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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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AMY R. WEISSBROD GURVEY

US PATENTEE, Petitioner,

1:24-CV-211
AMN/CFH

COMPLAINT SEEKING INJUNCTIVE RELIEF, CIVIL RIGHTS DAMAGES AND PATENT INFRINGEMENT, AIDING AND ABETTING INFRINGEMENT, ATTORNEY'S FEES AND COSTS AND DECLARATORY DETERMINATIONS OF UNCONSTITUTINAL PRACTICES

DECLARATION IN SUPPORT OF ORDER TO SHOW CAUSE AND
42 USC §§1983, 1985, 1988,
28 USC §§1331, 1338; 2201

v.

HON. KATHY HOCHUL and

HON. LETITIA JAMES, Chief NYS Government Officers,

HON. JOSEPH A. ZAYAS,

HON. LAURA TAYLOR SWAIN,

KEVIN O'TOOLE,

BRIAN O'DWYER

FRANK HOARE, Defendants/Respondents.

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I. JURISDICTION

1. This Complaint is brought by Order to Show Cause pursuant to 42 USC §§1983, 1984, 1988, and 28 USC §1331, 1338, 2201 seeking prospective injunctive relief against NYS officers and declaratory determinations that defendants are promulgating unconstitutional practices in patent litigation and infringing Plaintiff's standard essential patents for ticketing management and event content management in the United States for 13 years, and have ignored services notices sent to defendants in 2011, 2013, 2017, 2019 also served on the defendant Office of the NYS Attorney General Letitia James. The named agency defendants herein, Kevin O'Toole, Brian Odwyer, and Frank Hoare, are chairs of state agencies Port Authority of NY and NJ, NYS Gaming Commission and NYS Thruway/EZ Pass, that are each infringing Plaintiff's patents and/or aiding and abetting infringement of Plaintiff's by other entities without payment of just compensation for 13 years. The other named NYS Government defendants are continuing to promulgate unconstitutional State protocols to govern patent litigation that are in direct conflict with preempting US Supreme Court and Federal Circuit mandates and violate the Supremacy Clause of the United States Constitution, Art. 6, Cl.2. Plaintiff also seeks injunctive relief and damages for defendants' unlawful acts instructing lower level state officers and attorneys under defendants' supervision and control to engage in *ex parte* obstruction of justice in confidential state files to deprive Plaintiff of due process of law and to get infringement damages also before the SDNY against venture partners of the State and private companies generating significant revenues for NYS since Plaintiff's claims against private company infringers were upheld by the 2d Circuit in 2012.

2. As a result of defendants continuing violations of Plaintiff's due process constitutional rights, contumacious ignorance of her patent rights for 13 years, and instructing ex parte corruption of justice by other court officers that deprived Plaintiff of infringement hearings before the SDNY since 2010, Plaintiff is

allowed to abrogate the State's sovereign immunity and sue both the state and its administrative officers before the district courts of New York. *Pennington Seed v. Produce Exchange 299*, 457 F. 3d 1334 (Fed Cir. 2006); *Xechem International v. University of Texas, MD Anderson Cancer Center*, 382 F. 3d 1324 (Fed Cir. 2004); *SCA Hygiene Products Aktiebolag v. First Quality Baby Products*, 137 S. Ct. 954 (2017); *Forrester v. White*, 484 US 219 (1989), *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 US 423 (1982) and *DC Court of Appeals v. Feldman*, 460 US 462, 470 (1983). In 2023, a SDNY clerk was convicted by the US Dept. of Justice for taking bribes from defense attorneys and state attorneys for 18 years in exchange for deleting docket entries. Plaintiff's infringement complaint docketed and date stamped on April 22, 2010 was deleted ex parte from the docket when Plaintiff's patent litigation was remanded by the 2d Circuit in 2012 and Plaintiff never got the patent discovery that was stayed ex parte based on forged documents shuffled to SDNY judicial officers by 1st Dept. attorney grievance committee (AGCP attorneys, Jorge Dopico and Richard Supple under the direction of clerk Catherine O'Hagan Wolfe when these officers never had jurisdiction over Plaintiff in the capacity of an attorney.

3. Named defendants also deprived Plaintiff of constitutional access to the state supreme courts of New York which are courts of general jurisdiction in defiance of *Haywood v. Drown*, 566 Us 729 (2009), and instructed state judges to enter orders directing Plaintiff to the NY Court Claims. The NY Court of Claims is a court of limited jurisdiction and has no power, jurisdiction or authority to award injunctive relief, damages, attorney's fees and costs and punitive damages against 1st Dept. AGC officers, attorneys, clerks and judges. In this case, it was confirmed that the signatures of dead AGC former counsel Paul Curran was affixed on some of the documents and the signature of a retired judge was embossed on a "collateral estoppel" order finding Plaintiff to be a "vexatious attorney" when there never a previous order sanctioning Plaintiff in the capacity of an attorney.

4. Plaintiff sued the named 1st Dept. attorneys, clerks, and presiding AGC justice seeking injunctive relief under Article 78 of the CPLR, damages, attorneys' fees and costs and punitive damages for withholding the forged documents in violation of her constitutional rights in 2011, 2013, 2017, and 2019, and for abusing process against Plaintiff in the known total absence of jurisdiction and failing to vacate the forged purported "collateral estoppel" in breach of administrative duty. Wilcox v. Supreme Council of Royal Arcanum, 210 NY 370 (1914). . It was confirmed that by order of the 1st Dept. entered in April 21, 2016 that forged and unserved documents were manufactured and considered by the Court **but that Plaintiff would continue to be deprived of access to the documents, in clear violation of her most basic constitutional rights.** Because one of the 1st Dept. attorneys Richard Supple was serving as Plaintiff's adversary in a SDNY patent litigation, the 1st Dept.'s admitted ex parte consideration of crafted documents, conflicted out the entire court, and made the side order that Plaintiff must get prior permission to come back to the court a sham and a charade. Plaintiff sought prior permission to come back to the court five times and never heard a word. Sometimes, Plaintiff waited a year for an answer, and then learned in 2018 that her mandamus petition against the new presiding justice, Hon. Rolando Acosta, brought under Article 78 of the CPLR, Index No. 132-17, was transferred sua sponte to the 2d Dept. where it remains unadjudicated after six years. (01366-18)

5. In 2022, the SDNY circuit officer Julie Allsman also admitted that in 2013, she personally accepted the forged documents and purported collateral estoppel believing they had gotten hearings in the state, which they never did and in reliance, Allsman immediately entered a so-called "cascading order" and deleted Plaintiff's good name and certification of good standing from the roster of circuit attorneys, without notice hearing or due process of law. See, *Bradley v. Fisher*, 80 US 335 (1872); *Marbury v. Madison*, 5 US 137 (1803); *In re Gourian*, 58 F. 3d 54 (2d Cir. 1995)(only one bar admission that need not be NYS is required for SDNY roster

listing and Plaintiff remains admitted in excellent standing in California since 1979). That order in turn induce the newly sitting judge on remand from the 2d Circuit to deny Plaintiff infringement and nonjoinder hearings, and all relief based on her issued patents.

6. Plaintiff is also entitled to damages against the State for the unlawful and unconstitutional means used by state defendants officers including instructing ex parte obstruction of justice in closed NYS files by 1st Dept. AGC officers and attorneys under their supervision and control. Because the named defendants deprived Plaintiff of due process of law to all courts in NYS and by such acts caused a total taking of her patents by infringers in NYS, Plaintiff is permitted under unanimous decisions of the US Supreme Court and Federal Circuit to abrogate the State's sovereign immunity and sue the State and its administrative officers before this court, and in support of her action, Plaintiff declares to the truth of the following statements and submits copies of recent sworn correspondence filed with the NY Court of Appeals and the SDNY and the 2d Circuit.

II. STATEMENTS IN SUPPORT OF ORDER TO SHOW CAUSE AND COMPLAINT

7. Plaintiff Amy Weissbrod Gurvey is a US patentee admitted to practice law in California since 1979 in excellent standing. Plaintiff is a studio executive producer, concert impresario and entrepreneur and not a practicing lawyer. Plaintiff also attended medical school in NYS and is permanently and physically disabled from birth as defined under the Americans With Disabilities Act, 42 USC §12101.

8. Plaintiff appears in good faith before this Court seeking injunctive relief and damages against the named defendants under *Ex parte Young*, 209 US 123 (1908) for continuing infringement and aiding and abetting infringement of Plaintiff's US patents without payment of just compensation after being served with

written notice including upon defendant NYS Attorney General Letitia James in 2011, 2013, 2017, 2019 and 2022. As to the administrative breaches of duty by state defendants, defendants continue to authorize state attorneys, clerks, officers and judges under their supervision and control to engage in *ex parte* obstruction of justice in Plaintiff's stellar state files when the State lost jurisdiction over Plaintiff in the capacity of an attorney in 1998 when Plaintiff voluntarily resigned when attending medical school. Voluntary resignation was granted in good standing by 3d Dept. officer Dan Brennan and OCA' Denise Rajpal and in 2000 Plaintiff's online profile state good standing resignation. Plaintiff never requested reinstatement and was never thereafter charged NY bar dues and as a matter of law the State lost jurisdiction over Plaintiff in the capacity of an attorney. There is no dispute that defendants ignored Plaintiff's infringement notices, demands for the payment of statutory royalties and proposals for a joint ventures with defendants since 2011.

9. Plaintiff was denied and continues to be denied infringement hearings on her US patents by defendant chief officers of the Port Authority of NY and NJ, the NYS Gaming Commission, the NYS Thruway and EZ-Pass, the NYS Police and NYS Office of Court Administration (OCA). Plaintiff's patents are continue to be infringed by the OCA and its software developers in implementing systems to manage case document transmissions on the NYSCEF electronic docket system.

10. Since 2011, the state supreme courts which are court of general jurisdiction dismissed Plaintiff's otherwise proper actions seeking Article 78 mandamus relief and damages against state officers in their individual capacities and judges who were forging and inserting crafted documents, and state judges kept referring Plaintiff to the NY Court of Claims. For 13 years, Plaintiff has been bandied back and forth between courts in NYS while the SDNY circuit officers made sure that Plaintiff's got no hearing on her patents against private infringing companies in a SDNY patent lawsuit (06cv1202) after Plaintiff's claims were remanded by the 2d Circuit in 2012 (462 Fed. Appx. 26)

11. As defendants know from the US Supreme Court's own 2009 order striking down a statute upheld by the NY Court of Appeals, the NY Court of Claims is a court of limited jurisdiction and cannot award Plaintiff mandamus relief, federal damages, attorney's fees and costs and punitive against state officers violating her constitutional rights in their individual capacities. It is no coincidence that the US Supreme Court decision in *Haywood v. Drown*, 566 US 729 (2009) was entered the same year that Plaintiff's first US patent claims issued and were already being infringed by state agencies. In 2011 th first notices of infringement were served.

12. Plaintiff is a native New Yorker with multi-dimensional talents that the State could have reaped benefits from instead of abusing process against her without jurisdiction to get out of paying just compensation for taking her patents. At age 12, Plaintiff was accepted to both the HS of Music and Art and Performing Arts and to the Bronx High School of Science and graduated 2d in her class from M&A. Plaintiff is a Rhodes Scholarship awardee from the UCLA Schools of Medicine and Law and an expert in multidisciplinary education and curriculum derivation in science, technology and the arts. Plaintiff taught biochemistry at as TA at Columbia University and served an assistant dean counselling professional students in the School of General Studies. Plaintiff is astounded and frustrated that state defendants decided for 13 years to instruct 1st Dept. and AG attorneys to harass Plaintiff in the known total absence of jurisdiction to steal her patents for the State's use and the public use, instead of negotiating with Plaintiff after several offers were made for joint ventures and synergistic projects.

13. To demonstrate the heinous and preposterous implications of defendants' malicious activities, in 2021, the US Attorney for the EDNY criminally protected Ticketmaster for placing spiders on competitors' websites to steal customer data for its own marketing and database storage, and Plaintiff's patents provide a solution for deterring such crimes. *US v. Ticketmaster*, 21 CR 22, 24 (EDNY 2021). Defendants could have reaped considerable benefits and save money

from the State's treasury by partnering with Plaintiff instead of abusing process against Plaintiff since 2011. Ticketmaster's merged partner Live Nation was a defendant in Plaintiff's then pending antitrust and infringement action before the SDNY. The United States Dept. of Justice had already posted Plaintiff's parent holding company LIVE-Fi® Technologies opposition to the merger granted to Ticketmaster and Live Nation before the DC District Court in January 2010. DOJ Media and Entertainment Website March 2010 ("E"); *US v. Ticketmaster and Live Nation*, 2010 WL 975407, 975408. Instead, Plaintiff had to wait 13 years for a SDNY a clerk to be convicted by the DOJ for taking bribes for 18 years from defense attorneys and state officers in exchange for deleting docket SDNY entries including in Plaintiff's antitrust and infringement action (06cv1202). Plaintiff's infringement complaint date stamped and docketed by the SDNY on April 22, 2010 suspiciously vanished *ex parte* from the docket (06cv1202) in 2012 along with Plaintiff's Rule 60(b) motion to vacate the preposterous Rule 12(b) dismissal of defendant Live Nation based on fraudulent jurisdictional moving papers filed by four law firms that Live Nation and Ticketmaster had "no NY contacts" to answer for willful infringement of Plaintiff's first issued patent claims. Gurvey US Patents 11403566, D647910S, 7603321. Live Nation owns WOTW-106.7 Lite FM that broadcasts from 1133 Avenue of the Americas in the same building where the parties common IP attorney at Cowan Liebowitz & Latman had their offices for 25 years. In 2008, in the DC District Court defendant Live Nation admitted that since 2008 it was importing a ticketing system from CTS Eventim of Germany to service its owned and operated venues in NYC – House of Blues, Irving Plaza and Roseland Ballroom. But in 2009, the SDNY dismissed defendant Live Nation from Plaintiff's SDNY antitrust and infringement litigation and investigation confirmed that Richard Supple, dually serving as an AGC attorney with Dopico had proffered forged state documents by the sitting judge to deprive Plaintiff of patent discovery in 2007.

14. To deprive Plaintiff's due process access to the courts in NY to protect her intellectual property guaranteed by the Fifth and Fourteenth Amendments of

the United States Constitution, defendants including the attorneys serving at the Office of defendant Letitia James nstructed state attorneys, clerks and judicial officers at the 1st Dept. attorney grievance committee (AGC) to engage in *ex parte* obstruction of justice in Plaintiff's closed 3d Dept. files. The plan was to falsely discredit Plaintiff by entering forged documents into her otherwise stellar and closed bar record knowing full well that jurisdiction over Plaintiff in the capacity of an attorney was lost in favor of the State in 1998. Unbeknownst to Plaintiff, defense attorney Supple then of Hinshaw & Culbertson's NY office, had agreed to defendant the Cowan Liebowitz & Latman lawyers who were the subject of a USPTO conflicts of interest investigation and against whom Plaintiff had sought orders to compel her withheld USPTO files from the 1st Dept. AGC. 37 CFR 2.10, 2.19, 10.66, 11.108. 11.116.

15. In 2015, Plaintiff's presentation to the NYS Statewide Commission on Attorney Disciplinary solicited by committee organizer John Maher, former editor of the New York Law Journal resulted in a change enactment of the Judiciary Law Part 1240 amended statutes. Plaintiff's presentation on behalf of inventors and patentees contended that Supple's dual representation the Cowan who were reported to the 1st Dept. AGC and placed under conflicts of interest investigation by the USPTO Commissioner of Patents, was unlawful and defiant of the cannons against conflicts of interest. Plaintiff in fact only sought orders to compel production of withheld USPTO files mandated by preempting federal law and Supple and Dopico as state officers breached federal duties owed to Plaintiff to compel the files from the Cowan lawyers. 37 CFR 2.10, 2.19, 10.66, 11.108. 11.116.

16. Instead of compelling the patent files, Plaintiff was retaliated against by clear acts of *ex parte* obstruction of justice in her state files by Dopico, 1st Dept. clerk Catherine O'Hagan Wolfe and Supple and other 1st Dept. attorneys Naomi Goldstein, James Shed and Orlando Reyes when there was no jurisdiction over Plaintiff in the capacity of an attorney in favor of NYS since 1998. In fact, Plaintiff

was only subject to the jurisdiction of the 3d Dept. for the time she was admitted, 1985-1998 and no ethics complaint was ever filed against Plaintiff at the 3d Dept.

17. Although, fourteen years earlier in 1998, Plaintiff had already been granted voluntary resignation by 3d Dept.'s Dan Brennan and OCA officer Denise Rajpal, defendants decided to engage in ex parte corruption of Plaintiff's closed files. Ex parte obstruction of justice began in 2011-2012 when Plaintiff's SDNY claims seeking damages for breach of attorney client privilege, conflicts of interest, nonjoinder torts and aiding and abetting infringement were upheld by the 2d Circuit (426 Fed. Appx. 26) for patent discovery and damage hearings. The 1st Dept. attorneys under named defendants' supervision and control began manufacturing forged and unserved documents affixing the signatures of a dead 1st Dept. attorney grievance committee (AGC) chief counsel Paul Curran, who left the AGC in 2002 and was dead of cancer in 2007. In addition, a purported "collateral estoppel" order labelling Plaintiff as a "vexatious attorney" was crafted in 2012 when there was never any order sanctioning Plaintiff in the capacity of an attorney entered in the State of NY on which collateral estoppel could have been applied. In fact, there was never a single ethics complaint ever filed against Plaintiff.

18. Dopico and Supple shuffled their forged documents *ex parte* to SDNY circuit officers and OCA officers in 2013, with malice aforethought. The plan was to induce these officers that included SDNY circuit officer Julie Allsman and OCA's Sam Younger, to enter so-called "cascading orders" to mar Plaintiff's otherwise stellar record in reckless disregard of whether a cascading order could be followed by a SDNY judge or courts in other states where Plaintiff was entitled to enforce her patents.

19. In 2022, nine years after the fact, Allsman admitted to Plaintiff that in 2013 she accepted *ex parte* documents from Supple and Dopico and from former magistrate Henry Pitman who was caught red handed engaging in ex parte conversations with Supple and was forced to disqualify himself from the SDNY lawsuit. Supple was then Plaintiff's adversary and was precluded as a matter of

law from engaging in ex parte communications with court officers and judges. In fact, after certain deleted documents were discovered in the microfiche files of the court, it was confirmed that Supple had been violating the law since 2007 when he proffered ex parte documents to the first SDNY judge and somehow got patent discovery stayed without any legal justification.

20. Allsman, a circuit administrative officer, admitted that she accepted Dopico and Supple's *ex parte* proffers that had gotten no hearing in the state. Allmans also admitted that in 2013, she immediately deleted Plaintiff's good standing SDNY roster listing without notice, hearing or due process. These acts also make Allsman jointly liable to Plaintiff in her individual capacity. See, *Bradley v. Fisher*, 80 US 335 (1872); *Marbury v. Madison*, 5 US 137 (1803); *In re Gourian*, 58 F. 3d 54 (2d Cir. 1995)(only one bar admission that need not be NYS is required for SDNY roster listing and Plaintiff remains admitted in excellent standing in California since 1979).

21. By failing to abort ongoing *ex parte* obstruction of justice by officers under their supervision and control state defendants de facto breached their administrative duties owed to Plaintiff in matters pertaining to her US patents and implicated state and federal officers and judges in violations of Plaintiff's constitutional rights. All state and SDNY officers were instrumental in depriving Plaintiff of due process and hearings on her patents before all the courts in NYS for 13 years.

22. In addition, OCA's Sam Younger who admitted that his associate Denise Rajpal had granted Plaintiff voluntary resignation from NY practice in good standing in 1998, also accepted the same *ex parte* forged proffers from Dopico and posted a per se defamatory replacement notice on Plaintiff's online profile that Plaintiff was a "vexatious attorney". This was done to prevent Plaintiff from retaining an attorney to sue the state defendants including for continued failure to vacate the faux 2012 collateral estoppel order entered without jurisdiction that was also shuffled *ex parte* to Allman. See, *Wilcox v. Supreme Council of Royal Arcanum*,

210 NY 370 (1914). Allsman said she believed from the documents she accepted ex parte in 2012 that Plaintiff had gotten access to her complete state files and hearings before the AGC before any order was entered. In fact, Plaintiff never got her files or hearing and to date their remain unlawfully withheld in continuing violation of her constitutional rights, allowing injunctive relief against the defendants.

23. Suspiciously also in 2012, Plaintiff's infringement complaint against defendants Live Nation merged with Ticketmaster, Instant Live Concerts, Phish's Mike Gordon, and the parties common IP attorneys at Cowan Liebowitz & Latman, PC of NYC, was deleted *ex parte* from the SDNY docket (06cv1202) after Plaintiff's claims were upheld for patent discovery, nonjoinder and aiding and abetting infringement hearings by the 2d Circuit (462 Fed. Appx. 26). The hearings were never conducted on remand for 8 years by the magistrate or the second SDNY judge who continued to deny Plaintiff any hearings for which a patent is a prerequisite including infringement, aiding and abetting infringement and nonjoinder intentional torts, in violation of mandates by the Federal Circuit. *Anza Technology v. Mushkin*, 934 F. 3d 1349 (Fed Cir. 2019); *Carter v. ALK Holdings*, 605 F. 3d 1319 (fed Cir. 2010). It was confirmed that SDNY Cowan defendants had inserted Plaintiff's confidential content editing algorithms into a PCT application filed for Legend Films of San Diego "at the "client's instructions", filed fraudulent declarations of inventorship omitting Plaintiff's name from the list of inventors. The claims that issued to Plaintiff in 2009 were all anticipated in the operative SDNY complaint and being willfully infringed by the named SDNY defendants and by nine NYS agencies.

24. In 2023, a SDNY clerk, Dionisio Figueroa, was convicted by the Dept. of Justice for taking bribes from defense attorney including in pro se cases for 18 years in exchange for deleting docket entries.

25. In the interim, Plaintiff attempted four times to enter the state supreme courts since to get Article 78 mandamus relief and damages (110774-2011,

M5775, 132-17, 01366-18). The state supreme court are courts of general jurisdiction and Plaintiff was entitled to be awarded injunctive relief, damages, attorneys' fees and costs and punitive damages against 1st Dept. AGC attorneys, clerks and judges including for failing to vacate the "collateral estoppel" and "vexatious attorney" order that was fabricated, per se frivolous, and entered without jurisdiction over Plaintiff in the capacity of an attorney in 2012. Upon belief the order was not signed by any current AGC member and a retired judge no longer serving had his signature photocopied by Dopico and Supple. Plaintiff was called by AGC chief counsel Ralph Riordan who requested that she not sue.

26. Limited further investigation being allowed revealed that a former Civil Court Judge's sanction who reentered private practice, Jay Stuart Dankberg's was entered into Plaintiff's otherwise stellar record. It was also determined that AG had instructed unilateral destruction of audiotapes and transcripts in a HUD housing holdover in which Mr. Dankberg was defending Plaintiff by a Civil Court clerk Ernesto Belzaguy, and OCA clerk, Jane Chin. It was confirmed that completed transcripts necessary for Plaintiff's HUD housing appeal to the Appellate Term were ordered destroyed by AG attorneys that had been prepared by a court listed transcriber, Linda Sears. The 1997 L&T proceeding, 60941/97 was in fact an illegal HUD holdover because Plaintiff got no HUD mandated notice of lease holder because a coterminous lease had already been issued to an outside in defiance of Plaintiff's HUD protected expanded rights as a tenant in HUD housing. The 1995 had been issued when Plaintiff was in medical school and a coterminous lease was issued months before Plaintiff received a postcard from the NYC Housing Part which does not qualify as HUD mandated notice. HUD mandates preempt the state in HUD lease termination or holdover proceedings and also allow the tenant to trial by jury. 24 CFR 966, 966.4, 966.51(a)(2), 966.66. NYC housing judges are hearing officers and have no power or authority to preside over HUD lease termination proceedings when the attorney for a tenant moves for trial by jury. 24 CFR 966.66 The housing judge who sanctioned Mr. Dankberg when no sanction was justified or

legal was a hearing officer who had no jurisdiction not to transfer the case. As it turned out, in 1985 a qui tam class action was filed on the behalf of the tenants in the same building project for defying the HUD protected rights of the original tenants. The Government recovered $7mil from the State and the HUD landlords but the case was settled and never reported. *Sultzer v. Pierce*, 85CV 0519 (CEB); *Sultzer v. Battery Park City Authority*, Supreme NY, 13906-86.

27. The inevitable conclusion is that whenever federally protected property rights – be they patents or HUD housing rights are being litigated in before NY state courts, the State will do everything possible including instruct its officers to engage in crimes and *ex parte* obstruction of justice to prevent the State and its venture partners from paying or losing money.

28. Because there was never any jurisdiction over Plaintiff in the capacity of any attorney after 1998, however, and jurisdiction is never waived, Eleventh Amendment immunity traditionally enjoyed by the state and its administrative officers is obliterated in Plaintiff's case on two separate grounds. The State must fix its own housekeeping problems in the courts and not instruct state attorneys to orchestrate *ex parte* crimes in withheld state files. The judge Hon. Sheila Abdus-Salaam who granted Plaintiff an injunction to protect her assets in her HUD apartment in 1998 when Plaintiff was in medical school, was found dead in the Hudson River, and took no part when Plaintiff sought an appeal as of right on constitutional grounds. Four times the NY Court of Appeals found that Plaintiff's motions seeking an appeal as of right receive a response that the order before the court were nonfinal and did not finally determine an action. This is ludicrous.

29. The import of the instant petition cannot be underestimated, and determinations of the unconstitutionality of NYS protocols in federal property litigation must be entered.

30. The forged documents that were accepted ex parte from Dopico and Supple by OCA officer Younger seeking that Younger change Plaintiff's good

standing online profile set in stone in 1998 were cited by a state judge in Florida to revoke Plaintiff's guardianship for her loving mother Laura Weissbrod *ex parte*. Plaintiff's mother was much loved retired NYC math teacher and instructor at NOVA University and Broward Community College. The sitting judge was removed from the bench, however, in 2020 after he allowed his court guardianship cronies to search and seize Plaintiff's loving mother from her home with her assets and throw her mother into a sanctioned a nursing facility that had no doctors on staff and had a concealed venture with the county court. That facility, Life Care Centers of America was already the defendant in a qui tam class action, in which the Government collected $145mil in 2017 for fraudulent Medicare billing and admitting and maintaining elders who don't need treatment or have the constitutional right and capacity to reject treatment. Then when Plaintiff got the court by mandamus to compel the first capacity hearing in the facility, the county doctor found that Plaintiff's mother had full capacity and had to be released to Plaintiff. The county judge refused to release Plaintiff's mother after jurisdiction over his guardianship was lost as a matter of law, however, and Plaintiff's mother died in anguish trying desperately to escape to Plaintiff and never understanding how Plaintiff's guardianship had been unilaterally revoked by the court. Investigation confirmed that the OCA changed profile caused the judge to revoke Plaintiff's guardianship, a life changing loss that cannot be revoked or compensated in money damages. Plaintiff does not sleep at night from anguish, Plaintiff lost her estate of $1.2 mil while defendants were stealing Plaintiff's patents.

31. AG's practices of secretly orchestrating *ex parte* obstruction of justice in confidential state files and withholding access to the files in violation of a litigant's constitutional rights especially a pro se litigant, cannot continue.

32. Plaintiff is now entitled to abrogate the State's sovereign immunity and sue defendants in their official capacities for prospective injunctive relief before the federal district courts of NY and recover maximum damages from the state treasury caused by the state's promulgation of unconstitutional protocols being

illegally enforced by state administrative defendants. See, *Pennington Seed v. Produce Exchange 299*, 457 F. 3d 1334 (Fed Cir. 2006); *Xechem International v. University of Texas, MD Anderson Cancer Center*, 382 F. 3d 1324 (Fed Cir. 2004); *SCA Hygiene Products Aktiebolag v. First Quality Baby Products*, 137 S. Ct. 954 (2017); *Forrester v. White*, 484 US 219 (1989) and *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 US 423 (1982); see also *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 527 US 627 (1999).

33. Plaintiff was always entitled to sue the 1st Dept. AGC officers for crimes undertaken in their individual capacities before the supreme courts of NY, and was unlawfully derailed from her actions in defiance of US Supreme Court mandates.

34. It is argued because defendant NYS Attorney General instructed the *ex parte* obstruction of justice by 1st Dept. state officers and attorneys in their individual capacities and defended state officers in four Article 78 actions before the supreme courts of NY in 2011, 2016, 2017 and 2019, AG harbors an inherent conflict of interest, AG officers are liable to Plaintiff, and AG cannot now defend the state defendants including itself in this action. *Kentucky v. Graham*, 473 US 159 (1985). A determination in this regard must be entered by the district court.

MEMORANDUM OF LAW

35. Under the Eleventh Amendment, which sets forth the doctrine of sovereign immunity, "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the several United States by citizens of another State, or by citizens or subjects of any foreign state." Ergo, the Eleventh Amendment bars "a suit by private parties seeking to impose a liability against state officers and institutions which must be paid from public funds in the state treasury" (*Edelman v. Jordan*,

415 US 651, 663 (1974)). Further, under Eleventh Amendment sovereign immunity, "neither a State nor its officials acting in their official capacities are 'persons' under 42 USC §1983 (*Will v. Michigan Dept. of State Police*, 491 US 58, 71 (1989)). It is relevant that Plaintiff was a resident of NYS until 2004.

36. The United States Supreme Court has, however, carved out a narrow exception to this rule and an additional proviso for US patent cases.

37. In *Ex parte Young*, 209 US 123 (1908), the Court held as follows"

> "[I]f the act which the state [officer] seeks to enforce be a violation of the Federal Constitution, the officer, in proceeding under such enactment, comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from responsibility to the supreme authority of the United States" (citation omitted).

38. In *Papasan v. Allain*, 478 US 265 91986), the Supreme Court, consolidating a number of its prior decisions in interpreting *Ex parte Young*, stated:

> " *Ex parte Young*'s applicability has been tailored to conform as precisely as possible to those specific situations in which it is necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to the supreme authority of the United States. Consequently, *Ex parte Young* has been applied to cases in which a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past, as well as on cases in which the relief against the state official directly ends the violation of federal law.... Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law.....
>
> "[R]elief that serves directly to bring an end to a present violation of federal law is not barred by the Eleventh Amendment even though accompanied by a substantial ancillary effect on the state treasury...

39. "For Eleventh Amendment purposes, the fine line between permitted and prohibited suits will often be indistinct ... In discerning on which side of the line a particular case falls, the Court must look to the substance rather than to the form

of the relief sought, and will be guided by the policies underlying *Ex parte Young*. *Papasan, supra,* at 478 US 277-279 [citations omitted]...

40. State officials acting in their official capacities when violating federally protected constitutional rights, therefore, may only be sued for injunctive or prospective relief (*see Will, supra,* 491 US at 71, n. 10, ["a state official in his or her official capacity, when sued for injunctive relief, (is) a person under §1983 because official-capacity actions for prospective relief are not treated as actions against the State" (internal quotation marks omitted)]; *see also Huminski v. Corsones,* 396 F. 3d 53, 70 (2d Cir 2005). ["state officials cannot be sued in their official capacities for retrospective relief under §1983... (but) can be subject to suit in their official capacities for injunctive or other prospective relief"].

41. In the instant lawsuit we are two categories of state officers. One category continues breaches of administrative duty by allowing continued infringement and taking of Plaintiff's US patents by nine NYS agencies. The other category continues to allow violation of Plaintiff's due process rights by state attorneys, clerks and officers under their supervision and control who have refused to produce Plaintiff's forged state files and vacate a state 2012 order entered without jurisdiction over Plaintiff. Three of the state agency defendants sued in this lawsuit continue taking and infringement of Plaintiff's Fifth and Fourteenth Amendment rights guaranteed by the United States Constitution after being served with notice in 2010, 2013, 2017, 2019 and 2022. Defendants were served via AG, while members of AG's office were instructing forgery of 1st Dept documents and the shuffling of those documents to the SDNY and OCA to prevent infringement hearings against private entity infringers in the state.

42. Ergo, injunctive relief, damages, and attorneys' fees and costs are properly awarded Plaintiff for the infringement of her patents and separately for the unconstitutional means deployed by defendants by enforcing unconstitutional NYS statutes and protocols aimed at marring Plaintiff's otherwise stellar and closed record in the known absence of jurisdiction, and shuffling forged documents to get

cascading orders entered by SDNY circuit officers and OCA officers.

43. In *Forrester v. White*, 484 US 219 (1989), Justice Sandra Day O'Connor stressed that immunity for judges and state officers attaches to the function and not the office. Justice O'Connor emphasized that abuse of process against an individual in the absence of jurisdiction is deemed breach of a purely administrative, non-judicial function not protected by immunity. In addition, the Judge acknowledged the unfortunate common practice of judges entering "vexatious litigant" orders when such order may be totally frivolous, not supported the record or by the state's own definition to protect themselves and quasi-judicial officers from liability. In the case of a litigant over which the judge had no power to adjudicate a cause, a vexatious litigant order may, as in the instant case, be per se defamatory, frivolous and actionable if it causes damages to the litigant and/or cascading orders from other courts that follow the order. This is the instant case to a T.

44. This Court must determine that the practice of entering "vexatious litigant" or "vexatious attorney" orders is per se unconstitutional and unprotected unless the litigant can get an immediate appeal as of right on constitutional grounds by a state appeals court. A judge cannot be protected by delays in the court system if the judge was already divested of immunity for adjudicating a cause over which the judge has no power or jurisdiction.

45. Since 2011, defendants also defied their administrative duties iterated by the US Supreme Court in *Haywood v. Drown*, 566 US 729 (2009) by denying Plaintiff constitutional access to the state supreme courts of general jurisdiction to hear Plaintiff's 42 USC §1983 claims seeking damages and injunctive relief against the 1st Dept. AGC officers and attorneys in their individual capacities. Supreme court judges found the court had no jurisdiction to hear the claims and improperly referred Plaintiff to the NY Court of Claims where the only defendant is the State itself that would prevent adjudication of mandamus orders to compel the forged

documents, attorney's fees and costs and punitive damages. [1] *Ibid*. Then the NY Court of Claims denied Plaintiff blanket access to hear damages claims against the State for promulgating unconstitutional practices authorized by state administrative defendants herein who were properly sued in their official capacities.

46. Ergo the State of NY had denied Plaintiff all due process constitutional access to its courts to recover strict liability infringement damages against its agencies and private entity infringers by the illegal means. The facts of this case allow Plaintiff to sue the State in the federal district court and abrogate the State's sovereign immunity. *Pennington Seed v. Produce Exchange 299*, 457 F. 3d 1334 (Fed Cir. 2006); *Xechem International v. University of Texas, MD Anderson Cancer Center*, 382 F. 3d 1324 (Fed Cir. 2004) (citing *Florida Prepaid Postsecondary Expense Board v. College Savings Bank*, 527 US 627 (1999)

OTHER RELEVANT LITIGATION HISTORY

47. In 2005, Plaintiff filed a practitioner ethics complaint at the 1st Dept. attorney grievance committee (AGC) against her NYC USPTO practitioners and managing partners at the Cowan Liebowitz & Latman, PC. The Cowan lawyers were under investigation for conflict of interest violations by the US Commissioner of Patents and for filing fraudulent declarations of inventorship in matters pertaining to Plaintiff's retainer in favor of other clients. Plaintiff sought orders to compel production of her withheld USPTO files from the 1st Dept. after the Cowan defendants abandoned her patent applications without statutory notice based on an

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[1] In 2009, the US Supreme Court struck down NY's Corrections Law §24 upheld by the NY Court of Appeals that sought to limit the federal remedies available to prisoners against corrections officers pursuant to 42 USC §1983. *Haywood v. Drown*, 566 US 729 (2009). The *Haywood* Court found that since the supreme courts in NY were courts of general jurisdiction, the State could not deny prisoners constitutional access to the supreme courts of New York and limit them by statutes to a claim against the State before the NY Court of Claims without violating the Supremacy Clause of the United States Constitution, Art. 6, Cl. 2.

admitted conflict of interest with five other clients that existing prior to the time Plaintiff's retainer was offered. USPTO did not grant unilateral withdrawal to the Cowan lawyers after two unsuccessful attempts in 2003 and 2007. 37 CFR 2.10, 2.19, 10,66, 11.108. 11.116. State 1st Dept. AGC officers had a federal duty to compel the withheld USPTO files in favor of Plaintiff and failed to do so. *Virginia Office of Protection and Advocacy v. Stewart*, 563 US 247 (2011)(Scalia, J.)

48. Unbeknownst to Plaintiff, the Cowan lawyers were being unlawfully defended by Richard Supple and Hal Lieberman, dually serving committee members of the 1st Dept. attorney grievance committee (AGC). Both Supple and Lieberman concealed their state posts and conflicts of interest. As AGC staff attorneys, Hinshaw & Culbertson could not accept the Cowan firm's representation in Plaintiff's SDNY lawsuit. Lieberman was the 1st Dept. AGC general counsel at that time. In fact, the Cowan lawyers had offered Plaintiff a patent retainer unlawful in NYS seeking an investment in her patent applications in exchange for services in violation of *Buechel v. Rhodes*, 285 AD 2d 274 (1st Dept. 1999). Plaintiff declined the offer and paid the firm $50,000. However, the firm concealed existing conflicts of interest with Live Nation, MLB, Legend Films of San Diego, and Mike Gordon of Phish, and Cowan allowed Gordon to sit in on a confidential partners' meeting that got him unlawful access to Plaintiff's patent application that were protected by attorney client privilege. *Spalding Sports Worldwide v. Wilson*, 203 US 800 (Fed Cir. 2000). Then the Cowan lawyers filed defective applications under Plaintiff's name insufficient to maintain valuable priority dates, abandoned the applications without statutory notice admitting to a conflict of interest, and withheld the files. Plaintiff never got a response to her ethics complaint filed at the AGC, but the triage attorney who was assisting Plaintiff was terminated after what she claimed was two years of prosecutorial abuse and Title VII violations by the 1st Dept. chief clerk, Catherine O'Hagan Wolfe. *Anderson v. First Dept. State of NY et al.*, 614 F. Supp. 2d 404 (SDNY 2009)(Headnotes, 15, 16)(Scheindlin, J.).

49. It was confirmed that the Cowan lawyers filed fraudulent declarations of inventorship in favor of Legend Films and inserted certain of Plaintiff's confidential content editing algorithms protected by attorney client privilege into a PCT application filed for Legend, 02 US 14192. Cowan partners had already found Legend's patent draft application did not contain patentable subject matter; however, the CTO requested unlawfully that the names of all inventors not be entered on the declaration of inventorship. Cowan lawyers admitted omitting Plaintiff's name from the list of inventors in violation of 37 CFR 1.324. Legend did achieve a patent in 2007 after insertion of Plaintiff's proprietary technology making the firm per se liable for nonjoinder torts that arise under the patent laws. 35 USC 256, 37 CFR 1.324.

50. Relevant to the lawsuit is that the Cowan lawyers actually knew that Plaintiff was not admitted in NYS and only admitted in California. Supple is the common thread to the forgery of documents at the AGC. The Cowan defendants in fact had in fact requested an of counsel arrangement for Plaintiff to refer patent clients from California, and Legend Films was one of those clients. **In 2002, the Cowan lawyers paid Plaintiff's bar dues to California knowing full well that Plaintiff's was not admitted in NYS**. This knowledge was imputed to Supple and Lieberman who were both serving as agents for the State and had actual and apparent authority to bind the State. Investigation confirmed that Supple used his concealed AGC post to remove the ethics complaints against the Cowan lawyers from state consideration and worked with Dopico the new 1st Dept. AGC chief counsel to forge documents into Plaintiff's closed bar files. Clearly the aim at that time was to prevent a strict aiding and abetting infringement award against the Cowan lawyers after Plaintiff's claims were upheld by the 2d Circuit in 2012 (462 Fed. Appx. 26).

51. Sometime in 2011-2012, 14 years after her resignation was accepted by state officers and NYS lost jurisdiction over Plaintiff in the capacity of an attorney, Dopico and Supple having failed to respond to Plaintiff's AGC petition that her

withheld USPTO files be compelled from the Cowan lawyers, who were Supple's private sector clients, began forging documents into Plaintiff's closed NYS bar file. The forged signature of a dead former chief counsel Paul Curran was affixed and photocopied onto several documents, and no current member of the AGC signed the documents. These acts were undertaken knowingly without jurisdiction over Plaintiff in the capacity of an attorney and establish per se unprotected *ex parte* obstruction of justice by state officers. *US v. Reich* 479 F. 3d 179 (2d Cir 2007). State defendants following unconstitutional state protocols breached their administrative duties in their official capacities in allowing the *ex parte* crimes and breaches of fiduciary duty by 1st Dept. judges to continue. *Forrester v. White,* 484 US 219 (1989).

52. Plaintiff entered the Supreme court NY County in 2011 (110774-2011) that found the matter as one related to Cowan's disciplinary violations and transferred it to the Appellate Division 1st Dept. that never heard the transferred claims. Plaintiff was notified years later that the transferred claims were *sua sponte* dismissed in 2013 and that AGC presiding justices who have administrative duty to supervise the staff attorneys, failed to do so. Then Plaintiff was notified that a "collateral estoppel" order had ben entered by the AGC ex parte finding Plaintiff to be a vexatious attorney when Plaintiff was never sanctioned as an attorney in NYS. Plaintiff was denied a hearing before the order was entered. An immediate appeal was denied by the 1st Dept. even though there was no previous order on which collateral estoppel or vexatious attorney misconduct could have been applied. The NY Court of Appeals found the order nonfinal, did not finally determine an action and the 1st Dept. did not adjudicate Plaintiff's claims seeking determinations of unconstitutional practices by the State. The 1st Dept. told Plaintiff she had to get the prior permission of the Court to file further motions, when the Court having admitted accepted forged proffers from Supple who was Plaintiff's SDNY adversary, was conflicted out immediately.

53. The Appellate Division denied reconsideration on April 21, 2016. The Court found that Supple and Dopico manufactured unserved documents that were inserted into Plaintiff's closed file, that even though court had considered the documents, **that Plaintiff would be denied access to see the documents, clearly a per se violation of her constitutional rights**.

54. In 2016-2018, Judiciary Law Part 1240.7 was enacted proving that the protocols promulgated by the state officers and enforced by defendants since 2011 when the crimes were perpetrated was deemed unconstitutional requiring amendment. Unconstitutional protocols continue to be enforced by the state defendants sued herein.

55. In 2022, years after the fact, it was confirmed that Supple was engaging in ex parte communications with three SDNY judicial officers during Plaintiff's patent lawsuit including the SDNY Magistrate Henry Pitman improperly presiding without a judge on remand from the 2d Circuit. The magistrate admitted he had engaged in communications with Supple and accepted ex parte the documents Supple proffered from the state. The ex parte communications with Supple required the magistrate to recuse himself which he did without filing a formal order and he left the court under mysterious circumstances.

56. The same documents were also accepted *ex parte* by the SDNY circuit attorney Julie Allsman in 2013. Allsman admitted to Plaintiff in 2022 that she did accept and consider the documents ex parte and immediately deleted Plaintiff's name without notice, hearing or due process of law from the roster of SDNY attorneys. The deletion orders by Allsman qualify as cascading orders and are also unprotected. *Forrester v. White*, 484 US 219 (1989); *Bradley v. Fisher*, 80 US 335 (1872); *Marbury v. Madison*, 5 US 137 (1803). Only one bar admission is required for SDNY roster listing that need not be NYS. *In re Gouiran*, 58 F. 3d 54 (2d Cir. 1995). The same documents were accepted by OCA's Sam Younger, and the cascading orders entered by Younger are also unprotected. Plaintiff was never notified of Younger's orders until 2023, tolling all relevant statutes.

57. Plaintiff was denied access to the NY Court of Claims in 128261 to get damages against the State for promulgating unconstitutional protocols in patent case and AGC cases. The 1st Dept. did not hear the appeal. AGC 1st Dept. clerks, attorneys and judges had already been cited for federal violations by the SDNY. *Anderson v. First Dept., State of NY*, 614 F. Supp. 2d 404 (SDNY 2009)(Headnotes, 15, 16)(Scheindlin, J.). The same cited clerk, Catherine O'Hagan Wolfe, then left the state and was somehow hired by the 2d Circuit. It was at this time that the "collateral estoppel" order with no current AGC member's signature and finding Plaintiff was a "vexatious attorney" was entered in 2012, when Plaintiff was never sanctioned as an attorney in NYS.

58. The Court of Appeals found the "collateral estoppel" order containing a false sentence about vexatious attorney conduct nonfinal and denied an appeal as of right on constitutional grounds.

59. It is contended unconstitutional for the State to deny a respondent, particularly a faux respondent over which the AGC has no jurisdiction, an immediate appeal or hearing on a "vexatious attorney" order. Here the order was fabricated to protect the dead AGC counsel Paul Curran's estate and the retired judge whose photocopied signatures had been affixed, and it was copied by two state officers, Allsman and Younger, and then further copied by the State of Florida in 2020 and 2021, leading to the murder and untimely death of Plaintiff's loving mother, Laura Weissbrod.

60. In *Forrester v. White*, 484 US 219, Justice Sandra Day O'Connor held that it is common practice for judges to enter vexatious litigant orders to protect the judge from liability particularly in the case here, where there is no jurisdiction over the litigant in favor of the court. In addition, the State of NY had no compelling state interest to attempt to regulate and falsely regulate Plaintiff's activities except to protect its officers and treasury form paying Plaintiff civil rights damages and infringement damages for taking of her patents. *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 US 423 (1982).. In this case, a

retired 1st Dept. judge's signature was affixed on the purported collateral estoppel order subjecting both the judge and the AGC staff attorneys to criminal prosecution.

61. When Plaintiff entered the Supreme Court NY county again in 2015 (100163-15) the first judge, Paul Wooten had put the case on a standard litigation track and allegedly was transferred. The new Judge Hon. Gerald Lebovits, sua sponte dismissed Plaintiff's claims that properly sought injunctive relief against the AGC officers, 42 USC 1983 damages, attorney's fees and costs and punitive damages. The case was sua sponte dismissed as without jurisdiction and in the order Plaintiff was improperly directed to the NY Court of Claims. The orders violate *Haywood v. Drown*, 566 US 729 (2009)

62. In the meantime and unbeknownst to Plaintiff, the forged documents and the purported collateral estoppel order were shuffled *sua sponte* to the SDNY circuit executive office after Plaintiff's claims were upheld by the 2d Circuit. On remand, Plaintiff's infringement complaint was deleted *ex parte* from the docket. In 2023, Plaintiff was notified that the SDNY clerk, Dionisio Figueroa was convicted by the Dept. of Justice for taking bribes from defense attorneys and state attorneys for 18 years particularly in pro se cases in exchange for deleting docket entries.

63. The NY Court of Claims is a court of limited jurisdiction where only the State of NY is a proper defendant. The Court has no authority to hear 42 USC §1983 claims injunctive relief, damages, attorney's fees and costs, and punitive damages against state officers sued in their individual capacities for depriving a citizen of their constitutional rights. That court could never afford full relief to Plaintiff.

64. However, on August 13, 2023, the Court of Claims denied Plaintiff blanket access to recover damages against the State of NY for promulgating unconstitutional policies in patent matters and in attorney disciplinary actions that were enforced and continue to be enforced by the named state defendants herein in

their official capacities, entitling Plaintiff to injunctive relief. *Pulliam v. Allen*, 466 Us 522 (1984)..

65. In this action, the state defendants are also charged with unlawfully authorizing and instructing *ex parte* obstruction of justice by 1st Dept. AGC officers Jorge Dopico, Naomi Goldstein, Richard Supple, James Shed and OCA's Sam Younger and SDNY circuit officer Julie Allsman under their supervision and control including to enter material and defamatory alterations *ex parte* to Plaintiff's stellar record, good standing certifications and online profiles. The instructions were given to defendants by the named defendants herein including by defendant AG during purported privileged communications. NY's Executive Law subd. 63-1.

66. Ergo, AG harbors a conflict of interest based on its own officers continuing to breaches of preempting federal and civil rights statutes against Plaintiff's interest and cannot defend the State and named state defendants in this lawsuit.

ADDITIONAL JURISDICTIONAL STATEMENTS AND VENUE

67. This is an action that state officers be ordered to pay 42 USC §1983 damages to Plaintiff for *ex parte* obstruction of justice by state and circuit officers in Plaintiff's confidential state files confirmed by the 1st Dept. by order entered April 21, 2016. The AGC attorneys who were under the supervision and control of named state defendants herein. Plaintiffs also seeks to be awarded an injunction against the state court defendants and the state agency defendant to abort continuing violations of Plaintiffs' constitutional rights to due process of law the named defendants in matters pertaining to her US patents, and cease using her patents that the state has taken without payment of just compensation.

68. This is also an action seeking relief from patent taking and infringement and aiding and abetting infringement in defiance of Plaintiff's right to due process of law arising under the Patent Laws of the United States, Title 35 of

the United States Code, 35 USC§ 271, 284, 285, 286 by state agencies including Port Authority of NY and NJ, NYS Gaming Commission and the NYS Thruway.

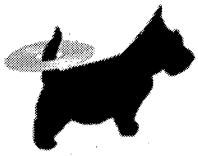
69. The subject of this lawsuit is taking of Plaintiff's patents by its officers violations of her rights to due process of law including by crafting forged documents into her confidential state files that were shuffled ex parte to officers of the courts to prevent Plaintiff from getting hearings for 13 years of her three standard essential patents-in- suit, Gurvey US Patent Nos. 11403566, D647910S, and 7603321. These patents pertain to apparatus, methods and designs for electronic ticketing, electronic ticketing management and authenticated event content management and distribution.

70. This Court has jurisdiction over the subject matter of this patent action pursuant to 28 USC §1331 in that one or more of Plaintiffs' claims arises under the laws of the United States as well as 28 USC §1338 granting district courts original jurisdiction over any civil action relating to patents. Additional supplementary plenary jurisdiction is proper in this Court pursuant to 28 USC§ 1367 over all of Plaintiffs' non-federal question claims, such that they for a part of the same case or controversy.

71. the Court has jurisdiction under 42 USC §§1983, 1985, 1988 to pay Plaintiffs' damages for violations of Plaintiffs' constitutional rights by NYS officers of the courts that continue since 2011 and were undertaken ex parte without notice, hearing or due process of law with ex parte obstruction of justice admitted in 2022 and 2023, tolling prevailing statutes, that continues to deprive Plaintiff of access to the SDNY to get hearings on her patents against private and state infringers in the district and the circuit.

72. Venue is proper in this judicial district pursuant to 28 USC §1391(b).

73. Letters to Hon. Rowan D. Wilson, Chief Judge of the NY Court of Appeals, and the Julie Allsman of the SDNY circuit officer merit damages and injunctive relief be awarded in favor of Plaintiffs against defendants under the Civil Rights Act of 1871 and the Patent Act.



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February 6, 2024

Hon. Rowan D. Wilson
Chief Judge
NY Court of Appeals
20 Eagle Street
Albany, NY 12207-1095

Re: *Gurvey v. State of NY* 2023-138 (NY Ct. Cl. 135611)
***Gurvey v. State of NY* SSD#8**

Supplementary Jurisdictional Brief

Dear Judge Wilson and the Court:

This is in response to the Courts' request for an additional jurisdictional brief on whether the NY Court of Appeals has jurisdiction to grant Claimant an appeal as of right on constitutional rights to the August 15, 2023 order of the NY Court of Claims denying Claimant blanket access to its court to grant patent infringement and taking damages against seven NYS agencies. (NY Ct. Cl. 135611) and referring Plaintiff back to the district court. As of the week of January 29, 2024, Court of Appeals clerks again told Claimant that the issue of jurisdiction was still being reviewed. It is relevant to this brief that Claimant's previous Article 78 complaint seeking mandamus relief against state officers and infringement damages before the Supreme Court of NY, New York County filed in 2015 (2015-100163) received an order in January 2016 from Hon. Gerald Lebovitz (after Judge Paul Wooten was transferred to Brooklyn) *sua sponte* dismissing Claimant's complaint and finding that the NY Court of Claims had sole jurisdiction to grant damages to Claimant against the state, its agencies and officers. This order was clear abuse of discretion, and not a correct statement of the law, and was entitled to an appeal from the 1st Dept. that was never allowed. The NY Court of Claims will not award Plaintiff damages against state officers undertaken in their individual capacities, cannot grant injunctive relief to abort infringement of patents, and cannot grant punitive damages.

On April 21, 2016, the 1st Dept. denied Claimant an appeal, vacatur of "crafted documents" and issued an order that Claimant could not come back to the court without prior permission. (M5775). The 1st Dept. order also admitted that 1st Dept. attorney grievance committee (AGC) attorneys Jorge Dopico and Richard Supple had entered crafted unserved documents into Claimant's 3d Dept. closed bar file without a warrant, that the crafted documents were considered by the court, **but that Claimant would continue to be denied access to see the documents and her complete state file.** This order admits per se violations of Claimant's constitutional rights to due process of law. See also, NY's Judiciary Law Part 1240.7.

Empirically relevant is that in 1998, the 3d Dept. and NYS Office of Court Administration (OCA) both granted Claimant voluntary resignation from NY practice in good standing. Claimant never requested reinstatement in NYS and Claimant was not charged bar dues after 1998. Ergo, **NYS lost jurisdiction over Claimant in the capacity of an attorney in 1998 and any crafted documents inserted ex parte into Claimant's confidential and closed state file demonstrates *ex parte* obstruction of justice by 1st Dept. attorneys and officers and wrongful state action that is unprotected.** *US v. Reich*, 479 F. 3d 179 (2d Cir. 2007)(Sotomayor, J.) Ergo the 1st Dept. attorneys and officers were properly sued in their individual capacities for damages, injunctive relief and punitive damages in the state supreme court and Claimant's application for reconsideration of Judge Lebovits's order was denied in abuse of discretion. The appeal to this order was found nonfinal by the NY Court of Appeals.

Claimant's next mandamus petition directed to the Appellate Division 1st Dept. presiding justice filed in 2017 to get the crafted documents and complete state files compelled from 1st Dept. and OCA officers, was transferred sua sponte to the 2d Dept. based on a conflict of interest (132-17). That petition remains unadjudicated at the 2d Dept. for over 5 years. (01366-2018). A separate petition filed in the 3d Dept. against Hon. Elizabeth Garry (529146) to produce Claimant's resignation files and good standing certificate was not adjudicated. The 3d Dept. clerks told Claimant that the attorney admission officers harbored a conflict of interest and the judge could not hear her petition. In 2023, the NY Court of Appeals transferred Claimant's s appeal in NY Court of Claims Index No. 135611 (SSD8) to the 3d Dept. that said it could not hear an appeal. When Claimant wrote this Court opposing the transfer order and seeking vacatur of the order, no response was forthcoming. SSD8 has since been deleted from the 3d Dept. docket and requires an order from this Court vacating the transfer order and consolidating the appeal with the instant appeal, 2023-138.

Jurisdictional Brief

N.Y. Const., art. VI, §7(a) confers jurisdiction over cases in law and equity to the

state's supreme courts. *Pollicina v. Misericordia Hosp. Medical Ctr.*, 624 NE 2d 964, 977 (NY 1993) (noting the supreme courts' "inviolate authority to hear and resolve all causes in law and equity"). Every manner of related and equivalent action may be brought in a New York supreme court that is a court of general jurisdiction. The trial courts may hear all types of intentional and other tort claims. *See Kagen v. Kagen*, 236 NE 2d 475, 478 (NY 1968) (the Supreme Court is a court of original, unlimited and unqualified jurisdiction"). Ergo, the supreme court may hear claims for strict liability taking of US patents by state agencies withholding payment of just compensation and aiding and abetting taking or infringement by state agencies in favor of private entities. The supreme courts can also hear claims seeking injunctive relief against state officers and judges for continuing violations of a litigant's constitutional rights including a US patentee's constitutional right to due process of law and withholding hearings on crafted documents. *Ex parte Young*, 209 US 123 (1908); *Pulliam v. Allen*, 466 US 522 (1984); *See also, Xechem International v. Univ. of Texas, MD Anderson Cancer Center*, 382 F. 3d 1324, 72 USPQ 2d 1253 (Fed. Cir. 2004).

Ergo, in 2015, Supreme Court NY County. Hon. Gerald Lebovits, abused discretion when he overturned an order entered by Hon. Paul Wooten and found in January 2016 that his court had no jurisdiction to hear Claimant's damages and injunction claims related to her US patents and that Claimant's sole remedy to get damages is before the NY Court of Claims. The Appellate Division improperly denied Claimant an appeal. On April 21, 2016 the 1st Dept. issued an order that prior permission must be granted before Claimant can come back to the court. The court found that its AGC attorneys Dopico and Supple did in fact craft and insert unserved documents into Claimant's 3d Dept. file without a warrant or hearing, that the court had considered the crafted documents **and that Claimant would continue to be denied access to the documents**. The Court of Appeals found the 1st Dept. order nonfinal and that it did not finally determine an action.

However, it is since 2011 that Claimant has been denied constitutional access to the supreme courts in NY to get hearings and injunctive relief against state officers for violating her due process rights in matters related to her US ticketing management and event content patents, Gurvey US Patent Nos. 11403566, D647910S, 7603321 and to Claimant's illegal retaliatory targeting by *ex parte* obstruction of justice. The first time the Supreme Court NY County denied jurisdiction was in 2011 (110774-2011). The court transferred Plaintiffs' claims *sua sponte* including the claim to the 1st Dept. seeking injunctive relief against 1st Dept. attorneys including to compel production of her USPTO patent files being withheld by NYC patent practitioners and managing partners at Cowan Liebowitz & Latman. The court held the case was a disciplinary matter and it had no jurisdiction. This order, too, was abuse of discretion because there was no disciplinary action against Plaintiff possible. The 1st Dept. then *sua sponte* dismissed the transferred claims clearly because it was concealing a known conflict of interest. Both the 1st Dept. AGC attorneys and

the court's presiding justices had breached administrative duties owed to Claimant by crafting forged documents and entering sua sponte orders without hearing and the judges failing to supervise the state attorneys. Several of these documents affix the signatures of dead AGC counsels including Paul Curran who left the AGC in 2002 and was dead of cancer in 2007 and of a retired judge. The state attorneys' acts undertaken without jurisdiction over Claimant in the capacity of an attorney are unprotected. *US v. Reich,* 479 F. 3d 179 (2d Cir 2007)(Sotomayor, J.); *Forrester v. White*, 484 US 219 (1989); *Stump v. Sparkman*, 435 US 349 (1978); *Alvarez v. Snyder*, 264 AD 2d 27 (1st Dept. 2000)(Tom, J).

Thereafter in 100163-2015, supreme court judge Lebovits denied Claimant patent taking and infringement damages against NYS agencies and injunctive relief against the 1st Dept. AGC officers. The judge incorrectly found lack of jurisdiction and that Claimant's sole remedy was before the NY Court of Claims. The court improperly denied Claimant injunctive relief against the 1st Dept. AGC attorneys, clerks and justices under *Ex parte Young,* 209 US 123 (1908) including orders to produce the crafted documents, the complete state files and the practitioner ethics complaints filed against the Cowan lawyers. NY Judiciary Law Part 1240.7 required those documents to be produced. However, 1st Dept. did not recuse itself, or enter an order transferring the case or otherwise notify Claimant of its conflicts.

Pursuant to *Haywood v. Drown*, 556 US 729, 129 S. Ct. 2108 (2009), the January 2016 order of judge Lebovits was an unconstitutional attempt by the State to limit Claimant's federal remedies. The sole defendant that can be sued before the Court of Claims is the State of NY and not the state's officers against whom injunctive relief and punitive damages are properly sought for wrongful acts undertaken in their individual capacities in Plaintiff's confidential state files. *Kentucky v. Graham*, 473 US 159 (1985). That would include damages for *ex parte* obstruction of justice in closed bar files without jurisdiction over Claimant in the capacity of an attorney. *Virginia Office of Protection and Advocacy v. Stewart*, 563 US 247 (2011)(Scalia, J.)

Contrary to the supreme court's order, under art. IV §7(a), the court always had full power, authority and jurisdiction to grant Claimant strict liability patent damages and injunctive relief against state officers. The supreme court clearly demonstrated in its orders that unconstitutional protocols continue to be promulgated by the state in patent cases and in attorney disciplinary proceedings. In 2017, the 1st Dept. transferred Claimant's mandamus petition against the 1st Dept. and OCA (132-17) to the 2d Dept. (01366-18) where it remains unadjudicated after 5 years. *Ex parte Young*, 209 US 123 (1908); *Pulliam v. Allen*, 466 US 522 (1984). See also, *Xechem International v. Univ. of Texas, MD Anderson Cancer Center*, 382 F. 3d 1324, 72 USPQ 2d 1253 (Fed. Cir. 2004).

In *Haywood v. Drown*, 556 US 729, 129 S. Ct. 2108 (2009), the US Supreme Court

shut down on constitutional grounds NY's Correction Law §24 that precluded prisoners from entering its supreme courts of general jurisdiction to bring 42 USC §1983 actions for damages against state prison officers for violations of their constitutional rights in connection with prison disciplinary proceedings. The Court found a violation of the Supremacy Clause, Art. 6, Cl. 2. The Court held that NYS unlawfully attempted to limit the federal remedies available to prisoners by forcing actions before the NY Court of Claims and making the State the sole defendant against whom damages could be recovered. By such acts, the State attempted to eradicate valuable federal claims by depriving the prisoners of their right to get damages and injunctive relief against the correctional officers and punitive damages authorized by federal statutes before a state court of general jurisdiction and by unlawfully enacting a statute that limited federal remedies. *Kentucky v. Graham*, 473 US 159 (1985). The state is not permitted to eradicate federal remedies available to pro se litigants and patentees by denying them access to the courts of general jurisdiction in the state. Patent taking and 14th Amendment violations are separate from infringement. Taking includes unlawful means used to prevent infringement hearings. In other words Judge Lebovits's order was an immunity order cloaked in jurisdictional garb to discriminate against Claimant's right to file federal damage claims and claims for injunctive relief before the state supreme courts of New York.

In *Haywood*, the NYS Attorney General (AG) attempted to defend its statute on the ground that lawsuits brought by prisoners in correctional facilities are bad policy and most are frivolous and may interfere with state operations and state officers. AG also claimed the statute was neutral. The Supreme Court emphatically disagreed and found that the Supremacy Clause does not permit states to deny access to their courts of general jurisdiction because they disagree with Congress about the overall value of such litigation - especially in light of the Court's teachings in *Howlett v. Rose*, 496 US 356 (1990); *Felder v. Casey*, 487 US 131 (1988); *Martinez v. California*, 444 US 277 (1980). The court found that a state lacks authority to nullify a federal right or cause of action the state believes is inconsistent with its local policies. Once a state opens its courts to hear §1983 actions it may not selectively exclude certain §1983 actions by denominating state policies as jurisdictional. The Court also found that states may not relieve congestion in its courts by declaring a whole category of federal claims to be frivolous. Until it has been proven that the claim has no merit, the judgment is not up to the state to make the determination *sua sponte* by denying jurisdiction.

In further support of her pending appeal, 2023-138, Claimant reiterates NYS's ongoing failure for 13 years to allow her constitutional access its supreme courts to get taking, infringement, aiding and abetting taking and infringement strict liability damages as well as injunctive relief against state officers for violating her right to constitutional due process of law. There has been no hearing on Claimant's patents by the state consistent with preempting federal mandates and orders of the US Supreme Court in 13 years. *Xechem International v. Univ. of Texas, MD*

Anderson Cancer Center, 382 F. 3d 1324, 72 USPQ 2d 1253 (Fed. Cir. 2004); *SCA Hygiene Products Aktiebolag v. First Quality Baby Products*, 137 S. Ct. 954 (2017). The State supreme courts were bequeathed with jurisdiction to hear those claims when they were first filed in 2011 and 2015.

Claimant was denied constitutional access to the state supreme courts four times since 2011, most recently in 2017 (132-17 1st Dept.) and in 2019 (529146 3d Dept.) The 3d Dept. claimed in 2019 that its presiding justice Hon. Elizabeth Garry harbored a conflict of interest having been instructed by the Attorney General in 2015 to deny Claimant access to her complete state files. Clearly this was because the withheld documents were evidence of unprotected *ex parte* obstruction of justice by 1st Dept. attorneys and OCA officers without further jurisdiction over Claimant. 100163-15. In fact, jurisdiction in favor of the 1st Dept. never existed, only the 3d Dept. had jurisdiction for the time Plaintiff was admitted. NY's Judiciary Law Part 1240.1, .2.

In this regard, NY's Executive Law subd. 63-1 that requires AG to defend state judges, attorneys and clerks is inconsistent with the duty of the state to compel production of withheld patent files from patent practitioners and administrative duties to a respondent in a disciplinary proceeding to compel the complete relevant state files. NY's Judiciary Law Part 1240.7. Here, a faux proceeding was commenced with crafted documents in the known absence of jurisdiction over Claimant and none of the crafted documents were produced for hearing. They remain unlawfully withheld proving ongoing violations of Plaintiff's constitutional rights and that the state supreme courts or district court had a duty to grant that relief.

Now, there is no doubt that since 2011 1st Dept. AGC attorneys engaged in *ex parte* obstruction of justice in Claimant's confidential 3d Dept. state files and inserted crafted documents including several affixing the photocopied signature of a dead AGC 1st Dept. chief counsel Paul Curran and of a retired judge. Curran left the AGC in 2002 and was dead of cancer in 2007. Claimant's HUD housing attorney in 2000 received a sanction from a NYC housing judge in 2002, and that document was inserted ex parte into Claimant's file when Claimant was the HUD tenant and not the attorney in that case. The AGC only has jurisdiction over attorneys functioning in a representative capacity for a client. This criteria proves that the acts of AGC attorneys were malicious, calculated and criminal.

In 2022 and 2023, Claimant was advised that in 2013 the crafted documents had been shuffled by 1st Dept. AGC counsel Dopico to OCA officer Sam Younger. The same documents were delivered by AGC attorney Richard Supple to circuit officers in the SDNY in 2013. Supple was then unlawfully dually serving as Claimant's adversary in a SDNY patent litigation defending private company infringers of Claimant's patents including the Cowan patent practitioners against whom USPTO

conflict of interest ethics complaints were filed at the AGC in 2005. The result was entry by OCA and SDNY circuit officers of so-called "cascading" orders in 2013 that served to deny Claimant infringement and taking hearings before all courts in NYS for 13 years. Claimant was also denied injunctive relief against state agency infringers in the state supreme court, and to this day, remains denied constitutional access to the crafted documents.

In *Florida Prepaid Secondary Education Expense Board v. College Savings Bank*, 527 US 627 (1999), the US Supreme Court found that a state cannot be sued *in federal court* for infringement of patents based on sovereign immunity conferred by the 11th Amendment. The court found that in enacting 35 USC §271(h) Congress overstepped its powers by improperly abrogating the states' sovereign immunity not to be sued in federal court by enacting a blanket statute without demonstrating that the states or any particular state was depriving patentees of due process of law. However, if a Plaintiff can prove that the state has deprived an inventor of due process of law to get hearings on patent as occurred herein, the inventor can seeking damages in the district court and abrogate the State's sovereign immunity under the Fourteenth Amendment.

In this case, for 13 years, Claimant has been deprived of due process of law by the State of NY. Both the state and federal court offices in NYS engaged in *ex parte* obstruction of justice with 1st Dept. AGC attorneys to prevent Claimant from getting infringement hearings. *US v. Reich*, 479 F. 3d 179 (2d Cir. 2007)(Sotomayor, J.). There is no proscription in *Florida Prepaid* that prevents a patentee from suing a state agency and its officers in state court for patent taking and to get injunctive relief. For that relief, state supreme court is the proper forum, not the NY Court of Claims. This is especially true because the Court of Claims cannot grant injunctive relief or punitive damages. However, because the State of NY denied Plaintiff due process to all its courts to protect her patents, she can sue State and its officers in the federal district court, which Plaintiff will now do. *Xechem International v. Univ. of Texas, MD Anderson Cancer Center*, 382 F. 3d 1324, 72 USPQ 2d 1253 (Fed. Cir. 2004); Plaintiff is entitled to Ex parte Young, 209 US 123 (1908) relief against state officers to abort continuing violation of her constitutional rights. See also, *Pennington Seed v. Produce Exchange 299*, 457 F. 3d 1334 (Fed Cir. 2006). Moreover, in any action for patent taking damages if the NY Court of Claims had not denied Plaintiff access, the state must follow the preempting federal patent law and cannot impose its procedural blockades of 90 day notice or accrual date, when the US Supreme Court had iterated with specificity that no accrual date can be charged against a patentee. *SCA Hygiene Products Aktiebolag v. First Quality Baby Products*, 137 S. Ct. 954 (2017).

The State of NY determined its courts to be of general jurisdiction to hear these claims. *Xechem International v. Univ. of Texas, MD Anderson Cancer Center*, 382 F. 3d 1324, 72 USPQ 2d 1253 (2004). However, as in *Haywood*, NY has

unconstitutionally attempted to limit Claimant's remedies by supreme court orders denying jurisdiction and referring her to the NY Court of Claims. The practices promulgated by the State are per se unconstitutional, as are the unconstitutional means that were deployed by state officers to deprive Claimant of access to its courts.

No state attorney can enter a crafted order against an individual without notice, hearing or due process of law and without production of the complete state files including the right to cross examine adverse witnesses. An attorney disciplinary proceeding, even a faux proceeding, a considered a quasi-criminal action. Likewise, no SDNY circuit officer can remove an attorney's roster listing without notice, hearing or due process. *Bradley v. Fisher*, 80 US 335 (1871); *Marbury v. Madison*, 5 US 137 (1808). Only one bar is required for circuit roster listing that need not be NYS and Claimant remains admitted in California in good standing since 1979. *In re Gouiran*, 58 F. 3d 54 (2d Cir. 1995)

Claimant's patents are in term. They continue to be infringed by at least seven NYS agencies since 2010 as well as by private companies who are venture partners of the State of NY. Those include, for example, NYS Thruway, EZ Pass, Port Authority of NY and NJ, NYS Police, NY Health and Hospital Assn, sports leagues and teams, Commissioner of Major League Baseball, the NY Yankees, airport terminals and most recently sport betting companies that are generating considerable tax dollars for the State. With respect to the private company infringers, state agencies are jointly and severally liable for aiding and abetting infringement of Claimant's patents. 35 USC § 271, 274, 285, 286.

Ergo, the Court of Appeals must find that Claimant was denied constitutional due process access to its state supreme courts for 13 years to get infringement hearings. Claimant was never properly referred to the NY Court of Claims by supreme court judges. However, the NY Court of Claims defied its administrative duty by not granting Claimant a hearing under preempting federal law. *Xechem International v. Univ. of Texas, MD Anderson Cancer Center*, 382 F. 3d 1324, 72 USPQ 2d 1253 (2004). Because Plaintiff has been denied due process of law, it properly can seek infringement damages against the State and damages under 42 USC §1983 with attorney's fees and costs for promulgating unconstitutional protocols in the state to govern patent and "faux" disciplinary proceedings that constitutes abuse of process.

This court erred in transferring Claimant's SSD 8 appeal to the 3d Dept. in 2023. The court already held it was conflicted out and in 2015 had been instructed by AG not to produce Claimant's complete state files. In 2019, the 3d Dept. again held it could not hear Claimant's 2019 mandamus petition. Because Claimant was never served with any of the cascading orders of the NYS OCA and SDNY circuit office until 2023, all statutes are tolled on the federal and state claims.

Concerning jurisdiction, the US Supreme Court already shut down a correction statute upheld by the NY Court of Appeals, proving the court had jurisdiction in a similar case on all fours. Most respectfully in December 2023 a SDNY clerk Dionisio Figueroa was convicted by the US Attorney SDNY of taking bribes from defense attorneys in exchange for deleting docket entries including in pro se cases. The Court of Appeals must now either acknowledge unconstitutional practices and protocols promulgated by the state in patent cases and attorney disciplinary proceedings or be subject to a writ of mandamus before the US Supreme Court.

Dated February 6, 2024
Princeton, NJ

Yours etc.,
/amygurvey/

AMY R. GURVEY
US PATENTEE

CERTIFICATION OF SERVICE

Appellant Amy R. Gurvey certifies that on February 6, 2024 she served a true and accurate copy of the within Supplementary Jurisdictional Statement upon the NYS Attorney General, PO Box 341 Capitol Station, Albany, NY 12224-0341, Attn: Anthony Rotondi Assistant AG.

/amygurvey/

US PATENTEE

Live-Fi™ Technology Holdings

7302 Woodstone Circle
Princeton, NJ 08540
amyg@live-fi.com

January 19, 2024

Hon. Kimberly A. Moore
Chief Adm. Judge Federal Circuit
717 Madison Place, NW
Washington, DC 20549

Hon. Deborah Livingston
Chief Adm. Judge Second Circuit
40 Foley Square
New York, NY 10007

cc: Hon. Damian Williams
US Attorney SDNY

Hon. Rowan Wilson
Chief Judge, NY Court of Appeals

Re: *Gurvey v. 2d Circuit Grievance Panel Petition* ***Returned Unadjudicated***
Gurvey v. Cowan Liebowitz & Latman, Live Nation, Inc., Instant Live Concerts, LLC, Next Ticketing, Inc., Mike Gordon of Phish
06cv1202 Petition Improperly returned by Fed Circuit 23-134

Re: 2d Circuit attorney and clerk Julie Allsman, Esq. and Catherine O'Hagan Wolfe

Dear Administrative Judges Moore and Livingston:

In 2022 the undersigned attorney-entrepreneur and sole-named inventor of standard essential patents for ticketing management in the United States, was advised by 2d Circuit attorney Julie Allsman that her good name and California certification of good standing were deleted *ex parte* from the roster of attorneys in 2013 without notice, hearing or due process of law. Allsman, a circuit administration attorney, admitted that she deleted Petitioner's good name based on *ex parte* proffers accepted *ex parte* from Petitioner's SDNY adversary, Richard Supple of Hinshaw & Culbertson in the above SDNY litigation. Petitioner received no notice, hearing or due process. In 2016, Petitioner was advised that Supple was a concealed state attorney dually serving on the Appellate Division 1st Dept. attorney grievance committee (AGC) without disclosing conflicts of interest and had crafted unserved documents with his AGC chief counsel, Jorge Dopico that were proffered to Allsman. These documents were shuffled ex parte to prejudice Petitioner's recovery rights in the SDNY lawsuit. Supple previous proffered ex parte documents to the first judge who recused herself after staying patent discovery, an order reversed by 2d Circuit in 2012. (462 Fed. Appx. 26). In 2016, the Appellate Division held that Petitioner would be denied

constitutional access to see Supple and Dopico's crafted state documents, but that court had considered the documents *ex parte* and knew that Supple was Petitioner's adversary in the SDNY lawsuit, conflicting out the entire court.

Thereafter, the discovery ordered by the 2d Circuit was never allowed by SDNY Magistrate Henry Pitman or the replacement Judge Lorna Schofield. Pitman never recorded his hearings and left the case and the court. Petitioner's non-joinder damage claims against the Cowan defendant lawyers pursuant to 35 USC §256 are independent of infringement claims and were never heard by the court. The evidence before the SDNY was undisputed that Cowan lawyers had inserted Petitioner's confidential content editing algorithms into a PCT application filed for another client, Legend Films of San Diego (02 PCT 14192). Defendant Live Nation, surviving entity of Clear Channel Entertainment SPINCO, that owns and operates 46 event venues in NYS, was somehow dismissed *sua sponte* by the first judge based on fraudulent jurisdictional papers that it had "no NY contacts". Live Nation was being defended in the SDNY lawsuit by Supple and Hinshaw & Culbertson and Baker Botts attorney, Steven Shortgen of Dallas TX. The evidence was also undisputed that Cowan lawyers had failed to protect Petitioner's confidential ticketing and content editing trade secrets by allowing a non-lawyers, Phish's Mike Gordon, to sit in on conferences.

Allsman admitted in 2022 that she deleted Petitioner's name based on *ex parte* proffers in 2013, and never checked the documents she got from Supple. It was confirmed that Petitioner's amended non-joinder and infringement complaint filed and date stamped April 22, 2010 had also been deleted ex parte from the docket. Emails were undisputed that Cowan lawyers did insert Petitioner's confidential algorithms into a PCT specification filed before the USPTO for Legend Films "at the client's instructions", omitted Petitioner's name from the list of inventors, and filed fraudulent declarations of inventorship, causing a conflict of interest investigation by the US Commissioner of Patents, Wynn Coggins. Ergo the Cowan defendants caused delay of Petitioner's prosecution rights by conflict of interest violations before the Office that benefited its other clients. *BlueRadios v. Hamilton Brook, Smith & Reynolds*, 2022 WL 138642 (D. Mass.). This is the precise holding of the 2d Circuit in 2012.

Cowan defendant's attorney, R. Lewis Gable admitted that he did insert Petitioner's algorithms into the PCT he filed for Legend in 2002. Cowan partner Christopher Jensen admitted in an email was done "at the client's instructions". The Cowan defendants never filed Petitioner's formal applications, but instead filed defective applications, and abandoned these applications admitting to a conflict of interest to the USPTO after taking Petitioner's $50,000 retainer. The USPTO never granted withdrawal to the Cowan lawyers in 2003 or 2007 for defiance of practitioner conflict of interest mandates. 37 CFR 2.10, 2.19, 10.66, 11.108. 11.116 **The firm hung itself because its administrative partners Simon Gerson and Midge Hyman paid Petitioner's bar dues to California in 2002 impliedly admitting knowledge that Petitioner was not admitted in NYS.** In fact, the firm sent Petitioner on a business trip to work with Legend Films in San Diego and locked Petitioner

out of the office on her return and withheld her files, Petitioner's contact lists and clients. Ergo, the Cowan lawyers conspired with Supple to get rid of Petitioner and frame her.

Supple, dually serving as a NYS attorney on the Appellate Division 1st Dept. without disclosing conflicts of interest, did delete the ethics complaints filed by Petitioner and could never accept the Cowan firm's SDNY defense retainer. (JL Part 1240.6d). The crafted documents included the photocopied signatures of a 2002 AGC chief counsel Paul Curran, who left the state in 2002 and was dead of cancer in 2007. A December 2012 purported "collateral estoppel" order based on documents with Curran's forged signature, received no hearing in the state. The 2012 order says it was suspending Petitioner for 6 months. Petitioner was listed at the 3d Dept. and NYS Office of Court Administration (OCA) as voluntarily resigned in 1998 in good standing when Petitioner was in medical school. Petitioner never requested reinstatement and was never thereafter charged bar dues, proving a sham by criminal obstruction of justice and that Petitioner was being framed. *US v. Perry*, 479 F. 3d 179 (2d Cir 2007)(Sotomayor, J.)

There was no jurisdiction over Petitioner in the capacity of an attorney in favor of the 1st Dept ever. Only the 3d Dept. had jurisdiction until 1998. NY's Judiciary Law Part 1240. There was in fact no previous order on which collateral estoppel could have been entered over Petitioner in the capacity of an attorney. In 2016, the Appellate Division knew full well that Supple was Petitioner's adversary in the SDNY lawsuit, conflicting out the court when it accepted ex parte documents. Allsman accepting the same documents, conflicted out the 2d Circuit. The NY Court of Appeals held the 2012 and 2016 1st Dept. orders were both "non-final" such that no cascading order could be entered by Allsman and certainly not ex parte without hearing. An appeal on constitutional grounds is pending before NY Court of Appeals on the Appellate Division orders and on an order entered in 2023 by the NY Court of Claims denying Petitioner blanket access to the state to recover infringement damages against seven NYS agencies and for obstruction of justice by state attorneys without jurisdiction over Petitioner undertaken in their official capacities. SSD8.

Investigation revealed that the current 2d Circuit clerk Catherine O'Hagan Wolfe, previously worked with Dopico and Supple at the 1st Dept. [2] O'Hagan Wolfe did everything possible to prevent Petitioner's good name from being reinstated to the circuit roster and to prevent Petitioner's appeal to clearly wrong orders of the SDNY in 23017 from being heard by the Federal Circuit.

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[2] O'Hagan Wolfe was previously cited in 2009 by the SDNY in her post as clerk for the 1st Dept. for retaliatory harassment of the AGC triage attorney, Christine Anderson, helping clients and attorney-entrepreneurs file ethics complaints against NYC attorneys. O'Hagan Wolfe left the state and is believed implicated in the denial of Petitioner's petition to reinstate her good name filed in 2002, 22-725, 22-840. There was never jurisdiction over Petitioner in the capacity of an attorney in favor of the 1st Dept. *Anderson v. First Dept., State of NY et a.*, 614 F. Supp. 2d 404 (SDNY 2009) (Headnotes, 15, 16)(Scheindlin, J).

As a matter of law, the 2d Circuit lost jurisdiction based on administrative misconduct of its circuit attorney who accepted ex parte proffers from Petitioners' SDNY adversary. Ergo, the Federal Circuit could not find the 2d Circuit had jurisdiction to hear the 2017 appeal to clearly wrong orders of the SDNY, or the power to grant mandamus orders against the SDNY. In fact, the SDNY being petitioned in 2014 to remand patent malpractice claims to the state of NY, failed to adjudicate the claim because there was no diversity jurisdiction because Cowan partners reside in NJ. This meant that the Court knew full well it had a duty to adjudicate the non-joinder claims and grant patent discovery and an amended complaint based on the Cowan lawyers' fraudulent breaches of attorney client privilege in favor of not one but four clients with whom conflicts of interest were known to exist.

The Federal Circuit always had exclusive arising under appellate jurisdiction based on the SDNY's failing to hear the non-joinder claims stated in every complaint field in the court. 35 USC 256; *Carter v. ALK Holdings*, 605 F. 3d 1319 (2010). The Federal Circuit never mentioned Petitioner's non-joinder claims only that 2010 amended complaint was not on the docket. That is true. This is because that complaint was deleted *ex parte* by a clerk, Dionisio Figueroa, who was convicted by the DOJ in 2023 for taking bribes from defense attorneys for 18 years.

Allsman admitted she did not grant notice or hearing, or even check in 2013 that there was any previous order on which collateral estoppel could have been entered against Petitioner in the capacity of an attorney. In fact, there was none and there was no state hearing either.

Ergo, the Second Circuit owes Petitioner a hearing to vacate the illegal order entered by Allsman deleting Petitioner's good name from the docket *ex parte* based on consideration of ex parte proffers from Petitioners' adversary. Decisions of the US Supreme Court are unanimous on this issue. *Bradley v. Fisher*, 80 US 335 (1871); *Liljeberg v. Health Services, Acquisition Corp.*, 486 US 847 (1988);. Only one bar is required for circuit roster listing that need not be NYS and Petitioner is admitted in California on excellent standing since 1979. *In re Gouiran*, 58 F. 3d 54 (2d Cir 1995). The circuit roster listing is a vested commission that can only be rejected or revoked unilaterally by the attorney unless the court affords notice, hearing and due process of law and has ground for revocation. *Marbury v. Madison*, 5 US 137 (1803).

In the meantime, the Federal Circuit must vacate its mandates entered in 2020 and 2023 because the Second Circuit was per se conflicted out as a matter of law based on acceptance of ex parte proffers by Allsman and never had jurisdiction as a matter of law over any order of the 2d Circuit entered since 2013.

This notice is being sent as a formal grievance to the US Attorney, SDNY concerning obstruction of justice by state attorney in withheld state files. Petitioner has also been denied injunctive relief from the district court to compel the files and for continuing violations of her constitutional rights. *Pulliam v. Allen*, 466 US 522 (1984). There is no

dispute that Petitioner was framed, prejudiced and seriously injured in her reputation and career by being denied due process of law .

In response to Allsman's January 9, 2024 letter, it is irrelevant that a local rule attempts to circumvent preempting federal mandates under the Supremacy Clause, Art. 6, C. 2 and decisions of the US Supreme Court. The rules are just rules, are not controlling and Petitioner restates her demand for a hearing from the circuit panel to reinstate her good name to the roster.

Supple and Allsman must be subject to the disciplinary jurisdiction of the State of NY and SDNY. Allsman must recuse herself from this matter based on conflict of financial interest and have her supervising judge respond to it. If Petitioner's application is denied it will be the subject of a writ of mandamus to the Supreme Court of the United States.

The Federal Circuit, however, has an administrative duty to vacate its mandates finding lack of jurisdiction to hear Petitioner's 2017 appeal to the improper SDNY summary judgment order and 2023 mandamus petition against the SDNY to grant a non-joinder and infringement hearing based on issuance of petitioner's August 2, 2022 US patent, 11403566 Contrary to Federal Circuit's orders, the 2d Circuit had no jurisdiction to enter a single order denying transfer of Petitioner's 2017 appeal or mandamus petition against the SDNY since 2012. It is astounding that the SDNY judge denied disqualification of Supple and H&C in 2016 defying NY Judiciary law Part 1240.6d. The Federal Circuit should be more interested in protecting the constitutional rights of inventors over patent attorneys who breach an inventor's attorney client privilege to benefit other clients and engaging in clear conflict of interest violations before the USPTO.

Yours etc.,

/amygurvey

Amy R. Gurvey
US Patentee
CEO , LIVE-Fi ®Technologies, LLC

cc: Hon. Letitia James, NYS Attorney General PO Box 341 Capitol Station, Albany, NY 12224-0341 Certification of Service Anthony Rotondi, Asst. AG, 1-19-24

PARTIES

74. Plaintiff Amy Weissbrod Gurvey is the sole-name inventor of the patents-in-suit and CEO of LIVE-Fi® Technologies, LLC, a limited liability company with offices in New Jersey and California. Plaintiff has the legal right to bring this cause.

75. Defendant Hon. Kathy (Kathleen) Hochul is the Governor of the State of New York.

76. Defendant Hon. Letitia James is the Attorney General for the State of New York.

77. Defendant Joseph Zayas is the Chief Counsel and Officer of the NYS Office of Court Administration (OCA).

78. Defendant Laura Taylor Swain is the Chief Administrative Judge of the US District Court for the Southern District of New York.

79. Defendant Kevin O'Toole is the Chair, of the Port Authority of New York and New Jersey, alleging to be infringing Plaintiff's patents alone and with a venture partner OTG that manufactures kiosks targeting for installation in the tri-state area airports that are infringing Plaintiff's patents.

80. Defendant Brian O'Dwyer is the Chief Executive Officer of the NYS Gaming Commission, and in charge of sports betting companies that are infringing Plaintiff's patents.

81. Defendant Frank Hoare is Executive Director of the NYS Thruway that with EZ Pass is infringing Plaintiff's patents.

WHEREFORE, Plaintiff being deprived of constitutional access to the federal and state courts of NY to recover infringement damages against private and state agency infringers for 13 years, prays for injunctive relief against the named defendants to abort continuing violations of Plaintiff's constitutional rights and against the State for promulgation of unconstitutional protocols in defiance of

federal patent mandates that continue to be enforced against Plaintiff's interests. The following relief is properly granted to Plaintiff:

(1) That defendants Port Authority of NY and NJ, NYS Gaming Commission and NYS Thruway/EZ Pass who along with defendant AG Letitia James have been noticed of infringement and aiding and abetting infringement of Plaintiff's patents alone and with venture partners since 2011 produce a full accounting of all uses of Plaintiff's patents for hearing and that the matters be set down for inquest to pay just compensation to Plaintiff from the State treasury.

(2) That defendants immediately produce Plaintiff's complete NYS files, 1st Dept. AGC files, Plaintiff's ethics complaint file opened against the NYC law firm of Cowan Liebowitz & Latman, PC, OCA files, SDNY circuit roster files with online profiles, and all documents generated by court officers and clerks including copies of electronic screen displays that continue to be withheld in violation of Plaintiff's constitutional rights for 13 years and all orders entered against Plaintiff in the capacity of an attorney, if any.

(3) That defendants immediately produce any and all documents generated on which a purported vexatious attorney and collateral estoppel order was entered into Plaintiff's file without hearing in the state in 2012. *Wilcox v. Supreme Council of Royal Arcanum*, 210 NY 370 (1914).

(4) That defendants immediate produce any and all documents on which defendants denied vacatur of the order mentioned in (3).

(5) That defendants produce Plaintiff's patent practitioner ethics complaint file duly opened against the NYC IP firm Cowan Liebowitz & Latman, PC, the Cowan firm's responses to the complaints and the names of all individuals who accessed that file. (NOTE: In defiance of USPTO mandates the Cowan lawyers withheld Plaintiff's USPTO patent files after its patent practitioners and managing partners abandoned Plaintiff's

patent applications and attempted unilateral withdrawal from Plaintiff's patent retainer based on an admitted conflict of interest with five other clients including Live Nation, Inc., merged with Ticketmaster, Instant Live Concerts, Legend Films of San Diego, MLB, Instant Live Concerts and Phish's Mike Gordon that existed prior to the time a patent retainer was offered to Plaintiff. 37 CFR 2.10, 2.19, 10.66, 11.108, 11.116

(6) That defendants be ordered to produce Plaintiff's complete 3d Dept. files since Plaintiff was granted admission from California in 1985, online screens and profiles, notes, memoranda, orders and documents generated by 3d Dept. justices, attorney membership officer Dan Brennan, and OCA officer Denise Rajpal and presiding justices including any ethics complaints ever filed against Plaintiff in the capacity of an attorney.

(7) That defendant Kevin O'Toole pay Plaintiff just compensation for continued infringement, aiding and abetting infringement and taking of her three US patents-in-suit by the Port Authority of NY and NJ since 2010, produce PA's hospitality kiosk contracts with OTG of Pennsylvania since 2010 and all revenue statements generated that would show purported income from OTG kiosks placed in PA serviced airport terminals.

(8) That defendant Brian O'Dwyer pay Plaintiff just compensation for infringement and aiding and abetting of her three US patents-in-suit by the NYS Gaming Commission, produce his contracts with the NYS Lottery, OTB and sports betting companies and account for all revenues generated since 2010 by the State alone and with each venture or contractual partner.

(9) That defendant Frank Hoare pay Plaintiff just compensation for infringement and aiding and abetting of her three US patents-in-suit by the NYS Thruway and EZ-Pass and produce an accounting of all revenues generated since 2010 including revenues generated from systems deployed

wherein photograph of a ticket or license plate was used to collect unpaid Thruway tolls.

(10) That defendant Joseph Zayas pay Plaintiff just compensation for infringement of three patents-in-suit by the NYS Police and the state's electronic NYSCEF document filing system for those cases where a summons, citation or parking ticket, case number or other data identifying a case or litigant is used and continues to be used to transmit content during or related to prosecution of state proceedings.

(11) That defendants produce all documents created by AGC 1st Dept. officers, counsel Jorge Dopico, attorney Naomi Goldstein, former AGC attorney James T. Shed, and counsel Richard Supple that were inserted into Plaintiff's state record with the names of all individuals served with those documents.

(12) That the State be forced to pay damages caused from cascading orders entered against Plaintiff by the SDNY and out of state courts after circuit and state officers changed Plaintiff's good standing roster listing and online profile without notice, hearing or due process of law.

(13) That the Court issue a determination that NYS promulgated and continues to promulgate unconstitutional protocols in and related to attorney disciplinary proceedings including by creating forged documents and entering faux vexatious litigant orders including when there is no jurisdiction over a respondent to achieve an desired result for the State.

(14) That the Court produce all documents generated during legislative hearings that were used determine improper, unethical or unconstitutional protocols in state attorney disciplinary actions and resulted in amendments enacted to NY Judiciary Law in 2016 and 2018.

(15) That the Court issue a determination that unconstitutional protocols continue to be promulgated in attorney disciplinary proceedings because the duties of the NYS Attorney General iterated in Executive Law subd 63-1 to defend state clerks, AGC attorneys and judges including from ex

parte obstruction of justice are unlawfully deemed to be privileged communications such that the state will not produce all relevant state documents before entry of an order against an attorney-respondent in violation of the attorneys' constitutional right to hearing to confront all adverse witnesses. See NY Judiciary Law Part 1240.7.

(16) That the Court issue a determination that defendants' ongoing failure to allow an immediate appeal as of right on constitutional grounds to any purported *ex parte* "vexatious attorney" determination in an attorney disciplinary proceeding is per se unconstitutional and violative of the Fourteenth Amendment Due Process Clause.

(17) That the Court issue a determination that NYS is promulgating unconstitutional protocols in patent cases including applying state law instead of preempting US Supreme Court mandates and Federal Circuit law and procedure.

(18) That the Court issue a determination that the failure of the AGC officers to compel an inventor-client files from a patent practitioner who enters the state AGCs alleging ethics violations, constitutes breach of a federal administrative duty that entitles the inventor-client to sue the AGC officers injunctive relief and damages in their individual capacities, get mandamus relief, recover civil rights damages, attorney's fees and costs. 42 USC §1983, 1985, 1988. 37 CFR 2.10, 2.19, 10.66, 11.108. 11.116.

(19) That the Court issue a determination that pursuant to a US Supreme Court order reversing the NY Court of Appeals, *Haywood v. Drown*, 556 US 729 (2009), the state supreme courts cannot deny a patent inventor constitutional access to get injunctive relief, damages, punitive damages, and attorney's fees and costs pursuant to 42 USC §1983 against state officers in their individual capacities who defy US Supreme Court, Federal Circuit and USPTO mandates or otherwise attempt to prevent a US patentee from recovering patent infringement or taking damages by

engaging in *ex parte* obstruction of justice. *Pulliam v. Allen*, 466 US 522 (1984).

(20) That the Court issue a determination that defendant NYS Attorney General is precluded from defending the State of NY and the other defendants herein sued in their official capacities because AG previously defended state AGC attorneys, clerks and presiding judges who violated Plaintiff's constitutional rights and engaged in ex parte obstruction of justice in their individual capacities and shuffled their forged documents to SDNY circuit officers and AGC officers intending that Plaintiff would be deprived of infringement hearings before SDNY and before other district courts.

(21) A determination that Plaintiff is entitled to her attorney's fees and costs in this action and such other and further relief as the court deems just and proper.

Dated: February 9, 2024

Princeton, NJ

Yours etc.,

/AMYGURVEY/

Amy R. Weissbrod Gurvey

US Patentee Plaintiff