ANALYSIS OF THE SEPTEMBER 22, 2011 SHORT-FORM ORDER OF SUPREME COURT JUSTICE PETER FOX COHALAN

This analysis constitutes a "legal autopsy" of the case, consistent with what is proposed in "*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*", 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record ("...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like..." (p. 53)).

INTRODUCTION

The original September 22, 2011 short-form order, filed in the Suffolk County Clerk's office on October 20, 2011, was stamped "Publish" – meaning the Court deemed it to have value.

As hereinafter shown, the ONLY value the decision has – certainly its only precedential value – is that it is the FIRST published decision to identify (at p. 5) the existence of cases bringing a cause of action for journalistic fraud – this case, *Sassower v. Gannett* (Suffolk Co. #10-12596), and a previous case, *Sassower v. New York Times* (Westchester Co. #05-19841), with citation to the law review article by Professors Clay Calvert and Robert Richards, which proposed the journalistic fraud cause of action, "14 Fordham Intell. Prop. Media & Ent. L.J. 1 (2003)", furnished by plaintiffs.

The decision also has precedential value in identifying (at p. 5) the further law review article which plaintiffs had furnished on "'institutional reckless disregard for the truth' in defamation actions", though not its authors, Professors Randall Bezanson and Gilbert Cranberg, or its citation, 90 Iowa Law Review 887 (2005), purporting, falsely, without supporting facts or law, that plaintiffs had not asserted a cause of action based thereon.

The September 22, 2011 decision, as electronically published by Lexis, with the citation "2011 NY Slip Op 32872U; 2011 N.Y. Misc. LEXIS 5148", appends the following:

> "NOTICE: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS".

In other words, the New York State Law Reporting Bureau, which determines whether a court's desire for publication is appropriate for the printed official reports, determined it was not.

The "NOTICE" is then followed by the annotation:

> "PRIOR HISTORY: *McFadden v Sassower, 27 Misc. 3d 45, 900 N.Y.S.2d 585, 2010 N.Y. Misc. LEXIS 381 (2010)*".

Such "PRIOR HISTORY", which the Court would have identified for Lexis, is the appellate decision of Appellate Term, Second Department Justices Denise Molia and Angela Iannacci on plaintiff Elena Sassower's appeals from the October 11, 2007 and January 30, 2008 decision/orders of White Plains City Court Judge Brian Hansbury. This is not appropriate "PRIOR HISTORY", as may be seen from

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the fact that the short-form order does not itself make any reference to that appellate decision – or to any decision by Judge Hansbury.

Instead, the single reference to Judge Hansbury in the short-form order is that the article giving rise to plaintiffs' action for libel, libel *per se*, and journalistic fraud:

> "reported on a public meeting of the Westchester Common Council held at the city hall in White Plains, New York", where the "meeting's agenda included the judicial confirmation of Judge Brian Hansbury, which the plaintiffs Elena Ruth Sassower (hereinafter E.R. Sassower) and Doris L. Sassower (hereinafter D.L. Sassower) opposed." (at p. 2, underlining added).

This does not state that plaintiffs' opposition to Judge Hansbury was based on any decision he had rendered.

As for the immediately-following next sentence of the short form order, purporting that:

> "plaintiffs allege, *inter alia*, that the article...erroneously reported on a prior judicial decision which evicted E.R. Sassower and D.L. Sassower from their apartment of 21 years" (at p. 2).

The referred-to "prior judicial decision which evicted E.R. Sassower and D.L. Sassower from their apartment of 21 years", to which plaintiffs objected, was NOT by Judge Hansbury, but "by Jo Ann Friia, signed on July 3, 2008". Plaintiffs' Complaint (¶¶14, 52) not only highlighted this, but explicitly identified that the article's reference to Judge Friia's July 3, 2008 decision was among the respects in which the article was, "on its face, non-conforming with standards for news articles" and served no purpose but to imply that "The Journal News had investigated – and discredited – plaintiffs' publicly-expressed 'alleg[ations]' of Judge Hansbury's 'corruption and conflict of interest...demonstrated by his 2007 decision to evict [them]'", which was false.

Judge Friia's July 3, 2008 decision was appealed by plaintiff Elena Sassower – and reversed by Appellate Term Justices Molia and Iannacci in an appellate decision whose citation is not "*27 Misc. 3d 45, 900 N.Y.S.2d 585, 2010 N.Y. Misc. LEXIS 381 (2010)*".

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1st Page – THE CAPTION:

Without explanation and with no citation to legal authority, the decision changes the caption of the action – and only as to plaintiffs – from:

> "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*,

to:

> "ELENA RUTH SASSOWER, DORIS L. SASSOWER, and CENTER FOR JUDICIAL ACCOUNTABILITY, INC."

It, thereby, removes the double capacities in which each of the individual plaintiffs appear – germane to their libel *per se* cause of action – and that they and the corporate plaintiff are bringing the action "*Pro Bono Public*" – germane to their journalistic fraud cause of action. In so doing, the decision replicates what Satterlee did in its dismissal motion – to which plaintiffs objected both at the June 1, 2011 oral argument [Tr. 11-12][1] and by their opposition/cross-motion memo (pp. 12-13) as done by Satterlee without so-identifying the change and "without providing any legal authority".

Plaintiffs' assertions that Satterlee's revision of the caption was "legally-unauthorized, if not proscribed" and that its purpose in deleting their professional capacities was to conceal their libel *per se* cause of action were not denied or disputed by Satterlee. Nor are they denied or disputed by the Court, whose decision, without ruling on the issue, follows with the identical revision of the caption.

1st Page – THE PARTIES & THEIR ATTORNEYS:

On the right side of the caption, the decision misrepresents the attorneys representing the parties – and the *pro se* plaintiff.

(1) "SARNO & DeFELICE, LLC" are not "Attorneys for Plaintiffs Doris L. Sassower & Center for Judicial Accountability, Inc." They are, as reflected by each and every one of plaintiffs' submissions, attorneys for:

> "DORIS L. SASSOWER, Individually and as President of the Center for Judicial Accountability, Inc., ELENA RUTH SASSOWER, as Director of the Center for Judicial Accountability, Inc., and CENTER FOR JUDICIAL ACCOUNTABILITY, INC., Acting *Pro Bono Publico*".

Here, too, the decision obliterates the professional capacities of the two individual plaintiffs – germane to their libel *per se* cause of action – and that they and the corporate plaintiff are additionally "*Acting Pro Bono Public*" – germane to their journalistic fraud cause of action.

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[1] The transcript of the June 1, 2011 oral argument is Exhibit 22 to plaintiff Elena Sassower's December 19, 2011 affidavit in support of plaintiffs' disqualification/reargument/vacatur motion.

(2) "SATTERLEE STEPHENS BURKE & BURKE, LLP" are not "Attorneys for Defendants". They do NOT represent defendant Keith Eddings, the reporter who authored the news article at issue, nor do they represent defendant DOES 1-10. This, too, was pointed out by plaintiffs at the June 1, 2011 oral argument [Tr. 5-6], by their opposition/cross-motion memo (pp. 1. 12, 49 (& fn. 24), 55-56), and by their reply memo (pp. 10, 30).

The decision's concealment that Satterlee it is not representing the defendant DOES is germane to plaintiffs' cross-motion, whose fourth branch sought Satterlee's disqualification for conflict of interest as a defendant DOE – relief the decision conceals.

(3) "ELENA RUTH SASSOWER" is 'Pro Se", but only in her individual capacity. In her professional capacity, as Director of the Center for Judicial Accountability, Inc. – the capacity relevant to her libel *per se* cause of action – she is represented by SARNO & DeFELICE, LLC.

<u>1st Page – CPLR §2219(a) LISTING OF "PAPERS":</u>

Immediately below the caption, the decision contains a preformatted section for "papers...read on this motion". The "papers" are listed only by numbers 1-35. As examination of the record reveals, this large number of "papers" is because the Court has <u>separately numbered</u> each and every exhibit appended to the motion and cross-motion, <u>separately numbered</u> each and every exhibit appended to the opposing and reply papers, and <u>separately numbered</u> each and every appended affidavit of service.[2] At the same time, it has NOT numbered – and, therefore, presumably, NOT "read on this motion" – the most important document in determining the motion and cross-motion: plaintiffs' Verified Complaint.[3] Although a copy of what Satterlee purported to be the Verified Complaint was

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[2] The following numbers are handwritten on the record documents: <u>#1</u> Satterlee's motion to dismiss; <u>#2</u>: Meghan Sullivan affidavit; <u>#3</u>: Exhibit A to Sullivan affidavit; <u>#4</u>: Exhibit B to Sullivan affidavit; <u>#5</u>: Mary Smith affidavit; <u>#6</u>: Exhibit A to Smith affidavit; <u>#7</u> affidavit of service for dismissal motion; <u>#8</u>: Satterlee dismissal memorandum of law; <u>#9</u>: affidavit of service for dismissal memo; <u>#10</u>: plaintiffs' notice of cross-motion; <u>#11</u>: plaintiff ERS' November 29, 2011 moving affidavit; <u>#12</u>: Exhibit 10 to ERS affidavit; <u>#13</u>: Exhibit 11 to ERS affidavit; <u>#14</u>: Exhibit 12 to ERS affidavit; <u>#15</u>: Exhibit 13 to ERS affidavit; <u>#16</u>: Ex 14 to ERS affidavit; <u>#17</u>: Exhibit 15 to ERS affidavit; <u>#18</u>: Exhibit 16 to ERS affidavit; <u>#19</u>: Exhibit 17 to ERS affidavit; <u>#20</u>: Exhibit 18 to ERS Affidavit; <u>#21</u>: affidavit of service for plaintiffs' notice of cross-motion & affidavit; <u>#22</u>: Plaintiffs' November 29, 2011 memorandum of law; <u>#23</u>: affidavit of service for plaintiffs' memorandum of law; <u>#24</u>: Minnie Stanley affidavit; <u>#25</u>: affidavit of service for Stanley affidavit; <u>#26</u>: Meghan Sullivan affidavit; <u>#27</u>: Exhibit A to Sullivan affidavit; <u>#28</u>: affidavit of service for Sullivan affidavit; <u>#29</u>: Satterlee reply memorandum of law; <u>#30</u>: affidavit of service for Satterlee reply memorandum of law; <u>#31</u>: ERS reply affidavit; <u>#32</u>: Exhibit 19 to ERS reply affidavit; <u>#33</u>: affidavit of service for ERS reply affidavit; <u>#34</u>: plaintiffs' reply memo of law; <u>#35</u>: affidavit of service for plaintiffs' reply memorandum of law.

[3] The other "papers" in the file were the following: slip for index #; summons with notice; affidavit of service for summons with notice; notice of appearance and demand for complaint; RJI (original & copy); stipulation extending time; ERS' January 5, 2011 letter; ERS' January 18, 2011 letter; attached ERS' January 7, 2011 letter; stapled clump of correspondence consisting of ERS' February 18, 2011 letter (fax & original); DeFelice's February 22, 2011 letter; ERS' April 18, 2011 letter (original & fax); ERS' May 4, 2011 letter; ERS' May 3, 2011 letter to Court transmitting her May 3, 2011 letter to Satterlee.

annexed to the affidavit of Satterlee lawyer Emily Smith, such had been twice superseded – and the facts pertaining thereto were set forth by plaintiff Elena Sassower's opposition/cross-motion affidavit (¶¶17-19), without contest from Satterlee. Therein identified was that:

> "Among the 'clarifying changes' [to the Verified Complaint], the addition of the words 'contrary to the news article' at the end of ¶34 to highlight that the video of the Common Cause meeting reflects that [plaintiff Elena Sassower] (and [her] mother) left the Council chamber BEFORE Judge Hansbury and his wife and, therefore, had not 'pursue[d]' him in leaving the Council chamber, as the article implied." (¶19, capitalization in the original).

This referred-to ¶34 is among the most important paragraphs of the Verified Complaint[4], as are the adjacent ¶¶32-33, and 35, as these ALL establish the knowing falsity of defamatory facts in the news article, as verifiable from the video. The decision conceals both the content of these four material paragraphs and the existence of the video.

This preformatted section also contains pre-formatted language connoting oral argument, *to wit*, "(and after hearing counsel in support and opposed to the motion)". However, there is a line striking it out, as if to imply that there was no oral argument. This is false. Oral argument was held on June 1, 2011 – the date indicated at the top, right of the decision's first page as "ADJ. DATE" – when the Court "hear[d] counsel in support and opposed to the motion". The counsel in support was Meghan Sullivan, Esq. for Satterlee. The counsel in opposition was James DeFelice, Esq., who was heard with plaintiff Elena Sassower, *pro se* in her individual capacity.

As it is the Court's practice to hold oral argument on ALL motions – and it did hold oral argument on Satterlee's motion and plaintiffs' cross-motion – its striking out of its standard reference "(and after hearing counsel in support and opposed to the motion)" can be explained only in two ways, both frauds:

> First, concealing that Mr. DeFelice argued on behalf of plaintiff Doris Sassower and the Center for Judicial Accountability, Inc. at the June 1, 2011 oral argument in opposition to Satterlee's motion is essential if the decision is to also assert – as it does at page 2 – "The motion is unopposed by D.L. Sassower and the plaintiff Center for Judicial Accountability, Inc." Plainly, Satterlee's motion is not "unopposed" by them if Mr. DeFelice argued on their behalf against the motion, as he did, side-by-side with plaintiff Elena Sassower, at the June 1, 2011 oral argument.
>
> Second, because plaintiffs' June 1, 2011 oral argument provided the Court with the dispositive facts and law mandating judgment for plaintiffs, the decision had to eliminate the existence of the argument if it was to achieve its pre-fixed result of dismissing their

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[4] As pointed out by plaintiffs' reply memo (at p. 3, fn. 2):

> "For purposes of simplicity, plaintiffs' Verified Complaint is hereinafter mostly referred to as 'plaintiffs' Complaint'. Such shorthand should not obscure that it is a 'verified plead' and, as such, has evidentiary value equivalent to an affidavit. (see p. 58 and footnote 29 of plaintiffs' opposition/cross-motion memo)."

Complaint. Among the dispositive facts and law plaintiffs directly presented to the Court on June 1, 2011 – ALL obliterated from its decision:

(1) that the threshold issue before the Court was Satterlee's disqualification as a defendant DOE – the subject of the fourth branch of plaintiffs' cross-motion – and that it was "completely unopposed, undenied, undisputed" by Satterlee [Tr. 5-7] (see also, opposition/cross-motion, pp. 12, 54-56; plaintiffs' reply memo, pp. 5, 7, 9-10, 31-32);

(2) that Satterlee's dismissal motion "conceals, distorts, falsifies the allegations of the complaint" [Tr. 7-15, 19], and, specifically, in the following respects:

   i. by concealing the existence of the video and that it substantiates the Complaint's analysis that plaintiffs were completely silent "during" Judge Hansbury's confirmation (see also, opposition/cross-motion memo, pp. 2, 7, 8, 9, 18-19, 26, 34; plaintiffs' reply memo, pp. 4, 6, 38);

   ii. by falsely purporting that the Complaint and analysis "corroborate[] the article" – and are the "documentary evidence" for dismissing the Complaint (see also, opposition/cross-motion memo, pp. 4, 21-26; plaintiffs' reply memo, pp. 6, 18-22, 38);

   iii. by concealing the Complaint's libel *per se* cause of action, including by altering the caption to make it appear that plaintiffs are suing only in a single capacity (see also, opposition/cross-motion memo, pp. 4, 12-13);

   iv. by concealing all the Complaint's allegations germane to the journalistic fraud cause of action, as, for instance, the "**READERS' REPRESENTATIVE**" and "**ACCURACY**"/Corrections Policy, and misrepresenting that there had been a response to plaintiffs' retraction demand (see also, opposition/cross-motion memo, pp. 20, 21, 45-46; plaintiffs' reply memo, p. 39).

(3) that the subject article is a "news article" and, as such, "not one in which a reporter's opinion is supposed to appear. It is reserved for fact" [Tr. 9-10, lns. 2-4] (see also, opposition/cross-motion memo, pp. 8, 20, 26-32; plaintiffs' reply memo, pp. 13-16, 24);

(4) that the article "on its face, does not comport with the standards of news articles" [Tr. 9, lns. 5-7] (see also, opposition/cross-motion, pp. 20, 27; plaintiffs' reply memo, pp. 14, 38);

(5) that the summary judgment branch of plaintiffs' cross-motion included "a request that the Journal News be ordered to remove from its masthead its accuracy policy because it is a false and misleading advertising claim, in violation of public policy, including General Business Law Article 22(a)" [Tr. 13-14] (see also, notice of cross-motion, p. 2; opposition/cross-motion memo, pp. 59-61; plaintiffs' reply memo, p. 36);

(6) that a cause of action for libel includes not only what is printed, but what is left out, *Gerard Matovcik v. Times Beacon Record Newspapers, et al.*, 46 A.D.3d 636 (2nd Dept. 2007) [Tr. 20-21] (see also, opposition/cross-motion memo, pp. 37-40; plaintiffs' reply memo, p. 19).

All these facts, which plaintiffs directly made known to the Court at the June 1, 2011 oral argument, bar it from dismissing their Complaint under the controlling standards and law to which the decision cites. Indeed, this is why these facts are all also highlighted by plaintiffs' opposition/cross-motion and reply papers that the Court purports to have "read".

1st Page – "ORDERING" PARAGRAPHS:

There are two ordering paragraphs on the first page:

The first "ordering" paragraph pertains to Satterlee's October 22, 2010 motion for dismissal pursuant to CPLR §§3211(a)(1) and (7) – a motion falsely purported to have been made "by the named defendants". It was not. Defendant Eddings, a named defendant, was *not* represented by Satterlee – a fact pointed out by plaintiffs at oral argument [Tr. 5] and highlighted by their opposition/cross-motion memo (pp. 1, 12, 49).

This ordering paragraph grants Satterlee's motion "to the extent of dismissing the complaint for failure to state a cause of action" and "otherwise denie[s]" it. In other words, the decision grants the motion dismissing the Complaint pursuant to CPLR §3211(a)(7), "failure to state a cause of action", but not pursuant to CPLR §3211(a)(1), a "defense founded on documentary evidence".

The decision nowhere explains why it has not granted dismissal based on documentary evidence – and all but conceals that it has denied dismissal on that ground. The reason, however, is clear from the "documentary evidence" purported by Satterlee as the basis for dismissal: the Complaint with its incorporated Exhibit 7 analysis of the news article.

As pointed out by plaintiffs both at oral argument [Tr. 8-11] and by their opposition/cross-motion memo (pp. 2) and reply memo (pp. 37-39), the Complaint and Exhibit 7 analysis establish – *with the corroboration of the video* – that the defamatory news article is not only factually false, but was

known to be false by defendant Eddings, an eyewitness to the events, when written by him, and, additionally, that The Journal News' prominently-featured policy as to "**ACCURACY**", "Corrections", and a "**READERS' REPRESENTATIVE**"/"Reader Services Editor" is a fraud upon the public, *entitling plaintiffs' to summary judgment.*

The second "ordering" paragraph pertains to plaintiffs' November 29, 2010 cross-motion, whose relief is materially concealed and, in its entirety, "denied". According to this paragraph, the cross-motion seeks:

> "an order imposing sanctions pursuant to 22 NYCRR 130-1.1, granting a default judgment against DOES 1-10, extending the plaintiffs' time to serve the defendant Keith Eddings, giving notice that the Court will treat the defendants' motion as one for summary judgment, and for various relief directed against the defendants' counsel" (underlining added).

Concealed by the euphemism "various relief directed against the defendants' counsel" are the second, third, and fourth branches of plaintiffs' eight-branch cross-motion. These three branches are:

> The cross-motion's second branch: "referring defense counsel to appropriate disciplinary authorities pursuant to this Court's mandatory 'Disciplinary Responsibilities' under the Chief Administrator's Rules Governing Judicial Conduct, 22 NYCRR §100.3D(2), for their knowing and deliberate violations 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'"[5];
>
> The cross-motion's third branch: "assessing damages against defense counsel for deceit and collusion proscribed under Judiciary Law §487(1) as a misdemeanor and entitling plaintiffs to treble damages";
>
> The cross-motion's fourth branch: "disqualifying defense counsel for violation of Rule 1.7 of the Rules of Professional Conduct for Attorneys 'Conflict of Interest: Current Clients', as they are themselves parties, being defendant DOES";

The decision nowhere identifies these three cross-motion branches. This includes in the last page of the decision (p. 6), denying "The remaining relief requested in the cross-motion" because "the contentions therein are without merit" – without identifying a single one of these "contentions".

This ordering paragraph also materially truncates two additional branches of plaintiffs' cross-motion.

- The cross-motion's first branch, identified only as "sanctions pursuant to 22 NYC 130-1.1" – truncated to conceal that it, too, is "relief directed against defendants'

[5] By letter dated January 5, 2011, plaintiffs requested that this branch be expanded to "specifically include Satterlee's knowing and deliberate violation of Rule 5.1 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers'". (See Exhibit 27 to plaintiff Elena Sassower's December 19, 2011 affidavit in support of plaintiff's disqualification/reargument/vacatur motion).

counsel" – a fact the decision does not disclose until page 6, where, in order to deny it as "without merit", the decision flagrantly misrepresents the basis for the branch and disregards cognizable legal standards; and

- The cross-motion's seventh branch, identified only as "giving notice that the Court will treat the defendants' motion as one for summary judgment" — truncated to conceal that the request was significantly and materially more specific:

> "giving notice, pursuant to CPLR §3211(c), that defendants' dismissal motion is being considered by the Court as one for summary judgment in plaintiffs' favor on their Verified Complaint's three causes of action: for libel (¶¶36-56), libel *per se* (¶¶57-64), for journalistic fraud (¶¶65-79), and on a fourth cause of action related thereto: institutional reckless disregard for truth; with additional notice, as part thereof, that the Court will be determining whether defendant Journal News should be ordered to remove from its masthead its '**ACCURACY**' policy as a false and misleading advertising claim, in violation of public policy, including General Business Law, Article 22-A (§§349 and 350, *et seq.*)."

The decision never reveals this content of the summary judgment branch. This includes in its footnote 2 (at p. 5), where it purports that "E.R. Sassower does not assert a cause of action" for "institutional reckless disregard for the truth" and that "the matter is not before this Court", and at page 6, where this seventh cross-motion branch is denied as "remaining relief requested in the cross-motion [whose] contentions...are without merit" – with none of those contentions identified.

Finally, this ordering paragraph, as elsewhere in the decision, conceals:

> The cross-motion's eighth branch: "such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202".

The state of the record, with respect to plaintiffs' cross-motion was highlighted at the outset of plaintiffs' reply memo (pp. 1-3) – and particularized by its 41 pages – *to wit*, that the branches of the cross-motion for Satterlee's disqualification and for summary judgment were unopposed, *in fact*, and the six other branches were unopposed, *as a matter of law*. Indeed, the deceit and fraud pervading Satterlee's opposition reinforced plaintiffs' entitlement to all eight cross-motion branches, *as a matter of law*.

2nd Page – FIRST PARAGRAPH: Description of the "Action"

Purporting to describe plaintiffs' "action" – as opposed to their Complaint, to which it makes no mention – this paragraph furnishes no record references and is multitudinously false and misleading. This includes:

(1) misidentifying The Journal News as "a Westchester County newspaper", notwithstanding ¶6(c) of plaintiff's Complaint, under the heading "THE PARTIES & BACKGROUND FACTUAL ALLEGATIONS", identifies The Journal News as "defendant GANNETT's

community newspaper for the suburban New York City counties of Westchester, Rockland, and Putnam" – without dispute by defendants;

(2) failing to identify the subject "article" as a news article, notwithstanding 39 paragraphs of the Complaint and the "WHEREFORE" clause specify that it is a news article and the significance of its being a news article, with these further highlighted by plaintiffs' oral argument [Tr. 9-10, lns. 2-4], opposition/cross-motion memo (pp. 8, 20, 26-32), and reply memo (pp. 13-16, 24);

(3) misidentifying the "article" as having been published on May 6, 2007 – when the Complaint clearly identifies the publication date as May 6, 2009, including in the first of its "FACTUAL ALLEGATIONS" (¶13);

(4) failing to identify the headlines of the news article, either the newspaper headline, "*Hecklers try to derail new judge*", or the website headline, "*White Plains woman heckles city judge during confirmation*" – notwithstanding the Complaint identifies (¶¶39(b), 42 & fn. 5) that the libel begins with the headlines, furnishing law for the proposition "...the headline alone may provide a basis for a finding of libel..."

(5) replicating the news article's omission of the individual plaintiffs' organizational affiliation and titles and making it appear as if they had "opposed" Judge Hansbury's confirmation, as individuals and not, as the Complaint expressly identifies, as "Co-Founders, Director and President" of the Center for Judicial Accountability, Inc., germane to both their libel and libel *per se* causes of action (¶¶43, 46-47; 58-59, 61-64) – with such reinforced by plaintiffs' opposition/cross motion memo (pp. 12-13, 39-40);

(6) materially misrepresenting and falsifying the Complaint by purporting:

"The plaintiffs alleged, *inter alia*, that the article defamed them by characterizing them as 'hecklers,' by labeling their statements in opposition to the confirmation of Judge Brian Hansbury as 'slings and arrows,' and erroneously reported on a prior judicial decision which evicted E.R. Sassower and D.L. Sassower from their apartment of 21 years" – and, in so doing,

- materially concealing, by the "*inter alia*", that plaintiffs' allegations were set forth in a 33-page Complaint, which was verified, and which incorporated exhibits – the most important of which was Exhibit 7: a paragraph-by-paragraph contextual analysis of the news article;

- concealing, with respect to "hecklers", that the Complaint had asserted (at ¶¶32, 35) that such "characterization" by defendant Eddings was knowingly false – with the particulars set forth by the Exhibit 7 analysis and proven by a video, establishing that plaintiffs "did not 'heckle' or otherwise make any 'protest' 'during' the Common Council's meeting confirming Judge Hansbury, which took place without disturbance" and in defendant Eddings' presence;

- concealing, as to "slings and arrows", that the Complaint asserted (at ¶14) that it exemplified how defendant Eddings' news article was "on its face,...non-conforming with the standards for news articles", as such characterization "[was] in lieu of even a single quote of what plaintiffs...publicly stated";

- falsifying and concealing what the Complaint alleged (at ¶¶14, 52) with respect to "a prior judicial decision which evicted E.R. Sassower and D.L. Sassower from their apartment of 21 years", which was NOT that such decision had been "erroneously reported" by defendant Eddings' news article or that the decision was relevant or rendered by Judge Hansbury, but that, in violation of "standards for news articles", it was maliciously inserted to give the illusion "that by obtaining and reporting on 'a related decision signed by another City Court judge, JoAnn Friia, on July 3, 2008', The Journal News had investigated – and discredited – plaintiffs' publicly-express 'alleg[ations]' of Judge Hansbury's 'corruption and conflict of interest...demonstrated by his 2007 decision to evict them]'" – which was false.

2nd Page – SECOND PARAGRAPH: Description of Defendants & Dismissal Motion:

This paragraph also furnishes no record references. Purporting to describe the defendants, it states "defendant Gannett Company, Inc. is the parent company of Gannett Satellite Information Network, Inc." – without explaining how this is relevant since Gannett Satellite Information Network is not a defendant. It further states that the named individual defendants are "employees of the Journal" – notwithstanding Satterlee's dismissal motion asserted (at fn. 6) that Keith Eddings was "formerly a reporter with The Journal News", thereafter furnishing an affidavit of The Journal News' Director of Employee Relations in substantiation.

Additionally, this paragraph asserts that "The named defendants" moved to dismiss the complaint. This is false. Defendant Eddings is not represented by Satterlee – a fact highlighted by plaintiffs' oral argument [Tr. 5, lns. 15-21] and opposition/cross-motion memo (pp. 1, 12, 49, & fn. 24).

Most prejudicial, however, is the falsehood in the final sentence of this paragraph "The motion is unopposed by D.L. Sassower and the plaintiff Center for Judicial Accountability, Inc.[fn1]" – as to which its annotating footnote 1 explains:

> "The opposition to the motion is not signed by counsel for the above-referenced plaintiffs despite the inclusion of a signature line on the papers submitted. Correspondence between E.R. Sassower and counsel for the defendants indicates that she would forward papers signed by plaintiffs' counsel no later than the date of oral argument herein. The Court's computerized system does not indicate that this was done. Thus, the above-referenced plaintiffs have not submitted opposition to the defendants' motion, nor joined in E.R. Sassower's cross-motion. In any event, D.L. Sassower and the Center for Judicial Accountability, Inc. have not submitted separate

or additional papers herein, and the Court's decision would be no different if the papers submitted had been signed by their counsel."

As hereinabove stated (p. 6, *supra*), the decision's first page conceals the June 1, 2011 oral argument at which James DeFelice, counsel for "D.L. Sassower and plaintiff Center for Judicial Accountability, Inc.", argued in opposition to Satterlee's dismissal motion. The decision's footnote 1 similarly conceals the June 1, 2011 oral argument as it seeks to take advantage of Mr. DeFelice's inadvertent failure, at the argument, to sign the opposition/cross-motion papers bearing his name and the clients he represents. Plainly, if notwithstanding the Court's recognizing Mr. DeFelice in opposition at the oral argument, it deemed the absence of his signature as significant, a fair and impartial tribunal would have notified Mr. DeFelice that the papers were unsigned, affording him the chance to furnish his signature.

That the decision – by contrast – gives defendant Eddings the benefit of a dismissal motion that does <u>not</u> bear his name and was <u>not</u> made by counsel representing him – and covers up those facts by repeated pretenses throughout the decision that Satterlee represents the "defendants" and that the dismissal motion was made by the "defendants" underscores the double-standard at play.

Finally, it deserves note that although this paragraph discloses the basis of Satterlee's dismissal motion, *to wit*,

> "to dismiss the complaint because it is substantially true, that it consists of nonactionable statements of opinion, that the statements therein are not defamatory and that a cause of action for journalistic fraud is not recognized in New York",

the decision nowhere identifies any of the facts, law, or legal argument presented by Satterlee in support other than, at page 5, that Satterlee submitted the "unreported case" of "***Sassower v. The New York Times, Co.***, Sup Ct, Westchester County, July 6, 2006, Loehr, J., Index No. 19841/05".

Indeed, from this paragraph on page 2 until 3-1/2 pages later, the decision makes not the slightest reference to Sattelee's dismissal motion – and then only to state: "Accordingly, the defendants' motion pursuant to CPLR §3211(a)(7) is granted and the complaint is dismissed in its entirety." (at p. 5).

<u>2nd Page – THIRD PARAGRAPH: Standards, in Paraphrase, for CPLR §3211(a)(7), but not for CPLR §3211(a)(1):</u>

This paragraph is altogether deceitful, as its purpose is to give the appearance that the decision is guided by, and adhering to, the controlling adjudicative standards for dismissal motions pursuant to CPLR §3211(a)(7), failure to state a cause of action.

Citing to seven cases – and among them, *Gjobnlekaj v. Sot*, 208 A.D.2d 472 (2d Dep't 2003) – this paragraph paraphrases the governing principles[6]:

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6 These governing principles were all identified at pages 2-3 of plaintiffs' opposition/cross-motion memo, not through paraphrasing, but by direct quotation, including of *Gjobnlekaj v. Sot*:

- "pleadings shall be liberally construed, the facts alleged accepted as true, and every possible favorable inference given to plaintiffs";
- "the Court must accept the facts alleged therein as true and interpret them in the light most favorable to the plaintiff";
- "the Court's sole inquiry is whether the facts alleged in the complaint fit within any cognizable legal theory, not whether there is evidentiary support for the complaint";
- "Upon a motion to dismiss, a pleading will be liberally construed and such motion will not be granted unless the moving papers conclusively establish that no cause of action exits".

The identical standard was quoted by plaintiffs – along with the standard for motions founded on "documentary evidence" pursuant to CPLR §3211(a)(1) – at the outset of their opposition/cross-motion memo (pp. 2-3) and was the basis for plaintiffs' opposition and cross-motion. As stated:

> "Such controlling standard made it frivolous, *as a matter of law*, for Satterlee to bring a dismissal motion under CPLR §§3211(a)(7) and (1) if it could not identify (a) ALL the presumed-true allegations of the Complaint which taken together fail to state a cause of action; and (b) ALL these allegations which, stating a cause of action, are documentarily-rebutted.
>
> The Satterlee dismissal motion does neither. Indeed, it so conceals the Complaint that it does not even identify that in addition to a 'First Cause of Action: Libel' (¶¶36-56), there is a 'Second Cause of Action: Libel *Per Se*' (¶¶57-64). Only a single paragraph of the libel *per se* 'Second Cause of Action' is cited by the motion – and that, in a footnote materially concealing its content and falsifying the law (fn. 14, at p. 21).[fn 4] As for the libel 'First Cause of Action', the Satterlee motion cites to

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> "It is well settled that on a motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and according the plaintiff the benefit of every possible inference (*see Leon v Martinez*, 84 N.Y.2d 83, 87, 614 N.Y.S.2d 972, 638 N.E.2d 511 [1994])." (opposition/cross-motion memo, at p. 3, underlining in memo).

Plaintiffs' opposition/cross-motion also quoted from *Silsdorf v. Levine*, 59 NY2d, 8, 12 (1983) – a case to which this paragraph of the Court's decision does not cite, notwithstanding it is more directly on point than any of the seven cited cases, being not only a New York Court of Appeals case, but one which came up "in the procedural posture of a motion to dismiss for failure to state a cause of action", with the Court there stating:

> "...we accept as true each and every allegation made by plaintiff...If, upon any reasonable view of the stated facts, plaintiff would be entitled to recovery for defamation, the complaint must be deemed to sufficiently state a cause of action." (opposition/cross-motion memo, p. 3, underlining in memo).

These quotes establish that the operative standard, underscored by the pertinent language of these quotes underlined by plaintiffs, is as to "all the facts as alleged in the pleading" and "each and every allegation made by plaintiff. Virtually "all" and "each and every" allegation of plaintiffs' Verified Complaint is concealed by the decision.

> only two of its paragraphs – and only passingly, without confronting their content (fn. 7, at p. 6; p. 8). As for the 'Third Cause of Action: Journalistic Fraud' (¶¶65-79), none of its paragraphs are either cited or identified. The accuracy of ALL 44 of these paragraphs, comprising the Complaint's three causes of action are not denied or disputed by Satterlee – including ALL the legal authority they furnish, both in the body of those paragraphs and by their annotating footnotes.
>
> As for the 35 paragraphs of the Complaint that precede its three causes of action, the Satterlee motion, to the extent it does cite them, materially distorts, falsifies, and omits their content. The accuracy of these, too, is all undenied and undisputed.
>
> That the Satterlee motion is crafted on the pretense that the Complaint itself, by its incorporated Exhibit 7 analysis, is the 'documentary evidence' for its own dismissal pursuant to CPLR §3211(a)(1) is a measure of how extreme its falsification of the Complaint is." (plaintiffs' opposition/cross-motion memo, at pp. 3-4, italics and capitalization in the memo).

Plaintiffs' opposition/cross-motion memo then continued with more than 50 pages of specifics, going through Satterlee's dismissal motion, virtually line-by-line, to show its wholesale violation of the legal standard for motions under CPLR §§3211(a)(1) and (7) as to the allegations of the complaint and "documentary evidence".

Similarly, at the outset of the June 1, 2011 oral argument, plaintiff Elena Sassower stated:

[Tr. 7-8]

> "...As demonstrated by the cross-motion papers the dismissal motion made by the Satterlee firm is, from beginning to end, a fraud upon the Court. It is founded on deceit. It purports to seek dismissal on two grounds.
>
> The first ground being failure to state a cause of action.
>
> And the second being documentary evidence. This is a pre-answer dismissal motion.
>
> On such a motion, the elementary, legal standard is that all the allegations of the complaint are presumed true, and the duty of the Court is to afford every liberal inference to the plaintiff in ascertaining whether or not all those allegations do not state a cause of action.
>
> What the Satterlee firm has done is to conceal, distort, falsify the allegations of the complaint to such a degree that they purport that the complaint itself is the documentary evidence, warranting dismissal on the grounds of documentary evidence, not just failure to state a cause of action...."

Plaintiff Elena Sassower then continued for another seven transcript pages [Tr. 8-15], particularizing material respects in which Satterlee's dismissal motion had "concealed, distorted, and falsified the allegations of the complaint" and the evidence substantiating those allegations, most importantly,

plaintiffs' Exhibit 7 paragraph-by-paragraph contextual analysis of the news article and the video of the Common Council meeting.

The decision NOWHERE compares the Complaint's allegations with Satterlee's dismissal motion, does not itself even purport to recite the Complaint's allegations, and conceals EVERY allegation highlighted by plaintiffs' opposition/cross-motion as not only stating their causes of action, but evidentiarily establishing them.

3rd Page – "First and Second Causes of Action for Libel and Libel Per Se":

The four paragraphs on page 3 are under the heading "First and Second Causes of Action for Libel and Libel Per Se". They exclusively present law, with the fourth paragraph materially false and misleading as to opinion:

> "...Because only assertions of fact are capable of being proven false, a defamation action cannot be maintained unless it is premised on published assertions of fact (*Brian v. Richardson*, 87 NY2d 46, 637 NYS2d 347 [1995]. Non-actionable 'pure opinion' is a statement of opinion accompanied by recitation of facts upon which it is based, or, if not accompanied by such factual recitation, the statement must not imply that is based upon undisclosed facts (*Steinhilber v. Alphonse*, 68 NY2d 283, 508 NYS2d 901 [1986].) Expressions of an opinion, 'false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions.' (*Steinhilber v. Alphonse*, *id.*)."

This is false – as would have been so-revealed had the decision either paraphrased or quoted the continuation of *Steinhilber*, which distinguishes between "pure opinion' and 'mixed opinion':

> "When, however, the statement of opinion implies that it is based upon facts which justify the opinion but are unknown to those reading or hearing it, it is a 'mixed opinion' and is actionable (see, *Hotchner v. Castillo-Puche*, 551 F2d 910, 913 [2d Cir], *cert denied sub nom. Hotchner v Doubleday & Co.*, 434 U.S. 834; *cf. Cianci v. New Times Pub. Co*, 639 F2d 54, 64, 65 [2d Cir]).[fn3] The actionable element of a 'mixed opinion' is not the false opinion itself – it is the implication that the speaker knows certain facts, unknown to his audience, which support his opinion and are detrimental to the person about whom he is speaking. (*Rand v New York Times Co.*, 75 AD2d 417, 422; cf. *Silsdorf v. Levine*, 59 NY2d 8, 14, where the complaint alleged not only that the opinion was defamatory but that the accompanying recitation of facts upon which it was based was either a 'gross distortion' or 'misrepresentation of fact'.)" (68 NYS2d 283, 289-90, underlining added).

The annotating footnote 3 in *Steinhilber* gave further authority:

> "The rule as set forth in the Restatement (Second) of Torts §566 is as follows: 'A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.'"

Such distinction between "pure opinion" and "mixed opinion", including the above underlined quote from *Steinhilber*, was set forth by plaintiffs' opposition/cross-motion memo (pp. 29-30) in the context of detailing the deceit of Satterlee's dismissal motion on the subject of opinion.

As stated by the opposition/cross-motion memo:

> "Satterlee does not directly state that the article's characterizations are "pure opinion". Nor does it acknowledge that even 'pure opinion' is actionable when it is:
>
> > 'ostensibly accompanied by a recitation of the underlying facts upon which the opinion is based, but those underlying facts are either falsely misrepresented or grossly distorted (*Silsdorf v. Levine*, 59 NY2d 8, cert denied 464 U.S. 831, *Chalpin v. Amordian Press*, 128 AD2d 81.)', *Parks v. Steinbrenner, et al.*, 131 A.D.2d 60, 62-3 (1st Dept. 1987).
>
> Nor does Satterlee assert that the article's characterizations do not imply undisclosed facts, also actionable. Restatement (Second) of Torts, §566). Indeed, although acknowledging:
>
> > 'It is well-settled that only statements that can be reasonably interpreted as stating <u>or implying</u> facts about the plaintiff that are objectively provable as true or false are actionable.' (at p. 16, underlining added),
>
> Satterlee limits itself to purporting that the article's characterizations 'could [not] even remotely be interpreted as <u>stating</u> facts' (at p. 15, underlining added) and that 'The allegedly defamatory phrases Plaintiffs identify simply do not constitute <u>statements</u> of fact under any of the three factors governing this determination.' (at p. 17, underlining added) – avoiding any affirmative assertion that there are no undisclosed, <u>implied</u> facts." (plaintiffs' opposition/cross-motion memo, p. 30).

The decision does not even identify Satterlee's factual and legal presentation supporting its dismissal motion, demonstrated by plaintiffs' opposition/cross-motion to be permeated by deceit and fraud.

<u>4th Page – FIRST PARAGRAPH</u>

The decision here summarizes the "four factor analysis" of *Steinhilber* for "distinguishing between fact and opinion", stating that it "rejected any 'mechanistic rule' based on the semantic nature of the assertion in favor of a determination on 'totality of the circumstances'". It thereby seeks to create the illusion that by using the *Steinhilber* analysis, it will be making the required "determination on 'totality of the circumstances'". This is utterly false.

<u>4th Page – SECOND PARAGRAPH</u>:

The decision here purports to apply the four-factor *Steinhilber* analysis "to this case". However, unlike the Court of Appeals' application of its four-factor analysis in *Steinhilber*, the decision

confines itself to conclusory assertions, devoid of a single demonstrative fact. To the extent anything factual can be discerned, it is non-responsive or demonstrably false.

As to the first factor: "An assessment of whether the specific language in issue has a precise meaning which is readily understood or whether it is indefinite and ambiguous", the decision states:

> "It is clear that the specific language used in the article was indefinite and ambiguous. The specific language; in its entirety, is expressed as a description of the actions of the individual plaintiffs, and what transpired during the meeting." (at p. 4)

This is false – which is why the decision does not identify any of the "specific language" it is talking about – let alone the "specific language, in its entirety" that is supposedly "indefinite and ambiguous". The contrasts sharply with how this factor was applied in *Steinhilber*, where the Court of Appeals not only identified the "specific language", but the statements that "preceded and followed" it. *Steinhilber*, at 293.

Among the "specific language" of the news article with "a precise meaning which is readily understood" – which, moreover, is not confined to "what transpired during the meeting" – is, as particularized by plaintiffs' Exhibit 7 analysis:

- "heckled the judge during his confirmation";
- "The two eventually returned to their seats, where they carried on their protest",
- "During an invocation by the Rev. Carol Huston, Sassower interrupted Huston's observations...with a loud 'Hummph";
- "He walked from the chambers, accompanied by his wife and followed by the Sassowers and two cops";
- "As the Sassowers stepped up their pursuit";
- "a related decision signed by another City Court judge, Jo Ann Friia, on July 3, 2008...noted that the condominium board at 16 Lake St. rejected the Sassowers' application to buy a unit they were renting from John McFadden. The women responded to the eviction by suing McFadden";
- "interrupting...during the confirmation hearing of Judge Richard Wesley';
- "Wesley's connection to her case could not be determined yesterday".

As to the second factor: "A determination of whether the statement is capable of being objectively characterized as true or false", the decision states:

> "It is determined that the relevant statements are not capable of being objectively characterized as true or false in that the words used are hyperbole and would not be

considered facts by the average reader of the article. No evidence has been submitted to establish that the statements were false when made." (at p. 4).

This is false. The unidentified "relevant statements" would be the above "specific language" of the first factor – all "capable of being objectively characterized as true or false", which is why the decision does not identify them.

As for the decision's further claim "No evidence has been submitted to establish that the statements were false when made", evidence is NOT the standard for dismissal for failure to state a cause of action, as the decision itself recognizes at page 2, citing *Leon v Martinez*, 84 NY2d 83 (1994) and *International Oil Field Supply Services Corp. v. Fadeyi*, 35 AD3d 372 (2d Dept. 2006), *Thomas McGee v. City of Rensselaer*, 17 Misc.2d 491 (Sup Ct. Rensselaer County 1997). See, also, *Kotowski v. Hadley*, 38 A.D.3d 499, 500 (2d Dept. 2007), *Sokol v. Leader*, 74 A.D.3d 1180, 1182 (2nd Dept. 2010), *Shaw v. Club Managers Association*, 84 A.D.3d 928, 931 (2nd Dept. 2011).

Moreover, the assertion that plaintiffs had submitted "No evidence" is an outright fraud, as the evidence plaintiffs submitted was overwhelming:

- their Complaint, which the decision conceals is verified;
- the Complaint's incorporated Exhibit 7 analysis, wholly concealed by the decision;
- the video, wholly concealed by the decision.

Indeed, it was Satterlee that had submitted NO evidence in rebuttal other than the insufficient three-sentence affidavit of defendant Journal News' Director of Employee Relations – thereby entitling plaintiffs to the summary judgment sought by their cross-motion, *as a matter of law*. (see plaintiffs' reply memo, including with respect to the deficient three-sentence affidavit, pp. 3, 5, 28-29).

As to the third factor: "An examination of the full context of the communication in which the statement appears", the decision states:

> "It is determined that the examination of the full context of the communication in which the statement appears is that of a report of a somewhat contentious public meeting of a municipal body wherein the individual plaintiffs vociferously voiced their opinion regarding a public matter." (at p. 4).

This is non-responsive and false. The "statement[s]" at issue, challenged by the Complaint, are not "statements" by "the individual plaintiffs vociferously voic[ing] their opinion regarding a public matter". The "statement[s]" are those of defendant Eddings whose "communication" is a news article, the "full context" of which is its publication by a major newspaper, in its print newspaper and on its website, with the print format being on a news page stating that "questions or concerns about...journalistic standards" were to be directed to a "**READERS' REPRESENTATIVE**", and whose facing page contained the newspaper's masthead with an assertion that the newspaper valued "Accuracy, fairness, and balance" and that its policy was "to promptly correct errors", for which the "readers' representative" could be contacted, with similar information accessible on its website, which, additionally allowed for readers' comments wherein four of eight comments reflected the defamation of plaintiffs accomplished by the news article (Complaint, ¶¶13-19).

As to the fourth factor: "A consideration of the broader social context or setting surrounding the communication including the existence of any applicable customs or conventions which might 'signal the reader or listeners that what is being read or heard is likely to be opinion, not fact'", the decision states:

> "The totality of the circumstances strongly suggests that the common attitude regarding civility and decorum in public meetings supports the determination that such language should be protected." (at p. 4).

This is non-responsive and false. The question was not as to "totality of the circumstances", but "the broader social context or setting surrounding the communication including the existence of any applicable customs or conventions which might 'signal the reader or listeners that what is being read or heard is likely to be opinion, not fact". "[T]he communication", at issue, is not what plaintiffs said and has nothing to do with "the common attitude regarding civility and decorum in public meetings". "[T]he communication", at issue, is defendant Eddings' news article, as to which "the applicable customs or conventions" are of a factual presentation, where a reporter's opinions are not supposed to appear and where breaches of accuracy, fairness, and balance are supposed to result in appropriate corrective action. (plaintiffs' opposition/cross-motion memo, pp. 31-32).

4th Page – THIRD PARAGRAPH:

This paragraph is a single-sentence declaration:

> "Based upon the foregoing application of the four factors stated above, and considering the totality of the circumstances, the Court finds that the words in the Journal article constitute non-actionable opinion." (at p. 4).

In other words, based on an "application" that conceals all the "words in the Journal article" and is non-responsive as to two of the four factors to conceal that the "article" is a news article, where the reporter's opinion does not belong, and where no "totality of the circumstances" are presented – not even one that is germane – the decision purports that the unidentified "words in the Journal article" are "non-actionable opinion". This is utter perversion of the *Steinhilber* standard.

That the decision was unable to actually "apply" the four-factor *Steinhilber* analysis to the news article is not surprising – as Satterlee was similarly unable to apply any *Steinhilber*-type analysis to it and, after making bald assertions as to only the first factor, left off the further factors. This was highlighted by plaintiffs' opposition/cross-motion memo (pp. 28, 30-31).

4th Page – FOURTH PARAGRAPH:

This paragraph, which continues to the 5th page, surrounds with legal precepts and case citations, its factually bare assertions:

> "Here, the statements made about the individual plaintiffs were loose, figurative, or hyperbolic…"; and

"the language...is not actionable as libel as it does not falsely relate factually ascertainable facts or characteristics concerning them.".

As with its application of the four-factor *Steinhilber* analysis, the decision does not identify the "statements" that are "loose, figurative, or hyperbolic" or "the language" that "does not falsely relate factually ascertainable facts or characteristics". As is eminently clear from the above response to the decision's first *Steinhilber* factor (p. 18, *supra*), such is false – and its falsity is evident from the Complaint, its incorporated Exhibit 7 analysis of the news article – and the video, furnished as Exhibit 10 to plaintiffs' opposition/cross-motion.

5th Page – FIRST FULL PARAGRAPH:

This paragraph – the last under the heading "First and Second Causes of Action for Libel and Libel Per Se", also surrounds with legal precepts and case citations, its factually-bare assertions:

> "E.R. Sassower has failed to plead a cause of action in libel as she has not shown 'special damages,' i.e. damages contemplating the loss of something having economic or pecuniary value";
>
> "Further, considering the language in the Journal article as a whole, in its ordinary meaning, there is nothing which would establish a cause of action for libel per se".

The decision does not identify what, in fact, the Complaint has pled with respect to damages – or reveal that its damage claims for its libel and libel *per se* causes of action, set forth in its "WHEREFORE" clause, are annotated by three footnotes containing legal authority – and that the first of these, the Complaint's footnote 15, states:

> Fn. 15: "No special damages are required to be pled or proved, as defendants' defamation was not slander, but libel, *Matherson v. Marchello*, 473 N.Y.S.2d 998, 1001, 1004 (2nd Dept. 1984), and libelous *per se*, *Gallo v. Montauk Video, Inc.*, 178 Misc.2d 1069 (Appellate Term-2nd Dept, 1998), 44 New York Jurisprudence 2nd, §224 'Compensatory or actual damages'; disparaging them in their profession, *Porcari v. Gannet Satellite Information Network, Inc.*, 50 A.D.3d 993, 994 (2nd Dept. 2008)."

This is a correct statement of law, as seen from *Matherson v. Marchello* – which the decision itself cites three times – once in its first paragraph on page 3 pertaining to defamation generally, and twice in its second paragraph on page 3, breaking down defamation into libel and slander. Other than *Steinhilber v. Alphonse*, cited four times by the decision, no case is cited more than *Mattherson.*

In *Matherson*, authored by then Appellate Division, Second Department Justice Vito Titone, a unanimous Court stated:

> "...whether an allegation of special damages is necessary...turns on which branch of the law of defamation is involved. ... there is a schism between the law governing

slander and the law governing libel (see Restatement, Torts 2d, 568, Comment b; see, also, *Gurtler v. Union Parts Mfg. Co.*, 1 NY2d 5; 2 NY PJI 84 [1983]).[fn]

A plaintiff suing in slander must plead special damages unless the defamation falls into any one of four per se categories...

On the other hand, a plaintiff suing in libel need not plead or prove special damages if the defamatory statement ''tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society''...Thus, unlike the law of slander, in the law of libel the existence of damage is conclusively presumed from the publication itself and a plaintiff may rely on general damages..."

As stated at ¶¶55-56 of the Complaint:

"55. As a result of the news article – and as reflected by the posted comments on LoHud.com (Exhibit 5) – plaintiffs ELENA and DORIS SASSOWER were exposed to hatred, contempt, and aversion, with an unsavory opinion of them created in the minds of readers in the community, causing the individual plaintiffs physical injury, in addition to emotional pain, anguish, and humiliation.

56. This injury to plaintiffs ELENA and DORIS SASSOWER – and to plaintiff CJA, whose reputation, development, and finances were adversely impacted by reason thereof – is on-going by reason of the permanence of this unretracted, uncorrected news article, readily-accessible from the LoHud.com website, with The Journal News making money by charging for such access (Exhibit A-3)."

Moreover, as reflected by *Matherson*, as well as by *Wadsworth v. Beaudet*, 267 AD2d 727 (3d Dept 1999), which this paragraph of the decision cites, no special damages need be pleaded where the defamation arises from statement that "tend to injure another in his or her trade, business or profession" – which is the case at bar, particularized by the Complaint's libel *per se* cause of action (¶¶57-64), none of whose allegations the decision reveals, including their cited legal authority.

5th Page –"The Third Cause of Action for Journalistic Fraud":

There are two paragraphs under this heading.

In the first, 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 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).

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

As for the "journalistic fraud" cause of action, the decision denies it on the ground that:

> "The Court is unable to find a single jurisdiction that recognizes a cause of action for journalistic fraud. The sole case on the issue is an unreported case, submitted by the defendants, which involves E.R. Sassower herself. In an action by E.R. Sassower against The New York Times, the Court found that 'based on the Court's research, no jurisdiction has embraced such cause of action' (*Sassower v. The New York Times Co.*, Sup Ct, Westchester County, July 6, 2006, Loehr, J., Index No. 19841/05)."

This is legally insufficient – and plaintiffs' opposition/cross-motion memo (at pp. 41-46) fully detailed the deceit of dismissal on this ground precisely because Satterlee was urging it upon the Court. Fundamental to such deceit was Satterlee's concealment of the legal proposition "new torts are constantly being recognized", enunciated by the Court of Appeals in *Brown v. State of New York*, 89 N.Y.2d 172, 181-182 (1996) – and highlighted by footnote 14 of the Complaint, annotating the journalistic fraud cause of action.

Plaintiffs' opposition/cross-motion memo (at p. 44) more extensively quoted from *Brown v. State of New York*:

> "...it is well to recognize that the word tort has no established meaning in the law. Broadly speaking, a tort is a civil wrong other than a breach of contract (see, Prosser and Keeton, [5th ed.] §1). There are no fixed categories of torts, however, and no restrictive definitions of the term (*see*, *Advance Music Corp. v. American Tobacco Co.*, 296 NY 79; *see also*, Prosser and Keeton, *op. cit.*). Indeed, there is no necessity that that a tort have a name; new torts are constantly being recognized (see, the extensive analysis by Justice Breitel, as he then was, in *Morrison v. National Broadcasting Co.*, 24 A.D.2d 284, *revd on other grounds* 19 N.Y.2d 453; *see also*, 16 ALR3d 1175). Tort law is best defined as a set of general principles which, according to Prosser and Keeton, occupies a 'large residuary field' of law remaining after other more clearly defined branches of the law are eliminated (Prosser and Keeton, *op. cit.*, §1, at 2.)."[7]

Based thereon, plaintiffs' opposition/cross-motion memo stated (at pp. 44-46):

> "Thus, that 'no court has recognized a journalistic fraud cause of action' is no argument for why such cause of action should not be recognized by this Court. Indeed, even had the unpublished *Sassower v. New York Times* decision purported, based on Judge Loehr's claimed 'research', that the journalistic fraud cause of action had been previously tested and rejected – <u>which it conspicuously did not</u> – such would be worthless unless the decision gave reasoned explanation confronting the constitutional and other arguments in '*Journalistic Malpractice: Suing Jayson Blair*

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[7] *See* also, "Defining Torts: ...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.", <u>The Law of Torts</u>, Vol. 1, Dobbs, Hayden, Bublick (2nd ed. 2011) §1, at 2.

and the New York Times for Fraud and Negligence' (Exhibit 16) supporting its recognition. This is clear from the masterful exposition of 'Procedure as a Source of Judicial Legitimacy' in "*Keeping Up Appearances: A Process Oriented Approach to Judicial Recusal*", 53 University of Kansas Law Review, 531, 522-556 (2005), by Amanda Frost, discussing the components of such legitimacy: 'A. Litigants Initiate and Frame Disputes'; B. Adversarial Presentation of Disputes', 'C. Reasoned Decisionmaking'; 'D. Reference to Governing Body of Law'; and 'E. Impartial Decisionmaker'. Tellingly, the only case Satterlee identifies as having tested the journalistic fraud cause of action is *Sassower v. New York Times* – giving rise to the inference that it is the only case to have done so prior to this one.

As more fully particularized by ¶¶11-16 of plaintiff Elena Sassower's accompanying affidavit, the record in *Sassower v. New York Times* establishes that Judge Loehr's unpublished decision on which Satterlee relies is a complete fraud, Even still, Judge Loehr was not adverse to recognizing a cause of action for journalistic fraud were the allegations of the complaint therein within the purview of such cause of action, which he held they were not:

> 'as opposed to the Blair case in which there was admitted widespread fabrication of news stories and plagiarism, the gravamen of plaintiffs' claim as alleged in the complaint is not defendants' misstatement of fact... Thus, even if such cause of action existed, plaintiffs have failed to allege a claim thereunder.' (at p. 9).

Here, because the facts specified by the Complaint as giving rise to the journalistic fraud cause of action are so obviously within its purview, Satterlee avoids them entirely. Thus, Satterlee neither cites to, nor identifies the content of, the paragraphs of the Complaint's journalistic fraud cause of action (¶¶65-79). Indeed, Satterlee's so-called 'Factual Background' (pp. 3-10) also skips the paragraphs of the Complaint's 'Factual Allegations' which are at the heart of the journalistic fraud cause of action (¶¶70-75) – *to wit*, those pertaining to the **'READERS' REPRESENTATIVE'** and **'ACCURACY'**/'Corrections' Policy (¶¶15-17)." (underlining, capitalization and bold, in the original).

The decision conceals all the Complaint's allegations pertaining to the journalistic fraud cause of action and *Brown v. State of New York*, 89 N.Y.2d 172, 181-182 (1996), presented by its annotating footnote 14 – whose significance, as hereinabove shown, was highlighted by plaintiffs' opposition/cross-motion and reply memos.

5th Page –LAST PARAGRAPH: Dismissal of the Complaint:

Although the formatting of the page makes it appear that this is a third paragraph under the title heading "The Third Cause of Action for Journalistic Fraud", it actually pertains to both it and to the title heading "First and Second Causes of Action for Libel and Libel Per Se":

> "Accordingly, the defendants' motion pursuant to CPLR §3211(a)(7) is granted and the complaint is dismissed in its entirety."

As hereinabove demonstrated, the decision's granting of Satterlee's dismissal motion pursuant to CPLR §3211(a)(7) is not based on any determination as to the sufficiency of the motion and is accomplished by concealing essentially the entirety of the Complaint, disregarding the controlling adjudicative principles it cites, and falsifying both operative legal principles and the state of the record.

6th Page – CROSS-MOTION:

Although the five paragraphs of this final page of the decision pertain to plaintiffs' cross-motion, no title heading reflects that fact.

The first paragraph reiterates the same expurgated description of the cross-motion as appears in the second "ordering paragraph" on the first page of the decision (see p. 9, *supra*):

> "for an order imposing sanctions pursuant to 22 NYCRR 130-1.1, granting a default judgment against DOES 1-10, extending the plaintiffs' time to serve the defendant Keith Eddings, giving notice that the Court will treat the defendants' motion as one for summary judgment, and for various relief directed against the defendants' counsel." (underlining added).

The euphemism "various relief directed against the defendants' counsel" conceals three, completely unidentified branches of plaintiffs' eight-branch cross-motion. These three unidentified branches are:

> The second branch of plaintiffs' cross-motion: "referring defense counsel to appropriate disciplinary authorities pursuant to this Court's mandatory 'Disciplinary Responsibilities' under the Chief Administrator's Rules Governing Judicial Conduct, 22 NYCRR §100.3D(2), for their knowing and deliberate violations 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';[8]

> The third branch of plaintiffs'' cross-motion: "assessing damages against defense counsel for deceit and collusion proscribed under Judiciary Law §487(1) as a misdemeanor and entitling plaintiffs to treble damages;

> The fourth branch of plaintiffs' cross-motion: "disqualifying defense counsel for violation of Rule 1.7 of the Rules of Professional Conduct for Attorneys 'Conflict of Interest: Current Clients', as they are themselves parties, being defendant DOES".

[8] Expanded to "specifically include Satterlee's knowing and deliberate violation of Rule 5.1 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers'" (Exhibit 27). See fn. 5, *supra*.

Without being identified, here or anywhere else in the decision, these are denied in the penultimate fourth paragraph (at p. 6) as "The remaining relief requested in the cross-motion" – with the explanation that "the contentions therein are without merit".

Not only are these unidentified "contentions" meritorious, but, as demonstrated by plaintiffs' cross-motion memo (pp. 50-56) and reinforced by their reply memo (pp. 31-32, 34-36), they are compelled, *as a matter of law* and by the Chief Administrator's Rules Governing Judicial Conduct – which is why the decision conceals them, entirely.

Also encompassed by the penultimate fourth paragraph denial as "remaining relief requested in the cross-motion" whose "contentions therein are without merit" (at p. 6) is "giving notice that the Court will treat the defendants' motion as one for summary judgment" – the seventh branch of plaintiffs' cross-motion. That branch was significantly and materially more specific:

> "giving notice, pursuant to CPLR §3211(c), that defendants' dismissal motion is being considered by the Court as one for summary judgment in plaintiffs' favor on their Verified Complaint's three causes of action: for libel (¶¶36-56), libel *per se* (¶¶57-64), for journalistic fraud (¶¶65-79), and on a fourth cause of action related thereto: institutional reckless disregard for truth; with additional notice, as part thereof, that the Court will be determining whether defendant Journal News should be ordered to remove from its masthead its '**ACCURACY**' policy as a false and misleading advertising claim, in violation of public policy, including General Business Law, Article 22-A (§§349 and 350, *et seq.*)"

– a fact the decision never reveals, including in the decision's footnote 2 (at p. 5) falsely purporting that "E.R. Sassower does not assert a cause of action" for "institutional reckless disregard for the truth" and that "the matter is not before this Court" (see pp. 22-24, *supra*). As hereinabove demonstrated, the Complaint not only states four meritorious causes of action, but the record before the Court establishes plaintiffs' entitlement to summary judgment as to each cause – including removal of The Journal News' false and misleading masthead policy as to "**ACCURACY**". (opposition/cross-motion memo, pp. 58-61; reply memo, pp. 36-41).

The eighth branch of plaintiffs' cross-motion, "such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202" – not even identified in the decision's truncation of the cross-motion relief – is, implicitly, also encompassed by the denial of "remaining relief requested in the cross-motion" whose "contentions...are without merit".

That leaves three of plaintiffs' eight cross-motion branches, the disposition of which the decision discusses.

The first branch of plaintiffs' cross-motion, "sanctions pursuant to 22 NYC 130-1.1", is – like the cross-motion's second, third, fourth, seventh, and eighth branches – disposed of as being "without merit", on the following grounds:

> "The essence of E.R. Sassower's motion for sanctions is that defendants' counsel has submitted affidavits which contain false and misleading exhibits and a memorandum

of law which includes 'false and deceitful decisions which besmirch plaintiffs and mislead the Court.' Based on the record herein, the Court finds the affidavits and the memorandum of law to be well within the bounds of legitimate advocacy on the part of defendants' counsel. The Court finds this branch of E.R. Sassower's cross-motion to be without merit." (at p. 6).

This is false. Apart from the fact that the decision does not deny that Satterlee's affidavit exhibits and the besmirching decisions in its memo of law were "false and misleading" – and such cannot be "well within the bounds of legitimate advocacy" – the exhibits and decisions were NOT the basis of this branch of the cross-motion. Rather, it was Satterlee's wholesale falsification and obliteration of the allegations and evidence supporting the Complaint and its knowingly false and misleading citation of law, demonstrated by the entirety of plaintiffs' opposition/cross-motion and reinforced by the entirety of their reply memo – the latter "expressly submitted in support of plaintiffs' request...for imposition of additional $10,000 sanctions against Satterlee, with an additional award of maximum costs to plaintiffs..." for falsifying and concealing virtually the entire content of plaintiffs' opposition/cross-motion (reply memo, pp. 1-3).

As for the fifth branch of plaintiffs' cross-motion, "granting a default judgment against DOES 1-10", it is denied "in light of the Court's decision herein that the complaint does not state a cause of action". The discussion is as follows:

> "E.R. Sassower also has filed a cross-motion for entry of a default judgment against DOES 1-10, who have not appeared and who are not represented in this action. The Court notes that there is a dispute as to whether the unnamed defendants have been properly served. Assuming for the purposes of this cross-motion that DOES 1-10 have been properly served, E.R. Sassower is obligated to establish that she has viable causes of action before a default judgment can be entered against them (*Woodson v. Mendon Leasing Corp.*, 100 NY2d 62, 760 NYS2d 727 [2003]; see also *Maida v Lessing's Rest. Servs., Inc.*, 80 AD3d 732, 915 NYS2d 316 [2d Dept 2001]; *Triangle Props. 2, LLC v. Narang*, 73 AD3d 1030, 903 NYS2d 424 [2d Dept 2010]). In light of the Court's decision herein that the complaint does not state a cause of action, the branch of E.R. Sassower's cross-motion which seeks a default judgment is denied. On the Court's own motion, the complaint against DOES 1-10 is dismissed." (at p. 6, underlining added).

The assertion that "there is a dispute as to whether the unnamed defendants have been properly served" is false. There is no dispute. Nowhere did Satterlee ever dispute service upon defendant DOES – nor could it as its motion made no mention whatever of the DOES. This could not have been clearer from plaintiff Elena Sassower's oral argument [Tr. 6, lns. 13-14] and from plaintiffs' opposition/cross-motion memo:

> "...[Satterlee's dismissal motion] does not even give a footnote to defendants DOES 1-10, who are nowhere mentioned and who, without explanation, Satterlee is not representing, presumably because it cannot: Satterlee being among them[fn12] (see p. 54-56, *infra*)." (opposition/cross-motion memo, at p. 12);

> "As hereinabove stated (at p. 12, *supra*), Satterlee's Section A entitled 'The Parties' does not even give a footnote to defendants DOES 1-10, who are nowhere mentioned in the Satterlee memo and, without explanation, are not being represented by Satterlee.
>
> ...
>
> The only explanation for Satterlee's NOT representing these defendant DOES (and concealing that the defendant DOES, though properly served, have not appeared), is that Satterlee is among them – being 'legal personnel' who, *inter alia*, received from The Journal News defendants the plaintiffs' analysis supporting their retraction demand and advised those defendants to ignore it. In other words, Satterlee is a defendant DOE, directly responsible for generating this lawsuit against its clients, who are here its fellow defendants. Such gives it a direct interest in the subject matter of this suit..."
>
> The fraudulent dismissal motion made by Satterlee in defense of the non-DOE defendants, simultaneous with its non-representation of the DOE defendants, who it has allowed to default, reflects impaired judgment that is consistent with conflict of interest." (opposition/cross-motion memo, pp. 55-56).

It is to conceal this "impaired judgment that is consistent with conflict of interest" that the decision manufactures a "dispute" as to service upon the DOES – where none exists – thereby giving an aura of explanation for why the DOES are not represented by Satterlee and in a posture of default.

As there is no basis in fact and law for the Court's dismissal of plaintiffs' Complaint for failure to state a cause of action, there is no basis in fact and law for its denying plaintiffs a default judgment against defendant DOES 1-10 and for its "own motion" dismissing of the Complaint against them.

Finally, as for the sixth branch of plaintiffs' cross-motion, "extending the plaintiffs' time to serve the defendant Keith Eddings", it is denied "as academic" on the same ground as the denial of the fifth branch for a default judgment – that "the complaint does not state a cause of action". As hereinabove demonstrated, the Complaint not only states four meritorious causes of action, but the record establishes plaintiffs' entitlement to summary judgment as to each cause – with plaintiffs' entitlement extending their time to serve defendant Eddings, also conclusively established with fact and law (opposition/cross-motion memo, pp. 57-58; reply memo, p. 29).