SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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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 ACCOUNTABILTY, INC.,
Acting *Pro Bono Publico*,

Plaintiffs,

Index #10-12596

Justice Peter Fox Cohalan

REPLY AFFIDAVIT

-against-

GANNETT COMPANY, INC., The Journal News, LoHud.com
HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS,
D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10,

Defendants.

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STATE OF NEW YORK)
BRONX COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the individual *pro se* plaintiff herein, fully-familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in reply to the January 11, 2012 opposition of Satterlee, Stephens, Burke & Burke, LLP to plaintiffs' December 21, 2011 motion for the Court's disqualification and, if denied, disclosure, vacatur, reargument & other relief, and in further support of that motion.

2. Once again, Satterlee continues its *modus operandi* of litigation fraud, apparently confident that the Court, once again, will allow it "to get away with anything" and will, as it did by its September 22, 2011 short-form order (Exhibit 20)[1], cover up Satterlee's flagrant violation of

[1] Exhibits 20-29 are annexed to my December 21, 2011 moving affidavit in support of plaintiffs' motion.

mandatory rules of professional conduct, beginning with truth, by granting Satterlee relief to which it has not the slightest factual and legal entitlement.[2] That is the only conclusion that can be drawn from Satterlee's 23-page opposing memorandum of law, falsifying the content of plaintiffs' December 21, 2011 motion and going *dehors* the record to further besmirch plaintiffs by judicial decisions in cases of which it has no personal knowledge and whose records it does not purport to have reviewed. Nor does Satterlee limit itself to arguing that the Court should merely deny plaintiffs' motion. Rather, it urges the Court to, *sua sponte*, sanction me, or:

> "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 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)..." (at p. 21).

3. Needless to say, had Satterlee actually believed there was any factual or legal basis for sanctions and an injunction against me, it was free to have cross-moved for such relief, which, tellingly, it has chosen not to do. And here – as previously – Satterlee avoids the penalties of perjury by placing its supposed factual assertions in its memorandum of law, with no affidavit or affirmation swearing to the truth of assertions it knows to be false.[3]

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[2] Satterlee's prior litigation fraud – covered up by the Court's September 22, 2011 short-form order – was its October 22, 2010 dismissal motion, its December 8, 2010 reply/opposition to plaintiffs' cross-motion, and the oral advocacy of Satterlee attorney, Meghan Sullivan, Esq., based thereon, as particularized by ¶¶13-18 of my December 21, 2011 moving affidavit in support of this motion.

[3] Satterlee's January 11, 2012 memorandum of law, which bears the printed names of Satterlee partner Mark Fowler, Esq. and of Michael Gibson, Esq., has an illegible signature, seemingly of Mr. Fowler, as it is

4. As evident from plaintiffs' December 21, 2011 memorandum of law and my December 21, 2011 moving affidavit, the centerpiece of plaintiffs' motion is its Exhibit 23: a paragraph-by-paragraph 30-page analysis of the Court's September 22, 2011 short-form order [hereinafter "decision"]. Because Satterlee cannot refute the accuracy of the analysis in any respect, it derides it as "rambling" (at p. 10) and purports that it "simply repeats virtually every argument plaintiff made in her prior written submissions and oral argument.[fn5]". The annotating footnote 5 states:

> "Plaintiff submitted hundreds of pages of briefing and exhibits to the 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 not such obligation. The Order correctly identifies sufficient reasons for dismissing each of Plaintiff's causes of action."

This is false. As plaintiffs' analysis demonstrates, the September 22, 2011 decision conceals ALL the allegations of plaintiffs' complaint which state their causes of action – indeed, conceals ALL the facts, law, and legal argument presented by their "prior written submissions and oral argument" as entitling them to summary judgment. Among these, the video of the May 4, 2009 White Plains Common Council meeting proving the material falsity of the subject news article – which, like everything else corroborative of plaintiffs' causes of action, the decision not only does not "summarize and analyze in depth", but conceals as if it does not exist.

5. The closest Satterlee comes to confronting the analysis is by a list of 16 examples of its supposed "vituperation, irrelevancies, and non-sequitors" (at pp. 10-13) – each either an

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different from the signature on Mr. Gibson's six-sentence January 11, 2012 affidavit, whose sole purpose is to append irrelevant and misleading cases. Interestingly, for the first time in this litigation, each bears the correct, untruncated caption of this action, reflecting that I and my co-plaintiff Doris L. Sassower have brought the action both individually and in our professional capacities – germane to our libel *per se* cause of action – and that we and the corporate plaintiff are acting pro *bono publico* – germane to our journalistic fraud cause of action.

editorialized distortion or outright falsification of the content of the very pages of the analysis it cites, as comparison with those pages reveals. The following is a sample of six of Satterlee's examples – with a comparison to the cited pages:

- "A lengthy recitation 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." (underlining in the original).

  The cited pages 6-8 of the analysis itemize that both at oral argument and by their written submissions plaintiff presented the Court with "the dispositive facts and law mandating judgment for plaintiffs" and that these were "ALL obliterated from its decision" (underlining in the original). Satterlee does not identify from the cited pages even one supposed "meritless arguments" that was addressed by the Court's "concise, well-reasoned Order."

- "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."

  The cited page 7 of the analysis rebuts Satterlee's depiction that there is anything "nonsensical" in plaintiffs' "contention" that Satterlee "conceal[ed] the existence of the video" both in making its dismissal motion and at oral argument – and Satterlee does not deny its concealment of the video. Nor does it deny, or even identify, plaintiffs' accompanying "contention" that the video establishes that plaintiffs were completely silent 'during' Judge Hansbury's confirmation", contrary to the article. As reflected by the analysis, these documentarily-established "contentions" are dispositive not only of the sufficiency of plaintiffs' causes of action, but of their entitlement to sanctions and disciplinary and criminal referrals of Satterlee for its material fraud.

- "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."

  The cited pages 10-13 of the analysis give particulars of the material misrepresentations and falsifications of the decision's description of plaintiffs' action – none denied or disputed by Satterlee and all refuting its bald claim that the Court "accurately and concisely summarized.... Plaintiffs'... pleading".

- "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."

  The cited pages 16-21 of the analysis quote from *Steinhilber v. Alphonse*, 68 NY2d 283 (1986), to demonstrate that the decision's statement of the law pertaining to opinion was materially false and misleading – replicating the deceit and fraud of Satterlee's dismissal motion, exposed by plaintiffs' opposition/cross-motion memo – and that the decision's application of the *Steinhilbe*r four-factor analysis for distinguishing fact from opinion consisted of conclusory assertions, devoid of a single demonstrative fact and that to the extent anything factual could be discerned, it was non-responsive and demonstrably false – which was not surprising as Satterlee's dismissal motion had been similarly unable to apply any *Steinhilber*-type analysis, also exposed by plaintiffs' opposition/cross-motion memo.

- "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 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.[fn7] "

  This is the only example without cited pages from the analysis. The germane pages are 21-22 – and these discuss that the decision dismissed the complaint's libel *per se* cause of action on a wrong proposition of law as to "special

damages", as evidenced by the decision of then Appellate Division, Second Department Justice Vito Titone in *Matherson v. Marchello*, 473 NYS2d 998 (2nd Dept. 1984) – a case cited three times by the decision for other purposes – and that also evidenced by *Matherson v. Marchello* is that plaintiffs had stated a cause of action for libel *per se*, which the decision concealed by not reciting any of their pleaded allegations pertaining thereto.[4]

- "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."

  The cited page 22 of the analysis used the word "deceit" to describe the decision's bald assertion, in a footnote, that plaintiffs had not "assert[ed] a cause of action based on [institutional reckless disregard for truth]" and "the matter is not before the court" – with the *cited pages 22-24* then demonstrating that their institutional reckless disregard for truth cause of action was not only squarely before the Court, but in a posture of summary judgment for plaintiffs. As for the journalistic fraud cause of action, *the cited pages 25-26* demonstrate that the decision's dismissal of that cause of action replicated Satterlee's deceitful advocacy, exposed as such by plaintiff's opposition/cross-motion, concealing *Brown v. State of New York*, 89 N.Y.2d 172, 181-182 (1996), that "new torts are constantly being recognized", and that Judge Loehr's decision in *Sassower v. The New York Times* was "not adverse to recognizing a cause of action for journalistic fraud were the allegations of the complaint therein

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[4] Satterlee's annotating footnote 7, which begins with the admission "The law concerning libel per se is somewhat murky in New York" does not discuss, or even mention, *Matherson v. Marchello* – and is utterly deceitful in putting forward, as if they have some significance, *Hahn v. Konstanty*, 257 A.D.2d 799 (3rd Dept. 1999) and *Mancusi v. New York Post*, 6 Media L. Rep. 1784 (Sup.Ct. Queens Co. 1980). As for its claim "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 explanation is among the allegations of the complaint's *libel per se* cause of action, unidentified by the Court's decision.

within the purview of such cause of action, which he held they were not" (at p. 26, underlining in the original).

6. Tellingly, NONE of Satterlee's 16 examples of "vituperations, irrelevancies, and non-sequitors" responds, or even corresponds, to the fact-specific, law-supported synopsis of the analysis, presented at ¶4 of my moving affidavit wherein I stated:

> "4. The analysis demonstrates that no fair and impartial tribunal could render the September 22, 2011 decision as it brazenly disregards and distorts the controlling legal standards it recites and flagrantly falsifies and conceals the factual and evidentiary record before the Court, as for example:
>
> - without explanation or legal authority, changing the caption of the action to remove the double capacities in which the individual plaintiffs appear – germane to their libel *per se* cause of action – and removing that the action is being brought by them and the corporate plaintiff *pro bono publico* – germane to their journalistic fraud cause of action;
>
> - misrepresenting the defendants who Satterlee represents and on whose behalf its dismissal motion has been made – germane, *inter alia*, to the uncontested fourth branch of plaintiffs' cross-motion to disqualify Satterlee for conflict of interest as a defendant DOE;
>
> - purporting, without explanation, that no oral argument was had on Satterlee's dismissal motion – germane to its misrepresentation that "The motion was unopposed by D.L. Sassower and the plaintiff Center for Judicial Accountability, Inc.";
>
> - making no determination as to the sufficiency of Satterlee's dismissal motion, either for its requested dismissal of plaintiffs' Complaint pursuant to CPLR §3211(a)(1), 'defense founded on documentary evidence', or for its requested dismissal of the Complaint pursuant to CPLR §3211(a)(7), 'failure to state a cause of action';
>
> - concealing the reason for not granting Satterlee's motion pursuant to CPLR §3211(a)(1) for a 'defense founded on documentary evidence', *to wit*, because the purported 'documentary evidence' – the Complaint and its Exhibit 7 analysis – establish the fraudulence of Satterlee's motion as to both CPLR §3211(a)(1) and CPLR §3211(a)(7);
>
> - concealing virtually every allegation of plaintiffs' Complaint, in violation of black-letter law, which it recites, as to the standard governing dismissal for failure to state a cause of action – and concealing

all the allegations highlighted by plaintiffs' cross-motion and oral argument as establishing the Complaint's causes of action, including: (i) that the subject article is a news article; (ii) that, on its face, it was non-conforming with the standards of news articles; (iii) that its knowing falsity is established by a video; (iv) that notwithstanding defendant Gannett purported to have an '**ACCURACY**'/corrections policy – including as part of its masthead – it ignored, without response, plaintiffs' analysis particularizing the article's falsity and knowing falsity; and (v) that despite defendant Gannett's purporting to have a '**READERS' REPRESENTATIVE**' – including as part of its masthead – it had none;

- misrepresenting the law as to opinion, including as set forth by *Steinhilber v. Alphonse*, 68 NY2d 283 (1986), on which it purports to rely;

- purporting to apply the four-factor *Steinhilber* analysis by conclusory assertions devoid of a single demonstrative fact, with responses to two of the four factors being, additionally, non-responsive;

- purporting, as part of its *Steinhilber* analysis, that 'No evidence has been submitted to establish that the statements [in the article] were false when made', when the evidence submitted by plaintiffs was overwhelming, including: (i) their Complaint, which the decision conceals was verified; (ii) the Complaint's incorporated Exhibit 7 analysis, wholly concealed by the decision; and (iii) the video, wholly concealed by the decision – and when 'evidence' is not the standard on a motion to dismiss for failure to state a cause of action, as the decision elsewhere acknowledges;

- misrepresenting the law as to 'special damages', including as set forth by *Matherson v. Marchello*, 473 NYS2d 998 (2nd Dept. 1984), to which it cites three times;

- concealing the legal proposition 'new torts are constantly being recognized', enunciated in *Brown v. State of New York*, 89 NY2d 172, 181-192 (1996) and set forth in the Complaint itself, so as to purport, as its sole basis for dismissing plaintiffs' cause of action for journalistic fraud, that 'the Court is unable to find a singe jurisdiction that recognizes a cause of action for journalistic fraud', which the record before the Court showed to be a legally-insufficient ground;

- baldly purporting, without fact or law – and relegated to a footnote – that plaintiffs' Complaint does not 'assert' a cause of action for 'institutional reckless disregard of the truth' in defamation actions';

- denying plaintiffs' eight-branch cross-motion by falsifying the basis of the single branch whose grounds it purports to give – the first branch: 'imposing sanctions pursuant to 130-1.1' against Satterlee – and concealing, as to the three additional cross-motion branches against Satterlee, the 'various relief' they sought, *to wit*, the second branch: referral of Satterlee to disciplinary authorities; the third branch, assessing damages against Satterlee under Judiciary Law §487(1); and the fourth branch, to disqualify Satterlee – over and beyond concealing all the facts, law, and legal argument the cross-motion presented in support of those branches, as well as in support of the other branches, including the seventh branch: for summary judgment to plaintiffs."

7. Satterlee's failure to deny or dispute the accuracy of this synopsis makes its opposition to plaintiffs' motion frivolous, *as a matter of law*. Indeed, Satterlee's opposition is utterly fraudulent in its bald pretenses that the motion is "baseless" and "not supported by a shred of actual evidence" (at p. 2) – language repeated with endless variants throughout its memo as it argues against the granting of plaintiffs' motion. This, in face of the mountain of "actual evidence" embodied by the record-based facts, law, and legal argument of plaintiffs' 30-page analysis, none of which Satterlee addresses.

8. The endless fraud that pervades Satterlee's opposition memo, as demonstrated herein and as evident from the most cursory review of the analysis, further reinforces plaintiffs' entitlement to the relief sought by their motion under applicable adjudicative principles:

> "when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secundum, Vol. 31A, §166 (1996 ed., p. 339).

> "It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause...and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause." II John Henry Wigmore, Evidence, §278 at 133 (1979).

9. Indeed, based on the showing herein, any fair and impartial tribunal would recognize its mandatory duty to take "appropriate action" pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, including by referring Satterlee's culpable attorneys to disciplinary authorities for their "substantial violation" of New York's Rules of Professional Conduct for Attorneys – and, specifically, Rule 3.1 "Non-Meritorious Claims and Contentions"; Rule 3.3 "Conduct Before A Tribunal"; and Rule 8.4 "Misconduct". Certainly, plaintiffs are entitled – and hereby request – imposition of maximum costs and $10,000 sanctions against Satterlee – for their latest violation of 22 NYCRR §130-1.1 by their January 11, 2012 opposition to plaintiff's motion.

10. For the convenience of the Court, a Table of Contents follows:

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PLAINTIFFS' ENTITLEMENT TO THE GRANTING OF THE FIRST & FOURTH BRANCHES OF THEIR MOTION: THE COURT'S DISQUALIFICATION &, IF DENIED, DISCLOSURE, & VACATUR OF ITS DECISION PURSUANT TO CPLR §5015(a)(4)

11. Without explanation, Satterlee's memo makes the first branch of plaintiffs' motion, which it identifies (at p. 1) only as "disqualifying the Honorable Peter Fox Cohalan from this proceeding", its Point II "PLAINTIFF'S MOTION TO DISQUALIFY MUST BE DENIED" (at pp. 13-15). It thereby implies that the Court, without first ruling on the motion's first branch for its disqualification, can rule on its second branch, for reargument and renewal, which Satterlee's memo makes its Point I (pp. 5-13) and that, additionally, the Court can ignore the alternative relief the first branch of plaintiff's motion expressly seeks: disclosure by the Court of facts bearing upon its fairness and impartiality – relief which Satterlee nowhere identifies, and which, therefore, is unopposed. As Satterlee may be presumed to know, judicial disqualification and disclosure are threshold issues:

> "So long as the affidavit [to disqualify] is on file, and the issue of disqualification remains undecided, the judge is without authority to determine the cause or hear any matter affecting the substantive rights of the parties", 48A Corpus Juris Secundum §145
>
> "As a general rule...once a challenged judge has...been made the target of a timely and sufficient disqualification motion, he immediately loses all jurisdiction in the matter except to grant the motion and in some circumstances to make those orders necessary to effectuate the change.", §22.1, Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm, Little, Brown & Company.

12. Also uncontested is plaintiffs' December 21, 2011 memorandum of law, exclusively devoted to the judicial disqualification/disclosure issues. Instead, Satterlee fashions a disingenuous argument reflective of plaintiffs' showing therein that judicial disqualification is warranted where a judge's bias results in a decision which cannot be justified. Thus, Satterlee acknowledges (at p. 14) the above-quoted ¶4 of my moving affidavit that the Court's decision "brazenly disregards and distorts controlling legal standards" and "flagrantly falsifies the factual evidentiary record" – in other

words, that it cannot be justified – but purports that this is "hyperbole" to be "stripp[ed] away" and whose essence is nothing more than "disagreement" with the "Court's analysis of 'legal standards' and the 'factual evidentiary record', which plaintiffs do "not like" and think is "wrong". (at p. 14). Such self-serving misrepresentation of plaintiffs' motion pervades the entirety of Satterlee's memo, which is saturated with the pretense that at issue is "an adverse ruling" (at pp. 2, 9), "the cynical strategy" of an "unsuccessful litigant" (at p. 9); and that the motion:

> "alleges no facts warranting recusal..., 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." (at pp. 13-14).

13. This is utter fraud. As is evident from the above-quoted synopsis of the analysis (pp. 6-8, *supra*), which is part of that same ¶4 of my moving affidavit, plaintiffs are not "disagreeing" with the Court's "application of the law to the facts alleged", as if the Court is remotely faithful to the facts or is giving any "application of the law" that is defensible. At issue is not "disagreement" with the Court's "reasoning" or a decision plaintiffs do "not like". Rather, plaintiffs' motion asserts and – by their analysis establishes – that the Court's decision is corrupt and cannot be justified as it upends both the law and facts. As stated at the outset of plaintiffs' memorandum of law (at p. 1):

> "As demonstrated by plaintiffs' analysis of the September 22, 2011 decision (Exhibit 23), no fair and impartial tribunal could render it as it flagrantly violates ALL cognizable legal standards and adjudicative principles to grant defendants relief to which they are <u>not</u> entitled, *as a matter of law*, and to deny plaintiffs relief to which the law – and mandatory rules of judicial conduct – <u>absolutely</u> entitle them. Such decision is, in every respect, a knowing and deliberate fraud <u>by</u> the Court and 'so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause' of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960)." (underlining in the original).

14. A decision of this nature, contravening the most basic adjudicative standards and lacking evidentiary support, can only be seen as emanating from an extrajudicial source – as it cannot otherwise be explained.

15. As for Satterlee's underlined assertion (at p. 15) that it is "entirely speculative" that the Court has "relationships with other local judges against whom Plaintiff has sought recusal and unsuccessfully sought disciplinary and criminal remedies" and its further assertion that there is only a "presum[ption]" that the Court is aware of plaintiffs' "purported role in opposing judicial pay raises", the point is – and Satterlee does not contest it – that should the Court not disqualify itself based on plaintiffs' motion, it must disclose "facts bearing upon its fairness and impartiality", including those specified at ¶¶5-12 of my moving affidavit under the title heading "DISCLOSURE OF RELATIONSHIPS AND INTERESTS".

16. The obligation of disclosure rests on the Court, not plaintiffs, who up until the June 1, 2011 oral argument – their first appearance before the Court – believed that it would rise above its relationships and interests, as it was duty-bound to do. Nor was it clear at the June 1, 2011 oral argument, when I and Mr. DeFelice directly alerted the Court to the facts and law dispositive of plaintiffs' rights, that the Court would not, thereafter, reconsider the appearance of its palpable bias and render a decision appropriate to the facts and the law in the record before it.

17. The September 22, 2011 decision erases any doubt that the Court's obligation was to have recused itself, *sua sponte*, prior thereto because it was totally unable to render an adjudication with any resemblance to the facts and law – for whatever reason, be it self-interest or its relationships.

18. Insofar as the Court's interest, a statutory disqualification under Judiciary Law §14, such divests it of jurisdiction to have even rendered the September 22, 2011 decision. As set forth in plaintiffs' memorandum of law:

> "It is long-settled that a judge disqualified by statute is without jurisdiction to action and the proceedings before him are void, *Oakley v. Aspinwall, supra*, 549, *Wilcox v. Arcanum*, 210 NY 370, 377 (1914), *Casterella v. Casterella*, 65 AD2d 614 (2nd Dept. 1978), 1A Carmody-Wait 2d §3:94." (at p. 2).

19. Satterlee does not dispute that judicial disqualification for interest under Judiciary Law §14 gives rise to grounds for vacatur under CPLR §5015(a)(4) for "lack of jurisdiction". Nor does it dispute the existence of the Court's interests herein, identified at ¶¶10-12 of my moving affidavit:

> "10. The Court's financial interest in obtaining a pay raise puts it in a directly adversarial posture to the plaintiffs herein – and gives it an interest in NOT affording them a victory that would enhance their ability, reputationally and financially, to oppose judicial pay raises, as for instance, not granting plaintiffs the summary judgment to which their Complaint entitles them, *as a matter of law*, based on the record herein.
>
> 11. With respect to the judicial compensation issue, defendant GANNETT and other media have been inducing the public to believe that judicial pay raises are warranted. As demonstrated by CJA's involvement on this issue, they have accomplished this by a pattern and practice of knowingly false and dishonest reporting and editorializing, suppressing, virtually entirely, all report of citizen opposition and the facts and law in support thereof. This gives the Court an additional interest in trashing the journalistic fraud cause of action, lest defendant GANNETT and other media be vulnerable to consequence for their willful and deliberate cover-up of the hoax of the judicial pay raise 'crisis' – a cover-up now manifested by their withholding from the public any news of CJA's dispositive October 27, 2011 Opposition Report to Governor Cuomo, Senate Majority Leader Skelos, Assembly Speaker Silver, and Chief Judge Lippman on the judicial pay raise issue.[fn3]
>
> 12. This is not the Court's only interest in the journalistic fraud cause of action. By virtue of the Court's acting on its undisclosed relationships, biases, and interests by its abusive behavior and prejudgment at the June 1, 2011 oral argument (Exhibit 22) and by its corrupt September 22, 2011 decision (Exhibit 20), it has acquired a further interest. The Court would be personally affected by a press which reported, rather than suppressed, the kind of injudicious, corrupt conduct that Judge

Hansbury exhibited – as such behavior mirrors its own." (underlining in the original).

20. Whereas "the rule of necessity" would permit the Court to sit on this case because its disqualifying pecuniary interest arising from plaintiffs' opposition to judicial compensation increases is shared by all other state-paid New York judges, such is forfeited by the Court's corrupt September 22, 2011 decision which has created its additional interest in press suppression not shared by such honest judicial brethren as sit on the state bench – requiring its disqualification for actual bias and interest and vacatur of its decision by reason thereof, as well as for lack of jurisdiction pursuant to CPLR §5015(a)(4).

PLAINTIFFS' ENTITLEMENT TO THE GRANTING OF THE SECOND BRANCH OF THEIR MOTION: REARGUMENT & RENEWAL

Satterlee's Procedural Objection Overlooks the Ready-Remedy in CPLR §2001

21. Satterlee's initial argument (at pp. 5-6) is that the Court should deny reargument and renewal on procedural grounds, because they are not separately set forth by plaintiffs' motion, as CPLR §2221(f) specifies. However, CPLR §2001 provides an answer for plaintiffs' oversight. It reads:

> "At any stage in an action, the court may permit a mistake omission, defect or irregularity to be corrected, upon such terms as may be just, or if a substantial right of a party is not prejudiced, the mistake, omission, defect, or irregularity shall be disregarded."

22. Indeed, it does not appear that defendants have been prejudiced as Satterlee has identified the "new fact" as:

> "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)." (at p. 7, underlining in the original)

"In reality, the only development purportedly demonstrating this Court's 'bias' is the fact that the Court issued an Order dismissing Plaintiff's Complaint" (at p. 9) –

which it purports to address (at pp. 6-9).

23. Plainly, utilizing CPLR §2001 in the situation at bar would be consistent with the seventh branch of plaintiffs' motion for "such other and further relief as may be just and proper".

24. In any event, plaintiffs are ready to withdraw the requested renewal so that their meritorious reargument branch is not jeopardized – since the "new fact" of the Court's actual bias, manifested by its September 22, 2011 decision, is duplicative of the first branch for the Court's disqualification by reason thereof and, in the alternative, for disclosure.

Plaintiffs' Entitlement to Reargument

25. Satterlee's opposition to reargument (at pp. 9-13) culminates in the deceit: "Plaintiff has utterly failed to identify any relevant fact or issue of law that the Court overlooked or misapprehended" (p. 13), which follows upon its more cunning assertions that plaintiff "utterly fails to specifically identify any fact or issue of law which was genuinely overlooked by the Court" (at p. 9, underlining added) and that "absent...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" (at p. 13, underlining added).

26. In truth, Satterlee is correct only to the extent that plaintiffs do not contend that the Court "genuinely" or "actually" "overlooked" or "misapprehended" anything such that the result was inadvertent "error".

27. However, utilizing the euphemistic language of the statute and lawyer parlance, a continuum of "error" is demonstrated by plaintiffs' motion – and, in particular, by the analysis – any one of which would justify correction through the granting of reargument. As illustrative, the

decision's strike out of the preformatted language pertaining to oral argument, which, *inter alia*, enabled it to then purport that Satterlee's dismissal motion was "unopposed by D.L. Sassower and the plaintiff Center for Judicial Accountability, Inc.", the details of which are set forth at ¶¶21-24 of my moving affidavit and pages 6 and 13 of the analysis.

PLAINTIFFS' ENTITLEMENT TO THE GRANTING OF THE THIRD & FIFTH BRANCHES OF THEIR MOTION, WHICH SATTERLEE COMBINES: VACATUR PURSUANT TO CPLR §5015(a)(3) & COSTS & SANCTIONS UNDER 22 NYCRR §130-1.1

28. Satterlee combines the third and fifth branches of plaintiffs' motion on the pretense (at pp. 16-19) that the advocacy of Satterlee attorney Meghan Sullivan, Esq. at the June 1, 2011 oral argument – which is the ground on which the fifth branch seeks maximum costs and $10,000 sanctions against Satterlee and Ms. Sullivan pursuant to 22 NYCRR §130-1.1 – is also the ground for vacatur for "fraud, misrepresentation, or other misconduct of an adverse party" pursuant to CPLR §5015(a)(3), sought by the third branch.

29. This is true only to the extent that Ms. Sullivan's factually and legally false oral advocacy on June 1, 2011 rested on Satterlee's October 22, 2010 dismissal motion – which it did, notwithstanding the fraudulence of that dismissal motion had been fully exposed by plaintiffs' opposition/cross-motion papers. As stated by ¶15 of my moving affidavit:

> "15. Among the deceits, already exposed by plaintiffs' opposition/cross-motion papers, which the Court allowed Ms. Sullivan to repeat:
>
> - that it was 'difficult to tell...from...the complaint what exactly in the article the plaintiff's complained about.' (Exhibit 22, p. 23, lns. 21-24);
>
> - that 'the language' in the article that plaintiffs claim is defamatory' is: 'heckling', 'slings and arrows', and 'fireworks' (Exhibit 22, p. 24);

- that 'plaintiff's claim fails because the complaint itself, specifically Exhibit 7 to the complaint, is an analysis that...established that the gist or [sting] of the article is substantially true' (Exhibit 22, p. 25);

- that 'all of the statements, complained of by plaintiffs' are 'figurative expression[s]' and 'not factual statements' (Exhibit 22, p. 26);

- that plaintiffs' lawsuit against The New York Times was 'strikingly similar' (Exhibit 22, p. 28)."

30. The September 22, 2011 decision completely covers up the fraudulence of Satterlee's dismissal motion, the subject of four branches of plaintiffs' cross-motion against Satterlee. As highlighted by plaintiffs' analysis (at pp. 9-10, 27-30), this cover-up includes the deceit that Satterlee's dismissal motion was "well within the bounds of legitimate advocacy", here cited by Satterlee (at p. 16) as if that snippet of the decision has record support, which it has none.

31. Plaintiffs' opposition/cross-motion papers readily establish grounds for vacatur of the Court's decision "for fraud, misrepresentation, or other misconduct of a party" pursuant to CPLR §5015(a)(3) – and Satterlee does not assert the contrary. Instead, it purports (at p. 17) that "as set forth in Point I *infra*" plaintiffs are "not entitled to reargue or renew" – which, of course, has nothing to do with their entitlement to vacatur under CPLR §5015(a)(3).

32. As for the fifth branch of plaintiffs' motion, seeking maximum costs and sanctions against Ms. Sullivan and Satterlee pursuant to NYCRR §130-1.1 for:

> "her factually and legally false advocacy at the June 1, 2011 oral argument, including her assertions that "New York law simply does not make [a] distinction [between news articles and editorials or columns]" and that "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",

the specifics of Ms. Sullivan's misconduct is particularized at ¶¶15-18 of my moving affidavit and fully substantiated by plaintiffs' November 29, 2010 opposition/cross-motion memorandum of law

and December 15, 2010 reply memorandum of law, as to which there has been no responsive adjudication by the Court.

33. That Satterlee attempts to rely on its December 7, 2010 reply memorandum of law in opposition to plaintiffs' November 29, 2010 cross-motion memorandum of law only reinforces the necessity of a responsive adjudication. Suffice to say, however, that Satterlee's citation (at p. 18) to the uninformative decision in *Palmieri v. Thomas*, 29 A.D.3d 658, 659, 814 N.Y.S.2d 717, 718 (2d Dep't 2006) and to *Wilkins v. New York Post*, 32 Media L. Rep. 1566 (Sup. Ct. N.Y. Co. 2003), whose decision, involving a tabloid, is unpublished by Lexis or Westlaw – is not impressive authority for its assertion that

> "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 cases involving editorials or letters to the editor." (at p. 18, underlining in the original).

PLAINTIFFS' ENTITLEMENT TO THE GRANTING OF THE SIXTH BRANCH OF THEIR MOTION: LEAVE TO AMEND THE VERIFIED COMPLAINT TO EXPLICITLY IDENTIFY INSTITUTIONAL RECKLESS DISREGARD FOR TRUTH AS A FOURTH CAUSE OF ACTION

34. Satterlee's opposition to the sixth branch of plaintiffs' motion for "leave to amend the Verified Complaint, pursuant to CPLR §3025(b), so as to make additionally explicit a fourth cause of action for institutional reckless disregard for truth" is predicated on a succession of brazen deceits.

35. It purports (at pp. 21-23) that "the very same paragraph of [plaintiffs'] motion" that seeks leave "acknowledges" that "this Court has already ruled within the Order that no such cause of action is recognized under New York State Law. *See* Order at p. 5." This is false. Firstly, ¶25 of my moving affidavit – which is the paragraph Satterlee identifies – "acknowledges" no such thing. Its single-sentence states:

"25. Although I believe that plaintiffs' Verified Complaint adequately pleads a fourth cause of action for Institutional Reckless Disregard for Truth – and the decision (at p. 5) provides neither facts nor law to support its bald assertion to the contrary – annexed is plaintiffs' proposed fourth cause of action, with revised "WHEREFORE" clause (Exhibit 29), in support of the branch of this motion as seeks leave to amend."

Secondly, the Court did NOT reject the institutional reckless disregard for truth cause of action, the decision explicitly stating:

"E.R. Sassower does not assert a cause of action based on this second issue [the law review article "institutional reckless disregard for the truth' in defamation actions"] and the matter is not before the Court." (Exhibit 20, at p. 5, underlining added).

36. Satterlee then builds on its two-fold deceit that the Court has rejected the institutional reckless disregard for truth cause of action by requesting that plaintiffs' sixth branch "be treated as a motion to reargue", which it then submits musts "be denied as the Plaintiff has not offered this Court any argument whatsoever as to what fact or issue of law was overlooked by this Court." This deceit is fully exposed by plaintiffs' analysis (at pp. 22-24), as follows:

"...the decision purports that the third cause of action for journalistic fraud is based on two law review articles. While acknowledging that the first law review article, whose title it does not give, explores 'journalistic malpractice' and that its authors, two professors, had 'conclude[d] that readers of print media should have a cause of action for journalistic malpractice', it gives no information as to the second law review article other than that it had explored ''institutional reckless disregard for the truth' in defamation actions', then stating, in a footnote:

'E.R. Sassower does not assert a cause of action based on this second issue and the matter is not before the court'.

This is a deceit and the decision gives no elaborating details. As is explicit from the Complaint's 'WHEREFORE' clause (at p. 33) it expressly brings 'a cause of action for Institutional Reckless Disregard for Truth[fn18], to the extent warranted by the evidence adduced', as part of its 'other and further relief as may be just and proper' – with the annotating footnote 18 identifying the Complaint's footnote 14, annotating the title 'AS AND FOR A THIRD CAUSE OF ACTION FOR JOURNALISTIC FRAUD', as follows:

'Such proposed cause of action, designed to foster media

> accountability and facing no First Amendment bar, is discussed in the law review article '*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*', 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1 (2003), by Professors Clay Calvert and Robert D. Richards, Co-Directors of the Pennsylvania Center for the First Amendment at the Pennsylvania State University.
>
> That the law evolves, with new causes of action constantly emerging, is further reflected by the law review article, '*Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press*', 90 Iowa Law Review, 887 (2005), proposing yet a further cause of action for media accountability.
>
> Recognition of these causes of action is consistent with what the New York Court of Appeals articulated in *Brown v. State of New York*, 89 N.Y.2d 172, 181-182 (1996): 'new torts are constantly being recognized'.'

Such is sufficient for placing the 'matter...before the court' as a cause of action – and the decision offers no legal authority for its factually-unsupported, *sua sponte*, contrary claim, which, indeed, has no basis in law, as is clear from §208: 'The Basic Pleading Requirement' of New York Practice by David D. Siegel (5th ed., 2011), interpreting CPLR §3013:

> 'All pleadings must be liberally construed. Draftsmanship is secondary. Under the CPLR, if a cause of action can be spelled out from the four corner of the pleading, cause of action is stated and no motion lies under CPLR 3211(a)(7) based on a failure to plead one. The pleading can be pathetically drawn; it can reek of miserable draftsmanship. That is not the inquiry. We want only to know whether it states a cause of action – any cause of action. If it does, it's an acceptable CPLR pleading.[fn]
>
> ...
>
> It's not necessary that the claim pleaded be given any particular name. It can even be named wrong[fn]...

This is consistent with CPLR 3026, 'Construction':

> 'Pleadings shall be liberally construed. Defects shall be ignored if a substantial right of a party is not prejudiced.'

Indeed, the decision does not cite any prejudice to defendants with respect to the proposed institutional reckless disregard for truth cause of action – and the record shows that Satterlee itself did not purport to be prejudiced. Rather, Satterlee entirely ignored the institutional reckless disregard for truth cause of action – not only in its dismissal motion, but in its opposition to plaintiff's cross-motion. This even as the

seventh branch of plaintiffs' cross-motion expressly sought summary judgment on the proposed cause of action for institutional reckless disregard for truth, identifying 'the evidence adduced' as:

> 'Satterlee's failure to address to Complaint's suggested recognition of a cause of action for Institutional Reckless Disregard for Truth, combined with its obliteration of the allegations of the Complaint pertaining to the '**READERS' REPRESENTATIVE**' that would be its essence' (opposition/cross-motion memo, at pp. 47-48).

As to the Complaint's allegations concerning the '**READERS' REPRESENTATIVE**', plaintiffs' opposition/cross-motion memo (at pp. 46-47), stated:

> 'With respect to ¶¶15-17, 21, 73-75 pertaining to the '**READERS' REPRESENTATIVE**' – a position intended to ensure the integrity of The Journal News' journalism – defendant Journal News' abolishment of that position, or at very least its failure to staff it, cannot be seen as having journalistic justification. Such decision, irrespective of whether it was failure to staff or abolition of the position, may be presumed to be financially-driven, impelled by a desire to increase defendant Gannett's renowned profit margin[fn23]. As such, this case is perfect for recognizing the cause of action proposed by the law review article '*Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press*" (Exhibit 17), additionally referred-to in the Complaint's footnote 14...'

This summary of the institutional reckless disregard for truth cause of action was, with the balance of plaintiffs' opposition/cross-motion memo, incorporated by reference in plaintiff Elena Sassower's accompanying affidavit (at ¶2), which swore to its truth. It is well-settled that 'affidavits may be used freely to preserve inartfully pleaded, but potentially meritorious, claims', *Rovello v. Orfino Realty, Co., Inc*, 40 N.Y.2d 633, 635-6 (1976), *Leon v Martinez*, 84 NY2d 83, 88 (1994), *Sargiss v. Margarelli*, 12 NY3d 527, 531 (2009).

Moreover, since it is well settled that ''Leave to conform a pleading to the proof pursuant to CPLR 3025 (c) should be freely granted absent prejudice or surprise resulting from the delay'' (*Bryant v Broadcast Music, Inc.*, 60 AD3d 799, 800, 875 NYS2d 226 [2009], quoting *Alomia v New York City Tr. Auth.*, 292 AD2d 403, 406, 738 NYS2d 695 [2002]).', *Worthen-Caldwell v Special Touch Home Care Services, Inc.*, 78 A.D.3d 822 (App. Div. 2nd Dept. 2010)., such deficiency as the Court felt

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"[fn23] *See* ¶6(a) of the Complaint, quoting '*Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press*", at 890."

existed in the Complaint had an easy remedy. See, also, *Edenwald Contracting Co., Inc. v. City of New York*, 60 NY2d 957, 959 (1983), 'Permission to amend pleadings should be 'freely given' (CPLR 3025, subd [b])' *U.S. Bank v. Sharif*, 2011 NY Slip Op 7835; 2011 N.Y. App. Div. LEXIS 7647 (Second Dept. 2011)."

37. Satterlee's next deceit is that:

"Plaintiff still fails to cite to a single statute or case law which establishes that New York recognizes the newfound cause of action which Plaintiff now seeks leave to amend her Complaint to allege." (at p. 22).

The relevant case law, *Brown v. State of New York*, 89 N.Y.2d 172, 181-182 (1996), has been cited and quoted by plaintiffs innumerable times, beginning in their existing complaint, for the proposition that "new torts are constantly being recognized" – and additional legal authority is embodied in the proposed amendment to the complaint (Exhibit 29) whose annotating footnote cites treatise authority:

"The Law of Torts, Vol. 1, Dobbs, Hayden, Bublick (2nd ed. 2011) §1, at 2. '...Tort law is predominantly common law. That is, judges rather than legislatures usually define what counts as an actionable wrong and thus as a tort.; they also define how compensation is to be measured and what defenses may defeat the tort claim.'"

That is all that is needed for this Court – or any Court – to recognize the institutional reckless disregard cause for truth cause of action, buttressed, as it is, by the ample legal argument and case law from the law review article of the two professors who proposed it, also cited and quoted in the record, many times.

38. Finally, plaintiffs' motion for leave to amend is not "procedurally deficient", as Satterlee purports (at p. 22).

39. Firstly, this lawsuit is still "pending" – as Satterlee well knows in using inference (at p. 22), but no statement or case law, that it is not.

40. Secondly, the proposed amendment is sufficient and meritorious on its face, stating:

> "81. The position of '**READERS' REPRESENTATIVE**' was intended to ensure the integrity of The Journal News' journalism.
>
> 82. The abolishment of that position by Defendant GANNETT and/or Defendant Journal News, or at very least their failure to staff it, cannot be seen as having journalistic justification. Such decision, irrespective of whether it was failure to staff or abolition of the position, was financially-driven, impelled by a desire to increase defendant GANNETT's renowned profit margin[fn16]." –

and Satterlee makes no showing that "the proposed amendment is palpably insufficient or patently devoid of merit on its face", notwithstanding it cites case law for that proposition.

41. Thirdly, Satterlee's claim (p. 23) that it 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" is also built on a succession of deceits – preceded, as it is, by Satterlee's attempt to rewrite the history of this case:

> "Plaintiff has offered (i) no explanation of what new facts allegedly give rise to her proposed 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." (at pp. 22-23).

What plaintiffs "offered" is their analysis (Exhibit 23), which – as reflected by the above quoted excerpt relating to the institutional reckless disregard for truth cause of action (pp. 19-22, *supra*) – sets forth the facts showing that it was sufficiently pleaded, that Satterlee never objected that it was not sufficiently pleaded, that it was fully-litigated, and that it is in a posture of summary judgment for plaintiffs. Consequently, no re-litigation is in order, but, rather, only a ruling on this already fully-litigated cause of action, to which – as the record shows – Satterlee has no defense.

[fn16] *See* ¶6(a) of the Complaint."

ELENA RUTH SASSOWER

Sworn to before me this
10th day of February 2012

Notary Public

FRANCES Y. LAU
Notary Public, State of New York
No. 01LA6208436
My Commission Expires July 6, 2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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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,

Index # 10-12596
Justice Peter Fox Cohalan

-against-

GANNETT COMPANY, INC., The Journal News, LoHud.com HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS, D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10,

Defendants.

AFFIDAVIT IN REPLY & IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR DISQUALIFICATION/DISCLOSURE, VACATUR, REARGUMENT & OTHER RELIEF

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