SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

ELENA RUTH SASSOWER and DORIS L. SASSOWER, Individually and as Director and President, respectively, of the Center for Judicial Accountability, Inc., and CENTER FOR JUDICIAL ACCOUNTABILITY, INC., Acting *Pro Bono Publico*, Plaintiffs, - against - GANNETT COMPANY, INC., THE JOURNAL NEWS, LOHUD.COM, HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS, D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10, Defendants.	Index No.: 10-12596

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF ELENA RUTH SASSOWER'S MOTION FOR LEAVE TO REARGUE/RENEW, TO DISQUALIFY, AND FOR SANCTIONS

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Defendants Gannett Company, Inc., Gannett Satellite Information Network, Inc., Henry Freeman, CynDee Royle, Bob Fredericks, and D. Scott Faubel (collectively "Defendants"), respectfully submit the following memorandum of law in opposition to Plaintiff Elena Ruth Sassower's ("Ms. Sassower" or "Plaintiff") motion for an order: (i) disqualifying the Honorable Peter Fox Cohalan from this proceeding; (ii) granting reargument and renewal, pursuant to CPLR § 2221, of the Court's September 22, 2011 Order granting Defendants' motion to dismiss and denying Plaintiff's cross-motion; (iii) vacating the Court's September 22, 2011 Order, pursuant to CPLR § 5015(a)(3), on the grounds of fraud; (iv) vacating the Court's September 22, 2011 Order, pursuant to CPLR § 5015(a)(4), for lack of jurisdiction; (v) sanctioning counsel for Defendants, pursuant to NYCRR § 130-1.1, and (vi) granting Plaintiff's leave to amend her dismissed Complaint.[1] Certain cases cited in this memorandum are attached as exhibits to the accompanying affidavit of Michael H. Gibson, sworn to on January 11, 2012.

PRELIMINARY STATEMENT

Plaintiff's Complaint in this matter purported to allege claims for libel, libel per se, and "journalistic fraud" against the Defendants with regard to a May 6, 2009 article (the "Article") published in *The Journal News*. On September 22, 2011, this Court issued an Order granting Defendants' motion to dismiss the Complaint in its entirety and denying Plaintiff's cross-motion for sanctions and for judgment by default (the "Order").

This case has now come full circle. The "gist or sting" of the innocuous Article at issue is that Plaintiffs Elena and Doris Sassower spoke vehemently and out-of-turn in protesting the confirmation of Judge Brian Hansbury, a judge who had previously ruled against the Sassowers

[1] Plaintiff Elena Sassower appears to be the only party seeking disqualification, renewal, reargument, and the other relief sought by this motion. The other Plaintiffs have not joined in the motion.

in a lawsuit in which they were involved. Plaintiffs have admitted that, during the proceedings before the White Plains Common Council, they accused Judge Hansbury of being "a corrupt judge" and that their remarks "recap[ping] Judge Hansbury's [alleged] misconduct in office" drew the instruction of a City Councilwoman that Council rules did not allow for personal attacks.[2] This Court dismissed Plaintiffs claims against *The Journal News* and several of its reporters and editors because the challenged statements in the Article were non-defamatory, protected opinion, rhetorical hyperpole, and/or otherwise non-actionable, as a matter of law.

Now, having sustained an adverse ruling in this case, Plaintiff Elena Sassower has leveled a personal attack against this Court that resembles the one she previously made against Judge Hansbury. Plaintiff attempts to re-litigate every aspect of this case in a sprawling motion that is replete with baseless and intemperate accusations of fraud and corruption by this Court and by counsel for the Defendants, which are not supported by a shred of actual evidence. Plaintiff goes so far as to demand the disqualification of the Honorable Peter Fox Cohalan from this proceeding, as well as to seek $10,000 in sanctions against Satterlee Stephens Burke & Burke LLP ("Satterlee") and against its associate, Meghan Sullivan, Esq. ("Ms. Sullivan"), personally.

This is by no means the first time that Plaintiff has sought to have a sitting judge disqualified in one of her many litigations. In *Sassower v. Commission on Judicial Conduct of*

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[2] As previously pointed out to the Court, the Sassowers' attacks on the judiciary extend far beyond Judge Hansbury to encompass large portions of the judicial bench in Westchester County and elsewhere. As Justice Lauer noted in his Decision and Order denying plaintiffs' motion to reargue the dismissal of their claims in *Sassower v. The New York Times Co.*, No. 05-19841 (Sup. Ct. West. Co. Sept. 27, 2006), at 2, *aff'd*, 852 N.Y.S.2d 180 (2d Dep't 2008) (copy annexed as Exhibit 1 to the affidavit of Michael Gibson for the convenience of the Court) "[i]t appears that at least nine members of the Supreme Court or Acting Supreme Court Judges in this courthouse had issued standing recusal orders recusing themselves from any action involving plaintiffs." *See also id.* (noting that the Sassowers accused Judge Nicolai of "engag[ing] in an on-going retaliatory vendetta against [them] due to their crusade against judicial corruption"). After Justice Lauer dismissed her meritless libel case against *The New York Times*, Ms. Sassower characterized Justice Lauer's rulings as "a fraud"-- just as she has characterized the decision of this Court. *See.* Plaintiff's November 29, 2011 affidavit in opposition to motion to dismiss at ¶¶ 14-16.

the State of New York, slip op. 108551/99 (Sup. Ct. N.Y. County Jan. 31, 2000), the Honorable William A. Wetzel was confronted with a situation strikingly similar to the one now faced by this Court. As Justice Wetzel explained:

> The proceeding has been marked by petitioner's deluge of applications seeking recusal of each of the various assigned judges. For the most part, these applications have been based upon the petitioner's categorical allegation that this action somehow implicates the Governor, and therefore all judges who are subject to reappointment by the Governor are ipso facto disqualified. Petitioner further asserts a potpourri of grounds for recusal, and then particularizes its application as to this court in a letter and attachments dated December 2, 1999, which contain specific allegations of impropriety.
>
> It is noteworthy that this court finds itself in wide company as a target of allegations by this petitioner. These papers are replete with accusations against virtually the entire judiciary, the Attorney General, the Governor, and the respondent. Petitioner cannot however bootstrap a conflict where none exists merely by making accusations against a court. This court must and indeed has seriously considered the application for recusal and is acutely aware that it is not only actual conflicts which compel recusal, but also the appearance of conflicts. However, this court is also aware that the determination of the existence of an appearance of conflicts requires an objective basis, not simply a litigant's bald assertion. This court has no conflict, in fact or in "appearance."
>
> Equally important as the obligation to recuse when appropriate is the obligation to decide the case when there is no legal basis for recusal. This matter has now been assigned to at least seven different judges of this court. The submitted papers exceed fourteen inches in height and required two court officers to deliver to chambers. There are individual "letters" from the petitioner which include upwards of ten exhibits and measure in excess of two inches, as well as a so-called "Omnibus motion" an inch thick . . . .
>
> When a court recuses itself without a proper basis, it undermines respect for the judiciary, encourages forum-shopping, unnecessarily prolongs litigation, and unfairly "passes the buck" to other judges. Obviously, all of these ramifications are highly undesirable. This squandering of judicial resources must come to a

> halt. Since petitioner's assertions as to this court are devoid of merit, in law or in fact, the application for recusal is denied.
>
> By refusing to recuse myself, I will undoubtedly join the long list of public officials and judges who are the objects of petitioner's relentless vilification. Nonetheless, my oath of office does not permit me to unnecessarily grant a baseless recusal motion merely to avoid this unwanted and unwarranted ridicule. The Second Circuit in *U.S. v. Bayless*, 1/21/00 N.Y.L.J. 25, (col. 4), at 29, (col. 6), cautioned that recusal is not intended to be "used by judges to avoid sitting on difficult or controversial cases."

Sassower v. on Judicial Conduct of the State of New York, supra, at 2-4, *aff'd*, 289 A.D.2d 119, 734 N.Y.S.2d 68 (1st Dep't 2001) (copy annexed as Exhibit 2 to the affidavit of Michael H. Gibson for the convenience of the Court).[3] Similarly in *Sassower v. Field*, 973 F.2d 75,78 (2d Cir. 1992), a case in which George, Doris, and Elena Sassower were all plaintiffs, the Second Circuit quoted the district court's summary of plaintiffs' abusive litigation tactics:

> They made several unsupported bias recusal motions based upon this court's unwilling involvement in some of the earlier proceedings initiated by George Sassower. . . . There were continual personal attacks on the opposing parties and counsel. . . . In virtually every instance where a court ruling was not satisfactory to them, plaintiffs routinely made a motion to reargue. . . . Finally, they have now filed a mammoth motion for a new trial and sanctions against opposing counsel which seeks to reargue virtually every aspect of the litigation for the third time.

For the reasons expressed by Judge Wetzel, we respectfully urge that this Court reject Plaintiff's calculated, dilatory, and baseless demand for recusal. We further urge that Plaintiff's motion be denied in its entirety. Specifically, those aspects of Plaintiff's motion which seek renewal and reargument fail to satisfy the requirements of CPLR § 2221 in that they fail to either

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[3] Justice Wetzel went on to hold that: "Given the history of this litigation and its progeny, this court is compelled to put an end to plaintiff's badgering of the respondent and the court system. Therefore, the petitioner Elena Sassower and The Center for Judicial Accountability, Inc., are enjoined from instituting any further actions or proceedings relating to the issues decided herein." *Sassower v. Commission on Judicial Conduct of the State of New York, supra,* at 5.

(a) raise new issues of fact or changes to the law which Plaintiff justifiably failed to raise prior to the issuance of the Order and which would affect the outcome of the motion (motion to renew), or (b) allege an issue of fact or law that was genuinely overlooked by the Court (motion to reargue). Plaintiff's allegations of fraud against Satterlee and Ms. Sullivan are equally meritless, and are largely repetitive of claims already correctly rejected by this Court. In short, there are no grounds whatsoever for the vacatur of the Order or the sanctioning of Satterlee or Ms. Sullivan. Indeed, the only sanctionable conduct before the Court is that of the Plaintiff, who has brought an entirely frivolous sanctions motion against Satterlee and Ms. Sullivan without basis in law or fact.[4]

ARGUMENT

POINT I

PLAINTIFF'S MOTION FOR LEAVE TO REARGUE AND TO RENEW SHOULD BE DENIED

Plaintiff's combined motion to reargue and to renew should be denied in its entirety, as it is procedurally deficient and does not come close to meeting the requirements of CPLR § 2221.

A. Plaintiff's Combined Motion for Leave to Reargue and Renew Violates CPLR § 2221(f)

As an initial point, the motion should be denied as it does not comply with the statute's requirement that any combined motion for leave to reargue and renew set forth separately the grounds for each individual motion. CPLR § 2221(f), provides:

> A combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought.

[4] Plaintiff is also on familiar ground in seeking sanctions against counsel for a newspaper defendant in a libel action. When she pursued the same course in her case against counsel for *The New York Times*, the Court dismissed her claim as "frivolous." See *Sassower v. The New York Times Co.*, No. 05-19841 *supra* at 9-10, Gibson Aff. Exhibit 2.

See also LaFiosca v. LaFiosca, 31 Misc. 3d 973, 976, 919 N.Y.S.2d 805, 806 (Sup. Ct. N.Y. County 2011) (denying combined motion to reargue); *Andrade v. Triborough Bridge & Tunnel Auth.*, 10 Misc. 3d 1063(A), 814 N.Y.S.2d 559 (Sup. Ct. N.Y. County 2005) ("[W]hen a movant submits a single motion that seeks to both renew *and* reargue, movant must take special care to identify and support each individual item of relief separately.") (emphasis in original). Like the movant in *LaFiosca*, Plaintiff has failed to identify which portions of her motion pertain to her motion to reargue and which pertain to her motion to renew. Rather, Plaintiff has provided this Court with "an assortment of jumbled arguments." *See LaFiosca v. LaFiosca*, 31 Misc. 3d 973, at 976. As such, Plaintiff's combined motion to reargue and renew is procedurally deficient and should be denied.

B. Plaintiff's Motion for Leave to Renew Should Be Denied

CPLR § 2221(e) provides that a motion to renew:

> 2. Shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination.

(emphasis added). *See also Blackwell v. Mikevin Management III, LLC*, 88 A.D.3d 836, 838, 931 N.Y.S.2d 116, 177 (2d Dep't 2011) (motion to renew denominated as one to reargue and renew treated as a motion to reargue as the motion "did not offer any new facts not offered" on the original motion to dismiss); *Simpson v. Cook Pony Farm Real Estate, Inc.*, 12 A.D.3d 496, 497, 784 N.Y.S.2d 633, 636 (2d Dep't 2004). As the Second Department held in *Sun Whan Lee v. John Doe*, 57 A.D.3d 651, 870 N.Y.S.2d 66 (2d Dep't 2008), "[a] motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their

first factual presentation" *citing Renna v. Gullo*, 19 A.D.3d 472, 797 N.Y.S.2d 115 (2d Dep't 2005).

Plaintiff's motion to renew does not specifically identify any new fact or change in the law upon which the motion relies, as required by CPLR § 2221(e). Instead, Plaintiff's motion regurgitates at length the arguments previously set forth within her massive opposition to the Defendants' motion to dismiss and in support of her cross-motion. The only ostensible new "fact" which can be discerned from Plaintiff's motion is the alleged (and thoroughly unsubstantiated accusation of) "actual bias" of this Court in ruling against her and in failing to disqualify itself (even though Plaintiff had not previously requested recusal or disqualification).

Plaintiff simply cannot manufacture a new "fact" by seeking recusal or disqualification of the presiding judge. First, as set forth in greater detail within Point II *supra*, there was simply no basis whatsoever for the Court to disqualify itself in this matter *sua sponte* before or after deciding Defendants' motion to dismiss. Moreover, it is well-settled law that any alleged new fact raised within a motion for leave to renew must be found to change the outcome of the underlying decision. *See* CPLR § 2221(e)(2); *Korman v. Bellmore Public Schools*, 62 A.D.3d 882, 883, 879 N.Y.S.2d 194, 196 (2d Dep't 2009) (new facts upon which Petitioner relied "would not change the outcome of the proceeding"); *Mountains Realty Corp v. Gelbelman*, 29 A.D.3d 874, 875, 816 N.Y.S.2d 150 (2d Dep't 2006) ("The court nonetheless properly denied [motion for leave to renew] as the facts proffered in support thereof would not have changed the outcome."). Defendants will not burden the Court by repeating here the arguments in their motion to dismiss and in their opposition to the Plaintiff's frivolous cross-motion, but instead respectfully refer the Court to the authority set forth within Defendants' October 22, 2010, Memorandum of Law in Support of Defendants' Motion to Dismiss ("Defendants' Moving

Brief") and its December 8, 2010 Reply Memorandum of Law in further Support of Defendants' Motion to Dismiss ("Defendants' Reply Brief"), which established Defendants' entitlement to the dismissal of Plaintiff's Complaint in its entirety.

Even assuming *arguendo* that Plaintiff's motion raises a new issue of fact or law (and it clearly does not), Plaintiff has not even attempted to justify her failure to raise the alleged new issue during the briefing and argument of the original motions, as required by the law. *See Marrero v. Cyrstal Nails*, 77 A.D.3d 798, 799, 909 N.Y.S.2d 136, 137 (2d Dep't 2010) (affirming denial of motion for leave to renew, in part because "plaintiffs did not demonstrate a reasonable justification for their failure to include [new facts], which were available to them, in their original motion."); *Kessler v. Towns*, 67 A.D.3d 801, 887 N.Y.S.2d 855, 856 (2d Dep't 2009) ("The Supreme Court properly exercised its discretion in denying that branch of the petitioner's motion which was for leave to renew since she failed to offer a reasonable excuse as why she did not present the alleged new facts on the prior motion.")

Here, Plaintiff's own motion offers unequivocal and repeated admissions that the purported new facts (i.e., the Court's presumed relationship with the several judges with whom the Plaintiff purports to have disagreements and other far-fetched theories of bias) were fully available to the Plaintiff during the pendency of the Defendants' motion to dismiss and Plaintiff's cross-motion for sanctions and for default judgment. Indeed, Plaintiff's motion makes multiple references to the "presumed" relationships between the Court and the third-parties and the Court's "presumed" awareness of the Plaintiff's opposition to proposed judicial pay raises. *See* Sasssower Aff. at ¶¶ 5, 8, 9. As such, Plaintiff has not and cannot offer any justification for her failure to raise her concerns concerning the Court's impartiality prior to the issuance of the Order.

In reality, the only development purportedly demonstrating this Court's "bias" is the fact that the Court issued an Order dismissing Plaintiff's Complaint. But if an adverse ruling were grounds to assert "bias" and to therefore seek disqualification of the presiding judge and renewal of the motion, every unsuccessful litigant would be encouraged to deploy the cynical strategy of Plaintiff in this case in hopes of obtaining a "do-over" before a different judge. But CPLR 2221(a) specifically states that a motion to renew "shall be made, on notice, to the judge who signed the [challenged] order, unless he or she is unable to hear it." As Justice Wetzel observed in *Sassower v. Commission on Judicial Conduct of the State of New York, supra*, at 4, the courts should not allow baseless recusal requests to be used as a means of forum-shopping.

As Plaintiff's motion fails to identify any genuine new fact or change in the law which Plaintiff justifiably omitted from her original motion and which would be outcome-determinative of the underlying motions, Plaintiff's motion to renew should be denied.

C. <u>Plaintiff's Motion for Leave to Reargue Should Be Denied</u>

A motion for leave to reargue an order of the Court is governed by CPLR § 2221(d), which provides that such a motion:

> 2. Shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.

See CPLR § 2221(d)(2); *Moffett v. Gerardi*, 71 A.D.3d 845, 847, 897 N.Y.S.2d 185, 187 (2d Dep't 2010); *Daluise v. Sottile*, 15 A.D.3d 609, 789 N.Y.S.2d . 923 (2d Dep't 2005) (trial court's granting of motion to reargue reversed as "[t]he plaintiffs did not demonstrate that the Supreme Court overlooked or misapprehended matters of fact or law").

While Plaintiff's motion offers many pages of invective concerning the purported fraud committed by Satterlee, Ms. Sullivan, this Court, and several other judges, it utterly fails to specifically identify any fact or issue of law which was genuinely overlooked by the Court and which would give rise to a right to reargue. Indeed, the only purported "facts" upon which Plaintiff's motion rests are contained within her thirty page single-spaced, rambling "analysis" of the Order (the "Analysis"), which simply revisits virtually every argument she made in her prior written submissions and in oral argument.[5] Here, as in *Sassower v. Field, supra*, Plaintiff's request for reargument is waste of this Court's time and resources and an abuse of the judicial process.

Within her Analysis (Exhibit 23), Plaintiff purports to perform an "autopsy" of the Order and of the prior proceedings before this Court. The "autopsy" consists of thirty pages of vituperation, irrelevancies, and non-sequiturs, including, but (by no means limited to) the following:

- An attack on this Court's Order based upon Lexis's annotation and reported "prior history," which, of course, are not part of the Court's Order. Exh. 23, pp. 1-2.
- The irrelevant observation that the Order sets forth an abbreviated caption for the case, which is similarly not a reason for challenging the good faith or legal reasoning of the Court. Exh. 23, p. 4.
- A convoluted discussion of the capacities in which Sarno & DeFilice did – or did not – represent the Plaintiffs. This, too, is irrelevant to the correctness of the Court's reasoning in dismissing the case.[6] Exh. 23, p. 4

[5] Plaintiff submitted hundreds of pages of briefing and exhibits tothe Court in connection with Defendants' motion to dismiss and her cross-motion for sanctions. Plaintiff evidently assumes that the Court was obliged to summarize and analyze in depth in the Order each and every one of her misplaced arguments. Of course the Court has no such obligation. The Order correctly identifies sufficient reasons for dismissing each of Plaintiff's causes of action.

[6] Interestingly, Mr. DeFelice does not appear to be representing Ms. Sassower in connection with this motion for disqualification, renewal, and reargument (among other relief), which appears to have been submitted by Ms. Sassower only in her own behalf, acting *pro se*.

- A thoroughly disrespectful assertion that the Court committed "fraud" in striking out a reference to oral argument in the preamble to the Order. Exh. 23, p. 6.

- A lengthy regurgitation of arguments that Plaintiffs made in oral argument, with citations to those same arguments made in their submissions to the Court, which succeeds only in establishing that the Court did, indeed, already have before it (in both written submissions and oral argument) all of Plaintiffs' meritless arguments that it rejected in its concise, well-reasoned Order. Exh. 23, pp. 6-8.

- A repetition of Plaintiffs' nonsensical contention that Defendants "concealed" from the Court a video recording of certain White Plains City Council proceedings (mentioned in the *Journal News* Article that gives rise to this dispute), when, in fact, Plaintiffs themselves referenced the video in their Complaint and submitted the video to the Court as Exhibit 10 to their opposition papers. Exh. 23, p. 7, Complaint ¶¶ 31-35.

- An attack on the Court's "ordering" paragraphs in the Order on the ground that they do not describe in full detail each and every theory on which Plaintiffs sought sanctions against Satterlee and Ms. Sullivan for filing a routine and meritorious motion to dismiss (which, tellingly, it takes Plaintiff three single-spaced pages to describe in her "autopsy"). Exh. 23, pp. 8-10.

- Accusing the Court of "materially misrepresenting and falsifying" the Complaint and "concealing" various allegations, when, in fact, the Court accurately and concisely summarized the essence of Plaintiffs' sprawling thirty four page pleading. Exh. 23, pp. 10-12.

- Charging that this Court was guilty of a "falsehood" in stating in the Order that the Defendants' motion to dismiss was unopposed by D. L. Sassower and the Center for Judicial Accountability because Mr. DeFilice did not sign the opposition papers. Yet Plaintiff tacitly acknowledges that Mr. DeFilice did not sign the opposition, and she conspicuously fails to submit an affidavit from Mr. DeFilice stating that the failure was inadvertent. Exh. 23, pp. 12-13. Moreover, Plaintiff fails to come to terms with the Court's statement that "the Court's decision would be no different if the papers submitted had been signed by their counsel." Order p. 2, n. 1.

- Accusing the Court of being "altogether deceitful" in its application of CPLR § 3211(a)(7). Exh. 23, p. 13.

- Reiterating for four single-spaced pages the misguided arguments that Plaintiff made in connection with the opinion defense to a defamation, which Plaintiff already argued exhaustively in her opposition to Defendants' motion to dismiss. Exh. 23, pp. 16-21.

- An irrelevant discussion of the law concerning *libel per se*. While Ms. Sassower complains that she was not obliged to plead and prove "special damages" because the

challenged statements in the Article constitute *libel per se*, she fails to recognize that the point of Defendants' brief is that – as this Court found – there has been no libel at all – *per se* or *per quod*. All of the challenged statements are non-defamatory words of opinion, non-actionable rhetorical hyperbole, or substantially true by Plaintiffs' own (grudging and/or inadvertent) admission.[7]

- Claiming "deceit" on the part of the Court for dismissing her putative claim for "journalistic fraud" and/or "institutional reckless disregard for the truth." Exh. 23, pp. 22. Yet Plaintiff still does not come forward with a single reported decision recognizing such a cause of action. The only previous case to consider the matter, Plaintiff's own libel case against *The New York Times* declined to recognize such a newfound cause of action. *See Sassower v. New York Times Co., supra*, at p. 9. Plaintiff advances no decisions recognizing this non-existent cause of action -- before or after this Court's Order. Instead, she repurposes large portions of her prior brief on the subject. Exh. 23, pp. 22-26.

- An attack on this Court's analysis of Plaintiff's various cross-motions for sanctions against Satterlee and Ms. Sullivan for actions that this Court has already found to be "well within the bounds of legitimate advocacy on the part of defendants' counsel." Exh. 23, pp. 27-29.

- A reiteration of Plaintiff's argument that she is entitled to a default judgment against unidentified Doe defendants. Exh. 23, pp. 29-30. As Defendants previously argued, this is the same tactic that Plaintiff adopted in her claim against *The New York Times*, which the court in that case rightly rejected. Even "[a]ssuming, *arguendo*, that . . . the[se] unnamed and unknown "Does" have been properly served, CPLR 3215 requires that the plaintiffs state a viable cause of action before a default judgment may be entered against them." *Sassower v. The New York Times Co., supra*, (citing

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[7] The law concerning libel *per se* is somewhat murky in New York, but, as the Third Department made clear in *Hahn v. Konstanty*, 257 A.D.2d 799, 684 N.Y.S.2d 38 (3d Dep't 1999), the libel *per se* doctrine continues to be recognized: "As plaintiffs did not plead any special damages in their complaint, and concede that they "cannot claim any monetary loss" as a result of defendants' alleged wrongdoing, the complaint must be dismissed unless the statements at issue can properly be characterized as "libel per se" (*citing Rinaldi v Holt, Rinehart & Winston*, 42 N.Y.2d 369, 379, 397 N.Y.S.2d 943 (1977), *cert denied,* 434 U.S. 969; *Alvarado v K-III Mag. Corp.* 203 A.D.2d 135, 137, 610 N.Y.S.2d 241 (1st Dep't 2994); *Garfinkel v Twenty-First Century Publ. Co.,* 30 A.D.2d 787, 788, 684 N.Y.S.2d 38 (3d Dep't 1999). Basically, the libel *per se* doctrine holds that, if a statement is not defamatory on its face, then a plaintiff must plead special damages with particularity. Here, Plaintiff would have the Court believe that she is harmed in her business or profession by reason of the Article, and therefore the challenged statements constitute libel *per se*. However, as the Court found, the Complaint does not identify any statements that are actually libelous, much less libelous *per se*. The Plaintiff offered no cogent explanation as to why an Article that depicts her as outspokenly protesting confirmation of a judge that she regards as corrupt causes her professional harm. The Complaint also plainly does not allege special damages, which must be pleaded with stringent particularity. *See Mancusi v. New York Post, Inc.*, 6 Media L. Rep. 1784 (Sup Ct. Queens Co. 1980) (copy attached as Exhibit 3 to the affidavit of Michael Gibson, for the convenience of the Court) However, even if Plaintiff was not required to plead special damages, the entirety of the Complaint would still be subject to dismissal because the Article simply was not libelous.

Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62, 760 N.Y.S.2d 727 (2003); *Beaton v. Transit Facility Corp.*, 14 A.D.3d 637, 789 N.Y.S.2d 314 (2d Dep't 2005)).

- A reiteration of Plaintiff's argument for extending her time to serve the Complaint on defendant Keith Eddings. Exh. 23, p. 30. But, for all of the reasons stated in the Court's Order and in Defendants' briefs, the Complaint states no cause of action against Eddings or anyone else, and therefore the Court's denial of leave to extend Plaintiff's time to serve Eddings was entirely proper.

Conspicuously absent from Plaintiff's self-styled "autopsy" is any plausible argument as to a single relevant fact or issue of law that Plaintiff has a reasonable or objective basis to believe that the Court actually overlooked or misapprehended, much less one that would change the outcome of this case.

In conclusion, because Plaintiff has utterly failed to identify any relevant fact or issue of law that the Court overlooked or misapprehended, her motion for leave to reargue should be denied.

POINT II

PLAINTIFF'S MOTION TO DISQUALIFY MUST BE DENIED

Plaintiff's motion also seeks, for the first time, to disqualify this Court pursuant to Judiciary Law § 14 and/or 22 NYCRR § 100.3(E), and, consequently, to vacate the Order for alleged lack of jurisdiction. Recusal pursuant to Judiciary Law § 14 requires that the Court be "interested" in the matter at hand or "related by consanguinity or affinity to any party to the controversy...." 22 NYCRR § 100.3(E) calls for disqualification, where, *inter alia*, the "judge has a personal bias or prejudice concerning a party." Plaintiff alleges no facts warranting recusal under either statute.

Plaintiff, in fact, fails to identify any objective basis for disqualification, and essentially argues that the Court's "bias" is evidenced by its application of the law to the facts alleged,

resulting in an Order with which Plaintiff disagrees. Of course, disagreement with a Court's legal reasoning is not grounds for disqualification. It is on this baseless foundation of "bias," which Plaintiff argues is "so pervasive" as to reflect the Court's "interest" in this proceeding, that Plaintiff then "presumes" the Court is interested in this action based on nothing more than (a) Plaintiff's prior efforts at recusal and sanctions against other judges with whom the Court may have relationships, and (b) the fact that Plaintiff has generally opposed judicial pay raises. Were this sufficient basis for recusal based on "interest" or "bias," any litigant would hold a free pass for disqualification of any Judge that issues a decision he or she does not like.

Plaintiff contends that the Court's Order "brazenly disregards and distorts controlling legal standards" and "flagrantly falsifies the factual evidentiary record before the Court." Sassower Aff. ¶ 4. Stripping away Plaintiff's hyperbole, the bias alleged is based on the Court's analysis of "legal standards" and the "factual evidentiary record." Of course, a party's assertion that the Court's opinion is wrong cannot be grounds for disqualification or every unsuccessful litigant could demand recusal. Thus, the law is clear that bias allegedly evidenced by a legal opinion is simply not proper grounds for disqualification. *Hurrell-Harring v. State*, 20 Misc. 3d 1108(A), 866 N.Y.S.2d 92 (Sup. Ct. Albany County 2008) ("In order to be disqualifying, alleged bias and prejudice, must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what is learned from participation in the case. Neither the formation of an opinion on a question of law nor judicial rulings in a litigation constitute grounds for a claim of bias or prejudice on the part of a judge."); *see also U. S. ex rel. Monty v. McQuillan*, 385 F. Supp. 1308, 1311 (E.D.N.Y. 1974), *aff'd*, 516 F.2d 897 (2d Cir. 1975).

Working backwards from the purported "bias" evidenced by the Court's Order, Plaintiff then "presumes" the Court must be "interested" in this proceeding. The basis for this alleged

interest is entirely speculative relationships with other local judges against whom Plaintiff has sought recusal and unsuccessfully sought disciplinary and criminal remedies, Sasssower Aff. at ¶¶ 5-8, and the Court's presumed awareness of Plaintiff's purported role in opposing judicial pay raises, Sassower Aff. at ¶¶ 9-10. Tellingly, the purported "interest" of the Court alleged in Plaintiff's motion completely consists of facts and circumstances known to Plaintiff at the time it filed its Complaint. Plaintiff's inexcusable failure to raise this "interest" prior to the issuance of the Order reveals the current motion to be nothing more than sour grapes. *People v. Simone*, 13 A.D.3d 71, 72, 785 N.Y.S.2d 82, 83 (1st Dep't 2004); *People v. Grasso*, 13 Misc. 3d 1214(A), 824 N.Y.S.2d 757 (Sup. Ct. N.Y. Co. 2006), *aff'd sub nom. People ex rel. Spitzer v. Grasso*, 49 A.D.3d 303, 853 N.Y.S.2d 64 (1st Dep't 2008).

As Judge Wetzel emphasized in prior litigation by this Plaintiff, the judicial process must not be undermined by baseless recusal motions. *Sassower v. Commission on Judicial Conduct of the State of New York, supra,* at 2-4 ("When a court recuses itself without a proper basis, it undermines respect for the judiciary, encourages forum-shopping, unnecessarily prolongs litigation, and unfairly "passes the buck" to other judges."). Indeed, the Court has an obligation to deny such motions. *See Galasso v. Calder*, 31 Misc. 3d 1220(A), 929 N.Y.S.2d 199 (Sup. Ct. N.Y. Co. 2011) ("A judge is as much obligated not to recuse himself when it is not called for as he is obligated to when it is.") (internal citations omitted); *Hurrell-Harring, supra*, at 92 ("A judge has an obligation not to recuse himself unless he or she is satisfied that he or she is unable to serve with complete impartiality, in fact or appearance") (internal citations omitted). Particularly here, were a finding of grounds for recusal would arguably apply with equal force to any state court judge daring to dismiss claims against Plaintiff, justice requires denial of Plaintiff's motion.

POINT III

PLAINTIFF'S MOTION TO VACATE PURSUANT TO CPLR § 5015(A)(3) AND TO SANCTION COUNSEL FOR THE DEFENDANTS SHOULD BE DENIED

Plaintiff's motion also seeks to vacate the Order, pursuant to CPLR § 5015(a)(3), based upon alleged fraud committed by Satterlee and Ms. Sullivan during the oral argument which took place before the Court on June 1, 2011, and also seeks sanctions for this conduct pursuant to 22 NYCRR 130-1.1.

Regrettably, Satterlee, Ms. Sullivan and this Honorable Court are by no means the only targets of Plaintiff's allegations of fraud and requests for the imposition of sanctions. Indeed, not only does Plaintiff now seek to sanction Satterlee for the advocacy of Ms. Sullivan during the June 1, 2011 oral argument, but she also sought to sanction Satterlee for the filing of its motion to dismiss -- said request being properly denied by the Court, which held Satterlee's submissions to be "well within the bounds of legitimate advocacy." See Order at p. 6. Moreover, Plaintiff's motion is only a small sampling of her long established history of accusing adversaries and judges of fraud and corruption. A non-exhaustive list, limited only to citations within Plaintiff's own moving papers, includes: (i) allegations of corruption against the Honorable Brian Hansbury, *see* Sassower Aff. at ¶ 5; (ii) accusations that the Honorable Denise Molina "covered up" for Justice Hansbury and engaged in "corruption" in ruling against the Plaintiff in two appeals, *Id.* at ¶ 6; (iii) the seeking of disciplinary and criminal charges against the Honorable Denise Molina and the Honorable Angela Iannacci, *Id.* at ¶ 6; (iv) allegations of political influence in the appointment of the Honorable Gail Prudenti, *Id.* at ¶ 8 and (v) allegations of

fraud against the Honorable Gerald Loeher in ruling against Plaintiff in her strikingly similar lawsuit against *The New York Times*.[8] *Id.* at ¶ 17.

Plaintiff's claims of fraud against Satterlee and Ms. Sullivan in this proceeding, are meritless and frivolous, and Plaintiff's motion to vacate the Order and to sanction Satterlee and Ms. Sullivan should be denied.

As an initial point, it appears as though Plaintiff's allegations of fraud against Satterlee are partially based upon arguments advanced by Satterlee within its original motion to dismiss, which the Plaintiff has already unsuccessfully argued by way of her denied cross-motion for sanctions. Indeed, the current motion alleges that the Court failed to "throw the book" at Ms. Sullivan for alleged "deceits" contained within Satterlee's motion papers. Sassower Aff. ¶ 14. However, as set forth in Point I *infra* Plaintiff is not entitled to reargue or renew her motion for sanctions based upon Defendants' Motion to Dismiss, which Satterlee filed and argued. With regard to Ms. Sullivan's alleged "newly-manufactured deceits" at the oral argument, the statements were most certainly not deceitful or fraudulent and therefore there exist no grounds whatsoever for the vacatur of the Order. As such, there likewise exists no grounds to sanction Satterlee or Ms. Sullivan individually.

In order to vacate an order or judgment of the court pursuant to CPLR § 5015(a)(3), the moving party must establish misconduct or fraud on the part of its adversary or its adversary's attorney sufficient to warrant the vacatur of the ruling. *See Blumes v. Madar*, 21 A.D.3d 518, 519, 800 N.Y.S.2d 580, 581 (2d Dep't 2005); *Arroyo v. Hilton*, 281 A.D.2d 440, 441, 721 N.Y.S.2d 553 (2d Dep't 2001). To warrant vacatur, the fraud must have prevented a party "from

[8] As with the instant proceeding, Plaintiff also sought the disqualification of Justice Loehr in her case against *The New York Times*, and also sought sanctions against the *Times*'s counsel. *See Sassower v. The New York*

fully and fairly litigating the matter." *Shaw v Shaw*, 97 A.D.2d 403, 467 N.Y.S.2d 231 (2d Dep't 1983).

Plaintiff's motion alleges that the following three statements made by Ms. Sullivan at the oral argument constitute a fraud upon the Court and warrant not only the vacatur of the Order, but the imposition of sanctions upon Satterlee and Ms. Sullivan individually:

> New York law simply does not make [a] distinction [between news articles and editorials or columns]
>
> Miss Sassower, her position is that the distinction between editorial and news articles is, it is a fiction, it is not true, and Miss Sassower should be aware that it's not true.
>
> A strikingly similar case was brought by the Sassowers in 2006, in Westchester County against the New York Times...

Not surprisingly, Plaintiff fails to demonstrate -- nor could she -- that any of these statements are false, much less fraudulent. As set forth within Defendants' Reply Memorandum of Law in Further Support of Defendants' Motion to Dismiss the Complaint, New York law indeed does not make a substantive distinction between news articles and editorials with regard to the applicability of the opinion defense. The opinion defense is available in cases involving news articles, just as it is in case involving editorials or letters to the editor. *See* Defendants' Reply Brief at p. 8-9 (citing *Palmieri v. Thomas*, 29 A.D.3d 658, 659, 814 N.Y.S.2d 717, 718 (2d Dep't 2006) (affirming dismissal of defamation complaint against newspaper publisher because "[t]he complained-of statements appearing in the news article were either absolutely privileged . . . or consisted of non-actionable opinion"); *see also Wilkins v. New York Post*, 32 Media L. Rep. 1566 (Sup. Ct. N.Y. Co. 2003) (copy annexed as Exhibit 4 to the affidavit of Michael Gibson for the convenience of the Court) (statements in news article calling plaintiff the

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Times Co., supra, at 9-10 (Gibson Aff., Exh. 1).

"toll collector from hell," "nasty," the "Outerbride Ogre," and that she "treats motorists like garbage" all found to be protected opinion also noting the hyperbolic language is consistent with opinion rather than fact).

Entirely at odds with Plaintiff's allegations of fraud, the Court was made aware of the caselaw supporting the statements Ms. Sullivan made at oral argument, and the Court was free to determine whether those statements were supported by the law. Under such circumstances, Plaintiff was provided the opportunity to "fully and fairly litigat[e] the matter." *Shaw*, *supra*, 97 A.D.2d at 403, and cannot possibly claim fraud warranting vacating the Court's Order.

Just as Satterlee's and Ms. Sullivan's arguments were not fraudulent, they are also not "frivolous" arguments warranting sanctions under 22 NYCRR 130-1.1. In order for conduct to be "frivolous" and sanctionable under Rule 130, it must be (1) "completely without merit in law or fact and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law," or (2) "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another." 22 NYCRR 130-1(c). Significantly, case law wholly supports Ms. Sullivan's oral arguments statements, and there is no allegation, nor can there be any allegation, that Ms. Sullivan's statement were made with any intent to delay or prolong litigation, or harass Plaintiff. Further, even assuming, *arguendo*, that Ms. Sullivan misstated the law (which she did not), her conduct is not frivolous -- simply being wrong on the law is not sanctionable conduct. *Golden v. Barker*, 223 A.D.2d 769, 770, 636 N.Y.S.2d 444 (3d Dep't 1996) ("conduct attributable to legal error, standing alone, is not frivolous within the meaning of 22 NYCRR 130-1.1 (c)").

POINT IV

PLAINTIFF'S CONDUCT IS SANCTIONABLE

In contrast, Plaintiff's patently baseless and entirely frivolous sanctions and recusal motion is itself sanctionable. 24 N.Y. Jur. 2d *Costs in Civil Actions* § 84 ("Frivolous conduct includes making a frivolous motion for costs or sanctions."). The Court, provided Plaintiff is given an opportunity to be heard, is free to impose such sanctions *sua sponte*. *Kamen v. Diaz-Kamen*, 40 A.D.3d 937, 837 N.Y.S.2d 666 (2d Dep't 2007). Sanctions against Plaintiff are certainly warranted here, particularly in light of Plaintiff's similar actions in other cases, which have drawn sanctions or injunctions against further filings. Any sanctions motion, however baseless, negatively impacts the attorney against whom such allegations are directed. Ms. Sullivan did nothing warranting having her professional name associated with such a motion on the court docket, and such frivolous sanctions motions will only proliferate if permitted without consequence. *Cf. S. Blvd. Sound, Inc. v. Felix Storch, Inc.*, 165 Misc. 2d 341, 342-43, 629 N.Y.S.2d 635, 636 (Civ. Ct. 1995) (awarding sanctions on its own initiative against party making sanction motion, noting that "[t]oo often attorneys make boilerplate motions for sanctions or make such motions as an intimidation device in litigation), *aff'd as modified*, 167 Misc. 2d 731, 643 N.Y.S.2d 882 (App. Term N.Y. Co. 1996); *Shelley v. Shelley*, 180 Misc. 2d 275, 284, 688 N.Y.S.2d 439, 445 (Sup. Ct. Westchester Co. 1999) (imposing sanctions upon party seeking sanctions upon Court's own order to show cause, and holding that "[t]he practice of opposing motions with a "knee-jerk" response including a cross-motion for the imposition of sanctions against the moving party or counsel without any basis in law or fact has become an increasingly disturbing aspect of civil litigation. It has been recognized that a motion for sanctions in such

circumstances is itself a form of frivolous conduct warranting the imposition of sanctions.") (internal citations omitted).

At the very least, in light of Plaintiff's history of vexatious litigation, this Court should follow the lead of Judge Wetzel and enjoin Plaintiff "from instituting any further actions or proceedings relating to the issues decided herein." *Sassower v. Commission on Judicial Conduct of the State of New York, supra*, at 5; see also *Sassower v. Signorelli*, 99 A.D.2d 358, 472 N.Y.S.2d 702 (2d Dep't 1984) (permitting Court to enjoin further litigation by George or Doris L. Sassower, holding that "plaintiff pressing a frivolous claim can be extremely costly to the defendant and can waste an inordinate amount of court time, time that this court and the trial courts can ill afford to lose. Thus, when, as here, a litigant is abusing the judicial process by hagriding individuals solely out of ill will or spite, equity may enjoin such vexatious litigation."); *Sassower v. Abrams*, 833 F. Supp. 253 (S.D.N.Y. 1993) (enjoining George Sassower from further litigation on certain issues in any federal court); *In the Matter of Pignataro v Davis*, 8 A.D.3d 487, 778 N.Y.S.2d 528 (2d Dep't 2004) (affirming trial court's precluding individual from making further applications to court, noting that while "[p]ublic policy generally mandates free access to the courts . . . a party may forfeit that right if he or she abuses the judicial process by engaging in meritless litigation motivated by spite or ill will.")

POINT V

PLAINTIFF'S MOTION FOR LEAVE TO AMEND SHOULD BE DENIED

Once again, Plaintiff's motion masks her request for relief as something it clearly is not. At Paragraph 25 of the motion, Plaintiff seeks leave to amend her Complaint to allege a cause of action for "Institutional Reckless Disregard for Truth." However, as the very same paragraph of the motion acknowledges, this Court has already ruled within the Order that no such cause of

amendment; (ii) no indication of when she became aware of them; and (iii) no excuse for her delay in alleging the proposed and unrecognized cause of action. On the other hand, Defendants would be severely prejudiced by having to essentially re-litigate Plaintiff's meritless claims based upon her inexcusable delay in bringing a patently meritless cause of action.

For these reasons, Plaintiff's motion for leave to amend her already dismissed Complaint should be dismissed.

CONCLUSION

For the above reasons, it is respectfully requested that Plaintiff's motion be denied in its entirety.

Dated: New York, New York
January 11, 2012

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