ALAN R. LEVY and LISA S. VANDEVER-LEVY, Plaintiffs/Appellants, v. TOM 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 UNKOWN CORPORATIONS, PARTNERSHIPS, AND/OR LIMITED LIABILITY COMPANIES OR OTHER TYPES OF LEGAL ENTITES), Defendants/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-000760-25 CIVIL ACTION Appeal of the Judgment and Order of the Hon. Robert J. Mega, P.J.Ch., entered on October 29, 2025. SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO.: UNN-C-088-24 Sat Below: Hon. Robert J. Mega, P.J.Ch.

DEFENDANTS-RESPONDENTS, TOM O'REILLY, JOANNA PAPADAKIS, BILL TOMKIEWICZ'S, MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS-APPELLANTS' APPEAL

RAINONE COUGHLIN MINCHELLO, LLC
555 U.S. Highway 1 South, Suite 440
Iselin, New Jersey 08830
Phone: 732-709-4182
Fax: 732-791-1555
Attorneys for Defendants/Respondents
Tom O'Reilly, Joanna Papadakis, and Bill Tomkiewicz

Of Counsel and On the Brief, Brian P. Trelease, Esq.– (#021352009)
On the Brief Only, Michael M. Wuest, Esq.- (#411312022)
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PRELIMINARY STATEMENT

Appellants, Alan R. Levy and Lisa S. Vandever-Levy ("Appellants"), are politically active in the City of Rahway and were members of a private Facebook group known as the Rahway Community Voice ("RCV"). Respondents, Tom O'Reilly, Joanna Papadakis, and Bill Tomkiewicz ("Respondents"), are the administrators of RCV and have served in that capacity for approximately the past two (2) years. RCV adopted rules concerning the proper content that it permits to be publicized on its Facebook page. Respondents determined that several of the Appellants' posts violated the rules of RCV, and the Appellants were subsequently dismissed from the private group. This action led to the commencement of this matter upon which Appellants initially sought re-admittance to the Facebook page. However, Appellants are no longer prosecuting this remedy. Instead, Appellants have engaged in extrajudicial intimidation - emails and social media posts - designed to embarrass counsel and pressure the Respondents into capitulation by attacking their choice of legal representation, even filing a Motion to Disqualify counsel for alleged unethical behavior.

The Appellants' Motion to Disqualify Respondents' counsel is the chief example of these acts coupled with the repeated critical and aggressive social media posts or emails intended to badger Respondents' counsel in an extrajudicial fashion. Then, after the extrajudicial attacks are lodged, the Appellants race to the courthouse

and try to make motion practice out of their personal perceived vendettas. In citing the Uniform Public Expression Protection Act ("UPEPA"), Appellants aim to launder their impermissible litigation tactics through veiled constitutional rhetoric and sanitize their conduct through inapplicable immunities. This is the very essence of an abuse of process claim under New Jersey law.

Appellants also attempt to relitigate matters that they have previously lost and know, or should know, are meritless and are filed for ulterior motives, and not reviewable on this appeal. The only matter for this Court to consider on appeal is whether the denial of the Appellants' Order to Show Cause was proper. However, Appellants' filing is replete with a wish list of previously denied arguments, bald assertions, and baseless claims which are not reviewable by this Court. This appeal is limited to the lower court's denial of the Appellants' Order to Show Cause only.

As will be set forth more fully below, the lower court's decision correctly opines that the Appellants' arguments fall far short establishing a UPEPA defense. Furthermore, the lower court decision correctly determined that Respondents have presented the requisite *prima facie* case based on the Appellants' conduct and that Appellants have failed to engage in any constitutionally protected right. Therefore, Respondents respectfully request that the lower court's decision denying Appellants' Order to Show Cause be affirmed.

PROCEDURAL HISTORY

The Respondents rely upon the Summary of Proceedings provided in the October 29, 2025, Order by the Honorable Robert J. Mega, P.J.Ch.. (Pa 2).

COUNTERSTATEMENT OF MATERIAL FACTS

On October 3, 2024, Appellants filed their Amended Verified Complaint in Union County Superior Court alleging constitutional violations tied to Rahway Community Voice ("RCV"), a private Facebook group. (Pa25-38). On October 17, 2024, the Court denied the Appellants' first Order to Show Cause. (Pa156-167). On February 18, 2025, the Court denied the Respondents' Motion to Dismiss and permitted the Appellants' claims to proceed. (Pa39-44). On April 21, 2025, the Appellants filed a Motion to Disqualify the law firm of Rainone, Coughlin, Minchello, LLC, alleging conflicts of interests pertaining to representation of Respondents. The lower court denied that motion, with prejudice, on June 24, 2025. (Pa131-136).

In the Motion to Disqualify, Appellants acknowledged they "have been public critics of the Rainone firm" and link several Facebook posts they made. (Pa168-179). Those posts begin on December 5, 2024, where a post was made personally attacking the firm's Managing Partner, Louis N. Rainone, Esq. (Id.). On March 24, 2025, Appellant, Alan Levy, posted a criticism of the Defendants' Motion to Dismiss and leveling accusations of professional conduct violations singling out the

undersigned counsel. (Id.) On March 26, 2025, Appellant, Alan Levy, tagging his wife Appellant, Lisa Vandever-Levy, criticized Respondents' legal representation along with a screenshot of email communications with undersigned counsel. (Id.). On March 28, 2025, Appellant, Alan Levy, posted his pointed personal thoughts on the ongoing nature of discovery. (Id.).

On April 17, 2025, Appellant, Alan Levy, tagging his wife Appellant, Lisa Vandever-Levy, posted: "we have been frequent public critics of" the law firm of Rainone, Coughlin, Minchello, LLC, "the City of Rahway" and the "Rahway Democratic Party Campaign Committee" who are not parties to this lawsuit, and again accusing improprieties. (Id.). On April 21, 2025, a post was made accusing Rainone, Coughlin, Minchello, LLC, of seeking to "prevent a settlement" and criticized "the Rahway Democratic Party and the Rainone firm itself," again, neither of whom are parties to this action. (Id.). On May 3, 2025, Appellant, Alan Levy, tagging his wife Appellant, Lisa Vandever-Levy, posted a screenshot of email communications with undersigned counsel and offers their unfiltered thoughts on the status of the instant action. (Id.). On May 18, 2025, a post was made commenting on the Respondents' opposition to the Motion to Disqualify. The next day, on May 19, 2025, Appellant, Alan Levy shared his post with a wider group to amplify his comments. (Id.).

On July 11, 2025, the Court granted leave for the Defendants to file an amended pleading. (Pa137-142). In that Order, the Court wrote "the Plaintiffs have put Mr. Trelease's conduct, and the conduct of the Rainone Firm at issue, and have expanded upon the issues pled in Plaintiffs' Complaint." (Id.). On July 21, 2025, Respondents filed their Amended Answer and Counterclaim. (Pa143-153).

LEGAL ARGUMENT

POINT I

STANDARD OF REVIEW ON APPEAL FROM A DENIAL OF AN ORDER TO SHOW CAUSE IS WHETHER THERE WAS ANY ABUSE OF DISCRETION.

Under UPEPA, the statute is silent as to the standard of review on appeal and only sets the statute of limitations for the filing of a denied Order to Show Cause under the law. See N.J.S.A. 2A:53A-57. In reviewing the denial of an Order to Show Cause, or other injunctive relief, the applicable standard of review is "whether the trial court abused its discretion." See Bubis v. Kassin, 353 N.J. Super. 415, 425 (App. Div. 2002) (citing Horizon Health Ctr. v. Felicissimo, 135 N.J. 126, 137 (1994)). Orders to show cause have long been determined to be "utilized where a party seeks some form of emergent, temporary, interlocutory or other form of interim relief." See Solondz v. Kornmehl, 317 N.J. Super. 16, 20 (App. Div. 1998). Only when there are "[i]ssues of statutory interpretation" which "are questions of law" are

then reviewed "de novo." Satz v. Starr, 482 N.J. Super. 55, 62 (App. Div. 2025) (citing Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9 (2019)). As there is no issue of statutory interpretation present here, the Appellate Division has determined that an appeal pertaining to a UPEPA Order to Show Cause is whether "the trial judge misapplied his discretion and the law." See Id. at 65.

The "ordinary abuse of discretion standard defies precise definition" and "arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Co. Prosecutor, 171 N.J. 561, 571 (2002) (internal quotations omitted). Demonstrating abuse of discretion by a lower court "also arises when the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment." Masone v. Levine, 382 N.J. Super. 181, 193 (App.Div.2005) (internal quotations omitted).

Here, Appellants misunderstand the cited Satz opinion because the de novo standard of review is only if there was a decision pertaining to the statutory interpretation of UPEPA. There is no statutory interpretation present on this appeal. Instead, as properly articulated by the lower court, the issue is whether "(a) the responding party failed to establish a prima facie issue as to each 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." (Pa12).

Even in the alternative, should the panel determine that the appropriate standard of review is de novo, the Court must still deny the Appellants' request for relief. Based upon a fresh reading of the arguments presented, the Respondents have demonstrated that Appellants are abusing the judicial process, the Respondents' counterclaim should advance on the merits and, the Appellants' prayer for relief via their Order to Show Cause be denied once more.

POINT II

THE APPELLATE DIVISION SHOULD UPHOLD THE DECISION BY THE LOWER COURT BECAUSE THE RESPONDENTS' COUNTERCLAIM SURVIVES UPEPA SCRUTINY AS THERE IS A VALID CAUSE OF ACTION, REQUISITE PRIMA FACIE SHOWING, AND THE APPELLANTS' CONDUCT IS NOT BASED ON PROTECTED ACTIVITY (RAISED BELOW Pa13-14).

The State of New Jersey enacted the UPEPA in 2023 as a mechanism for free speech protection. Strategic Lawsuits Against Public Participation, also known as SLAPP suits, 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 and 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)).

The UPEPA is constructed to "protect the exercise of the right of freedom of speech." N.J.S.A. 2A:53A-59. Those protections only apply if the matter at issue is "based on" a protected activity. See Satz, 482 N.J. Super. at 63 (applying N.J.S.A. 2A:53A-55(a)(1) and N.J.S.A. 2A:53A-50(b)(3)). The burden of proof under UPEPA is on the moving party to establish this. See Id.

The UPEPA is designed to "promote uniformity of the law with respect to its subject matter among states that enact" such protections. N.J.S.A. 2A:53A-60. Upon motion, "the court shall award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the Order to Show Cause . . . to the responding party if the responding party prevails on the Order to Show Cause and the court finds that the Order to Show Cause was frivolous or filed solely with intent to delay the proceeding." N.J.S.A. 2A:53A-58(2). If the responding party establishes "a *prima facie* case as to each essential element of any cause of action in the complaint" then the moving parties Order to Show Cause must be dismissed, with prejudice, under the UPEPA. N.J.S.A. 2A:53A-55(a)(3)(a).

Courts determine the adequacy of a pleading by determining whether a cause of action is suggested by the pled facts. See Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). Courts must resolve doubts in favor of allowing the claim to proceed, particularly where the pleadings allege intentional misuse of judicial

process; a tort long recognized under New Jersey law. See Baglini v. Lauletta, 338 N.J. Super. 282, 294 (App. Div. 2001) certif denied, 169 N.J. 607 (2001).

A. The Respondents Established a Prima Facie Case of Malicious Abuse of Process and UPEPA Requires Dismissal of the Appellants' Application (Raised Below Pa13).

The tort of malicious abuse of process exists not for commencing an improper action, but for misusing or misapplying process after it is issued. See Baglini, 338 N.J. Super. at 293. In other words, to be found liable for malicious abuse of process, a party must have performed additional acts "after issuance of process which represent the perversion or abuse of the legitimate purposes of that process." Id. at 294 (internal quotations omitted). New Jersey Courts have held over its long history that "basic to the tort of malicious abuse of process is the requirement that the defendant perform **further acts** after issuance of process which represent the perversion or abuse of the legitimate purposes of that process." Id. (quoting Penwag Prop. Co., Inc. v. Landau, 148 N.J. Super. 493, 499 (App.Div. 1977), aff'd, 76 N.J. 595, 388 (1978) (citing Gambocz v. Apel, 102 N.J. Super. 123, 130 (App.Div.), certif. denied, 52 N.J. 485, 246 (1968)) (internal quotations omitted) (emphasis added).

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)). For there to be "abuse" of process, a party must "use" process in some fashion, and that use must be "coercive" or “illegitimate” to create harm. See Id. Accordingly, a claim of 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 130.

Here, the Respondents have established a *prima facie* case of their counterclaim of malicious abuse of process and therefore the Appellants’ application must be denied under the standard provided by UPEPA section N.J.S.A. 2A:53A-55(a)(3)(a).

i. The Appellants Improperly Utilized and Abused the Judicial Process (Raised Below Pa13).

The first element of a malicious abuse of process claim is demonstrating a party has improperly used the process in some way. See Baglini, 338 N.J. Super. at 294; see also Hoffman, 280 N.J. Super. at 130. The Appellants filed their Amended Complaint on October 3, 2024. (Pa25-38). Since then, Appellants have repeatedly sought to abuse the judicial process against parties and individuals not joined to this lawsuit. The lower court unequivocally found that “[i]n the present matter, the Court

is satisfied that the Defendants have established a prima facie showing of a malicious abuse of process claim" because the "Plaintiffs have repeatedly attempted to tie these three individual Defendants and their counsel, Mr. Trelease, to the City of Rahway" who is not a party to this action. (Pa13).

The lower court best articulated the scenario in its June 24, 2025, Order denying the disqualification of counsel reminding Appellants that:

> Defendants in this case are being sued in their individual capacities as administrators of the Facebook group RCV, not in any official capacity for positions they hold or have held for the City of Rahway. The City of Rahway is not a party to this case, nor is any City of Rahway official. Implications that City of Rahway officials are somehow involved in alleged censorship are at this time speculative at best. . .
>
> Furthermore, the Court notes Appellants arguments that the Rainone Firm has contributed to the democratic party of the City of Rahway and have a financial interest in maintaining their status as municipal counsel, however, as has been stated and restated, this matter is against private individuals outside of any official capacity as the administrators of a Facebook group RCV. If the parties have political differences, that is not an issue for the Court to attempt to resolve. Despite Mr. Levy's representations that he has been a staunch critic of the Rainone Firm's representation of the City of Rahway; the Court similarly finds that to be of no moment in the present matter as it 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.

(Pa131-136). In fact, in response to Appellants' continued conduct, the lower court felt compelled to reaffirm this decision, stating "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." (Pa14).

Contrary to the assertions made by the Appellants in their papers, the lower court did consider their argument that the filing of the Motion to Disqualify counsel was within the term of process. Instead, the lower court did hold that Appellants have been targeting the judicial process not directed at Respondents but their choice of attorneys and the City of Rahway, where it bears repeating are not parties to the action. The lower court held that "[i]t appears to the 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' rights to be represented by counsel of their choice." (Pa13).

The Appellants are voluntarily availing themselves of the judicial process by filing motions targeted at counsel and parties not named in the Amended Complaint as a method of impermissible collateral attack. The Appellants only problem is they want to be immunized from any potential liability for doing so. The very purpose of the tort of malicious abuse of process claim is to prevent the abuse of the legitimate purposes of process. See Baglini, 338 N.J. Super. at 294. The Appellants'

conduct is what constitutes the abuse of process itself, and not some technical loophole definition of what they would prefer the word "process" to mean to fit their ends. The Appellants are engaged in the judicial process and their subsequent actions after filing their Amended Complaint have abused that very process.

Accordingly, the Respondents have established the necessary *prima facie* showing of the first element of their abuse of process claim.

ii. The Appellants had an Ulterior Motive for this Abuse Manifested by Several Furthering Acts (Raised Below Pa13-14).

The second element of a malicious abuse of process claim is that the abusing party had an ulterior motive for their acts demonstrated by furthering or additional acts. See Baglini, 338 N.J. Super. at 294; see also Hoffman, 280 N.J. Super. at 130. To briefly reiterate, a furthering act is one which perverses an otherwise legitimate process in pursuit of an ulterior motive. See Baglini, 338 N.J. Super. at 293-94. The Appellants claim that their ulterior motives are "irrelevant" to an abuse of process claim. See **App. Br. Pgs 29-32**. The Appellants are incorrect because the Baglini court is explicit that ulterior motives are not only relevant but an essential element of establishing an abuse of process claim.

Since the Amended Complaint has been filed, the Appellants have demonstrated time and again their ulterior motives for every subsequent action are not related to the relief sought in their Amended Complaint but to cause harm to the

Respondents and collaterally attack parties not involved in the underlying action. The Appellants do not actually want to be re-admitted to the RCV private Facebook group but seek an unfettered excuse to make a perversion of the judicial process and waste judicial resources. The lower court previously held that the Appellants made their extrajudicial comments and barbs an issue in its July 11, 2025 Order and indicated the Respondents could refer to them. (Pa137-142). As articulated in the record below, if the court cross-references the Facebook posts with the judicial filings, then the posts read like subtitles to each filing the Appellants made with the Court and illuminates the ulterior motives accompanying the filing.

Additionally, Appellants baldly assert that Respondent, Tom O'Reilly, is engaging in "censorship" in his management of RCV in his capacity "as the Chairman of the Rahway Democratic Campaign Committee." See **App. Br. Pg. 28**. Despite being repeatedly reminded by the lower court, Respondents are not being sued for any political affiliations but only in their individual capacities as administrators of RCV.

It bears repeating that the Appellants conduct itself is so irregular and damaging that their use of the process is not for the purpose of seeking re-entry into a private Facebook group, but to badger and violate the judicial process to impermissibly attack parties or organizations not named in the Amended Complaint solely based on the Respondents' choice of legal counsel. The lower court concluded

that the Appellants' "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." (Pa14.)

Accordingly, the record is replete with examples of furthering acts or abuses, and the Respondents have demonstrated the *prima facie* showing required to meet the second element of the abuse of process claim.

iii. The Appellants Actions Resulted in Harm to the Respondents (Raised Below Pa14).

The third and final element of a malicious abuse of process claim is that the abusive furthering acts result in harm. See Baglini, 338 N.J. Super. at 294; see also Hoffman, 280 N.J. Super. at 130. Respondents are being sued in their individual capacity for their alleged conduct pertaining to the private RCV Facebook group. Again, rather than arguing the allegations in the Amended Complaint, Appellants are driven only by their desire to attack parties and individuals not named in this suit. Their willingness to do so despite the various court orders already entered is just another demonstration of the lengths they will go to abuse the process for their subversive ends unrelated to RCV. The Appellants' UPEPA claims are being utilized not to protect any right but to coerce or delay, which is anathema to the construction of the UPEPA.

The Respondents have the right to choose their own counsel, and the lower court has already ordered there is no conflict of interest. (Pa131-136). Appellants cannot dislodge this fact. Yet, as demonstrated by the Appellants' application, they are attempting to collaterally attack non-parties to the underlying action to further their own ulterior political motives, which is not an issue on appeal, and yet the Appellants continually attempt to make it one at the cost of the Respondents. As stated by the lower court, the Appellants' conduct requires 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." (Pa14).

Accordingly, the Respondents have demonstrated the necessary *prima facie* showing as to element three of their abuse of process claim.

iv. The Establishment of a Prima Facie Claim, Which the Respondents' Have Done, is an Absolute Defense to a UPEPA Action, and the Appellants Requested Relief Must be Denied (Raised Below Pa12-14).

As outlined in UPEPA section N.J.S.A. 2A:53A-55(a)(3)(a), the establishment of a *prima facie* case is an absolute defense to a UPEPA action. The Respondents have demonstrated that each of the three elements described in the Baglini decision regarding a malicious abuse of process claim have been established: (a) improper

use of process; (b) with an ulterior motive; and (c) resulting in harm. As highlighted by the lower court, the Appellants' utilization of the courts, based solely on distain for entities not in the case, and Respondents' choice of legal counsel, have forced the Respondents to defend claims that have nothing with their involvement with RCV. (Pa14).

B. The Alleged Conduct was not Based on a Protected Activity (Raised Below Pa10-13).

Alternatively, the Appellants' underlying conduct is not a protected activity under UPEPA. The UPEPA permits summary dismissal where the responding party demonstrates "that this act does not apply." N.J.S.A. 2A:53A-55(a)(2). To reiterate, the UPEPA can only provide relief if the subject alleged acts are "based on" a protected activity. See Satz, 482 N.J. Super. at 63 (applying N.J.S.A. 2A:53A-55(a)(1) and N.J.S.A. 2A:53A-50(b)(3)). The burden of proof under UPEPA is on the moving party to establish this. See Id. 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." N.J.S.A. 2A:53A-50(b)(3). In New Jersey, free speech is guaranteed under the State Constitution. See N.J. Const., Art. I, Para. 6. The New Jersey Supreme Court has determined that "[w]e rely on federal constitutional principles in interpreting the free speech clause of the

New Jersey Constitution." Karins v. Atl.City, 152 N.J. 532, 547 (1998). In New Jersey, the right to petition is not all expansive but instead merely permits citizens to "have the right to petition and engage in political speech against elected officials." Comm. to Recall Robert Menendez From the Office of U.S. Senator v. Wells, 204 N.J. 79, 127 (2010) (citing Meyer v. Grant, 486 U.S. 414, 421-22 (1988)).

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). To determine if a 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); agree Krynicky v. Univ. of Pittsburgh, 742 F.2d 94 (3d Cir. 1984). In the anti-SLAPP context, it is on the moving party to establish the "underlying . . . cause of action must itself have been an act in furtherance of the right of petition or free speech." Park v. Bd. of Trs. of Cal. State Univ., 217 Cal. Rptr. 3d 130, 134 (2017). "[T]he focus is on determining what the [movant]'s activity is that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning." See Id.

Here, Appellants have failed to demonstrate that there was state action or that there was a protected right at all. First, the Appellants' Amended Complaint and Order to Show Cause fail does not assert government action on the part of

Respondents. 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. As determined by the lower court, Respondents are "being sued in their individual capacity rather than agents or administrators of the City" of Rahway or other government entity. (Pa13).

Second, Respondents' counterclaim for malicious abuse of process does not target any protected right available to the Appellants. As previously stated, when making a malicious abuse of process claim, the claim is based on conduct occurring after the filing of a complaint and not based upon the filing of the complaint itself, or the filers' rights to petition the courts. The Appellants' conduct is what is at issue here and not their right to petition the court itself.

Going further, the lower court was "unpersuaded" that the UPEPA bars the Respondents counterclaim for malicious abuse of process just because filing of a motion is, tentatively, or, "in theory petitioning the government." (Pa10.) Moreover, the Appellants "have not engaged in any protected petitioning activity against any governmental entity" and "it has not been shown that Plaintiffs' rights have been impacted or violated." (Pa15.)

Accordingly, there is no constitutionally protected activity implicated by the underlying alleged facts. Furthermore, as required by Satz and UPEPA section N.J.S.A. 2A:53A-55(a)(1), it is squarely upon the Appellants to make the requisite

showings that their actions were a protected activity. For the reasons stated herein, the Appellants cannot because the underlying acts are private in nature, and no state action is present to implicate free speech jurisprudence.

POINT III

THE APPELLATE DIVISION SHOULD UPHOLD THE DECISION BY THE LOWER COURT AND DETERMINE THAT THE LITIGATION PRIVILEGE DOES NOT APPLY. (Pa15-16).

The Respondents' counterclaim targets conduct—the perversion of judicial mechanisms—not mere statements having been made, or alleged to have been made, by the Appellants. The Appellants' persistent reliance on privilege is misplaced. The litigation privilege protects communications made in litigation, not the misuse of process itself. See Hawkins v. Harris, 141 N.J. 207, 216 (1995). The litigation privilege only applies to "communications made by attorneys in the course of judicial or quasi-judicial proceedings." Baglini, 338 N.J. Super. at 297. As the Supreme Court of New Jersey has held, the privilege is not a shield for acts of coercion or harassment through the courts. See Loigman v. Twp. Comm. of Middletown, 185 N.J. 566, 585–87 (2006).

Here, the Appellants' assertion of the litigation privilege cannot withstand scrutiny. The lower court has already determined that the Appellants cannot assert the litigation privilege when it denied their Motion to Disqualify:

> Appellants cannot claim that they are absolutely immune from claims of Malicious Abuse of Process arising from statements made pursuant to the Litigation Privilege when Appellants themselves submitted the same "privileged" statements as Trelease Ex.s to Court correspondence. By attaching the emails as Trelease Ex. A to Transaction Id: CHC202596501, Appellants' have waived the right to assert privilege over same as they have placed the subject emails at issue in prior filings. Therefore, Appellants' argument that they are absolutely immune from claims of Malicious Abuse of Process arising from statements made pursuant to the litigation privilege fails.

(Pa131-136). This decision was subsequently affirmed by the lower court when it held that "[i]t appears to this Court that the Defendants in this action are not targeting Plaintiffs for malicious abuse of process 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." (Pa15-16).

Permitting the litigation privilege to apply when there is ample evidence of furthering acts and ulterior motives runs counter to the tort of malicious abuse of process as contemplated by the Baglini court. The Appellants misapply the Hawkins decision by insisting because the litigation privilege conceptually exists in New Jersey jurisprudence that no claim of malicious abuse of process may ever proceed. Instead, Hawkins focuses on when the litigation privilege *may* apply and does not stand for the proposition that the litigation privilege *always* applies, as incorrectly

asserted by the Appellants. Accordingly, the litigation privilege cannot apply because the nature of the privilege fails under otherwise applicable common law principles.

POINT IV

THE APPELLATE DIVISION SHOULD UPHOLD THE DECISION BY THE LOWER COURT AND DETERMINE THAT THE NOERR-PENNINGTON DOCTRINE DOES NOT APPLY. (Pa14-15).

The Appellants also loosely invoke federal petitioning immunity referred to as the Noerr-Pennington Doctrine. New Jersey courts recognize a limited similar principle. See Main St. at Woolwich, LLC v. Ammons Supermarket, Inc., 451 N.J. Super. 135, 144 (App. Div. 2017). Noerr-Pennington immunity only applies to civil liability arising from utilizing the courts to object to a violation of rights. See Id. The doctrine is limited because Noerr-Pennington is typically related to protection of petitioning activity in antitrust matters. See Id. Sometimes, the doctrine may apply to a claim of malicious abuse of process, but it has historically not been utilized in such a way. See Id. at 145.

Courts applying analogous doctrine caution against overreach, holding that Noerr-Pennington does not shield sham litigation. See Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus., Inc., 508 U.S. 49, 60–61 (1993). "Sham litigation is found where a [litigant's] activities are not genuinely aimed at procuring favorable

government action." Ammons Supermarket, Inc., 451 N.J. Super. at 145 (quoting Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 500 n.4, (1988)) (internal quotations omitted). Sham litigation may also "be evidenced by repetitive lawsuits carrying the hallmark of insubstantial claims." Id. (quoting Otter Tail Power Co. v. United States, 410 U.S. 366, 380 (1973)) (internal quotations omitted); see also California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 513 (1972) (recognizing that sham activity may not be a series of individual lawsuits but a series of court actions without regard for merit).

Here, as discussed above, the Appellants' claims are not based on any protected activity or right. The Appellants' right to petition the courts is not disputed or impacted in any way by the Respondents. What is disputed is the length at which the Appellants are provided legal berth to engage in their repeated erroneous conduct and abuse of process. First, without demonstrating there is a protected right or activity at issue the Appellants cannot avail themselves of the immunity described by the Ammons Supermarket court because immunity only attaches when there is a violation of rights. In fact, the lower court properly concluded that Appellants "have not engaged in any protected petitioning activity against any governmental entity" and "it has not been shown that Plaintiffs' rights have been impacted or violated." (Pa15). Without showing a violation of any right, Noerr-Pennington immunity cannot attach.

Second, the Appellants' repeated series of meritless court actions demonstrate their conduct is likely not protected by Noerr-Pennington because those acts are sham litigation or something akin to it. As argued above, the Appellants' most recent filings are not directed to the Respondents, but aimed at their choice of legal counsel, coupled with their extrajudicial intimidation tactics of counsel or improper collateral attack on parties not named in the Amended Complaint. The record demonstrates that the Appellants do not genuinely want to procure favorable government action against the Respondents but want to continue having an unfettered platform to attack counsel and irrelevant unnamed parties.

POINT V

NEW JERSEY COURT RULE 1:4-8 IS IRRELEVENT BECAUSE IT IS NOT THE ONLY WAY TO OBTAIN FEES OR ASSERT BAD FAITHUNDER THE LAW. (NOT RAISED BELOW).

The Respondents are not circumventing New Jersey Court Rule 1:4-8 because the same rule is not the only mechanism to make an application for fees, or to assert bad faith, in New Jersey law. Under the tort of malicious abuse of process, the remedy is a possible jury award of compensatory and/or punitive damages for the prevailing party. See Baglini, 338 N.J. Super. at 288. Pursuant to UPEPA, if a responding party prevails on defending a claim then upon motion "the court shall award court costs, reasonable attorney's fees, and reasonable litigation expenses

related to the Order to Show Cause . . . to the responding party if the responding party prevails on the Order to Show Cause and the court finds that the Order to Show Cause was frivolous or filed solely with intent to delay the proceeding." N.J.S.A. 2A:53A-58(2). The UPEPA does not define the term "frivolous." See N.J.S.A. 2A:53A-50. Instead, the New Jersey Supreme Court has held that a "complaint, counterclaim, cross-claim, or defense is deemed frivolous if it was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury." See Toll Bros., Inc. v. Twp. of W. Windsor, 190 N.J. 61, 67 (2007) (internal quotations omitted).

Here, the Appellants' argument is not reviewable on appeal because this novel argument is not part of the October 29, 2025, Order. To the extent the court considers these assertions, neither the Respondents' counterclaim nor the remedy built into UPEPA must be predicated upon the filing of a concurrent R. 1:4-8 motion as incorrectly asserted by the Appellants in their papers. First, the Respondents' counterclaim for malicious abuse of process does not rely on the frivolous litigation statute to assert bad faith or ulterior motive because it provides its own remedy for that. The insistent demands by the Appellants that the Respondents' counterclaim must simultaneously rely on R. 1:4-8 are misplaced and the Appellants cite no authority determining otherwise. The Appellants also have no authority to instruct the Respondents on how to defend their own affairs.

Second, an award of reasonable attorney's fees and cost of suit may be awarded to the prevailing party to an Order to Show Cause under UPEPA section N.J.S.A. 2A:53A-58(2), which also may include Respondents, who pursued this application. However, UPEPA demands that argument be made on a separate motion and cannot be litigated at this juncture.

CONCLUSION

For the foregoing reasons, Defendants-Respondents respectfully request that the lower court's decision denying Plaintiffs-Appellants' Order to Show Cause be affirmed.

Respectfully submitted,

RAINONE COUGHLIN MINCHELLO, LLC
Attorneys for Defendant/Respondent
Tom O'Reilly, Joanna Papadakis, and Bill Tomkiewicz

By: 
Brian P. Trelease, Esq.

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