IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

HALSCOTT MEGARO, P.A.,	)	
	)	
Plaintiff,	)	**Docket # 5:21-CV-00478-BO**
	)	
-against-	)	
	)	
HENRY MCCOLLUM, et. al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO MOTION TO DISMISS AND CROSS-MOTION TO RECUSE AND INCORPORATED MEMORANDUM OF LAW

NOW COMES Plaintiff, Halscott Megaro, P.A., by and through undersigned counsel, and hereby submits this response in opposition to the Defendants' motion to dismiss.

INTRODUCTION

1. At the outset, it is necessary to correct demonstrably false assertions made by Defendants. As Defendants are well aware, Plaintiff does not now, nor has it ever, sought "millions of dollars from Defendants for its own benefit." Further, Plaintiff Halscott Megaro, P.A. is NOT the same entity as Patrick Michael Megaro.

2. The substance of Plaintiff's claims, and damages, are set forth in Docket # 13 and its attachments – documents with which Defendants have been in possession for several years. Plaintiff seeks (1) reimbursement for approximately $90,000.00 in costs and expenses spent in prosecuting Defendants' underlying lawsuit over the course of several years, including payments to court reporters for approximately 20 depositions, and other incidental expenses in prosecuting the action, and (2) for the quantum meruit value of the services rendered, which Defendants Tarlton

and Gilliam both acknowledged and assented to, as well as under theories of unjust enrichment and contract theories as outlined in the initial complaint.

3. To claim that Plaintiff seeks "millions of dollars" lacks any basis in fact or reality, and is not made in good faith, leaving only two possibilities: (a) defense counsel either knows this assertion to be false, or (b) acts with reckless disregard for the truth.

4. The invective and unprofessional mud-flinging set forth by Defendants in their motion to dismiss prove that Plaintiff's fears – as expressed in its opposition to transferring venue from the Middle District of Florida to this Court – are 100% well-founded and true.

5. For the reasons set forth herein, Plaintiff respectfully requests that this Court issue an order (1) recusing itself from consideration of the case, and (2) denying the Defendants' motion in its entirety.

STATEMENT OF THE RELEVANT FACTS

6. Plaintiff commenced an action on behalf of the Defendants Henry McCollum and Leon Brown in this Court, Docket # 5:15-CV-451-BO on August 31, 2015. In that underlying lawsuit, Plaintiff sought damages pursuant to 42 U.S.C. § 1983 civil rights violations committed against McCollum and Brown.

7. Contemporaneously with the initiation of the underlying lawsuit, Leon Brown was adjudicated incompetent upon the application of Patrick Michael Megaro, Esq., to the Cumberland County District Court, North Carolina, and his sister, Geraldine Brown Ransom was appointed guardian. Mrs. Ransom ratified the retainer agreement Plaintiff had with McCollum and Brown as Brown's guardian and was subsequently substituted as the plaintiff in the underlying lawsuit by this Court's order.

8. Later, Geraldine Brown Ransom was removed as guardian for Leon Brown for various reasons associated with exploitation of the ward, general incompetence, and failure to abide by the state court's directives. Defendant J. Duane Gilliam, Esq., was substituted as guardian of the estate of Leon Brown on Mary 31, 2016. (Docket # 15-CV-451, Docket # 85).

9. Defendant Gilliam ratified the retainer agreement like his predecessor and continued to employ Plaintiff in prosecuting the claims of Leon Brown in the underlying lawsuit.

10. After successfully defeating motions to dismiss by the defendants in the underlying lawsuit, discovery commenced. Plaintiff spent over 1 year conducting extensive discovery, reviewing the contents of a file that was over 30 years old and numbered several hundred thousand pages, and conducted no less than 12 depositions in various locations across North Carolina and one in New York City. Some depositions lasted 7 hours or more.

11. Plaintiff also expended sums of money in retaining experts to prove damages and liability in the underlying lawsuit and conducted extensive factual investigation into Defendants' legal claims.

12. Plaintiff also participated in a court-ordered mediation that lasted approximately 8 hours and which required extensive preparation.

13. Prior to the Court's deadline for dispositive motions, Plaintiff filed a motion for summary judgment that, with its exhibits, was approximately12,800 pages long. (Docket # 15-CV-41, Docket # 127). The Rule 56.1 Statement of Material Facts filed with this Court was 54 pages long. Plaintiff also filed a motion to sanctions against some defendants in the underlying lawsuit for concealing relevant evidence that was highly probative to Defendants' claims.

14. Plaintiff's efforts were successful. In early 2017, three of the seven defendants in the underlying lawsuit reached a settlement with Plaintiff and Defendants, and Plaintiff sought judicial approval of the settlement pursuant to the law in April, 2017.

15. The settlement was fully approved by Defendant Gilliam on behalf of Leon Brown.

16. Thereafter, this Court raised an inquiry regarding Henry McCollum's capacity to enter into a settlement, and appointed Defendant Raymond Tarlton as Guardian Ad Litem.

17. Without consulting with Plaintiff prior, or making any effort to resolve the matter without court intervention, on July 26, 2017, Defendant Tarlton, acting as Guardian Ad Litem for Henry McCollum, asked this Court to determine the fee agreement invalid. (Docket # 15-CV-451, Docket # 11). In that application, Tarlton specifically acknowledged that Plaintiff is entitled to quantum meruit writing:

> Finally, if this Court determines that the representation agreement is invalid, this Court should also determine if any amount of compensation is owed to Mr. McCollum's current counsel under the doctrine of **quantum meruit** in order to allow Mr. McCollum to retain counsel under an appropriate agreement with the assistance of the undersigned guardian. That determination should take into account any amount of money already collected as fees in connection with representing the brothers.

(Id., Page 16 of 21).

18. Gilliam never joined in that motion or otherwise sought to invalidate the employment arrangement of Plaintiff on behalf of Leon Brown.

19. Several months of litigation thereafter followed, culminating with a hearing on December 14, 2017. (Docket # 15-CV-41, Docket # 255). During that hearing, the Court directed the Plaintiff and Tarlton to take a recess and attempt to work out their differences. After a recess, the Court ruled that the guardians would remain on the case, and ruled that the same lawyers for Defendants would continue to remain on the case. The Court then approved the settlement with

several of the defendants in the underlying lawsuit. The case was next set for argument on the dispositive motions.

20. Plaintiff opposed the defendants' motions for summary judgment in the underlying lawsuit, necessitating responses to two separate motions. The Court heard extensive oral argument on January 23, 2018 on the competing motions for summary judgment. (Docket # 15-CV-451, Docket # 261). Again, Plaintiff's efforts were successful in defeating the defendants' motions for summary judgment, setting the stage for trial.

21. From December 14, 2017 through April, 2018, Plaintiff approached Defendants Tarlton and Gilliam on numerous occasions seeking to work out the issue of representation and a fee arrangement going forward in accordance with the Court's directive. (Docket # 13-4). During those discussions, Tarlton acknowledged, in writing, "right now everyone is proceeding under a quantum meruit basis absent a valid fee agreement." (Docket # 13-5).

22. However, ultimately Tarlton declined to engage in meaningful discussions, and ultimately discharged Plaintiff in April, 2018 in favor of Hogan Lovells, a law firm that represented it would represent the Defendants pro bono. After Plaintiff, Patrick Michael Megaro, and Jaime T. Halscott were discharged as counsel, any filing rights or filing access to the underlying lawsuit was terminated by the Clerk of Court.[1]

23. After Plaintiff was discharged, Jaime T. Halscott, a partner of Plaintiff, attempted on numerous occasions to engage in discussions with Defendants Tarlton and Gilliam to address outstanding unreimbursed expenses.

[1] Plaintiff, Megaro, and Halscott were also removed from the CM/ECF email notification system.

24. Tarlton took the position that Plaintiff was entitled to nothing at all, and refused to engage Mr. Halscott any further. Gilliam simply ignored Mr. Halscott's numerous, repeated requests to at least discuss the matter.

25. On May 10, 2021, Defendants' trial commenced in the underlying lawsuit in this Court. During trial, Defendants settled with two of the defendants in the underlying lawsuit, realizing several million dollars in a settlement that was ultimately approved by the Court. On May 14, 2021, the trial concluded with a $75M dollar verdict in Defendants' favor.

26. This action was commenced in the Ninth Judicial Circuit Court of Orange County, Florida on May 25, 2021, Docket # 2021-CA-005364.

27. On June 25, 2021, defense counsel filed a motion in the underlying lawsuit for attorneys' fees and costs. (Docket # 15-CV-451, Docket # 442). In that motion, defense counsel, who was supposed to be representing the Defendants pro bono, requested a fee of $7,017,015.50 and costs in the amount of $489,412.19.

28. Defendants were served with the summons and complaint, and defense counsel filed a Notice of Removal, removing this case to the United States District Court for the Middle District of Florida. There it was assigned Docket # 6:21-CV-01559. Defendants immediately moved to change venue, and specifically asked to transfer this case to this District, and specifically to the Honorable Terrence Boyle. In making that application, dated September 23, 2021, Defendants stated:

> The interests of justice and judicial economy favor transfer to the Court that [a] has already heard many of the issues raised by Plaintiff's Complaint, including the validity of Plaintiff's representation agreements; [b] has seen firsthand the work for which Plaintiff seeks compensation; [c] must approve any fees and costs that may be awarded from settlements in the North Carolina Action; and [d] is currently in the process of evaluating the attorney's fees and costs warranted by Defendants' win at trial.

(Docket # 8, Pages 3-4 of 28).

29. Defendants never informed this Court that there was an issue concerning the fees, and instead moved ahead with its motion for legal fees and reimbursement of costs. This resulted in an Amended Judgment being issued in the underlying lawsuit on November 5, 2021. (Docket # 15-CV-451, Docket # 457).

30. Plaintiff opposed the motion to transfer venue on several bases, including the fact that all of Plaintiff's witnesses and evidence were in Florida, and complained that Defendants were engaging in not only forum-shopping, but judge-shopping by requesting a specific District Court Judge who had already demonstrated a bias against Plaintiff.

31. On November 16, 2021, the Middle District of Florida transferred the case to this Court, where it was initially assigned to the Honorable Louise W. Flanagan before being nearly instantly reassigned to Judge Terrence W. Boyle. Defendants now move to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

ARGUMENT IN OPPOSITION TO MOTION TO DISMISS

32. The Fourth Circuit has conclusively held that the purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint; "importantly, [a Rule 12(b)(6) motion] does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Edwards v. City of Goldsboro, 178 F.3d 231, 243-244 (4th Cir. 1999), quoting Republican Party v. Martin, 980 F.2d 943, 952 (4th Cir.1992). The Fourth Circuit has also repeatedly and conclusively held that a District Court may only reach an affirmative defense in the "rare circumstances" where "all facts necessary to the affirmative defense clearly appear on the face of the complaint." Goodman v. Praxair, Inc., 494 F.3d 458, 464 (4th Cir. 2007) (en banc); see also Pressley v. Tupperware Long

Term Disability Plan, 553 F.3d 334, 336 (4th Cir. 2009); Richmond, F. & P. R.R. Co. v. Forst, 4 F.3d 244 (4th Cir. 1993).

33. In analyzing a Rule 12(b)(6) motion, the law is well-settled that a court **must** accept as true all well-pleaded allegations of the challenged pleading and view those allegations in the light most favorable to the plaintiff. Venkatraman v. REI Systems, Inc., 417 F.3d 418, 420 (4th Cir. 2005).

34. A motion to dismiss pursuant to Rule 12(b)(6) can only be granted only if "it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir.1999). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, (2007) (internal quotations omitted). A claim is facially plausible if the plaintiff alleges factual content "that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged" and shows more than "a sheer possibility that a defendant has acted unlawfully." Id.

35. Here, Defendants ask this Court to go well beyond the four corners of the Complaint, draw on its own personal knowledge, experience, and opinion of one of the stockholders of the Plaintiff corporation, and rule in its favor on the basis of everything except the Complaint.

A. The Defendants Have Not, and Cannot Establish, Res Judicata or Collateral Estoppel at this Stage

36. The Defendants' motion to dismiss rests upon a foundational conflation that Plaintiff Halscott Megaro, P.A., a Florida corporate entity, is the same as the individual, Patrick M. Megaro.

Based on this demonstrably incorrect assertion, Defendants raise res judicata[2] as a defense, and urge this Court to dismiss the Complaint on that ground. This argument fails for several reasons.

37. It is a basic tenet of black-letter American law that a corporation is an entity, separate and distinct from its shareholders. Whipple v. Commissioner, 373 U.S. 193 (1963); Whitney, Bradley & Brown, Inc. v. Kammermann, 436 Fed. Appx. 257 (4th Circ. 2011); Dalton v. Bowers, 287 U.S. 404, (1932), State ex rel. Cooper v. Ridgeway Brands Mfg., LLC, 362 N.C. 431 (2008). "And this oft-stated principle is equally applicable, whether the corporation has many or only one stockholder." De Witt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 681 (4th Cir. 1976).

38. The North Carolina Supreme Court has held that in order for the doctrine of res judicata to apply, the party against whom the doctrine is invoked must have "had a full and fair opportunity to litigate the issue in the first action." Thomas M. McInnis & Associates, Inc. v. Hall, 318 N.C. 421, 434 (1986). There must be mutuality of the parties. See Sawyers v. Farm Bureau Insurance of N.C., Inc., 170 N.C.App. 17, 30-31, 612 S.E.2d 184, 193-94 (2005) (Steelman, J., dissenting), rev. 360 N.C. 158, 622 S.E.2d 490 (2005).

39. Halscott Megaro, P.A., does not equate to Patrick Michael Megaro, and vice versa. Halscott Megaro, P.A. was not a party to the disciplinary proceeding against Patrick Michael Megaro. Nor were any of the Defendants parties to that proceeding. Thus, Defendants cannot establish the first element of this defense. At no stage could Halscott Megaro P.A., nor Jaime Halscott nor any attorney who performed work on or was a partner in Halscott Megaro, P.A. raise any defense or have any opportunity to be heard. Under no stretch of the imagination could any

[2] Defendants have couched their argument as "claim preclusion" which is re judicata, as opposed to issue preclusion, which is collateral estoppel.

reasonable claim be made that the parties had a full and fair opportunity to litigate. Neither prong of Defendants' stated test can be met.

40. Second, the issues raised in the North Carolina State Bar's disciplinary proceeding were not identical to the issues raised herein. The issues raised therein were whether Patrick Michael Megaro's conduct was a violation of ethical standards, not whether it was tortious, and not whether the Defendants committed a tort. The issues raised therein are not the issues raised herein. Nor did the North Carolina State Bar determine whether or not Halscott Megaro, P.A. is entitled to quantum meruit for the services it rendered to the Defendants, and whether it is entitled to reimbursement for the expenses it incurred for which Defendants, and their counsel, enjoyed the benefit.

41. Specifically, the North Carolina State Bar decision did not address Patrick Michael Megaro's conduct with respect to the fee after the Industrial Commission Award. The decision does not address the hours or costs expended in prosecution of the underlying lawsuit. The determinations made predate the underlying lawsuit. Nor was that the inquiry or issue presented. And again, there have thus far been zero allegations of misconduct levied against Halscott Megaro, P.A., the ACTUAL Plaintiff in this case, or Jaime Halscott.

42. Attorney Megaro's North Carolina Bar case is up on appeal and for this Court to take a final dispositive action pending the outcome of all legal remedies would be premature. Similarly, on May 5, 2017, this Court made a brief inquiry into the proceedings of the North Carolina Industrial Commission, which resulted in a statutory award in Henry McCollum and Leon Brown's favor. (Transcript of 5-5-2017, pp 21-22). Then it considered it *SETTLED AND CLOSED* (emphasis added). (p. 22). Accordingly, Res judicata is inapplicable; as a consequence, this Court must deny the motion on this ground.

B. The Equitable Defenses of Laches and Unclean Hands Are Inapplicable at this Stage; Even If They Did Apply, Disputed Material Facts Preclude Determination at this Stage

43. Laches is an affirmative defense. Belmora LLC v. Bayer Consumer Care AG, 987 F.3d 284 (4th Cir. 2021). It is black-letter law that an affirmative defense must be pled and proven by the party asserting it. At this stage of the proceedings, nothing has been proven; no evidence has been presented, and there is a dispute as to the factual contentions concerning Defendants' claim of laches.

44. The defense of laches "'requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.'" Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 121-22, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002) (quoting Kansas v. Colorado, 514 U.S. 673, 687 (1995)). "The first element of laches, lack of diligence, is satisfied where a plaintiff has **unreasonably** delayed in pursuing his claim." EEOC v. Navy Fed. Credit Union, 424 F. 3d 397, 409 (4th Cir. 2005) (citing White v. Daniel, 909 F.2d 99, 102 (4th Cir. 1990) (emphasis added).

45. "Laches is an equitable doctrine 'designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'" Stratton v. Royal Bank of Can., 211 N.C. App. 78, 88—89, 712 S.E.2d 221, 230 (2011) (citation omitted).

> To establish the affirmative defense of laches, our case law recognizes that 1) the doctrine applies where a delay of time has resulted in some change in the condition of the property or in the relations of the parties; 2) the delay necessary to constitute laches depends upon the facts and circumstances of each case; however, the mere passage of time is insufficient to support a finding of laches; 3) the delay must be shown to be unreasonable and must have worked to the disadvantage, injury or prejudice of the person seeking to invoke the doctrine of laches; and 4) the defense of laches will only work as a bar when the claimant knew of the existence of the grounds for the claim.

Id. at 89, 712 S.E.2d at 231.

46. In the instant case there is absolutely no surprise. There is no revival of claims. No evidence has been lost. No witnesses have disappeared. Not one single factual basis exists to support Defendants' contention that laches prevents recovery.

47. By its very nature, Plaintiff's claim against Defendants is entirely contingent on the Defendants' recovery in the underlying lawsuit. An action against Defendants prior to any recovery in the underlying lawsuit would have been not only premature, but potentially fruitless, as there would have been no funds with which to satisfy any judgment. No possibility of recovery came to fruition until October 22, 2021, when final judgment was entered in the Defendants' favor in the underlying lawsuit.

48. Defendants also claim Plaintiff has unclean hands, and as a result, this Court should dismiss. It is Defendants who have unclean hands. The Plaintiff attempted for several months to negotiate in good faith with the Defendants to resolve the issue of reimbursement of expenses, let alone a fee for services actually performed, and for which Defendants enjoyed a benefit. The Defendants instead strung Plaintiff along, in bad faith, before disengaging completely.

49. Defendants, having successfully removed Plaintiff from the docket in the underlying lawsuit and blocking access to even asking this Court for reimbursement of expenses or quantum meruit, now fault Plaintiff for not asking this Court sooner for reimbursement. The fact remains that Defendants, after knowing that Plaintiff was making a claim, never informed this Court and asked it to wait before ruling on its award of legal fees and reimbursement of its own expenses. Nor did they ask this Court to reopen the matter. This was nothing short of deliberate. How can counsel, who is no longer counsel, ask a court for a fee when it was discharged? It cannot, and Defendants know this. This is exactly the reason that North Carolina recognizes a lawsuit for the

recovery of fees and cost as the appropriate vehicle for recovery when an attorney has been discharged prior to conclusion of the case.

50. The proper remedy is to bring an action in quantum meruit to recover the reasonable value of the legal services performed for the client. "[A]n attorney discharged with or without cause can recover only the reasonable value of his services as of that date." Covington v. Rhodes, 38 N.C. App. 61, 247 S.E.2d 305. The discharged lawyer may bring the quantum meruit action against either the former client, id., or the former client's subsequent lawyer. Pryor v. Merten, 127 N.C. App. 483, 490 S.E.2d 590 (1997).

51. Now that the underlying docket is closed, it is highly questionable whether the Court has jurisdiction to go back and do what Defendants propose. Given Defendants' actions and position that Plaintiff is entitled to nothing, they cannot now plausibly claim that they come before this Court with a clean slate.

52. Given that disputed issues of fact exist, and the facts necessary to support Defendants' affirmative defenses do not appear in Complaint, this Court must deny the motion.

C. Tarlton is Properly a Party Because As Guardian Ad Litem, He Controls the Underlying Lawsuit and the Issue of Representation and Fees

53. This Court appointed Raymond Tarlton as Guardian Ad Litem specifically to control the issue of representation and legal fees. Defendants now claim that he has no control, and therefore no responsibility, for the same. Defendants make this claim while simultaneously acknowledging "A GAL has a great deal of power over litigation itself, including the power to retain counsel on his ward's behalf." (Docket # 45-1, Page 31 of 38).

54. Defendants want it both ways. Because Tarlton was directly in a position to control the issues at the center of this case, he is properly a party before this Court.

D. Plaintiff Properly States a Claim Against

Tarlton, Pinchbeck, and Gilliam in their Individual Capacities

55. The record in the underlying lawsuit is clear – Plaintiff conferred a benefit through representation to the various guardians herein. Plaintiff represented Henry McCollum and Leon Brown through their appointed guardians.

56. What is not in dispute is that Henry McCollum knowingly and voluntarily accepted Plaintiff's services for years until he was appointed a guardian ad litem. Then Raymond Tarlton consented to this Court to accepting the same legal services.

57. What is not in dispute is that Leon Brown, his first guardian Geraldine Ransom Brown, and J. Duane Gilliam, his second guardian, all accepted Plaintiff's services knowingly and voluntarily for years. Equally indisputable are the numerous communications in which Gilliam specifically approved several actions by Plaintiff and its members, including the first settlement that was ultimately approved by this Court in December, 2017.

58. Equally clear is that Plaintiff never intended to provide those services gratuitously, as Defendants are clearly aware.

59. Finally, Gilliam's actions in continuing the representation for almost 2 years after he was appointed guardian indicates that he ratified the fee agreement that was ratified by Leon Brown's first guardian. Accordingly, there can be no question that Gilliam is personally liable. As Defendants are well aware, there is a long history emails, meetings, and telephone calls with Gilliam that prove the above.

E. Conclusion

60. For the above stated reasons this Court must deny the Defendants' motion to dismiss in its entirety.

CROSS-MOTION TO RECUSE

61. 28 U.S.C. § 455 provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." In considering recusal under subsection (a), "what matters is not the reality of bias or prejudice but its appearance." Liteky v. United States, 510 U.S. 540, 548 (1994). Opinions formed by the judge during the course of the proceedings dare a valid basis for recusal when "they display a deep-seated favoritism or antagonism that would make fair judgment impossible." Id. Canon 3C(1) of the Code of Conduct for United States Judges likewise directs recusal where the judge's impartiality might reasonably be questioned. 28 U.S.C. § 144 provides that "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."

62. Disqualification also is required when the judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(b)(1). This includes all stages of litigation, including pretrial proceedings. 28 U.S.C. § 455(d)(1).

63. The Second Circuit has "interpreted 28 U.S.C. § 455 as asking whether 'an objective, disinterested observer fully informed of the underlying facts, [would] entertain significant doubt that justice would be done absent recusal,' or alternatively, whether 'a reasonable person, knowing all the facts,' would question the judge's impartiality." United States v. Yousef, 327 F.3d 56, 169 (2d Cir. 2003). "[T]he protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system." Potashnick v. Port City Constr. Co.,

609 F.2d 1101, 1111 (5th Cir. 1980) (quoting United States v. Columbia Broadcasting Sys., Inc., 497 F.2d 107, 109 (5th Cir. 1974)); see also Liljeberg v. Health Serv. Acquisition Corp., 486 U.S. 847, 865 (1988) ("it is critically important...to identify the facts that might reasonably cause an objective observer to question [a judge's] impartiality")). The "appearance of impartiality is virtually as important" to the smooth functioning of a fair judicial system as is the fact of impartiality." Webbe v. McGhie Land Title Co., 549 F.2d 1358, 1361 (10th Cir. 1977).

64. Here, Defendants make no pretense. They specifically wanted this case brought before the Honorable Terrence Boyle where they believe the Judge's personal attitudes and opinions regarding the individual, Patrick Michael Megaro, will give them an advantage. They know they can deploy the kind of inflammatory language used in their motion to influence this Court. And they specifically ask this Court to apply its opinions regarding the individual against the corporate entity. The Defendants' motion to dismiss is awash in attempts to shock the conscious of this Court into disregarding the law and equities herein.

65. Given the statements made by Judge Boyle in the underlying lawsuit concerning the conduct of the individual, Patrick Michael Megaro, and the manner in which Defendants have moved to dismiss, it is apparent that Plaintiff cannot receive a fair determination by this Court. To any disinterested outside observer, the Court's impartiality might reasonably be questioned and, to allow otherwise, creates at least the appearance of impropriety.

66. The Defendants have placed this Court in this position by making the specific arguments in this motion and the motion to transfer venue. They have proven Plaintiff's point. As a consequence, this Court should recuse itself.

67. Equally concerning is this Court's conduct with regard to issues of fundamental fairness. Defendants sought from the onset to have this case transferred to the Honorable Judge

Terrence Boyle, knowing full well what law would be applicable and exactly how they were going to respond. The Defendants and their counsel are no strangers to North Carolina law or this Court.

68. Nonetheless, Defendants sought a 30-day extension to file their response to Plaintiff's initial complaint. In that request they asked this Court to provide a shortened time frame of 10 days for Plaintiff to respond, as a response was due imminently.

69. That very same day, over objection of Plaintiff, this Court rubber stamped Defendants' request, granting a full 30 days to file the motion to dismiss to which Plaintiff herein responds.

70. Plaintiff attempted to engage local counsel with numerous respected law firms, but has no success, as it outlined it would in opposition to the motion to transfer venue. Law firms and lawyers were either conflicted out or were outright scared of assisting with this particular case in front of Judge Boyle, believing it to be political suicide and fearing retribution of this Court in future cases. Not one single counsel that Plaintiff attempted to engage expressed any sentiment that Plaintiff would receive a fair and impartial trial with this Court.

71. Fortunately, Plaintiff was able to secure local counsel, that ironically had to be sourced from Florida. In doing so, and with these delays, Plaintiff was only able to navigate the hurdles of the mail in CM/ECF filing registration requirement, notice of appearance and notice of special appearance last week.

72. Without any undue delay, Plaintiff sought a fair first-time extension of 30-days, the same extension timeframe that this Court granted, over objection, the very same day it was filed by Defendants. That was filed and acknowledge by this Court last Friday, January 21, 2022.

73. In that motion for extension of time, Plaintiff outlined the same issues herein, as well as Defendant's assented to 14-days extension. In email between this Court's judicial assistant, the

issue of Defendants filing a response was addressed. They would not be filing one and reiterated no objection to a 14-day extension.

74. As of this filing, on the eve of the rule's 21 days within which to respond, this Court has refused to grant or deny the extension.

75. This further reinforces Plaintiff's concerns, expressed in other filings in this case, over the fairness and impartiality that Plaintiff would receive form this Court.

Plaintiff respectfully asks that this Court deny Defendants' motion to dismiss in its entirety, direct Defendants to answer the initial complaint, and recuse itself from this case. In support thereof, the affidavit of Attorney Jaime Halscott for Plaintiff Halscott Megaro, P.A. is attached and certificate of counsel stating that it is made in good faith is incorporated below.

Dated: January 26, 2022

Respectfully submitted,

/s/ Jaime T. Halscott____

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CERTIFICATION OF COUNSEL

I hereby certify that the affidavit attached in support of the Cross Motion to Recuse is made in good faith as per the requirements of 28 U.S. Code § 144.

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2022, I filed the foregoing Motion for Extension of Time with the Clerk of the Court using the CM/ECF system, which will electronically serve this document on all counsel of record, and further cause the foregoing to be served via electronic mail on the following Defendants' counsel:

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