previous knowledge of the removal statute – the statutory words are meaningless if the Attorney General was personally determined to create an unfair and predetermined hearing[1].

The Attorney General is the head law enforcement officer in this State and the attorney for the Governor. He has direct unfettered access to the Governor, providing him with legal advice and his factual narrative on issues such as these. The AG has the position, power, access and ability to carry out these assertions. At a minimum, the Attorney General would advise the Governor regarding his choice of hearing officer, the applicable law, as well as whether the legal standard for removal was met at the conclusion of the hearing. Under these circumstances, no reasonable person would disregard these very specific and direct threats that the Attorney General would manipulate the process. The very removal process that is statutorily guaranteed to Plaintiff and which represented his only alternative to resigning that day.

The trial Court dismissed Plaintiff's allegation that his resignation was involuntary as a result of "coercion or duress", largely due to his sophistication as an

[1] Plaintiff also had no ability to conduct legal research because the Attorney General/staff ordered Plaintiff's phone and electronic devices to be disabled. *See* Plaintiff's Complaint (Ma10) and Certification (Ma82).

attorney and prosecutor. The lower Court reached a different result, however, as to Plaintiff's resignation being involuntary as the result of misrepresentations by the Attorney General. Defendants now appeal the trial Court's determination that Plaintiff sufficiently pled that his resignation was involuntary under a 'misrepresentation' theory. Defendants go to great lengths to mix the standards between a 'coercion/duress' theory versus a 'misrepresentation' theory. This is because under a 'misrepresentation' theory, the standard of proof is much less, provided the misrepresentation is directed at Plaintiffs alternatives to resigning. This is precisely what is at issue here - the AG intended to personally manipulate any removal proceeding to a predetermined outcome against Plaintiff. Given the Attorney General's superior position to Plaintiff - as the head law enforcement official in this State - no county prosecutor would simply disregard these threats.

STATEMENT OF FACTS

I. Background Facts.

In 2020, Mr. Pfeifer was appointed by Governor Murphy to be the Prosecutor for Warren County, confirmed by the Senate on June 12, 2020, and sworn into office on July 9, 2020. (Ma10, ¶4). Although appointed to a 5-year term (July 9, 2020 – July 9, 2025), Mr. Pfeiffer's term of office will continue until a successor has been appointed and confirmed by the Senate. *See* N.J. Const. Art. VII, § 2, ¶ 1 and Ma10 ¶4. Under New Jersey law, the Governor is the sole authority tasked

with 'removal' of a County Prosecutor, which must be "for cause", "after a public hearing", upon "due notice [to the Prosecutor] and an opportunity to be heard in his defense." N.J.S.A. 52:17B-110.

II. April 5, 2024, Meeting between Prosecutor Pfeiffer and Attorney General Platkin.

On April 5, 2024 Pros. Pfeiffer drove to Trenton to meet with the Attorney General at his office at 11:30 AM. The day before he was told the purpose of the meeting was to discuss "issues related to Warren County." (Ma10 ¶49). At the outset of the meeting, the Attorney General demanded Pros. Pfeiffer's resignation based on a report that listed four sustained findings against him. (Ma10 ¶50). Pros. Pfeiffer was unaware that any such report had been issued. The Attorney General further advised Pros. Pfeiffer that he had fully superseded the Warren County Prosecutor's and "relieved him of his duties." (Ma10 ¶50).

The Attorney General refused to discuss the basis for his demand for the resignation and advised Pros. Pfeiffer repeatedly "this was not a discussion; I have made my decision - you are done"; and "if you do not resign things will get worse for you." (Ma10 ¶52). The Attorney General then advised that the decision regarding Pros. Pfeiffer's future was the Attorney General's alone and that he would control any removal proceeding to a predetermined outcome against Pfeiffer. (Ma10 ¶53). In that regard, the Attorney General advised Pros. Pfeiffer

that he could have a hearing, but that would not matter as he (the Attorney General) would hire the hearing officer, who would make findings of fact, but ultimately the final decision was his as the Attorney General to make and his decision "had already been made on the information he had." Id. Pros. Pfeiffer was repeatedly threatened by the Attorney General that if he did not resign by days end, "things will get worse for you". (Ma10 ¶54).

Pros. Pfeiffer requested a copy of the report which the Attorney General had referenced. (Ma10 ¶55). The Attorney General did not have a copy but promised to provide the report if Pros. Pfeiffer waived personal service. Id. Personal service of the report was waived but a complete copy of the report still has not been provided to date. (Ma10 ¶56). The meeting ended at approximately 11:45 AM and Pros Pfeiffer was advised he had "until the end of the day" to resign, and he was not allowed to return to the Warren County Prosecutor's Office. Comp. (Ma10 ¶57). The procedure for removal described by the Attorney General and the Attorney General's role and involvement in the process of removal was in fact false and inaccurate. (Ma10 ¶58); N.J.S.A. 52:17B-110.

III. The Text Message Resignation.

Having been told by the Attorney General that he would control any removal proceeding to a predetermined outcome and that if he didn't resign "things would get worse", Pfeiffer understood that he either resigns immediately or face a bogus

removal proceeding stacked against him. Believing he had no other option, at approximately 5:08pm Pros. Pfeiffer spoke to Attorney General Platkin and verbally agreed to resign. (Ma10 ¶59). Thereafter, Pros. Pfeiffer was contacted by Lyndsay Ruotolo (First Assistant Attorney General) at 5:46 PM as he was driving home who demanded that he pull his vehicle over to the side of the road and immediately 'text' his resignation to her phone. Comp. (Ma10 ¶59).

IV. Mr. Pfeiffer's Withdraw of his Informal 'Resignation'

Three (3) business days later, on April 10, 2024, Counsel for Mr. Pfeiffer corresponded with the Attorney General to advise that "Prosecutor Pfeiffer contests, the validity, and otherwise withdrawals, his informal notice of retirement and invalid resignation as Prosecutor of Warren County which was informally texted to the First Assistant Deputy Attorney General." (Ma10 ¶61). The letter also stated that "Prosecutor Pfeiffer intends to complete his appointed term to the constitutional office of Warren County Prosecutor." (Ma10 ¶61). On April 11, 2024, Plaintiff's counsel received Ms. Ruotolo's email response which concluded that the "April 10, 2024, letter attempting to rescind Mr. Pfeiffer's resignation is without effect." (Ma10 ¶61).

On April 17, 2024, Counsel for Mr. Pfeiffer corresponded with the Governor to advise him of the illegal actions of the Attorney General and to confirm that Pros. Pfeiffer had withdrawn his resignation. (Ma10 ¶63). To date, the Governor

or his Office has not responded to the April 17, 2024, correspondence. (Ma10 ¶64). To date, neither the Governor nor his Office has communicated with Pros. Pfeiffer in any manner regarding his resignation. (Ma10 ¶64).

Procedural History

On May 23, 2024, Plaintiff filed a four-count Complaint against the Attorney General and the Governor. (Ma10). Count I avers that Plaintiff's resignation was void because the Attorney General had no Constitutional or statutory authority to seek, request or accept the resignation of a county prosecutor and for lack of valid acceptance of the resignation by the Governor. (Ma30). Count II avers that Plaintiff was "unlawfully removed from office upon" the swearing-in of an Acting Prosecutor. (Ma32). Count III —avers that Plaintiff's resignation was involuntarily induced "by coercion, fraud and other illegal acts" and "misrepresentation". (Ma34). Count IV avers that there was no legal authority to supersede the WCPO. (Ma39). This Count was voluntarily withdrawn by the Plaintiff.

Count III is the sole Count at issue in this appeal. Consistent with the caselaw as to 'involuntary' resignations, Pfeiffer alleged two distinct theories as to why his resignation was involuntary and invalid. First, Pfeiffer alleged in Count III that his resignation was involuntary because it was procured through duress and coercion. For example, Pfeiffer alleges that he was repeatedly threatened by the Attorney General that if he did not resign by days end, "things will get worse for you".

(Ma10 ¶54). Separate and apart from the duress/coercion theory, Pfeiffer also alleges that his resignation was 'involuntary' because it was obtained through the Attorney General's direct misrepresentations of the removal process and his ability to control the outcome of said proceedings. As to the resignation being 'involuntary' due to direct misrepresentations, Pfeiffer alleges that the Attorney General:

i. "Misrepresent[ed] the Attorney General's power to remove and terminate the Prosecutor";

ii. "Misrepresent[ed] the hearing process [as] resulting in the Attorney General's authority to remove and terminate the Prosecutor";

iii. "Misrepresent[ed] the actual removal process and the Governor's role in removal process";

iv. "Misrepresent[ed] the hearing process to reinforce the impression and conclusion that the hearing procedure would be a sham because the Attorney General would be making the ultimate decision and therefore Pros Pfeiffer had no option but to resign as the hearing would result in removal/termination by the Attorney General";

v. "By making the aforementioned false statements and/or reinforcing the false impressions with the intent and purpose that the Prosecutor rely on the false statements and impressions to resign without a hearing."

(Ma10 ¶107).

On October 28, 2024, the trial court denied the Defendants' motion to dismiss Count I. (Ma93). The Defendant's request was denied because the Attorney General did not have legal authority to seek and accept the resignation of a County Prosecutor and there was no proof that the Governor accepted the resignation. Id. However, the court granted the motion to dismiss as to Counts II and III. Id.

On November 18, 2024, Plaintiff moved for reconsideration of the Court's order dismissing Count III, arguing that the trial court had addressed only his "duress/coercion theory" of Count III, but not the "misrepresentation theory" of Count III. Plaintiff also argued that the court had erred in dismissing the "duress/coercion theory" based on the criminal acts of the Attorney General. Defendants opposed the motion, arguing, inter alia, that the "theories" were intertwined (consistent with Plaintiff pleading them under a single count), that the misrepresentation theory is not accepted law in New Jersey, that the standard for either is an objective one for a person in Plaintiff's shoes, and that given Plaintiff's status as a former judge and County Prosecutor, it was impossible to conclude, as a matter of law, that he was reasonably fooled into resigning by the deceptive misrepresentations of another constitutional officer.

On February 10, 2025, the trial court partially granted Plaintiff's motion for reconsideration, denying the motion based on coercion and duress, but reinstating

Count III as to the "misrepresentation theory" of involuntariness. Ma1. In so ruling, the trial Court acknowledged:

> Plaintiff is correct that the Court's October order failed to distinguish analytically between and to appreciate the two prongs of Count 3, that is, his "coercion and duress" theory and his "misrepresentation" theory. While the complaint mingles the two theories in a way that gives the Court some plausible basis for missing the distinction, both prongs are there, and the Court dismissed the count without appreciating that distinction. This Court failed to consider the misrepresentation prong of Count III and deems it, here, to be in the interests of justice to reconsider that aspect of the October 2024 order. As discussed above, the Court does not restore the coercion and fraud components of Count III.

Ma9. Although The lower Court did not reinstate the Plaintiff's 'duress/coercion' theory, it did reconsider the prior dismissal of the 'misrepresentation' theory within Count III:

> The Court reaches a different conclusion on the misrepresentation theory in Plaintiff's third count of the complaint. Courts have concluded that a decision to resign may be involuntary when "made in reasonable reliance on misinformation received from his employer." Comm'r of Metro. Dist. Comm'n v. Civil Svc. Comm'n, 521 N.E.2d 401, 403 (Ma. App. Ct. 1988); see also Covington v. Dep't of Health & Human Svcs., 750 F.2d 937, 942 (Fed Cir. 1984) ("A resignation or retirement is involuntary if it is obtained by agency misinformation or deception."). As one district court explained:
>
> > The test for determining if an employee's election is due to improper information is "whether, under the circumstances of a particular case, a reasonable person would have been confused." Frantz v. Office

> of Pers. Mgmt., 778 F.2d 783, 786 (Fed.Cir.1985). In other words, if an employee materially relies on misinformation to his detriment, it is sufficient if the employee shows that a reasonable person would have been misled by the agency's statements. Covington, 750 F.2d at 942 (citing Scharf v. Dep't of the Air Force, 710 F.2d 1572, 1574–75 (Fed. Cir. 1983)). Applying an objective test, the court will neither inquire into the subjective perceptions of the employee nor the subjective intentions of the agency. Scharf, 710 F.2d at 1575.
> [Bloch v. Powell, 227 F. Supp. 2d 25, 36 (D.D.C. 2002).]

While Plaintiff argues that the Court did not consider and decide the allegations on misrepresentation, the Court addressed the reasonableness of Plaintiff's reliance upon the allegations. As Plaintiff recognizes, misrepresentations require an employee to have reasonably relied on an employer's misrepresentation of a material fact. **Here, the alleged misrepresentations go to the very fundament of a fair hearing. The allegations, taken as true, as the Court must, amount to an affirmative misrepresentation of the removal process by the Attorney General – that the ultimate decision was his, not the Governor's – as well as an assurance that the outcome was pre-determined. Additionally, while Plaintiff's professional experience and acumen may have alerted him to the due process issues inherent in the flawed hearing allegedly described by the Attorney General, his avenues to verify, challenge, or dispute those statements were unclear. Given the broad statutory authority granted the Attorney General through the Criminal Justice Act and his position as the State's chief law enforcement officer, the Court cannot conclude, as a matter of law, that the alleged comments would not have misled a reasonable person.**

Ma7-9 [emphasis added]. This interlocutory appeal followed as to the reinstatement of Count III limited to the "misrepresentation theory".

LEGAL ARGUMENT

POINT I

DEFENDANTS FAIL TO DISTINGUISH THE DIFFERENT STANDARDS AND PRECEDENT ATTENDANT TO PLAINTIFF'S CLAIM OF "DURESS/COERCION" VERSUS HIS "MISREPRESENTATION" CLAIM, AND PLACE ALMOST EXCLUSIVE RELIANCE UPON PRECEDENT INVOLVING "DURESS/COERCION" WHICH IS NOT AT ISSUE IN THIS APPEAL.

On a fundamental level, Defendants attempt to 'blend' the precedents interpreting "duress/coercion" resignation claims with those involving "misrepresentation" in their moving brief. For example, Defendants cite McBride v. Atlantic City, 146 N.J.Super. 498 (Law Div. 1974) 14 times throughout their brief and declare it to be the "binding precedent" under "New Jersey law" which is dispositive to this appeal. However, the McBride court only addressed the voluntariness of a resignation under a "duress/coercion" theory – not the "misrepresentation" theory which is solely under appeal in this matter.

In McBride, the Plaintiff was a police officer alleging that the "resignation submitted by him was invalid because it was the result of coercion." 146 N.J.Super. 498, 500 (Law Div. 1974). In particular, the plaintiff police officer was alleged to have stolen copper wire for the purpose of selling it a junkyard for extra money. Id. When caught and confronted, the plaintiff officer told investigative officials that he had the "owner's permission to take the wire." Id. The following day the plaintiff

officer was confronted by the Commissioner of Public Safety and offered the "choice of resigning for personal reasons or meeting criminal charges that would be filed against [him]." The Plaintiff ultimately decided to sign his resignation. Id. at 502. One month later, the Plaintiff retained counsel and disputed the validity of his resignation as the product of "coercion." Id. "The primary issue, therefore [was] whether plaintiff's resignation was in fact obtained by defendant as the result of illegal means, i.e., coercion or duress." Id. at 502-503. Clearly the McBride matter involved the validity of a resignation under a 'coercion/duress' theory – not based on a 'misrepresentation' theory.

The Plaintiff in the instant matter pursued both a 'coercion/duress' and a 'misrepresentation' theory. In its Order dated October 28, 2024, the trial Court dismissed both such theories in Count III of plaintiff's Complaint. Ma93. However, when Plaintiff sought reconsideration, the trial Court reinstated the 'misrepresentation' theory, but not the 'coercion/duress' theory of Count III. Ma1. In so holding, the trial Court acknowledged the distinction between the two theories and the different standards attendant to each. Ma1.

The United States Court of Appeals for the Third Circuit, following other Circuits and jurisdictions, has articulated two circumstances in which an employee's resignation will be considered involuntary, that is: "(1) when the employer forces the resignation or retirement by coercion or duress, or (2) when

the employer obtains the resignation or retirement by deceiving or misrepresenting a material fact to the employee." Leheny v. City of Pittsburgh, 183 F.3d 220, 227–28 (3d Cir. 1999); Judge v. Shikellamy Sch. Dist., 135 F. Supp. 3d 284, 293 (M.D. Pa. 2015), aff'd, 905 F.3d 122 (3d Cir. 2018); Hargray v. City of Hallandale, 57 F.3d 1560, 1568 (11th Cir. 1995); Scharf v. Dept. of the Air Force, 710 F.2d 1572, 1574–76 (1983); Covington v. Department of Health & Human Serv., 750 F.2d 937, 942–44 (Fed.Cir.1984). Different standards and factors apply to each such theory. In determining whether a resignation was involuntary due to **coercion or duress**, a court generally will consider the following factors: (1) whether the employee was presented with an alternative to resignation; (2) whether the employee understood the nature of the choice she was given; (3) whether the employee had a reasonable time to choose; (4) whether the employee was permitted to select the effective date of resignation; and (5) whether the employee had the advice of counsel. Hargray v. City of Hallandale, 57 F.3d 1560, 1568 (11th Cir.1995); O'Connell v. County of Northampton, 79 F.Supp.2d 529, 533 (E.D. Pa. 1999); Speziale v. Bethlehem Area Sch. Dist., 266 F. Supp. 2d 366, 372 (E.D. Pa. 2003); Judge v. Shikellamy Sch. Dist., 135 F. Supp. 3d 284, 293 (M.D. Pa. 2015), aff'd, 905 F.3d 122 (3d Cir. 2018).

Under a **misrepresentation** theory, a court may find a resignation to be involuntary if induced by an employee's reasonable reliance upon an employer's

misrepresentation of a material fact concerning the resignation. Leheny v. City of Pittsburgh, 183 F.3d 220, 228 (3d Cir. 1999) *citing* Hargray v. City of Hallandale, 57 F.3d 1560, 1568 (11th Cir.1995); *see also* Scharf v. Dep't of the Air Force, 710 F.2d 1572, 1574–75 (Fed. Cir. 1983) *and* Covington v. Dep't of Health & Hum. Servs., 750 F.2d 937, 942 (Fed. Cir. 1984). A misrepresentation may be material if it concerns an alternative to resignation, such as the possibility of criminal prosecution. Hargray, 57 F.3d at 1568. Further, an employee is not required to show that the employer intentionally deceived him in order for his resignation to be held involuntary. Id. Applying the proper 'misrepresentation' standard to the instant matter reveals that Plaintiff Pfeiffer's resignation was involuntary due to the material misrepresentations of the Attorney General which induced the resignation.

A completely different and less stringent standard applies to a misrepresentation theory than a claim based on duress/coercion. As the Court noted citing McBride v. Atlantic City, to be successful under the duress/coercion theory the plaintiff must meet a very high standard. The employer's conduct in requesting or obtaining the resignation must effectively deprive the employee of free choice in the matter as the pressure was "so oppressive under the given circumstance to constrain one to do what free will would refuse." McBride, 146 N.J.Super. at 503. However, a much lower standard applies to the misrepresentation theory.

For misrepresentation and misinformation, the individual need only show:

1) that the misrepresentation is material in that it concerns the consequences of the resignation or the alternative to resignation.
2) an objective standard normally applies, and a reasonable person would have been misled by the lack of, or misleading nature of, the information; and
3) that the employee materially relies on the misinformation to his detriment.

There is no requirement that the plaintiff be intentionally misled or deceived about his employment options. Convington, 750 F.2d 937, 942 (Fed Cir. 1984). However, an even lower standard applies where there is an intent to deceive by the defendant. If an intent to deceive is pled and found, the result is a subjective standard being applied where it is sufficient that the plaintiff was actually misled. Christie v. United States, 518 R.2d 584, 587 (1975).

POINT II

PLAINTIFFS COMPLAINT SETS FORTH A PLAUSIBLE ENTITLEMENT TO RELIEF UNDER THE 'MISREPRESENTATION' THEORY OF COUNT

The lower Court correctly determined that Plaintiff Pfeiffer pled sufficient facts to support that his resignation was involuntary due to the Attorney General's misrepresentation of a material fact. This is particularly true when viewed under the liberal motion to dismiss standard.

"Under the 'misrepresentation' theory, a resignation may be found involuntary if induced by an employee's reasonable reliance upon an employer's misrepresentation of a material fact concerning the resignation." Stone v Univ. of Maryland Med. Sys. Corp., 855 F.2d 167, 174 (4th Cir. 1988). "A misrepresentation is material if it concerns either the consequences of the resignation or the alternative to resignation." Id. (citations omitted). Unlike a retirement which is induced through duress, there is no requirement that an employee be intentionally deceived about his employment options, it being sufficient that "the employee shows that a reasonable person would have been misled by the agency's statements." Covington v. Dep't of Health & Hum. Servs., 750 F.2d 937, 942 (Fed. Cir. 1984). A material misrepresentation is also sufficient irrespective of whether it was an intentional lie or an innocent misrepresentation. *See* Spreen v Brey, 961 F.2d 109, 113 (7th Cir. 1992) ["The misleading information can be negligently or even innocently provided; if the employee materially relies on the misinformation to his detriment, his retirement is considered involuntary."].

A. The Direct Misrepresentations of the Attorney General.

The Attorney General did in fact make material misrepresentations to secure Plaintiff's resignation. The Attorney General directly pressured Pfeiffer to resign by repeatedly stating "this was not a discussion; I have made my decision - you are

done"; and "if you do not resign things will get worse for you." (Ma10 ¶52). Far beyond applying pressure, however, the Attorney General then directly misrepresented the procedure available to Pfeiffer if he did not resign as being something he would control to a predetermined outcome against Pfeiffer. In that regard, the Attorney General advised Pros. Pfeiffer that he could have a hearing, but that would not matter as he (the Attorney General) would hire the hearing officer, who would make findings of fact, but ultimately the final decision was his as the Attorney General to make and his decision "had already been made on the information he had." Id. Pfeiffer could either resign within the next couple of hours or face a removal proceeding that the AG would personally ensure would be meaningless.

B. The Misrepresentations Were Material.

Within minutes of meeting the Attorney General in Trenton on April 5, 2024, Pros. Pfeiffer was informed of investigative findings against him and advised that he had to resign that day or face removal proceedings. Stated differently, Pros. Pfeiffer had a few hours to either resign or contest the allegations against him which he just learned of at the meeting. In fact, Mr. Pfeiffer still has not received

the full investigation report against him to date[2]. AG Platkin, however, did not stop there.

The Attorney General then directly misrepresented the Plaintiff's only alternative to resigning – thereby eliminating any 'choice' and vitiating any due process rights afforded to the Plaintiff's constitutional position as a confirmed County Prosecutor. A misrepresentation is material if it concerns an alternative to resignation. Hargray v. City of Hallandale, 57 F.3d 1560, 1568 (11th Cir.1995). By directly representing that Pfeiffer could have a hearing – but it would be meaningless as he would personally pick the hearing officer and personally control the outcome – AG Platkin removed any viable alternative to resigning. In that regard, the misrepresentations of AG Platkin strike directly at the heart of Pfeiffer's statutory due process rights and left him with no alternative to fairly address the allegations against him. Simply put, it is difficult to conceive of misrepresentations more 'material' to the decision to resign – than the top law enforcement official in this State telling you to either resign that day or he will personally ensure you will not receive a fair hearing and will be removed.

C. Prosecutor Pfeiffer Directly relied upon the Misrepresentations in resigning.

[2] Where an employer has not provided proof of the alleged incident, together with the supporting factual details regarding the incident(s) for which the employer is seeking resignation, the resignation is void. *See* Shefulsky v. Clarion Hosp., No. 2:21-CV-749, 2022 WL 21827088, at *4 (W.D. Pa. Aug.8, 2022).

Prosecutor Pfeiffer vehemently denies any wrongdoing in the underlying investigation and would not have resigned if he believed he had any alternative to meaningfully confront the allegations. AG Platkin, however, left no room to doubt. It's not as if the Attorney General advised that his Office would simply 'contest' Pfeiffer's position at a removal hearing. AG Platkin made clear that he would personally ensure that Pfeiffer would not receive a fair removal hearing and, therefore, any alternative to resignation would ultimately be futile. It's also not as if the Attorney General made some vague allegation that the removal process would be 'unfair' – instead AG Platkin emphasized that his decision was already made. He then made direct and specific representations about how he would personally control any hearing on removal through handpicking a hearing officer and declaring the final decision to be 'his' alone.

Defendants also postulate that a "professional like Plaintiff cannot, as a matter of law, have reasonably relied on misstatements relating to basic rights such as the right to a hearing." Def. Br. at 2. While it is certainly true that a lawyer and county prosecutor has superior legal knowledge and understanding beyond a lay person. However, the Attorney General of the State of New Jersey is also "sophisticated" – the difference being that the AG is in a superior position, has direct oversight of county prosecutors and has substantial power and influence to make good on his threats to control any removal hearing to a predetermined

outcome with direct access to the Governor. To suggest that the top law enforcement official in this State can threaten to interfere and manipulate the statutory due process rights of a county prosecutor, and 'as a matter of law' the resignation will still 'always' be voluntary, simply strains credulity.

Defendants also admonish Plaintiff Pfeiffer because "someone so situated could not have had his free will overborne by being misled about his rights under this hardly obscure one-sentence statute…" Def. Br. at 10. In other words, irrespective of AG Platkin's misrepresentations about the removal process, the Plaintiff should have known the short statute (N.J.S.A. 52:17B-110) which affords him a hearing and removal for cause. This argument simply misses the point. This issue is not that the Plaintiff should have known of his right to a removal hearing for cause. Even if Plaintiff was fully familiar with the statutory process for a removal hearing, AG Platkin's statements about how he would manipulate the process so Plaintiff 'could not win' would still eliminate any alternative to resigning. When the Attorney General directly states[3] that he will personally manipulate the hearing process to

[3] Although ancillary to the dispositive facts and not addressed by the lower Court, AG Platkin also directly misrepresented that if Plaintiff resigned, the Internal Affairs report alleging misconduct would not be released. Moving Defendant argues that "any reasonable prosecutor would know that such an agreement is prohibited by state law and thus would not expect it to be enforced." Def. br. at 22. This is not accurate. The decision to release an internal affairs investigation report is discretionary with the Attorney General. *See* ¶3 of IAPP §9.6.2. Therefore, the Attorney General directly representing he would not release the IA report if Plaintiff resigned, only to publicly release it thereafter, is another material misrepresentation in this matter which would render Plaintiff's resignation involuntary.

ensure an unfavorable outcome for Plaintiff – the statutory language affording the hearing simply retains no meaning.

Therefore, the facts underlying this narrow issue reveal direct misrepresentations which could only be intended to achieve what actually happened – that Pros. Pfeiffer would recognize he had no viable alternative to resigning. There is no requirement that the plaintiff be intentionally misled or deceived about his employment options. Convington, 750 F.2d 937,942 (Fed Cir. 1984). However, an even lower standard applies where there is an intent to deceive by the defendant. If an intent to deceive is pled and found, the result is a subjective standard being applied where it is sufficient that the plaintiff was actually misled. Christie v. United States, 518 R.2d 584, 587 (1975). Here, there is no other way to characterize AG Platkin's misrepresentations other than as an intent to deceive and defraud the Plaintiff. However, whether an objective or subjective standard is applied, no reasonable person or county prosecutor would dismiss these types of allegations made by the Attorney General as "an alleged bluster." The AG's statements represent fraud and an unlawful threat to Plaintiff's due process rights – leaving Plaintiff with a few hours to either resign or face a hearing that the AG would ensure would be unfair and predetermined. In that regard, these facts represent particularly egregious misrepresentations – made by the head law enforcement official – against a fellow constitutional officer for the purpose of forcing an immediate resignation.

Voluntariness is what distinguishes constructive discharge from a valid resignation. In order to be voluntary, a decision must be informed, free from fraud or other misconduct, and made after due consideration. Baker v. Consol. Rail Corp., 835 F. Supp. 846, 852 (W.D. Pa. 1993); *aff'd*, 30 F.3d 1484 (3d Cir. 1994). Here, Plaintiff is an appointed and confirmed sitting county Prosecutor who can only be removed for cause after a hearing. N.J.S.A. 52:17B-110. AG Platkin ambushed Plaintiff with a supersession of his office at the same time as first advising Plaintiff of alleged misconduct findings against him. Without even producing the full report against him, AG Platkin told Pfeiffer he must immediately resign or face a removal proceeding that the AG would personally control and make sure would lead to a predetermined outcome against Pfeiffer. These representations by Attorney General Platkin were designed to remove any alternatives other than an immediate resignation by Plaintiff. As the trial Court correctly noted, these misrepresentations "go to the very fundament of a fair hearing." Ma9. To allow the Attorney General to force a resignation in this manner is not only unfair to Plaintiff but would have far reaching consequences for all county prosecutors in this State. Beyond that, the Attorney General – as this State's highest law enforcement official – should be held to a high standard of integrity and candor when seeking the resignation of a fellow constitutional officer such as the Plaintiff. Therefore, beyond rendering Plaintiff's resignation 'involuntary', AG Platkin's misrepresentations in this matter should not

be countenanced by our Judiciary and are directly antithetical with the importance and sanctity of the Office he serves.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Defendants' appeal be denied in its entirety.

RUSSO LAW OFFICES, LLC.

By: 

Dated: July 21, 2025

BRAD M. RUSSO, ESQ.

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO BOX 116
TRENTON, NJ 08625-0116

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

MATTHEW J. PLATKIN
Attorney General

MICHAEL C. WALTERS
Acting Director

August 14, 2025

Via eCourts
Marie C. Hanley, Clerk
Superior Court of New Jersey
Appellate Division
R. J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625-0006

Re: James L. Pfeiffer v. Matthew J. Platkin, Attorney General of New Jersey, and Phillip D. Murphy, Governor of the State of New Jersey
Docket No.: A-2403-24

On Appeal from an Interlocutory Order of the Superior Court of New Jersey, Law Division, Mercer County
Docket No.: MER-L-1029-24

Sat Below: Hon. Robert T. Lougy, A.J.S.C.

Letter Reply Brief on behalf of Defendants-Appellants

Dear Ms. Hanley:

Please accept this letter reply brief on behalf of Defendants-Appellants, Matthew J. Platkin, Attorney General of New Jersey, and Phillip D. Murphy, Governor of the State of New Jersey.

TABLE OF CONTENTS

TABLE OF ORDERS BEING APPEALED

PRELIMINARY STATEMENT

Plaintiff submitted his resignation after being given the choice to either resign or face removal proceedings in light of serious alleged misconduct and after the Governor had confirmed that he would seek the removal of Plaintiff as County Prosecutor. Plaintiff now seeks to rescind his resignation, claiming it was involuntary, but he fails to state a viable claim, whether pled as coercion or misrepresentation. He does not dispute that his claim fails under New Jersey's test for claims that a resignation was induced by coercion, which asks whether a reasonable person with the plaintiff's background would have been prevented from exercising free will under the circumstances. But the related test for misrepresentation claims leads to the same result, as no reasonable County Prosecutor and former Superior Court judge would have been induced to resign by the alleged misstatements about removal that are dispelled by a one-sentence statute. Plaintiff is especially hard-pressed to claim reasonable reliance on those statements given the absence of a traditional employment relationship between the Attorney General and a County Prosecutor—which is why any perceived power imbalance would not induce a reasonable County Prosecutor to believe he could be forcibly removed by the Attorney General. This Court should thus reverse the decision below which reinstated this misrepresentation theory, and direct that Count Three be dismissed in its entirety.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

To avoid unnecessary repetition, this brief incorporates the recitation of facts and procedural history in Defendants-Appellants' opening merits brief.

ARGUMENT

WHETHER PLED AS COERCION OR MISREPRESENTATION, COUNT THREE DOES NOT STATE A CLAIM FOR RELIEF.

Plaintiff accepts that McBride v. Atlantic City, 146 N.J. Super. 498 (Law Div. 1974), aff'd o.b., 72 N.J. 201 (1976), forecloses his coercion theory, but argues that a "completely different and less stringent standard" governs his misrepresentation theory. (Pb15).[2] But the two standards do not differ in any way that gives Plaintiff a viable misrepresentation claim. Rather, both standards lead to the same result where Plaintiff simply repackages his coercion claim that was properly dismissed under McBride as misrepresentation.

1. Initially, all agree that McBride imposes "a very high standard" to prove that a resignation was induced by coercion. (Pb15). A resignation is involuntary under McBride only if the employer's conduct was "so oppressive under given circumstances as to constrain one to do what his free will would refuse." Id. at

---

[1] The related statements of facts and procedural history are combined for the Court's convenience.

[2] "Pb__" refers to Plaintiff-Respondent's merits brief.

503. The inquiry is objective, focusing on how a reasonable person with the plaintiff's professional background would be affected by the alleged conduct. Id. at 505-06 (noting that "[a]s a police officer for almost four years," the plaintiff "knew his legal rights as to a hearing before discharge").

As the trial court concluded, Plaintiff cannot meet that high bar: as "a Judge of the Superior Court before becoming prosecutor" and experienced attorney, Plaintiff "knew of his right to a hearing and, as an attorney, judge, and chief law enforcement officer of the county, would understand what due process in such a hearing would require. (Indeed, nothing in the Constitution or Title 52 would assign the Attorney General the role of presiding over the hearing)." (Ma108-09). Thus, "nothing that the Attorney General allegedly said was so coercive as to deprive Plaintiff the benefit of his free will and considerable experience." (Ma109).

It makes little sense to say, however, that those same factual allegations lead to a contrary result if Plaintiff relabels the claim as misrepresentation. The touchstone of both coercion and misrepresentation is whether a resignation was voluntary, assessed under an objective standard. See Stone v. Univ. of Maryland Med. Sys. Corp., 855 F.2d 167, 174 (4th Cir. 1988) (describing both coercion and misrepresentation as "situations in which the employer's conduct has prevented the employee from making a free and informed choice"); Judge v.

Shikellamy Sch. Dist., 905 F.3d 122, 126 (3d Cir. 2018) (applying objective standard); accord McBride, 146 N.J. Super. at 503. Those two standards exist to reflect the two different factual ways an employee's ability to make "a free and informed choice" can be defeated—e.g., via false information about "the consequences of the resignation" (misrepresentation), Stone, 855 F.2d at 174, or through "psychological pressure" (coercion), McBride, 146 N.J. Super. at 503. But where the pleading defect is that a claim that sounds in coercion fails as a matter of law under a coercion analysis, no case holds that it is easier for the plaintiff to carry his burden by pleading the same alleged facts as misrepresentation. Contra (Pb15). Here, because the Attorney General's alleged statements did not "deprive Plaintiff the benefit of his free will and considerable experience" when pled as coercion, (Ma109), there is no basis to reach a different result when he pleads the same alleged acts as misrepresentation.

2. In any event, Plaintiff's claim fails under a misrepresentation analysis. All agree on the governing test: a resignation is involuntary "if induced by an employee's reasonable reliance upon an employer's misrepresentation of a material fact concerning the resignation." (Pb14-15) (quoting Hargray v. City of Hallandale, 57 F.3d 1560, 1570 (11th Cir. 1995)). As Appellants' merits brief explained, Plaintiff cannot establish that he reasonably relied on the Attorney General's alleged misstatements regarding the removal process where a one-

sentence statute confirms he may only be removed "by the Governor" and only "after a public hearing," N.J.S.A. 52:17B-110, and "as an attorney, judge, and chief law enforcement officer of the county, [he] would understand what due process in such a hearing would require." (Ma108-09). That result flows from caselaw—including cases Plaintiff cites—which consistently hold that a sophisticated plaintiff cannot have reasonably relied on misstatements relating to basic hearing rights that are dispelled by the plain text of a statute or contractual agreement. See, e.g., Judge, 905 F.3d at 126; Keyes v. D.C., 372 F.3d 434, 440-41 (D.C. Cir. 2004) (twenty-seven-year government employee who "had served in senior positions" was "in an unusually good position to know that the information [regarding her resignation] could not have been correct"); Stone, 855 F.2d at 176 (cited at Pb17).

That is all the more clear given that these parties did not have a traditional employment relationship. Plaintiff cites no case recognizing a misrepresentation claim in circumstances outside the traditional employment relationship. And it is obvious why the absence of such a relationship matters in the analysis: a reasonable person would be less likely to be induced or deceived into resigning by an actor who has no hiring or firing authority over them. See Stone, 855 F.2d at 174 ("[t]he reliance must be reasonable under the circumstances"). The Attorney General is not a county prosecutor's employer, as each occupies a

Senate-confirmed, constitutional office. N.J.S.A. 2A:158-1; N.J.S.A. 52:17A-2; see (Pb23) (Plaintiff acknowledging that they are "fellow constitutional officer[s]"). That distinction undercuts any claim of reasonable reliance, as a reasonable county prosecutor with Plaintiff's experience would know that he is not subject to the Attorney General's hiring and firing authority in the first place.

It is no answer to say that the Attorney General is "in a superior position" with "oversight of county prosecutors and [] substantial power and influence." (Pb20). While the Criminal Justice Act of 1970 states that the Attorney General "maintain[s] a general supervision over [] county prosecutors," N.J.S.A. 52:17B-103, it also confirms that a county prosecutor can only be removed "by the Governor" and only "for cause after a public hearing," N.J.S.A. 52:17B-110. So while the Attorney General retains a general supervision over the 21 County Prosecutor Offices, he does not have "substantial power" over the county prosecutors in a way that impacts their individual employment rights. Cf. Yurick v. State, 184 N.J. 70, 82-83 (2005) (explaining that the supersession of a county prosecutor "simply is not the equivalent of removal from office," as the individual "technically continue[s] to hold his office" but no longer controls its day-to-day operations). The Attorney General's position thus might count in the reasonable-reliance analysis if the plaintiff was a direct at-will employee on his staff whom he could fire, but that has no purchase here where Plaintiff was

himself a constitutional officer whose removal can only be initiated by the Governor and only for cause, see N.J.S.A. 52:17B-110.

Indeed, Plaintiff now apparently concedes that he is presumed to know "of his right to a removal hearing for cause," arguing instead that "AG Platkin's statements about how he would manipulate the process so Plaintiff 'could not win' would still eliminate any alternative to resigning." (Pb21). But that statement could not induce reasonable reliance for much the same reason: any county prosecutor with Plaintiff's experience would have understood the obvious "due process issues inherent in the flawed hearing allegedly described" (Ma9), and known that such an intention would yield to his due process rights. See Judge, 905 F.3d at 126 (finding that non-legally-trained plaintiff "would have understood the nature of her choice between resignation and charges followed by a pre-termination hearing" notwithstanding employer's inaccurate description of her hearing rights); Stone, 855 F.2d at 177 (similar).

Plaintiff's effort to avoid the objective standard similarly fails. He states that "[i]f an intent to deceive is pled and found, the result is a subjective standard being applied where it is sufficient that the plaintiff was actually misled," (Pb22), but the sole case he cites says the opposite. See Christie v. United States, 518 F.2d 584, 587 (Ct. Cl. 1975) ("Duress is not measured by the employee's

subjective evaluation of a situation. Rather, the test is an objective one.").[3] And it only makes sense that the standard is an objective one, since reliance must be "reasonable" and reasonableness is based on context, which here includes that Plaintiff was not a layperson but rather an "attorney, judge, and chief law enforcement officer of the county." (Ma109); see (Pb20) (Plaintiff agreeing that "a lawyer and County Prosecutor has superior legal knowledge and understanding beyond a lay person"). Even cases cited by Plaintiff confirm that the standard for reasonable reliance is an objective one. See Judge, 905 F.3d at 126 (stating that "[e]ven assuming [plaintiff] believed in good faith that her options were between resignation and immediate termination, her subjective state of mind is immaterial to the objective legal standard that applies"); Scharf, 710 F.2d at 1575 (applying "an objective test") (cited at Pb14-15).

Plaintiff's remaining arguments lack merit. He states that he was unable to himself conduct legal research in the hours between the Attorney General meeting and his resignation, see (Pb2 n.1), but that overlooks that he still had "several hours to contact an attorney" to seek legal advice. See Stone, 855 F.2d at 177 (dismissing misrepresentation and coercion claims of non-attorney who

[3] Christie discussed the plaintiff's actual knowledge of certain facts only to demonstrate that there was no reliance at all, let alone reasonable reliance—not because the court was applying a subjective analysis. 518 F.2d at 588.

was given time to seek counsel to consider his options). He also reiterates his "ancillary" allegation that the Attorney General "misrepresented that if Plaintiff resigned, the Internal Affairs report alleging misconduct would not be released." (Pb21 n.3). But as this allegation is found nowhere in the Complaint, it is not properly before the Court and should be disregarded. See Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202 (App. Div. 2003). In any event, the Internal Affairs Policy & Procedures (IAPP) section Plaintiff cites is inapposite; while Section 9.6.2 allows the Attorney General to unilaterally order the release of certain internal affairs reports, what is alleged here is an agreement to conceal the circumstances of an officer's separation from a county agency, which is prohibited by a separate provision, IAPP § 9.11.3. Just as no reasonable county prosecutor in Plaintiff's position would have been induced to resign by the alleged misstatements about the removal process, no reasonable county prosecutor would have resigned based on this alleged unlawful agreement.

CONCLUSION

The Court should reverse the partial reinstatement of Count Three.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Daniel S. Shehata
Daniel S. Shehata
Deputy Attorney General
ID #000362012
Daniel.Shehata@law.njoag.gov

Tim Sheehan
Assistant Attorney General
Of Counsel