** FILED ** Env: 37869378
McHenry County, Illinois
2025LA000360
Date: 5/1/2026 10:20 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN CIRCUIT COURT OF 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL R. DULBERG, Individually and)
THE PAUL R. DULBERG REVOCABLE TRUST,)
)
Plaintiffs,)
)
vs.) Case No. 25 LA000360
)
)
THOMAS W. GOOCH, SABINA SERSHON,)
EDWARD X. CLINTON, JULIA WILLIAMS,)
ALPHONSE TALARICO, GEORGE FLYNN,)
THOMAS J. POPOVICH, HANS MAST, THE)
GOOCH FIRM, CLINTON LAW FIRM, LLC.,)
LAW OFFICE OF ALPHONSE A. TALARICO,)
)
Defendants.)

DEFENDANTS, THOMAS J. POPOVICH AND HANS MAST'S MOTION FOR LEAVE TO FILE FULL MOTION TO DISMISS *INSTANTER*

Defendants, Thomas J. Popovich and Hans Mast, (collectively the "Defendants"), by and through counsel, Wilson Elser Moskowitz Edelman & Dicker, LLP, and moves this Honorable Court for leave to file the Defendants' Motion to Dismiss Plaintiff's Complaint, *instanter*, and in support thereof state:

1. Defendants filed their Motion to Dismiss and its supporting Exhibits 1-29 on February 13, 2026.

2. Shortly thereafter, Defendants served unfiled versions of the Motion to Dismiss and Exhibits 1-29 on February 14, 2026.

3. Because the filing was too large, Exhibits 21-29 to the Motion to Dismiss were rejected by the McHenry Circuit Court Clerk.

4. The Defendants subsequently filed Exhibits 21-29, and these Exhibits were accepted by the McHenry Circuit Court Clerk.

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5. Inadvertently, only the first page of Defendants' Motion to Dismiss was filed on February 13, 2026.

6. The Defendants now seek to file the full fifteen-page (15) Motion to Dismiss, which was sent to all parties on February 14, 2026, which is attached as Exhibit A.

7. This Motion to Dismiss and its contents are not changed in any way.

8. Under these circumstances, the Defendants request leave of Court to file their responsive pleading *instanter*. *See* Exhibit A.

WHEREFORE, Defendants Thomas J. Popovich and Hans Mast, respectfully request that this Honorable Court enter an ORDER: (i) granting this Motion for leave to file the Defendants' Motion to Dismiss *instanter*; (ii) and for any other just and equitable relief.

Respectfully submitted,
Thomas J. Popovich and
Hans Mast

/s/ Kavi V. Modi
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CERTIFICATE OF SERVICE

I certify that on this 1st day of May, 2026, service of a true and complete copy of the above and foregoing was made via upon the following via e-mail:

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EXHIBIT A

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL R. DULBERG, Individually and THE PAUL R. DULBERG REVOCABLE TRUST, Plaintiffs, vs. THOMAS W. GOOCH, SABINA SERSHON, EDWARD X. CLINTON, JULIA WILLIAMS, ALPHONSE TALARICO, GEORGE FLYNN, THOMAS J. POPOVICH, HANS MAST, THE GOOCH FIRM, CLINTON LAW FIRM, LLC., LAW OFFICE OF ALPHONSE A. TALARICO, Defendants.	))))))))))))))	Case No. 25 LA000360

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Defendants Thomas J. Popovich and Hans Mast (respectively, "Attorney Popovich" and "Attorney Mast") (collectively, the "Popovich Defendants"), by and through their undersigned attorneys, and for their Motion to Dismiss Plaintiffs' Complaint ("Complaint") under 735 ILCS 5/2-619.1[1] state as follows:

INTRODUCTION

Plaintiff's 88-page Complaint boils down to this: Plaintiffs (more specifically, Mr. Dulberg only) was involved in various underlying pieces of litigation, and evidently now is dissatisfied with the results thereof. Plaintiffs thus allege, without support, that all of the defendants (lawyers who represented him at various times over the last 10+ years) were in on a conspiracy to defraud Mr. Dulberg and the Courts. As to the Popovich Defendants, Plaintiffs bring a claim for "conspiracy to commit fraud against Dulberg and conspiracy to commit fraud on the Court…" (Compl., p. 82).

[1] Defendants' arguments in support of dismissal under 5/2-615 are made <u>in the alternative</u> to their 5/2-619(a)(5) and 5/2-619(a)(9) arguments.

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Ignoring the blatant pleading defects, the Complaint against the Popovich Defendants fail as a matter of law. The claim against the Popovich Defendants is a legal malpractice claim dressed up as a "conspiracy" claim. The Popovich Defendants ceased representing Mr. Dulberg in 2015. The first underlying case was resolved when Mr. Dulberg had replacement counsel. Mr. Dulberg, in 2017, already sued the Popovich Defendants for malpractice, and *that* case was dismissed as time-barred in 2023. Mr. Dulberg raised the various outlandish claims from the Complaint in prior litigation that has been dismissed. Indeed, the following are affirmative bars to the Complaint against the Popovich Defendants: (i) statute of limitations; (ii) statute of repose; (iii) *res judicata*; and (iv) collateral and judicial estoppel.

Further, the successor counsel doctrine applies insofar as Plaintiffs seek to lump the Popovich Defendants in with *other* defendants and their purported conduct occurring years after the Popovich Defendants' representation ceased. Finally, Plaintiffs' "fraud on the court" bases are, in sum, that he disagrees with legal arguments that were made and accepted in underlying pieces of litigation. Ignoring that legal conclusions are not well-pled allegations entitled to the presumption of truth, there is simply no merit to these claims. The issues decided by other Courts are not controversial questions of law, and the records in those cases speak for themselves. Even ignoring the dispositive defenses listed above, it is evident that Plaintiffs will never be able to adequately plead a claim for conspiracy to commit fraud (whether upon Dulberg or upon the Court). Such claims require an extremely high level of specificity, and the underlying cases' records *prove* that Plaintiffs could not cure this defect by way of amendment.

The Complaint should be dismissed with prejudice; it is nothing more than a frivolous, harassing, and defamatory tome of non-actionable grievances.

RELEVANT BACKGROUND AND ALLEGATIONS [2]

[2] In reciting the Complaint's allegations, Popovich Defendants in no attest admit to their veracity.

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This Motion references (and attaches documents related to) the Underlying Cases, and the Defendants respectfully request that this Court takes judicial notice of those matters. Facts capable of judicial notice, including filings in other official proceedings, are properly considered in assessing a motion to dismiss. *See, e.g., Village of Riverwoods v. BG Ltd. Partnership*, 276 Ill. App. 3d 720, 724 (1st Dist. 1995).

I. OVERVIEW

The Popovich Defendants formerly represented Mr. Dulberg[3] in a 2012 personal injury action, brought against David Gagnon and Caroline and Bill McGuire (the "Personal Injury Case[4]"). *See* **Exhibit 1**. During the Personal Injury case, Plaintiff filed a Chapter 7 Bankruptcy Petition (the "Bankruptcy Case[5]"). *See* **Exhibit 2** (Bankruptcy Petition); **Exhibit 3** (Bankruptcy Docket Report). Plaintiff later sued the Popovich Defendants for legal malpractice (the "Legal Malpractice Case[6]"). *See* **Exhibit 4** (2017 Legal Malpractice Complaint). The Legal Malpractice Case (in which Mr. Dulberg raised the same issues as recited in the instant Complaint) was dismissed as time-barred on February 1, 2023. Plaintiff filed this case December 4, 2025.

Plaintiff brought the Legal Malpractice Case through attorney Thomas Gooch, who is also a Defendant here. Plaintiff then brought a *second* legal malpractice claim and breach of contract claims against other defendants (i.e., lawyers and ADR Systems), who are not named here (the

[3] This Motion will refer to "Plaintiff" or "Mr. Dulberg" because the Trust-Plaintiff is never identified, nor is its presence in this case explained. Moreover, the Trust Plaintiff was never a party to any of the relevant underlying cases, nor did the Popovich Defendants ever represent the Trust Plaintiff. Thus, the Trust Plaintiff's presence in this case is improper and it should be dismissed with prejudice.

[4] *Paul Dulberg v. David Gagnon et al.*, Circuit Court of Twenty-Second Judicial Circuit, McHenry County, Illinois, Case No.: 2012LA000178.

[5] Case No. 14-bk-83578, United States Bankruptcy Court, Northern District of Illinois, Western Division.

[6] *Paul Dulberg v. Law Offices of Thomas J. Popovich, P.C., and Hans Mast*, Circuit Court of Twenty-Second Judicial Circuit, McHenry County, Illinois, Case No.: 2017LA000377.

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"2022 Litigation[7]"). *See* **Exhibit 5** (2022 Complaint). Collectively, these four prior actions will be referred to as the "Underlying Cases," when feasible.

II. THE UNDERLYING CASES

a. The Personal Injury Case

Plaintiff, in 2012, sued David Gagnon, Caroline McGuire, and Bill McGuire ("Personal Injury Defendants") for a personal injury. *See generally* **Exhibit 1**. That complaint alleged that Plaintiff was injured by Gagnon's operation of a chainsaw. *Id.* at 2-4. The other Personal Injury Defendants, the McGuires, reached a lump-sum $5,000 settlement with Plaintiff, which the Personal Injury Case's Court approved as a good faith settlement on January 13, 2014. *See* **Exhibit 6, at 2** (2014-01-13 McGuires' Motion for Order of Dismissal); **Exhibit 7** (2014-01-22 Order Approving Dismissal).

On March 13, 2015, the Popovich Defendants filed a Motion to Withdraw as Counsel for Plaintiff. *See* **Exhibit 8**. The Court entered an Order that same day granting the Motion to Withdraw. **Exhibit 9**. Less than a week later, attorney Brad. J. Balke appeared for Plaintiff. *See* **Exhibit 10**. Months later, on November 6, 2015, W. Randal Baudin II entered an appearance for Plaintiff. *See* **Exhibit 11**. The Personal Injury Case was dismissed with prejudice by an Agreed Order of the parties on December 12, 2016, after a net award of $561,000 was achieved at a binding mediation on Dec. 8, 2016. *See* **Exhibit 12**; *see also, infra*.

b. The Bankruptcy Case

Joseph D. Olsen was appointed as Trustee of the Bankruptcy Estate in August 2016. *See* **Exhibit 13** (Notification of Appointment of Trustee). As the Complaint notes, the Bankruptcy Trustee largely held Plaintiff's Personal Injury Case for his bankruptcy estate. *See* **Exhibit 14, at 3** (Amended Schedule B); *see also See* **Exhibit 15, at 2** (Amended Statement of Financial Affairs).

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[7] *Paul Dulberg & The Paul Dulberg Revocable Trust*, Circuit Court of Cook County, Illinois, Case No.: 2022L010905.

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The Trustee entered into a mediation agreement and settled the matter. *See* **Exhibit 16** (October 31, 2016 Bankruptcy Order authorizing Trustee to Enter into a "Binding Mediation Agreement"); **Exhibit 17, at 6-11** (the filed, unsigned Binding Mediation Agreement); **Exhibit 18, at 3-4** (Trustee's Final Report) (reflecting that Plaintiff's Bankruptcy Estate received $301,000 in personal injury proceeds from Allstate Insurance); **Exhibit 19, at 3** (Trustee's Final Account and Distribution) (same). The Bankruptcy Case closed on June 30, 2017. *See* **Exhibit 3, at 6**.

c. The Legal Malpractice Case

The Legal Malpractice Case was filed on November 28, 2017. *See* **Exhibit 4**. The Complaint was amended twice, making the operative allegations in the Second Amended Complaint. **Exhibit 20** (Second Amended Legal Malpractice Complaint). In the Legal Malpractice Case, Plaintiff recited allegations regarding the Personal Injury Case. **Ex. 20, ¶¶** 10-29; *see also, generally* **Ex. 1**. Plaintiff also complained that the Popovich Defendants "urged" him to accept the $5,000 settlement offer from the McGuires. *See* **Ex. 20**, ¶¶ 38, 40. Plaintiff alleged that he lost more than $300,000 because of the binding mediation and the Popovich Defendants' purported wrongful conduct. *Id.* at ¶¶ 52-54, 56, 59. Plaintiff also took issue with Attorney Mast's assessment of liability against the McGuires in the Personal Injury Case. **Ex. 20**, ¶¶38,40.

The Popovich Defendants moved for summary judgment on September 16, 2022. *See* **Exhibit 21**. The Popovich Defendants argued that Plaintiff admitted that Popovich was not involved with the "high/low agreement in the mediation," and that Plaintiff had threatened to sue the Popovich Defendants in February of 2015. *Id.* at 7.

The Popovich Defendants argued that Plaintiff's February 2015 threat to sue reflected that the November 2017 Legal Malpractice Case was time-barred. They also argued that the Legal Malpractice Case was time-barred because, at bottom, Plaintiff knew or reasonably should have known of the injury that the Popovich Defendants allegedly caused (i.e., insufficient McGuire-settlement) either when it occurred or when the Popovich Defendants withdrew (both in 2015). **Ex. 21**, at 10. The Popovich Defendants asserted that Plaintiff's threat to sue around that time made Plaintiff's knowledge indisputable. *Id*. Plaintiff filed a Response to the Summary Judgment, and the Popovich Defendants filed a Reply. *See* **Exhibit 22**; **Exhibit 23**. In Plaintiff's Response, he attempted to argue that he suffered a "pecuniary loss" at the December 12, 2016 mandatory arbitration, and not earlier. **Ex. 22**, 2-3.

At the hearing on the Motion for Summary Judgment, Hon. Joel D. Berg rejected Plaintiff's argument:

> When did the pecuniary loss occur? Here is the amazing part, and this is what -- where the disconnect comes on this case and it's why I'm having so much trouble with it, I'm being urged that the pecuniary loss occurred when the decision was given on the binding mediation. But the reason I believe that's a disconnect is because -- for two reasons. The loss that occurred on the binding mediation that is being urged upon the Court is a loss of what appears to be $360,000. The difference between the $660,000 that the mediator indicated the -- were the appropriate measure of damages against Mr. Gagnon and the $300,000 insurance policy limit, that $360,000 difference and the amount that was awarded and the amount that the mediator claimed should have been awarded is based on an agreement that somebody entered into. **We don't know who that somebody was, but we know for a fact that that somebody was not Hans Mast or the Law Offices of Tom Popovich because the agreement occurred well after they were out of Dodge.** But didn't the pecuniary loss itself, in fact, occur if there was a cause of action to which you were alerted? The pecuniary loss occurred when he only got $5,000. I agree with defense counsel. Statute of limitations lapsed. Merely denying the statute of limitation without more in the depositions and the sworn testimony does not itself create an issue of material fact.

See **Exhibit 24, at 17-18** (Hearing Transcript) (emphasis added). The Popovich Defendants were granted summary judgment on February 1, 2023; the Court found the two-year statute of limitations barred the Legal Malpractice Case. *See* **Exhibit 25**. Plaintiff sought to appeal that decision (and other decisions in that case). *See* **Exhibit 26**, at 2-3 (Notice of Appeal). But, on December 4, 2023, his appeal was dismissed. **Exhibit 27** (Dismissal of Appeal).

d. <u>The 2022 Litigation</u>

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Plaintiff's penchant for litigation continued. In 2022, he filed another action with legal malpractice and breach of contract claims against a plethora of defendants (the "2022 Litigation[8]"). He brought a similarly lengthy Complaint in that case, and in Count IV, he alleged against ADR Systems of America, LLC, that he suffered a "pecuniary injury in an amount excess of $261,000" because the Binding Mediation Agreement was purportedly amended. *See* **Ex. 5**, **at 32-33** (2022 Litigation Complaint). ADR was dismissed from the lawsuit and asked for sanctions against Plaintiff based on a violation of Illinois Supreme Court Rule 137. *See* **Exhibit 28, at 7** (ADR's Petition for Sanctions). Judge Swanagan agreed and granted sanctions because Plaintiff never explained how ADR would have ever been liable under the complaint's allegations. **Exhibit 29.**

III. THE INSTANT COMPLAINT'S ALLEGATIONS

Here, against the Popovich Defendants, Plaintiff claims "[a]ll named defendants worked in parallel conduct" throughout the Legal Malpractice Case "[t]o deliberately collapse the claims of Dulberg" purportedly arising from the Personal Injury Case and the Bankruptcy Case. (Compl., at ¶ 221.) Plaintiff sets forth a laundry-list of conclusory, false, or otherwise deficient allegations to prop up his claim that the Defendants here acted in concert. *See id.* at ¶ 225.

Namely, Plaintiff alleges that during the Personal Injury Case, Mast purportedly offered to settle one set of his claims against the McGuires for $7,500 and later, $5,000. Compl., ¶¶ 19, 23-26. Plaintiff makes various references to *Tislschner v. Spangler*[9], a case purportedly presented to Plaintiff during a meeting with Mast during the Personal Injury Case. *See id.* at ¶¶20-21, 225(6). Plaintiff alleges that the Popovich Defendants committed fraud upon Dulberg during the settlement with the McGuires. *Id.* at ¶135. Plaintiff also claims that Gagnon, the defendant in the Personal Injury Case, admitted negligence by failing to answer co-Defendant McGuire's Cross-Claim for

[8] *Paul Dulberg & The Paul Dulberg Revocable Trust,* Cook County Case No.: 2022L010905.
[9] 409 Ill. App. 3d 988 (2d Dist. 2011).

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Contribution against Gagnon. *Id.* at ¶ 18. It bears noting that these were all allegations raised in the Legal Malpractice Case that was dismissed with prejudice.

Plaintiff also claims that all Defendants worked together to incorrectly define "injury" in the context of 735 ILCS 5/13-214.3 (the statute of limitations for claims against attorneys). *Id.* at ¶ 225(1). Plaintiff also claims (as he appears to assert in the 2022 Litigation) that the Popovich Defendants did not inform Plaintiff that the bankruptcy would cause Plaintiff "to lose control over the direction" of the Personal Injury Case and that the Popovich Defendants "intentionally and knowingly acted" to prevent the bankruptcy property out of the "proper jurisdiction" until the case was dismissed or settled for less than $50,000. *See id.* at ¶¶ 36-37; Ex. 6, at ¶ 72(n). Plaintiff claims that the bankruptcy was opened because the Popovich Defendants advised that Plaintiff would be unable to recover for his medical bills related to the Personal Injury Case. (Compl. at ¶ 12). Plaintiff further claims that, despite the Popovich Defendants having long withdrawn as his counsel and despite the Trustee having control of the Personal Injury Case, the Defendants here engaged in the purported misconduct by getting Plaintiff to participate in the binding mediation in which he did not want to participate. *Id.* at ¶ 12.

Simply stated, Count VI (the only count against the Popovich Defendants) contends that the Popovich Defendants (and the other Defendants) worked together to obtain these various orders in the Underlying Cases with which Plaintiff now takes issue. *Id.*, ¶¶219-226.

ARGUMENT

I. STANDARD OF REVIEW

A motion to dismiss brought pursuant to 735 ILCS 5/2-619.1 contains arguments under both 2-615 and 2-619. A motion to dismiss brought under 735 ILCS 5/2-615 admits all well-pled

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facts, but not conclusions of law or factual conclusions not supported by allegations of specific fact. Illinois is a fact-pleading jurisdiction. *Chandler v. Illinois Central R.R. Co.*, 207 Ill.2d 331, 348 (2003). Hence, a plaintiff must plead facts that bring the case within the cause of action. *Id.*

A motion to dismiss under 735 ILCS 5/2-619 raises defects or defenses to the complaint and questions whether the defendant is entitled to judgment as a matter of law. *Gonnella Baking Co. v. Clara's Pasta Di Casa, Ltd.*, 337 Ill. App. 3d 385, 388 (1st Dist. 2003).

II. PLAINTIFFS' COMPLAINT IS TIME-BARRED. (5/2-619(A)(5)).

a. Statute of Limitations

Section 13-214.3(b) of the Illinois Code of Civil Procedure sets forth the limitations period for claims against attorneys related to their provision of legal services and provides that such actions "must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶14; quoting 735 ILCS 5/13-214.3(b).

The statute of limitations for attorney malpractice applies even when the claims brought are "styled as malpractice **or fraud or conspsiracy**." *See Schrock v. Ungaretti & Harris, Ltd.*, 2019 IL App (1st) 161698, ¶ 48 (emphasis added). Thus, Section 5/13-214.3(b) applies here.

While not entirely clear from the Complaint, Plaintiff's purported injuries are the adverse results in the Personal Injury and Legal Malpractice Cases. Using the latest date (the February 1, 2023 dismissal of the Legal Malpractice Case), it is indisputable that the Complaint (filed December 4, 2025) is time-barred. "Illinois courts have frequently recognized, either expressly or implicitly, that a cause of action for legal malpractice will rarely accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action in which plaintiff has become entangled" because of the defendant-attorney's conduct. *Hermansen v. Riebandt*, 2020 IL App (1st) 191735, ¶79; citing, *Lucey v. Law Offices of Pretzel & Stouffer, Chtrd.*, 301 Ill. App. 3d

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349, 356 (1st Dist. 1998).

Here, the latest possible trigger date for the limitations period was the adverse judgment in the Legal Malpractice Case, entered February 1, 2023. This case, filed December 4, 2025, therefore is time-barred. The trial court's judgment, not a post-judgment effort at challenging that judgment, is the trigger. *See, e.g., Belden v. Emmerman*, 203 Ill. App. 3d 265, 269-70 (1st Dist. 1990) (rejecting argument that limitations period for malpractice claim was not triggered by underlying trial court's adverse judgment, but rather upon the adjudication of the appeal thereof); *see also, Zupan v. Berman*, 142 Ill. App. 3d 396, 399 (1st Dist. 1986) (limitations period began upon trial Court's judgment, not adjudication of post-trial motions); *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 86-87 (1995) (limitations period for an improperly prepared mechanic's lien began on trial court's entry of an order reducing the value of the lien, not when the trial court subsequently denied a motion to reconsider).

Therefore, the Complaint should be dismissed with prejudice.

b. <u>Statute of Repose</u>

Section 5/13-214.3(c) contains a 6-year statute of repose for claims made against attorneys. Illinois courts have interpreted section 13-214.3(c) to provide that the repose period begins to run with the "last act of representation" upon which the claim is founded. *Trogi v. Diabri & Vicari, P.C.*, 362 Ill. App. 3d 93, 96 (1st Dist. 2005). There can be no dispute that March 13, 2015 (the date on which the Popovich Defendants were granted leave to withdraw as Plaintiff's counsel, *see*, Ex. 10) is the last possible date that there was an "act of representation." To wit, Plaintiff *sued* the Popovich Defendants in 2017. Indeed, the statute of repose expired *at the latest* in 2023, making this December 2025 Complaint time-barred.

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III. <u>RES JUDICATA BARS THE COMPLAINT AGAINST THE POPOVICH DEFENDANTS. (2-619(A)(9), OR ALTERNATIVELY, 2-615[10])</u>

Res judicata also bars the Complaint, even ignoring that it is untimely.

For the doctrine of res judicata to apply, three requirements must be satisfied: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of cause of action, and (3) there is an identity of parties or their privies. *River Park v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998).

The first and second factors are clearly present; Plaintiff and the Popovich Defendants were both parties to the Legal Malpractice Case, and there was a final judgment entered.

In determining whether there is identity of causes of action, "separate claims will be considered the same cause of action for purposes of res judicata if they arise from a single group of operative facts, **regardless of whether they assert different theories of relief**." *River Park*, 184 Ill. 2d at 302 (emphasis added)

As set forth in the background section above and in the Underlying Cases' records (including those attached and for which judicial notice is proper), the "cause of action" here against the Popovich Defendants is the same as that which was adjudicated in the Legal Malpractice Case. (*Compare* **Ex. 20**; **Ex. 21**; **Ex. 22**; *with*, instant Complaint). That Plaintiff has entitled the claim against the Popovich Defendants something other than legal malpractice is of no import. As the Supreme Court stated in *River Park*, the relevant question is whether the claims arise from a single set of operative facts, not whether the theories of relief pled are identical.

IV. <u>COLLATERAL ESTOPPEL BARS THE COMPLAINT ALLEGATIONS AS TO THE POPOVICH DEFENDANTS. (5/2-619(A)(9) OR, ALTERNATIVELY, 5/2-615[11])</u>

Even further, collateral estoppel bars the claims against the Popovich Defendants.

[10] The Popovich Defendants assert that *res judicata* is an affirmative matter defeating the Complaint and thus is a 5/2-619(a)(9) argument. However, in the event the Court disagrees, this section is alternatively stated under 5/2-615.

[11] *See*, fn. 10 above.

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“The minimum threshold requirements for the application of collateral estoppel are: (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication.” *Nowak v. St. Rita High Sch.*, 197 Ill. 2d 381, 390-91 (2001) (collecting cases).

Elements 2 and 3 are easily shown; there was a final judgment on the merits in both the Personal Injury and Legal Malpractice Cases, and the party against whom estoppel is asserted (Plaintiff) was a party to both prior adjudications.

As to the first element (“the issue decided in the prior adjudication is identical with the one presented in the suit in question”) the very nature of the Plaintiff’s Complaint shows that this element is also satisfied. The gravamen of the Plaintiff’s Complaint is that: (i) various positions and arguments were made in the Underlying Cases; and (ii) Plaintiff disagrees with the underlying Courts’ acceptance of those positions and arguments (which Plaintiff now claims were adverse to him). The simple reality, however, is that these issues were raised and adjudicated in the Underlying Cases. For example, in the Legal Malpractice Case, the arguments about the improper settlement with the McGuires, about the bankruptcy issue, about the ulimtate Personal Injury Settlement, and about section 5/13-214.3 were all raised, and all were adjudicated.

The doctrine of collateral estoppel is an equitable doctrine “that precludes a party from litigating an issue already decided in a prior proceeding.” *Pedersen v. Vill. Of Hoffman Estates*, 2014 IL App (1st) 123402, *42. That is, the adjudication of the facts or question in the first cause will be conclusive of the same question in the later suit. *LaSalle Bank Nat’l Ass’n v. Vill. Of Bull Valley*, 355 Ill. App. 3d 629, 635 (2d Dist. 2005). Indeed, Plaintiff’s attempts to re-litigate issues that were already decided in the Underlying Case is the precise conduct that this doctrine intends to prevent. The Complaint should be dismissed with prejudice.

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<u>SECTION 5/2-615 ARGUMENTS (MADE IN THE ALTERNATIVE TO 5/2-619 ARGUMENTS)</u>

I. <u>PLAINTIFF FAILS TO PLEAD HIS CLAIM. (5/2-615).</u>

Plaintiff alleges conspiracy to defraud Mr. Dulberg and conspiracy to defraud the Court against the Popovich Defendants. The Complaint, despite its length, falls woefully short of the operative pleading standards, and no amendment can cure the Complaint's deficiencies.

"Fraud consists of misrepresentations of material facts or, under some circumstances, the failure to disclose facts. *McCarthv. Pointer*, 2013 IL App (1st) 121688, ¶ 17. "Not all judgments obtained by fraud are void. Courts distinguish between fraud which prevents a court from acquiring jurisdiction or merely gives the court colorable jurisdiction, and fraud occurring after the court's valid acquisition of jurisdiction, such as false testimony or concealment." *Adoption of E.L.*, 315 Ill. App. 3d 137, 154 (1st Dist. 2000). Only judgments attained by that type of fraud are "void." *Id.* This type of fraud can be considered "extrinsic fraud," "which is defined as fraud that occurs in situations where an unsuccessful party has been prevented from fully exhibiting his [or her] case by being kept away from the court or is kept from gaining knowledge of the suit." *Id.* An allegation of fraud upon the court requires a **clear and convincing showing of said fraud, and is reserved for "the most egregious misconduct directed to the court itself."** *Ress v. Fathke*, 2022 IL App (1st) 001796-U, ¶ 19 (citing *Dooley v. U.S.*, 2011 WL 4398159, ¶ 9 (S.D. Ill. 2011) (emphasis added).

Simply put, Plaintiff here is complaining of adverse judgments against him entered in prior litigation, and he relies on erroneous interpretations of the law mere *conclusions* to support his cause of action.

First, Plaintiff makes references to case law and Plaintiff's purported opinions that the underlying Courts misapplied the law. The records of those Cases (and the law itself) reveals that these allegations are without merit and cannot be remedied by amendment. But, in any event,

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allegations that are legal conclusions are not sufficient (even ignoring the heightened pleading standard for fraud) and are not entitled to the presumption of truth. That Plaintiff did not like the results in the Underlying Cases does not mean that fraud on the Court occurred nor that some conspiracy to defraud him or the Court occurred. "An allegation of fraud, conspiracy or collusion must show the facts upon which the allegation is based, and not mere conclusions of the pleader." *Douglass v. Wones*, 120 Ill. App. 3d 36, 44 (2nd Dist. 1983); citing, *In re Estate of Hansen*, 109 Ill. App. 2d 283, 294 (1st Dist. 1969). Here, all Plaintiff offers are his conclusions, and dismissal is warranted.

Second, the place to lodge these challenges to those adverse orders was within the Underlying Cases or on appeal. *Harris Trust Savings Bank v. Phillips*, 154 Ill. App. 3d 574, 585 (1st Dist. 1987) ("There is no civil cause of action for misconduct which occurred in prior litigation.

Third, a plaintiff alleging fraud must meet "a higher standard when it comes to pleading." *Green v. Rogers,* 234 Ill. 2d 478, 495 (2009). The facts constituting an alleged fraud must be pled with "specificity and particularity," which includes facts demonstrating: (1) what misrepresentations were made; (2) when they were made; (3) who made the misrepresentations; and (4) to whom they were made. *See, e.g., Bd. of Ed. v. A, C & S, Inc.,* 131 Ill. 2d 428, 457 (1989). Length and verbosity does not equate to specificity and particularity. As to the Popovich Defendants, the Complaint utterly fails to plead, with sufficient factual allegations, with whom they agreed to conspire, what act(s) were taken in furtherance of this purported conspiracy, nor the requisite – who, what, when, where, and why. To state a claim for civil conspiracy, a plaintiff must plead a combination of two or more persons who join together for the purpose of accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62, (1994). The mere characterization of a combination of acts as

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a conspiracy is insufficient to withstand a motion to dismiss. *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 24 (1998). All Plaintiff offers (because it is all he *can* offer) are insufficient conclusions and "characterization[s] of a combination of acts" to support his purported conspiracy claim. This is insufficient. Plaintiff cannot connect the dots because there are no dots to connect. Dismissal with prejudice is warranted.

Finally, Plaintiff's prayer for relief requests attorney's fees. (Compl., p. 88). There is no statute or contract that allows for the recovery thereof and, therefore, this prayer should be dismissed with prejudice.

WHEREFORE Defendants Thomas J. Popovich and Hans Mast request this Court enter an ORDER: (1) granting this Motion; (2) dismissing the Complaint, with prejudice, under 5/2-619(a)(5),(a)(9) or alternatively under 5/2-615; and (3) granting any other appropriate relief.

Dated: February 13, 2026

Respectfully submitted,
Thomas J. Popovich and
Hans Mast

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CERTIFICATE OF SERVICE

I certify that on this 13th day of February, 2026, service of a true and complete copy of the above and foregoing pleading upon all counsels of record by e-file service and/or email.

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