

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, THIRD DEPARTMENT

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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,

July 24, 2018

Plaintiffs-Appellants,

**MOVING AFFIDAVIT**

-against-

Albany Co. Index # 5122-16

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-Respondents.

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

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff-appellant in the appeal of this citizen-taxpayer action pursuant to Article 7-A of the State Finance Law (§123 *et seq.*), seeking declarations of unconstitutionality and unlawfulness pertaining to the state budget and injunctions based thereon. I am fully-familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of the relief requested by the accompanying order to show cause, with preliminary injunction and TRO.

2. Incorporated herein by reference are appellants' brief and reproduced record on appeal, which I have today filed in the Clerk's Office. Such corroborate appellants' pre-calendar

statement [R.3-30], with its appended “legal autopsy”/analysis [R.9-30] of Judge Hartman’s appealed-from November 28, 2017 decision and judgment [R.31-41],<sup>1</sup> establishing our entitlement, *as a matter of law*, to summary judgment on each of the ten causes of action of our September 2, 2016 verified complaint [R.99-123 (R.159-219)] and to the granting, in its entirety, of our March 29, 2017 order to show cause, with preliminary injunction and TRO [R.635-746]. Based on such appellate showing and, in particular, our entitlement to summary judgment on our sixth cause of action [R.109-112 (R.187-201)], seventh cause of action [R.112-114 (R.201-212)], and eighth cause of action [R.114 (R.212-213)], this order to show cause seeks a TRO and preliminary injunction to halt disbursements of monies for the unconstitutional, fraudulent, and statutorily-violative commission-based judicial salary increases – and the district attorney salary increases based thereon – which each day steal tens, if not hundreds, of thousands of dollars from New York taxpayers.

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

### **Table of Contents**

Threshold Integrity Issues Pertaining to the Court: Disclosure by its Justices & the Disqualification of at least One – Associate Justice Michael Lynch .....	3
Threshold Integrity Issues Pertaining to the Attorney General: Plaintiffs’ Entitlement to its Representation/Intervention & its Disqualification on Conflict of Interest Grounds .....	7
Appellants’ Statutory Entitlement to a Preference, Both for their Appeal and Preliminary Injunction .....	14
Appellants’ Entitlement to a <i>Subpoena Duces Tecum</i> , Furnishing this Court with the Original Record.....	19
Appellants’ Entitlement to a TRO and Preliminary Injunction .....	23

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<sup>1</sup> Because this order to show cause rests on and incorporates appellants’ already perfected appeal whose reproduced record on appeal contains, at the front [R.1-41], their notice of appeal, pre-calendar statement, and the appealed-from November 28, 2017 decision and judgment, appending these same documents to this affidavit is duplicative. In the interest of economy, I refer the Court to the reproduced record on appeal, without which this order to show cause cannot be determined.



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**Threshold Integrity Issues Pertaining to the Court:  
Disclosure by its Justices & the Disqualification of at least One –  
Associate Justice Michael Lynch**

4. Inasmuch as this appeal involves judicial salaries – and expressly requests criminal referrals of defendants-respondents [hereinafter “respondents”] and other “culpable public officers and their agents” [R.131, R.224] on whom the Court is dependent and has personal, professional, and political relationships – the Court’s duty – before it can address the first two questions on the appeal as to Judge Hartman’s duty to have made disclosure, absent her disqualifying itself – is to address the disclosure that its own judges must make, absent their disqualifying themselves.

5. To assist the Court in this difficult, but requisite, task, the disclosure incumbent on each of its justices includes the following:

- Each associate justice of this Court currently has a \$75,200 yearly salary interest in the commission-based judicial salary increases challenged by appellants’ sixth, seventh, and eighth causes of action, with the current yearly salary interest of the presiding justice being \$77,700. The consequence of the Court’s determination in appellants’ favor – which is the ONLY determination the record will support – is that the yearly salary of associate justices will nosedive from \$219,200 to \$144,000 and the yearly salary of the presiding justice will plunge from \$224,700 to \$147,600 – with each justice also subject to a “claw-back” of the judicial salary increases he/she has collected since April 1, 2012 – those “claw-backs”, as of this date, already maxing at over \$300,000<sup>2</sup>, not counting “claw-backs” of salary-based non-salary benefits.

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<sup>2</sup> The climb in the yearly judicial salary for each of this Court’s associate justices as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March 31, 2012, when it was \$144,000, is, as follows: April 1, 2012: \$168,600; April 1, 2013: 176,000; April 1, 2014: \$183,300; April 1, 2015: \$183,300. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: \$203,400; April 1, 2017: \$205,400; April 1, 2018: \$219,200.

The climb in the yearly judicial salary for this Court’s presiding justice as a result of Chapter 567 of the Laws of 2010 and the August 29, 2011 report of the Commission on Judicial Compensation since March



- Each of this Court's justices has an incalculable financial interest in the slush-fund \$3-billion-plus Judiciary budget, which funds the Court, including its underfunded and demonstrably sham Attorney Grievance Committee, with whose staff and members it has relationships<sup>3</sup>;
- Each of this Court's justices was elevated to this Court upon appointment by Governor Cuomo, the first named defendant – and all are dependent upon him or his gubernatorial successor for their continuation in office<sup>4</sup>;
- Each of this Court's justices has relationships with Chief Judge DiFiore, the last-named defendant;

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31, 2012, when it was \$147,600 is, as follows: April 1, 2012: \$172,800; April 1, 2013: 184,000; April 1, 2014: \$188,000; April 1, 2015: \$187,000. The further climb, as a result of Chapter 60, Part E, of the Laws of 2015 and the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, is, as follows; April 1, 2016: \$208,500; April 1, 2017: \$210,500; April 1, 2018: \$224,700.

<sup>3</sup> This Court's Attorney Grievance Committee is currently "sitting on" appellants' September 16, 2017 attorney misconduct complaint against those responsible for the defense fraud of the attorney general's office in this citizen-taxpayer action and its predecessor. The four attorneys registered in the Third Department who are its subject are: Assistant Attorneys General Adrienne Kerwin and Helena Lynch and their direct supervisors, Assistant Attorney General Jeffrey Dvorin and Deputy Attorney General Meg Levine. Prior thereto, the Court's Attorney Grievance Committee "sat on" appellants' October 14, 2016 misconduct complaint against Albany County District Attorney P. David Soares and his fellow Third Department district attorneys, all beneficiaries of the statutorily-violative, fraudulent, and unconstitutional judicial salary increases to which their district attorney salary increases are tied. The Grievance Committee's indefensible dismissal of that complaint, on July 5, 2017, was the subject of a July 28, 2017 request for reconsideration, to which it adhered by letter dated May 4, 2018. These complaints – and the record thereon – are posted on appellant Center for Judicial Accountability's website, [www.judgewatch.org](http://www.judgewatch.org), accessible via the prominent homepage link "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance". It brings up a menu page with a link entitled: "FIGHTING BACK! — Complaints to Supervisory, Disciplinary & Criminal Authorities". [See, also, Free-Standing Exhibit I (eye), containing the September 16, 2017 misconduct complaint – and, additionally, a further March 6, 2018 misconduct complaint/supplement against District Attorney Soares and his fellow district attorneys].

<sup>4</sup> The permanent justices of this Court, appointed to five-year terms by the Governor, pursuant to Judiciary Law §71, are Presiding Justice Elizabeth Garry, whose term expires January 1, 2021; Justice Michael Lynch, whose term expires January 1, 2020; Justice Eugene Devine, whose term expires January 1, 2019; Justice John Egan, Jr., whose term expires January 1, 2020; and Justice William McCarthy, whose term expired July 12, 2018.

The "temporary" justices of this Court have terms that run until January 1<sup>st</sup> of the year after they reach 70 years of age or the expiration of their 14-year term as Supreme Court justices: Justice Robert Mulvey, whose term expires January 1, 2026; Justice Phillip Rumsey, whose term expires January 1, 2020; Justice Stanley Pritzker, whose term expires January 1, 2027; Justice Sharon Aarons, whose term expires January 1, 2024; and Justice Christine Clark, whose term expires January 1, 2027.

- Each of this Court's justices has relationships with the panoply of specific judges, past and present, involved in perpetuating – if not also procuring – the unconstitutional, fraudulent, and statutorily-violative commission-based judicial salary increases. Among these judges whose willful and deliberate misconduct is recited and reflected by the record are:

(1) Court of Claims Judge/Acting Albany County Supreme Court Justice Denise Hartman;

(2) Court of Claims Judge/Acting Albany County Supreme Court Justice Roger McDonough;

(3) Chief Administrative Judge Lawrence Marks;

(4) Former Chief Judge Jonathan Lippman;

(5) Third Judicial District Administrative Judge Thomas Breslin;

(6) Deputy Chief Administrative Judge Michael Cocoa; and

(7) the then Albany County Supreme Court Justice, and now Associate Justice of this Court, Michael Lynch.

6. Any justice of this Court unable or unwilling to rise above his financial interest and relationships so as to impartially discharge his judicial duties MUST disqualify himself – and the “rule of necessity” is NOT to the contrary.

7. Associate Justice Lynch, however, MUST disqualify himself – or must be disqualified – from any handling of this case, based on his demonstrated actual bias, born of interest. Indeed, it was his judicial misconduct as duty judge in Supreme Court/Albany County, when presented with appellants' March 28, 2014 order to show cause with a preliminary injunction and TRO in the predecessor citizen-taxpayer action that gave rise to all subsequent proceedings therein before Judge McDonough and, thereafter, in this citizen-taxpayer action before Judge Hartman – each of these two judges replicating Justice Lynch's paradigm of misconduct, *to wit*, misrepresentation of law, conclusory falsehood of fact, and, as to Judge McDonough, conclusory falsehood that Assistant



Attorney General Adrienne Kerwin had committed no misconduct, when she grossly had, with Judge Hartman simply ignoring the issue.

8. Evidencing what Associate Justice Lynch did are:

- the transcript of the March 28, 2014 oral argument (Exhibit A-2);
- appellants' March 28, 2014 order to show cause (Exhibit A-1) [R.1113-1114]<sup>5</sup>;
- the March 28, 2014 verified complaint supporting it [R.226-272, R.1105a];
- the voluminous exhibits annexed thereto [R.1106-1112];
- appellants' accompanying March 26, 2018 Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) (Exhibit B);
- my correspondence with Justice Lynch after the oral argument for "reconsideration, by reargument, renewal, or by vacatur for fraud" (Exhibits C-1, C-3, C-4); and
- Justice Lynch's responding so-ordered letters (Exhibits C-2, C-5).

9. Also annexed, without its exhibits, is my subsequent May 16, 2014 affidavit in further support of the March 28, 2014 order to show cause (Exhibit D-2) as it vividly summarizes my interaction with AAG Kerwin not only in the days immediately prior to the March 28, 2014 oral argument and her fraud upon, and collusion with, Justice Lynch at the oral argument, but what transpired thereafter when, having been given three weeks by Justice Lynch for filing answering papers to the March 28, 2014 order to show cause, she made an April 18, 2014 motion to dismiss the March 28, 2014 verified complaint so fraudulent and insufficient, *as a matter of law*, that my May 16, 2014 affidavit and accompanying memorandum of law [R.1123-1160] were in support of appellants' May 16, 2014 cross-motion for summary judgment on the complaint's four causes of

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<sup>5</sup> The record of this citizen-taxpayer action contains the order to show cause that Justice Lynch signed in the prior citizen-taxpayer action [R.113-1114] and an assortment of documents pertinent thereto [R.1115-1119; R.1189-1190], as AAG Kerwin appended them as exhibits to her affirmation in support of her July 21, 2017 cross-motion for sanctions against me for my supposed abusive, harassing conduct [R.1069-1078].

action (Exhibit D-1) [R.1120-1122] – the same four causes of action as were before Justice Lynch – and which, *on their face*, establish a *prima facie* entitlement to summary judgment, as I so-stated at the oral argument and in my correspondence thereafter.

10. By May 16, 2014, the case was before Judge McDonough. As for Justice Lynch, he was already sitting on this Court – as, undisclosed by him in denying the TRO six weeks earlier, was that he was awaiting appointment to the Court by Governor Cuomo, the first-named defendant in the predecessor citizen-taxpayer action. Governor Cuomo appointed Justice Lynch to this Court on or about April 15, 2014 – which surely he would not have done if, two weeks earlier, Justice Lynch had granted the TRO (Exhibit A-1), directed AAG Kerwin to immediately comply with appellants’ March 26, 2014 Notice to Furnish the Court with Papers Pursuant to CPLR §2214(c) (Exhibit B), and scheduled a comparably immediate hearing on the preliminary injunction. This was Justice Lynch’s duty to have done, based on the facts and law before him – and which, had he done, would have ended the case, in short order, with the granting of the declarations sought by the March 28, 2014 verified complaint [R.269-270].

**Threshold Integrity Issues Pertaining to the Attorney General:  
Plaintiffs’ Entitlement to its Representation/Intervention  
& its Disqualification as Defense Counsel on Conflict of Interest Grounds**

11. Appellants are without counsel – and, pursuant to Executive Law §63.1, which predicates the attorney general’s litigation posture on “the interest of the state”, and State Finance Law §123, which contemplates the attorney general’s affirmative role in citizen-taxpayer actions as plaintiff – we are entitled to his representation or intervention on our behalf because Judge Hartman’s appealed-from November 28, 2017 decision and judgment [R.31-41] is indefensible, the product of fraud and collusion between her and the attorney general’s office in which she worked for 30 years, concealing what is evident from the face of each of appellants’ verified pleadings –