



Defendant, Alan P. Rosefielde (“Rosefielde”) by way of Answer to Plaintiff’s Complaint, avers as follows:

FIRST COUNT

1. Defendant admits the allegations of Paragraph 1 of the Complaint.
2. Defendant admits the allegations of Paragraph 2 of the Complaint.
3. Defendant admits the allegations of Paragraph 3 of the Complaint.
4. Defendant admits in part and denies in part the allegations of Paragraph 4 of the Complaint. It is admitted that Plaintiff provided legal services to Defendant. The remaining averments of Paragraph 4 are denied.
5. Defendant admits in part and denies in part the allegations of Paragraph 5 of the Complaint. It is admitted that there is an Agreement, and to that extent the Agreement speaks for itself. The remaining averments of Paragraph 5 are denied.
6. Defendant denies the allegations of Paragraph 6 of the Complaint.
7. Defendant admits the allegations of Paragraph 7 of the Complaint.
8. Defendant admits in part and denies in part the allegations of Paragraph 8 of the Complaint. Defendant admits receipt of an alleged Statement of Account by regular mail. The remaining averments of Paragraph 8 are conclusions of law to which no response is required and, as such, they are denied.
9. Defendant admits the allegations of Paragraph 9 of the Complaint.

SECOND COUNT

10. No response is required to the allegations of Paragraph 10 of the Complaint.
11. Defendant admits the allegations of Paragraph 11 of the Complaint.
12. Defendant has no knowledge as to what the Plaintiff expected, nor any knowledge of Plaintiff's alleged books of account as alleged in Paragraph 12 of the Complaint.
13. Defendant has no knowledge of Plaintiff's alleged books of account referred to Paragraph 13 of the Complaint.
14. The averments of Paragraph 14 are conclusions of law to which no response is required and, as such, they are denied.

THIRD COUNT

15. No response is required to the allegations of Paragraph 15 of the Complaint.
16. Defendant denies the allegations of Paragraph 16 of the Complaint.
17. Defendant admits the allegations of Paragraph 17 of the Complaint.
18. Defendant denies the allegations of Paragraph 18 of the Complaint.

FOURTH COUNT

19. No response is required to the allegations of Paragraph 19 of the Complaint.
20. Defendant admits in part and denies in part the allegations of Paragraph 20 of the Complaint. It is admitted that there was a written Agreement, and to that extent the Agreement speaks for itself. The remaining averments of Paragraph 20 are denied.
21. Defendant has no knowledge as to what the Plaintiff expected as alleged in

Paragraph 21 of the Complaint. The remaining averments of Paragraph 21 are conclusions of law to which no response is required and, as such, they are denied.

22. Defendant admits in part and denies in part the allegations of Paragraph 22 of the Complaint. It is admitted that Plaintiff has demanded payment. The remaining averments of Paragraph 22 are denied.

#### **AFFIRMATIVE AND OTHER DEFENSES**

1. The Plaintiff is barred pursuant to the Doctrine of Waiver.
2. The Plaintiff is barred pursuant to the Doctrine of Laches.
3. The Plaintiff is barred pursuant to the Doctrine of Estoppel.
4. The Plaintiff is barred pursuant to the Doctrine of Unclean Hands.
5. The Plaintiff is barred pursuant to the Doctrine of Accord and Satisfaction.
6. The Plaintiff is barred pursuant to the Doctrine of Unjust Enrichment.
7. The Plaintiff's damages have been caused by its own negligence.
8. The Plaintiff has breached its fiduciary duty to the defendant, and has overcharged the defendant.
9. The fees charged are not reasonable in accord with the standards of practice and RPC 1.15.

#### **COUNTERCLAIM AND THIRD PARTY COMPLAINT**

Counterclaimant and Third Party Plaintiff Alan Rosefelde alleges:

#### **THE PARTIES**

1. Counterclaimant and Third Party Plaintiff ALAN ROSEFELDE is and at all times herein mentioned was a citizen and resident of the State of Florida.
2. On information and belief Counterclaim Defendant, ARCHER & GREINER



PC (hereinafter “Archer”) is and at all times herein mentioned was, a professional corporation duly organized and existing under the laws of the State of New Jersey with its principal place of business in the City and Haddonfield, New Jersey.

3. Third Party Defendant, JOHN CONNELL, (hereinafter “Connell”) is an individual and an attorney licensed to practice law in New Jersey with an office in Haddonfield, New Jersey.
4. Third Party Defendant, BENJAMIN MORGAN, (hereinafter “Morgan”) is an individual and an attorney licensed to practice law in New Jersey with an office in Haddonfield, New Jersey.
5. At all times herein mentioned, Connell was a partner and agent of the Archer, and in doing the things herein alleged was acting within the scope of such employment and agency.
6. At all times herein mentioned, Morgan was a partner and agent of the Archer, and in doing the things herein alleged was acting within the scope of such employment and agency.
7. The Court has jurisdiction over the third party defendant pursuant to 28 U.S.C. §1332, because there is a complete diversity of citizenship between Archer and Rosefelde, and more that Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs, is at stake. Venue is proper as cause of action arose in this District.

FIRST CAUSE OF ACTION

(Legal Malpractice against Counterclaim Defendant Archer and Third Party Defendants Connell and Morgan)

8. Rosefelde refers to and incorporates herein the General Allegations stated in Paragraphs 1 through 7 alleged herein above, and make them a part hereof as though set forth at length.

9. Rosefielde was named as a Defendant in the case of Bruce Kaye, etal v. Alan P. Rosefielde, etal, which was filed in February 2005 in the Superior Court of New Jersey, Atlantic County, Docket No. ATL-C-000017-05.
10. On April 21, 2005, Rosefielde and Archer entered into a written retainer agreement, which provided amongst other things, that Archer would perform “efficiently and cost-effectively, and will provide conscientious, competent and diligent services....” Further the agreement provided Archer would “communicate with you throughout the course of our representation so that you are aware of how we are progressing and can be involved in decisions which may have an impact on both the cost of the litigation and the outcome.”
11. Steve Fram (“Fram”) signed the written retainer agreement on behalf of Archer. Fram was the head of Archer’s litigation department, and he became Rosefielde’s lead attorney.
12. Bruce Kaye (“Kaye”) and Rosefielde have been locked in litigation for over eleven years, and each had expended millions of dollars in attorneys’ fees. The litigation, began in New Jersey, and spilled over to an arbitration proceeding and other litigation in Florida.
13. On November 24, 2012, Kaye and Rosefielde entered into a global Settlement Agreement, which encompassed four pending Florida cases, in addition to a New Jersey Appeal and two judgments. The Settlement Agreement was intended to end eight years of litigation, and a multitude of claims and counterclaims.
14. The Settlement Agreement provided for two contingencies. The first contingency required a minimum payment of Two Hundred Fifty Thousand Dollars (\$250,000) to Kaye by Rosefielde’s legal malpractice carrier, the American Guarantee & Liability Insurance Company

("American"). American paid the Two Hundred Fifty Thousand Dollars (\$250,000) on February 21, 2013. As part of the Settlement Agreement, Kaye warranted that he would not seek any further payment from Rosefelde, and that, within 10 days of receipt of the American Payment, dismiss all the Actions with prejudice. Accordingly, all actions, except for the appeal to the Appellate Division of the Superior Court of New Jersey, NO. A-001120-07T2, were dismissed. The appeal was not dismissed because the decision of the Appellate Division was the "trigger" of the second contingency. This contingency provided that if Rosefelde "prevailed on any issue on appeal in the New Jersey Action that alters the outcome of the trial or the Judgment", Kaye was required to pay Rosefelde the sum of Five Hundred Thousand Dollars (\$500,000) in Settlement of the Florida litigation. In essence, Kaye and Rosefelde entered into a high-low agreement. A high-low agreement is a device used in cases in which a Counterclaim Defendant agrees to pay plaintiff a minimum recovery in return for plaintiff's agreement to accept a maximum sum regardless of the outcome of the trial.

15. On August 16, 2013, the Appellate Division issued a decision, wherein it vacated the award for counsel fees, because based on the record, Kaye were unable to prove that Rosefelde's conduct proximately caused any compensable damages to him. The Appellate Division remanded for the trial court to reconsider and, if necessary, recalculate the amount of counsel fees, if any, that plaintiffs were entitled to receive under the circumstances presented.

16. The Appellate Division also vacated the trial court's award of punitive damages based on Rosefelde's acquisition of an ownership interest in BA Management, and his use of corporate funds to pay for a personal trip to Las Vegas. With respect to BA Management, the record did not show that



Rosefelde's acquisition of an ownership interest in this company proximately caused any compensable damages. The Court remanded for the trial court to reconsider whether an award of punitive damages is sustainable based only on the Four Thousand Dollars (\$4,000) of compensatory damages awarded for Rosefelde's improper use of corporate funds to pay for his personal trip.

17. An issue, which was litigated between Rosefelde and Kaye, was whether Rosefelde was an independent contractor or an employee.
18. Kaye, in his brief filed with the Appellate Division on cross appeal at page 9, stated Rosefelde was an independent contractor: "Effective January 1, 2003, Bruce Kaye and his companies engaged defendant Rosefelde as an independent contractor."
19. The Appellate Division upheld the Trial Court's determination that Rosefelde was not an employee: "Rosefelde does not meet the [Feldman] test for an employee.. ... Neither Kaye nor Rosefelde intended that Rosefelde be treated as an employee. Instead, Rosefelde was treated as a consultant retained through Rosefelde's Florida Corporation."
20. In October 2013 Fram left Archer to join another firm. As a result of that move Connell assumed Fram's role as lead attorney.
21. Kaye filed a Notice Of Petition seeking Certification by the New Jersey Supreme Court. On May 23, 2014 the New Jersey Supreme Court granted certification, "*limited to the issue*" of whether the Appellate Division erred by affirming the trial court's holding that economic damages are a necessary prerequisite to disgorgement of the *employee's* salary.
22. On June 23, 2014, almost one year after Kaye filed the original request for



Certification, Kaye filed a Motion To Expand Certification.

23. On July 25, 2014 Connell sent Rosefelde an email requesting him to have his Florida attorney send a detailed written report of the procedural status of the Florida litigation in a form of an annotated procedural history with attachments as necessary, ready to insert in the brief to be filed with the New Jersey Supreme Court. Connell thought, and Rosefelde agreed, it was important for the Court to know how Rosefelde continued to pursue the conclusive settlement of this case.
24. On July 28, 2014 Rosefelde's Florida attorney emailed Connell an annotated procedural history of the Florida litigation together with various court orders. In spite of the importance of the Settlement Agreement, and the Florida litigation with respect to the same, Connell did not insert the procedural history into the brief, as he said he would.
25. On July 31, 2014 Rosefelde sent Connell an email, in which he stated: "Finally, I think it is incumbent upon us to notify the Supreme Court that I was not an employee. Perhaps a footnote should be inserted."
26. On October 2, 2014, the New Jersey Supreme Court denied Kaye's Motion To Expand Certification To Include Legal Fees and Punitive Damages.
27. On January 20, 2015, Rosefelde sent Connolly a letter outlining his strategy for the oral argument to be presented to the New Jersey Supreme Court two weeks later. In that letter Rosefelde reminded Connell that the Appellate Division and the trial court found that he was not an employee, and thus, it was the Law of the Case. Rosefelde further instructed Connell to make his employee status the first argument to the Court.

"ROSEFELDE NOT AN EMPLOYEE"

“Our first argument to the Court should be that the Court dismiss the Certification as being improvidently granted.

The sole issue provided for in the Court’s Order is:

Certification is granted *limited to the issue* of whether the Appellate Division erred by affirming the trial court's holding that economic damages are a necessary prerequisite to disgorgement of the *employee’s* salary.”

28. In addition to the trial court and Appellate Division’s, finding that Rosefelde was not an employee, Kaye, in his brief to expand certification argued at page 6, that Rosefelde was for two years a “generally unsupervised, unmonitored, independent contractor...”
29. In the aforementioned January 20, 2015 letter, Rosefelde also directed Archer & Connell to argue the doctrine of judicial estoppel. Rosefelde wrote that it would be inequitable for the court to rule that he was an employee for the purposes of disgorgement, while at the same time upholding his status as a nonemployee for his CEPA counterclaim.
30. During the course of Archer, Connell, and Morgan’ representation of Rosefelde, there were several instances wherein the conduct of the Archer, Connell, and Morgan fell below the applicable standard of care, as set forth herein.
31. Archer, Connell, and Morgan, and each of them, had a duty to use such skill, prudence, and diligence as members of the legal profession commonly possess and exercise, in providing legal services to Rosefelde. Archer, Connell, and Morgan failed to develop a clear plan or strategic defense and representation of Rosefelde. This failure to develop a strategy became evident as Archer, Connell, and Morgan began spending inordinate amounts of time and money attempting to develop only one argument, i.e., that there can be no disgorgement without economic damages, while completely ignoring the much more substantive and potent defense that

Rosefielde was not an employee, and that the parties had signed a settlement agreement. Archer, Connell, and Morgan ignored and failed to pursue courses of action and strategies which would have offered Rosefielde a valid defense and bolstered Rosefielde's claims to many, if not all, of Kaye's claims.

32. On February 4, 2015 Connell argued the issue of disgorgement of an employee's salary, but never once argued that the trial court and the Appellate Division had found Rosefielde was not an employee. Connell's failure to make the foregoing argument was grossly negligent and fell below the applicable standard of care.
33. Connell never argued the Law of the Case was that Rosefielde was not an employee. Connell's failure to make the foregoing argument was grossly negligent and fell below the applicable standard of care.
34. Connell never argued that Kaye, in his own brief, stated Rosefielde was an independent contractor. Connell's failure to make the foregoing argument was grossly negligent and fell below the applicable standard of care.
35. Connell never argued the doctrine of Judicial Estoppel. Connell's failure to make the foregoing argument was grossly negligent and fell below the applicable standard of care.
36. Connell never argued that the underlying case had been settled and Rosefielde was released from all claims. Connell's failure to make the foregoing argument was grossly negligent and fell below the applicable standard of care.
37. On September 22, 2015, the Supreme Court of New Jersey issued an Opinion, allowing a claim for disgorgement, even where there are no economic damages.



38. In footnote 2 of its Opinion, The Supreme Court of New Jersey stated that it had addressed the issue before them “on the assumption that Rosefielde was an employee. “
39. Archer, Connell, and Morgan failed to notify the New Jersey Supreme Court that the assumption contained in footnote 2 of its Opinion was incorrect. Archer, Connell, and Morgan’s failure to notify the Supreme Court of this error was grossly negligent and fell below the applicable standard of care. Archer, Connell and Morgan were additionally negligent In their representation of Rosefielde.
40. Archer, Connell, and Morgan failed to file a Motion For Reconsideration with the New Jersey Supreme Court based on the fact the assumption contained in footnote 2 of its Opinion was incorrect. Archer, Connell, and Morgan’s failure to file Motion For Reconsideration with the Supreme Court was grossly negligent and fell below the applicable standard of care.
41. As a result of the New Jersey Supreme Court’s decision, Kaye is seeking disgorgement from Rosefielde of at least One Million Dollars (\$1,000,000).
42. The conduct of the Archer, Connell, and Morgan, and each of them, in doing the acts and omissions herein alleged and in their representation of Rosefielde directly resulted in damages and harm to Rosefielde.
43. Archer, Connell, and Morgan’ handling of the Kaye case fell below the applicable standard of care in many respects. From the commencement of its representation of Rosefielde in April 2005 through December 2015, Archer, Connell, and Morgan billed over One Million Dollars (\$1,000,000) in attorneys’ fees to Rosefielde; and just on the Certification issue alone over One Hundred Thousand Dollars (\$100,000). Rosefielde alleges that this staggering amount of legal fees is an example of unconscionable,

abusive, and unfettered expenditure of attorney's fees.

44. On October 5, 2015, thirteen days after the New Jersey Supreme Court's decision, Connell wrote Rosefielde stating Archer would seek to withdraw from representation of Rosefielde if its invoices were not paid within 14 days.
45. In doing all of the above described acts and omissions, Counterclaim Defendant and Third Party Defendants, and each of them, put their own financial interests ahead of the interests of Rosefielde.
46. Counterclaim Defendant and Third Party Defendants, and each of them, failed to exercise reasonable care and skill in their representation of Rosefielde by negligently and carelessly doing all of the acts and omissions as herein alleged.
47. As a direct and proximate result of the aforesaid gross negligence and/or intentional failures of the Archer, Connell, and Morgan, Rosefielde was required to retain new counsel to assume their representation. Rosefielde has already expended Eighteen Thousand Dollars (\$18,000). The full amount may exceed Two Hundred Fifty Thousand Dollars (\$250,000), but the actual amount is yet to be determined.
48. As a further direct and proximate result of the negligence of Archer, Connell, and Morgan, and each of them, Rosefielde sustained damages, including, but not limited to, legal fees paid to Archer, Connell, and Morgan in the amount of at least One Million Dollars (\$1,000,000). Rosefielde has sustained, and will continue to sustain, further and additional damages as a direct result of the Archer, Connell, and Morgan's negligence including possible disgorgement of One Million Dollars (\$1,000,000) to Kaye, all in an amount according to proof.

WHEREFORE, Plaintiff prays for judgment as

hereinafter set forth.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty against Counterclaim Defendant Archer and  
Third Party Defendants Connell and Morgan)

49. Rosefielde refers to and incorporates herein the General Allegations and the allegations of the First Cause of Action in paragraphs 1 through 6, and 8-48 alleged herein above, and make them a part hereof as though set forth at length.
50. Archer, Connell, and Morgan, and each of them, owed Rosefielde a fiduciary duty to act at all times in good faith and in Rosefielde's best interests, and had a duty, among other things, to perform the services for which they were retained with reasonable care and skill, to act in Rosefielde's highest and best interests at all times, and to not expose Rosefielde to any unnecessary risk or peril. Archer, Connell, and Morgan never repudiated this fiduciary and confidential relationship at any time herein mentioned.
51. Archer, Connell, and Morgan, and each of them, breached their fiduciary duties and obligations to Plaintiff by doing all of the acts and omissions as herein alleged. Among other things, Archer, Connell, and Morgan breached their duty by failing to properly counsel and advise Rosefielde as to its ability to seek reconsideration of the New Jersey Supreme Court's decision based upon the incorrect assumption noted in the footnote 2 to its Opinion and the Law of the Case. Archer, Connell, and Morgan feared they would not be paid for the additional work, and thus, placed their interests above Rosefielde's. By placing their interest in charging unconscionable fees above Rosefielde's interests, and by generally mishandling, mismanaging, and overbilling in this case to such an extent that Rosefielde



- was forced to incur excessive and unconscionable legal fees and expenses.
52. Archer, Connell, and Morgan breached their fiduciary duty of care, and violated their ethical responsibilities required by the standards of practice.
  53. Connell's failure to follow Rosefielde's instructions to argue that Rosefielde was not an employee was a breach of his fiduciary duty of care; was a breach of the standards of practice.
  54. Connell's failure to follow Rosefielde's instructions to argue the Law of the Case was Rosefielde was not an employee was a breach of his fiduciary duty of care; was a breach of the standards of practice.
  55. Connell's failure to argue that Kaye, in his own brief, asserted Rosefielde was an independent contractor was a breach of his fiduciary duty of care; was a breach of the standards of practice.
  56. Connell's failure to follow Rosefielde's instructions to argue the Doctrine of Judicial Estoppel was a breach of his fiduciary duty of care; was a breach of the standards of practice.
  57. Connell's failure to argue that the underlying case had been settled, and Rosefielde was released from all claims, was a breach of his fiduciary duty of care; was a breach of the standards of practice.
  58. Archer, Connell, and Morgan's failure to notify the Supreme Court of the error in their assumption, was an intentional breach of their fiduciary duty of care; was a breach of the standards of practice.
  59. Archer, Connell, and Morgan's failure to file Motion For Reconsideration with the Supreme Court was an intentional breach of their fiduciary duty of care; was a breach of the standards of practice.
  60. Archer, Connell, and Morgan's failure to read the Supreme Court was an intentional breach of their fiduciary duty of care; was a breach of the

standards of practice.

61. Archer, Connell, and Morgan ignored and failed to pursue courses of action and strategies which would have offered Rosefielde a valid defense and bolstered Rosefielde's claims to many, if not all, of Kaye's claims. Failure to build a cogent defense for Rosefielde was a breach of their fiduciary duty of care; was a breach of the standards of practice.
62. Furthermore, in doing all of the above described acts and omissions constituting Archer, Connell, and Morgan' breach of their fiduciary duties owed to Rosefielde, Rosefielde sustained damages, including but not limited to, legal fees incurred to Archer, Connell, and Morgan in the amount in excess of One Million Dollars (\$1,000,000).
63. Rosefielde has sustained, and will continue to sustain, further and additional damages as a direct result of the Archer, Connell, and Morgan's negligence including possible disgorgement of One Million Dollars (\$1,000,000) to Kaye, all in an amount according to proof.
64. Archer, Connell, and Morgan breached their fiduciary duties of honesty, forthrightness, loyalty, and fidelity. Archer, Connell, and Morgan violated the standards of practice and RPC 1.2 (a), by failing to abide by Rosefielde's decisions concerning the scope and objectives of their representation. Specifically Archer, Connell, and Morgan failed to follow Rosefielde's instructions contained in his letter to Connell dated January 20, 2015.
65. When Archer, Connell, and Morgan did not immediately read and analyze the New Jersey Supreme Court's decision, they intentionally breached their fiduciary duty of care and violated the standard of RPC 1.3, which required them to act with reasonable diligence and promptness.
66. By transmitting to Rosefielde the New Jersey Supreme Court's decision

without an analysis or comments, Archer, Connell, and Morgan breached their fiduciary duty of care, and violated their ethical duty imposed by the standard of practice and RPC 1.4 (c), which requires a lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

67. Archer, Connell, and Morgan failure to read, analyze, and communicate with Rosefielde concerning the New Jersey Supreme Court’s decision because of their fear of not being able to collect additional fees was in effect a withdrawal from representation, and thus an intentional breach their fiduciary duties of honesty, forthrightness, loyalty, and fidelity; which are violations of the standards of practice and standards of RPC 1.16 (a)(1) and (b)(1).

68. Archer had a fiduciary duty, and ethical duty under RPC 5.1, to make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct. Archer breached its fiduciary duty by failing to take measures giving reasonable assurance that Connell and Morgan did not breach their fiduciary duties.

69. Archer, Connell, and Morgan breached their fiduciary duty of honesty, forthrightness, loyalty, and fidelity, and their ethical duties imposed by the standards of RPC 1.5 (a) (4) (5). The fees charged were unreasonable in light of the amount charged, and the results obtained. In addition the fees were unreasonable because of the time and cost limitations imposed upon the Archer, Connell, and Morgan by Rosefielde.

### THIRD CAUSE OF ACTION

(Breach of Contract against Counterclaim Defendant Archer)



70. Rosefielde refers to and incorporates herein the General Allegations and the allegations of the First & Second Causes of Action in paragraphs 1 through 6, 8- 48, and 50-69 alleged herein above, and make them a part hereof as though set forth at length.
71. On October 1, 2013, Rosefielde wrote and emailed a draft brief to Archer with respect to dismissal of the Notice of Certification Petition. On October 8, 2013 Morgan informed Rosefielde that Archer would “prepare a *short* opposition to this petition for certification”. In response Rosefielde wrote to Morgan, and said, “the opposition should be *very short*.”
72. In order to minimize the time involved, Rosefielde sent a draft of an opposition brief on October 14, 2013.
73. Archer billed for services performed by summer associates, which were unnecessary and unauthorized. The summer associates researched the issue of whether punitive damages are available when compensatory damages have not been awarded and has not been preserved on appeal. The issue of punitive damages was not at issue before the New Jersey Supreme Court.
74. On July 7, 2014, Connell sent Rosefielde an email responding to Rosefielde’s request for an extension to file an opposition and/or cross-move with respect to Kaye’s motion. In that email, Connell indicated that he knew “of only one reported case where expanded certification was permitted, and that was only at the self-initiated order of the Court, not the request of any party.” Finally, Connell stated that he had “already conducted research on this issue and plan to provide the court with legal authority to preclude what plaintiff seeks for both substantive and procedural reasons.” Based upon Connell’s email, Rosefielde reasonably concluded that the research was done, and that Connell would be able to file an opposition by July 9, 2014.

75. In response to Connell's email Rosefielde and Connell had a conversation on July 9, 2014, in which Rosefielde expressed to Connell his concerns about cost.

76. In the interim between their discussion on July 9, 2014 and July 22, 2014 Archer, Connell & Morgan spent 11.20 hours researching "economic loss". The foregoing charges were unwarranted, unnecessary, and unauthorized; they had nothing to do with Rosefielde's opposition to Kaye's motion to expand certification.

77. On July 22, 2014, Rosefielde sent an email to Connell, in which he stated:

Attached hereto is my brief; I prepared it by cutting & pasting from prior briefs, and added some new material. Please review it and prepare it for filing with the Supreme Court. There are some cites to the record, which you may have to correct as to form. ***However, I do not want you to rewrite the brief: it is an expense I can ill afford***" (*Emphasis added*).

After receiving the foregoing email, Connell proceeded to bill for an additional 42.90 hours. This is extraordinary in view of the fact that Connell was prepared to file papers in opposition on July 9, and he had been admonished about fees. Rosefielde also noted that Connell only authored 5 pages of the brief containing 13 case citations, with the other 12 pages being authored by Rosefielde.

78. On July 25, 2014, Rosefielde sent Connell an email, in which he stated: "4. You need to keep the rewrite to a minimum, to keep the fees reasonable."

79. On September 2, 2014, Rosefielde wrote to Connell explaining that he had reviewed Archer & Greiner's bills for November, May, June, and July and

found that significant charges were unwarranted, unnecessary, duplicative, unauthorized, and contrary to his express oral and written instructions. Rosefelde analyzed each invoice and explained his conclusions regarding each charge.

80. Connell never responded to Rosefelde's letter.

81. On January 20, 2015 Rosefelde sent a letter to Connell stating:

**I would want you to spend no more than 10 hours in preparation for the oral argument (Emphasis added).**

82. Contrary to Rosefelde's express written instructions that "**I would want you to spend no more than 10 hours in preparation for the oral argument**", Archer, Connell, and Morgan spent a total of 76.9 hours, of which, 9.1 hours were for administrative tasks.

83. After a conversation with Connell, in which he suggested the filing a supplemental brief with the Supreme Court at a cost of no more than \$5,000, Rosefelde wrote on February 6, 2015: "Finally, as discussed, I would want you to spend no more than 10 hours on the drafting, writing, and preparation of this brief."

84. On February 10, 2015 Connell wrote "you can be assured it will not contain or refer to any such issues; it will be limited, brief, and to the point." Notwithstanding, the agreement that the billing would be for no more than 10 hours, Archer billed Rosefelde for 30.9 hours.

85. Archer, Connell and Morgan breached the written contract between Rosefelde and Archer by failing to perform their services efficiently and cost-effectively.

86. Even a cursory review of the Archer, Connell, and Morgan' billing records evidence the fact that this was a revolving-door assignment, which led to



grossly excessive, wasteful, unnecessary, and often-repetitive work on the case by many different personnel.

87. A review of Archer, Connell, and Morgan' billing records reveals a pattern of unconscionable overbilling and an uncontrolled and undisciplined approach to the case, all of which proximately resulted in damage and loss to Rosefelde.

88. Archer, Connell and Morgan breached the written contract between Rosefelde and Archer by failing to provide conscientious, competent and diligent services.

89. Archer, Connell and Morgan breached the written contract between Rosefelde and Archer by failing to communicate with Rosefelde throughout the course of their representation so that Rosefelde was could be involved in decisions, which might have an impact on both the cost of the litigation and the outcome.

90. Archer, Connell and Morgan breached the written contract between Rosefelde and Archer by failing to follow the oral and written instructions given by Rosefelde, which would have had an impact on both the cost of the litigation and the outcome.

91. By a written agreement, Archer accepted a payment by Rosefelde of \$30,000 in full satisfaction of all amounts due and owing Archer, as of September 26, 2013.

92. Archer has breached the foregoing settlement agreement by seeking payment for Invoice # 1403020 dated 11/16/11, # 1408540 dated 12/12/11, #1436955 dated 05/09/12, # 1455322 dated 08/08/12, and # 1212890 dated 08/07/08, which were all invoiced prior to September 26, 2013, and thus have been fully satisfied.

WHEREFORE, Plaintiff Rosefielde prays for judgment against Archer, Connell, and Morgan, and each of them, as set forth below:

**As to the First Cause of Action**

1. For actual damages of approximately in a sum to be determined by actual proof, including but not limited to disgorgement of any fees paid.;
2. For interest as allowed by law;
3. For costs of suit incurred herein;
4. For attorney's fees;
5. For such other and further relief as the Court deems just and proper.

**As to the Second Cause of Action**


1. For actual damages of approximately in a sum to be determined according to proof, including but not limited to disgorgement of sums paid;
2. For punitive damages.
3. For interest as allowed by law;
4. For costs of suit incurred herein;
5. For attorney's fees;
6. For such other and further relief as the Court deems just and proper.

**As to the Third Cause of Action**

1. For actual damages of approximately in a sum according to proof;
3. For interest as allowed by law;
4. For costs of suit incurred herein;
5. For attorney's fees;
6. For such other and further relief as the Court deems just and proper.

ANDREW RUBIN, ESQ

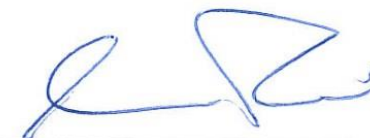
Attorney ID # 17921979  
96Park Street  
Montclair, New Jersey 07042  
(973)509-3585  
Fax (973) 509-0063  
[arubinesq@earthink.net](mailto:arubinesq@earthink.net)  
Attorney for defendant Alan P. Rosefelde

By:   
\_\_\_\_\_  
Andrew Rubin

Dated: July 25, 2016


### JURY DEMAND

Defendant, counterclaimant, third party plaintiff Alan  
Rosefelde demands a trial by jury as to all claims.

  
\_\_\_\_\_  
Andrew Rubin

### CERTIFICATION – RULE 11

The undersigned certifies that the within amended answer and  
counterclaim is filed in good faith and not for purposes of delay.

  
\_\_\_\_\_  
Andrew Rubin

### CERTIFICATION PURSUANT TO LOCAL RULE 12

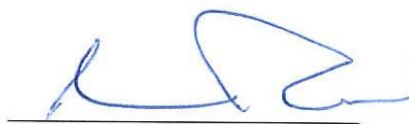
1. The matter in controversy is not the subject of a pending action or  
arbitration proceeding.



2. No other action or arbitration is contemplated.
3. The undersigned knows of no parties who should be joined in this action.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the above statements are willfully false I am subject to punishment.

Date: 7/26/16



Andrew Rubin

#### CERTIFICATION OF SERVICE

The undersigned certifies that on July 26, 2016, this Pleading was served on the Court and the plaintiff by electronic filing and by regular mail.



Andrew Rubin

July 26, 2016