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,

Index #5122-16
RJI #01-16-122174

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HEASTIE, 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, THOMAS P. DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DiFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

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PLAINTIFFS' MEMORANDUM OF LAW
in Reply & in Further Support
of their March 29, 2017 Order to Show Cause
with Preliminary Injunction & TRO

ELENA RUTH SASSOWER, unrepresented plaintiff,
individually & as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York & the Public Interest

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May 15, 2017

TABLE OF CONTENTS

INTRODUCTION

This memorandum of law is submitted in reply to defendants' opposition to plaintiffs' March 29, 2017 order to show cause with preliminary injunction and TRO, filed by Assistant Attorney General Helena Lynch, who identifies herself as "of counsel" to defendant Attorney General ERIC T. SCHNEIDERMAN, attorney for himself and his co-defendants. It is also submitted in further support of all seven branches of the March 29, 2017 order to show cause, as to which plaintiffs have a *prima facie* summary judgment "merits" entitlement.

The facts, law, and argument mandating the granting of the seven branches of plaintiffs' March 29, 2017 order to show cause, *as a matter of law*, are furnished, concisely, by the March 29, 2017 moving affidavit of plaintiff SASSOWER accompanying it – an affidavit to which AAG Lynch's April 21, 2017 opposition papers make no reference. Instead, and notwithstanding the more than three weeks that the Court gave AAG Lynch to respond to the March 29, 2017 order to show cause and the huge legal and evidentiary resources of the Attorney General's office at her disposal, she has come forward with a paltry, largely repetitive April 21, 2017 affirmation and memorandum of law, whose pervasive fraud is proven by comparing it to plaintiff SASSOWER's March 29, 2017 affidavit, whose accuracy AAG Lynch does not contest.

As hereinafter shown, AAG Lynch's opposition is no opposition, *as a matter of law*, and is, from beginning to end, a "fraud on the court", as that term is defined.[1] As such, it continues the

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[1] Plaintiffs' September 30, 2016 memorandum of law – to which plaintiff SASSOWER's March 29, 2017 affidavit refers at ¶¶3, 9, 17 – furnished the definition of "fraud on the court", as follows:

> ""Fraud on the court" is defined by Black's Law Dictionary (7th ed. 1999) as:
>
> > 'A lawyer's or party's misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding.'
>
> See, also *CDR Creances S.A.S. v Cohen, et al.*, 23 N.Y.3d 307 (2014):

modus operandi of her predecessor, Assistant Attorney General Adrienne Kerwin, whose identically pervasive litigation fraud, detailed by plaintiffs' September 30, 2016 memorandum of law and covered up by the Court's December 21, 2016 decision, is chronicled by plaintiffs' analysis of the decision, annexed as Exhibit U to their February 15, 2017 order to show cause to disqualify the Court for actual bias and to vacate the decision. As with all evidentiary proof dispositive of the true facts, AAG Lynch's approach to the Exhibit U analysis – twice cited by plaintiff SASSOWER's March 29, 2017 affidavit as establishing plaintiffs' entitlement to the granting of their March 29, 2017 order to show cause (¶¶9, 17) – is to conceal it entirely, while arguing for denial of the March 29, 2017 order to show cause based on the Court's December 21, 2016 decision.

Evidenced by AAG Lynch's litigation fraud, as likewise the litigation fraud of AAG Kerwin, is that defendants have no legitimate defense – and that the Attorney General's duty, pursuant to State Finance Law §123 *et seq.* and Executive Law §63.1, is to be representing plaintiffs or intervening on their behalf, as plaintiffs have repeatedly requested. It also bespeaks their view – and that of supervisory personnel in the Attorney General's office, including defendant Attorney General SCHNEIDERMAN himself – that they can obliterate ALL rules of professional conduct and litigation standards because the Court, having a $60,000-plus salary interest in this citizen-taxpayer action and having worked for 30 years in the Attorney General's office, including under defendant

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> 'Fraud on the court involves willful conduct that is deceitful and obstructionist, which injects misrepresentations and false information into the judicial process 'so serious that it undermines . . . the integrity of the proceeding' (Baba-Ali v State, 19 NY3d 627, 634, 975 N.E.2d 475, 951 N.Y.S.2d 94 [2012] [citation and quotations omitted]). It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting 'a wrong against the institutions set up to protect and safeguard the public' (*Hazel-Atlas Glass Co. v. Hartford-Empite,* 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm'r Pat. 675 [1944]; *see also Koschak v Gates Const. Corp.*, 225 AD2d 315, 316, 639 N.Y.S.2d 10 [1st Dept 1996]['The paramount concern of this Court is the preservation of the integrity of the judicial process']).''

Attorney General SCHNEIDERMAN and, before that, under defendant Governor CUOMO when he was Attorney General, will let them get away with everything. Certainly, no disinterested, impartial tribunal would tolerate the misconduct that AAG Lynch exhibited at the March 29, 2017 oral argument and now again by her April 21, 2017 opposing papers, let alone the "green light" given to her by supervisory authorities at the Attorney General's office, including defendant SCHNEIDERMAN, in a case of such magnitude and consequence to the People of the State of New York.

Plaintiffs' Exhibit U analysis (at pp. 7-8) identified the four threshold integrity issues that AAG Kerwin's litigation fraud presented the Court, concealed by its December 21, 2016 decision. Likewise, AAG Lynch's litigation fraud presents the Court with four comparable threshold integrity issues:

> (1) its duty, absent its disqualification, to make disclosure of facts bearing upon its willingness to enforce standards of professional conduct upon the Attorney General's office, and, in particular, disclosure of its judicial compensation interest in this citizen-taxpayer action and its personal and professional relationships and associations with defendant Attorney General SCHNEIDERMAN and with former Attorney General, now Governor, defendant CUOMO, who appointed it to the bench, and with Attorney General staff;
>
> (2) plaintiffs' entitlement to the Attorney General's representation/intervention, pursuant to Executive Law §63.1 and State Finance Law Article 7-A;
>
> (3) plaintiffs' entitlement to the disqualification of defendant Attorney General Schneiderman from representing his co-defendants;
>
> (4) plaintiffs' entitlement to sanctions, and disciplinary and criminal referrals of AAG Lynch and those supervising her in the Attorney General's office, responsible for her litigation fraud.

The law pertaining to each of these threshold integrity issues is furnished at the close of this memorandum in a section entitled "Plaintiffs' Requested Affirmative Relief to Safeguard the Integrity of these Judicial Proceedings". With the exception of pages 52-55 pertaining to the Court's

duty to make disclosure, absent its disqualifying itself, this section largely repeats, *verbatim*, the same section in plaintiffs' September 30, 2016 memorandum of law pertaining to AAG Kerwin's litigation fraud, unaddressed by the Court's December 21, 2016 decision. It is identically applicable to AAG Lynch's litigation fraud. As for the Court's duty to make disclosure, absent its disqualifying itself, it is even more applicable now, in light of the Court's completely conclusory, three-paragraph May 5, 2017 decision, which, without identifying plaintiffs' Exhibit U analysis or contesting its accuracy, including as to the dispositive significance of plaintiffs' September 30, 2016 memorandum of law, denied plaintiffs' February 15, 2017 order to show cause for its disqualification and vacatur of its December 21, 2016 decision, concealing plaintiffs' request for disclosure, of which it made none.

As was true with AAG Kerwin's litigation fraud, so here: AAG Lynch's litigation fraud reinforces plaintiffs' entitlement to all seven branches of their March 29, 2017 order to show cause under applicable legal principles that plaintiffs have again and again set forth, including by their September 30, 2016 memorandum of law (at p. 4) and by their Exhibit U analysis (at pp. 5-6), *to wit*:

> 'when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.' Corpus Juris Secondum, Vol 31A, 166 (1996 ed., p. 339);
>
> 'It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause…and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.' II John Henry Wigmore, Evidence §278 at 133 (1979).

AAG Lynch's Answering Papers
are No Opposition, *As a Matter of Law*,
to Plaintiffs' Summary Judgment Entitlement to All Seven Branches
of their March 29, 2017 Order to Show Cause

In *Zuckerman v. City of New York*, 49 NY2d 557 (1980), the New York Court of Appeals reiterated the principles governing summary judgment:

> "We repeat today a precept frequently stated — where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure so to do…
> …
> To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212, subd [b]), and he must do so by tender of evidentiary proof in admissible form. On the other hand, to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact' (CPLR 3212, subd [b]). Normally if the opponent is to succeed in defeating a summary judgment motion he, too, must make his showing by producing evidentiary proof in admissible form. The rule with respect to defeating a motion for summary judgment, however, is more flexible, for the opposing party, as contrasted with the movant, may be permitted to demonstrate acceptable excuse for his failure to meet the strict requirement of tender in admissible form (e.g., *Phillips v Kantor & Co.*, 31 N.Y.2d 307; *Indig v Finkelstein*, 23 N.Y.2d 728; also CPLR 3212, subd [f]).' We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Alvord v Swift & Muller Constr. Co.*, 46 N.Y.2d 276, 281-282; *Fried v Bower & Gardner*, 46 N.Y.2d 765, 767; *Platzman v American Totalisator Co.*, 45 N.Y.2d 910, 912; *Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 N.Y.2d 285, 290)."

"[T]he basic rule followed by the courts is that general conclusory allegations, whether of fact or law, cannot defeat a motion for summary judgment where the movant's papers make out a *prima facie* basis for the grant of the motion", Vol. 6B, Carmody-Wait 2d §39:66 (1996 ed., p. 219). "A party opposing a motion for summary judgment cannot rely on mere denials, either general or

specific...it is not enough for the opponent to merely deny the movant's presentation. He must state his version and he must do so in evidentiary form." *Id.* §39:56 (pp. 163-4). The party seeking to defeat summary judgment "must avoid mere conclusory allegations and come forward to lay bare his proof...", Siegel, New York Practice §281 (199 ed., p. 442). "[M]ere general allegations will not suffice", Vol. 6B Carmody-Wait 2d §39:52 (1996 ed. P. 157). "[T]he burden is on the opposing party to rebut the evidentiary facts and to present evidence showing there exists a triable issue of fact. Such party must assemble, lay bare, and reveal his proofs...some evidentiary proofs are required to be put forward", Id., §39:53 (pp. 159-60); Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR §3212:16).

"It is well settled that the consequence of failing to respond to a fact set forth in motion papers is a deemed admission (*see, Kuehne & Nagel v Baiden,* 36 NY2d 539, 544).", *Firth v. State*, 287 A.D.2d 771, 772 (3rd Dept. 2001). "If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it" Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR C3212:16 (1992 ed., p. 324). "[I]f answering affidavits are not produced, the facts alleged in the movant's affidavits will usually be taken as true", 2 Carmody-Wait §8:52 (1994 ed., p. 353). Where answering affidavits are produced, they "should meet traversable allegations" of the moving affidavit. "Undenied allegations will be deemed to be admitted, *id*, citing *Whitmore v. J. Jungman, Inc.*, 129 NYS 776, 777 (S.Ct. NY Co. 1911). "The moving part is entitled to summary judgment where the opposing party offers no proof or fails to challenge or rebut the movant's prima facie showing., 2 Carmody Wait 2d, §39:106.

In *Noce v. Kaufman*, 2 NY2d 347 (1957), cited in Corpus Juris Secundum (1996), Vol. 31A, §167 (at p. 343), the New York Court of Appeals reiterated:

> "that where an adversary withholds evidence in his possession or control that would be likely to support his version of the case, the strongest

> inferences may be drawn against him which the opposing evidence in the record permits (*Perlman v. Shanek*, 192 App. Div. 179; *Milo v. Railway Motor Trucking Co.*, 257 App. Div. 640; *Borgman v. Henry Phipps Estates*, 260 App. Div. 657)."

"A court reviewing a motion for summary judgment will tend to construe the facts 'in a light most favorable to the one moved against, but this normal rule of summary judgment will not be applied if the opposition is evasive, indirect, or coy.'", Siegel, New York Practice §281; *Prudential Ins. Co. of Am. v. Dewey, Ballantine, Bushby, Palmer & Wood*, 170 A.D.2d 108, 573 N.Y.S.2d 981 (1st Dept. 1991), aff'd 80 N.Y.2d 377.

AAG Lynch's NON-PROBATIVE, PERJURIOUS AFFIRMATION

AAG Lynch's paltry affirmation is essentially a vehicle for her annexing exhibits which are either unnecessary because they are already before the court or unavailing of any defense. As such, it follows the same *modus operandi* as AAG Kerwin employed.

Although AAG Lynch's affirmation expressly states (at p. 1) that it is "under penalty of perjury pursuant to C.P.L.R. 2106", it is not affirmed "to be true", as CPLR §2106 requires:

> "The statement of an attorney...when subscribed and affirmed by him to be true under penalties of perjury, may be served or filed in the action in lieu of and with the same force and effect as an affidavit." (underlining added).

According to treatise authority:

> "Certain professionals have been authorized by CPLR 2106 to make written statements by mere affirmation by including words to the effect that their averments are 'true under the penalties of perjury'[fn2] (underlining added)"[fn2] False swearing in either an affidavit or CPLR 2106 affirmation constitutes perjury under Chapter 210 of the Penal Law."; New York Practice, §205, David Siegel, 5th edition (2011).

> "While attorneys always have a professional duty to state the truth in papers, the affirmation under this rule gives attorneys adequate warning of prosecution for perjury for a false statement.", McKinney's Consolidated Laws of New York Annotated, 7B, p. 817 (1997), Commentary by Vincent C. Alexander.

Conspicuously, AAG Lynch's affirmation does not set forth the basis upon which it is made – whether personal knowledge, familiarity with the facts, papers, and proceedings, or upon information and belief, and if the latter, the source thereof. It is, therefore, completely non-probative, *as a matter of law*.

> "An affirmation, to be sufficient, must be made upon personal knowledge or upon information and belief in which event the source of the information and the grounds for the belief must be provided", *People v. Lazarus*, 452 NYS2d 305 (Nassau County Court 1983).

More than 110 years ago, it was already stated:

> "It has too long been the rule to need the citation to authority, that such averments in an affidavit have not [sic] probative force. The court has a right to know whether the affiant had any reason to believe that which he alleges in his affidavit." *Fox v. Peacock*, 97 A.D. 500, 501 (1904).

In fact, AAG Lynch has the most limited of personal knowledge of this litigation in which she appeared, for the first time, at the March 29, 2017 oral argument. Yet, AAG Lynch's affirmation does not even identify the limited personal knowledge she does have, *to wit*:

(1) of plaintiff SASSOWER's correspondence with the Attorney General's office in the days leading up the March 29, 2017 oral argument and thereafter, to which she was a recipient (Exhibits 6 and 7)[2], and;

(2) of the March 29, 2017 oral argument at which she represented defendants (Exhibit 5).

Such non-disclosure enables her to dissemble as to evidence establishing plaintiffs' entitlement to the granting of their March 29, 2017 order to show cause – over and beyond the evidentiary specifics of plaintiff SASSOWER's March 29, 2017 affidavit, to which she makes no reference.

Having asserted no personal knowledge of the facts at issue – which are the facts concisely stated in plaintiff SASSOWER's March 29, 2017 moving affidavit, and at the March 29, 2017 oral

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[2] Plaintiff SASSOWER's accompanying affidavit in reply and in further support annexes Exhibits 4 -15, continuing the sequence of exhibits begun by her March 29, 2017 moving affidavit.

argument (Exhibit 5), and by plaintiff SASSOWER's correspondence (Exhibits 6 and 7) – AAG Lynch's affirmation is "without evidentiary value and thus unavailing", *Zuckerman v. City of New York*, 49 NY2d 557, 563 (1980), citing cases.

The bulk of AAG Lynch's affirmation, ¶¶3-12, consists of her recitation of the ten exhibits she has annexed. In so doing, she does not identify the legal principal that:

> "The affidavit or affirmation of any attorney, even if he has no personal knowledge of the facts, may, of course serve the vehicle for the submission of acceptable attachments which do provide 'evidentiary proof in admissible form', e.g., documents, transcripts", *Zuckerman v. City of New York*, at 563.

Nor does she purport that her annexed exhibits are "evidentiary proof in admissible form" capable of defeating plaintiffs' summary judgment entitlement to the seven branches of their March 29, 2017 order to show cause. Nor are they. AAG Lynch's first five exhibits are already before the Court and serve no purpose but to give bulk to a substantively-barren, conclusory, and fraudulent submission. These are:

her ¶3, annexing as Exhibit 1: plaintiff's September 2, 2016 verified complaint, without exhibits – which she fails to identify as a verified complaint;

her ¶4, annexing as Exhibit 2: the Court's December 21, 2016 decision, which she misidentifies as "dated December 1, 2016";

her ¶5, annexing as Exhibit 3: the Court's signed February 21, 2017 order to show cause, which plaintiffs had submitted for its disqualification and for vacatur, reargument/renewal of its December 21, 2016 decision/order – without plaintiff SASSOWER's February 15, 2017 moving affidavit with its Exhibit U analysis of the December 21, 2016 decision;

her ¶6, annexing as Exhibit 4: the Court's signed March 29, 2017 order to show cause – without plaintiff SASSOWER's March 29, 2017 moving affidavit with its exhibits;

her ¶7, annexing as Exhibit 5: plaintiffs' March 29, 2017 verified supplemental complaint (as corrected);

As for AAG Lynch's second five exhibits, Exhibits 6-10, they are furnished to mislead. This may be seen from her pretense about them at pages 14-16 of her memorandum of law in opposition to plaintiffs' fifth and sixth branches of relief – as hereinafter detailed (at pp. 39-40, *infra*). In fact, they all substantiate plaintiffs' entitlement to relief, excepting Exhibit 7. These are:

> her ¶8, annexing as Exhibit 6: "a printout of the summary of the Assembly's Actions on bill No. A0300D", downloaded from the Assembly's website;
>
> her ¶9, annexing as Exhibit 7: "page 450 of bill A0300D", from the Assembly's website;
>
> her ¶10, annexing as Exhibit 8: "a printout of a summary of the Senate's actions on bill No. S2003D", downloaded from the Senate's website;
>
> her ¶11, annexing as Exhibit 9: the coverpage, with certification, of what she purports to be "the Judiciary budget for Fiscal Year 2017-2018", but which pertains to only one part of the Judiciary's two-part budget presentation;
>
> her ¶12, annexing as Exhibit 10: the cover letter signed by defendants Temporary Senate President FLANAGAN and Assembly Speaker HEASTIE, which she purports certifies the Legislature's budget for fiscal year 2017-2018.

AAG Lynch's ¶13 identifies her memorandum of law as "set[ting] forth Defendants' legal arguments in opposition to Plaintiffs' application" – without taking the opportunity to incorporate the memorandum of law by reference or to otherwise affirm it to be accurate and true, either as to its "legal arguments" or as to such facts as it furnishes.

AAG Lynch's ¶14 then purports to recite the seven branches of plaintiffs' March 29, 2017 order to show cause. Her recital contains the following material falsehoods and omissions, established by the face of the signed March 29, 2017 order to show cause she annexes as her Exhibit 4:

> she falsely purports at (1) that the order to show cause seeks "summary judgment on Plaintiff's sixth cause of action, parts of which survived Defendants' motion to dismiss" – a description that follows upon her assertions at ¶¶2 and 13 of her affirmation that plaintiffs are moving for "partial summary judgment". To the contrary, plaintiffs seek summary judgment on all five sections of their sixth cause of

action – consistent with the Court's December 21, 2016 decision (at pp. 6-7, p. 8), which AAG Lynch annexes as her Exhibit 2;

she falsely purports at (3) that the eight budget bills that plaintiffs are seeking to have declared "null and void, pursuant to Article III, §10 of the New York State Constitution" are #S.2000/A.3000 and #S.2003/A.3003 through #S.2009/A.3009 – which are the Governor's UNAMENDED budget bills – when the eight bills are those that the legislative defendants purport to have "amended" on March 13, 2017, whose B and A print numbers are furnished by footnote 1 of plaintiffs' March 29, 2017 order to show cause. Additionally, she conceals that the declarations of nullity sought as to those eight "amended" bills are also for "fraud" because "in fact, [the legislative defendants] did not amend" them;

she conceals at (4) that plaintiffs are not only seeking a declaration that Debt Service Budget Bill #S.2002-A/A3000-A is "null and void, pursuant to Article III, §10 of the New York State Constitution", but, additionally, by reason of "fraud" because, "in fact" the legislative defendants "did not amend" it on March 20, 2017 to produce such bill;

she falsely purports at (5) that plaintiffs are seeking to have "certain unidentified bills amended on March 13, 2017" declared "null and void, pursuant to Article VII, §§4, 5, 6 of the New York State Constitution and Pataki v. New York State Assembly, 4. N.Y.3d 75 (2004)"– when plaintiffs identified the eight bills purportedly "amended" on March 13, 2017, furnishing16ation for what are actually 16 bills at footnote 1 of their March 29, 2017 order to show cause;

she falsely purports at (6) that the alternative injunctive relief that plaintiffs seek with respect to the "unamended Legislative/Judiciary Bill S2001/A3001" is because their §§1, 4, and 3 are "not certified", when it is "*inter alia*" for that reason.

All such falsehoods and omissions are repeated in her memorandum of law.

AAG Lynch's ¶15 then purports to identify the evidence that plaintiffs furnished in support of their order to show cause, stating:

> "With her motion papers, Plaintiff submitted three requests pursuant to the Freedom of Information Law ('FOIL') (two of which were directed to the Senate Records Access Officer and one of which was addressed to the Assembly Records Access Officer); her proposed Verified Supplemental Complaint (submitted herewith as Exhibit 5); and copies of: numerous bills, the summary of recommended changes to the Executive Budget, prepared by the Ways and Means Committee for presentation to the Members of the Assembly, and Senate Resolution No. 1050."

Concealed by this ¶15, as elsewhere in her affirmation and by her memorandum of law, are the following:

(1) that the referred-to "motion papers" include plaintiff SASSOWER's March 29, 2017 affidavit in support of the order to show cause, specifying the facts, law, argument, and record references substantiating plaintiffs' entitlement to the relief sought – the accuracy of which AAG Lynch does not contest in any respect;

(2) that the referred-to "requests pursuant to the Freedom of Information Law ('FOIL')" – to which AAG Lynch does not thereafter refer either in her affirmation or memorandum of law – and which are six in number, not three – are for records further establishing plaintiffs' entitlement to the third, fourth, and fifth branches of their March 29, 2017 order to show cause – all such records being in the possession, custody, and control of the legislative defendants, as to which plaintiff SASSOWER's March 29, 2017 affidavit stated, as follows at its ¶¶11-13:

> "11. To further establish the evidentiary facts as to the legislative defendants' flagrant violations of their own legislative rules and of Article III, §10 with respect to their 'amending' of these budget bills, annexed as Exhibits 1, 2, and 3[fn2], are plaintiffs' FOIL requests to the records access officers of both defendant SENATE and defendant ASSEMBLY for pertinent documents.
>
> 12. Absent production of evidentiary proof of the legislative defendants' compliance with their own procedures for amending bills – including a vote to amend what are non-sponsor amendments – the bills were not 'amended' in fact – and the so-called 'amended' bills are nullities.
>
> 13. To ensure there would be no impediment to the Court's granting of a TRO to enjoin defendants from taking further budget action on 'amended' budget bills that are each nullities, plaintiffs gave repeated notice to defendants' counsel, the Attorney General, to bring to the oral argument herein the documents sought by plaintiffs' FOIL requests.";

(3) that the referred-to "numerous bills", which AAG Lynch could have – but chose not to – specify, were itemized by plaintiff SASSOWER's March 30, 2017 e-mail to her supervisor, with a copy to her, as follows:

"[fn2] The FOIL requests in Exhibit 3 are for records pertaining to the Senate and Assembly's 'amending' of the budget bills for fiscal year 2016-2017."

> "By the way, I left in Justice Hartman's chambers, for the Attorney General's pick-up, the voluminous Senate 'amended' bills, Assembly 'amended' bills, and the Senate and Assembly March 15th budget resolutions and their accompanying report/summary of proposed changes. I had brought this for the Attorney General, in expectation of an evidentiary hearing – and AAG Lynch left before I could give them to her. Justice Hartman's law secretary, Mr. Liberati-Conant agreed that if the Attorney General did not pick them up, by Monday, they could be discarded.
>
> It was not until 5 p.m. yesterday that I finally left the courthouse – as, before then, I was busy filing in the Clerk's Office not only the original order to show cause that Justice Hartman had signed, but a complete set of budget bills – the Governor's original bills, his 30-day amended bills, and the Senate and Assembly 'amended' bills – and the resolutions, which I had brought for the expected evidentiary hearing and, at Justice Hartman's request, left in chambers during the argument. ..." (Exhibit 7-b).

Having concealed the entirety of plaintiff SASSOWER's March 29, 2017 moving affidavit, with its particularization of the evidence entitling plaintiffs to the granting of each branch of their March 29, 2017 order to show cause, and additionally concealing plaintiff SASSOWER's March 30, 2017 e-mail as to the documentary proof she had furnished for AAG Lynch and the Court (Exhibit 7-b), AAG Lynch concludes her affirmation with the following bald, utterly fraudulent assertions:

> "16. Defendants are unable to locate in the papers submitted by Plaintiff any legal argument in support of Plaintiff's motion for summary judgment, or any evidence in support thereof.
>
> 17. Aside from two limited and unsupported assertions in her proposed Supplemental Complaint, Defendants are also unable to locate anything in the papers submitted by Plaintiff that would direct the Court to the portion of any of the submitted bills that reflects the constitutional violations she alleges.
>
> 18. Defendants are also unable to locate in the papers submitted by Plaintiff any assertion or evidence of an irreparable injury that would result if she were to be denied the preliminary injunctive relief and the temporary restraining order she requests, or any argument or evidence showing that equitable considerations favor the preliminary injunction and temporary restraining order Plaintiff seeks."

AAG Lynch's FRAUDULENT MEMORANDUM OF LAW

AAG Lynch's memorandum of law is 17 pages, divided into four sections: a "Preliminary Statement" (pp. 1-2); a section entitled "Summary of Relevant Facts and Procedural History" (pp. 2-5); a section entitled "Argument" (pp. 5-17); and a one-sentence "Conclusion" (p. 17). As AAG Lynch has not incorporated her memorandum of law into her affirmation, swearing to its truth, the factual assertions in the memorandum are unsworn.

AAG Lynch's "PRELIMINARY STATEMENT" (at pp. 1-2)

AAG Lynch's summarizing "Preliminary Statement" offers up the succession of falsehoods and deceits that will fill her memorandum of law – all of which are rebutted by the facts, law, argument, and record references of plaintiff SASSOWER's March 29, 2017 moving affidavit, essentially all concealed.

AAG Lynch's "SUMMARY OF RELEVANT FACTS AND PROCEDURAL HISTORY" (at pp. 2-5)

Beneath this heading, AAG Lynch presents three subsections.

Subsection A – "Complaint Filed September 2, 2016, and Defendants' Motion to Dismiss" (at pp. 2-4), is a misnomer – as its content is devoid of any mention of "Defendants' Motion to Dismiss".

As relates to the September 2, 2016 complaint, AAG Lynch does not identify it as verified, presumably to conceal the evidentiary significance this entails. Pursuant to CPLR §105(u), "A 'verified pleading' may be utilized as an affidavit whenever the latter is required." She then confines her "Summary of Relevant Facts" to a materially misleading description of its ten causes of action. Although AAG Lynch could have utilized the accurate descriptions that are the titles of the ten causes of action in the complaint, she does not – and by her paraphrasing makes the following material changes:

- from the first three causes of action, she removes the word "unlawful", so as to make it appear that they are, exclusively, challenges to constitutionality, which they are not;

- from the fourth cause of action, she removes reference to the "statutory" nature of the violations—making it appear that the issues of unlawfulness and unconstitutionality are confined to legislative rule violations, which they are not;

- from the ninth cause of action, she replaces the phrase "Three-Men-in-a-Room Deal-Making" with "'three-men-in-a-room' budget negotiation process" – as if it involves "process", which it does not;

- from the tenth cause of action, she removes its challenge to the lawfulness of the district attorney salary reimbursement item and to the propriety and lawfulness of the reappropriations.

AAG Lynch provides no elaboration as to the content of any of these ten causes of action: most notably, that each of the first four causes of action includes allegations that they are not barred by Judge Roger McDonough's August 1, 2016 decision dismissing comparable causes of action in plaintiffs' predecessor citizen-taxpayer action, specifying these dismissals as having been accomplished

> "in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on 'documentary evidence' that he did not identify – and which does not exist." (¶¶26, 37, 43, 51, September 2, 2016 verified complaint, underlining in the original)

Nor does she identify the substantiating proof plaintiffs annexed to the September 2, 2016 complaint as Exhibit G: their analysis of Judge McDonough's August 1, 2016 decision, demonstrating it to be:

> "a judicial fraud, falsifying the record in all material respects to grant defendants relief to which they are not entitled, *as a matter of law*, and to deny plaintiffs relief to which they are entitled, *as a matter of law*". (Exhibit G, at p. 2, underlining and italics in the original).

Additionally, she does she not reveal that plaintiffs had accompanied their September 2, 2016 complaint with a September 2, 2016 order to show cause for a preliminary injunction with TRO, that

these had gone before Judge McDonough, the duty-judge on that date, who had stricken the TRO, giving defendants, represented by AAG Kerwin, two weeks to respond – which she did by a September 15, 2016 cross-motion to dismiss that was so legally insufficient and fraudulent that plaintiffs' September 30, 2016 memorandum of law in opposition and reply sought, *inter alia*, sanctions against her and her superiors in the Attorney General's office, disqualification of defendant Attorney General SCHNEIDERMAN from representing his co-defendants – and conversion of AAG Kerwin's cross-motion to summary judgment for plaintiffs on all ten of their causes of action.

Instead of furnishing any such "Summary of Relevant Facts and Procedural History" – which is what this portion of her memorandum of law purports to do – AAG Lynch skips directly to the Court's December 21, 2016 decision, as to which she states (at p. 3):

> "In a Decision and Order dated December 21, 2016 (the 'Decision and Order'), the Court dismissed all claims asserted in the Complaint except subparts one and three of the sixth cause of action."

further stating:

> "This Court held that the sixth cause of action states a cognizable claim insofar as it alleges an unconstitutional delegation of legislative power, and a violation of Article XIII, §7 of the New York State Constitution, which limits increases in compensation of public officers."

This is utterly false. The Court's December 21, 2016 decision preserved the whole of the sixth cause of action – which is why she does not quote its disposition. That disposition, under the title heading "Cause of Action Six States a Claim" (at p. 6), reads:

> "...Plaintiff argues that the 2015 legislation that created the Commission on Legislative, Judicial & Executive Compensation (Commission) violates the New York State Constitution (see Chapter 60, Law of 2015 [Part E]). In particular, she argues that the provision therein that gives the Commission's recommendations the 'force of law' violates the separation of powers doctrine and improperly delegates legislative function to the Commission. She further argues that the legislation violates Article XIII, §7 of the New York State

> Constitution, which states that the compensation of public officers 'shall not be increased or diminished during the term for which he or she shall have been elected or appointed.' Plaintiff raises additional challenges to the form and timing of the bill by which the legislation was introduced, among other things.
>
> Here, on the record before it, the Court cannot say that plaintiffs' claim is not cognizable. Defendants argue that the Appellate Division has already approved of commissions similar to the Commission here (*see McKinney v. Commr. of the N.Y. State Dept. of Health*, 41 AD3d 252 [1st Dept 2007]). But the Court does not consider *McKinney* to be sufficiently analogous to this case to foreclose any and all challenges to the Commission legislation. Nor does *McKinney* address all the arguments raised by plaintiff." (at p. 7, underlining added).

And reinforcing that the Court's disposition of the sixth cause of action was not qualified, in any way, is the decision's decretal paragraph, stating:

> "**ORDERED** that the motion to dismiss for failure to state a cause of action is denied with respect to cause of action six". (at p. 8).

Presumably, AAG Lynch read the Court's December 21, 2016 decision – and, additionally, AAG Kerwin's March 22, 2017 opposition to plaintiffs' February 15, 2017 order to show cause for the Court's disqualification and vacatur of its December 21, 2016 decision – wherein AAG Kerwin stated, as follows:

> "The Court held that the sixth cause of action states a cognizable claim. Decision & Order at 7. The sixth cause of action asserts that the 2015 legislation that created the Commission is unconstitutional, because, among other things, it violates the separation of powers doctrine and improperly delegates legislative function to the Commission." (AAG Kerwin's March 22, 2017 memorandum of law, at p. 4).

Not surprisingly, the Court's subsequent May 5, 2017 decision, denying the February 15, 2017 order to show cause, also made plain that plaintiffs' sixth cause of action had been preserved, without qualification, giving the following recapt:

> "The December 21, 2016 decision and order, among other things, dismissed 9 of the 10 causes of action asserted in the complaint for failure to state a

cause of action, but denied defendants' motion to dismiss with respect to the sixth cause of action." (at p. 2).

As for the balance of this section, AAG Lynch recites the paltry dispositions made by the December 21, 2016 decision as if legitimate, which she knows from plaintiffs' Exhibit U analysis they are not – and, thereupon, in a single sentence that does not identify that the decision directed that defendants answer within 30 days of the decision, states: "Defendants submitted their Verified Answer on January 30, 2017".

Subsection B – "Plaintiff's Motion for Disqualification, and For Reconsideration and Reargument" (at p. 4) conceals that the disqualification sought by plaintiffs' order to show cause was for the Court's actual bias, as manifested by its December 21, 2016 decision – and the substantiating proof it furnished: plaintiffs' analysis of the December 21, 2016 decision, annexed as Exhibit U to plaintiff SASSOWER's February 15, 2017 moving affidavit.

Tellingly, this subsection, which identifies (at p. 4) that the "motion is currently pending", does not identify that the Court gave AAG Kerwin an unprecedented five weeks within which to respond to it – and that the response, on March 22, 2017, was immediately objected to by plaintiff SASSOWER as so fraudulent as to require its withdrawal by supervisory levels of the Attorney General's office, who, purporting their satisfaction, nonetheless replaced AAG Kerwin with AAG Lynch. AAG Lynch failure to even refer to AAG Kerwin's March 22, 2017 opposition, let alone to rely upon it, not only concedes the truth of plaintiff SASSOWER's assertions of its fraud, but furthers AAG Lynch's own add-on fraud that the December 21, 2016 decision preserved only the first and third parts of the sixth cause of action – a fraud that AAG Kerwin had not put forward.

Subsection C – "Plaintiff's Current Motion, via Order to Show Cause, for Summary Judgment, to File a Supplemental Compliant (sic), and for a Temporary Restraining Order and Preliminary Injunction" (at pp. 4-5) essentially consists of nothing but a recitation of the relief sought by plaintiffs' March 29, 2017 order to show cause, which AAG Lynch materially misstates in the same respects as at ¶14 of her accompanying affirmation (*see* pp. 10-11, *supra*), except that she here falsely purports that plaintiffs "moved for partial summary judgment" – which she then contradicts by stating that they seek "summary judgment in Plaintiff's favor on all sub-parts of the sixth cause of action of the complaint". The subsection concludes with the sentence: "The Court denied Plaintiff's request for an evidentiary hearing" – which is incorrect. The Court's denial was limited to "Plaintiff's request for an evidentiary hearing on March 31, 2017". The Court did not rule out an evidentiary hearing on a subsequent date – and its May 5, 2017 so-ordered letter further reflects that fact (Exhibit 4-b).

AAG Lynch's "ARGUMENT"

AAG Lynch's Point I (at pp. 5-7): Conceals Plaintiffs' Entitlement to the Granting of the First Branch of their March 29, 2017 Order to Show Cause

AAG Lynch's Point I entitled "Plaintiff Is Not Entitled to Summary Judgment on Her Sixth Cause of Action" is her response to the first branch of plaintiffs' March 29, 2017 order to show cause for an order:

> "pursuant to CPLR §3212, granting summary judgment to plaintiffs on each of the five sections of the sixth cause of action of their September 2, 2016 verified complaint (¶¶59-68) – and declaring null and void the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation and enjoining further disbursement of monies pursuant to its 'force of law' judicial salary increase recommendation".

Unlike her affirmation and elsewhere in her memorandum of law, AAG Lynch here acknowledges (at p. 5) that "Plaintiff seeks summary judgment on 'each of the fives (sic) sections" of

her sixth cause of action", but purports that "Plaintiff has made no showing of entitlement to summary judgment" (at p. 5).

This bald assertion is outright fraud – as AAG Lynch well knows in not identifying, let alone rebutting, plaintiffs' showing in ANY of the five sections of their sixth cause of action – each section entitling them to summary judgment, *as a matter of law*. These five sections bear the following titles:

A. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations "the Force of Law";

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions;

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution;

D. Chapter 60, Part E, of the Law of 2015 Violates Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3;

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process.

Indeed, AAG Lynch does not even confront plaintiffs' showing in sections A and C – notwithstanding her pretense in this Point I that these are the only two sections of the sixth cause of action preserved by the Court's December 21, 2016 decision – further asserting (at p. 5): "To the extent Plaintiff seeks summary judgment on any other subpart of her sixth cause of action, it must be denied at the outset."

For that matter, AAG Lynch conceals the very issue presented by section A. Thus, she euphemistically asserts that it "alleges that the statute creates an unconstitutional delegation of legislative powers by according certain actions of the Commission the 'force of law'"—using the

phrase "certain actions of the Commission" presumably because disclosing that these are its salary recommendations is too immediately revealing of their unconstitutionality, including with respect to section C of plaintiffs' sixth cause of action pertaining to Article XIII, §7 of the New York State Constitution barring the increasing or diminishing of the compensation of public officers during their elected or appointive terms.

Further fraudulent is AAG Lynch's citation to, and quoting from, caselaw for the proposition that statutes have a presumption of constitutionality, as to which plaintiffs bear a heavy burden to prove unconstitutionality (at p. 6) – implying that plaintiffs have not overcome the presumption and not met their burden – and purporting, baldly:

> "Plaintiff has established only that, under the liberal construction of pleadings afforded pro se plaintiffs, parts of her sixth cause of action state a cognizable claim. Plaintiff makes no factual showing, much less a showing beyond a reasonable doubt, that Chapter 60, Part E of the Laws of 2015 violates the separation of powers doctrine or Article XIII, section 7 of the New York State Constitution." (at p. 6).

This is false. Plaintiffs' showing is so overwhelmingly that AAG Lynch dares not reveal the succession of provisions of the New York State Constitution that plaintiffs' section A recites as violated by the "force of law" provision of Chapter 60, Part E of the Laws of 2015: Article III, §1; Article III, §13, Article III, §14; Article IV, §7; Article III, §6 – or the legislative source specifying the violations: the introducers' memorandum to Assembly Bill #7997 – constituting an "admission against interest" – or the quoted dissenting opinion of then Appellate Division, Fourth Department Justice Eugene Fahey in *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), or the devastating *amicus curiae* brief to the New York Court of Appeals by the Association of the Bar of the City of New York in *McKinney, et al. v. Commissioner of the New York State Department of Health, et al.* This, apart from not offering the slightest refutation to plaintiffs' section C pertaining to the Article XIII, §7 violation.

Likewise fraudulent is AAG Lynch's concluding paragraph, stating, in full:

> "Further, Plaintiff is not entitled to summary judgment in such an expedited manner, *i.e.*, via Order to Show Cause. Dispositive relief should be considered only after full briefing on a properly submitted motion for summary judgment. Plaintiff's motion for summary judgment on her sixth cause of action should be denied." (at p. 7).

There was nothing expedited by plaintiffs' March 29, 2017 order to show cause – the Court having afforded AAG Lynch over three weeks for her answering papers, until April 21, 2017, which is more than double the nine days she would have had had plaintiffs proceeded by ordinary motion, served by express mail. Indeed, defendants have had more than a year to formulate their defense to the five sections of this sixth cause of action – as it was furnished to them as the thirteenth cause of action (¶¶385-423) of plaintiffs' March 23, 2016 verified second supplemental complaint in their predecessor citizen-taxpayer action, *Center for Judicial Accountability v. Cuomo, et al.* (Albany Co. #1788-2014), with component parts furnished previously therein by their September 22, 2015 cross-motion for summary judgment and November 5, 2015 reply papers. Indeed, component parts were furnished as far back as March 30, 2012, when plaintiffs commenced their declaratory judgment action, *Center for Judicial Accountability, Inc. v. Cuomo, et al.* (Bronx Co. #302951-2012; New York Co. #401988-2012), with a verified complaint containing a second cause of action (¶¶140-154) entitled "Chapter 567 of the Laws of 2010 is Unconstitutional, *As Written*".

Defendants having had ample opportunity to refute the facts, law, and legal argument presented by each of the five sections of plaintiffs' sixth cause of action, including by their own motion for summary judgment – and having failed to do so, TOTALLY – and not only here, but at any point previously in either this citizen-taxpayer action, the previous citizen-taxpayer action, or in the declaratory judgment action, plaintiffs are entitled to the granting of the first branch of their March 29, 2017 order to show cause for summary judgment in their favor as to each of the five

sections of their sixth cause of action. And making this grant of summary judgment even more compelled is that defendants, throughout, have been represented by New York State's highest legal officer, the New York State Attorney General, unable to offer up any defense at any point in time – and whose duty, from the outset, in face of plaintiffs' notice, was to seek judicial declarations of unconstitutionality and, concurrently, to disqualify himself from representing himself and his fellow defendants in all these litigations, spanning the past five years.

AAG Lynch's Point II (at pp. 7-9):
Conceals Plaintiffs' Entitlement to the Granting of the Second Branch of their March 29, 2017 Order to Show Cause

AAG Lynch's Point II entitled "Plaintiff Is Not Entitled to File a Supplemental Complaint Because the Proposed New Claims are Either Patently Meritless or Redundant" is her response to the second branch of plaintiffs' March 29, 2017 order to show cause for an order:

> "pursuant to CPLR §3025(b), granting leave to plaintiffs to supplement their September 2, 2016 verified complaint (pertaining to fiscal year 2016-2017) by their March 28, 2017 verified supplemental complaint (pertaining to fiscal year 2017-2018)".

This Point II is utterly fraudulent – beginning with its assertion:

> "Plaintiff seeks to file her Supplemental Complaint, which would add ten claims that exactly replicate those in the original Complaint, but are 'pertaining to fiscal year 2017-2018.'...The vast majority of the proposed new claims have already been found by the Court to be legally insufficient. Adding duplicates of those claims, therefore, would be futile. The remaining proposed claims – exact reproductions of the two sub-parts of the sixth cause of action that survived Defendants' motion to dismiss – are duplicative. Accordingly, Plaintiff's motion to file a supplemental complaint should be denied." (underlying added).

For this proposition, AAG Lynch cites, twice, "¶¶370, 375" of plaintiffs' March 29, 2017 supplemental complaint pertaining to the ten reiterated causes of action – but conceals the four paragraphs between them, ¶¶371-374, which are as follows:

"371. Insofar as nine of those ten causes of action were dismissed by Justice Hartman's December 21, 2016 decision/order, such does not bar the reiteration of those same nine causes of action for fiscal year 2017-2018, as her decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on all ten causes of action of their September 2, 2016 complaint.

372. Proving that the December 21, 2016 is a judicial fraud – and that Justice Hartman was duty-bound to have disqualified herself for actual bias born of her financial interest and relationships with the defendants – is plaintiffs' analysis thereof, annexed as Exhibit U to their February 15, 2017 order to show cause for its vacatur and for Justice Hartman's disqualification. Justice Hartman signed it on February 21, 2017 – and made it returnable, more than five weeks later, on March 24, 2017.

373. As highlighted by the analysis (Exhibit U), Justice Hartman dismissed each of the nine causes of action by completely disregarding the fundamental standards for dismissal motions, concealing all their allegations, and by bald falsehood. As for plaintiffs' sixth cause of action (¶¶59-68)– the only cause of action Justice Hartman preserved – she concealed the state of the record thereon, entitling plaintiffs to summary judgment.

374. Plaintiffs analysis is accurate, true, and correct in all material respects." (underlining in the original).

AAG Lynch's failure to deny or dispute these allegations concedes their truth – with her concealment of them reinforcing them, *as a matter of law*. Such renders fraudulent the balance of her Point III (at pp. 8-9) resting on the Court's dismissal of plaintiffs' nine causes of action by its December 21, 2016 decision as grounds for denying the second branch of plaintiffs' March 29, 2017 order to show cause. Suffice to say that AAG Lynch's paraphrase of the December 21, 2016 decision conceals:

- that it dismissed the first, second, third, and fourth causes of action by FALSELY purporting they were "identical" to causes of action dismissed by Judge McDonough in the 2014 Action as "patently devoid of merit" – when they are NOT "identical". As pointed out by plaintiffs' Exhibit U analysis (at pp. 14-15), they differ, including because each alleges and demonstrates, by plaintiffs' Exhibit G analysis (at pp. 24-29), the fraudulence of Judge McDonough's dismissals of the comparable causes of action in the predecessor citizen-taxpayer action, which he accomplished by:

"materially simplifying, distorting, and falsifying the content of those…causes of action – and on NO EVIDENCE.". (Exhibit G, p. 25, underlining and capitalization in the original).

- that it dismissed the fifth cause of action by FALSELY purporting that it "was also rejected by [Judge McDonough] in the 2014 Action" – when, as pointed out by plaintiffs' Exhibit U analysis (at pp. 15-16), there is NO decision of Judge McDonough dismissing claims pertaining to Article VII, §§4, 5, 6 – the gravamen of the fifth cause of action;

- that its dismissal of the seventh and eighth causes of action because the Commission on Legislative, Judicial and Executive Compensation is not a party was, as pointed out by plaintiffs' Exhibit U analysis (at p. 16), *sua sponte*, without legal authority, and inapplicable to the allegations pertaining to defendant legislators' failure and refusal to oversee the Commission statute;

- that its dismissal of the ninth cause of action as "fail[ing] to state a cognizable claim" is, as pointed out by plaintiffs' Exhibit U analysis (at pp. 17-18), based on FALSIFYING the issue, namely, whether "three-men-in-a-room 'budget negotiations and amending of budget bills' – all taking place out of public view – is consistent with the text of Article VII, §§3 and 4 – or Article VII, §10 of the New York State Constitution", as well as FALSIFYING the standard for determining constitutionality of a practice, *to wit*, whether it unbalances the constitutional design;

- that its dismissal of the tenth cause of action as "non-justiciable" was, as pointed out by plaintiffs' Exhibit U analysis (at pp. 18-19), not only based on the FALSEHOOD that it challenged "itemization", which it did not, but was *sua sponte*;

The significance of plaintiffs' Exhibit U analysis was not only highlighted by ¶¶371-374 of plaintiffs' March 29, 2017 verified supplemental complaint, hereinabove quoted, but by plaintiff SASSOWER's March 29, 2017 affidavit in support of plaintiffs' March 29, 2017 order to show cause (¶¶9, 17), as well as by plaintiff SASSOWER's prior correspondence with the Attorney General's office to which AAG Lynch was a recipient (Exhibit 6). Having failed to contest the accuracy of Exhibit U, including in establishing plaintiffs' entitlement to summary judgment on all ten causes of action of their September 2, 2016 complaint, AAG Lynch has no grounds for opposing plaintiffs' requested leave to supplement by their March 29, 2017 supplemental complaint, as to

which plaintiffs have a near identical summary judgment entitlement with respect to its reiterated ten causes of action.[3]

AAG Lynch's Point III (at pp. 9-15):
Conceals Plaintiffs' Entitlement to the Granting of the Third, Fourth, Fifth & Sixth Branches of their March 29, 2017 Order to Show Cause

AAG Lynch's Point III, entitled "Plaintiff Does Not Satisfy Any Criteria for a Preliminary Injunction or Temporary Restraining Order" is her response to the third, fourth, fifth, and sixth branches of plaintiffs' March 29, 2017 order to show cause and consists of three subsections, prefaced by a recitation of law, concluding with a paragraph stating:

> "Plaintiff's application for a preliminary injunction and TRO, which seeks relief related solely to the 2017-2018 budget, fails to satisfy the fundamental requirement of being related to the underlying action. See C.P.L.R. 6301. And Plaintiff has failed to submit any evidence to establish that (1) she, or the public, will be irreparably harmed in the absence of the relief she seeks, (2) she would be likely to succeed on the merits if she properly filed claims for the relief sought, or (3) the balance of the equities tips in her favor." (at pp. 10-11, underlining added).

This is utterly false. Upon being granted leave to supplement their September 2, 2016 verified complaint pertaining to fiscal year 2016-2017 with their March 29, 2017 verified supplemental complaint pertaining to fiscal year 2017-2018 – the second branch of plaintiffs' March 29, 2017 order to show cause, which, as hereinabove shown, is compelled, based upon their Exhibit U analysis – the injunctive relief sought by the third, fourth, fifth, and sixth branches of their March 29, 2017 order to show cause will fully "satisfy the fundamental requirement of being related to the underlying action".

Moreover, by their submitted evidence, plaintiffs have demonstrated that not only are they

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[3] Adding to the fraudulence of AAG Lynch's Point II, she misrepresents (at pp. 7-8) the "claims" asserted by plaintiffs' supplemental complaint. Over and beyond her replication of the misrepresentations from ¶14 of her affirmation and from pp. 4-5 of her memorandum of law (***see, supra***), she here purports as to the first and second causes of action that the grounds upon which they assert that the Legislature's and Judiciary's

"likely to succeed on the merits" of their "properly filed claims", but that they have SUMMARY JUDGMENT. Indeed, demonstrated by plaintiff SASSOWER's March 29, 2017 affidavit, with its annexed FOIL requests, the accompanying March 29, 2017 verified supplemental complaint of particulars, and the voluminous complete sets of budget bills and Senate and Assembly one-house budget resolutions that plaintiff SASSOWER brought to the courthouse on March 29, 2017, is that any fair and impartial tribunal would have been compelled to make a summary judgment "merits" determination on March 29, 2017 with respect to, at very least, the fifth cause of action – and, indeed, the third and fourth causes of action, if not, additionally, the sixth. That is why, at the March 29, 2017 oral argument (Exhibit 5), the Court furnished NO REASONS for denying the TRO, or for denying plaintiff SASSOWER's request for an evidentiary hearing, then and there – or, alternatively, on Friday, March 31, 2017 – and did not respond, thereafter to plaintiff SASSOWER's March 30, 2017 request for her reconsideration thereof, until May 5, 2017, when the Court gave NO REASONS for denying reconsideration of the TRO, while reserving decision on the evidentiary hearing (Exhibit 4-b).

AAG Lynch's Subsection A (pp. 11-13)
Conceals Plaintiffs' Entitlement to the Third & Fourth Branches of their March 29, 2017 Order to Show Cause

AAG Lynch's Subsection A entitled "Plaintiff Is Not Entitled to a Declaration that Any of the 2017-2018 Budget Bills are Null and Void or that they Violate Article III, §10 of the New York State Constitution" is her response to the third and fourth branches of plaintiffs' March 29, 2017 order to show cause for orders:

> "declaring null and void, by reason of the legislative defendants' fraud and violation of Article III, §10 of the New York State Constitution, the eight budget bills for fiscal year 2017-2018 they purport to have 'amended' on

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proposed budget are unconstitutional is that they are "not adequately itemized". This is false – but she offers it up because caselaw holds itemization to be non-justiciable.

> March 13, 2017[fn2], but which, in fact, they did not 'amend' – and enjoining all budget actions based thereon"; AND
>
> "declaring null and void, by reason of the legislative defendants' fraud and violation of Article III, §10 of the New York State Constitution, Debt Service Budget Bill #S.2003-A/A.3003-A for fiscal year 2017-2018 they purport to have identically 'amended' on March 20, 2017, but which, in fact, they did not amend – and enjoining all budget actions based thereon"; (underlining in the original).

This subsection offers up a succession of frauds to conceal that AAG Lynch has NO ANSWER to plaintiffs' entitlement to this relief, particularized by ¶¶10-13 of plaintiff SASSOWER's March 29, 2017 affidavit. Among these frauds:

Fraud #1: AAG Lynch conceals that at issue are the nine budget bills that the legislative defendants purport to have "amended" on March 13, 2017 and March 20, 2017, "but which, in fact, they did not 'amend'". Indeed, nowhere in this subsection does the word "amended"; or "amend" even appear;

Fraud #2: AAG Lynch lists (at pp. 11-12), as the nine bills that plaintiffs seek to have declared "null and void", NOT the Senate and Assembly "amended" bills of March 13, 2017 and March 20, 2017, whose numbers are furnished by the third and fourth branches of plaintiffs' order to show cause, but the Governor's unamended bills.

Fraud #3: AAG Lynch conceals that plaintiffs are also seeking declarations that these nine bills are "null and void" because of their "fraud" – such being the legislative defendants' "fraud" in not having "amended" the bills, "in fact", there having been not even a vote of any Senators or Assembly members on whether to so-amend the bills;

Fraud #4: AAG Lynch conceals the nature of the Article III, §10 violation alleged, *to wit*, the complete absence of records as to how the budget bills were "amended" – including the absence of records as to any meetings of the Senate Finance Committee and Assembly Ways and Means

Committee on March 13, 2017 and March 20, 2017 and of any votes of Senate and Assembly members on the question of whether to amend the Governor's budget bills;

Fraud #5: AAG Lynch falsely states (at pp. 12-13):

> "To the extent Plaintiff relies on any assertions in her proposed Supplemental Complaint to support her application for preliminary injunctive relief, such reliance is misplaced. To demonstrate entitlement to such relief, Plaintiff is required to submit 'evidentiary proof.' *Brodsky*, 142 A.D.2d at 1003."

She thereby conceals that plaintiff's "reli[ance]" is by an affidavit – her March 29, 2017 moving affidavit – and that the referred-to "proposed Supplemental Complaint" is verified. Pursuant to CPLR §105(u), "A 'verified pleading' may be utilized as an affidavit whenever the latter is required; "a sworn complaint may be regarded as an affidavit.", 2 Carmody-Wait 2d §4:12. Affidavits are "the foremost source of proof on motions" New York Practice, §205, David Siegel, 5th edition (2011). "Any form of evidence, documentary or otherwise, may be considered on a motion for summary judgment. Affidavits are the primary source of proof", New York Practice, §281, Siegel 5th edition (2011).

Nor is *Brodsky v. Rochester*, 142 A.D.2d 1002 (4th Dept. 1988), to the contrary. Indeed, the two cases it cites pertaining to "evidentiary proof": *Armbruster v. Gipp*, 103 AD2d 1014, and *Camardo v. Board of Education*, 50 AD2d 1073, both involve affidavit presentations.

Plaintiff SASSOWER's March 29, 2017 affidavit – whose accuracy AAG Lynch does not contest – is dispositive of plaintiffs' entitlement to summary judgment on their third and fourth branches, stating as follows at ¶10:

> "...plaintiffs' supplemental complaint furnishes the particulars of the legislative defendants' fraudulent, completely-opaque "amending" at ¶¶229-233, 238-242."

These referred-to paragraphs of plaintiffs' March 29, 2017 verified supplemental complaint, all under the title heading:

> "The Senate & Assembly 'Amending' of the Governor's Budget Bills (*Facts Pertaining to Reiterated Fourth & Fifth Causes of Action* (¶¶48-53; 54-58))

read:

> 229. Notwithstanding plaintiff SASSOWER's testimony at the Legislature's January 30, 2017 budget hearing on 'local government officials/general government', at its January 31, 2017 budget hearing on 'public protection', at the local budget hearing held by legislators of the Westchester delegation, and ALL her written and oral communications, no Senate or Assembly committee or statutory commission met to deliberate and vote on the Legislature's proposed budget, on the Judiciary's proposed budget, on Legislative/Judiciary Budget Bill #S.2001/A.3001 – or on the appropriation for district attorney salaries contained in the Division of Justice Services' budget in Aid to Localities Budget Bill #S.2003/A.3003. This identically replicated what had taken place in the last three years, when, following the Legislature's budget hearings, no committee met to deliberate and vote on the Legislature's proposed budget, on the Judiciary's proposed budget, on the Governor's combined Legislative/Judiciary budget bills – or on his Aid to Localities budget bills.
>
> 230. Upon information and belief, no Senate or Assembly committee met to deliberate and vote on defendant CUOMO's other 'appropriation bills': his State Operations Budget Bill #S.2000-A/A.3000-A and his Capital Projects Budget Bill #S.2004-A/A.3004-A – and, until March 20, 2017, his Debt Service Budget Bill #S.2002/A.3002. Nor, upon information and belief, and excepting a hearing on raising the age of criminal responsibility, did any committee meet to deliberate and vote on defendant CUOMO's six 'Article VII bills':
>
> (1) Public Protection and General Government Budget Bill #S.2005-A/A.3005-A;
>
> (2) Education, Labor and Family Assistance Budget Bill #S.2006-A/A.3006-A;
>
> (3) Health and Mental Hygiene Budget Bill #S.2007/A.3007;
>
> (4) Transportation, Economic Development and Environmental Conservation Budget Bill #S.2008-A/A.3008-A;

(5) Revenue Budget Bill #S.2009-A/A.3009-A;

(6) Good Government & Ethics reform Budget Bill #S.2010/A.3010.

231. Upon information and belief, defendants SENATE and ASSEMBLY also dispensed with any deliberation and any votes on the Senate and Assembly floor with respect to any of these budget bills, other than, on March 23, 2017, when the Assembly voted to approve Debt Service Budget Bill #2002-A/3002-A.

232. Nonetheless, on March 13, 2017 – notwithstanding a succession of legislative rules designed to ensure the integrity and transparency of the legislative process: Senate Rule VII, §4(b), Assembly Rule III, §6 (*amendments*); Senate Rule VIII, §2(a)(1), (a)(2); Assembly Rule IV, §2(a), (b), (c) (*standing committees, meetings, notice*); Senate Rule VII, §2(a)(1), (3), (4)b; Assembly Rule IV, §2(d), (e), (g) (*committee attendance, minutes, votes*); Senate Rule VIII, §6; Assembly Rule IV, §6 (reports) – eight 'amended' budget bills emerged from defendant SENATE and the same eight bills, differently 'amended', emerged from defendant ASSEMBLY. Yet who introduced these amendments, what they consisted of, by what notice to Senate Finance Committee and Assembly Ways and Means Committee members, and at what committee meeting they were deliberated and voted upon is a mystery.

233. Indeed, neither the Senate Finance Committee nor Assembly Ways and Means Committee met on March 13, 2017.

...

238. According to defendants' HEASTIE and FLANAGAN's February 7, 2017 'Joint Legislative Schedule for Adopting SFY 2017-2018 Budget', March 13, 2017 was to be the date for "Senate & Assembly One House Budget Actions", when, additionally, 'Joint Senate & Assembly Budget Committees Commence'.

239. Yet on March 13, 2017, there were no 'Senate & Assembly One House Budget Actions' – only the mysteriously 'amended' Senate and Assembly bills.

240. The Senate and Assembly websites do not indicate when the March 13, 2017 'amended' bills were distributed to the Senators and Assembly members. The earliest would have been March 13, 2017, quite possibly in the evening hours. As for the following day, March 14, 2017, a winter storm resulted in the cancellation of the legislative session.

241. As for defendant CUOMO's debt service budget bill, it was 'amended' a week later – in equally mysterious fashion. On March 20,

2017, a meeting of the Senate Finance Committee was called from off the floor of the Senate. Its two-minute meeting had a two-item agenda – the second of which was an already-'amended' debt service budget bill. The video of the Senate Finance Committee meeting shows Chair Young presiding, with Ranking Member Krueger beside her:

> [video: https://www.nysenate.gov/calendar/meetings/finance/march-20-2017/finance-meeting]
>
> Chair Young: Next, we have –
>
> Clerk: S2002-A. Budget bill an act making appropriations for the legal requirements of the state debt service and lease purchase requirements and other special contractual obligations.
>
> Chair Young: This is usually a noncontroversial bill and it shows that we're making progress on the state budget. And I'd like to get this taken care of. Does anyone have any questions?
>
> Senator: I do not.
>
> Chair Young: You do not.

Ranking Member Krueger appears to say either 'We need to move the debt service bill.' Or to ask 'Do we need to move the debt service bill' – to which Chair Young answers 'yes'. The bill is then moved and seconded – and upon Chair Young asking 'Any no votes?', there were none. The meeting then concluded with Chair Young stating: 'OK the budget bill is reported directly to the third reading.'

242. No video records what took place on March 20, 2017 in the Assembly Ways and Means Committee with respect to the debt service budget bill. Defendant ASSEMBLY's website indicates that the bill was 'amended' in the Ways and Means Committee on March 20, 2017 – and that the amended bill was the same as the Senate's amended bill. However, there was no Ways and Means Committee meeting on March 20, 2017."

These particularized assertions, presented by a sworn and verified supplemental complaint, are entirely undenied and undisputed by AAG Lynch, who, moreover, having no personal knowledge of any of the facts, has furnished no affidavit from any of her legislative clients having knowledge of the facts – as, for instance, the chairs and ranking members of the Senate Finance Committee and

Assembly Ways and Means Committee. Indeed, neither AAG Lynch's affirmation nor her memorandum of law even purport that defendant Senate and Assembly actually amended the Governor's budget bills on March 13, 2017 and March 20, 2017, let alone furnish any documents that would establish compliance with applicable Senate and Assembly rules – although all such documents are in the possession, custody, and control of her legislative clients. Nor does AAG Lynch make any mention of what action, if any, she took to secure the documents sought by plaintiffs' FOIL requests – FOIL requests to which she refers only at ¶15 of her affirmation, but without any elucidation as to their content and relevance.

The foregoing establishes AAG Lynch's utter deceit in asserting, as she does, (at p.12): that "Plaintiff fails to submit any evidentiary proof demonstrating a violation of Article II, section 10" when, in fact, the proof furnished is sufficient to award summary judgment to plaintiffs as to that constitutional violation – and as to the "fraud" that it conceals.

Finally, there is a further noteworthy fraud in AAG Lynch's statement (at p. 13):

> "It would be difficult to overstate the extent of the disruption of countless facets of government operations that would result from nullifying numerous duly enacted budget bills." (underlining added).

To the contrary. Apart from the fact that the "enacted budget bills" rest on fraudulent Senate and Assembly "amended" budget bills – and "fraud vitiates everything it touches", *Hadden v. Consolidated Edison Company of New York*, 45 NY2d 466 (1978), citing *Angerosa v White Co.*, 248 App Div 425, 431, aff'd 275 NY 524 – they were NOT "duly enacted". Rather, they are, themselves, the behind-closed-doors, "amending" of the Senate and Assembly "amended" budget bills by the "three men in the room" defendants, CUOMO, FLANAGAN, and HEASTIE. Indeed, they not only suffer from ALL the constitutional infirmities and fraud as are the basis for the third, fourth, and fifth branches of plaintiffs' March 29, 2017 order to show cause (see, pp. 40-41, *infra*), but more,

including with respect to the "messages of necessity" that secured their passage.

AAG Lynch's Subsection B (at pp. 13-15)
Conceals Plaintiffs' Entitlement to the Fifth Branch of their March 29, 2017 Order to Show Cause

AAG Lynch's Subsection B entitled "Plaintiff is Not Entitled to a Declaration that Any Purported Amended Budget Bills are Null and Void or that they Violated Article VII, §§4, 5, or 6 of the New York State Constitution" is her response to the fifth branch of plaintiffs' March 29, 2017 order to show cause for an order:

> "declaring null and void, by reason of the legislative defendants' violation of Article VII, §§4, 5, 6 of the New York State Constitution and the controlling consolidated decision of the Court of Appeals in *Pataki v. Assembly* and *Silver v. Pataki*, 4 NY3d 75 (2004), each of their March 13, 2017 'amended' budget bills that altered appropriations by increases and additions, directly to the bills, not 'stated separately and distinctly from the original item' and removing and inserting qualifying language – and enjoining all budget actions based thereon".

This subsection offers up a succession of frauds to conceal that AAG Lynch has NO ANSWER to plaintiffs' entitlement to this relief, particularized by ¶¶14-16 of plaintiff SASSOWER's March 29, 2017 affidavit. Among her frauds:

Fraud #1: that plaintiff SASSOWER has not identified the amended bills at issue – in her words: "certain bills amended on March 13, 2017" that "Plaintiff largely does not identify" (at p. 13) – when ALL the pertinent bills are identified by the order to show cause, whose footnote 2, annotating the date "March 13, 2017" states, as follows, with respect to the eight bills "amended" on that date:

> "These eight bills are:
>
> three 'appropriation bills', purportedly amended by defendant Senate and, separately, by defendant Assembly – resulting in six bills:
>
> State Operations: #S.2000-B: #A.3000-B;
> Aid to Localities: #S.2003-B; #A.3003-B;

Capital Projects: #S.2004-B; #A.3004-B;

And five 'Article VII bills', purportedly amended by defendant Senate and, separately, by Defendant Assembly – resulting in ten bills:

Public Protection & General Government: #S.2005-B; #A.3005-B
Education, Labor & Family Assistance: #S.2006-B; #A.3006-B
Health and Mental Hygiene Budget: #S.2007-A; #A.3007-A;
Transportation, Economic Development, & Environmental Conservation: #S.2008-B; #A.3008-B
Revenue: #S.2009-B; #A.3009-B".

Fraud #2: that "Plaintiff fails to show any likelihood of success on the merits" (at p. 13); that "Plaintiff fails to submit any evidentiary proof of any violation of Article VII, section 4" (at p. 14); and that "Plaintiff submits no evidence to enable the Court to examine the question of whether the purported amendments by the Legislature [to the Governor's budget bills] complied with the requirements of Article VII, section 4 regarding legislative amendments related to appropriations." (at p. 15) – when ¶¶14-16 of plaintiff SASSOWER's March 29, 2017 affidavit not only furnished the specific paragraphs of plaintiffs' March 29, 2017 verified supplemental complaint particularizing the evidence, but highlighted that it mandated the immediate granting of summary judgement, stating:

"14. With respect to the fifth branch of relief, declaring null and void, by reason of the legislative defendants' violation of Article VII, §§ 4, 5, 6 of the New York State Constitution and the controlling decision of the Court of Appeals in *Pataki v. Assembly* and *Silver v. Pataki*, 4 NY3d 75 (2004), the eight 'amended' budget bills that altered appropriations by increases and additions directly to the bills, not 'stated separately and distinctly from the original item', and removing and inserting qualifying language – and enjoining all budget actions based thereon – plaintiffs' supplemental complaint furnishes the particulars of the legislative defendants' *sub silentio* repudiation of Article VII, §§4, 5, 6 of the New York State Constitution and of the controlling Court of Appeals caselaw with respect to their alterations of defendant CUOMO's budget bills at ¶¶234-237, 253-259.

15. As stated at the very outset of plaintiffs' supplemental complaint – at its ¶112:

'the legislative defendants have so brazenly repudiated Article VII, §§4, 5, 6 of the New York State Constitution – and the

controlling consolidated Court of Appeals decision in the budget lawsuits to which they were parties: *Silver v. Pataki* and *Pataki v. Assembly*, 4 N.Y.3d 75 (2004) – that nothing more is required for summary judgment to plaintiffs on their reiterated fifth cause of action (¶¶54-58)[fn2] than to compare defendant Governor's budget bills for fiscal year 2017-2018 with the legislative defendants' 'amended' budget bills. And facilitating the comparison are the legislative defendants' one-house budget resolutions and their accompanying summary/report of recommended budget changes, already embodied in their 'amended' budget bills – as well as their own press releases and public statements.' (underlining in the original).

16. The Attorney General was furnished with this paragraph more than a day before the oral argument – and comparable notice four days earlier – ample time to confront the cited evidence, all available to him from his legislative clients, including their websites, over and beyond from plaintiff CJA's website, so as to be ready to confront plaintiffs' *prima facie* entitlement to declarations of unconstitutionality with respect to the 'amended' budget bills – and for immediate injunctive relief."

The referred-to ¶¶234-237, 253-259 of plaintiffs' verified complaint are as follows:

"234. As to the content of these 'amended' budget bills, they violated Article VII, §§4, 5, and 6 of the New York State Constitution, flagrantly – altering defendant CUOMO's budget bills by additions directly to the bills, not separately stated and by removing and adding qualifying language. Many, if not most – possibly even all – of these alterations were without being signified by the 'amended' bills, in disregard of the printed notice on the first page of each:

'EXPLANATION: Matter in **italics** (underscored) is new; matter in brackets [-] is old law to be omitted..

235. Illustrative is defendant SENATE and ASSEMBLY's 'amending' of the Division of Criminal Justice Services' budget, contained in defendant CUOMO's Aid to Localities budget bill. In defendant CUOMO's original bill, #S.2003/A.2003, the Division of Criminal Services' 'All Funds" appropriations are $184,245,000 and 'All Fund' reappropriations are $263,379,898 (at pp. 60) – neither of which changed when defendant CUOMO made his 30-day amendments that produced Aid to Localities Budget Bill #S.2003-A/A.3003-A.

236. Yet, on March 13, 2017, when defendant SENATE 'amended' Aid to Localities Budget Bill #S.2003-A – resulting in its designation as #S.2003-B – the 'All Funds' appropriation for the

Division of Criminal Justice Services was increased by $16,330,000 to $200,575,000 and reappropriations were increased by $122,219,451 to $385,599,349 (at p. 68), without any underlining or italics to denote the change. As for defendant ASSEMBLY's 'amended' Aid to Localities Budget Bill #A.3003-B, it pushed 'All Funds' appropriations for the Division of Criminal Justice Services even higher, to $202,735,000, and reappropriations to $375,590,348, also without underlining or italics to denote the change. And exemplifying the increase of a particular appropriation, defendant SENATE's 'amended' #S.2003-B added $1,600,000 to the appropriation for district attorney salary reimbursement – upping the Governor's appropriation from $4,212,000 to $5,812,000. Again, no underlining or italics to denote the change.

237. Another example, this from defendant CUOMO's State Operations Budget Bill #S.2000/A.3000, is the budget for the Commission on Judicial Conduct, for which $5,584,000 was appropriated. This was unchanged by defendant CUOMO's 30-day amended State Operations Budget Bill #S.2000-A/A.3000-A. Yet, defendant ASSEMBLY's 'amended' #A.3000-B (at pp. 443) added $100,000 to make the appropriation $5,684,000, an increase, not flagged by any underlining or italics.

...

253. As for the one-house budget proposals, appended-to or accompanying the Senate and Assembly resolutions, Senate Resolution #1050 attached a 'Report on the Amended Executive Budget'. It opened with the following statement under the heading 'All State Agencies and Operations':

> 'The Senate denies with prejudice the following new language contained within the body of various appropriations:
>
> * Language that would prevent certain appropriations from becoming effective contingent upon the Legislature enacting a specified Executive initiative.
>
> * Language that would allow the Director of the Division of the Budget to administratively reduce appropriation authority. This language is in the Aid to Localities Budget of most agencies.
>
> * Language that would require Members of the Legislature to sign a series of redundant documents prior to Legislative initiatives being implemented.
>
> * Language that would give the Executive unlimited transfer authority within the State Operations Budget. This is in

addition to the transfer language included in the Division of the Budget (DOB) and affects most agencies.

* Language that would consolidate state agency administrative hearings into a single entity.

* Language that would extend and expand the use of the design-build project delivery method within appropriations.'

It then furnished the following explanation:

'The Senate has stricken this language from the appropriation bills because such language constitutes an impermissible and unconstitutional over-reach by the Executive, infringing upon the independent role of the Legislature. This objectionable language constitutes a direct violation of fundamental separation of powers principles, and goes beyond any actions sanctioned by the Court of Appeals in Silver v. Pataki.'

254. No memorandum of law accompanied the Senate report to support its bald assertion that the 'objectionable language' that the Senate had stricken from the appropriation bills 'goes beyond any actions sanctioned by the Court of Appeals in *Silver v. Pataki*'. Nor, for that matter, did the Senate report furnish a legal citation for the referred-to Court of Appeals' ruling so as to facilitate verification of what the Court of Appeals had said.

255. Upon information and belief, the referred-to *Silver v. Pataki* ruling is the Court of Appeals consolidated decision in *Pataki v. Assembly* and *Silver v. Pataki*, 4 N.Y.3d 75 (2004). It proscribes the referred-to strike-outs of objected-to language from defendant CUOMO's appropriation bills.

256. Moreover, defendant SENATE's 'amended' bills not only deleted language, it also concealed what it had done by disregarding Senate Rule VII, §4(b):

'When amendments are offered to a printed bill, the proposed changes, indicating page and line numbers, shall be listed on four detail sheets and the same changes shall be incorporated and marked on two copies of the bill... Furthermore, when a printed bill is amended the accompanying introducer's memorandum required pursuant to section one of this Rule, shall also be amended to reflect any changes...'

257. The Assembly's 'Summary of the Recommended Changes to the Executive Budget', accompanying its Resolution #179, furnished a similar list of objected to 'appropriation language' that it had 'remove[d]', albeit without an explanatory paragraph of justification. Under the heading: "Assembly Budget Proposal SFY 2017-18 – All State Agencies', it stated:

> 'The Executive Budget includes several policy proposals within appropriation language that appear within multiple State agencies. The Assembly rejects each of these proposals and removes appropriation language that would:
>
> • grant interchange and transfer authority for the purposes of consolidating administrative hearings for state agencies;
>
> • impermissibly delegate to the director of the Division of Budget the authority to interchange and transfer appropriations without limit;
>
> • impermissibly delegate to the Division of the Budget the authority to reduce payments from appropriations, without limit, in the event that receipts are less than assumed in the financial plan;
>
> • condition the effectiveness of the State Operations budget upon the passage of the Aid to Localities budget;
>
> • authorize design-build contracts for capital projects; and
>
> • require all legislative sponsors of discretionary funding to provide a written declaration to the director of the Division of the Budget that such grants are for and will be used solely for a lawful purpose, funds will not be misused, and there are no conflicts of interest or financial benefit to the legislative sponsor."

258. Upon information and belief, defendant ASSEMBLY's failure to cite to the Court of Appeals consolidated decision in *Pataki v. Assembly* and *Silver v. Pataki*, 4 N.Y.3d 75 (2004) as support for its having 'remove[d]...appropriation language', reflects its knowledge that what it has done is proscribed by that decision.

259. Certainly, too, even were defendant ASSEMBLY's 'remov[al of]...appropriation language' constitutionally permitted, it would not warrant its violation of Assembly Rule IV, §6(f):

> 'All budget appropriation bills reported favorably or for consideration, if reported with amendments, shall be immediately reprinted, and the amendments proposed by the committee shall be underscored in their proper place except in cases where the committee amends eliminating certain words or figures, in which case such words or figures shall be printed enclosed in black-faced brackets.'"

So overwhelming – and dispositive – is this evidentiary presentation that AAG Lynch does not deny or dispute the accuracy of ANY of it. This includes her fraudulent two paragraphs, starting at the top of her page 14 and spanning to her page 15 – which is the ONLY place in the opposition papers in which she cites to ANY paragraphs of plaintiffs' supplemental complaint. Citing to assertions at ¶237 and ¶¶235-236 of the supplemental complaint, she purports that Assembly Bill #A.3000-B "was never acted on", stating it was "printed on March 13, 2017, but that prints 2000c and 3000d were printed on April 8, 2017" and implying the same with respect to S2003b, "printed on March 13, 2017…[with] 2000C and 2003D…subsequently printed on April 4, 2017." This is outright fraud. These two bills, for State Operations and for Aid to Localities – and every other March 13, 2017 "amended" bill – were "acted on"– having been the predicate for ALL subsequent budget activity (Exhibits 14-a; 15-a), including subsequent activity that the fifth branch sought to enjoin, *to wit*, the behind-closed-doors, three-men in a room budget dealing-making of defendants CUOMO, FLANAGAN, and HEASTIE, who "acted on" all the March 13, 2017 "amended" bills by "amending" them further – which is what the c and d prints are, subsequent amendments, with each of their "three-men-in-a-room" "amended" bills violating Article VII, §4 and *Pataki v. Assembly & Senate/Silver v. Pataki*, 4 NY3d 75 (2004), no less flagrantly than the March 13, 2017 "amended" bills, though not necessarily in the same respects. Thus, notwithstanding the $100,000 increase that #A.3000-B had unconstitutionally added for the Commission on Judicial Conduct was deleted in #A.3000-D and notwithstanding the $1,600,000 increase that #S.2003-B had appropriated for district

attorney salary reimbursement was deleted by #S.2003-D, each of these "d" prints not only retained other unconstitutional increases and language changes from the "b" prints, but made further increases and language changes, prohibited by Article VI, §4 and *Pataki v. Assembly & Senate* and *Silver v. Pataki*. (Exhibits 14-b, 15-b: plaintiffs' demonstration of illustrative increases, retained and added by enacted "three-men-in-a-room" State Operations Budget Bill #S.2000-D/A.3000-D and Aid to Localities Budget Bill #S.2003-D/A.3003-D.

Suffice to note that the 2002 Supreme Court decision in *Silver v. Pataki*, 192 Misc. 2d 117,125, contains a particularly significant observation about *New York State Bankers Association v Wetzler*, 81 NY2d 98 (1993), stating that it:

> "illustrates that the traditional form of budget adoption by agreement of the Legislature and the Governor can give third parties rights when constitutionally prescribed procedures are not strictly followed, and raises the specter that other provisions in appropriation bills enacted in past years may be vulnerable to challenge."

AAG Lynch's Subsection C (at pp. 15-16)
Conceals Plaintiffs' Entitlement to the Sixth Branch of their March 29, 2017 Order to Show Cause

AAG Lynch's Subsection C entitled "Plaintiff is Not Entitled to an Injunction Against the Legislative/Judiciary Budget Bill S2001/A3001 or Against Disbursements Pursuant to Any Part Thereof" is her response to the sixth branch of plaintiffs' March 29, 2017 order to show cause for an order:

> "enjoining defendants from enacting the unamended Legislative/Judiciary Budget Bill #S.2001/A.3001 and/or disbursing monies pursuant thereto; or, alternatively: (i) as to the legislative portion, enjoining enactment of its §1 appropriations and §4 reappropriations (pp. 1-9; 27-53) and disbursement of monies therefrom, *inter alia*, because, in violation of Article VII, §1 of the New York State Constitution, they are not certified; and; (ii) as to the judiciary portion, enjoining enactment of its §3 reappropriations (pp. 23-26) and disbursement of monies therefrom, *inter alia*, because, in violation of Article VII, §1 they are not certified".

Here, too, AAG Lynch offers up frauds to conceal that she has NO ANSWER to plaintiffs' entitlement to this relief, particularized by ¶17 of plaintiff SASSOWER's March 29, 2017 affidavit. Among her frauds:

Fraud #1: her assertion that:

> "The sole basis for Plaintiff's request to enjoin the budget bills for two entire branches of the state government is 'because they are not certified.'".

This is false. The basis for enjoining enactment/disbursement with respect to the whole of Legislative/Judiciary Budget Bill #S.2001/A.3001 is NOT limited to the absence of certification. Nor, for that matter, is it the sole ground for the alternative relief requested – as reflected by the words "*inter alia*". The basis for the requested primary and alternative relief, spelled out by ¶17, is as follows:

> "17. With respect to the sixth branch of relief, enjoining defendants from enacting the unamended Legislative/Judiciary Bill #S.2001-A.3001 and/or disbursing monies pursuant thereto; or, alternatively, for an injunction as to the §1 and §4 legislative portions, *inter alia*, because, in violation of Article VII, §I, they are not certified; and, as to the Judiciary's §3 reappropriations, because, *inter alia*, they are not certified, plaintiffs' supplemental complaint furnishes the particulars at ¶¶117-129, 148-163, 173-175, & p. 63 & 65 (with respect to the legislative portions) and at ¶¶130-141, 176-179, and p. 64 (with respect to the judiciary portions). Plaintiffs' entitlement to summary judgment as to these, constituting their reiteration, for fiscal year 2017-2018, of the first, second, and third causes of action of their September 2, 2016 verified complaint pertaining to fiscal year 2016-2017 (¶¶23-47), is established by their entitlement to summary judgment on the causes of action of their September 2, 2016 verified complaint. Here, too, dispositive of the state of the record before the Court as to these three causes of action is plaintiffs' September 30, 2016 memorandum of law – reinforced further by their Exhibit U to their February 15, 2017 order to show cause for this Court's disqualification for the actual bias that its December 21, 2016 decision demonstrates, *prima facie*."

In other words, the grounds for the requested relief, both the primary and alternative, are the facts, law, and argument furnished by the paragraphs of plaintiffs' March 29, 2017 supplemental

complaint pertaining to their reiterated first, second, and third causes of action – as to which, based on the record, plaintiffs have a summary judgment entitlement.

Fraud #2: her assertion that:

> "to the extent Plaintiff's vague assertion that 'they are not certified' is construed as asserting that the Judiciary's and Legislature's budget estimates were not certified, as required by Article VII, §1 of the New York State Constitution, Plaintiff submits no evidence thereof. Nor could she. The Judiciary's budget estimate for Fiscal Year 2017-2018 was certified. *See* Lynch Aff. Ex. 9. And the Legislature's budget estimate for Fiscal Year 2017-2018 was certified. *See* Lynch Aff. Ex. 10."

This is multitudinously false. There is nothing "vague" about plaintiffs' assertions with respect to the lack of certifications – as to which their "submit[ted]…evidence" was their March 29, 2017 verified supplemental complaint, whose particularized paragraphs establish AAG Lynch's deceit in putting forward her Exhibits 9 and 10, unaccompanied by any sworn statement of her clients.

Thus, AAG Lynch does not reveal that her Exhibit 10 which she purports to be the "certification" of the Legislature's proposed budget is the same December 1, 2016 letter about which ¶¶117-119 of the supplemental complaint stated as follows, without contest by her:

> "117. By a one-sentence letter virtually identical, but for the dates, to the one-sentence letters of the past three fiscal years, defendants FLANAGAN and HEASTIE, as Temporary Senate President and Assembly Speaker, addressed a December 1, 2016 letter to defendant CUOMO stating:
>
> > 'Attached hereto is a copy of the Legislature's Budget for the 2017-2018 fiscal year pursuant to Article VII, Section I of the New York State Constitution.'
>
> 117. Identical to those three previous letters, this December 1, 2016 letter was not sworn to, but merely signed. It made no claim to be attaching 'itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house' – as required by Article VII, §1 of the New York State Constitution." (underlining in the original).

Nor does AAG Lynch reveal that her Exhibit 10 is not – and cannot be – a "certification" of legislative reappropriations – as NO legislative appropriations were part of the 16-page proposed budget presentation that the December 1, 2016 letter transmitted. They only popped up in defendant CUOMO's combined Legislative/Judiciary Budget Bill #S.2001/A.3001, as to which plaintiffs' supplemental complaint stated, as follows, without contest by her:

> "156. Identically to the last three years, the §4 legislative reappropriations (pp. 27-53) were not part of the legislative budget that defendants FLANAGAN and HEASTIE had transmitted by their December 1, 2016 coverletter. These legislative reappropriations, spanning 26-1/4 pages and untallied, amounted to tens of millions of dollars, and, by description, were not suitable for certification as reappropriations."

Indeed, plaintiffs' reiterated third cause of action in their March 29, 2017 supplemental complaint (pp. 64-65) is entirely about the legislative reappropriations and could not be clearer in stating that Legislative/Judiciary Budget Bill #S.2001/A.3001 "adds legislative reappropriations that were not part of the Legislature's proposed budget and not certified either as to their suitability as reappropriations or as to their amounts." (p 65, underlining in the original).

As for AAG Lynch's Exhibit 9, furnishing what ¶12 of her affirmation purports to be "a true copy of the cover page of the Judiciary budget for Fiscal Year 2017-2018, with the certification of the Chief Judge of the Court of Appeals, and approval of the Governor on December 1, 2016", this is false. It is the transmitting memorandum and certification for only one part of the Judiciary's proposed budget, its operating budget – and ¶¶130-136 of plaintiffs' supplemental complaint exposes the fraud that AAG Lynch is here perpetrating. Those paragraphs – whose accuracy AAG Lynch has not contested – read:

> "130. By two memoranda, dated December 1, 2016, Chief Administrative Judge Lawrence Marks furnished a two-part presentation of the Judiciary's proposed budget to the same recipients as last year: defendants CUOMO, FLANAGAN, and HEASTIE, Senate Coalition Leader Jeffrey Klein, Senate Minority Leader Andrea Stewart-Cousins,

Assembly Minority Leader Brian Kolb, as well as the chair and ranking member of the Senate Finance Committee – Senator Catharine Young and Senator Liz Krueger –; the chair and ranking member of the Assembly Ways and Means Committee – Assemblyman Herman Farrell, Jr. and Assemblyman Bob Oaks –; and the chairs of the Senate and Assembly Judiciary Committees – Senator John Bonacic and Assemblywoman Helene Weinstein.

131. In language identical to that used for the past three years, the Chief Administrative Judge's memoranda represented this two-part proposed budget as: 'itemized estimates of the annual financial needs of the Judiciary…' for its operating expenses and

> 'itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary.'

132. The latter memorandum explained that the two-part presentation:

> 'follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2017-2018 Fiscal Year.' (underlining added).

133. The two parts of the Judiciary's proposed budget contained, for each part, a certification by the Chief Judge and approval by the Court of Appeals identical to those furnished in the last three years. However, identically to the last three years, because of the future tense 'will' pertaining to the 'single budget bill' and the bill's placement in the 'Executive Summary' section, NO certification appeared to encompass the 'single budget bill'.

134. Identically to the last three years, the Judiciary's two-part budget, including its single 'Executive Summary' and statistical tables, did not provide a cumulative dollar total for the Judiciary's budget request. Likewise, the Judiciary's 'single budget bill' did not provide a cumulative tally.

135. Identically to the last three years, the Judiciary's failure to provide a cumulative dollar total for its two-part budget and to tally the figures in its 'single budget bill' enabled it to conceal a discrepancy of tens of millions of dollars between them. This discrepancy was the result of

reappropriations in the 'single budget bill' (at pp. 13-16) that were not in the Judiciary's two-part budget presentation.

136. The Judiciary's two-part budget presentation contained no reappropriations. They appeared only in the 'single budget bill'. Their amount, as identified on the first page of the 'single budget bill', was $84,350,000. This did not include the $15,000,000 in IOLA reappropriations, identified on the last page of the 'single budget bill' as part of its 'SCHEDULE' (at p. 13) – and which, if added, make a cumulative total of $99,350,000 in reappropriations." (underlining in plaintiffs' March 29, 2017 verified supplemental complaint).

Further paragraphs of plaintiffs' March 29, supplemental complaint particularized how the uncertified legislative reappropriations and seemingly uncertified Judiciary reappropriations were fitted into the Governor's combined Legislative/Judiciary Budget Bill #S.2001/A.3001:

"152. Identically to the last three years, the legislative portions of defendant CUOMO's bill, §1 and §4 (pp. 1-9, 27-53), were non-consecutive. The judiciary portions of the bill, §2 and §3 (pp. 10-22, 23-26), were consecutive and, *verbatim*, the same §2 and §3 as were the entirety of the Judiciary's 'single budget bill'.

155. Identically to the last three years, the bill's §3 for the Judiciary bore the title 'Reappropriations' (p. 23). By contrast, its §4 for the Legislature was not titled 'Reappropriations', although that is what they were – for the Legislature (p. 27).

...

161. As for the §3 judiciary reappropriations in defendant CUOMO's Budget Bill #S.2001/A.3001, these were, identically to the last three years, the Judiciary's seemingly uncertified 'single budget bill' and only partially tallied (pp. 1, 13-16). The total tally of the judiciary reappropriations in defendant CUOMO's Budget Bill #S.2001/A.3001 is $99,350,000.

162. Identically to the last three years, there is no cumulative dollar total in defendant CUOMO's Budget Bill #S.2001/A.3001 either for the whole bill (pp. 1-54), or for its §1 and §4 legislative portion (pp. 1-9, 27-53), or for its §2 and §3 judiciary portion (pp. 10-22, 23-26), thereby concealing hundreds of millions of dollars in legislative and judiciary reappropriations." (underlining in plaintiffs' March 29, 2017 verified supplemental complaint).

Thus, AAG Lynch has furnished NO EVIDENCE of the certifications, whose absence she purports as the SOLE basis for the injunctions plaintiffs seek by the sixth branch of their March 29, 2017 order to show cause – addressing NONE of the other aspects of unconstitutionality, unlawfulness, and fraudulence laid out by plaintiffs' reiterated first cause of action in their March 29, 2017 supplemental complaint (at p. 63), as follows:

> "As to the First Cause of Action (¶¶23-33),
> Reiterated for Fiscal Year 2017-2018
> The Legislature's Proposed Budget for Fiscal Year 2017-2018,
> Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional
> & Unlawful
>
> That the Legislature's proposed budget for fiscal year 2017-2018, embodied in Legislative/Judiciary Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because [as chronicled by ¶¶117-129, 173-175, *supra* and discussed by plaintiffs' first cause of action herein (¶¶23-33) and its incorporated corresponding first, fifth, and ninth causes of action from plaintiffs' prior citizen-taxpayer action (Exhibits B, C, A)]: **(1)** it is not 'certified by the presiding officer of each house', nor does it even purport to be 'itemized estimates of the financial needs of the legislature', BOTH expressly mandated by Article VII, §1 of the New York State Constitution; **(2)** it is missing 'General State Charges'; **(3)** its section of 'Senate and Assembly Joint Entities' is materially incomplete; and **(4)** its budget figures, identical to the past six budgets, but for a uniform 3% increase in most figures, are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the funding they need to discharge their constitutional duties."

Nor did she address any of the other aspects of unconstitutionality, unlawfulness, and fraudulence laid out by the second cause of action (at p. 64), as follows:

> "As to the Second Cause of Action (¶¶34-39),
> Reiterated for Fiscal Year 2017-2018
> The Judiciary's Proposed Budget for 2017-2018,
> Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional
> & Unlawful
>
> That the Judiciary's proposed budget for fiscal year 2017-2018, embodied in Legislative/Judiciary Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and

> fraudulent – because [as chronicled by ¶¶130-141, 176-179, *supra* and discussed by plaintiffs' second cause of action herein (¶¶34-39) and its incorporated corresponding second, sixth, and tenth causes of action from plaintiffs' prior citizen-taxpayer action (Exhibits B, C, A)]: **(1)** the Judiciary budget is so incomprehensible that the Senate majority and minority and Assembly majority and minority cannot agree on its cumulative cost and percentage increase; **(2)** its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; **(3)** the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-required itemization and violates Judiciary Law §215(1), creating a 'slush fund' and concealing relevant costs; **(4)** it conceals and embeds funding for judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional, *to wit*, the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation."

Suffice to note that with respect to the unconstitutionality and unlawfulness of the transfer/interchange provision in the Judiciary's budget, including its use to create a "slush fund", such was not part of the second and sixth causes of actions dismissed by Judge McDonough – having been presented, for the first time, by plaintiffs' March 23, 2015 second supplemental complaint (Exhibit A, ¶¶320-330).

AAG Lynch's Point IV (at pp. 16-17)
Conceals Plaintiffs' Entitlement to the Seventh Branch of their March 29, 2017 Order to Show Cause

AAG Lynch's Point IV entitled "Plaintiff is Not Entitled to Motion Costs" is her response to the seventh branch of plaintiffs' March 29, 2017 order to show cause for an order:

> "for such other and further relief as may be just and proper, including $100 motion costs pursuant to CPLR §8202".

The least of the relief sought by plaintiffs' seventh branch – and mandated by the state of the record – is the "$100 motion costs", but this is the only relief she discloses, stating that "motion costs are discretionary" and such discretion should not be exercised as:

> "Plaintiff filed an Order to Show Cause containing a premature and unsupported motion for summary judgment, a motion to file a supplemental complaint containing causes of action that are either meritless or duplicative, and an application for a preliminary injunction and temporary restraining order for relief unrelated to the Complaint and for which Plaintiff provides no evidentiary support. Plaintiff should not be rewarded for filing a meritless motion and application for preliminary relief for which she provides no support." (at pp. 16-17).

Such is utter fraud – repeating her prior frauds by her opposition papers, hereinabove demonstrated. Plaintiffs' March 29, 2017 order to show cause and the budget bills and one-house budget resolutions that plaintiff SASSOWER brought to the courthouse on March 29, 2017 presented a *prima facie*, summary judgment entitlement to the granting of the first six branches of their order to show cause – and, by reason thereof, to the $100 motion costs specified by the seventh branch. AAG Lynch's litigation fraud, by her opposition papers, only reinforce this.

AAG Lynch's litigation fraud is properly addressed as part of the "other and further relief" requested by plaintiffs' seventh branch – as, likewise, all other threshold integrity issues. This, too, would be consistent with the end of AAG Lynch's one-sentence "CONCLUSION" (at p. 17), requesting the Court to "order such other and further relief as the Court shall seem (sic) just and equitable."

PLAINTIFFS' REQUESTED AFFIRMATIVE RELIEF TO SAFEGUARD THE INTEGRITY OF THESE JUDICIAL PROCEEDINGS

I. The Court's First Threshold Duty: To Disclose Facts Bearing Upon its Fairness & Impartiality

The bedrock principle for a judge is judicial impartiality. Over 150 years ago, the New York Court of Appeals recognized that 'the first idea in the administration of justice is that a judge must necessarily be free from all bias and partiality', *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), quoted in *Scott v. Brooklyn Hospital*, 93 A.D.2d 577, 579 (2nd Dept. 1983). This standard of impartiality, both in appearance and actuality is the hallmark of the Chief Administrator's Rules Governing Judicial

Conduct (Part 100) – which, pursuant to Article VI, §§20 and 28(c) of the New York State Constitution, has constitutional force.

§100.3E pertains to judicial disqualification and states in pertinent part:

> "(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might be reasonably questioned, including but not limited to instances where: (a)(i) the judge has a personal bias or prejudice concerning a party...(d) the judge knows that the judge...(iii) has an interest that could be substantially affected by the proceeding."

Judiciary Law §14 governs statutory disqualification for interest. In pertinent part, it states:

> "A judge shall not sit as such in, or take any part in the decision, of an action, claim, matter, motion or proceeding...in which he is interested..."

It is long-settled that a judge disqualified by statute is without jurisdiction to action and the proceedings before him are void, *Oakley v. Aspinwall*, *supra*, 549, *Wilcox v. Arcanum*, 210 NY 370, 377 (1914), *Casterella v. Casterella*, 65 AD2d 614 (2nd Dept. 1978), 1A Carmody-Wait 2d §3:94. "Recusal, as a matter of due process, is required...where there exists a direct, personal, substantial or pecuniary interest in reaching a particular conclusion", *People v. Alomar*, 93 N.Y.2d 239 (1999), *Kampfer v. Rase*, 56 A.D.3d 926 (3rd Dept. 2008).

Although recusal on non-statutory grounds is "within the personal conscience of the court", a judge's denial of a motion to recuse will be reversed where the alleged "bias or prejudice or unworthy motive" is "shown to affect the result", *People v. Arthur Brown*, 141 AD2d 657 (2nd Dept. 1988), citing *People v. Moreno*, 70 NY2d 403, 405 (1987); *Matter of Rotwein*, 291 NY 116, 123 (1943); 32 New York Jurisprudence 44, *Janousek v. Janousek*, 108 AD2d 782, 785 (2nd Dept 1985): "The only explanation for the imposition of such a drastic remedy...is that...the court became influenced by a personal bias against defendant."

A judge who fails to disqualify himself upon a showing that his "unworthy motive" has "affect[ed] the result" and, based thereon, does not vacate such "result" is subject not only to reversal

on appeal, but to removal proceedings:

> "*A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...*", italics added by Appellate Division, First Department in *Matter of Capshaw*, 258 AD 470, 485 (1st Dept. 1940), quoting from *Matter of Droege*, 129 AD 866 (1st Dept. 1909).

In *Matter of Bolte*, 97 AD 551 (1st Dept. 1904), cited in the August 20, 1998 New York Law Journal column, "*Judicial Independence is Alive and Well*", by the then administrator and counsel of the New York State Commission on Judicial Conduct, Gerald Stern, the Appellate Division, First Department held:

> "A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another..." (at 568, emphasis in the original).
>
> "...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe." (at 574).

§100.3F of the Chief Administrator's Rules Governing Judicial Conduct provides that where a judge's "impartiality might reasonably be questioned" or he has an interest, he may:

> "disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation of the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding."

The Commission on Judicial Conduct's annual reports explicitly instruct:

> "All judges are required by the Rules of Judicial Conduct to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned."

According to the Commission in its brief before the New York Court of Appeals in *Matter of Edward J. Kiley*, (July 10, 1989, at p. 20),

> "It is cause for discipline for a judge to fail to disclose on the record or offer to disqualify under circumstances where his impartiality might reasonable (sic) be questioned."

Treatise authority holds:

> "The judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a disqualification motion", Flamm, Richard E., Judicial Disqualification: Recusal and Disqualification of Judges, p. 578, Little, Brown & Co., 1996.

Instructive of the Court's obligation to make disclosure and address whether it should disqualify itself, even in the absence of a formal motion for its disqualification – and to do so, threshold, before determining the motion before it – is the decision "*Trimarco v. Data Treasury Corp.*, 2014 NY Slip Op 30664[U] [Sup Ct, Suffolk County 2014]" – cited by its May 5, 2017 decision (at p. 2).

Yet the Court's May 5, 2017 decision, like its December 21, 2016 decision, not only makes no disclosure, it conceals that plaintiffs even requested disclosure.

The specifics of plaintiffs' disclosure requests, as stated initially in their September 30, 2016 memorandum of law (at p. 5) and then quoted, *verbatim*, in their Exhibit U analysis of the Court's December 21, 2016 decision, are no less germane now, as then, and were as follows:

> "...apart from this Court's $60,000-a-year judicial salary interest, plus the additional thousands of dollars in salary-based, non-salary benefits challenged by this citizen-taxpayer action, are the Court's professional and personal relationships that led to its being appointed to the bench by defendant Governor Cuomo and confirmed by defendant Senate, last year, after 30 years of employment in the Attorney General's office, including as an assistant solicitor general to defendant Attorney General Schneiderman and, before that, as an assistant solicitor general to then-Attorney General defendant Cuomo.[fn4]" (Exhibit U analysis, at p. 6).

The Court responded to this – and to the balance of plaintiffs' Exhibit U analysis on which their February 15, 2017 order to show cause for its disqualification rested – with three sentences in its May 5, 2017 decision:

> "...plaintiff has not alleged a proper ground for disqualification. The undersigned Judge has no interest in this litigation or blood relation or affinity to any party hereto (*see People v. Call*, 287 AD2d 877, 878-879 [3d Dept 2001]; *People v Call*, 287 AD2d 877 [3d Dept 2001]; *Trimarco v. Data Treasury Corp.*, 2014 NY Slip Op 30664[U] [Sup Ct, Suffolk County 2014], citing *Paddock v. Wells*, 2 Barb. Ch. 331, 333 [Chancellor's Ct 1847]). Plaintiffs' conclusory allegations of bias and fraud are meritless." (at p. 2, underlining added).

Suffice to note that even Judge McDonough, in denying plaintiffs' requests for his disqualification, did not purport that he had "no interest". Rather, and without revealing that the case before him involved the unconstitutionality and unlawfulness of judicial salary increases, he stated:

> "The alleged financial conflict that plaintiffs describe is equally applicable to every Supreme and Acting Supreme Court Justice in the State of New York, rendering recusal on the basis of financial interest a functional impossibility (*see*, Matter of Maron v Silver, 14 NY3d 230, 248-249 [2012])."

Inasmuch as the first branch of plaintiffs' March 29, 2017 order to show cause is for summary judgment on their sixth cause of action to void the statute that since April 1, 2016 has raised the Court's salary by over $20,000 a year and that will raise it by another $10,000 on April 1, 2018, and will result in the voiding of the predecessor statute that gave its salary a $40,000 boost, with the consequence that its yearly salary will plummet from its current $193,000-plus to $136,700 – on top of which it will be subject to a claw-back of approximately $100,000 since it took the bench two years ago, this Court must disclose the basis for its bald declaration that it has "no interest in this litigation". Certainly, such declaration gives the appearance that it is not fair and impartial, as no fair and impartial judge would make so false a claim.

In that connection, the Court should also disclose whether it agrees with the position, asserted by plaintiffs before Judge McDonough, but ignored by him, that:

> "A judge can be financially interested, yet nonetheless rise above that interest to discharge his duty. A judge who cannot or will not do that and so-demonstrates this by manifesting his actual bias – must disqualify himself or be disqualified." (underlining in the original)[4].

As plaintiffs' February 15, 2017 order to show cause for the Court's disqualification was not only for "interest", but, in the first instance, for "demonstrated actual bias" – as to which plaintiffs furnished their Exhibit U analysis of its December 21, 2016 decision as the *prima facie* proof – the Court must additionally disclose the basis upon which its May 5, 2017 decision, without identifying the Exhibit U analysis or contesting its accuracy in any respect, baldly proclaimed "Plaintiff's conclusory allegations of bias and fraud are meritless." Here, too, no fair and impartial judge would make so false a claim.

Likewise, the Court must disclose the basis upon which its May 5, 2017 decision makes the one-sentence declaration "plaintiff has not established "matters of fact or law" that the Court 'overlooked or misapprehended,' or new facts that would warrant renewal or reargument" – which, as to reargument, is belied by the Exhibit U analysis and, as to renewal, is belied by the responses to plaintiffs' FOIL requests pertaining to the Court's 30-year tenure at the Attorney General's office, working for defendants CUOMO and then SCHNEIDERMAN and its appointment to the bench by defendant CUOMO, confirmed by defendant SENATE – which, like Exhibit U, were exhibits to plaintiff SASSOWER's moving affidavit and summarized therein (¶¶9-11).

As to the Court's 30-year tenure at the Attorney General's office, disclosure is certainly warranted as to its personal and professional relationships with named defendants

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[4] See plaintiffs' Exhibit G analysis of Judge McDonough's August 1, 2016 decision, annexed to their September 2, 2016 verified complaint (at pp. 11-14, under the section heading: "The Threshold Issue of Justice McDonough's Disqualifying Actual Bias, Born of his Financial Interest – Shoved to the Back & Covered-Up".

SCHNEIDERMAN and CUOMO, with Attorney General supervisory staff, and with AAG Lynch and AAG Kerwin, given its complete cover-up of the Attorney General's flagrant litigation fraud and disregard of the interests of the state. In that regard, disclosure is warranted as to whether the Court, when it worked in the Attorney General's office, itself was a practitioner of the AG's *modus operandi* of litigation fraud (Exhibit 7-a), such that it cannot now blow the whistle on what it itself did

Then, there is a reasonable question as to whether, given all the circumstances, including plaintiffs' April 10, 2017 and April 21, 2017 complaints to supervising judges about its demonstrated actual bias and its subsequent further demonstration of actual bias by its May 5, 2017 decision, as herein summarized, make "the risk of bias [] too high to be constitutionally tolerable". As to this disqualification standard, the United States Supreme Court rendered a decision on March 6, 2017 in *Rippo v. Baker*, 580 U. S. ____ , stating:

> "Under our precedents, the Due Process Clause may sometimes demand recusal even when a judge ''ha[s] no actual bias.'' *Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813, 825 (1986). Recusal is required when, objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.' *Withrow v. Larkin*, 421 U. S. 35, 47 (1975); *see Williams v. Pennsylvania*, 579 U. S. ___, ___ (2016) (slip op., at 6) ('The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias' (internal quotation marks omitted))....the question our precedents require [is]: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable."

II. The Court's Second Threshold Duty: To Ensure that the Parties are Properly Represented by Counsel

Executive Law §63.1 identifies that the Attorney General's litigation position is contingent on "the interest of the state". It reads as follows:

> "The attorney-general shall:
>
> > 1. Prosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state, but this section shall not apply to any of the military department bureaus or military offices of the state. No action or proceeding affecting the property or interests of the state shall be instituted, defended or conducted by any department, bureau, board, council, officer, agency or instrumentality of the state, without a notice to the attorney-general apprising him of the said action or proceeding, the nature and purpose thereof, so that he may participate or join therein if in his opinion the interests of the state so warrant." (underlining added).

State Finance Law Article 7-A also contemplates the Attorney General's affirmative role in safeguarding against "wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property" (§123-b) – including as plaintiff:

> §123-a defines "person" to include "the attorney general" and he is the only "person" so-specified;
>
> §123-c(3) states "Where the plaintiff in such action is a person other than the attorney general, a copy of the summons and complaint shall be served upon the attorney general."
>
> §123-d states that costs and security "shall not apply to any action commenced by the attorney general in the name of and on behalf of the people of the state."

The Attorney General's duty is thus not to provide a knee-jerk defense, but to determine "the interest of the state". Where there is no legitimate defense to a lawsuit, the Attorney General's

obligation is not to defend, but to intervene and/or represent the plaintiff so as to uphold "the interest of the state".

Certainly, if the Attorney General had any legitimate defense, AAG Lynch would not have engaged in the litigation fraud she has by her April 21, 2017 opposition papers. Such establishes, *prima facie*, what was already proven by the litigation fraud of AAG Kerwin in the predecessor citizen-taxpayer action and in this proceeding: that the Attorney General has no legitimate defense and his duty is to be representing plaintiffs or intervening on their behalf.

Attorney General SCHNEIDERMAN is a named defendant, complicit and culpable in the corruption that has given rise to this citizen-taxpayer action, the predecessor citizen-taxpayer action, and the declaratory judgment action that preceded it, to which he was also a named defendant. With respect to the sixth, seventh, and eighth causes of action pertaining to the Commission on Legislative, Judicial and Executive Compensation, he has both direct and indirect financial interests.

In *Greene v. Greene*, 47 NY2d 447, 451 (1979), the Court of Appeals articulated key principles governing attorney disqualification for conflict of interest – the situation at bar where Attorney General SCHNEIDERMAN, in addition to representing himself, represents his co-defendant public officers:

> "It is a long-standing precept of the legal profession that an attorney is duty bound to pursue his client's interests diligently and vigorously within the limits of the law (Code of Professional Responsibility, canon 7). For this reason, a lawyer may not undertake representation where his independent professional judgment is likely to be impaired by extraneous considerations. Thus, attorneys historically have been strictly forbidden from placing themselves in a position where they must advance, or even appear to advance, conflicting interests (see, e.g., *Cardinale v Golinello*, 43 NY2d 288, 296; *Eisemann v Hazard*, 218 NY 155, 159; Code of Professional Responsibility, DR 5-105). This prohibition was designed to safeguard against not only violation of the duty of loyalty owed the client, but also against abuse of the adversary system and resulting harm to the public at large.

> ...where it is the lawyer who possesses personal, business or financial interest at odds with that of his client, these prohibitions apply with equal force (Code of Professional Responsibility, DR 5-101, subd [A]). Viewed from the standpoint of a client, as well as that of society, it would be egregious to permit an attorney to act on behalf of the client in an action where the attorney has a direct interest in the subject matter of the suit. ...the conflict is too substantial, and the possibility of adverse impact upon the client and the adversary system too great, to allow the representation."

The former DR 5-101 is now reflected in Rule 1.7 of New York's Rules of Professional Conduct. Rule 1.7(a)(2) bars a lawyer from representing a client if a "reasonable lawyer" would conclude:

> "there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property, or other personal interests."[5]

Such "significant risk" is here present, compounded by the fact that Attorney General SCHNEIDERMAN's preeminent duty of representation is not to his co-defendants who he has heretofore protected, but to the state, which, by his litigation fraud, he has been flagrantly betraying.

III. The Court's Power under 22 NYCRR §130-1.1(d) to Act "Upon its Own Initiative"and Impose Costs & Sanctions against AAG Lynch for her Frivolous Opposition Papers

To enable a court to safeguard the integrity of its proceedings, NYCRR §130-1.1(d) explicitly empowers it to act "upon its own initiative, after a reasonable opportunity to be heard" in imposing costs and sanctions against a party or his attorney for "frivolous" conduct in "Every pleading, written motion, or other paper" he has signed.

§130-1.1(c) defines conduct as "frivolous" if:

"(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

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[5] Such is permitted under Rule 1.7(b) only if, *inter alia*, "(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client"; and "(4) each affected client gives informed consent, confirmed in writing".

(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or

(1) it asserts material factual statements that are false."

AAG Lynch's April 21, 2017 opposition papers meets the test for frivolousness on all three counts. As hereinabove demonstrated, she has brazenly disregarded the most fundamental legal standards, beginning with honesty. Fashioned on fraud and deceit throughout, they are "completely without merit in law", chocked with "material factual statements that are false", and intended to "delay or prolong the resolution of the litigation or maliciously injure [the plaintiffs herein]", as it has already done.

Such mandates that maximum costs and sanctions be imposed,[6] especially as AAG Lynch's "frivolous" conduct, by her opposition papers, continues the misconduct she engaged in at the March 29, 2017 oral argument, so vigorously objected to by plaintiff SASSOWER.

IV. The Court's Mandatory Disciplinary Responsibilities under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct

Part 100 of the Chief Administrator's Rules Governing Judicial Conduct are designed to ensure the integrity of judicial proceedings. Part 100.3D relates to a judge's "Disciplinary Responsibilities". In mandatory language it states:

> "(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action."

New York's Rules of Professional Conduct, promulgated as joint rules of the Appellate Divisions of the Supreme Court, are Part 1200 of Title 22 of New York Codes, Rules and

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[6] Under §130-1.2, the court is empowered to impose "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct". Pursuant to §130-1.3, "financial sanctions" of up to $10,000 may additionally be imposed, payable to the Lawyers' Fund for Client Protection.

Regulations. Particularly relevant is the Code's definition section, which specifies "fraud" as involving:

> "scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another" (1200.1(I)).

It also defines "law firm" as including "a government law office".

Rule 3.1, entitled "Non-Meritorious Claims and Contentions", states:

> "a lawyer shall not…defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous…". (subsection a).

The definition of "frivolous" is the same as that under 22 NYCRR §130.1.1(c) and includes "knowingly assert[ing] material factual statements that are false" (subsection b(3)).

Rule 3.3, entitled "Conduct Before a Tribunal", states:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer or use evidence that the lawyer knows to be false. or use evidence that the lawyer knows to be false. If a lawyer…has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal…

Rule 8.4, entitled "Misconduct", states:

"A lawyer or law firm shall not:

(a) violate or attempt to violate the Rules of Professional Conduct…

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice."

Rule 5.1 is entitled "Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers" and states:

"(a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules.

(b)(1) A lawyer with management responsibilities in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules.

(2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules.

(c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate...

(d) A lawyer shall be responsible for a violation of these Rules by another lawyer if:

(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or

(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and

(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated."

As demonstrated herein, AAG Lynch's April 21, 2017 opposition papers are not just "frivolous", but fraudulent – and flagrantly violate the Rules of Professional Conduct and, specifically, Rule 3.1, Rule 3.3, and Rule 8.4.

Pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, the Court's duty is to "take appropriate action" by referring AAG Lynch and her culpable superiors in the Attorney General's office who failed to discharge supervisory responsibilities under Rule 5.1 to disciplinary authorities, is consistent with the unequivocal directive of the New York Court of Appeals:

> "the courts are charged with the responsibility of insisting that lawyers exercise the highest standards of ethical conduct...Conduct that tends to reflect adversely on the legal profession as a whole and to undermine public confidence in it warrants disciplinary action (*see Matter of Holtzman*, 78 NY2d 184, 191 cert denied, ___ US __, 112 S.Ct 648; *Matter of Nixon*, 53 AD2d 178, 181-182; *cf., Matter of Mitchell*, 40 NY2d 153, 156).", *Matter of Rowe*, 80 NY2d 336, 340 (1992).[7]

V. Judiciary Law §487 Provides the Court with a Further Means to Protect Itself & Plaintiffs from AAG Lynch's Demonstrated Fraud and Deceit

Judiciary Law §487, "Misconduct by attorneys", states, in pertinent part:

"An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party;

...

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action."

In *Amalfitano v. Rosenberg*, 12 NY3d 8, 14 (2009), the New York Court of Appeals recognized that "the evident intent" of Judiciary Law §487 is "to enforce an attorney's special

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[7] "A court cannot countenance actions, on the part of an attorney, which are unethical and in violation of the attorney's Canon on Ethics... ...A court cannot stand idly by and allow a violation of law or ethics to take place before it.", *People v. Gelbman*, 568 N.Y.S2d 867, 868 (Just. Ct. 1991).

obligation to protect the integrity of the court and its truth-seeking function". As such, AAG Lynch's fraudulent opposition papers warrant that the Court utilize Judiciary Law §487, including by referring her to criminal authorities so that she, her colluding attorney superiors, and her consenting attorney defendants, can each be prosecuted for her "misdemeanor" and punished under the penal law. Such would not only also be consistent with the Court's duty to take "appropriate action" under §100.3(D)(2) of the Chief Administrator's Rules Governing Judicial Conduct, but would serve the beneficial purpose of facilitating plaintiffs' collection of "treble damages" in a civil action – the importance of which is all the greater as the legislative defendants have not seen fit to create the fund that State Finance Law §123-g identifies was to be established under State Finance Law §123-h to reimburse plaintiffs in meritorious citizen-taxpayer actions for litigation costs and expenses, including attorney fees.[8]

CONCLUSION

Upon the Court's confronting the threshold issue of its fairness and impartiality, including by disclosure of its judicial compensation interest in the litigation and its relationships and associations, including with named defendants SCHNEIDERMAN and CUOMO, this Court's duty is to address the three further threshold issues:

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[8] State Finance Law §123-g, entitled "Costs and fees", states:

> "1. The court shall have the authority to fix a reasonable sum to reimburse the plaintiff for costs and expenses, including attorney fees in an action wherein judgment was rendered for the plaintiff. Such attorney fees shall only be paid from the fund established under section one hundred twenty-three-h of this article to the extent of money available therein.
>
> 2. No intervenors, unless they are necessary parties, shall be awarded attorney fees."

There is no State Finance Law §123-h.

(1) plaintiffs' entitlement to the Attorney General's representation/intervention, pursuant to Executive Law §63.1 and State Finance Law Article 7-A (§123 *et seq.*);

(2) plaintiffs' entitlement to the disqualification of defendant Attorney General SCHNEIDERMAN from representing his co-defendants;

(3) plaintiffs' entitlement to sanctions, and disciplinary and criminal referrals of AAG Lynch and those supervising her in the Attorney General's office, responsible for her litigation fraud;

and, thereafter, to summarily grant each of the seven branches of plaintiffs' March 29, 2017 order to show cause – or, alternatively, to hold an evidentiary hearing on their entitlement to relief, including as to the preliminary injunctions sought by their third, fourth, fifth, and sixth branches.

ELENA RUTH SASSOWER, unrepresented plaintiff,
Individually & as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York & the Public Interest

May 15, 2017