SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ELENA RUTH SASSOWER, individually, and as Coordinator of the Center for Judicial Accountability, Inc., CENTER FOR JUDICIAL ACCOUNTABILITY, INC., and The Public as represented by them,

Plaintiffs,

-against-

THE NEW YORK TIMES COMPANY, The New York Times, ARTHUR SULZBERGER, JR., BILL KELLER, JILL ABRAMSON, ALLAN M. SIEGAL, GAIL COLLINS, individually and for THE EDITORIAL BOARD, DANIEL OKRENT, BYRON CALAME, MAREK FUCHS, and DOES 1-20,

Defendants.

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Index #05-19841

Affidavit in Opposition to Defendants' Motion to Dismiss and in Support of Plaintiffs' Cross-Motion for Sanctions, Referrals, Disqualification, Default Judgment, Summary Judgment & Other Relief

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

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the plaintiff *pro se* in the above-entitled action for libel and journalistic fraud, fully familiar with all the facts, papers, and proceedings heretofore had.

2. I submit this affidavit in opposition to Mr. Freeman's April 13, 2006 motion to dismiss the complaint and in support of the relief sought by plaintiffs' cross-motion. As particularized by this affidavit and by plaintiffs' accompanying memorandum of law, which I

incorporate herein by reference, swearing to, and reiterating, such factual assertions as therein set forth, Mr. Freeman's motion is a fraud on the court, requiring this Court to not only deny the motion, but to discharge its mandatory disciplinary responsibilities to the fullest by imposing maximum costs and sanctions, by making appropriate disciplinary referrals, and by disqualifying Mr. Freeman and The New York Times Company Legal Department from appearing as counsel to defendants. Such is fully warranted by the record herein, as likewise the granting of a default judgment against the non-appearing defendants and notice to the appearing defendants that the Court is converting Mr. Freeman's dismissal motion to one for summary judgment in plaintiffs' favor, with further notice to defendants that the Court will be determining whether The Times must be required to remove its front-page motto "All the News That's Fit to Print" as a false and misleading advertising claim.

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

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MR. FREEMAN'S AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS IS ITSELF A FRAUD ON THE COURT

3. Although the first paragraph of Mr. Freeman's four-paragraph affidavit identifies that he is "Assistant General Counsel of The New York Times Company" and "fully familiar with the facts set forth herein", his three subsequent paragraphs offer few facts – with none substantiating the material factual representations made by his memorandum of law.

4. This deficiency is all the more noteworthy in view of Mr. Freeman's august credentials, as reflected by the printed program I received at the November 16, 2005 panel discussion at New York University Law School in which he participated, "*Freedom of the Press or License to Libel: Balancing Freedom of the Press with an Individual's Right to Protect 'A Good Name' from Defamatory Statements*" (Exhibit U)[1] – referred to at ¶¶125-6 of the verified complaint. Mr. Freeman, a *cum laude* graduate of Harvard Law School (class of '75), is described as:

> "Assistant General Counsel of The New York Times since 1992, In that capacity, he is primarily responsible for the Company's litigations. He is also involved in newsroom counseling... He worked...for the Company's affiliated newspapers and broadcast properties as well, since he began working for The Times in 1981. Prior to coming to The Times, Mr. Freeman was an associate at the New York law firm of Cahill Gordon & Reindel, where he represented The Times in litigation in several significant cases.
>
> Mr. Freeman is chair of the American Bar Association's Litigation Section's First Amendment and Media Litigation Committee. He is also the immediate past chair of the ABA's Forum on Communication Law. From 1992 to 1995, Mr. Freeman was chairman of the New York State Bar Association Media Law Committee...
>
> He is a frequent lecturer and moderator of panels on First Amendment issues and has been on the Practicing Law Institute's Communications Law faculty since 1985. He also was founder and remains co-chair of the Boca

[1] This affidavit continues the sequence of exhibits annexed to the verified complaint.

conference, a winter meeting bringing together 250 media attorneys nationwide....

...from 2001 to 2003 [he] was co-chair of [the ABA's] Task Force on the Public Perception of Lawyers.

Since 1998, Mr. Freeman has been an adjunct professor at New York University. He teaches media law courses to both undergraduates and graduate journalism students..."

5. With respect to the second paragraph of Mr. Freeman's affidavit, identifying the defendants on whose behalf his dismissal motion is made, Mr. Freeman offers no facts to support the bald claim in footnote 1 of his memorandum of law that defendants OKRENT and FUCHS are "not New York Times Company employees and have not been properly served". Indeed, his affidavit's second paragraph fails even to repeat the claim – with the consequence that his memorandum of law is completely non-probative as to the basis upon which The New York Times Company Legal Department is not appearing for defendants OKRENT and FUCHS. As a seasoned litigator, Mr. Freeman is presumed to know that such factual assertions in his memorandum have no probative value unless presented in a sworn document, such as an affidavit, subject to the penalties of perjury – not a memorandum of law, which is unsworn.

6. The absence of any substantiating statement in Mr. Freeman's affidavit pertaining to defendants OKRENT and FUCHS is all the more deceitful when seen against the long history of my attempts to obtain the cooperation of The New York Times Company Legal Department in effecting service upon these two defendants. Such history, spanning from November 1, 2005 to March 2, 2006, is chronicled by my correspondence with the Company's Legal Department, annexed to the verified complaint as Exhibits T-8 – T-22.

7. The history subsequent to my aforesaid March 2, 2006 letter (Exhibit T-22), to

which there was no response, is as follows:

(a) On March 9, 2006 (Exhibit X-1), following receipt of Mr. Freeman's March 1, 2006 notice of appearance and demand for complaint (Exhibit W), I requested that he clarify whether, by his not appearing for defendant FUCHS, he was claiming that "229 West 43rd Street, New York, New York 10036" was not FUCHS' "actual place of business". I also asked whether, by his not appearing for defendant OKRENT, upon whom substituted service had been effected at his home address, plaintiffs should infer that OKRENT would be represented by separate counsel.

(b) Mr. Freeman's answer, by letter dated March 14, 2006 (Exhibit X-3), was that The New York Times Company Legal Department was not appearing for defendants FUCHS and OKRENT "because they are not employees of The New York Times Company and we are not in the position to accept service for them" and further, that it was his "understanding" that OKRENT had "not properly been served and, hence, there is no reason for him to appear in this proceeding at this time".

(c) I thereupon responded, by letter dated March 17, 2006 (Exhibit X-4):

> "The issue is NOT whether Mr. Fuchs and Mr. Okrent are 'employees of The New York Times' or whether The Times is 'in the position to accept service for them'....CPLR 308(2) does not require that they be 'employees' and allows for substituted service on any 'person of suitable age and discretion'.
>
> As for Mr. Fuchs, the only relevant question is the one explicitly set forth by my March 9th letter:
>
> > 'whether, by your not appearing for defendant Marek Fuchs, you are now claiming that 229 West 43rd Street, New York, New York 10036 is not his 'actual place of business'. (underlining in...original letter).
>
> What is your answer? ...

> As for Mr. Okrent, my March 9th letter explicitly identified that 'we effected substituted service at his home address'....are you claiming that Mr. Okrent's residence address is not 645 West End Avenue, New York, New York 10025 and that our substituted service upon him did not comply with the requirements of CPLR 308(2)?" (capitalization and underlining in the original letter)

(d) Mr. Freeman did not answer these inquiries[2].

7. It is against this backdrop that Mr. Freeman, by his first footnote to his memorandum of law, continues the deceit challenged by my March 17, 2006 letter (Exhibit X-4) in baldly purporting that "Messrs Okrent and Fuchs are not New York Times employees and have not been properly served."

8. With respect to the third paragraph of Mr. Freeman's affidavit, purporting that his annexed Exhibit A is "a portion of the transcript of Confirmation Hearings on Federal Appointments before the U.S. Senate Judiciary Committee of May 22, 2003 at which Ms. Sassower was arrested", such is an outright fraud on the court, as Mr. Freeman well knows, being "fully familiar with the facts set forth herein".

9. Mr. Freeman's "portion of the transcript" are actually two pages from the Senate Judiciary Committee's June 25, 1996 confirmation hearing – and there is no way that Mr. Freeman was unaware of this. First, the attached pages themselves reflect "citizen opposition" not to Judge Richard Wesley, but to Judge Lawrence Kahn. Second, the handwritten numbers "47" and "48" appearing at the upper right of these two transcript pages were written by me and reveal, by their sequencing, that these pages were taken from CJA's July 3, 2001 letter to New York Home-State Senator Charles Schumer, to which, with the

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[2] Mr. Freeman's only response was to that portion of my March 17, 2006 letter as pertained to his wilful and deliberate failure to serve me with a copy of his March 1, 2006 notice of appearance and

official transcript title page, they were Exhibit H. The title page that Mr. Freeman has chosen not to include identifies the June 25, 1996 hearing date – and bears my handwritten numbering "46", along with my handwritten notation "Exhibit 'H'". A copy is annexed hereto as Exhibit AA-1.

10. Mr. Freeman accessed this Exhibit H from CJA's website, www.judgewatch.org – most likely from the "Paper Trail to Jail", where it is posted as an enclosure to my May 21, 2003 memorandum-letter to Capitol Police and clearly identified as "transcript pages from the Senate Judiciary Committee's June 25, 1996 confirmation 'hearing'". A copy of the "Paper Trail to Jail" as it appeared during Mr. Freeman's preparation of his dismissal motion is annexed hereto as Exhibit AA-2 (see p. 2).

11. It must be noted that in selecting the two pages from the June 25, 1996 transcript to put before the Court on the pretense that they are from May 22, 2003, Mr. Freeman was passing over the actual transcript of the Senate Judiciary Committee's hearing of that date – and, more importantly, the videotape of the May 22, 2003 hearing – *readily-accessible* from "The Paper Trail to Jail" and from other pages of the website, particularly *via* the link marked "The Celluloid DNA: Videotape and Still-Frame Analysis of US Senate Judiciary Committee's May 22, 2003 'hearing'" (Exhibit AA-2, at p. 3) Such primary source documentary evidence establishes the complete truth of my analysis of paragraphs 2, 6-7 of FUCHS' column – annexed to the complaint as Exhibit A – and the falsity of Mr. Freeman's bald claims in his memorandum that FUCHS' account of what took place at the May 22, 2003 hearing on Judge Wesley's confirmation was "a fair and accurate summary of what appeared

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demand for complaint. In an envelope postmarked March 20, 2006 (Exhibit X-5), he served me with

in official government documents" (at p. 3); and "supported by the official record" (at p. 19). These unsworn claims have no probative value and Mr. Freeman does not repeat them, under oath, in his affidavit where they would -- reflective of his knowledge that such would subject him to prosecution for perjury as the actual transcript and videotape do NOT substantiate FUCHS' account.

12. Likewise, in annexing his Exhibit B – the transcript of my June 28, 2004 sentencing before D.C. Superior Court Judge Brian Holeman -- Mr. Freeman conspicuously does not claim, let alone show, that it demonstrates that FUCHS' account of my sentencing is "a fair and accurate summary". It is not a "fair" summary. Rather, it is a one-sided account, whose omission of what I said during the sentencing proceeding, either by direct quote or paraphrase, is compounded by FUCHS' omission of what I told him about it during his telephone interview of me.

13. As for Mr. Freeman's concluding words, "Further affiant sayeth not.", implying that anything more is superfluous, this is a deceit. As hereinabove shown, his affidavit is wholly insufficient and, with respect to his Exhibit A, outrightly fraudulent.

PLAINTIFFS' ENTITLEMENT TO SANCTIONS AGAINST MR. FREEMAN, THE NEW YORK TIMES COMPANY LEGAL DEPARTMENT, AND DEFENDANTS, AS WELL AS APPROPRIATE DISCIPLINARY REFERRALS AGAINST THEM

14. On April 17, 2006, following receipt of Mr. Freeman's dismissal motion, returnable May 8, 2006, with answering papers required seven days earlier, *to wit*, May 1, 2006, I faxed and e-mailed him a letter requesting his consent to a 30-day adjournment (Exhibit Z-1). He faxed his consent, the next day (Exhibit Z-2), stating that I should advise

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such copy – unaccompanied by any coverletter.

the assigned judge that my time to answer his motion was now June 1, 2006.

15. By letter dated May 1, 2006, entitled "RE: NOTICE OF INTENT TO SEEK SANCTIONS AGAINST YOU" (Exhibit Z-3), I advised that I could not adjourn his dismissal motion, as it was not on any court calendar. Annexing a copy of the computerized record from the Clerk's office, the letter recited my belief, based on that record and what I was told by staff at the Clerk's office, that Mr. Freeman had not filed the motion, nor purchased an RJI, as he was required to do before serving his motion. I further stated, based on discussions with the attorney advising *pro se* litigants, that it appeared that his dismissal motion was "a nullity" and that "technically" he was "in default". I informed him that if he now purchased an RJI and moved to be relieved of the default so as to file his dismissal motion, I would cross-move for sanctions against him pursuant to NYCRR §130-1.1 and Judiciary Law §487 and for an order referring him to disciplinary authorities for knowing and deliberate violation of New York's Disciplinary Rules of the Code of Professional Responsibility, NYCRR §1200.3 [DR 1-102: "Misconduct"] and §1200.33 [DR 7-102: "Representing a Client Within the Bounds of the Law"]. This, because

> "the motion, from beginning to end, is fashioned on flagrant falsification and material omission of the complaint's pleaded allegations and on law either inapplicable by reason thereof or itself falsified by your motion. Indeed, your dismissal motion is nothing less than a fraud on the court. This includes your supporting affidavit which – in contravention of the standard governing motions to dismiss for failure to state a cause of action – annexes, as Exhibit A, what it purports to be "a portion of the transcript of Confirmation Hearings on Federal Appointments before the U.S. Senate Judiciary Committee of May 22, 2003 at which Ms. Sassower was arrested" – but which, in fact, are the final two pages of the Senate Judiciary Committee's June 25, 1996 confirmation hearings, obtained from CJA's website."

I further stated:

> "I am prepared to waive your default -- but only to allow defendants to answer the verified complaint. Such answer should be by counsel who is not, as you are, among the defendant DOES 1-20 and thereby disqualified for interest and susceptible to discipline for violation of NYCRR §1200.20 [DR 5-101: "Refusing Employment When the Interests of the Lawyer May Impair Independent Professional Judgment"]."

The letter closed by requesting Mr. Freeman's prompt response by fax and e-mail so that I would know how to proceed.

16. I received no response from Mr. Freeman until Friday, May 12, 2006, when his letter dated Monday, May 8, 2006, arrived by regular mail (Exhibit Z-4). It stated that the

> "motion to dismiss and the RJI have properly been served and filed in Westchester Supreme Court. There may have been some sort of confusion in the clerk's office because at least one judge apparently has recused him/herself but there is no question that the motion is now properly before the court."

17. Mr. Freeman's letter altogether ignored my assertion as to the sanctionable nature of his dismissal motion, except to admit that he had annexed the "the wrong congressional transcript" to his affidavit. He gave no explanation as to how this "wrong" transcript might have been annexed, other than to infer that such had been procured from CJA's website, conceding that the May 22, 2003 transcript is "also" posted there. He did not, however, state that he would take any immediate steps pertaining thereto, but only that he would "submit the proper transcript to the court at an appropriate time."

18. By letter to Mr. Freeman dated May 23, 2006, entitled "RE: Cross-motion for sanctions, etc. against you, The New York Times Company Legal Department, & defendants" (Exhibit Z-5), I objected to what I considered his further litigation misconduct and further stated, with respect to his dismissal motion, that I would be making the cross-motion for sanctions and disciplinary referral indicated by my May 1st letter. The final paragraph read:

"So that you there is no question that your fraudulent dismissal motion is with the knowledge and consent of your superiors in the New York Times Company Legal Department, as well as of the defendants – both those for whom you have appeared and for whom you should have appeared, all of whom are, in fact, your co-defendants -- please apprise them that my cross-motion will also be directed against them."

19. Mr. Freeman's e-mailed response, dated May 23, 2006 (Exhibit Z-6), was to baldly deny my "allegations of flagrant falsification, etc."

PLAINTIFFS' ENTITLEMENT TO MR. FREEMAN'S DISQUALIFICATION AND THAT OF THE NEW YORK TIMES COMPANY LEGAL DEPARTMENT

20. Mr. Freeman's misconduct, as hereinabove chronicled and particularized by plaintiffs' accompanying memorandum of law, are demonstrative of the fact that Mr. Freeman and The New York Times Company Legal Department must not only be sanctioned and referred to disciplinary authorities, but disqualified on conflict of interest grounds and because they are necessary witnesses herein.

21. They are, in actuality, co-defendants – being among DOES 1-20. These DOES are expressly identified by ¶15 of the complaint as including "legal personnel...at The New York Times and/or THE NEW YORK TIMES COMPANY who have collusively participated in, aided and abetted, and/or acquiesced in" The Times' pattern and practice of journalistic fraud and who bear responsibility for FUCHS' column, including by "wilfully fail[ing] to undertake appropriate review and correction, necessitating this lawsuit." Such misconduct, as it relates directly to Mr. Freeman, is summarized at ¶¶125-138 and fully documented by the referred-to correspondence annexed as Exhibits T-1 – T-22 to the complaint.

22. Reflecting Mr. Freeman's guilty knowledge that he and the Legal Department are among DOES 1-20 is his omission of an appearance for them when he filed his March 1,

2006 notice of appearance and demand for complaint (Exhibit W)[3]. Such omission was notwithstanding The New York Times Company's paralegal Edward Bohan accepted substituted service for the DOES on February 14, 2006 (Exhibit V-2). All aspects of that service, including subsequent mailing to the DOES c/o The New York Times Company Legal Department, were in my presence.

23. Nor does Mr. Freeman mention the DOES in his dismissal motion. This includes, in particular, footnote 1 of his memorandum of law (at p. 1), where he accounts for ALL the other defendants except the DOES.

24. As summarized by ¶¶125-138 and documented by the referred-to correspondence annexed as Exhibits T-1 – T-22 to the complaint, The New York Times Company Legal Department had notice, since November 2005, of my analysis of the FUCHS' column (Exhibit A) and my correspondence to defendants KELLER and CALAME based thereon (Exhibits Q-S). Nonetheless, it rebuffed, my good-faith efforts to secure appropriate and independent review with flagrant dishonesty and unprofessional conduct, spurning my entreaties on behalf of New York Times Company shareholders, of which I am one. It thereby made inevitable a lawsuit which was then only a filed summons with notice – needlessly bringing upon the shareholders a litigation whose costs they would bear: "tens, if not hundreds of dollars in legal fees, potentially millions of dollars in damages – and attendant negative publicity that would cause the value of New York Times Company stock to tumble" (Exhibit

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[3] Prior thereto, my January 24, 2006 letter to Solomon B. Watson, IV (Exhibit T-16, p. 2) – to which Mr. Freeman was an indicated recipient -- afforded notice that he was among the DOES, with my January 30, 2006 letter to Rhonda Brauer (Exhibit T-18, p. 1), providing further specificity as to his disqualifying conflicts of interest. See ¶¶27-31 *infra*.

T-1, p. 1).

25. No independent attorney, with such expertise in libel law as Mr. Freeman and his colleagues and superiors in The New York Times Company Legal Department -- Senior Counsel McCraw, Senior Vice President/Chief Legal Officer Solomon B. Watson, IV and Corporate Compliance Officer/Senior Counsel Rhonda Brauer – have, could fail to have recognized that a lawsuit based on my analysis of the FUCHS' column (Exhibit A) and my correspondence with defendants KELLER and CALAME based thereon (Exhibit Q-S) would present viable causes of action for defamation and defamation *per se*. Such was obvious from caselaw of the U.S Supreme Court and New York Court of Appeals, with which Mr. Freeman was well familiar[4], requiring that defamatory statements be viewed in context. As they surely recognized, my analysis was nothing less than the most breathtaking of contextual examinations – highlighting with line-by-line, paragraph-by-paragraph precision how the column's defamatory characterizations of me and CJA were built on a succession of knowingly false and misleading implied and express facts and innuendos, buttressed by unidentified "staunchest defenders", "defenders", and a "most earnest listener", who I contended were fictions.

26. That Mr. Freeman – by his motion – has been unable to confront the analysis[5]

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[4] See cases cited by Mr. Freeman's memorandum of law – discussed by plaintiffs' memorandum of law (at pp. 24-25, 27-31).

[5] As demonstrated by plaintiffs' memorandum of law (at pp. 31-44), Mr. Freeman does not address the analysis in his memorandum of law, but instead substitutes a regurgitation of the column, to which he affixes bald claims and factual assertions that are non-probative because they are not made in an affidavit, in addition to being demonstrably false and misleading. Among these factual assertions: that FUCHS was the "'earnest listener' described" who was "exhausted by his interview with [me] where [I] unceasingly crusaded against judges though he was trying to interview [me] about [my] own

only underscores his betrayal of duty to The New York Times Company in the months prior to service of the summons with notice, as likewise the betrayal of his colleagues and superiors in the Legal Department, who threw away a succession of opportunities to confront it professionally, responsibly -- and in a manner consistent with Mr. Freeman's public assertion that "The Times has a 'strong policy' of correcting factual errors and readily does so 'irrespective of whether it increases or decreases the chances of its being sued'" (¶125).

27. I believe that their violation of the care and good faith owed to The Company and its shareholders is attributable to the fact, as highlighted by my July 29, 2005 letter to defendant KELLER accompanying the analysis (Exhibit Q, p. 5), that Times' correction of the column's "massive 'errors'" would require an investigative expose of the "disruption of Congress" case. Such would readily reveal a succession of electorally-significant, major stories about the corruption of judicial selection and discipline, involving our highest public officers – all of which The Times had not only wilfully and deliberately suppressed, but had done so with SULZBERGER's knowledge and that of The Times highest-ranking editors, to whom CJA repeatedly and fruitlessly turned throughout 15 years with complaint, after complaint, after complaint.

28. Beyond the professional and personal relationships that Mr. Freeman and other senior attorneys of the Legal Department have with SULZBERGER and these high-ranking editors, lawyers in the Legal Department, including its head, Mr. Watson, have been personally involved in Times' suppression of the electorally-significant major stories that would be

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case". Such does not even qualify as hearsay as Mr. Freeman's affidavit does not reiterate any of this under oath, let alone identify that these statements were made to him by FUCHS. Neither does he explain why FUCHS has not come forward with his own affidavit.

revealed by an expose of the "disruption of Congress" case. Indeed, it may be that the misconduct of high-level Times editors and SULZBERGER in connection with CJA's complaints is the product of the advice they received from the Legal Department – advice which has paved the way to plaintiffs' cause of action for journalistic fraud.

29. Suffice to say – and as reflected by the span of my correspondence with the Legal Department, substantiating ¶¶125-138 – neither Mr. Freeman nor Mr. Watson would answer my straightforward question as to whether lawyers in the Legal Department were aware of my analysis of FUCHS' column (Exhibit A) and correspondence with KELLER and CALAME based thereon (Exhibits Q-S) prior to my initiation of contact with the Legal Department in November 2005 (Exhibits T-1, T-3, T-5). Nor would they – or Mr. McCraw – respond to the issue of their disqualifying and divergent interests, raised by my correspondence as accounting for their unprofessional, bad-faith conduct as therein chronicled (Exhibits T-16, at p. 2; T-18, at p. 2). Likewise Mr. Brauer would not respond thereto – even to the limited extent of acknowledging that she would bring their conflict-driven misconduct to the attention of "the officers and directors of The New York Times Company", as my January 30, 2006 letter to her requested (Exhibit T-18, at p. 2).

30. Finally, and establishing Mr. Watson's direct involvement in the background events substantiating BOTH the defamation and journalistic fraud causes of action herein, I annex a copy of my first letter to SULZBERGER, dated June 30, 1992 (Exhibit BB-1) – referred to at ¶7 of the verified complaint. Such letter, enclosing a copy of my complaint to the New York City Department of Consumer Affairs for its "investigation to determine whether The Times should be free to induce purchase of its newspaper and mislead the pubic

by use of its motto 'All the News That's Fit to Print'", asked SULZBERGER to elaborate upon his reiteration of the historic Times' pledge of impartiality by discussing standards for coverage. Copies of The Times' response are also annexed: a July 14, 1992 letter from Mr. Watson to the Department of Consumer Affairs, falsely purporting, without any factual specificity, that my complaint was "not one of consumer protection, but...of editorial control of a newspaper" and providing no law for his proposition that, for "constitutional reasons", the Department of Consumer Affairs was "without...jurisdiction" (Exhibit BB-2). This was followed by SULZBERGER's own July 15, 1992 letter to me, refusing to articulate or discuss standards of coverage (Exhibit BB-3).

31. Mr. Watson – whose position, as reflected by his letterhead, was then Vice President and General Counsel to The New York Times Company – knew or had reason to know that New York City's Consumer Protection Law is expressly applicable to any "publisher or printer who is guilty of deception on the sale or offering for sale of its own services"[6] – and that the question as to whether the "All the News That's Fit to Print" motto -- featured on The Times front-page, not its editorial page -- is a false and misleading advertising claim, was properly within the jurisdiction of New York City's Department of Consumer Affairs. Certainly, Mr. Watson knew that such front-page motto had been proven false by the documents substantiating my complaint, establishing, in *readily-verifiable* fashion, the corruption of federal judicial selection involving the bar associations and public officers running for re-election – which The Times was suppressing from coverage, with no explanation as to its standards for coverage.

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[6] New York City Administrative Code §20-705.

PLAINTIFFS' ENTITLEMENT TO A DEFAULT JUDGMENT AGAINST THE NON-APPEARING DEFENDANTS AND, ADDITIONALLY, TO CONVERSION OF MR. FREEMAN'S DISMISSAL MOTION TO ONE FOR SUMMARY JUDGMENT AGAINST THE APPEARING DEFENDANTS

32. Plaintiffs commenced this action for libel and journalistic fraud on November 4, 2005 by filing a summons with notice (Exhibit V-1). Such was duly served upon all the defendants on February 14, 2006 – and I witnessed every aspect of the service effected on that date by Richard P. Simmonds, as attested to in his affidavit of service, filed in the County Clerk's office on March 3, 2006 (Exhibit V-2). Additionally, on February 21, 2006, service was effected on defendant THE NEW YORK TIMES COMPANY *via* the New York Secretary of State, and the affidavit of service of Robert Haak, enclosing the receipt from such service, was filed in the County Clerk's office on March 16, 2006 (Exhibit V-3). In response to Mr. Freeman's March 1, 2006 notice of appearance and demand for complaint (Exhibit W), plaintiffs served him with their verified complaint on March 21, 2006. The affirmation of service of Eli Vigliano, Esq. was filed with the Clerk's office on March 30, 2006, with the verified complaint (Exhibit Y).[7]

33. The defendants who are in default – having failed to appear notwithstanding the aforesaid due and timely service -- are defendants OKRENT, FUCHS, and DOES 1-20, in addition to The New York Times and its EDITORIAL BOARD. The basis for their liability is set forth in plaintiffs' verified complaint.

34. A copy is the verified complaint is submitted herewith and incorporated herein by reference for purposes of securing a default judgment against these non-appearing

[7] The filing of these documents with the Clerk's office is reflected by the copy of the computerized docket annexed to my May 1, 2006 letter to Mr. Freeman (Exhibit Z-3).

defendants – and, additionally, for purposes of plaintiffs' requested conversion of Mr. Freeman's dismissal motion to one for summary judgment against the appearing defendants.

WHEREFORE, it is respectfully prayed that Mr. Freeman's dismissal motion be denied and plaintiffs' cross-motion for sanctions, disciplinary referrals, disqualification, default, summary judgment, and other relief be granted.

ELENA RUTH SASSOWER

Sworn to before me this
1st day of June 2006

LAURA MARJI
Notary Public, State of New York
No. 01MA6049278
Qualified in Westchester County
Term Expires Oct. 10, 2006

Notary Public

TABLE OF EXHIBITS

Z-4: George Freeman's May 8, 2006 letter to Elena Sassower

Z-5: Elena Sassower's May 23, 2006 letter to George Freeman

Z-6: George Freeman's May 23, 2006 e-mail to Elena Sassower

Exhibit AA-1: Coverpage and 2-page excerpt of U.S. Senate Judiciary Committee's June 25, 1996 hearing – with handwritten "Ex 'H'" and numbering 46-48 – downloaded from CJA's website, www.judgewatch.org: "Paper Trail to Jail": Elena Sassower's May 21, 2003 letter to Capitol Police

AA-2: CJA's website "Paper Trail to Jail", as it appeared in the weeks preceding Mr. Freeman's April 13, 2006 dismissal motion

Exhibit BB-1: Elena Sassower's June 30, 1992 letter to Arthur Sulzberger, Jr., enclosing her June 30, 1992 complaint to New York City Department of Consumer Affairs and Sulzberger's January 17, 1992 editorial statement "From the Publisher"

BB-2: July 14, 1992 letter from Solomon B. Watson, IV to New York City Department of Consumer Affairs

BB-3: July 15, 1992 letter from Arthur Sulzberger, Jr. to Elena Sassower