SUPREME COURT OF STATE OF NEW YORK
BRONX COUNTY

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity
as Governor of the State of New York,
ERIC T. SCHNEIDERMAN, in his official capacity
as Attorney General of the State of New York,
THOMAS DiNAPOLI, in his official capacity
as Comptroller of the State of New York,
DEAN SKELOS, in his official capacity
as Temporary President of the New York State
Senate, THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Speaker of the New York State Assembly,
THE NEW YORK STATE ASSEMBLY,
JONATHAN LIPPMAN, in his official capacity
as Chief Judge of the State of New York,
the UNIFIED COURT SYSTEM, and
THE STATE OF NEW YORK,

Defendants.

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VERIFIED COMPLAINT
Index #302951-12

JURY TRIAL DEMANDED

"The appellate, administrative, disciplinary, and removal provisions of Article VI [of the New York State Constitution] are safeguards whose integrity – or lack thereof – are not just 'appropriate factors', but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission [on Judicial Compensation] cannot constitutionally recommend raising judicial pay." (underlining in the original).

Opening quote from plaintiffs' October 27, 2011 Opposition Report to the 'Final Report' of the Special Commission on Judicial Compensation, addressed to Governor Andrew Cuomo, Temporary Senate President Dean Skelos, Assembly Speaker Sheldon Silver, and Chief Judge Jonathan Lippman, based on analysis of the New York Court of Appeals' February 23, 2010 decision in the judges' pay raise lawsuits.

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

1. This is an action against the constitutional officers of the three branches of New York State government for fraud and constitutional violations against the People of the State. It is based on their willful and deliberate failure to discharge their checks-and-balances function so as to ensure the integrity of the State judiciary and with it the processes of judicial selection and discipline – culminating in their collusion against the People to corruptly raise judicial salaries, motivated by a scheme to also raise legislative and executive salaries. It seeks a declaratory judgment as to the unconstitutionality of Chapter 567 of the Laws of 2010, *as written and as applied*, pertaining to judicial compensation and as to the statutory violations with respect thereto. Additionally, it seeks compensatory and punitive damages for defendants' constitutional and statutory violations and fraud upon the People of the State.

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

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VENUE

3. Pursuant to CPLR §503(a), venue lies in the Supreme Court of the State of New York, Bronx County, as that is where plaintiff SASSOWER currently resides.

THE PARTIES
& BACKGROUND FACTUAL ALLEGATIONS

4. Plaintiff CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (CJA) [hereinafter "CJA"] is a national, non-partisan, non-profit citizens' organization, headquartered in White Plains, New York and incorporated in 1994 under the laws of the State of New York. Its patriotic purpose is to safeguard the integrity of the processes of judicial selection and discipline so as to secure the constitutional promise of fair and impartial justice and due process under law. It does this by examining, investigating, and interacting with the largely behind-closed-doors judicial selection and discipline processes and providing the results, in *independently verifiable documentary form*, to individuals and institutions charged with protecting the public from corruption.

a. Plaintiff CJA emerged from a local non-partisan citizens' group, the Ninth Judicial Committee, founded in 1989 by New York attorney Eli Vigliano, Esq., to oppose the collusion between Democratic and Republic party leaders, rigging judicial elections in the Ninth Judicial District of New York, comprising Westchester, Putnam, Dutchess, Orange, and Rockland Counties.

b. Collectively, plaintiff CJA and the Ninth Judicial Committee [hereinafter "CJA"] have been documenting the corruption of New York's processes of judicial selection and discipline – and of the judicial process itself – for nearly a quarter century – and for just as long have provided such documentary evidence to the constitutional officers in all three branches of New York State government so that they could take appropriate action to protect the People of the State.

c. To overcome press suppression so as to inform the People and further alert New York's constitutional and public officers, plaintiff CJA has additionally undertaken costly newspaper ads, including:

- "*Where Do You Go When Judges Break the Law?*", New York Times, October 26, 1994, Op-Ed page ($16,770), reprinted in New York Law Journal, November 1, 1994, p. 9 ($2,280) (Exhibit A-1);

- "*A Call for Concerted Action*", New York Law Journal, November 20, 1996, p. 3 ($1,648) (Exhibit A-2); and

- "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", New York Law Journal, August 27, 1997, pp. 3-4 ($3,077) (Exhibit A-3).

d. By reason of defendants' violation of their constitutional duties, willfully disregarding, without investigation or appropriate action, the documentary evidence of systemic judicial corruption that plaintiff CJA has provided and proffered, and by enabling such corruption, including retaliation against its founders, plaintiff CJA has been profoundly damaged in its organizational and financial development, which it has survived only because of its founders' perseverance and self-sacrifice.

5. Plaintiff ELENA RUTH SASSOWER [hereinafter "SASSOWER"] is a resident, citizen, and taxpayer of the State of New York, born in New York County and currently residing in Bronx County.

a. She is the daughter of two lawyers, George Sassower and Doris L. Sassower, themselves native-born and life-long residents, citizens, and taxpayers of the State of New York, each viciously retaliated against by New York's judiciary for exposing judicial corruption. This included, in 1986, the disbarment of George Sassower, without due process, by New York's court-controlled attorney disciplinary system and, in 1991, the immediate, indefinite, and unconditional suspension of Doris Sassower's law license, without due

process. Such retaliation against plaintiff SASSOWER's courageous whistle-blowing parents, spanning more than 35 years to the present, has caused irreparable financial, reputational, and other injury to them and to their three innocent daughters, the eldest being plaintiff SASSOWER.

b. From 1991 to 1993, plaintiff SASSOWER was Coordinator of the Ninth Judicial Committee. In September 1993, she co-founded plaintiff CJA with her mother, Doris L. Sassower, and was its Coordinator until January 2006, when she became its Director.

c. In those capacities, spanning more than 20 years, plaintiff SASSOWER has documented the corruption of the judicial process that has so injured her and her family – corruption embracing appellate and supervisory levels of New York's judiciary and the Commission on Judicial Conduct – and also contaminating judicial selection, both elective and appointive to the lower state courts and "merit selection" appointment to the New York Court of Appeals, aided and abetted by a self-serving, lapdog press. As part thereof, plaintiff SASSOWER has litigated in the New York courts, including three major lawsuits in her own name, all brought in the public interest, and has engaged, simultaneously, in evidence-based advocacy to the constitutional officers of New York's three government branches for investigation and remedial action.

d. All three of the public interest lawsuits brought by plaintiff SASSOWER were "thrown" by fraudulent judicial decisions, obliterating all adjudicative standards and anything resembling the rule of law – as to which, by reason of self-interest and collusion by the three government branches and the "fourth branch", the press, there is no functioning safeguard or remedy. These three lawsuits are:

- *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, v. Commission on Judicial Conduct of the State of New York*, spanning from 1999-2002 and three courts: Supreme Court/NY County; the Appellate Division, First Department; and the New York Court of Appeals, which denied review both by right and by leave[1] – a lawsuit physically incorporating two other lawsuits against the Commission on Judicial Conduct in which plaintiffs participated:

  -- *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York*, brought in 1995 in Supreme Court/NY County and not appealed; and

  -- *Michael Mantell v. New York State Commission on Judicial Conduct*, spanning 1999-2001 and three courts: Supreme Court/NY County; the Appellate Division, First Department, wherein plaintiffs moved to intervene; and the New York Court of Appeals, which denied leave to appeal;

- *Elena Ruth Sassower, individually and as Coordinator of the Center for Judicial Accountability, Inc., Center for Judicial Accountability, Inc., and The Public, as represented by them, v. The New York Times Co., The New York Times, Arthur Sulzberger, Jr., et al.*, spanning from 2005 – 2008 and two courts: Supreme Court/Westchester County and the Appellate Division, Second Department;[2]

- *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, v. Gannett Company, Inc., The Journal News, LoHud.com, et al.*, spanning from 2010 to the present in Supreme Court/Suffolk County[3], with a notice of appeal filed for an appeal to the Appellate Division, Second Department.

e. As a result of plaintiff SASSOWER's judicial whistleblowing, she, too, has been retaliated against by New York's judiciary, causing her direct reputational, financial,

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[1] The full record of this lawsuit, including the two lawsuits it physically incorporated, is posted on plaintiff CJA's website, www.judgewatch.org, accessible *via* the sidebar panels "Test Cases-State/NY" and "Judicial Discipline-State/NY"

[2] The full record of this lawsuit is posted on plaintiff CJA's website, accessible *via* the sidebar panels "Suing The New York Times" and "Press Suppression".

[3] The full record of this lawsuit is posted on plaintiff CJA's website, accessible *via* the top panel "Latest News" and sidebar panel "Press Suppression".

and other injury. This includes, in addition to the foregoing three public interest lawsuits, a landlord-tenant proceeding, *John McFadden v. Elena Sassower*, spanning from 2007- 2011 and three courts: White Plains City Court, the Appellate Term for the Ninth Judicial District, and the Appellate Division, Second Department – wherein plaintiff SASSOWER was unlawfully evicted from her home of 21 years and judicially robbed of $1,000,000 in counterclaims and thousands of dollars in costs under 22 NYCRR §130-1.1, *et seq.*, and tens, if not hundreds, of thousands of dollars in damages pursuant to Judiciary Law §487, with the State itself robbed of tens of thousands of dollars in sanctions due it under 22 NYCRR §130-1.1, *et seq.*[4] Although initially a private case, *McFadden v. Sassower* assumed public interest dimension because, in addition to the flagrant judicial corruption evidenced by the record, the New York State Attorney General came into the case, on behalf of the White Plains City Court Clerk, and engaged in litigation fraud to protect the Clerk, shown to have tampered with court records at the instance of the White Plains City Court's senior judge. The State Attorney General at that time was defendant ANDREW M. CUOMO.

6. Defendant ANDREW M. CUOMO [hereinafter "CUOMO"] is Governor of the State of New York, elected by the People of the State in November 2010 to a four-year term.

a. As Governor, he is the State's highest constitutional officer in whom the executive power vests (N.Y. Constitution, Article IV, §1).

b. In furtherance of his constitutional duty to "take care that the laws are faithfully executed" (N.Y. Constitution, Article IV, §3), defendant CUOMO has, at his disposal, the investigative and prosecutorial resources of the State's executive branch,

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[4] The full record of this lawsuit is posted on plaintiff CJA's website, accessible *via* the sidebar panel "Test Cases".

including the State Attorney General (Executive Law, §§63.2, 63.3, 63.8); and authority to appoint a special prosecutor.

c. Before taking his oath as New York's Governor on January 1, 2011, defendant CUOMO was the State Attorney General from January 1, 2007 through December 31, 2010, having been elected by the People of the State in November 2006 to a four-year term.

d. On June 20, 2006, while a candidate to succeed Attorney General Eliot Spitzer, who was then a candidate for Governor, plaintiffs faxed, e-mailed, and sent by certified mail/return receipt a letter to Defendant CUOMO (Exhibit B-1), identifying their "direct, first-hand experience with New York's current and past Attorneys General, going back nearly a decade and a half" and enclosing plaintiffs' three public interest ads, noting that the third, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", summarized how "New York's Attorneys General engage in a *modus operandi* of litigation fraud to defend state judges and the Commission on Judicial Conduct, sued for corruption, where they have *no* legitimate defense – and are rewarded by fraudulent judicial decisions". The letter described how plaintiff SASSOWER had publicly handed a copy of the ad to Attorney General Spitzer, in January 1999, together with a letter requesting that he investigate and take steps to vacate the fraudulent judicial decisions in the three cases the ad described. Instead, Attorney General Spitzer "proceeded to corrupt the judicial process by litigation fraud, precisely as his predecessors had – and, like them – [was] rewarded by a succession of fraudulent judicial decisions." Specified were "two separate lawsuits against the Commission on Judicial Conduct – both commenced in April 1999."

e. Defendant CUOMO did not respond to this June 20, 2006 letter, requesting to meet with him and discuss:

> "how – if voters elect you as our next Attorney General – you will discharge 'your mandatory professional and ethical obligations' with respect to the record evidence of systemic governmental corruption involving not only the office of the Attorney General, but three Attorneys General directly." (Exhibit B-1, at p. 3, underlining in the original).

f. Nor did defendant CUOMO respond to plaintiffs' subsequent letter, dated September 1, 2006, faxed and e-mailed to him (Exhibit B-2).

g. Upon information and belief, during the four years in which defendant CUOMO was Attorney General and since becoming Governor, countless citizens of the State of New York have turned to him for investigation and prosecution of the corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property. This has included plaintiff SASSOWER's own father, George Sassower.

7. Defendant ERIC T. SCHNEIDERMAN [hereinafter "SCHNEIDERMAN"] is Attorney General of the State of New York, elected by the People of the State in November 2010 to a four-year term.

a. As Attorney General, he is a constitutional officer of the executive branch, heading its department of law and, as such, the State's chief legal officer (N.Y. Constitution, Article V, §§1, 4).

b. The Attorney General's duty is to "prosecute and defend all actions in which the state is interested"; and to "protect the interest of the state"; where "in his opinion the interests of the state so warrant" (Executive Law §63.1), for which he has extensive investigative and prosecutorial powers (Executive Law §63).

c. Before taking his oath as Attorney General on January 1, 2011, defendant SCHNEIDERMAN was a New York State Senator for 12 years. During this period, he was a member of the Senate Judiciary Committee and was present at its hearings to confirm

judicial nominees to the New York Court of Appeals at which plaintiff SASSOWER testified and/or was barred from testifying as to the corruption of the "merit selection" process that had produced them, encompassing the Commission of Judicial Conduct, covered up by fraudulent judicial decisions of state judges, including of the Court of Appeals, aided and abetted by the Attorney General, *to wit*,

- the Senate Judiciary Committee's January 22, 2003 hearing to confirm the nomination of Susan P. Read to the New York Court of Appeals (Exhibit C);

- the Senate Judiciary Committee's January 12, 2004 hearing to confirm the nomination of Robert S. Smith to the New York Court of Appeals (Exhibit D;

- the Senate Judiciary Committee's September 14, 2006 hearing to confirm the nomination of Eugene F. Pigott, Jr. to the New York Court of Appeals (Exhibit E);

- the Senate Judiciary Committee's February 12, 2007 hearing to confirm the nomination of Theodore T. Jones, Jr. to the New York Court of Appeals (Exhibit F);

- the Senate Judiciary Committee's March 6, 2007 hearing to confirm the renomination of Judith S. Kaye to be Chief Judge of the Court of Appeals (Exhibit G);

- the Senate Judiciary Committee's December 13, 2007 hearing to confirm the renomination of Carmen B. Ciparick to the New York Court of Appeals (Exhibit H)[5];

- the Senate Judiciary Committee's February 11, 2009 hearing to confirm the nomination of defendant JONATHAN LIPPMAN to be Chief Judge of the Court of Appeals (Exhibit I).

d. By letter to defendant SCHNEIDERMAN, dated July 19, 2011 (Exhibit J),[6] plaintiffs identified that they had repeatedly placed the record of *Elena Ruth Sassower v.*

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[5] As plaintiffs were barred from testifying, the annexed Exhibit H is their December 15, 1993 opposition statement to Judge Ciparick's initial nomination. – whose significance, additionally, is as to its recital of a pattern of "sham" public hearings by the Senate Judiciary Committee– including its March 17, 1993 hearing on Judge Kaye's nomination to be Chief Judge – and the fraud that the Committee thereafter perpetrates on the

Commission on Judicial Conduct before the Senate Judiciary Committee in connection with its Court of Appeals confirmation hearings – and that such was:

> "a perfect 'paper trail' of judicial and governmental corruption embracing New York's legislative and executive branches....directly relevant to the judicial compensation lawsuits brought by New York judges beginning in 2007 – and particularly to the judicial compensation lawsuit brought by Chief Judge Kaye and the OCA in 2008, culminating in the Court of Appeals' February 23, 2010 decision, from which Chief Judge Lippman, having been substituted for Chief Judge Kaye in her lawsuit, 'took no part'." (p. 2, underlining in the original).

e. During the 12 years in which defendant SCHNEIDERMAN was a New York State Senator and upon his election as Attorney General, countless citizens of the State of New York have turned to him for investigation and prosecution of the corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property. Since his becoming Attorney General, this has included plaintiff SASSOWER's own father, George Sassower.

8. Defendant THOMAS DiNAPOLI [hereinafter "DiNAPOLI"] is Comptroller of the State of New York, elected by the People of the State in November 2010 to a four-year term, following appointment by the Legislature in 2006, upon the resignation of Comptroller Alan Hevesi due to scandal.

a. As Comptroller, defendant DiNAPOLI is a constitutional officer of the executive branch, heading its "department of audit and control" (N.Y. Constitution, Article V, §§1, 4).

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full Senate and People of the State in bringing nominations for confirmation votes where it has not investigated testimony of nominee unfitness.

[6] Plaintiffs' July 19, 2011 letter to defendant SCHNEIDERMAN is also Exhibit E-1 in their Compendium of Exhibits to their October 27, 2011 Opposition Report.

b. In this capacity, he is "responsible for ensuring that the taxpayers' money is being used effectively and efficiently to promote the common good." (Comptroller's website: www.osc.state.ny.us/about/response.htm).

c. Prior to becoming Comptroller, defendant DiNAPOLI was a member of the New York State Assembly for nearly twenty years. Sixteen of these were after the November 15, 1989 report by former State Comptroller Edward Regan about the Commission on Judicial Conduct, Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy, calling for legislative emendation of the Judiciary Law enveloping the Commission's proceedings in confidentiality so as to allow independent auditing of its handling of judicial misconduct complaints (Exhibit K).[7]

d. Upon information and belief, during the twenty years in which defendant DiNAPOLI was an Assemblyman and since becoming Comptroller, countless constituents and other citizens have turned to him for investigation and prosecution of the corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property.

9. Defendant DEAN SKELOS [hereinafter "SKELOS"] is Temporary Senate President of defendant NEW YORK STATE SENATE, having been elected by the Senate's republican majority to be their Majority Leader in January 2011 (N.Y. Constitution, Article III, §9).

a. As Temporary Senate President, defendant SKELOS is the highest constitutional officer of defendant NEW YORK STATE SENATE, receiving extra compensation from the State's taxpayers in recognition of his leadership responsibilities.

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[7] Comptroller Regan's November 15, 1989 Report and its December 7, 1989 press release are also enclosure #2 to CJA's August 8, 2011 letter to the Commission on Judicial Compensation, annexed as Exhibit I in their Compendium of Exhibits to their October 27, 2011 Opposition Report.

b. During defendant SKELOS' nearly 30 years in the New York Senate, he has been a member of the Senate Judiciary Committee, present at several of its hearings to confirm judicial nominees to the New York Court of Appeals at which plaintiff SASSOWER testified and/or was barred from testifying as to the corruption of the "merit selection" process that had produced the nominees, encompassing the Commission of Judicial Conduct, covered up by fraudulent judicial decisions of State judges, including of the Court of Appeals. (Exhibits C-2, D-2, E-2, G).

c. Upon information and belief, during the 30 years in which defendant SKELOS has been a Senator, countless constituents and other citizens of the State have turned to him for investigation and prosecution of corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property.

10. Defendant NEW YORK STATE SENATE [hereinafter "SENATE"] is the upper house of the New York State Legislature, in which the State's legislative power vests (N.Y. Constitution, Article III, §1). It consists of 62 members, who are its constitutional officers, elected by the People of the State every two years.

a. To enable defendant SENATE to meet its constitutional duty to the People of the State, it has established committees, which are empowered to hold hearings and take testimony, including by subpoena, and whose chairmen and ranking members receive extra compensation from the State's taxpayers in recognition of their leadership responsibilities. Among defendant SENATE's standing committees is its Judiciary Committee, with 23 current members.

b. From 1993 onward, plaintiffs continuously provided the Senate, mostly through its Judiciary Committee, but also including its leadership, with case file evidence

establishing systemic corruption within New York's judiciary, encompassing appellate and supervisory levels and the New York Commission on Judicial Conduct, infecting the process of judicial selection, including "merit selection" to the New York Court of Appeals.

c. Upon information and belief, members of defendant SENATE regularly receive requests from constituents for investigation and prosecution of corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property, with further requests received by the Senate Judiciary Committee. This has included from plaintiff SASSOWER's own father, George Sassower.

11. Defendant SHELDON SILVER [hereinafter "SILVER"] is Speaker of the New York State Assembly, having been elected by the Assembly's democratic majority to be their majority leader in February 1994.

a. As Assembly Speaker, defendant SILVER is the Assembly's highest constitutional officer (N.Y. Constitution, Article III, §9), receiving added compensation from the State's taxpayers in recognition of his leadership responsibilities.

b. Upon information and belief, during the more than 35 years that defendant SILVER has been an Assemblyman, countless constituents and other citizens of the State have turned to him for investigation and prosecution of corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property.

12. Defendant NEW YORK STATE ASSEMBLY [hereinafter "ASSEMBLY"] is the lower house of the New York State Legislature in which the State's legislative power vests (N.Y. Constitution, Article III, §1). It consists of 150 members, who are its constitutional officers, elected every two years.

a. To enable defendant ASSEMBLY to meet its constitutional duty to the People of this State, it has established committees which are empowered to hold hearings and take testimony, including by subpoena, and whose chairmen and ranking members receive added compensation from the State's taxpayers in recognition of those leadership positions. Among its standing committees: the Assembly Judiciary Committee, with 21 current members.

b. Beginning in 1992, plaintiffs provided the Assembly, mostly through its Judiciary Committee, with case file evidence establishing systemic corruption within New York's judiciary, encompassing appellate and supervisory levels and the Commission on Judicial Conduct, covering up political manipulation of judicial elections and New York's unconstitutional court-controlled attorney disciplinary system, employed to retaliate against judicial whistle-blowing attorneys.

c. Upon information and belief, members of defendant ASSEMBLY regularly receive requests from constituents for investigation and prosecution of corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property, with further requests received by the Assembly Judiciary Committee. This has included from plaintiff SASSOWER's own father, George Sassower.

13. Defendant JONATHAN LIPPMAN [hereinafter "LIPPMAN"] is Chief Judge of the State of New York, Chief Judge of the Court of Appeals, and Chief Judicial Officer of Defendant NEW YORK STATE UNIFIED COURT SYSTEM, having been appointed by then Governor David Paterson in December 2008 and confirmed by defendant SENATE on February 11, 2009. (N.Y. Constitution, Article VI, §28(a); Judiciary Law §210).

a. As such, defendant LIPPMAN is the highest constitutional officer of New York State's judicial branch, with broad powers to ensure the effective operation of the courts, including the power to issue administrative orders and to establish standards and administrative policies of general applicability throughout the State. (N.Y. Constitution, Article VI, §28(a); Judiciary Law §211).

b. From 1996 to 2007, defendant LIPPMAN was Chief Administrative Judge of the State of New York, appointed by then Chief Judge Judith Kaye. In that capacity, he received correspondence and documentation from plaintiffs pertaining to systemic corruption within the judiciary, including as to the corruption of the Commission on Judicial Conduct and "merit selection" to the Court of Appeals, being covered up by New York state judges, Chief Judge Kaye, among them, and defendant OFFICE OF COURT ADMINISTRATION.

c. At the Senate Judiciary Committee's February 11, 2009 hearing to confirm defendant LIPPMAN's nomination to the New York Court of Appeals, plaintiff SASSOWER testified against his confirmation, based on his betrayal of his mandatory duties as Chief Administrative Judge to take appropriate action with regard to evidence of systemic judicial corruption and the corruption of "merit selection" involving the Commission on Judicial Conduct – of which, by his nomination, he was the beneficiary, and as to which William Galison, a citizen of New York, gave further testimony at the hearing (Exhibits I)[8].

d. Upon information and belief, defendant LIPPMAN now, as in the past, receives countless complaints from the People of the State of New York reporting corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property and

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[8] The Senate Judiciary Committee's video of the February 11, 2011 hearing on defendant LIPPMAN's appointment as Chief Judge, including the opposition testimony of plaintiff SASSOWER and William Galison, is posted on plaintiff CJA's website, accessible *via* the sidepanel "Judicial Selection: NYS".

requesting investigation and prosecution. This has included from plaintiff SASSOWER's own father, George Sassower.

14. Defendant UNIFIED COURT SYSTEM is the judicial branch of New York State government. It includes all New York State trial and appellate courts, as well as the judges and justices who sit on those courts. (N.Y. Constitution, Article VI, §1(a)). These judges and justices are the constitutional officers of the State's judicial branch.

a. From 1991 onward, plaintiffs provided defendant UNIFIED COURT SYSTEM's Chief Judge, Chief Administrative Judge, and various committees, commissions, institutes, and its Special Inspector General for Fiduciary Appointments, appointed in 2000, with information and documentation, including case file evidence, that the lower courts had "thrown" two Election Law proceedings challenging political manipulation of elective judgeships; that the court-controlled attorney disciplinary law was unconstitutional and being used to retaliate against judicial whistle-blowing lawyers; that the Commission on Judicial Conduct was corruptly dismissing, without investigation, facially-meritorious, documented judicial misconduct complaints, particularly against high-ranking, politically-connected judges; that the Attorney General had corrupted the judicial process in defending the Commission in Article 78 proceedings, for which he was rewarded by fraudulent judicial decisions, without which the Commission would not have survived – and whose consequence was to infect judicial selection, including "merit selection" to the Court of Appeals – and that defendant SENATE was colluding with then Governor Pataki to rig the judicial appointments process, with the UNIFIED COURT SYSTEM adding its imprimatur by authorizing double-dipping so that newly-installed unfit judges could receive pensions on top of their judicial salaries.

b. Upon information and belief, defendant UNIFIED COURT SYSTEM receives countless complaints from the People of the State of New York reporting corruption in New York's judiciary, unlawfully depriving them of life, liberty, and property, and requesting investigation and prosecution. This has included from plaintiff SASSOWER's own father, George Sassower.

15. Defendant STATE OF NEW YORK is the eleventh state of the United States of America, whose highest law, ratified by its voting citizens, is the United States Constitution and the New York State Constitution, each opening with the words "We the People".

a. Prefatory to the Articles of the State Constitution pertaining to the executive, legislative, and judicial branches of its government is a "Bill of Rights" contained in its Article I. Among its provisions; "No member of this state shall be…deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers…" (Article I, §1); "No person shall be deprived of life, liberty or property without due process of law" (Article I, §6); "No person shall be denied the equal protection of the laws of this state or any subdivision thereof" (Article I, §11).

FACTUAL ALLEGATIONS

II. A Tale of Six Lawsuits:
Three by Citizens -- Suing for Judicial Accountability
Three by Judges & the Unified Court System -- Suing for Pay Raises

16. In 1998, defendants SENATE and ASSEMBLY passed, and then-Governor Pataki signed, legislation, effective in 1999, raising the salaries of the constitutional officers of the judicial branch – these being the judges and justices of defendant UNIFIED COURT SYSTEM. Likewise, the salaries of the constitutional officers of the legislative and executive branches were raised.

17. In April 1999, plaintiff SASSOWER commenced the Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono public, v. Commission on Judicial Conduct of the State of New York.* It challenged the Commission's dismissal, without investigation and without reasons, of a facially-meritorious judicial misconduct complaint against Appellate Division, Second Department Justice Albert Rosenblatt for his believed perjury on his publicly-inaccessible application to be a Court of Appeals judge, which he had filed with the Commission on Judicial Nomination – a dismissal not made by the Commission on Judicial Conduct until after it had sat on the complaint for 2-1/2 months while the Commission on Judicial Nomination forwarded Justice Rosenblatt's name to Governor Pataki, who, with knowledge of the complaint, nominated Justice Rosenblatt and passed him on to the Senate, which confirmed him after an unprecedented, no-notice, by-invitation-only confirmation hearing, scheduled the day before the Senate Judiciary Committee held it.

a. The Article 78 petition also detailed a prior article 78 proceeding against the Commission on Judicial Conduct, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York* – brought in 1995 to challenge the Commission's dismissal, without investigation and without reasons, of eight facially-meritorious judicial misconduct complaints against powerful, politically-connected judges – and, in particular, against the Commission's own highest ranking judicial member: Appellate Division, Second Department Justice William Thompson, shown to have used his judicial powers for ulterior political and retaliatory purposes. The petition described what had happened in that prior proceeding: it had been thrown by a fraudulent Supreme Court decision – with details additionally particularized by annexed exhibits. Among these, a May 5, 1997 memorandum to a long list of leaders, including Governor Pataki and the Assembly and Senate

Judiciary Committees, attaching an analysis deconstructing the decision – the accuracy of which neither they nor anyone else had ever denied or disputed.

b. The Article 78 petition in the latter case presented six claims for relief:

The first claim for relief challenged, *as written*, the Commission's self-promulgated rule, 22 NYCRR §7000.3, whereby the Commission has given itself *carte blanche* to do anything – or nothing at all – with the complaints it receives, unbounded by any standard. Such is inconsistent and irreconcilable with Judiciary Law §44.1, whereby the Legislature imposed a mandatory duty on the Commission to investigate every complaint it receives unless it determines that the complaint "on its face lacks merit".

The second claim for relief challenged, *as applied*, this same self-promulgated 22 NYCRR §7000.3 because it enables the Commission to dismiss, without investigation, facially-meritorious complaints which Judiciary Law §44.1 requires it to investigate – such as Plaintiffs' complaint against Justice Rosenblatt and their complaint against then Appellate Division, Second Department Justice Daniel Joy, who had succeeded Appellate Division, Second Department Justice Thompson as the Commission's highest-ranking judicial member;

The third claim for relief challenged, *as applied*, if not *as written*, the confidentiality provision of Judiciary Law §45, which the Commission has wrongfully interpreted to deny complainants information substantiating the legitimacy or even actuality of its purported dismissals of their uninvestigated complaints;

The fourth claim for relief challenged, *as written and as applied*, Judiciary Law §43.1 and §41.6 and the Commission's rule 22 NYCRR §7000.11, by which the Commission is empowered to dispose of complaints by three-member panels, rather than the full eleven-member Commission. *As written*, these provisions set no standard as to when three-member panels are to be assigned, thereby allowing the Commission to invidiously and selectively choose which complaints will go to the full eleven-member Commission and allowing three-member panels to be composed of all lawyers, all judges, or a mix of lawyers and judges without a single lay member, thus defeating the intent of diversity expressed by Article VI, §22(1) of the Constitution and Judiciary Law §41.1, both as far as membership and appointing authority. The lack of any provision for administrative review by the full eleven-member Commission of a panel dismissal of a complaint, without investigation, renders Judiciary Law §43.1 and §41.6 and 22 NYCRR §7000.11 further unconstitutional;

The fifth claim for relief challenged the Commission with violating Judiciary Law §41.2, restricting the chairmanship to a member's "term in office or for a period of two years, whichever is shorter", by its then chairman who had been chair for approximately nine years;

The sixth claim for relief challenged the Commission with violating both the Constitution and Judiciary Law §44.1 by failing to acknowledge, let alone determine, plaintiffs' complaint against its highest-ranking judicial member, Appellate Division, Second Department Justice Joy.

18. Also in April 1999, indeed only days after plaintiff SASSOWER commenced her Article 78 proceeding against the Commission, New York attorney Michael Mantel independently commenced his own Article 78 proceeding, *Michael Mantel v. New York State Commission on Judicial Conduct*, based on its dismissal, without investigation and without reasons, of a facially meritorious complaint he had filed.

19. In September 1999, Mr. Mantell's Article 78 proceeding was "thrown" by a fraudulent decision of Manhattan Supreme Court Justice Edward Lehner. Plaintiff immediately demonstrated this by a detailed analysis, which, along with a copy of the record of Mr. Mantell's case, she physically incorporated into the record of her case – much as she had physically incorporated into her own case a copy of the record of her mother's case against the Commission, together with her analysis of the fraudulent Supreme Court decision that had dismissed it. Nonetheless, in January 2000, her own Article 78 proceeding was "thrown" by a fraudulent Supreme Court decision, one resting, exclusively, on the fraudulent decisions in *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission*. Such decision also insulated the Commission from further legal challenge by both plaintiff SASSOWER and plaintiff CJA by, *sua sponte*, enjoining them from "any further actions or proceedings relating to the issues decided herein" so as to "put an end to [their] badgering of the [Commission] and the court system".

20. On March 3, 2000, plaintiff SASSOWER delivered to Chief Judge Kaye a copy of the full record of her Article 78 proceeding against the Commission, with its physically incorporated records of *Doris Sassower v. Commission* and *Michael Mantell v. Commission* so as to

documentarily substantiate a request that the Chief Judge appoint a Special Inspector General. Plaintiffs' coverletter stated:

> "The most salient and frightening fact about the Commission's corruption...is that in three specific Article 78 proceedings over the past five years, the Commission – whose duty it is to uphold judicial standards – has been the beneficiary of fraudulent judicial decisions of Supreme Court/New York County, without which it could not have survived the challenges brought by complainants whose *facially-meritorious* judicial misconduct complaints the Commission has dismissed *without investigation*. Indeed, the Commission had NO legitimate defense in any of these three proceedings, relying on litigation fraud by 'the People's Lawyer, the State Attorney General, who represented the Commission in flagrant disregard of Executive Law §63.1[fn.3]." (p. 2, italics and capitalization in the original).[9]

The annotating footnote 3 was as follows:

> "[fn3] Executive Law §63.1 requires the Attorney General's involvement in litigation to be predicated on 'the interests of the state'. No 'state interest' is being served by an Attorney General who corrupts the judicial process with defense fraud and misconduct in order to defeat a meritorious claim."

21. Chief Judge Kaye did not answer plaintiffs' March 3, 2000 letter. Instead, it was answered by counsel to defendant UNIFIED COURT SYSTEM who – by obliterating any mention of the corruption issues and otherwise misrepresenting its content – purported that the Chief Judge had "no jurisdiction" and no "power in her administrative capacity" and that "Should [plaintiff SASSOWER] object to the handling of [her] case in the Supreme Court, [her] proper avenue of address is by appeal of that decision to an appellate court."

22. Plaintiff SASSOWER thereupon telephoned Chief Judge Kaye's New York City office, speaking with the Chief Judge directly and requesting that she "personally review" the deceitful response of defendant UNIFIED COURT SYSTEM's counsel. Plaintiff SASSOWER then reiterated this in a hand-delivered April 18, 2000 letter to Chief Judge Kaye, which was a formal complaint against said counsel. The letter detailed that the Chief Judge had "jurisdiction" and

"power" to investigate evidence of the Commission's corruption; that compared to the legislative and executive branches, the judicial branch has the greatest interest in ensuring the integrity of the judiciary and as much jurisdiction, if not more, to do so; and that any supposed lack of "jurisdiction" would not relieve her of the obligation to ensure that investigation was initiated by the jurisdictionally-proper body.

23. Neither Chief Judge Kaye nor anyone on her behalf denied or disputed the accuracy of plaintiffs' April 18, 2000 letter. Instead, they did not respond.

24. Five weeks later, on May 23, 2000, plaintiff SASSOWER ran into Chief Judge Kaye and directly asked her when her response to the April 18, 2000 letter would be forthcoming. To this the Chief Judge "breezily stated" – in the presence of defendant LIPPMAN, then Chief Administrative Judge – that she didn't know when.

25. Plaintiff SASSOWER recounted this in a hand-delivered June 30, 200 letter to Chief Judge Kaye, with a copy to defendant LIPPMAN, further objecting that the Chief Judge's office was continuing to direct members of the public who were turning to the Chief Judge for help against biased judges to the Commission, with knowledge that it was dumping complaints.

26. Neither Chief Judge Kaye, nor anyone on her behalf responded to plaintiffs' June 30, 2000 letter – or the subsequent correspondence consisting of a facially-meritorious judicial misconduct complaint against the Chief Judge that plaintiffs filed with the Commission, with copies sent to her and defendant LIPPMAN.

27. It took another two years before plaintiff SASSOWER's lawsuit against the Commission reached the Court of Appeals, on May 1, 2002 – "Law Day". By then, Mr. Mantell's appeal of the fraudulent Supreme Court decision that had "thrown" his case was affirmed by a paltry

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[9] This letter is Exhibit G to plaintiff SASSOWER's October 24, 2002 motion for leave to appeal,

decision of the Appellate Division, First Department, which, without reasons, denied plaintiffs' motion to intervene and other relief and, without citation to any legal authority and by distorting the facts, made it appear that Mr. Mantell "lack[ed] standing" to seek judicial review of the Commission's dismissal of his judicial misconduct complaint. The Court of Appeals, under Chief Judge Kaye, denied Mr. Mantell's motion for leave to appeal.

28. As for plaintiff SASSOWER's appeal of the fraudulent Supreme Court decision that had "thrown" her case, it, too, was affirmed by a paltry decision of the Appellate Division, First Department, which additionally purported that Plaintiff SASSOWER "lack[ed] standing to sue the Commission".

29. At the Court of Appeals, on May 1, 2002, plaintiff SASSOWER initially sought an appeal of right, invoking the Court's own decisional law that:

> "Where the question of whether a judgment is the result of due process is the decisive question upon an appeal, the appeal lies to this Court as a matter of right.", *Valz v. Sheepshead Bay*, 249 N.Y. 122, 131-2 (1928).

In so doing, plaintiff SASSOWER demonstrated that on two court levels – Supreme Court and the Appellate Division – she had been denied a fair and impartial tribunal and that these courts had manifested their disqualifying interest and bias by obliterating "All adjudicative standards", rendering decisions "so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause [of the United States Constitution]", *Garner v. State of Louisiana*, 369 U.S. 157, 163 (1961), *Thompson v. City of Louisville*, 362 U.S. 199 (1960).

30. Accompanying plaintiff SASSOWER's jurisdictional statement for an appeal of right was an extensive motion to disqualify all seven Court of Appeals judges for interest and bias and, pursuant to Article VI, §2(a) of the State Constitution, to designate justices of the Supreme Court to

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accompanying this Verified Complaint as a free-standing exhibit.

serve as Associate Court of Appeals judges for purposes of the appeal, with disclosure by judges so-designated of facts bearing upon their impartiality. Additionally, the motion sought:

> "Such other and further relief as may be just and proper, including disciplinary and criminal referrals, pursuant to §§100.3D(1) and (2) of the Chief Administrator's Rules Governing Judicial Conduct and DR 1-103(A) of New York's Disciplinary Rules of the Code of Professional Responsibility, of the documentary proof herein presented of longstanding and ongoing systemic corruption by judges and lawyers on the public payroll."

31. The referred-to "lawyers on the public payroll" were first and foremost, Attorney General Spitzer, who was shown to have corrupted the judicial process with litigation fraud at every stage of plaintiff SASSOWER's Article 78 proceeding, as he had in Mr. Mantell's Article 78 proceeding – because he had no legitimate defense. Indeed, by reason of Attorney General Spitzer's continued litigation fraud before the Court of Appeals, plaintiff SASSOWER thereafter moved to strike his opposition to her appeal of right and disqualification motion.

32. The Court of Appeals, with Judge Rosenblatt "taking no part", dismissed plaintiff SASSOWER's motion for disqualification "upon the ground that the Court has no authority to entertain the motion made on nonstatutory grounds" and denied recusal, without reasons and without identifying any of the facts, law, and legal argument the motion presented – and without making disclosure. In a separate decision, the Court, again with Judge Rosenblatt "taking no part", dismissed her appeal of right by its boilerplate "no substantial question is directly involved" and, without reasons, denied her motion to strike the Attorney General's opposition.

33. By motion dated October 15, 2002, plaintiff SASSOWER moved for reargument and to vacate the Court's two decisions for fraud and lack of jurisdiction, demonstrating, with fact and law, in a 35-page moving affidavit, the fraudulence of each decision, manifesting the Court's

disqualification for actual bias and interest. This included showing that her disqualification motion had been expressly made on statutory grounds – Judiciary Law §14, disqualification for interest.[10]

34. On October 24, 2002, plaintiff SASSOWER made a further motion, this one for leave to appeal,[11] whose sole "Question Presented for Review" was:

> "Whether this Court recognizes a supervisory responsibility to accept judicial review of an appeal against the New York State Commission on Judicial Conduct, sued for corruption, where the record before it[fn] establishes, *prima facie*, that the Commission has been the beneficiary of five fraudulent judicial decisions[fn] without which it would not have survived three separate legal challenges – with four of these decisions, two of them appellate, contravening this Court's own decision in *Matter of Nicholson*, 50 N.Y.2d 597, 610-611 (1980), *to wit*:
>
> > '...the commission MUST investigate following receipt of a complaint, unless that complaint is determined to be facially inadequate (Judiciary Law §44, subd. 1)...' (emphasis added)." (at p. 3).

35. In explaining "Why the Question Presented Merits Review", the motion began:

> "This appeal presents the Court with five judicial decisions arising from three separate Article 78 proceedings against the Commission, all involving its mandatory duty under Judiciary Law §44.1 to investigate *facially-meritorious* judicial misconduct complaints[fn3]. No provision is more important to a complainant of judicial misconduct than Judiciary Law §44.1." (at p. 6),

with the annotating footnote 3 stating:

> "Judiciary Law §44.1 is NOT the only issue presented by this Article 78 proceeding, whose verified petition contains six claims for relief address to a variety of statutory and rule provisions [A-37-45]."

The motion closed, 14 pages later, with the following:

> "Chief Judge Kaye's public position, expressed in '*I rise in defense of state's courts*" (Daily News, 1/17/02) (Exhibit 'M-1'), and reflected in '*State judicial system is accountable to the public*' (Albany Times Union, 2/10/02) (Exhibit 'M-2') is that

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[10] Plaintiff SASSOWER's October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief accompanies this Verified Complaint as a free-standing exhibit.

[11] Plaintiff SASSOWER's October 24, 2002 motion for leave to appeal accompanies this Verified Complaint as a free-standing exhibit.

'as a public institution the courts must recognize their accountability to the public – and we do.' This appeal represents a decisive moment for this Court – and a powerful opportunity to demonstrate that judges don't just cover-up for judges, but are capable of holding their judicial brethren accountable for their fraudulent judicial decisions, which have here destroyed the public's rights to be safeguarded against judicial misconduct by a properly-functioning Commission.

Finally, as to the related transcending issues encompassed by this appeal – all of which can only enhance public trust and confidence in the judiciary and in the judicial process – Petitioner-Appellant refers the Court to her February 20, 2002 affidavit in support of her motion in the Appellate Division for leave to appeal. Suffice to repeat this Court's words quoted therein, first from *Nicholson* (at 607):

> 'There can be no doubt that the State has an overriding interest in the integrity and impartiality of the judiciary. There is 'hardly *** a higher governmental interest than a State's interest in the quality of its judiciary' (*Landmark Communications v. Virginia*, 425 US 829, 848 [Stewart, J., concurring]',

and then from *Commission v. Doe* (at 61), where the Court recognized the Commission as 'the instrument through which the State seeks to insure the integrity of its judiciary'."

36. On December 17, 2002, the Court of Appeals, with Judge Rosenblatt "taking no part", denied these two final motions in plaintiff SASSOWER's public interest lawsuit against the Commission, each without reasons.

37. Simultaneously, on that same December 17, 2002 date, co-defendant SENATE's leadership, including incoming Senate Minority Leader David Paterson, were disregarding proper procedure and the public's rights by confirming the appointment of Senate Judiciary Committee Chairman James Lack to a Court of Claims judgeship – in face of plaintiffs' December 16, 2002 letter to them chronicling his official misconduct in that position, covering up the Commission's corruption, and its polluting impact on judicial appointments to the lower state courts and to the Court of Appeals (Exhibit L-1).

38. In January 2003, the vacancy in the chairmanship of the Senate Judiciary Committee created by Senator Lack's elevation to the Court of Claims was filled by Senator John DeFrancisco,

who carried on in the tradition of his predecessor. As with Chairman Lack, so, too, with Chairman DeFrancisco, rules of procedure and evidence were completely irrelevant to the Senate Judiciary Committee's discharge of its responsibilities with respect to judicial selection and discipline. Illustrative, its proceedings confirming the nominations of Court of Appeals judges under Chairman DeFrancisco's tenure: Susan Read (Exhibit C); Robert Smith (Exhibit D); Eugene Pigott (Exhibit E), Theodore Jones (Exhibit F), Chief Judge Kaye (Exhibit G), and Carmen Ciparick (Exhibit H).

39. Although Chairman DeFrancisco knew – from March 2003 onward – of Chief Judge Kaye's direct role, administratively and judicially, in the corruption of the Commission on Judicial Conduct, having received, in hand, a copy of plaintiff SASSOWER's final two motions in her Commission case at a meeting with her on March 17, 2003 (Exhibit M), at which Ranking Member Malcolm Smith was present and also received a copy, he not only took no remedial steps, but, four years later, in March 2007, barred Plaintiff SASSOWER from testifying in opposition to Chief Judge Kaye's reappointment as Chief Judge at the Senate Judiciary Committee's confirmation hearing, as to which plaintiff SASSOWER had furnished him, in advance, with a comprehensive written statement about her misconduct in that case (Exhibits G-3, G-4, G-8). Likewise, he barred Doris Sassower from testifying about Chief Judge Kaye's misconduct in perpetuating the retaliatory suspension of her law license and the unconstitutionality of New York's attorney disciplinary law, as to which Doris Sassower had, likewise, furnished a comprehensive written statement (Exhibits G-5, G-5, G-9). Chairman DeFrancisco also barred George Sassower from testifying as to Chief Judge Kaye's facilitating role in judicial corruption and disregard of the duties of her office, as to which George Sassower had similarly furnished a comprehensive written statement (Exhibit G-10). Likewise, Chairman DeFrancisco did not investigate the opposition testimony of a former New

Yorker, Judith Herskowitz, who flew in from Florida and presented both orally and in writing (Exhibit G-11), at the Senate Judiciary Committee's March 6, 2007 confirmation hearing.

40. By 2005, Chief Judge Kaye and judges and justices of defendant UNIFIED COURT SYSTEM began lobbying, at tax-payer expense, for increased judicial pay, generating propaganda that included, in 2008, the folio, "They Deserve Better"...Unanimous Support for Judicial Compensation Reform, that they "deserved" such increase and that there was "unanimous support" for same.

41. In fact, defendant UNIFIED COURT SYSTEM had never asked the People of the State, whose tax dollars would be paying the judicial salary increases, whether they believed judicial pay raises were "deserved".

42. Nor had defendant SENATE or defendant ASSEMBLY held any hearings at which members of the public could be heard as to whether the state's judges "deserved" pay raises.

43. As for New York's Governors in the decade spanning from 1999 to 2009 – Governor Pataki, Governor Spitzer, and Governor Paterson – each knew, from Plaintiffs' evidence-based advocacy, and Eliot Spitzer, from his direct participatory role, that New York's judiciary was "throwing" cases by fraudulent judicial decisions, including at appellate levels and at the Court of Appeals, to protect a corrupt Commission on Judicial Conduct and a court-controlled attorney disciplinary system that was also corrupt.[12]

44. Beginning in 2006, frustrated that despite their lobbying, the legislative and executive branches had not enacted any increases in judicial pay, individual State-paid judges commenced lawsuits for increased pay, alleging that the failure of the Legislature and Governor to raise judicial salaries was because they had "linked" them with legislative salaries and other considerations – and

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12 As to Governor Paterson, see Exhibits L-1, L-2.

that these were extraneous matters to which their "deserved" and "unanimously"-recognized entitlement to pay raises was being "held hostage". The first two cases were:

> EDWARD A. MARON, ARTHUR SCHACK, and JOSEPH A. DeMARO v. SHELDON SILVER, as Speaker of the NYS Assembly, NEW YORK STATE ASSEMBLY, JOSEPH BRUNO, as the Temporary President of the New York State Senate, NEW YORK STATE SENATE, ELIOT SPITZER, as Governor of the State of New York, THOMAS DiNAPOLI, as the Comptroller of the State of New York, and The OFFICE OF COURT ADMINISTRATION *(filed in Supreme Court, Nassau Co: #06-021984; transferred by stipulation of parties to Albany)*; and
>
> HON. SUSAN LARABEE, HON. MICHAEL NENNO, HON. PATRICIA NUNEZ, and HON. GEOFFREY WRIGHT v. ELIOT SPITZER, as Governor of the State of New York, NEW YORK STATE SENATE, NEW YORK STATE ASSEMBLY, and STATE OF NEW YORK *(filed in Supreme Court, NY Co: #07-112301)*

45. To rack up the pressure, in April 2008, Chief Judge Kaye piled on with her own lawsuit "in her official capacity". Her co-plaintiff was defendant UNIFIED COURT SYSTEM in a case entitled:

> JUDITH S. KAYE, in her official capacity as Chief Judge of the State of New York, Chief Judge and THE NEW YORK STATE UNIFIED COURT SYSTEM v. SHELDON SILVER, in his official capacity as Speaker of the New York State Assembly, THE NEW YORK STATE ASSEMBLY, JOSEPH BRUNO, in his official capacity as Temporary President of the New York State Senate, THE NEW YORK STATE SENATE, DAVID A. PATERSON, in his official capacity as Governor of the State of New York, and THE STATE OF NEW YORK (*filed in Supreme Court, NY Co: #08-400763*).

46. These judicial pay raise lawsuits were defended by then Attorney General CUOMO, as well as outside counsel, whose services on behalf of the Governor, Senate, Assembly, Comptroller, and the State cost taxpayers approximately three-quarters of a million dollars, if not more.

II. The Senate Judiciary Committee's Aborted 2009 Hearings on the Commission on Judicial Conduct & Court-Controlled Attorney Disciplinary System

47. On June 8, 2009, while the judges' pay raise lawsuits were working their way up to the New York Court of Appeals – which, in the summer of 2009 would grant them an appeal, of

right – defendant SENATE, through its Judiciary Committee under the chairmanship of Senator John Sampson, held the Legislature's first hearing on the Commission on Judicial Conduct in 22 years and, upon information and belief, its first hearing, ever, on the court-controlled attorney disciplinary system.

48. Such hearing, at the Capitol in Albany, directly resulted from plaintiffs' advocacy before Chairman Sampson – beginning on January 27, 2009, at the Senate Judiciary Committee's hearing on "merit selection" to the New York Court of Appeals, wherein plaintiff SASSOWER had publicly stated:

> "...you need to be sure that the regulatory bodies, the Commission on Judicial Conduct, the attorney disciplinary committees are functioning, because they are one of the first stops for the Commission on Judicial Nomination in securing information about candidates. And they are useless. They are worthless and they are corrupt. And there needs to be hearings and investigation of those bodies." (transcript, pp. 88-89).

In late February 2009, plaintiff SASSOWER followed this up by a meeting with Chairman Sampson at his Brooklyn district office, accompanied by William Galison, who, like her, had testified at the Senate Judiciary Committee's February 11, 2009 hearing on defendant LIPPMAN's confirmation to the Court of Appeals, which they had each opposed on grounds relating to his role in perpetuating the corruption of the Commission on Judicial Conduct and attorney disciplinary system.

49. So great was the public response to the Senate Judiciary Committee's announcement of the June 8, 2009 hearing on the Commission on Judicial Conduct and attorney disciplinary system that, at the outset of the hearing and before any testimony was taken, Chairman Sampson stated:

> "the committee will conduct additional hearings in New York City as well as in Western New York so that we can get a better understanding of the total picture across the state and accommodate those who couldn't testify today." (transcript, p. 5).

50. A succession of witnesses thereupon testified, with substantiating documents, as to the corruption of the state judiciary, devastating their lives, and as to which the Commission on Judicial Conduct and attorney disciplinary system were worthless facades. This testimony, however, was cut short by the political power struggle simultaneously unfolding on the floor of the Senate that very day, June 8, 2009.

51. Less than two weeks later, on June 19, 2009, in the wake of a June 2, 2009 Appellate Division, First Department decision affirming a procedurally-aberrant decision of Justice Lehner in the *Larabee* case which, upon his finding that the Legislature had violated separation of powers by linking judicial salaries with its own and granting summary judgment thereon, did not direct the Legislature to consider the judicial salary issue without linkage, but, rather directed it to raise judicial compensation, and a similarly aberrant June 15, 2009 summary judgment decision of Justice Lehner in Chief Judge Kaye's lawsuit, directing the Legislature to raise judicial salaries, "with an appropriate provision for retroactivity", Chairman Sampson introduced a Senate bill to create a special commission on judicial compensation to evaluate and make recommendations on judicial compensation that would have the force of law "unless modified or abrogated by statute" (Bill #S06009).

52. Not until 3-1/2 months later, on September 24, 2009, did the Senate Judiciary Committee resume its hearing on the Commission on Judicial Conduct and attorney disciplinary system. At this second hearing, in Manhattan, a succession of witnesses also testified as to the personal and financial devastation caused them by the corruption of the state judiciary, covered up by a worthless Commission on Judicial Conduct and attorney disciplinary system, again furnishing copies of dismissed complaints and other documentation in substantiation.

53. In response to testimony by an expert witness, forensic auditor Catherine Wilson, that the cost to the State of the corruption in Surrogate's Court alone was "hundreds of millions of dollars...easily" (transcript, p. 31), Senate Judiciary Committee member Eric Adams proposed the creation of a task force, stating to her:

> "What we will need because I think that the best way to resolve inefficiencies and corruption is government is through – is to allow the people who are personally touched by the matter to empower us with information, so I'm going to ask the chair if he will put in place a task force that will be comprised of individuals like yourself and those who are victims to assist us in navigating how this problem is being hidden from public view." (transcript, p. 38).

54. This second hearing ended, like the first, without an opportunity for all the witnesses to testify – and Chairman Sampson assured those present:

> "This is not the last hearing, there will be other hearings. This is just a hearing for today, there will be an additional hearing....
>
> We are looking to have a hearing hopefully some[time] next month to finish up everything, this is not the last hearing, the next one will be the last one here in New York since we got a tremendous crowd." (transcript, p. 245).

The colloquy with members of the audience was as follows:

(transcript, pp. 245-247)

"The audience:	Senator, this morning you mentioned formation of a task force.
Senator Sampson:	By the time you come back the next time we will have that task force.
...	
The Audience:	Senator Sampson, did you say [, are] you saying the task force will be up and running by the time –
Senator Sampson:	By the time we get here next month we will have the parameters of the task force.
...	
Senator Sampson:	Everybody, this is a very tough crowd just leave the documentation, I will follow in the next hearing, thank you."

55. The continued hearing, in New York City, never took place. Although announced for December 16, 2009, it was cancelled due to an alleged conflict in Chairman Sampson's schedule. No subsequent hearing date was ever announced.

56. On January 12, 2010 the Court of Appeals held oral argument on the *Maron*, *Larabee*, and *Chief Judge* judicial pay raise lawsuits, from which Defendant LIPPMAN, having succeeded Chief Judge Kaye as plaintiff in her "official capacity" suit, recused himself. Except for the intelligent questioning of Judge Robert Smith – the judge who may have bought his office (Exhibit D) – the bias and lack of sophistication of the "merit selected" bench could not have been more evident, with Judge Pigott distinguishing himself by his open hostility and contempt for the Constitution and legal boundaries in his colloquy with Richard Dolan, Esq, appearing on behalf of the defendants therein – the Legislature, Governor, Comptroller, and State:

(video: 00:55:18)[13]

> Judge Pigott: "It is striking to me that you think that this Constitution of the State of New York allows that.
>
> Counsel Dolan: "Well Judge, I think that because that is what the Constitution says."
>
> Judge Pigott: "Well, you keep saying that. That's not much of an argument to say it's the law because that's what the law says…"

(video: 01:09:09)

> Judge Pigott: "You keep saying that the Constitution doesn't do it. Usually when people make arguments, they make arguments more than the law does not provide for it, the law doesn't say it. The Constitution doesn't do it."

57. On February 23, 2010, the "merit-selected" Court of Appeals judges, excepting defendant LIPPMAN, rendered a 5-1 decision, Judge Robert Smith, dissenting. The majority decision, by Judge Pigott, held that the Legislature and Governor had violated separation of powers

by "linking" judicial salaries to legislative salaries or "unrelated policy initiatives" and directed that the Legislature rectify such violation by addressing the issue in an "appropriate and expeditious way".

58. In so-holding, the Court of Appeals decision found it necessary to repetitively purport, without record references, that all parties had "agreed" that the judiciary was entitled to a pay raise.

> "All parties to this litigation agree that Article VI justices and judges have earned and deserve a salary increase. That is what makes this litigation unique." (at p.5);
>
> "...all the parties acknowledge that the Judiciary is entitled to an increase in compensation..." (at p. 23);
>
> "All parties agree that a salary increase is justified" (at p. 29);
>
> "All of the State defendants have conceded, at one point or another, that judicial compensation must be increased." (at p. 32);
>
> "...this Court has been called upon to adjudicate constitutional issues relative to an underlying matter upon which all have agreed; namely, that the Judiciary is entitled to a compensation adjustment." (at p. 29).

59. On its face, and by comparison to the record, the Court of Appeals decision was a judicial fraud, including by concealing the following material facts:

> a. It concealed that state-paid judges are not civil-service government employees, but constitutional officers of the State's judicial branch;
>
> b. It concealed that as constitutional offices of the State's judicial branch, judges had been treated identically to the constitutional officers of the State's two other branches – none of whom had a salary raise since 1999, *to wit*, the Governor, Lieutenant Governor, Attorney General, and Comptroller, these being the constitutional officers of the executive branch; and the 62 Senators and 150 Assembly members who are the constitutional officers of the legislative branch;

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[13] The video is posted on plaintiff CJA's website, www.judgewatch.org, accessible *via* the sidebar panel, Judicial Compensation-NYS at the webpage devoted to the judges' pay raise lawsuits.

c. It concealed that the compensation of the State's judicial constitutional officers is comparable, if not superior, to the compensation of New York's executive and legislative constitutional officers, which it further concealed by falsely purporting that the legislature is "part-time", which it is not;

d. It concealed that in addition to comparable, if not superior compensation, judges enjoy incomparably superior job security;

d. It concealed that judges' complaints about their salaries were not unique, but identically shared by the constitutional officers of the executive and legislative branches: all had their salaries eroded by inflation, all could be earning exponentially more in the private sector, and all earned less than some of their government-paid staff and government employees reporting to them;

e. It concealed that New York judges enjoy significant "non-salary" "pension, medical and other benefits",

f. It concealed that despite the "frozen" pay State judges had overwhelmingly sought re-election and re-appointment upon expiration of their terms – and there was no shortage of qualified lawyers eager to fill vacancies;

g. It concealed that State judges earn "many times the multiples of the annual income earned by most New Yorkers".

60. Virtually ALL the particularized facts, law, and legal argument presented on behalf of the Governor, Legislature, Comptroller, and State on the separation of powers issue were ignored and concealed by the February 23, 2010 Court of Appeals decision, additionally including:

a. the express proscription of Article XIII, §7 of the State Constitution:

"Each of the state officers named in this constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed"

b. the procedurally aberrant summary judgment decision of Justice Lehner in the *Larabee* lawsuit, affirmed by the Appellate Division, First Department, and Justice Lehner's comparably aberrant decision in the *Chief Judge* lawsuit, granting summary judgment to the judicial pay raise plaintiffs for a procedural separation of powers violation based on "linkage" and then, instead of a procedural direction that

the Legislature and Governor consider the judicial pay issue without "linkage", its direction that they:

> "within 90 days...adjust the compensation payable to members of the judiciary to reflect the increase in the cost of living since such pay was last adjusted in 1998, with an appropriate provision for retroactivity".

61. Notwithstanding the palpable deficiencies and fraud of the February 23, 2010 decision, whose consequences would be so costly to the State's taxpayers – and where Justice Smith's dissent would have dismissed all claims – Attorney General defendant CUOMO did not move to reargue the decision before the Court of Appeals or file a petition for a writ of certiorari with the United States Supreme Court.

62. Nor did Senate Judiciary Committee Chairman Sampson reschedule the December 16, 2009 hearing that was to be held in Manhattan, or schedule any hearing for western New York, or announce appointment of the task force that Senator Adams had proposed and that he had endorsed so that investigation could go forward on corruption issues germane to whether the State judiciary "deserved" and were "entitled" to judicial pay raises.

63. Consequently, at the end of April 2010, plaintiff SASSOWER met with Senator Adams to discuss the promised task force and further hearings on the Commission on Judicial Conduct and attorney disciplinary system. With her were William Galison, who had testified at the Senate Judiciary Committee's June 8, 2009 Albany hearing, and Sunny Sheu, who had been unable to testify at the September 24, 2009 hearing in Manhattan.

64. In support of their requests, plaintiff SASSOWER provided Senator Adams with the written statement she had drafted for the Senate Judiciary Committee's December 16, 2009 hearing as it particularized why her public interest lawsuit against the Commission on Judicial Conduct was:

> "the most powerful and far-reaching lawsuit brought by any complainant against the Commission in its 35-year history [and]...properly – and most productively – the

> starting point for understanding and verifying the Commission's corruption [and] Additionally...for...understanding and verifying the corruption of the attorney disciplinary system" (at p. 7).[14]

65. To enable Senator Adams to see this for himself, she provided him with a copy of her final motion in that lawsuit – her October 24, 2002 motion for leave to appeal, which the Court of Appeals had denied without reasons.

66. Although Senator Adams sought to justify the Senate Judiciary Committee's failure to resume hearings on the Commission on Judicial Conduct and attorney disciplinary system by saying that the Senators were "busy with the budget", Defendant SENATE had been holding hearings on other topics.

67. Throughout 2010, witnesses who had testified at the Senate Judiciary Committee's June 8, 2009 and September 24, 2009 hearings, witnesses who had been scheduled to testify at the December 16, 2009 hearing, and would-be witnesses wanting to testify at future hearings about the Commission on Judicial Conduct and attorney disciplinary system telephoned and wrote Chairman Sampson and Senator Adams, inquiring what was happening, including as to the status of the promised task force.

III. Introduction and Passage of the Statute Creating the Commission on Judicial Compensation & its Statutorily-Limited 150-Day Existence

68. On November 16, 2010, nearly eight months after the Court of Appeals' February 23, 2010 decision, the judges in the *Larabee* lawsuit returned to the Court of Appeals, asserting that the Legislature had failed to comply with its February 23, 2010 decision by not taking up the judicial pay raise issue. They sought compensatory damages for the Legislature's alleged constitutional violation, and, alternatively, remand to Supreme Court for assessment of damages.

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[14] Plaintiff SASSOWER's draft written statement for the aborted December 16, 2009 hearing is Exhibit F-2 in the Compendium of Exhibits to plaintiffs' October 27, 2011 Opposition Report. [hereinafter "Op-Report/Ex.F-2"].

69. Within days, then Governor Paterson called defendants SENATE and ASSEMBLY into Executive Session to introduce legislation to create a special commission on judicial compensation (Governor's Program Bill #333) – largely identical to the bill Senator Sampson had introduced into the Senate on June 19, 2009, which had gone nowhere. Four days later, in the evening of November 29, 2010, with no hearings having been held thereon, defendant SENATE passed, 57-0; with defendant ASSEMBLY following suit at about midnight, 99-22. As with all bills, the prefatory words were, "The People of the State of New York, represented in Senate and Assembly, do enact, as follows".

70. On December 10, 2010, Governor Paterson signed into law the bill he had introduced, stating "The people of New York State are entitled to a strong and able judiciary that dispenses fair justice in our courts. And our judges are entitled to fair compensation." In other words, Governor Paterson linked "fair justice" to "fair compensation".

71. Pursuant to the bill, now Chapter 567 of the Laws of 2010:

- every four years, commencing on April 1, 2011, a commission on judicial compensation was to be "established…to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system" [§1(a)] and mandated to "take into account all appropriate factors including, but not limited to", six specified factors [§1(a), underlining added];

- in discharge of these responsibilities, the commission was empowered to "hold public hearings", "have all the powers of a legislative committee pursuant to the legislative law" (§1(c)); and further have:

> "such facilities, resources and data of any court, department, division, any political subdivision thereof…to carry out properly its powers and duties [§1(f)]; and
>
> "reasonable assistance from state agency personal as necessary for the performance of its functions" [§1(g)].

- "Not later than one hundred fifty days after its establishment", the commission was to render "a report to the governor, legislature and the chief judge of the state", as to its "findings,

conclusions, determinations and recommendations, if any" [§1(h)], following which it was to "be deemed dissolved" [§1(i)];

- the commission's pay raise determinations were to go into effect, automatically, on April 1 of the year to which the determinations applied, "unless modified or abrogated by statute" prior thereto [§1(h)];

- the commission was to consist of seven members, three appointed by the governor, one by the temporary senate president, one by the speaker of the assembly, and two by the chief judge. The governor was also to appoint its chair.[[§1(b)].

72. Passage of the legislation was accompanied by declarations that it would remove politics from determination of judicial salaries. In the words of defendant LIPPMAN, the legislation "takes us out of politics forever" ("*N.Y. Legislation Creates Judicial Pay Commission*", New York Law Journal, December 1, 2010).

73. Despite the statutory "establishment" of the Commission on April 1, 2011, the Commission was not, in fact, "established". Fifty-three days later, the Commission was sill "inoperative", as well as "inaccessible to the public" and plaintiffs so-notified defendants CUOMO, SKELOS, SILVER, and LIPPMAN by a May 23, 2011 letter[15], identifying that as of that date defendant CUOMO had not even made his three appointments to the Commission, nor, by reason thereof, designated the Commission's chair, and, additionally, that the Commission had no actual office, no staff, and no contact information.

74. Plaintiffs' May 23, 2011 letter further set forth their opposition to judicial pay raises, the basis therefore, and requested action from defendants CUOMO, SKELOS, SILVER, and LIPPMAN as follows:

> "In determining the adequacy of judicial compensation, the law charges the Commission with taking 'into account all appropriate factors'. Surely you would agree that topping the list of 'appropriate factors' would be evidence that New York's state judiciary is, at all levels, pervasively corrupt and lawless. As to this, our New

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[15] Plaintiffs' May 23, 2011 letter is Exhibit A-1 in their Compendium of Exhibits to their October 27, 2011 Opposition Report. [hereinafter "Op-Report/Ex.A-1"].

York-based nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA), intends to make a FULLY-DOCUMENTED presentation, vigorously opposing any increase in judicial compensation until mechanisms are in place and functioning to remove a multitude of miscreant judges who deliberately pervert the rule of law and any semblance of justice and whose decisions are nothing short of 'judicial perjuries', being knowingly false and fabricated. Such judges, willfully destroying the lives of countless New Yorkers, the wellbeing of our state, and our democracy as a whole, are unworthy of their current salaries and benefits – being paid by hardworking New Yorkers.

The corruption and lawlessness of New York's state judiciary, infesting its supervisory and appellate levels, collusively condoned by the New York State Commission on Judicial Conduct, was the subject of testimony by more than two dozen New Yorkers, including lawyers, at hearings held by the New York State Senate Judiciary Committee on June 8, 2009 and September 24, 2009. You can hear for yourselves what these New Yorkers had to say, as the full videos of both hearings are posted on CJA's website, www.judgewatch.org, accessible *via* the top panel 'Latest News' and, additionally, *via* the sidebar panel 'Judicial Discipline: State-NY'.

As reflected by the videos – and by the transcripts of the hearings, which are also posted – the Senate Judiciary Committee could not accommodate all the members of the public who clamored to testify – and its then chairman, Senator John Sampson, promised that the Committee would hold additional hearings. He also endorsed a proposal by fellow Committee member Senator Eric Adams that a task force be appointed to assist the Committee in addressing the mountain of information and evidence the public was presenting of corruption.[fn] Yet, no task force was appointed and the Senate Judiciary Committee's continued hearings were aborted. A third hearing, calendared for December 16, 2009 – at which CJA was slated to testify – was cancelled and not re-scheduled. To date, the Senate Judiciary Committee has NOT rendered <u>any</u> report nor made <u>any</u> findings with respect to the mountain of documentary evidence of systemic judicial corruption it received at the two hearings. Indeed, its 2009 annual report, purporting to 'detail the activities of the Judiciary Committee' in 2009, contains <u>no</u> reference to the hearings – the first legislative hearings on the Commission in 22 years.

...

There must be NO increase in judicial compensation UNTIL there is an official investigation of the testimony and documentation that the public provided and proffered to the Senate Judiciary Committee in connection with its 2009 hearings and UNTIL there is a publicly-rendered report with factual findings with respect thereto. CJA, therefore, calls upon you – our leaders of our three branches of New York State's government – to take steps to ensure that IF the Senate Judiciary Committee does not undertake the investigation and report, <u>as is its duty to do</u> – that you secure same, be it by a special prosecutor appointed by the Governor, by a task force appointed by the Legislature, or by the Chief Judge's appointment of an inspector general and commission for such purpose.

> A copy of this letter is being furnished to former Senate Judiciary Committee Chairman Sampson, who, as Senate Minority Leader, is a member of the Committee *ex officio*, as well as to the Senate Judiciary Committee's current chairman, Senator John Bonacic, its ranking member, Senator Ruth Hassell-Thompson – as well as its 21 other members – Senator Adams among them – so that they may identify for you, for the Commission on Judicial Compensation, and for the public, what they intend to do with the information and documentation the public supplied and proffered the Senate Judiciary Committee for its June 8, 2009 and September 24, 2009 hearings – and aborted December 16, 2009 hearing." (underlining and capitalization in the original).

75. Neither defendants CUOMO, SKELOS, SILVER, and LIPPMAN responded. Nor was there any response from the indicted recipients of the letter: Senate Minority Leader Sampson, the Senate Judiciary Committee's chairman, Senator John Bonacic, or its Ranking Member, Senator Ruth Hassell-Thompson, or the 21 other members of the Senate Judiciary Committee, Senator Adams, among them. Likewise, there was no response from the four members of the Commission appointed by defendants SKELOS, SILVER, and LIPPMAN, also indicated recipients. None denied that evidence of pervasive corruption in New York's judiciary at all levels was an "appropriate factor" for the Commission's consideration, disentitling its judges to any pay raise.

76. Plaintiffs' May 23, 2011 letter is true and correct in all material respects.

77. It was not until June 10, 2011 – the 70th day of the Commission's statutorily-limited existence – that defendant CUOMO announced his three appointees to the Commission, one of whom was "Bill Thompson", who defendant CUOMO additionally designated as Chair. Such announcement was unaccompanied by any explanation for the delay – which has never been explained.

78. On June 23, 2011, plaintiffs addressed a letter to Chairman Thompson and defendant CUOMO's two other Commission appointees,[16] identifying that the Commission was still

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[16] Plaintiffs' June 23, 2011 letter is Exhibit B-1 in their Compendium of Exhibits to their October 27, 2011 Opposition Report. [hereinafter "Op-Report/Ex.B-1"].

"inoperative and inaccessible to the public" on that day – the 84th day of its statutorily-limited 150-day existence, as it still had no telephone number, no fax number, no e-mail address, and, apparently, no office or staff.

79. The June 23, 2011 letter further stated that unless the Commission disagreed with the proposition that corruption and lawlessness by New York's state judiciary, infesting its supervisory and appellate levels, would – *without more* – disentitle it to ANY boost in judicial compensation, its:

> "'FIRST order of business' must be – as the May 23rd letter stated (at p. 4) – a request to Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman for their 'assistance in securing factual findings as to [the] testimony and documentation' the public presented and proffered to the Senate Judiciary Committee in connection with its 2009 hearings on the Commission on Judicial Conduct and court-controlled attorney disciplinary system – as to which, as stated in our May 23rd letter, 'There Has Been No Investigation, No Findings, and No Committee Report.'" (capitalization and underlining in the original).

80. The letter then continued:

> "On this THRESHOLD corruption issue, Chairman Thompson suffers from disqualifying conflict of interest, requiring his resignation from the Commission. His father, former Appellate Division, Second Department Justice William C. Thompson, was a key participant in the corruption of our judiciary – including of the Commission on Judicial Conduct, of which he was its highest-ranking judicial member for many years, and of the attorney disciplinary system, which he and his fellow Appellate Division justices utilized for ulterior, retaliatory purposes as an ongoing pattern and practice. The evidence of this, embodied in four lawsuits we brought, two against the Appellate Division, Second Department justices, including Justice Thompson, personally, and two against the Commission on Judicial Conduct, was to have been submitted by CJA at the Senate Judiciary Committee's aborted December 16, 2009 public hearing. This can be *readily-verified* from the written statement CJA drafted for that hearing and subsequently provided to Senate Judiciary Committee Member Adams to reinforce his suggestion, made at the September 24, 2009 hearing, that a task force be formed to examine the scathing testimony and evidence the Committee was receiving[fn]
>
> Our December 16, 2009 statement describes the record of our four lawsuits as:
>
> > 'perfect 'paper trails' establishing, *prima facie*, how New York state judges and the federal courts, aided and abetted by New York's Attorney General, obliterated ALL cognizable legal standards in fraudulent judicial decisions that falsified and omitted the material

> facts and controlling law to protect and perpetuate New York's verifiably-corrupt attorney disciplinary system and Commission on Judicial Conduct.' (CJA's December 16, 2009 statement, at p. 3, underlining, italics, and capitalization in the original)."

81. Neither defendants CUOMO, SKELOS, SILVER, or LIPPMAN, nor Senator Sampson, nor the 23 members of the Senate Judiciary Committee – all indicated recipients of this June 23, 2011 letter – responded. Nor was there any response from Chairman Thompson – or from any of the other Commissioners, to whom the letter was addressed and sent.

82. Plaintiffs' June 23, 2011 letter had additionally identified that the Commission was subject to the Open Meetings Law. In a further letter to the Commissioners, dated June 30, 2011[17], plaintiffs questioned the Commission's compliance with the Open Meetings Law, also noting that they had received no response from the Commission to the issue of "the disqualifying conflict of interest of Chairman Thompson".

83. Again, there was no response from the Commission – or from any of the indicated recipients thereof: defendants CUOMO, SKELOS, SILVER, LIPPMAN, Senator Sampson, and the 23-member Senate Judiciary Committee.

84. Despite plaintiffs' express request to be notified of the Commission's organizational meeting so that they might attend, the Commissioners did not notify plaintiffs of the meeting, public notice of which did not appear in the New York Law Journal until July 11, 2011 – the very day it was held, in the morning.

85. Upon information and belief, at the meeting the Commissioners expressed their pre-conceived biases for judicial pay raises. Such pre-conceived biases were also on display at the public

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[17] Plaintiffs' June 30, 2011 letter is Exhibit C-2 in their Compendium of Exhibits to their October 27, 2011 Opposition Report. ["hereinafter Op-Report/Ex.C-2"].

hearing, whose date and location – July 20, 2011 in Albany – had been announced at the organizational meeting.

86. The July 20, 2011 hearing opened with testimony from defendant UNIFIED COURT SYSTEM's Chief Administrative Judge, then Ann Pfau, followed by testimony of former Chief Judge Judith Kaye. Other than defendant CUOMO's Budget Director, Robert Megna, who presented in opposition to the judicial pay raises, the seven citizen witnesses who also opposed the pay raises, including plaintiff SASSOWER, were mostly relegated to the end. The basis of their opposition was, primarily, that corrupt, abusive judges do not deserve pay raises, with one of the witnesses, William Galison, suggesting that efforts by Sunny Sheu to expose judicial misconduct had resulted in his being killed. As for plaintiff SASSOWER, she began by reiterating the position expressed by the May 23, 2011 and June 23, 2011 letters, *to wit*, that New York's judiciary was systemically corrupt and that such disqualified it from any pay raises. She noted that the proponents of judicial pay raises who had preceded her had each claimed that New York has "a quality, excellent, top-rate judiciary", without any evidence – whereas, by contrast, "those who …are saying that the judiciary of this state is unworthy of a pay raise because it is pervasively corrupt have the evidence to back up their position". In that context, plaintiff SASSOWER stated that the witnesses who had testified at the Senate Judiciary Committee's 2009 hearings as to "the corruption at various levels of the judiciary that had wiped them out financially and otherwise" had "c[o]me forward with their documentation" – as to which Senator Sampson promised investigation and a task force. She stated

> "You have no basis to give any consideration to pay raises when there have not been, has been no investigation, no findings, no committee report with respect to the presentations made in 2009 before the Senate Judiciary Committee at hearings that were aborted."

87. Plaintiff SASSOWER then raised the "threshold issue" that the Commission had neither confronted nor publicly disclosed – Chairman Thompson's disqualification. Her words were as follows:

> "Now, Chairman Thompson's father was a member of the judiciary of this state and if you should approve retroactive pay raises he would, he would, his father would be a beneficiary. But that's not the real disqualification that he faces. His father was the highest-ranking judicial member of the New York State Commission on Judicial Conduct for many, many years and was himself the subject of repeated judicial misconduct complaints – judicial misconduct complaints of which I have direct, first-hand experience, testimonial capacity. And his misconduct that was the subject of those complaints resulted in lawsuits both against him personally and against the Commission on Judicial Conduct."

88. Without denying or disputing that these facts gave rise to Chairman Thompson's disqualification – the further particulars of which had been elaborated by plaintiffs' June 23, 2011 letter – plaintiff SASSOWER was cut off because of "time".

89. Plaintiff SASSOWER thereupon tried to show that such time-restriction was also preventing her from addressing the frauds presented by witnesses for judicial pay raises, identifying a list of "20, 20 specific frauds" she had compiled from their testimony. Here, too, she was cut off.

90. Likewise, plaintiff SASSOWER was cut off in identifying the documentary evidence she was leaving for the Commission, to substantiate the systemic corruption of New York's judiciary – and Chairman Thompson's disqualifying interest. She sufficed to identify "the two final motions in the lawsuit against the Commission on Judicial Conduct that went up to the Court of Appeals" in 2002 – asserting that from these the Commissioners could "verify that the Commission [on Judicial Conduct] was the beneficiary of a succession of fraudulent judicial decisions without which it would not have survived, including four of the Court of Appeals", further suggesting that the Commissioners avail themselves of the assistance of the bar associations whose representatives had testified in support of judicial pay raises for "fact-finding".

91. Chairman Thompson's sole response to plaintiff SASSOWER's further statement that she believed that the Court of Appeals decision in the judges' judicial compensation lawsuits was a fraud, as set forth in the letter she had sent the Commissioners the day before and that morning – was: "Ma'am step away from the microphone, thank you, and the table, now."

92. As Chairman Thompson sought to introduce the next speaker, plaintiff SASSOWER returned to the issue of his disqualification. The exchange was as follows:

Plaintiff Sassower:	"Uuh. What –"
Chairman Thompson:	"No. Please."
Plaintiff Sassower:	"With respect to you disqualification. How are you addressing your disqualification?"
Chairman Thompson:	No. Ma'am. Step away from the microphone and the table —now, now."
Plaintiff Sassower:	"Well that's our problem with our judiciary –"
Chairman Thompson:	"That's right. I'm not a member of the judiciary. Step away now."
Plaintiff Sassower:	"– they don't address their disqualification for interest and their bias."
Chairman Thompson:	"Thank you."
Plaintiff Sassower:	"And this panel is not ashamed to have articulated its, its predisposition to pay raises before the evidence is in. Okay, here it is."
Chairman Thompson:	"Our next speaker, thank you. Take the – and your name plate."
Plaintiff Sassower:	"Here it is. Okay. Have it examined by the advocates of judicial pay raises to confirm –"
Chairman Thompson:	"Ma'am. We're going to have to"

Plaintiff Sassower: "– that the Commission has been the beneficiary of fraudulent judicial decisions. The *modus operandi* in this state, fraudulent judicial decisions."

Chairman Thompson: "Our next speaker –"

Plaintiff Sassower: "The judiciary of this state is corrupt, pervasively, systemically corrupt."

93. The evidence that plaintiff SASSOWER left on the table for the Commissioners were the two final motions in her Article 78 proceeding against the Commission on Judicial Conduct, dated October 15, 2002 and October 24, 2002.

94. Additionally, plaintiff SASSOWER provided the draft written statement she had prepared for the aborted December 16, 2009 Senate Judiciary Committee hearing,[18] as well as the written statements that she and Doris Sassower had submitted to the Senate Judiciary Committee in opposition to Chief Judge Kaye's confirmation in March 6, 2007 (Exhibits G-8, G-9). These particularized the judiciary's *modus operandi* of fraudulent judicial decisions, involving, in addition to the Commission on Judicial Conduct, the attorney-disciplinary system – and both exposing the corruption of Chairman Thompson's father.

95. As for the letter that plaintiff SASSOWER referred to as having been sent to the Commissioners that morning and the previous day, pertaining to the fraudulence of the Court of Appeals' decision in the judicial compensation cases, it was plaintiffs' July 19, 2011 letter to defendant SCHNEIDERMAN (Exhibit J), to which the Commissioners were indicated recipients. Its analysis of the February 23, 2011 decision exposed the deceit of much of what judicial pay advocates claimed at the July 20, 2012 hearing as to the separation of powers violation committed by defendants SENATE and ASSEMBLY and the Governor by "linkage".

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[18] This was the same December 16, 2009 written statement as she had given to Senator Adams. See ¶64, *supra*. Op-Report/Ex.F-2.

96. On August 8, 2011, in the wake of a New York Law Journal article reporting that Chairman Thompson had stated that the Commissioners were "expected to begin discussing specific raise levels for judges" at that day's meeting, plaintiffs sent a letter[19] to the Commissioners entitled:

> "Threshold Issues Barring Commission Consideration of Pay Raises for Judges:
> (1) Chairman Thompson's Disqualification for Interest, as to which there has been No Determination;
> (2) Systemic Corruption in New York's Judiciary, Embracing the Commission on Judicial Conduct, as to which there has been No Determination; &
> (3) The Fraud & Lack of Evidence Put Forward by Advocates of Judicial Pay Raises."

97. As to the first threshold issue, plaintiffs' August 8, 2011 letter stated, in pertinent part:

> "If the Commission – three of whose members are lawyers – believes that without ruling on Chairman Thompson's disqualification for interest, it can lawfully proceed to discuss 'specific raise levels for judges', it should state this publicly, with legal authority, disclosing the specifics of the disqualification detailed by CJA's June 23rd letter." (at p. 2, underlining in the original).

98. As to the second threshold issue, plaintiffs' August 8, 2011 letter presented an analysis of the judicial pay raise issue, based on the Court of Appeals' explication of the New York State Constitution. Plaintiffs stated, in full:

> "As set forth by CJA's June 23rd letter, 'corruption and lawlessness of New York's state judiciary, infesting its supervisory and appellate levels', disentitles it to any boost in judicial compensation.
>
> Such corruption and lawlessness are not only 'appropriate factors' for your consideration under the statute requiring you to consider 'all appropriate factors', but your disregard of these factor would be unconstitutional pursuant to the very February 23, 2010 Court of Appeals decision in the judicial compensation cases that underlies the Commission's creation.
>
> In that decision – whose fraudulence was particularized by CJA's July 19, 2011 letter to which I referred at the hearing – the Court of Appeals searched the New York

[19] Plaintiffs' August 8, 2011 letter is Exhibit I in their Compendium of Exhibits to their October 27, 2011 Opposition Report. [hereinafter "Op-Report/Ex.I"].

State Constitution for a textual basis to reject the 'linkage' of judicial salaries with legislative and executive salaries and found 'significant' that although the legislature is vested with the power to raise salaries, the provisions relating to the compensation of judicial, legislative, and executive officers are not set forth in the legislative article of the Constitution, but within the separate articles for each branch. The Court held that it is within the separate judiciary article that determination is to be made as to whether, on 'its own merit', New York State judges deserve an increase in compensation.

Article VI is the judiciary article of the New York State Constitution and it provides not only appellate, administrative, and disciplinary safeguards for ensuring judicial integrity, but express procedures for removing unfit judges. Indeed, Article VI specifies three means for removing judges – the Commission on Judicial Conduct [§22], concurrent resolution by the legislature [§23], and impeachment [§24]– and these in the three sections that IMMEDIATELY precede §25(a) to which judges point in clamoring that inflation has unconstitutionally diminished their compensation:

> 'The compensation of a judge…shall not be diminished during the term of office for which he was elected or appointed.'

Of these three means for judicial removal provided by Article VI, concurrent legislative resolution and judicial impeachment exist in name only – having given way to the Commission on Judicial Conduct, as to which, more than 22 years ago, the New York State Comptroller issued a report entitled '*Not Accountable to the Public*', calling for legislation to permit independent auditing of its handling of judicial misconduct complaints.[fn] Such never happened – and 20 years later, in 2009, at Senate Judiciary Committee hearings on the Commission on Judicial Conduct – the first legislative hearings on the Commission since 1987 – its corruption was attested to by two dozen New Yorkers who provided and proffered supporting documentation – as to which, to date, there has been NO investigation, NO findings, and NO committee report.

It was CJA's position, presented by our May 23rd and June 23rd letters and reiterated by my July 20th testimony that:

> 'There must be NO increase in judicial compensation UNTIL there is an official investigation of the testimony and documentation that the public provided and proffered to the Senate Judiciary Committee in connection with its 2009 hearings and UNTIL there is a publicly-rendered report with factual findings with respect thereto…[and] until mechanisms are in place and functioning to remove judges who deliberately pervert the rule of law and any semblance of justice and whose decisions are nothing short of 'judicial perjuries', being

knowingly false and fabricated.' (May 23rd letter, capitalization in the original)[fn3]

Our position now is stronger. The appellate, administrative, disciplinary, and removal provisions of Article VI are safeguards whose integrity – or lack thereof – are not just 'appropriate factors', but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay.[fn4]" (at pp. 2-4, underlining and capitalization in the original).

99. As to the third threshold issue, plaintiffs' August 8, 2011 stated:

"...reiterating what I stated at the July 20th hearing, this Commission has been inundated by fraud from the advocates of judicial pay raises, who have furnished a combination of no evidence and irrelevant and misleading evidence to support their claims. From my list of '20 specific frauds', to which I referred, I sufficed to identify only one: their claim that we have 'a quality, excellent, top-rate judiciary' with judges discharging their constitutional duties.

The documentary evidence I left for you, on the table, at the July 20th hearing – the two final motions in CJA's lawsuit against the Commission on Judicial Conduct [fn] – puts the lie to the supposed 'excellence' and 'quality' of a score of judges whose fraudulent judicial decisions, protecting the Commission on Judicial Conduct, are therein demonstrated, covering up the corruption of scores of other judges – William Thompson, Sr., pivotally among them – as documented in underlying case records". (at pp. 4-5, underlining in the original).

Plaintiff SASSOWER identified that the "the other 19 frauds" on her list were exposed by her audible comments following the conclusion of the testimony of two of the judicial pay raise

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fn3 "The correctness of this position may be seen from the federal statute for the Citizens' Commission on Public Service and Compensation, requiring that its review of compensation levels of federal judges, the Vice-President, Senators, Representatives, and others include 'any public policy issues involved in maintaining appropriate ethical standards' – with 'findings or recommendations' pertaining thereto 'included by the Commission as part of its report to the President'[2 U.S.C. §363]."

fn4 "Such safeguards are properly viewed as comparable to the 'good Behaviour' provision of the U.S. Constitution, immediately preceding – and in the same sentence – as the prohibition against diminishment of federal judicial compensation [U.S. Constitution, Article III, §1]."

advocates, by correspondence she had sent to the Commissioners on August 1, 2011 and August 5, 2011,[20] with the balance to be addressed in subsequent correspondence, and that:

> "Meantime, the Commission should be guided by the legal principle applicable to fraud:
>
> > 'It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause ... and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates indefinitely, though strongly, against the whole mass of alleged facts constituting his cause.' II John Henry Wigmore, Evidence, §278 at 133 (1979)." (at p. 6).

100. Plaintiffs' August 8, 2011 letter is true and correct in all material respects.

101. Notwithstanding plaintiffs' August 8, 2011 letter, sent to the Commissioners in advance of that day's afternoon meeting, Commissioner Robert Fiske, Jr. announced his readiness to discuss increasing judicial compensation at the meeting. Stating that judicial pay raise advocates had "made a compelling case for an immediate increase", he said nothing about what examination, if any, he had made of the case presented by opponents of any judicial pay raises.

102. In response, plaintiffs sent an August 17, 2011 letter to the Commissioners[21] entitled:

> "Protecting the People of this State from Fraud: The Commission on Judicial Compensation's Duty to Identify the Case Presented by Opponents of ANY Judicial Pay Raises & to Make Findings with Respect Thereto, in Discharge of its Statutory Responsibilities".

In pertinent part, it stated:

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[20] Plaintiffs' August 1, 2011 and August 5, 2011 letters are Exhibits G and H, respectively, in their Compendium of Exhibits to their October 27, 2011 Opposition Report.

[21] Plaintiffs' August 17, 2011 letter is Exhibit J-1 in their Compendium of Exhibits to their October 27, 2011 Opposition Report. [hereinafter "Op-Report/Ex.J-1"].

> It is a fraud on the People of this State for any Commissioner to purport that advocates of judicial pay raises "have made a compelling case" *without* confronting the opposition case against ANY judicial pay raises spearheaded by the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA)....
>
> The first requirement of the Commission's 'report to the governor, the legislature and the chief judge', mandated by the statute creating the Commission, is for 'findings' [§1(h)]. Does the Commission plan to make no findings as to CJA's opposition case, including our assertion that advocates of judicial pay raises have inundated the Commission with fraud?" (underlining, italics, and capitalization in the original).

The letter then concluded with the following paragraph:

> "***IF*** you believe that the Commission can lawfully ignore CJA's August 8th letter without its members incurring liability for official misconduct and criminal fraud and without furnishing grounds for repeal of the statute creating the Commission, over and beyond the voiding of *any* Commission recommendation to raise judicial pay, you should secure an advisory opinion from the judges and lawyers who have made the supposedly 'compelling case' for judicial pay raises. Indeed, CJA calls upon you to seek their opinion – and to include it in your upcoming 'report to the governor, the legislature and the chief judge'." (at p. 5, bold, capitalization, italics, and underlining in the original).

103. Plaintiffs sent a copy of this August 17, 2011 letter to the judicial pay raise advocates who had testified at the July 20, 2011 hearing, drawing their attention to its final paragraph and inviting their response.[22] These judicial pay raise advocates included then Chief Administrative Judge Pfau.

104. Neither the Commission nor judicial pay raise advocates responded.

105. Plaintiffs' August 17, 2011 letter is true and correct in all material respects.

106. On August 23, 2011 and August 26, 2011, plaintiffs sent letters to Chief Administrative Judge Pfau[23] – with copies to the Commissioners – each letter entitled:

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[22] See Exhibits J-2, J-3, J-4, J-5, J-6, J-7 in Plaintiffs' Compendium of Exhibits to their October 27, 2011 Opposition Report.

[23] Plaintiffs' August 23, 2011 and August 26, 2011 letters are Exhibits K-1 and L in their Compendium of Exhibits to their October 27, 2011 Opposition Report.

"Ensuring that the Commission on Judicial Compensation is Not Led into Constitutional Error: Clarification of the Office of Court Administration's 'Memorandum discussing constitutional considerations in establishing judicial pay levels' – and the Substantiating Evidence",

These letters particularized, in two parts, the deceit of a memorandum of constitutional considerations which defendant UNIFIED COURT SYSTEM had submitted to the Commission. The first letter, that of August 23, 2011, demonstrated by defendant UNIFIED COURT SYSTEM's own memorandum and Chief Administrative Judge Pfau's own testimony at the July 20, 2011 hearing the correctness of the analysis in plaintiffs' August 8, 2011 letter that corruption and lawlessness of New York's state judiciary, infesting supervisory and appellate levels are not merely "appropriate" considerations, disentitling the judiciary to any pay raises – but a constitutional bar to such raises.

107. Other than an acknowledgment of receipt by defendant UNIFIED COURT SYSTEM's Counsel,[24] Chief Administrative Judge Pfau did not respond. Nor was there any response from the Commission, or any of the judicial pay raise advocates, all indicated recipients of plaintiffs' August 23, 2011 and August 26, 2011 letters.

108. Plaintiffs' August 23, 2011 and August 26, 2011 letters are each true and correct in all material respects.

IV. Commission on Judicial Compensation's August 29, 2011 "Final Report" & Plaintiffs' October 27, 2011 Opposition Report

109. On August 29, 2011, the Commission presented a "Final Report" to defendants CUOMO, SKELOS, SILVER, and LIPPMAN, recommending a 27% salary increase for New York State judges over the next three years. The annual salaries of Supreme Court justices would be increased from $137,500 to $160,000 on April 1, 2012; to $167,000 on April 1, 2013; and to $174,000 on April 1, 2014, with other state judges given proportionate increases.

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[24] See Exhibit K-2 in plaintiff's Compendium of Exhibits to their October 27, 2011 Opposition Report.

110. On it face, the Commission's "Final Report" is non-conforming with the statute. Most glaringly, its pay raise recommendation is not only unsupported by any finding that current "pay levels and non-salary benefits" are inadequate, but there is not even a pretense of having examined "non-salary benefits".

111. Nevertheless, neither defendants CUOMO, SKELOS, SILVER, or LIPPMAN – nor any of the other defendants and public officers charged with protecting the People of the State and their taxpayer dollars "blew the whistle" or took other appropriate steps to ensure that the pay raise recommendations would not become law, automatically, pursuant to statute, beginning April 1, 2012.

112. On October 27, 2011, plaintiffs presented defendants CUOMO, SKELOS, SILVER, and LIPPMAN with an Opposition Report, demonstrating that the Commission's "Final Report" was "statutorily non-conforming, constitutionally violative, and the product of a tribunal disqualified for interest and actual bias". This, in addition to being "frauds upon...the public, achieved by obliterating the existence of citizen opposition to any judicial pay raises, championed by [plaintiffs], and all the facts, law, and legal argument presented in support" (at p. 1). Based thereon, plaintiffs' Opposition Report called upon these defendants – to whom it was addressed – to secure:

> "(1) Legislation Voiding the Commission's Judicial Pay Recommendations;
>
> (2) Repeal of the Statute Creating the Commission;
>
> (3) Referral of the Commissioners to Criminal Authorities for Prosecution;
>
> (4) Appointment of a Special Prosecutor, Task Force, and/or Inspector General to Investigate the Documentary and Testimonial Evidence of Systemic Judicial Corruption, Infesting Supervisory and Appellate Levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation Unlawfully and Unconstitutionally Ignored, Without Findings, in Recommending Judicial Pay Raises".

113. Plaintiffs' Opposition Report was 37 single-spaced pages, supported by a two-volume Compendium of Exhibits[25] consisting of plaintiffs' correspondence, spanning from May 23, 2011 to September 2, 2011 on the judicial compensation issue, the correspondence of forensic accounting expert Catherine Wilson to the Commission, and the documentary evidence plaintiff SASSOWER had furnished the Commissioners at the July 20, 2011 hearing, other than the two final motions to the Court of Appeals in her Article 78 proceeding against the Commission on Judicial Conduct. As to the two final motions, plaintiff SASSOWER had confirmed with the Governor's staff member who assisted the Commission on Judicial Compensation, that they were with the Commission's records and accessible to the Governor and other public officers.[26]

114. The "Conclusion" to the Opposition Report addressed to defendants CUOMO, SKELOS, SILVER, and LIPPMAN stated, in pertinent part:

> "To assist you in discharging your mandatory duties to the People of this State, this Opposition Report will be furnished to the seven Commissioners to afford them the opportunity to rebut its presentation of fact, law, and legal argument, if they can. It will also be furnished to judicial pay raise advocates who testified and made submissions to the Commission so that they, too, can rebut its presentation, if they can." (at p. 37, underlining in the original).

115. Consistent therewith, by letter dated October 28, 2011 (Exhibit N), plaintiffs furnished the Opposition Report to the seven Commissioners by e-mail, further advising them that it was also readily accessible, with exhibits, from plaintiff CJA's website. Likewise, plaintiffs provided it to judicial pay raise advocates (Exhibit O), with an express request that the judge recipients:

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[25] Plaintiffs' Opposition Report and its two-volume Compendium of Exhibits are furnished herewith as free-standing exhibits, thereby enabling the Court to see what they looked like when provided to defendants CUOMO, SKELOS, SILVER, and LIPPMAN and, thereafter, to defendants SCHNEIDERMAN and Senate Minority Leader Sampson.

[26] These final two motions, dated October 15, 2002 and October 24, 2002, are furnished herewith as free-standing exhibits.

"forward it to ALL the judges and former judges who testified at the Commission's July 20th hearing and/or submitted written statements to the Commission – indeed, to ALL New York State's 1,200-plus judges and such former state judges who have retired and/or resigned since 1999 – so that they, like yourselves, may have the opportunity to contest CJA's October 27, 2011 Opposition Report, if they can." (at p. 2, capitalization and underlining in the original).

116. Both these letters further stated:

"Consistent with applicable legal principles, the failure of the Commissioners and judicial pay raise advocates to respond to CJA's Opposition Report will be deemed a concession that they cannot do so without conceding the fraud, illegality and unconstitutionality therein particularized – reinforcing the People's entitlement to all the relief sought."

117. Neither the Commissioners nor judicial pay advocates ever responded to plaintiffs' Opposition Report or correspondence, with a rebuttal or anything else.

118. On November 1, 2010, plaintiffs sent a letter to Budget Director Megna (Exhibit P), who had testified against the pay raises at the Commission's July 20, 2011 hearing, e-mailing him the Opposition Report, apprising him of its availability, with exhibits, from plaintiff CJA's website, and stating that, upon his request, a "hard copy" would be furnished "especially if doing so would facilitate [his] securing Governor Cuomo's introduction of legislation to override the Commission's judicial pay raise recommendations". The letter then stated:

"Consistent with your July 20th testimony, CJA calls upon you to protect the public purse and public interest by taking such action. As our October 27th Opposition Report demonstrates (at pp. 1, 18-21, 23, 25, 26, 29, 31, 33), the Commission flagrantly failed 'to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices', as was its statutory duty to do – and its judicial pay raise recommendations are unsupported by any finding that current 'pay levels and non-salary benefits' are inadequate. Based on our showing therein, we respectfully request that you present Governor Cuomo with a report supplementing our own, amplifying the critical difference between salary and 'compensation and non-salary benefits', wholly disregarded by the Commission. This, in addition to addressing such other 'appropriate factors' as the Commission wilfully failed to consider, in violation of the Commission statute and New York's Constitution. Among these, 'rates of inflation'; 'changes in public-sector spending'; 'the state's ability to fund increases in compensation and non-salary benefits' – as well as the 'skewing' and 'distorting' of

the salary structure for 'constitutional officers' and executive branch commissioners, to which you alluded when you testified." (at p. 2, underlining added).

119. Defendants CUOMO, SKELOS, SILVER, and LIPPMAN were indicated recipients of this November 1, 2011 letter, as they were of plaintiffs' October 28, 2011 letters to the Commissioners and the judicial pay raise advocates – and received those letters.

120. On November 29, 2011, plaintiffs furnished the Opposition Report to defendant SCHNEIDERMAN, with a complaint based thereon for his Public Integrity Bureau. On December 8, 2011, plaintiffs furnished it to Senate Minority Leader Sampson. And on March 1, 2011, they e-mailed it to defendant DiNAPOLI, with a complaint for his Investigations Unit.

121. On March 2, 2012, plaintiffs sent a letter to Defendant CUOMO, SKELOS, SILVER, and LIPPMAN, entitled:

"YOUR FINDINGS OF FACT & CONCLUSIONS OF LAW: Protecting the People of this State & the Public Purse from Judicial Pay Raises that are Unconstitutional, Unlawful, & Fraudulent" (Exhibit Q).

It requested that they advise as to their findings of fact and conclusions of law with respect plaintiffs' Opposition Report – and confirmation that they would be "taking action, consistent therewith, to protect the People of this State and the public purse from the succession of constitutional and statutory violations therein particularized." The letter also identified that copies were being sent to defendant SCHNEIDERMAN and Senate Minority Leader Sampson – so that they, too, could identify their findings of fact and conclusions of law.

122. A substantial portion of plaintiffs' March 2, 2012 letter was devoted to defendant SCHNEIDERMAN's duty as Attorney General and to facts giving rise to the appearance that the three branches of our state government were colluding against the People. As stated:

"...inasmuch as Attorney General Schneiderman is New York's highest law enforcement officer and 'The People's Lawyer', we ask that he confirm that in the event you fail to take steps to modify or abrogate the Commission statute, as is your

duty based on our Opposition Report, he will bring a lawsuit prior to April 1, 2012 to void the statute and the Commission's judicial pay raise recommendations and will accompany it with an order to show cause for a temporary restraining order to enjoin the judicial pay raise recommendations from becoming law on April 1, 2012 – both based on what should be evident from the findings of fact and conclusions of law you have made, namely, the merit of our Opposition Report in establishing, *prima facie*, constitutional and statutory violations, in addition to fraud perpetrated on the People of the State.

Based on those findings of fact and conclusions of law, it is the Attorney General's duty to undertake such lawsuit and injunction on the People's behalf. Should he doubt that 'the interests of the state so warrant' and that this is what Executive Law §63.1 requires, we request that he promptly secure an opinion from whatever division within the Attorney General's Office examines such matters, the Division of Appeals and Opinions, among them.

Suffice to say, Attorney General Schneiderman's obligations are reinforced by the telling fact that neither you, he, nor anyone else has denied or disputed the accuracy of our Opposition Report *in any respect*. This includes as to the fraudulence of the February 23, 2010 Court of Appeals decision, analyzed by our July 19, 2011 letter to Attorney General Schneiderman, which is Exhibit E-1 to the Opposition Report, and our further analysis, based thereon, that systemic judicial corruption, encompassing appellate and supervisory levels and the Commission on Judicial Conduct, is a constitutional bar to judicial pay raises, set forth at pages 10-12 of the Opposition Report, quoting from our August 8, 2011 letter to the Commission on Judicial Compensation, which is Exhibit I.

As our July 19, 2011 letter to Attorney General Schneiderman further sets forth, including by its title:

> 'Vindicating the Public's Rights against Judicial Fraud: The Court of Appeals' February 23, 2010 Decision Underlying BOTH the Creation of the Commission on Judicial Compensation & the Perpetuation of the Judicial Compensation Lawsuits' (CJA's Opposition Report, Exhibit E-1, underlining and capitalization in the original),

the Court of Appeals decision has emboldened judges to seek retroactive pay and damages for the purported separation of powers violation. This is what the judges in *Larabee v. Governor* are presently seeking by a renewal motion. Consequently, Attorney General Schneiderman should be introducing our analysis as to the fraudulence of that decision into defending against *Larabee*, rather than, as he still is doing, accepting the decision as legitimate and exposing the People of this State to hundreds of millions of dollars in liability. For this reason, at the February 23, 2012

conference on the judges' motion[fn3], I gave Assistant Attorney General Joel Graber, who handles the judicial compensation lawsuits on behalf of the Governor, Legislature, and Comptroller – and who was an indicated recipient of our July 19, 2011 letter by reason thereof – a copy of the Opposition Report, its two-volume Exhibit Compendium, and the Executive Summary.

In the presence of the press, I also questioned Mr. Graber as to what the July 19, 2011 letter describes as:

> 'the inexplicable failure of the Attorney General's Office…to have moved to reargue the palpably deficient February 23, 2010 decision before the Court of Appeals and/or to have filed a petition for a writ of certiorari with the U.S. Supreme Court, where the consequences were so violative of the New York Constitution and so potentially catastrophic to New York taxpayers – and where the dissent of Judge Smith would have dismissed all claims' (CJA's Opposition Report, Exhibit E-1, p. 8, underlining in the original).

Mr. Graber's response was that the answer was 'out of his pay grade'. Since Governor Cuomo was the Attorney General throughout 2010, he assumedly knows the answer, as do the constitutional officers of the executive and legislative branches he was defending. We therefore respectfully request that the Governor disclose it – so as to dispel the appearance that the executive and legislative constitutional officers were, as they are now, colluding against the People to secure their own pay raises.

Indeed, the ONLY explanation for Attorney General Cuomo failing to appeal the February 23, 2010 Court of Appeals decision to the U.S. Supreme Court – which plainly was not in the interest of the People of this State – is that keeping that fraudulent decision intact furthered the interests of the constitutional officers of the executive and legislative branches who were his clients. Self-interest, rather than the People's interest, is also the ONLY explanation for your failing to respond to our serious and substantial May 23, 2011, June 23, 2011, and June 30, 2011 correspondence[fn4] and to our October 27, 2011 Opposition Report.

It seems obvious that the reason you have not come forward with your findings of fact and conclusions of law during the past four months is because these establish where the People's interest lies – which is not where you want it to be because it prevents you from touting the 'success' of the judicial compensation commission and using it to create a comparable commission to adjust compensation of executive and legislative branch constitutional officers, to be enacted, just as the judicial compensation commission was, without any hearings and whose recommendations

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[fn3] "Oral argument that had been scheduled for October 20, 2011 was put over to February 23, 2012 – at which time it was postponed to March 15, 2012."

[fn4] "This correspondence is Exhibits A, B, and C to our Opposition Report and discussed in its 'Introduction' (pages 1-4)."

would take effect just as automatically, no matter how violative of the People's rights and interests.

Certainly, it is a great surprise to us to have received no response from the Governor's Budget Director, Robert Megna, to our November 1, 2011 letter to him[fn] ..." (Exhibit Q, pp. 3-5, italics, underlining, and capitalization in the original).

123. The March 2, 2012 letter requested (at pp. 5-6) that if Budget Director Megna submitted a report to defendant CUOMO, "amplifying the critical difference between salary and 'compensation and non-salary benefits', wholly disregarded by the Commission", as plaintiffs had requested him to do, that a copy be furnished to them, "as likewise such information as he and/or the Office of Court Administration ha[d] furnished [defendant CUOMO] as to the cost to this State's taxpayers of the judicial pay increases that, absent action, will take effect on April 1, 2012."

124. Finally, plaintiffs stated that a copy of their March 2, 2012 letter would be sent to defendant DiNAPOLI, with a request:

"that he immediately secure from his fellow constitutional officers in the executive branch – the Governor or the Attorney General – our October 27, 2011 Opposition Report so that he can make his own findings of facts and conclusions of law and thereby determine his further duty to the taxpayers and People of this State. A copy of the complaint we filed yesterday with the Comptroller's Investigations Unit of his Legal Services Division is enclosed (Exhibit D)"

125. Notwithstanding plaintiffs' March 2, 2012 letter requested response "no later than Thursday, March 8, 2012, by e-mail" so that they could be "guided accordingly in safeguarding the public's trampled rights", none of the defendants or other public officers responded.

126. On March 14, 2012, the Associated Press reported that the judicial salary raises "appear headed for approval in the upcoming state budget":

"Sen. Stephen Saland and Assemblyman Joseph Lentol, who co-chair the budget conference committee on public protection, said Wednesday the judiciary's spending proposal is mainly intact, including the first raises for 1,300 judges since 1999.

'As far as I'm aware, it hasn't been raised as an issue,' Saland said.

....

Lentol agreed the raises are safe. The new fiscal year starts April 1." (underlining added).

The cost of these raises for 2012 was reported as $27.7 million.

127. The following day, March 15, 2012, at the oral argument of the judges' renewal motion in the *Larabee* lawsuit, the judges were not satisfied with Assistant Attorney General Graber's claim that as a result of the "non-partisan" Commission on Judicial Compensation "all the judges are going to get increases". They are demanding $312 million in damages for the "constitutional violation" found by the Court of Appeals' February 23, 2010 decision, whose legitimacy Assistant Attorney Graber did not contest.

AS AND FOR A FIRST CAUSE OF ACTION
Evisceration of Separation of Powers:
Collusion of the Three Government Branches against the People

128. Plaintiffs repeat, reiterate, and reallege paragraphs 1-127, with the same force and effect as if more fully set forth herein.

129. The conduct of the defendant constitutional officers hereinabove summarized is violative of their checks-and-balances function underlying the separation of powers doctrine and betrays their constitutional and statutory duties to the People of the State.

130. The August 29, 2011 "Final Report" of the Commission on Judicial Compensation is, *on its face*, statutorily violative, and insufficient to support the Commission's recommended judicial pay raises. Such should have been immediately apparent to defendant constitutional officers, especially those who promulgated the statute. Nonetheless, they failed to take action, *sua sponte*, to prevent its imposition on the public purse.

131. The cost to the People of the State of the Commission's recommended judicial pay raises is more than $100 million over the next three years – and, by virtue of the non-diminishment clause of the State Constitution, Article VI, §25(a) – billions of dollars over time.

132. Nor did defendant constitutional officers take action to safeguard the public purse and protect the People's rights when presented with plaintiffs' October 27, 2011 Opposition Report, setting forth not only the facial violations and infirmities of the Commission's Report, but its other violations of the statute and State Constitution and that it was "the product of a tribunal disqualified for interest and actual bias" and constituted "frauds upon [them] and the public". (Op.Report, at p. 1, underlining in the original).

133. Based on plaintiffs' October 27, 2011 Opposition Report, the action that defendant constitutional officers were duty-bound to take to safeguard the public purse and the People's rights was, as spelled out on its cover and reiterated by its content:

> "(1) Legislation Voiding the Commission's Judicial Pay Recommendations;
>
> (2) Repeal of the Statute Creating the Commission;
>
> (3) Referral of the Commissioners to Criminal Authorities for Prosecution;
>
> (4) Appointment of a Special Prosecutor, Task Force, and/or Inspector General to Investigate the Documentary and Testimonial Evidence of Systemic Judicial Corruption, Infesting Supervisory and Appellate Levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation Unlawfully and Unconstitutionally Ignored, Without Findings, in Recommending Judicial Pay Raises".

134. Defendant constitutional officers have never denied or disputed any of the facts, law, or legal argument presented by plaintiffs' October 27, 2011 Opposition Report – or the People's entitlement to the requested four-fold relief based thereon.

135. Plaintiffs' October 27, 2011 Opposition Report, including its two-volume Compendium of Exhibits, is incorporated herein by reference. The material facts set forth in each section of the Opposition Report are true and correct in all respects and plaintiffs' opinions and conclusions based thereon are appropriate and well-founded:

(a) its section entitled "Introduction" (at pp. 1-4);

(b) its section entitled "The Fraudulence of Chairman Thompson's August 29, 2011 Transmitting Letter" (at pp. 4-8)

(c) its section entitled "CJA's August 17, 2011 Letter to the Commission" (at pp. 8-9);

(c) its section entitled "CJA's August 8, 2011 Letter to the Commission" (at pp. 10-15);

(d) its section entitled "As to the First Threshold Issue: Chairman Thompson's Disqualifying Self-Interest" (at p. 10);

(e) its section entitled "As to the Second Threshold Issue: Systemic Judicial Corruption Constituting an 'Appropriate Factor" for the Commission's Consideration, Having Constitutional Magnitude" (at pp. 10-13);

(f) its section entitled "As to the Third Threshold Issue: The Fraud & Lack of Evidence Put Forward by Judicial Pay Raise Advocates" (at pp. 13-15);

(g) its section entitled "Analysis of the Commission's Report" (at pp. 15-33), including each of its subsections:

i. "Members of the Special Commission on Judicial Compensation" (at pp. 15-17);
ii. "Part One – Final Report of the Commission" (at pp. 17-33);
iii. "I. Introduction" (at pp. 17-18);
iv. "II. Statutory Mandate" (at pp. 18-22);
v. "III. Findings & Recommendations of the Commission" (at pp. 22-33)
"a. Most Recent Judicial Salary Increase" (at pp. 25-26);
"b. Salary Comparisons" (at pp. 26-29);
"c. Other Factors" (at pp. 29-31);
"d. Recommendations" (at pp. 31-33);
vi. "Part Two – Dissenting Statements" (at pp. 33-37)
"I. Dissenting Statement of Robert B. Fiske, Jr." (at pp. 33-35);
"II. Dissenting Statement of Kathryn S. Wylde" (at pp. 35-36);
"III. Dissenting Statement of Mark S. Mulholland" (at pp. pp. 36-37);

(h) its section entitled "Conclusion" (at p. 37).

136. The failure of defendant constitutional officers to come forth with findings of fact and conclusions of law with respect to plaintiffs' October 27, 2011 Opposition Report reflects their knowledge that such would not only expose the fraudulence of the Commission's Report, but of the February 23, 2010 Court of Appeals decision, as particularized by plaintiffs' July 19, 2011 letter to Defendant SCHNEIDERMAN (Exhibit J) – and a pattern of fraudulent judicial decisions by the

Court of Appeals and the lower state courts in cases involving the People's fundamental constitutional rights, beginning with the three cases identified at the outset of that July 19, 2011 letter: plaintiff SASSOWER's Article 78 proceeding against the Commission on Judicial Conduct and the two Article 78 proceedings against the Commission it physically incorporated: Doris Sassower's and Michael Mantell's.

137. Plaintiffs' July 19, 2011 letter (Exhibit J) is true and correct in all material respects as to:

> (a) its analysis of the Court of Appeals' February 23, 2010 decision in the judge's judicial compensation cases;
>
> (b) that the two final motions in *Elena Ruth Sassower v. Commission* "concisely summarize the fraudulence of the judicial decisions of which the Commission was the beneficiary" in that case and the two others: *Doris Sassower v. Commission* and *Michael Mantell v. Commission*.

138. Plaintiffs' March 2, 2012 letter to defendant constitutional officers, hereinabove quoted at ¶¶121-125, *supra*, sets forth the facts giving rise to the appearance – and reflects the actuality – that the three government branches are here colluding against the People of this State, and that by their nonfeasance and misfeasance they are laying the groundwork to utilize a comparable commission scheme to procure pay raises for the constitutional officers of the legislative and executive branches, in violation of the People's rights and interests.

139. The failure of defendant constitutional officers to deny, dispute, or otherwise respond to plaintiffs' March 2, 2012 letter reinforces its truth.

AS AND FOR A SECOND CAUSE OF ACTION
Chapter 567 of the Laws of 2010 is Unconstitutional, *As Written*

140. Plaintiffs repeat, reiterate, and reallege paragraphs 1-139, with the same force and effect as if more fully set forth herein.

A. Chapter 567 of the Laws of 2010 Violates Article XIII, §7 of the New York State Constitution

141. Article XIII, §7 of the New York State Constitution states:

> "Each of the state officers named in this constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed".

142. Both in their briefs and at oral argument before the Court of Appeals, defendant constitutional officers, other than the judicial constitutional officers, highlighted the significance of this express prohibition in defending against the judges' judicial pay raise lawsuits. Such was pointed out by plaintiffs' July 19, 2011 letter to defendant SCHNEIDERMAN (Exhibit J), which quoted from defendants' November 23, 2009 brief:

> "This Court has never decided whether the provision of Article XIII, §7, banning salary increases during a State officer's term of office, applies to judges.... it seems unlikely that this Court could uphold the order below, to the extent it was adverse to Defendants, or grant relief to Plaintiffs on their appeal, without addressing Article XIII, §7."

143. That Article XIII, §7 of the State Constitution required the Court of Appeals to have thrown out the three judicial pay raise lawsuits before it is reflected by the fact that its February 23, 2010 decision not only did not address Article XIII, §7, but did not even mention its existence.

144. Because Chapter 567 of the Laws of 2010, *as written*, allows the Commission to effectuate salary increases for judges during their terms, it violates Article XIII, §7 and is unconstitutional.

B. Chapter 567 of the Laws of 2010 Unconstitutionally Delegates Legislative Power Without Essential Safeguarding Provisions & Guidance

145. Such case law as *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al.*, 15 Misc.3d 743; 836 N.Y.S.2d 794 (Supreme Court/Bronx Co. 2007), affirmed by the Appellate Division, First Department, 41 A.D.3d 252 (2007), appeal dismissed, 9

N.Y.3d 891 (2007), appeal denied, 9 N.Y.3d 815 (N.Y., Nov. 27, 2007); motion granted 9 N.Y.3d 986 (N.Y., Nov. 27, 2007), reflects further grounds upon which Chapter 567 of the Laws of 2010 is unconstitutional, *as written*.

146. Article III, §1 of the New York State Constitution vests the legislative power in the Senate and Assembly. There is no provision in the Constitution for delegating decision-making power over judicial salaries to an appointed commission, let alone to an appointed commission whose recommendations are self-executing so as to become law automatically without affirmative legislative or executive action by the People's elected representatives.

147. Such delegation, moreover, could only be constitutional if the appointed commissioners were of a sufficient number and diversity, and untainted by an agenda or other bias and interest.

148. At bar, Chapter 567 of the Laws of 2010 provides for only seven commissioners – and of these, only two are appointed by the Legislature. This is an insufficient number to reflect the diversity of either the Legislature or the State.

149. Nor does the statute specify neutrality as a criteria for appointment – and having two commissioners appointed by the chief judge assures that at least two of the seven commissioners will have been appointed to achieve the judiciary's agenda of pay raises.

150. As the judiciary would otherwise have no deliberative role in determining judicial pay raises legislatively and the chief judge is directly interested in the determination, the chief judge's participation as an appointing authority is, at very least, a constitutional infirmity.

151. Nor could such delegation be constitutional unless the statute defined the constitutional considerations relevant to the Commission's evaluation of judicial compensation levels.

152. Chapter 567 of the Laws of 2010 is not sufficiently-defined and provides insufficient guidance to the Commission as to the "appropriate factors" for it to consider. The statute requires the Commission to "take into account all appropriate factors, including but not limited to" six listed factors. These six listed factors are all economic and financial – and are completely untethered to any consideration as to whether the judges whose salaries are being evaluated are discharging their constitutional duty to render fair and impartial justice and afford the People their due process and equal protection rights under Article I.

153. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof, are not earning their current salaries. Consequently, a prerequisite to any pay raise recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI are functioning.

154. The absence of such explicit factor to guide the Commission renders the statute unconstitutional, *as written*.

AS AND FOR A THIRD CAUSE OF ACTION
Chapter 567 of the Laws of 2010 is Unconstitutional, *as Applied*

155. Plaintiffs repeat, reiterate, and reallege paragraphs 1-154, with the same force and effect as if more fully set forth herein.

156. The Commissioners' willful disregard of the three threshold issues that plaintiffs identified by their August 8, 2011 and August 17, 2011 letters (Op-Report/Ex.I, Ex. J-1) as barring their consideration of judicial pay raises suffice to render their pay raise recommendations void *ab initio* – and Chapter 567 of the Laws of 2010 unconstitutional, *as applied*.

157. Each of these three threshold issues, individually, is sufficient to void the Report, on constitutional grounds.

A. As for the First Threshold Issue: Chairman Thompson's Disqualifying Self-Interest

158. The facts giving rise to Chairman Thompson's disqualification for interest – his father's pivotal role in systemic judicial corruption, involving appellate and supervisory levels and the Commission on Judicial Conduct – are particularized by plaintiffs' June 23, 2011 letter (Op-Report/Ex.B) and substantiated by the four lawsuits summarized by Plaintiff SASSOWER's December 16, 2001 draft written statement (Op-Report/Ex.F-2). Among these, plaintiff SASSOWER's lawsuit against the Commission on Judicial Conduct and Doris Sassower's lawsuit against the Commission on Judicial Conduct, each appending facially-meritorious, documented judicial misconduct complaints against Chairman Thompson's father, dismissed by the Commission, without investigation

159. Chairman Thompson's failure and refusal to rule upon the issue of his disqualification for interest, the failure and refusal of his fellow Commissioners to rule upon it, and the concealment of the very issue from the Commission's Report concedes Chairman Thompson's disqualification for interest, *as a matter of law* – and renders the Report a nullity. [See ¶97, *supra*].

160. Moreover, the Commissioners' failure to rule upon the facts giving rise to Chairman Thompson's disqualification, *to wit*, systemic judicial corruption, embracing appellate and supervisory levels and the Commission on Judicial Conduct, while not denying or disputing that these are "appropriate factors" and a constitutional bar to judicial pay raises, reinforces how completely the Commission was willing to subordinate its statutory mandate to Chairman Thompson's disqualifying self-interest.

B. As for the Second Threshold Issue: Systemic Judicial Corruption is an "Appropriate Factor" Having Constitutional Magnitude

161. Plaintiffs' constitutional analysis that systemic judicial corruption, infecting appellate and supervisory levels and the Commission on Judicial Conduct is an "appropriate factor" for the Commission's consideration, was set forth by their August 8 2011 letter (Op-Report/Ex.I) and is quoted at ¶98, *supra*. Its accuracy is reinforced by plaintiffs' further analysis of defendant UNIFIED COURT SYSTEM's memorandum of constitutional considerations, presented by their August 23, 2011 letter (Op-Report/Ex.K-1).

162. The Commissioners' failure to deny or dispute same – and their concealment of the very issue by their Report concedes it, *as a matter of law*.

C. As for the Third Threshold Issue: The Fraud and Lack of Evidence Put Forward by Judicial Pay Raise Advocates

163. Plaintiff SASSOWER's testimony before the Commission at its one and only public hearing, on July 20, 2011, alerted it to the fraud and lack of evidence in the claims of witnesses testifying in favor of judicial pay raises. Rather than afford plaintiff SASSOWER the opportunity to elaborate, even briefly, as to the "20 frauds" she stated she had listed, the Commission cut her off.

164. Plaintiff SASSOWER sufficed to identify that the judicial pay raise advocates had not furnished any evidence as to the supposed "quality" and "excellence" of New York's judges, contrasting it to the opponents of judicial pay raises who could documentarily prove the lawlessness and corruption of New York's judiciary, disentitling it to any pay raises. She herself provided such documentary proof to substantiate her assertions that the judiciary has a *modus operandi* of fraudulent judicial decisions, specifying the decisions, including of the Court of Appeals, in the three lawsuits against the Commission, *verifiable* from the two final motions in her lawsuit against the Commission, and, additionally, the Court of Appeals' February 23, 2010 decision in the judges' pay

raise lawsuits, *verifiable* from plaintiffs' July 19, 2011 letter to defendant SCHNEIDERMAN (Exhibit J).

165. The Commission has not denied or disputed the significance of the evidence plaintiff SASSOWER furnished at the July 20, 2011 hearing – nor of her subsequent correspondence, laying out the succession of other frauds put forward by judicial pay raise advocates. This includes their material concealments as to the following:

> (a) that New York's state-paid judges are not civil-service government employees, but constitutional officers of New York's judicial branch;
>
> (b) that the salaries of all New York's constitutional officers have remained unchanged since 1999 – the Governor, Lieutenant Governor, Attorney General, and Comptroller, who are the constitutional officers of our executive branch – and the 62 Senators and 150 Assembly members who are the constitutional officers of our legislative branch;
>
> (c) that the compensation of New York's judicial constitutional officers is comparable, if not superior, to the compensation of New York's executive and legislative constitutional officers, with the judges enjoying incomparably superior job security;
>
> (d) that New York's executive and legislative constitutional officers have also suffered the ravages of inflation, could also be earning exponentially more in the private sector; and also are earning less than some of their government-paid staff and the government employees reporting to them;
>
> (e) that as a co-equal branch, the same standards should attach to pay increases for judges as increases for legislators and executive branch officials – *to wit*, deficiencies in their job performance and governance do not merit pay raises;
>
> (f) that outside the metropolitan New York City area, salaries drop, often markedly – as reflected by the county-by-county statistics of what New York lawyers earn – and there is no basis for judges in most of New York's 62 counties to be complaining as if they have suffered metropolitan New York City cost-of-living increases, when they have not, or to receive higher salaries, as if they have;
>
> (g) that New York judges enjoy significant "non-salary benefits";
>
> (h) that throughout the past 12 years of "stagnant" pay, New York judges have overwhelmingly sought re-election and re-appointment upon expiration of their terms – and there is no shortage of qualified lawyers eager to fill vacancies;

(i) that the median household income of New York's 19+ million people is $45,343 – less than one-third the salary of New York Supreme Court justices.

166. The Commissioners' failure to deny or dispute plaintiffs' showing – and to even identify that plaintiffs had asserted that the claims of judicial pay advocates were fraudulent and lacked evidence – concedes it, *as a matter of law*.

AS AND FOR A FOURTH CAUSE OF ACTION
The Commission's Judicial Pay Raise Recommendations are Statutorily Violative

167. Plaintiffs repeat, reiterate, and reallege paragraphs 1-166, with the same force and effect as if more fully set forth herein.

168. As particularized by plaintiffs' Opposition Report, the Commission's judicial pay raise recommendations are statutorily violative in multiple respects.

169. Each of these violations of these statutory violations are sufficient to void the judicial pay raise recommendations.

(i) ***In violation of the Commission statute***, the Commission's judicial pay raise recommendations are unsupported by any finding that current "pay levels and non-salary benefits" of New York State judges are inadequate (Op. Report, at pp. 1, 16, 31);

(ii) ***In violation of the Commission statute***, the Commission examines only judicial salary, not "compensation and non-salary benefits" (Op. Report, at pp. 18-21, 25-31);

(iii) ***In violation of the Commission statute***, the Commission does not consider "all appropriate factors" – a violation it attempts to conceal by transmogrifying the statutory language "all appropriate factors" to "a variety of factors" (Op. Report, at pp. 4-5, 21), thereby failing to even identify "appropriate factors";

(iv) ***In violation of the Commission statute***, the Commission makes no findings as to five of the six statutorily-listed "appropriate factors" it is required to consider (Op. Report, at pp. 21, 23-24);

170. The failure of the Commission's Report to identify citizen opposition to judicial pay

raises – and the basis thereof – let alone to identify that citizen opposition is an "appropriate factor" for its consideration is a further ground upon which the Report and pay raise recommendations violate the statute, *as applied.* This citizen opposition included those protesting the dire financial state of the State and the cuts made to essential governmental services and the firing of thousands of state workers, including hundreds of court employees, to save money.

171. Although the statute, *as written*, confers significant investigative powers upon the Commission and resources to enable it to examine "all appropriate factors", the Commission's near-total failure to have utilized such powers and resources is an additional ground upon which its Report and recommendations are statutorily violative, *as applied.*

172. Underlying all these violations is the Commissioners' bias and interest in securing the predetermined result of raising judicial salaries, additionally rendering its Report and recommendations statutorily violative, *as applied.*

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment against defendants as follows:

1. As to the first cause of action, a declaratory judgment pursuant to CPLR §3001 that the three government branches have unconstitutionally violated their checks-and-balances function, eviscerating the separation of powers doctrine and colluding against the People of the State by failing to protect them against unconstitutional, statutorily-violative, and fraudulent judicial pay raises.

2. As to the second cause of action, a declaratory judgment pursuant to CPLR §3001 that Chapter 567 of the Laws of 2010 is unconstitutional, *as written*, in that it violates Article XIII, §7 of the New York State Constitution and because it delegates the legislative power to a commission whose recommendations automatically become law, where the commission is of insufficient size and diversity, lacks neutrality, and lacks sufficient guidance as to constitutional considerations, *to wit,*

that systemic judicial corruption, disabling mechanisms for judicial discipline and removal, is a constitutional bar to judicial pay raises.

3. As to the third cause of action, a declaratory judgment pursuant to CPLR §3011 that Chapter 567 of the Laws of 2010 unconstitutional, *as applied*, by reason of the Commission's disregard of three threshold issues, each rendering its judicial pay raise recommendations void *ab initio*: its chairman's disqualification for interest; systemic judicial corruption as an "appropriate factor" for its consideration, having constitutional magnitude; the fraud and lack of evidence for the claims of judicial pay raise advocates.

4. As to the fourth cause of action, a declaratory judgment pursuant to CPLR §3001 that the Commission's recommendations are statutorily violative in that they are unsupported by any finding that current "pay levels and non-salary benefits" of New York State judges are inadequate; are not based on examination of "compensation and non-salary benefits"; are not based on consideration of "all appropriate factors"; are unsupported by any findings as to five of the six statutorily-listed "appropriate factors"; fail to identify citizen opposition to judicial pay raises – and that such is an "appropriate factor" for its consideration, which it does not consider, whether relating to citizen opposition arising from the corruption in the judiciary, from the fraud of judicial pay raise advocates, or the dire financial state of the State, where essential governmental services are being curtailed and thousands of state workers, including hundreds of court employees have been terminated to save money; that the recommendations do not rest on the Commission's use of the investigative powers and resources with which it is statutorily endowed, and that pervading all these deficiencies and violations is the Commissioners' bias and interest in a predetermined outcome of raising judicial salaries.

5. As and for a specific declaratory judgment pursuant to CPLR §3001, arising from all

four causes of action that any increase in judicial compensation is unconstitutional, absent predicate findings that New York state judges are discharging their duties to render fair and impartial justice and that mechanisms are in place and functioning to remove corrupt judges.

6. An order striking Chapter 567 of the Laws of 2010 and voiding the Commission's August 29, 2011 "Final Report" and judicial pay raise recommendations.

7. An order impounding such monies as have been designated and budgeted for the judicial pay raises for 2012-2013, reported to be $27.7 million – to seed a superfund from which to make restitution to the victims of judicial corruption, with additional monies to be deposited based on computation of what the further increases for 2013-2014 and 2014-2015 would have cost taxpayers, multiplied by 35 years – that being the approximate number of years of courageous judicial whistle-blowing by plaintiff SASSOWER's parents, George Sassower and Doris Sassower.

8. Awarding compensatory and punitive damages to plaintiffs, individually, and on behalf of the People of the State and public interest, of at least $312 million, that being the amount that the judicial plaintiffs in *Larabee v. Silver, et al.* are currently seeking, as retroactive pay due them as damages for the purported separation of powers constitutional violation caused by "linkage".

9. Such other and further relief as may be just and proper, together with costs and disbursements of this action.

ELENA RUTH SASSOWER

Sworn to before me this
30th day of March 2012

Notary Public

VERIFICATION

STATE OF NEW YORK)
COUNTY OF BRONX) ss:

I am the 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
30th day of March 2012

Notary Public

TABLE OF EXHIBITS

FREE-STANDING EXHIBITS:

1. Chapter 567 of the Laws of 2010

2. "Final Report of the Special Commission on Judicial Compensation", August 29, 2011

3. Plaintiffs' October 27, 2011 "Opposition Report to the 'Final Report' of the Special Commission on Judicial Compensation", with two-volume Compendium of Exhibits

4. Final two motions in *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York*:

   (a) October 15, 2002 motion for reargument, vacatur for fraud, lack of jurisdiction, disclosure & other relief;

   (b) October 24, 2002 motion for leave to appeal;

   with the Court of Appeals' two December 17, 2002 decisions/orders thereon.

ANNEXED EXHIBITS:

Exhibit A-1: "*Where Do You Go When Judges Break the Law?*", New York Times, October 26, 1994, Op-Ed page, reprinted in New York Law Journal, November 1, 1994, p. 9

Exhibit A-2: "*A Call for Concerted Action*", New York Law Journal, November 20, 1996, p. 3

Exhibit A-3: "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", New York Law Journal, August 27, 1997, pp. 3-4

Exhibit B-1: Plaintiffs' June 20, 2006 letter to Attorney General candidate Cuomo

Exhibit B-2: Plaintiffs' September 1, 2006 letter to Attorney General candidate Cuomo

Exhibit C-1: Plaintiffs' January 22, 2003 written statement in opposition to Senate confirmation of Susan P. Read to NY Court of Appeals

Exhibit C-2: Senate Judiciary Committee transcript: pp. 1-3, 28-35;

Exhibit C-3: Senate confirmation transcript, pp. 237, 239

Exhibit D-1: Plaintiffs' January 12, 2004 written statement in opposition to Senate confirmation of Robert S. Smith to NY Court of Appeals

Exhibit D-2: Senate Judiciary Committee transcript: pp. 1-3, 57-68

Exhibit E-1: Plaintiffs' September 14, 2006 written statement in opposition to Senate confirmation of Eugene F. Pigott, Jr. to NY Court of Appeals

Exhibit E-2: Senate Judiciary Committee transcript: pp. 1-2, 38-46

Exhibit F-1: Plaintiffs' February 9, 2007 letter to Chairman DeFrancisco: requests to testify in opposition to Senate confirmations of Theodore T. Jones, Jr. & Chief Judge Judith Kaye

Exhibit F-2: Plaintiffs' February 12, 2007 letter to Chairman DeFranciso

Exhibit F-3: Plaintiffs' written statement, submitted for the record of Senate Judiciary Committee's February 12, 2007 "public" confirmation hearing of Theodore T. Jones, Jr. to NY Court of Appeals

Exhibit G-1: See Exhibit F-1, *supra*: Plaintiffs' February 9, 2007 letter to Chairman DeFrancisco requesting to testify in opposition to Chief Judge Kaye's confirmation

Exhibit G-2: Doris Sassower's February 13, 2007 letter to Chairman DeFrancisco

Exhibit G-3: Plaintiffs' March 1, 2007 letter to Chairman DeFrancisco

Exhibit G-4: Plaintiffs' March 2, 2007 letter to Chairman DeFrancisco

Exhibit G-5: Doris L. Sassower's March 5, 2007 letter to Chairman DeFrancisco

Exhibit G-6: Eli Vigliano's March 6, 2007 e-mail to Chairman DeFrancisco

Exhibit G-7: Plaintiffs' March 5, 2007 e-mail to Senators

Exhibit G-8: Plaintiffs' March 6, 2007 written opposition statement
(*Exhibit F-3 to Plaintiffs' October 27, 2011 Opposition Report*)

Exhibit G-9: Doris Sassower's March 6, 2007 written opposition statement
(*Exhibit F-4 to Plaintiffs' October 27, 2011 Opposition Report*)

Exhibit G-10: George Sassower's March 2, 2007 letter to Chairman DeFrancisco, with written statement

Exhibit G-11: March 5, 2007 written statement of Judith Herskowitz

Exhibit G-12: Senate Judiciary Committee March 6, 2007 transcript, pp. 1-3, 118-120

Exhibit G-13: Senate March 6, 2006 transcript: pp. 952, 956-958

Exhibit H: Plaintiffs' December 15, 1993 written statement in opposition to confirmation of Carmen Beauchamp Ciparick to NY Court of Appeals
-- with pp. 1-2, 122-127 of transcript of Senate Judiciary Committee's March 17, 1993 hearing to confirm the nomination of Judith Kaye as Chief Judge of the NY Court of Appeals

Exhibit I-1: Plaintiffs' February 11, 2009 written statement in opposition to Senate confirmation of Jonathan Lippman as Chief Judge of the NY Court of Appeals

Exhibit I-2: Senate Judiciary Committee February 11, 2009 transcript:
-- testimony of Plaintiff Sassower:
-- testimony of William Galison:

Exhibit J: Plaintiffs' July 19, 2011 letter to Attorney General Schneiderman
(*Exhibit E-1 to Plaintiffs' October 27, 2011 Opposition Report*)

Exhibit K: Comptroller Edward Regan's November 15, 1989 report Commission on Judicial Conduct – Not Accountable to the Public: Resolving Charges Against Judges is Cloaked in Secrecy, with December 7, 1989 press release, "*Commission on Judicial Conduct Needs Oversight*"
(part of *Exhibit I to Plaintiffs' October 27, 2011 Opposition Report*)

Exhibit L-1: Plaintiffs' December 16, 2002 letter to Senate Majority Leader Joseph Bruno, Senate Minority Leader Martin Connor, & Senate Minority Leader David Paterson

Exhibit L-2: Plaintiffs' October 26, 2001 letter to Senator David Paterson

Exhibit M: Plaintiffs' March 5, 2003 letter to Senate Judiciary Committee Ranking Member Malcolm Smith, Assembly Judiciary Committee Chairwoman Helene Weinstein & Ranking Member Fred Thiele

Exhibit N: Plaintiffs' October 28, 2011 letter to Commission on Judicial Compensation

Exhibit O: Plaintiffs' October 28, 2011 letter to Judicial Pay Raise Advocates

Exhibit P: Plaintiffs' November 1, 2011 letter to Budget Director Robert Megna

Exhibit Q: Plaintiffs' March 2, 2011 letter to Governor Andrew Cuomo, Temporary Senate President Dean Skelos, Assembly Speaker Sheldon Silver, Chief Judge Jonathan Lippman

Ex A: Executive Summary of Plaintiffs' October 27, 2011 Opposition Report

Ex B-1: Plaintiffs' November 29, 2011 complaint to AG's Public Integrity Bureau

Ex B-2: Plaintiffs' November 29, 2011 e-mail to AG's Public Integrity Bureau

Ex B-3: December 7, 2011 letter from AG's Public Integrity Bureau

Ex C-1: AG's website: "About he Public Integrity Bureau"

Ex C-2: AG's website: "*Accord With Comptroller Will Help Attorney General Pursue Corruption Cases*", New York Times, Nicholas Confessore, May 23, 2011

Ex C-3: AG's website: "AG, comptroller partnership a no-brainer", Albany Times Union, Fred LeBrun, May 30, 2011

Ex D: Plaintiffs' March 1, 2012 complaint to Comptroller's Investigations Unit

The exhibits annexed to this March 30, 2012 verified complaint were all handed up with the complaint to the Commission on Legislative, Judicial and Executive Compensation at its November 30, 2015 public hearing by Elena Sassower in substantiation of her testimony.

They are accessible from CJA's website, www.judgewatch.org, *via* the prominent homepage link: "NO PAY RAISES FOR NEW YORK's CORRUPT PUBLIC OFFICERS: The Money Belongs to their Victims!" and the left sidebar panel "Judicial Compensation: State-NY" – each leading to CJA's webpage for the Commission on Legislative, Judicial and Executive Compensation.