SUPREME COURT OF THE 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,

July 24, 2018

Plaintiffs-Appellants,

MOVING AFFIDAVIT

-against-

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 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 pursuant to Article 7-A of the State Finance Law (§123 *et seq.*), seeking declarations of unconstitutionality and unlawfulness pertaining to the state budget and injunctions based thereon. I am fully-familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of the relief requested by the accompanying order to show cause, with preliminary injunction and TRO.

2. Incorporated herein by reference are appellants' brief and reproduced record on appeal, which I have today filed in the Clerk's Office. Such corroborate appellants' pre-calendar

statement [R.3-30], with its appended "legal autopsy"/analysis [R.9-30] of Judge Hartman's appealed-from November 28, 2017 decision and judgment [R.31-41],[1] establishing our entitlement, *as a matter of law*, to summary judgment on each of the ten causes of action of our September 2, 2016 verified complaint [R.99-123 (R.159-219)] and to the granting, in its entirety, of our March 29, 2017 order to show cause, with preliminary injunction and TRO [R.635-746]. Based on such appellate showing and, in particular, our entitlement to summary judgment on our sixth cause of action [R.109-112 (R.187-201)], seventh cause of action [R.112-114 (R.201-212)], and eighth cause of action [R.114 (R.212-213)], this order to show cause seeks a TRO and preliminary injunction to halt disbursements of monies for the unconstitutional, fraudulent, and statutorily-violative commission-based judicial salary increases – and the district attorney salary increases based thereon – which each day steal tens, if not hundreds, of thousands of dollars from New York taxpayers.

3. For the convenience of the Court, a Table of Contents follows:

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[1] Because this order to show cause rests on and incorporates appellants' already perfected appeal whose reproduced record on appeal contains, at the front [R.1-41], their notice of appeal, pre-calendar statement, and the appealed-from November 28, 2017 decision and judgment, appending these same documents to this affidavit is duplicative. In the interest of economy, I refer the Court to the reproduced record on appeal, without which this order to show cause cannot be determined.

* * *

Threshold Integrity Issues Pertaining to the Court: Disclosure by its Justices & the Disqualification of at least One – Associate Justice Michael Lynch

4. Inasmuch as this appeal involves judicial salaries – and expressly requests criminal referrals of defendants-respondents [hereinafter "respondents"] and other "culpable public officers and their agents" [R.131, R.224] on whom the Court is dependent and has personal, professional, and political relationships – the Court's duty – before it can address the first two questions on the appeal as to Judge Hartman's duty to have made disclosure, absent her disqualifying itself – is to address the disclosure that its own judges must make, absent their disqualifying themselves.

5. To assist the Court in this difficult, but requisite, task, the disclosure incumbent on each of its justices includes the following:

- Each associate justice of this Court currently has a $75,200 yearly salary interest in the commission-based judicial salary increases challenged by appellants' sixth, seventh, and eighth causes of action, with the current yearly salary interest of the presiding justice being $77,700. The consequence of the Court's determination in appellants' favor – which is the ONLY determination the record will support – is that the yearly salary of associate justices will nosedive from $219,200 to $144,000 and the yearly salary of the presiding justice will plunge from $224,700 to $147,600 – with each justice also subject to a "claw-back" of the judicial salary increases he/she has collected since April 1, 2012 – those "claw-backs", as of this date, already maxing at over $300,000[2], not counting "claw-backs" of salary-based non-salary benefits.

[2] The climb in the yearly judicial salary for each of this Court's associate justices as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March 31, 2012, when it was $144,000, is, as follows: April 1, 2012: $168,600; April 1, 2013: 176,000; April 1, 2014: $183,300; April 1, 2015: $183,300. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: $203,400; April 1, 2017: $205,400; April 1, 2018: $219,200.

The climb in the yearly judicial salary for this Court's presiding justice as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March

- Each of this Court's justices has an incalculable financial interest in the slush-fund $3-billion-plus Judiciary budget, which funds the Court, including its underfunded and demonstrably sham Attorney Grievance Committee, with whose staff and members it has relationships[3];

- Each of this Court's justices was elevated to this Court upon appointment by Governor Cuomo, the first named defendant – and all are dependent upon him or his gubernatorial successor for their continuation in office[4];

- Each of this Court's justices has relationships with Chief Judge DiFiore, the last-named defendant;

31, 2012, when it was $147,600 is, as follows: April 1, 2012: $172,800; April 1, 2013: 184,000; April 1, 2014: $188,000; April 1, 2015: $187,000. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: $208,500; April 1, 2017: $210,500; April 1, 2018: $224,700.

[3] This Court's Attorney Grievance Committee is currently "sitting on" appellants' September 16, 2017 attorney misconduct complaint against those responsible for the defense fraud of the attorney general's office in this citizen-taxpayer action and its predecessor. The four attorneys registered in the Third Department who are its subject are: Assistant Attorneys General Adrienne Kerwin and Helena Lynch and their direct supervisors, Assistant Attorney General Jeffrey Dvorin and Deputy Attorney General Meg Levine. Prior thereto, the Court's Attorney Grievance Committee "sat on" appellants' October 14, 2016 misconduct complaint against Albany County District Attorney P. David Soares and his fellow Third Department district attorneys, all beneficiaries of the statutorily-violative, fraudulent, and unconstitutional judicial salary increases to which their district attorney salary increases are tied. The Grievance Committee's indefensible dismissal of that complaint, on July 5, 2017, was the subject of a July 28, 2017 request for reconsideration, to which it adhered by letter dated May 4, 2018. These complaints – and the record thereon – are posted on appellant Center for Judicial Accountability's website, www.judgewatch.org, accessible *via* the prominent homepage link "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance". It brings up a menu page with a link entitled: "FIGHTING BACK! — Complaints to Supervisory, Disciplinary & Criminal Authorities". [*See*, also, Free-Standing Exhibit I (eye), containing the September 16, 2017 misconduct complaint – and, additionally, a further March 6, 2018 misconduct complaint/supplement against District Attorney Soares and his fellow district attorneys].

[4] The permanent justices of this Court, appointed to five-year terms by the Governor, pursuant to Judiciary Law §71, are Presiding Justice Elizabeth Garry, whose term expires January 1, 2021; Justice Michael Lynch, whose term expires January 1, 2020; Justice Eugene Devine, whose term expires January 1, 2019; Justice John Egan, Jr., whose term expires January 1, 2020; and Justice William McCarthy, whose term expired July 12, 2018.

The "temporary" justices of this Court have terms that run until January 1st of the year after they reach 70 years of age or the expiration of their 14-year term as Supreme Court justices: Justice Robert Mulvey, whose term expires January 1, 2026; Justice Phillip Rumsey, whose term expires January 1, 2020; Justice Stanley Pritzker, whose term expires January 1, 2027; Justice Sharon Aarons, whose term expires January 1, 2024; and Justice Christine Clark, whose term expires January 1, 2027.

- Each of this Court's justices has relationships with the panoply of specific judges, past and present, involved in perpetuating – if not also procuring – the unconstitutional, fraudulent, and statutorily-violative commission-based judicial salary increases. Among these judges whose willful and deliberate misconduct is recited and reflected by the record are:

  (1) Court of Claims Judge/Acting Albany County Supreme Court Justice Denise Hartman;

  (2) Court of Claims Judge/Acting Albany County Supreme Court Justice Roger McDonough;

  (3) Chief Administrative Judge Lawrence Marks;

  (4) Former Chief Judge Jonathan Lippman;

  (5) Third Judicial District Administrative Judge Thomas Breslin;

  (6) Deputy Chief Administrative Judge Michael Cocoa; and

  (7) the then Albany County Supreme Court Justice, and now Associate Justice of this Court, Michael Lynch.

6. Any justice of this Court unable or unwilling to rise above his financial interest and relationships so as to impartially discharge his judicial duties MUST disqualify himself – and the "rule of necessity" is NOT to the contrary.

7. Associate Justice Lynch, however, MUST disqualify himself – or must be disqualified – from any handling of this case, based on his demonstrated actual bias, born of interest. Indeed, it was his judicial misconduct as duty judge in Supreme Court/Albany County, when presented with appellants' March 28, 2014 order to show cause with a preliminary injunction and TRO in the predecessor citizen-taxpayer action that gave rise to all subsequent proceedings therein before Judge McDonough and, thereafter, in this citizen-taxpayer action before Judge Hartman – each of these two judges replicating Justice Lynch's paradigm of misconduct, *to wit*, misrepresentation of law, conclusory falsehood of fact, and, as to Judge McDonough, conclusory falsehood that Assistant

Attorney General Adrienne Kerwin had committed no misconduct, when she grossly had, with Judge Hartman simply ignoring the issue.

8. Evidencing what Associate Justice Lynch did are:

- the transcript of the March 28, 2014 oral argument (Exhibit A-2);
- appellants' March 28, 2014 order to show cause (Exhibit A-1) [R.1113-1114][5];
- the March 28, 2014 verified complaint supporting it [R.226-272, R.1105a];
- the voluminous exhibits annexed thereto [R.1106-1112];
- appellants' accompanying March 26, 2018 Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) (Exhibit B);
- my correspondence with Justice Lynch after the oral argument for "reconsideration, by reargument, renewal, or by vacatur for fraud" (Exhibits C-1, C-3, C-4); and
- Justice Lynch's responding so-ordered letters (Exhibits C-2, C-5).

9. Also annexed, without its exhibits, is my subsequent May 16, 2014 affidavit in further support of the March 28, 2014 order to show cause (Exhibit D-2) as it vividly summarizes my interaction with AAG Kerwin not only in the days immediately prior to the March 28, 2014 oral argument and her fraud upon, and collusion with, Justice Lynch at the oral argument, but what transpired thereafter when, having been given three weeks by Justice Lynch for filing answering papers to the March 28, 2014 order to show cause, she made an April 18, 2014 motion to dismiss the March 28, 2014 verified complaint so fraudulent and insufficient, *as a matter of law*, that my May 16, 2014 affidavit and accompanying memorandum of law [R.1123-1160] were in support of appellants' May 16, 2014 cross-motion for summary judgment on the complaint's four causes of

[5] The record of this citizen-taxpayer action contains the order to show cause that Justice Lynch signed in the prior citizen-taxpayer action [R.113-1114] and an assortment of documents pertinent thereto [R.1115-1119; R.1189-1190], as AAG Kerwin appended them as exhibits to her affirmation in support of her July 21, 2017 cross-motion for sanctions against me for my supposed abusive, harassing conduct [R.1069-1078].

action (Exhibit D-1) [R.1120-1122] – the same four causes of action as were before Justice Lynch – and which, *on their face,* establish a *prima facie* entitlement to summary judgment, as I so-stated at the oral argument and in my correspondence thereafter.

10. By May 16, 2014, the case was before Judge McDonough. As for Justice Lynch, he was already sitting on this Court – as, undisclosed by him in denying the TRO six weeks earlier, was that he was awaiting appointment to the Court by Governor Cuomo, the first-named defendant in the predecessor citizen-taxpayer action. Governor Cuomo appointed Justice Lynch to this Court on or about April 15, 2014 – which surely he would not have done if, two weeks earlier, Justice Lynch had granted the TRO (Exhibit A-1), directed AAG Kerwin to immediately comply with appellants' March 26, 2014 Notice to Furnish the Court with Papers Pursuant to CPLR §2214(c) (Exhibit B), and scheduled a comparably immediate hearing on the preliminary injunction. This was Justice Lynch's duty to have done, based on the facts and law before him – and which, had he done, would have ended the case, in short order, with the granting of the declarations sought by the March 28, 2014 verified complaint [R.269-270].

Threshold Integrity Issues Pertaining to the Attorney General:
Plaintiffs' Entitlement to its Representation/Intervention
& its Disqualification as Defense Counsel on Conflict of Interest Grounds

11. Appellants are without counsel – and, pursuant to Executive Law §63.1, which predicates the attorney general's litigation posture on "the interest of the state", and State Finance Law §123, which contemplates the attorney general's affirmative role in citizen-taxpayer actions as plaintiff – we are entitled to his representation or intervention on our behalf because Judge Hartman's appealed-from November 28, 2017 decision and judgment [R.31-41] is indefensible, the product of fraud and collusion between her and the attorney general's office in which she worked for 30 years, concealing what is evident from the face of each of appellants' verified pleadings –

beginning with the March 28, 2014 verified complaint that was before Justice Lynch [R.226-272] – *to wit*, that there is NO "merits" defense to our causes of action, each *prima facie* as to a mountain of constitutional, statutory, and rule violations.

12. By letter, dated May 16, 2018 (Exhibit I (eye) -1)[6], I gave NOTICE to Attorney General Schneiderman's successor, Barbara D. Underwood, that Judge Hartman's November 28, 2017 decision and judgment [R.31-41] was indefensible—and furnished, in substantiation, appellants' January 10, 2018 notice of appeal [R.1] with its pre-calendar statement [R.3] and "legal autopsy"/analysis of the November 28, 2017 decision and judgment [R.9-30] from which that fact could be verified, *readily*. In pertinent part, the letter stated:

> "The accuracy of this 'legal autopsy'/analysis is your duty to verify – since, pursuant to Executive Law §63.1, you have NO defense to the appealed-from decision and judgment, which, *as a matter of law*, must be voided. Only this is consistent with the 'interests of the state' – and your obligations pursuant to State Finance Law §123 *et seq.* and such other provisions as Executive Law §63-c and State Finance Law §187 *et seq.* ('New York False Claims Act').
>
> Consequently, your duty is to obviate the appeal entirely by moving to vacate the November 28, 2017 decision and judgment and the underlying decisions on which it rests, including pursuant to CPLR §5015(a)(3) 'fraud, misrepresentation, or other misconduct of an adverse party'; or, alternatively, to represent CJA on the appeal and perfect and prosecute it on behalf of the People of the State of New York and the public interest that CJA has heretofore been representing. (Exhibit I-1, at pp. 4-5, capitalization, italics, and underlining in the original.)

13. I received no response from Attorney General Underwood, nor from anyone on her behalf – including her high-ranking supervisory/managerial attorneys to whom I also sent the May 16, 2018 NOTICE. Consequently, on May 30, 2018, I sent her a further letter (Exhibit J-1)[7],

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[6] The substantiating enclosures – excepting appellants' January 10, 2018 notice of appeal herein [R.1-41] – are herewith furnished as Free-Standing Exhibit I (eye).

[7] The substantiating enclosures are herewith furnished as Free-Standing Exhibit J.

inquiring whether her failure to respond was the consequence of her conflicts of interests – thereupon particularizing a succession of conflicts impinging on her judgment.

14. Again, in the absence of any response, I sent a follow-up: a June 6, 2018 e-mail (Exhibit K), requesting a response by June 13th. Then, in the absence of any response again, I sent a June 14, 2018 e-mail (Exhibit L) that I would be moving forward with perfecting the appeal and asking who, in the office, would be handling it. Even as to this, there was no response – and on June 18, 2018, I independently ascertained that it was Assistant Solicitor General Frederick Brodie (Exhibit M).

15. Eight days later, after responses from Assistant Solicitor General Brodie reflecting that the attorney general's office would be continuing, on appeal to this Court, the same disregard of its professional and ethical obligations as in Supreme Court, I sent him a June 26, 2018 e-mail (Exhibit N-2), with copies to Attorney General Underwood and her high-ranking supervisory/managerial attorneys, stating:

> "As I have still received NO response from Attorney General Underwood – or any of her high-level supervisory/managerial attorneys – to my May 16th NOTICE, May 30th letter, and June 6th and June 14th e-mails, I am cc'ing them on this e-mail, with an express request that they IMMEDIATELY advise as to who is evaluating the 'interest of the state' on this appeal – and, consistent therewith, plaintiffs' entitlement to the Attorney General's representation/intervention, pursuant to Executive Law §63.1 and State Finance Law §123 *et seq.*, including *via* appointment of independent/outside counsel. Needless to say, such will be a threshold issue at the [upcoming] argument of the order to show cause – and if Attorney General Underwood is not personally present to address it – and the state of the record – I will request the Court to command her appearance and response." (capitalization and underlining in the original).

16. Again, there was no response from Attorney General Underwood or any of her supervisory/managerial attorneys. Nor, for that matter, did Assistant Solicitor General Brodie answer my question as to "who is evaluating the 'interest of the state' on this appeal" in responding, by a June 27, 2018 e-mail (Exhibit N-3):

> "I do not believe Executive Law 63(1) or State Finance Law 123 *et seq.* entitles you to a formal determination by the attorney general of the 'interests of the state' or the appointment of an independent counsel. Executive Law 63(1) provides, in part, that '[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 you and CJA are not a part 'of the state,' the provision does not appear to apply to you. State Finance Law 123 *et seq.* authorizes citizen-taxpayer suits under certain circumstances, and I understand you have proceeded under that section. State Finance Law 123-c(3) requires that citizen-taxpayer complaints be served on the attorney general, but does not appear to require the attorney general to make a formal determination. If you have contrary authority, please bring it to my attention." (bold in original).

17. Such 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.

18. On July 6, 2018, as I was finalizing the reproduced record on appeal, I e-mailed Assistant Solicitor General Brodie, cc'ing Attorney General Underwood and her highest supervisory/managerial attorneys, and stating:

> "as would have been obvious to you three weeks ago, at the outset of your review of the draft brief that I had furnished Attorney General Underwood and her highest-ranking supervisory and managerial attorneys on June 14th – essentially unchanged by the finalized July 4th brief I furnished you yesterday – the state has NO FACTUAL OR LEGAL BASIS for opposing the appeal. Your duty, weeks ago, was to have so-advised Attorney General Underwood, her executive supervisory/managerial staff, and your immediate supervisor, Assistant Solicitor General Paladino, so that prompt steps could have been taken, consistent with Executive Law 63.1 ('The attorney-general shall – Prosecute and defend all actions and proceedings in which the state is interested…in order to protect the interest of the state….') and State Finance Law, Article 7-A (§§123-b; 123-a, 123-c(3), 123-d) – and NOT, as you did, burden me with the huge effort and expense of perfecting the appeal. It remains your duty to advise them of what, certainly, by now, you well know: that there is NO DEFENSE to this appeal, that any opposition is frivolous, *as a matter of law*, and that each and every day that passes brings with it a further larceny of taxpayer dollars – with the judicial and district attorney salary increases themselves stealing tens, if not hundreds, of thousands of dollars daily." (Exhibit O-1, capitalization, underlining, and italics in the original).

19. Assistant Solicitor General Brodie's response, also on July 6, 2018 (Exhibit O-2), was to refer me back to his June 27, 2018 e-mail, with the words: "I previously responded to your argument that you are entitled to some sort of formal determination by the Attorney General on the

merits of your appeal. See item 10 of my email of June 27, 2018 at 10:36 a.m." This followed his assertion: "I will review your brief when it is served on me" – thereby making even more explicit what had already been apparent over the weeks of my interaction with him, namely, that he was not evaluating "the interest of the state".

20. In reply, I e-mailed that I would "respond further…by my affidavit in support of the order to show cause, with preliminary injunction with TRO, which I will e-mail you as soon as it is fully drafted so that you can have maximum time to review it before the anticipated…oral argument." (Exhibit O-3).

21. Suffice to note that throughout the course of this citizen-taxpayer action before Judge Hartman, as likewise throughout the course of its predecessor before Judge McDonough, appellants sought court orders pursuant to Executive Law §63.1 and State Finance Law Article 7-A, "compelling Attorney General Schneiderman to identify who in the Attorney General's office has independently evaluated the 'interest of the state' in this case and plaintiffs' entitlement to the representation/intervention of the Attorney General" (Exhibit D-1) [R.1120-1122]. From our first May 16, 2014 memorandum of law, we briefed this threshold issue and the related threshold conflict-of-interest issue [R.1152-1154] – and then repeated them, essentially identically, in all our subsequent memoranda of law[8] because neither then nor thereafter was it ever addressed by Judge McDonough or Judge Hartman – or, in any significant way, if at all, by AAG Kerwin or AAG Helena Lynch, the two assistant attorneys general who signed papers, or AAG James McGowen, who showed up in court with AAG Kerwin on March 28, 2014 before Justice Lynch [Exhibit A-2], to oppose appellants' order to show cause with TRO [Exhibit A-1] and, thereafter, again with AAG

[8] *See* R.517-520 (appellants' September 30, 2016 reply memorandum of law); R.980-982 (appellants' May 15, 2017 reply memorandum of law); R.1334 (appellants' August 25, 2017 reply memorandum of law).

Kerwin, on March 23, 2016, to oppose another order to show cause with TRO (Exhibit F-1), which he argued (Exhibit F-2).

22. By way of postscript, the record before Judge Hartman includes my September 28, 2016 FOIL request to the attorney general's records access officer for:

> "the Attorney General's guidelines, policies, and procedures for determining the 'interest of the state', pursuant to Executive Law §63.1, and its duty to represent plaintiffs and/or intervene on their behalf in citizen-taxpayer actions, pursuant to State Finance Law Article 7-A" [R.590].

The December 15, 2016 response, from the attorney general's records appeals officer – which I also furnished to Judge Hartman – was "after a diligent search, the OAG located no responsive records." [R.604].

23. I received a similar response to the FOIL request embodied by my May 30, 2018 letter to Attorney General Underwood (Exhibit J-1), which had concluded, as follows:

> "For the benefit of all concerned, I invoke FOIL [Public Officers Law, Article VI] and, by copy of this letter to your records access officer, request:
>
> (1) written protocols, policies, and/or guidelines of the attorney general's office governing the conflicts of interest afflicting you – and procedures for securing independent/outside counsel, as well as a special prosecutor;
>
> (2) records of how the attorney general's office has implemented Executive Law §63.11, conferring upon you the duty to 'Receive complaints concerning violations of section seventy-four of the public officers law' – including the make-up of your 'advisory committee on ethical standards'; and instances where, based on its 'findings and recommendations', the attorney general has brought 'a civil action…for the recovery of moneys…received or expended by an officer';
>
> (3) records establishing when, if ever, any committee of the Legislature has held an oversight hearing of the operations of the attorney general's office with respect to its constitutional and statutory function, discharge of its duties, and its budget."

The July 5, 2018 answer I received was that "the Office of the Attorney General has conducted a diligent search and has located no records that respond to your request". (Exhibit J-4).

Appellants' Statutory Entitlement to a Preference, both for their Appeal and the Preliminary Injunction

24. It is to prevent "illegal or unconstitutional disbursement of state funds" that State Finance Law §123-c(4) commands:

> "An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have preference over all other causes in all courts."

and that §123-e(2) provides:

> "The court, at the commencement of an action pursuant to this article, or at any time subsequent thereto and prior to entry of judgment, upon application by the plaintiff or the attorney general on behalf of the people of the state, may grant a preliminary injunction and impose such terms and conditions as may be necessary to restrain the defendant if he or she threatens to commit or is committing an act or acts which, if committed or continued during the pendency of the action, would be detrimental to the public interest. A temporary restraining order may be granted pending a hearing for a preliminary injunction notwithstanding the requirements of section six thousand three hundred thirteen of the civil practice law and rules, where it appears that immediate and irreparable injury, loss, or damage will result unless the defendant is restrained before a hearing can be had."

25. This Court's Rules of Practice, Part 800, currently in effect, make no mention of citizen-taxpayer actions, nor special provision for their appellate review, including with respect to their mandated statutory preference "over all other causes in all courts", notwithstanding the importance of State Finance Law Article 7-A – and the fact that actions brought thereunder challenging state disbursements and encompassing injunctive relief would, in the main, if not exclusively, be brought in the Third Department. Likewise, there is no mention of, nor provision for, citizen-taxpayer actions in this Court's Rules of Practice, Part 850, that will take effect on September

17, 2018 – or in the new Statewide Appellate Division Practice Rules, also taking effect on September 17, 2018, which this Court's Part 850 is intended to supplement.

26. The not-yet operative Statewide Appellate Division Practice Rules do, however, contain a provision entitled "Calendar Preference", §1250.15(a), whose subsection 1 states: "A party seeking and entitled by law to a preference in the hearing of an appeal shall provide prompt notice by letter to the court setting forth the basis for such preference."

27. Appellants, having today perfected their appeal by the filing of their brief and reproduced record on appeal, now promptly seek an accelerated briefing schedule and preferential calendaring for oral argument and decision on the appeal – and for the preliminary injunction and other relief sought by this order to show cause.

28. At bar, the need for expedition could not be more imperative, given the magnitude of public monies in the state budget, currently exceeding $160 billion – and the flagrant repetition in this fiscal year's budget of all the violations of constitutional provisions, statutory provisions, and legislative rules that appellants' citizen-taxpayer actions sought to safeguard by appropriate declarations – entitlement to which the record establishes. These continuing violations from one fiscal year to the next have enabled respondents to misappropriate taxpayer money on a massive scale. Meanwhile, New York's prosecutorial authorities with jurisdiction to act: Albany County District Attorney P. David Soares and Attorney General Underwood, with a multitude of statutes at their disposal to protect taxpayer money and the public fisc – including Penal Law §496 "corrupting the government" ("The Public Trust Act") – have simply ignored the "grand larceny" taking place, notwithstanding the *prima facie* evidence my criminal complaints to them furnished pertaining to this fiscal year (attached and Free-Standing Exhibits I (eye)).

29. Just in terms of the commission-based judicial salary increases and the district attorney salary increases linked thereto – whose unconstitutionality, fraud, and statutory violations are the subject of appellants' sixth, seventh, and eighth causes of action [R.109-112 (R.187-201); R.112-113 (R.201-212); R.114 (R.212-213)] – the cost to taxpayers, since April 1, 2012, has been over $300 million – and growing. No "claw back" could ever fully recover this larceny of tax dollars.

30. Then, too, the budgets for the upcoming 2019-2020 fiscal year for the judiciary and executive branches are being fashioned now, with the legislative budget being a slapped-together façade, which should be fashioned now, but is not. The sooner judicial declarations pertaining to objected-to constitutional and statutory violations emanate, the less disruptive it will be to those budgets.

31. As a further note, this year's behind-closed-doors three-men-in the-room, "amending" of budget bills resulted in the insertion of a Part HHH into Budget Bill #S.7509-C/9509-C, establishing a compensation committee for legislative and executive pay raises (Exhibit H). Such suffers from substantially the same constitutional and statutory infirmities as Part E of fiscal year 2015-2016 Budget Bill #S.4610-A/A.6721-A (Chapter 60, Part E, of the Laws of 2015), challenged by appellants' sixth and seventh causes of action [R.109-112 (R.187-201); R.112-113 (R.201-212)].[9]

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[9] One material difference is that Part HHH specifies (Exhibit H, at §3) that "the parties' performance and timely fulfillment of statutory and Constitutional responsibilities" is among the "appropriate factors" the compensation committee must "take into account" (also see §4b). By contrast, Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] does not so-specify "performance" or "fulfillment of statutory and Constitutional responsibilities" as among the "all appropriate factors" for the Commission on Legislative, Judicial and Executive Compensation to "take into account" – and this is a key ground upon which appellants' sixth cause of action challenges the statute as unconstitutional, phrasing the issue as follows, in three paragraphs from appellants' March 23, 2016 verified second supplemental complaint, followed by a new fourth paragraph [R.110-111]:

> "'400. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof,

As the judicial declarations to which appellants are entitled herein would render that compensation committee and its work a nullity, the sooner that happens, the better for all concerned.

32. Respondents would face no hardship by an accelerated briefing schedule. All are represented by the attorney general, whose lawyer staff numbers over 500, with support personnel twice that, if not more, and which has a dedicated "Appeals and Opinions Bureau", headed by the solicitor general – Attorney General Underwood (Exhibit N-3, #9) – expert in the constitutional and legal issues presented by appellants' brief.[10]

> are not earning their current salaries. *Consequently, a prerequisite to any judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.*
>
> 401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office for corruption – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.*
>
> 402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are 'appropriate factors' for its consideration in making salary recommendations renders the statute unconstitutional, *as written*.'
>
> 65. As Judiciary Law §183-a statutorily links district attorney salaries with judicial salaries, the failure of the Commission statute to include an express provision requiring the Commission to take into account such 'appropriate factor' means that district attorneys become the beneficiary of judicial salary increase recommendations, without ANY evidence, or even claim, that existing district attorney salaries are inadequate – and, likewise, without ANY evidence, or even claim, that district attorneys are discharging their constitutional and statutory duties to enforce the penal law and that mechanisms to remove them for corruption are functional. Such additionally renders the Commission statute unconstitutional, *as written*." [underlining, italics, and capitalization in the original].

[10] Reflecting this – and the attorney general's role to opine on constitutionality, reflected in a multitude of statutory provisions – §1250.9(i) of the new statewide Appellate Division Practice Rules, entitled "Constitutionality of State Statute", reads:

> "Where the constitutionality of a statute of the State is involved in a matter in which the State is not a party, the party raising the issue shall serve a copy of the brief upon the Attorney

33. More than a month ago, by my June 14, 2018 e-mail (Exhibit L), I furnished Attorney General Underwood and her highest supervisory/managerial attorneys with appellants' drafted brief, so that they would be able to file respondents' brief today, essentially simultaneous with appellants' filing of their brief and this order to show cause. In pertinent part, my transmitting e-mail stated:

> "This is to give you NOTICE that two weeks from today, on June 28, 2018, or shortly thereafter, I am intending to file plaintiffs' perfected appeal of Judge Hartman's November 28, 2017 decision & judgment at the Appellate Division, Third Department and – based on its showing of plaintiffs' entitlement, *as a matter of law*, to summary judgment on each of the ten causes of action of their September 2, 2016 verified complaint and on each of the reiterated ten causes of action of their March 29, 2017 verified supplemental complaint – to accompany it with an order to show cause for a preliminary injunction, with TRO, pursuant to CPLR §5518, to enjoin the ongoing larcenous disbursements of taxpayer monies to fund the statutorily-violative, fraudulent, and unconstitutional commission-based judicial salary increases – and the district attorney salary increases linked thereto.
>
> So that you will be fully prepared to proceed, on that date, I herewith furnish you with plaintiffs' 'Questions Presented' and appellate brief, which I have already drafted. It is posted on CJA's website, www.judgewatch.org, accessible here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/complaints-notice/moving-forward-appeal.htm." (capitalization, italics, and underlining in the original).

34. On July 7, 2018, after extensive interaction with Assistant Solicitor General Brodie concerning the reproduced record on appeal and the wording of the stipulation in lieu of certification pursuant to CPLR §5532 (Exhibits M-3 -Q-4), I served the attorney general, by priority mail, with two copies of appellants' brief, essentially identical to the June 14, 2018 draft brief, and a bound copy of the stipulated reproduced record. These were delivered by the post office on July 9, 2018 (Exhibit Q-4).

35. Consequently, if Attorney General Underwood does not appear today with respondents' brief ready to be filed, a briefing schedule requiring her to file by July 27, 2018 would

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> General of the State of New York, and file proof of service with the court. The Attorney General may thereupon intervene in the appeal."

be more than generous. Indeed, inasmuch as Attorney General Underwood has essentially had appellants' brief since June 14, 2018, a direction that respondents' brief be filed three days hence would give her virtually the full 45 days that this Court's scheduling memorandum provides (Rule §800.9(b)).

Appellants' Entitlement to a Subpoena *Duces Tecum*, Furnishing this Court with the Original Record

36. This Court's failure to include, in its rules, any specific procedures for citizen-taxpayer actions – or to ensure that same were part of the new statewide Appellate Division Practice Rules – means there are no rules, consistent with the intent of the citizen-taxpayer statute, namely, to facilitate and expedite appeals in these important cases. Such appellate rules would include specifying that citizen-taxpayer actions are among the category of cases that may be perfected on the original record (*Cf.* Statewide Appellate Division Practice Rule §1250.5(e)), thereby obviating the time-delaying effort and appeal-discouraging expense of compiling, printing, and binding a reproduced record on appeal.[11]

37. Appellants have already been burdened with the HUGE effort and cost of compiling, printing, and binding a reproduced record on appeal. However, the reproduced record is NOT the full record. Due solely to their bulk, omitted from the reproduced record, but reflected by its table of contents [R.ii, R.x][12], are record documents essential to PROVING appellants' appellate entitlement

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[11] The expense of a reproduced record on appeal of the prior citizen-taxpayer action – with all its voluminous substantiating attached and free-standing exhibits – was the most important reason why appellants' November 17, 2014 notice of appeal therein was not perfected. Indeed, I spent considerable time trying to ascertain the possibilities of appealing on an "Agreed statement in lieu of record" pursuant to this Court's Rule §800.4(d) and CPLR §5527: "Statement in lieu of record on appeal".

[12] *See* this Court's Rule §800.5(a)(6): "…Omitted exhibits which are material to the issues raise on appeal shall be filed when briefs are filed. All exhibits, whether omitted from the record or not, shall be listed and briefly described in the table of contents".

to summary judgment and the other relief sought. These are summarized by appellants' stipulation in lieu of certification pursuant to CPLR §5532 as:

> "(1) the free-standing exhibits [plaintiff-appellant Sassower] brought to the courthouse and filed on March 29, 2017, in support of plaintiffs-appellants' March 29, 2017 order to show cause, with preliminary injunction & TRO; and (2) the record in plaintiffs-appellants' underlying and incorporated citizen-taxpayer action, *Center for Judicial Accountability, Inc. v. Cuomo, et al.* (Albany County #1788-2014)."

38. As they are part of the record of this citizen-taxpayer action, they are properly before this Court – and appellants seek a subpoena *duces tecum* to have them brought up from the Albany County Clerk's Office.[13]

39. Suffice to note that because the first nine causes of action of the September 2, 2016 verified complaint [R.99-123] are, in material respects, the eight causes of action of the March 23, 2016 verified second supplemental complaint in the prior citizen-taxpayer action [R-159-219], the SAME documentary evidence substantiates them both.

40. As Judge Hartman, by her December 21, 2016 decision [R.527-535], dismissed appellants' first five causes of action expressly on Judge McDonough's dispositions of corresponding causes of action in the prior citizen-taxpayer action [R.531], completely disregarding the allegations of the September 2, 2016 verified complaint [R.100 (¶¶24-27); R.103 (¶¶35-38); R.104 (¶¶41-44); R.106 (¶¶49-52)] and its Exhibit G analysis [R.338-373] that his dispositions thereof were fraudulent and denied us the summary judgment to which we were entitled, *as a matter of law*, the record of the prior citizen-taxpayer action is the PROOF of this – and that Judge

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[13] *Cf.*, Statewide Appellate Division Practice Rules: §§1250.9(2)(i); (4)(i); (5).

Also, this Court's Rule §800.5(b): "Exhibits which are material to the issues raised by any party shall be made available to the court. …Exhibits…under the control of a third person shall be filed…pursuant to a subpoena duces tecum issued in accordance with CPLR, article 23. Appellant shall also file with his brief proof of service of such a…subpoena together with a list of all relevant exhibits."

Hartman's dismissals of the first five causes of action, concealing those dispositive allegations and the Exhibit G analysis, is comparably fraudulent and comparably denied us the summary judgment to which we were entitled, *as a matter of law*.

41. As for appellants' sixth, seventh and eighth causes of action [R.109-112 (R.187-201); R.112-113 (R.201-212); R.114 (R.212-213)] as to the unconstitutionality, fraud, and statutory violations of the commission-based judicial salary increases, the evidence establishing our entitlement to summary judgment thereon is the evidence entitling us the TRO and preliminary injunction sought by this order to show cause. All of this was furnished in the prior citizen-taxpayer action – and none more dispositive than:

- the copy of what I handed up to defendant Legislature in testifying at its February 6, 2013 budget hearing in opposition to the "force of law" judicial salary increases of the August 29, 2011 report of the Commission on Judicial Compensation, embedded in the judiciary budget – the original of which I had sought to provide Supreme Court by appellants' March 26, 2014 Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) (Exhibit B, at p. 3 & following) and, thereafter, by appellants' June 16, 2014 order to show cause to prevent destruction of original records & direct turn-over (Exhibit E) – both denied and falsified by Judge McDonough's October 9, 2014 decision [R.326-334], as a consequence of which I filed a duplicate of the most pertinent parts in support of appellants' September 22, 2015 cross-motion for summary judgment [R.1171-1181][14], *to wit*:

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[14] *See* R.1179, ¶8 – my September 22, 2015 affidavit, reading:

> "**With respect to AAG Kerwin's fraud in connection with plaintiffs' order to show cause with TRO, signed by the Court on June 16, 2014; Attorney General Schneiderman's conflict of interest; and the fraudulence, unconstitutionality, and unlawfulness of the judicial salary raises, encompassed by plaintiffs' sixth cause of action**: The most important documents I handed up in testifying at the Legislature's February 6, 2013 'public protection' budget hearing in opposition to the Judiciary's budget and the second phase of the judicial salary increase are plaintiffs' October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report and plaintiffs' March 30, 2012 verified complaint in *CJA v. Cuomo I* based thereon. A copy of those documents is herewith furnished, in a free-standing file folder, due to their volume…." (bold and underlining in the original).

(1) appellants' October 27, 2012 opposition report, with exhibits;

(2) appellants' March 28, 2012 verified complaint in the declaratory judgment action, *Center for Judicial Accountability, Inc. v. Cuomo, et al.*, (Bronx Co. #302951-12/New York Co. #401988-12) with exhibits.

- my December 31, 2015 letter to then Chief Judge Nominee/Westchester District Attorney, respondent DiFiore, entitled "So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?" – which was Exhibit 37 to the March 23, 2016 verified second supplemental complaint and whose enclosures of my November 30, 2015 written testimony before the Commission on Legislative, Judicial and Executive Compensation and subsequent submissions to it were furnished in a free-standing folder accompanying the March 23,2016 verified second supplemental complaint (Exhibit G – inventory);

- my January 15, 2016 letter to respondent Temporary Senate President Flanagan and respondent Assembly Speaker Heastie entitled "IMMEDIATE OVERSIGHT REQUIRED…", furnishing a 12-page "Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc." – which were Exhibits 39 and 40 to the March 23, 2016 verified second supplemental complaint (Exhibit G – inventory)[15].

42. As for the free-standing exhibits that, on March 29, 2017, I filed in support of appellants' March 29, 2017 order to show cause [R.635-743] – consisting of the progression of budget bills for the fiscal year 2017-2018 budget and one-house budget resolutions [R.863, R.791 at ¶8] – such documentarily establish our entitlement to the TRO and preliminary injunctions sought by

[15] Appellants' seventh cause of action in this citizen-taxpayer action [R.112] and its incorporated fourteenth cause of action from their March 23, 2016 second supplemental complaint [R.201-202] identify Exhibits 35, 39, and 40 as among the "DISPOSITIVE evidentiary proof" of the unconstitutionality, *as written and as applied*, of Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative Judicial and Executive Compensation"; with their eighth cause of action [R.114] identifying, by its incorporated fifteenth cause of action [R.212-213] that the statutory violations, particularized by their 12-page Statement of Particulars as "individually and collectively…sufficient to void the judicial salary increase recommendations of its December 24, 2015 Report, *as a matter of law*". Indeed, the FACIAL violations of Chapter 60, Part E, of the Laws of 2015 by the December 24, 2015 report, which the incorporated fifteenth cause of action highlights [R.212-213], are verifiable simply by comparing the statute with the report. The reproduced record suffices to enable this, as it contains, courtesy of AAG Kerwin's July 21, 2017 cross-motion

that order to show cause, *as a matter of law*, because, on their face, the purportedly legislatively-amended budget bills and resolutions establish the violations of Article VII, §§4, 5 and 6 of the New York State Constitution, pleaded by the March 29, 2017 verified supplemental complaint [R.671-743] and embodied by its reiterated fifth cause of action [R.737], entitling us to summary judgment thereon.

43. In short, all this casefile evidence PROVES what is obvious from the face of appellants' verified pleadings in both citizen-taxpayer actions: our *prima facie* entitlement to summary judgment on each cause of action and – by reason thereof – to the TRO and preliminary injunctions we sought on four separate occasions by orders to show cause, in conjunction with the verified pleadings:

- Our March 28, 2014 order to show cause in the prior citizen-taxpayer action (Exhibit A-1: R.1113-114) before that day's duty judge, Justice Lynch (transcript: Exhibit A-2), based on our March 28, 2014 verified complaint [R.226-272];

- Our March 23, 2016 order to show cause in the prior citizen-taxpayer action [Exhibit F-1: R.1182-1188] before Judge McDonough (transcript: Exhibit F-2), based on our March 23, 2016 verified second supplemental complaint [R.135-225];

- Our September 2, 2016 order to show cause in this citizen-taxpayer action [R.80-82] before that day's duty judge, Judge McDonough (transcript: R.444-458), based on our September 2, 2016 verified complaint [R.87-132];

- Our March 29, 2017 order to show cause in this citizen-taxpayer action [R.635-638] before Judge Hartman (transcript: R.816-837), based on our March 29, 2017 verified supplemental complaint [R.671-743].

Appellants' Entitlement to a TRO and Preliminary Injunction

44. The TRO and preliminary injunction sought by this order to show cause – enjoining disbursement of any further monies to pay the judicial salary increases resulting from the December

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for summary judgment on appellants' sixth cause of action [R.1069-1273], the statute [R.1080-1082] and the

24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation [R.1083-1105] and the August 29, 2011 report of the Commission on Judicial Compensation – and from reimbursing counties for the district attorney salary increases based thereon – is more limited than any of the four TROs and preliminary injunctions appellants sought in Supreme Court – to which, as the record shows, we were entitled, *as a matter of law*, because we were entitled to summary judgment on the underlying causes of action on which they were based.

45. The particulars of the record are conveniently summarized in the record by appellants' "legal autopsy"/analyses of the lower court decisions:

- **our "legal autopsy"/analysis of Judge McDonough's August 1, 2016 decision [R.315-325] and his prior decisions [R.326-334, R.335-337]**, annexed as Exhibit G [R.338-373] to our September 2, 2016 verified complaint;

- **our "legal autopsy"/analysis of Judge Hartman's December 21, 2016 decision [R.527-535]**, annexed as Exhibit U [R.554-577] to our February 15, 2017 order to show cause;

- **our analysis of Judge Hartman's May 5, 2017 decision [R.49-51] and May 5, 2017 amended decision [R.52-60]**, furnished by ¶¶5-8, 10-11 [R.1002-1007] of our June 12, 2017 order to show cause;

- **our "legal analysis"/autopsy of Judge Hartman's June 26, 2017 decision [R.68-79]**, annexed as Exhibit I [R.1293-1319] to my August 25, 2017 reply affidavit in further support of the June 12, 2017 order to show cause.

46. As chronicled by appellants' brief, neither the attorney general nor Judge Hartman have contested the accuracy of a single one of these analyses. Each is, for all intents and purposes, an agreed statement of the facts, upon which this Court could properly rely for determination of the "Questions Presented". (*cf.* CPLR §5527: "Statement in lieu of record on appeal"; this Court's Rule §800.4(d), "Agreed statement in lieu of record").

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report [R.1083-1105]. See ¶49, *infra*.

47. In any event, absent Attorney General Underwood's refutation of the accuracy of our appellants' brief – and of the "legal autopsy"/analyses on which it is based – any opposition to the appeal is frivolous, as likewise opposition to the TRO and preliminary injunction here requested.

48. Suffice to say, with respect to the requested TRO and preliminary injunction pertaining to the commission-based judicial salary increases – and the district attorney salary increases based thereon – Attorney General Underwood must demonstrate that Judge Hartman's dispositions of appellants' sixth, seventh, and eight causes of action [R.109-112 (R.187-201), R.112-114 (R.201-212), R.114 (R.212-213), are defensible, which, based on the facts and law in the record before her – highlighted by the brief (at pp. 9-10, 14-17, 20, 26-27, 35-36, 37-38, 42, 44, 50-69) – she cannot do.

49. Indeed, in light of the enclosures to my May 16, 2018 NOTICE (free-standing Exhibit I (eye)), Attorney General Underwood should be expected to produce, at the oral argument of this TRO – at minimum:

- her findings of fact and conclusions of law as to the respects in which the Commission on Judicial Compensation's August 29, 2011 report, *on its face*, violates Chapter 567 of the Laws of 2010 – itemized by appellants' executive summary to their October 27, 2011 opposition report [*See* appellants' November 29, 2011 corruption complaint to public integrity bureau; March 2, 2012 letter: Exhibit A; March 30, 2012 order to show cause for a stay with TRO in declaratory judgment action];

- her findings of fact and conclusions of law as to the respects in which the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation [R.1083-1105], *on its face*, violates Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] – summarized by appellants' 12-page "Statement of Particulars" and itemized by the fifteenth cause of action of their March 23, 2016 verified second supplemental complaint in the prior citizen-taxpayer action [R.212-213] on which the eighth cause of action of their September 2, 2016 verified complaint rests [R.114]. [*See* appellants' March 6, 2018 misconduct complaint against Albany District Attorney Soares, Exhibits B & C].

Appellants' Request for a Pre-Calendar Conference

50. This Court's Rule §800.24-b, entitled "Civil Appeals Settlement Program", reads, in pertinent part:

> "(a) The court, in those cases in which it deems it appropriate, will issue a notice directing the attorneys for the parties and the parties themselves (unless the court excuses a party's personal appearance) to attend a pre-calendar conference before such person as it may designate to consider settlement, the limitation of issues and any other matter which such person determines may aid in the disposition of the appeal or resolution of the action or proceeding. Where parties are represented by counsel, only attorneys fully familiar with the action or proceeding, and authorized to make binding stipulations or commitments, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.
>
> (b) Any attorney or party who, without good cause shown, fails to appear for or participate, with the familiarity and authorization described in subdivision (a) of this section, in a regularly-scheduled pre-calendar conference, or who fails to comply with the terms of a stipulation or order entered following a pre-calendar conference, may be subject to such sanctions and/or to such costs in the form of reimbursement for actual expenses incurred and reasonable attorneys' fees as the court may direct.
>
> (c) Should a pre-calendar conference not be scheduled within 30 days after the filing of a pre-calendar statement, any party may apply to the court by letter requesting such conference. The application shall include a brief statement indicating why a conference would be appropriate."

51. The Court's pre-calendar statement form itself requires the appellant to furnish "*any information you deem relevant to the determination of whether the matter is appropriate for a Civil Appeals Settlement Program (CASP) Conference."* My answer, by the pre-calendar statement [R.3-30] I filed with appellants' January 10, 2018 notice of appeal [R.1-41], was:

> "State Finance Law §123-c(4) commands that citizen-taxpayer actions be 'promptly determined'. The speediest way to resolve the far-reaching, constitution-vindicating issues on this appeal and prevent further dissipation and theft of billions of dollars in taxpayer monies, including from the state budget for fiscal year 2018-2019, which,

> replicating and reappropriating monies from the state budgets for fiscal years 2016-2017 and 2017-2018, will have to be declared unconstitutional and unlawful, (*Korn v. Gulotta*, 72 NY2d 363 (1988); New *York State Bankers Assn v. Wetzler*, 81 NY2d 98 (1993); *King v. Cuomo*, 81 NY2d 247 (1993); *Pataki v. New York State Assembly, New York State Senate/Silver v. Pataki*, 4 NY3d 75 (2004)), is *via* a settlement conference.
>
> That defendants/respondents have no defense to the record herein, establishing that Judge Hartman's appealed-from decisions are criminal acts, each flagrantly falsifying the factual record and obliterating fundamental black-letter law – including by concealing, *without adjudication*, the threshold integrity issues pertaining to defendant Attorney General Schneiderman's duties, conflicts of interest, and litigation fraud – makes the holding of such settlement conference all the more compelled." [R.6-7]

52. That this answer, substantiated by the "legal autopsy"/analysis I had attached to the pre-calendar statement [R.9-30], did not result in the Court's scheduling a pre-calendar settlement conference, nor any notice to appellants of any special procedures for appeals of citizen-taxpayer actions, as for instance, by the original record to facilitate expedition, raises a reasonable question as to this Court's fairness and impartiality. This must be addressed by the Court's justices, with an explanation, as part of the disclosure that is threshold.

53. As this Court's §800.24-b(c) is permissive, not mandatory, in allowing a party to "apply to the court by letter requesting such conference", where none has been scheduled, I trust I may also apply by motion. I do this now, by this order to show cause, reiterating the above two paragraphs from appellants' January 10, 2018 pre-calendar statement [R.6-7] as my "brief statement indicating why a conference would be appropriate".

54. To the extent that the Court can designate a judicial hearing officer as the person presiding over such conference, I request that he/she be empowered to assist the Court by holding an evidentiary hearing on appellants' entitlement to a preliminary injunction, none having ever been held in the courts below.

* * *

55. Pursuant to §800.2(d) of this Court's rules, the attorney general has been notified of this order to show cause and the requested oral argument on the TRO. In view of what transpired below at the four oral arguments of appellants' TROs (Exhibits A-2, F-2, R.444-458, R.816-837), I additionally request the presence of a court reporter – or that an audio/video recording be made thereof.

56. No other application for the same or similar relief has been previously requested of this Court.

– POSTSCRIPT –

Yesterday, July 23, 2018, at 3:47 p.m., Assistant Solicitor General Brodie sent an e-mail to Appellate Division, Third Department Court Attorney Jane Landes – with a copy to me (Exhibit T-2) – attaching a letter addressed to the Court's Clerk, Robert Mayberger, requesting that it be "provided in advance to the Appellate Division Justice who will hear appellant's application". Its footnote 2 states: "All references herein to the proposed OSC and Sassower Affidavit are to the version that appellant sent to the Court by email on Monday, July 22, 2018, at 10:52 a.m."

By then, the version of my affidavit, already posted on CJA's webpage for the order to show cause, http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/7-24-18-osc-with-TRO.htm, included a substantive change: the insertion of what is now ¶23 – thereby upping the numbering of all subsequent paragraphs by one. This includes my ¶¶47-48, to which Assistant Solicitor General Brodie's letter had cited, in stating:

> "Although she attempts to shift the burden to respondents (e.g., Sassower Aff. ¶¶47-48), the burden of establishing her case rests solely on Ms. Sassower – as plaintiff, as appellant, and as the movant seeking emergency relief."

Those two paragraphs are now ¶¶48-49.

Because I do not wish the Court to have before it an order to show cause and affidavit that are materially different from what Assistant Solicitor General Brodie had before him when he wrote his letter, I have made no subsequent changes to my affidavit, other than to correct typos and grammar – and to add this postscript. As Assistant Solicitor General Brodie's letter is knowingly false and deceitful, I will respond to it by a separate affidavit – including therein a request for sanctions and costs pursuant to NYCRR 130-1.1 *et seq.*

One final note, on Friday morning, July 20, 2018, prior to writing my footnote 3, whose initial sentence reads:

> "This Court's Attorney Grievance Committee is currently 'sitting on' appellants' September 16, 2017 attorney misconduct complaint against those responsible for the defense fraud of the attorney general's office in this citizen-taxpayer action and its predecessor…."

I called up the Attorney Grievance Committee to confirm that it had not sent me either an acknowledgment of, nor disposition for, the September 16, 2017 complaint – as I had received neither. The investigator I spoke with, Joe Legnard, stated to me that it "looks like the file is open" and "still preliminary in status" – and that he would check further and either he or someone else would call me back.

Five hours later – at about 3 p.m. – I did get a call back, from Chief Attorney Monica Duffy, who apologized that the September 16, 2017 complaint had not been acknowledged, nor determined. We then discussed the substance of the complaint, as likewise of my October 14, 2016 complaint against Albany District Attorney Soares and his fellow district attorneys. Chief Attorney Duffy told me she would send me a response on Monday. I thanked her – and told her that I would include the fact of her call – and such written response as I received from her – in this affidavit, whose footnote 3 I believe I read to her, in addition to the "other and further relief" of the order to show cause, seeking an order:

> "investigating the handling of plaintiffs-appellants' September 16, 2017 and October 14, 2016 attorney misconduct complaints, germane to this appeal and this order to show cause, filed with the Third Department Attorney Grievance Committee".

Upon concluding our phone conversation, I e-mailed Chief Attorney Duffy the order to show cause and my affidavit – forwarding her the same e-mail as I had described to her as having been earlier sent to Court Attorney Landes (Exhibit U).

As of now, 10:30 a.m., Tuesday, July 24, 2018, I have not received Chief Attorney Duffy's promised response – nor the answer to my question as to whether:

> "when I am in Albany, it would be helpful to you if I dropped off at the Grievance Committee a copy of the appeal brief and reproduced record on appeal in support of the complaints – or whether it suffices that I am furnishing 10 copies of the brief and reproduced record to the Appellate Division."

_____

Elena Ruth Sassower, Unrepresented Plaintiff-Appellant

Sworn to before me this
24th day of July 2018

_____

Notary Public

TABLE OF EXHIBITS

Exhibit G: Inventory of two-volume compendium of exhibits, plus free-standing exhibits, substantiating appellant's March 23, 2016 verified second supplemental complaint

Exhibit H: Part HHH of fiscal year 2018-2019 budget bill #S.7509-C/A.9509-C

Exhibit I-1: Appellant Sassower's May 16, 2018 letter to Attorney General Barbara Underwood – "NOTICE: Corruption and Litigation Fraud by Former Attorney General Eric Schneiderman & his Office – and Your Duty to Take Investigative and Remedial Action, most immediately, in the Citizen-Taxpayer Action...and pursuant to 'The Public Trust Act (Penal Law §496: 'Corrupting the government')", with e-mail & mail receipts

Exhibit I-2: Appellant Sassower's May 18, 2018 letter to Interim Attorney General Candidates – "Testing the Fitness of Acting Attorney General Barbara Underwood – & Every Other Candidate for Interim Attorney General", with e-mail receipt

Exhibit J-1: Appellant Sassower's May 30, 2018 letter to Attorney General Underwood – "What is the Status? – CJA's May 16, 2018 letter: NOTICE...",

> (1) Disclosure of facts giving rise to your duty to secure appointment of independent/outside counsel to investigate and report on your ethical and law enforcement obligations with respect to the May 16, 2018 NOTICE, or a special prosecutor;
>
> (2) FOIL/records request – conflicts of interest; Executive Law §63.11; legislative oversight.

with e-mail & mail receipts

Exhibit J-2: Attorney General's May 30, 2018 FOIL pre-acknowledgment

Exhibit J-2: Attorney General's June 6, 2018 FOIL acknowledgment

Exhibit J-3: Attorney General's July 5, 2018 FOIL response

Exhibit K: Appellant Sassower's June 6, 2018 e-mail to Attorney General Underwood – "RE: What is the Status?..."

Exhibit L: Appellant Sassower's June 14, 2018 e-mail to Attorney General Underwood – "NOTICE: OSC/with preliminary injunction & TRO to be presented to the Appellate Division, 3rd Dept – Citizen-Taxpayer Action..."

Exhibit M-1: Appellant Sassower's June 18, 2018 e-mail to Assistant Solicitor General Victor Paladino – "OSC/with preliminary injunction & TRO to be presented to the Appellate Division, 3rd Dept – Citizen-Taxpayer Action…" (12:09 pm)

Exhibit M-2: Assistant Solicitor General Paladino's June 18, 2018 e-mail (12:43 pm)

Exhibit M-3: appellant Sassower's June 18, 2018 e-mail to Assistant Solicitor General Frederick Brodie (1:04 pm)

Exhibit M-4: Assistant Solicitor General Brodie's June 18, 2018 e-mail (1:22 pm)

Exhibit M-5: Assistant Solicitor General Brodie's June 18, 2018 e-mail (6:28 pm)

Exhibit M-6: Appellant Sassower's June 19, 2018 e-mail (1:10 pm)

Exhibit M-7: Assistant Solicitor General Brodie's June 19, 2018 e-mail (1:54 pm)

Exhibit N-1: Assistant Solicitor General Brodie's June 25, 2018 e-mail (10:14 am)

Exhibit N-2: Appellant Sassower's June 26, 2018 e-mail (6:56 pm)

Exhibit N-3 Assistant Solicitor General Brodie's June 27, 2018 e-mail (10:35 am)

Exhibit N-4: Appellant Sassower's June 29, 2018 e-mail (1:52 pm)

Exhibit O-1: Appellant Sassower's July 3, 2018 e-mail (1:16 pm)

Exhibit O-2: Assistant Solicitor General Brodie's July 3, 2018 e-mail (2:34 pm)

Exhibit O-3: Assistant Solicitor General Brodie's July 3, 2018 e-mail (12:15 pm)

Exhibit O-4: Appellant Sassower's July 3, 3018 e-mail (3:36 pm)

Exhibit O-5: Assistant Solicitor General Brodie's July 3, 2018 e-mail (3:41 pm)

Exhibit O-6: Appellant Sassower's July 3, 2018 e-mail (4:19 pm)

Exhibit P-1: Appellant Sassower's July 5, 2018 e-mail (11:24 am)

Exhibit P-2: Assistant Solicitor General Brodie's July 5, 2018 e-mail (1:35 pm)

Exhibit P-3: Appellant Sassower's July 5, 2018 e-mail (2:01 pm)

Exhibit P-4: Assistant Solicitor General Brodie's July 5, 2018 e-mail (2:09 pm)

Exhibit Q-1: Appellant Sassower's July 6, 2018 e-mail (1:46 pm)

Exhibit Q-2: Assistant Solicitor General Brodie's July 6, 2018 e-mail (3:57 pm), with signed stipulation

Exhibit Q-3: Appellant Sassower's July 6, 2018 e-mail (4:25 pm), with signed stipulation

Exhibit Q-4: Appellant Sassower's July 10, 2018 e-mail (1:48 pm)

Exhibit Q-5: Assistant Solicitor General Brodie's July 10, 2018 e-mail (1:52 pm)

Exhibit R-1: Appellant Sassower's July 13, 2018 e-mail (3:48 pm)

Exhibit R-2: Assistant Solicitor General Brodie's July 13, 2018 e-mail (4:10 pm)

Exhibit R-3: Appellant Sassower's July 13, 2018 e-mail (4:29 pm)

Exhibit R-4: Assistant Solicitor General Brodie's July 13, 2018 e-mail (4:32 pm)

Exhibit R-5: Appellant Sassower's July 17, 2018 e-mail (2:02 pm)

Exhibit R-6: Assistant Solicitor General Brodie's July 17, 2018 e-mail (2:07 pm)

Exhibit S-1: Appellant Sassower's July 20, 2018 e-mail to Appellate Division, 3rd Dept. Court Attorney Jane Landes, with copies to Assistant Solicitor General Brodie & supervisory/managerial attorneys, including Attorney General Underwood – (12:20 pm) – "…order to show cause, with preliminary injunction & TRO, to be presented July 24th at the Appellate Division, 3rd Dept."

Exhibit S-2: Court Attorney Landes' July 20, 2018 e-mail (3:21 pm)

Exhibit S-3: Appellant Sassower's July 20, 2018 e-mail (4:31 pm)

Exhibit S-4: Assistant Attorney General Brodie's July 20, 2018 e-mail (4:38 pm)

Exhibit T-1: Appellant Sassower's July 23, 2018 e-mail to Court Attorney Landes, with copies to Assistant Solicitor General Brodie & supervisory/managerial attorneys, including Attorney General Underwood – (10:52 am)

Exhibit T-2: Assistant Solicitor General Brodie's July 23, 2018 e-mail (3:47 pm), with attached letter to Appellate Division, 3rd Dept Clerk Robert Mayberger

Exhibit T-3: Court Attorney Landes' July 23, 2018 e-mail (4:24 pm)

Exhibit U: Appellant Sassower's July 20, 2018 e-mail to Third Department Attorney Grievance Committee Chief Attorney Monica Duffy (3:44 pm)