

Plaintiffs' MARKED PLEADING –
Assistant Attorney General Adrienne Kerwin's November 5, 2014 "Verified Answer"
to Plaintiffs' March 28, 2014 Verified Complaint

SUPREME COURT OF STATE OF NEW YORK
ALBANY 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,
DEAN SKELOS in his official capacity
as Temporary Senate President,
THE NEW YORK STATE SENATE,
SHELDON SILVER, in his official capacity
as Assembly Speaker, THE NEW YORK
STATE ASSEMBLY, ERIC T. SCHNEIDERMAN,
in his official capacity as Attorney General of
the State of New York, and THOMAS DiNAPOLI,
in his official capacity as Comptroller of
the State of New York,

Defendants.

VERIFIED COMPLAINT
Index #1788-14

JURY TRIAL DEMANDED

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"It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein."

State Finance Law, §123: "Legislative purpose"

"A budget is a statement of the financial position of the government, for a definite period of time, based upon an estimate of proposed expenditures and anticipated revenues...The method by which public budgets are prepared is governed by the State Constitution and the applicable State statutes. The requirements contained in those documents are not particularly burdensome and permit the executive and the legislative officials considerable freedom of action in implementing governmental

operations and programs and providing for the revenues to fund them. The legal requirements they contain, however, are grounded in the general principles of fiscal responsibility and the accountability that underpins the regulation of all public conduct and they must be followed.”

Korn v. Gulotta, 72 N.Y.2d 363, 372-373 (1988), underlining added

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

1. This is an citizen-taxpayer action, pursuant to State Finance Law §123, *et seq.* [Article 7-A], for a declaratory judgment as to the unconstitutionality and unlawfulness of the Governor’s Budget Bill #S.6351/A.8551, embodying the Legislature’s proposed budget for fiscal year 2014-2015, the Judiciary’s proposed budget for fiscal year 2014-2015, and millions of dollars in unaccounted-for reappropriations. The expenditures of such Budget Bill are unconstitutional and unlawful disbursements of state funds and taxpayer monies, which plaintiffs seek to enjoin.

[AG #1: “Deny that ¶¶1-2...make factual allegations that need to be admitted or denied and therefore do not respond to same, but to the extent that same are deemed to make factual allegations, deny that plaintiffs are entitled to any relief herein.”]

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

TABLE OF CONTENTS

VENUE.....3

THE PARTIES & BACKGROUND FACTUAL ALLEGATIONS.....3

FACTUAL ALLEGATIONS.....11 [9]

AS AND FOR A FIRST CAUSE OF ACTION29 [27]
The Legislature’s Proposed Budget for Fiscal Year 2014-2015,
Embodied in the Governor’s Budget Bill #S.6351/A.8551,
is Unconstitutional & Unlawful

AS AND FOR A SECOND CAUSE OF ACTION.....35 [31]
The Judiciary’s Proposed Budget for 2014-2015,
Embodied in the Governor’s Budget Bill #S.6351/A.8551,
is Unconstitutional & Unlawful

AS AND FOR A THIRD CAUSE OF ACTION38 [33]
The Governor’s Budget Bill #S.6351/A.8551,
is Unconstitutional & Unlawful,
Over & Beyond the Legislative & Judiciary Budgets
It Embodies “Without Revision”

AS AND FOR A FOURTH CAUSE OF ACTION39 [33]
Nothing Lawful or Constitutional Can Emerge
From a Legislative Process that Violates its
Own Statutory & Rule Safeguards

PRAYER FOR RELIEF: WHEREFORE44 [38]

* * *

VENUE

3. Pursuant to State Finance Law §123(c)(1), this action is properly venued in the Albany County Supreme Court, as Albany County is where the unconstitutional and unlawful disbursements sought to be enjoined will be occurring and where defendant state officers have their principal offices.

[AG #2: “refer all issues of law to the court”]

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. In addition to the taxes it pays to the State of New York, its New York members pay taxes to the State of New York.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

5. Plaintiff CJA’s patriotic purpose is to safeguard the judicial process by ensuring the integrity of its judges. In so doing, it interfaces with all three branches of government and has interacted with all defendants herein through its Director, plaintiff ELENA RUTH SASSOWER, including, specifically, regarding the New York State budget.

[AG #5: “Deny the allegations”]

(a) Plaintiffs’ focus on the New York State budget had its genesis in the 2011 Special Commission on Judicial Compensation, established pursuant to Chapter 567 of the Laws of 2010. As the Commission’s August 29, 2011 Final Report recommending judicial salary increases of 27% over a three-year period were to have the force of law, absent gubernatorial or legislative action, plaintiffs presented defendants CUOMO, SKELOS, and SILVER with an October 27, 2011 Opposition Report, whose first requested relief was for override of the recommended judicial salary increases. The basis for the override was plaintiffs’ showing that the Commission had violated express conditions precedent for the judicial salary recommendations, set forth in Chapter 567 of the Laws of 2010, in addition to being fraudulent and unconstitutional.

(b) Neither defendants CUOMO, SKELOS, SILVER ever denied or disputed the accuracy of plaintiffs' October 27, 2011 Opposition Report. Nor did defendants SCHNEIDERMAN and DiNAPOLI, to whom plaintiffs filed corruption complaints based thereon. Nor did Chief Administrative Judge Lippman, to whom plaintiffs also furnished the October 27, 2011 Opposition Report. Yet, none took any steps to protect the public purse from judicial salary increases shown to be statutorily violative, fraudulent, and unconstitutional.

(c) As a result, plaintiffs were burdened with bringing a declaratory judgment action to secure a determination as to the unconstitutionality of Chapter 567 of the Laws of 2010, *as written and as applied*. The lawsuit, entitled:

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,

was commenced in Bronx County Supreme Court on March 30, 2012 (#302951-2012), accompanied by an order to show cause, with TRO, to prevent disbursement of the monies for the first phase of the judicial salary increase that was to take effect on April 1, 2012.

(d) Defendant SCHNEIDERMAN, a named defendant therein, defended all defendants and, in the absence of any legitimate merits defense, engaged in fraudulent advocacy. At his urging, the TRO was denied and the lawsuit [hereinafter "*CJA v. Cuomo I*"] was transferred to Supreme Court/New York County, with no ruling on the preliminary injunction. In the process, plaintiffs' original verified complaint, ALL substantiating exhibits, and the order to show cause for a preliminary injunction, with TRO, went missing.

(e) Since the transfer, in September 2012, *CJA v. Cuomo I* has been in limbo, sitting on a shelf in the New York County Clerk's Office because the New York County Clerk – whose salary is tied to judicial salaries – has ignored plaintiffs' complaints for

investigation of the record tampering, ignored their requests that he discharge his mandatory duty under Judiciary Law §255 to certify the missing documents, and ignored their requests that he take action against his Chief Deputy Clerk who has barred plaintiff SASSOWER from reviewing the case file under threat that he will have court officers remove her from the courthouse, which he has already done.

(f) With the case stalled, plaintiffs sought to secure override of the second phase of the judicial salary increase that was scheduled to take effect on April 1, 2013 by directly participating in the Legislature's consideration of the Judiciary's proposed budget for fiscal year 2013-2014. In so doing, plaintiffs demonstrated that the Judiciary's proposed budget for fiscal year 2013-2014 was unconstitutional because it lacked itemization sufficient to permit intelligent and meaningful review and because it violated Article VII, §7 of the State Constitution. They also documented that the Legislature's proposed budget for fiscal year 2014-2015 was unconstitutional, being uncertified and missing "General State Charges".

(g) The Legislature's response – as likewise defendant CUOMO's – to plaintiffs' presentation of proof was to ignore it and violate all statutory and rule provisions that ensure the integrity of the budget process. Defendant CUOMO's signing of the state budget for fiscal year 2013-2014, which he did several times, ceremonially, at various locations throughout the state, was in face of plaintiffs' March 29, 2013 letter entitled:

"The Governor's Duty to Disapprove S.2601-a/A.3001-a (Judiciary/Legislative Appropriations Bill), Pursuant to Article VII, §4, and Article IV, §7 of the New York State Constitution, Because the Legislature Violated Express Constitutional and Statutory Safeguards, as well as its Own Rules, in Passing It" (Exhibit A)¹.

(h) Consequently, beginning in April 2013 and spanning through September 2013, plaintiffs filed a series of corruption complaints with criminal and ethics authorities against defendants and such other collusive public officers as defendant CUOMO's Director of the Budget, Robert Megna, for "grand larceny of the public fisc and other corrupt acts" in connection with the Judiciary and Legislative budgets for fiscal year 2013-2014 and defendant CUOMO's Budget Bill #S.2601/A.3001 (2013) embodying them. Among these authorities: the U.S. Attorneys for the Southern, Eastern, and Northern Districts of New York and the Albany County District Attorney – all, additionally, requested to intervene in *CJA v. Cuomo I*.

(i) All plaintiffs' corruption complaints and intervention requests are – like *CJA v. Cuomo I* – in limbo because the criminal and ethics authorities with whom they were filed are disabled by conflicts of interest and have been sitting on them. The only exception is the conflict-ridden Commission to Investigate Public Corruption of defendants CUOMO and SCHNEIDERMAN, which, by a February 7, 2014 letter to plaintiffs, purported "your matter falls outside of our mandate." (Exhibit I). This disposition followed upon plaintiffs' filing a

¹ The exhibits to this Verified Complaint, all incorporated herein by reference, are appended in chronological order. So, too, plaintiffs' records/FOIL requests that are appended as the last set of exhibits.

January 7, 2014 supplemental complaint with the Commission (Exhibit E-2) as to the fraudulence and unconstitutionality of the Judiciary's and Legislature's proposed budgets for fiscal year 2014-2015, established by their December 11, 2013 and December 30, 2013 letter to defendants CUOMO, SKELOS, SILVER and Legislative Leaders (Exhibits C, D). Plaintiffs' supplemental complaint described these two letters as each presenting "an open-and-shut, prima facie case of public corruption, verifiable in a matter of minutes, involving huge sums of taxpayer monies." – with investigation by the Commission consistent with its pledge to "follow the money" and the declaration of its December 2, 2013 interim report:

"Government watchdogs, the media, and most of all, members of the public have a right to understand how their tax dollars are spent and by whom, as well as the process used to appropriate state funds" (at p. 25).

(j) The record of all of the foregoing is posted on plaintiff CJA's website, www.judgewatch.org, accessible from links on the homepage and, additionally, by the top panel "Latest News".

6. Plaintiff ELENA RUTH SASSOWER [hereinafter "SASSOWER"] is a New York-born resident, citizen, and taxpayer of the State of New York.

[AG #4: "Deny knowledge or information sufficient to form a basis of belief to admit or deny"]

7. Defendant ANDREW M. CUOMO [hereinafter "CUOMO"] is Governor of the State of New York.

[AG #9: "admit that Defendant Cuomo is the Governor of the State of New York and deny the remaining allegations except to respectfully refer the court to the documents cited as the best evidence of what is stated and contained therein."]

(a) On July 2, 2013, defendant CUOMO issued Executive Order #106, identifying that "the New York State Division of the Budget is charged with carrying out the Executive's constitutional obligations with respect to the State's multi-billion dollar budget" and that, pursuant to Executive Law §6 and §63(8), he was appointing a Commission to Investigate Public Corruption, whose mandate, *inter alia*, was to:

"Investigate weaknesses in existing laws, regulations and procedures relating to addressing public corruption, conflicts of interest, and ethics in State Government, including but not limited to criminal laws protecting against abuses of the public trust; and make recommendations to reform any weaknesses uncovered in existing State laws, regulations and procedures." (§IIc).

(b) As stated by defendant CUOMO, at his July 2, 2013 press conference, "The jurisdiction here is broad and sweeping."

(c) In response, plaintiff SASSOWER delivered an August 21, 2013 letter to defendant CUOMO, entitled:

“Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act (Program Bill #3) – the *Sine Qua Non* for ‘Government Working’ & Working for the People”.

It stated that “the purposes [defendant CUOMO had] conferred upon the Commission are actually duties of a properly-functioning legislature, discharging its oversight and law-making functions” (Exhibit B, p. 1, underlining in original).

(d) In support, the letter summarized the findings of the 2004, 2006, and 2008 reports of the Brennan Center for Justice, examining the components of a functioning Legislature and demonstrating that New York’s Legislature was the most dysfunctional of any state legislature and Congress because of legislative rules vesting disproportionate powers in the Temporary Senate President and Assembly Speaker, emasculating members and reducing committees to shells.

(e) Plaintiffs’ August 21, 2013 letter showed how that dysfunction had lent itself to behind-closed-doors deal-making between defendants SKELOS, SILVER, and CUOMO – and that the true facts behind defendant CUOMO’s establishing the Commission to Investigate Public Corruption were that he, in collusion with them, had aborted the legislative process with respect to his “Public Trust Act” (Program Bill #3) and his Program Bills #4, #5, and #12 – and not, as he publicly purported, that “the Legislature has failed to act”.

8. Defendant DEAN SKELOS [hereinafter “SKELOS”] is Temporary Senate President of defendant NEW YORK STATE SENATE, a position he shares, on an alternating basis, with Senator Jeffrey Klein.

[AG #3: “Admit the allegations”]

9. Defendant NEW YORK STATE SENATE [hereinafter “SENATE”] is the upper house of the New York State Legislature, consisting of 63 members.

[AG #6: “Deny knowledge or information sufficient to form a basis of belief to admit or deny..., except to respectfully refer the court to the document cited as the best evidence of what is stated and contained therein.”]

(a) According to the Legislature’s budget narrative for fiscal year 2014-2015 (at p. 2): “The Senate conducts its legislative business through the operation of 34 Standing Committees”.

(b) The largest Senate committee – and the only one identified in the Legislature’s budget narrative (at p. 3) – is the Senate Finance Committee.

10. Defendant SHELDON SILVER [hereinafter “SILVER”] is Speaker of defendant NEW YORK STATE ASSEMBLY.

[AG #3: “Admit the allegations”]

11. Defendant NEW YORK STATE ASSEMBLY [hereinafter “ASSEMBLY”] is the lower house of the New York State Legislature, consisting of 150 members.

[AG #6: “Deny knowledge or information sufficient to form a basis of belief to admit or deny..., except to respectfully refer the court to the document cited as the best evidence of what is stated and contained therein.”]

(a) According to the Legislature’s budget narrative for fiscal year 2014-2015 (at p. 2): “The Assembly conducts its legislative business through the operation of 38 standing committees”.

(b) The largest Assembly committee – and the only one identified in the Legislature’s budget narrative (at p. 3) – is the Assembly Ways and Means Committee.

12. Defendant ERIC T. SCHNEIDERMAN [hereinafter “SCHNEIDERMAN”] is Attorney General of the State of New York.

[AG #10: “admit that Eric T. Schneiderman is the Attorney General of the State of New York and deny the remaining allegations of the paragraph except to respectfully refer the court to the law or document cited as the best evidence of what is stated and contained therein.”]

(a) Pursuant to Executive Law §63.8, defendant SCHNEIDERMAN was directed by defendant CUOMO’s Executive Order #106 to “inquire into the matters set forth in this Order”, and requested to deputize the attorney members of the Commission to Investigate Public Corruption and delegate to them “the authority to exercise the investigative powers that are provided for in an investigation pursuant to such Subdivision Eight of Section Sixty-Three.” (¶IV).

(b) Defendant SCHNEIDERMAN described the Commission’s mandate at the July 2, 2013 press conference: “This Commission will be uniquely empowered to take a top to bottom review of all aspects of our state government, to refer findings of specific cases of misconduct, and to recommend reforms”.

(c) Defendant SCHNEIDERMAN may be presumed knowledgeable of plaintiffs’ efforts to secure the Commission’s investigation of what took place with respect to the budget for fiscal year 2013-2014 – and what was unfolding with respect to the budget for fiscal year 2014-2015 – not the least reason being because under Executive Law §63.8, each of the Commission members he deputized is required to:

“make a weekly report in detail to the attorney-general, in form to be approved by the governor and the attorney-general, which report shall be

in duplicate, one copy of which shall be forthwith, upon its receipt by the attorney-general, transmitted by him to the governor.” (underlining added).

13. Defendant THOMAS DiNAPOLI [hereinafter “DiNAPOLI”] is Comptroller of the State of New York.

[AG #3: “Admit the allegations”]

FACTUAL ALLEGATIONS

14. Article VII of the New York State Constitution governs the State budget. Among its pertinent provisions: §1, whose second paragraph states:

“Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall be transmitted to the appropriate committees of the legislature.”

and §7, stating, in full:

“No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.”

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

15. Defendants SENATE and ASSEMBLY never furnished defendant CUOMO with “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house” for fiscal year 2014-2015.

[AG #5: “Deny the allegations”]

16. This is particularized by plaintiffs’ December 30, 2013 letter to defendant CUOMO, entitled:

“SAFEGUARDING THE PUBLIC PURSE FROM LEGISLATIVE FRAUD & LARCENY: Your Duty to Exclude the Legislature’s Proposed Budget from

the State Budget for Fiscal Year 2014-2015 Because its Absence of Certified Itemized Estimates Violates Article VII, §1 of the NYS Constitution; Alternatively, to Recommend that the Legislature Reject it, or Alter it Based on Certification of Itemized Estimates” (Exhibit D, underlining in original).

[AG #8: “deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

17. The facts therein set forth established that defendants SKELOS and SILVER furnished defendant CUOMO with a one-sentence November 27, 2013 coverletter stating: “Attached is a copy of the Legislature’s Budget for the 2014-2015 fiscal year pursuant to Article VII, Section 1 of the New York State Constitution.”

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

18. Such did not claim to be transmitting “itemized estimates of the financial needs of the legislature” – or that same had been “certified by the presiding officer of each house”. The transmitted legislative budget consisted of an untitled five-page budget narrative, with a sixth page chart entitled “All Funds Requirements for the Legislature”, and a ten-page “Schedule of Appropriations”. There was no certification among these 16 pages, nor even a reference to “itemized estimates” of the Legislature’s “financial needs” or to Article VII, §1 (Exhibit D, p. 2).

[AG #5: “Deny the allegations”]

19. Because defendants SKELOS and SILVER did not transmit to defendant CUOMO “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house”, as Article VII, §1 of the State Constitution expressly requires, plaintiffs asserted that defendant CUOMO could not constitutionally include the proffered legislative budget with his state budget “without revision” and suggested an alternative course consistent with the constitutional design. They also argued that if, nonetheless, he believed himself constitutionally mandated to include it, his duty was to recommend its rejection for lack of the required certification, or, alternatively, its approval following the Legislature’s emendation or supplementation of his budget bill based on “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house” (Exhibit D, p. 3).

[AG #5: “Deny the allegations”]

20. The letter suggested (at p. 4) that Budget Director Megna should assist defendant CUOMO with other recommendations with respect to the Legislature’s proposed budget and requested that he direct Budget Director Megna to review it and furnish a report.

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

21. In addition to pointing out that the Legislature’s proposed budget was missing “General State Charges” – these being “the ‘fringe benefits’ that are pension contributions, social security, health, dental, vision and life insurance, etc. for legislators and legislative branch employees” (at p. 2) – plaintiffs’ letter asserted (at p. 4) that “the most minimal examination of its 16 pages reveals that is fashioned to mislead, conceal, and thwart intelligent review of its largest appropriations: these being for member offices and committees, combined in a lump sum, and separate lump sum appropriations for “senate operations” and Assembly “administrative and program support operations”.

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

22. Plaintiffs stated:

“...with these figures being identical to the figures for fiscal year 2011-2012, fiscal year 2012-2013, and fiscal year 2013-2014 – as likewise the balance of the budget – such are palpably not the product of any cognizable ‘process’ of ascertaining the Legislature’s actual ‘financial needs’.

We submit that the Legislature’s budget figures are a contrivance of the leadership designed to perpetuate its power through unitemized, grossly inadequate appropriations for the staffing of legislators’ offices and the legislative committees, combined with unitemized funding for a more directly-controlled central staff.^{[fn3]”}

...

Upon information and belief, all the 72 legislative committees, excepting the Assembly Ways and Means Committee and Senate Finance Committee, operate with funding so nominal that they lack the staff necessary to discharge their constitutional duties of lawmaking and oversight. It is to conceal this that the ‘Schedule of Appropriations’ for the Senate and Assembly has no line-item for committee appropriations. Rather – and reflecting the reality that the committees essentially operate from the offices of their chairs, with limited additional funding for committee staff positions – the line-items for Senate and Assembly committees are each combined with members’ offices, with the result that it is impossible to ascertain the individual or collective appropriations for committees – or members’ offices. Upon information and belief, appropriations for members’ offices are also inadequate for legislators to discharge their duties....” (Exhibit D, pp. 4-6, underlining in the original).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

23. Plaintiffs summed up the triviality of the Legislature’s proposed budget by noting (at p. 6) that more than half of its 10-page “Schedule of Appropriations” was devoted to less than 10% of the proposed budget, with most of the 90% balance lacking itemization sufficient for meaningful and intelligent review – this 90% being, primarily, the appropriations for each house of member

offices and committees combined in a single lump sum, and the separate lump sum appropriations for “senate operations” and Assembly “administrative and program support operations”. The result:

“a ‘slush fund’ from which Temporary Senate President Skelos and Assembly Speaker Silver fortify their power: rewarding the faithful and punishing the dissident. In the words of former Senator Franz Leichter, testifying on February 26, 2009 before the Temporary Senate Committee on Rules and Administration Reform about the power of the presiding officers of each house:

‘They also control the Legislative Budget, which is not itemized as are the Executive and Judicial Budgets, and its opaqueness allows the shifting of monies at the leaders’ whim.’^[fn6]” (Exhibit D, pp. 6-7).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

24. The letter identified that it was being sent to defendants SKELOS and SILVER so that defendant CUOMO could have their response; that it was additionally being sent to “appropriate committees of the legislature” having jurisdiction with respect to the Legislature’s budget so that they could “identify the process, if any, by which the Legislature determines its ‘itemized estimates’ of its ‘financial needs’ – and the role therein of rank-and-file legislators and the legislative committees”; and that it was also being sent to the Commission to Investigate Public Corruption.

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

25. Defendants SKELOS and SILVER never responded. Nor was there any response from defendant CUOMO. Likewise, there was no response from Budget Director Megna or from the Chairs and Ranking Members of the many “appropriate committees of the legislature”, all indicated recipients.

[AG #11: “Deny knowledge or information sufficient to form a basis of belief to admit or deny...,except to deny that there was no response from Budget Director Megna.”]

26. Plaintiffs’ December 30, 2013 letter (Exhibit D) and its single enclosure – their August 21, 2013 letter to defendant CUOMO (Exhibit B) – are true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

27. The non-response of these defendants replicated their non-response to plaintiffs’ letter of three weeks earlier concerning the Judiciary’s proposed budget for fiscal year 2014-2015 (Exhibit C). That letter was addressed to all the public officers to whom Chief Administrative Judge Prudenti had addressed her two November 29, 2013 memoranda transmitting the Judiciary’s two-part budget: defendants CUOMO, SKELOS, and SILVER, other Legislative Leaders, and the Chairs and Ranking

Members of the Senate Finance Committee and Assembly Ways and Means Committee and the Chairs of the Senate and Assembly Judiciary Committees.

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

28. The letter, dated December 11, 2013, was entitled:

“SAFEGUARDING THE PUBLIC PURSE FROM JUDICIAL FRAUD & LARCENY: Your Constitutional & Statutory Duty to Reject the Entirety of the Judiciary’s Proposed Budget for Fiscal Year 2014-2015, Over & Beyond its Concealed, Unitemized Third Phase of the Judicial Salary Increase that Will Otherwise Take Effect, Automatically, on April 1, 2014” (Exhibit C-1).

It stated the following:

(a) that whereas the Judiciary’s proposed budget for fiscal year 2013-2014 had identified its inclusion of funding for the second phase of the judicial salary increase, though not its dollar amount, the Judiciary’s budget for fiscal year 2014-2015 concealed both its inclusion of funding for a third phase of judicial salary increase and its dollar amount (at pp. 1-2);

(b) that all plaintiffs’ objections to the Judiciary’s proposed budget for fiscal year 2013-2014 “apply with even greater force” to its proposed budget for fiscal year 2014-2015 (at p. 5);

(c) that plaintiffs’ March 11, 2013 letter pertaining to the second phase of the judicial salary increase and the Judiciary’s budget for fiscal year 2013-2014 “furnishes facts and law sufficient for mandating...rejection of the unitemized and concealed third phase of the judicial salary increase and the entirety of the Judiciary’s proposed budget [for fiscal year 2014-2015]” (at p. 5, underlining in original).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

29. The letter asserted (at p. 8) that if defendants CUOMO, SKELOS, SILVER and the other Legislative Leaders and Chairs and Ranking Members of the “appropriate committees of the legislature” to whom it was addressed disagreed that they were duty-bound to reject the whole of the Judiciary’s proposed budget for lack of sufficient and intelligible itemization and violation of Article VII, §7:

“creating a slush fund for the Judiciary to steal monies from the public purse for the third phase of the judicial salary increase which, like the first two phases, are fraudulent, statutorily-violative, and unconstitutional, as demonstrated, resoundingly, by CJA’s October 27, 2011 Opposition Report” (underlining in the original),

they should furnish the facts and law constituting the basis for their disagreement.

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

30. The letter also requested that meetings be scheduled with plaintiff SASSOWER so that the content of the letter could be “discussed directly” and stated that she would meanwhile schedule:

“...meetings with rank-and-file Senators and Assembly members, beginning with CJA’s own, Senator George Latimer and Assemblyman David Buchwald – and the chairs and ranking members of the Senate Committee on Investigations and Government Operations and the Assembly Committee on Oversight, Analysis and Investigation – so as to be able to report to you as to whether they are able to meaningfully comprehend and scrutinize the Judiciary’s purported ‘itemized estimates’, budget bill, and the concealed, but included, third phase of the judicial salary increase.” (Exhibit C-1, p. 8, underlining added).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

31. The letter closed by noting that it would be furnished to the Commission to Investigate Public Corruption with a request that it investigate and render to a report to defendants CUOMO and SENATE and ASSEMBLY, and, additionally, that the letter would be furnished to Chief Administrative Judge Prudenti and Chief Judge Lippman so that they could be prepared to be interrogated about it.

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

32. Plaintiffs’ December 11, 2013 letter is true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

33. On January 7, 2014, by a letter entitled:

“FOLLOWING THE MONEY’:
The Proposed Judiciary & Legislative Budgets for Fiscal Year 2014-2015”
(Exhibit E-1),

plaintiffs furnished defendants CUOMO, SKELOS, SILVER, and other legislators with their letter to the Commission to Investigate Public Corruption, whose description of their December 11 and December 30, 2013 letters was that each presented “an open-and-shut, prima facie case of public

corruption, verifiable in a matter of minutes, involving huge sums of taxpayer monies.” (Exhibit E-2, p. 3, underlining in the original).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

34. Plaintiffs’ January 7, 2014 letters (Exhibits E-1, E-2) are true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

35. On January 10, 2014, the Senate Finance Committee and Assembly Ways and Means Committee Chairs announced the Legislature’s joint budget hearings, stating that the hearings were “intended to provide the appropriate legislative committees with public input on the executive budget proposal” and citing Legislative Law §32-a.

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

36. Legislative Law §32-a reads:

“Budget; public hearings. After submission and prior to enactment of the executive budget, the senate finance committee and the assembly ways and means committee jointly or separately shall conduct public hearings on the budget. Such hearings may be conducted regionally to provide individuals and organizations throughout the state with an opportunity to comment on the budget. The committees shall make every effort to hear all those who wish to present statements at such public hearings. The chairs of the committees jointly or separately shall publish a schedule of hearings.”

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

37. By a January 14, 2014 letter entitled:

“Vindicating the Public’s Rights under Article VII, §1 of the NYS Constitution & Legislative Law §32-a:

(1) request to testify at the Legislature’s joint budget hearings in opposition to the proposed Judiciary & Legislative budgets;

(2) request for information/records as to the process, if any, by which the Legislature’s proposed budget was compiled” (Exhibit F-1),

Plaintiff SASSOWER wrote the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee, as well as the Chairs and Ranking Members of other

“appropriate committees of the legislature” – with copies to defendants CUOMO, SKELOS, and SILVER (Exhibit F-2) – reiterating her telephone requests to testify, made the previous day.

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

38. The letter also reiterated plaintiffs’ prior request for information about the process by which the Legislature’s budget had been compiled, combining it with an explication of Article VII, §1, as follows:

“...I request that ‘the appropriate committees of the legislature’ having primary jurisdiction over the Legislature’s proposed budget – the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations – identify the process by which the Legislature’s proposed budget for fiscal year 2014-2015 was compiled. If the Senate Finance Committee or Assembly Ways and Means Committee – having more general jurisdiction – can answer that question, or if the question can be answered by the supervisory Assembly Committee on Oversight, Analysis, and Investigation, I request that they do so. Indeed, it should be obvious that the reason Article VII, §1 requires that the Judiciary’s ‘certified’ ‘itemized estimates’ of its ‘financial needs’ be transmitted to ‘the appropriate committees of the legislature’, in addition to the Governor, but does not require that the Legislature’s ‘certified’ ‘itemized estimates’ of its ‘financial needs’ be transmitted to ‘the appropriate committees of the legislature’, is because ‘the appropriate committees of the legislature are presumed to have formulated the ‘itemized estimates’ that the ‘presiding officer of each house’ have ‘certified’. (Exhibit F-1, pp. 2-3, underlining in original).

The letter further stated:

“in the absence of your answers as to the process underlying the Legislature’s proposed budget for fiscal year 2014-2015, Temporary Senate President Skelos and Assembly Speaker Silver must be called upon to furnish it, publicly, at the Legislature’s joint budget hearings. In any event, they or their designated representatives should be expected to testify and answer questions about the Legislature’s proposed budget, just as the Chief Administrative Judge will be testifying and answering questions about the Judiciary’s proposed budget.” (Exhibit E-2).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

39. There was no response to the letter.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

40. Plaintiffs' January 14, 2014 letter` (Exhibit F-1) is true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

41. A week later, on January 21, 2014, defendant CUOMO announced his Executive budget, combining the Legislature's proposed budget and the Judiciary's proposed budget on the same budget bill, #S.6351/A.8551. He made no recommendation to the Legislature with respect to the legislative portion of the bill. His only recommendation pertained to the Judiciary portion, which he urged be reduced so that what he purported as its 2.7% increase over last year would be kept below the 2% “fiscally responsible goal for all of New York State government.”

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

42. Undisclosed by defendant CUOMO was that his Budget Bill #S.6351/A.8551 included millions of dollars in reappropriations for the Legislature not part of its proposed budget. These were inserted at the back of his Budget Bill #S.6351/A.8551 in an out-of-sequence section spanning 19 pages, behind a section of Judiciary reappropriations which, though contained in the Judiciary's proposed “single budget bill”, were not included in its two-part budget presentation and seemingly not encompassed by the Chief Judge's certification and the Court of Appeals' approval.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

43. By a January 29, 2014 letter to the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee, entitled:

“Your Mandatory Duty under Legislative Law §32-a to Hear Testimony in Opposition to the Legislature's Proposed Budget & Governor Cuomo's Budget Bill #S.6351/A.8551 at Public Budget Hearings” (Exhibit G),

plaintiff SASSOWER protested that there had been no response to her requests to testify in opposition to the Legislature's proposed budget and gave notice that defendant CUOMO's Budget Bill #S.6351/A.8551 was “even more unconstitutional and fraudulent than the Legislature's proposed budget”, stating:

“it adds on millions of dollars in reappropriations for the Legislature that are not part of the Legislature's proposed budget – a fact it tries to conceal by placing the reappropriations at the back of the bill, out of sequence (at pp. 27-46)^[fn2] .

Perhaps you have insight into these millions of dollars of reappropriations. Do you know their cumulative total? Why were they not part of the Legislature's proposed budget, transmitted to the Governor by its November 27, 2013 coverletter? When and in what fashion were they separately transmitted to the Governor. Who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose? Are they?^[fn3]

By the way, since the Governor’s Budget Bill #S.6351/A.8551 contains no cumulative tally for its monetary allocations for the Legislature, what is that sum? – presumably the addition of appropriations and reappropriations.” (Exhibit G, p. 2, underlining in the original).

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

44. As to whether the monies designated for reappropriation were “suitable for that purpose”, the January 29, 2014 letter furnished the following definition of “reappropriation” from the “Citizen’s Guide” on the Division of the Budget’s website, suggestive that they were not:

“A reappropriation is a legislative enactment that continues all or part of the undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years.” (Exhibit G, p. 2).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

45. The Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee did not respond.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

46. Plaintiffs’ January 29, 2014 letter is true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

47. Meantime, on January 31, 2014, defendants SKELOS and SILVER announced their joint legislative budget schedule. The press release quoted defendant SKELOS:

“This schedule will result in passage of an early state budget for the fourth consecutive year. We will work through the process of reviewing the Governor’s proposal, holding public hearings, listening to our constituents, and conducting conference committee negotiations, and will adopt a fiscally responsible budget...” (underlining added).

It also quoted defendant SILVER:

“As the Legislature continues to publicly examine the governor’s proposed budget through the joint legislative budget hearings, we announce the remaining steps of the budget process that both houses will take in order to reach an on-time budget...[that] addresses the many divergent needs of the people in our state.” (underlining added).

The Assembly Ways and Means Committee Chair was also quoted:

“This schedule provides legislators and the public with an opportunity to participate in budget-making decisions that will lead to the adoption of a sound and prudent state financial plan before the April 1 deadline”. (underlining added).

Also, the Senate Finance Committee Chair:

“The legislative budget schedule sets the dates for each step of an open and transparent process, which will be followed by the legislature to deliver a responsible and early budget again this year”. (underlining added).

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

48. On February 3, 2014, plaintiff SASSOWER telephoned the office of the Senate Finance Committee Chair, requesting to testify “in Opposition to ANY Funding for the Commission to Investigate Public Corruption – including the proposed \$270,000 appropriation”, embedded in the Executive budget. Her memorializing e-mail, bearing that title, was sent to the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee (Exhibit H).

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

49. Again, no response.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

50. Plaintiffs’ February 3, 2014 e-mail is true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

51. On February 21, 2014, plaintiff SASSOWER sent the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee a letter entitled:

“Restoring Value to Your Sham and Rigged February 5, 2014 ‘Public Protection’ Budget Hearing on the Judiciary’s Proposed Budget by Appropriate Questioning of Chief Administrative Judge Prudenti” (Exhibit K-1).

It protested their “wilful misfeasance and nonfeasance”, stating:

“To date, in a brazen display of your conflicts of interest, both institutional and individual, you have scheduled no budget hearing on the Legislature’s own budget. As for your budget hearing on the Judiciary’s budget – at the February

5, 2014 budget hearing on ‘public protection’^[fn2] – it was demonstrably sham and rigged, likewise reflective of your conflicts of interest.

Apart from excluding opposition testimony, such as mine, nothing could have been more obscene than your permitting Chief Administrative Judge Prudenti to testify in support of the Judiciary’s budget without addressing our December 11, 2013 letter, whose dispositive nature is evident from the most cursory examination of the evidence it presents – and which expressly stated that it was being furnished to her so she could prepare for your ‘interrogation’ (at p. 8). Indeed, you did not even ask her to explain why she made no mention of the third phase of the judicial salary increase and its reported \$8.4 million cost in her oral and written hearing presentations – and why the Judiciary’s budget documents also conceal them.

As you know, because I furnished you with the substantiating proof at last year’s February 6, 2013 ‘public protection’ budget hearing, the third phase of the judicial salary increase must be stricken because the Commission on Judicial Compensation’s August 29, 2011 Report, on which it is based, violated the safeguarding conditions of Chapter 567 of the Laws of 2010 for a salary increase. Striking this third phase would suffice to bring the Judiciary’s budget within the Governor’s 2% cap – if, in fact, the Judiciary’s budget is only .5 beyond the cap, as Chief Administrative Judge Prudenti claimed, putting that .5 excess at about \$9 million of a \$44 million increase. You accepted these numbers from her, without question, notwithstanding the Governor’s Commentary to the Judiciary’s budget identified growth at 2.7% and the dollar increase as \$53 million...

As at last year’s ‘public protection’ hearing, you engaged in the most minimal and superficial ‘number-crunching’ with respect to the Judiciary’s budget. Once again you allowed Chief Administrative Judge Prudenti to testify without identifying the total cost of the Judiciary’s budget, even as your own ‘White’, ‘Blue’, ‘Yellow’, and ‘White’ Books wildly diverged as to the relevant figures...” (Exhibit K-1, pp. 2-3, underlining in the original).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

52. Based upon an analysis of these divergences and those in defendant CUOMO’s Commentary and his Division of the Budget website, as well as various deceptions of Chief Administrative Judge Prudenti at the hearing, the letter enclosed “a list of pertinent questions to which this state’s taxpayers are entitled to answers from Chief Administrative Judge Prudenti” (Exhibit K-2) and requested that they be forwarded to the Chief Administrative Judge for response. To assist the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee in evaluating the questions, the letter also enclosed an analysis of the Judiciary’s two-part budget presentation, its “single-budget bill”, and defendant CUOMO’s Budget Bill #S.6351/A.8551 – none containing a cumulative figure for the Judiciary’s proposed budget – and

of defendant CUOMO's Commentary and the pertinent webpage of his Division of the Budget, differing as to the relevant cumulative figures and percentages (Exhibit K-3).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

53. Plaintiff SASSOWER's letter also stated that without the fiscal notes and introducer's memoranda required by Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f), Budget Bill #S.6351/A.8551 could not be voted out of committee – and enclosed plaintiffs' February 11, 2014 letter to the Chair and Ranking Member of the Senate Finance Committee (Exhibit J-1) and February 11, 2014 letter to the Chair and Ranking Member of the Assembly Ways and Means Committee (Exhibit J-8). These had requested the fiscal notes and introducer's memoranda, without response from them.

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

54. Senate Rule VIII, §7 entitled “Finance Committee” reads:
“...The sponsor of a bill providing for an increase or decrease in state revenues or in the appropriation or expenditure of state moneys, without stating the amount thereof, must, before such bill is reported from the Finance Committee or other committee to which referred, file with the Finance Committee and such other committee a fiscal note which shall state, so far as possible, the amount in dollars whereby such state moneys, revenues or appropriations would be affected by such bill, together with a similar estimate, if the same is possible, for future fiscal years. Such an estimate must be secured by the sponsor from the Division of the Budget or the department or agency of state government charged with the fiscal duties, functions or powers provided in such bill and the name of such department or agency must be stated in such note.

The Finance Committee shall keep and maintain a file containing all bills requiring fiscal notes and the notes appertaining thereto, which shall be available to Senators and officers of the Senate, accredited representatives of the press, and other responsible persons having a legitimate interest therein.”

Senate Rule VII, §1 entitled “Introduction” reads:

“Bills and resolutions shall be introduced by a Senator, or on the report of a committee, or by message from the Assembly, or by order of the Senate, or by the Governor pursuant to Article VII of the Constitution. Every bill introduced...shall be accompanied by the introducer's memorandum in quadruplicate. Such memorandum shall contain a statement of the purposes and intent of the bill and, if the member deems it appropriate, may set forth such other statements that the member feels necessary including, but not limited to, statements relating to economic impact, environmental impact or

the impact on the judicial system of the bill. A Committee, where it deems necessary, may require that the introducer's memorandum be amended to include such appropriate statements."

[AG #7: "refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit."]

55. Plaintiffs' February 11, 2014 letter to the Senate Finance Committee Chair and Ranking Member (Exhibit J-1) noted that these provisions apply to Budget Bill #S.6351/A.8551 pursuant to Senate Rule VII, §6 entitled "Budget bills", stating:

"When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill..."

[AG #8: "Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein."]

56. The letter noted that Budget Bill #S.6531/A.8551 did not state the "increase" of its "appropriation or expenditure of state monies" and, therefore, the Senate Finance Committee could not report the bill until the Governor, as its sponsor, filed a "fiscal note" with it. The letter requested that fiscal note, specifying that

"If properly drawn, such fiscal note would not only specify 'the amount in dollars' of the third phase of the judicial salary increase recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation, pursuant to Chapter 567 of the Laws of 2010, but 'the amount in dollars' of the increases in statutorily-tied salaries of district attorneys and county clerks and of all 'General State Charges' – together with 'estimate[s]' for 'future fiscal years'. This third-phase judicial salary increase is hidden somewhere in the Judiciary portion of the Governor's Budget Bill #S.6351/A.8551 (pp. 10-26), with no identification of its 'amount in dollars' for fiscal year 2014-2015." (Exhibit J-1, p. 2)

[AG #8: "Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein."]

57. The letter additionally sought the fiscal notes that the Governor was required to have filed with the Senate Finance Committee before it "report[ed]" his prior two Budget Bills for the Legislative and Judiciary Budgets [#S.2601/A.3001 (2013); #S.6251/A.9051 (2012)] – and specifically with respect to the second and first phases of the judicial salary increases.

[AG #8: "Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein."]

58. Likewise, the letter requested the Governor’s “introducer’s memorandum” for each of his three Article VII budget bills for the Judiciary and Legislature, including any amendments thereto.

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

59. Assembly Rule III, §1(f) entitled “Introducer’s memorandum” states:

“There shall be appended to every bill introduced in the Assembly, an introducer’s memorandum setting forth...its fiscal impact on the state...”

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

60. Plaintiffs’ February 11, 2014 letter to the Chair and Ranking Member of the Assembly Ways and Means Committee (Exhibit J-8) noted that this provision applied to Budget Bill #A.8551, because Assembly Rule III, §2(f) entitled “Introduction”, states:

“When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill, and upon receipt thereof by the Assembly it shall be endorsed ‘Budget Bill’”.

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

61. The letter therefore requested the Governor’s “introducer’s memorandum” appended to or accompanying his Budget Bill #A.8551/S.6351, setting forth “its fiscal impact on the state”, specifying that:

“If properly drawn, such would have furnished the cumulative dollar amounts of the bill’s two separate budgets for the Judiciary and Legislature. It would also have furnished: (1) the dollar amount of the third phase of the judicial salary increase recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation, pursuant to Chapter 567 of the Laws of 2010; (2) the dollar amounts of the increases in statutorily-tied salaries of district attorneys and county clerks; (3) the dollar amounts of all ‘General State Charges’ resulting therefrom; and (4) estimates of the dollar amounts for future fiscal years. This third-phase judicial salary increase is hidden somewhere in the Judiciary portion of the Governor’s Budget Bill #A.8551/S.6351 (pp. 10-26), with no identification of its dollar cost for fiscal year 2014-2015.” (Exhibit J-8, pp. 1-2).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

62. The letter additionally sought the introducer’s memoranda that the Governor was required to have appended to or accompanying his prior two budget bills for the Legislative and Judiciary budgets [#A.3001/S.2601 (2013); #A.9051/S.6251 (2012)] – and specifically with respect to the second and first phases of the judicial salary increases.

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

63. Plaintiffs’ February 21, 2014 letter (Exhibit K-1) – and its five enclosures (Exhibits K-2, K-3, J-1, J-8)² – are true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

64. The Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee did not respond to plaintiffs’ February 21, 2014 letter. Nor did the committees’ rank-and-file members respond to the February 21, 2014 letter, sent to them as an e-mail with the subject line:

“HEADS-UP! – What’s Been Happening with the Judiciary & Legislative Budgets – & Appropriations for the Commission to Investigate Public Corruption?” (Exhibit K-4).

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

65. Likewise, the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee did not respond to plaintiffs’ February 28, 2014 e-mail entitled,

“Request that CJA’s February 21, 2014 letter, with enclosures, be posted as ‘Miscellaneous Testimony’ on the Senate Finance Committee website” (Exhibit L),

identifying that the Senate Finance Committee had posted, on its website, as “Miscellaneous Testimonies”:

“[the] written statements of the New York County Lawyers’ Association and New York State Bar Association in support of the Judiciary’s budget in support of the Judiciary’s budget – the latter also identifying (at pp. 5-6) and supporting the third phase of the judicial salary increases whose cost it identifies as ‘\$8.5 million’.”

² Plaintiffs’ first listed enclosure, their April 2, 2013 letter to Finance/Ways & Means Committee leadership, is annexed to plaintiffs’ Notice to Produce pursuant to CPLR §2214(c), accompanying this Verified Complaint.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

66. Plaintiffs’ February 28, 2014 e-mail (Exhibit L) is true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

67. On March 4, 2014, plaintiffs sent a letter to the Chairs and Ranking Members of the other “appropriate committees of the legislature”, entitled:

“Your Constitutional Duty:

(1) to address the evidence of fraud and unconstitutionality in the proposed Judiciary and Legislative budgets – and in the materially-divergent Governor’s Budget Bill #S.6351/A.8551, which, in violation of Senate and Assembly Rules, is unsupported by a fiscal note and introducer’s memorandum;

(2) to address the \$270,000 and other appropriations, embedded in the Executive budget, for a demonstrably corrupt Commission to Investigate Public Corruption” (Exhibit M-1).

The letter stated:

“To the extent you were deferring to the Senate Finance Committee and Assembly Ways and Means Committee to oversee and scrutinize the Judiciary and Legislative budgets – and the Governor’s Budget Bill #S.6351/A.8551, purportedly based thereon, that was a mistake. Their Chairs and Ranking Members have engaged in the most wilful misfeasance and nonfeasance, holding no hearing whatever on the Legislature’s proposed budget and holding a sham and rigged hearing on the Judiciary’s proposed budget as part of their February 5, 2014 budget hearing on ‘public protection’. This is particularized by our February 21, 2014 letter to them – a copy of which is enclosed, together with its most important enclosure – our ‘Questions for Chief Administrative Judge Prudenti’. (Exhibit M-1, pp. 1-2, underlining in the original).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

68. The letter requested that they forward the “Questions for Chief Administrative Judge Prudenti” for her response (Exhibit K-2). Additionally, it furnished “Questions for Temporary Senate President Skelos and Assembly Speaker Silver”, to be forwarded to them for response (Exhibit M-2). Both sets of questions were enclosures to the letter.

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

69. Noting (at p. 3) that there had still been no response to plaintiffs' repeated question as to "the process, if any, by which the Legislature determines its 'itemized estimates' of its 'financial needs' and the role therein or rank-and-file legislators and the legislative committees", the letter recounted (at p. 4) that upon plaintiffs' filing a FOIL/records request with the Secretary of the Senate and Assembly Public Information Office, the answer that came back from the Secretary of the Senate was "the records you request, if the records even exist, are not subject to disclosure pursuant to Senate Rules", with the Assembly's Records Access Officer replying: "the Assembly maintains no records describing the process by which the Legislative Budget for fiscal year 2014-15 was compiled".

[AG #7: "refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit."]

70. The letter further recounted (at p. 4) that upon requesting records pertaining to the mysterious legislative reappropriations at the back of defendant CUOMO's Budget Bill #S.6351/A.8551, the Secretary of the Senate similarly stated "if the records even exist, [they] are not subject to disclosure pursuant to Senate Rules" and that the Assembly Records Access Officer also similarly stated "The Assembly maintains no record responsive to this request." No response whatever from the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee.

[AG #8: "Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein."]

71. The letter stated (at p. 4) that they could see for themselves "the astonishing results" of plaintiffs' FOIL and records requests pertaining to the Legislature's proposed budget, the Judiciary's proposed budget, and defendant CUOMO's Budget Bill #S.6351/A.8551, as they are posted on their own webpage of our website, www.judgewatch.org and that the link for it was posted on the webpage for this letter.

[AG #8: "Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein."]

72. Finally, the letter pointed out (at pp. 4-5) that the Legislature had held no budget hearing on funding for the Commission to Investigate Public Corruption, embedded in the Executive budget, but that it should recognize the inconsistency of authorizing funding for the Commission, while suing it in a declaratory action challenging it for operating without requisite legislative authorization of funding.

[AG #8: "Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein."]

73. Plaintiffs' March 4, 2014 letter – and its enclosures – are true and correct in all material respects.

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

74. None of the Chairs and Ranking Members of the “appropriate committees of the legislature” to whom the March 4, 2014 letter was addressed responded. Nor was there any response from the indicated recipients, including defendants SKELOS and SILVER (Exhibit M-3).

[AG #4: “Deny knowledge or information sufficient to form a basis of belief to admit or deny”]

75. Upon information and belief, less than two weeks later, all of these Chairs and Ranking Members, as likewise defendants SKELOS and SILVER, went on to publicly celebrate “Sunshine Week”. The Senators postured about making “legislative proceedings more open and transparent by expanding public access to session, committee meetings, and votes” (March 18, 2014 press release of Senate Majority). The Assembly Members, about a “legislative package to strengthen the State’s Freedom of Information Law (FOIL), proclaimed by a March 19, 2014 press release “Assembly Passes Sunshine Week Legislation to Increase Public Access and Promote Greater Government Accountability”, quoting defendant SILVER as saying:

“A government that is truly ‘of the people’ must, by definition, be open and transparent... These laws give the public a necessary window into the operation of our state and foster confidence in our government.”

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

AS AND FOR A FIRST CAUSE OF ACTION

The Legislature’s Proposed Budget for Fiscal Year 2014-2015, Embodied in Budget Bill #S.6351/A.8551, is Unconstitutional & Unlawful

76. Plaintiffs repeat, reiterate, and reallege ¶¶1-75, with the same force and effect as if more fully set forth herein.

[AG #12: “As to the allegations contained in paragraphs 76 through 112 of the complaint, no response is required in light of the court’s October 9, 2014 Decision and Order. To the extent that a response is deemed required, the allegations are denied.”]

77. Plaintiffs’ December 30, 2013 letter (Exhibit D) was, and is, dispositive of the unconstitutionality and fraudulence of the Legislature’s proposed budget for fiscal year 2014-2015 and all the facts, law, and legal argument are specifically repeated, reiterated, and realleged. Such is additionally reinforced and substantiated by plaintiffs’ “Questions for Temporary Senate President Skelos & Assembly Speaker Silver” (Exhibit M-2), furnished to defendants SKELOS and SILVER, as well as the leaders of defendant SENATE and ASSEMBLY (Exhibit M-3) as an enclosure to plaintiffs’ March 4, 2014 letter (Exhibit M-1).

78. The Legislature’s proposed budget that defendants SKELOS and SILVER transmitted to defendant CUOMO is unconstitutional, *on its face* – which is why defendants SENATE and ASSEMBLY are not posting it on their websites and have not responded to plaintiffs’ inquiries on the subject (Exhibit N).

79. As chronicled by plaintiffs’ December 30, 2013 letter, the transmittal that defendants SKELOS and SILVER made to defendant CUOMO does not purport to be “itemized estimates of the financial needs of the legislature”, as Article VII, §1 expressly requires. Nor does it purport to be “certified by the presiding officer of each house”, as Article VII, §1 expressly requires.

80. This absence of certification for the Legislature’s proposed budget is not in doubt. It is established by the responses plaintiffs received and did not receive to their records/FOIL requests for the certification from defendants SENATE and ASSEMBLY (Exhibit N) and from defendant CUOMO and his Division of the Budget (Exhibit O)³. No certification exists.

81. Such suffices to render the Legislature’s proposed budget unconstitutional, *on its face* – and to have required defendant CUOMO to have excluded it from his state budget because it violated Article VII, §1, or, if including it, to have so-identified that fact to the Legislature with a recommendation that it be rejected by the Legislature by reason thereof or approved only upon modification based on “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house.”

82. As highlighted by plaintiffs’ December 30, 2013 letter to defendant CUOMO:

“It is to prevent fraud and larceny of taxpayer monies that Article VII, §1 requires that the Legislature’s ‘itemized estimates’ of ‘financial needs’ be ‘certified by the presiding officer of each house’ – just as it requires the Judiciary’s ‘itemized estimates’ of its ‘financial needs’ be ‘approved by the court of appeals and certified by the chief judge of the court of appeals’^[fn2]. This certification requirement takes on added significance as Article VII, §1 does not lay out any procedure by which the Legislature and Judiciary are to ascertain their ‘itemized estimates’, which it does for the Executive branch. That Temporary Senate President Skelos and Assembly Speaker Silver have not certified their November 27, 2013 transmittal to you, in face of the unequivocal certification language of Article VII, §1, bespeaks their knowledge that they have not transmitted the required ‘itemized estimates’ of the Legislature’s ‘financial needs’ to which they can attest. (Exhibit D, p, 2, underlining in the original)

83. Thus, the State Constitution, in exchange for the independence it gives the Legislature to determine its own “financial needs”, asks for nothing more than that the “itemized estimates” be “certified by the presiding officer of each house” – a most nominal requirement.

³ The attachment furnished by the Division of the Budget’s January 9, 2014 letter was the same as had been furnished by the Assembly’s Public Information Office on December 6, 2013 – which contained no certification, as set forth by plaintiffs’ December 16, 2013 letter to the Assembly Public Information Office, without dispute from it (Exhibits N).

84. That defendants SKELOS and SILVER should violate so nominal a constitutional requirement – and wilfully and deliberately fail to post the purported Legislative budget on defendant SENATE and ASSEMBLY websites – reflects their knowledge that what they were transmitting to defendant CUOMO as the Legislature’s budget for fiscal year 2014-2015 was NOT the constitutionally-mandated “itemized estimates of the financial needs of the legislature”.

85. As pointed out by the December 30, 2013 letter (Exhibit D, pp. 2-3), the proffered budget, *on its face*, was not “itemized estimates of the financial needs of the legislature” as it contains no “General State Charges”, these being “pension contributions, social security, health, dental, vision and life insurance, etc. for legislators and legislative branch employees”. This is also not in doubt – nor that defendants ASSEMBLY, SENATE, and defendant CUOMO have stated that they have no records of the Legislature’s “General State Charges”, nor certification thereof, with the Division of the Budget making no production of same (Exhibits N, O, R).

86. Nor could the budget that defendants SKELOS and SILVER submitted to defendant CUOMO be actual “financial needs” as they were identical to those of the Legislature’s past three budgets. Indeed, demonstrated by questions 14 and 15 of the “Questions for Temporary Senate President Skelos and Assembly Speaker Silver” (Exhibit M-2) is that such identical tallies are the product of manipulation.

87. That defendants SKELOS, SILVER, SENATE, and ASSEMBLY have failed and refused to disgorge information as to the process by which the Legislature’s budget for 2014-2015 was compiled reinforces that there was no cognizable process (Exhibits D (at p. 7); F-1 (at pp. 2-3); M-1 (at pp. 3-4); M-2 (at question #10-12); Q).

88. Article VII, §1 does not vest defendants SKELOS and SILVER with power to themselves determine the “itemized estimates of the financial needs of the legislature”, but only to certify same. Implicitly, that power is vested in “the appropriate committees of the legislature”. As pointed out by plaintiffs’ January 14, 2014 letter:

“...it should be obvious that the reason Article VII, §1 requires that the Judiciary’s ‘certified’ ‘itemized estimates’ of its ‘financial needs’ be transmitted to ‘the appropriate committees of the legislature’, in addition to the Governor, but does not require that the Legislature’s ‘certified’ ‘itemized estimates’ of its ‘financial needs’ be transmitted to ‘the appropriate committees of the legislature’, is because ‘the appropriate committees of the legislature are presumed to have formulated the ‘itemized estimates’ that the ‘presiding officer of each house’ have ‘certified’. (Exhibit F-1, pp. 2-3, underlining in original).

88. Indeed, no other provision of the Constitution and no statute or rules of the Senate or Assembly vest the Temporary Senate President and Assembly Speaker with the power that defendants SKELOS and SILVER have seemingly arrogated to themselves.

89. Nor would “appropriate committees of the legislature” craft such a budget as defendants SKELOS and SILVER transmitted to defendant CUOMO – one whose lump-sum,

“slush-fund” appropriations give defendants SKELOS and SILVER a free hand in financially rewarding members and legislative committees who follow their dictates and punishing those who do not.

90. In addition to being unconstitutional, *as written*, the Legislature’s budget for fiscal year 2014-2015 is unconstitutional *as applied* – and that application is demonstrated by their implementation of past legislative budgets, especially the recent identical budgets.

91. Upon information and belief, examination of how defendants SKELOS and SILVER have distributed the lump sum appropriations would establish that the budget is their most powerful tool by which they so dominate members and committees as to deprive them of their “financial needs” for discharging their constitutional duties, and for discharging them with independence.⁴

92. Plaintiffs’ direct, first-hand interaction with defendant SENATE and ASSEMBLY pertaining to the Judiciary and Legislative budget for fiscal year 2014-2015 – much of it evidenced by written correspondence, including the annexed (Exhibits C-V) – establishes that these defendants, by their “appropriate committees” and by their members, are not functioning in any manner that is consistent with their constitutional duties.

93. Nor is this nonfeasance, misfeasance, and nonfeasance unique to the Legislature’s response to the Judiciary and Legislative budget for fiscal year 2014-2015. Rather, it replicates their course of conduct with respect to the Judiciary budget for fiscal year 2013-2014, and with regard to EVERY issue that plaintiffs have brought before them for more than two decades.

94. In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center’s 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature’s own budget, throwing asunder the constitutional command: “itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house”.

95. This constitutional defiance has, apparently, been going on for some time now, abetted by our Governors – defendant CUOMO following in their practice of not even furnishing a recommendation on the Legislature’s budget that he sends back to it “without revision” (Exhibit P).

96. In 2009, the Temporary Senate Committee on Rules and Administration Reform whose charge was to make recommendations with respect to Senate rules, devoted significant discussion to the issue of adequate funding for committees, without apparent recognition that the solution was in Article VII, §1, *to wit*, confining the Temporary Senate President and Assembly

⁴ “Mr. Silver has proved himself a master of wielding the levers of power at the Capitol. He controls where members park, the size and location of their offices and how much money they can spend on their staffs. He also can increase, or decrease, their pay, by offering them myriad leadership posts.”, “*Bad Week is Merely Bump for Assembly’s Master of Power*”, New York Times, May 20, 2013, Danny Hakim, Thomas Kaplan

Speaker to certifying the “itemized estimates of the financial needs of the legislature”, compiled by “appropriate committees of the legislature”.

97. Suffice to note that the much maligned June 8, 2009 Senate coup was largely about Senate rules – and the new Senate rules, immediately enacted, included one entitled “Committee and Leadership staff” which began as follows:

“Pursuant to a resolution adopted by the house, committees and leadership will receive funding for necessary staff. The adopted resolution shall state the exact amount each committee or leadership position is to receive for staffing purposes.” (Exhibit V-2).

98. Such does not appear in current Senate rules (Exhibit V-3) – and plaintiffs’ records request to the Senate for records as to funding amounts for committee staff and member offices resulted in the response: “the records, if they even exist, are not subject to disclosure pursuant to Senate rules.” (Exhibit V-4). As for the videos and transcripts of the Senate floor proceedings during the period of the Senate coup, and transcripts of the period, the Senate has purported that it has “no documents responsive to [the] request” (Exhibit U-2).

AS AND FOR A SECOND CAUSE OF ACTION

The Judiciary’s Proposed Budget for 2014-2015, Embodied in Budget Bill #S.6351/A.8551, is Unconstitutional & Unlawful

99. Plaintiffs repeat, reiterate, and reallege ¶¶1-98, with the same force and effect as if more fully set forth herein.

100. Plaintiffs’ December 11, 2013 letter (Exhibit C-1) was, and is, dispositive of the fraudulence and unconstitutionality of the Judiciary’s proposed budget for fiscal year 2014-2015. All the facts, law, and legal argument presented therein and by its incorporated and enclosed March 11, 2013 letter pertaining to the Judiciary’s proposed budget for fiscal year 2014-2015 (Exhibit C-2), are specifically repeated, reiterated, and realleged.

101. Such dispositive presentation is reinforced and amplified by plaintiffs’ February 21, 2014 letter (Exhibit K-1), with its *prima facie* showing (at pp. 3-5) that defendants SENATE and ASSEMBLY, as well as defendant CUOMO and his Division of Budget, are unable to comprehend the Judiciary’s proposed budget for fiscal year 2014-2015 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary’s budget for fiscal year 2013-2014 – paralleling what plaintiffs’ March 11, 2013 letter had established with respect to the Judiciary’s proposed budget for fiscal year 2014-2015: their utter inability to discern its cumulative dollar amount and the total earmarked for the Judiciary by the Governor’s budget bill (Exhibit C-2, pp. 10-11).

102. Such stunning inability resoundingly rebuts the judicial fiction that the Legislature's passage of budget bills such as these presumes it found their itemization sufficient for intelligent, meaningful review.

103. Plaintiffs' most important enclosures to their February 21, 2014 letter pertaining to the Judiciary's proposed budget for fiscal year 2014-2015 are its "Questions for Chief Administrative Judge Prudenti" (Exhibit K-2) and accompanying "Analysis of the Judiciary's Two-Part Proposed Budget & 'Single Budget Bill'" (Exhibit K-3). Each reflects that the reason the Judiciary did not itself identify the cumulative dollar amount of its proposed budget – which it could readily have done – was to conceal the reappropriations. As detailed, the Judiciary's reappropriations do not appear in its two-part budget presentation, but only in its "single budget bill", and there is a reasonable question as to whether the "single budget bill" is encompassed within the certification of the Chief Judge and approval by the Court of Appeals.

104. If the Chief Judge's certification and the Court of Appeals' approval do not encompass the "single budget bill", the reappropriations were unconstitutionally included by defendant CUOMO "without revision" in his Budget Bill #S.6351/A.8551, pursuant to Article VII, §1.

105. Plaintiffs' "Questions for Chief Administrative Judge Prudenti" (Exhibit K-2) present further constitutional and statutory violations relating to the reappropriations in the Judiciary's "single budget bill", such as whether the funds earmarked for reappropriation were properly designated as such, rather than returned to the public treasury.

106. Noting that the "reappropriations in the 'single budget bill'...are pretty barren", plaintiffs' question #14 asked whether they were consistent not only with Article VII, §7 (quoted at ¶14, *supra*), but, additionally, Article III, §16:

"No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act."

and State Finance Law §25:

"Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation. If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show clearly any such change."

107. All of these are grounds for a declaration of unconstitutionality and unlawfulness with respect to the Judiciary's proposed budget.

108. With regard to the third phase of the judicial salary increase, plaintiffs “Questions” demonstrated that the only reason for the Judiciary’s failure to have identified that its budget included it and to have omitted a line-item for it in its “single budget bill”, was to conceal the duty of defendants SENATE, ASSEMBLY, and CUOMO to strike it for non-compliance with the statutory prerequisites of Chapter 567 of the Laws of 2010, as well as for fraud and unconstitutionality, all evidentiarily established by plaintiffs’ October 27, 2011 Opposition Report and the March 30, 2012 verified complaint in *CJA v. Cuomo I* based thereon.

AS AND FOR A THIRD CAUSE OF ACTION

**Budget Bill #S.6351/A.8551 is Unconstitutional & Unlawful
Over & Beyond the Legislative & Judiciary Budgets it Embodies “Without Revision”**

109. Plaintiffs repeat, reiterate, and reallege ¶¶1-108, with the same force and effect as if more fully set forth herein.

110. The uncertified Legislative budget for fiscal year 2014-2015, transmitted to defendant CUOMO by defendants SKELOS and SILVER contained no reappropriations. Yet, defendant CUOMO’s Budget Bill #S.6351/A.8551 includes 19 pages of reappropriations for the Legislature, totaling tens of millions of dollars, hidden in an out-of-sequence section at the back of the bill (at pp. 27-46).

111. As reflected by the responses to plaintiffs’ records/FOIL requests as to where these reappropriations came from, who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose; their cumulative total; and the cumulative total for the monetary allocations for the Legislature in Budget Bill #S.6351/A.8551 (Exhibits T), defendant CUOMO has no records, defendant ASSEMBLY has no records, defendant SENATE states that “if the records even exist” they are “not subject to disclosure pursuant to Senate rules”; and Defendant CUOMO’s Division of the Budget purports that its “review process” will take as long as May 30, 2014.

112. In the absence of satisfactory response to these basic questions, the legislative reappropriations in Budget Bill #S.6351/A.8551 are unconstitutional and unlawful and must be stricken so as to prevent wrongful expenditure of state and taxpayer monies.

AS AND FOR A FOURTH CAUSE OF ACTION

**Nothing Lawful or Constitutional Can Emerge From a Legislative Process that
Violates its Own Statutory & Rule Safeguards**

113. Plaintiffs repeat, reiterate, and reallege ¶¶1-112, with the same force and effect as if more fully set forth herein.

[AG #13: “As to the allegations contained in ¶113 of the complaint, repeat and restate all previous responses herein.”]

114. Even were defendant CUOMO's Budget Bill #S.6351/A.8551 and the proposed Legislative and Judiciary budgets not – as they are – fraudulent and fraught with constitutional violations and infirmities – the Legislature's wilful and deliberate violation of express statutory and rule provisions render them further unlawful and unconstitutional.

[AG #5: “Deny the allegations”]

115. In mandatory terms, Legislative Law §32-a states:

“The committees shall make every effort to hear all those who wish to present statements at such public hearings.”

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

116. As hereinabove demonstrated, the ONLY “effort” made by defendants SENATE and ASSEMBLY was in ignoring, without response, plaintiff SASSOWER's repeated phone calls and written requests to testify at public hearings in opposition – which they did with full knowledge that her testimony was not only serious and substantial, but dispositive.

[AG #5: “Deny the allegations”]

117. There is not the slightest excuse for what these defendants did in violating not only plaintiffs' right to be heard, but the public's right to hear the particularized facts and law that plaintiffs had, in abundance, with respect to the Judiciary and Legislative budgets – and with respect to the Commission to Investigate Public Corruption.

[AG #5: “Deny the allegations”]

118. Nor is there the slightest excuse for their wilful and deliberate violation of their own rules – as, for instance, Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) pertaining to fiscal notes and introducer's memoranda, whose purpose is to ensure that legislators – and the public – are alerted to relevant costs. Even beyond the concealed, unitemized third phase of the judicial salary increase, defendants SENATE and ASSEMBLY have demonstrated their utter unconcern in imposing upon taxpayers the expense of two budgets – the Judiciary and Legislative budgets – whose dollar amount they do not know or will not reveal. Such is utterly unconstitutional.

[AG #5: “Deny the allegations”]

119. Indeed, apart from the absence of the mandatory fiscal notes and introducer's memoranda, it would appear that such rules as Senate Rule VII, §4 “Title and body of bill” would, if complied with, have prevented Budget Bill #S.6351/A.8551 from funding the third phase of the judicial salary increase and superseding Judiciary Law Article 7-B, without identifying that fact.

[AG #5: “Deny the allegations”]

120. Defendants SENATE and ASSEMBLY have thrown aside all the substantive and procedural Senate and Assembly rules designed to ensure a legitimate legislative process in tossing Budget Bill #S.6351/A.8551 into Senate and Assembly resolutions to commence the Legislature’s joint budget conference “process” – even something as basic as committee votes, set forth in Senate Rule VIII, §5 as follows:

“No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection. A member's vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair.”

[AG #5: “Deny the allegations”]

121. That these Senate and Assembly resolutions are wrapped in rhetoric to make it appear that there has been some deliberative process and participation only compounds the assault on the public’s rights. Thus, on March 12, 2013, on the Assembly floor, in introducing defendant SILVER’s Resolution #914, the Chair of the Assembly Ways and Means Committee stated:

“Today we will consider an assembly resolution in response to the state fiscal year 2014-15 Executive Budget. The Assembly budget is the product of deliberation among our members, with input from community groups, stakeholders, and, most importantly, the constituents we represent. Adoption of this resolution is necessary to allow us to move forward to the conference committee process....” (video, at 03:15 mins.).

[AG #5: “Deny the allegations”]

122. This fiction of deliberation, participation, transparency, and process infuses the language of Resolution #914:

“...WHEREAS, Upon submission [of the Governor’s Executive budget], pursuant to Joint Rule III, the Senate finance committee and the Assembly ways and means committee undertake an analysis and public review of all the provisions of such budget; and

WHEREAS, After study and deliberation, each committee makes recommendations in the form of bills and resolutions as to the contents thereof and such other items of appropriation deemed necessary and desirable for the operation of the government in the ensuing fiscal year; and

WHEREAS, All such fiscal committees’ recommendations, when arrived at, are then to be placed before the members of the Legislature, individually and collectively, in their respective houses for their consideration and approval; and

WHEREAS, Each house thereupon considers and adopts legislation in bill format expressing its positions on the budget for the ensuing fiscal year; and

WHEREAS, Upon adoption thereof, a Conference Committee on the Budget, authorized by concurrent resolution of the Senate and Assembly pursuant to Joint Rule III, and such subcommittees thereof as may be deemed necessary are appointed by the Speaker of the Assembly and the Temporary President of the Senate, respectively, will engage in negotiations designed to reach an accord on the contents of the budget for the ensuing fiscal year..." (underlining added).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

123. Similarly, Senate Resolution #4036, introduced by defendant SKELOS (and Klein) on March 13, 2014:

“WHEREAS, It is the intent of the Legislature to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public; and

WHEREAS, The Senate Finance Committee has conducted an extensive study and review of the Governor's 2014-2015 Executive Budget submission..." (underlining added).

[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]

124. The comments on the Senate floor in the wee hours of March 14, 2014 more accurately stated where matters stood:

“...the hour is late. I wish this wasn't 12:30 at night and that we had had more time than starting at 5:30 this afternoon to review this one-house resolution. There's an amazing amount of unknown information, there's an amazing number of lines in the document that are concerns or modifications with no dollar figures or no even language explanation of what we might guess is meant... But, I have to say the numbers don't add up on my own colleagues' charts.... And, in fact, I believe if we had budget bills, and, by the way, we don't have budget bills to back up any of these 55 pages of often one-sentence description, if we had budget bills before us, maybe we could have a healthier debate about what's being proposed, but, disturbingly, we don't have those on our desks and disturbingly, I don't even believe they've gone into the computers yet.... (Senate Finance Committee Ranking Member Liz Krueger, video, at 1:24:00 hours)

“I looked for bill S.6355-B, which is referenced here [in the resolution], but it doesn't seem to exist as of the point that we are being asked to debate this resolution...”

...That is simply not what this process is supposed to be about. This process is supposed to be about bringing just a little bit of sunlight, a little bit of public knowledge and straight-forwardness about where each of the entities that have to negotiate a budget are at this point in the process...That is a fundamental problem with this resolution....” (Senator Daniel Squadron, video, 1:31:00 hours)

“Where to begin? Well, let’s start with the fact that we started this debate at 12:19 am. I think that when we’re talking about this budget resolution we got to talk about the fact that there is a broken process that has led to a broken product. The first thing, we started, as again I said at 12:19 am and we have only had a couple of hours to look at an incredibly complicated resolution at this point in reference to a whole bunch of bills that might or might not exist. Our good friend, Senator DeFrancisco, earlier referred to a bill that might be written, might not be written, etc. That tells you plenty about how the process has been broken. The fact that anybody on this side of the aisle was not even, didn’t even have a real sense of what was going to be on it until a few hours ago, tells you how much the process is broken and the product itself is broken as well...

There is a no real details on mostly everything in this resolution and I’m sure when we get the bills, they will be detailed and then we can have an opportunity to really have a conversation, but again, no real opportunity for many of the folks in this body to even see the details, therefore be able to look at them, to discuss them. This is supposed to be a deliberative body. This process is supposed to be a better one, unfortunately, it is broken...

This process is broken, the product was broken. And I would implore our colleagues to, as we move forward in this that we look how we can actually have a discussion about how do we put a budget resolution together and a series of budget bills that actually address the concern of folks in this body and don’t exclude so much of the conversations that we are supposed to be having...” (Senator Gustavo Rivera, video at 1:48:00 hours)

“We’re still looking for those bills that don’t exist, apparently... We don’t have budget bills, we have vague language in a 55 page resolution that we got way too recently. My colleagues say that this spending plan adds up, but it doesn’t...There are so many things that are wrong here, or that are unknown here. There’s a slew of items with no explanation, no amount of money...

At best this a shopping list with no badge of legitimacy. More realistically, it’s a classic Albany scam designed to make everyone think they should be happy while not answering any of the important questions, like how am I going to pay for this... When a complex, but detail-free proposal comes out late in the day and you’re told that you are going to come to the floor and vote on it late at night or 2 in the morning when the public and the press are asleep, you know you are being fed something fake and filled with poison pills.

Now the good news is just a one house gimmick, not the actual budget...

...I hope that when an actual set of budget bills come to the floor of this house in the next couple of weeks, we and the people of New York have an opportunity to review those budget bills, real bills with real numbers attached with adequate time to understand what's in them because that is not what has happened here tonight. (video, at 2:30:00 - 2:42:00 hours).

[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]

125. Nothing that comes out of such perverted charade is – or can be – constitutional, least of all the completely unscrutinized Legislative and Judiciary budgets.

[AG #5: “Deny the allegations”]

126. Certainly, too, one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York’s Constitution “... The doors of each house shall be kept open...”; Public Officers Law, Article VI “The legislature therefore declares that government is the public’s business...”; Senate Rule XI, §1 “The doors of the Senate shall be kept open”; Assembly Rule II, §1 “A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public” – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, SKELOS, SILVER, SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that an citizen-taxpayer action could successfully be brought against the whole of the Executive budget.

[AG #5: “Deny the allegations”]

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

[AG #14: “Deny that plaintiffs are entitled to any of the relief sought in the complaint under the heading ‘Prayer for Relief.’”]

1. **For a declaratory judgment pursuant to State Finance Law §123 et seq. – Article 7-A, “Citizen-Taxpayer Actions”:**

A. that the Legislature’s proposed budget for fiscal year 2014-2015, embodied in Budget Bill #S.6351/A.8551, is a wrongful expenditure, misappropriation, illegal, and unconstitutional because it is not based on “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house”, as Article VII, §1 of the State Constitution expressly mandates; is missing “General State Charges”; and because its budget figures are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the monies they need to discharge their constitutional duties;

B. that the Judiciary's proposed budget for fiscal year 2014-2015, embodied in Budget Bill #S.6351/A.8551, is a wrongful expenditure, misappropriation, illegal and unconstitutional because it conceals the third phase of the judicial salary increase, its cost, and the prerogative of the Legislature and Governor to strike it; that this prerogative is a duty based on plaintiffs' October 27, 2011 Opposition Report because the recommendation on which the salary increase is based is statutorily-violative, fraudulent, and unconstitutional; that the Judiciary budget is so incomprehensible that the Governor, Budget Director, and Legislature cannot agree on its cumulative cost and percentage increase; and that its reappropriations are not certified, including as to their suitability for that purpose, and violate State Finance Law §25, Article VII, §7; Article III, §16;

C. that Budget Bill #6351/A.8551 is a wrongful expenditure, misappropriation, illegal and unconstitutional by its inclusion of reappropriations for the Legislature that were not part of its proposed budget and not certified by the Legislature as funds properly designated for reappropriation;

D. that Budget Bill #6351/A.8551 is a wrongful expenditure, misappropriation, illegal and unconstitutional because nothing lawful or constitutional can emerge from a legislative process that violates its own statutory & rule safeguards, *inter alia*, Legislative Law §32-a (public hearings); Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) (fiscal notes and introducer's memoranda); Senate Rule VII, §4 ("Title and body of bill"); Assembly Rule III, 1, 8) "Contents"; "Revision and engrossing"; Senate Rule VIII, §§3, 4, 5; Assembly Rule IV (committee meetings, hearings, reports, votes); Senate Rule VII, 9 (resolutions); New York Constitution, Article III, §10 "... The doors of each house shall be kept open..." ; Public Officers Law, Article VI "The legislature therefore declares that government is the public's business..."; Senate Rule XI, §1 "The doors of the Senate shall be kept open"; Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public", etc.

2. **Pursuant to State Finance Law §123-e, for entry of a judgment permanently enjoining defendants from taking any action to enact Budget Bill #S.6351/A.8551**, by voting on, signing, and disbursing monies for Budget Bill #S.6351/A.8551, or, at least, for the entirety of the Legislative portion, both its appropriations and reappropriations (pp. 1-9; 27-46); and, with respect to the Judiciary portion, the unitemized funding for the unidentified third phase of the judicial salary increase and the reappropriations (at pp. 24-26).

3. **Pursuant to State Finance Law §123-g, for costs and expenses, including attorneys' fees;**

4. **For such other and further relief as may be just and proper**, including referral to the Commission to Investigate Public Corruption of this "matter" within its "mandate", as well as to appropriate state and federal criminal authorities, such as the Albany County District Attorney and the U.S. Attorney for the Northern District of New York.

AG's "DEFENSES"

AG's #16: *"A defense is founded upon documentary evidence. CPLR 3211(a)(1)."*

AG's #17: *"The court lacks subject matter jurisdiction. CPLR 3211(a)(2)."*

AG's #18: *"Plaintiffs lack standing to challenge the matters that he is (sic) attempting to challenge. CPLR 3211(a)(3)."*

AG's #19: *"Plaintiffs have raised these same claims in another pending court proceeding. CPLR 3211(a)(4)."*

AG's #20: *"This proceeding is barred, in whole or in part, by the principles of res judicata and collateral estoppel. CPLR 3211(a)(5)."*

AG's #21: *"Plaintiffs' claims are moot. CPLR 3211(a)(7)."*

AG's #22: *"The claims that plaintiffs make in this proceeding are not justiciable. CPLR 3211(a)(7)."*

AG's #23: *"The petition fails to state a cause of action. CPLR 3211(a)(7)."*

AG's #24: *"The issue raised by the petitioners-plaintiffs is not ripe for judicial review."*

AG's "WHEREFORE CLAUSE"

"WHEREFORE, defendants Cuomo, Skelos, the New York State Senate, Silver, and the New York State Assembly, and (sic) respectfully request that the relief requested in the complaint be denied, that the complaint and this proceeding be dismissed and that defendants be awarded costs and disbursements, together with such other relief as may be just."