

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Tuesday, June 19, 2018 1:10 PM
To: 'Frederick.Brodie@ag.ny.gov'
Cc: 'victor.paladino@ag.ny.gov'
Subject: Record on Appeal -- Citizen-Taxpayer Action: CJA v. Cuomo, et al (Albany Co. #5122-16)
Attachments: draft-contents-record-6-19-18.doc; 4-25-17-hartman-so-ordered-ltr.pdf; 5-23-17-letter-from-kerwin-to-hartman.pdf

Dear Assistant Solicitor General Brodie,

Thank you for your prompt review of plaintiffs' proposed table of contents for the record on appeal.

The three items that you thought you didn't have, you have. They are Exhibits 6-a, 6-b, and 5 to my May 15, 2017 reply affidavit in further support of plaintiffs' March 29, 2017 order to show cause with preliminary injunction and TRO.

As for your three "Other (minor) comments", you are right that the first two are typographical errors – and I thank you for having alerted me to the errors so that I could correct them. As for the third, Exhibit B-2 to my June 12, 2017 moving affidavit, which you indicate is missing from your copy, it is, as the table of contents indicates, Judge Hartman's May 5, 2017 amended decision and order. I recollect that I noticed it missing when I was waiting on line at the post office – and subsequently sent it, with a little post-it indicating that it had been inadvertently not included. In any event, you have the May 5, 2017 amended decision and order -- as AAG Kerwin sent it to me by her May 11, 2017 notice of entry for it which is Exhibit B-1.

Attached is plaintiffs' revised table of contents. For completeness, it now includes, at the outset, plaintiffs' two notices of appeals and pre-calendar statements for Judge Hartman's underlying May 5, 2017 decision and order, May 5, 2017 amended decision and order, and June 26, 2017 decision and order. It also now includes two further documents I have found: Judge Hartman's April 25, 2017 so-ordered letter and AAG Kerwin's May 23, 2017 letter to Judge Hartman, attached above for your convenience. I have also further particularized the contents of my May 19, 2017 letter pertaining to plaintiffs' subpoenas *duces tecum*, as well as particularized AAG Kerwin's Exhibits W – AA to her July 21, 2017 affirmation.

Additionally, I have added the free-standing EVIDENCE I brought to the courthouse on March 29, 2017 for the oral argument on plaintiffs' March 29, 2017 order to show cause and which, after the oral argument, I filed at the clerk's office with the original of Judge Hartman's signed order to show cause. Such EVIDENCE, corroborative of plaintiffs' entitlement to summary judgment on the reiterated fourth and fifth causes of action of our March 29, 2017 verified supplemental complaint, is too voluminous to include in the bound record on appeal itself – and I will be excluding it.

I will also be excluding repetitive and irrelevant exhibits – and most of defendants' exhibits fit into that category. Thus, the only defendants' exhibits I will include in the bound record on appeal are Exhibits 6-10 of AAG Lynch's April 21, 2017 affirmation and Exhibits I, J of AAG Kerwin's July 21, 2017 affirmation. I understand from the Appellate Division, Third Department that I should try to get a stipulation from you pertaining to excluded exhibits – and my table of contents includes, as its penultimate entry, a "Stipulation Dispensing with Reproducing Exhibits". Would such a stipulation be acceptable to you?

I also understand from the Appellate Division, Third Department that – unlike the First and Second Departments – the original record remains at the clerk's office of the lower court. I will be submitting a subpoena to the Appellate Division, Third Department for the original record – one encompassing the incorporated record of the predecessor citizen-taxpayer action, *CJA v. Cuomo, et al.* (Albany Co. #1788-14), whose inventory I will provide. Will defendants join in

plaintiffs' request that the original record of the two citizen-taxpayer actions be brought up to the Appellate Division, Third Department for purposes of the appeal and determination of plaintiffs' accompanying OSC for a preliminary injunction with TRO? Please advise.

Finally, I trust you read – or will be reading – my May 16, 2018 NOTICE to Attorney General Underwood and my follow-up May 30, 2018 letter – and, based on your review of the record on appeal and plaintiffs' drafted "Questions Presented" and appeal brief: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/complaints-notice/moving-forward-appeal.htm>, will be making an appropriate recommendation to Attorney General Underwood with respect thereto. For your convenience, everything is accessible from CJA's menu page for the two citizen-taxpayer actions, here: <http://www.judgewatch.org/web-pages/searching-nys/budget/menu-budget-reform.htm> -- and I am available to assist you with any questions.

Thank you.

Elena Sassower, unrepresented plaintiff-appellant,
acting on her own behalf and "on behalf of the People of the State of New York & the Public Interest"
914-421-1200
elena@judgewatch.org

From: Brodie, Frederick <Frederick.Brodie@ag.ny.gov>
Sent: Monday, June 18, 2018 6:28 PM
To: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Cc: Paladino, Victor <Victor.Paladino@ag.ny.gov>
Subject: CJA v. Cuomo: Record on Appeal

Dear Ms. Sassower,

I've reviewed your proposed table of contents for the record on appeal. I am in general agreement with your proposed list of items, subject to the following comments/questions:

First, there are three items I don't have. If it's not a problem, could you email copies of the following to me so I can confirm their relevance?

Page vi – Plaintiffs' March 24, 2017 letter to Judge Hartman

Page vi – Judge Hartman's So-Ordered March 24, 2017 letter

Page vii – Transcript of March 29, 2017 Oral Argument

Other (minor) comments:

Page iv – You have "Exhibit M-1" twice. The second one should be "Exhibit M-2."

Page v – Exhibit V to the February 15, 2017 moving affidavit does not appear to be an affidavit of service. Please correct the description of the document.

Page xii – Exhibit B-2 is missing from my copy of the June 12, 2017 moving affidavit. Please check and see if it's contained in your file copy.

Finally, the draft stipulation of record should be revised as shown in the attached pdf. With respect to the change on your signature block, on this appeal you can represent only yourself as an individual. An organization must be represented by counsel. With respect to my signature block, I have added the AG's middle initial and my name and title.

Of course, before stipulating that the copies are "correct and complete," I will need to review a proof of the record.

Very truly yours,

Frederick A. Brodie
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