SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001995-23T2

CAROL SAYERS,	CIVIL ACTION
Plaintiff-Respondent	ON APPEAL FROM
v.	SUPERIOR COURT, CHANCERY DIVISION MIDDLESEX COUNTY
JACK GREENFIELD,	HONORABLE GLENN C. SLAVIN, J.S.C. Sat below
Defendant-Appellant,	

BRIEF AND APPENDIX-VOLUME 1
FOR
APPELLANT JACK GREENFIELD

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PRELIMINARY STATEMENT

A court order, (default judgment) was issued on March 9,1990, while it was found 33-years later that the 1990 court lacked personal jurisdiction for it was only discovered by the defendant in 2023 that Service of Process had not been executed. September 22, 2023, the trial court upon this defendant bringing forth a direct challenge relating to the court in 1990 for personal jurisdiction resulted in a denial of claim for Deprivation of Rights (Procedural Due Process Violation/Defective Service). The plaintiff failed to prove validity of service as established by Third Circuit case law once jurisdiction is challenged by the defendant. The courts possess -0- records for Service of Process for the hearing that took place on March 9,1990 which led to a default judgement against this defendant. Upon challenge to personal jurisdiction the trial court misapplied the "doctrines of laches" as its reason for denial of claim to Deprivation of Rights (Procedural Due Process having not been served proper service of process) and failed to correct this defect as to have applied applicable case law that would have voided the 1990 default judgment. This defendant asks this court to reverse the trial court's findings and issue an order rendering the 1990 default judgment void as the courts in the Third Circuit have consistently demonstrated via case law based on similar circumstances and evidence. It

has been established when the lower courts deny granting a default judgment void when jurisdiction of a court is challenged by defendant, whereby Service of Process cannot be validated by the person bearing said responsibility upon challenge, the Appellate Division applying applicable case law reverses the lower courts findings in favor for the defendant.

PROCEDURAL HISTORY

Defendant filed a Motion to Vacate Arrears (voiding a 1990 default judgment) against plaintiff on August 30, 2023 (Pa50-Pa67). The plaintiff mailed a cross-motion to the court in answer but knowingly failed to complete Service as Plaintiff Sayers did not send her answer to this defendant as designated by court rules for completion of service which the court ultimately identified as "…no Response having been filed" (Pa1), thus the plaintiff failed to validate Service of Process for the March 1990 hearing (Pa7). The trial judge heard this entire case on paper and on September 22 ,2023 denied all claims without prejudice by way of order filed on September 26, 2023 (Pa17-Pa19). On October 16, 2023, the defendant filed a Motion for Reconsideration (Pa-33-Pa48; Pa75-Pa76), and the plaintiff once more made no attempt to file an Answer (Pa1; Pa36-Pa37; Pa44; Pa46). The trial judge denied all claims without prejudice on November 17, 2023 (Pa1-Pa2). Both motions were heard on paper as the court denied the

defendant's request for oral arguments for both motions. Defendant filed an Emergent Motion for Stay with the trial court on November 28, 2023 (Pa68-Pa69) and was denied without prejudice on December 6,2023 (Pa30-Pa31). December 1, 2023, a Notice of Appeal was filed and was dismissed by this court on February 1, 2024, without prejudice. Defendant filed an Emergent Motion for Stay on February 26,2024 (denied) along with a second Notice for Appeal upon receipt of trial court's final order filed February 16, 2024 (Pa133).

STATEMENT OF FACTS

On September 12, 1986, a court order modifying or Terminating Support Order was issued directing the defendant to pay plaintiff through direct payment. It was further ordered child support payment/alimony was hereby **terminated** as of 9/16/1986, **arrearages of -$0-** are certified/reinstated as of 9/16/1986 and the Middlesex County Probation Department was **relieved** of any further **supervision and enforcement** for this case and directed to **close** its file in this matter (Pa4-Pa5).

On March 9, 1990, a subsequent hearing took place resulting in the court issuing a default judgment as this defendant had not appeared (Pa7-Pa8). This judgment had ordered the defendant to make child support payments to Middlesex County Probation (Pa7-Pa8). Probation began to seize monies on three separate instances between 1990 and

2001, (1990, 1995 and 2001) each seizure lasting less than 3-months on each occasion (Pa12-Pa15) as this defendant had forwarded the 1986 court order relieving Probation of enforcement and supervision (Pa4).

In 2021, Probation intercepted a Federal Government Stimulus check, and it was not until May of 2023 upon receiving a letter from the Levy Department (Pa32) that this defendant began to seek legal redress. It was during the next few months that it was discovered for the first time within the past 33-years that a 1990 court ordered default judgement (Pa 7-Pa8) had been issued. It was further discovered during this timeframe of discovery in 2023 that Service of Process had not been executed for said 1990 hearing/default judgement as there are zero court records that validate Service of Process (Pa6; Pa21-Pa23) while the plaintiff forsook to prove validity of service by failing to Respond to said claim of a Due Process violation (Service of Process never being executed)(Pa1; Pa10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62). The court denied both Motion to Vacate Arrears on September 26, 2023 (Pa17-19) and a subsequent Motion for Reconsideration on November 21, 2023 (Pa1-Pa2). February 16, 2024, the court issued a final order denying all claims without prejudice (Pa133).

ARGUMENT

I. THE COURT ERRED AS A RESULT OF THE TRIAL COURT'S EXCEPTIONAL DISPLAY OF ABUSE OF DISCRETION BY NOT RECOGNIZING THIRD CIRCUIT CASE LAW AS IT FAILED TO ADHERE TO PROCEDURES, PRECIDENTS, AND POLICIES ESTABLISHED WITHIN THE THIRD CIRCUIT. CASE LAW HAS CLEARLY ESTABLISHED THAT ONCE A DEFENDANT CHALLENGES A COURT'S EXERCISE OF PERSONAL JURISDICTION OVER IT, WITH RESPECT TO THIS DEFENDANT'S CHALLENGE TO THE GENERAL JURISDICTION OF THE COURT FOR THE MARCH 1990 HEARING, IT IS THE PARTY CLAIMING VALIDITY OF SERVICE WHO BEARS THE BURDEN OF PROOF FOR SERVICE OF PROCESS AS MATTER OF WELL ESTABLISHED (PRECEDENTS) THIRD CIRCUIT CASE LAW. SERVICE WAS NOT PROPERLY EXECUTED THUS THE COURT IN 1990 LACKED PERSONAL JURISDICTION AND ALL SUBSEQUENT JUDGMENTS ORIGINATING FROM THAT HEARING ARE TO BE FOUND VOID. THIS ERROR HAS RESULTED IN A DENIAL OF JUSTICE FOR IT IS A FUNDAMENTAL RIGHT AT STAKE OF DUE PROCESS. IT IS THE CONSTITUTIONAL BASIS OF ANALYSIS THAT HAS NOT BEEN SATISFIED FOR SERVICE OF PROCESS FAILED TO BE VALIDATED ONCE CHALLENGED, THUS TO BE FOUND DEFECTIVE. THE COURT FAILED TO ADHERE TO THE DOCTRINE OF STARE DECISIS TO OBTAIN APPLICABLE CASE LAW IN THE ADJUDICATION OF THIS CASE RESULTING IN NEGATIVELY EFFECTUATION THE FINAL OUTCOME AS TO REACHING AN UNFAIR RESULT. THE COURT FAILED TO ADHERE TO CASE LAW THAT ESTABLISHED: A DEFAULT JUDGMENT IS VOID WHEN A

SUBSTANTIAL DEVIATION FROM SERVICE OF PROCESS RULES HAS OCCURRED, CASTING REASONABLE DOUBT ON PROPER NOTICE, THAT WOULD HAVE COMPELLED THE COURT TO GRANT THE 1990 DEFAULT JUDGMENT AS VOID FOR THE EVIDENCE DEMONSTRATED SERVICE OF PROCESS HAD NOT BEEN ESTABLIHED NOR VALIDATED (Pa1; Pa7; Pa133)

Personal jurisdiction will exist and is properly exercised when the court has a statutory basis which to base personal jurisdiction; that statutory basis can be exercised in accord with the Constitution and the defendant has been given sufficient **notice** of the plaintiff's suit against him. When discerning precedents, it contains a **ratio decidendi** which is the central Rule stemming from the judgment. This ratio is the part of the **precedent** that becomes the judgment, and **other judges** are compelled to apply it when applicable and therefore **"BINDS"** the **judge** to **adhere** to established precedents which the trial court failed to consider and adhere to. It is therefore the **constitutional basis of analysis** that has **not** been satisfied, as this appeal will demonstrate by the court **failing to cure** its **errors** (missed case law and Validity of Service not validated) when the opportunity was presented via a Motion to Reconsider (Pa33-Pa34) the court directly caused harm and prejudice to this defendant resulting in the **improper denial** of granting this defendant's motion to void the 1990 default judgment (Pa7). This denial was attributed to the court's abuse of judicial

discretion by **not recognizing service of process had not been properly executed** (Pa6; Pa34-Pa35; Pa39-Pa40) while additionally **citing missed case law** (Pa17-Pa18; Pa33) in **misapplying** the doctrines of Laches (Pa17-Pa18) as reason for said denial of claims which will be addressed in Argument II. The court's basis for denial was erroneously exercised to deny a **FUNDAMENTAL** Rights violation (defective Service of Process) to which it will be demonstrated such that laches **does not govern civil rights actions**. If a defendant **was** served with proper notice a state's statutes of limitations would normally govern an issue of time restraints, however, the court failed to recognize that Notice of Service had **not been validated by Plaintiff Sayers** when challenged (Pa1; Pa6; Pa34-Pa35; Pa39-Pa40) as established through case law cited in this appeal. The purpose of Section 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails, Carey v. Piphus, 435 U.S. 247, 254-257 (1978).

"The numerous rulings made during the litigation process, if they are within the trial court's **discretionary authority,** are measured against the standard of "**mistake exercise"** or "**abuse of discretion**." Thus, an appellate court must defer to the trial courts exercise of discretion **unless the trial judge pursued a**

manifestly unjust course…" Gillman v Bally Mfg. Corp, 286 NJ Super 525 528 (App Div 1996), and the mistaken exercise prejudices the substantial rights of a party, Morning Ledger v Sports and Expo., 423 NJ Super 140, 174-175 (App Div 2011). In this defendant's case before this court the trial court failed to evaluate the evidence and facts establishing a meritorious claim of Defective Service (its erroneous misapplication of laches to deny this defendants Civil Rights Action claim of a Due Process Violation) citing missed case law (Pa17-Pa18; Pa33) thus generating an unfair result, R 2:10-2. A judgment **IS a void judgment if the court that rendered judgment lacked jurisdiction** of the subject matter **or** if the parties acted in manner **inconsistent with due process** evidence established in this case before the court showed Service of Process **failed to be validated** by Plaintiff Sayers (Pa1) for failure to validate when challenged (P10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62) (Third Circuit case law cited throughout this appeal establishes the burden of proof of validity is on the party **claiming** Service of Process had been executed properly). This precedent is further established as in the case of Jameson v. Great Atlantic and Pacific Tea Co., 363 N.J. Super. 419, 425 (App.Div.2003); When "a default judgment is taken in the face of defective personal service, the judgment is [generally] VOID." Rosa v. Araujo, 260 N.J. Super. 458, 462 (App.Div.

1992), certif. denied, 133 N.J. 434 (1993). The court failed to recognize it is the PLAINTIFF that bears the burden of establishing personal jurisdiction when jurisdiction is CHALLENGED by the defendant (P10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62), Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir.2001). N.J Rule 4:50-1(d) provides that the court may relieve a party from a final judgment if the judgment is void; If a court is satisfied that INITIAL service of process was so **DEFECTIVE** that the judgment is VOID, ordinarily, the judgment **SHOULD BE set aside**. Berger v. Paterson Veterans Taxi Service, 244 N. J. Super. 200, 205 (App.Div.1990), (the court ignored facts and evidence of defective service as the evidence validated the courts have no records for Service of Process relating to the March 9, 1990, hearing) (Pa6; P10; Pa21; Pa33-Pa35; Pa39-Pa41). A substantial deviation from the Service of Process rules "**REQUIRES" RELIEF from a DEFAULT JUDGMENT**: Sobel v. Long Island Entertainment, 329 N. J. Super. 285, 293-94 (App.Div.2000). Moreover, if a JUDGMENT is void due to **defective** service, the defendant is **not required to present a meritorious defense**, in order to **VACATE** the judgment. ibid. where default was entered WITHOUT PROPER SERVICE of the complaint, it is "a fortiori void, and should be **set aside**." Gold Kist, Inc., 756 F.2d at 19.

A motion to **VACATE** a default judgement need **not** meet "the more stringent requirements of R. 4:50-1 for setting aside a default judgement". O'Connor v. Altus, 67 N.J. 106, 129 (1975) "only a mere **showing** of **good cause** is **required** for setting aside an entry of default", N.J. Div. of Youth and Family Servs. V. M.G. 427 N.J. Super at 171. A valid "entry of default is a necessary predicate to a default judgement," the default judgement is "void", Clark v. Pomporio, 397 N.J. Super. 630, 641-42 (App. Div).

Additionally, a judgment is a void judgment if the court that rendered the judgment **lacked** jurisdiction of the subject matter, **or OF the parties**, or ACTED in a manner **inconsistent with DUE PROCESS**, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. In the instance of Herring v. United States of America, 424 F.3d 384, 386 (3" Cir. 2005) the Court in its foot notes explained the various definitions of void judgments by various circuits. Under Rule 60(b)(4), because of the unique considerations applicable to void judgments, a motion brought many years AFTER the judgment was obtained **MAY** nevertheless be made within a reasonable time. The mere fact that a significant amount of time has passed since a void judgment was rendered CANNOT "cure" its **fatal** infirmity. For this reason, some authority states that a motion under Rule 60(b)(4) **MAY** be made at **ANY TIME**.

The trial court's decision rested on a misapprehension of the facts, evidence, and law. The "GOOD CAUSE" standard requires the exercise of sound discretion in light of the facts and circumstances of the particular case considered in the context of the Court Rule being applied". Del.Valley Wholesale Florist. V. Addalia, 349 N.J. Super. 228, 232 (App. Div. 2002). It is **abuse of discretion** when a decision is made **without** rational explanation inexplicably **departed from ESTABLISHED POLICIES**, or rested on impermissible basis," US Bank, Supra 209 N.J. at 467-68.

Additionally, the court's final order establishing arrearage of $88,047.35 (Pa133) is be deemed void as it must be noted that **any** subsequent orders/judgments issued after said March 9,1990 default judgment would also be deemed void as evidenced by numerous case law cited in this brief for the court failed to recognize Service of Process had not been effectuated in 1990 and thus the trial court lacked evidence to validate Service of Process **had been established** (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41). The lower court **relied** on the **erroneous** default judgement from 1990 (Pa7), that on its face should be deemed as a void judgement as matter of Third Circuit case law (cited in this appeal) due to **deficiency of Service of Process,** therefore the court piggybacked said final order issued on February 16, 2024 (Pa133) on a void judgment

at its face. The trial court failed to recognize the 1990 default judgment as void due to the challenge of Service of Process having **failed to be proven** by Plaintiff Sayers in this litigant's Motion to Vacate Arrears (Pa1; Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41) by the person **claiming** validity of service (Third Circuit case law fully addressed and cited within this appeal establishing the person claiming validity must prove when challenged).

Nonetheless, the statutes of limitation for a Civil Rights violation as deemed by New Jersey (N.J. Ct. R. 4:104) would have been "tolled" due to proper service of process not being executed (Pa6; Pa21; Pa33 – Pa35) and equally of import was the court failed to recognize the plaintiff forsaken to prove validity of service (Pa1; Pa34-Pa35) when jurisdiction was challenged (Pa10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62) as established by **cited** Third Circuit case law.

If we consider the Supreme Court Case of Peralta v. Heights Medical Center, Inc., 108 S. Ct. 896 no. 86-1430 argued Nov. 30,1987, decided Feb. 24, 1988, as this case will be cited for various established precedents, as Justice White clearly remarked, "When a person has been deprived of **property** in a manner contrary to the most basic tenants of due process, it is no answer to say his particular case due process of law would have led to the same result because he had no

adequate defense upon the merits", Coe v. Amour Fertilizer Works, 237 U.S. 413, 424, 35 S. Ct. 625, 629, 59 L. Ed. 1027 (1915). It is further noted in this instance case of Peralta, heard by the Supreme Court to which **mirrored this defendant's** case (zero records for service of process had been established) now before the Third Circuit Court whereby, appellant denied that he had been personally served and that he had notice of the judgement. "The case proceeded through the **899 Texas courts on that basis, and it is **not denied by APPELLEE** that under our cases, **A judgement entered without notice or service is constitutionally infirm**" as stated by Justice White.

The **facts** are that **both** Mr. Peralta and **this** Defendant denied having been served or notified as **both** defendants had **demonstrated with facts** and **evidence**, that **neither** of the appellees in these two similar cases **OBJECTED** (Pa1). The trial court neglected to recognize the **evidence** that the Courts do **not** have records demonstrating **validity of Service** of Process (Pa6; P10; Pa21; Pa33-Pa35; Pa39-Pa41) and that Plaintiff Sayers, upon her own behest **failed** to **prove** validity of service (Pa1) as **established** by Third Circuit case law; "once a defendant **challenges** a court's exercise of personal jurisdiction over it, the **plaintiff** bears the burden of establishing personal jurisdiction", Kilinc v. Tracfone Wireless Inc. U.S. District Court, W.D. Pennsylvania, Dec. 27,2010 757

Supp. 2d 535 as this **relevant** case will be cited further in this appeal. The court's failure to acknowledge this precedent was attributed to its **misapplication** of case law to erroneously deny this defendant's claim that proper service was not executed.

That said, "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections;" cited in Mullane v. Central Hanover Bank & Trust Co, 339 U.S. 306 314, 70 S. Ct. 652, 657, 94 L Ed. 865 (1950). "**FAILURE** to give NOTICE **VIOLATES** the most rudimentary **demands of due process law"**. Armstrong v. Manzo, 380, U.S. 45, 550, 85 S. Ct. 1187,1190,14 L. Ed. 2d 62 (1965) ….Matthews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 902, 47 L. Ed. 18 (1976) …" Justice White further continued to state "The Texas courts nevertheless held, as appellee urged them to do, that to have the judgement set aside, appellant would have to show a meritorious defense, apparently on the ground that without a defense, the same judgement would again be entered on retrial and hence appellant had suffered no harm from the judgement entered without notice. But this reasoning is UNTENABLE…."

When considering the criteria for determining whether to set aside a default judgment or an entry of default are the same

but are applied more **liberally** to a **default** as in; Duncan v. Speach, 162 F.R.D. 43, 44 (E.D.Pa.1995). Generally, courts look upon the default procedure with disfavor because the interests of justice are best served by obtaining a decision on the merits, Farnese v. Bagnasco, 687 F.2d 761, 764 (3d Cir.1982). Reviewing additional **applicable case law** as in Paris v. Pennsauken School District. United States District Court, D. N.J. August 09,2013, this instance case in Westlaw is not reported in F. Supp.2d, 2013 WL 4047638, however, it does exhibit relevance to established precedents set forward by the Third Circuit: "… Indeed, "entry of default judgement is a two-part process; default judgement may be entered only upon the entry of a default by the clerk of the court…". In this case before the court, it has been demonstrated but not recognized by the trial court that there are no records for Service of Process entered by the clerk of the court (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41).

With regard to Service of Process, The 14th Amendment Section 1 protects Due Process Rights for: if a state seeks to deprive a person of a protected life, liberty, or property interest, the Fourteenth Amendment's Due Process Clause **REQUIRES** that the state first provide certain procedural protections (to which the court ignored as due process was not afforded to this defendant such that Notice was not served as demonstrated

(Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41). The Supreme Court has construed the Fourteenth Amendment's Due Process Clause to impose the same procedural due process limitations on the states as the Fifth Amendment does on the Federal Government. Fifth Amendment due process case law is therefore relevant to the interpretation of the Fourteenth Amendment.

In considering Kilinc v. Tracfone Inc., 757 F. Supp. 2d 535 (W.D. Pa. 2010) No. 2:10-cv-1311, a case similar in nature to this case before the court, the Third Circuit Court embraced its well-founded established **PRECEDENT that consistently demonstrates; If validity of service is challenged, the party claiming valid service** (in this instance case it is Plaintiff Kilinc to whom mirrors Plaintiff Sayers in this case before this court) bears the burden of proof. Correspondingly, Grand Entertainment Group, Ltd. v. Star Media Sales, Inc., 988 F.2d 476 (3d Cir.1993) (citing 4A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1083 (1987) holds; "Although Fed.R.Civ.P. 4 is to be construed liberally, the **Plaintiff MUST demonstrate** that the **legal** requirements set forth in the Rule **have been fulfilled**. Defense counsel represented that **Tracfone had NOT** been served at all, and therefore had **NOT RESPONDED** to the Complaint" (This instance case **PRECISELY mirrors** this defendant's case for:

"TO" respond, it is only reasonable one **must have** been first notified as in the case of Tracfone to which no such evidence is **present** that Service of Process was executed properly to this defendant in 1990). The Third Circuit Court ruled from **evidence** presented by the defendant's counsel in **favor of the defense** (Tracfone Inc.) as the Plaintiff "**FAILED**" to prove **validity of service** (Plaintiff Sayers before this court **mirrored** that of Plaintiff Kilinc as she FAILED TO PROVE validity of service by **NOT** responding to claims of jurisdictional challenge i.e. Service of Process) (Pa1). The Third Circuit has consistently demonstrated validity of service **must be proven** by the party **claiming** validity of service as the plaintiff in this case **clearly failed** to **respond** to this defendant's **direct challenge to validity of service and/or** to DISPUTE **ANY** claims **asserted** by this defendant (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41).

When Appellate courts apply a deferential standard in reviewing factual finds by a judge the courts "give deference to the trial court that heard the witnesses, **sifted the competing evidence**, and made **reasoned** conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). The facts in this appeal before this court demonstrate the trial court failed to draw reasoned conclusions (to be noted, the case before this court was decided on paper and as established in this appeal

ignored all relevant facts and evidence) as it did not recognize the evidence that it was deemed to sift through (Service of Process had NOT been executed (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41), while the court congruently **misapplied** case law (laches) as will be further established in Argument II.

With respect to this defendant's claim of a Civil Rights Violation in regard to Procedural Due Process, if we consider the United States Supreme Court case of Armstrong v. Manzo, 85 S. Ct. 1187 it was affirmed: 'Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing (a key Underpinning element for this case before this court) appropriate to the nature of the case.' Let us consider Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306, at 313, 70 S.Ct. 652, at 656, 94. .Ed. 865. 'An elementary and fundamental requirement of **due process** in any proceeding which is to be accorded **FINALITY** is; notice reasonably calculated, under **ALL** the circumstances, to apprise interested parties of the pendency of the action and **AFFORD** them an opportunity to present their objections…" (this clearly speaks directly to Deprivation of Due Process Rights enacted against this defendant because of defective Service of Process in 1990

and first recognized in 2023). The court failed to evaluate the evidence and facts establishing a meritorious claim of defective service (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41) denying this claim by its employing of missed case law (Pa17-Pa18; Pa33). This cited case of Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306, at 313 speaks to (Whether or not the action is in **personam** or in rem, the court can determine the interests of all claimants providing there is a procedure allowing for "**notice and an opportunity**" to be heard). The trial court failed to recognize this defendant's claim of a Due Process Violation (defective service) which was **not** disputed by Plaintiff Sayers for she clearly **failed** to **Respond** as to **prove** validity of service once jurisdiction was **challenged** (Pa1) that would have compelled the Trial Court to ascertain established case law (utilizing Stare Decisis) to determine Third Circuit precedents when jurisdiction had been challenged by this defendant (facilely mirroring this case before this court)..

Intrinsically, the Trial Court failed to acknowledge when validity of service is challenged, the party claiming valid service bears the burden of proof: Grand Entm't Grp., Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 488 (3d Cir. 1993. In the trial court's Civil Action Order filed November 21, 2023 (Pa1), it clearly established the court did **not** receive a response from the plaintiff, ultimately failing to prove the burden of validity

of service as the court wrote: "DESPITE the plaintiff having been properly served" (Pa1). The lower court failed to recognize as matter of established case law as it will speak to the heart of this Appeal before the Appellate Division that the **absence of service of process** or a waiver of service by the defendant, due process will **NOT permit a court to exercise power over a party** named as **DEFENDANT** in the complaint as cited in: Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350, 119 S.Ct. 1322, 143 L.Ed.2d 448 (1999).

Moreover, the Discovery Rule due to exceptional circumstances would toll time (33-years) (N.J. Ct. R. 4:104); Grunwald v. Bronkesh, 131 N.J. 483, 492 (1993), for when this defendant first discovered in May of 2023 a violation of Due Process from 1990 he did NOT sleep on his rights and **contemporaneously** filed a Motion to have the default judgement **void** seeking redress with the Trial Court (Pa73 – Pa74). Upon obtaining discovery material between May-July of 2023 for this exceptional case originating 34- years ago, a Motion to Vacate Arrears was filed and denied on September 26, 2023 (Pa17). As previously cited, where default was entered without proper service of the complaint, it is "a fortiori void, and **SHOULD BE SET ASIDE**." Gold Kist, Inc., 756 F.2d at 19. "ANY defects ... **ARE FATAL** and leave the court

WITHOUT JURISDICTION AND ITS JUDGMENT VOID."

With that being said, in addition the discovery rule (N.J. Ct. R. 4:104) and Rule 60 (b) (6) **delays the accrual of a cause of action until `the injured party DISCOVERS**, (totality of evidence confirming May of 2023) or by an exercise of reasonable diligence and intelligence should have discovered (**zero** evidence cited to dispute defendant's claim of Defective Service lacking any records of Service of Process) that he may have a basis for an actionable claim." Id. The court failed to present in its findings a "**morsel**" of **EVIDENCE** in its denial of a Civil Rights Action claim that would have verified and/or disputed this defendant **had** known or should have known of the 1990 hearing for the evidence clearly demonstrates the **contrary**, as further established in Argument II. The court advanced an erroneous "presumption" **(lacking** facts and evidence) **this defendant HAD notice** for the 1990 hearing (Pa2) for **"IF"** this presumption were found to be **credible** (there is no evidence in this case to remotely presume neither Service of Process nor knowledge had been given regarding the 1990 hearing up until 2023), it **could** have negated the defendant's claim of defective service, i.e. having no notice given **but** this **presumption will** be debunked in this appeal. That said, it must be additionally discerned that Rule 60 (b) (6)

provides a catchall for vacating a judgment **without time limit** for "**any** other reason that **justifies relief**" (the evidence provided to the trial court had failed to be recognized which would have demonstrated that notification had never been properly executed: Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41).

It has been well established in this Third Circuit, Motions for relief from judgment pursuant to R. 4:50-1 "are addressed to the sound discretion of the trial court, whose determination will be left undisturbed "**UNLESS**" it results from a **Clear abuse of discretion**." Pressler, Current N.J. Court Rules, comment 1 on R. 4:50-1 (2007), and cited cases therein. Motions to VACATE DEFAULT JUDGMENTS as this defendant has sought, however, are "VIEWED with great liberality, and **EVERY reasonable** ground for indulgence is TOLERATED to the end that a **JUST RESULT** is reached." Id. at comment 2, and cited cases therein.

This succeeding case law instance augments the long-standing premise held by this Third Circuit that; Upon a challenge to the **sufficiency of service** when lodged (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41), the party ASSERTING the validity of service **BEARS** the burden of proof on that issue. Because courts **LACK** PERSONAL JURISDICTION where **service of process** is **IMPROPER**, determining proper service **is** a threshold issue as recognized in; Lampe v. Xouth,

Inc., 952 F.2d 697, 700–01 (3d Cir.1991) ("A court obtains personal jurisdiction over the parties when the complaint and summons are "**PROPERLY SERVED**" upon the defendant. Effective service of process is therefore a PREREQUISITE to PROCEEDING FURTHER in a case."); see also U.S. v. One Toshiba Color Television, 213 F.3d 147, 156 (3d Cir.2000) ("[T]he entry of a default judgment WITHOUT **PROPER** SERVICE of a complaint renders that J**UDGMENT VOID**."); The following cited case of Gold Kist, Inc. v. Laurinburg Oil Co., Inc., 756 F.2d 14, 19 (3d Cir.1985) is of relevance as it too cites precedent in which ("A default judgment entered when there has been NO proper service of the complaint is, A **FORTIORI, VOID**, and **should be set aside**."). PLAINTIFF pro se BEARS the burden of **PROVING** sufficient service of process cited in; Grand Entm't Grp., Ltd. v. Star Media Sales, 988 F.2d 476, 488 (3d Cir.1993).

It is the **CORNERSTONE** AND UNDERPINNINGS to this defendant's case to which the trial court failed to recognize in reaching its findings for its determination of an unfair result as the court clearly did **not** observe Third Circuit Court **precedents**, standards and policies as it **failed** to use established well founded case law that all judges in this Circuit have been **designated to adhere to** (when applicable as in this instance case as the court misapplied laches as reason for denial

for a Due Process of Rights claim verses seeking applicable case law). It is therefore the doctrine of Stare Decisis that OBLIGATES courts to look at precedents while formulating their decisions to which the lower court failed to demonstrate. This further speaks to the trial court's clear abuse of judicial discretion, for absent of being able to demonstrate valid proof of service (Plaintiff Sayers failed to respond) (Pa1) the 1990 court **lacked** personal jurisdiction as determined in: (Gen. Elec. Co. v. Deutz AG, 270 F3d 144, 150, (3d Cir. 2001). Cases cited have established any ORDERS OR JUDGEMENTS are to be found as **VOID** AS MATTER OF CASE LAW, "ANY DEFECTS …ARE FATAL AND LEAVE THE COURT WITHOUT JURISDICTION AND ITS **JUDGEMENT VOID**." Driscoll v. Burlington Bristol Bridge Co., 8 N.J. 433, 493, 86 A2d 201 (1952), cert, den., 344 U.S. 838, 73 S.Ct. 25, 97 L.Ed. 652 (1952). Legal STANDARD Federal Rule of Civil Procedure 12(b)(5), **EFFECTIVE SERVICE OF PROCESS** is a prerequisite to the court's personal jurisdiction over a defendant.13 "in resolving a motion under Rule 12(b)(5), the party making the service has the burden of **demonstrating** its validity when an OBJECTION TO SERVICE **IS MADE**."14 The party **MUST** PROVE that service was **PROPERLY** EFFECTUATED by a preponderance of evidence , DiGenova v. United Here Local 274, No. 16-1222, 2016 WL 3144267, at

*2 (E.D. Pa. June 6, 2016 . If the judgment is void **ALL** other orders and issues are IRRELEVANT and VOID. Every issue that happened subsequent to a void judgment (Pa12; Pa20; Pa94; Pa133) is **without merit** because a void judgment can never gain legitimacy, any argument is also therefore without merit and void (See Armstrong v. Manzo 380 U. S. 5451 551 552).

Another key fact (abuse of discretion) that promulgated an unfair result: Clear evidence was presented demonstrating Plaintiff Sayers **failed to respond** in order to **prove** service of process (Pa1) upon this defendant's challenging to validity of service (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41), thereby challenging the 1990 court's jurisdiction as cited case law has established the burden of proof is placed with the plaintiff upon challenge of jurisdiction by the defendant, Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir.2001). That being said, the following Third Circuit Court cases cite legal reinforcement that "**No** default can be entered without a defendant **first being served properly**." Daniek v. Duda, No. 15-6032, 2016 WL 4435677, *1, 2016 U.S. Dist. LEXIS 108848 *2 (D.N.J. Aug. 17, 2016) (citing Gold Kist, Inc. v. Laurinburg Oil Co., 756 F.2d 14, 19 (3d Cir. 1985)). "[P]ro se LITIGANTS ARE **NOT** excused from **complying** with the Federal Rules of Civil Procedure governing **service of process**." Anderson v. Mercer

County Sheriff's Dep't, No. 117620, 2014 WL 2196935, at *4, 2014 U.S. Dist. LEXIS 71776, at *12 (D.N.J. May 27, 2014). "Service of process is governed by Federal Rule of Civil Procedure 4." Zurich Am. Ins. Co. v. Big Green Group, No. 19111500, 2020 U.S. Dist. LEXIS 223742 at *4 (D.N.J. Nov. 30, 2020). Pursuant to Rule 4(h).

The ABSENCE OF SERVICE OF PROCESS or a waiver of service by the defendant establishes as matter of law that due process will **NOT PERMIT a court to exercise power over a party named** as **defendant** in the complaint as cited in Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350, 119 S.Ct. 1322, 143 L.Ed.2d 448 (1999). It is of note that Rule 4:50-1(f) as a "**catchall**" provision allows courts to RELIEVE a party from a final judgment for "**any** other reason justifying relief from the operation of the judgment." Motions under subsection (f) are "addressed to the broad discretion of the trial court." Court Inv. Co. v. Perillo, 48 N.J. 341 (1966). "That discretion is ... to be exercised according to equitable principles, and the decision reached by the trial court will be accepted by an appellate tribunal in the **ABSENCE** of an ABUSE of its discretion" Ibid. The court in Mr. Perillo's case articulated that: "the very ESSENCE of (f) is its capacity for relief in EXCEPTIONAL SITUATIONS. And in such EXCEPTIONAL cases its boundaries are as **EXPANSIVE as**

the need to achieve equity and justice." Ibid. Additionally, subsection (f) requires defendants to demonstrate that their failure to appear was EXCUSABLE and that they **had a meritorious defense**. (zero court records (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41) to validate service of process occurred to which **IF** service of process is **NOT** established a default judgement will be VOID as cited by numerous cases in this appeal (Pressler, supra, comment 4 on R. 4:50-1).

In regard to the court ignoring critical evidence, we will once again focus on the plaintiff's failure to Respond (Pa1) to the challenge of personal jurisdiction once asserted by this defendant clearly ignoring the plaintiff's burden to assume the obligation to provide proof to validity of service, as established in cited case law (Kilinc v. Tracfone Wireless Inc. U.S. District Court, W.D. Pennsylvania, Dec. 27,2010 757 Supp. 2d 535), to which bares precedent; once a **challenge to the sufficiency of service** is **lodged**, (Pa10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62) "the **party asserting the validity of service BEARS the burden** of proof on that issue." Grand Entm't Grp., Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 488 (3d Cir. 1993). As previously cited, where default was entered without proper service of the complaint, it is "a **fortiori void**, and **SHOULD BE SET ASIDE**." Gold Kist, Inc., 756 F.2d at 19. (ANY defects ... ARE FATAL and leave the court **WITHOUT**

jurisdiction and ITS **JUDGMENT VOID**." Driscoll v. Burlington–Bristol Bridge Co., 8 N.J. 433, 493, 86 A.2d 201 (1952), cert. den., 344 U.S. 838, 73 S.Ct. 25, 97 L.Ed. 652 (1952). Personal service is a **prerequisite** to achieving in **personam jurisdiction** as the plaintiff in this case before this court clearly failed to produce evidence disputing this defendant's claim of Defective Service (Pa1) upon challenge of jurisdiction (Pa10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62).

The court further failed in its abuse of discretion to recognize that a Motion to Vacate a default judgement "should be viewed with **great liberality, and EVERY reasonable ground for indulgence IS tolerated to the end that a JUST RESULT is reached**." Citing; Marder v. Realty Constr. Co. 84 N.J. Super. 313, 319, 202, A.2d 175 (App. Div.) aff'd. 43 N. J. 508, 205 A.2d 744 (1964). (This referenced case exhibits relevance as it establishes **EXPANDED precedents** for this defendant's challenge of jurisdiction of the court in March of 1990 (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41). Although the decision is **generally** left in the sound discretion of the trial court ("**UNLESS**" there is **demonstrated Abuse of Judicial Discretion** as demonstrated in this appeal), it is germane to recognize that "[a]ll doubts…should be resolved in FAVOR of the PARTIES SEEKING RELIEF." as set forth in Mancini,

Supra, 1332 N.J at 334, 625 A.2d 484 citing Arrow Mfg. Co. v. Levinson, 231 N.J. Super, 527, 534, 555 A2d 1165 (App. Div. 1989). Although the court found in the Mancini instance "their" neglect was inexcusable it must be asserted "this" defendant has shown NEITHER the court (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41) nor the plaintiff (Pa1) were able to bring forth any FACTS or EVIDENCE to "**disprove"** that service of process was "**NOT"** EXECUTED for the MARCH 9, 1990 hearing, thus resulting in a void default judgment (Pa7) for the court's lack of jurisdiction as service of process had not been validated (Pa1).

Case law has been defined as a precedent that has been set based on prior judicial decisions rather than specific statutes or regulations. The court fostered **arbitrary analysis** in rendering its determination in Kilinc v. Tracfone Inc., 757 F. Supp. 2d 535 W.D. Pa. 2010 No. 2:10-cv-1311 as it affirmed; "once a **CHALLENGE** to the sufficiency of service is lodged, (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41) the party asserting the validity of service **BEARS** the burden of **proof** on that issue." thereby giving **legal basis and doctrine** for the 1990 Default Judgement ordered void for Service of Process had **not** been established whereby similar cited cases challenging jurisdiction due to defective service, the default judgments have been deemed void. The Appellate Division has

consistently exercised precedents established in the Third Circuit (cited cases in this appeal) reversing the lower court's initial denial and has granted the defendant's motion to void a default judgement in such similar cases.

When Statutes of Limitation for a Civil Rights Violation apply within an individual State "EXCEPTIONS" may be granted such as using the common law doctrine known as the discovery rule, Grunwald v. Bronkesh, 131 N.J. 483, 492 (1993). At the same time, it must also be recognized Rule 60 (b) (6) provides a catchall for **vacating a judgment without time limit** for "any other reason that **justifies** relief" (33-years "until" the default judgement was actually discovered which supports this defendant's motion to vacate a default judgment due to **exceptional circumstances** and cited established case law and that Proper Notice had **not** been afforded regarding the March 9, 1990 hearing.(Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41). In the instance case of Court Invest. Co. v. Perillo, N.J. 48 N.J. 334, 225, A2d 352 (1966) established "*** (motion under (f) is addressed to the discretion of the trial court. That discretion is a broad one to be exercised according to equitable principles, and the decision reached by the trial court will be accepted by an appellant tribunal in the **ABSENCE** of ABUSE of DISCRETION). No categorization can be made of the situations which would warrant redress under section (f) is its

capacity for relief in exceptional situations. And in such exceptional cases its boundaries are as expansive as the need to achieve equity and justice." 48 N.J. at 341, 225A, 2d at 356.

According to the categorization that can be made of the situations which would warrant redress, the Perillo's knew nothing about the default judgment against them until 14 YEARS LATER which **articulates similar circumstances and facts** that warrant redress surrounding this defendant's case in front of this court. In the Perillo's case the trial court had originally vacated the judgment but was overturned in the Appellate Division yet only to be **reversed** and the order of the trial court was **reinstated** as the Perillo's ultimately had their **default judgement vacated** due to **exceptional circumstances**. Perillo's case in its essence pertaining to **improper service** and having a default judgement rendered against them PRECISELY "mirrors" the very UNDERPINNINGS of this case before this court. This speaks to similar circumstances as service of process was defective as demonstrated in this appeal with evidence that the trial court **ignored** and case law clearly **establishes through precedents when**: A default is entered **without proper service** of the complaint, it is "**a fortiori void**, and **should be set aside**; Gold Kist, Inc., 756 F.2d at 19; see Grand Entertainment Grp. v. Star Media Sales, Inc., 988 F.2d 476, 493 (3d Cir.1993).

The government must afford the person NOTICE, an opportunity to be heard, and a decision made by a neutral decision maker (which all evidence cited has demonstrated this defendant was NOT AFFORDED in 1990 and was ignored by the trial court which speaks to the PROCEDURAL DUE PROCESS RIGHTS VIOLATION that occurred in March of 1990 albeit first noticed in May of 2023). It becomes matter of law that Procedural Due Process is REQUIRED and guaranteed by the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. Pursuant to Federal Rule of Civil Procedure 55(c), A court "**may set aside an entry of default for good cause.**" Fed. R. Civ. P. 55(c); see also Mrs. Ressler's Food Prods. v. KZY Logistics, LLC, 675 F. App'x 136, 139 (3d Cir. 2017). In considering whether to vacate a default judgment, a court should consider (1) whether the plaintiff will be prejudiced by a vacatur of default, (2) whether the defendant has a meritorious defense, and (3) whether the defendant's culpable conduct led to the entry of default. See Feliciano v. Reliant Tooling, Co., 691 F.2d 653, 656 (3d Cir. 1982); see also Sourcecorp Inc. v. Croney, 412 F. App'x 455, 459 (3d Cir. 2011). However, an entry of default **may be set aside WITHOUT consideration of these factors** where the entry of default was "**IMPROPER (lacking service of process)**," as established in; Gold Kist, Inc. v. Laurinburg

Oil Co., Inc., 756 F.2d 14, 19 (3d Cir. 1985); Mettle v. First Union Nat. Bank, 279 F. Supp. 2d 598, 603 n.3 (D.N.J. 2003). Third Circuit precedent has established WHERE DEFAULT IS ENTERED WITHOUT PROPER SERVICE of the complaint, it is "a FORTIORI VOID, and SHOULD BE SET ASIDE." Gold Kist, Inc., 756 F.2d at 19; see also Grand Entertainment Grp. v. Star Media Sales, Inc., 988 F.2d 476, 493 (3d Cir.1993) (finding that district court **improperly entered a default where the defendants had not been properly served** in this following case); Anderson v. Mercer Cty. Sheriff's Dept., No. 11-7620, 2013 WL 5703615, at *3 (D.N.J. Oct. 17, 2013) which **mirrors the relevant facts** regarding **this defendant's** challenge of jurisdiction for the March 9, 1990, hearing, as defective service also has been demonstrated but had failed to be recognized as the evidence established (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41).

Substantive Due Process has been defined as the procedural due process requirements due when a Fundamental Right is implicated. A Judges' **refusal to consider evidence** (as demonstrated by the trial court's erroneous denial of a Due Process Rights violation misapplying case law verses abiding by the doctrine of Stare Decisis obtaining applicable case law to when jurisdiction has been challenged by a defendant), when a **Fundamental Right** is at stake **denies Due Process Rights**

to a "meaningful hearing." Armstrong v. Mango ,380 US 545,552; 85 S. ct.1187 (1965). Where a State law impinges upon a fundamental right secured by the U.S. Constitution it is presumptively unconstitutional. Harris v. McRae, 448 US 297 (1980); Zablocki v. Redhail, 434 US 374 (1978). Where a statutory classification interferes with the exercise of a Fundamental Right, constitutional scrutiny of State procedures is required. Under the Supremacy clause appears in Article VI of the Constitution of the U.S., everyone must follow federal law in the face of conflicting State law. "Otherwise, valid State laws or "COURT ORDERS" CANNOT stand in the way of constitutional law." Justice Kennedy wrote "The 14th Amendment prohibits the state from **depriving** any person of life, liberty, or **property WITHOUT DUE PROCESS OF LAW**." The Court has long recognized that the Due Process Clause "**guarantees MORE than fair process**," Glucksberg, 521 US 702 (1997).

Upon the court having been afforded an opportunity, (Pa1) to cure this defect in its **misapplying case law** (citing Clarke v. Clarke) (Pa16 - Pa17) it ultimately failed to cure said defect as it ignored this defendant's direct challenge in indicating its error via a Motion to Reconsider (Pa1; Pa10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62). The court countered this challenge of error ignoring that laches does not apply to Civil

Rights Actions by offering a non-relevant deflection with a dissertation of why Reconsideration falls into a "narrow corridor (Pa1 - Pa2) versus the fact that laches did not apply to this instance case. Under the Supremacy clause appears in Article VI of the Constitution of the U.S., everyone must follow federal law in the face of conflicting State law. "Otherwise, valid State laws or "COURT ORDERS" CANNOT stand in the way of constitutional law." Justice Kennedy wrote "The 14th Amendment prohibits the state from **depriving** any person of life, liberty, or **property WITHOUT DUE PROCESS OF LAW**." The Court has long recognized that the Due Process Clause "**guarantees MORE than fair process**," Glucksberg, 521 US 702 (1997).

With that being said, facts and evidence that the court failed to recognize caused prejudice and harm resulting in its finding to be unfair for the evidence presented validates there are **-0-** court records on file that **confirms Service of Process** for the March 9, 1990 hearing (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41) as to dispute this defendant's claim of a Procedural Due Process violation (Pa10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62), (albeit, it had been discovered 33-years later which this brief addresses regarding extraordinary circumstances).

Of equal importance, the court ignored Plaintiff Sayers failed to prove validity of service (Pa1) as case law establishes; Once a defendant challenges a court's exercise of personal jurisdiction over it the **PLAINTIFF BEARS** the burden of establishing personal jurisdiction. Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir.2001) as this Defendant clearly **challenged** personal jurisdiction for the March 9, 1990, hearing (Pa10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62). The courts are then **bound** by the doctrine of Stare Decisis in the rendering of its adjudication as to apply applicable case law in its analysis for this case or any other case before the court when relevant as the trial court neglected its bound duty.

This further demonstrates the court's non-adherence to established Third Circuit case law precedent, specifically applying to the plaintiff's burden to **prove** validity of Service once challenged by a defendant. All cited cases in this appeal are **consistent with Third Circuit Court rulings** that mirror this case with respect to issues of jurisdiction due to **deficiency of service of process** that the lower courts ALL had failed to recognize. Each case cited utilizing Westlaw is found to have similar circumstances to this defendant's case and was **REVERSED** by the higher court. The following instance case maintains a consistent precedent held by the Third Circuit, Kilinc v. Tracfone Wireless Inc. U.S. District Court, W.D.

Pennsylvania, Dec. 27,2010 757 Supp. 2d 535) to which the plaintiff **failed to respond with validity of service** (mirroring Plaintiff Sayers) (Pa1) and was reversed.

With respect to judicial discretion one EXCEPTION to the trial court's discretion rule is; if a judge makes a DISCRETIONARY decision but does so under a **MISCONCEPTION OF THE APPLICABLE LAW**(Pa17-Pa18) (laches), the court **need NOT grant the usual DEFERENCE** in order to AVOID a manifest denial of justice as determined by Kavanaugh v Quigley, 63 NJ Super 153, 158 (App Div 1960).

If we review once again Court Invest. Co. v. Perillo, N.J. 48 N.J. 334, 225, A2d 352 (1966) it established; The trial court will be accepted by an appellant tribunal in the "**ABSENCE" OF ABUSE OF DISCRETION**. The Third Circuit has consistently reversed lower court's decisions when it was found (as in this case before the court) if Service of Process was **not** established by the party claiming valid service when **jurisdiction had been challenged** (Pa1) the decision **WAS** REVERSED, and any subsequent JUDGMENTS would be considered VOID and UNENFORCEABLE as matter of law.

For applying a Standard of Review for this defendant's case, the court rendered a result that was both ARBITRARY AND UNREASONABLE in lieu of exercising proper

consideration of the relevant facts and evidence (as been detailed in this appeal) and failed to be guided by established case law (precedents, adherence to the doctrine of Stare Decisis) when Procedural Due Process (Defective Service of Process) and errors exhibited to MATTER of LAW (misapplication of laches) issues were at stake. Precedents and Policies defined by Third Circuit Courts were not adhered to (failure to follow the doctrine of Stare Decisis due to an erroneous denial of claim using missed case law, i.e. laches) which **obligate** courts to look at **precedents** while making their decision. This caused an "UNFAIR" result leading to prejudice and harm by not properly adjudicating the 1990 default judgment to be deemed void as case law has well established when challenging jurisdiction due to **Defective Service** (corroborating case law fully cited throughout this appeal).

Let us now focus on the trial court's erroneous presumption (exhibiting abuse of judicial discretion) that: "clearly the defendant was on notice," (Pa2) as this being the court's reference to the March 9,1990 court order (Pa7). It is evident to reasonable people the evidence and facts of this case were not recognized and/or ignored via the court's unfounded presumptuous statement "clearly the defendant was on notice …" (Pa2) that was provided to uphold its own **false narrative giving legal credence** to an unfair result if not directly

challenged by this defendant. Reasonable people considering the "actual" facts and evidence while applying applicable case law (adhering to Stare Decisis) could **not have agreed** with the court's result denying a Procedural Rights violation (Pa1) for; a). Evidence demonstrates there are zero court records to support validity of service (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41) to which the court falsely presumes this defendant had knowledge of (Pa2), b). Plaintiff Sayers **failed** to prove validity of service as established when jurisdiction had been challenged as "**no**" Response was recorded in court records by the clerk of the court (Pa1) c). Due to the claim involved Procedural Due Process Rights Violations (jurisdictional challenge) the facts were compelled to have been adjudicated with applicable case law involving the statutes of limitation (albeit an exception would apply to the tolling of time based on the given evidence cited) and for reasons mentioned in point (b), d). It becomes a false narrative to infer that because notice relating to events with a court in 1986 (Pa2) would remotely have a reasonable person conclude this defendant had knowledge and/or should been aware of an event with regard to a separate court order issued "4-years later" (1990) that rendered a default judgment (Pa7) **WITHOUT** any facts and evidence that would corroborate the court's false presumption (void of supporting evidence) of "ACTUALLY" HAVING

notice for that hearing 4-years later in 1990. The presumption becomes congruently contradictory for the court to egregiously cite "clearly he was on notice" (Pa2) that "in point of fact" the 1986 order **REMOVED** Probation from both **SUPERVISION AND ENFORCEMENT**, thereby **closing** this defendant's case (Pa4 – Pa5) in 1986. Unless one had notice of a new hearing the 1986 court order by de facto was the order this defendant was compelled to adhere to. Likewise, evidence demonstrated all 3 instances (1990, 1995 and 2001) of interaction with Probation were undertaken with this litigant sending the 1986 Court order (Pa4) to Probation for each instance of the three years monies were erroneously taken, resulting in Probation halting their actions within 3 months of each instance case as evidenced with documentation (PA12-Pa15). These exceptional circumstances throughout 34 years in totality speak to why this Defendant took legal action in 2023, however, the trial court ignored **all** provided pertinent facts and **evidence** that corroborated this defendant had no knowledge until his own discovery phase in 2023 when first learning the 1990 court order existed (Pa7 – Pa8) thereby justifiably tolling time to file.

ARGUMENT

II. THE COURT ERRED BY ITS MISAPPLICATION OF CASE LAW IN EMPLOYING THE DOCTRINE OF LACHES TO DENY A DEPRIVATION OF RIGHTS VIOLATION. THE COURT FAILED TO BE APPRISED THAT

THERE IS NO FEDERAL STATUTE OF LIMITATIONS WITH RESPECT TO CIVIL RIGHTS ACTIONS ARISING UNDER SECTION 1983 AND THAT LACHES DOES NOT GOVERN CIVIL RIGHTS ACTIONS. IT IS "STATE TOLLING PRINCIPLES THAT GOVERN THE TOLLING OF THE APPLICABLE STATE STATUTES OF LIMITATIONS IN FEDERAL CIVIL RIGHTS ACTIONS ARISING UNDER 42 U.S.C.A. §1983, AS ITS ERRONEOUS DENIAL NEGATIVELY EFFECTUATED THIS CASE'S OUTCOME UNFAIRLY. THE RELEVANT STATE'S STATUTE OF LIMITATIONS FOR ANALOGOUS ACTIONS WOULD "NORMALLY" APPLY, HOWEVER, INVOKING THE COMMON LAW DOCTRINE KNOWN AS THE DISCOVERY RULE, DUE TO CIRCUMSTANCES SURROUNDING THIS SPECIFIC CASE WOULD THEN HAVE WARRANTED AN EXCEPTION TO THE STATE'S STATUTE PERMITTING THE TOLLING OF TIME INTO 2023. HAD THE COURT CURED THIS DEFECT TO THE MISAPPLICATION OF CASE LAW, IT WOULD THEN HAVE BEEN GOVERNED BY PRECEDENTS ESTABLISHED THROUGH THIRD CIRCUIT CASE LAW TO ITS FINDINGS AND AS SUCH FAILED TO BE BOUND BY PRIOR COURT'S DECISIONS THAT WERE SIMILAR TO THAT OF THIS DEFENDANT'S CASE. AS IT WAS NOT GUIDED BY THE DOCTRINE OF STARE DECISIS THAT OBLIGATES COURTS TO LOOK AT PRECEDENTS IN THE DETERMINATION OF THEIR DECISIONS THE COURT DELIVERED AN UNFAIR RESULT (Pa17)

The court failed to recognize it is "State tolling principles" that govern the tolling of the applicable state statutes of limitations (and not its misapplication of the

doctrine of laches) in federal civil rights actions arising under 42 U.S.C.A. § 1983." Ammlung, 494 F.2d at 816 (The court demonstrated both missed case law and misinterpretation of case law addressed in the following cited cases). From the perspective of the trial court's misapplication of case law erroneously using laches (Pa17 – Pa18) as reason for denial of this defendant's claim for having not been afforded a protected Fourteenth Amendment Right of Procedural Due Process some 34-years ago, i.e. defective service of process (Pa16) , it erroneously denied the vacating of a default judgment resulting in both prejudice and harm caused by the court's error and its deficiency to cure it in failing to deem the 1990 default judgement void as per matter of law (**Missed case law addresses the court produced an unfair result for the standard of review;** R 2:10-2, Gillman v Bally Mfg. Corp, 286 NJ Super 525 528 (App Div 1996)). Unlike the statute of limitations, **laches** is **NOT** a **SPECIFIC TIME LIMIT SET BY LAW, BUT RATHER A PRINCIPLE OF FAIRNESS AND EQUITY.** In summary, the statute of limitations is a **FIXED TIME LIMIT SET BY LAW**, while **laches** is a **defense based on the concept of FAIRNESS AND UNREASONABLE DELAY**.

In applying a Standard of Review for this issue it must be noted the trial court misapplied using **laches** (R 2:10-2) to deny

a Fundamental Right at stake, indicating 33-years **constitutes laches for failure to file in a reasonable amount of time** (Pa17 – Pa18). As matter of law, **laches does not govern civil rights actions**, for statutes of limitations would apply "**unless" an EXCEPTION** were to be made by the court (to which the court did not address (Pa1; Pa133). The common law doctrine known as the **discovery rule** (N.J. Ct. R. 4:104) is accepted by courts in both New Jersey and New York: "**New Jersey has adopted the discovery rule (N.J. Ct. R. 4:104) that postpones the accrual of a cause of action when a plaintiff DOES NOT and CANNOT KNOW the facts that constitute an actionable claim**" as demonstrated in Grunwald v. Bronkesh, 131 N.J. 483, 492 (1993) that applies specifically to this case before the court due to defective service as service of process was unable to be validated (fully documented in this appeal) .

The discovery rule (N.J. Ct. R. 4:104) delays the accrual of a cause of action **UNTIL "the INJURED PARTY DISCOVERS**, or by an exercise of reasonable diligence and intelligence should have discovered that **he may have a basis for an actionable claim**" Id. (the totality of evidence corroborate it was first discovered in May of 2023 that Service of Process had not been executed for the March 9, 1990, hearing/default judgement (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-

Pa41). Further noted RULE 60 (B) (6) **PROVIDES A CATCHALL FOR VACATING A JUDGMENT WITHOUT TIME LIMIT FOR "ANY OTHER REASON THAT JUSTIFIES RELIEF**" The facts and evidence ignored demonstrates abuse of discretion surrounding this case amongst the trial court's **misapplication of case law** in denial of a **meritorious claim as service of process was not validated** upon challenge of jurisdiction (Pa1; Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41), thus the court in 1990 lacked jurisdiction as established in Argument "I" as matter of law and any subsequent orders and /or judgements are to be nullified (case law cited in Argument I).

The court erroneously focused on utilizing the doctrines of laches albeit misapplied (PA17 -Pa18) (**laches does not govern civil rights actions**), to deny a meritorious claim of having this Defendant's Procedural Due Process Rights violated 34-years ago. It has been well established in the Third Circuit; **A ruling is "contrary to law" when the magistrate judge has misinterpreted or misapplied the applicable law,** R 2:10-2. See, e.g., Pharm. Sales & Consulting Corp. v. J.W.S. Delavau Co., Inc., 106 F.Supp.2d 761, 764 (D.N.J.2000). The court disregarded that the Federal Courts of Appeals I 3rd Circuit precedents establishes; if a **defendant challenges the validity of service of process**, the **plaintiff** bears the burden (Pa1;

Pa10-Pa11; Pa33-Pa35; Pa39-Pa40; Pa58-Pa59; Pa62; Pa133) to demonstrate that the procedure to deliver the papers satisfies the requirements of the federal procedural rule governing service., The court **misapplied laches** improperly to deny a Civil Rights Action claim thereby disregarding precedent and policy. In doing such, the court clearly neglected to seek applicable case law regarding when **service of process has been deemed defective and challenged** by a defendant (as has been demonstrated with evidence in this appeal) that was not cured when given the opportunity (Pa1 - Pa2).

In the Court's Civil Action Order on November 17, 2023; the trial court responded in its denial for Motion to Reconsider (Pa1- Pa2) clearly demonstrating the court's failure to acknowledge this error of misapplication of case law countering by opposing this defendant's claim of Procedural Due Process stating: "Reconsideration is "a matter within the sound discretion ….Reconsideration should be utilized **only** for those cases which fall into the **narrow corridor** in which: 1) the court has based its decision upon a **palpably incorrect basis**, or 2) the court **did not consider or failed to appreciate the significance of probative, competent evidence**. The STANDARD for reconsideration requires **proof of error**, **mistake, missed caselaw or statute**, which is **not** present in this case (clearly laches using Clarke v. Clarke was

misapplied). The Defendant claims a violation of his Due Process Rights for a **lack of service of process** by the plaintiff dating back 33 years" (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41)."

The court circumvented a direct response to the specific claim that laches does not govern Civil Rights Actions and **ignored missed case law** as the **stated reasons for its error** (Pa1 – Pa2) causing an unfair result (R 2:10-2); Gillman v Bally Mfg. Corp., 286 NJ Super 525 528 (App Div 1996) The following will speak to the court's abbreviated arbitrary analysis and illogical thought process in this case for if we begin with the court's reference to what **MUST** be present to GRANT a Motion for Reconsideration (Pa - Pa2); what the court proports it did "**not do**" in order to for it to have granted a Motion to Reconsider, it has been established with evidence "**it" was, in reality, what the court "did do"**, as the court ignored the facts/evidence and then proceeded to error as matter of law (using laches for denial). The court by not recognizing and curing this error once challenged (Pa1 – Pa2: Pa133) doubled down by articulating "**NONE**" of these following elements were PRESENT in this case" (Pa2) but "undeniably" the existent facts of this case **contradict the court's statements** : 1) "the court **has** based its decision upon palpably incorrect basis, or 2) the court **did not consider or**

failed to appreciate the significance of probative competent evidence (the court **ignored** the evidence presented as established in this appeal). The standard for reconsideration requires proof of error, mistake, missed case law or statute, which is NOT present in this case" (Pa1 -Pa2).

As previously documented, missed case law "**IS**" in fact **present and cited** as being erred by the court (Pa17 – Pa18) for the court misapplied the treatment of laches citing Clarke v. Clarke, 359 N.J. Super. 562, 570 (App. Div. 2003) (citing L.V. v. R.S., 347 N.J. Super. 33, 39 (App. Div. 2002) as alleged legal justification to deny claim of having this Defendant's Procedural Due Process Rights violated 34- years ago. Nevertheless, the court failing to cure this error facilitated its unfair result for the "statutes of limitations" which does govern Civil Rights Actions, **would have "tolled" time due to exceptional circumstances**.

With the court's conflation of the facts and evidence while offering of a false narrative, a reasonable person would conclude the court did base its decision upon a **palpably incorrect basis**. This in specific reference to the courts citation commencing with, "over the years' …" (Pa2). The trial court referenced the defendant's interactions with that court during 1986 to which is accurate, however, the court then conflates the facts using this new false narrative by egregiously stating the

following: "**Clearly the defendant WAS ON NOTICE**" (Pa2). This being in reference to the court's "presumption," neither fact nor evidence based that, "**on notice,**" infers somehow **having knowledge** to the "1990" hearing some **4-years after the 1986 order relieving Probation of both supervision and enforcement**. The court asserts because having knowledge in 1986 with another court that issued an Order **closing** this defendant's case with Probation (Pa4 – Pa5), in 1990 **without evidence having been served or notified until 2023** the court presumes this defendant "**knew**" of the March 9, 1990, hearing/default judgment. This irrational thought process could **not** be shared by **reasonable** people **UNLESS** the court had evidence that notification **was** executed to which it **does not**. This false presumption speaks to abuse of judicial discretion as it failed to recognize the evidence that "**WAS**" presented to the court in this instance case.

This court has been provided with Third Circuit and Supreme Court reversals where **each defendant has challenged**, (as with this defendant), having **similar circumstances that notification had NOT been properly executed** and thus, **service of process could NOT BE VALIDATED** (Pa6; Pa10; Pa21; Pa33-Pa35; Pa39-Pa41), to which the Appellate Division **had granted reversals deeming the default judgements void**.

CONCLUSION

Defendant therefore respectfully asks this court to reverse the judgment of the lower court's denial to vacating of arrears and thereby issue an Order "voiding" the March 9, 1990, default judgment in conjunction with any subsequent orders that were piggybacked from the default judgment thus showing arrears as -0- dollars. As such, the trial court should have deemed the 1990 default judgment void due to the presented evidence and facts demonstrating the March 9, 1990's court's lack of personal jurisdiction, as Service of Process had not been established. It is a matter of established case law in the Third Circuit for it to be deemed void as validity of service had not been validated once challenged while the presented evidence demonstrated there are zero records of Service of Process recorded by the clerk in court records. I ask the court to further direct Probation to refund all monies improperly seized from this Defendant from 1990 to the present day.

Respectfully submitted,

/s/ Jack Greenfield

Dated: April 23, 2024

Superior Court of NJ – Appellate Division – Letter Brief

Appellate Division Docket #: A-001995-23T2

PLAINTIFF,
CAROL SAYERS

VS.

APPELLANT/DEFENDANT,
JACK GREENFIELD

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
MERCER COUNTY, TRENTON, NJ
DOCKET #: A-001995-23T2

DEFENDANT APPEALING:
MOTION OF STAY
JUDGMENT BY:
HONORABLE JUDGE(S):
JESSICA R. MAYER
MARY GIBBONS WHIPPLE
ON: APRIL 4, 2024

BRIEF AND APPENDIX
FOR:
PLAINTIFF: CAROL SAYERS

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ARGUMENT SUPPORTIVE DOCUMENTS

Appellate Division Docket #: A-001995-23T2 Appellate Letter Brief

STATEMENT OF FACTS AND PROCEDURAL HISTORY:

([1]da)

1. On March 17, 1983, a Civil Action was ordered and filed by the Honorable William J. McCloud, J.S.C.: Judgment of Divorce at Superior Court of NJ, Chancery Division, Union County, NJ, Docket #: M-16017-81. This Divorce order granted me: (Carol Greenfield, *now: Carol Sayers*) custody of my 2 children: my son: Jarrod Greenfield, age 8, and my daughter, Sherri Greenfield, age 3. ([2]da2)

2. It was further ordered from Judgment of Divorce from ex-husband: Jack Greenfield (current appellant/defendant in this case): was to pay Child Support for Two children in the amount of $ 140.00 per week through Probation dept. (da2)

   Mr. Greenfield was to also pay all medical, dental, hospital, and Prescriptions for the 2 children. (pa26-pa29)

[1] da = Respondent's combined Statement of Facts and Procedure History

Mr. Greenfield was to participate with payment of the 2 children's College tuition, room and board, books when they finished high school.

3. Mr. Greenfield was ordered to make the 2 children: beneficiaries of his Life Insurance, per the divorce decree of filed March 17, 1983. (pa26-29)
4. Mr. Greenfield *left state of NJ* and moved away, with no known address, phone number, or employer information forwarded to me.

Jack Greenfield had absolutely *no conscience or have a moral compass* for Leaving behind and neglecting his 2 Children, with zero communication with us, and disregarding the weekly child support, which was stated in the Divorce decree of March 17, 1983.

5. **On March 20, 1990**, the Honorable Judge John Pisansky, Superior Court NJ, Chancery division, Union County, NJ, **Docket #: M-16017-81** ordered Defendant, Jack Greenfield to make child support payments through

Middlesex County Probation Dept.

(da3-4)

At that time, past Child support **Arrears were set at $ 24,195.00**, which

Were Served against defendant: Jack Greenfield, and in favor of myself:

Carol Greenfield. (da3-4)

6. It was not until the Superior Court of NJ, Passaic County: Probation Dept./Child Support Division contacted me *last year*: June 2023, stating that they had located Jack Greenfield.

7. I financially and emotionally supported my two children 100% by myself, Working two jobs. Plus requesting extra hours to my employer, just to Compensate for all of their financial needs such as: Food, Clothing, a home, Medical and dental insurance coverage, birthdays, college tuition, including Both children receiving their Master's Degrees. I am very proud of my two

Children, who are such respectful, kind, successful, and hard-working adults now. It is because of the love and 100% support that I gave wholeheartedly to my children, to provide a healthy, happy, and normal life. It is truly a pity and a disgrace that Jack Greenfield did not participate throughout all of those formative years, and see what wonderful children... and now productive adults that they have become. In closing, it is Jack Greenfield's loss that he chose to be absent from their lives for all of these years.

8. Honorable Glenn Slavin, of Middlesex County Superior Court, **had ruled 2/16/24**, that **past Child Support arrearages in the amount of $ 88,047.35** ***Be enforced,*** and **DENIED** Jack Greenfield his **Motion for Stay.** Docket #: FM-12-16017-81 (da 12-13)

9. **Final audit** was performed at Passaic County Court Probation Department, Led by Wendy Zupa, Finance Dept., and completed their Audit investigation Of past arrearages owed to Carol Sayers, (formerly Carol Greenfield), by

Jack Greenfield, in the amount of: **$ 88,047.35**. (da 20-21)

10. On April 4, 2024, Honorable Judge(s) Jessica R. Mayer, and Mary Gibbons Whipple: **DENIED MOTION FOR STAY**, REQUESTED BY APPELLANT/DEFENDANT: JACK GREENFIELD. (MOTION #: M-003614-23, BEFORE PART G. (da 22-23)

To clarify what is fact:

- I worked 2 jobs and extra hours, to pay for their **Room and Board** at the University.
- I paid for all of their **College Courses** as they Matriculated from **Freshman year to Senior Year**, as well paid
- I paid for all of their **curriculum Books** each semester.
- I paid for their **Food** while they were dorming at the University.

In addition, my two children had **acquired Federal Student Loans,** (da5-6)

to assist with the balance of payments that was due to the University.

There is **NO TRUTH** in the statement that Jack Greenfield ever made

Payments in full, towards *any part of their education*, for either my son, or for my

daughter, throughout their lifetime.

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ARGUMENT

Regarding the signed **2/26/2024 MOTION OF STAY** paperwork

From Jack Greenfield, **Page 6, Paragraph 3**: whereby Jack Greenfield

Stated that **on lines 3 through line 8**: the Court would "financially place

Me immediately below the poverty level, and I will not be able to afford

Rent, thus being homeless without being able to afford food and the basics

Needed to live" .... etc. "having personal harm and imminent danger while

Awaiting Motion of Stay by the Court." **(Exhibit 1)**

This statement from Jack Greenfield is a *narcissistic plea for himself*, yet he

had **ZERO conscience** worrying about whether his two young children:

ages 3 and 8, had a safe roof over their head to sleep, or Food on the table,

clothing for school, had any interest in their well-being at school, medical

insurance coverage, especially if they were ill and needed to see a Dr. or go to a hospital, when he disappeared out of sight, with no known whereabouts…***until I heard from Passaic County Court House Probation Child Support Division in June 2023.***

Of note: Regarding the signed **2/26/2024 MOTION OF STAY** paperwork From Jack Greenfield, **Page 6, Paragraph 5**, whereby Jack Greenfield States **that on lines 1 through 8**: and claims that **"I was paid in full via direct payments ending in 2001 when my daughter turned 23 years of age"**, is **completely FALSE**. **Jack Greenfield did NOT Participate In any form of payment**, for either my Son or my Daughter's schooling: from their Elementary school, thru High School, through their **completion of their Master's Degrees**. **(Exhibit 2)**

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Regarding the signed **2/26/24 MOTION OF STAY, PAGE 7, Paragraph 2**

whereby Jack Greenfield states on **lines 9-12,** that "due to personal medical circumstances for the past 8 years my only source of income has been Social Security benefits (SSA)….et al: I will be forced to leave my place Of residence and thereby become homeless without the means to provide for the basics to survive." **(Exhibit 3)**

My rebuttal to Jack Greenfield's comment above (Exhibit 3) is:

Did Jack Greenfield ever think about the Health, safety, and well-being of his two young children as they grew up, *without extending Any type of support from their absentee father, who disappeared from their lives?*

Jack Greenfield is now concerned about his OWN well being to survive, But, had no conscience, walking away from his responsibilities as a parent.

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Regarding the signed **2/26/2024 MOTION OF STAY** paperwork

From Jack Greenfield:

Referring to (Pa76), whereby Jack Greenfield states that he is "**asking the Court** to direct Probation **to refund all mo**nies that were garnished through 1990-2023".

Please see the **Final Audit Investigation** performed by Passaic County Court Probation Finance Dept, which clearly shows **years of non-payment** for his two children. (Da 20-21)

In addition, Jack Greenfield **did not** participate in *any form of payments* for either my son or my daughter's education throughout their childhood, from Elementary school, High School, OR through college and their Master's Degrees. **(Exhibit 4)**

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Regarding the signed **2/26/2024 MOTION OF STAY** paperwork

From Jack Greenfield:

Referring to **Paragraph 3, Under Certification, Pg. 1** - Jack Greenfield

Did not support the two children in their growing years, until they both

Both reached age 23, *as he states.* There is No Proof that *direct payment*

was made to me for the 2 children. (Pa50) **(Exhibit 5)**

Regarding the signed **2/26/2024 MOTION OF STAY** paperwork

From Jack Greenfield:

Referring to **Page 8, Certification, lines 13 – line 18:** whereby Jack

Greenfield states: "in my situation if the 1990 Order does not stand due

To Rights Violation this would not be considered a negotiation but rather

A serious oversight…et al "as I argue as "Pay-Direct" for that is what the 1990 Court order demanded and that is precisely what I diligently and Sometimes with great sacrifice accomplished as I humbly suggest to The court quite proudly." **(Pa 57) (Exhibit 6)**

My rebuttal to Jack Greenfield's comments above in Pa 57:

I do not believe that the Court is guilty of an oversight in this case. Jack Greenfield **did not** pay directly to me for the two children throughout their growing years until they reached age 23. These comments made by Jack Greenfield in Pa57 are not valid. The proof is with the Final Audit Investigation performed by the Finance Department of Passaic County Child Support Probation team.

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CONCLUSION:

I, Plaintiff, Carol Sayers (formerly Carol Greenfield) respectfully asks that this Court, deny granting a Motion of Stay to the defendant/appellant: Jack Greenfield.

Jack Greenfield **FAILED** to make Child Support payments for his Two children: Jarrod Greenfield and Sherri Greenfield, with **past arrearages**

Per: Passaic County Probation Child Support: Final Audit Investigation

performed on: 2/21/24: TOTAL: $ 88,047.35 (da 20-21)

Respectfully submitted,

Carol Sayers

Dated: June 14, 2024