SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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

Plaintiffs,

Affidavit in Reply & in Further Support of Order to Show Cause & for the Court's Disqualification

-against-

Index #1788-2014

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, DEAN SKELOS in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, SHELDON SILVER, in his official capacity as Assembly Speaker, THE NEW YORK STATE ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General of the State of New York, and THOMAS DiNAPOLI, in his official capacity as Comptroller of the State of New York,

Defendants.

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STATE OF NEW YORK)
WESTCHESTER COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff, fully familiar with all the facts, papers, and proceedings heretofore had, and submit this affidavit in reply to Assistant Attorney General Adrienne Kerwin's opposition to plaintiffs' March 23, 2016 order to show cause for leave to file their verified second supplemental complaint and for a preliminary injunction – and for the disqualification of this Court.

2. I have written plaintiffs' accompanying reply memorandum of law, which I incorporate herein by reference, swearing to the truth of its presentation of facts and the accuracy of its recited law. Such comprehensively establishes that AAG Kerwin's April 8, 2016 opposing memorandum of law and affirmation are not only false, but fraudulent.

3. As therein stated (at pp. 13-14), virtually all the legal issues have already been fully briefed. Therefore, upon this Court's granting of the first branch of plaintiffs' order to show cause for leave to file their verified second supplemental complaint – and upon defendants answering and/or moving to dismiss or for summary judgment – plaintiffs will directly move or cross-move for summary judgment. This would be the most expeditious and economical way to resolve the identical issues pertaining to the legislative and judiciary budgets and combined legislative/judiciary budget bills for fiscal years 2014-2015, 2015-2016, and 2016-2017 and the embedded judicial salary increases recommended by the Commission on Judicial Compensation and by the Commission on Legislative, Judicial and Executive Compensation.

4. No purpose would be served by burdening the unrepresented and *pro se* plaintiffs, with the effort and expense of commencing a new citizen-taxpayer action for fiscal year 2016-2017, especially as it would doubtless be assigned to this Court as related to this case.

5. Needless to say, without a fair and impartial judge, there can be no fair and impartial determination of the issues. Based upon what took place at the March 23, 2016 oral argument of the TRO sought by plaintiffs' March 23, 2016 order to show cause (Exhibit C)[1], the Court's response to my March 24, 2016 letter pertaining thereto (Exhibits D, E), and AAG Kerwin's brazen fraud by her April 8, 2016 opposition papers, the Court's obligation is to recognize its duty to disqualify itself. No formal motion is required for such purpose.

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[1] The exhibits annexed herein continue the sequence of my March 23, 2016 moving affidavit.

6. In the interest of judicial economy, I reiterate, as if more fully set forth, my March 24, 2016 letter to the Court requesting "reconsideration of the Court's denial of the TRO and...an immediate hearing on the preliminary injunction, and if denied, ...the Court's disqualification for demonstrated actual bias and interest" (Exhibit D). The conclusion of the letter, after two single-spaced pages of particulars, was as follows:

> "As I stated yesterday, this Court has a substantial financial interest in this citizen taxpayer action, inasmuch as it challenges the judicial salary increases of which the Court has been the beneficiary, boosting its salary by almost $40,000 a year. Contrary to the Court's June 24, 2015 decision – the same decision as granted plaintiffs' March 31, 2015 motion for leave to file their supplemental complaint – just because 'every Supreme and Acting Supreme Court Justice in the State of New York' has an 'equally applicable' 'financial conflict', does not make 'recusal on the basis of financial interest a functional impossibility'. A judge can be financially interested, yet nonetheless rise above that interest to discharge his duty. A judge who cannot or will not do that and so-demonstrates this by manifesting actual bias – must disqualify himself or be disqualified.
>
> The Court asked me yesterday whether I was reiterating my request that it disqualify itself. Let there be no doubt that based on the record before the Court and its conduct at yesterday's proceeding – I am.
>
> Based on the record before the Court, in the absence of its granting of the TRO and/or its scheduling a hearing on the preliminary injunction for either tomorrow or Monday, March 28th, I seek an appealable order so that the Appellate Division, Third Department can determine plaintiffs' entitlement to the Court's disqualification for demonstrated actual bias and interest – and to the TRO and preliminary injunction requested by their emergency order to show cause.
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> Thank you." (Exhibit D, p. 3).

7. The Court's three-sentence responding letter was as follows:

> "Dear Ms. Sassower:
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> The Court is in receipt of your faxed correspondence of March 24, 2016. The Court finds insufficient basis to schedule any further appearances and/or a hearing at this time, and no basis to issue a formal written Order as requested in your correspondence.
>
> So Ordered." (Exhibit E).

8. In other words, without denying or disputing the accuracy of the recitation of fact and law in my letter, the Court responded in a completely conclusory fashion, refusing to furnish an appealable order for the Appellate Division's review, simultaneously concealing that at issue was the Court's disqualification for actual bias and interest in the context of a TRO and preliminary injunction having an additional $19,000 impact on its judicial salary for fiscal year 2016-2017.

9. If the Court's disposition of my March 24, 2016 letter is remotely defensible – and not a further manifestation of its actual bias, born of interest, already amply demonstrated by the record herein – then it must particularize the supposed "insufficient basis" and "no basis".[2] No objective reading of my March 24, 2016 letter supports either assertion.

10. Suffice to say, neither at the March 23, 2016 oral argument, nor by its March 24, 2016 letter, did the Court deny my assertions that State Finance Law §123-e(2) authorized the granting of the TRO sought by plaintiffs' order to show cause, including to enjoin "the force of law" judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation that, absent the TRO, took effect, automatically on April 1, 2016. Nor did the Court

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

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

give any reason for not scheduling an immediate hearing on plaintiffs' requested preliminary injunction request that is the rationale for the restriction, in CPLR §6313, to the granting of a TRO to restrain public officers from statutory duties.

11. That AAG Kerwin's April 8, 2016 opposition papers omit from their procedural history any reference to the TRO sought by plaintiffs' March 23, 2016 order to show cause, or to the oral argument thereon, or to the Court's disposition thereof, or to my March 24, 2016 letter and the Court's response thereto only underscores that the Court is on its own in justifying what it has done.

12. As stated by plaintiffs' reply memorandum of law in chronicling the deceit of AAG Kerwin's April 8, 2016 opposition papers:

> "Plainly, AAG Kerwin would not now be replicating and reprising all her past fraud had she believed the Court to be a fair and impartial tribunal that would not only draw the proper inferences from her misconduct, but sanction her and her conspiring superiors, consistent with 22 NYCRR §130-1.1 *et seq.*, Judiciary Law §487, and the Court's mandatory disciplinary responsibilities under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct. Her unabashed instant fraud demonstrates she has no such belief[fn2]– reinforcing the Court's duty to disqualify itself, already established by the record herein." (at p. 3).

ELENA RUTH SASSOWER

Dated: April 22, 2016

Sworn to before me this
23rd day of April 2016

Notary Public

CHRISTOPHER J LEPAGE
Notary Public - State of New York
NO. 01LE6321403
Qualified in Westchester County
My Commission Expires Mar 16, 2019