UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LEE KENWORTHY, as the administrator of the ESTATE OF SHAYLING KENWORTHY and LEE KENWORTHY, individually, Plaintiff, v. LYNDHURST POLICE DEPARTMENT; et als., Defendants.	Civil Action No: 2:18-cv-12822 (MCA)(JAD) **Civil Action** **MOTION RETURN DATE:** **August 5, 2019** (Document Electronically Filed)

BRIEF IN SUPPORT OF DEFENDANT HOUSING AUTHORITY OF BERGEN COUNTY'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO FED. R. CIV. PROC. 12(b)(1) AND 12(b)(6)

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PRELIMINARY STATEMENT

Pursuant to the Court's June 7, 2019 Letter Order (ECF No. 41), Defendant Housing Authority of Bergen County ("Defendant" or "HABC") respectfully submits this Brief In Support Of Its Motion To Dismiss, Pursuant To Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6), the January 18, 2019 *pro se* Amended Complaint (ECF No. 30-1) filed by plaintiff Lee Kenworthy ("Plaintiff"), both in his individual capacity and as administrator *ad prosequendum* on behalf of the estate of his deceased wife, Shayling Kenworthy ("the decedent"), purporting to assert a myriad of meritless federal civil rights claims and state law negligence-based claims against various defendants – ***none of which have even been asserted (much less adequately plead) against HABC, despite HABC being a defendant***.

Plaintiff's Amended Complaint arises out of an August 17, 2016 incident that occurred at 287 Castle Terrance, Lyndhurst, New Jersey ("the apartment") – the address of an apartment that Plaintiff and the decedent rented from owners/co-defendants Ann and Robert Martin ("the Martins") and Richard and Lauren Anderson ("the Andersons"). HABC has never owned, controlled or maintained and interest in that property. Plaintiff claims the apartment was in disrepair and unsanitary conditions, which triggered the decedent to suffer an asthma attack which, in pertinent part, combined with the alleged failure to provide medical

assistance by the Lyndhurst Defendants (defined infra), ultimately resulted in her death.

The entirety of Plaintiff's allegations as to HABC specifically consist of the following: identifying it as a "state-owned" entity and setting forth its address (see Amended Complaint, attached to the accompanying Certification of Christopher J. Turano, Esq. ["Turano Cert."] as Exhibit A, ¶ 12); falsely stating that prior to the events set forth in the Amended Complaint, Plaintiff was "assaulted" at the HABC and underwent a "horrific set of experiences" which were part of a prior federal lawsuit that was settled (see id., ¶ 20); and that Plaintiff allegedly disclosed his "recent residential travails" and "eviction" from HABC to defendants Richard and Lauren Anderson. See id., ¶ 21.

This is now Plaintiff's "second bite at the apple" attempting to successfully plead a coherent, sensical and legally cognizable claim against HABC arising from the exact same operative facts alleged in his original August 16, 2018 Complaint. It must be emphasized that Plaintiff was miraculously able to obtain leave to file this frivolous pleading only after the deadlines for him to oppose all defendants' motions to dismiss his original Complaint (see ECF Nos. 6, 7, 14, 15, 16) had passed and after him mis-representing to the Court that he was in the process of retaining legal counsel in connection therewith. Not surprisingly, six months later,

no notice of appearance on behalf of Plaintiff has been entered and Plaintiff is still *pro se*.

This Court should no longer allow Plaintiff to waste its, the HABC's and all other defendants' valuable time and resources, and accordingly should Plaintiff's Amended Complaint must be dismissed as against HABC with prejudice. First, assuming arguendo this Court had jurisdiction to hear a case against HABC (which it does not), Plaintiff has failed to allege facts sufficient to plead any cognizable cause of action against the HABC. In fact, Plaintiff's Amended Complaint fails to allege a single substantive allegation against HABC, fails to assert a single cause of action against HABC, and in fact contains less allegations even referencing HABC than does Plaintiff's original Complaint. Effectively, Plaintiff has eliminated HABC as a party-defendant in the Amended Complaint and has obviously failed to cure any deficiencies with respect to pleading against HABC that existed within the original Complaint.

Second, this Court does not have jurisdiction to hear this case with respect to HABC. More specifically, subject matter jurisdiction is lacking because Plaintiff has not asserted (or alleged facts sufficient to plead) against HABC either a violation under the United States Constitution or a federal statute so as to provide federal question jurisdiction; diversity jurisdiction is lacking because the requisite complete diversity amongst the parties is lacking (all but one of the defendants,

and Plaintiff, are in-state defendants) and a loss of greater than $75,000.00 has not been alleged arising from HABC's conduct; and HABC is not the United States government, thus rendering jurisdiction pursuant to 28 U.S.C. § 1342 lacking.

Finally, again even assuming arguendo Plaintiff's ramblings were to be construed (even under the most liberal of standards) to state a claim against HABC, any such claim would be barred by the Rooker-Feldman doctrine.

Accordingly, for all of the reasons to be discussed herein in detail, HABC's motion must be granted and the Court must dismiss Plaintiff's Amended Complaint as against HABC with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

STATEMENT OF FACTS

On August 16, 2018, Plaintiff filed his original Complaint in the United States District Court for the District of New Jersey. See Turano Cert., Exhibit A. In response thereto, all defendants respectively filed motions to dismiss Plaintiff's Complaint. See ECF Nos. 6, 7, 14, 15, 16).

Since each of the defendants filed motions to dismiss Plaintiff's Complaint, Plaintiff has engaged in a number of bad faith procedural delay tactics to stall this Court from ultimately dismissing his meritless lawsuit. To begin with, rather than file opposition to those motions in accordance with the Rules, on December 28, 2018, Plaintiff filed a motion for an emergent hearing, claiming baselessly that

"'serious injury is and has been threats upon [his and his family members'] lives from officers of the law/mafia/medical professional surrounding [his] children and home surrounding retaliation in exact manner right before Shayling Kenworthy was murdered." See ECF No. 17. The Court ultimately entered an Order on January 3, 2019 denying this motion, finding that Plaintiff did not make "any 'clear and specific showing' of irreparable harm, nor has he demonstrated a likelihood of success on the merits of his underlying action." See ECF No. 18.

Following that unsuccessful stall tactic, on January 7, 2019, Plaintiff filed the same letter, five different times, respectively in "response" to all of the defendants' motions to dismiss (albeit beyond the time for filing opposition to these motions) claiming that he was intending to retain an attorney, that counsel would be retained and entering an appearance within a week, and thus requesting a "30 to 60 day extension" to allow this alleged new counsel to prepare and familiarize himself or herself with the case. See ECF Nos. 19-23. On January 9, 2019, Plaintiff re-filed the same letter, this time characterizing it as a "motion for continuance" requesting the same relief. See ECF No. 24. On January 14, 2019, by way of text order, the Court granted Plaintiff's request for a continuance and gave Plaintiff until February 15, 2019 to file a response. See ECF No. 27

Once again, rather than actually file opposition to the multiple then-pending motions to dismiss, on January 18, 2019, Plaintiff filed a motion for leave to file an

amended complaint which attached the subject Amended Complaint. See ECF Nos. 30 and 30-1. After HABC, the Lyndhurst defendants and the Martin/Anderson defendants respectively filed letters pointing out the procedural impropriety of Plaintiff's purported "motion" and that Plaintiff had failed to file any opposition in response to any of defendants motions to dismiss (thus warranting them being granted as unopposed, see ECF Nos. 31-33), all defendants filed formal briefs in opposition to Plaintiff's motion for leave to amend. See ECF Nos. 34-37 and 40. On June 7, 2019, this Court entered a Letter Order granting Plaintiff's motion to amend, directing defendants to file new motions to dismiss in response to the Amended Complaint by or before July 5, 2019 (as well as setting a further briefing schedule for filing oppositions and replies), and terminating the previously filed motions to dismiss as moot. See ECF No. 41.

With respect to the substantive allegations of the Complaint, given their rambling, incoherent and non-sensical nature, HABC respectfully refers this Court to the Amended Complaint (see ECF No. 30-1) so as to not waste the Court's time attempting to summarize the same, except to state as follows: the entirety of Plaintiff's allegations as to HABC specifically consist of the following: identifying it as a "state-owned" entity and setting forth its address (see Turano Cert., Exhibit A, ¶ 12); falsely stating that prior to the events set forth in the Amended Complaint, Plaintiff was "assaulted" at the HABC and underwent a "horrific set of

experiences" which were part of a prior federal lawsuit that was settled (see id., ¶ 20); and that Plaintiff allegedly disclosed his "recent residential travails" and "eviction" from HABC to defendants Richard and Lauren Anderson. See id., ¶ 21. Overall, the Amended Complaint contains less allegations pertaining to the HABC than the original Complaint, contains absolutely no substantive allegations pertaining to HABC, and does not actually allege within its 10 counts any cause of action against the HABC specifically. Essentially, all Plaintiff has done in the Amended Complaint insofar as the HABC is concerned is retained them as a named defendant only – any substance is missing and there are actually less allegations even referencing the HABC in the Amended Complaint.

LEGAL ARGUMENT

POINT I

PLAINTIFF'S AMENDED COMPLAINT MUST BE DISMISSED PURSUANT TO FED. R. CIV. PROC. 12(b)(6) BECAUSE IT FAILS TO STATE A COGNIZABLE CLAIM AGAINST HABC

Plaintiff's Amended Complaint must be dismissed pursuant to Fed. R. Civ. Proc. 12(b)(6) because Plaintiff has failed to plead facts sufficient to assert any type of cognizable claim against the HABC.

A. The Standard Of Review On A Motion To Dismiss Pursuant To Fed. R. Civ. Proc. 12(b)(6).

To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint must contain sufficient factual matter, presumptively

accepted as true at this stage, to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ibid. "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, supra, 550 U.S. at 555, 127 S. Ct. at 1965.

Reviewing the standard set forth in Iqbal, supra, the Third Circuit noted in Santiago v. Warminster Twp., 629 F.3d 121, 129-30 (3d Cir. 2010) that:

> [T]o determine the sufficiency of a complaint, a court must take three steps: First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Iqbal, 129 S. Ct. at 1947. Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 1950. Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief." Id.

In Phillips v. Cnty. of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008), the Third Circuit also noted that Twombly "can be summed up thus: stating a claim requires a complaint with enough factual matter (taken as true) to suggest the required element[s]" which "does not impose a probability requirement at the pleading stage, but instead simply calls for enough facts to raise a reasonable

expectation that discovery will reveal evidence of the necessary element." Phillips, supra, 515 F.3d at 234 (citing Twombly, supra, 550 U.S. at 555, 127 S. Ct. 1955) (emphasis added). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Twombly, supra, 550 U.S. at 555, 127 S. Ct. 1955. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." Id. at 557, 127 S. Ct. 1955.

B. Plaintiff's Amended Complaint Must Be Dismissed Insofar As It Attempts To Assert Claims Against HABC Because Plaintiff Has Failed to Allege Facts Sufficient To Plead Any Cognizable Cause Of Action Against HABC.

Plaintiff's Amended Complaint is completely devoid of any substantive allegations pertaining to the HABC. Rather, the entirety of the allegations contained within Plaintiff's 66-page Amended Complaint (lengthier than his original) that mention or allude to HABC are as follows: identifying it as a "state-owned" entity and setting forth its address (see Turano Cert., Exhibit A, ¶ 12); falsely stating that prior to the events set forth in the Amended Complaint, Plaintiff was "assaulted" at the HABC and underwent a "horrific set of experiences" which were part of a prior federal lawsuit that was settled (see id., ¶ 20); and that Plaintiff allegedly disclosed his "recent residential travails" and "eviction" from HABC to defendants Richard and Lauren Anderson. See id., ¶ 21. The Amended Complaint actually contains less allegations pertaining to the HABC than the original Complaint, contains absolutely no substantive allegations pertaining to HABC, and

does not actually allege within its 10 counts any cause of action against the HABC specifically. Effectively, all Plaintiff has done in the Amended Complaint insofar as the HABC is concerned is retained them as a named defendant only. The aforementioned allegations collectively, even viewing them under the most liberal of standards, could not as a matter of law collectively amount to any cognizable cause of action recognized under federal or state law.

However, Plaintiff has failed to plead facts which, even if true, state a cognizable claim against HABC and/or establish any type of nexus between the HABC, the events of August 17, 2016 and/or the apartment at which the underlying facts occurred. First, Plaintiff has not alleged that HABC owned, or has any other interest in, the apartment such that it would confer any duty of care on HABC in relation to Plaintiff and the decedent. In fact, Plaintiff himself pleads that the apartment was owned not by HABC, but rather by the Martins and the Andersons. See Turano Cert. Exhibit A, ¶ 8, 11. And in actual point of fact, HABC does not own or control the apartment nor have any interest whatsoever in that property.[1] Second, Plaintiff has failed to thereafter plead a factual basis sufficient to establish a duty on the part of HABC to have intervened and/or taken

[1] HABC's public website lists its properties at http://habcnj.org/ourbuildings/. 287 Castle Terrance, Lyndhurst, New Jersey is not listed anywhere as being owned, operated, controlled or maintained in any way by HABC. Because the properties owned by HABC is a matter of public record, this Court may accordingly take judicial notice of the same.

any action in relation to the events of August 17, 2016 (as alleged by Plaintiff) and/or the private landlord-tenant relationship amongst the owners of the apartment, Plaintiff and the decedent. Accordingly, Plaintiff has thus wholly failed to plead any facts establishing any "breach" by HABC surrounding the events of August 17, 2016 and/or his wife's passing, much less causally connected HABC's actions to those events and/or any purported damage suffered by Plaintiff.

Even construing the allegations in Plaintiff's Amended Complaint liberally, one cannot glean any semblance of a cause of action being asserted against HABC, which is further reflected by the fact that in pleading his purported "causes of action" at the end of the Amended Complaint, Plaintiff explicitly names those defendants against whom he directs each specific claim. Noticeably, HABC is not identified as a defendant against whom Plaintiff attempts to seek relief in connection with any of his claims. Thus, because Plaintiff's Amended Complaint fails to allege facts sufficient to assert all the required elements of a state law negligence claim, it must be dismissed insofar as it asserts claims against HABC.

POINT II

PLAINTIFF'S AMENDED COMPLAINT MUST BE DISMISSED PURSUANT TO FED. R. CIV. PROC. 12(b)(1) BECAUSE THIS COURT LACKS SUBJECT MATTER JURISDICTION.

Insofar as concerns the HABC, even assuming arguendo it were to be concluded that Plaintiff's fabricated narrative in his Amended Complaint somehow

could be construed to alleged some type of cause of action against HABC, the Amended Complaint must nonetheless be dismissed because this Court does not have subject matter jurisdiction.

It is well-settled that federal courts have limited jurisdiction which has been defined by Congress and authorized by statute. Huber v. Taylor, 519 F. Supp. 2d 542, 554 (W.D. Pa. 2007), rev'd o.g. 532 F.3d 237 (3d Cir. 2008); see also Bowles v. Russell, 551 U.S. 205, 212-213, 127 S. Ct. 2360, 2365, 168 L. Ed. 2d 96, 104 (2007); see also Exxon Mobile Corp v. Allapattah Servs., 545 U.S. 546, 553, 125 S. Ct. 2611, 2617, 162 L. Ed. 2d 502, 517 (2005). In Arbaugh v. Y & H Corp., 546 U.S. 500, 513, 126 S. Ct. 1235, 1244, 163 L. Ed. 2d, 1097, 1109 (2006), the Supreme Court of the United Sates opined as follows:

> [G]rants of federal court subject matter jurisdiction are contained in 28 U.S.C. §§ 1331 and 1332. Section 1331 provides for "federal question" jurisdiction, and § 1332 for "diversity of citizenship" jurisdiction. A plaintiff properly invokes §1331 when she pleads a colorable claim "arising under" the Constitution or laws of the United States. See Bell v. Hood, 327 U.S. 678, 681-685, 66 S. Ct. 773, 775-777, 90 L. Ed. 939, 942-945 (1946). She invokes §1332 jurisdiction when she presents a claim between parties of diverse citizenship that exceeds the required jurisdictional amount, currently $75,000. See § 1332.

Furthermore, pursuant to 28 U.S.C. § 1342 and 28 U.S.C. § 1343, respectively, federal courts also retain jurisdiction when the United States is a defendant, or when the complainant seeks to recover damages under federal law

resulting from a "deprivation of a right or privilege of a citizen of the United States."

Simply put, Plaintiff has failed to set forth any allegations sufficient to establish any of the aforementioned jurisdictional bases to confer subject matter jurisdiction upon this Court with respect to any purported claim against the HABC, and thus his Amended Complaint must be dismissed at least insofar as concerns the HABC.

A. Plaintiff Has Failed To Allege Facts Sufficient To Support The Existence Of Federal Question Jurisdiction As To His Claim Against HABC.

Under Article III of the United States Constitution, federal courts can hear "all cases, in law and equity, arising under this Constitution, [and] the laws of the United States..." U.S. Const, Art III, Sec 2. The Supreme Court has interpreted this clause broadly, finding that it allows federal courts to hear any case in which there is a federal ingredient. Osborn v. Bank of the United States, 9 Wheat. (22 U.S.) 738 (1824). For federal question jurisdiction to exist, the requirements of 28 U.S.C § 1331 must also be met. Pursuant to 28 U.S.C. § 1331, "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Here, in perhaps the most lazy and transparent attempt possible to try to establish federal question jurisdiction, Plaintiff's Amended Complaint simply references some federal statutes in its "Jurisdiction" section (see Turano Cert.,

Exhibit A, ¶¶ 15-16 and 18-19) as well as merely inserts cites to federal statutes throughout his counts (none of which are asserted against HABC, only against other defendants) which Plaintiff claims were violated but for which he provides no allegations establishing any of the elements thereof. See id., pages 51-64. Thus, this Court lacks federal question jurisdiction over any of Plaintiff's claims insofar as concerns HABC.

B. Plaintiff Has Failed To Allege Facts Sufficient To Support The Existence Of Diversity Jurisdiction As To His Claim Against HABC.

Likewise, Plaintiff has failed to establish that this Court may hear any purported claim against HABC through diversity jurisdiction. Pursuant to 28 U.S.C. § 1332, federal district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and the lawsuit is between:

> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
>
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

> (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

In other words, 28 U.S.C. § 1332(a) requires that for diversity jurisdiction to exist, there must be complete diversity between citizens of different states. See, e.g., Lincoln Prop. Co. v. Roche, 546 U.S. 81, 89, 126 S. Ct. 606, 613, 163 L. Ed. 2d 415, 424-25 (2005). Complete diversity necessitates that, in instances with multiple plaintiffs or defendants, no plaintiff can be a citizen of the same state as any defendant. Zambelli Fireworks Mfg. Co. v. Wood, 592 F. 3d 412, 419 (3d Cir. 2010); Exxon Mobil Corp. v. Allapattah Servs. Inc., supra, 545 U.S. at 553, 125 S. Ct. at 2617, 162 L. Ed. 2d 517; Kaufman v. Allstate N.J. Ins. Co., 561 F.3d 144, 148 (3d Cir. 2009).

Here, the elements of diversity jurisdiction are lacking. While Plaintiff has attempted to claim that the amount in controversy in this matter exceeds $75,000.00 (see Turano Cert., Exhibit A, ¶ 17), Plaintiff has not alleged any facts providing any factual support for that baseless conclusory demand. Moreover, by Plaintiff's own allegations (see id., ¶¶ 1-14), Plaintiff and all but one of the defendants (Adapt Pharma) are unambiguously citizens of the State of New Jersey. Because Plaintiff is a citizen of the same state (New Jersey)[2] as all but one of the defendants, complete diversity does not exist. As such, this Court does not have

[2] Plaintiff is a resident of the state of New Jersey, with an address of 127 Walton Street, Englewood, N.J. 07631 listed on the CM-ECF Civil Docket.

diversity jurisdiction to hear this matter.

C. Plaintiff Has Failed To Allege Facts Sufficient To Support The Existence Of Jurisdiction As To His Claim Against HABC Pursuant To 28 U.S.C. § 1345 or 28 U.S.C. § 1346.

Pursuant to 28 U.S.C. § 1345 and 28 U.S.C. § 1346, respectively, the district courts retain jurisdiction when the United States Government is a plaintiff or a defendant. While Plaintiff claims that this Court has jurisdiction over this matter based on the inclusion of the United States Government as a defendant, none of the defendants in this action are the United States governmental entity. HABC specifically is a New Jersey state entity completely independent of, and with no connection whatsoever to, the United States government.

D. Plaintiff Has Failed To Allege Facts Sufficient To Support The Existence Of Jurisdiction As To His Claim Against HABC Pursuant To 28 U.S.C. § 1343.

Pursuant to 28 U.S.C. § 1343, the district court has subject matter jurisdiction in civil rights actions:

> 1) To recover damages for injury to his person or property because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in 42 U.S.C. § 1985;
>
> 2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in 42 U.S.C. § 1985 which he had knowledge were about to occur and power to prevent;
>
> 3) To redress the deprivation [...] of any right [...]

> secured by the Constitution of the United Sates or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> 4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Here, Plaintiff has not alleged that HABC, or any other defendant for that matter, deprived Plaintiff or the decedent of any right or privilege under the United States Constitution, nor has Plaintiff alleged that HABC or any other defendants violated 42 U.S.C. § 1985 or any other federal statute. Thus, 28 U.S.C. § 1343 does not confer subject matter jurisdiction upon this Court.

E. Plaintiff Has Failed To Allege Facts Sufficient To Support The Existence Of Jurisdiction As To His Claim Against HABC Pursuant To 28 U.S.C. § 1330 Through 28 U.S.C. § 1369.

28 U.S.C. § 1330 through 28 U.S.C. § 1369 prescribe a number of other grounds for conferring subject matter jurisdiction on the federal district courts. For brevity's sake, HABC respectfully submits that Plaintiff has failed to make allegations sufficient to confer subject matter jurisdiction upon this Court pursuant to any of those statutes sufficient for it to hear a claim against HABC.

POINT III

PLAINTIFF'S AMENDED COMPLAINT MUST BE DISMISSED BECAUSE, EVEN ASSUMING *ARGUENDO* THAT IT DID STATE A COGNIZABLE LEGAL CLAIM AGAINST HABC, IT WOULD BE BARRED BY THE *ROOKER-FELDMAN* DOCTRINE.

Furthermore, even assuming arguendo Plaintiff's ramblings were to be construed (even under the most liberal of standards) to state a claim against HABC, any such claim would be barred by the Rooker-Feldman doctrine.

The Rooker–Feldman doctrine, which derives its name from the Supreme Court's decisions in Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), "preclude[s] lower federal court jurisdiction over claims that were actually litigated or 'inextricably intertwined' with adjudication by a state's courts." Parkview Assocs. Pshp. v. City of Leb., 225 F.3d 321, 325 (3d Cir.2000) (quoting Gulla v. North Strabane Twp., 146 F.3d 168, 171 (3d Cir.1998)). In Rooker, the parties that were defeated in state court turned to a Federal District Court for relief. Alleging that the adverse state-court judgment was rendered in contravention of the Constitution, they asked the federal court to declare it "null and void". Id. at 414-415, 44 S. Ct. 149. A finding that Rooker-Feldman bars a litigant's federal claims divests a District Court of subject matter jurisdiction over those claims. Guarino v. Larsen, 11 F.3d 1151, 1156-57 (3d Cir.1993).

The Rooker–Feldman doctrine is based on "the well-settled understanding that the Supreme Court of the United States, and not the lower federal courts, has jurisdiction to review a state court decision." Parkview supra, 225 F.3d at 324. Under 28 U.S.C. § 1257, the Supreme Court has jurisdiction to review a decision by "the highest court of a State in which a decision [may] be had." Since Congress has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not intend to empower District Courts to review state court decisions. Gulla supra, 146 F.3d at 171. To ensure that Congress's intent to prevent "the lower federal courts" from "sit[ting] in direct review of the decisions of a state tribunal" is given effect, Gulla supra, 146 F.3d at 171, the Rooker–Feldman doctrine prohibits District Courts from adjudicating actions in which "the relief requested ... requires determining that the state court's decision is wrong or ... void[ing] the state court's ruling." FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir.1996).

Four requirements must be met for the Rooker–Feldman doctrine to apply: (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments. Great W. Mining & Mineral Co. v. Fox Rothschild

LLP, 615 F.3d 159, 166 (3d Cir. 2010) (first alteration added) (citing Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)) "The second and fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim." Great W. Mining supra, 615 F.3d at 166.

Here, Plaintiff's filing of his initial Complaint, and this Amended Complaint to preserve this federal court action, collectively constitute a transparent attempt to obtain second and third bites at the apple to litigate his prior state court action (see Exhibit A to Certification of Counsel submitted in support of the Martin/Anderson defendants' opposition to Plaintiff's Motion, ECF No. 34-1) – which made allegations arising out of the exact same operative facts, and which was dismissed with prejudice – in federal court without having directly appealed dismissal of the same.

This is a textbook scenario for application of Rooker-Feldman to bar Plaintiff's lawsuit and Amended Complaint, as all four requirements under the Rooker-Feldman are clearly met. The "with prejudice" dismissal of Plaintiff's state court lawsuit undoubtedly reflects that Plaintiff "lost" in state court, thus satisfying the first element of Rooker-Feldman. The second Rooker-Feldman element is met because Plaintiff's filing the exact same action in federal court now without having directly appealed the dismissal of his state court action essentially constitutes Plaintiff complaining of injuries caused by dismissal of that state court

lawsuit (just in another forum). The third Rooker-Feldman element is met because orders were entered dismissing Plaintiff's state court lawsuit against all defendants prior to his initiating the instant action (see Exhibits F through G to Certification of Counsel submitted in support of the Martin/Anderson defendants' opposition to Plaintiff's Motion, ECF No. 34-1), which dismissals were ultimately "with prejudice" based on Plaintiff's failure to even oppose the same. See ibid., Exhibits I through K. Finally, the fourth element of Rooker-Feldman is met because by not directly appealing the dismissal of his state court lawsuit, but rather filing the exact same lawsuit in federal court, Plaintiff is effectively inviting this Court to review and reject the state court's dismissal of this action, look at it anew and get a second bite at the apple. Such tactics should not be countenanced.

Thus, for the reasons set forth above, this court lacks jurisdiction pursuant to the Rooker-Feldman doctrine to adjudicate Plaintiff's proposed Amended Complaint, and accordingly such proposed pleading is futile and therefore Plaintiff's Motion must be denied.

CONCLUSION

For all of the aforementioned reasons, defendant Housing Authority of Bergen County ("HABC") respectfully requests that this Court grant its Motion To Dismiss Plaintiff's Amended Complaint in its entirety and enter an Order dismissing Plaintiff's Complaint against HABC with prejudice.

Respectfully submitted,

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By: */s/ Christopher J. Turano, Esq.*
CHRISTOPHER J. TURANO, ESQ.

Dated: July 1, 2019