

APPENDIX TABLE OF CONTENTS

Appendix A - Opinion of the Superior Court of New Jersey, Appellate Division, A-3732-23, decided September 24, 2025.

Appendix B - Order of the Supreme Court of New Jersey denying certification, Supreme Court No. 091382, dated April 6, 2026 and filed April 10, 2026.

Appendix C - Superior Court of New Jersey, Law Division, Bergen County order granting summary judgment, BER-L-6279-22, July 19, 2024 filing.

Appendix D - Relevant portions of the Law Division oral decision on summary judgment, July 19, 2024.

Appendix E - Fourteenth Amendment, Due Process Clause.

APPENDIX A

Opinion of the Superior Court of New Jersey, Appellate Division
A-3732-23 - Decided September 24, 2025

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3732-23**

KEVIN KIRK,

Plaintiff-Appellant,

v.

NATIONAL INSTITUTE FOR
PEOPLE WITH DISABILITIES
OF NEW JERSEY,

Defendant-Respondent.

Argued September 10, 2025 – Decided September 24, 2025

Before Judges Mayer and Paganelli.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. L-6279-22.

Kevin Kirk, appellant, argued the cause pro se.

Martin W. Aron argued the cause for respondent
(Jackson Lewis, PC, attorneys; Martin W. Aron, of
counsel and on the brief; Kea S. Noyan, on the brief).

PER CURIAM

Plaintiff Kevin Kirk appeals from a July 24, 2024 order granting summary judgment to defendant National Institute for People With Disabilities of New Jersey (National Institute) and dismissing his complaint with prejudice. We affirm.

We recite the facts from the motion record. In 2019, plaintiff began working at a residential group home operated by National Institute. The group home served individuals with intellectual and developmental disabilities.

In 2020, at the start of the COVID-19 pandemic, National Institute implemented a mandatory masking policy for all employees interacting with group home residents "for the health and safety of residents and staff." Plaintiff, who underwent training on the use of masks to protect against the spread of COVID-19, signed a written acknowledgment regarding National Institute's mandatory mask policy.

During the pandemic, plaintiff's co-worker filed an internal complaint, reporting plaintiff's failure to wear a mask at work while interacting with fellow employees and group home residents in violation of the mask policy. National Institute's executive director investigated the allegations regarding plaintiff's noncompliance with its mask policy.

The investigation revealed additional reports of plaintiff's failure to wear a mask while at work. When plaintiff's co-workers attempted to address plaintiff's noncompliance with the corporate mask wearing policy, they reported plaintiff ignored them.

Plaintiff was interviewed as part of National Institute's investigation into his failure to wear a mask. He reported wearing a mask whenever he provided direct care to residents. Further, he did not recall any co-workers discussing his not wearing a mask.

At the conclusion of the investigation, National Institute determined the allegations against plaintiff for failing to wear a mask when interacting with group home residents and staff employees "were substantiated." Based on the results of the investigation, effective January 21, 2021, National Institute terminated plaintiff's employment for violating its health and safety protocols.

Plaintiff filed a complaint against National Institute alleging employment discrimination under the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -50. Plaintiff, who is black, alleged National Institute discriminated against him based on his race and sexual orientation. He further contended National Institute retaliated against him, wrongfully terminated his employment, and intentionally caused him to suffer emotional distress.

National Institute filed an answer. Thereafter, the parties conducted discovery, including plaintiff's deposition. During his deposition, plaintiff declined to provide specific examples supporting his allegations against National Institute. Rather, plaintiff testified he would not "go into depth" other than saying "neglectful behavior" and elected "to wait for a jury" for the "shock value" to support his claims.

National Institute moved for summary judgment. The motion included a statement of material facts with appropriate citations to the record and certifications from National Institute's executive director and quality resource manager.

In opposition to the summary judgment motion, plaintiff offered two unsworn handwritten letters authored by "L. Edwards." Plaintiff asserted the letters supported his claims against National Institute.

The judge heard oral argument on National Institute's summary judgment motion. After listening to plaintiff's arguments in opposition to the motion, the judge advised plaintiff there was no sworn deposition testimony supporting the allegations. Moreover, the judge remarked he lacked "a conforming certification . . . under Rule 1:6-6 that would attach [to] any document, or transcript[,], or certification from an individual" or "a response to the statement

of material facts that would be correlated to a record to substantiate th[e] allegation[s]."

Regarding plaintiff's reliance on the unsworn letters submitted in opposition to the motion, the judge stated those letters lacked a certification or affidavit required under the Court Rules. In rejecting the letters, the judge said: "In order to have a qualifying certification and affidavit[,] it has to be sworn and attested to by the affiant, meaning the person who provided the statement. I can't accept it unless it's certified" by "[s]omebody who is subjected to the laws for perjury."

Upon receipt of plaintiff's nonconforming opposition to the summary judgment motion, the judge's chambers provided plaintiff with the relevant Court Rules, governing opposition to summary judgment, and the judge specifically granted plaintiff leave "to provide a conforming opposition to the motion for summary judgment." Despite the opportunity to file conforming opposition, including responses to National Institute's statement of material facts, plaintiff claimed he "did not know how to respond" and asserted he would rely on the unsworn letter writer's testimony at trial.

The judge noted plaintiff had the right to represent himself but that plaintiff remained obligated to follow the Court Rules. The judge cited Rubin

v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982), and other cases, explaining "pro se litigants are not entitled to greater rights than litigants who are presented by counsel. It is fundamental that the court system protect the procedural rights of all litigants and to accord procedural due process to all litigants." Specifically, the judge stated:

[W]hen you choose . . . to represent yourself, it is not an excuse . . . that you didn't know what you had to do to oppose the motion for summary judgment. You are responsible for reading the rule. Comprehending the rule. And if you didn't understand the rule, we have ombudsmen in the courthouse to assist you. But it is not an excuse on the return date of a motion for summary judgment to come in before the [c]ourt and stat[e] to the [c]ourt that you didn't know what to do to oppose the motion.

In response to the judge's statement, and acknowledging the letters submitted in opposition to summary judgment "weren't . . . under any oath," plaintiff renewed his request for the judge to consider the unsworn letters. Plaintiff argued the issue with the unsworn letters could "be rectified if [he] d[id] go to some kind of trial."

In granting summary judgment to National Institute, the judge cited plaintiff's nonconforming opposition to the motion and issuance of a deficiency notice giving plaintiff additional time "to file a conforming opposition" before deciding the motion. The judge stated plaintiff filed a second nonconforming

opposition despite receipt of the applicable Court Rules governing opposition to the motion for summary judgment. The judge concluded:

[P]laintiff did not provide the [c]ourt with a responding statement to defendant's statement of material facts which was quite extensive in this case. Moreover, [National Institute]'s statement of material facts included citations to the record, thus conforming with Rule 4:46-2(b) and Rule 4:46-5(a). In light of . . . plaintiff's failure to provide a response to the statement of material facts, all facts therein are deemed admitted.

Thus, pursuant to Rule 4:46 and Brill v. Guardian Life Insurance Company, 142 N.J. 520, . . . (1995), there are no genuine issues of material fact challenged. Therefore, [National Institute] is entitled to a judgment or an order as a matter of law as no conforming opposition was filed by plaintiff.

On appeal, plaintiff argues the judge erred in granting summary judgment "based on a misrepresentation of facts, improper handling of witness testimony, and disregard for admissible evidence." Specifically, plaintiff asserts the judge impermissibly allowed National Institute to rely on hearsay statements but rejected as hearsay the submission of two unsworn letter statements from his witness. Additionally, plaintiff contends the judge failed to provide sufficient findings of facts that National Institute was entitled to summary judgment as a matter of law.

We review a trial judge's grant or denial of a motion for summary judgment de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022).

Rule 4:46-2(c) provides a motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." We "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 540.

"To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill, 142 N.J. at 540).

"Summary judgment should be granted, . . . 'after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman, 242 N.J. at 472 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

Here, plaintiff failed to provide adequate citations to the record in opposing National Institute's motion for summary judgment. Plaintiffs bear "responsibility to refer [the court] to specific parts of the record to support their argument. They may not discharge that duty by inviting [the court] to search through the record." Spinks v. Twp. of Clinton, 402 N.J. Super. 465, 474-75 (App. Div. 2008) (deeming it "improper" to ask the court "to scour sixty-one pages of [the] plaintiffs' appendix, as well as computer disks without informing [it] of what particular pages supposedly support their argument").

In omitting citations to competent evidential materials in the record, plaintiff failed to demonstrate a genuine factual dispute regarding his claims. Thus, we are satisfied the judge properly granted summary judgment to National Institute based on plaintiff's failure to provide opposition to the motion in accordance with the Court Rules. Plaintiff was provided a copy of the applicable

Court Rules governing opposition to summary judgment and additional time to submit conforming opposition papers. However, plaintiff did not do so.

Even if we considered the merits of plaintiff's amorphously stated arguments, his claims are unable to survive summary judgment.

We defer to a trial court's evidentiary ruling absent an abuse of discretion. See Invs. Bank v. Torres, 243 N.J. 25, 48 (2020). Appellate courts review the trial court's evidentiary ruling "under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)).

"When a trial court admits or excludes evidence, its determination is 'entitled to deference absent a showing of an abuse of discretion, i.e., [that] there has been a clear error of judgment.'" Rowe v. Bell & Gossett Co., 239 N.J. 531, 551 (2019) (alteration in original) (quoting Griffin v. City of E. Orange, 225 N.J. 400, 413 (2016)). Accordingly, we "will reverse an evidentiary ruling only if it 'was so wide [of] the mark that a manifest denial of justice resulted.'" Id. at 551-52 (alteration in original) (quoting Griffin, 225 N.J. at 413).

Plaintiff mistakenly asserts statements by National Institute's employees contained in the internal investigation report constituted impermissible hearsay under N.J.R.E. 802. Plaintiff contends the judge considered the improper hearsay statements and summary judgment should be reversed. We disagree.

N.J.R.E. 801(c) defines hearsay as "a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Under N.J.R.E. 802, "[h]earsay is not admissible except as provided by the rules or by other law."

The New Jersey Supreme Court has held "within the usual limits that govern the admissibility of evidence as a whole, an investigative report concerning an employee is admissible as non-hearsay statements whenever the employer's motivations are directly at issue." Carmona v. Resorts Int'l Hotel, 189 N.J. 354, 376 (2007). "[W]here statements are offered not for the truthfulness of their contents, but only to show that they were in fact made and that the listener took certain action as a result thereof, the statements are not inadmissible hearsay." El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 164 (App. Div. 2005) (internal quotation marks omitted).

Plaintiff's NJLAD claims implicate National Institutes motives, so an investigative report containing statements upon which it relied in terminating a plaintiff's employment are relevant and admissible for non-hearsay purposes. See Carmona, 189 N.J. at 377. Such reports, regardless of the truthfulness of the underlying complaints, bears on whether an employer "acted reasonably in light of that information." El-Sioufi, 382 N.J. Super. at 165. Therefore, the statements made by National Institute employees contained in the investigative report are not hearsay.

Nor did the judge abuse his discretion in rejecting plaintiff's unsworn letters in opposition to National Institute's motion for summary judgment.

Plaintiff relies on the 2024-2025 New Jersey Senate Joint Resolution (S.J.R.) 32 in arguing the judge should have admitted the two unsworn and undated letters into evidence. Plaintiff's reliance on this resolution is misplaced. S.J.R. 32 is a proposed legislative amendment to N.J.R.E. 803(c) introduced in the Senate on January 9, 2024. The resolution has yet to be signed into law and remains pending before the Senate Judiciary Committee as a proposed amendment to N.J.R.E. 803(c). Pending legislation is not legally binding on the courts. See Pickett v. Lloyds, 252 N.J. Super. 477, 489 (App. Div. 1991).

Nor is N.J.R.E. 803(a) applicable as an exception to the hearsay rule in support of the admission of plaintiff's unsworn letters. The Rule provides an exception from the hearsay exclusion when "[t]he declarant-witness testifies and is subject to cross-examination about a prior otherwise admissible statement, and the statement . . . is inconsistent with the declarant-witness' testimony at trial or hearing." Because the statements by fellow employees in National Institute's investigative report were not prior inconsistent statements of testifying witnesses, N.J.R.E. 803(a) was inapplicable and the judge did not abuse his discretion in rejecting the letters in opposition to summary judgment.

We also reject plaintiff's argument that there were genuine and material disputed facts precluding the entry of summary judgment. As set forth above, plaintiff failed to file a conforming opposition to the motion for summary judgment. He provided no response to the statement of material facts and cited no sworn testimony by way of deposition, certification, or affidavit to contradict those facts.

Rather, plaintiff declined to provide evidence rebutting National Institute's facts because doing so would "reveal [his] argument" and "strategy to win" at trial. In the absence of plaintiff providing any competent and admissible evidence to rebut National Institute's facts supporting summary judgment, the

judge properly accepted those uncontested facts consistent with Rule 4:46-2 in granting the motion.

To the extent we have not specifically addressed any of plaintiff's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is
a true copy of the original on file in
my office.

M. C. Hanley

Clerk of the Appellate Division

APPENDIX B

Order of the Supreme Court of New Jersey Denying Certification
Supreme Court No. 091382 - April 6, 2026

SUPREME COURT OF NEW JERSEY
C-473 September Term 2025
091382

Kevin Kirk,

Plaintiff-Petitioner,

v.

O R D E R

National Institute for
People with Disabilities
of New Jersey,

Defendant-Respondent.

A petition for certification of the judgment in A-003732-23
having been submitted to this Court, and the Court having considered the
same:

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
6th day of April, 2026.

A handwritten signature in black ink, appearing to read "Akasha J. Baker". The signature is written in a cursive, flowing style.

CLERK OF THE SUPREME COURT

APPENDIX C

Superior Court of New Jersey, Law Division
Order Granting Summary Judgment - BER-L-6279-22

Order Prepared by the Court

KEVIN KIRK,

Plaintiff,

v.

NATIONAL INSTITUTE FOR PEOPLE
WITH DISABILITIES OF NEW JERSEY,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.: BER-L-6279-22

CIVIL ACTION

ORDER

THIS MATTER having been brought before the court by way of a motion of Jackson Lewis P.C., attorneys for defendant, National Institute for People with Disabilities of New Jersey, seeking the entry of an order granting summary judgment and dismissing plaintiff's complaint, with prejudice, pursuant to R. 4:46; and the court having reviewed the moving papers, any opposition thereto, and for good cause having been shown;

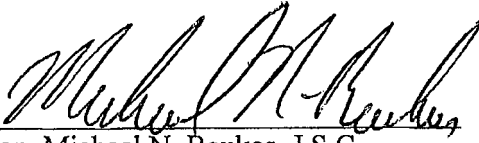
IT IS on this **19th day of July, 2024**;

ORDERED that defendant, National Institute for People with Disabilities of New Jersey's Motion for Summary Judgment be and is hereby **GRANTED***; and it is further

ORDERED that plaintiff's complaint be and is hereby **DISMISSED WITH PREJUDICE***; and it is further

ORDERED that the court provides a copy of this order to all counsel of record on this date via eCourts Civil. Movant is directed to serve a copy of this order within seven (7) days of

the date hereof on all parties not served electronically, by regular mail and certified mail, return receipt requested.


Hon. Michael N. Beukas, J.S.C.

☐ UNOPPOSED

☒ OPPOSED

* The court held oral argument and set forth its reasoned decision, findings of fact, and conclusions of law on the record.

APPENDIX D

Relevant Portions of the Law Division Oral Decision
Motion for Summary Judgment - July 19, 2024

1 I -- I assume that -- that this allegation of
2 -- of like a -- a death to -- that's nowhere in the --
3 the record. There's no other testimony. You have all
4 of the interrogatory answers.

5 You will not see any allegation of -- of a
6 death. You won't see allegations of presenting the
7 shock value at trial. And plaintiff was instructed at
8 his deposition. He -- he said he wasn't going to
9 answer question because he wanted to reserve this --
10 the shock value at trial. He was advised, Your Honor,
11 that now is the time to speak. If he has something to
12 say, you have to tell us now.

13 THE COURT: Thank you.

14 Mr. Kirk, anything further?

15 MR. KIRK: Yes. Um. As far as, um, saying I
16 was talking or something like that, that was nowhere
17 inside the text message. I believe you have the
18 transcripts of the text message. I spoke around the
19 lady that was trying to set a trap. It was a bit of
20 entrapment there as she was trying to do. And I spoke
21 around it. Because, you know, as a supervisor I'm
22 supposed to, you know, acknowledge this person's
23 problems and try to rectify them.

24 Um. As far as she said something like --
25 where was that? Where is the other thing that you had

1 said? I'm sorry. Um. You don't have any record of
2 anybody for that for me, but I'm pretty sure you do.
3 But, I mean, it's -- that part -- that part is a little
4 bit it gets -- because this is someone I cared for for
5 years. And I don't feel like the practices -- the
6 unethical practices that -- and I can be, you know,
7 look for who was or not. There's been plenty of times
8 where I didn't understand why certain things weren't
9 implemented. But this is usually the results. Um.
10 I would like to continue on this.

11 THE COURT: We are done with oral argument.
12 Thank you.

13 MR. KIRK: Okay. All right.

14 THE COURT: The Court is prepared to rule on
15 this motion.

16 This matter comes before the Court by way of
17 motion of summary judgment filed by defendant National
18 Institute For People With Disabilities of New Jersey,
19 hereinafter defendant or National Institute, seeking
20 the entry of an order granting summary judgment in
21 their favor, and dismissing the complaint pursuant to
22 Rule 4:46.

23 This matter arises out of the employment
24 termination of plaintiff Kevin Kirk, hereinafter
25 plaintiff or Kirk, for alleged repeated violations of

1 an indoor mask policy in effect at the height of the
2 COVID-19 pandemic in January of 2021.

3 Thereafter, plaintiff his complaint on
4 November 22nd, 2022. Defendant National Institute
5 filed their answer on February 14th, 2023. This matter
6 was afforded in excess of 450 days of discovery and a
7 trial has been scheduled for October 28, 2024.

8 Defendant National Institute filed the within
9 motion for summary judgment on June 21st, 2024.
10 Plaintiff filed his nonconforming opposition to the
11 motion on June 21st, 2024. The Court on July 3rd, 2024
12 issued a deficiency notice on plaintiff's opposition
13 stating.

14 "The opposition filed to the summary judgment
15 application is nonconforming and deficient according to
16 Rule 4:46-2. Plaintiff is granted leave from the Court
17 to file a conforming opposition by Tuesday, July 9th,
18 2024."

19 Thereafter, plaintiff filed a second
20 nonconforming opposition on July 4th, 2024. Defendant
21 filed a reply on July 15th, 2024.

22 Defendant National Institute argues that
23 they're entitled to summary judgment and dismissal of
24 the complaint against them. Defendant contends that
25 the undisputed record evidence makes it abundantly

1 clear that plaintiff cannot establish the elements of a
2 cause of action for race or sex discrimination under
3 the New Jersey Law Against Discrimination, N.J.S.A.
4 10:5-1 in sequence, hereinafter the NJLAD.

5 Similarly, defendant asserts that plaintiff's
6 retaliation of intentional infliction of emotional
7 distress claims fail both factually and legally. Thus,
8 defendant attests that summary judgment must be granted
9 in the entirety and plaintiff's complaint against
10 defendant must be dismissed. The defendant argues that
11 plaintiff's race discrimination claim in Count One must
12 be dismissed because he cannot demonstrate a prima
13 facie case and cannot rebut legitimate nonpretextual
14 reasons for termination of employment.

15 Defendant claims plaintiff cannot prove a
16 prima facie case under the NJLAD because he is unable
17 to establish that his job performance met National
18 Institute's reasonable expectations. Specifically,
19 defendant asserts the evidence establishes that
20 plaintiff engaged in flagrant and repeated violations
21 of National Institute's mask policy when in the
22 presence of others during the height of the COVID-19
23 pandemic. Defendant notes when a coworker repeatedly
24 reminded plaintiff of the need to wear his mask,
25 plaintiff laughed dismissively causing her complain to

1 Human Resources.

2 Further, defendant contends plaintiff
3 acknowledged in writing that he was aware of and would
4 abide by the mask policy, yet, failed to do so.
5 Defendant alleges the mask policy was instituted to
6 protect the disabled group home residents for whom
7 plaintiff was responsible.

8 Additionally, defendant argues the policy
9 violation was corroborated in the independent
10 investigation in which others attested to having
11 observed plaintiff not wear a mask while in proximity
12 to residents and coworkers. Defendant claims plaintiff
13 has not identified any other employee of National
14 Institute known to management or the National Institute
15 investigator Ms. Dunn (phonetic) who was retained after
16 engaging in the same flagrant violations of the COVID
17 mask policy.

18 Moreover, defendant contends plaintiff
19 further fails to establish that National Institute's
20 decision to terminate him was in any way motivated by
21 race beyond the baseless conclusory allegations that he
22 could not specify in his sworn deposition testimony.
23 Defendant asserts they acted for legitimate
24 nonpretextual performance based reasons in terminating
25 plaintiff's employment, when its investigation

1 confirmed that plaintiff had repeatedly violated a
2 mandatory masking policy in effect at the height of the
3 pandemic. Thus, defendant argues Count One of
4 plaintiff's complaint for race discrimination in
5 violation of the NJLAD must be dismissed with
6 prejudice.

7 Next, defendant contends that plaintiff's
8 reverse gender discrimination claim must be dismissed
9 since plaintiff cannot demonstrate either unlawful
10 discrimination for a pretext based on his sex.
11 Defendant alleges that plaintiff is a member of a class
12 that has not -- his -- that -- that has not
13 historically been victimized by discrimination.
14 Rather, defendant claims that they did not discriminate
15 against male workers, such as plaintiff, because, in
16 fact, approximately two years into his employment he
17 was quickly promoted from Direct Support Professional
18 to an Assistant Supervisor.

19 Defendant argues plaintiff proffered no
20 evidence that defendant engaged in a pattern of sex
21 discrimination that favored women over men. Moreover,
22 defendant notes it is unprovided that plaintiff was not
23 performing at a level that met defendant's legitimate
24 expectations as evidenced by the outcome of the
25 investigation into plaintiff's failure to comply with

1 the masking policy. Defendant notes that plaintiff's
2 coworker Ms. Cubias (phonetic) alleged that plaintiff
3 was not wearing his mask around residents and employees
4 at the Garfield home. So she raised concerns to
5 plaintiff who laughed and was dismissive.

6 Defendant claims Ms. Cubias filed a formal
7 complaint with Human Resources. And an investigation
8 of the incident concluded that plaintiff's actions were
9 in violation of National Institute's mask policy and
10 risked the health and safety of residents and employees
11 at the Garfield home.

12 Defendant asserts that independent
13 investigation and recommendation led to plaintiff's
14 termination. Thus, defendant con (sic) -- contends
15 Count Two of plaintiff's complaint for a sex
16 discrimination violation of the NJLAD must be dismissed
17 with prejudice.

18 Further, defendant argues that plaintiff's
19 retaliation claims should be dismissed because
20 plaintiff engaged in no protected conduct and was
21 terminated for a legitimate non pry (sic) -- pretextual
22 reasons. Defendant claims plaintiff's retaliation
23 claim is baseless because he cannot establish the
24 requisite causal connection between any protected
25 activity and termination of his employment.

1 Defendant alleges that plaintiff readily
2 admits he never complained of any harassment,
3 discrimination or bullying, if such conduct ever took
4 place at all. The defendant notes that plaintiff first
5 complained about purported discrimination only after he
6 was terminated when he filed the complaint in this
7 matter. Thus, defendant contends Count Three of
8 plaintiff's complaint for retaliation in violation of
9 the NJLAD must be dismissed with prejudice.

10 Moreover, defendant contends that plaintiff
11 cannot establish elements of an intentional infliction
12 of emotional distress claim as the claim is baseless
13 and should be dismissed. Defendant asserts there is no
14 such conduct that could be considered "extreme and
15 outrageous conduct which intentionally or recklessly
16 causes severe emotional distress to another."

17 Furthermore, defendant notes that plaintiff
18 admits he never sought any treatment with any medical
19 or healthcare professional for any conduct of the
20 National Institute. Defendant alleges plaintiff never
21 lodged any complaint of discrimination or harassment
22 during his employment, and never sought treatment for
23 distress following termination. Defendant attests
24 plaintiff has made vague references to financial
25 hardship related to the maintenance of his home and

1 utilities. Thus, defendant contends Count Four of
2 plaintiff's complaint for intentional infliction of
3 mental distress must be dismissed with prejudice.

4 Additionally, defendant argues that plaintiff
5 cannot establish a prima facie case of hostile work
6 environment under the NJLAD. Defendant also claims
7 plaintiff could not even specify the alleged comments
8 in his deposition that was the result of gender,
9 sexuality or race. Indeed, defendant alleges
10 plaintiff concedes that he only solicited an unknown
11 "statement" consisting of hearsay from La (sic) --
12 Lindonia Edwards, a coworker, who was subsequently
13 terminated from National Institute after his own
14 termination.

15 Thus, defendant argues to the extent this
16 Court finds plaintiff's complaint includes a claim
17 based on an alleged hostile work environment, the claim
18 must be dismissed with prejudice.

19 Lastly, defendant contends that plaintiff's
20 punitive damages claim should be dismissed because
21 defendant engaged in no wanton or egregious conduct.
22 Therefore, defendant argues summary judgment should be
23 granted in their favor and plaintiff's complaint should
24 be denied with prejudice.

25 Plaintiff did not file with the Court any

1 conforming opposition to the summary judgment motion
2 pursuant to Rule 4:46. Without any response to the
3 statement of material facts, and in the absence of any
4 sworn certification and responding legal brief in
5 opposition, plaintiff argues that he does not concede
6 anything as all of his claims have proof behind them
7 and has already provided his evidence in the case.

8 Plaintiff claims that with regard to the
9 investigation, during discovery the defense showed him
10 an email supposedly from Kirk claiming he had some
11 interaction with the investigator. Plaintiff alleges
12 that he does not have that email address, and it seems
13 like an attempt to cover up that he was not interviewed
14 properly. Thus, plaintiff asserts the investigation
15 was evidently inadequate as he was questioned about his
16 work on the same day he was let go indicating their
17 decision was made before the National Institute called
18 him.

19 Plaintiff argues with regard to business and
20 earnings, although there is a business in his name; it
21 has not generated any earnings, due to obstacles
22 preventing progress. Plaintiff claims the defendant,
23 who has access to his tax and earning records,
24 knowingly lies about his earnings suggesting he is not
25 experiencing hardship which is far from the truth.

1 Plaintiff alleges he has not earned a single cent from
2 his business and has not purzue (sic) -- pursued it
3 further since encountering these obstacles.

4 Next, plaintiff contends that with regard to
5 questioning contrary to -- to defendant's assertions,
6 he clearly recalls the events at issue in this matter.
7 Plaintiff claims he informed Erica and Ralph Caloma on
8 the phone that he always wore his mask, yet, despite
9 his honest response, he was wrongfully dismissed.
10 Plaintiff alleges that Mr. Caloma even acknowledged
11 that he -- he -- sorry, that he has been conspired
12 against.

13 However, plaintiff notes his attempt to
14 respond further was cut short when Erica from Human
15 Resources abruptly ended the phone call. Plaintiff
16 asserts with regard to text messages, accusation and
17 hearsay are not a valid defense. Because if the act
18 (sic) -- accusations were true, there would be no need
19 to rely on entrapment attempts via text. Which is why
20 there was no direct reply to this particular
21 accusation.

22 Plaintiff claims supporting the false claims
23 of a subordinate speaking against a supervisor with no
24 witness present is backwards by any company standards
25 and not grounds for dismissal. Plaintiff attests that

1 the absence of concrete evidence shows that his
2 dismissal was based on discrimination and not on any
3 legitimate grounds.

4 Lastly, plaintiff argues that he can say more
5 but would rather do so in cross-examination where he
6 can demonstrate the defendant's false -- falsehoods in
7 real time.

8 The Court will now begin its analysis with
9 the applicable summary judgment standard enumerated in
10 Rule 4:46. New Jersey Court Rule 4:46-2 provides that
11 a trial court shall grant summary judgment with the
12 pleadings, depositions, answers to interrogatories, and
13 admissions on file together with the affidavits, if
14 any, show that there is no genuine issues as to any
15 material fact challenged. And that the moving party is
16 entitled to a judgment or order as a matter of law.
17 Citing Rule 4:46-2(c). See also Brill v. Guardian Life
18 Insurance Company, 142 N.J. 520, Page 540 (1995).

19 An issue of fact is genuine only if
20 considering the burden of persuasion at trial, the
21 evidence submitted by the parties on the motion
22 together with all legitimate inferences therefrom
23 favoring the nonmoving party, would require submission
24 of the issue to the trier of fact. Citing Rule 4:46-
25 2(c).

1 If the evidence submitted on the motion is so
2 one-sided that one party must prevail as a matter of
3 law, the trial court should not hesitate to grant
4 summary judgement. Citing Litwin v. Whirlpool Corp.,
5 436 N.J. Super. 80 (App. Div. 2014), citing Brill, 142
6 N.J. at 540, quoting Anderson v. Liberty Lobby, Inc.,
7 477 U.S. 242, at Page 252 (1986).

8 On motions for summary judgment, the motion
9 judge is required to treat the evidence in opposition
10 to the motion indulgently and resolve all reasonable
11 inferences against the movant. At the outset, the
12 Court notes that plaintiff's initial opposition filed
13 on June 21st, 2024 was nonconforming and deficient
14 according to Rule 4:46-2.

15 Section B of Rule 4:46-2 sets forth the
16 requirements for an opposition to a motion as "A
17 responding statement either admitting or disputing each
18 of the facts in the movant's statement. Subject to
19 Rule 4:46-5(a), all material facts in the movant's
20 statement which are sufficiently supported will be
21 deemed admitted for purposes of the motion only, unless
22 specifically disputed by citation conforming to the
23 requirements or Paragraph A demonstrating the existence
24 of a genuine issue as to the fact."

25 "An opposing party may also include in the

1 responding statement additional facts that the party
2 contends are material and as to which there exists a
3 genuine issue. Each such fact shall be stated in
4 separately numbered paragraphs together with citations
5 to the motion record."

6 As these requirements were not complied with,
7 the Court on July 3rd, 2024, issued a deficiency notice
8 on plaintiff's opposition stating. "The opposition
9 filed for the summary judgment application is
10 nonconforming and deficient according to Rule 4:46-2.
11 Plaintiff is granted leave from the Court to file a
12 conforming opposition by Tuesday, July 9th, 2024."

13 Thereafter, plaintiff filed a second
14 nonconforming opposition on July 4th, 2024. This
15 opposition again did not include a responding statement
16 either admitting or disputing each of the facts in the
17 movant's statement.

18 In addition, plaintiff did not file a
19 responding legal brief, or even a certification or
20 affidavit in opposition to the summary judgment motion
21 in conformance with Rule 1:6-6. As set forth in Rule
22 4:46-2(b), "Subject to Rule 4:46-5(a), all material
23 facts in the movant's statement which are sufficiently
24 supported will be deemed admitted for purposes of the
25 motion only, unless specifically disputed by citation

1 conforming to the requirements of Paragraph A
2 demonstrating the existence of a genuine issue as to
3 the fact."

4 In this application, plaintiff did not
5 provide the Court with a responding statement to
6 defendant's statement of material facts which was quite
7 extensive in this case. Moreover, defendant's
8 statement of material facts included citations to the
9 record, thus conforming with Rule 4:46-2(b) and Rule
10 4:46-5(a). In light of pain (sic) -- plaintiff's
11 failure to provide a response to the statement of
12 material facts, all facts therein are deemed admitted.

13 Thus, pursuant to Rule 4:46 and Brill v.
14 Guardian Life Insurance Company, 142 N.J. 520, Page 549
15 (1995), there are no genuine issues of material fact
16 challenged. Therefore, defendant is entitled to a
17 judgment or an order as a matter of law as no
18 conforming opposition was filed by plaintiff.

19 As such, defendant National Institute's
20 motion for summary judgment is hereby granted in
21 accordance with the standards enumerated in Rule 4:46-1
22 and the Supreme Court's holding in Brill v. Guardian
23 Life Insurance Company, 142 N.J. 520 (1995) and
24 plaintiff's complaint be and is hereby dismissed with
25 prejudice.

1 That will conclude the delivery of the
2 Court's opinion in this matter. I will have an order
3 prepared and uploaded by the end of the day.

4 We are off the record.

5 MS. MOORE: Thank you, Your Honor.

6 (Proceedings concluded)
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APPENDIX E

Constitutional Provision Involved

FOURTEENTH AMENDMENT

Section 1 provides, in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.