

FILED

October 29, 2025

PREPARED BY THE COURT

ALAN R. LEVY and LISA S. VANDEVER-  
LEVY,

Plaintiffs,

v.

THOMAS O'REILLY, JOANNA  
 PAPADAKIS, BILL TOMKIEWICZ,  
 RAHWAY COMMUNITY VOICE, JOHN  
 DOES 1-10 (FICTICIOUS NAMES  
 REPRESENTING UNKNOWN  
 INDIVIDUALS) AND/OR XYZ CORP. 1-10  
 (FICTICIOUS NAMES REPRESENTING  
 UNKNOWN CORPORATIONS.  
 PARTNERSHIPS AND/OR LIMITED  
 LIABILITY COMPANIES OR OTHER  
 TYPES OF LEGAL ENTITIES),

Defendants,

SUPERIOR COURT OF NEW JERSEY  
 CHANCERY DIVISION:  
 GENERAL EQUITY PART  
 UNION COUNTY  
 DOCKET NO. UNN-C-88-24

**ORDER**

**THIS MATTER** having been opened to the Court by Plaintiffs Alan R. Levy and Lisa S. Vandever-Levy ("Plaintiffs") on an application for an Order to Show Cause pursuant to the Uniform Public Expression Protection Act ("UPEPA"), N.J.S.A. § 2A:53A-49 et. seq.; and the Court having considered the papers submitted, and after hearing oral arguments; and for good cause having been shown;

**IT IS** on this 29th day of October, 2025,

**ORDERED** that Plaintiffs' application for an Order to Show Cause dismissing with prejudice the Defendants' Counterclaim for Malicious Abuse of Process pursuant to N.J.S.A. §§ 2A:53A-51 & 55 is hereby **DENIED**; it is further

**ORDERED** that Plaintiffs' application to dismiss Defendants' Counterclaim pursuant to the Noerr-Pennington Doctrine is hereby **DENIED without prejudice**; it is further

**ORDERED** that Plaintiffs' application to dismiss Defendants' Counterclaim pursuant to the Litigation Privilege is hereby **DENIED without prejudice**

**ORDERED**, that a copy of this Order shall be deemed served upon uploading to eCourts.

/s/ Robert J. Mega

Hon. Robert J. Mega, P.J.Ch.

See statement of reasons attached.

[X] Opposed

[ ] Unopposed

### **Statement of Reasons**

Presently before the Court is Plaintiffs/Counter-Defendants, Alan Levy and Lisa Vandever-Levy (hereinafter "Plaintiffs") Motion for an Order to Show Cause. Plaintiffs seek the following relief:

- 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; and
- Awarding Plaintiffs' court costs, reasonable attorneys' fees, and reasonable litigation expenses pursuant to N.J.S.A. § 2A:53A-58.

### **Summary of the Proceedings**

Plaintiffs originally filed an Amended Verified Complaint and Order to Show Cause, alleging that Defendants violated their free speech rights as guaranteed by the New Jersey State Constitution by censoring and banning them from the "Rahway Community Voice" (RCV) Facebook group. Defendants named include Thomas O'Reilly, Joanna Papadakis, Bill Tomkiewicz, and the Rahway Community Voice Facebook group.

By way of background, Defendant O'Reilly initially moved to dismiss the complaint. The Court denied this motion on February 18, 2025. O'Reilly filed his Answer on March 4, 2025; Papadakis and Tomkiewicz filed their Answer on April 9, 2025. Plaintiffs then filed a motion to disqualify the Rainone Coughlin Minchello law firm (hereinafter "The Rainone firm") from simultaneously representing all three Defendants, arguing several conflicts of interest. On June 24, 2025, the court denied Plaintiffs' motion to disqualify the Rainone firm. On July 11, 2025, the Court granted Defendants' motion for leave to amend their Answer to add a Counterclaim for Malicious Abuse of Process. On July 21, 2025, Defendants filed the amended Answer and asserted the Counterclaim. On August 28, 2025 Plaintiffs, through an Order to Show Cause under the New Jersey Uniform Public Expression Protection Act (UPEPA), now move to dismiss the Defendants' Counterclaim for Malicious Abuse of Process.

### **Plaintiff/Counter-Defendants' Position**

Plaintiffs asserts that 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). Plaintiffs assert that this statute is applicable here because Defendant’s counterclaim targets petitioning activity (i.e., the filing of a motion to disqualify counsel) and protected public speech (criticizing government and related parties through comments on social media). As such, Plaintiffs assert that Defendants’ Counterclaim is “based on” public criticism of the government and the government’s law firm, which happen to be Defendants’ representation in this matter. Plaintiffs further contend that the counterclaim was also brought because of Plaintiffs’ Motion to Disqualify the Rainone Coughlin Minchello law firm. Although this motion was denied, Plaintiffs assert that this does not give rise to an abuse of prosecution claim because the motion was not “frivolous.”

Plaintiffs assert that Defendants’ counterclaim *per se* triggers an Anti-SLAPP law because it targets petitioning activity. Plaintiffs assert that the intent of Defendants’ counterclaim is to punish Plaintiffs for engaging in politically critical speech, even though punishing politically critical speech is unconstitutional. Plaintiffs assert that Defendants’ intent is clear by looking at Counts 6 and 7 of Defendants counterclaim. The Counts state: “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.” Plaintiffs assert that this “petitioning activity” that Defendants seek to target is the filing of a motion to disqualify the Rainone Coughlin Minchello law firm.

Plaintiffs assert that if UPEPA applies, Defendants’ counterclaim for malicious abuse of process is meritless under well-settled New Jersey law. Plaintiffs assert that the counterclaim is inapplicable because the filing of a disqualification Motion is not “process” within the meaning of the tort itself. Plaintiffs further assert Defendants’ Counterclaim against Plaintiffs’ motion to disqualify does not allege improper use, but rather an improper intention by the Plaintiffs. Plaintiffs cite to Defendants’ Motion for Leave to File a Counterclaim, which argues: “1) emails between Mr. Levy and Mr. Trelease relating to the underlying litigation, along with 2) Plaintiffs’

critical social media posts were evidence of Plaintiffs' Malicious Abuse of Process." See Exhibit F. Plaintiff asserts that these criticism of public officials is immaterial in a claim of malicious abuse of process.

Plaintiffs assert that the Litigation Privilege mandates dismissal. Plaintiffs assert that based on Loigman v. Twp. Comm. of Twp. of Middletown, 185 N.J. 566, 579 (2009) citing Cutler v. Dixon, 76 Eng. Rep. 886, 887-88 (K.B. 1585), the litigation privilege protects Plaintiffs from civil liability arising from words used in the course of a judicial proceeding. Plaintiffs further assert that the Noerr-Pennington doctrine mandates dismissal of Defendants' Counterclaim. As such Plaintiffs assert that they are immune from civil liability for claims arising from utilizing the Courts in order to object to a violation of their rights.

### **Defendants' Opposition**

Defendants assert that Plaintiffs cannot claim their underlying actions were based on any protected activity and fall procedurally short of UPEPA protections. Defendants assert that Plaintiffs' disqualification motion and extrajudicial activities are not protected speech or petitioning in any constitutionally recognized sense. Defendants assert that Plaintiffs fail at step two because the law of the case dictates that the Defendants have a sufficient cause of action. Defendants cite to this Court's July 11, 2025 Order which states: "The Court is satisfied that the proposed counterclaim [by the Defendants] sufficiently states a cause of action." Defendants assert that Plaintiffs fails at the final proof because there is a genuine issue of material fact as to the merits of Defendants' counterclaim. Defendants assert that Plaintiffs have not met their burden of showing there is no genuine issue because their moving papers only attempt to underscore Defendants' counterclaim as an example of the process being abused. As such, Defendants assert their counterclaim of abuse of process is sufficient to withstand an application under the Order to Show Cause Standard of R. 4:67-1, et seq., the UPEPA, N.J.S.A. 2A:53A-49 et seq., or a Motion to Dismiss under R. 4:6-2(e). Defendants further assert the Court should deny Plaintiffs' Order to Show Cause because the extraordinary relief sought is not routinely granted by New Jersey Courts.

Defendants further assert that a claim for malicious abuse of process requires three essential elements: (a) improper use of process; (b) with an ulterior motive; and (c) resulting in harm. See Baglini, 338 N.J. Super. at 294; see also Hoffman, 280 N.J. Super. at 13. Defendants

assert that they have established a *prima facie* case of their counterclaim of malicious abuse of process and therefore the Plaintiffs' application must be denied under the standard provided by UPEPA section N.J.S.A. 2A:53A-55(a)(3)(a). Defendants assert that since the Amended Complaint has been filed, Plaintiffs have demonstrated their ulterior motives in this action to cause harm to the Defendants. To support this assertion, Defendants point to Plaintiffs' public attacks made on Facebook since filing the Amended Complaint. Defendants assert that Plaintiffs' cross referencing the Facebook posts with court filings read like subtitles to each filing the Plaintiffs made with the Court illuminates the ulterior motives accompanying the filing. On March 24, 2025, Plaintiff, Alan Levy, made a Facebook post publicly attacking undersigned counsel and alleging professional conduct violations. See Trelease Exhibit F. That same day, the Plaintiffs filed correspondence with the Court. On March 28, 2025, all parties had a Case Management Conference with the Court, and then Plaintiff, Alan Levy, made a Facebook post attacking "the Rainone Coughlin law firm." See Id. On April 17, 2025, Plaintiff, Alan Levy, made a Facebook post attacking Defendant, Thomas O'Reilly, and asserting conflicts of interest. See Id. Then, on April 21, 2025, the Plaintiffs filed their motion to disqualify counsel and subsequently made comments on Facebook detailing his reasons for same. Defendants assert that rather than arguing the allegations in the Complaint, Plaintiffs are driven only by their desire to attack parties and individuals not a party to this suit.

Defendants assert that as set forth in the Stern v. Thomasson, 2025 N.J. Super. Unpub. LEXIS 1497 (Law Div. July 28, 2025) opinion, UPEPA is usually used for large commercial interests attempting to stifle public disclosure surrounding such corporate actions. Defendants assert that in the present action, no party is a large corporate interest. To the contrary, each involved party is a private individual participating in this action in their individual capacity. Therefore, there is no broad regulatory scheme at play when analyzing the moderation of a private social media group. Therefore, the Defendants assert they have demonstrated all essential elements for a malicious abuse of process *prima facie* showing and the Plaintiffs' application must be denied, with prejudice, under UPEPA section N.J.S.A. 2A:53A-55(a)(3)(a), and the Defendants' counterclaim be permitted to proceed on the merits.

Alternatively, Defendants assert that the Plaintiffs' underlying conduct is not a protected activity within the legal meaning of the phrase and therefore UPEPA cannot provide any relief.

The UPEPA defines the activity protected as an “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.” See N.J.S.A. 2A:53A-50(b)(3). To determine whether a free speech right has been infringed, the moving party must demonstrate that there is some ‘state action’ under ‘the color of law’ for their claim to proceed. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 929 (1982). Defendants assert that Plaintiffs’ Amended Complaint and/or application for their Order to Show Cause fail to even make an implication that the Defendants’ alleged conduct was a state action. The operation of RCV as a private Facebook group, operated on a private corporation’s web platform, by private persons who are sued in their individual capacities, is not a state action. The Court has already disregarded the Plaintiffs’ argument that the private group can ever be considered a ‘public square’ in its October 17, 2024, denial of the Plaintiffs’ last attempted Order to Show Cause. See Trelease Exhibit B. Therefore, Defendants assert that Plaintiffs fail to make the requisite showing that their actions were a protected activity.

Defendants further assert that the litigation privilege does not apply because Defendants’ counterclaim targets conduct – i.e., the perversion of judicial mechanisms – not mere statement having been made by the Plaintiffs. Defendants assert that the Noerr-Pennington Doctrine does not apply because Plaintiffs’ claims are not based on any protected activity or right. Defendants assert that public policy and judicial economic considerations also support Defendants’ counterclaim.

Defendants assert that the Crowe factors dictate the denial of Plaintiffs’ Order to Show Cause. Plaintiffs have not established irreparable harm, nor have they established a well-settled right to bring the claim. Plaintiffs have failed to show a probably of success on the merits because Defendants have demonstrated a *prima facie* showing of the essential elements of malicious abuse of process. Defendants assert that the balance of equities weigh in favor of the Defendants because granting the Plaintiffs’ application would deprive the Defendants of their right to pursue redress for litigation abuse.

### Plaintiffs' Reply

Plaintiffs rebut Defendants' assertion that the UPEPA must be construed narrowly.

Plaintiffs cite to § 2A:53A-59 which states: "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). Plaintiffs assert that Defendants' counterclaim does not seek to protect the individual Defendants' interests but rather imposed the Counterclaim in an attempt to silence critics of non-parties. Plaintiffs assert that 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").

Plaintiffs assert that Defendants were incorrect in their assertion that Plaintiff incorrectly filed the action as an Order to Show Cause as opposed to a Motion to Dismiss. Plaintiffs cite to N.J.S.A. 2A:53A-51 which states that after the filing of a counterclaim, the party may file an application for an order to show cause with the court. Plaintiffs assert that Defendants' reliance on the Crowe factors is inapplicable given that Plaintiffs are seeking statutory relief as opposed to emergent relief. Plaintiffs assert that Defendants were incorrect in asserting that Plaintiffs' application should be denied because there was no state action. Plaintiffs respond by asserting that there is nothing in UPEPA that requires the Counterclaim to be a form of State Action. Plaintiffs further assert that 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).

Plaintiffs assert that Defendants' malicious abuse of process counterclaim lacks merit because it is asserted against Plaintiffs' "extrajudicial activities," namely Plaintiffs' posts on social media and emails to Mr. Trelease. Plaintiffs assert that Defendants never argue how the Plaintiffs' Motion to Disqualify was a "perversion" or "illegitimate." See Batiz v. Brown, 2013 U.S. Dist. LEXIS 36595 (D.N.J. Mar. 14, 2013).

## Law & Analysis

### A. The Uniform Public Expression Protection Act

The Uniform Public Expression Protection Act (“UPEPA”), N.J.S.A. 2A:53A-49 to -61, is New Jersey’s anti-SLAPP statute. A SLAPP suit, fully known as Strategic Lawsuits Against Public Participation, have been generally recognized as a trend of “large commercial interests utilized litigation to intimidate citizens who otherwise would exercise their constitutionally protected right to speak in protest against those interests.” LoBiondo v. Schwartz, 199 N.J. 62, 85 (2009) (citing Penelope Canan & George W. Pring, *Strategic Lawsuits Against Public Participation*, 35 Soc. Probs. 506 (1988); Penelope Canan & George W. Pring, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches*, 22 Law & Soc'y Rev. 385 (1988)). SLAPP suits are also thought of as “actions in which apparently meritless complaints alleging defamation and various other intentional torts such as infliction of emotional distress and interference with business advantage were brought for the apparent purpose of silencing citizen protest.” LoBiondo v. Schwartz, 323 N.J. Super. 391, 420 (App. Div.), certif. denied, 162 N.J. 488 (1999), followed in part, 199 N.J. 62 (2009). A meritorious defendant in a SLAPP suit can then file their own SLAPP-back suit: “the traditional cause of action for malicious use of process well serves the role of affording a remedy to one who has been victimized by a SLAPP.” LoBiondo, 199 N.J. at 92.

Well after the series of decisions in the LoBiondo cases, the Legislature passed UPEPA in 2023. 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. In an expeditious manner, N.J.S.A. 2A:53A-53, defendants can obtain a with-prejudice dismissal if they prevail on the statute’s three-step process. N.J.S.A. 2A:53A-55.

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 the New Jersey Constitution, on a matter of public concern.

[N.J.S.A. 2A:53A-50(b).]

Second, under Section 55(a)(2), the expeditious dismissal procedure will go forward only if the party asserting the cause of action fails to demonstrate that an exception to UPEPA applies, i.e., the court must consider whether the cause of action is:

- (1) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;
- (2) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or
- (3) against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services.

[N.J.S.A. 2A:53A-50(c).]

Third and final, under Section 55(a)(3), the court must dismiss the claim with prejudice if:

- (a) the responding party fails to establish a *prima facie* case as to each essential element of any cause of action in the complaint; or
- (b) the moving party establishes that:
  - (i) the responding party failed to state a cause of action upon which relief can be granted; or
  - (ii) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

[N.J.S.A. 2A:53A-50(c).]

In so ruling, “the court may 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.

UPEPA’s show-cause dismissal procedure contains an additional check against SLAPP plaintiffs: if the movant is successful on the application to dismiss, “the court shall award court costs, reasonable attorney’s fees, and reasonable litigation expenses related to the order to show cause.” N.J.S.A. 2A:53A-58. However, if the plaintiff successfully defends their cause of action “and the court finds that the order to show cause was frivolous or filed solely with intent to delay the proceeding,” then the court is similarly mandated to award the same fees to such plaintiff. Ibid.

The Legislature has instructed the courts that UPEPA “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.” N.J.S.A. 2A:53A-59. Additionally, “[i]n 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.

#### Applicability of UPEPA to Defendants’ Counterclaim

As instructed by the Appellate Division in Satz v. Starr, 482 N.J. Super. 55 (App. Div. 2025), and the plain text of UPEPA, this court’s first inquiry is whether Defendant’s counterclaim falls within the scope of UPEPA. Satz, 482 N.J. Super. at 13. Plaintiffs argue that the Defendants’ counterclaim of malicious abuse of process falls within UPEPA because it was filed against Plaintiffs as a result of both their **speech** and **petitioning activity** [emphasis added]. In regard to their speech, Plaintiffs assert that Defendants’ counterclaim was impermissibly targeting and punishing Plaintiffs for their social media speech which criticizes public officials and figures. Plaintiffs further assert that the petitioning activity (i.e., filing the motion to disqualify Defendants’ counsel) is a protected activity that is similarly being punished by the Counterclaim. The relevant portion of Section 55(a)(1) states that the moving party must establish that the cause of action asserted against them is “based on” the movants:

(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 the New Jersey Constitution, on a matter of public concern.**

In the present action, although the filing of a motion is in theory petitioning of the government – i.e., the Courts – the Court is nonetheless unpersuaded that UPEPA bars Defendants’ counterclaim. As a preliminary matter, the Court notes that the “petitioning activity” prong can be met by alleging a violation of guaranteed rights by the United States Constitution or the New Jersey constitution on a matter of public concern, as pled. The Court notes, as part of its findings for the record, that Plaintiff filed a motion to disqualify Defendants’ current counsel in part due to their representation of a Governmental entity or figure<sup>1</sup> (which is a non-party to this

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<sup>1</sup> Counsel for Defendants were the subject of the disqualification motion as it was alluded that they are also counsel for non-party city of Rahway.

action). This lawsuit in its present form is devoid of any public figure or entity. Notwithstanding same, Plaintiffs filed an application to remove the law firm, who similarly is not a party to this action, for its connection as counsel to prior representations, not part of the present matter. Accordingly, the Court finds that Defendants' counterclaim appears to be filed in response to Plaintiffs' motion to disqualify their current Defense counsel. The Court notes that the Defendants named in the present matter are not identified as agents or representatives of a governmentally funded program.

The Court is not satisfied at this time that Plaintiffs have established that Defendants' Counterclaim was filed in retaliation to Plaintiffs' public criticism of the government and its officials. Rather, the Defendants appear to present a claim suggesting that the Plaintiffs' motion to relieve their present counsel may have been filed with an ulterior purpose. Specifically, the Plaintiffs' motion to relieve counsel references the Rainone law firm's professional affiliation with the City, an entity that is not a party to this action. Plaintiffs' motion appeared to conflate the Defendants' representation with purported City involvement. The "City of Rahway, its mayor and the law firm of Rainone Coughlin Minchello" are not parties to this present action, but Defendants' counsel. Plaintiffs are free to communicate and discuss their opinions regarding the city and its officials while simultaneously engaging in separate litigation with the named Defendants. However, Plaintiffs filed the motion to disqualify the within Defendants' counsel, it appears in part, due to ties with a non-party client.

Turning to Section 50(c)(3) exception, the Court does not find that the exception removes Defendants' claims from UPEPA's scope. That exception prevents "a person primarily engaged in the business of selling or leasing goods or services" from invoking UPEPA "if the cause of action arises out of a communication related to the person's sale or lease of the goods or services." N.J.S.A. 2A:53A-50(c)(3). The exception also prevents claims "by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety." N.J.S.A. 2A:53A-50(c)(2). The Court finds that neither exception is applicable to the present matter.

#### *Standard of Review*

Section 55(a)(3) provides three alternative bases for the court to resolve the application. The third option, Section 55(a)(3)(b)(ii), is to apply the summary judgment standard; the Court

will not use this standard, as the parties have not engaged in any discovery and generally do not dispute the underlying facts. That leaves this court with deciding whether “(a) the *responding party fail[ed]* to establish a *prima facie* case as to each essential element of any cause of action in the complaint; or (b) the moving party establishes that: (i) *the responding party failed* to state a cause of action upon which relief can be granted.” N.J.S.A. 2A:53A-55(a)(3)(a)–(b)(i) (emphasis added).

The Court now turns to whether Defendants have set forth a cause of action for malicious abuse of process. “An action for malicious abuse of process will lie against one who uses a writ after its issuance solely to coerce or injure the defendant.” Tedards v. Auty, 232 N.J. Super. 541 (App. Div. 1989). “The gist of the tort of malicious abuse of process is not commencing an action without justification. . . .” Baglini v. Lauletta, 338 N.J. Super. 282, 293 (App. Div. 2001). “. . . [B]asic to the tort of malicious abuse of process is the requirement that the defendant perform ‘further acts’ after issuance of process which represents the perversion or abuse of the legitimate purposes of that process.” Id. at 294. “In the absence of some coercive or illegitimate use of the judicial process there can be no claim for its abuse.” Id. “Thus, if the process is not used at all no action can lie for its abuse.” Id. “Further acts which lend themselves to an abuse of process include attachment, execution, garnishment, sequestration proceedings, arrest of the person and criminal prosecution and even such infrequent cases as the use of a subpoena for the collection of a debt.” Id.

“[A Court’s] focus [in a malicious abuse of process action] must not be on what prompted the suit but what action plaintiff engaged in after commencement of the action.” Hoffman v. Asseenontv.com, Inc., 404 N.J. Super. 415, 431 (App. Div. 2009). “The tort of malicious abuse of process lies not for commencing an improper action, but for misusing or misapplying process after it is issued.” Id. As stated, “[i]n order for there to be ‘abuse’ of process, [. . .] a party must ‘use’ process in some fashion, and that use must be ‘coercive’ or ‘illegitimate.’”

Plaintiffs assert that the filing of a motion is not “process” within the meaning of the tort itself. Plaintiff further asserts that Defendants’ counterclaim must be dismissed since there is no tort liability for filing a motion during litigation. Defendants rely on Plaintiffs’ extrajudicial

comments on Facebook following the commencement of the action to illustrate Plaintiffs' "ulterior motives" to attack and target parties not involved in the underlying action. Defendants also cite to this Court's July 11, 2025 Order stating "The Court is satisfied that the proposed counterclaim [by the Defendants] sufficiently states a cause of action."

As a preliminary note, the Court notes that Defendants have misinterpreted the Court's July 11, 2025 Order. The Order was in response to Defendants' Motion for Leave to Amend their Answer pursuant to R. 4:9-1. In granting the application, this Court merely found that the Defendant's proposed counterclaim pled sufficient facts to allow a response. The Court explicitly refrained from determining the ultimate merits of the proposed counterclaim and instead looked to whether "the proposed complaint states a cause of action, not if the party will eventually succeed on the merits." See July 11, 2025 Order, See Notte v. Merchs. Mut. Ins. Group, 185 N.J. 490 (2006). In doing so, the Court had the discretion to deny the motion to amend if it was clear that the amendment was so meritless that a motion to dismiss under R. 4:6-2(e) would have to be granted, the so-called futility prong of the analysis. Id.; see also Comment 2.2.1 to R. 4:9-1. Dismissal pursuant to Rule 4:6-2(e) is a substantially more lenient standard than the applicable standard on motions for summary judgment. In reviewing a complaint under R. 4:6-2 (e), a Court's inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). Contrary to dismissal pursuant to Rule 4:6-2(e), under UPEPA this Court is required to look outside the pleadings to determine whether Defendant stated a cause of action. As such, Defendant's argument that Plaintiff's fail "at step two" due to this Court's previous findings is misplaced.

In the present matter, the Court is satisfied that the Defendants have established a *prima facie* showing of a malicious abuse of process claim. Plaintiffs have repeatedly attempted to tie these three individual Defendants and their counsel, Mr. Trelease, to the City of Rahway. The Court has made clear these individuals are being sued in their individual capacity rather than as agents or administrators of the City. It appears to this Court that Plaintiffs' actions have been targeting Mr. Trelease and the Rainone law firm solely because of their professional affiliation with the City, thereby allegedly infringing upon Defendants' right to be represented by counsel of their choice. The Court has made references to this specific conduct in previous Orders.

In Plaintiffs' initial motion to relieve counsel, Plaintiffs argued that the Rainone Firm had contributed to the Democratic party of the City of Rahway and therefore have a financial interest in maintaining their status as municipal counsel. See Plaintiffs' Motion to Relieve Counsel (CHC2025126856). In support of the motion, Plaintiffs further argued that Rainone Firm's municipal representation of the City of Rahway constituted a conflict of interest by representing the current Defendants. Id. In denying the Motion, this Court emphasized that the matter before the Court is against private individuals without any official governmental capacity while acting in the position as administrators for a private Facebook group, RCV. See June 24, 2025 Order. The issue before this Court involves a Facebook group that is run by private individuals and not the City of Rahway itself or its elected officials in their official capacity. Id.

Subsequently, in this Court's July 11, 2025 Order granting Defendants' motion for leave to amend their Answer, the Court noted how, in their reply brief, Plaintiffs would refer to the Defendants' counterclaim as "his Counterclaim" with "him" allegedly referring to Mr. Trelease and/or his firm. The Court articulated that while Mr. Trelease is counsel for the Defendants, it is not his Counterclaim, but rather his clients' counterclaim. See July 11, 2025 Order.

Based on the foregoing, the Court is satisfied that a *prima facie* showing has been made in respect to the abuse of prosecution claim, such that the individual Defendants in this present matter had to defend against a motion which appears in part to be based on their counsel's representation of clients that are not a part of this matter, thus requiring Defendants to defend same in order to preserve their right to their choice of counsel. Whether the counterclaim will ultimately succeed on the merits is an issue that will be litigated and determined through the discovery process. Plaintiffs' course of conduct throughout the proceedings has set forth a sufficient basis to allow the Defendants to bring and litigate the claim of malicious abuse of process. For the foregoing reasons, Plaintiff's Order to Show Cause to dismiss Defendants' Counterclaim of malicious abuse of process pursuant to the UPEPA statute is hereby **DENIED**.

#### Noerr-Pennington Doctrine

The Noerr-Pennington doctrine holds that petitioners for government redress are generally immune from antitrust liability when defending against antitrust claims predicated on this petitioning activity. See Main Street at Woolwich, LLC v. Ammons Supermarket, Inc., 451 N.J. Super. 135, 144 (App. Div. 2017). The doctrine's provenance lies in the field of antitrust

law, but its reach has since then been extended to include common-law torts such as malicious prosecution and abuse of process." *Id.* At 145. In Main Street at Woolwich, LLC v. Ammons Supermarket, Inc., the Court highlighted the need to evaluate whether litigation was part of a pattern of sham lawsuits aimed at harming competitors rather than addressing legitimate grievances. *Id.* At 151.

The Court is not satisfied that the Noerr-Pennington Doctrine is applicable to Plaintiffs' claim at this time. Plaintiffs, at this stage, have not engaged in any protected petitioning activity against any governmental entity. Plaintiffs' initial complaint is against the Defendants' acting in their individual capacity as administrators of a private Facebook page, not as government actors. At this stage, it has not been shown that Plaintiffs' rights have been implicated nor violated. Therefore, the Court finds that Plaintiffs' application to dismiss Defendants' Counterclaim pursuant to the Noerr-Pennington Doctrine is hereby **DENIED without prejudice.**<sup>2</sup>

#### Whether the Litigation Privilege Applies

The litigation privilege "protects an attorney from civil liability arising from words he has uttered in the course of judicial proceedings." Loigman v. Twp. Comm. of Twp. Middletown, 185 N.J. 566, 578 (2006). New Jersey's litigation 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).

The purpose of the privilege is to encourage "open channels of communication and the presentation of evidence" in judicial proceedings. *Id.* at 217. The privilege is not limited to in-court statements; "it extends to all statements or communications in connection with the judicial proceeding." *Id.* at 216. The privilege ensures that "[s]tatements by attorneys, parties and their representatives made in the course of judicial or quasi-judicial proceedings are absolutely privileged and immune from liability." Peterson v. Ballard, 292 N.J. Super. 575, 579 (App. Div. 1996).

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<sup>2</sup> The Court finds that this theory may be more appropriately addressed upon a motion for Summary Judgment following the completion of discovery.

Plaintiffs assert that the Litigation Privilege applies and therefore mandates dismissal. Plaintiffs rely on the case of Hawkins v. Harris, 141 N.J. 207, 216 (1995), which states that: “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.” Defendants assert that the privilege does not apply because Plaintiffs’ criticism of the Defendants and/or their counsel is not confined to “court filings judicial/quasi-judicial communications, or proceedings.”

In the present matter, the Court finds that the Litigation privilege argument is premature at this time. It appears to this Court that the Defendants in this action are not targeting Plaintiffs for malicious prosecutions made during the course of these proceedings – but rather whether their ulterior motives in bringing the action may be to deprive Defendants of their choice of counsel, thus incurring costs by the Defendants in order to proceed. The Litigation privilege does preclude Defendants from litigating their claim of malicious abuse of prosecution in response to the actions Plaintiff has taken throughout the course of the proceedings. Therefore, the Court finds that Plaintiffs’ application to dismiss Defendants’ Counterclaim pursuant to the litigation privilege is hereby **DENIED without prejudice.**<sup>3</sup>

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<sup>3</sup> The Court finds that this theory may be more appropriately addressed upon a motion for Summary Judgment following the completion of discovery.