

DEVON TYLER BARBER,

Plaintiff,

v.

JOHN W. TUMELTY and THE LAW
OFFICE OF JOHN W. TUMELTY,
Defendant(s).

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS

THIS MATTER having been opened to the Court by Defendants, John W. Tumelty, Esq. and the Law Office of John W. Tumelty, by way of a Motion to Dismiss Plaintiff's First Amended Complaint pursuant to **R. 4:6-2(e)**, and the Court having considered the written submissions of the parties, and for good cause shown;

IT IS on this ____ day of _____, 2025,

ORDERED that Defendants' Motion to Dismiss is hereby **DENIED**; and

IT IS FURTHER ORDERED that Defendants shall file and serve an Answer within **35 days** of the entry of this Order, pursuant to **R. 4:6-1**; and

IT IS FURTHER ORDERED that any conviction-dependent malpractice allegations, to the extent deemed premature, shall be handled separately as a matter for **case-management scheduling**, without prejudice to Plaintiff's independent claims for breach of fiduciary duty, breach of contract, consumer fraud, fraud in the inducement, and all other non-malpractice causes of action.

HON. SARAH B. JOHNSON, J.S.C.

DEVON TYLER BARBER,

Plaintiff,

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JOHN W. TUMELTY and THE LAW
OFFICE OF JOHN W. TUMELTY,
Defendant(s).

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ATLANTIC COUNTY

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Civil Action

CERTIFICATION OF SERVICE

I, **Devon Tyler Barber**, certify as follows:

1. On 11/25/2025, I served a true copy of:
 - (a) Plaintiff's **Second Amended Complaint**;
 - (b) Plaintiff's **Notice of Filing** Second Amended Complaint;
 - (c) Plaintiff's **Brief in Opposition** to Defendants' *Motion to Dismiss*;
 - (d) Plaintiff's **Certification** in Opposition;
 - (e) the **Proposed Form of Order**;
by electronic filing through the Judiciary Electronic Document Submission (JEDS) system and by electronic mail upon:

John W. Tumelty, Esq.
Law Office of John W. Tumelty
jt@johntumeltylaw.com

2. Service was made pursuant to **R. 1:5-1(a)** and is complete upon transmission.
3. I certify that the foregoing statements are true. I am aware that if any statement is willfully false, I am subject to punishment.

Dated: 11/25/2025

s/ BARBER, DEVON TYLER, **Plaintiff, Pro Se**
325 E. Jimmie Leeds Rd., Suite 7-333
Galloway Township, Atlantic County, New Jersey
(609) 862-8808 — Tylerstead@ProtonMail.com

Barber v. Tumelty — Service of Plaintiff Filings and Withdrawal of Prior Settlement Proposal

From dTb33@pm.me <dTb33@pm.me>
To jt@johntumeltylaw.com
BCC Christopher Koos<christopher.koos@njcourts.gov>
Date Tuesday, November 25th, 2025 at 8:22 PM

Barber v. Tumelty — Service of Plaintiff Filings and Withdrawal of Prior Settlement Proposal

Counsel,

Please be advised that Plaintiff's prior informal settlement proposal is hereby withdrawn. In light of the filing of Plaintiff's Second Amended Complaint and the positions taken in Defendants' pending Rule 4:6-2(e) motion, Plaintiff believes settlement discussions would be premature at this time. This withdrawal is made without prejudice to any of Plaintiff's rights, and Plaintiff remains open to good-faith settlement dialogue at a procedurally appropriate stage.

Pursuant to **R. 1:5-1(a)**, please accept service of the following documents, which are being transmitted simultaneously through the Judiciary Electronic Document Submission (**JEDS**) system:

- **Barber Second Amended Complaint.pdf**
- **Barber Opposition Brief Motion to Dismiss.pdf**
- **Barber Certification in Opposition.pdf**
- **Barber Proposed Order Denying Motion to Dismiss.pdf**
- **Barber Certification of Service.pdf**
- **Barber Cover Letter to Court.pdf**

A PDF copy of this email and proof of transmission will also be uploaded to the docket via JEDS for the Court's record.

If you require any additional copies or prefer service at a secondary email address, please advise.

Regards,

Devon Tyler Barber

Plaintiff, Pro Se

325 E. Jimmie Leeds Rd., Suite 7-333

Galloway Township, NJ 08205

(609) 862-8808

Tylert@ProtonMail.com

Sent with [Proton Mail](#) secure email.

3.37 MB 6 files attached

Barber – Notice of Filing Second Amended Complaint (R. 4-9-1) – 11-25-25.pdf 243.45 KB

Barber – Certification of Service (SAC & Opposition Brief) – 11-25-25.pdf 435.28 KB

Barber – Proposed Order Denying Motion to Dismiss – 11-25-25.pdf 509.66 KB

Barber – Cover Letter to Court (Filing SAC & Opposition Brief) – 11-25-25.pdf 527.30 KB

Barber – Brief in Opposition to Motion to Dismiss (R. 4-6-2(e)) – With Certifications (Filed 11-25-25).pdf 875.86 KB

Barber – Second Amended Complaint (Filed 11-25-25).pdf 861.52 KB

BARBER, DEVON TYLER, **Plaintiff, Pro Se**
325 E. Jimmie Leeds Rd., Suite 7-333
Galloway Township, Atlantic County, New Jersey
(609) 862-8808 — Tylerstead@ProtonMail.com

DEVON TYLER BARBER,

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JOHN W. TUMELTY and THE LAW
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Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

NOTICE OF FILING:

SECOND AMENDED COMPLAINT

TO: The **Honorable** Sarah B. Johnson, **J.S.C.**
Superior Court of New Jersey, Law Division
Atlantic County

PLEASE TAKE NOTICE that Plaintiff, **Devon Tyler Barber**, hereby files the attached **Second Amended Complaint** pursuant to Rule 4:9-1. This amendment is filed as of right prior to the entry of any responsive pleading and in further response to Defendants' pending ***Motion to Dismiss*** under Rule 4:6-2(e).

The **Second Amended Complaint** clarifies and amplifies Plaintiff's factual allegations, **separates conviction-dependent claims from independent claims**, and further demonstrates that **multiple tort, contract, and consumer-fraud causes of action** remain viable regardless of any *post-conviction proceedings*.

Plaintiff respectfully requests that the Court deem the pending ***Motion to Dismiss*** moot or, in the alternative, deny the *motion* for the reasons set forth in Plaintiff's concurrently filed **Brief in Opposition**.

Respectfully submitted,

s/ Devon Tyler Barber
DEVON TYLER BARBER
Plaintiff, Pro Se
Dated: 11/25/2025

Table of Contents

NOTICE OF FILING:	1
PLEASE TAKE NOTICE	1
SECOND AMENDED COMPLAINT	4
PRELIMINARY STATEMENT	4
JURISDICTION AND VENUE	5
PARTIES.....	6
FACTUAL ALLEGATIONS	6
A. The Underlying July 2022 Events	6
B. Detention Hearing Violations.....	7
C. Retainer and Representations by Defendant Tumelty	7
D. Defendants' Abandonment and Failures.....	8
E. Damages.....	8
CAUSES OF ACTION	9
COUNT I – BREACH OF CONTRACT (Retainer Agreement)	9
COUNT II – BREACH OF FIDUCIARY DUTY	9
COUNT III – FRAUD / FRAUDULENT INDUCEMENT.....	10
COUNT IV – CONSUMER FRAUD (N.J.S.A. 56:8-1 et seq.).....	10
COUNT V – NEGLIGENCE / GROSS NEGLIGENCE (Independent of conviction validity)	10
COUNT VI – LEGAL MALPRACTICE (Conviction-Dependent Portion Only)	11
COUNT VII — UNJUST ENRICHMENT	11
DEMAND FOR JUDGMENT	12
JURY DEMAND.....	12
Plaintiff hereby demands trial by jury on all claims and all issues so triable as of right pursuant to R. 4:35-1 and the Seventh Amendment to the United States Constitution, as incorporated through Article I, Paragraph 9 of the New Jersey Constitution.	12
CERTIFICATION (R. 1:4-4)	12

Cases

Baldasarre v. Butler , 132 N.J. 278 (1993)	10
Baxt v. Liloia , 155 N.J. 190 (1998)	10
Lash v. State , 169 N.J. 20 (2001)	10
McKnight v. Office of the Public Defender , 197 N.J. 180 (2008)	5, 11
Rogers v. Cape May County Office of the Public Defender , 208 N.J. 414 (2011)	5, 11

Other Authorities

Article I, Paragraph 9 of the New Jersey Constitution	12
N.J. Const. art. VI, § 3, ¶ 2	5
Seventh Amendment to the United States Constitution	12

Rules

R. 1:39	6
R. 1:4-4	12
R. 4:3-2(a)	5
R. 4:35-1	12

BARBER, DEVON TYLER, **Plaintiff, Pro Se**
325 E. Jimmie Leeds Rd., Suite 7-333
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DEVON TYLER BARBER,
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JOHN W. TUMELTY and THE LAW
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Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

SECOND AMENDED COMPLAINT

1. Plaintiff, **Devon Tyler Barber**, an individual who resides in Atlantic County, New Jersey, hereby files this **Second Amended Complaint** against Defendants **John W. Tumelty, Esq.** and the **Law Office of John W. Tumelty**, and alleges as follows:

PRELIMINARY STATEMENT

2. This civil action arises from **attorney misconduct, fee fraud, breach of fiduciary duty, abandonment, and actionable commercial misrepresentations** committed by Defendants after accepting a \$5,000 retainer to represent Plaintiff in pretrial detention proceedings in matters **ATL-22-002292** and **ATL-22-002313**. Those proceedings originated from what was, in substance, a **civil wage and property dispute** between Plaintiff and his **former employers**. Plaintiff's **former employers** generated a misleading criminal narrative following Plaintiff's requests for unpaid wages and the return of his property. Defendants were retained specifically to expose the **civil nature** of

the dispute, challenge the inaccurate narrative, and **protect** Plaintiff's liberty interests.

Defendants **failed** to do so, resulting in prolonged detention, increased pressure on Plaintiff's plea decision, and the injuries set forth herein.

3. Although a limited subset of malpractice allegations may intersect with issues bearing on the ultimate validity of Plaintiff's conviction, the **majority of claims asserted in this pleading arise from independent torts, contractual breaches, retainer-based misrepresentations, and consumer-fraud violations**. These claims concern Defendants' **pretrial conduct, commercial inducements, failures to act, and breaches of professional and fiduciary obligations**, and **do not require overturning or collaterally attacking any conviction** to proceed.
4. Pursuant to *McKnight v. Office of the Public Defender*, 197 N.J. 180 (2008), and *Rogers v. Cape May County Office of the Public Defender*, 208 N.J. 414 (2011), only those portions of a legal-malpractice claim that require undermining the validity of a criminal conviction are subject to the exoneration rule and may be stayed pending post-conviction review. All **independent tort, contract, fiduciary-duty, and consumer-fraud claims** proceed immediately and are not barred by the exoneration doctrine.

JURISDICTION AND VENUE

5. The Court has subject-matter jurisdiction over this action pursuant to **N.J. Const. art. VI, § 3, ¶ 2** and **N.J.S.A. 2A:3-1**, which vest the Superior Court, Law Division, with original jurisdiction over all civil actions.
6. Venue is proper in **Atlantic County** under **R. 4:3-2(a)** because the acts and omissions alleged in this Complaint occurred in this county, and Defendants **regularly transact** business here.

PARTIES

7. **Plaintiff Devon Tyler Barber** is a natural person residing in Atlantic County, New Jersey, who conducts lawful contracting and home-improvement work through duly formed business entities and/or beneficial legal arrangements. Plaintiff appears in this matter in his personal capacity as the party injured by Defendants' acts and omissions.
8. **Defendant John W. Tumelty, Esq.** is a natural person and attorney licensed to practice law in the State of New Jersey, who publicly advertises himself as a "**Certified Criminal Trial Attorney**" pursuant to **R. 1:39**.
9. **Defendant The Law Office of John W. Tumelty** is a New Jersey law practice and business entity located in Atlantic County, New Jersey, and conducts the commercial offering of legal services throughout the State.

FACTUAL ALLEGATIONS

A. The Underlying July 2022 Events

10. In July 2022, Plaintiff was performing authorized renovation and property-maintenance work at **1525 W. Aloe Street, Galloway Township**, pursuant to a labor-for-lodging and wage arrangement with the property owners and their business entities.
11. When Plaintiff sought payment for completed work, the property owners and associated individuals responded with escalating hostility. They unlawfully destroyed portions of Plaintiff's personal property, scattered his belongings, and forced him from the premises in retaliation for his unpaid-wage demands, as well as for Plaintiff's ongoing work with a licensed contractor who had entrusted him with a company work truck for both on-duty and authorized off-duty use.

12. The ensuing police response incorrectly treated the matter as a criminal incident, despite clear indicators that the underlying dispute involved **civil wage issues, a work-for-lodging arrangement, and a tenancy/occupancy conflict**, none of which were investigated or presented by defense counsel.

B. Detention Hearing Violations

13. At Plaintiff's initial detention hearing, Plaintiff was electronically **mute**, unable to meaningfully participate, and prevented from presenting evidence of his lawful residence, wage-based employment, work-for-lodging arrangement, and **tenancy status**.

14. Assigned counsel at that hearing **failed** to challenge the prosecution's mischaracterizations and presented no evidence regarding Plaintiff's employment history, community ties, or the ***civil nature*** of the underlying dispute.

C. Retainer and Representations by Defendant Tumelty

15. Shortly after the hearing, Plaintiff's family retained Defendant Tumelty and paid a **\$5,000** flat fee in reliance on Defendant's advertisements, assurances, and express promises that he would:

- (a) **File a second detention-review motion;**
- (b) Present **evidence** of Plaintiff's residence, employment, and civil wage dispute;
- (c) **Investigate** the incident as a civil matter rather than a violent crime; and
- (d) Communicate regularly, act diligently, and **protect** Plaintiff's liberty interests.

16. Defendant Tumelty expressly held himself out as a "Certified Criminal Trial Attorney" and an "aggressive advocate," representing that he possessed the skill and experience necessary to secure Plaintiff's pretrial release.

17. These written and verbal representations induced Plaintiff and his family to retain him and pay the \$5,000 retainer.

D. Defendants' Abandonment and Failures

18. Despite repeated assurances, Defendants never filed a detention-review motion, even though such filings could have been submitted electronically through JEDS.
19. Defendants never investigated or preserved the civil-nature evidence, never secured Plaintiff's phone records or wage documentation, and never obtained the corroborating materials that were readily accessible and essential to correcting the prosecution's narrative.
20. Defendants failed to communicate with Plaintiff, failed to challenge the State's mischaracterizations, and visited Plaintiff only once during his 108-day confinement.
21. As alleged herein, Plaintiff remained confined between July 11 and October 26, 2022 as a direct result of Defendants' inaction, neglect, and abandonment—not because of any legal determination challenged in this civil action.

E. Damages

22. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered:
 - (a) loss of liberty for 108 days;
 - (b) physical injury and unsafe confinement conditions;
 - (c) psychological harm, including anxiety, trauma, and post-concussive symptoms;
 - (d) business interference, lost wages, and disruption to contracting opportunities;
 - (e) destruction of personal property;
 - (f) reputational harm affecting employment, housing, and credit; and
 - (g) loss of the unearned \$5,000 retainer.
23. These injuries arise from Defendants' independent torts, contractual breaches, and fiduciary misconduct and **do not depend on overturning, challenging, or undermining the validity of any conviction**, and therefore fall outside the exoneration rule.

24. Plaintiff incorporates by reference his Certifications filed November 7–8, 2025 (including supporting exhibits), each of which is based on personal knowledge and submitted pursuant to R. 1:4-4.

CAUSES OF ACTION

COUNT I – BREACH OF CONTRACT (Retainer Agreement)

25. Plaintiff repeats and realleges the above paragraphs.

26. Plaintiff and Defendants entered into a **retainer agreement** for legal representation.

27. Defendants breached the agreement by:

- (a) Failing to file a detention-review motion;
- (b) Failing to communicate;
- (c) Failing to investigate;
- (d) Failing to perform services for which payment was made.

28. Plaintiff suffered ascertainable loss, including the **\$5,000 fee** and consequential damages.

COUNT II – BREACH OF FIDUCIARY DUTY

29. Defendants owed Plaintiff fiduciary duties of **loyalty, diligence, candor, and communication.**

30. Defendants abandoned Plaintiff, withheld action, and failed to protect Plaintiff's liberty interests.

31. Under Baxt v. Liloia, 155 N.J. 190 (1998), Lash v. State, 169 N.J. 20 (2001), and Baldasarre v. Butler, 132 N.J. 278 (1993), an attorney's fiduciary obligations—including loyalty, diligence, candor, and communication—are independent of negligence principles, and breaches of those duties are fully actionable as stand-alone claims.

32. Plaintiff suffered emotional, economic, and liberty-based injury as a result.

COUNT III – FRAUD / FRAUDULENT INDUCEMENT

33. Defendants made material misrepresentations, including:
 - (a) Claims of certification and aggressive representation,
 - (b) Promises of immediate detention-review filings,
 - (c) Assertions of strategic action that never occurred.
34. Plaintiff reasonably relied on these statements when paying \$5,000.
35. Defendants knew or should have known these statements were false or misleading.
36. Plaintiff suffered damages as a result.

COUNT IV – CONSUMER FRAUD (N.J.S.A. 56:8-1 et seq.)

37. Plaintiff repeats and realleges the above paragraphs.
38. Defendants' advertising, marketing, and retainer-inducement statements constitute **unlawful commercial practices** under:
 - **Blatterfein v. Larken Assocs.**,
 - **Cox v. Sears**,
 - **Gennari v. Weichert**.
39. Defendants knowingly induced Plaintiff into a transaction using misrepresentations.
40. Plaintiff suffered **ascertainable loss** including the \$5,000 retainer and consequential damages.
41. Plaintiff is entitled to **treble damages**, fees, and costs.

COUNT V – NEGLIGENCE / GROSS NEGLIGENCE (Independent of conviction validity)

42. Defendants owed Plaintiff a duty of reasonable care in representation.
43. Defendants breached this duty by failing to:
 - (a) communicate;

- (b) investigate;
- (c) preserve evidence;
- (d) file a detention review motion;
- (e) protect Plaintiff from continued pretrial detention and worsening confinement conditions.

44. These failures were **pre-conviction** and independent of any plea.

45. Plaintiff suffered economic, psychological, and liberty-based injuries as a direct result.

COUNT VI – LEGAL MALPRACTICE (Conviction-Dependent Portion Only; To be stayed if Court deems appropriate)

46. To the extent any malpractice claim requires establishing innocence or reversal of conviction, Plaintiff pleads such counts in the alternative.

47. Plaintiff acknowledges that the conviction-dependent portion of this count may be stayed pending post-conviction proceedings consistent with **McKnight** and **Rogers**.

48. This does not affect his independent non-malpractice claims in **Counts I–V** and **VII**.

COUNT VII — UNJUST ENRICHMENT

49. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

50. Plaintiff conferred a material benefit upon Defendants by paying a \$5,000 retainer for legal services that Defendants promised, but failed, to perform.

51. Defendants knowingly accepted and retained that benefit while failing to act, failing to communicate, failing to investigate, and abandoning Plaintiff during critical pretrial detention proceedings.

52. Defendants' retention of the retainer fee, despite their nonperformance and misrepresentations, is unjust, inequitable, and contrary to principles of good conscience.

53. Plaintiff suffered ascertainable economic loss in the form of the \$5,000 payment and consequential damages.

54. Equity demands the return of the \$5,000 and such further relief as the Court deems just.

DEMAND FOR JUDGMENT

55. **WHEREFORE**, Plaintiff demands judgment as follows:

- (a) Compensatory damages, including loss of liberty, emotional distress, lost wages, reputational harm, and property loss;
- (b) Return of the **\$5,000 retainer**;
- (c) Treble damages under the CFA;
- (d) Punitive damages as permitted by law;
- (e) Attorney's fees and costs where allowed;
- (f) Pre- and post-judgment interest;
- (g) Declaratory and equitable relief;
- (h) Any other relief this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury on all claims and all issues so triable as of right pursuant to **R. 4:35-1** and the Seventh Amendment to the United States Constitution, as incorporated through Article I, Paragraph 9 of the New Jersey Constitution.

CERTIFICATION (R. 1:4-4)

I certify that the foregoing statements made by me are true to the best of my knowledge, information, and belief. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: November 25, 2025
Atlantic County, New Jersey

s/ Devon Tyler Barber
Devon Tyler Barber
Plaintiff, Pro Se

BARBER, DEVON TYLER, Plaintiff, *Pro Se*
325 E. Jimmie Leeds Rd., Suite 7-333
Galloway Township, Atlantic County, New Jersey
(609) 862-8808 — Tylerstead@ProtonMail.com

DEVON TYLER BARBER,
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

COVER LETTER /
CORRESPONDENCE

November 25, 2025

KAUFMAN DOLOWICH LLP
Iram P. Valentin, Esq. – Bar No. 010222002
David J. Gittines, Esq. – Bar No. 021422005
Court Plaza North
25 Main Street, Suite 500
Hackensack, New Jersey 07601
(201) 488-6655
Attorneys for Defendants
John W. Tumelty, Esq. and
The Law Office of John W. Tumelty

VIA JEDS FILING AND COURTESY COPY

Honorable Sarah B. Johnson, J.S.C.
Superior Court of New Jersey
Law Division – Civil Part
Atlantic County Civil Courthouse
1201 Bacharach Boulevard
Atlantic City, New Jersey 08401

Re: Barber v. Tumelty
Docket No. ATL-L-002794-25

Plaintiff's Filing of Second Amended Complaint and Brief in Opposition to Defendants' Motion to Dismiss

Dear Judge Johnson:

Please accept this correspondence together with Plaintiff's filings submitted today via JEDS, consisting of:

1. **Plaintiff's Second Amended Complaint**, with Certifications and Notice of Filing;
2. **Plaintiff's Brief in Opposition** to Defendants' Motion to Dismiss pursuant to R. 4:6-2(e), with Certifications and a Proposed Form of Order; and
3. **Plaintiff's Certification of Service**, including service of Plaintiff's withdrawal of a prior settlement proposal.

The Second Amended Complaint is filed pursuant to Rule 4:9-1 and clarifies Plaintiff's claims, including the separation of conviction-dependent allegations from independent tort, contract, fiduciary-duty, and consumer-fraud causes of action. The concurrently filed Opposition Brief explains why dismissal is improper under the liberal standard governing Rule 4:6-2(e).

Plaintiff respectfully requests that the Court deny Defendants' Motion to Dismiss, or deem the motion moot in light of the Second Amended Complaint.

Thank you for your time and consideration.

Respectfully submitted,

s/ **Devon Tyler Barber**
DEVON TYLER BARBER
Plaintiff, Pro Se

BARBER, DEVON TYLER, **Plaintiff**, *Pro Se*
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25 Main Street, Suite 500
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Attorneys for Defendants
John W. Tumelty, Esq. and
The Law Office of John W. Tumelty

VIA JEDS FILING AND COURTESY COPY

Honorable Sarah B. Johnson, J.S.C.
Superior Court of New Jersey
Law Division – Civil Part
Atlantic County Civil Courthouse
1201 Bacharach Boulevard
Atlantic City, New Jersey 08401

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Respectfully submitted,

s/ **Devon Tyler Barber**
DEVON TYLER BARBER
Plaintiff, Pro Se

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CERTIFICATION OF SERVICE

I, **Devon Tyler Barber**, certify as follows:

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 - (d) Plaintiff's **Certification** in Opposition;
 - (e) the **Proposed Form of Order**;
by electronic filing through the Judiciary Electronic Document Submission (JEDS) system and by electronic mail upon:

John W. Tumelty, Esq.
Law Office of John W. Tumelty
jt@johntumeltylaw.com

2. Service was made pursuant to **R. 1:5-1(a)** and is complete upon transmission.
3. I certify that the foregoing statements are true. I am aware that if any statement is willfully false, I am subject to punishment.

Dated: 11/25/2025

s/ BARBER, DEVON TYLER, **Plaintiff, Pro Se**
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**PLAINTIFF'S BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PURSUANT
TO R. 4:6-2(e)**

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO
DISMISS PURSUANT TO R. 4:6-2(e)**

**Plaintiff, Devon Tyler Barber, respectfully submits this Brief in
Opposition to Defendants' Motion to Dismiss the First Amended
Complaint pursuant to Rule 4:6-2(e) of the New Jersey Court Rules.**

TABLE OF CONTENTS

Contents

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO R. 4:6-2(e)	1
PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO R. 4:6-2(e)	1
TABLE OF CONTENTS	2
TABLE OF AUTHORITIES.....	3
I. PRELIMINARY STATEMENT	4
II. PROCEDURAL HISTORY.....	4
III. STATEMENT OF FACTS	5
IV. LEGAL ARGUMENT	6
POINT I DEFENDANTS' MOTION MUST BE DENIED BECAUSE RULE 4:6-2(e) REQUIRES ALL FACTS TO BE ACCEPTED AS TRUE AND DISMISSAL IS DISFAVORED.	6
POINT II THE EXONERATION RULE DOES NOT BAR PLAINTIFF'S INDEPENDENT CLAIMS.	6
POINT III PLAINTIFF HAS ADEQUATELY PLED BREACH OF CONTRACT, FIDUCIARY DUTY, FRAUD, AND NEGLIGENCE CLAIMS.	7
POINT IV PLAINTIFF HAS STATED A VALID CFA CLAIM BASED ON DEFENDANTS' COMMERCIAL PRACTICES AND INDUCEMENTS.	8
POINT V EVEN IF ANY PLEADING WERE DEFICIENT, RULE 4:9-1 REQUIRES LEAVE TO AMEND..	8
V. CONCLUSION	9

TABLE OF AUTHORITIES

Cases

Baldasarre v. Butler , 132 N.J. 278 (1993) _____	7
Banco Popular N. Am. v. Gandi , 184 N.J. 161 (2005) _____	4
Baxt v. Liloia , 155 N.J. 190 (1998) _____	7
Blatterfein v. Larken Assocs. , 323 N.J. Super. 167 (App. Div. 1999) _____	8
Cox v. Sears , 138 N.J. 2 (1994) _____	8
Gennari v. Weichert Co. Realtors , 148 N.J. 582 (1997) _____	8
Green v. Morgan Props. , 215 N.J. 431 (2013) _____	4
Lash v. State , 169 N.J. 20, 34–35 (2001) _____	7
McKnight v. Office of the Public Defender , 197 N.J. 180 (2008) _____	4, 6
Printing Mart–Morristown v. Sharp Elecs. Corp. , 116 N.J. 739 (1989) _____	4, 6, 8
Rogers v. Cape May County Office of the Public Defender , 208 N.J. 414 (2011) _____	4, 6

Rules

R. 1:6-3(a) _____	5
R. 4:6-2(e) _____	1, 5
Rule 4:6-2(e) _____	4, 6

I. PRELIMINARY STATEMENT

Defendants seek the extraordinary remedy of dismissing an extensively documented civil action at the pleading stage, contrary to the liberal standard mandated by **Rule 4:6-2(e)** and controlling New Jersey Supreme Court precedent. Their motion rests almost entirely on a misapplication of the **exoneration rule**, which—properly understood—applies **only** to malpractice claims that require proof that a criminal conviction would not have occurred but for counsel’s negligence.

Plaintiff’s **First Amended Complaint** sets forth **numerous independent causes of action**—including breach of contract, breach of fiduciary duty, consumer fraud, fraudulent inducement, retainer misconduct, and abandonment—that do **not** depend upon the invalidity of any conviction and, therefore, are not barred by the exoneration rule as articulated in **McKnight v. Office of the Public Defender**, 197 N.J. 180 (2008), and **Rogers v. Cape May County Office of the Public Defender**, 208 N.J. 414 (2011).

Under **Printing Mart–Morristown v. Sharp Elecs. Corp.**, 116 N.J. 739 (1989), **Green v. Morgan Props.**, 215 N.J. 431 (2013) and **Banco Popular N. Am. v. Gandi**, 184 N.J. 161 (2005), Plaintiff’s factual allegations must be accepted as true and all reasonable inferences drawn in his favor. When that standard is applied, dismissal is plainly inappropriate.

Even if any aspect of Plaintiff’s malpractice claims were premature, the proper remedy would be a **stay**, not dismissal of independent claims that stand entirely on their own. Plaintiff’s remaining causes of action must proceed.

II. PROCEDURAL HISTORY

Plaintiff filed his **First Amended Complaint** on **October 28, 2025**, supported by comprehensive exhibits documenting the underlying events, Defendants’ misconduct, and the resulting injuries. Plaintiff thereafter filed a **Certification of Damages and Injury** on **November 8, 2025**, and a **Supplemental Certification and Clarification** on **November 8, 2025**, further detailing factual matters relevant to this litigation.

Defendants moved to dismiss in lieu of an answer pursuant to **R. 4:6-2(e)**. This opposition is timely filed under **R. 1:6-3(a)**.

III. STATEMENT OF FACTS

Plaintiff incorporates and summarizes the facts set forth in:

- the **First Amended Complaint**,
- the **Certification of Damages and Injury**, and
- the **Supplemental Clarification**.

The underlying **July 2022** incident was a **civil wage dispute** misclassified as a criminal matter. Plaintiff suffered severe detention-hearing irregularities, including being muted and **unable to participate**. Plaintiff's family retained Defendant Tumelty, a self-advertised "**Certified Criminal Trial Attorney**," paying **\$5,000** for urgent legal action.

Tumelty **did not** file a detention-review motion, did **not** investigate, did **not** preserve exculpatory evidence, and did **not** communicate. Plaintiff remained confined for **108 days** under extremely harsh and unsafe conditions.

Plaintiff alleges:

- breach of contract (retainer)
- fiduciary-duty violations
- consumer fraud
- fraudulent inducement
- negligence
- **unjust enrichment**
- business, economic, emotional, reputational, and liberty harms

These claims do **not** depend on overturning his conviction.

IV. LEGAL ARGUMENT

POINT I DEFENDANTS' MOTION MUST BE DENIED BECAUSE RULE 4:6-2(e) REQUIRES ALL FACTS TO BE ACCEPTED AS TRUE AND DISMISSAL IS DISFAVORED.

The New Jersey Supreme Court has repeatedly emphasized that the standard under **R. 4:6-2(e)** is exceedingly liberal:

- A complaint should be dismissed **only in the rarest of circumstances**. **Printing Mart**, 116 N.J. at 772.
- On a **Rule 4:6-2(e)** motion, the Court must accept all well-pleaded allegations as true and give Plaintiff every reasonable inference. **Green v. Morgan Props.**, 215 N.J. 431, 452 (2013). The question is not whether Plaintiff will ultimately prevail, but whether a cause of action may be suggested by the facts. **Banco Popular N. Am. v. Gandi**, 184 N.J. 161, 166 (2005). Defendants improperly ask the Court to weigh facts, resolve disputes, and ignore pleaded allegations. This is prohibited at the dismissal stage.

POINT II THE EXONERATION RULE DOES NOT BAR PLAINTIFF'S INDEPENDENT CLAIMS.

Defendants misstate the exoneration rule as a blanket prohibition against civil claims by criminal defendants. That is not the law.

Under **McKnight**, the rule applies only when a malpractice claim “requires proof that the conviction would not have occurred but for counsel’s negligence.”

New Jersey’s exoneration jurisprudence, including **McKnight** and **Rogers**, applies only where the malpractice claim requires undermining the validity of the conviction itself and does not bar independent economic or contractual claims.

Here, Plaintiff asserts multiple claims that are **not tied to innocence**, including:

- retainer misconduct,
- fee fraud,
- abandonment,

- breach of fiduciary duty,
- consumer fraud,
- fraudulent inducement,
- failure to investigate pretrial,
- failure to communicate,
- failure to act on detention review.

Even if some aspect of malpractice were premature, the remedy is a **stay**, not dismissal of independent claims.

See **McKnight**, 197 N.J. at 194–95; **Rogers**, 208 N.J. at 428–31.

POINT III PLAINTIFF HAS ADEQUATELY PLED BREACH OF CONTRACT, FIDUCIARY DUTY, FRAUD, AND NEGLIGENCE CLAIMS.

New Jersey recognizes independent fiduciary-duty and contract claims against attorneys.

- **Baxt v. Liloia**, 155 N.J. 190 (1998) Attorneys owe fiduciary duties to their clients that exist independently of negligence or malpractice principles.”
- **Lash v. State** confirms that “the fiduciary duties of loyalty, honesty, and fidelity arise inherently from the attorney-client relationship,” and exist independent of any negligence standard. *169 N.J. 20, 34–35 (2001)*.
- **Baldasarre v. Butler**, holds that attorneys owe their clients the duty of “undivided loyalty,” and must avoid any conduct that compromises the client’s interests. *132 N.J. 278, 291–92 (1993)*.

Plaintiff alleges:

- misrepresentations,
- failure to communicate,
- abandonment,
- retainer breaches,
- violations of RPC 1.1, 1.3, and 1.4,
- self-dealing, and
- nonperformance of promised services.

These are independent and **fully actionable**.

POINT IV PLAINTIFF HAS STATED A VALID CFA CLAIM BASED ON DEFENDANTS' COMMERCIAL PRACTICES AND INDUCEMENTS.

Defendants falsely contend the CFA does not apply to attorneys. It does.

- **Blatterfein v. Larken Assocs.**, 323 N.J. Super. 167 (App. Div. 1999) – CFA applies to commercial aspects of professional services.
- **Cox v. Sears**, 138 N.J. 2 (1994) – misrepresentations inducing consumer transactions are actionable.
- **Gennari v. Weichert Co. Realtors**, 148 N.J. 582 (1997) – misrepresentations of qualifications or services are actionable.

Plaintiff's CFA allegations involve:

- advertising,
- inducement,
- misrepresentations about certification,
- promises of aggressive representation,
- promises to secure release,
- inducing a \$5,000 retainer.

These are **quintessential CFA violations**.

POINT V EVEN IF ANY PLEADING WERE DEFICIENT, RULE 4:9-1 REQUIRES LEAVE TO AMEND.

New Jersey has a **liberal amendment standard**.

Leave to amend must be “freely given in the interest of justice.”

Where a complaint can be cured by amendment, dismissal with prejudice is **improper**.

See **Printing Mart, Banco Popular, Green**.

If the Court finds any portion of the FAC unclear, Plaintiff respectfully requests leave to file a Second Amended Complaint.

V. CONCLUSION

For the foregoing reasons:

1. Defendants' **Motion to Dismiss** should be **DENIED** in its entirety;
2. Alternatively, any dismissal should be **without prejudice**, with leave to amend;
3. If the Court finds any malpractice claim premature, the appropriate remedy is a **stay**, not dismissal, and all independent claims must proceed.

Respectfully submitted,

Dated: 11/25/2025

s/ BARBER, DEVON TYLER, **Plaintiff, Pro Se**
325 E. Jimmie Leeds Rd., Suite 7-333
Galloway Township, Atlantic County, New Jersey
(609) 862-8808 — Tylerstead@ProtonMail.com

BARBER, DEVON TYLER, **Plaintiff**, *Pro Se*
325 E. Jimmie Leeds Rd., Suite 7-333
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(609) 862-8808 — Tylerstead@ProtonMail.com

DEVON TYLER BARBER,
Plaintiff,

v.

JOHN W. TUMELTY and THE LAW
OFFICE OF JOHN W. TUMELTY,
Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

**CERTIFICATION OF PLAINTIFF IN
OPPOSITION TO MOTION TO DISMISS
(R. 1:4-4)**

I, **Devon Tyler Barber**, of full age, certify and declare as follows:

1. I am the Plaintiff in this matter. I submit this **Certification** in support of my **Opposition to Defendants' Motion to Dismiss**.
2. The factual allegations in my **First Amended Complaint**, my **Certification of Damages and Injury**, and my **Supplemental Clarification** are **true and correct to the best of my knowledge**, based on personal experience, my own records, and documents obtained from governmental and business entities.
3. In **July 2022**, I was the **victim** of a **civil wage dispute** that was misclassified as a criminal matter. At my initial detention hearing, I was **muted**, **unable to participate**, and my **evidence of residence, employment, and wages** was never presented.

4. My family retained Defendant **John W. Tumelty**, paid him **\$5,000**, and relied entirely on his representations that he would **investigate**, present the truth, and **file** the appropriate motions to secure my pre-trial release.
5. Defendant Tumelty did **not** file a detention-review motion, did **not** present exculpatory or mitigating evidence, did **not** preserve my iPhone or wage-communication evidence, and effectively abandoned me.
6. As a result of Defendants' **inaction** and abandonment—**not as a challenge to any conviction or adjudication**—Plaintiff remained detained for 108 days under exceptionally harsh conditions. During that confinement, Plaintiff was physically **assaulted** by correctional officers, placed in prolonged **solitary confinement**, repeatedly exposed to **bed-bug** and **scabies infestations**, and ultimately housed in a medical-mental-health protective-custody pod with severely **unstable inmates**. These conditions **caused** substantial **physical, psychological, and economic harm**, including lost wages, lost business opportunities, loss of housing stability, and **destruction** of personal property. These **injuries** arise independently of the validity of any conviction and are attributable solely to Defendants' **breaches of fiduciary duty, failures to act, misrepresentations, and commercial misrepresentations** in the marketing and provision of legal services.
7. These injuries were caused not by the subsequent plea disposition, but by Defendants' **pretrial inaction, misrepresentations, commercial misrepresentations** in the marketing and provision of legal services, **abandonment**, and **failure** to fulfill their **fiduciary, contractual, and professional duties**.

8. Plaintiff's claims for breach of contract, breach of fiduciary duty, consumer fraud, misrepresentation, commercial misrepresentation, retainer misconduct, and other independent harms arise entirely from Defendants' conduct and do not depend on overturning, undermining, or challenging the validity of any conviction.

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

Dated: 11/25/2025

s/ BARBER, DEVON TYLER, **Plaintiff, Pro Se**
325 E. Jimmie Leeds Rd., Suite 7-333
Galloway Township, Atlantic County, New Jersey
(609) 862-8808 — Tylerstead@ProtonMail.com

DEVON TYLER BARBER,

Plaintiff,

v.

JOHN W. TUMELTY and THE LAW
OFFICE OF JOHN W. TUMELTY,
Defendant(s).

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS

THIS MATTER having been opened to the Court by Defendants, John W. Tumelty, Esq. and the Law Office of John W. Tumelty, by way of a Motion to Dismiss Plaintiff's First Amended Complaint pursuant to **R. 4:6-2(e)**, and the Court having considered the written submissions of the parties, and for good cause shown;

IT IS on this ____ day of _____, 2025,

ORDERED that Defendants' Motion to Dismiss is hereby **DENIED**; and

IT IS FURTHER ORDERED that Defendants shall file and serve an Answer within **35 days** of the entry of this Order, pursuant to **R. 4:6-1**; and

IT IS FURTHER ORDERED that any conviction-dependent malpractice allegations, to the extent deemed premature, shall be handled separately as a matter for **case-management scheduling**, without prejudice to Plaintiff's independent claims for breach of fiduciary duty, breach of contract, consumer fraud, fraud in the inducement, and all other non-malpractice causes of action.

HON. SARAH B. JOHNSON, J.S.C.

BARBER, DEVON TYLER, **Plaintiff, Pro Se**
325 E. Jimmie Leeds Rd., Suite 7-333
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(609) 862-8808 — Tylerstead@ProtonMail.com

DEVON TYLER BARBER,
Plaintiff,

v.

JOHN W. TUMELTY and THE LAW
OFFICE OF JOHN W. TUMELTY,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

NOTICE OF FILING:

SECOND AMENDED COMPLAINT

TO: The **Honorable** Sarah B. Johnson, **J.S.C.**
Superior Court of New Jersey, Law Division
Atlantic County

PLEASE TAKE NOTICE that Plaintiff, **Devon Tyler Barber**, hereby files the attached **Second Amended Complaint** pursuant to Rule 4:9-1. This amendment is filed as of right prior to the entry of any responsive pleading and in further response to Defendants' pending ***Motion to Dismiss*** under Rule 4:6-2(e).

The **Second Amended Complaint** clarifies and amplifies Plaintiff's factual allegations, **separates conviction-dependent claims from independent claims**, and further demonstrates that **multiple tort, contract, and consumer-fraud causes of action** remain viable regardless of any *post-conviction proceedings*.

Plaintiff respectfully requests that the Court deem the pending ***Motion to Dismiss*** moot or, in the alternative, deny the *motion* for the reasons set forth in Plaintiff's concurrently filed **Brief in Opposition**.

Respectfully submitted,

s/ Devon Tyler Barber
DEVON TYLER BARBER
Plaintiff, Pro Se
Dated: 11/25/2025

Table of Contents

NOTICE OF FILING:	1
PLEASE TAKE NOTICE	1
SECOND AMENDED COMPLAINT	4
PRELIMINARY STATEMENT	4
JURISDICTION AND VENUE	5
PARTIES.....	6
FACTUAL ALLEGATIONS	6
A. The Underlying July 2022 Events	6
B. Detention Hearing Violations.....	7
C. Retainer and Representations by Defendant Tumelty	7
D. Defendants' Abandonment and Failures.....	8
E. Damages.....	8
CAUSES OF ACTION	9
COUNT I – BREACH OF CONTRACT (Retainer Agreement)	9
COUNT II – BREACH OF FIDUCIARY DUTY	9
COUNT III – FRAUD / FRAUDULENT INDUCEMENT.....	10
COUNT IV – CONSUMER FRAUD (N.J.S.A. 56:8-1 et seq.).....	10
COUNT V – NEGLIGENCE / GROSS NEGLIGENCE (Independent of conviction validity)	10
COUNT VI – LEGAL MALPRACTICE (Conviction-Dependent Portion Only)	11
COUNT VII — UNJUST ENRICHMENT	11
DEMAND FOR JUDGMENT	12
JURY DEMAND.....	12
Plaintiff hereby demands trial by jury on all claims and all issues so triable as of right pursuant to R. 4:35-1 and the Seventh Amendment to the United States Constitution, as incorporated through Article I, Paragraph 9 of the New Jersey Constitution.	12
CERTIFICATION (R. 1:4-4)	12

Cases

Baldasarre v. Butler , 132 N.J. 278 (1993)	10
Baxt v. Liloia , 155 N.J. 190 (1998)	10
Lash v. State , 169 N.J. 20 (2001)	10
McKnight v. Office of the Public Defender , 197 N.J. 180 (2008)	5, 11
Rogers v. Cape May County Office of the Public Defender , 208 N.J. 414 (2011)	5, 11

Other Authorities

Article I, Paragraph 9 of the New Jersey Constitution	12
N.J. Const. art. VI, § 3, ¶ 2	5
Seventh Amendment to the United States Constitution	12

Rules

R. 1:39	6
R. 1:4-4	12
R. 4:3-2(a)	5
R. 4:35-1	12

BARBER, DEVON TYLER, **Plaintiff**, *Pro Se*
325 E. Jimmie Leeds Rd., Suite 7-333
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(609) 862-8808 — Tylerstead@ProtonMail.com

DEVON TYLER BARBER,
Plaintiff,

v.

JOHN W. TUMELTY and THE LAW
OFFICE OF JOHN W. TUMELTY,
Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

SECOND AMENDED COMPLAINT

1. Plaintiff, **Devon Tyler Barber**, an individual who resides in Atlantic County, New Jersey, hereby files this **Second Amended Complaint** against Defendants **John W. Tumelty, Esq.** and the **Law Office of John W. Tumelty**, and alleges as follows:

PRELIMINARY STATEMENT

2. This civil action arises from **attorney misconduct, fee fraud, breach of fiduciary duty, abandonment, and actionable commercial misrepresentations** committed by Defendants after accepting a \$5,000 retainer to represent Plaintiff in pretrial detention proceedings in matters **ATL-22-002292** and **ATL-22-002313**. Those proceedings originated from what was, in substance, a **civil wage and property dispute** between Plaintiff and his **former employers**. Plaintiff's **former employers** generated a misleading criminal narrative following Plaintiff's requests for unpaid wages and the return of his property. Defendants were retained specifically to expose the **civil nature** of

the dispute, challenge the inaccurate narrative, and **protect** Plaintiff's liberty interests.

Defendants **failed** to do so, resulting in prolonged detention, increased pressure on Plaintiff's plea decision, and the injuries set forth herein.

3. Although a limited subset of malpractice allegations may intersect with issues bearing on the ultimate validity of Plaintiff's conviction, the **majority of claims asserted in this pleading arise from independent torts, contractual breaches, retainer-based misrepresentations, and consumer-fraud violations**. These claims concern Defendants' **pretrial conduct, commercial inducements, failures to act, and breaches of professional and fiduciary obligations**, and **do not require overturning or collaterally attacking any conviction** to proceed.
4. Pursuant to *McKnight v. Office of the Public Defender*, 197 N.J. 180 (2008), and *Rogers v. Cape May County Office of the Public Defender*, 208 N.J. 414 (2011), only those portions of a legal-malpractice claim that require undermining the validity of a criminal conviction are subject to the exoneration rule and may be stayed pending post-conviction review. All **independent tort, contract, fiduciary-duty, and consumer-fraud claims** proceed immediately and are not barred by the exoneration doctrine.

JURISDICTION AND VENUE

5. The Court has subject-matter jurisdiction over this action pursuant to **N.J. Const. art. VI, § 3, ¶ 2** and **N.J.S.A. 2A:3-1**, which vest the Superior Court, Law Division, with original jurisdiction over all civil actions.
6. Venue is proper in **Atlantic County** under **R. 4:3-2(a)** because the acts and omissions alleged in this Complaint occurred in this county, and Defendants **regularly transact** business here.

PARTIES

7. **Plaintiff Devon Tyler Barber** is a natural person residing in Atlantic County, New Jersey, who conducts lawful contracting and home-improvement work through duly formed business entities and/or beneficial legal arrangements. Plaintiff appears in this matter in his personal capacity as the party injured by Defendants' acts and omissions.
8. **Defendant John W. Tumelty, Esq.** is a natural person and attorney licensed to practice law in the State of New Jersey, who publicly advertises himself as a "**Certified Criminal Trial Attorney**" pursuant to **R. 1:39**.
9. **Defendant The Law Office of John W. Tumelty** is a New Jersey law practice and business entity located in Atlantic County, New Jersey, and conducts the commercial offering of legal services throughout the State.

FACTUAL ALLEGATIONS

A. The Underlying July 2022 Events

10. In July 2022, Plaintiff was performing authorized renovation and property-maintenance work at **1525 W. Aloe Street, Galloway Township**, pursuant to a labor-for-lodging and wage arrangement with the property owners and their business entities.
11. When Plaintiff sought payment for completed work, the property owners and associated individuals responded with escalating hostility. They unlawfully destroyed portions of Plaintiff's personal property, scattered his belongings, and forced him from the premises in retaliation for his unpaid-wage demands, as well as for Plaintiff's ongoing work with a licensed contractor who had entrusted him with a company work truck for both on-duty and authorized off-duty use.

12. The ensuing police response incorrectly treated the matter as a criminal incident, despite clear indicators that the underlying dispute involved **civil wage issues, a work-for-lodging arrangement, and a tenancy/occupancy conflict**, none of which were investigated or presented by defense counsel.

B. Detention Hearing Violations

13. At Plaintiff's initial detention hearing, Plaintiff was electronically **mute**, unable to meaningfully participate, and prevented from presenting evidence of his lawful residence, wage-based employment, work-for-lodging arrangement, and **tenancy status**.
14. Assigned counsel at that hearing **failed** to challenge the prosecution's mischaracterizations and presented no evidence regarding Plaintiff's employment history, community ties, or the ***civil nature*** of the underlying dispute.

C. Retainer and Representations by Defendant Tumelty

15. Shortly after the hearing, Plaintiff's family retained Defendant Tumelty and paid a **\$5,000** flat fee in reliance on Defendant's advertisements, assurances, and express promises that he would:
 - (a) **File a second detention-review motion;**
 - (b) Present **evidence** of Plaintiff's residence, employment, and civil wage dispute;
 - (c) **Investigate** the incident as a civil matter rather than a violent crime; and
 - (d) Communicate regularly, act diligently, and **protect** Plaintiff's liberty interests.
16. Defendant Tumelty expressly held himself out as a "Certified Criminal Trial Attorney" and an "aggressive advocate," representing that he possessed the skill and experience necessary to secure Plaintiff's pretrial release.
17. These written and verbal representations induced Plaintiff and his family to retain him and pay the \$5,000 retainer.

D. Defendants' Abandonment and Failures

18. Despite repeated assurances, Defendants never filed a detention-review motion, even though such filings could have been submitted electronically through JEDS.
19. Defendants never investigated or preserved the civil-nature evidence, never secured Plaintiff's phone records or wage documentation, and never obtained the corroborating materials that were readily accessible and essential to correcting the prosecution's narrative.
20. Defendants failed to communicate with Plaintiff, failed to challenge the State's mischaracterizations, and visited Plaintiff only once during his 108-day confinement.
21. As alleged herein, Plaintiff remained confined between July 11 and October 26, 2022 as a direct result of Defendants' inaction, neglect, and abandonment—not because of any legal determination challenged in this civil action.

E. Damages

22. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered:
 - (a) loss of liberty for 108 days;
 - (b) physical injury and unsafe confinement conditions;
 - (c) psychological harm, including anxiety, trauma, and post-concussive symptoms;
 - (d) business interference, lost wages, and disruption to contracting opportunities;
 - (e) destruction of personal property;
 - (f) reputational harm affecting employment, housing, and credit; and
 - (g) loss of the unearned \$5,000 retainer.
23. These injuries arise from Defendants' independent torts, contractual breaches, and fiduciary misconduct and **do not depend on overturning, challenging, or undermining the validity of any conviction**, and therefore fall outside the exoneration rule.

24. Plaintiff incorporates by reference his Certifications filed November 7–8, 2025 (including supporting exhibits), each of which is based on personal knowledge and submitted pursuant to R. 1:4-4.

CAUSES OF ACTION

COUNT I – BREACH OF CONTRACT (Retainer Agreement)

25. Plaintiff repeats and realleges the above paragraphs.

26. Plaintiff and Defendants entered into a **retainer agreement** for legal representation.

27. Defendants breached the agreement by:

- (a) Failing to file a detention-review motion;
- (b) Failing to communicate;
- (c) Failing to investigate;
- (d) Failing to perform services for which payment was made.

28. Plaintiff suffered ascertainable loss, including the **\$5,000 fee** and consequential damages.

COUNT II – BREACH OF FIDUCIARY DUTY

29. Defendants owed Plaintiff fiduciary duties of **loyalty, diligence, candor, and communication.**

30. Defendants abandoned Plaintiff, withheld action, and failed to protect Plaintiff's liberty interests.

31. Under Baxt v. Liloia, 155 N.J. 190 (1998), Lash v. State, 169 N.J. 20 (2001), and Baldasarre v. Butler, 132 N.J. 278 (1993), an attorney's fiduciary obligations—including loyalty, diligence, candor, and communication—are independent of negligence principles, and breaches of those duties are fully actionable as stand-alone claims.

32. Plaintiff suffered emotional, economic, and liberty-based injury as a result.

COUNT III – FRAUD / FRAUDULENT INDUCEMENT

33. Defendants made material misrepresentations, including:
 - (a) Claims of certification and aggressive representation,
 - (b) Promises of immediate detention-review filings,
 - (c) Assertions of strategic action that never occurred.
34. Plaintiff reasonably relied on these statements when paying \$5,000.
35. Defendants knew or should have known these statements were false or misleading.
36. Plaintiff suffered damages as a result.

COUNT IV – CONSUMER FRAUD (N.J.S.A. 56:8-1 et seq.)

37. Plaintiff repeats and realleges the above paragraphs.
38. Defendants' advertising, marketing, and retainer-inducement statements constitute **unlawful commercial practices** under:
 - **Blatterfein v. Larken Assocs.**,
 - **Cox v. Sears**,
 - **Gennari v. Weichert**.
39. Defendants knowingly induced Plaintiff into a transaction using misrepresentations.
40. Plaintiff suffered **ascertainable loss** including the \$5,000 retainer and consequential damages.
41. Plaintiff is entitled to **treble damages**, fees, and costs.

COUNT V – NEGLIGENCE / GROSS NEGLIGENCE (Independent of conviction validity)

42. Defendants owed Plaintiff a duty of reasonable care in representation.
43. Defendants breached this duty by failing to:
 - (a) communicate;

- (b) investigate;
- (c) preserve evidence;
- (d) file a detention review motion;
- (e) protect Plaintiff from continued pretrial detention and worsening confinement conditions.

44. These failures were **pre-conviction** and independent of any plea.

45. Plaintiff suffered economic, psychological, and liberty-based injuries as a direct result.

COUNT VI – LEGAL MALPRACTICE (Conviction-Dependent Portion Only; To be stayed if Court deems appropriate)

46. To the extent any malpractice claim requires establishing innocence or reversal of conviction, Plaintiff pleads such counts in the alternative.

47. Plaintiff acknowledges that the conviction-dependent portion of this count may be stayed pending post-conviction proceedings consistent with **McKnight** and **Rogers**.

48. This does not affect his independent non-malpractice claims in **Counts I–V** and **VII**.

COUNT VII — UNJUST ENRICHMENT

49. Plaintiff repeats and realleges all preceding paragraphs as though fully set forth herein.

50. Plaintiff conferred a material benefit upon Defendants by paying a \$5,000 retainer for legal services that Defendants promised, but failed, to perform.

51. Defendants knowingly accepted and retained that benefit while failing to act, failing to communicate, failing to investigate, and abandoning Plaintiff during critical pretrial detention proceedings.

52. Defendants' retention of the retainer fee, despite their nonperformance and misrepresentations, is unjust, inequitable, and contrary to principles of good conscience.

53. Plaintiff suffered ascertainable economic loss in the form of the \$5,000 payment and consequential damages.

54. Equity demands the return of the \$5,000 and such further relief as the Court deems just.

DEMAND FOR JUDGMENT

55. **WHEREFORE**, Plaintiff demands judgment as follows:

- (a) Compensatory damages, including loss of liberty, emotional distress, lost wages, reputational harm, and property loss;
- (b) Return of the **\$5,000 retainer**;
- (c) Treble damages under the CFA;
- (d) Punitive damages as permitted by law;
- (e) Attorney's fees and costs where allowed;
- (f) Pre- and post-judgment interest;
- (g) Declaratory and equitable relief;
- (h) Any other relief this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury on all claims and all issues so triable as of right pursuant to **R. 4:35-1** and the Seventh Amendment to the United States Constitution, as incorporated through Article I, Paragraph 9 of the New Jersey Constitution.

CERTIFICATION (R. 1:4-4)

I certify that the foregoing statements made by me are true to the best of my knowledge, information, and belief. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: November 25, 2025
Atlantic County, New Jersey

s/ Devon Tyler Barber
Devon Tyler Barber
Plaintiff, Pro Se

BARBER, DEVON TYLER, **Plaintiff**, *Pro Se*
325 E. Jimmie Leeds Rd., Suite 7-333
Galloway Township, Atlantic County, New Jersey
(609) 862-8808 — Tylerstead@ProtonMail.com

DEVON TYLER BARBER,

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JOHN W. TUMELTY and THE LAW
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Defendant(s).

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

PLAINTIFF'S BRIEF IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PURSUANT
TO R. 4:6-2(e)

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO
DISMISS PURSUANT TO R. 4:6-2(e)

**Plaintiff, Devon Tyler Barber, respectfully submits this Brief in
Opposition to Defendants' Motion to Dismiss the First Amended
Complaint pursuant to Rule 4:6-2(e) of the New Jersey Court Rules.**

TABLE OF CONTENTS

Contents

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO R. 4:6-2(e)	1
PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO R. 4:6-2(e)	1
TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
I. PRELIMINARY STATEMENT	4
II. PROCEDURAL HISTORY	4
III. STATEMENT OF FACTS	5
IV. LEGAL ARGUMENT	6
POINT I DEFENDANTS' MOTION MUST BE DENIED BECAUSE RULE 4:6-2(e) REQUIRES ALL FACTS TO BE ACCEPTED AS TRUE AND DISMISSAL IS DISFAVORED.	6
POINT II THE EXONERATION RULE DOES NOT BAR PLAINTIFF'S INDEPENDENT CLAIMS.	6
POINT III PLAINTIFF HAS ADEQUATELY PLED BREACH OF CONTRACT, FIDUCIARY DUTY, FRAUD, AND NEGLIGENCE CLAIMS.	7
POINT IV PLAINTIFF HAS STATED A VALID CFA CLAIM BASED ON DEFENDANTS' COMMERCIAL PRACTICES AND INDUCEMENTS.	8
POINT V EVEN IF ANY PLEADING WERE DEFICIENT, RULE 4:9-1 REQUIRES LEAVE TO AMEND..	8
V. CONCLUSION	9

TABLE OF AUTHORITIES

Cases

Baldasarre v. Butler , 132 N.J. 278 (1993) _____	7
Banco Popular N. Am. v. Gandi , 184 N.J. 161 (2005) _____	4
Baxt v. Liloia , 155 N.J. 190 (1998) _____	7
Blatterfein v. Larken Assocs. , 323 N.J. Super. 167 (App. Div. 1999) _____	8
Cox v. Sears , 138 N.J. 2 (1994) _____	8
Gennari v. Weichert Co. Realtors , 148 N.J. 582 (1997) _____	8
Green v. Morgan Props. , 215 N.J. 431 (2013) _____	4
Lash v. State , 169 N.J. 20, 34–35 (2001) _____	7
McKnight v. Office of the Public Defender , 197 N.J. 180 (2008) _____	4, 6
Printing Mart–Morristown v. Sharp Elecs. Corp. , 116 N.J. 739 (1989) _____	4, 6, 8
Rogers v. Cape May County Office of the Public Defender , 208 N.J. 414 (2011) _____	4, 6

Rules

R. 1:6-3(a) _____	5
R. 4:6-2(e) _____	1, 5
Rule 4:6-2(e) _____	4, 6

I. PRELIMINARY STATEMENT

Defendants seek the extraordinary remedy of dismissing an extensively documented civil action at the pleading stage, contrary to the liberal standard mandated by **Rule 4:6-2(e)** and controlling New Jersey Supreme Court precedent. Their motion rests almost entirely on a misapplication of the **exoneration rule**, which—properly understood—applies **only** to malpractice claims that require proof that a criminal conviction would not have occurred but for counsel’s negligence.

Plaintiff’s **First Amended Complaint** sets forth **numerous independent causes of action**—including breach of contract, breach of fiduciary duty, consumer fraud, fraudulent inducement, retainer misconduct, and abandonment—that do **not** depend upon the invalidity of any conviction and, therefore, are not barred by the exoneration rule as articulated in **McKnight v. Office of the Public Defender**, 197 N.J. 180 (2008), and **Rogers v. Cape May County Office of the Public Defender**, 208 N.J. 414 (2011).

Under **Printing Mart–Morristown v. Sharp Elecs. Corp.**, 116 N.J. 739 (1989), **Green v. Morgan Props.**, 215 N.J. 431 (2013) and **Banco Popular N. Am. v. Gandi**, 184 N.J. 161 (2005), Plaintiff’s factual allegations must be accepted as true and all reasonable inferences drawn in his favor. When that standard is applied, dismissal is plainly inappropriate.

Even if any aspect of Plaintiff’s malpractice claims were premature, the proper remedy would be a **stay**, not dismissal of independent claims that stand entirely on their own. Plaintiff’s remaining causes of action must proceed.

II. PROCEDURAL HISTORY

Plaintiff filed his **First Amended Complaint** on **October 28, 2025**, supported by comprehensive exhibits documenting the underlying events, Defendants’ misconduct, and the resulting injuries. Plaintiff thereafter filed a **Certification of Damages and Injury** on **November 8, 2025**, and a **Supplemental Certification and Clarification** on **November 8, 2025**, further detailing factual matters relevant to this litigation.

Defendants moved to dismiss in lieu of an answer pursuant to **R. 4:6-2(e)**. This opposition is timely filed under **R. 1:6-3(a)**.

III. STATEMENT OF FACTS

Plaintiff incorporates and summarizes the facts set forth in:

- the **First Amended Complaint**,
- the **Certification of Damages and Injury**, and
- the **Supplemental Clarification**.

The underlying **July 2022** incident was a **civil wage dispute** misclassified as a criminal matter. Plaintiff suffered severe detention-hearing irregularities, including being muted and **unable to participate**. Plaintiff's family retained Defendant Tumelty, a self-advertised "**Certified Criminal Trial Attorney**," paying **\$5,000** for urgent legal action.

Tumelty **did not** file a detention-review motion, did **not** investigate, did **not** preserve exculpatory evidence, and did **not** communicate. Plaintiff remained confined for **108 days** under extremely harsh and unsafe conditions.

Plaintiff alleges:

- breach of contract (retainer)
- fiduciary-duty violations
- consumer fraud
- fraudulent inducement
- negligence
- **unjust enrichment**
- business, economic, emotional, reputational, and liberty harms

These claims do **not** depend on overturning his conviction.

IV. LEGAL ARGUMENT

POINT I DEFENDANTS' MOTION MUST BE DENIED BECAUSE RULE 4:6-2(e) REQUIRES ALL FACTS TO BE ACCEPTED AS TRUE AND DISMISSAL IS DISFAVORED.

The New Jersey Supreme Court has repeatedly emphasized that the standard under **R. 4:6-2(e)** is exceedingly liberal:

- A complaint should be dismissed **only in the rarest of circumstances**. **Printing Mart**, 116 N.J. at 772.
- On a **Rule 4:6-2(e)** motion, the Court must accept all well-pleaded allegations as true and give Plaintiff every reasonable inference. **Green v. Morgan Props.**, 215 N.J. 431, 452 (2013). The question is not whether Plaintiff will ultimately prevail, but whether a cause of action may be suggested by the facts. **Banco Popular N. Am. v. Gandi**, 184 N.J. 161, 166 (2005). Defendants improperly ask the Court to weigh facts, resolve disputes, and ignore pleaded allegations. This is prohibited at the dismissal stage.

POINT II THE EXONERATION RULE DOES NOT BAR PLAINTIFF'S INDEPENDENT CLAIMS.

Defendants misstate the exoneration rule as a blanket prohibition against civil claims by criminal defendants. That is not the law.

Under **McKnight**, the rule applies only when a malpractice claim “requires proof that the conviction would not have occurred but for counsel’s negligence.”

New Jersey’s exoneration jurisprudence, including **McKnight** and **Rogers**, applies only where the malpractice claim requires undermining the validity of the conviction itself and does not bar independent economic or contractual claims.

Here, Plaintiff asserts multiple claims that are **not tied to innocence**, including:

- retainer misconduct,
- fee fraud,
- abandonment,

- breach of fiduciary duty,
- consumer fraud,
- fraudulent inducement,
- failure to investigate pretrial,
- failure to communicate,
- failure to act on detention review.

Even if some aspect of malpractice were premature, the remedy is a **stay**, not dismissal of independent claims.

See **McKnight**, 197 N.J. at 194–95; **Rogers**, 208 N.J. at 428–31.

POINT III PLAINTIFF HAS ADEQUATELY PLED BREACH OF CONTRACT, FIDUCIARY DUTY, FRAUD, AND NEGLIGENCE CLAIMS.

New Jersey recognizes independent fiduciary-duty and contract claims against attorneys.

- **Baxt v. Liloia**, 155 N.J. 190 (1998) Attorneys owe fiduciary duties to their clients that exist independently of negligence or malpractice principles.”
- **Lash v. State** confirms that “the fiduciary duties of loyalty, honesty, and fidelity arise inherently from the attorney-client relationship,” and exist independent of any negligence standard. *169 N.J. 20, 34–35 (2001)*.
- **Baldasarre v. Butler**, holds that attorneys owe their clients the duty of “undivided loyalty,” and must avoid any conduct that compromises the client’s interests. *132 N.J. 278, 291–92 (1993)*.

Plaintiff alleges:

- misrepresentations,
- failure to communicate,
- abandonment,
- retainer breaches,
- violations of RPC 1.1, 1.3, and 1.4,
- self-dealing, and
- nonperformance of promised services.

These are independent and **fully actionable**.

POINT IV PLAINTIFF HAS STATED A VALID CFA CLAIM BASED ON DEFENDANTS' COMMERCIAL PRACTICES AND INDUCEMENTS.

Defendants falsely contend the CFA does not apply to attorneys. It does.

- **Blatterfein v. Larken Assocs.**, 323 N.J. Super. 167 (App. Div. 1999) – CFA applies to commercial aspects of professional services.
- **Cox v. Sears**, 138 N.J. 2 (1994) – misrepresentations inducing consumer transactions are actionable.
- **Gennari v. Weichert Co. Realtors**, 148 N.J. 582 (1997) – misrepresentations of qualifications or services are actionable.

Plaintiff's CFA allegations involve:

- advertising,
- inducement,
- misrepresentations about certification,
- promises of aggressive representation,
- promises to secure release,
- inducing a \$5,000 retainer.

These are **quintessential CFA violations**.

POINT V EVEN IF ANY PLEADING WERE DEFICIENT, RULE 4:9-1 REQUIRES LEAVE TO AMEND.

New Jersey has a **liberal amendment standard**.

Leave to amend must be “freely given in the interest of justice.”

Where a complaint can be cured by amendment, dismissal with prejudice is **improper**.

See **Printing Mart, Banco Popular, Green**.

If the Court finds any portion of the FAC unclear, Plaintiff respectfully requests leave to file a Second Amended Complaint.

V. CONCLUSION

For the foregoing reasons:

1. Defendants' **Motion to Dismiss** should be **DENIED** in its entirety;
2. Alternatively, any dismissal should be **without prejudice**, with leave to amend;
3. If the Court finds any malpractice claim premature, the appropriate remedy is a **stay**, not dismissal, and all independent claims must proceed.

Respectfully submitted,

Dated: 11/25/2025

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(609) 862-8808 — Tylerstead@ProtonMail.com

DEVON TYLER BARBER,
Plaintiff,

v.

JOHN W. TUMELTY and THE LAW
OFFICE OF JOHN W. TUMELTY,
Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

**CERTIFICATION OF PLAINTIFF IN
OPPOSITION TO MOTION TO DISMISS
(R. 1:4-4)**

I, **Devon Tyler Barber**, of full age, certify and declare as follows:

1. I am the Plaintiff in this matter. I submit this **Certification** in support of my **Opposition to Defendants' Motion to Dismiss**.
2. The factual allegations in my **First Amended Complaint**, my **Certification of Damages and Injury**, and my **Supplemental Clarification** are **true and correct to the best of my knowledge**, based on personal experience, my own records, and documents obtained from governmental and business entities.
3. In **July 2022**, I was the **victim** of a **civil wage dispute** that was misclassified as a criminal matter. At my initial detention hearing, I was **muted**, **unable to participate**, and my **evidence of residence, employment, and wages** was never presented.

4. My family retained Defendant **John W. Tumelty**, paid him **\$5,000**, and relied entirely on his representations that he would **investigate**, present the truth, and **file** the appropriate motions to secure my pre-trial release.
5. Defendant Tumelty did **not** file a detention-review motion, did **not** present exculpatory or mitigating evidence, did **not** preserve my iPhone or wage-communication evidence, and effectively abandoned me.
6. As a result of Defendants' **inaction** and abandonment—**not as a challenge to any conviction or adjudication**—Plaintiff remained detained for 108 days under exceptionally harsh conditions. During that confinement, Plaintiff was physically **assaulted** by correctional officers, placed in prolonged **solitary confinement**, repeatedly exposed to **bed-bug** and **scabies infestations**, and ultimately housed in a medical-mental-health protective-custody pod with severely **unstable inmates**. These conditions **caused** substantial **physical, psychological, and economic harm**, including lost wages, lost business opportunities, loss of housing stability, and **destruction** of personal property. These **injuries** arise independently of the validity of any conviction and are attributable solely to Defendants' **breaches of fiduciary duty, failures to act, misrepresentations, and commercial misrepresentations** in the marketing and provision of legal services.
7. These injuries were caused not by the subsequent plea disposition, but by Defendants' **pretrial inaction, misrepresentations, commercial misrepresentations** in the marketing and provision of legal services, **abandonment**, and **failure** to fulfill their **fiduciary, contractual, and professional duties**.

8. Plaintiff's claims for breach of contract, breach of fiduciary duty, consumer fraud, misrepresentation, commercial misrepresentation, retainer misconduct, and other independent harms arise entirely from Defendants' conduct and do not depend on overturning, undermining, or challenging the validity of any conviction.

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

Dated: 11/25/2025

s/ BARBER, DEVON TYLER, **Plaintiff, Pro Se**
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DEVON TYLER BARBER,
Plaintiff,

v.

JOHN W. TUMELTY and THE LAW
OFFICE OF JOHN W. TUMELTY,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO.: ATL-L-002794-25

Civil Action

NOTICE OF FILING:

SECOND AMENDED COMPLAINT

TO: The **Honorable** Sarah B. Johnson, **J.S.C.**
Superior Court of New Jersey, Law Division
Atlantic County

PLEASE TAKE NOTICE that Plaintiff, **Devon Tyler Barber**, hereby files the attached **Second Amended Complaint** pursuant to Rule 4:9-1. This amendment is filed as of right prior to the entry of any responsive pleading and in further response to Defendants' pending ***Motion to Dismiss*** under Rule 4:6-2(e).

The **Second Amended Complaint** clarifies and amplifies Plaintiff's factual allegations, **separates conviction-dependent claims from independent claims**, and further demonstrates that **multiple tort, contract, and consumer-fraud causes of action** remain viable regardless of any *post-conviction proceedings*.

Plaintiff respectfully requests that the Court deem the pending ***Motion to Dismiss*** moot or, in the alternative, deny the *motion* for the reasons set forth in Plaintiff's concurrently filed **Brief in Opposition**.

Respectfully submitted,

s/ Devon Tyler Barber
DEVON TYLER BARBER
Plaintiff, Pro Se
Dated: 11/25/2025