

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,

-against-

VERIFIED COMPLAINT
Index #10-12596

JURY TRIAL DEMANDED

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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“The First Amendment goes beyond protection of the press...’ ... ‘it is the right of the [public], not the right of the [media] which is paramount,’ ...for ‘without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally,’ ...”, *Cohen v. Cowles Media Co.*, 501 U.S. 663, 678 (1991), Justice Souter, writing in dissent with Justices Marshall, Blackmun, and O’Connor, cited in “*Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence*”, 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1, footnotes 62 and 156 (2003).

“Newspapers, magazines, and broadcast companies are businesses conducted for profit and often make very large ones. Like other enterprises that inflict damage in the course of performing a service highly useful to the public...they must pay the freight; and injured persons should not be relegated [to remedies which] make collection of their claims difficult or impossible unless strong public policy considerations demand.”, *Buckley v. New York Post Corp.*, 373 F.3d 175, 182 (2nd Cir. 1967), quoted in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 147 (1967).

Plaintiffs, as and for their Verified Complaint, respectfully set forth and allege:

1. This is an action for libel and journalistic fraud against the above-named defendants, seeking compensatory and punitive money damages and such other and further relief as may be just and proper.

VENUE

2. Venue lies in the Supreme Court of the State of New York, County of Suffolk, pursuant to CPLR §503. Plaintiff ELENA RUTH SASSOWER resides in Suffolk County, where she also maintains her office as Director of the Center for Judicial Accountability, Inc.

THE PARTIES & BACKGROUND FACTUAL ALLEGATIONS

3. Plaintiff ELENA RUTH SASSOWER [hereinafter “plaintiff ELENA SASSOWER”] is a private citizen of the United States of America and the State of New York and a registered voter thereof. She has lived and worked in the town of Southampton, County of Suffolk since December 2008.

(a) From 1991 to 1993, she was Coordinator of the Ninth Judicial Committee, a local, non-partisan, non-profit citizens’ group formed, in 1989, to oppose the political manipulation of judicial elections in the Ninth Judicial District of New York. By 1993, with accomplishments far surpassing its local name, she co-founded the Center for Judicial Accountability and was its Coordinator until January 2006, when she became its Director.

(b) In those capacities, plaintiff ELENA SASSOWER has spent the past two decades examining, researching, and interacting with the processes of judicial selection and discipline on local, state, and federal levels. Among the bodies before whom she has testified and/or submitted written statements concerning the fitness of judicial candidates and the screening processes that have produced them: the New York State Senate Judiciary Committee, the United States Senate Judiciary Committee, and, in New York City, the Mayor’s Advisory Committee on the Judiciary. Among the bodies before whom she has testified and/or submitted written statements pertaining to judicial discipline are the New York State Senate and Assembly

Judiciary Committees, the United States Senate and House Judiciary Committees, and the United States Judicial Conference.

(c) Recognition of her work has included publication of her article “*Without Merit: The Empty Promise of Judicial Discipline*” by the Massachusetts School of Law in its journal, The Long Term View (Vol. 4, No. 1: Summer 1997) (Exhibit 1a), and two awards by Westchester-based media: The Westchester County Weekly in its March 19, 1998 issue, recognizing her and her mother, plaintiff DORIS L. SASSOWER, as local “Heroes...whose belief in an ideal has informed their life work to the benefit of the entire community” (Exhibit 1b), and the White Plains CITIZEReporter, by its January 3, 2005 posting, naming her a “White Plains Person of the Year” for 2004, “Defender of the Constitution”, and “The New Nathan Hale” (Exhibit 1c) for serving a six-month jail sentence on a trumped-up “disruption of Congress” charge in defense of First Amendment rights and democratic values, thereafter featuring her as a guest on its “White Plains Week” cable television show.

(d) During these two decades, plaintiff ELENA SASSOWER has again and again provided and proffered The Journal News and its predecessor, Gannett Suburban Newspapers [hereafter both “The Journal News”], with the primary-source documentary evidence supporting her testimony and written statements as to the corruption of the processes of judicial selection and discipline—and of the judicial process itself — involving public officers, including judges, seeking re-election, reappointment, and higher public office. Virtually without exception, The Journal News has refused to investigate or independently verify this documentary evidence of corruption or to editorialize for its investigation and verification. Instead, it has engaged in knowingly false and misleading reporting and editorializing about these very processes and public officers, concealing their corruption, thwarting reform, and rigging elections – which it

has accomplished by minimizing and maligning, if not altogether suppressing, the corruption-exposing achievements of the Ninth Judicial Committee, the Center for Judicial Accountability, and the individual plaintiffs.

(e) Plaintiff ELENA SASSOWER has chronicled this pattern and practice of journalistic fraud by The Journal News, willfully disregarding its First Amendment responsibilities, in correspondence with it, spanning more than 20 years.

4. Plaintiff DORIS L. SASSOWER [hereinafter “plaintiff DORIS SASSOWER”] is a private citizen of the United States of America and the State of New York and a registered voter thereof. She has lived and worked in the City of White Plains, County of Westchester, since 1980.

(a) In 1993, she co-founded the Center for Judicial Accountability with her daughter, plaintiff ELENA SASSOWER, has been its President since its inception, and was its Director until January 2006.

(b) From 1991 to 1993, plaintiff DORIS SASSOWER was Director of the Ninth Judicial Committee and, from 1990 to 1991, its *pro bono* counsel in its public interest lawsuit, *Castracan v. Colavita*, challenging the legality and constitutionality of a three-year written deal between Democratic and Republican party leaders of the Ninth Judicial District to cross-endorse seven judicial nominees, implemented at judicial nominating conventions which violated the Election Law.

(c) From 1955 until 1991, plaintiff DORIS SASSOWER was an attorney in private practice, with a national reputation based on her legal writings, her public advocacy in the area of equal rights and law reform, and her litigation accomplishments in both the private and public sector. She was consistently rated “AV” by Martindale-Hubbell’s Law Directory (Exhibit 1d)

and, in June 1989, was elected as a Fellow of the American Bar Foundation, an honor reserved for less than one-third of one percent of the practicing bar of each state.

(d) Among plaintiff DORIS SASSOWER's other germane credentials: she was the youngest president of the New York Women's Bar Association when elected to that post in 1968. In 1971, she served on the first pre-nominating screening panel set up by the Reform Democrats of New York County to pass upon the qualifications of candidates for Supreme Court vacancies in the First Department. Her article about that experience appeared on the front page of the October 22, 1971 New York Law Journal (Exhibit 1e) and led to her appointment as the first woman to serve on the New York State Bar Association's Judicial Selection Committee, on which she served from 1972-1980, reviewing the qualifications of candidates for the New York Court of Appeals, Appellate Divisions, and Court of Claims. She herself was the first woman practitioner to be nominated, in 1972, as a candidate to the New York Court of Appeals.

(e) She has received many awards and honors, including, in 1997, the national Giraffe Award, given to individuals "who stick out their necks for the Common Good", in recognition of "her risktaking civic activism and for founding the Center for Judicial Accountability, Inc." (Exhibit 1f). In 2006, she was profiled in the book Feminists Who Changed America: 1963-1975. Her articles, speeches, and legal cases challenging sexism, as well as other papers, are archived at Harvard University's Schlesinger Library.

(f) Beginning in 1989, plaintiff DORIS SASSOWER became the victim of a torrent of sensationalized and false reporting by The Journal News resulting from the relationship between its veteran columnist and Editorial Page Editor, Milton Hoffman, with Sam Fredman, her professional rival, competitor, and former Chairman of the Westchester Democratic Party, who the Governor had newly appointed to an interim Supreme Court judgeship and, who,

thereafter, was elected to a full term under the judge-trading cross-endorsement deal that plaintiff DORIS SASSOWER would later challenge as *pro bono* counsel in *Castracan v. Colavita* – a deal of which Mr. Hoffman was publicly supportive.

(g) This sensationalized and false reporting, causing plaintiff DORIS SASSOWER to collapse, became the pretext for counsel of the Ninth Judicial District Grievance Committee to make a legally unauthorized motion to have her medically examined, ultimately resulting in her being unlawfully suspended from the practice of law by an interim order of the Appellate Division, Second Department that gave no reasons, was without findings, was not preceded by any hearing, and was immediate, indefinite, and unconditional – an order issued five days after The New York Times published her letter to the editor about the *Castracan v. Colavita* case and Justice Fredman.

(h) The Journal News' on-going libelous and malicious reporting of a private case before Justice Fredman, and, thereafter, of another private case, which the Administrative Judge for the Ninth Judicial District steered to Justice Nicholas Colabella – a boyhood friend of then Westchester County Republican Party Chairman Anthony Colavita, the first named respondent in the *Castracan* case – engendered such hostility against plaintiff DORIS SASSOWER that on the day of one such article, two abusive telephone calls were made to her home: one reader stating that she was “‘sick and tired’ of reading the kind of stories about Doris Sassower and her daughter that have been appearing in [the] paper” and would “write an editorial”, and a second from a man stating “the ways of the Sassowers will be bombed tonight at 6 p.m., fuck off”. This was immediately memorialized in faxes sent to The Journal News (Exhibits 2a, 2b).

(i) In October 1992, plaintiff DORIS SASSOWER commenced a libel action against defendant GANNETT and its culpable reporters, columnists, and editors of The Journal News by

filing a summons with notice in Supreme Court/New York County (Exhibit 3a), which she served in February 1993. Notwithstanding the case was dismissed later that year for failure to serve a complaint, The Journal News used the lawsuit as a basis, in December 1995, for refusing “to accept calls” from plaintiffs (Exhibits 3b, 3c) – a position articulated by the law firm which represented it in that case (Exhibit 3d), the same firm as represents it herein, Satterlee, Stephens, Burke & Burke, LLP.

(j) Plaintiff DORIS SASSOWER also has had more than 20 years of interaction with The Journal News, embodied in correspondence, similarly chronicling its cover-up of governmental corruption, its suppression, minimizing, and/or malignment of the corruption-exposing achievements of all three plaintiffs herein, and its knowing and deliberate election-rigging and dishonest editorial endorsements.

5. Plaintiff CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA) [hereinafter “plaintiff CJA”] is a national, non-partisan, non-profit citizens’ organization, incorporated under the laws of the State of New York in 1994. Like the Ninth Judicial Committee, its patriotic purpose is to safeguard the public interest in the integrity of the processes of judicial selection and discipline, which it does by examining, investigating, and interacting with these largely behind-closed-doors processes – and providing the results, in independently-verifiable documentary form, to individuals and institutions charged with protecting the public from corruption. Among such institutions, The Journal News and its parent entity, defendant GANNETT COMPANY, INC.

6. Defendant GANNETT COMPANY, INC. [hereinafter “defendant GANNETT”] is a money-making business, publicly-traded on the New York Stock Exchange. Incorporated under the laws of Delaware and headquartered in Virginia, it is the nation’s largest newspaper chain,

publishing more than 82 daily newspapers in the United States, including USA Today, the nation's largest-selling daily newspaper. Additionally, it owns 23 television stations in the United States and holds substantial properties in digital media. Its 2009 revenues were \$5.6 billion.

(a) According to the 2005 law review article, "*Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press*", 90 Iowa Law Review 887, 890:

"Gannett's operating margins are lauded as 'among the best in the industry'^[fn] The company's proxy statement does not even mention the quality and strength of journalism in newsrooms owned by Gannett."

(b) Nevertheless, defendant GANNETT's 2009 Annual Report, accessible from its website, www.gannett.com, contains a title heading "Trusted Journalism", beneath which it states "Delivering great journalism is a Gannett hallmark". Its website also purports that defendant GANNETT's mission is "provid[ing] must-have news and information...ever mindful of our journalistic responsibilities" and further that:

"In 1999, Gannett's Newspaper Division issued its Principles of Ethical Conduct for Newsrooms, becoming a leader among newspaper companies in the U.S. by setting out detailed guidelines on ethics for its community newspapers."

(c) The Journal News is defendant GANNETT's community newspaper for the suburban New York City counties of Westchester, Rockland, and Putnam. Defendant GANNETT's counsel herein, in its notice of appearance and demand for complaint, has characterized it as "merely a business unit of Gannett Satellite Information Network, Inc.", with LoHud.com being "merely the name of a website maintained by The Journal News" – asserting that they are "improperly identified in the caption as parties to this lawsuit."

(d) LoHud.com, by its own description, is a "high-traffic web site...continuously refined and updated to serve visitor needs." The website states that The Journal News' mission is "to be the most credible and sought-after source of local news and information in Westchester,

Rockland, and Putnam” and identifies five “essential tenets” to “achieve – and sustain – [this] mission”. Among them, “honesty...by adhering to the highest standards of...journalistic practices and ethics” and “accountability...by taking a leadership role when it comes to serving the best interests of the public”.

(e) Defendant GANNETT received prior notice from plaintiffs of The Journal News’ violation of its First Amendment responsibilities to inform the public of issues of legitimate public concern and its defamation and black-balling of plaintiffs, but took no appropriate supervisory steps to ensure the cessation of its conduct and to remedy the injury that had been caused to either plaintiffs or the public.

7. Defendant HENRY FREEMAN [hereinafter “defendant FREEMAN”], is Editor and Vice President for News at The Journal News. Upon information and belief, he has held this position since 2000.

(a) By reason thereof, defendant FREEMAN has been knowledgeable of, and a collusive participant in, The Journal News’ violation of First Amendment responsibilities by its pattern and practice of covering up the corruption of public officers and of the processes of judicial selection and discipline by willfully and deliberately not reporting on readily-verifiable documentary evidence of their corruption which plaintiffs have provided and proffered to The Journal News, and by dishonest editorials, whose consequence has been to thwart reform and rig elections.

8. Defendant CYNDEE ROYLE [hereinafter “defendant ROYLE”], is Senior Managing Editor at The Journal News. Upon information and belief, she has held that position since 1999.

(a) By reason thereof, defendant ROYLE has been knowledgeable of, and a collusive participant in, The Journal News’ violation of First Amendment responsibilities by its pattern and

practice of covering up the corruption of public officers and of the processes of judicial selection and discipline by willfully and deliberately not reporting on readily-verifiable documentary evidence of their corruption which plaintiffs have provided and proffered to The Journal News, and by dishonest editorials, whose consequence has been thwart reform and rig elections.

9. Defendant BOB FREDERICKS [hereinafter “defendant FREDERICKS”] is Deputy Managing Editor at The Journal News.

(a) Upon information and belief, defendant FREDERICKS was knowledgeable of plaintiffs’ complaints against The Journal News prior to May 5, 2009 – the date he received a telephone call from plaintiff ELENA SASSOWER and the three e-mails she thereupon sent him about the news article defendant KEITH EDDINGS was then writing (Exhibits G-1, G-2, G-3).¹

10. Defendant D. SCOTT FAUBEL [hereinafter “defendant FAUBEL”] is Assistant Metro Editor at The Journal News.

(a) Upon information and belief, defendant FAUBEL was knowledgeable of plaintiffs’ complaints against The Journal News prior to July 13, 2009, the date of his telephone conversation with plaintiff ELENA SASSOWER about defendant KEITH EDDINGS’ May 6, 2009 news article.

11. Defendant KEITH EDDINGS [hereinafter “defendant EDDINGS”] was a reporter at The Journal News, employed from at least 2001.

(a) By reason thereof, he was knowledgeable of, and a collusive participant in, The Journal News’ violation of First Amendment responsibilities by its pattern and practice of covering up readily-verifiable documentary evidence of the corruption of public officers and processes, proffered and provided by plaintiffs and their complaints against The Journal News, prior to writing

his May 6, 2009 news article, “*Hecklers try to derail new judge*”/*“White Plains woman heckles city judge during confirmation”* (Exhibits A-1, A-2) [hereinafter also “news article”], the subject of this action for libel and journalistic fraud.

12. Defendant DOES 1-10 are the reporters, editors, management, legal personnel, or other staff at defendant GANNETT, Journal News, and LoHud.com, who directed and/or advised defendant EDDINGS in the fashioning of his news article, including its two titles (Exhibits A-1, A-2), who failed to discharge their supervisory responsibilities to enforce defendants’ own journalistic standards and who, upon receipt of plaintiffs’ analysis demonstrating the news article to be false, defamatory, and knowingly so (Exhibit 7), failed to retract it, failed to correct it, and failed to report on the issue of legitimate public concern the article had purposefully concealed: the corruption of the judicial appointments process to White Plains City Court, thereby necessitating this lawsuit.

(a) DEFENDANT DOES 1-10 are also such persons at defendant GANNETT and Journal News who have collusively participated in, aided and abetted, and/or acquiesced in, defendants’ long-standing pattern and practice of journalistic fraud, willfully misleading the public as to issues of legitimate public concern, thwarting reform and rigging elections, while, simultaneously, suppressing, minimizing, and maligning plaintiffs’ corruption-exposing achievements.

¹ Exhibits A-K to this Verified Complaint are side-tabbed exhibits to plaintiffs’ analysis of “*Hecklers try to derail new judge*”/*“White Plains woman heckles city judge during confirmation”*– Exhibit 7 herein.

FACTUAL ALLEGATIONS

13. On May 6, 2009, The Journal News prominently published as news, at the top of its third page, an article headlined “*Hecklers try to derail new judge*” by defendant EDDINGS (Exhibit A-1). The identical news article was posted on its website, LoHud.com, though with a different headline, “*White Plains woman heckles city judge during confirmation*” (Exhibit A-2).

14. Upon information and belief, such news article, on its face, was non-conforming with standards for news articles, *inter alia*: (a) by its disparaging characterization “slings and arrows” in lieu of even a single quote of what plaintiffs ELENA and DORIS SASSOWER publicly stated; (b) by its characterization, with no attributing source, that they “pursued” and “stepped up their pursuit” of Judge Hansbury and his wife, upon their leaving the Council chamber; and (c) by implying 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-expressed “alleg[ations]” of Judge Hansbury’s “corruption and conflict of interest...demonstrated by his 2007 decision to evict [them]” (Exhibits A-1, A-2).

15. On the same page as the printed news article, page A-3, The Journal News provided contact information under the capitalized, bold-faced title, “**HOW TO REACH US**”. In capitalized, bold-face type, it listed an unnamed “**READERS’ REPRESENTATIVE**” (Exhibit A-1), stating:

“If you have questions or concerns about anything you see in The Journal News or about our journalistic standards and practices, please contact:

Reader Services Editor
Phone 914-694-3514...”

16. On the facing page, page A-2, The Journal News masthead provided further information (Exhibit 4a), including the following under the capitalized, bold-face title “**ACCURACY**”:

“Accuracy, fairness, and balance are important to us. It is the policy of The Journal News to promptly correct errors. To report an error or clarify a story, please direct your call to the readers’ representative at 914-694-3514.”

17. This was repeated, in nearly identical language, on LoHud.com’s “**Contacts**” page under the heading “Reader Services/Corrections” (Exhibit 4b):

“Accuracy, fairness and balance are important to us. It is the policy of *The Journal News* to promptly correct errors. If you wish to report an error or clarify a news story, please direct your calls to the Reader Services Editor: (914) 694-3514”.

18. An interactive feature on LoHud.com allowed readers of “*White Plains woman heckles city judge during confirmation*” to write and read comments about the article. When selected, the feature was entitled “In Your Voice: READ REACTIONS TO THIS STORY” (Exhibit A-2).

19. LoHud.com posted six comments for “*White Plains woman heckles city judge during confirmation*” (Exhibit 5). Four of these were unfavorable, including: “This nut belongs in the loony bin, plain and simple.”; “Doris there are meds for this.”; “Here is a picture of the nutjob...and of her mother”. A single comment was favorable: “I wish more people would make their way to City hall & speak their minds. Take your Gov’t back people.” Another single comment sought more information: “Was she unavailable for comment for this article? Did she give any reasons for the things she was saying? What are the specifics?”

20. On several dates, including May 22, 2009 and June 2, 2009, plaintiff ELENA SASOWER telephoned the number for The Journal News’ Readers’ Representative and left

messages that the news article was false and defamatory and that it needed to be retracted, with a story written about the issues of legitimate public concern it had purposefully concealed: the judicial appointments process by which White Plains gets its City Court judges and the case file evidence establishing Judge Hansbury's on-the-bench corruption – the subject of her public presentation before the Mayor and Common Council on May 4, 2009. She stated that she was preparing an analysis of the article in support of a formal complaint and asked to whom it should be addressed.

21. In a July 13, 2009 phone conversation, defendant FAUBEL told plaintiff ELENA SASSOWER that The Journal News did not currently have a Readers' Representative and that defendant ROYLE had assigned him to follow up on her complaint.

22. Plaintiff ELENA SASSOWER replied that it was essential that the complaint be handled by someone with more distance and independence than defendant FAUBEL, as his boss, defendant FREDERICKS, had knowledge of the scurrilous and improper article defendant EDDINGS was writing while he was writing it. She explained that this knowledge resulted from her having telephoned defendant FREDERICKS on May 5, 2009, immediately after receiving a phone call from defendant EDDINGS asking her for irrelevant and personal information for the article he was then writing – and that she had memorialized these phone calls in three May 5, 2009 e-mails she sent to defendant FREDERICKS, with a copy to defendant EDDINGS (Exhibits G-1, G-2, G-3).

23. The following day, July 14, 2009, plaintiff ELENA SASSOWER wrote a letter to defendant ROYLE (Exhibit 6), transmitting her analysis of the article (Exhibit 7) in support of plaintiffs' complaint and reiterating what she had told defendant FAUBEL as to his conflict of interest. In pertinent part, her July 14, 2009 letter (Exhibit 6) stated:

“as soon as Mr. Faubel examines my May 5th e-mails to Mr. Fredericks – recapturing my May 5th phone conversation with [Mr. Fredericks] about Mr. Eddings’ then-being-written article – he will doubtless ask to be relieved of having to pass judgment on the actions and inactions of his superior.

My May 5th e-mails to Mr. Fredericks, which I simultaneously sent to Mr. Eddings, are annexed as Exhibit G to my accompanying analysis of Mr. Eddings’ May 6th article.^[fn] Their importance is such that they are reproduced, in full, in the ‘Introduction’ to the analysis, prefaced as follows:

‘The three e-mails are herein reproduced, as they underscore the knowing and deliberate defamation that Mr. Eddings and his editor, Mr. Fredericks, intended by The Journal News’ May 6, 2009 article and their willful cover-up of issues of legitimate public concern: the misfeasance, nonfeasance, and malfeasance of the executive and legislative branches of our White Plains City government, undermining its judicial branch with corrupt judges who use their judicial power for ulterior, retaliatory purposes.’ (at p. 2).

Any impartial review of these e-mails and the analysis will confirm the necessity of oversight and remedial action by The Journal News. This would include retraction of the May 6th article, as well as a journalistic expose of the primary-source documentary evidence of the corruption of the judicial appointment process by which White Plains gets its City Court judges – this being the issue of legitimate public concern the article purposefully concealed.

I and CJA’s President and Co-Founder, Doris L. Sassower, would be pleased to meet with you and your designees so as to amicably resolve The Journal News’ knowing and deliberate defamation of each of us and blackballing of our non-partisan, non-profit citizens’ organization – part of its longstanding pattern and practice of journalistic fraud, withholding from the public issues of legitimate public concern in violation of its First Amendment responsibilities, which we can also amply document.”

24. The transmitted analysis (Exhibit 7) was a nine-page paragraph-by-paragraph deconstruction of the news article, beginning with its two titles, prefaced by a six-page “Introduction”, and supported by annexed exhibits (Exhibits A-K).

25. Defendant ROYLE did not respond. Nor was there any response from the other indicated recipients of the letter: defendants FAUBEL, FREDERICKS, and EDDINGS.

26. By letter dated August 18, 2009, addressed to defendant ROYLE (Exhibit 8), plaintiff ELENA SASSOWER informed her, as likewise defendants FAUBEL, FREDERICKS, and EDDINGS – each indicated recipients – that she had received no response from them to her July 14, 2009 letter and its accompanying analysis (Exhibits 6, 7).

27. None of these defendants responded.

28. On October 26, 2009, plaintiff ELENA SASSOWER telephoned defendant ROYLE who stated her belief that defendant FREEMAN had communicated with her about plaintiffs' complaint. Plaintiff ELENA SASSOWER replied that she had not received any response from defendant FREEMAN or anyone else to her analysis-supported July 14, 2009 letter (Exhibits 6, 7) and pointed out the electoral significance of The Journal News' failure to retract the May 6, 2009 article and publish a proper investigative story.

29. The following day, October 27, 2009, plaintiff ELENA SASSOWER reiterated the content of her telephone conversation with defendant ROYLE in an e-mail (Exhibit 9), which she also sent to defendants FREEMAN, FAUBEL, FREDERICKS, and EDDINGS. The letter closed as follows:

“Voters must be IMMEDIATELY informed of the true facts and important issues suppressed by the May 6, 2009 article so that they can intelligently cast their votes for Mayor and Common council in the upcoming election, now only a week away. Likewise, The Journal News editorial board must be informed so that its editorial endorsements may alert voters to the flagrant betrayal of public trust and responsibilities by Common Council members seeking re-election and mayoral office.

Please confirm that CJA's correspondence with the Mayor, Common Council & Corporation Counsel, annexed to my July 14, 2009 [analysis] as Exhibits B, C, D, E, & F will be IMMEDIATELY brought to the attention of The Journal News' editorial board and reporters and columnists handling election coverage, whose identities I additionally request.

As in the past, I and CJA's President & Co-Founder, Doris L. Sassower, are ready

to assist The Journal News in discharging its First Amendment obligations to the public. For your convenience, CJA's website, www.judgewatch.org, posts the relevant primary-source documents, accessible *via* the top panel 'Latest News', featuring a heading 'Welcoming Sunshine!', linking to a webpage for 'The Corrupt Judicial Appointments Process to White Plains City Court'." (capitalization in the original).

30. None of the defendants responded.

31. On September 1, 2010, in preparation for the drafting of this Verified Complaint, plaintiff ELENA SASSOWER viewed the video of the Common Council's May 4, 2009 meeting made by the White Plains Cable Television Access Commission – referred to by the analysis (Exhibit 7, pp. 6, 7-8, 11) and never previously viewed by her.

32. The video corroborates the analysis, establishing that plaintiffs ELENA and DORIS SASSOWER did not "heckle" or otherwise make any "protest" "during" the Common Council's meeting confirming Judge Hansbury, which took place without disturbance (at 18:50 minutes).

33. The video further shows that during Reverend Carol Huston's invocation, where she says "White Plains is a community that cares for its people" (at 4:54 minutes), there is no audible "Hummph" from plaintiff ELENA SASSOWER, whose back is directly in front of the camera and whose face is seen when she turns around and gives an incredulous look to plaintiff DORIS SASSOWER, standing behind her. Nor is there any visible reaction from anyone reflective of a "Hummph" having been heard.

34. The video also shows that immediately following the confirmation, several audience members got up to leave, as Judge Hansbury and his wife went around the council tables, shaking hands with the Council Members and Mayor. Thereafter, a disembodied voice – belonging to plaintiff ELENA SASSOWER – and emanating from the left, in the direction of the

door (at 22:14 minutes) – is heard to say “a corrupt judge and a corrupt process”. At that point, Judge Hansbury and his wife have not left the Council chamber, contrary to the news article.

35. The video further shows that after Judge Hansbury and his wife finish making their hand-shaking rounds and go left, leaving the Council chamber (at 22:19 – 22:22 minutes), a male figure in the front row rises and also goes left (at 22:25 minutes). Upon information and belief, it is defendant EDDINGS.

AS AND FOR A FIRST CAUSE OF ACTION: LIBEL

36. Plaintiffs repeat, reiterate, and reallege paragraphs 1-35 with the same full force and effect as if more fully set forth herein.

37. As demonstrated by plaintiffs’ analysis (Exhibit 7) and the video, the news article “*Hecklers try to derail new judge*”/“*White Plains woman heckles city judge during confirmation*” (Exhibits A-1, A-2) is not a “fair and true report” of what took place “during” the May 4, 2009 White Plains Common Council meeting – nor of what took place in the citizens’ half-hour preceding it.

(a) Such vitiates any privilege under New York Civil Rights Law §74, by its express language.²

38. Plaintiffs’ analysis (Exhibit 7) is herein repeated, reiterated, and realleged, as if more fully set forth. It establishes that the news article, by its parts and in context³, is knowingly

² New York Civil Rights Law §74. “Privileges in action for libel

A civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding or other official proceeding, or for any heading of the report which is a fair and true headnote of the statement published.

This section does not apply to a libel contained in any other matter added by any person concerned in the publication; or in the report of anything said or done at the time and place of such a proceeding which was not a part thereof.”

³ “It has long been our standard in defamation actions to read published articles in context...not to

false and defamatory as to plaintiffs ELENA and DORIS SASSOWER.

39. The analysis (Exhibit 7) is true and correct as to:
- a. its prefatory “Introduction” (at pp. 1-6);
 - b. its analysis of the news article’s titles (at p. 6);
 - c. its analysis of the news article’s paragraph 1 (at pp. 6-8);
 - d. its analysis of the news article’s paragraph 2 (at p. 8);
 - e. its analysis of the news article’s paragraph 3 (at p. 9);
 - f. its analysis of the news article’s paragraph 4 (at p. 10);
 - g. its analysis of the news article’s paragraph 5 (at p. 11), except that based on the video, it appears that only about 15 second separated the exiting from the Council chamber of plaintiffs DORIS and ELENA SASSOWER, with the latter’s words, before stepping out, being “a corrupt judge and a corrupt process” (at 22:14 minutes);
 - h. its analysis of the news article’s paragraphs 6 & 7 (at p. 12);
 - i. its analysis of the news article’s paragraph 8 (at pp. 12-13);
 - j. its analysis of the news article’s paragraph 9 (at pp. 13-14);
 - k. its analysis of the news article’s paragraph 10 (at p. 14);
 - l. its analysis of the news article’s paragraph 11 (at pp. 14-15).

40. None of the defendants have heretofore denied or disputed the accuracy of the analysis (Exhibit 7) – including as to the express and implied facts shown to be both false and knowingly so.

41. The analysis’ uncontested showing – and the referred-to readily-available primary-source documentary evidence that supports it, including the video – establish, by clear and convincing evidence, that the news article was written and published with actual malice, *to wit*, “with knowledge that it was false or with reckless disregard of whether it was false or not”, *New York Times v. Sullivan*, 376 U.S. 254, 280 (1964), *inter alia*, because defendant EDDINGS was a

isolate particular phrases but to consider the publication as a whole...”, “statements must first be viewed in their context...” *Immuno v. J. Moor-Jankowski*, 77 N.Y.2d 235, 250, 254 (1991) (underlining added); “The entire publication... must be considered...”, *Silsdorf v. Levine*, 59 N.Y.2d 8, 13 (1983) (underlining added); “offending statements can only be viewed in the context of the writing as a whole, and not as disembodied words, phrases or sentences”, *Gaeta v. New York News*, 62 N.Y.2d 340, 349 (1984) (underlining added); “...the court will not pick out and isolate particular phrases but will consider the publication as a whole...”, *James v. Gannett*, 40 N.Y.2d 415, 420 (1976) underlining added).

witness to the Common Council’s May 4, 2009 meeting and to plaintiffs’ public presentation in the citizens’ half-hour preceding it and had, in his possession, their corroborating correspondence with the Corporation Counsel, Mayor, and Common Council (Exhibits B, C, D, E, F) particularizing the readily-verifiable documentary proof establishing Judge Hansbury’s corruption and that of the judicial appointments process, summarized by their presentation – of which defendant FREDERICKS had notice while the article was being written by defendant EDDINGS (Exhibits G-1, G-2, G-3), who, likewise, had such additional notice.⁴

42. The deliberately false and maligning depictions of plaintiffs in the news article, beginning with its headlines that they were “Hecklers” and “heckle[d]” “during” Judge Hansbury’s confirmation⁵, were the product of defendants’ common law malice⁶, motivated by their ill-will, spite, and animus against plaintiffs for objecting to their knowingly false, slanted, and besmirching journalism, covering up governmental corruption, which plaintiffs had chronicled in correspondence and complaints to The Journal News, then spanning 20 years.

43. The news article’s besmirchment of the individual plaintiffs and obliteration of plaintiff CJA is consistent with defendants’ *modus operandi* of prior reporting and non-reporting⁷, chronicled by plaintiffs’ correspondence and complaints.

⁴ Such notice may be deemed as “furnishing the necessary ‘mental element’”, *Curtis v. Butts*, 388 U.S. 130, 161 (fn. 23), citing *New York Times v. Sullivan*, 376 U.S. 254, 287.

⁵ “A headline is often all that is read by the casual reader and therefore separately carries a potential for injury as great as any other false publication” *Schermerhorn v. Rosenberg*, 73 A.D.2d 276, 287 (2nd Dept. 1980); 43A New York Jurisprudence 2d (2007), §73: Meaning as determined by context – consideration of headlines”: “...the headline alone may provide a basis for a finding of libel...”.

⁶ Law of Defamation, 2nd ed. (2005), Rodney A. Smolla, §3:47: “Common-law malice as probative of constitutional actual malice”, quoting *Kipper v. New York Post Holdings Co., Inc.*, 12 N.Y.3d 348 (2009) and *DiLorenzo v. New York News*, 81 A.D.2d 844 (1981).

⁷ Law of Defamation, 2nd ed. (2005), Rodney A. Smolla, §3:69:

44. Defendants' willful failure to retract the news article or to take other corrective steps in face of plaintiffs' analysis (Exhibit 7) further reflects their actual malice and common-law malice⁸ – as it left plaintiffs without redress except by litigation, as to which defendants have overwhelming advantage by reason of their unlimited legal and financial resources and the judicial corruption issues central to this case.

45. No First Amendment defenses are available to defendants by reason of their actual malice – even were plaintiffs ELENA and DORIS SASSOWER to be deemed public figures.

46. Had defendants viewed plaintiffs ELENA and DORIS SASSOWER as public figures by reason of their work as CJA's Co-Founders and its Director and President, respectively, or CJA as an organization with any public profile, the news article would have identified this work and CJA, which it did not (Exhibits A-1, A-2).

47. The news article's purposeful concealment that the individual plaintiffs had expressly and publicly identified themselves as CJA's Co-Founders, Director, and President estops defendants from asserting that plaintiffs are other than private, non-public figures.

“Courts have held that the defendant's choice of which facts to report, or the defendant's resolution of inference or ambiguities in a manner adverse to the plaintiff, while not alone constituting actual malice, may be probative of the existence of actual malice.

There is a subtle difference between the principle that a defendant may select from among various interpretations of the ‘truth’ and conscious manipulation of evidence at hand. At some point on the continuum of journalistic judgment ‘honest selectivity’ gives way to distortion – the evidence is deliberately mischaracterized or edited in such a way as to create the possibility that the defendant acted with knowledge of falsity or reckless disregard for the truth. A lack of balance may, therefore, in some cases be probative of actual malice.”

“Fraud may be committed by suppression of the truth, that is, by concealment, as well as by positive falsehood and misrepresentation. Where a failure to disclose a material fact is calculated to induce a false belief, the distinction between concealment and affirmative misrepresentation is tenuous; both are fraudulent.”, 60A New York Jurisprudence 2d §91: “Concealment Generally”; “the distinction between concealment and affirmative misrepresentation faded into legal insignificance, both being fraudulent”, *Hadden v. Consolidated Edison Company of New York*, 45 N.Y.2d 466, 470 (1978), citing cases.

⁸ *Cf.*, *New York Times v. Sullivan*, 376 U.S. 254, 286; Sack on Defamation: Libel, Slander & Related Problems, §11.1 (4th ed. 2010): “Under certain circumstances, *failure* to retract may help establish ‘actual

48. Defendants have additionally forfeited any First Amendment shield by deliberately omitting from the news article the issue of legitimate public concern that defendant EDDINGS witnessed and about which the individual plaintiffs publicly spoke, *to wit*, the corruption of the process by which Judge Hansbury was reappointed to the White Plains City Court, as verifiable from their correspondence with the Corporation Counsel, Mayor, and Common Council (Exhibits B, C, D, E, F) and the referred-to case file and appellate briefs, a copy of which plaintiff ELENA SASSOWER hand-delivered to the Mayor's office on March 23, 2009 (Exhibits G-1, G-3) to documentarily establish the fraudulence of Judge Hansbury's two decisions in that case, whose particulars were summarized by her accompanying letter (Exhibit C).

49. Such correspondence, case file, and appellate briefs – fully corroborative of plaintiffs' May 4, 2009 public presentation before the Mayor and Common Council – were at all times readily accessible to defendants from CJA's website, www.judgewatch.org – and so known to them prior to publication of the news article (Exhibits A-1, A-2). This includes by the first of plaintiff ELENA SASSOWER's three May 5, 2009 e-mails to defendant FREDERICKS, with a copy to defendant EDDINGS (Exhibits G-1), identifying the precise location as:

“*via* the top panel ‘Latest News’, which links to a webpage entitled ‘The Corruption of the Judicial Appointment Process to White Plains City Court’” .

50. The news article reports on no issues of legitimate public concern, focused – as its two headlines reflect (Exhibits A-1, A-2) – on the individual plaintiffs and the disruptive spectacle they supposedly made of themselves, rather than what they publicly presented, with documentary substantiation.

51. Defendants' expungement from the news article of the evidence-based issues of legitimate public concern that plaintiffs publicly presented bespeaks their knowledge that they could

malice...” (italics in original).

not otherwise craft its false and reputationally-damaging characterizations of plaintiffs ELENA and DORIS SASSOWER.

52. Inasmuch as defendant FREDERICKS was informed prior to publication of the news article that defendant EDDINGS had personally witnessed the issues of legitimate public concern that were the focus of plaintiffs' public presentation and that he had received, in hand, the substantiating correspondence from which to verify same (Exhibits G-1, G-3), defendant FREDERICKS acted "to purposefully avoid the truth" by approving the article stripped of such document-substantiated issues, yet embellished by extraneous matter: the "disruption of Congress" case and Judge Friia's "related decision" – neither having any relevance, other than to bolster the article's false and defamatory characterizations and innuendos. At best, defendant FREDERICKS "acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties".⁹

53. Plaintiffs' analysis (Exhibit 7) provides the factual particulars of this purposeful avoidance of the truth and gross irresponsibility. Defendants' willful and deliberate failure to respond to the analysis, let alone by any retraction or correction, further evidences this,¹⁰ particularly as the video of the May 4, 2009 Common Council meeting was at all times available to them.

⁹ *Chapadeau v. Utica Observer-Dispatch, Inc.*, 38 N.Y.2d 196, 199-200 (1975); *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989); *Sweeney v. Prisoners' Legal Services of New York*, 84 N.Y.2d 786, 793 (1995); *Kahn v. New York Times Company, Inc.*, 269 A.D.2d 74, 80 (2000).

¹⁰ *Buchbinder v. Enlightenment Press, Inc.*, New York Law Journal, July 7, 1983, at p. 10, col. 5 "A retraction may be viewed as evidence of an intent to repair the harm caused by a mistaken publication. Where such an intent can be established, a finding of gross irresponsibility is therefore unwarranted."; *Kuan Sing Enterprises, Inc. v. T.W. Wang, Inc.*, 86 A.D.2d 549 (1st Dept. 1982) "...That the mistake was an honest one and not prompted by malice or gross irresponsibility is evidenced...by the rather effusive apology contained in the following issue...", aff'd 58 N.Y.2d 708.

54. Defendants' editorial decisions to expunge from the news article the evidence-based issues of legitimate public concern about which plaintiffs publicly spoke, in favor of false and defamatory characterizations and negative embellishments, are not "sustainable" and "clear abuses", as to which the courts have a "supervisory function".¹¹

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 ongoing 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).

AS AND FOR A SECOND CAUSE OF ACTION: LIBEL PER SE

57. Plaintiffs repeat, reiterate, and reallege paragraphs 1-56 with the same full force and effect as if more fully set forth herein.

58. The news article "*Hecklers try to derail new judge*" / "*White Plains woman heckles city judge during confirmation*" (Exhibits A-1, A-2) depicts plaintiffs ELENA and DORIS SASSOWER not as CJA's Co-Founders and its Director and President, as they publicly

¹¹ *Gaeta v. New York News, Inc.*, 62 N.Y.2d 340, 349 (1984), citing *Chapadeau v. Utica Observer-Dispatch, Inc.*, 38 N.Y.2d 196, 199 (1975).

identified themselves to be, having – in addition to direct, personal knowledge – the professional credentials and expertise to testify, with documentary evidence, as to both the corruption of Judge Hansbury and the process of his reappointment, but, as “hecklers”, whose behavior was unruly, disrespectful, impertinent, argumentative, harassing, and “pursu[ing]”, creating a spectacle by their “fireworks” and “slings and arrows” – all “in vain”.

59. Such depictions are libelous *per se*, damaging plaintiffs ELENA and DORIS SASSOWER in their professions as Director and President of an organization whose credibility they have worked to build, as well as damaging plaintiff CJA, which draws on their credibility for its reputation, development, and funding.

60. Nor does the “single instance rule” apply to this libel *per se*, as the news article’s besmirchment of plaintiffs ELENA and DORIS SASSOWER is represented as a pattern of inappropriate and meritless conduct by them:¹² plaintiff ELENA SASSOWER having allegedly “interrupt[ed]” a congressional hearing to confirm Judge Richard Wesley to the federal appeals circuit – which is false – and serving, for such “disruption of Congress”, a six-month jail sentence. Likewise false is that both plaintiffs ELENA and DORIS SASSOWER brought a federal lawsuit against John McFadden in response to eviction proceedings arising from their having been rejected by the “condominium board” as purchasers of Mr. McFadden’s apartment – a lawsuit impliedly so worthless that a federal appeals court “dismissed” it, with plaintiffs nonetheless pursuing it further: to the U. S. Supreme Court, which “refused to hear” it.

61. The omission from the news article of the professional capacities of plaintiffs ELENA and DORIS SASSOWER, identified by each of them in their public presentations before

¹² 43A New York Jurisprudence 2d (2007), §56: “Single instance rule”; *Celle v. Fillipino Reporter Enterprises, Inc.*, 209 F3d 163, 180-1 (2nd Cir. 2000).

the Mayor and Common Council and in their underlying correspondence (Exhibits B, C, D, E, F), does not eliminate the libel *per se* – especially, as those capacities would be independently known by a substantial number of readers in the community (Exhibits 1b, 1c, 1f).¹³

62. Defendant FREDERICKS’ willful disregard of his obligation to ensure that the news article appropriately identified plaintiffs – in face of express notice from plaintiff ELENA SASSOWER that her public presentation before the Mayor and Common Council and by her prior correspondence was “as director & co-founder of the Center for Judicial Accountability” (Exhibit G-3) – reflects his knowledge that such inclusion would, on its face, not only enhance their credibility, but make the news article libelous *per se*.

63. The libel *per se* intended and accomplished by the news article was as to the occupation and professionalism of plaintiffs ELENA and DORIS SASSOWER as advocates and, implicitly, as to plaintiff CJA, of which they are the public embodiment.

64. This libel *per se* – consistent with defendants’ pattern and practice of besmirching the professional credibility of the individual plaintiffs and marginalizing, if not obliterating, plaintiff CJA so as to freely engage in First Amendment-violating conduct– was fueled by their retaliatory animus against plaintiffs, whose correspondence and complaints have long chronicled their fraudulent journalism, covering up governmental corruption.

¹³ *Hinsdale v. Orange County Publications, Inc.*, 17 N.Y.2d 284 (1966), “...a fact not expressed in the newspaper but presumably known to its readers is part of the libel.”; LEXSTAT AT NY JUR DEFAMATION PRIVACY 7: “extrinsic facts may be considered in determining whether a writing is libelous *per se* where the extrinsic facts are presumably known to the readers of the statement”; *Michaels v. Gannett Co., Inc.*, 10 A.D.2d 417, 420-421 (App. Div. 4th Dept. 1960), “The test is...what the readers of the article reasonably understood the defendant to have intended (*Corrigan v. Bobbs-Merrill Co.*, 228 N. Y. 58; Restatement, Torts, §§564, 579)”.

AS AND FOR A THIRD CAUSE OF ACTION: JOURNALISTIC FRAUD¹⁴

65. Plaintiffs repeat, reiterate, and reallege paragraphs 1-64 with the same full force and effect as if more fully set forth herein.

66. The news article “*Hecklers try to derail new judge*”/“*White Plains woman heckles city judge during confirmation*” (Exhibits A-1, A-2) is a journalistic fraud, intended to mislead the public into believing that in reappointing Judge Hansbury to White Plains City Court, the executive and legislative branches of White Plains City government were properly functioning and safeguarding its welfare, when they were not (Exhibits B, C, D, E, F).

67. This journalistic fraud is demonstrated by plaintiffs’ analysis (Exhibit 7), summarizing not only the corruption of the process by which Judge Hansbury was reappointed to White Plains City Court, knowingly covered-up by defendant EDDINGS, but contrasting it to The Journal News’ prize-winning journalism awards for “Freedom of Information”, “Your Right to Know”, and “Let the Sun Shine In” (Exhibit K) and editorials proclaiming “the public’s right to know about its government and its workings. Open government is essential if democracy is to thrive” (Exhibits H-1/H-2). Indeed, plaintiff’s analysis showed (at pp. 5-6) that within a week of defendant EDDINGS’ news article, he wrote two other Journal News articles reflective of the

¹⁴ 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”.

public's right to know (Exhibits I-1/I-2, J) – with one of these (Exhibits I-1/I-2) generating a Journal News editorial criticizing the Corporation Counsel, Mayor, and Common Council for trespassing on “the public's right to know about public business”(Exhibits I-3/I-4).

68. Defendants' wilful failure to retract the subject news article or to correct it by any story examining the “workings” of the process by which the Mayor and Common Council reappointed Judge Hansbury to the White Plains City Court, in face of plaintiffs' fact-specific, document-based analysis (Exhibit 7), whose accuracy they did not dispute, underscores the willfulness of their journalistic fraud and intent to deprive the public of information “essential if democracy is to thrive” (Exhibits H-1/H-2).

69. Such journalistic fraud is all the more egregious as it not only allowed a demonstrably corrupt White Plains City Court judge – and collusive fellow judges – to continue to inflict irreparable injury upon plaintiffs and unsuspecting litigants, but allowed Common Council members who should have been turned out of office for corruption to be re-elected in the November 2009 elections.

70. The Journal News' prominently-featured policy as to “**ACCURACY**” (Exhibit 4a) and “Corrections” (Exhibit 4b), purporting that “Accuracy, fairness, and balance are important to us” and “It is the policy of The Journal News to promptly correct errors” has exacerbated the journalist fraud of the news article by inducing the public to believe that the article was accurate, fair, and balanced – when, as demonstrated by plaintiffs' analysis (Exhibit 7), it was grossly not.

71. The Journal News' prominently-featured policy of “**ACCURACY**” and “Corrections” (Exhibits 4a, 4b) is itself a journalistic fraud – and so-demonstrated by defendants' writing and publishing of the news article and willful failure to retract or correct it following

receipt of plaintiffs' analysis (Exhibit 7).

72. During the course of more than 20 years, The Journal News has not made a single retraction or acknowledgement of error in response to plaintiffs' voluminous correspondence and complaints about its slanted, false, and defamatory journalism, willfully covering up governmental corruption.

73. Nonetheless, The Journal News has promoted its policy of "**ACCURACY**" and Corrections" (Exhibits 4a, 4b) throughout these 20-plus years. It continues to do so to the present, modified only by The Journal News' deletion of any mention of a "**READERS' REPRESENTATIVE**" or "Reader Services Editor" to handle "**ACCURACY**" and "Corrections" issues.

74. Upon information and belief, The Journal News ceased having a "**READERS' REPRESENTATIVE**"/"Reader Services Editor" long before the subject news article, but deliberately retained references to them in its "**ACCURACY**" and "Corrections" policy (Exhibits 4a, 4b) and elsewhere in its newspaper (Exhibit A-1) and on its website to mislead readers that their interest in quality journalism was being protected.

75. The Journal News' journalistic fraud in purporting to have a non-existent "**READERS' REPRESENTATIVE**"/"Reader Services Editor" did not end until after the news article was published when, confronted by plaintiff ELENA SASSOWER's efforts to contact the Readers' Representative and her July 14, 2009 complaint and accompanying analysis (Exhibits 6, 7), The Journal News removed the references thereto from its page 2 newspaper masthead and from its website.

76. The Journal News' journalistic fraud, by its unretracted news article is not an isolated incident. Rather, it continues a pattern and practice, documented by plaintiffs'

correspondence and complaints, whereby it and defendant GANNETT deliberately mislead the public as to issues of legitimate public concern, while, simultaneously, maligning and black-balling plaintiffs – each to cover up governmental corruption.

77. That The Journal News purports, editorially and by its other reporting, that it upholds “the public’s right to know about its government and its workings” and furnishes the public with information serving that end because “Open government is essential if democracy is to thrive” (Exhibits H-1/H-2, I-3/I-4, K) only compounds this journalistic fraud.

78. Defendant GANNETT’s pattern and practice of journalistic fraud was calculated to – and did – irreparably destroy the lives of the individual plaintiffs, sabotage the growth and development of plaintiff CJA, and deprive the public of countless opportunities to secure the good-government reforms that plaintiffs’ dedicated advocacy consistently put within its grasp. Reform of the totally sham “process” by which White Plains gets its City Court judges is but one example of the myriad of reforms that would have been achieved had defendants respected their First Amendment responsibilities.

79. Defendant GANNETT has long subordinated its First Amendment responsibilities to its own business and other self-interests. Defendants’ writing and publishing of “*Hecklers try to derail new judge*”/“*White Plains woman heckles city judge during confirmation*” (Exhibits A-1, A-2) and willful failure to retract or correct it by any story examining the process by which Judge Hansbury was reappointed to the White Plains City Court (Exhibits 6, 7, 8, 9) – the focus of plaintiffs’ evidence-based public presentation on May 4, 2009 – are illustrative.

* * *

WHEREFORE, plaintiffs demand trial by jury and respectfully pray for judgment in their favor against defendants as follows:

As to the First and Second Causes of Action: Libel and Libel Per Se

(a) awarding plaintiffs compensatory damages from defendants in the sum of Five Million Dollars (\$5,000,000)¹⁵ – such including, as mitigation damages:

(i) the costs plaintiffs incurred in preparing their analysis of “*Hecklers try to derail new judge*”/“*White Plains woman heckles city judge during confirmation*” and their retraction demands based thereon (Exhibits 7, 6, 8, 9);

(ii) plaintiffs’ attorneys’ fees, costs, and disbursements of this action, necessitated by defendants’ willful failure to respond to plaintiffs’ analysis and retraction demands¹⁶;

(b) awarding plaintiffs punitive or exemplary damages from defendants in the sum of Fifteen Million Dollars (\$15,000,000)¹⁷ for the knowing and deliberate lies, smears, and character assassination of defendants’ unretracted news article, maliciously causing the individual plaintiffs to suffer stress, derision, degradation, humiliation, isolation and stigma, affecting them both physically and emotionally, and adversely impacting upon the corporate plaintiff, reputationally, financially, and developmentally.

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).

¹⁶ *Metropolitan Opera Associations v. Local 100, et al*, 2005 U.S. Dist. LEXIS 14422.

¹⁷ 44 New York Jurisprudence 2nd, §225 “Punitive or exemplary damages”; §226 “Punitive or exemplary damages – Necessity of actual damages”: “Punitive damages may be awarded for defamation even without

As to the Third Cause of Action: Journalistic Fraud

(a) awarding plaintiffs, on behalf of themselves and the public, compensatory damages from defendants in the sum of Eight Million Dollars (\$8,000,000) for the journalistic fraud defendants committed – such including recompense for:

(i) costs plaintiffs incurred in good-faith reliance on The Journal News' policy of "ACCURACY" and "Corrections", enforced by a "READERS' REPRESENTATIVE" (Exhibits A-1, 4a, 4b) in preparing their analysis of "*Hecklers try to derail new judge*"/"*White Plains woman heckles city judge during confirmation*" and their retraction demands based thereon (Exhibits 7, 6, 8, 9);


(ii) monetary injuries to plaintiffs resulting from defendants' fraud upon the public by its willful concealment of the corruption of the process by which Judge Hansbury was reappointed to White Plains City Court – among these: the monies Judge Hansbury wrongfully deprived plaintiff ELENA SASSOWER by his two fraudulent judicial decisions in *John McFadden v. Elena Sassower* (White Plains City Court Index #SP-1502/07), *to wit*: (a) up to \$1,000,000 on her four Counterclaims; (b) costs and sanctions under 22 NYCRR §130-1.1 *et seq.*; and (c) treble damages under Judiciary Law §487, as well as the money injuries plaintiff DORIS SASSOWER suffered from Judge Hansbury's misconduct in a separate case – all injuries which plaintiffs were unable to redress due to defendants' concealment, ongoing to the present, of this and related corruption;

(b) awarding plaintiffs, on behalf of themselves and the public, punitive or exemplary damages from defendants in the sum of Twenty-Two Million Dollars (\$22,000,000) for their journalistic fraud – such including the pattern and practice of journalistic fraud underlying "*Hecklers try to derail new judge*"/"*White Plains woman heckles city judge during confirmation*" (Exhibits A-1, A-2), expressly referred-to by plaintiffs' July 14, 2009 retraction demand (Exhibit 6) and "amply document[ed]" and


compensatory or actual damages."

objected to by their nearly 22-year correspondence and complaints, without redress from defendants, culminating in the continued fraud of their unretracted news article.

Such other and further relief as may be just and proper, including, in addition to attorneys' fees, costs, and disbursements of this action, assessment of any of the foregoing damages as part of a cause of action for Institutional Reckless Disregard for Truth,¹⁸ to the extent warranted by the evidence adduced.


ELENA RUTH SASSOWER, *Pro Se*
Individually & Acting *Pro Bono Publico*

Dated: October 4, 2010
Southampton, New York


SARNO & DeFELICE, LLC
By: JAMES A. DeFELICE, Esq.
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*

Dated: October 4, 2010
New York, New York

¹⁸ See, fn. 14 *supra*.

VERIFICATION


STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss:

I am the first-named individual plaintiff in the within action and Director of the corporate plaintiff, Center for Judicial Accountability, Inc. I have written the annexed Verified Complaint and attest that same is true and correct of my own knowledge, information, and belief, and as to matters stated upon information and belief, I believe them to be true.



ELENA RUTH SASSOWER

Sworn to before me this
4th day of October 2010



Notary Public

MARGARET M. O'CONNOR
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SUFFOLK COUNTY
REG. NO. 010C6132954
COMMISSION EXPIRES AUG. 29, 2013

CERTIFICATION

JAMES DeFELICE of SARNO & DeFELICE, LLC, 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*, hereby certifies that to the best of his knowledge, information, and belief, formed after reasonable inquiry into the facts and law, the Verified Complaint is not frivolous as defined in §130-1.1(c) of the Rules of the Chief Administrator of the Courts (22 NYCRR).


JAMES DeFELICE

Dated: New York, New York
October 4, 2010

TABLE OF EXHIBITS

- Exhibit 1a: Elena Sassower's published article "*Without Merit: The Empty Promise of Judicial Discipline*", The Long Term View (Massachusetts School of Law), Vol. 4, No. 1: Summer 1997
- Exhibit 1b: "*True Believers*", Westchester County Weekly, March 19, 1998
- Exhibit 1c: "*Delfino – Nicoletti – Sassower Persons of the Year*", White Plains CitizeNetReporter, January 3, 2005
- Exhibit 1d: Doris Sassower's Martindale-Hubbell Law Directory Listing, 1989
- Exhibit 1e: Doris Sassower's front-page article "*Judicial Selection Panels: An Exercise in Futility?*", New York Law Journal, October 22, 1971
- Exhibit 1f: Giraffe Project Press Release – "A Giraffe's been sighted in your territory!", with October 21, 1997 Commendation to Doris Sassower
- Exhibit 2a: Elena Sassower's April 4, 1992 fax to Gannett Suburban Newspapers – "RE: Your Libelous and Malicious story appearing in today's newspaper – Saturday, April 4, 1992"
- Exhibit 2b: Doris Sassower's April 4, 1992 fax to Gannett Suburban Newspapers – "RE: Your latest libelous and malicious story appearing today, Saturday, April 4, 1992"
- Exhibit 3a: Doris L. Sassower's October 26, 1992 Summons with Notice against Gannett
- Exhibit 3b: Elena Sassower's December 5, 1995 letter to Richard Liebson, Columnist/Gannett Suburban Newspapers – "RE: Gannett's follow-up to Sea Star"
- Exhibit 3c: Elena Sassower's December 6, 1995 letter to Nancy Blair, Local Editor/Gannett Suburban Newspapers
- Exhibit 3d: December 21, 1995 letter from Gannett Suburban Newspaper attorneys Satterlee, Stephens, Burke & Burke, LLP – "Re: Sassower v. Gannett"
- Exhibit 4a: "**ACCURACY**", The Journal News masthead, May 6, 2009 issue, page 2
- Exhibit 4b: "Corrections", www.lohud.com, May 6, 2009, accessible via "Contacts-Reader Services"

- Exhibit 5: “*Comments for White Plains woman heckles city judge during confirmation*”, LoHud.com, May 10, 2009
- Exhibit 6: CJA’s July 14, 2009 letter to CynDee Royle – “RE: (1) Retraction of The Journal News’ knowingly false and defamatory May 6, 2009 article ‘*Hecklers try to derail new city judge*’/‘*White Plains woman heckles city judge during confirmation*’; (2) Journalistic expose of the issue of legitimate public concern the article purposefully concealed, to wit, the corruption of the judicial appointment process by which White Plains gets its City Court Judges, as established by primary-source documentary evidence”
- Exhibit 7: CJA’s ANALYSIS of “*Hecklers try to derail new city judge*’/‘*White Plains woman heckles city judge during confirmation*’, with exhibits
- Exhibit A-1: “*Hecklers try to derail new city judge*”, by Keith Eddings/Journal News, May 6, 2009, p. 3
- Exhibit A-2: “*White Plains woman heckles city judge during confirmation*”, by Keith Eddings/LoHud.com, May 6, 2009
- Exhibit A-3: LoHud.com sale of “*White Plains woman heckles city judge during confirmation*”
- Exhibit B: CJA’s March 20, 2009 letter to White Plains Corporation Counsel
- Exhibit C: CJA’s March 23, 2009 letter to White Plains Mayor
- Exhibit D: CJA’s April 30, 2009 memo to White Plains Mayor & Common Council Members, with CJA’s April 29, 2009 letter to Corporation Counsel
- Exhibit E: CJA’s May 4, 2009 letter to White Plains Mayor
- Exhibit F: CJA’s May 4, 2009 e-mail to White Plains Mayor, Common Council Members, & City Clerk
- Exhibit G-1: CJA’s May 5, 2009 e-mail to Bob Fredericks, with copy to Keith Eddings – “Subject: How White Plains Gets Its City Court Judges”
- Exhibit G-2: CJA’s May 5, 2009 e-mail to Bob Fredericks, with copy to Keith Eddings – “Subject: Please forward me – elena@judgewatch.org”

- Exhibit G-3: CJA’s May 5, 2009 e-mail to Bob Fredericks, with copy to Keith Eddings – “Subject: Addendum: How White Plains Gets Its City Court Judges”
- Exhibit H-1: “*More light on ‘sunshine’*”; “*State, federal efforts*”; “*Additional Facts*”, Journal News/LoHud.com, March 22, 2009
- Exhibit H-2: “In Your Voice” – Center for Judicial Accountability, March 22, 2009
- Exhibit H-3: CJA’s March 22, 2009 letter to editor/proposal for coverage to Journal News – “Subject: We Applaud your editorial supporting state and federal efforts to open up government...”
- Exhibit I-1: “*Council’s actions questioned*”, by Keith Eddings/Journal News, May 14, 2009
- Exhibit I-2: “*State: White Plains Common Council’s executive session on the budget was illegal*”, by Keith Eddings/LoHud.com, May 14, 2009
- Exhibit I-3: “*Wrong Advice*”, editorial/Journal News, May 15, 2009
- Exhibit I-4: “*Wrong Advice*”, editorial/LoHud.com, May 15, 2009
- Exhibit J-1: “*Party chief contacts White Plains Dems over school race*”, by Keith Eddings/Journal News, May 14, 2009
- Exhibit K: “Awards and Contest Winners”/LoHud.Com, July 14, 2009

Exhibit 8: CJA’s August 18, 2009 letter to CynDee Royle, with copies to Faubel, Fredericks, and Eddings – “RE: CJA’s July 14, 2009 letter to you:
 1. Retraction of The Journal News’ knowingly false and defamatory May 6, 2009 article ‘*Hecklers try to derail new city judge*’/‘*White Plains woman heckles city judge during confirmation*’;
 2. Journalistic expose of the issue of legitimate public concern the article purposefully concealed, *to wit*, the corruption of the judicial appointment process by which White Plains gets its City Court Judges, as established by primary-source documentary evidence”

Exhibit 9: CJA’s October 27, 2009 e-mail to CynDee Royle, with copies to Freeman, Faubel, Fredericks, and Eddings – “Subject: Elections: Common Council & Mayor – Retraction/Journalistic Expose, Etc.”

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*,

Index #10-12596

Plaintiffs,

-against-

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

Defendants.

VERIFIED COMPLAINT

ELENA RUTH SASSOWER, *Pro Se*
Individually & Acting *Pro Bono Publico*

64 Towd Point Road
Southampton, New York 11968
Tel: 631-377-3583

SARNO & DeFELICE, LLC
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*

235 West 23rd Street, 5th Floor
New York, New York 10011
Tel: 212-401-4239