

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

superseding/corrected

----- X
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc.,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

Index # 5122-16
RJI #01-16-122174

**VERIFIED SUPPLEMENTAL
COMPLAINT**

Plaintiffs,
-against-

JURY TRIAL DEMANDED

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, in his official capacity
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
and JANET M. DiFIORE, in her official capacity as Chief Judge of the
State of New York and chief judicial officer of the Unified Court System,

Defendants.
-----X

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

111. Plaintiffs repeat, reallege, and reiterate the entirety of their September 2, 2016 verified complaint in this citizen-taxpayer action, which they incorporate by reference, including its incorporated three pleadings from their prior citizen-taxpayer action, *CJA v. Cuomo, et al* (Albany Co. #1788-2014), *to wit*, their March 23, 2016 proposed verified second supplemental complaint, their March 28, 2014 verified complaint, and their March 31, 2015 verified supplemental complaint – Exhibits A, B, and C thereto.¹

¹ The record of the prior citizen-taxpayer action, as likewise of this citizen-taxpayer action, is posted on plaintiff CJA's website, www.judgewatch.org, accessible *via* the prominent homepage link: "CJA's Citizen-

112. Virtually all the constitutional, statutory, and rule violations detailed by plaintiffs' September 2, 2016 verified complaint pertaining to the budget for fiscal year 2016-2017 – and by their incorporated pleadings pertaining to the budgets for fiscal years 2016-2017, 2014-2015 and 2015-2016 – are replicated with respect to the budget for fiscal year 2017-2018. Indeed, the constitutional violations are not only replicated, but the legislative defendants have so brazenly repudiated Article VII, §§4, 5, 6 of the New York State Constitution – and the controlling consolidated Court of Appeals decision in the budget lawsuits to which they were parties: *Silver v. Pataki and Pataki v. Assembly*, 4 N.Y.3d 75 (2004) – that nothing more is required for summary judgment to plaintiffs on their reiterated fifth cause of action (¶¶54-58)² than to compare defendant Governor's budget bills for fiscal year 2017-2018 with the legislative defendants' "amended" budget bills. And facilitating the comparison are the legislative defendants' one-house budget resolutions and their accompanying summary/report of recommended budget changes, already embodied in their "amended" budget bills – as well as their own press releases and public statements.

113. Suffice to here quote the unequivocal language of Article VII, §§4, 5, 6, which the legislative defendants have utterly transgressed:

§4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to

Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance".

² As identified by ¶56, the fifth cause of action is ¶¶362-383 of the twelfth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint and its sixteenth cause of action (¶¶458-470), in its entirety.

the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV.

§5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill.

§6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation."

114. Indeed, because the legislative defendants' "amending" of defendant Governor's budget bills not only violates Article VII, §§4, 5, 6, but was fraud and no "amending" in fact, accomplished by their violation of their own legislative rules, summary judgment for plaintiffs is also mandated on their reiterated fourth cause of action (§§48-53)³ pertaining to the legislative defendants' plethora of statutory, legislative rule, and other constitutional violations with respect to the fiscal year 2017-2018 budget.

115. As stated by plaintiffs' September 2, 2016 complaint (§ 33) – quoting from their prior pleadings – and hereinbelow further demonstrated:

"In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized

³ As identified by §49, the fourth cause of action is the twelfth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint, (Exhibit A: §§336-384).

control of the Legislature’s own budget, throwing asunder the constitutional command: ‘itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house’.”

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

TABLE OF CONTENTS

<u>FACTUAL ALLEGATIONS</u>	7
The Legislature’s Proposed Budget for Fiscal Year 2017-2018.....	7
<i>(Facts Pertaining to a Reiterated First Cause of Action (¶¶23-33))</i>	
The Judiciary’s Proposed Budget for Fiscal Year 2017-2018.....	10
<i>(Facts Pertaining to a Reiterated Second Cause of Action (¶¶34-39))</i>	
A New Legislative Session.....	14
<i>(Facts Pertaining to a Reiterated Fourth Cause of Action (¶¶48-53))</i>	
The Governor’s Legislative/Judiciary Budget Bill #S.2001/A.3001	15
<i>(Facts Pertaining to a Reiterated Third Cause of Action (¶¶40-47))</i>	
The Governor’s Aid to Localities Budget Bill #S.2003/A.3003.....	19
<i>(Facts Pertaining to a Reiterated Tenth Cause of Action (¶¶ 85-110))</i>	
The Legislature’s Incompetent, Superficial, & Misleading Budget Analyses.....	22
With respect to the Legislature’s proposed budget	22
<i>(Facts Pertaining to a Reiterated First Cause of Action (¶¶23-33))</i>	
With respect to the Judiciary’s proposed budget	23
<i>(Facts Pertaining to a Reiterated Second Cause of Action (¶¶34-39))</i>	
With respect to district attorney salary reimbursement to the counties in the Governor’s Aid to Localities Budget Bill # S.2003/A.3003	24
<i>(Facts Pertaining to a Reiterated Tenth Cause of Action (¶¶85-110))</i>	
With respect to the Governor’s qualifying language in his Aid to Localities Budget Bill #S.2003/A.3003 – & in his other appropriation bills	25
<i>(Facts Pertaining to a Reiterated Fifth Cause of Action (¶¶54-58))</i>	
The Senate & Assembly Joint Budget Hearings.....	27
<i>(Facts Pertaining to a Reiterated Fourth Cause of Action (¶¶48-53))</i>	

The Legislature’s January 30, 2017 Budget Hearing on “Local Government Officials/General Government”	28
<i>(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action</i>	
<i>(¶¶48-53; 54-58))</i>	
The Legislature’s January 31, 2017 Budget Hearing on “Public Protection”	32
<i>(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action</i>	
<i>(¶¶48-53; 54-58))</i>	
Plaintiffs’ Post-Hearing Advocacy	36
<i>(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action</i>	
<i>(¶¶48-53; 54-58))</i>	
The Senate and Assembly’s “Amending” of the Governor’s Budget Bills.....	41
<i>(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action</i>	
<i>(¶¶48-53; 54-58))</i>	
The Senate and Assembly One-House Budget Resolutions.....	46
<i>(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action</i>	
<i>(¶¶48-53; 54-58))</i>	
The Senate and Assembly General Budget Conference Committee & Subcommittees.....	58
<i>(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action</i>	
<i>(¶¶48-53; 54-58))</i>	
<u>CAUSES OF ACTION</u>	61
Reiterating, for Fiscal Year 2017-2018, the Ten Causes of Action of Plaintiffs’ September 2, 2016 Verified Complaint	
<u>PRAYER FOR RELIEF/WHEREFORE</u>	63
For a declaratory judgment pursuant to State Finance Law §123 <i>et seq.</i> – Article 7-A, “Citizen-Taxpayer Actions”:	
<u>As to the First Cause of Action (¶¶23-33), Reiterated for Fiscal Year 2017-18</u>	63
The Legislature’s Proposed Budget for Fiscal Year 2017-2018, Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful	
<u>As to the Second Cause of Action (¶¶34-39), Reiterated for Fiscal Year 2017-18</u>	64
The Judiciary’s Proposed Budget for 2017-2018, Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful	
<u>As to the Third Cause of Action (¶¶40-47), Reiterated for Fiscal Year 2017-18</u>	64
Budget Bill #S.2001/A.3001 is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies “Without Revision”	

<u>As to the Fourth Cause of Action (¶¶48-53), Reiterated for Fiscal Year 2017-18</u>	<u>65</u>
Nothing Lawful or Constitutional can Emerge from a Legislative Process that Violates its Own Statutory & Rule Safeguards	
<u>As to the Fifth Cause of Action (¶¶54-58), Reiterated for Fiscal Year 2017-18</u>	<u>67</u>
The “Process” by which the State Budget for Fiscal Year 2017-18 Is Being Enacted Violates Article VII, §§4, 5, 6 of the New York State Constitution	
<u>As to the Sixth Cause of Action (¶¶59-68), Reiterated for Fiscal Year 2017-18</u>	<u>67</u>
Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, <i>As Written</i> – and the Judicial Salary Increase Recommendations of the Commission on Legislative, Judicial & Executive Compensation are Null & Void by Reason Thereof	
<u>As to the Seventh Cause of Action (¶¶69-76), Reiterated for Fiscal Year 2017-18</u>	<u>68</u>
Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, <i>As Applied</i> – & the Judicial Salary Increase Recommendations of the Commission on Legislative, Judicial & Executive Compensation are Null & Void by Reason Thereof	
<u>As to the Eighth Cause of Action (¶¶77-80), Reiterated for Fiscal Year 2017-18</u>	<u>69</u>
The Violations of <u>Express</u> Statutory Requirements of Chapter 60, Part E, of the Laws of 2015 by the Commission on Legislative, Judicial & Executive Compensation Render its Judicial Salary Increase Recommendations Null and Void	
<u>As to the Ninth Cause of Action (¶¶81-84), Reiterated for Fiscal Year 2017-18</u>	<u>70</u>
Three-Men-in-a-Room Budget Dealing-Making is Unconstitutional, <i>As Unwritten</i> and <i>As Applied</i>	
<u>As to the Tenth Cause of Action (¶¶85-110), Reiterated for Fiscal Year 2017-18</u>	<u>70</u>
The Appropriation Item Entitled “For grants to counties for district attorney salaries”, in the Division of Criminal Justice Services’ Budget, Contained in Aid for Localities Budget Bill #S.2003-B/A.3003-B, is Unlawful and Unconstitutional. Reappropriation Items are also Improper, if not Unlawful	

* * *

FACTUAL ALLEGATIONS⁴

The Legislature's Proposed Budget for Fiscal Year 2017-2018 *(Facts Pertaining to a Reiterated First Cause of Action (¶¶23-33))⁵*

117. By a one-sentence letter virtually identical, but for the dates, to the one-sentence letters of the past three fiscal years, defendants FLANAGAN and HEASTIE, as Temporary Senate President and Assembly Speaker, addressed a December 1, 2016 letter to defendant CUOMO stating:

“Attached hereto is a copy of the Legislature’s Budget for the 2017-2018 fiscal year pursuant to Article VII, Section I of the New York State Constitution.”

118. Identical to those three previous letters, this December 1, 2016 letter was not sworn to, but merely signed. It made no claim to be attaching “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house” – as required by Article VII, §1 of the New York State Constitution.

119. Except for minor changes in its narrative text, the transmitted legislative budget was identical in its formatting to those for the previous three fiscal years.⁶ It began with a five-page budget narrative, whose fifth page listed “Budget Highlights – Joint Entities”. The sixth page contained a chart entitled “All Funds Requirements for the Legislature”. This was followed by a ten-page “Schedule of Appropriations”.

120. There was no certification among the 16 pages of the legislature’s proposed budget – nor even a reference to “itemized estimates” of the Legislature’s “financial needs” or to Article VII,

⁴ The substantiating documents, transcripts, and videos referred to herein are posted on CJA’s webpage for this verified supplemental complaint, accessible from CJA’s homepage, www.judgewatch.org (see footnote 1, *supra*).

⁵ As identified by ¶24, the first cause of action herein is the ninth cause of action of plaintiffs’ March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶301-316).

⁶ The reference to “the three previous fiscal years” and similar references are shorthand for what is actually the current 2016-2017 fiscal year and the preceding two fiscal years: 2015-2016 and 2014-2015.

§1 of the New York State Constitution.

121. Virtually each figure in the proposed legislative budget for fiscal year 2016-2017 was identical to each figure of the proposed legislative budgets for the previous three fiscal years – except for a 3% increase. As such, and except for this 3% increase, these figures were also identical to virtually each figure in the legislative budgets for the prior three fiscal years, *to wit*, fiscal years 2013-2014, 2012-2013, and 2011-2012.

122. Identically to the last three years, more than half of the 10-page “Schedule of Appropriations” was devoted to less than 10% of the budget. Most of the 90% balance consisted of lump-sum appropriations:

- (i) for defendant SENATE’s member offices and committees, combined in a single lump sum;
- (ii) for defendant ASSEMBLY’s member offices and committees, combined in a single lump sum;
- (iii) for defendant SENATE’s “senate operations”, which was its own lump-sum; and
- (iv) for defendant ASSEMBLY’s “administrative and program support operations”, another lump sum.

123. Identically to the last three years, the section entitled “Senate and Assembly Joint Entities” (at pp. 11-14) omitted most of the joint commissions the Legislature is required to establish and fund pursuant to Legislative Law, Article 5-A (§§82, 83). Among these, the Legislative Commission on State-Local Relations and the Legislative Commission on Government Administration. Additionally, the Administrative Regulations Review Commission, required to be established and funded pursuant to Legislative Law, Article 5-B (§§86-88), was omitted.

124. Identically to the last three years, the transmitted 16-page legislative budget contained no “General State Charges”, which were not even mentioned.

125. Identically to the last three years, the transmitted 16-page legislative budget contained no reappropriations, which were not even mentioned.

126. Identically to the last three years, neither defendant SENATE nor defendant ASSEMBLY then or thereafter posted the December 1, 2016 transmittal letter and 16-page legislative budget on their websites, despite plaintiffs' request that they do so.

127. The failure of defendants SENATE and ASSEMBLY to post their own budget requests reflects their knowledge that the budget requests could not withstand scrutiny – even on the most basic level. This includes its narrative presentation. As illustrative:

- (a) the narrative (at p. 2) refers to defendant ASSEMBLY as conducting its “legislative business through the operation of 38 standing committees”. Yet, the Assembly website lists 37 standing committees and only 37 are enumerated by Assembly Rule IV, §1(a). Plaintiffs' FOIL request pertaining to “THE MISSING 38th Assembly standing committee” failed to produce records pertaining to it;
- (b) the only standing committees identified by the narrative are the Senate Finance Committee and Assembly Ways and Means Committee, as to which there is a separate heading “FISCAL COMMITTEES”, whose text (at p. 3) includes the following:

“...the Chairmen and ranking Minority Members of the Senate Finance Committee and the Assembly Ways and Means Committee function as an Audit Committee, with the responsibility to select an independent certified public accountant to conduct an audit of the state's annual financial statements, receive the results of such independent audit, and submit the resulting audit certification to the State Comptroller for the State's Comprehensive Annual Financial Statement.”

Plaintiffs' FOIL request to defendants SENATE and ASSEMBLY for documents establishing the functioning of the Audit Committee” with respect to the selection of an “independent certified public accountant to conduct an audit of the state's annual financial statements”; its receipt of “results” and “the resulting audit certification” for each fiscal year since 2013-2014 have failed to produce records.

128. The budget narrative is missing any statement as to Senate and Assembly compliance with Article VI of the Legislative Law (§§89-92) as enacted by the New York State Governmental

Accountability, Audit and Internal Control Act of 1987 and 1999, requiring internal controls, internal audits and, every three years, independent audits. Plaintiffs' FOIL requests to defendants SENATE and ASSEMBLY for documents establishing compliance have not resulted in responses consistent therewith.

129. The failure of defendants FLANAGAN and HEASTIE to include, in their budget narrative – or their transmittal letter – any information about compliance with Article VI of the Legislative Law (§§89-92) has enabled them to conceal that the “independent audits” are sham, fraudulent documents, not the least reason because of their bald and fraudulent representations – accepted by the “independent audit” – as to “controls” pertaining to enactment of the Legislature's budget.

The Judiciary's Proposed Budget for Fiscal Year 2017-2018
(Facts Pertaining to a Reiterated Second Cause of Action (¶¶34-39))⁷

130. By two memoranda, dated December 1, 2016, Chief Administrative Judge Lawrence Marks furnished a two-part presentation of the Judiciary's proposed budget to the same recipients as last year: defendants CUOMO, FLANAGAN, and HEASTIE, Senate Coalition Leader Jeffrey Klein, Senate Minority Leader Andrea Stewart-Cousins, Assembly Minority Leader Brian Kolb, as well as the chair and ranking member of the Senate Finance Committee – Senator Catharine Young and Senator Liz Krueger –; the chair and ranking member of the Assembly Ways and Means Committee – Assemblyman Herman Farrell, Jr. and Assemblyman Bob Oaks –; and the chairs of the Senate and Assembly Judiciary Committees – Senator John Bonacic and Assemblywoman Helene Weinstein.

⁷ As identified by ¶35, plaintiffs' second cause of action herein is the tenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶317-331).

131. In language identical to that used for the past three years, the Chief Administrative Judge's memoranda represented this two-part proposed budget as: "itemized estimates of the annual financial needs of the Judiciary..." for its operating expenses and

"itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary."

132. The latter memorandum explained that the two-part presentation:

"follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2017-2018 Fiscal Year." (underlining added).

133. The two parts of the Judiciary's proposed budget contained, for each part, a certification by the Chief Judge and approval by the Court of Appeals identical to those furnished in the last three years. However, identically to the last three years, because of the future tense "will" pertaining to the "single budget bill" and the bill's placement in the "Executive Summary" section, NO certification appeared to encompass the "single budget bill".

134. Identically to the last three years, the Judiciary's two-part budget, including its single "Executive Summary" and statistical tables, did not provide a cumulative dollar total for the Judiciary's budget request. Likewise, the Judiciary's "single budget bill" did not provide a cumulative tally.

135. Identically to the last three years, the Judiciary's failure to provide a cumulative dollar total for its two-part budget and to tally the figures in its "single budget bill" enabled it to conceal a discrepancy of tens of millions of dollars between them. This discrepancy was the result of

reappropriations in the “single budget bill” (at pp. 13-16) that were not in the Judiciary’s two-part budget presentation.

136. The Judiciary’s two-part budget presentation contained no reappropriations. They appeared only in the “single budget bill”. Their amount, as identified on the first page of the “single budget bill”, was \$84,350,000. This did not include the \$15,000,000 in IOLA reappropriations, identified on the last page of the “single budget bill” as part of its “SCHEDULE” (at p. 13) – and which, if added, make a cumulative total of \$99,350,000 in reappropriations.

137. Identically to the last three years, the Judiciary’s “single budget bill” consisted of two sections: the first, denominated §2, containing appropriations, including “General State Charges” (pp. 1-12), and the second, denominated §3, containing reappropriations (pp. 13-15).

138. Identically to the last three years, §2 of the “single budget bill” began with a paragraph reading:

“The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2017.” (at p. 1).

Further down the page, under the heading “SCHEDULE”, another paragraph, stated:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.” (at p. 1).

139. Identically to the last three years, §3 of the “single budget bill” began with a paragraph reading:

“The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated being the unexpended balances of a prior year’s appropriation, are hereby reappropriated from the

same funds and made available for the same purposes as the prior year's appropriation, unless amended herein, for the state fiscal year beginning April 1, 2017." (at p. 13).

140. Identically to the last three years, the §3 listing of reappropriations under the heading "SCHEDULE" were pretty barren. Most referred to chapter 51, section 2 of the laws of 2016, 2015, 2014, 2013, 2012 and also chapter 51, section 3 of the laws of 2016 – which are the enacted budget bills for the Judiciary for those years, its appropriations and reappropriations, respectively. Yet they were completely devoid of specificity as to their purpose other than a generic "services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1..."; or "Contractual Services" (at pp. 13-14).

141. Missing from the Judiciary's two-part budget presentation, including in its Executive Summary, was:

- (a) any reference to the Judiciary's compliance with Article 7-D (§249), entitled "Internal Control Responsibilities of the Judiciary", whose section c requires "independent audits" every three years. Plaintiffs' FOIL requests to the Judiciary for documents establishing compliance therewith have not resulted in ANY production.
- (b) any reference to the judicial salary increase that would take effect by "force of law" on April 1, 2017 based on the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – unless overridden by the Legislature. Plaintiffs' FOIL requests for documents pertaining to the cost of that judicial salary increase have not resulted in ANY production by the Judiciary.
- (c) any reference to the judicial salary increase that had taken effect "by force of law" on April 1, 2016 based on the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – including its cost, and how the Judiciary had paid for it, inasmuch as defendants CUOMO and SENATE and ASSEMBLY had not appropriated monies to the Judiciary to fund it;
- (d) the Chief Administrative Judge's approvals of increases, decreases, and interchanges pursuant to the §2 text of the legislative/judiciary budget bill for fiscal year 2016-2017 – particularly the approvals that "enabled the Judiciary to fund the 'force of law' judicial salary increases for 2016-2017

recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – and, additionally, to fund the increases in general state charges resulting therefrom”. Plaintiffs’ FOIL requests to the Judiciary for documents pertaining thereto have not resulted in ANY production.

A New Legislative Session

(Facts Pertaining to a Reiterated Fourth Cause of Action (§§48-53))

142. Pursuant to Article III, §8 of the New York State Constitution, all members of the New York State Legislature were elected/re-elected on the Tuesday following the first Monday in November 2016. Pursuant to Article XIII, §4, the new legislative session commenced six weeks later, on January 4, 2017, with each house beginning by swearing in its members by the oath of office, prescribed by Article XIII, §1:

“I do solemnly swear that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of, according to the best of my ability”.

143. Additionally, and pursuant to Article III, §9, defendant SENATE chose “a temporary president”, defendant FLANAGAN, and defendant ASSEMBLY chose “a speaker”, defendant HEASTIE, thereupon adopting rules for the 2017-2018 legislative session.

144. Inasmuch as the December 1, 2016 proposed budgets of both the Legislature and Judiciary already replicated ALL of the constitutional and statutory violations of their prior budgets, laid out by the pleadings in plaintiffs’ instant and prior citizen-taxpayer actions – as to which plaintiffs’ summary judgment entitlement, *as a matter of law*, is established by the record – plaintiff SASSOWER reached out to defendants FLANAGAN, HEASTIE, and to Senate Minority Leader Stewart-Cousins and Assembly Minority Leader Kolb, the chairs and ranking members of appropriate Senate and Assembly committees, as well as their rank-and-file members, especially those who are lawyers. Such outreach efforts, by phone and e-mail, commenced on January 9, 2017,

and brought to their attention the record of this citizen-taxpayer action, posted on plaintiff CJA's website, www.judgewatch.org, requested to meet with them about it, and requested that it be put on the agenda of committee meetings for discussion and vote as to appropriate action.

145. Not a single legislator followed up by scheduling a meeting. This includes legislators for whom plaintiff SASSOWER completed their required meeting request forms: Defendant HEASTIE; Senator Brad Hoylman, ranking member of both the Senate Committee on Investigations and Government Operations and Senate Judiciary Committee; and Senate Judiciary Committee Chair Bonacic. It also includes plaintiffs' own senator – Senate Minority Leader Stewart-Cousins – and their own assemblyman, David Buchwald, a Harvard-educated lawyer, who sits on three of the appropriate committees of the Assembly: its Judiciary Committee; its Committee on Governmental Operations; and its Committee on Local Governments.

146. Nor was the record of this citizen-taxpayer action placed on the agenda of any committee meeting for discussion and vote as to appropriate action.

147. On January 17, 2017, pursuant to Article VII, §1 of the New York State Constitution, defendant CUOMO submitted to defendant SENATE and ASSEMBLY five budget bills for fiscal year 2017-2018, deemed "appropriation bills". On January 23, 2017, he submitted six additional budget bills, deemed "Article VII bills". Pursuant to Senate Rule VII, §6 and Assembly Rule III, §2(g), all these budget bills were referred to the Senate Finance Committee and Assembly Ways and Means Committee.

The Governor's Legislative/Judiciary Budget Bill #S.2001/A.3001
(Facts Pertaining to a Reiterated Third Cause of Action (¶¶40-47))

148. Identically to the last three years, defendant CUOMO combined the Legislature's proposed budget and the Judiciary's proposed budget into a legislative/judiciary budget bill – #S.2001/A.3001 – an "appropriation bill".

149. Defendant CUOMO's Legislative/Judiciary Budget Bill #S.2001/A.3001 repeated all the constitutional, statutory, and rule violations of his prior legislative/judiciary budget bills, detailed by plaintiffs' September 2, 2016 verified complaint and incorporated prior pleadings.

150. Identically to the last three years, notwithstanding Article VII, §1 allows the Governor to make "such recommendations...as he deems proper" with respect to the proposed budgets of the Legislature and Judiciary, defendant CUOMO furnished no recommendations regarding the Legislature's proposed budget. He thereby avoided identifying the dollar total the Legislature's budget.

151. However, in contrast to past years, defendant CUOMO also furnished no recommendations regarding the Judiciary's proposed budget, which in all previous years of his tenure he presented as his "Commentary of the Governor on the Judiciary". He thereby avoided identifying what he had included in his past commentaries: his figures as to the dollar amount of the Judiciary's budget – and recommendations with respect to judicial salary increases.

152. Identically to the last three years, the legislative portions of defendant CUOMO's bill, §1 and §4 (pp. 1-9, 27-53), were non-consecutive. The judiciary portions of the bill, §2 and §3 (pp. 10-22, 23-26), were consecutive and, *verbatim*, the same §2 and §3 as were the entirety of the Judiciary's "single budget bill".

153. Identically to the last three years, this §1 pertaining to the Legislature (pp. 1-9), replicated the 10-page schedule of legislative appropriations for fiscal year 2017-2018 that defendants FLANAGAN and HEASTIE had transmitted to defendant CUOMO by their December 1, 2016 letter. However, the following prefatory paragraph was inserted to this §1:

"The several amounts named in this section or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the

respective public officers and for the fiscal year beginning April 1, 2017.”
(p. 1).

154. Identically to the last three years, this prefatory paragraph for legislative appropriations in §1 mirrored the prefatory paragraph for judiciary appropriations in §2, whose wording differed only by omission of the words hereinbelow underlined:

“The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2017.” (at p. 10, underlining added).

155. Identically to the last three years, the bill’s §3 for the Judiciary bore the title “Reappropriations” (p. 23). By contrast, its §4 for the Legislature was not titled “Reappropriations”, although that is what they were – for the Legislature (p. 27).

156. Identically to the last three years, the §4 legislative reappropriations (pp. 27-53) were not part of the legislative budget that defendants FLANAGAN and HEASTIE had transmitted by their December 1, 2016 coverletter. These legislative reappropriations, spanning 26-1/4 pages and untallied, amounted to tens of millions of dollars, and, by description, were not suitable for certification as reappropriations.

157. Identically to the last two years, these legislative reappropriations at §4 were prefaced by the following two-paragraph text:

“The several amounts named herein, or so much thereof as shall be sufficient to accomplish the purpose designated, being the unexpended balances of prior year’s appropriations, are hereby reappropriated from the same funds and made available for the same purposes as the prior year’s appropriations, unless amended herein, for the state fiscal year beginning April 1, 2017.

For the purpose of complying with the state finance law, the chapter, section, and year of the last act reappropriating a former original appropriation or any part thereof was, unless otherwise indicated, chapter 51, section 4, of the laws of 2016. Where the full text of law being continued is not shown, leader dots ... are used. However, unless a change is clearly indicated by the use of brackets [] for deletions

and italics for additions, the purposes, amounts, funding source and all other aspects pertinent to each item of appropriation shall be as last appropriated.” (p. 27, underlining added).

158. Upon information and belief, the unidentified “state finance law” referred to is State Finance Law §25, entitled “Reappropriation bills”, which reads:

“Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation.

If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show clearly any such change.”

159. Identically to the last three years, defendant CUOMO’s Legislative/Judiciary Budget Bill #S.2001/A.3001 showed no “brackets []” or “italics” for the reappropriations indicating any changes in “the purposes, amounts, funding sources and all other aspects pertinent to each item...as last appropriated”.

160. Identically to the last three years, notwithstanding defendant CUOMO’s Budget Bill #S.2001/A.3001 added tens of millions of dollars in untallied legislative reappropriations (pp. 27-53), although they had not been part of the December 1, 2016 transmitted legislative budget, the Legislature’s “General State Charges”, which had also not been presented by its December 1, 2016 budget, were not added to the budget bill.

161. As for the §3 judiciary reappropriations in defendant CUOMO’s Budget Bill #S.2001/A.3001, these were, identically to the last three years, the Judiciary’s seemingly uncertified “single budget bill” and only partially tallied (pp. 1, 13-16). The total tally of the judiciary reappropriations in defendant CUOMO’s Budget Bill #S.2001/A.3001 is \$99,350,000.

162. Identically to the last three years, there is no cumulative dollar total in defendant CUOMO’s Budget Bill #S.2001/A.3001 either for the whole bill (pp. 1-54), or for its §1 and §4

legislative portion (pp. 1-9, 27-53), or for its §2 and §3 judiciary portion (pp. 10-22, 23-26), thereby concealing hundreds of millions of dollars in legislative and judiciary reappropriations.

163. Identically to the last three years, defendant CUOMO did not accompany his Legislative/Judiciary budget bill with any fiscal notes, fiscal impact statements, or introducer's memoranda, notwithstanding required by Senate Rule VIII, §8, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) – made applicable by Senate Rule VII, §6 and Assembly Rule III, §2(g) which identically state:

“When a bill is submitted or proposed by the Governor, by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill...”.

The Governor's Aid to Localities Budget Bill #S.2003/A.3003
(Facts Pertaining to a Reiterated Tenth Cause of Action (§§ 85-110))

164. Identically to last year, defendant CUOMO's massive Aid to Localities budget bill, #S.2003/A.3003, contained a section for the Division of Criminal Justice Services. Identically to last year, paragraph d of the bill's prefatory §1 read:

“No moneys appropriated by this chapter shall be available for payment until a certificate of approval has been issued by the director of the budget, who shall file such certificate with the department of audit and control, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee.” (at p. 1).

165. The Division of Criminal Justice Services' aid to localities budget was at pages 60-120 of the 1,080-page bill. Identically to last year, its first page furnished a tally of “All Funds” appropriations and, separately, a tally of “All Funds” reappropriations. The “All Funds” appropriations were \$184,245,000 – and, identically to last year, were dwarfed by the “reappropriations”: \$263,379,898.

166. Identically to last year, the “Schedule” of appropriations included an item: “For grants to counties for district attorney salaries”, reading:

“Notwithstanding the provisions of subdivisions 10 and 11 of section 700 of the county law or any other law to the contrary, for state fiscal year 2017-18 the state reimbursement to counties for district attorney salaries shall be equal to the amount received by a county for such purpose in 2013-14 and 100 percent of the difference between the minimum salary for a full-time district attorney established pursuant to section 183-a of the judiciary law prior to April 1, 2014, the minimum salary on or after April 1, 2014. **For those counties whose salaries are not covered by section 183-a of the judiciary law,** the state reimbursement for these counties will be pursuant to a plan prepared by the commissioner of criminal justice services and approved by the director of the budget (20244) 4,212,000” (bold added).

167. Other than the identification of “fiscal year 2017-18” to which the appropriation applied, both the appropriation amount and language were identical to that in the fiscal year 2016-2017 Aid to Localities budget bill – and, excepting the “(20244)”, identical to the item in the Aid to Localities budget bills for fiscal years 2015-2016 and 2014-2015.

168. Yet, differing from last year’s bill, defendant CUOMO attached the following qualifying language to eight items of appropriations and to eight items of reappropriations for the Division of Criminal Justice Services:

“Notwithstanding any law, rule or regulation to the contrary:

1. In the event that receipts, including but not limited to receipts from the federal government, are less than the amounts assumed in the 2017-2018 financial plan, as determined by the director of the budget, the amount available for payment under this appropriation may be reduced by the director of the budget in accordance with a written allocation plan promulgated by the director of the budget to offset that loss in receipts. Such written allocation plan shall specify the uniform percentage reductions of the appropriations and related cash disbursements subject to such plan, and be filed with the state comptroller, the chairperson of the senate finance committee and the chairperson of the assembly ways and means committee and posted on the website of the New York state division of the budget within five business days of such filing. The director of the budget may revise the written allocation plan subsequent to its filing with the state comptroller, the chairperson of the senate finance committee and the chairperson of the assembly ways and means and shall repost revisions that materially alter such plan;

2. The commissioner of the division of criminal justice services shall have the authority to take such actions as he or she deems necessary to implement and/or achieve the reductions set forth in the written allocation plan, subject to the approval of the director of the budget, including, but not limited to, reducing spending and liabilities for statutorily authorized programs. Such reductions shall be made in compliance with any applicable federal law, and to the extent practicable shall be made:

- (a) uniformly against existing liabilities and spending; and
- (b) in a manner that maximizes federal financial participation, if applicable”.*

169. Different qualifying language was attached, with underscoring, to another 28 items in the Criminal Justice Services’ aid to localities budget – all reappropriations:

“Provided however that notwithstanding anything to the contrary found within any provision of law, any resolution of the senate, or any memorandum of understanding or other agreement: (A) no contract or grant agreement requested by, or funding for a contract or agreement necessitated by a request for funding by, a member of the senate (which for purposes of this reappropriation shall mean a member of the senate that submits, either verbally or in writing, a request for a contract, grant agreement, or funding for a contract or agreement, to either (i) the temporary president and majority leader of the senate, (ii) the chair of the senate finance committee, (iii) any state agency, and/or (iv) any other government official, and who shall be hereinafter referred to as a ‘legislative sponsor’) shall be executed by any state agency on or after April 1, 2017 through March 31, 2018 that is funded by this appropriation unless all of the following conditions are satisfied: (1) each legislative sponsor of such contract, grant agreement, or funding request necessitating a contract or grant agreement submits a written declaration to the director of the division of the budget that (a) the requested contract, grant agreement, or funding request is for a lawful purpose and that all funds expended pursuant to the terms of the contract or grant agreement are intended to be used and will be used solely and directly for the lawful purpose or purposes specified in the contract, grant agreement, or funding request and (b) the legislative sponsor has (i) no financial interest, direct or indirect, in connection with the requested contract or grant agreement, or funding request, (ii) not received and will not receive any financial benefit, either directly or indirectly from the contractor or grantee that is a party to the requested contract or grant agreement or contract or grant agreement necessitated by the legislative sponsor's funding request, and (iii) no known conflict of interest as set forth in section 74 of the public officers’ law in connection with the requested contract or grant agreement, or funding request, and (2) the senate has, for each requested contract or grant agreement, or funding request necessitating a contract or grant agreement, posted on its public facing website for a period of at least 30 days commencing from the date of such request: (a) the legal name of the proposed contract or grant recipient, including the senate district in

* This qualifying language appears at pp. 60-61; pp. 61-62; pp. 63-64; pp. 64-65; pp. 65-66; pp. 66-67; pp. 67-68; pp. 68-69 – all appropriations, where it is not underscored – and then, in reappropriations, where it is underscored: p. 73; pp. 73-74; pp. 74-75; p. 75; p. 76; pp. 76-77; pp. 77-78; p. 111.

which such recipient resides and a description of the project(s) such contract or grant will be used for; (b) the names of all legislative sponsors, including each sponsor's district; (c) the amount of funding requested; and (d) the proposed administering state agency; and (B) expenditures shall only be made from this reappropriation to pay for obligations incurred under an executed contract or grant agreement meeting the requirements set forth in clause (A) above if the senate has, for such executed contract or grant agreement, continuously posted on its public facing website the information required in item (2) of clause (A) of this section from the date of the request for such contract or grant agreement through the date of expenditure ...” (underlining in defendant CUOMO’s original bill – pp. 78-79; 79-80; p. 80; p. 81; pp. 85-86; pp. 86-87; pp. 87-88; pp. 88-89; pp. 89-90; pp. 91-92; pp. 92-93; pp. 93-94; pp. 94-95; p. 96; p. 97; pp. 98-99; pp. 99-100; pp. 100-101; p. 103; pp. 104-105; pp. 106-107; pp. 107-108; pp. 108-109; p. 113; pp. 115-116; pp. 116-117; p. 118; pp. 119-120) & 30-day amended bill).

170. Identically to last year, based upon the definition of “reappropriations” on the Division of Budget website, quoted at ¶¶106-107 of the September 2, 2017 verified complaint, a substantial number of itemized reappropriations should have lapsed.

171. As for the reappropriations highlighted by ¶108 of plaintiffs’ September 2, 2017 verified complaint pertaining to previous “grants to counties for district attorney salaries” and “recruitment and retention” initiatives, all were gone from the 47 pages of reappropriations for the Division of Criminal Justice Services (pp. 73-120).

The Legislature’s Incompetent, Superficial, & Misleading Analyses of the Budget

172. Identically to prior years, the Legislature’s four “analyses” of defendant CUOMO’s Executive Budget, prepared by its supposedly professional “central” and fiscal committee staffs, were incompetent, superficial, and deliberately misleading documents.

With respect to the Legislature’s proposed budget: **(Facts Pertaining to a Reiterated First Cause of Action (¶¶23-33))**

173. BOTH the Senate Majority’s “White Book” and Assembly Majority’s “Yellow Book” omitted ANY mention of the Legislature’s proposed budget.

174. The Senate Minority’s “Blue Book” offered up a single sentence:

“Legislature: The Legislature proposes a 3% increase, its first budget increase since 2011.” (at p. 111)

175. The Assembly Minority’s “Green Book” was only slightly more expansive:

“Significant increases include:

* \$226.1 million for the Legislature, \$6.2 million more than last year.

This represents a 2.7% increase in spending.”

Yet these figures from the “Green Book” were different from the figures in the budget narrative that defendants FLANAGAN and HEASTIE transmitted to defendant CUOMO, which were, as follows:

“The recommended General Fund appropriation of \$224,380,145 for FY 2017-18 for the Legislature represents an increase of 3% or \$6,535,344 from the amount appropriated for FY 2016-17.” (at p. 1).

With respect to the Judiciary’s proposed budget:

(Facts Pertaining to Reiterated Second Cause of Action (¶¶34-39))

176. The Senate Minority’s “Blue Book” omitted any information about the Judiciary’s proposed budget, notwithstanding its two sections entitled “Public Protection, Legislature and Judiciary Fact Sheet” (pp. 111-112) and “Public Protection, Legislature and Judiciary Agency Details” (pp. 113-123).

177. The Assembly Minority’s “Green Book” furnished the following, which was the sum total of its presentation, on its “Legislature and Judiciary” page,

“Judiciary:

Significant increases include:

\$2.2 billion for the Judiciary, \$64.3 million more than last year. This represents a 2.9% increase in spending.” (underlining added).

178. The Senate Majority’s “White Book” stowed four paragraphs about the Judiciary’s proposed budget in its section entitled “Public Protection”. It opened with a one-sentence paragraph:

“THE FY 2018 Executive budget proposes All Funds spending of \$2.97 billion, an increase of \$119.7 million, or 4.2 percent.” (Exhibit GG, at p. 86)⁸

The limited detailing of the three further paragraphs, while referencing the judicial salary increase, made it appear inconsequential and not requiring any action by legislators:

“The increase in personal service is primarily driven by the Judiciary’s plan to add 200 new Full Time Equivalent (FTE) positions, and incremental salary increases for Judges and other employees...Spending for Judicial salaries would increase by \$2.4 million, or 1 percent.” (at p. 86, underlining added).

179. The Assembly Majority’s “Yellow Book” contained a 1-1/3 page section entitled “Judiciary” (pp. 155-156) stating:

“The Judiciary’s proposed budget request recommends All Funds appropriations of \$2.98 billion, which is an increase of \$98.7 million, or 3.43 percent, from the State Fiscal Year (SFY) 2016-17 level.” (underlining added)⁹

The limited detailing that followed, in four paragraphs that were each highlighted by a subject title, included one entitled “Judicial Compensation”. Its two sentences gave the appearance that the judicial salary increase was required – and that nothing need be, nor could be, done:

“The proposed budget includes \$2.4 million to support a salary increase for State Supreme Court Judges recommended by the Commission on Legislative, Judicial and Executive Compensation. Per the Commission, salaries must be fixed at 95 percent of the salary of a Federal District Court Judge effective April 1, 2016, and 100 percent effective April 1, 2018, with the salaries of all other state judges adjusted accordingly.” (at p. 156, underlining added)

**With respect to district attorney salary reimbursement to the counties
in the Governor’s Aid to Localities Budget Bill #S.2003/A.3003:
(Facts Pertaining to a Reiterated Tenth Cause of Action (¶¶85-110))**

180. The Assembly Minority’s “Green Book” omitted it entirely.

⁸ This information was reflected, as well, in a chart of “Proposed Disbursements – All Funds” (p. 88).

⁹ This is followed by two tables. The first, of “Appropriations” essentially repeats in chart form, the above-quoted narrative statement by identifying the Judiciary’s 2017-2018 request as “2,976.20” millions, representing a “98.70” millions change and a percentage change of “3.43. The second chart, “Disbursements”,

181. The Senate Minority's "Blue Book" (at p. 115) and the Assembly Majority's "Yellow Book" (at p. 116) each listed "District Attorney Salaries" as part of a chart – giving the identical \$4,212,000 figures for this year and last – and the \$ change and percentage as "0". In other words, each gave the impression that there was no issue warranting concern.

182. The Senate Majority's "White Book" listed in a chart the amount of "District Attorney Salary Reimbursement" (at p. 81), identifying its identical \$4,212,000 amount last year and this – and the change as "0" – with no comment about it, other than, in passing, as follows:

"The Executive proposes a decrease of \$21.5 million in General Fund Local Assistance programs primarily from the elimination of \$16.1 million in Legislative funding from FY 2017; and reductions totaling \$5.4 million to various core criminal justice programs; one in particular is funding for Rape Crisis Centers which would receive a reduction in funding of \$147,000 or 5.45 percent, while maintaining District Attorney Salaries, Special Narcotics Prosecutors, Ballistic Soft Body Armor Vests, and Probation Aid at FY 2017 levels." (at p. 80, underlining added).

**With respect to the Governor's qualifying language in
his Aid to Localities Budget Bill #S.2003/A.3003 – & in his other appropriation bills:
(Facts Pertaining to a Reiterated Fifth Cause of Action (§§54-58))**

183. The Senate Majority's "White Book" stated, in its page 1 "Overview" section:

"The FY 2018 Executive Budget includes language within all appropriation bills providing the Executive with broad powers to reduce certain local assistance payments unilaterally in the event that any revenue to the State including federal aid is reduced from projected levels. This proposal is intertwined with a second, and unprecedented, language proposal that would allow the Executive to shut down large agency operations if the Executive determines that revenues projected to support specific local assistance programs are not sufficient for the fiscal year. This language provides unchecked power to the Executive branch to rewrite the Executive Budget without approval of the Legislature. While the Executive argues for the need for this flexibility based on the uncertainties at the federal level and the current fiscal climate the newly advanced language would effectively make the entire enacted state budget merely advisory." (at p. 1).

Its "Public Protection" section also made reference to same, but without editorial comment:

identifies a request of "2,234.30" millions, a change of "66.80" millions, and a percentage change of "3.08" (at p. 155).

“The Executive adds new language to several appropriations under agencies in Public Protection:

- Providing that no funds may be available for certification or payment under the appropriation under the Legislature has finally acted upon the Aid to Localities budget and the Director of the Division of the Budget (DoB) has determined that those appropriations are sufficient
- Providing the Director of DoB with authority to transfer appropriations between any State agency or public authority
- Related to the newly created Administrative Hearing Interchange and Transfer Authority (information regarding this proposal can be found in the General Government and Local Assistance section of this report)”. (at p. 78).

Likewise, other references to such language appears in other sections of the “White Book”, as for instance, at pp. 107, 108, 112, 115.

184. The Senate Minority’s “Blue Book”, stated, in its “Overview of the Executive Budget”:

“The Governor also proposes the creation of unprecedented Executive control over budget changes in the next fiscal year. The Executive Budget includes appropriation language that would allow the Executive, through the Director of the Budget, to reduce the amount of appropriations in the event of a reduction in federal funds or state revenues. It would require the Division of the Budget to submit a plan to the Chair of Senate Finance, Chair of Assembly Ways and Means and the State Comptroller with a list of across-the-board reductions while authorizing Commissioners to take steps to achieve these reductions. It should be clear that the Legislature plays a role in this process, and the Senate Democratic Conference recognizes the importance of the separation of powers between the Executive and Legislative branches.” (at p. 7, underlining added).

There was no reference to the issue – or examples – in its section on “Public Protection”.

185. The Assembly Majority’s “Yellow Book” contained no reference to the issue.

186. The Assembly Minority's "Green Book" contained no reference to the issue in its section on "Criminal Justice Services". As the "Green Book" is not publicly distributed, it is unknown if there was any reference to it anywhere else.

The Senate & Assembly Joint Budget Hearings
(Facts Pertaining to a Reiterated Fourth Cause of Action (§§48-53))

187. On January 18/19, 2017, Senate Finance Committee Chair Young and Assembly Ways and Means Committee Chair Farrell announced the "Joint Legislative Hearing Schedule on the 2017-2018 Executive Budget". Except for the dates, their announcement was largely identical to those for the three prior fiscal years.

188. Identically to past years, the Legislature combined the budget hearings required by Article VII, §3 and Legislative Law §31 for agency heads with the budget hearings required for the public by Legislative Law §32-a – with the hearings organized by "programmatic areas".

189. Notwithstanding the Judiciary is a separate government branch, not an agency, the hearing on its budget was placed in the "programmatic area" of "public protection". As for the separate legislative branch of government, its budget was not comparably assigned to "public protection" – or to the only other "programmatic area" to which it would relate: "...general government".

190. Plaintiff SASSOWER immediately responded, requesting to testify at the January 30, 2017 budget hearing on "Local Government Officials/General Government" and, additionally, at the January 31, 2017 budget hearing on "Public Protection".

191. Identically to the past four years, plaintiff was not notified whether she would be permitted to testify until the eve of the hearings. On Friday, January 27, 2017, plaintiff SASSOWER received a call that she was scheduled to testify at the Monday, January 30, 2017 budget hearing at about 4:10 p.m. On Monday, January 30, 2017 – at just about that time, as she

was waiting in the hearing room to testify – she received a further call that she would be permitted to testify at the following day’s hearing – also at approximately 4 p.m.

192. That the legislative defendants permitted plaintiff SASSOWER to testify contrasted to the past three years in which she had not been permitted to testify – particularized by plaintiffs’ three pleadings in the prior citizen taxpayer action (Exhibits A, B, C) and encompassed by the fourth, eighth, and twelfth causes of action therein.

The Legislature’s January 30, 2017 Budget Hearing
on “Local Government Officials/General Government”
(Facts Pertaining to a Reiterated Fourth & Fifth Causes of Action (¶¶48-53; 54-58))

193. Identically to past years, the Legislature’s “general government” budget hearing did not include testimony from defendant CUOMO, defendant DiNAPOLI, or defendant SCHNEIDERMAN – all of whom have significant oversight responsibilities with respect to the whole of the budget, in addition to their own departmental/office budgets contained within the State Operations budget bill. Likewise, identically to past years, no representative of the Legislature testified on behalf of its budget.

194. Plaintiff SASSOWER was the last witness to testify, at approximately 7:30 p.m. The written statement she furnished – entitled “Statement Supplementing Testimony” – highlighted the problems with the Legislature’s proposed budget and defendant CUOMO’s Legislative/Judiciary Budget Bill #S.2001/A.3001 containing it, stating:

“As in past years, there is NO legislative budget hearing at which the Temporary Senate President and Assembly Speaker – or anyone on their behalf – are testifying in support of the Legislature’s proposed budget. Nor do the Legislature’s four ‘color books’ furnish ANY analysis of the Legislature’s proposed budget.

...

To assist legislators and the Legislature’s ‘appropriate committees’ in discharging their duties with respect to the Legislature’s own budget, below are questions to ask Temporary Senate President Flanagan and Assembly Speaker Heastie about their proposed legislative budget – and about the 26 pages of legislative reappropriations that were not part of their proposed legislative budget but which have popped into

Governor Cuomo's combined Legislative/Judiciary Budget Bill #S.2001/A.3001 in an out-of-sequence section at the back.

...

As for the unconstitutionality of such proposed legislative budget and such legislative reappropriations inserted in the Legislative/Judiciary budget bill – repeating what occurred in prior budget cycles – it is laid out by the first and third causes of action of the September 2, 2016 verified complaint in the Center for Judicial Accountability's citizen-taxpayer action against Governor Cuomo, Temporary Senate President Flanagan, Assembly Speaker Heastie, the Senate, and Assembly, among others. The verified complaint is posted on CJA's website, www.judgewatch.org, accessible via the prominent homepage link: 'CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' & Unconstitutional 'Three Men in a Room' Governance'. Also posted is the lawsuit record – and from it you can readily verify plaintiffs' entitlement to summary judgment on their first and third causes of action – and on all eight of their other causes of action, as well.

Suffice to note that the tenth cause of action is germane to the 'local government officials' portion of this budget hearing, as it pertains to the unconstitutionality and unlawfulness of the \$4,212,000 appropriation in the Aid to Localities budget bill for fiscal year 2016-2017, reimbursing the counties for district attorney salaries, identically repeated in the Aid to Localities budget bill for fiscal year 2017-2018." (capitalization and underlining in the original).

195. Plaintiff SASSOWER's "Statement Supplementing Testimony" is true and correct and the 26 enumerated questions pertaining to the Legislature's proposed budget and the legislative portions of defendant CUOMO's Budget Bill #S.2001/A.3001 were deserving of answer.

196. In her oral testimony, plaintiff SASSOWER identified that the "thread" running through plaintiffs' citizen-taxpayer action was the failure and refusal of the committees of the Legislature to discharge their oversight responsibilities with respect to the Judiciary; its monitor, the Commission on Judicial Conduct; judicial compensation, which the Legislature had vested, in 2011, in a Commission on Judicial Compensation and, in 2015, in a Commission on Legislative, Judicial and Executive Compensation; district attorney salaries – which the Legislature had tied to judicial salaries; district attorney "on the job" performance; and district attorney salary reimbursement to the counties.

197. Plaintiff SASSOWER attributed this nonfeasance, in part, to the fact that the legislative committees have no funding for staff – stating that this was concealed by the Legislature’s budget.

198. Identifying that the citizen-taxpayer action chronicled the unconstitutionality of the legislative budget, the judiciary budget, the executive budget, and a raft of statutory violations and legislative rule violations, she declared:

“The budget is off the constitutional rails. And I have called your offices, and I – three weeks ago, I implored leadership and the committee heads to meet with me, because I saw what was happening in this fiscal year. That all the violations, the constitutional, the statutory, the rule violations were repeating themselves in a Groundhog Day fashion.

Why should that be? It’s all laid out in the lawsuit. There are lawyers galore in the Senate and Assembly, including on the committees. They know how to read a pleading, the verified complaint, and to examine the record. And the record establishes an entitlement to summary judgment to the plaintiffs. Again, the budget is off the constitutional rails.” (transcript, pp. 523-524).

199. Plaintiff SASSOWER then briefly touched on defendant CUOMO’s “free-standing Article VII” Good-Government and Ethics Reform Budget Bill #S.2010/A.3010, disputing key premises:

“The reason why Albany is dysfunctional, the Legislature is dysfunctional, has nothing to do with whether there are full time legislators or part-time legislators, whether you earn outside income or not, whether we have public campaign financing or not. That is bogus. Because there is no difference, empirically – I’ve interacted with members of the Legislature for 25 years, and I can tell you there’s no difference between a legislator who purports to be full-time or one who has outside work. There’s no difference. The problem is that you don’t have the resources and you are emasculated by rules.” (transcript, pp. 524-525).

200. Plaintiff SASSOWER concluded by focusing on the tenth cause of action herein (¶¶85-110) pertaining to the \$4,212,000 reimbursement to the counties for district attorney salaries, contained in the Aid to Localities budget bill for fiscal year 2016-2017 – asserting that all its violations were repeated in the identical \$4,212,000 appropriation to the counties for fiscal year

2017-2018. In that connection, she set forth the constitutional restrictions facing defendants SENATE and ASSEMBLY with respect to that appropriation – and a constitutional solution, stating:

“The bottom line is that this is not a judiciary or legislative appropriation. And your duty under the Constitution – and I read from Article VII, Section 4: ‘The Legislature may not alter an appropriation bill submitted by the Governor except to strike out or reduce items therein.’

So you can’t add – if you want to add on the increases this year as a result of the judicial increases that are going into effect, you can’t add it here. You can only strike or reduce ...

... What I respectfully suggest – because the only way you can – you can’t add to it, you can’t – because of the court case, and I’m sure you’re familiar with the court case, a consolidation of two cases, *Silver v. Pataki* and *Pataki v. Assembly and Senate*, you are constrained. You cannot remove the language and keep the monetary appropriation.

So the only thing that you can do is strike that entire – because what happens under the Constitution, you know, is that such an appropriation bill shall, when passed by both houses, be a law immediately without further action by the Governor.

Your duty with respect to the Aid to Localities bill is to reduce appropriations, strike appropriations, and then reconcile your bill and it never goes back to the Governor.

There is no – you have no business with your one-house budget resolutions. They’re completely off the constitutional rails. The Governor is out of it.

What you can do, I respectfully submit – I have a solution for you on this issue. Under the Constitution, Article VII, Section 3, you can have the Governor – you can request the Governor or heads of the departments to appear before you, and you can – and the Governor additionally has 30 days within which to amend his bills.

You can give him notice that you want his 30-day amendments to include a revision of this DA salary reimbursement provision. He has 30 days he can do it as of right. After that, he needs your leave.

And once he delivers something acceptable to you, that is compliant with the law – because what you have here is not compliant – then you can include it in whatever appropriation bill you’re going to enact. And as I said, under the Constitution, it takes effect immediately. It never goes back to the Governor. He’s out of the picture. All your to-do about we’ve got to get an on-time budget – it never goes back to the Governor. The timeliness is in your hands.” (transcript, pp. 527-530).

201. The legislators present throughout plaintiff SASSOWER’s testimony¹⁰ were Senate Finance Committee Chair Young and Ranking Member Krueger, Assembly Ways and Means

¹⁰ Two legislators left before plaintiff SASSOWER concluded – one of whom was Assemblyman Steven Otis, a lawyer-member of the Assembly Committee on Local Government and a recipient of plaintiff SASSOWER’s prior e-mail on the issues.

Committee Chair Farrell and Ranking Member Oaks, and, additionally, the chair of the Senate Committee on Local Government, one of its rank-and-file members, as well as the ranking member of the Assembly Committee on Local Governments. Not one contested the accuracy of her testimony or asked her a single question.

The Legislature's January 31, 2017 Budget Hearing on "Public Protection"
(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action (§§48-53; 54-58))

202. Identically to past years, defendants SENATE and ASSEMBLY scheduled, as their first witness at their "public protection" budget hearing, the chief administrative judge to testify on behalf of the Judiciary's budget.

203. Identically to last year and the year before, Chief Administrative Judge Marks – like his predecessor Chief Administrative Judge Prudenti – furnished no cumulative dollar total of the Judiciary's two-part budget: its operating budget and its budget of general state charges. Nor did he furnish a cumulative dollar total of the Judiciary's "single budget bill" which the judiciary portion of defendant CUOMO's Legislative/Judiciary Budget Bill #S.2001/A.3001 replicated. Instead, and confining himself to the Judiciary's operating budget alone, he stated:

"Our proposed budget is fairly straightforward. We are seeking a 2 percent increase in our operating budget. That represents a \$42.7 million increase over our current year operating budget. The 2 percent increase is consistent with the benchmark set by the Governor...

In addition to the 2 percent increase we are seeking in our operating budget, we are seeking a modest capital appropriation of \$15 million."¹¹

204. Identically to past years, not a single Senator or Assembly member questioned Chief Administrative Judge Marks about the cumulative cost of the Judiciary's proposed budget – even

¹¹ This repeated Chief Administrative Judge Marks' December 1, 2016 memorandum transmitting the Judiciary's proposed budget of operating expenses, as likewise the Judiciary's Executive Summary.

though the Legislature's four "Color Books" widely diverged as to the relevant figures and percentages (§§176-179, *supra*).

205. Nor did a single Senator or Assembly member question Chief Administrative Judge Marks about the judicial salary increases about which, last year, he had been beseeching them for funding – and about which he made no mention in his testimony this year, either oral or written.

206. Identically to past years, Chief Administrative Judge Marks, like Chief Administrative Judge Prudenti, was permitted to bemoan shortages in Judiciary staffing – without disclosing that the Judiciary had cut staff so as to cap costs in order to secure and pay for judicial salary increases.

207. Approximately, 11 hours after Chief Administrative Judge Marks' testimony, plaintiff SASSOWER was called to testify as the last witness of the hearing (transcript, pp. 671-679).

208. Plaintiff Sassower began her testimony by identifying this citizen-taxpayer action, laying out, by ten causes of action, "the succession of constitutional violations, statutory violations, and violations of the Assembly and Senate rules with respect to the Judiciary Budget, Legislative Budget, the Executive Budget" – and identifying what she had handed up, in support of her testimony: "Article VII, Sections 1 through 7, of the New York State Constitution, which define the process by which the budget is fashioned and enacted."

209. She stated:

"It is fitting to begin with this because this is a hearing on public protection. And our public protection, our foremost public protection is in the New York State Constitution and what it lays out. In addition to Article VII, Sections 1 through 7, which pertain to the budget, is another very important provision of the State Constitution, which is Article III, Section 10: 'Each house of the Legislature shall keep a journal of its proceedings and publish the same...The doors of each house shall be kept open.'

In sum and substance, what is presented in the lawsuit is the unconstitutionality of what's been going on with your closed-door political conferences, which substitute for open committee deliberations and votes on bills. You're not voting on bills, you're not reconciling bills.

And under the Constitution, except for the legislative and judiciary budgets, the other budget bills presented by the Governor never go back to the Governor, they became law immediately once the Senate and Assembly pass the bills and reconcile their differences.

So all of this talk about how we've got to get an on-time budget, we have to put together a deal, this is out of whole cloth. This is violative of the constitution." (transcript, pp. 673-674).

210. She then quoted, in full, Article VII, §4 –

§4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV." (transcript, pp. 674-675).

211. In so doing, she emphasized that the Legislature was not constrained from changing the Legislative/Judiciary budget bill however was appropriate; and that, as to the other budget bills, it could only strike and reduce appropriations, but could not add to those bills.

212. With respect to the Judiciary budget, she stated that it concealed judicial pay raises that would take effect, by force of law, April 1, 2017, unless overridden by the Legislature – but that, notwithstanding this concealment, the Legislature apparently had some information about the pay raises because their \$2.4 million cost was identified by the Senate Majority's "White Book" and Assembly Majority's "Yellow Book".

213. Despite the importance of what plaintiff Sassower was saying – and the fact that she was the last witness – Assembly Ways and Means Chair Farrell and Senate Finance Committee Chair Young cut her off, refusing to allow her to read six recommendations that she begged to be permitted "to read very quickly". The exchange was as follows:

Chair Farrell: A sentence to close.

Sassower: I beg you, let me at least read recommendations with respect to –

Chair Young: Ma'am, you're out of time. This has been a long day.

Sassower: I've waited – I've waited – I've waited since the beginning of the hearing at 9:30.

Chair Young: But –

Sassower: This is of sufficient importance that you can give me five or 10 minutes.

Chair Young: But each speaker is given a certain allotted amount of time. So I'm sorry, please. Thank you.

Sassower: Let me close –

Chair Farrell: Thank you.

Sassower: – let me then close with a reference.

Chair Farrell: With a sentence.

Sassower: I have – I have – I have just – I have just six – six recommendations that I would just like to 12 read very quickly. Please, let me just read the recommendations.

Chair Young: Ma'am, you've been on for two nights in a row. You've had your allotted amount of time. It's over, we're shutting down. Thank you very much. (transcript, pp. 678-679).

214. Upon information and belief, Assembly Ways and Means Ranking Member Oaks, who had been present until nearly the end of plaintiff SASSOWER's testimony, was not present during the above-exchange. The legislators that remained were, in addition to Senate Finance Committee Chair Young and Assembly Ways and Means Committee Chair Farrell, Senate Finance Committee Ranking Member Krueger and a single rank-and-file assembly member, Assemblyman David Weprin – and none interjected to request that Sassower be afforded the brief few minutes to

read her six recommendations. None suggested, let alone requested, that plaintiff SASSOWER furnish the six recommendations and any others, in writing

215. As at the prior budget hearing, no legislator asked plaintiff SASSOWER a single question, nor questioned anything she said.

Plaintiffs' Post-Hearing Advocacy

((Facts Pertaining to Reiterated Fourth & Fifth Causes of Action (§§48-53; 54-58))

216. Within days of testifying at the two budget hearings in Albany, plaintiff SASSOWER testified, in Westchester County, at a February 3, 2017 budget hearing held by legislators whose districts encompass Westchester County. She highlighted her testimony at the Albany budget hearings – and that the video was easily accessible from CJA’s website. Additionally, she furnished the legislators with copies of Article VII, §§1-7 and Article III, §10 of the New York State Constitution, on which she had hand-written “Red Alert: The NYS budget is OFF the constitutional rails...see www.judgewatch.org, link to 2017 Legislative Session”.

217. Three days later, plaintiff SASSOWER addressed a February 6, 2017 letter to defendants FLANAGAN and HEASTIE, plus Senate Minority Leader Stewart-Cousins and Assembly Minority Leader Kolb. The letter called upon them to immediately make their appointments to the Commission on Government Administration and the Commission on State-Local Relations, stating:

“Both Commissions have time-sensitive work to do that is all the more exigent because key standing committees of the Legislature are NOT discharging their oversight responsibilities. This was the subject of my extensive testimony at the Legislature’s January 30th budget hearing on ‘Local Government Officials/General Government’. The committees I named as derelict with respect to oversight of the Judiciary, of its chief monitor – the Commission on Judicial Conduct – of judicial compensation, of district attorneys, of district attorney compensation, and of state aid to the counties for district attorney salaries – were:

- the Senate Judiciary Committee;
- the Assembly Judiciary Committee;

- the Senate Codes Committee;
- the Assembly Codes Committee;
- the Senate Committee on Local Government; and
- the Assembly Committee on Local Governments.

In addition to these six standing committees are four more I might have also identified, by name:

- the Senate Committee on Crime Victims, Crime, and Correction;
- the Senate Committee on Investigations and Government Operations;
- the Assembly Committee on Governmental Operations; and
- the Assembly Committee on Oversight, Analysis, and Investigation.

Then, of course – and but for the fact that I was testifying before the chairs and ranking members of the Senate Finance Committee and the Assembly Ways and Means Committee who bear greatest culpability for the mountain of constitutional, statutory, and legislative rule violations that have created the HUGE slush fund that is the state budget – I would have also specified those two committees, the largest of the Senate and Assembly, whose nonfeasance and misfeasance with respect to oversight is evident from the budget hearings, as, likewise, from their incompetent, substandard, and intentionally misleading ‘White Book’, ‘Blue Book’, ‘Yellow Book’ and ‘Green Book’ purported ‘analyses’ of the budget.

In the event you have not personally viewed the VIDEO of my January 30th testimony at the budget hearing on ‘Local Government Officials/General Government’ and the VIDEO of my testimony the following day at the January 31st budget hearing on ‘Public Protection’, I ask that you do so IMMEDIATELY, in further support of my January 9th written requests to meet with you, to which I also testified. The VIDEOS and my meeting requests are all posted on CJA’s website, www.judgewatch.org, accessible *via* the prominent homepage link ‘2017 Legislative Session’.

Likewise, if you have not yet personally examined the September 2, 2016 verified complaint in CJA’s citizen-taxpayer action and the record thereon – about which I also testified – you must do so IMMEDIATELY. It, too, is readily accessible from CJA’s website, including *via* the prominent homepage link: ‘CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget ‘Process’ and Unconstitutional ‘Three Men in a Room’ Governance’.

The first cause of action of the verified complaint, detailing the unconstitutionality of the legislative budget, *as written and as applied*, presents multiple paragraphs relating to the Commission on Government Administration, the Commission on State-Local Relations, and other legislative commissions and standing committees.

...

I look forward to your scheduling meetings at which we can sit down and discuss the situation – and as soon as possible. I would be pleased to meet with you either individually or together – and to include the chairs and ranking members of the 12

Senate and Assembly standing committees hereinabove identified, as well as the chairs and vice-chairs of the Commission on Government Administration and Commission on State-Local Relations – and, additionally, the co-chairs of the Administrative Regulations Review Commission...”. (pp. 2-5, underlining and italics in the original).

218. Upon sending the February 6, 2017 letter to defendants FLANAGAN and HEASTIE and Senate Minority Leader Stewart-Cousins and Assembly Minority Leader Kolb – and to all the indicated recipients, beginning with Senate Majority Coalition Leader Klein and the referred-to Senate and Assembly committee and commission leadership and various Senate and Assembly members of the Westchester delegation, plaintiff SASSOWER followed up with telephone calls and further e-mails to assure and confirm receipt and to further expand distribution to all members of the appropriate committees AND all members of Senator Klein’s Independent Democratic Conference.

219. The facts set forth in plaintiff SASSOWER’s February 6, 2017 letter are accurate, true, and correct.

220. None of the four Senate and Assembly leaders responded to the February 6, 2017 letter – including by making their appointments to the Legislative Commission on Governmental Operations and the Legislative Commission on State-Local Relations. Nor did any of the indicated recipients of the letter and plaintiff SASSOWER’s follow-up e-mails respond.

221. On February 23, 2017, plaintiff SASSOWER filed a misconduct/fraud complaint with the Senate’s Ethics and Internal Governance Committee against the Senate’s three conference leaders – defendant FLANAGAN, as Republican Conference Leader, Democratic Conference Leader Stewart-Cousins, and Independent Democratic Conference Leader Klein – as well as the many senators who had reason to know that the rules resolutions voted on by the Senate on January 4, 2017 and January 10, 2017 were not properly brought to the Senate floor for votes because “they violated safeguarding Senate rules being enacted – identical to those they were replacing” and, with respect to

the January 4, 2017 resolution, that it perpetuated:

“the most egregious dysfunctions recognized in 2009 by the Senate’s Temporary Committee on Rules and Administration Reform, to which Independent Democratic Conference Leader Klein and Democratic Conference Leader Stewart-Cousins were EACH members – including with respect to sham, rubber-stamp standing committees, even more numerous today than in 2009 and as to which, pursuant to Senate Rule VIII §a, senators may be appointed to up to seven.” (at p. 2, underlining in the original).

222. Exemplifying the sham, rubber-stamp nature of the standing committees – and the basis for plaintiffs’ claim that the Senate Rules for 2017-2018 were procured by fraud – was the fact, detailed by the misconduct/fraud complaint, that although the Senate’s webpage for the January 4, 2017 rules resolution indicated that the resolution had been referred to the Senate Finance Committee on January 4, 2017 and went from there to the Senate, the Senate’s website revealed that the Finance Committee had not met on that date – such that the resolution “appears to have skipped even rubber-stamp committee action and, if ‘referred’ to the Finance Committee, was never reported”. As for the subsequent January 10, 2017 resolution, amending the rules, although required, by Senate Rule XII, §1 to have been introduced to the Senate’s Rules Committee, with a memorandum, and “reported therefrom”, the Senate’s website showed that it had not been on the agenda of the Rules Committee at its one and only meeting before the January 10, 2017 Senate vote.

223. The facts set forth by plaintiffs’ February 6, 2017 letter are accurate, true, and correct.

224. Other than a bad-faith, elusive response and non-response of the Secretary of the Senate to the documents requested by the February 6, 2017 letter, pursuant to Senate Rule XV “Freedom of Information”, no member of the Senate’s Ethics and Internal Governance Committee responded: not its chair, Republican Senator Elaine Phillips, not its ranking member, Democratic Senator Michael Gianaris, nor any of its seven rank-and-file members: the three IDC members: Senators Valesky, Diane Savino, and David Carlucci; the two Republican members: Senators

Andrew Lanza and Thomas Croci – or the two Democratic members: Senators Gustavo Rivera and Roxanne Persaud. Nor was there a response from any of the complaint’s indicated recipients, including the named complained-against defendant FLANAGAN and Senators Stewart-Cousins and Klein.

225. By e-mail dated March 3, 2017 to the chief of staff to Assemblyman David Pietro – a legislator who own three dry-cleaning stores – plaintiff SASSOWER stated:

“the VIDEOS of my January 30th and January 31st testimony – and the evidence supporting it – present Assemblyman DiPietro with a stellar opportunity to demonstrate the fearless leadership that a dry cleaner can bring to the Legislature. Indeed, based on my testimony, he can easily put to the test his many fellow legislators who, having no employment or earned income outside the Legislature, label themselves ‘full time’ and posture themselves as unconflicted and pure, in contrast to such supposed ‘part-timers’ as he. To do this, Assemblyman DePietro need only take to the Assembly floor or hold a press conference and call upon his ‘full time’ colleagues to deny or dispute the accuracy of my January 30th and 31st testimony – especially ‘full-time’ lawyer-legislators who have no outside earned income – as, for instance, my own assemblyman, David Buchwald – a Princeton undergraduate and Harvard Law School graduate, who is a member of BOTH the Assembly’s Judiciary Committee and its Committee on Governmental Operations.

Indeed, it would be a great public service if Assembly DiPietro would not only ‘throw down the gauntlet’ to lawyer-legislators who do not practice law on the outside, such as Assemblyman Buchwald, but also to lawyer-legislators who do. Let both be challenged to come forward with their findings of fact and conclusions of law with respect to the ten causes of action of the citizen-taxpayer action to which I repeatedly referred in testifying. A prime example of a lawyer-legislator who has a private law practice is Assemblyman Phil Steck – a Harvard undergraduate, University of Pennsylvania Law School graduate, and the ONLY legislator, apart from Assemblyman Nojay, to testify before the Commission on Legislative, Judicial and Executive Compensation – also at the March 23, 2016 hearing. Like Assemblyman Buchwald, Assemblyman Steck is also a member of the Assembly Judiciary Committee.” (capitalization and underlining in the original).

226. The following day, plaintiff SASSOWER corrected the e-mail, stating:

“Assemblyman Buchwald’s undergraduate degree is from Yale, not Princeton. And, adding to his education credentials, he has a masters of public policy from Harvard’s John F. Kennedy School of Government, in addition to his law degree, *cum laude*, from **Harvard Law School.**

I do not know whether any other ‘full-time’ lawyer-legislators in the Assembly are Harvard Law School graduates, but **the Senate has at least two Harvard Law School graduates – both I believe ‘full time’**. They are **the Senate’s Deputy Democratic Conference Leader Michael Gianaris** (<https://www.nysenate.gov/senators/michael-gianaris/about>) and **Senator Brad Hoylman who is the ranking (Democratic) member of the Senate Committee on Investigations and Government Operations AND the Senate Judiciary Committee** (<https://www.nysenate.gov/senators/brad-hoylman/about>). Each of these high-ranking Senators have been on notice of their duty to view the VIDEOS of my testimony at the Legislature’s January 30th and 31st budget hearings and respond. To further facilitate my below proposal to ‘part time’ dry cleaning Assemblyman DiPietro that he ‘take to the Assembly floor or hold a press conference and call upon his ‘full time’ colleagues to deny or dispute the accuracy of my January 30th and 31st testimony – especially ‘full-time’ lawyer-legislators who have no outside earned income’ – a copy of this e-mail is being sent to Senators Gianaris and Hoylman – AND to their counsel.” (underlining, bold, and capitalization in the original).

227. The facts set forth by plaintiffs’ March 3-4, 2017 e-mails are accurate, true, and correct.

228. “Part-time” Assemblyman DiPietro did not respond. Nor was there any response from the indicated lawyer legislators: “full-time” Assemblyman Buchwald, “part-time” Assemblyman Steck, “full-time” Senator Gianaris, “full-time Senator Hoylman.

The Senate & Assembly “Amending” of the Governor’s Budget Bills
(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action (¶¶48-53; 54-58))

229. Notwithstanding plaintiff SASSOWER’s testimony at the Legislature’s January 30, 2017 budget hearing on “local government officials/general government”, at its January 31, 2017 budget hearing on “public protection”, at the local budget hearing held by legislators of the Westchester delegation, and ALL her written and oral communications, no Senate or Assembly committee or statutory commission met to deliberate and vote on the Legislature’s proposed budget, on the Judiciary’s proposed budget, on Legislative/Judiciary Budget Bill #S.2001/A.3001 – or on the appropriation for district attorney salaries contained in the Division of Justice Services’ budget in Aid to Localities Budget Bill #S.2003/A.3003. This identically replicated what had taken place in

the last three years, when, following the Legislature’s budget hearings, no committee met to deliberate and vote on the Legislature’s proposed budget, on the Judiciary’s proposed budget, on the Governor’s combined Legislative/Judiciary budget bills – or on his Aid to Localities budget bills.

230. Upon information and belief, no Senate or Assembly committee met to deliberate and vote on defendant CUOMO’s other “appropriation bills”: his State Operations Budget Bill #S.2000-A/A.3000-A and his Capital Projects Budget Bill #S.2004-A/A.3004-A – and, until March 20, 2017, his Debt Service Budget Bill #S.2002/A.3002. Nor, upon information and belief, and excepting a hearing on raising the age of criminal responsibility, did any committee meet to deliberate and vote on defendant CUOMO’s six “Article VII bills”:

- (1) Public Protection and General Government Budget Bill #S.2005-A/A.3005-A;
- (2) Education, Labor and Family Assistance Budget Bill #S.2006-A/A.3006-A;
- (3) Health and Mental Hygiene Budget Bill #S.2007/A.3007;
- (4) Transportation, Economic Development and
Environmental Conservation Budget Bill #S.2008-A/A.3008-A;
- (5) Revenue Budget Bill #S.2009-A/A.3009-A;
- (6) Good Government & Ethics reform Budget Bill #S.2010/A.3010.

231. Upon information and belief, defendants SENATE and ASSEMBLY also dispensed with any deliberation and any votes on the Senate and Assembly floor with respect to any of these budget bills, other than, on March 23, 2017, when the Assembly voted to approve Debt Service Budget Bill #2002-A/3002-A.

232. Nonetheless, on March 13, 2017 – notwithstanding a succession of legislative rules designed to ensure the integrity and transparency of the legislative process: Senate Rule VII, §4(b), Assembly Rule III, §6 (*amendments*); Senate Rule VIII, §2(a)(1), (a)(2); Assembly Rule IV, §2(a), (b), (c) (*standing committees, meetings, notice*); Senate Rule VIII, §2(a)(1), (3), (4); §2(b); Assembly Rule IV, §2(d), (e), (g) (*committee attendance, minutes, votes*); Senate Rule VIII, §6; Assembly Rule IV, §6 (reports) – eight “amended” budget bills emerged from defendant SENATE and the same

eight bills, differently “amended”, emerged from defendant ASSEMBLY. Yet who introduced these amendments, what they consisted of, by what notice to Senate Finance Committee and Assembly Ways and Means Committee members, and at what committee meeting they were deliberated and voted upon is a mystery.

233. Indeed, neither the Senate Finance Committee nor Assembly Ways and Means Committee met on March 13, 2017.

234. As to the content of these “amended” budget bills, they violated Article VII, §§4, 5, and 6 of the New York State Constitution, flagrantly – altering defendant CUOMO’s budget bills by additions directly to the bills, not separately stated and by removing and adding qualifying language. Many, if not most – possibly even all – of these alterations were without being signified by the “amended” bills, in disregard of the printed notice on the first page of each:

“EXPLANATION: Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.”.

235. Illustrative is defendant SENATE and ASSEMBLY’s “amending” of the Division of Criminal Justice Services’ budget, contained in defendant CUOMO’s Aid to Localities budget bill. In defendant CUOMO’s original bill, #S.2003/A.2003, the Division of Criminal Services’ “All Funds” appropriations are \$184,245,000 and “All Fund” reappropriations are \$263,379,898 (at pp. 60) – neither of which changed when defendant CUOMO made his 30-day amendments that produced Aid to Localities Budget Bill #S.2003-A/A.3003-A.

236. Yet, on March 13, 2017, when defendant SENATE “amended” Aid to Localities Budget Bill #S.2003-A – resulting in its designation as #S.2003-B – the “All Funds” appropriation for the Division of Criminal Justice Services was increased by \$16,330,000 to \$200,575,000 and reappropriations were increased by \$122,219,451 to \$385,599,349 (at p. 68), without any underlining or italics to denote the change. As for defendant ASSEMBLY’s “amended” Aid to Localities

Budget Bill #A.3003-B, it pushed “All Funds” appropriations for the Division of Criminal Justice Services even higher, to \$202,735,000, and reappropriations to \$375,590,348, also without underlining or italics to denote the change. And exemplifying the increase of a particular appropriation, defendant SENATE’s “amended” #S.2003-B added \$1,600,000 to the appropriation for district attorney salary reimbursement – upping the Governor’s appropriation from \$4,212,000 to \$5,812,000. Again, no underlining or italics to denote the change.

237. Another example, this from defendant CUOMO’s State Operations Budget Bill #S.2000/A.3000, is the budget for the Commission on Judicial Conduct, for which \$5,584,000 was appropriated. This was unchanged by defendant CUOMO’s 30-day amended State Operations Budget Bill #S.2000-A/A.3000-A. Yet, defendant ASSEMBLY’s “amended” #A.3000-B (at pp. 443) added \$100,000 to make the appropriation \$5,684,000, an increase, not flagged by any underlining or italics.

238. According to defendants HEASTIE and FLANAGAN’s February 7, 2017 “Joint Legislative Schedule for Adopting SFY 2017-2018 Budget”, March 13, 2017 was to be the date for “Senate & Assembly One House Budget Actions”, when, additionally, “Joint Senate & Assembly Budget Conference Committees Commence”.

239. Yet on March 13, 2017, there were no “Senate & Assembly One House Budget Actions” – only the mysteriously “amended” Senate and Assembly bills.

240. The Senate and Assembly websites do not indicate when the March 13, 2017 “amended” bills were distributed to the Senators and Assembly members. The earliest would have been March 13, 2017, quite possibly in the evening hours. As for the following day, March 14, 2017, a winter storm resulted in the cancellation of the legislative session.

241. As for defendant CUOMO's debt service budget bill – #S.2002/A.3002 – it was “amended” a week later – in equally mysterious fashion. On March 20, 2017, a meeting of the Senate Finance Committee was called from off the floor of the Senate. Its two-minute meeting had a two-item agenda – the second of which was an already-“amended” debt service budget bill. The video of the Senate Finance Committee meeting shows Chair Young presiding, with Ranking Member Krueger beside her:

[video: <https://www.nysenate.gov/calendar/meetings/finance/march-20-2017/finance-meeting>]

Chair Young: Next, we have –

Clerk: S2002-A. Budget bill an act making appropriations for the legal requirements of the state debt service and lease purchase requirements and other special contractual obligations.

Chair Young: This is usually a noncontroversial bill and it shows that we're making progress on the state budget. And I'd like to get this taken care of. Does anyone have any questions?

Senator: I do not.

Chair Young: You do not.

Ranking Member Krueger appears to say either “We need to move the debt service bill” or to ask “Do we need to move the debt service bill” – to which Chair Young answers “yes”. The bill is then moved and seconded – and upon Chair Young asking “Any no votes?”, there were none. The meeting then concluded with Chair Young stating: “OK the budget bill is reported directly to the third reading.”

242. No video records what took place on March 20, 2017 in the Assembly Ways and Means Committee with respect to the debt service budget bill. Defendant ASSEMBLY's website indicates that the bill was “amended” in the Ways and Means Committee on March 20, 2017 – and

that the amended bill was the same as the Senate's amended bill. However, there was no Ways and Means Committee meeting on March 20, 2017.

The Senate and Assembly One-House Budget Resolutions
(Facts Pertaining to Fourth & Fifth Causes of Action (§§48-53; 54-58))

243. On March 15, 2017, defendants SENATE and ASSEMBLY convened for their “One House Budget Actions”. The resolutions that each house passed, essentially on party lines, embodied the budget proposals of their respective majority party/coalition conferences, determined behind-closed-doors.

244. Defendant ASSEMBLY's one-house resolution was #179, introduced by defendant HEASTIE. The Assembly webpage for Resolution #179 records the following “actions”:

“03/13/2017 referred to ways and means
03/15/2017 reported referred to rules
03/15/2017 reported to calendar for consideration
03/15/2017 adopted”.

245. Defendant SENATE's one-house resolution was #1050, introduced by defendant FLANAGAN. The Senate webpage for Resolution #1050 records the following “actions”:

“15 / Mar / 2017 REFERRED TO FINANCE
15/ Mar / 2017 ADOPTED”

In other words, Senate Resolution #1050 was allegedly “referred” to the Senate Finance Committee, with no record of action by the committee with respect thereto.

246. In fact, the “referral” of Senate Resolution #1050 to the Senate Finance Committee either was never actually made – or those responsible and knowledgeable of the “referral” determined to conceal it so not to expose that Resolution #1050 was not properly brought to the Senate floor. These are the only two conclusions possible from the March 15, 2017 Senate floor proceedings, where not a single senator – including defendant FLANAGAN and Senate Finance

Chair Young – alluded to any “referral” having been made, even as Deputy Senate Minority Leader
Gianaris sought a Senate vote to have Senate Resolution #1050 referred to the Finance Committee:

[Transcript pp. 1049-1055]

Clerk: Senate Resolution 1050 by Senator Flanagan, response to the 2017-2018 Executive Budget submission (Legislative Bills 2000B, S2003B, S2004B, S2005B, S2007A, 2008B and 2009 to be adopted as legislation expressing the position of the New York State Senate relating to the 2017-2018 New York State Budget.

...
Senator Gianaris: Pursuant to Rule VI, subdivision 8(a)(6) of the Senate rules, I move to commit this resolution to a standing committee. The Finance Committee, specifically.

Senator DeFrancisco: Mr. President.

Acting Pres. Griffo: Hang on a second. Senator DeFrancisco, this is a – Senator Gianaris, this is a privileged resolution. Senator DeFrancisco, you may be heard.

Senator DeFrancisco: This is a privileged resolution.

(Laughter.)

Acting Pres. Griffo: Thank you, Senator DeFrancisco. Senator Gianaris, therefore the recommendation is out of order.

Senator Gianaris: Mr. President, I’m citing specifically Rule VI(8)(a)(6) of the Senate rules.

Acting Pres. Griffo: One second, Senator Gianaris. Senator Gianaris, this would comply with Rule – under Rule VII(9)(e) for adopting and accepting resolutions, privileged resolutions.

Senator Gianaris: But, Mr. President, that rule is silent as to whether privileged resolutions should first go through committee and whether or not they are subject to Rule VI(8)(a)(6). There’s nothing in the rule you cited that says that the other rules do not apply to it. And there is a rule for motions for resolutions to be committed to standing committees, and that’s what I am making.

Acting Pres. Griffo: Upon our review, Senator Gianaris, we do not find that in order, in accordance with Rule Number IX, and also in reference to paragraph (e).

Senator Gianaris: Mr. President, I'd like to appeal that decision and ask for the opportunity to be heard.

Acting Pres. Griffo: There is an appeal of the decision. You may be heard.

Senator Gianaris: Thank you, Mr. President. Resolutions, as a matter of course, typically go through the Finance Committee in this body. And they are often resolutions that don't as specifically relate to the State Budget as this resolution does. Given the hurried nature and the very poor process that's being implemented here today, I think more than ever this is an opportunity for deliberation that would be afforded by a committee of relevant jurisdiction. We are about to decide and debate and consider a resolution that states this body's position as to the State Budget, an over \$160 billion document. And yet the notice we've been afforded is minimal. It's minimal as a general rule; it's especially minimal today. These are hundreds of pages of budget bills that we're being asked to question and opine upon and make decisions about and discuss. And we're being told, time and time again here today, that that's not necessary, transparency is not something we care about.

Acting Pres. Griffo: Senator Gianaris, once again, the resolution before the house, as you've clearly stated, is on various aspects of a proposal. You are now talking about procedure. So I would ask you to stick to the policy aspect in order to be germane on your appeal.

Senator Gianaris: I appreciate your clarification, Mr. President. But you're asking me to separate things that are inseparable. I'm discussing the fact that I'd like this resolution to go to committee so we can consider it. So obviously whether or not we have had time to consider it properly is directly relevant to the point I'm making. Allow me to continue. If we're talking about -- well, we're not talking about transparency or else we'd be having a different conversation. But if we want to think about what would be transparent and fair and democratic -- with a small D -- and deliberative and all the things we'd like to pride ourselves on as being members of the Legislature, we are falling far short.

... We are not being given the opportunity to express ourselves as Senators. We are not being given the opportunity to review material before us. We are not being given the opportunity to express our own point of view on these matters, and calling for a vote. That is something that a select few in this body have. It is grossly unfair. It is disrespectful to the millions of people that we represent. And it is harmful -- since Mr. President wanted me to talk about the policy aspects of this, it is harmful on a policy basis to millions and millions of New York citizens that our voices seem to be worth less in the eyes of the majority. That's not fair. And everyone here knows it's not fair. ... People are rising up. People are taking to the streets in parts of our

state and our city of New York because they are upset about the fact that this body does not function properly. And let's be clear; this is not about whether I get to stand up and give a speech, because obviously I can do that right now. But this is about what are the consequences for the people we represent, what is going to be in this budget document.

...

But my point being, on a substantive basis, this has real consequences for the people that we represent.... There are many important subjects we're going to be dealing with today. And yet the majority says, Let's rush it. Let's get it done. Here's one resolution last night, here's another one this morning. Let's just hurry up and vote on it. And by the way, if you want some time to read it before you come out here, we're not giving you that. Get out here, get out here now, or we're starting without you. Mr. President, please refer this resolution to the Finance Committee where it can be properly deliberated on, and give every New Yorker the opportunity to have their representatives speak on their behalf. Thank you.

247. Defendant FLANAGAN, upon speaking in support of his Resolution #1050, did not indicate that it was "privileged" or address the issue of committee action with respect thereto. Rather, he stated:

[Transcript: p. 1065]

"...we have adopted an internal process that I think is worthy of the public's taking notice. We deliberated internally on a variety of different things with our colleagues in the IDC – and I want to thank Senator Klein for his members' input – when we went through every aspect of the budget..."

248. In the floor debate that followed, Senate Finance Committee Chair Young acknowledged the primacy of Senate resolution #1050 over the budget bills:

[Transcript: pp. 1077/1083-84]

Senator Krueger: Mr. President, we are debating a resolution, but the budget bills have also been printed. They don't match. When I ask my questions, should I be referring to the budget bills or the language in the resolution?

Senator Young: Through you, Mr. President, Senator Krueger should be referring to the resolution that is before the house.

...

Senator Krueger: Thank you. I have to disagree with the analysis on the numbers. But again, we're not working off the budget bills today, just the resolution, which doesn't have the numbers or the details and in fact, in any number of places, doesn't even match the budget bills.

Senator Young: Through you, Mr. President. First of all, I'd like to take issue with what Senator Krueger is saying, that she doesn't have the details, because the details are included in the Article VII bill that was introduced on Monday. So there was ample time for her and her colleagues to be able to examine that bill. But what was your question, Senator Krueger?

Sen. Krueger: Through you, Mr. President, [you've] already answered the question for me. We're not working off the budget bills. I'm told we're working off the resolution, and that doesn't match the budget bills, perhaps adding to the confusion.

249. As to the content of Senate Resolution #1050, it began and ended by referencing the Senate's "amended" budget bills, reading, in full:

"RESOLUTION in response to the 2017-2018 Executive Budget submission (Legislative Bills S2000B, S2003B, S2004B, S2005B, S2006B, S2007A, S2008B and S2009B) to be adopted as legislation expressing the position of the New York State Senate relating to the 2017-2018 New York State Budget

WHEREAS, It is the intent of the Legislature to effectuate the timely passage of a State Budget; and

WHEREAS, It is the intent of the Legislature to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public; and

WHEREAS, The Senate Finance Committee has conducted an extensive study and review of the Governor's 2017-2018 Executive Budget submission and has recommended proposed amendments to such Budget submission in the above referenced Legislative Bills and Report on the Executive Budget; and

WHEREAS, Article VII of the New York State Constitution provides the framework under which the New York State Budget is submitted, amended and enacted. The New York State Courts have limited the Legislature in how it may change the appropriations bills submitted by the Governor. The Legislature can delete or reduce items of appropriation contained in the several appropriation bills submitted by the Governor in conjunction with the Executive Budget, and it can add additional items of appropriation to those bills provided that such additions are stated separately and

distinctly from the original items of the bill and refer each to a single object or purpose; and

WHEREAS, An extensive study and review of the Governor's 2017-2018 Executive Budget submission has revealed that the construction of the budget bills submitted to the Legislature by the Governor constrains the Legislature in its ability to fully effectuate its intent in amending the Governor's budget submission; and

WHEREAS, The 2017-2018 Executive Budget includes funds for new programs throughout various agencies which are direct aid and grant programs, have been drafted as lump sum appropriations and are proposed to be distributed at the sole discretion of the Executive. In addition, some of these proposed initiatives related to capital plans have no corresponding plan details, which is imperative for proper consideration of these proposals. New capital spending, distributed through regional economic development councils, is also included in the Executive proposal; and

WHEREAS, The Legislature has amended the Governor's 2017-2018 Executive Budget submission to the fullest extent possible within the authority provided to it pursuant to Section 4 of Article VII of the New York State Constitution; and

WHEREAS, The Senate, in addition to the Governor's 2017-2018 Executive Budget submission bills as amended by the Senate in the above referenced legislative bills, does hereby provide its recommendations as to provisions in the Governor's 2017-2018 Executive Budget submission which reflect those items the Senate is constrained from effectuating as amendments to the 2017-2018 Executive Budget appended hereto; and

WHEREAS, It is the intent of the Legislature that upon the passage of the Governor's 2017-2018 Executive Budget submission as amended by the Senate, and the incorporated Report on the Amended Executive Budget may provide a basis for both houses of the Legislature to convene Committees on Conference pursuant to Joint Rule III of the Senate and Assembly for the purpose of reconciling any differences between the amendments to the Governor's budget as proposed by each house of the Legislature; now, therefore, be it

RESOLVED, That, the above referenced legislative bills (S2000B, S2003B, S2004B, S2005B, S2006B, S2007A, S2008B and S2009B) be and are incorporated as part of this resolution and are hereby adopted as the New York State Legislature's budget proposal for the 2017-2018 New York State Budget." (underlining added).

250. Such resolution, except for the fiscal year and bill numbers, was identical to last year's Senate resolution – and virtually identical to the Senate resolutions of at least the previous two

years. Its various “WHEREAS” paragraphs are, in a variety of respects, false and misleading, including:

a. The “WHEREAS” paragraph that asserted that the Senate had amended budget bills “within the authority provided to it pursuant to Section 4 of Article VII of the New York State Constitution”. This is false. Article VII, §4 prohibits the Senate from altering the Governor’s appropriation bills except by striking or reducing items of appropriation – and the Senate’s “amended” bills for fiscal year 2017-2018 had multitudinously disregarded that constitutional prohibition by increasing appropriations and adding items directly to the bill and not signifying these alterations in any way.¹²

b. The “WHEREAS” paragraph that asserted that “The New York Courts have limited the Legislature in how it may change the appropriations bills submitted by the Governor.” This is misleading by its immediately-following continuation which falsely makes it appear that it is “The New York State Courts”, rather than Article VII of the New York State Constitution, that limits the Legislature to “delet[ing] or reduc[ing] items of appropriation in the Governor’s appropriation bills”, with “additional items of appropriations” required to be “stated separately and distinctly from the original items of the bill and refer each to a single object or purpose”.

c. The “WHEREAS” paragraph that asserted that the Senate’s appended “recommendations as to provisions in the Governor’s 2017-2018 Executive Budget submission” reflected “those items the Senate is constrained from effectuating as amendments to the 2017-2018 Executive Budget”. This is false. The Senate’s “amended” bills embodied its so-called “recommendations”, either in whole or in part. Moreover, with respect to the Senate’s “recommendations” regarding the Judiciary’s budget, there was no constraint on its amending Legislative/Judiciary Budget Bill #S.2001/A.3001, which it had not done.

251. As for Assembly Resolution #179, it began by referencing all the Assembly’s budget bills, whether or not amended by the Assembly. It read:

“in response to the 2017-2018 Executive Budget submission (Bill Nos. A.3000-A, A.3001, A.3002, A. 3003-A, A.3004-A, A.3005-A, A.3006-A, A.3007, A.3008-A, A.3009-A and A.3010) to be adopted as legislation expressing the position of the New York State Assembly relating to the 2017-2018 New York State Budget

¹² Upon information and belief, this was the case in previous years, as well.

WHEREAS, Article 7 of the constitution requires the Governor to submit an executive budget containing a plan of expenditures to be made before the close of the ensuing fiscal year and recommendations as to proposed legislation; and

WHEREAS, At the time of submitting the budget to the legislature the Governor is required to submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein; and

WHEREAS, No provision may be embraced in any appropriation bill submitted by the Governor unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation; and

WHEREAS, Upon submission, pursuant to Joint Rule III, the Senate finance committee and the Assembly ways and means committee undertake an analysis and public review of all the provisions of such budget; and

WHEREAS, After study and deliberation, each committee makes recommendations in the form of bills and resolutions as to the contents thereof and such other items of appropriation deemed necessary and desirable for the operation of the government in the ensuing fiscal year; and

WHEREAS, All such fiscal committees' recommendations, when arrived at, are then to be placed before the members of the Legislature, individually and collectively, in their respective houses for their consideration and approval; and

WHEREAS, Each house thereupon considers and adopts legislation in bill format expressing its positions on the budget for the ensuing fiscal year; and

WHEREAS, Upon adoption thereof, a Conference Committee on the Budget, authorized by concurrent resolution of the Senate and Assembly pursuant to Joint Rule III, and such subcommittees thereof as may be deemed necessary are appointed by the Speaker of the Assembly and the Temporary President of the Senate, respectively, will engage in negotiations designed to reach an accord on the contents of the budget for the ensuing fiscal year; and

WHEREAS, In order to commence a Legislative process of budget negotiations designed to reach a timely accord on the contents of the budget for the ensuing fiscal year, it is necessary that budget proposals be adopted by each house of the Legislature; now, therefore, be it

RESOLVED, That, this resolution, together with the New York State Assembly proposals for Executive budget resubmission contained in Assembly Bill Nos. A.3000-B, A.3001, A.3002, A.3003-B, A.3004-B, A.3005-B, A.3006-B, A.3007-A,

A.3008-B and A.3009-B which are incorporated as if fully set forth in this resolution, herein constitute the legislation which expresses the budget proposals of the Assembly for the 2017-2018 New York State Budget.”

252. Such resolution, except for the fiscal year and bill numbers, was identical to last year’s Assembly’s resolution – and virtually identical to the Assembly resolutions of at least the previous two years. Its various “WHEREAS” paragraphs were false and misleading, including because the first three “WHEREAS” paragraphs pertaining to what “Article 7 of the constitution” requires of the Governor was not followed by any “WHEREAS” paragraphs as to what Article VII requires of the Legislature, nor any statement that the Legislature’s recited procedures are consistent with Article VII.

253. As for the one-house budget proposals, appended-to or accompanying the Senate and Assembly resolutions, Senate Resolution #1050 attached a “Report on the Amended Executive Budget”. It opened with the following statement under the heading “All State Agencies and Operations”:

“The Senate denies with prejudice the following new language contained within the body of various appropriations:

- * Language that would prevent certain appropriations from becoming effective contingent upon the Legislature enacting a specified Executive initiative.

- * Language that would allow the Director of the Division of the Budget to administratively reduce appropriation authority. This language is in the Aid to Localities Budget of most agencies.

- * Language that would require Members of the Legislature to sign a series of redundant documents prior to Legislative initiatives being implemented.

- * Language that would give the Executive unlimited transfer authority within the State Operations Budget. This is in addition to the transfer language included in the Division of the Budget (DOB) and affects most agencies.

* Language that would consolidate state agency administrative hearings into a single entity.

* Language that would extend and expand the use of the design-build project delivery method within appropriations.”

It then furnished the following explanation:

“The Senate has stricken this language from the appropriation bills because such language constitutes an impermissible and unconstitutional over-reach by the Executive, infringing upon the independent role of the Legislature. This objectionable language constitutes a direct violation of fundamental separation of powers principles, and goes beyond any actions sanctioned by the Court of Appeals in *Silver v. Pataki*.”

254. No memorandum of law accompanied the Senate report to support its bald assertion that the “objectionable language” that the Senate had stricken from the appropriation bills “goes beyond any actions sanctioned by the Court of Appeals in *Silver v. Pataki*”. Nor, for that matter, did the Senate report furnish a legal citation for the referred-to Court of Appeals’ ruling so as to facilitate verification of what the Court of Appeals had said.

255. Upon information and belief, the referred-to *Silver v. Pataki* ruling is the Court of Appeals consolidated decision in *Pataki v. Assembly* and *Silver v. Pataki*, 4 N.Y.3d 75 (2004). It proscribes the referred-to strike-outs of objected-to language from defendant CUOMO’s appropriation bills.

256. Moreover, defendant SENATE’s “amended” bills not only deleted language, it also concealed what it had done by disregarding Senate Rule VII, §4(b):

“When amendments are offered to a printed bill, the proposed changes, indicating page and line numbers, shall be listed on four detail sheets and the same changes shall be incorporated and marked on two copies of the bill... Furthermore, when a printed bill is amended the accompanying introducer’s memorandum required pursuant to section one of this Rule, shall also be amended to reflect any changes...”

257. The Assembly’s “Summary of the Recommended Changes to the Executive Budget”, accompanying its Resolution #179, furnished a similar list of objected to “appropriation language”

that it had “remove[d]”, albeit without an explanatory paragraph of justification. Under the heading:

“Assembly Budget Proposal SFY 2017-18 – All State Agencies”, it stated:

“The Executive Budget includes several policy proposals within appropriation language that appear within multiple State agencies. The Assembly rejects each of these proposals and removes appropriation language that would:

- grant interchange and transfer authority for the purposes of consolidating administrative hearings for state agencies;
- impermissibly delegate to the director of the Division of Budget the authority to interchange and transfer appropriations without limit;
- impermissibly delegate to the Division of the Budget the authority to reduce payments from appropriations, without limit, in the event that receipts are less than assumed in the financial plan;
- condition the effectiveness of the State Operations budget upon the passage of the Aid to Localities budget;
- authorize design-build contracts for capital projects; and
- require all legislative sponsors of discretionary funding to provide a written declaration to the director of the Division of the Budget that such grants are for and will be used solely for a lawful purpose, funds will not be misused, and there are no conflicts of interest or financial benefit to the legislative sponsor.”

258. Upon information and belief, defendant ASSEMBLY’s failure to cite to the Court of Appeals consolidated decision in *Pataki v. Assembly* and *Silver v. Pataki*, 4 N.Y.3d 75 (2004) as support for its having “remove[d]...appropriation language”, reflects its knowledge that what it has done is proscribed by that decision.

259. Certainly, too, even were defendant ASSEMBLY’s “remov[al of]...appropriation language” constitutionally permitted, it would not warrant its violation of Assembly Rule IV, §6(f):

“All budget appropriation bills reported favorably or for consideration, if reported with amendments, shall be immediately reprinted, and the amendments proposed by the committee shall be underscored in their proper place except in cases where the

committee amends eliminating certain words or figures, in which case such words or figures shall be printed enclosed in black-faced brackets.”

260. By contrast with defendants SENATE and ASSEMBLY’s deletion of language accompanying appropriations, it retained such other language as that accompanying the appropriation for district attorney salary reimbursement in the Division of Criminal Justice Services’ budget of Aid to Localities Budget Bill #S.2003-A.3003, about which plaintiff SASSOWER had testified.

261. Indeed, defendants SENATE and ASSEMBLY ignored every aspect of plaintiff SASSOWER’s testimony in the repetition of constitutional, statutory, and rule violations in which they engaged. This includes leaving Legislative/Judiciary Budget Bill #S.2001/A.3001 unamended – as if they were constrained from amending it, which, certainly is what the Senate’s Resolution 1050 implies.

262. With respect to the legislative portion of Legislative/Judiciary Budget Bill #S.2001/A.3001, neither one-house budget proposal made any recommendations for change. With respect to the judiciary portion, the Assembly majority’s proposal also made no recommendations for change, stating, under the heading “**Judiciary**”:

“The Assembly provides an All Funds appropriation of \$2.98 billion.

State Operations

- The Assembly accepts the Judiciary’s proposal and recommends no changes.

Aid to Localities

- The Assembly accepts the Judiciary’s proposal and recommends no changes.

Capital Projects

- The Assembly accepts the Judiciary’s proposal and recommends no changes.
...”

However, the Senate’s majority proposal did make a recommendation:

“*The Senate modifies the Office of Court Administration as follows.

- Denies recommendation to add 200 new full time equivalent positions, and reduces appropriation authority by \$18.2 million to reflect reduced spending.”

There was nothing preventing the Senate majority from amending Legislative/Judiciary Budget Bill #S.2001/A.3001 to embody this modification – which, moreover was to reduce an item of appropriation.

The Senate and Assembly General Budget Conference Committee & Subcommittees
(Facts Pertaining to Reiterated Fourth & Fifth Causes of Action (¶¶48-53; 54-58))

263. Identically to prior years, defendants FLANAGAN and HEASTIE’s “Joint Legislative Schedule for Adopting SFY 2017-2018 Budget”, which they did not release until February 7, 2017, did not reveal that it is mandated by statute, Legislative Law §53 and §54-a, and by a legislative rule based thereon, Senate and Assembly Permanent Joint Rule III – thereby concealing its violations thereof:

- In violation of Legislative Law §53 and §54-a, the Joint Legislative Schedule did not include dates for the Legislature’s two different sets of hearings on the budget – which, as these two statutes reflect, are to be separate: the public is to have its own hearings pursuant to Legislative Law §32-a and the department and division heads to have hearings of their own pursuant to Article VII, §3 of the New York State Constitution and Legislative Law §31.
- In violation of Legislative Law §54-a and Senate and Assembly Permanent Joint Rule III, the Joint Legislative Schedule did not provide for the convening of a Joint Budget Conference Committee within ten days “after submission of the budget by the governor pursuant to article seven of the constitution” – as those provisions mandate. Rather, it did not schedule the Joint Budget Conference Committee until March 13 – this being the identified date the “Joint Senate & Assembly Budget Conference Committees Commence”.

364. The requirement of Legislative Law §54-a¹³ and Permanent Joint Rule III that the Joint Budget Conference Committee and subcommittees be established “within ten days following

¹³ Legislative Law §54-a., entitled “Scheduling of legislative consideration of budget bills” – the source of Permanent Joint Rule III – begins, as follows:

“The legislature shall by concurrent resolution of the senate and assembly prescribe by joint rule or rules a procedure for:

1. establishing a joint budget conference committee or joint budget conference committees within ten days following the submission of the budget by the governor pursuant

the submission of the budget by the Governor pursuant to article VII of the constitution” – meant that this year they should have been established either ten days after the January 17, 2017 date that defendant CUOMO introduced his “appropriation bills”, or ten days after the January 23, 2017 date he introduced his “Article VII bills”, or, at latest, ten days after his “30 day amendments”, which was on or about February 17, 2017. This, so that they could promptly become operational and do what conference committees are supposed to do – and what both Legislative Law §54-a and Permanent Joint Rule III identify as their function: to reconcile different versions of budget bills and resolutions passed by the two legislative houses.

362. That failure to timely establish the budget conference committees is of constitutional magnitude was known to the legislative defendants, as it was identified by the twelfth cause of action of plaintiffs’ March 23, 2016 verified second supplement complaint – embodied in the fifth cause of action of their September 2, 2017 verified complaint herein (¶¶54-58). As stated:

“362. The failure of defendants FLANAGAN and HEASTIE to timely establish the Joint Budget Conference Committee and subcommittees is a statutory and rule violation of constitutional magnitude – since Article VII, §4 unequivocally states:

‘...an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor’s bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV.’
(underlining added).

363. In other words, achieving an ‘on time’ state budget is largely in the control of defendants SENATE and ASSEMBLY. Pursuant to Article VII, §4, once their two houses agree as to the items of appropriations to be stricken or reduced in defendant CUOMO’s four appropriation bills other than the Legislative/Judiciary budget bill– which is what the conference committees should be brokering, based on amended bills – these bills each become ‘law immediately, without further action by the governor’.”

to article seven of the constitution, to consider and reconcile such budget resolution or budget bills as may be passed by each house...”

363. This was not the only respect in which – pertaining to the budget conference committees – defendants FLANAGAN and HEASTIE’s “Joint Legislative Schedule” for the budget violated Legislative Law §54-a and Permanent Joint Rule III. It also violated their requirement of announcing the date by which the budget conference committees were to issue their “final reports”, stating only, with respect to the date “March 23”—“Joint Conference Committees End”. Not only did this contrast with prior years’ schedules, which had made the second of their two entries pertaining to the budget conference committees the date of their reports, but it implicitly conceded that reports would not be rendered – violations repeatedly objected to by plaintiffs, including by their fifth cause of action herein.

364. On Friday, March 17, 2017, defendants FLANAGAN and HEASTIE issued an announcement that the General Budget Conference Committee would meet at 4:30 p.m. on Monday, March 20, 2017 – with its budget conference subcommittees meeting immediately thereafter.

365. Identically to last year, defendants FLANAGAN and HEASTIE were the co-chairs of the ten-member General Budget Conference Committee. Among the members: Senate IDC Leader Klein – who, like defendant FLANAGAN, is a lawyer – Senate Minority Leader Stewart-Cousins, Assembly Minority Leader Kolb, Senate Finance Chair Young, and Assembly Ways and Means Chair Farrell – with alternates being the ranking members of those fiscal committees, Senator Krueger and Assemblyman Oaks. All are knowledgeable of plaintiff SASSOWER’s advocacy that the budget is “OFF the constitutional rails” – and the significance of this citizen-taxpayer action in establishing that fact and a multitude of statutory and legislative rule violations. Upon information and belief, all, if not almost all, of these legislators – all of whom receive top leadership stipends for their “leadership” responsibilities – consider themselves “full-time” legislators, without outside sources of income.

366. Likewise, knowledgeable are members of the two relevant budget conference subcommittees: “Public Protection/Criminal Justice/Judiciary” and “General Government and Local Assistance”. Their members also include Senators and Assembly members in leadership positions, receiving leadership stipends, without outside sources of income, knowledgeable of plaintiff SASSOWER’s advocacy and this lawsuit.

367. Other than the brief, non-substantive March 20, 2017 public meetings, the General Budget Conference Committee and its ten subcommittees have ALL completely disappeared from public view.

CAUSES OF ACTION

REPEATING, FOR FISCAL YEAR 2017-2018, THE TEN CAUSES OF ACTION OF PLAINTIFFS’ SEPTEMBER 2, 2017 VERIFIED COMPLAINT

368. Plaintiffs repeat, reallege, and reiterate ¶¶1-367 with the same force and effect as if more fully set forth herein.

369. With respect to the budget for fiscal year 2017-2018, defendants have replicated essentially ALL the constitutional, statutory, and legislative rule violations they committed with respect to the budget for fiscal year 2016-2017 – other than that the legislative defendants permitted plaintiff SASSOWER to testify at this year’s Senate and Assembly budget hearings – and that this pleading is drafted at a stage where the full range of violations have not yet occurred.

370. Consequently, the ten causes of action of plaintiffs’ September 2, 2016 verified complaint pertaining to the budget for fiscal year 2016-2017 are also applicable to this supplemental complaint pertaining to fiscal year 2017-2018. Nothing more is required than to change the bill numbers and fiscal years – and adjust for the fact that as of the date of this pleading, the violations that occur later in the budget “process” have yet to repeat.

371. Insofar as nine of those ten causes of action were dismissed by Justice Hartman's December 21, 2016 decision/order, such does not bar the reiteration of those same nine causes of action for fiscal year 2017-2018, as her decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on all ten causes of action of their September 2, 2016 complaint.

372. Proving that the December 21, 2016 is a judicial fraud – and that Justice Hartman was duty-bound to have disqualified herself for actual bias born of her financial interest and relationships with the defendants – is plaintiffs' analysis thereof, annexed as Exhibit U to their February 15, 2017 order to show cause for its vacatur and for Justice Hartman's disqualification. Justice Hartman signed it on February 21, 2017 – and made it returnable, more than five weeks later, on March 24, 2017.

373. As highlighted by the analysis (Exhibit U), Justice Hartman dismissed each of the nine causes of action by completely disregarding the fundamental standards for dismissal motions, concealing all their allegations, and by bald falsehood. As for plaintiffs' sixth cause of action (§§59-68) – the only cause of action Justice Hartman preserved – she concealed the state of the record thereon, entitling plaintiffs to summary judgment.

374. Plaintiffs' analysis (Exhibit U) is accurate, true, and correct in all material respects.

375. In the interest of simplicity, the ten causes of action of the September 2, 2016 verified complaint are not being here reprinted with new numbering. Rather, they are herein repeated, realleged, and reiterated, as if more fully-set forth, and designated as applicable to the facts hereinabove described pertaining to the budget for fiscal year 2017-2018. The requested declarations, in the PRAYER FOR RELIEF/WHEREFORE clause, are organized to track the content of the reiterated ten causes of action for fiscal year 2017-2018 that are not otherwise being set forth.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

1. **For a declaratory judgment pursuant to State Finance Law §123 *et seq.* – Article**

7-A, “Citizen-Taxpayer Actions”:

As to the First Cause of Action (§§23-33), Reiterated for Fiscal Year 2017-2018

The Legislature’s Proposed Budget for Fiscal Year 2017-2018,
Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful

That the Legislature’s proposed budget for fiscal year 2017-2018, embodied in Legislative/Judiciary Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because [as chronicled by §§117-129, 173-175, *supra* and discussed by plaintiffs’ first cause of action herein (§§23-33) and its incorporated corresponding first, fifth, and ninth causes of action from plaintiffs’ prior citizen-taxpayer action (Exhibits B, C, A)]: **(1)** it is not “certified by the presiding officer of each house”, nor does it even purport to be “itemized estimates of the financial needs of the legislature”, BOTH expressly mandated by Article VII, §1 of the New York State Constitution; **(2)** it is missing “General State Charges”; **(3)** its section of “Senate and Assembly Joint Entities” is materially incomplete; and **(4)** its budget figures, identical to the past six budgets, but for a uniform 3% increase in most figures, are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the funding they need to discharge their constitutional duties.

As to the Second Cause of Action (¶¶34-39),
Reiterated for Fiscal Year 2017-2018

The Judiciary's Proposed Budget for 2017-2018,
Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful

That the Judiciary's proposed budget for fiscal year 2017-2018, embodied in Legislative/Judiciary Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and fraudulent – because [as chronicled by ¶¶130-141, 176-179, *supra* and discussed by plaintiffs' second cause of action herein (¶¶34-39) and its incorporated corresponding second, sixth, and tenth causes of action from plaintiffs' prior citizen-taxpayer action (Exhibits B, C, A)]: (1) the Judiciary budget is so incomprehensible that the Senate majority and minority and Assembly majority and minority cannot agree on its cumulative cost and percentage increase; (2) its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; (3) the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-required itemization and violates Judiciary Law §215(1), creating a "slush fund" and concealing relevant costs; (4) it conceals and embeds funding for judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional, *to wit*, the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation.

As to the Third Cause of Action (¶¶40-47),
Reiterated for Fiscal Year 2017-2018

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

That Legislative/Judiciary Budget Bill #2001/A.3001 is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because [as chronicled by ¶¶148-163, *supra* and discussed by plaintiffs' third cause of action herein (¶¶40-47) and its incorporated

corresponding third, seventh, and eleventh causes of action from plaintiffs' prior citizen-taxpayer action (Exhibits B, C, A)] it adds legislative reappropriations that were not part of the Legislature's proposed budget and not certified either as to their suitability as reappropriations or as to their amounts.

As to the Fourth Cause of Action (§§48-53),
Reiterated for Fiscal Year 2017-2018

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

That the unamended Legislative/Judiciary Budget Bill #2001/3001 – and all the other budget bills “amended” by defendants SENATE and ASSEMBLY, to wit the four other “appropriation bills”:

- (1) State Operations Budget Bill: #S.2000-B; #A.3000-B;
- (2) Debt Service Budget Bill: #S.2002-A; #A.3002-A;
- (3) Aid to Localities Budget Bill: #S.2003-B; #A.3003-B
- (4) Capital Projects Budget Bill: #S.2004-B; #A.3004-B;

and the five “Article VII bills”:

- (1) Public Protection and General Government Budget Bill: #S.2005-B; #A.3005-B;
- (2) Education, Labor and Family Assistance Budget Bill: #S.2006-B; #A.3006-B;
- (3) Health and Mental Hygiene Budget Bill: #S.2007-A; #A.3007-A;
- (4) Transportation, Economic Development and
Environmental Conservation Budget Bill: #S.2008-B; #A.3008-B;
- (5) Revenue Budget Bill #S.2009-B; #A.3009-B

– are wrongful expenditures, misappropriations, illegal, unconstitutional – and fraudulent – because [as chronicled by §§142-147, 187-267, *supra* and presented by plaintiffs' fourth cause of action herein (§§48-53) and detailed by its incorporated corresponding fourth, eighth, and twelfth causes of action from plaintiffs' prior citizen-taxpayer action (Exhibits B, C, A)] nothing lawful or constitutional can emerge from violations of statutory and legislative rule safeguards designed to ensure legitimate legislative due process and protect public monies, including:

- (1) Legislative Law §32-a (*hearings for the public, separate from the hearings for the governor and agency heads, mandated by Article VII, §3 of the New York State Constitution & Legislative Law §31*);
- (2) Legislative Law §§53, §54-a (*joint budget schedule; joint budget conference*);
- (3) Senate Rule VIII, §8, Senate Rule VII, §1, and Assembly Rule III, §1(f); §2(a) (*fiscal notes, fiscal impact statements, and introducer's memoranda*), applicable to defendant Governor by Senate Rule VII, §6 and Assembly Rule III, §2(g);
- (4) Senate Rule VII, §4 and Assembly Rule III, §§1, 2, 8 (*bills*);
- (5) Senate Rule VIII, §§2, 6 and Assembly Rule IV, §§2, 4, 6, (*public meetings, recorded votes, committee reports*);
- (6) Senate Rule VII, §4(b) and Assembly Rule III, §1(f), §6 (*amendments*);
- (7) Senate Rule VIII, §5(c) and Assembly Rule IV, §1(d) (*committee oversight*);
- (8) Senate and Assembly Permanent Joint Rule III (*budget*);
- (9) Senate and Assembly Joint Rule II, §1 (*conference committee*).

Also, nothing lawful or constitutional can emerge from a legislative process that violates Article III, §10 of the New York State Constitution: “Each house of the legislature shall keep a journal of its proceedings, and publish the same.... The doors of each house shall be kept open...”; Public Officers Law, Article VI; Senate Rule XI, §1, and Assembly Rule II, §1. The behind-closed-doors Senate and Assembly majority and minority political conferences, which serve as the venue for discussing, debating, and voting on bills that are not being discussed, debated, voted on, and amended in committee are unconstitutional, as is Public Officers Law, §108.2 exempting them from the Open Meetings Law and FOIL.

As to the Fifth Cause of Action (§§54-58),
Reiterated for Fiscal Year 2017-2018

The “Process” by which the State Budget for Fiscal Year 2017-2018
Is Being Enacted Violates Article VII, §§4, 5, 6 of the New York State
Constitution

That the “process” by which the state budget for fiscal year 2017-2018 is being enacted violates Article VII, §§4, 5, 6 of the New York State Constitution because [as chronicled by §§183-186, 193-267, *supra* and presented by plaintiffs’ fifth cause of action herein (§§54-58) and its incorporated twelfth and sixteenth causes of action of their March 23, 2016 second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: §§362-383, §§458-470)] the Senate and Assembly, by their committees and full chambers, have failed to amend and pass the Governor’s appropriation bills and reconcile them so that they might “become law immediately without further action by the governor”, as Article VII, §4 mandates, substituting instead one-house budget proposals, emerging from closed-door political conferences of their majority party/coalitions, and serving as the basis for convening a Senate and Assembly budget conference committee and subcommittees, whose proceedings are themselves behind-closed-doors, mostly by staff – and then supplanted and cut short by behind-closed-doors deal-making by the Governor, Temporary Senate President, and Assembly Speaker to produce amended budget bills, sped to adoption on messages of necessity.

As to the Sixth Cause of Action (§§59-68),
Reiterated for Fiscal Year 2017-2018

Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Written* –
and the Judicial Salary Increase Recommendations of the Commission on
Legislative, Judicial and Executive Compensation are Null & Void by Reason Thereof

That the judicial salary increase for fiscal year 2017-2018, embedded in Legislative/Judiciary Budget Bill #S.2001/A.3001, is unconstitutional because [as set forth by plaintiffs’ sixth cause of action herein (§§59-68) and its incorporated thirteenth cause of action of plaintiffs’ March 23, 2016

verified second supplemental complaint in their prior citizen-taxpayer (Exhibit A: ¶¶385-423)] Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation, whose December 24, 2015 report gives rise to the judicial salary increase: (1) unconstitutionally delegates legislative power by giving the Commission's salary recommendations "the force of law"; (2) unconstitutionally delegates legislative power without safeguarding provisions; (3) violates Article XIII, §7; (4) violates Article VII, §6 (*anti-rider*) and, additionally, §§3 and 4 (*timeliness, content*); (5) was fraudulently procured and without legislative due process.

**As to the Seventh Cause of Action (¶¶69-76),
Reiterated for Fiscal Year 2017-2018**

Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Applied* –
& the Judicial Salary Increase Recommendation of
the Commission on Legislative, Judicial and Executive Compensation
are Null & Void by Reason Thereof

That the judicial salary increase for fiscal year 2017-2018, embedded in Legislative/Judiciary Budget Bill #S.2001/A.3001, is unconstitutional because [as set forth by plaintiffs' seventh cause of action herein (¶¶69-76) and its incorporated fourteenth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer (Exhibit A: ¶¶424-452)] the legislative defendants willfully and deliberately failed and refused to discharge their oversight duties with respect to the constitutionality and operation of the Commission on Legislative, Judicial, and Executive Compensation, in face of evidence that it (i) concealed and did not determine the disqualification/disclosure issues before it pertaining to its members' actual bias and interest; (ii) concealed and did not determine whether systemic judicial corruption is an "appropriate factor" barring judicial salary increases; (iii) concealed and did not determine issues of fraud, including the complete absence of evidence to justify a salary increase; and (iv) suppressed and disregarded the "appropriate factor" of citizen input and opposition.

**As to the Eighth Cause of Action (¶¶77-80),
Reiterated for Fiscal Year 2017-2018**

The Violations of Express Statutory Requirements
of Chapter 60, Part E, of the Laws of 2015 by
the Commission on Legislative, Judicial and Executive Compensation
Render its Judicial Salary Increase Recommendations Null and Void

That the judicial salary increase for fiscal year 2017-2018, embedded in Legislative/Judiciary Budget Bill #S.2001/A.3001, is unconstitutional because [as set forth by plaintiffs' eighth cause of action herein (¶¶77-80) and its incorporated fifteenth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer (Exhibit A: ¶¶453-457)] it rests on the December 24, 2015 report of the Commission on Legislative, Judicial, and Executive Compensation that violated the express statutory requirements of Chapter 60, Part E, of the Laws of 2015 in that: **(1)** the Commission made no finding and furnished no evidence that current "compensation and non-salary benefits" or "pay levels and non-salary benefits" of New York State judges are inadequate; **(2)** the Commission examined only judicial salary, not "compensation and non-salary benefits"; **(3)** the Commission did not "take into account all appropriate factors", such as systemic judicial corruption and citizen opposition – and made no claim that it had; **(4)** the Commission did not "take into account three of the six statutorily-listed "appropriate factors"; **(5)** the Commission's appointing authorities – defendants CUOMO, FLANAGAN, HEATIE, and former Chief Judge Lippman – constituted the Commission four months late, such that it had less than two months to execute its statutory charge; **(6)** the Commission did not utilize its significant investigative powers and available resources.

As to the Ninth Cause of Action (§§81-84),

Reiterated for Fiscal Year 2017-2018

Three-Men-in-a-Room Budget Dealing-Making is Unconstitutional,
As Unwritten and As Applied

That three-men-in-a-room, budget dealing-making is unconstitutional, *as unwritten and as applied* because [as chronicled by plaintiffs' ninth cause of action herein (§§81-84) and its incorporated sixteenth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer (Exhibit A: §§458-470)] neither the Constitution, nor statute, nor Senate and Assembly rules authorize the Governor, Temporary Senate President, and Assembly Speaker to huddle together for budget negotiations and the amending of budget bills – and it violates Article VII, §§3, 4 and Article IV, §7, transgressing the separation of powers, for them to do so. That it takes place behind-closed-doors, out of public view, is a further constitutional violation – of Article III, §10.

As to the Tenth Cause of Action (§§85-110),

Reiterated for Fiscal Year 2017-2018

The Appropriation Item Entitled “For grants to counties for district attorney salaries”, in the Division of Criminal Justice Services’ Budget, Contained in Aid for Localities Budget Bill #S.2003-B/A.3003-B, is Unlawful and Unconstitutional. Reappropriation Items are also Improper, if not Unlawful

That the appropriation item entitled “For grants to counties for district attorney salaries”, in the Division of Criminal Justice Services’ budget for fiscal year 2017-2018, contained in the Senate’s Aid to Localities Budget Bill #S.2003-B and the Assembly’s Aid to Localities Budget Bill #A.3003-B is unconstitutional and unlawful because [as chronicled by §§164-171, 180-182, *supra* and presented by plaintiffs’ tenth cause of action herein (§§85-110)] (1) it violates and overrides three specific statutory provisions: County Law §700.10 and §700.11 and Judiciary Law §183-a; (2) it violates and overrides “any other law to the contrary” – which is unconstitutionally vague and would include the New York State and United States Constitutions, which it cannot constitutionally

supersede; (3) it unconstitutionally rests on “the amount received by a county for such purpose in 2013-14” – without specifying the amount each county received “for such purpose in 2013-14” or the document containing that information; (4) it unconstitutionally rests on “a plan prepared by the commissioner of criminal justice services and approved by the director of the budget” – seemingly not then existent and without provision for its public availability.

2. Pursuant to State Finance Law §123-e, for entry of a judgment permanently enjoining defendants:

(a) from disbursing monies pursuant to Legislative/Judiciary Budget Bill #S.2001/A.2001, or, alternatively: (i) as to the legislative portion, enjoining disbursements pursuant to its §1 appropriations and §4 reappropriations (pp. 1-9; 27-53); and; (ii) as to the judiciary portion, disbursements of its §3 reappropriations (pp. 23-26);

(b) from disbursing monies pursuant to the appropriation item “For grants to counties for district attorney salaries” in the Division of Criminal Justice Services’ budget contained in Aid to Localities Budget Bill #S.2003-B, #A.3003-B;

(c) from enacting a budget based on the nine budget bills the legislative defendants purported to amend on March 13, 2017 and March 20, 2017, but, in fact, did not amend, and which, by those purported amendments violate Article VII, §§4, 5, 6 of the New York State Constitution and the controlling decision of the Court of Appeals in *Pataki v. Assembly* and *Silver v. Pataki*, 4 NY3d 75 (2004);

3. Pursuant to State Finance Law §123-g, for costs and expenses, including attorneys’ fees;

4. **For such other and further relief as may be just and proper**, including restoring public trust by referring to prosecutorial authorities the evidence particularized by this verified supplemental complaint as it establishes, *prima facie*, grand larceny of the public fisc and other corrupt acts, requiring that the culpable public officers and their agents be criminally prosecuted and removed from office, without further delay.

ELENA RUTH SASSOWER

Sworn to before me this
29th day of March 2017

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

I am the individual plaintiff in the within action and director of the corporate plaintiff, Center for Judicial Accountability, Inc. I have written the annexed verified supplemental complaint and attest that same is true and correct of my own knowledge, information, and belief, and as to matters stated upon information and belief, I believe them to be true.

ELENA RUTH SASSOWER

Sworn to before me this
29th day of March 2017

Notary Public