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**FILED**  
**APR 27 2018**  
 CHARLES E. POWERS, JR., J.S.C.

GAR DISABILITY ADVOCATES, LLC

Plaintiff,

v.

LORNA ORAK, THE PEOPLE'S  
 DISABILITY ADVOCATES OF  
 AMERICA, LLC and JOHN DOES 1-99,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
 CIVIL DIVISION: BERGEN COUNT  
 DOCKET No. BER-L-7987-17

*CIVIL ACTION*

**ORDER**

THIS MATTER having been brought before the Court by defendants The People's Disability Advocates of America, LLC and Lorna Orak (collectively, "Movants") by and through their attorneys, McElroy, Deutsch, Mulvaney & Carpenter, LLP, seeking an order dismissing the Complaint for failure to join necessary parties, pursuant to R. 4:28-1 and/or for violation of the Entire Controversy Doctrine, pursuant to R. 4:30A; the Court having considered the submissions made, arguments presents and timely opposition filed, if any; for good cause having been shown;

IT IS on this 27<sup>th</sup> day of April, 2017

**ORDERED** that Movants' Motion to Dismiss the Complaint be and hereby is granted in its entirety; and

**IT IS FURTHER ORDERED** that the Complaint be and hereby is dismissed in its entirety with prejudice; and

**IT IS FURTHER ORDERED** that a copy of this Order shall be served on any named party not registered for automatic receipt of same by eCourts within 5 days of the date of this Order.



Hon. Charles E. Powers, Jr., J.S.C.

Opposed

Unopposed

**GAR DISABILITY ADVOCATES, LLC v. ORAK ET AL****Docket No. BER- L-7987-17****RIDER TO THE ORDER DATED APRIL 27, 2018****I. Introduction and Factual Background**

Before the court is The People's Disability Advocates of America, LLC ("PDAA") and Lorna Orak's (collectively, "Defendants") motion to dismiss Plaintiff's Complaint pursuant to Rule 4:28-1 and R. 4:30(a) filed by GAR Disability Advocates, LLC ("Plaintiff"). Plaintiff is an organization that assists individuals in the process of applying for and receiving disability and disability-related government benefits. Orak is one of PDAA's independent contractors. Plaintiff and PDAA are direct competitors within the benefit services industry. Non-parties Erica Dougherty and Miranda Deem were case managers employed by Plaintiff until their employments were terminated in 2016 and 2017 respectively. Dougherty and Deem became, and are currently, employed by PDAA. Presently Deem and Dougherty are defendants in an action pending in federal court. Plaintiff commenced a lawsuit against PDAA in the United States District for the District of New Jersey. Plaintiff voluntarily dismissed the federal action as to its claims against PDAA without prejudice in July 2017. Plaintiff continues to actively prosecute its claims against Deem and Dougherty before the District Court. Plaintiff now seeks to revive its campaign against PDAA by switching venue to this Court and advancing claims against PDAA. Plaintiff has alleged four separate causes of action against PDAA relating to business tort: conversion, tortious interference with existing business relationships, misappropriation of trade secrets and confidential information, and unfair competition. Plaintiff has not joined Deem and Dougherty to this action.

Defendants now seek to dismiss Plaintiff's Complaint, asserting that Plaintiff's litigation

cannot properly proceed as Plaintiff has failed to join necessary parties, Deem and Dougherty, and that the present action would violate the Entire Controversy doctrine.

## II. Legal Analysis

Rule 4:28-1(a), New Jersey's Mandatory Party Joinder rule, provides:

A person who is subject to service of process shall be joined as a party to the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in the person's absence may either (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

An indispensable party is one that "has an interest inevitably involved in the subject matter before the court and judgment cannot be justly made between the litigants without either adjudging or necessarily affecting the absentee's interest." Chubb Custom Inc. v. Prudential, 394 N.J. 71, 82 (App. Div. 2007), aff'd, 195 N.J. 231 (2008).

The Entire Controversy Doctrine expresses courts' preference that "related claims and matters arising among related parties be adjudicated together rather than in separate, successive, fragmented, or piecemeal litigation." Kent Motor Cars, Inc. v. Reynolds and Reynolds, Co., 207 N.J. 428, 444 (2011). Rule 4:30A requires joinder of claims, but only applies to "mandatory joinder of claims." Id. Accurately described, the doctrine requires litigants in one action to join all legal and equitable claims related to a single, underlying transaction. Manhattan Woods Golf Club, Inc. v. Arai, 312 N.J. Super. 573, 577 (App. Div. 1998). Specifically, R. 4:30A reads in pertinent part:

Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine [.]

The doctrine is, however, an equitable one, and, therefore, it is not to be applied “where to do so would be unfair in the totality of the circumstances and would not promote any of its objectives, namely, the promotion of conclusive determinations, party fairness, and judicial economy and efficiency.” Pressler & Verniero, Current N.J. Court Rules, Comment 3.2 to R. 4:30A (Gann) (citing K-Land Corporation No. 28 v. Landis Sewerage Authority, 173 N.J. 59, 70 (2002)). Most importantly, “[t]he doctrine does not apply to bar component claims either unknown, unarisen or unaccrued at the time of the original action.” Id., cmt. 3.3.

The New Jersey Courts have routinely held that when a litigant knows of a potentially responsible party, and has already sued that party in another action, the principles that form the basis for the doctrine come into play. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336 (1984). “A party should not be permitted to maintain such independent action when a directly related suit is pending.” Id.

In the present matter, Deem and Dougherty are plead as the initiating primary bad actors which gave rise to any alleged liability on the part of Defendants. As such, Deem and Dougherty are indispensable parties to the singular controversy which is currently fragmented here and in the Federal Court. Application of the party joinder rule and the Entire Controversy Doctrine require the non-parties to be joined, or alternatively, for the Complaint to be dismissed. See Gross v. Cohen DuFour & Assocs., 273 N.J. Super. 617, 622 (Law Div. 1993).

The Appellate Court’s decision in J-M Mgt. Co., v. Phillips & Cohen, LLP, 443 N.J. Super. 447 (App. Div. 2015) reasserts the principles which favor dismissal of the instant matter. “The general rule is that the court which first acquires jurisdiction has precedence in the absence of special equities.” Id. The instant litigation would cause fragmented adjudication of claims and deprive the interested parties of fairness. Instead of commencing and pursuing Plaintiff’s claims

in a proper forum which exercises jurisdiction over all parties, Plaintiff is seeking fragmented litigation. Plaintiff further argues that Defendants should simply join the non-parties to the litigation, however neither party, Deem or Dougherty, have sufficient ties to New Jersey. Plaintiff has attempted to shift this burden to Defendants.

III. Conclusion

For the aforementioned reasons, Defendants' motion to dismiss is GRANTED.