SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NEW YORK STATE SENATE, NEW YORK STATE ASSEMBLY, DEAN G. SKELOS and JEFFREY D. KLEIN, as members and as Temporary Presidents of the New York State Senate, and SHELDON SILVER, as member and as Speaker of the New York State Assembly,

Index #160941/2013

Plaintiffs,

-v-

KATHLEEN RICE, WILLIAM J. FITZPATRICK, and MILTON L. WILLIAMS, Jr. in their official capacities as Co-Chairs of the Moreland Commission on Public Corruption and THE MORELAND COMMISSION TO INVESTIGATE PUBLIC CORRUPTION,

Defendants.

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PROPOSED INTERVENING PLAINTIFF'S MEMORANDUM OF LAW
in Reply to Counsel's Opposition to Motion for Reargument/Renewal/Vacatur for Fraud & Other Relief

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

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Introduction

This memorandum of law replies to the opposition submissions to the proposed intervening plaintiff's June 17, 2014 motion for reargument/renewal, vacatur and other relief, filed by counsel representing and purporting to represent the parties. These submissions are:

- a July 22, 2014 affirmation of Assistant Solicitor General Judith Vale for Attorney General Eric T. Schneiderman, as counsel for defendants Commission to Investigate Public Corruption and its Co-Chairs.

- a July 22, 2014 memorandum of law, signed by Michael J. Garcia, Esq., of Kirkland & Ellis, LLP, as "Attorneys for Plaintiffs New York State Senate and Dean G. Skelos as Temporary President of the New York Senate and Member" and, additionally signed by Jay K. Musoff, Esq, of Loeb & Loeb LLP, as "Attorneys for Plaintiff Jeffrey D. Klein as Temporary President of the New York State Senate and Member";

- a July 22, 2014 memorandum of law, signed by Marc E. Kasowitz, Esq., of Kasowitz, Benson, Torres & Friedman LLP, as "Attorneys for Plaintiffs New York State Assembly and Sheldon Silver, as Member and Speaker".

All three are no opposition, *as a matter of law*. Each is non-responsive to the motion. None confront the fact, law, and legal argument presented, essentially all of which they do not even identify. Indeed, common to all three submissions is their concealment of virtually the entire content of the motion. This includes the proposed intervening plaintiff's analysis of the Court's April 30, 2014 decision, annexed as Exhibit 17 and incorporated by reference at ¶7 of her moving affidavit as demonstrating:

> "that the decision is insupportable, factually and legally, substantively and procedurally – and that no fair and impartial tribunal could have rendered it."

It also includes the proposed intervening plaintiff's threshold question as to whether the Senate and Assembly were, in fact, plaintiffs and the propriety of Kirkland & Ellis' supposed dual representation of the Senate and Temporary Senate President Skelos and of the Kasowitz firm's supposed dual representation of the Assembly and Assembly Speaker Silver. This was set forth at ¶¶10-11 of her

moving affidavit and by her analysis of the Court's decision (Exhibit 17, pp. 4-5). Such was the basis for the motion's vacatur relief under CPLR §5015(a)(3) for "fraud, misrepresentation, or other misconduct by an adverse party". As stated,

> "no stipulation of discontinuance could be 'accept[ed]' where '[c]ounsel for all the parties' had not, in fact, signed it or where signing counsel suffered from disqualifying conflicts of interest, including as to the mootness of the constitutional, separation of powers issues. Such now, additionally, constitutes grounds for vacatur of the so-ordered stipulation of discontinuance, pursuant to CPLR §5015(a)(3) for 'fraud, misrepresentation, or other misconduct of an adverse party'.[fn5] In this regard, it must also be recognized that the Attorney General is more than defense counsel. He is, in fact, part of the defendant Commission, which was empowered and operated through his office." (at ¶11 of June 17, 2014 moving affidavit).

The analysis and challenge to the identity of the plaintiffs and the propriety of counsel's representation are dispositive of the proposed intervening plaintiff's entitlement to all branches of her June 17, 2014 motion. Counsel's concealment of these concedes them, *as a matter of law*, and makes their submissions not only frivolous, but frauds on the court, as that term is defined:

> "wilful conduct that is deceitful and obstructionist, which injects misrepresentations and false information into the judicial process 'so serious that it undermines . . . the integrity of the proceeding' (*Baba-Ali v State*, 19 NY3d 627, 634, 975 N.E.2d 475, 951 N.Y.S.2d 94 [2012] [citation and quotations omitted]). It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting 'a wrong against the institutions set up to protect and safeguard the public' (*Hazel-Atlas Glass Co. v. Hartford-Empire*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm'r Pat. 675 [1944]; *see also Koschak v Gates Const. Corp.*, 225 AD2d 315, 316, 639 N.Y.S.2d 10 [1st Dept 1996]", *CDR Creances S.A.S. v Cohen, et al.*, 23 NY3d 307, 318 (2014).

Such fraud is unacceptable when perpetrated by an ordinary lawyer. That it is perpetrated by this state's highest law enforcement officer, the Attorney General, on behalf of defendants, and by three attorneys purporting to represent the purported plaintiffs – all of whom are paid by taxpayer dollars – in a case of such far-reaching importance to the People of the State of New York, mandates severest action by the Court.

The Court possesses ample means to protect itself – and the public – from corruption of its proceedings by attorneys and their clients. Indeed, it has mandatory disciplinary responsibilities pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct to take "appropriate action". Pursuant thereto, it can make referrals to disciplinary and criminal authorities. It can also impose sanctions and costs, pursuant to §130-1.1 *et seq*., and can render a determination affording treble damages, pursuant to Judiciary Law §487. All such "appropriate action" is expressly requested by the proposed intervening plaintiff, including by way of the motion's fourth branch "for such other and further relief as may be just and proper".

Controlling Legal Standards

The fundamental rule is that "Failing to respond to a fact attested in the moving papers…will be deemed to admit it", Siegel, New York Practice, §281 (1999 ed., p. 442) – citing *Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 599 (1975) and Siegel, McKinney's Consolidated Laws of New York Annotated, Book 7B, CPLR 3212:16. "If a key fact appears in the movant's papers and the opposing party makes no reference to it, he is deemed to have admitted it", *id*. (1992 ed., p. 324). "[I]f answering affidavits are not produced, the facts alleged in the movant's affidavits will usually be taken as true", 2 Carmody-Wait §8:52 (1994 ed., p. 353). "Undenied allegations will be deemed to be admitted", *id*, citing *Whitmore v. J. Jungman, Inc.*, 129 NYS 776, 777 (S.Ct., NY Co. 1991).

Such rule applies not only to motions for summary motion, but to all motion practice – as to which, additionally, the controlling legal principle is:

> "when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secondum, Vol 31A, 166 (1996 ed., p. 339);
>
> "It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud

> in the preparation and presentation of his cause...and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause." II John Henry Wigmore, Evidence §278 at 133 (1979).

Counsel Conceals that Hundreds of Thousands of *Unlawfully-Obtained* Taxpayer Dollars were Used to Commence and Prosecute this Declaratory Judgment Action – and that, Pursuant to CPLR §3217(b), by Appropriate "Terms and Conditions", the Proposed Intervening Plaintiff Can Secure for the Taxpayers and People of the State of New York the Summary Judgment *for Which They Paid and to Which They Are Entitled*

The threshold issue on this motion, as it was on the proposed intervening plaintiff's order to show cause, is whether Kirkland & Ellis and the Kasowitz firm are entitled to represent the Senate and Assembly, let alone those bodies' individual members. This issue is concealed by counsel's submissions. Likewise, they conceal the further threshold issue as to whether the divergent interests of the Legislature and its leaders, Temporary Senate Presidents Skelos and Klein and Assembly Speaker Silver, on the very separation of powers questions as are the subject of the declaratory judgment action make the dual representation of the Senate and Temporary President Skelos by Kirkland & Ellis and the dual representation of the Assembly and Assembly Speaker Silver by the Kasowitz firm improper.

Plainly, if the law firms are not authorized to represent the plaintiffs, their opposition submissions are entitled to no consideration.

As shown by the FOIL/records requests, summarized at ¶¶7-33 of the accompanying reply affidavit, the proposed intervening plaintiff has uncovered a situation far more lawless and improper than previously presented. Not only are there no resolutions by the Senate and Assembly authorizing this declaratory judgment action – or any of the other litigation commenced and engaged in by

Kirkland & Ellis, the Kasowitz firm, and by Loeb & Loeb, representing Temporary Senate President Klein – but there are no contracts with these three firms retaining them for these litigations, let alone contracts approved by the Comptroller. The consequence is that these three law firms have had no authorization for these litigations, for which they have been illegally paid with hundreds of thousands of taxpayer dollars.

In *Silver v. Pataki*, 96 N.Y.2d 532, 538 (2001), cited at ¶4 of the proposed intervening plaintiff's April 23, 2014 order to show cause and, thereafter, by the analysis (Exhibit 17, p. 4), the Court of Appeals stated:

> "The Constitution [] does not give the Speaker representative authority for the body over which he presides. Nor has the Assembly passed a resolution expressing its will that the Speaker engage in this litigation.
>
> The Assembly Speaker is nominally a constitutional officer (NY Const, art III, §9), but his express statutory powers are circumscribed (*see, e.g.*, Legislative Law §§7, 12 [appointment of employees and expenditure authorizations]). Other duties are merely administrative, and include preserving order and decorum, appointing committee members and chairpersons, allocating staff, administering internal rules, and promulgating a budget adoption schedule (*see*, Rules of Assembly of State of NY, 1997-1988, rule I). None of these specific responsibilities are broad enough to confer on the Speaker any special implied authority to seek judicial review on behalf of the interests of the Assembly in general. Accordingly, as Speaker, plaintiff has no special authority to maintain this action." (at p. 538, underlining added).

As for Senate Rule III, §5, authorizing the Temporary Senate President to:

> "represent the Senate, or engage legal representation on behalf of the Senate, in any legal action or proceeding involving the interpretation or effect of any law of the federal, state or local government or the constitutionality thereof or with regard to the enforcement or defense of any right, privilege or prerogative of the Senate",

it does not necessarily dispense with the necessity of a Senate resolution where, as here, a legal action is commenced in the Senate's own name. Especially is this so when the Senate's interests diverge from those of its Temporary Senate President. Counsel does not dispute such divergence and that it pertains to the very constitutional, separation of powers issues as gave rise to the Commission's establishment and this declaratory judgment action.

Certainly, too, when the engagement of "legal representation" is outside counsel, as at bar, such must conform with legal requirements and established procedures for retention. As stated in the Appellate Division, First Department's decision in *Silver v. Pataki*, 274 A.D.2d 57, 62 (2000):

> "...the legislative power to financially obligate the State is limited to those 'claims...audited and allowed according to law' (NY Const, art III, §19). In furtherance of this clearly defined grant of legislative fiscal authority, Legislative Law §21 commands that '[n]either house shall, without the consent of the other...incur any expense whatever except as provided by this chapter.' There is no authorization contained in the Constitution or the Legislative Law for a legislator, even one of the chosen leaders of either house, to unilaterally initiate and conduct litigation or even authorize a debt for attorneys' fees when backed by a resolution of one house (*Carr v. State of New York*, 231 NY 164).

Yet, neither the Senate nor Assembly appear to have followed any of the requisite procedures for authorizing this and other litigations against the Commission, including in contracting for the services of outside counsel. As such, the Senate and Assembly are not lawfully plaintiffs – and if Temporary Senate Presidents Skelos and Klein and Assembly Speaker Silver are lawfully plaintiffs, they are not being lawfully represented by law firms having contracts with the state entitling them to compensation.

Having had no authorization to commence this declaratory judgment action, the law firms are without authorization to seek to discontinue it. Nor can plaintiffs, who may not be plaintiffs – and who unlawfully used hundreds of thousands of taxpayer dollars in bringing and prosecuting this action – seek to discontinue it when the proposed intervening plaintiff, acting on her own behalf and on behalf of the People of the State of New York, is ready to step in and secure for the taxpayers the summary judgment resolution of the declaratory judgment issues to which they are entitled and for which they paid.

Counsel conceals that the "voluntary discontinuance" they sought is pursuant to CPLR §3217, which states:

> (a) Without an order. Any party asserting a claim may discontinue it without an order…
>
> 2. by filing with the clerk of the court before the case has been submitted to the court or jury a stipulation in writing signed by the attorneys of record for all parties, provided that…no person not a party has an interest in the subject matter of the action;
>
> (b) By order of court. Except as provided in subdivision (a), an action shall not be discontinued by a party asserting a claim except upon order of the court and upon terms and conditions, as the court deems proper…."

The proposed intervening plaintiff proposed "terms and conditions" at the April 28, 2014 oral argument (Exhibit 14, pp. 29-31)[1] – quoted in her analysis (Exhibit 17, pp. 7-8):

> "I am looking for an intervention. Under 3217, the order of the Court is upon terms and conditions that the Court deems proper. I am proposing one possibility…
>
> …this is a situation where, if the Legislature represented by the leadership wanted to drop out as plaintiffs, fine, and in its stead Elena Sassower, individually and a director of the Center for Judicial Accountability, acting on her own behalf and on behalf of the People of the State of New York, be substituted as the plaintiff.
>
> And for the defendants, because your Honor is concerned that the Commission is defunct, notwithstanding there is no death certificate and we don't rule anyone dead until there is a death certificate –"
>
> …There is no order withdrawing Executive Order 106. And we have also on record a preliminary report which constitutes an ongoing danger to the public. If instead of the Commission, we substitute the Governor and possibly the Attorney General – and I will quote for you in concluding Crain's Business Week or maybe it's a daily now, and the Daily News and New York Times, actually – and this is last Thursday and Friday – what is regarded as a tantrum, in the words of Eleanor Randolph of the New York Times, the tantrum of Governor Cuomo before the Crain's editorial board where he says, 'This is my commission. I make it. I unmake it.' And he goes on 'I am the commission,' although at the same time purporting that it was independent.

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[1] Exhibits 8-17 are annexed to the proposed intervening plaintiff's June 17, 2014 affidavit in support of this motion. Her April 23, 2014 affidavit in support of her order to show cause annex Exhibits 1-7. Her September 26, 2014 reply affidavit annex Exhibits 18-29. The proposed intervening plaintiff's April 23, 2014 proposed verified complaint annexes Exhibits A-W.

> And of course the intervention motion and the verified complaint was all about the Commission being a front for the Governor and the Attorney General. Fine. They pulled the curtain back. They disbanded the Commission without any death certificate. Fine. We will substitute for the Commission and the Co-Chairs, we will substitute the Governor and the Attorney General and this case continues. (Exhibit 14, pp. 30-31).

Counsel have not denied or disputed that these "terms and conditions" are appropriate for discontinuance – and, in light of what is revealed by ¶¶7-33 of the proposed intervening plaintiff's accompanying affidavit, based on her FOIL/records requests – such "terms and conditions" should now be modified to afford the Senate and Assembly the opportunity to pass resolutions authorizing their inclusion as co-plaintiffs with her in securing judicial declarations, on behalf of the People of the State of New York, on the three causes of action of her verified complaint in which they are interested, over and beyond declarations on the causes of action of their own complaint.

Counsel Does Not Dispute that the Governor was Facing an Adverse Decision and Conceals that the Stipulation of Discontinuance was Not Signed by "Counsel for all the parties", as Stated by the Court's Decision

Counsel does not dispute the proposed intervening plaintiff's assertion that the Governor was facing an adverse decision in this declaratory judgment action. This anticipated adverse determination was most expansively stated at ¶70 of the proposed intervening plaintiff's April 23, 2014 affidavit in support of her order to show cause:

> "Based on the state of the record in this declaratory action, I believe that one of the reasons motivating Governor Cuomo to close down the Commission was to prevent a judicial determination that would go against him, resoundingly – and result in its closure. That now, as throughout, the Governor and Co-Chair Fitzpatrick continue to mislead the public to believe that there was nothing improper in the Governor establishing the Commission as a means to achieve his agenda of legislative reforms and then shuttering it upon a claim of having achieved that goal only reinforces how imperative it is that the People of this State, whose tax dollars have paid for both sides to brief the separation of powers constitutional issues for the Court, to have the benefit of the judicial determination the record warrants."

The proposed intervening plaintiff also stated this at the oral argument – and embodied it at page 2 of her analysis – as grounds for denying the discontinuance. The memorandum of law of Messrs. Garcia and Musoff cites to the reference appearing in the analysis – though only as "Ex. 17 at 2"), in stating:

> "The argument that 'a discontinuance can be denied where it is to avoid an adverse determination' (Affirmation of Elena Ruth Sassower dated June 17, 2014 ('Sassower Aff.'), Ex. 17 at 2) is inapposite. That exception is plainly inapt where, as here, *all* parties to the proceedings jointly stipulated to discontinue the action. ..." (italics in the original).

The assertion that "all parties to the proceedings jointly stipulated to discontinue the action" is false. There could be no stipulated discontinuance by "all parties" subsequent to the proposed intervening plaintiff's April 23, 2014 order to show cause to intervene – as she was a prospective party, whose status the Court had to determine first before it could entertain discontinuance.

Nor were "all parties" stipulating to discontinue. In the words of the Court's decision: "Counsel for all the parties have signed a Stipulation of Discontinuance" (underlining added) – a deceit exposed by the analysis (Exhibit 17, pp. 3-5), without contest by the opposing submissions.

Counsel's Submissions are Frauds on the Court in that they are Fashioned on the Deceit that the Reargument/Renewal/Vacatur Motion Presents No Facts, No Law, and No Credible Evidence

Notwithstanding every page of the proposed intervening plaintiff's 10-page moving affidavit – and all 12 pages of her analysis of the Court's decision it incorporates – particularize the facts, law, and credible evidence establishing her entitlement to the granting of her motion's four branches, counsel affirmatively misrepresent the motion as presenting no facts, law, or credible evidence.

Thus, Assistant Solicitor General Vale purports, with respect to the first and second branches for reargument/renewal and for vacatur of the stipulation states:

> "Sassower fails to identify any facts or legal authority that this Court misapprehended in declining to sign her proposed order to show

> cause. Nor has Sassower identified any mistake this Court made when it properly accepted the parties' stipulation of discontinuance after determining that the issues in this litigation were moot. Moreover, both Sassower's demand to renew her proposed order to show cause based on purported judicial bias and her claims of 'litigation fraud' are baseless." (¶3, underlining added)
>
> "Sassower fails to show that this Court misapprehended any particular fact or legal authority." (¶13, underlining added).

Likewise, Mr. Kasowitz asserts (at p. 5), with respect to the motion's first branch for renewal, that it is:

> "devoid of any new facts to support the arguments set forth in her order to show cause....Instead, Ms. Sassower argues that renewal is warranted because 'the Court was actually biased and duty bound to disqualify itself.' (Sassower Aff. ¶6.) As an initial matter, Ms. Sassower has not set forth any credible evidence to support these conclusory allegations."

Similarly, Messrs. Garcia and Musoff purport "The Proposed Intervenor does not and cannot offer any support" (at p. 3, underlining added) – asserting this with respect to the motion's third branch:

> "pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, referring the parties and their attorneys to disciplinary and criminal authorities for investigation and prosecution of their litigation fraud and conflict of interest".

This is fraud on the Court, immediately verifiable as such from the most cursory examination of the analysis of the Court's decision (Exhibit 17) and the June 17, 2014 affidavit of which it is part.

The Few Contentions of the Motion that Counsel Recite are so Distorted as to be Further Frauds

To the very limited extent that counsel identify ANY of the specific contentions of the proposed intervening plaintiff's motion, they are so materially distorted as to be further frauds on the Court. Here, too, all are resoundingly rebutted by the analysis and the moving affidavit. As illustrative:

(a) Assistant Solicitor General Vale purports (at ¶13) that the proposed intervening plaintiff is not entitled to the granting of reargument because her motion is "conclusory"; that it is based on the Court not ruling "in her favor" – and that, at issue, is the Court's legitimate "disagreement" with her "legal conclusions". She states:

> "Sassower makes the conclusory assertion that this Court must have ignored 'ALL [of] the facts, law and legal argument' that she presented in her prior affidavit and at oral argument because the Court did not rule in her favor. (See Aff. of E. Sassower ('Sassower Aff.') ¶¶8-13. But Sassower cannot use a reargument motion to rehash every single issue that this Court previously considered and rejected…Moreover, this Court's disagreement with Sassower's legal conclusions does not show that the Court ignored her arguments…." (¶13, underlining added).

This is false and further fraud on the Court. The proposed intervening plaintiff's so-called "conclusory assertion" is substantiated by the particulars of her June 17, 2014 affidavit, none more important than her analysis of the decision, identified at ¶7 to which Ms. Vale does not cite. Established by the analysis is that, at issue, is not a decision unfavorable to the proposed intervening plaintiff or the Court's "disagreement" with her "legal conclusions", but a decision that cannot be justified, factually, legally, procedurally, or substantively.

As for ¶¶8-13 cited by Ms. Vale, these further particularize the indefensibility of what the Court did, both by its decision and at the oral argument.

(b) Mr. Kasowitz purports (at pp. 2-3) that the proposed intervening plaintiff is not entitled to the granting of reargument because the Court already addressed "each" of her arguments at the oral argument – with the consequence that her motion is simply a "second 'bite at the apple'". He states:

> "At the April 28, 2014 hearing, the Court walked through each of Ms. Sassower's arguments and extensively addressed all the relevant issues, properly concluding that there was no basis to allow Ms. Sassower to intervene in a case that was no longer viable…
>
> …Ms. Sassower merely repeats the same flawed arguments previously set forth in her order to show cause and presented to the Court at oral argument. The instant motion amounts to nothing more than an attempt by Ms. Sassower to get a second 'bite at the apple' after having failed to prevail on her original application. Indeed, the crux of Ms. Sassower's motion is that she is entitled to re-litigate all the facts, law and legal arguments set forth in her order to show cause and presented at oral argument, simply because she contends that the Court did not sufficiently address each argument in the April 30, 2013 Order. (See Sassower Aff. ¶¶6-7.)" (pp. 2-3, underlining in the original).

This is false and further fraud on the Court. As verifiable from the transcript of the oral argument (Exhibit 14), the Court not only did not "address" the proposed intervening plaintiff's arguments, but stated it would "reserve decision" (pp. 34, ln. 21). Yet the decision addresses NONE of her arguments. Consequently, the "crux" of her motion is NOT that the April 30, 2014 "Order" "did not sufficiently address each" of her arguments. Rather, it is that the so-called "Order", is not an order, that it addresses NONE of the facts, law, or legal argument she presented, and that it is insupportable, factually, legally, procedurally, and substantively, and so-demonstrated by her analysis (Exhibit 17).

(c) Mr. Kasowitz misrepresents (at p. 4) the basis of the proposed intervening plaintiff's reargument. Thus, he states that its basis is:

> "the mere fact that the April 30, 2014 Order does not 'recite the papers used on the motion, (See Sassower Aff. ¶¶ 3-5, citing CPLR §2219(a).)".

This is false and further fraud on the Court. The proposed intervening plaintiff's did not request reargument based on "the mere fact that the April 30, 2014 Order does not 'recite the papers used on the motion". Rather the Court's failure to "recite the papers" is simply one indicia, among several, that the document that Ms. Vale served upon the proposed intervening plaintiff as an "Order" is NOT an order – and such is set forth by ¶¶3-5 of her affidavit.

(d) Assistant Solicitor General Vale purports (at ¶16) that the proposed intervening plaintiff's renewal:

> "presents no new facts but instead baselessly claims that this Court is biased because of an annual judicial salary increase that was approved by the Special Commission on Judicial Compensation several years before this lawsuit began and that has no connection to this litigation. (Sassower Aff. ¶¶ 6, 14-17)" (underlining added).

This is false and further fraud on the Court. The "new facts", constituting grounds for renewal, are the Court's indefensible decision and its conduct at the argument, each making manifest its *actual* bias and its duty to have disqualified itself. As for Ms. Vale's citation to ¶¶14-17 of the proposed intervening plaintiff's affidavit, these refute her false depiction of the judicial salary issue as unconnected with this litigation and establish the Court's financial interest because the nearly $40,000 yearly salary increase the Court has received would be jeopardized by a ruling against defendants on the second and third causes of action, embracing the proposed intervening plaintiff's complaints to the Commission to Investigate Public Corruption, focally concerning the judicial salary increase.

(e) Assistant Solicitor General Vale purports (at ¶17) that the contentions that the parties' counsel have engaged in litigation fraud and/or "conspiracy" with the Court is "patently frivolous", citing "¶¶11, 18" of the proposed intervening plaintiffs' June 17, 2014 affidavit.

This is false and a further fraud on the Court. The evidence of counsel's litigation fraud is detailed by virtually the entirety of the proposed intervening plaintiff's 41-page affidavit supporting her April 23, 2014 order to show cause – and so-identified by ¶11 of her June 17, 2014 affidavit, to which Ms. Vale cites. No aspect of that showing is contested by Ms. Vale or other counsel. As to Ms. Vale's citation to ¶18, it pertains to disclosure the Court should make "about its role in Ms. Vale's filing of the stipulation of discontinuance on April 24, 2014". Here, too, neither Ms. Vale, nor other counsel contest the accuracy of what is there set forth. Although Ms. Vale could have denied the Court's role in the stipulation she filed, she does not – and in failing to do so reinforces the Court's duty of disclosure on the subject.

(f) Mr. Kasowitz purports (at pp. 8-9) that the motion's second and third branches, for vacatur of the stipulation and referral of the parties and their attorneys to disciplinary and criminal authorities for fraud, misrepresentation, and other misconduct are "conclusory and baseless", were "previously raised by Ms. Sassower at oral argument and were properly rejected by the Court".

This is false and a fraud on the Court – and so-revealed by ¶11 of the motion, none of whose specifics Mr. Kasowitz identifies.

Counsel's Arguments as to Mootness are Further Frauds on the Court

Without contesting the analysis' showing as to the procedural infirmities of the decision pertaining to mootness (Exhibit 17) – most importantly:

> "*As a matter of law*, the proposed intervening plaintiff was a non-party, without standing to contest mootness until the Court determined her entitlement to intervene – the subject of her order to show. The Court could not entertain her challenge to mootness without first signing her intervention order to show cause – and there was no obstacle to the Court's signing it, as the declaratory judgment action was an active case before it." (Exhibit 17, at p. 3, italics in original),

counsel skip to purporting that the declaratory judgment action is moot. Messrs. Garcia and Musoff make argument under a title heading "No Viable Action Exists in Which to Intervene" (at pp. 2-3); Mr. Kasowitz under the title heading "The Motion is Moot" (at pp. 5-7); and Ms. Vale by her ¶¶14-15. None address or even identify the proposed intervening plaintiff's presentation of facts, law, and legal argument as to why the declaratory judgment action is NOT moot, particularized by the analysis as having been concealed by the Court's decision, *to wit*,

> (1) that the Governor did not withdraw his Executive Order #106 (Exhibit A-1), establishing the Commission, which is, therefore, still-live;

(2) that the Commission lives on by its December 2, 2013 preliminary report on which the public is being detrimentally led to rely.

These two facts, rebutting mootness, were focally presented by the proposed intervening plaintiff's April 23, 2014 order to show cause, both by her moving affidavit (¶¶ 1, 69) and by the three causes of action of her proposed verified complaint (¶¶101-113; ¶¶114-117; ¶¶118-126). She further highlighted them throughout her oral argument (Exhibit 14) and throughout her analysis of the Court's decision (Exhibit 17). Yet, none of the three counsel submissions identify Executive Order #106, nor the December 2, 2013 preliminary report, nor the proposed intervening plaintiff's three causes of action based thereon: the first two addressed to Executive Order #106, *as written and as applied*, and the third addressed to the December 2, 2013 preliminary report.

Instead, the Kasowitz memorandum engages in utterly disingenuous argument. Thus, it cites decisional law for the proposition, "Courts routinely deny a request for leave to intervene when the underlying action has been rendered moot by resolution, dismissal, settlement or discontinuance" (at p. 5) – in other words, by action within the litigation by which it is resolved. It thereupon conceals (at p. 6) that the filed stipulation of discontinuance signed by "Counsel for all the parties" was the Court's stated basis for declining to sign the proposed intervening plaintiff's order to show cause so as to declare:

> "Ms. Sassower erroneously argues that the Court erred in denying her motion as moot, because the stipulation of discontinuance was not filed until after Ms. Sassower filed her motion to intervene. (Sassower Aff. ¶7.) However, this argument suffers from a fundamental misunderstanding of the doctrine of mootness. Indeed, it was the decision to disband the Commission and withdraw the subpoenas, not the filing of the stipulation of discontinuance that rendered the matter moot. Once the Commission had been disbanded and the subpoenas withdrawn, questions as to the constitutionality of the Commission and the validity of the subpoenas were rendered purely academic. Thus, even in the absence of a stipulation of discontinuance, the Court lacked jurisdiction to issue a declaratory judgment as to the constitutionality of the Commission's actions and the validity of the subpoenas issued." (at pp. 6-7, underlining added).

The Kasowitz memorandum furnishes no law for this legal proposition, other than:

> "See CPLR §3001 ('The Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy.') (emphasis added); Simon v. Nortrax N.E., LLC, 44 A.D.3d 1027 (2d Dep't 2007) ('The courts of New York do not issue advisory opinions for the fundamental reason that in this State 'the giving of such opinions is not the exercise of judicial function.' Thus courts may not issue judicial decisions which 'can have no immediate effect and may never resolve anything.'') (internal quotations and citations omitted.)[fn3]" (at p. 7, underlining in the original).

This is not accompanied by any direct statement that there is no "justiciable controversy" or that the proposed intervening plaintiff is seeking "advisory opinions". Indeed, the closest the Kasowitz memorandum comes is a completely conclusory sentence at the end of its annotating footnote 3:

> "There is nothing in the nature of the original dispute between the parties (now resolved) that requires the Court to take the extraordinary step of rendering an advisory opinion in the absence of a live dispute."

That this is false is demonstrated by the analysis (Exhibit 17, pp. 10-12), particularly with respect to the Commission's December 2, 2013 preliminary report, the subject of the proposed verified complaint's third cause of action (¶¶118-126), quoted at length by the analysis – to which counsel furnish no response.

As for whether this declaratory judgment action falls within recognized exceptions to mootness, counsel does not contest the showing, made by the analysis (Exhibit 17, pp. 8-12), that the Court's assertion "As the situation here is unique and not likely to recur in precisely the same manner, no exception to the doctrine of mootness exists" in the last sentence of its decision (Exhibit 8-b) is "conclusory..., unsupported by facts or law, [and] entirely *sua sponte*".

Nor do counsel contest the showing, by the analysis (Exhibit 17, p. 9), as to why the situation is likely to recur – a showing quoting from the proposed intervening plaintiff's oral argument:

> Sassower: "...the transcending issue here is whether what the Governor did was a profound, far-reaching violation of the constitutional separation of powers. That was

the basis of the declaratory judgment action; that what the Governor had done was extremely dangerous and the Governor continued to act and Co-Chairman Fitzpatrick, for example, continued to herald what was done as perfectly appropriate and – " (Exhibit 14, p. 15);

"Does the Legislature have an ongoing interest in the determination of that issue so that never again does the Governor or any other Governor do a thing like what was done by Governor Cuomo?" (Exhibit 14, p. 16);

"What the Governor did is still being promoted by him as right and proper...." (Exhibit 14, p. 19);

"...what are we trying to accomplish? We are trying to assure that never again – this is not a one-time it's over situation. We have a Governor who said he did right, he would do it again and he is inviting other Governors to do it again." (Exhibit 14, pp. 20-21, underlining added).

Counsel's response to this is to not only conceal it, but, by the Kasowitz memorandum, to fraudulently purport, in a footnote:

"Ms. Sassower has made no showing that the issues raised in the underlying action are either likely to recur or are in any way evading review" (fn. 3, underlining added).

The same footnote then continues with a further deceit in an oblique attempt to argue against the likelihood of recurrence. Thus it states:

"The fact is that in more than a century between the passage of the Moreland Act in 1907 and Governor Cuomo's July 2, 2013 decision to empanel the Commission to Investigate Public Corruption, New York Governors have empanelled more than 50 Moreland Commissions, none of which sought to investigate the Legislature." (fn. 3).

This is multiply misleading. The so-called "July 2, 2013 decision" is Governor Cuomo's still-live July 2, 2013 Executive Order #106 (Exhibit A-1) – and it does not empanel a solely Moreland Act Commission. Rather, it establishes a hybrid Commission, combining Executive Law §6, which is the Moreland Act, a statute that does not authorize investigation outside the Executive Branch, with Executive Law §63.8, which does. It is the combination of these two statutory provisions in a single Executive Order that is among the key issues that Kasowitz, Kirkland & Ellis, and Loeb & Loeb

went to court to resolve by their declaratory judgment action – and which the Senate and Assembly have an unmooted interest in having resolved.

The Kasowitz Deceit as to the Proposed Intervening Plaintiff's Entitlement to Intervention

Alone among the counsel submissions, the Kasowitz memorandum purports that the proposed intervening plaintiff is not entitled to intervention because her intervention motion "raises issues that are tangential to those raised by plaintiffs in this action." (at p. 7) – and that her "remedy is to bring a new action, under [her] own banner, where [her] claims can be reviewed on the merits", citing *Jiggetts v. Dowling*, 21 AD3d 178, 182 (1st Dept. 2005). This deceit is fashioned from Mr. Kasowitz' concealment of the fact that the first and second causes of action of the proposed intervening plaintiff's complaint (¶¶101-113; ¶¶114-117) challenge Executive Order #106, *as written and as applied* – which is what plaintiffs' complaint also challenges. This accords with CPLR §1013 governing permissive intervention, which Mr. Kasowitz also conceals. It requires that the "claim...and the main action have a common question of fact and law". This does not mean there cannot be differences between them. As stated in *Ford v. Pulmosan Safety Equipment Corporation*, 13 Misc. 3d 1242(A) (Supreme Court/Queens County 2006):

> "intervenors are not prohibited from raising 'new issues', but rather from seeking relief that has 'no relation' to the action (*McGee v Horvat*, 23 A.D.2d 271, 276, 260 N.Y.S.2d 345). The mere fact that the intervenors and petitioners proffer differing facts and rely on disparate sections of [law] to support their claims for a judgment... is of no moment as the relief requested by the petitioners and intervenors in this proceeding is, for all intents and purposes, identical."

Indeed, at bar, the differing facts are simply because plaintiffs' complaint is crafted on material falsification – as the proposed intervening plaintiff demonstrated by her April 23, 2014 order to show cause.

The Kasowitz Deceit as to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct

The Kasowitz memorandum falsely purports, in its footnote 4:

> "Ms. Sassower's reliance on the Chief Administrator's Rules Governing Judicial Misconduct (sic) §100.3(D)(2) to support her request that the Court refer the parties and their attorneys to disciplinary and criminal authorities is misplaced. This rule only applies to judges, and thus has no application here."

This is utterly senseless. It is precisely because §100.3(D)(2) "only applies to judges" that it is applicable to the third branch of relief of the proposed intervening plaintiff's June 17, 2014 motion that the Court refer the parties and counsel to disciplinary and criminal authorities. The facts compelling the Court to do so are particularized by the proposed intervening plaintiff's April 23, 2014 affidavit in support of her order to show cause and by ¶11 of the June 17, 2014 moving affidavit. As their accuracy is uncontested by counsel, the Court's refusal to discharge its mandatory disciplinary responsibilities consistent therewith, indeed, its cover-up of the fraud perpetrated by counsel for both plaintiffs and defendants is grounds for its disqualification for demonstrated actual bias.

This Court's Mandatory Disciplinary Responsibilities Pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct to Protect the Integrity of its Proceedings

This Court's duty to ensure the integrity of the judicial process is set forth in Part 100 of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct, as well as in the Code of Judicial Conduct, adopted by the New York State Bar Association. Part 100.3D relates to a judge's "Disciplinary Responsibilities". In mandatory language it states:

> "(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action." (emphasis added).

Such "appropriate action" includes costs and sanctions pursuant to 22 NYCRR §130.1.1, referrals to appropriate disciplinary authorities, and assessment of treble damages under Judiciary Law §487.

A. Costs & Sanctions against Counsel and their Clients Pursuant to 22 NYCRR §130-1.1

Under 22 NYCRR §130-1.1-a(a), "Every pleading, written motion, and other paper, served on another party or filed or submitted to the court" is required to be signed. §130-1.1(b) identifies this signature requirement as constituting certification that "to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1) the presentation of the paper or the contentions therein are not frivolous as defined in section 130-1.1(c)" §130-1.1(c) defines conduct as "frivolous" if:

> "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false."

Counsel's opposition submissions, signed by each counsel, meets the test for frivolous on all three counts. As hereinabove demonstrated, each is, from beginning to end, materially false and misleading. As these opposition submissions have no legitimate purpose, being based in fraud, they can only be seen as "undertaken primarily to delay or prolong the resolution of the litigation or maliciously injure [the proposed intervening plaintiffs herein]".

B. Disciplinary & Criminal Referrals

New York Rules of Professional Conduct are promulgated as joint rules of the Appellate Divisions of the Supreme Court (22 NYCRR Part 1200). Rule 3.1, entitled "Non-Meritorious Claims and Contentions", states:

"a lawyer shall not...defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...". (subsection a).

The definition of "frivolous" is the same as that under 22 NYCRR §130.1.1(c) and includes "knowingly assert[ing] material factual statements that are false" (subsection b).

Rule 3.3, entitled "Conduct Before a Tribunal", states:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer or use evidence that the lawyer knows to be false..."

Rule 8.4, entitled "Misconduct", states:

"A lawyer or law firm shall not:

(a) violate or attempt to violate the Rules of Professional Conduct...

(b) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice."

As demonstrated by this memorandum of law, counsel's opposition submission flagrantly violates the Rules of Professional Conduct and, specifically, Rule 3.1, Rule 3.3, and Rule 8.4. Such substantial violations require that the Court "take appropriate action" by referring them to disciplinary authorities, consistent with the unequivocal directive of the New York Court of Appeals:

"the courts are charged with the responsibility of insisting that lawyers exercise the highest standards of ethical conduct...Conduct that tends to reflect adversely on the legal profession as a whole and to undermine public confidence in it warrants disciplinary action (*see Matter of Holtzman*, 78 NY2d 184, 191 cert denied, ___ US

__, 112 S.Ct 648; *Matter of Nixon*, 53 AD2d 178, 181-182; cf., *Matter of Mitchell*, 40 NY2d 153, 156).", *Matter of Rowe*, 80 NY2d 336, 340 (1992).

C. Treble Damages Pursuant to Judiciary Law §487

Judiciary Law §487, "Misconduct by attorneys", states, in pertinent part:

"An attorney or counselor who:
1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party;
...
Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action."

Consistent with the New York Court of Appeals' decision in *Amalfitano v. Rosenberg*, 12 NY3d 8, 14 (2009), recognizing "the evident intent" of Judiciary Law §487 "to enforce an attorney's special obligation to protect the integrity of the court and its truth-seeking function", the proposed intervening plaintiff is entitled to such determination as would afford her "treble damages" in this civil action.

This Court's Duty to Disqualify Itself for Actual Bias and Interest & to Vacate its April 30, 2014 Decision by Reason Thereof, – and, if Denied, to Confront the Particularized Facts, Law, & Argument Presented by the Motion and to Make Disclosure

The bedrock principle for a judge is judicial impartiality. Over 150 years ago, the New York Court of Appeals recognized that 'the first idea in the administration of justice is that a judge must necessarily be free from all bias and partiality', *Oakley v. Aspinwall*, 3 N.Y. 547 (1850), quoted in *Scott v. Brooklyn Hospital*, 93 A.D.2d 577, 579 (2nd Dept. 1983). This standard of impartiality, both in appearance and actuality, is the hallmark of the Chief Administrator's Rules Governing Judicial Conduct (Part 100) – which, pursuant to Article VI, §§20 and 28(c) of the New York State Constitution, has constitutional force.

§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: (a)(i) the judge has a personal bias or prejudice concerning a party...(d) the judge knows that the judge...(iii) has an interest that could be substantially affected by the proceeding."

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..."

It is long-settled that a judge disqualified by statute is without jurisdiction to action and the proceedings before him are void, *Oakley v. Aspinwall*, *supra*, 549, Wilcox v. Arcanum, 210 NY 370, 377 (1914), *Casterella v. Casterella*, 65 AD2d 614 (2nd Dept. 1978), 1A Carmody-Wait 2d §3:94.

Although recusal on non-statutory grounds is "within the personal conscience of the court", a judge's denial of a motion to recuse will be reversed where the alleged "bias or prejudice or unworthy motive" is "shown to affect the result", *People v. Arthur Brown*, 141 AD2d 657 (2nd Dept. 1988), citing *People v. Moreno*, 70 NY2d 403, 405 (1987); *Matter of Rotwein*, 291 NY 116, 123 (1943); 32 New York Jurisprudence 44, *Janousek v. Janousek*, 108 AD2d 782, 785 (2nd Dept 1985): "The only explanation for the imposition of such a drastic remedy...is that...the court became influenced by a personal bias against defendant."

A judge who fails to disqualify himself upon a showing that his "unworthy motive" has "affect[ed] the result" and, based thereon, does not vacate such "result" is subject not only to reversal on appeal, but to removal proceedings:

> "A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...", italics added by Appellate Division, First Department in *Matter of Capshaw*, 258 AD 470, 485 (1st Dept. 1940), quoting from *Matter of Droege*, 129 AD 866 (1st Dept. 1909).

In *Matter of Bolte*, 97 AD 551 (1st Dept. 1904), cited in the August 20, 1998 New York Law Journal column, "*Judicial Independence is Alive and Well*", by the then administrator and counsel of

the New York State Commission on Judicial Conduct, Gerald Stern, the Appellate Division, First Department held:

> "A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for willfully making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another..." (at 568, emphasis in the original).
>
> "...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe." (at 574).

§100.3F of the Chief Administrator's Rules Governing Judicial Conduct provides that where a judge's "impartiality might reasonably be questioned" or he has an interest, he may:

> "disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation of the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding."

The Commission on Judicial Conduct's annual reports explicitly instruct:

> "All judges are required by the Rules of Judicial Conduct to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned."

According to the Commission in its brief before the New York Court of Appeals in *Matter of Edward J. Kiley*, (July 10, 1989, at p. 20),

> "It is cause for discipline for a judge to fail to disclose on the record or offer to disqualify under circumstances where his impartiality might reasonable (sic) be questioned."

Treatise authority holds:

> "The judge is ordinarily obliged to disclose to the parties those facts that would be relevant to the parties and their counsel in considering whether to file a disqualification motion", Flamm, Richard E., Judicial Disqualification: Recusal and Disqualification of Judges, p. 578, Little, Brown & Co., 1996.

Where a motion for judicial disqualification is made,

> "The factual basis for the motion must be stated with specificity – that is, for the moving party's allegations to warrant the requested relief, such allegations, when taken as true, must contain information that is definite as to time, place, persons, and circumstances. Before acting on a judicial disqualification motion, the challenged judge should carefully examine the allegations to determine whether the motion alleges specific, objective facts that, considered as a whole, would lead a reasonable person to believe that the court is biased, that the appearance of the court's impartiality is in doubt, or that a fair and impartial disposition did not occur' Flamm, Judicial Disqualification, pp. 572-3.

Adjudication of a motion for a court's disqualification must be guided by the same legal and evidentiary standards as govern adjudication of other motions. Where, as here, the motion details specific, supporting facts, the court, as any adversary, must respond to those facts, as likewise the law presented relative thereto. To fail to do so would subvert the very purpose of resolving the 'reasonable questions' warranting disqualification.

Such is consistent with the "recusal reform" advocacy of the American Bar Association and such organizations as the Brennan Center for Justice, in collaboration with the national coalition Justice at Stake Campaign. Among their positions, "Enhanced Disclosure" and "Transparent and Reasoned Decision-Making", as to which they have explained:

> "It is critically important – for litigants, for the courts, and for the public at large – that disqualification decisions offer transparent and reasoned decision-making. …a failure to explain recusal decisions 'allows judges to avoid conscious grappling with the charges made against them' and 'offends not only a basic tenet of legal process, but also a basic tenet of liberal democracy – that officials must give public reasons for their actions in order for those actions to be legitimate.'[fn] Such a failure often makes it far more difficult for those reviewing a specific disqualification decision to understand the underlying rationale or facts, and denies other judges, justices, and courts both precedent for use in other cases and the chance to build on this precedent in developing a more refined body of disqualification jurisprudence.", "*Invigorating Judicial Disqualification: Ten Potential Reforms*", Judicature, Vol. 92, #1 (July-August 2008) – excerpted from its April 2008 report "*Fair Courts: Setting Recusal Standards*".

The imperative of giving reasons is set forth in *Nadle v. L.O. Realty Corp*, 286 AD2d 130, 735 NYS2d 1 (App. Div. 1st Dept. 2001) – approvingly cited by the Appellate Division, Second *Department in Hartford Fire Insurance Co. v. Cheever Development Corp*, 289 A.D.2d 292; 734 N.Y.S.2d 598 (2001):

> "'...we now take this opportunity to explain the basis for our insistence on the inclusion of the reasoning underlying a ruling. First of all, as the Third Department has had occasion to note:
>
> > Written memoranda assure the parties that the case was fully considered and resolved logically in accordance with the facts and law. Indeed, written memoranda may serve to convince a party that an appeal is unlikely to succeed or to assist this court when considering procedural and substantive issues when appealed.
>
> (*Dworesky v. Dworesky*, 152 A.D. 2d 895, 896.) In addition to the potential benefits to the litigants, the inclusion of the court's reasoning is necessary from a societal standpoint in order to assure the public that judicial decision making is reasoned rather than arbitrary.'". (*Nadle v. L.O. Realty*, underlining added).

The April 30, 2014 decision is *prima facie* evidence of pervasive actual bias – and so brazen as to manifest the Court's interest, including financial interest arising from the fraudulent judicial pay raises, covered up by the Commission and exposed by the second and third causes of action of the proposed intervening plaintiff's verified complaint. The actuality of bias and interest, which this Court's decision makes impossible to ignore, furnishes grounds for renewal.

Should the Court not disqualify itself based on this motion, it must justify its April 30, 2014 decision by confronting and addressing, with specificity, the facts, law, and legal argument the motion presents – beginning with the analysis of its decision (Exhibit 17). Only by so doing can it demonstrate that there are no grounds on which its impartiality might "reasonably be questioned". In such circumstances, it must disclose facts bearing upon its fairness and impartiality, such as identified at ¶¶14-18 of the proposed intervening plaintiff's June 17, 2014 affidavit in support of this motion.

Conclusion

For all the foregoing reasons, the proposed intervening plaintiff's June 17, 2014 motion for reargument, renewal, vacatur, and other relief must be granted, *as a matter of law* – the documentary evidence and substantiating law being dispositive, uncontested, and incontestable.

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

September 26, 2014