

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO: A-~~0304-23~~ 0003424-23

CIVIL ACTION:

ON APPEAL FROM:

SUPERIOR COURT NEW JERSEY

BURLINGTON COUNTY- LAW DIVISION

SAT BELOW: HONORABLE RICHARD HERTZBERG, J.S.C

DOCKET NO: BUR-L-000786-23

RECEIVED
APPELLATE DIVISION

MAY 30 2025

SUPERIOR COURT
OF NEW JERSEY

TONNESHA KIDD,

APPELLANT

vs.

LOURDES MEDICAL CENTER AT BURLINGTON

APPELLEE.

BRIEF ON BEHALF OF PLAINTIFF/APPELLANT

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ON BRIEF

1. FB APPELLANT'S APPENDIX, 2.IT= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA

3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA

4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES.....vi

PRELIMINARY STATEMENT.....1

PROCEDURAL HISTORY.....4

STATEMENT OF FACTS5

ARGUMENT

I. LEGAL STANDARD DE NO REVIEW.....12

A. LEGAL STANDARD ABUSE OF DISCRETION.....13

B. LEGAL STANDARD FOR MOTION FOR RECONSIDERATION.....14

C. LEGAL STANDARD FOR SUMMARY JUDGMENT.....37

LEGAL ARGUMENT I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING APPELLANT’S MOTION FOR RECONSIDERATION, AS THE TRIAL COURT OVERLOOKED, AND DISREGARDED ALL OF HER CLAIMS, RAISED THE STANDARD OF REVIEW OF HER PLEADINGS, AND HAVE MISSAPPLIED THE LAWS TO THIS MATTER, SIGNIFYING AN ABUSE OF DISCRETION. (Raised below, 1T, 2T,Pb242-Pb275).....14

- 1. PB-APPELLANT’S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
- 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 **LEGAL ARGUMENT II**

2 THE TRIAL COURT ERRED IN GRANTING DEFENDANTS’ MOTION TO
3 DISMISS FOR FAILURE TO STATE A CLAIM, AS APPELLANT MET THE
4 PLEADING REQUIREMENTS, WHILE DEFENDANT FAILED TO MEET ITS
5 BURDEN OF PROOF FOR THE GRANTING OF SUCH RELIEF MOTION TO
6 DISMISS STANDARD UNDER RULE 4:6-2(e) (**Raised below 1T,2T,Pb11
Pb9**).....27

7 **LEGAL ARGUMENT III**

8 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING
9 APPELLANT’S COMPLAINT IN ITS ENTIRETY, AS APPELLANT
10 PROFERRED A COGNIZABLE CLAIM FOR FRAUDULENT INDUCEMENT
11 AND FRAUDULENT MISREPRESENTATION, THIS COURT MISAPPLIED
12 THE LAW IN THIS MATTER, AS SUCH, THE RULING EXEMPLIFIES AN
13 ABUSE OF DISCRETION (**Raised below Pb10, Pb11, Pb12**).....30

14 **LEGAL ARGUMENT IV**

15 THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION, AND
16 RECONSIDERATION OF ITS ORDER DENYING LEAVE TO FILE AN
17 AMENDED COMPLAINT, AS LEAVE TO AMEND SHOULD BE GRANTED
18 WITH LIBERALITY, PURSUANT TO NJ R.4:9-1. (**Raised Below,
19 2T,Pb10,P242**).....31

25
26
27 1. PB-APPELLANT’S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 **LEGAL ARGUMENT V**

2 THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED
3 REVERSABLE ERROR IN DISMISSING APPELLANT’S COMPLAINT WITH
4 PREJUDICE, AS IT HAS ERRED IN MISSAPPLYING THE LAW IN
5 CONSIDERING MATTERS OUTSIDE THE PLEADINGS, THEREBY
6 GRANTING SUMMARY JUDGMENT; WITHOUT FIRST PERMITTING
7 DISCOVERY, AND DEFENDANTS FAILED TO ATTACH A SEPARATE LIST
8 OF NON DISPUTED FACTS, PURSUANT TO N.J.R. 4:46 (a); CONSIDERING
9 OVER 107 EXHIBITS ATTACHED TO SAID MOTION;AND THEN FAILING
10 TO RECONSIDER ITS APRIL 26, 2024 ORDER(**Raised below(Pb11,Pb12,P242)**).
1134

10 **LEGAL ARGUMENT VI**

11 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING
12 APPELLANT’S COMPLAINT IN ITS ENTIRETY, AS APPELLANT’S
13 SECOND AMENDED COMPLAINT WAS WELL-PLED TO DEFEAT A
14 SECOND MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, AND
15 THE LAW WAS MISSAPPLIED IN THIS MATTER.(**Raised below, Pb10, Pb11,**
16 **Pb12,P242)**.....38

16 **LEGAL ARGUMENT VII**

17 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN RAISING ITS
18 PLEADING STANDARD FOR APPELLANT, WHO IS A PRO SE LITIGANT,
19 AS SUCH THIS COURT SHOULD REVERSE ITS RULING ENTERING
20 JUDGMENT ON BEHALF OF THE DEFENDANT IN THE INTEREST OF
21 MANIFESTED JUSTICE(**Raised below,Pb10, Pb11,**
22 **Pb12)**.....39

- 26
27 1. PB-APPELLANT’S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 **LEGAL ARGUMENT VIII**

2 THIS MATTER IS OF GREAT PUBLIC INTEREST AND CONCERN, AS SUCH
3 THIS COURT SHOULD REVERSE THE TRIAL COURT’S ERRONEOUS
4 RULINGS, IN THE INTEREST OF MANIFESTED JUSTICE (Raised below,
5 (1T,Pb10, Pb11, Pb12).....42

6 **LEGAL ARGUMENT IX**

7 THE TRIAL COURT’S ORDER GRANTING DEFENDANTS’ MOTION TO
8 DISMISS FOR FAILURE TO STATE A CLAIM/SUMMARY JUDGMENT WAS
9 ARBRITRARY, AND CAPRICIOUS, AS IT IS NOT SUPPORTED BY THE
10 TRIAL COURT’S RECORD...(Raised below, Pb10, Pb11,
11 Pb12).....46

12 **CONCLUSION**.....50

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1. PB-APPELLANT’S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
- 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

- 1. Honorable Richard Hertzberg, Order, dated September 13, 2023.....Pb9
- 2. Honorable Richard Hertzberg, Order, dated April 26, 2023, denying Appellant’s Motion for Leave to File an Amended Complaint..... Pb 10
- 3. Honorable Richard Hertzberg’s, Order, dated April 26, 2023 granting Defendants Motion to Dismiss.....Pb 11
- 4. Honorable Richard Hertzberg’s, Order, dated June 11, 2024, denying Appellant’s Motion for Reconsideration.....Pb 12
- 5. Honorable Richard Hertzberg’s, Order, dated August 30, 2023, denying Defendants Motion to Dismiss as moot.....Pb278

LIST OF PARTIES

Party Name	Appellate Party Desig.	Trial Court-Role	Trial Court-Ag.
Tonnesha Kidd	Appellant	Plaintiff	Participated Below
Lourdes Medical Center, et. Als-	Respondent	Defendant	Participated Below

TABLE OF TRANSCRIPTS

Proceeding	Proceeding date	Transcript #
Oral Argument	September 8, 2023	1T
Oral Argument	April 25, 2024	2T

v

- 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
- 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

TABLE OF AUTHORITIES

1

2 1. In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020)12

3 2. State v. Courtney, 243 N.J. 77, 85 (2020)12

4 3. State v. G.E.P., 243 N.J. 362, 382 (2020)12

5 4. State v. Hemenway, 239 N.J. 111, 125-25 (2019)12

6 5. State v. Hyland, 238 N.J. 135, 143 (2019)12

7 6. Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019).....12

8 7. Green v. Monmouth Univ., 237 N.J. 516, 529 (2019).....12

9 8. State v. Fuqua, 234 N.J. 583, 591 (2018)12

10 9. State v. Dickerson, 232 N.J. 2, 17 (2018)..... 12

11 10. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).....12

12 11. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378

13 (1995).....12

14 12. Serico v. Rothberg, 234 N.J. 168, 178 (2018).....13

15 13. Kieffer v. Best Buy, 205 N.J. 213, 222 (2011).....13

16 14. Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 207 (2019).....13

17 15. Est. of Pickett v. Moore's Lounge, 464 N.J. Super. 549, 554-55 (App. Div.

18 2020).....13

19 14. Gillman v. Bally Mfg. Corp., 286 N.J. Super. 523, 528 (App. Div.), certif.

20 denied 144 N.J. 174 (1996)13

21 15. Goodyear Tire and Rubber Co. v. Kin Properties, Inc., 276 N.J. Super. 96, 106,

22 647 A.2d 478 (App. Div.), certif. denied, 139 N.J. 290 (1994)..... 13

25

26

27 1. PB-APPELLANT'S APPENDIX, 21T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA

28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA

4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 16. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484, 323
 2 A.2d 495 (1974).....13
 3 17. Gittleman v. Central Jersey Bank & Trust Co., 103 N.J. Super. 175, 179, 246
 4 A.2d 757 (App. Div. 1967), rev'd on other grounds, 52 N.J. 503, 246 A.2d 713
 5 (1968).....14
 6 18. State v. Simon, 161 N.J. 416, 444 (1999)14
 7 19. Graham v. Gielchinsky, 126 N.J. 36, 363 (1991).....14
 8 20. Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382
 9 (App. Div. 2015).15
 10 21. Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010).....15
 11 22. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div.
 12 1990).....15,16
 13 23. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994).....15,16
 14 24. Rider v. State Dept. of Transportation, 221 N.J. Super. 547 (App. Div.
 15 1987).....16
 16 25. Supreme Court of New Jersey in Printing Mart v. Sharp Electronics, 116 N.J.
 17 739, 746 (1989).....16,17,18,19,20,27
 18 26. McGarry v. Pallito, 687 F.3d 505, 509 (2d. Cir. 2012).....18
 19 28. Julian v. New York city Transit Authority, 857 F.Supp.242 (E.D.N.Y. 1994),
 20 aff'd, 52 f.3d., 312 92d Cir. 1995)18
 21 29. Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct.594, 30 L.Ed.2d.6529(1972) (per
 22 curiam).....18,22,29,39,40,42,43
 23
 24
 25
 26

27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 30. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746
 2 (1989).....16,17,18,19,20,23,28
 3 31. Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div.
 4 1957).....18
 5 32. Smith v. SBC Commc'ns, Inc., 178 N.J. 265, 268-69 (2004).....18,20
 6 33. Pressler & Verniero, Current N.J. Court Rules, comment 4.1.2 on R. 4:6-2
 7 (2017).....19
 8 34. New Jersey Sports Productions, Inc. v. Bobby Bostick Promotions, LLC, 405
 9 N.J. Super. 173, 178-79 (Ch. Div. 2007)..... 19
 10 35. Wreden v. Township of Lafayette, 436 N.J. Super. 117, 124 (App. Div.
 11 2014).....19
 12 36. Frederick v. Smith, 416 N.J. Super. 594, 597 (App. Div. 2010)20
 13 37. Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002). "A 9
 14 A-1738-2120
 15 38. Rieder v. State Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div.
 16 1987).....20
 17 39. Flinn v. Amboy Nat'l Bank, 436 N.J. Super. 274, 287 (App. Div. 2014)...20,34
 18 40. Seidenberg, 348 N.J. Super. at 250).....20
 19 41. Dolson v. Anastasia, 55 N.J. 2, 5-6 (1969).....20
 20 42. Douglas Lyons vs. Kull Auto Sales, Inc.....21
 21 43. Hall v. City of Santa Barbara, 833 F.2d 1270, 1274(9th Cir. 1986)22
 22 44. Quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice &
 23 Procedure 1357, at 598.....22
 24

26
 27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 28 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 45. Scheuer v. Rhodes, 416 U.S. 232, 236(1974).....22

2 46. Conley v. Gibson, 355 U.S. 41, 45- 46(1957).....22

3 47. Allen v. WestPointPepperell, Inc., 945 F.2d 40, 44 (2d Cir. 1991).....23

4 48. McGarry v. Pallito, 687 F.3d 505, 509 (2d. Cir. 2012).....23

5 49. Julian v. New York city Transit Authority, 857 F.Supp.242 (E.D.N.Y. 1994),

6 aff'd, 52 f.3d., 312 92d Cir. 1995.....22

7 50. Alie v. NYNEX Corp., 158 F.R.D. 239, 243 (E.D.N.Y.1994).....22

8 51. Branum v. Clark, 927 F.2d 698, 705 (2d. Cir. 1991)22

9 52. Firestone v. Firestone, 76 F.3d, 1205, 1208 9D.C. Cir. 1996.....22

10 53. EEOC v. Lockheed Martin Corp., 116 F.3d 110, 112 94th Cir.25

11 54. Browsers v. Nat'l. Collegiate Athletics ass'n., 130 F. Supp.2d 610, 612

12 (D.N.J.....25

13 55. NI Industries, Inc. v. Commercial Union Insurance, 935 F. Supp. 513, 515

14 (D.N.J. 1996).....25

15 56. Max's Seafood Café v. Quinteros, 16 F.3d 669, 677 (3d Cir. 1999).....26

16 57. Compaction Sys. Corp., 88 F. Supp. 2d at 345.....27

17 58. Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012).....27

18 59. Camden Cty. Energy Recovery Assocs., L.P. v. New Jersey Dept. of Env'tl.

19 Prot., 320 N.J. Super 59, 64 (App. Div. 1999), aff'd o.b. 170 N.J. 246 (2001).....27

20 60. Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348

21 (2010).....27

22

23

24

25

26

27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA

28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA

4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 61. NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006).....28
 2 62. Banco Popular No. America v. Gandhi, 184 N.J. 161, 165-66 (2005).....28
 3 63. Fazilat v. Feldstein, 180 N.J. 74, 78 (2004).....28
 4 64. Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).....28
 5 65. Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. 437, 456
 6 (1998).....31
 7 66. G & W, Inc. v. Borough of E. Rutherford, 280 N.J. Super. 507, 516 (App. Div.
 8 1995).....31
 9 67. Interchange State Bank v. Rinaldi, 303 N.J. Super. 239, 256 (App. Div.
 10 1997).....31
 11 68. Pressler & Verniero Current, NJ Court Rules, coment 2.131,34
 12 69. New Jersey Sports Productions, Inc. v. Bobby Bostick Promotions, LLC, 405
 13 N.J. Super. 173, 178-79 (Ch. Div.
 14 2007).....34
 15 70. Chance v. McCann, 405 N.J. Super. 547, 563 (App. Div.
 16 2009).....34
 17 71. Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46
 18 (2007).....35
 19 72. Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007),
 20 certif. denied, 195 N.J. 419 (2008).35
 21
 22 73. D'Angelo v. Owen Loan Servicing, LLC, 2017, NJ superior,.....35
 23 74. Haines v. Rowe, 449 U. S. 5, 9(1980).....40,43
 24

25 X

- 26
 27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 28 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 75. Perrotte v. Johnson, Case No.: 1:15-cv-00026-LJO-SAB (PC), (E.D. Cal. Jan.
 2 3, 2017)40,43
 3 76. Draper v. Coombs, 792 F.2d 915, 924 (9th Cir. 1986).....40,43
 4 77. Pembroke v. Wilson, 370 F.2d 37, 39-40 (9th Cir. 1966).....40,44
 5 78. Moore v. Agency of Intern. Dev., 994 F.2d 874, 876 (D.C. Cir. 199).....40,44
 6 79. Breck v. Ulmer in 1987, supra,.....40,44
 7 80. Wagner and Greenway v. Heathcott, supra.....44
 8 81. Balducci v. Cige, 240 N.J. 574, 595 (2020).....45
 9 82. State v. McNeil-Thomas, 238 N.J. 256, 271 (2019).....45
 10 83. Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015).....46
 11 84. State v. Hubbard, 222 N.J. 249, 264 (2015).....46
 12 85. C.R. v. M.T., 248 N.J. 428, 440 (2021)46
 13 86. Gnall v. Gnall, 222 N.J. 414, 428 (2015).....46
 14 87. State v. Mohammed, 226 N.J. 71, 88 (2016).....46
 15 88. State v. Gamble, 218 N.J. 412, 424 (2014).....46
 16 89. Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015)46
 17 90. Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974),,,,46
 18 91. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)46
 19 92. State v. Camey, 239 N.J. 282, 306 (2019).....47
 20 93. Motorworld, Inc. v. Benkendorf, 228 N.J. 311, 329 (2017).....47
 21 94. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016)47
 22
 23
 24

- 25
 26
 27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1	95. State v. K.W., 214 N.J. 499, 507 (2013).....	47
2	96. Balducci v. Cige, 240 N.J. 574, 595 (2020).....	47
3	97. State v. McNeil-Thomas, 238 N.J. 256, 272 (2019).....	47,48
4	98. State v. S.S., 229 N.J. 360, 380-81 (2017).....	47
5	99. State v. Hubbard, 222 N.J. 249, 270 (2015).....	48
6	100. State v. Carrillo, 469 N.J. Super. 318, 332 (App. Div. 2021).....	48
7		
8	COURT RULES:	
9	Rule 4:49-1.....	31,32
10	Rule 4:49-2.....	14,15
11	Rule 4:46(a).....	19,49,50
12	Rule 4:46-2(c).....	37
13	Rule 4:46-2(a).....	38
14	Rule 4:6-2 (a).....	35
15	Rule 4:6-2(e).....	16,17,19,28,29
16	Rule 4:6-2 (c).....	36
17	Local Civil Rule 7.1(i)	26
18	Rule 59 (e).....	25
19		
20	STATUES:	
21	N.J.S.A. §§ 10:5-3, 10:5-4.....	30,39
22	42 U.S.C. § 1981	30,39
23	Title VII	30,39

1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

PRELIMINARY STATEMENT

1
2 This appeal involves a fundamental right to seek redress(Pb1-Pb13). Pursuant
3
4 to New Jersey court rules, the trial court erroneously entered a judgment in favor of
5 Defendants for Summary Judgment prior to discovery, or resolution of genuine
6 issues of disputed material facts(Pb11). Defendants framed its motion to dismiss as
7
8 one for failure to state a claim from which relief may be sought. However, the trial
9 court used matters outside the 4-corners of Appellant's complaints to reach its unjust
10 result. In essence, the trial court misapplied the law to this matter; when it entered
11 judgment in favor of Defendants despite it failing to meet its burden of proof for
12 granting a motion to dismiss for failure to state a claim, or the granting of Summary
13 Judgment(Pb279-353). Appellant's complaints were well pled to defeat a Motion to
14 Dismiss for Failure to state a claim from which relief may be
15 sought(Pb13,Pb50,Pb77). The trial court erroneously raised the standard of review
16 for Appellant's pleadings; who is a Pro se litigant; who lack the requisite knowledge
17 of the law and skill. Instead of applying the leniency standard, the trial court raised
18 the standard of review to that of one above an attorney. Dismissing Appellant's
19 complaint; in its entirety; when claims existed that met the pleading requirements is
20
21 a clear abuse of discretion and flies in the face of manifested justice (1T- 4a-62a,
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27
28
1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 **2T-6-53,Pb10,Pb11,Pb12).** Denying Appellant, the opportunity to cure a simple
2 defect; where the amendment should've been granted with liberality, where
3 Defendants would not have been prejudiced, and the amendment was not futile is a
4 clear abuse of discretion (**1T- 4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111,**
5 **Pb179, Pb242).**
6

7
8 Moreover, the matter was not ripe, precluding the entry of Summary
9 Judgment. Discovery had not begun. To grant Summary Judgment; without
10 permitting discovery, when Defendants failed to include a separate statement of
11 Material facts that were not in dispute; as required by Rule 4:6-2(a) is a clear abuse
12 of discretion. (**1T- 4a-62a, 2T-6-53, Pb111, Pb179, Pb242,Pb279-352).**
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16 More importantly, the trial court erroneously overlooked all of Appellant's
17 meritorious, substantive claims. It not only raised the standard of review of
18 Appellant's pleadings, but it sided with Defendants' meritless claim that Appellant
19 was seeking to use discovery to make her prima facie case, when Appellant had
20 already stated a prima facie case (**1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb55,**
21 **Pb76, Pb77, Pb111, Pb179, Pb242).** In conclusion, the trial court abused its
22 discretion when it arbitrarily dismissed Appellant's complaint in its entirety;
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25
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- 27
28
1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 erroneously entering a judgment in favor of Defendants' based on a misconstruing
2 of the facts, and misrepresentations proffered by the Defendants'. Appellant made
3 the court aware throughout the pendency of the matter that Defendants were
4 knowingly, and intentionally fabricating facts to the court. The trial court ignored
5 all of Appellant's claims, assertions despite reputative evidence supporting her
6 contentions. Consequently, the trial court record doesn't support the outcome
7 reached (1T-4a-62a, 2T-6-53, Pb11,Pb13, Pb 33Pb49, Pb76, Pb111, Pb179,
8 **Pb242**). The trial court erred by not only ignoring Appellant; but also, by ignoring
9 established New Jersey, Appellate law, and federal law, precedents and by granting
10 Defendants' Motion to Dismiss/Summary Judgment where it failed to meet its
11 burden of proof. The Defendants, and the trial court erroneously told Appellant,
12 Pro se; that she was not permitted to use discovery to develop her claims. It is well
13 settled that discovery is a vital tool that is; in fact; used to develop claims.
14 Accordingly, Appellant was denied the opportunity of due process of law, and just
15 opportunity to be heard on the merits of her claims1T- 4a-62a, 2T-6-5, Pb242).
16 Defendants attempted to trick Appellant as to whether it was seeking a motion to
17 dismiss or Summary Judgment; as it filed three motions to dismiss; when one is
18 permitted, affixing close to **250 pages of exhibits** to its Motions (**Pb279-Pb353**).

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- 20 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
- 21 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
22 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

PROCEDURAL HISTORY

On April 19, 2023, Plaintiff/Appellant timely filed her Complaint (**Pb.13**). On June 5, 2023, Defendant filed a Notice of Motion to Dismiss Plaintiff's Complaint (**Pb279**). June 6, 2023, Plaintiff filed her timely Opposition to Defendants' Motion to Dismiss (**Pb 37**). On June 23, 2023, Plaintiff filed a Motion for Leave to file an Amended Complaint (**Pb50**). On June 26, 2023, Appellant timely filed her Amended Complaint, consisting of the correct Complaint (**Pb.49**). On July 17, 2023, 22 days later; filed another Motion to Dismiss, Motion to Strike, alternatively requesting for Dismissal of Plaintiff's Amended Complaint for failure to State a Claim; while the initial one was pending (**Pb298**). On August 17, 2023, Appellant filed her timely Opposition (**Pb111**). On August 30, 2023, an Order was entered denying Defendants Motion to Dismiss Appellant's complaint as moot (**Pb278**). On September 6, 2023, Appellant cross- motion for Leave to file an Amended complaint (**Pb111**). However, on September 6, 2023, oral arguments were scheduled for September 8, 2023. On September 13, 2023; after oral arguments, the Honorable Hertzberg granted Defendants Motion to Dismiss without prejudice (**Pb9**). On December 8, 2023, filed her Amended Complaint per the Honorable Hertzberg's September 8, 2023, order correcting all deficiencies (**Pb77**). On December 28, 2023, Defendants filed a third

1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 Notice of Motion to Dismiss Appellant's complaint (**Pb322**). On January 23, 2025,
2 Appellant cross motioned for Leave to file an Amended Complaint (**Pb 179**). On
3 April 25, 2024, oral arguments were held. On April 26, 2024, the Honorable
4 Hertzberg denied Appellant's Motion for Leave to File an Amended complaint
5 (**Pb10**) and granted Defendants' third Motion to Dismiss/Summary Judgment
6 (**Pb11**). On May 14, 2024, Appellant filed her timely Notice of Motion for
7 Reconsideration (**Pb 241**). On July 11, 2024, the Honorable Hertzberg denied
8 Appellant's timely filed Motion for Reconsideration (**Pb12**). On July 6, 2024,
9 Appellant filed her timely Amended Notice of Appeal (**Pb6**).

13 14 STATEMENT OF FACTS

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16 This matter arises out of a subsequent claim for post-employment ongoing
17 retaliation, breach of contract, and other claims(**Pb13**). On or around August 28,
18 2019, Defendants agreed, and promised Plaintiff/Appellant that it would cease
19 further acts of harassment, and retaliation against Appellant, and others (**Pb13**). As
20 a material condition to agree to enter into negotiation discussions on the state court
21 claims, Appellant advised Defendant that it would have to agree to no further acts of
22 retaliation, harassment, and discrimination. Defendant agreed to such. At no time did
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1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

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1 Appellant discuss with Defendant resolving any federal court claims, nor did she
2 agree to resolve such matters. Defendant agreed to put such language in writing; but
3 failed to do so. Contrary to such agreement, from October 2019 to present; 2023,
4 Defendant has continued to engage in ongoing, continuous, pervasive harassment,
5 pervasive and retaliation against Appellant, family, and friends, which magnified to
6 an all-time high from July 22, 2021, to present; after entry of waiver of fees by the
7 Honorable Robert Kugler(Pb13). Appellant has sent numerous letters to Cease and
8 Desist further retaliatory acts since October 2019 to present to no avail. Because of
9 the ongoing, and severity of the post-employment, and post state court settlement
10 retaliation, and harassment, Plaintiff has been forced to file subsequent federal
11 charges with the EEOC on 1/7/23, and 1/23/23. The instant state court action was
12 filed on 4/19/23(Pb13, 1T, 2T).
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18 Appellant asked the trial court to deny Defendant's Second Motion to
19 Dismiss, as it had failed to meet the criteria for such relief. Defendant outlined other
20 actions that were irrelevant to instant matter (Pb279-353). It continued to mislead
21 the trial Court from the outskirts to obtain a favorable ruling(Pb279-353).
22 Specifically, Defendants falsely alleged in its brief, that the instant matter was the
23 third case that Plaintiff had brought against Defendant stemming from her
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- 27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVENT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 employment dating back to 2017, which was utterly false (Pb279-353). The instant
 2 matter is a subsequent litigation arising out of ongoing, continuous, pervasive, post-
 3 employment, post-settlement harassment, and retaliation (Pb13, 1T-4a-62a,2T-6-
 4 53). The facts complained about in this matter postdate Plaintiff's employment.
 5
 6 More importantly, Defendant falsely alleged in its brief that the instant matter is one
 7 previously litigated. Plaintiff has never filed any action surrounding the facts
 8 outlined in her complaint before any court or previously to this instant matter being
 9 filed. Defendant's Procedural history is totally flawed, as it attempted to mislead the
 10 trial court by reverting it back to 2017 and falsely stating that the instant matter
 11 pertained to Plaintiff/Appellant's employment, and occurrences stemming from
 12 2017(Pb326,1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111, Pb179, Pb242)
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17 More importantly, the defendant falsely alleged to the trial Court, that Plaintiff
 18 had three different actions against Defendant that arose out of the same occurrences,
 19 or transactions, which was utterly false (Pb279-Pb327). The instant matter involves
 20 a subsequent litigation for the violation of civil right laws, and tort laws postdating
 21 any matter before any other Court. The matters before other Courts pertained to
 22 Plaintiff's 2017 employment matter. The matters before the trial Court pertained to
 23 occurrences post-employment (Pb13). Consequently, Defendant has falsely alleged
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- 28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 that the state court settlement released Defendants from violations of civil rights laws
2 that date after her employment, and after the state court settlement, which is false
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4 **(Pb279-Pb353)**. September 19, 2019, state court settlement pertained specifically to
5 the state claims that were before the trial Court during that time(1T-4a-64,2T).

6
7 Appellant timely filed her Amended Complaint, which is Well-pled, and states
8 a cause of action from which relief may be sought **(Pb50, Pb77)**. It substantiates its
9 claims and defeats a motion to dismiss. Defendant falsely alleged in its Notice of
10 Motion to Dismiss that 'the factual allegations asserted by Appellant in both actions
11 were virtually identical.'" **(Pb279-352)**. Defendant goes on to further falsely allege
12 that Appellant failed to serve the second lawsuit on Lourdes until over 2 1/2
13 years **(Pb283)**. It knowingly misconstrued and left out material facts by omitting to
14 appraise the Court of the fact that the matter was served after entry of Waiver of fees
15 by the Honorable Robert Krugler, and the issuances of the Summons by the New
16 Jersey District Court. In short, Defendant has knowingly and intentionally sought to
17 misrepresent pertinent facts to the trial Court and has attempted to paint
18 Plaintiff/Appellant in a false light. Furthermore, Defendants have falsely alleged; in
19 its brief; that Plaintiff agreed to settle the civil rights claims before the US District
20 Court after remand **(Pb279-352)**. That is utterly false. All civil right claims were

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 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 removed from the state court action. Defendants proffered misrepresentations before
2 the trial Court. Moreover, Defendant falsely alleged; in its Motion to Dismiss; that
3 Appellant admitted to and acknowledged that she signed the settlement agreement
4 that it affixed hereto its Second Motion to Dismiss(Pb283). Defendants' contentions
5 were utterly false. Defendant continued to confuse the issues before the trial Court
6 by providing a laundry list of irrelevant facts, and history that have nothing to do
7 with this instant complaint. Specifically, it is falsely alleged that Plaintiff's Original
8 Complaint consists of conclusory, vague statements, and fantastical allegations
9 (Pb279-353). The subsequent complaint before this Court is distinct (Pb13).
10 Contrary to Defendants' contentions, Appellant's initial complaint; as all complaints
11 filed in this action; were all Well-plead (Pb13, Pb50, Pb77)). Neither complaint
12 consisted of bare conclusions, vague statements, and fantastical allegations. All
13 stated a claim from which relief could be granted(Pb13). Moreover, Defendant goes
14 on to falsely allege, in its motion; that allegations contained within Plaintiff's 2017
15 complaints were included in her First Amended Complaint (Pb279-352, Pb50). It
16 then falsely proffered that Appellant included identical allegations from her first and
17 second lawsuit and alleged a wrongful termination that occurred on September 7,
18 2017(Pb279-352). This is a subsequent action arising out of post-employment

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- 20 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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22 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 discrimination, and retaliation (**Pb13, Pb50, Pb77,1T, 2T**). Contrary to Defendants'
2 false misrepresentations, Appellant never admitted that she signed any settlement
3 **agreement supplied to the Court, or any Court, by Defendants (Pb283)**.
4 Plaintiff's Amended Complaint contains sufficient facts, and fails to include
5 conclusionary statements, and fantastical allegations (**Pb50, Pb77**). Defendant failed
6 to meet the criteria for the granting of Motion to Dismiss for failure to state a claim
7 with prejudice (**1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111, Pb179,**
8 **Pb242**).

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12 Appellant respectfully requested that the Court not consider the documents
13 and exhibits that Defendants attached to its motion to dismiss and **it attached 63**
14 **Exhibits to its first motion to dismiss, filed on June 5, 2023; 67 Exhibits to its**
15 **second motion to dismiss, filed on July 17, 2023; and 107 Exhibits it attached to**
16 **its third motion to dismiss, filed on 12/28/23(Pb279- Pb352)**. Appellant is a Pro
17 se litigant that lacks the requisite knowledge, and skill of the law. She requests
18 leniency from this Court as Defendant has sought to confuse Appellant on numerous
19 occasions, misconstrue the facts of the matter, and proffer misrepresentations before
20 this very Court. She corrected her complaint using as a guide, rules outlined in the
21 New Jersey Model Jury Charges, and New Jersey state law. All elements to all cause

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 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 of actions were contained within Appellant's amended complaint to state a claim
2 from which relief may be granted. Contrary to Defendants' assertions, Appellant has
3 more than followed this Court's instructions by submitting her Amended Complaint
4 which is well pled and pleads sufficiently to state a claim under New Jersey law for
5 all alleged cause of actions (**Pb50, Pb77**). Appellant's Amended Complaint failed to
6 recite rambling assertions, and bare legal conclusions (**Pb50, Pb77**). It consists of a
7 well-pled Complaint that is comprehensible, and grounded in logic, contrary to
8 Defendants' false assertions (**Pb50, Pb77**). Appellant did not just file the same
9 complaint, Nor did she refer to a prior 2017 complaint (**Pb279-352**). Again,
10 Appellant referred to the New Jersey Court rules, and cause of actions, and
11 specifically followed each guideline when drafting her second Amended Complaint.
12 All causes of actions outlined in Appellant's Amended complaints;
13 (**Pb13,Pb49,Pb76**) recite each required element, and it defeated the entry of Default
14 for failure to state a claim (**1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111,**
15 **Pb179, Pb242**).

16 Appellant followed the trial Court's instructions by reviewing, and using the
17 elements contained within each NJ cause of action as a guide, reviewing Defendants'
18 prior Motion to Dismiss and attempting to correct her complaint. As such, she filed

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- 20 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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22 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 a well-pled Amended Complaint that was sufficient to defeat Defendants' second
2 Motion to Dismiss for failure to state a claim, which was totally without merit and
3 consisted of multiple misrepresentations (Pb50, Pb77,Pb335).
4

5 **STANDARD OF REVIEW**
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7 **DE NOVO REVIEW**
8

9 " An appellate court's review of rulings of law and issues regarding the applicability,
10 validity (including constitutionality) or interpretation of laws, statutes, or rules is
11 de novo. See *In re Ridgefield Park Bd. of Educ.*, 244 N.J. 1, 17 (2020) (agency's
12 interpretation of a statute); *State v. Courtney*, 243 N.J. 77, 85 (2020) (interpretation
13 of sentencing provisions in the Criminal Code); *State v. G.E.P.*, 243 N.J. 362, 382
14 (2020) (retroactivity of statute); *State v. Hemenway*, 239 N.J. 111, 125 25 (2019)
15 (constitutionality of a statute).. "A trial court's interpretation of the law and the
16 legal consequences that flow from established facts are not entitled to any special
17 deference." *Rowe v. Bell & Gossett Co.*, 239 N.J. 531, 552 (2019) (quoting
18 *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (1995). C.
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 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 An interpretation of a contract, *Serico v. Rothberg*, 234 N.J. 168, 178 (2018), *Kieffer*
2
3 *v. Best Buy*, 205 N.J. 213, 222 (2011), including an arbitration agreement, *Goffe v.*
4
5 *Foulke Mgmt. Corp.*, 238 N.J. 191, 207 (2019), and an insurance policy, *Est. of*
6
7 *Pickett v. Moore's Lounge*, 464 N.J. Super. 549, 554-55 (App. Div. 2020), is
8
9 reviewed de novo.

10 ABUSE OF DISCRETION

11 The abuse of discretion standard was explained by the Appellate Division in
12
13 *Gillman v. Bally Mfg. Corp.*, 286 N.J. Super. 523, 528 (App. Div.), certif. denied
14
15 144 N.J. 174 (1996), as follows: "the trial court's exercise of discretion ... may be
16
17 disturbed only if it is `so wholly insupportable as to result in a denial of justice."
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19 *Goodyear Tire and Rubber Co. v. Kin Properties, Inc.*, 276 N.J. Super. 96, 106, 647
20
21 A.2d 478 (App. Div.), certif. denied, 139 N.J. 290 (1994) (quoting *Rova Farms*
22
23 *Resort, Inc. v. Investors Ins. Co. of Am.*, 65 N.J. 474, 484, 323 A.2d 495 (1974)). "In
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25 reviewing the exercise of discretion, it is not the appellate function to decide whether
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27 the trial court took the wisest course, or even the better course, since to do so would
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merely be to substitute our judgment for that of the lower court. The question is only

1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 whether the trial judge pursues a manifestly unjust course.' Gittleman v. Central
 2 Jersey Bank & Trust Co., 103 N.J. Super. 175, 179, 246 A.2d 757 (App. Div. 1967),
 3
 4 rev'd on other grounds, 52 N.J. 503, 246 A.2d 713 (1968)."] Sometimes this standard
 5 is stated in terms of a "clearly erroneous" concept (i.e., that the court will not be
 6
 7 reversed unless its decision was clearly erroneous). See e.g. State v. Simon, 161 N.J.
 8 416, 444 (1999) (trial court decision to be upheld unless "there was an abuse of
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 10 discretion which renders the lower court's decision clearly erroneous"); Graham v.
 11 Gielchinsky, 126 N.J. 36, 363 (1991) (" we are satisfied that the trial court's exercise
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 13 of discretion was not so clearly erroneous as to have had the capacity to bring about
 14 an unjust result"). Note that the term "clearly erroneous" may also be used in
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 16 reviewing factual findings.

17 LEGAL ARGUMENT I

18
 19 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING
 20 APPELLANT'S MOTION FOR RECONSIDERATION, AS THE TRIAL COURT
 21 OVERLOOKED, AND DISREGARDED ALL OF HER CLAIMS, RAISED THE
 22 STANDARD OF REVIEW OF HER PLEADINGS, AND HAVE MISSAPPLIED
 23 THE LAWS TO THIS MATTER, SIGNIFYING AN ABUSE OF DISCRETION.

24 **STANDARD OF REVIEW FOR RECONSIDERATION, PURSUANT TO NJ**
RULE 4:49-2. (Raised below, 1T, 2T, Pb242-P275)

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 27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 "Motions for reconsideration are governed by Rule 4:49-2, which provides
2 that the decision to grant or deny a motion for reconsideration rests within the sound
3 discretion of the trial court." *Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment*,
4 440 N.J. Super. 378, 382 (App. Div. 2015). Reconsideration "is not appropriate
5 merely because a litigant is dissatisfied with a decision of the court or wishes to
6 reargue a motion . . ." *Palombi v. Palombi*, 414 N.J. Super. 274, 288 (App. Div.
7 2010). Rather, reconsideration should be utilized only for those cases which fall into
8 that narrow corridor in which either 1) the [c]ourt has expressed its decision based
9 upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either
10 did not consider, or failed to appreciate the significance of probative, competent
11 evidence. [*Ibid.* (quoting *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div.
12 1990)).

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18 "Alternatively, if a litigant wishes to bring new or additional information to
19 the [c]ourt's attention which it could not have provided on the first application, the
20 7 A-1966-22 [c]ourt should, in the interest of justice (and in the exercise of sound
21 discretion), consider the evidence."³ *D'Atria*, 242 N.J. Super. at 401. Thus, we will
22 not disturb a trial judge's denial of a motion for reconsideration absent "a clear abuse
23 of discretion." *Pitney Bowes Bank, Inc.*, 440 N.J. Super. at 382 (citing *Hous. Auth.*

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1. PB-APPELLANT'S APPENDIX, 2.IT= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY –NONDISCERNABLE

1 of *Morristown v. Little*, 135 N.J. 274, 283 (1994). Plaintiff argues that his Court 1)
2 the [c]ourt has expressed its decision based upon a palpably incorrect or irrational
3 basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate
4 the significance of probative, competent evidence. [Ibid. (quoting *D'Atria v. D'Atria*,
5 242 N.J. Super. 392, 401 (Ch. Div. 1990)).] Specifically, all complaints filed in this
6 matter were clear, specific, to the point; and stated a claim from which relief may be
7 granted. This Court refused to apply the law to this matter. It overtly failed to
8 consider any of Plaintiffs claims, despite the merit, and legitimacy of the claims.
9 Instead, arbitrarily ruled that not one of Plaintiff's claims stated a cognizable claim,
10 which is unfounded. The record clearly supports the contrary. "A motion to dismiss
11 a complaint under Rule 4:6-2(e) for failure to state a claim upon which relief can be
12 granted must be evaluated in light of the legal sufficiency of the facts alleged in the
13 complaint." (See *Printing Mart*, supra, 116 N.J. at 746, 563 A.2d 31.) "The court
14 must view the allegations with great liberality and Unlike a summary
15 judgment motion, a motion to dismiss for failure to state a claim pursuant to R. 4:6-
16 2(e) is based on the pleadings themselves. See *Rider v. State Dept. of Transportation*,
17 221 N.J. Super. 547 (App. Div. 1987). As noted by the Supreme Court of New Jersey
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1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 in *Printing Mart v. Sharp Electronics*, 116 N.J. 739, 746 (1989), on a motion brought
2 pursuant to R. 4:6-2(e) the complaint must be searched in depth and with liberality
3 to determine if a cause of action can be gleaned even from an obscure statement,
4 particularly if further discovery is taken. Every reasonable inference is therefore
5 accorded the plaintiff and the motion granted only in rare instances and without
6 prejudice. Moreover, a complaint should not be dismissed under this rule where a
7 cause of action is suggested by the facts and a theory of actionability may be
8 articulated by amendment of the complaint. In the instant matter, all of Defendants'
9 contentions were without merit. Appellant's complaints were well-plead. She met
10 the legal requisite to state a claim from which relief may be granted. More
11 importantly, Appellant's claims were apparent from the Complaint itself. Defendant
12 attached unpublished cases and exhibits to its Certification. Appellant respectfully
13 requested that the trial Court use the 4-Corners of Plaintiff's Complaint. The
14 unpublished cases, and exhibits that Defendants attached were irrelevant, as it
15 attempted to confuse the trial Court with false facts, and misrepresentations. All
16 allegations were without merit. Appellant argued that there were Germane issues of
17 material facts in dispute. Defendants failed to include a list of non-disputed material
18 facts with its request for Summary Judgment in this matter. More importantly,

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- 20 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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22 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 Appellant is a Pro se litigant, who lacks the requisite knowledge and skill. As such,
2 she respectfully requested leniency when reviewing her pleadings. See McGarry v.
3 Pallito, 687 F.3d 505, 509 (2d. Cir. 2012); Julian v. New York city Transit Authority,
4 857 F.Supp.242 (E.D.N.Y. 1994), aff'd, 52 f.3d., 312 92d Cir. 1995) (citing Haines
5 v. Kerner, 404 U.S. 519, 520, 92 S.Ct.594, 30 L.Ed.2d.6529(1972) (per curiam).
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8 "When a trial court considers an application for relief under this rule, it is required
9 to search "the complaint in depth and with liberality to ascertain whether the
10 fundament of a cause of action may be gleaned even from an obscure statement of
11 claim, opportunity being given to amend if necessary." Printing MartMorristown v.
12 Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Di Cristofaro v. Laurel Grove
13 Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957). The court must "accept as
14 true all factual assertions in the complaint." Smith v. SBC Commc'ns, Inc., 178 N.J.
15 265, 268-69 (2004).
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20 Moreover, in doing so, every reasonable inference to be drawn from the
21 factual assertions must be accorded to the plaintiff and the motion granted only in
22 rare instances and ordinarily without prejudice. Id. on 282. "We note Rule 4:6-
23 2(e) specifically provides that only the pleading sought to be struck may be
24 considered by the court to determine if it fails to state a claim upon which relief may
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1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 be granted. If matters outside of the pleading are presented to and not excluded by
2 the court, the motion is to be treated as one for summary judgment and disposed of
3 as provided by Rule 4:46. R. 4:6-2(e). However, a motion to dismiss under Rule 4:6-
4 2(e) is not converted into a motion for summary judgment if a party submits and a
5 court reviews a document that is specifically referenced in a pleading. See Pressler
6 & Verniero, Current N.J. Court Rules, comment 4.1.2 on R. 4:6-2 (2017) (citing New
7 Jersey Sports Productions, Inc. v. Bobby Bostick Promotions, LLC, 405 N.J. Super.
8 173, 178-79 (Ch. Div. 2007))." "We review a grant of a motion to dismiss a
9 complaint for failure to state a cause of action de novo, applying the same standard
10 under Rule 4:6-2(e) that governed the motion court." Wreden v. Township of
11 Lafayette, 436 N.J. Super. 117, 124 (App. Div. 2014). Moreover, our examination of
12 the complaint should be one "that is at once painstaking and undertaken with a
13 generous and hospitable approach." Id. at 125 (quoting Printing Mart-Morristown,
14 supra, 116 N.J. at 746. (1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111,
15 Pb179, Pb242-Pb275).

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Moreover, before dismissing a complaint, a plaintiff should be afforded an
opportunity to amend the complaint either by clarifying or amplifying the
allegations. See Printing Mart Morristown, supra, 116 N.J. at 746. Only under the

1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 rarest of circumstances should a motion to dismiss be granted, see Smith, supra, 178
2 N.J. at 282, and ordinarily a complaint should not be dismissed with prejudice. See
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4 *ibid.* Appellate review of a trial court's ruling on a motion to dismiss is de novo.
5 Frederick v. Smith, 416 N.J. Super. 594, 597 (App. Div. 2010) (citing Seidenberg v.
6 Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002). "A 9 A-1738-21 complaint
7 should be dismissed for failure to state a claim pursuant to Rule 4:6- 2(e) only if "the
8 factual allegations are palpably insufficient to support a claim upon which relief can
9 be granted." *Ibid.* (quoting Rieder v. State Dep't of Transp., 221 N.J. Super. 547, 552
10 (App. Div. 1987). "With-prejudice" dismissal of a plaintiff's complaint will be
11 reversed if it is "premature, overbroad, . . . [or] based on a mistaken application of
12 the law." Flinn v. Amboy Nat'l Bank, 436 N.J. Super. 274, 287 (App. Div. 2014).
13 "This standard requires that 'the pleading be searched in depth and with liberality to
14 determine whether a cause of action can be gleaned even from an obscure
15 statement.'" Frederick, 416 N.J. Super. at 597 (quoting Seidenberg, 348 N.J. Super.
16 at 250); see also Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746
17 (1989). The inquiry is limited to examining the legal sufficiency of the facts alleged
18 only on the face of the complaint; neither the trial nor appellate court is concerned
19 with the weight, worth, nature, or extent of the evidence. Dolson v. Anastasia, 55

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1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 N.J. 2, 5-6 (1969). See Douglas Lyons vs. Kull Auto Sales, Inc, where in his
2 complaint, plaintiff alleges he signed a RISC in which he and Kull agreed to the
3 terms of a financed sale of the car. Although plaintiff refers to a document attached
4 to the complaint that purports to be the RISC, it is obvious he attached the wrong
5 document; plaintiff mistakenly attached the purchase order when he had intended to
6 attach the RISC. But, by stating in the complaint, "pursuant to the express terms of
7 the RISC, [the] common law of assignments, . . . American Honda Finance
8 Corporation stepped into the same shoes as dealer [Kull] and became derivatively .
9 . . and fully liable for all of [Kull's] misconduct[,]" it is implicit plaintiff is alleging,
10 as evidenced by the RISC, that American became an assignee of the loan, assumed
11 Kull's position, and is liable for Kull's alleged misconduct. Kull's misconduct was
12 its employees, defendants Maw and Swadis, misrepresented the quality of the car to
13 plaintiff before he purchased it. Although the attachment of the wrong document
14 raised questions about what he was endeavoring to allege, plaintiff should have been
15 given an opportunity to attach the RISC or amend the complaint to clarify his claim
16 against American. Certainly, the complaint should not have been dismissed with
17 prejudice. Accordingly, the Lyons Court reversed the November 21, 2014, order to
18 the extent its dismissal of plaintiff's complaint was with prejudice. The trial court

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1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

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1 shall re-enter its dismissal without prejudice and grant plaintiff the opportunity to
2 attach the RISC or amend the complaint to clarify his claim against American.
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4 Consequently, other Courts have disfavored and rarely granted motions to dismiss
5 for failure to state a claim. Hall v. City of Santa Barbara, 833 F.2d 1270,
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7 1274(9th Cir. 1986) (“It is axiomatic that ‘[t]he motion to dismiss for failure to state
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9 a claim is viewed with disfavor and is rarely granted.’) (Quoting 5 Charles Alan
10 Wright & Arthur R. Miller, Federal Practice & Procedure 1357, at 598). The U.S.
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12 Supreme Court has stated;” The issue is not whether a plaintiff will ultimately prevail
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14 but whether the claimant is entitled to off evidence in support of the claims. Indeed,
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16 it may appear on the face of the pleadings that recovery is very remote and unlikely,
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18 but that is not the test.” Scheuer v. Rhodes, 416 U.S. 232, 236(1974). Rather, “a
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20 complaint should not be dismissed for failure to state a claim unless it appears
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22 beyond doubt that the plaintiff can prove no set of facts in support of his claim which
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24 would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45- 46(1957). Moreover,
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26 even a cause of action for fraud which must be specifically pleaded satisfies the
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28 particularity requirement for fraud if it identifies circumstances constituting fraud so

1. PB-APPELLANT’S APPENDIX, 2.IT= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 that defendant can prepare an adequate answer from the allegations.” Moreover,
2 “Although, the Court must limit its review to the facts stated on the face of the
3 complaint, (Allen v. WestPointPepperell, Inc., 945 F.2d 40, 44 (2d Cir. 19910, a
4 complaint drafted by a pro se plaintiff must be construed liberally. McGarry v.
5 Pallito, 687 F.3d 505, 509 (2d. Cir. 2012); Julian v. New York city Transit Authority,
6 857 F.Supp.242 (E.D.N.Y. 1994), aff’d, 52 f.3d., 312 92d Cir. 1995) (citing Haines
7 v. Kerner, 404 U.S. 519, 520, 92 S.Ct.594, 30 L.Ed.2d.6529(1972) (per curiam).
8 Because the sanction of dismissal is harsh, courts are adjured to apply the rule of
9 liberal construction ‘with particular strictness where the complaint alleges a
10 violation of civil rights.” Alie v. NYNEX Corp., 158 F.R.D. 239, 243
11 (E.D.N.Y.1994) (citing Branum v. Clark, 927 F.2d 698, 705 (2d. Cir. 1991).

12 Specifically, in this matter the trial Court disregarded all Appellant’s claims.
13 In doing so it overlooked and misapplied the law governing the granting of a Motion
14 to dismiss for failure to state a claim, and Summary Judgment. A Motion to Dismiss
15 should be granted in ‘rare’ cases. If any claim states a cognizable claim; such motion
16 should be denied. Appellant proffered multiple cognizable claims in this matter. The
17 trial Court failed to consider any of Appellant claims; despite them being
18 meritorious, and despite substantive, and reputable evidence provided. Instead, it

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1. PB-APPELLANT’S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY –NONDISCERNABLE

1 misapplied the law by raising the standard of review on Appellant's pleadings,
2 misapplying the laws governing the granting of a Motion to Dismiss for Failure to
3 state a claim from which relief may be sought, Summary Judgment, and Motion for
4 Leave to file an Amended Complaint. Specifically, Appellant was advised that she
5 needed to name specific individuals and provide more specific information than
6 what was alleged. Consequently, once Appellant provided a paramount of probative
7 evidence, the trial Court downplayed it, failed to consider it, and outright dismissed
8 her matter in its entirety(1T,2T). The Court committed reversible error when it raised
9 the standard of review when reviewing the pleadings in this matter. Appellant
10 advised the Court that she was not filing a claim for conspiracy, or collusion. She
11 provided probative evidence over and beyond what is required to defeat a Motion
12 for Dismissal for failure to state a claim from which relief may be sought. The
13 standard of review of Appellant's pleadings were raised, and she was advised that
14 she needed to prove her case; beyond that of a Prima Facie case. Appellant presented
15 a Prima facie case. More importantly, the trial court erred when it accepted
16 Defendants' unsupported argument that Appellant was relying on Discovery to make
17 her claims. Discovery is a time to develop a case. Appellant in no way relied on it to
18 state her prima facie case. Accordingly, when the trial court accepted such an

- 19 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 20 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
- 21 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
22 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 unsubstantiated assertion by Defendant in its rulings, it misapplied the law, thereby
2 committing reversible error. The rulings on this matter by the trial court support
3 Appellant's contention that the trial Court failed to consider any of her claims;
4 overlooked all claims, misapplied the law, and just outright dismissed her complaint;
5 and arbitrarily entered judgment for the Defendants.' Appellant's complaints more
6 than met the burden of proof for defeating the granting of a motion to dismiss for
7 failure to state a claim with prejudice. To rule otherwise signifies a manifested
8 injustice. The record supports Appellant's contentions that she proffered at least one
9 cause of action in her Complaints to defeat Defendants' Motion to Dismiss, and that
10 the trial Court considered no evidence provided by Appellant. Appellant provided a
11 paramount of evidence within her pleading, and during Oral arguments. Defendants'
12 contention of her reliance on discovery was unfounded, and unsupported.
13 Defendants failed to meet their burden for the granting of such relief. Appellant
14 followed the Courts instructions, contrary to Defendants' assertions. The record
15 supports Appellant's contentions that Defendant has been untruthful with the trial
16 Court from the outskirts. The trial court disregarded all of Appellant's meritorious
17 claims, and contentions; and misapplied the law by granting Defendants' Motion to
18 Dismiss/Summary Judgment. Appellant was required to reach the standard of a

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- 27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

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1 claim for conspiracy; in which she advised the Court non numerous times that she
2 was not filing such a claim(1T,2T). “A motion to reconsider under Rule 59(e) should
3 be granted to correct a clear error, whether of law or fact, and to prevent a manifest
4 injustice. *Firestone v. Firestone*, 76 F.3d, 1205, 1208 9D.C. Cir. 1996)(four grounds
5 for reconsideration are: to prevent manifest injustice, to accommodate for an
6 intervening controlling of law, to account for newly discovered evidence, or to
7 correct clear error of facts of law); *EEOC v. Lockheed Martin Corp.*, 116 F.3d 110,
8 112 94th Cir. 1997). Rule 59(e) motion is timely filed, the courts have considerable
9 discretion. In the District Court of New Jersey, however, Local Civil Rule 7.1(i)
10 governs motions for reconsideration. *Browsers v. Nat’l. Collegiate Athletics ass’n.*,
11 130 F. Supp.2d 610, 612 (D.N.J.)200) Local Civil Rule 7.1(i) permits a party to seek
12 reconsideration by the Court of matters “which [it] believes the Court has
13 overlooked” when it ruled on the motion. L.Civ.R.7. (i); see *Nl Industries, Inc. v.*
14 *Commercial Union Insurance*, 935 F. Supp. 513, 515 (D.N.J. 1996). The movant has
15 the burden of demonstrating either ...2) the availability of new evidence that was
16 not available when the Court [issued its order]; or the need to correct a clear error of
17 law or fact or prevent manifest injustice.” *Max’s Seafood Café v. Quinteros*, 16 F.3d
18 669, 677 (3d Cir. 1999) (citation omitted). The Court will grant a motion for

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1. PB-APPELLANT’S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 reconsideration only where its prior decision has overlooked a factual or legal issue
2 that may alter the disposition of the matter. *Compaction Sys. Corp.*, 88 F. Supp. 2d
3 at 345(1T-4a-62,2T-6-53).

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5 The trial court has overlooked probative evidence. It has failed to consider
6 any of Appellant's claims, and evidence proffered. The trial court raised Appellant's
7 pleading standard of review by requiring that she met the standard for a claim for
8 conspiracy, prove her case beyond a prima facie standard, among other things.
9 Appellant met her burden of proof. To the contrary, defendants fell short in
10 establishing its burden of proof for the granting of such relief. The law has been
11 misapplied to this matter, as the rulings signify a clear abuse of discretion. To correct
12 this manifest injustice, Appellant respectfully request that this Court reverse the trial
13 court's April 25, 2024, Order dismissing this Complaint, and remand this matter back
14 to the trial court for further proceedings (1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49,
15 Pb76, Pb111, Pb179, Pb242).

LEGAL ARGUMENT II

22 THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' MOTION TO
23 DISMISS FOR FAILURE TO STATE A CLAIM, AS APPELLANT MET THE
24 PLEADING REQUIREMENTS, WHILE DEFENDANT FAILED TO MEET ITS
25 BURDEN OF PROOF FOR THE GRANTING OF SUCH RELIEF UNDER RULE
26 4:6-2(e). (Raised below 1T,2T,Pb11 Pb9).

- 27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual
2 allegations as true and must carefully examine those allegations “to ascertain
3 whether the fundament of a cause of action may be gleaned even from an obscure
4 statement of claim. . . .” *Printing Mart Morristown v. Sharp Elec. Corp.*, 116 N.J.
5 739, 746 (1989). After a thorough examination, should the Court determine that such
6 allegations fail to state a claim upon which relief can be granted, the Court must
7 dismiss the claim. *Id.* It is simply not enough for a party to file mere conclusory
8 allegations as the basis of its complaint. See *Scheidt v. DRS Techs., Inc.*, 424 N.J.
9 Super. 188, 193 (App. Div. 2012); see also *Camden Cty. Energy Recovery Assocs.,*
10 *L.P. v. New Jersey Dept. of Env'tl. Prot.*, 320 N.J. Super 59, 64 (App. Div. 1999),
11 *aff'd o.b.* 170 N.J. 246 (2001) (“Discovery is intended to lead to facts supporting or
12 opposing an asserted legal theory; it is not designed to lead to formulation of a legal
13 theory.”). Under the New Jersey Court Rules, a complaint may only be dismissed
14 for failure to state a claim if, after an in-depth and liberal search of its allegations, a
15 cause of action cannot be gleaned from even an obscure statement in the Complaint,
16 particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, *Current*
17 *N.J. Court Rules*, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing *Printing*
18 *Mart*, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference

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1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG,
2 LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161,
3 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The “test for determining
4 the adequacy of a pleading [is] whether a cause of action is suggested by the facts.”
5 Printing Mart, 116 N.J. at 746. However, “a court must dismiss the plaintiff’s
6 complaint if it has failed to articulate a legal basis entitling plaintiff to relief.” Sickles
7 v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). “New Jersey is a “fact”
8 rather than a “notice” pleading jurisdiction, which means that a plaintiff must allege
9 facts to support his or her claim rather than merely reciting the elements of a cause
10 of action. That means if a plaintiff fails to include enough facts in the complaint to
11 set forth a viable cause of action, a defendant can file as an initial pleading a motion
12 for failure to state a claim upon which relief may be granted pursuant to Rule 4:6-
13 2(e).” “Thethe state court judges will view with great liberality the facts as pled
14 and are loathe to grant a motion to dismiss unless there are no facts that would
15 support a cause of action against the defendant. The case law is clear that “every
16 reasonable inference will be accorded the plaintiff” in considering whether a
17 complaint should be dismissed.” In the instant matter, Appellant’s pleading
18 requirements were raised to a higher standard than provided by the law, and higher
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- 27 1. PB-APPELLANT’S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

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1 to that of an attorney. See Haines, supra. The Appellant stated sufficient facts to meet
 2 the New Jersey pleading requirements and defeat the entry of an order for failure to
 3 state a claim from which relief may be sought on **all of her claims** in all complaints.
 4 She alleged cognizable claims for Breach of Contract, Breach of Oral contract,
 5 Unjust Enrichment, Intentional Infliction of Emotional Distress Retaliation under
 6 NJLAD, Title VI, **42, USC 1981; and not a 2A statute as falsely contended by**
 7 **Defendants;** and other claims. Appellant adequately alleged the elements, and facts
 8 to state a cause of action under both state and federal laws against discrimination,
 9 and retaliation in all complaints filed with the trial court. (1T-4a-62a, 2T-6-53, Pb13,
 10 Pb 33Pb49, Pb76, Pb111, Pb179, Pb242, Pb279-Pb352).

LEGAL ARGUMENT III

17 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING
 18 APPELLANT'S COMPLAINT IN ITS ENTIRETY, AS APPELLANT
 19 PROFERRED A COGNIZABLE CLAIM FOR FRAUDULENT INDUCEMENT
 20 AND FRAUDULENT MISREPRESENTATION, THIS COURT MISAPPLIED
 21 THE LAW IN THIS MATTER, AS SUCH, THE RULING EXEMPLIFIES AN
 22 ABUSE OF DISCRETION (Raised below Pb10, Pb11, Pb12).

23 Appellant pled all required elements to state a Prima facie case for Fraudulent
 24 Inducement and Fraudulent Misrepresentation. Appellant pleaded with specificity.
 25 Appellant relied on the alleged misrepresentations. Defendant changed the facts of

- 26 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 27 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
- 28 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 the case, then misrepresented them to the Court. **Appellant never settled any**
 2 **federal court claims within any state court settlement with Defendant, and state**
 3 **so would signify fraudulent inducement, and fraudulent misrepresentation on**
 4 **the part of Defendant.** Appellant pleaded that Defendant intended for her to rely on
 5 the alleged misrepresentations. Appellant's cause of actions consists of the fourth
 6 element, despite Defendants' false assertions. Appellant's Second Amended
 7 Complaint met the requirement to defeat Defendant's motion to dismiss for failure
 8 to state a claim from which relief may be granted. This Court misapplied the law in
 9 this matter. Appellant met her burden of proof to defeat dismissal of her complaint
 10 in its entirety, and request reversal, and remand. (1T-4a-62a, 2T-6-53, Pb13, Pb
 11 33Pb49, Pb76, Pb111, Pb179, Pb242).

LEGAL ARGUMENT IV

12 THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR
 13 LEAVE TO FILE AN AMENDED COMPLAINT, AND MOTION FOR
 14 RECONSIDERATION OF ITS ORDER DENYING SUCH RELIEF, AS LEAVE
 15 TO AMEND SHOULD BE GRANTED WITH LIBERALITY, PURSUANT TO NJ
 16 R.4:9-1(Raised Below, 2T,Pb10,P242).

17 "Rule 4:9-1 requires that motions for leave to amend be granted liberally."

18 Kernan v. One Wash. Park Urban Renewal Assocs., 154 N.J. 437, 456 (1998).

19 Motions for leave to amend "should generally be granted even if the ultimate merits

- 20 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 21 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
- 22 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
 23 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

32

1 of the amendment are uncertain." *G & W, Inc. v. Borough of E. Rutherford*, 280 N.J.
2 Super. 507, 516 (App. Div. 1995); see also *Interchange State Bank v. Rinaldi*, 303
3 N.J. Super. 239, 256 (App. Div. 1997) (motions for leave to amend should be
4 liberally granted without consideration of the ultimate merits of the amendment).
5 The "broad power of amendment should be liberally exercised at any stage of the
6 proceedings, including on remand after appeal, unless undue prejudice would
7 result." *Pressler & Verniero*, Current N.J. Court Rules, comment 2.1 on R. 4:9-1
8 (2017). Nevertheless, "the granting of a motion to file an amended complaint always
9 rests in the court's sound discretion." *Kernan*, supra, 154 N.J. at 457. While trial
10 courts are free to deny leave to amend when the newly asserted claim is not
11 sustainable as a matter of law, *Interchange State Bank*, supra, 303 N.J. Super. at 256-
12 57, the trial court here did not engage in that analysis when it denied leave to amend.
13 Appellant moved the trial Court to correct the technical, typographical errors, and
14 omissions, but she sought to clarify the facts of the case and put all claims before the
15 trial Court. Appellants' complaints omitted pertinent facts inadvertently. Appellant
16 brought to the Court's attention that her submitted documents had consisted of
17 changes that were not made by her. All Complaints filed stated a claim from which
18 relief may be sought. However, Appellant's amended complaint would have added

- 19 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
- 20 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
- 21 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
22 RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 clarification, and potentially changed the result. Defendant would not have been
2 prejudiced if the Amended complaint were allowed at that juncture of the litigation.
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4 The proceeding was in its initial stages. Discovery had not started yet in the matter.
5 There was no apparent reason for denying the motion for Leave to file an Amended
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7 Complaint, as there are no mitigating factors that exist against it at that juncture.
8 There was no undue delay in the matter. In the interest of justice, Appellant should
9
10 have been allowed Leave to File the Amended complaint to permit all allegations to
11 be put properly before the court as set forth in Appellant's complaint, and to cure
12 any defects. In doing so, the litigation could've more effectively proceeded on its
13 merits. Defendants would have suffered no undue prejudice by the Court's granting
14 of the proposed amendment. "The determination of whether prejudice will result
15 includes assessing whether the amendment would result in additional discovery,
16 cost, and preparation to defend. No prejudice would have resulted.
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20 Moreover, Appellant's motion to amend her complaint, and amended
21 complaint was not futile, as Plaintiff has alleged sufficient facts to state of claim for
22 relief that is facially plausible(1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111,
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24 Pb179, Pb242-279). In the interest of manifested justice, Appellant respectfully
25 requests that this Court reverses the trial court's erroneous rulings in this
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1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVENT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

34

1 matter and remand this matter to the trial court for further proceedings on the merits.

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3 LEGAL ARGUMENT V

4
5 THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED
6 REVERSABLE ERROR IN DISMISSING APPELLANT'S COMPLAINT, IN ITS
7 ENTIRETY; WITH PREJUDICE, AS IT HAS ERRED IN MISSAPPLYING THE
8 LAW IN CONSIDERING MATTERS OUTSIDE THE PLEADINGS, THEREBY
9 GRANTING SUMMARY JUDGMENT; WITHOUT FIRST PERMITTING
10 DISCOVERY, WHERE DEFENDANTS FAILED TO ATTACH A SEPARATE
11 LIST OF NON DISPUTED FACTS, PURSUANT TO N.J.R. 4:46 (a);
12 CONSIDERING OVER 107 EXHIBITS ATTACHED TO SAID MOTION; AND
13 THEN FAILING TO RECONSIDER ITS APRIL 26, 2024 ORDER(Raised
14 below(Pb11,Pb12,P242,Pb279-Pb352)).

15 Defendant attached numerous documents and affidavits that
16 were not included with Appellant's pleading. Appellant filed her Complaint, without
17 any attachments thereto. Appellant requested that the trial Court only consider the 4
18 corners of the Complaint. The trial Court considered those documents, and Affidavits
19 attached to Defendants' Notice of Motion to Dismiss. Appellant respectfully
20 requested in Opposition brief, and during Oral arguments that those documents, and
21 affidavits not be considered; especially without being given the opportunity to
22 conduct discovery. The trial court failed to provide Appellant with notice, and
23 opportunity for Discovery, if it had decided to use matters outside the pleadings. The
24 trial Court asked Appellant whether she had evidence, and who she would speak to
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27 1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

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1 regarding the alleged settlement agreement. Despite Appellant providing evidence,
2 and requesting Discovery, this Court considered matters outside the record but failed
3 to permit discovery into the matters prior to the granting of Defendants' Motion to
4 Dismiss with prejudice. "A "with-prejudice" dismissal of a plaintiff's complaint will
5 be reversed if it is "premature, overbroad, . . . [or] based on a mistaken application
6 of the law." *Flinn v. Amboy Nat'l Bank*, 436 N.J. Super. 274, 287 (App. Div. 2014)."
7 "If matters outside of the pleading are presented to and not excluded by the court,
8 the motion is to be treated as one for summary judgment and disposed of as provided
9 by Rule 4:46. See *Pressler & Verniero*, Current N.J. Court Rules, comment 4.1.2 on
10 R. 4:6-2 (2017) (citing *New Jersey Sports Productions, Inc. v. Bobby Bostick*
11 *Promotions, LLC*, 405 N.J. Super. 173, 178-79 (Ch. Div. 2007 "Our review of a
12 ruling on summary judgment is de novo, applying the same legal standard as the trial
13 court. *Chance v. McCann*, 405 N.J. Super. 547, 563 (App. Div. 2009). Thus, we
14 consider, as the trial judge did, "whether the evidence presents a sufficient
15 disagreement to require submission to a jury or whether it is so one-sided that one
16 party must prevail as a matter of law." *Liberty Surplus Ins. Corp. v. Nowell*
17 *Amoroso, P.A.*, 189 N.J. 436, 445-46 (2007) (quoting *Brill, supra*, 142 N.J. at 536).
18 Summary judgment must be granted "if the pleadings, depositions, answers to
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 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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36

1 interrogatories and admissions on file, together with the affidavits, if any, show that
2 there is no genuine issue as to any material fact challenged and that the moving party
3 is entitled to a judgment or order as a matter of law." R. 4:46-2(c). If there is no
4 genuine issue of material fact, "[we] must [then] decide whether the trial court
5 correctly interpreted the law." *Massachi v. AHL Servs., Inc.*, 396 N.J. Super. 486,
6 494 (App. Div. 2007), certif. denied, 195 N.J. 419 (2008). Applying these standards,
7 we are satisfied that the trial judge properly granted summary judgment."
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11 Moreover, Defendant cites *D'Angelo v. Owen Loan Servicing, LLC* 2017, NJ
12 superior, which is inapplicable to this matter. *D'Angelo, supra*, is a case that involved
13 a matter that went through the discovery process. The decision came after full
14 discovery was held, and Summary Judgment was granted. Contrary to such, the trial
15 Court has misapplied the law to this case, by considering matters outside the
16 pleadings without permitting discovery, and prematurely granting Defendants'
17 motion; without considering facts, and evidence present before this Court. In short,
18 this court granted Summary Judgment without permitting discovery. More
19 importantly, Defendants failed to follow the procedure for the granting of a Summary
20 Judgment motion; in that it failed to include a list of Disputed and Undisputed
21 Material facts to its motion as required for the granting of such motion. Defendants
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RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 failed to meet the standards of proof for the granting of a motion to dismiss with
2 prejudice, and for a Summary Judgment. The trial court's ruling signifies a clear
3 miscarriage of justice. (1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111,
4 Pb179, Pb242,Pb279-352).
5

6 7 **Legal Standard**

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9 Summary judgment may be granted where the pleadings, depositions,
10 answers to interrogatories, and admissions on file, together with the affidavits, if any,
11 show that there is no genuine issue as to any material fact and the moving party is
12 entitled to summary judgment as a matter of law. N.J.R. 4:46-2(c). No discovery was
13 conducted in the matter. Genuine issues of material facts existed(1T,2T,Pb209).
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16 More importantly, the summary judgment motion must set forth a concise and
17 separate statement of each material fact as to which the moving party contends there
18 is no genuine issue. N.J.R. 4:46-2(a) (amended eff 9/1/16). That was not done here.
19 Defendants failed to include in its motion a concise, and separate statement of
20 material facts that it contended that there existed no genuine issue. Despite such
21 failure, Summary Judgment was arbitrarily entered in on behalf of the Defendants.
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23 As such, in the interest of manifested justice, Appellant respectfully requested that
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 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 this court reverse the trial court's erroneous rulings and remands this matter back to
 2 the trial court for further proceedings on the merits(Pb209-210,Pb279-Pb352).
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4 LEGAL ARGUMENT VI

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 6 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING
 7 APPELLANT'S COMPLAINT IN ITS ENTIRETY, AS APPELLANT'S SECOND
 8 AMENDED COMPLAINT WAS WELL-PLED TO DEFEAT A SECOND
 9 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, AND THE LAW
 10 WAS MISSAPPLIED IN THIS MATTER(Raised below, Pb10, Pb11, Pb12,P242).

11 Appellant's complaint was well-plead despite Defendants' false
 12 assertions. Not only did the Appellant follow the Court's instructions when drafting
 13 her Amended Complaint, but she sought guidance from case law, New Jersey Court
 14 rules, and New Jersey Model Jury Charges. Contrary to Defendants' contentions,
 15 Appellant's second Amended Complaint was devoid of rambling bare conclusions,
 16 vague statements, and fantastical allegations. To the contrary, Appellant's Complaint
 17 was clear, to the point, and consisted of sufficient facts to defeat a Motion to Dismiss.
 18 Not only did Defendant proffered numerous false allegations, but it provided this
 19 Court with a Laundry list of irrelevant facts to this court to secure an Order of
 20 dismissal of all of Appellants' claims, which is not supported by the trial court's
 21 record (Pb279-Pb352). Appellant's case consisted of Post-employment, and Post
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1 state court settlement, harassment, and Retaliation. This matter has absolutely
2 nothing to do with what Defendants contended (Pb13, Pb50, Pb77).

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4 In short, the law was misapplied in this matter, entering an erroneous
5 judgment in favor of the Defendants.' Appellant stated well-pled, cognizable claims
6 for Breach of contract, Breach of oral contract, Breach of Covenant and fair dealing,
7 Fraudulent inducement and Fraudulent misrepresentation; as she pleaded with
8 specificity, claim for unjust enrichment, Invasion of Privacy, Intentional Infliction
9 of Emotional Distress, Retaliation under NJLAD, Title VII, 42 USC 1981, not 2A
10 statute, and all claims alleged(Pb279). Appellant request that this Court reverse the
11 trial court's rulings in the interest of manifested justice(Pb13, Pb50, Pb77,P1T, 2T).
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16 LEGAL ARGUMENT VII

17 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN RAISING ITS
18 PLEADING STANDARD FOR APPELLANT, WHO IS A PRO SE LITIGANT, AS
19 SUCH THIS COURT SHOULD REVERSE ITS RULING ENTERING
20 JUDGMENT ON BEHALF OF THE DEFENDANT IN THE INTEREST OF
21 MANIFESTED JUSTICE(Raised below,Pb10, Pb11, Pb12).

22 Appellant is a Pro se litigant who lacks the requisite knowledge and skill of
23 the law. The record supports Appellant's contentions that the pleading requirements
24 were raised to a higher standard in the instant matter rather than the application of
25 the leniency standard; which is of great public concern, and interest as it affects
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1 similarly situated individuals. In Haines vs. Kerner, 404 U. S. 519, the court outlined
2 the Haines test for leniency to be applied to Pro se complaints, “The Haines test is
3 not whether the facts alleged in the complaint would entitle the plaintiff to relief.
4 Rather, it is whether the Court can say with assurance based on the complaint that,
5 beyond any doubt, no set of facts could be proved that would entitle the plaintiff to
6 relief. The reasons for the Haines test are manifest. A pro se complaint provides an
7 unsatisfactory foundation for deciding the merits of important questions, because
8 typically it is in artfully drawn, unclear, and equivocal, and because thorough
9 pleadings, affidavits, and possibly an evidentiary hearing will usually bring out facts
10 which simplify or make unnecessary the decision of questions presented by the
11 naked complaint.” See” Perrotte v. Johnson, Case No.: 1:15-cv-00026-LJO-SAB
12 (PC), (E.D. Cal. Jan. 3, 2017) where, the court found...” when considering pro se
13 litigants, the Court recognizes that such litigants are entitled to some latitude and
14 leniency with procedural matters. See, e.g., Haines v. Rowe, 449 U.S. 5, 9 (1980)
15 (discussing less stringent pleading standard applicable to pro se litigants) (citing
16 Haines v. Kerner, 404 U.S. 519, 520-21 (1972)); Draper v. Coombs, 792 F.2d 915,
17 924 (9th Cir. 1986) (affording pro se litigant leniency with regard to compliance with
18 local rules and civil rules of procedure pertaining to discovery matters) (citing

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1 Pembroke v. Wilson, 370 F.2d 37, 39-40 (9th Cir. 1966)); Moore v. Agency of Intern.
2 Dev., 994 F.2d 874, 876 (D.C. Cir. 1993) (discussing leniency to be afforded to pro
3 se litigants in procedural matters such as service of process). “Moreover, see Breck
4 v. Ulmer in 1987, supra, where the Alaska Supreme Court held the pleadings of some
5 pro se litigants to a less stringent standard than represented parties, even finding in
6 some cases an affirmative duty of the trial court to explain to pro se litigants the
7 technical points of procedure. In addition to increasing access to the courts, this
8 policy of pro se leniency has promoted the resolution of disputes on their merits,
9 rather than on technical errors made by an unrepresented party.
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14 In the instant matter, despite the rising of the pleading standard, Appellant still
15 met the New Jersey pleading requirements. She stated all cognizable claims under
16 the law. She alleged all elements to state a claim from which relief may be sought
17 for all claims. The trial court’s order granting Defendant motion to dismiss/Summary
18 Judgment is clearly erroneous, and flies in the face of justice. As such, Appellant
19 respectfully requests that this court reverse the trial court’s rulings and remand this
20 matter back to the trial court for further proceedings in the interest of manifested
21 justice(Pb241,1T-4a-62,2T-6-53).
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LEGAL ARGUMENT VIII

THIS MATTER IS OF GREAT PUBLIC INTEREST AND CONCERN, AS SUCH THIS COURT SHOULD REVERSE THE TRIAL COURT'S ERRONEOUS RULINGS, IN THE INTEREST OF MANIFESTED JUSTICE(Raised below (1T,Pb10, Pb11, Pb12).

Appellant is a Pro se litigant who lacks the requisite knowledge of the law, and skill. All of Appellant's Pleadings were substantial, and stated a claim from which relief could be sought(Pb35,P115,Pb179).

Furthermore, the plaintiff's complaint should have been read with liberality. Motions to amend should be granted with liberality. Despite Appellant's Pro se status, she met her burden of proof(1T-4a-62. 2T-6-53).

Contrary to such, Defendant fell short of meeting its burden for the granting of such relief. Appellant has been denied her First Amendment rights, rights to seek redress, and right to opportunity to due process, and to be heard on the merits of her claims, because she is not an attorney. This matter involves great public interest, and concern in the 'exercise of free speech,' right to seek redress, right to due process of law, and opportunity to be heard where this court should reverse the trial court's erroneous rulings. Appellant has demonstrated that she has met all factors to defeat such an entry of the granting of Motion to Dismiss with prejudice. She has

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3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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43

1 demonstrated, and the record supports her contentions that the record does not
2 support the relief afforded the Defendant in this matter. Material issues of dispute
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4 facts exist precluding the entry of Summary Judgment. Defendants failed to include
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6 a Statement of Material Genuine Issues of Disputed, and non-disputed facts with its
7 motion. Despite such flaws, the trial court arbitrarily considered matters outside the
8 record without permitting discovery, which flies in the face of manifested justice.
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10 More importantly, Appellant is a Pro se litigant who lacks the requisite
11 knowledge, and skill of the law. The record supports her contentions that the
12 pleading requirements were raised to a higher standard in the instant matter; rather
13 than the application of the leniency standard, which is of great public concern, and
14 interest as if affects similarly situated individuals. In Haines vs. Kerner, 404 U. S.
15 519, the court outlined the Haines test for leniency to be applied to Pro se complaints,
16
17 “The Haines test is not whether the facts alleged in the complaint would entitle the
18 plaintiff to relief. Rather, it is whether the Court can say with assurance based on the
19 complaint that, beyond any doubt, no set of facts could be proved that would entitle
20 the plaintiff to relief. The reasons for the Haines test are manifest. A pro se complaint
21 provides an unsatisfactory foundation for deciding the merits of important questions,
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4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVENT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

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1 because typically it is in artfully drawn, unclear, and equivocal, and because
2 thorough pleadings, affidavits, and possibly an evidentiary hearing will usually bring
3 out facts which simplify or make unnecessary the decision of questions presented by
4 the naked complaint. "See" Perrotte v. Johnson, Case No.: 1:15-cv-00026-LJO-SAB
5 (PC), (E.D. Cal. Jan. 3, 2017) where, "Defendants acknowledge that Plaintiff is
6 proceeding pro se but argue that such status does not excuse him from complying
7 with procedural rules of the Court. However, when considering pro se litigants, the
8 Court recognizes that such litigants are entitled to some latitude and leniency with
9 procedural matters. See, e.g., Haines v. Rowe, 449 U.S. 5, 9 (1980) (discussing less
10 stringent pleading standard applicable to pro se litigants) (citing Haines v. Kerner,
11 404 U.S. 519, 520-21 (1972)); Draper v. Coombs, 792 F.2d 915, 924 (9th Cir. 1986)
12 (affording pro se litigant leniency with regard to compliance with local rules and
13 civil rules of procedure pertaining to discovery matters) (citing Pembroke v. Wilson,
14 370 F.2d 37, 39-40 (9th Cir. 1966)); Moore v. Agency of Intern. Dev., 994 F.2d 874,
15 876 (D.C. Cir. 1993) (discussing leniency to be afforded to pro se litigants in
16 procedural matters such as service of process). See Breck v. Ulmer in 1987, supra,
17 where the Alaska Supreme Court has held the pleadings of some pro se litigants to a
18 less stringent standard than represented parties, even finding in some cases an

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 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
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1 affirmative duty of the trial court to explain to pro se litigants the technical points of
2 procedure. In addition to increasing access to the courts, this policy of pro se
3 leniency has promoted the resolution of disputes on their merits, rather than on
4 technical errors made by an unrepresented party. For twenty-five years, Breck served
5 as a useful guidepost for dealing with the actions of pro se litigants. See Wagner v.
6 Wagner and Greenway v. Heathcott “Due process protects the right to self-
7 representation from arbitrary denial. It ensures a pro se litigant’s claim will be
8 heard despite a litigant’s potential lack of familiarity with procedure.
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13 Appellant was required to redo her complaint so that she could remove
14 pertinent information. All complaints filed met the pleading requirement. Appellant
15 shouldn’t have been required to submit an amended complaint and then be subjected
16 to a dismissal not supported by the record. All claims proffered were substantial, and
17 meritorious. As such, the rulings are this matter are unjust, and an abuse of
18 discretion. All rulings in this case by the trial court signify a stripping of Plaintiff’s
19 due process of law right, and right to opportunity to be heard on the merits of her
20 claim. The trial court has raised the pleading requirement beyond that of the law, and
21 beyond that of an attorney, and has failed to consider any of Appellant’s meritorious
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 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

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1 claims because she is a Pro se litigant, nonlawyer, who lacks the requisite knowledge
2 and skill of the law. (1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111, Pb179,
3 Pb242). Accordingly, it is respectfully requested that this court correct the wrongs
4 done and reverse this matter for further proceedings in the trial court.
5

7 LEGAL ARGUMENT IX

8 THE TRIAL COURT'S ORDER GRANTING DEFENDANTS' MOTION TO
9 DISMISS FOR FAILURE TO STATE A CLAIM/SUMMARY JUDGMENT WAS
10 ARBRITRARY, AND CAPRICIOUS, AS IT IS NOT SUPPORTED BY THE
11 TRIAL COURT'S RECORD(raised below, Pb10, Pb11, Pb12).

12 Appellate courts apply a deferential standard in reviewing factual
13 findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. McNeil-
14 Thomas, 238 N.J. 256, 271 (2019). In an appeal from a non-jury trial, appellate
15 courts "give deference to the trial court that heard the witnesses, sifted the competing
16 evidence, and made reasoned conclusions." Gripenburg v. Twp. of Ocean, 220 N.J.
17 239, 254 (2015). Deference is given to credibility findings. State v. Hubbard, 222
18 N.J. 249, 264 (2015). "Appellate courts owe deference to the trial court's credibility
19 determinations as well because it has 'a better perspective than a reviewing court in
20 evaluating the veracity of a witness.'" C.R. v. M.T., 248 N.J. 428, 440 (2021)
21 (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)). B. "A reviewing court must
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 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

1 accept the factual findings of a trial court that are 'supported by sufficient credible
2 evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State
3 v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not
4 disturb the factual findings and legal conclusions of the trial judge' unless convinced
5 that those findings and conclusions were 'so manifestly unsupported by or
6 inconsistent with the competent, relevant and reasonably credible evidence as to
7 offend the interests of justice.'" Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254
8 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484
9 (1974). 27 C. "The general rule is that findings by a trial court are binding on appeal
10 when supported by adequate, substantial, credible evidence." Gnall v. Gnall, 222
11 N.J. 414, 428 (2015) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). See
12 State v. Camey, 239 N.J. 282, 306 (2019) ("[w]e will not disturb the trial court's
13 findings; in an appeal, we defer to findings that are supported in the record and find
14 roots in credibility assessments by the trial court"); Motorworld, Inc. v. Benkendorf,
15 228 N.J. 311, 329 (2017) ("[w]e review the trial court's factual findings under a
16 deferential standard: those findings must be upheld if they are based on credible
17 evidence in the record"); Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016)
18 (findings by the trial court are binding on appeal when supported by adequate,
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- 28 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT,
RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

48

1 substantial, credible evidence); State v. K.W., 214 N.J. 499, 507 (2013) ("[w]e defer
2 to the trial court's factual findings 'so long as those findings are supported by
3
4 sufficient credible evidence in the record"). D. The deferential standard is applied
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6 "because an appellate court's review of a cold record is no substitute for the trial
7 court's opportunity to hear and see the witnesses who testified on the stand."
8 Balducci v. Cige, 240 N.J. 574, 595 (2020). And "[l]imiting the role of a reviewing
9 court is necessary because '[p]ermitting appellate courts to substitute their factual
10 findings for equally plausible trial court findings is likely to undermine the
11 legitimacy of the [trial] courts in the eyes of litigants.'" State v. McNeil-Thomas, 238
12 N.J. 256, 272 (2019) (alterations in original) (quoting State v. S.S., 229 N.J. 360,
13 380-81 (2017). Appellate courts also apply that deferential standard of review to a
14 trial court's fact-finding based on video or documentary evidence. State v. McNeil-
15 Thomas, 238 N.J. 256, 271 (2019); State v. S.S., 229 N.J. 360, 379 (2017); State v.
16 Hubbard, 222 N.J. 249, 270 (2015); State v. Carrillo, 469 N.J. Super. 318, 332 (App.
17 Div. 2021).

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23 In conclusion, the rulings in this matter by the trial court are clearly erroneous.

24 The record does not support the result reached by the trial court. The trial court

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1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
 3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
 4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

49

1 record supports Appellant's contention that she met her burden of proof to defeat an
2 entry of judgment in favor of the Defendants.' The trial court overlooked all
3 reputable evidence proffered by Appellant, misapplied the law to this matter, and
4 arbitrarily entered judgment in favor to Defendants.' More importantly, Defendants
5 have been untruthful in the matter. Specifically, Defendants knowingly provided
6 misrepresentations, and misconstrued the facts of the case, highlighting irrelevant
7 issues throughout to attain a favorable ruling. Appellant's pleadings were well pled;
8 with all elements stated to state a cause of action. **No discovery was taken in the**
9 **matter prior to the entry of Summary Judgment. The matter was too**
10 **premature. Defendants failed to provide a list of non-disputed material facts in**
11 **a separate statement, which is required for the granting of Summary Judgment.**
12 **N.J. R 4:46 (a).** Appellant raised all arguments below. If the court should find that
13 something was inadvertently removed or not included in the record below, it is
14 respectfully requested that this court **apply Plain Error to this matter.** In the
15 interest of manifested justice, Appellant respectfully requests that this court correct
16 the trial court's error, and reverse, and remand this matter back to the trial court for
17 further proceedings. **(1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111, Pb179,**
18 **Pb242,Pb279-Pb352).**

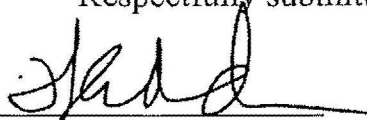
1. PB-APPELLANT'S APPENDIX, 2.1T= TRANSCRIPT FOR SEPTEMBER 8, 2023- OA
3. 2T= TRANSCRIPT FOR APRIL 25, 2024-OA
4. AFTER REVIEW OF BOTH TRANSCRIPTS, IT HAS BEEN DISCOVERED THAT PERTINENT, RELEVANT TESTIMONY HAS BEEN OMITTED AS EVIDENCED BY --NONDISCERNABLE

50

CONCLUSION

For foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's rulings in this matter, denying Appellant's Motion for Leave to File an Amended Complaint, and granting Defendants' Motion to Dismiss For Failure to State a Claim/Summary Judgment with prejudice, in the interest of manifested justice. All rulings by the trial court have been clearly erroneous and are not supported by the record.

Respectfully submitted,



Tonnesha Kidd,

Plaintiff/Appellant-Pro se

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-3424-24

TONNESHA KIDD,

Plaintiff-Appellant

v.

LOURDES MEDICAL CENTER AT
BURLINGTON,

Defendant-Respondent.

CIVIL ACTION

ON APPEAL FROM A FINAL
ORDER OF THE SUPERIOR
COURT OF NEW JERSEY

BURLINGTON COUNTY: LAW
DIVISION

DOCKET NO. BUR-L-000786-23

Honorable Richard Hertzberg

**DEFENDANT/RESPONDENT'S BRIEF IN OPPOSITION TO
PLAINTIFF/APPELLANT'S APPEAL**

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TABLE OF CONTENTS

PRELIMINARY STATEMENT1

RELEVANT PROCEDURAL HISTORY1

Plaintiff’s First Lawsuit.....1

Plaintiff’s Second Lawsuit.....2

**Plaintiff Settles All Claims, Signs a Full Release, and Agrees to Dismiss with
Prejudice All Claims That Were or Could Have Been Brought.....3**

**The District Court Dismisses Plaintiff’s Second Lawsuit Since She Settled All
Claims and Signed a Release.....4**

Plaintiff’s Third Lawsuit (this case).....6

COUNTERSTATEMENT OF FACTS.....10

ARGUMENT.....13

POINT I13

**THE TRIAL COURT CORRECTLY DISMISSED PLAINTIFF’S FIRST
AND SECOND AMENDED COMPLAINTS IN THEIR ENTIRETY. (Pa9,
Pa11).....13**

**A. The Trial Court Correctly Dismissed Plaintiff’s Alleged
Promissory Estoppel Claim Because It Fails to State a Claim as
a Matter of Law (Count I).....15**

**B. The Trial Court Correctly Dismissed Plaintiff’s Alleged
Breach of Contract Claim Because It Fails to State a Claim as
a Matter of Law (Count II).17**

**C. The Trial Court Correctly Dismissed Plaintiff’s Alleged
Breach of Oral Contract Claim Because It Fails to State a
Claim as a Matter of Law (Count III).....21**

**D. The Trial Court Correctly Dismissed Plaintiff’s Alleged
Breach of Covenant of Good Faith and Fair Dealing Claim
Because It Fails to State a Claim as a Matter of Law (Count IV
(Pa91)).23**

E.	The Trial Court Correctly Dismissed Plaintiff’s Alleged Fraudulent Inducement and Fraudulent Misrepresentation Claims Because They Fail to State a Claim as a Matter of Law (Counts IV (Pa93) and VI).	26
F.	The Trial Court Correctly Dismissed Plaintiff’s Alleged Unjust Enrichment Claim Because It Fails to State a Claim as a Matter of Law (Count VII).	29
G.	The Trial Court Correctly Dismissed Plaintiff’s Alleged Invasion of Privacy Claims Because They Fail to State a Claim as a Matter of Law (Count VIII and IX).	30
	1. Intrusion Upon Seclusion (Count IX)	30
	2. Public Disclosure of Private Facts and False Light (Count VIII)	32
H.	The Trial Court Correctly Dismissed Plaintiff’s Alleged Intentional Infliction of Emotional Distress Claim Because It Fails to State a Claim as a Matter of Law (Count X (Pa100)).	33
I.	The Trial Court Correctly Dismissed Plaintiff’s NJLAD Retaliation Claim Because It Fails to State a Claim as a Matter of Law (Count XII).	37
J.	The Trial Court Correctly Dismissed Plaintiff’s Alleged Retaliation Claim Under Section 1981 Under NJ State Law Because It Fails to State a Claim as a Matter of Law (Count X (Pa107)).	40
K.	The Trial Court Correctly Denied Plaintiff’s Request for Injunctive Relief Because It Fails to State a Claim as a Matter of Law (Count XI).	40
	POINT II	41
	THE TRIAL COURT CORRECTLY DENIED PLAINTIFF’S CROSS-MOTION TO FILE THIRD AMENDED COMPLAINT. (Pa10)	41
	POINT III	45
	THE TRIAL COURT CORRECTLY DENIED PLAINTIFF’S MOTION FOR RECONSIDERATION. (Pa12)	45
	CONCLUSION	49

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ist Colonial Community Bank v. Wolfson</i> , No. A-0992-21, 2023 WL 4111383 (Super. Ct. App. Div. June 22, 2023)	27
<i>Alexander v. Seton Hall Univ.</i> , 204 N.J. 219 (2010)	38
<i>Banco Popular N. Am. v. Gandi</i> , 184 N.J. 161 (2005)	14, 26
<i>Baskin v. P.C. Richard & Son, LLC</i> , 246 N.J. 157 (2021)	13
<i>Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Assoc.</i> , 182 N.J. 210 (2005)	24
<i>Buckley v. Trenton Sav. Fund Soc’y.</i> , 111 N.J. 355 (1988)	34, 36
<i>Bull Int’l, Inc. v. MTD Consumer Grp, Inc.</i> , 654 Fed.Appx. 80 (3d Cir. 2016).....	17
<i>Camden County Energy Recovery Assocs., L.P. v. New Jersey Dept. of Envtl. Prot.</i> , 320 N.J. Super. 59 (App. Div. 1999)	14
<i>Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi</i> , 398 N.J. Super. 299 (App. Div. 2008)	46
<i>Carlson v. Arnot-Ogden Memorial Hosp.</i> , 918 F.2d 411 (3d Cir. 1990)	17
<i>Cox v. Keystone Carbon Co.</i> , 861 F.2d 390 (3d Cir.1988), cert. denied, 498 U.S. 811 (1990).....	34

<i>Coyle v. Englander’s</i> , 199 N.J. Super. 212 (App. Div. 1985)	17
<i>Crowe v. De Gioia</i> , 90 N.J. 126 (1982)	40
<i>Cummings v. Bahr</i> , 295 N.J. Super. 374 (App. Div. 1996)	45, 47
<i>D’Angelo v. Ocwen Loan Servicing, LLC</i> , No. A-4195-14T2, 2017 WL 712781 (Super. Ct. App. Div. Feb. 23, 2017)	36, 37
<i>D’Atria v. D’Atria</i> , 242 N.J. Super. 392 (Ch. Div. 1990)	46, 47
<i>Delareto v. Totaro</i> , No. A-0366-09T1, 2010WL3834365 (Super. Ct. App. Div. Sep. 29, 2010)	23
<i>Delbridge v. Office of Pub. Defender</i> , 238 N.J. Super. 288 (Law Div. 1989), aff’d o.b. sub nom	14
<i>DelVicchio v. Hemberger</i> , 388 N.J. Super. 179 (App. Div. 2006)	46
<i>Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C.</i> , 237 N.J. 91 (2019)	13
<i>Edgar v. Avaya Inc.</i> , 503 F.3d 340 (3d Cir. 2007)	2
<i>In re Estate of Blair</i> , No. A-1394-19, 2021 N.J. Super. Unpub. LEXIS 633 (Super. Ct. App. Div. Apr. 15, 2021)	48
<i>Franklin Medical Associates v. Newark Public Schools</i> , 362 N.J. Super. 494 (App. Div. 2003)	41
<i>Fusco v. Bd. of Educ.</i> , 349 N.J. Super. 455 (App. Div. 2002)	45

Ghobrial v. Elnashfan,
 2018 N.J. Super. LEXIS 179 (Law Div. Dec. 24, 2018), aff’d,
 2020 N.J. Super. Unpub. LEXIS 2385 (App.Div. Dec. 14, 2020)48

Glass v. Suburban Restoration Co., Inc.,
 317 N.J. Super. 574 (App. Div. 1998)14, 15

Griffin v. Tops Appliance City, Inc.,
 337 N.J. Super. 15 (App. Div. 2001)33

Grillo v. State,
 469 N.J. Super. 267 (App. Div. 2021)41, 42

Hammer v. Hair Sys., Inc.,
 Nos. A-2791-07T1, A-1893-08T1, 2009 N.J. Super. Unpub.
 LEXIS 1587 (Super. Ct. App. Div. June 18, 2009).....32

State ex rel. Health Choice Group, LLC v. Bayer Corporation,
 478 N.J. Super. 184 (App. Div. 2024)13

Healthcare Practice Sales LLC v. Liechtung,
 No. BER-L-2084-18, 2020 N.J. Super. Unpub. LEXIS 3970
 (Bergen Co. Super. Ct. May 21, 2020)48

Hillsborough Rare Coins, LLC v. ADT LLC,
 No. 16-916, 2017 WL 1731695 (D.N.J. May 2, 2017)15

Hinton v. Meyers,
 416 N.J. Super. 141 (App. Div. 2010)48

Hodge v. McGrath,
 No. A-4684-12T2, 2014 WL 6909499 (Super. Ct. App. Div. Dec.
 10, 2014)35, 37

Hoffman v. Hampshire Labs, Inc.,
 405 N.J. Super. 105 (App. Div. 2009)28

Interchange State Bank v. Rinaldi,
 303 N.J. Super. 239 (App. Div. 1997)42

Kidd v. Buttonwood Behave. Health Hosp.,
 No. A-5371-17T4, 2021 WL 56291 (N.J. Super. Ct. App. Div. Jan.
 7, 2021)9

Kidd v. Helene Fuld Med. Ctr.,
178 N.J. 250 (2003)9

Kidd v. Lourdes Med. Ctr. of Burlington Cty.,
No. 18-16250 (RBK/JS), 2019 U.S. Dist. LEXIS 74771* (D.N.J
2019)2

Kidd v. Lourdes Medical Center at Burlington, et. al.,
No. 23-1706, 2025 WL 1672371 (3d Cir. June 13, 2025).....5

Kidd v. Maryville Univ.,
No. 4:19-CV-1193, 2020 WL 364282 (E.D. Mo. Jan. 22, 2020).....9

Kidd v. Mind Your Mind NJ,
No. MER-L-957-23 (Mercer County Ct. filed May 12, 2023).....9

Kidd v. Petrella,
No. 05-3810, 2005 WL 2205815 (D.N.J. Sept. 9, 2005).....9

Kidd v. Preferred Care of Mercer,
No. 3:18-CV-12081, 2020 WL 525863 (D.N.J. Jan. 31, 2020)9

Kidd v. Royal Health Gate Nursing et al.,
No. MER-L-1156-23 (Mercer County Ct. filed May 28, 2023).....9

Kidd v. Stebbins,
No. A-1329-05T1, 2007 WL 461011 (N.J. Super. Ct. App. Div.
Feb. 14, 2007)9

Kidd v. Sunoco Gas Station,
No. MER-DC-3972-20 (Mercer County Ct. filed Sept. 22, 2020).....9

Kidd v. Superior Nursing Care, Inc.,
No. A.08-504, 2008 WL 2945960 (D.N.J. July 28, 2008)9

Lobiondo v. O’Callaghan,
357 N.J.Super. 488 (App. Div. 2003)16, 17

Moche v. Levy,
A-5480-13T2, No. 2015 WL 10710974 (App. Div. April 22, 2016).....42

Myska v. New Jersey Mfrs. Ins. Co.,
440 N.J.Super. 458 (App. Div. 2015).....19

<i>N.J. Citizen Action, Inc. v. County of Bergen</i> , 391 N.J.Super. 596 (App. Div. 2007)	39
<i>In re NAHC, Inc. Securities Litigation</i> , 306 F.3d 1314 (3d Cir. 2002)	44
<i>Nickerson v. Quaker Group</i> , No. L-2141-04, 2008 WL 2600720 (App. Div. July 3, 2008).....	23
<i>Notte v. Merchants Mut. Ins. Co.</i> , 185 N.J. 490 (2006)	42
<i>Palombi v. Palombi</i> , 414 N.J. Super. 274 (App. Div. 2010)	46, 47
<i>Port Liberte II Condo. Ass’n, Inc. v. New Liberty Residential Urb. Renewal Co.</i> , 435 N.J. Super. 51 (App. Div. 2014)	41
<i>Printing Mart-Morristown v. Sharp Electronics Corp.</i> , 116 N.J. 739 (1989)	13, 14
<i>Prudential Stewart Realty v. Sonnenfeldt</i> , 285 N.J. Super. 106 (App. Div. 1995)	23
<i>Rieder v. State Dept. of Transp.</i> , 221 N.J. Super. 547 (App. Div. 1987)	13, 14
<i>Romaine v. Kallinger</i> , 109 N.J. 282 (1988)	32
<i>Rumbauskas v. Cantor</i> , 138 N.J. 173 (1994)	30
<i>Sadeeshkumar v. Venugopal</i> , 478 N.J. Super. 25 (App. Div. 2024)	45
<i>Schillaci v. First Fid. Bank</i> , 311 N.J. Super. 396 (Super. Ct. App. Div. 1998).....	26
<i>Shalita v. Township of Washington</i> , 270 N.J.Super. 84 (App. Div. 1994)	16

<i>Sickles v. Cabot Corp.</i> , 379 N.J. Super. 100 (App. Div. 2005)	13
<i>Tartaglia v. UBS PaineWebber, Inc.</i> , 197 N.J. 81 (2008)	38
<i>Taylor v. Metzger</i> , 152 N.J. 490 (1998)	34
<i>Tonnesha Kidd v. Lourdes Medical Center of Burlington Cty et al.</i> , No. 1:19-cv-12115-KMW-MJS (D.N.J. May 3, 2019), ECF 22	4
<i>Turner v. Wong</i> , 363 N.J. Super. 186 (App. Div. 2003)	34
<i>Villanova v. Innovative Investigations, Inc.</i> , 420 N.J. Super. 353 (Super. Ct. App. Div. 2011)	31
<i>VRG Corp. v. GKN Realty Corp.</i> , 135 N.J. 539 (1994)	29
<i>Waste Mgmt. of N.J., Inc. v. Union County Utils.</i> , 399 N.J. Super. 508 (App. Div. 2008)	40, 41
<i>Wilson v. Amerada Hess Corp.</i> , 168 N.J. 236 (2001)	24
<i>Wood v. New Jersey Mfrs. Ins. Co.</i> , 206 N.J. 562 (2011)	23

Statutes

N.J.S.A. 2A:14-134
N.J.S.A. 10:5-1 *et seq.*37

Other Authorities

New Jersey Rules of Evidence 201(b)(4)2
New Jersey Court Rules, comment 4.115
New Jersey Court Rule 2:6-81
New Jersey Court Rule 4:49-245, 46, 48
New Jersey Court Rule 4:5-8(a)26, 28
New Jersey Court Rule 4:9-142

PRELIMINARY STATEMENT

This is the third lawsuit Plaintiff has filed stemming from her eight-week employment with Defendant Lourdes Medical Center of Burlington County (“Defendant” or “Lourdes”) in 2017. The Trial Court here gave Plaintiff the opportunity to amend her complaint for a second time and specifically instructed Plaintiff as to the types of allegations she would need to include to be able to state a claim. Plaintiff failed to do so, and the Trial Court properly dismissed her claims with prejudice.

RELEVANT PROCEDURAL HISTORY

Plaintiff’s First Lawsuit.

In 2017, Defendant employed Plaintiff as a registered nurse for eight weeks. (See Pa14¹ at ¶ 4; Pa51 at ¶ 8; Pa78 at ¶ 8).² Following the termination of her employment, on September 6, 2018, Plaintiff filed a complaint in New Jersey

¹ The pages in Plaintiff’s Appendix are labeled as Pb_. However, to be in compliance with Rule 2:6-8 and to avoid confusion with citation to Plaintiff’s brief, Defendant will cite to the pages in Plaintiff’s appendix using the prefix “Pa.” Further:

Da = defendant’s appendix

1T = transcript of hearing on Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint, September 8, 2023

2T = transcript of hearing on Defendant’s Motion to Dismiss Plaintiff’s Second Amended Complaint, April 25, 2024

² Plaintiff’s Appendix erroneously states that Plaintiff filed her Second Amended Complaint on August 12, 2023. Plaintiff filed her Second Amended Complaint on December 8, 2023.

Superior Court Burlington County, Case No. BUR-L-001892-18 against Defendant alleging breach of contract, fraud, defamation, retaliation under the Civil Rights Act of 1964, and civil conspiracy (“First Lawsuit”). (*See* Da5-22).³ Defendant removed the First Lawsuit to the District Court of the District of New Jersey, and on May 3, 2019, the federal court dismissed Plaintiff’s federal retaliation claim, declined to exercise supplemental jurisdiction over Plaintiff’s remaining state law claims, remanded them back to this Court, and closed the federal action. *See Kidd v. Lourdes Med. Ctr. of Burlington Cty.*, No. 18-16250 (RBK/JS), 2019 U.S. Dist. LEXIS 74771* at *2, *10-11 (D.N.J 2019).

Plaintiff’s Second Lawsuit.

On May 3, 2019, the very same day that Plaintiff’s federal case was closed, Plaintiff filed *another* complaint against Defendant in the District Court of the District of New Jersey, asserting a single count of retaliation in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (“Second Lawsuit”). (*See* Da24-33). The factual allegations Plaintiff asserted in both the First Lawsuit and the Second

³ In deciding a motion to dismiss, courts may consider items subject to judicial notice, such as records of the court in which the action is pending. N.J.R.E. 201(b)(4); *Cf. Edgar v. Avaya Inc.*, 503 F.3d 340, 349, n. 13 (3d Cir. 2007) (noting that a court may also take judicial notice of facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned) (citations omitted).

Lawsuit were virtually identical. (*Compare* Da5-22 with Da24-33). Plaintiff failed to serve her Second Lawsuit on Defendant for over 2.5 years.

Plaintiff Settles All Claims, Signs a Full Release, and Agrees to Dismiss with Prejudice All Claims That Were or Could Have Been Brought.

Following the remand of Plaintiff’s state law claims in the First Lawsuit, in August 2019, Plaintiff and Defendant mutually agreed to settle all claims between them and filed a stipulation of dismissal with prejudice. (*See* Pa14 at ¶ 6; Pa51 at ¶ 10; Pa78 at ¶ 13). The stipulation made clear that Plaintiff was dismissing “this action, and each and every claim that was or could have been asserted therein... with prejudice.” (Da35). On September 3, 2019, Plaintiff signed a settlement agreement (“Settlement Agreement”) with Defendant, agreeing to release any and all claims or disputes she had with Defendant “whether known or unknown, including but not limited to claims...[of] retaliation of any kind (including but not limited to, claims under...The Civil Rights Act of 1866...),” and had her signature notarized. (Da37, Da41). By signing the Settlement Agreement, Plaintiff agreed “that this is the entire Agreement concerning the settlement of the disputes described above, and that no representations or inducements have been made by either side except as set forth herein.” (Da40). Immediately above Plaintiff’s signature and the notary seal, the Settlement Agreement states,

BY SIGNING THIS AGREEMENT, KIDD
ACKNOWLEDGES THAT SHE DOES SO VOLUNTARILY
AFTER CAREFULLY READING AND FULLY

UNDERSTANDING EACH PROVISION AND ALL OF THE EFFECTS OF THIS AGREEMENT, WHICH INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS AND RESTRICTS FUTURE LEGAL ACTION AGAINST [LOURDES] AND OTHER RELEASED ENTITIES.

(Da41).

The District Court Dismisses Plaintiff's Second Lawsuit Since She Settled All Claims and Signed a Release.

Over two and a half years after Plaintiff signed the Settlement Agreement, Plaintiff finally served the Second Lawsuit on Defendant. *See* Affidavit of Service, *Tonnesha Kidd v. Lourdes Medical Center of Burlington Cty et al.*, No. 1:19-cv-12115-KMW-MJS (D.N.J. May 3, 2019), ECF 22. Defendant immediately moved to dismiss the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) due to Plaintiff's release of any and all claims against Defendant, which the court converted into a Motion for Summary Judgment. *See id.* at ECF 24.

During the Second Lawsuit, Plaintiff filed multiple letters and motions with the federal court, inter alia, a Cross-Motion for Entry of Default, two Motions for Reconsideration, and a request to deny or defer Defendant's converted Motion for Summary Judgment. Notably, the federal court recognized that "Plaintiff appears to be a rather seasoned pro se litigant, having represented herself in numerous trial and appellate proceedings, in both federal and state courts, as well as before several state agencies." *See id.* at ECF No. 57. The federal court also highlighted Plaintiff's "clear pattern of dilatory tactics," and "expressly place[d] [Plaintiff] on notice that it will

consider the imposition of sanctions if Plaintiff continues to “delay or obstruct” a decision on Defendant’s Motion for Summary Judgment. *See id.* at ECF No. 57, ¶¶ 9, 11, n. 8, 10 (emphasis added).

On March 21, 2023, after considering extensive written submissions and a hearing that lasted over an hour, the federal court granted Defendant’s Motion for Summary Judgment. *See id.* at ECF No. 65. On March 27, 2023, Plaintiff filed a Motion to Alter Judgment in an attempt to revive her Second Lawsuit, and on April 14, 2023, Plaintiff filed a Notice of Appeal of the Second Lawsuit to the Third Circuit. *See id.* at ECF 66-68; *see also* Da43-48. On October 26, 2026, the District Court for the District of New Jersey denied Plaintiff’s Motion for Reconsideration. *See id.* at ECF 71.

On June 13, 2025, the Third Circuit affirmed all the District Court’s rulings in the Second Lawsuit. *See Kidd v. Lourdes Medical Center at Burlington, et. al.*, No. 23-1706, 2025 WL 1672371, at *2 (3d Cir. June 13, 2025). Notably, the Third Circuit held: “[Plaintiff] also has argued in the District Court and now argues on appeal she should not be bound by the settlement agreement. But we agree with the District Court, *see* ECF No. 65 at 37-41, that [Plaintiff] has not presented anything that puts the validity or enforceability of the settlement agreement in question.” *Id.*

Plaintiff's Third Lawsuit (this case).

Five days after Plaintiff filed her Notice of Appeal of the Second Lawsuit to the Third Circuit, Plaintiff filed the instant action against Defendant, alleging seven counts, six of which stemmed from the Settlement Agreement (“Third Lawsuit”). (See Pa13-32). On June 5, 2023, Defendant moved to dismiss Plaintiff’s Third Lawsuit for failure to state a claim (“Initial Motion”).

Plaintiff then filed an Amended Complaint, adding four new causes of action. (See Pa50-76). Defendant then moved to dismiss the Amended Complaint. On September 8, 2023, Honorable Richard L. Hertzberg, J.S.C. (“the Trial Court”) held a hearing pertaining to Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint. (See Da50, 1T4-12 to 20). During this hearing, the Trial Court went through each and every one of Plaintiff’s counts and explained to Plaintiff how each is legally deficient. (See 1T38-11 to 15; *see, generally*, 1T24-1 to 1T35-7). The Trial Court explained to Plaintiff how the allegations in her Amended Complaint were “too conclusory,” and where Plaintiff needs “to be specific” because she has the burden of proof “to have a well pled complaint that alleges sufficient facts.” (1T16-15; 1T18-8 to 10; 1T33-5 to 6).

After going through each of Plaintiff’s deficient counts, the Trial Court gave her one final opportunity “to articulate a cause of action [against Defendant] that can go forward,” noting that “the second time around, if [the second amended complaint]

is still not cognizable, [the Trial Court] probably will dismiss *with prejudice.*” (1T41-2 to 4, 1T53-16 to 18) (emphasis added). The Trial Court afforded Plaintiff 90 additional days to file a Second Amended Complaint, urging her to take her time in crafting her amended pleading.

On December 8, 2023, Plaintiff filed her Second Amended Complaint (Pa77-110) and on December 28, 2023 Defendant again moved to dismiss for failure to state a claim under which relief can be granted as to all counts. On January 23, 2024, Plaintiff filed an Opposition to Defendant’s Motion to Dismiss Plaintiff’s Second Amended Complaint as well as a Cross-Motion for Leave to File a Third Amended Complaint (“Cross Motion”). The following were the sole substantive changes made in Plaintiff’s proposed Third Amended Complaint to Plaintiff’s Second Amended Complaint:

- On page 8, paragraph 34, Plaintiff removed “pending” which preceded “contract” on the second line of the paragraph. (*Compare* Pa224 at ¶ 34 with Pa83 at ¶ 34).
- On page 31, Plaintiff changed the title heading of Count XII from “RETALIATION IN VIOLATION OF SECTION 1981 UNDER NJ STATE LAW” to “RETALIATION IN VIOLATION OF 42 USC SECTION 1981.” (*Compare* Pa239h with Pa107).
- On page 31, paragraph 150, Plaintiff added “42 USC” to precede “Section 1981,” and deleted “of the New Jersey State law.” (*Compare* Pa239h at ¶ 150 with Pa107).
- On page 32, paragraphs 151-53, Plaintiff added “42 USC” to precede “Section 1981.” (*Compare* Pa239i at ¶¶ 151-53 with Pa107-108 at ¶¶140-42).

The allegations contained in the remaining 31 out of 34 pages of Plaintiff's proposed Third Amended Complaint were identical to those in Plaintiff's Second Amended Complaint.⁴

On April 25, 2024, Honorable Richard L. Hertzberg, J.S.C. held a hearing pertaining to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint and Plaintiff's Cross-Motion. (Da83). During this hearing, the Trial Court again reviewed every single one of Plaintiff's counts and found none of them to be cognizable. (*See* 2T47-16 to 2T52-14). With respect to Plaintiff's Cross-Motion, the Trial Court held, "it is not substantially different from the second amended pleading so that would be futile." (2T52-14 to 17). Consequently, the Trial Court granted Defendant's motion and dismissed the entirety of Plaintiff's Second Amended Complaint, with prejudice, and denied Plaintiff's Cross-Motion. (2T52-24 to 25; Pa10-11).

⁴ Deviation in paragraph numbers between Plaintiff's Second Amended Complaint and proposed Third Amended Complaint result from each version including numbering inconsistencies, not from the addition of substantive allegations. For example, the Second Amended Complaint has consecutive paragraphs labeled Paragraph 57 and 81 (Pa88 at ¶¶57, Pa92 at ¶81, Pa93 at ¶81), but the Third Amended Complaint does not, (Pa228 at ¶¶57-58, Pa232 at ¶¶81-82), resulting in numbering discrepancies between the Second Amended Complaint and Third Amended Complaint. Similarly, the Third Amended Complaint skips from Paragraph 95 to Paragraph 97 (Pa235-236), but the identical paragraphs were numbered consecutively in the Second Amended Complaint. (Pa96). Additionally, both Count IX and X of the Second Amended Complaint start at a Paragraph 113 (Pa99-100), but not in the Third Amended Complaint. (Pa239a-239b).

On May 14, 2024, Plaintiff filed a Motion for Reconsideration challenging the Trial Court’s dismissal of her Second Amended Complaint. (Pa242-277). On June 11, 2024, the Trial Court issued an Order denying Plaintiff’s Motion for Reconsideration, explaining, “Plaintiff repeats the same arguments that were unsuccessfully advanced in opposition to the motion to dismiss heard on April 25, 2024. No new evidence or legal theory has been raised.” (Pa12). Plaintiff then filed this appeal.

To date, Plaintiff has initiated at least three separate judicial proceedings against Defendant (plus this appeal and an appeal to the United States Court of Appeals for the Third Circuit), all arising from her eight-week former employment in 2017. (*See* Pa77-110; Da5-22, Da24-33, Da43-46).⁵

⁵ In addition to Plaintiff’s actions against Defendant, Plaintiff has initiated lawsuits against at least *ten* other distinct entities in the past ten years. *See, e.g., Kidd v. Helene Fuld Med. Ctr.*, 178 N.J. 250 (2003); *Kidd v. Petrella*, No. 05-3810, 2005 WL 2205815 (D.N.J. Sept. 9, 2005); *Kidd v. Stebbins*, No. A-1329-05T1, 2007 WL 461011 (N.J. Super. Ct. App. Div. Feb. 14, 2007); *Kidd v. Superior Nursing Care, Inc.*, No. A.08-504, 2008 WL 2945960 (D.N.J. July 28, 2008); *Kidd v. Maryville Univ.*, No. 4:19-CV-1193, 2020 WL 364282, at *1 (E.D. Mo. Jan. 22, 2020); *Kidd v. Preferred Care of Mercer*, No. 3:18-CV-12081, 2020 WL 525863, at *1 (D.N.J. Jan. 31, 2020); *Kidd v. Sunoco Gas Station*, No. MER-DC-3972-20 (Mercer County Ct. filed Sept. 22, 2020); *Kidd v. Buttonwood Behave. Health Hosp.*, No. A-5371-17T4, 2021 WL 56291 (N.J. Super. Ct. App. Div. Jan. 7, 2021); *Kidd v. Mind Your Mind NJ*, No. MER-L-957-23 (Mercer County Ct. filed May 12, 2023); *Kidd v. Royal Health Gate Nursing et al.*, No. MER-L-1156-23 (Mercer County Ct. filed May 28, 2023).

COUNTERSTATEMENT OF FACTS

In the Original Complaint Plaintiff filed in this lawsuit, Plaintiff's allegations contained conclusory and vague statements and fantastical allegations, in which Plaintiff attempted to blame every single incident of inconvenience in her life on Defendant. *See* Pa13-32. For example, Plaintiff alleged "being made to go over and beyond as suppose to others when applying for anything[,] ... [and] being made to met [sic] a higher standard when applying for any type of credit[.]" (Pa14-15 at ¶ 10). Plaintiff further alleged that Defendant harassed, discriminated and retaliated against her by

recruiting any and every one to give Plaintiff a very hard time on all facets of her life[,] . . . *causing misfortunes to happen surrounding around the number 14* to family, and friends, . . . having creditors, and others hold Plaintiff to a higher standard by placing undue pressure on her to pay certain bills[,] . . . subjecting Plaintiff, family, and friends to some type of threat or harm, essentially *interfering with Plaintiff's ability to go on with her life without some type of misfortune*, or havoc . . . [and] *subjecting her to eyeball rolling*, and ongoing denials for credit applications, or anything that she is applying for; and *being giving a hard time by anyone in general*.

(Pa16 at ¶ 16; Pa24 at ¶ 52) (emphasis added).

These allegations remained in Plaintiff's First Amended Complaint. (Pa52 at ¶ 16). Not only that, but Plaintiff's First Amended Complaint *added* additional conclusory statements and fantastical allegations against Defendant, for example, she claimed that Defendant contacted and recruited various individuals and

companies, including “every realtor, landlord, or agent,” mortgage companies, all three credit bureaus, and the Philadelphia Parking Authority, inter alia, to “intercept [Plaintiff’s] chances of moving,” cancel unidentified contracts, and “giving Plaintiff false hope to distract her.” (Pa53 at ¶ 17 to Pa54 at ¶26).

In the Second Amended Complaint, Plaintiff retained the vast majority of conclusory statements and fantastical allegations that were previously rejected by the Trial Court. (Pa78 at ¶ 8; Pa78 at ¶ 13 to Pa79 at ¶ 19; Pa84 at ¶¶ 37-39; Pa85 at ¶¶ 41-45). Plaintiff also expanded upon and added a number of allegations in her final attempt to maintain this action against Defendant. (*See* Pa78 at ¶¶ 9-12; Pa80 at ¶ 20 to Pa84 at ¶ 36; Pa85 at ¶ 40). Through the added allegations, Plaintiff continues to blame Defendant for every perceived slight, be it from realtors, listing agents, landlords, mortgage companies, or “any, and everyone that Plaintiff has come in contact with on a daily basis, concerning business or personal affairs[.]” (Pa85 at ¶ 38). For example, Plaintiff adds the following allegations:

- “From 2021 to Present, Defendant continues to contact, and recruit potential, prospective landlords, realtors, listing agents, and others to deny Plaintiff’s rental, mortgage, refinancing, and business loan applications.” (Pa81 at ¶ 24).
- “On or around December 23, 2023, Defendant contacted, and recruited New England mortgage, and Rob Beaty to require that Plaintiff go over, and beyond the usual course in proving that she met the requirements for securing the mortgage, and refinancing. Specifically, Defendant recruited Rob Beaty, to require that Plaintiff gather 12 months of income, instead of

6 months of income; and to provide personal, and irrelevant information to use to deny her application on.” (Pa82 at ¶ 26).

- “From 2021 to present, Defendants continues to contact, and recruit all prospective landlords, realtor companies, mortgage companies, to intercept Plaintiff’s ability to get approved for a rental, mortgage loan, refinancing, or business financing. (Pa82 at ¶ 29).
- “From May, 2023 to present, Defendant contacted, and recruited Olive Management to harass Plaintiff, and file repeated evictions on her, and quickly adding \$200 plus fees; if she fails to pay the rent by the 1st of the month; then constantly adding fees to her balance, so that her balance doesn’t reach zero, then refusing to update her balance once its paid by Plaintiff so that she could get evicted.” (Pa84 at ¶ 36).
- “From July, 2021 to Present, Defendants have contacted, and recruited different businesses to send Plaintiff notices alleging she owe large sums of money that needed to be paid immediately in retaliation for her participation in protective active, and post settlement.” (Pa85 at ¶ 40).

In addition, Plaintiff inexplicably included in her Second Amended Complaint an allegation identical to that made in her First and Second Lawsuits – an alleged wrongful termination that occurred on September 7, 2017. (*Compare* Pa78 at ¶ 9 and Pa103 at ¶ 126 with Da8 at ¶ 18 and Da27 at ¶ 25).

ARGUMENT

POINT I

**THE TRIAL COURT CORRECTLY DISMISSED PLAINTIFF’S FIRST
AND SECOND AMENDED COMPLAINTS IN THEIR ENTIRETY.
(Pa9, Pa11)**

This Court reviews a grant of a motion to dismiss *de novo*. *See State ex rel. Health Choice Group, LLC v. Bayer Corporation*, 478 N.J. Super. 184, 194 (App. Div. 2024); *Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C.*, 237 N.J. 91, 108 (2019). In reviewing the grant *de novo*, this Court applies the same standard as the motion court on a motion to dismiss. *See Sickles v. Cabot Corp.*, 379 N.J. Super. 100, 106 (App. Div. 2005). In doing so, this Court “examine[s] ‘the legal sufficiency of the facts alleged on the face of the complaint,’ giving the plaintiff the benefit of ‘every reasonable inference of fact.’” *Baskin v. P.C. Richard & Son, LLC*, 246 N.J. 157, 171 (2021) (quoting *Dimitrakopoulos*, 237 N.J. at 108).

The New Jersey Court Rules allow a defendant to move for dismissal of a complaint where all, or part, of the complaint fails to state a claim upon which relief can be granted. R. 4:6-2(e). A motion to dismiss under R. 4:6-2(e) must be evaluated in light of the legal sufficiency of the facts alleged on the face of the complaint. *See Printing Mart-Morristown v. Sharp Electronics Corp.*, 116 N.J. 739, 746 (1989); *Rieder v. State Dept. of Transp.*, 221 N.J. Super. 547, 552 (App. Div. 1987) (citing *P&J Auto Body v. Miller*, 72 N.J. Super. 207 (App. Div. 1962)). For purposes of

analyzing a motion to dismiss under R. 4:6-2(e) the nonmoving party is entitled to reasonable inferences of fact. *Id.*

A motion to dismiss under R. 4:6-2(e) should be granted when it appears that no relief could be granted under any set of facts that could be proved consistent with the allegations. *See Banco Popular N. Am. v. Gandi*, 184 N.J. 161, 166 (2005). When reviewing the sufficiency of a complaint, courts are required to “search[] the complaint in depth and with liberality to ascertain whether the fundamentals of a cause of action may be gleaned even from an obscure statement of claim.” *Printing Mart-Morristown*, 116 N.J. at 746. A pleading must allege sufficient facts to give rise to a cause of action – ***mere conclusions and an intention to rely on discovery are inadequate***. *See Glass v. Suburban Restoration Co., Inc.*, 317 N.J. Super. 574, 582 (App. Div. 1998); *see also Camden County Energy Recovery Assocs., L.P. v. New Jersey Dept. of Env'tl. Prot.*, 320 N.J. Super. 59, 64 (App. Div. 1999) (“Discovery is intended to lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory”).

“[A] dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted.” *Rieder*, 221 N.J. Super. at 552. Further, “[c]omplaints cannot survive a motion to dismiss where the claims are ***conclusory or vague and unsupported by particular overt acts***.” *Delbridge v. Office of Pub. Defender*, 238 N.J. Super. 288, 314, (Law Div. 1989),

aff'd o.b. sub nom (emphasis added). “[P]leadings reciting *mere conclusions without facts* and reliance on subsequent discovery do not justify a lawsuit.” *Glass*, 317 N.J. Super. at 582 (emphasis added). Obviously, *if the complaint states no basis for relief and discovery would not provide one*, dismissal is the appropriate remedy. See Pressler, Current N.J. Court Rules, comment 4.1 on R. 4:6–2 (2005) (citing *Camden County Energy Recovery Assocs.*, 320 N.J. Super. at 64) (emphasis added).

A. The Trial Court Correctly Dismissed Plaintiff’s Alleged Promissory Estoppel Claim Because It Fails to State a Claim as a Matter of Law (Count I).⁶

In New Jersey, a promissory estoppel claim will not survive where the alleged promise was made in the context of a contractual relationship. Crucially, “the ‘essential justification’ for the doctrine of promissory estoppel is ‘to avoid the substantial hardship or injustice which would result’ if a promise was made, and reasonably relied upon, but not enforced.” *Hillsborough Rare Coins, LLC v. ADT LLC*, No. 16-916, 2017 WL 1731695, at *6 (D.N.J. May 2, 2017) (quoting *Pop’s Cones, Inc. v. Resorts Int’l Hotel, Inc.*, 307 N.J. Super 461, 469 (App. Div. 1998).

⁶ Defendant refers to Count numbers as they appear in the Second Amended Complaint. While Defendant’s arguments and reference Plaintiff’s Second Amended Complaint, they apply equally to the First Amended Complaint. The First Amended Complaint is based on the same allegations as the Second Amended Complaint and suffers from the same deficiencies. Accordingly, the Trial Court’s Order also properly dismissed the First Amended Complaint and that Order should be affirmed for the same reasons that dismissal of the Second Amended Complaint should be affirmed.

There are four elements to the doctrine of promissory estoppel: (1) a clear and definite promise; (2) made with the expectation that the promisee will rely upon it; (3) reasonable reliance upon the promise; and (4) which results in definite and substantial detriment. *See Lobiondo v. O'Callaghan*, 357 N.J.Super. 488, 499 (App. Div. 2003).

In her Second Amended Complaint, Plaintiff alleges that “Defendants [sic] promised Plaintiff that it would cease all further harassment, discrimination, and retaliation” in relation to the parties’ settlement of the First Lawsuit. (Pa86 at ¶ 47) (emphasis added). Plaintiff further adds that Defendant promised Plaintiff to include a corresponding provision into any resulting settlement agreement. (*See* Pa86 at ¶¶ 49-50). Plaintiff further admits she “entered into a state court settlement agreement[.]” (Pa78 at ¶ 13). Plaintiff cannot maintain a promissory estoppel claim against Defendant because the alleged promise by Defendant was made in the context of a contractual relationship. *See Shalita v. Township of Washington*, 270 N.J.Super. 84, 90 (App. Div. 1994) (“It has been said that ‘[q]uasi-contract liability [should] not be imposed ... if an express contract exists concerning the identical subject matter.’”) (*quoting Suburban Transfer Serv. v. Beech Holdings, Inc.*, 761 F.2d 220, 226-27 (3d Cir. 1983)).

The Trial Court correctly noted during the September 8, 2023 hearing dismissing Plaintiff’s prior promissory estoppel claim that Plaintiff cannot “rely on

a promise that is contradicted essentially by a later document,” (1T26-13 to 16), and again at the April 25, 2025 hearing dismissing Plaintiff’s Second Amended Complaint that “promissory estoppel is not ... something that’s relevant when there is a contract.” (2T48-6 to 9). *See Lobiondo*, 357 N.J.Super. at 500 (rejecting Plaintiff’s attempt at utilizing the theory of promissory estoppel to obtain specific performance of an alleged contract); *Carlson v. Arnot-Ogden Memorial Hosp.*, 918 F.2d 411, 416 (3d Cir. 1990) (“In light of our finding that the parties formed an enforceable contract, relief under a promissory estoppel claim is unwarranted.”); *Bull Int’l, Inc. v. MTD Consumer Grp, Inc.*, 654 Fed.Appx. 80, 100 (3d Cir. 2016) (holding that promissory estoppel is an equitable remedy used to enforce a promise in the absence of an enforceable agreement between the parties).

As Plaintiff’s promissory estoppel claims relates solely to terms allegedly discussed while negotiating the executed Settlement Agreement, (Pa86 at ¶¶47-51), the Trial Court did not err in dismissing it.

B. The Trial Court Correctly Dismissed Plaintiff’s Alleged Breach of Contract Claim Because It Fails to State a Claim as a Matter of Law (Count II).

In New Jersey, a *prima facie* claim for a breach of contract requires (1) a valid contract; (2) defective performance by the defendant; and (3) resulting damages. *See Coyle v. Englander’s*, 199 N.J. Super. 212, 223 (App. Div. 1985). Despite a lengthy set of amended (for the second time) allegations against Defendant, Plaintiff failed

to plead the second and the third elements of the *prima facie* case; and therefore, her breach of contract claim against Defendant were properly dismissed.

The first element requires Plaintiff to plead a valid contract. In her Second Amended Complaint, Plaintiff alleges that

[o]n September 19, 2019, Plaintiff entered [into] a state court settlement with Defendant with the with the provisions that she would be paid a sum of money, and that Defendant would cease all further post-employment, post settlement harassment, retaliation, and discrimination towards her, her family, and friends; and include such a provision within the settlement contract.

(Pa87 at ¶ 55). Plaintiff further alleges that Defendant breached the Settlement Agreement by failing to

1.) uphold the agreement to ‘no further harassment, or retaliatory acts towards Plaintiff, family, and friends; 2.) failed to include such provision in to the contract; 3.) failed to give Plaintiff the benefit or the bargain originally intended by both Plaintiff, and Defendant as a contingency for entering into any settlement contract.

(Pa88 at ¶ 60). Despite referencing the Settlement Agreement as the basis for her claim, Plaintiff failed to attach it to her Second Amended Complaint and failed to refer to the specific provisions in the Settlement Agreement that she contends supports her claim.

A review of the executed Settlement Agreement (Da37-41), plainly shows that no such provisions exists.⁷ The only two representations made by Defendant in the Settlement Agreement are Defendant’s agreement to pay Plaintiff to resolve all claims and Defendant’s agreement “that this is the Entire Agreement concerning the settlement of the disputes . . . and that no representations or inducements have been made by either side except as set forth herein.” (Da37, Da40). Nowhere in the Settlement Agreement does it state that Defendant agreed to “cease all further post-employment, post settlement harassment, retaliation, and discrimination towards [Plaintiff,] her family, and friends,” as Plaintiff contends. Since no such provision is included in the Settlement Agreement, Plaintiff has failed to allege the first element of her *prima facie* breach of contract claim – a valid contract. Plaintiff also fails on the second element, defective performance, for the same reason. Plaintiff does not allege that Defendant failed to comply with any of the contractual requirements *actually* contained in the Settlement Agreement. In fact, at the April 25, 2025 hearing on Defendant’s Motion to Dismiss Plaintiff’s Second Amended Complaint,

⁷ The Court may review the attached Settlement Agreement without converting the Defendant’s Motion to Dismiss Plaintiff’s Second Amended Complaint into a Motion for Summary Judgment because the Settlement Agreement is integral to Plaintiff’s Second Amended Complaint. *See Myska v. New Jersey Mfrs. Ins. Co.*, 440 N.J.Super. 458, 482 (App. Div. 2015).

Plaintiff admitted that Defendant complied with the terms of the Settlement Agreement:

THE COURT: ...you signed the document that said settlement agreement and you got \$14,000, right?

MS. KIDD: ...yes, I did get \$14,000.

(2T13-15 to 19).

Additionally, on September 8, 2023, the Trial Court explained to Plaintiff that her breach of contract claim was deficient because it was based on provisions that were simply not part of the Settlement Agreement between the parties. (*See* 1T26-18 to 1T28-20). The Trial Court allowed Plaintiff one final time to amend her pleading, but cautioned Plaintiff, “if a settlement agreement says, this is what’s in the agreement, that’s all that’s in the agreement, it’s an uphill battle for you to say there was something left out.” (*See* 1T28-15 to 20). Despite this warning, Plaintiff continued to base her breach of contract claim on provisions that simply are not part of the Settlement Agreement.

Moreover, while Plaintiff contests the authenticity of the Settlement Agreement, Plaintiff admits that the terms of the contract she seeks to enforce *were not included in the contract she executed*. Plaintiff’s very own Second Amended Complaint states: “Defendant knowingly, and intentionally failed to include the provision for ‘No further harassment, or retaliatory acts towards Plaintiff in the

settlement agreement; as previously agreed.” (Pa88 at ¶ 57). Plaintiff again reiterated this at the April 25, 2024 hearing:

THE COURT: But, do you – do you think – do you think that you signed a settlement agreement that actually did have the no harassment language?

MS. KIDD: What I signed – what I signed should have had that language. What I signed, should have had that language.

THE COURT: Okay, but it didn’t – but it didn’t, correct?

MS. KIDD: Exactly – Exactly –

(2T20-21 to 2T21-04).

In sum, Defendant cannot have failed to breach a contract provision that never existed. Therefore, the Trial Court was correct in dismissing Plaintiff’s breach of contract claim because Plaintiff failed to sufficiently plead the required elements of her *prima facie* breach of contract claim. Accordingly, the Trial Court’s ruling should be affirmed.

C. The Trial Court Correctly Dismissed Plaintiff’s Alleged Breach of Oral Contract Claim Because It Fails to State a Claim as a Matter of Law (Count III).

The parol evidence rule is a rule of substantive law which states that an integrated agreement “renders inoperative prior written agreements *as well as prior oral agreements*” that are inconsistent with the written agreement. Restat. 2d of Contracts, § 213, cmt. A (emphasis added). “Where writings relating to the same

subject matter are assented to as parts of one transaction, both form part of the integrated agreement.” *Id.*

In her Second Amended Complaint, Plaintiff alleges that “[o]n or in August 2019, a definite, clear oral promise to cease all further harassment, and retaliatory acts against Plaintiff, and others was made by Defendant to Plaintiff[,]” along with a “clear oral promise to include a provision of ‘No further harassment, or retaliatory acts against Plaintiff’ within any agreement to resolve the matter.” (Pa89 at ¶¶ 65-66). Plaintiff further alleges that one month later on September 19, 2019, she “entered into the state court settlement agreement” with Defendant. (Pa78 at ¶ 13, Pa87 at ¶ 55). The Settlement Agreement signed by Plaintiff clearly states, “this is the entire Agreement concerning the settlement of the disputes described above, and that *no representations or inducements have been made by either side except as set forth herein.*” (Da40) (emphasis added). Thus, Plaintiff signed an integrated Settlement Agreement *after* Defendant allegedly made an oral agreement regarding the same matter. Plaintiff’s integrated Settlement Agreement, renders any alleged prior oral agreement inoperative, and therefore, it should be dismissed with

prejudice.⁸ *See Delareto v. Totaro*, No. A-0366-09T1, 2010WL3834365, at *4 (Super. Ct. App. Div. Sep. 29, 2010) (“Because of the integrated agreement in this case, the parol evidence rule bars consideration of the alleged oral loan agreement[.]”); *Nickerson v. Quaker Group*, No. L-2141-04, 2008 WL 2600720, at *11 (App. Div. July 3, 2008) (holding that an executed agreement’s integration clause supersedes any prior oral representations). Accordingly, the Trial Court correctly concluded that “there is a contract which ... supersedes any kind of promise that might have been made beforehand.” (2T48-10 to 14).

D. The Trial Court Correctly Dismissed Plaintiff’s Alleged Breach of Covenant of Good Faith and Fair Dealing Claim Because It Fails to State a Claim as a Matter of Law (Count IV (Pa91))⁹.

“Under settled principles of law, there exists in every contract an implied covenant of good faith performance and fair dealing[.]” *Prudential Stewart Realty v. Sonnenfeldt*, 285 N.J. Super. 106, 109 (App. Div. 1995). The implied covenant requires that “neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract[.]” *Wood*

⁸ The Trial Court specifically cautioned Plaintiff during the September 8, 2023 hearing that oral agreements are subsumed into a later fully integrated agreement and therefore for that reason her oral breach of contract failed as a matter of law. *See* 1T29-3 to 7. Despite this clear instruction, Plaintiff, to her detriment, continued to maintain her faulty claim against Defendant.

⁹ Plaintiff’s Second Amended Complaint contains two counts labeled as Count IV and two counts labeled as Count X. For clarity, page references are added into the headings where those counts are discussed.

v. New Jersey Mfrs. Ins. Co., 206 N.J. 562, 577 (2011) (citation omitted). A party must not act in bad faith, dishonestly, or with improper motive to destroy or injure the right of the other party ***to receive the benefits or reasonable expectations of the contract***. See *Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Center Assoc.*, 182 N.J. 210, 230-231 (2005); *Wilson v. Amerada Hess Corp.*, 168 N.J. 236, 251 (2001) (citations omitted).

A *prima facie* showing of a breach of the implied covenant of good faith and fair dealing claim requires the plaintiff to plead that the defendant, with no legitimate purpose: (1) acted with bad faith or engaged in deception or evasion in the performance of contract; and (2) by such conduct, denied the plaintiff of the bargain ***originally intended by the parties***. See *Brunswick Hills Racquet Club, Inc.*, 182 N.J. at 230-23 (quoting 23 Williston on Contracts § 63:22 at 513-14 (Lord ed. 2002)) (internal quotations omitted). “Proof of ‘bad motive or intention’ is vital to an action for breach of the covenant.” *Id.* at 225.

Plaintiff’s Second Amended Complaint alleges that “Defendant was in a contractual relationship with Plaintiff and owed a duty to Plaintiff to act in good faith, and fair dealing.” (Pa91 at ¶ 74). Plaintiff also alleges that Defendant, *inter alia*,

breached their duty on multiple occasions, through its ongoing, and continuous acts of harassment, and retaliation, and failing to adhere to the September 19, 2019, Settlement agreement, by intercepting Plaintiff’s revenue, credit applications, intercepting her ability to move,

to obtain a mortgage, business funding, property contract, subjecting her, family, and friends to threats of harm, harassment, contacting prospective, and current contacts to get it, or them to further harassment Plaintiff, friends, and other acts; all while attempting to get Plaintiff to alter the material terms of the contract.

(Pa90 at ¶ 67). However, Defendant's only obligation under the Settlement Agreement was to pay Plaintiff – which it did. (*See* Da37-41). Plaintiff does *not* allege that Defendant failed to pay her as written in the Settlement Agreement, and Plaintiff does *not* allege that Defendant did anything in bad faith to deprive her of the benefit of the bargain (the payment) originally intended by both parties. Plaintiff's Second Amended Complaint completely fails to plead that the benefit of the bargain (the payment) was denied to her as a result of Defendant's alleged conduct.

Importantly, the Trial Court specifically pointed this deficiency to Plaintiff during the September 8, 2023 hearing. In denying Plaintiff's prior breach of covenant of good faith and fair dealing claim, the Trial Court explained,

If something's written and you say, this is my signature and this is what we're bound to do, and these are your rights and these are my rights, you know, if those terms aren't violated in general -- as a general matter, you don't have a breach of the covenant of good faith and fair dealing.

(1T30-6 to 11). Plaintiff failed to heed the Trial Court's warning and failed to properly amend her complaint to plead the requisite elements of her breach of covenant of good faith and fair dealing. At the April 25, 2024 hearing the Trial Court

correctly reiterated: “again there’s nothing to show the [Trial Court] that the requirement of paying out \$14,000 in exchange for release was not performed in good faith.” (2T49-17 to 19). As Plaintiff’s Second Amended Complaint fails to allege the requisite elements, the Trial Court’s dismissal of Plaintiff breach of covenant of good faith and fair dealings claim should be affirmed.

E. The Trial Court Correctly Dismissed Plaintiff’s Alleged Fraudulent Inducement and Fraudulent Misrepresentation Claims Because They Fail to State a Claim as a Matter of Law (Counts IV (Pa93) and VI).

To establish claims of fraudulent inducement and fraudulent misrepresentation, Plaintiff must show “(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.” *Banco Popular N. Am.*, 184 N.J. at 173; *see also Schillaci v. First Fid. Bank*, 311 N.J. Super. 396 (Super. Ct. App. Div. 1998). Rule 4:5-8(a) requires that any complaint alleging fraud set forth the “particulars of the wrong, with dates and items if necessary, . . . insofar as practicable.” Additionally, during the September 8, 2023 motion to dismiss hearing, the Trial Court specifically noted to Plaintiff that she must “outline . . . [w]ho said what, when did they say it, what did they say, what did you interpret it to mean, and why did you end up signing the contract? Otherwise, fraudulent inducement doesn’t fly.” (1T31-14 to 18).

In her Second Amended Complaint Plaintiff alleges that “[o]n August 8, 2019, Defendant induced Plaintiff into hurrying up, and signing a Stipulation of Dismissal . . . under the false pretense that[] it would include a provision for ‘No further harassment, or retaliatory acts against Plaintiff’” and “induced Plaintiff into a state court settlement agreement upon false representations that she was settling only the state court claims” and “by representing to Plaintiff that it would cease any further harassment, discrimination, and retaliatory acts.” (Pa93 at ¶¶ 83-84; Pa94 at ¶ 86). Plaintiff further alleges that she entered into the settlement negotiations and the settlement agreement “because of her reliance upon Defendants’ representations,” and has she known “that the Defendant’s representations were false, and fraudulent, she would have never entered into negotiation discussions, nor any state court settlement agreement.” (Pa94 at ¶¶ 89-90). Plaintiff did not heed the Trial Court’s warning of the specific details she must include relating to her fraud claims to survive a motion to dismiss. Furthermore, at the April 25, 2024 hearing, Plaintiff testified that she read the Settlement Agreement before signing it. (2T22-22 to 2T23-01). *See 1st Colonial Community Bank v. Wolfson*, No. A-0992-21, 2023 WL 4111383, at *6 (Super. Ct. App. Div. June 22, 2023) (granting summary judgment where a party’s purported extrinsic representations were directly contradicted by the written agreement and therefore could not form the basis of a fraudulent inducement claim).

The Settlement Agreement itself clearly states “that this is the entire Agreement concerning the settlement of the disputes described above, and that *no representations or inducements have been made by either side except as set forth herein.*” (Da40 at ¶ 11) (emphasis added). Plaintiff signed the Settlement Agreement, had her signature notarized, and therefore, agreed that she had carefully read and fully understood each provision and all of the effects of the Settlement Agreement. (Da41). Therefore, Plaintiff did not reasonably rely on the alleged misrepresentations given the specific language of the Settlement Agreement she later signed.

Additionally, Plaintiff failed to plead fraud with specificity. Plaintiff’s allegations of fraud are formulaic and fail to specifically detail knowledge or belief by Defendant of the falsity of its alleged misrepresentations, the wrongs committed by Defendant, and the damages suffered by Plaintiff. Plaintiff’s mere conclusions, without facts that each element was met is simply not enough to meet the higher standard required by Rule 4:5-8(a). Because Plaintiff failed to properly plead the fourth element of her fraud claim and failed to plead each element with specificity, the Trial Court correctly dismissed Plaintiff’s fraud claim with prejudice. *See Hoffman v. Hampshire Labs, Inc.*, 405 N.J. Super. 105 (App. Div. 2009) (“Plaintiff failed to plead specific facts that, if proven, would show that defendants’ representations were false.”).

F. The Trial Court Correctly Dismissed Plaintiff’s Alleged Unjust Enrichment Claim Because It Fails to State a Claim as a Matter of Law (Count VII).

In order to sustain a claim of unjust enrichment, a plaintiff must show: (1) Defendant “received a benefit and that retention of that benefit without payment would be unjust,” (2) Plaintiff expected “*remuneration*” from Defendant at the time she conferred the benefit upon Defendant, and (3) “the *failure of remuneration* enriched [Defendant] *beyond its contractual rights*. See *VRG Corp. v. GKN Realty Corp.*, 135 N.J. 539, 554 (1994) (emphasis added).

In her Second Amended Complaint, Plaintiff alleges that Defendant “breach[ed] the contract by deliberately failing, and refusing to honor its legal, and contractual terms, and obligations to cease further harassment, and retaliatory acts,” and further alleges that Defendant “profited, and enriched themselves unjustly at the expense, and detriment of Plaintiff.” (Pa98 at ¶ 102). Plaintiff fails to allege the alleged benefit received by Defendant that serves as the basis of her unjust enrichment claim, although Defendant surmises that Plaintiff is referring to the Settlement Agreement. Plaintiff also fails to allege specific facts to show that she expected remuneration from Defendant, that Defendant failed to provide the expected remuneration to Plaintiff, and that Defendant’s failure to provide the expected remuneration enriched it beyond its contractual rights.

To the contrary, Defendant’s sole obligation under the Settlement Agreement was to pay Plaintiff – which it did. (*See* Da37-41). Plaintiff concedes she entered into a “settlement agreement to accept \$14,000” and, importantly, does not allege anywhere in her Second Amended Complaint that she failed to receive this payment. (Pa96 at ¶ 97). In fact, Plaintiff acknowledged that she received the \$14,000 settlement payment. (*See* 2T13-15 to 19). Since Plaintiff’s Second Amended Complaint fails to allege any element of her unjust enrichment claim, the Trial Court correctly held that “unjust enrichment isn’t relevant when there’s a contract that’s been performed,” (2T51-8 to 10), and dismissed the claim with prejudice.

G. The Trial Court Correctly Dismissed Plaintiff’s Alleged Invasion of Privacy Claims Because They Fail to State a Claim as a Matter of Law (Count VIII and IX).

The claim of invasion of privacy consists of four distinct claims: “1) intrusion upon seclusion; 2) public disclosure of private facts; 3) placing plaintiff in a false light in the public eye; and 4) appropriation, for the defendant's benefit, of the plaintiff's name or likeness.” *Rumbauskas v. Cantor*, 138 N.J. 173 (1994). Plaintiff appears to allege the first three of the listed privacy torts.

1. Intrusion Upon Seclusion (Count IX)

The tort of intrusion upon seclusion requires an intentional intrusion, “physical[] or otherwise, upon the solitude or seclusion of another or his private affairs or concerns,” and is subject to liability “if the intrusion would be highly

offensive to a reasonable person.” 3 Restat., Torts 2d, § 652B at 378 (1977). To establish liability, Plaintiff must show that “the interference with the plaintiff’s seclusion is a substantial one, of a kind that would be highly offensive to the ordinary reasonable man, as the result of conduct to which the reasonable man would strongly object.” *Id.* § 652B, cmt. b. During the September 8, 2023 hearing on Defendant’s motion to dismiss, the Trial Court noted that “in and of itself, having a private investigator isn’t an invasion of privacy.” (1T32-1 to 5).

In her Second Amended Complaint, Plaintiff alleges that,

From October 2019 to present, and at many times, and places unknown to Plaintiff, Defendant has contacted a Private Investigator to watch, follow Plaintiff, in order to gather personal information about her, family, and friends, to inquire into Plaintiff’s personal affairs, all at which constitute an invasion to Plaintiff’s right to privacy.

(Pa99 at ¶106). The remaining allegations in support of Plaintiff’s claim of intrusion upon seclusion simply parrot the elements of the claim. (Pa99 at ¶144 to Pa100 at ¶17). Plaintiff fails to sufficiently describe the alleged intentional intrusion by Defendant upon her solitude or seclusion. Plaintiff also fails to sufficiently plead facts to show that the alleged intrusion would be highly offensive to a reasonable person. Therefore, Plaintiff’s invasion of privacy claim fails and should be dismissed. *See, e.g. Villanova v. Innovative Investigations, Inc.*, 420 N.J. Super. 353 (Super. Ct. App. Div. 2011) (finding no invasion of privacy when defendant placed a concealed GPS tracking device on plaintiff’s car without his knowledge or

consent); *Hammer v. Hair Sys., Inc.*, Nos. A-2791-07T1, A-1893-08T1, 2009 N.J. Super. Unpub. LEXIS 1587 (Super. Ct. App. Div. June 18, 2009) (finding no invasion of privacy when private investigator followed plaintiff and prepared a subsequent report). Accordingly, this Court should affirm the Trial Court’s dismissal of Plaintiff’s intrusion upon seclusion claim.

2. Public Disclosure of Private Facts and False Light (Count VIII)

To sustain a cause of action for giving publicity to a private life, Plaintiff must show that *matters revealed* were actually private, that *dissemination* of such facts would be offensive to a reasonable person, and that there is no legitimate interest of the public in being apprised of the facts publicized. *See* 3 Restat., Torts 2d, § 652D (1977). False light cause of action is fairly similar and will be analyzed alongside Plaintiff’s giving publicity to a private life claim. A defendant commits false light invasion of privacy when it “gives *publicity* to a matter concerning another that places the other before the public in a false light” and requires that “(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.” *Romaine v. Kallinger*, 109 N.J. 282, 294 (1988) (*quoting* 3 Restat., Torts 2d, § 652E).

In her Second Amended Complaint, Plaintiff alleges that Defendant hired a private investigator to follow Plaintiff and gather personal information. (Pa99 at ¶

106). Plaintiff then facetiously recites that Defendant “publicized information concerning the private life of Plaintiff . . . without Plaintiff’s consent,” and that “[a] reasonable person in Plaintiff’s position would consider the publicity highly offensive,” and that the “private information was not of legitimate public concern.” (Pa99 at ¶¶ 108-110). This threadbare recitation of the elements of Plaintiff’s causes of action relating to invasion of privacy cannot survive a motion to dismiss. At the April 25, 2024 hearing, the Trial Court correctly observed that “there’s not allegation exactly of what private information is being disseminated.” (2T51-10 to 12). Since Plaintiff has not provided any details as to the information or matters that have been allegedly publicized by Defendant, or the manner of this alleged publication, this Court should affirm the dismissal of Plaintiff’s claims of giving publicity to a private life and false light.

H. The Trial Court Correctly Dismissed Plaintiff’s Alleged Intentional Infliction of Emotional Distress Claim Because It Fails to State a Claim as a Matter of Law (Count X (Pa100)).

A *prima facie* claim of intentional infliction of emotional distress (“IIED”) requires a Plaintiff to establish that Defendant (1) acted intentionally or recklessly, and (2) outrageously and (3) proximately caused Plaintiff (4) severe distress. *See Griffin v. Tops Appliance City, Inc.*, 337 N.J. Super. 15, 22-23 (App. Div. 2001) (quoting *Buckley v. Trenton Sav. Fund Soc’y.*, 111 N.J. 355, 366-67 (1988)). The defendant’s conduct must be so “outrageous in character, and so extreme in degree,

as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Buckley*, 111 N.J. at 366-67. A court determines the threshold inquiry of whether outrageous conduct could possibly be found as a matter of law based on the facts, while a jury later determines if the conduct was in fact outrageous. *See Taylor v. Metzger*, 152 N.J. 490, 509-10 (1998).

The emotional distress suffered by the plaintiff must be “so severe that no reasonable man could be expected to endure it.” *Id.* The severity of the claimed emotional distress involves questions of both law and fact. *See Buckley*, 111 N.J. at 367. The court must first decide whether as a matter of law severe emotional distress can be found, and then the jury must decide whether Plaintiff has in fact proven it. *See id.* “Severe emotional distress is a severe and disabling emotional or mental condition which may be generally recognized and diagnosed by trained professionals. The emotional distress must be sufficiently substantial to result in either physical illness or serious psychological sequelae.” *Turner v. Wong*, 363 N.J. Super. 186, 200 (App. Div. 2003). “[I]t is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress.” *Cox v. Keystone Carbon Co.*, 861 F.2d 390, 395 (3d Cir.1988), cert. denied, 498 U.S. 811 (1990). Intentional infliction of emotional distress claim is subject to a two-year statute of limitations in N.J.S.A. 2A:14-1.

In her Second Amended Complaint Plaintiff's alleges that Defendant

intentionally and with reckless disregard by deliberately inflicting severe emotional distress on Plaintiff by breaching the Settlement agreement, through its multiple that it would cease all further harassment, discriminatory, and retaliatory acts; then continuing to subject her, family, and friends to ongoing harassment, retaliation, discriminations, and threats of harm.

(Pa100 at ¶ 114). Plaintiff further alleges that “[a]s a direct, and proximate result of Defendant’s extreme and outrageous, oppressive conduct, Plaintiff was, is, with a high degree of probability that Plaintiff would suffer from emotional distress,” and that “Plaintiff will suffer mental pain and anguish, PTSD, depression, anxiety, severe emotional trauma, embarrassment, and humiliation.” (Pa101 at ¶ 115). Plaintiff also includes in her allegations a recitation of the elements of the claim. (Pa101 at ¶¶ 116-118). Notably, Plaintiff made minimal changes to this amended claim by adding solely conclusory statements. (Pa101 at ¶¶ 116-118).

Stripped of all mere conclusions without facts, Plaintiff’s Second Amended Complaint does *not* allege she suffered severe distress, received medical treatment or suffered the sort of extreme debilitating mental anguish that must be established to prevail on this kind of claim. *See Hodge v. McGrath*, No. A-4684-12T2, 2014 WL 6909499, at *2 (Super. Ct. App. Div. Dec. 10, 2014) (affirming dismissal of IIED claim because plaintiff failed to allege all of the elements necessary to prove such a claim, namely extreme and outrageous conduct and extreme emotional distress). “[M]ental anguish, damage to [Plaintiff’s] reputation, embarrassment, [and]

humiliation” are not enough to state a claim of intentional infliction of emotional distress, and therefore Plaintiff has failed to state a claim for intentional infliction of emotional distress. *See D’Angelo v. Ocwen Loan Servicing, LLC*, No. A-4195-14T2, 2017 WL 712781, at *7 (Super. Ct. App. Div. Feb. 23, 2017) (affirming dismissal of an IIED claim because plaintiff failed to allege he sustained injuries necessary to state a claim).

Additionally, Plaintiff’s allegations of a breach of contract, misrepresentations related to a contract, and conclusory “harassment, discriminatory, and retaliatory acts” are simply not so extreme and outrageous “as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Buckley*, 111 N.J. at 366. The Appellate Division has previously found that “utilizing bad business practices, making demands for disputed payments, calling plaintiff late in the evening, failing to accept plaintiff’s mortgage payments, contacting plaintiff directly while knowing he was represented by counsel, and filing foreclosure actions against him” are not enough to state a claim for intentional infliction of emotional distress. *D’Angelo*, 2017 WL 712781, at *8.

Moreover, the Trial Court specifically counselled Plaintiff during the September 8, 2023 hearing that “you don’t create a cause of action for emotional distress by repeating what you said before, and just saying, and this was emotional

distress.” (1T32-14 to 17). Yet despite an additional opportunity to add colorable allegations, Plaintiff’s Second Amended Complaint fails for the same reasons as her prior attempts. Plaintiff’s conclusory allegations simply do not meet the elevated threshold for liability for intentional infliction of emotional distress. Plaintiff has failed to sufficiently plead outrageous conduct and severe distress, and therefore, her claim must be dismissed with prejudice.¹⁰ See *D’Angelo*, 2017 WL 712781, at * 7 (affirming dismissal of an IIED claim because plaintiff failed to allege he sustained injuries necessary to state a claim); *Hodge*, 2014 WL 6909499, at *2 (affirming dismissal of IIED claim because plaintiff failed to plead extreme and outrageous conduct and extreme emotional distress).

The Trial Court correctly concluded that Plaintiff’s Second Amended Complaint fails to state a claim for intentional infliction of emotional distress.

I. The Trial Court Correctly Dismissed Plaintiff’s NJLAD Retaliation Claim Because It Fails to State a Claim as a Matter of Law (Count XII).

Plaintiff has pled a retaliation claim pursuant to “New Jersey Laws Against Discrimination,” and therefore Defendant will analyze Plaintiff’s claim pursuant to the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 *et seq.* (See Pa102). To establish a retaliation claim under LAD, plaintiff must demonstrate that:

¹⁰ Due to the two-year statute of limitation on Plaintiff’s IIED claim, any alleged conduct by Defendant that allegedly occurred prior to April 19, 2021, is not actionable and must be dismissed.

(1) she engaged in protected activity known by the employer; (2) thereafter the employer subjected her to an adverse employment decision; and (3) her participation in the protected activity caused the retaliation. *Tartaglia v. UBS PaineWebber, Inc.*, 197 N.J. 81, 125 (2008). The statute of limitations for LAD claims is two years. *See Alexander v. Seton Hall Univ.*, 204 N.J. 219, 228 (2010).

In support of her NJLAD retaliation claim, Plaintiff re-alleges that she entered into the Settlement Agreement in September 2019, filed a § 1981 claim in the District Court for the District of New Jersey around July 22, 2021, and that both of these constitute protected activity under various state and federal statutes. (Pa103 at ¶¶ 127-130). Plaintiff further re-alleges that Defendant retaliated against her “[f]rom October 2019 to August 17, 2023”¹¹ and proceeds to list a laundry list of non-employment-related inconveniences and conduct allegedly coming from Defendant. (Pa103 at ¶ 131 to Pa105 at ¶ 134). None of the above allegations related to discrimination, none constitute an adverse *employment* action and none allege a causal relationship to Plaintiff’s race as alleged in Paragraph 45 of her Second Amended Complaint. Moreover, Plaintiff settled any claims that arose during her employment so, necessarily, any post-settlement actions that could form the basis of a new claim could not have been in the context of employment. Since Plaintiff fails

¹¹ As above, the LAD two-year statute of limitations bars any alleged conduct by Defendant that occurred prior to April 19, 2021.

to plead actions by an employer, an adverse employment action, or any semblance of causation, as required by the LAD, her retaliation claim must be dismissed.

The only allegation that Plaintiff added to her Second Amended Complaint relating to her alleged NJLAD claim pertains to Plaintiff's termination of employment with Defendant on September 7, 2017. (Pa103 at ¶ 126). However, Plaintiff has since settled all claims and disputes she had with Defendant "whether known or unknown, including but not limited to claims . . . [of] retaliation of any kind,"¹² and had her signature notarized. (Da37, Da41). Plaintiff has not been employed with Defendant since September 7, 2017. Any claim arising from Plaintiff's employment with Defendant is barred by the Settlement Agreement and is also time barred. As such, the Trial Court did not err in dismissed Plaintiff's NJLAD claims with prejudice, noting, "she hasn't worked for Lourdes for – for years and there's no basis for a Law Against Discrimination Claim where whatever issue regarding employment resolved some time ago." (2T51-25 to 2T52-03). Accordingly, this Court should affirm the Trial Court's dismissal.

¹² Courts may consider documents referred to and explicitly relied on in Plaintiff's Second Amended Complaint without converting a motion to dismiss into one for summary judgment. *See N.J. Citizen Action, Inc. v. County of Bergen*, 391 N.J.Super. 596, 605 (App. Div. 2007).

J. The Trial Court Correctly Dismissed Plaintiff’s Alleged Retaliation Claim Under Section 1981 Under NJ State Law Because It Fails to State a Claim as a Matter of Law (Count X (Pa107)).

In addition to her NJLAD claim, Plaintiff has also included a retaliation claim pursuant to “Section 1981 of the New Jersey state law.” (Pa107 at ¶ 138 to Pa108 at ¶ 142). No such New Jersey law or statute exists, and therefore, the Trial Court correctly dismissed Count X of Plaintiff’s Second Amended Complaint with prejudice.

K. The Trial Court Correctly Denied Plaintiff’s Request for Injunctive Relief Because It Fails to State a Claim as a Matter of Law (Count XI).

Last, Plaintiff requests the extraordinary remedy of injunctive relief. (Pa108 at ¶ 143 to Pa109 at ¶ 148). To obtain an injunction, Plaintiff must demonstrate that (1) injunctive relief is necessary to prevent irreparable harm; (2) legal right underlying the Plaintiff’s claim is settled; (3) material facts are uncontroverted and demonstrate *a reasonable probability of ultimate success on the merits*; and (4) relative hardship to the parties favors granting the relief. *See Crowe v. De Gioia*, 90 N.J. 126, 132-34 (1982). “Each of these factors must be *clearly and convincingly demonstrated.*” *Waste Mgmt. of N.J., Inc. v. Union County Utils.*, 399 N.J. Super. 508, 520 (App. Div. 2008) (citations omitted) (emphasis added).

Plaintiff has not proven by clear and convincing evidence that she will be irreparably harmed in the absence of an injunction, and that the harm is imminent,

concrete, and nonspeculative. Plaintiff also cannot demonstrate a reasonable probability of success on the merits of her claims. *See, e.g., Waste Mgmt.*, 399 N.J. Super. at 528-29 (finding that “plaintiff failed to demonstrate by clear and convincing evidence a reasonable probability of success because the present state of the law” highly favored defendant's position and material facts advocated by defendants were well-founded). Accordingly, the Trial Court properly denied Plaintiff’s request for injunctive relief.

POINT II

THE TRIAL COURT CORRECTLY DENIED PLAINTIFF’S CROSS-MOTION TO FILE THIRD AMENDED COMPLAINT. (Pa10)

The Trial Court properly denied Plaintiff’s Cross-Motion for Leave to File a Third Amended Complaint. (Pa10). This Court reviews a Trial Court’s decision to deny a motion to amend the complaint for abuse of discretion. *See Franklin Medical Associates v. Newark Public Schools*, 362 N.J. Super. 494, 506 (App. Div. 2003) (“Our review here is limited. The determination of a motion to amend a pleading is generally left to the sound discretion of the trial court, and its exercise of discretion will not be disturbed on appeal, unless it violates a clear abuse of discretion.”) (internal citations omitted). *See also Grillo v. State*, 469 N.J. Super. 267, 275 (App. Div. 2021); *Port Liberte II Condo. Ass’n, Inc. v. New Liberty Residential Urb. Renewal Co.*, 435 N.J. Super. 51, 62 (App. Div. 2014). In order to constitute an abuse of discretion, “the Court’s decision must be ‘made without a rational explanation,

inexplicably depart [] from established policies, or rest[] on an impermissible basis.” *Moche v. Levy*, A-5480-13T2, No. 2015 WL 10710974, at *16 (App. Div. April 22, 2016) (quoting *Flagg v. Essex County Prosecutor*, 171 N.J. 561, 571 (2002)).

“Rule 4:9-1 requires that motions for leave to amend be granted liberally and that the granting of a motion to file an amended complaint always rests in the court’s sound discretion.” *Grillo*, 469 N.J. Super. at 275 (internal quotations omitted). The exercise of such discretion “requires a two-step process: whether the non-moving part will be prejudiced, and whether granting the amendment would nonetheless be futile.” *Notte v. Merchants Mut. Ins. Co.*, 185 N.J. 490, 500 (2006).

To determine futility, courts consider “whether the amended claim will nonetheless fail and, hence, allowing the amendment would be a useless endeavor.” *Notte*, 185 N.J. at 501. “Significantly, ‘courts are free to refuse leave to amend when the newly asserted claim is not sustainable as a matter of law. In other words, there is no point to permitting the filing of an amended pleading when a subsequent motion to dismiss must be granted.’” *Interchange State Bank v. Rinaldi*, 303 N.J. Super. 239, 256-57 (App. Div. 1997) (quoting *Mustilli v. Mustilli*, 287 N.J. Super, 605, 607 (Ch.Div.1995)).

Here, there was no abuse of discretion by the Trial Court in denying Plaintiff’s motion to file a Third Amended Complaint. First, as explained, *supra*, Plaintiff’s proposed Third Amended Complaint was virtually identical to the Second Amended

Complaint and categorically failed to overcome any of the deficiencies in the Second Amended Complaint.

Second, at the September 8, 2023 hearing dismissing Plaintiff's Amended Complaint with leave to amend, the Trial Court went through "each and every one" of Plaintiff's counts and explained to Plaintiff how each is "legally deficient." (1T38-11 to 15; *see, generally*, 1T24-5 to 1T35-7). The Trial Court further explained, "you can't just go and say general things and discovery will figure it out." (1T37-4 to 5).

Nevertheless, Plaintiff's Second Amended Complaint failed to correct the deficiencies. At the April 25, 2024 hearing, the Trial Court again asked Plaintiff:

THE COURT: ... what proof do you have that [Defendant] is organizing these various persons, realtors, etcetera, to conspire against you? How – how do you know that?

MS. KIDD: So, I have – I have so many emails. I have – I have a lot – I have a lot of emails.

(2T25-21 to 2T26-03). However, Plaintiff could not provide any specifics as to what these emails allegedly contain that links Defendant to the to Plaintiff's alleged harms. Similarly:

THE COURT: Who? Ms. – Ms. – Ms. Kidd, who – who is doing these acts? That's what – I just want to know.

MS. KIDD: Lourdes Medical Center, its agents, staff members, employees. Agents, as I stated, could be the insurance company. It could be their attorney, okay.

(2T33-05 to 11). Throughout the hearing, Plaintiff repeatedly alluded to evidence in her possession supporting her claims but consistently failed to assert facts that, if incorporated into an amended complaint, could state a claim for relief. (*See, e.g.*, 2T29-01 to 04; 2T45-23 to 24) (“... I have a lot of evidence. I have a lot of things that I would have to sift through because it’s a lot – it’s a lot of things. I make sure to document things...” and “I got the audio tapes. I have the audio tapes, Your Honor – audio tapes of my retaliation.”). Yet, despite the Trial Court telling Plaintiff that she should include details with her amended pleading, Plaintiff did not do so. Evidently, Plaintiff has *no facts and only conspiracies* to support her claims against Defendant.

Therefore, there is no basis for finding that the Trial Court abused its discretion in denying Plaintiff’s Cross-Motion. Plaintiff’s Proposed Third Amended Complaint and hearing testimony make it abundantly clear that any further amendments would be futile. *See In re NAHC, Inc. Securities Litigation*, 306 F.3d 1314, 1332 (3d Cir. 2002) (affirming lower court’s denial of leave to amend plaintiff’s complaint after the appellants “again [did] not specify what additional facts, if any, they would plead if given another opportunity to amend their Complaint.”). Accordingly, this Court should likewise affirm the Trial Court’s decision to deny Plaintiff’s Leave to Amend to File a ***Third*** Amended Complaint.

POINT III

THE TRIAL COURT CORRECTLY DENIED PLAINTIFF’S MOTION FOR RECONSIDERATION. (Pa12)

The Trial Court correctly denied Plaintiff’s Motion for Reconsideration. (Pa12). This Court likewise reviews the Trial Court’s denial of a motion for reconsideration under the abuse of discretion standard. *See Sadeeshkumar v. Venugopal*, 478 N.J. Super. 25, 40 (App. Div. 2024); *Cummings v. Bahr*, 295 N.J. Super. 374, 389 (App. Div. 1996). “[R]eversal is required when the [trial judge’s decision]... ‘is clearly unfair or unjustly distorted by a misconception of law or finding of fact that are contrary to the evidence.’” *Sadeeshkumar*, 478 N.J. Super. at 40 (*quoting M.G. v. S.M.*, 457 N.J. Super. 286, 294 (App. Div. 2018)).

New Jersey Court Rule 4:49-2 governs motions for reconsideration and states in relevant part:

a motion for ... reconsideration seeking to alter or amend a judgment or order shall ... shall state **with specificity** the basis on which it is made, including **a statement of the matters or controlling decisions** which counsel believes **the court has overlooked or as to which it has erred**. (emphasis added).

“Reconsideration should be used *only* for those cases which fall into that narrow corridor in which either (1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence.” *Fusco v. Bd. of Educ.*, 349 N.J. Super. 455, 462 (App. Div. 2002) (*citing*

D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); R. 4:49-2; *accord Cummings*, 295 N.J. Super. at 384).

The *D'Atria* court stressed the extraordinarily limited scope of a motion for reconsideration as follows:

a litigant **must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner**, before the Court should engage in the actual reconsideration process. The arbitrary or capricious standard calls for a less searching inquiry than other formulas relating to the scope of review. **Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a Court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.**

242 N.J. Super. at 401 (emphasis added).

A motion for reconsideration is *not* warranted where the movant merely reiterates the arguments or cases previously analyzed by the court. *See DelVicchio v. Hemberger*, 388 N.J. Super. 179, 188-89 (App. Div. 2006); *see also Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi*, 398 N.J. Super. 299, 310 (App. Div. 2008) (“Reconsideration cannot be used to expand the record or reargue a motion.”). The policy justifications underlying the Court’s rules governing motions for reconsideration provide that “motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour.” *Id.* at 402. Moreover, reconsideration “is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion.” *Palombi v.*

Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010); *D’Atria*, 242 N.J. Super. at 400 (“A litigant should not seek reconsideration merely because of dissatisfaction with a decision of the court.”). As explained by the Court in *Palombi*, 414 N.J. Super. at 289, the “magnitude of error cited must be a *game-changer* for reconsideration to be appropriate.” (emphasis supplied). The decision to deny a motion for reconsideration falls “within the sound discretion of the [trial court], to be exercised in the interest of justice.” *Cummings*, 295 N.J. Super. at 384 (quoting *D’Atria*, 242 N.J. Super. at 401).

Plaintiff’s Motion for Reconsideration fell well outside the very narrow circumstances under which reconsideration motions can be granted. Plaintiff neither demonstrated – nor even attempted to set forth – the threshold showing of an arbitrary, capricious, or unreasonable action by the Trial Court in connection with its Orders granting Defendant’s Motion to Dismiss Plaintiff’s Second Amended Complaint and denying Plaintiff’s Cross-Motion for Leave to File a Third Amended Complaint. Plaintiff presented *no* credible, admissible evidence that the Trial Court overlooked when it granted Defendant’s Motion to Dismiss Plaintiff’s Second Amended Complaint and denied Plaintiff’s request to file yet another faulty complaint. Nor did Plaintiff show that the Trial Court applied incorrect law. Plaintiff presented to the Trial Court the same arguments that failed the first time and expressed her dissatisfaction with the Trial Court’s decision. Plaintiff did not

demonstrate that the Trial Court failed to make its decision on a palpably incorrect or irrational basis. Plaintiff merely rested on and amplified the same arguments she made in her initial opposition to Defendant's Motion to Dismiss and the same arguments she made in support of her motion to amend, and therefore, her Motion for Reconsideration must be denied. *See Hinton v. Meyers*, 416 N.J. Super. 141 (App. Div. 2010) (denying reconsideration of summary judgment because plaintiff's motion did not meet the standards for relief pursuant to Rule 4:49-2); *Healthcare Practice Sales LLC v. Liechtung*, No. BER-L-2084-18, 2020 N.J. Super. Unpub. LEXIS 3970 (Bergen Co. Super. Ct. May 21, 2020) (affirming denial of reconsideration because Plaintiff failed to establish grounds for relief pursuant to R. 4:49-2).

A motion for reconsideration is not the proper vehicle to reargue a motion because the movant is dissatisfied, and therefore, Plaintiff's Motion for Reconsideration should be denied. *See In re Estate of Blair*, No. A-1394-19, 2021 N.J. Super. Unpub. LEXIS 633 (Super. Ct. App. Div. Apr. 15, 2021) (denying motion for reconsideration because petitioner presents no convincing arguments that the Trial Court's order was palpably incorrect, irrational, arbitrary, capricious, or unreasonable); *Ghobrial v. Elnashfan*, 2018 N.J. Super. LEXIS 179 (Law Div. Dec. 24, 2018), *aff'd*, 2020 N.J. Super. Unpub. LEXIS 2385 (App.Div. Dec. 14, 2020) (denying motion for reconsideration because the aim of the motion was to express

disagreement with the Court's factual determination). Therefore, it is respectfully requested that this Court affirm the Trial Court's denial of Plaintiff's Motion for Reconsideration.

CONCLUSION

For all the foregoing reasons, Defendant respectfully requests that this Court fully affirm the Trial Court's orders granting Defendant's Motion to Dismiss Plaintiff's First Amended Complaint, granting Defendant's Motion to Dismiss Second Amended Complaint with prejudice in its entirety, denying Plaintiff's Motion for Leave to File a Third Amended Complaint, and denying Plaintiff's Motion for Reconsideration.

June 30, 2025

Respectfully submitted,

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2 SUPERIOR COURT OF NEW JERSEY

3 APPELLATE DIVISION

4 DOCKET NO: A-03424-23

5 CIVIL ACTION:

6 ON APPEAL FROM:

7 SUPERIOR COURT NEW JERSEY

8 BURLINGTON COUNTY- LAW DIVISION

9 SAT BELOW: HONORABLE RICHARD HERTZBERG, J.S.C

10 DOCKET NO: BUR-L-000786-23

11
12 TONNESHA KIDD,

13 APPELLANT

14 vs.

15 LOURDES MEDICAL CENTER AT BURLINGTON

16 APPELLEE.
17

18
19 **REPLY BRIEF ON BEHALF OF PLAINTIFF/APPELLANT**
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TABLE OF CONTENTS

1

2 TABLE OF

3 AUTHORITIES.....vi

4 PRELIMINARY

5 STATEMENT.....1

6 PROCEDURAL HISTORY & STATEMENT OF FACTS.....3

7 COUNTERSTATEMENT OF FACTS6

8 POINT I

9

10 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL

11 COURT ABUSED DISCRETION WHEN IT DISMISSED PLAINTIFF’S FIRST

12 AND SECOND AMENDED COMPLAINTS IN THEIR ENTIRETY,

13 CONVERTED THE MOTION TO SUMMARY JUDGMENT WITHOUT

14 NOTICE, AND OPPORTUNITY TO CONDUCT DISCOVERY, TAKING

15 JUDICIAL NOTICE OF FACTS IN DISPUTE, WITHOUT ALLOWING

16 PLAINTIFF OPPORTUNITY TO BE HEARD, AND THEN GRANTING

17 SUMMARY JUDGEMENT AS A MATTER OF LAW (Pa9, Pa11).....7

18 POINT II

19

20 DEFENDANTS’ CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL

21 COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT’S

22 COMPLAINT AS SHE PROFERRED A COGNIZABLE CLAIM FOR

23 PROMISSORY ESTOPPEL, THE LAW WAS MISSAPPLIED TO THIS MATTER,

24 SIGNIFYING AN ABUSE OF DISCRETION (Raised below, Pb10, Pb11, Pb12)11

25 POINT III

26

27 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL

28 COURT COMMINTED REVERSIBLE ERROR IN DISMISSING APPELLANT’S

29 COMPLAINT IN ITS ENTIRETY, AS APPELLANT PROFERRED A

30 COGNIZABLE CLAIM FOR BREACH OF CONTRACT, AND THE LAW WAS

31 MISAPPLIED IN THIS MATTER(Raised below, Pb10, Pb11, Pb12, Pb242).....13

POINT IV

DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT’S COMPLAINT IN ITS ENTIRETY, AS SHE PROFERRED A COGNIZABLE CLAIM FOR BREACH OF ORAL CONTRACT, AS SUCH THIS COURT SHOULD REVERSE THE TRIAL COURT’S ERRONEOUS RULING(Raised belowPb10, Pb11, Pb12).....16

POINT V

DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT PROFERRED A COGNIZABLE CLAIM FOR BREACH OF CONVENANT AND FAIR DEALING, THE LAW WAS MISSAPPLIED TO THIS MATTER, AS SUCH THE RULING IS AN ABUSE OF DISCRETION(Raised below,Pb10, Pb11, Pb12).....18

POINT VI

DEFENDANT CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT’S COMPLAINT IN ITS ENTIRETY, AS APPELLANT PROFERRED A COGNIZABLE CLAIM FOR FRAUDULENT INDUCEMENT AND FRAUDULENT MISREPRESENTATION, THIS COURT MISAPPLIED THE LAW IN THIS MATTER, AS SUCH, THE RULING EXEMPLIFIES AN ABUSE OF DISCRETION (Raised below Pb10, Pb11, Pb12).....20

POINT VII

DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT’S COMPLAINT IN ITS ENTIRETY, AS SHE PROFERRED A COGNIZABLE CLAIM FOR UNJUST ENRICHMENT, AS SUCH, THIS COURT MISSAPPLIED THE LAW, AND ENTERED AN ERRONNEOUS RULING IN THIS MATTER (Raised below,Pb10, Pb11, Pb12).....21

1 POINT VIII

2 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL
3 COURT COMMITTED REVERSIBLE ERROR, AS APPELLANT PROFERRED
4 A COGNIZABLE CLAIM FOR INVASION OF PRIVACY, THE COURT
5 MISAPPLIED THE LAW, IT FAILED TO CONSIDER ANY OF APPELLANT’S
6 CLAIMS, AS SUCH, IT ABUSED ITS DISCRETION IN THIS MATTER(Raised
below, Pb10, Pb11, Pb12).....23

7 POINT IX

8 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING
9 APPELLANT’S COMPLAINT IN ITS ENTIRETY, AND DENYING HER
10 LEAVE TO FILE AN AMENDED COMPLAINT; IF IT WAS APPLICABLE; AS
11 SHE PROFERRED A COGNIZABLE CLAIM FOR INTENTIONAL
12 INFLICTION OF EMOTIONAL DISTRESS, THE TRIAL COURT
13 OVERLOOKED PLAINTIFF’S CLAIMS, FAILED TO TAKE ANY OF THEM
14 INTO CONSIDERATION, AND MISAPPLIED THE LAW TO THIS MATTER
SIGNIFYING A CLEAR ABUSE OF DISCRETION (Raised below, Pb10, Pb11,
Pb12).....24

15 POINT X

16 THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING
17 APPELLANT’S COMPLAINT IN ITS ENTIRETY, AS SHE PROFERRED A
18 COGNIZABLE CLAIM FOR RETALIATION UNDER LAWS AGAINST
19 RETALIATION, AND DISCRIMINATION UNDER NJLAD, AND 42 USC 1981
20 FORPOST - EMPLOYMENT RETALIATION, THE TRIAL COURT FAILED TO
21 CONSIDER APPELLANT’S CLAIMS, IT MISSAPPLIED THE LAW TO THIS
22 MATTER, AS SUCH, IT HAS ABUSED ITS DISCRETION (Raised below,Pb10,
23 Pb11, Pb12).....26

1 POINT XI

2 DEFENDANTS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED
3 REVERSIBLE ERROR IN DISMISSING APPELLANT’S COMPLAINT IN ITS
4 ENTIRETY, AND DENYING HER LEAVE TO FILE AN AMENDED
5 COMPLAINT; IF IT WAS APPLICABLE; AS SHE PROFERRED A
6 COGNIZABLE CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL
7 DISTRESS, THE TRIAL COURT OVERLOOKED PLAINTIFF’S CLAIMS,
8 FAILED TO TAKE ANY OF THEM INTO CONSIDERATION, AND
9 MISAPPLIED THE LAW TO THIS MATTERSIGNIFYING A CLEAR ABUSE OF
10 DISCRETION (**Raised below, Pb10, Pb11, Pb12**).....34

11 POINT XII

12 DEFENDANT’S ARGUMENTS ARE WITHOUT MERIT, AS THE TRIAL
13 COURT ABUSED ITS DISCRETION IN DENYING APPELLANT THE
14 OPPORTUNITY TO FILE A THIRD AMENDED COMPLAINT. (**Pa10**).....38

15 POINT XIII

16 DEFENDANT’S ARGUMENTS ARE WITHOUT MERIT, AS THE TRIAL
17 COURT ABUSED ITS DISCRETION IN DENYING APPELLANT’S MOTION
18 FOR RECONSIDERATION. (**Pa12**).....39

19 CONCLUSION.....40

TABLE OF AUTHORITIES

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1. E.g., Royal Assoc. v. Concannon, 200 N.J. Super. 84 (App. Div. 1985).....12

2. Spaulding v. Hussain, 229 N.J. Super. 430, 438 (App. Div. 1988).....12

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18. Delaretto v. Totaro.....18

19. Weston v. Pennsylvania, 251 F.3d 420, 425 (3d Cir. 2001).....28

20.Jones v. R.R. Donnelly & Sons Co., 541 U.S. 369, 372-73 (2004)...27,28,29

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22.Stewart v. Rutgers, 930 F. Supp. 1043, 1047 (D.N.J. 1995).....29

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25.Hodge v. McGrath.....32

26.Hammer v. Hair Sys.Inc.,.....33

27.See, e.g., Sylvan Learning Inc., 795 F. Supp. 2d at 1299.....36

28.Dunkin’ Donuts Franchised Rests. LLC, 2011 WL 6026129, at *6; Krispy Kreme Doughnut Corp..... 36

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31. Buffalo Wild Wings Int’l, Inc., 829 F. Supp. 2d at 845-46.....36

32. Century 21 Real Estate, LLC v. Destiny Real Estate Props., 4:11-CV-38 JD, 2011 WL 6736060, at *7 (N.D. Ind. Dec. 19, 2011).36

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38. ServiceMaster Residential/Commercial Serv., L.P. v. Westchester Cleaning Serv., Inc., No. 01 Civ. 2229(JSM), 2001 WL 396520, at *3 (S.D.N.Y. Apr. 19, 2001).....37

Preliminary Statement

1
2 The Defendants arguments are all without merit. The trial court committed
3 reversible error by failing to follow current case, and statutory law and granting
4 Defendants Summary Judgment as a matter of law on issues of fact for the trier of
5 facts. Defendants framed it's a motion to dismiss; while attaching over 200
6 documents consisting of affidavits, documents, and irrelevant exhibits to its motion.
7 Defendants admitted that the trial court considered all matters proffered by it that
8 were outside of the record. As such, the trial court converted said motion to dismiss
9 to a Summary Judgment motion; at a premature stage of the litigation, while denying
10 discovery, and failing to give Appellant proper notice of such. Appellant begged the
11 trial court to not consider **matters outside the record as she attached nothing to**
12 **her complaint.** The trial court abused discretion when it failed to apply the correct
13 legal standard to this case. Instead of applying the motion to dismiss standard, N.J.
14 R. 4:4-6; it misapplied the legal standard for a motion for Summary judgment as a
15 matter of law. Defendants weren't entitled to such relief; as this action wasn't
16 duplicative to the 2017 action; as falsely proffered by Defendants'. Appellant never
17 signed a full release; as Defendants allege; for the first time in its Respondent brief
18 to this appeal. Defendants mischaracterized Plaintiff's April and September 2024
19 Oral argument testimonies. As Appellant pointed out in her opening brief, her **oral**
20 **argument**

1 **testimony was adulterated**, and the testimony transcripts filed, and excerpts the
2 Defendants refer to, and rely on in its argument; **don't reflect the full, and true**
3 **proceeding from below**. Appellant pointed out in opening brief that **close to 90%**
4 **of her oral argument testimony is missing; as evidenced by 'indiscernible.'**
5 Appellant spoke clearly and was very audible. Because of her lack of knowledge
6 with the rule change for **filing a motion to settle and correct the record below; it**
7 **was too late for her to move for such relief**. As such she pointed out the
8 inconsistencies within her opening brief and foot notes. Defendant refers to excerpts
9 from September 8, 2025, oral argument; which consists of a mischaracterization of
10 Appellants' actual testimony. Appellant respectfully request that this court not
11 consider such as it doesn't accurately reflect Appellant's true testimony at the given
12 time. Defendant has adulterated Appellant's oral argument testimony to make it
13 appear as if she contradicted her statements in the Third Circuit court; to make it
14 look like she stated that she did in fact agreed to a Full Release of all claims, and
15 that no authentication was needed. It attempted to use the oral arguments held in the
16 Superior court in this matter to discredit Appellant and gain a favorable ruling in the
17 Third Circuit Court of Appeals matter; on issues that have nothing to do with this
18 matter. All of Defendants' assertions are false. This matter involves a subsequent
19 post-employment litigation, and Breach. This matter has nothing to do with the 2017
20 action.

1 In short, Defendants continue to provide misrepresentations to **all** courts.
2 Defendants have knowingly withheld pivotal facts, **providing part facts**, and have
3 continued to be untruthful, and deceitful. All of Defendants' contentions contained
4 within their reply brief are without merit. All of Appellant's claims were **well pled**
5 **and consist of cognizable claims**. Appellant followed the court's directions; and
6 used the NJ Model Jury Charges as a guide. The trial court arbitrarily converted
7 defendants' motion to summary judgment, at a premature period in the litigation,
8 failing to provide notice to Appellant, denying discovery, ruling on issues of fact,
9 overlooking all of Appellant's arguments, and misapplying the law to this matter.
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14 Procedural History & Statement of Facts

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16 Plaintiff relies on the procedural history and statement of facts set forth in our Initial
17 Brief.
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19 However, contrary to Defendants' contentions in its Procedural History,
20 Appellant never signed a **full release of all claims** as falsely alleged for the first
21 time in Defendants' reply brief to this instant appeal. She never testified to such
22 either.
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25 Again, Defendant is attempting to commit fraud upon all courts. Defendants
26 continue to input irrelevant proceedings, and history in all its briefs to attempt to
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1 distract the court, act as if it is telling on Appellant in the attempt to cover up the
2 true issues of this case; an abuse of discretion simply put. Specifically, it points out
3
4 **Kidd vs. Helene Fuld Medical Center; but fails to point out that that case**
5 **yielded a \$150, 000 settlement offer, and is irrelevant.** She lists all cases with
6 Plaintiff's name on them that are medical malpractice, and that have nothing to do
7 with post-employment discrimination, retaliation nor this case. All cases listed are
8 irrelevant to this matter and have nothing to do with a motion to dismiss. If the trial
9 court considered such, as proffered by the Defendants' it supports Plaintiff's
10 contention that the motion was converted to a Summary Judgment, and the trial
11 courts procedure is flawed. The listed cases have absolutely nothing to do with the
12 case at hand. **It is well settled that every single act of retaliation constitutes a new**
13 **action.** Moreover, **Defendant has attached documents, and is raising arguments**
14 **that weren't filed, or raised in the trial court.** Consequently, Defendants continue
15 **to falsely allege that Plaintiff signed a full release, which was never done.** More
16 importantly, the allegation is irrelevant to the above-mentioned matter. Defendants
17 continue to argue an irrelevant, false defense misrepresenting the facts to the court
18 to secure a favorable ruling. Defendants' contentions that a court could take **judicial**
19 **notice are without merit; as the cases listed, and mentioned contain disputable**
20 **facts, and Plaintiff was provided with no opportunity to be heard.** Moreover, the
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1 attached cases were not part of the record below, and Defendants failed to file to
2 Supplement the trial court record.
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4 More importantly, Defendant's Counsel has failed to mention the multiple
5 cases that she has worked on where she has attached documents that shouldn't have
6 been attached or the fact that she files frivolous motions to dismiss that consist of
7 untruths, and deceit in every case Defendants' counsel works on. **Defendants falsely**
8 **alleges that Plaintiff waited 2 ½ years to serve a case that is irrelevant to this**
9 **matter. Defendant failed to divulge that that irrelevant case couldn't be served**
10 **until the court filed it.**
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14 In short, Defendants' Procedure History, and Counterstatement of facts are
15 flawed, as both discussed nothing that **is relevant to this instant matter, or a**
16 **motion to dismiss for failure to state a claim;** and contains multiple
17 misrepresentations to commit fraud upon this court. The above-mentioned matter
18 consists of subsequent **post-employment litigation; not the 2017 employment**
19 **action;** and it is not a duplicative litigation as Defendant falsely alleges. All of
20 Appellant's complaints and claims all state cognizable claims.
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24 Accordingly, the Honorable Richard Hertzberg abused discretion when he
25 dismissed Appellant's complaint in its entirety, failing to consider well-pled
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1 cognizable claims, raising the standard of review on Appellant, Pro se's pleadings
2 and misapplying the law in direct conflict with current case law, statutory law,
3 federal and state. Moreover, the trial court committed reversible errors in
4 considering irrelevant matters outside the 4-corners of the complaint and granting
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6
7 **Summary judgment as a matter of law on issues of fact for the jury.**

8
9 Defendants' contentions are without merit. Plaintiff did more than just remove
10 'pending,' change the title, and add 42 USC to her amended complaint. Its
11 contentions are blatantly false. Plaintiff followed the court instructions, and made
12 substantive changes as advised by the court.
13

14
15 Moreover, Plaintiff's Motion for Reconsideration didn't just reiterate the
16 same thing as previously argued; rather it brought to the court's attention current
17 case, and statutory law misapplied, as well as the fact that it overlooked all of
18 Plaintiff's well-pled cognizable claims; which conflicts with current case law, and
19 past rulings.
20

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22 **Counterstatement of Facts**

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24 All of Defendants contentions are without merit in its entirety. **It consists of**
25 **untruths and is deceitful in its entirety.** All of Appellant's claims were well-pled,
26 and substantial enough to defeat a motion to dismiss. Plaintiff's complaints didn't
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1 consist of conclusory and vague statements and fantastical allegations. **All facts**
2 **contained within all complaints could be proven.** Contrary to Defendant's
3 assertions, Plaintiff **never 'inexplicably included in her Second Amended**
4 **Complaint an allegation identical to that made in her First and Second**
5 **Lawsuits-an allege wrongful termination that occurred on September 7, 2017.'**"

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7
8 That is utterly false. If such is contained with the amended complaint: it is either a
9 typo, or a change not made by Plaintiff. Plaintiff has argued such throughout the
10 subsequent post-employment litigation. **She has also advised the court that her**
11 **pleadings have been changed and altered after filing.** Plaintiff **never signed a**
12 **full release releasing any federal claims, nor were any federal claim docket**
13 **numbers listed on any settlement agreement or stipulation of dismissal.**

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17 POINT I

18 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL
19 COURT ABUSED DISCRETION WHEN IT DISMISSED PLAINTIFF'S FIRST
20 AND SECOND AMENDED COMPLAINTS IN THEIR ENTIRETY,
21 CONVERTED THE MOTION TO SUMMARY JUDGMENT WITHOUT
22 NOTICE, AND OPPORTUNITY TO CONDUCT DISCOVERY, TAKING
23 JUDICIAL NOTICE OF FACTS IN DISPUTE, WITHOUT ALLOWING
24 PLAINTIFF OPPORTUNITY TO BE HEARD, AND THEN GRANTING
25 SUMMARY JUDGEMENT AS A MATTER OF LAW (Pa9, Pa11).

26 **General Rule:** Under Rule 4:6-2(e), a motion to dismiss for failure to state a
27 claim must be evaluated based on the legal sufficiency of the facts alleged in the
28 complaint. The court must view the allegations with great liberality and without
concern for the plaintiff's ability to prove the alleged facts.

1 **Reasonable Inferences:** The court is required to accord every reasonable
2 inference to the plaintiff. A motion to dismiss should be granted only in rare
3 instances, typically without prejudice, allowing the plaintiff an opportunity to
4 amend the complaint if necessary.
5

6 **Obscure Statements:** The court must search the complaint in depth and
7 with liberality to determine whether a cause of action can be gleaned, even from an
8 obscure statement of claim.
9

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11 This was not done here. The trial court overlooked all of Appellants' viable
12 cognizable claims, attempted to frame her for the Third Circuit Court Appeal matter,
13 by mischaracterizing Plaintiff's oral argument testimony to make it appear as if she
14 contradicted herself, deleting all substantive, reputative oral argument testimony;
15 about 90% of her testimony was omitted; as evidenced by indiscernible throughout
16 the transcript; misapplying the law to the case, denying notice, and discovery, and
17 then granted Summary Judgment as a matter of Law; framed as a motion to dismiss;
18 after considering over 200 exhibits, and certifications attached to motion that was
19 framed as Motion to Dismiss. Plaintiff stated a prima facie case for breach of
20 contract. She didn't attach the state court settlement to the complaint. If it or any
21 documents were considered, **she should've been given opportunity to conduct**
22 **discovery.** The trial court misapplied the legal standard for a Motion to Dismiss.
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1 which requires consideration of the 4 corners of the complaint. Moreover, it
2 misapplied the legal standard for the granting of a motion for summary judgment.
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4 Defendant failed to meet the standard for the granting of all relief sought.

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6 “A motion for summary judgment asks the court to look at the evidence to
7 conclude there is no issue of material fact in dispute.’ “Accordingly, N.J.Ct.
8 R.4:46—2” a judge will grant summary judgment’ if pleadings, depositions, answers
9 to interrogatories and admissions on filed, together with the affidavits; if any, show
10 that there is no genuine issues as to any material fact challenged and that the moving
11 party is entitled to a judgment or order as a matter of law. “importantly the law
12 requires the moving part to submit statement of facts as to which there is no genuine
13 dispute.”
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17 In short, Summary Judgment was granted as a matter of law; without giving
18 her notice that the motion to dismiss was being converted; and without giving her
19 the opportunity to conduct discovery and provide evidence. Defendants’ argument
20 that the court **could consider matters outside the record is severely flawed; as the**
21 **matters were irrelevant, disputable, and Plaintiff was not given notice or**
22 **opportunity to be heard.** More importantly, Defendant submitted, and attached
23 **over 200 irrelevant documents, affidavits, and other irrelevant material to**
24 support a premature motion for summary judgement, while intentionally tricking
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1 Plaintiff into believing it was a motion to dismiss; given her Pro se status, and lack
2 of requisite knowledge of the law. Plaintiff is not a lawyer, and don't have the
3 resources of a lawyer. She is not skilled as an attorney.
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6 Moreover, during oral arguments, the Defendant explicitly stated that plaintiff
7 cannot rely on discovery to prove her case; which supports Plaintiff's contentions
8 that the trial court's abused its discretion by not putting Plaintiff on notice, and
9 denying adequate opportunity for discovery, while knowingly permitting Defendants
10 to attempt to trick Plaintiff, Pro se Litigant; by framing its motion as a motion to
11 dismiss; denying discovery, and prematurely granting Summary Judgment as a
12 matter of law where it is inapplicable. Defendants failed to meet the standard for the
13 granting of any relief sought. Appellant followed the court's instructions. All claims
14 met the standard requirement to defeat a motion to dismiss and/or motion for
15 summary judgment, despite the pleading standard being arbitrarily raised. Plaintiff
16 presented a basis for relief, and discovery would've more than supported all her
17 claims. Plaintiff stated a prima facie case in all complaints filed in the above-
18 mentioned matter. The issue that was before the third circuit is irrelevant to this
19 matter. Defendant continues to attempt to intertwined separate matters; with separate
20 issues, and dates; to falsely profer that all actions are the same and relate to one
21 another; which is utterly false.
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POINT II

DEFENDANTS' CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT'S COMPLAINT AS SHE PROFERRED A COGNIZABLE CLAIM FOR PROMISSORY ESTOPPEL, THE LAW WAS MISSAPPLIED TO THIS MATTER, SIGNIFYING AN ABUSE OF DISCRETION (**Raised below, Pb10, Pb11, Pb12**).

All Defendants' arguments are without merit. Appellant's Second amended complaint clarified that she relied upon the promise of Defendant prior to entering any agreement or agreeing to enter any negotiating discussions. Appellant never admitted that she entered a contractual contract prior to the promise made by Defendant. Appellant's Complaint specifically states that the promise was made prior to agreeing to enter into any discussions. Defendant; again; provided false, misrepresentations, and misconstrued facts to the trial Court; in which the Court relied upon when not considering any of Appellant's claims. Specifically, Defendant, falsely alleges in its second motion to dismiss "In relation to the party's settlement of the first lawsuit.' Nowhere in Appellant's Second Amended Complaint, and Promissory Estoppel claim does she allege a settlement agreement. Defendant continues to falsely allege that Appellant admits to entering into a state court settlement agreement. Nowhere in Appellant's Promissory Estoppel claim does it mention a settlement agreement. In short, Defendant misled all Courts, and took

1 advantage of Appellant’s Pro se status, and lack of requisite knowledge, and skill of
2 the law; in essence **exploiting her**. “To succeed on this claim, plaintiff must prove
3 each of the following facts:
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5
6 1. That the defendant made a clear and definite promise. 2. That the defendant
7 expected that the promise would be relied upon. 3. That the plaintiff did reasonably
8 rely on the promise. “Promissory Estoppel is well established in New Jersey. E.g.,
9 Royal Assoc. v. Concannon, 200 N.J. Super. 84 (App. Div. 1985). See Spaulding v.
10 Hussain, 229 N.J. Super. 430, 438 (App. Div. 1988) where “the trial judge correctly
11 charged the elements of promissory estoppel, namely, a clear and definite promise
12 made with the expectation that the promisee will rely on coupled with reasonable
13 reliance therein by the promisee to his detriment.” See also Friedman v. Tappan
14 Development Corp., 22 N.J. 523 (1956); The Malaker Corp. v. First Jersey National
15 Bank, 163 N.J. Super. 463 (App. Div. 1978), certif. den. 79 N.J. 488 (1979).
16 However, more recent decisions have tended to relax the strict requirement of a
17 “clear and definite” promise, particularly where the plaintiff seeks damages resulting
18 from detrimental reliance on promises made. See, e.g., Pop’s Cones v. Resorts Intern.
19 Hotel, 307 N.J. Super. 461, 469-70, 472 (App. Div. 1997); Peck v. Imedia, Inc., 293
20 N.J. Super. 151, 168 (App. Div. 1996). This Court misapplied the law. Defendant’s
21 arguments were without merit. **Plaintiffs’ claims didn’t relate to terms allegedly**
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1 **discussed while negotiating any executed Settlement agreement.** Accordingly,
2 Appellant alleged a cognizable claim under Promissory Estoppel. (**1T-4a-62a, 2T-**
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4 **6-53, Pb13, Pb 33Pb49, Pb76, Pb111, Pb179, Pb242).**

5
6 As such, she respectfully request that this court undue the erroneous ruling of
7 the trial court, reverse, and remand this matter back to the trial court for further
8 proceedings on the merit.
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10 POINT III
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13 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL
14 COURT COMMINTED REVERSIBLE ERROR IN DISMISSING APPELLANT’S
15 COMPLAINT IN ITS ENTIRETY, AS APPELLANT PROFERRED A
16 COGNIZABLE CLAIM FOR BREACH OF CONTRACT, AND THE LAW WAS
MISAPPLIED IN THIS MATTER(Raised below, Pb10, Pb11, Pb12, Pb242).

17 All Defendants’ arguments were misguided, and meritless. Appellant
18 followed the court’s instructions and drafted her Second Amended Complaint for
19 Breach of Contract using the elements outlined in the New Jersey Model Jury
20 charges, and New Jersey case law. Appellant alleged all elements of the cause of
21 action for breach of contract under New Jersey law. Contrary to Defendants’
22 assertions, she did not fail to allege elements second, and third. Again, Defendants
23 misled the trial court with such assertion. Appellant is not required to attach any
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1 settlement agreement to the complaint. She has alleged sufficient facts, and
2 allegations to defeat a motion to dismiss for failure to state a claim from which relief
3 may be granted. It is well settled that a settlement agreement is a Contract.
4 Appellant's Complaints clearly state that the State court settlement was a Contract.
5 Appellant clearly outlines the breach in her complaint amounting to a defective
6 performance. More importantly, she has alleged a cognizable claim for damages
7 under the NJ Breach of Contract statute. *Coyle v. Englander's* 199 N.J. Super. 212
8 (App. Div. 1985); *Donovan v. Bachstadt*, 91 N.J. 434 (1982); *525 Main Street Corp.*
9 *v. Eagle Roofing Co.*, 34 N.J. 251 (1961); *Marcus & Co, Inc. v. K.L.G. Baking Co.,*
10 *Inc.*, 122 N.J.L. 202 (E. & A. 1939); *Hadley v. Baxendale*, 9 Ex. 341, 156 Eng. Rep.
11 145 (1854). More importantly, the breach was material. "The generally accepted rule
12 is that "[W]hether a breach is material is a question of fact." Farnsworth on
13 Contracts, Sec. 8.16 (1990). However, New Jersey courts will enforce a contractual
14 provision establishing that a particular breach is grounds for termination of the
15 contract. See *Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp.*, 100 N.J. 166
16 (1985) (upholding termination of franchise on basis of contractual provision that
17 made it clear that franchisee's breach was grounds for termination); *Gorrie v.*
18 *Winters*, 214 N.J. Super. 103 (App. Div. 1986) (courts shall enforce mutually agreed
19 and expressly stated time of the essence clause), certif. denied, 107 N.J. 114 (1987).
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1 “ The Restatement of Contracts sets forth the following criteria for determining
2 whether a breach is material: a. the extent to which the injured party will be deprived
3 of the benefit which he/she reasonably expected; b. the extent to which the injured
4 party can be adequately compensated for the part of that benefit of which he will be
5 deprived; c. the extent to which the party failing to perform or to offer to perform
6 will suffer forfeiture; d. the likelihood that the party failing to perform or to offer to
7 perform will cure his failure, taking account of all the circumstances including any
8 reasonable assurances; e. the extent to which the behavior of the party failing to
9 perform or to offer to perform comports with standards of good faith and fair dealing.
10 [2 Restatement, Contracts 2d. § 241 at 237 (1981)]. 4 Nolan v. Lee Ho, 120 N.J. 465,
11 472 (1990). Restatement (Second) of Contracts, § 237 (1981). 5 Simonson v. Z.
12 Cranbury Assoc., L.P., 149 N.J. 536 (1997).” Accordingly, the trial court failed to
13 consider any of Appellant’s claims.
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19 Appellant met her burden of proof to defeat such relief granted. **She**
20 **established a prima facie case for Breach of Contract.** It is respectfully requested
21 that this court correct its clear error and reverse, and remand this matter to the trial
22 court for further proceedings on the merits of her claims.
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POINT IV

DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT'S COMPLAINT IN ITS ENTIRETY, AS SHE PROFERRED A COGNIZABLE CLAIM FOR BREACH OF ORAL CONTRACT, AS SUCH THIS COURT SHOULD REVERSE THE TRIAL COURT'S ERRONEOUS RULING(Raised belowPb10, Pb11, Pb12). .

Defendants proffered untruths to secure a favorable ruling; the dismissal of all of Appellant's claims. Nowhere in Appellant's Second amended Complaint did she allege, or does it mention in her Breach of Oral Contract claim a settlement contract. Defendants misconstrued the facts of this matter to mislead the trial Court. Appellant entered in an Oral Contract with Defendants. Defendants made a promise that was material to entering any negotiating discussions. Defendants input its own words into Appellant's Second Amended Complaint. Defendants agreed, and to the fraudulent inducement when it stated that the written settlement agreement negated any Oral promise that was made. There was no settlement agreement in place at the time the Defendant entered into the oral contract to cease all further ongoing harassment, discrimination, or retaliatory acts. The specific oral agreement; alone; constitutes a contract in itself. One might add, that you can have both an oral and written agreement/contract at the same time. Contrary to Defendants' assertions, parole evidence is inapplicable to this matter. An oral agreement was made prior to

1 entering into any written contract. Defendant intentionally, and knowingly omitted
2 such clause as agreed upon provision to cease further retaliatory, or discriminatory
3 acts against Appellant and others. As such, the exception to Parole Evidence applies
4 to this matter. ‘There was a prior, valid agreement that was not described or referred
5 to correctly in the written contract. “More importantly, ‘exceptions to parole
6 evidence consist of the following: 1.) Errors or defects in the written contract due to
7 mistake, fraud, duress, or illegality 2.) The contract is ambiguous as to the parties’
8 intent. 3.) There is some problem with the consideration. 4.) There was a prior, valid
9 agreement that was not described or referred to correctly in the written contract. 5.)
10 Defects in the formation of the contract (such as fraud, duress, mistake, or illegality)
11 6.) The parties’ intent regarding ambiguous terms in contract 7.) Problems with the
12 consideration (e.g., the consideration was never paid). Accordingly, Defendants
13 cannot rely upon their argument of Parole evidence to this matter.’ *Delareto v. Totaro*
14 is inapplicable to this matter. **Parole evidence was inapplicable to this matter.**
15 **Moreover, the mere omission of the oral agreement from the agreement changes**
16 **the terms of the agreement, rendering it void; as Plaintiff never agreed to such**
17 **new terms.** The trial court overlooked, and failed to consider all of Appellant’s
18 claims, and evidence proffered. Instead, it misapplied the law and outright dismissed
19 all claims in its **entirety**.
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1 Appellant respectfully requests that this Court reverse the trial courts order
2 dismissing Appellant's complaint and remand the matter for further proceedings in
3 the interest of manifested justice. (1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76,
4 Pb111, Pb179, Pb242).

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7 POINT V

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9 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL
10 COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT
11 PROFERRED A COGNIZABLE CLAIM FOR BREACH OF COVENANT AND
12 FAIR DEALING, THE LAW WAS MISSAPPLIED TO THIS MATTER, AS SUCH
13 THE RULING IS AN ABUSE OF DISCRETION(Raised below,Pb10, Pb11,
14 Pb12).

15 Appellant's Second Amended Complaint alleged all elements required for a
16 cognizable claim under Breach of Covenant, and fair dealing. Defendant
17 misrepresented to the trial Court the facts of the matter. Appellant appropriately
18 pleaded that Defendant acted in bad faith. The promise not to engage in any further
19 harassment, and retaliation was pivotal and material to the contract. Appellant
20 alleged that she was denied the bargain originally intended by the parties. Appellant
21 argued the same during oral arguments. She also, brought to the trial Court's attention
22 that her filed pleadings have been altered. Appellant's Second Amended Complaint
23 clearly states what Defendant did to Breach Covenant, and Fair Dealing. Defendant
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1 falsely argued that Appellant's Amended Complaint stated nothing that Lourdes did
2 in bad faith to deprive the benefit of the bargain originally intended. That was an
3 utterly false assertion. Defendant failed to uphold its promise. Appellant alleged all
4 elements to establish a prima facie claim for Breach of Covenant of Good Faith, and
5 Fair Dealing. Appellant pled the benefit of bargaining, contrary to Defendants'
6 untrue assertions. Appellant met the standard to defeat the granting of a Motion to
7 Dismiss for failure to state a claim with prejudice. More importantly, this Court held
8 Appellant's pleadings to a higher standard, as well as misapplied current law.
9 Defendant failed to meet the criteria for the granting of such relief. Contrary to
10 Defendants' contentions, Plaintiff took heed to the court's warning. She also
11 understood that her complaint alleged a prima facie case, and it shouldn't had been
12 dismissed in its **entirety**.

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18 As such, Appellant respectfully requests that this Court correct the lower
19 court's erroneous ruling and reverse the matter in the interest of manifested justice.
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POINT VI

DEFENDANT CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT'S COMPLAINT IN ITS ENTIRETY, AS APPELLANT PROFFERED A COGNIZABLE CLAIM FOR FRAUDULENT INDUCEMENT AND FRAUDULENT MISREPRESENTATION, THIS COURT MISAPPLIED THE LAW IN THIS MATTER, AS SUCH, THE RULING EXEMPLIFIES AN ABUSE OF DISCRETION (**Raised below Pb10, Pb11, Pb12**).

Appellant pled all required elements to state a Prima facie case for Fraudulent Inducement and Fraudulent Misrepresentation. Appellant pleaded with specificity. Appellant relied on the alleged misrepresentations. Defendant changed the facts of the case, then misrepresented them to the Court. Appellant pleaded that Defendant intended for her to rely on the alleged misrepresentations. Appellant's cause of actions consists of the fourth element, despite Defendants false assertions. Appellant's Second Amended Complaint met the requirement to defeat Defendant's motion to dismiss for failure to state a claim from which relief may be granted. This Court misapplied the law to this matter. Appellant met her burden of proof to defeat dismissal of her complaint in its entirety. (**1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111, Pb179, Pb242**).

Defendant's' contentions are without merit, and utterly false. **Plaintiff never testified during April 2024 oral arguments that she read the settlement**

1 **agreement before signing. Again, Defendants are mischaracterizing Plaintiff's**
2 **oral argument testimony, which has been deleted, and adulterated.** Plaintiff
3 requests that this court doesn't consider it; as it doesn't reflect what actually occurred
4 in the lower court; and during the hearing.
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7 Defendants' contentions are without merit. Plaintiff pled the fraudulent
8 inducement, and misrepresentation claims with specificity to defeat the granting of
9 a motion to dismiss, and/or Summary Judgment in this matter.
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11 Appellant respectfully request that this Court correct the trial court's
12 erroneous ruling in this matter, reverse, and remand this matter to the trial court for
13 further proceedings in the interest of manifested justice.
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16 POINT VII

17 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL
18 COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT'S
19 COMPLAINT IN ITS ENTIRETY, AS SHE PROFERRED A COGNIZABLE
20 CLAIM FOR UNJUST ENRICHMENT, AS SUCH, THIS COURT MISSAPPLIED
21 THE LAW, AND ENTERED AN ERRONNEOUS RULING IN THIS MATTER (
Raised below, Pb10, Pb11, Pb12).

22 Contrary to Defendants assertions, Appellant pleaded all required elements to
23 state a cognizable claim for Unjust enrichment under New Jersey. law." Unjust
24 enrichment is like quantum meruit, but essentially from a different angle. It is, based
25 on society's interest in preventing someone from retaining a benefit without
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1 compensating the party which conferred the benefit. To recover under unjust
2 enrichment: (1) one party must have received a benefit from the other; (2) allowing
3 the receiving party to receive the benefit without compensation would be unjust, (3)
4 the party conferring the benefit expected to be compensated when it conferred the
5 benefit; and (4) the receiving party would be unjust. enriched beyond its contractual
6 rights if it did not have to pay for the benefit. Appellant's Second Amended
7 Complaint met the criteria to defeat Defendant's motion to dismiss for failure to state
8 a claim from which relief may be granted.
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13 Moreover, Defendant continues to state that Plaintiff failed to state that she
14 didn't get the \$14,000. **Plaintiff testified during oral arguments that any money**
15 **obtained was taken back. Therefore, she received nothing from any proposed**
16 **settlement agreement.** Again, Plaintiff's oral argument testimony was deleted, and
17 adulterated. It fails to reflect the true proceeding that took place. The Court failed to
18 consider any of her claims. Instead, it misapplied the law, and outright dismissed
19 Appellant's complaint in its entirety.
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23 To correct a miscarriage of justice that has occurred here, Appellant
24 respectfully requests that this court reverse the lower court's erroneous ruling, and
25 remand the matter back to the trial court for further proceedings on the merits
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POINT VIII

DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED REVERSIBLE ERROR, AS APPELLANT PROFERRED A COGNIZABLE CLAIM FOR INVASION OF PRIVACY, THE COURT MISAPPLIED THE LAW, IT FAILED TO CONSIDER ANY OF APPELLANT'S CLAIMS, AS SUCH, IT ABUSED ITS DISCRETION IN THIS MATTER(Raised below, Pb10, Pb11, Pb12).

All Defendants' contentions are without merit. Appellant filed well-pleaded pleadings stating a claim from which relief could be granted. Appellant was not required to plead with specificity. All elements for a claim under Invasion of Privacy have been met. Appellant pled sufficient facts, and allegations to establish a claim under NJ law for Intrusion upon Seclusion. Appellant met her burden to defeat a motion to dismiss for failure to state a claim from which relief may be sought. Appellant more than demonstrated that the interference by Defendant was highly offensive to a reasonable person, and that the interference with Appellant's seclusion was substantial. More importantly, Appellant described the alleged intrusion by Defendant on Appellant's solitude or seclusion to present date, contrary to Defendants' contentions. Appellant pled sufficient facts, and allegations to state a claim for Public Disclosure of Private facts, and false light under New Jersey Law. All elements to such cause of action were alleged to defeat a motion to dismiss. Despite Defendants' contentions, Appellant's complaint failed to provide a threadbare recitation of elements, rather it met the pleading requirements. The trial Court

1 again failed to consider Appellant’s claims. It misapplied the law. Appellant
2 respectfully request that this Court reverse this erroneous ruling, and remand back
3 to the trial court for further proceedings. (1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49,
4 **Pb76, Pb111, Pb179, Pb242**).

7 POINT IX

8 DEFENDANTS ARE WITHOUT MERIT, AS THE TRIAL COURT COMMITTED
9 REVERSIBLE ERROR IN DISMISSING APPELLANT’S COMPLAINT IN ITS
10 ENTIRETY, AND DENYING HER LEAVE TO FILE AN AMENDED
11 COMPLAINT; IF IT WAS APPLICABLE; AS SHE PROFERRED A
12 COGNIZABLE CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL
13 DISTRESS, THE TRIAL COURT OVERLOOKED PLAINTIFF’S CLAIMS,
14 FAILED TO TAKE ANY OF THEM INTO CONSIDERATION, AND
MISAPPLIED THE LAW TO THIS MATTERSIGNIFYING A CLEAR ABUSE OF
DISCRETION (Raised below, Pb10, Pb11, Pb12).

15 Appellant has pleaded all required elements to state Prima facie claim for the
16 Intentional infliction of emotional distress from which relief could be granted.
17 Defendant again misled the Court as to Appellant’s claim for Intentional Infliction
18 of emotional distress. Specifically, Appellant’s claim is based on the emotional
19 distress suffered because of the **Defendants’ continued, ongoing, pervasive**
20 **harassment, and retaliation, and the acts thereto persisted for over 7 years, to**
21 **present.** Appellant has sufficiently pleaded a claim under the New Jersey statute to
22 defeat a dismissal for failure to state a claim. None of her complaints consisted of
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1 mere conclusions, rather sufficient facts, and allegations. Appellant established
2 prima facie claims for Intentional infliction of emotional distress on the face of her
3 complaints; the circumstances surrounding the claims bespeaks for itself. Moreover,
4 the Intentional Infliction of Emotional distress has been ongoing to present date; and
5 not just occurring prior to April 21, 2021, as falsely alleged by Defendants.
6 Appellant's claims were timely filed within 2 years, and pursuant to the Continuing
7 Violation Doctrine. Appellant alleged that she is suffering extreme mental anguish,
8 and severe distress. **Appellant does not have to allege in her Complaint that she's**
9 **received mental health treatment as contended by the Defendants.** Appellant
10 made the required changes to her complaint using New Jersey model Jury charges
11 as a guide; among other things. Defendant failed to meet the criteria for the granting
12 of the relief sought. The trial Court misapplied the Law when it increased the
13 standard of review for Appellant's pleadings. It overtly made light of Appellant's
14 claims, overlooked, and disregarded them; then just outright **dismissed all** claims
15 contrary, and in conflict with current law. The granting of Defendant's Motion to
16 Dismiss/Summary Judgment, and denial of Plaintiff's Motion for Leave to file an
17 Amended Complaint flies in the face of manifested justice.

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25 Accordingly, in the interest of manifested justice, it is respectfully requested
26 that this Court corrects the lower court's error, reverse the matter, and remand it back
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1 to the trial court for further proceedings on the merits.

3 POINT X

4 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL
5 COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT’S
6 COMPLAINT IN ITS ENTIRETY, AS SHE PROFERRED A COGNIZABLE
7 CLAIM FOR RETALIATION UNDER LAWS AGAINST RETALIATION, AND
8 DISCRIMINATION UNDER NJLAD, AND 42 USC 1981 FOR POST -
9 EMPLOYMENT RETALIATION, THE TRIAL COURT FAILED TO CONSIDER
10 APPELLANT’S CLAIMS, IT MISSAPPLIED THE LAW TO THIS MATTER, AS
11 SUCH, IT HAS ABUSED ITS DISCRETION (Raised below, Pb10, Pb11, Pb12).

12 Defendants misconstrued facts of the case to the trial court. It misled the Court
13 into thinking that Appellant filed an employment action, rather **than post-**
14 **employment action, post-settlement action.** Appellant has clearly stated that this
15 is a post-employment, post-settlement retaliation claim, which is covered under the
16 NJLAD, and 42 U.S.C. § 1981 statues. It is well settled in NJ, who recognizes 42
17 U.S.C. § 1981 retaliation, and discrimination actions. Appellant inadvertently cited
18 the New Jersey statute of limitations for the 1981 action. Appellant respectfully
19 Cross-moved for Leave of Court to file an Amended Complaint to correct her
20 complaint to clarify that she intended to file a 42 U.S.C. § 1981 action. It is clear on
21 the face of Appellant’s complaint that her original intentions were to file under the
22 42 U.S.C. § 1981 statue. Appellant intended to file a 42 U.S.C. § 1981 claim for
23 retaliation, and racial discrimination under the law. See Jones v. R.R. Donnelley&
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1 Sons Co., 541 U.S. 369, 372-73(2004). (2T,6-53,Pb179, Pb242).
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3 In the instant matter, Appellant proffered a claim from which relief could be
4 granted under all retaliation statutes. Appellant is an African American woman who
5 has participated in Protective activity. Defendant falsely alleged that Appellant did
6 not participate in protective activity, which is utterly false. **A settlement agreement,
7 and or any proceeding within the forum of civil rights is protective activity.**
8

9 Appellant specifically filed an action against a previous employer. Appellant has also
10 pled that Defendant continues to intercept in her client pool, and ability to make
11 revenue; as well as intervenes and interferes with her ability to provide care to her
12 clients. Defendant knowingly incorrectly contended that it states that any actions
13 arising out of Appellant's employment is barred by the state court Settlement
14 agreement. **All actions complained about postdates any settlement agreement.**
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16 Defendants are stating that since there was a state court settlement on different,
17 irrelevant matters; it is free to violate state and federal laws against discrimination;
18 and continue to engage in the same activity; in violation of civil right laws; forever;
19 without consequences thereto. Defendants have attempted to use the state court
20 settlement as a shield from all future violations of the NJLAD, and Retaliation laws;
21 both state, and federal. That such assertion is unfounded. To date, Defendants have,
22 and continues to engage in post-employment, and post-state court settlement
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1 harassment, and retaliation in direct violation of the NJLAD; and other race
2 discrimination, and retaliation laws to date. “Title VII makes it unlawful for an
3 employer to discriminate against any individual on 4 the basis of race, color, religion,
4 or national origin. See, e.g., 42 U.S.C. § 2000e 2; *Weston v. Pennsylvania*, 251 F.3d
5 420, 425 (3d Cir. 2001). Section 1981 provides a separate and independent basis
6 from Title VII to allege 5 discriminations in private employment because it prohibits
7 racial discrimination in the performance of contracts, including employment
8 contracts. See 42 U.S.C. § 1981; *Jones v. R.R. Donnelly & Sons Co.*, 541 U.S. 369,
9 372-73 (2004). The NJLAD provides redress for individuals who are the victims of
10 various types of discrimination, including racial discrimination, by an employer. See
11 N.J.S.A. §§ 10:5-3, 10:5-4; *Chugh v. Western Inventory Services, Inc.*, 333 F. Supp.
12 2d 285, 289-90 (D.N.J. 2004).” “Claims brought pursuant to the original version of
13 section 1981 are subject to the applicable state statute of limitations for the
14 underlying injury. See *Jones*, 541 U.S. at 380-82. The applicable New Jersey statute
15 of limitations is two years. See *Stewart v. Rutgers*, 930 F. Supp. 1043, 1047 (D.N.J.
16 1995) (stating that a state’s personal injury statute of limitations, which is two years
17 in New Jersey, applies under section 1981), rev’d on other grounds, 120 F.3d 426
18 (3d Cir. 1997). On the other hand, claims brought pursuant to the 1990 amendments
19 to section 1981 are subject to a four-year statute of limitations. See *Jones*, 541 U.S.

1 at 380-85; see also Chugh, 333 F. Supp. 2d at 294-95.” The Continuing Violation
2 Doctrine is applicable to this matter; as Defendant continued, and continues to
3 engage in ongoing harassment, and retaliation, constituting a pattern of series acts;
4 rather than discrete acts here, and there. More importantly, the Discovery rule is
5 applicable to this matter. See *Roa v. LAFE*, __ N.J. __, 2 N.J. Lexis 3 (Jan. 14, 2010),
6 where “the Court reached a different conclusion regarding the impact of the statute
7 of limitations on plaintiffs’ claim that the cancellation of Fernando’s health insurance
8 constituted unlawful retaliation under the LAD. The Court held that although that
9 claim was in some sense related to plaintiffs barred wrongful termination claims, as
10 a “discrete act” it must be analyzed separately to determine whether it also was
11 barred by the statute of limitations. Although the cancellation of coverage claim, like
12 the wrongful termination claims, was filed more than 2 years before plaintiffs filed
13 their complaint, the Court held that it was saved from the bar of the statute of
14 limitations by the “discovery rule.” The Court noted that the “discovery rule” is a
15 well-established equitable principle that delays the running of the statute of
16 limitations until the time the claimant learns or should have learned of the act giving
17 rise to his claim. In this regard, the Court observed that plaintiffs had not learned of
18 the cancellation of insurance until November 11, 2003, less than 2 years prior to the
19 filing of their Complaint. Accordingly, by application of the discovery rule plaintiffs’
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1 claim of retaliation based on the cancellation of their medical insurance was not
2 barred time. (1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111, Pb179, Pb242).

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4 As in the instant matter, both the Continuing Violation Doctrine, and
5 Discovery are applicable to this matter. More importantly, Appellant also alleges a
6 cognizable cause of action for Retaliation under NJ State laws, and 42 U.S.C. §1981
7 which state a claim from which relief may be granted. Appellant could have filed her
8 claims in federal or state. Defendant attempted to mislead the trial Court by falsely
9 alleging that Appellant filed a discrimination claim not grounded in state or federal
10 retaliation, and discrimination law, because her computer could not make the symbol
11 that goes between the USC and 1981. Despite any typographical errors, Appellant
12 filed her retaliation claims pursuant NJLAD, Title VII, and 42 USC 1981 laws
13 governing race discrimination, and retaliation. New Jersey law recognizes Section
14 42 US 1981 claims. (1T-4a-62a, 2T-6-53, Pb13, Pb 33Pb49, Pb76, Pb111, Pb179,
15 Pb242).

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17 More importantly, post-employment actions are also recognized under New
18 Jersey law. In the United States, post-employment retaliation is a legal term that
19 refers to an employer's retaliatory actions against a former employee who has filed
20 a complaint or lawsuit against the employer. To prove a claim for post-employment
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1 retaliation, the employee must demonstrate a link between the protected activity
2 being done and the adverse action against them. The trial Court overtly misapplied
3 the law to the matter. Appellant met her burden of proof in establishing a claim for
4 Retaliation.
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7 Appellant pointed out errors within her complaint that was discovered. She
8 reported to this Court that her pleadings had been changed. Instead of this Court
9 permitting Appellant Leave to Amend her Complaint, the trial Court ruled that no
10 amendment would preclude the defeat. Defendant contended that Appellant failed to
11 allege a retaliation claim under NJ, or federal law. Specifically, it contended that
12 there was no such rule, or cause of action alleged by Appellant. Appellant's computer
13 couldn't make the symbol between 42 US 1981.
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17 However, it was clear that she was referring to the same statute previously used
18 under retaliation laws. Hodge vs. McGrath is inapplicable to this matter. In that case
19 Plaintiff filed a cause of action for harassment, where at that present time NJ did not
20 recognize such. Defendant attempted to misapply Hodge, supra to the instant matter.
21 It falsely alleged that Appellant filed a retaliation claim under NJ law that is not
22 recognized. On the face of Appellant's complaint, she filed a claim under 42 USC
23 1981. She inadvertently wrote that it was under New Jersey law referring to the NJ
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1 statute of limitations for the 42 USC 1981. She crossed moved to file an Amended
2 Complaint correcting the inadvertence, to clarify her intentions. All retaliation
3 claims filed by Appellant are recognized in both state and federal law.
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6 More importantly, several of Plaintiff's claims were time barred, see Hodge,
7 supra. That is not the case here. Plaintiff in Hodge vs. McGrath had issues with its
8 complaint that does not exist here in the instant matter. Once again, Defendant
9 attempted to input its own words, and meanings into Appellant's Second Amended
10 Complaint; to fit another irrelevant case. The instant matter is distinguished from
11 Hodges, supra. Appellant followed the court's instructions, referring to the NJ Model
12 Jury Charges, and has filed well-pled complaints grounded in law, despite the
13 inadvertent reference to the NJ statues of Limitations.
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17 Furthermore, Defendant cited Hammer v. Hair Sys. Inc., which is inapplicable
18 to this matter. Appellant sought leave to correct such error noticed when drafting her
19 reply to Defendants' motion to dismiss. In the interest of manifested justice,
20 Appellant was denied an opportunity to make such corrections pursuant to Leave to
21 Amend. Such denial flies in the fact of manifested justice.
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25 Moreover, **Defendants' contentions that Plaintiff has also included a**
26 **retaliation claim pursuant to Section 1981 of the NJ state law. No such New**
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1 **Jersey law or statute exists, and therefore the Trial Court correctly dismissed**
2 **Count X of Plaintiff’s Second Amended complaint.” Is without merit. Plaintiff**
3 **corrected the typographical error. More importantly, the fact that Plaintiff was**
4 **filing a US 42 Section 1981 cause of action was made clear v Appellant via her**
5 **amended complaints, and during oral arguments.** The Defendant continues to
6 point out previous litigation, and cases filed by Plaintiff. However, it fails to point
7 out that the 2017 federal claim was filed under 42 USC 1981. Therefore, it was clear
8 on the face of the complaint that that was the same claim that Plaintiff was filing;
9 but for a typo or change made not by Plaintiff. More importantly, the third amended
10 complaint that the trial court denied Plaintiff the right to file contained the correction
11 of the statute under federal and state law. The trial court was fully aware of the
12 clarification, and the dismissal with prejudice on this claim signifies a clear abuse of
13 discretion.

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20 Appellant respectfully requests that this court reverse the trial court’s
21 erroneous ruling in this matter, and remand it back to the trial court for further
22 proceedings, as the trial court misapplied the law.
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POINT XI

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2 DEFENDANTS CONTENTIONS ARE WITHOUT MERIT, AS THE TRIAL
3 COURT COMMITTED REVERSIBLE ERROR, AS APPELLANTPROFERRED
4 A COGNIZABLE CLAIM FOR THE ENTRY OF INJUNCTIVE RELIEF, AS
5 APPELLANT’S COMPLAINTS HAS MERIT, THE TRIAL COURT
6 MISSAPPLIED THE LAW TO THIS MATTER, IGNORED ALL OF
7 APPELLANT’S CLAIMS, AND PLEADINGS FOR ASSISTANCE WITH
8 ONGOING HARRASSMENT, AND RETALIATION; AND IT OUTRIGHT
9 ARBRITRARILY DISMISSED APPELLANT’S COMPLAINT IN ITS
10 ENTIRETY, DENYING LEAVE TO FILE AN AMENDED COMPLAINT; IF IT
11 WAS APPLICABLE; AND ENTERING JUDGMENT IN FAVOR OF
12 DEFENDANT; DESPITE ITS FAILURE TO MEET ITS BURDEN OF
13 PROOF(Raised below, 2TPb10, Pb11, Pb12). _

14 All the Defendants’ arguments proffered to the trial court were meritless.
15 Appellant met all standards for the granting of Injunctive relief on the face of her
16 complaints. She proved all elements, and established criteria for the granting of
17 Injunctive relief. Specifically, she has more than established irreparable harm, legal
18 rights, and material facts. All allegations contained within Appellant’s complaints;
19 alleged a cognizable claim from which relief may be sought. The Second Amended
20 Complaint was meritorious and can be proven before a jury. Appellant has
21 established clear, and convincing evidence on all elements supporting the entry of
22 Injunctive relief, contrary to Defendants’ contentions. Appellant has demonstrated
23 reasonable probability of success on the merits of her claims, if not all claims
24 contained within her complaint. Defendant continues to engage in the very acts, in
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1 violation of civil rights laws; as it did from 2017 to present. In the interest of justice,
2 and irreparable harm, the trial court should've granted Appellant's Injunctive relief
3 against Defendant. "Harm or potential harm to the franchisor's reputation and/or
4 goodwill is often cited as evidence of irreparable harm,²⁰⁹ because "[a] trademark
5 epitomizes the goodwill of a business."²¹⁰ This type of harm is irreparable because
6 "a former franchisee's continued use of a franchisor's marks after termination of the
7 franchise agreement poses a substantial risk to the franchisor's brand reputation and
8 goodwill."²¹¹ The harm to goodwill is inherently irreparable because "„it is virtually
9 impossible to ascertain the precise economic consequences of intangible harms, such
10 as damage to reputation and loss of goodwill,"" which makes the argument of
11 irreparable harm even stronger.²¹² "In cases involving competing businesses
12 offered by a former franchisee, the „potential harm . . . arises from [the franchisee]'s
13 ability to trade on the knowledge and customer relationships gained as a . . .
14 franchise, which impacts on [the franchisor]'s good will and its interest in re-
15 franchising the market."²¹³ Courts have articulated irreparable harm based on
16 potential harm to goodwill and reputation in a number of different scenarios. One
17 court found harm to the "valuable name and trademark" of a well-known, national
18 franchisor as the injury "especially justifying injunctive relief," because of the
19 considerable effort and money the franchisor invested in developing the goodwill
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1 associated with the name.²¹⁴ Similarly, another court stated that a franchisor
2 offering ²⁰⁶ See, e.g., *Sylvan Learning Inc.*, 795 F. Supp. 2d at 1299; *Dunkin’*
3 *Donuts Franchised Rests. LLC*, 2011 WL 6026129, at *6; *Krispy Kreme Doughnut*
4 *Corp.*, 725 F. Supp. 2d at 398. ²⁰⁷ *Krispy Kreme Doughnut Corp.*, 725 F. Supp. 2d
5 at 397; see also *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999) (same).
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7 ²⁰⁸ *Sylvan Learning Inc.*, 795 F. Supp. 2d at 1299. ²⁰⁹ *Buffalo Wild Wings Int’l,*
8 *Inc.*, 829 F. Supp. 2d at 845-46; *Century 21 Real Estate, LLC v. Destiny Real Estate*
9 *Props.*, 4:11-CV-38 JD, 2011 WL 6736060, at *7 (N.D. Ind. Dec. 19, 2011). ²¹⁰
10 *Dunkin’ Donuts Franchised Restaurants LLC*, 2011 WL 6026129 at *6 (quoting
11 *Dunkin’ Donuts Inc. v. N. Queens Bakery, Inc.*, 216 F. Supp. 2d 31, 40 (E.D.N.Y.
12 2001). ²¹¹ *Buffalo Wild Wings Int’l, Inc.*, 829 F. Supp. 2d at 846. ²¹² *Ty, Inc. v.*
13 *Jones Group*, 237 F.3d 891, 902 (7th Cir. 2001) (quoting *Abbott Labs. v. Mead*
14 *Johnson & Co.*, 971 F.2d 6, 16 (7th Cir. 1992). ²¹³ *Singas Famous Pizza Brands*
15 *Corp. v. New York Adver. LLC*, No. 10 Civ. 8976(RJH), 2011 WL 497978, at *8
16 (S.D.N.Y. Feb. 10, 2011), *aff’d*, 468 F. App’x 43 (2d Cir. 2012) (citing *ServiceMaster*
17 *Residential/Commercial Serv., L.P. v. Westchester Cleaning Serv., Inc.*, No. 01 Civ.
18 2229(JSM), 2001 WL 396520, at *3 (S.D.N.Y. Apr. 19, 2001)). ²¹⁴ *Century 21 Real*
19 *Estate, LLC*, 2011 WL 6736060, at *7. 999.002/593385.6 ²⁹ evidence that “its
20 marks are widely known and associated exclusively” with the franchisor and its
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1 approved franchisees has a strong showing of irreparable harm because the marks
2 “represent and embody [the franchisor’s] considerable goodwill and favorable
3 reputation,” and any damage would be irreparable.²¹⁵ Another court stated that, in
4 a situation where the infringement arises because the franchisee continues to operate
5 as a business similar to the franchisor’s, the danger of lost goodwill “can be
6 particularly true where the [franchisee’s] business operates out of the same
7 location” because the franchisee operating as a “renegade . . . franchise” could more
8 easily damage the franchisor’s reputation if customers believe the franchisor is
9 authorizing the franchise.
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14 Plaintiff demonstrated a reasonable probability of success on the merits of her
15 claims. She more than proved clear and convincing evidence that she will be
16 irreparably harmed in the absence of said injunction, and that harm was imminent,
17 concrete, and nonspeculative.
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20 As such, the trial Court not only misapplied the law in this matter, but it
21 overlooked, disregarded, did not consider, and made light of Appellant’s complaints.
22 The record supports a prima facie case for ongoing, continuous harassment,
23 discrimination, and retaliation. A clear miscarriage of justice has occurred in this
24 matter. Appellant respectfully request that this Court correct the trial courts errors
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1 and reverse this matter in the interest of manifested justice.

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3 POINT XII

4 DEFENDANT’S ARGUMENTS ARE WITHOUT MERIT, AS THE TRIAL
5 COURT ABUSED ITS DISCRETION IN DENYING APPELLANT THE
6 OPPORTUNITY TO FILE A THIRD AMENDED COMPLAINT. (Pa10).

7 Rule 4:9-1 requires that motions for leave to amend be granted liberally.....
8 Plaintiff met the standard for the filing of a third amended complaint. She prove that
9 the amended complaint would correct any deficiencies, that it would not be futile,
10 and that defendants would suffer no prejudice. The excerpts from the oral argument
11 that Defendants seek to put before this court; again are adulterated, consisting of
12 pertinent deleted portions. Therefore, if fails to reflect would truly took place during
13 the oral argument proceedings. Because, the excerpts fail to include the total
14 testimony, and signifies mischaracterization of Plaintiff’s testimony; she request that
15 its not considered by this court.
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20 In short, the trial court abused its discretion in denying Appellants motion for
21 Leave to file an Amended Complaint. It is respectfully requested that this court
22 reverse this matter, and remand it back to the trial court for further proceedings on
23 the merits.
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POINT XIII

THE DEFENDANTS' ARGUMENTS ARE WITHOUT MERIT, AS THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR RECONSIDERATION. (Pa12).

Defendants' contentions that the trial court didn't abuse its discretion in denying Plaintiff's Motion for Reconsideration is without merit. "Reconsiderations should be used for those cases...1)the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2.) its obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence.: Fusco v. Bd. Of Educ., 349 N.J. Super. 455, 462(App. Div.2002)(citing D'atria v. D'Atria, 242 N..J. Super. 392, 401 (Ch. Div. 1990); R.4:49-2; accord Cummings, 295 N.J. Super. At 384).

Plaintiff has proved that the trial court acted in an arbitrary, capricious, and unreasonable manner in the handling of this matter. She had demonstrated that this court failed to consider any of her well-pled, cognizable claims. It overlooked all of her meritorious claims, defenses, and profered evidence.

Contrary to Defendants' assertions, Plaintiff didn't just reargue the same arguments; rather bought it to the trial courts attention that it misapplied case, and statutory law; as well as provided the wrong legal standards to this matter. The events

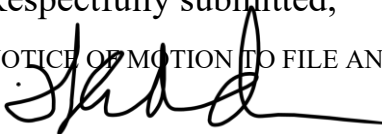
1 that occurred in the trial court fit within the rule for reconsideration. The decision to
2 dismiss Plaintiff's complaint in its entirety; not applying the New Jersey state court
3 pleading requirements to this matter, and granting of Summary Judgment as a matter
4 of Law at the premature stage; without notice of conversion, and opportunity for
5 discovery; and then tricking a Pro se litigant; supports Appellants' contentions that
6 the rulings by the trial court in this matter were arbitrary, capricious, and
7 unreasonable.
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11 As such, the denial of Plaintiff's motion for reconsideration signifies an abuse
12 of discretion. In the interest of manifested justice, it is respectfully requested that
13 this correct undue this injustice, and reverse this ruling, and remand to the trial court
14 for further proceedings.
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17 CONCLUSION

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19 For foregoing reasons, Appellant respectfully requests that this Court
20 reverse the trial court's rulings in this matter, denying Appellant's Motion for Leave
21 to File an Amended Complaint, and granting Defendants' Motion to Dismiss For
22 Failure to State a Claim/Summary Judgment with prejudice, in the interest of
23 manifested justice. All rulings by the trial court have been clearly erroneous,
24 arbitrary, capricious, unreasonable, and are not supported by the record.
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27 Respectfully submitted,
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Tonnesha Kidd,
Plaintiff/Appellant-Pro se