"Legal analysis" of Asst. Solicitor General Brodie's July 23, 2018 letter, annexed as Ex 2 to Sassower's Aug. 1, 2018 reply affirmation

> office thereof which requires the services of attorney or counsel, in order to protect the interest of the state, but this section shall not apply to any of the military department bureaus or military offices of the state.' (underlining added).

As for State Finance Law §123, *et seq.*, Assistant Solicitor General Brodie does not quote the single provision to which he refers: §123-c(3), which reads:

> 'Where the plaintiff in such action is a person other than the attorney general, a copy of the summons and complaint shall be served upon the attorney general'.

In other words, in this section, as likewise in §123-a(3), §123-d, §123-e(2), it is expected that the attorney general will himself bring the citizen-taxpayer action. Certainly, the requirement that a plaintiff serve the attorney general with a copy of the summons and complaint would be meaningless if the attorney general did not then have to make a 'formal determination' as to it and other statutes that furnish the attorney general with ample means for safeguarding public monies, such as Executive Law §63-c and State Finance Law §187 *et seq.* ('New York False Claims Act'). And who in the attorney general's office makes the determination, 'formal' or otherwise? Did such person determine that in this citizen-taxpayer action, as well as in the previous one, the attorney general should not 'prosecute', but, instead, 'defend'? How could this be in 'the interest of the state', when defending cannot be done except by litigation fraud because there is NO legitimate defense." (capitalization in the original).

Assistant Solicitor General Brodie furnishes no answer.

* **As to the first subheading entitled "Judicial disclosure" (at p. 6)**, Assistant Solicitor General Brodie's two-sentence response is that:

> "...the cited rule [§100.3F of the Chief Administrator's Rules Governing Judicial Conduct] does not entitle plaintiff to any disclosure. It provides instead that, under certain circumstances, a judge who disqualifies him or herself '*may* disclose on the record' the basis for disqualification. 22 N.Y.C.R.R. §100.3(F) (emphasis added)."

This is an utter perversion of that safeguarding rule provision – and of §100.3E of the Chief Administrator's Rules Governing Judicial Conduct on which it rests. In mandatory language, §100.E, entitled "Disqualification", states "A judge shall disqualify himself or herself in a

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proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to...."

Under the title heading "Threshold Integrity Issues Pertaining to the Court: Disclosure by its Justices & the Disqualification of at least One: Associate Justice Lynch", ¶¶4-10 – and then ¶52 – of appellant Sassower's moving affidavit furnishes a litany of specifics as to why the impartiality of each justice – and the Court – might "reasonably be questioned". Under such circumstance, where, additionally Assistant Solicitor General Brodie's letter does not dispute that appellants have "reasonably...questioned" the impartiality of the justices – triggering mandatory judicial disqualification – §100.3F, entitled "Remittal of Disqualification", governs. It states:

> "A judge disqualified by the terms of subdivision (E)..., of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding."

In other words, absent each justice disputing, as relates to him/her, the reasonable questions raised by appellants' specifics, he/she is disqualified, pursuant to §100.3E – and cannot sit, except by making disclosure with respect thereto and asserting his/her belief that he/she can be impartial and is willing to participate, with the parties then agreeing, outside the presence of the judge, and then incorporating the agreement in the record.

Suffice to say that Assistant Solicitor General Brodie's flagrant deceit that §100.3F does not entitle appellants to the disclosure relief sought – when it absolutely does as a prerequisite as to any justice sitting on the case – comes after he has had more than a month within which to familiarize himself with the record of this citizen-taxpayer action, containing appellants' repetitive briefing of the issue – particularly by their memoranda of law [R.473, R.515-517], [R.924, R.973-979],

[R.1334] and by their June 16, 2017 conflict-of-interest/corruption complaint against Judge Hartman, filed with the Commission on Judicial Conduct [R.1320-1327] – whose accurate interpretation of §100.3F he could have further confirmed from the Commission on Judicial Conduct's most recent annual report, for 2018, posted on its website, http://www.scjc.state.ny.us/Publications/AnnualReports/nyscjc.2018Annualreport.pdf, containing the following, readily-found from its table of contents:

> "Conflicts of Interest. All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned. Three judges were cautioned for various isolated or promptly redressed conflicts of interest. One judge failed to disclose that a complaining witness was a judge who reviews his cases. Another judge failed to recuse himself from a matter after personally witnessing the alleged violation. A third judge failed to immediately recuse himself from a case despite the fact that he had a personal relationship with the complaining witness." (at p. 16, underlining added).

With regard to Assistant Solicitor General's assertions that "consideration of recusal is premature, because no panel has been selected" (at p. 6) and that, with respect to Justice Lynch's disqualification pursuant to §100.3E, "[b]ecause a panel has not been selected, this request again is premature" (at p. 7), the issue of recusal/disqualification precedes the selection of the panel. That issue – and the issue of disclosure – is what is before the Court, immediately, being the first of the threshold issues that the single justice hearing the TRO – Associate Justice Eugene Devine – must address as to himself.

Certainly, it would be inconsistent with the intent of this Court's Rules of Practice, §800.1:

> "...When a cause is argued or submitted to the court with four justices present, it shall, whenever necessary, be deemed submitted also to any other duly qualified justice of the court, unless objection is noted at the time of argument or submission."

for appellants not to make "objection...at the time of argument" – which, with respect to the TRO, is to a single justice – as to which, to prevent surprise, he and the Court of which he is part, are entitled to maximum notice.

Finally, and further false, is Assistant Solicitor General's assertion (at p. 6):

> "...the fact that appellant challenges judicial salaries does not require disqualification because every judicial officer would suffer the same purported conflict. *Matter of Maron v. Silver*, 14 N.Y.3d 230, 248-49 (2010) (discussing Rule of Necessity); *Pines v. State*, 115 A.D.3d 80, 90-91 (2d Dep't) (similar), *app. dismissed*, 23 N.Y.3d 982 (2014).".

Indeed, he has NOT denied or disputed appellant Sassower's rebuttal thereof, at ¶6 of her moving affidavit:

> "6. Any justice of this Court unable or unwilling to rise above his financial interest and relationships so as to impartially discharge his judicial duties MUST disqualify himself – and the "rule of necessity" is NOT to the contrary." (capitalization in the original).

The Letter's Fraudulent Section F (at pp. 7-8):
"If Emergency Relief is Granted, a Substantial Undertaking Should Be Required"

By this section, Assistant Solicitor General Brodie continues his knowingly false and misleading advocacy and makes manifest the attorney general's duty to have made a "formal determination" in this citizen-taxpayer action to represent plaintiffs – or here, appellants – or to have intervened on their behalf, or to be the plaintiff-appellant.

Tellingly, Assistant Solicitor General Brodie does not cite the citizen-taxpayer statute, State Finance Law Article 7-A, in support of his argument. Its §123-e(2) reads:

> "2. The court, at the commencement of an action pursuant to this article, or at any time subsequent thereto and prior to entry of judgment, upon application by the plaintiff or the attorney general on behalf of the people of the state, may grant a preliminary injunction and impose such terms and conditions as may be necessary to restrain the defendant if he or she threatens to commit or is committing an act or acts which, if committed or continued during the pendency of the action, would be detrimental to the public interest. A temporary restraining order may be granted pending a