

REPLY TO 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: 12/14/2020

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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

CIVIL ACTION

NOTICE OF MOTION FOR
INJUNCTIVE RELIEF
TEMPORARY RESTRAINTS AND REPLY TO
DEFENDANTS' 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

ATTORNEY GENERAL OF NEW JERSEY
ATTN: Michael T. Moran
Deputy Attorney General
R. J. Hughes Justice Complex
25 Market Street
PO Box 116
Trenton, New Jersey 08625

Representing the Defendants:

NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION
25 W. Market Street
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Trenton, New Jersey 08625

and

NEW JERSEY SUPREME COURT
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Trenton, New Jersey 08611

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KENNETH FRANK IREK,

Plaintiff,

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**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

CIVIL ACTION

**REPLY BRIEF IN SUPPORT OF OPPOSITION TO DEFENDANTS' CROSS- MOTION
TO DISMISS THE VERIFIED COMPLAINT AND IN OPPOSITION TO
DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTIVE
RELIEF ON BEHALF OF PLAINTIFF, KENNETH FRANK IREK**

PRELIMINARY STATEMENT

1. Defendants' reply to Plaintiff's Notice of Motion for Injunctive Relief Temporary

Restraints contains two separate and distinct demands in their Notice of Motion;

A. Cross-motion to dismiss Plaintiffs' Verified Complaint; and

B. Opposition to Plaintiff's Motion for Injunctive Relief.

2. Plaintiff's Reply Brief addresses each demand separately;

A. Support of Opposition to Defendants' Cross-Motion to Dismiss the Verified
Complaint; and

B. Support of Opposition to Defendants' Opposition to Plaintiff's Motion for Injunctive Relief.

**OPPOSITION TO DEFENDANTS' CROSS-MOTION
TO DISMISS THE VERIFIED COMPLAINT**

Summary of Plaintiff's Complaint

3. This is an action to declare, *void ab initio*, a fraudulently obtained Default Judgment entered by this Court on March 22, 1995, Docket No. MER L 005664-94; Judgment No. J 082161-95; and entered as a Lien on 3-31-1995.
4. On or about May, 1990, Plaintiff advertised in a local newspaper the sale of a vacant construction lot in Jackson, New Jersey. The vacant construction lot was owned by Kirex Development Company, Inc., a New Jersey corporation, incorporated on April 30, 1986. Kenneth Frank Irek, was the sole shareholder, president, secretary, treasurer and director of Kirex Development Company, Inc., a New Jersey corporation.
5. Zontan Szatmary and his wife, Cathleen Szatmary, decided to purchase the lot and retained a licensed New Jersey attorney, Dennis D. Poane to represent them in the purchase of the lot.
6. A "Contract for Sale of Real Estate" was signed by Zontan Szatmary and Cathleen Szatmary on 5/29/ 90, and by Kirex Development Co, Inc., by Kenneth Irek, President, Attest: Kenneth Irek Secretary, on 6/6/90.
7. Cathleen Szatmary gave a \$5,000 check payable to "Kirex Dev. Co", dated May 29, 1990, to Plaintiff as the initial deposit of the purchase price of \$35,000.
8. Plaintiff acting in his official capacity as the President of Kirex Development Company, Inc., endorsed the check as "Kirex Development Co".
10. Dennis D. Poane proceeded to prepare for closing with a series of correspondences back and forth with Fran Donahue, at the end of June and early July, 1990.
11. On or about August, 1990, Plaintiff became unavailable and the closing never took place.
12. On April 12, 1991, Cathleen D. Szatmary and Zontan J Szatmary made a claim to the New Jersey Lawyers' Fund for Client Protection "Statement of Claim", stating that they lost Five Thousand dollars (\$5,000) from Kenneth Irek (Plaintiff), based on a Fiduciary Relationship (escrow agent).

13. On November 26, 1993, the Trustees of the Client Protection Fund paid to Zontan and Cathleen D. Szatmary the sum of \$5,000.
14. On December 29, 1994, the New Jersey Lawyers' Fund for Client Protection, filed a Complaint in the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-5664-94, demanding Kenneth Irek reimburse the NJLFCP for the Five Thousand Dollars (\$5,000), paid on his behalf to the Szatmarys, plus interests and costs of suit.
14. Paragraph 4 of the NJLFCP Complaint states: "4. In or about August 1990, while representing Zontan and Cathleen Szatmary, defendant 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."
15. On March 22, 1995, Default Judgment (J 082161-95) was entered in favor of the New Jersey Lawyers' Fund for Client Protection, and against Kenneth Irek, in the sum of Five Thousand (\$5,000.00) Dollars, plus interest and costs of suit.
16. For the next twenty-five (25) years, and still continuing, the Defendant NJLFCP attempted to recover the \$5,000 from Plaintiff under an Assignment Agreement they entered with Zontan and Cathleen Szatmary.
17. At least on or about April 24, 2000, the NJLFCP began efforts to enforce the Judgment through the NJ Comprehensive Enforcement Program.
18. Between 2000 and 2020, Defendants utilized other methods to compel Plaintiff to reimburse them for the \$5,000 claim paid to the Szatmarys, such as suspension of Plaintiff's driver license.
19. Between at least 2004 and 2020, NJLFCP, through its employees, agents, directors, affiliates, and legal counsel, Defendant, NJLFCP, published multiple defamatory statements stating the Plaintiff, acting as a New Jersey attorney, engaged in "dishonest conduct".
20. The gravamen of the Complaint is that Defendants lacked subject matter jurisdiction over Kenneth Irek because he did not represent the Szatmarys as an "attorney" or as a "fiduciary".
21. There is no factual evidence in the record that there were "... funds to be held, in a fiduciary capacity, in escrow ..."
22. Daniel R. Hendi, Director and Counsel to the NJLFCP, Defendant, responding to a Record Request from Plaintiff, Mr. Hendi states that, inter alia: "**As there has been no activity in this account since May 2017, the balance in the account as of today remains \$2,500.**"

showing that the Defendants still consider the Default Judgment active and their collection activities ongoing.

23. The Complaint contains 6 Counts and seeks both legal and equitable relief.

Procedural History of Plaintiff's Complaint

24. On November 9, 2020, Plaintiff filed a six-count Verified Complaint in the Superior Court of New Jersey, Mercer County, Law Division. The 35-day return date for the Defendants' answer is December 24, 2020, assigned Track 1 and pretrial Judge is Honorable Douglas H. Hurd, P. J. Cv.

Factual Background of Plaintiff's Complaint

(A more detailed Factual Background is attached to the Verified Complaint as Exhibit "A", and above, in the 'Summary of Plaintiff's Complaint')

25. The origins of this case began more than 30 years ago. For purposes of this Complaint, the facts contained herein are wholly based upon certified written statements and sworn transcripts of oral testimony, letters, correspondence and board hearings of the District Ethics Committee, District IX; the Disciplinary Review Board; the New Jersey Lawyers' Fund for Client Protection; the Comprehensive Enforcement Program; the Office of Attorney Ethics; and the Mercer County Superior Court, all entities of the New Jersey Supreme Court. They were obtained by Plaintiff through Records Requests (SEE Attachment "1") filed pursuant to N.J. Rules of Court, Rule 1:28-9, *et seq.*, and/or Rule 1:38-1, *et seq.*, and sent directly to the Plaintiff. References to the NJ Constitution, NJ Statutes, NJ Rules and Regulations are from current officially published sources.

26. In the beginning of the summer of 1990, Cathleen Szatmary and her husband Zontan, where looking for a building lot in Jackson, New Jersey. They saw a lot listed in the newspaper and went to the lot and met a licensed New Jersey real estate salesperson, who represented the Plaintiff, Kenneth F. Irek. The Szatmary's decided to purchase the vacant lot and retained Dennis D. Poane, Esq, a new Jersey attorney whose office was in Lakewood, New Jersey, at the time, to represent them in the purchase of the lot from Plaintiff.

The vacant construction lot was owned by Kirex Development Company, Inc., a New Jersey corporation, incorporated on April 30, 1986. The Plaintiff, Kenneth Frank Irek, was the sole shareholder, president, secretary, treasurer and director of Kirex Development Company, Inc.

Subsequently, the Szatmarys signed a Contract for Sale of Real Estate on May 29, 1990, and wrote check #1301, dated 5/29/90, in the amount of \$5,000 to “Kirex Dev Co”, with the memo: “Dep of Land 85 2221 Bal Due 30,000.00” pursuant to the terms of the contract as “initial deposit”. Plaintiff signed the Contract on June 6, 1990, as: “Kirex Development Co, Inc By Kenneth Irek, President attest: Kenneth Irek, Secretary”. He then endorsed the \$5,000 initial deposit check as “Kirex Development Co”, and deposited it into Kirex’s business account at New Jersey National Bank.

Thereafter, from the end of June, 1990, through July, The Szatmary’s attorney attempted to contact Plaintiff to schedule a closing date, but could not contact him. The closing never took place.

On November 14, 1990, Dennis D. Poane, representing himself as the attorney for Zontan and Cathleen Szatmary, the prospective purchasers of the real property, sent a correspondence to Ronald Troppoli, Director of Special Prosecutions with the Monmouth County Prosecutor’s office stating he believed that Mr. Irek, Plaintiff, may have absconded with the funds given in trust by my clients. His cover letter stated that they (Poane and Ronald Troppoli) had several previous conversations regarding Kirex Development Company and Kenneth Irek, and Dennis Poane listed the documents attached, describes number “2” as:

“2. My office notes dated June 1, 1990, which shows at the bottom that Mr. Irek would personally guarantee the \$5,000.00 involved.”

The office notes referred to are hand-written and state, inter alia:

“p.c. Ken Irek 1. He will guarantee personally \$5000.- 2. He’ll get ECRA approval if bank demands; if no then only give off 3. Looking for closing before July.”

A letter from the District Ethics Committee for Monmouth County District IX, dated February 27, 1991, to Cathleen and Zontan Szatmary, acknowledged receipt of their grievance form complaining about attorney Kenneth F. Irek (unsigned).

On the grievance form, Question B. (1) asks: Was the specific lawyer complained of your lawyer? Answer, NO.

On the grievance form, Question E. asks to state what the lawyer did or failed to do which may be unethical. *The answer is reproduced in its entirety:*

“Please see letter filed by our Attorney, dated November 14, 1990, to Ronald J. Troppoli, of the Monmouth County Prosecutor’s Office, and the attachments, which accompanies this Complaint Form. The basis of our Complaint is that Mr. Irek was both an Officer of the Contracting Corp., Kirex Development Co., and an Attorney in dealing with us, for the purchase of a lot upon which to construct a home. Mr. Irek received \$5,000.00 as our down payment and then disappeared. After extensive letter writing and phone calling, and also a trip to Mr. Irek’s house by Mr. Poane, no response was received, in order to conclude the purchase of the lot. Mr. Irek has disappeared, our \$5000.00 has also disappeared. I would also like you to know that we spent approximately another \$4,000 in preparation for the purchase of the lot, including Perk Test. We believe Mr. Irek took our money, has intentionally failed to sell the property to us or give us our money back, and has now disappeared. We believe Mr. Irek acted as an Attorney for Kirex Development Co., as well as an Official of that Company.” *(The form is undated and unsigned)*

On April 12, 1991, the Szatmarys completed a New Jersey Lawyers’ Fund For Client Protection *Statement of Claim*, which was received by NJLFCP on April 16, 1991

The following are excerpts of relevant portions of the claim: *[italics indicate the claimant’s hand-written response]*

Question 3. Attorney Against Whom Claim is Made: Name: *Kenneth Irex ...*

Question 4. How Long Have You Known Him/ Her *Never met him, Dealings only through real estate deal (escrow agent)*

Question 5. How Long Did He/ She Represent You *NA*

Question 7. Is Claim Based On _____ Attorney-Client Relationship

**Or X Fiduciary (guardian, executor, trustee)
Relationship (*escrow agent*)**

Question 15. How Did You Learn About The Fund? *Through Dennis Poane (Our Attorney)*

On July 29, 1992, District IX Ethics Committee of the New Jersey Supreme Court held an ethics hearing regarding a Grievance Form filed by Cathleen D. Szatmary against Kenneth F. Irek, Esq (Plaintiff). The hearing was held in Middleton, NJ. The Respondent, Kenneth F. Irek (Plaintiff) was served by Affidavit of Publication, but was not present.

Cathleen D. Szatmary testified under oath and her verbal testimony generally follows the chronological events outlined above, and are not contested. The following excerpts from her testimony are set forth in detail to corroborate and reinforce the Facts of this complaint:

Page 6, line 18: Robert J. Gaughran questioning Cathleen D. Szatmary

Q. Now, after you spoke to Ken Irek and saw the lot, did you retain legal counsel to represent you in connection with this purchase?

A. Right.

Q. And who represented you?

A. Dennis Poane, Esq.

Page 7, line 8: Robert J. Gaughran questioning Cathleen D. Szatmary

Q. So, you and your husband decided that you're serious about purchasing this lot - -

A. Uh-huh.

Q. - - and you retained Mr. Poane to represent you.

A. Right.

Page 8, line 5: Robert J. Gaughran questioning Cathleen D. Szatmary

Q. So, your attorney, Mr. Poane, Dennis Poane, negotiated those changes in the real estate contract with whom?

A. Well, that he sent it back, um - - I think either Fran picked it up or he mailed it, I'm not really sure which.

Q. Did he have any negotiation with Kenneth Irek?

A. He spoke - - did he? I don't know if he spoke to him or not. I think he - -I'm not sure if he spoke to him or not. He might have spoke to him once or twice, I'm not really sure, but he mostly, I think, dealt with Fran - -

Q. Okay.

A. Donahue.

Page 9, line 5: Robert J. Gaughran questioning Cathleen D. Szatmary

Q. Okay. So, the contract is dated May 29, 1990. I show you exhibit P-2 again, which is the \$5,000 dollar deposit check and ask you what's the date on that check.

A. 5/29

Q. So, did you prepare the check at the same time that you signed the contract?

A. Right

Q. Now, the check is made payable to Kirex Development Co..

A. Right

Q. Is there any reason why the check was made payable to Kirex Development Co.?

A. Well, that was the development that we were buying from. You know, that was his development.

Q. "His development," meaning Mr. Irek's?

A. Right.

Q. Okay.

A. And I had questioned Dennis about that, I was like: How come we don't - - because we bought houses before and because we've sold two houses and knew we were buying this land to build and I said: How come it's not made out to, you know, a lawyer in trust, because that's usually how we did it, and he informed me that Ken Irek was a lawyer acting on his own behalf through Kirex Development so there would not be a problem. He wouldn't see any reason why we shouldn't fill it out that way.

Q. All right. So, your lawyer advised you that it was okay to have the check payable to the developmental company because representations were made to your lawyer by Mr. Irek?

A. That he was acting on his own behalf as a lawyer.

Page 11, line 9: Robert J. Gaughran questioning Cathleen D. Szatmary

Q. So, what you're saying is: That when your lawyer did the title work, he found out that there were liens and judgments against Mr. Irek?

A. Right. Correct.

Q. Do you know if those liens and judgments against Mr. Irek would have exceeded the total purchase price of the lot?

A. The liens and judgments that he knew of, at the time, would not have - - the guy still would have - - Ken Irek would have still come out with some money.

Q. Okay.

A. Not much, but he still would have come out with some money.

Q. Okay.

A. A very small amount.

Page 16, line 13: Richard M. Keil questioning Cathleen D. Szatmary

Q. I have some questions. P-1, paragraph five of the contract states: Deposit monies, all deposit monies will be held in trust by Kirex Development Co. Located at Colts Neck, NJ until closing. The time you gave – at the time you handed over that check, you understood then that it was the same as being - - that it was being held by an attorney.

A. Correct. Because that's what I questioned, that. Because we had a misdealing with an attorney one time Justin Ann Connors. We didn't lose anything, we did not lose anything out of that but we were in the process of buying our house when we had dealings with - - or selling our house when we had dealings with him and that was like hairy in itself and that's when we had William Smith take over for us and then we just found Dennis later for our other things. So, that's why I was more cautious than I would have been normally in saying: Why isn't there an attorney, you know, dealing with this and he said, you know: He is an attorney, you know.

Page 18, line 3: James H. Moody questioning Cathleen D. Szatmary

Q. With regard to the contract that's been marked P - - I believe P-1 for identification, is that the actual contract that you were originally provided with and which your attorney made certain changes?

A. Correct

Q. Did you receive any type of correspondence from your attorney indicating any discussions he had with Ken Irek regarding changes to be made in the contract before this one was actually executed?

A. I don't know. I have a lot of different letters here, that he gave me copies of, which I don't know exactly if there is any - - I mean, he's - - you mean as far as verbally speaking to him or just letters?

Q. Yes, if they spoke on the phone, if there was any clarification of the terms of the contract or any changes to be made in the contract before you and your husband signed it.

A. I'm almost positive that he spoke to him at least once because he had told us that.

Q. Okay. Do you know whether there was a discussion, a verbal discussion, between your attorney and Mr. Irek with regard to that question that you raised on the deposit being held in escrow or being - -

A. That, I'm not aware of.

Q. - - held by the firm until such time as the closing?

A. That, I'm not aware of.

Page 22, line 17: James H. Moody questioning Cathleen D. Szatmary

Q. MR. MOODY: One other question I forgot. You were talking about trying to reach Ken Irek or Fran or someone when you started to become a little concerned as to whether this was going to close. Did you ever speak to Ken Irek directly?

A. Not after that, not after the - - I only initially spoke to him once in reference to the paper.

Q. And that was to the ad?

A. I believe so.

Q. After that, did you ever speak to him?

A. No, I didn't. I believe Dennis did, though.

Q. How about your husband, to your knowledge, did he ever speak to him?

A. No.

Q. Did you ever meet him?

A. No.

Q. You never - -

A. I don't know what the man even looks like.

Q. Okay

Page 23, line 25: Robert J. Gaughran, Esq., submitting his verbal summary to the Ethics Committee

Just as a very brief summary, I respectfully submit that although the Respondent is not here he has, at the very least, violated two of the rules of professional conduct, 1:15 (b) as it relates to his obligation to safekeep property and that he did not return to the grievant the funds that they were entitled to. And, secondly, I also submit that RPC 8.4 (c) has been violated in that the Respondent engaged in conduct that's either dishonest, fraudulent, along with potential misrepresentation to the grievant.

On May 14, 1993, the New Jersey Lawyers' Fund for Client Protection sent a letter to Plaintiff stating that they now had jurisdiction to consider the Zontan and Cathleen Szatmary claim against him, since the Supreme Court of New Jersey had disbarred Plaintiff on May 11, 1993

The following are excerpts of relevant portions of the Disbarment Order:

[Caption]

“The Disciplinary Review Board having filed a report with the Court recommending that KENNETH F. IREK, formerly of COLTS NECK, be disbarred for the knowing misappropriation of escrow funds in violation of RPC 1:15(b) and RPC 8.4(c), and good cause appearing;

It is ORDERED that KENNETH F. IREK, formerly of COLTS NECK, who was admitted to the bar of this State in 1981, be disbarred and that his name be stricken from the roll of attorneys of this State, effective immediately; and it is further

ORDERED that KENNETH F. IREK be and hereby is permanently restrained and enjoined from practicing law; and it is further...

ORDERED that the Office of Attorney Ethics shall cause this Order to be published on two successive days in the Asbury Park Press.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, NJ on this 11th day of May, 1993.”

{Citations: 132 N.J. 203 (1993); 623 A.2nd 1378 (N.J. 1993)}

On November 26, 1993, the NJLFCP entered a Release, Assignment and Subrogation Agreement with Zontan and Cathleen D. Szatmary.

On December 29, 1994, the New Jersey Lawyers' Fund for Client Protection, Plaintiff, filed a Civil Action Complaint against Kenneth Irek, Defendant in the Superior Court of New Jersey, Law Division, Mercer County.

The following are excerpts of relevant portions of the Complaint:

[Caption] Docket No. MER-L-005664-94

“The plaintiff, New Jersey Lawyers' Fund for Client Protection, an entity established by the Supreme Court of New Jersey under R.1:28-1, et seq., Richard J. Hughes Justice Complex, CN-961, Trenton, New Jersey 08625, complaining against the defendant says:

1. The plaintiff was established to reimburse clients for loses caused by the dishonest conduct of members of the Bar of New Jersey.
2. Defendant maintained offices for the practice of law at 41 Highway 34, Colts Neck, New Jersey 07722.
3. Defendant was disbarred from the practice of law on May 11, 1993.
4. In or about August 1990, while representing Zontan and Cathleen Szatmary, defendant 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.
5. The individuals named in paragraph four of this complaint filed a claim with plaintiff on account of the dishonest conduct of the defendant.
6. Pursuant to R. 1:28-1, et seq., of the Rules Governing the courts of New Jersey, the plaintiff has paid the claim of the claimants named in paragraph four and has received an assignment of all their rights, claims and interest against the defendant.
7. To date, defendant has not reimbursed the plaintiff for any monies paid on his behalf.

WHEREFORE, plaintiff demands judgment against the defendant for damages in the amount of FIVE THOUSAND DOLLARS (\$5,000.00) plus interest from the date of Complaint and costs of suit.

[signed] /S/

Michael T. McCormick
Deputy Counsel
Attorney for Plaintiff

Dated: December 21, 1994

CERTIFICATION

I hereby certify pursuant to R. 4:5-1 that, to my knowledge, the matter in controversy is not the subject of any action pending in any court nor is there any arbitration proceeding, nor is any such action or arbitration contemplated. I further certify that there are no parties who should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

[signed] /S/

Michael T. McCormick
Deputy Counsel
Attorney for Plaintiff

Dated: December 21, 1994”

On March 1, 1995, Daniel R. Hendi, Esq., Senior Counsel for the New Jersey Lawyers’ Fund for Client Protection, filed a ‘Request For Entry Of Default Judgment With Supporting Affidavit’, with the NJ Superior Court of Mercer County (SEE Attachment 20, Request For Entry Of Default, MER L 005664-94).

On March 22, 1995, ‘Default Judgment’ was entered by Judge Neil H. Shuster, JSC, Judgment # J-082161-95 and stamped: Recorded as a Lien 3-31-95”

Beginning on or about April, 2000, the New Jersey Lawyers’ Fund for Client Protection (“NJLFCP”) began using the Comprehensive Enforcement Program established by N.J.S.A. 2B:19-1 et seq. to enforce their Judgment against Plaintiff. Between 2000 and 2017, the NJLFCP sent at least 39 letters directly to Plaintiff regarding the Fund’s use of the Comprehensive Enforce Program for collection of their judgment for restitution against Plaintiff.

The Plaintiff, living in California since 1994, did not attend any Enforcement Hearings in Trenton, New Jersey. NJLFCP continued their collection activity through letters, Consent Orders and Bench Warrants.

On or about the early part of 2017, Plaintiff became aware of the New Jersey Supreme Court’s decision to vacate the disbarment of Michael A. Luciano (In re Luciano, 2016 BL 382847, N.J., No. D-63 September Term 2013, 11/16/16). Plaintiff began requesting records and

documents from the New Jersey Supreme Court and its entities, on or about May 18, 2017, related to this Complaint, when Plaintiff called Denise McCollum at the Supreme Court Clerk's Office (The records Defendant provided in response to the eight (8) Records Requests are contained in the body of the Complaint and in the attached Attachments and Exhibits).

Plaintiff filed additional Records Requests until 2020, when the record request responses by Defendant, upon review, were sufficient to indicate material errors and jurisdictional deficiencies that would support the filing of this Complaint.

Legal Argument

27. **POINT I**
Lack of Subject Matter Jurisdiction

A. Plaintiff's reply to Defendants' factual and legal suppositions for dismissal of the Verified Complaint with prejudice for lack of subject matter jurisdiction:

1. Defendants state as a threshold matter, the Verified Complaint should be dismissed for want of subject matter jurisdiction. Defendants also state that 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.

Plaintiff's Reply:

The Superior Court of New Jersey, Law Division is a Court of general jurisdiction and can hear matters in law and equity. It is the proper forum for cases brought for or against the NJLFCP, and has been since its creation. See NJLFCP v. Pace, 374 N.J. Super 57; NJLF v. Flanagan, 2014 N.J. Super. Unpub. LEXIS 1127; NJLFCP v. First Fidelity Bank, NA, 303 N.J. Super 208; NJLF v. Stewart Title Guarantee Co, 2017 N.J. Super. Unpublished. LEXIS 3211; and NJLFCP v. Howard, 2010 NJ. Super. Unpublished LEXIS 584.

The Supreme Court of New Jersey is the highest Appellate Court and has limited authority to adjudicate legal matters as a court of first instance, pursuant to the New Jersey Constitution, art. VI.

2. Defendants state that Irek contends the Mercer County Superior Court lacked subject matter jurisdiction to issue the March 22, 1995 default judgment.

Plaintiff's Reply:

Subject matter jurisdiction is a question of law. The New Jersey Supreme Court derives its authority over New Jersey attorneys from Article VI of the New Jersey State Constitution:

“3. The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.”

The Lawyers' Fund for Client Protection (“Fund”) is an entity of the New Jersey Supreme Court and derives its authority from Rule 1:28 of the Rules Governing the Courts of New Jersey. That Rule limits the Fund to consider only claims resulting from the dishonest conduct of a member of the bar of this state, and if the attorney was acting either as an **attorney** or **fiduciary**: (emphasis added)

“Rule 1:28-3. Payment of Claims (a) Eligible Claims. The Trustees may consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state or an attorney (i) admitted pro hac vice, (ii) holding limited license as in-house counsel, (iii) registered as multijurisdictional practitioner, (iv) certified as a foreign legal consultant or (v) permitted to practice under Rule 1:21-3(c), if the attorney was acting either as an attorney or fiduciary, provided that: (1) Said conduct was engaged in while the attorney was a practicing member of the Bar of this State or admitted Pro Hac Vice in a matter pending in this State; (2) On or after January 1, 1969, the attorney has been suspended, disbarred or placed in disability inactive status, has resigned with prejudice or has pleaded guilty to, or been convicted of embezzlement or misappropriation of money or other property; or an

ethics committee has certified a claim to the trustees as an appropriate matter for their consideration. Where an ethics committee does not act and an attorney cannot be located, is deceased or incapacitated, the trustees may consider timely application directly provided that the trustees find that the claim is an appropriate matter for their consideration; (3)..."

The terms "acting either as an attorney or fiduciary", have a precise legal definition. The ABA Model Rules for Lawyers' Funds for Client Protection, under Rule 10, states:

"A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship between the lawyer and the claimant."

The Comment to this section further explains the wording:

"Comment [1] Set forth in Paragraph A is the basic criteria for compensability of losses. An eligible claim must include: (1) a demonstrable loss; (2) caused by the dishonest conduct of a lawyer; and (3) within or arising out of a client-lawyer or fiduciary relationship. [2] Fiduciary relationships are included because lawyers traditionally serve in that capacity as executors, conservators and guardians ad litem. Rejection of claims based upon technical distinctions between this sort of service and a client-lawyer relationship would not serve the purpose or mission of the Fund."

Every State and the District of Columbia have a type of Fund similar to New Jersey's Fund, that only apply to lawyers acting either as lawyers or fiduciaries; for example:

Alabama – "(b) The loss was caused by the dishonest conduct of a lawyer acting either as an attorney or as a fiduciary in the matter in which the loss arose; and";

Alaska – "(f) "Reimbursable losses" are only those losses of money, property or other things of value which meet all of the following tests: (1) The loss was caused by the dishonest conduct of a lawyer when (i) acting as a lawyer, or (ii) acting in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or (iii) acting as an escrow holder or other fiduciary, having been designated as such by a client in the matter in

which the loss arose or having been so appointed or selected as a result of the client-attorney relationship.”

Arizona – “A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a client-lawyer relationship or a fiduciary relationship between the lawyer and the claimant that is customary and related to the practice of law.”

Arkansas – “A. The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a lawyer-client relationship or a fiduciary relationship between the lawyer and the claimant.”

The sworn oral testimony of Cathleen Szatmary and the sworn written claims of Cathleen and Zontan Szatmary state that their attorney was Dennis Poane, and Plaintiff, Kenneth Frank Irek, was not representing them as their attorney. The facts, as contained in the record of the original, underlying case, do not show a client-lawyer relationship or a fiduciary relationship between the Plaintiff and the claimant, the Szatmarys, that is customary and related to the practice of law.

The words “**fiduciary capacity**” were first stated by Richard M. Keil, Esq, the Chair of the District IX Ethics Committee that held the hearing against Plaintiff in 1992. In his written Hearing Panel Report Recommending Public Discipline, he found, inter alia; ‘The respondent, Kenneth Irek, on behalf of Kirex Development Company and as the attorney for Irex (sic) Development Company, of which he was the President, negotiated a real estate contract with the Grievants. He engaged in conduct which constituted dishonesty, fraud, deceit and misrepresentation by failing to safeguard the \$5,000.00 deposit, which was to have been held in the trust account of his development company, and misappropriating the deposit belonging to the Grievants.’

He also found, inter alia; ‘The panel finds that the grievants testimony was credible in every detail. The panel finds respondent guilty of Count One in that he received money in a **fiduciary capacity** (emphasis added) with the money placed in trust and failed to safeguard it and return it’; and ‘The panel finds defendant guilty of Count Three, a violation of R.P.C.8.4 (c) because he accepted the money, misrepresented that it would be placed in trust and held until

closing and he then absconded with the funds. His actions constituted misrepresentation, deceit, dishonesty and fraud upon Mr. and Mrs. Szatmary.’

The term Fiduciary Capacity, is a phrase that generally means trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, custodian under a uniform gifts to minors act, investment adviser (if the institution receives a fee for its investment advice), any capacity in which the institution possesses investment discretion on behalf of another, or any other similar capacity. The word Fiduciary as used in Rule 1:28 is a noun, whereas the words Fiduciary Capacity, as used by District IX Ethics Committee is an adjective, and not governed by Rule 1:28, or any other New Jersey law as applied to an attorney acting as an individual seller of his own real property.

The extant record of this matter has no evidence of any ‘fiduciary capacity’ except in conclusory statements by the volunteer Attorneys serving on the District IX Ethics Committee and the NJ Disciplinary Review Board, and by conclusory statements made by Michael T. McCormick in the underlying NJLFCP Civil Complaint against Kenneth Irek:

‘In or about August 1990, while representing Zontan and Cathleen Szatmary, defendant 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.’

Plaintiff does not contest the facts contained in the sworn testimony of Cathleen Szatmary, the only testimony taken by Defendants, or written statements made by her and her husband, Zontan Szatmary, since they were the only parties with direct knowledge of the events, with the exception of their attorney, Dennis D. Poane, who did not testify, and the Plaintiff, who did not participate in any manner, since he had direct, personal knowledge of the facts and events and concluded his conduct was not regulated by the NJ Rule 1:20 and they no subject matter jurisdiction over his specific actions in that matter. The actions and conduct of the Plaintiff, acting as the President of his wholly-owned NJ corporation, are not subject to the jurisdiction of the New Jersey Rules of Professional Conduct or the NJ Lawyers’ Fund for Client Protection, or ultimately, to the Supreme Court of New Jersey.

As a direct and proximate cause of the false statements made by Defendant in the original complaint filed December 29, 1994, that Plaintiff was ‘... **representing Zontan and Cathleen**

Szatmary ...’, this Court believed Defendant had subject matter jurisdiction and adjudicated the matter resulting in a Default Judgment against Plaintiff. Defendants falsely Certified that the Fund had Subject Matter Jurisdiction over Kenneth Irek, but they did not. Because this Court actually lacked subject matter jurisdiction because the Defendant lacked subject matter jurisdiction, the ensuing Default Judgment must be vacated and declared null and void.

A judgment which is void ab initio is a complete nullity with no legal effect whatsoever, and may be impeached directly or collaterally by all persons, anywhere, at any time, or in any manner. Whether defendant raised subject matter jurisdiction raised previously will not preclude it from making the argument now. “Subject matter jurisdiction can neither be conferred by agreement of the parties nor waived as a defense, and a court must dismiss the matter if it determines that it lacks subject matter jurisdiction.” it *Royster v. N.J. State Police*, 439 N.J. Super. 554, 568, 110 A.3d 934 (App. Div. 2015), *aff’d as modified on other grounds*, 227 N.J. 482, 152 A.3d 900 (2017). *See, e.g., Macysyn v. Hensler*, 329 N.J. Super. 476, 481, 748 A.2d 591 (App. Div. 2000) (stating “[t]he issue of subject matter jurisdiction may be raised at any time”).

3. Defendants state Irek attempts to circumvent the explicit Court Rules and invite this Court (Superior Court of New Jersey, Mercer County, Law Division) to encroach upon matters vested in the Fund through the Supreme Court.

Plaintiff’s Reply:

Defendants reliance on GE Capital Mortgage Services, Inc., for the premise that all actions related to the NJLFCP cannot be brought before the Superior court, but must be brought before the Supreme Court. GE Capital was a case brought against the Fund by a disappointed claimant and the Superior Court granted summary disposition in favor of the Fund, based upon R. 1:28-3(b), which gives the Trustees sole discretion regarding “eligible claims”. Plaintiff agrees with Defendants that the Fund Trustees have sole discretion to consider “eligible claims”, which are described in part (a) of that Rule:

(a) Eligible Claims. The Trustees may consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state or an attorney (i) admitted pro hac vice,

(ii) holding limited license as in-house counsel, (iii) registered as multijurisdictional practitioner, (iv) certified as a foreign legal consultant or (v) permitted to practice under Rule 1:21-3(c), if the attorney was acting either as an attorney or fiduciary, provided that:

- (1) Said conduct was engaged in while the attorney was a practicing member of the Bar of this State or admitted Pro Hac Vice in a matter pending in this State;
- (2) On or after January 1, 1969, the attorney has been suspended, disbarred or placed in disability inactive status, has resigned with prejudice or has pleaded guilty to, or been convicted of embezzlement or misappropriation of money or other property; or an ethics committee has certified a claim to the trustees as an appropriate matter for their consideration. Where an ethics committee does not act and an attorney cannot be located, is deceased or incapacitated, the trustees may consider timely application directly provided that the trustees find that the claim is an appropriate matter for their consideration;
- (3) The claim is filed within one year of the earliest of an event set forth in subparagraph (2) above. The time limitation set forth in this subparagraph may be extended by the trustees in their discretion;
- (4) The claim is made directly by or on behalf of the injured client or the client's personal representative or, if a corporation, by or on behalf of itself or its successors in interest; and
- (5) The claimant certifies that the relevant facts have been disclosed in writing to the appropriate law enforcement and disciplinary authorities. A willfully false certification in this regard shall be an absolute bar to any award.

(b) Consideration of Claims. The trustees in their sole discretion but on the affirmative vote of 4 of them shall determine which eligible claims merit reimbursement from the Fund and the amount, time, manner, conditions and order of payment of reimbursement. In making such determinations the trustees shall consider, among other appropriate factors, the following:

- (1) The amounts available and likely to become available to the Fund for the payment of claims and the size and number of claims which are likely to be presented;
- (2) The amount of the claimant's loss as compared with the amount of losses sustained by other eligible claimants;
- (3) The degree of hardship suffered by the claimant as a result of the loss;
- (4) The degree of negligence, if any, of the claimant which may have contributed to the loss;
- (5) The potential for recovery from a collateral source.

4. Defendants state Plaintiff challenges the Fund's discretionary decisions, including its determination to award \$5,000.00 to two claimants and its and its decision to recoup that award by way of obtaining a judgment against Irek.

Plaintiff's Reply:

Plaintiff does not challenge the Fund's discretionary decisions that are made pursuant to their authority contained in R 1:28-3, as long as the claim is an "Eligible Claim", described in (a), above: ... if the attorney was acting either as an attorney or fiduciary...

5. Defendants state that this Court (Superior Court of New Jersey, Mercer County, Law Division) cannot unilaterally reverse the Supreme Court's Decision to disbar Irek, thereby divesting it of jurisdiction to hear this matter.

Plaintiff's Reply:

Count Three of the Verified Complaint relates to the Fund's authority to pay eligible claims as contained in R 1:28. It is incorporated by reference in this Reply to reduce, as much as possible, duplication of the same statements, and should be viewed in conjunction with this Reply.

The Fund is an entity of the New Jersey Supreme Court, which derives its authority from Article VI of the NJ Constitution states, inter alia, "**The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.**" Payment of eligible claims is contained in Rule 1:28-3, which states, inter alia, that the Trustees may consider for payment all claims resulting from the dishonest conduct of a member of the New Jersey bar, provided that: '**... the attorney has been suspended, disbarred or placed in disability inactive status, has resigned with prejudice or has pleaded guilty to, or been convicted of embezzlement or misappropriation of money or other property.**'

In a letter dated May 14, 1993, from Defendant, NJLFCP to Plaintiff, Mr. Kenneth Irek, Roger S. Steffens, Deputy Counsel of NJLFCP, Defendant, stated that, inter alia: '**You have previously received a copy of the referenced claim. At the time we forwarded it to you the Fund lacked jurisdiction to consider making an award to the claimant due to the fact that you had not been disciplined. Recent action by the Supreme Court in your case has conferred jurisdiction upon the Fund to consider claims against you. This the Board of Trustees will seek to do in an expeditious manner.**'

The "discipline" that was an essential element to confer jurisdiction on the NJLFCP, was the disbarment of Kenneth F. Irek. On May 11, 1993, Robert N. Wilentz, Chief Justice of the Supreme Court of New Jersey, signed an Order stating, inter alia:

A. The Disciplinary Review Board having filed a report with the Court recommending that Kenneth F. Irek be disbarred for the knowing misappropriation of escrow funds in violation of RPC 1.15(b) and RPC 8.4(c), and good cause appearing;

B. It is Ordered that Plaintiff, Kenneth F. Irek, be disbarred and that his name be stricken from the roll of attorneys of New Jersey, and permanently restrained and enjoined from practicing law.’

Chief Justice Wilentz’s Disbarment Order ostensibly conferred jurisdiction upon the defendant, NJLFCP, to consider a claim against Plaintiff. On or about November 26, 1993, the Defendant, NJLFCP Board of Trustees, believing the Supreme Court disbarment of Plaintiff had conferred jurisdiction on them to consider claims against Plaintiff, ‘**having considered the claim of Zontan Szatmary and Cathleen D. Szatmary, arising from the dishonest conduct of their attorney, Kenneth Irek**’, paid them \$5,000 upon execution of a Release, Assignment and Subrogation Agreement.

Article VI of the NJ Constitution states, inter alia, “**The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.**”

New Jersey RPC 1.15(b) and RPC 8.4(c) are rules of professional conduct promulgated by the New Jersey Supreme Court, pursuant to its authority over New Jersey attorneys derived from Article VI of the New Jersey State Constitution.

Justice Wilentz’s disbarment order was based on the recommendation of the New Jersey Disciplinary Review Board. The Supreme Court’s responsibility in attorney disciplinary matters is to conduct an independent review of the record to determine whether the charges have been proved by clear and convincing evidence. R. 1:20-16(c) states: “**De Novo Review. Supreme Court review shall be de novo on the record.**”

There were no findings of fact and conclusions of law evidencing a De Novo review by the Supreme Court.

The Decision and Recommendation of the Disciplinary Review Board, decided December 28, 1992, concluded:

“Upon a de novo review of the record, the Board is satisfied that the DEC’s conclusion that respondent acted unethically is fully supported by clear and convincing evidence. Respondent absconded with grievant’s deposit monies, which

grievants had entrusted to him for safekeeping until closing of title not because respondent was the president of Kirex, but because he was an attorney. Although it is respondent's status as a member of the bar that required him to abide by the high standards expected of the profession, he was also acting as an attorney in the transaction, as Kirex' counsel. Disbarment is, therefore, the only appropriate sanction for his knowing misuse of escrow funds. In re Hollendonner, 102 N.J. 21 (1985). A six-member majority of the Board so recommends. One member would have imposed a two-year suspension, believing that the record did not clearly and convincingly demonstrate that respondent was acting as an attorney. Two members did not participate. The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs." [Signed by Raymond R. Trombadore, Chair, Disciplinary Review Board]

The facts, as contained in the record of District IX Ethics Committee Hearing, were reviewed and used in the Decision and Recommendation of the Disciplinary Review Board, and show, inter alia:

A. That Plaintiff was the sole owner and seller of the real property being purchased by the Szatmarys, in the real estate transaction that was the subject of the disciplinary proceedings;

B. That Plaintiff had no client-attorney 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;

C. That Plaintiff had no client-lawyer relationship or a fiduciary relationship between the Plaintiff and the claimant, the Szatmarys, that is customary and related to the practice of law;

D. That the \$5,000 deposit money paid to Plaintiff was made payable to Kirex Dev. Co., and endorsed in ink by 'Kirex Development Co.';

E. That Plaintiff was acting in his personal capacity as the president of his solely owned corporation, and, although he was a member of the New Jersey Bar, he was not acting as an attorney or fiduciary, and had the same rights as a non-attorney to conduct his personal affairs.

F. There were no “escrow” funds, as defined by New Jersey law, present in the real estate transaction. Claimant Cathleen Szatmary added the hand-written words “Escrow Agent” in her Statement of Claim to the NJLFCP on question 4 and question 7. No other records in this matter contain any factual proof of the Plaintiff acting as an Escrow Agent, save conclusory statements by the Defendants. A general definition of an Escrow Agent, in a New Jersey real property transfer, was randomly taken from the Internet:

Escrow is a broad term that can mean several different things. It can refer to a process, as well as the money and documents collected during that process. An official definition of escrow is “an item of value, money, or documents deposited with a third party to be delivered upon the fulfillment of a condition.” In a real estate transaction, this can refer to money deposited by the buyer as part of the purchase offer, as well as documents relating to the sale of the home.

You can think of the escrow process in New Jersey as an intermediate step during the home buying process. In a typical transaction, a buyer will provide an earnest money deposit to show the seller that they are serious about buying the house. These and other funds can be held in escrow pending the finalization of the real estate transaction.

At this point, the money has not been released to the seller yet. It’s being held in a special account by a neutral third party, until all conditions of the sale have been finalized.

G. The Plaintiff was the seller of the real property, so could not have qualified as an ‘escrow agent’. The word ‘escrow’ is not contained in any records of this matter until Cathleen Szatmary added those words to her NJLFCP claim form.

H. These facts contained in the record, excluding the unverified, unsubstantiated conclusory opinions, indicate that the Plaintiff was acting only as the President and Secretary of his solely-owned New Jersey corporation, and his conduct was not subject to the New Jersey Rules of Professional Conduct.

I. The New Jersey Supreme Court did not have jurisdiction over Plaintiff while acting as President and Secretary of his solely-owned New Jersey corporation.

J. A judgment which is void ab initio is a complete nullity with no legal effect whatsoever, and may be impeached directly or collaterally by all persons, anywhere, at any time, or in any manner.

K. The May 11, 1993, Disbarment Order of Kenneth F. Irek, signed by Robert N. Wilentz, Chief Justice of the Supreme Court of New Jersey, D-112 September Term 1992, is

void ab initio for lack of subject matter jurisdiction. The disbarment Order is a type of Judgment and is subject to the same rules regarding subject matter jurisdiction, as other judgments.

L. Defendant, NJLFCP, could consider for payment all claims resulting from the dishonest conduct of a member of the New Jersey bar, provided that: ‘... **the attorney has been suspended, disbarred or placed in disability inactive status, has resigned with prejudice or has pleaded guilty to, or been convicted of embezzlement or misappropriation of money or other property.**’

M. Defendant, NJLFCP, lacked the authority to pay a claim against Plaintiff because the NJ Supreme Court Disbarment Order of Plaintiff, Kenneth F. Irek, was null and void.

6. Defendants state that this Court (Superior Court of New Jersey, Mercer County, Law Division) 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.

Plaintiff’s Reply:

This Court (Superior Court of New Jersey, Mercer County, Law Division), does have subject matter jurisdiction because Counts One, Two and Three are properly in the same court that the 1994 NJLFCP complaint against Plaintiff was filed in.

Plaintiff’s Verified Complaint contains six counts and exhibits and attachments directly obtained from Defendants pursuant to their role as Custodians of Judicial Records. Rule 4:6-2 (a), relied upon by Defendants for dismissal, is made by motion without the benefit of the Defendants’ answer and an opportunity rebut it. Part (b) of the Rule states that in the opposition to the motion (Plaintiff’s Reply, herein), all material facts in the movant’s statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue of fact. ... The record should be viewed in the light most favorable to the party against whom dismissal is sought. Dismissal at this early stage, without

Defendants' Answer would be premature and deny Plaintiff the opportunity to contest the Statute of Limitations issues (fraud on the court, statute was tolled, not under Title 59, etc.) and the Absolute Immunity defense (actions occurred outside the employment scope of Defendants, improperly contacting California governmental authorities, etc.).

The short statutory period allowed for Plaintiff's Reply to Defendants Motion, cannot fully adjudicate this matter that contains legal issues that can effect all New Jersey attorneys engaged in private contractual transactions.

B. Standard of Review for denial of Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint with prejudice for lack of subject matter jurisdiction.

In Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, also cited by Defendants, the Court held that the test for determining the adequacy of a pleading is whether a cause of action is "suggested" by the facts. In reviewing a complaint dismissed under N.J. Civ. R. 4:6-2(e), the reviewing court's inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. However, a reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary. At this preliminary stage of the litigation, the court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforesaid principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.

C. Plaintiff's Conclusion for denial of Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint with prejudice for lack of subject matter jurisdiction.

This Court, as a trial court of general jurisdiction, has subject matter jurisdiction over this proceeding, as discussed above, and should deny Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint.

28. **POINT II**
Failure To State A Claim Upon Which Relief Can Be Granted

A. Summary of Defendants' factual and legal suppositions for failure to state a claim upon which relief can be granted:

1. Defendants state Irek's tort claims should be dismissed because they are time-barred because they accrued outside the applicable statutes of limitations and cannot be brought and litigated before the Court. Specifically, they contend:

a. Count Four, Common-law Fraud, should be dismissed with prejudice for failure to state a claim upon which relief can be granted, because time-barred;

b. Count Five, Intentional Infliction of Mental Duress, should be dismissed with prejudice for failure to state a claim upon which relief can be granted, because time-barred; and

c. Count Six, Libel-Defamation, should be dismissed with prejudice for failure to state a claim upon which relief can be granted, because time-barred.

Plaintiff's Reply:

Defendant contends that Counts Four, Five and Six should be dismissed with prejudice for failure to state a claim upon which relief can be granted, because the applicable Statute of Limitations has expired.

2. Defendants are entitled to absolute immunity in law and equity, pursuant to Title 59, the Torts Claims Act, on all tort counts. (59:2-2b).

Plaintiff's Reply:

Defendants claim that the Plaintiff's tort claims against Defendants are barred because they claim the defense of absolute immunity under Title 59, the New Jersey Tort Claims Act, specifically 59:2-2(b), Liability of public entity. In its entirety, that section states:

“ a. A public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances.

b. 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.”

There are factual situations where absolute immunity can be lost, such as unlawful actions; Marley v. Palmyra, 193 N.J. Super. 271, Leang v. Jersey City Bd. of Educ., 198 N.J. 557 (Moreover, the TCA specifically provides that there will be no immunity for a public employee if the conduct complained of constituted actual fraud, actual malice, or willful misconduct. N.J.S.A. § 59:3-14(a) provides that nothing in the act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted actual fraud, actual malice or willful misconduct).

3. Irek's "cavils" [petty or unnecessary objection] 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.

Plaintiff's Reply:

Plaintiff's Verified Complaint and accompanying Exhibits and Attachments evidence that the on December 29, 1994, Michael T. McCormick, Deputy Counsel to Dependent, NJLFCP, filed a Civil Action Complaint against Kenneth Irek, Defendant in the Superior Court of New Jersey, Law Division, Mercer County. The Complaint stated, inter alia,

“In or about August 1990, while representing Zontan and Cathleen Szatmary, defendant 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.”

NJLFCP had taken sworn statements from Zontan and Cathleen Szatmary that they were represented by their attorney, Michael Poane, Esq. Michael T. McCormick knew Kenneth Irek, was not representing Zontan and Cathleen Szatmary in that real estate transaction because Defendant, NJLFCP had access to the entire record of that matter. Michael T. McCormick made material misrepresentations of existing facts, in his possession, which he ought to have known were false. Michael T. McCormick made material representations in the above-described Complaint with the intention that the Mercer County Superior Court would rely on them and accept jurisdiction of the matter, which could be considered ‘Fraud upon the Court. That is described as where a material misrepresentation has been made to the court, or by the court itself. The main requirement is that the impartiality of the court has been so disrupted that it can't perform its tasks without bias or prejudice. SEE Brocken v. Brocken, 2010 N.J. Super. Unpub. LEXIS 109.

The Mercer County Superior Court did rely on the false Certification to confer subject matter jurisdiction on the NJLFCP, and issued a Default Judgment against Kenneth Irek, (the Plaintiff in the instant case), although the NJLFCP had no jurisdiction over Plaintiff.

4. Defendants state that 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.

Plaintiff's Reply:

Plaintiff agrees with Defendants that when the Fund's trustees and deputy counsels' are discharging their official responsibilities, namely their attempts to pursue and recover an outstanding amount from a judgment that was rightfully obtained, there is no complaint by Plaintiff. But in the instant matter, the claim against Plaintiff and the ensuing Civil Complaint, Default Judgment and 25-years of collection activities, were not rightfully obtained.

NJLFCP had no jurisdiction over Kenneth Irek since he was not acting as an Attorney or Fiduciary in the real estate transaction, and the NJLFCP trustees did not have all the requirements, necessary pursuant to R. 1:28-3, for the Szatmary's claim to be an "eligible claim".

B. Standard of Review for denial of Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint with prejudice for failure to state a claim upon which relief can be granted.

"In considering a motion to dismiss under *Rule 4:6-2(e)*, courts search the allegations of the pleading in depth and with liberality to determine whether a cause of action is suggested by the facts." *Rosen v. Cont'l Airlines, Inc.*, 430 N.J. Super. 97, 101, 62 A.3d 321 (App. Div. 2013) (citation and internal quotation marks omitted). Every reasonable inference is accorded to the plaintiff. *Smith v. SBC Commc'ns, Inc.*, 178 N.J. 265, 282, 839 A.2d 850 (2004).

Additionally, in *Bosland v. Warnock Dodge, Inc.*, 396 N.J. Super. 267, the Court stated:

We pause briefly to emphasize the liberality with which a trial court is required to analyze a plaintiff's complaint before dismissing it for failure to state a claim upon which

relief can be granted. *R. 4:6-2(e)*. We "review such a motion by the same standard applied by the trial court." *Sickles v. Cabot Corp.*, 379 N.J. Super. 100, 106, 877 A.2d 267 (App.Div.), *certif. denied*, 185 N.J. 297, 884 A.2d 1267 (2005). Thus, our "inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 746, 563 A.2d 31 (1989). Because such motions are brought at a very early stage in the litigation, every reasonable inference is accorded the plaintiff and "a trial court should grant a dismissal 'in only the rarest of instances.'" *NCP Litig. Trust v. KPMG LLP*, 187 N.J. 353, 365, 901 A.2d 871 (2006) (quoting *Printing Mart, supra*, 116 N.J. at 772, 563 A.2d 31). Also SEE *Dressler v. Donovan*, 2012 N.J. Super. Unpub. LEXIS 1247,

Under *R. 4:6-2(e)*, a complaint will be dismissed if it fails to state a claim upon which relief can be granted. The standard governing the analysis of a motion to dismiss pursuant to *R. 4:6-2(e)* requires the complaint be examined "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 746, 563 A.2d 31 (1989) (quoting *Di Cristofaro v. Laurel Grove Mem'l Park*, 43 N.J. Super. 244, 252, 128 A.2d 281 (App. Div. 1957)). In evaluating a motion to dismiss the court is not concerned with the plaintiff's ability to prove its allegations; rather, "a complaint is entitled to liberal reading in determining its adequacy" and must merely "allege sufficient facts as give rise to a cause of action" Pressler & Verniero, *Current N.J. Court Rules*, comment 1 on *R. 4:5-2* (2012); *Printing-Mart, supra*, 116 N.J. at 746. "[P]laintiffs are entitled to every reasonable inference of fact," and the required examination of the complaint "should be one that is at once painstaking and undertaken with a generous and hospitable approach."

Printing-Mart, supra, 116 N.J. at 746. While "the motion should be granted if even a generous reading of the allegations does not reveal a legal basis for recovery," *Edwards v. Prudential Prop. & Cas. Co.*, 357 N.J. Super. 196, 202, 814 A.2d 1115 (App. Div. 2003), courts should only grant a motion to dismiss with caution and in 'the rarest instances.'" *Ballinger v. Del. River Port Auth.*, 311 N.J. Super. 317, 322, 709 A.2d 1336 (App. Div. 1998) (quoting *Printing-Mart, supra*, 116 N.J. at 772); see *Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 166, 836 A.2d 779 (2003) (noting courts' "aversion to dismissing complaints for failure to state a claim pursuant to Rule 4:6-2(e)").

C. Plaintiff's Conclusion for denial of Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint with prejudice for failure to state a claim upon which relief can be granted.

The Plaintiff's Verified Complaint contains six counts that each state a cognizable cause of action that contains all the elements necessary for relief to be granted. Notwithstanding Defendants' assertions that various defenses might defeat Plaintiff's Counts, the Verified Complaint is viable on its face and should go forward to a decision on its merits.

Consequently, Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint with prejudice for failure to state a claim upon which relief can be granted, should be denied

**OPPOSITION TO DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF**

Summary of Plaintiff's Motion For Injunctive Relief

29. The Plaintiff's claims arise out of actions of Defendant, NJLFCP, beginning in 1995, to collect \$5,000 from Plaintiff, as reimbursement for a claim paid by them to a claimant, for the conduct of Plaintiff, during a real estate transaction.

30. Based upon the facts set forth in the Verified Complaint, Defendants have caused the Mercer County Superior Court to issue an Order suspending Plaintiff's New Jersey Driver License.

31. Based upon the facts set forth in the Verified Complaint, Defendants have caused the New Jersey Driver's License Forfeiture to be sent directly to the California Department of Motor Vehicles, requesting them to suspend or refuse to renew Plaintiff's California driver license.

32. Based upon the facts set forth in the Verified Complaint, Defendant has caused the issuance of a Bench Warrant, dated March 23, 2015, sent to County of Los Angeles, stating: **'THEREFORE, we command you to take KENNETH F. IREK between the hours of 8:30 a.m. and 3:30 p.m. on Monday through Friday and safely and closely keep him in your custody in the common jail of the County of Los Angeles until he shall be brought before the Honorable William Anklowitz, J.S.C., Superior Court of New Jersey, Mercer County, or until said Court shall make Order to the contrary.'**

33. Based upon the facts set forth in the Verified Complaint, Defendant, in a letter sent to California Department of Motor Vehicles, dated October 22, 2004, Joanne M. Dietrich, Deputy Counsel to the Defendant, NJLFCP, stated, inter alia, **'The Fund exists as a Committee of the**

Supreme Court of New Jersey pursuant to R. 1:28-1 et seq. for the purpose of compensating the clients of disciplined attorney who misappropriated money from them. Kenneth Irek was such an attorney. His conduct while acting as a New Jersey lawyer, has resulted in claims with the Fund in the amount of \$5,000.00.'

34. Based upon the facts set forth in the Verified Complaint, immediate and irreparable damage could result before a final resolution of this matter by trial or summary judgment, it is therefore requested that an Order be issued preliminarily enjoining and restraining 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.

Procedural History of Plaintiff's Motion For Injunctive Relief

35. This is a Motion filed by the Plaintiff, Kenneth Frank Irek on November 27, 2020 in the Superior Court of New Jersey, Mercer County, Law Division. The return date for the Motion is Friday, December 18, 2020. Plaintiff waives oral arguments.

Factual Background of Plaintiff's Motion For Injunctive Relief

36. The Plaintiff's claims arise out of actions of Defendant, NJLFCP, beginning in 1995, to collect \$5,000 from Plaintiff, as reimbursement for a claim paid by them to a claimant, for the conduct of Plaintiff, during a real estate transaction.

37. The temporary restraints requested are based upon the actions of Defendants, stated in the Summary of Plaintiff's Motion for Injunctive Relief, above and the Verified Complaint, and Plaintiff's Motion for Injunctive Relief Temporary Restraints and accompanying Certification, which are incorporated here for clarity purposes.

38. The prior and future actions of Defendants could result in Plaintiff being arrested in California and sent to Trenton, New Jersey to be brought before the Honorable William Anklowitz, J.S.C., Superior Court of New Jersey, Mercer County, Trenton, New Jersey, causing immediate and irreparable damage before a final resolution of this matter, by trial or summary judgment.

39. The prior and future actions of Defendants and other persons acting in concert with them and at their direction, by 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, has caused and could continue to cause immediate and irreparable damage before a final resolution of this matter, by trial or summary judgment

40. **POINT III**
Defendants' Opposition to Plaintiff's Motion for Injunctive Relief

A. Plaintiff's reply to Defendants' factual and legal suppositions for opposition to Plaintiff's Motion for Injunctive Relief.

1. Defendants state that Plaintiff has not shown, by clear and convincing proof, that he:

a) Has suffered irreparable harm (such relief is necessary to prevent irreparable harm). Defendants state 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 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' (sic) 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, 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.

Plaintiff's Reply:

The first Crowe factor has been met because Plaintiff is subject to irreparable harm. In Crowe, the definition of irreparable harm is harm that is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. Plaintiffs' arrest and incarceration cannot adequately be remedied by monetary damages. Additionally, Defendants have stated in their Motion that Plaintiff is prevented from receiving monetary damages in his Tort Counts because they are time-barred. Also, having the State of New Jersey without formal judicial proceedings, request the State of California to have Plaintiff's Driver License revoked or not renewed, is harm to the Plaintiff that cannot be compensated by a monetary reward, since Plaintiff can be deprived of access to medical care, his job and other essential and important activities.

b) Stated a cognizable legal claim that he has a likelihood of success on the merits (there is a settled underlying claim and a showing of reasonable probability of success on the merits) 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.

Plaintiff's Reply:

The second Crowe factor has been met because Counts One, Two and Three are premised upon lack of Subject Matter Jurisdiction, which has no time constraints and voids all ensuing actions based upon the void judgment or action. Counts Four, Five and Six are cognizable on the face of the Verified Complaint, and are capable of being sustained by adequate opposition to Defendants' defenses.

c) Would suffer a substantial hardship if the application was denied (the relative hardship to the parties in granting or denying relief). *Crowe v De Gioia*.

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.

Plaintiff's Reply:

The Defendants are not 'ordinary' litigants. They are the entire State of New Jersey government, with the unfettered power to incarcerate their civil law opponents, request deprivation of important property rights of their civil law opponents in states thousands of miles away, with no formal proceedings in the Sister state. It can imprison a person for a civil money judgment, in violation of the New Jersey Constitution. It is improbable that the Defendants would incur a substantial hardship if temporally prevented from continuing to obtain the sum allegedly still owed to the Fund of \$2,500.00.

2. Defendants state that absent any showing to warrant the extraordinary relief, the application should be denied.

Plaintiff's Reply:

Plaintiff's above-replies adequately indicate the need for extraordinary relief in the form of the Motion for Injunctive Relief Temporary Restraints.

3. Defendants state for harm to be irreparable, an applicant must have no adequate remedy at law.

Plaintiff's Reply:

Plaintiff's above-replies indicate that there is no adequate remedy at law for the Plaintiff being arrested in California, incarcerated and sent Three Thousand miles to the Trenton, New Jersey Courthouse. Money is not an adequate substitute for freedom.

4. Defendants state that a preliminary injunction should not be granted when all material facts are controverted.

Plaintiff's Reply:

Plaintiff's Verified Complaint is based entirely on documents, sworn and unsworn, that comprise the entire record of this matter, that has been created and kept in complete control by Defendants. Plaintiff did not participate in any manner with the creation of the underlying records. He accepts as true the record as it stands, and does not dispute the facts therein. Plaintiff does dispute the incorrect legal conclusions of New Jersey law, drawn from these undisputed records. Plaintiff instituted this civil action to have a Judicial determination, properly applying New Jersey law to the undisputed record.

B. Standard of Review for denial of Defendants' Cross-Motion to Deny Plaintiff's Motion for Injunctive Relief.

Crowe v. De Gioia, 90 N.J. 126 (1982) has been the standard authority for the evaluation of issuing preliminary injunctive relief since 1982. Four principles are considered:

The first is that a preliminary injunction should not issue except when necessary to prevent irreparable harm. Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J.Eq. 299, 303 (E. & A. 1878). Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. In certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive relief. Hodge v. Giese, 43 N.J.Eq. 342, 350 (Ch.1887).

A second principle is that temporary relief should be withheld when the legal right underlying plaintiff's claim is unsettled. Citizens Coach Co. v. Camden Horse R.R. Co., *supra*, 29 N.J.Eq. at 304-05. It involves a fact-sensitive analysis that "requires a determination of whether the material facts are in dispute, and whether the applicable law is settled. SEE Waste Mgmt., 399 N.J. Super. at 528.

A third rule is that a preliminary injunction should not issue where all material facts are controverted. Citizens Coach Co. v. Camden Horse R.R. Co., *supra*, 29 *N.J.Eq.* at 305-06. Thus, to prevail on an application for temporary relief, a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits. Ideal Laundry Co. v. Gugliemone, 107 *N.J.Eq.* 108, 115-16 (E. & A. 1930). That requirement is tempered by the principle that mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the *status quo*. See Naylor v. Harkins, 11 *N.J.* 435.

The final test in considering the granting of a preliminary injunction is the relative hardship to the parties in granting or denying relief. Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 *N.J.Eq.* 506, 515 (Ch.1941), mod. on other grounds, 132 *N.J.Eq.* 613 (E. & A. 1942).

C. Plaintiff's Conclusion for denial of Defendants' Cross-Motion to Deny Plaintiff's Motion for Injunctive Relief.

The Plaintiff's Motion for Injunctive Relief Temporary Restraints meets all of the Crowe requirements for issuance:

- 1) it is necessary to prevent irreparable harm;
- 2) claims contained in the Verified Complaint are cognizable on their face;
- 3) all material facts, verified by the attached record, are uncontroverted and undisputed;
- 4) the Defendants will suffer little or no hardship by issuance of the Motion, whereas Plaintiff could be arrested in California and sent to New Jersey for a hearing in Trenton.

Consequently, Defendants Cross-Motion in Opposition to Plaintiff's Motion for Injunctive Relief should be Denied.

CONCLUSION

For the reasons stated above, the Plaintiff respectfully requests that the Court **Grant** Plaintiff's Motion for Injunctive Relief Temporary Restraints; and **Deny** Defendants' Objection to Plaintiff's Motion for Injunctive Relief Temporary Restraints; and **Deny** Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint for lack of subject matter jurisdiction; and **Deny** Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted,

/s / Kenneth Frank Irek
Kenneth Frank Irek
Plaintiff, Pro Se

Dated: December 14, 2020

Kenneth Frank Irek, Pro Se
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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

CIVIL ACTION

ORDER

THIS MATTER having been opened to the Court by Kenneth Frank Irek, Plaintiff, Pro Se, upon Notice of Motion for Injunctive Relief Temporary Restraints in the above-entitled action, for an Order entering Temporary Restraints against Defendants, and Defendants having objected to the Motion by way of a Cross-Motion dismissing the Plaintiff's Verified Complaint combined with an objection to Plaintiff's requested Order for Temporary Restraints, and the Court having considered the papers submitted in support herein, along with the papers submitted by Defendants in opposition and Cross-Claim to dismiss Plaintiff's Verified Complaint, and the oral argument, if any, and for good cause shown;

IT IS on this day of , 2020:

ORDERED that Defendants' Cross-Motion to Dismiss Plaintiff's Verified Complaint is hereby **DENIED**; and it is further

ORDERED that Defendants' objection to granting Plaintiff's Motion for Injunctive Relief Temporary Restraints is hereby **DENIED**; and it is further

ORDERED that Plaintiff's Motion for Injunctive Relief Temporary Restraints, is hereby **GRANTED**; and Defendants are preliminarily enjoined and restrained 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 been sent;

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.

IT IS FURTHER ORDERED that pursuant to Rule 1:5-1(a), a copy of this Order shall be served on all parties not served electronically, by regular mail within _____ days of its receipt by the moving party.

HONORABLE DOUGLAS H. HURD, P. J. Cv.

In accordance with the required statement of Rule 1:6-2(a), this Motion was _____ opposed _____ unopposed.

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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
CIVIL ACTION

**Reply To Defendants' Cross-Motion to
Dismiss and Reply To Defendants'
Opposition To Plaintiff's Motion For
Injunctive Relief**

CERTIFICATION OF SERVICE

On December 14, 2020, I, Kenneth Frank Irek, certify that the annexed Notice of Motion, Brief in Support of Motion, Proposed Order, and all supporting papers, were filed via eCourts with the Clerk, Superior Court of New Jersey, Mercer County, Law Division, and a true copy served upon the Defendants by:

 ✓ Emailing to:
 Priority Mail to:

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