COURT OF APPEALS
STATE OF NEW YORK

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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-Appellants,

-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-Respondents.

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November 25, 2019

NOTICE OF MOTION pursuant to CPLR §5015 & §2221, this Court's Rule 500.24, §100.3 of the Chief Administrator's Rules Governing Judicial Conduct, & the Court's Inherent Power

Upon the annexed affidavit of the unrepresented individual plaintiff-appellant Elena Ruth Sassower, sworn to on November 25, 2019, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, the unrepresented plaintiff-appellants will move this Court at 20 Eagle Street, Albany, New York 12207 on

Monday, January 6, 2020 or as soon thereafter as defendant-respondents can be heard for an order:

1. pursuant to CPLR §5015(a)(4), vacating the Court's three October 24, 2019 Orders, as well as its May 2, 2019 Order, for lack of jurisdiction – or securing a federal forum to do so – absent the Court's establishing that the unequivocal language of Judiciary Law §14 and its own interpretive decisions in *Oakley v. Aspinwall*, 3 NY 547 (1850), and *Wilcox v. Royal Arcanum*, 210 NY 370 (1914), did not divest the six associate judges of jurisdiction by reason of their financial and other interests in this appeal;

2. pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct and consistent with *Oakley v. Aspinwall*, at 548-549, 551, for disclosure by the Court's six associate judges of their financial and other interests in the appeal;

3. pursuant to §100.3E of the Chief Administrator's Rules, disqualifying this Court's six associate judges for the actual bias demonstrated by their October 24, 2019 and May 2, 2019 Orders and vacating them by reason thereof – or securing a federal forum to do so;

4. pursuant to CPLR §5015(a)(3), vacating the October 24, 2019 and May 2, 2019 Orders for fraud, misrepresentation and other misconduct of defendant-respondent New York State Attorney General Letitia James – or securing a federal forum to do so;

5. pursuant to CPLR §2221(d) and this Court's Rule 500.24, granting reargument to address what the Court "overlooked" by its three October 24, 2019 Orders – *to wit*, ALL the facts, law, and legal argument presented by appellants' May 31, 2019, June 6, 2019, and August 8, 2019 motions, including as to the *unconstitutionality, as written, as unwritten, and as applied*, of the Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution, mirrored in CPLR §5601(b)(1) – granting appeals of right "wherein is directly involved the construction of the constitution of the state or of the United States" – with a *sua sponte* ground to dismiss because "no

substantial constitutional question is directly involved", which it has not even embodied in a court rule.

6. pursuant to CPLR §2221(e), granting renewal to address new facts that could not be presented previously, further warranting vacatur of the October 24, 2019 Orders, *to wit*:

> (a) unless Court Clerk John Asiello was disabled by disqualification, the Court's October 24, 2019 Orders are not lawfully signed, pursuant to CPLR §2219(b) and defendant-respondent Chief Judge DiFiore's own January 26, 2016 authorization;
>
> (b) the Court's November 21, 2019 Order in *Delgado v. New York State*, if rendered by its six associate judges, manifests their actual bias born of undisclosed financial and other interests, proscribed by Judiciary Law §14, divesting them of jurisdiction to "sit" and "take any part";
>
> (c) Chief Administrative Judge Lawrence Marks and other judges of the Unified Court System are colluding in fraud and deceit before the current Commission on Legislative, Judicial and Executive Compensation, which is itself repeating ALL the statutory and constitutional violations of the 2015 Commission on Legislative, Judicial and Executive Compensation that this citizen-taxpayer action establishes.

7. pursuant to CPLR §8202, granting appellants' $100 motion costs;

8. pursuant to the Court's inherent power, granting such other and further relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on plaintiff-appellants seven days before the return date by e-mail and regular mail, *to wit*, December 30, 2019.

ELENA RUTH SASSOWER, unrepresented plaintiff-appellant, 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

Dated: White Plains, New York
November 25, 2019

TO: New York State Attorney General Letitia James
The Capitol
Albany, New York 12224-0341

ATT: Solicitor General Barbara Underwood
Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie

COURT OF APPEALS
STATE OF NEW YORK

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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,

November 25, 2019

Plaintiffs-Appellants,

Moving Affidavit
for Relief Pursuant to CPLR §5015 & §2221, this Court's Rule 500.24, §100.3 of the Chief Administrator's Rules Governing Judicial Conduct, & the Court's Inherent Power

-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-Respondents.

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> "This Court's constitutional function is to uphold and safeguard our State Constitution. Nothing more is asked, on this motion, than that the associate judges discharge that function, <u>for which they are paid</u>, and which, if they do, will wipe out, overnight, the 'culture of corruption' plaguing our state – as is eminently clear from the verified pleadings of this citizen-taxpayer action and the record thereon." (appellants' June 6, 2019 motion for leave to appeal, at p. 21; repeated in their August 8, 2019 motion to strike, at ¶18, underlining in the original).

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff-appellant in the appeal of this citizen-taxpayer action brought pursuant to State Finance Law Article 7-A (§123 *et seq.*) "on behalf of the People of the State of New York & the Public Interest" for declarations that the state budget is unconstitutional and unlawful – including the Judiciary budget that this Court approves and the commission-based judicial salary increases it embeds that have raised the salaries of each of this Court's associate judges by $82,200 a year – and whose determination in plaintiff-appellants' favor – the ONLY determination the record will support on each of their ten causes of action – will cause a $82,200 salary drop for each associate judge, from $233,400 to $151,200, and require claw-backs from each associate judge – the highest nearing $400,000 from Senior Associate Judge Jenny Rivera.

2. I am fully familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of appellants' accompanying notice of motion[1] pertaining to the Court's three October 24, 2019 Orders (Exhibits A-1, A-2, A-3),

[1] This motion and the prior proceedings on which it rests are accessible from CJA's website, www.judgewatch.org, *via* the prominent homepage link "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' & Unconstitutional 'Three-Men-in-a-Room' Governance". The direct link for CJA's webpage for this motion is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/11-25-19-motion-5015-etc.htm – and from it all referred-to evidence, law, and prior proceedings can be easily accessed.

which, *without* identifying or addressing Judiciary Law §14, *without* making any disclosure of the financial and other interests of each associate judge in this appeal, *without* invoking "Rule of Necessity", or determining whether it could be invoked, purport to dispose of appellants' three motions, each raising those threshold issues:

- appellants' May 31, 2019 motion for "Reargument/Renewal & Vacatur, Determination/Certification of Threshold Issues, Disclosure/Disqualification and Other Relief" (Mo. No. 2019-645);

- appellants' June 6, 2019 motion for "Leave to Appeal Pursuant to Article VI, §3(b)(6) of the New York State Constitution" (Mo. No. 2019-646);

- appellants' August 8, 2019 motion "to Strike as 'Fraud on the Court', to Disqualify the Attorney General, & for Other Relief" (Mo. No. 2019-799).

3. This motion is timely, there being no time restrictions on motions to vacate pursuant to CPLR §§5515(a)(3), (4) – or with respect to the Court's inherent power. As for reargument, governed by this Court's Rule 550.24,[2] the 30th day from the date of the October 24, 2019 Orders falls on Saturday, November 23, 2019, thereby extending the time to serve such motion to the next business day, Monday, November 25, 2019, pursuant to General Construction Law §25-a.

4. The Court's three October 24, 2019 Orders are constitutionally and jurisdictionally indefensible – and, if rendered by the six associate judges, warrant proceedings to remove them from office, pursuant to Article VI, §§22-24 of the New

[2] This motion is also timely for purposes of renewal, governed by CPLR §2221(e) – the statutory right to which being superior to this Court's Rule 550.24.

York State Constitution, and to criminally prosecute them for corruption and larceny of public monies,[3] upon grand jury inquiry and indictment, pursuant to Article I, §6 of the New York State Constitution. Indeed, these three Orders are even more egregious than the May 2, 2019 Order (Exhibit B-1), which, *without* identifying or addressing the threshold issues in the record before the Court, purported to dismiss appellants' appeal of right on *sua sponte* grounds that are not only a LIE, but contravene Article VI, §3(b)(1) of the New York State Constitution and CPLR §5601(b)(1).

5. The purpose of this motion is to afford the associate judges one last clear chance to discharge their constitutional function – beginning with rendering a responsive, reasoned decision on the threshold jurisdictional and disqualification issues that appellants' May 31, 2019 motion particularized, prefaced as follows:

> "5. …based on the unequivocal bar of Judiciary Law §14 that a judge 'shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which…he is interested' and this Court's interpretive decisions, going back to *Oakley v. Aspinwall*, 3 NY 547 (1850), that the statute divests an interested judge of jurisdiction – both prominently before the Court – I would have expected all six associate judge to have recognized that they had no jurisdiction to dismiss the appeal in which they themselves are directly interested, unless they could invoke 'Rule of Necessity' to give

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[3] Among the penal laws: Penal Law §175.35 "offering a false instrument for filing in the first degree"; Penal Law §195 "official misconduct"; Penal Law §496 "corrupting the government in the first degree"/"public corruption" [PUBLIC TRUST ACT]; Penal Law §195.20 "defrauding the government"; Penal Law §190.65 "scheme to defraud in the first degree"; Penal Law §155.42 "grand larceny in the first degree"; Penal Law §105.15 "conspiracy in the second degree; Penal Law §20 "criminal liability for conduct of another". All are cited by appellants' August 8, 2019 motion as applicable to the associate judges' acts herein (Exhibit B, at p. 37).

themselves the jurisdiction the statute removes from them – a question threshold on the appeal.

6. Indeed, rather than *sua sponte* dismissing the appeal, as the May 2, 2019 Order purports [], the duty of the six associate judges was to *sua sponte* address whether they could invoke 'Rule of Necessity' – and to explicate same by a reasoned decision comparable to the Court's decision in *New York State Criminal Defense Lawyers v. Kaye*, 95 NY2d 556 (2000). There, in response to a disqualification motion accompanying a motion for leave to appeal,[fn2] based on 'Judiciary Law §14 and a parallel provision of the New York Code of Judicial Conduct (Canon 3[C][1][d][i])', the Court denied the disqualification motion, stating (at p. 561) that its judges had 'no pecuniary or personal interest' and that 'petitioners ha[d] alleged none'.

7. The May 2, 2019 Order makes no disclosure of what the associate judges know to be their pecuniary and personal interests in appellants' appeal, proscribed by Judiciary Law §14 and 'parallel provision[s]' of the Chief Administrator's Rules Governing Judicial Conduct (§100.3E). Consequently, by this motion and in conjunction with appellants' motion for leave to appeal, I now allege and particularize those interests and relationships so that the Court may render a reasoned decision on the judicial disqualification issues comparable to its decision in *Criminal Defense Lawyers v. Kaye* [fn3]– one additionally addressed to the fact that the Court could not constitutionally dismiss appellants' appeal without invoking 'Rule of Necessity' as it is the 'narrow exception', *General Motors Corp. v. Rosa*, 82 N.Y.2d 183, 188 (1993), *Maron v. Silver*, 14 N.Y.3d 230, 249 (2010),[fn4] to the unconstitutionality that exists when judges have 'direct, personal, substantial pecuniary interest[s]', *Caperton v. Massey Coal*,

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"[fn2] The Court, thereafter, granted Criminal Defense Lawyers' motion for leave to appeal and, on the appeal, affirmed against them, 96 N.Y.2d 512 (2001)."

"[fn3] As the Court there noted, citing *Schulz v New York State Legislature*, 92 NY2d 917 (1998), a 'statutorily based' disqualification motion raises 'an issue of law for decision by the Court'."

"[fn4] The Appellate Division's December 27, 2018 Memorandum and Order (at p. 3) also refers to the 'narrow exception' that is 'Rule of Necessity', attributing it to '*Pines v. State of New York*, 115 AD3d 80, 90 [2014] [internal quotation marks, brackets and citations omitted], appeal dismissed 23 NY3d 982 [2014]'. The citations it has omitted from *Pines* are to *General Motors Corp. v. Rosa* and *Maron v. Silver*."

556 U.S. 868 (2009), quoting *Tumey* v. *Ohio*, 273 U.S. 510, 523 (1927) – as at bar.

8. As the May 2, 2019 Order does not invoke 'Rule of Necessity', it is unconstitutional, pursuant to all U.S. Supreme Court caselaw, as may be discerned from Chief Justice Roberts' dissent in *Caperton*[fn5] because the six associate judges each have 'direct, personal, substantial pecuniary interest[s]'. This, quite apart from their other interests and relationships contributing to the 'probability' of bias, viewed by the *Caperton* majority to also be unconstitutional." (underlining in the original).

6. The Court responded to the May 31, 2019 motion by its October 24, 2019 Order on Mo. No. 645 (Exhibit A-1), purporting it to be "Upon the papers filed and due deliberation". It first dismissed the "motion for reconsideration of this Court's May 2, 2019 dismissal order" made on CJA's behalf by regurgitating, *verbatim*, the pretext of its May 2, 2019 Order, whose falsity the motion had exposed (Exhibit B-2, at p. 2). That pretext – that I was not CJA's "authorized legal representative" (Exhibit B-1) – fraudulently concealed that both CJA and I were before the Court as "unrepresented appellants" raising the threshold issue of our entitlement to be

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"[fn5] As stated in Chief Judge Roberts' dissent, to which Judges Scalia, Thomas, and Alito joined:

'We have thus identified only *two* situations in which the Due Process Clause requires disqualification of a judge: when the judge has a financial interest in the outcome of the case, and when the judge is presiding over certain types of criminal contempt proceedings.

It is well established that a judge may not preside over a case in which he has a 'direct, personal, substantial pecuniary interest.' *Tumey* v. *Ohio*, 273 U.S. 510, 523 (1927). This principle is relatively straightforward, and largely tracks the longstanding common-law rule regarding judicial recusal. See Frank, Disqualification of Judges, 56 Yale L. J. 605, 609 (1947) ('The common law of disqualification … was clear and simple: a judge was disqualified for direct pecuniary interest and for nothing else'). …' (italics in the original)."

represented by the Attorney General or to state-paid independent counsel, by reason of the Attorney General's conflicts of interest. Next, the Order denied, *without reasons*, the motion for "reconsideration" made on my behalf. Only then – after these two substantive determinations – did the Order deny, *without reasons*, "disqualification of the Associate Judges of this Court &c", with Associate Judge Garcia additionally denying, *without reasons*, his recusal "on nonstatutory grounds". No acknowledgment, except implicitly, that the "disqualification of the Associate Judges" sought by the motion is on statutory grounds – and no acknowledgment at all that the caselaw with respect thereto, including the Court's own, is black-letter, non-discretionary – and divests the associate judges of jurisdiction.

7. The Court's other two October 24, 2019 Orders (Exhibits A-2, A-3), denying and dismissing appellants' June 6, 2019 and August 8, 2019 motions, are of the same ilk, albeit without any mention of disqualification/recusal. Demonstrating this is the annexed "legal autopsy"/analysis of all three October 24, 2019 Orders (Exhibit A-4), stating, as follows, in its prefatory overview:

> "*The Court's three October 24, 2019 Orders dispose of appellants' three motions, dated May 31, 2019, June 6, 2019, and August 8, 2019, without identifying ANY of the facts, law, or legal argument they present – or the state of the record with respect thereto. Their denials are ALL without reasons – and their dismissals are ALL verbatim repeats of reasons from the Court's May 2, 2019 Order, demonstrated as frauds by appellants' motions and prior submissions*.
>
> *Nor are the three October 24, 2019 Orders or the May 2, 2019 Order*

signed by any of the Court's six associate judges – or by the Court's Clerk, who, on those dates, was not absent or physically disabled. Without explanation, the four Orders are signed by the Court's Deputy Clerk."

8. All three October 24, 2019 Orders and the May 2, 2019 Order (Exhibits A-1, A-2, A-3, B-1), when compared to the record, cannot be justified – and cannot be explained as other than as the brazen manifestation of actual bias by the six associate judges, arising from their HUGE financial and other interests and relationships, which would disqualify them, pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct, had they jurisdiction to "sit" and "take any part" in this appeal, which they do not have, pursuant to Judiciary Law §14, *Oakley v. Aspinwall*, *Wilcox v. Royal Arcanum*, 210 NY 370 (1914), and ALL other caselaw on the subject – and which their willful concealment of the issue in the Orders concedes, *as a matter of law*.

9. If this Court has ANY facts and law showing that its four Orders are constitutionally and jurisdictionally defensible, in other words, that there are "adequate and independent state grounds" to sustain them, this motion is the Court's opportunity to furnish the particulars. This includes confronting the unconstitutionality, *as written, as unwritten, and as applied*, of the Court's substitution of the language of Article VI, §3(b)(1) of the New York State Constitution, mirrored in CPLR §5601(b)(1) – granting appeals of right "wherein is directly involved the construction of the constitution of the state or of the United

States" – with its *sua sponte* ground to dismiss because "no substantial constitutional question is directly involved", which the Court has not embodied in its rules and otherwise conceals. Such is detailed at ¶¶19-23 of appellants' May 31, 2019 motion and its showing of unconstitutionality is reinforced by the Court's *without reasons* denial of that motion by its October 24, 2019 Order on Mo. No. 2019-645 (Exhibit A-1).

10. Suffice to say, apart from appellants' constitutional entitlement to appeals by right and by leave, pursuant to Article VI, §3(b)(1) and Article VI, §3(b)(6) of the New York State Constitution, established, resoundingly, by the record of their May 31, 2019 and June 6, 2019 motions, no litigant should have to contend with litigation fraud of an adverse party, least of all New York's highest legal officer – which is what this Court sanctioned by all four Orders, willfully disregarding its duty to enforce safeguarding statutory and court rule safeguards. This, apart from its own inherent power and duty to safeguard the integrity of proceedings before it.

11. The fourth branch of this motion, pursuant to CPLR §5015(a)(3), for vacatur of the Court's Orders, is based on the Attorney General's fraud, misrepresentation, and other misconduct before this Court on every aspect of the appeal. Dispositive is appellants' August 8, 2019 motion to strike the Attorney General's opposition to appellants' appeals by right and by leave, as "fraud upon the

court",[4] denied, *without reasons*, by this Court's October 24, 2019 Order on Mo. No. 2019-799 (Exhibit A-3).

12. As recognized, powerfully, 115 years ago, in *Matter of Bolte*, 97 AD 551, 574 (1st Dept. 1904) – and quoted in appellants' memoranda of law, contained within the record on appeal I furnished the Court, at the outset, in support of appellants' appeal of right:

> "…Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequences as if the judicial officer received and was moved by a bribe." [R.516; R.975].

13. At bar, the Court's four Orders have manifested not mere "favoritism", but outright collusion with defendants, with whom all six associate judges have shared financial and other interests, in addition to relationships – the closest being with defendant Chief Judge DiFiore, who – as identified by appellants' May 31, 2019 motion (at ¶¶38-43) – is criminally liable for the fraud, corruption, and larceny of

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[4] The centerpiece of the August 8, 2019 motion is its Exhibit B "legal autopsy"/analysis of the Attorney General's June 27, 2019 memorandum in opposition to appellants' May 31, 2019 and June 6, 2019 motions. The particulars of the Attorney General's frauds relating to Judiciary Law §14, *Oakley v. Aspinwall*, and "Rule of Necessity" are at pages 5-7 and 21-28. The financial liability to the associate judges and the state, resulting therefrom, is identified at page 37, as follows:

> "…the judges would have no immunity defense for money damages in a federal lawsuit against them – their actions being 'in the clear absence of all jurisdiction' by virtue of Judiciary Law §14 and the Court's own interpretive caselaw, beginning with *Oakley v. Aspinwall*, 3 NY 547 (1850) and reiterated in such cases as *Wilcox v. Royal Arcanum*, 210 N.Y. 370 (1914). Indeed, in *Stump v. Sparkman*, 435 U.S. 349, 358 (1978), the U.S. Supreme Court's grant of judicial immunity was because 'neither by statute nor by case law has the broad jurisdiction granted…been circumscribed…' – emphatically NOT the situation presented by the unequivocal language of Judiciary Law §14 and *Oakley v. Aspinwall*." (appellants' August 8, 2019 motion, Exhibit B, at p. 37, capitalization and underlining in the original).

taxpayer monies she perpetuated and became an active accomplice in since her receipt of my December 31, 2015 letter to her,[5] dispositive *on its face* and by the open-and-shut, *prima facie* evidence it transmitted, *to wit*,

- a FULL copy of CJA's October 27, 2011 opposition report to the Commission on Judicial Compensation's August 29, 2011 report;

- a FULL copy of CJA's November 30, 2015 written testimony before the Commission on Legislative Judicial and Executive Compensation, plus CJA's December 2, 2015 and December 21, 2015 supplemental statements; and

- CJA's June 27, 2013 conflict-of-interest ethics complaint to the Joint Commission on Public Ethics (JCOPE), with its attached April 15, 2013 corruption complaint to then U.S. Attorney Preet Bharara.

14. As for this motion's fifth branch: reargument pursuant to CPLR §2221(d) and this Court's Rule 500.24, the grounds for such relief are evident from the October 24, 2019 Orders (Exhibits A-1, A-2, A-3, B-1), which, *on their face*, omit ALL of the facts, law, and legal argument presented by appellants' three motions – ALL of which they "overlook" because they are dispositive of appellants' ABSOLUTE entitlement to the relief those motions deny, *without reason* – and which this motion seeks by reargument.

15. As for this motion's sixth branch: renewal pursuant to CPLR §2221(e), it is based on new facts that any fair and impartial tribunal, having jurisdiction, would

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[5] Annexed as Exhibit G to appellants' May 31, 2019 motion.

deem to warrant relief. The "reasonable justification" for why they were not presented by appellants' May 31, 2019, June 6, 2019, and August 8, 2019 motions is that they had not yet occurred. Indeed, I do not yet have all the relevant new facts, some yet to unfold – for which reason I have noticed this motion with a long return date. This will accommodate my furnishing the Court with the not-yet-known or yet-to-occur new facts, pursuant to this Court's Rule 500.6. Such will include the following:

A. Unless Court Clerk John Asiello was disabled by disqualification, the Court's October 24, 2019 Orders and May 2, 2019 Order are not lawfully signed, pursuant to CPLR §2219(b) and defendant-respondent Chief Judge DiFiore's own January 26, 2016 authorization.

All four of the Court's Orders herein are not signed by any judge or by Court Clerk Asiello, but by Deputy Clerk Heather Davis. Clerk Asiello also functions as the Court's legal counsel and I have sent him two FOIL/records request letters inquiring on the subject. The first, dated November 1, 2019 (Exhibit C-1) was disingenuously responded-to by Deputy Clerk Davis (Exhibit C-2). The second, dated November 13, 2019 (Exhibit D), was my reply thereto and asked for expedition by reason of this motion.

On Friday, November 22, 2019, Motion Clerk Rachel MacVean informed me that no response to my November 13, 2019 letter had yet gone out, further stating that she could not orally tell me whether Clerk Asiello had disqualified himself, as she is not privy to the letter that will be sent.

Upon receipt of such letter, I will advise the Court as to this issue, potentially constituting another respect in which the October 24, 2019 and May 2, 2019 Orders are unlawful and cannot be defended.

B. The Court's November 21, 2019 Order in *Delgado v. New York State*, if rendered by its six associate judges, is yet a further manifestation of their actual bias born of undisclosed financial and other interests, proscribed by Judiciary Law §14 and §§100.3E & F of the Chief Administrator's Rules Governing Judicial Conduct.

Part E of Chapter 60 of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation, is materially replicated in Part HHH of Chapter 59 of the Laws of 2018, establishing the Committee on Legislative and Executive Compensation. Appellants' challenge to the constitutionality of Part E, *as written*, is presented by the first two sub-causes of their sixth cause of action [R.109-111 (R.187-193)] – the content of which the Appellate Division's December 27, 2018 decision entirely conceals[6]. This Court's determination of those two sub-causes would dispose of the constitutional challenge to Part HHH, *as written*, presented by *Delgado v. State of New York*.

By an August 28, 2019 express-mail letter to Clerk Asiello, which the Clerk's Office received on August 30, 2019, appellants furnished an update as to the status of the *Delgado* case following the June 7, 2019 decision of Albany Supreme Court

[6] *See* appellants' March 26, 2019 letter to Clerk Asiello in support of their appeal of right, materially quoting (at pp. 10-12) the first two sub-causes of their sixth cause of action – and furnishing, additionally, a "legal autopsy"/analysis of the Appellate Division's December 27, 2018 decision, including with respect to those two sub-causes (at pp. 13-17).

Justice Christina Ryba, which upheld the constitutionality of Part HHH based on the Appellate Division, Third Department's December 27, 2018 decision herein. The letter stated:

> "…there has been significant appellate activity in the *Delgado* case – most importantly, on August 9, 2019, the plaintiffs therein filed a notice of appeal directly to this Court, pursuant to Article VI, §3(b)(2) of the New York State Constitution and CPLR §5601(b)(2), solely on the issue of the constitutionality of Chapter 59, Part HHH, of the Laws of 2018. Indeed, promptly upon their e-filing their notice of appeal to this Court at 4:54 p.m., they e-filed a notice of cross-appeal to the Appellate Division, Third Department at 5:26 p.m. … More than three weeks earlier, at 4:09 p.m. on July 15, 2019, the Attorney General had filed her own appeal to the Appellate Division, Third Department from that portion of Justice Ryba's June 7, 2019 decision as struck down the Committee's restrictions on legislators' outside income.
>
> As the Court would be well-served by an appropriate status report from the Attorney General on the *Delgado* and other lawsuits – including as to what steps, if any, she has taken to apprise the plaintiffs therein and the courts of the two threshold integrity issues that exist in those cases: (1) her own direct and indirect financial and other interests in the suits; and (2) the judges' own interests, especially arising from the relatedness of those lawsuits to this – I request that such status reports be ordered by this Court as part of the 'other and further relief as may be just and proper', requested by appellants' August 8, 2019 notice of motion." (at p. 19, underlining in the original).

On that same August 30, 2019 date, Clerk Asiello addressed a *sua sponte* jurisdictional inquiry letter to the *Delgado* plaintiffs' counsel, Cameron MacDonald, giving him and defendants' counsel, Attorney General Letitia James, until September 9, 2019 to be heard with respect to the Court's subject matter jurisdiction.

The Court held that jurisdictional inquiry for nearly 2-1/2 months – until November 21, 2019, when the six associate judges purported to render an order,

signed by Clerk Asiello, stating:

> "Appeal transferred without costs, by the Court sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (see NY Const, art VI, §§3[b][2], 5[b]; CPLR 5601[b][2]). Chief Judge DiFiore took no part." https://www.nycourts.gov/ctapps/Decisions/2019/Nov19/DecisionList112119.pdf.

This November 21, 2019 Order may have been propelled by my phone call to the Clerk's Office on November 13, 2019, inquiring about the status of the *Delgado* direct appeal, which I then followed up by a November 13, 2019 FOIL/records request to Clerk Asiello (Exhibit D) for a copy of his August 30, 2019 *sua sponte* jurisdictional inquiry letter and the parties' responses[7] – the same November 13, 2019 FOIL/records request as requested, yet a second time, his confirmation that he had disqualified himself from *CJA v. Cuomo* and the reason (Exhibit C-1).

It should be obvious that if Clerk Asiello disqualified himself from *CJA v. Cuomo*, he should have disqualified himself from *Delgado* – whose direct appeal was based on Justice Ryba's decision resting on the *CJA v. Cuomo* appellate decision for

[7] Only because of this November 13, 2019 records request (Exhibit D) did I learn of the November 21, 2019 Order – late in the afternoon on Friday, November 22, 2019, upon telephoning Motion Clerk MacVean. The purpose of my call was to apprise her that if the Court had not yet copied and sent me the requested August 30, 2019 *sua sponte* jurisdictional inquiry letter and responses, there was no reason for it to do so, as I had just obtained the August 30, 2019 inquiry letter and the Attorney General's September 9, 2019 responding letter and October 2, 2019 updating letter from Assistant Solicitor General Victor Paladino – and was hopeful that Mr. MacDonald would provide me with his September 9, 2019 letter. Ms. MacVean advised me that the requested *Delgado* records had already been copied, though not sent – and then informed me of the Court's November 21, 2019 Order transferring the direct appeal, accessible from the Court's website.

the constitutional issue.

As with the Court's four Orders herein that Clerk Asiello did not sign (Exhibits A-1, A-2, A-3, B-1), the Court's November 21, 2019 Order in *Delgado* that he signed is devoid of a single fact as to the record before the Court, furnishes no explication of the legal provisions to which it cites, does not cite to any of the Court's own interpretive caselaw, does not identify why "Chief Judge DiFiore took no part", or what it means, and makes no disclosure that the associate judges have interests in the *Delgado* direct appeal, inasmuch as the constitutional issue determined by Justice Ryba's June 7, 2019 decision rests on the Appellate Division's December 27, 2018 decision herein – the subject of appellants' appeals of right and by leave to this Court, as to which the associate judges have HUGE financial and other interests, divesting them of jurisdiction pursuant to Judiciary Law §14 and the Court's own caselaw – interests their four Orders have concealed and not confronted.

Indeed, the November 21, 2019 Order, if the product of the Court's six associate judges, is, like the October 24, 2019 and May 2, 2019 Orders herein, also the manifestation of their actual bias born of their undisclosed financial and other interests, as it cannot be justified procedurally – and, it would appear, substantively.

With respect to procedure, inasmuch as the *Delgado* plaintiffs had simultaneously filed notices of appeal to this Court and to the Appellate Division, Third Department, the proper disposition – IF, in fact, "a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are

involved" – was NOT transfer, but dismissal of the direct appeal – the disposition identified and urged by the Attorney General's September 9, 2019 letter.

Of course, more crucial is whether, as the Order baldly purports, "a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved". Based upon my preliminary review, it appears that just as the Court has subverted Article VI, §3(b)(1) of the New York State Constitution, for appeals of right from Appellate Division orders, and has subverted Article VI, §3(b)(6) of the New York State Constitution, for appeals by leave[8] – so, too, has it subverted Article VI, §3(b)(2) for direct appeals. This includes by *sua sponte* jurisdictional inquiry letters, of the type Clerk Asiello sent out, NOT citing Article VI, §3(b)(2), but only CPLR §5601(b)(2) – plainly reflective of his knowledge that CPLR §5601(b)(2) omits the crucial clause that Article VI, §3(b)(2) contains: "and on any such appeal only the constitutional question shall be considered and determined by the court". I will report more specifically on this upon my further examination of the law – and after the Court furnishes me with Mr. MacDonald's September 9, 2019 letter in support of his direct appeal, which he has refused to supply.[9]

Suffice to say, threshold issues comparable to those raised herein by appellants, should have been raised by Mr. MacDonald. Certainly, none is more glaring than the

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[8] *See* appellants' May 31, 2019 motion, at ¶¶19-23 and appellants' June 6, 2019 motion, at pages 5-10.

[9] Mr. MacDonald's refusal, reflected by my email exchange with him – and with Assistant Solicitor General Paladino – on November 21st and 22nd is attached (Exhibits E-1 – E-11).

Attorney General's disqualification, arising from her own direct financial interest in upholding the constitutionality of Part HHH of Chapter 59 of the Laws of 2018 and the lawfulness of the Committee on Legislative and Executive Compensation's December 10, 2018 report. As stated at ¶55 of appellants' May 31, 2019 motion:

> "(A) …And, already, Attorney General James is benefiting from the materially identical Part HHH, Chapter 59 of the Laws of 2018 that established the Legislative and Executive Compensation Committee, which, like Part E, Chapter 60 of the Laws of 2015, was an unconstitutional rider, inserted into the budget as a result of behind-closed-doors, three-men-in-a-room budget deal-making. By its December 10, 2019 Report – replicating ALL the violations which are the subject of appellants' seventh and eighth causes of action [R.112-114 (R.201-213)] – she benefited from a $38,5000 salary raise.
>
> On December 31, 2018, the Attorney General's salary, pursuant to Executive Law §60, was $151,500. As a result of the 'force of law' recommendations of the Committees' December 10, 2018 Report, it zoomed to $190,000, effective January 1, 2019. On January 1, 2020, this will shoot up another $20,000 to $210,000, and then, on January 1, 2021, by another $10,000 to $220,000, through which she had obtained a $38,500 salary boost that took effect on January 1, 2019 – with a further $20,000 salary boost, beginning January 1, 2020 and then a $10,000 salary boost, beginning on January 1, 2021, upheld by Justice Ryba's June 7, 2019 decision."

Indeed, based on appellants' submissions herein – alerting the Court to both the Attorney General's interests and her litigation fraud in *Delgado* in defending the constitutionality of Part HHH[10] – the associate judges should reasonably have issued a

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[10] Appellants' submissions detailed the Attorney General's litigation fraud before Justice Ryba in *Delgado* – including urging that she rely on the Appellate Division's December 27, 2018 decision herein to uphold the constitutionality of Part HHH, with knowledge of its fraudulence, and then further inducing her reliance by this Court's May 2, 2019 Order, dismissing appellants' appeal of right from the Appellate Division's decision. Thereafter, having succeeded in *Delgado* by Justice Ryba's June 7, 2019 decision upholding the constitutionality of Part HHH based on the Appellate

sua sponte inquiry to Attorney General James as to the propriety of her representing the *Delgado* defendants before this Court. Certainly, the fact that Attorney General James disqualified herself from representing the defendants in the two lawsuits challenging Part XXX of Chapter 59 of the Laws of 2019, establishing the Public Campaign Financing and Election Commission – reported in the press and presumably known to the Court – only underscores the propriety of such *sua sponte* inquiry as the associate judges might have made, but did not.

C. Chief Administrative Judge Lawrence Marks and other judges of the Unified Court System are colluding in fraud and deceit before the current Commission on Legislative, Judicial and Executive Compensation, which is itself repeating ALL the statutory and constitutional violations of the 2015 Commission on Legislative, Judicial and Executive Compensation that this citizen-taxpayer action establishes.

By the Court's October 24, 2019 Orders (Exhibits A-1, A-2, A-3), the associate judges gave themselves and their fellow judges of the Unified Court System an immediate, tangible benefit beyond being able to continue to collect their current commission-based judicial salary increases: the prospect of further judicial salary increases – to be procured by the same unconstitutional, statutory-violative, and fraudulent means as detailed by appellants' sixth, seventh, and eighth causes of action [R.109-112 (R.187-201); R.112-114 (R.201-212); R.114 (R.212-213)] that the Court refused to review, either by right or by leave – on a record establishing appellants'

Division's decision herein, the Attorney General turned to this Court and offered up Justice Ryba's decision, as if it were independent corroboration of the Appellate Division's decision, annexing it to her June 26, 2019 memorandum in opposition to appellants' May 31, 2019 and June 6, 2019 motions

entitlement to summary judgment as to all three.

Until November 4, 2019, I did not know – because to even imagine it in the circumstances at bar is depraved – that the Unified Court System, under defendant Chief Judge DiFiore, would actively be engaged in misleading the instant, belatedly-appointed Commission on Legislative, Judicial, and Executive as to its statutory charge – and as to its obligation to confront probative evidence. The particulars are set forth by my letter of today's date to Chief Administrative Judge Marks entitled:

> "Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony". (underlining in the original).

A copy is annexed (Exhibit F) and incorporated herein by reference. The following questions, at page 6, pertain to this Court:

> "By the way, was your undated written submission to the Commission, whose pervasive fraud includes its assertion (at p. 7) 'Judges…must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR Part 100), which impose ethical restrictions upon judges' public and private conduct and activities' citing 'NY Const., Art. VI, §20(b), (c)' – thereby implying that New York's judges do comply and that there is enforcement when they don't – approved by Chief Judge DiFiore and the associate judges – or was its content known to them and, if so, when? Did you – and they – actually believe that New York's Judiciary was not obligated to include ANY information as to CJA's succession of lawsuits, since 2012, seeking determination of causes of action challenging the constitutionality of the commission statutes, *as written, as applied, and by their enactment*, and the statutory-violations of the commission reports, where the culminating lawsuit, to which

– a fact pointed out by page 17 of appellants' "legal autopsy"/analysis of the Attorney General's June 26, 2019 memorandum in opposition, annexed as Exhibit B to their August 8, 2019 motion.

> Chief Judge DiFiore is a named defendant, is at the Court of Appeals, on a record establishing the willful trashing of the Chief Administrator's Rules Governing Judicial Conduct and any cognizable judicial 'process'?[fn]" (capitalization and italics in the original).

Upon receipt of Chief Administrative Judge Marks' response to this paragraph and the balance of the letter, I will furnish it to the Court as a new fact further warranting vacatur of the October 24, 2019 Orders.

Finally, and further illustrative of the "willful trashing of the Chief Administrator's Rules Governing Judicial Conduct" to which my letter to Chief Administrative Judge Marks refers is the non-disclosure by any of the associate judges in their Orders herein of any facts bearing upon their disqualification – as is their obligation pursuant to §§100.3E and F of the Chief Administrator's Rules. Indeed, not until I was preparing for my testimony for the November 4, 2019 hearing of the instant Commission on Legislative, Judicial and Executive Compensation did I realize that Associate Judge Paul Feinman had testified before the prior Commission on Legislative, Judicial and Executive Compensation at its November 30, 2015 hearing to which the seventh cause of action refers [R.112-114 (R.201-212)].

His duty was to disclose this and, additionally, his knowledge of the facts recited by that cause of action as to the frauds committed by the judicial pay raise witnesses, of which he was one. This includes his knowledge of CJA's December 2, 2015 supplemental statement, furnishing particulars as to those frauds and identifying Judge Feinman as among the judicial pay raise witnesses who had not presented any

evidence that prevailing judicial "pay levels and non-salary benefits" were inadequate. As there stated:

> "The judges who testified…surely consider themselves well-qualified. Yet, not one stated that he/she would be resigning from the bench, if no salary increase was forthcoming. … Likewise, First Department Appellate Division Justice Paul Feinman, who identified that he had come to the bench in 1997. This was before the 1999 judicial pay raises, in other words, during a prior 'salary freeze' period. Yet, that also did not seem to dampen his judicial aspirations – and he sought re-election, twice, in 2006 and also 2007 – which were subsequent 'salary freeze' years.
>
> Any legitimate inquiry by this Commission would rapidly disclose that there is no shortage of experienced, well-qualified New York lawyers who would make superlative judges – and who would embrace the current $174,000 Supreme Court salary level as a HUGE step up from what they are currently making. For that matter, there is also no shortage of experienced, well-qualified lawyers who would embrace the prior $136,700 Supreme Court salary level as a HUGE step up." (CJA's December 2, 2019 supplemental statement, at pp. 2-3, capitalization in the original).

Four years later, as a result of the frauds put forward by Chief Administrative Judge Marks and his judicial brethren to the prior Commission on Legislative, Judicial and Executive Compensation, which it adopted – as set forth by the sixth, seventh, and eighth causes of action herein – the current Supreme Court salary is $210,900 and that, according to them, warrants increase, based on the same frauds – and so-detailed in my letter of today's date to Chief Administrative Judge Marks (Exhibit F).

Elena Ruth Sassower, unrepresented plaintiff-appellant

Sworn to before me this
25th day of November 2019

Notary Public

JOSEPH GONNELLA JR
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GO6357364
Qualified in Westchester County
My Commission Expires 04-17-2021

TABLE OF EXHIBITS

Ex. A-1: Court of Appeals' October 24, 2019 Order on Mo. No. 2019-645

Ex. A-2: Court of Appeals' October 24, 2019 Order on Mo. No. 2019-646

Ex. A-3: Court of Appeals' October 24, 2019 Order on Mo. No. 2019-799

Ex. A-4: Appellants' "legal autopsy"/analysis of October 24, 2019 Orders

Ex. B-1: Court of Appeals' May 2, 2019 Order (SSD 23)

Ex. B-2: Appellants' "legal autopsy"/analysis of May 2, 2019 Order (Ex. D to appellants' May 31, 2019 motion for reargument, etc.)

Ex. C-1: Appellants' November 1, 2019 FOIL/records request to Clerk Asiello

Ex. C-2: Deputy Clerk Davis' November 7, 2019 letter

Ex. D: Appellants' November 13, 2019 FOIL/records request to Clerk Asiello

Ex. E-1: Appellants' November 21, 2019 e-mail to Cameron MacDonald (6:55 pm) – "…Delgado v. State of New York – direct appeal to the Court of Appeals"

Ex. E-2: Appellants' November 22, 2019 e-mail to Attorney General Letitia James & Solicitor General Barbara Underwood (1:44 pm) – "Delgado v. State of New York – direct appeal to the Court of Appeals" (cc: Asst Solicitors General Victor Paladino, Frederick Brodie, and MacDonald)

Ex. E-3: Senior Solicitor General Paladino's November 22, 2019 e-mail (2:08 pm)

Ex. E-4: Appellants' November 22, 2019 e-mail to Paladino (2:39 pm) – "Thank you, Asst. Solicitor General Paladino…" (cc to MacDonald)

Ex. E-5: MacDonald's November 22, 2019 e-mail (2:46 pm)

Ex. E-6: Appellants' November 22, 2019 e-mail to MacDonald (3:07 pm) – "Apologies, if you've taken offense, Mr. MacDonald" (cc: Paladino)

Ex. E-7: Mr. MacDonald's November 22, 2019 e-mail (3:14 pm)

Ex. E-8: Appellants' November 22, 2019 e-mail to MacDonald (3:22 pm) – "Answering your question, Mr. MacDonald…" (cc: Paladino)

Ex. E-9: Mr. MacDonald's November 22, 2019 e-mail (3:26 pm) (cc: Paladino)

Ex. E-10: Appellants' November 22, 2019 e-mail (3:59 pm) – "Again, answering your question, Mr. MacDonald" (cc: Paladino)

Ex. E-11: Appellants' November 22, 2019 e-mail (4:31 pm) to MacDonald – "News Flash: Yesterday the Court of Appeals decided the direct appeal in Delgado v. State of New York" (cc: Paladino)

Ex. F: Appellants' November 25, 2019 letter to Chief Administrative Judge Marks – "Demand that You Withdraw Your Unsworn November 4, 2019 Testimony before the Commission on Legislative, Judicial and Executive Compensation as FRAUD, as Likewise Your Submission on which it was Based, Absent Your Denying or Disputing the Accuracy of My Sworn Testimony"