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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

**REPLY MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS/COUNTER-
DEFENDANTS' ORDER TO SHOW
CAUSE**

1.0 PRELIMINARY STATEMENT

Defendants' opposition papers include two sentences that do a more persuasive job proving their Malicious Abuse of Process Counterclaim is an improper SLAPP suit than the Plaintiffs' own Anti-SLAPP application.

The Plaintiffs' furthering acts by way of their disqualification motion and extrajudicial activities are not protected speech or petitioning in any constitutionally recognized sense and the burden is on them to prove they are. These acts are a misuse of the judicial process for collateral and coercive purposes directed at parties not named in this action.

Defendants admit that they filed their Counterclaim because Plaintiffs "routinely post comments on social media sites criticizing the City of Rahway, its Mayor, and the Rainone Coughlin law firm." The Motion to Disqualify Counsel is merely a pretext.¹ The real motivation behind Defendants' Counterclaim is the fact that Levy wrote emails and public social media posts that have apparently hurt some people's feelings.

Criticizing public officials is a fundamental civil liberty. Defendants argue that Plaintiffs' social media comments are "not protected speech in any constitutionally recognized sense and the burden is on them to prove they are." It is difficult to determine which of these positions is more of an anathema to fundamental Constitutional rights: that 1) Defendants believe public criticism of elected officials is not protected speech, or 2) that it is the Plaintiffs' burden to prove that their speech is protected. All the while, Defendants argue that "extrajudicial activities" qualify as a "misuse of judicial process." These things are mutually exclusive. The very definition of "extrajudicial" is that it exists outside of the judicial process.

2.0 DEFENDANTS MISUNDERSTAND NJ's ANTI-SLAPP LAW

New Jersey's Uniform Public Expression Protection Act ("UPEPA") protects petitioning activity (like filing a motion) and speech (like social media speech criticizing public officials and public figures). See N.J.S.A. § 2A:53A-49 *et. seq.* Any claims implicating either right are subject to heightened early-case scrutiny and immunity from suit, not merely a defense against ultimate liability. See *Satz v. Starr*, 482 N.J. Super. 55, 64 (App. Div. 2025) ("The UPEPA mandates the

¹ Even if it were not a pretext, the surface reason and the pretext reason *both* render this a SLAPP suit, and require the court to move on to the analysis of the weakness of the claims prong of UPEPA.

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.”); Stern v. Thomasson, 2025 N.J. Super. Unpub. LEXIS 1497, *7 (Law Div. July 28, 2025) (The Hon. Robert J. Mega, P.J.S.C.); (holding that the UPEPA requires a Court to rule on an Order to Show Cause “[i]n an expeditious manner.”); Paucek v. Shaulis, 349 F.R.D. 498, 510 (D.N.J. 2025) (“The Court must promptly hold a hearing upon the defendant's dismissal motion (UPEPA calls the motion an application for an order to show cause) to dismiss the complaint and rule on the motion ‘as soon as practicable after [the] hearing.’ And if the defendant loses his anti-SLAPP dismissal motion, he may take an immediate interlocutory appeal.)

In this case, Defendants’ Counterclaim seeks to create tort liability due to the filing of a motion to disqualify. That is petitioning activity. The Counterclaim also seeks to punish the Levys for out-of-court criticism, calling *that* an abuse of process. The UPEPA would apply if only one of these conditions were met, but it doubly applies here.

2.1 Anti-SLAPP Laws like UPEPA are to be applied BROADLY not NARROWLY to Protect the Freedom of Speech and Freedom to Petition.

Defendants seek to depart from UPEPA’s mission by arguing for an interpretation of the law that is the polar opposite of what the law says. Defendants argue:

Because dismissal under the UPEPA is considered a drastic remedy, the statute must be narrowly construed to protect against overbroad application that would immunize sham litigation.
(Defendants’ Brief at Page 11)

However, the Legislature made it clear that UPEPA shall be ***broadly construed***.

§ 2A:53A-59. Construction

This act shall be ***broadly construed*** and applied to protect the exercise of the right of freedom of speech and of the press, the right to assembly and petition, and the right of association, guaranteed by the United States Constitution or the New Jersey Constitution. (emphasis added)

In addition, even though the UPEPA is relatively new, the courts which have applied the law have noted that the UPEPA must be “broadly” applied to protect people’s free speech rights. See 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”). Given the fact that the law is new here in New Jersey, the New Jersey legislature was wise enough to mandate that the Courts look to other state jurisdictions in how to interpret an Anti-SLAPP law. § 2A:53A-60.²

Meanwhile, Defendants’ Counterclaim against Plaintiffs for daring to “post comments on social media sites criticizing the City, its Mayor, and this law firm.” (See Counterclaim at ¶6-7) Defendants attempt to argue this Court into reversible error by urging that Plaintiffs are subject to punishment for critical commentary about public officials and public figures, with no constitutional safeguards. This cuts against generations’ worth of constitutional law. See New York Times Co. v. Sullivan, 376 U.S. 254 (1964) (holding that public officials may not recover damages for defamatory falsehoods relating to their official conduct without proof of “actual malice”); Curtis Publ’g Co. v. Butts, 388 U.S. 130 (1967) (extending Sullivan’s actual malice standard to “public figures”); Garrison v. Louisiana, 379 U.S. 64 (1964) (holding that even sharp attacks on public officials are protected unless made with knowing or reckless falsehood); Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988) (holding that public figures cannot recover for

² Anti-SLAPP laws are routinely given broad constructions so that they can apply to a large range of conduct, regardless of what the plaintiff’s cause of action is called. See City of Montebello v. Vasquez, 376 P.3d 624, 628-29, 632 (2016) (noting that California’s Anti-SLAPP law shall be “construed broadly” so as to “encourage continued participation in matters of public significance,” such that acts “in furtherance of” the constitutional rights of free speech and press under the Federal and California constitutions “may extend beyond the contours of the constitutional rights themselves”); Campanelli v. PeaceHealth Sw. Med. Ctr., 565 P.3d 933, 946 (Wash. App. 2025) (finding that “Washington’s anti-SLAPP immunity is intentionally broad” and “tolerates some degree of overinclusiveness”); Panik v. TMM, Inc., 538 P.3d 1149, 2023 Nev. LEXIS 46, *7-8 (Nev. 2023) (finding that, “[c]onsistent with the broad construction that the anti-SLAPP statute is to receive, [the statute] may apply to any cause of action,” and that “we have recognized that anti-SLAPP protections may apply in cases involving a variety of claims for relief”).

intentional infliction of emotional distress without showing Sullivan-level actual malice); Rosenblatt v. Baer, 383 U.S. 75 (1966) (clarifying that criticism of government officials performing public functions lies at the core of First Amendment protection); 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.”).

What the Counterclaim is really about is that Plaintiffs criticized the government and its chosen politically connected law firm.³ Are the counter-plaintiffs in this action, (O’Reilly, Papadakis, and Tomkiewicz) really placing themselves in this position because they take umbrage at criticisms of their lawyers? It seems that the individual Defendants have no skin in this part of the game. If the Defendants felt that the Motion to Disqualify Counsel was improper, they could have simply sought relief pursuant to R. 1:4-8, which would have exposed the Defendants to no risk. The motion would have failed, but at least it would have sought a sanction in a manner that would not expose the Defendants/Counter-plaintiffs to Anti-SLAPP consequences. The Counterclaim seems to be far more about silencing critics of non-parties than vindicating any interests of the parties. Defendants’ counsel’s intolerance to critical political free speech is obvious. Moreover, Plaintiffs are hardly the only people who have made the exact same criticism of the Rainone Coughlin law firm in a public setting.⁴

³ For example, Mr. Trelease complains about Levy’s social media posts that criticize how his law firm represents the Rahway City Government and engages in “pay to play” activities. While these critical comments may cause the attorneys at his law firm to take umbrage, are they not protected by the Federal and State Constitution? Are these comments not “matters of public concern?”

⁴ “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>

Defendants argue that Plaintiffs statements “are not protected speech or petitioning in any constitutionally recognized sense and the burden is on them to prove they are.” It is difficult to make a concise statement about how wrong this statement is. The Defendants fail to “recognize” how the Constitution protects critical speech. Plaintiffs’ right to engage in such speech is entitled to robust protection from both 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 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”).

Even if the Court ignores the Defendants’ assault on the basic nature of the First Amendment, Defendants’ attack of Plaintiffs’ right to petition is equally offensive to the UPEPA. Even if Mr. Trelease did not, in writing, confirm the pretext, and this was a “clean” claim – it still implicates UPEPA because it is aimed at petitioning activity.

While not all counterclaims do not automatically trigger Anti-SLAPP protection, **counterclaims for abuse of process *per se* trigger an Anti-SLAPP law because they target petitioning activity.** 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, Inc. v. SEO In Corp, 2010 U.S. Dist. LEXIS 152023, 2010 WL 11549638, at *3 (C.D. Cal. June 3, 2010) (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).

Of course, this does not mean that the motion must automatically be *granted*. It means that the motion has cleared the first hurdle (again *twice*) because the counterclaim is aimed at both petitioning (the filing of a motion) and aimed at speech (social media posts criticizing the government and its law firm). We now move to the additional prongs of the UPEPA.

2.3 An Order to Show Cause is the Only Allowable Mechanism for UPEPA.

In an argument that really is just an unnecessary side show, Defendants object to Plaintiffs filing this UPEPA application by way of an Order to Show Cause.

In a UPEPA application, a party “may” file an application for an Order to Show Cause. See N.J.S.A. 2A:53A-51. The Plaintiffs did not have to take this route and instead could have filed a Motion to Dismiss under Rule 4:6-2(e).

(Defendants’ Brief at page 10)

The heading for N.J.S.A. 2A:53A-51, which states:

§ 2A:53A-51. *Order, show cause*

Not later than 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this act applies or at a later time on a showing of good cause, the party may file an application for an order to show cause with the court to dismiss the cause of action or part of the cause of action. (emphasis added)

The statute could not be clearer that the mechanism to seek relief under the UPEPA is an Order to Show Cause. This court made this exact finding. See Stern v. Thomasson, at *7 (“This statutorily-codified defense to SLAPP suits permits defendants to seek dismissal of such a suit upon an order to show cause. N.J.S.A. 2A:53A-51.”).

2.4 **The Crowe Factors are Irrelevant: Plaintiffs Seek Statutory, not Emergent Relief.**

Defendants' reliance on the standards in Crowe v. DeGoia, 90 N.J. 126 (1982) is inapt, since Crowe applies to applications for emergent relief or injunctions, which the Plaintiffs are not seeking. In this application, Plaintiffs seek *statutory* relief which is outlined in the UPEPA, not emergent relief. Hence, Crowe has no relevance in this application. The factors for weighing this UPEPA application are clearly laid out in Section 55 of the statute. See Stern v. Thomasson, at *7-8; Paucek, at *22-23).

2.5 **UPEPA Does Not Require the Counterclaim be a State Action**

On pages 19-20 of their Opposition, Defendants' write, "Free speech jurisprudence prohibits governmental infringement on free speech rights; it does not apply to private conduct. See State v. Schmid, 84 N.J. 535, 559, (1980)." After more than a year of this litigation, Defendants still appear to ignore what Schmid actually says. This Court's February 18, 2025 decision denying Defendants' Motion to Dismiss succinctly states the holding of Schmid:

[Schmid] explained that *owners of private property were not exempt from the New Jersey Constitution's speech protections merely because they are not state actors*, but also provided the right of owners "to fashion reasonable rules to control the mode, opportunity and site for the individual exercise of expressional rights upon his property. (emphasis added)

Defendants then double-down and argue that the Anti-SLAPP application must be denied because Plaintiffs "fail to even make an implication the Defendants' alleged conduct was a state action." This fails. First, the Counter-plaintiffs *seem to be* re-arguing their already-lost motion to dismiss. Second, even if they were arguing simply against the instant motion, there is nothing in UPEPA that requires the Counterclaim be a form of State Action. In fact, there are no cases under any UPEPA decision nor any other existing Anti-SLAPP laws that limit Anti-SLAPP laws to the defense of claims only brought by government plaintiffs. Third, even if state action were required,

using the courts for a claim *is state action*. See Sullivan, 376 U.S. at 265 (1964) (holding that a civil libel judgment imposed by a state court constitutes state action); Shelley v. Kraemer, 334 U.S. 1, 14–20 (1948) (holding that judicial enforcement of private agreements constitutes state action); Cohen v. Cowles Media Co., 501 U.S. 663, 668 (1991) (reaffirming that enforcement of state tort laws implicates the First Amendment because the application of state rules of law in state courts in a manner alleged to restrict First Amendment freedoms constitutes “state action”); NAACP v. Claiborne Hardware Co., 458 U. S. 886, 458 U. S. 916, n. 51 (1982) (same); Philadelphia Newspapers, Inc. v. Hepps, 475 U. S. 767, 475 U. S. 777 (1986) (same). This is a fundamental legal principle that is rarely required to be invoked in court, because there are almost no lawyers left who practiced before Sullivan.⁵

3.0 DEFENDANTS’ MALICIOUS ABUSE OF PROCESS COUNTERCLAIM LACKS MERIT BY ITS OWN TERMS AND DEFINITIONS

Having established that the UPEPA applies, we move on to resolving that the Counterclaim does not survive the UPEPA’s application – and that is a simple analysis of whether the claim is itself valid. Malicious Abuse of Process under New Jersey law requires an improper act that represents a “perversion or abuse of the legitimate purposes of that 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).

Defendants claim there are three (3) examples of Plaintiffs’ actions which they believe were a “perversion or abuse of the legitimate purposes” of judicial process: 1) Plaintiffs’ Motion to Disqualify, 2) Plaintiffs’ “extrajudicial” public social media posts, and 3) Mr. Levy’s emails to

⁵ This is a legal concept that one sometimes needs to remind laypeople of on social media discussions about court cases, as it sometimes escapes laypeople when they ask how the First Amendment applies to private lawsuits between individuals.

Mr. Trelease. Not one of these things even meets the definition of the type of judicial process which is within the definition of a Malicious Abuse of Process claim.

3.1 “Extrajudicial Activities” Cannot be “Judicial Process.”

As stated earlier, on pages 11-12 of their brief, Defendants make the argument that Plaintiffs’ “extrajudicial activities” are examples of “misuse of judicial process.” This shouldn’t require much analysis. Even if wrongful, an extrajudicial activity is by definition, not “process.” Imagine if a party physically attacked another party. The attacker would certainly have committed a legal wrong and should probably go to jail. Whatever the remedy, it sure wouldn’t be “abuse of process.” In this case, we have a far less extreme situation, but the same logic.

The Appellate Division has held that “process is not abused unless after its issuance the defendant reveals an ulterior purpose he had in securing it by committing further acts whereby *he demonstrably uses the process as a means to coerce or oppress.*” Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 431 (App. Div. 2009) (quoting Ruberton v. Gabage, 280 N.J. Super. 125, 130 (App. Div. 1995) (internal quotations omitted) (emphasis added). In other words, for there even to be “abuse” of process, a party must actually “use” process in some fashion, and that use must be “coercive” or “illegitimate” to create harm. See Id.

How could Plaintiffs’ comments on social media or Mr. Levy’s emails to Mr. Trelease counsel constitute a “use of judicial process?” Even Defendants’ own opposition brief repeatedly refers to these statements as “extrajudicial activities.” Hence, Defendants cannot claim that they even qualify as a “use” of process, let alone a “misuse” or “abuse” of process.

3.2 The Motion to Disqualify, itself, was not Misuse of Process and any alleged “bad intentions” in bringing a Motion is Irrelevant

Defendants never argue how the Plaintiffs’ Motion to Disqualify, itself, was a “perversion” or “illegitimate.” They therefore waive any such arguments in favor of expressing umbrage about

Plaintiffs' subjective intentions in bringing the Motion. The Defendants' Opposition brief completely ignores Plaintiffs' arguments regarding the definition of a filing that even meets the definition of "process." Indeed, a Motion is not "process" within the definition provided by the New Jersey Courts for over 100 years.

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); 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) (defining "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.'") A Motion to Disqualify does not involve the acquisition of jurisdiction over any person or thing. Defendants were already within the jurisdiction of this litigation; Plaintiffs' Disqualification Motion was not even "process" as the law defines it.

Defendants' opposition ignores the portion of Plaintiffs' moving papers, where we addressed the case of Batiz v. Brown, 2013 U.S. Dist. LEXIS 36595 (D.N.J. Mar. 14, 2013), which 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. Id. at *8.

If Plaintiffs were to serve Subpoenas on Defendants' family members seeking personal and unrelated information, that very well might meet the definition of misuse of process, since that would serve a "coercive" and "illegitimate" purpose and seek to "acquire or exercise jurisdiction" over individuals unrelated to the ongoing litigation. However, Plaintiffs' Motion to Disqualify most certainly was not unrelated to the underlying litigation, and the only "coercion" involved would have been from the Court, had the motion been granted.

Hypothetically, even if Plaintiffs had "bad intentions" in filing the Motion to Disqualify Counsel, that is irrelevant. See Gambocz v. Apel, 102 N.J. Super. 123, 128 (App. Div. 1968) (quoting Prosser, Law of Torts, § 115, pp. 876-77 (3d ed. 1964)) ("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.*") (emphasis added)

Accordingly, even if the Motion to Disqualify Counsel were somehow improper (it wasn't), it does not qualify as a Malicious Abuse of Process. The counterclaim simply does not possess even a gossamer thread of whimsical theory as to its legitimacy.

3.3 Plaintiffs' Motion to Disqualify Counsel was Proper and Legitimate

While the Plaintiffs' Motion was eventually denied, that does not mean it was improper or a "perversion of legitimate process." Otherwise, every failed motion would be subject to an abuse of process claim. That is not, and has never been, the law. Moreover, the Disqualification Motion was based on several legitimate factual and legal arguments.

For example, the Motion showed 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 talk 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 resolved* as to at least two of the defendants. However, Rainone Coughlin & Minchello chose to impede that resolution and refused to communicate the fact that Plaintiffs were prepared to settle with those two defendants for no payment at all, just setting things right on terms that they explicitly stated they were prepared to do. 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. Plaintiffs respect that the Court has decided that this is not an unwaivable conflict. However, one cannot criticize them for thinking it sure as anything *looks like an unwaivable conflict.*

The decision noted that the Defendants had the right to waive any conflict of interest and have the right to change their minds regarding whether to settle the case. That does not mean that a conflict did not exist. In fact, the Court’s June 24, 2025, decision never states that there was no conflict of interest in all three (3) Defendants being simultaneously represented by the Rainone Coughlin firm. Rather, the Court merely held that it was satisfied that “informed written consent” had been provided by the Defendants to waive any conflict of interest. While Plaintiffs disagree

with the Court's ruling, a factual issue (the existence of written and informed consent), which was what the denial turned on, is more than enough to show that the motion was colorable as a matter of law and was brought for a proper purpose. A motion that fails on a factual dispute cannot be the basis for an argument that a motion was brought improperly – especially when the basis for that factual dispute was never put in the record, and to this day is not in the record.

3.3 Defendants Waived Their Claim the Motion to Disqualify Counsel was Improper.

Defendants had plenty of opportunity to argue that Plaintiffs' Motion to Disqualify was improper with R. 1:4-8. They waived that right. Defendants are now 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. Even though the motion was denied, Defendants never alleged in opposition that the Motion, itself, was improper.

4.0 THE MALICIOUS ABUSE OF PROCESS CLAIM IS PRECLUDED NY THE LITIGATION PRIVILEGE AND NOERR-PENNINGTON DOCTRINE

4.1 The Litigation Privilege

If this Motion results in anything; it should clear up any misunderstanding of how the Litigation Privilege works and any confusion with the Attorney-Client privilege. 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.

(Exhibit I).

In an effort to clear up Defendants' confusion, Plaintiffs never argued that the Litigation Privilege means Levy's emails must be confidential or are not "at issue." Indeed, they are very much "at issue" in why the Malicious Abuse of Process claim is invalid. Simply put, the doctrines of "Attorney-Client Privilege" and "Litigation Privilege" have no relationship to one another. They may share a word, but it makes them no more related than butterflies and buttercups.

The former protects the *confidentiality* of a communication; which can be waived if a party discloses it in a public filing. 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. "The litigation privilege has been described a more of an immunity for litigators, by contrast to a qualified immunity." 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)). A party cannot "waive" the litigation privilege.

Moreover, the civil immunity provided by the Litigation Privilege is absolute and broad. This means that an attorney is immune from all civil lawsuits for what they write to opposing counsel, ranging from Defamation to Malicious Abuse of Process. See 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); 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.");

Hence, Defendants' Counterclaim can only survive if the centuries-old application of the litigation privilege were suddenly 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);

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).

If actively trying to settle a case is now a "perversion of the legitimate use of process," then Defendants are asking this Court to abrogate numerous Supreme Court decisions upholding that public policy. Of course, the implication is that the "settlement" would be somehow disadvantageous. Meanwhile, the Levys were (and remain) prepared to resolve this matter with

two out of the three defendants for nothing more than being permitted to re-enter the Facebook group. This is a resolution that they seemed prepared to accept, and then counsel got involved.

4.2 The Noerr-Pennington Doctrine

Additionally, the Noerr-Pennington doctrine precludes Defendants' Counterclaim. 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) While Defendants are correct that the application of the Noerr-Pennington doctrine is limited if the allegedly abusive litigation is deemed to be a "sham," this Court has already ruled that this litigation is not a sham, in the Court's own February 18, 2025 decision denying Defendants' Motion to Dismiss holding Plaintiffs have properly alleged that "Defendants overstepped their right to regulate the RCV with reasonable rules and, instead, unreasonably restricted the RCV by selective moderation."

Simply put, Plaintiffs' pursuit of their Constitutional rights is not a sham.

5.0 PLAINTIFFS ARE ENTITLED TO FEES

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").

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.

Dated: October 6, 2025.



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