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ALAN R. LEVY and LISA S. VANDEVER-LEVY, *Plaintiffs/Counter-Defendants,* vs. THOMAS O'REILLY, JOANNA PAPADAKIS, BILL TOMKIEWICZ, RAHWAY COMMUNITY VOICE, JOHN DOES 1-10 (FICTITIOUS NAMES REPRESENTING UNKNOWN INDIVIDUALS) AND/OR XYZ CORP. 1-10 (FICTITIOUS NAMES REPRESENTING UNKNOWN CORPORATIONS, PARTNERSHIPS, AND/OR LIMITED LIABILITY COMPANIES OR OTHER TYPES OF LEGAL ENTITIES), *Defendants/Counter-Plaintiffs.*	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: UNION COUNTY DOCKET NO.: UNN-C-0088-24 Civil Action **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS/COUNTER-DEFENDANTS' ORDER TO SHOW CAUSE**

1.0 PRELIMINARY STATEMENT

Defendants' Counterclaim is a quintessential "SLAPP" suit (Strategic Lawsuit Against Public Participation) that seeks to silence and penalize Plaintiffs for engaging in protected public participation, in violation of the Uniform Public Expression Protection Act ("UPEPA"). See N.J.S.A. § 2A:53A-49 *et. seq.* Two of the most fundamental principles of New Jersey's UPEPA is to protect: 1) freedom of speech and 2) the right to petition the government on "matters of public

concern." See N.J.S.A. § 2A:53A-50(b)(3). Since the right to petition is sacrosanct, even an unsuccessful motion counts as "petitioning activity" that is protected by the UPEPA. There is not, nor can there be, tort liability for filing a motion. That is precisely what the litigation privilege is. Otherwise, every failed motion would be subject to an abuse of process claim. That is not, and has never been, the law.

Since the counterclaim is targeted at both UPEPA-protected activities, Plaintiffs/Counter-Defendants ALAN R. LEVY and LISA S. VANDEVER-LEVY ("Plaintiffs") seek the following relief: 1) Granting Plaintiffs' Order to Show Cause Dismissing Defendants/Counter-Plaintiffs' ("Defendants") Counterclaim for Malicious Abuse of Process dated 7/21/25 with prejudice, pursuant to N.J.S.A. §§ 2A:53A-51 & 55; 2) Awarding Plaintiffs' court costs, reasonable attorneys' fees, and reasonable litigation expenses pursuant to N.J.S.A. § 2A:53A-58; and 3) Granting such other relief that the Court determines is equitable and just.

2.0 PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Plaintiffs filed this lawsuit to vindicate free speech rights protected by Article I of the New Jersey State Constitution. (See **Exhibit A**) While there was no direct government action, the New Jersey State Constitution protects free speech as a positive right and not a mere negative restriction on government. Accordingly, even private property can be subject to free speech claims. See State v. Schmid, 84 N.J. 535 (1980) citing Pruneyard Shopping Ctr. v. Robins, 447 U.S. 74 (1980) (upholding a State Constitution's "positive right" to free speech). On 2/18/25, this Court denied Defendant, THOMAS O'REILLY's ("O'REILLY") Motion to Dismiss, holding that Plaintiffs properly alleged they were censored and banished from the Rahway Community Voice based on Defendants' unconstitutional viewpoint discrimination. (See **Exhibit B**) After the Motion to Dismiss was denied, Defendant, O'REILLY filed an Answer on 3/4/25 while Defendants

JOANNA PAPADAKIS ("PAPADAKIS") and BILL TOMKIEWICZ ("TOMKIEWICZ") filed an Answer on 4/9/25. (See **Exhibits C and D**)

On 4/21/25, Plaintiffs filed a Motion to Disqualify Counsel from representing all three Defendants based upon conflicts of interest amongst all three Defendants, as well as their ongoing representation of the CITY OF RAHWAY. (See **Exhibit E**) On 5/15/25, in addition to opposing Plaintiff's Motion to Disqualify Counsel, Defendants filed a Cross-Motion for Leave to add a Counterclaim against Plaintiffs alleging Malicious Abuse of Process. (See **Exhibit F** at pages 16-18) On 6/2/25, Plaintiffs filed their Reply Brief in support of the Motion to Disqualify and Opposition to Defendants' Cross-Motion to assert its Counterclaim. (See **Exhibit G**) On 6/24/25, the Court denied Plaintiff's Motion to Disqualify Counsel. (See **Exhibit H**) On 7/11/25, the Court issued an Order & Decision Granting Defendants' Motion for Leave, and on 7/21/25, Defendants filed their Counterclaim alleging Malicious Abuse of Process. (See **Exhibit I and Exhibit J**)[1]

While this Court did deny the Disqualification motion, it was brought in good faith and for its stated purpose. Meanwhile, the Counterclaim is brought in bad faith and was brought without a legitimate motive. The entire premise of the counterclaim is that, since the Levys sent emails Defendants did not like and wrote public social media posts "intimidating" Defendants' law firm, their filing a motion to relieve counsel was then transformed into a tactic to seek an advantageous settlement. This theory is both novel (not in a good way) and unsupportable. More importantly, Defendants' Counterclaim violates the UPEPA, hence Plaintiffs have filed this Order to Show Cause pursuant to N.J.S.A. §§ 2A:53A-51.

3.0 LEGAL ARGUMENT

[1] Defendants' Counterclaim heading says "Malicious Use of Process," which is an obvious typographical error.

3.1 The Anti-SLAPP law overview

New Jersey's Anti-SLAPP statute is a version of the Uniform Public Expression Protection Act ("UPEPA"). See N.J.S.A. § 2A:53A-49 *et. seq.*; see also, Satz v. Starr, ___ N.J. Super. ___, 2025 WL 1522032, *4 (App Div. 2025) (approved for publication on May 29, 2025); Paucek v. Shaulis, ___ F.R.D. ___, 2025 U.S. Dist. LEXIS 85976 (D.N.J. May 6, 2025); Stern v. Thomasson, 2025 N.J. Super. Unpub. LEXIS 1497 (Law Div. July 28, 2025) (The Hon. Robert J. Mega, P.J.S.C.) "In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it." N.J.S.A. § 2A:53A-60.[2] This law provides an expedited procedure for the dismissal of lawsuits that seek to chill the exercise of fundamental constitutional rights. Those rights include speech and petition, both of which are impacted by the counterclaim.

In deciding a UPEPA motion, the Court follows a three-step analysis. See Stern supra at *7. First, under Section 55(a)(1), the moving party must establish that the cause of action asserted against them is "based on" the movant's:

1. communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
2. communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
3. exercise of the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United States Constitution or

[2] The UPEPA mandates the court hear the order to show cause "as expeditiously as possible[,]" N.J.S.A. § 2A:53A-53, and that "[t]he court shall rule on an order to show cause . . . as soon as practicable after a hearing." N.J.S.A. § 2A:53A-56. Additionally, the statute imposes a presumption on the court to enter a stay of the underlying action while it is considering the order to show cause. See N.J.S.A. § 2A:53A-52.

the New Jersey Constitution, on a matter of public concern. [N.J.S.A. § 2A:53A-50(b).];

Stern at *7-8.

Once the movant makes this showing, the burden shifts to the non-movant, who may avoid application of the statute only by demonstrating that their causes of action fall within one of the statute's enumerated exceptions, such as claims asserted against a governmental entity or against a person engaged in the sale or lease of goods or services where the challenged communication stems from that commercial transaction. See Id. at *8. This clearly does not apply here.

Thus, the Court proceeds to the final step: determining whether the non-movant has met their burden to establish a prima facie basis for the claim or whether dismissal is warranted. N.J.S.A. § 2A:53A-55(a) states Defendants' Counterclaim must be dismissed if: (a) Defendants fail to establish a prima facie case as to each essential element of any cause of action in the Counterclaim; or (b) Plaintiffs establish that Defendants failed to state a cause of action upon which relief can be granted in their Counterclaim; or (c) Plaintiffs establish there is no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter of law on the Counterclaim. See Paucek, at *22-23.

Finally, if a Movant prevails the Court must award costs, reasonable attorney's fees, and reasonable litigation expenses related to the filing of the Order to Show Cause. See N.J.S.A. § 2A:53A-58(1); Paucek, at *25 (holding UPEPA's fee-shifting provisions is "an important economic incentive reflecting the Legislature's intention to broadly protect free speech rights").

3.2 UPEPA Applies Because this Case is Based on Both Speech and Petitioning

The UPEPA "applies to a cause of action asserted in a civil action against a person 'based on' the person's: . . . exercise of the right of freedom of speech or of the press, the right to assembly

or petition, or the right of association, guaranteed by the United States Constitution or the New Jersey Constitution, on a matter of public concern." N.J.S.A. § 2A:53A-50(b)(3); see also Navellier v. Sletten, 52 P.3d 703, 711 (Cal. 2002) (noting, with regard to California's anti-SLAPP statute, that "[t]he . . . statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning"). In evaluating the application, the Court must "consider the pleadings, the order to show cause application and supporting certifications, briefs, any reply or response to the order to show cause, and any evidence that could be considered in ruling on a motion for summary judgment." N.J.S.A. § 2A:53A-54.

In this case, it is without question that the UPEPA applies. In fact, it *doubly* applies. The abuse of process counterclaim was filed against Plaintiffs ostensibly based on their motion to disqualify counsel. However, Defendants also allege that the counterclaim is based on the Plaintiffs' criticisms of the City, Mayor, and Defendants' law firm; and the fact that they routinely post comments on social media criticizing the City, Mayor, and their law firm. See Counterclaim at ¶6-7. Accordingly, the claim is "based on" public criticism of the government and the government's law firm, which happens to be Defendants' representation here.[3] Thus, the counterclaim is "based on" the Levys' exercise of their freedom of speech on matters of public concern as guaranteed by the New Jersey and U.S. Constitutions.

Even without the anti-speech allegations, the counterclaim was also brought because the Levys filed a motion to disqualify Rainone Coughlin & Minchello, LLC from this action due to

[3] It is ironic and noteworthy that Mr. and Mrs. Levy are outspoken critics of Rainone Coughlin & Minchello, LLC, and the firm is retaliating for that criticism, using Defendants' funds, in a frivolous abuse of process claim. If the motion to disqualify lacked any horsepower when it was filed, it certainly screams "conflict of interest" for a firm to counsel such a poor decision to try and shut down one of its own critics, on its clients' dime, while placing its clients at risk of paying an Anti-SLAPP award, where they have no skin in the game.

their conflicts of interest. The counterclaim further states that the reason the motion was brought was to "obtain a settlement." Counterclaim at ¶10. Whether the Disqualification motion was properly denied or not is a matter for an appellate court to review on a non-interlocutory basis, should Plaintiffs ever seek to pursue that route upon a final judgment. However, Plaintiffs accept that the motion failed. Meanwhile, contrary to Defendants' assertion, a motion that simply failed does not give rise to an abuse of process claim; and the motion to disqualify certainly was not *frivolous*. Even if it were, the counterclaim would still fall under the UPEPA.

4.0 DEFENDANTS' COUNTERCLAIM VIOLATES UPEPA

4.1 UPEPA Protects Petitioning and Speech, and the Claim Attacks Both

The Defendants' counterclaim for malicious abuse of process *per se* triggers an Anti-SLAPP law because it targets petitioning activity. UPEPA applies to lawsuits based on a person's communications in a legislative, executive, judicial, administrative, or other government proceeding and to communications on an issue under consideration by any of those bodies. N.J.S.A. § 2A:53A-50(2)(b)(1)-(2). It also applies to speech on matters of public concern. Id. at 2A:53A-50(2)(b)(3). It is unusual for an Anti-SLAPP law to be triggered by claims against both speech and petitioning activity, but this case has met that unusual condition, because the counterclaim is brought against Plaintiffs' petitioning activity and the text of the counterclaim explicitly admits that it is "based on" protected speech.

4.2 The Levys' *Speech* is Protected by the Anti-SLAPP law

Defendants' counterclaim's intent is to punish Plaintiffs for engaging in politically critical speech, despite the fact that doing so is clearly unconstitutional. Rocci v. Ecole Secondaire Macdonald-Cartier, 165 N.J. 149, 158 (2000) ("Speech related to matters of public concern occupies the highest rung of the hierarchy of First Amendment values, and such speech

requires maximum protection"). Defendants' censorious intent could not be clearer when reading the black and white text of their counterclaim, specifically Counts #6 and #7 which states:

> 6. Plaintiffs are admitted critics of the City of Rahway, its Mayor, and the law firm of Rainone Coughlin Minchello.
> 7. Plaintiffs routinely post comments on social media sites criticizing the City, its Mayor, and this law firm.

It is unusual that a SLAPP suit plaintiff is so comfortable admitting that its intent is to punish the defendant (or in this case, counter-defendant) for political speech. That makes this Court's job easy. It is refreshing that the counterclaim does not try to hide its motive. What this is really about is that the Levys criticized Defendants and Rainone Coughlin & Minchello.[4] Not only is Defendants' intolerance to critical political free speech obvious for all to see; but it is also noteworthy in the current context of the dispute that Defendants' counterclaim complains about criticism of the Rainone Coughlin firm, even though this law firm is often the subject of ***public*** critical political speech and criticism.[5]

Plaintiffs' right to engage in such speech is entitled to robust protection from the Federal and State Constitutions. "Speech involving matters of public concern needs adequate breathing room in a democratic society [to promote] unrestrained debate." Senna v. Florimont, 196 N.J. 469, 498 (2008) (citing N.Y. Times Co. v. Sullivan, 376 U.S. 254, 272 (1964)); Binkewitz v. Allstate

[4] This raises the question of whether the counterclaim was brought for the interests of the Defendants or for the interests of the law firm. It is unusual to see a client who authorizes an entire claim to punish another party for criticizing their lawyers. The law firm of Rainone Coughlin & Minchello is promoting their own interests while creating nothing but risk for their clients. On its face, the purpose of the Counterclaim is to silence Plaintiffs from engaging in political speech that the City, the Mayor, and Rainone Coughlin & Minchello don't like.

[5] "Assembly speaker's law firm has made millions since he took power. Critics cry foul." April 25, 2024: The Star Ledger (NJ). https://www.nj.com/politics/2024/04/assembly-speakers-law-firm-has-made-millions-since-he-took-power-critics-cry-foul.html "Income for Coughlin's law firm doubled during his first year as speaker." July 17, 2019: Politico, https://www.politico.com/states/new-jersey/story/2019/07/17/income-for-coughlins-law-firm-doubled-during-his-first-year-as-speaker-1103416

Ins. Co., 222 N.J. Super. 501, 515 (App. Div. 1988) ("An action for tortious interference based on the same verbal conduct would equally chill the free expression we seek to protect").

Viewed in full context, the chilling effect of Defendants' Counterclaim is a message to political critics: if you express criticism of elected officials on public forums or Rainone Coughlin & Minchello, you do so at your own peril. Not only will you be silenced, but if you use the Courts to petition for your Constitutional rights, you will face additional punishment like the subject Counterclaim. Hence, the Court must take a stand in favor of Free Speech and grant Plaintiffs' Order to Show Cause pursuant to the UPEPA.

4.3 The Levys' *Petitioning* is Protected by the Anti-SLAPP law

Even if we were to ignore every flashing sign that says: "this is to punish speech criticizing the government and Rainone Coughlin & Minchello," we would still have an unsupportable SLAPP suit before us. Because this counterclaim was brought to punish the Levys for *petitioning activity* – namely the filing of a motion to disqualify Rainone Coughlin & Minchello. Even without these admissions of improper motive, the Anti-SLAPP law is properly invoked. Defendants have simply given the Court two prongs upon which its grant of the motion may independently hang.

A counterclaim for abuse of process *per se* triggers an Anti-SLAPP law because it targets petitioning activity. While New Jersey's UPEPA is rather new, it is nearly universal that where there is an Anti-SLAPP law, it applies in abuse of process or other litigation privilege cases. See Hidalgo v. Watch City Constr. Corp., 105 Mass. App. Ct. 148, 151 (2024) ("claims for malicious prosecution and abuse of process are based solely on the opposing party's petitioning activity, and thus are prima facie subject to dismissal under the anti-SLAPP statute"); see also Microsoft Corp. v. Media, 2018 U.S. Dist. LEXIS 238438, at *19-20 (C.D. Cal. Mar. 13, 2018) ("Anti-SLAPP motions targeting litigation activity via claims such as abuse of process…are routinely granted based on the litigation privilege."); Lucky Kim Int'l, 2010 U.S. Dist. LEXIS 152023, 2010 WL

11549638, at *3 (granting Anti-SLAPP motion to strike abuse of process counterclaim based on litigation privilege); Blaha v. Rightscorp, Inc., 2015 U.S. Dist. LEXIS 108460, 2015 WL 44776888, at *2-3 (C.D. Cal. May 8, 2015) (granting Anti-SLAPP motion to strike abuse of process claim based on litigation privilege); G.R. v. Intelligator, 185 Cal. App. 4th 606, 619, 110 Cal. Rptr. 3d 559 (2010) (affirming Anti-SLAPP dismissal of invasion of privacy claim based on litigation privilege).

5.0 DEFENDANTS' COUNTERCLAIM FOR MALICIOUS ABUSE OF PROCESS IS MERITLESS UNDER WELL-SETTLED NEW JERSEY LAW

5.1 The Standard For Abuse of Process

Having established that the UPEPA applies, we now must examine the strength of the counterclaim. Doing so makes it clear that the litigation privilege applies and the claim must be dismissed since there is no tort liability for filing a motion in the course of litigation. The standard for abuse of process under New Jersey law requires there must be an improper act that represents a perversion of the legitimate use of process, such that it loses its legitimate function as a reasonably justifiable litigation procedure. See, e.g., Baglini v. Lauletta, 338 N.J. Super. 282, 294 (App. Div. 2001), quoting Penwag Prop. Co., Inc. v. Landau, 148 N.J. Super. 493 (App. Div. 1977) aff'd, 76 N.J. 595 (1978).

The case of Batiz v. Brown, 2013 U.S. Dist. LEXIS 36595 (D.N.J. Mar. 14, 2013), described the usual case of abuse of process as one involving coercion or extortion, where the process is used to compel an action unrelated to its intended purpose, for example, a subpoena to discover information unrelated to the litigation. The Batiz court reiterated that the plaintiff must show a coercive, illegitimate, or improper use of the judicial process, coupled with an ulterior motive and a further act representing the perversion of the process. Id. at *8.

5.2 The Very Actions Alleged are not "Process" Nor Are They Improper

At the outset, and as noted above, there is no remedy in tort for the filing of a motion. A motion is not "process" within the meaning of the tort itself. New Jersey courts define "process" as the "procedural methods used by a court to 'acquire or exercise its jurisdiction over a person or over specific property," including "the 'summons, mandate, or writ used by a court to compel the appearance of the defendant in a legal action or compliance with its orders,'" as well as the "'arrest of the person and criminal prosecution.'" Ruberton v. Gabage, 280 N.J. Super. 125, 131 (App. Div.) (citations omitted), certif. denied, 142 N.J. 451 (1995); see Wozniak v. Pennella, 373 N.J. Super. 445, 461 (App. Div. 2004). The motion to disqualify did not involve the acquisition of jurisdiction over any person or thing. Accordingly, Plaintiffs' Disqualification motion was not even "process" as the law defines it. Hence, the entire counterclaim fails.

Nevertheless, let us hypothetically entertain it further, so that the Court is comfortable that the claim's termination should not be mourned by any sense of justice, and will not be revived by any appellate court. Defendants' Counterclaim alleges that the intention of Plaintiffs' Motion to Disqualify was "to intimidate, harass, and coerce Defendants to obtain a collateral advantage, specifically to obtain a settlement of the Plaintiffs' claim against Defendants." Counterclaim at ¶ 10. Even though the motion was denied, Defendants never alleged in opposition that the Motion, itself, was improper.[6] Nor do collateral intentions matter. "Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." Gambocz v. Apel, 102 N.J.

[6] By failing to pursue relief in accordance with R. 1:4-8, Defendants are precluded from alleging the Disqualification motion was frivolous or improper. See Toll Bros., Inc. v. Township of West Windsor, 190 N.J. 61 (2007); Community Hosp. Group, Inc. v. Blume, Goldfaden, Berkowitz, Donnelly, Fried & Forte, P.C., 381 N.J. Super. 119 (App. Div. 2005); Trocki Plastic Surgery Ctr. v. Bartkowski, 344 N.J. Super. 399, 406 (App. Div. 2001). This is yet *another* ground for dismissal, intertwined with the main argument, but independent in its own right.

Super. 123, 128 (App. Div. 1968) (quoting Prosser, Law of Torts, § 115, pp. 876-77 (3d ed. 1964)). Defendants make no allegation as to improper use, only as to intention. They only allege that it was filed by a critic and was done to try and advance the cause of settling this case.

The mere fact that Plaintiffs may be critics of public officials and Rainone Coughlin & Minchello is immaterial in a claim of malicious abuse of process. However, that seems to be the centerpiece of the counterclaim. In support of their Motion for Leave to File a Counterclaim, Defendants argued: 1) emails between Mr. Levy and Mr. Trelease relating to the underlying litigation, along with 2) Plaintiffs' critical social media posts were evidence of Plaintiff's Malicious Abuse of Process. (See **Exhibit F**)

5.3 The Litigation Privilege Mandates Dismissal

In the 7/11/25 Decision granting the Motion for Leave to assert the Counterclaim, the Court held that the emails between LEVY and TRELEASE could be used because:

> Plaintiffs have waived the right to assert privilege over same as they have placed the subject emails at issue in prior filings.[7]

(**Exhibit I**). While Plaintiffs dispute the finding of any waiver of *any* privilege, it is irrelevant to the claim since emails between counsel are not actionable because communications between counsel do not meet the legal definition of "Process," which has existed for over a century:

[7] The holding that Plaintiffs waived their right to rely upon the immunity provided by the Litigation Privilege appears to be based on a confusion between the doctrines of "Attorney-Client Privilege" with "Litigation Privilege," which have no relationship to one another. The former protects the ***confidentiality*** of a communication; which can be waived if a party discloses it. The latter provides the authors of communications ***absolute civil immunity from claim of Malicious Abuse of Process.*** See Loigman, 185 N.J. at 579, 587-88 (where court held litigants and counsel are "free to pursue the best course charted for their clients without the distraction of a vindictive lawsuit looming on the horizon."); Hawkins, 141 N.J. at 216; see also, O'Brien & Gere Eng'rs, Inc. v. City of Salisbury, 447 Md. 394, 410 (Ct. of Appeals 2016) quoting, Paul T. Hayden, Reconsidering the Litigator's Absolute Privilege to Defame, 54 Ohio.St. L.J. 985, 992 (1993) ("The litigation privilege has been described a more of an immunity for litigators, by contrast to a qualified immunity.") A party cannot "waive" the litigation privilege. That is simply impossible.

> Process in that context has a well understood, if not perfectly defined, meaning. It is typically that which compels a party to appear in court. Usually, process will issue from a court or through counsel with the authority of the court. Most commonly, process consists of a summons, an order to show cause, a court order, a subpoena, a warrant, or even a writ. Williams v. Bd. of Educ., 124 N.J.L. 380 (Sup. Ct. 1940); In re Martin, 86 N.J. Eq. 265, 273-274 (Ch. 1916); R. 5:4-1; R. 4:52-1(b); R. 4:67-1.

State v. Anastasia, 356 N.J. Super. 534, 539 (App. Div. 2003).

Secondly, the counterclaim can only survive if the centuries-old application of the litigation privilege were reversed:

> The litigation privilege generally protects an attorney from civil liability arising from words he has uttered in the course of judicial proceedings. The privilege has deep roots in the common law, dating back to medieval England. E.g., Cutler v. Dixon, 76 Eng. Rep. 886, 887-88 (K.B. 1585) (reasoning that allowing action for words spoken in "course of justice" would hinder litigation for "those who have just cause for complaint"); Buckley v. Wood, 76 Eng. Rep. 888, 889 (K.B. 1591) (holding that "no action lies" for defamation even if words were false when spoken in "course of justice"); Hodgson v. Scarlett, 171 Eng. Rep. 362, 363 (C.P. 1817) ("It is necessary to the due administration of justice; that counsel should be protected in the execution of their duty in Court; and that observations made in the due discharge of that duty should not be deemed actionable.").

Loigman v. Twp. Comm. of Twp. of Middletown, 185 N.J. 566, 579 (2009).

> The absolute privilege applies to "any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action."

Hawkins v. Harris, 141 N.J. 207, 216 (1995); Erickson v. Marsh & McLennan, Co., 117 N.J. 539, 563 (1990) (where court held that even defamatory statements are immune from liability if "made in the course of judicial, administrative, or legislative proceedings."); DeVivo v. Ascher, 228 N.J. Super. 453, 457 (App. Div. 1988) (where court held "an absolute privilege may be extended to statements made in the course of a judicial proceeding even if the words are written or spoken ***maliciously***, without any justification or excuse, and from personal ill will or anger against the party defamed") (emphasis added).

5.4 Noerr-Pennington Mandates Dismissal

Additionally, Defendants' Counterclaim is independently made futile by the Noerr-Pennington[8] doctrine, which holds that parties are immune from civil liability for claims arising from utilizing the Courts in order to object to a violation of their rights. See Main St. at Woolwich, LLC v. Ammons Supermarket, Inc., 451 N.J. Super. 135, 143-144 (App. Div. 2017) (the Noerr-Pennington doctrine provides immunity from "*common-law torts such as malicious prosecution and abuse of process*") (emphasis added); Fraser v. Bovino, 317 N.J. Super. 23, 37 (App. Div. 1998); quoting Prof'l Real Estate Inv'rs., Inc. v. Columbia Pictures Indus., Inc., 508 U.S. 49, 56 (1993); Structure Bldg. Corp. v. Abella, 377 N.J. Super. 467, 471 (App. Div. 2005) (homeowners' group that engaged in unsuccessful litigation against a land developer's effort to obtain subdivision approval was entitled to civil immunity under the Noerr-Pennington doctrine).[9]

5.5 The Counter-Plaintiffs' Theory Is Contrary to New Jersey Public Policy

Additionally, the claimed "ulterior motive" of trying to advance this matter to settlement is hardly a "perversion of the legitimate use of process." Baglini, 338 N.J. Super. at 294. The New Jersey Courts have long held that, "Settlement of litigation ranks high in our public policy." Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) quoting Jannarone v. W.T. Co., 65 N.J. Super. 472 (App. Div.) certif. denied 35 N.J. 61 (1961); "It is the policy of the law to encourage settlements …" Judson v. Peoples Bank and Trust Co., 25 N.J. 17, 35 (1957). Despite all of this, the counter-plaintiffs expect an abuse of process claim to rest upon an allegation that the Levys filed a motion

[8] Derived from United Mine Workers of America v. Pennington, 381 U.S. 657 (1965); Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961) which originally provided civil immunity to parties seeking relief from Antitrust legislation.

[9] Ironically, the reasoning behind the Noerr-Pennington doctrine is often referred to as identical to Anti-SLAPP statutes by courts throughout the nation. See Valenzuela v. My Way Holdings, LLC, 541 P.3d 191, 200 (N.M. 2024); Wagenaar v. Robinson, 2014 U.S. Dist. LEXIS 119112 (D. Nev. 2014) ("The principals behind Nevada's anti-SLAPP statute and the *Noerr-Pennington* doctrine are essentially the same."); Select Portfolio Servicing v. Valentino, 875 F. Supp. 2d 975, 988 (N.D. Cal. 2012).

hoping that it might advance this public policy. That expectation will only be realized if this court decides to deviate from the clear mandates laid down by this State's appellate courts.

The record shows the Levys *had a settlement in place* with two of the defendants. (See **Exhibit E** at pages 6-7) On 2/25/25, Defendants, PAPADAKIS and TOMKIEWICZ reached out to Plaintiff, LEVY in an effort to settle the case and reinstate the Plaintiffs to RCV – which was the whole point of the case. (See id.) TOMKIEWICZ wrote, "Anyway, I'd like to know what you want from this disagreement. ***If it's access to the group, that could have and would have been done long ago."*** (See id.) On 3/10/25, Defendant PAPADAKIS also stated in writing that she had nothing to do with Defendant O'REILLY's decision. (See id.) More importantly, PAPADAKIS stated, "We are all adults here and ***we can come to a resolution in my opinion.***" (See id.) Additionally, on 3/10/25, TOMKIEWICZ stated, "Joanna and I would both be someone that would want to you. Not just because of the conflict, but because were both people that would feel bad about the entire situation and would talk to you just from caring about others. So, let's plan a time that works for all of us." (See id.) In other words, this case was largely resolved.

However, the Rainone Coughlin & Minchello law firm chose to impede that resolution and refused to communicate the fact that Plaintiffs were prepared to settle with at least two of the defendants for no payment at all. It seems quite unlikely that the defendants preferred to 1) continue the case, 2) did not want to know about settlement overtures, and 3) waived any conflict that this decision created.

In the Court's wisdom, there was no conflict of interest here – and this motion seeks no quarrel with that decision to deny the motion. However, the motion was at least colorable, if not victorious, and was brought for a proper purpose – as the Plaintiffs reasonably believed an ethical violation was impeding the resolution of this case. A motion seeking to remove that impediment was an honorable thing to do, even if the Court did not ultimately agree with the motion. It was

certainly not a perversion of the legitimate use of any process (and as discussed above, a "motion" is not "process" anyway.

6.0 CONCLUSION

The Court should grant Plaintiffs' Order to Show Cause and an Order: 1) Dismissing Defendants' Counterclaim with Prejudice, pursuant to N.J.S.A. §§ 2A:53A-51 & 55 and 2) Awarding to Plaintiffs court costs, reasonable attorneys' fees, and reasonable litigation expenses related to the Order to Show Cause pursuant to N.J.S.A. § 2A:53A-58. If Denied, the Counter-Defendants give notice of appeal as a matter of right under N.J.S.A. §2A:53A-57.

Dated: August 28, 2025

By:_____

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