ALEXANDER SCHACHTEL, LAW OFFICE OF ALEXANDER SCHACHTEL, LLC, Plaintiffs/Respondents, v. PING ZHANG HUGHES, Defendant/Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003510-21 Civil Action On Appeal from a Final Order of Superior Court of New Jersey Law Division: Hudson County Docket No. HUD-L-3590-18 Sat Below Hon. Maryann Rodgers, J.S.C. without a jury

APPELLANT'S BRIEF IN SUPPORT OF APPEAL TO VACATE AND DISMISS THE JUDGMENT AGAINST PING ZHANG HUGHES

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PRELIMINARY STATEMENT

The parties herein were in an attorney-client relationship for only a day or so. The *pro se* ex-client Ping Zhang pursued the return of her retainer in small claims court. Two months after the jury trial in Special Civil Court concluded in June 2018, with a verdict that awarded damages to Ms. Zhang, the former attorney Maggi Maksoud, now plaintiff in this matter, filed a separate lawsuit against Ms. Zhang arising out of the same events as the Special Civil Court trial alleging malicious use of process, intentional infliction of emotional distress (IIED), defamation, and seeking injunctions. Ms. Zhang and her husband filed a second suit against Maksoud for improperly publicizing confidential financial records.

As Ms. Zhang proceeded mostly *pro se*, plaintiffs were able to take advantage of her in the second litigation as they essentially ignored what had already come before in the jury trial. In this case, even though no expert testimony was offered by the plaintiffs, the judge made a finding that plaintiffs had proven their IIED claim. A full year later, the court held a proof hearing on the IIED damages claim on the uncorroborated testimony of plaintiff Maksoud and a psychologist friend, entered judgment against Ms. Zhang in the amount of $664,947.75 on the IIED alone plus additional and accruing attorney's fees for the years following March 2021 which counsel was to later submit to the Court. These damages awards included attorney's

fees in other actions that had already previously been denied by the judges presiding. (7T. 22:9-19; 143:24-159:1; 162:12 to 155:14; Ja1732-41).

STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

Ms. Zhang and Maksoud first met in 2015 when Ms. Zhang was seeking representation for a matrimonial matter. (9T. 62:21-63:8) [2]. In order to meet with Maksoud on September 4, 2015, Ms. Zhang Ms. Zhang had to pay a $100 up front consultation fee which was the entire fee for that meeting (9T. 62:2-63:8). On September 17, 2015, Ms. Zhang paid her $4,000 retainer (9T. 66:6-67:14). After the payment and signing of the retainer, Ms. Zhang and Maksoud immediately disagreed Maksoud wanted to file an immediate answer and Ms. Zhang told her to "do nothing". (9T. 136:8-16). That same night Ms. Zhang brought a copy of her husband's Complaint to Maksoud's office as directed but was affronted and shocked by Ms. Maksoud's extraordinarily rude treatment and a new demand for additional retainer funds that same night after she signed the original retainer and paid the full retainer that same afternoon. (9T. 122:16-124:19 and 126:2-130:11).

"She want me nine o'clock in her office – to prepare my document.

[1] Since they are so intertwined, for the Court's convenience, the Statement of Facts and Procedural History are presented together. The court below took judicial notice of the cases between these parties and relied on aspects of each to find liability and damages. Combing the facts and procedural history was essential to reducing a 72-page brief to comply with the Rules.

[2] Transcript designations:1T - September 7, 2018; 2T - January 6, 2021; 3T- February 17, 2021; 4T - February 23, 2022; 5T - February 28, 2022; 6T - March 2, 2022; 7T - March 22, 2022; 8T - March 14, 2018; 9T- March 15, 2018; and 10T - March 19, 2018.

> …I trusted her. I take her word. I want to go back to her office then have a short discussion and she don't need to work late on my case. But … 8:30 she carried her bag out. She met me in the lobby. And, then, she angry. She bullied me. …. all I remember is I did -- it's a small office, small lobby. Her assistant sit in the – in the front desk. And, then, she's standing in the middle. I'm kind of on the side. I just terrible, terrible, horrible, "I'm from China. And I-- I don't see this too much."[3]
> The Court: It's okay.
> Ms. Zhang: I just – I don't see this much. Especially I don't see this at work especially on a business. (9T. 116:1-21).

Shortly thereafter, they agreed to part ways. Zhang wanted a detailed invoice, but Maksoud would not provide one at first, Maksoud told Zhang her fees were $1,750 but if Zhang agreed to accept a partial refund of $3,015 she would not charge her the full $1,750 in outstanding time. (9T. 143:24-159:1; 162:12-166:14). By October 26, 2015, Ms. Zhang still had no detailed invoice and went to Maksoud's office to get one. The meeting did not go well. A confrontation occurred in Maksoud's office over Ms. Zhang's need for an invoice. Maksoud had the Bayonne police called to come to her office which was doubly intimidating to Ms. Zhang since Ms. Maksoud was also a Bayonne Municipal Prosecutor. (9T. 170:7-25; and E.g. Ja2123). Maksoud falsely told the police that Ms. Zhang threw herself on the floor uncontrollably and was obstructing her office, but Ms. Zhang had to double check Maksoud's English to make sure she understood. (9T. 168:17-169:14 and

[3]Ms. Zhang was born and raised in China and learned English as a second language after immigrating to the United States as an adult. Her lack of skill in English is readily apparent from her postings and her oral participation in the hearings.

E.g. Ja223). The only police record was the printed dialogue of the 911 call where the officer stated, "it sounds like an argument in a lawyer's office." In Maksoud's view the police were called to remove Ms. Zhang and in Ms. Zhang's view, the police advised Ms. Zhang to sue Maksoud. (9T. 170:10 to 22 and Ja1040). When the police arrived at the office, Maksoud told them a false story that Ms. Zhang had thrown herself on the floor crying and rolling around uncontrollably while screaming and yelling. (E.g. Ja2123; 9T. 168:17-169:14). Four days after the police were called, Maksoud sent Ms. Zhang an invoice that Ms. Zhang deemed fraudulent because it charged for meetings on dates that had not occurred. (Ja2199; 2317).

Ms. Zhang followed the advice of the police and finally sued Maksoud in July 2017. The initial complaint against Maksoud was filed *pro se* by Ms. Zhang sought a full refund of the $4,000 retainer she paid to Maksound. The complaint was voluntarily dismissed on October 23, 2017. (Ja2138) and a new revised complaint was filed by Ms. Zhang against on October 30, 2017. Again Ms. Zhang sought the retainer refund but added causes of action for IIED, harassment, and defamation, and asked for additional damages as a result of Maksoud's malicious conduct for calling and lying to the police about Ms. Zhang and continually threatening Ms. Zhang with arrest by the Bayonne Police Department with whom Maksoud regularly worked as their prosecutor. (Ja2120 *et seq.* 2123).

As discovery proceeded, Maksoud and her lawyer were ordered to turn over time records and Maksoud's diary to Ms. Zhang for use at trial. Maksoud did not comply with the order in good faith. Instead of producing the records to Ms. Zhang in a timely fashion before or during trial, the records were mailed, certified return receipt required, to Ms. Zhang's residential address so that they arrived after the trial concluded. (Ja2407-16). Had they been produced properly, the records could have significantly aided Ms. Zhang's case as the records undermined Maksoud's since her diary conflicted with the four dates on the invoice. After reviewing the records Ms. Zhang made a motion for new trial. (Compare Ja2407-16 with Ja2317). The last motions in the case were decided in June of 2018.

A jury trial in the Special Civil Division began on March 14, 2018. The defense started the case by successfully limiting various Ms. Zhang's proofs and allegations. For example, Maksoud raised the viability of Ms. Zhang's other counts including Count Four which the judge took to be a cause of action for IIED against Maksoud. The Court ruled it was too late for summary judgement motions. (8T. 25:12-17). Maksoud's counsel argued that Ms. Zhang could not "pursue IIED", which was "a very serious allegation" therefore, Ms. Zhang would need "medical treatment and/or an expert" which she did not have. (8T. 24:20-26:28). The Court ruled *in limine* in defendant's favor on various issues including that Ms. Zhang could not claim interest due to Maksoud's retention of the money for 2½ years. (See E.g.

8T. 16:11-20:2). Both Ms. Zhang and Maksoud testified during the trial. Ms. Zhang testified and introduced evidence as to the calling of the police and the repeated threats by Maksoud to the Bayonne Municipal Police to have her arrested if she returned to Maksoud's office in Bayonne. (9T. 170:10-22; 10T. 120:22-121:10). At the end of Ms. Zhang's case, the court entered a directed verdict on the IIED cause of action ruling that the proofs did not establish that Maksoud's action had not "been so extreme as to be outrageous and utterly intolerable in a civilized society." (10T. 150:15-151:3).

Although Maksoud was not present for much of the trial proceedings on the first day, she explained that she had worked out her childcare issues so she could come to testify and be present the next day. (8T. 83:5-6). As Maksoud explained, "I have limited days I can work. I'm only working part-time. I have a young child…" (8T. 84:8-10). Therefore, she asked for special accommodations which were made. Maksoud, clearly was not worried or anxious about the case, since she did not make time to attend on March 15, 2018 because of her childcare commitments, other scheduled court appearances, and lunch engagements. (9T. 121:9-122:5).

The judge charged the jury that the case was simply a contract case and that the IIED claim was not for their consideration. (10T. 269:6-270:2). A verdict was returned in Ms. Zhang's favor awarding her $2,609 plus costs on her claim for a

refund.[4] (Ja2282). In her opposition to Ms. Zhang's claims, Maksoud repeatedly moved for attorney's fees, and damages as other sanctions for having to defend against what was asserted to be a frivolous lawsuit. (E.g. Ja2171. ¶ 15 of Answer; 2244). That relief was repeatedly denied, first by Judge Radames Velazquez, Jr. (Ja2242-44) and then by Judge Galis Menendez (Ja2400). After trial, Maksoud again filed a motion requesting damages as sanctions and attorney's fees for reasons similar to those that had been raised during the trial. (Ja2294 *et seq*.). Judge Galis-Menendez again denied the motion, stating in the order: **"Motion is denied the lawsuit was not frivolous rather it was litigated properly to conclusion."** (Ja2400).

In 2018, Ms. Zhang and her husband filed a complaint against Maksoud, Docket No. HUD-L-004258-18, in connection with Maksoud's publishing of their confidential information, including social security numbers during the first trial despite the trial court's warning to the parties. (9T: 96:7-25). Maksoud and her counsel violated these instructions anyway. The confidential information had been provided to Maksoud when Ms. Zhang first approached her in connection with matrimonial litigation. The improperly and publicly filed information was later

[4] The form of Judgment, that was to conform to the jury verdict, was submitted by Maksoud and left out the costs awarded to Ms. Zhang. The judgment instead focused on details irrelevant to the final judgement to highlight facts supporting Maksoud's claim that this was a Pyrrhic victory for Ms. Zhang. (Ja2282-85). As a *pro se* litigant, whose first language was not English, Ms. Zhang did not know to contest the form of Judgment.

ordered deleted by Judge Turula (Ja 2403; 2399). Maksoud moved in this second case for dismissal and damages as sanctions and attorney's fees. Her motion was again denied as the court found that Ms. Zhang had a valid basis for filing this suit since client confidential financial information had been publicly filed and the only question was damages (Ja2683-85; 2689).[5] The case was eventually resolved via summary judgment since there were no identifiable damages. (E.g. 2T. 21:9-24; 33:8-12; 68:9-16; 70:14-15; 69:4-6).

Two months after the post-verdict motions from the jury verdict were decided on June 8, 2018 (Ja2402), Maksoud filed an Order to Show Cause and Verified Complaint (VC) against Ms. Zhang on August 1, 2018, which forms the basis for the present litigation. The VC asked for a mandatory injunction prohibiting Ms. Zhang from publishing further critical comments against Maksoud and her co-plaintiff and lawyer, Alexander Schachtel (Schachtel). (Ja1-53). Count I and II asked for damages for Maksoud and Schachtel for defamation. (Ja8-10). Count III asked for damages for IIED for Maksoud (Ja11) and Count IV alleged malicious abuse of process for Maksoud. (Ja12). All but one of the online posts were taken down before the Order to Show Cause was heard before Judge Jablonski. (1T. 5:19-6:1). Schachtel and Maksoud acknowledged that postings from 2018 had all been taken

[5] Judge Rodgers relied on Maksoud's testimony to find that this lawsuit was totally without basis (3T. 26:21-22) which was contrary to Judge Costello's ruling and Judge Turula's Orders deleting the improperly filed confidential information. (Ja2403; 2399).

down before the hearing. (1T. 5:19-6:1) except Maksoud indicated that one review of Maksoud from 2015 remained on Google's AVVO. (1T. 20:7-11). That review was inconsequential and lowered Maksoud's overall rating to 97 out of 100.[6] Most of the alleged statements cited in the VC were statements about Schachtel (Ja5-8). Only one specific posting about Maksoud was referenced in the VC. This tactic disguised the lawsuit's defect under the Entire Controversy Doctrine ("ECD"). The claims Maksoud filed on August 1, 2018, in this case should have been brought by counterclaim in the initial lawsuit. Maksoud and her lawyer had even threatened to bring them as a counterclaim in October 2017. (E.g. Ja2274). Maksoud had personally acknowledged the possible application of the ECD to these related lawsuits between the same parties in the context of the second action by Ms. Zhang. (Ja2671 at 8:38) and asked that Ms. Zhang's second action be dismissed for violating the ECD. Most significantly, Schachtel abandoned his case and his similar claim entirely when plaintiff substituted new counsel in for him in 2020. (Ja1458, *et seq*.). The abandonment by a plaintiff speaks volumes as to the value of Maksoud's case. (Ja1-10).

[6] Additionally, the contents of the 2015 review were not actionable because they were true. By the time Ms. Zhang posted the review, Maksoud had bullied Ms. Zhang, called and lied to the police, in Ms. Zhang's presence and, in Ms. Zhang's view, Maksoud had defrauded her out of a full refund and created false and conflicting invoices. (E.g 9T. 126:2-127:25). Moreover, right after she was retained in the afternoon, Ms. Maksoud asked her to return to her office at 9:00 P.M. to provide her husband's Complaint but was rude, yelled at her and told Ms. Zhang to bring more money to add to the $4,000 retainer and left her standing in the lobby. (E.g T 100:12-20; 113:8-115:25).

After explaining that the law does not protect against hurt feelings (1T. 34:22-35:1), Judge Jablonski denied all equitable relief sought by the plaintiffs and transferred the remainder of the case to the Law Division stating:

> Every individual before this Court has an absolute right to state what his or her opinions are. However, if those opinions are determined to be libelous or slanderous, and therefore impact on the business activities of the plaintiffs, then there is an adequate redressing for that if the plaintiffs are able to prove their entitlement to compensatory damages as a result of them, if they are able to show that it is proximally caused by the intentionnel acts of Ping. (1T. 35:6-14).

Within a few months of the transfer of the case to the Law Division, plaintiffs filed a motion for a summary hearing and disposition on the VC pursuant to R. 4:67-1(b). On 1/30/2019, counsel for plaintiff Maksoud certified:

> Despite the length and detail of some of the pleadings, this is a matter that boils down to several simple fact issues and therefore the dispute can be resolved expeditiously. There will be no need for party depositions, expert evidence or any unique discovery activities. Accordingly, there is no need for a typical discovery period as all facts and evidence are out in the open and in the possession of each party. (Ja328 ¶¶5,6,7).

Although Judge Turula denied the motion for a summary disposition (Ja218), plaintiffs were essentially able to get summary disposition by taking advantage of their *pro se* adversary in discovery motion practice. Schachtel had propounded various *pro forma* interrogatories, document demands, and requests for admission on Ms. Zhang (Ja227 *et seq*.). Days after they were initially due, Schachtel moved to have Ms. Zhang defaulted and her answer was suppressed without prejudice, and

she was placed in default on March 29, 2019. (Ja248-49). On July 12, 2019, Ms. Zhang's answer was suppressed with prejudice. (Ja304-5).

Ms. Zhang filed three separate motions *pro se* to vacate her default. (Ja260, 276, 368, 386). All three motions were denied without prejudice on September 13th and November 8th and 22nd of 2019. (*E.g*. Ja342; 665). Unable to move forward on her own, Ms. Zhang retained counsel for a fourth motion to address her default status. (Ja694-711 and 755). The fourth motion brought was denied in November 2020 by Judge Rogers on the grounds that the arguments and showing of compliance by Ms. Zhang was "too late" and should have been raised with Judge Militello earlier. (Ja926; 3T. 10:2-8).

Detailed answers to interrogatories, document demands, and requests for admission had been provided. (Ja374, *et seq.*). (Ja328 at ¶5-7). Plaintiff's argument that they were being prevented from preparing for trial by lack of discovery was disingenuous at best. Instead of conceding as they previously certified that all parties had "everything necessary to proceed" to trial in light of the previous related jury trial between the parties where both Maksoud and Ms. Zhang testified, Maksoud's counsel vigorously contested the efforts to vacate the default status. The last motion was <u>not</u> on the merits but on the grounds that the arguments and factual demonstrations were "too late". (Ja926; 3T. 10:2-8).

Due to her default, Ms. Zhang was never able to take any discovery, even though in opposing the request for a summary proceeding, Ms. Zhang made it clear that she needed to take discovery. The default severely limited Ms. Zhang's participation at the evidentiary hearing held in lieu of a trial. Ms. Zhang was also denied her right to a jury trial which both parties had requested. (E.g. 1T. 36:15-17; 4T. 5:5-6; Ja1111).

The hearing to establish the *bona fides* and prima facie basis for Maksoud's causes of action began on January 6, 2021. After briefs and submissions by both parties, Judge Rogers ruled on all issues of liability on February 17, 2021, holding that the cause of action for abuse of process was defective and had to be dismissed for failure to prove the required "special damages" and that no compensable damages existed for the alleged defamation; therefor the court awarded only $500 in nominal damages for the alleged defamation. (3T. 18:8-19:1; 27:16-22; Ja1731-1742). As to the IIED count, the court ruled that a *prima facie* case had been established and that no medical expert opinion was needed for emotional stress pain and suffering damages which would be determined at a future hearing along with punitive damages. (3T. 11-23; Ja1219). A motion for reconsideration was filed by Ms. Zhang arguing that the IIED had to be dismissed since the plaintiff failed to provide an independent medical expert or expert report to prove the IIED damages. (Ja1173, 1147-48, 1177, 1198-99). The motion was denied. (Ja1219).

A full year later, the damages hearing on the IIED claim began in February 2022. Ms. Zhang again proceeded *pro se*.[7] Maksoud appeared again as a witness testifying over a three-day period with an interruption for the testimony of a treating psychologist, who was a friend, who would come as needed to Maksoud's office in Bayonne from his office in Jersey City so she could use him "as a sounding board". Ms. Zhang objected to his testimony particularly without production of a report. The personal psychologist first heard Maksoud's name and 2018 - 2019. (5T. 104:15-105:10). Perhaps Maksoud did not attempt to establish the psychologist as an expert witness because he did not have a clean background. The State had sued him for fraud in a civil case where it was alleged he had defrauded Medicaid by false billings which resulted in his paying $40,000 in restitution and being banned forever from Medicaid, New Jersey Family Care and Workforce New Jersey among other programs. Maksoud had previously paid with insurance for her occasional meeting visits with her doctor. (5T. 80:10-19; 85:20-86:15). Dr. Seglin did not see Maksoud from 2016 to 2018 (5T. 67:25-68), and starting in mid-2018, Maksoud just wanted to use him "as a sounding board" depending on the various challenges she was facing. He came to Maksoud's office when she called starting in the fall of 2018 in

[7] While Ms. Zhang used lawyers for precise jobs during part of the litigation, presumably to save on expenses that a long litigation like Maksoud imposes on a defendant in a contingency case. To her detriment, unrepresented for all hearing days in 2022.

Bayonne to see her even though he had relocated his office in Jersey City farther away (5T. 105:1-10). The psychologist had to be paid out of pocket by then due to his permanent disqualification from all state programs including Medicaid. Maksoud, allegedly, personally paid for his visits with her. No records of checks, payments or dates of treatment were provided on Maksoud's wish list of damages. (Ja1674). There was an estimate of her payments or listing of time spent with him as compensable time unless he represents time spent "talking to friends about Ms. Zhang". (Ja1674).

The psychologist friend had allegedly conferred on 12-15 occasions with Maksoud starting in 2014 or 2015 but on personal problems including generalized marriage counseling, anxiety with marriage, and pregnancy from 2014 through 2018. (5T. 108:10-109:7; 41:15-43:9; 55:14-15; 62:16-24; 64:1). After three days of testimony, punctuated by Maksoud breaking down to cry six times (7T. 5-12), the Court awarded compensable damages of $522,700 on the IIED cause of action. That number reflected one dollar ($1.00) more than the $522,699 Maksoud claimed as estimated time lost at $300 per hour. Maksoud's wish list of lost hours included estimates hours of personal time spent "talking to friends about Zhang" and time for missing a "niece's birthday" and hours she spent reviewing filings made in her own case all at $300 per hour. (Ja1674).

Judge Rogers took judicial notice of all prior proceedings between the parties several times. (E.g. 7T 5:21-25) but instead of recognizing the rulings by the judges presiding over those cases which judges all denied the motions for damages as sanctions and attorney's fees for cases that were 'tried fully and fairly' to conclusion and ruling that Zhang's cause of action for disclosure of personal records by Maksoud was viable, Judge Rogers accepted Maksoud's testimony that all were frivolous and malicioius. The ruling of the Judges who presided over those two cases should have been recognized but instead Judge Roger's found Ms. Zhang's causes of action were frivolous, malicious, and designed only to hurt Maksoud, the findings of the presiding judges to the contrary notwithstanding. (E.g. 3T. 15:5-17:11). It was Ms. Zhang's statements in pleadings that Judge Rogers found most defamatory and supported her findings of liability on defamation, abuse of process, and the IIED claim, (E.g. 3T. 15:5-17:11). The Court, citing Maksoud's testimony awarded some attorney's fees that had been denied by prior court rulings, so that with attorney's fees plus interest a final judgement was entered against Ms. Ping in the amount of $664,947.752 plus additional and accruing attorney's fees for the years following March 2021. (7T. 22:13-19) and post judgment interest occurs as well.[8]This appeal now follows.

[8] After three additional days of testimony Judge Rogers' opinion resolved all issues from the case filed by Maksoud and was read into the record as March 22, 2022 shortly before Judge Rogers

LEGAL ARGUMENT

I. THE JUDGMENT IN FAVOR OF MAKSOUD ON THE IIED CLAIM SHOULD BE VACATED AND THE CLAIM DISMISSED (Ja1731-34; 1737-42; 3T. 11:2-19;17)

A. The IIED Claim is Not Valid Because the Alleged Conducted is Covered by the Defamation and Abuse of Process Claims (Ja1731-34; 1737-42; 3T. 11-2 to 19-17)

IIED is a tort that is only available when others covering that same conduct are not. In this case, the defamation and abuse of process claims were pled. The court found liability on the defamation claim and so awarded nominal damages since there were "no compensable damages" (3T. 18:17-19:1). Judge Rogers also found that the abuse of process claim was also proved but lacked any special damages, so it was dismissed. (3T. 27:16-22; (Ja1731, 1737).

"[A] plaintiff may not pursue a claim for intentional infliction of emotional distress to circumvent the required elements of or defenses applicable to another cause of action that directly governs a particular form of conduct." Griffin v. Tops Appliance City, Inc., 337 N.J. Super. 15, 24 (App. Div. 2001); see also Decker v. Princeton Packet, Inc., 116 N.J. 418, 432 (1989). Stated another way, because Ms. Zhang's allegedly defamatory posts and prior litigation statements are forms of

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retired on April 4, 2022 while Judge Rogers filed no final form of order. Chief Judge Turula did so on her behalf in June of 2022. Thereafter, plaintiff Maksoud's counsel vigorously pursued collection practice to try to take Ms. Zhang's home based on those final Judgments and Opinions. (Ja1735;1743; 1748; 1841). Ms. Zhang filed *pro se* Notices of Appeal from those Orders. (Ja1746, 1749, 1764).

conduct governed by plaintiffs' claims for defamation and malicious use of process, respectively, plaintiffs cannot circumvent the elements of or defenses applicable to those two causes of action by maintaining a separate claim for IIED as well.

In Griffin, supra, 337 N.J. Super. at 24, the Appellate Division held that the plaintiff "could not rely upon the fact that the defendants had filed a criminal complaint against him as a basis for finding intentional infliction of emotional distress, because such conduct is the specific subject of the tort of malicious prosecution." Similarly, it is widely held that a plaintiff cannot re-package a failed defamation claim as a different tort claim. See Bainahuer v. Manoukian, 215 N.J. Super. 9, 48 (App. Div. 1987) ("[p]roof or failure of proof of the operative facts of the defamation count would, therefore, completely comprehend the malicious interference cause."); Lutz v. Royal Ins. Co. of Am., 245 N.J. Super. 480, 503 (App. Div. 1991) (dismissing plaintiff's tortious interference claims since plaintiff "attempt[ed] to prove his malicious interference claims with precisely the same evidence that forms the basis for the defamation claim.").

Indeed, courts have routinely refused to subvert a defendant's First Amendment protections by allowing plaintiffs to repackage defamation claims as other causes of action that are premised on the same set of facts. In Decker, the Supreme Court affirmed the dismissal of the plaintiff's infliction of emotional distress claim that was premised upon the same facts as his failed defamation claim

because otherwise "plaintiffs would be able to use the tort of negligent infliction of emotional distress to overcome defenses to defamation actions[.]" 116 N.J. at 432. More specifically, our Supreme Court held:

> [I]t comports with first amendment protections to deny an emotional-distress claim based on a false publication that engenders no defamation *per se*. In this case, by determining that as a matter of law a false obituary does not injure reputation or cause compensable emotional distress, the Court preserves the libel law's first amendment protections[.]

Id. Here, Maksoud's emotional distress cause of action is premised upon two forms of conduct: (1) Ms. Zhang's allegedly defamatory internet posts; and (2) Ms. Zhang's lawsuits against Maksoud and her law firm. The former is governed by the tort of defamation; the latter is governed by the tort of malicious use of process. Accordingly, the judgement in favor of Maksoud for IIED should be vacated and the count of the Complaint dismissed with prejudice.

B. Liability for the IIED Cause of Action Was Erroneously Found by the Court Below Without Reliable Expert Medical Testimony (Ja1219; 3T. 19:18-21-11)

In sustaining the IIED claim, Judge Rogers cited to Clark v. Nenna, 465 N.J. Super. 505 (App. Div. 2020) and Baglini v Lauletta, 338 N.J. Super. 282, 306-307 (App. Div. 2001) (3T. 19:18-19:9) for the proposition that "expert testimony is not needed for an IIED claim." 3T. 19:1-21:14. In Clark, the Appellate Division affirmed summary judgment against the plaintiff on an IIED claim because he did not have expert medical testimony to support his case; exactly the opposite of what the court

held below in this case. In Baglini, the IIED claims were dismissed for legal reasons. The plaintiffs in Baglini had a meritorious abuse of process claim therefore the IIED claims of some were dismissed voluntarily and the court dismissed others mid-trial. Bagalini does not stand for the proposition the trial cited it for but is instead an illustration of the legal principle argued above, that when there is a meritorious defamation or abuse of process claim, the IIED cause of action should be dismissed. As the trial court's legal basis for finding liability on the IIED claim was wrong and misunderstood the law, the judgment should be vacated.

In addition to misunderstanding the law, Judge Rogers also made demonstrably erroneous factual findings when ruling that Ms. Zhang was liable for IIED. The Court repeatedly claimed it was taking judicial notice of all the prior litigation between the parties (E.g. 7T. 5), yet instead of actually reviewing and relying on the prior court decisions, Judge Rogers relied on testimony of Maksoud in reaching her decision. See E.g., 7T. 5:21-25. Maksoud asserted that Ms. Zhang filed and lost three lawsuits not two and that there was no factual or legal basis for any of them. She asserted she won the first trial (4T. 18-22) when she demonstrably did not, as a money judgment and costs were awarded to Ms. Zhang. (Ja2282).[9] Yet,

[9] Maksoud attempted to frame the jury trial as a win for her because early on and temporarily she made an offer to settle to Ms. Zhang which offer was slightly more than the amount that was awarded by the jury. A settlement offer has no bearing on who "won or lost" a lawsuit. The fact that Maksoud's counsel snuck mention of the settlement offer into the final form of order is not proof of victory, but evidence of an attorney taking advantage of a *pro se* litigant.

Judge Rogers found Maksoud won the first trial simply because Maksoud said she did. (3T. 8:25-9:2). Judge Rogers was persuaded that the jury trial was terminated in Maksoud's favor and even worse that there was no probable cause for Ms. Zhang to have brought the lawsuit. The Judge who actually presided over that jury trial found the complete opposite. As noted above, in denying a post-judgment motion from Maksoud, for sanction and attorneys fees, Judge Mitsy Galis-Menendez, held that the "[m]otion is denied the lawsuit was not frivolous rather it was litigated properly to conclusion." **(**Ja2400). Maksoud never sought reconsideration or an appeal of this ruling so it became the law of the case and should not have been open to reconsideration by Judge Rogers in a different proceeding. Additionally, Judge Costello while presiding over that second case denied a motion to dismiss and to award attorney's fees, sanctions, or any other damages sought by Maksoud. (Ja2689; 2683-84). Judge Costello on the record, explained the cause of action that was reasonably based in fact and law:

> "She's alleging that you breached a retainer agreement and didn't act in good faith. However? By divulging her confidential information. She's entitled to make that claim, because there's an implied covenant of good faith and fair dealing in every contract and it's undisputed that you did disclose it. You may have a defense to that. And you're entitled to discovery on that. Maybe we'll be back on a motion for summary judgment but I'm not dismissing the complaint on its face."

(Ja2683-84). Those court rulings should have estopped the plaintiff from arguing and Judge Rogers from making findings the opposite of the rulings of the

Judges who presided over the lawsuits. For Judge Rogers to find otherwise based on Maksoud's assertion to the contrary, was an error that necessitates vacating the judgment.

Moreover, even if Maksoud's IIED claim is not dismissed, as it should be, Maksoud's testimony concerning her subjective emotional response was inadequate to establish the elements of severe, indeed unendurable, emotional distress required by an IIED claim. To prove on IIED, a plaintiff must show that the defendant's:

> **conduct was so outrageous in character and extreme in degree as to go beyond all bounds of decency; the defendant's actions were the proximate cause of the emotional distress; and the distress suffered was so severe that no reasonable person could be expected to endure it.**"
>
> Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 366 (1988) (emphasis added).

Disabling emotional and mental distress which can be "generally recognized and diagnosed by professionals trained to do so." Taylor v. Metzger, 152 N.J. 490, 515 (1998). "The emotional distress must be sufficiently substantial to result in either "physical illness or serious psychological sequelae." Turner v. Wong, 363 N.J. Super. 186, 200 (App. Div. 2003)(citing Aly v. Garcia, 333 N.J. Super. 195, 204 (App. Div. 2000), certif. denied, 167 N.J. 87 (2001). "The standard is an objective one. The defendant's conduct must be 'sufficiently severe to 'cause genuine and substantial emotional distress or mental harm to average persons.'' Id. (citation omitted). "Expressions of anger, without more, are not extreme or

outrageous." Juzwiak v. Doe, 415 N.J. Super. 442, 453 (App. Div. 2010). "Unendurable distress" as required was not satisfied herein. Buckley, 111 N.J. at 368. Similarly, being "acutely upset", does not rise to the level of severe emotional distress. Aly, supra, 333 N.J. Super. at 204-05.

Maksoud's presentation at the first hearing on liability in January 2021 focused entirely on "abuse of process" and "defamation". Maksoud believed judges might have heard about Ms. Zhang's allegations and that she worried it would lower her in their estimations. (2T. 38:3-40:16). She did not claim any great emotional distress at that hearing but rather presented herself as a skilled experienced lawyer and prosecutor who had been financially harmed by defamation and abuse of process. (E.g. 2T. 7:17; 8:18). She had explained at the outset of the jury trial that she was significantly scaling back on work with the birth of her child and by March 2018 before she filed her own lawsuit on August 1, 2018, she was "only working part time". Maksoud's cutting back was not caused by Zhang but by Maksoud's growing family obligations; therefore, estimated loss of family income of $100,000 was illusory. (Ja1674 and p. 7 *infra*). Maksoud's counsel explained at the first hearing they had no need for medical reports at all **"because they were not seeking medical injury".** (2T. 106:22-107:7).

When the hearings resumed, 13 months later, Maksoud's presentation of herself was dramatically different. Maksoud now sought medical and emotional injuries and

claimed that she had been suffering for many years and had become unable to practice law **not** because of "child care" obligations but solely because of Zhang. (E.g. 7T. 7:18-23; 8:7-10:21). Moreover, Maksoud came up with unreliable testimony by a friend in the medical field and not an independent expert. She had occasionally used this friend, who happened to be a psychologist, as a "sounding board." (4T. 56:19-20). He would come to her office when she called. She did not go to his office. (E.g. 7T. 8:24-25).[10]. As proof positive that there were no compensable emotional damages, Judge Rogers calculated the emotional damages by relying on Maksoud's wish list of estimates of time spent as damages calculated at exactly $300 an hour. For example, time for missed trips to the zoo with family or emails and texts to husband about Zhang were compensated at $300 an hour.[11] (Ja1674). Consequently, the judgment in this regard should be vacated and dismissed for, among other reasons, it conflicts with the finding of "no compensable damages" under defamation and is an illegal circumvention of defamation's requirements for demonstrable compensable damages by using rough estimates of hours spent such as talking to friends about Ms. Zhang, missed parties and multiplying all by $300 an

[10] Remarkably, there were no fees claimed as allegedly paid to the so called treating psychologist who was a friend who was debarred from billing under all state programs in 2016 including Medicaid when he signed a debarment agreement and paid $40,000 in restitution. Thereafter the psychologist had to charge cash from the patient. (5T. 83:1-86:19). Nor are there hours listed for talking to Dr. Seglin unless they are among the many hours listed for talking to friends about Ms. Zhang that were claimed. (Ja1674).

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hour. Such circumvention of the damages requirements for defamation is prohibited. See, Case law at p. 17 I.A *infra*.

C. The IIED and Defamation Claims were based on Court Filings and are thus Barred by New Jersey's Immunity Caselaw (Ja1219; 3T. 14-9 to 15-7 and 3T. 22:1 to 10)

Judge Rogers found that a *prima facie* case existed for defamation and the IIED causes of action by utilizing statements Ms. Zhang made in pleadings and other documents related to the litigations between the parties. She read into the record the statements from pleadings that so troubled her. (3T. 15:11-17:8). Maksoud became obsessed with Zhang and claimed to review all court filings causing her great emotional distress. (7T. 15:14-16; 10:19-21). These statements cannot form the basis for plaintiffs' defamation or IIED claims because they are absolutely protected by the litigation privilege. Erickson v. Marsh & McLennan Co., 117 N.J. 539, 563 (1990)("A statement made in the course of judicial, administrative, or legislative proceedings is absolutely privileged and wholly immune from liability.")

> The doctrine that an absolute immunity exists in respect of statements, even those defamatory and malicious, made in the course of proceedings before a court of justice, and having some relation thereto, is a principle firmly established and is responsive to the supervening public policy that persons in such circumstances be permitted to speak and write freely without the restraint of fear of an ensuing defamation action, this freedom being indispensable to the due administration of justice.
>
> Fenning v. S.C. Holding Corp., 47 N.J. Super. 110, 117 (App. Div. 1957).

Particularly relevant to this matter, the litigation privilege "insulates the defamer not only from a defamation action but, as well, from other related tort counts whose gravamen is the same as that of the defamation claim." Zagami, LLC v. Cottrell, 403 N.J. Super. 98, 104 (App. Div. 2008). The scope of the privilege goes so far as to include all statements, pleadings, and filings made even if they were tortuously criminal. Ruberton v. Gabage, 280 N.J. Super. 125 (App Div. 1995) (extortion by threatening to bring a criminal case was covered by the privilege).

Judge Rogers reasoned that Ms. Zhang's pleadings were not immune from defamation claims because Ms. Zhang had listed the docket numbers of specific cases online. (3T. 22:3-9). No case has approved that exception to the immunity afforded litigation pleadings and statements and one should not be found herein. Plaintiff Maksoud and her attorney listed the same docket numbers in postings online both before and after Ms. Zhang did. See (E.g. Ja405-06; 493-94; Ja1318). Maksoud also posted docket numbers including collection cases she filed against a former client on Google. (Ja497). If the plaintiffs also posted docket numbers, how could Ms. Zhang's noting of the same docket numbers be deemed the basis for defamation and IIED damages?

Judge Rogers should not have relied on statements contained in pleadings to find liability; therefore, that Judgment should be dismissed. Moreover, Judge Roger's finding that there were "no compensable damages" for defamation also

should have barred the finding of similarly computed but inadequately proved estimates of compensable damages at $300 an hour as if they were proper emotional IIED damages under an IIED claim. (Ja1674). Judge Rogers relied almost completely on Maksoud's testimony that the statements in the filings in cases were the cause of Maksoud's claimed damages of emotional pain and suffering to arrive at the damages she announced for the IIED cause of action. (3T. 22:10-24:1). The only alleged defamatory postings were opinions that are not opinions and therefore adequate for a defamation cause of action and also, did not cause any "compensable damages." Since the pleadings are immune from being used as the basis of a lawsuit and since there were no compensable damages for defamation, the Judgment should be vacated, and the case dismissed.

II. ALL OF PLAINTIFFS' CAUSES OF ACTION ARE BARRED BY RES JUDICATA, COLLATERAL ESTOPPEL, AND THE ENTIRE CONTROVERSY DOCTRINE (Ja2671-72; Ja1245–1252; Denied at Ja2671-72 and 3T.24-27)

A. Res Judicata (Ja1245–1252; Denied at Ja2671-72; and 3T. 24-27)

Maksoud's claims for abuse of process began with the first suit filed against Maksoud. In that case, Maksoud sought to recover attorney's fees and other damage awards as sanctions for Ms. Zhang's alleged abuse of process in the case. Both the Judge overseeing that case at trial and the Judge during motions rejected those claims and denied any recovery for abuse of process and declined to find damages in the form of sanctions. (E.g. Ja2400; 2242-44). Ms. Zhang filed a second action

along with her husband for damages due to Maksoud's alleged publication of their private information that had been given to Maksoud in the context of the attorney-client relationship with Maksoud. In that case, Maksoud also sought a dismissal of the case and an award of attorney's fees and damages in the form of sanctions and was again denied same by the Court presiding over that action. (Ja2689; 2683-84). Having lost on these issues before the courts presiding over the actions and motions, the doctrine of *res judicata* bars the plaintiff from pursing these theories and damages based thereon in this subsequent case.

In Velasquez v. French, 123 N.J. 498 (1991). Our Supreme Court held that a North Carolina court's judgment that the same action had to be dismissed, because the defendant corporations were dissolved, was technically on the merits and therefore barred plaintiffs from pursuing the case in New Jersey Courts. The Court stated:

> The term *"res judicata"* refers broadly to the common-law doctrine barring relitigation of claims or issues that have already been adjudicated. In essence, the doctrine of *res judicata* provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding.
>
> The rationale underlying *res judicata* recognizes that fairness to the defendant and sound judicial administration require a definite end to litigation.
>
> Id. at 505.

Moreover, "[o]nly in extraordinary circumstances has the Court departed from strict deference to *res judicata* principles." Id. at 514.

The jury in Special Civil Part lawsuit (HUD-DC-14482-17) found that Ms. Maksoud was liable for $2,609 and costs. (Ja2282). After the verdict awarding Ms. Zhang damages, Maksoud's attorney filed a motion for sanctions pursuant to R. 1:4-8 and N.J.S.A. 2A:15-59.1. On April 27, 2018, Judge Galis-Menendez denied that motion, finding "the lawsuit was not frivolous, rather it was litigated properly to conclusion." (Ja2400). In Brennan v. Lonegan, (Ja 1263-67) No. A-0274-09T1, 2010 WL 5140448, at *2 (N.J. Super. Ct. App. Div. Dec. 20, 2010), the Appellate Division concluded that the denial of a motion for sanctions and counsel fees under R. 1:4-8 and N.J.S.A. 2A:15-59.1 precludes a plaintiff's subsequently-filed malicious use of process claim. In doing so, the court reasoned "[t]he two claims have a common element – a showing that the accused party lacked a good faith basis (i.e., probable cause) to file the original lawsuit." Id. at *13. The court then concluded:

> Brennan's current attempt to differentiate his unsuccessful frivolous lawsuit claim from his current SLAPP suit elevates form over substance. It is essentially the same claim. And even if it were not, Judge Mecca's final adverse adjudication of the probable cause issue precluded Brennan from re-litigating that issue in the second lawsuit, thus rendering him unable to establish an essential element of his malicious use of process claim.
>
> Id. at *14.

So too in this case, the multiple denials of Maksoud's multiple frivolous litigations and motions for damages in the form of sanctions and attorney's fees by Judge Galis-Menendez and others bars Judge Rogers from fact otherwise no matter how Maksoud testified. (Ja2400). *Res judiciata* bars plaintiffs from establishing a *prima facie* abuse of process claim based on Zhang's case alleging a disclosure of confidential information because Zhang's complaint was found to be true. (Ja2684) The IIED Judgment based in large part on Judge Roger's erroneous findings, to the contrary of the judges who presided on those cases should be vacated. Likewise, the award of attorney's fees as damages, based on the same grounds, after the initial courts repeatedly denied them, should be vacated as well.

B. Collateral Estoppel (Ja1245-1252; Denied at Ja2671-72)

Collateral estoppel is a companion doctrine to *res judicata* but has a broader application. Velasquez, supra, 123 N.J. 498; In re Corruzzi, 95 N.J. 557, 568 appeal dismissed, 469 U.S. 802 (1984). As our Supreme Court explained in State v. Gonzalez, 75 N.J. 181, 186-87 (1977):

> Collateral estoppel is that branch of the broader law of *res judicata* which bars relitigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action.

Collateral estoppel will apply to the party bringing the action to prevent them from relitigating the same issues as were resolved against them in the past, even if different parties are involved in the litigation. In this case, the plaintiffs attempted

to recover attorney's fees and damages in the form of sanctions and costs. That same relief was denied on the merits by Judge Costello who actually presided over the case. (E.g. Ja2684 and also as to the Counterclaim in VC instant action by Judge Lynnes. (Ja20-05).

The complaint filed by Ms. Zhang and her husband, David Hughes, against Maksoud concerned the publishing of Ms. Zhang and her husband's confidential information, including social security numbers. The information had been provided to Maksoud when Ms. Zhang first met with her concerning matrimonial litigation in 2015. There was no question the events occurred, and that Maksoud and her attorneys published the confidential information obtained in 2015 and that Judge Turula had it stricken from the records. (Ja2399; 2403). Judge Jablonski had also noted that Maksoud violated RPC 1.6 by such actions. Judge Turula confirmed the merits of Zhang's Complaint by ordering that the confidential information posted by Maksoud be immediately removed from the public Court records shortly after the action against Maksoud was filed. (E.g. Ja 2399; 2403). Judge Costello later denied the motion to dismiss Zhang and Hughes' complaint in totality and for sanctions because confidential financial information had been disclosed. (Ja2683-84). When Maksoud queried Judge Costello after the ruling against her, Judge Costello explained as follows:

> The case will continue, and Ms. Maksoud will be required to file an answer no later than March 15th to the only claim that I find to be

> cognizable, which is a breach of contract claim arising out of the retainer agreement and that breach, the alleged breach, being a breach of confidentiality and not performing her end of the bargain in good faith. (Ja2683-84; 2689).

Although Maksoud ultimately prevailed on summary judgment, her attorneys did not file motions to reconsider or appeal the denial of damages in the form of sanctions for a frivolous litigation in that case. As Maksoud explained in her testimony, the summary judgment was based on a lack of demonstrable damages from her tortious actions. (E.g. 2T. 21:9-24; 33:8-12; 68:9-16; 70:14-15; 69:4-6). Therefore, Maksoud is collaterally estopped from asserting that the litigation was frivolous and warranted sanctions, attorney's fees, or damages because of the rulings to the contrary by Judges Costello, Turula, and Jablonski who presided directly over aspects of the case previously.

Maksoud is also collaterally estopped because the prima facie IIED claim was based on Maksoud's testimony that the prior lawsuits were frivolous and without consideration of the actual rulings in those cases (See 7T. 3T). Therefore, the IIED Judgment and damages based thereon should be vacated and the claim dismissed with prejudice.

C. The Entire Controversy (Raised By Appellee Ja2671-72 Not by Appellant)

The entire controversy doctrine is derived in part from the provisions of the New Jersey State Constitution. The New Jersey Supreme Court summarized the

scope of the entire controversy doctrine in Prevati v. Mohr, 145 N.J. 180, 187 (1996) (emphasis added):

> …. the entire controversy doctrine requires whenever possible all phases of a legal dispute to be adjudicated in one action. ***At a minimum, all parties to a suit should assert all affirmative claims and defenses arising out of the underlying controversy.*** The doctrine, which promotes the twin goals of efficient judicial administration and fairness, encourages the comprehensive and conclusive determination of a legal controversy. It stems directly from the principles underlying the doctrine of *res judicata* or claim preclusion.

The New Jersey Court Rules require the application of the doctrine:

> ***Non-joinder of claims*** or parties required to be joined by the entire controversy doctrine ***shall result in the preclusion of the omitted claims*** to the extent required by the entire controversy doctrine, except as otherwise provided by *R.* 4:64-5 (foreclosure actions) and *R.* 4:67-4(a) (leave required for counterclaims or cross-claims in summary actions).
>
> *See also R.* 4:7 (making mandatory counterclaims not asserted subject to preclusion under *R.* 4:30A); *R.* 4:5-1 (requiring identification of any other **pending or contemplated action** in any other court or arbitration proceeding involving same controversy).
>
> R. 4:30A (emphasis added).

Maksoud identified the most hurtful defamation by Zhang in her argument to Judge Jablonski as the October 2015 AVVO posting that she alleged was still actionable in 2018. (E.g. 1T. 19:18-20:6; 2T. 15:12-15). Maksoud's Complaint herein alleged a May 1, 2018, internet posting as the basis for her defamation claim but that was a repeat of that prior posting of October 2015 as she first explained to Judge Jablonski at her first appearance in this case. (1T. 19:18-20; 20:25). Those

internet postings pre-dated that case and were as she and her attorney contended a valid basis for counterclaim to the first Zhang Complaints in 2017. (Ja2274; Ja8-9). The Complaint herein is barred by the entire controversy doctrine. The jury trial proceedings just ended 7 weeks before Maksoud's Complaint was filed on August 1, 2018. Maksoud herself referenced the entire controversy doctrine as applicable to these multiple actions, between Zhang and herself, in an effort to bar the second action by Ms. Zhang filed in October 2018 (Ja2671-72). That action was based on Maksoud's violation of her retainer agreement and Ethics Rules as found by Judges Costello, Turula, and Jablonski. (E.g. Ja2399; 2402; 2675-76; and 2682). Clearly, such counterclaims should, have been filed in the first case, as her attorney, at the time, DeSocio, wrote they were going to file in October of 2017. (Ja2274).

If the process claims stemming from Ms. Zhang's July 2017 complaint as replaced by the October 2017 complaint and the defamation claims were filed as threatened (Ja2274; 1T. 19:18 to 206) the alleged damages would have been minimized as would the judicial time on this four year-long spite suit pursued by Maksoud would be far less. Counsel for Maksoud threatened to file such counterclaims in October 2017 but never did so. (E.g. Ja2274). The alleged improper public postings would have come down at an earlier time as they did when

plaintiffs first filed this case (1T. 5:19-6:1)[12]

The entire controversy doctrine encompasses "virtually all causes, claims, and defenses relating to a controversy" between parties engaged in litigation. Cogdell v. Hospital Ctr., 116 N.J. 7, 16, 560 A.2d 1169 (1989). All of Maksoud's alleged causes of action arose before Ms. Zhang refiled the first suit against Maksoud in October 2017. Accordingly, this case falls squarely within the entire controversy doctrine and therefore the judgment entered in this case should be vacated and plaintiff's claims dismissed in their entirety.

III. THE IIED AND DEFAMATION CLAIMS WERE DEFECTIVE AND ARE BARRED BY THE FIRST AMENDMENT AND SHOULD BE DISMISSED WITH PREJUDICE (Ja1731-34; 1737-41; 3T. 11:5 to 14:5)

A. The Defamation Claims Are Defective (Ja1732-36; 1737-41; 3T. 11:5 to 14:5)

Under New Jersey defamation law, "opinions" are not actionable. Our Court has protect individuals from shouldering the heavy costs of defauding defamation claims when they are based on internet reviews expressing opinions. Courts have often entered judgements dismissing those type of complaints. Ms. Zhang's Google review was an opinion as to her interaction with Maksoud as her attorney and as to. the termination of their relationship. In 2018 when this case was first reviewed in

[12] Maksoud's IIED damages as testified to at the second proof hearing began in the fall of 2018 and 2019 well after Maksoud's "alleged" victory in the jury trial which ended in June 2018. The psychologist never heard Zhang's name from Maksoud until the fall of 2018. (4T. 90:12:3; 4T. 92:6-14). The Court heard testimony and relied on the claimed emotional distress damages under an IIED claim which largely coincides with her filing of her own complaint herein on August 1, 2018 to March 2022.

Chancery, Judge Jablonski denied injunctive relief indicating that "these are opinions." Judge Jablonski further noted that Ms. Zhang's poor use of English which was her second language learned as an adult made it difficult to read into the record because of certain parenthetical, punctuation, and what might be considered difficult representation of what that posting is. Judge Jablonski went on to hold: "**these are opinions**." (1T39:22-24) and continued explaining he could not **restrain anybody from exercising anybody's right to an opinion.**" (1T27:20-25; 39:55-40:4).

In the initial hearing herein, Maksoud argued that she was being "falsely accused of being a thief, a liar and a cheater" (1T5:9-11) but Judge Jablonski did not change his ruling in the face of her listing of such conclusory labels..

B. Maksoud Failed To Make A Prima Facie Cause Of Action For Defamation Because The Identified Statements Were Opinions (Ja17321-36; 1737-41; 3T. 11:5 to 14:5)

The Doctrine of presumed damages, W.J.A. v. D.A., 210 N.J. 229 (2012), is a procedural device permitting plaintiff to survive a motion for summary judgment to jury trial in the absence of proof of actual damages. The $500 award herein is an error because Maksoud failed to meet the legal requirements for a defamation cause of action in New Jersey.

In *Dendrite Intern. v. Doe No. 3* (2001) 342 N.J. Super. 134 [775 A.2d 756] (App. Div. 2001), constitutional free speech protections were extended to comments

made online, and created a four-part test to ensure that plaintiffs do not use discovery to "harass, intimidate or silence critics in the public forum opportunities presented by the Internet." (*Id.*, 775 A.2d at p. 771.) *Dendrite's* claim was rejected because it failed to produce adequate evidence of the harm. Maksoud did not meet that element of or the second or third element of the tests required by *Dendrite*.

C. It Was Error to Find that Ms. Zhang Knowingly Posted A False Statement Because Ms. Zhang's Posts Were Truthful Based On Her Experience With Maksoud (Ja1732-36; 1737-41; 3T. 11:5 to 14:5. Ms. Zhang's Testimony Proves same (9T. 29:7 *et. seq.*)

To establish defamation, posts that were factually defamatory and not just net opinions are required. Judge Rogers determined that there were no compensable damages and awarded only $500 in nominal damages.[13] In this case, there are postings on various websites about the quality of legal services provided by the plaintiff. (Ja1040-44). No matter how good an attorney may be, he or she is subject to criticism by a client if he or she does not get the result that the client expected. There could be criticism concerning how the attorney spoke to the client or questions about the fees that were charged. Expressions like "He is a lazy lawyer," "a careless lawyer," "a cheating lawyer," "a thief of a lawyer," "a lawyer who is shady," "a

[13] Because Plaintiffs were limited to nominal damages for defamation any claim for punitive damages fails pursuant to N.J.S.A. 2A:15-5.13(c), which states: "Punitive damages may be awarded only if compensatory damages have been awarded in the first stage of the trial. **An award of nominal damages cannot support an award of punitive damages.**" (Emphasis added). Moreover, Judge Rogers decided not to award punitive damages at her last and final decision but instead awarded an extraordinary amount of emotional damages $525,000 based on defective estimates of compensable damages (Ja1674; 7T *passim*).

lawyer who is not truthful," and "a liar of a lawyer," are all conclusory opinions that are not actionable as Judge Jablonski indicated when he first reviewed this case. 1T.

Ms. Zhang believed the statements she made to be true for the following reasons among others. Ms. Zhang had seen Maksoud deceive the police when she called them to her office to remove Ms. Zhang. Maksoud told the police Ms. Zhang had been lying on the ground screaming, crying and yelling which was not true. (E.g. Ja2123).. Maksoud's lies as to her reports to the police were the first basis for Ms. Zhang's opinion about Maksoud's lack of veracity.

Maksoud's billings was the second basis for Ms. Zhang's negative opinion of Maksoud. Ms. Zhang tried to get her money back and to get a detailed invoice for the services allegedly rendered by Maksoud. Maksoud refused to refund Ms. Zhang's money even though Ms. Zhang told Maksoud virtually immediately, telling her "to stop" "do nothing" that same night after initially retaining her that afternoon of September 17, 2017. Maksoud initially refused to provide an invoice. When an invoice was eventually provided, it included time charged for days and times that were wrong and conflicted with Maksoud's diary when it first became available after trial. (E.g. Ja2121, *et seq.*). Ms. Maksoud offered a partial refund of the retainer payment, but conditioned it on Ms. Zhang accepting her charges for dates and times to which Ms. Zhang would not agree. Zhang eventually sued. (Ja2121). Ms. Zhang reasonably believed she was being cheated by fraudulent conduct and therefore her

opinions that Maksoud was a "thief" and a "fraud" which were honestly believed "opinions" which were not actionable. For all these reasons, the defamation claim was defective.

Judge Roger's requested a copy of the invoice that Ms. Zhang disputed and had asserted was fraudulent because Maksoud's diaries and appointment books provided *after* the jury trial showed no entries for appointments with Ms. Zhang for at least two of the days that Maksoud billed Ms. Zhang for meetings. (Ja 2067-2079). Maksoud's counsel declined the Court's request for the invoice that Ms. Zhang had asserted was fraudulent. Maksoud's counsel indicated it was not part of his exhibits and that since they were operating remotely he could not provide it to the Court. (T91:14-21). Ms. Zhang's experience with the false entries on Maksoud's invoice justified all such conclusory labels of fraud liar, etc. Simply put, there was no actual or factual statement on Ms. Zhang's post that could be claimed to be factually false or as required by *Dendrite*.

When Judge Rogers saw Ms. Zhang's statement, *"She Lied she was 'required' to keep our Personal documents in Her Had for Severn (7) years!!!"*. the Court erroneously concluded that Ms. Zhang was acting intentionally and with a reckless disregard of whether the statement was true or false. (2T94:5-95:2; 3T11: 8-11). It was, however, Maksoud's statement that she had to keep all records for 7 years that was wrong. Our Rules require attorneys to keep of their own financial

transactions and their own bookkeeping records for 7 years. **Rule 1:21-6(c)** of Rules of General Application. That Rule does not apply to client's confidential information like client's social security numbers and financial records that were the subject of Ping's and Maksoud's dispute. Ms. Zhang was on sound ground in stating that Maksoud's assertion that she must by law keep clients confidential information and documents for seven years was false. Both Maksoud and Judge Rogers were wrong in their understanding of Rule 1:21 (c).

Matrimonial files are confidential and without a court order, they are available only to the parties or their attorneys. Maksoud violated her fiduciary duty by using Ms. Zhang's documents in public civil court as, Judges Costello and Turula indicated (Ja2684; 2399; 2403).

The New Jersey Identity Theft Prevention Act, ("ITPA") 58 N.J.S.A. §161, *et seq.*, requires business to redact or destroy clients 'personal identifiers, SSN and DOB once a person was no longer a customer or client. Maksoud failed to comply with ITPA. Moreover, the Common law of Confidentiality Protects personal information and documents. The RPCs also require lawyers to protect client's confidential information as Judges Costello, Turulla and Jablonski later ruled. (E.g. Ja2065).

There was no specific factual statement identified as defamatory which was not reasonably believed to be true in Ms. Zhang's eyes. The proof hearing devolved

into counsel asking Maksoud such questions as whether she was a "liar" to which Maksoud answered I am not a liar and it hurt when the defendant wrote that. (E.g. 4T 55:15-23). The matter was more akin to children shouting names at each other, than actual defamatory statements that caused damages. Opinions are not actionable as defamation as Judge Jablonski ruled at the outset of the case. (1T34:22-35:1).

"Although scathing characterizations can be hurtful, the law of defamation does not provide redress whenever feelings and sensibilities are offended. Rather, recovery for slander exists to redress solely harm to reputation." Ward v. Zelikovsky, 136 N.J. 516, 539 (1994). In Ward, the plaintiffs were called anti-Semites and the wife a "bitch" at a condominium association meeting. The New Jersey Supreme Court explained some of the evidence that would be required to prove defamation:

> The Wards did not offer sufficient proof that the "chill" they felt, the feeling of not being wanted at condominium affairs, and the alleged decline in Mrs. Ward's real-estate business actually existed and were caused by Zelikovsky's statement at the condominium board meeting. **Significantly, no witness testified to thinking less of the Wards because of Zelikovsky's statements**.
>
> Id. at 542 (emphasis added).

The Court further noted that "'lowered social standing and its purely social consequences are not sufficient to support a finding of special damages." Id. (quoting *Restatement (Second) of Torts*, § 575, comment b). The labels "bitch" and "anti-Semite" or racist pig are worse than liar and thief, but neither set of labels is actionable.

> To prove defamation, a plaintiff needs more than their own testimony:
>
> > [A] plaintiff should offer some concrete proof that his reputation has been injured. One form of proof is that an existing relationship has been seriously disrupted, reflecting the idea that a reputation may be valued in terms of relationships with others. Testimony of third parties as to a diminished reputation will also suffice to prove "actual injury." **Awards based on a plaintiff's testimony alone or on "inferred" damages are unacceptable.**
> >
> > Sisler v. Gannett Co., 104 N.J. 256, 281 (1986) (internal citation omitted) (emphasis added).

As discussed above, in this case, Maksoud's evidence was her own self-serving testimony. Her simple assertion that she was not a liar, or a thief was not sufficient proof to sustain a defamation claim. The testimony of Maksoud's non-expert psychologist friend, simply repeated the self-serving complaints Maksoud had related to him and , did nothing further as to proof for defamation either.

Google and Avvo are anonymous online boards for the public to share their personal experience and opinions. Letting others know your firsthand opinions and experience about professionals is beneficial for everyone in society.

> Defamation-law principles must "achieve the proper balance between protecting reputation and protecting free speech." In that regard, "speech on 'matters of public concern'...is 'at the heart of the First Amendment's protection.'" … In the same vein, speech related to matters of public concern "occupies the 'highest rung of the hierarchy of First Amendment values[.]'" Such speech "requires maximum protection." Thus, when alleged defamatory remarks touch on a matter of public concern, "the interests of free speech justify, and fairness to individual reputation permits, application of a strict and high burden of proof to establish actionable defamation."

> Rocci v. Ecole Secondaire, 165 N.J. 149, 155-156 (2000) (internal citations omitted).

There should be free discourse, commentary and criticism regarding a lawyer's professionalism and service without fear of retaliation in court action. Our courts should not be flooded by doctor's or lawyer's suing patients and clients who report their opinions about their experiences. Just as it is in the public interest to know how our teachers are performing it is in the public interest to have a free discourse about the performance of our licensed professionals. Opinions in this regard are the exact type of First Amendment speech that needs to be protected. This is exactly why in prior proceedings between these parties, Judge Jablonski warned that:

> That is what we have in case. As irksome as this – these that these comments have been made on AVVO and on Google, they are nonetheless constitutionally protected speech that this court cannot enjoin. Every individual before this Court has an absolute right to state what his or her opinions are. 1T35:1-5.

Later Judge Jablonski noted "these are opinions" and that "the law does not protect against hurt feelings when it is balanced against free speech." 1T39:24- 43:12-14.

In other states, internet reviews of public professional practices like lawyers and doctors have been treated more protectively than if it was just a matter of private concern. See *Creekside Endodontics, LLC v. Sullivan*, 2022 COA 145, 527 P.3d 424; *DeRicco v. Maidman,* 209 A.D.3d 560, 175 N.Y.S.3d 476 (2022). Judge Roger's judgment finding a *prima facie* case of defamation should be vacated and moreover,

Judge Jablonski's findings that Ms. Zhang's online reviews constitute protected opinions should be the law of the case so the Defamation and IIED counts should be dismissed on this basis as well.

IV. THE COURT BELOW ERRONEOUSLY RELIED ON MAKSOUD'S EMOTIONAL REACTIONS TO THE ALLEGED "STRESS OF LITIGATION" CAUSED BY MAKSOUD'S PERSONAL CHOICE TO PURSUE HER COMPLAINT HEREIN TO GAIN MONETARY DAMAGES (Ja1732-36; 1737-41)

There was no contact between the parties after 2015 except in court. Maksoud's psychologist friend even testified that he never heard Ms. Zhang's name mentioned by Maksoud until roughly the fall of 2018 or maybe 2019. (7T11:16-21; 7T14:12-16; 4T. 90:12-20; 92:6-14). Litigation induced stress itself is not compensable whether caused by someone else suing you or you suing them.

> Stress and anxiety normally attend the litigation process. For this reason, the majority of courts addressing litigation-induced stress have treated it as a non-compensable component of damages regardless of whose actions necessitate the litigation.
>
> …
>
> Both the state and federal cases reflect the view that because anxiety is an unavoidable consequence of the litigation process, it does not form a separate basis for recovery against one's opponent.
>
> Picagna v Board of Education of Cherry Hill, 143 NJ 391, 397-98 (1996).

The trial court's opinion herein as to the damages incurred by plaintiff pursuant to the IIED cause of action were those that flowed from the litigation between the two parties from mid to late 2018 when Maksoud filed this case through

March 2022 when Judge Rogers rendered her final Opinion. (7T). In reaching her decision, Judge Rogers recounted the emotional trauma that Ms. Maksoud alleged that she suffered as a result of the onslaught of filings. (E.g. 7T 9:11-11:9). Under New Jersey law, these alleged emotional damages are non-compensable. Accordingly, all damages awarded for the stress Maksoud allegedly suffered in connection with litigation are not compensable. Stress from the lawsuit Maksoud chose to file and pursue to get money, should not be compensable for that second reason. The damages awarded, should be vacated and the causes of action dismissed.

A. The Judgement On The IIED Cause Of Action Is Defective Because It Conflicts With The Court's Ruling Of No Compensable Damages And No Special Damages Under Defamation And Malicious Use Of Process Respectively. (Ja1731-34; 1737-41; 3T. 18:8 to 19:1 and 3T. 24:24 to 27)

The finding, that there was no "special grievance" for the malicious abuse of process (3T 27:16-22) and the finding of "no compensable damages" for defendant's defamation claim (3T 18:8-12) conflicts with the finding of liability under the IIED claim.

The "[s]pecial grievance consists of interference with one's liberty or property." Penwag Property Co. v. Landau, 76 N.J. 595 (1978). "Counsel fees and costs may be an element of damage in a successful malicious prosecution, but do not in themselves constitute a special grievance necessary to make out the cause of action." Id. at 598. Similarly, "mental anguish or emotional distress" are not the special injuries required to sustain a malicious prosecution action and the same is

true of the alleged loss of reputation which could flow from the mere filing of any complaint." Brien v. Lomazow, 227 N.J. Super. 288, 304 (App. Div. 1988).

Again, as discussed above, Maksoud's damages for the IIED claim arise from the stress she purportedly suffered from litigation. Mental anguish and emotional distress from litigation were a "special grievance" and were not compensable damages so awarding damages based on alleged stress caused by her own lawsuit she herself chose to file and pursue as Judge Rogers detailed in her decision was improper and the judgment should be vacated. (3T. 15:8 to 17:11; 7T. 7:18 to 20). To even arrive at such damages, Judge Rogers relied upon and specifically incorporate Maksoud's claim for damages based on time estimates at $300 reviewing pleadings in her own case. (Ja1674). The estimates of lost family revenue from her law practice when she previously explained resulted from working part time for childcare reasons makes her estimates incredible. (Compare Ja1674 and 8T. 84; 8-10; 9T. 121:9 to 122:5).

An analysis of the basis Judge Rogers used to arrive at her $522,700 figure for emotional distress reveals that it is only a computation based on $300 an hour from the estimates of hours Maksoud suggests she spent talking about Ms. Zhang to others and personal and legal time which were not adequate to be compensable under defamation, and therefore are not a basis for emotional distress damages either.

V. THE VERDICT SHOULD BE VACATED FOR SEVERAL OTHER REASONS (Ja342; 664-65; 926-27) (Ja1732-36; 1727-41; 7T.1 *et. seq.*)

A. Rigid Enforcement Of A Default Against a *Pro Se* Defendant For Minor Discovery Violations Denied The Right to A Jury Trial

The New Jersey Constitution provides in Paragraph 9:

> The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons when the matter in dispute does not exceed fifty dollars. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury.

In the circumstances of this case, Paragraph 9 of the New Jersey State Constitutional takes precedence over the rules of default. The right to a jury trial was demanded in plaintiff's Complaint and by the defendant at various times. (1T.36:15-17 and; E.g. 4T.5:5-6 and Ja1111).

After the case was remanded from the Chancery Division to the Law Division, Maksoud moved to have the case conducted as a summary proceeding under the Rules. "No discovery is necessary." Both sides are "ready for trial" the plaintiffs' lawyer certified on behalf of Maksoud. (Ja328, ¶5,6,7). Maksoud's motion was denied. But Plaintiff's counsel then took advantage of a *pro se* defendant to essentially have a summary action anyway. He immediately propounded interrogatories and document demands on Ms. Zhang and then days after they were due, he moved to have Ms. Zhang placed in default. The *pro se* defendant was held in default, and an Order to Strike her Answer was entered (the order was submitted on March 24, but not executed by Judge Militello until June 29, 2019. (Ja674).

Motions for reconsideration and to vacate the default and reinstate Ms. Zhang's answer were filed *pro se* by Ms. Zhang and each of them was denied. Each time, instead of conceding that all parties had all documents necessary to proceed to trial, as had been certified to the Court in support of the motion to proceed summarily, plaintiff vigorously contested the efforts to vacate the default. Plaintiffs produced a total of 83 pages of documents representing that those 83 pages were all documents relevant to the lawsuit in their possession. (E.g. Ja357). The last motion to vacate the default was brought by a lawyer from Ms. Zhang and included demonstration that discovery had now been provided but the motion was again denied but this time as too late. (Ja926; 3T. 10:2-8). Allowing the case to proceed in this matter violated Ms. Zhang's constitutional rights to a jury trial.

B. The Evaluation of Damages for Emotional Trauma Was Arbitrary and Capricious and Should Be Vacated

The damages assessed for emotional distress $525,700 were in fact a totally unreliable rough estimate of compensable damages at $300 per hour which is not an approved methodically valuing medically trauma.

Having found no compensable damages for defamation (3T. 18:8 - 19-1) and no"special" damages for abuse of process. (3T. 17:16-22), plaintiff cannot be entitled to estimated "compensatory damages" under the under the guise of damages for extraordinary "emotional distress" resulting from "conduct so horrendous that it is beyond the capacity of a person to bear". Judge Rogers having found no

compensable damages and faced with an IIED claim for emotion distress which could not be adequately documented by independent medical expert awarded damages relying on defective calculations of the hours Maksoud spent talking to others about Ms. Zhang or missing zoo trip and parties with her child or double checking the work of her lawyers on her own case. (Ja1 to 2098 and Ja1674). Maksoud claimed $522,699 on her sheet of estimated times lost multiplied by $300 an hour. (Ja1674). The Court rounded it up $1 and awarded $522,700 in emotional distress damages under the IIED. Such legal contortions to award rough estimates of compensable damages should not stand.

C. Evidence in Mitigation of Damages went Unconsidered (7T. 1, *et. seq.*)

Ms. Zhang, acting *pro se*, was not provided an opportunity to present evidence in mitigation of the damages alleged by plaintiffs. When plaintiffs rested their case, Ms. Zhang, because she was unfairly held in default, was never asked if she had evidence of her own that rebutted or mitigated plaintiffs' evidence. All defendants should be allowed to present evidence in mitigation of a plaintiff's alleged damages. Tevis v. Tevis, 155 N.J. Super. 273 (App. Div. 1978), rev'd. on other grounds, 79 NJ 422 (1979).

CONCLUSION

The Judgment for damages plus interest and costs should be vacated and plaintiff's Complaint should be dismissed with prejudice for 8 separate and

independent legal reasons. (1) IIED is not permitted when defamation and abuse of process are pled and/or recovered upon; (2) IIED and defamation based on statements made in litigation are barred under our immunity doctrines; (3) IIED is barred absent reliable independent expert testimony; (4) *res judicata*; (5) collateral estoppel; (6) the entire controversy doctrine each bar the claims in this case; (7) IIED and defamation based on conclusory statements of opinion are not actionable and should be dismissed; and (8) the finding of "no compensable damages" bars a recovery under IIED based on rough **estimates** of hours lost by plaintiff. In the alternative, a new jury trial should be granted for the reasons set forth in Point VI.

Respectfully submitted,
PASHMAN STEIN WALDER HAYDEN

James A. Plaisted

James A. Plaisted

Superior Court of New Jersey
Appellate Division
Docket No. A-003510-21

ALEXANDER SCHACHTEL, LAW OFFICE OF
ALEXANDER SCHACHTEL, LLC,
MAGGI KHALIL MAKSOUD AND LAW OFFICE
OF MAGGI KHALIL MAKSOUD, LLC,

PLAINTIFFS-RESPONDENTS,

v.

PING ZHANG HUGHS A/K/A "JOANNA ZHANG"
A/K/A "PING ZHANG" A/K/A "A.J. PARK"
A/K/A PING LIANG" A/K/A "PING ZING LIANG,"

DEFENDANT-APPELLANT.

On appeal from a final order of the Superior Court of New Jersey, Law Division,
Hudson County, HUD-L-3590-18; Hon. Marybeth Rogers, J.S.C.

RESPONDENTS' BRIEF

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BRIEF FILED ON AUGUST 31. 2023

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Procedural History

Plaintiff sued defendant for defamation (Count One), intentional infliction of emotional distress (Count Three), and malicious use of legal process (Count Four), alleging in her Verified Complaint (JA1) that defendant had intentionally harassed and threatened plaintiff over several years, causing plaintiff to suffer severe emotional distress that harmed her professional life as an attorney and her personal life as a wife and mother (original co-plaintiff Schachtel settled with defendant and is no longer involved in this matter). JA1-12.

Defendant filed an Answer and Counterclaim, and a Third Party Complaint (which defendant did not pursue). JA54, 70. Plaintiff filed an Answer to defendant's Counterclaim. JA676.

Discovery proceeded, but defendant failed to answer plaintiff's requests for discovery. Plaintiff moved for entry of default on this ground; defendant opposed. JA220, 242. By March 29, 2019 Order, the trial court granted plaintiff's motion and struck defendant's Answer without prejudice for failure to provide discovery. JA248. Defendant did not cure her failure to provide discovery, so plaintiff moved to strike defendant's Answer with prejudice; defendant again opposed. The court entered a July 12, 2019 Order granting plaintiff's motion and striking defendant's Answer with prejudice. JA266.

Over the following months, defendant filed several motions to vacate the default judgment against her, which the trial court denied. 3T10:1-25. Defendant retained counsel, who, in October 2020, moved to vacate the default judgment. Plaintiff opposed, affirming that defendant still had not complied with the discovery requests propounded on her. By December 17, 2020 Order, the trial court denied defendant's motion to vacate the default judgment. JA926.

Several dates for a proof hearing were then scheduled and adjourned. During this year-plus period, defendant retained lawyers who appeared on her behalf in the action then moved to withdraw from representation (JA1460).

The proof hearing began on January 6, 2021. 2T. On February 17, 2021, after briefs and submissions from both parties, Law Division Judge Marybeth Rogers ruled that plaintiff's claim for abuse of process failed as a matter of law because there was no "special grievance" as required for the claim. 3T27. Plaintiff's established a prima face claim of defamation but damages were not established; only nominal damages were awardable, 3T18-19; JA1731 (a nominal $500 award was entered for plaintiff's defamation claim in the final judgment, JA1731).

With regard to intentional infliction of emotional distress, Judge Rogers ruled that plaintiff established a prima facie claim, with the amount of damages to be determined after additional proof hearings. JA1219; 3T11-23. Defendant

moved for reconsideration of Judge Rogers' ruling, but the court denied reconsideration by March 19, 2021 Order. JA1219.

Judge Rogers heard plaintiff's additional proofs on the intentional infliction of emotional distress claim on February 23, February 28, March 2, March 4, and March 7, 2022. The proof hearing included the testimony of plaintiff (4T, 6T), and of plaintiff's treating psychologist, Dr. Mark Seglin (5T).

On March 22, 2022, after the proof hearing concluded, Judge Rogers issued an oral decision on plaintiff's intentional infliction of emotional distress claim (7T3:1-25), then entered an Order of Disposition that same day providing for judgment in plaintiff's favor and against defendant in the amount of $522,700 plus $42,393 in legal fees. JA1124. Defendant moved for reconsideration of the March 22, 2022 Order of Disposition, but the court (Judge Turula) denied defendant's motion by Order entered April 29, 2022 (noting that Judge Rogers had retired). JA1675.

Plaintiff then submitted to the Law Division a proposed Order for Judgment. Defendant opposed. On June 7, 2022, Judge Turula entered an Order for Judgment in favor of plaintiffs Maksoud and Law Office of Maksoud and against defendant for $500 nominal damages for defamation (under Count One), and for $522,700 in compensatory damages for intentional infliction of emotional distress (under Count Three), plus attorney's fees and costs of

$42,392, and pre and post-judgment interest, resulting in a total final judgment of $664,947.75. JA1731.

Defendant filed two Notices of Appeal to this Court, the first (JA1747, 1749, with Case Information Statement, JA1754) providing that defendant was appealing the Law Division's March 22, 2022 Order (JA1124), and the second (JA1766, with Case Information Statement, JA1769) providing that defendant was appealing the Law Division's June 7, 2022 Order of Judgment (JA1731).

Counterstatement of Facts

Plaintiff affirmed the following central facts underlying her claims against defendant (set forth in plaintiff's Verified Complaint, JA1, and deemed admitted by defendant when default then default judgment were entered against her):

7. On September 4, 2015, Zhang met with Maksoud for the purposes of a consultation for legal services.

8. In the ensuing weeks, Zhang met with Maksoud for additional, extended consultations prior to signing a retainer agreement.

9. Maksoud advised Zhang that the time spent on extended consultations would be deducted from Zhang's retainer or billed directly.

10. On September 17, 2015, Zhang retained Maksoud Law by signing a retainer agreement and tendering an initial retainer in the amount of four thousand dollars ($4,000.00).

11. Maksoud commenced representation and began to perform work for Zhang.

12. On or about September 28, 2015 after several bizarre conversations with Zhang (who requested that Maksoud take inappropriate and unacceptable actions) but prior to filing anything with the Court, Maksoud advised Zhang in writing that she could no longer provide representation and terminated the attorney-client relationship.

13. Upon termination of her representation, Maksoud refunded Zhang [by certified mail] the entire portion of her unused retainer which amounted to approximately three thousand dollars ($3,000.00).

14. In the ensuing days, Zhang appeared several times, in person at Maksoud's office and demanded repayment of the remaining portion of her retainer.

15. Maksoud politely explained to Zhang that she had earned her fees and would not be providing a refund.

16. Undeterred, over the next several weeks, Zhang continued to return to Maksoud's office and made repeated demands for a full refund.

17. Maksoud continued to deny Zhang's requests.

18. On or around October 22, 2015, Zhang made another appearance at Maksoud's office, during which she began to scream loudly and to gesture wildly at Maksoud's staff.

19. Zhang refused to leave the premises unless she received a refund.

20. Ultimately, the police were contacted and Zhang was forcibly removed from the premises.

21. Following this incident, on or around October 27, 2015, Zhang published a lengthy, false and heavily disparaging review of Maksoud on Avvo.com.

22. Beginning in October of 2015, Zhang began to write letters to Maksoud, reiterating her demands for a full refund.

23. Maksoud ignored these letters, which recurred periodically over the ensuing twelve months.

24. On July 12, 2017, Zhang filed a pro se Special Civil Part Complaint against Maksoud demanding damages in the amount of $4,082.00, the full amount of her retainer, plus court costs.

25. The Complaint contained several unorthodox counts, including claims premised on "Dishonest and Deceitful Consultation Fee," "Broke Promise on Clerical Retainer Meeting," and "Made Up Charges by E-Mail Statement."

26. After limited written discovery, Zhang voluntarily dismissed her own Complaint by stipulation dated October 23, 2017.

27. Just eight (8) days later, on October 31, 2017, Zhang filed a new prose Special Civil Part Complaint against Maksoud demanding damages in the amount of $15,082.00.

28. Zhang's second Complaint contained novel, even more unorthodox counts, including, "Dishonest, Bully and Insult," "Gross Retaliation on a Fraudulent and Abusive Written Accounting," and "Egregious Actual Malice-Multi Intentional Wanton Personal Attack."

29. After denial of Maksoud's motion to dismiss, the case proceeded through discovery and culminated in a three-day jury trial ending March 19, 2018.

30. The jury found in favor of Maksoud on all counts, ruling that she had over-refunded Zhang and that she was entitled to charge approximately $1,400.00 in fees for legal services rather than the $1,000.00 in fees which she had deducted from Zhang's retainer.

31. Undeterred by the jury's findings, Zhang filed a motion for reconsideration, which was denied, and has subsequently filed several motions for a new trial, all of which have been denied to date.

32. On or around April 1, 2018, Zhang spitefully filed a fraudulent ethics complaint against Maksoud's trial attorney charging that the attorney had falsified

and doctored written documents, in spite of her admission in trial proceedings that the documents in question were genuine.[1]

33. On or around May 1, 2018, Zhang published another false and defamatory online review about Maksoud Law on the firm's Google Business Page.

34. The false review, published on or around May 1, 2018 under the pseudonym "A.J. Park" is provided in full below:

"A solo business - "JEKYLL AND HYDE!!" Advertise low fees on bait and switch. Pretend nice to take your money. Aggressive and Offensive on you and cheat you! Outrageously Dishonest on unearned legal fees for the days and hours she NEVER worked!!

When someone is showing tons of great reviews around same date, that's alert! More than one start is the warning sign. MKM is RUDE and DISHONEST. She steals your retainer for her personal business use. She never work on your case but FRAUDULENTLY "bill" you with "Summarized" "bill" on your waiting in her office lobby, on her missing appointment.... BACK "bill" you after she grabbed your money. She asks for multiple advertising "reviews" to cover up her bad reviews. MKM attempted to remove her 1 star AVVO review. She wasn't successful to remove the truth. Her issue is under ethic review." [JA1-12]

[1] The ethics charge was vetted for an extended period then dismissed.

As plaintiff affirmed, "Zhang's review was entirely and categorically false and defamatory." Zhang's intentional, targeted conduct caused Ms. Maksoud to expend countless hours dealing with Zhang's lawsuits, outrageous letters, and antics. "Because of the ordeals and trials, literal and figurative, that Maksoud has suffered at the hands of Zhang, she has been caused to endure substantial psychological anguish and mental strain and suffering. Furthermore, as a result of Zhang's defamatory publications, Maksoud and Maksoud Law's reputation has been severely and irreparably tainted and injured in the eyes of potential customers and fellow members of the bar, causing significant lost revenues and reputational injury," Ms. Maksoud affirmed in her Verified Complaint. JA1-12.

Ms. Maksoud testified in detail about these facts at the proof hearing before Judge Rogers, on January 6, 2021 (2T) and February 23, 2022 (4T). Ms. Maksoud started her own practice in 2006. 2T7:1-25. "I, you know, had a nice clientele. I earned a nice living. I became president of the Young Lawyer division of the Hudson County Bar Association rather quickly, and I even made my way up to the New Jersey State Bar Association Family Law Executive Committee. And that really is an honor to serve on." 2T7-8.

> I used to be very busy. I mean, in my office, it wasn't rare for me to be there way after dinner time, and I enjoyed dotting my I's, crossing my T's, doing a good job for my clients. Making sure they were happy, well served, that no one was upset about anything; that I met my deadlines, and I thought I was doing a very good job.

> I would go to social networking events for work and I really felt well liked, well spoken to, and, you know, it was difficult as a solo and as a woman. I am not going to tell you it wasn't. There were challenges. And also as a minority.
>
> But I overcame all that. I felt like if I, if I may say, a shining, you know, growing star.
>
> I was -- I was asked to be a super lawyer in that magazine on two different occasions, and even the international divorce lawyers, the matrimonial lawyers, they invited me to some fancy event in Jersey City. [2T8:1-25]

"Things were going really well but then I met Ping Zhang," plaintiff explained. "Things changed after that. They changed for me drastically after that." 2T8:15-25. Defendant was a former client of Ms. Maksoud's practice. 4T14-15. Ms. Maksoud was paid a $4,000 retainer by defendant. The attorney client relationship quickly deteriorated into a toxic relationship and ended. Ms. Maksoud offered to return $3,015 of the $4,000 Ms. Zhang had paid. 2T10-12. But Zhang filed lawsuits against plaintiff demanding increasing amounts of money from her. 4T16:1-25; 2T19-21.

Even after one lawsuit was completed (with the jury determining that attorney Maksoud had reimbursed Zhang more than she was even entitled to be reimbursed of the $4,000 retainer paid, 2T15), defendant continued threatening and harassing Ms. Maksoud -- calling her a "liar and a thief" (4T16-17), stating that Ms. Maksoud had given false testimony, and that she had been the subject of an ethics investigation (4T17). Ms. Maksoud offered to pay Zhang the entire $4,000

back, but Zhang would not accept even that to resolve the matter. 2T16-17, 21. Ms. Maksoud testified,

> Throughout this whole time in the end of October, October 27, 2015, she wrote a very defamatory, hurtful to my career, to my person, on AVVO, and that remains up to this very day." 2T25. "She put up a whole bunch of reviews on Google that she would update regularly with new docket numbers, and she even ended it by saying, I will keep updating this, which she kept her promise and did that. She -- in addition to all of the reviews, she started harassing -- she knew Mr. DeSocio was my attorney. She knew I paid him. She knew that he was formally retained. But she also knew, because I didn't hide it, my attorney was a very good friend of mine." 2T25-26. "And it kept getting bigger. She filed an ethics complaint against Mr. DeSocio. She said on Google that I was under ethics review, which was never even true. She always hinted that she filed. I never received an ethics complaint until this date. Perhaps it wasn't accepted, I don't know, but she did file one against Mr. DeSocio and it was dismissed. But it was a process. And it ruined my relationship with my friend and formerly retained attorney. And she did that. She filed against -- so she did the other Google review May 2018, and then after losing her motion for a new trial, in May 2018 she did the Google review… [2T25-26, 101-03, 105]

Ms. Maksoud affirmed that defendant "referred to me as a thief, fraudulent. I mean, every word you can think of I have had to see over and over in the course of five years. Deceitful, fraudulent. She has called me an abuser" – without any basis in truth. 2T32, 2T35. Ms. Maksoud explained at the proof hearing (4T) how defendant continued her war of harassment and threats against her thereafter by inundating plaintiff with "voluminous motions. I couldn't count them. I started to relive them when I tried, and it was too emotional for me, but a ton of motions,"

and demanding to see Ms. Maksoud's "private bank statements, and I had to read that and answer that."

> And even though there was no fact dispute whatsoever about how much she gave me or how much I received, and we were saying the same thing, she still wanted my bank statements and just kept targeting me in ways I still don't understand, in ways that completely harassed and disturbed me, my life, my family. And I could expand upon all the stuff she looked for, I could talk about what she called me online from, you know, thief to much more specific -- which are things that are provable lies.
>
> She said that I misappropriated her retainer and I used it for personal use. Misappropriated client's retainer for personal use. That's what the whole world got to read. Google, Yelp, Avvo, Google Maps, and many online sources have been copied from each other. She wrote things like that.
>
> She wrote that I stole. She wrote that I was a thief… [4T18-19]

"One of the claims that Ms. Zhang has asserted against you is that you stole personal, confidential information. I'm going to give you the opportunity to address that. And also, if you would, address it in terms of what an obligation of an attorney is to maintain a file under the RPC. Could you please address that for the Court?"

> She said that I took her financial information and I misused it and I gave it to others. She never provided the names of others that I gave it to. And when Judge Costello asked her you're making some very serious allegations, can you be specific, is there a credit card that was opened under your name that you're asserting that I, Maggi Khalil Maksoud, did on her behalf fraudulently. The word fraud, fraud with her financial information.
>
> And she said no. Judge Costello asked her did you go out and buy -- did she go out -- Maggi go out and buy a car in -- in your name

> or use your information. She said no. She said -- there was no allegation she provided, but yet she threw out all these allegations. No specifics, I should say.
>
> And she said that on a public forum that I lied and that I'm lying when I said I have to keep the files for seven years. And she said that I'm lying when I said that I have to keep the files to defend myself at this point. And she also said that I am using it for improper purpose on forums and in all of her documentation.
>
> The thing that really gets me is that it's all provable lies, but she's still filing in the face of lies, and her own lies. Her papers conflict each other. And here I am, being dragged through the mud by her own words.
>
> She said that in -- in 2018, for example, she said that I never provided her with an itemized invoice. Okay? Yet, she refers to it throughout her documents, and I can prove I sent it through certified mail in 2015 when I terminated services. But yet, she writes these things everywhere. And it conflicts with her own writings at times. And in my file I have my certified proof that I sent an itemized invoice, and this is -- like, there's just countless examples of how she lied and how she forces me to respond to all of this stuff that she has said endlessly, until this day. [4T21-22]

Ms. Maksoud affirmed to Judge Rogers at the proof hearing that defendant's statements were all lies – Ms. Maksoud had never been found or even accused of such misconduct. Yet this is what defendant told the consumers of legal services and the rest of the legal community attorney Maksoud had done. 4T15-19, 23.

Ms. Maksoud explained to Judge Rogers the damaging harm that defendant's intentional lies and constant harassment and threats had done. "Professionally, I can't work. My kids are not around, and I'm not working. I don't feel like the strong and happy and confident woman that I used to be. I can't

help people. I've been too busy reading everything she's filing. And with each filing it's broken me down just a little more. It's made me question who I am, what I did. You know, when -- when she gave me a $4,000 retainer and terminated me and she started bullying me, maybe I'm wrong. Maybe I should have given her $5,000 or $6,000 and just given into her demands because of how much she did to me."

> It's made me unable to help others. It's made me wonder what I could have done differently every day and what the next client might do to me because of what she was able to do to me for so long, endlessly, even until this day.
>
> All the letters against my attorneys. An attorney friend of mine that we no longer speak because of what she did to him. Professionally, he was a colleague and a friend, and he was very much in my life, often communicating with Mr. Christopher DeSocio, often enjoying lunches and meeting up at work events.
>
> We don't do any of that anymore. He was traumatized by her. And you know, I don't want to speak for him, but I'm certainly traumatized, and I can say we don't talk anymore, and it's because of this. [4T19-20]

"[W]hen I met Ms. Zhang I was extremely busy. I worked long hours gladly. I was earning a great living, and I had just been married for about a year, and life was very good. I had a full-time secretary, which is something I struggled for a long time to try to grow into, and my office life was finally happy. I had that secretary to assist. We had a great relationship and it was the piece of my office that I really needed, and I had -- my personal life was great. I had been married for a year and working, and things were good. Professionally, I was a part of a

number of associations that I outlined in my certifications, and I was really growing my career…." Ms. Maksoud affirmed that her career was "now essentially …. nonexistent. I physically can't practice law currently. I don't know if I'll ever go back to it. I know I browse jobs, but I'm not pursuing anything actively, and I don't think I'll be able to for some time." "I'm just not well" from the tremendous stress and anxiety she had suffered at defendant's hands, Ms. Maksoud affirmed. 4T25. Ms. Maksoud testified that she had suffered "great distress" and "felt humiliated" by defendant's nonstop lies and harassment:

> Yes, great distress, and I felt humiliated. I still feel the humiliation. I personally do not want to appear before any of them because they know what I've been through, regardless of their position on any of it, they've seen -- they've seen this, and I'm embarrassed. I'm humiliated.
>
> My confidence, I can't -- I can't act as a lawyer right now. Maybe with more therapy. Maybe with more time. Maybe if I ever get my justice. Maybe if she stops writing letters, and stops suing me, and I get my justice that I'm seeking before the Court. Maybe. [4T32]

Ms. Maksoud affirmed that defendant's intentional acts had impacted her health. 4T33-34. Ms. Maksoud affirmed her therapy sessions with Dr. Seglin to try to manage her stress, anxiety, and depression. 4T57. This was the result of the "targeted" harassment by defendant that caused plaintiff "severe distress and impacts me on a regular basis, if not even a daily basis." 4T60.

I believe I touched on it in my certification, but my family life, I don't think we talked about too much today, has really been impacted.

I recall several -- several dates where my family was doing things that I would have normally loved to participate in, like a neighbor who had a birthday party. It was, I believe a three-hour event, and I couldn't go.

Typically the mothers take the child to those events, and I asked my husband to do it instead of me because I just emotionally could not have normal conversations with other mothers, other people, and I missed that birthday party for our neighbor, my son's friend, who was his same age and the same school, and I missed so much more.

My husband has countless days where he took our child or children, depending on the year -- right, it depends on what year it was, and he would go without me to the zoo because the day before maybe I was served with something new, and I was just a mess from all the things she was saying about me, and how she was still going on.

And I just needed time alone to just – to just breathe from it and, quite frankly, to cry that this has become my life and it's continuing in this way.

I missed apple pickings with my family. And it impacted my pregnancies. I miscarried on more than one occasion, and I remember during those pregnancies -- and even the pregnancies that went to term, not feeling happy the way that a pregnant person should feel, excited about the future and her family. Instead I would just run to my computer, drop everything, and read what she is saying and what she is doing and just continue to focus on it because I had to.

I didn't want to default. I had to always make sure I had an attorney. I had to go to my husband and explain to him what we were paying and why. I had to go to my colleagues and ask for help, and I'm not -- I'm not proud of that. It's embarrassing.

And I owe them money that I want to pay them because they deserve to be paid for their help, and I just feel like my name was dragged through the mud, not just before the Court -- and I feel

humiliated and my reputation, but not only do I feel completely destroyed professionally but also personally.

I can't interact with people or even my own family, my own kids. I go into a daze, and my husband -- from my understanding from what he says to me, he's -- I'm trying really hard to be present because I'm not present, and he's -- he's clearly, from my observations, very upset about that.

And it's so many aspects of my life that she's impacted. I don't know how the Court could ever give me all that time that I lost with my family or even time where I wasn't present. All the dinners I had with girlfriends and colleagues where I wasn't there, and when I finally talked, it was about her. It was about this, and I turned everyone into a personal therapist. I turned everyone's moment with me, where we were supposed to catch up and have a good time and colleagues, into talking about what she filed.

And they would ask questions and show interest and care and concern because they were, but it became every free moment was about this to a point where one of my colleagues, Julie Lynwander, we stopped talking.

I became a different person, from sad to angry to edgy to just not being able to just be normal and go out for lunch, or dinner, or drinks, or just get together.

I just was like what is going on here. How is this still happening and what is -- what is – I just have to even understand what she's saying, and I feel so impacted I don't know if I could articulate it enough. I don't know if I can share with the Court every single thing I missed, whether I was present or not present, and how I wasn't present at times when I was physically there.

I stopped going to bar functions. I stopped everything. I was part of the Family Law Executive Committee, which is a very prestigious committee and I -- I'm just not myself. There's so much loss upon loss. [4T63-65]

In entering the Order of Disposition (memorialized in the final June 7, 2022 Order of Judgment), Judge Rogers reviewed New Jersey law governing a claim for

intentional infliction of emotional distress and ruled that plaintiff's proofs established a prima facie claim (3T19-24). Following the additional testimony heard in February and March 2022, Judge Rogers placed her final decision on the record at the March 22, 2022 hearing (7T): "This is the Court's opinion as to the proof hearing in this matter clarifying the issue of damages on the count of intentional infliction of emotional distress." "This hearing was a follow-up to the January 2021 hearing, with the Court's decision on the record February 17th, 2021" during which the court found prima facie proof of the elements of plaintiff's claim for intentional infliction of emotional distress. 7T3:10-4:10.

In her March 22 decision (7T), Judge Rogers noted she was determining "whether IIED damages have been proven and, if so, what is the appropriate measure of damages" (7T4:1-25). Judge Rogers reviewed the proofs presented to her during the proof hearings and ruled that plaintiff had established compensatory damages for her claim of intentional infliction of emotional distress. "The Court finds that the damages have been proven by well more than a preponderance of the evidence." 7T4-5. Citing to the proofs presented (which included plaintiff's Verified Complaint and attachments thereto, and the testimony of Ms. Maksoud and her therapist, Dr. Seglin), Judge Rogers found "that Ms. Zhang's conduct was directed at Ms. Maksoud, that her conduct was

purposeful, intentional, and outrageous." "Ms. Maksoud testified credibly; her testimony many times causing her to break down in tears." 7T5:1-25.

> This matter began over a $4,000 retainer. It was Ms. Zhang who started two lawsuits against Ms. Maksoud.
>
> It was Ms. Zhang who received a jury verdict in 2018 finding that Ms. Maksoud had over-reimbursed Ms. Zhang for that retainer.
>
> The Court agreed that what followed did go to the chipping away by the -- strike that -- the four degrees of what followed did go to the chipping away, the crippling of Ms. Maksoud; the person, the lawyer, and the woman.
>
> The Court agrees that Ms. Zhang does not move on and this Court does find that Ms. Zhang dragged Ms. Maksoud right along with her at great personal harm to Ms. Maksoud. [7T6:1-25]

"It is obvious to the Court that Ms. Zhang has no concept as to what abuse of the mitigation process can cost an individual."

> Ms. Zhang made additional internet postings after the jury verdict.
>
> This Court in January of 2021 enjoined Ms. Zhang and found that the postings were hers, and she was ordered to take them down.
>
> The postings were as to Mr. Schachtel and Ms. Maksoud.
>
> There was an identical pattern regarding Mr. Schachtel; a retainer for legal advice, dissatisfaction with the attorney, and a request for a return in this case -- in this case, a $200 retainer.
>
> This led to the Chancery action with Mr. Schachtel and Ms. Maksoud. Ms. Zhang did not stop.
>
> The answers and counterclaims calling Mr. Schachtel and Ms. Maksoud co-conspirators, that there was fraudulent inducement, harassment, psychological abuse, that Ms. Maksoud had falsely testified in the jury trial.

> There were multiple requests for a new trial, all denied, at that point which she took her dissatisfaction to the internet. [7T7:1-25]

"The Court agrees that Ms. Zhang started, continued, and perpetuated this litigation. Ms. Maksoud testified as to the voluminous motions and complaints, that she felt targeted and harassed, and that this all disturbed her. She testified that she is unable to work, that Ms. Zhang has broken her down, that she can no longer help people. She testified as to the letters against her attorneys, about the bullying, how Ms. Zhang's attacks affected her relationships with each attorney who represented her. Each time she had to get another attorney."

> She had a busy office at the time that she met Ms. Zhang. She was earning a great living. She testified that she had been married for a year, had a full time secretary, her personal life was great. But now she cannot go back to her practice.
>
> Ms. Zhang actually became Ms. Maksoud's (inaudible). It was initially depending on her husband. And then she was searching for an attorney, busy with her counsel. She missed dinners. Spent hours upon hours reviewing everything that Ms. Zhang was filing. This caused her stress. It was taxing and depressing. She started therapy. Ms. Maksoud testified that the main reason she reached out to Dr. Seglin, her psychologist, again, was because of what was happening with Ms. Zhang, as she was mentally breaking down and physically was unable to work.
>
> Dr. Seglin came to Ms. Maksoud's office to see her.
>
> She said she felt targeted and harassed, and that the entire pattern had caused her severe distress on a regular basis, if not daily.
>
> She said that her secretary told her that she needed professional help.

> Ms. Maksoud was afraid that Ms. Zhang was following her even when she took a walk with her husband. This was taxing and happened regularly. [7T8-9]

Judge Rogers noted that Ms. Maksoud affirmed "that she is a different person from when she met Ms. Zhang."

> When asked about how it felt to have to keep going before different Judges on her own personal matters, she testified that she kept losing her confidence. She didn't feel good about seeking justice. She felt humiliated and distressed and they would know -- and that they would know what she was going through.
>
> She no longer takes new matters.
>
> She testified that she cannot sleep. That she wakes up thinking about how she could do things differently. That she has nightmares about what people are thinking about her on line, being called a thief. She said that it makes her nauseous and sick to her stomach. She feels stressed all the time thinking about what Ms. Zhang is going to do next.
>
> She is often depressed, she cannot get this out of her head.
>
> Every time she turned around there would be another letter talking about misrepresentation and fraud.
>
> She testified that even the day of this hearing she was in the bathroom all morning.
>
> She said that she felt helpless, that she still feels like a helpless victim. She continued to worry, even once hiring Mr. Keefe.
>
> She was worried that he would resign and that she would once again be left with no attorney.
>
> When will it end, she wants to know. A pattern of attacking her and her lawyers was distressing. Her family life was impacted. She couldn't have normal conversations. She missed family parties. There were countless days that she missed outings with her husband and her children.

> She was reading everything posted and pled or written by Ms. Zhang. She asked her colleagues for help.
>
> She owes her colleagues money. She feels humiliated. She is personally, in her own words, not present. [7T8-10]

"When asked on direct how hard it was to admit the things that Ms. Zhang had done to her and how hard it was to admit all the pain she had experienced in front of Ms. Zhang, she said it was difficult getting support. It was humiliating and emotional and that she felt victimized each and every day." 7T9-10.

Judge Rogers noted the testimony of Dr. Seglin, Ms. Maksoud's psychologist. Dr. Seglin had seen Ms. Maksoud for individual counseling for stress and anxiety about the Zhang matter. 7T11:1-25. "He said he would meet with her periodically until recently. Ms. Maksoud would call on him when needed when she was feeling overwhelmed."

> He said that it was like treating someone -- and this was very important to the Court -- he said he was treating someone who has PTSD while the attack is going on.
>
> He said it was difficult to be helpful. He said that as time went on, Ms. Maksoud was increasingly demoralized and increasingly withdrawn from her professional role. It was disturbing for him to see.
>
> His own frustration wasn't finding any path that she could get on for a resolution and a protection from these distressing statements being made about her.
>
> He said he was aware that the original dispute was over a retainer that had been returned and then the litigation continued over the course of many years.

> He was asked on direct whether in his experience litigation was stressful in itself. He agreed.
>
> He was asked if this condition would be classified as even more stressful than one would classify as normal litigation stress. He said yes.
>
> He was asked if the use of the word liar and thief would be particularly upsetting to a woman sole practitioner and that in the law, character and reputation are an important part of the professional experience. He agreed. [7T13-14]

Dr. Seglin diagnosed Ms. Maksoud with "anxiety and hopelessness in the face of it that was transmitting into major depression. It is a clinical diagnosis; dysphoria, passivity, ruminating thoughts, and just helplessness. Loss of interest, loss of engagement in one's interest, social withdrawal. All of those were apparent with Ms. Maksoud, said Dr. Seglin." 7T15.

> Dr. Seglin was asked if he could make a causal connection between the increase in anxiety and the major depression with her interactions with Ms. Zhang. Yes, he says.
>
> Ms. Maksoud became obsessed with Ms. Zhang and her comments. It was a preoccupation eclipsing every area of her life.
>
> The doctor was asked if in his professional experience whether this was an extreme case for him. He said it was.
>
> The doctor was asked what made this case different from some of the others that he had handled.
>
> He once again said that it was like treating someone who had PTSD and had experienced a physical assault or a terrible natural environmental catastrophe. [7T15:1-25]

"He was asked if he would describe Ms. Maksoud as having suffered severe distress. He said yes. He was asked what his assessment of Ms. Maksoud was today regarding her severe distress, major depression…"

> He said that she has retreated from the law, she is no longer participating in the Hudson County legal community, and that he was happy that she finds some support in the family, but it makes him sad to think that she is no longer a participant in the legal community.
>
> He said that attorneys like Ms. Maksoud are hard to find.
>
> Dr. Seglin was asked if Ms. Maksoud spoke with him as to how this affected her family relationship, and he was able -- and whether he was able to draw any conclusions as to the (inaudible).
>
> He said that her mood changes were being taken home with her, that there was no question that she felt that she had burdened her husband, and that becoming a parent seemed to throw her out again somewhat, but that she was still blue and listless and she felt that she had let her children down.
>
> It burdened her marriage. This litigation caused her -- clouded her parenting and disabled her as an attorney. [7T16-18]

"The Court found his testimony to be extremely helpful, credible, without hesitation, even when confronted on cross-examination by Ms. Zhang about an issue meant to discredit him, he remained calm and direct, answering truthfully with an explanation that was accepted by the Court. He was consistent in his responses, he had a clear sense of honesty and candor about him." 7T19:1-15.

In assessing further the damages caused by defendant's intentional infliction of emotional distress, Judge Rogers found, "Once a sole practitioner, the Court finds that Ms. Maksoud's confidence was slowly chipped away by Ms.

Zhang as evidenced by Dr. Seglin's testimony and Ms. Maksoud's own testimony. Not only was there nothing left of Ms. Maksoud's practice, she was, and the Court finds her to be, seriously, emotionally affected. This is obvious to the Court."

> Ms. Zhang's attacks were purposeful and unrelenting towards Ms. Maksoud, and every one of --and every one of Ms. Maksoud's lawyers.
>
> Ms. Maksoud testified that Ms. Zhang referring to her as a thief, that she stole retainers, that the retainer was a sham, that she stole Ms. Zhang's money and the documents with all this confidential personal information, that Ms. Maksoud was a liar and sinister and evil and had an ethics violation against her, that she lied to the jury, that she was fraudulent, a fabricator, a (inaudible), and outrageously dishonest, all of which were denied by Ms. Maksoud and never proven.
>
> These allegations were all in postings and pleadings by Ms. Zhang. Ms. Zhang never stopped.
>
> Ms. Maksoud testified clearly about the injury to her psyche, her physical person, her practice, and her reputation.
>
> There have been seven Judges in Hudson County who have been involved in at least one aspect of this matter which began in 2015 to the present day over a $4,000 retainer.
>
> Words do mean something, and they do have consequences; consequences that are palpable, actual, and in this case, debilitating.
>
> The Court finds that the harm here was real, that Ms. Zhang's conduct was real, and that it was reckless and intentional and she caused harm to Maggi Maksoud.
>
> The Court finds that Ms. Zhang's actions are intentional and deliberate without any regard for any emotional distress that would follow, and the Court finds that that -- the Court finds that great distress did follow.

> The Court's -- the Court finds that $522,700 would be fair, reasonable, and adequate compensation for the harm that Ms. Maksoud has experienced at the hands of Ms. Zhang.
>
> The Court's judgment shall also include $42,392 in legal fees and that Mr. Keefe be permitted to submit a certification of legal services to the Court for his fee, for his time since the March 1st, 2021 certification of Ms. Maksoud addressing her damages which included an itemized breakdown of the time and money expended by her.
>
> This is the decision of the Court. [7T20-22]

ARGUMENT

THE LAW DIVISION DID NOT ERR IN ENTERING THE MARCH 22, 2022 OR JUNE 7, 2022 ORDERS IDENTIFIED IN DEFENDANT'S NOTICES OF APPEAL (JA1124, JA1731).

Defendant has appealed from the March 22 and June 7 orders the Law Division entered against her. Those are the orders she has designated in her Notices of Appeal and Case Information Statements.

Defendant has not appealed any other Law Division orders. She has not identified any other orders in her Notices of Appeal or Case Information Statements. Thus, the propriety of any other Law Division orders – including the orders entering default and default judgment against defendant, and orders denying defendant's various motions for relief from the default judgment, is not before the Court in this appeal, 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 459 (App. Div. 2004).

The issue before this Court is only the propriety of the March 22 and June 7 Orders from which defendant has appealed. Defendant has not carried her burden

to show reversible error by the Law Division in the way the court proceeded or the court's substantive rulings entering judgment for plaintiff on her claims against defendant for defamation and intentional infliction of emotional distress.

Procedurally, Judge Rogers followed New Jersey law in holding the multi-day proof hearing on plaintiff's claims, following the entry of default judgment against defendant. New Jersey law provides that where default judgment has been entered in a plaintiff's favor but the plaintiff seeks unliquidated damages, the court should hold a proof hearing. See Rule 4:43-2(b) ("[i]f to enable the court to enter judgment ... it is necessary to ... determine damages ... the court ... on notice to the defaulting defendant ... may conduct such proof hearing ... as it deems appropriate"); Chakravarti v. Pegasus Consulting Grp., Inc., 393 N.J. Super. 203, 210–11 (App. Div. 2007) ("It is axiomatic that where, following the entry of a default, a plaintiff seeks unliquidated damages, judgment should not ordinarily be entered without a proof hearing.") The "question of what proofs are necessary" at a proof hearing "is inherently within the judge's discretion." Chakravarti, supra, 393 N.J. Super. 210. The defendant maintains the right to challenge the plaintiff's proofs through cross-examination and argument. The record shows that Judge Rogers properly exercised her discretion – allowing defendant (who had counsel for part of the proof hearing, 2T, and was pro se during other parts, 4T) to cross-examine plaintiff's proofs until Judge Rogers, appropriately, deemed defendant's

cross-examination to be harassing and not helpful to the court's determination for the proof hearing. A trial judge has discretion to require proof of liability as well as damages at a proof hearing, and to decide to what extent proofs are necessary for each. Chakravarti, supra, 393 N.J. Super. 210. Judge Rogers did not abuse her discretion in that regard.

Substantively, Judge Rogers again followed New Jersey law, which provides that a plaintiff is required only to establish a prima facie case at a proof hearing. Kolczycki v. City of E. Orange, 317 N.J. Super. 505, 514 (App. Div. 1999); Heimbach v. Mueller, 229 N.J. Super. 17, 20 (App. Div. 1988); see Pressler & Verniero, Current N.J. Court Rules, cmt. 2.2.2 on R. 4:43–2 (2022) ("unless there is intervening consideration of public policy or other requirement of fundamental justice, the judge should ordinarily apply to plaintiff's proofs the prima facie case standard of [Rule] 4:37–2(b) and [Rule] 4:40–1, thus not weighing evidence or finding facts but only determining bare sufficiency"). A court should not decline to enter judgment against a defaulting defendant unless it is clear that "some necessary element of plaintiff's prima facie case was missing or ... plaintiff's claim was barred by some rule of law whose applicability was evident either from the pleadings or from the proofs presented." Heimbach, supra, 229 N.J. Super. 24. Extensive proof of liability of the defendant is not required unless the evidence

"even when viewed indulgently, demonstrates that the defendant is not liable," Morales v. Santiago, 217 N.J. Super. 496, 505 (App. Div. 1987).

Judge Rogers evaluated plaintiff's proofs closely – evidenced by the multiple days of hearings the court held and the court's careful application of New Jersey law to the claims alleged. As summarized in the Procedural History above, of the three causes of action the plaintiff alleged, Judge Rogers rejected one cause of action (malicious use of process) entirely, ruling the claim failed as a matter of law; ruled one claim was prima facie established on its substantive elements (defamation) but that compensatory damages flowing from the wrong were not established, entitling the plaintiff only to "nominal damages" (ultimately determined to be $500); and sustained for compensatory damages only the intentional infliction of emotional distress claim plaintiff asserted.

Judge Rogers' ruling that plaintiff established a prima facie case of intentional infliction of emotional distress claim is in accordance with New Jersey law, which provides that a plaintiff must show that (1) defendant acted intentionally or recklessly (in deliberate disregard of a high degree of probability that emotional distress will follow); (2) defendant's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community;" (3) defendant's actions proximately caused him emotional distress;

and (4) the emotional distress was "so severe that no reasonable [person] could be expected to endure it." Segal v. Lynch, 413 N.J. Super. 171, 191 (App. Div. 2010); Buckley v. Trenton Saving Fund Soc., 111 N.J. 355, 366 (1988); see Model Charge 3.30F. Judge Rogers reviewed plaintiff's proofs and ruled that the proofs satisfied those elements. 3T19. Defendant acted intentionally, Judge Rogers noted, having previously outlined the intentional actions the defendant took in harassing and intimidating Ms. Maksoud with her internet postings and other harassing conduct. Defendant's conduct was outrageous, Judge Rogers found, citing the years of litigation pressed forward by the defendant and, most notably, the testimony of Ms. Maksoud herself. Judge Rogers agreed that defendant's actions proximately caused plaintiff emotional distress, citing to plaintiff's testimony about the tremendous impact defendant's years-long intentional harassment had on her professional and personal life as a young mother and wife.

With regard to whether the emotional distress was "so severe that no reasonable [person] could be expected to endure it," New Jersey law provides that "severe emotional distress is a severe and disabling emotional or mental condition which may be generally recognized and diagnosed by trained professionals." Turner v. Wong, 363 N.J. Super. 186, 200 (App. Div. 2003) (citing Taylor v. Metzger, 152 N.J. 490, 515 (1998)). The "emotional distress must be sufficiently substantial to result in either physical illness or serious psychological sequelae." Id.

(citing Aly v. Garcia, 333 N.J. Super. 195, 204 (App. Div. 2000)). "A[ ] severe and disabling emotional or mental condition which is capable of being generally recognized and diagnosed by professionals trained to do so qualifies as severe emotional distress." Hill v. New Jersey Dep't of Corr. Com'r Fauver, 342 N.J. Super. 273, 297 (App. Div. 2001) (citing Taylor, supra, 152 N.J. 515).

The detailed testimony of plaintiff about how defendant's continuous harassment, lies, and threats impacted her professional and personal life, further supported by treating psychologist Seglin's testimony, satisfied the standard for a prima facie case of the "severity" element of the claim, compare Hill, supra, 342 N.J. Super. 297 (post-traumatic stress disorder may qualify as severe emotional distress) with testimony of Dr. Seglin (affirming to Judge Rogers that plaintiff was suffering from essentially post-traumatic stress disorder). Though "aggravation, embarrassment, an unspecific number of headaches, and the loss of sleep" is insufficient distress as a matter of law to be "severe" (Buckley, supra, 111 N.J. 366), a plaintiff who received treatment for depression, anxiety, and related issues, suffered from mood changes, insomnia, nightmares, and the like, was diagnosed with PSTD, establishes severe emotional distress, Taylor, supra, 152 N.J. 514. Lankford v. City of Clifton Police Dep't, 546 F. Supp. 3d 296, 325–26 (D.N.J. 2021). Judge Rogers correctly ruled that plaintiff's proofs qualified as severe and were sufficient to establish a prima facie case of this element of the claim.

Regarding whether defendant Zhang's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community," this Court has held that similar acts qualify, see Hill, supra, 342 N.J. Super. 98 ("Here, when viewed in the light most favorable to plaintiffs, we conclude that a rational factfinder could determine that a four-person conspiracy to file false charges which were intended to, and could have cost plaintiff his livelihood and severely impacted his career, is sufficiently outrageous behavior so as to warrant submission of the issue to the jury for its determination"); cf. Flizack v. Good News Home For Women, Inc., 346 N.J. Super. 150, 156 (App. Div. 2001) ("Following an acrimonious staff meeting, Winfrey approached plaintiff, forcing her to back into a table. Touching plaintiff with the front of her body, Winfrey exclaimed, "Are you still pissed at me ... [b]ecause if you are I am going to have to stare in them big blue eyes and pat those white titties." Simultaneously, Winfrey stroked plaintiff's breast in a sexual manner. When plaintiff attempted to flee, Winfrey embraced her, again in a sexual manner. Plaintiff was able to escape to the parking lot. Winfrey pursued her, placing her arm around plaintiff's neck and shoulder and "cuddl[ing]" her while attempting to usher her back into the building"; found sufficiently outrageous to go to jury); Burbridge v. Paschal, 239 N.J. Super. 139, 146 (App. Div. 1990) (conduct could be considered sufficient

outrageous where defendant used the leasehold property "consistently and systematically [to] harass, impede and prevent plaintiffs from all reasonable use and enjoyment of [their] properties." Plaintiffs alleged that defendants knew that their actions would "inflict severe emotional shock and trauma upon plaintiffs" and that as a result "of the extreme and outrageous actions of defendant ... plaintiffs have suffered severe and debilitating emotional shock and trauma"); Leang v. Jersey City Bd. of Educ., 198 N.J. 557, 568, 587–88 (2009) (a teacher's false report that her co-worker, a teacher, who was a practicing non-violent Buddhist, had threatened to kill her students, and arranged to have the plaintiff removed publicly from the school, allegedly in retaliation for rebuking the teacher's sexual advances); Doe v. Burke, A-4920-18, 2021 WL 3625397, at *11 (N.J. Super. Ct. App. Div. Aug. 17, 2021) (plaintiff has alleged that the prosecutor acted intentionally and willfully in making the disclosures for political reasons, and that this was "outrageous and extreme" conduct, which caused her severe emotional distress. On the face of the pleadings, these are sufficient to withstand a motion to dismiss under Rule 4:6-2(e)).

Attorney Maksoud's testimony at the proof hearing, supported by her treating psychologist, far exceeded what courts have deemed insufficient to show "outrageous" conduct, see, e.g., Larry v. State, A-1286-10T2, 2011 WL 6782438, at *2 (N.J. Super. Ct. App. Div. Dec. 28, 2011) (escorted from your place of

employment by a State trooper is embarrassing. But it is not the equivalent of atrocious conduct—plaintiff was neither handcuffed nor restrained in any way. It simply guaranteed that the removal would be accomplished "in an orderly manner." The fact that she was escorted from the building was simply not "beyond all possible bounds of decency."); Cole v. Laughrey Funeral Home, 376 N.J. Super. 135, 147–48 (App. Div. 2005) (decedent's children from an earlier marriage were not informed about the death of their parent and thus excluded from the viewing at the funeral home after the decedent was murdered); Harris v. Middlesex Cnty. Coll., 353 N.J. Super. 31, 36, 46–47 (App. Div. 2002) (a supervisor expressed doubt that the plaintiff had been diagnosed with breast cancer, and then came near her "on the verge of physically bumping into [the plaintiff's] breast area as if to see" if she truly had a mastectomy).

Regarding the amount of compensatory damages to be awarded to plaintiff on her intentional infliction claim, Judge Rogers again followed New Jersey law in holding several days of proof hearings to ascertain "whether IIED damages have been proven and, if so, what is the appropriate measure of damages" (7T4:1-25). New Jersey law provides that after a default, the plaintiff is generally entitled to "all of the damages" that can be "prove[n] by competent, relevant evidence." Heimbach, supra. As summarized in the Statement of Facts, plaintiff provided competent evidence from herself and her treating psychologist as to the damage

defendant's acts caused to plaintiff's professional and personal life. Plaintiff was a young vibrant attorney with a thriving practice and fulfilling marriage before defendant went on her campaign. It was up to Judge Rogers, who evaluated the testimony presented to her during the multi-day proof hearing, to determine reasonable compensation for the damages that defendant caused by her intentional infliction of emotional distress committed over the several years of time. "Determining an award that properly compensates" the victim of a tort, particularly an intentional tort like intentional infliction of emotional distress, "not susceptible to scientific precision," see Cuevas v. Wentworth Grp., 226 N.J. 480, 499–500 (2016), holding modified on other grounds by Orientale v. Jennings, 239 N.J. 569 (2019) (jury or factfinding judge "charged with the responsibility of deciding the merits of a civil claim and the quantum of damages to be awarded a plaintiff"). As our Supreme Court has stressed with regard to a jury's determination, applying equally to a factfinding judge following a proof hearing,

> There is no neat formula for translating into monetary compensation an accident victim's pain and suffering or the mental anguish of a victim of invidious racial discrimination in the workplace. *See id. at 280, 927 A.2d 1269.* In a case of workplace discrimination in violation of the LAD, jurors are asked to exercise a high degree of discernment, through their collective judgment, to determine the proper measure of damages for emotional distress, which includes "embarrassment, humiliation, indignity, and other mental anguish." *Model Jury Charges (Civil) § 2.36, "Past and Future Emotional Distress in an Employment Law Case" (2014).* [Cuevas, supra, 226 N.J. 500]

As summarized in the Statement of Facts above, Judge Rogers heard several days of testimony from plaintiff and her treating psychologist, then placed her decision on the record. 6T1-22. Particularly in light of defendant's defaulted status, she has not carried her heavy burden of overcoming the presumption of correctness that attaches to a damages award – she has not demonstrated, "clearly and convincingly," that Judge Rogers' compensatory award is "a miscarriage of justice" warranting relief on appeal. Baxter v. Fairmont Food Co., 74 N.J. 588, 598 (1977).

OPPOSITION TO APPELLANT'S ARGUMENT POINTS

Appellant's Point I

Defendant says that plaintiff "may not pursue a claim for intentional infliction of emotional distress to circumvent the required elements of or defenses applicable to another cause of action that directly governs a particular form of conduct," citing Griffin v. Tops Appliance City, Inc., 337 N.J. Super. 15 (App. Div. 2001) and Decker v. Princeton Packet, Inc., 116 N.J. 418 (1989). These cases do not show that Ms. Maksoud cannot recover for intentional infliction of emotional distress against defendant. Ms. Maksoud prevailed on her defamation claim first of all; only her damages were deemed not to have been established (entitling her to only nominal damages). The Law Division did not rule that defendant had not defamed plaintiff or had not taken the harassing and threatening

actions she was charged with taking. Ms. Maksoud's claim of intentional infliction of emotional distress was premised on multiple intentional or reckless acts that Zhang carried out repeatedly and that cumulatively inflicted the severe distress.

With regard to appellant's contention that "reliable" medical expert testimony was required to sustain the intentional infliction judgment, it was up to Judge Rogers to determine the "reliability" of the testimony of plaintiff's treating psychologist, Dr. Seglin, who Judge Rogers found credible. Beyond that, the "question of what proofs are necessary" at a proof hearing "is inherently within the judge's discretion." Chakravarti, supra, 393 N.J. Super. 210.

Appellant contends, "Judge Rogers also made demonstrably erroneous factual findings when ruling that Ms. Zhang was liable for IIED." App. Brief at 19. It was not an error for Judge Rogers to review the history of the parties' relationship, which included the litigations between them, then rely upon the testimony of Ms. Maksoud in determining which claims had been established. Judge Rogers cited more than sufficient evidence to justify her findings. Appellant's argument that the distress suffered by Ms. Maksoud was not "severe" enough is addressed above. In short, the proofs presented to the Law Division were sufficient to establish a prima facie case of this element of the intentional infliction claim. Appellant's dissection of various parts of Ms. Maksoud's testimony, or the way her lawyer may have argued aspects of plaintiff's claim,

disregards that this was a proof hearing – not a presentation of proofs at a contested trial. Plaintiff only had to minimally satisfy the required legal elements of the claim. Judge Rogers did not err in ruling that plaintiff did so.

Appellant's argument about the amount of damages awarded is also addressed above and fails on similar ground. Compensatory damages for defamation require a showing of specific economic or pecuniary loss caused by the defamatory words, Nuwave Inv. Corp. v. Hyman Beck & Co., 221 N.J. 495, 499 (2015). Judge Rogers' ruling that plaintiff's proofs did not satisfy that element for defamation did not mean that plaintiff's proofs could not establish the "severe" emotional distress element of the IIED claim. Judge Rogers heard days of testimony before deciding on an appropriate measure of damages (*see* discussion above, noting determination by factfinder on amount of damages not susceptible to appellate attack absent clear and convincing proof of miscarriage of justice).

Appellant argues that the IIED and defamation claims were based on court filings. They were not. The claims were based on defendant's harassment of Ms. Maksoud via her defamatory online postings and, in part, her repeated litigation, all of which, Judge Rogers found, was intended to carry on defendant's crusade against plaintiff over a minor matter. Plaintiff's proofs provided ample support for Judge Rogers' conclusion that defendant's continual court filings and defamatory online postings about plaintiff being a thief and liar, established a prima facie case

of intentional infliction of emotional distress that caused plaintiff great professional and personal harm. Judicial immunity for a litigant's good faith filings in a lawsuit does not extend to this defendant's abuse of her former lawyer under the guise of pursuing legal relief against her, or to claimed "reviews" published online that defamed the plaintiff as a thief and liar.

Appellant's Point II

Appellant argues that plaintiff's claims are barred by res judicata and related doctrines. These rulings are not contained within the March 22, 2022 or June 7, 2022 Orders from which defendant has appealed and thus are not before this Court.

Moreover, res judicata, collateral estoppel, and the like, are affirmative defenses a defendant must prove. Zhang defaulted and default judgment was entered against her. She did not prove any affirmative defenses.

Appellant's Point III

Appellant says that opinions are protected from liability. True, but defendant's liability for defamation and intentional infliction of emotional distress is premised not on her opinions about plaintiff (whether Ms. Maksoud is a good or bad lawyer, etc.), but on defendant's publication of false facts – that Ms. Maksoud had falsified documents; that Ms. Maksoud stole and was a thief; "that I misappropriated her retainer and I used it for personal use," and "that I took her financial information and I misused it and I gave it to others." Judge Rogers

premised the defamation and intentional infliction of emotional distress judgments on these falsehoods that defendant made during her crusade against her former attorney.

Appellant goes to great lengths in her Brief to defend a client's right to post opinions and reviews about lawyers. This case is not about such rights. Nothing in the Law Division's ruling provides that a client cannot post reviews or give opinions about a lawyer. This case is about a defendant who decided to wage war against her former attorney (for whatever reason was in Zhang's head) by barraging the former lawyer with continuous lawsuits and court filings, and by defaming her online with false accusations of theft and lies – harassing Ms. Maksoud to the point where she had to seek psychological treatment for the great emotional harm that defendant's lies and harassment had caused. Judge Rogers found all of this after the lengthy and detailed testimony presented at the proof hearings. Judge Rogers found that defendant conducted a targeted and intentional harassment of Ms. Maksoud, over years, that harmed Ms. Maksoud professionally and personally (and targeted any other lawyer who tried to help Ms. Maksoud along the way). Judge Rogers' ruling that defendant defamed plaintiff, and that defendant intentionally inflicted emotional distress upon her, is in accordance with the procedural and substantive New Jersey law cited above. Defendant has not

shown that Judge Rogers' rulings are so erroneous that this Court should vacate the order and judgment on appeal.

Appellant's Point IV

Appellant argues, "THE COURT BELOW ERRONEOUSLY RELIED ON MAKSOUD'S EMOTIONAL REACTIONS TO THE ALLEGED 'STRESS OF LITIGATION' CAUSED BY MAKSOUD'S PERSONAL CHOICE TO PURSUE HER COMPLAINT HEREIN TO GAIN MONETARY DAMAGES." "Under New Jersey law, these alleged emotional damages are non-compensable."[2]

Judge Rogers did not award compensatory damages to plaintiff based on the "stress of litigation" that she "chose to pursue," or only because of the "onslaught of filings." Judge Rogers awarded compensatory damages based on the mental anguish Ms. Maksoud suffered from defendant's intentional infliction of anguish, humiliation, torment, anxiety, and depression. As plaintiff said, "Professionally, I can't work. My kids are not around, and I'm not working. I don't feel like the strong and happy and confident woman that I used to be. I can't help people. I've been too busy reading everything she's filing. And with each filing it's broken me down just a little more. It's made me question who I am, what I did."

[2] Appellant cites, Picogna v. Bd. of Educ. of Twp. of Cherry Hill, 143 N.J. 391, 399 (1996), but that was a breach of contract case. The Supreme Court held that the plaintiff there could not recover "litigation-induced distress as a separate component of damages" for breach of contract, while noting, "New Jersey permits recovery for emotional distress damages in some cases" -- as this case here.

> It's made me unable to help others. It's made me wonder what I could have done differently every day and what the next client might do to me because of what she was able to do to me for so long, endlessly, even until this day.
>
> All the letters against my attorneys. An attorney friend of mine that we no longer speak because of what she did to him. Professionally, he was a colleague and a friend, and he was very much in my life, often communicating with Mr. Christopher DeSocio, often enjoying lunches and meeting up at work events.
>
> We don't do any of that anymore. He was traumatized by her. And you know, I don't want to speak for him, but I'm certainly traumatized, and I can say we don't talk anymore, and it's because of this. [4T19-20]

"Ms. Zhang's conduct was directed at Ms. Maksoud, that her conduct was purposeful, intentional, and outrageous." "The Court agreed that what followed did go to the chipping away by the -- strike that -- the four degrees of what followed did go to the chipping away, the crippling of Ms. Maksoud; the person, the lawyer, and the woman. The Court agrees that Ms. Zhang does not move on and this Court does find that Ms. Zhang dragged Ms. Maksoud right along with her at great personal harm to Ms. Maksoud." 7T6:1-25.

Appellant argues (at page 44), "[t]he finding, that there was no 'special grievance' for the malicious abuse of process (3T 27:16-22) and the finding of 'no compensable damages' for [the] defamation claim (3T 18:8-12) conflicts with the finding of liability under the IIED claim." Those findings do not conflict because they are different, separate findings. Judge Rogers' declination to find "interference with one's liberty or property" for malicious prosecution purposes,

and declination to find proximate causation establishing damages flowing from the defamation, did not preclude Judge Rogers from finding that plaintiff established a prima facie case of intentional infliction of emotional distress. Judge Rogers was the factfinder in the proof hearing and thus entitled to find that plaintiff sustained a claim for one claim but not another. Appellant has not shown a legal error that mandates relief on appeal.

Appellant also says it was erroneous for "Maksoud's claim for damages" to be "based on time estimates at $300 reviewing pleadings in her own case" (Ja1674). Appellant argues, "[a]n analysis of the basis Judge Rogers used to arrive at her $522,700 figure for emotional distress reveals that it is only a computation based on $300 an hour from the estimates of hours Maksoud suggests she spent talking about Ms. Zhang to others and personal and legal time which were not adequate to be compensable under defamation, and therefore are not a basis for emotional distress damages either." It was not error for Judge Rogers to consider Ms. Maksoud's Certification detailing the loss of her personal and professional time caused by defendant's wrong. Model Charge 8.11C provides, "Plaintiff has a right to be compensated for any earnings lost as a result of injuries caused by defendant's negligence or other wrongdoing." Plaintiff's Certification below was more than a dollar calculation, moreover. It was a supplement to plaintiff's verified complaint and testimony at the proof hearing detailing the impact on her

life from defendant's wrongs. Ms. Maksoud's Certification detailed who she was when the intentional infliction began, and how it impacted her personally and professionally thereafter -- the impact on her friendships, her marriage to her husband (new at the time), her motherhood, and her overall enjoyment of life. This Certification provided at least some measure of loss. It was not error for Judge Rogers to consider all of this in determining what she believed was an appropriate measure of damages.

Appellant, again, has not shown reversible error warranting this Court's intervention on appeal. Calculating damages is an "inherently subjective" process, Johnson, supra, 192 N.J. 280. "[T]he law can provide no better yardstick for [a jury's] guidance than [the jurors'] own impartial judgment and experience." Ibid. The "measure of damages is what a reasonable person would consider to be adequate and just under the circumstances." Model Jury Charges (Civil), Damages-Personal Injuries: Disability, Impairment, Loss of the Enjoyment of Life, Pain and Suffering § 6.11F (Dec.1996). Juries – or judges when they are the factfinder -- are given "wide latitude" in determining non-economic damages in particular. Baxter v. Fairmont Food Co., 74 N.J. 588, 598 (1977). Judge Rogers' decision affixing damages was consistent with Model Charge 8.11E:

> The law on compensation recognizes that a plaintiff may recover for any disability or impairment that he or she suffers as a result of his or her injuries.

Disability or impairment means worsening, weakening or loss of faculties, health or ability to participate in activities. The law also permits a plaintiff to recover for the loss of enjoyment of life, which means the inability to pursue one's normal pleasure and enjoyment. [*citing, Evoma v. Falco, 247 N.J. Super. 435, 452 (App. Div. 1991*)]

You must determine how the injury has deprived [Plaintiff] of [his] [her] customary activities as a whole person. This measure of compensation is what a reasonable person would consider to be adequate and just under all the circumstances of the case to make [Plaintiff] whole for [his] [her] injury and [his] [her] consequent disability, impairment, and the loss of the enjoyment of life. The law also recognizes as proper items for recovery, the pain, physical and mental suffering, discomfort, and distress that a person may endure as a natural consequence of the injury. Again, this item of recovery is what a reasonable person would consider to be adequate and just under all the circumstances to compensate [Plaintiff].

Here are some factors you may want to take into account when fixing the amount of the verdict for disability impairment, loss of enjoyment of life, pain and suffering. You may consider [Plaintiff's] age, usual activities, occupation, family responsibilities and similar relevant facts in evaluating the probable consequences of any injuries you find [he] [she] has suffered. You are to consider the nature, character and seriousness of any injury, discomfort or disfigurement. You must also consider their duration, as any verdict you make must cover the harms and losses suffered by [Plaintiff] since the accident, to the present time, and even into the future if you find that [Plaintiff's] injury and its consequence have continued to the present time or can reasonably be expected to continue into the future.

The law does not provide you with any table, schedule or formula by which a person's pain and suffering, disability, impairment, and loss of enjoyment of life may be measured in terms of money. The amount is left to your sound discretion. You are to use your sound discretion to attempt to make the plaintiff whole, so far as money can do so, based upon reason and sound judgment, without any passion, prejudice, bias or sympathy. You each know from your common experience the nature of pain and suffering, disability, impairment and loss of enjoyment of life and you also know the nature and function of money. The task of equating the two so as to

> arrive at a fair and reasonable award of compensation requires a high order of human judgment. For this reason, the law can provide no better yardstick for your guidance than your own impartial judgment and experience.
>
> You are to exercise sound judgment as to what is fair, just and reasonable under all the circumstances. You should, of course, consider the testimony of [Plaintiff] on the subject of [his] [her] discomforts. You should also scrutinize all the other evidence presented by both parties on this subject, including the testimony of the doctors. After considering the evidence, you shall award a lump sum of money that will fairly and reasonably compensate [Plaintiff] for [his] [her] pain, suffering, disability, impairment, and loss of enjoyment of life proximately caused by defendant's negligence (or other fault)

Appellant has not demonstrated that $522,700 in compensatory damages for intentional infliction of emotional distress, in the context of the proof hearing held below, was so "wide of the mark," so "pervaded by a sense of wrongness," or so "manifestly unjust to sustain," that it shocks the judicial conscience. Johnson, supra, 192 N.J. 281; Baxter, supra, 74 N.J. 598; Cuevas, supra, 226 N.J. 513 (affirming as within bounds "award of $800,000 for Ramon and $600,000 for Jeffrey in emotional-distress damages" where "mental anguish and humiliation here were sustained over a long period, and were not fleeting or insubstantial").

Appellant's Point V

As noted above, defendant has not appealed the entry of default or default judgment against her, so the propriety of the Law Division's orders in those regards is not before the Court here in this appeal.

Under Subpoint (B) (at page 47), appellant again attacks the compensatory damage award, arguments which are addressed above and which show that appellant has not demonstrated reversible error in that regard.

Under Subpoint (C) (at page 48), appellant argues that "evidence in mitigation of damages went unconsidered" because defendant "was not provided an opportunity to present evidence in mitigation of damages alleged by plaintiff." This was because defendant was defaulted then had default judgment entered against her. She had no right to present evidence at the proof hearing. Nothing in the transcripts shows that defendant proffered any such evidence, moreover. Nothing in Appellant's Brief even suggests what type of evidence could "mitigate" depression, anxiety, and the loss of personal and professional enjoyment of one's life that defendant's intentional infliction of emotional distress caused to plaintiff.

CONCLUSION

The Court should affirm the Law Division's March 22 and June 7, 2022 Orders and deny defendant's appeal in its entirety.

Respectfully submitted,

/s/ Michael Confusione (No. 049501995)
Attorney for Respondents,
MAGGI KHALIL MAKSOUD and
LAW OFFICE OF MAGGI KHALIL MAKSOUD, LLC

Dated: August 31, 2023

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1363-22

ALEXANDER SCHACHTEL, LAW OFFICE OF ALEXANDER SCHACHTEL, MAGGI KHALIL MAKSOUD AND LAW OFFICE OF MAGGI KHALIL MAKSOUD

CIVIL ACTION

Plaintiffs-Respondents,

vs.

PING ZHANG HUGHES,

Defendant-Appellant.

Appeal from the Superior Court, Law Division, Hudson County

Docket No. HUD-L-3590-18

Sat Below Without a Jury
HONORABLE MARYANN ROGERS, J.S.C.

REPLY BRIEF ON BEHALF OF APPELLANT PING ZHANG HUGHES

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PRELIMINARY STATEMENT

How can a client, who is dissatisfied with her lawyer after an initial consultation and who then obtained a favorable jury verdict requiring the lawyer to pay her $2,906 from a $4,000 retainer, now be ordered to pay the lawyer over $600,000 for damages and counsel fees?

The answer to this simple question is obvious and self-evident: the plaintiff Maggi Maksoud (hereinafter "Lawyer") cannot and should not be able to recover anything from the defendant Ping Zhang Hughes (hereinafter "Client"). Such a judgment on its face is a gross miscarriage of justice that must be overturned by this appellate Court.

It is even more important for this final default judgment to be overturned by this Court when the Client rightfully complained publicly about the Lawyer who had more money in an account than the Lawyer could legally retain. A Client who was entitled to claim the return of the whole $4,000 retainer ought not to be subjected to severe financial distress for criticizing the Lawyer. Offering opinions about the quality of the Lawyer and the acts taken by the Lawyer is hardly actionable and surely cannot, and does not, support an award to the Lawyer of any amount for either libel or intentional infliction of emotional distress. It is even more urgent that relief be granted to the Client who is facing the loss of her home as the Lawyer attempts to collect what can only be described as a draconian judgment. This award was not

obtained from a jury but from a judge who did not permit the Client to offer a defense to or properly cross-examine the Lawyer's purported psychologist Mark Seglin about the claims concerning the Lawyer's temporary mental reactions to the opinions published about her. That the Client's conduct was somehow "so outrageous in character, so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community" is simply untrue. Buckley v. Trenton Sav. Soc'y, 111 N.J. 355,365-67 (1988). The Client's conduct in the circumstances revealed in the testimony could hardly sustain a verdict of the magnitude awarded here. A cursory review of the transcript of the default hearing establishes, beyond question, that the Lawyer failed to prove the essential elements required by our Supreme Court in Buckley: that the conduct was "outrageous" which then proximately caused "severe" distress. Id.

Defendants under New Jersey law cannot be held responsible for opinions or actions which are "insulting, annoying or threatening" or which are "indignities, petty oppressions or other trivialities." 49 Prospect St. Tenants Ass'n v. Sheva Gardens, Inc., 227 N.J. Super. 449, 472 (App. Div. 1998) (quoting Restatement (Second) of Torts, Sec. 46, comment d). Even if the statements were libelous (which they were not because they are opinions, essentially truthful and one is beyond the statute of limitations) in this case, the Lawyer was only awarded "nominal" damages for libel because the Lawyer failed to prove that she lost any actual and quantifiable

legal business. In the ordinary libel case, plaintiff must show that someone actually held the plaintiff in lesser regard because of the alleged libel. The Lawyer here provided no such proof. Finally, if the evidence that is relevant to the Lawyer's claim of libel "duplicates" or "overlaps" the evidence to establish a claim of emotional injury, the lawyer would be "precluded from obtaining a double recovery." Taylor v. Metzger, 152 N.J. 490, 509 (1998). Yet it appears that the Judge disregarded the rule precluding double recovery for overlapping legal theories.

Simply put, a default judgment for temporary mental discomfort for such a significant amount of money should not be allowed to stand especially when the required elements of the tort of intentional infliction of emotional distress were not satisfied. This is obvious when the basis of the alleged discomfort are accurate statements of opinion that, in essence, were true: the Lawyer acted unprofessionally because she had money that did not belong to her, a fact that was proven by a jury verdict. See R.P.C. 1.5(a) and 1.6(d)(4). The only thing that is truly "so extreme as to go beyond all possible bounds of decency" in this case is the award of money in such an excessive amount to a Lawyer who wrongfully kept more money from a Client in her business account than that to which she was entitled. Therefore, the award under the circumstances as revealed in the record and testimony in the two proceedings below must be set aside in its entirety by this Court.

STATEMENT OF FACTS

The Client relies upon the statement of facts as set forth in the Client's initial brief previously filed and as revealed in the numerous documents in the joint appendix and lengthy transcripts.

PROCEDURAL HISTORY

The Client relies upon the statement of proceedings as set forth in the Client's brief previously filed with two additional comments. First, the Lawyer's claims that she "won" the jury trial are misleading at best, false at worst. (Ja0004 – Lawyer's complaint at paragraph 30). The jury awarded the Client a verdict of $2,609 against the Lawyer. (Ja2282).

Second, that the Lawyer sought a judicial declaration (Ja2284) about check number 1034, dated 9/28/15 (Ja0854) for $3,105 sent by her trial counsel to the Client, was a misguided attempt to justify her otherwise improper actions. By the time of the hearings in 2022, it is unreasonable to assume that anyone would negotiate a seven year old stale check. While the check might appear as the Lawyer's attempt to comply with R.P.C. 1.6(d) to return the unearned portion of a retainer, the Client never cashed that check. (Ja2191;6T8-21). The Client was entitled to claim that she was due the entire retainer of $4,000. (2T38-19). More properly, that check should procedurally be viewed as an offer to settle the Client's claim for $4,000. (Ja2190-2191) (letter from the Lawyer's trial counsel on

September 29, 2017, offering to settle the claim of the Client against the Lawyer if the Client cashed the September 28, 2015 check). Such an offer is evidence of nothing. N.J.R.E. 408. When the Client got that letter with the offer to settle, she refused to settle because she did not have a bill from the Lawyer to confirm the dates and amounts of the charges. (1T52-3). Before the jury was picked, the Trial Judge on the record asked the trial counsel for the Lawyer what amount the Lawyer would pay to settle the claim of the Client. The Lawyer's counsel replied: "Zero." (1T7-18). In litigated matters, offers are made "every day." Baglini v. Lauletti, 338 N.J. Super. 282, 296-7 (App. Div. 2001). So the Trial Judge correctly ruled that the jury would decide the "contract" claim. (1T211-21). A jury verdict was entered in favor of the Client against the Lawyer for $2,609. (Ja2283).

LEGAL ARGUMENT

I. PLAINTIFF FAILED TO PROVE THE REQUIRED ELEMENTS FOR THE TORT OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

A cursory review of the Model Civil Jury Charge for intentional infliction of emotional distress ("IIED") 3.30 F, compared to the record in this case reveals that: (i), the Judge below did not properly apply the evidence to all of the elements required to sustain an IIED claim (6T3 to 28); (ii), the Client's conduct was neither "extreme" nor "outrageous"; and (iii), the Client's conduct was not "beyond all

possible bounds of decency" or "atrocious and utterly intolerable in a civilized community". Id.

More importantly, none of the Client's conduct reaches the level of severity or intensity necessary to support any award of IIED damages, let alone an award of over a half million dollars for one Client consultation, a few other contacts, two emails and a negative review on AVVO. Mark Seglin, a purported psychologist, offered by the Lawyer as a witness at the default hearing, could not confirm the costs to the Lawyer for any of his contacts with her about the alleged libel. Seglin, who was not offered or qualified as an expert witness, produced no records, no bills, no written reports or any other documents about those contacts. Compare, N.J.A.C. 8:43G-15.2(d) (requiring a medical doctor to document 15 items for all inpatient treatment and care). The Client was not permitted by the Judge to cross-examine Seglin about the Lawyer's prior history of personal or marital psychological issues. (8T32-2). The Judge prohibited the Client from questioning Seglin about any records for the Lawyer's prior history of personal emotional difficulties dating back to 2015. Such records would be highly relevant to determine whether those problems were the source of her complaints. (8T64-1). Seglin did testify that the Lawyer was using him as a "sounding board." (8T56-2).

Seglin did not provide anywhere in his testimony a professionally accepted diagnosis to a reasonable degree of medical/psychological certainty. The failure to

do so would render such testimony insufficient as a matter of law to establish any condition of emotional distress. Morales-Hurtado v. Reinoso, 241 N.J. 590, 592-96 (2020). While this witness did blurt out a billing code after the Judge warned the Client not to ask about the "code" (8T60-18 to 62-12; 8T109-7), a qualified psychologist would have compared the reaction of the Lawyer to each of the Client's acts and then testified that each of her reactions were "proximately caused" by the Client to a reasonable medical/psychological certainty. Buckley, supra, 111 N.J. at 361. The qualified expert would then apply those circumstances to the DSM standards of specific psychological conditions identified by the American Psychiatry Association. See, Diagnostic and Statistical Manual of Psychiatric Disorders (5th Ed. 2022). None of that happened in this case. Thus, Seglin's testimony was in fact a prohibited "net" opinion. Fernandez v. Baruch, 52 N.J. 127,131 (1968); Anderson v. A.J. Friedman Supply, 416 N.J. Super. 46 (App. Div.), certif. denied, 185 N.J. 518 (2011) (net opinion declared under N.J.R.E. 703 when witness could not recall articles on which he based his opinions as to the cause of plaintiff's cancer); See also, Lingar v. Live-In Companions, Inc., 300 N.J. Super. 22, 35 (App. Div. 1977).

None of the Client's conduct or the Lawyer's reaction to that conduct satisfied the elements set forth in the case law allowing recovery for IIED. For example, in Portee v. Jaffe, 84 N.J. 88 (1988) plaintiff was allowed to recover for emotional distress when, for 4 hours, she observed her young son being crushed to death while

trapped between an elevator floor and the elevator exit. She ultimately tried to commit suicide, having witnessed the horrible event proximately caused by defendant's negligence. Id. at 91.

On the other hand, the allegations in this case are more aligned to the claims that were unsuccessful in Buckley- sleep loss, aggravation, headaches, headaches with the taking of non-prescription drugs and embarrassment. See, Buckley, supra, 111 N.J. at 368-9. Buckley, like this case, involved a dispute over a small financial transaction, there a dishonored check for $150. Buckley also held that there can be no recovery for IIED which is caused by a breach of contract. Id., at 364. This case also essentially arose from a breach of contract claim over the $4,000 retainer. (3T211-21; 3T224-7). In Buckley recovery for IIED was denied. The same result should follow here.

Finally, another element lacking in the Judge's decision below is the proper application of objective standard for how the average similar citizen would react to a defendant's alleged tortious conduct. Taylor v. Metzger, 152 N.J. 490, 516 (1998). What must be analyzed and was not in this case: would the average lawyer "suffer severe emotional distress." Id., at 528. Applying this objective standard to this case, the Lawyer's claims for IIED must fail because the conduct of the Client would not cause "severe emotional distress" to the average lawyer of "ordinary" legal "experience and normal constitution, sensitivity and susceptibilities." Id., at 529,

citing Lingar, supra, at 35. The Judge simply recited what the witness Seglin said (12T13-17) but simply repeating a witness's testimony is not a finding of fact. The average lawyer would react calmly, with a measured response on the internet, to rebut the Client's opinion. In fact, the Lawyer did just that. (Ja0966).

The alleged incidents here may have temporarily caused "acute upset" to the Lawyer but that reaction does not create a cause of action for IIED. Lingar, supra, at 35, citing Trisuzzi v. Tabatchnik, 285 N.J. Super. 15, 26 (App. Div. 1995). Her emotional distress here was not "sufficiently substantial to result in physical illness or serious psychological sequalae." Id., at 35, quoting Eyrich v. Dam, 193 N.J. 244, 253 (App. Div.), certif. denied, 109 N.J. 583 (1984). Her claims for IIED therefore must fail. Any alleged tort before August 20, 2016 is time barred. N.J.S.A. 2A:14-2.

II. THE DAMAGES AWARDED ARE OUTRAGEOUS AND ARBITRARY.

To award the Lawyer more than half a million dollars is grossly excessive for her temporary upset in reaction to opinions that criticized her failure to return the Client's entire $4,000 retainer. When pressed on the witness stand at the jury trial, this Lawyer was untruthful about the exact dates of her contact with the Client. This was revealed in the Lawyer's daily diary (Ja0858) which the Lawyer's trial counsel mailed before but was not received by the Client until after the jury trial. The bill (Ja0856) claimed client conferences for more than an hour on 9/4/15 and 9/16/15 but

the diary had no such entries for those two dates. The Client tried to raise this issue without success in a post-trial motion. (Ja2407). These actions should have affected the credibility of the Lawyer at the default hearing, but were not considered by the Judge.

` The Lawyer's $300 hourly rate for legal services used by the Judge as the basis to calculate an unbelievable total amount to award the Lawyer for IIED damages is totally arbitrary. (12T22-9; Db45; Db48; Ja2064; Ja2066). Since the Lawyer could not recover special damages for the alleged libel, it was completely improper to allow her request for general damages for mental distress based upon an hourly rate for legal services. (Pb45; Ja1662; Ja2064). She may not recover any damages based on an hourly legal rate for the time her attention was allegedly diverted or lost because she was thinking about the negative evaluations of her legal services or the time spent by the Lawyer defending a jury trial which she lost. The Lawyer did not offer any documented evidence of a financial loss for even one hour of legal services. For such a claim, a lawyer would be required to prove what she earned before the publication of the negative opinions; then prove what she earned after the publication of the negative opinions; and then prove that the loss of her net income was proximately caused by the publications. No such evidence supported by financial records was produced in this case.

The Lawyer offered Mark Seglin to establish the cost for the Lawyer's "treatment" and, in addition, as noted above, to establish the specifics of her condition. He produced no records, no written report, and no proof of payment by check, credit card or cash. Neither did he produce records to establish the specific dates of his consultations with the Lawyer. Although he blurted out a billing code, the Judge discouraged any discussion about any codes. (8T60-18 to 62-12; 8T109-7). This witness could not explain how the Lawyer's reactions to the events of 2015 persisted until his discussions with her in 2018. Moreover, Seglin was sufficiently impeached by his own misconduct for over-billing Medicaid patients. (8T83-1). He was not a competent witness which is obvious from the record of his testimony. (8T-13 to 8T116-25).

The Judge's refusal to allow the Client to cross-examine Seglin about the prior medical history, diagnosis codes and billing records are also grounds to reverse this judgment. (8T60-64). Any competent lawyer would have demanded production at the time of the hearing of any records of treatment or any bills that this witness used to refresh his recollection. N.J.R.E. 612.

In the ordinary jury trial for tort damages, the jury would be asked to return a specific verdict for the amount of past and then perhaps future lost net wages. Then the jury would be asked to determine a specific amount for treatment costs. Finally, the jury would be asked to return a specific verdict for any past or future pain and

suffering. In this case the Judge, without any specific documentary evidence for lost net wages or treatment or future suffering, awarded one extravagant amount. The award here is fatally flawed because no proof was offered to establish any of these items to a reasonable degree of certainty. Only the temporary past suffering proximately caused by the alleged libel per se could have been awarded here if based upon competent evidence but the Lawyer's tears on the witness stand do not equate with actual proof. The Judge's reaction to the self-serving tears and uncorroborated testimony of the Lawyer do not justify the incredible award here. No permanent injury was claimed here or was submitted in the testimony. [1] Thus, an award of more than a half million dollars for a temporary period of discomfort based on a Lawyer's hourly billing rate defending a jury case which the Lawyer lost and the Lawyer's view of 3 emails is simply unconscionable. The Judge failed to apply the required standards for damages in libel cases. Nuwave Inv. v. Hyman Beck & Co., 221 N.J. 495 (2015). No "nominal" damages should have been awarded here and any "general" damages "must be demonstrated through competent evidence." Id., at 499,

[1] A cursory examination of the Lawyer's current website claims that she is an active, skilled, and competent lawyer in several areas of law. Examination of a public website by an appellate court has been permitted. See Malanga v. Twp. of West Orange, 253 N.J. 291 (2023). There suit was brought over the redevelopment of the municipal library. That case was argued in October 2022. The decision was given by Chief Justice Rabner on March 13, 2023. However, on March 6, the Chief Justice examined the library's public website to determine its operating hours. Id., at 325 n.11; See also Churchill v. State, 378 N.J. Super. 471, 475 n.1 (App. Div. 2005).

500; Taylor, supra, 152 N.J. at 509. All of the Lawyer's post-jury trial motions for counsel fees were rejected because the Client's lawsuit against her for the retainer was not frivolous as found by several judges. (Db20). The time and money spent by the Lawyer defending the Client's successful suit against her are simply not recoverable in this or any other action.

Since there was no competent medical proof of any proximate medical causation for these alleged temporary injuries to any degree of certainty, an award under the standards set forth in Trisuzzi, supra, for such a shocking amount must be reversed and dismissed. See, Baxter v. Fairmont Foods, 74 N.J. 88 (1977).

III. THE DEFENDANT'S OPINIONS BASED ON FACTS ARE NOT ACTIONABLE AS LIBEL

The Lawyer committed the following wrongful acts[2]: (1) Overcharged the Client $4,000 as a retainer. See R.P.C. 1:16(d), 1.5. The special civil part jury verdict awarded the Client $2,609 against the Lawyer. (Ja2282); (2) Improperly disclosed the personal identifiers of the Client when responding to Client's motion for a new jury trial; See R.P.C. 1.6(d)(4) and 58 N.J.S.A. 161 et seq. (3) Testified untruthfully at the jury trial as to the dates of contact with the Client who received the mailed

[2] Also improper is attempting or threatening by a lawyer to use criminal enforcement to resolve a civil claim. R.P.C. 3.4(g) The dispute over the retainer does not justify calling the police in this case where no police records or reports establish the Lawyer's unsupported allegations about the Client's conduct in her office on October 15, 2015. The 911 call to the police reported "only an argument." (Db4,Db6,Db9n.6)

diary refuting this testimony only after the jury trial. The diary clearly revealed that those dates in the bill submitted to the jury did not match the dates which the lawyer claimed as true during her trial testimony; (see discussion infra at 9) (4) Falsely claimed in her complaint in this lawsuit that she "won" the jury trial (Ja0004, Para. 30). The jury verdict of $2,609 was rendered in favor of the Client AGAINST the Lawyer; (5) Testified falsely that she was required to keep personal identifier information for seven (7) years. (Db38-39). In fact, R.P.C. 1.15(d) and Rule 1:6-2(c)(1) require retention of only financial and bookkeeping records for seven (7) years. Moreover, 58 N.J.S.A. 161 et seq. requires the destruction of personal identifiers such as SSN and DOB as soon as the person is no longer a client. See R.P.C. 1.6(d)(4). The disclosure of that information in 2018 in response to the Client's motion for a new jury trial was, therefore, completely unlawful. (Ja2399; Ja2403; Ja2666). Such personal identifier information should have been destroyed in 2015 (three years earlier) when Ms. Zhang was no longer a client. R.P.C. 1:16(d)(4).

Not only should these actions of the Lawyer disqualify her from collecting damages for IIED, but her actions allow public criticism by the person wronged by these improper and unlawful actions. The Client's description of these wrongful acts, while expressed in harsh language, amount to, in truth, her opinions based on fact: that in dealing with her, the Lawyer was unprofessional. Such opinions, based

on the actions of the Lawyer, cannot be and are not libelous. Dendrite Intern v. Doe No. 3, 342 N.J. Super. 134, 158-9. (App Div. 2001). When the Lawyer sought in this case an injunction against the Client, Judge Jablonski, sitting in Chancery correctly denied any relief to enjoin the opinions of the client. (8T35-7).

More importantly, the 2015 email is barred by N.J.S.A. 2A:14-3 the one-year statute of limitations for libel so there can be no recovery for either libel or emotional distress if that email proximately caused the Lawyer's distress. That would be a prohibited recovery. See Taylor, supra, 152 N.J. at 509.

If the alleged libel is published on the internet, the cause of action arises on the date of the posting. Churchill, supra, 378 N.J. at 476, 483. Here the post (Ja1043) appeared on the internet on October 27, 2015, but the complaint (Ja0001) was filed on August 20, 2018. This issue was raised by the Client's attorney David Lin before the Chancery Judge. (4T18-18). The 2015 email does not constitute a "continuous tort." Therefore, any claims arising from the 2015 posting on the internet are time-barred. Id., at 485; Nuwave, supra, 221 N.J. at 495; Roberts v. Mintz, Docket No. A-156-14 (App. Div. July 26, 2016) (2016 WL 398112 at 5).

CONCLUSION

For the foregoing reasons, the default judgment in this case must be reversed and vacated in its entirety.

Respectfully submitted,

s/Joel N. Kreizman
Joel N. Kreizman

Dated: January 11, 2024