SUPREME COURT OF STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

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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,

November 13, 2018

Reply Affidavit in Further Support of Appellants' Motion to Strike Respondents' Brief, for a Declaration that the Attorney General's Appellate Representation of Respondents is Unlawful, & for Other Relief

-against-

App. Div. 3rd Dept. Docket #527081
Albany Co. Index # 5122-16

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

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff-appellant in this citizen-taxpayer action appeal, fully familiar with all the facts, papers, and proceedings heretofore had, and submit this affidavit in reply to Assistant Solicitor General Frederick Brodie's November 2, 2018 affirmation and memorandum in opposition to appellants' October 23, 2018 motion to strike his respondents'

brief, for a declaration that the attorney general's appellate representation of respondents is unlawful, and for other relief. As with Mr. Brodie's respondents' brief, his memorandum bears the name of his immediate supervisor, Assistant Solicitor General Victor Paladino, who appears with him "of counsel" to Attorney General Barbara Underwood, attorney for defendants-respondents.

2. This affidavit is without prejudice to my firm belief, based on caselaw and treatise authority pertaining to Judiciary Law §14, that the panel deciding this motion – which I understand will be the appeals panel – is, by virtue of its HUGE financial and other interests in the appeal (Exhibit H-2)[1], without jurisdiction to sit – possibly even upon invocation of "the rule of necessity"[2] – and that its threshold duty is to determine that issue, preceded by "remittal of disqualification" pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct. The relevant caselaw and treatise authority pertaining to Judiciary Law §14, on which I rely, is set forth by prior correspondence I sent to the Court a month ago (Exhibits J, L) – the accuracy of which was uncontested by Mr. Brodie (Exhibit K) – about which the appeals panel may be unaware.

3. Today's November 13, 2018 return date of the motion is also the date of oral argument of the appeal before the four-judge appeals panel: Associate Justices William McCarthy, Christine Clark, Robert Mulvey, and Phillip Rumsey – the only judges of this ten-judge Court who had NO prior contact with this case. Nonetheless, the four panel judges will have no difficulty in deciding the motion virtually simultaneously with its being submitted, at 10 a.m., as it is based on the

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1 The financial and other interests of the Court's justices are set forth at ¶¶5-10 of my July 24, 2018 moving affidavit (Exhibit H-2) in support of an order to show cause, whose first branch was for disclosure/disqualification (Exhibit H-1). The exhibits annexed hereto continue the sequence begun by my October 10, 2018 moving affidavit, which annex Exhibits A-G.

2 New York cases invoking the rule of necessity invariably cite, either directly or through other cases, United *States v. Will*, 449 U.S. 200 (1980). Yet, it is unclear to me whether, in the federal system, there is any analogue to Judiciary Law §14 – a statute which, as New York caselaw makes clear, removes jurisdiction from a judge under given circumstances such as interest, as opposed to mandating disqualification under such circumstances.

briefs which each judge is presumed to have read in preparation for the oral argument, scheduled for 1 p.m.

4. As stated in the first paragraph of appellants' reply brief (at p. 1), "the most cursory comparison" of respondents' brief to appellants' brief reveals that respondents' brief is "from beginning to end, 'a fraud on the court'". Having read the briefs, each panel judge knows this to be true – and that the reply brief itself furnished a comprehensive 55-page comparison, whose accuracy was not only easy to verify, but which the panel had more than five weeks to verify – and which was its duty to verify – assisted by the judges' law clerks and staff attorneys.

5. Perhaps it is too much to expect that a fair and impartial appeals panel, having no knowledge of this case other than from its review of the briefs, would have, *sua sponte*, issued a show cause order to Mr. Brodie, requiring him, Mr. Paladino, and Attorney General Underwood to account for the respondents' brief, on penalty of relief comparable to that sought by appellants' motion (*Cf. Matter of Greenberg*, 15 N.J. 132 (1954)). In any event, appellants' motion now <u>proves</u> what the four panel judges surely recognized from reading the reply brief, *to wit*, that Mr. Brodie would have NO defense to what he did by his respondents' brief. And among his frauds, highlighted at the very outset of the reply brief (at pp. 2-5), his concealment of appellants' "legal autopsy"/analyses of Judge Hartman's decisions [R.554-577; R.1002-1008 (at ¶¶5-8, 10-11); R.1293-1319; R.9-30], establishing her <u>actual bias</u>, and his false factual assertion (at p. 58) that no "statutory ground for recusal exists", described by the reply brief (at p. 5) as an "outright[] lie[]" as "'interest' is a statutory ground', proscribed by Judiciary Law §14".

6. Once again, "the most cursory comparison" – now of appellants' motion and Mr. Brodie's opposition – establishes that his opposition to the motion is, from beginning to end, a further "fraud on the court", concealing ALL the facts, law, and legal argument presented by the

reply brief, NONE of which he denies or disputes, yet urging, in the conclusion of his memorandum (at p. 15), that the motion "be denied in all respects". According to Mr. Brodie's memorandum (at p. 2), "The record before this Court presents no support for striking the [respondents'] brief" – with a further description of appellants' motion as resting on "supposed defects" of his respondents' brief, set forth by their reply brief. In other words, Mr. Brodie does not even acknowledge the reply brief as having presented any actual "defects" of his respondents' brief, let alone anything more serious than "defects", such as fraud. Nor does he elucidate even one of the "supposed defects" or dispute that it is a "defect". Instead, he substitutes conclusory, sham argument that is at best irrelevant to the wholesale fraud of his respondents' brief – fraud that is proven by the content of appellants' reply brief that he has concealed. Indeed, his cited cases, if anything, substantiate appellants' entitlement to the relief sought by this motion. Here's a run-down:

(A) the four cases cited by Mr. Brodie's memorandum under the section heading "The Court Should Not Strike Respondents' Brief" (at pp. 1-4):

-- *Matter of Walker v. Buttermann*, 164 A.D.3d 1081, 1083 (3d Dep't 2018), which Mr. Brodie cites (at p. 1) for the proposition: "This Court has recognized a 'strong public policy favoring the resolution of cases upon their merits". However, that case did not involve litigation fraud – unlike here where Mr. Brodie's fraudulent respondents' brief has no purpose other than to prevent a "merits" resolution as to EVERY issue before the Court;

-- *Foreman v. Jamesway Corp.*, 175 A.D.2d 514, 515 (3d Dep't 1991), which Mr. Brodie cites (at p. 2) for the proposition: "Striking a party's filing is a 'drastic sanction'", thereupon concealing that such "drastic sanction" is fully warranted because his respondents' brief is a demonstrated "fraud on the court";

-- *Campaign for Fiscal Equity v. State of New York*, 8 N.Y.3d 14, 28 (2006) and *New York State Inspection, Sec. & Law Enf. Employees v. Cuomo*, 64 N.Y2d 233, 239 (1984), which Mr. Brodie cites (at p. 4) for the proposition that respondent' brief should not be stricken "[a]s a matter of courtesy and comity toward coordinate branches of government" – concealing that "courtesy and comity" have no relevance to a respondents' brief that is fraudulent, put forward by the office of the attorney general not only on behalf of "coordinate branches", but the judicial branch;

(B) the five cases cited by Mr. Brodie's memorandum under the section heading "Respondents are Properly Represented by the Attorney General, Who Cannot Represent Plaintiff" (at pp. 4-9):

-- *Parnes v. Parnes*, 80 A.D.3d 948, 953 (3d Dep't 2011), which Mr. Brodie cites (at p. 5) for the proposition: "Disqualification is a 'harsh sanction'". This is a deceit. Appellants are not seeking to disqualify the attorney general as a "sanction", but because the attorney general's representation of respondents violates Executive Law §63.1, being contrary to, and subverting of, "the interest of the state";

-- *Solow v. W.R. Grace & Co.*, 83 N.Y.2d 303, 310 (1994), which Mr. Brodie cites (at p. 5) for the proposition that attorney disqualification "conflicts with public policies favoring client choice and restricts an attorney's ability to practice.". This is a deceit. At issue is NOT – as in *Solow* – a private client and representation by a private attorney, but the state attorney general whose SOLE legal authority to represent the defendant-respondent public officers and the state – at taxpayer expense – is "the interest of the state";

-- *Matter of Cliff v. Vacco*, 267 A.D.2d 731, 732 (3d Dep't 1999) (Graffeo, J.), *lv. denied*, 94 N.Y.2d 762 (2000), which Mr. Brodie cites (at pp. 7, 9) for the proposition: "The Attorney General is not authorized to engage in 'the representation of private individuals such as [plaintiff] in matters involving the enforcement of private rights.'"—adding (at p. 7) "*accord* *Waldman v. State of New York*, 140 A.D.3d 1448, 1449 (3d Dep't 2016)" and (at p. 9) "*accord* *Grant v. Harvey*, No. 09 Civ. 1918, 2012 WL 1958878 *3 (S.D.N.Y. May 24,2012)". This is a deceit. Appellants are NOT seeking the attorney general's representation to enforce private rights, but to enforce public rights – so-reflected by their ten causes of action, their requested declaratory judgments based thereon – and the case caption identifying appellants as "acting on behalf of the People of the State of New York & the Public Interest";

(C) the one case cited by Mr. Brodie's memorandum pertaining to 22 NYCRR §130-1.1 (at p. 10):

-- *W. Hempstead Water Dist. v. Buckeye Pipeline Co., L.P.*, 152 A.D.3d 558, 558-559 (2nd Dept 2017), which Mr. Brodie cites (at p. 10) for the proposition that respondents' brief is not sanctionable under 22 NYCRR §130-1.1 because the "standard" for establishing that "Conduct is 'frivolous,' and therefore sanctionable under the rule…is "high". This is a deceit. The reply brief meets that "high" standard, resoundingly, including as to "material factual statements that are false", as to which it supplies a profusion of examples.

(D) the seven cases cited by Mr. Brodie's memorandum under the section heading "Respondents' Brief Did Not Violate Judiciary Law §487" (at pp. 11-13):

-- Dupree v. Voorhees, 102 A.D.3d 912, 913 (2d Dep't 2013), which Mr. Brodie cites (at p. 11) for the proposition that Judiciary Law §487 "requires proof to deceive" – as if the reply brief has not furnished such proof. This is a deceit. The reply brief furnishes a mountain of proof, none of which Mr. Brodie identifies or addresses;

-- Facebook, Inc. v. DLA Piper LLP (US), 134 A.D.3d 610, 615 (1st Dep't 2015), which Mr. Brodie cites (at p. 11) for the proposition that the attorney misconduct must be "'egregious' or 'chronic and extreme,' and the allegations of fraud must be 'stated with particularity'", concealing that appellants' reply brief has demonstrated this, resoundingly – with further reinforcement from the record of proceedings before the Court on appellants' motions;

-- Cramer v. Sabo, 31 A.D. 3d 998, 999 (3d Dep't 2006), *lv. denied*, 8 N.Y.3d 801 (2007), which Mr. Brodie cites (at p. 11) for the proposition that "The allegations of deceit and collusion cannot be 'conclusory', concealing that the allegations of deceit and collusion in appellants' reply brief are fact-specific;

-- Seldon v. Lewis Brisbois Bisgaard & Smith LLP, 116 A.D.3d 490, 491 (1st Dep't 2014), *lv. dismissed*, 25 N.Y.3d 985 (2015), which Mr. Brodie cites (at p. 12) for the proposition that his respondents' brief is "simple advocacy" because he supposedly "proceeded in subjective good faith". This is a deceit. Appellants' reply brief and the record of proceedings before this Court on appellants' motions put the lie to Mr. Brodie's pretense of "subjective good faith";

-- Lipin v. Hunt, 137 A.D.3d 518, 519 (1st Dep't), *app. dismissed*, 27 N.Y.3d 1053 (2016), *rearg. denied*, 28 N.Y. 943 (2016), which Mr. Brodie cites (at p. 12) for the proposition that "advocates' statements '[]made in the course of judicial proceedings, and [] material and pertinent to the issue to be resolved in those proceedings,'...are 'absolutely privileged,' even against attack under §487". If this is not a twisting of that decision, then Mr. Brodie is using it because – as clear from *Bisogno v Borsa*, 101 A.D.3d 780 (2012), which *Lipin* quotes – it improperly engrafts principles pertaining to defamation claims to Judiciary Law §487 violations. Here, as with everything else, Mr. Brodie does not identify what "advocates' statement" he is purporting to be "absolutely privileged" notwithstanding involving "deceit or collusion", proscribed by Judiciary Law §487;

-- Kaiser v. Van Houten, 12 A.D.3d 1012, 1015 (3d Dep't 2004), which Mr. Brodie cites (at p. 12) for the proposition that "a claim under Judiciary Law §487 is 'nonexistent in the absence of sustainable compensatory damages". This is false. A claim under Judiciary Law §487 is, in the first instance, for a determination that an attorney is guilty of "any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party" – a misdemeanor. The statue expressly states: "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." (underlining added). Upon such determination of Mr. Brodie's guilt – and that of his collusive superiors – appellants would be entitled to demonstrate their damages "in a civil action".

-- *Matter of Leeds v. Burns*, 205 A.D.2d 540, 540 (2d Dep't), *lv. denied*, 84 N.Y.2d 811 (1994), which Mr. Brodie cites (at p. 13, fn. 2) for the proposition: "A party who proceeds *pro se* cannot recover attorney's fees". This is a deceit. Appellants have not proceeded "pro se" on this appeal, as if by choice. It is Mr. Brodie, among other attorneys, who, by "deceit" and "collusion" have deprived appellants of their lawful entitlement to the attorney general's representation/intervention pursuant to Executive Law §63.1 and State Finance Law, Article 7-A – as to which they have suffered damage. And Judiciary Law §487 neither specifies nor limits damage to "attorney's fees";

(E) the one case cited by Mr. Brodie's memorandum under the section heading "Plaintiff is Not Entitled to Supplement Her Reply Brief" (pp. 13-14):

-- *People v. Evans*, 212 A.D.2d 628, 628 (2d Dep't 1995), which Mr. Brodie cites (at p. 14) for the proposition that appellants have not been granted leave to supplement her reply brief and that "paragraphs 7 through 17 of plaintiff's moving affidavit should be disregarded because they constitute an unauthorized supplement". This is utter fraud. As Mr. Brodie himself concedes (at p. 14), appellants have not sought leave to supplement their reply brief. Nor is there any reason for them to be granted what they have not requested. It is sufficient that they have made a motion to strike respondents' brief as "a fraud on the court" – and such entitles them to furnish such additional examples beyond the mountain they presented by their reply brief.

7. Tellingly, Mr. Brodie's final section heading "There is No Basis for a Referral to Disciplinary or Criminal Authorities" (at p. 15), beneath which is a single sentence, is unsupported by any caselaw pertaining to 22 NYCRR §100.3D(2), the legal authority upon which appellants' fifth branch of their motion rests. 22 NYCRR §100.3D – which is §100.3D of the Chief Administrator's Rules Governing Judicial Conduct – is entitled "Disciplinary Responsibilities" and its ¶2 states, in mandatory terms:

> "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." (underlining added).

8. Just as prior to my drafting of appellants' reply brief, I gave NOTICE directly to Attorney General Underwood that Mr. Brodie's respondents' brief was "a fraud on the court" – and her duty was to withdraw it – so, too, before drafting this reply affidavit, I gave NOTICE directly to Attorney General Underwood that Mr. Brodie's opposition to the motion was "a fraud on the court" – and her duty was to withdraw it. As before, she did not respond – only Mr. Brodie.

9. Annexed hereto are my three November 5, 2018 e-mails to Attorney General Underwood (Exhibits M, O, Q) – and the only responses I received to them, from Mr. Brodie (Exhibits N, P, R). The particulars recited by my first e-mail sufficed for his opposition papers to be withdrawn:

> "Respondents' opposition – consisting of Mr. Brodie's affirmation and memorandum – does not deny or dispute ANY of the facts, law, or legal argument presented by appellants' 55-page reply brief. This makes respondents' opposition to the motion frivolous, *as a matter of law*. Indeed, in order to fashion opposition, Mr. Brodie conceals the ENTIRE content of the reply brief – including the very fact that it concerns respondents' 'fraud on the court' by his respondents' brief. Thus, his memorandum and affirmation only reference fraud obliquely, in the context of purporting that 'counsel acted in subjective good faith', with 'no intent to defraud the Court' (memo, at p. 3) – conclusory declarations whose brazen falsity is established, *prima facie*, by the 55-page reply brief, chronicling <u>Mr. Brodie's willful and deliberate misleading of the Court, both as to fact and law, with respect to the entirety of what is before it on this appeal</u>." (Exhibit M, capitalization, italics, and underlining in the original).

10. To this, Mr. Brodie responded by asserting that his opposition papers "were proper in both form and substance, and will not be withdrawn" (Exhibit N). Upon my further entreaties to Attorney General Underwood and her supervisory/managerial attorneys – cc'ing, as well Mr. Paladino – and asking "Have you read appellants' October 4th reply brief, DISPOSITIVE of the October 23rd motion?" (Exhibit Q), there was no response, other than from Mr. Brodie, stating that he did not expect that I would receive any answer from them (Exhibit R). True enough, I have received no response.

11. Appellants' reply brief is "DISPOSITIVE" of the motion, which is why Mr. Brodie's opposition to the motion conceals its ENTIRE content. Moreover, his elaboration of the "process" he employed in preparing respondents' brief and describing his professional qualifications and those of Mr. Paladino, both seasoned litigators, reinforce appellants' entitlement to ALL the relief the motion seeks. This includes its second branch:

> "declaring Attorney General Underwood's appellate representation of respondents unlawful for lack of any evidence – or even a claim – that it is based on a determination pursuant to Executive Law §63.1 that such is in 'the interest of the state', with a further declaration that such taxpayer-paid representation belongs to appellants" (underlining in the original).

12. With respect to this second branch, my moving affidavit amply furnished fact, law, and legal argument, stating:

> "15. Needless to say, respondents' brief, by its fraudulence, not only manifests the conflicts of interest it falsely proclaims Attorney General Underwood does not have, but proves, *prima facie*, that the only determination an unconflicted attorney general could have made, pursuant to Executive Law §63.1, is that 'the interest of the state' rests with appellants. Under such circumstances, it is not enough for the Court to simply strike Attorney General Underwood's respondents' brief. It must further protect the appellate process by declaring her appellate representation of respondents as violative of Executive Law §63.1 and unlawful – and that such taxpayer-paid representation belongs to appellants.
>
> 16. Suffice to note that respondents' brief (at pp. 20-21) under a Point I-E heading 'Plaintiff is Not Entitled to Representation by the Attorney General' does a similar job of transposition, concealment, and fraud as to what was before Judge Hartman with respect to appellants' entitlement to the attorney general's representation/intervention pursuant to Executive Law §63.1 and State Finance Law §123 *et seq.* – also part of the third sub-question of appellants' brief (at iv-v).
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> 17. Here, too, appellants' reply brief (at pp. 10-11) furnishes rebuttal, with much more that might have been said. Most significant, that this respondents' Point I-E, by its omission of the first sentence of the two-sentence Executive Law §63.1, was replicating Mr. Brodie's deceit by his June 27, 2018 e-mail to me – quoted at ¶16 of my July 24, 2018 moving affidavit in support of the second branch of appellants' [first] order to show cause, with rebuttal at ¶17 (Exhibit [E]) – to which his opposition to this second branch was both NON-RESPONSIVE and deceitful and so-demonstrated by the 'legal autopsy'/analyses annexed to my August 1, 2018 reply affidavit (Exhibit Z, at pp. 23-25) and my August 6, 2018 reply affidavit (Exhibit

DD, at pp. 4-7). For the Court's convenience, the rebutting pages of these 'legal autopsy'/analyses, with their interpretive discussion of Executive Law §63.1 and State Finance Law §123 *et seq.*, are annexed hereto (Exhibits F and G)." (italics, underlining, capitalization in the original).

13. As with everything else, Mr. Brodie does not contest the accuracy of these referred-to "rebutting pages...with their interpretive discussion of Executive Law §63.1". Rather, he simply ignores them in the section of his memorandum addressed to the motion's second branch. Such section, entitled "Respondents are Properly Represented by the Attorney General, Who Cannot Represent Plaintiff" (at pp. 4-11), is both fraudulent and insufficient, *as a matter of law*, to defeat the particularized evidentiary and legal showing made by the motion. And so-demonstrating this is appellants' annexed analysis of that section (Exhibit S), incorporated by reference, which I wrote and to whose accuracy I attest.

14. As should be obvious, the brazen violations of all legal and ethical standards by Mr. Brodie, aided, if not directed, by Mr. Paladino and Attorney General Underwood, with the knowledge and acquiescence of other supervisory/managerial attorneys of the attorney general's office, including "Senior Legal Staff", bespeak their confidence that they can get away with anything because the Court is not a fair and impartial tribunal. And the proof of this is what they have gotten away with thus far, before five of the Court's other justices, with respect to appellants' two prior orders to show cause (Exhibits H-1, I-1) – and by this motion, originally presented as a third order to show cause.

15. Mr. Brodie's memorandum (at pp. 1, 11, 14) seeks to mislead the panel about this motion and the prior two orders to show cause.[3] Indeed, under his section heading "Respondents'

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3 The final paragraph at page 14 of Mr. Brodie's memorandum states:

"Plaintiff also complains about the Court's August 7 order denying her summary judgment motion. (*See* Sassower Aff. ¶14.) Her objections to that order have already been rejected when the Court denied her motion for reargument and renewal on October 23, 2018."

Brief Is Not Sanctionable", he purports (at p. 11) that the denial of the orders to show cause is evidence that "plaintiff's position that there is 'NO legitimate defense to this appeal'…may charitably be described as hyperbole". This is yet a further sanctionable false factual statement by him, as his wholly fraudulent respondents' brief, which appellants' reply brief demonstrates as such without any contest from him as to its accuracy, PROVES there is "NO legitimate defense to this appeal".

16. In the unlikely event this appeals panel, prior to this motion, was unaware of appellants' first and second orders to show cause (Exhibits H-1, I-1), wherein – as chronicled by my reply affidavits for each – Mr. Brodie just as brazenly defied all evidentiary and legal standards – and was rewarded by two without-reasons decisions of a four-judge motion panel consisting of this Court's Presiding Justice Elizabeth Garry and Associate Justices John Egan, Jr., Eugene Devine, and Stanley Pritzker (Exhibits H-2, I-2) – it is the duty of each justice to personally review same, as immediately as possible, beginning with my annexed correspondence (Exhibits J, L) pertaining to the motion panel's statutory disqualification pursuant to Judiciary Law §14, divesting it of jurisdiction to have rendered its August 7, 2018 decision (Exhibit H-3) – so much so that it was without jurisdiction to even vacate it.[4]

This is bizarre. Appellants never made a "summary judgment motion" and ¶14 of my moving affidavit does not "complain" that the Court's August 7, 2018 order denied same.

[4] Review of the record of appellants' two prior orders to show cause and my comprehensive demonstration of Mr. Brodie's litigation fraud therein by my reply affidavits is essential to the panel's recognizing the magnitude of Mr. Brodie's fraud herein, as for instance, at ¶16 of his opposing affirmation herein:

> "I have no desire to defraud the Court in this or any other appeal. To the contrary, I take care to ensure that the papers I submit to the courts are trustworthy".

This he places beneath a section heading in his affirmation (at p. 5): "I Have Represented the Respondents On Appeal in Subjective Good Faith". And such is replicated in his opposing memorandum by the assertions (at p. 3): "respondents' counsel acted in subjective good faith. Specifically, counsel has no intent to defraud the

17. I was advised by Court staff, including Chief Motion Attorney Edward Carey, that said correspondence had been promptly furnished to the motion panel. The motion panel simply ignored same – and the state of the record before it – in rendering its October 23, 2018 decision, denying the order to show cause for its disqualification and other relief, without reasons (Exhibit I-2).

Elena Ruth Sassower

Elena Ruth Sassower, Unrepresented Plaintiff-Appellant

Sworn to before me this
13th day of November 2018

Jessica Whiting

Notary Public

Jessica Whiting
Notary Public, State of New York
Registration # 01WH5049663
Qualified in Schenectady County
My Commission Expires Sept. 25, 2021

Court"; thereafter repeated (at p. 11): "respondents' counsel proceeded in subjective good faith". <u>Nothing could be further from the truth</u> – and Mr. Brodie's educational and professional background and credentials enable him to know that.

TABLE OF EXHIBITS

Exhibit H-1: Appellants' three-page order to show cause, signed by Associate Justice Eugene Devine on August 2, 2018 at the oral argument of the TRO

Exhibit H-2: Pages 1-7 of July 24, 2018 moving affidavit in support of order to show cause

Exhibit H-3: August 7, 2018 decision and order on motion of four-judge motion panel consisting of Presiding Justice Elizabeth Garry and Associate Justices John Egan, Eugene Devine, & Stanley Pritzker

Exhibit I-1: Appellants' three-page order to show cause, signed by Presiding Justice Garry on September 12, 2018

Exhibit I-2: October 23, 2018 decision and order on motion of four-judge motion panel consisting of Presiding Justice Gary and Associate Justices Egan, Devine, & Pritzker

Exhibit J: Appellant Sassower's October 12, 2018 e-mail (12:14 pm) – "ON-HOLD: Appellants' Fully-Submitted OSC to Disqualify the Court for Demonstrated Actual Bias, Etc."

Exhibit K: Assistant Solicitor General Brodie's October 12, 2018 e-mail (12:31 pm)

Exhibit L: Appellant Sassower's October 15, 2018 e-mail (2:12 pm) – "Demanding a 'Surreply' from Attorney General Underwood, Personally as to the CPLR §5015(a)(4) Vacatur Relief Sought by Appellants' Fully-Submitted OSC"

Exhibit M: Appellant Sassower's November 5, 2018 e-mail to Attorney General Barbara Underwood (11:42 am) – "…NOTICE: Your Duty to Withdraw Mr. Brodie's Fraudulent November 2nd Opposition to Appellants' Oct. 23rd Motion to Strike Respondents' Brief, to Declare the AG's Representation of Respondents Unlawful, Etc."

Exhibit N: Asst. Solicitor General Brodie's November 5, 2018 e-mail (12:09 pm)

Exhibit O: Appellant Sassower's November 5, 2018 e-mail (12:46 pm) – "AGAIN – NOTICE TO ATTORNEY GENERAL UNDERWOOD: Your Duty to Withdraw Mr. Brodie's Fraudulent November 2nd Opposition to Appellants' Oct. 23rd Motion to Strike Respondents' Brief, to Declare the AG's Representation of Respondents Unlawful, Etc."

Exhibit P: Asst. Solicitor General Brodie's November 5, 2018 e-mail (12:54 pm)

Exhibit Q: Appellant Sassower's November 5, 2018 e-mail (1:26 pm) – "EMERGENCY NOTICE TO ATTORNEY GENERAL UNDERWOOD, 'SENIOR LEGAL STAFF', & OTHER SUPERVISORY/MANAGERIAL ATTORNEYS – Citizen-Taxpayer Action CJA v Cuomo, et al. (Appellate Division, Third Dept. #527081)"

Exhibit R: Asst. Solicitor General Brodie's November 5, 2018 e-mail (1:43 pm)

Exhibit S: Appellants' entitlement to the declarations sought by the second branch of their motion -- "legal autopsy"/analysis of the ten paragraphs of Asst. Solicitor General Brodie's November 2, 2018 memorandum under the section heading "Respondents are Properly Represented by the Attorney General, Who Cannot Represent Plaintiff"