STATE OF NEW YORK
COUNTY COURT: COUNTY OF CATTARAUGUS

THE PEOPLE OF THE STATE OF NEW YORK

vs. **MOTION AND AFFIDAVIT IN OPPOSITION**

CSquared

XXXXXXXXXXX Court Case Number: 14050030

On, or about October 31st, 2014 alleged defendant came into involuntary possession of an envelope with a return address "Lori Pettit Rieman, District Attorney, Cattaraugus County, 303 Court Street, Little Valley, 14755, Lori Pettit Rieman shall sometimes be referred to hereafter as Rieman.

Said envelope contained five pieces of paper, herein described directly below, marked as exhibit A;

i. A letter, dated October 30, 2014, addressed to "Dear Ladies" and signed by Lori Pettit Rieman. One page

ii. A Notice of Motion naming the alleged defendant therein, not signed by Lori Pettit Rieman. One page.

iii. An Affidavit by Lori Pettit Rieman naming the alleged defendant therein and signed by Lori Pettit Rieman.

iv. A Certificate of Disqualification of the XXXXXXXXXXX Village Court Judge concerning the alleged defendant.

v. A Proposed order for change of venue.

STATE OF NEW YORK)
COUNTY OF CATTARAUGUS) ss:
VILLAGE OF LITTLE VALLEY)

Answer in Response to Affidavit of Lori Pettit Rieman

I CSquared, sometimes referred to here as the alleged defendant, being duly sworn, deposes and says;

1. Unable to admit or deny due to lack of knowledge, however admitted that Lori Pettit Rieman, sometimes referred to hereafter as Rieman claims to be an "Attorney at law…"

2. Denied to the extent that Lori Pettit Rieman has the authority to file and move the court based on CPL §170.15(3). Admitted to the extent that Lori Pettit Rieman claims that CPL §170.15(3) governs this present matter. The time limits of CPL §170.15(3) are contained in CPL §255.20, which mandates that such motions fall within the 45 day time limit [People v. Greenberg 89 N.Y.2d 553 (1997); 678 N.E.2d 878; 656 N.Y.S.2d 192.];

   > CPL §170.15(3): *"At any time within the period provided by section 255.20,…"*
   >
   > CPL §255.20: *"Except as otherwise expressly provided by law, whether the defendant is represented by counsel or elects to proceed pro se, all pre-trial motions shall be served or filed within forty-five days after arraignment and before commencement of trial, or within such additional time as the court may fix upon application of the defendant made prior to entry of judgment."*

   It has been 60 days since the XXXXXXXXXXX Village Justice recused himself on August 28th, 2014, and over 170 days in accordance with CPL. §30.30, well outside the time limits for either, therefore, in accordance with the CPL, Lori Pettit Rieman has no authority to ask for such relief. It has been over 170 days from the start of this issue;

   > CPL. §30.30: *(b) ninety days of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three months and none of which is a felony;*

Further, Rieman knew, or should have known that by scheduling the peoples motion on November 10th, 2014, and serving the alleged defendant with the papers thereto, by regular mail, she violated 22 CRR-NY 1000.13 and (CPLR 2103[b][2]), which specifically states;

> *(ii) When motion papers are served by regular mail, at least 13 days notice shall be given (CPLR 2103[b][2]).*

However, it is further denied it should have been Lori Pettit Rieman who made the motion. The alleged defendant has never met Lori Pettit Rieman and at the last hearing the alleged defendant involuntary appeared at, he was ambushed by both Elizabeth Ensell and Kelly Balcom, both of which appeared to argue for the people against the alleged defendant. Two against one which is unfair and not in the interests of justice and shows the lack of integrity and failure to follow proper procedure on Rieman's, Ensell's and Balcom's part. The alleged defendant can find no law, stare decisis or otherwise, that would allow them to do as such.

Further the alleged defendant was appearing involuntary pro-se, by himself that day. He is not a lawyer. To this day of writing this motion in opposition the alleged defendant does not know who will be appearing for the people at anytime. It is constantly changing. First it was alleged Assistant District Attorney Elizabeth Ensell, who when the alleged defendant first contacted her in late XXXXXXXXXXX, to report the assault upon him, that occurred on XXXXXXXXXXX, Ensell stated *"it was a civil matter, not a criminal one"* then would go on to state in the first pretrial conference hearing held on June 26th, 2014, that it is *"alright for police officers to assault people".*

Both her and Kelly Balcom would appear and argue at the next pre trail conference hearing in August 2014, in which they knowingly and willfully lied both to the defense as well as the court, in claiming that the *"people oppose any and all future motions"* made by the defense because it would be in *"violation of the Omnibus Motion Rule contained in Article 55 of the Criminal Procedure Law."(see exhibit B, paragraph 38),* Kelly Balcom would specifically point out this paragraph to the court verbally, and then would go on verbally and also point out the next paragraph (*paragraph 39*), which would directly contradict paragraph 38, in that in paragraph 38 they claim that by that the alleged defendant is not allowed to file *"any and all future motions"* and then in paragraph 39 *"if the Court grants the Defendant the ability to*

file additional pretrial motions….. (to) place a page limit on any motions filed". Balcom, knew, or should have known that the Court can only interpret the law, not rewrite it, in doing so Balcom, (if the law even existed, which it did not) would have asked the court to violate the very tenets of the judicial branch of government which is to interpret the law, not write it and further in one sentence she claimed the does not allow a defendant to file future motions, in the next they claim it can, which is a contradiction. Further they asked the court if it did grant the defendant (alleged) the right to file more motions, that he be limited in what he could file. This would have denied the alleged defendant the ability to mount a proper defense and in doing so the People, through their agents Balcom, Ensell and Rieman would have denied the alleged defendant his do process rights. [Donovan, 13 N.Y.2d at 153-54, 193 N.E.2d at 631, 243 N.Y.S.2d at 845.] See generally U.S. Constitution, preamble, article. III, § 2, amendments IV, V and VI, New York State Constitution article I § 11 and 12

The alleged defendant has spent many hours trying to locate this law and even "article 55", and cannot find either, they does not exist. It appears to be a complete fabrication on Ensell's part and supported by Balcom and District Attorney Rieman. Further the alleged defendant cannot find any law, rule, regulation, or stare decisis that would allow two assistant district attorneys to appear and argue against one individual, pro-se or otherwise. Balcom and Ensell would also file more fabricated paperwork in the form of a fraudulent 710 notice, that was never served upon the alleged defendant at the original time claimed and that did not exist until the alleged defendant discovered it in the peoples answer to the alleged defendant's omnibus motion. They would also admit in their answer that the District Attorney has a secret file (see exhibit B) on the alleged defendant. The alleged defendant can find no law, stare decisis or otherwise, that would have allowed them keep secret files on anyone. The alleged defendant has every right to review such file and make copies of its contents.

The alleged defendant believes that the purpose of the appearances by multiple individuals, the lies, the fabricated evidences and secret file is meant to confuse, misdirect and deny the alleged defendants in his defense and in doing so Lori Pettit Rieman, as well as those employed by her have denied the alleged defendant his due process rights in violation of Article 1 § 6 and 11 of the New York State Constitution and Amendment 5 and 14 of the US

Constitution and represent a personal vendetta by the District Attorney are her employees to make an example out of the alleged defendant for attempting the exercise his constitutional and civil rights and anything that emanates there from. At a minimum they have committed acts of official misconduct in this matter, which is a class A misdemeanor;

Article 195.00 Official misconduct.

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. *He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or*

2. *He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.*

Further they claim to be attorneys who are "licensed to practice law" as such they are bound by, and in violation of "New York Lawyer's Code of Professional Responsibility", Cannon 1; EC 1-1, EC 1-4, EC 1-5 and EC 1-7 and well as they are in violation of the rules of professional conduct;

RULE 3.3 (a)
A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer

(b) A lawyer who represents a client before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures including, if necessary, disclosure to the tribunal.

RULE 3.4

(a) *Knowingly use perjured testimony or false evidence.*

RULE 3.8

(a) A prosecutor or other government lawyer shall not institute, cause to be instituted or maintain a criminal charge when the prosecutor or other government lawyer knows or it is obvious that the charge is not supported by probable cause.

RULE 4.1

In the course of representing a client, a lawyer shall not knowingly make a false statement of fact or law to a third person.

RULE 4.4

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass or harm a third person or use methods of obtaining evidence that violate the legal rights of such a person.

RULE 8.4

(a) Violate or attempt to violate the rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) Engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) Engage in conduct that is prejudicial to the administration of justice.

3. Denied. The alleged defendant was falsely charged with "Breath Test Violation, Driving While Intoxicated, Stop Signal Violation and Obstructing Governmental Administration." To the contrary, the alleged defendant on the morning in question was exercising his rights to life, liberty and pursuit of happiness that was that were unlawfully and illegally denied him. The alleged defendant was unlawfully stopped of his forward motion based on false allegations of the kidnapper, one Matthew Albanese, then assaulted by his co-conspirator, one Bryan H Schwabenbauer, who has a history of such actions and who has also been accused of filing perjured testimony, which was refuted by four other public officers in at least one prior case in which Schwabenbauer was sued both in an individual and alleged official capacity.

   Further, the people have already admitted to some startling facts in this matter by failing or refusal to deny each specific allegation contained in the omnibus motion served upon the people on July 2nd, 2014. Some, but not all of the allegations the people have admitted to are stated individually below.

   i. The People admitted that Albanese, the alleged officer who conducted the field tests failed and/or refused to conduct a proper medical prescreening for the HGN test.

ii. *The People admitted that field sobriety tests, two conversations, the unlawful stop and arrest could not have happened in the time frame if Albanese had followed the proper procedures.*

iii. *Alleged "defendant" was unlawfully arrested, on, or around 1:19 AM, on* XXXXXXXXXXX*, without a warrant and/or probable cause, by alleged officer Matthew Albanese of the XXXXXXXXXXX Police Department, and taken to 1 Washington, XXXXXXXXXXX, New York, i.e. Police Headquarter, upon the conclusion of alleged field testing.*

iv. *The People admitted that no refusal warnings, screenings or Miranda rights were read to alleged defendant the morning in question and he did maintain, and was exercising his right to remain silent as well as other rights.*

v. *The People admitted that Albanese ignored the alleged defendant pleas as to his ankle and eye problems.*

vi. *The People admitted and that Albanese would testify at the alleged refusal hearing in Machias, New York Town Court that he (Albanese) did not follow proper procedures for field testing which is mandated for determining probable cause for arrest the morning in question in violation of alleged defendants Articles 1, § 6, 8 and 11 of the New York State Constitution and the 4th, 5th and 14th Amendment to the US Constitutional rights, as well as other violations of rules, regulations and/or laws, including the common law.*

vii. *The People admitted that alleged defendant, while his left hand was shackled to a metal chair at 1 Washington, XXXXXXXXXXX, New York was assaulted, or menaced, with malice and forethought by "Sherriff Deputy Sergeant" Bryan H Schwabenbauer for attempting to exercising his right to remain silent, as well as other rights, in violation of Articles 1, § 6, 8 and 11 of the New York State Constitution and the 4th, 5th and 14th Amendment to the US Constitutional rights. Alleged defendant would then discover that Schwabenbauer has a history of this type of actions and is named in a federal lawsuit in which he, as well as the county of Cattaraugus is name as defendants for substantially similar action, see [Brown vs. West Valley Environmental Services, LLC, et al (10-CV-210)]. The alleged defendant believes he was violently thrown against the wall by Schawbenbauer between 02:15 AM and 02:30 AM, it was during this time that Albanese and Schawbenbauer would falsely claim that the defendant would refuse a "breath*

test".

viii. *The people admitted that Bryan H Schwabenbauer knew, or should have known that his actions were unjustified and he did place the alleged defendant in fear of death or serious bodily injury.*

ix. *The people admitted that a blue wall code of silence exists between individuals who alleged themselves to be 'law enforcement' concerning this matte, including the two other individuals who were present the morning in question, including John Doe 1.*

x. *The people admitted that Albanese perjured himself by filing false testimony in the matter.*

xi. *The people admitted that it is against the law to remain silent when being question by one who claims to be a police officer while in custodial custody.*

xii. *The People admitted that the alleged 'defendant' on cross, during the alleged refusal hearing, challenged Albanese statement that Albanese was not traveling in an easterly direction, instead that Albanese was in fact traveling in a northerly direction. Albanese still maintained that he was traveling eastwardly until the alleged defendant corrected him again and again. Albanese then changed is testimony claiming "it was east" then stated "technically" it was "northeasterly" as to the direction he (Albanese) was traveling. Elk street, the street in question is one of the most northerly oriented streets in XXXXXXXXXXX, being about only 5° off of true north.*

The People have remained silent on specific formal avers by the alleged defendant within the time allowed to respond, as such the People have admitted to them and they can no longer be denied. Silence as a response to an assertion, containing facts which the party would naturally be expected to deny has traditionally been received as an admission [MCCORMICK, supra note 2, § 262]. Further, in connection with a responsive pleading, silence by means of failing to expressly deny a statement has the effect of an admission [N.Y. C.P.L.R. 3018(a)], to wit;

> *(a) Denials. A party shall deny those statements known or believed by him to be untrue. He shall specify those statements as to the truth of which he lacks knowledge or information sufficient to form a belief and this shall have the effect of a denial. All other*

statements of a pleading are deemed admitted, except that where no responsive pleading is permitted they are deemed denied or avoided.

In a representative capacity, admissions commonly are introduced through the parties' attorneys, whether in the form of their written briefs [Pok Rye Kim v. Mars Cup Co., 476 N.Y.S.2d 381] or as statements made in open court [29A AM. JUR. 2D Evidence § 784 (2011)]. There are two types of admissions; (1) Formal, and; (2) Informal.

The question becomes what type of assertion have the people admitted to and what are the repercussions of such admissions? Formal admissions are binding [Rahman v. Smith, No. 23495/03, 2005 WL 5118512 (N.Y. Sup. Ct. Nov. 29, 2005)]. Once made, the statement cannot be contradicted and is therefore conclusively bound to the party. Once a statement is deemed to be a formal judicial admission, the statement is no longer evidence but rather a concession that completely withdraws the fact from contention [See Rahman]. In this matter because of the people failed and/or refused to deny specific facts contained in the omnibus motion, the People have admitted to them, and are no longer allowed to challenge them.

Further, Albanese, who has perjured himself in this matter, while claiming to represent "The People of the State of New York" claimed it is against the law to remain silent while being questioned by an alleged "police officer" while under alleged arrest, which is in violation of the constitutional procedural guidelines as outlined in Miranda v. Arizona. In doing so Albanese proved he lacks the proper attributes to be a "police officer" when he filed the 195.50 (Obstruction of government administration) claiming it was illegal to remain silent against the alleged defendant. In doing so Albanese either provide evidence of his personal bias against the alleged defendant and/or his complete disregard to uphold the law and/or he is an individual who lacks "ordinary intelligence, judgment, and experience".

4. Admitted to the extent that the XXXXXXXXXXX Village Court judge has disqualified himself. Denied to the extent that the proceeding must be moved from XXXXXXXXXXX to Machias Town Court, even if the People did file their motion in the proper time. There are at least two other justices/judges in the immediate XXXXXXXXXXX area as well as other towns

that are much closer to the alleged defendants location and county seat then Machias. CPL §170.15(3)(a) is very clear;

> *"(a) Death, disability or other incapacity or disqualification* ***<u>of all of the judges of such court;</u>"***

The alleged defendant has not received any type of notification of the disqualification of any other judges locally. Further, there is nothing in the District Attorney's paperwork that would indicate as such either.

Further, it will be very difficult for the alleged defendant to travel to Machias to review the records and to ensure they are not altered during the course of this matter, to obtain copies, and to appear at any proceedings that maybe required. Further, the winter weather may also make travel even more difficult, and it will be also difficult for at least one witness the alleged defendant intents to call.

5. Admitted to the extent that the alleged defendant is unaware that any *"previous application for relief sought here has been made"*, the alleged defendant is unaware that the "District Attorney" has filed such paperwork anywhere else concerning this matter.

The purpose of mandated procedures, rules, cannons and laws, such as the NYCRR, CPL, Rules of Court, etc…. is that "governments" and those employed by them, are in place to protect individual rights, of both innocents and accused alike. In this case, the alleged defendant broke no law and the evidence clearly points to that fact, not only the morning in question, but the actions by government officials thereafter also. The "District Attorney", "those" directly supervised by her, "members" of the "Cattaraugus County Sheriff's Department" and "XXXXXXXXXXX Police Department" have engaged in a course of official misconduct in order to "teach" the alleged defendant, and those of society, a lesson that people are not allowed to exercise their constitutional and civil rights and anything that emanates there from, and not allowed to defend themselves, and if they do, the people will stop at nothing, including the laws, rules, and procedures to make examples out of people who do attempt to exercise their rights.

"It cannot be overemphasized that our legal system is concerned as much with the integrity of the judicial process as with the issue of guilt or innocence. The constitutional and statutory safeguards provided for one accused of crime are to be applied in all cases. The worst criminal,

the most culpable individual, is as much entitled to the benefit of a rule of law as the most blameless member of society." [Donovan, 13 N.Y.2d at 153-54, 193 N.E.2d at 631, 243 N.Y.S.2d at 845.] See generally U.S. Constitution, preamble, article. III, § 2, amendments IV, V and VI.

In Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935), the prosecutor's knowing use of perjured testimony was held to be a denial of due process of law in violation of the Fourteenth Amendment. *"Without attempting at this time to deal with the question at length, we deem it sufficient for the present purpose to say that we are unable to approve this narrow view of the requirement of due process. That requirement, in safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions."*

It is clear that the District Attorney, those directly supervised and trained by her, members of the Cattaraugus County Sheriff's Department, and XXXXXXXXXXX Police Department have, at a minimum, knowingly and willfully engaged in a pattern of willful official misconduct and so admitted thereto as so described herein.

The alleged defendant now believes that one of the purposes of the people asking to move the venue is so they can continue their official misconduct and illegally and unlawfully find the alleged defendant guilty, so they can place him in the hands of other individuals who will then purposely place him in harm's way, which will eventually lead to the alleged defendant being murdered and/or tortured and/or assaulted and/or new false charges being placed against him and being found guilty under their tainted system so he will never see freedom again. The law requires the judge hearing the matter to view the evidence in *"the light most favorable to the defendant."* [People v. Vecchio, 240 A.D.2d 854, 855, 658 N.Y.S.2d 720 [1997]].

Further this court must be made aware of the extremely difficult time the alleged defendant is having in his attempt to have the XXXXXXXXXXX court proceedings transcribed, so he may use it at trial to prove the true nature of those employed by the District Attorney. He has been trying since XXXXXXXXXXX for such services and so far has been unable to obtain them. Alleged defendant believes the reason for this is the evil eye and hand that appears to be present

in this matter, which "Lori Pettit Rieman, Esq., District Attorney of Cattaraugus County" and her office is part of, including, but not limited to Kelly Balcom and Elizabeth Ensell. See exhibit C.

WHEREFORE, the alleged defendant respectfully request, pursuant to the constitution of the United States, The New York State Constitution, CPL § 210.20, 210.40, to deny the peoples motion and dismiss the "charges" in the interests of justice under these circumstances and if such relief be not granted, the second alternative that CPL § 30.30 be granted for the peoples failure to prosecute in a timely manner, within 90 days as mandated and to deny the peoples motion, and if such relief be not granted, the third alternative that CPL §255.20 via CPL §170.15 be granted for the peoples failure to change venue in a timely manner, within 45 days as mandated and to deny the peoples motion, and if such relief be not granted, the fourth alternative Pursuant to the Uniform Rules of the New York State Trail Courts 22 NYCRR 200.15 and County Law § 701 be granted, on the ground that all proceedings leading up to and including the original allegations are tainted by that accusers and the appearance of impropriety, and actual impropriety, and a pattern of prosecutorial misconduct on the part of "Lori Pettit Rieman, Esq., District Attorney of Cattaraugus County" and her office, including, but not limited to Kelly Balcom and Elizabeth Ensell, from the investigation and prosecution of this matter and to seek the appointment of a Special District Attorney under these circumstances and to deny the peoples motion and if such relief be not granted, and for such other and further relief as this Court may deem fair, just and proper in the interests of justice under these circumstances.

Signed under the penalties of divine judgment this _____ day of _____, _____

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XXXXXXXXXXXXXXX