CHANDER KANT, Ph.D., Plaintiff/Appellant, v. SETON HALL UNIVERSITY, JOYCE STRAWER, RICHARD HUNTER, JOHN SHANNON, JOHN DOES 1-10, AND XYZ CORP. 1-10, Defendants/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001235-24 **ON APPEAL FROM THE DETERMINATION OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, CIVIL PART, ESSEX COUNTY** **SAT BELOW:** **Hon. Stephen L. Petrillo, J.S.C** **Thomas R. Vena, J.S.C.** **Hon. Robert H. Gardner, J.S.C.** **Docket No. ESX-L-000007-21**

PLAINTIFF'S BRIEF TO SUPPORT APPEAL OF SUMMARY JUDGMENT ORDER, ORDER DENYING PLAINITFF LEAVE TO FILE AN AMENDED/SUPPLEMENTAL COMPLANT, ORDER DENYING SUPPLEMENTAL DISCOVERY, AND ORDERS SANCTIONING PLAINTIFF

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PRELIMINARY STATEMENT

Dr. Chander Kant (hereinafter "Dr. Kant" or "Plaintiff") appeals the granting by the Superior Court, Law Division of: (1) summary judgement; (2) orders denying leave to file an Amended Supplemental Complaint; (3) denial of supplemental discovery; and (4) sanctions issued to Plaintiff for not following Court Orders for various reasons, including filing a motion for reconsideration. Dr. Kant submits that the defendants violated the Law Against Discrimination ("LAD") based on race, national origin and retaliation. These continuing violations came from Seton Hall University's (hereinafter "Defendants" or "Seton Hall"): (1) failure to promote Dr. Kant to full professor in October 2018 after nearly thirty years of continuous employment, and (2) disparate treatment by way of assigning Dr. Kant to teach more courses than white American-born faculty. He also alleges various acts of harassment and retaliation.

Seton Hall's established Faculty Guide criteria for promotion to full professor include the following: (1) teaching effectiveness; (2) professional recognition of publications; and (3) service to the university, profession, and community. The record has established that Dr. Kant has been qualified for promotion. Dr. Kant met or exceeded instructional effectiveness standards in most courses in the ten years prior to his application for promotion. Moreover, Dr. Kant authored and published ten refereed journal articles since his appointment as an

associate professor. Most importantly, Dr. Kant was the solo author of all the published pieces, indicating originality in scholarship, distinction, and a robust reputation among academic economists. In addition, Dr. Kant's published articles have been cited hundreds of times. Furthermore, Dr. Kant has led major university initiatives, including changing the composition of the Business School's Rank and Tenure Committee and serving as a successful change agent by implementing revisions to Economics Department programs and policies, which were presented to the Provost. Dr. Kant has also served on various university committees, volunteered at numerous student recruitment events, written recommendation letters, and chaired academic conference sections.

Defendant Richard Hunter made a discriminatory statement denigrating Dr. Kant as "one of those typical Indians who's not submissive to us." *See* Kant Deposition Transcript 2T Pg. 370 lines 1-4, (862 a).[1] At that time, Hunter was Chair of the Seton Hall Economics Department. *See* Kant Deposition Transcript 1T pg.18 Lines 6-7, (510 a).

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[1] 1T denotes Appellant, Chander Kant's Deposition , Volume I, dated July 26, 2022, pages 1 to 283 (493 a – 775 a)
2T denotes Appellant, Chander Kant's Deposition, Volume II, dated July 28, 2022, pages 284 to 575 (776 a – 1067 a)
3T denotes Appellant, Chander Kant's Deposition, Volume III, dated January 11, 2023, pages 576 to 860 (1068 a – 1352 a)
4T denotes Appellant, Chander Kant's Deposition, Volume IV, dated January 13, 2023, pages 861 to 1088 (1353 a – 1694 a)

Dr. Kant submits that when using a comparative analysis between Dr. Kant and a similarly situated colleague, Dr. Kurt Rotthoff, a non-minority member who was promoted to full professor in 2019, the only conclusion is disparate treatment under the LAD. As Dr. Rotthoff has similar or lesser credentials than Dr. Kant in all three faculty guide criteria areas, the comparative analysis presents issues of material fact that require resolution by a jury.

Dr. Kant also appeals the Law Division's denial of his Motion for Leave to File a Supplemental Complaint. In that Supplemental Complaint he submitted newly discovered evidence that he was asked to teach more courses than white America-born faculty.

Dr. Kant also appeals the Law Division's imposition of sanctions following his motion for reconsideration and his alleged violations of the Discovery Confidentiality Orders, without a finding of bad faith by the Law Division.

STATEMENT OF PROCEDURAL HISTORY

On January 4, 2021, Plaintiff filed a three-count Complaint with the Superior Court, Law Division, Essex County, asserting that Defendants violated the LAD by discriminating on the basis of race and national origin, utilizing harassment and retaliation against Plaintiff. (10 a). Defendants filed an Answer on February 11, 2021. (23 a).

On June 15, 2021, Plaintiff filed a Motion to Compel Discovery. On July 1, 2021, Defendants filed a Certification in opposition to Plaintiff's Motion to Compel Discovery. On July 6, 2021, Plaintiff filed a reply brief to Defendants' Certification in opposition to Plaintiff's Motion to Compel Discovery. On July 23, 2021, the Law Division issued an Order directing Defendants to produce full and complete responses to Plaintiff's discovery no later than thirty (30) days from the date of the Order. The Law Division also indicated that, "Counsel shall meet and confer within 14 days to attempt to resolve their differences. Any objections must be detailed and if privilege is claimed, must be accompanied by a privilege log." (379 a). Defendants did not produce full answers to Plaintiff's interrogatories as ordered. On August 13, 2021, Defendants filed a Motion for a Protective Order. On September 2, 2021, Plaintiff filed opposition to Defendant's Motion for Protective Order. On September 10, 2021, the Law Division issued an Order granting Defendant's Motion for a Protective Order. (380 a).

On February 22, 2022, Plaintiff filed a Motion to Compel Certified and Fully Responsive Discovery or Strike Defendants Answers to Complaint. On March 10, 2022, Defendants filed opposition to the Motion to Strike defendants' Answer for failure to make discovery. On April 14, 2022, entered on April 19, 2022, an Order was entered denying Plaintiff's Motion to Strike Defendants' Answer for failure to make discovery (36 a). On March 11, 2022, Defendants filed

a Cross-Motion to Compel Discovery. On March 24, 2022, Plaintiff filed opposition to Defendants' Cross-Motion to Compel Discovery. On April 14, 2022, an Order was entered denying Defendants' Cross-Motion to Compel Discovery. (36 a).

On June 3, 2022, a Motion to be Relieved as Counsel was filed by Plaintiff's counsel. On June 24, 2022, the Law Division issued an Order granting the motion to be relieved as counsel. Since this Order was granted, Plaintiff has submitted all documents as a pro se litigant. He did not retain counsel until the appeal of the Appellate Division, when a Notice of Appearance was submitted by Arnold Shep Cohen, Esq. of Oxfeld Cohen, PC.

On June 8, 2022, Defendants filed a Motion to Compel Plaintiff to appear for Deposition and Extend the discovery end date. (38 a). On June 24, 2022, an Order was issued granting Defendants' Motion to Compel Plaintiff's Deposition. (49 a). Plaintiff was deposed by Defendants' attorney on July 26, 2022,[2] July 28, 2022, [3] January 11, 2023,[4] and January 13, 2023.[5]

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[2] 1T denotes Appellant, Chander Kant's Deposition , Volume I, dated July 26, 2022, pages 1 to 283 (493 a – 775 a)
[3] 2T denotes Appellant, Chander Kant's Deposition, Volume II, dated July 28, 2022, pages 284 to 1088 (776 a – 1067 a)
[4] 3T denotes Appellant, Chander Kant's Deposition, Volume III, dated January 11, 2023, pages 576 to 860 (1068 a – 1352 a)
[5] 4T denotes Appellant, Chander Kant's Deposition, Volume IV, dated January 13, 2023, pages 861 to 1088 (1353 a – 1694 a)

On August 10, 2022, Defendants filed a Motion for Protective Order. (51 a). On August 26, 2022, entered on September 1, 2022, an Order for Protective Order was issued by the Law Division. (132 a). On August 10, 2022, Defendants filed a Motion to dismiss Plaintiff's Complaint for failure to appear for Deposition, or alternatively, to compel Plaintiff to appear for deposition, and also for an Award of attorney's fees and costs. On August 18, 2022, Plaintiff filed an objection to Defendants' Motion to Dismiss Complaint for Failure to Make Discovery. On August 26, 2022, a Deleted-Order to Dismiss Complaint for Failure to Make Discovery was issued by the Law Division. On August 26, 2022, a Correction: Motion Result modified to Partial on 09/02/2022 re Motion to Dismiss Complaint for Failure to Make Discovery – Original was Entered in Error, was entered on the docket sheet. On August 26, 2022, with regards to Defendants' Motion to Dismiss Complaint for Failure to Make Discovery, An Order was entered denying Defendants' request to dismiss Plaintiff's Complaint, and ordered Plaintiff to be deposed. On September 6, 2022, a correction was made to the Order to Dismiss Complaint for Failure to Make Discovery - Denied by the Law Division on 09/01/2022 has been deleted as ordered by the Law Division– filed incorrectly.

On August 10, 2022, Plaintiff filed a Motion to Compel Responses to Discovery Served on February 2, 2022 and First Motion to Extend the Discovery

End Date. (72 a). On August 26, 2022, entered on September 1, 2022, an Order to Extend Discovery was partially issued by the Law Division. (130 a).

On September 7, 2022, Plaintiff filed a Motion For Reconsideration of Orders Dated August 26, 2022, entered on September 1, 2022, and April 14, 2022, entered on April 19, 2022, Denying Plaintiff's Motions to Compel Discovery Responses was filed by Plaintiff. (134 a). Identified in these discovery requests were two other colleagues of Dr. Kant, Anthony Loviscek and John Shannon, promoted to full professor in 2016-2017.

On September 7, 2022, Plaintiff filed a Motion for Reconsideration of Order Dated August 26, 2022, entered on September 1, 2022, Compelling Plaintiff's Deposition by September 20, 2022.

On September 8, 2022, Plaintiff filed a Motion for Protective Order. (248 a). On December 20, 2022, the Law Division issued an Order denying Plaintiff's Motion for Protective Order.

On September 21, 2022, Defendants filed a Certification in support of defendants' renewed Motion to Dismiss Plaintiff's Complaint for failure to comply with the Court's August 26, 2022 order to appear for deposition, or alternatively, to compel Plaintiff to complete his deposition, and also for an award of attorney's fees and cost.

On September 21, 2022, Plaintiff filed a Motion for Reconsideration of Order Dated August 26, 2022, entered on September 1, 2022, granting Defendants' Motion for Protective Order, Award of Fees and Injunction. (132 a). On October 7, 2022, the Law Division issued an Order denying Plaintiff's Motion For Reconsideration of Orders Dated August 26, 2022, entered on September 1, 2022, and April 14, 2022, entered on April 19, 2022, denying Plaintiff's Motions to Compel Discovery Responses; and Plaintiff's Motion for Reconsideration of Order Dated August 26, 2022, entered on September 1, 2022, compelling Plaintiff's Deposition by September 20, 2022.

On October 27, 2023, Defendant, Joyce Strawser was deposed by Plaintiff.[6]

On October 28, 2022, Plaintiff filed a Motion for Stay Pending Appeal. On December 22, the Law Division issued an order denying Plaintiff's Motion for Stay pending Appeal. (270 a). On November 3, 2023, Defendant, Henry Amoroso was deposed by Plaintiff.[7]

On November 30, 2022, Defendants filed a Motion to Extend Discovery. On December 22, 2022, The Law Division issued an Order to Extend Discovery.

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[6] 5T denotes deposition transcript of Defendant, Joyce Strawser's October 27, 2023 deposition. (2961 a – 3178 a)

[7] 6T denotes deposition transcript of Defendant, Henry Amoroso's November 3, 2023 deposition. (1755 a – 1878 a)

On December 21, 2022, Plaintiff filed a Motion to Compel Discovery. (258 a). On March 1, 2023, The Law Division issued an Order denying Plaintiff's Motion to Compel Discovery. (275 a)

On February 14, 2023, an Order was issued by the Law Division in favor of Defendants and against Plaintiff in the amount of Eight Thousand, Nine Hundred and Nineteen Dollars ($8,919.00), reflecting an award of attorney's fees and costs incurred. (272 a).

On June 7, 2023, Plaintiff filed a Motion to Extend Discovery. On August 22, 2023, an Order was entered extending discovery. On September 20, 2023, Defendants filed a Motion for Protective Order. On January 12, 2024, Judge Petrillo granted Defendants' Motion for Protective Order. (286 a).

On December 20, 2023, Plaintiff filed a Motion to Extend Discovery. (277 a). On January 12, 2024, Judge Petrillo granted Plaintiff's Motion to Extend Discovery, but without any written discovery. (288 a). On December 29, 2023, Defendants filed a Cross Motion for Order to Delete, (entered on the court's docket on December 29, 2023). On January 12, 2024, Judge Petrillo granted Defendants' Motion for Order to Delete. (2837 a).

On January 31, 2024, Plaintiff filed a Motion for Reconsideration of the Order extending discovery, permitting three depositions but no further discovery. On April 24, 2024, Judge Petrillo issued an Order denying Plaintiff's Motion to

Reconsider. (2931 a). On February 8, 2024, Defendants filed a Cross Motion to Enforce Litigants Rights. On April 24, 2024, Judge Petrillo issued an Order partially granting Defendants' Cross Motion to Enforce Litigants Rights and sanctioned Plaintiff $1,000. (289 a).

On April 27, 2024, Plaintiff filed a Motion for Leave to Serve a Supplement Complaint, wrongly labeled on the Case Jacket as Motion to Compel Discovery. (291 a). Defendants filed their Opposition and Cross-Motion on May 16, 2024 labeled on the Case Jacket only as Defendants Cross-Motion. On July 31, 2024, Judge Petrillo issued an Order denying Plaintiff's Motion for Leave to Supplement Complaint wrongly labeled on the case jacket as Motion Compel Discovery. (374 a).

On May 14, 2024, Plaintiff filed a Motion to Reconsider including the Court sanctioning him $1,000. On July 31, 2024, the Law Division denied Plaintiff's motion to reconsider. On May 16, 2024, Defendants filed a Cross Motion for Protective Order. On July 31, 2024 the Law Division partially granted Defendants' Cross Motion for Protective Order. (2946 a).

On May 19, 2024, Plaintiff sent a letter to Judge Petrillo requesting that Judge Petrillo consider Plaintiff's May 14, 2024 Motion for Reconsideration also as a Motion for Recusal Based on Disqualification due to his bias against Plaintiff.

Plaintiff attached a Proposed Order and Certificate of Service. Judge Petrillo denied it on July 31, 2024. (2948 a).

On August 20, 2024, Plaintiff filed a Motion for Reconsideration of the July 31, 2024 orders. On September 16, 2024, the Law Division denied plaintiff's Motion for Reconsideration. On August 23, 2024, Defendants sent a letter to the Honorable Stephen Petrillo, J.S.C., which stated:

> This firm represents Defendants Seton Hall University, Joyce Strawser, Ph.D., Richard Hunter, J.D., and John Shannon, J.D. (collectively "Seton Hall Defendants") in the above referenced matter. I am writing at the request of Your Honor at the July 31, 2024 oral argument for Plaintiff's Motions for Reconsideration and the Seton Hall Defendants' Cross-Motion to Seal, as well as in Your Honor's Order for Protective Order (LCV20241896889), that we submit a supplemental order clarifying the documents/transcripts to be removed from the public record. That supplemental order is submitted herewith.
>
> Thank you for your consideration and attention to this matter.

On August 26, 2024, the Law Division granted Defendants' Motion for Protective Order.

On September 5, 2024, Defendants filed a Cross Motion to Pay Counsel Fees for Plaintiff filing Motion for Reconsideration. On September 16, 2024, the Law Division granted Defendants' Cross Motion to Pay Counsel Fees. (375 a).

On September 13, 2024, Defendants filed a Motion for Summary Judgment. (384 a). On October 25, 2024, entered on October 28, 2024, the Law Division granted Defendants' Motion for Summary Judgment (8 a).

Plaintiff did not file an answer to the summary judgment motion. Rather, on October 1, 2024, he filed a Motion for Adjournment. (3228 a). On October 25, 2024, the Law Division denied Plaintiff's Motion for Adjournment. (3259 a).

On October 3, 2024, Defendants submitted a letter to the Law Division in opposition to Plaintiff's Motion for Adjournment. (3244 a).

On October 8, 2024, Defendants filed a Verification of Attorney Fees.

On October 30, 2024 Judge Petrillo granted Defendants Motion for Attorney Fees, mislabeling it on the Case Jacket as Court Initiated Correspondence. (377 a). Plaintiff was ordered to pay $7,661.50. (377 a). See transcript of this Decision (7T).[8]

On November 17, 2024, Plaintiff filed a Motion to Vacate Summary Judgment Order. On December 6, 2024, the Law Division denied Plaintiff's Motion to Vacate Summary Judgment Order. (382 a).

Hearings were held in this case in the Law Division on April 14, 2022 (8T)[9], February 27, 2023 (9T)[10], January 12, 2024 (10T)[11], February 16, 2024 (11T)[12],

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[8] 7T denotes the transcript of the October 30, 2024 Decision.
[9] 8T denotes the transcript of the April 14, 2022 hearing in the Law Division.
[10] 9T denotes the transcript of the February 27, 2023 hearing in the Law Division.
[11] 10T denotes the transcript of the January 12, 2024 hearing in the Law Division.
[12] 11T denotes the transcript of the February 16, 2024 hearing in the Law Division.

July 31, 2024 (12T)[13], September 16, 2024 (13T)[14], and October 25, 2024 (14T).[15] There are two transcripts of decisions. One, a Transcript of Decision to sanction Plaintiff and award $7,661.50 attorneys fees, dated October 30, 2024 (7T); and two, a transcript of Decision on Motion for Summary Judgment, dated October 28, 2024 (15T).[17]

On December 31, 2024, Mr. Kant filed the instant appeal pro se. (1 a). This appeal was marked deficient, and an Amended Appeal was filed on January 25, 2025. (4 a).

STATEMENT OF FACTS

Dr. Kant is of Asian descent and Indian origin. (10 a). He completed his B.A. with Honors in economics from St. Stephen's College, Delhi in 1968 (1582 a), his M.A. from Delhi School of Economics in 1970 (1582 a), and received his Ph.D. from Southern Methodist University in 1980. (1565 a). He has worked as an Assistant Professor at Cleveland State University and Catholic University of America (1582 a), and has been a tenured Associate Professor at Seton Hall University since 1989. (1582 a; Kant Deposition 1T pg. 10 Line 11, 502 a).

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[13] 12T denotes the transcript of the July 31, 2024 hearing in the Law Division.
[14] 13T denotes the transcript of the September 16, 2024 hearing in the Law Division.
[15] 14T denotes the transcript of the October 25, 2024 hearing in the Law Division.
[17] 15T denotes the transcript of the October 28, 2024 Decision on Motion for summary judgment.

Dr. Kant has taught various undergraduate and graduate courses. (Kant Deposition 1T pg. 184 lines 12-13 (676 a); (1584 a). He assigns reading assignments, provides examination reviews, and gives practice examinations. (1584 a). His teaching philosophy is rooted in distilling economics in a relatable manner (1583 a). Dr. Kant attends teaching conferences for professional development and sponsors independent studies. (Kant Deposition 1T pg. 23 Line 25 (515 a); 1T Pgs. 24-25 Lines 1-25 (516 a-517 a); (1584 a). His students rate him highly and his students consistently perform better in common departmental examinations than students who were taught by other professors. (1584 a). Dr. Kant employs creative pedagogical methods, such as incorporating a murder mystery, to demonstrate the wide applicability of economic concepts. (1584 a)

Dr. Kant has served on various university committees (1593 a), refereed papers (1594 a), volunteered for student recruitment (1594 a), written recommendation letters (1594 a), and chaired academic conference sessions. (1593 a). He led pathbreaking initiatives at the school, including but not limited to changing the composition of the Business School's Rank and Tenure Committee (1592 a), implementing changes in Economics programs (1593 a), dropping certain required electives (1593 a), and revising the University's Racial/Ethnic Discrimination Policy. (1593 a). In addition, Dr. Kant spearheaded a student

survey on reasons for university enrollment and shared the results with the Provost. (1594 a).

Dr. Kant has published in highly ranked journals (1586 a-1591 a), with his work being cited hundreds of times. He has received various prestigious national and international awards and fellowships, including the Fulbright Fellowship, a senior fellowship from the American Institute of Indian Studies in Chicago, and a fellowship from the Hong Kong Institute for Monetary Research. (1591 a). He contributed the sole entry on Capital Flight to the Encyclopedia of Globalization. (Kant Deposition 1T pg. 120 Lines 10-16 (612 a); (1591 a). Professors at Harvard University and the Free University of Berlin have sought his expertise and comments on their papers. (1591 a). Dr. Kant has also been a visiting scholar at the Department of Economics at Columbia University (1591 a) and served on the organizing committee for the Society for Economic Measurement conference held in Frankfurt, Germany, in collaboration with the European Central Bank. (Kant Deposition 2T pg. 305 lines 7-12, (797 a)).

The evidence produced in discovery demonstrates Dr. Kant was equally or more qualified for promotion to full professor than a similarly situated colleague, Dr. Kurt Rotthoff. Specifically, Dr. Kant provided the defendants with more extensive and robust evidence of effective teaching than did Dr. Rotthoff. (Kant Deposition 2T pg. 339 line 3 to pg. 344 line 11, (831 a-836 a)). Moreover, and

importantly, on the professional recognition of publication criterion, Dr. Kant's contributions since being promoted to Associate Professor outpace Dr. Rotthoff's. In fact, Dr. Rotthoff's publication record has approximately 20% fewer publications than Dr. Kant's in numerosity and they do not reflect Dr. Kant's level of originality as a solo-author of his scholarship. (Kant Deposition 1T pg. 153 Lines 20-25, (645 a)).

The scholarship criterion set forth in Article 4.3 of the Faculty Guide includes in pertinent part the following:

> "The applicant shall document this scholarship by submitting full bibliographic detail. A copy of each publication or other research or creative material shall be submitted along with any evaluations by colleagues, reviews, citations, awards, and other forms of scholarly recognition. . . .
>
> "In evaluating the merits of research or other creative work, greater weight shall be given to original authorship than to editorial work to articles in refereed journals than in nonrefereed journals, to nonrefereed journals than to self-published or unpublished materials. In cases of multiple authorship, the extent of the applicant's role shall be determined."

Seton Hall University Faculty Guide, (1625 a).

The Economics Department guidelines contain the following levels of publications: Top Economics Journals or A+ Level Journals, Top Field Journals and Next Level of General Interest Journals or "A" Journals, Good Journals or "B" Ranked and Other Journals or "C" Ranked Journals. (Kant Deposition 1T pg. 43 Line 8 (535 a). Furthermore, the Economics Department has two main avenues to satisfy the research requirement for promotion to Full Professor: 1) Four

economics publications, where two are of 'A' rank or better, and the other two must be of 'B' rank or better. At least one of these publications must be sole authored, plus a display of continued scholarship and evidence of citations of published work and 2) Three economics publications where one is an 'A+', the other two are of 'B' rank or better. At least one of these publications must be solo authored. Additionally, a display of continued scholarship and evidence of citations of published work must be achieved. (Kant Deposition 1T pg. 61 Lines 4-11, (553 a)).

Dr. Kant has published in higher quality journals and his publications have been cited about ten times more than Dr. Rotthoff's. Dr. Rotthoff published eight papers (after removing the parts written by his co-authors) compared to Dr. Kant's ten papers. Of those eight papers, two were authored half by Dr. Rotthoff, while another two were each one third authored by Rotthoff. In comparison, all of Dr. Kant's papers were solo-authored. This demonstrated superior originality in scholarship. Moreover, Dr. Kant demonstrated that he met the Department's guideline requirements for promotion to full-professor, which Rotthoff did not satisfy. (Kant Deposition 1T pg. 222 line 22-pg. 223 line 7, (714 a-715 a)).

On the service to the university, profession, and community criterion, Dr. Kant and Dr. Rotthoff both list various committee memberships, refereeing papers, volunteering for student recruitment events, writing recommendation letters and

chairing academic conference sessions. Dr. Kant met Seton Hall's documentation requirements found in his promotion application, while Dr. Rotthoff did not meet his requirements. Dr. Kant successfully led an initiative to change the composition of the Economics Department Rank and Tenure Committee and of the School of Business executive committee. (Kant Deposition 1T pg. 48 Lines 15-25 (540 a); pg. 49 Lines 1-3 (541 a); (1592 a)). Taken all together, Dr. Kant has established that he was at the very least equal if not more qualified for promotion to full professor than Dr. Rotthoff.

LEGAL ARGUMENT

POINT I

THERE EXIST GENUINE ISSUES OF MATERIAL FACT (8 a)

A ruling on a finding of summary judgment is reviewed by the Appellate Division de novo. Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014). As such the Court is bound to "apply the same standard governing the trial court," Murray v. Plainfield Rescue Squad, 210 N.J. 581, 584 (2012), and need not defer to the trial court's interpretation of "the meaning of a statute or the common law," Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

Court rules require summary judgment to be granted only when the record demonstrates that "there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R.

4:46–2(c). The Court must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). In applying that standard, a court properly grants summary judgment only "when the evidence 'is so one-sided that one party must prevail as a matter of law.'" Id. N.J.S.A. 10:5-12(a).

"The LAD is remedial social legislation whose overarching goal is to eradicate the 'cancer of discrimination.'" Nini v. Mercer Cty. Cnty. Coll., 202 N.J. 98, 108-09 (2010) (*quoting* Fuchilla v. Layman, 109 N.J. 319, 334 (1988))." Smith v. Millville Rescue Squad, 225 N.J. 373, 390 (2016) (*quoting* Nini, 202 N.J. Supra at 115); *see also* Bergen Commercial Bank v. Sisler, 157 N.J. 188, 216 (1999) (*noting* "the state anti-discrimination laws, as social remedial legislation, are deserving of a liberal construction").

Discrimination "is still a pervasive problem in the modern workplace," and courts should be "steadfast in [their] efforts to effectuate the Legislature's goal of workplace equality." Smith, 225 N.J. at 390-91 (*quoting* Quinlan v. Curtiss-Wright Corp., 204 N.J. 239, 260 (2010)). "[T]he more broadly [the LAD] is applied the greater its antidiscriminatory impact." Nini, 202 N.J. Supra at 115 (*quoting* L.W. ex rel. L.G. v. Toms River Reg'l Sch. Bd. of Educ., 189 N.J. 381, 400 (2007)).

In order to establish a LAD cause of action, the plaintiff must "'show that the prohibited consideration [race and national origin] played a role in the decision making process and that it had a determinative influence on the outcome of that process.'" Maiorino v. Schering–Plough Corp., 302 N.J.Super. 323, 344 (App.Div.1997) (*quoting* Miller v. CIGNA Corp., 47 F.3d 586, 597 (3d Cir.1995)). Direct proof of discrimination is not often found, and thus, discrimination cases can be proved through circumstantial evidence. Ibid. *See* Parker v. Dornbierer, 140 N.J.Super. 185, 189 (App.Div.1976) ("We recognize that discrimination is not usually practiced openly and that intent must be found by examining what was done and what was said in the circumstances of an entire transaction.").

Proof of discrimination involves a three-step process. First, the plaintiff carries the burden of establishing, by a preponderance of the evidence, the elements of a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). To establish a prima facie case under LAD, a plaintiff must show:

> (1) that she is a member of a class protected by the anti-discrimination law; (2) that she was qualified for the position or rank sought; (3) that she was denied promotion, reappointment, or tenure; and (4) that others ... with similar or lesser qualifications achieved the rank or position. Dixon v. Rutgers, the State Univ. of N.J., 110 N.J. 432, 443(1988); *See* Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981) (recognizing that a plaintiff's burden in establishing a prima facie case "is not onerous.").

After an employee has established a prima facie case, a presumption is created that the employer unlawfully discriminated against the employee. Stewart v. Rutgers, the State Univ. 120 F.3d 426, 432 (3d Cir.1997). The burden then shifts to the employer to rebut the presumption of discrimination by either establishing the reasonableness of the otherwise discriminatory act or by articulating a legitimate, nondiscriminatory reason for the employment action. Maiorino v. Schering–Plough Corp., supra, 302 N.J.Super. at 345–47. "'To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection' which would support a jury finding that unlawful discrimination was not the cause of the adverse employment action." Stewart v. Rutgers, supra, 120 F.3d at 432 (*quoting* St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507(1993)). The employer only carries the burden of production, rather than persuasion, of showing a legitimate, nondiscriminatory reason for its action.

Once the employer sets forth a legitimate, nondiscriminatory reason for its adverse employment action, the burden again shifts to the employee to show that the employer's articulated reason "was merely a pretext to mask the discrimination" or was not the true motivating reason for the employment decision. Kelly v. Bally's Grand, Inc., 285 N.J.Super. 422, 430 (App.Div.1995). An employee successfully meets this burden "by persuading the court that a

discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." Texas Dep't of Community Affairs v. Burdine, supra, 450 U.S. at 256.

To defeat a motion for summary judgment, when the defendant answers the plaintiff's prima facie case with legitimate, nondiscriminatory reasons for its action, "[T]he plaintiff's evidence rebutting the employer's proffered legitimate reasons must allow a factfinder reasonably to infer that each of the employer's proffered non-discriminatory reasons, ..., was either a post hoc fabrication or otherwise did not actually motivate the employment action (that is, the proffered reason is a pretext).... [To do so,] the non-moving [party] must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them "unworthy of credence," ... and hence infer "that the employer did not act for [the asserted] non-discriminatory reasons." Fuentes v. Perskie, 32 F.3d 759, 764–765 (3d Cir.1994); *See also* Kelly v. Bally's Grand, Inc., supra, 285 N.J.Super. at 431–32 (holding that "plaintiff need not provide direct evidence that the employer acted for discriminatory reasons in order to survive summary judgment [;]" rather, she "need only point to sufficient evidence to support an inference that the employer did not act for its proffered non-discriminatory reasons.").

If a plaintiff who has established a prima facie case can raise enough suspicions that the employer's proffered reasons for termination were pretextual, the motion for summary judgment must then be denied. Bray v. Marriott Hotels, 110 F.3d 986, 990–91 (3d Cir.1997). The standard, then, is "whether evidence of inconsistencies and implausibilities in the employer's proffered reasons for discharge reasonably could support an inference that the employer did not act for non-discriminatory reasons, not whether the evidence necessarily leads to [the] conclusion that the employer did act for discriminatory reasons." Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 900 (3d Cir.) (*citing* Graham v. F.B. Leopold Co., Inc., 779 F.2d 170, 172–73 (3d Cir.1985)). When considering a motion for summary judgment, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In evaluating the evidence, the court must "view the inferences to be drawn from the underlying facts in the light most favorable to the party opposing the motion." Curley v. Klem, 298 F.3d 271, 276–77 (3d Cir.2002) (*quoting* Bartnicki v. Vopper, 200 F.3d 109, 114 (3d Cir.1999)); *see also* Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970).

Viewed most favorably to Dr. Kant, the non-moving party, the summary judgment record established the following: (1) a racist comment was made by

Defendant Professor Hunter, Chair of the Economics Department, denigrating Dr. Kant based on his national origin, (2) a comparative analysis of full-professor applications revealed Dr. Kant to be more qualified than a similarly situated colleague who Defendants elected to promote to full-professor, Dr. Kurt Rotthoff. Accordingly, Dr. Kant has established sufficient evidence to prove that the reasons Defendants proffered for the decision not to promote Dr. Kant were bogus and accordingly support an inference that Defendants did not act for non-discriminatory reasons.

When viewed in this light it is apparent that Dr. Kant has established issues of material fact, which warrant a jury verdict. Dr. Kant has established a prima facie case under the LAD. He is a member of a protected class. Dr. Kant was qualified for the full-professor promotion, which was sought after thirty years of continuous service to the university. Dr. Kant established that another similarly situated employee with similar or lesser qualifications was granted a promotion to full professor. The evidence adduced in discovery demonstrates that Dr. Kant was equal to, if not more qualified than, Dr. Kurt Rotthoff, a similarly situated employee who was successfully promoted to full professor. Therefore, as Plaintiff has raised enough suspicions, and factual disagreements, it is clear that Seton Hall's proffered reasons for its adverse action were pretextual. Thus, Defendants' motion for summary judgment should have been denied.

POINT II

THE LAW DIVISION ERRED IN DENYING DR. KANT LEAVE TO AMEND/SUPPLEMENT THE COMPLAINT AND DISCOVERY (291 a – 373); (374 a); (299 a -310 a)

Dr. Kant appeals the July 31, 2024 Order of the Law Division, denying his motion for leave to file an Amended Supplemental Complaint. (374 a). That Motion was brought under R. 4:9-1, and R. 4:9-4.

Longstanding precedent has made clear that "R. 4:9-1 requires that motions for leave to amend be granted liberally" and that "the granting of a motion to file an amended complaint always rests in the court's sound discretion." Kernan v. One Washington Park Urban Renewal Assocs., 154 N.J. 437, 456-57 (1998).

Plaintiff summarized his reasons that the Motion should have been granted as follows:

A. ISSUES AND OCCURRENCES AFTER JANUARY 4, 2021 THAT HAVE NOT BEEN A PART OF A PRIOR COMPEL/PROTECTION MOTION. (286 a); (291 a - 373); (374 a); (299 a -310 a)

On April 24, 2024, the lower Court denied Plaintiff's January 31, 2024 motion for reconsideration of the no written discovery as part of its January 12, 2024 Order. Plaintiff had alleged at p. 6-9 of his brief and at paragraphs 11-14 and 18-19 of his certification that Defendants (and Chair Henry Amoroso) have made Plaintiff teach more courses than white, America-born faculty members. Plaintiff restated this issue

in his February 12, 2024 reply belief (at p. 6-7) (Ex. G, H, I, J and K). The lower Court in support of its denial, it cited the February 16, 2024 hearing on this motion. (Transcript of the February 16, 2024 hearing pg. 39 line 14 to pg. 42 line 8; 2899 a-2900 a).

Plaintiff recounted that he could not hear what was being said in a faculty meeting on Microsoft Teams on December 12, 2023, when his laptop gave the message "No audio device installed." He informed the department faculty of this problem on December 19, 2023. Nobody replied to him that he also was unable to hear what was being said. Plaintiff alleged these facts in his January 2, 2024 reply brief (at p. 4, numbered paragraph (3), in footnote 1) and in his Certification (at paragraphs 6-7), in further support of his December 20, 2023 motion to extend discovery.

Screenshots and documents were used to support this allegation in that filing. Plaintiff's January 2, 2024 certification was attached as exhibits.

Plaintiff made the allegation to further support his December 20, 2023 motion to extend discovery. He had planned to depose a Seton Hall University's corporate representative on technology related issues including this one. Defendants had meanwhile moved on September 20, 2023 seeking, inter alia, that Plaintiff be barred from deposing the representative on technology-related issues that had occurred in 2023, by September 20.

The Court held a hearing on both Plaintiff's December 20, 2023 motion to extend discovery and Defendants' September 20, 2023 motion for protective order on January 12, 2024. (Transcript of January 12, 2024 hearing pg. 72 line4-pg. 73 line 5; 2876 a-2877 a). The Court granted Defendants' motion for a protective order, holding that the technology related issues had not been pled in the January 4, 2021 Complaint. (January 12, 2024 hearing transcript pg.13 line 10-pg. 14 line 2; 2847 a). Plaintiff seeks to remedy it by specifically and formally stating them in his Supplemental Complaint.

B. ISSUES AND OCCURRENCES AFTER JANUARY 4, 2021 THAT HAVE BEEN A PART OF A PRIOR COMPEL/PROTECTION MOTION BUT DENIED BY EITHER JUDGE PETRILLO OR BY JUDGE VENA, ON GROUNDS THEY WERE NOT PLED IN THE JANUARY 4, 2021 COMPLAINT. (80 a); (81 a); (93 a – 111 a); (113 a – 121 a); (123 a – 127 a); (312 a); (1467 a –1488 a); (299 a – 310 a); (344 a – 373 a)

Plaintiff here lists issues and occurrences after January 4, 2021 that have been a part of a prior compel/protection motion but denied by either Judge Petrillo or by Judge Vena on grounds they were not pled in the January 4, 2021 Complaint. He also lists one issue on which the Court denied Plaintiff relief without prejudice.

i) Denial on grounds that the said issues and occurrences were not pled in the January 4, 2021 Complaint, or that Judge Vena had earlier denied them. (80 a); (81 a); (93 a – 111 a); (113 a – 121 a); (123 a – 127 a); (1467 a – 1488 a); (299 a – 310 a); (344 a – 373 a)

ii)

1. **Display problems in Plaintiff's classrooms. (80 a); (93 a – 111 a); (312 a); (299 a – 310 a)**

On August 21, 2023, Plaintiff alleged that,

> **"TEAMS classrooms allow a technician to disrupt display and power from the control room; and one or more than one person(s) directed technicians to do so in my TEAMS classrooms [in Spring 2022 and Fall 2022.]"**

He made this allegation in bold in an August 21, 2023 email to the Registrar and copied to all relevant Administrators (to the Chair, Dean, current acting Provost, ex-Provost and current acting President Katia Passerini, Director of Classroom Support, and Tech's Associate Chief Information Officer Mr. Paul Fisher.). The Registrar responded to Plaintiff's August 21, 2023 email on other matters but has not responded to the above allegation. Nor has any other administrator (to whom the email was copied) commented. See, Plaintiff's September 28, 2023 certification, Ex. M in opposition to Defendants' September 20, 2023 motion for a protective order. (299 a – 310 a; 312 a). At the January 12, 2024 hearing on pending motions, the Court granted Defendants' motion for a protective order holding that the technology-related issues had not been pled in the January 4, 2021 Complaint. (January 12, 2024 hearing transcript pg. 13 line 10-pg. 14 line 2; 2847 a). Plaintiff seeks to remedy it by specifically and formally stating them in his Supplemental Complaint.

The Registrar was well aware of the Spring 2022 display problems, which were (a) display would not light on the front screen at all, as it remained all dark –

though it did on the rear screen; b) both the screens would go dark – even though the classroom did not lose power; and c) on the front screen changing marks and etchings in black appeared that did not appear on the screen at the back . . .) since he finally agreed to change Plaintiff's classroom in the middle of the Spring 2022 semester – on March 14, 2022. Plaintiff stated this issue in his August 10, 2022 Certification (74 a-82 a at paragraph 19A) to his motion to compel responses to discovery end date, dated August 10, 2022. He also provided exhibits to his August 10, 2022 Certification (72 a – 129 a).

Plaintiff sought an Order to compel on his Spring 2022 display problems, in his December 21, 2022 motion.[18] At the February 27, 2023 hearing on the said motion, the Court denied this Spring 2022 issue as not in the Complaint. (275 a). (See also the transcript of the February 27, 2023 hearing (pg. 14 line 24 to pg. 15 line 10; 3278 a-3279 a). Since then, plaintiff has alleged similar problems for Fall 2022. He has also pointed out, as noted above, that neither the Registrar nor any other administrator has denied Plaintiff's August 21, 2023 allegation that "TEAMS classrooms allow a technician to disrupt display and power from the control room;

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[18] The August 10, 2022 motion sought Judge Vena to compel Defendants to provide written discovery identified by Plaintiff on February 2, 2022, and specifically as identified in his July 20, 2022 deficiency letter. See, Judge Vena's order dated August 26, 2022 on the said motion. On February 2, 2022, when he served his discovery, this issue of display problems in Plaintiff's classroom was ongoing, and Plaintiff did not seek to compel an order on this issue in his August 10, 2022 motion.

and one or more than one person(s) directed technicians to do so in my TEAMS classrooms [in Spring 2022 and Fall 2022."] Plaintiff sought to add this issue of display problems in his classrooms in both Spring 2022 and Fall 2022 caused by "one or more than one person(s) direct[ing] technicians to do so" in his Supplemental Complaint.

2. Remotely changing the unlocking password of Plaintiff's Seton Hall supplied computer. (312 a – 331 a)

In January 2023, Plaintiff could not unlock the Seton Hall supplied laptops (both old/new) using the old/new passwords. Seton Hall's information technology department ("Tech') did not provide ticket or documentation for the inability-to-unlock problem and made false/untrue statements to Plaintiff. Plaintiff then bought a new laptop with his own funds to use in the classroom. He since realized (and now believes) that Tech can change the unlocking password of a Seton Hall supplied laptop at will, wherever the laptop might be. See, Plaintiff's September 28, 2023 certification, Ex. L. (312 a – 331 a).

As stated above, at the January 12, 2024 hearing on pending motions, the Court granted Defendants' motion for a protective order holding that the said technology related issues had not been pled in the January 4, 2021 Complaint and denied by prior order. January 12, 2024 hearing transcript pg. 13 line 10-pg. 14, line 2; 2847 a. On February 2, 2022, when Plaintiff served his second discovery, this issue of display problems in Plaintiff's classroom was ongoing, and Plaintiff

did not seek a compel order on this issue in his August 10, 2022 motion. Further, on the classroom display and power issues, Plaintiff has made a very specific allegation – never before made - in his August 21, 2023 email to the Registrar. As to the ruling that these issues were not actually in the January 4, 2021 Complaint, Plaintiff intends to remedy it by including them in the Supplemental Complaint.

a) Remotely uninstalling audio speakers from Plaintiff's Seton Hall supplied laptop: December 12, 2023. Judge Petrillo ignored this fact that Plaintiff alleged on pages 5-6 of his April 27, 2024 moving brief. Instead, he states that it occurred in May 2020 that Plaintiff did not allege.

b) Having technicians disrupt display and power in Kant's classrooms in Fall 2022 and Spring 2022.

3. Instigation of Caucasian American students by administrators and/or senior faculty against Plaintiff. (293 a – 296 a)

Several faculty members and administrators treated Plaintiff in a disparate manner as compared to faculty members with different race and national origin in connection with handling and responding to a complaint by a student who alleged he had emailed an examination to Plaintiff in a timely manner, and who refused compromise offered by Plaintiff who had not received the exam. They took perverse decisions on evidence presented by Plaintiff and encouraged the student to act inappropriately. This is the first-time a grade appeal has been filed against Plaintiff in his 35 years of teaching at Seton Hall. Upon information and belief,

grade appeals based on allegedly timely emailing an exam to an instructor, which the instructor had not received, are rare.

This saga started in October 2020 and reached the highest levels of the University four semesters later – in Spring 2022. Plaintiff argued it fell within the scope of the Complaint (10 a, citing its paragraph 80). That paragraph states:

> "Defendants have engaged in numerous continued acts of discrimination and harassment against Assoc. Prof. Kant."

Defendants disagreed, arguing in their August 18, 2022 opposition certification to Plaintiff's motion to compel (319 a) that the "[C]hief among the defects in his motion is that Plaintiff is improperly attempting to obtain discovery about claims that are not found within the four corners of his Complaint." (333 a) Judge Vena half ruled for Plaintiff. While denying the Motion to compel, and ruling on August 26, 2022 that: "[T]he Court is not satisfied from a review of the motion that a basis to compel discovery has been provided," he extended discovery to "allow the parties to resolve any discovery dispute." On October 7, 2022, Judge Vena upheld his August 26, 2022 decision upon reconsideration. Plaintiff filed an inter-locutory appeal with the Appellate Division and framed the above as one of the four issues in the appeal. The Appellate Division denied leave to appeal on November 28, 2022.

On January 13, 2023, the defense counsel examined Plaintiff mostly on issues he had earlier vigorously argued were not in the Complaint – including over

30-pages of the transcript on the afore-mentioned student issue. Plaintiff argued in his September 28, 2023 brief that Defendants' examination of Plaintiff thoroughly covered this issue (a few months after half-denial by Judge Vena of written discovery, which meant they accepted that this issue belonged in the suit. Denying this interpretation, the Court ruled on January 12, 2024 that deposing Plaintiff thoroughly on this issue on January 13, 2023 is not a concession by Defendants that the issue was pled in the January 4, 2021 Complaint. (January 12, 2024 hearing transcript pg. 15 line 5-25; 2848 a). This has made adding this issue to Plaintiff's Supplemental Complaint necessary.

4. Ignoring Plaintiff's request to change his sabbatical period from Spring 2021 and Fall 2021 to Fall 2021 and Spring 2022. (1467 a – 1488 a); (344 a – 373 a)

In February 2021, ex-Provost Katia Passerini ignored Plaintiff's request that the two semesters of his sabbatical could be Fall 2021 and Spring 2022. According to Seton Hall's Faculty Guide, the Provost makes the decision on a sabbatical. Everyone else only makes recommendations to the Provost. Chair Amoroso and Dean Strawser had recommended against sabbatical to Plaintiff for Spring 2021 and recommended approving it only for Fall 2021. At the Provost's level, Plaintiff requested taking sabbatical for Fall 2021 and Spring 2022. Provost Burton/Passerini ignored this suggestion, even though the University would have saved 25% of Plaintiff's salary by a year sabbatical.

5. Preventing Plaintiff's contact with the IT department representative. (81 a); (113 a – 121 a)

In Spring 2022, Chair Amoroso conspired with Professor Kurt Rotthoff to delay sending Plaintiff a link for attending a meeting of the department on Microsoft Teams so that by the time Plaintiff received the invitation and joined the meeting, the first item on the agenda, "IT introduction of services and outreach - Jarrod Cecere" was over. Mr. Cecere had already left, and Plaintiff could neither benefit by this outreach by the IT department nor have his doubts removed by Mr. Cecere.

Plaintiff sought a compel order on this issue in his December 21, 2022 motion. The Court denied it at the February 27, 2023 hearing on grounds that this Spring 2022 occurrence was not in the Complaint. (Transcript of February 27, 2023 hearing pg. 14 lines 3-23; 3278 a).

Plaintiff seeks to overcome this ruling by adding this issue in his Supplemental Complaint.

i. Denied without prejudice. (81 a); (123 a – 127 a)

The following issue/occurrence is in this category:

Reporting faculty election results in a manner to deliberately humiliate Plaintiff.

On May 11, 2022, a faculty member representing the faculty Elections Committee, announced only a few election results (contradicting the practice that all election results are announced simultaneously) and in a manner to deliberately humiliate Plaintiff.

Plaintiff stated this issue in his August 10, 2022 motion to extend and compel Certification (at para. 19C; 74 a – 82 a) and provided supporting documents that consisted of Plaintiff's Certification to the motion, (74 a - 82 a), that consists of supporting documents he provided on this issue (123 a-127 a as Ex. O to his said motion to extend and compel). Having occurred only on May 11, 2022, this issue was not a part of Plaintiff's February 2, 2022 discovery requests, his July 20, 2022 deficiency letter, or his August 10, 2022 compel motion decided by Judge Vena. He sought a compel order on this issue in his December 21, 2022 motion. The Court, at the February 27, 2023 hearing, denied this issue without prejudice. (Transcript of the February 27, 2023 hearing, pg. 13 line 14-pg. 14 line 2; 3278 a). Plaintiff then sought to include this issue in his Supplemental Complaint.

On August 20, 2024, Plaintiff filed his motion for reconsideration. In Section III, Sub-Section G of the said motion he argued:

> **Judge Petrillo Crafted His Discovery Decisions to Specifically Exclude Evidence That Plaintiff Was Asked to Teach More Courses For Tens of Years Than White America-Born Faculty**

Plaintiff discovered while deposing Chair Amoroso in November 2023 that the latter had been assigning him to teach more courses semester after semester than white America-born faculty. Through his December 4, 2023 letter, Plaintiff requested defendants to supply documents as revealed during the October and November 2023 depositions. Plaintiff attached that letter as Exhibit J to his December 20, 2023 motion for extension. (283 a). The central request in this letter was for,

> List of all courses actually taught, including the days and times they met, the classrooms they were taught in, and actual enrollment in all such courses, by the tenured and tenure track (i.e., probationary-for-tenure) faculty members of the Department of Economics and Legal Studies starting from Fall 2015 semester to Fall 2023 semester.

In his reply brief to that motion for extension, Plaintiff answered factor 7 - the type and extent of discovery that remains to be completed – from *Cordero v. Bogopa West New York,Inc.*, No. A-1941-22, 2023 WL 4310721 at *4-*5 (App. Div. Jul. 3, 2023) as follows:

> Defendants need to produce documents whose existence was/will be revealed during the depositions or whose likelihood of providing admissible evidence was/is reinforced during the depositions. (Plaintiff's 1/2/24 reply brief) at ¶4.

Judge Petrillo knew before the January 12, 2024 hearing that Plaintiff was requesting documentation on course assignments to tenured and tenure track (i.e., probationary-for-tenure) faculty members of the Economics Department since Fall

2015 (since Dr. Henry Amoroso became Chair of the Department of Economics and Legal Studies - in January 2015).

At the January 12, 2024 hearing, Plaintiff explained that Chair Amoroso assigned himself very few courses and assigned to Plaintiff far more course. Plaintiff strenuously argued for documents requested in his December 4, 2023 letter. *See* Transcript of the January 12, 2024 hearing pg. 31, lines 7-9 (; 2856 a), and pg. 68 line 9-pg. 70 line 2; (2874 a-2875 a). But Judge Petrillo prohibited any written discovery in his January 12, 2024 Order (while permitting some depositions). *See* January 12, 2024 Order (288 a).

In the February 12, 2024 reply brief, at ¶ 6-7 to his motion for reconsideration of the no written discovery part of the January 12, 2024 Order, Plaintiff stated that Defendants do not deny the following from his moving brief (Plaintiff's January 31, 2024 brief).

- Defendants do not deny that the main documents Plaintiff sought on December 4, 2023 are on his recently discovered claim that the Defendants (and Chair Henry Amoroso) have made Plaintiff teach more courses than white, America-born faculty members.
  Defendants do not deny that the number of courses taught by Chair Henry Amoroso and Plaintiff during Spring 2018 and Fall 2018 semesters. In the Spring of 2018, Amoroso taught two courses, and Kant taught three. In the Fall of 2018, Amoroso taught one course, and Kant taught three. Defendants do not deny that the assignment of courses for Spring 2023 and Fall 2023 was even more discriminatory against Plaintiff. In the spring of 2023, both Shannon, Amoroso and Rotthoff taught two courses while Kant taught three.

In the Fall of 2023, both Shannon and Rotthoff taught two courses, Amoroso taught no courses, and Kant taught three courses.

While allowing documents following January and February, 2024 depositions, Judge Petrillo did not allow documents following October and November, 2023 depositions (that Plaintiff requested in his December 4, 2023 letter). *See* April 24, 2024 Order (289 a). This inconsistency of allowing documents following January and February 2024 depositions, but not those following October and November 2023 depositions lacks a logical foundation.

Due to Chair Amoroso's machinations, it was almost impossible to spot this discrimination. Plaintiff, however, spotted it in October/November 2023 when he examined documents just before Chair Amoroso's deposition.

Plaintiff is not seeking to amend the Complaint. The reasoning for adding the issues and occurrences listed in the Supplemental Complaint is the entire controversy "use it or lose it" doctrine. The supplemental pleading adds to his original pleading. All the issues, events, and occurrences, whether in the original or supplemental pleading constitute one composite whole claim of discrimination, retaliation, and harassment by Defendants due to Plaintiff's race and national origin. Plaintiff is not adding any new claims, he is not modifying his January 4, 2021 pleading, he is not amending his January 4, 2021 pleading.

The final step in all the facts/occurrences in his Supplementary Complaint took place after he filed his original Complaint. *Department of Environmental Protection v. Standard Tank Cleaning*, 19 Corp., 284 N.J. Super. 381 does not apply because i) issues have not been framed in this case, ii) it involved a Rule 4:9-1 motion for leave to amend, filed after the conclusion of the first phase of the trial. Still the Court allowed it. In contrast, this case involves a motion for leave to supplement (not amend) filed much before the trial under the weaker Rule 4:9-4 requirements.

Judge Petrillo's denial to Plaintiff of the leave to file the supplemental complaint at the July 31, 2024 hearing (July 31, 2024 hearing transcript pg. 15 line 12-pg. 25 line 8 (3293 a-3298 a), is bad both on facts and law. It must be reversed.

The reasoning of the Supreme Court in Watkins v. Resorts, 124 N.J. 398 (1991), supports plaintiff's argument on supplementing his Complaint. The Supreme Court in Watkins considered a res judicata issue. Said the Court:

> Plaintiff's state court and federal court actions arose from the same factual occurrences. Hence, they constitute the same claim for res judicata purposes. Although the corporations, which were plaintiffs in the federal action, do not join as plaintiffs in the state action, the individual plaintiffs and all defendants are identical. Thus, two of the requirements for claim preclusion, identity of parties and of claim, are satisfied.

POINT III

THE LAW DIVISION ERRED IN SANCTIONING DR. KANT (272 a); (375 a); (377 a); (2929 a)

On October 30, 2024, Judge Petrillo erroneously awarded Defendants $7,661.50 in attorney's fees and costs in connection with Dr. Kant's motion for reconsideration of discovery orders. On February 14, 2023, the Law Division erroneously awarded Defendants $8,919.00 in attorney's fees following Dr. Kant's motion for reconsideration of discovery orders. (272 a). On April 24, 2024, Judge Petrillo erroneously ordered Dr. Kant pay Defendants $1,000 as a sanction for bad-faith violation of the Discovery Confidentiality Order. (2929 a).

New Jersey law, specifically N.J.S.A. 2A:15-59.1 and R. 1:4-8, allows for sanctions against parties, including pro se litigants, who file frivolous claims or defenses. Importantly, however, there exists a "Safe Harbor" Period such that before filing a motion for sanctions or attorney's fees, the prevailing party must provide the pro se litigant with a 28-day "safe harbor" period. This allows the pro se litigant to withdraw the offending paper before facing sanctions pursuant to R. 1:4-8. There is nothing in the record to suggest that this Safe Harbor period was followed. Moreover, Dr. Kant, as a pro-se litigant, was unfamiliar with the intricacies and rules governing the court system. Fundamental fairness requires that his lack of legal knowledge, training, and understanding not be held against him. Accordingly, the orders financially sanctioning Dr. Kant should be reversed.

POINT IV

THE LAW DIVISION ERRED IN DENYING PLAINTIFF DISCOVERY (36 a); (130 a); (132 a); (275 a); (286 a; (288 a); (289 a); (374 a); (380a)

Plaintiff appeals the Law Division's denial of discovery that could reasonably have led to the discovery of relevant evidence at issue in the Complaint. (36 a; 130 a; 132 a; 275 a; 286 a; 288 a; 289 a; 374 a; 380a)

A. Defendant's Motion for a Protective Order (380 a)

On August 13, 2021, Defendants filed a Motion for Protective Order. On September 2, 2021, Plaintiff filed opposition to Defendant's Motion for Protective Order. On September 10, 2021, the Law Division issued an Order granting Defendant's Motion for Protective Order. (380 a). The scope of discovery includes "any matter not privileged, which is relevant to the subject matter in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party" so long as it is "reasonably calculated to lead to discovery of admissible evidence." R. 4:10-12. Therefore, the Law Division's denial of discovery was in error.

B. Plaintiff's Motion to Strike the Answer (36 a)

On February 22, 2022, Plaintiff filed a Motion to Strike Defendants' Answer for failure to make discovery. On March 10, 2022, Defendants filed opposition to Motion to Strike defendants' Answer for failure to make discovery in the form of a

memorandum of law. On April 14, 2022, an Order was issued and entered on April 19, 2024, denying Plaintiff's Motion to Strike Defendants' Answer for failure to make discovery. (36 a). The Law Division erred. Under Rule 4:23-5, Defendants' deficiencies in discovery responses served on August 20, 2021 warranted granting of Plaintiff's motion.

C. Defendants' Motion to Compel Deposition (49 a); (38 a-48 a)

On June 8, 2022, Defendants filed a Motion to Compel Deposition. On June 15, 2022, Plaintiff filed opposition to Defendants' Motion to Compel Deposition. On June 20, 2022, Plaintiff filed a reply brief to Defendants' Motion to Compel Deposition. On June 20, 2022, Defendants submitted a reply brief to its Motion to Compel Deposition. On June 24, 2022, an Order was issued granting Defendants' Motion to Compel Deposition (49 a). Plaintiff was pro-se and unaware of the ramifications of the motion to compel deposition. As such, the Law Division erred in compelling discovery.

D. Defendant's Motion for a Protective Order (51 a – 71 a); (132 a)

On August 10, 2022, Defendants filed a Motion for Protective Order. On August 26, 2022, entered on September 1, 2022, an Order for Protective Order was issued by the Law Division. (132 a). Discovery rules are designed to "further the public policies of expeditious handling of cases, avoiding stale evidence, and providing uniformity, predictability, and security in the conduct of litigation.

Abtrax Pharm, Inc. v. Elkins-Sinn, Inc. 139 N.J. 499, 512 (1995). The Law Division's protective order denied Plaintiff discovery of potentially admissible evidence at an early stage of the litigation contrary to longstanding established policy supporting expeditious case management.

E. Denial of Plaintiff's Motions for Reconsideration to Compel Discovery (134 a – 247 a)

On September 7, 2022, Plaintiff filed a Motion for Reconsideration of Orders Dated August 26, 2022, entered on September 1, 2022, and April 14, 2022, entered on April 19, 2022, Denying Plaintiff's Motions to Compel Discovery Responses. The Law Division erred in denying Plaintiff discovery of potentially relevant evidence. "Relevant evidence" means "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." Payton v. New Jersey Tpk. Auth., 148 N.J. 524, 535 (1997). Plaintiff identified certain employees and representatives of the university to depose for the purpose of discovery of relevant evidence. Denying Plaintiff the opportunity to depose unjustly and illegally denied him discovery under established precedent. Denying Plaintiff's Motions to Compel Discovery Responses illegally denied him discovery under established precedent. including similarly situated professors.

F. Denial of Plaintiff's Motion for a Protective Order (248 a – 257 a)

On September 7, 2022, Plaintiff filed a Motion for Reconsideration of Order Dated August 26, 2022, entered on September 1, 2022, Compelling Plaintiff's Deposition by September 20, 2022.

On September 8, 2022, Plaintiff filed a Motion for Protective Order. On December 20, 2022, the Law Division issued an Order denying Plaintiff's Motion for Protective Order. Plaintiff was pro-se and unaware of the ramifications of a protective order. As such, the Law Division erred in compelling discovery.

G. Denial of Plaintiff's Motion for Reconsideration (36 a); (130 a); (132 a)

On September 21, 2022, Plaintiff filed a Motion for Reconsideration of Order Dated August 26, 2022, entered on September 1, 2022, Granting Defendants' Motion for Protective Order, Award of Fees and Injunction. (132 a). On October 7, 2022, The Law Division issued an Order denying Plaintiff's Motion For Reconsideration of Orders Dated August 26, 2022, entered on September 1, 2022, and April 14, 2022, entered on April 19, 2022, Denying Plaintiff's Motions to Compel Discovery Responses; and Plaintiff's Motion for Reconsideration of Order Dated August 26, 2022, entered on September 1, 2022, Compelling Plaintiff's Deposition by Sept. 20, 2022. The Law Division erred because the Defendants' did not meet their burden of proving the need for a protective order. Horon Holding Corp. v. McKenzie, 341 N.J. Super 117, 129 (App. Div. 2001).

H. Denial of Plaintiff's Motion for a Stay Pending Appeal (270 a)

On October 28, 2022, Plaintiff filed a Motion for Stay Pending Appeal. On December 22, the Law Division issued an order denying Plaintiff's Motion for Stay pending Appeal (270 a). . Under Rule 2:2-4 leave to appeal from an interlocutory order may be granted "in the interests of justice." Plaintiff was repeatedly denied his right to depose individuals who could produce relevant evidence of the claims at issue. Therefore, the interests of justice warranted a stay pending appeal. The stay was denied after the interlocutory appeal was denied. (270 a).

I. Denial of Plaintiff's Motion to Compel Discovery (275 a)

On December 21, 2022, Plaintiff filed a Motion to Compel Discovery. On March 1, 2023, the Law Division issued an Order denying Plaintiff's Motion to Compel Discovery. (275 a). As previously argued, New Jersey has a generally liberal discovery standard for all parties to seek information relevant to their case. Denying Plaintiff's Motions to Compel Discovery Responses illegally denied him discovery under established precedent. _Plaintiff was denied the opportunity to seek out relevant evidence by way of deposing university officials in possession of information with logical connection to the claims at issue – including similarly situated professors.

J. The Law Division's Order to Dismiss the Complaint (3257 a)

On December 22, 2022, the Law Division denied issuing an Order to Dismiss Complaint partially for Failure to make Discovery. This order was denied because a partial order to dismiss was premature. Importantly, it was made prior to the close of discovery and deposition of Plaintiff. A motion to dismiss is deemed premature if filed before the Plaintiff has had sufficient opportunity to conduct discovery or present all the necessary evidence to support its claims.

K. Grant of Defendants' Motion for a Protective Order (286 a)

On September 20, 2023, Defendants filed a Motion for Protective Order. On January 12, 2024, Judge Petrillo granted Defendants' Motion for Protective Order. Plaintiff was pro-se and unaware of the legal ramifications of the protective order. As such, the Law Division erred in granting the protective order.

On January 12, 2024, the Law Division erroneously granted Defendants' motion for a protective order barring the deposition of Interim President Katia Passerini, Ph.D., and an additional Seton Hall corporate representative. (286 a). In New Jersey there exists a longstanding standard of substantial liberality in providing access to information, documents and materials, favoring litigants' rights to "broad pretrial discovery." HD Supply Waterworks Group, Inc. v. Director, Division of Taxation, 29 NJ Tax 573, 583 (2017) (*citing* Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 535 (1997) (*citing* Jenkins v. Rainner, 69 N.J. 50, 56 (1976)); *see also* Shanley & Fisher, P.C. v. Sisselman, 215 N.J.Super. 200,

215–216 (App. Div. 1987). As such, a party may obtain material which "appears reasonably calculated to lead to the discovery of admissible evidence" pertaining to the cause of action. Ibid. *citing* In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 82 (2000). Litigants, therefore, maintain the right to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action..." Ibid. *citing* R. 4:10–2(a). Under court rules, "relevant evidence" is defined as "evidence having any tendency in reason to prove or disprove any fact of consequence to the determination of the action." Ibid. N.J.R.E. 401. Importantly, "the relevancy of documents and materials is not predicated upon their admissibility at trial; instead, it is founded upon whether the information sought is "reasonably calculated to lead to admissible evidence respecting the cause of action or its defense." Ibid. *citing* Pressler & Verniero, Current New Jersey Rules Governing the Courts, comment 1 on R. 4:10–2(a) (2016). "Thus, disclosure of inadmissible evidence is nonetheless required if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Ibid. *citing* R. 4:10–2(a); *see also* Irval Realty, Inc. v. Board of Public Utility Commissioners, 115 N.J.Super. 338, 346 (App. Div. 1971), aff'd, 61 N.J. 366 (1972); Berrie v. Berrie, 188 N.J.Super. 274, 278 (Ch. Div. 1983). "Information which bears even a remote relevance to the subject matter of a cause

of action is discoverable, if it is reasonably likely to lead to discovery of admissible evidence." Ibid.

Dr. Kant has the right to depose the following individuals under the aforenoted legal standard for the following reasons. First, Dr. Passerini made adverse employment decisions regarding Dr. Kant after he filed the instant lawsuit, including delay of a COVID accommodation, denial of Dr. Kant's appeal regarding a student grade grievance, and denial of two semesters of sabbatical leave. The Complaint includes a claim of retaliation. The timing of the adverse employment actions renders deposition of Dr. Passerini reasonably calculated to lead to the discovery of admissible evidence and proper in discovering the full panoply of evidence to completely and fairly adjudicate the claims in the Complaint. As such, it is abundantly clear that the deposition of Dr. Passerini is likely to bear relevant evidence regarding Dr. Kant's claims at issue in this case.

Second, the deposition of the Seton Hall representative inherently pertains to Defendants' policies and practices regarding all the misuse of technology related complaints of Dr. Kant. sabbatical leave, teacher effectiveness, and accommodations. Deposition on all these topics is reasonably related and can be expected to adduce relevant evidence related to the claims at issue in the Complaint. Dr. Kant was erroneously denied his right to complete pre-trial discovery and seeks reversal of the Superior Court's orders.

L. Denial of Plaintiff's Motion to Reconsider (289 a)

On January 31, 2024, Plaintiff filed a Motion to Reconsider. On April 24, 2024, Judge Petrillo issued an Order denying Plaintiff's Motion to Reconsider. The Law Division's underlying interlocutory order was in error as previously argued and therefore the denial of the motion to reconsider was by extension erroneous in tandem.

M. Denial of Plaintiff's Motion to Compel Discovery (374 a)

On April 27, 2024, Plaintiff filed a Motion to Amend/Supplement the Complaint wrongly entered on the Case Jacket as Motion Compel Discovery. On July 31, 2024, Judge Petrillo issued an Order denying Plaintiff's Motion to Amend/Supplement the Complaint wrongly entered on the Case Jacket as Motion to Compel Discovery. (374 a). Defendants can point to no cognizable prejudice from having Plaintiff depose certain individuals employed by Seton Hall University in connection with the claims at issue toward evincing relevant evidence. The Law Division erred in denying him this right.

In failing to permit the Complaint to be supplemented, and in unduly restricting discovery, the lower court's rulings conflict with the well established continuing violation doctrine. In Board of Education of Borough of Alpha v. Alpha Ed Assoc, 190 NJ 34 (2006), the Supreme Court reiterated this long standing precedent:

> We are convinced that the continuing violation doctrine that has been approved in our Appellate Division and in the federal courts is a viable doctrine to be applied by an arbitrator when appropriate. In the present case, the arbitrator found that despite the apparent lateness of the grievance, the Board's elimination of the health insurance benefit for part-time employees working twenty hours or more per week was a continuing violation that should be addressed and not dismissed as untimely. Essentially, the arbitrator concluded that each time the Board failed to provide health insurance benefits for those employees, that refusal was a separate and continuing violation.

The lower court overlooked that the continuing violation theory expands the scope of the events covered by the Complaint.

CONCLUSION

For all the foregoing reasons, Dr. Kant appeals to this Court to reverse the Law Division's granting of summary judgment, the orders denying Dr. Kant leave to amend/supplement the Complaint, limiting discovery, and sanctions.

Respectfully submitted,
OXFELD COHEN P.C.
Attorneys for Appellant, Dr. Chander Kant

/s/ Arnold Shep Cohen

ASC/elj

ARNOLD SHEP COHEN, ESQ.

CHANDER KANT, PHD, Appellant/Plaintiff, v. SETON HALL UNIVERSITY, JOYCE STRAWSER, RICHARD HUNTER, JOHN SHANNON, JOHN DOES 1-10, AND XYZ CORP. 1-10, Respondents/Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION **A-001235-24** CIVIL ACTION ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY LAW DIVISION, ESSEX COUNTY DOCKET NO. ESX-L-000007-21 SAT BELOW THE HONORABLE ROBERT H. GARDNER, J.S.C.

BRIEF OF RESPONDENTS/DEFENDANTS SETON HALL UNIVERSITY, JOYCE STRAWSER, RICHARD HUNTER, AND JOHN SHANNON

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Dated Submitted: August 22, 2025

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PRELIMINARY STATEMENT

Defendants, Seton Hall University ("Seton Hall"), Joyce Strawser ("Strawser"), Richard Hunter ("Hunter"), and John Shannon ("Shannon") (collectively, the "Seton Hall Defendants") respectfully request that the Court affirm the trial court's dismissal with prejudice of the Complaint ("Complaint") of Plaintiff, Chander Kant ("Plaintiff") as a matter of law, as well as affirm the trial court's order denying Plaintiff's motion to supplement the Complaint (which was made nearly two months after the close of discovery), orders sanctioning Plaintiff for repeatedly violating the Discovery Confidentiality Order, and discovery orders denying Plaintiff's abusive discovery tactics to prolong the case and protecting the Seton Hall Defendants from further harassment by Plaintiff.

Plaintiff is an Associate Professor at Seton Hall's W. Paul Stillman School of Business (the "Business School") in the Department of Economics and Legal Studies ("Department"). Seton Hall and its Business School maintained standards for promotion, merit pay bonuses, leaves of absence, and other employment topics. Plaintiff failed to meet these standards, resulting in denials of his various applications. Rather than take any responsibility for his failure to meet these standards, Plaintiff filed a three-count Complaint against the Seton Hall Defendants, alleging race discrimination, national origin discrimination, and retaliation under the New Jersey Law Against Discrimination ("NJLAD").

After six discovery extensions, consisting of 1,113 days of discovery, Seton Hall Defendants moved for summary judgment, which the trial court correctly granted given that the undisputed material facts unequivocally establish that Plaintiff simply was unqualified for a promotion in 2018. As a matter of law, Plaintiff cannot establish a *prima facie* case to sustain his claims under the NJLAD. The trial court's dismissal of Plaintiff's Complaint with prejudice should therefore be affirmed.[1]

This Court should similarly affirm the remaining orders that Plaintiff appeals. First, the trial court did not abuse its discretion in denying Plaintiff's attempt to "supplement" his Complaint, two months after the close of discovery, with untimely and futile claims. Second, the trial court did not abuse its discretion in sanctioning Plaintiff for his continued violations of the Discovery Confidentiality Order, of which Plaintiff was given multiple warnings and opportunities by defense counsel to correct before motion practice. Third, the trial court did not abuse its discretion in stopping Plaintiff's harassing tactics and unwarranted attempts to purposefully delay discovery and the trial, resulting in six discovery period extensions and 1,113

[1] Plaintiff also alleged ancillary claims including the failure to receive merit pay, funding for a conference, and other benefits which did not rise to the level of an adverse employment issue or are barred by the NJLAD's two-year statute of limitations. Since Plaintiff has not briefed the dismissal of these ancillary claims, any argument as to these claims is waived. See, e.g., Thomas Makuch, LLC v. Jackson, 476 N.J. Super. 169, 183 (App. Div. 2023), certif. den. 256 N.J. 436 (2024) (deeming as abandoned the five causes of action dismissed on summary judgment where plaintiff failed to address them on appeal).

days of discovery. Plaintiff's remaining basis for appeal as to the orders purportedly denying him discovery is not entirely clear. Regardless, there is no basis to disrupt any of the trial court's remaining orders compelling discovery and protecting the Seton Hall Defendants. Notably, eight of the orders Plaintiff raises in his brief were not included in his Amended Notice of Appeal, dated January 25, 2025, and accordingly, should not be considered by this Court. (See Pa4).

This Court should affirm the trial court's orders in their entirety.

PROCEDURAL HISTORY

On January 4, 2021, Plaintiff filed the Complaint, alleging three counts under the NJLAD. (Pa10). On February 11, 2021, Seton Hall Defendants filed their Answer with Affirmative Defenses, denying the Plaintiff's allegations. (Pa23). The original discovery end date set for May 7, 2022. On June 15, 2021, Seton Hall Defendants provided written responses and objections to discovery. (Da6).

On September 10, 2021, the Court granted Seton Hall Defendants' motion for protective order, entering a Discovery Confidentiality Order ("Discovery Confidentiality Order"), after Plaintiff's refusal to consent to one, and Seton Hall Defendants produced confidential documents shortly thereafter. (Da67-71; Da175).[2]

[2] Plaintiff was originally represented by Hyderally & Associates, P.C. (See Pa10). Less than three months later, Mr. Hyderally and his firm withdrew as counsel, and on December 22, 2022, Brian Cige, Esq. appeared as counsel for Plaintiff. Approximately six months later, on June 3, 2022, Mr. Cige moved to be relieved as counsel for Plaintiff. (See Da164).

On June 24, 2022, the court extended the discovery end date to October 4, 2022. (Pa49-50). On April 14, 2022, the court denied Plaintiff's motion to compel discovery responses which sought, *inter alia*, discovery regarding claims not in his Complaint, or strike the Answer. (Pa36). On June 24, 2022, the Court granted Seton Hall Defendants' motion to compel Plaintiff's deposition, for which Plaintiff had been refusing to provide available dates. (Pa49). Plaintiff subsequently appeared for deposition on July 26, 2022 and July 28, 2022, but then refused to further appear to finish his deposition, and filed another motion to compel. (Pa49-50; Pa62; Pa72).

On August 26, 2022, the court (1) granted Plaintiff's motion to extend discovery to January 2, 2023, and denied Plaintiff's motion to compel discovery responses; (2) granted Seton Hall Defendants' motion for protective order and sanctions against Plaintiff for his violation of the Discovery Confidentiality Order again in filing three confidential Seton Hall documents on the public docket (Pa130-133), and (3) granted Seton Hall Defendants' second motion to compel Plaintiff to appear to complete his deposition by September 20, 2022. (See Pa130-133; Pa2031-32) (collectively, the "August 26th Orders"). On October 7, 2022, the court denied Plaintiff's three motions for reconsideration of the August 26th Orders. (Da210-15). Plaintiff then filed a motion for leave to appeal, which this Court denied in November 2022. (Da218).

On December 22, 2022, the court extended discovery again through June 30, 2023, denied Plaintiff's motion to stay the matter pending his attempted appeal of the October 7th Reconsideration Orders, and granted Seton Hall Defendants' motion to compel Plaintiff to complete his deposition on January 11, 2023 and January 13, 2023. (Pa2828-29). On February 14, 2023, the court entered judgment against Plaintiff for attorney's fees and costs in connection with the August 26th Orders (specifically, the sanction and protective order).[3] (Pa272). On February 27, 2023, the court denied Plaintiff's motion to compel as to Plaintiff's third round of written discovery, propounded in August 2022. (Pa275-76).

On August 22, 2023, the court granted Plaintiff's motion for another extension of discovery through December 29, 2023. (Da2831-32). Thereafter, Plaintiff proceeded to take the depositions of three of the four Seton Hall Defendants and one non-party witness. (E.g. Pa1755, Pa2961).

On January 12, 2024, the court granted Plaintiff's motion for another extension of discovery, through February 29, 2024, permitting limited discovery (the "January 12th Order"). (Pa288). Seton Hall Defendants cross-moved for a protective order and sanctions because Plaintiff, in his motion, electronically filed excerpts of the deposition transcripts that the Seton Hall Defendants designated as

[3] Plaintiff's Attachment to the Amended Notice of Appeal contains an inaccurate summary of the February 14, 2023 Order.

confidential. (Pa286-87). After extensive oral argument on January 12, 2024, the court permitted limited discovery, allowing Plaintiff to take additional days of depositions of the Seton Hall Defendants. (Id.). While the court denied Seton Hall Defendants' cross-motion for sanctions, the court nevertheless gave Plaintiff an on-the-record warning to not violate the Discovery Confidentiality Order again. (See 10T54-64). It also ordered that no other discovery was allowed without further order of the court. (Pa288). In January and February 2024, Plaintiff completed the depositions of each of the Seton Hall Defendants. (E.g. Pa1755, Pa2961).

On February 16, 2024, the court denied Plaintiff's motion to reconsider the January 12th Order to the extent such requested discovery had already been sought by Plaintiff before that January 12th Order and sanctioned Plaintiff for violating the Discovery Confidentiality Order. The court granted Plaintiff the opportunity to pursue limited written discovery stemming from the completion of the depositions, including, if appropriate, a motion to compel. (Pa2929-32).

Rather than filing any motion to compel, and for the first time in the case's history, on April 27, 2024, almost two months after the close of all discovery, Plaintiff filed, *inter alia*, a motion to supplement his Complaint with allegations concerning circumstances that he had known about for years. (Pa292). The court set oral argument for July 31, 2024; however, the day before, Plaintiff emailed the court and counsel to advise that he was refusing to show up for the oral argument

due to the court's "bias". (Da474). During the July 31, 2024 hearing, the court noted Plaintiff's failure to attend and denied his motions. (12T3-7). Judge Petrillo advised that the case was being reassigned to the Honorable Robert H. Gardner ("Judge Gardner") due to administrative reshuffling that had nothing to do with Plaintiff's motion to recuse. (12T5-6). Finally, the court ruled that Plaintiff had waived his right to bring the motion to compel that had been permitted at the February 16, 2024 hearing, and that discovery was closed. (Pa2946-47).

On August 20, 2024, Plaintiff filed a motion to reconsider, *inter alia*, the July 31 Order, reviling Judge Petrillo, Judge Vena who was initially assigned to the case, and various members of the court's staff for alleged bias and discrimination against him. (See 13T45). Otherwise, his motion was a repeat of his prior April 27, 2024 motion. Seton Hall Defendants moved for sanctions. (See Da392; 13T49). On September 16, 2024, the court denied Plaintiff's motion and sanctioned Plaintiff. (Pa375-76).

On September 13, 2024, Seton Hall Defendants filed a motion for summary judgment on all counts. (Pa401). On October 25, 2024, Judge Gardner heard oral argument on Seton Hall Defendants' motion for summary judgment. (14T). On October 28, 2024, Judge Gardner granted Seton Hall Defendants' motion for summary judgment in its entirety and dismissed the Complaint with prejudice. (Pa8). On October 30, 2024, the court awarded Seton Hall Defendants' counsel fees

from the September 16 Order granting sanctions. (Pa377). On December 6, 2024, the court denied Plaintiff's motion to vacate the summary judgment order, dismissing the Complaint with prejudice. (Pa382).

On December 31, 2024, Plaintiff filed a Notice to Appeal. (Pa1). On January 25, 2025, Plaintiff filed an Amended Notice to Appeal. (Pa4).

RELEVANT STATEMENT OF FACTS[4]

I. SETON HALL'S FACULTY GUIDE AND DEPARTMENT GUIDELINES GOVERN PLAINTIFF'S EMPLOYMENT

Seton Hall has maintained a Faculty Guide ("Faculty Guide"), governing the employment of professors during Plaintiff's employment. (Pa1602). Seton Hall's business school is the W. Paul Stillman School of Business ("Business School"). The Business School's Department of Economics and Legal Studies (the "Department") has maintained Department Guidelines ("Department Guidelines") further defining criteria outlined in the Faculty Guide. (Pa1676; Pa1683). Defendant Strawser has been the dean of the Business School since 2012. (Pa2960). Plaintiff is an Associate Professor at the Business School in the Department. (Pa10).

[4] As indicated in the Preliminary Statement, Plaintiff alleged other claims, but on appeal takes issue only with the granting of summary judgment based on the alleged failure to promote claim.

II. PLAINTIFF IS NOT QUALIFIED FOR A PROMOTION TO FULL PROFESSOR

In October 2018, Plaintiff applied for promotion to Full Professor. (Pa1581). The 2018 Faculty Guide provided for three criteria for promotion: (a) "Teaching Effectiveness"; (b) "Scholarship, including Research and other Creative Work"; and (c) "Service to the University, the Profession, and the Community". (Pa1602). The Department Guidelines further defined each of these criteria, including but not limited to requiring the applicant demonstrate (a) an average teaching evaluation score of at least 3.75 since the last promotion, (b) the rankings of journals and a "continued display of scholarship," and (c) "strong evidence of continued service since the promotion/appointment to associate professor." (Pa534-35; Pa1019-20; Pa1676-99).

Plaintiff had the burden of showing that he satisfied the requisite promotion criteria. (Pa1602; Pa576; Pa606-07; Pa1684). However, Plaintiff submitted less than two semesters' worth of teaching evaluations: Fall 2015, and Spring 2018 (partial[5]). (Pa1684; Pa658-59). As a result, Plaintiff failed to demonstrate "continued and consistent excellence in teaching" per the requisite promotion criteria. (Pa1684; Pa1695).

[5] The teaching evaluations Plaintiff submitted for Spring 2018 were only for part of the semester, and not for all of the courses that he taught in Spring 2018. (Pa658-59). So, Plaintiff submitted *less than* two semesters' worth of evaluations out of his 29-year career at Seton Hall.

Importantly, throughout the ten years preceding Plaintiff's Fall 2018 promotion application, Plaintiff consistently scored well below the criteria for effective teaching. (Pa1712-46; Pa1690). Since the 2004-2005 academic year through his application for promotion in Fall 2018, Plaintiff failed to meet expectations for teaching every academic year he taught. (Pa1712-46; Pa668-79). For instance, in 2009, then-Dean Karen Boroff, who would ultimately decide whether Plaintiff would be promoted, had noted that Plaintiff's teaching reached a level of "incompetence". (Pa1712).

Plaintiff also failed to use the requisite "A+", "A", "B", and "C" ranking system for his publications to indicate the quality of the journals in which he published, as required by the Departmental Guidelines. (Pa1582; Pa643-44; Pa1676). To mislead his colleagues and give himself triple credit for each publication, Plaintiff listed each of his publications three times in his application. (Pa1582). He did this even though his past proposal within the Department that sole-authored articles be counted three times was specifically voted down by the Department and never adopted well before his promotion application. (Pa610; Pa825-28; Pa972).

As of the time of his October 2018 promotion application, Plaintiff had only published nine refereed journal articles in his 29 years at Seton Hall. (Pa1581; Pa785-86). Plaintiff's most recent publications prior to his promotion application

were only in 2016, 2010, and 2005. (Pa1582; Pa612-15). Further, Plaintiff made no effort to write scholarly articles with other authors. (Pa1016). In his application, Plaintiff included performing his ordinary job duties as a form of leadership and service, which he admits is not leadership. (Pa1582; Pa587-88) ("I think it's preposterous that you would try to count a payroll dispute with service"); (Pa721-25) ("Q. Would you agree with me that that was not leadership? A. No, that's not leadership. … Q. But the work you were doing was your ordinary duties; correct? A. Yes.").

Hunter and Shannon, who are full professors in the Legal Studies department, voted against Plaintiff's 2018 application for promotion at the Department review level. (Pa1684). Both Defendants indicated they voted against the promotion because of Plaintiff's failure to provide sufficient teaching evaluations, to provide the rank or quality of the journals in which he published, and to demonstrate leadership beyond his normal duties. (Pa1684). Strawser also declined to recommend Plaintiff for promotion because: his teaching evaluation scores did not consistently rise to the 3.75 level; he had published only nine refereed articles since joining Seton Hall and "only four peer-reviewed journal articles over the past thirteen years"; and he did not demonstrate leadership that is expected for promotion to Full Professor, such as serving as a chair to leading significant projects or initiatives. (Pa1691).

Significantly, the Business School's Rank & Tenure Committee unanimously rejected Plaintiff's 2018 promotion application because of Plaintiff's failure to provide sufficient evidence that Plaintiff met the standards in the Faculty Guide and Department Guidelines. (Pa1696). Plaintiff admitted at deposition that none of the Business School Rank & Tenure Committee members voted against him out of discriminatory animus. (Pa758; Pa764-68).

The University Rank & Tenure Committee also unanimously rejected Plaintiff's promotion application because of Plaintiff's failure to meet the criteria for promotion. (Pa1700). Plaintiff admits that 10 of the 11 University Rank & Tenure Committee members who voted against him did not do so out of discriminatory animus. (Pa1003; Pa1925). Interim Provost Boroff rejected Plaintiff's promotion application on January 16, 2017. (Pa2802).

In his Complaint, Plaintiff accused Strawser, Hunter, and Shannon of discriminatory animus, but was unable to produce any evidence of the same during discovery. The only specific allegation he made was against Hunter with regard to an alleged comment made in 2014, seven years before he filed his Complaint.

Specifically, Plaintiff alleges that in "fall of 2014, Professor Hunter, whose race is Caucasian, and national origin is American, informed Associate Professor Kant that he was 'one of those typical Indians who's not submissive to us.'" (Pa10, ¶24). However, Plaintiff confirmed that this alleged comment was an isolated

comment, and he has never heard Hunter make any derogatory comments about people from India. (Pa868-69). Plaintiff admitted that he took no action in response to this alleged comment, ostensibly "[b]ecause there were more important issues to consider". (Pa870). Although Plaintiff subsequently filed grievances against Hunter, and complaints against other Seton Hall employees for discrimination, he did not file a grievance or a complaint against Hunter for this alleged comment. (Pa870-73). Aside from his testimony, Plaintiff has no evidence to support how this comment is connected to any of the allegations in the Complaint. (Pa874).

LEGAL ARGUMENT

I. STANDARDS OF REVIEW

A. Summary Judgment

This Court reviews a trial court's summary judgment decision *de novo*. DeSimone v. Springpoint Sr. Living, Inc., 256 N.J. 172, 180 (2024) (citing Samolyk v. Berthe, 251 N.J. 73, 78 (2022)). It thus "employ[s] the same standard [of review] that governs the trial court." Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). This Court "consider[s] whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational

factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995). This Court's review of the facts is limited to the undisputed facts presented to the trial court. See Kennedy v. Meadowview Nursing & Convalescent Ctr., 308 N.J. Super. 565, 573 (App. Div. 1998).

B. Leave to Amend

This Court's review of the trial court's denial of a motion for leave to amend is limited. Franklin Med. Assocs. v. Newark Publ. Sch., 362 N.J. Super. 494, 506 (App. Div. 2003). In other words, "[t]he determination of a motion to amend a pleading is generally left to the sound discretion of the trial court, and its exercise of discretion will not be disturbed on appeal, unless it constitutes a 'clear abuse of discretion.'" Id. (quoting Salitan v. Magnus, 28 N.J. 20, 26 (1958)). A court does not abuse its discretion in not allowing leave to amend where allowing an amendment is futile. Prime Acct. Dep't v. Twp. of Carney's Point, 212 N.J. 493, 511 (2013).

C. Discovery Sanctions and Discovery Orders

This Court reviews a trial court's sanction for discovery misconduct to determine "whether the trial court abused its discretion." Abtrax Pharms., Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 517 (1995). A trial court's discovery sanction will be upheld "unless an injustice appears to have been done." Id. "Sanctions imposed

by a trial court will not be disturbed on appeal if they are just and reasonable under the circumstances." Aetna Life & Cas. Co. v. Imet Mason Contractors, 309 N.J. Super. 358, 365 (App. Div. 1998).

The abuse of discretion standard also applies to the trial court's decisions on discovery. Focazio v. Aboyoun, 481 N.J. Super. 153, 170 (App. Div. 2025). "[A]bsent . . . a judge's misunderstanding or misapplication of the law," this Court should affirm a discovery decision. Brugaletta v. Garcia, 234 N.J. 225, 240 (2018).

II. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE

A. Plaintiff Was Not Qualified for the Promotion He Sought.

The trial court correctly found Plaintiff cannot establish the critical second element of his *prima facie* case of discrimination under the NJLAD because he was unqualified for promotion to full Professor. The undisputed material facts amply support this finding.[6]

1. Plaintiff Was Not Qualified for Promotion.

To establish a *prima facie* case of race or national origin discrimination under the NJLAD, Plaintiff must show: "(1) that []he is a member of a class protected by the anti-discrimination law; (2) that []he was qualified for the position or rank sought; (3) that []he was denied promotion, reappointment, or tenure; and (4) that

[6] Plaintiff failed to file any responsive statement of material facts in opposition to Seton Hall Defendants' motion for summary judgment. Pursuant to Rule 4:46-2, the trial court correctly found that there was no genuine dispute of material facts.

others ... with similar or lesser qualifications achieved the rank or position." Dixon v. Rutgers, 110 N.J. 432, 442 (1988). For a failure to promote claim under the NJLAD, the plaintiff must demonstrate he was qualified for the position or rank he sought. Id. If Plaintiff establishes the aforementioned *prima facie* case, the burden of production only, then shifts to Seton Hall Defendants to "articulate a legitimate, non-retaliatory reason for the decision." Id.

The burden then shifts back to Plaintiff to prove that the articulated reason is a pretext or that a discriminatory reason more likely motivated the employer's action. Jamison v. Rockaway Twp. Bd. of Educ., 242 N.J. Super. 436, 445 (App. Div. 1990). Notably, "an employee's poor performance in discharging his duties is a legitimate nondiscriminatory reason to fire or demote the employee." Casseus v. Elizabeth Gen. Med. Ctr., 287 N.J. Super. 396, 405 (App. Div. 1996).

Here, Seton Hall's July 2018 Faculty Guide and the Department Guidelines outlined the standards for the 2018 promotion process. (Pa1602-1676; Pa525-26). As noted above, those included (a) "Teaching Effectiveness"; (b) "Scholarship, including Research and other Creative Work"; and (c) "Service to the University, the Profession, and the Community". (Pa1602). The Faculty Guide further permitted each department to develop its own standards and expectations for promotion, which Plaintiff's Department set forth in 2014 in the Department Guidelines. (Pa1675). The applicant, here Plaintiff, has the burden of showing that

he satisfies the criteria for promotion. (Pa576; Pa606-07; Pa1684). Plaintiff failed to meet the legitimate and nondiscriminatory standards required for promotion, and the undisputed material facts support the trial court's decision.

a. Plaintiff did not satisfy the "Teaching Effectiveness" criteria

The standard for "Teaching Effectiveness" under the Faculty Guide is "continued and consistent excellence in teaching", which Plaintiff failed to demonstrate. (Pa1602-76; Pa1683; Pa1695). Specifically, Plaintiff submitted less than two semesters' worth of teaching evaluations: Fall 2015, and Spring 2018 (partial), which failed to satisfy the application requirements. (Pa1684; Pa658-59). Because Plaintiff disregarded the application requirements for promotion and only provided a limited number of course evaluations, he failed to demonstrate "continued and consistent excellence in teaching." (Pa1683; Pa1695).

Nonetheless, even if Plaintiff had submitted more evaluations (which Plaintiff did not), those evaluations would have shown that Plaintiff had consistently scored ***below*** the criteria for effective teaching over the last ten years of his teaching career. (Pa1712-46; Pa1691). For instance, then-Dean Karen Boroff, who would ultimately decide whether Plaintiff would be promoted, had noted in the past that Plaintiff's teaching reached a level of "incompetence" multiple times. (Pa1712). Since the 2004-2005 academic year through the time of his application for promotion in Fall 2018, Plaintiff failed to meet the requisite expectations for continued excellence in

teaching every academic year he taught, except for three semesters. (Pa1712-46; Pa668-79).

Clearly, Plaintiff cherry-picked only two semesters of teaching evaluations to submit with his 2018 promotion application, concealing the years of evaluations demonstrating continued and consistent incompetent teaching. (Pa1712-46; Pa1691). Based on this alone, the undisputed facts show Plaintiff was unqualified for the 2018 promotion and cannot establish the requisite second element of the *prima facie* case in order to sustain his discrimination claim under the NJLAD.

b. Plaintiff did not satisfy the "Scholarship" criteria

The University standard for "Scholarship" under the Faculty Guide is "professional recognition of meritorious publications; research, or other creative work". (Pa1602). The Department Guidelines adopt "four tiers or levels of publication" for ranking journal publications according to an A+, A, B, and C system to demonstrate their merit. (Pa1676). For promotion to Full Professor, the Department Guidelines provided two main ways to satisfy the research requirement:

> 1. Four economics publications: where two are of 'A' quality or better, the other two must be of 'B' rank or better. At least one of these publications must be sole authored. ***Plus a display of continued scholarship*** and evidence of citations to published work.
>
> 2. Three economics publications: where one is an 'A+', the other two are of 'B' rank or better. At least one of these publications must be sole authored. ***Plus a display of continued scholarship*** and evidence of citations to published work.

Id. (emphases added)

In his application, Plaintiff refused to abide by the Department Guidelines, and refused to use the Department's "A+", "A", "B", and "C" system to indicate the quality of the journals in which he had published, or how his publications met the standards for promotion. (Pa1582). The Business School's Rank & Tenure Committee and University Rank & Tenure Committee members were also not amused by Plaintiff's antics, noting Plaintiff "set his own criteria" and provided "little explanation of how to objectively measure the quality of the journals." (Pa1696-1700). Because Plaintiff failed to provide the requisite journal rankings for his publications, Plaintiff failed to carry his burden to demonstrate "professional recognition of meritorious publications; research, or other creative work". (Pa1684).

Further, Plaintiff listed each of his publications three times in his application to give himself triple credit for each publication, giving a false impression that he satisfied Department Guidelines. (Pa1582). However, Plaintiff knew this tactic was improper and insufficient to demonstrate the number of required articles because he proposed this exact method of crediting publications to the Department, which had been voted down and never adopted. (Pa610; Pa825-28; Pa972).[7] Plaintiff also concedes (as he must) that there is no language in the Faculty Guide or the Department Guidelines that permitted him to list his published articles three times in his application submission. (Pa604-09; Pa1602-1676).

[7] Unlike his colleagues, Plaintiff only writes sole-authored articles. (Pa1582).

Nonetheless, even if Plaintiff had properly listed his articles once, Plaintiff's application would have shown a very short list of articles despite his long tenure at Seton Hall. Indeed, as of the time of his October 2018 promotion application, Plaintiff only published nine refereed journal articles in his 29 years at Seton Hall. (Pa1581; Pa731-32). Plaintiff's most recent publications leading up to his promotion application are only in 2016, 2010, and 2005. (Pa1582; Pa612-15).

Because of this long drought in Plaintiff's publication record and Plaintiff's own failure to provide any ranking as to the merit of his publications, Plaintiff did not objectively meet the criteria for promotion to Full Professor. (Pa1602-91). Indeed, Plaintiff had "only four peer-reviewed journal articles over the past thirteen years." (Pa1691). Strawser, who did not recommend Plaintiff for promotion, expressly wrote that it was due to Plaintiff being unable to demonstrate the requirement of "a display of continued scholarship" that "one would expect to see from a Full Professor". (Id.).

Here again, Plaintiff cannot demonstrate he was qualified for a promotion as required to establish a *prima facie* case for discrimination. And, therefore, the trial court properly rejected Plaintiff's claims fail as a matter of law.

c. Plaintiff also did not satisfy the "Service and Leadership" criteria

The promotion standard for "Service and Leadership" under the Faculty Guide is "service and leadership in the university, the profession or the community."

(Pa1602). The Department Guidelines define this as "strong evidence of continued service since the promotion/appointment to associate professor." (Pa1676).

On his 2018 promotion application, Plaintiff noted that he worked for four months without pay—a payroll issue that was later resolved and Plaintiff was paid in full. (Pa1582). Since teaching is part of Plaintiff's regular duties as a member of the faculty, that period cannot constitute service to the University, the profession, or the community, let alone constitute leadership. (Pa587: Pa721-25) ("Q. Would you agree with me that that was not leadership? A. No, that's not leadership. … Q. But the work you were doing was your ordinary duties; correct? A. Yes.").

In short, Plaintiff's application lacked any demonstration of Plaintiff taking any leadership roles or engaging in any cognizable service activities, and thus he did not satisfy the standard for promotion in 2018. (Pa1602). Because he is unqualified, Plaintiff cannot establish the required second element of his *prima facie* case for discrimination as to his 2018 promotion application. The trial court correctly concluded that Plaintiff's claim fails as a matter of law.

2. Plaintiff Did Not Suffer An Adverse Employment Action

The remaining conduct of which Plaintiff complains—an alleged isolated comment in 2014—does not amount to a tangible adverse employment action.

An "adverse employment action" "must rise above something that makes an employee unhappy, resentful or otherwise cause an incidental workplace

dissatisfaction." Victor v. State, 401 N.J. Super. 596, 616 (App. Div. 2008), aff'd as modified, 203 N.J. 383 (2010). For example, "'unfavorable evaluation[s], unaccompanied by a demotion or similar action' or a job reassignment with no corresponding reduction in wages or status is insufficient." Id. (quoting El–Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 170 (App. Div. 2005)). Rather, adverse actions include those that "affect wages, benefits, or result in direct economic harm" or "cause a significant, non-temporary adverse change in employment status or the terms and conditions of employment." Id.

Similarly, an isolated comment does not rise to the level of an adverse employment action. In his Complaint, Plaintiff alleges that in "fall of 2014, Professor Hunter, whose race is Caucasian, and national origin is American, informed Associate Professor Kant that he was 'one of those typical Indians who's not submissive to us.'" (Pa10, ¶ 24). However, this alleged comment does not rise to the level of an adverse employment action under the NJLAD.

Specifically, Plaintiff confirmed that this alleged comment was an isolated comment, and he has never heard Hunter make any derogatory comments about people from India. (Pa868-69). Plaintiff admitted that he took no action in response to this alleged comment, ostensibly "[b]ecause there were more important issues to consider". (Pa870). Although Plaintiff subsequently filed grievances against Hunter, and complaints against other Seton Hall employees for discrimination, he

did not file a grievance or a complaint against Hunter for this alleged comment. (Pa870-71). Aside from his testimony, Plaintiff has no evidence to support how this comment is connected to any of the allegations in the Complaint. (Pa872) As such, this isolated comment fails to establish a *prima facie* case for discrimination under the NJLAD.

3. Plaintiff is Unable to Point to any Comparator

Under the NJLAD, Plaintiff must point to any actual comparator but, as shown below, is unable to do so to support his claims of discrimination. Only as to the 2018 promotion does Plaintiff mention a comparator – Kurt Rotthoff ("Rotthoff"). (Pa3192-218). However, the element requires that a comparator have similar or lesser qualifications. Dixon, 110 N.J. at 442. Rotthoff is not a comparator as Rothoff clearly has qualifications that very well exceed those of Plaintiff.

While Plaintiff failed to provide teaching evaluations over the years and instead, demonstrated consistent teaching *incompetence*, Rotthoff submitted teaching evaluations since his prior promotion that showed he had achieved a ranking of "Outstanding" in overall teaching in 27 out of 29 of the courses he had taught since his last promotion, which included student comments praising his teaching competence. (Pa3192). While Plaintiff failed to provide the journal rankings and only published three articles over the course of the decade or so leading up to promotion, Rotthoff published 15 peer-reviewed articles in only five years

(more than Plaintiff had published in his entire 29-year career at Seton Hall at that point), and provided the Department Guidelines ranks for each (A+, A, B, or C, among other criteria), including four publications in A-ranked journals. (Id.). Finally, while Plaintiff identified his own job duties as acts of service or leadership, Rotthoff identified numerous service activities in coaching student sports, the University Athletic Council, the Undergraduate Admissions Committee, and heavy involvement in other University governance and service committees, including chairing the School's Undergraduate Educational Policy Committee. (See id.).

As demonstrated above, Rotthoff is a far more qualified faculty member than Plaintiff and not even close to a comparator. As such, Plaintiff is unable to establish this final element of a *prima facie* case for discrimination under the NJLAD.

4. Seton Hall Denied Plaintiff Promotion because of Legitimate, Nondiscriminatory Reasons

As shown above, Seton Hall denied Plaintiff for promotion for legitimate, nondiscriminatory reasons. If this Court determines that Plaintiff established a *prima facie* case under the NJLAD, Seton Hall Defendants have provided multiple legitimate, nondiscriminatory reasons for their lawful actions. The burden on Seton Hall Defendants is simply – "one of coming forward with nondiscriminatory, legitimate reasons for the particular employment action." Mogull v. CB Com. Real Est. Grp., Inc., 319 N.J. Super. 53, 65 (App. Div. 1999), rev'd on other grounds, 162

N.J. 449 (2000). These reasons are accepted as true at face value regardless of whether persuasive or not. Id.

As demonstrated above, in Section II.A., Plaintiff did not receive a promotion in 2018 because he did not meet the legitimate and nondiscriminatory University standards – Plaintiff did not submit consistent years of teaching evaluations (because they showed he had deplorable teaching effectiveness), he did not submit journal rankings to establish the merit of his publications and did not consistently publish journals to evidence scholarship, and he did not do anything above his typical job duties to demonstrate leadership or service. Plaintiff's failure to qualify for the promotion he sought is evident.

Accordingly, the Seton Hall Defendants had legitimate, non-discriminatory reasons for the above actions, which is fatal to Plaintiff's claims.

5. Plaintiff is Unable to Show Discriminatory Animus

Plaintiff retains the burden to prove that the legitimate, nondiscriminatory reasons are pretext and were actually motivated by discriminatory animus. Viscik v. Fowler Equip. Co., Inc., 73 N.J. 1, 14 (2002). In the context of a university, "[w]hen a decision to hire, promote or grant tenure to one person rather than another is reasonably attributable to an honest even though partially subjective evaluation of their qualifications, no inference of discrimination can be drawn." Chou v. Rutgers, State Univ., 283 N.J. Super. 524, 540 (App. Div. 1995). Indeed, "courts must be

vigilant not to intrude into that determination and should not substitute their judgment for that of the college with respect to the qualifications of faculty members." Id. at 539.

Here, Plaintiff is not only unable to show discriminatory animus, but **he has admitted** there has been no discriminatory animus towards him. As to the promotion, aside from objectively not qualifying for promotion to Full Professor, Plaintiff has also admitted that the vast majority of faculty that voted against him did not do so out of discriminatory motives. Specifically, 17 faculty members and administrators voted on Plaintiff's 2018 promotion application. (Pa1696; Pa1880; Pa1925). Plaintiff admitted at deposition that none of the members of the Business School's Rank & Tenure Committee voted against him out of discriminatory animus. (Pa758-68). Plaintiff further admitted that 10 of the 11 members of the University Rank & Tenure Committee who voted against him did not do so out of discriminatory animus. (Pa1002; Pa1925).

Simply put, Plaintiff admits there is no discriminatory animus fueling the other individuals who reviewed, recommended, or voted on his various applications to Seton Hall for employment opportunities. His false claim of discriminatory animus is not supported by the record.

For these reasons, as shown above, Plaintiff's counts (Count I and II) for discrimination fail as a matter of law based on the undisputed material facts. Accordingly, the trial court's summary judgment order should be affirmed.

B. Seton Hall Defendants Did Not Harass Plaintiff, Warranting Dismissal of Counts I and II

Seton Hall Defendants did not unlawfully harass Plaintiff. As demonstrated above, the undisputed material facts do not support any finding of discriminatory animus. Instead, as demonstrated above, Seton Hall Defendants acted on legitimate nondiscriminatory reasons for denying Plaintiff a promotion.

"Among the prohibited forms of employment discrimination is harassment, based on race, religion, sex, or other protected status, that creates a hostile work environment." Cutler v. Dorn, 196 N.J. 419, 430 (2008). To establish discriminatory harassment, Plaintiff must prove that: "the complained-of conduct (1) would not have occurred *but for* the employee's [protected trait]; and it was (2) *severe or pervasive* enough to make a (3) *reasonable [person]* believe that (4) the conditions of employment are altered and the *working environment is hostile or abusive*." Id. (emphases in original). The focus is on the harassing conduct – "not its effect on the plaintiff or the working environment." Id. at 431. "Whether harassing conduct makes a work environment hostile is assessed by use of a reasonable person standard." Id. Conduct is severe or pervasive if it would "make a reasonable person believe that the conditions of employment are altered and that

the working environment is hostile." Id. Courts look to the following circumstances in determining whether the conduct is severe or pervasive: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Id. at 432.

Here, Hunter's isolated, alleged comment to Plaintiff in 2014, which is barred by the statute of limitations, is not conduct that is severe or pervasive under the law. The comment was limited to one time, was not physically threatening or humiliating, and not severe. It was not even subjectively severe or hostile as Plaintiff filed a grievance against Hunter after the comment was made and did not even mention the comment. (Pa870-73). Therefore, there is no discriminatory harassment claim that can be sustained by the undisputed material facts, warranting dismissal of Counts I and II as a matter of law.

C. Seton Hall Defendants Did Not Retaliate Against Plaintiff, Warranting Dismissal of Count III

Seton Hall Defendants also did not retaliate against Plaintiff. NJLAD retaliation claims follow the same burden-shifting analysis as NJLAD discrimination claims. Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 546 (2013). To establish a *prima facie* case of retaliation under the NJLAD, a plaintiff must show that (1) "he was engaged in a protected activity known to the defendant"; (2) "he was thereafter subjected to an adverse employment decision by the defendant"; and (3) "there was

a causal link between the two". Romano v. Brown & Williamson Tobacco Corp., 284 N.J. Super. 543, 548-49 (App. Div. 1995).

Plaintiff is unable to demonstrate that he engaged in any protected activity, that there is any causal link, or that he was otherwise subjected to any other adverse employment actions to sustain retaliation claims under the NJLAD.

1. Plaintiff Did Not Engage in Protected Activity Under the NJLAD

Under the NJLAD, "the plaintiff bears the burden of proving that his or her original complaint—the one that allegedly triggered his or her employer's retaliation—was made reasonably and in good faith." Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 373 (2007). "[A]n unreasonable, frivolous, bad-faith, or unfounded complaint cannot satisfy the statutory prerequisite necessary to establish liability for retaliation under the LAD." Id. However, Plaintiff did not engage in any protected activity in this case.

Here, Plaintiff admitted that the majority of the people who did not recommend him for promotion did not have discriminatory animus. (See Pa758-68; Pa1003; Pa1925). Moreover, Plaintiff was unable to point to any conduct during the 2019 promotion process by Strawser, Shannon, or Hunter that demonstrated a discriminatory animus. Instead, the Faculty Guide is clear that applicants are not permitted to supplement their applications for promotion once the process has begun. (See Pa1602).

The legitimate denial of promotion, as demonstrated above in Section II.A, cannot be challenged with smokescreen, threadbare allegations of discrimination. Therefore, Plaintiff is unable to sustain a cause of action for retaliation under the NJLAD since he did not engage in any cognizable protected activity.

2. Plaintiff Did Not Otherwise Suffer an Adverse Employment Action Under the NJLAD

As evidenced herein, the remaining conduct of which Plaintiff complains does not amount to adverse employment actions. Like discrimination claims, retaliation claims also require an "adverse employment action," and the same standard set forth above applies. Victor, 401 N.J. Super. at 616. As demonstrated above in Section II.A.2, Plaintiff complains of conduct that does not rise to the level of an adverse employment action—specifically, an alleged isolated comment. Therefore, Plaintiff is unable to sustain a cause of action for retaliation under the NJLAD based on this conduct.

3. Plaintiff Cannot Demonstrate the Requisite Causal Link

There is no causal link that Plaintiff can tie together to sustain a retaliation claim. Instead, Plaintiff's internal complaint in 2019, stemmed from being not recommended for promotion – that is, he was first denied something (what he would argue is an adverse employment action) and then would make the internal complaint that the denial happened because of discrimination. Needless to say, if the adverse

action occurred before the complaint, there is no causation to establish a retaliation claim under the law.

4. Seton Hall Denied Plaintiff Promotion because of Legitimate, Nonretaliatory Reasons

As set forth in Section II.A., Plaintiff was unqualified and did not meet the standards for promotion in 2018. Plaintiff did not receive a promotion in 2018 because he did not meet the requisite standards – he did not submit consistent years of teaching evaluations (because they showed he had deplorable teaching effectiveness), he did not submit journal rankings to establish the merit of his publications and did not consistently publish journals to evidence scholarship, and he did not do anything above his regular job duties to demonstrate leadership or service. As Seton Hall Defendants have proffered legitimate, non-retaliatory reasons for the challenged actions, the trial court properly held that Plaintiff's claim fails.

5. Plaintiff is Unable to Show Retaliatory Animus

As demonstrated in Section II.A.5, Plaintiff is unable to show any discriminatory animus to support his NJLAD claims. For these same reasons, Plaintiff's claim for retaliation is unsupported by the undisputed material facts. Therefore, the court correctly granted Seton Hall Defendants' Motion for Summary Judgment and dismissed Count III of Plaintiff's Complaint with prejudice.

D. The Statute of Limitations Bars The Alleged 2014 Comment From Supporting Plaintiff's Claims

Plaintiff complains of conduct that falls outside of the statute of limitations and so is barred from this action. Under the NJLAD, the statute of limitations for discrete acts of discrimination, such as a failure to promote, "constitutes a separate actionable 'unlawful employment practice.'" Roa v. Roa, 200 N.J. 555, 567 (2010) (quoting National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 114 (2002)). As such, "for limitations purposes, a discrete retaliatory or discriminatory act occur[s] on the day that it happen[s]." Id. (alterations in original). The statute of limitations under the NJLAD is two years. N.J.S.A. 2:14-2(a); Vitale v. Schering-Plough Corp., 231 N.J. 234, 249 (2017).

Plaintiff filed his Complaint on January 4, 2021. (See Pa10). The statute of limitations under the NJLAD means that anything before January 4, 2019 is no longer actionable. The alleged comment by Hunter occurred in 2014 and is barred from this matter by the statute of limitations. (See id.).

E. The Claims Against The Individual Defendants Fail

Having failed to establish a *prima facie* case for discrimination and retaliation under the NJLAD, Plaintiff's claims against the individual Defendants were properly dismissed. Under the NJLAD, Plaintiff must demonstrate that Seton Hall Defendants acted wrongfully in causing injury to Plaintiff, that each individual is generally aware of their role in part of the overall wrongful activity at the time, and

that the individual defendant knowingly and substantially assisted in the main wrongful conduct. Tarr v. Bob Ciasulli's Mac Auto Mall, Inc., 181 N.J. 70, 84 (2004). Courts examine the nature of conduct, amount of assistance, presence or absence at time of the conduct, and relation to others and state of mind. See id.

Because Plaintiff is unable to establish the *prima facie* elements of his claims, there can be no aiding and abetting liability on the part of any of the individual defendants. See Monaco v. American General Assurance Co., 359 F.3d 296, 307 n.15 (3d Cir. 2004) ("[I]nasmuch as we hold that the district court correctly granted summary judgment to the corporate defendants, any claim he brought against the individual defendant for aiding and abetting fails as well.").

Nonetheless, even if Plaintiff could establish a *prima facie* case, he would need to prove that the Individual Defendants were motivated by discriminatory animus or knew of others' discriminatory animus and substantially assisted. However, Plaintiff already admitted that the others involved in the denials were not racist or engaged in discriminatory or retaliatory animus. (Pa758-68; Pa1003; Pa1924). Plaintiff thus cannot sustain his burden to prove discriminatory animus.

1. Strawser Cannot be Held Individually Liable under the NJLAD

As evidenced herein, Strawser cannot be held individually liable as Plaintiff has not established that Strawser demonstrated discriminatory or retaliatory animus, or knowingly or substantially supported such animus, against the Plaintiff. Plaintiff

has failed to support his allegations against Strawser with any evidence other than his own speculation. With respect to the 2018 promotion application, Strawser's reasons for not recommending Plaintiff's promotion were well-grounded in Plaintiff's deplorable teaching record, his deficient publication record, and his underwhelming service to, and non-existent leadership within, the University. (Pa1582; Pa1691). While Plaintiff complained about Strawser's use of certain control questions on the teaching evaluations as set forth in the Department Guidelines, Plaintiff admitted that Strawser was required to follow the Department Guidelines until they were amended. (Pa1022-23). Therefore, the Complaint was properly dismissed with prejudice as to Strawser.

2. Hunter Cannot be Held Individually Liable under the NJLAD

As shown herein, Hunter cannot be held individually liable as he did not demonstrate any discriminatory or retaliatory animus, or knowingly or substantially support such animus, against the Plaintiff. In his Complaint, Plaintiff alleges that in "fall of 2014, Professor Hunter, whose race is Caucasian, and national origin is American, informed Associate Professor Kant that he was 'one of those typical Indians who's not submissive to us.'" (Pa10, ¶ 24). At deposition, Plaintiff claimed that this alleged comment was made in Fall 2014. (Pa863-64). Given that this comment was allegedly made more than six years prior to the filing of the Complaint, this "claim" is barred by the two-year statute of limitations.

Plaintiff also took no action in response to this alleged comment, "[b]ecause there were more important issues to consider". (Pa870). Although Plaintiff subsequently filed grievances against Hunter, and complaints against other Seton Hall employees for discrimination, he did not file a grievance or a complaint against Hunter for this alleged 2014 comment. (Pa870-73). Aside from his testimony, Plaintiff has no evidence to support this allegation. (Pa874). As such, this isolated alleged comment fails to establish a *prima facie* case for discrimination.

As to the promotion application, Hunter's reasons for not supporting Plaintiff's promotion application were legitimate and nondiscriminatory for the reasons set forth above. Therefore, the Complaint was properly dismissed in its entirety with prejudice as to Hunter.

3. Shannon Cannot be Held Individually Liable under the NJLAD

Shannon cannot be held individually liable as he did not demonstrate any discriminatory or retaliatory animus, or knowingly or substantially support such animus, against the Plaintiff. Shannon's reasons for not supporting Plaintiff's promotion in 2018 were objective and well-grounded for the reasons set forth above. Plaintiff further admitted that he has never heard Shannon make racist comments against anyone, let alone people born in India. (Pa992). In short, Plaintiff has zero evidence that Shannon voted against Plaintiff's promotion on the basis of

discriminatory animus. Therefore, the Complaint was properly dismissed in its entirety with prejudice as to Shannon.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFF'S MOTION TO ADD NEW CLAIMS

The trial court did not abuse its discretion when it denied Plaintiff's motion to add new claims his Complaint two months after the close of discovery as untimely and futile. (Pa373). Importantly, the discovery period had been extended six times already, totaling 1,113 days, and Plaintiff sought to add allegations that predated the filing of the Complaint over two years prior. Throughout the litigation, Plaintiff attempted to "add" "claims" by way of letter to Seton Hall Defendants' counsel without moving to amend his Complaint and sought discovery regarding these unpled "claims". (Da392-95; Pa2950; Pa1958). The trial court repeatedly upheld Seton Hall Defendants objections on the grounds that those unpled "claims" were not part of the Complaint. (E.g. Pa130; 10T13:6-20:23).

When Plaintiff finally brought a motion in April 2024 to formally add the claims, the proposed claims and attendant delay were as follows:

"New" Allegation	Date Allegedly Occurred	Date Plaintiff First Mentioned Issue in the Case	Resulting Delay
Teaching more courses than white faculty colleagues	Spring semester 2017 – Fall semester 2018 (before Complaint filed)	November 3, 2023 (deposition questions based on documents Plaintiff produced on Oct. 10, 2023)	7 years

Laptop audio speakers disabled	May 2020 (before Complaint filed)	June 17, 2021 (letter)	4 years
Display problems on his computer	Spring 2022	June 17, 2021 (letter) and August 5, 2022 (letter)	2 years
Password issues on his laptop	January 2023	September 2023 (brief)	1.5 years
Student grade appeal	October 2020 – March 2022	February 2, 2022 (discovery request)	3.5 years
Sabbatical denial (partial)	October 2020 (before Complaint filed)	June 17, 2021 (letter)	3.5 years
Delay in receiving department meeting link	March 4, 2022	August 10, 2022 (motion)	2 years
Election results email that "humiliated" Plaintiff	May 11, 2022	August 5, 2022 (letter)	2 years

(Da392-459; Pa113; Pa128; Pa353).

All of the above allegations occurred well before discovery closed on February 29, 2024. (See Pa2929-32). At least half of these claims—the "teaching more courses" claim, the sabbatical claim, the disabled laptop audio speakers claim, and the student grade appeal—all allegedly occurred in 2020, prior to the filing of the Complaint in January 2021. Therefore, these alleged claims were not an attempt to supplement the Complaint, but rather, were an attempt to *amend* the Complaint.

"If a claim does not arise until **after** a complaint has been filed, leave to add that claim should be granted **so long as** the moving party has exercised due diligence, and the addition will not cause the trial to be unduly delayed or complicated." Dep't of Env't Protection v. Standard Tank Cleaning Corp., 284 N.J. Super. 381 (App. Div. 1995) (emphasis added). Courts should reject attempts to amend pleadings where such pleadings would be "filed late in the litigation and require[] a renewal of discovery" and will "result in untenable delay of trial of the issues as already framed." Brown v. Brown, 208 N.J. Super. 372, 381 (App. Div. 1986).

Plaintiff offered no excuse for why he waited years to bring his motion to add these alleged claims. Plaintiff was on notice by no later than August 26, 2022, that the court had sustained Seton Hall Defendants' objections to Plaintiff's attempts to obtain discovery on these new allegations that were not in his Complaint. Allowing Plaintiff to amend his pleading would have necessarily required the trial court to reopen discovery, causing prejudice to Seton Hall Defendants. (10T13:6-18:20; 12T15:12-25:8). The trial court properly denied Plaintiff's motion as untimely.

In addition, the trial court correctly denied Plaintiff's motion because adding the proposed claims would be futile. Crucially, Plaintiff's NJLAD causes of action require an "adverse employment action." Here, none of Plaintiff's proposed new claims reached the level of an adverse employment action. All are merely events that caused Plaintiff to be "unhappy, resentful or otherwise cause[d] an incidental

workplace dissatisfaction." Victor, 401 N.J. Super. at 616. And, none affected Plaintiff's wages, benefits, or resulted in direct economic harm or a significant, non-temporary adverse change in his employment status or the terms and conditions of his employment. (12T15:12-25:8). As such, the trial court did not abuse its discretion in denying Plaintiff's motion.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN SANCTIONING PLAINTIFF ON THREE SEPARATE OCCASIONS

Plaintiff contends that the trial court's orders sanctioning him should be reversed because he was not afforded to the safe harbor period required under N.J.S.A. 2A:15-59 and Rule 1:4-8. But neither N.J.S.A. 2A:15-59 nor Rule 1:4-8—and their respective safe harbor provisions—apply to pre-trial discovery conduct. See McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 562 (1993); R. 1:4-8(e). Moreover, Plaintiff ignored warnings by both the trial court and defense counsel. For the reasons set forth below, the trial court did not abuse its discretion in sanctioning Plaintiff without reference to any safe-harbor provision.

A. Plaintiff Intentionally Files Confidential Documents on the Public Docket

On September 10, 2021, the trial court granted Seton Hall Defendants' motion for protective order, entering a Discovery Confidentiality Order over Plaintiff's objection. (Da175). Plaintiff opposed the order and repeatedly violated it thereafter.

First, on June 15, 2022, Plaintiff filed confidential Seton Hall documents, including emails involving Seton Hall students when objecting to his second counsel's motion to withdraw. (Da186). Seton Hall Defendants gave Plaintiff multiple opportunities to remove the documents from the public docket by consent order, but Plaintiff refused. (E.g. Da186-188). On August 10, 2022, Seton Hall Defendants filed a motion for protective order and for sanctions. (Pa54). In opposing this motion, Plaintiff compounded his violation by filing additional confidential documents for a second time, after defense counsel's warning, on the public docket without leave of court. This additional, mid-motion violation removed any doubt that Plaintiff's repeated violations of the Discovery Confidentiality Order have been willful, and that he would continue to e-file confidential documents until the court intervened. As such, the trial court was well within its discretion to sanction Plaintiff for this misconduct in its August 26, 2022 Order and February 14, 2023, judgment for attorneys' fees and costs. (Pa132; Pa272).

B. Plaintiff Filed Confidential Documents Again and Defied an Express Warning by the Court

On December 20, 2023, Plaintiff filed confidential excerpts of deposition transcripts on the public docket as part of a motion to extend discovery, in violation of the Discovery Confidentiality Order. (Pa279-81). Seton Hall Defendants filed a motion for protective order and sanctions. (Da238). The trial court granted the protective order, removing the confidential excerpts from the public docket, and

denied sanctions, instead issuing "an on the record fair warning" that if Plaintiff violated the Discovery Confidentiality Order again, the court would "have no choice but to conclude that [Plaintiff is] thumbing [his] nose at the Court's order and instruction, and are, in fact, acting intentionally out of bounds and in bad faith." (Pa286; 10T26:2-14). The very next day, Plaintiff set out to do exactly that.

On January 24, 2024, counsel for Seton Hall Defendants received, for the first time, a letter from Plaintiff through the mail dated "January 13, 2024" that indicated it was sent by e-mail, but in fact it never was. (Da370). The letter objected to Seton Hall Defendants' designation of certain documents as confidential. (Id.). Under the Discovery Confidentiality Order, when a party objects to a confidentiality designation, the designating party has 10 days to respond; if it fails to respond, the confidentiality designation becomes void. (Da175, ¶ 7).

Upon receiving a copy of the "January 13, 2024" letter on January 24, 2024, counsel immediately alerted Plaintiff that the letter was not received until January 24, 2024; that the letter had not been e-mailed on January 13, 2024; and that the 10-day time period under the Discovery Confidentiality Order did not begin to run until January 24, 2024. (Da372). The mailed copy of the "January 13, 2024" letter was also incorrectly addressed by the Plaintiff to the wrong physical address.

Incredibly, Plaintiff made no attempt to explain the misrepresentation regarding delivery in his "January 13, 2024" letter. (Da376). On January 28, 2024,

Plaintiff sent a new letter declaring that the 10-day time period under the Discovery Confidentiality Order had expired, and the documents in question were now supposedly no longer confidential. (See id.). In other words, Plaintiff created a false record to eliminate Seton Hall Defendants' 10-day period to respond to Plaintiff's confidentiality objections and concoct a waiver of confidentiality.

On February 16, 2024, the trial court sanctioned Plaintiff $1,000 for his misconduct, noting that Plaintiff's scheme was concocted just one day after the prior hearing when the court admonished Plaintiff for his attempt to violate the spirit, if not the letter, of the Discovery Confidentiality Order and warned that any similar actions would not be tolerated. (11T84:1-85:15; 11T87:11-89:19). Plaintiff's thumbing of his nose at the court was inexcusable, and the trial court's sanction was fully justified and within its sound discretion.

C. Plaintiff's Continued Bad Faith Motions and Contempt

In April and August 2024, Plaintiff filed two consecutive motions for reconsideration of the court's rulings made at the February 16, 2024 hearing, and memorialized in its April 24, 2024 Orders. The court held oral argument on July 31, 2024, for which Plaintiff refused to appear, accusing the court and its staff of racism. (Da475). Seton Hall Defendants cross-moved for a protective order, barring additional discovery and sanctions. (See Da392). The trial court denied Plaintiff's

motions, granted Seton Hall Defendants a protective order, but denied sanctions. (Pa2946-48).

Shortly thereafter, on August 20, 2024, Plaintiff filed yet another motion for reconsideration of the court's July 31, 2024 Orders. (See Da460). Plaintiff's motion was frivolous, offering no new law or facts to call into question the court's orders. Worse still, Plaintiff doubled down on his attacks upon the court and its staff, accusing them of discrimination and incompetence. As a final act of disrespect, Plaintiff—again—refused to appear for the oral argument on September 16, 2024. (13T4). In light of Plaintiff's clear bad faith, the trial court did not abuse its discretion in sanctioning Plaintiff.

V. THE DISCOVERY RULINGS SHOULD BE AFFIRMED

For most of the "discovery orders" Plaintiff challenges, Plaintiff fails to explain why he believes the orders should be reversed. For this reason alone, Plaintiff has failed to meet his burden, and the orders should be affirmed. See Soc'y Hill Condo. Ass'n, Inc. v. Soc'y Hill Assocs., 347 N.J. Super. 163, 174 (App. Div. 2002) (finding plaintiff abandoned claim on appeal where it failed to offer any argument on it). Nonetheless, the trial court did not abuse its discretion in granting and denying the discovery orders Plaintiff appeals.

A. The Discovery Confidentiality Order was Properly Entered

Plaintiff claims, without any reasoning, that the trial court erred by granting Seton Hall Defendants' motion for protective order on September 10, 2021—implying that relevant discovery was denied. The result of the motion was the entry of the Discovery Confidentiality Order to protect confidential documents, to which Plaintiff inexplicably refused to agree. (Da67). Such orders are commonplace in litigation. Seton Hall Defendants had a legitimate, protectable interest in preserving the confidentiality of its internal organizational documents and emails, including emails involving its students, which Seton Hall is required to safeguard under the federal Family Educational Rights and Privacy Act. The Discovery Confidentiality Order did not bar relevant discovery, but instead, provided procedural safeguards to protect the confidentiality of such documents being produced. As such, the court below acted well within its discretion in entering the Discovery Confidentiality Order (which was not in the Amended Notice of Appeal).

B. The Trial Court Properly Denied Plaintiff's Motion to Strike

Plaintiff claims, again with no analysis, that the April 14, 2022 Order denying his motion to strike Seton Hall Defendants' Answer was error because of the alleged deficiencies in Seton Hall Defendants' responses. As demonstrated below, Plaintiff's contention is totally unsupported by the record.

First, Plaintiff did not "promptly" file his motion as required by Rule 4:23-5(c), but delayed more than five months to bring his motion. Da73). Further, Seton Hall Defendants had produced all relevant documents relating to Plaintiff's claims, including his failure to promote claim; his other ancillary claims; all Faculty Guides; all University anti-discrimination policies; Plaintiff's HR file; any complaints of discrimination made by Plaintiff; and Plaintiff's teaching evaluations. Where Plaintiff's requests exceeded the permissible bounds of discovery, Seton Hall Defendants served detailed, specific objections. (Da72-135).

Thus, by any standard, Seton Hall Defendants had more than fulfilled their discovery obligations, and the trial court agreed. (8T9:19-10:4). The trial court was well within its discretion to deny Plaintiff's motion.

C. The Trial Court Properly Compelled Plaintiff's Deposition

The trial court properly compelled Plaintiff's deposition (which was not in the Amended Notice of Appeal) because Plaintiff was refusing to sit for his deposition. Plaintiff's *pro se* status is no excuse. Plaintiff has participated in a number of lawsuits and was clearly required by the Court Rules to present himself for deposition. The trial court was therefore well within its discretion.

D. The Trial Court Properly Removed Confidential Documents from the Docket and Denied Plaintiff's Motion to Compel

Plaintiff claims that the trial court's granting of Seton Hall Defendants' motion for a protective order on August 26, 2022 and denial of Plaintiff's motion to

compel was in error, because the orders supposedly "denied Plaintiff discovery of potentially admissible evidence at an early stage of the litigation [.]" Plf.'s Br. at 42. However, Plaintiff's motion sought discovery regarding "new" allegations that were not relevant to the subject matter or reasonably calculated to lead to the discovery of admissible evidence. Plaintiff also wrongfully filed confidential Seton Hall documents on the public docket in violation of the Discovery Confidentiality Order. (Da58). Plaintiff was denied no relevant discovery as a result of the granting of that protective order and the denial of his motion to compel. Consequently, Plaintiff's arguments are without merit.

E. The Trial Court Properly Denied Plaintiff's September 2022 Motions for Reconsideration

For the reasons set forth in Section IV.B, the trial court was well within its discretion to deny Plaintiff's motions for reconsideration as to the August 26, 2022 Order and April 19, 2022 Order, because the discovery he sought was not relevant to the claims in his Complaint and Plaintiff filed confidential documents on the docket. Plaintiff's motion for reconsideration of the August 26, 2022 protective order (removing the improperly filed confidential documents from the public docket) was properly granted for the reasons stated in Section IV.A.

On the October 7, 2022 Reconsideration Orders, the trial court specifically found that Plaintiff's motions for reconsideration "did nothing but reiterate and

reargue the motions". (Da212). Therefore, the trial court's orders were in the sound discretion of the court.

F. The Trial Court Properly Denied Plaintiff's Motion for a Protective Order

Plaintiff complains that the December 22, 2022 Order denying his motion was unfair because "Plaintiff was pro-se and unaware of the ramifications of a protective order." Plf.'s Br. at 44. This does not make any sense – Plaintiff moved for the protective order to prevent his own deposition. Plaintiff directly defied Judge Vena's order to appear for deposition by September 20, 2022, and attempted to cover himself by filing a motion for protective order, citing his motions for reconsideration as an excuse. (See Pa250-53). Further, Plaintiff's motions had been denied by November 2022. (Da210-15). As such, the trial court was well within its discretion to deny Plaintiff's motion for protective order to stop his own deposition.

G. The Trial Court Properly Denied Plaintiff's Motion to Stay Pending Appeal

Plaintiff challenges the court's December 22, 2022 Order, denying his motion to stay pending appeal on two irrational grounds. First, Plaintiff claims that "the interests of justice warranted a stay pending appeal." Plf.'s Br. at 45. Plaintiff nevertheless acknowledges that the motion to stay "was denied after the interlocutory appeal was denied" by this Court. Id. Further, Plaintiff's interlocutory

appeal concerned written discovery, not depositions. Plaintiff was repeatedly given wide latitude to take multiple depositions. Therefore, the trial court did not err.

H. The Trial Court Did Not Dismiss the Complaint in December 2022

Plaintiff argues that "[o]n December 22, 2022, the Law Division issued an Order to Dismiss Complaint partially for Failure to make Discovery". Plf.'s Br. at 46. It did not. On the contrary, the court extended fact discovery another six months and ordered Plaintiff to appear for two additional days of deposition in January 2023. (Pa2828). All of Plaintiff's claims that were pled in the Complaint remained in the case until the court granted summary judgment in October 2024.

I. Plaintiff's December 2022 Motion to Compel

Plaintiff argues, with no analysis or reasoning, that the trial court improperly denied his December 2022 motion to compel. Contrary to Plaintiff's assertion, the record reflects that the court granted part of Plaintiff's motion—ordering Seton Hall Defendants to produce certain Faculty Guides—but denied the remainder of his motion. (Pa275-76). The discovery that the court denied involved allegations that were not found within Plaintiff's Complaint and merely a backdoor attempt to seek reconsideration of discovery previously ruled irrelevant. (9T9:9-19:10). As such, the trial court's March 1, 2023 Order was well within its discretion.

J. Seton Hall Defendants' January 2024 Motion for Protective Order

Plaintiff first challenges the trial court's protective order barring the depositions of then-interim president Katia Passerini on the dubious grounds that

"Plaintiff was pro-se and unaware of the legal ramifications of the protective order". Plf.'s Br. at 46. But as set forth above, not only was Plaintiff aware of what a protective order is, he had already sought one in September 2022 to avoid his own deposition.

Second, as the trial court observed, Plaintiff was continuing to improperly seek discovery concerning claims that he never attempted to add to his Complaint:

> The plaintiff has not offered any valid explanation for why he has never sought leave to amend the complaint during the two years since he amended his interrogatory answers despite being aware for more than a year that the court would not compel the defendants to produce discovery regarding these unpled issues. He was on notice of that by virtue of Judge Vena's order…. These defendants will not be forced by this Court to provide discovery about issues that have not been properly pled and that are likely utterly irrelevant."

(10T13:6-20:23). The trial court's ruling was consistent with Judge Vena's prior ruling, and the court was well within its discretion to grant the protective order.

K. The Court Properly Denied Plaintiffs Motion for Reconsideration

For the reasons set forth in Section IV.D., the trial court was well within its discretion to deny Plaintiff's motions for reconsideration in April and August 2024.

CONCLUSION

Seton Hall Defendants respectfully request that this Court affirm all the trial court orders, including dismissal of the Complaint with prejudice.

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CHANDER KANT, Ph.D., Plaintiff/Appellant, v. SETON HALL UNIVERSITY, JOYCE STRAWER, RICHARD HUNTER, JOHN SHANNON, JOHN DOES 1-10, AND XYZ CORP. 1-10, Defendants/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001235-24 **ON APPEAL FROM THE DETERMINATION OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, CIVIL PART, ESSEX COUNTY** **SAT BELOW:** **Hon. Stephen L. Petrillo, J.S.C** **Thomas R. Vena, J.S.C.** **Hon. Robert H. Gardner, J.S.C.** **Docket No. ESX-L-000007-21**

PLAINTIFF'S REPLY BRIEF TO SUPPORT APPEAL OF SUMMARY JUDGMENT ORDER, ORDER DENYING PLAINITFF LEAVE TO FILE AN AMENDED/SUPPLEMENTAL COMPLANT, ORDER DENYING SUPPLEMENTAL DISCOVERY, AND ORDERS SANCTIONING PLAINTIFF

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Defendants served their discovery "responses" after Kant filed his motion to compel discovery. (Da1-5). Responses were largely non-responsive, and no documents were produced. (Da9-66). The court granted this motion on 7/23/21. (379a) Defendants admit that denial of discovery on 4/14/22 was due to claims allegedly not being included in the Complaint. The Court extended discovery on 8/26/22 to allow the parties to resolve discovery disputes. (130a)

Defendants incorrectly imply that the 2/14/23 Sanctions Order was partly also for other orders issued by the Court on 8/26/22. Defendants imply that the Court granted only Kant's requests for discovery extensions. 6/24/22 and 12/22/22 Orders were at Defendants' requests, were without any restrictions, while the 8/26/22 Order (at Kant's request) denied Kant's Motion to Compel and granted a discovery extension "to allow parties to resolve any discovery dispute."

The first pages of Amoroso's deposition on 11/3/23 and Strawser's deposition on 10/27/23 do not indicate that depositions were completed. (1755a and 2961a). An application was made at the 1/12/24 hearing to continue Amoroso's deposition, which the Court denied. It permitted the continued deposition of Strawser. The Court issued Orders flowing from the 2/16/24 hearing on 4/24/24, denying Kant's motion to compel documents sought prior to 1/12/24. (289a) Simultaneously, it permitted Kant to seek documents per his 2/2/24 and

2/14/24 letters to Defendants, provided that "Defendants' response need not be formal, and can be submitted by letter, with a brief explanation for any objections to the document requests." (289a)

Kant filed his motion to supplement (on 4/27/24) within three days of the Order denying his motion to compel production of documents prior to 1/12/24. He did not allege anything against Judge Vena or the court staff in his 8/20/24 motion for reconsideration. His allegations against Judge Petrillo were accompanied by 356 pages of Certification, with 24 Exhibits out of which only about one-third were repeated from the 4/27/24 motion.[1] Kant had filed a motion for stay of SJM proceedings because he filed another interim appeal. Judge Gardner first denied the stay without hearing arguments on it and then granted SJ on 10/28/24.

While mandating its standards be followed in three areas, the Faculty Guide ("FG") permits departments to elaborate their expectations in research and publications. (1623a). The paragraph following the indented paragraph on this page mandates the use of the FG criteria in all three areas. The Departmental Guidelines ("DG") Defendants have submitted, delete (on 1676a) the first sentence from the indented paragraph they quote from the FG (from 1623a). The deleted sentence states "It is expected that each department that evaluates an application

[1] These were Exhibit numbers 7, 9, 11, 15, 20-24

for promotion or tenure shall have a clear statement of research and publication expectations on file in the Dean and Provost's office." (1623a). The part of the paragraph quoted on 1676a discusses evaluation rather than guidelines.

Kant submitted complete teaching evaluations by students (called TCEs hereafter) for the whole semester, for Spring 2018 also. (658a-659a; 1684a; and 1919a-1921a). The TCEs had two ways of meeting the standards: scores above 3.10 on Item 24 or on average of the scores on Items 5, 6, 7, 9, 12, and 21. (2157a, 2164a; 684a–689a), Use of Item 24 to evaluate teaching was discontinued by the School of Business in February 2018. *See*; 680a; 804a; 813a; 816a; and 1887a. Except for AY2014-15 (1737a), documents cited by Defendants (1712a-1746a and 1690a) do not give any TCE scores. Using the actual TCE scores for AY2014-15 (1737a), Fall 2015 (1910a-1914a), and Spring 2018 (1919a-1921a) that are on record, utilizing Item 24, Kant met or exceeded expectations in most courses in the last ten years. Using information on Items 5, 6, 7, 9, 12, and 21 he exceeded expectations in two-thirds of the courses or Items (and met expectations in the rest).

On scholarship, the FG requires "demonstrated professional recognition of meritorious publications" only for promotion to full professor and Article 4.3b defines this recognition as "citations, awards, and other forms of scholarly recognition." (1625a-1626a). The DG requires determining journal rankings using

the 5-year impact factor, Eigenfactor Score and Article Influence Score values from the JCR (Journal Citations Report) for the year in which a paper is submitted for publication. (1678a) The FG, Article 4.3c. requires that, inter alia, "[I]n cases of multiple authorship, the extent of the applicant's role shall be determined." (1624a) Rotthoff, who mostly published papers with others, admitted that in economics, if co-authors' names are listed alphabetically, all co-authors contributed equally to the paper. (3204a). Kant's proposal on this issue was not rejected. (825a-828a, 972a).

At the time of his promotion application, Kant had published 11 sole-authored refereed journal articles or their equivalent (the equivalent, in Princeton Studies in International Finance, has been very highly cited) publications since joining Seton Hall. (1586a-1589a; 1598a). Hunter and Shannon were/are full professors in Kant's department, Hunter has been the department chair and has taught economics courses. They criticized Kant for not submitting TCEs since his appointment. They falsely claimed that Kant had not submitted journal quality material. They ignored evidence of professional recognition of publications required for promotion only to full professor. Strawser's recommendation against Kant was due to her false summation of Kant's application. The subsequent committees voted against Kant due to false and biased recommendations they were fed by Hunter, Shannon and Strawser and because Shannon, as member of a

subsequent committee, swayed the committee to vote against Kant. The provost's denial of promotion was on 3.29.19 (not on 1.16.17).

ARGUMENT

I. STANDARDS OF REVIEW; B. Leave to Amend:

Kant did not seek leave to amend. He sought leave to supplement under R. 4:9-4, and entire controversy doctrine, *R*. 4:30A**.** The applicable standard is *Brown v. Brown,* 208 N.J. Super. 372, 380 (App. Div. 1986)

II. THE COURT SHOULD REVERSE DISMISSAL OF COMPLAINT

A1. Kant Was Qualified for the Promotion He Sought.

a. Kant satisfied the "Teaching Effectiveness" criteria

Kant submitted his full two most recent TCEs that were three years apart (he was on leave during the intervening years), and in line with the practice in the Business School. (704a-705a). With other TCEs produced by Defendants, utilizing Item 24, Kant met or exceeded expectations in most courses; utilizing Items 5, 6, 7, 9, 12, and 21 he exceeded expectations in two-thirds of the courses (and met expectations in the rest). Kant met teaching standards even on TCEs and ex-Dean Boroff's opinions were not based on any evidence but because Kant had filed a suit against her. (668a). The FG does not require any minimum score on TCEs and gives eight other elements to demonstrate teaching effectiveness for promotion. (1623a-1624a).

b. Kant satisfied the "Scholarship" criteria.

The DG permit applicants to provide other evidence in support of the quality of a journal for purposes of promotion and tenure. (1677a-1679a). Kant provided eight indicators of the quality of journals in which he had published and which are widely recognized in academics (since he did not have 5-year impact factor, Eigenfactor Score and Article Influence Score values from the JCR for the year in which he submitted his papers for publication to place them in the "A+", "A", "B", and "C" system). He also provided evidence on citations, awards, and other forms of scholarly recognition to demonstrate professional recognition of his publications. (1589a-1591a, 1598a, 1906a, 716a-718a). He did not "set his own criteria."

Kant did not list his publications three times each to spread any falsehood. He prominently wrote in his application, "I have entered each of my publications thrice since they are sole-authored (on the assumption the average co-authorship of research of applicants for promotion at the Seton Hall is three)." (605a; 1586a) He did not need to inflate the number of his publications to meet the DG since they require only four publications since Associate Prof. (1678a)

At the time of his application, Kant had published 11 sole-authored refereed journal articles or their equivalent since joining Seton Hall 1586a-1589a; 1598a. DG required four publications since Associate Prof (1678a) – the FG had no

requirement for number of publications for promotion. Strawser falsely reported that Kant had four peer-reviewed journal articles over the past thirteen years. (1692a). Kant had five sole-authored articles. (1586a-1587a). "a display of continued scholarship" does not mean "a display of continuous scholarship." His most recent publications were in 2018, 2018, and 2016. (1586a-1587a). Kant met the publication criteria for promotion.

c. Kant satisfied the "Service" criteria. (1592a-1595a).

A.2. Kant Suffered Adverse Employment Actions.

In addition to voting against Kant's promotion, Hunter participated in making it difficult as Chair to include Kant's citations in the report to AACSB and denial of his leave application, (510a, 927a-968a), not doing anything to advance Kant's proposal to equitably treat sole-authored versus multi-authored papers (823a-830a; 972a-988a), accusing Kant of academic dishonesty without any basis and thwarting a Fulbright student's attempt to do his Ph.D. under Kant (853a-861a; 884a-890a).

A.3. Comparators

a. Other than Denied Promotion

Comparators are all other tenured/tenure-track faculty members in the department or school of business for the following allegations: Failing to include, and making it difficult to submit for inclusion, only Kant's citations to his

publication in report to AACSB (13a; 18a; 927a-968a); declaring only Kant as non-scholarly in report to AACSB (13a; 1040a-1045a; 1060a-1061a); denial of (unpaid) leave only to Kant (13a-14a; 1243a-1244a; 1248-56a); and denial of conference funding only to Kant (14a; 1199a-1212a).

b. Denied Promotion

Judge Vena denied Kant's motion to compel Defendants to answer discovery on two others promoted to full professorship in 2016. The only comparator for whom Defendants have supplied information (incomplete) is Rotthoff.

The record does not have any TCEs for Rotthoff and he did not provide any information on Items 5, 6, 7, 9, 12, and 21. He claimed high numbers for Item 24, even though the use of Item 24 to evaluate teaching was abandoned by the School of Business in February 2018. On Items 5, 6, 7, 9, 12, and 21 Kant exceeded expectations in two-thirds of the courses (and met expectations in the rest). (1737a; 1910a-1914a; and 1919a-1921a). Rotthoff arbitrarily (without providing the 5-year impact factor, Eigenfactor Score and Article Influence Score from the JCR for the year in which he submitted his papers for publication) claimed four of his publications (all co-authored) were in A journals. Since he did not claim any A+ publication, DG for promotion required him to have contributed to two A publications. (1678a). He contributed 0.5 + 0.5 + 0.33 + 0.33 to these papers, i.e.,

a total of 1.66 contributions. (3205a). He did not meet the DG publication requirements for promotion to full. Nor did he meet the FG requirement of "demonstrated professional recognition of meritorious publications" demonstrated by "citations, awards, and other forms of scholarly recognition." Kant had about ten times as many citations. (1900a-1905a). Kant met the FG requirement as well as the DG standards (and Rotthoff did not, as Kant provided evidence during discovery). (714a-715a). Kant also met the service requirement better than Rotthoff (1592a-1595a; 3211a-3212a).

C. The Claims Against the Individual Defendants Stand

C.1. Strawser Must be Held Individually Liable under the NJLAD

Strawser did not object to either the deletion of the first sentence from the FG paragraph that Hunter and Shannon put in the DG or the use of this doctored paragraph to create DG on teaching. Rather, she used the DG on teaching to vote against Kant's application ignoring eight other elements of teaching effectiveness in the FG. She focused on one TCE Item, the very Item that was amended out as a control question in February 2018. She falsely stated Kant only had three publications in the previous 13 years. She ignored both the FG distinction between sole-authored and multi-authored publications and Rotthoff's own-admission that his contribution to co-authored papers was pro-rata. She accepted without question Rotthoff arbitrarily giving four of his co-authored publications "A" rank. She

voted for his promotion even though he did not have enough publication-contributions for promotion to full in journals that he claimed as A. Her discriminatory animus against Kant is patently clear and she knowingly and substantially engaged in this animus.

C.2. Shannon and Hunter Must be Held Individually Liable under the NJLAD

They both deleted the first sentence from the FG paragraph that they put in the DG and used the doctored paragraph to create DG on teaching. They falsely stated Kant had not provided any information on the quality of the journals in which he had published. They dismissed the citations information Kant presented (even though that – professional recognition – was the essential FG criteria for promotion to full. They absurdly required Kant to provide TCE scores since appointment. They ignored both the FG distinction between sole-authored and multi-authored publications and Rotthoff's own-admission that his contribution to co-authored papers was pro-rata. They accepted without question Rotthoff arbitrarily giving four of his co-authored publications "A" rank. They voted in favor of Rotthoff's promotion even though he did not have enough publication-contributions in journals that he claimed as A ranking for promotion to full.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING KANT'S MOTION TO SUPPLEMENT HIS COMPLAINT

Kant did not seek to amend to add new claims – he sought to supplement his Complaint with new occurrences. The relevant dates are when Kant discovered an

event and when the trial court denied discovery. The court denied discovery as late as a few days before Kant filed his motion. None of these events either occurred or were discovered before Kant filed his Complaint or were either pled or denied before 2/27/23. The trial court did not opine that adding these occurrences would be futile. Being required to do more work than others is an effective pay cut. These occurrences were also to continuously harass Kant and to prevent his professional advancement. i) (1814a-1830a,1837-1838a, 294a, Entry on 1/31/24 at the trial court of Kant's 1/31/24 Certification and Exhibits G, H, J and K filed with it, 289a, T4 31:9-40:5[2], ii) (294a, Entry on 1/2/24 at the trial court of Kant's 1/2/24 Certification and Exhibits R and S filed with it T313:6-20:23)[3]; iii) (294a-310a, 92a-110a, T313:6-20:23), iv) (311a-331a, T313:6-20:23), v) (1531a-1560a, T313:6-20:23); vi) (342a-373a, 1467a-1488a, T313:6-20:23); vii) (296a, T2 14:3-23)[4]; viii) (296a: T2 13:14-14:2) –semicolons numbers i) – viii) separate references to allegations in the Supplementary Complaint and references are in the order of allegations).

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN REPEATEDLY SANCTIONING PLAINTIFF

A. Kant was represented when Exhibits sanctioned on 8/26/22 were filed.

B. Defendants Trapped Kant in Filing Deposition Transcripts on 12/20/23.

[2] T4 is the hearing transcript for February 16, 2024
[3] T3 is the hearing transcript for January 12, 2024
[4] T2 is the hearing transcript for January 27, 2023

On December 11, 2023, Veritext denied Defendants' request to designate deposition-transcripts confidential because Defendants made their request too late and it now required Kant's consent. (Da 286-Da296). Defendants never sought Kant's consent. That led Kant to believe that Defendants had abandoned their request, and he filed them with his 12/20/23 motion (to show that the phrase "do not understand" was used during Strawser, Hunter and Amoroso's depositions about 400 times. (280a). Defendants cross-moved for sanctions precisely because Kant had filed these transcripts. Judge Petrillo ruled, without hearing from Kant, that Kant's conduct was "intentional, and if not intentional it is so grossly negligent," "indefensible, and "I believe you are trying to be clever, too clever for your own good." (T3 26:2–14). He abruptly granted Defendants' cross-motion to seal and issued warnings to Kant without hearing from him. (T3 53:13–53:23).

C. Judge Petrillo's 4/24/24 Sanctions Order Was Solely Due to His Bias

Judge Petrillo gave the following reasons; i) Kant was "making a jerk out of people by being dishonest," (presumably because he is Asian and an immigrant from India) and ii) "the entirety of this exercise (a letter Kant mailed on 1/13/24 (Da370, Da376-37 and the unnumbered page after Da377) that Mr. Gorman alleged was received by him in Princeton, NJ on 1/24/24) was designed to set up the defense attorney Mr. Gorman, in order to trap them in this ten-day timeframe;" (T4 83:17-88:19). He distrusted both Kant's testimony and documentary evidence

(electronic return receipt dated 1/17/24 of the Certified Mail letter dated 1/13/24, (Da370; Da376-378) with delivery at the correct address (21 Main Street). (T4 86:12-87:9). It was held that it was Kant's responsibility to have that letter delivered to Mr. Gorman in Princeton, NJ. (T4 49:17-79:23)

D. Sanctions for Filing Motion for Reconsideration

Kant neither filed any reconsideration motion in April 2024, nor accused anybody in the Court system of racism except Judge Petrillo. His August 20, 2024 motion for reconsideration (of the 7/31/24 Orders) with 24 Exhibits, do provide new evidence. Neither in the Order nor at the 9/16/24 hearing did the Court rule that the filing was in bad faith or frivolous. (375a) Sanctioning Kant for painfully putting together the filing for continuing attempts at seeking justice is an abuse of discretion.

V. THE DISCOVERY RULINGS MUST BE REVERSED

The court did not either give reasons, or state the issue was not specifically pled in the Complaint - ignoring its paragraph 106. (19a). Kant has explained the reason they should be reversed. The 9/20/21 Discovery Confidential Order was entered without considering reasonable changes Kant requested. (Da 67). The 4/14/22 Order ignored Kant's repeated attempts to persuade Defendants to provide

discovery. (T1)[5] The 8/26/22 Order denied legitimate discovery. (130 a).

Defendants moved for protective order on 9/12/23 (not in Jan. 24).

VI. A PRIMA FACIE CASE OF EMPLOYMENT DISCRIMINATION WAS ESTABLISHED

The heart of the defense by defendants is the following:

> Specifically, Plaintiff alleges that in "fall of 2014, Professor Hunter, whose race is Caucasian, and national origin is American, informed Associate Professor Kant that he was 'one of those typical Indians who's not submissive to us.'" (Pa10, ¶24). However, Plaintiff confirmed that this alleged comment was an isolated comment, and he has never heard Hunter make any derogatory comments about people from India. (Pa868-69). Plaintiff admitted that he took no action in response to this alleged comment, ostensibly "[b]ecause there were more important issues to consider". (Pa870). Although Plaintiff subsequently filed grievances against Hunter, and complaints against other Seton Hall employees for discrimination, he did not file a grievance or a complaint against Hunter for this alleged comment. (Pa870-73). Aside from his testimony, Plaintiff has no evidence to support how this comment is connected to any of the allegations in the Complaint. (Pa874).

In Taylor v. Metzger, 152 N.J. 490 (1998), our Supreme Court ruled that one racially derogatory comment alone can prove LAD employment discrimination. Defendants here claim that the racially explosive statement by Hunter, the former Department Chair, was not an adverse employment action. Victor v. State, 401 N.J. Super. 596, 616 (App. Div. 2008), aff'd as modified, 203 N.J. 383 (2010). This undermines the legitimacy of Seton Hall's defenses.

[5] T1 is the hearing transcript for April 14, 2022

In short, Hunter's comment about Kant is discriminatory on its own. Hunter does not deny making this statement. Such a comment made to a tenured academic is highly insulting and violates the NJLAD. In retrospect, although Hunter's comment was made a few years before Kant's promotion denial, it still was not "an isolated comment." Rather, it was the first step in a series of discriminatory actions, creating a prima facie showing of discrimination. Hunter's comment tainted and prejudiced the eventual promotion process. Kant never had a chance. The nexus was not clear until the promotion process began. The comment revealed Seton Hall's true motive and negatively affected the promotion application. That Kant did not react to the comment is strong evidence that he was not interested initially in legal action.

In Taylor v. Metzger, supra a county sheriff's officer filed a LAD claim after her supervisor, the county sheriff, called her a "jungle bunny" in the presence of an undersheriff. Id. at 494-495. The Supreme Court held that a single derogatory racial remark by a supervisor can create a hostile work environment under the NJLAD. Id. at 494. Kant did not file a claim for Hunter's hostile comment, but in retrospect, it is clear that it predicts the improper failure to promote.

Respectfully submitted,
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