CONNELL FOLEY LLP
ATTORNEYS AT LAW

85 LIVINGSTON AVENUE
ROSELAND, N.J. 07068-3702
(973) 535-0500
FAX: (973) 535-9217

JERSEY CITY OFFICE
6 CHAPEL AVENUE
JERSEY CITY, N.J. 07305
(201) 521-1000
FAX: (201) 521-0100

NEW YORK OFFICE
888 SEVENTH AVENUE
NEW YORK, N.Y. 10106
(212) 262-2390
FAX: (212) 262-3118

JOHN A. PINDAR (1969)
GEORGE W. CONNELL
ADRIAN M. FOLEY, JR.
GEORGE J. KENNY
KENNETH F. KUNZMAN
SAMUEL D. LORD
RICHARD D. CATENACCI
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JOHN K. BENNETT
PETER J. SMITH

WRITER'S DIRECT DIAL

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JAMES P. RHATICAN

COUNSEL
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VIRGINIA M. EDWARDS
FRANCIS E. SCHILLER
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GEORGE M. PATTERSON
ANTONIO CELII
ALEXIS E. LAZZARA

PLEASE REPLY TO ROSELAND, N.J.

August 18, 2004

VIA NEW JERSEY LAWYER'S SERVICE

Superior Court of New Jersey
Civil Case Processing
Hall of Records, Room 237
Dr. Martin Luther King Blvd.
Newark, New Jersey 07102-1681

Re: Romeo v. Seton Hall University
Docket No. ESX-L-1866-04

Dear Sir/Madam:

This firm represents the defendant in the above-referenced matter. Enclosed for filing are the original and two (2) copies of the following documents:

- Brief in Opposition to plaintiff's Motion for Reconsideration;
- Certification of Dania M. Billings, Esq.;
- Proposed form of Order; and
- Certification of Service.

Kindly file the enclosed documents and return conformed, stamped "filed" copies of the same to the undersigned in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

CONNELL FOLEY LLP

Dania M. Billings

DB/dxf
Enclosures
cc: Marianne F. Auriemma, Esq. [w/encls. via New Jersey Lawyer's Service]
Thomas D. Shanahan, Esq. (w/encls. via Federal Express)

ANTHONY ROMEO, individually and on behalf of himself and student applicants for "TRUTH", a gay and lesbian student organization denied Provisional Recognition by Seton Hall University, Plaintiff, vs. SETON HALL UNIVERSITY, A.B.C. Corp.'s 1-100, John Does 1-100 and DEF Non-Profit Corp.'s or Institutions 1-100 that may be necessary but currently unknown to Plaintiff for purposes of effectuating the equitable relief sought herein, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-1866-04 Civil Action

DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO VACATE THE DISMISSAL AND FOR RECONSIDERATION OF THE MOTION TO DISMISS UNDER *R.* 4:49-2

Connell Foley LLP
Attorneys for
85 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500

Of Counsel:
John K. Bennett, Esq.

On the Brief:
Marc D. Haefner, Esq.
Dania M. Billings, Esq.

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PRELIMINARY STATEMENT

This brief is submitted by the defendant, Seton Hall University ("Seton Hall"), in opposition to the plaintiff's motion to vacate the dismissal and for reconsideration of the motion to dismiss. Plaintiff's motion to vacate the dismissal is nothing more than an attempt by plaintiff to evade the warranted dismissal of his claims by making unsupported procedural arguments that seek to confuse the otherwise clear legal issues raised by plaintiff's Complaint and addressed in defendant's motion to dismiss.

The plaintiff's failure to present sufficient legal arguments should not however deter this Court from following the law. Rather, the Court, cognizant of its decision on defendant's motion to dismiss, should accordingly dismiss plaintiff's flawed arguments on this point. Plaintiff's arguments being dismissed, plaintiff's motion to vacate the dismissal and for reconsideration must fail.

STATEMENT OF FACTS

Defendant relies upon and herein incorporates the Statement of Facts contained within their Motion to Dismiss brief, along with all materials submitted in support of that motion. In addition, defendant provides the following statements:

Plaintiff's counsel's Certification mistakes what has transpired between the parties and Your Honor's chambers since June 9, 2004. (Certification of Marianne F. Auriemma, Esq., (Auriemma Cert.)). To address, point by point, each and every misstatement would, however, exhaust the patience of this Court. Seton Hall, however, is compelled to comment upon a few of the key discrepancies.

In her Certification, plaintiff's counsel states that on June 25, 2004, Dania Billings, an associate with defense counsel's firm called and advised her that John K. Bennett had consented to an adjournment of the motion return date until July 23, 2004. (Auriemma Cert. at ¶14). However, Ms. Billings did not speak with Ms. Auriemma on June 25, 2004. (Certification of Dania M. Billings at ¶¶18-20) ("Billings Cert."). Ms. Auriemma also asserts that she advised Ms. Billings that she would notify the Court in writing of the parties' consent to an adjournment. (Auriemma Cert. at ¶15). Ms. Auriemma never advised Ms. Billings of such. (Billings Cert. at ¶19).

Perhaps of most import, plaintiff's counsel represents to the Court that Your Honor's Law Clerk advised her that the Court had received no notice that the motion had been adjourned. (Auriemma Cert. at ¶20). As the Court is aware, the Court's Law Clerk was advised of the parties' consent to an adjournment via telephone communications from Ms. Billings, and additionally that Ms. Billings informed the Court that defendant had requested that plaintiff provide written notification of such consent to the Court and also offered to provide formal notification from defendant if the Court desired. (Billings Cert. at ¶¶13-14). Counsel for plaintiff has crafted their Certification and Affirmation in Support of their motion in such a fashion as to have the Court make the mistaken conclusion that defense counsel has in some way engaged in actions which were improper or unseemly with regard to their motion to dismiss. This implied slight is without merit.

Further, and more importantly, Your Honor ruled in the June 25, 2004 Order that recognition of plaintiff's student group is not compelled by the New Jersey Law Against Discrimination, (hereinafter the "LAD"), N.J.S.A. 10:5-1 *et seq.* Plaintiff cannot now proceed as if Your Honor did not consider the matter and arrive at a conclusion as to the merits. Plaintiff attempts to sway the focus of the Court from its judgments as to the merits at issue. It is undisputed that the Court was aware that

plaintiff sought to submit opposition to defendant's motion to dismiss at the time that the Court decided the motion and that the Court concluded that such opposition would not be helpful. (Auriemma Cert. at ¶25 and Billings Cert. at ¶13). Therefore, all that is relevant in the instant motion are the merits of the Court's decision to dismiss the Complaint with prejudice.

On the merits, plaintiff's arguments fail. Defendant was entitled to prevail on its motion to dismiss as the Court properly found on this point. Defendant carried its necessary burden on a motion to dismiss and plaintiff has submitted nothing in his papers to demonstrate that the Court need revisit this issue on a motion for reconsideration or by vacating the dismissal. Defendant's support for these statements is addressed more fully in Point II of this opposition brief.

For the reasons stated herein, plaintiff's arguments on his motion to vacate the dismissal and for reconsideration fail, as a matter of law. Seton Hall respectfully requests that this Court deny plaintiff's motion in its entirety, and uphold the dismissal of the plaintiff's Complaint with prejudice as a matter of law.

LEGAL ARGUMENT

POINT I

PLAINTIFF CANNOT SATISFY THE STANDARD UNDER *R.* 4:49-2 TO PREVAIL ON HIS MOTION FOR RECONSIDERATION

In pertinent part, New Jersey Court Rule 4:49-2 allows a party to move to alter or amend an Order where that party believes that the Court has overlooked or erred as to its consideration of specific matters. Although reconsideration is a matter within the sound discretion of the court, such relief is appropriate only in extremely limited circumstances. *See Fusco v. Board of Educ. of City of Newark*, 349 N.J.Super. 455, 462 (App.Div. 2002); *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App.Div. 1996). As the court stated in *D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch.Div.1990):

> A litigant should not seek reconsideration merely because of dissatisfaction with a decision of the Court. Rather, the preferred course to be followed when one is disappointed with a judicial determination is to seek relief by means of either a motion for leave to appeal or, if the Order is final, by a notice of appeal. Reconsideration should be utilized only for those cases which fall into that **narrow corridor** in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence....

Id. at 401 (emphasis added); *see also Palumbo v. Township of Old Bridge*, 243 N.J.Super. 142, 150 (App.Div. 1990) (noting with disapproval the excessive use of motions for reconsideration "when essentially there is little more than disagreement with the court's decision."). Thus, "[a] litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process." *D'Atria*, 242 N.J.Super. at 401; *see also Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App.Div. 1996) (same).

The "arbitrary or capricious" standard calls for a less searching inquiry than other formulas relating to the scope of review. *See id.* "Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a Court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement." *Id.* Indeed, "the arbitrary, capricious or unreasonable standard is the least demanding form of judicial review." *Id.; see also Housing Authority v. Little*, 135 N.J. 274, 283-284 (1994) (noting that the prior determinations of the trial court should be left undisturbed unless they were the result of a clear abuse of discretion.) .

The Court is also entitled to a wide latitude with regard to its judicial discretion. "Judicial discretion is an

indispendable ingredient of judicial power." *Smith v. Smith*, 17 N.J.Super. 128, 132 (App.Div. 1951). The *Smith* Court held that,

> [p]erhaps a more accurate composite definition is that judicial discretion is the option which a judge may exercise between the doing and the not doing of a thing which cannot be demanded as an absolute legal right, guided by the spirit, principles and analogies of the law, and founded upon the reason and conscience of the judge, to a just result in the light of the particular circumstances of the case.

Id., citing *Brandon v. Montclair*, 124 N.J.L. 135 (Sup.Ct.1940); *Beronio v. Pension Commission of Hoboken*, 130 N.J.L. 620 (E. & A. 1943).

Plaintiff has not established---nor can he establish---that this Court has acted in an "arbitrary, capricious, or unreasonable manner" or abused its judicial discretion by granting defendant's motion to dismiss with prejudice. To the contrary, and as the Court's Order makes clear, this Court's decision was based upon a review of plaintiff's pleadings and the submissions of the defendant. The Court was convinced, based upon the materials before it, and without the need to hear opposition from plaintiff, that a judgment dismissing the Complaint with prejudice was the only one to be made. A motion for reconsideration "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." *Cummings*, 295 N.J.Super. at 382. Plaintiff has not followed this well-settled

legal direction and has failed to put forth any evidence which can dissuade the Court from its previous decision.

In support of the instant motion, plaintiff does little more than disagree with the findings of the Court when it disposed of this matter. As such, plaintiff's application for reconsideration should be denied for failure to provide any procedural or substantive basis for the relief requested. In light of the foregoing, the trial court's June 25, 2004 Order, which provided for the dismissal of the Complaint with prejudice, must be upheld.

POINT II

PLAINTIFF HAS FAILED TO DEMONSTRATE THAT THE COURT IMPROPERLY DISMISSED THE COMPLAINT, AS SUCH, THE COURT'S DISMISSAL WITH PREJUDICE SHOULD BE UPHELD

First and foremost, defendant fully and competently presented legal arguments which illustrated that plaintiff's Complaint should be dismissed with prejudice in its brief in support of its Motion to Dismiss. There has been no adequate presentation by plaintiff of any reason why this Court should vacate the dismissal of plaintiff's Complaint. The overwhelming majority of plaintiff's motion papers are focused on plaintiff's arguments that defendant's motion was procedurally defective and that the Court improperly highlighted in its Order that there is an issue of material fact existing in this case. To the

contrary, defendant's motion and its supporting papers were procedurally proper. As noted in defendant's motion brief, the documents presented by defendant were appropriate as either those referenced in or attached to plaintiff's Complaint, or those to which the Court may properly take judicial notice. Defendant's motion having been brought under *R.* 4:6-2(e), it was also in perfect conformity with the time constraints governing such motions.

Also, plaintiff presents an illogical argument in asserting that there is "clearly" an issue, raised by "plaintiff's counsel in its pleadings and as recognized by the Court." (Plaintiff's Brief, Point I, p. 2). The Court did not perceive an issue of material fact which remains in question, because if such were the case, the Court would not have granted defendant's motion to dismiss, but instead denied the motion and ordered the parties to further litigate the matter.

Defendant will briefly illustrate to the Court once again how defendant carried its necessary burden under *R.* 1:6-2(e) and that plaintiff's contentions that there is an issue of material fact existing in the properly dismissed matter are incorrect.

A. The Court's Decision Is Proper And Should be Upheld In That Plaintiff Would Not Prevail On His Opposition to Defendant's Motion To Dismiss On Reconsideration

1. The University's Equal Employment Opportunity/Affirmative Action Policy Incorporates All Aspects Of The Anti-Discrimination Law, Which Includes Both The Religious Organization Exemption And First Amendment Protections

As argued in defendant's brief in support of its motion to dismiss, the plain language of the LAD makes it clear that Seton Hall has not violated the law on the facts presented by plaintiff. The LAD provides that it is illegal for "any owner of any place of public accommodation…to discriminate against any person…on account of sexual orientation… ." N.J.S.A. 10:5-12(f). Specifically however, the LAD qualifies the scope of the statute, presumably in recognition of First Amendment protections. The LAD limits the definition of "a place of public accommodation," and exempts educational institutions affiliated with religious organizations from the definition. N.J.S.A. 10:5-5(1). The LAD states that "[n]othing herein contained shall be construed to include or to apply to any…educational facility operated or maintained by a bona fide religious or sectarian institution." *Id.* Thus, an educational facility such as Seton Hall, which is maintained or operated by a religious institution, is exempt from the dictates of the LAD.

Seton Hall's actions are thus completely compliant with the statute.

Though plaintiff admits in his Complaint and in his motion papers here that Seton Hall is exempt from his demands under the LAD, he nonetheless proceeds also to assert a meritless position in the Complaint. (Affirmation in Support of Thomas D. Shanahan, Esq., Exh. B at ¶¶5 and 8) ("Shanahan Affirmation").[1] Plaintiff asserts that Seton Hall has waived its exempt status by adopting an Anti-Discrimination policy. *Id.* at ¶¶7-8. Seton Hall's Equal Employment Opportunity/Affirmative Action policy ("EEO/AA") policy however does not forbid Seton Hall from relying on the fact that the LAD itself exempts it from certain provisions of the LAD. Plaintiff incorrectly relies on Seton Hall's commitment to defending the right of all students to be free from bias and prejudicial attacks as evidence that Seton Hall must formally recognize plaintiff's student group. Quite damaging to the plaintiff's assertions, the University's EEO/AA policy states that the University is committed to EEO/AA programs that "are carried out in accordance with the teachings of the Catholic Church and the proscriptions of the law."

[1] Importantly, plaintiff's submission of the Shanahan Affirmation with its eight pages of legal argument on the issues presented by this case has now provided the Court with a full understanding of the plaintiff's position. That submission, however, fails to provide anything that would alter the Court's previous dismissal motion and thus this motion for reconsideration should be denied.

(Complaint, Ex. A). Therefore, plaintiff places mistaken reliance on the policy to assert that Seton Hall has waived the religious institution exemption when the policy clearly acknowledges that Seton Hall is governed by the teachings of the Catholic Church.

Further, any decision inapposite to the one already arrived at by this Court would interpret the law in such a way that Seton Hall's essential Catholic identity and mission would be compromised. To force Seton Hall to grant full recognition to plaintiff's proposed student group would violate Seton Hall's rights under the First Amendment's free exercise clause. In *Dale v. Boy Scouts of America*, 530 U.S. 640 (2000), the Supreme Court made it clear that the First Amendment limits the ability of New Jersey through the LAD to force organizations to adopt views and accept members with which it disagrees.

2. Plaintiff's Contract Argument Disregards That As A Matter Of Law, Seton Hall's Anti- Discrimination Policy Does Not Satisfy The Requirements For Formation Of A Contract

Again, plaintiff asserted in his Complaint that Seton Hall breached a contract with him by failing to provide provisional recognition to his proposed gay and lesbian student group. Plaintiff asserts that Seton Hall's adoption of a written anti-discrimination policy formed a unilateral contract and promise to recognize plaintiff's gay and lesbian student group in

exchange for the consideration of the plaintiff agreeing to attend Seton Hall. Plaintiff also presents this argument in the motion papers submitted to this Court. (Shanahan Affirmation ¶¶10-11). However, as demonstrated in defendant's brief in support of its motion to dismiss, and briefly in the present submission, plaintiff's assertions that a valid and binding contract was formed between Seton Hall and plaintiff are wholly lacking in legal support.

In order for such a contract to be formed, the Court must be able to discern the terms of the contract and the intent of the parties to be bound. *Packard Englewood Motors, Inc., v. Packard Motor Car Co.*, 215 F.2d 503, 508 (3d Cir. 1954). Neither can be found here. Plaintiff points to the language in the University's anti-discrimination policy which states that "[t]he University supports and implements all state and federal anti-discrimination laws." However, as stated above, Seton Hall also states in its policy that the policy is to be understood in the context of Seton Hall's commitment to its Catholic teachings. Thus, there is no intent of the University to be bound.

The EEO/AA policy of the University states in pertinent part, "[r]esponsibility for the interpretation and administration of this policy resides solely with the Department of Human Resources." Moreover, the language in the EEO/AA

policy which references the name and number of a University officer who has been charged with the responsibility of providing information about the provisions of the laws and regulations referred to, and also their applicability to the University, makes it clear that there are no contract terms to be discerned from the information provided by the University. Consequently, the policy cannot rationally be construed to limit Seton Hall's rights. Seton Hall retained exclusive jurisdiction over the question of whether a group could be recognized on campus and that essential to the decision on recognition was whether the group's function was in accord with the Catholic teaching that infuses the identity and mission of Seton Hall. Therefore, no contract can be found to have been formed or existing between plaintiff and the University.

As correctly decided by the Court on the motion to dismiss, plaintiff's Complaint fails to state a claim upon which relief can be granted, and as such, was properly dismissed with prejudice.

B. Plaintiff's Arguments With Regard To The Court's Decision To Dismiss The Complaint With Prejudice Are Facially Nonsensical

Finally, plaintiff argues that the Court "clearly notes that an issue of material fact exists in this case." (Plaintiff's Brief, Point I, p. 2). The plaintiff asserts that his support for this comes from the Court's findings in its

Order dismissing the Complaint with prejudice. *Id.* The Court in its Order states,

> Formal recognition or endorsement of Plaintiff's Group may not be compelled by LAD; However, the tangible benefits which flow from becoming a member of the student body at Seton Hall, such as equal access to facilities and Services afforded other groups without regard to sexual orientation may well fall within LAD. The Memorandum of Understanding appears to be a fair solution.

Judge Coleman's June 25, 2004 Order. Plaintiff's arguments that the Court itself would highlight an issue of material fact existing in the case and then dismiss the Complaint with prejudice are incongruous and absurd. Plaintiff ignores the totality of the Court's Order in order to allow plaintiff to highlight only that limited portion which he feels allows him an argument which could permit his prevailing on his motion.

The Court states very clearly that recognition or even endorsement of plaintiff's proposed group cannot be compelled, as a matter of law, by the LAD. The Court highlighted an area in which there may be a factual concern, that of whether the tangible benefits of access to facilities and services afforded other groups falls within the LAD.[2] However, without delay, the

[2] Seton Hall does not agree with this dicta, instead believing, as previously argued, that its rights under the LAD and the First Amendment are absolute; nonetheless, in light of the disposition of its case by the Court, Seton Hall mentions this issue only to clarify its position.

Court then accurately noted that Seton Hall had already granted plaintiff's proposed group those tangible benefits, well before plaintiff instituted his suit with a citation to the University's Memorandum of Understanding. As such, the Court found that the Complaint was properly subject to dismissal, and that there was no issue of material fact, and properly dismissed the Complaint with prejudice.

In light of the foregoing, defendant requests that the Court's June 25, 2004 Order be upheld and the plaintiff's motion denied.

CONCLUSION

In conclusion, based on all of the above and Your Honor's proper dismissal of this action with prejudice, defendant respectfully requests that Your Honor deny plaintiff's motion to vacate the dismissal and for reconsideration of the motion to dismiss.

CONNELL FOLEY LLP
Attorneys for Defendant,
Seton Hall University

BY: _____
Marc D. Haefner

DATED: August 18, 2004

CONNELL FOLEY LLP
85 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500
Attorneys for Defendant,
Seton Hall University

ANTHONY ROMEO, individually and on behalf of himself and student applicants for "TRUTH", a gay and lesbian student organization denied Provisional Recognition by Seton Hall University, Plaintiff, vs. SETON HALL UNIVERSITY, Inc., A.B.C. Corp.'s 1-100, John Does 1-100 and DEF Non-Profit Corp.'s or Institutions 1-100 that may be necessary but currently unknown to Plaintiff for purposes of effectuating the equitable relief sought herein, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-1866-04 Civil Action **CERTIFICATION OF DANIA M. BILLINGS, ESQ. IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO VACATE THE DISMISSAL AND FOR RECONSIDERATION OF THE MOTION TO DISMISS**

DANIA M. BILLINGS, ESQUIRE, hereby certifies and states:

1. I am an associate with the law firm of Connell Foley LLP, which represents the Defendant Seton Hall University in this matter. I am fully familiar with the facts set forth herein.

2. I submit this Certification in support of Seton Hall University's Opposition to Plaintiff's Motion to Vacate the Dismissal and for Reconsideration of the Motion to Dismiss.

3. On June 8, 2004, I placed a call to Thomas D. Shanahan, Esq., plaintiff's counsel, leaving a voicemail in which I requested an extension of time to file a responsive pleading to plaintiff's Complaint. Though I left my name and return number in Mr. Shanahan's voicemail, during the afternoon of June 9, 2004 he left a voicemail consenting to the extension in the mailbox of an administrative assistant who was on vacation. Therefore I did not receive the message until the following day. As such, on June 9, 2004, defendant filed a Motion to Dismiss pursuant to *R.* 4:6-2(e). See Exhibit A.

4. Plaintiff's opposition to this Motion to Dismiss, if any, was due under *R.* 4:6-2(e) and *R.* 1:6-3 to be served on defendant on or before June 17, 2004.

5. On June 15, 2004, Mr. Shanahan sent via facsimile a Stipulation setting forth a proposed adjournment of the return date of June 25, 2004 until July 16, 2004 and an enlarged briefing schedule.[1] See Exhibit B.

6. On this same day, June 15, 2004, John K. Bennett, Esq., attorney of record in this matter, responded (also via facsimile) to Mr. Shanahan's facsimile. Mr. Bennett advised Mr. Shanahan that defendant would consent to an adjournment of the return date, but that the date of July 16, 2004, proposed by Mr. Shanahan, was not a motion day. See Exhibit C.

[1] Defendant's motion was returnable on June 25, 2004, not June 25, 2003 as noted in plaintiff's Certification of Marianne F. Auriemma, Esq.

7. Plaintiff's counsel did not send a reply to Mr. Bennett's June 15, 2004 correspondence.

8. On June 23, 2004, Ms. Auriemma sent another facsimile letter to Mr. Bennett requesting consent to an extension of time for another motion cycle for plaintiff to file an opposition to defendant's Motion to Dismiss. See Exhibits D and E.[2]

9. Also on June 23, 2004, Michael Ellington, Judge Coleman's Law Clerk, phoned our offices and spoke with me to inquire whether defendant had received opposition to our Motion to Dismiss and whether oral argument was still necessary in the matter if we had not.

10. I informed Mr. Ellington that my understanding was that there was an extension sought by plaintiff's counsel which was consented to by Mr. Bennett, and that I would verify that this information was correct and place a return call to Mr. Ellington. As Mr. Bennett was out of the office during most of the day on June 23, 2004, I was unable to confirm this information with him until it was too late in the day to return the Court's telephone call.

11. On the afternoon of June 23, 2004, I responded to Ms. Auriemma's request for an additional adjournment of the Motion to Dismiss return date via telephone, in the hopes that the

[2] The information in this and the following nine (9) paragraphs were conveyed to plaintiff's counsel and are referenced in the attached June 25, 2004 letter to Ms. Auriemma, on which Mr. Shanahan was copied.

information would be conveyed to her more quickly than by another method of communication, and left a voicemail in which I informed her that defendant consented to a further extension, but requested that plaintiff formally notify the Court of the extension.

12. Ms. Auriemma did not return my telephone call.

13. On the morning of June 24, 2004 I returned Mr. Ellington's telephone call and informed him that in response to plaintiff's request for a second extension, defendant consented to such, and that this would result in defendant's Motion to Dismiss having a return date of July 23, 2004, an extension of two (2) motion cycles. I also informed Mr. Ellington that I had requested that plaintiff formally notify the Court of the parties' consent.

14. Mr. Ellington advised me that he would speak to Judge Coleman as to the extension, and that in the future, the movant should inform the Court of consent to an extension. I then offered to draft a letter and fax it immediately to Judge Coleman's chambers to formally provide such notification. However, Mr. Ellington stated that in this instance, I was not to draft formal notification at that time. Mr. Ellington advised me that after speaking with Judge Coleman he would place another telephone call to me.

15. As assured, Mr. Ellington called me again later in the day on June 24, 2004 and advised that Judge Coleman had been informed of the parties' consent to adjournment of the return date until July 23, 2004, but felt confident that he could make a ruling on the matter on June 25, 2004.

16. I placed another telephone call to Ms. Auriemma that same afternoon, June 24, 2004, and notified her of the information received from Judge Coleman's Law Clerk.

17. I received a letter from Ms. Auriemma on the afternoon of June 25, 2004 in which she falsely accused me of misrepresenting the information received from Judge Coleman's chambers. See Exhibit F.

18. In paragraph 14 of her Certification, Ms. Auriemma states that on the morning of June 25, 2004 I placed a call to her and advised her that Mr. Bennett had consented to an adjournment until July 23, 2004. I did not place such a call. As stated in paragraph 11 above, on June 23, 2004 I left a voicemail for Ms. Auriemma advising her of defendant's consent to an additional adjournment and requesting that plaintiff's counsel formally notify the Court.

19. In paragraph 15 of her Certification, Ms. Auriemma states that she informed me that she would notify the Court in writing. However, Ms. Auriemma at no time advised me of such,

and as stated above, I did not speak with Ms. Auriemma on June 25, 2004.

20. In paragraph 16 of her Certification, Ms. Auriemma states that late in the day on June 25, 2004 I placed a call to her advising that I had spoken with Judge Coleman's Law Clerk. Again, I did not speak with Ms. Auriemma on June 25, 2004, and I informed her of my conversations with Mr. Ellington via voicemail on June 23, and in a telephone conversation on June 24, 2004.

21. In paragraph 17 of her Certification, Ms. Auriemma states that I also advised her of the information received from Mr. Ellington that Judge Coleman would rule on the motion on June 25, 2004. I advised Ms. Auriemma of this on June 24, 2004, not June 25, 2004.[3]

22. Ms. Auriemma's statement in paragraph 19 of her Certification that she would place a call to the Court to verify the information I gave her (on June 24, 2004) was never made to me.

23. In paragraph 20 of her Certification, Ms. Auriemma states that she placed a call to Mr. Ellington on June 25, 2004 and that he advised her that the Court had received no notice that the motion had been adjourned. However, on June 25, 2004, upon receiving Ms. Auriemma's letter, I placed another call to

[3] Ms. Auriemma's statement in paragraph 18 of her Certification was during the course of my conversation with her on June 24, 2004.

Mr. Ellington and was informed that he had spoken with Ms. Auriemma and had notified her that I had made him aware of the parties' consent to an adjournment until July 23, 2004.

24. I received a copy of Judge Coleman's June 25, 2004 Order on June 29, 2004.

25. On June 29, 2004 I sent a copy of the June 25, 2004 Order to Ms. Auriemma and Mr. Shanahan via facsimile and regular mail. See Exhibit G.

26. On July 21, 2004, my office received a copy of plaintiff's Motion to Vacate the Dismissal and for Reconsideration of the Motion to Dismiss.

I certify under penalty of perjury that the foregoing is true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dania Billings

Dania M. Billings

Date: August 18, 2004