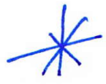
Exhibit 2 to Appellant Sassower's Aug 1, 2018 reply affidavit



<u>The second subheading is titled "Attorney General Representation" (at p. 7)</u> and in the first of Assistant Solicitor General Brodie's three paragraphs thereunder he truncates the relief sought by appellants' second branch, identifying only that it:

> "asks the Court to direct Attorney General Underwood to 'identify who has determined 'the interests of the state on this appeal' and appellant's 'entitlement to the Attorney General's representation/intervention".

What he has materially omitted is that this second branch also seeks to have the Court direct Attorney General Underwood to identify "how, if at all, she has addressed her own conflicts of interest" with respect to the appeal and order to show cause.

Assistant Solicitor General Brodie furnishes <u>no</u> argument as to why Attorney General Underwood should not be directed to respond to these two questions – making such direction all the more compelled. On top of this, he nowhere claims that Attorney General Underwood's representation of respondents on the appeal and in opposition to appellants' order to show cause is in "the interest of the state". Indeed, as "the interest of the state" is the ONLY basis upon which, pursuant to Executive Law §63.1, Attorney General Underwood can lawfully represent respondents, it is Attorney General Underwood who is not properly before the Court, representing respondents. Nor can she represent them, *as a matter of law*, in light of her conflicts of interest – such as itemized by appellant Sassower's May 30, 2018 letter to her, annexed as Exhibit J to the order to show cause – and uncontested by her – and, by his letter, by Assistant Solicitor General Brodie.

Suffice to say that although ¶¶11-24 of appellant Sassower's moving affidavit furnish the particulars of appellants' arguments for the relief sought by the second branch of appellants' order to show cause – and the circumstances giving rise thereto – Assistant Solicitor General Brodie confronts none of it, including in stating:

> "Nor is she entitled to representation by the Attorney General as alleged (Sassower Aff. ¶11)";

Ex-F

> "While appellant protests that Executive Law §63(1) authorizes the Attorney General to '[p]rosecute' actions (Sassower Aff. ¶17), the statute nowhere entitles private citizens to compel or direct such prosecutions."

To the contrary, he brazenly regurgitates deceits already exposed by those very cited paragraphs.

Thus, establishing the fraud of his second and third paragraphs, which read, in full:

> "Under Executive Law 63(1), '[n]o 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.' (Emphasis added.) Because appellant is not an officer 'of the state,' the provision does not apply to her. While appellant protests that Executive Law §63(1) authorizes the Attorney General to '[p]rosecute' actions (Sassower Aff. ¶17), the statute nowhere entitles private citizens to compel or direct such prosecutions.
>
> Similarly, while State Finance Law 123-c(3) requires that citizen-taxpayer complaints be served on the attorney general, it does not require the attorney general to make a formal determination as to their merit or substitute herself as a plaintiff."

is appellant Sassower's cited ¶17, which responding to Assistant Solicitor General Brodie's original iteration of this by his June 27, 2018 e-mail to her (Exhibit N-3), states:

> "17. Such [e-mail] response is a deceit, as to both Executive Law §63.1 and State Finance Law §123 *et seq*. As to Executive Law §63.1, which is two sentences long, Assistant Solicitor General Brodie omits its first sentence because – as is clear therefrom – I and CJA do not have to be 'a part 'of the state'' in order to be entitled to representation by the Attorney General, whose duty, enunciated by that first sentence, is to:
>
> > '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.' (underlining added).
>
> As for State Finance Law §123, *et seq.*, Assistant Solicitor General Brodie does not quote the single provision to which he refers: §123-c(3), which reads:

> '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'.
>
> In other words, in this section, as likewise in §123-a(3), §123-d, §123-e(2), it is expected that the attorney general will himself bring the citizen-taxpayer action. Certainly, the requirement that a plaintiff serve the attorney general with a copy of the summons and complaint would be meaningless if the attorney general did not then have to make a 'formal determination' as to it and other statutes that furnish the attorney general with ample means for safeguarding public monies, such as Executive Law §63-c and State Finance Law §187 *et seq.* ('New York False Claims Act'). And who in the attorney general's office makes the determination, 'formal' or otherwise? Did such person determine that in this citizen-taxpayer action, as well as in the previous one, the attorney general should not 'prosecute', but, instead, 'defend'? How could this be in 'the interest of the state', when defending cannot be done except by litigation fraud because there is NO legitimate defense." (capitalization in the original).

<u>As to the first subheading entitled "Judicial disclosure" (at p. 6)</u>, Assistant Solicitor General Brodie's two-sentence response is that:

> "...the cited rule [§100.3F of the Chief Administrator's Rules Governing Judicial Conduct] does not entitle plaintiff to any disclosure. It provides instead that, under certain circumstances, a judge who disqualifies him or herself '*may* disclose on the record' the basis for disqualification. 22 N.Y.C.R.R. §100.3(F) (emphasis added)."

This is an utter perversion of that safeguarding rule provision – and of §100.3E of the Chief Administrator's Rules Governing Judicial Conduct on which it rests. In mandatory language, §100.E, entitled "Disqualification", states "A judge <u>shall</u> disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to...."

Under the title heading "Threshold Integrity Issues Pertaining to the Court: Disclosure by its Justices & the Disqualification of at least One: Associate Justice Lynch", ¶¶4-10 – and then ¶52 – of appellant Sassower's moving affidavit furnishes a litany of specifics as to why the impartiality of each justice – and the Court – might "reasonably be questioned". Under such circumstance, where, additionally Assistant Solicitor General Brodie's letter does not dispute that appellants have