

SUPREME COURT OF STATE OF NEW YORK  
ALBANY COUNTY

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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,

-against-

ANDREW M. CUOMO, in his official capacity  
as Governor of the State of New York,  
DEAN SKELOS in his official capacity  
as Temporary Senate President,  
THE NEW YORK STATE SENATE,  
SHELDON SILVER, 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, and THOMAS DiNAPOLI,  
in his official capacity as Comptroller of  
the State of New York,

Defendants.

**VERIFIED  
SUPPLEMENTAL COMPLAINT**

Index #1788-2014

JURY TRIAL DEMANDED

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Plaintiffs, as and for their Verified Supplemental Complaint, respectfully set forth and allege:

127. By this citizen-taxpayer action pursuant to State Finance Law §123, *et seq.* [Article 7-A], plaintiffs additionally seek declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Budget Bill #S.2001/A.3001. The expenditures of such Budget Bill – embodying the Legislature's proposed budget for fiscal year 2015-2016, the Judiciary's proposed budget for fiscal year 2015-2016, and millions of dollars in uncertified and nonconforming reappropriations – are unconstitutional and unlawful disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

128. Plaintiffs repeat, reallege, and reiterate the entirety of their March 28, 2014 verified complaint, which they incorporate by reference.

129. Virtually all the constitutional, statutory, and rule violations detailed by the verified complaint pertaining to the Governor’s Budget Bill #S.6351/A.8551 and the Legislature’s and Judiciary’s proposed budgets for fiscal year 2014-2015 are replicated by the Governor’s Budget Bill #S.2001/A.3001 and the Legislature’s and Judiciary’s proposed budgets for 2015-2016. It is, as the expression goes, “déjà vu all over again”.

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

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percentage of increase over last year's bill – for which the same set of dollar and other determinations as to Budget Bill #S.6351/A.8551 were necessary.

167. In fact, Senate Resolution #950 did not even list defendant CUOMO's Budget Bill #S.2001 – just as, identically, last year's Senate Resolution #4036 had omitted defendant CUOMO's Senate Budget Bill #S.6351.

168. Likewise, no meaningful “analysis” and “study and review” of Budget Bill #S.2001/A.3001 was undertaken by the Joint Budget Conference Committee. This includes by its “Public Protection” Subcommittee, whose charge – like the “public protection” budget hearing on February 26, 2015 – did not include the Legislature's budget, but, as stated by Co-Chair Assemblyman Joseph Lentol:

“State Commission of Correction, Department of Corrections and Community of Services, the Division of Criminal Justice Services, the Division of Homeland Security and Emergency Services, Interest on Lawyer Accounts, Judiciary, judicial commissions, Department of Law, Division of Military and Naval Affairs, Office of Indigent Legal Services, Office for the Prevention of Domestic Violence, the Division of State Police, and the Office of Victims Services.” (March 16, 2015 meeting).

### CAUSES OF ACTION

#### AS AND FOR A FIFTH CAUSE OF ACTION

**The Legislature's Proposed Budget for Fiscal Year 2015-2016,  
Embodied in Budget Bill #S.2001/A.3001,  
is Unconstitutional & Unlawful**

169. Plaintiffs repeat, reiterate, and reallege ¶¶1-168 with the same force and effect as if more fully set forth herein.

170. The Legislature's proposed budget for fiscal year 2015-2016 is identical to the Legislature's proposed budget for fiscal year 2014-2015. As such, it suffers from all the

unconstitutionality, unlawfulness, and fraudulence as is set forth by the first cause of action of plaintiffs' verified complaint (¶¶76-98).

171. The October 9, 2014 decision and order purporting to dismiss the first cause of action (Exhibit 11-b) does not bar plaintiffs from asserting this fifth cause of action replicating it. *As a matter of law*, dismissal was "not appropriate". In a declaratory judgment action, such as this, the court's duty is to make a declaration as to the rights of the parties – and this was pointed out by plaintiffs' May 16, 2014 memorandum of law in opposition to defendants' dismissal motion and in support of their cross-motion for summary judgment and other relief (at pp. 7-8), citing *Seymour v. Cuomo*, 180 A.D.2d 215, 217-218 (3rd Dept. 1992), and *Donovan v. Cuomo*, 126 A.D.2d 305, 310 (3rd Dept. 1987), and quoting from New York Practice, §440, David D. Siegel (5th ed. 2011):

"If a plaintiff in an ordinary action loses on the merits, the result is a dismissal of the complaint. In a declaratory action, 'the court should make a declaration, even though the plaintiff is not entitled to the declaration he seeks'.<sup>fn1</sup> A mere dismissal is not appropriate.<sup>fn2</sup> The court must determine the rights of the parties to the dispute involved and, if the defendant prevails, the declaration should simply go the defendant's way.<sup>fn3</sup> If the defendant should move to 'dismiss' the complaint for failure to state a cause of action, under CPLR 3211(a)(7), the motion in the declaratory context should be taken as a motion for a declaration in the defendant's favor and treated accordingly."

172. This the decision did not do, notwithstanding plaintiffs' requested declarations were succinctly laid out by ¶1A of their "PRAYER FOR RELIEF" as follows:

"A. that the Legislature's proposed budget for fiscal year 2014-2015, embodied in Budget Bill #S.6351/A.8551, is a wrongful expenditure, misappropriation, illegal, and unconstitutional because it is not based on 'itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house', as Article VII, §1 of the State Constitution expressly mandates; is missing 'General State Charges'; and because its budget figures are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the monies they need to discharge their constitutional duties".

173. Instead, the decision states:

“Plaintiff’s first cause of action alleges that the Budget is unconstitutional because it was not adequately certified and does not contain itemized estimates of the financial needs of the legislature. The itemization challenge clearly must be dismissed as it is nonjusticiable (*see, Urban Justice Center v. Pataki*, 38 AD3d 20, 30 [1st Dept. 2006]). As to the certification issue, the Court finds that the documentary evidence submitted by defendants conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement for certification (*see generally, Matter of Schneider v. Rockefeller*, 31 NY2d 420, 434 [1972]). Accordingly, the first cause of action must be dismissed.” (at p. 5).

174. As to certification, the decision does not identify “the documentary evidence submitted by defendants [that] conclusively demonstrates that defendants have complied with the letter and spirit of the constitutional requirement of certification”. In fact, there is NONE.

175. The one-sentence November 27, 2013 letter to defendant CUOMO, signed by defendants SKELOS and SILVER and transmitting a 16-page legislative budget – which defendants submitted in support of their dismissal motion (fn. 1, *supra*) – “conclusively demonstrate[d]” precisely what ¶¶17-18, 79 of plaintiffs’ verified complaint alleged, to wit, that the November 27, 2013 letter did not claim to be transmitting “itemized estimates of the financial needs of the legislature” or that same had been “certified by the presiding officer of each house” and that the 16-page budget it transmitted contained no certification, nor even a reference to “itemized estimates” of the Legislature’s “financial needs” or to Article VII, §1 of the New York State Constitution. Indeed, as alleged by plaintiffs’ verified complaint, no certification was possible, *inter alia*, because the transmitted budget was missing the Legislature’s “General State Charges” and because its figures were a palpable contrivance of leadership, being dollar identical to those of the previous four years.

176. As to itemization, the decision does not discuss or analyze *Urban Justice Center v. Pataki*, let alone identify what plaintiffs had to say about it in opposing defendants’ dismissal

motion, *to wit*, that *Urban Justice Center v. Pataki* is distinguishable because it did not involve “the fashioning of ‘slush-fund’ budgets for purposes asserted and shown to be illegitimate, illegal, unconstitutional, and fraudulent...”, as asserted and shown by ¶¶87-97 of plaintiffs’ first cause of action, whose content the decision entirely omits.

177. Plaintiffs’ May 16, 2014 memorandum of law presented dispositive arguments with respect to “certification” (at pp. 17-19) and “itemization” (at pp. 15-17) . NONE are addressed, or even identified, by the October 9, 2014 decision. This, in face of defendants’ own failure to address, or even identify, these arguments, which plaintiffs’ (June 6, 2014) reply memorandum of law pointed out (at p. 4). Tellingly, the decision’s last page listing of “Papers Considered” omits both these memoranda of law – each meticulously chronicling the state of the record before the Court.

178. Plaintiffs have filed a notice of appeal from the October 9, 2014 decision. Their accompanying pre-calendar statement highlights the state of the record on which plaintiffs rely in further support of this fifth cause of action and their entitlement to summary judgment thereon (Exhibit 11-a).

**AS AND FOR A SIXTH CAUSE OF ACTION**



**The Judiciary’s Proposed Budget for 2015-2016,  
Embodied in Budget Bill #S.2001/A.3001,  
is Unconstitutional & Unlawful**

179. Plaintiffs repeat, reiterate, and reallege ¶¶1-178 with the same force and effect as if more fully set forth herein.

180. The Judiciary’s proposed budget for fiscal year 2015-2016, embodied by Budget Bill #S.2001/A.3001, is materially identical to the Judiciary’s proposed budget for fiscal year 2014-2015, embodied by Budget Bill #S.6351/A.8551. As such, it suffers from the same unconstitutionality,

unlawfulness, and fraudulence as set forth by the second cause of action of plaintiffs' verified complaint (¶¶99-108).

181. The October 9, 2014 decision purporting to dismiss the second cause of action (Exhibit 11-b) does not bar plaintiffs from asserting this sixth cause of action which replicates it. *As a matter of law*, dismissal was "not appropriate", *inter alia*, because in a declaratory judgment action, such as this, the court's duty is to make a declaration as to the rights of the parties (see ¶171, *supra*). This the decision did not do, although plaintiffs' requested declarations were succinctly laid out by ¶1B of their "PRAYER FOR RELIEF" as follows:

"B. that the Judiciary's proposed budget for fiscal year 2014-2015, embodied in Budget Bill #S.6351/A.8551, is a wrongful expenditure, misappropriation, illegal and unconstitutional because it conceals the third phase of the judicial salary increase, its cost, and the prerogative of the Legislature and Governor to strike it; that this prerogative is a duty based on plaintiffs' October 27, 2011 Opposition Report because the recommendation on which the salary increase is based is statutorily-violative, fraudulent, and unconstitutional; that the Judiciary budget is so incomprehensible that the Governor, Budget Director, and Legislature cannot agree on its cumulative cost and percentage increase; and that its reappropriations are not certified, including as to their suitability for that purpose, and violate State Finance Law §25, Article VII, §7; Article III, §16".

182. Comparison of the October 9, 2014 decision with plaintiffs' second cause of action shows that it plucks a single allegation, ¶101, which it distorts to remove its substantiating evidentiary content— and that it then falsifies the facts and law with respect to that single allegation to dismiss the entire cause of action.

183. The decision states:

"Plaintiffs' second cause of action principally alleges that the Senate and Assembly are unable to comprehend the Judiciary's proposed budget for 2014-2015 because the cumulative dollar amount and percentage increase over the prior year's budget is not capable of being discerned. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a

defense to this cause of action. Said information is readily discernible throughout the Judiciary's proposed budget. Accordingly, the second cause of action must be dismissed. Additionally, this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticiable." (at p. 5).

184. ¶101 of plaintiffs' second cause of action asserts that plaintiffs, by their February 21, 2014 letter – Exhibit K to their verified complaint – had made a:

*“prima facie* showing (at pp. 3-5) that defendants SENATE and ASSEMBLY, as well as defendant CUOMO and his Division of the Budget, are unable to comprehend the Judiciary's budget for fiscal year 2014-2015 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary's budget for fiscal year 2013-2014...”

185. The referred-to pages 3-5 of plaintiffs' February 21, 2014 letter furnished the wildly divergent cumulative dollar figures for the Judiciary's proposed budget and for the percentage increase over the previous year's budget, as follows:

From Defendant CUOMO's "Commentary of the Governor on the Judiciary":

“The Judiciary has requested appropriations of \$2.1 billion for court operations, exclusive of the cost of employee benefits. Disbursements for court operations from State Operating Funds are projected to grow by \$53 million or 2.7 percent.”

From Defendant CUOMO's Division of the Budget webpage for the Judiciary:

“The Judiciary's General Fund Operating Budget requests \$1.81 billion, excluding fringe benefits, for Fiscal Year 2014-2015. This represents a cash increase of \$44.2 million, or 2.5%. The associated appropriation request is \$1.82 billion, which represents a \$63 million, or 3.6% increase. The slightly higher appropriation increase is because of the technical reasons that relate to the use of reappropriation authority to fund the first two years of the judicial pay raise....”

The Judiciary's All Funds budget request for Fiscal Year 2014-2015, excluding fringe benefits, totals \$2.04 billion, an appropriation increase of \$63.8 million, or 3.2% over the 2013-2014 All Funds budget...”



From the Senate Majority’s “White Book”, under Senate Finance Committee Chairman DeFrancisco’ auspices:

“(at pp. 75, 85): The Judiciary’s ‘All Funds total’ is \$2.03 billion’, ‘an increase of \$53 million’ or ‘2.7 percent’. This is followed by a chart entitled ‘Public Protection Proposed Disbursements—All Funds’ (at p. 86) listing a figure of \$2,723,103,000 for the Judiciary, constituting an increase of \$76,403,000, identified as 2.89%.”

From the Senate Minority’s “Blue Book”, under Senate Finance Committee Ranking Member Krueger’s auspices:

“(at p. 155) a chart containing a ‘Total All Funds’ tally of \$2,706,142,084, representing a change of \$72,245,608, and a percentage change of 2.74%. No elaboration is provided in the brief accompanying text which instead states:

‘The Judiciary’s General Fund Operating Budget request is \$1.82 billion. The request is an increase of \$63 million over the current fiscal year appropriation, or 3.6%.’ On a cash basis, the requested increase is 2.5% (\$44.20 million), the difference relating to a prior year reappropriation technicality. When evaluating this budget, it is the 2.5% cash basis request that is primary.”

From the Assembly Majority’s “Yellow Book”, under Assembly Ways and Means Chairman Farrell’s auspices:

“(at p. 141): ‘The Judiciary’s proposed budget request, as submitted to the Governor, recommends appropriations of \$2.73 billion, which is an increase of \$77.25 million or 2.9 percent from the State Fiscal Year (SFY) 2013-2014 level.’

More precise figures appear in an ‘Appropriations’ table immediately beneath: ‘\$2,726.14 in millions’, representing a dollar change of ‘\$77.25 in millions’ and a percentage change of ‘2.92%’. Also, a ‘Disbursements’ table, giving the figures: ‘\$2,723.10 in millions’, representing a dollar change of ‘\$76.40 in millions’, and a percentage change of ‘2.89%’.”

From the Assembly Minority’s “Green Book”, under Assembly Ways and Means Ranking Member Oaks’ auspices:

“two sets of untotalled figures: The first: ‘\$2 billion for the Judiciary, \$53 million more than last year. This represents a 2.7% increase in

spending.’ The second: ‘\$669.1 million in General State Charges...\$8.5 million more than last year.’”

186. Defendants’ dismissal motion contested none of this – nor ¶103 of plaintiffs’ second cause of action asserting that the reason the Judiciary had failed to identify the cumulative dollar amount of its proposed budget was to conceal the reappropriations, which were not contained in their two-part budget presentation, for which there was certification, but only its “single-budget bill”, for which there was seemingly no certification.

187. Contrary to the decision, defendants submitted NO “documentary evidence...clearly and conclusively establish[ing] a defense to this cause of action”. The unidentified “documentary evidence” that defendants submitted was one part of the Judiciary’s proposed budget, that of its operating expenses, which included the “single-budget bill” (fn. 4, *supra*), as well as the Governor’s Budget Bill #S.6351/A.8551 (fn. 5, *supra*), whose judiciary portion replicated the “single-budget bill” – NONE containing the cumulative dollar amount of the Judiciary’s proposed budget or percentage increase. In other words, here, too, defendants’ “documentary evidence” substantiates plaintiffs’ verified complaint, *inter alia*, ¶103 of the second cause of action.

188. As to the decision’s assertion that “this cause of action would also appear to fall under the type of itemization argument already found to be nonjusticiable”, the qualifying language – “would also appear” – is insufficient for a declaratory judgment. This, quite apart from the OBVIOUS fact that the cumulative dollar amount of the Judiciary’s budget is NOT “itemization”.

189. Moreover, the rationale for nonjusticability, not discussed by the decision, is that the Legislature would not pass a budget it did not understand. Such is a judicial fiction, exposed as such by defendants’ inability to agree on the relevant figures germane to understanding the Judiciary’s budget and its percentage increase – and so-stated by plaintiffs’ ¶102 of their second cause of action.

190. Further, the decision entirely conceals that the third phase of the judicial salary increase – which it does not even mention – is not just unitemized, but completely hidden within the Judiciary’s proposed budget and Budget Bill S.6351/A.8551. As to it, the issue is not “type of itemization”, but, as stated by plaintiffs’ May 16, 2014 memorandum of law (at pp. 16-17):

“the total disregard of ‘the constitutional mandate to itemize’ – a distinction *Saxton v. Carey* palpably recognizes and *Urban Justice Center v. Pataki* resting thereon.”

191. Plaintiffs’ arguments with respect to “itemization”, presented at pages 15-17 of their May 16, 2014 memorandum of law, are dispositive. NONE are addressed, or even identified, by the October 9, 2014 decision. This, in face of defendants’ own failure to address, or even identify, these arguments, which plaintiffs’ (June 6, 2014) reply memorandum of law pointed out (at p. 4). Tellingly, the decision’s last page listing of “Papers Considered” omits both these memoranda of law – each meticulously chronicling the state of the record before the Court.

192. Suffice to add that the decision’s dismissal of this cause of action is also premised on a false prefatory assertion (at p. 4) that it involves “purported violations of Article VII, §1 of New York’s Constitution” – implying that it is limited to Article VII, §1. As such, the decision’s purported dismissal of the second cause of action does not reach the violations of Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25, alleged in ¶¶105-107 of the second cause of action pertaining to the reappropriations included in Budget Bill #S.6351/A.8551. Indeed, the decision never mentions the Judiciary’s reappropriations, contained in its “single budget bill”, but not its two-part budget presentation, including whether they were certified.

193. Plaintiffs have filed a notice of appeal from the October 9, 2014 decision. Their accompanying pre-calendar statement highlights the state of the record on which plaintiffs rely in

further support of this sixth cause of action and their entitlement to summary judgment thereon (Exhibit 11-a).

✓ **AS AND FOR A SEVENTH CAUSE OF ACTION**

**Budget Bill #S.2001/A.3001 is Unconstitutional & Unlawful  
Over & Beyond the Legislative & Judiciary Budgets it Embodies “Without Revision”**

194. Plaintiffs repeat, reiterate, and reallege ¶¶1-193, with the same force and effect as if more fully set forth herein.

195. Defendant CUOMO’s Budget Bill #S.2001/A.3001 includes tens of millions of dollars of reappropriations for the Legislature that were never part of the proposed budget for fiscal year 2015-2016 that defendants SKELOS and SILVER transmitted by their December 1, 2014 letter to defendant CUOMO (Exhibit 1-b). This replicates, identically, the inclusion in defendant CUOMO’s Budget Bill #S.6351/A.8551 of tens of millions of dollars in reappropriations that were never part of the proposed legislative budget for fiscal year 2014-2015 transmitted by defendants SKELOS’ and SILVER’s November 27, 2013 letter – the subject of the third cause of action of plaintiffs’ verified complaint (¶¶109-112).

196. The October 9, 2014 decision purporting to dismiss the third cause of action (Exhibit 11-b) does not bar plaintiffs from asserting this seventh cause of action replicating it. *As a matter of law*, dismissal was “not appropriate” because, *inter alia*, in a declaratory judgment action, such as this, the court’s duty is to make a declaration as to the rights of the parties (see ¶171, *supra*). This, the decision did not do, notwithstanding plaintiffs’ requested declarations were succinctly laid out by ¶1C of their “PRAYER FOR RELIEF” as follows:

“C. that Budget Bill #6351/A.8551 is a wrongful expenditure, misappropriation, illegal and unconstitutional by its inclusion of reappropriations for the Legislature that were not part of its proposed budget and not certified by the Legislature as funds properly designated for reappropriation”.

197. The decision states:

“Plaintiffs’ third cause of action alleges that the Legislative Budget transmitted to the Governor by Senator Skelos and Speaker Silver contained no reappropriations. They further contend that the Governor’s budget contains nineteen pages of reappropriations. Accordingly, they contend that the reappropriations constitute revisions in violation of New York’s Constitution. The Court finds that the documentary evidence submitted by defendants clearly and conclusively establishes a defense to this cause of action. Said submissions clearly establish that the ‘reappropriations’ at issue do not constitute executive revisions to the proposed Budget. Accordingly, the third cause of action must be dismissed.” (at p. 6).

198. Plaintiffs’ third cause of action did not contend that “the reappropriations constitute revisions in violation of New York’s Constitution” – and this was pointed out at pages 19-20 of plaintiffs’ May 16, 2014 memorandum of law in opposition to defendants’ pretense that it did.

199. Plaintiffs’ third cause of action (¶¶111-112) asserted that absent defendants’ response to “basic questions”, the legislative reappropriations in Budget Bill #S.6351/A.8551 were unconstitutional and unlawful. The “basic questions” particularized were:

“where these reappropriations came from, who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose; their cumulative total; and the cumulative total [of] the monetary allocations for the Legislature in Budget Bill #S.6351/A.8551”.

200. Defendants furnished neither “documentary evidence” nor response – and such was pointed out at pages 19-20 of plaintiffs’ May 16, 2014 memorandum of law and at page 4 of their (June 6, 2014) reply memorandum of law.

201. This seventh cause of action identically asserts that the 22 pages of legislative reappropriations in Budget Bill #S.2001/A.3001 (Exhibit 5-b) are unconstitutional and unlawful absent defendants’ response to the same “basic questions”, now pertaining to Budget Bill #S.2001/A.3001.

202. Plaintiffs have filed a notice of appeal from the October 9, 2014 decision. Their accompanying pre-calendar statement highlights the state of the record on which plaintiffs rely in further support of this seventh cause of action and their entitlement to summary judgment thereon (Exhibit 11-a).

**AS AND FOR A EIGHTH CAUSE OF ACTION**

**Nothing Lawful or Constitutional Can Emerge From a Legislative Process  
that Violates its Own Statutory & Rule Safeguards**

203. Plaintiffs repeat, reiterate, and reallege ¶¶1-202, with the same force and effect as if more fully set forth herein.

204. Defendant SENATE and ASSEMBLY's violations of statutory and rule safeguards with respect to Budget Bill #S.2001/A.3001 replicate their violations last year with respect to Budget Bill #S.6351/A.8551 – the subject of the fourth cause of action of plaintiffs' verified complaint (¶¶113-126).

205. This eighth cause of action, therefore, replicates the fourth cause of action so as to apply it to Budget Bill #S.2001/A.3001.

206. As to plaintiffs' fourth cause of action, the October 9, 2014 decision held:

“Plaintiffs' complaint adequately sets forth a viable cause of action alleging, *inter alia*, that defendants violated Legislative Law §32-a regarding public hearings for New York's Budget. Defendants argue that the cause of action should be dismissed because plaintiffs lack standing to challenge internal legislative rules. The Court has not been persuaded that Legislative Law §32-a constitutes an internal legislative rule. Additionally defendants' submissions did not include any documentary evidence establishing a defense to said cause of action. Accordingly, defendants' motion to dismiss must be denied as to plaintiffs' fourth cause of action.” (Exhibit 11-b, at p. 7)