PJSC ARMADA, Plaintiff-Appellant, v. ALEXY KUZOVKIN, ALLA ROITMAN, YEFIM ROITMAN, and JOHN DOES 1-5, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003343-23 On Appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. BER-L-197-19 Sat Below: Hon. Peter G. Geiger, J.S.C. Civil Action

BRIEF OF APPELLANT PJSC ARMADA

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PRELIMINARY STATEMENT

Despite commencing this action and diligently pursuing relief since 2019, Plaintiff PJSC Armada ("Plaintiff" or "Armada") comes now before the Appellate Division for the second time without ever having received meaningful discovery or adjudication on the merits, contrary to this Court's September 3, 2021 Order. Armada appeals five orders arising from its suit against Defendants Alla Roitman, Yefim Roitman (the "Roitmans") and Alexy Kuzovkin ("Kuzovkin") for embezzlement of funds by Kuzovkin from Armada, and the laundering of same through, *inter alia*, the Roitmans, New Jersey residents and the purchase of real estate. In 2021, this Court reversed and remanded this case for full discovery, including jurisdiction and *forum non conveniens*. Armada has never obtained discovery contrary to this Court's September 3, 2021 Order because through delay and obfuscation, Defendants managed to skirt their basic discovery obligations. This Court's September 3, 2021 decision is law of the case, and the trial court erred in construing every allegation against Armada (as non-movant) while accepting the same arguments this Court previously rejected.

On the merits, the Court should reverse and remand the trial court's orders: (1) dismissing the case with prejudice on personal jurisdiction, *forum non conveniens* grounds, and preclusion; and (2) denying Armada's motions to compel discovery, extend discovery, and obtain letters rogatory as "moot." New

Jersey has personal jurisdiction over Kuzovkin because Armada alleges that Kuzovkin absconded with Armada's corporate funds and—through a series of sham transactions—laundered the money through Bergen County residents (the Roitmans). As Armada's money laundering expert Mr. Cassella and case law confirms, New Jersey may exercise jurisdiction over a foreign individual who violates NJRICO and uses New Jersey as a conduit for unlawful activity. Defendants also did not meet their heavy burden to show that Bergen County is an inconvenient forum to litigate claims against Bergen County residents. The trial court's decision that Armada should sue Defendants in Russia (or some other unspecified forum) is unsupported by law and this Court's prior decision.

Similarly, neither issue preclusion nor claim preclusion applies to a Russian investigation into Kuzovkin as a "witness" where none of the prior investigations or matters involved the Roitmans at all. The trial court erroneously concluded that a discretionary decision by a Russian prosecutor in 2014 not to bring criminal charges against Kuzovkin in Russia bars Armada's claims against Defendants in New Jersey. The trial court also erred in finding that the economic loss doctrine bars Armada's claims because the economic loss doctrine is inapplicable where—by their own admission—the parties never entered into a contract. The trial court's decisions on these issues fly in the face of case law and this Court's prior opinion, holding that: (1) Armada's complaint

states a claim and a basis for personal jurisdiction; and (2) the parties should engage in fulsome discovery necessarily involving the merits and jurisdiction.

The trial court also erred in denying Armada's cross-motion to compel discovery because Defendants failed to comply with their discovery obligations and produce responsive documents. The trial court permitted broad discovery. Yet, the Roitmans produced 11 pages of documents in this case total and not a single bank record, tax receipt, email, text message, or travel document. Furthermore, all Defendants refuse to produce relevant financial documents based on frivolous "confidential" and "personal" objections and insist they do not have a single document related to a million-dollar real estate transaction. The trial court erred in permitting Defendants to withhold this information.

After not producing any responsive documents and leveling frivolous objections, the trial court dismissed this action based on a lack of evidence when Defendants' repeated intransigence and refusal to comply with the New Jersey Rules of Court is the very reason why the record is limited at this time. Kuzovkin continues to conceal the source of the millions of dollars of US cash that he used to consummate these transactions, and the Roitmans concealed what they did with millions of dollars in cash. For these reasons, the Court should reverse the trial court's orders and reinstate the case so Armada may obtain the discovery to which it is entitled.

COMBINED PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

A. ALEXY KUZOVKIN'S EMBEZZLEMENT FROM PJSC ARMADA.

Armada is a public joint stock company registered in the Russian Federation, whose shares are traded on the Moscow Interbank Currency Exchange. 199a. Armada was the parent company of a group of companies (the "Armada Group"), which, at its peak, ranked as one of the top five software developers in Russia with combined annual sales of approximately RUB 5.579 million (USD $184 million). 199a.

Beginning in or around 2012, Kuzovkin, who then led Armada's management, began engaging in a fraudulent scheme (the "Illegal Scheme") to systematically siphon money and technology out of the company using dummy companies, offshore accounts, and insider information. 202a-203a. Between 2012 and 2014, the Armada Group transferred nearly RUB 2.7 billion to two outside Kuzovkin-controlled subcontractors, Dom Dlya PK, LLC ("DDP") and Tverinformproduct LLC ("Tver"), under the guise of software development contracts. 203a. DDP and Tver then transferred the funds to four sham shell companies masquerading as software providers who in turn transferred the same funds to additional sham companies, many of which were dissolved. 203a. Kuzovkin likewise caused Armada to lend

[1] Armada submits a combined procedural history and statement of facts for the convenience of the Court as the procedural history and facts are intertwined.

RUB 1.76 billion to three of its wholly owned subsidiaries (the "Armada Subs") at near zero interest who then lent the money back to Armada at interest rates of 8.0% or 8.25% so that Armada was servicing debt on its own money, money the Armada Subs transferred to dozens of offshore entities owned by Kuzovkin and other Armada managers. 203a.

To further undercut Armada, its managers, with Kuzovkin at the helm, also formed a competitor company, Programmy Produkt LLC ("PPL"), which was beneficially owned by Kuzovkin. 203a. Within a year following the many fraudulent transactions facilitated by Kuzovkin, PPL's gross revenues grew from RUB 3 million to nearly RUB 150 million. 204a. Through inside information, Kuzovkin usurped corporate opportunities from Armada so that PPL won proposals for software projects ultimately performed by Armada employees. 204a. This Illegal Scheme was made possible through banking transactions initiated through two notorious Russian banks, CJSC Promsberbank ("PSB") and CB Intercommerz, Ltd. ("Intercommerz"). 204a-205a. In 2015, PSB, of which Kuzovkin was a board member, had its banking license revoked amid a massive embezzlement investigation. 205a. Likewise, Intercommerz was later labelled a money laundering institution in one of the largest Russian-facing asset forfeiture cases ever filed in U.S. federal court. 204a-205a. In late 2013, Armada shareholders began to suspect the Illegal Scheme and appointed a new general director. 206a. The new director

entered Armada's offices on August 19, 2014, to discover no employees, documents, or equipment. 206a. Armada, a once thriving company, vanished overnight. 206a. As legal proceedings and criminal investigations mounted, Kuzovkin fled to Austria, purchasing nearly USD $8,500,000 worth of real estate in Austria and Russia within a span of a month. 207a-209a.

B. THE ROITMANS CONSIPIRE WITH KUZOVKIN.

One of the properties Kuzovkin purchased with the embezzled funds was a Moscow apartment owned by A. Roitman (the "Apartment Transaction"). 208a-209a. A. Roitman and her father, Y. Roitman, are Bergen County residents. 198a. Though the fair market value of the Apartment was approximately USD $3.5 million, Kuzovkin only apparently paid USD $1 million. 209a. Armada discovered the Apartment Transaction in or around 2017. 208a-209a. Pursuant to 28 U.S.C. § 1782, Armada subpoenaed A. Roitman (the "2017 Subpoena Application") for records related to the sale. 209a-210a. A. Roitman produced only an Agreement of Sale ("Agreement") in Russian (itself noting the appraised value was more than double the purchase price) and claimed Kuzovkin paid for the apartment in cash via money in a safe deposit box in Moscow. 210a; 357a-371a. A. Roitman refused to provide any additional information regarding the Apartment Transaction, except to say through her attorney that "she asked a Russian realtor to sell the apartment," that Kuzovkin "responded and offered to pay her asking price" and that she flew

(presumably from New Jersey where she lives) to "Moscow and sign the papers." 211a; 373a. She provided no financial record, tax return, bank record, email, letter, correspondence, note, etc. with respect to the Apartment Transaction. 211a; 373a.

In fact, prior to providing the Agreement, and despite the valid subpoena, A. Roitman tried to condition its production on Armada agreeing that her "obligation under the subpoena stops upon her receipt of the funds" and that Armada would "not seek any information on what happened to the money once the money was deposited in the safe deposit box in Moscow." 376a. Tellingly, the real estate agency that handled the Apartment Transaction, Namos Real Estate ("NRE"), denies any involvement in the transaction except for the registration of the transfer of title, stating that "[a]ll material terms of the transactions, including the price … were determined by the parties on their own." 211a. In addition, Armada further learned that A. Roitman failed to disclose that her father, Y. Roitman, had also entered into a $200,000 cash transaction with Kuzovkin the same day as the Apartment Transaction for parking space rights (the "Parking Transaction") associated with the apartment. 210a-211a. As with the Apartment Transaction, the Parking Transaction was for far under the appraised market value. It is unclear how Kuzovkin paid for the Parking Transaction. 210a-211a. A. Roitman's conduct, admissions, omissions, and statements, made via prior counsel, combined with NRE's contrary representations regarding the Apartment Transaction, raise significant questions

about the legality of both sales. 211a; 376a. Indeed, given the timing of these transactions, Armada alleges that Kuzovkin paid the Roitmans with funds embezzled from Armada. 211a. Armada believes the actual amount paid via safe deposit box was $3,700,000 not $1,000,000 and that the fake purchase price was a cover. 211a.

Further, under Russian Federal Law 173-FZ, cash transactions in foreign currency like United States Dollars between Russian residents, like Kuzovkin, and U.S. residents, like the Roitmans, are prohibited. 212a. Non-cash transactions would have to be handled via a formal wire transfer initiated through a Russian bank. 212a. Due to strict currency and capital flight regulations, a Russian bank would need to conduct due diligence on the funding source prior to initiating such a transfer. 212a. In other words, had Kuzovkin paid for the apartment via a wire transfer, the Russian bank would have requested information on the source of funds–information Kuzovkin could obviously not provide because the funds were embezzled (and, inferentially, undeclared). 212a.

Thus, the Roitmans helped Kuzovkin launder a portion of the embezzled funds by entering into one or more transactions structured to avoid detection, evade reporting requirements, and sidestep inconvenient due diligence questions that would have inevitably arisen had the sale been handled transparently. 213a. The Roitmans directed these activities from New Jersey and a very strong and reasonable inference exists – to which Armada is entitled at the pleadings stage – that the

Roitmans repatriated the unlawful proceeds of the transaction into New Jersey. 195a-387a. By not producing a single financial record, tax return, bank record, email, letter, correspondence, note etc., the Roitmans have gained valuable assets at Armada's expense without any explanation. 195a-387a.

C. THE INITIAL COMPLAINT, MOTION TO DISMISS, AND THE APPELLATE DIVISION'S OPINION.

On January 9, 2019, Armada filed a Complaint against Defendants A. Roitman, Y. Roitman, and Kuzovkin.[2] 81a. Armada sought damages in excess of $3.5 million dollars against Defendants for the return of the embezzled funds. 81a. On May 10, 2019, the Roitmans moved to dismiss the Complaint. 82a. The court granted the Roitmans' motion with prejudice on June 28, 2019, holding Armada failed to state a claim and that New Jersey was an improper forum. 75a-106a. Subsequently, on September 23, 2019, Kuzovkin also moved to dismiss the complaint. 82a. On December 2, 2019, the court granted Kuzovkin's motion with prejudice as well, again holding Armada failed to state a claim and also that the court lacked personal jurisdiction over Kuzovkin. 83a. Armada timely appealed. 75a-83a.

In an unpublished opinion, this Court reversed and remanded. 75a-106a. The Court first concluded that it was error to dismiss the Complaint with prejudice on

[2] Armada brought claims for: (1) breach of fiduciary duty; (2) aiding and abetting breach of fiduciary duty; (3) fraud; (4) fraudulent transfer; (5) civil conspiracy; and (6) violation of the New Jersey Racketeer Influenced and Corrupt Organizations ("NJRICO") Act. 81a.

jurisdictional and *forum non conveniens* grounds because such does not constitute a dismissal on the merits and, therefore, should not be with prejudice. 77a. The Court further concluded that dismissal was premature absent jurisdictional discovery. 75a-106a. With respect to *forum non conveniens* as applied to the Roitmans, the Court also explained that "without discovery revealing contrary information, it is unclear how it would be demonstrably inappropriate or unduly burdensome for the Roitmans to litigate this matter in their home forum." 88a. The Court further recognized,

> The record is devoid of evidence showing the Roitmans are amenable to service in Russia or that Russian law offers a satisfactory remedy to resolve plaintiffs' claims against the Roitmans. That plaintiffs had already commenced proceedings against Kuzovkin in Russia does not guarantee they could do so against the Roitmans, New Jersey residents who, unlike Kuzovkin, had no direct connection to Armada.

89a. Regarding jurisdiction over Kuzovkin, the Court further observed:

> The complaint alleges Kuzovkin conspired with New Jersey residents, which necessarily would involve contacts and communications extending into New Jersey. Indeed, plaintiffs attached a letter from the Russian real estate agency that handled the sale of the Moscow apartment and parking space, which states, "All material terms of the transactions, including the price of real estate objects . . . were determined by the parties on their own." These facts, if true, may be sufficient to establish specific jurisdiction over Kuzovkin.
>
> …
>
> Additionally, plaintiffs' proposed amended complaint alleges Kuzovkin frequently travelled to the United States,

> including New Jersey, to publicize Armada and seek capital from the U.S. investment community, and met with brokers in Jersey City. The motion court should have allowed plaintiffs to amend their complaint to cure its jurisdictional defects. These facts too, if true, may be sufficient to establish our courts' jurisdiction over Kuzovkin.
>
> [93a-94a.]

Lastly, the Court held that the Complaint pled sufficient facts to state a claim for aiding and abetting breach of fiduciary duty, civil conspiracy, and racketeering in violation of NJRICO, reversing the trial court's holding to the contrary. 95a-103a. In so doing, this Court noted that "plaintiffs may attempt to cure the other dismissed claims when amending their complaint on remand." 97a.

In light of the Appellate Division's decision, Armada filed an Amended Complaint on February 10, 2022. 195a-387a. Therein, Armada brought claims for: (1) breach of fiduciary duty; (2) aiding and abetting breach of fiduciary duty; (3) conversion; (4) civil conspiracy; (5) demand for an accounting, tracing and imposition of a constructive trust; and (6) violation of NJRICO. 215a-230a. Notwithstanding this Court's clear holdings on jurisdiction, *forum non conveniens*, and the merits of Armada's claims, Kuzovkin again moved to dismiss on March 16,

2022. See 2T.[3] On March 24, 2022, Armada served Kuzovkin with a Rule 1:4-8 frivolous litigation letter in light of the Appellate Division's clear holdings, and Kuzovkin thereafter withdraw the frivolous motion. 2T. Undeterred, Kuzovkin again moved to dismiss and to limit discovery "solely to jurisdictional discovery." Id. Judge Wilson denied both motions on May 27, 2022, and directed the parties to "go . . . forward with discovery" without restriction and then "go to trial" because the Appellate Division "reversed this Court" and said that discovery proceedings should go forward. 2T at 13; 832a (Order denying Kuzovkin's motion to limit discovery).

D. AFTER STONEWALLING ARMADA'S DISCOVERY REQUESTS, THE ROITMANS AND KUZOVKIN AGAIN MOVE TO DISMISS.

On June 16, 2022, Judge Wilson set an initial paper discovery deadline of August 30, 2022, which the parties thereafter mutually extended to October 21, 2022. 106a-110a; 834a-837a. Armada served discovery on Defendants, but all served boilerplate objections to every request. 1023a-1032a; 1052a-1087a. Armada sought discovery from Kuzovkin on the source of the funds related to the Apartment Transaction and Kuzovkin's financial records. Id. Kuzovkin produced Russian income tax returns for years 2008, 2011, and 2014, but not returns for years 2009, 2010, and 2012-13—the year in which the questioned transactions took place. 850a-

[3] As referred herein, (1) 1T refers to the January 26, 2023 transcript; (2) 2T refers to the May 27, 2022 transcript; (3) 3T refers to the February 22, 2023 transcript; and (4) 4T refers to the April 19, 2023 transcript.

858a. The missing 2013 tax returns directly relate to Kuzovkin's jurisdictional claims that New Jersey is an improper forum, and on the merits regarding the Agreement where, on October 18, 2013, Kuzovkin purchased the Moscow Apartment from A. Roitman. 208a-209a. After the Roitmans failed to produce a single document, Armada served them with deficiency letters on October 25 and October 27, 2022. 850a-858a. To date, the Roitmans have produced eleven pages of documents in this case and neither the Roitmans nor Kuzovkin have been willing to sit for a deposition even though their depositions were noticed prior to the discovery cutoff date. 850a-858a.

Unable to resolve discovery issues, Armada sought leave to file motions to compel discovery against both Defendants. 859a-966a. On January 26, 2023, Judge Wilson held a discovery case management conference during which he permitted Armada to file a motion to compel and stated that, without restriction, "discovery will continue." 1T. No order related to the conference was entered. 1a-15a. Judge Wilson subsequently retired and the case was transferred first to Judge Robert Vinci and then to Judge Mary Thurber, both of whom issued scheduling orders with respect to Defendants' desire to file yet another motion to dismiss, permitting Armada to "incorporate into your response the discovery that you think you need" to "get it all done at one time." 3T at 20:13-18. Defendants moved to dismiss on April 26, 2023, and Armada cross-moved to compel discovery on June 23, 2023. 478a-2411a. After

several months of court inaction, Armada moved on December 7, 2023, to extend discovery and sought issuance of letters rogatory. 65a-188a; 189a-421a. The case was subsequently re-assigned to a fourth judge, Judge Geiger in late 2023. 1a-15a. Judge Geiger did not hear the pending motions until March 2024, nearly a year after the parties filed the briefs. Id.

E. THE TRIAL COURT DISMISSES ARMADA'S AMENDED COMPLAINT WITH PREJUDICE AND DENIES ARMADA THE OPPORTUNITY TO CONDUCT DISCOVERY IN SPITE OF THIS COURT'S CLEAR HOLDINGS.

After nearly a year, the trial court dismissed the Amended Complaint with prejudice. 18a-41a. In so doing, the trial court repeatedly contended that "jurisdictional discovery" was "completed," noting that, although Judge Wilson never issued an order, he accepted Defendants' self-serving claims that they complied with their discovery obligations. 25a-26a. On the merits, the trial court held that "it does not have jurisdiction over this matter." 28a. The trial court found that it lacked personal jurisdiction over Kuzovkin based on Kuzovkin's purchase of the Moscow Apartment from the Roitmans, Bergen County residents—which the court considered not "systematic, or purposeful" contact. 30a.

The trial court recounted "foreign proceedings" in Russia dating back to 2014 and 2017 and found that "New Jersey is not the appropriate forum to litigate the claims of embezzlement and corporate malfeasance in this matter as the claims are directly related to the previous proceedings that were litigated to completion by the

Russian Courts." 29a. After weighing the *forum non conveniens* factors, the trial court found that New Jersey was a "demonstrably inappropriate" forum because of purported "numerous practical and logistical difficulties," including that "[w]itnesses, documents, evidence, property," and other facts are "all located in Russia." 29a. The trial court found there was no local interest in allowing Armada to pursue claims against Bergen County residents in Bergen County. 29a-30a.

The trial court further held res judicata and collateral estoppel applicable because a Russian "criminal investigation" against Kuzovkin (who appeared only as a witness) was dismissed. 30a-32a. The trial court—without any citation—also applied res judicata and collateral estoppel to bar "secondary liability against" the Roitmans. 31a-33a. The trial court held that collateral estoppel also barred Armada's claims because prior Russian proceedings found that no "large-scale embezzlement and/or corporate misfeasance scheme was perpetrated." 31a.

Alternatively, the trial court found that the economic loss doctrine barred claims against the Roitmans because (1) Armada's claims (except Count V) arise in tort, (2) Armada seeks to recover purely economic damages, and (3) the parties agreed that Armada and the Roitmans did not have a contractual relationship or owe a fiduciary duty to Armada. 32a. The trial court summarily denied Armada's

discovery motions as "moot." 36a; 39a; 41a. This second appeal followed.[4] 1a-15a.

ARGUMENT

POINT I

STANDARD OF REVIEW

"Rule 4:6-2(e) motions to dismiss for failure to state a claim upon which relief can be granted are reviewed de novo." Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021). "A reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Id. (quoting Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107 (2019)). To that end, "[t]he complaint must be searched thoroughly 'and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Id. (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)).

Questions regarding the applicability of res judicata and collateral estoppel are reviewed *de novo* as such are questions of law "'to be determined

[4] Armada sought to appeal the January 26, 2023, conversation with Judge Wilson that served as the basis for the trial court's dismissal of this case. However, this Court advised Armada that it "cannot appeal an opinion or use a transcript in place of an order," and "Judge Wilson never issued an order or opinion related to the January 26, 2023 conversation with the parties." 1a-15a.

by a judge in the second proceeding after weighing the appropriate factors bearing upon the issue.'" Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000) (citation omitted). Likewise, "the question of jurisdiction is a question of law" while an appellate court's review of the "'court's factual findings with respect to jurisdiction' is only to determine if those findings are supported by substantial, credible evidence in the record." Rippon v. Smigel, 449 N.J. Super. 344, 358 (App. Div. 2017). A decision to dismiss "on *forum non conveniens* grounds is reviewed under the abuse of discretion standard, because the principles of *forum non conveniens* are equitable in nature." Paradise Enterprises Ltd. v. Sapir, 356 N.J. Super. 96, 102 (App. Div. 2002). Appellate courts generally defer to a trial court's disposition of discovery matters unless the court has abused its discretion or its determination is based on a mistaken understanding of the applicable law. State v. Brown, 236 N.J. 497, 521 (2019).

POINT II

THE TRIAL COURT'S ORDERS SHOULD BE REVERSED BASED ON THE LAW OF THE CASE DOCTRINE (16A-40A).

The trial court's orders should be reversed under the law of the case doctrine because this Court's prior decision and order in this matter reversed the trial court's grant of Defendants' motions to dismiss with prejudice on jurisdictional grounds. 77a-78a. This Court plainly held that such a motion should not be granted with prejudice and, in this case, at all as there was nothing

in the record demonstrating New Jersey was an inappropriate forum or that, assuming the facts alleged in the Complaint as true, there was no personal jurisdiction over Kuzovkin. 83a-95a. On remand, this Court further held that Plaintiff was entitled to jurisdictional discovery. 83a-95a. These holdings constitute the law of the case. 83a-95a.

"It has been generally stated that the law of the case doctrine applies to the principle that where there is an unreversed decision of a question of law or fact made during the course of litigation, such decision settles that question for all subsequent stages of the suit." State v. Hale, 127 N.J. Super. 407, 410 (App. Div. 1974) (internal quotation marks and citation omitted). This is "based upon the sound policy that when an issue is once litigated and decided during the course of a particular case, that decision should be the end of the matter." Id. Most commonly, the doctrine "applies to the binding nature of appellate decisions upon a trial court if the matter is remanded for further proceedings, or upon a different appellate panel which may be asked to reconsider the same issue in a subsequent appeal." Id. These principles "have been uniformly adopted and followed by [New Jersey] courts." Slowinski v. Valley Nat. Bank, 264 N.J. Super. 172, 180 (App. Div. 1993) (citing cases).

Before and after the 2022 Ukraine Invasion, courts have concluded that Russia cannot provide an adequate alternative forum. See Lehram Cap. Invs.,

Ltd. v. Baker & McKenzie Int'l, --- N.E.3d --- 2024 WL 1558029, at *9 (holding that under forum non conveniens analysis, the "parties cannot litigate this mater in Russia, the forum where the tort occurred."); Norex Petroleum Ltd. v. Access Indus., 416 F.3d 146, 159 (2d Cir. 2005) ("In this case, defendants failed to demonstrate that Russia affords Norex a presently available forum to litigate the disputed issues underlying its RICO complaint"). Now, despite this Court's prior holding, the trial court once again erroneously granted Defendants' motions to dismiss on jurisdictional grounds with prejudice. Yet, discovery has uncovered no evidence New Jersey is an inconvenient forum or that undermines personal jurisdiction over Kuzovkin. Nor has Armada been afforded the jurisdictional discovery ordered by this Court as a result of Defendants' stonewalling. See infra Point VII. That, coupled with the trial court's erroneous denial of Plaintiff's motion to compel or extend discovery, see infra Points VII and VIII, violates the law of the case doctrine and warrants reversing the trial court.

POINT III

THE TRIAL COURT ERRED IN CONCLUDING IT DID NOT HAVE JURISDICTION OVER KUZOVKIN (16A-40A)

The trial court erred in concluding that it did not have jurisdiction over Kuzovkin because Kuzovkin did not provide full discovery and Armada's well-pled allegations of a RICO conspiracy involving Bergen County residents permits jurisdiction. The trial court held it did not have personal jurisdiction

over Kuzovkin, concluding there was "nothing in the record sufficient to establish" Kuzovkin having sufficient minimum contacts with New Jersey. Crediting Kuzovkin's self-serving sham affidavit, the trial court noted he "certified that he has never traveled to New Jersey" and "[t]he only alleged tie between Defendant Kuzovkin and the forum state is that Defendant Kuzovkin purchased an Apartment in Moscow from the Roitman's who are New Jersey residents." 30a. This, per the court, was a "singular occasion" that did not constitute sufficient "continuous, systematic, or purposeful" contact to establish personal jurisdiction. 30a. The trial court ignored the Amended Complaint's allegations, this Court's reversal, Defendants' failure to provide discovery, and law that New Jersey may exercise jurisdiction over foreign RICO defendants who direct illicit activity into New Jersey from abroad.

A. The Amended Complaint pleads facts sufficient to establish the minimum contacts for New Jersey to have personal jurisdiction over Kuzovkin.

When a defendant challenges an action for lack of personal jurisdiction, a plaintiff "need only establish a *prima facie* case of personal jurisdiction" and "is entitled to have its allegations taken as true and all factual disputes drawn in its favor." Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004) (citing R. 4:4-4(c)). Courts must also determine whether the defendant has minimum contacts with the forum, and, consistent with due process, whether subjecting the defendant to the court's jurisdiction violates "traditional notions of fair play

and substantial justice." Lebel v. Everglades Marina, Inc., 115 N.J. 317, 322 (1989) (citing International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

The allegations in the Amended Complaint, which must be taken as true, establishes Kuzovkin had minimum contacts with New Jersey sufficient to confer specific personal jurisdiction. Such exists where a defendant has "purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985); see also Blakey v. Cont'l Airlines, Inc., 164 N.J. 38, 67 (2000) (quoting Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 126 (1994) ("An intentional act calculated to create an actionable event in a forum state will give that state jurisdiction . . . .")).

Here, the Amended Complaint further alleges Kuzovkin perpetrated the Illegal Scheme via his relationship with the very sizable Russian immigrant community in New Jersey, including Bergen County. It is reasonable to infer that Kuzovkin could not launder at least one million dollars and likely more from Russia to New Jersey without the assistance of multiple New Jersey residents. It is also reasonable to infer that Kuzovkin communicated with the Roitmans in New Jersey regarding his plans. 208a-209a. This is supported by the Roitmans' questionable assertion that only a single document evidences the Apartment Transaction, and the real estate agent's representation that

Defendants negotiated the sale on their own.[5] To hold there is no personal jurisdiction over Kuzovkin would effectively deny Armada justice and serve to encourage money laundering into the State. 208a-209a.

Personal jurisdiction (NJRICO) can also be exercised under a "conspiracy theory" which arises from the "time-honored notion that the acts of [a] conspirator in furtherance of a conspiracy may be attributed to the other members of the conspiracy." See Fairfax Fin. Holdings Ltd. v. S.A.C. Capital Mgmt., L.L.C., 450 N.J. Super. 1, 77-78 (App. Div. 2017) (citation omitted). Under the conspiracy theory, personal jurisdiction can be maintained over defendants based "solely on actions that other defendants allegedly committed within New Jersey" where there is evidence the defendants "knew or should have known their alleged co-conspirators would take action" in New Jersey. Id.

As discussed in the Cassella Report, the Amended Complaint pleads enhanced facts that explain in detail the amount of planning and deception required to transmit suitcases of U.S. cash currency from New Jersey to Moscow

[5] The significance of the fact that a *Russian* real estate transaction was consummated not only in cash but in cash currency utilizing *U.S. Dollars* cannot be overstated. The use of *U.S. Dollars* to consummate what was supposedly a localized Russian real estate deal was prohibited by Russian law, common knowledge to anyone doing business in Russia. Furthermore, all U.S. cash currency originates with the Federal Reserve and the U.S. banking system. Kuzovkin could not have obtained *U.S. Dollars* that he placed into a safe deposit box that he controlled in Moscow for collection by either or both Defendants without jurisdictionally meaningful contacts with the United States. 212a.

and back, and the plethora of domestic and foreign currency control and anti-money laundering laws violated along the way. 195a-356a. The trial court did not discuss or review any RICO-related case law or conspiracy jurisdiction authority in summarily finding that New Jersey lacked jurisdiction over Kuzovkin. Armada pled NJRICO predicate acts which—if proven—would confer jurisdiction for extraterritorial acts. The Amended Complaint plausibly alleges that the Kuzovkin-Roitman relationship was not only a New Jersey-facing conspiracy but most likely the proverbial tip of the iceberg when it comes to the extent of Kuzovkin's true contacts with this State.

B. The trial court should have rejected Kuzovkin's sham affidavit because the limited factual discovery to date directly rebuts his self-serving conclusory claims.

Kuzovkin refused to appear for a deposition and instead submitted a self-serving sham certification that, without explanation, claims that he "never contacted the Roitmans for the purchase of the subject real property," he "only spoke with a Russian broker located in Russia," and "I have never set foot, called, or emailed into New Jersey." 1487a. The certification also improperly makes sweeping legal conclusions that "None of the matters complained of in this litigation occurred in New Jersey," and "the entire transaction occurred in Russia." 1487a. The trial court should not have refused jurisdiction based on a limited record and Kuzovkin's sham affidavit. 1487a.

The "sham affidavit" doctrine "refers to the trial court practice of disregarding an offsetting affidavit that is submitted in opposition to a motion for summary judgment when the affidavit contradicts the affiant's prior deposition testimony." Shelcusky v. Garjulio, 172 N.J. 185, 194 (2002). During discovery, Armada noticed Defendants' depositions, but they refused to appear. Kuzovkin's sham certification makes sweeping legal conclusions improperly characterized as facts; Kuzovkin (and the Roitmans) failed to produce any documents concerning the safe deposit box or the financial details of the transactions, making it impossible to test his self-serving contentions; and, most importantly, the record evidence contradicts Kuzovkin's sham affidavit. 159a-177a; 1486a-1487a.

A. Roitman admitted "she asked a Russian realtor to sell the apartment," that Kuzovkin "responded and offered to pay her asking price" and that she flew (presumably from New Jersey where she lives) to "Moscow and sign the papers." 211a; 372a-376a. The trial court deprived Armada meaningful discovery and improperly credited Defendants' self-serving statements in place of this Court's clear directives. For these reasons, the trial court should have rejected the plainly contradicted sham certification.

C. Exercising personal jurisdiction over Kuzovkin comports with the notions of "fair play and substantial justice."

Exercising personal jurisdiction over Kuzovkin is likewise consistent with the "traditional notions of fair play and substantial justice." Lebel, 115 N.J. at 322. Relevant factors in the "fair play" evaluation include "the burden on [the] defendant, the interests of the forum state, the plaintiff's interest in obtaining relief, the interstate judicial system's interest in efficient resolution of disputes, and the shared interest of the states in furthering fundamental substantive social policies." Waste Mgmt., 138 N.J. at 124-25. "New Jersey's long-arm statute provides for jurisdiction coextensive with the due process requirements of the United States Constitution." Miller Yacht, 384 F.3d 93, 96 (3d Cir. 2004) (citing Rule 4:4-4(c)); State, Dep't of Treasury, Div. of Inv. ex rel. McCormac v. Qwest Commc'ns Int'l, Inc., 387 N.J. Super. 487, 498 (App. Div. 2006). Thus, if conduct triggers jurisdiction under the long-arm statement then, for all practical purposes, the exercise of personal jurisdiction is deemed fair for due process purposes. Here, the burden rests with Kuzovkin—not Armada—to present "a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Lebel, 115 N.J. at 328.

Armada provided an expert report by Stefan D. Cassella, a former federal prosecutor and money laundering expert. 116a-158a. Mr. Cassella opined that Defendants' conduct bears all the hallmarks of money laundering and RICO

violations, and noted that what "occurred in Moscow, how U.S. currency was withdrawn from a Russian safe deposit box and how that currency was transported, transmitted and/or spent and whether the Roitmans reported or did not report the transactions is an important issue from a substantive and jurisdictional perspective." 133a-135a; id. (noting "extraterritorial jurisdiction over all members of a conspiracy to commit" money laundering).

For these reasons, Kuzovkin failed to meet his burden that New Jersey does not have jurisdiction over a defendant who plausibly directs unlawful conduct into (and through) Bergen County residents.

D. As this Court held, Armada is entitled to full and complete discovery in aid of jurisdiction—which it still has never received.

Lest there be any doubt as to Kuzovkin's contacts with New Jersey, Armada is entitled to full and complete jurisdictional discovery pursuant to this Court's opinion requiring same. This Court previously held "the motion court's dismissals on jurisdictional grounds were premature" as "the court should have permitted discovery on the questions of personal jurisdiction." 77a-78a. Kuzovkin's failure to comply with his discovery obligations and refusal to produce relevant non-privileged documents, including his complete tax returns, his communications with the Roitmans, and other papers sought, required denial of his motion to dismiss especially where, as here, personal jurisdiction and the merits are inextricably intertwined.

POINT IV

THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' MOTIONS TO DISMISS ON *FORUM NON CONVENIENS* GROUNDS (16A-40A).

This Court already rejected Defendants' *forum non conveniens* arguments and reversed the trial court's prior orders of dismissal on this ground. The Court should again reverse the trial court for committing the same legal errors.

A. New Jersey is an appropriate forum.

New Jersey is the proper forum to adjudicate Armada's claims against Bergen County residents. "[A] plaintiff's choice of forum is entitled to a great degree of deference" and "preferential consideration." Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 554 (2011). Only when a chosen forum is "demonstrably inappropriate" may a court decline to exercise jurisdiction under the doctrine of *forum non conveniens*. Id. at 548. "While a foreign plaintiff's choice of a United States forum may deserve somewhat less deference, nevertheless that reduced deference is not an invitation to accord a foreign plaintiff's selection of an American forum no deference since dismissal for *forum non conveniens* is the exception rather than the rule." Varo v. Owens-Illinois, Inc., 400 N.J. Super. 508, 523 (App. Div. 2008) (internal quotation marks and citation omitted).

The gravamen of Armada's allegations is that Defendants conspired and arranged to violate New Jersey, federal, and foreign law, aided and abetted foreign fraud, transported laundered cash obtained via a disguised transaction

into New Jersey and then concealed those proceeds in violation of New Jersey law. 195a-356a. New Jersey necessarily has a strong interest in bringing these allegations to bear. Indeed, the Legislature has recognized the need to establish remedies to "deter individuals and business entities from assisting in the 'legitimizing' of proceeds of illegal activity." N.J.S.A. 2C:21-23(e). Finally, with respect to the Roitmans in particular, this Court previously held that "[w]ithout discovery revealing contrary information, it is unclear how it would be demonstrably inappropriate or unduly burdensome for the Roitmans to litigate this matter in their home forum." 88a. The Roitmans produced 11 pages of documents and did not show how it would be "inconvenient" for Armada to sue them in the county they reside in. The trial court's order should be reversed.

B. There is no adequate alternative forum.

The trial court erred in holding that Russia was an adequate alternative forum for Armada to litigate its claims against Bergen County residents. Dismissal for *forum non conveniens* requires a showing that an alternative appropriate forum exists. D'Agostino, 225 N.J. Super. at 259; see also Varo, 400 N.J. Super. at 520 (quoting Mandell v. Bell Atl. Nynex Mobile, 315 N.J. Super. 273, 280-81 (Law Div. 1997) ("if there is jurisdiction but there is no alternative forum, then the mere inconvenience to any party . . . become[s] irrelevant; for

the litigation cannot be dismissed on *forum non conveniens* grounds if to do so would be to leave plaintiff with no available forum")).

Again, Defendants had the burden to prove not only that Armada's chosen forum is inappropriate, but also that an alternative, far more appropriate forum is available. Varo, 400 N.J. Super. at 520 ("If the defendant fails to carry this burden, the *forum non conveniens* motion must be denied."). An alternative forum is adequate only if: (1) "defendant is amenable to service of process there"; and (2) the alternative forum "permits litigation of the subject matter of the dispute." Id. Defendants did not satisfy any of the *forum non conveniens* requirements to warrant dismissal.

First, Armada pled that the Roitmans were New Jersey residents and that Kuzovkin fled Russia and may now reside in Austria. 198a. Kuzovkin's self-serving claim to the contrary notwithstanding, there is no evidence Defendants will travel to Russia to defend this suit or be amenable to service of process there. Second, the notion that Russia "permits litigation of the subject matter in dispute" or could otherwise provide an adequate alternative forum is highly unlikely given recent global events. After the prior proceedings in Russia cited by the trial court as evidence for Russia being an adequate forum, Russia's

military invaded Ukraine in 2022.[6] Since then, the United States has imposed sanctions on aspects of the Russian economy. See, e.g., Executive Orders ("EO"), 14024, 14039, 14065, and 14066. Further, the U.S. Department of Commerce has imposed export controls on goods, services and technology to Russia while western financial institutions have suspended dollar-denominated currency transactions involving Russian banks. Russia has also withdrawn from the Council of Europe, the preeminent European human rights organization. For the trial court to conclude Russia is an adequate forum without acknowledging these events is vexing. Nor is there a basis in the record to support Russia being an adequate alternative forum (even if Kuzovkin resides there now).

Finally, Armada's prior efforts to remove Kuzovkin from his position of authority in Russia further supports Russia being an inadequate forum. 206a. The Amended Complaint describes the lengthy effort to remove Kuzovkin while

[6] The Court may take judicial notice that: (1) Russia invaded Ukraine in 2022; (2) the United States has imposed sanctions and export controls on Russia; and (3) Russia withdrew from various European institutions after the invasion. Courts can take judicial notice of world events from suitable sources under N.J.R.E. 201(b)(3) ("Facts which may be judicially noticed include ... specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned."); J.H. v. R&M Tagliareni, LLC, 239 N.J. 198, 227 n.2 (2019) (collecting cases); see also J.S. v. R.T.H., 155 N.J. 330, 341 (1998) (relying on U.S. Department of Justice). On appeal, a "reviewing court in its discretion may take judicial notice of any matter specified in Rule 201, whether or not judicially noticed by the judge." N.J.R.E. 202(b).

he was systematically dismantling Armada and siphoning off its assets. 206a. By the time Armada was able to secure an order appointing an external manager, the company had been reduced to an empty office. 197a. The most reasonable inference that can be drawn from this is that Russian shareholder protections are inadequate, given that Kuzovkin dismantled a publicly traded company, siphoned value out of Russia, and fled to Austria, all under the watch of Russian securities regulators and courts charged with safeguarding investor rights. 206a. That Armada had to resort to a Section 1782 application in federal court to obtain basic facts (before the Ukraine Invasion) further evidences the inadequacy of Russian discovery mechanisms.

C. The public interest factors favor a New Jersey forum.

The public interest factors favor litigating a New Jersey RICO case against New Jersey residents. New Jersey courts adopted the analytical framework set forth in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947), which "enunciated certain private-interest and public-interest factors to be considered in deciding a *forum non conveniens* motion." Yousef, 205 N.J. at 558. Here, both the public interest and private interest factors weigh in Armada's favor.

When considering the public interest factors, courts balance:

> [1] consideration of trial delays that may occur because of backlogs in a jurisdiction; [2] whether jurors should be compelled to hear a case that has no or little relationship to their community; [3] the benefit to a

> community of "having localized controversies decided at home"; and [4] whether the law governing the case will be the law of the forum where the case is tried.
>
> [Id. (citing Gulf Oil, 330 U.S. at 508-09).]

Armada amply satisfies the first three public interest factors. At the outset, Russia cannot be an adequate judicial forum given the effects of its war against Ukraine. A New Jersey forum would provide more efficient adjudication of Armada's claims and New Jersey has a significant interest in vindicating its laws. The Amended Complaint alleges Defendants are part of a money laundering scheme in violation of NJRICO, and that the ill-gotten, laundered money was repatriated into the State. 227a-229a.

Armada's NJRICO and conspiracy allegations should be heard by a New Jersey jury. As to the fourth factor, although Russian law may inform the illegality of Defendants' acts, the claims are New Jersey claims, and New Jersey law governs them. To the extent that Armada must establish Defendants' conduct evaded both domestic and foreign reporting requirements and currency control regulations, "the trial judges of this State are perfectly capable of determining any choice of law issues presented and applying foreign law if required." Madan-Russo v. Posada, 366 N.J. Super. 420, 430 (App. Div. 2004). New Jersey is a valid forum under the public interest factors.

D. The private interest factors favor a New Jersey forum.

Similarly, the private interest factors militate in favor of adjudicating this matter in a New Jersey court. These factors include:

> "[1] the relative ease of access to sources of proof"; [2] the "availability of compulsory process"; [3] the cost of obtaining the attendance of witnesses; . . . [4] the enforceability of a judgment; and [5] "all other practical problems that make trial of a case easy, expeditious and inexpensive."
>
> [Yousef, 205 N.J. at 558 (citing Gulf Oil, 330 U.S. at 508).]

A court must show deference to a plaintiff's choice of forum when assessing private interest factors. Varo, 400 N.J. Super. at 526-27.

Here, Armada satisfied all private interest factors. The trial court's conclusion that "[w]itnesses, documents, evidence, property, and all other sources of facts and discovery are all located in Russia" is plainly erroneous and unsupported. Most of the conduct giving rise to Armada's claims occurred outside Russia. 29a-30a. That some of the alleged misconduct may have occurred in Russia does not mean Russia is an adequate or available alternative forum to bring this case under the circumstances. Nor is there anything in the record to support a finding that Armada could obtain evidence or question witnesses in Russia. 195a-387a (Asoskov Cert.). In fact, there is nothing to establish what witnesses and evidence will be necessary or the location of such evidence. Moreover, none of Defendants are in, or likely to go to, Russia. 198a.

Further, based on the United States' reaction to the Russian war in Ukraine, compulsory process will likely be impossible, itself sufficient to render Russia an inadequate forum. See Varo, 400 N.J. Super. at 519-20 (an adequate forum provides a forum where the defendant is amenable to service of process and the subject matter of the dispute may be litigated). Moreover, as explained in Varo, modern technology largely mitigates the expense of international discovery. Finally, New Jersey courts have acknowledged the general notion that private interest factor arguments regarding the difficulty and cost of discovery and trial are better raised "by a plaintiff, upon whom the burdens of discovery and presentation of evidence at trial lie." Mastondrea v. Occidental Hotels Mgmt. S.A., 391 N.J. Super. 261, 279-80 (App. Div. 2007) (emphasis added). Here, Armada has submitted to and indeed prefers this New Jersey forum. For these reasons, Armada satisfied all the private interest factors, and the trial court's dismissal on *forum non conveniens* grounds was erroneous.

POINT V

THE DOCTRINES OF COLLATERAL ESTOPPEL AND RES JUDICATA DO NOT BAR ARMADA'S CLAIMS (16A-40A).

The trial court erroneously concluded that, based on prior investigations in Russia – matters to which Kuzovkin was admittedly not a party, the Roitmans were not involved in any capacity, and which did not involve the same issues or

claims raised in the Amended Complaint – collateral estoppel and res judicata applied, warranting dismissal of Armada's case.

A. Collateral estoppel does not bar the Amended Complaint.

Neither collateral estoppel nor res judicata bar Armada's claims because Kuzovkin and the Roitmans were not parties to any prior Russian "investigations," and Armada's allegations against Defendants have never been litigated in any forum.

Collateral estoppel or issue preclusion only applies where:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

Winters v. Fire, 212 N.J. 67, 85 (2012). The party seeking to invoke the doctrine of issue preclusion bears the burden of demonstrating what was determined in the prior adjudication. Sweeney v. Sweeney, 405 N.J. Super. 586, 598 (App. Div. 2009), certif. denied, 199 N.J. 518 (2009). Collateral estoppel "will not be applied when it is unfair to do so." Villanueva v. Zimmer, 431 N.J. Super. 301, 312 (App. Div. 2013).

Unlike judgments of sister states, collateral estoppel has limited applicability to foreign judgments (or investigations) and "a court may, but is

not required to extend comity to a foreign judgment." Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 426 (App. Div. 2011) (citation omitted). A New Jersey court may refuse to give preclusive effect to a foreign judgment that offends New Jersey public policy or where the foreign system or proceeding deprives a litigant of a full and fair opportunity to litigate its claims. Id. at 430. Additionally, a court may not assume preclusion from mere similarities or coincidences between foreign and domestic proceedings including even the possibility that virtually identical damages were sought in both. Id. at 430-31. Rather, the burden is on the party asserting preclusion to identify legal authority or support for the application of cross-border preclusion. Id. Defendants can only prevail in their preclusion arguments by showing that Armada had the "same full and fair opportunity to litigate the issues and with the same remedial opportunities as the second forum." Id. at 430. Defendants failed to do so.

First, the issues supposedly discussed in prior Russian proceedings did not involve the same issues as raised in the Amended Complaint. The actual identity of the issue posed in successive litigation must be clearly established and identical in all respects. Ettin v. Ava Truck, Leasing, Inc., 53 N.J. 463, 480 (1969); In re Civil Commitment of J.S.W., 371 N.J. Super. 217, 222 (App. Div. 2004) (issues in both actions must be "identical" to bar later action). Thus, if "the judgment might have been based upon one or more of several grounds, but

does not expressly rely upon any one of them, then none of them is conclusively established under the doctrine of collateral estoppel, since it is impossible for another court to tell which issue or issues were adjudged by the rendering court." Id. (emphasis added).

Here, the prior matters purportedly involved broad allegations of financial misconduct against Armada's "former management team," specifically a Mr. Gordon and Mr. Kruglykov, not Kuzovkin or the Roitmans. 2223a-2264a; 2320a-2378a. Nor does the Amended Complaint allege claims against Gordon or Kruglykov. 195a-387a. None of the prior matters involved similar allegations or issues as those pled in the Amended Complaint. Compare 500a-505a, 507a-514a (Asoskov Cert.) (explaining in detail how the Amended Complaint does not raise the same issues as prior investigations or matters in Russia).

Second, neither Kuzovkin nor the Roitmans were a party to any of the Russian court decisions, nor did the Russian court evaluate Kuzovkin's actions at Armada. 510a. Thus, the issue of whether Kuzovkin absconded with Plaintiff's funds and embezzled corporate monies has not been previously litigated. Third, there was no final adjudication on the merits involving the Roitmans or Kuzovkin, merely an "investigation" where Kuzovkin was described as a "witness." 2388a. See also Mortgageling Corp. v. Commonwealth Land Title, 142 N.J. 336, 346 (1995) ("Typically, the merits of a claim are

adjudicated following a full trial of the substantive issues."). Fourth, because the issues in the Amended Complaint were not raised in Russian litigation, they cannot be "essential" to any prior judgment. Indeed, the transcripts do not reveal the issue or issues that any "decisions" or conclusions were based on in Russia. As such, collateral estoppel does not apply.

Collateral estoppel also does not apply for the additional reason the prior proceeding and the subsequent proceeding have differences "in the quality and extensiveness of the procedures followed." Villanueva, 431 N.J. Super. at 312. See, e.g., Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 525 (2006) (declining to apply collateral estoppel based on prior finding in administrative action). Equality of forum requires that the determination by the Russian matters afford the same degree of formality, due process, and adjudicative procedures as are available in the second forum. Id. Also, issue preclusion only applies where the standard and burden of proof in the prior proceeding is identical to the second proceeding. See, e.g., Pivnick v. Beck, 326 N.J. Super. 474, 482 (App. Div. 1999), aff'd.o.b., 165 N.J. 670 (2000) (collateral estoppel does not apply where burdens of proof differ). The record is devoid of evidence demonstrating that the prior Russian matters afforded the same degree of formality, due process, evidentiary burden, and adjudicative proceedings as available in this Court. 489a; 519a. The "translations" provided do not explain any of the procedures

involved or what, if any, burdens of proof, rules of evidence or discovery was involved. The matters or "investigations" in Russia where Kuzovkin admittedly appeared as a "witness" are not similar in any way to New Jersey legal procedures. Compare 2388a, with 489a; 520a. The trial court erred in applying collateral estoppel to a prior Russia investigation involving Kuzovkin as witness.

B. Res judicata does not bar the Amended Complaint.

Res judicata or claim preclusion does not bar the Amended Complaint because there was no prior, valid judgment on the merits, neither the Roitmans nor Kuzovkin were a party to any of the prior proceedings cited, and none of the prior events cited involved allegations of conspiracy and financial crime by Defendants. For res judicata to apply:

> (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.
>
> [McNeil v. Legis. Apportionment Comm'n of State, 177 N.J. 364, 395 (2003) (citation omitted and cleaned up).].

First, as with collateral estoppel, there was no final adjudication on the merits absolving the Roitmans or Kuzovkin of any wrongdoing or unlawful conduct, much less the claims in the Amended Complaint. Neither the Roitmans nor Kuzovkin were a party to any Russian proceeding or in privity with any

parties absolved in a prior proceeding. The sole transcript of Russian proceedings (i.e. the one Kuzovkin provided) identifies Kuzovkin as merely a **witness**. 2388a. Under Russian law, a "witness" is merely a "person who may have knowledge of certain facts relevant to the criminal investigation." 493a. As such, res judicata does not apply.

Second, a claim that could not have been presented in the first action (i.e. NJRICO claims in Russia) will not be barred in the second action. Bondi, 423 N.J. Super. at 423. "The reasoning for this exception is that if the plaintiff could not have asserted the two claims 'in a single forum, it would be unfair to force [the plaintiff] to sacrifice the claims that could not be so asserted in order to bring a single action in one forum.'" Id. (quoting Watkins, 124 N.J. at 413-14). At the time of the prior 2014-2015 Russian proceedings, Armada did not know (and could not have known) who the Roitmans were or how they sold Russian real estate to Kuzovkin for cash. 206a-208a. As such, Armada should not be held to a hindsight standard of inquiry. Bondi, 423 N.J. Super. at 423. For this additional reason, res judicata does not bar Armada's claims.

POINT VI

THE ECONOMIC LOSS DOCTRINE DOES NOT APPLY TO THE CLAIMS AGAINST THE DEFENDANTS (16A-33A).

The trial court erred when it found that the economic loss doctrine barred Armada's claims against the Roitmans for aiding and abetting breach of fiduciary

duty, conversion, civil conspiracy, demand for accounting or constructive trust, and NJRICO violations. "The economic loss doctrine prohibits the recovery in a tort action of economic losses arising out of a breach of contract." Sun Chem. Corp. v. Fike Corp., 243 N.J. 319, 328 n.2 (2020) (citing Dean v. Barrett Homes, Inc., 204 N.J. 286, 296-97 (2010)). As such, it "only applies to bar certain tort claims between parties to a contract." SRC Constr. Corp. v. Atl. City Hous. Auth., 935 F.Supp.2d 796, 799 (D.N.J. 2013) (emphasis in original).

Here, the economic loss doctrine does not apply because all parties agree there is no contractual relationship between Armada and the Roitmans. The Roitmans admitted they "are not alleged to have a contractual relationship with Armada, nor is it alleged they ever assumed an independent duty to prevent economic harm to a Russian public company." 32a. Nor does the economic loss doctrine bar an NJRICO, aiding and abetting, or other similar claim sounding in fraud. See Ross v. Celtron Intern., Inc., 494 F.Supp.2d 288, 298 (D.N.J. 2007) (explaining the doctrine does not bar fraud claims). Hence, the trial court's unsupported application of the economic loss doctrine was erroneous and should be reversed.

POINT VII

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING ARMADA'S APPLICATIONS FOR DISCOVERY (16A-33A; 37A).

This Court reviews a trial court's disposition of discovery matters under an abuse of discretion standard. Brown, 236 N.J. at 521. Under Rule 4:10-2(a),

parties may obtain discovery regarding any non-privileged matter that is relevant to the subject of a pending action or is reasonably calculated to lead to the discovery of admissible evidence. New Jersey's discovery rules are to be "liberally construed" because "justice is more likely to be achieved when there has been full disclosure and all parties are conversant with all available facts." In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 82 (2000). Pretrial discovery should be accorded the broadest possible latitude. Jenkins v. Rainner, 69 N.J. 50, 56 (1976). The scope of discovery is substantially broader than the standard for admissibility. K.S. v. ABC Professional Corp., 330 N.J. Super. 288, 291 (App. Div. 2000). Discoverable documents include any information "relevant to the subject matter involved in the pending action," including documents with the "tendency in reason to prove or disprove any fact of consequence to the determination of the action." Id.

A. Kuzovkin failed to produce relevant non-privileged documents and furnish complete interrogatory responses.

The trial court should have compelled Kuzovkin to produce relevant tax and financial documents concerning the allegations in the Amended Complaint. Specifically, the court should have compelled production of missing tax returns for the years 2009, 2010, and 2012-2013, the time periods directly relevant to Armada's embezzlement allegations and, coincidentally, the years Kuzovkin failed to produce. Kuzovkin produced only 43 documents in total and refused to

produce any documents or communications in response to 42 of Armada's 61 document requests. 159a-177a.

Armada's requests sought documents concerning the Apartment and Parking Transaction; the safe deposit box where Kuzovkin purportedly placed the cash paid to the Roitmans; Kuzovkin's taxes; and Kuzovkin's monetary transfers among himself, his banking partners, and his companies (which Armada has reason to believe served as the vehicle for Kuzovkin's Illegal Scheme). See, e.g., 165a-168a; 174a; 176a (RFP Nos. 10-14, 16-22, 51, 60). These requests are directly relevant to Armada's claims and are reasonably calculated to lead to the discovery of admissible evidence. As such, the trial court should have ordered their production.

Compounding the above gross deficiencies, Kuzovkin baselessly objected (with form objections) to all of Armada's interrogatories and baldly refused to answer half of them. 1027a-1031a (Responses to ROG Nos. 1-15). Kuzovkin made no effort (nor could he) to specifically explain how the interrogatories are inappropriate under New Jersey's broad discovery rules. Far from being objectionable, these interrogatories sought relevant information and go directly to the issues in this case. See N.J.R.E. 401 (broadly defining "relevance" as evidence having the "tendency in reason to prove or disprove any fact of consequence to the determination of the action."). Kuzovkin also improperly

answered interrogatories not asked. For example, when asked to identify all bank account numbers he owned, maintained, was authorized to use, or had access to, Kuzovkin answered that "he has no bank accounts in the United States." The trial court should have ordered Kuzovkin to fully answer Armada's Interrogatories. 1027a-1028a (Responses to ROG Nos. 3-5).

B. The Roitmans produced only 11 pages of documents in violation of their discovery obligations.

The Roitmans' discovery responses were also deficient in numerous respects, and the trial court should have ordered them to cure the deficiencies. Despite admitting to traveling to Russia to complete the transactions with Kuzovkin, the Roitmans claimed to possess no emails, receipts, or financial documents related to the transaction. Indeed, they claimed to not possess or control documents or communications in responsive to 36 of Armada's 52 requests. 1033a-1051a; 1063a-1077a.

Three of Armada's discovery requests are particularly illustrative of the Roitman's stonewalling: Request for Document Production Number 38; Interrogatory Number 3; and Interrogatory Number 15 directed to A. Roitman. Those Requests state:

- Identify all persons in Russia who You communicated with during the Relevant Time Period concerning the Moscow Apartment, the Moscow Apartment Transaction, the Parking Rights Transaction, the Agreement of Sale, the Power of Attorney, the Safe Deposit Box Transaction, the Complaint or the Action. (1082a-1083a) (ROG No. 3);

- Describe each person, bank or financial institution that handled, possessed, received, transferred, spent, used or benefited from any monetary instruments, including the Cash Currency, after You "had your representatives pick up the cash from the safe deposit box" as referenced in the email sent by Steven Kropf on Friday, August 25, 2017 at 2:41 p.m. as appended in Exhibit "J" to the Complaint. (1086a) (ROG No. 15); and

- All documents or communications concerning the (i) financial institution which the safe deposit box was located; (ii) address of the bank or branch of the bank in which the safe deposit box was located; (iii) the date on which You or Your representatives took possession of the "cash from the safe deposit box" as referenced in the email sent by Steven Kropf on Friday, August 25, 2017 at 2:41 p.m.; and (iv) identity of every person that was involved with, witnessed or has knowledge of the aforementioned events. (1074a) (RFP to Y. Roitman No. 38).

The Roitmans raised frivolous objections to these three requests, including baseless "personal and confidential" objections, as well as using the 2017 Subpoena Application as a pretext to not comply with their discovery obligations. 1033a-1051a; 1063a-1077a. The trial court erred in permitting the Roitmans to do so.

The Roitmans also refused to provide any information or documentation concerning the safe deposit box they admittedly used to receive proceeds from Kuzovkin, including information as to who retrieved the money or how the transaction occurred. 1052a-1062a; 1078a-1087a. Despite these refusals, the Roitmans then claimed at before Judge Wilson that Kuzovkin owned the box while admitting it "was utilized to facilitate the transfer of the cash sale." 1T at 14:8-15.

The Roitmans never stated in their answers to interrogatories that Kuzovkin purportedly owned the safe deposit box at issue. 1052a-1062a; 1078a-1087a. Indeed,

the Roitmans' answers to interrogatories are evasive, non-responsive and incomplete. For nearly every single interrogatory directed to A. Roitman that relates to the Apartment Transaction, she proclaims a lack of knowledge and points to her father, Y. Roitman, as the person with requisite knowledge. 1078a-1087a. Yet his responses to the same interrogatories are boilerplate objections. 1052a-1062a. All this even though A. Roitman was the owner of record of the apartment, and she flew from New Jersey to Moscow to consummate the transaction and take custody of the funds. 1083a-1084a.

Despite admissions that the Roitmans spoke with each other, Kuzovkin, a captive real estate agency in Russia, and numerous unidentified "representatives" who helped pick up the funds at issue, not a single name or identifying characteristic as to *any* of the persons or companies involved in multi-million-dollar real estate transactions has been supplied. Rather, Defendants' deficient interrogatory answers are a combination of blanket objections and non-specific statements like "Kuzovkin was located through magazine and newspaper listings placed by the [unidentified] captive real estate agency related to the Apartment Building." 1059a (Y. Roitman Response to ROG 12); 376a. (Roitman admitting that her "representatives" picked up the "cash" in Russia).

The Roitmans' interrogatory responses are also deficient because they improperly direct Armada to responses not provided in response to the 2017

Subpoena Application. See 1082a-1083a; 1086a (A. Roitman Responses to ROG Nos. 2, 3-5, and 15 (baselessly refusing to answer interrogatories because that information "was specifically limited from disclosure by the DNJ Order")); see also 1056a-1060a (Y. Roitman Responses to ROG Nos. 2, 3, 4, 5, 6, 7, 13, and 15). Any decision the federal judge made in the 2017 case brought in aid of foreign legal proceedings does not in any way impact the scope of permissible discovery under New Jersey's broad discovery rules as outlined above. See Rule 4:10-2(a).

Armada's interrogatories seek relevant information, including, (1) the identity of "each person who has knowledge of any fact that concerns allegations contained in the Complaint," 1082a, A. Roitman Rog No. 2; (2) the identity of "all persons in Russia who You communicated with" "concerning the Moscow Apartment, the Moscow Apartment Transaction, the Parking Rights Transaction, the Agreement of Sale, the Power of Attorney, the Safe Deposit Box Transaction, the Complaint or the Action," 1082a-1083a, A. Roitman Rog No. 3; and (3) the description of "each person, bank or financial institution that handled, possessed, received, transferred, spent, used or benefited from any monetary instruments, including the Cash Currency, after You "'had your representatives pick up the cash from the safe deposit box,'" 1086a, A. Roitman Rog No. 15.

Defendants improperly objected to every discovery request. Then, Defendants thwarted this Court's clear edict and the trial court's case management orders by

abusing judicial re-assignments and blocking Armada's attempts to obtain the discovery. The trial court should have compelled the Roitmans to provide full, certified supplemental answers by date certain. The Roitmans' obvious strategy in this case is to stonewall, but they have inescapable discovery obligations. As this Court stated in 2021, the trial court's order should be reversed because Armada is entitled to basic discovery and complete responses.

POINT VIII

THE TRIAL COURT ERRED IN DENYING ARMADA'S MOTION TO EXTEND DISCOVERY (16A-35A).

The trial court erred in denying Armada's motion to extend discovery because Armada easily satisfied the liberal "good cause" standard for an extension. See Ponden v. Ponden, 374 N.J. Super. 1, 9-11 (App. Div. 2004); Leitner v. Toms River Reg'l Schs., 392 N.J. Super. 80, 87, 92-94 (App. Div. 2007) (discussing that good cause must be construed liberally where there is no prejudice to the other party and enumerating nine factor test to be applied before arbitration or trial date set).

Here, the Leitner factors weigh in favor of a discovery extension. The Amended Complaint in this case was filed in June 2022 and a case management order entered shortly thereafter. 106a-110a. Between June 16 and November 29, 2022, the parties engaged in paper discovery and disputes arose due to Defendants' inadequate responses to Armada's discovery requests. 42a-421a; 442a-1262a. On November 29, 2022, with those disputes unresolved, Judge Wilson entered a case

management order setting a discovery end date of July 5, 2023. 111a-113a. While pursuing rulings on the unresolved discovery disputes, and prior to the expiration of all applicable deadlines, Armada noticed Defendants' depositions. 11a; 68a; 71a.

Between November 29, 2022, and April 26, 2023, there were three (3) judicial reassignments with respect to this matter, further adding to its complexity. 68a. Nonetheless, Armada cross-moved to compel the outstanding discovery prior to the discovery end date and before either an arbitration or trial date was set. Armada was diligent throughout in its pursuit of discovery while Defendants repeatedly frustrated Armada's attempts to obtain it. Nor would Defendants be prejudiced by an extension of discovery while Armada would be greatly prejudiced in its absence. The trial court's order denying a discovery extension should be reversed.

POINT IX

THE TRIAL COURT ERRED IN DENYING ARMADA'S MOTION FOR ISSUANCE OF LETTERS ROGATORY AND INTERNATIONAL ASSISTANCE (16A-33A; 40A).

The trial court erred in denying Armada's motion for issuance of letters rogatory and international assistance because Armada has a right to depose Nikolaj Hummelbrunner in connection with his sale of property in Vienna (the "Vienna Transaction") to Kuzovkin. 189a-194a. Such testimony is relevant because, like the Apartment Transaction with the Roitmans, the Vienna Transaction bears the same hallmarks of a transaction meant to facilitate

Kuzovkin's embezzlement. 189a-194a. Letters rogatory allow a party to depose an individual who is out-of-state or out of the country. Matter of Berkson, 280 N.J. Super. 180, 183 (App. Div. 1995) (citing R. 4:11-5) (recognizing use of letters rogatory properly "addressed to the appropriate judicial authority"). Hummelbrunner, on information and belief, resides in Austria, and has relevant information regarding the Vienna Transaction, a transaction Plaintiff has reason to believe was in furtherance of Kuzovkin's Illegal Scheme. 49a-55a; 189a-194a. Indeed, any information Armada learns regarding the Vienna Transaction will inform its understanding of Kuzovkin's transactions with the Roitmans. As such, the trial court erred in denying Armada's motion for issuance of letters rogatory and international assistance as "moot."

CONCLUSION

For the reasons set forth above, this Court should reverse the trial court's orders granting Defendants' motions to dismiss and denying Plaintiff's motions to compel discovery, extend the discovery period, and for issuance of letters rogatory and international assistance.

FOX ROTHSCHILD LLP

Attorneys for Appellant PJSC Armada

Dated: September 30, 2024

By: */s/Corinne McCann Trainor*

ELY GOLDIN
CORINNE MCCANN TRAINOR
MICHAEL W. SABO

Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-003343-23

PJSC ARMADA,

Plaintiff-Appellant,

—against—

ALEXY KUZOVKIN, ALLA ROITMAN, YEFIM ROITMAN, and JOHN DOES 1-5,

Defendants-Respondents Cross-Appellants.

CIVIL ACTION

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, BERGEN COUNTY, DOCKET NO. BER-L-197-19

SAT BELOW: HON. PETER G. GEIGER J.S.C.

BRIEF FOR DEFENDANT-RESPONDENT CROSS-APPELLANT ALEXY KUZOVKIN

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December 4, 2024

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PRELIMINARY STATEMENT

There could hardly be a more inconvenient forum for this litigation—between a Russian plaintiff and a Russian defendant over alleged misconduct in Russia over a decade ago—than New Jersey. In this action, a Russian plaintiff, PJSC Armada ("Armada"), sued its former Russian executive, Alexy Kuzovkin ("Kuzovkin"), alleging that he—together with the entire Armada management team—committed corporate wrongdoing and embezzlement in Russia under Russian law over a decade ago. Attempting to litigate its Russian corporate governance dispute in New Jersey, after years of litigation in Russia, Armada alleged that Kuzovkin used a small portion of the monies allegedly misappropriated from Armada to purchase real property in Moscow from two New Jersey residents, Yefim and Alla Roitman (the "Roitmans"). The real estate purchase took place in Moscow and was conducted through a Russian broker. Despite bringing numerous cases in Russia against Armada's former management team over several years, the Russian plaintiff sought to relitigate all of its claims of corporate malfeasance in New Jersey.

In a 2019 decision, the trial court granted Kuzovkin's first motion to dismiss for lack of personal jurisdiction but did not reach the issue of forum non-conveniens, even though Kuzovkin had also sought dismissal on that basis. By order dated September 3, 2021, this Court found that the trial court should

have granted jurisdictional discovery before dismissing the action against Kuzovkin but took no position as to whether there was personal jurisdiction over him. Importantly, however, in reversing the trial court's dismissal of the Roitmans' motion to dismiss based on forum non-conveniens, this Court expressly contrasted their circumstances with Kuzovkin, highlighting that unlike the Roitmans who had little connection to Armada, Armada "had already commenced proceedings against Kuzovkin in Russia . . ." 89a. And unlike Kuzovkin, who is a Russian citizen, the Roitmans were "New Jersey citizens residing in Bergen County" and thus it was not obvious that they would suffer a "grossly unfair burden." 88a.

After this Court's reversal, Armada obtained extensive jurisdictional discovery from Kuzovkin, which, among other things, included Kuzovkin's passports and travel itineraries, which all corroborated his testimony that he has never set foot into New Jersey. 1487a. Nor did he negotiate the sale of Moscow real property with the Roitmans, but rather, used a broker in Russia. 1487a. Armada could establish no facts to provide the requisite "minimum contacts" with the State of New Jersey to meet constitutional due process requirements.

After jurisdictional discovery, Kuzovkin moved again for dismissal on the grounds that New Jersey lacked personal jurisdiction over him, on the grounds of forum non-conveniens, and under the doctrines of collateral estoppel, res

judicata, and the entire controversy doctrine given Armada's extensive litigation of these disputes with Kuzovkin and the other Armada executives in Russia. 21a. On May 14, 2024, the trial court granted Kuzovkin's motion to dismiss for lack of personal jurisdiction, forum non-conveniens, and collateral estoppel. 34a.

The trial court's decision should be affirmed. Discovery has confirmed that Kuzovkin has never set foot into New Jersey, did not communicate into New Jersey with the Roitmans, and did not attend Armada's US road shows. 1487a. Further, irrespective of personal jurisdiction, the trial court did not abuse its discretion in dismissing the claims against Kuzovkin under the doctrine of non-conveniens because a Russian plaintiff is attempting to sue a Russian defendant for wrongdoing in Russia under Russian law with nearly all the witnesses— the alleged "co-conspirators" identified in Armada's Amended Complaint— themselves Russian citizens, the relevant documents in Russia and the Russian language, and the relevant Russian law. 195a-356a.

And by being forced to litigate in New Jersey, Kuzovkin is also prejudiced and prevented from defending himself because, as Armada concedes, it is highly unlikely that the Russian courts will assist American legal proceedings and allow him to compel discovery in Russia from his alleged co-conspirators, the former management team at Armada, when it is being sought in connection with an action pending in the United States. *See* Appellant's Brief p.18. Indeed, the

alleged co-conspirators identified in the Amended Complaint (but not named as defendants) are necessary parties to this proceeding, and the difficulties of obtaining discovery from the alleged co-conspirators is highly prejudicial to Kuzovkin. *See Markwardt v. New Beginnings*, 304 N.J. Super. 522, 536, n 4, 701 A2d 706, 713 (App Div 1997) ("Where, as here, an individual or business is alleged to be a key member of a conspiracy . . . the court should order the plaintiff to join as a party defendant that person or entity."). When balancing the relevant public and private interest factors, there could hardly be a more inconvenient forum for this litigation than New Jersey.

The trial court also properly applied the doctrine of res judicata and collateral estoppel against Armada, which had extensively litigated these very claims in Russia and lost. 31a-33a. Armada has been pursuing its claims for years in Russia, and not satisfied with the results, it sued Kuzovkin in New Jersey in what amounts to international forum shopping.

This appeal should also be dismissed for glaring procedural defects by Armada, who strangely failed to include in the record a copy of the March 15, 2024 transcript of the oral argument regarding the very decision that it is appealing and, of course, where its arguments were addressed and rejected by the trial court.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

A. The Parties

Plaintiff-Appellant Armada is a public company incorporated in Russia with its principal place of business in Moscow. AC ¶ 7. Defendant-Respondent Kuzovkin is a Russian national residing in Moscow, Russia, and Vienna, Austria. AC ¶ 8. He is alleged to have been Armada's CEO until 2013. *See* Exhibit A ¶ 23. Defendants-Respondents Alla Roitman and Yefim Roitman are New Jersey residents. AC ¶¶ 10-11.

B. The Dispute

Armada alleges that until 2012 it was one of the top five software developers in Russia in terms of annual sales, with customers in Russia's public and private sectors. AC ¶ 20. According to Armada, beginning in 2012 Kuzovkin and the other executives at Armada started siphoning money and technology from Armada. AC ¶¶ 35-58. Armada alleges that Kuzovkin had Armada lend money to these companies at low interest rates, and these companies in turn lent Armada that money back at higher interest rates. *See* AC at ¶¶ 41-43. Furthermore, Armada alleges that Armada's then-mangers formed a competing company that usurped corporate opportunities from Armada. *See* AC at ¶¶ 44-49.

In late 2013, Armada alleges that it discovered this alleged misconduct and that Armada's shareholders initiated legal proceedings in Russia where it successfully removed Kuzovkin, and Armada's other managers, from their positions with the company. *See* AC at ¶¶ 59-60. Armada claims that when his replacement was appointed, it "found no employees, no documents, no equipment, and no telephones." *See* AC ¶ 61. Armada alleges that it pursued legal actions against Kuzovkin and others in Russia. *See* AC at ¶ 63.

Armada claims that on November 15, 2013, Kuzovkin purchased real property in Vienna, Austria with funds it claims, "upon information and belief. . . [were] actually embezzled by Kuzovkin from Armada." *See* AC at ¶ 67. Armada also alleges that in or about 2017, it discovered that Kuzovkin purchased a "luxury apartment" in Moscow (the "Moscow Apartment") in 2013 from Yefim and Alla Roitman. *See* AC at ¶ 75. Armada claims that the purchase price for the Moscow Property was 27,500,000 Russian Rubles, or "approximately USD $1,000,000 . . . although comparable apartments in the neighborhood sold for significantly higher sums." *See* AC at ¶ 76. Armada further claims that the fair market value was actually $3,500,000.00. *See* AC at ¶ 77. Armada alleges that "on the same day that the Agreement of Sale was executed, October 18, 2003, [Mrs. Roitman's] father, Y. Roitman . . . a US citizen who resides in Russia, sold an automobile parking spot associated with

the Moscow Apartment to Kuzovkin for approximately USD $200,000." AC at ¶¶ 88-89. Armada claims "upon information and belief" that "the Moscow Apartment was purchased with funds that Kuzovkin embezzled from Armada." AC at ¶¶ 78, 90. Armada also "believe[s] that the actual amount paid via safe deposit box was $3,700,000 not $1,000,000 and that the purchase price in the agreement marked as Exhibit "B", did not reflect the actual agreement among Kuzovkin and the Roitmans, who helped him conceal his embezzlement." *See* AC at ¶ 91.

Armada brought several proceedings in Russia and sought and obtained discovery in aid of their foreign legal proceedings in Russia from Alla Roitman by filing an ex parte application with the United States District Court for the District of New Jersey under 28 USC § 1782 seeking information related to the transaction. *See* AC at ¶¶ 81-82. In response to the subpoena served on her, Mrs. Roitman provided the purchase document that was signed and notarized by her in Russia. *See* AC at ¶ 84. Through her lawyer, she informed Plaintiffs that no other communications or documents relating to the purchase ever existed, and that she had asked third-parties in Moscow to sell the apartment, who then located Mr. Kuzovkin, ultimately concluding in an all cash deal in which Kuzovkin deposited the cash in a bank safe deposit box that Mrs. Roitman

picked up after the closing. *See* AC ¶¶ 85-86, 92. Armada did not seek any further discovery from the Roitmans.

C. Armada Commences this Action Against Kuzovkin and the Roitmans

On or about January 9, 2019, Armada commenced this action seeking to hold Kuzovkin liable in New Jersey for his alleged wrongdoing and corporate malfeasance in Russia, including counts for breach of fiduciary duty, conversion, accounting and constructive trust, fraud, and New Jersey RICO and against the Roitman's for aiding and abetting Kuzovkin's alleged wrongdoing. 81a.

Armada commenced this action in New Jersey only after suffering a series of decisions finding that there was no wrongdoing dated between January 12, 2015 through September 11, 2017, wherein the Russian Courts consistently rejected the same claims of wrongdoing at Armada. 29a.

D. The Lower Court's Initial Dismissal and the Appellate Division Reverses to Allow Limited Jurisdictional Discovery

On May 10, 2019, the Roitmans moved to dismiss the Complaint as against them for failure to state a claim and under the doctrine of forum non conveniens. 82a. On June 28, 2019, the trial court granted the Roitman's motion in its entirety. 75a-105a. On September 23, 2019, Kuzovkin moved to dismiss the Complaint as against him on the same grounds as the Roitman's moved,

incorporating all of their arguments, and on the additional ground of lack of personal jurisdiction given that Kuzovkin was a Russian citizen with no ties to New Jersey. 82a.

On December 2, 2019, the trial court granted Kuzovkin's motion to dismiss for lack of personal jurisdiction but did not reach any other grounds. 83a. The trial court found that "Kuzovkin is a Russian national who resides in Russia. There is no evidence that Kuzovkin ever entered the State of New Jersey . . . The apartment that was allegedly used for money laundering is also located in Russia. Therefore, there is no way for this Court to find that there were substantial enough minimum contacts directed at New Jersey to exercise personal jurisdiction over the Defendant." 730a. The trial court did not reach Kuzovkin's forum non conveniens grounds for dismissal. 33a.

On September 3, 2021, the Appellate Division reversed and granted Armada's jurisdictional discovery, taking no position as to whether there was personal jurisdiction. 75a-106a. Importantly, in reversing the trial court's dismissal of the Roitmans' motion to dismiss on forum non-conveniens grounds, never reached by the trial court in dismissing the claims against Kuzovkin, the Appellate Division expressly contrasted their circumstances with Kuzovkin, highlighting that, unlike the Roitmans, who have little connection to Armada and the alleged corporate malfeasance in Russia, Armada "had already

commenced proceedings against Kuzovkin in Russia . . .” 89a. App. Div. Order at 14. In contrast to Kuzovkin, there was “no guarantee they could do so against the Roitmans, New Jersey residents who, unlike Kuzovkin, had no direct connection to Armada.” Fleischmann Cert. Ex. F, App. Div. Order at 14. Further, the Appellate Division reversed the Roitmans’ motion because unlike Kuzovkin, who is a foreign citizen, they were “New Jersey citizens residing in Bergen County” and thus it was not obvious that they would suffer a “grossly unfair burden.” *Id.* at 13.

Armada has since had the opportunity to engage in extensive jurisdictional discovery. 83a. While Armada contends that there is outstanding discovery, this is because it conflates merits and jurisdictional discovery. Armada has obtained all discovery necessary to adjudicate the issue of personal jurisdiction, which has confirmed that Kuzovkin has never been to New Jersey or communicated into New Jersey. 1487a-1492a. Fleischmann Cert. Ex. C, Bates 562-715-716.

E. The Order Under Appeal

On May 14, 2024, the trial court granted Kuzovkin’s motion to dismiss. The trial court noted that “Defendant Kuzovkin produced seven hundred and eleven pages of documents relating to his possession, custody, or control related to transaction with the Roitman Defendants as well as documents relating to his travel in the United States and documents with respect to the Plaintiff that he

still had in his possession. Defendant Kuzovkin also executed a Certification of Completeness as it relates to his discovery responses/productions and notably certified that he has never traveled to New Jersey. On January 26, 2023, Judge Wilson found that the discovery responses/productions were sufficient and did not order any further discovery to be produced by the defending parties." 28a.

In applying the doctrine of forum non-conveniens, the trial court recognized that "Plaintiff voluntarily elected to litigate its claims in Russia and cannot now contend that Russia is an inadequate forum to pursue its claims against the defending parties in this matter." 29a. Further, the trial court "weighed the public and private interest factors" and determined that New Jersey was a "demonstrably inappropriate" forum, with "numerous practical and logistical difficulties," including that "[w]itnesses, documents, evidence, property, and all other sources of facts and discovery are all located in Russia. Moreover, there is no local interest in allowing the Plaintiff, a Russian corporation, to litigate claims of embezzlement and corporate misfeasance that occurred in Russia before a jury in New Jersey." 29a-30a.

As to personal jurisdiction, the trial court found that "this Court lacks personal jurisdiction over Defendant Kuzovkin. The completion of jurisdictional discovery has made clear that this Court does not possess personal jurisdiction, neither general or specific, over Defendant Kuzovkin. There is nothing in the

record sufficient to establish that Defendant Kuzovkin has sufficient minimum contacts, in any respect, with the state of New Jersey." 30a.

The trial court also found that collateral estoppel barred the relitigation of the corporate governance claims because the record showed that "the issue of whether a large-scale embezzlement and/or corporate misfeasance scheme was perpetrated was extensively litigated in the Russian Courts" and "[i]n all of the former Russian proceedings it was ultimately determined that no such events occurred, and no individuals were found liable based upon the allegations asserted." 31a-32a. Further, "[t]here is nothing in the record to suggest that Plaintiff did not have the full and fair opportunity to litigate these claims against the defending parties in Russia."

Having found that jurisdictional discovery was complete, the trial court denied the Russian plaintiff's discovery motions as mooted by the dismissal. 25a-26a.[1]

On June 28, 2024, Armada filed a notice of appeal. On July 16, 2024, the Roitman Defendants filed a Notice of Cross Appeal as to the issue of the Court's denial of its request for fee shifting. On July 17, 2023, Defendant Kuzovkin filed a Notice of Cross Appeal as to that issue.

[1] The trial court also denied the Roitmans' and Kuzovkin's request for fee shifting. 17(a).

ARGUMENT[2]

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING ON THE GROUNDS OF FORUM NON-CONVENIENS

On a forum non-conveniens motion, the Appellate Division will not disturb a dismissal unless there is a showing of clear abuse discretion. *Kurzke v. Nissan Motor Corp. in U.S.A.*, 164 NJ 159, 165, 752 A2d 708, 711 (2000); *See also Rebbeck v. Honeywell Intl.*, 2019 N.J. Super. Unpub. LEXIS 489, at *3 (App Div Mar. 5, 2019) ("[W]e will not intervene absent a clear abuse of discretion.").

"To guide the exercise of this discretion, courts generally apply a three step process. At the outset, a court determines whether there is an adequate alternative forum to adjudicate the parties' dispute. If another forum exists, the court then considers the degree of deference properly accorded the plaintiff's choice of forum. Finally, the court analyzes the private-and public-interest factors implicated in the choice of forum." *Varo v. Owens-Illinois*, 400 N.J. Super. 508, 519, 948 A.2d 673, 680 (App. Div. 2008).[3]

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[2] In addition to the arguments made here, in support of his opposition Kuzovkin expressly adopts and incorporates the arguments made in the Roitmans' appeal brief in opposition to Armada's appeal and in support of its cross-appeal (including the trial court's denial of fee shifting).

[3] Kuzovkin previously moved for dismissal on the grounds of forum non conveniens but the trial did not reach the issue and dismissed only for lack of personal

"An adequate forum is one where the defendant is amenable to service of process, and where the subject matter of the dispute may be litigated." *Rippon v. Smigel*, 449 N.J. Super. 344, 365, 158 A.3d 23, 35 (App. Div. 2017). In other words, "there must be at least two forums in which defendant is amenable to process." *Varo v. Owens-Illinois*, 400 NJ Super 508, 520, 948 A2d 673, 680 (App Div 2008).

"The private interest factors are: (1) the relative ease of access to sources of proof, (2) the availability of compulsory process for attendance of unwilling witnesses and the cost of obtaining the attendance of willing witnesses, (3) whether a view of the premises is appropriate to the action and (4) all other practical problems that make trial of the case "easy, expeditious and inexpensive," including the enforceability of the ultimate judgment." *Rippon*, 449 N.J. Super. at 365, 158 A.3d at 35-36 (citations and quotations omitted).

"The public interest factors are: (1) the administrative difficulties which follow from having litigation "pile up in congested centers" rather than being handled at its origin, (2) the imposition of jury duty on members of a community having no relation to the litigation, (3) the local interest in the subject matter such that affected members of the community may wish to view

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jurisdiction. 83a. The Appellate Division also did not address the issue as it related to Kuzovkin on appeal.

the trial and (4) the local interest "in having localized controversies decided at home." *Id.* (citations and quotations omitted).

While Plaintiff is entitled to some deference in picking a forum, "[a] nonresident's choice of forum is entitled to substantially less deference." *D'Agostino v. Johnson & Johnson*, 225 N.J. Super. 250, 262, 542 A.2d 44, 50 (App. Div. 1988).

A. Russia is an Adequate Forum for a Russian Plaintiff Who Has Made Extensive Use of the Russian Courts

Kuzovkin is amenable to service in Russia because, as this Court previously acknowledged, the alleged corporate malfeasance all occurred in Russia and Kuzovkin is a Russian citizen and resident. Fleischmann Cert. Ex. F, App. Div. Order at 14. Further, the Russian plaintiff has repeatedly accessed the Russian courts over these very issues and even successfully removed Kuzovkin from his corporate role via the Russian courts. 206a at ¶60. Given Kuzovkin's Russian citizenship and his executive role with the Russian plaintiff corporation, Armada cannot credibly dispute that Russia is an adequate forum as the law defines the term: that Kuzovkin "is amenable to service of process, and . . . the subject matter of the dispute may be litigated [there]." *Rippon v. Smigel*, 449 N.J. Super. 344, 365, 158 A.3d 23, 35 (App. Div. 2017).

Thus, "Russia provides an adequate alternative forum for adjudication of this dispute." *Freidzon v. OAO Lukoil*, 2015 US Dist LEXIS 32040, at *19

(S.D.N.Y. Mar. 12, 2015). The Russian plaintiff's claim that Russia cannot provide an adequate forum given the war between Ukraine and Russia is baseless, and there is no indication that the Russian courts have closed to anyone, let alone Russian citizens. *See* Appellant's Brief p.32. Further, Armada successfully used its home country's courts to remove Kuzovkin from his executive role and has used those courts thereafter to pursue its claims. 206a at ¶60. That the Russian plaintiff's claims since have not withstood the scrutiny of the Russian courts does not support it forum shopping into New Jersey. "Russia [has been found] to be an adequate forum where the 'plaintiffs in this case have similarly pursued relief in the Russian courts until the results were not to their liking.'" *Paulo v. France-Presse*, 2023 U.S. Dist. LEXIS 55617, at *32 (S.D.N.Y .Mar. 30, 2023) (quoting *Base Metal Trading SA v. Russian Aluminum*, 253 F Supp 2d 681, 707 (S.D.N.Y. 2003)).

Armada's choice of forum is also entitled to less difference because "[w]hen the plaintiff is foreign, however, this assumption [of convenience] is much less reasonable. Because the central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference." *In re Vioxx Litig.*, 928 A2d 935, 938 (App Div 2007).

B. The Public Interest Factors Overwhelmingly Support Russia as the Appropriate Forum

The public-interest factors support Russia as the appropriate forum to litigate this dispute. The first public-interest factor, "the administrative difficulties which follow from having litigation pile up in congested centers rather than being handled at its origin," supports Russia as the appropriate forum because this is a controversy that occurred in Russia between a Russian plaintiff, its former Russian executive, Kuzovkin, and would only lead to further congestion of the already congested New Jersey courts.

The second public-interest factor, "the imposition of jury duty on members of a community having no relation to the litigation," supports Russia as the appropriate forum because New Jersey citizens, imposed with jury duty, have no connection or relation to this litigation over Russian corporate malfeasance occurring in Russia or the sale of property in Russia.

The third public-interest factor, "the local interest in the subject matter such that affected members of the community may wish to view the trial," supports Russia as the appropriate forum because it is Russia and its citizens which have a local interest in this dispute over a Russian company and misconduct occurring in Russia. New Jersey citizens would have little, if any, interest, in such a distant controversy with little, or no, connection to them.

The fourth public-interest factor, "the local interest in having localized controversies decided at home," supports Russian as the appropriate forum because all key facts and circumstances in this controversy occurred in Russia.

In other words, "this dispute relates to alleged misconduct perpetrated in Russia involving Russian business entities and stock" and "the 'local interest factor' plainly falls in favor of Russian adjudication of the issues." *Freidzon*, 2015 U.S. Dist. LEXIS 32040, at *24.

C. The Private Interest Factors Overwhelmingly Support Russia as the Appropriate Forum

The private-interest factors also support Russia as the appropriate forum to litigate this dispute. The first private-interest factor, "the relative ease of access to sources of proof," supports Russia as the appropriate forum because all of the alleged misconduct in this action occurred in Russia, and thus the relevant witnesses and documents are in Russia and, indeed, in the Russian language. Practically none of the merits evidence or witnesses are located in New Jersey. That is "the conduct at issue occurred almost exclusively in Russia. Thus, most, if not all, of the relevant documentary evidence to be assembled is in Russia." *Freidzon*, 2015 U.S. Dist. LEXIS 32040, at *21.

The second private-interest factor, "the availability of compulsory process for attendance of unwilling witnesses and the cost of obtaining the attendance of willing witnesses," also favors Russia because New Jersey courts will not

have jurisdiction over the Russian witnesses or be able to compel their testimony, and the cost of obtaining the attendance of willing witnesses from Russia would be more expensive than obtaining their testimony before a Russian tribunal. Indeed, "much of this evidence falls beyond this Court's power to compel, including records in the possession of governmental bodies of the Russian Federation and records in the possession of other foreign third parties." *Id.* Indeed, "because this case concerns a fraudulent scheme perpetrated in Russia, Russian corporate entities, and Russian stock holdings, it is reasonable to conclude that most, if not all, of the putative non-party witnesses are Russians. Accordingly, many prospective witnesses would fall beyond the reach of this Court's subpoena power." *Id.* at *22.

That is, unlike in *Mastondrea v. Occidental Hotels Mgt. S.A.*, where "[n]othing but cost hinders the [defendant]" from appearing in New Jersey with witnesses, and "[t]here has been no showing that any Mexican non-employee witnesses are unavailable to the Hotel in Mexico for purposes of *de bene esse* deposition, should their testimony be favorable to the Hotel, or that those witnesses would be more available if trial were to be conducted in Mexico." 918 A2d 27, 38 (App. Div. 2007), here, Armada concedes, 29a, that if this case proceeds in New Jersey, Kuzovkin, in his defense, will be unable to procure compulsory testimony and documents from Russia, where the alleged

wrongdoing occurred and where the alleged co-conspirators, named as such in the Amended Complaint, reside. *See Markwardt*, 304 N.J. Super. at 536, n 4, 701 A2d at 713 ("Where, as here, an individual or business is alleged to be a key member of a conspiracy . . . the court should order the plaintiff to join as a party defendant that person or entity."). Forcing Kuzovkin, a foreign citizen who has never set foot in New Jersey, to litigate claims about his alleged corporate malfeasance here when that alleged malfeasance happened in Russia and to deny him access thereby also to discovery in his defense from Russia is manifestly a "grossly unfair burden."

The third private-interest factor, "whether a view of the premises is appropriate to the action," supports Russia as the appropriate forum because Plaintiff appears to be alleging that the Property was undervalued (even though sold for their alleged value), and thus a view of the Moscow real property would be appropriate and unavailable. 27a.

The fourth private-interest factor, "all other practical problems that make trial of the case 'easy, expeditious and inexpensive,' including the enforceability of the ultimate judgment," supports Russia as the appropriate forum because the relevant witnesses, documents, and evidence are all in Russia, and in the Russian language. Furthermore, it is unclear whether a New Jersey judgment against Kuzovkin would be enforceable against Kuzovkin in Russia.

And critically, Russian law will apply to many, if not all, of the claims in this action, which will require extensive expert testimony on each issue of Russian law. New Jersey adheres to the internal affairs doctrine which "direct[s] that the law of the state of incorporation [governs] internal corporate affairs." *Krys v. Aaron*, 106 F. Supp. 3d 472, 484 (D.N.J. 2015) (quoting *Fagin v. Gilmartin*, 432 F.3d 276, 282 (3d Cir. 2005)). "Generally, 'internal affairs are involved whenever the issue concerns the relations [between or amongst] the corporation, its shareholders, directors, officers[,] or agents." *Labbe v. OSI Outsourcing Solutions, Inc.*, 2015 U.S. Dist. LEXIS 52546, at *7 (D.N.J. Apr. 22, 2015) (quoting Restatement (Second) of Conflicts of Law § 313 cmt. a (1971)). Thus, "anyone controlling" a [Russian] corporation would therefore be presumptively subject to [Russian] law "on fiduciary obligations to the corporation and other relevant stakeholders." *Krys*, 106 F. Supp at 484 (quoting *In re Teleglobe Commc'ns Corp.*, 493 F.3d 345, 386 (3d Cir. 2007)). Thus, the Court will need extensive expert testimony on Russian fiduciary and corporate laws to make any substantive legal determinations.

Even Plaintiff's civil conspiracy and NJ Rico claims are predicated on the same allegations that Kuzovkin violated Russian law because he—along with other former executives discussed in the AC but not named as defendants—allegedly siphoned and diverted a Russian company's assets. It is only a tiny

fraction of these funds that Plaintiff alleges were later obtained by two New Jersey residents, the Roitmans, by selling a Moscow property with the sale taking place in Moscow. Thus, most, if not all, of the claims will "require the application of Russian law and a conflict of law inquiry would likely lead to the application of Russian law in settling subsidiary legal issues associated with Plaintiff's RICO claims. Although this Court is capable of applying foreign law, a Russian court would undoubtedly be more competent." *Freidzon*, 2015 US Dist LEXIS 32040, at *24.

Thus, the public and private interest factors here overwhelmingly support the litigation of this dispute with Kuzovkin—allegations of corporate malfeasance under Russian law underpin all the claims in this suit—in the locale where the events occurred. The "[d]etermination of the appropriateness of the forum *requires weighing* public and private interest factors, including the accessibility of proof, availability of witnesses, administrative difficulties, local interest in the trial, and the availability of a much more appropriate forum." *Capital Inv. Funding, LLC v. Calvary Asset Mgt., LLC*, 2016 N.J. Super. Unpub. LEXIS 1800, at *16 (Super. Ct. App. Div. July 12, 2016) (emphasis added). The trial court did not abuse its discretion in finding that the factors did not support New Jersey retaining this case. The Court should affirm the dismissal on the grounds of forum non-conveniens.

II. THE TRIAL COURT'S DISMISSAL ON THE GROUNDS OF LACK OF PERSONAL JURISDICTION WAS SUPPORTED BY SUBSTANTIAL AND CREDIBLE EVIDENCE 30a

A. The Standard on a Motion to Dismiss for Lack of Personal Jurisdiction

The Court reviews the trial court's renewed dismissal for lack of personal jurisdiction by examining "whether the trial court's factual findings are 'supported by substantial, credible evidence' in the record." *Delgatto v. Greenbrier Sporting Club*, 2019 N.J. Super. Unpub. LEXIS 296, at *5 (App Div Feb. 6, 2019) (quoting *Patel v. Karnavati Am., LLC*, 437 N.J. Super. 415, 423, 99 A.3d 836 (App. Div. 2014)). Whether facts support the exercise of jurisdiction is a question of law and is reviewed de novo, with the plaintiff bearing the burden to prove jurisdiction. *Delgatto*, 2019 N.J. Super. Unpub. LEXIS 296, at *5.

"[I]t is the party asserting the adequacy of defendant's contacts to support specific jurisdiction who bears the burden of persuasion on that issue." *Citibank, N.A. v. Estate of Simpson*, 290 N.J. Super. 519, 532-533, 676 A.2d 172, 178-179 (App. Div. 1996). '"Specific jurisdiction is available when the 'cause of action arises directly out of defendant's contacts with the forum state . . .'" *Pullen v. Galloway*, 461 N.J. Super. 587, 597-598, 223 A3d 625, 630-631 (App. Div. 2019) (quoting *Waste Mgmt., Inc. v. Admiral Ins. Co.*, 138 N.J. 106, 119, 649 A.2d 379 (1994) (ellipses supplied by court). "In examining specific

jurisdiction, the minimum contacts inquiry must focus on the relationship among the defendant, the forum, and the litigation." *Pullen*, 461 NJ Super 587, 597-598, 223 A.3d 625, 630-631 (quotations and citations omitted). The minimum contacts requirement is satisfied if "the contacts expressly resulted from the defendant's purposeful conduct and not the unilateral activities of the plaintiff." *Lebel v. Everglades Marina, Inc.*, 115 N.J. 317, 323, 558 A.2d 1252 (1989) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)). "In determining whether the defendant's contacts are purposeful, a court must examine the defendant's conduct and connection with the forum state and determine whether the defendant should reasonably anticipate being haled into court in the forum state." *Bayway Ref. Co. v. State Util., Inc.*, 333 NJ Super 420, 429, 755 A2d 1204, 1209 (App. Div. 2000) (citations, quotations, and alterations omitted).

Even if there are sufficient contacts, the exercise of personal jurisdiction requires finding "that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Baanyan Software Svcs., Inc. v. Kuncha*, 433 N.J. Super. 466, 473 (App. Div. 2013) (citations and quotations omitted). "The factors to be considered include the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest

in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Reliance Nat. Ins. Co. In Liquidation v. Dana Transp., Inc.*, 376 NJ Super 537, 550-551, 871 A2d 120, 128 (App. Div. 2005) (citations and quotations omitted).

B. Overwhelming Substantial and Credible Evidence Established that New Jersey Does Not Have Personal Jurisdiction over Kuzovkin

The overwhelming evidence after jurisdictional discovery supports affirming the trial court's dismissal of this action on the grounds of lack of personal jurisdiction. The uncontested facts include that (a) Kuzovkin is a Russian national who does not reside here; (b) the alleged corporate transactions at issue happened in Russia and relate to a Russian company located in Moscow; (c) the apartment at issue is located in Moscow; (d) the sale of the Moscow apartment occurred in Moscow; (e) Armada does not reside in New Jersey and (f) the evidence shows that Kuzovkin has never set foot in the State of New Jersey or otherwise engaged in any activity in New Jersey. *See Finley v. Zimmerman*, 2012 N.J. Super. Unpub. LEXIS 649, at *13 (App. Div. Mar. 27, 2012) (finding no jurisdiction where "[t]he significant events, or non-events, that are at the core of the parties' dispute all involve Florida actors, Florida real estate, and Florida law. The only link to New Jersey is plaintiffs' residence."); *See also Regan v. Lowenstein*, 292 Fed. Appx. 200, 204 (3d Cir. 2008) (finding

no personal jurisdiction where defendant merely entered into a contract with a resident of the forum).

The Russian plaintiff contends that the discovery it received was insufficient, but this Court never ruled that Armada was entitled to unlimited discovery, but only that "[d]iscovery is necessary to resolve the disputed jurisdictional issues." 94a.[4] The Russian plaintiff has obtained extensive discovery, including passport and itinerary information which confirms that Kuzovkin had no contacts with New Jersey. Kuzovkin's affidavit testimony is not a "sham affidavit," as that doctrine applies where a party submits an affidavit "that directly contradicts his [or her] prior representations in an effort to create an issue of fact." *Metro Mktg., LLC v. Nationwide Veh. Assur., Inc.*, 275 A3d 459, 468 (App Div 2022) (citations and quotations omitted). Kuzovkin's affidavit contradicts neither prior testimony, let alone any evidence submitted by Armada. The discovery Armada claims it did not receive is merits discovery to which it is not entitled unless there was a showing of personal jurisdiction. 57a at ¶ 7.

In the AC, the Russian plaintiff alleged that large American financial institutions such as Bank of New York Mellon, State Street, US Bank National

[4] The "law of the case doctrine," cited by Armada, is irrelevant because this Court's prior decision took no position on whether there was in fact personal jurisdiction over Kuzovkin. 25a.

Association, Morgan Stanley, and Firebird Management, LLC, have offices in New Jersey (and all over the United States, including in New York City), and also were investors in Armada. AC ¶ 22. Further, the Russian plaintiff alleged that "between 2008 and 2014, Kuzovkin frequently travelled to the United States, including New Jersey, for purposes of attending roadshows at which he publicized Armada to and sought capital from the U.S. investment community." AC ¶ 24. "Upon information and belief, as part of the roadshow, Kuzovkin met with brokers like Deutsche Bank U.S." that also happen to have offices in New Jersey. AC ¶ 25.

The evidence after discovery shows that Kuzovkin did not travel to the United States for roadshows. Rather, he has visited the United States once in that period for vacation in 2014 where he travelled to Miami and Orlando. *See* Kuzovkin Cert., ¶ 5. His passports and contemporaneous vacation itinerary corroborate this. 1489a-1492a. Fleischmann Cert. Ex. C, Bates 562-715-716. In fact, the 2010 roadshow, which was Armada's only roadshow, was not attended by Kuzovkin, but rather by Dmitry Chursin, who was the investor relations manager for Armada between 2007 to 2014. *See* Kuzovkin Cert. Exhibit B, Chursin Email with Attachment. Fleischmann Cert. Ex. C, Bates 720-721, 561, 556-560.

The Russian plaintiff also pointed out that New Jersey has a large Russian population, and then speculated that Kuzovkin must have therefore entered the State of New Jersey. But again, the evidence shows that he travelled once to the United States in 2014 and did not travel to New Jersey. *See* Fleischmann Cert. Ex. C, Bates 562, 715-716.

Further, Kuzovkin did not "telephone[] the buyer in New Jersey to iron out the details of the contract, [and] mail[] the contract to the buyer in New Jersey for signing in New Jersey . . ." *Lebel*, 115 N.J. at 324-325, 558 A.2d at 1256. Instead, he spoke only with a Russian broker in Russia and the contract was signed in Russia. 1487a. Kuzovkin Cert., ¶ 7. And even if he had emailed or called into New Jersey to negotiate the Moscow real estate purchase, "we have held that telephonic and electronic communications with individuals and entities located in New Jersey alone, are insufficient minimum contacts to establish personal jurisdiction over a defendant." *Baanyan Software Servs., Inc. v. Kuncha*, 433 NJ Super 466, 477-479, 81 A3d 672, 679 (App. Div. 2013) (citing *Pfundstein v. Omnicon Grp. Inc.*, 285 N.J. Super. 245, 252, 666 A.2d 1013 (App. Div. 1995)) (holding that that negotiation of the provisions of the agreement via telephonic and interstate mail communications was not an attempt by the defendant to "tap an interstate market or avail itself of the privilege of doing business" in New Jersey, but rather was "a 'fortuitous' or 'attenuated'

contact between [the defendant] and New Jersey."). Further, to allow a "[Russian] company, to compel an individual employee to defend against a New Jersey lawsuit, where that employee was hired to work in [Russia], and never lived in, worked in, or visited New Jersey, violates principles of 'fair play and substantial justice.'" *Baanyan,* 433 NJ Super 466, 479.

In essence, based on the happenstance of a real estate seller's residence, not only did the Russian plaintiff improperly sue Kuzovkin in New Jersey, where he neither directed any activity nor could have anticipated ever being sued, the Russian plaintiff also burdens New Jersey courts by seeking to relitigate claims of corporate wrongdoing in Russia. New Jersey has no interest in a suit between a Russian plaintiff and a Russian defendant over alleged corporate wrongdoing and misdeeds in Russia. And even with respect to the Moscow real property purchase, the happenstance of the Roitman's residence is not purposeful availment. A defendant may "not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." *Lebel v. Everglades Mar., Inc.*, 115 N.J. 317, 323, 558 A2d 1252, 1255 (1989) (internal citations and quotations omitted). And "the plaintiff's claim must 'arise out of or relate to' the defendant's forum - related activities." *Jardim v. Overley*, 461 N.J. Super 367, 376, 221 A3d 593, 598 (Super Ct App Div 2019).

The bottom line is that Kuzovkin bought an apartment—he did not transfer money for no consideration, but he obtained as asset in Russia for that money. AC ¶¶ 84-86. He communicated only with a Russian broker in Russia, and never purposefully made any communication into New Jersey. 1487a ¶ 7. There is no way Kuzovkin "could reasonably anticipate that [New Jersey] would have a substantial interest in vindicating the personal rights of the [Russian plaintiff]" as to his alleged corporate malfeasance in Russia because he purchased property in Moscow from New Jersey residents. *Shah v. Shah*, 184 N.J. 125, 139, 875 A.2d 931, 940 (2005) (internal citations and quotations omitted).

Even if, arguendo, there were minimum contacts, jurisdiction would still not comport with substantial justice. The State of New Jersey has no interest in adjudicating claims by a Russian plaintiff relating to Moscow real property and purported corporate malfeasance of an executive at a Russian company that all occurred in Russia. Not only is Armada a Russian corporation, but nearly all the relevant witnesses, documents, and events are in Russia. Forcing Kuzovkin to litigate these claims in New Jersey—a state he has never been to—would impose a severe and unjust burden on him.

The Court should affirm the trial court's dismissal for lack of personal jurisdiction.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING UNDER THE DOCTRINES OF COLLATERAL ESTOPPEL AND RES JUDICATA

The Court also "review[s] de novo a decision on res judicata and collateral estoppel." *Challenger Acres, LLC v. Baxter*, 2024 N.J. Super. Unpub. LEXIS 2781, at *11 (App Div Nov. 7, 2024). New Jersey Courts follow the doctrine of collateral estoppel or issue preclusion described in the Restatement of Judgments. *Hernandez v. Region Nine Hous. Corp.*, 146 N.J. 645, 659 (1996). A plaintiff must, in order to avoid the preclusion bar, demonstrate either that "he lacked full and fair opportunity to litigate the issue" in a prior proceeding, or there are "other circumstances [that] justify affording [plaintiff] an opportunity to relitigate the issue." Restatement (Second) of Judgments § 29, at 291.

The party seeking to enforce collateral estoppel must establish: "(1) the issue sought to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding and that the litigant against whom issue preclusion is invoked had a full and fair opportunity to litigate the issue; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding." *In re Estate of*

Dawson, 136 N.J. 1, 20–21 (1994) (internal citations and quotations omitted).

Here, the specific issue of whether a large-scale embezzlement and/or corporate misfeasance scheme was perpetrated by Armada's former management team was extensively litigated in the Russian civil courts that maintain jurisdiction over Russian public companies. 29a. On each occasion, it was decisively determined that no such events actually occurred, and Armada's prior managers were found not liable to Armada based upon such claims that were actually filed and asserted by Armada and resolved by Russian Courts. 29a. It is not in dispute that Armada was a party to each of the civil matters identified above and that it was determined on each occasion that the claimed large-scale embezzlement and/or corporate misfeasance scheme simply did not occur, and that Armada's prior management team was not liable to Armada based upon the allegations asserted. 29a.

Specifically, Plaintiff's first component of the claimed illegal scheme, that Kuzovkin and Armada's managers utilized DDP and TVER to abscond with funds by way of dummy companies is directly contradicted by: (1) the January 27, 2015 Moscow Arbitration Court Decision; (2) February 25, 2015 Moscow Arbitration Court Decision; and (3) the September 21, 2015 Moscow Arbitration Court Decision. *See* Fleischmann Cert. Exs. K §3:1, N §3:1; 8:1. Specifically, in claims previously asserted in Russia by Armada, the Court

found entities such as Tver were not utilized to embezzle or defraud Armada and that the subcontracts were valid, legitimate and enforceable. 461a.

Plaintiff's second component of the claimed illegal scheme was that Armada's management team utilized preferential intercompany loans as a ruse to transfer funds to unidentified offshore companies. AC ¶ 43. The September 25, 2015 Moscow Arbitration Court Decision directly refutes that these events occurred. In that action, Armada sought to hold R.A. Kruglyakov, the former General Director of Armada, liable for the use of interconnected loan on loan transactions to misappropriate funds from Armada between 2012 and 2014. *See* Fleischmann Cert. Ex. K. §30:18. The Court reviewed an audit that was prepared in connection with the case and determined that Kruglyakov and Armada's executive were not liable for claimed unfavorable intercompany loans being taken in bad faith or as part of a fraudulent scheme to embezzle funds from Armada. 460a-461a.

Plaintiff's third component of the claimed illegal scheme was that Armada's management team formed PPL, a competing entity, and utilized that entity to usurp business opportunities from Armada. 203a. The December 7, 2015 decision of the Supreme Court of the Russian Federation in an action brought by Armada, found that there was no evidence of a claimed malicious

agreement related to PPL and that Armada did not establish intentional concealment on the part of PPL. *See* Fleischmann Cert. Ex. L §15:1.

Furthermore, the Moscow criminal proceeding determined that Kuzovkin did not spearhead a large-scale embezzlement scheme or otherwise misappropriate funds from Armada. Fleischmann Cert. Ex. O §12:3.

The dismissal was further supported by comity. The Russian Court that governs public joint stock companies, as well as a criminal investigator, conclusively determined that no large-scale embezzlement scheme or corporate misfeasance was carried out by Armada's prior management team between 2012 and 2014. Fleischmann Cert. Ex. O §29:3. This Court must decline to exercise jurisdiction as it cannot reach a contrary finding to the Russian Courts, which would be required for Plaintiff to recover in this matter.

Based upon the principles of comity, New Jersey Courts have long adhered to the general rule that the court first acquiring jurisdiction has precedence absent special equities. *See Yancoskie v. Delaware River Port Authority*, 78 N.J. 321, 324 (1978); *Bass ex rel. Will of Bass v. DeVink*, 336 N.J. Super. 450, 455 (App. Div. 2001). Both federal and New Jersey state courts apply similar standards to address parallel proceedings. *Exxon Rsch. & Eng'g Co. v. Indus. Risk Insurers*, 341 N.J. Super. 489, 507, (App. Div. 2001) (citing *American Home Prods. v. Adriatic Ins. Co.*, 286 N.J. Super. 24, (App. Div.

1995)). In the federal system, parallel litigation is defined as actions where "substantially the same parties are litigating substantially the same issues simultaneously." *Schneider Nat'l Carriers, Inc. v. Carr*, 903 F.2d 1154, 1156 (7th Cir. 1990). In the federal system the following eight factors are considered in determining whether special circumstances justifying a dismissal or stay are present:

> (1) the identity of the court that first assumed jurisdiction over the property;
>
> (2) the relative inconvenience of the federal forum;
>
> (3) the need to avoid piecemeal litigation;
>
> (4) the order in which the respective proceedings were filed;
>
> (5) whether federal or foreign law provides the rule of decision;
>
> (6) whether the foreign action protects the federal plaintiff's rights;
>
> (7) the relative progress of federal and foreign proceedings; and
>
> (8) the vexatious or contrived nature of the federal claim.

Exxon, *supra*, 341 N.J. Super. at 508 (citation omitted).

Given that the underlying claims concern allegations of embezzlement and corporate misfeasance by the management team of a Russian public company in 2012 through 2014, there is no logical basis to suggest that a New Jersey state court is an appropriate forum for relitigating said claims. It is

submitted that special attention should be given to the seventh factor, because the foreign proceedings concluded there was no large-scale embezzlement scheme or corporate misfeasance conducted by Armada's previous management team and such matters were completed and resolved between 2014 and 2017 in Russian Courts. There is no legitimate basis to conclude that this Court should now reopen or relitigate the prior determinations of Russian Courts

Finally, Plaintiff has already commenced extensive litigation over this dispute in Russia. The entire controversy doctrine mandates that Plaintiff bring its claims in one forum. *Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C.*, 237 N.J. 91, 98, 203 A.3d 133, 137 (2019) ("The entire controversy doctrine embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court. The doctrine seeks to impel litigants to consolidate their claims arising from a single controversy whenever possible."). "If a party fails to assert a claim that the entire controversy doctrine requires to be joined in a given action, a court may bar that claim." *Id.* (citations omitted). Here, Armada spent years litigating these claims in Russia and may not now bring these claims here.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING ARMADA'S DISCOVERY MOTIONS

The trial court correctly denied Armada's discovery motions as mooted by the dismissal. This Court allowed Armada jurisdictional discovery, not merits discovery. Kuzovkin has provided Plaintiff with that jurisdictional discovery, which establishes that there is no basis for jurisdiction here over an action between a Russian plaintiff and a Russia citizen, Kuzovkin, relating to events that all occurred in Russia long ago.

Prior to the motions leading to this appeal, the Trial Court previously found that "the Court is satisfied that there's been Certifications of Completeness by the defendants and I'm not ordering them to do anything. And if they wish to get a motion to compel I'm happy that the defendants are in full compliance with their discovery obligations." Fleischman Reply Cert., Ex. A, Jan 26, 2023 Hearing Tr. at p. 23. The Trial Court also recognized that unless Plaintiff can establish jurisdiction there was no basis for merits discovery. *Id.* at 12 ("what was stated by the Appellate Division was concerning jurisdictional discovery"); *See also id.* at 17. Plaintiffs raised the exact same issues then as they raise now: that they need to know all of Kuzovkin's financial information and have all of his tax returns.

The discovery Plaintiff sought to compel has nothing to do with jurisdictional discovery, but simply conflated merits and jurisdictional

discovery. Plaintiff mysteriously omitted the transcript of oral argument on March 15, 2024—the very decision that is being appealed—from the record, perhaps because it establishes that when challenged by Judge Geiger, Plaintiff would not distinguish between the merit's discovery and jurisdictional discovery—or identify the jurisdictional discovery it was purportedly lacking[5]. For example, Plaintiff sought all of Kuzovkin's tax returns, but these have nothing to do with jurisdiction or, indeed, the merits. *Id.* at 22 (trial court noting that discovery into tax returns is generally improper). Furthermore, and in any event, such returns are confidential and may only be compelled with good cause shown. *De Graaff v. De Graaff*, 395 A.2d 525, 527 (App. Div. 1978) ("[I]f the movant has the information sought, or it is readily obtainable through other means, good cause for production is not shown."). "Disclosure should only be required when it serves a 'substantial purpose,' and disclosure of full returns should not be required "if partial disclosure will suffice." *Louro v. Pedroso*, 2017 N.J. Super. Unpub. LEXIS 1444, at *5 (App. Div. June 14, 2017) (citations and quotations omitted). "[I]n all but the clearest cases[,] the return should be examined by the judge before any disclosure is ordered." Id. (citations and quotations omitted). Armada claimed that "Kuzovkin has produces only 43 documents in total and refuses to produce any documents or communications in

[5] The Roitman's have included the transcript as part of their submission.

response to 42 of Armada's 61 total requests, including: RFP Nos. 10-11, 13-14, 16-19, 21-38, 42-45, 47, 49, 50-56, and 59-61 (the "Requests")." This is objectively false. Kuzovkin produced 711 pages of documents that are bates stamped as Kuzovkin 000001 through Kuzovkin 000711. Kuzovkin produced all documents in Kuzovkin's possession, custody or control respecting the transaction involving the Roitman defendants and respecting the road shows attended by Kuzovkin in the United States, as well as documents respecting Armada that he still had in his possession. In other words, he produced all documents relevant to jurisdictional discovery.

Notably, while Armada cited to a list of Requests that it contended were improperly objected to, it nowhere stated the reasons why the objections were improper. A blanket, generalized statement is insufficient. The trial court was not required to parse through each request if Armada could not be bothered to explain the relevance of these requests, or why Kuzovkin's objections, in its view, lack merit. For this reason alone, Armada's cross-motion was properly denied. Moreover, Armada was under the misapprehension that merely declaring that certain categories of documents are relevant makes it so.

With respect to the demands that seek tax returns and related financial documents, they were also overly broad and not sufficiently specific to seeking information related to this matter, including, but not limited to, the jurisdictional

issues. (*See, e.g.*, Request Nos. 16, 22, 27, 44). In fact, the demands for this category of documents appear to be more appropriate for the post-judgment phase of an action (this would not only require a judgment but would also require requests that would be specific and relevant to judgment enforcement efforts). Armada's discovery requests amount to a fishing expedition, in which Armada appeared to believe it was entitled to post-judgment discovery and other irrelevant discovery. "Courts do not permit a discovery 'fishing exhibition' to establish otherwise unsupported accusations." *Trocano v. Stevens*, 2022 N.J. Super. Unpub. LEXIS 3006, *7 (Bergen Co. Sup. Court Nov. 14, 2022).

For example, in Plaintiff's RFP No. 32, Armada asked for all of Kuzovkin's bank account information, which is completely overbroad, unduly burdensome, invasive, and improper. It also asked for documents relating to Kuzovkin's businesses (*see e.g.*, Requests Nos. 28-31 and 33)—which have nothing to do with jurisdictional discovery (or indeed this action)—based on their conclusory statement that "Plaintiff has reason to believe [they] served as the vehicle for Kuzovkin's embezzlement and sham transactions." Pl.'s Br. at 52. But Armada gave no basis for this belief; nor did it explain how this discovery might support jurisdiction over Kuzovkin. New Jersey rules do not permit a party to seek disclosure into information and matters that are not relevant to this action and are not reasonably calculated to lead to the discovery

of admissible evidence. Armada also sought overbroad discovery on Kuzovkin's purchase of a home in Austria, without explaining how such overbroad discovery into an Austrian real estate purchase is in any way relevant to jurisdiction or the merits.

Armada also objected to Kuzovkin's interrogatory objections, but again, rather than explain why these objections are improper in any specific way, it contented itself with saying that all of them seek "relevant information and go directly to the issues in this case." Pls. Br. at 55. Armada's objections in many instances went beyond mere irrelevance, and Armada's conclusory, broad-strokes statements were an inadequate basis to support a motion to compel.

The interrogatories were overly broad and sought information beyond the scope of this action, particularly those that begin with "Identify all…." This includes those which seek tax, bank account, financial information, and information respecting financial, real estate and other professionals without limiting the scope of the inquiry and providing requisite specificity (*e.g.,* Interrogatory No. 12 and the proper objection thereto). The objections to the Interrogatories were proper. For example, each of Interrogatory Nos. 6, 8, 10, 11 and 13 asserts some iteration of "describe with particularity…the circumstances..." These Interrogatories, as stated in the objection, "seek[s] information more practically obtained by an alternative discovery device (e.g.,

deposition)" because they require a narrative response. The same is true with respect to Interrogatory No. 3, which asks defendant to "Identify all instances (including dates and times) You travelled to the United States (including New Jersey) during the Relevant Time Period." In addition to the proper objections, defendant responded that "he has never visited New Jersey; that he attended one information technology conference unrelated to this action in the United States and that any other visit(s) to the United States were as a tourist." This was a fulsome response. Importantly, each of these and many other interrogatories make factual assumptions that have neither been established nor conceded by defendant, which, in addition to their unreasonably broad scope, is another proper basis for the objections.

Further, Armada objected to Kuzovkin's responses to Interrogatory Nos. 4 and 5 as having provided information that was not requested. This is untrue. Interrogatory No. 4 asked defendant to identify his bank accounts that he owned, maintained or had access to in New Jersey and defendant responded that "he has no bank accounts in the United States."

Regarding Interrogatory No. 5, plaintiff asked defendant to identify all safe deposit boxes that he owns, co-owned, or to which he had a right of access, but this request did not limit itself to the United States. Thus, defendant not only responded that "he does not maintain a safety deposit box in the United States,"

but properly objected to the interrogatory as overly broad and as seeking information that is not relevant to this action. This should be the end of the inquiry because the existence of bank accounts and safe deposit boxes in the United States (or, in this case, non-existent boxes) goes to the jurisdictional question and defendant fully responded. This is not the forum for plaintiff to engage in a fishing expedition for account and safety deposit information maintained by defendant outside of the United States. Such information is not properly sought or obtained in the context of this action. Simply stated, plaintiff does not get to use this action as a means to obtain information that it might use in another case in another venue.

In short, the trial court correctly denied Armada's discovery motions as moot. The discovery sought by Armada was at best merits discovery—which Armada conflated with jurisdictional discovery. 75a-106a. This Court expressly reversed for jurisdictional discovery, not merits discovery. 75a-106a. Armada had obtained all discovery necessary to determine the jurisdictional issues and the discovery they complain they did not receive was at most merits discovery. 1487a-1492a. Fleischmann Cert. Ex. C, Bates 562-715-716. Accordingly, the trial court did not err in denying the discovery motions.[6]

[6] For the reasons detailed in the Roitman's brief, which are adopted in whole herein, the trial court should have granted Kuzovkin's motion for attorney's fees.

CONCLUSION

For the foregoing reasons, the trial court's Judgment should be affirmed and the cross-appeal granted.

Dated: New York, New York
December 4, 2024

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	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003343-23
PJSC ARMADA, Plaintiff, -vs- ALEXY KUZOVKIN, ALLA ROITMAN, YEFIM ROITMAN, AND JOHN DOES 1-5, Defendants.	ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO. BER-L-197-19 SAT BELOW: HON. Peter G. Geiger, J.S.C.

BRIEF OF DEFENDANTS/RESPONDENTS YEFIM ROITMAN AND ALLA ROITMAN

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PRELIMINARY STATEMENT

In the underlying matter, Armada PJSC ("Plaintiff" or "Armada"), a dormant Russian public corporation, is seeking to relitigate failed Russian claims of embezzlement and corporate misfeasance by Armada's prior management team in a new forum. The Roitman Defendants are New Jersey residents that had no involvement with Armada but for selling an apartment and parking space in Russia to Armada's former Chairman in 2013. Armada's fantastical contention is that the Roitman Defendants are alleged to be secondarily liable in somehow assisting the former Chairman in transferring the ill begotten proceeds of his alleged scheme. In discovery it was finally disclosed that Armada previously litigated to conclusion the issue of the claimed embezzlement and corporate misfeasance in Russian civil and criminal courts between 2014 and 2017. The resulting decisions, which Plaintiff did not disclose in its pleadings or in discovery—and which therefore were unknown to the Appellate Division when it rendered its prior decision in this matter reversing the trial court's initial dismissal and requiring jurisdictional discovery—reveal that Plaintiff did not prevail in any of the prior actions in Russia and that the Russian civil and criminal courts conclusively found ***that there was no embezzlement or corporate misfeasance scheme*** carried out by Armada's prior management team.

Following jurisdictional discovery after this Court's initial remand, the Law

Division granted the Roitman Defendants' Motion to Dismiss and this (second) appeal by Armada followed. The Law Division's decision to dismiss the claims against the Roitman Defendants is sound and is not subject to reversal. The Law Division dismissed the Complaint (again) based on the doctrines of (a) forum non conveniens; (b) res judicata; (c) collateral estoppel; and (d) the economic loss doctrine. These conclusions were all sound and should not be disturbed on appeal, nor should the Law Division's decision be reversed because Armada misapplies the law of the case doctrine, and because a Russian corporation cannot assert exterritorial NJ RICO claims.

The Roitman Defendants have also narrowly cross-appealed the Court's denial of a request for counsel fees based upon Armada's initial Rule 4:5-1 failures and the efforts to conceal the prior Russian proceedings in discovery. In sum, for the reasons set forth in greater detail herein, the Roitman Defendants' cross-appeal should be granted, and the Trial Court's May 14, 2024 Order and Decision dismissing Armada's Complaint, with prejudice, should be affirmed.

STATEMENT OF FACTS

A. The Parties

Armada appears to be a dormant public company registered in the Russian Federation whose shares were previously traded on the Moscow Interbank Currency Exchange ("MICEX"). (199a). Defendant Kuzovkin was Armada's

former Chairman of the Board of Directors. Id. at ¶ (200a). The Roitman Defendants are United States citizens, and had no involvement or affiliation with Armada. (1274a). In 2013, the Roitman Defendants sold a Moscow apartment and adjoining parking space (collectively, the "Property") to Kuzovkin. (Ibid). Despite the allegations in the Amended Complaint, which are largely pled upon information and belief, the Roitman Defendants had no connection or affiliation with Kuzovkin, but for the 2013 sale of Property to Kuzovkin. Ibid.

B. Plaintiff's Amended Complaint

Plaintiff's Amended Complaint (the "Complaint") in this matter generally alleges that Kuzovkin and Armada's executives engaged in financial improprieties, purposefully devalued Armada, misappropriated funds, and usurped business opportunities for their own benefit. (197a) Although efforts are made to conflate the claimed roles of the Roitman Defendants and Kuzovkin, the Complaint essentially alleges largely upon "information and belief" that Kuzovkin purchased the Property from the Roitman Defendants "with funds embezzled from Armada." (209a - 211a). With respect to the allegations of financial impropriety levied against Kuzovkin and Armada's former management team, the Complaint asserts three specific elements which made up the purported "Illegal Scheme."

First, Armada contends that between 2012 and 2014, nearly RUB 2.7 billion was transferred pursuant to software development contracts awarded to two outside

subcontractors allegedly controlled by Kuzovkin and his associates: Dom Dlya PK, LLC ("DDP") and Tverinformproduct LLC ("Tver"). (203a). The Complaint alleges that DDP and Tver were controlled by Kuzovkin and his associates and that the funds were then transferred to further dummy companies that did not provide services or deliver products. Ibid.

Second, the Complaint contends that, between 2012 and 2014, Kuzovkin caused Armada to lend approximately RUB 1.76 billion to three of its wholly owned subsidiaries at either low or zero interest rates. Ibid. Armada contends that these subsidiaries then turned around and lent the same money back to Armada at significantly higher interest rates. Ibid. The Complaint also alleges Armada paid debt service on its own money to the subsidiaries who in turn transferred the money to unidentified offshore entities. Ibid.

Third, the Complaint contends that Armada's former managers formed a competing company called Programmny Produkt LLC ("PPL") that was beneficially owned by Kuzovkin and other insiders. Armada contends that Kuzovkin and the prior management team usurped corporate opportunities and undercut Armada's bids on projects, through PPL, that were historically handled by Armada. (203-204a).

The Complaint asserts the following legal causes of action: Breach of Fiduciary Duty as to Defendant Kuzovkin (Count I); Aiding and Abetting the

Breach of Fiduciary Duty as to all Defendants (Count II); Conversion as to all Defendants (Count III); Civil Conspiracy as to all Defendants (Count IV); Demand for an Accounting and Imposition of a Constructive Trust as to all Defendants (Count V); and NJ Civil Rico as to all Defendants (Count IV).

C. Undisclosed Foreign Proceedings

While the Rule 4:5-1 Certification of the Complaint represented "that the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in this action", (231a), the Complaint generally averred that: "Armada—driven by Arsenal and other principal shareholders—has pursued and initiated legal proceedings and criminal investigation regarding various aspects of the Illegal Scheme." (206a). In discovery, the Roitman Defendants specifically requested all documents reflecting the status and/or result of any related foreign litigation. In response, Plaintiff made reference to an Austrian criminal complaint and stated: "Armada will produce a list of all lawsuits in Russia responsive to this interrogatory." (1278a). This interrogatory answer was never supplemented. Indeed, the Russian decisions identified below, which have been translated for the purposes of this motion, were not disclosed and appear to have been purposefully concealed by Plaintiff in connection with the effort to relitigate the same issues in a new forum. (Ibid.) Said decisions, however, were included within Defendant

Kuzovkin's production of documents. The Roitman Defendants, as residents of New Jersey, had no reason or ability to know of the extensive prior litigation by Armada concerning *the same issue*s raised in this litigation. (1272a).

The undisclosed foreign proceedings revealed that between 2014 and 2017 Armada extensively litigated in Russian civil and criminal courts its putative claims of embezzlement and corporate misfeasance by Armada's prior management team. (1280a - 1418a). The resulting decisions from those actions, which Armada did not disclose in its pleadings or in discovery, reveal that Armada did not prevail in any of the prior actions in Russia and that the Russia civil and criminal courts conclusively found ***that there was no embezzlement or corporate misfeasance scheme*** carried out by Armada's prior management team between 2012 and 2014. Ibid. In each of these actions Armada actually litigated to conclusion the same three elements of the claimed illegal scheme – and Russia's civil and criminal courts founded that no such alleged scheme occurred.

As noted above, the alleged illegal scheme included three primary parts: (1) the award of dummy contracts to "DDP" and "Tver", which Armada now contends were controlled by insiders; (2) Armada's lending funds to wholly owned subsidiaries at either low or zero interest rates, while paying the debt service on the loans; and (3) Armada's managers creation of PPL, an alleged competing entity that usurped corporate opportunities from Armada. (203a to 204a).

Armada fully litigated each of these issues in Russian Courts and the same allegations and the very existence of the claimed scheme was denied by the Russian Courts. By way of example, on September 25, 2015, the Supreme Court of the Russian Federation (Case No. A40-164985/14) dismissed Armada's claims against Kruglyakov related to claimed unfavorable intercompany loans as being undertaken in bad faith or as part of a fraudulent scheme. (1385a). The Court's decision reflects that Kruglyakov was General Director of Armada until being removed in 2014. (1368a).

Second, on September 21, 2015, the Moscow Arbitration Court (Case No. A40-212879/14) issued a decision against Armada which found that Armada's subcontracts with Tver and DDP were legitimate and that there was no evidence of fraud in connection with Armada's dealings with Tvyer and DDP. (1347a -1357a).

Third, on December 7, 2015, the Supreme Court of the Russian Federation (Case No. A40-152986/14) issued a decision on appeal against Armada in connection with a claim by Armada seeking ownership of PPL. (1402a – 1412a). It was determined by the Supreme Court that there was no evidence of a claimed malicious agreement related to PPL and that Armada did not prove intentional concealment on the part of PPL. (1410a -1411a). This decision directly refutes Plaintiff's underlying claim that PPL usurped business opportunities from Armada, and reveals that Armada already directly litigated this issue in Russian Courts.

Further, Armada's efforts in Russia to have Kuzovkin held criminally responsible were dismissed. On or about September 11, 2017, the Senior Investigator for the Department of Internal Affairs issued a written decision dismissing Criminal case No. 11601455010005131, which was brought against R.A. Kruglyakov, A.V. Kuzovkin, A.L. Gordon and I.E. Gorbatov. (1421a – 1456a). The decision recounted that a criminal case was initiated due to verified statements of a representative of Arsenal Advisor LTD and the General Director of Armada, contending that the criminal defendants, beginning on March 2, 2012, engaged in a large-scale scheme to embezzle funds from Armada. (1421a – 1424a). It was claimed that the embezzlement of funds belonging to Armada was, in part, carried out through fictitious subcontracts with PC Home LLC and Tver. Ibid. Following the investigation, all criminal allegations (which were initially precipitated by Armada's complaints) against Kuzovkin were terminated and dismissed in the written decision. (1447a – 1450a). This decision unmistakably clarifies that the allegations of intercompany lending as being a fraudulent scheme by Armada's prior management team was previously litigated in Russia and decided against Armada.

PROCEDURAL HISTORY

A. Initial Complaint

The Initial Complaint was filed on January 9, 2019 and asserted the following causes of action: Breach of Fiduciary Duty as to Defendant Kuzovkin (Count I); Aiding and Abetting the Breach of Fiduciary Duty as to all Defendants (Count II); Fraud as to all Defendants (Count III); Fraudulent Transfer as to all Defendants (Count IV); Civil Conspiracy as to all Defendants (Count VI)[sic]; and NJ Civil Rico as to all Defendants (Count VII)[sic]. (2203a).

B. Rule 4:5-1 Certification

In connection with the Initial Complaint, on or about February 10, 2022, counsel for Armada included a Certification pursuant to Rule 4:5-1 stating: "I certify that the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in this action pursuant to R. 6:3-1 and R. 4:5-1." (231a). The Initial Complaint also included the same language. (2219a). It is noted that Rule 4:5-1 requires, in part, "a certification as to whether the matter in controversy is the subject of any other action pending in any court. . ., and, if so, the certification shall identify such actions and all parties thereto." Here, the supplied Certification included modified language merely stating that this dispute was "not the subject of any other action." This unwarranted modification did not cure the default or the obligations of the Rule in any manner.

C. Initial Dismissal by Law Division

On June 28, 2019, the Law Division entered an Order dismissing Armada's Complaint as against the Roitman Defendants. (2197). The Law Division decision reasoned that Armada had failed to state a claim as to all causes of action asserted against the Roitman Defendants. Ibid. The Court also found that based upon the private and public interest factors that New Jersey was a demonstrably inappropriate forum for the resolution of this dispute. Ibid. Thereafter, on December 2, 2018, the Law Division entered an Order dismissing the Complaint as against Defendant Kuzovkin. (2195a).

D. The Prior Appellate Division Decision

Armada appealed the Law Division's dismissal orders, and on or about September 3, 2021, the Appellate Division issued a decision remanding the matter back to the Law Division to allow jurisdictional discovery to proceed as to the suitability of New Jersey as an appropriate forum for resolution of the matters. (92a-95a). The Appellate Division concluded: "We therefore conclude the motion court mistakenly exercised its discretion by prematurely considering the public and private interest factors." (89a). The extensive prior litigation of the underlying claimed embezzlement scheme was not known to the Appellate Division at the time of the decision. Ibid. Notably, the Appellate Division opinion stated: "Moreover, the pleadings do not sufficiently establish that Russia

will offer an adequate alternative forum. . . . ***That plaintiffs had already commenced proceedings against Kuzovkin in Russia*** does not guarantee they could do so against the Roitmans, New Jersey residents who, unlike Kuzovkin, had no direct connection to Armada." Ibid. (emphasis supplied). It was not disclosed or known to the Appellate Division, at that time, that Plaintiff previously extensively litigated to conclusion the issue of the claimed embezzlement scheme in Russia, and that Plaintiff did not prevail in connection with any such prior claims. Ibid. The Appellate Division reasoned that the dismissal of the claims against all Defendants was premature and remanded to allow jurisdictional discovery to proceed. (95a).

The Appellate Division also allowed Plaintiff the opportunity to file an Amended Complaint asserting additional facts. On February 10, 2022, Plaintiff filed an Amended Complaint asserting the causes of action identified in Paragraph B of the Statement of Facts section above. (196a).

E. Plaintiff's Discovery Responses

In this action, Defendant Yefim's Interrogatories to Plaintiff, in part, required Armada to identify "each and every legal proceeding in any jurisdiction, whether civil or criminal, including all pending and completed proceedings, involving the alleged overt shareholder oppression, embezzlement and diversion of

funds away from PJSC Armada . . .” (1278a). Plaintiff’s certified answer to this specific Interrogatory included the following certified statement:

> On March 18, 2020, Armada filed a complaint against Kuzovkin and Mr. Nikolaj Hummelbrunner with the Central Public Prosecutor's Office for the Prosecution of White Collar Crime and Corruption (Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption) alleging money laundering. The case is being investigated by an Austrian prosecutor and is pending. Kuzovkin’s request to terminate investigation was denied by the Austrian authorities.
>
> Armada will produce a list of all lawsuits in Russia responsive to this interrogatory.

(1278a)

Plaintiff never supplemented its discovery or identified any of the Russian civil or criminal matters identified herein.

F. Roitman Defendants’ Motions to Dismiss.

After jurisdictional discovery was completed – and the undisclosed foreign decisions were discovered (through Kuzovkin) and translated, the parties were permitted to engage in motion practice by the Trial Court. On April 26, 2023, the Roitman Defendants filed a Motion to Dismiss. (18a - 19a, 1269a). On the same date, counsel for Defendant Kuzovkin filed a separate Motion to Dismiss. (18a - 19a, 14861a). The Roitman Defendants’ motion and proposed form of Order requested that fee shifting be granted in favor of the Roitman Defendants. (17a). On June 23, 2023, Plaintiff filed Oppositions and Cross Motions to Compel

Discovery. (18a – 19a, 478a). Oral Argument was initially scheduled for August 25, 2023, but adjourned. (12a). On December 20, 2023, without seeking pre-motion consent, Plaintiff filed additional Motions to Extend the Discovery End Date and a Motion to Issue Letters Rogatory to allow the taking of discovery in Austria. (18a – 19a).

G. Plaintiff's "Expert" Report

As part of its Opposition to the Roitman Defendants' Motions to Dismiss, Plaintiff included the putative expert report of Professor Anton Asoskov, a claimed Russian law expert. (484a – 520a) Puzzlingly, Professor Asoskov, while acknowledging the adjudication of the civil matters on the merits in Russia, appears to contend that Armada, a Russian corporation, was improperly denied the opportunity to fairly present its claims because the Russian arbitrazh courts (in his view) improperly "denied motions to compel production or granted them, but subsequently issued final decisions before the requested evidence was produced." (490a). Professor Asoskov sweepingly proclaims "in at least eight (8) cases, there was not an opportunity to fully and fairly litigate on the merits." (Ibid.) Professor Asoskov even goes so far as to accuse the Russian arbitrazh courts of not acting independently or impartially. (449a, 504a, 507a, 509a, 511a, 516a). Of course, the unilateral opinion that Armada was somehow wronged or that the Russian arbitrazh courts rendered flawed or unfair decisions on discovery matters and in

final orders does not at all support the notion that Armada is permitted to relitigate the existence of the purported illegal scheme in the Superior Court of New Jersey, nearly a decade later, as it is seeking to do at present.

Professor Asoskov concludes that each of six (6) Russian civil decisions, relied upon by the Roitman Defendants, included "evidence of material irregularities that resulted in the deprivation of important right [*sic*] and/or legal protections afford to litigants such that there was not an opportunity to fully and fairly litigate on the merits." (484a).

H. Oral Argument on Motion to Dismiss

On March 15, 2023, the Honorable Peter G. Geiger, J.S.C. conducted oral argument with respect to the pending motions. During argument, the Court repeatedly inquired into the status of jurisdictional discovery and whether any such jurisdictional discovery remained outstanding. (5T7:1-8)[1]. Counsel for Plaintiff repeatedly argued that jurisdictional discovery and merits discovery were inextricably intertwined. (5T8:9-21). Counsel for the Roitman Defendants and Defendant Kuzovkin argued that jurisdictional discovery had been completed and that the case was now ripe to be dismissed on jurisdictional and forum non conveniens grounds, among other reasons. (5T10:13-17; 5T15:2-13). Towards the end of the argument the Court commented: "[a]nd that goes to my opening

[1] As referenced herein "5T" refers to the transcript of the March 15, 2024 Motion Argument Transcript, which was not included by Armada in its appeal filings.

comment: where do we draw the line between the jurisdictional discovery and the merit discovery?" (5T70:1-3). Following arguments, the Court reserved. (5T93:1). For reasons which are unclear, this transcript, which was mentioned in Plaintiff's, Appellate CIS, was not submitted as part of its appeal.

I. The Motion to Dismiss Decision

On May 14, 2024, Judge Geiger issued an Order resolving each of the pending motions. The Court granted the Motion to Dismiss by the Roitman Defendants and the Motion to Dismiss by Defendant Kuzovkin, and denied the remaining Motions filed by Plaintiff as moot. (18a – 19a).

In reciting the factual background of this matter, the Court stated that "on September 3, 2021, the Superior Court of New Jersey Appellate Division decided that jurisdictional discovery was necessary to resolve the disputed jurisdictional issues in this matter." (25a) "The Appellate Division did not express an opinion as to whether personal jurisdiction existed as to the Defendants." (Ibid.) The Trial Court initially granted the Roitman Defendants Motion to Dismiss on the basis of forum non conveniens, as Plaintiff previously elected to litigate its embezzlement and corporate misfeasance claims in Russia. The Trial Court reasoned:

> This Court finds that New Jersey is not the appropriate forum to litigate the claims of embezzlement and corporate misfeasance in this matter as the claims are directly related to the previous proceedings that were litigated to completion by the Russian Courts. Plaintiff voluntarily elected to litigate its claims in Russia

> and cannot now contend that Russia is an inadequate forum to pursue its claims against the defending parties in this matter. [(29a)]

In addressing the public and private interest factors, the Court noted: "[i]t is abundantly clear to this court that in a matter such as this, on a complex track litigation docket, there are numerous practical and logistical difficulties that correspond with this matter. Witnesses, documents, evidence, property, and all other sources of facts and discovery are all located in Russia." (29a – 30a).

The Trial Court also stated: "that the doctrines of res judicata/claim preclusion and collateral estoppel/issue preclusion are also persuasive here." (30a). The Trial Court found that res judicata and collateral "bars the relitigation of the underlying claims against Defendant Kuzovkin and by extension the secondary liability claims against the Roitman Defendants." (30a – 31a). Additionally, the Court dismissed Armada's claims against the Roitman Defendants on the basis of the economic loss doctrine, noting that the Roitman Defendants did not have an independent duty to prevent economic harm to Armada. (32a). Lastly, the Court denied the Roitman Defendants' request for fee shifting due to the violation of Rule 4:5-1(b)(2) by counsel for Plaintiff. (17a).

J. Appeal and Cross Appeal.

On June 28, 2024, Plaintiff filed a Notice of Appeal. On July 16, 2024, the Roitman Defendants filed a Notice of Cross Appeal as to the issue of the Court's

denial of its request for fee shifting. On July 17, 2023, Defendant Kuzovkin filed a similar Notice of Cross Appeal.

LEGAL ARGUMENT

POINT I

THE LAW DIVISION'S DECISION SHOULD NOT BE OVERTURNED DUE TO THE LAW OF THE CASE DOCTRINE

Armada erroneously contends that the Law Division's Orders should be overturned on appeal based upon the law of the case doctrine. Armada arguments in this regard fail both legally and factually. The "law of the case" is a discretionary doctrine that "operates to prevent relitigation of a previously resolved issue." In re Estate of Stockdale, 196 N.J. 275, 311 (2008); see also Pressler & Verniero, Current N.J. Court Rules, comment 4 on R. 1:36–3 (2025) (describing "law of the case" as "a non-binding discretionary rule intended, unless there is good cause not to do so, to avoid relitigation before the same court of the same issue in the same controversy").

In Lanzet v. Greenberg, 126 N.J. 168, 192 (1991), the Supreme Court clearly stated "[f]or the determination of an issue to constitute the law of the case, ... the issue must have been contested and decided." See also Daniel v. State, Dep't of Transp., 239 N.J. Super. 563, 581 (App. Div. 1990) ("Law of the case" doctrine

avoids relitigation of question that has previously been "litigated and decided in a suit.")

Armada glaring misstates the actual holding of the Appellate Division in the earlier appeal. There, the Appellate Division issued a decision remanding the matter back to the Law Division to allow jurisdictional discovery to proceed as to the suitability of New Jersey as an appropriate forum for resolution of the matter. The Appellate Division concluded: "We therefore conclude the motion court mistakenly exercised its discretion by ***prematurely considering the public and private interest factors***." (89a)(emphasis supplied). The Court certainly did not determine that jurisdiction existed or that New Jersey was in fact a suitable forum. Moreover, at the time of the prior appeal, the extensive litigation by Armada in Russia remained undisclosed.

After jurisdictional discovery was completed and the extent of Armada's prior litigation in Russia was disclosed (by Kuzovkin, not Armada) the Trial Court correctly reasoned that Plaintiff had already voluntarily selected Russia as the proper forum. The Law Division stated: "[T]his Court notes that this matter has a long history of litigation in various Russian Courts. . . The ultimate finding of the proceedings concluded there was no large-scale embezzlement scheme or corporate misfeasance conducted by the prior management team." (29a). The Court also reasoned that New Jersey was not the proper forum, in part, because "Plaintiff

voluntarily elected to litigate its claims in Russia and cannot now contend that Russia is an inadequate forum." (Ibid.).

In New Jersey, jurisdictional discovery is commonly viewed as more narrowly focused than merits discovery. See Crespi v. Zeppy, No. A-2881-22, 2024 WL 1295798, at *3 (App. Div. Mar. 27, 2024). Despite "the presumption of broad discovery is ingrained in our jurisprudence, 'nevertheless, there are limits.'" Est. of Lasiw by Lasiw v. Pereira, 475 N.J. Super. 378, 395 (App. Div. 2023) (quoting Lipsky v. N.J. Ass'n of Health Plans, Inc., 474 N.J. Super. 447, 464 (App. Div. 2023)). Jurisdictional discovery should not involve a protracted "fishing expedition" into the underlying merits of the legal claims. Marchionda v. Embassy Suites, Inc., 122 F. Supp. 3d 208, 211 (D.N.J. 2015) (quoting LaSala v. Marfin Popular Bank Pub. Co., 410 F. App'x 474, 478 (3d Cir. 2011)).

Here, the Law Division followed the Appellate Division's specific directions on remand. The Appellate Division previously found that it was "premature" to dismiss the case on forum non conveniens grounds because jurisdiction discovery was not yet conducted. The Law Division then allowed jurisdictional discovery to be completed and ultimately found that New Jersey is not the correct forum for the relitigation of the embezzlement or corporate misfeasance claims because Plaintiff had actually litigated those same issues in Russia between 2014 and 2017, and *not* prevailed. Here, the Appellate Division certainly did not previously decide that

New Jersey was a proper forum, and the law of the case doctrine is not applicable as to this issue.

POINT II

THE COURT'S APPLICATION OF THE DOCTRINE FORUM NON CONVENIENS WAS CORRECT AND IS NOT SUBJECT TO REVERSAL.

A. New Jersey is not an Appropriate Forum

On appeal, and without specific reference to the Law Division's actual decision, Armada once again argues that New Jersey is the appropriate forum for the relitigation of its resolved foreign embezzlement and corporate misfeasance claims. As an initial matter, the application of the equitable doctrine of forum non conveniens is generally "left to the sound discretion of the trial court, and on appeal considerable deference should be paid to the court's decision. Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 557 (2011) (citation omitted).

Without reference to Court's actual decision, Armada once again seeks to claim that in the underlying action it was asserting general "money laundering claims" under New Jersey Law. To be clear, Armada is only seeking to use the jurisdictional hook of present New Jersey residents, who had no affiliation with Armada, to relitigate its stale and resolved embezzlement and corporate misfeasance claims in a new forum. Plaintiff's reference to anti-money laundering legislative findings is entirely misleading as the cited provision specifically relates

to empowering law enforcement and the New Jersey Attorney General to combat money laundering in New Jersey, not former Russian corporations. See N.J.S.A. 2C:21-23.

Armada's appeal entirely fails to address the Law Division's actual rationale in finding New Jersey to be the improper forum. The Court highlighted that Plaintiff "voluntarily elected" to litigate its claims of embezzlement and corporate misfeasance and cannot now contend that Russia is an inadequate forum, when it chose to litigate in Russia and failed to prevail in any matter in Russia related to its putative claims for embezzlement and corporate misfeasance. The Court's recognition that Plaintiff already sought to litigate its claims in Russia, and did not prevail, highlights that New Jersey is an improper forum for the re-litigation of said claims.

B. Secondary Liability

In dismissing the claims against the Roitman Defendants, the Law Division emphasized that alleged claims against the Roitman Defendants are only for "secondary liability," which would need to be premised *first* upon a determination that Kuzovkin was responsible for a large-scale embezzlement or corporate misfeasance scheme in Russia. (31a – 32a) The Roitman Defendants are not even properly named as parties in connection with the claimed underlying dispute between Plaintiff and Kuzovkin. In other words, assuming, *arguendo*, that the

Roitman Defendants were actually somehow affiliated with Kuzovkin and were assisting him in hiding or moving assets (which they were decidedly not), the proper procedure would have been for Plaintiff to first obtain a judgment or award in Russia as to the underlying claim and then file a claim against the Roitman Defendants in New Jersey based upon the alleged improper transfer of real estate. Here, the Russian Courts ***conclusively determined that no large-scale embezzlement or corporate misfeasance scheme*** was carried about by Armada's former management team. In the underlying matter Plaintiff was attempting to re-litigate the putative Illegal Scheme, and a *de facto* post-judgment collection or fraudulent transfer claim against the Roitman Defendants at the same time. Worse yet, Plaintiff is relying solely upon the post-judgment claim to establish jurisdiction in the State of New Jersey.

By way of analogy, New Jersey would not be the proper forum for a financial dispute between a California corporation and its former chairman, even if the corporation alleged that the chairman utilized ill begotten funds to purchase real estate in California that was sold by individuals who subsequently moved to New Jersey. California would remain the proper forum for the underlying financial dispute. Here, Plaintiff is using the scant New Jersey connection of the present residence of the Roitman Defendants in the effort to relitigate its embezzlement and financial misfeasance claims in an entirely new forum.

Plaintiff's argument that no alternative forum exists is misleading, as the Law Division found that Armada has already voluntarily litigated its claims in Russia and cannot now seek to relitigate said claims in New Jersey. Armada's appeal continues to ignore and downplay this key distinction.

C. Plaintiff Cannot Assert Civil RICO Claims

Plaintiff repeatedly claims that its putative claim under N.J.S.A. 2C:41-1, et seq., ("NJ RICO") saves the deficient Complaint and allows Plaintiff to proceed with "money laundering claims" against New Jersey residents. However, Plaintiff's NJ RICO claims cannot survive, as the harm alleged in the Complaint occurred in Russia and the Plaintiff is a Russia Corporation. In RJR Nabisco, Inc., v. European Community, the United States Supreme Court held that while certain substantive provisions of the Federal RICO Statute do apply to foreign conduct, the provision providing for a private civil right of action under RICO does not allow plaintiffs to sue for injuries occurring outside the United States. 579 U.S. 325, 346 (2016).

In RJR Nabisco, the United States Supreme Court held:

> We now turn to RICO's private right of action, on which respondents' lawsuit rests. Section 1964(c) allows "[a]ny person injured in his business or property by reason of a violation of section 1962" to sue for treble damages, costs, and attorney's fees. Irrespective of any extraterritorial application of § 1962, ***we conclude that § 1964(c) does not overcome the presumption against extraterritoriality. A private RICO plaintiff therefore must allege and prove a domestic injury to its business or***

property.

[(Id. at 346)(emphasis supplied)]. The Supreme Court further reasoned "[a]llowing recovery for foreign injuries in a civil RICO action, including treble damages, ***presents the same danger of international friction***." Id. at 348 (emphasis supplied).

The Third Circuit has applied this doctrine to dismiss RICO claims by foreign parties. Humphrey v. GlaxoSmithKline PLC, 905 F.3d 694 (3d Cir. 2018). The extraterritorial application of New Jersey Civil RICO statute has not specifically been addressed by New Jersey State Courts, but there is no logical basis to extend a state law's reach beyond that of the federal statute upon which it is based, especially in light of the forceful and definitive RJR Nabisco ruling by the United States Supreme Court. Further, New Jersey has a well-established public policy *against* endeavoring to govern or regulate out-of-state conduct. Ortiz v. Goya Foods, Inc., 2020 WL 1650577, at *4 (D.N.J. Apr. 3, 2020) (finding that New Jersey Wage Payment Law does not apply extraterritorially); D'Agostino v. Johnson & Johnson, Inc., 133 N.J. 516 (1993) (stating "New Jersey law does not regulate conduct outside the state. Rather, New Jersey law regulates conduct in New Jersey").

Here, the alleged injury and the real estate transaction at issue are purely extraterritorial harm. The alleged economic injury to Armada is purely foreign and

extraterritorial. Armada was a Russian corporation and the alleged secondary claims against the Roitman Defendants arose from the sale of real property in Russia. Armada's fantastical efforts to allege that the Roitman Defendants engaged in "money laundering activities" in New Jersey (all upon information and belief), does not alter this analysis, as the actual harm alleged is an economic loss to Armada in Russia. As such, Armada possesses no private right of action under New Jersey's Civil RICO statute and the passing references to a purported NJ RICO claim or "money laundering claims" generally does not reflect reversible error by the Law Division.

D. Public and Private Interest Factors

Here, the Law Division correctly applied Public Interest Factors and the Private Interest factors in dismissing Armada's Complaint. "The equitable doctrine of forum non conveniens empowers a court to decline to exercise jurisdiction when a trial in another available jurisdiction will best serve the convenience of the parties and the ends of justice." Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 557 (2011) (quotation omitted). While deference is normally afforded to the plaintiff's choice of forum, if the plaintiff is not a resident of the chosen forum, that deference is diminished. Ibid. In all circumstances, however, "a plaintiff's choice of forum is not dispositive, because ultimately it is for the court to decide whether the ends of justice will be furthered by trying a case in one forum or

another." Ibid. (citations omitted). Thus, if the plaintiff's choice of forum is "demonstrably inappropriate," then the case should be dismissed. Ibid. "The first step in a forum non conveniens inquiry is to determine whether there is an adequate alternative forum for the case." Rippon v. Smigel, 449 N.J. Super. 344, 364 (App. Div. 2017). "An adequate forum is one where the defendant is amendable to service of process, and where the subject matter of the dispute may be litigated." Ibid. On appeal, significant deference should be afforded to the Trial Court's application of the equitable doctrine of forum non conveniens. Yousef, supra, 205 N.J. at 557.

It is now known that Armada litigated to conclusion and did not prevail on a myriad of claims related to the claimed embezzlement and/or corporate misfeasance scheme in Russia. As Armada elected to previously litigate its claims in Russia, it is barred from now contending that Russia is not an adequate forum. Because Russia is an "adequate forum," the inquiry thus calls for a balancing of the "public and private interest factors." Rippon v. Smigel, 449 N.J. Super. 344, 364, (App. Div. 2017).

> The four private interest factors are:
>
> (1) the relative ease of access to sources of proof,
> (2) the availability of compulsory process for attendance of unwilling witnesses and the cost of obtaining the attendance of willing witnesses,
> (3) whether a view of the premises is appropriate to the action and

> (4) all other practical problems that make trial of the case easy, expeditious and inexpensive, including the enforceability of the ultimate judgment.

Rippon, supra, 449 N.J. Super. at 364.

The four public interest factors are:

> (1) the administrative difficulties which follow from having litigation pile up in congested centers rather than being handled at its origin,
> (2) the imposition of jury duty on members of a community having no relation to the litigation,
> (3) the local interest in the subject matter such that affected members of the community may wish to view the trial and
> (4) the local interest in having localized controversies decided at home.

Rippon, supra, 449 N.J. Super. at 365.

The Court properly considered each of these factors and concluded:

> This Court finds that New Jersey is not the appropriate forum to litigate the claims of embezzlement and corporate misfeasance in this matter as the claims are directly related to the previous proceedings that were litigated to completion by the Russian Courts. Plaintiff voluntarily elected to litigate its claims in Russia and cannot now contend that Russia is an inadequate forum to pursue its claims against the defending parties in this matter. Because the Court finds that Russia is an adequate forum, this court has weighed the public and private interest factors of Gulf Oil to make its determination that New Jersey is a "demonstrably inappropriate" forum. It is abundantly clear to this court that in a matter such as this, on a complex track litigation docket, there are numerous practical and logistical difficulties that correspond with this matter. Witnesses, documents, evidence, property, and all other sources of facts and discovery are all located in Russia. Moreover, there is no local interest in allowing the Plaintiff, a Russian corporation, to litigate claims of embezzlement and corporate misfeasance that occurred in Russia before a jury in

> New Jersey. As a result, the public and private interest factors unequivocally weigh in favor of dismissal of this matter.

[(29a – 30a)]

With respect to the public interest factors, but for reemphasizing its alleged NJ RICO claims, which it is not permitted to pursue, Armada presents no arguments as to why the Trial Court's decision was unsound. With respect to the private interest factors, Armada argues that Russia is an unavailable or difficult forum due to the Russian war in Ukraine. Armada ignores that the Court found that Armada already consented to litigate these claims in Russia and did so between 2014 and 2017. Russia's invasion of the Ukraine does not render New Jersey the proper forum for a Russian corporation to re-litigate its claims of embezzlement and corporate misfeasance all of which occurred in Russia and were addressed by Russian Courts. For the reasons set forth herein, Armada has not identified that the Law Division committed reversible error with respect to its application of the doctrine of forum non conveniens.

POINT III

THE COURT DID NOT ERR IN FINDING THAT COLLATERAL ESTOPPEL AND RES JUDICATA BARRED ARMADA's COMPLAINT.

A. Collateral Estoppel

Armada argues that the Court erred in dismissing the Complaint, in part, on collateral estoppel grounds. The Law Division found that the doctrine of collateral

estoppel operated to bar Plaintiff's claims. The Court held:

> "Here, it is clear that the issue of whether a large-scale embezzlement and/or corporate misfeasance scheme was perpetrated was extensively litigated in the Russian Courts. In all of the former Russian proceedings it was ultimately determined that no such events occurred, and no individuals were found liable based upon the allegations asserted. There is nothing in the record to suggest that Plaintiff did not have the full and fair opportunity to litigate these claims against the defending parties in Russia. As a result, the doctrine of collateral estoppel bars the re-litigation of the underlying issues against Defendant Kuzovkin and by extension any issue of secondary liability against the Roitman Defendants"

[(31a – 32a)]

New Jersey Courts follow the doctrine of collateral estoppel or issue preclusion described in the Restatement of Judgments. Hernandez v. Region Nine Hous. Corp., 146 N.J. 645, 659 (1996). A plaintiff must, in order to avoid the preclusion bar, demonstrate either that "he lacked full and fair opportunity to litigate the issue" in a prior proceeding, or there are "other circumstances [that] justify affording [plaintiff] an opportunity to relitigate the issue." Restatement (Second) of Judgments § 29, at 291. The doctrine will not be rigidly applied if the party sought to be precluded "did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action." Id. § 28, at 274.

The party seeking to enforce collateral estoppel must establish: "(1) the issue sought to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding and that the litigant against

whom issue preclusion is invoked had a full and fair opportunity to litigate the issue; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding." In re Estate of Dawson, 136 N.J. 1, 20–21 (1994) (internal citations and quotations omitted).

On appeal, Armada does not deny the existence of the undisclosed, extensive foreign litigation. Rather and quite incredibly, Armada argues "the issues ***supposedly*** discussed in prior Russian proceedings did not involve the same issues raised in the Amended Complaint." Given that Armada was the litigant or the complaining party in each of the cases, Armada's present counsel should have access to the entire breath of Armada's efforts in this regard, but Armada refused to produce the information in discovery. Tellingly, Armada instead relies upon an expert affidavit to argue that the Russian decisions identified the Roitman Defendants were not fairly decided. Equally telling, Armada has not alleged that it prevailed in a foreign claim or action related to the putative scheme.

Defendants' arguments that collateral estoppel does not apply where the parties are not identical is not in line with established New Jersey precedent. "The doctrine of collateral estoppel is not rendered inapplicable by virtue of the fact that the parties in the civil action are not the same as those in the criminal proceeding.

"Complete identity of parties is no longer required. Collateral estoppel [previously] was available only where there was mutuality of estoppels, that is, only where the party taking advantage of the earlier adjudication would have been bound by it, had it gone the other way." New Jersey Mfrs. Ins. Co. v. Brower, 161 N.J. Super. 293, 298 (App. Div. 1978). A party precluded from relitigating an issue with an opposing party is also precluded from doing so with another person unless he lacked full and fair opportunity to litigate the issue in the first action or circumstances justify affording the party an opportunity to relitigate the issue. Figueroa v. Hartford Ins. Co., 241 N.J. Super. 578, 584 (App. Div. 1990). As noted by the Trial Court, Armada, as evidenced by significant foreign litigation it engaged in related to the alleged embezzlement and corporate misfeasance scheme, certainly had the opportunity file civil claims against Kuzovkin in Russia.

Based upon the foregoing the Court's decision concerning the application of Collateral Estoppel is sound and not subject to reversal.

B. Res Judicata

Armada argues that the Court erred in dismissing the Complaint, in part, on Res Judicata grounds. The Law Division found that the doctrine of Res Judicata operated to bar Armada's claims, specifically identifying the September 11, 2017, Award of Termination of the Criminal Case by the Senior Investigator for the Department of Internal Affairs in Russia ("Kuzovkin Criminal Termination"). The

Court concluded: "As a result, the doctrine of res judicata bars the re-litigation of the underlying claims against Defendant Kuzovkin and by extension the claims of secondary liability against the Roitman Defendants."

Res judicata, or claim preclusion, insulates courts from the inefficiency of relitigating claims that have already been resolved, thereby protecting the integrity of judgments and preventing the harassment of parties. Velasquez v. Franz, 123 N.J. 498, 505 (1991); Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 409 (1991). To apply the bar, three elements must be met: (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one. Watkins, supra, 124 N.J. at 412.

Armada bizarrely and incorrectly states that Kuzovkin was just a witness in "the sole transcript of Russian proceedings (i.e. the one Kuzovkin provided.)." Given that transcripts and translations of six Russian proceedings were attached to the Roitman Defendants' motion and each of these – in addition to others – was produced by Kuzovkin, this is simply an error or misrepresentation. Further, the citation supplied by Armada is not to the September 11, 2017, Kuzovkin Criminal Termination at issue, but to a separate proceeding on December 15, 2014 before the Court of Arbitrazh of Moscow. (493a). Further there is no doubt that the

terminated criminal proceeding, which was initiated by Armada, addressed the alleged criminal conduct of Kuzovkin, and substantively terminated the action against him. (14421a; 1448a).

Armada again argues that its putative NJ RICO claims renders res judicata inapplicable. Armada's logic in this regard is confounding, as it contends that Armada did not know about sale of property from the Roitman Defendants at the time of the prior proceedings – where it was ultimately determined that no embezzlement scheme of corporate misfeasance occurred. In reality, Armada would have needed to prevail in the underlying claims and actions (and have evidence of the Roitman's alleged involvement) to assert claims against the Roitman Defendants. It is axiomatic that a fraudulent transfer action, even one disguised as a NJ RICO claim, cannot lie where the claimant ***does not prevail*** in the underlying action against the primary defendant. Finally, Armada, as a Russian Corporation, has no standing to assert NJ RICO claims as the economic harm alleged is to Armada, a Russian Corporation.

POINT IV

THE LAW DIVISION'S APPLICATION OF THE ECONOMIC LOSS DOCTRINE WAS CORRECT.

Armada contends that the Court erred in dismissing the Complaint, as against the Roitman Defendants, on the basis of the economic loss doctrine. The Law Division held:

> Further, this Court finds that the claims against the Roitman Defendants must be dismissed due to the economic loss doctrine. To be clear, Plaintiff is first asserting claims against Defendant Kuzovkin for breach of duty owed to Armada in connection with the alleged embezzlement scheme. Secondarily, Plaintiff is asserting that Defendant Kuzovkin utilized the allegedly embezzled funds to acquire property from the Roitman Defendants. Plaintiff is bringing claims against the Roitman Defendants for allegedly participating/aiding in the disbursement and concealment of the embezzled funds through the sale of their real property in Russia

[(32a)]

The Roitman Defendants, private citizens in America, owed no duty to Armada, a dormant Russian public corporation. The Court correctly found that the economic loss doctrine actually arises from the concept that there is no generalized duty to prevent others from incurring intangible economic loss or losses that do not arise from tangible physical harm to persons and tangible things. See Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 310 (2002); Prosser & Keeton on the Law of Torts, § 92, at 656–58. Clearly the Roitman Defendants did not assume any duty to prevent Armada from suffering claimed economic losses.

On appeal, Armada does not address the Law Division's reasoning and misleadingly once argues that the economic loss doctrine does not apply because there is no contractual relationship between the Roitman Defendants and Armada. In this regard, Armada concedes that there is no contractual relationship or duty owed by the Roitman Defendants to Armada and thus justifies the dismissal on this

ground. Armada further argues that fraud-based claims are exempt from the entire controversy doctrine. However, the case cited for this proposition only states that fraud in the inducement claims, at times, may be brought alongside a breach of contract claim. Ross v. Celtron Int'l, Inc., 494 F. Supp. 2d 288, 298 (D.N.J. 2007). Plaintiff has not asserted a fraud claim and the factual allegations against the Roitman Defendants were plead upon information and belief. The Court stated, "it is undisputed that the Roitman Defendants have no contractual relationship with the Plaintiff, nor is it alleged that the Roitman Defendants had an independent duty to prevent economic harm to the Plaintiff." (32a).

As set forth herein, the Roitman Defendants owed no duty to Armada, contractual or otherwise, and Plaintiff's claims are subject to dismissal based upon the economic loss doctrine and the related principle that a party owes no general duty to prevent economic losses to strangers (including unknown Russian Corporations).

POINT V

PLAINTIFF'S APPEAL SHOULD BE DISMISSED AS INCOMPLETE

Oral argument was conducted on March 15, 2024 in this matter in connection with the Motions upon which Armada seeks to appeal. Rule 2:5-1(g) requires that an appealing party obtain the transcript "if a verbatim record was made of the proceedings before the court, agency, or officer from which the appeal

is taken." Plaintiff's appeal included transcripts of other proceedings, but not the primary motion argument at issue. See Footnote 3 to Brief of Appellant PJSC Armada. The procedural history contained within Plaintiff's Case Information Statement referred to the March 15, 2024, oral argument, as did Armada's brief. (12a). The Appellate Division has dismissed appeals where all transcripts have not been obtained. See Cable v. Rodig, 2011 WL 3425570 (App. Div. Aug. 8, 2011).

In the interest of clarifying the record, the Roitman Defendants obtained the transcript of the March 15, 2024 oral argument. It is unknown whether this was an intentional decision by Armada to attempt to remove the significant and relevant discussion relating to the completion of jurisdictional discovery from the record on appeal. In any event, failure to submit the transcript of the motion argument of the motions being appealed violates the Court Rules and is potentially grounds to dismiss the appeal outright.

POINT VI

THE LAW DIVISION DID NOT ERR IN DISMISSING PLAINTIFF'S ADDITIONAL MOTIONS AS MOOT

Plaintiff alleges that the Law Division erred in not granting its additional motions related to discovery issues. The Court property followed the Appellate Division's instructions concerning the taking of jurisdictional discovery. The Court found that jurisdictional discovery was complete and granted the Motions to Dismiss of the Roitman Defendants. Nothing herein constitutes reversible error.

POINT VII

THE LAW DIVISION ERRED IN DENYING ARMADA'S APPLICATION FOR FEE SHIFTING (16a-40a)

The Roitman Defendants' initial moving papers sought the award of counsel fees pursuant to Rule 4:5-1 and because Plaintiff purposefully failed to disclose the extent and substance of the matters that Armada previously litigated in Russia with respect to the claimed illegal scheme. (17a). While the issue of the non-disclosure of prior litigation, was noted during oral argument, issues related to Rule 4:5-1 and the award of counsel fees were not addressed. (5T72:21-T73:3).

Here, counsel for the Roitman Defendants inexcusably violated Rule 4:5-1 by not disclosing that Armada had already filed numerous matters in Russia seeking financial recoveries related to the putative Illegal Scheme identified in the Complaint. Armada or its counsel cannot reasonably certify that they are aware of no non-parties who should be joined in this action, when Armada *actually litigated* (and did not prevail upon) claims in Russia seeking the same relief against other non-parties. The non-disclosure and the efforts to conceal the results of the foreign proceedings constitute an implicit and explicit breach of Rule 4:5-1.

Rule 4:5-1 requires that each party include with their first pleading "a certification as to whether the matter in controversy is the subject of any other action pending in any court or of a pending arbitration proceeding, or whether any

other action or arbitration proceedings is contemplated; and if so, the certification shall identify such actions and all parties thereto." Rule 4:5-1. This Rule further requires that each party disclose the names of any non-party who should be joined or is subject to joinder because of "potential liability to any party on the basis of the same transactional facts." Ibid. Rule 4:5-1 makes clear that it is a continuing obligation and that the parties are required to file an amended certification based upon any new developments.

Rule 4:5-1 was amended as part of changes to the Court Rules governing mandatory party joinder. See Kent Motor Cars, Inc. v. Reynolds and Reynolds, Co., 207 N.J. 428, 442 (2011). The amendment reflects the New Jersey Supreme Court's long-held preference that related claims and matters arising among related parties be adjudicated together rather than in successive, fragmented and piecemeal litigation. Id. at 443. This Rule is designed to "implement the philosophy of the entire controversy doctrine" and allows a court to dismiss the successive claims of a party failing to comply with the entire controversy doctrine. See Pressler & Verniero, Current N.J. Court Rules. Cmt 2.1 on R. 4:5-1(b)(2) (2025). Although the Rule specifies dismissal and imposition of litigation costs as two enforcement mechanisms, they are not the only sanctions available to the court. Kent Motor Cars, Inc. v. Reynolds and Reynolds, Co., 207 N.J. 428, 445 (2011); Mitchell v. Charles P. Procini, D.D.S., P.A., 331 N.J. Super. 445, 454 (App. Div. 2000).

Here, the prior Russian matters clearly reflect a host of parties that Armada actually asserted claims against "on the basis of the same transactional facts" in Russia regarding the claimed corporate misfeasance and embezzlement scheme, including members of Armada's prior management team. Armada and its counsel had an obligation to disclose and not conceal the existence of these matters and the results. The failure to do so is a violation of Rule 4:5-1.

The Roitman Defendants were directly prejudiced by the non-compliance with the requirements of Rule 4:5-1 during the motion to dismiss and the resulting appeal on the record. The failure to disclose the existence of prior and pending claims prevented the Roitman Defendants from fully addressing the clear insufficiency of New Jersey as an appropriate forum for the resolution of these claims. The extent to which the non-disclosure of ***the then completed foreign litigations*** prejudiced the Roitman Defendants is evident in Appellate Division's decision. It appears that the Appellate Division understood from the record before it that Armada had "commenced" proceedings in Russia, (89a), but the fact that such matters had been conclusively resolved *against* Armada at the time the Complaint was filed was *withheld* from the Appellate Division and was not part of the record on appeal. In addition to duties under Rule 4:5-1, Armada and its counsel owe a duty of candor to the Court to disclose and not conceal the *completed* prior Russian proceedings.

Here, it appears evident that Plaintiff inexcusability (and likely intentionally) violated Rule 4:5-1, by not disclosing that it had filed (and litigated to conclusion) legal actions as to the same claims, events, and occurrences. As such, sanctions in the form of an award of counsel fees are warranted.

Further, Armada disregards that a duty of candor and fairness is owed to the Court in connection with its pleadings. See RPC 3.3. Courts have held that the non-disclosure or omission of other filed complaints can constitute breach of this obligation. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984) ("In some situations, silence can be no less a misrepresentation than words."). Rule 1:4–8 requires that there must be a "good ground to support" every allegation in every pleading. Here, the parenthetical nomenclature of "Illegal Scheme" which is repeated twenty-four (24) times in Plaintiff's Complaint is itself an omission operating as a misrepresentation. In the Complaint, Plaintiff defines the amorphous Illegal Scheme as follows: "[s]tarting in 2012, Armada's former management, led by Kuzovkin, the former chairman of Armada's board of directors, proceeded to siphon off the company's assets and opportunities en masse through an intricate series of self-dealing transactions (the "Illegal Scheme") involving more than forty (40) companies—most of which were shell companies. (199a). Of course, for conduct to be considered "Illegal" it must be "[n]ot authorized by law; Illicit; unlawful; contrary to law..." In this regard, Plaintiff

cannot plead that such putative conduct was *illegal* while Armada itself litigated this specific issue in Russia's civil and criminal courts from 2014 to 2017 *and did not prevail*, thus rendering the conduct at issue not *illegal*. The Complaint and Armada's discovery responses cannot simply omit all reference to the extensive litigation in which it engaged in Russia merely because Armada lost and/or now disagrees with the results while also contending that the conduct at issue constituted still an alleged "Illegal Scheme."

Based upon the foregoing it is submitted that the Court's denial of counsel fees in favor of the Roitman Defendants was improvident and subject to review by the Appellate Division.

CONCLUSION

Based upon the foregoing it is summited that the Appellate Division should dismiss the appeal of Plaintiff, PJSC Armada and Affirm the Law Divisions Decision. It is also submitted that decision to not grant counsel fees and costs should be remanded for further proceeding pursuant to R. 4:42-9 to determine the reasonable counsels owed by PJSC Armada.

Respectfully submitted,
CLARK GULDIN, ATTORNEYS AT LAW

By: */s/ Arthur M. Owens*
ARTHUR M. OWENS
Member of the Firm

DATED: December 4, 2024

PJSC ARMADA, Plaintiff-Appellant, v. ALEXY KUZOVKIN, ALLA ROITMAN, YEFIM ROITMAN, and JOHN DOES 1-5, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003343-23 On Appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. BER-L-197-19 Sat Below: Hon. Peter G. Geiger, J.S.C. Civil Action

REPLY BRIEF OF APPELLANT/CROSS RESPONDENT PJSC ARMADA

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PRELIMINARY STATEMENT

Plaintiff PJSC Armada ("Armada") appeals five orders arising from its suit against Defendants Alla Roitman, Yefim Roitman (the "Roitmans"), and Alexy Kuzovkin ("Kuzovkin") for embezzlement, money laundering and violations of NJRICO.

New Jersey has personal jurisdiction over Kuzovkin because Armada alleges that Kuzovkin laundered at least $1,000,000 in embezzled cash from Russia into New Jersey through New Jersey residents (the Roitmans). See Am. Compl. at ¶170 (detailing Defendants' specific contacts with New Jersey that affects "trade or commerce."). The trial court erred in dismissing the Amended Complaint with prejudice on grounds that Kuzovkin was not physically present in New Jersey when the embezzlement and money laundering occurred. The law of personal jurisdiction does not require Kuzovkin's physical presence especially where, as here, his alleged co-conspirators are New Jersey residents.

Russia is not an "available alternative forum" for purposes of a *forum non conveniens* analysis. None of the Defendants ever expressly consented to litigate this case in Russia. Nor have Defendants demonstrated that the Russian courts could or would adjudicate this case (and adjudicate it fairly no less). Furthermore, in the wake of the war in Ukraine and global sanctions against

Russia, it is difficult to believe how any litigant could seriously contend that today's Russia is an available "adequate form."

Defendants also cannot satisfy their heavy burden to show that either claim preclusion or issue preclusion bars the Amended Complaint. The law of res judicata is vastly different when the judgment emanates from a foreign country—especially a country like Russia—a point Defendants completely sidestep. Likewise, res judicata cannot apply since there was no Russian judgment, and none of the Defendants were ever parties to any proceeding in Russia. Finally, Armada's expert—a preeminent Russian law professor—found glaring irregularities in the Russian proceedings that preclude the application of cross-border res judicata. 117a-139a. The trial court never wrestled with any of these issues and therefore committed reversible error in holding that estoppel principles bar the Amended Complaint.

Contrary to Defendants' argument, the parties never completed discovery regarding the central aspects of this case. For this reason, the trial court erred in denying Armada's cross-motion to compel discovery related to records and a notice of deposition that Defendants ignored. Defendants repeatedly failed to comply with their discovery obligations and produce documents as this Court ordered. The trial court permitted broad discovery yet, the Roitmans produced only 11 pages of documents in this case. To this day, years after Armada filed

this litigation, Defendants have not produced a single document related to the receipt, transportation, or whereabouts of a $1,000,000 in cash that the Roitmans allegedly retrieved from a safe deposit box in Moscow. Nor have Defendants produced records regarding where Kuzovkin obtained or earned the cash, how Kuzovkin transferred the cash to the Roitmans, and what the Roitmans did with the cash. And Armada never received key records or the chance to depose Defendants. By any standard, discovery was incomplete, and it was an abuse of discretion for the trial court to hold otherwise and dismiss with prejudice.

The Court should affirm the trial court's decision denying Defendants' attorneys' fee application. Rule 4:5-1 requires the disclosure of any "other action pending in any court or of a pending arbitration proceeding, or whether any other action or arbitration proceedings is contemplated . . .." The trial court did not abuse its discretion because: (1) there was no pending or contemplated action or proceeding in February 2022 (when Armada filed the Amended Complaint); (2) there was not (and has never been) a single proceeding, action, investigation, or claim against the Roitmans or one that sought "the same relief" in another forum; and (3) counsel had no duty to disclose prior investigations in a foreign forum that involved other former Armada officers. For these reasons, the Court should reverse the trial court's orders and reinstate the case so Armada may obtain the discovery to which this Court ordered in its prior decision.

COMBINED PROCEDURAL HISTORY AND STATEMENT OF FACTS

Armada incorporates by reference and adopts the "Combined Procedural History and Statement of Facts" filed in its September 30, 2024 opening brief.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN CONCLUDING IT DID NOT HAVE JURISDICTION OVER KUZOVKIN IN THE ABSENCE OF THE FULL JURISDICTIONAL DISCOVERY THIS COURT ORDERED (16A-40A).

Despite this Court's prior opinion permitting Armada to obtain full jurisdictional discovery, 75a-106a, the trial court repeated the same errors as the trial court in the prior appeal and dismissed Armada's complaint with prejudice for lack of jurisdiction after Defendants successfully stonewalled Armada from obtaining any meaningful discovery. The trial court construed Armada's allegations against it and erroneously concluded that "jurisdictional discovery was conducted by the parties in this matter" (see 25a; 28a) The parties did not complete jurisdictional discovery in this case, and this incorrect premise infected the trial court's other erroneous legal conclusions. Defendants repeatedly refused to engage in discovery, did not provide responsive documents and refused to appear for depositions.[1] Still, the existing limited record supports the exercise of jurisdiction over Kuzovkin.

[1] The trial judge that dismissed the case did not have the benefit of managing any of the discovery in this case (including an appreciation for the depths of Defendants' obstruction) because this matter was transferred to multiple

A. New Jersey May Exercise Personal Jurisdiction Over Kuzovkin Without a Finding of Physical Presence in the State.

1. New Jersey may assert personal jurisdiction over Kuzovkin regardless of whether he physically entered the state.

Kuzovkin's tortious conduct and the acts by his co-conspirators are sufficient to establish minimum contacts for purposes of exercising specific jurisdiction. Specific jurisdiction over a defendant exists when the defendant has "purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985) (finding for specific jurisdiction to exist, the defendant must purposefully conduct activities within the forum that ultimately provide the benefits and protections of the forum's laws); see also Blakey v. Cont'l Airlines, Inc., 164 N.J. 38, 67 (2000) (quoting Waste Mgmt., Inc. v. Admiral Ins. Co., 138 N.J. 106, 126 (1994) (finding an intentional act "calculated to create an actionable event in a forum state" is sufficient to give that state jurisdiction)).

Contrary to Kuzovkin's claims, even a single contact can support the exercise of personal jurisdiction over a defendant where that contact creates a substantial connection with the forum. Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 96 (3d Cir. 2004) (citing Burger King, 471 U.S. at 475 n.18). While a threshold

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different judges no less than four times within a one-year period. Armada Br. at 13-14.

determination that defendant "[purposefully avail[ed] itself of the privilege of conducting activities within the forum" is necessary, Hanson v. Denckla, 357 U.S. 235, 253 (1958), "physical entrance" is not. O'Connor v. Sandy Lane Hotel Co., Ltd., 496 F.3d 312, 317 (3d Cir. 2007) (citing Burger King, 471 U.S. at 476).

In the context of an NJRICO case (and under basic personal jurisdiction principals), the fact that Kuzovkin may never have physically set foot in New Jersey is not a sufficient basis to dismiss an NJRICO complaint for lack of personal jurisdiction. See Lebel v. Everglades Marina, Inc., 115 N.J. 317, 327 (1989) (The mere fact that neither defendant nor the boat was ever physically present in New Jersey does not preclude a finding that minimum contacts existed."); Burger King, 471 U.S. at 476 ("Jurisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State."). Particularly relevant to the facts of this case, the Third Circuit has determined that personal jurisdiction existed over Spanish defendants who: (1) "engaged in negotiations for an agreement that would have created rights and obligations among citizens of the forum and contemplated significant ties with the forum;" and (2) "initiated numerous contacts with [plaintiff's agent] over the telephone and through the mails." Grand Entm't Grp., Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 482-83 (3d Cir. 1993) (citing Lebel). The Third Circuit determined that these contacts—like those alleged

in this case—were sufficient to establish minimum contacts with the forum, especially because the dispute at issue arose directly out of those contacts. Id. at 483.

The Supreme Court of New Jersey reached a similar conclusion in Lebel when it found personal jurisdiction existed over a Florida seller whose only contact with New Jersey was a contract of sale with a New Jersey resident. Lebel, 115 N.J. at 320–21. The Lebel Court concluded that the seller's alleged phone calls to New Jersey and use of the postal service to solicit the contract were sufficient to satisfy the minimum contacts requirement necessary for specific jurisdiction because the buyer's allegations "support[ed] a finding that, at least for the purposes of this sale, the defendant purposely directed his activities" at the New Jersey buyer. Id. at 327.

The Lebel Court noted that the defendant knew the buyer was a New Jersey resident and that the property would be shipped to New Jersey. Id. Thus, the defendant's relationship with a buyer residing in New Jersey was deemed to "enhance defendant's contacts with the forum." Id. (citing Keeton v. Hustler Magazine, 465 U.S. 770, 780 (1984)). The seller's conduct was "'purposefully directed' toward a resident of New Jersey and there was "no doubt that [the seller] was well aware that this sale would have direct consequences in New Jersey such that it should have been aware of the possibility of litigation arising in that forum." Id. at 328.

The Amended Complaint pleads facts contradicting the notion that the Kuzovkin-Roitman relationship was a chance encounter and makes a plausible and convincing case that Kuzovkin had extensive and ongoing New Jersey-facing contacts with the Roitmans and others—contacts that certainly give rise to personal jurisdiction. See Am. Compl. ¶¶75-79, 159-74 (discussing Defendants' Illegal Scheme and manipulation of Moscow Apartment purchase price). Furthermore, the uncontradicted expert report of Stefan D. Cassella ("Cassella")—a former DOJ official and an expert on international money laundering—sets forth a myriad of federal crimes potentially violated by the disguised real estate transaction and the receipt, transportation, and use of huge quantities of U.S. cash from Russia. 117a-158a. Instead of deeming the allegations true and considering the facts in a light most favorable to Armada, the trial court erroneously accepted Kuzovkin's self-serving recharacterization of the NJRICO claims in the Amended Complaint as a seemingly legitimate "Moscow real estate purchase." Kuzovkin Br. at 28. However, as Cassella explains, in money laundering cases, the offenders "conceal the illicit source of the money to make it appear legitimate." 128a. See State, Dep't of Treasury, Div. of Inv. ex rel. McCormac v. Qwest Commc'ns Int'l, Inc., 387 N.J. Super. 487, 498 (App. Div. 2006) (finding plaintiff entitled to all reasonable inferences when considering the exercise of personal jurisdiction).

Moreover, as discussed more fully below, Armada never had the opportunity to depose Defendants on their jurisdictionally relevant contacts with one another. See 67a; 71a. However, on the limited record below, it is reasonable to infer that Defendants communicated with each other via text, email, and other forms of communication platforms regarding plans to move a huge quantity of U.S. cash out of Russia. See Am. Compl. ¶¶75-79. This inference is particularly persuasive given the Roitmans' assertion (of questionable veracity) that only a single document supports the transaction, and the real estate agent's representation that the Roitmans and Kuzovkin purposefully excluded real estate professionals from their discussions and negotiated the sale on their own. See Lebel, 115 N.J. at 327 (finding defendant's alleged phone calls to New Jersey and use of the mail to solicit the contract satisfied the minimum-contacts requirement to assert specific jurisdiction even where neither the defendant nor the property at issue were ever "physically present in New Jersey"); see also Maglio & Kendro, Inc. v. Superior Enerquip Corp., 233 N.J. Super. 388 (App. Div. 1989) (finding personal jurisdiction over nonresident defendant who telephoned plaintiff located in forum state to solicit performance of services). Jurisdiction over Kuzovkin is therefore proper because there "can be no doubt that [he] was well aware that [the Illegal Scheme] would have direct consequences in New Jersey such that [he] should have been aware of the possibility of litigation arising in that forum." Lebel, 115 N.J. at 328.

2. New Jersey may exercise personal jurisdiction over Kuzovkin under a conspiracy theory of jurisdiction.

Personal jurisdiction as to Defendant Kuzovkin can also be exercised under the "conspiracy theory" of personal jurisdiction. This theory arises from the notion that a defendant subjects himself to jurisdiction by engaging in a conspiracy with a nexus to Defendants like the Roitmans in a forum state. Qwest Commc'ns Int'l, Inc., 387 N.J. Super. at 503; see Am. Compl. ¶¶75-79, 165-74. See also Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 102 n.8 (3d Cir. 2004) (Scirica, J., dissenting) (discussing imputation of jurisdictional contacts based upon conspiracy theory).[2]

Jurisdiction over Defendants is proper since the Legislature enacted NJRICO to eliminate Defendants' "activities [that] present[] a serious threat to the political, social and economic institutions of this State." N.J.S.A. 2C:41-1.1(a). NJRICO is broader in scope than the federal act. State v. Ball, 141 N.J. 142, 167, 175 (1995) (NJRICO "shall be liberally construed") (quoting N.J.S.A.

[2] Conspiracy jurisdiction is also consistent with the United States Money Laundering Control Act, which was "specifically intended to be applied extraterritorially and to cover activity that occurs outside of the U.S." Frank C. Razzano, American Money Laundering Statutes: The Case for a Worldwide System of Banking Compliance Programs, 3 J. INT'L L. & PRAC. 277, 288 (1994); 18 U.S.C. § 1956 and 18 U.S.C. § 1957. Notably, courts throughout the country have exercised jurisdiction over foreign parties where part of a money laundering scheme occurred in the United States. See United States v. All Assets Held at Bank Julius Baer & Co., 571 F. Supp. 2d 1 (D.D.C. 2008) (district court has jurisdiction over wire transfer of dollars between foreign countries where money passed through a New York bank acting as intermediary; applies equally to §§ 1956 and 1957).

2C:41-6); State v. Ball, 268 N.J. Super. 72, 104 (App. Div. 1993) (NJRICO is "broadly drawn, arguably even more broadly drawn than the Federal Statute."); see also Franklin Med. Assocs. v. Newark Pub. Sch., 362 N.J. Super. 494, 514 (App. Div. 2003) (NJRICO broader than "federal analogue"); Horowitz v. Marlton Oncology, P.C., 116 F. Supp. 2d 551, 554 n.1 (D.N.J. 1999) (same).

This lawsuit indisputably arises from Defendants' alleged conspiracy and contacts with New Jersey—Kuzovkin's alleged contacts with New Jersey constitute "forum-related activities." Zahl v. Eastland, 465 N.J. Super. 79, 95 (App. Div. 2020); id. at 92-109 (finding personal jurisdiction over non-New Jersey resident on NJRICO claims). The trial court erred in concluding that it did not have jurisdiction over Kuzovkin because Kuzovkin did not provide full discovery and Armada's well-pled allegations of a NJRICO conspiracy involving Bergen County residents permits jurisdiction. Kuzovkin's tortious conduct and conspiracy with Bergen County residents as pled are not merely "random" or "fortuitous." Qwest Commc'ns Int'l, Inc., 387 N.J. Super. at 501.

But the trial court's order and opinion did not mention Armada's conspiracy-based (and NJRICO-driven) theory of jurisdiction or explain why Lebel, Zahl, or other cases permitting jurisdiction for conspiracies and tortious conduct directed into New Jersey do not apply to Armada's well-pled allegations. Like in Lebel, the Amended Complaint and the Cassella Report

painstakingly details specific money-laundering conduct affecting trade or commerce in the State of New Jersey. Am. Compl. at ¶¶170(a)-(f); 117a-139a. To hold there is no personal jurisdiction over Kuzovkin—as the trial court did—belies the reality of how money laundering conspiracies operate, New Jersey's interest in adjudicating NJRICO conspiracies. 208a-209a.

The Court should reject the Roitmans' novel claim that NJRICO does not apply to their unlawful conduct—i.e., laundering embezzled funds in the Illegal Scheme into New Jersey. None of the cases the Roitmans cite involved NJRICO or alleged "activities [that] present[] a serious threat to the political, social and economic institutions of this State." See N.J.S.A. 2C:41-1.1(a). See also Roitmans Br. at 24 (conceding that the "extraterritorial application of [NJRICO] has not specifically been addressed by the New Jersey Courts"). The Roitmans' reference to federal RICO jurisprudence is of no moment because NJRICO is broader than its federal counterpart. Ball, 141 N.J. at 167, 175.

The trial court committed reversible error by ignoring the voluminous well-pled NJRICO allegations, the Cassella Report, and the fundamental fact that Kuzovkin is proven to have laundered funds into New Jersey he would unquestionably be subject to jurisdiction. Compare Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107 (2019) (citation omitted) ("review of a complaint's factual allegations must be 'undertaken with

a generous and hospitable approach.'"), with Citibank, N.A. v. Est. of Simpson, 290 N.J. Super. 519, 531 (App. Div. 1996) (reversing dismissal order on jurisdictional grounds without evidential hearing or fact finding because "defendant alleged a number of facts that, if undisputed or established, might well support an exercise of long-arm jurisdiction against these third-party defendant," "most of these facts or their import were disputed by certifications supporting the motion to dismiss," and the trial court "simply gave defendant the benefit of its allegations."). The Court should reverse and remand the trial court's dismissal on jurisdictional grounds consistent with the above.

B. Exercising Jurisdiction Over Kuzovkin Comports with Substantial Justice, and Jurisdictional Discovery is Inextricably Linked with the Merits.

Exercising jurisdiction over Kuzovkin comports with traditional notions of fair play and substantial justice because New Jersey maintains an interest in adjudicating NJRICO conspiracy claims against Kuzovkin and two Bergen County residents. Lebel, 115 N.J. 317, 322 (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). Relevant factors in the "fair play" evaluation include "the burden on [the] defendant, the interests of the forum state, the plaintiff's interest in obtaining relief, the interstate judicial system's interest in efficient resolution of disputes, and the shared interest of the states in furthering fundamental substantive social policies." Waste Mgmt., 138 N.J. at 124–25.

In the "fair play" analysis, the burden rests with Defendant Kuzovkin to present "a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Lebel, 115 N.J. at 328 (citing Burger King Corp., 471 U.S. at 475). Defendant Kuzovkin, who is believed to not be in Russia, failed to meet his burden that it would be unfair to litigate this matter involving him and New Jersey residents in New Jersey. Regardless, time and time again, courts have held that "New Jersey's long-arm statute provides for jurisdiction coextensive with the due process requirements of the United States Constitution." Miller Yacht, 384 F.3d 93, 96 (3d Cir. 2004) (citing Rule 4:4-4(c)); Qwest Commc'ns Int'l, Inc., 387 N.J. Super. at 498. Thus, if conduct triggers jurisdiction under the long-arm statement then, for all practical purposes, the exercise of personal jurisdiction is deemed fair for due process purposes. Id.

Lest there be any doubt as to Kuzovkin's contacts with New Jersey, Armada is entitled to full and complete jurisdictional discovery pursuant to this Court's opinion (and the trial court's May 2022 order) requiring same. 75a-105a; 832a. This Court previously held "the motion court's dismissals on jurisdictional grounds were premature" as "the court should have permitted discovery on the questions of personal jurisdiction." 77a-78a. Witnesses, documents, and evidence related to Kuzovkin and the Roitmans (Bergen County residents) will

not be found overseas, but in New Jersey. Kuzovkin's failure to comply with his discovery obligations and refusal to produce relevant non-privileged documents, including his complete tax returns, his communications with the Roitmans, and other papers sought, required denial of his motion to dismiss especially where, as here, personal jurisdiction, and the merits are inextricably intertwined. See, e.g., Gulf Oil Corp. v. Copp Paving Co., Inc., 419 U.S. 186, 212 n.8 (1974) ("there are cases in which the jurisdictional questions are so intertwined with the merits that the court might prefer to reserve judgment on the jurisdiction until after discovery has been completed.") (cleaned up); Data Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1285 n.2 (9th Cir. 1977) ("Where the jurisdictional facts are intertwined with the merits, a decision on the jurisdictional issues is dependent on a decision of the merits. In such a case, the district court could determine its jurisdiction in a plenary pretrial proceeding.").

The trial court erred in accepting Defendant's self-serving allegations "on their face." See Rippon v. Smigel, 449 N.J. Super. 344, 359 (App. Div. 2017) ("Presented with a motion to dismiss on the basis of lack of jurisdiction, a trial court must make findings of the 'jurisdictional facts,'" and "jurisdictional allegations cannot be accepted on their face . . .." Compare Ball, 141 N.J. at 175 (NJRICO "shall be liberally construed"), with Am. Compl. at ¶170 (discussing Defendants' NJRICO violations affecting New Jersey commerce). Taken as true,

the Amended Complaint and record establish that New Jersey may exercise personal jurisdiction over Kuzovkin for the Illegal Scheme.

POINT II

THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' MOTIONS TO DISMISS ON *FORUM NON CONVENIENS* GROUNDS (16A-40A).[3]

This Court already rejected Defendants' *forum non conveniens* arguments and reversed the trial court's prior orders of dismissal on this ground. The Court should again reverse the trial court for abusing its discretion on similar grounds. Varo v. Ownes-Illinois, Inc., 400 N.J. Super. 508, 523 (App. Div. 2008).

A. New Jersey is An Appropriate Forum to Sue Bergen County Residents for a Money Laundering Conspiracy Involving New Jersey Commerce.

New Jersey is the proper forum to adjudicate Armada's claims against the Roitmans, Bergen County residents. "[A] plaintiff's choice of forum is entitled to a great degree of deference" and "preferential consideration." Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 554 (2011). Only when a chosen forum is

[3] This Court's prior opinion rejecting the same *forum non conveniens* arguments Defendants raise again now constitutes binding law of the case and serves as an independent basis to deny the Motion. See 77a-78a. (concluding that "the motion court's dismissals on jurisdictional grounds were premature; instead, the court should have permitted discovery on the question[] of [] forum non conveniens."). See also State v. Njango, 247 N.J. 533, 544 (2021) (identifying Appellate Division ruling as "law of this case" and binding on remand because of party's interest in finality of previous disposition thereof).

"demonstrably inappropriate" may a court decline to exercise jurisdiction under the doctrine of *forum non conveniens*. Id. at 548.

The gravamen of Armada's allegations is that Defendants conspired and arranged to violate New Jersey, federal, and foreign law, aided and abetted foreign fraud, transported laundered cash obtained via a disguised transaction into New Jersey and then concealed those proceeds in violation of New Jersey law. 195a-356a. New Jersey necessarily has a strong interest in bringing these allegations to bear. The Legislature has recognized the need to establish remedies to "deter individuals and business entities from assisting in the 'legitimizing' of proceeds of illegal activity." N.J.S.A. 2C:21-23(e). Therefore, the trial court committed reversible error when it held (without discussing NJRICO) that there is "no local interest in allowing [Armada] to litigate claims of embezzlement and corporate misfeasance that occurred in Russia before a jury in New Jersey." 29a-30a. Compare Am. Compl. at ¶170 (discussing Defendants' NJRICO violations affecting New Jersey commerce).

Finally, with respect to the Roitmans in particular, this Court previously held that "[w]ithout discovery revealing contrary information, it is unclear how it would be demonstrably inappropriate or unduly burdensome for the Roitmans to litigate this matter in their home forum." 88a (emphasis added). This Court also further recognized that "record is devoid of evidence showing the Roitmans

are amenable to service in Russia or that Russian law offers a satisfactory remedy to resolve plaintiffs' claims against the Roitmans." Id.

Incredibly, the Roitmans still argue that Bergen County, New Jersey (where they live) is not an appropriate forum to bring this action. Roitmans Br. at 20-21. Years later, nothing has changed because, as discussed infra, Defendants repeatedly stonewalled and objected to Armada's relevant discovery requests related to these issues. The Roitmans' 11-page document production did not show how it would be "inconvenient" for Armada to sue them in the county they reside in. This Court should reverse the trial court's decision, which did not articulate: (1) any basis in the record "showing the Roitmans are amenable to service in Russia or that Russian law offers a satisfactory remedy to resolve plaintiffs' claims against the Roitmans"; or (2) "how it would be demonstrably inappropriate or unduly burdensome for the Roitmans to litigate this matter in their home forum." 88a.

B. Russia Is Not an Adequate Alternative Forum to Bring an Action Alleging a NJRICO Conspiracy Involving Bergen County Residents.

In addition to improperly failing to defer to Armada's choice of forum, Yousef, 205 N.J. at 554, the trial court did not require the Roitmans to show that Russia is an alternative (available) adequate forum wherein Armada can assert their claims against the Roitmans.

A trial court may only "decline jurisdiction when a trial in another available jurisdiction will best serve the convenience of the parties and the ends of justice." Yousef, 205 N.J. at 557. See also Rippon, 449 N.J. Super. at 364 ("An adequate forum is one where the defendant is amenable to service of process, and where the subject matter of the dispute may be litigated."); D'Agostino v. Johnson & Johnson, Inc., 225 N.J. Super. 251, 259 (App. Div. 1988); Varo, 400 N.J. Super. at 520 (noting same).

The trial court erred in holding that Russia was an adequate alternative forum for Armada to litigate its claims against Bergen County residents because dismissal for *forum non conveniens* requires a showing that an alternative appropriate forum exists. D'Agostino, 225 N.J. Super. at 259; see also Varo, 400 N.J. Super. at 520 (quoting Mandell v. Bell Atl. Nynex Mobile, 315 N.J. Super. 273, 280-81 (Law Div. 1997) ("if there is jurisdiction but there is no alternative forum, then the mere inconvenience to any party . . . become[s] irrelevant; for the litigation cannot be dismissed on *forum non conveniens* grounds if to do so would be to leave plaintiff with no available forum")).

There is nothing in the record to support a finding that the Roitmans (residents of Bergen County) are either subject to or have agreed to accept service in a Russian (or other European) action, such that this action should be dismissed in the interests of justice. Nor is there anything in the record to support

a finding that Armada could bring its claims against the Roitmans (Bergen County residents) in Russia for their participation in the Illegal Scheme. The Roitmans submitted nothing to satisfy their burden of proof. See Varo, 400 N.J. Super. at 520. Thus, the trial court reached uninformed, unsupported conclusions, and abused its discretion. See Kurzke v. Nissan Motor Corp., 164 N.J. 159, 166 (2000) (holding that the trial court abused its discretion and prematurely found that Germany qualified as an adequate alternative forum).

Kuzovkin has also failed to explain how Russia would provide Armada with an alternative adequate forum. Armada pled that Kuzovkin fled to and may now reside in Vienna, Austria, not Russia. Am. Compl. ¶¶9, 64. As such, there is no indication Kuzovkin will return to Russia for suit, that he is amenable to service of process in Russia, or that New Jersey is not "demonstrably inappropriate" forum. Civic S. Factors Corp. v. Bonat, 65 N.J. 330, 333 (1974).

Kuzovkin's self-serving, unsubstantiated claim that he is now amenable to service in Russia (or that Russia is somehow an adequate alternative forum) fails to satisfy his heavy burden.[4] Contrary to the unpublished cases Kuzovkin

[4] Kuzovkin's ability to timely file papers, motions, and documents in this case over many years belies his claim that litigating in New Jersey imposes an unfair burden. Indeed, modern technology mitigates the expense of international discovery. See Varo, 400 N.J. Super. at 526 (rejecting Spain as adequate alternative forum since "modern means of discovery such as videotaped testimony, telephonic conferencing and *de bene esse* depositions" are "designed to facilitate the gathering of evidence").

cites, Russia is not an adequate (or available) alternative forum to litigate NJRICO claims against New Jersey residents. See Lehram Cap. Invs., Ltd. v. Baker & McKenzie Int'l, 241 N.E.3d 1022, 1035, appeal denied, 244 N.E.3d 256 (Ill. 2024) (holding that under *forum non conveniens* analysis, the "parties cannot litigate this matter in Russia, the forum where the tort occurred."); Norex Petroleum Ltd. v. Access Indus., 416 F.3d 146, 159 (2d Cir. 2005) ("In this case, defendants failed to demonstrate that Russia affords Norex a presently available forum to litigate the disputed issues underlying its RICO complaint"); Google LLC v. Starovikov, 2022 WL 1239656, at *6 (S.D.N.Y. 2022) (S.D.N.Y. Apr. 27, 2022) (finding that Russia was not an adequate alternative forum where defendants, who "submitted no expert opinions or other evidence to support that Russian courts are functioning" failed to show that Russian courts would permit litigation of the subject matter in dispute).

Armada's claims arise from allegations of conspiracy and money laundering through New Jersey residents and into New Jersey in violation of, *inter alia*, the NJRICO statute. See Am. Compl. ¶¶75-79, 159-74. None of these claims hinge simply on the ownership of real property as Kuzovkin suggests.

Finally, private factors like the difficulty and cost of discovery and trial are better raised "by **a plaintiff**, upon whom the burdens of discovery and presentation of evidence at trial lie." Mastondrea v. Occidental Hotels Mgmt. S.A., 391 N.J. Super. 261, 279-80 (App. Div. 2007) (emphasis added).

Kuzovkin makes sweeping claims about his residence, amenability to service of process, and purported citizenship without any discovery or citation to the record before the trial court. Kuzovkin Br. at 14-16. The trial court abused its discretion by crediting Defendants' self-serving statements without a record.

Again, Defendants had the burden to prove not only that Armada's chosen forum is inappropriate, but also that an alternative, far more appropriate forum is available. Varo, 400 N.J. Super. at 520 ("If the defendant fails to carry this burden, the *forum non conveniens* motion must be denied."). An alternative forum is adequate only if: (1) "defendant is amenable to service of process there"; and (2) the alternative forum "permits litigation of the subject matter of the dispute." Id. The trial court abused its discretion because Defendants did not satisfy any of the *forum non conveniens* requirements to warrant dismissal.

C. The Public Interest Factors Favor a New Jersey Forum.

The public interest factors favor litigating a New Jersey RICO case against New Jersey residents. New Jersey courts adopted the analytical framework set forth in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947), which "enunciated certain private-interest and public-interest factors to be considered in deciding a *forum non conveniens* motion." Yousef, 205 N.J. at 558.

Here, both the public interest and private interest factors weigh in Armada's favor. As to the first three factors, a New Jersey forum would be more

efficient to adjudicate Armada's claims because New Jersey has a significant interest in vindicating its laws including NJRICO. The Amended Complaint alleges Defendants are part of a money laundering scheme in violation of NJRICO, and that the ill-gotten, laundered money was repatriated into the State by Bergen County residents—not a "distant controversy." Compare 227a-229a, with Kuzovkin Br. at 17. A Bergen County jury has an interest in "localized controversies decided at home," i.e., hearing claims of corporate malfeasance and NJRICO conspiracy involving the Roitmans, their neighbor Bergen County residents "that present[] a serious threat to the political, social and economic institutions of this State." N.J.S.A. 2C:41-1.1(a); Yousef, 205 N.J. at 558. And "the trial judges of this State are perfectly capable of determining any choice of law issues presented and applying foreign law if required." Madan-Russo v. Posada, 366 N.J. Super. 420, 430 (App. Div. 2004).

A. Roitman also admitted that she initiated the Moscow Apartment Transaction **from New Jersey and flew to Russia to sign the papers.** See 211a; 373a (A. Roitman's attorney admitting that "[s]he asked a Russian realtor to sell the apartment," the "buyer responded," and she [flew] to Moscow and sign[ed] the papers."); see also 1083a-1084a. (A. Roitman responding to ROG No. 6 that "In October 2013, Defendant Alla travelled to Russia to complete the transaction."). A. Roitman's discovery responses (including her attorneys'

representations) indicate New Jersey is the proper forum for this case. For these reasons, New Jersey is a valid forum under the public interest factors.

D. The Private Interest Factors Favor a New Jersey Forum.

Similarly, the private interest factors militate in favor of adjudicating this matter in a New Jersey court. A court must show deference to a plaintiff's choice of forum when assessing private interest factors. Varo, 400 N.J. Super. at 526-27. In this case, Armada satisfied all private interest factors. The trial court's conclusion that "[w]itnesses, documents, evidence, property, and all other sources of facts and discovery are all located in Russia" is plainly erroneous and unsupported. 29a. In fact, most of the conduct giving rise to Armada's claims occurred in New Jersey, not Russia. 29a-30a. Because Defendants successfully blocked meaningful discovery this Court ordered, there is nothing to establish what witnesses, and evidence will be necessary or the location of such evidence.[5]

[5] The trial court also had an insufficient record to conduct a jurisdictional or *forum nonconveniens* inquiry because Defendants refused to provide **any** information about: (1) the "captive real estate agency"; (2) the Safe Deposit Box A. Roitman admitted that she had her "representatives pick up the cash from the safe deposit box"; or (3) the identity of the "representatives" that picked up the one million dollars in cash. See 1057a-1059a. (Y. Roitman's ROG Response Nos. 5-10); id. 1082a-1086a (A. Roitman's ROG Responses Nos. 3-6, 13-15) (interrogatories seeking information about A. Roitman's admitted "representatives" who picked up the cash from the safe deposit box"); See also 1028a, 1030-1031a. (Kuzovkin ROG Response Nos. 4, 13) (failing to provide any bank financial information); id. at Response No. 5 (failing to provide any information concerning Kuzovkin's Safe Deposit Box used for the transaction at issue in the case). Kuzovkin failed to produce **any** information concerning the

By their own admission, Defendants are not in, or likely to go, to Russia. 198a. See Kuzovkin Br. at 19-20 (Kuzovkin admitting that "in his defense, [he] will be unable to procure compulsory testimony and documents from Russia . . .."). For these reasons and those outlined in Armada's opening brief, the trial court abused its discretion in dismissing the Amended Complaint with prejudice based on the unsupported conclusion that New Jersey is an inconvenient forum.

POINT III

THE DOCTRINES OF COLLATERAL ESTOPPEL AND RES JUDICATA DO NOT BAR ARMADA'S CLAIMS (16A-40A).

The trial court erroneously concluded that, based on prior investigations in Russia—matters to which Kuzovkin was admittedly not a party, the Roitmans were not involved in any capacity, and which did not involve the same issues or claims raised in the Amended Complaint—collateral estoppel and res judicata applied, warranting dismissal of Armada's case.

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captive real estate agency, the Roitmans' "representatives" or the "Safe Deposit Box." Kuzovkin also failed to provide any information about the accounts, banks, and financial institutions he used for the transactions at issue in this case. See 1028a-1031a (refusing to answer ROG Nos. 4-5, 8-9, and 13 and provide bank account and safe deposit box information); id. 163a-164a, 167a-169a, 171a-173a (refusing to produce any pertinent financial records in response to RFP Nos. 1, 5, 7, 20, 24, 25, 32, 42, 44, and 49).

A. Collateral Estoppel Does Not Bar the Amended Complaint.

Neither collateral estoppel nor res judicata bar Armada's claims because Kuzovkin and the Roitmans were not parties to any prior Russian "investigations," and Armada's allegations against Defendants have never been litigated in any forum. Winters v. Fire, 212 N.J. 67, 85 (2012).

The trial court committed reversible error in finding that a 2017 Russian "investigation" where Kuzovkin admittedly appeared as a "witness" (and where the Roitmans were not involved) collaterally estopped Armada from proceeding with this case. 88a-89a. Contrary to the trial court's findings, the issues raised in the Amended Complaint (including a conspiracy with the Roitmans) have never been raised or adjudicated in any **prior proceeding**. See 491a-494a, 519a (discussing that dismissing preliminary investigation is not a finding of innocence or merits determination with preclusive effect); see also 2388a (Kuzovkin's translation describing him as a "Witness"); see also 1226a-1227a (certified translation describing Kuzovkin as merely a "witness" in 2017 proceeding); see also 2409a ("describing what took place as an "investigation"); 2411a ("the results of the investigation of the case and collected evidence, investigation" . . ..); see also id. 2382a, 2385a, and 2388a (describing a "preliminary" "investigation"). Collateral estoppel does not apply to a foreign "preliminary" criminal "investigation" where a person appeared as a witness.

And Defendants misstate holdings of other Russian court decisions. For example, Kuzovkin claims that the Russian court "found entities such as Tver were not utilized to embezzle or defraud Armada and that the subcontracts were valid, legitimate and enforceable." Kuzovkin Br. at 32-33. Kuzovkin is wrong. As explained by Professor Asoskov, an issue of whether a contract was invalid was not raised in those cases, and thus, "grounds for voidability of transaction were not evaluated by the Russian courts." See 502a; see also id. 518a ("The trial court especially emphasized that '*CJSC ARMADA SOFT is not barred from filing a separate claim to have the contract declared invalid and have the effects of contract's invalidity applied.'*") (emphasis in original).[6]

Two completely different standards govern the preclusive effect of a judgment issued by a state or federal court versus a judgment issued by a foreign court. Preclusive effect to U.S.-based judgments is primarily based on the Full Faith and Credit Clause, and the Full Faith and Credit Act, 28 U.S.C. §1738, and other recognition statutes. By contrast, "judgments rendered in a foreign nation are not

[6] The trial court disregarded that the previous Russian proceedings concerned issues related to unpaid balances under contracts, personal liability of Roman Kruglyakov, a former CEO, for a fine imposed by the Russian Central bank, a breach of fiduciary duty by Arkady Gordon, a former CEO, a breach of fiduciary duty by Roman Kruglyakov, ownership rights over Programmnyi Produkt LLC and validity of a sale of Programmnyi Produkt LLC. See 504a-519a. These issues are not the same issues raised by Armada in this action. Id.

entitled to the protection of full faith and credit." Innes v. Carrascosa, 391 N.J. Super. 453, 495 (App. Div. 2007) (quoting Restatement (Second) of Conflict of Laws, § 98 cmt. b (1971)).

Additionally, the question of whether a court should afford a foreign judgment preclusive effect is not necessarily decided by domestic law (i.e., New Jersey law). Rather, a foreign country's judgment should ordinarily have no greater effect than it has in the country in which it was rendered. Watkins v. Resorts Intern. Hotel and Casino, Inc., 124 N.J. 398, 411 (1991) ("binding effect of a judgment is generally determined by law of the jurisdiction that rendered it."); See also Restatement (Third) Foreign Relations Law §481, cmt. c. Indeed, this has always been the rule. See Restatement (Second) of Conflict of Laws §95 (Supp. 1988) ("[w]hat issues are determined by a valid State judgment is determined, subject to constitutional limitations, by the local law of the State where the judgment was rendered").

In other words, if Russian law does not preclude subsequent litigation, neither should New Jersey. 489a-490a. And "the rules of law of a foreign country are a question of fact to be determined by the jury . . .." Leary v. Gledhill, 8 N.J. 260, 270 (1951). On every issue relevant to the res judicata analysis, the record favors Armada, not Defendants. As noted, none of the Defendants were parties to the Russian litigation. The international money laundering aspects of this case and the

Roitmans' involvement was not even known, let alone litigated. Professor Asoskov, Armada's expert on Russian law, opined that the issue of whether Kuzovkin absconded with Armada's funds and embezzled corporate monies has not been previously litigated let alone to a final judgment on the merits due any deference by a New Jersey court. See 82a-91a, 500a-505a, 510a-514a (explaining in detail how the Amended Complaint does not raise the same issues as prior investigations or matters in Russia); 484a-520a (the Russian law of preclusion would not bar the New Jersey lawsuit). At bottom, the trial court (1) disregarded Armada's evidence (including two powerful expert reports); (2) failed to consider the preclusive effect of a Russian judgment under Russian law—a question of fact; and (3) ultimately deferred to Defendants when the applicable legal standard required exactly the opposite. Each of these errors and omissions by the trial court would independently warrant reversal. Together, the trial court's decisions are simply unsustainable.

Finally, the trial court also erred by sidestepping the fundamental fairness analysis required when a court applies res judicata to a foreign judgment. See Bondi v. Citigroup, Inc., 423 N.J. Super 377, 428 (App. Div. 2011) (foreign res judicata does not apply unless the party whose claim is being sought to be barred had a fair and reasonable opportunity to litigate that claim in the first action); Villanueva v. Zimmer, 431 N.J. Super. 301, 312 (App. Div. 2013) (collateral estoppel "will not be applied when it is unfair to do so."); Pace v. Kuchinsky, 347 N.J. Super. 202, 217

(App. Div. 2002) ("A party sought to be precluded under the doctrine of collateral estoppel must have his or her "day in court" on the specific issue in question"); Pivnick v. Beck, 326 N.J. Super. 474, 486 (App. Div. 1999) (application of collateral estoppel is disfavored where "quality or extensiveness of the procedures in the two actions were different").

Here, Professor Asoskov determined that there was not a full and fair opportunity to litigate these claims in Russia. Id. Furthermore, Kuzovkin presented no evidence, testimony, or certification demonstrating that the prior Russian matters afforded the same degree of formality, due process, evidentiary burden, and adjudicative proceedings as available in this Court. 489a, 516a, 519a. The Court should reverse the trial court's unfair, erroneous application of collateral estoppel.

B. Res Judicata Does Not Bar the Amended Complaint.

Res judicata or claim preclusion does not bar the Amended Complaint because there was no prior, valid judgment on the merits, Defendants were not parties to any of the prior proceedings cited, and none of the prior events cited involved allegations of conspiracy and financial crime by Defendants. McNeil v. Legis. Apportionment Comm'n of State, 177 N.J. 364, 395 (2003).

First, the trial court erred because as with collateral estoppel, there was no final adjudication on the merits absolving the Roitmans or Kuzovkin of any wrongdoing or unlawful conduct, much less the claims in the Amended

Complaint. Defendants were not parties to any Russian proceeding or in privity with any parties absolved in a prior proceeding. The sole transcript of Russian proceedings (i.e., the one Kuzovkin provided) identifies Kuzovkin as merely a **witness**. 2388a. Under Russian law, a "witness" is merely a "person who may have knowledge of certain facts relevant to the criminal investigation." 493a.

Second, a claim that could not have been presented in the first action (i.e., NJRICO claims in Russia) will not be barred in the second action. Bondi, 423 N.J. Super. at 423. At the time of the prior 2014-2015 Russian proceedings, Armada did not know (and could not have known) who the Roitmans were or how they sold Russian real estate to Kuzovkin for cash. 206a-208a. As such, Armada should not be held to a hindsight standard of inquiry. Bondi, 423 N.J. Super. at 423. Armada could not have pursued NJRICO claims in Russia. Id.

Third, the claims in the Amended Complaint, which involves claims against Kuzovkin and the Roitmans for tortious conduct, conspiracy, and NJRICO violations were not at issue in any foreign inquiry. Therefore, res judicata does not apply to bar the claims against Kuzovkin here. "Where the causes of action are different, there is no ground for invoking the doctrine of *res judicata* unless a point to be determined in the later action was in fact litigated and determined in the earlier action." City of Bayonne v. N. Jersey, Etc., Comm'n, 30 N.J. Super. 409, 414 (App. Div. 1954).

Finally, the record evidence—including Armada's expert report—directly refutes the trial court's bald contention that Armada had the opportunity to fairly litigate claims against Defendants in Russia on the merits. Compare 89a-90a, with 506a-507a, 519a-520a (no fair procedures or legal protections in Russian matters); Innes, 391 N.J. Super. at 489 ("Res judicata is also inapplicable in this case because there has been no indication that the hearings in Spain were fairly litigated."). Armada has never pursued NJRICO-related claims against Kuzovkin or the Roitmans in Russia. The trial court did not make any supported finding (factual or legal) that Russian proceedings and investigations involving other individuals bar this case. The Court should reverse the trial court's unsupported decision that res judicata bars this action—which "affects a substantial public interest," "frustrate[s] totally the essential purpose of [NJRICO]," and results in "inequitable administration" of the law. Velasquez v. Franz, 123 N.J. 498, 513–14 (1991).

POINT IV

THE ECONOMIC LOSS DOCTRINE DOES NOT APPLY TO THE CLAIMS AGAINST THE DEFENDANTS (16A-33A).

The trial court erred when it found that the economic loss doctrine barred Armada's claims against the Roitmans for aiding and abetting breach of fiduciary duty, conversion, civil conspiracy, demand for accounting or constructive trust, and NJRICO violations. "The economic loss doctrine prohibits the recovery in a tort

action of economic losses arising out of a breach of contract." Sun Chem. Corp. v. Fike Corp., 243 N.J. 319, 328 n.2 (2020) (citation omitted). As such, it "only applies to bar certain tort claims between parties to a contract." SRC Constr. Corp. v. Atl. City Hous. Auth., 935 F.Supp.2d 796, 799 (D.N.J. 2013) (emphasis in original).

Here, the economic loss doctrine does not apply because all parties agree there is no contractual relationship between Armada and the Roitmans. See Roitmans' Br. at 34 ("there is no contractual relationship between the Roitmans and Armada."); accord 32a (same). The doctrine "functions to eliminate recovery on 'a contract claim in tort clothing.'" G&F Graphic Servs. v. Graphic Innovators, Inc., 18 F. Supp. 3d 583, 588-89 (D.N.J. 2014) (citation omitted) (emphasis added); see also New Mea Constr. Corp. v. Harper, 203 N.J. Super. 486, 494 (App. Div. 1985) (finding that defendant's failure to use construction material specified in the parties' contract was a type of conduct that could not give rise to a separate claim by "[m]erely nominally casting [the] cause of action" as a tort claim). The trial court erroneously cited to case law involving a contractor's liability under a commercial contract. 32a.

Nor does the economic loss doctrine bar an NJRICO, aiding and abetting, or other similar claim sounding in fraud. See, e.g., Ross v. Celtron Intern., Inc., 494 F. Supp. 2d 288, 298 (D.N.J. 2007) (explaining economic loss doctrine does not bar fraud claims). And the Roitmans do not dispute that the economic loss doctrine is inapplicable to NJRICO and fraud claims. See Roitmans' Br. at 33-35. Hence, the

absence of any contractual relationship among Armada and the Roitmans or any "economic losses arising out of a breach of contract," means the economic loss doctrine does not bar any of Armada's claims in this case, and the Court should reverse trial court's erroneous decision. Sun Chem. Corp., 243 N.J. at 328 n.2.

POINT V[7]

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING ARMADA'S APPLICATIONS FOR DISCOVERY (16A-33A; 37A).

A. The Trial Court Abused its Discretion and Violated this Court's Prior Decision When It Permitted Kuzovkin to Withhold Relevant Non-Privileged Documents and Furnish Incomplete Interrogatory Responses.

The trial court should have compelled Kuzovkin to produce relevant tax and financial documents concerning the allegations in the Amended Complaint—issues and claims (like NJRICO) that are inextricably linked to jurisdictional discovery. For example, the trial court should have compelled production of missing tax returns for the years 2009, 2010, and 2012-2013, the time periods directly relevant to Armada's embezzlement allegations and, coincidentally, the years Kuzovkin failed to produce.

[7] Armada incorporates by reference and reasserts its arguments concerning the Motion to Extend Discovery and for Issuance of Letters Rogatory, which neither Defendant substantively responds to in their respondent papers. See Armada Br. at Point VIII (the trial court erred in denying armada's motion to extend discovery) and Point IX (the trial court erred in denying Armada's motion for issuance of letters rogatory).

Armada repeatedly proffered a basis for why it was entitled to the missing tax returns under this Court's order and the court rules. The missing returns go directly to the allegations in the Amended Complaint. Compare 165a-168a; 174a; 176a (RFP Nos. 10-14, 16-22, 51, 60), with, Am. Compl. at ¶¶166, 170 (NJRICO predicate acts included Kuzovkin soliciting and raising capital from New Jersey investors between **2009-2013**); id. at ¶¶2, 35 ("**Starting in 2012**" "Kuzovkin . . . proceeded to siphon off [Armada's] assets and opportunities *en masse* through an intricate series of self-dealing transactions"); id. at ¶36 ("between **2012 and 2014**, through a number of tranches, the Armada Group transferred nearly RUB 2.7 billion under software development contracts awarded to two outside subcontractors: [] DDP [and] Tver"); see also id. at ¶¶41, 69, 154-56 ("A significant portion of the events described herein occurred between **February 2012 through March 2014.**"); id. at ¶¶58-59, 64, 166, 170 (describing NJRICO elements and unlawful conduct in **2013**). The trial court abused its discretion as the missing 2013 tax returns directly relate to Kuzovkin's jurisdictional claims that New Jersey is an improper forum, and on the merits regarding the Agreement of Sale where, on October 18, 2013, Kuzovkin purchased the Moscow Apartment from A. Roitman. Id. at ¶75.

And by producing numerous other returns during the time he embezzled Armada's funds (2008, 2010, and 2014), Kuzovkin waived any belated objection

to producing the critical missing returns Armada requested. See United Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 567 (App. Div.1984) (holding that a party may not choose to divulge only information that is favorable to their position but assert a privilege defense "to preclude disclosure of the detrimental facts."). Despite the record below, the trial court again deprived Armada of any meaningful jurisdictional discovery in violation of this Court's prior decision.[8]

The trial court also erroneously permitted Kuzovkin to baselessly object (with form objections) to all of Armada's interrogatories and refusal to answer half of them. 1027a-1031a (Responses to ROG Nos. 1-15). Contrary to Kuzovkin's claims, these interrogatories sought relevant information and go directly to the merits and jurisdictional issues in this case. Compare 159a-177a, with N.J.R.E. 401 (broadly defining "relevance" as evidence having the "tendency in reason to prove or disprove any fact of consequence to the

[8] The record before the trial court confirmed that the Roitmans received money and Kuzovkin took ownership of the Parking Space and Moscow Apartment in accordance with the sales purchase agreements. See 1088a (Kuzovkin000321). Kuzovkin's production, including the Acts of Transfer and preamble memorializes the transaction, see 1091a (Kuzovkin000423). Kuzovkin's tax returns and financial documents regarding the transfer are directly relevant to Armada's claims and the jurisdictional issues raised by the parties in this Motion. See Am. Compl. at ¶¶24-25, 64-65 (alleging that Kuzovkin travelled to New Jersey to promote Armada and fled to Austria after embezzlement). As such, the trial court erred by not ordering Kuzovkin to produce all responsive documents sought by Armada.

determination of the action."). The trial court erred by not ordering Kuzovkin to fully answer Armada's Interrogatories—which were relevant to the claims and jurisdictional issues in this case—i.e., the Illegal Scheme to embezzle Armada's funds via the Roitmans as New Jersey residents. 1027a-1028a. Worse still, the trial court permitted Defendants to avoid sitting for depositions despite Armada serving notices within the discovery period. See 67a ("While pursuing rulings on unresolved discovery disputes and prior to the expiration of all applicable deadlines, Plaintiff noticed the depositions of the Defendants in this case."); 71a ("To date, the Defendants have not provided dates on which they will appear for their depositions. No depositions have been taken in this matter.").

B. The Trial Court Abused its Discretion and Violated this Court's Prior Decision by Permitting the Roitmans to Produce 11 Pages of Documents.

The Roitmans' discovery responses were also deficient in numerous respects, and the trial court should have ordered them to cure the deficiencies. Despite admitting to traveling to Russia to complete the transactions with Kuzovkin, the Roitmans claimed to possess no emails, receipts, or financial documents related to the transaction. Indeed, they claimed to not possess or control documents or communications in responsive to 36 of Armada's 52 requests. 1033a-1051a; 1063a-1077a. The Roitmans' respondent papers do not defend or otherwise try to justify their 11-page document production and discovery non-responses.

As detailed in Armada's opening brief, the trial court abused its discretion and accepted the Roitmans' refusal to answer nearly every document request and interrogatory, including RFP No. 38, Interrogatory Nos. 3 and 15, and RFP No. 38, which involve both merits and jurisdictional discovery this Court ordered. 1033a-1051a; 1063a-1077a. Interrogatory No. 3 sought the identity of all persons in Russia the Roitmans communicated with concerning the Moscow Apartment, the Moscow Apartment Transaction, the Parking Rights Transaction, the Agreement of Sale, the Power of Attorney, the Safe Deposit Box Transaction, the Complaint or the Action. (1082a-1083a) (ROG No. 3). Interrogatory No. 15 (and its corollary RFP No. 38) sought documents and information concerning each person, bank or financial institution that handled, possessed, transferred etc. the admitted cash proceeds for the Illegal Scheme that A. Roitman had her "representatives pick up" from Kuzovkin's "safe deposit box" (1086a) (ROG No. 15).

In the face of this Court's clear order allowing Armada to engage in fulsome discovery, the trial court abused its discretion by blessing the Roitmans frivolous objections, including baseless "personal and confidential" objections, and 2017 Subpoena Application as a pretext to not comply with their discovery obligations. 1033a-1051a; 1063a-1077a; see also 1052a-1062a; 1078a-1087a (the Roitmans refusing to provide any information or documentation concerning the safe deposit box they admittedly used to receive proceeds from Kuzovkin, including information

as to who retrieved the money or how the transaction occurred). 1052a-1062a; 1078a-1087a. After years of obstruction, the Roitmans ambushed Armada and claimed—for the first time before Judge Wilson—that Kuzovkin owned the Safety Deposit Box while admitting it "was utilized to facilitate the transfer of the cash sale." 1T at 14:8-15. The Roitmans never confirmed in their answers to interrogatories that Kuzovkin purportedly owned the Safe Deposit Box at issue. 1052a-1062a; 1078a-1087a.

The Roitmans' respondent papers do not mention any of these issues or attempt to refute the propriety of their conduct in discovery because it is indefensible. The Roitmans' discovery responses amount to a shell game and abuse of the discovery process. A. Roitman repeatedly proclaims a lack of knowledge and points to her father Y. Roitman as the person with requisite knowledge, who then levels boilerplate objections and non-responses. 1052a-1062a; 1078a-1087a. The trial court should not have countenanced the Roitmans' clear abuse of the discovery process, which violates New Jersey's liberal discovery rules and the Court's prior decision. Jenkins v. Rainner, 69 N.J. 50, 56 (1976) (pretrial discovery should be accorded the broadest possible latitude); In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 82 (2000) (discovery rules must be "liberally construed" to reveal "all available facts").

The Roitmans' "confidential" and "private" objections are baseless given that A. Roitman admitted she owned the apartment at issue, and she flew from New Jersey to Moscow to consummate the transaction and take custody of the funds. 1083a-1084a. At a minimum, and despite the Roitmans' obstruction, Armada established a jurisdictional nexus between Kuzovkin and the Roitmans as New Jersey residents. See 211a; 372a-376a (A. Roitman admitted "she asked a Russian realtor to sell the apartment," that Kuzovkin "responded and offered to pay her asking price" and that she flew (presumably from New Jersey where she lives) to "Moscow and sign the papers."); 1059a (Y. Roitman Response to ROG 12); 376a. (Roitman admitting that her "representatives" picked up the "cash" in Russia). The trial court deprived Armada meaningful jurisdictional discovery and improperly credited Defendants' self-serving statements in place of this Court's clear directives. The trial court then dismissed the Amended Complaint with prejudice even though Armada established a jurisdictional (and forum-related) link among the claims pled and New Jersey. Consistent with this Court's 2021 decision, the trial court should be reversed because Armada is entitled to basic discovery and complete responses.

C. Armada Never Obtained Full Jurisdictional Discovery as this Court and the Trial Court ordered.

Based on the above, Armada never received the full jurisdictional discovery this Court and the trial court ordered. This Court reversed the prior dismissal because that dismissal was premature absent jurisdictional discovery. 75a-

106a. With respect to *forum non conveniens* as applied to the Roitmans, this Court explained that "without discovery revealing contrary information, it is unclear how it would be demonstrably inappropriate or unduly burdensome for the Roitmans to litigate this matter in their home forum." 88a.

Then, despite this Court's clear prior decision, Kuzovkin moved to dismiss in 2022 to limit discovery "solely to jurisdictional discovery." 2T; 832a. Judge Wilson expressly rejected Kuzovkin's frivolous attempts to again limit discovery, and the trial court directed the parties to "go . . . forward with discovery" without restriction and then "go to trial" because the Appellate Division "reversed this Court" and said that discovery proceedings should go forward. 2T at 13; 832a (Order denying Kuzovkin's motion to limit discovery). At the same time Defendants refused to produce documents and answer basic discovery requests, they refused to appear for depositions. See 67a ("While pursuing rulings on unresolved discovery disputes and prior to the expiration of all applicable deadlines, Plaintiff noticed the depositions of the Defendants in this case."); 71a ("To date, the Defendants have not provided dates on which they will appear for their depositions. No depositions have been taken in this matter."). For these reasons, the trial court violated its own prior order and abused its discretion in denying Armada the discovery this Court ordered must go forward. 75a-105a; 832a.

POINT VI

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING DEFENDANTS' ATTORNEYS' FEE APPLICATION (16A-43A).

A. Standard of Review.

Appellate courts review a trial court's Rule 4:5-1(b)(2) decision under an abuse of discretion standard. See Karpovich v. Barbarula, 150 N.J. 473, 483 (1997); see also Kent Motor Cars, Inc. v. Reynolds and Reynolds, Co., 207 N.J. 428, 444-45 (2011) (providing that enforcement of Rule 4:5-1(b)(2) is "left to the [trial] court"). In reviewing a "violation of Rule 4:5-1(b)(2)," the trial court "must exercise its discretion and consider the purposes of the entire controversy doctrine before barring a subsequent action." Karpovich, 150 N.J. at 483. Determinations regarding attorneys' fees will be disturbed "only on the rarest of occasions, and then only because of a clear abuse of discretion." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (citation omitted).

B. Armada Did Not Violate Rule 4:5-1, and the Entire Controversy Doctrine Does Not Bar the Amended Complaint.

1. Armada Did Not Violate Rule 4:5-1 Under Any Theory.[9]

Armada's Rule 4:5-1 certification was proper when made and did not require supplementation because this matter was not the subject of any other

[9] Confusingly, the Roitmans accuse themselves of violating Rule 4:5-1. See Roitmans' Br. at pp. 37 ("counsel for the Roitman Defendants inexcusably violated Rule 4:5-1 . . .").

action pending in any court or of a pending arbitration proceeding, and none was (or is) contemplated. Rule 4:5-1 requires that each party included with their first pleading "a certification as to whether the matter in controversy is the subject of any other action pending in any court or of a pending arbitration proceeding, or whether any other action or arbitration proceedings is contemplated; and if so, the certification shall identify such actions and all parties thereto." Rule 4:5-1 (emphasis added); see Roitmans Br. at 37-38 (confirming Rule 4:5-1 only applies to "pending" or "contemplated" "actions").[10]

In the Amended Complaint filed in February 2022, counsel for Armada certified that "the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, and that no other parties should be joined in this action pursuant to R. 6:3-1 and R. 4:5-1." 230a. The Court should affirm the trial court's denial of Defendants' fee application for four reasons.

First, there was no pending or contemplated action or proceeding in February 2022. The Roitmans' claims to the contrary are plainly belied by the operative requirements in the Rule that the proceedings be "pending" or "contemplated," and their own brief filed in support of this motion. See

[10] The Roitmans' repeated claims that some matters were "undisclosed" is patently false. For example, Plaintiff produced a table of Russian decisions in Russian that lists case numbers, parties, causes of action and outcomes. See 424a-436a.

Roitmans' Br. at 38-40 (claiming prejudice and a sanctionable violation of Rule 4:5-1 for purported failure to disclosure "the completed foreign litigations") (emphasis in original).

Second, there was not (and has never been) a single proceeding, action, investigation, or claim against the Roitmans, or one that sought (seeks) "the same relief" in another forum. The Roitmans concede as much in their brief. Therefore, the Roitmans' claim of prejudice is unsupported.

Third, to the extent there were prior investigations in another forum that involved Armada and other former Armada officers, counsel had no duty to disclose anything under Rule 4:5-1 regarding these matters.[11] Fourth, to the best of counsel's determination, there were no legal proceedings concerning the subject matter of the instant action pending in any Russian court or arbitral tribunal when the Bergen County action was filed on January 9, 2019, and there have not been any since (including in 2022 when the Amended Complaint and certification was made).

Although counsel understood that during the pendency of this matter, Armada asked the Austrian public prosecutor to criminally investigate Kuzovkin, that investigation is not presently before any court or arbitral body.

[11] The Roitmans unsupported and repeated use of the phrase "secondary liability" has no legal significance to the issues in dispute here.

It is axiomatic that a victim's criminal allegations that are in the process of government criminal investigation is not a matter that is "pending in any court." The purpose of Rule 4:5-1 and the reasonable conclusion that the Roitmans would not intervene in an Austrian criminal investigation confirm that Armada had no duty to disclose it as a "completed foreign litigation[]" against other persons (not the Roitmans) under Rule 4:5-1.

The Court should reject Defendants' cross-appeal because Armada's Rule 4:5-1 certification was proper as counsel has and had no basis to believe that the matter here—Kuzovkin's dealings with the Roitmans, while he oversaw Armada—has been either "pending in any court" or the subject of any arbitration proceeding during the pendency of this action.

2. The Entire Controversy Doctrine Does Not Bar the Amended Complaint.

The entire controversy doctrine does not mandate that Armada pursue its claims outside this litigation. "The entire controversy doctrine provides a mechanism to prevent fragmentation of litigation." Oliver v. Ambrose, 152 N.J. 383, 393 (1998); see Dimitrakopoulos, 237 N.J. at 108-09 (the entire controversy doctrine involves "whether multiple claims must be asserted in the same action" and noting that "[t]he entire controversy doctrine 'embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court'") (citation omitted). "[B]ecause

the entire controversy doctrine is an equitable principle, its applicability is left to judicial discretion based on the particular circumstances inherent in a given case." Allstate Ins. Co. v. Cherry Hill, 389 N.J. Super. 130, 141 (App. Div. 2006) (citation omitted).

Here, the Entire Controversy Doctrine does not support dismissal because the claims against the Roitmans are novel, and the Roitmans were admittedly never parties to the Russian matters cited. Nor was Kuzovkin a party to any matter, action, or proceeding that was previously conducted in Europe. At most, Kuzovkin appears to have been a witness or the subject of an investigation akin to a grand jury investigation or criminal inquiry by the police. See 1418a-1457a. The claims and facts underlying the Roitmans' alleged involvement in the scheme to defalcate Plaintiff have never been entertained or adjudicated by any court, tribunal, or judicial body. See 1094-1247a; 1280a-1457a; see generally 484a-520a. Accordingly, fairness did not require application of the Entire Controversy Doctrine on the facts and circumstances here. See Oliver v. Ambrose, 152 N.J. 383, 395 (1998) ("The application of the entire controversy doctrine requires us to consider fairness to the parties, as the 'polestar' . . ..").

As explained above, Armada never violated Rule 4:5-1, there is no chance of fragmented litigation involving the Roitmans, and Armada does not contemplate bringing claims against them in another forum as they are New

Jersey residents. Nor does the Entire Controversy Doctrine support dismissal given that the "matter" upon which the Roitmans rely was a foreign proceeding with different judicial rules or "an unequal jurisdiction." Bondi, 423 N.J. Super. at 428. In sum, the facts and circumstances of this case do not (and did not) support applying the Entire Controversy Doctrine.

C. The Court Should Disregard (and Deem Waived) Kuzovkin's Cross-Appeal Because He Does Not Include Any Point Heading or Discussion Related to the Cross-Appeal as Required by Rule 2:6-2(a)(6).

The Court should disregard (and deem waived) Kuzovkin's cross-appeal because he does not include any point heading or discussion related to cross-appeal as required by Rule 2:6-2(a)(6). Kuzovkin waived and/or abandoned his cross-appeal because his brief does not mention or discuss the issue raised in the cross-appeal. Kuzovkin's brief does not include any point headings or substantively discuss the trial court's correct decision. Kuzovkin's unbriefed cross-appeal is therefore waived. Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011). See State v. Hild, 148 N.J. Super. 294, 296 (App. Div. 1977) (confirming that parties must "[s]upporting legal argument with appropriate record reference" and "justify[ing] their positions by specific reference to legal authority.").

Instead of briefing the cross-appeal, Kuzovkin relegates his cross-appeal to a one-sentence footnote without any argument or support whatsoever.

Kuzovkin Br. at 43 n.6. Cross-appeal by footnote is improper and waives the cross-appeal. See Almog v. Isr. Travel Advisory Serv., Inc., 298 N.J. Super. 145, 155 (App. Div. 1997) (limiting consideration "of the issues to those arguments properly made under appropriate point headings" and declining to address "oblique hints and assertions" made in footnotes that are untethered to the point headings required under Rule 2:6-2(a)(6)."); see also Mid-Atl. Solar Energy Indus. Ass'n v. Christie, 418 N.J. Super. 499, 508 (App. Div. 2011) (refusing to address an issue raised in a two-sentence paragraph in a brief "without a separate point heading, in violation of Rule 2:6-2(a)[(6)]").[12] Kuzovkin's one sentence footnote cross-appeal also prejudices Armada by depriving it the opportunity to respond to Kuzovkin's inchoate claims. For these reasons, the Court should disregard (and deem waived) Kuzovkin's improper one sentence cross-appeal by "oblique hint or assertion" made in a footnote rather than in a point heading with support. Almog v. Isr. Travel Advisory Serv., Inc., 298 N.J. Super. at 155.

[12] The Court should reject any attempt by Kuzovkin to improperly cure or otherwise "explain[] the argument in greater detail in a reply brief, to which [Armada] had no opportunity to respond." Mid-Atl. Solar Energy Indus. Ass'n, 418 N.J. Super. at 508.

POINT VII

THE COURT SHOULD NOT DISMISS ARMADA'S COMPLETE APPEAL AND FULL ACCOMPANYING RECORD.

Armada's appeal is complete, and this Court has the entire record of the matters on appeal sufficient to decide the issues presented. Armada provided this Court with the voluminous record below, which includes fifteen appendices and numerous transcripts. The Roitmans provided the Court with the March 15, 2024 hearing transcript and thereby mooted their own argument. In any event, the Roitmans do not identify any prejudice and do not point to any specific issue, argument, passage, or statement in the transcript (or made at argument before the trial court) that would frustrate this Court's review or understanding of the issues (and orders) on appeal.

And the unpublished, inapposite cases cited by the Roitmans do not support dismissal of the appeal under the circumstances where the Court possesses the transcript and the entire record below. Compare Bruno v. Gale, Wentworth & Dillon Realty, 371 N.J. Super. 69, 72 n.2 (App. Div. 2004) (declining to dismiss appeal where appellant failed to file non-decision hearing transcript and "the transcript is not vital to our review of the order and arguments raised on appeal.").[13] In sum, the Court has a complete record

[13] The rules do not require that every transcript be filed with the Court, particularly where the appeal does not involve a motion for reconsideration. See

including all relevant documents and transcripts necessary to review the issues on appeal.

CONCLUSION

For the reasons set forth above, this Court should reverse the trial court's orders granting Defendants' motions to dismiss and denying Armada's motions to compel discovery, extend the discovery period, for issuance of letters rogatory and international assistance, and affirm the trial court's orders denying Armada's motions for counsel fees pursuant to Rule 4:5-1.

FOX ROTHSCHILD LLP

Attorneys for Appellant/Cross Respondent PJSC Armada

Dated: February 5, 2025

By: */s/Corinne McCann Trainor*

ELY GOLDIN
CORINNE MCCANN TRAINOR
MICHAEL W. SABO

State v. Scott, 229 N.J. 469, 479 (2017) (appellate review is taken "from orders and judgments and not from opinions . . . or reasons given for the ultimate conclusion.'"); accord R. 2:2-3(a) (permitting appeals "from final judgments").

Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO. A-003343-23

PJSC ARMADA,

Plaintiff-Appellant,

—against—

ALEXY KUZOVKIN, ALLA ROITMAN, YEFIM ROITMAN, and JOHN DOES 1-5,

Defendants-Respondents Cross-Appellants.

CIVIL ACTION

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, BERGEN COUNTY, DOCKET NO. BER-L-197-19

SAT BELOW: HON. PETER G. GEIGER J.S.C.

REPLY BRIEF FOR DEFENDANT-RESPONDENT CROSS-APPELLANT ALEXY KUZOVKIN

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March 5, 2025

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In his cross-appeal, defendant-respondent-cross-appellant Alexy Kuzovkin ("Kuzovkin") expressly adopted and incorporated the arguments made in the Roitmans' appeal brief in support of its cross-appeal, including the trial court's denial of fee shifting. *See* p. 12, fn. 1. The only argument that is directly targeted at Kuzovkin is that the cross-appeal should not be considered because Kuzovkin supposedly doesn't argue it. But Kuzovkin is permitted to adopt the arguments made by other parties and avoid duplication. *See McDarby v. Merck & Co., Inc.*, 401 NJ Super 10, 95, n 50, 949 A2d 223, 276 [Super Ct App Div 2008] ("To avoid duplication in these back-to-back appeals, we permitted each party to adopt by reference arguments asserted in either case.); *State v. Taccetta,* 301 NJ Super 227, 245, 693 A2d 1229, 1239 [Super Ct App Div 1997] (analyzing arguments made by another party and adopted by reference, but ultimately rejecting them on the merits).

In addition to the arguments made herein, Kuzovkin also adopts the arguments made in the Roitmans' reply.

CONCLUSION

Thus, the Court should consider and grant the cross-appeal.

Dated: New York, New York
March 5, 2025

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	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003343-23
PJSC ARMADA, Plaintiff, -vs- ALEXY KUZOVKIN, ALLA ROITMAN, YEFIM ROITMAN, AND JOHN DOES 1-5, Defendants.	ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO. BER-L-197-19 SAT BELOW: HON. Peter G. Geiger, J.S.C.

REPLY BRIEF OF DEFENDANTS/CROSS APPELLANTS YEFIM ROITMAN AND ALLA ROITMAN IN SUPPORT OF CROSS APPEAL

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PRELIMINARY STATEMENT

In the underlying matter, Armada PJSC ("Armada"), a dormant Russian public corporation, sought to relitigate failed Russian claims of embezzlement and corporate misfeasance by Armada's prior management team in a new forum. The Roitman Defendants, who are United States citizens, were innocent sellers of Russian real property to Defendant Alexy Kuzovkin ("Kuzovkin"), Armada's former Chairman, in 2013. The Law Division granted the Roitman Defendants' Motion to Dismiss, which was subsequently appealed by Armada.

The Roitman Defendants have narrowly cross appealed the Court's denial of a request for counsel fees based upon Armada's initial Rule 4:5-1 failures and the efforts to conceal the prior Russian proceedings in discovery. For the reasons set forth herein, the Roitman Defendants Cross Appeal should be granted and this matter should be remanded for further proceeding pursuant to Rule 4:42-9 to determine the reasonable counsel fees owed by Armada.

STATEMENT OF FACTS/PROCEDURAL HISTORY

The Roitman Defendants refer to and incorporate the Statement of Facts and Procedural History as set forth in their initial Respondents' Brief. With respect to the issue of its Cross Appeal, in connection with its Motion to Dismiss, the Roitman Defendants sought fee shifting pursuant to Rule 4:5-1(b), as Armada's counsel did not disclose the extensive ***completed*** foreign litigation as to issues related to the putative Illegal Scheme. (17a). The Court dismissed Armada's

complaint, but denied the Roitman Defendants' request for fee shifting due to the violation of Rule 4:5-1(b)(2) by counsel for Armada. Ibid.

On June 28, 2024, Armada filed a Notice of Appeal. On July 16, 2024, the Roitman Defendants filed a Notice of Cross Appeal as to the issue of the Court's denial of its request for fee shifting. On July 17, 2024, Defendant Kuzovkin filed a similar Notice of Cross Appeal.

LEGAL ARGUMENT

POINT I

THE LAW DIVISION ERRED IN DENYING ARMADA'S APPLICATION FOR FEE SHIFTING DUE TO THE VIOLATION OF RULE 4:5-1

The Roitman Defendants' underlying moving papers sought the award of counsel fees pursuant to Rule 4:5-1 because Armada purposefully failed to disclose the extent and substance of the matters that Armada previously litigated in Russia with respect to the claimed "Illegal Scheme". (17a). While the issue of the non-disclosure of prior completed litigation was noted during oral argument, issues related to Rule 4:5-1 and the award of counsel fees were not addressed. (5T72:21-T73:3).[1]

The Roitman Defendants' initial Respondents' Brief asserted that Armada

[1] As referenced herein "5T" refers to the transcript of the March 15, 2024, Motion

and its counsel had an obligation to disclose, and a duty not to conceal, the existence of completed foreign legal proceedings related to the alleged Illegal Scheme and that the failure to do so was an obvious violation of Rule 4:5-1. In response, Armada argues (1) that it did not have any duty to disclose prior or completed legal proceedings, and (2) that the Roitman Defendants cannot rely upon Rule 4:5-1 because they were not parties to the completed foreign legal proceedings related to the alleged Illegal Scheme.

As an initial matter, Armada does not dispute that Rule 4:5-1 specifies dismissal and the imposition of litigation costs as two available enforcement mechanisms. Kent Motor Cars, Inc. v. Reynolds and Reynolds, Co., 207 N.J. 428, 445 (2011); Mitchell v. Charles P. Procini, D.D.S., P.A., 331 N.J. Super. 445, 454 (App. Div. 2000). Armada's dubious claim that it did not need to disclose the extensive prior foreign litigation because such matters were not "pending" or "contemplated" at the time the initial Complaint was filed in January 2019, or when the Amended Complaint was filed on February 2022, does not stand up to a modicum of scrutiny. Initially, Rule 4:5-1 is intended to implement the entire controversy doctrine. "Taken together, both Rule 4:30A and Rule 4:5-1(b)(2) advance the same underlying purposes. As it relates to claims and to parties, they express a strong preference for achieving fairness and economy by avoiding

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Argument Transcript.

piecemeal or ***duplicative litigation***." Kent Motor Cars, supra, 207 N.J. at 445 (emphasis supplied). Given that the stated intent of Rule 4:5-1 and the entire controversy doctrine is to prevent "duplicative litigation", Armada's counsel serious violations are not cured by the fact that the extensive foreign litigation as to the claimed Illegal Scheme was *concluded* by the time the Bergen County Complaints were filed. Attorneys in New Jersey have an obligation of candor and fairness under RPC 3.3 and pleadings are required to be supported by "good grounds" under Rule 1:4-8. Given the intent to prevent duplicative litigation, no reasonable attorney could interpret Rule 4:5-1 as not requiring disclosure of related matters that had been litigated to conclusion, and realistically such claims should not be filed in the first place. The Roitman Defendants' initial Respondents' Brief noted that the non-disclosure or omission of previously filed complaints can represent a breach of these duties. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). Armada entirely fails to respond to or address this point.

Here, Armada extensively litigated its claims of embezzlement and corporate misfeasance in Russia and did not prevail or establish the existence of the claimed Illegal Scheme in any Russian court or tribunal. Armada's counsel did not acknowledge the completed foreign litigation or the results of said claims in its Rule 4:5-1 certification or in the actual paragraphs of filed Complaint. Clearly this represents a violation of the express intent of Rule 4:5-1 and the entire controversy

doctrine, warranting the imposition of fee shifting against Armada and in favor of the Roitman Defendants.

Armada attempts to argue that its non-disclosure of extensive foreign litigation is cured by virtue of the fact that such claims were not asserted against the Roitman Defendants. Here, the Law Division properly observed that res judicata and collateral estoppel "bars the relitigation of the underlying claims against Defendant Kuzovkin and by extension ***the secondary liability claims against the Roitman Defendants***." (30a – 31a)(emphasis supplied). In order for the Roitman Defendants to have conspired with Defendant Kuzovkin to hide alleged ill begotten funds, Armada would need to first establish that it had some right to Kuzovkin's funds in the first place and/or that the funds were embezzled in the first place. Here, Armada failed in all prior attempts to establish that the claimed Illegal Scheme actually occurred. As such, the fact that the Roitman Defendants were not parties to the underlying embezzlement and corporate misfeasance claims in Russia does not justify the non-disclosure of those completed matters or Armada's ongoing efforts to hide their failures in such matters.

In a footnote, Armada disputes the contention that it failed to disclose the prior foreign litigation identifying a Russian language table of decisions that it produced in discovery in this matter in 2022, following the prior remand by the

Appellate Division. This timing is notable and further suggestive that fee shifting in favor of the Roitman Defendants should apply in this instance. When this matter was previously before the Appellate Division in 2021, the very existence of these *completed* matters had not been disclosed and was not part of the record on appeal at the time. (89a). The Appellate Division was entirely unaware that these matters had been fully litigated when it issued its decision. Ibid. Had these completed foreign matters, upon which the Law Division ultimately relied in part to dismiss the Amended Complaint in May 2024, been disclosed at the outset as required by Rule 4:5-1 (or simply not filed in the first place), the Roitman Defendants would have been spared the significant cost and expense of litigating this matter to conclusion in 2024, and in connection this with this appeal in 2024 and 2025.

Based upon the foregoing, it is submitted that the Roitman Defendants' Cross-Appeal should be granted and this matter should be remanded for further proceeding pursuant to R. 4:42-9 to determine the reasonable counsel fees owed by Armada.

POINT II

ARMADA'S REPLY SUBMISSION CONFIRMS THAT APPLICATION FOR FEE SHIFTING IS WARRANTED

Positions and arguments asserted in Armada's Reply submission serve to further highlight and justify that the Roitman Defendants' Cross-Appeal should be granted.

A. Transcript of Underlying Oral Argument Was Not Provided.

The Roitman Defendants' initial Respondents' Brief noted that Armada's appeal did not include the transcript of the March 15, 2024 oral argument, in violation of Rule 2:5-1(g). The Roitman Defendants noted that Appellate Division has dismissed appeals where all transcripts have not been obtained. See Cable v. Rodig, 2011 WL 3425570 (App. Div. Aug. 8, 2011). The Roitman Defendants suggested that this was potentially done to remove the significant and relevant discussion during the March 15, 2024 oral argument relating to the completion of jurisdictional discovery from the record on appeal. (5T70:1-3).

In response, Armada does not deny that this transcript was omitted, does not respond to the contention that this was done purposefully to remove the jurisdictional discovery discussion from the record, and incorrectly argues that the transcript of the motion argument with respect to the motions being appealed was

somehow not "vital." Armada's admitted efforts in this regard further justify the grant of the Roitman Defendant's Cross Appeal.

B. Armada Seeks to Rely Upon an "Expert Report" that is Not Properly in Motion Record or Record on Appeal.

In its Reply, Armada once again seeks to rely upon the putative expert report of Stefan D. Cassella. Armada's Reply misleadingly states that this expert report is "uncontradicted." The Roitman Defendants' Motion to Dismiss was filed on April 26, 2023 (1270a), Armada's Opposition and Cross-Motions were filed on June 23, 2026 (479a), and the Roitman Defendants' Reply was filed on August 14, 2023 (423a). After the motion argument had been adjourned at the request of Armada, and while the motions were fully briefed, on December 4, 2023, Armada served the putative expert report Stefan D. Cassella. (115a). Then, on December 20, 2023, without seeking pre-motion consent, Armada filed a Motion to Issue Letters Rogatory to allow the taking of discovery in Austria, which attached the putative expert report of Stefan D. Cassella. (18a – 19a).

The Roitman Defendant's object to Armada's attempted reliance upon this alleged expert report in connection with the appeal of the grant of the Roitman Defendants' Motion to Dismiss, as it was submitted after the Motion to Dismiss was fully briefed and was not part of the record as to that Motion. The Roitman Defendants' note that this report is not properly part of the record on appeal

pursuant to Rule 2:5-4, as it relates to the Roitman Defendants. Armada's efforts in this regard further justify the grant of the Roitman Defendant's Cross Appeal.

C. Extraterritorial Application of NJ RICO Statute.

Armada repeatedly claims N.J.S.A. 2C:41-1, et seq., ("NJ RICO") saves the deficient Complaint and allows Armada, a Russian Corporation, to proceed with generalized "money laundering claims" against New Jersey residents. The Roitman Defendants have noted that these claims cannot survive as the harm alleged in the Complaint occurred in Russia and the plaintiff is a Russia Corporation. In RJR Nabisco, Inc., v. European Community, the United States Supreme Court held that while certain substantive provisions of the Federal RICO Statute ("RICO") do apply to foreign conduct, the provision providing for a private civil right of action under RICO does not allow foreign plaintiffs to sue for injuries occurring outside the United States. 579 U.S. 325, 346 (2016).

The Roitman Defendants noted that the Third Circuit has applied this doctrine to dismiss RICO claims by foreign parties relating to extraterritorial harm, Humphrey v. GlaxoSmithKline PLC, 905 F.3d 694 (3d Cir. 2018), and that New Jersey has a well-established public policy *against* governing or regulating out-of-state conduct. Ortiz v. Goya Foods, Inc., 2020 WL 1650577, at *4 (D.N.J. Apr. 3, 2020); D'Agostino v. Johnson & Johnson, Inc., 133 N.J. 516 (1993).

In its Reply submission, Armada seeks to sidestep the sound logic of this

doctrine, which prevents foreign entities from seeking to enforce United States civil and criminal laws against United States citizens for harm occurring in other countries. Armada cites no authority where any RICO statute was applied extraterritorially and against US citizens by a foreign corporation or party. Instead, Armada misleadingly cites State v. Ball, 141 N.J. 142, (1995) for the general proposition that NJ RICO is intended to be "broader" than its federal counterpart. However, Ball has nothing to do with the extraterritorial application of RICO or NJ RICO and Armada entirely ignores New Jersey's well stated public policy *against* governing or regulating out of state conduct.

It is submitted that Armada's arguments in this regard are in bad faith and are intended to mislead the Court which further justifies the grant of the Roitman Defendant's Cross-Appeal.

D. "Illegal Scheme" Nomenclature.

In the Complaint, in the underlying litigation and in this Appeal, Armada has continued to accuse Roitman Defendants of some type of wrongdoing by utilizing the misleading definitional nomenclature of the "Illegal Scheme." In the Complaint, Armada defines the amorphous "Illegal Scheme" as follows: "[s]tarting in 2012, Armada's former management, led by Kuzovkin, the former chairman of Armada's board of directors, proceeded to siphon off the company's assets and opportunities en masse through an intricate series of self-dealing transactions (the

"Illegal Scheme") involving more than forty (40) companies—most of which were shell companies. (199a). In this Appeal, the term "Illegal Scheme" is repeated fifty-nine (59) times in Armada's Appellant's Brief and sixty (60) times in Armada's Reply Brief. This continued use of this term, even after the disclosure that the Armada failed in establishing that any such conduct actually occurred is an ongoing misrepresentation. For conduct to be considered "Illegal" it must be "[n]ot authorized by law; Illicit; unlawful; contrary to law..." In this regard, Armada cannot represent that such putative conduct was *illegal* while Armada itself litigated this specific issue in Russia's civil and criminal courts from 2014 to 2017 *and did not prevail*, thus rendering the conduct at issue decidedly not *illegal*. Armada's Appeal cannot continue to omit all reference to the *results* of the extensive litigation in which it engaged in Russia merely because Armada lost and/or now disagrees with the results while also still claiming that the conduct at issue constituted an alleged "Illegal Scheme."

Based upon the foregoing it is submitted that the Court's denial of counsel fees in favor of the Roitman Defendants was in error and should be subject to review by the Appellate Division.

CONCLUSION

Based upon the foregoing it is summited that the Appellate Division should grant the Cross Appeal of the Roitman Defendants and that this matter should be

remanded for further proceeding pursuant to R. 4:42-9 to determine the reasonable counsel fees owed by Armada.

Respectfully submitted,
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By: */s/ Arthur M. Owens*
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DATED: March 5, 2025