SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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ELENA RUTH SASSOWER and DORIS L. SASSOWER, Individually and as Director and President, respectively, of the Center for Judicial Accountability, Inc., and CENTER FOR JUDICIAL ACCOUNTABILTY, INC., Acting *Pro Bono Publico*,

Index #10-12596

MOVING AFFIDAVIT

Plaintiffs,

-against-

GANNETT COMPANY, INC., The Journal News, LoHud.com HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS, D. SCOTT FAUBEL, KEITH EDDINGS, DOES 1-10,

Defendants.

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

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the individual *pro se* plaintiff herein, fully-familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of the relief requested by plaintiffs' accompanying notice of motion. This affidavit is specifically submitted:

- to swear to the truth of plaintiffs' accompanying analysis of the September 22, 2011 short-form order(Exhibit 20)[1], establishing the Court's actual bias so extreme as to reflect interest;
- to set forth further facts as to the Court's interest;
- to identify some of the personal and professional relationships the Court must disclose if it does not recuse itself;
- to set forth facts pertaining to the June 1, 2011 oral argument, particularly with respect to the false advocacy therein of Meghan Sullivan, Esq. on behalf of the defendants represented by Satterlee Stephens Burke & Burke, LLP;

[1] These exhibits continue the sequence begun by the Verified Complaint, whose exhibits are 1-9. Exhibits 10-18 are annexed to my November 29, 2010 affidavit in opposition to Satterlee's dismissal motion and in support of plaintiffs' cross-motion; and exhibit 19 is annexed to my December 15, 2010 reply affidavit

- to set forth facts pertaining to the June 1, 2011 oral argument not contained by the transcript (Exhibit 22) ;

- to append plaintiffs' proposed fourth cause of action for "institutional reckless disregard for truth", with "WHEREFORE" clause (Exhibit 29).

2. This motion is timely. The September 22, 2011 short-form order [hereinafter "decision"], which the Court did not file until October 20, 2011, has yet to be served upon plaintiffs by Satterlee by a proper "notice of entry" (Exhibit 21).

PLAINTIFF'S ANALYSIS ESTABLISHING ACTUAL BIAS SO PERVASIVE AS TO REFLECT INTEREST

3. The facts establishing the actuality of this Court's pervasive bias, if not interest, mandating its disqualification and vacatur of its September 22, 2010 decision by reason thereof, or upon the granting of reargument/renewal, are particularized by the annexed analysis of the September 22, 2011 decision (Exhibit 23), incorporated herein by reference, which I wrote and to whose accuracy I swear.

4. The analysis demonstrates that no fair and impartial tribunal could render the September 22, 2011 decision as it brazenly disregards and distorts the controlling legal standards it recites and flagrantly falsifies and conceals the factual and evidentiary record before the Court, as for example:

- without explanation or legal authority, changing the caption of the action to remove the double capacities in which the individual plaintiffs appear – germane to their libel *per se* cause of action – and removing that the action is being brought by them and the corporate plaintiff *pro bono publico* – germane to their journalistic fraud cause of action;

- misrepresenting the defendants who Satterlee represents and on whose behalf its dismissal motion has been made – germane, *inter alia*, to the uncontested fourth branch of plaintiffs' cross-motion to disqualify Satterlee for conflict of interest as a defendant DOE;

- purporting, without explanation, that no oral argument was had on Satterlee's dismissal motion – germane to its misrepresentation that "The motion was unopposed by D.L. Sassower and the plaintiff Center for Judicial Accountability, Inc.";

- making no determination as to the sufficiency of Satterlee's dismissal motion, either for its requested dismissal of plaintiffs' Complaint pursuant to CPLR §3211(a)(1), "defense founded on documentary evidence", or for its requested dismissal of the Complaint pursuant to CPLR §3211(a)(7), "failure to state a cause of action";

- concealing the reason for not granting Satterlee's motion pursuant to CPLR §3211(a)(1) for a "defense founded on documentary evidence", *to wit*, because the purported "documentary evidence" – the Complaint and its Exhibit 7 analysis – establish the fraudulence of Satterlee's motion as to both CPLR §3211(a)(1) and CPLR §3211(a)(7);

- concealing virtually every allegation of plaintiffs' Complaint, in violation of black-letter law, which it recites, as to the standard governing dismissal for failure to state a cause of action – and concealing all the allegations highlighted by plaintiffs' cross-motion and oral argument as establishing the Complaint's causes of action, including: (i) that the subject article is a news article; (ii) that, on its face, it was non-conforming with the standards of news articles; (iii) that its knowing falsity is established by a video; (iv) that notwithstanding defendant Gannett purported to have an "**ACCURACY**"/corrections policy – including as part of its masthead – it ignored, without response, plaintiffs' analysis particularizing the article's falsity and knowing falsity; and (v) that despite defendant Gannett's purporting to have a "**READERS' REPRESENTATIVE**" – including as part of its masthead – it had none;

- misrepresenting the law as to opinion, including as set forth by *Steinhilber v. Alphonse*, 68 NY2d 283 (1986), on which it purports to rely;

- purporting to apply the four-factor *Steinhilber* analysis by conclusory assertions devoid of a single demonstrative fact, with responses to two of the four factors being, additionally, non-responsive;

- purporting, as part of its *Steinhilber* analysis, that "No evidence has been submitted to establish that the statements [in the article] were false when made", when the evidence submitted by plaintiffs was overwhelming, including: (i) their Complaint, which the decision conceals was verified; (ii) the Complaint's incorporated Exhibit 7 analysis, wholly concealed by the decision; and (iii) the video, wholly concealed by the decision – and when "evidence" is not the standard on a motion to dismiss for failure to state a cause of action, as the decision elsewhere acknowledges;

- misrepresenting the law as to "special damages", including as set forth by *Matherson v. Marchello*, 473 NYS2d 998 (2nd Dept. 1984), to which it cites three times

- concealing the legal proposition "new torts are constantly being recognized", enunciated in *Brown v. State of New York*, 89 NY2d 172, 181-192 (1996) and set forth in the Complaint itself, so as to purport, as its sole basis for dismissing plaintiffs' cause of action for journalistic fraud that "the Court is unable to find a singe jurisdiction that recognizes a cause of action for journalistic fraud", which the record before the Court showed to be a legally-insufficient ground;

- baldly purporting, without fact or law – and relegated to a footnote – that plaintiffs' Complaint does not "assert" a cause of action for "institutional reckless disregard of the truth' in defamation actions";

- denying plaintiffs' eight branch cross-motion by falsifying the basis of the single branch whose grounds it purports to give – the first branch: "imposing sanctions pursuant to 130-1.1" against Satterlee – and concealing, as to the three additional cross-motion branches against Satterlee, the "various relief" they sought, *to wit*, the second branch: referral of Satterlee to disciplinary authorities; the third branch, assessing damages against Satterlee under Judiciary Law §487(1); and the fourth branch, to disqualify Satterlee – over and beyond concealing all the facts, law, and legal argument the cross-motion presented in support of those branches, as well as in support of the other branches, including the seventh branch: for summary judgment to plaintiffs.

DISCLOSURE OF RELATIONSHIPS & INTERESTS

5. Should the Court not disqualify itself and vacate its September 22, 2011 decision based on the analysis (Exhibit 23), it must – consistent with its ethical duty – respond to the 30 pages of fact, law, and legal argument the analysis particularizes and disclose the facts bearing upon the appearance and actuality that it is not a fair and impartial tribunal. This includes disclosure of its personal and professional relationships with appellate judges who – like defendant Journal News – covered up the corruption of White Plains City Court Judge Brian Hansbury, *readily-verifiable* from the City Court record of the landlord/tenant case *McFadden v. Elena Sassower*. As the Court may be presumed to have recognized, verifying the falsity of the subject article pertaining to Judge Hansbury would necessarily expose the corruption of the appellate judges who protected him.

6. Among the appellate judges whose official misconduct in covering up for Judge Hansbury has given them an interest in this litigation by reason thereof is Suffolk Supreme Court Justice Denise Molia, who, as an Appellate Term justice, protected Judge Hansbury on my appeals of *McFadden v. Elena Sassower* and *McFadden v. Doris Sassower and Elena Sassower* and, prior thereto, on my pre-appeal motions. Justice Molia, who is up for re-election in 2012, has chambers in the same building as the Court's – and her corruption on my appeals, as likewise that of Nassau

Supreme Court Justice Angela Iannacci, sitting on the Appellate Term with her, are particularized by my fully-documented motions for their disqualification for actual bias and interest that are the basis upon which I sought, and currently seek, disciplinary and criminal relief against them.

7. My dispositive motions to disqualify Justices Molia and Iannacci and my attempts to secure disciplinary and criminal remedies against them are posted on the Center for Judicial Accountability's website, www.judgewatch.org, accessible *via* the same "Latest News" webpage as features this lawsuit against Gannett. The relevant posted documents include plaintiff Center for Judicial Accountability's June 14, 2011 letter to then Chief Administrative Judge Ann Pfau to remove Justices Molia and Iannacci from their Appellate Term designations (Exhibit 24b) – a copy of which I furnished to then Appellate Division, Second Department Justice Gail Prudenti under a coverletter addressed to her (Exhibit 24a). Justice Prudenti's response was to ignore it – and to allow a four-judge Appellate Division, Second Department panel to deny my reargument motion for appellate review of the corruption of Justices Molia and Iannacci, to refer them to disciplinary and criminal authorities, and other legally-compelled relief. Among the Long-Island originating judges on that Second Department panel – Peter Skelos, the brother of Senate Majority Leader Dean Skelos, likewise from Long Island.

8. This Court may be presumed to have long-standing personal and professional relationships with now Chief Administrative Judge Prudenti, whose father, as head of the Suffolk County Republican Party was doubtless instrumental in the Court's securing its judgeship and whose posthumous influence doubtlessly helped secure his daughter's meteoric rise through the judicial ranks, including as Suffolk County Surrogate and, simultaneously, Chief Administrative Judge for the Tenth Judicial District, in which capacity she was this Court's direct superior.

9. The Court may also be presumed to be aware that from shortly before the June 1,

2011 oral argument, plaintiff Center for Judicial Accountability, Inc. (CJA) emerged as the public's foremost and most vocal opponent to judicial pay raises – taking the position that systemic corruption in New York's judiciary, infesting appellate and supervisory levels and involving the Commission on Judicial Conduct, disentitled its judges to any salary increases.[2] Indeed, CJA ultimately demonstrated that such position has constitutional magnitude, including in an August 23, 2011 follow-up letter to then Chief Administrative Judge Pfau (Exhibit 25b), which not only enclosed a further copy of the June 14, 2011 letter, but was sent to a long list of judicial pay raise advocates, with a request that they "forward this e-mail to ALL New York's 1200+ state-paid judges" (Exhibit 25a).

10. The Court's financial interest in obtaining a pay raise puts it in a directly adversarial posture to the plaintiffs herein – and gives it an interest in NOT affording them a victory that would enhance their ability, reputationally and financially, to oppose judicial pay raises, as for instance, not granting plaintiffs the summary judgment to which their Complaint entitles them, *as a matter of law*, based on the record herein.

11. With respect to the judicial compensation issue, defendant GANNETT and other media have been inducing the public to believe that judicial pay raises are warranted. As demonstrated by CJA's involvement on this issue, they have accomplished this by a pattern and practice of knowingly false and dishonest reporting and editorializing, suppressing, virtually entirely, all report of citizen opposition and the facts and law in support thereof. This gives the Court an additional interest in trashing the journalistic fraud cause of action, lest defendant GANNETT and other media be vulnerable to consequence for their willful and deliberate cover-up of the hoax of the

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[2] See CJA's May 23, 2011 letter to Governor Cuomo, Senate Majority Leader Skelos, Assembly Speaker Silver, and Chief Judge Lippman – which was posted on CJA's website on that date – and which is quoted by, and appended to, CJA's June 14, 2011 letter (attachment #4).

udicial pay raise "crisis" – a cover-up now manifested by their withholding from the public any ews of CJA's dispositive October 27, 2011 Opposition Report to Governor Cuomo, Senate Majority Leader Skelos, Assembly Speaker Silver, and Chief Judge Lippman on the judicial pay aise issue.[3]

12. This is not the Court's only interest in the journalistic fraud cause of action. By irtue of the Court's acting on its undisclosed relationships, biases, and interests by its abusive ehavior and prejudgment at the June 1, 2011 oral argument (Exhibit 22) and by its corrupt September 22, 2011 decision (Exhibit 20), it has acquired a further interest. The Court would be ersonally affected by a press which reported, rather than suppressed, the kind of injudicious, corrupt onduct that Judge Hansbury exhibited – as such behavior mirrors its own.

THE JUNE 1, 2011 ORAL ARGUMENT & THE MISCONDUCT OF SATTERLEE ATTORNEY MEGHAN SULLIVAN, ESQ.

13. The June 11, 2011 oral argument (Exhibit 22) was the first time the parties were efore the Court. By then, the Court had had more than five months to familiarize itself with the ecord of the case and to know that Satterlee's dismissal motion was, from beginning to end, a "fraud n the court", as likewise its opposition to plaintiffs' cross-motion. Indeed, no great amount of time r expenditure of resources would have been necessary for the Court to verify Satterlee's fraud, as it as meticulously demonstrated, with virtual line-by-line precision, by plaintiffs' opposition/cross-notion papers and was the basis upon which plaintiffs sought to have Satterlee withdraw its motion nd enter into settlement discussions, which Satterlee insolently refused to do (Exhibit 26).

14. Based on the unambiguous record before it, the Court was duty-bound to have thrown the book" at Satterlee attorney Meghan Sullivan, Esq., who had signed its fraudulent

[3] An Executive Summary of CJA's October 27, 2011 Opposition Report is annexed hereto as Exhibit 26. The full Opposition Report, with its Compendium of Exhibits including CJA's August 23, 2011 letter to hen Chief Administrative Judge Pfau, is posted on CJA's website, accessible *via* the top panel "Latest News".