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.

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Index #1788-14
(Justice Roger McDonough)

NOTICE OF MOTION

Oral Argument Requested

PLEASE TAKE NOTICE that upon the annexed affidavit of the *pro se* individual plaintiff ELENA RUTH SASSOWER, sworn to on March 31, 2015, the exhibits annexed thereto, plaintiffs' accompanying March 31, 2015 verified supplemental complaint, and upon all the papers and proceedings heretofore had, plaintiffs will make a motion before Supreme Court Justice Roger D. McDonough at the Albany County Courthouse, at 16 Eagle Street, Albany, New York 12207, on April 16, 2015, or as soon thereafter as the parties or their counsel may be heard for an order:

(1) pursuant to CPLR §3025(b), granting leave to plaintiffs to supplement their March 28, 2014 verified complaint with their March 31, 2015 verified supplemental complaint;

(2) for such other and further relief as may be just and proper, including an order by the Court disqualifying itself and vacating its October 9, 2014 decision and order by reason thereof, absent disclosure of facts bearing upon its financial interest and the appearance and actuality that it is not fair and impartial, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on the *pro se* individual plaintiff ELENA SASSOWER seven days before the return date by e-mail and regular mail.

Dated: White Plains, New York
March 31, 2015

ELENA RUTH SASSOWER, Plaintiff *Pro Se*, individually & as Director of the Center for Judicial Accountability, Inc., and on behalf of the People of the State of New York & the Public Interest

10 Stewart Place, Apartment 2D-E
White Plains, New York 10603
914-421-1200
elena@judgewatch.org

TO: Attorney General Eric T. Schneiderman
The Capitol
Albany, New York 12224-0341

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,
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Index #1788-14

Plaintiffs,

Affidavit

-against-

Oral Argument Requested

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.

----------x

STATE OF NEW YORK)
WESTCHESTER COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff in this citizen-taxpayer action brought under State Finance Law Article 7-A [§123 *et seq.*] for declaratory judgment. I am fully familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of plaintiffs' motion for leave to supplement their March 28, 2014 verified complaint, pursuant to CPLR §3025(b):

> "Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional

> or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

2. With the end of fiscal year 2014-2015 today, March 31, 2015, all the billions of taxpayer dollars of Budget Bill #S.6351/A.8551, whose disbursement plaintiffs sought to enjoin, will have been disbursed. Yet, although the Court can no longer grant the injunctive relief requested by ¶2 of the verified complaint's "PRAYER FOR RELIEF", its three other paragraphs can still be granted (Exhibit A).

3. ¶1 of plaintiffs' "PRAYER FOR RELIEF" – on which their three subsequent paragraphs rest – is the most important: declaratory judgment with respect to the unconstitutionality and unlawfulness of Budget Bill #S.6351/A.8551. And reinforcing plaintiffs' entitlement to this relief is the successor to Budget Bill #S.6351/A.8551 for fiscal year 2015-2016, Budget Bill #S.2001/A.3001, replicating, identically, ALL the constitutional, statutory, and rule violations of Budget Bill #S.6351/A.8551.

4. It is to furnish the Court with the relevant particulars about the identical constitutional, statutory, and rule violations of successor Budget Bill #S.2001/A.3001 – and to secure all available relief with respect thereto – that plaintiffs seek to supplement their verified complaint.

5. Picking up where ¶126 of the verified complaint leaves off,[1] the verified supplemental complaint states, in its prefatory ¶129 and thereafter demonstrates by its content that:

> "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

[1] "As an additional pleading, a supplemental pleading generally need not and should not repeat the original pleading allegations,[fn] ..." §35:2 Carmody-Wait 2d: "Form and content; as additional or augmenting pleading; verification".

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".

6. A copy of the verified supplemental complaint accompanies this motion. It is largely the same as the one I e-mailed to Assistant Attorney General Adrienne Kerwin on Thursday, March 26, 2015, so that she could stipulate to its filing, thereby obviating the waste of time and burden on plaintiffs in making a motion for "leave of court", which, pursuant to CPLR §3025(b), is "freely given on such terms as may be just" (Exhibit B).

7. On Friday, March 27, 2015, AAG Kerwin advised that she would not consent and that plaintiffs should proceed by motion. Her stated reason was that the supplemental complaint was meritless based on the Court's October 9, 2014 decision and order dismissing the verified complaint's first three causes of action. In so-stating, AAG Kerwin did not deny or dispute the accuracy of any of the supplemental complaint's allegations pertaining to the decision's dismissal of those three causes of action – or its preserving the fourth cause of action.

8. AAG Kerwin's opposition to this motion must therefore rebut the supplemental verified complaint's particularized allegations:

- that the Court's purported dismissal of plaintiffs' first cause of action by its October 9, 2014 decision does not bar their fifth cause of action, set forth at ¶¶169-178;
- that the Court's purported dismissal of plaintiffs' second cause of action by its October 9, 2014 decision does not bar their sixth cause of action, set forth at ¶¶179-193;
- the Court's purported dismissal of plaintiffs' third cause of action by its October 9, 2014 decision does not bar their seventh cause of action, set forth at ¶¶194-202.

9. As with plaintiffs' verified complaint, AAG Kerwin refused to identify who at the Attorney General's office, other than herself, was evaluating the "interest of the state" and plaintiffs'

entitlement to the Attorney General's representation, pursuant to Executive Law §63.1 and State Finance Law Article 7-A.

10. Should the Court deny this motion for leave based on its October 9, 2014 decision,[2] it must, in addition to giving particularized response to plaintiffs' fifth, sixth, seventh, and eighth causes of action (¶¶169-236) and the declaratory judgment they seek (at pp. 39-40), disclose facts bearing upon the Court's fairness and impartiality, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

11. The Court made no disclosure, by its October 9, 2014 decision, with respect to plaintiffs' questions as to its fairness and impartiality and request for disclosure. These were raised by my June 6, 2014 reply affidavit in further support of plaintiffs' cross-motion for summary judgment and other relief. Under the heading "Postscript", I stated:

> "10. No fair and impartial tribunal would tolerate AAG Kerwin's litigation fraud, upending the most basic legal standards and ethical rules. Yet AAG Kerwin, Attorney General Schneiderman, Comptroller DiNapoli, and their high-ranking staff are seemingly unconcerned about any consequences for their violative conduct. Apparently, they believe the Court will let them get away with anything.
>
> 11. This belief is understandable. The Court has a direct financial interest in this citizen-taxpayer action, challenging, as it does, not only the monies for the Judiciary in the Governor's Budget Bill #S.6351/A.8551, but the third phase of the judicial salary increase by which, on April 1, 2014, this Court's own annual salary rose from $167,000 to $174,000.
>
> 12. Plaintiffs have a summary judgment entitlement to a declaration that the third phase of the judicial salary increase is statutorily-violative, fraudulent, and unconstitutional. This will be evident to the Court upon its ordering defendants to produce the documents I handed up to the Legislature at its February 6, 2013 joint budget hearing on 'public protection' in substantiation of my oral

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[2] The October 9, 2014 decision is annexed to plaintiffs' verified supplemental complaint as Exhibit 11-b.

> testimony opposing the judicial salary increases recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation. That is why these documents have not been voluntarily produced by AAG Kerwin in response to plaintiffs' Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) (Exhibit X-2, p. 3). Indeed, it is why her dismissal motion conceals that plaintiffs' complaint even challenges the third phase of the judicial salary increase – a fraud in and of itself requiring denial of her dismissal motion, *as a matter of law*. (see plaintiffs' May 16, 2014 memorandum of law, pp. 8-9, 10-11, 29).
>
> 13. Suffice to say, with the fall of the third phase of the judicial salary increase – the first two phases will also fall – bringing this Court's yearly salary down to $136,700 – a whopping drop of nearly $40,000 a year.
>
> 14. Although the 'rule of necessity' holds that where all judges are disqualified, none are disqualified, that does not mean that a judge who is unable to rise above his direct and substantial financial interest is not required to disqualify himself; or that a judge not disqualifying himself is not required to acknowledge his self-interest and make other appropriate disclosure, such as the extent to which he is dependent upon defendants for his continuance on the bench and relevant personal, professional, and political relationships impacting on his fairness and impartiality.
>
> 15. This Court can powerfully model fairness and impartiality. All it takes is making disclosure and addressing the fundamental, black-letter, legal and ethical standards, laid out by plaintiffs' May 16, 2014 memorandum of law, that AAG Kerwin and her high-level accomplices would have the Court completely ignore." (my June 6, 2014 reply affidavit, at pp. 5-7, italics and underlining in the original).

12. In face of these paragraphs – and a record showing that defendants never contested plaintiffs' assertions as to the *prima facie*, evidentiary significance of the documents I handed up at the Legislature's February 6, 2013 budget hearing to establish that the three-phase judicial salary increases were statutorily-violative, fraudulent, and unconstitutional – the October 9, 2014 decision purposefully concealed that the verified complaint involves judicial salary increases, made no disclosure as to it or anything else, did "completely ignore" plaintiffs' May 16, 2014 memorandum of law, not even listing it among "Papers Considered" (at p. 9), and manifested the Court's actual

bias, born of interest, by falsifying the record in every material respect save preserving plaintiffs' fourth cause of action (¶¶113-126), to which plaintiffs were entitled to summary judgment.

13. Plaintiffs have no objection to the Court's belatedly disqualifying itself and vacating its October 9, 2014 decision and order by reason thereof so that this groundbreaking citizen-taxpayer action may be heard by a judge able to rise above his financial and other interests. Such would additionally spare the Court of having to decide a formal motion for its disqualification pursuant to Judiciary Law §14 and §100.3E of the Chief Administrator's Rules Governing Judicial Conduct[3] and for vacatur of its October 9, 2014 decision based thereon and pursuant to CPLR §5015(a)(4), "lack of jurisdiction to render the judgment or order" – it being long-settled that a judge disqualified by statute, in this case Judiciary Law §14, is without jurisdiction to act and that the proceedings before him are void, *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), *Wilcox v. Arcanum*, 210 N.Y. 370, 377 (1914), 1A Carmody-Wait 2d §3:94.

14. Plaintiffs could, *as a matter of right*, commence a new citizen-taxpayer action for declaratory and other relief with respect to Budget Bill #S.2001/A.3001, containing the same facts and same four causes of action as presented by their verified supplemental complaint. However, it doubtless would be referred to this Court as a related case – and, as to this, AAG Kerwin agreed.

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[3] Judiciary Law §14 governs statutory disqualification for interest. In pertinent part, it states:

> "A judge shall not sit as such in, or take any part in the decision, of an action, claim, matter, motion or proceeding…in which he is interested…"

§100.3E pertains to judicial disqualification and states, in pertinent part:

> "(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might be reasonably questioned, including but not limited to instances where: …(d) the judge knows that the judge…(iii) has an interest that could be substantially affected by the proceeding."

ELENA RUTH SASSOWER

Sworn to before me this
31st day of March 2015

Notary Public

PATRICIA D RODRIGUEZ
Notary Public - State of New York
NO. 01RO6199133
Qualified in Westchester County
My Commission Expires 01/12/17

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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**PLAINTIFFS' MOTION FOR LEAVE
TO SUPPLEMENT VERIFIED COMPLAINT**

ELENA RUTH SASSOWER, Plaintiff *Pro Se*, individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York &
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