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,

-against-

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.

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August 25, 2017

AFFIDAVIT IN REPLY & IN OPPOSITION

Oral Argument Requested

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

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

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff in this citizen-taxpayer action brought pursuant to Article 7-A of the State Finance Law (§123 *et seq.*). I am fully-familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in reply to Assistant Attorney General Adrienne Kerwin's July 21, 2017 opposition to plaintiffs' June 12, 2017 order to show cause, which she has combined with a cross-motion; in opposition to the cross-motion; and in further support of plaintiffs' June 21, 2017 order to show cause.

2. Accompanying this affidavit is plaintiffs' August 25, 2017 memorandum of law, which I wrote and incorporate by reference, swearing to the truth of its recitation of fact and law. Such memorandum establishes the utter fraudulence of AAG Kerwin's opposition to plaintiffs' June 12, 2017 order to show cause and her cross-motion, as to which, by letter dated July 27, 2017 (Exhibit H-1), I first alerted the Court and gave "NOTICE" to AAG Kerwin's superiors, including defendant Attorney General Schneiderman,

> "of their duty to review AAG Kerwin's July 21, 2017 opposition/cross-motion and to withdraw it and take other appropriate steps to uphold the rule of law and ethical mandates, as required by New York's Rules of Professional Conduct, applicable to them. Among its non-discretionary provisions: Rule 5.1, 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers',[fn3] and Rule 5.2, 'Responsibilities of a Subordinate Lawyer'." (underlining in the original).

3. I received no response from AAG Kerwin or her superiors to my July 27, 2017 "NOTICE" to them, which had requested their response by August 15, 2017. As a result, I was put to the burden of chronicling the litigation fraud AAG Kerwin had committed by her July 21, 2017 opposition/cross-motion, which, had they discharged their supervisory and managerial responsibilities pursuant to Rule 5.1, as they are mandated to do, they would have themselves recognized, readily.

4. AAG Kerwin's brazen litigation fraud by her July 21, 2017 opposition/cross-motion – aided and abetted, if not directed, by her highest superiors – is inexplicable except as a reflection of their view that because this Court has a HUGE financial interest in the judicial compensation issues presented by this lawsuit and relationships with defendants, the Court will let them get away with everything, because fundamental adjudicative and ethical standards do not apply. Certainly, events subsequent to those recited by plaintiffs' June 12, 2017 order to show cause could only have reinforced this view.

5. This case, being a citizen-taxpayer action pursuant to State Finance Law Article 7-A (§123 *et seq.*), is entitled to expedition, pursuant to State Finance Law §123-c(4):

> "An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have preference over all other causes in all courts."

This unequivocal directive was quoted at ¶2 of my June 12, 2017 moving affidavit in conjunction with my request (at ¶4) that the Court fix "the shortest return date possible" for plaintiffs' June 12, 2017 order to show cause. Indeed, my affidavit's ¶13 specified that among the grounds for the renewal sought by the order to show cause was "the Court's willful, deliberate, and sustained violation of the expedition mandated by State Finance Law §123-c(4)", in connection with both plaintiffs' February 15, 2017 order to show cause and plaintiffs' March 29, 2017 order to show cause – such conduct manifesting the Court's actual bias. Yet, in face of same and my sworn assertion (at ¶4), substantiated by an e-mail receipt, that I had already furnished the Attorney General with the unsigned order to show cause so that AAG Kerwin would have "a 'head-start' in responding", the Court did not fix "the shortest return date possible".

To the contrary, upon signing the order to show cause on June 16, 2017, it fixed a July 28, 2017 return date, six weeks away – an amount of time unprecedented, but for the fact that the Court had fixed a comparably distant return date for plaintiffs' February 15, 2017 order to show cause, which was for its disqualification for the actual bias demonstrated by its December 21, 2016 decision – whose denial by the Court's fraudulent May 5, 2017 decision is the subject of plaintiffs' June 12, 2017 order to show cause.

6. On June 26, 2017, the Court, yet again, made manifest its actual bias – this time by a fraudulent decision denying "in its entirety" plaintiffs' March 29, 2017 order to show cause, when the record before it established plaintiffs' "*prima facie* summary judgment 'merits' entitlement" to

all its seven branches – and to the Court's adjudication of four threshold integrity issues, none of which it adjudicated and all of which it concealed, *to wit*:

> (1) its duty, absent its disqualification, to make disclosure of facts bearing upon its willingness to enforce standards of professional conduct upon the Attorney General's office, and, in particular, disclosure of its judicial compensation interest in this citizen-taxpayer action and its personal and professional relationships and associations with defendant Attorney General Schneiderman and with former Attorney General, now Governor, defendant Cuomo, who appointed it to the bench, and with Attorney General staff;
>
> (2) plaintiffs' entitlement to the Attorney General's representation/intervention, pursuant to Executive Law §63.1 and State Finance Law Article 7-A;
>
> (3) plaintiffs' entitlement to the disqualification of defendant Attorney General Schneiderman from representing his co-defendants;
>
> (4) plaintiffs' entitlement to sanctions, and disciplinary and criminal referrals of Assistant Attorney General Helena Lynch and those supervising her in the Attorney General's office, responsible for her litigation fraud, upon their substituting her for AAG Kerwin.

Annexed hereto as Exhibit I is plaintiffs' record-based analysis of the Court's June 26, 2017 decision, demonstrating it to be a "criminal fraud". Such analysis expressly supplements plaintiffs' record-based analysis of the Court's December 21, 2016 decision, also a "criminal fraud", which their February 15, 2017 order to show cause had annexed as its Exhibit U to establish their entitlement to the Court's disqualification for demonstrated actual bias and vacatur of the December 21, 2016 decision.[1] As for plaintiffs' record-based analysis of the fraud committed by the Court's May 5, 2017 decision and amended decision in denying plaintiffs' February 15, 2017 order to show cause and adhering to the December 21, 2016 decision, it is furnished by my June 12, 2017 moving affidavit herein (at ¶¶6, 8, 10, and 11).

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[1] Plaintiffs' Exhibit U analysis of Judge Hartman's December 21, 2016 decision is also annexed by AAG Kerwin's July 21, 2017 affirmation as part of her Exhibit D.

7. This Court's fraud, by its June 26, 2017 decision, as particularized by plaintiffs' annexed Exhibit I analysis, would have been immediately obvious to AAG Kerwin and her superiors. Such, however, did not deter AAG Kerwin, with their connivance, from utilizing it for her July 21, 2017 cross-motion, whose first branch – for summary judgment to defendants on plaintiffs' sixth cause of action – is based ENTIRELY on the deceits of the June 26, 2017 decision in denying plaintiffs the summary judgment sought by their March 29, 2017 order to show cause; and whose second branch – for sanctions against me – would not have been possible but for the fraudulence of the June 26, 2017 decision in denying plaintiffs' March 29, 2017 order to show cause "in its entirety", when the facts and law compelled that "its entirety" be granted.

8. There is a reasonable question as to whether the Court's purpose in fixing a six-week return date for plaintiffs' June 12, 2017 order to show cause was to orchestrate a scenario that would give itself time to concoct a decision denying plaintiffs' March 29, 2017 order to show cause and give time for the Attorney General to then use it for a cross-motion, whose purpose, additionally, would be as camouflage for the fact that the Attorney General had no grounds to oppose plaintiffs' June 12, 2017 order to show cause. Indeed, as highlighted by plaintiffs' accompanying memorandum of law (at pp. 9-10), ALL the exhibits that AAG Kerwin annexes to her paltry affirmation, to give it bulk, are for her cross-motion and it is the cross-motion that is the majority of her memorandum of law (pp. 10-25). As stated in the "Introduction" of plaintiffs' memorandum of law (at p. 3):

> "The record herein is one of symbiosis – the Court, which has a HUGE financial interest in this citizen-taxpayer action and has relationships with defendants, especially with defendants CUOMO and SCHNEIDERMAN, under whom it worked during its 30 years in the Attorney General's office, covers up and facilitates the Attorney General's litigation fraud, by its assistant attorneys general, who, in turn, cover up for the Court's fraudulent judicial decisions."

9. The Court's above-described misconduct by the indefensible return date it fixed for plaintiffs' June 12, 2017 order to show cause and by its fraudulent June 26, 2017 decision is all the more brazen as it was committed in face of notice, by ¶3 of my moving affidavit, that I would be filing the June 12, 2016 order to show cause with the Commission on Judicial Conduct:

> "to further accelerate enforcement of the fundamental precepts pertaining to judicial conduct, disqualification, and disclosure that plaintiffs' September 30, 2016 memorandum of law placed before the Court – and which it has knowingly, deliberately, and now repeatedly violated".

10. I did, in fact, furnish the Commission on Judicial Conduct with the June 12, 2017 order to show cause, not then known to me as having been signed, in support of a June 16, 2017 judicial misconduct complaint (Exhibit J). Stating (at p. 7) that I would annex the complaint to my reply affidavit herein so that the Court would have a "head start" in providing the Commission with a "written reply", I then summed up the situation (at pp. 7-8), as follows:

> "Judge Hartman's corrupt conduct, as hereinabove summarized, if committed in an ordinary case having no large issues and only private litigants, would – consistent with caselaw [fn3] – justify her removal from the bench. That it is committed here, to thwart a monumental citizen-taxpayer action against public officers who have utterly disabled our state government by their willful and deliberate violations of the New York State Constitution, statutory law, legislative rules, and caselaw, and who have colluded in larcenous and opaque, slush-fund budgets – all here challenged – mandates not only her removal, but her referral to criminal authorities for indictment and felony prosecution with them.[fn4]

11. The situation I summarized was BEFORE the subsequent events, hereinabove recited, as to the Court's subverting, for its own ulterior purposes, plaintiffs' rights to an expeditious return date for their June 12, 2017 order to show cause, thereupon rendering its fraudulent June 26, 2017 decision for the Attorney General's use for a fraudulent cross-motion that would further subvert plaintiffs' rights to expedition by its improper designation of a September 1, 2017 return date (Exhibit H-1).

12. Unless this Court is able to do the impossible – refute plaintiffs' record-based analyses (see ¶6, *supra*), particularizing with facts and law, that its December 1, 2016 decision, its May 5, 2017 decision and May 5, 2017 amended decision, and its June 26, 2017 decision each obliterate all cognizable adjudicative standards and flagrantly falsify the record – it must disqualify itself forthwith based on its demonstrated actual bias and vacate those decisions. Absent its doing so, it must make the disclosure as to its judicial compensation interest in this lawsuit, its relationships with defendants and personnel in the Attorney General's office, and other facts bearing upon its fairness and impartiality[2] that it has willfully failed and refused to make throughout the nearly full year it has had this case, all the while concealing, without adjudication, the Attorney General's litigation fraud, by its AAGs Kerwin and Lynch, which plaintiffs meticulously laid out in the record before it.

Elena Ruth Sassower, Unrepresented Plaintiff

Sworn to before me this
25th day of August 2017

Notary Public

VERONICA H CARRASQUILLO
Notary Public - State of New York
NO. 01CA6292025
Qualified in Westchester County
My Commission Expires Oct 28, 2017

[2] This would include such particulars as set forth at ¶8 of my moving affidavit as to "whether the Court, when it worked in the Attorney General's office, itself was a practitioner of the AG's *modus operandi* of litigation fraud (Exhibit 7-a), such that it cannot now blow the whistle on what it itself did."

TABLE OF EXHIBITS

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Defendants.

PLAINTIFF SASSOWER's AUGUST 25, 2017 AFFIDAVIT IN REPLY & IN FURTHER SUPPORT OF PLAINTIFFS' JUNE 12, 2017 ORDER TO SHOW CAUSE & IN OPPOSITION TO DEFENDANTS' JULY 21, 2017 CROSS-MOTION

ELENA RUTH SASSOWER, unrepresented plaintiff,
individually & as director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York & the Public Interest

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August 25, 2017