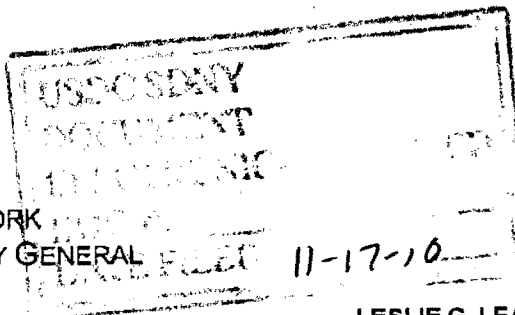


MEMO ENDORSED



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL



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November 15, 2010

By Facsimile Transmission - (914) 390-4278

Hon. Cathy Seibel
United States District Court Judge
United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

Application denied
SO ORDERED:
Cathy Seibel
Cathy Seibel, U.S.D.J.

Dated: 11/16/10

Re: Alan Kachalsky, et al. v. , Susan Cacace, et al.
10 CV 5413 (CS)

Dear Judge Seibel:

This office represents Susan Cacace and Jeffrey A. Cohen, both of whom are New York State court judges, and, in all probability, Judges Albert Lorenzo and Robert K. Holdman, who were added to this case as defendants in the First Amended Complaint, which was ECF filed on November 4, 2010 (collectively the "State Defendants"). This letter is submitted in response to the November 12, 2010, letter from counsel for Plaintiffs proposing a briefing schedule in accordance with this court's endorsement order dated November 5, 2010.

We are mystified by the assertion in plaintiff's letter, that defendants have "unilaterally ignore[d] established deadlines, resist[ed] the Court's subsequent attempt to guide the formation of a schedule, and delay briefing until almost an arbitrary point in the future," and disagree with the implications of those statements. Regardless, the State Defendants request a slight modification of the schedule proposed by plaintiff, consisting of solely allowing a period of four weeks, rather than the three weeks currently provided for State Defendants, to serve their reply to their pending dismissal motion and their opposition to Plaintiffs' summary judgment motion. State Defendants note that the original schedule herein provided four (4) weeks to reply to Plaintiffs' opposition to the motion to dismiss and to oppose Plaintiffs' motion for summary judgment, but that the newly

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proposed schedule would shorten that time, and State Defendants request any new schedule allow for the same time as originally ordered by the Court. We also note that the summary judgment motion by Plaintiffs will be pre-answer and pre-discovery. Since summary judgment is an evidence-based motion, plaintiffs' motion will presumably be supported by affidavits/declarations, and under the proposed schedule State Defendants will have only three weeks to develop an evidentiary record in response to plaintiffs' motion. Given the gravity of the issues herein, and that the opposition to the summary judgment motion may require substantial evidentiary submissions, the State Defendants feel four weeks is the minimum time in which it can prepare and serve their papers. State Defendants request that the court "so order" the following schedule, which differs from that contained in Plaintiffs letter, only in allowing four weeks rather than three weeks, for the State Defendants to submit their dismissal reply papers and their summary judgment opposition papers, and would accordingly move the date for Plaintiffs' summary judgment reply back by one week:

December 6, 2010 – Service of State Defendants' supplemental briefs in support of their motions to dismiss, addressing the First Amended Complaint filed on November 4, 2010;

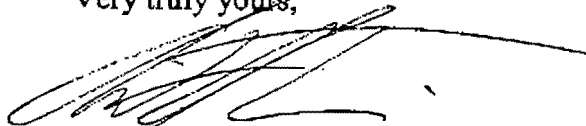
January 5, 2011 – Service of Plaintiffs' opposition to State Defendants motions to dismiss, and service of Plaintiffs' motion for summary judgment;

February 2, 2011 – Service of State Defendants' reply papers in support of their motion to dismiss, and service of State Defendants' opposition to Plaintiffs' summary judgment motion;

February 16, 2011 – Service of Plaintiffs' summary judgment reply, with bundling and ECF filing of all motion papers immediately following such service.

Thank you for your attention to this matter. All parties will receive a copy of this letter simultaneously by facsimile transmission.

Very truly yours,



Anthony J. Tomari
Assistant Attorney General

Page 3

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DATE: November 15, 2010 NUMBER OF PAGES: 4 (INCLUDING THIS PAGE)

TO: Hon. Judge Seibel FAX NO: (914) 390-4278

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FROM: Anthony Tomari, Assistant Attorney General

ATTN:

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