SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

STEPHEN PHILLIP ROMINE PLAINTIFF,	)	
	)	**INDEX NO. 16-1351**
VS.	)	
JAMES P. LAURITO and STEVEN V. LANT DEFENDANTS	)	**MEMORANDUM OF LAW**

INTRODUCTORY STATEMENT AND STATEMENT OF FACTS

INTRODUCTION

1) This Memorandum of Law is submitted in support of the Plaintiff STEPHEN PHILLIP ROMINE motion seeking to move Ulster County Supreme Court to vacate its February 14th, 2018 Decision for Summary Judgment Dismissal against the Plaintiff and enter a Default Judgment against the same Defendants. This action was commenced with the filing of a Summons with Notice with the Ulster County Clerk on May 19th, 2016. The case was assigned Index Number 16-1351. On or about June 22nd the Defendants received a Plaintiffs' initial complaint. The issue was joined with the Defendants submitting an Answer July,12th, 2016.On September 21st the Plaintiff served 2nd amended complaint. An answer to the second amended complaint was served on October 11, 2016. On June 12th, 2016 the Defendants served upon the Plaintiff a Demand for Interrogatories & Production of Documents. On October 31st, 2016 the Plaintiff served his response. On February 6th, 2017 the Defendants served a Notice of Motion for Summary Judgment. On April 10th, 2017 the Plaintiff served a Demand for Interrogatories and Production of Documents and a Demand to take Deposition. On April 11th, 2017 Hon. Judge Christopher E. Cahill signed a so-ordered letter submitted by Attorney for the Defendants Christina M. Bookless granting a stay on all discovery and instructing the Defendants they were

not required to answer the Plaintiff's interrogatories Demands. On May, 30th, 2017 the Plaintiff filed an Opposition to Summary Judgment with the Ulster County Clerk. On Feb. 14, 2018 the Ulster County Supreme Court granted the Defendants a Summary Judgment Dismissal and served. On or about March 8th, 2018 the Plaintiff filed a motion to Reargue and a Motion to Renew. On or about April 11th 2019 the Plaintiff served an Affidavit of Facts to the Defendants. The Court issued a Decision/Order May 3rd, 2018 declaring that the Plaintiff's Affidavit of Facts is a discovery device and instructed the Defendants they were not obligated to supply an answer. The Defendants filed an Opposition to Motion to Reargue and Renew on May 15, 2018 and the Plaintiff filed a Reply to both of the Defendants mentioned Opposition Reply. On June 6th, 2108 the Plaintiff sent the Judge a Notice of Objection/Writ of Error regarding the Courts May 3rd, 2018 decision. The Motion to Renew and Motion to Reargue are pending. As will be set forth below the facts and case law support a Motion to Vacate based on multiple counts of fraud rising to the level of Fraud on the Court and entering a Default Judgment.

LAW, FACTS AND FRAUDS

I- THE FRAUDS RELATED TO DEFENDANTS LEAVING CENTRAL HUDSON

Defendant James P. Laurito claimed he was no longer with Central Hudson when Plaintiff filed his Ulster County Supreme Court Complaint. Plaintiff has submitted Exhibit R of an official Central Hudson Press Release proclaiming that Defendant James P. Laurito was "promoted" to Executive Vice President of Business Development, a Department of its Parent Company, Fortis Inc. The Press Release also stated that Defendant Laurito will be staying on with Central Hudson, continuing

as a member the Board of Directors, where he has been a member of the Board since 2014. (See Exhibit R.) Furthermore, Central Hudson official 2018 photographic roster of its Board of Directors has Defendant James P. Laurito pictured as a current 2018 Member of the Board. (See Exhibit S.) To claim that Defendant James P. Laurito "left Central Hudson" is fraud**.**

Take Judicial Notice:

Defendants and their lawyers have remained silent (in all of their paperwork submitted to this Court) on the Plaintiff asserting Defendant Mr. Laurito being on Central Hudson Board of Directors, when this lawsuit was filed and up until the present time. (See Exhibits R, S.) U.S. Supreme Court held:

*"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior... This sort of deception will not be tolerated and if this is routine it should be corrected immediately."*U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

Attorneys for the Defendants know that James P. Laurito is currently on the Board of Directors and that he has not "left Central Hudson" and that as one of the Directors on the Board, he has access to information the Plaintiff was seeking in discovery regarding the operations of Central Hudson. To state otherwise is fraud.

"[A]n attorney's duty to zealously represent a client is circumscribed by an 'equally solemn duty to comply with the law and standards of professional conduct . . . to prevent and disclose frauds upon the Court' " (People v DePallo, 96 NY2d 437, 441 [2001], quoting Nix v Whiteside, 475 US 157, 168-169 [1986]). To that end, the Rules of Professional Conduct expressly prohibit an attorney from, among other things, "mak[ing] a false statement of fact or law to a tribunal" (Rules of Professional Conduct [22 NYCRR 1200.0] rule 3.3 [a] [1]), "offer[ing] or us[ing] evidence that [he or she] knows to be false" (Rules of Professional Conduct [22 NYCRR 1200.0] rule 3.3 [a] [3]), "suppress[ing] any evidence that [he or she] or the client has a legal obligation to reveal or produce" (Rules of Professional Conduct [22 NYCRR 1200.0] rule 3.4 [a] [1]), "knowingly us[ing] perjured testimony or false evidence" (Rules of Professional Conduct [22 NYCRR 1200.0] rule 3.4 [a] [4]).

The plain fact is Defendant James P. Laurito was officially an Executive Member on the Board of Directors of Central Hudson when the Plaintiff filed his Ulster County

Supreme Court Complaint. The Courts statements on page four of its February 14th, 2018 Decision/Order, declaring that "Mr. Laurito left Central Hudson" is in error. On the contrary, Mr. Laurito is currently a vital part of the operations of Central Hudson, serving as an Executive Member of the Board of Directors and was serving as such during the time the Plaintiff filed his Complaint contrary to the statements of the Defendant and repeated by the Ulster County Supreme Court on page four of its February 14th, 2108 Decision/Order.

It should also be clear that the claim by Defendant James P. Laurito, that he cannot answer the Demand for Interrogatories because "he left Central Hudson", is fraud. The Central Hudson official Press Release states he was "promoted" (see exhibit R,S). People do not get promoted when departing a Company. The Ulster County Supreme Court repeated this fraud, as well as other fraud that is set forth in the Affirmation of Support Affidavit of the Plaintiff, in its February 14th, 2018 Decision/Order has caused the Plaintiff to be unable to obtain discovery to very important questions to his case. Furthermore, if the Defendants have access to a computer at home or a library, they could have both answered 80 of the 152 Interrogatory questions, and at least half of those questions, without a computer. (See Exhibit T.) Some of the questions were "yes" or "no" questions. Furthermore, to the amazement of the Plaintiff, the Defendants, through their Attorney, claim that they could not answer deposition questions which were documented in the Ulster County Courts Decision/Order of February 14th, 2018 stating "the Defendants are not in possession of the information the Plaintiff seeks" without ever even knowing what the Plaintiffs deposition questions were. (See Exhibit Q, page 5.) There is a legal and a moral duty here, to not only the Plaintiff, but to the Public, to answer the

Plaintiffs interrogatory questions. To remain silent, once again invokes what the U.S. Supreme Court has held:

"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior... This sort of deception will not be tolerated and if this is routine it should be corrected immediately." U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

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II-THE FRAUDS OF NOT RECEIVING PROPER NOTICE & RESPONDING

The Affidavits of the Defendants are part of the fraud on the Court to claim that they did not receive the Plaintiffs Lawful Notices even though they were addressed to them specifically by name and delivered via certified mail/return receipt to their primary place of business and admittedly received by an authorized agent.

Take Judicial Notice:

Proper notice was made, according to NY Appeals Court:

"The Appellate Division correctly determined that the Plaintiff insurer presented sufficient evidence of a regular office practice to ensure the proper mailing of notifications to insured's so as to raise the presumption that such a notification was mailed to and received by the insured. Specifically, the Plaintiff insurer submitted an Affidavit from an employee who had personal knowledge of the practices utilized by the insurer at the time of the alleged mailing to ensure the accuracy of addresses, as well as office procedures relating to the delivery of mail to the post office. Thus, the Plaintiff insurer provided proper notice of the amendment to the policy upon renewal adding the relevant exclusion. Defendant's remaining contentions are without merit. [Preferred Mut. Ins. Co. v Donnelly Court of Appeals of New York April 03, 201422 N.Y.3d 11698 N.E.3d 847.] "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party." {Matter of McCann v Scaduto Court of Appeals of New York December 23rd, 198771 N.Y.2d 164519 N.E.2d 309}.

Plaintiff Stephen Phillip Romine, has submitted to this Court, via certified mail and return requested receipts for the March 21st, April 9th, May 16th, June 25th and September 12th, 2103 mailings, which all included the Lawful Notices sent to the

Defendants and Central Hudson Counsel Paul Colbert. (See Exhibits EE1, EE2a, EE2b, EE3, EE4, and EE5.)

Defendants admit in their Affidavits that "authorized" Agent/Representatives received and processed their mail. (See Exhibit B, page 4, paragraph 13 and Exhibit C, page 4, paragraph 14.) What Defendants and their lawyers seem intent on, is remaining silent on any discussion of their misrepresentations of the "writings", correctly put "Lawful Notices" which were "proper notices" (id.), is the declaration just above the notarized signature on said notice is "Notice to principal is notice to agent and notice to agent is notice principal". This is a maxim in law, which the Defendants and the Ulster County Supreme Court overlook. These lawful notices were sent via certified mail, return receipt, specifically to the Defendants, by name, and required a signature from their appointed authorized Agents/Representatives who signed for them in the place of the Defendants, thereby taking on the responsibility of transmitting the information to whom the certified mail was addressed to. Thus, they cannot now claim they did not receive the Lawful Notices that were addressed specifically to them and specifically received by their authorized Agents/Representatives, and in claiming they did not receive them, they demonstrate bad faith and fraud

Take Judicial Notice:

It is a general rule, settled by an unbroken current of authority, that notice to, or knowledge of, an agent acting within the scope of his authority and in reference to a matter over which his authority extends, is notice to, or knowledge of, the principal. The doctrine of Imputed Notice applies. ["In general, knowledge acquired by an agent acting within the scope of his or her agency is imputed to the principal and the latter is bound by that knowledge even if that information is never actually communicated." (Christopher S. v Hampton v Dougalston Club, 275 AD2d 768, 769-770 {2d Dept. 2000} see also Center v Hampton Affilates, 66 NY2d 782, 784 {1985}]. An agent is presumed to communicate to his employer what he learns in the discharge of his expected duties." (Seward Park Hous. Corp. v Chen, 287 S2d 157,

166 [1st Dept 2001] , Howell v. Mills, 53 N.Y. 322; McCutcheon v. Dittman, 164 N.Y. 355; Ratshesky v. Piscopo, 239 Mass. 180

In the case of the Defendants, according to their Affidavits (see Exhibit B and Exhibit C), not only did agent, Daniel Harkenrider, Service Supervisor, have possession and the knowledge of the Lawful Notices, as stated in his Affidavit (see Exhibit D), but Central Hudson Counsel, Paul Colbert, also had knowledge of the Lawful Notices. The Plaintiff finds it very curious that there is no Affidavit from legal Counsel Paul Colbert stating he did not inform the Defendants of the Lawful Notices. Either way, because of the Doctrine of "Notice to Impute", knowledge of the Lawful Notices is imputed to the President and CEO of that organization whom the Lawful Notices were addressed to by name and signed for by an agent delegated and authorized to sign for Defendants when receiving their certified and return receipt mail. The Notice and Demand Lawful Notices (see Exhibit EE1) were sent to the Defendants and their attorney on five separate occasions, dated March 21st, April 9th, May 16th, June 25th and Sept. 12th of 2013, via certified mail, return receipt. The Notice of Default/Warning of Liability Lawful Notices (see Exhibit EE2b) were sent on four separate occasions, dated April 9th, May 16th, June 25th, and Sept. 12th of 2013 via certified mail, return receipt requested. The Lawful Notices were included with two letters (see Exhibits EE4 and EE5) were sent to Central Hudson Counsel, Paul Colbert. In each of those letters, Mr. Colbert was apprised of the amount of financial debt to the Plaintiff that was accruing due to the terms and conditions of agreement in the "Notice of Demand" Lawful Notices. Mr. Colbert and Mr. Harkenrider initiated three separate U.S. mail communications to the Plaintiff on April 1th, June 21st and Sept. 20th of 2013 (see Exhibits GG, W and X) and neither of them made any statements within those communications that they objected to the terms and

conditions of the agreement in the "Notice and Demand" or the "Notice of Default/Warning of Liability" Lawful Notices dated March 21st, April 9th, May 16th, June 25th and Sept. 12th of 2013, respectively, or that Attorney Paul Colbert, as an Agent/Representative of the Defendants, disagreed with the monetary sum that had developed and that had informed him of. There were no objections made, apparent in any way, about the Lawful Notices, until the lawsuit was filed in May of 2016, three years later. Mr. Harkenrider's April 1st letter clearly states in the beginning what his letter is regarding: Re: "Concerns about the Installations of Smart Meters". (See Exhibit GG.) For Mr. Harkenrider to now attempt to claim he was rebutting any of the terms and conditions of said agreement in the Lawful Notices is a complete misrepresentation and fabrication of what actually was stated. The fact is, Mr. Harkenrider never objected to, or even mentioned, the Lawful Notices. Attorney Colbert's letter dated June 21th (see Exhibit W) was regarding the Plaintiffs PSC Complaint, as he stated in the beginning of his letter Re: Complaint 325148. Furthermore, Mr. Colbert sent an email (see Exhibit MM) to Nicole Nevin on June 21st, 2013, wherein he clearly stated that his June 21st, 2013 letter (see Exhibit W) was in regards to the PSC "Complaint of Mr. Romine and Ms. Nevin". The Sept. 20th letter (see Exhibit X) of Paul Colbert began with Re: "Letter dated September 12th, 2013" and did not mention the Lawful Notices by name or date and did not mention that there was any objection to agreeing with the terms and conditions of Plaintiffs Lawful Notices and no objection to what was declared owed monetarily to the Plaintiff within the June 25th or the September 12th, 2013, respectively, letters of the Plaintiff. (See Exhibit EE4 and Exhibit EE5.) For the Defendants attorney to state Plaintiff was "not satisfied with the content and form" of the Defendant's Agents/Representatives letter, is yet another misleading statement. Defendants

attempt to gloss over the plain fact that the Defendants, their Agents/Representatives nor their lawyers, presented any objection whatsoever to the terms and conditions of said agreement that was contained in the Lawful Notices (sent five times via certified, return receipt, mail) and the monetary amount accruing therein said correspondence. Their own writings demonstrate to anyone who can read, that they did not clearly (or even vaguely) present any objections (see Exhibit GG),W,X). To say otherwise, as the Defendant's Attorney has attempted to do, is a misrepresentation and fraud**.** Furthermore, for the Defendants to give sworn testimony that they never knew about the Lawful Notices is not reasonable, as any CEO or President most certainly knows the legal principle of "Notice to Impute" which surely the Defendants Central Hudson lawyer must have informed them of, as the company executives must be made aware of their liabilities before they start managing the company. The attempt by the Defendants and their attorneys to convince this Court that they had no knowledge of the Lawful Notices and are therefore exempt from any legal ramifications because they purportedly did not know of the Lawful Notices, is fraud, as "notice to agent is notice to principal and NY case law affirms it (id.)" and was clearly printed above the signature within the Lawful Notices. (See Exhibit EE1 and Exhibit EE2b.) Either way, notice was and is imputed to the Defendants.

> Mileasing Co. v Hogan, 87A.D.2d 961,451 N.Y.S 2d 211 (1984) "Notice given to one person generally will be imputed to another person if an agency relationship exists between the parties" (see 42 NY Jur, Notice and Notices, § 4, p 384), McCutcheon v. Dittman, supra; Howell v. Mills, supra.

Central Hudson, under the leadership of the Defendants and the current leadership, operate under the Tariff, which the NY State Courts have concluded, "The tariff is the state approved purported contract between the utility and its customers". The force of that contract (see Exhibit G. page 34, bottom of page) came into being and

purportedly has force because the New York Public did not object to it, even though they were never physically informed with “proper notice” about this. A person would have to know the New York Register existed and then they would need to know where the PSC postings were placed regarding the PSC deliberations on said Tariff, in order to be able to object. Most New York residents and power consumers have no idea what the New York register is or where it is located. (See Exhibit Z.) That having been said, the Public never really knows when a PSC deliberation proceeding is happening or about an important issue that may affect them, with liberty, property or health, is being deliberated on.

Take Judicial Notice:

The Plaintiff can point again to Matter of McCann v Scaduto Court of Appeals of New York December 23, 198771 N.Y.2d 164519 N.E.2d 309.

U.S Supreme Court ruling Davis v. Wechsler, 263 US 22, 24 that states:

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”

The use of manufactured consent by Central Hudson, under the leadership of the Defendants, colluding with and under the mantle of authority of the Public Service Commission, to force the Plaintiff and the Public to live with a microwave emitting devices on their homes, citing state law, is fraud and unconstitutional as “proper notice” of such proceedings was not provided.

Take Judicial Notice:

U.S Supreme Court held:

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."
(Norton v. Shelby County, 118 U.S. 425 p. 442.)

Take Judicial Notice:

NY Court of Appeals held:

"Notice by publication and posting is unlikely to reach those who, although they have an interest in the property, do not make unusual efforts to stay abreast of such notices. A county's use of these indirect forms of notice is not reasonable where there are inexpensive and efficient direct alternatives--such as personal delivery or mailing. Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party (Matter of McCann v Scaduto Court of Appeals of New York December 23, 198771 N.Y.2d 164519 N.E.2d 309}.

The same holds true for the agreement to deploy GE I-210 smart digital transmitting utility meters into the Central Hudson customer base. No one was physically informed and no one knew about the New York register (see Exhibits F, BB, and Z) or the deliberations for deployment of the smart digital transmitting utility meters, or notification of the installation (see Exhibit AA). Yet the Plaintiff and the Public are being forced to live with these microwave radiation emitting devices which transmit pulses every ten seconds, 24/7, never turning off, for the rest of their lives, simply because they did not object to it, as stated by Attorney Paul Colbert in his June 21st, 2013 letter. (See Exhibit W.) To state that the Public, which includes the Plaintiff, received "proper notice", is fraud. To state that the Plaintiff and the Public gave informed physical consent, is more fraud**.** The New York State Court of Appeals agrees (id.).

Central Hudson, under the leadership of the Defendants, in collusion with the PSC, operate with a method of ratifying agreements, whether it be the agreement to deploy microwave emitting devices into the Plaintiffs and the Public homes and their environments or the "Tariff contract", which has all kinds of terms and conditions, including protecting the Company from liability of their "devices" (e.g., smart

transmitting utility meters) that may cause harm or cause injury to the Public (see Exhibit NN). Yet said agreements purportedly become final when no opposition is rendered and purportedly become binding on the Public. This so-called agreement relies on the "Doctrine of Acquiescence" because the public purportedly raised no objections.

"raised no objection". Matter of Burroughs v, Annucci 164 A.D.3d 1558, 83 NYS 3d 738.

Central Hudson Counsel, Paul Colbert, stated as much in his June 21st, 2013 letter to the Plaintiff. (See Exhibit W.) Central Hudson, under the leadership of the Defendants and the current leadership, and in collusion with the PSC, engaged in this type of contract development in the dynamic of the customer/utility relationship. Now here comes the Plaintiff, who initiates an agreement with terms and conditions with the Defendants and Central Hudson whom with the Plaintiff is purportedly already in contract with. In this case, the Plaintiff actually physically delivered (via certified U.S mail, return receipt), the "Notice of Demand" Lawful Notice and agreement with its terms and conditions, to the CEO and President and Central Hudson on five separate occasions dated March 21st, April 9th, May 16th, June 25th and September 12th of 2013, (see Exhibit E), to the Defendant's primary place of business. The Plaintiff also sent, with the "Notice of Demand", the "Notice of Default/Warning of Liability" on April 9th, May 16th, June 25th and September 20th of 2103. The Plaintiff informed the Defendants and Central Hudson that their silence will be taken as agreement and acceptance by that silence, just as the PSC and Central Hudson tell their customers, only they do so after their agreements are purportedly ratified. (See Exhibit W.) The Defendants and Central Hudson chose to be silent even though they were notified, thus their silence would be taken as agreement, which is much more accommodating than what Central Hudson or the

PSC has done for the Plaintiff and the Public regarding their so-called Notices. Referencing the Restatement of Law/Contacts 2nd in Chapter 69: "Acceptance by Silence" (see Exhibit Y) proclaims "a course of dealing between the parties gives the offeror reason to understand silence will constitute acceptance" and "where the offeror has stated that assent may be manifested by silence or inaction". Both these conditions were present in the dealings with Central Hudson under the leadership of the Defendants and the current leadership. For the Defendant's attorney to state in his Memorandum of Law on page five (see Exhibit G) the "theory of liability" of acceptance by silence is "unusual" as does Defendants James P. Laurito on page seven of his Affidavit (see Exhibit B) and Steven V. Lant on page six of his Affidavit (see Exhibit C) and Service Supervisor, Daniel Harkenrider on page two of his Affidavit (see Exhibit D) is most certainly suspect of colluding to commit fraud. Acceptance by silence is exactly how Central Hudson operates with manufacturing consent for its tariffs and smart digital transmitting utility meter deployments, as the fourteen uncontested Affidavits of Central Hudson customers attest to. (See Exhibit Z.) According to Defendants attorney and Central Hudson, the fourteen customers are all purportedly bound to an agreement they never even saw or were physically informed of. (See Exhibits F, Z, and BB.) The fraud in all of this, should be apparent. The Defendants attorney can say that the Tariff takes on the "force of law", as he states on page 34 of his Memorandum, and point to state law (State administrative Procedures Act), approving this fraudulent practice of improper notification held up as a proper notice by the PSC involving the New York Register that most New Yorkers have no clue even exists. Fourteen uncontested Affidavits document this. (See Exhibits F, Z and BB.)

Take Judicial Notice:

U.S Supreme Court held:

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."
(Norton v. Shelby County, 118 U.S. 425 p. 442.)

III- THE FRAUDS AROUND ANALOG METERS

The Plaintiff and his partner, Nicole Nevin, being adversely affected by the GE I-210 smart digital transmitting utility meter that was placed on his home, without proper notice and without his informed physical consent, under fraudulent circumstances, violate his fundamental and inalienable rights protected by the U.S Constitution. The Defendants, their Agents/Representatives and their attorneys have been fraudulently stating that a GE I-210 digital transmitting utility meter is not a smart utility meter, even though the manufacturer of said meter, General Electric, state in their product information page, that this exact digital utility meter is part of the I-210 smart utility meter family. (See Exhibit P.) Furthermore, the Utilities Telecom Council in collaboration with the Edison Electric Institute published “Smart Utility Meters and Smart Utility Meter Systems” document that states the AMR utility meters, of which the GE I-210 is one, are first generation smart utility meters. (See Exhibit U.) In spite of this, the Defendants, their Agents/Representatives and their attorneys, in collusion with the PSC, have attempted to rewrite history and misrepresent that only two-way communications utility metering devices are considered “smart utility meters”. The use of the word “smart”, with the one-way digital transmitting GE I-210 utility meter in this document, is the same utility meter that the Defendants are referring to as an “ERT” utility meter, which was the utility

meter that was placed upon the Plaintiffs house without his physical informed consent. Plaintiff notified Central Hudson via five separate U.S. Postal, certified, return receipt mailings of “Lawful Notices”, demanding the Defendants order their Agents/Representatives to remove the harmful smart transmitting utility meter and replace it with a safe analog utility meter. All of the Plaintiffs neighbors have had analog meters on their homes the past five years, while the Plaintiff and his partner Nicole Nevin have been forced to live without electrical service to their home because they demand a safe analog meter also.

Central Hudson, under the leadership of the Defendants, has continued to maintain that they are not in a position to supply analog utility meters to the Plaintiff because they “are not available”. (See Exhibit D.) The plain facts are that Central Hudson is regularly removing perfectly functioning used analog utility meters from homes having upgrades and new construction. (See Exhibits A, pages 3 and 4, paragraph 6, Exhibit B, page 3, paragraph 10, Exhibit C, page 3, paragraph 11 and Exhibit D, page 3, paragraph 11) wherein Defendants James P. Laurito and Steven V. Lant and Mr. Daniel Harkenrider stated they would need PSC approval to allow Plaintiff to be issued a Central Hudson used analog utility meter, if an analog utility meter was requested by a customer. (See Exhibits B, paragraph 20, page 7 and Exhibit C, paragraph 22, page 6.) Those statements fly in the face of the facts laid bare in the May 16th, 2013 official PSC Freedom of Information Law (FOIL) response that stated there is no “regulation, rule or law” that would prohibit the installation of a used Central Hudson analog utility meter and that the decision is entirely up to Central Hudson. (See Exhibit E.) The Plaintiff easily obtained the aforementioned PSC document, thus it is hard to imagine that a CEO and a President, of a large utility company, such as Central Hudson, would not know what the Plaintiff has uncovered

through a FOIL request, unless they were colluding to keep the Plaintiff and the Public deceived through this obvious fraud that analog utility meters are not available. Even with the Defendants, their Agents/Representatives and lawyer stating that analog utility meters are not available anymore, the Plaintiff was able to locate fourteen unused analog utility meters, in original manufacturer's boxes, five years later. (See Exhibit DD.) Irrespective of Defendants, their Agents/Representatives and lawyers, stating analog utility meters are not available, the fact is that at least three companies nationwide (see Exhibits L and M) do remanufacture original equipment analog utility meters, which do surpass the only standard the PSC uses to approve utility meters, which is the ANSI C-12 standard. (See Exhibit V.) Furthermore, utilities which are much larger than Central Hudson are using these utility meters in twelve states and have none of Central Hudson's imagined problems with the analog meters. (See Exhibits N and M3.) The PSC has no prohibition on remanufactured analog utility meters as long as they can pass approval. (See Exhibit O.) The fact is, analog utility meters are available, and Central Hudson under the leadership of the Defendants, and the current leadership, hide this fact and refuse to make them available to their customers, and is, in fact, using fraud to cover their subsequent liabilities for doing so. Central Hudson refused to comply or respond to Plaintiffs Lawful Notices, caused the Plaintiff to use his inalienable rights, protected by the U.S. Constitution, to defend himself and his stroke-ridden partner Nicole Nevin and to remove the digital transmitting utility meter and replace it with a safe analog utility meter, which other utilities, in twelve States, are offering customers (See Exhibit N.) Because of this action, the Plaintiff was penalized and his electrical service was terminated, forcing him to be without electrical service for over five years. Central Hudson, under the leadership of the Defendants and under

the mantle of authority of the PSC, terminated Plaintiffs electrical service and refused to reconnect Plaintiffs home with a safe analog utility meter when analog utility meters are, in fact, available whenever a renovation or upgrade is done.

“Simmons v. United States, 390 U.S. 377 (1968) has held:

"The claim and exercise of a Constitution right cannot be converted into a crime"... "a denial of them would be a denial of due process of law". Miranda v. Arizona, 384 US 436, 491. “The claim and exercise of a constitutional right cannot be converted into a crime”.

The Plaintiff has a fundamental right to protect himself and his family from harm (see Exhibit CC) and to claim that the removal of the smart transmitting digital utility meter was unlawful or illegal is a misrepresentation of what actually happened, considering the circumstances.

IV- THE FRAUD THAT AMPLE STUDIES PROVE BIOLOGICAL SAFETY OF SMART TRANSMITTING AND NON-TRANSMITTING UTILITY METERS

The Defendants and their attorneys, claim there are ample medical studies which document smart transmitting utility meters, (erroneously being referred to as ERT utility meters), are biologically “safe”. Defendants have not produced these so-called medical studies in Exhibits for this Court to read/review, but rather, they refer to the PSC communication wherein they state “numerous scientific and medical studies show no health threat from ERT utility meters”. Three reports were cited, of which none of were prepared by medical researchers from Health Professions, but were reports given by engineers and physicists from Industry. (See Exhibit G, page 71, top of page.) The bottom of the paragraph states, “Please keep in mind ongoing research continues to be conducted by many Health organizations”. None of the

above cited reports which the Defendants attorney or the PSC is relying on for evidence of biological safety are Health organizations. The three cited reports, (none of which are peer-reviewed), are articles prepared from charts and reference books and are, in fact, not medical studies with subjects observed over a period of time. To state these are medical studies is a misrepresentation, to say the least. No medical, peer-reviewed, scientific studies have been submitted by the Defendants or their attorneys and to say they have done so, is fraud. (See Exhibit G, top of page 78.) By contrast, the Plaintiff has submitted the only medical, peer-reviewed study on smart transmitting utility meters, prepared by a Medical Professional, using a survey of human subjects and published with a peer-reviewed medical journal. (See Exhibit J.) Also submitted here is another peer-reviewed study, by a world renowned, award winning medical researcher, PhD. Dr. Martin Pall, noted smart utility meters and documented neuropsychiatric disorders can be caused by smart transmitting utility meters. (See Exhibit K.) The Plaintiff has also submitted letters and an article from Harvard trained MD and New York Public Health Physician, Dr. David Carpenter, who was the Director of New York State Wadsworth Laboratories, was on President Carter's Cancer Panel, and is currently the Director of the Institute of Health and Environment at Albany University, a World Health Agency collaborator. This article is co-signed by forty three, world renowned, medical professionals. Dr. Carpenter is an expert on electromagnetic radiation exposure and health effects. All these documents attest to the biological harm of microwave emitting smart transmitting utility meters. (See Exhibit FF.) The biological effects, documented in these peer-reviewed scientific studies and articles, should not be present below FCC maximum exposure guidelines. (See Exhibits K, KK and LL, OO.) The Environmental Protection Agency and the US Department of Interior declared: "The

FCC exposure guidelines are considered protective of effects arising from a thermal mechanism but not from all possible mechanisms. The generalization by many, that the guidelines protect human beings from harm by any and all mechanisms is not justified". (See Exhibit H.) The U.S. Department of Interior also declared: "However the electromagnetic radiation standards used by the FCC continue to be based on thermal heating, a criterion now nearly thirty years out of date and inapplicable today." (See Exhibit I, Enclosure A.)

To claim biological safety and yet have no medical articles or peer-reviewed studies to support those claims and the fact that the Industry articles which are cited, base their conclusions on the thirty year out of date FCC guidelines, is fraud and misrepresentation, as no guarantee of biological safety can be asserted.

V- THE FRAUD THAT THE PLAINTIFF ALREADY LITIGATED HIS CASE

The Defendants attorney has claimed and the Ulster County Supreme Court repeat, that Plaintiff had his day in Court and his case was already litigated by the PSC. (See Exhibit Q, bottom of page 8.) Eugene Rizzo and Associates are seasoned attorneys, practicing law for a very long time. The fact that Mr. Rizzo or his associates would not know due process of law or that an administrative act is not the same thing as a quasi-judicial act, would be hard to imagine for a lawyer or their associates, of their caliber. Yet, Mr. Rizzo and associates, representing the Defendants, have done just that, fraudulently claiming that the Plaintiff has already litigated his case via the PSC and should not be re-litigated, invoking collateral estoppel. The Ulster County Supreme Court repeated that claim in its February 14th, 2018 Decision/Order granting Summary Judgment dismissal for the Defendants.

Meanwhile, the Plaintiffs determination had none of the indicia of a quasi-judicial proceeding. In particular, the elements of due process were not present, as the Plaintiff did not have thorough litigation in a hearing, was not able to examine any evidence his opponents were presenting to the PSC, was not able to confront his opponents in an organized setting, had no discovery, had no briefs were submitted, had no opportunity to take depositions and had no valid final quasi-judicial judgment. In reality, what the Plaintiff actually had was some very brief phone calls with Consumer Specialist, Karen Anderson, of the PSC. To say his case was adjudicated or litigated is outright fraud and the Defendant's attorney certainly knows there was no litigation of any kind that could possibly be construed as such. The PSC decision was an administrative action, based on a few brief phone calls with Consumer Specialist, Karen Anderson and the Plaintiff and Nicole Nevin. (See Exhibit HH.) There was no hearing, no adjudication and certainly no litigation for the Plaintiff and for the Defendants lawyers to suggest there was litigation is a complete misrepresentation and fabrication of what actually took place.

When an attempt was made by the Plaintiff to actually litigate his case with a PSC Informal Hearing, which has adjudicatory authority, that request was denied by Informal Hearing Officer, Ramona Munoz, in an official PSC letter dated March 3rd, 2014, on account of 16 NYCRR 12.5(a). Informal Hearing Officer, Ramona Munoz, stated "an informal hearing officer is without the power to grant the relief you are requesting". (See Exhibit II.) New York Appellate Court First Department held:

"The exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or when its pursuit would cause irreparable injury". (Coleman v. Daines 79 A.D.3d 554, 913 N.Y.S.2d 83, 2010 (*Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978])

According to "The doctrine of Res Judicatta and Collateral Estoppel are applicable to give conclusive effect to the quasi-judicial determinations of an administrative

agency…….when rendered pursuant to the adjudicatory authority of that agency" (Lee v. Jones 230 AD2d 435 [3d Dept., 1997].

The PSC decision, (that the Defendant's attorney is referring to), is the July 16th, 2013 Decision (see exhibit HH) of Consumer Specialist, Karen Anderson of the PSC, rendered in an administrative capacity and was not a quasi-jurisdictional valid final judgment. Blacks Law declares on quasi-judicial: "The acts of an officer that take on a judicial quality. The officer is authorized to act in such a way". Karen Anderson of the PSC does not have quasi-judicial authority as she is not an "officer". Informal Hearing Officer, Ramona Munoz, does have quasi-judicial authority and she denied the application for any litigation on a quasi-judicial level. (See Exhibit II.) An Informal Hearing officer has that authority in that agency and this is why he/she is called an officer, meaning an officer of the quasi-judicial court which is what a PSC Informal Hearing is. There was no Informal Hearing for the Plaintiff and there was no litigation or preclusion of issues nor applicability of collateral estoppel. The Defendant's attorney in attempting to convince this Court that litigation happened, committed fraud, when in fact, no actual litigation occurred.

There was no hearing wherein the Plaintiff and Central Hudson participated, thus no actual litigation happened and collateral estoppel has no effect. All that transpired in the purported adjudication, which Defendant's attorney Eugene Rizzo would have this Court believe was litigation, was a few brief phone calls.

The elements necessary in all cases for issue preclusion are well known. It is required that an issue in the present proceeding be identical to that necessarily decided in a prior proceeding and that in the prior proceeding the party against whom preclusion is sought was accorded a full and fair opportunity to contest the issue.(*Schwartz v Public Adm'r*, 24 N.Y.2d 65, 71; *Ryan v New York Tel. Co.*, 62 N.Y.2d 494, 500-502).

While issue preclusion may arise from the determinations of administrative agencies, in that context the doctrine is applied more flexibly, and additional factors must be considered by the Court *(cf.*, *Staatsburg Water Co. v Staatsburg Fire Dist.*, 72 N.Y.2d 147 [decided today], *supra)*. These additional requirements are often

summed up in the beguilingly simple prerequisite that the administrative decision be "quasi-judicial" in character (*see, e.g.*, *Ryan v New York Tel. Co.*, *supra*, at 500; *Bernstein v Birch Wathen School*, 71 A.D.2d 129, 132, *affd* 51 N.Y.2d 932). However, the determination of whether an agency proceeding was "quasi-judicial" actually involves a multifaceted inquiry. “Collateral estoppel is a flexible doctrine” and that a determination of whether a party had a full and fair opportunity to litigate in the prior proceeding requires a “practical inquiry into the realities of [the] litigation” (*Gilberg v Barbieri*, 53 NY2d 285, 292 [1981].

The Defendant’s attorney knows all these facts, and as a lawyer, cannot claim ignorance of the law. It should be very clear to even the uneducated in law, that there was no actual litigation for the Plaintiff and to say there was, clearly is fraud.

“Collateral estoppel bars re-litigation of an actual litigation” that had a valid and final prior judgment (*New Hampshire v Maine*, 532 US 742, 748-749 [2001];

The Plaintiff demonstrated that he did not have an opportunity to litigate as his application with the PSC Informal hearing was denied [lack of a full and fair opportunity to litigate]. (*See Kaufman*, 65 NY2d at 456.) Defendants attorney knows there was no inquiry into the realities of the litigation and have instead set forth fraudulent statements, expounding to this Court that the Plaintiff litigated his Complaint with the PSC, when all that actually occurred was a few brief phone calls with PSC Consumer Specialist, Karen Anderson,. (See Exhibit HH.) There is no way a few brief phone calls can be considered litigation and for a lawyer, who cannot claim ignorance of the law, to assert this, is clear and convincing evidence of fraud.

Take judicial Notice:

U. S. Supreme Court declares:

“There are no maxims of the law more firmly established, or of more value in the administration of justice, than the two which are designed to prevent repeated litigation between the same parties in regard to the same subject of controversy; namely, interest rei publicae, ut sit finis litium, and nemo debet bis vexari pro una et eadam causa,” and “But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. Where the unsuccessful

party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent,…..and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing. UNITED STATES v. THROCKMORTON 98 U.S. 61 (1878).
See Wells, Res Adjudicata, sect. 499; Pearce v. Olney, 20 Conn. 544; Wierich v. De Zoya, 7 Ill. 385; Kent v. Ricards, 3 Md. Ch. 392; Smith v. Lowry, 1 Johns. (N. Y.) Ch. 320; De Louis et al. v. Meek et al., 2 Iowa, 55.

VI- THE FRAUD THAT THE PSC CAN LITIGATE CONSTITUTIONAL VIOLATIONS

The Defendant's Attorneys also know the PSC cannot litigate constitutional claims, as it has no jurisdiction and is only invested with authority to adjudicate matters involving "utility service problems"(16NYCRR 12.1).

a) As the Commission admits in In Re Transgas Energy Sys. LLC, 01-F-1276, 2003 WL 22357809 (Oct. 16, 2003): "Without jurisdiction, no Court or any quasi-judicial body can proceed, as to do so could result in a dismissal".
b) New York Appellate Court First Department held: "The exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or when its pursuit would cause irreparable injury" (Coleman v. Daines 79 A.D.3d 554, 913 N.Y.S.2d 83, 2010 (Watergate II Apts. v Buffalo Sewer Auth., 46 NY2d 52, 57 [1978]).
c) New York Appellate Court Third Department held: The only exceptions are when the agency's action is challenged as unconstitutional, resort to an administrative remedy would be futile or pursuit of the administrative remedy would cause irreparable injury Matter of Ford v Snashall A.D.2d 493712 N.Y.S.2d 658. August 3, 2000 (Watergate II Apts. v Buffalo Sewer Auth., 46 NY2d 52, 57 [1978]).
d) U. S. Court of Appeals held that exhaustion of administrative remedies also may not be required where an agency ordinance or rule is attacked as unconstitutional on its face (Sedlock v. Bd. of Trs., 367 Ill. App. 3d 526 (Ill. App. Ct. 3d Dist. 2006).

The above three court cases demonstrate the PSC cannot rule on constitutional cases. Defendants and their attorney would have this Court and the Plaintiff believe that the PSC can litigate constitutional claims and that the Plaintiffs case was thoroughly litigated a some of the Plaintiff's claims were constitutional violations.

Take Judicial Notice:

The Plaintiff can point again to Matter of McCann v Scaduto Court of Appeals of New York December 23, 198771 N.Y.2d 164519 N.E.2d 309.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

The use of manufactured consent by Central Hudson, under the leadership of the Defendants, colluding with and under the mantle of authority of the Public Service Commission, to force the Plaintiff and the Public to live with a microwave emitting devices on their homes the remainder of their lives, citing state law, is fraud and is unconstitutional.

Take Judicial Notice:

U.S Supreme Court held:

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."
(Norton v. Shelby County, 118 U.S. 425 p. 442.)

VII- FRAUD ON THE COURT

The Defendants, assisted by their attorneys, have made multiple misleading and deceptive statements that constitute Fraud on the Court by upsetting the interest of justice in this case and impeding the Plaintiffs ability to procure remedy and relief sought. Pursuant to CPLR 3016(b) attached with this Motion, is an Affirmation of Support Affidavit, with Exhibits, documenting the facts that reveal the Defendants, their Attorneys and their Agents/Representatives and their misleading statements and misrepresentations, document a pattern and practice of fraud.

n CDR Creances S.A.S. v. Cohen (23 N.Y. 3d 307, 15 NE 3d 274 (2014) New York Appeals Court affirmed:

a) *"Fraud on the Court: It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting "a wrong against the institutions set up to protect and safeguard the public" (Hazel-Atlas Glass Co. v Hartford-Empire Co., 322 US 238, 246 [1944]; see also Koschak v Gates Constr. Corp., 225 AD2d 315, 316 [1st Dept 1996] ["ThIe paramount concern of this Court is the preservation of the integrity of the judicial process"]).*

b) *In People v. Depallo [96 NY 2d 437, 754 NE 2d 357 (2001)], New York Appeals Court affirmed: "A Defendant's right to give testimony does not include a right to commit perjury (see, United States v Dunnigan, 507 US 87, 96; Harris v New York, 401 US 222, 225), and the Sixth Amendment right to the assistance of Counsel does not compel counsel to assist or participate in the presentation of perjured testimony (see, Nix v Whiteside, 475 US 157, 173). In light of these limitations, an attorney's duty to zealously represent a client is circumscribed by an "equally solemn duty to comply with the law and standards of professional conduct ... to prevent and disclose frauds upon the Court" (id., at 168-169). The United States Supreme Court has noted that counsel must first attempt to persuade the client not to pursue the unlawful course of conduct. If unsuccessful, withdrawal from representation may be an appropriate response."(id., at 170) This approach is consistent with the ethical obligations of attorneys under New York's Code of Professional Responsibility. DR 7-102 (codified at 22 NYCRR 1200.33) expressly prohibits an attorney, under penalty of sanctions, from knowingly using perjured testimony or false evidence (DR 7-102 [a] [4]); knowingly making a false statement of fact (DR 7-102 [a] [5]); participating in the creation or preservation of evidence when the attorney knows, or it is obvious, that the evidence is false (DR 7-102 [a] [6]); counseling or assisting the client in conduct the lawyer knows to be illegal or fraudulent (DR 7-102 [a] [7]); and knowingly engaging in other illegal conduct (DR 7-102 [a] [8]; see also, EC 7-26). Additionally, DR 7-102 (b) (1) mandates that "[a] lawyer who receives information clearly establishing that ... [t]he client has, in the course of the representation, perpetrated a fraud upon a ... tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected ... tribunal, except when the information is protected as a confidence or secret" (emphasis added). The First Department affirmed. The Court of Appeals granted leave to appeal to address the proper evidentiary and legal standards for such a motion.*

c) *The Court reviewed a number of federal cases and imported the federal "clear and convincing evidence" standard into New York law: "The federal Courts have applied the clear and convincing standard in determining whether the offending party's actions constitute fraud on the court ((see e.g. Aoude v Mobil Oil Corp., 892 a systematic and pervasive scheme, designed to undermine the judicial process and thwart the non-offending party's efforts to assert a claim or defense by the offending partys repeated perjury or falsification of evidence (id. at 1118). We adopt this standard and conclude that in order to demonstrate fraud on the Court, the non-offending party must establish by clear and convincing evidence that the offending party has acted knowingly in an attempt to hinder the fact finder's fair adjudication of the case and his adversary's defense of the action. A Court must be persuaded that the fraudulent conduct, which may*

include proof of fabrication of evidence, perjury, and falsification of documents concerns issues that are central to the truth-finding process. Essentially, fraud upon the Court requires a showing that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense. A finding of fraud on the Court may warrant termination of the proceedings in the non-offending party's favor . . . . Therefore, once a Court concludes that clear and convincing evidence establishes fraud on the Court, it may strike a pleading and enter a default judgment. "Applying the "clear and convincing" standard to the facts of the case, the Court of Appeals then held that the lower Courts correctly struck the principal Defendants' pleadings based upon the corroborated evidence and the pervasive nature of their deception.

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The Plaintiffs Motion to Vacate cites twenty six frauds and supports this with an Affidavit of Support with forty Exhibits, which document the machinery of this Court was set in motion by misrepresentations and misleading fraudulent statements of the Defendants, their Agents/Representatives and their attorneys. Not being an isolated instance of fraud, the twenty-six frauds itemized in the Affirmation of Support Affidavit, cumulatively rise to the level of Fraud on Court, obstructing a just decision and hindering the dispensation of petitioned relief for the Plaintiff.

[Bessa v Anflo Indus., Inc. Supreme Court, Appellate Division, Second Department, New York, March 22, 2017148 A.D.3d 97451 N.Y.S.3d 102]:
"Fraud on the Court involves willful conduct that is deceitful and obstructionistic, which injects misrepresentations and false information into the judicial process 'so serious that it undermines . . . the integrity of the proceeding' " (id. at 318, quoting Baba-Ali v State of New York, 19 NY3d 627, 634 [2012]). "[I]n order to demonstrate fraud on the Court, the non-offending party must establish by clear and convincing evidence that the offending 'party has acted knowingly in an attempt to hinder the fact finder's fair adjudication of the case and his adversary's defense of the action'" (CDR Créances S.A.S. v Cohen, 23 NY3d at 320, quoting McMunn v Memorial Sloan-Kettering Cancer Ctr., 191 F Supp 2d 440, 445 [SD NY 2002]). "A Court must be persuaded that the fraudulent conduct, which may include proof of fabrication of evidence, perjury, and falsification of documents concerns 'issues that are central to the truth-finding process'" (CDR Créances S.A.S. v Cohen, 23 NY3d at 320-321, quoting McMunn v Memorial Sloan-Kettering Cancer Ctr., 191 F Supp 2d at 445). See id.; cf. Pastrana v City of New York, 262 AD2d 53, 53 [1999]; Brady v City of New York, 257 AD2d 466, 466 [1999]). "included specific facts demonstrating that Defendants' representations were intentional, were calculated to

deceive the Court or were part of an "unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter" (CDR Créances S.A.S. v Cohen, 23 NY3d 307, 321 [2014] [internal quotation marks and citation omitted]). For "when a party lies to the court and [its] adversary intentionally, repeatedly, and about issues central to the truth-finding process, it can fairly be said that [the party] has forfeited [the] right to have [the] claim decided on the merits" (McMunn, 191 F Supp 2d at 445). Therefore, once a court concludes that clear and convincing evidence establishes fraud on the court, it may strike a pleading and enter a default judgment.

VIII- CONCLUSION

The fact that the Ulster County Supreme Court has repeated the Defendant's fraudulent claims that Defendant "James P. Laurito left Central Hudson", that Defendants "are not in possession of information the Plaintiff seeks", inferring they do not have access to relevant information, (without knowing what information the Plaintiff is seeking in a deposition), that analog utility meters are not available because they "are no longer manufactured", that there are ample medical studies that document smart digital transmitting utility meters are biologically safe, that Defendants have adequately demonstrated they have no knowledge of Plaintiffs lawful notices, that Plaintiff already litigated his case, to name a few of the 26 frauds cited by the Plaintiff all demonstrate the court has been touched by fraud in its , February 14th, 2013 Decision/Order.

The fact that the Ulster County Supreme Court repeated the aforementioned frauds, as well as other frauds that is set forth in the Affidavit of Support and Memorandum of the Plaintiff in its February 14th, 2018 Decision/Order, as though it was all true, has obstructed the interest of justice and has demonstrated this Court has been "touched by fraud"

Take Judicial Notice:

U.S. Supreme Court holds:

"Fraud destroys the validity of everything into which it enters." Nudd v. Burrows, 91 U.S. 426, "Fraud vitiates everything it touches." Boyce's Executors v. Grundy, 28 U.S. 3 Pet. 210 (1830), "Fraud vitiates the most solemn of contracts, documents and even judgments." U.S. v. Throckmorton, 98 U.S. 61.

The twenty-six frauds central to the issues being deliberated on, perpetrated by the Defendants, their attorneys and their Agents/Representatives, is outlined and documented in the Plaintiffs Affirmation of Support Affidavit and in this Memorandum of Law. As a result of these frauds, the Plaintiff was denied discovery, denied due process and denied a fair hearing, which is integral in the judicial process and the interest of justice. More could be said, but it should now be clearly evident, the machinery of this Court, not through an isolated incident, but rather through a pattern and practice of fraud, was injected with misleading statements, misrepresentations and fraudulent claims, rising to the level of Fraud on the Court.

Respectfully Submitted by
Stephen Phillip Romine
Pro Se, Pro Per, Sui Juris

_____ _____

Signature of Stephen Phillip Romine Date

Sworn to before me this ____day of _____ 2018

_____
Notary