

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER**

STEPHEN PHILLIP ROMINE

**INDEX NO.: 16-1351**

Plaintiff

**Vs.**

Assigned to:  
HON. CHRISTOPHER CAHILL

JAMES P. LAURITO AND STEVEN V. LANT

Defendants

**MOTION TO REARGUE**

**SIRS:**

- 1- **The Plaintiff STEPHEN PHILLIP ROMINE** , ("plaintiff"), affirms , I am pro se, pro per, sui juris litigant and as much am familiar with the facts and circumstances surrounding this matter.
- 2- The plaintiff respectfully move for leave of court pursuant to CPLR 2221(d)(e)(f) with a Motion to Reargue regarding matters of misapprehended and overlooked facts and errors law concerning Honorable presiding Judge Christopher E. Cahill's decision granting summary judgement motion (SJM) to the defendants in case 17-1284 so ordered February 14,2018 and postmarked February 16,2018 .

**Overlooked and Misapprehended Facts and Misapplied Law**

- 3- Regarding of the Courts statements in SJM decision on page 2 states:

*"The GE I-210 was approved by the New York State Public Service Commission.("PSC") in 2008. The GE I-210 meter was installed in accordance with Central Hudson's procedures, the PSC's rules and regulations and the utility's Tariff. After the installation of the digital metro , the plaintiff complained that the meter caused health hazards by emitting microwaves and possible carcinogens. In early 2013 the plaintiff sought to have Central Hudson remove the digital meter. The plaintiff claims that the meter caused him to become ill and that his partner,*

*Ms. Nicole Nevin, had suffered a mini stroke ("TIA") on May 7, 2013, because of the meter..... Thereafter Central Hudson attempted to resolve this issue with the plaintiff and informed him that his request for an analog meter could not be met as "such meters were no longer manufactured and Central Hudson does not stock any analog meters.....The PSC determined the ERT meters being installed by Central Hudson meet the Commission's safety and accuracy standards " :*

a- The Court overlooks the fact presented by the plaintiff in his Opposition to Summary Judgment Motion ("OSJM") that Central Hudson under the leadership of the defendants and their policies directing company operations pushed through the deployment of digital transmitting meters into its customer base without any public knowledge or participation yet the deployment got approved ( **see Exhibit-D,L, N**)

b- **Take Judicial Notice:**The Court has apparently overlooked the fact in the plaintiff's OSJM of an official letter from the PSC stating that Central Hudson's used analog utility meters taken off of customers homes for one reason or another **such as upgrades or new construction** and test good can be used by Central Hudson customers requesting it as there is no PSC document, " rule, law or Tariff stipulation" preventing Central Hudson from installing a used analog meter ( **see Exhibit AE**), **therefore there is and was an availability of PSC approved analog utility meters for those customers, who for health reasons need an analog utility meter, and most certainly at least one good used analog meter was available for the plaintiff, over the years Central Hudson was operating under the leadership of the defendants and their policies.**

c- **Take Judicial Notice:**The Court has apparently overlooked the fact in the plaintiff's OSJM that there are three Companies nationwide that remanufacture original equipment refurbished analog meters that are being used by utilities in twelve states including our neighboring states of Maine and Vermont and that two of the companies have been remanufacturing refurbished analog utility meters for 50 years and 75 years (see Exhibit AD, AJ, AK).

d- **Take Judicial Notice** :The Court has apparently overlooked the fact in the plaintiffs's OSJM that these mentioned companies that remanufacture analog meters can refurbish analog utility meters supplied by Central Hudson that under the leadership of the defendants and their policies directing company operations took off the homes of customers and tested bad (see exhibit-AD, AK).

e- **Take judicial Notice**:The Court has apparently overlooked items previously mentioned in (a) through (d) also supplied in the plaintiffs OSJM and in doing so misapprehends the triable issue of material fact of Central Hudson under the leadership of the defendants and their policies directing company operations, have committed **Fraud on the plaintiff, Fraud on the public and "Fraud on the Court"** claiming analog utility meters are not available anymore when it is clear they were available when the plaintiff originally requested and demanded one and for 4 and 1/2 years still claim they are not available when the facts provided in Point-X of the plaintiffs OSJM and this document prove otherwise.

f- **Take judicial Notice**:The Court has apparently overlooked the fact of a Notarized Affidavit signed by a world leading expert on microwave radiation exposure **who is on my expert witness list** , who is a **New York State** public health physician who serves as director of the Institute of Health and Environmental Sciences a Collaborating Center for the World Health Agency, as well as professor of environmental health sciences at University of Albany's School of Public Health . **The Court overlooks that** Dr. Carpenter's statements do not support the defendants claim and the PSC's claim the digital meters are biologically safe and do support the plaintiffs claims that digital meters are a biological hazard to the electrical consumer. (see exhibit C,AB,F).

g- **Take Judicial Notice**:The Court has apparently overlooked the facts presented in the plaintiffs OSJM that demonstrate that digital utility meters emit dangerous and toxic radiation contrary to the claims of Central Hudson under the leadership of the defendants and their policies directing operations. The court has overlooked the fact that the plaintiff has provided this court with facts from peer-reviewed scientific studies done by medical and health professionals while the defendants have provided no facts from peer-reviewed scientific

studies done by medical and health professionals in any of their submitted paperwork to this court. **demonstrating more Fraud** (see exhibit AG, AH, **AH!** C, F, G1, G2, **G3, K, K2**)

h- **Take Judicial Notice:**The Court has apparently overlooked the fact presented by the plaintiff in his OSJM that the PSC relies on the Federal Communications Commission to approve the safety of utility meters and that the Environmental Protection Agency has stated the" *"The Federal Communications Commission (FCC) exposure guidelines is considered protective of effects arising from a thermal mechanism but not from all possible mechanisms. The generalization by many that the guidelines protect humans from harm by any or all mechanisms is not justified"* (See Exhibit I), **The Court overlooks the fact that the so-called approving regulatory entity of digital meters ,the FCC, is an agency "captured" by industry and not to to be trusted as the final word(see exhibit-AI).**

i- **Take Judicial Notice:**The Court in overlooking the facts previously mentioned in items (f) and (g) and in plaintiffs OSJM Point X, has apparently misapprehended the triable issue of material facts that demonstrate that the Central Hudson under the leadership of the defendants and their policies directing company operations, and in collusion with the PSC , have in fact committed Fraud and Gross Negligence by claiming digital meters are safe when they have supplied no scientific peer-reviewed studies done by medical and health professionals demonstrating **that** digital meters are actually biologically safe and contrary to the defendants claim there are "ample studies" **fraudulently omitting "done by medical and health professionals that prove biological safety."**

j- **Take Judicial Notice :**The Court in overlooking the facts in item 3 (a) through (h) of this document also located in the plaintiffs OSJM has misapprehended this triable issue of material fact that digital utility meters are a biological hazard and that **time tested safe** analog meters were available when plaintiff requested and demanded one, as demonstrated by the Courts statements on pages 1 and 2 of this Courts SJM decision located in item 3 of this document that portray the Courts apparent misapprehension (**see exhibit -AE, AJ, AK**)

4- Regarding the Courts statement in SJM decision page 3 quoting Central Hudson:

*"your service will not be restored unless you accept an ERT meter " :*

a- **Take judicial Notice:**The Court in overlooking the facts in exhibit AD, AE, AJ AK misapprehends that there is no document regulation, law or tariff stipulation that prevented Central Hudson , under the leadership of the defendants and their policies directing company operations,from supplying an analog utility meter to the plaintiff when he requested and demanded it and certainly no **valid** reason that the plaintiffs electricity could not have been restored anytime during the defendants tenure. **as CEO and President of Central Hudson(see exhibit-AE)**

b- **Take Judicial Notice:**The Court in overlooking the facts ~~in exhibits AD, AE, AG, Aj, AK, K2, Z~~ submitted with plaintiff's OSJM misapprehends the triable issue of fact that the continued demand for a ~~an~~ New York State PSC approved ERT transmitting meter to be installed **at the plaintiff's residence** by Central Hudson under the defendants leadership and policies directing company operations , **and in collusion** with the authorization and approval of PSC (see exhibit-S page 3, U) , ~~at plaintiffs residence~~ in order to restore electricity to the plaintiffs home , **is unjust** in ~~view spite~~ of it not being proven **biologically** safe and proven **biologically** dangerous ( in **exhibits AD, AE, AG, Aj, AK, K2, Z** ). **The Court overlooks the fact the meters are emitting a class 2B possible carcinogen every twenty to thirty seconds twenty four hours a day which is in the same category as lead, benzene and DDT(see exhibit-AC) and violates the fourth amendment of the U.S. Constitution that declares a citizen has a right to be secure in their home from government intrusion.**

c- The Court apparently overlooked the plaintiffs citations of law submitted with plaintiffs OSJM that states if the government and a private party enter into a "symbiotic relationship" with ~~one~~ each other it is a state action [Burton v. wilmingon parking Authority, 365 U.S. 715

(1961] and "although the conduct of private parties lies beyond the Constitution scope in most instances, governmental authority may dominate an activity to such an extent that it's participants must be deemed to act with the authority of the government and as a result , be subject to constitutional restrictions" [Edmonson v. Leesville Concrete Co. (1991)] and "there is a sufficiently close nexus between the State and the challenged action of the regulated entity...the action of the latter may be fairly treated as that of the State itself" (Jackson v. Metropolitan Edison Co, 419 U.S. 345, 351 (1974), citing Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972))

d- The Court in overlooking the facts in 4a through 4e of this document and also located in the plaintiffs OSJM misapprehends the triable issues of material fact concerning Central Hudson under the leadership of the defendants and their policies directing company operations of forcing the plaintiff to live with a dangerous utility meter or live without electricity is a grave injustice that needs remedy and relief.

5- Regarding the Courts statements in SJM decision on pages 3 and 4 :

*"The petitioner requested that the PSC convene an informal hearing regarding his refusal to accept the digital meter at his residence. In a letter dated March 3, 2014 , the PSC denied plaintiff's request and stated that it did not have the authority to direct Central Hudson to install an analog meter. The Plaintiff failed to appear either the July 3013 determination or the March ,2014 determination of the PSC and did not commence an article 78 special proceeding challenging*

*either decision :*"

~~Take Judicial Cognizance of the Following :~~

a- **Take Judicial Notice:** The Court apparently overlooked the facts in exhibit U submitted with plaintiffs OSJM where the plaintiff was told in an official PSC letter they did not have the authority to direct Central Hudson to install an analog utility meter on the plaintiffs residence and that **"rf concerns would be better addressed to the FCC and local government"** which produced futility for the plaintiff.

b- The Court apparently overlooks the facts in exhibit AA in plaintiffs OSJM that detailed the futility experienced by the plaintiff dealing with the PSC.

c- **Take Judicial Notice:**The Court apparently overlooks the case law cited in plaintiffs OSJM providing exceptions to not exhausting all of ones administrative remedies mentioned in the opposition to SJM Point III which case law demonstrates is available if the administrative agency lacks the power to grant the effective relief sought by the plaintiff is futile (cave, 514 F. 3d at 249).

d- **Take Judicial Notice:** The Court in overlooking the facts detailed in items 5a through 5c of this document and said facts submitted in plaintiff's OSJM, misapprehends that the plaintiff did not "fail" to take administrative actions but chose to seek remedy ~~and~~ from the New York State Supreme Court after he realized he had been the victim of Fraud and other violations mentioned in the 2nd amended complaint.

6- Regarding the Courts statements in SJM decision on page 4 :

*"Defendant Laurito was an employee of Central Hudson from November 1, 2009 to March 31, 2016. He was CEO in October 2014. On April 1,2016, Mr Laurito left Central Hudson for other*

*employment. At the time of this action was commenced , Mr. Laurito (and Mr Lant) was no longer an employee of Central Hudson"*

a- **Take Judicial Notice:** The Court overlooks the fact stated in Point XI (2nd paragraph up from the bottom) that shows defendant James P. Laurito did not leave for other employment as the Court has been misled by the defendants and their attorneys in their Memorandum of Law on page\_\_\_committing "Fraud on the Court". The overlooked fact is the defendant James P. Laurito is still employed by the Central Hudson/Fortis corporate structure of which Central Hudson is a part and is currently now executive vice-president of Business Development at Fortis. Point XI of plaintiff's OSJM read: "Defendant James P. Laurito was CEO of Central Hudson until April 1<sup>st</sup>, 2016, when he became their Director and simultaneously became Executive Vice President of business development in the parent company Fortis", which defendants never rebutted. (see exhibit\_\_\_\_\_).

b- **Take Judicial Notice:** The Court overlooks the fact in Point XI of plaintiffs OSJM that defendant did not depart from Central Hudson as defendants and attorneys would he us believe but James P. Laurito remained on the Board of Directors of Central Hudson. (see exhibit \_\_\_\_\_)

c- **Take Judicial Note:** The Court seems to overlook the facts contained in exhibit Q submitted with plaintiffs Opposition to SJM , lawful Notice of Demand document ,specifically in item #4 on page 2 of said Notice, where in bold letters plaintiff states: " **"Because we have committed no violation and no act besides self defense against your wrong doing, any interruption of our electrical service is unjustified and will cause an obligation by the company and it's policy makers to us of 1000,000 dollars in addition to 10,000 dollars per day denied or failed service."** The Court overlooks in the Notice of Demand that not only Central Hudson is claimed liable but also claimed liable is it's "**policy makers**" personally which would include the top executive leadership who set the course of strategies and direction for the company as defined in the job description of CEO's and Presidents of any



company . The court also overlooks in the same lawful notices the names of "**James P. Laurito**" and "**Steven V. Lant**" were also in bold letters where document addressed "to" in two places in beginning of mentioned document provided in Opposition to Summary Judgement (see exhibit-Q). The Court apparently overlooking this fact misapprehends that in the Notice of Demand not only Central Hudson is claimed liable but also it's "**policy makers**" which would include the top executive leadership who set the course of strategies and direction for the company as defined in the job description of CEO's and Presidents of any company and is why the names of James P. Laurito and Steven V. Lant were also in bold letters when document addressed "to" in two places in beginning of mentioned document (see exhibit Q). The Court in overlooking this fact misapprehended that if the plaintiff did in fact establish a tacit-agreement with the defendants as case law and the prestigious Restatement of Contracts (second) describe can happen under special circumstances , **the plaintiffs agreement ,with it's terms and conditions, does not expire when the defendants retired or changed their employment status.**

d- The Court apparently overlooked cases law and comments cited in Point VIII of Opposition to SJM which states that officers and directors are liable for their intentional torts committed against those dealing with the corporation. (*Seagate Technology v. A.J. Kogyo Co.* (1990) 219 Cal. App. 3d 696, 701; *Taylor-Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 113 *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1372, 1379), and *can* also be liable for negligence and cannot hide behind the company shield. "Director status therefore neither immunizes a person from individual liability nor subjects him or her to vicarious liability" (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 505).

e- The court apparently overlooked the case law and comments cited in the plaintiff's OSJM that stated executives and directors duty to the plaintiff, is

not governed by the business judgment rule (*Id.*, at p. 507 n.15) and that The business judgment rule does not replace the common law duty to refrain from conduct that imposes an unreasonable risk of injury which every person owes to others (*Kurtz, Richards, Wilson & Co. v. Insurance Communicators Marketing Corp.* (1993) 12 Cal. App. 4th 1249, 1259; *Frances T. v. Village Green Owners Assn.*, *supra*, 42 Cal. 3d 490, 507).

f- The court has apparently overlooked these case law citations with comments in plaintiffs OSJM that stated : Officers or directors may be subject to personal liability if they personally directed, or otherwise participated in the tortious conduct, or that, and although the director or officer knew or reasonably should have known that some hazardous condition or activity under their control could injure plaintiff, he or she negligently failed to take or order appropriate action to avoid the harm (*Michaelis v. Benavides* (1998) 61 Cal.App. 4th 681, 685-687; *Frances T. v. Village Green Owners Assn.*, *supra*, 42 Cal.3d at p. 508). and that Directors and officers have frequently been held liable for negligent nonfeasance where they knew that a condition or instrumentality under their control posed an unreasonable risk of injury to the plaintiff, but then failed to take action to prevent it (*Frances T. v. Village Green Owners Assn.*, *supra*, 42 Cal.3d at p. 510) [citing *Dwyer v. Lanan & Snow Lumber Co.*, *supra*, 141 Cal.App.2d 838]. ( *Kurtz, Richards, Wilson & Co. v. Insurance Communicators Marketing Corp.* (1993) 12 Cal.App. 4th 1249, 1259; *Frances T. v. Village Green Owners Assn.*, *supra*, 42 Cal. 3d 490, 507).

g- The Court apparently overlooked these law citations with comments

submitted in plaintiff's OSJM indicating defendants were agents of their corporate principal, Central Hudson, and are liable for their own acts regardless of whether the principal is liable. As Executive Directors, their roles were to direct and ultimately control corporate conduct. Directors individually owe a duty of care, independent of the corporate entity's own duty, to refrain from acting in a manner that creates unreasonable risk of personal injury to third parties (*Seagate Technology v. A.J. Kogyo Co.* (1990) 219 Cal. App. 3d 696, 701 ; *Taylor-Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 113 ]; *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1372, 1379) and (*Michaelis v. Benavides, supra*, 61 Cal.App.4th 681, 683.)

h- **Take judicial Notice:**The Court in apparently overlooking facts in Point VIII of **plaintiff's OSJM** ~~opposition to SJM~~ presented here in 8-a though 8-e misapprehends that if James P. Laurito and Steven V. Lant were in fact negligent resulting in a Continuing Private Nuisance, Fraud, Breach of Contract and not limited to those, the defendants could be personally liable and changing employment status does not insulate them from the plaintiff's claim of liability as long as complaint is filed within statute of limitations.

7- Regarding the Court statements in SJM decision on pages 4 & 5 :

*"Initially , the plaintiff contends that this motion (SJM) is premature as he has not had the opportunity to conduct discovery. The motion was originally returnable February 6, 2017. On April 10, 2017 the plaintiff served a Demand for Interrogatories and Notice to take deposition of the defendants. On April 13,*

*2017 , this court so-ordered defendants attorney's April 11, 2017 letter to the court requesting a stay on plaintiff's discovery demands pending a decision on this motion. The court granted the stay pursuant to CPLR section 3214(b). The defendant's claim that since they were not employed by Central Hudson at the time this action was commenced, they are not in possession of any information the plaintiff seeks. The defendants also maintain that any discovery requests should be made to the non-party , Central Hudson :*

a- The court apparently overlooks the fact that the plaintiffs constitutional right to due process has been violated by not allowing him any discovery in case 16-1351. No CPLR statutes can trump anyone's constitutional rights to due process. Without discovery there is no due process. U.S.C 42 section 1983 states : "Every person who under the color of any statute, ordinance, regulation, custom or usage of any State and territory or the district of Columbia, subjects, or causes to be subjected, any citizen of the United states or other person within the jurisdiction thereof to the deprivation of rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

b- **Take Judicial Notice:**The Court apparently misapprehends the fact that in stating twice "the defendants are not in possession of any of the discovery the plaintiff seeks" the Court has overlooked the

particular questions, that only the plaintiff knows, that would have been asked of the defendants in a deposition that would have been tailored to each defendant dependent on what answers they gave to the previous question. The court cannot possibly assert all the answers are not in possession of the defendants as only the plaintiff knows what those questions are.

c- The Court apparently overlooks case law *Baltodano v Merck, Sharp & Dohme (I.A.) Corp*, March 3, 2011, Thompson, O.R detailed in plaintiffs Opposition to SJM which states courts are not to render Summary Judgment based on gaps in proof if plaintiff is denied the information needed to proceed.

8- Regarding the Courts SJM statement on pages 5 & 6 :

*CPLR section 3212 (f) permits a party opposing summary judgement to obtain further discovery when it appears that facts supporting the position of the opposing party exist but cannot be stated ( Jones v. American Commerce Ins. Co. 92 AD3d 844 [2nd dept. 2012])." ....."*  
*The mere hope of speculation that evidence sufficient to defeat a motion for summary judgement may be uncovered during discovery is insufficient to deny the motion as premature.....After a review of the record, the plaintiff's request must be denied. As stated above , the defendants are not in any possession of any discovery the plaintiff seeks. The plaintiff has failed to demonstrate that discovery might lead*

*to relevant evidence or facts essential to oppose the motion which are exclusively under the control of the defendants."* :

a- **Take Judicial Note:** In citing CPLR section 3212(f) the court has overlooked or misapprehended the fact that the Plaintiff is not seeking "further discovery " which is the spirit of CPLR 3212 which requires more than the hope or speculation that evidence sufficient to defeat a summary judgement motion may be uncovered. The plaintiff has had no discovery obtained from the defendants. The Court overlooks that the spirit of CPLR 3212 does not apply to all discovery which puts no requirement of having more than speculation or hope of discovering evidence necessary to pursue remedy. That requirement is only for further discovery which CPLR 3212 assumes the opposition to SJM has had. Therefore the SJM is premature as no discovery has been granted to the Plaintiff while the defendants had discovery with answers to the defendants 87 questions.

b- **Take Judicial Note:** The Court misapplied law granting SJM as case law cited with comments states CPLR 3212(f), mandates denial of a motion for summary judgement is patently premature, meaning when it is made prior to the preliminary conference, if no discovery has been exchanged (Gao v. City of New York, 29 AD3d 449, 449 [1st Dept 2006] ; Bradley v Ibex Construction, LLC, 22 AD3d 380, 380-381 [1st Dept 2005] ; McGlynn v. Palace Co., 262 AD2d 116, 117 [1st Dept

1999]). Under these circumstances, the proponent seeking denial of a motion as premature, need not demonstrate what discovery is sought, that the same will lead to discovery of triable issues of fact or the efforts to obtain the same have been undertaken (Bradley at 380). **In McGlynn, the court denied plaintiff's motion seeking summary judgement , when the same was made after the preliminary conference but before the defendant had obtained any discovery whatsoever ( McGlynn at 117).**

c- **Take Judicial Note:** The Court's misapprehends in its SJM decision where it proclaims twice "the defendants are not in possession of any of the discovery the plaintiff seeks" as though that is a proven fact in granting summary judgement considering no discovery has been given the plaintiff. Obviously the court has overlooked the particular questions, that only the plaintiff knows what would have been asked of the defendants in a deposition that would have been tailored to each defendant dependent on what the defendants answered in the preceding questions. The court cannot possibly assert all the answers are not in possession of the defendants without first knowing what the particular questions are as only the plaintiff knows what those questions are and the Court has no idea what they are and be able to say the defendants cannot answer them.

d- The Court has overlooked case law that states opposition to SJM depends on the ability to secure evidence that is within the Defendant's

possession and courts are not to render Summary Judgment based on gaps in proof if the Plaintiff has not had a fair chance to obtain necessary and available evidence from the other party (*Baltodano v Merck, Sharp & Dohme (I.A.) Corp*, March 3, 2011, Thompson, O.R). Furthermore, it is well established that where the facts essential to justify opposition to Summary Judgment are exclusively in the control of the movant Summary Judgment may be denied when the opposing party has not had a reasonable opportunity for disclosure prior to making the motion [Baron v. Incorporated village of Freeport 143 A.D. 2d 792-793, 533 N.Y.S. 2d 143 (2nd dept. 1988)].

e- **Take Judicial Notice:**The Court has overlooked the fact that the plaintiff has stated in his OSJM the following quote as a fact of evidence : "I, the plaintiff, am faced with the challenge of piercing the corporate veil of Central Hudson required by the very nature of the claims and causes of actions in my Complaint against the past CEO, Steven V. Lant and the past President and CEO, James P. Laurito, as Defendants. To have had my right to Discovery stayed and my submitted 153 Interrogatory questions refused to be answered by the Defendants, supported by an order of this court, is a severe, if not fatal, impediment to my attempt to piercing the corporate veil which is difficult in and of itself, with Discovery. The timing of the Summary Judgment Motion is premature as I have had absolutely no disclosures from the Defendants through Discovery, which, in effect, violate my constitutional rights to due process"

f- **Take Judicial Notice:** This Court when referring to the plaintiff



states the "plaintiff claims" throughout the 10 pages of its summary judgment decision. The Court has violated impartiality by affirming at the bottom of page 5 and the top of page 6 that *"the defendants are not in possession of any discovery the plaintiff seeks"* as though that is a proven fact. The plaintiff has proven that erroneous in Items **7-b & 8-c**.

g- As Plaintiff, the case depends on the ability to secure evidence that is within the Defendant's possession and courts are not to render Summary Judgment based on gaps in proof if the Plaintiff has not had a fair chance to obtain necessary and available evidence from the other party (*Baltodano v Merck, Sharp & Dohme (I.A.) Corp*, March 3, 2011, Thompson, O.R).

Furthermore, it is well established that where the facts essential to justify opposition to Summary Judgment are exclusively in the control of the movant Summary Judgment may be denied when the opposing party has not had a reasonable opportunity for disclosure prior to making the motion [Baron v. Incorporated village of Freeport 143 A.D. 2d 792-793, 533 N.Y.S. 2d 143 (2nd dept. 1988)].

~~h— Summary judgement is appropriate where " there is no genuine dispute as to any material fact and the movant is entitled to a judgement. as matter of law" Fred R. Civ. p. 56(a), however, "Only through discovery can it be determined whether a material factual issue exists which precludes summary judgement.." Vega v. First Fed. Savings & Loan Assoc. of Detroit, 622 F.2d 918. 926 (6th Cir. 1980). Therefore a non moving party "must receive 'a full~~

~~opportunity to conduct discovery' to be able to successfully defeat a motion for summary judgement ."~~ *Ball v. Union Carbide Corp.*, 385 f.3d 713, 719 (6th Cir.2004) ~~quoting~~ *Anderson v. liberty Lobby, inc.*, 477 U.S. 242, 257 (1986). ~~"(S)ummary judgement should not [be] awarded until the [non-movant be allowed some discovery."~~ *Whites's landing Fisheries, Inc. v. Buchholdzer*, 29 F.3d 229, 231 (6th Cir.1994). ~~Instead, where the non-movant demonstrates "by affidavit or declaration" that "it cannot present facts essential to justify it's opposition , the court may...defer considering the motion or deny it"~~ Fed. R. Civ. P. 56(d) . ~~if the court enters summary judgment ' without permitting the [non-movant] to conduct any discovery at all, "such a decision 'will constitute an abuse of discretion,"~~ *Vance v. United States*, 90 F. 3d 1145. 1149 (6th Cir. 1996); ~~accord~~ *GenTra, Inc. v. Estrin*, 538 F. 402, 420, (6th Cir. 1996); ~~accord~~ *GenTra, Inc. v. Estrin*, 538 F.3d 402, 420 96th Cir. 2008) ; ~~United states v.Var-Ken, Inc.~~, 875 F.2d 868, 1989 WL 42913, at \*2 (6th Cir. 1989).

**h-** The timing of the Summary Judgment Motion is premature as plaintiff has had absolutely no disclosures from the Defendants through Discovery, which, in effect, violate his constitutional rights to due process. The fourteenth amendment clearly states: *"[N]o Person ought to be taken imprisoned, or be exiled or **deprived of his Privileges, Franchises, Life, /Liberty or Property but by due process of Law"***.

**i-** The Court in ~~ignoring~~ ~~declared~~ ~~quote~~ in overlooking the facts in **plaintiff's** OSJM has misapplied the law by granting Summary Judgement based on where " there is no genuine dispute as to any material fact and the

movant is entitled to a judgement. as matter of law" Fed R. Civ. p. 56(a) **but** ignoring case law that states "Only through discovery can it be determined whether a material factual issue exists which precludes summary judgement.."

Vega v. First Fed. Savings & Loan Assoc. of Detroit, 622 F.2d 918, 926 (6th Cir. 1980). Therefore a non-moving party "must receive 'a full opportunity to conduct discovery' to be able to successfully defeat a motion for summary judgement ." Ball v. Union Carbide Corp., 385 f.3d 713, 719 (6th Cir.2004) quoting Anderson v. liberty Lobby, inc., 477 U.S. 242, 257 (1986). " (S)ummary judgement should not [be] awarded until the [non-movant be allowed some discovery." Whites's landing Fisheries, Inc. v. Buchholdzer, 29 F.3d 229, 231 (6th Cir.1994). Instead, where the non-movant demonstrates "by affidavit or declaration" that "it cannot present facts essential to justify it's opposition , ( which plaintiff ~~Stephen Romine~~ did in above quote **in item -e**) did the court may...defer considering the motion or deny it" Fed. R. Civ. P. 56(d) . if the court enters summary judgment ' without permitting the [non-movant] to conduct any discovery at all, "**such a decision 'will constitute an abuse of discretion,**" Vance v. United States, 90 F. 3d 1145. 1149 (6th Cir. 1996); accord CenTra, Inc. v. Estrin, 538 F. 402, 420, (6th Cir. 1996); accord CenTra, Inc. v. Estrin, 538 F.3d 402, 420 96th Cir. 2008) ; United states v.Var-Ken, Inc., 875 F.2d 868, 1989 WL 42913, at \*2 (6th Cir. 1989).

9- Regarding the courts statements in the SJM decision on page 6 :

*Proceeding to the merits, it is axiomatic that the summary judgments a "drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue" (Mcday*

*v. State). In deciding whether summary judgement is warranted , the courts main function is issue identification, not issue determination . The party seeking summary judgement has the burden of establishing it;s entitlement thereto as a matter of law. The evidence must be construed in a light most favorable to the party opposing the motion. In order to defeat the a motion for summary judgement the patty opposing the motion must produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial of action :*

a- The **Court** has misapprehended the law **and overlooked** that facts are needed to prove "factual issues" and the deprivation of discovery harms the plaintiff in "attempting to establish the existence of material issue of fact" and "improperly deprives a person of a trial" of discovered "disputed facts "( Arkansas Right to Life v. Butler, 983 F. Supp. 1209, 1215 (W.D. ARK 1997), afford 146 F.3d 558 (8th Cir. 1998).

b- The **Court** acknowledges that summary judgements are a "drastic" and "extreme remedy" but overlooks case law that states they "should be sparingly employed." Giordano v. Lee, 434 F.2d 1227, 1230 (8th Cir.1970).

d- **Take Judicial Notice:** The **Court** misapprehends ~~overlooks by overlooking~~ the importance of this lawsuit as it is not one of just one person seeking remedy and relief but **establishes** ~~establishing~~ through the plaintiff that the public has also been the victim of **Fraud Constitutional Violations, Nuisance, Trespass and Human Rights Violations** as stated in plaintiffs OSJM ~~Opposition to Summary Judgement~~ ( Statement of Facts: item 1, 3, 4, 5, 10, 11, 12 & Rebuttals Points: V, VIII, IX, X, IX ). In misapprehending the importance of this lawsuit the court overlooks that summary judgement may not be appropriate in complicated and important litigation" ( 10B Charles Alan Wright, Arthur R. Miller, , & Mary K. Kane, Federal Practice and procedure Civil 2732 (2732 (3d.ed. 2007), See,e.g. Kenedy v. Silas mason Co., 334 U.S. 249, 256 (1948 (warning against using summary judgement "for deciding issues of far-flung import).

e- **Take Judicial Notice:** This **Court** has overlooked that plaintiff claims constitutional and

human rights violations , and that cases premised on alleged violations of constitutional or civil rights of plaintiff are frequently are unsuitable for summary judgement. As true with other cases involving important public issues , courts may refuse to grant summary judgement because it felt a fuller record in order necessary to be able to decide the issues involved. ( 10B Wright & Miller, supra, at 27322. See, e.g. Arkansas Right to Life, 983 F. Supp. at 12215) " in cases of alleged violations persons rights, summary judgement may be inappropriate"). The plaintiff has filed an **Affirmation in Opposition to Summary Judgement** document which includes claims of constitutional rights violations and international human rights violations **(See Point IX of OJSM, see exhibit J).**

f- **Take Judicial Notice:**The Court acknowledges *Summary judgement is appropriate where " there is no genuine dispute as to any material fact and the movant is entitled to a judgement. as matter of law" Fed R. Civ. p. 56(a).* **However** the court overlooks case law that states "Only through discovery can it be determined whether a material factual issue exists which precludes summary judgement.." *Vega v. First Fed. Savings & Loan Assoc. of Detroit, 622 F.2d 918. 926 (6th Cir. 1980).* Therefore a non-moving party "must receive 'a full opportunity to conduct discovery' to be able to successfully defeat a motion for summary judgement ." *Ball v. Union Carbide Corp., 385 f.3d 713, 719 (6th Cir.2004)* quoting *Anderson v. liberty Lobby, inc., 477 U.S. 242, 257 (1986).* " (S)ummary judgement should not [be] awarded until the [non-movant be allowed some discovery." *Whites's landing Fisheries, Inc. v. Buchholdzer, 29 F.3d 229, 231 (6th Cir.1994).* Instead, where the non-movant demonstrates "by affidavit or declaration" that "it cannot present facts essential to justify it's opposition , the court may...defer considering the motion or deny it" *Fed. R. Civ. P. 56(d)* . if the court enters summary judgment ' without permitting the [non-movant] to conduct any discovery at all, "**such a decision 'will constitute an abuse of discretion,**" *Vance v. United States, 90 F. 3d 1145. 1149 (6th Cir. 1996); accord CenTra, Inc. v. Estrin, 538 F. 402, 420, (6th Cir. 1996); accord CenTra, Inc. v. Estrin, 538 F.3d 402, 420 96th Cir. 2008) ; United states v.Var-Ken, Inc., 875 F.2d 868, 1989 WL 42913, at \*2 (6th Cir. 1989).*

10- Regarding the Courts statements in SJM decision on pages 6 & 7:

"It is clear that the plaintiff's causes of action, whatever their label, all arise from the same

*claims that he made to the Public Service Commission .....Disputes involving billing and service or disconnection by the utility company of such service is subject to primary jurisdiction of the Public Service Commission.....The doctrine of primary jurisdiction requires that matters of the reasonableness of utility rates, rules, or practices must first be submitted to the Public Service Commission " :*

a- **Take Judicial Notice:**This Court misapprehends and overlooks that the fact the plaintiff did not file any complaint with the PSC that regarded a breached contract . The matter of the plaintiff claiming the establishment of a tacit-agreement between the plaintiff and the defendants is genuine triable fact that needs to be decided on in court and not with the PSC. The fact that the PSC decided against the plaintiffs request to have electricity from Central Hudson restored with an analog meter has no bearing on whether or not a tacit-agreement was in fact established between the defendants and the plaintiff. and certainly not in the jurisdiction of the PSC.

b- **Take Judicial Note:** The Court overlooks legal precedents when considering primary jurisdiction is if a defendant's liability may turn upon correctly, interpreting administrative regulations [Far East Conference v. United States, 342 U.S. 570, 574-5 (1952);Mississippi Power & Light Co. v. United GasPipe Line Co., 532 F.2d 412, 420 (5th Cir.1976),cert. denied, 429 U.S. 1094 (1977)]. The Defendants in plaintiffs case would be shielded as the PSC complaint only named Central Hudson as a company regulated by the PSC and does not regulate individuals.

c- The Court overlooks other considerations supporting application of the doctrine are whether the matter at issue has been committed exclusively to an agency's jurisdiction, or if the court has requested an amicus brief from the agency.In re Paxil Litigation,2002 WL 1940708, at \*2 (C.D. Cal.August 16, 2002),on reconsideration,2002 WL 31375497 (C.D.Cal Oct 18,2002). Is the matter beyond "the conventional experience of judges" or does the agency possess the "more specialized experience, expertise and insight" lacking in the court? [Far East Conference v.United States, 342 U.S. at 574.See also,Premo Pharmaceutical Laboratories, Inc.v. United States, 629 F.2d 795, 803 (2dCir. 1980) (determination as to whether a drug is "safe and effective" committed toFDA due to superior expertise)] As stated in plaintiffs opposition to SJM the PSC does not have exclusive jurisdiction . (Point

I- Opposition to SJM)

d- **Take Judicial Notice:** The Court has overlooked the ~~legal precedents concerning~~ **facts of Fraud** submitted in plaintiff's OSJM **(in Point X)** ~~allegedly~~ being committed by the defendants claimed by the plaintiff **and that** the legal precedents say the administrative agency has no jurisdiction. For example, in United States ex rel. Johnson v. Shell Oil Co., 34 F. Supp. 2d 429, 431-33 (E.D. Texas 1998), the court explained that no administrative agency has the power to settle or litigate false claims actions, while a U.S. district court **(or a State Supreme Court)** does have exclusive jurisdiction vested in it for this type of claim. See, United States v. Hardrives, Inc., 1993 WL 385498, at \*6 n.10 (9th Cir. Sept. 30, 1993) ("**Agency 'has no jurisdiction over fraud claims and so cannot have the 'first word' on the existence of fraud'**"). Therefore the Court misapprehends that the plaintiff's claim of Fraud is not under the jurisdiction of the PSC and cannot claim primary jurisdiction.

g- **Take Judicial Notice; The Court has overlooked the law regarding** primary jurisdiction doctrine applies based on: "(1) the need to resolve an issue (2) that has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that (4) requires expertise or uniformity in administration." Slip op. at 24 (quoting *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 760 (9th Cir. 2015) (internal citations omitted)). The district court in *Glenn* held that, applying these considerations, the primary jurisdiction doctrine did not apply (*Glenn, et al. v. Hyundai Motor America, et al.* No. SA CV 15-2052-DOC (June 24, 2016 C.D. Cal.). As to the first two elements, **the court found that because the plaintiffs sought monetary relief—relief beyond what National Highway Traffic Safety Administration (NHTSA) can provide in a recall—there is a substantial need to resolve the issue in court.** *Id.* Regarding the third factor, there was also no authority suggesting that Congress intended NHTSA to have *exclusive* regulatory authority over vehicle safety. *Id.* at 24.

**This court seems to overlook or misapprehend the facts of the plaintiff Stephen P. Romine's Opposition to SMJ Point-I also demonstrated the PSC cannot provide relief in the form of monetary damages the plaintiff sought and the PSC does not have exclusive jurisdiction.**

11- Regarding the Courts statements in SJM decision on page 7 :

*"Disputes involving billing or service with utility company or disconnection by utility company of such service is subject to primary jurisdiction of the Public Service Commission. The doctrine of primary jurisdiction requires that matters concerning reasonableness of a utility's rates, rules or practices must first be submitted to the Public Service Commission."*

a- **Take Judicial Notice:** This Court overlooks the facts in plaintiff's OSJM (**Point VII, IX,X**) that states the claims of the plaintiff were not limited to "billing, service, utility rates, rules or practices" of the utility which the court states involves primary jurisdiction of the PSC, but also included claims of Fraud, Breach of Contract and Constitutional and **Human Right Violations and not limited to those** which the PSC has no jurisdiction.

b- **Take Judicial Notice:** This Court overlooks the fact that the plaintiff did first submit his matter to the PSC before he filed a lawsuit with this Court and only after the PSC stated in an official letter that the PSC did not have the authority to grant the relief the plaintiff sought "**and the "rf. concern would be better addressed to the FCC or the local government"**" (see exhibit- U).

c- **Take Judicial Notice:** This Court misapplied the law granting the defendants SJM by overlooking the exclusions regarding plaintiff having to exhaust his administrative remedies which the plaintiff stated in **Point III** his OSJM.

11- Regarding Courts statements in SJM decision on page 8 :

*"Plaintiff was informed of his administrative appeal process to follow after both decisions but failed to undertake an appeal. As a result , the plaintiff failed to exhaust his administrative remedies" :*

a- **Take Judicial Notice:** This Court overlooks case law that demonstrates when remedies provide no genuine opportunity for adequate relief the litigant is exempted from that rule. It has been documented in OSJM ~~opposition to summary judgment motion~~ that the PSC cannot force Central Hudson to the install an analog utility meter on the plaintiffs home **which is what the plaintiff was requesting from the PSC.**( see exhibit U). This fact is further corroborated by an official correspondence from the PSC via a Foil Request (exhibit AE of



Opposition to SJM)) where the PSC states that Central Hudson's electric tariff PSC No.15 Leaf 51 specifies that the meter is the Company's property. The Company is responsible for selecting the meter that is most appropriate to the customers service. Customer preference is not a consideration." (see exhibit -AE) So it is clear that the PSC asserts it has no authority to order Central Hudson to comply with the plaintiffs requests and cannot provide relief plaintiff sought. Only Central Hudson could have provided the relief the plaintiff had requested.

b- . This Court also overlooks that an Article 78 special proceeding cannot force Central Hudson to do anything as it only has jurisdiction over administrative government agencies like the PSC and the PSC has officially admitted it has no authority to give plaintiffs requests. (see exhibits U & AE) thus the plaintiff experienced futility knowing his claim would be denied.

d- This Court also overlooks that the plaintiff should also be exempted from exhaustion of administrative remedies because the plaintiff has raised constitutional questions which could not be resolved through administrative process [*Waste Connections, Inc. v. Okla. Dep't of Env'tl. Quality*, 2002 OK 94 (Okla. 2002)].

c- This Court overlooks that exhaustion of administrative remedies should not apply, because nothing of an administrative nature is to be or can be done. The issues the plaintiff raises does not require technical knowledge and experience but one that would involve the interpretation and application of law.

d- This Court overlooks the plaintiff is seeking relief on different claims than what the PSC has jurisdiction over, such as Fraud, breach of contract and constitutional violations which the PSC has no mechanisms to deal with.

e- This Court overlooks the plaintiff seeks monetary relief that the PSC does not have authority to disburse so plaintiff should be exempt from exhausting administrative remedies.

f- This Court overlooks the plaintiff should be exempted from the rule of exhaustion of administrative remedies as there is strong public interest involved.

12- Regarding the Courts SJM decisions statements on page 8:

"Defendants have , therefore , sustained their burden of proof entitling them to summary

*judgement . As the PSC maintains primary jurisdiction in matter relating to termination of service, and as the the PSC's exercise of primary jurisdiction has ended unsuccessfully for the plaintiff, the court has now only limited power of review, and the plaintiff has shown no grounds for conducting what would be a 'back door' review of the PSC decisions."*

a- **Take Judicial Notice:** The Court has overlooked that fact that the PSC approval of the electrical service disconnection of the plaintiff , has nothing to do with the plaintiffs claim of Fraud as this claim is not dependent on the electrical service being disconnected even though it is directed at Central Hudson under the leadership of the defendants and their policies maintaining their meters are safe when it is proven in plaintiffs OSJM they are dangerous. Similarly the Court overlooks the fact that regarding the plaintiff's claim of Fraud against Central Hudson under the leadership and policies of the defendants maintaining analog utility meters are no longer available anymore when in fact they are available demonstrated in the plaintiff's OSJM is not dependent on the PSC's approval of the plaintiff's electrical service. In overlooking these facts the Court seems to misapprehend that the PSC approval of the termination of plaintiff's electrical service does not exonerate Central Hudson and the defendants from all wrongdoing as the Courts decision implies.

b- **Take Judicial Notice:** The Court has overlooked that fact that the PSC approval of the electrical service disconnection of the plaintiff does not nullify the plaintiffs claim regarding the Breach of Contract as an issue of fact involving the defendants ignoring lawful notices and becoming bound in a tacit-agreement ,which plaintiff demonstrated in OSJM and in this motion (see exhibit-Q) .

c- **Take judicial Notice:** The Court in overlooking the fact the PSC approved the electrical service disconnection of the plaintiff by Central Hudson under the leadership of the defendants and their policies, being identified as a state actor violating the Constitutional and International Human rights under the color of law as plaintiff claims, is not dependent on the mentioned PSC's **termination** approval but actually a component of the claim as the Court

seems to misapprehend.

d- **Take Judicial Notice:** Considering overlooked facts in 12a, b & c the burden of proof has not been met as the primary jurisdiction claimed by the defendants with the PSC in termination of electrical service disconnections does not apply to Fraud, Breach of Contract and Constitutional violations under the color of law.

e- **Take judicial Notice:** The Court misapplies the law when it overlooks it's own statements on page 6 of it's decision where it stated " *the courts main function is issue identification, not issue determination* " **when** granting the defendants SJM claiming they have met the burden of proof while overlooking the facts in the plaintiffs OSJM and overlooks the obvious fact that this case is more than just about termination of electrical service **but also about Fraud, Breach of Contract, Human Right Violations and not limited to those.**

13- Regarding the Courts statements in SJM decision on page 8 :

*"The issue of primary jurisdiction aside, the court agrees with the defendants that collateral estoppel precludes the plaintiff from re-litigating the same issues that were determined in the prior proceeding even though the defendants were not named parties in the PSC proceeding. The plaintiff admits that he filed a complaint with the PSC and received the adverse determinations described above. The defendants allege that the plaintiff raises the same issues in this proceeding that he litigated before the PSC. Collateral Estoppel , or issue preclusion, gives conclusive effect to an administrative agency's quasi-judicial determination when several sic conditions are met. : 1) that the issues in both proceedings are identical; 2) that the issue in the prior proceeding was actually litigated and decided; 3) that there was a full and fair opportunity to litigate in the prior proceeding; 4) that the issue previously litigated was necessary to support a valid and final judgement on the merits."*

a- **Take Judicial Notice:**The Court overlooks the facts of the complaint filed with the PSC only dealt with the issue of restoring electrical service using an analog meter (see exhibit-U).

The PSC not having jurisdiction, did not rule on Fraud, Breach of Contract, Constitutional & International Human rights violations, Trespass, Abuse of Right and Continuing a Private Nuisance **and not limited to those** which are all claimed in the plaintiffs **complaint** . Quasi-judicial activity is limited to the issues that concern the particular administrative agency. So proceeding with the plaintiffs lawsuit would not be re-litigating the same issues because those issues were never litigated to begin with therefore Collateral Estoppel does not apply.

b- **Take Judicial Notice:**The **Court overlooks** the fact true litigation never happened as the PSC May 3, 2013 decision involved none of the elements of due process such as discovery, depositions.motions and briefings. "Collateral Estoppel applies [when] an issue of fact or law is actually litigated and determined by a valid and final judgment. A judgement is not conclusive in a subsequent action as to issues which might have been but were not litigated and determined in a prior action." Green v. Dupuis, 2005 U.S. Dist. LEXIS 26320 (E.D. Mich. Oct. 24, 2005).Due process cannot be denied through Collateral Estoppel .

c- **Take Judicial Notice:**The Courts ~~SJM decision~~ overlooks these facts **in light of** it's own criteria for establishing Collateral Estoppel does not apply to the plaintiffs lawsuit : 1) The issues are most certainly not identical as in this lawsuit there are 7 claims being Fraud, Breach of Contract, Constitutional violations, International Human Rights violations, Trespass, Abuse of Right and a Continuing Private Nuisance and only 2 claims in the PSC complaint being restoration of electrical service and a written guarantee of an analog meter.~~(See exhibit)~~, 2) The PSC complaint was not "actually litigated" as the informal hearing was denied (id.), 3) There was no full and fair opportunity to litigate the prior proceeding as the PSC officially stated it did not have the authority to grant the plaintiff relief sought so plaintiff experienced futility. 4) the issues were never "previously litigated" (Id.).

d- **Take Judicial Notice:**The Courts ~~SJM decision~~ overlooks the plaintiffs complaint to the PSC, registered as PSC case 325148, was never litigated as the request for an informal hearing/review was denied on May 3, 2014 by the Office of Consumer Affairs manager, Ramona Munoz (see Exhibit-U). The Court also overlooks Ms. Munoz statements in exhibit-U that "All relevant hearing determinations must reflect '*applicable state laws, Commission*

*rules, regulations, orders and opinions'* and because the relief you seek is beyond the power of an informal hearing officer to provide." **The court also overlooked that Ms. Munoz also stated in a previous paragraph of the same letter, "any concerns you have regarding rf. technology would be better addressed by either the FCC or your local government officials."** The Court misapprehends that the PSC letter is officially stating that the PSC is not the agency to help with the remedy sought, and that the plaintiff should go to the "FCC or your local government". In view of this the plaintiff may appeal directly to a court of law and bypass the quasi-judicial activity of an administrative agency if the agency's remedies would be inadequate. (*Coit Indep. Joint Venture v. FSLIC*, 489 U.S. 561, 109 S. Ct. 1361, 103 L. Ed. 2d 602 [1989])

14- Regarding the Courts statements in SJM decision on pages 9 & 10 :

*"The court agrees with the defendants that they cannot be held liable for the actions of the corporation or of the employees of Central Hudson.*

*.....a director or officer of a corporation like the defendants are not personally liable for the torts or wrongful acts of the corporation or for their co-employees. unless they personally participated in the wrongful act or conduct.*

a- **Take Judicial Notice:** The Court misapprehends the fact that the plaintiff is not holding the defendants liable for what the corporation did or what its employees did, as stated in the SJM decision, but for defendants having breached a contract, for creating and directing policy that maintained fraud, civil rights violations and gross negligence but not limited to.

c- This Court has overlooked that the courts have consistently held that intentional conduct by a corporate officer will result in personal liability (see *Frances T. v. Village Green Owners Association*). Similarly, if a corporate officer "authorizes, directs or in some meaningful sense actively participates in the wrongful conduct," personal liability will attach even though the actions were taken by the corporation. In this situation, there is joint liability. Personal liability also enters the equation when a corporate officer engages in fraud

d- This court overlooks that corporate executives need not possess personal knowledge of a regulatory

violation to incur criminal responsibility United States v. Dotterweich, 320 U.S. 277 (1943). Consumer frauds is crime.

e- **Take Judicial Notice:** This court in its decision has overlooked the facts the plaintiff has presented in **Point X** of his ~~opposition to SJM~~ OJSM that establish the defendants as executive leadership participated in Fraud : 1) A false misrepresentation, actual or implied, or the concealment of a matter ( Central Hudson under the leadership of the defendants and their policies falsely claimed analog meters were not available anymore to the plaintiff and the public ), 2) Knowledge of the falsity or statements (Central Hudson under the leadership of the defendants knew that Central Hudson had operational analog meters removed during new construction that were tested to see if they are good and brought back to the shop), 3) Intent to mislead (Central Hudson under the leadership of the defendants and their policies, mislead the plaintiff and the public to get them to use digital meters), 4) Reliance ( Central Hudson, under the leadership defendants and their policies , was relied on because they were regulated by the PSC and the plaintiff did not know the PSC and Central Hudson were colluding and still are to commit fraud on the plaintiff and the public), 5) The injury to the plaintiff from Fraud is that the plaintiff relied on the Fraud of Central Hudson who under the leadership of the defendants ~~who~~ were colluding with the PSC and deceived the plaintiff into believing analog meters were not available thereby causing the plaintiff to live without electrical service for a couple of years before seeking court remedy **upon discovering the Fraud but only after** suffering much hardship and extra expense. The plaintiff has met all the conditions for proving Fraud ( see exhibit -**AE, U page 2**)

15- Regarding the Courts statements in the SJM decision on page 10 :

*"The plaintiffs's theory of personal liability against the defendants arises from their failure to respond to a letter he wrote to them at Central Hudson in March 2013. The defendants claim that they never were aware of or saw the plaintiff's communications , and point out that any complaints to Central Hudson were addressed by service supervisors or legal counsel. They also point out that they played no roll in the plaintiff's meter dispute.*

*In the court's opinion , the defendants have adequately demonstrated they had no knowledge of plaintiff's claims, and that , in any case, neither took action nor failed to take any action*

*which would result in their personal liability."*

a- **Take Judicial Notice:** The Court overlooks all the facts in **Point-VII** of the plaintiffs OSJM concerning the notarized lawful documents sent certified mail by the plaintiff to defendants by name at their main place of business. The court misapprehends the distinction between "a letter" and a lawful notice as these documents were not "complaints" but were notices of violations and demands to correct them. The courts reference to the plaintiffs lawful documents as a "letter" , which the defendants claimed in their SJM Motion is repeated in the courts February 14, 2018 SJM decision on page 10 . The Court misapprehends that **just as** a Bill of Sale, **or a Will, or a Contract** each with title headings on the top of the document signed and notarized are all lawful documents and are not just "letter(s)" , so is The Notice of Demand, The Notice of Default and Notice of Liability with title headings in bold Letters on top of document with terms and conditions itemized and numbered and signed and notarized are all lawful documents sent certified mail and not just "letters" (see exhibit-Q).

b- **Take Judicial Notice:** The Court overlooked the plaintiff citing legal prerequisites for establishing a legally bound tacit-agreement, as laid out in the plaintiffs **OSJM** document in Point- VII which documented a tacit agreement is supported by case law and the classic work Restatement of Contracts (second) treatise , published in 1981 by the American Law Institute and used as a contract law reference throughout all of jurisprudence. As **a the Court acknowledges the** general rule, silence or inaction in the face of an offer will not constitute acceptance of the offer. This Court however overlooks or misapprehends the "**Silence is Acceptance**" principle laid out in chapter 69 of the Restatement of Law -Contracts (second) the classic law reference published by the American Law Institute demonstrating **there are special circumstances where silence and inaction may constitute an acceptance of an agreement:**

c- **Take Judicial Notice:** The Court has obviously overlooked these facts stated in **Point-VII** of plaintiff's OSJM detailing special circumstances that would create a binding tacit-

agreement :

(1)- Silence may operate as an acceptance under the rule stated in **Restatement of Law-Contracts (second) chapter on "Silence is Acceptance" section 69(1) (b) " Where the offeror has stated or given reason to the offeree to understand that assent maybe manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer"** [ Golden Eagle Ins.Co. v. Foremost Ins. Co (1993) 20 CA4th, 1732,1385, 25CR2d 242". Silence is Shows Consent, 6 Barb [N.Y.]2B,35

- (3)- If there is a relationship between the parties or a previous course of action by which silence or inaction can be understood as acceptance under the rule stated in **chapter "Silence is Acceptance" section 69(1) (c) Restatement of of Law-Contracts "Where because of previous dealings or otherwise, it is reasonable that the offeree should notify the offeror if he does not accept,"** [Southern Cal. Acoustics Co. C.V. Holder Inc. (1969 71 C2nd 719, y22 79 CR 319" See also Circuit City Stores Inc. v. Najjd (Cir. 2002), 294 F3rd 1104,1109].

(4) The Court overlooks the fact that Central Hudson, under the leadership and the policies of the defendants in collusion with the PSC applied the same "Law of Acquiescence" with deployment of digital transmitting meters in their customer base without physical or oral consent of their customers. Based on the fact that not one person in Central Hudson's customer base commented during the NYSDPS comment period deployment of meters went forward. ( see exhibit-L).

(5) The Court overlooks the fact that Central Hudson under the leadership of the defendants reasoned that the public acquiesced and tacitly gave purported consent (see exhibit-AF1 second paragraph first page)

(6) Central Hudson under the leadership of the defendants and their policies in collusion with the PSC claimed to have established a contract with it's customers ,called the Tariff, once again based on the Law of Acquiescence due to public's silence and inaction (see exhibits-X).

(6) The court overlooks the special circumstances just described and documented



in plaintiffs OSJM and in this motion that demonstrates that the mentioned lawful notices , notarized and sent certified mail and addressed to the defendants several times over the course of the two months preceding the May, 2013 removal of the digital transmitting meter and installation of refurbished analog meter carried out in self defense did in fact establish a tacit- agreement that does not expire when the defendants retired or changed employment. The defendants were made personally liable and Central Hudson was made liable as a company as stipulated in the plaintiffs lawful notices (see Exhibit-Q).

d- **Take Judicial Notice:**The Court overlooks several important facts regarding the lawful notices purportedly being replied to by "service supervisors and legal counsel". The plaintiff did not receive any communication from the defendants or their agents referring to or mentioning the several lawful notices by name of notice , date of notice, or discussing not accepting terms and conditions of lawful notices submitted as exhibits in plaintiffs OSJM (see exhibits-**AF1 & AF2**).

e- **Take Judicial notice;**The Court overlooks the fact that the defendants and/or their agents failed to send a sworn affidavit to the plaintiff, which plaintiff stated and required in the lawful Notice of Demand as a lawful reply stating defendants or agents do not agree with facts and terms and conditions of lawful Notice of Demand or , the Notice of Default/ Warnings of Liability submitted as exhibits in plaintiff's OSJM (see exhibit-Q).

f- **Take judicial Notice;**The Court overlooks the fact that the only communication made to the plaintiff in the stipulated required 14 days was the letter from a single supervisor named Daniel Harkenrider who in his April 1, 2013 letter does not include any reference to the lawful Notice of Demand by name or date of Notice nor does he rebut any of it's facts therein, and does not state that he or anybody else he is representing does not consent to the terms and conditions of lawful Notice of Demand. Mr Harkenrider's letter was not a "sworn affidavit" as required by the plaintiff's Notice of Demand as a lawful reply ( see exhibit-**Q-Item18-page-5** ).

f- The Court overlooks the fact that legal counsel Paul Colbert sends a letter to the plaintiff dated June 21, 2013 and September 20, 2103 3 months and 5 months respectively beyond

the March 21st Notice of Demand obviously beyond the 14 day stipulation date to respond to Notice of Demand stipulations. Attorney Colbert letter also does not mention lawful Notice of Demand or Notice of Default/ Warnings of Liability by name , date nor mention that he, or anybody he is representing, does not consent to the terms and conditions of the lawful Notices of Demand or Notice of Default /Warnings of Liability. Attorney Colbert does not send a " sworn affidavit" required by lawful Notice of Demand as a lawful reply. (see exhibit-AF1).

**The June 21st letter by Attorney Colbert was a response to the PSC complaint and not the lawful notices as he states in an email " "Attached is alter that has been sent to you regarding your complaint to the New York Public Service Commission concerning your electric service"(see exhibit AA PSC Log- page right before Colbert letter )**

g- The Court overlooks The fact that the plaintiff did not write a single "letter" to the defendants but sent several sets of the lawful notices on March 21, 2013, April 9, 2013 (see exhibit -Q) to the defendants addressed to their name and principal place of place of work over the course of several months

16- Regarding the Courts statements in the SJM decision on page 10 :

*"They (defendants) also point out that they played no roll in the plaintiff's meter dispute. In the court's opinion , the defendants have adequately demonstrated they had no knowledge of plaintiff's claims, and that , in any case, neither took action nor failed to take any action which would result in their personal liability."*

**a- Take Judicial Notice: The Court has overlooked the facts that defendants James P. Laurito and Steven V. Lant were not just employees of Central Hudson but were the top executives of the company whose responsibilities typically include decision maker on strategy and other key policy issues.**

**b- Take Judicial Notice: The Court overlooks the fact that the policy and decision to terminate meter reader jobs and irradiate the plaintiff and the public with digital**

transmitting meters, was the defendants as CEO and President of Central Hudson..

c- Take Judicial Notice: The Court overlooks the fact that the policy and decision to deceive the public with the false idea analog meters are unavailable, when in fact they are available and being used in 12 states (see exhibit AD, AJ, AK) was part of a policy that they created and at the very least directed as chief executives of the corporation.

d-- Take Judicial Notice: The Court overlooks the fact that the policy and decision to not allow used analog meters taken off of customers homes that tested good not to be supplied when requested by customers was part of a policy that the defendants created or at the very least directed as it was not mandated by the PSC. (see exhibit AE).

e- Take Judicial Notice: The Court overlooks the fact that the policy and decision to install digital meters on customers homes without the physical consent of the resident, which they could have done, was part of the policy the defendants decision as chief executives of the corporation or at the very least they directed (see exhibit-O-page 2 & D, N).

f- Take judicial Notice: The Court overlooks the fact that the policy and decision to install digital meters without informing or warning the resident of the presence of a microwave emitting digital meter on their home was part of a policy the defendants created as chief executives of the corporation or at the very least they directed (see exhibit-0-page 2 & D, N).

g- Take judicial Notice: The Court overlooks the fact that the policy and decision to not have Central Hudson's used analog meters taken off of customers homes that tested bad refurbished by a certified meter re-manufacturer and was part of the policy and decision the defendants created or at the very least directed (AD, AJ, AK).

h- Take Judicial Notice: The Court overlooks the fact that the CEO and President of Central Hudson were negligent in keeping informed of what is going on in every department which is part of any CEO's and presidents job description, as according to the defendants they were purportedly unaware of a crisis situation created by their policies and the two desperate customers (plaintiff and partner) which they had a

common law duty to care for.

i- Take judicial Notice; The Court overlooks the fact that the decision to cut the plaintiffs electrical service by the legal and service department is criminal knowing full well the plaintiff's partner had just had a mini-stroke and just returned from the hospital, instead of removing the analog meter the plaintiff installed and replacing it with a good used analog taken from one of Central Hudson's shops lays squarely on the shoulders of the defendants who created or at the least directed that inhumane policy.

j- Take judicial Notice: The Court overlooks the fact that all of the plaintiff's demands could have been met very easily 4 and 1/2 years ago by having a used analog meter previously taken off of a customers home having an upgrade from Central Hudson's shop and tested good, could have been installed on the plaintiffs home according to the PSC, protecting the plaintiffs partner, but because of the defendants policies this was not done (see exhibit-AE)

k- Take judicial Notice; The Court overlooks all the facts in the plaintiffs OSJM of many peer-reviewed scientific studies and the affidavit of an expert witness that demonstrate the emissions of the digital meters is toxic and irradiated the plaintiff, his partner Nicole Nevin and many people in Central Hudson's customer base without their permission or knowledge and without compassion or concern, all under the color of PSC rules and regulations, organized and/ or directed by the defendants and their policies (see exhibits- AB,AH, AH1,C ,F, G1, G2, G3, I, J, K1, K2, Z, )

l- Take Judicial Notice: The court overlooks the fact that the defendants have not supplied any peer-reviewed scientific studies done by medical or health professionals demonstrating the biological safety of these digital meters. The Court in not being cognizant of the absence of such peer-reviewed scientific studies done by medical and health professionals proving biological safety, misapprehends that the deployment of digital transmitting meters is one big experiment on the plaintiff and the public which is in violation of the Nuremberg Code and Treaty and a violation of the plaintiffs International Human Rights(see exhibit-exhibit J).

m- **Take Judicial Notice:**The Court in overlooking the fact of the defendants position in their corporation, the Court misapprehends that if a corporate officer "authorizes, directs or in some meaningful sense activity participates in the wrongful conduct,' personal liability will attach even though the actions were taken by the corporation. In this situation , there is joint liability. Personal liability also enters the equation when a corporate officer engages in fraud. In deciding liability courts will consider if an officer 's participation in the improper conduct resulted from direct action or knowingly consenting to or approving the unlawful acts (see Frances T. v. Village Green Owners Association)

Based on the foregoing , the plaintiff prays that this Court exercise it's discretion to grant the motion to reargue pursuant to CPLR 2221 and reconsider it's recent decision/order granting summary judgement, and allow this case , #16-1351, to proceed with full discovery rights for the plaintiff , especially in light of protecting plaintiffs rights to due process guaranteed in the 14th amendment of the U.S. Constitution and the provision of U.S.C. 42 section 1983.

Dated: \_\_\_\_\_

Woodstock, New York

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**Pro se, Per, Sui Juris**

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