CROSS-MOTION TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT

Kenneth Frank Irek, *Plaintiff*

v.

New Jersey Lawyers' Fund
For Client Protection, *Defendant*

and

The Supreme Court of New Jersey, *Defendant*

Superior Court of New Jersey
Mercer County
Law Division
Docket No. MER-L-002022-20
File Date: 12/09/2020

GURBIR S. GREWAL
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R.J. Hughes Justice Complex
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Attorney for Defendants,
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By: Michael T. Moran (251732019)
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DOL# 20-02764

KENNETH FRANK IREK, Plaintiff, v. NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION and THE SUPREME COURT OF NEW JERSEY, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MERCER COUNTY DOCKET NO. MER-L-2022-20 **CIVIL ACTION** **ENTRY OF APPEARANCE**

The Office of the Attorney General, by Deputy Attorney General Michael T. Moran, hereby enters an appearance as Counsel on behalf of Defendants New Jersey Lawyers' Fund for Client Protection and Supreme Court of New Jersey.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Michael T. Moran
Michael T. Moran
Deputy Attorney General
Attorney ID: 251732019

DATE: December 3, 2020

Civil Case Information Statement
(CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under *Rule* 4:5-1
Pleading will be rejected for filing, under *Rule* 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed

For Use by Clerk's Office Only
Payment type: ☐ ck ☐ cg ☐ ca
Chg/Ck Number:
Amount:
Overpayment:
Batch Number:

Attorney/Pro Se Name	Telephone Number	County of Venue
Michael T. Moran, DAG	(609) 376-3377	Mercer

Firm Name (if applicable)	Docket Number (when available)
State of New Jersey, Office of the Attorney General, Division of Law	MER-L-2022-20

Office Address	Document Type
R.J. Hughes Justice Complex 25 Market Street, P.O. Box 116 Trenton, New Jersey 08625	Notice of Appearance
	Jury Demand ■ Yes ☐ No

Name of Party (e.g., John Doe, Plaintiff)	Caption
New Jersey Lawyers' Fund for Client Protection and Supreme Court of New Jersey, Defendants	Kenneth Frank Irek v. New Jersey Lawyers' Fund for Client Protection, et al.

Case Type Number (See reverse side for listing)	Are sexual abuse claims alleged?	Is this a professional malpractice case?
999	☐ Yes ■ No	☐ Yes ■ No If you have checked "Yes," see *N.J.S.A.* 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.

Related Cases Pending?	If "Yes," list docket numbers
☐ Yes ■ No	

Do you anticipate adding any parties (arising out of same transaction or occurrence)?	Name of defendant's primary insurance company (if known)
☐ Yes ■ No	■ None ☐ Unknown

The Information Provided on This Form Cannot be Introduced into Evidence.

Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation

Do parties have a current, past or recurrent relationship?	If "Yes," is that relationship:
☐ Yes ■ No	☐ Employer/Employee ☐ Friend/Neighbor ☐ Other (explain) ☐ Familial ☐ Business

Does the statute governing this case provide for payment of fees by the losing party? ☐ Yes ■ No

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition

Do you or your client need any disability accommodations?	If yes, please identify the requested accommodation:
☐ Yes ■ No	
Will an interpreter be needed?	**If yes, for what language?**
☐ Yes ■ No	

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

Attorney Signature: /s/ Michael T. Moran

Side 2

Civil Case Information Statement
(CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days discovery

151	Name Change
175	Forfeiture
302	Tenancy
399	Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
502	Book Account (debt collection matters only)
505	Other Insurance Claim (including declaratory judgment actions)
506	PIP Coverage
510	UM or UIM Claim (coverage issues only)
511	Action on Negotiable Instrument
512	Lemon Law
801	Summary Action
802	Open Public Records Act (summary action)
999	Other (briefly describe nature of action)

Track II - 300 days discovery

305	Construction
509	Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD))
599	Contract/Commercial Transaction
603N	Auto Negligence – Personal Injury (non-verbal threshold)
603Y	Auto Negligence – Personal Injury (verbal threshold)
605	Personal Injury
610	Auto Negligence – Property Damage
621	UM or UIM Claim (includes bodily injury)
699	Tort – Other

Track III - 450 days discovery

005	Civil Rights
301	Condemnation
602	Assault and Battery
604	Medical Malpractice
606	Product Liability
607	Professional Malpractice
608	Toxic Tort
609	Defamation
616	Whistleblower / Conscientious Employee Protection Act (CEPA) Cases
617	Inverse Condemnation
618	Law Against Discrimination (LAD) Cases

Track IV - Active Case Management by Individual Judge / 450 days discovery

156	Environmental/Environmental Coverage Litigation
303	Mt. Laurel
508	Complex Commercial
513	Complex Construction
514	Insurance Fraud
620	False Claims Act
701	Actions in Lieu of Prerogative Writs

Multicounty Litigation (Track IV)

271	Accutane/Isotretinoin
274	Risperdal/Seroquel/Zyprexa
281	Bristol-Myers Squibb Environmental
282	Fosamax
285	Stryker Trident Hip Implants
286	Levaquin
289	Reglan
291	Pelvic Mesh/Gynecare
292	Pelvic Mesh/Bard
293	DePuy ASR Hip Implant Litigation
295	AlloDerm Regenerative Tissue Matrix
296	Stryker Rejuvenate/ABG II Modular Hip Stem Components
297	Mirena Contraceptive Device
299	Olmesartan Medoxomil Medications/Benicar
300	Talc-Based Body Powders
601	Asbestos
623	Propecia
624	Stryker LFIT CoCr V40 Femoral Heads
625	Firefighter Hearing Loss Litigation
626	Abilify
627	Physiomesh Flexible Composite Mesh
628	Taxotere/Docetaxel
629	Zostavax
630	Proceed Mesh/Patch
631	Proton-Pump Inhibitors
632	HealthPlus Surgery Center
633	Prolene Hernia System Mesh

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics.

Please check off each applicable category ☐ **Putative Class Action** ■ **Title 59** ☐ **Consumer Fraud**

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KENNETH FRANK IREK, Plaintiff, v. NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION and THE SUPREME COURT OF NEW JERSEY, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MERCER COUNTY DOCKET NO. MER-L-2022-20 **CIVIL ACTION** **NOTICE OF CROSS-MOTION TO DISMISS PLAINTIFF'S VERIFIED COMPLAINT**

TO: The Honorable Douglas H. Hurd, P.J.Cv.
Mercer County Superior Court
175 South Broad Street, 3rd Floor
Trenton, New Jersey 08625

Kenneth Frank Irek, pro se
8330 Haskell Avenue, Unit 226
North Hills, California 91343

PLEASE TAKE NOTICE that, on Friday, **December 18, 2020**, or as soon thereafter as counsel may be heard, the undersigned, attorney for Defendants New Jersey Lawyers' Fund for Client Protection and Supreme Court of New Jersey, will apply to the Honorable Douglas H. Hurd, P.J.Cv., for an Order dismissing Irek's Verified Complaint and denying Irek's Motion for Injunctive Relief in this matter.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 1:6-2, it is requested that the Court consider this cross-motion on the papers submitted unless opposition is entered, in which case oral argument is requested.

In support of their cross-motion, the Judiciary Defendants will rely upon the attached Brief.

A proposed form of Order is attached.

Discovery End Date: NONE

Arbitration Date: NONE

Trial Date: NONE

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Michael T. Moran
Michael T. Moran
Deputy Attorney General
Attorney ID: 251732019

DATE: December 9, 2020

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KENNETH FRANK IREK, Plaintiff, v. NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION and THE SUPREME COURT OF NEW JERSEY, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MERCER COUNTY DOCKET NO. MER-L-2022-20 **CIVIL ACTION** **ORDER**

THIS MATTER having been opened to the Court on application of Plaintiff pro se Kenneth Frank Irek ("Irek") for injunctive relief, and Deputy Attorney General Michael T. Moran, appearing on behalf of Defendants New Jersey Lawyers' Fund for Client Protection and Supreme Court of New Jersey ("Judiciary Defendants"), having objected to Irek's application for injunctive relief and cross-moving for an Order dismissing the Verified Complaint with prejudice under Rule 4:6-2(a) for lack of subject matter jurisdiction and under Rule 4:6-2(e) failure to state a claim upon which relief can be granted, and the Court having considered the moving papers and for good cause shown;

IT IS on this _____ day of _____, 2020

ORDERED that the Judiciary Defendants' Cross-Motion to Dismiss Irek's Verified Complaint is hereby **GRANTED;** and it is further

ORDERED that Irek's Verified Complaint against the Judiciary Defendants and their employees is hereby **DISMISSED WITH PREJUDICE;** and it is further

ORDERED that Irek's Motion for Injunctive Relief is hereby **DENIED WITH PREJUDICE;** and it is further

ORDERED that a copy of this Order shall be served upon the pro se plaintiff within ten days of it being uploaded onto eCourts.

_____
HON. DOUGLAS H. HURD, P.J.Cv.

_____ Opposed

_____ Unopposed

KENNETH FRANK IREK, Plaintiff, v. NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION and THE SUPREME COURT OF NEW JERSEY, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MERCER COUNTY DOCKET NO. MER-L-2022-20 **CIVIL ACTION**

BRIEF IN SUPPORT OF DEFENDANTS NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION AND SUPREME COURT OF NEW JERSEY'S CROSS-MOTION TO DISMISS THE VERIFIED COMPLAINT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

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By: Michael T. Moran
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PRELIMINARY STATEMENT

For the reasons set forth herein, Defendants New Jersey Lawyers' Fund for Client Protection ("the Fund") and Supreme Court of New Jersey (collectively, "Judiciary Defendants") respectfully request that the Court grant their cross-motion to dismiss Plaintiff pro se Kenneth Frank Irek's ("Irek") Verified Complaint with prejudice under Rule 4:6-2(a) and/or Rule 4:6-2(e) and deny Irek's motion for injunctive relief.

As a threshold matter, the Verified Complaint should be dismissed for want of subject matter jurisdiction. Irek presents a number of claims against the Judiciary Defendants, namely the Fund's purported lack of jurisdiction to seek and obtain a default judgment against Irek. Essentially, he challenges the Fund's discretionary decisions, including its determination to award $5,000.00 to two claimants and its decision to recoup that award by way of obtaining a judgment against Irek. The Supreme Court of New Jersey, however, maintains exclusive and plenary regulatory authority over the practice of law in this State, which encompasses the governance and control over the Fund. Explicit in this authority, direct claims against the Fund must be petitioned before the Supreme Court. As such, the Superior Court of New Jersey, Law Division, lacks subject matter jurisdiction to adjudicate those disputes.

Notwithstanding the jurisdictional issue, Irek's tort claims should be dismissed because they are time-barred. Simply put, these claims accrued outside the applicable statutes of limitations and cannot be brought and litigated before the Court. Thus, Counts Four, Five, and Six of the Verified Complaint should be dismissed with prejudice for failure to state a claim upon which relief can be granted.

Putting aside the uncurable statute of limitations deficiency, the Judiciary Defendants are nevertheless entitled to absolute immunity in law and equity. Under the Tort Claims Act ("TCA"), a public entity is cloaked with immunity when a public employee is entitled to immunity. The Supreme Court of New Jersey has bestowed absolute immunity upon all personnel associated with the Fund, provided the alleged actions or inaction involved the performance of their official duties. Irek's cavils encompass actions or omissions taken by Fund personnel within their respective official capacities. Therefore, irrespective of whether a public entity or public employee is named in the suit, immunity attaches, and dismissal is the appropriate remedy.

Finally, Irek's motion for injunctive relief should be denied. In short, he has not shown – by clear and convincing proof – that he (1) has suffered irreparable harm; (2) stated a cognizable legal claim that has a likelihood of success on the merits; and (3) would suffer a substantial hardship if the

application was denied. Absent any showing to warrant the extraordinary relief, the application should be denied.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Irek, a California resident, is a former Colts Neck, New Jersey attorney who was disbarred in May 1993 "for the knowing misappropriation of escrow funds in violation of RPC 1.15(b) and RPC 8.4(c)."[2] See In re Irek, 132 N.J. 203, 204 (1993). His disbarment stemmed from a real estate transaction involving Zontan Szatmary and Cathleen Szatmary ("the Szatmarys"), in which Irek acted as an escrow agent. See Attachment 16 to Plaintiff's Verified Complaint. The facts giving rise to Irek's disbarment and the instant action will be summarized sequentially below.

A. The May-June 1990 Real Estate Sale, Irek's Ensuing "Unavailability," the Fund's $5,000.00 Default Judgment Against Irek, and the Judiciary Defendants' Attempts to Recover the Judgment

In May 1990, Irek advertised the sale of a vacant construction lot in Jackson, New Jersey. See Plaintiff's Verified Complaint, ¶ 11. Kirex Development Company, Inc. ("Kirex") owned the vacant

[1] The statement of facts and procedural history have been combined for ease of understanding and to avoid repetition, as they are inextricably related.

[2] For reasons unknown at this time, although reasonably noticed of same, Irek did not appear before the Disciplinary Review Board or the New Jersey Supreme Court for the proceedings leading up to his disbarment.

lot. See id. ¶ 12. Irek was Kirex's sole shareholder, president, secretary, treasurer, and director. See id. ¶ 13.

The Szatmarys were interested in purchasing the vacant lot and retained the legal services of Dennis D. Poane, Esq., to complete the transaction. See id. ¶¶ 14-15. Between May 29, 1990 and June 6, 1990, the Szatmarys and Kirex – through its agent, Irek – executed a contract for sale of the lot. See id. ¶ 18. Cathleen Szatmary issued a check dated May 29, 1990 in the amount of $5,000.00 to Kirex as an initial deposit of the lot's $35,000.00 purchase price. See id. ¶ 19.

In August 1990, Irek "became unavailable and the closing never took place."[3] See id. ¶ 23. On April 12, 1991, the Szatmarys completed a Statement of Claim through the New Jersey Lawyers' Fund for Client Protection, indicating that Irek – as an escrow agent – misappropriated the $5,000.00 deposit. See id. ¶¶ 24-25. On November 26, 1993, the Fund agreed to pay the Szatmarys in the amount of $5,000.00. See id. ¶ 27.

On December 29, 1994, Michael T. McCormick, Deputy Counsel for the Fund, filed a complaint in the Superior Court of New

[3] Curiously, Irek does not indicate whether the Szatmarys' $5,000.00 was returned before he "became unavailable." Based on the documents submitted with the Verified Complaint and considering he was disbarred for his unethical conduct in the underlying real estate transaction, one can reasonably infer that the Szatmarys were neither conveyed ownership of the lot nor returned their $5,000.00 initial deposit.

Jersey, Law Division, Mercer County, Docket No. MER-L-5664-94, demanding Irek to reimburse the $5,000.00 that was paid to the Szatmarys. See id. ¶ 28. Deputy Counsel McCormick advised the court that Irek "embezzled, misapplied and converted to his own use the sum of $5,000.00 received by him on behalf of Mr. and Mrs. Szatmary as funds to be held, in a fiduciary capacity, in escrow in connection with a real estate transaction." See id. ¶ 29.

On March 22, 1995, a default judgment was entered against Irek in the amount of $5,000.00, plus interest and costs of suit. See id. ¶ 31. Since the entry of default judgment, the Fund has attempted to recover the lien amount from Irek. See id. ¶ 32. From 1995-2017, the Judiciary Defendants issued 15 information subpoenas to Irek. See id. ¶ 35. From 2000-2017, Irek was served with 11 summonses to appear at an enforcement hearing at the Mercer County Civil Courthouse. See id. ¶ 34. On November 5, 2004 and March 23, 2015, two bench warrants were issued for Irek's arrest. See id. ¶ 36. The March 23, 2015 bench warrant was later forwarded to the Sheriff of Los Angeles County, California. See id. ¶ 37. To achieve payment of the lien, the Judiciary Defendants also requested the California Department of Motor Vehicles to suspend or refuse to renew Irek's driver's license. See id. ¶¶ 39, 41.

To date, Irek owes $2,500.00 on the default judgment. See id. ¶ 42.

B. Irek's Verified Complaint and Request for Injunctive Relief

On November 9, 2020, Irek filed a six-count Verified Complaint in the Superior Court of New Jersey, Law Division, Civil Part, Mercer County. See Plaintiff's Verified Complaint.

First, Irek contends that the Mercer County Superior Court lacked subject matter jurisdiction to issue the March 22, 1995 default judgment. See Plaintiff's Verified Complaint, Count One. The crux of Irek's quibbles revolve around the fact that the Szatmarys were represented by Mr. Poane, not Irek, and a fiduciary relationship between Irek and the Szatmarys was not established. See Plaintiff's Verified Complaint, ¶¶ 63, 65. Instead, Irek claims that he entered into the purchase agreement as the President of Kirex and said conduct was not subject to the jurisdiction of the Supreme Court of New Jersey or the Fund. See id. ¶ 66.

Second, Irek – without any factual support – asserts that the Mercer County Superior Court entered the March 22, 1995 default judgment without personal jurisdiction over Irek. See Plaintiff's Verified Complaint, Count Two.

Third, Irek claims that the Fund lacked jurisdiction to pay the $5,000.00 claim to the Szatmarys. See Plaintiff's Verified Complaint, Count Three. Although the Disciplinary Review Board concluded on December 28, 1992 that Irek "was also acting as an attorney" on behalf of Kirex when he absconded with the Szatmarys' funds, Irek claims that he "had no client-lawyer relationship with

the Szatmarys, did not hold himself out as an attorney, and was acting only as an individual and President of his solely owned New Jersey corporation." See Plaintiff's Verified Complaint, ¶¶ 92, 93B. Twenty-five years later, Irek now avers that he "was not subject to the New Jersey Rules of Professional Conduct," and "[t]he New Jersey Supreme Court did not have jurisdiction over [him] while acting as resident and Secretary of his solely-owned New Jersey corporation." See id. ¶¶ 94-95. In turn, he argues that the Fund lacked the authority to award $5,000.00 to the Szatmarys because the Supreme Court's disbarment order is null and void. See id. ¶ 99.

Fourth, Irek alleges that the Judiciary Defendants are liable for common law fraud. See Plaintiff's Verified Complaint, Count Four. He asserts that on December 29, 1994, Deputy Counsel McCormick knowingly made material misrepresentations regarding the Szatmarys' legal representation during the aforementioned real estate transaction. See Plaintiff's Verified Complaint, ¶¶ 102, 104-106.

Fifth, Irek makes a claim for "intentional infliction of mental duress." See Plaintiff's Verified Complaint, Count Five. He cites to the Judiciary Defendants' "various activities to compel [him] to reimburse the [Fund] for the $5,000 claim they had paid to the Szatmarys," claiming that "[t]hese activities . . . are still continuing." See Plaintiff's Verified Complaint, ¶¶ 112-113.

Specifically, from 2000-2017, Irek alleges that the Judiciary Defendants sent "at least 39 letters" regarding the Fund's attempt to collect the $5,000.00 judgment. See id. ¶ 115. Irek references: (1) a July 28, 2006 order to suspend his driver's license; (2) an August 14, 2006 letter to Irek in which the Judiciary Defendants advised him that they would seek a suspension of his California driver's license if he did not remit payment for the $5,000.00 judgment; (3) an October 6, 2006 letter in which the Judiciary Defendants requested the California Department of Motor Vehicles to suspend or refuse to renew his driver's license for failure to pay his financial arrears; and (4) a March 30, 2015 letter to Irek in which the Judiciary Defendants advised him of the bench warrant against him and a final request to enter a consent order for repayment before the prosecution of the bench warrant. See id. ¶¶ 116-119.

Sixth, Irek brings a "libel-defamation" claim. See Plaintiff's Verified Complaint, Count Six. He contends that the Judiciary Defendants have "published written statements containing disparaging and defamatory statements that were intended to libel and defame [him]." See Plaintiff's Verified Complaint, ¶ 133. He buttresses his claim on alleged publications dated December 29, 1994, October 22, 2004, and October 6, 2006; the genesis of this claim is Irek's contention that he did not misappropriate the $5,000.00 in a fiduciary capacity. See id. ¶¶ 134-136.

In light of the above-mentioned allegations, Irek requests (1) the March 1995 default judgment be declared void ab initio; (2) injunctive relief enjoining the Judiciary Defendants from compelling Irek's payment of the $5,000.00 default judgment; (3) injunctive relief ordering the cancellation of all bench warrants; (4) injunctive relief ordering the restoration of his New Jersey and California driving privileges; (5) injunctive relief enjoining the Judiciary Defendants from publishing defamatory and malicious statements about Irek regarding his misappropriation of funds; (6) the May 11, 1993 disbarment order be declared void ab initio; (7) his New Jersey bar license be reinstated; (8) repayment of $2,500.00 that was previously remitted to the Fund; (9) compensatory damages; and (10) punitive damages. See Plaintiff's Verified Complaint, Prayer for Relief, pp. 19-22.

On November 28, 2020, Irek filed a "Notice of Motion for Injunctive Relief Temporary Restraints." He argues that there is "immediate and irreparable damage" prior to a final adjudication in this matter and seeks injunctive relief. He seeks a preliminary injunction enjoining the Judiciary Defendants from:

A. Continuing to engage in conduct related to compelling Plaintiff to reimburse the NJLFCP for the $5,000 claim they had paid to the claimants (Szatmarys);

B. Intentionally threatening the arrest of Plaintiff;

C. Intentionally inducing others to unlawfully cancel remove or not renew any privileges or rights of Plaintiff;

D. Enforcing, continuing in effect or re-issuing all Bench Warrants related to the facts herein stated, in the State of California;

E. Enforcing, continuing in effect or re-issuing all Bench Warrants related to the facts herein stated, in the State of New Jersey;

F. Enforcing, continuing in effect or re-issuing all Bench Warrants related to the facts herein stated, in any other State where they may have sent them;

G. Enforcing, continuing in effect or re-issuing New Jersey Driver's License Forfeiture;

H. Defendants and other persons acting in concert with them and at their direction, from publishing, republishing, distributing and redistributing false, disparaging, defamatory and malicious statements, including but not limited to, that Plaintiff engaged in dishonest conduct, misappropriated money; and embezzled, misapplied and converted to his own use the sum of $5,000.00;

I. Granting such other relief as the court deems equitable and just.

[See Plaintiff's Certification in Support of Motion for Injunctive Relief Temporary Restraints, ¶ 9.]

The Judiciary Defendants cross-move to dismiss the Verified Complaint with prejudice under Rule 4:6-2(a) and Rule 4:6-2(e) and move in opposition to Irek's application for injunctive relief.

STANDARD OF REVIEW

A. Rule 4:6-2(a)

A court's subject matter jurisdiction cannot be waived, and the defense can be raised at any time during litigation, including on appeal. Triffin v. Se. Pa. Transp. Auth., 462 N.J. Super. 172, 178 (App. Div. 2020). Consistent with this principle, the New Jersey Court Rules dictate, in pertinent part:

> Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint . . . shall be asserted in the answer thereto, except that the following defenses . . . may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter. . . .
>
> [R. 4:6-2(a).]

Jurisdiction over the subject matter "does not depend upon the sufficiency of a complaint in a particular case, nor the technical manner in which the cause is pleaded." Abbott v. Beth Israel Cemetery Ass'n of Woodbridge, 13 N.J. 528, 536-37 (1953) (citing Baron v. Peoples Nat'l Bank of Secaucus, 9 N.J. 249, 258 (1952)). "It is the Power of the court to hear and determine a case of the class to which the one to be adjudicated is relegated." Petersen v. Falzarano, 6 N.J. 447, 454 (1951). Because jurisdiction is a threshold legal issue, a reviewing court should dismiss an action if it determines subject matter jurisdiction is lacking. Royster v. N.J. State Police, 439 N.J. Super. 554, 568 (App. Div. 2015), aff'd in part and modified in part by, 227 N.J. 482 (2017).

B. Rule 4:6-2(e)

In addition to raising a subject matter jurisdiction defense, the New Jersey Court Rules dictate:

> Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint . . . shall be asserted in the answer thereto, except that the following defenses . . . may at the option of the pleader be made by motion, with briefs: . . . (e) failure to state a claim upon which relief can be granted. . . .
>
> [R. 4:6-2(e).]

At the motion to dismiss stage, a court must examine the legal sufficiency of the facts asserted in the complaint and determine whether a cause of action is "suggested" by the facts. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). The court must "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned." Ibid. (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). The plaintiff is afforded "every reasonable inference of fact," as the court will not base its finding on the plaintiff's ability to prove the allegations contained within the complaint. Ibid. In fact, the court must accept as true the plaintiff's version of the events. Rumbauskas v. Cantor, 138 N.J. 173, 175 (1994).

In making these determinations, the court may look to whether the plaintiff's complaint complies with the statute of limitations. See Smith v. Datla, 451 N.J. Super. 82, 88 (App. Div.

2017). Further, an immunity question should be adjudicated "early in a proceeding," and a motion to dismiss "is a particularly effective device to resolve any claim of immunity." See Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008) (citing Wildoner v. Borough of Ramsey, 162 N.J. 375, 387 (2000)). Although a complaint should be accorded "meticulous and indulgent examination" and dismissed "in only the rarest of instances," dismissal with prejudice is the appropriate remedy if the plaintiff is categorically impeded from bringing a viable cause of action. See Printing Mart-Morristown, 116 N.J. at 772.

ARGUMENT

POINT I

IREK'S VERIFIED COMPLAINT SHOULD BE DISMISSED BECAUSE THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER IREK'S CLAIMS.

Under the New Jersey Constitution, the Supreme Court of New Jersey is vested with exclusive regulatory authority over the State bar. See N.J. Const. art. VI, § II, para. 3. Indeed, the Court has noted that through this constitutional provision, it "has exercised plenary, exclusive, and almost unchallenged power over the practice of law." In re Li Volsi, 85 N.J. 576, 585 (1981).

Pursuant to this authority, the Court established the New Jersey Lawyers' Fund for Client Protection "for the express purpose of reimbursing, to a certain extent, the losses caused by the dishonest conduct of members of the New Jersey bar." GE Capital

Mortg. Servs., Inc. v. N.J. Title Ins. Co., 333 N.J. Super. 1, 5 (App. Div. 2000). The Supreme Court appoints seven trustees to administer and operate the Fund. R. 1:28-1(a). The Court has dictated that "[n]o claimant or any other person or organization shall have any right in the Fund as beneficiary or otherwise." R. 1:28-3(d). Rather, it directed that the seven trustees shall be conferred with "sole discretion" to determine "which eligible claims merit reimbursement from the Fund and the amount, time, manner, conditions and order of payment of reimbursement." R. 1:28-3(b).

In GE Capital Mortgage Services, Inc., the plaintiff filed a claim with the Fund, seeking reimbursement of monies in the amount of $694,146.75 that were misappropriated by an attorney during a real estate transaction. See 333 N.J. Super. at 3-4. A representative from the Fund advised the plaintiff that it would not consider the claim because of a lack of an attorney-client relationship between the plaintiff and the attorney and "the strong possibility" that the plaintiff could recoup its loss in full from collateral sources. Id. at 4. The plaintiff filed a verified complaint with the Superior Court of New Jersey, Chancery Division, against the Fund and the parties involved in the underlying real estate transaction. Ibid. The plaintiff argued that it suffered a loss as a result of the attorney's "dishonest conduct and demanded that it be declared a proper claimant against the Fund and that

the Fund be ordered to recognize and pay its claim." Ibid. The Fund moved to dismiss the verified complaint, citing to a want of subject matter jurisdiction. Ibid. The trial court agreed and dismissed the claims against the Fund. Ibid.

On appeal, the Appellate Division affirmed. Id. at 7. The court found that the plaintiff's argument that "it should be permitted to utilize the court system to establish a viable and enforceable claim against the Fund[] . . . directly violate[s] the procedure established by our Supreme Court for the processing of such claims." Id. at 6. Citing to "the novel jurisdictional and public policy implications of permitting direct claims against the Fund," the court held that permitting a claim against the Fund to proceed in the Law Division "would intrude improperly on matters clearly vested in the Fund by the Supreme Court." Ibid.

Turning to the present case, Irek attempts to circumvent the explicit Court Rules and invite this Court to encroach upon matters vested in the Fund through the Supreme Court. In sum, he challenges (1) the Fund's discretion in awarding the Szatmarys $5,000.00 in November 1993; and (2) the Fund's decision to recoup the November 1993 loss by seeking and obtaining a $5,000.00 against him. However, the Fund is wholly a creature of our Supreme Court; hence, any claim against the Fund deriving from its discretionary authority must be brought before that Court. GE Capital Mortgage Services, Inc. unequivocally instructs that claims against the

Fund cannot be brought in Superior Court. See 333 N.J. Super. at 6 ("[T]he mere fact that R. 1:28-2(f) specifically grants immunity from suit to the Fund's trustees and personnel will not be interpreted as an inferential endorsement by the Supreme Court of direct claims against the Fund in the trial divisions."). Succinctly stated, this Court lacks authority to scrutinize the decision-making that is within the "sole discretion" of seven trustees who were appointed by and answer directly to the Supreme Court. Absent an express sanction of the Supreme Court, Irek is barred from pursuing any claims against the Fund in this Court.[4]

Likewise, to the extent Irek seeks a reinstatement of his New Jersey law license, this Court also lacks jurisdiction to grant such relief. Principally, any relief in this matter irrefutably requires a reopening of Irek's disbarment proceeding, as the Fund's award to the Szatmarys was not plausible unless and until Irek was disbarred for dishonest, unethical conduct. See Plaintiff's Verified Complaint, ¶ 99. As stated above, the Supreme Court governs the regulation of the practice of law in New Jersey. See N.J. Const. art. VI, § II, para. 3 ("The Supreme Court shall have jurisdiction over the admission to the practice of law and the

[4] The gravamen of Irek's requested relief is a vacation of the default judgment that was entered under docket number MER-L-5664-94. His proper recourse remains with filing a motion to vacate the default judgment in that specific case under Rule 4:50-1, not filing a new, separate lawsuit in Superior Court.

discipline of persons admitted."). The Court clearly indicated in its May 13, 1993 Order that Irek "be disbarred and that his name be stricken from the roll of attorneys of this State," as well as "permanently restrained and enjoined from practicing law" in New Jersey. In re Irek, 132 N.J. at 204. This Court cannot unilaterally reverse the Supreme Court's decision to disbar Irek, thereby divesting it of jurisdiction to hear this matter.

Therefore, this Court lacks subject matter jurisdiction and should dismiss the Verified Complaint without having to delve into the merits of the pleading or Irek's application for injunctive relief.

POINT II

IREK'S TORT CLAIMS ARE TIME-BARRED UNDER THE APPLICABLE STATUTES OF LIMITATIONS.

The TCA is a comprehensive statutory scheme that establishes the parameters for tort claims against State entities, including notice and investigation provisions, as well as substantive rules pertaining to immunity from suit. See N.J.S.A. 59:1-1, et seq. It modified the traditional sovereign immunity doctrine and established the limited circumstances in which a party may assert tort claims against the State and its entities. Feinberg v. N.J. Dep't of Envtl. Prot., 137 N.J. 126, 133 (1994).

In enacting the TCA, the Legislature declared:

> The Legislature recognizes the inherently unfair and inequitable results which occur in

> the strict application of the traditional doctrine of sovereign immunity. On the other hand the Legislature recognizes that while a private entrepreneur may readily be held liable for negligence within the chosen ambit of his activity, the area within which government has the power to act for the public good is almost without limit and therefore government should not have the duty to do everything that might be done. Consequently, it is hereby declared to be the public policy of this State that public entities shall only be liable for their negligence within the limitations of this act and in accordance with the fair and uniform principles established herein. All of the provisions of this act should be construed with a view to carry out the above legislative declaration.
>
> [N.J.S.A. 59:1-2 (emphasis added).]

Reflective of the Legislature's express intent, the TCA's guiding principle is that "immunity from tort liability is the general rule and liability is the exception." Coyne v. State, 182 N.J. 481, 488 (2005) (quoting Garrison v. Twp. of Middletown, 154 N.J. 282, 286 (1998)). Consequently, it "imposes strict requirements upon litigants seeking to file claims against public entities," see McDade v. Siazon, 208 N.J. 463, 468 (2011), including several statutes of limitations, see N.J.S.A. 59:8-8 (90-day statute of limitations to present a notice of claim to a public entity); N.J.S.A. 59:8-9 (one-year statute of limitations to present a late notice of claim motion to the appropriate court); N.J.S.A. 59:8-8b (two-year statute of limitations to file suit against a public entity).

Statutes of limitations are equitable in nature and promote timely and efficient litigation, penalize dilatoriness, and serve as measures of repose. Montells v. Haynes, 133 N.J. 282, 292-93 (1993). In turn, they spare courts from litigating stale claims. Smith, 451 N.J. Super. at 92. Consistent with these general principles, the TCA provides that a plaintiff will be "forever barred" from "recovering against a public entity" unless he files suit within two years of a claim's accrual. N.J.S.A. 59:8-8b; see also Velez v. City of Jersey City, 180 N.J. 284, 290 (2004) (stating that a tort claim against a public entity must be filed "within two years after the claim's accrual") (citing N.J.S.A. 59:8-8b).

Broadly speaking, a cause of action accrues on the date when "the right to institute and maintain a suit" first arises. Russo Farms v. Vineland Bd. of Educ., 144 N.J. 84, 98 (1996) (quoting Rosenau v. City of New Brunswick, 51 N.J. 130, 137 (1968)); see also Dunn v. Borough of Mountainside, 301 N.J. Super. 262, 273 (App. Div. 1997) (noting that "a tort claim accrues when a person is injured due to another person's fault"), certif. denied, 153 N.J. 402 (1998). Stated differently, a claim accrues when a plaintiff knows that he is injured, and a public entity is responsible for the alleged injuries. See Beauchamp v. Amedio, 164 N.J. 111, 118-19 (2000); see also N.J.S.A. 59:8-1 (stating that "[a]ccrual shall mean the date on which the claim accrued").

Here, Irek's claims for common law fraud (Count Four), "intentional infliction of mental duress" (Count Five), and "libel-defamation" (Count Six) are all time-barred under the applicable statutes of limitations.[5] This case epitomizes the necessity for statutes of limitations. Each claim will be analyzed in turn.

As for the common law fraud claim, the complained of conduct occurred on December 29, 1994, the date in which Deputy Counsel McCormick filed a complaint against Irek to collect the $5,000.00 that he owed the Fund. On that date or soon thereafter, Irek would have reasonably known that he had a potential claim against a public entity or employee, as the alleged fraud was committed at that particular time. However, nearly 26 years have elapsed since the alleged conduct occurred, and the claim is well outside the TCA's two-year statute of limitations. Thus, Count Four of the Verified Complaint should be dismissed with prejudice.

Next, Irek's "intentional infliction of mental duress" claim is premised upon correspondence that the Judiciary Defendants

[5] In addition to the statute of limitations defense, there is also a question of whether Irek served a timely notice of claim prior to initiating suit against the Judiciary Defendants. See N.J.S.A. 59:8-8. In the event the Court declines to dismiss his tort claims for the reasons delineated in this motion, the Judiciary Defendants reserve the right to file a motion to dismiss the Verified Complaint for failure to file a notice of claim with 90 days of the tort claims' accrual. See N.J.S.A. 59:8-8a.

purportedly sent between 2000 and 2017. See Plaintiff's Verified Complaint, ¶ 115. He references various communications and documents dated July 28, 2006; August 14, 2006; October 6, 2006; March 23, 2015; and March 30, 2015. See id. ¶¶ 116-120. At the latest, despite his claim that he "continues to suffer[] extreme emotional distress," Irek's emotional distress claim accrued over five years ago, namely March 30, 2015. See id. ¶ 122. Irek's allegation of continuing extreme emotional distress is unavailing and inconsequential to the accrual of his tort claim. See Russo Farms, 144 N.J. at 114 (concluding that "a wrongful act with consequential continuing damages is not a continuing tort" and does not lengthen the statute of limitations) (quoting Ricottilli v. Summersville Mem'l Hosp., 188 W. Va. 674 (1992)). Therefore, Count Five of the Verified Complaint is time-barred under the two-year statute of limitations and should be dismissed with prejudice.

Lastly, Irek's "libel-defamation" claim is equally barred by the more stringent one-year statute of limitations.[6] See N.J.S.A. 2A:14-3; Patel v. Soriano, 369 N.J. Super. 192, 247 (App. Div.), certif. denied, 182 N.J. 141 (2004). Irek attributes this claim to alleged writings published in December 29, 1994; October 22, 2004; and October 6, 2006. See Plaintiff's Verified Complaint, ¶¶ 134-

[6] Even assuming the TCA's two-year statute of limitations applies, Irek's claim is still time-barred under that more generous standard.

136. Akin to the preceding emotional distress claim, Irek's claim that "[t]he intentional wrongful conduct . . . is[] continuing and ongoing" does not negate the undisputable fact that, at the latest, the complained of publications were made available in 2006 and outside the statute of limitations period. See Churchill v. State, 378 N.J. Super. 471, 478 (App. Div. 2005) (holding that a defamation claim's one-year statute of limitations "runs from the date of publication of the alleged libel or slander"). Thus, Count Six is time-barred and should be dismissed with prejudice.

Therefore, Irek is "forever barred" from asserting tort claims against the Judiciary Defendants in this matter, and same should be dismissed with prejudice.

POINT III

THE JUDICIARY DEFENDANTS ARE IMMUNE FROM SUIT IN LAW AND EQUITY BECAUSE THE IMMUNITY AFFORDED TO THE TRUSTEES AND DEPUTY COUNSEL FOR CONDUCT IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES EXTENDS TO THE PUBLIC ENTITIES THEY REPRESENT.

Generally, the Supreme Court of New Jersey regulates the operation and administration of the Fund. See N.J. Lawyers' Fund for Client Prot. v. Pace, 186 N.J. 123, 126 (2006). The Court has found that the bar's reputation is sullied when a lawyer violates the law, but sustained when the Fund's trustees determine that a claim should be covered by the Fund. Ibid. As a result, it confers the Fund with broad discretion in determining whether a claim

merits reimbursement. See N.J. Lawyers' Fund for Client Prot. v. First Fidelity Bank, N.A., 303 N.J. Super. 208, 210-11 (App. Div.), certif. denied, 152 N.J. 13 (1997). In accordance with these maxims, essentially codifying the doctrine of quasi-judicial immunity, the Court Rules provide that "[t]he Board of Trustees, Director and Counsel, Deputy Counsel, and Secretary and all staff personnel shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties." R. 1:28-1(f) (emphasis added). Further, the TCA provides that "[a] public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable." N.J.S.A. 59:2-2b.

Here, assuming the Court finds Points I and II of this brief unpersuasive, Irek's tort claims and requests for monetary and injunctive relief should be denied because the Judiciary Defendants are entitled to absolute immunity. Irek complains of conduct that falls squarely within the Fund's trustees and deputy counsel's official responsibilities, namely their attempts to pursue and recover an outstanding amount from a judgment that was rightfully obtained. None of the purported conduct is alleged to have occurred outside the employment scope of the trustees and deputy counsel. Thus, the trustees and deputy counsel enjoy immunity in law and equity. Because the public employees are

entitled to absolute immunity, the Judiciary Defendants, public entities, are equally entitled to immunity. See N.J.S.A. 59:2-2b.

Therefore, the Judiciary Defendants are shielded with absolute immunity, and all relief in law and equity should be denied.

POINT IV

IREK HAS NOT DEMONSTRATED BY CLEAR AND CONVINCING PROOF THAT HE IS ENTITLED TO INJUNCTIVE RELIEF.

The long recognized standard for granting equitable injunctive relief was announced by our Supreme Court in Crowe v. De Gioia, 90 N.J. 126 (1982). In determining whether injunctive relief is warranted, a reviewing court should analyze the following factors: (1) such relief is necessary to prevent irreparable harm; (2) there is a settled underlying claim and a showing of reasonable probability of success on the merits; and (3) the relative hardship to the parties in granting or denying relief. See id. at 132-34. An injunction may only be granted when the application is supported with "clear and convincing proof." Dolan v. De Capua, 16 N.J. 599, 614 (1954). In reviewing an injunctive relief application, a court must undertake "the most sensitive exercise of judicial discretion." Crowe, 90 N.J. at 132.

As to the first Crowe factor, it is axiomatic that injunctive relief "should not be entered except when necessary to prevent substantial, immediate and irreparable harm." Subcarrier Commc'ns,

Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). For harm to be irreparable, an applicant must have no adequate remedy at law. Ibid.

Next, the applicant must show that he presents a legally-settled right and can demonstrate a likelihood of success on the merits. Crowe, 90 N.J. at 133. To prevail on an application for temporary relief, the claim must be premised upon rights or causes of action that are cognizable under the law. See Plotnick v. DeLuccia, 434 N.J. Super. 597, 618 (Ch. Div. 2013). Moreover, a preliminary injunction should not be granted when all material facts are controverted. Crowe, 90 N.J. at 133.

Lastly, the final factor summons a balancing test of the hardships to the parties if relief is granted or denied. Id. at 134. In making this balance, a court must determine whether the equities favor maintaining or disturbing the status quo pending the ultimate resolution of the case. Id. at 134-35.

Guided by the above principles, Irek's application for injunctive relief is meritless. As to the irreparable harm factor, Irek faces no harm via an ongoing violation of his rights. The Judiciary Defendants are merely utilizing proper channels to satisfy the default judgment against Irek. Despite Irek's conclusory allegations to the contrary, he has not demonstrated that the judgment was improperly procured. The judgment exists only because Irek – as an escrow agent on behalf of Kirex –

misappropriated the Szatmarys' funds, which in turn resulted in the Szatmarys applying for and receiving an award from the Fund in that exact amount. The mere fact that he was not the Szatmarys' attorney does not negate the obvious that the Szatmarys' initial deposit was held in escrow and Irek was the designated escrow agent when he absconded with their money. The Disciplinary Review Board and Supreme Court found this conduct to be in violation of the appropriate Rules of Professional Conduct, which warranted the disbarment and the Szatmarys' ensuing entitlement to an award from the Fund.

Moreover, over two decades have elapsed since the default judgment was entered, and Irek failed to contest the judgment's validity on numerous occasions. To come before the Court and argue that he would suffer an "immediate and irreparable damage" before the resolution of this matter is nothing short of disingenuous. He was provided ample opportunities to challenge the judgment, but he elected to ignore the notices, see Plaintiff's Verified Complaint, ¶¶ 34-35, which ultimately resulted in the Judiciary Defendants pursuing alternative and appropriate enforcement measures. Simply stated, Irek is not subject to any immediate or irreparable harm. Therefore, the first Crowe factor is not met.

Second, as referenced in Points I, II, and III of this brief, Irek does not state a cognizable cause of action against the Judiciary Defendants. To recap, (1) his claims are barred because

this Court lacks subject matter jurisdiction; (2) his claims are time-barred under the applicable statutes of limitations; and (3) the Judiciary Defendants are entitled to absolute immunity. Accordingly, no cause of action can be sustained against the Judiciary Defendants, and there is no likelihood of success on the merits. Because this matter should be dismissed in its entirety with prejudice on the merits, the second Crowe factor weighs in favor of denying the injunction.

Finally, Irek would suffer no hardship if the injunction was denied. The default judgment was entered in 1995, and the Judiciary Defendants have attempted to recover the judgment since that time. He has effectively discounted any and all subsequent notices that the Judiciary Defendants have sent him insofar that he could be heard on the matter. Now, years later, Irek baselessly claims that this judgment and the notices/enforcement measures stemming from that judgment have somehow caused him some hardship. However, his threadbare recitals of hardship fail to vault the clear and convincing standard needed to warrant an injunction. Further, in the event an injunction was granted, the Judiciary Defendants would incur a substantial hardship because they would be precluded from enforcing their rights as litigants, namely satisfying the judgment that was lawfully obtained. Hence, the equities necessitate a maintenance of the status quo pending resolution of this case. Therefore, the third Crowe factor is not satisfied.

Consequently, Irek's motion for injunctive relief should be denied.

CONCLUSION

For these reasons, the Judiciary Defendants respectfully request that the Court grant the cross-motion to dismiss and dismiss Plaintiff's Verified Complaint with prejudice for lack of subject matter jurisdiction and, in the alternative, failure to state a claim upon which relief can be granted. Moreover, the Judiciary Defendants respectfully request that Irek's application for injunctive relief be denied.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Michael T. Moran
Michael T. Moran
Deputy Attorney General
Attorney ID: 251732019

DATE: December 9, 2020

CERTIFICATION OF SERVICE

I hereby certify that the within Notice of Cross-Motion to Dismiss Irek's Verified Complaint and Opposition to Irek's Motion for Injunctive Relief, along with the accompanying Brief, were filed via eCourts filing with the Clerk, Superior Court of New Jersey, Law Division, Mercer County. I further certify that the Notice of Cross-Motion, Opposition, and all supporting papers were served upon the pro se plaintiff in accordance with Rule 1:5 via certified and regular mail:

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DATE: December 9, 2020

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SHEILA Y. OLIVER
Lt. Governor

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December 9, 2020

VIA eCOURTS AND REGULAR MAIL
The Honorable Douglas H. Hurd, P.J.Cv.
Mercer County Superior Court
175 South Broad Street, 3rd Floor
Trenton, New Jersey 08625

Re: Irek v. N.J. Lawyers' Fund for Client Protection, et al.
Docket No. MER-L-2022-20
DOL# 20-02764

Dear Judge Hurd:

Enclosed please find Defendants New Jersey Lawyers' Fund for Client Protection and Supreme Court of New Jersey's Cross-Motion to Dismiss Plaintiff Kenneth Frank Irek's Verified Complaint and Opposition to Irek's Motion for Injunctive Relief. The cross-motion to dismiss and motion for injunctive relief are returnable **December 18, 2020.**

Respectfully yours,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

/s/ Michael T. Moran
Michael T. Moran
Deputy Attorney General
Attorney ID: 251732019

cc: Kenneth Frank Irek, pro se (via certified & regular mail)