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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BILL BALRAM, **Plaintiff,** **VS.** **PACIFIC RAIL SERVICES, TIM BYRNE, JOHN DOES 1-10, AND XYZ CORP. 1-10,** **Defendants.**	CIVIL ACTION NO.: 03-CV-6054 (JAG) **Rule 11 Notification**

Plaintiff, Bill Balram (ABalram@ or Aplaintiff@), by way of this Fed. R. Civ. Pro. 11 Notification to defendants, against the Defendants, Pacific Rail Services (APRS") and Tim Byrne (AByrne"),, John Does 1-10, and XYZ Corp. 1-10 (hereinafter collectively the Adefendants@) hereby says:

1. Fed. R. Civ. Pro. 11 provides that a party may not file a motion for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
2. Defendants= motion to dismiss clearly violates said rule.
3. Defendants= motion is filed prior to any discovery and is replete with self-serving factual representations from defendants B most of which are contested by plaintiff.
4. Further, not only is there no legal basis for defendants' motion, but there is a case that stands for the exact opposite proposition.
5. Hahn v. Arbat Systems, Ltd., 200 N.J. Super. 266, 268-269 (N.J. Super. , 1985) clearly stands for the proposition that a discrimination plaintiff is not precluded from litigating his claim under the LAD due to a finding by the Department of Labor -- even when the

Department of Labor considered and ruled upon the issue of discrimination in a manner adverse to the plaintiff.

6. The court ruled that, "were we to permit consideration of the discrimination issue for the purposes of unemployment compensation to abridge or defeat a complete exploration of the charges in the courts, we would, in our judgment, be permitting a serious infringement upon this important public policy." Id.

7. Further, the court stated that it was of high priority is the public policy in New Jersey which seeks to ensure complete review and rigorous enforcement in matters of alleged and actual discrimination. Id.

8. This finding is consistent with the New Jersey Supreme Court's repeated emphasis on the strong public policy supporting claims of employment discrimination in this state. *See e.g.* Jackson v. Concord Company, 54 N.J. 113, 124 (1969) (racial discrimination claim wherein the Court referenced the need to "eradicate the cancer of discrimination"); Peper v. Princeton University Board of Trustees, 77 N.J. 55, 80 (1978) (sex discrimination claim where the Court stated that "New Jersey has always been in the vanguard in the fight to eradicate the cancer of unlawful discrimination of all types from our society."); Goodman v. London Metals Exchange, Inc., 86 N.J. 19, 30-31 (1981) (Court dictates that the "Legislature has given the Law Against Discrimination a special niche in the legislative scheme"); Andersen v. Exxon Co., 89 N.J. 483, 492 (1982) (the LAD fulfills provisions in the state constitution guaranteeing civil rights.)

9. Of course, even beyond the issue that defendants' motion is contrary to law is the fact that plaintiff's claim of discrimination was never addressed by the Department of Labor.

10. Defendants' motion does not even state that the specific issue of discrimination was ever considered by the Department of Labor.

11. This is similar to the facts that existed in Rendine v. Pantzer, 276 N.J. Super. 398 (N.J. Super., 1994). In that case, the plaintiffs moved to strike the affirmative defense of collateral estoppel and res judicata as to the decision of the Department of Labor, Division of Unemployment and Disability Insurance, Appeal Tribunal which denied Rendine benefits because she was discharged for misconduct connected with the work.

12. Judge Meehan ruled that Rendine could still bring her claim for discrimination, a claim not addressed in the Appeal Tribunal decision." Rendine v. Pantzer, 276 N.J. Super. 398, 422 (N.J. Super., 1994).

13. Further plaintiff was not represented by counsel at this administrative proceeding where the hearings are conducted in an informal fashion by a hearing officer, not an ALJ. *Cf.* Ensslin, 275 N.J. Super. at 372-73

14. Further, there is no question that the remedies available in an unemployment hearing is far different from a court and thus they are not forums of equal jurisdiction for the purposes of determining a potential application of the entire controversy doctrine. Thornton v. Potamkin Chevrolet, 94 N.J. 1, 6 (1983). *Cf.* Hernandez, supra, 146 N.J. at 661 (LAD claim is not barred by proceeding before the EEOC); Kopin v. Orange Products, Inc., 297 N.J. Super. 353, 375, 688 A.2d 130 (App. Div.) (quantum meruit action by an employee is not barred by an earlier resort to Wage Collection Division), *certif. denied*, 149 N.J. 409, 694 A.2d 194 (1997); Cafferata v. Peyser, 251 N.J. Super. 256, 262-63, 597 A.2d 1101 (App. Div. 1991) (holding that a medical malpractice action is not barred by a Special Civil Part action by a physician seeking payment of his bill); Long v. Lewis, 318 N.J. Super. 449, 458-459 (N.J. Super., 1999) (Adverse Merit Systems Board decision does not preclude a court action.).

15. Due to the facts and law cited above, plaintiff demands that defendants immediately withdraw their frivolous motion for summary judgment so that the parties can go forward with discovery.

16. Plaintiff by way of this motion puts defendants= counsel, its partners, associates, and employees and each and every defendant, as jointly and individually liable, on notice of same and shall file this motion at the expiration of 21 days if said challenged paper is not withdrawn.

17. Plaintiff intends to seek recoupment of reasonable attorneys= fees and costs incurred in opposing the motion.

DATED: September 10, 2013

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Attorneys for Plaintiff

By: _____
TY HYDERALLY, Esq.
For the Firm

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