SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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LESLIE RIOS and MELISSA MEDINA-RIOS,
individually and as registered domestic partners,

Plaintiffs,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY d/b/a MTA, PETER S. KALIKOW in his capacity of Chair of the MTA, STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, et al.,

Defendants.

Index No.: 13206/03

AFFIDAVIT OF ROBERT S. CURCIO

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STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

ROBERT S. CURCIO, being duly sworn, deposes and says:

1. I have been employed by the Staten Island Rapid Transit Operating Authority ("SIRTOA") as its Manager, Pension Administration and Benefits, since 1994. In that capacity, I deal with a wide variety of benefit matters involving SIRTOA employees, including those represented by the United Transportation Union ("UTU") such as Ms. Leslie Rios.

2. Under SIRTOA's labor agreement with the UTU, SIRTOA pays all of the premiums for the medical insurance of its UTU-represented employees. That collectively bargained medical insurance – in Ms. Rios's case it is called the "Empire Plan" – covers the UTU-represented employees and only, via "family" coverage, their spouse and their dependent children, generally up to the age of 19 but occasionally up to the age of 25. Currently, the cost of those premiums for one employee such as Ms. Rios (a UTU-

represented SIRTOA employee who is not married and does not report having dependent children) is $ 386.48 per month, which comes to $ 4,157.76 per year. If that coverage were to be changed so as to cover a "domestic partner" via an expanded version of family coverage, for an individual such as Ms. Rios without dependent children the cost of premiums would become $ 866.17 per month, which comes to $ 9,916.04 per year, that is, an increase – for one individual in Ms. Rios's situation – of $ 479.69 per month or $5,756 per year.

3. SIRTOA has never, to my knowledge going back to 1994, provided medical insurance coverage for any UTU-represented employees beyond their spouses or domestic children; that is, SIRTOA has never provided such medical insurance for, for instance, UTU-represented employees' parents, siblings, neighbors, friends, or domestic partners. This policy has been in place without regard to the sexual orientation of any UTU-represented employees or to the sexual orientation of their spouses, children, parents, siblings, neighbors, friends, or domestic partners.

4. SIRTOA does not ask any employees (or any individuals the employees wish to have covered on their medical insurance) what their sexual orientation might be, and SIRTOA keeps no records or statistics of the sexual orientation of anyone.

5. On October 9, 2002, Ms. Rios came to my office, gave me a copy of a certificate of domestic partnership apparently issued (on October 1, 2002) by the City Clerk of the City of New York, and asked that I add Ms. Rios's domestic partner – whose name on the certificate is given as Melissa Medina – to the medical insurance that SIRTOA provides for Ms. Rios. I told her that such additional coverage was not part of the medical insurance provided for in the labor agreement that SIRTOA had with the UTU. I also told her I would double-check with Owen Swords, who handled labor

relations matters for SIRTOA's union-represented employees. I contacted Mr. Swords that day; he told me that such additional coverage is not part of the coverage provided for in the labor agreement between SIRTOA and the UTU and thus is not allowed, and I believe I re-confirmed that conclusion with Ms. Rios when we spoke again.

6. Almost a year passed in which the matter of expanding the medical insurance coverage for Ms. Rios to cover her domestic partner stayed silent, at least as far as I was aware. In September 2003, however, a local representative of the UTU (Ms. Dee G. Vandenburg) wrote me a letter (dated September 15, 2003) asking me to advise her "what procedure needs to be taken to have Ms. Rios' [medical insurance] coverage extended to her legal registered domestic partner, Melissa Medina-Rios." I wrote Ms. Vandenburg the next day, advising her that the Empire Plan medical insurance coverage for UTU-represented employees of SIRTOA did not extend to employees' domestic partners; I provided that view based on my prior discussions with Owen Swords, who had confirmed that the UTU-SIRTOA labor agreement did not extend medical insurance coverage to non-spouses (and non-dependent children) of employees.

7. In dealing with Ms. Rios on this matter, and with Ms. Vandenburg, I relied on neither Metropolitan Transportation Authority nor New York City Transit Authority personnel.

Robert S. Curcio

Sworn to before me this
8th day of March, 2004

Notary Public

JOHN A. SIRACUSA
Notary Public, State of N. Y.
No. 43-480 8493
Qualified in Richmond County
Comm. Expires Sept. 30, 2006

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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LESLIE RIOS and MELISSA MEDINA-RIOS,
individually and as registered domestic partners,

Index No.: 13206/03

Plaintiffs,

-against-

AFFIDAVIT OF OWEN SWORDS

METROPOLITAN TRANSPORTATION AUTHORITY d/b/a MTA, PETER S. KALIKOW in his capacity of Chair of the MTA, STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, et al.,

Defendants.

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STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

OWEN SWORDS, being duly sworn, deposes and says:

1. I have been employed by the Staten Island Rapid Transit Operating Authority ("SIRTOA") as Senior Director, Employee Policy Compliance, since January 2000, and have worked in various capacities for SIRTOA since 1974. As Senior Director, and in my prior positions, I have been responsible for a broad range of labor relations matters involving the employees of SIRTOA who are represented by labor unions. Those unions represent units of SIRTOA employees under the "Taylor Law" (New York Civil Service Law §§ 200-214), and are, under that law, the exclusive bargaining representatives of those employees.

2. According to SIRTOA personnel records I have reviewed, Ms. Leslie Rios was hired by SIRTOA as a "conductor" in 1999, and voluntarily transferred to the

position of "[railroad] car cleaner" in 2000; she is a SIRTOA car cleaner today (and has not been employed by either the Metropolitan Transportation Authority or the New York City Transit Authority). In both SIRTOA positions, she has been represented for purposes of collective bargaining by the United Transportation Union ("UTU"). SIRTOA has had, for many years, a collective bargaining agreement with the UTU that, as amended from time to time, covers the rates of pay and the benefits (and, among other things, hours of work and working conditions) of car cleaners (and conductors). The most recent such agreement nominally expired on December 15, 2002; under New York's Taylor Law, however, the terms and conditions of that agreement will continue in effect until an amendment to that agreement – or a new agreement – is negotiated and signed by the UTU and SIRTOA. Prior to the signing of such an amendment or new agreement, SIRTOA may not (as I understand the Taylor Law) lawfully, by itself, change the rates of pay and the benefits previously negotiated, and such unilateral action would be an unlawful "improper practice" under the Taylor Law. I cannot predict when an amendment to the old UTU-SIRTOA agreement (or a new agreement) will be negotiated.

3. As a result of collective bargaining with the UTU, SIRTOA pays all of the premiums for the UTU-represented SIRTOA employees' medical insurance; in Ms. Rios's case, that medical insurance is called the "Empire Plan." That medical insurance, as a result of collective bargaining with the UTU, also covers UTU-represented employees' spouses and dependent children, usually up to the age of 19 but in some circumstances to a higher age. The UTU-SIRTOA collective bargaining agreement whose terms were in effect in October of 2002, and since then, does not call for coverage of any other individuals – that is, individuals other than employees, spouses, and certain

dependent children – whether those other individuals are sisters or brothers, parents, friends, roommates, or domestic partners.

4. Also as a result of collective bargaining, UTU-represented employees who believe that they have been improperly paid by SIRTOA, that employment benefits have been improperly denied or administered by SIRTOA, that hours of work have been improperly determined by SIRTOA, that conditions of work have been improper, or that any other aspect of the UTU-SIRTOA agreement has been improperly interpreted by SIRTOA, may file a "claim or grievance" that, if not resolved, would be decided on a final and binding basis by an arbitration panel called a "board of adjustment." No "claim or grievance" under the UTU-SIRTOA agreement has been filed by or on behalf of Ms. Rios concerning her medical insurance.

5. On October 9, 2002, SIRTOA's manager for pension administration and benefits, Robert S. Curcio, spoke to me and said that Ms. Rios had come by his office, had given him a copy of a "domestic partnership" certificate, and asked to have her partner put on the medical insurance coverage that SIRTOA arranges for its UTU-represented employees. Mr. Curcio reported to me that he had told Ms. Rios that such coverage was not within the medical insurance coverage provided for in the relevant collective bargaining agreement, and thus he could not honor her request. I confirmed to Mr. Curcio that because such additional coverage was not part of the labor contract with the UTU, such additional coverage was not allowed. In so advising Mr. Curcio, I relied on my familiarity with the UTU-SIRTOA collective bargaining agreement, and the Taylor Law. (While the New York City Transit Authority is a signatory to that agreement as well, I consulted with no Transit Authority employees [or any employees of

the Metropolitan Transportation Authority either, for that matter] about this subject in connection with my conversation with Mr. Curcio.)

6. I know that additional coverage of the kind Ms. Rios requested would be expensive; as noted in the accompanying affidavit of Mr. Curcio, for just one individual in Ms. Rios's situation (i.e., a UTU-represented SIRTOA employee who is currently unmarried and without dependent children), such additional coverage would cost, in terms of annual premiums, some $5,756/year more than what SIRTOA is now paying for someone in Ms. Rios's situation. Moreover, under New York's Taylor Law as I understand it, SIRTOA may not lawfully increase (or decrease) wages or benefits that have been set by virtue of collective bargaining unless the relevant collective bargaining agreement is amended, or replaced by a new agreement; in other words, SIRTOA is legally bound to maintain the status quo as to wages and benefits, absent agreement with the UTU to change that status quo, and no such agreement has been made.

Owen Swords

Sworn to before me this
9th day of March, 2004

Notary Public

JOHN A. SIRACUSA
Notary Public, State of N. Y.
No. 43-480 8493
Qualified in Richmond County
Comm. Expires Sept. 30, 2006

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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LESLIE RIOS and MELISSA MEDINA-RIOS,
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Plaintiffs,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY d/b/a MTA, PETER S. KALIKOW in his capacity of Chair of the MTA, STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY, et al.,

AFFIRMATION OF RICHARD SCHOOLMAN

Defendants.

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RICHARD SCHOOLMAN, pursuant to CPLR 2106, hereby affirms:

1. I am an attorney admitted to practice in the courts of the State of New York and have been employed, since 1992, as special counsel in the Office of the General Counsel of the defendant New York City Transit Authority ("Transit Authority" or "TA"). At the request of the Staten Island Rapid Transit Operating Authority ("SIRTOA") and of the Metropolitan Transportation Authority ("MTA"), I am representing SIRTOA and the MTA, as well as the Transit Authority – and their officials who have been sued in their official capacities (Peter Kalikow [sued as chair of the MTA], Lawrence G. Reuter [sued as president of the Transit Authority], and Robert S. Curcio [sued as a manager of SIRTOA]) – in this action. All of these defendants may be referred to as the MTA-related defendants. (While "MTA Long Island Railroad d/b/a LIRR" and James J. Dermody, its president, were originally named as defendants, the plaintiffs withdrew their claims against these two defendants via a stipulation filed with

the office of the Clerk of the Court on March 12, 2004; a copy of that stipulation is attached as Exhibit A.) I submit this affirmation in support of the motion of SIRTOA, and of the other remaining MTA-related defendants, to dismiss for failure to state a claim (under CPLR 3211(a)(7)), or to dismiss by way of summary judgment (under CPLR 3212).

2. This action was commenced on October 28, 2003, according to the summons that plaintiffs' attorney (Thomas D. Shanahan, Esq.) served on SIRTOA and the other MTA-related defendants; the summons and complaint were served on the MTA-related defendants on various dates in November and December, 2003. I served an answer on behalf of SIRTOA and the other MTA-related defendants on December 15, 2003. In telephone discussions between Mr. Shanahan as attorney for the plaintiffs, and myself as attorney for the MTA-related defendants, I expressed the view that there were no material issues of fact in dispute as to the plaintiffs' claims against the MTA-related defendants, and thus this case is ripe for a dispositive motion by those defendants. Mr. Shanahan concurred, and we worked out a schedule for the service of motion papers. This motion is being made in compliance with that schedule.

3. Based on my personal experience and knowledge as an attorney employed by the Transit Authority and its files maintained in the ordinary course of business, I am familiar with the corporate status of all of the MTA-related defendants. SIRTOA's legal name, as stated in its certificate of incorporation (a copy of which is attached as Exhibit B), is the Staten Island Rapid Transit Operating Authority. (SIRTOA appears to have been sued in this action twice, i.e., as SIRTOA and as "MTA Staten Island Railway.") As shown by its certificate of incorporation, SIRTOA is a public benefit corporation that is a subsidiary of the MTA, and established under New York Public Authorities Law (i.e.,

"PAL") § 1266(5).[1] SIRTOA's parent, the MTA, is similarly a public benefit corporation (PAL § 1263(1)(a)), and can sue and be sued in its own name (PAL § 1265(1)); SIRTOA, as its certificate of incorporation notes, has the same basic powers as its MTA parent, and thus may sue and be sued in its own name. The Transit Authority – which is not a subsidiary of the MTA but a distinct, pre-existing, entity (established in 1953 in what is now PAL §§ 1200-1221) – is also a public benefit corporation (PAL § 1201(1)) that can sue and be sued in its own name. PAL § 1204(1).

4. As shown by the accompanying affidavit of Robert Curcio (dated March 8, 2004), plaintiff Leslie Rios – on October 9, 2002 – gave Mr. Curcio, a SIRTOA manager, a copy of a certificate of domestic partnership (dated October 1, 2002) issued by the City Clerk of the City of New York and asked Mr. Curcio to add Melissa Medina, the other person named on the certificate of domestic partnership, to the medical coverage that SIRTOA provides to employees such as Ms. Rios. (A copy of that certificate of domestic partnership is attached as Exhibit C.) Mr. Curcio told Ms. Rios that day (October 9, 2002) that such an addition was not permitted under the applicable collective bargaining agreement. In a letter dated September 18, 2003, almost a year later, a lawyer representing Ms. Rios – Thomas D. Shanahan – wrote to Mr. Curcio repeating Ms. Rios's request (or "demand") that SIRTOA add Melissa Medina (now apparently called Melissa Medina-Rios) to the medical insurance that SIRTOA provides to Ms. Rios; the letter stated that if that demand was not granted "within five days," a lawsuit might follow. That demand was not so granted.

[1] The Long Island Railroad and Metro-North Commuter Railroad are also public benefit corporations that are subsidiaries of the MTA.

5. In the accompanying memorandum in support of the motion of SIRTOA and the other MTA-related defendants to dismiss and for summary judgment, reference is made to determinations of the New York City Commission on Human Rights dismissing, for lack of jurisdiction, complaints of employment discrimination under the New York City Administrative Code (§ 8-101 *et seq.*) against the New York City Transit Authority in light of a provision of the Public Authorities Law, as amended effective May 15, 2000, that expressly exempts the New York City Transit Authority and its subsidiaries from the jurisdiction of municipal and other local laws. My office regularly received copies of such employment discrimination complaints and, in light of the May 15, 2000 amendment to PAL § 1266(8), brought that amended provision to the attention of the Commission on City Human Rights and urged that that Commission dismiss such complaints because, under the amended § 1266(8), the Transit Authority had been expressly exempted from the jurisdiction of the City Administrative Code. The City Commission on Human Rights concurred and has issued notices of dismissal (in light of the May 15, 2000 amendment to the PAL) regularly. Attached as Exhibit D is one such notice of dismissal – termed a "Notice of Administrative Closure" – in *Pinkston v. NYC Transit Authority*, M-E-AR-01-1010596-E (March 7, 2002) (in light of PAL amendment, "the [New York City] Commission on Human Rights lacks jurisdiction over the New York City Transit Authority").

6. A copy of the complaint in this action is annexed as Exhibit E. The complaint's Fourth Cause of Action relies (Comp. ¶ 39) on 9 NYCRR § 5.32. For the Court's convenience, a copy of 9 NYCRR § 5.32, as well as a copy of 9 NYCRR § 5.33 and of 9 NYCRR § 4.28, which are codifications of Governor's Executive Orders, are attached to this affirmation in Exhibit F.

7. The complaint's Fifth Cause of Action refers (Comp. ¶ 46) to "[t]he EEO policy of the MTA defendants." I spoke with plaintiffs' attorney, Mr. Shanahan, and he confirmed that that EEO policy was found in a letter dated April 2000; a copy of that letter is attached for the Court's convenience as Exhibit G.

Executed and affirmed at Brooklyn, New York, this 19th day of March, 2004, subject to the penalties of perjury.

Richard Schoolman

Richard Schoolman