STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

STEPHEN PHILLIP ROMINE

Plaintiff-Appellant,

Albany County Clerk
Index No.: 528147

-Against-

JAMES P. LAURITO and STEVEN V. LANT

Defendants-Respondents,

****

APPELLANTS BRIEF

****

Stephen Philip Romine
8 Fitzsimmons Lane
Pro Se, Pro Per, Sui Juris Litigant
Woodstock, New York 12498
(845) 532-5120
pilgrimpeace@gmail.com

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

STEPHEN PHILLIP ROMINE

Plaintiff-Appellant,
-Against-

Index No.: 528147

JAMES P. LAURITO and STEVEN V. LANT

Defendants-Respondents,

Table of Contents For Appellant's Brief

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

STEPHEN PHILLIP ROMINE

Plaintiff/Appellant,

Index No.: 528147

-Against-

JAMES P. LAURITO and STEVEN V. LANT

Defendants/Respondents,

Table of Authorities

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

STEPHEN PHILLIP ROMINE
Plaintiff/Appellant,

-Against-

Index No.: 528147

JAMES P. LAURITO and STEVEN V. LANT
Plaintiff/Respondents,

PRELIMINARY STATEMENT

This is an appeal by plaintiff/appellant Stephen Phillip Romine, from an decision/order entered on February 27, 2017, in the Supreme Court, Ulster County, State of New York. The aforementioned Court granted defendants/respondents, James P. Laurito and Steven V. Lant, a summary judgment dismissal against the plaintiff/appellant Stephen Phillip Romine's claims made in 2nd amended complaint (R55). Those claims were abuse of right, violations of inalienable rights, negligence creating a private nuisance, trespassing, breach of contract, fraud, violation of international human rights by violating the Nuremberg Code for carrying out an experiment on the plaintiff/appellant and the public. Plaintiff/appellant Stephen Phillip Romine was and is representing himself pro se, pro per and sui juris.

Plaintiff/appellant has been suffering undue hardship living without

electrical service for the past 6 years and this case is being brought to obtain relief for the plaintiff/appellant.

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

STEPHEN PHILLIP ROMINE
Plaintiff/Appellant

-Against-

Index No.:
528147

JAMES P. LAURITO and STEVEN V. LANT
Defendants/Respondents

QUESTIONS ON APPEAL

POINT I:

DID ULSTER COUNTY SUPREME COURT GRANT A PREMATURE SUMMARY JUDGEMENT DECISION/ORDER TO DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT?

Point II:

DID ULSTER COUNTY SUPREME COURT VIOLATE THE PLAINTIFF/APPELLANT STEPHEN PHILLIP ROMINE 'S U.S. CONSTITUION'S 14th AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW BY DENYING HIS DISCOVERY DEMANDS?

Point III:

DID ULSTER COUNTY SUPREME COURT ERR AND GIVE THE APPEARANCE OF BIAS AGAINST PLAINTIFF/APPELLANT STEPHEN PHILLIP ROMINE AND FAVOR

DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT?

Point IV:

WHETHER ULSTER COUNTY SUPREME COURT WAS TOUCHED BY FRAUD WHEN DECIDING TO GRANT SUMMARY JUDGEMENT MOTION?

Point V:

WHETHER THE ULSTER COUNTY SUPREME COURT ERRED IN CITING PRIMARY JURISDICTION WHEN GRANTING SUMMARY JUDGMENT FOR THE DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT.

Point VI:

WHETHER ULSTER COUNTY SUPREME COURT OVERLOOKED THE EXCEPTIONS TO "FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES" WHEN GRANTING SUMMARY JUDGEMENT FOR THE DEFENDANTS/JAMES P. LAURITIO AND STEVEN V. LANT?

Point VII:

WHETHER THE ULSTER COUNTY SUPREME COURT ERRED IN CITING COLLATTERAL ESTOPPEL WHEN GRANTING SUMMARY JUDGMENT FOR THE DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT?

Point VIII:

WHETHER ULSTER COUNTY SUPREME COURT GAVE THE APPEARANCE OF BIAS BY OVERLOOKING THE EVIDENCE OF BREACH OF CONTRACT AND LIABILITY OF THE DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V LANT?

Point IX:

WHETHER ULSTER COUNTY SUPREME COURT ERRED BY OVERLOOKING SOCIETAL INTEREST BY GRANTING SUMMARY JUDGMENT FOR DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT?

Point X:

WHETHER THE PLAINTIFF/APPELLANT WAS A VICTIM OF FRAUD ON THE COURT?

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

STEPHEN PHILLIP ROMINE
Plaintiff/Appellant

-Against-

Index No.:
528147

JAMES P. LAURITO and STEVEN V. LANT
Defendants/Respondents

Statement of Facts

Overview of the Complaint.

Stephen Phillip Romine filed a 2nd amended complaint with the New York State Supreme Court in Ulster County September 21, 2016 against James P. Laurito and Steven V. Lant (R55 to R62). The complaint cited abuse of right, trespassing, negligence, continuing a private nuisance, fraud, breach of contract, constitutional violations, international human right violations and violating the Nuremberg Code by doing human experimentation without informed consent from the public.

Factual background.

In 2005 the N.Y.S. Public Service Commission approved the deployment of the GE I-210 smart utility meters (R80 to R83) with out proper notice of the public and thus no input from the public on that decision (R633). The smart utility meter was installed on the home of Mr. Romine in 2008 without his informed consent (R494 top of paragraph, R660 Item #2). Mr. Romine became aware of the smart meter on his home in 2013 when his significant other, Ms. Nicole Nevin became very ill immediately upon moving in with Mr. Romine (R494 top paragraph R435 ,R663 #12). After doing much diligent research and discovering smart meters emit a class 2B toxin that can cause adverse biological effects (R515 to R563), Mr. Romine initially requested, and then eventually demanded, that Mr. Laurito and Mr. Lant order the smart meter removed from his home and replaced with a time tested safe analog meter that every neighbor has on his street has except him (R660 to R668). Mr. Romine gave informed "proper notice" to Mr. Laurito and Mr. Lant with a notarized lawful notice sent certified mail on March 21, 2013 (R660), that the smart meter digital transmitting meter was making Ms. Nicole Nevin ill and that if it was not removed in two weeks he would be forced to remove it and replace using his inalienable rights to self-defense protected in the U.S. Constitution (R663 Item #15). Mr. Romine then sent letters on, April 9, 2013 (R315), May 16, 2013 (R422), June 25, 2013 (R436 to

R438 and September 12, 2013 (R446) that included a complete sets of the lawful notices to Central Hudson under the leadership and supervision of Mr. Laurito and Mr. Lant.

Mr. Laurito and Mr. Lant refused to accommodate Mr. Romine's demands, which was simply to supply a time tested biologically safe analog utility meter , that all eight of Mr. Romine's neighbors have and still have 6 years later. Mr. Laurito and Mr. Lant would not respond to Mr. Romine's lawful notices, or even acknowledge them, which they claimed they had no knowledge of even though the aforementioned lawful notices were sent on multiple occasions, certified mail directly to them and were signed by their appointed representatives as having been received (R667.5, R668, R671). Mr. Romine waited beyond the lawful notice stipulated 14 days and didn't make a move till two months beyond the March 21, 2013 lawful notice mailing. Mr. Romine could wait no longer as Ms. Nicole Nevin experienced a mini-stroke standing 10 feet in front of the smart meter for which she was hospitalized for two days (R365 to R375) forcing Mr. Romine to remove the offending smart transmitting meter himself (R496 to R497) and replace it with a time tested biologically safe analog utility meter he purchased online (R376). Central Hudson representatives showed up to the residence of Mr. Romine four days later and cut the service entrance wires at the utility pole

leaving Mr. Romine's residence without electrical service while Ms. Nevin was recuperating from the stroke (R497 bottom paragraph, R505). In the interim of two weeks Mr. Romine observed several of his own chronic health problems completely disappear when the smart transmitting utility meter was removed (R498 top paragraph). In spite of the adverse biological health effects being reported to Mr. Laurito and Mr Lant, they demanded through their legal counsel, Paul Colbert (R86), that Mr. Romine accept the smart transmitting utility meter if he wants his electrical service resumed (R86). Mr. Romine and his significant other, Nicole Nevin, have been forced to live with much adversity without electrical service from the electrical monopoly Central Hudson for 6 years, because he won't accept a smart utility meter, protecting Ms. Nevin from more harm as stated in the lawful notices (R660 to R668). Meanwhile, all of Mr. Romine's 8 neighbors on his street, to the present day have been enjoying electrical service using time tested safe analog utility meters. Central Hudson claims they do not have access to analog meter anymore, meanwhile periodically they are constantly coming into possession of good used analog meters of their own when servicing upgrades and renovations which they have not denied in any of their documents. The PSC has stated there is no rule, regulation or law that would prohibit Central Hudson from using their own good used analog

meters (R787), or a refurbished/remanufactured analog meter (R789), which they could have their own meters refurbished or supplied from two manufacturers nationwide (R905 to R923).

The attempted steps toward resolution.

Mr. Romine and Ms. Nevin both filed a complaint with the NYS Public Service Commission (PSC) requesting their electrical service be resumed with a time tested safe analog meter (R672). Their request was denied without due process of law (R673 to R675). Mr. Romine then filed an application for an Informal Hearing with the PSC but was denied claiming they did not have the authority to meet Mr. Romine's two requests and was instructed by the PSC to seek help elsewhere, such as his "local government or the Federal Communications Committee" (R676, R677 to R679). Mr. Romine eventually filed a complaint on May 19, 2016 and then a 2nd amended complaint with the NYS Supreme Court in Ulster County September 21, 2016 (R55 to R62).

Overlooking the 500 pages of evidence Mr. Romine had submitted in his Opposition to Summary Judgment reply (R462 to R493), and denying him any discovery while his adversaries obtained discovery (R687 to R688), the aforementioned Court granted a summary judgment order to Mr. Laurito and Mr. Lant (R10 to R20). Mr. Romine is seeking to reverse, vacate or annul

that summary judgment order obtained without due process, overlooking abundant uncontroverted evidence and undisputed facts, and misapprehending law.

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

STEPHEN PHILLIP ROMINE
Plaintiff/Appellant

-Against-

Index No.:
528147

JAMES P. LAURITO and STEVEN V. LANT
Defendants/Respondents

QUESTIONS, FACTS & DISCUSSION PRESENTED ON APPEAL

POINT I

DID ULSTER COUNTY SUPREME COURT GRANT A PREMATURE SUMMARY JUDGEMENT DECISION/ORDER TO DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT?

A-Factual Background:

The plaintiff/appellant answered the 87 interrogatory questions of the defendants/respondents who then filed a motion for summary judgment prior to the plaintiff/appellant serving his 152 interrogatory questions on the defendants/respondents. Ulster County Supreme Court issued a stay on all

discovery demands instructing the defendants/respondents they did not have to answer the plaintiff'/appellant's discovery demands.

B-Discussion

1-The summary Judgment motion was premature, as the plaintiff/appellant had not obtained any discovery before the motion for summary judgment was granted in favor of the defendants/respondents. New York case law states:

"A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment". Harvey v. Neals 61 AD3d 935 [2009], Valdivia v. Consolidated Resistance Co. of Am, Inc. 54 AD3d 753, Hirsch v. Greenridge Assoc. LLC. 26 AD3d 753, Afzal v. Board of Fire Commrs. Of Belmont Fire District 23 AD3d 507,508 [2009], Venables v. Sagna, 46 AD3d 672 [2007], Amico v. Melville Volunteer Fire Co.Inc 39 AD3d 784 [2006], Fazio v. Brandywine Realty Trust, 29 AD3d 939 [2006], Juseinaski v. New York Manufacturers & Traders Trust v. North Fork Bank 467 [2005], Rengifo v. City of New York, 7 AD3d 773 [2004], Urcan v. Cocarelli, 234 AD2d 537 [1996], Groves v. Land's End Hous. Co. 80 NY2d 978 [978], *Campbell v. City of New York*, 220 AD2d 476 [2 Dept. 1995]; *Elliot v. County of Nassau*, 53 AD3d 561 [2 Dept. 2008],

Ulster County Supreme Court decision cited and quoted Jones v. American Commerce Ins. 92 AD3d 844 [2nd Dept. 2012], which stated:

"CPLR 3212{f} permits a party opposing summary judgment to obtain further discovery when it appears that facts supporting the position of the opposing party exist but cannot then be stated".

The Ulster County Supreme Court misapprehends that the word "*further*" in cited quote indicates that the Appellate Division instruction is relevant to where some discovery has already been made. Further discovery is discovery made after some discovery has already been obtained. The plaintiff/appellant obtained no discovery before summary judgment was granted for the defendants/respondents and a stay was ordered on discovery.

2-Furthermore the plaintiff/appellant has supplied 500 pages of exhibits with facts to support his claims, which the Ulster County Supreme Court overlooked, and did not mention any of them in its Feb. 14, 2018 decision/order granting summary judgment. It is clear that U.S. Supreme Court has held regarding granting a summary judgment there should be

"*no doubt that the plaintiff can prove no set of facts in support of his claim*"(Haines v. Keaner, et al. 404 U.S. 519,92 s. Ct. 594,30 L. Ed. 2d 652) *"We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'* Conley v. Gibson, 355 U.S. 41,45 46 (1957) See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944),
(see exhibits A through Z & AA through AK pages R494 to R922).

3-The plaintiff/appellant has submitted as an exhibit a Freedom of Information Law request response from the New York State Public Service Commission (hereafter called the PSC) documenting that Central Hudson Gas and Electric Corporation (hereafter called CenHud) under the leadership

of the defendants/respondents could have supplied the plaintiff/appellant a used CenHud analog meter taken off of another customers home who had an upgrade, renovation or any other reason as long as the analog meter was still accurate (R787). The plaintiff/appellant could have been supplied with an analog meter when it was first requested and had his electricity restored and not forced to live a sub-standard life for over 6 years. This dispute could have been easily settled had CenHud, under the leadership of the defendants/respondents, not committed fraud claiming analog meters are no longer available and that the plaintiff/respondent must have a microwave radiation emitting digital meter (R675 paragraph 2, R785). This undisputed PSC fact has been overlooked and not even mentioned or considered by the Supreme Court of Ulster County in its Feb. 14,2018 decision/order. The plaintiff/appellant has also presented facts of 2 companies nationwide that remanufacture ANSI C12 approved original equipment analog utility meters that are being used by utilities in twelve states including California, Maine and Vermont (R789, R905 to R921, R922).

The Ulster County Supreme Court overlooked this information and did not mention it in its Feb.14, 2013 decision.

4-The Ulster County Supreme Court has erred by granting summary judgment to the defendants/respondents when material facts exist to support the plaintiff/appellants claims such as:

a- Radiation from meters is harmful: Studies and letters from radiation experts (R510 to R563, R577 to R632, R689 to R739, R771 to R777, R799 to R845 (R515.5, R576)

b- 2 manufacturers who remanufacture ANSI approved analog meters (R905 to R921, R922).

c- Official PSC documents proving used Central Hudson analog utility meters are acceptable as an-opt out choice (R787).

d- Affidavit and paper of New York State Public Health Physician Dr. David Carpenter affirming the harm of the radiation emitted from smart digital meters. Letter is co-signed by 50 radiation experts (R515 to R521).

e- List of Utilities that use re-manufactured ANSI C12 approved analog meters (R783).

f- EPA document stating the FCC guidelines, which the PSC uses to say digital meters are safe, are not to be trusted for biological safety (R573 to R574, R705 to R739

g- Official PSC documents declaring they do not have the authority to grant the relief the plaintiff sought (R677 paragraph 1).

h- Affidavits of CenHud's power customers who like the plaintiff never gave physical informed consent to the Utility to install a microwave emitting device on their homes (R635 to R656)

i-Official PSC documents declaring used analog utility meters can be used by CenHud (R787).

j-Notarized document from meter remanufacturer declaring that the remanufactured analog meters have no aftermarket parts added in their remanufacturing process demonstrating no need for further PSC approval because said meters were remanufactured (R789 "with regard to question #1", R922)

k- Official PSC document showing there were 0 "Public Comments" on the PSC deliberation page when the digital smart meters were originally approved by the PSC, documenting there was no public participation (R633, R80)

l- Official letter from the town of Woodstock town supervisor, Jeremy Wilber, urging Central Hudson, under the supervision of the defendants/respondents, to stop "installing digital smart meters by stealth"(R657to R658)

m- Lawful notices sent to the defendants/respondents warning them of liability for not replacing the digital smart meters installed without residents

consent, with an analog utility meter, and terms and conditions for failure to do so and notice of default (R660 to R671)

5- *"Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law". Alvarez v. Prospect Hosp.,* 68 N.Y.2d 320, 324 [1986]; *Andre v. Pomeroy,* 35 N.Y.2d 361, 364 [1974].

"The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact". Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 [1985]; CPLR 3212[b].
"If the movant fails to make such a showing, then the motion must be denied, regardless of the sufficiency of the opposing papers See, Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735, 853 N.Y.S.2d 526, 883 N.E.2d 350 (2008.)"

The defendants/respondents did not provide sufficient evidence in admissible form demonstrating the absence of material issues of fact therefore the motion should have been denied. The plaintiff/appellate has supplied much evidence in the exhibits submitted with the opposition to summary judgment motion (see exhibits A to AK-R494 to R922).

"*If a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact, which require a trial of the action*". *See Zuckerman v. City of New York*, 49 NY2d 557 [1980]; *SRM Card Shop v. 1740 Broadway Associates*, 2 AD3d 136 [1 Dept. 2003]; *Romano v. St. Vincent's Medical Center of Richmond*, 178 AD2d 467 [2 Dept. 1991].
See, Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735, 853 N.Y.S.2d 526, 883 N.E.2d 350 (2008).

The plaintiff/appellate has supplied much evidence in the exhibits submitted with the opposition to summary judgment motion, which the Ulster County Supreme Court has overlooked. The Ulster County Supreme Court is mandated to view the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence. See, Negri v. Stop & Shop, Inc., 65 N.Y.2d 625, 626, 491 N.Y.S.2d 151, 480 N.E.2d 740 (1985) (R494 to R922).

POINT II

DID ULSTER COUNTY SUPREME COURT VIOLATE THE PLAINTIFF/APPELLANT STEPHEN PHILLIP ROMINE 'S U.S. CONSTITUION'S 14th AMENDMENT RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW BY DENYING HIS DISCOVERY DEMANDS?

A- Factual Background:

Defendants/respondents demanded and received answers to 87 multi-part interrogatory questions from plaintiff/appellant. Plaintiff/appellant in turn demanded answers to 152 interrogatory questions from the two defendants/respondents but not before defendants/respondents filed a

summary judgment motion. The Ulster County Supreme Court issued a stay order on discovery before the plaintiff/appellant had obtained any discovery from the defendants/respondents. Ulster County Supreme Court decision cited and quoted Jones v. American Commerce Ins. 92 AD3d 844 [2nd Dept. 2012], which declares:

"CPLR 3212{f} permits a party opposing summary judgment to obtain further discovery when it appears that facts supporting the position of the opposing party exist but cannot then be stated".

B-Discussion:

1-The plaintiff/appellant was put at a disadvantage and unequal as the defendants/respondents did not have to prove any facts existed before they made discovery demands and were allowed to ask any questions they wanted to, and essentially go on a fishing expedition. The plaintiff answered all their 87 questions. On the contrary the limiting of the plaintiff/appellant's ability to secure information through discovery to oppose the summary judgment motion by mandating the plaintiff needs to prove such facts exist before discovery is demanded is not equal protection under the law and is not "*fundamental fairness*" which U. S. Supreme Court stated must be present.

U.S. Supreme Court has held:

"Reciprocal discovery is required by fundamental fairness, and that although the statute does not require it, the State might grant discovery in a given case". Wardius v. Oregon, 412 U.S. 470 (1973)

POINT III

DID ULSTER COUNTY SUPREME COURT ERR AND GIVE THE APPEARANCE OF BIAS AGAINST PLAINTIFF'/APPELLANT STEPHEN PHILLIP ROMINE AND FAVOR DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT ?

A-Factual Background:

1-Plaintiff /appellant Stephen Phillip Romine did file a complaint with the NYS Public Service Commission that requested two issues to be resolved with Central Hudson Gas and Electric Corporation (Hereafter called CenHud) his electric utility service provider. The first request was to provide an analog electromechanical utility meter, herein called an analog meter, as all plaintiff/appellant's neighbors on his street had in 2013 (and all still have) and to reconnect the plaintiff/appellant's electrical service so he and his partner Nicole Nevin could resume their normal life. For two months previous to the electrical service disconnect, the plaintiff/appellant and his partner, Nicole Nevin, had been contacting CenHud and sending lawful notices demanding the removal of the smart digital utility meter that was on their home plaintiff/appellant claimed was causing adverse biological health effects (R494 to R509). Then after two months of complaining to CenHud,

the plaintiff/appellants partner, Nicole Nevin, had a mini stroke standing 8 to 10 feet in front of the smart meter. Nicole Nevin was hospitalized for two days at Northern Dutchess Hospital and returned home with a hospital warning that she was at high risk for a major stroke in the next 90 days, which could possibly mean severe disability or even death (R364 to R376). The plaintiff/appellant and Ms. Nicole Nevin did do due diligence and discovered medical research that documents chronic exposure to low level microwaves, which is what is emitted from smart digital utility meters, could cause neurological and cardiac problems (R800 4th horizontal column down). Plaintiff/appellant could no longer wait on CenHud to switch out the smart digital meter and was forced to go into self-defense mode to protect his partner and removed the smart digital utility meter replacing it with a radiation-free ANSI approved remanufactured electromechanical analog utility meter. Plaintiff/appellant sent the CenHud a certified/priority package via US Mail, with their smart digital utility meter. Four days transpired with no problems and electrical service operating properly when Utility representatives arrived and the electrical service to plaintiff/appellant 's home was disconnected at the Utility pole and is still disconnected 6 and years later. CenHud did not even look at the analog meter replacement and did no testing to see if the meter was operating properly. The demand for an

analog meter for health and medical reasons, and the reconnection of electrical service has been steadfastly denied, by CenHud under the leadership of the defendants/respondents and the current leadership. July 16, 2013 the PSC made an administrative decision (R673 to R675), without the basic elements of due process, against the plaintiff/appellants only two demands. Upon application of the plaintiff/appellant for an informal hearing regarding the July 16th, 2013 decision, the NYS Public Service Commission denied the application. The PSC informal hearing officer Ramona Munoz, asserted it had no authority to grant the relief sought by the plaintiff/appellant, which was to assure an analog meter would be supplied, therefore electrical service will not be restored without accepting a transmitting ERT digital smart utility meter citing 16 NYCRR 12.5(a)(2) statute (R672, 673 to R675, R676, R677 to R679). On May, 19, 2016 plaintiff/appellant filed a lawsuit with the Ulster County Supreme Court claiming CenHud had been committing, abuse of right, multiple frauds, breach of contract, continuing a private nuisance through negligence and fraud, violating his inalienable rights protected by the US Constitution, violating 42USC section 1983, violating his international human rights and violating the Nuremberg Code (R320, R322 to R326).

2-On April10, 2017 the plaintiff/appellant served a Demand for Interrogatories and a Notice To Take Deposition from defendant/respondents. The Ulster County Supreme Court issued a stay on discovery, April 13, 2017 (R687 to R688). The Ulster County Supreme Court defended it's "so-ordered" stay on discovery on the bottom of pages 5 and top of page 6 in it's Feb. 14, 2108 decision/order (R15) granting summary judgment by proclaiming "the defendants are not in possession of any of the information the plaintiff seeks". The Ulster County Supreme Court listed 8 papers it considered when arriving at its Feb. 14, 2018 decision/order granting summary judgment for the defendants/respondents (R20). The plaintiff/appellant's Demand for Interrogatories was not included in "papers considered" and no deposition questions have ever been made available to the Ulster County Supreme Court by the plaintiff/appellant.

3-The plaintiff/appellant submitted an exhibit of an official PSC response to a Freedom of Information request with his Opposition to Summary Judgment motion (OSJM) (R784 to R790, R487). The response declared that there is no PSC rule, law or regulation that prohibits CenHud from supplying a used analog utility meter that has been taken off of it's customers homes due to an upgrade, renovation or any other reason as long

as the meter is still accurate. CenHud has a customer base of 300,000 and half of them still have analog meters.

B-Discussion:

1-The Ulster County Supreme Court summary judgment decision/order of Feb, 14, 2018 overlooked the plaintiffs claims of multiple fraud, breach of contract, violations and continuing a private nuisance, constitutional violations, 42USC 1983 violations, international human right violations, Nuremberg Code all of which are in the plaintiffs Ulster County Supreme Court complaint and not in the NYS Public Service Commission Complaint. The plaintiff/appellant complained to the NYS Public Service Commission about needing an analog electromechanical meter and having his electrical service restored and the PSC stated in an official letter it "did not have the power to grant the relief you are requesting." The plaintiff/appellant was requesting, specifically to restore electricity and direct the utility to install an analog type meter"(R677 paragraph1).

First of all the July 16, 2013 decision was made by consumer specialist Karen Anderson who is not an officer of the PSC quasi-jurisdictional hearing court. Her decision was an administrative decision and cannot be

considered litigation, as there was no hearing with the necessary elements of due process.

The Ulster County Supreme Court erred by overlooking the plaintiff/appellant's cited complaints and gave the appearance of bias by claiming breach of contract, multiple counts of fraud, continuing a private nuisance based on continuing fraud and negligence, constitutional violations, international human right violations, violation of the Nuremberg Code, and violating US Code 42 section 1983 are the "same claims" (R16 top of page) made by plaintiff/appellant to the NYS Public Service Commission. The administrative action of the PSC did not consider any of those issues nor are any of them mentioned in the official PSC complaint:

a- The July 16, 2103 administrative action of the PSC is not central to the plaintiff's claims of breach of contract. The defendants/respondents agreed to a contract by silence and acquiescence as outlined in the classic legal reference Restatement of Contracts 2nd chapter 69, "Acceptance by Silence". The PSC administrative action affects that claimed contract in no way.

b- The July 16, 2013 PSC administrative action of was not central to the plaintiff/appellants claims of fraud and continuing a private nuisance because of fraud and negligence as the plaintiff discovered the fraud after

the July 16, 2103 administrative action and was not mentioned in the official communications of the PSC (R672 to R679).

c- The July 16, 2013 PSC administrative action was not central to the plaintiff's claims of constitutional and 42USC 1983 violations as the plaintiff/appellant did not seek relief for that from the PSC and was only trying to get electrical service restored with an analog meter (R676).

d- The July 16, 2013 administrative action of the PSC was not central to the plaintiff's claim of violating his International Human Rights as the plaintiff/appellant has a right to effective remedy and the PSC ruling stated it "did not have that power to grant the relief " so no relief was granted. The plaintiff/appellant has a right to seek relief in a higher court.

e- The July 16, 2103 administrative action of the PSC was not central to claim of violating the Nuremberg Code restriction of conducting an experiment on the public including the plaintiff/appellant and was not part of the official PSC complaint (R575 to R576, R322 to R326).

The plaintiff/appellant at the time of the submission of the Public Service Commission complaint only sought the relief of having his electrical service back on with an analog meter and nothing else. At this time the

plaintiff/appellant seeks monetary relief for being forced to live a substandard life with much adversity for 6 years because of the refusal to reconnect with an analog utility meter, and has filed two lawsuits (#16-1351 & #17-1284) with the Ulster County Supreme Court, with claims that were not central to the official PSC complaint filed in 2013 that Ulster County Supreme Court claims as having already been "litigated" (R17 to R18)). The Ulster County Supreme Court erred by declaring on the bottom of page 6 and top of page 7 of its Feb. 14, 2018 Decision/Order" (R16) "it is clear that the plaintiff's causes of action all arise from the same claims he made to the Public Service Commission". None of the aforementioned causes of action ("a" through "e") were mentioned in the official PSC complaint and therefore are not the "same claims" as the Ulster County Supreme Court proclaimed. The July 16, 2103 ruling (R673 to R675) the Ulster County Supreme Court has cited is an administrative action, not a judicial decision, and does not have jurisdiction to blanket all civil violations that may have occurred to the plaintiff/appellant. The PSC admits in *In Re Transgas Energy Sys. LLC*, 01-F-1276, 2003 WL 22357809 (Oct. 16, 2003): "Without jurisdiction, no court or any quasi- judicial body can proceed, as to do so could result in a dismissal." It is for that reason the PSC Informal

Hearing officer, Ramona Munoz, stated in the official PSC letter dated March, 2014,

*"an informal hearing officer is without power to grant the relief you are requesting" (*see exhibit U*).*
According to 16NYCRR 12.1(b):

"Any utility customer may file a complaint with, or ask a question of, the commission relating to his or her electric, gas, steam, telephone or water service, when the customer believes he or she has not obtained a satisfactory resolution of a dispute with a utility regulated by the commission. Complaints may involve bills for utility service, deposit request, negotiations for deferred payment agreements, service problems, and other matters relating to utility service. "

It should be clear the plaintiff/appellant's Ulster County Supreme Court complaint claims do not fall under the jurisdiction of the PSC and were never litigated.

The Ulster County Supreme Courts main function when determining a summary judgment motion is issue identification, not issue determination (Barr v. County of Albany). The Ulster County Supreme Court in effect determined there is no fraud, no breach of contract, no continuing private nuisance, no constitutional violations, no international rights violations, no Nuremberg Code violation, and no violation of 42 US Code 1983 without having a trial and overlooking the 500 pages of exhibit documentation the plaintiff/appellant has supplied with his Ulster County Supreme Court complaint. The Ulster County Supreme Court based it's decision on the

NYS Public Service Commissions (PSC) ruling when in fact the PSC only issued an administrative ruling, with no hearing, and when a hearing was applied for by the plaintiff/appellant, the PSC stated they don't have the authority to grant the relief the plaintiff/appellant sought. The PSC has no authority to adjudicate the aforementioned violations the plaintiff/appellant has claimed. The Ulster County Court's Feb. 14, 2018 decision/order has created the appearance of bias, by determining no issues of facts exist, when there is abundant evidence in the many exhibits that documents otherwise and has been submitted, yet overlooked by the Supreme Court located in Ulster County. On the contrary New York case law states:

"*To determine whether there are any factual issues, we view the evidence in a light most favorable to the nonmoving party and give that party the benefit of every favorable inference*"
(McKenna v. Reale NY [137 AD3d] 2016, Boston v.Dunham, 274 AD2d 708, 709 [2000]

2-The plaintiff/appellant served a Demand for Interrogatories and Notice To Take Deposition April 10, 2017 (R956-A958) The deposition questions were not known to anyone, let alone the Ulster County Supreme Court, except the plaintiff/appellant himself. There is no way that Court could proclaim the defendants/respondents do not possess the information the plaintiff/appellant seeks in a deposition without knowing what the deposition

questions are. The Court making such a claim is creating the appearance of impropriety, prejudice and bias.

3-The Ulster County Supreme Court has repeated the claim in it's Feb.14, 2018 decision that analog utility meters are not available anymore echoing the defendants/respondents misleading statements (R11). The plaintiff has demonstrated with a FOIL response from the PSC that used analog utility meters become available when they are removed from a customer's home for an upgrade, renovation or any other reason (R787). There is absolutely no reason the plaintiff/appellant could not have been supplied with a used CenHud analog utility meter under the executive leadership of the defendants/respondents. The Ulster County Court has overlooked this important piece of evidence and gives further appearance of impropriety, prejudice and bias.

"*The existence of actual prejudice or bias is irrelevant when an appearance of impropriety has been created*". See, e.g., In re Schiff, 83 N.Y.2d 689, 694, 613 N.Y.S.2d 117, 119 (1994), Merola v. Walsh, 75 A.D.2d 163, 166, 429 N.Y.S.2d 11, 13 (1st Dept1980) , Leombruno V. Leombruno, 150 A.D.2d 902, 902, 540 N.Y.S.2d 925, 926 (3d Dep't 1989), In re Estate of Wiggins, 218 A.D.2d 904, 904, 630 N.Y.S.2d 155, 156 (3d Dep't 1993), In re Cunningham, 57 N.Y.2d 270, 274-75, 456 N.Y.S.2d 36, 38 (1982), People v. Corelli, 41 A.D.2d 939, 939, 343 N.Y.S.2d 555, 556 (2d Dep't 1973), People v. Zappacosta, 77 A.D.2d 928, 929, 431 N.Y.S.2d 96, 98 (2d Dep't 1980)

POINT IV

V WHETHER ULSTER COUNTY SUPREME COURT WAS TOUCHED BY FRAUD WHEN DECIDING TO GRANT SUMMARY JUDGEMENT MOTION?

A-Factual Background:

1-The Ulster County Supreme Court declared on bottom of page 2 and top of page 3 of its Feb.14, 2018 decision/order that stating:

"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". (R11)

2-Plaintiff/appellant obtained from the PSC through a Freedom of Information Law request an official response stating that analog utility meters that are still accurate that CenHud removes from any of it's customers homes because of an upgrade, renovation or other reason can be reinstalled on another customers home and that there is no PSC law regulation or rule that prohibits that replacement option (R787).

3-The plaintiff/appellant has supplied the Ulster County Supreme Court with many peer-scientific medical studies and papers demonstrating the biological harm of the chronic exposure to microwave radiation (R510 to R563, R576 to R632, R689 to R739, R771 to R777, R799 to R845). Microwave radiation and Voltage Transients is what is emitted from transmitting and non-transmitting digital utility meters. The "ERT" smart meter CenHud, has attempted to force on the plaintiff/appellant

home, under the executive leadership of the defendants/respondents, emits pulsing ENF radiation every few seconds 24 hours a day (R510 to R511, R515 to R521, R539 to R563).

4- The defendants/respondents, colluding with the PSC, claim "there are numerous medical scientific studies" that documents EMF emitting digital utility meters do not cause biological harm and pose no threat to human health, yet they have submitted absolutely no peer-reviewed medical scientific studies that had live subjects studied over a reasonable period of time. Instead they submit non peer-reviewed industry reports done by engineers who are not health experts (R181). Absolutely no peer-reviewed scientific medical studies have been submitted by defendants/respondents, in case # 16-1351, or by the PSC in any of their decisions.

B-Discussion:

1- The Ulster County Supreme Court Feb.14, 2018 decision/order (R10) parroted the defendants/respondents false claim that analog meters are not available: "such meters were no longer being manufactured and Central Hudson does not stock any analog meters" fraudulently inferring that analog meters are not available. The Court's statement perpetuates fraud, as the plain fact is that used analog meters that are still perfectly functional and accurate could have been made available with the stroke of a pen as they get

removed from CenHud's customers homes and replaced with digital smart meters. The PSC has issued an official response to a Freedom of Information Law (FOIL) request that stated there is no rule, law, or regulation that prohibits the use of a used analog meter taken off a CenHud's customer home because of an upgrade, renovation or any other reason so long as the meter is still accurate (R787). The Ulster County Court has been provided with that official PSC FOIL response but once again overlooks a very important piece of evidence submitted as an exhibit with the plaintiff/appellant's Opposition to Summary Judgment and yet makes no mention of it in it's Feb. 14, 2018 decision/order. There is no justifiable reason that the plaintiff/appellant could not have been supplied with a good used analog meter from CenHud, under the leadership of the defendants/respondents. His nightmare of being off the grid for 6 years would have been avoided and possibly the stroke experience of his partner, Ms. Nicole Nevin, had a used analog meter been supplied when first requested and then demanded out of medical need.

2- The fact that the defendants/respondents cannot back up the biological safety of digital transmitting meters and non-transmitting meters with any peer-reviewed scientific medical studies to support that claim is the commission of fraud. Instead the defendants/respondents cite the NYS

Public Service Commission (PSC) assertion that said digital utility meters are safe. The PSC cannot assert biological safety without medical peer-reviewed studies that have examined subjects exposed to smart meter radiation and have failed the public whom they purportedly serve.

U. S. Supreme Court declares: *"There are no maxims of the law more firmly established, or of more value in the administration of justice, than the two which are designed to prevent repeated litigation between the same parties in regard to the same subject of controversy; namely, interest rei publicae, ut sit finis litium, and nemo debet bis vexari pro una et eadam causa," and "But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no* adversary trial or decision of the issue in the case. Where the *unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent. UNITED STATES v. THROCKMORTON 98 U.S. 61 (1878).*
See Wells, Res Adjudicata, sect. 499; Pearce v. Olney, 20 Conn. 544; Wierich v. De Zoya, 7 Ill. 385; Kent v. Ricards, 3 Md. Ch. 392; Smith v. Lowry, 1 Johns. (N. Y.) Ch. 320; De Louis et al. v. Meek et al., 2 Iowa, 55.

The fact that the Ulster County Supreme Court has repeated the false claims of defendant/respondent James P. Laurito and his lawyers that they "are not in possession of information the plaintiff seeks", inferring they do not have access to relevant information, that analog meters are not available because they "are no longer manufactured" and that such meters are biologically safe demonstrates at the very least that the Ulster County Court has been touched by fraud.

"Fraud destroys the validity of everything into which it enters" Nudd v. Burrows, 91 U.S. 426, "Fraud vitiates everything it touches" Boyce's Executors v. Grundy, 28 U.S. 3 Pet. 210 (1830), "Fraud vitiates the most solemn of contracts, documents and even judgments" U.S. v. Throckmorton, 98 U.S. 61 (1878).

POINT V

WHETHER THE ULSTER COUNTY SUPREME COURT ERRED IN CITING PRIMARY JURISDICTION WHEN GRANTING SUMMARY JUDGMENT FOR THE DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT?

A-Factual Background:

The plaintiff/appellant filed a complaint with the NYS Public Service Commission (PSC) and it was ruled on, by PSC consumer specialist Karen Anderson July 16, 2013. The ruling was that electrical service will not be restored unless the plaintiff/appellant accept a microwave emitting Encoder Receiver Transmitter (ERT) utility meter on his home (R675 2nd paragraph). The Plaintiff/appellant filed an application for an informal hearing request upon suggestion of the consumer specialist Karen Anderson (R676). What was requested was that the PSC direct the Utility to install an analog type meter on the plaintiff's/appellant's home or allow plaintiff/appellant to use an analog meter purchased elsewhere. That request was denied in an official PSC letter dated March 03, 2014 by PSC informal hearing officer Ramona

Munoz, who stated: "an informal hearing office is without power to grant the relief you are requesting." Ms. Munoz gave the statute documenting her statement: 16NYCRR 12.5(a)(2) " request for an informal hearing may be denied if the relief sought by the customer or utility is beyond the power of the informal hearing officer to provide." Ms. Munoz also stated "any concerns you have regarding rf technology would be better addressed by either the FCC or your local government official" (R678 2nd paragraph) After much deliberation Plaintiff/appellant then filed a complaint with the Supreme Court of Ulster County, part of his "local government", with claims of breach of contract, multiple counts of fraud, continuing a private nuisance due to continuing negligence and fraud, violation of inalienable rights protected by the U.S. Constitution, violating 42 USC 1983, violation of International Human rights and violating the Nuremberg Code, all of which were not mentioned or litigated about in the original complaint plaintiff/appellant filed with the PSC. The Ulster County Supreme Court, citing primary jurisdiction as one of its reasons, handed down a summary judgment decision against the plaintiff/appellant.

C-Discussion:

Primary jurisdiction is different than exclusive jurisdiction. Primary jurisdiction specifies a particular agency be pleaded to first but not

exclusively. The PSC does not have exclusive jurisdiction. (2Richard J. Pierce, Jr., Administrative L. Treatise section 14.1 at 1162 (5ed. 210). Although the PSC has primary jurisdiction over the issue of restoring electricity, to which the plaintiff/appellant initially sought relief, the PSC admitted in it's March 3, 2014 official letter that it did not have the power to direct Central Hudson to supply an analog utility meter (R677). After living 3 years without electrical service, the plaintiff/appellant was subjected to cumulative harm and filed a complaint with the Ulster County Supreme Court making different claims and relief sought that falls under different Jurisdiction than the PSC has. When an administrative agency cannot grant the relief sought it is a persons right to go to the agency that can grant the relief. Citing primary jurisdiction of the PSC by the Ulster County Supreme Court does not apply to plaintiff/appellant's claims of breach of contract, fraud, continuing a private nuisance due to fraud and negligence, constitutional violations, 42USC 1983, violations of international human rights and violating the Nuremberg Code, all of which are not in the jurisdiction of the PSC.(R55, R56, R57).

POINT VI

WHETHER ULSTER COUNTY SUPREME COURT OVERLOOKED THE EXCEPTIONS TO "FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES" WHEN GRANTING SUMMARY JUDGEMENT FOR THE DEFENDANTS/JAMES P. LAURITIO AND STEVEN V. LANT?

A-Factual Background:

The plaintiff/appellant filed a complaint with the NYS Public Service Commission (PSC) and it was ruled on, by PSC consumer specialist Karen Anderson July 16, 2013 (R673 to R675). The ruling was that electrical service will not be restored unless the plaintiff/appellant accepts a microwave emitting Encoder Receiver Transmitter (ERT) utility meter on his home. The Plaintiff/appellant filed an application for an informal hearing request upon suggestion of the consumer specialist Karen Anderson (R676). What was requested was that the PSC direct the Utility to install an analog type meter on the plaintiff's/appellant's home or allow plaintiff/appellant to use an analog meter purchased elsewhere. That request was denied in an official PSC letter dated March 03, 2014 by PSC informal hearing officer Ramona Munoz, who stated: "an informal hearing office is without power to grant the relief you are requesting." Ms. Munoz gave the statute documenting her statement: 16NYCRR(a)(2) " request for an informal hearing may be denied if the relief sought by the customer or utility is beyond the power of the informal hearing officer to provide." Ms. Munoz also stated "any concerns you have regarding rf technology would be better

addressed by either the FCC or your local government official" (R677 to R679).

Plaintiff/appellant then filed a complaint with the Supreme Court of Ulster County, with claims of breach of contract, multiple counts of fraud, continuing a private nuisance due to continuing negligence and fraud, violation of inalienable rights protected by the U.S. Constitution, violating 42USC section 1983, violation of International Human rights and violating the Nuremberg Code. The Ulster County Supreme Court, citing "Failure to Exhaust Administrative Remedies" as one of its reasons, handed down a summary judgment decision against the plaintiff.

B-Discussion:

1- Plaintiff/appellant's claims in his Ulster County Supreme Court complaint are not the same claims in the PSC complaint, which was decided in the March 3, 2014 official PSC letter (R677 to R679), ruling against the plaintiff/appellant's request for his electrical service restored and a written guarantee of an analog utility meter. The PSC admitted it had no power to grant the relief sought and instructed the plaintiff/appellant's " rf concerns would better be addressed to the FCC" or local government" rather than the PSC itself. The plaintiff/appellant seeing the PSC route was futile did not

file an appeal as the PSC officially stated it did not have authority to grant the relief plaintiff sought and cited 16NYCRR(a)(2) " request for an informal hearing may be denied if the relief sought by the customer or utility is beyond the power of the informal hearing officer to provide." After having then endured 3 years of living a substandard life in order to defend himself and his partner Nicole Nevin from the potential harm of an ERT meter, plaintiff/appellant filed a complaint with the Ulster County Supreme Court with claims not part of the PSC's complaint or decided upon by a PSC quasi-jurisdictional hearing. The plaintiff/appellant has every right to seek remedy from another agency when the initial agency approached and filed a claim with, officially proclaims it does not have the power to grant the relief requested.

"[t]he requirement of exhaustion of administrative remedies assumes that adequate relief may be obtained under the [challenged zoning] ordinance" (*Polak v Kavanah,* 48 A.D.2d 840, 840 [1975])
Furthermore the mere existence of other adequate remedies does not *mandate* dismissal" (*Lehigh Portland Cement Co. v New York State Dept. of Envtl. Conservation,* 87 N.Y.2d 136, 140-141 [1995] [emphasis added]; *see* CPLR 3001)

2- New York Appellate Court First Department held: "The exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or when its pursuit would cause irreparable injury" (Coleman v. Daines 79 A.D.3d 554, 913 N.Y.S.2d 83, 2010 - New York Appellate Court Third Department held: The only exceptions are when the agency's action is challenged as unconstitutional,

resort to an administrative remedy would be futile or pursuit of the administrative remedy would cause irreparable injury Matter of Ford v Snashall **A.D.2d 493712 N.Y.S.2d 658**
August 3, 2000 (*Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978])

4- U. S. Court of Appeals held that exhaustion of administrative remedies also may not be required where an agency ordinance or rule is attacked as unconstitutional on its face (*Sedlock v. Bd. of Trs.*, 367 Ill. App. 3d 526 (Ill. App. Ct. 3d Dist. 2006

5-It should be clear from the decision of the official PSC letter of March 3, 2014 that was supported with law and regulations, that it makes abundantly clear that "requiring plaintiff to pursue the asserted administrative remedy would be an exercise in futility, thereby demonstrating a recognized exception to the exhaustion requirement" (*see e.g. Town of Oyster Bay v Kirkland,* 81 A.D.3d 812, 815 [2011], *appeal dismissed* ___ NY3d ___, 2011 NY Slip Op 76237 [2011])

6- PSC official Ramona Munoz cited NYCRR 12.5(a)(2) "A request for an informal hearing may be denied if the relief sought by the customer or utility is beyond the power of the informal hearing officer to provide. In this case, the person requesting the hearing shall be notified as to the reason why a hearing cannot resolve the complaint, and shall be advised of the appropriate authority to address the complaint, if known." Ms Munoz did exactly that when she stated in the March 3, 2014 letter: " rf concerns would better be addressed to the FCC" or your local government official" (R678 paragraph

1) After much consideration Plaintiff/appellant filed a complaint with his local county Supreme Court pro se, pro per, sui juris.

POINT VII

WHETHER THE ULSTER COUNTY SUPREME COURT ERRED IN CITING COLLATTERAL ESTOPPEL WHEN GRANTING SUMMARY JUDGMENT FOR THE DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT?

A-Factual Background:

The plaintiff/appellant filed a complaint with the NYS Public Service Commission (PSC) and it was ruled on, by PSC consumer specialist Karen Anderson July 16, 2013 (R673 to R675). The ruling was that electrical service will not be restored unless the plaintiff/appellant accepts a microwave emitting Encoder Receiver Transmitter (ERT) utility meter on his home. The Plaintiff/appellant then filed an application for an informal hearing request upon suggestion of the consumer specialist Karen Anderson. (R676). What was requested was that the PSC direct the Utility to install an analog type meter on the plaintiff's/appellant's home. That request was denied in an official PSC letter dated March 03, 2014 by PSC informal hearing officer Ramona Munoz, who stated: "an informal hearing office is without power to grant the relief you are requesting." Ms. Munoz gave the

statute documenting her decision: 16NYCRR 12.5(a)(2) "request for an informal hearing may be denied if the relief sought by the customer or utility is beyond the power of the informal hearing officer to provide." Ms. Munoz also stated "any concerns you have regarding rf technology would be better addressed by either the FCC or your local government official" (R677 to R679).

Plaintiff/appellant filed a complaint with the Supreme Court of Ulster County, with claims of breach of contract, multiple counts of fraud, continuing a private nuisance due to continuing fraud, violation of inalienable rights protected by the U.S. Constitution, violating 42USC section 1983, violation of International Human rights and violating the Nuremberg Code, all of which were not mentioned or litigated about in the plaintiff/appellant's original complaint filed with the PSC. The Ulster County Supreme Court, declared on the bottom of page 8 and the top of page 9 of it's Feb. 14, 2018 decision /order (R17 & R18) "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 a quasi-judicial determination when several basic determinations are met: 1) that issues in both proceedings are identical; 2) that the issue in the prior proceeding was actually litigated with a hearing quasi-judicially

decided; 3) that there was a full and fair opportunity to litigate in the prior proceeding; 4) that the issue previously was necessary to support a valid and final judgment on the merits." The Ulster County Supreme Court used collateral estoppel as one of its reasons to grant the summary judgment for the defendant/respondents in its Feb. 14, 2018 decision/order for summary judgment.

B-Discussion:

[c]ollateral estoppel is a flexible doctrine [that is] not to be applied automatically just because its formal prerequisites are met" (People v Fagan, 66 NY2d at 816; see People v Aguilera, 82 NY2d at 30; see also Ashe v Swenson, 397 US 436, 444 [1970])

The plaintiff/appellant claims of breach of contract, multiple counts of fraud, continuing a private nuisance due to continuing negligence and fraud, violation of inalienable rights protected by the U.S. Constitution, violating 42USC section 1983, violation of International Human rights and violating the Nuremberg Code all of which were not mentioned or litigated about in the plaintiff/appellants original PSC complaint.

Collateral estoppel will operate to bar only issues that were actually litigated or necessarily decided in the prior proceeding

(see McGee v J. Dunn Constr. Corp., 54 AD3d 1009, 1009-1010 [2008]; Chisholm-Ryder Co. v Sommer & Sommer, 78 AD2d 143, 144 [1980]).

1- Breach of Contract was claimed because of several sets of notarized/certified lawful notices the plaintiff/appellant sent to the defendants/respondents at their primary place of business. The defendants/respondents defaulted on the terms and conditions in the lawful notices. The lawful notices incorporated principles of contract law expounded upon in the classic legal reference Restatement of Law/Contracts 2nd in chapter titled "Acceptance by Silence". The PSC ruling does not have jurisdiction to decide on contract law issues and it's July 16, 2013 administrative action does not blanket all civil violations the defendants/respondents have caused the plaintiff/appellant (R673 to R675).

2- Multiple counts of fraud was claimed and documented by the plaintiff/appellant and was not submitted in the original PSC complaint or mentioned in the July 16, 2013 PSC administrative decision (R673 to R675). The PSC does not have jurisdiction over fraud and their July 16, 2013 decision in no way dismisses the multiple issues of fraud claimed by the plaintiff/appellant (R673 to R675).

3- Continuing a private nuisance due to continuing negligence and fraud became an issue when fraud became apparent after the July 16, 2013

administrative decision and not in the jurisdiction of the PSC and not dismissed by collateral estoppel (R673 to R675)

4- Violations of the plaintiff/appellants inalienable rights protected by the U.S. Constitution, violations of international human rights and violating the Nuremberg Code were not listed in the Plaintiff/appellant's PSC complaint and do not get dismissed by the PSC July 16, 2103 administrative decision (R673 to R675).

5- Violations of deprivation of inalienable rights under the color of law declared in 42USC section 1983 were not mentioned in the plaintiff/appellants PSC complaint and do not become null and void by the July 16, 2013 PSC administrative decision (R673 to R675).

The plaintiff had none of the elements of due process in the purported "litigation" the Ulster County Supreme Court refers to on the bottom of page 8 of its Feb.14, 2018 decision/order citing collateral estoppel. The forum in which the opportunity to litigate is provided must employ *"procedures substantially similar to those used in a court of law."* *Ryan,* 62 N.Y.2d at 499, 467 N.E.2d at 490, 478 N.Y.S.2d at 826. The PSC decision of July 16, 2103 the Ulster County Supreme Court refers to as "litigation" on page 8 of

its decision/order, was an administrative action not adjudication (R673 to R675).

"Administrative action other than adjudication cannot be res judicata. " (Allied,72 NY2d at 275-76, 528 NE2d at 154-55, 532 NYS2d at 231-32 see also K. Davis, supra note 1 section 18.08 at 368)

Furthermore the use of collateral estoppel must consider fairness to both sides in the dispute and whether as well as if actual litigation took place:

"[W]hether to apply collateral estoppel in a particular case depends upon 'general notions of fairness involving a practical inquiry into the realities of the litigation' " (*Jeffreys v Griffin*, 1 NY3d 34, 41 [2003], quoting *Matter of Halyalkar v Board of Regents of State of N.Y.*, 72 NY2d 261, 268-269 [1988])

When the plaintiff/appellant requested a purported quasi-jurisdictional tribunal in the form of the informal hearing, that request was denied by the PSC, asserting that they did not have the authority to grant the relief the Plaintiff sought in the PSC complaint. Informal hearing officer Ramona Munoz cited: 16NYCRR(a)(2) "request for an informal hearing may be denied if the relief sought by the customer or utility is beyond the power of the informal hearing officer to provide." Ms. Munoz also stated in the March 3, 2014 letter in an official PSC capacity: "any concerns you have regarding rf technology would be better addressed to either the FCC or your local

government" directing the plaintiff/appellant away from the PSC (R676 to R679).

POINT VIII

WHETHER ULSTER COUNTY SUPREME COURT GAVE THE APPEARANCE OF BIAS BY OVERLOOKING THE EVIDENCE OF BREACH OF CONTRACT AND LIABILITY OF THE DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V LANT?

A-Factual Background:

1-Plaintiff/appellant sent an 8 page notarized lawful notice certified mail on March 21, 2013 to the defendants/respondents at their primary place of business at 284 South Ave, Poughkeepsie N. Y. The first notice was a "NOTICE AND DEMAND FOR REMOVAL Of All DIGITAL ELECTRIC METERS, RADIATION AND SURVELLIANCE DEVICES, NOTICE OF LOSS OF EASEMENT PRIVILIGE BY CRIMINAL MISCONDUCT (R660 to R671) The Notice was primarily addressed to James P. Laurito and Steven V Lant, The defendants/respondents were given 14 days to comply with the demands of lawful notice or rebut all points therein with facts, evidence, truth and law with a sworn affidavit by a fully identified responsible and qualified officer of the Utility Service Provider Central Hudson.

2- Plaintiff/appellant sent a second set of notarized lawful notices certified mail, on April 9, 2013 to the defendants/respondents at their primary place of business at 284 South Ave, Poughkeepsie N. Y. The second lawful notice was a "NOTICE OF DEFAULT AND WARNING OF LIABILITY" (R660 to R671). That notice was primarily addressed to James P. Laurito, President and Steven V Lant. The notice informed the defendants/respondents that they had acquiesced to the terms and conditions of the first lawful notice, "Notice of Demand" sent March 21, 2013.

3- A letter was sent to the plaintiff/appellant April 1, 2013 by Central Hudson service supervisor, Daniel Harkenrider (R794 to R795). The letter was not notarized and was not a sworn affidavit. The letter did not mention the lawful notices by name sent by the plaintiff/appellant nor did it rebut the facts point by point in those lawful notices or legal principles contained therein.

4- Two letters were sent by Central Hudson attorney Paul Colbert to the plaintiff/appellant on June 21, 2013 (R794 to R795, R839). Those letters were not notarized nor were they sworn affidavits. The aforementioned letters did not mention the lawful notices by name, did not rebut the lawful notices point by point, did not rebut the legal principles contained therein, nor did they object to the financial fees that were accruing.

5-The defendants/respondents whether by their agents or themselves did not dispute the agreement and the terms and conditions of that agreement set forth in the several sets of aforementioned lawful notices that were sent from plaintiff/appellant (March 21, 2013, April 9, 2013, May 16, 2013, June 25, 2013 and September 12, 2013) even though each time they were informed their silence would be taken as consent which they were notified of in each document (R664 item #18 and page R668.5 item #2).

6- The defendants/respondents through their agents and attorneys have stated that the plaintiff/appellant is purportedly bound to an agreement called the Tariff, that the plaintiff/appellant was never physically made aware of in person, by mail, email, telephone or informed that if he did not oppose said Tariff that he purportedly consented to, was purportedly bound by its terms and conditions takes on the "force of law"(R145, 2nd paragraph).

B-Discussion:

The Ulster County Supreme Court predetermined that breach of contract claim of the plaintiff/appellant was of no effect overlooking evidence submitted in exhibits and refusing to acknowledge that several sets of lawful notices were sent by the plaintiff/appellant to the defendants/respondents with each communication beginning with March 21, 2013 (R660), April 9, 2013 (R668.5), May 16, 2013 (R422), June 25, 2013 (R436) , September 12, 2013

(R460). The Feb. 14, 2018 decision/order (page R19) only mentions a "letter" which is a misleading description of what was sent. Those "communications" were more than just a letter as evidenced by the quantity, content and form depicting lawful notices with legal implications explained in detail. The Ulster County Supreme Court refers to the breach of contract claim as the "plaintiff's theory of personal liability" overlooking the references and quotes by the plaintiff/appellant from the Restatement of Contracts 2nd, chapter 69 "Acceptance by Silence". This classic legal reference documents the breach of contract claim is not a theory but a legal principle expounded on in one of the most prestigious legal references in all of American jurisprudence. Furthermore that legal reference is located in the Ulster County Supreme Court Library where plaintiff/appellant utilized its principles.

The Ulster County Court goes on to say: "The defendants claim that they were never aware of, or saw the plaintiff's communications, and point out that any complaints to Central Hudson were addressed by service supervisor or legal counsel. They also point out that they (the defendants/respondent's) played no role in the plaintiff's meter dispute."

What the Ulster County Supreme Court overlooks is that the plaintiff's communications was not a "complaint" but a lawful demand, was addressed

to each of the defendants/respondents by name and sent to their primary place of business, was notarized and sent certified mail. An important point that the Ulster County Supreme Court fails to mention is that on the last page of Notice Of Demand and Notice Default/Warning of Liability is the following declaration:

"Notice to principal is notice to agent and notice to agent is notice principal." This is a Maxim in Law, which the defendants/respondents and the Ulster County Supreme Court overlooked. These lawful notices were sent certified mail specifically to the defendants/respondents by name and required a signature from their appointed authorized agent who signed for them. They cannot now claim they did not receive the lawful notices that were addressed specifically to them.

It is a general rule, settled by an unbroken current of authority, that notice to, or knowledge of, an agent acting within the scope of his authority and in reference to a matter over which his authority extends, is notice to, or knowledge of, the principal. The doctrine of Imputed Notice applies:

[" *In general, knowledge acquired by an agent acting within the scope of his or her agency is imputed to the principal and the latter is bound by that knowledge even if that information is never actually communicated.*" (Christopher S. v Hampton v Dougalston Club, 275 AD2d 768, 769-770 {2d Dept. 2000} see also Center v Hampton Affilates, 66 NY2d 782, 784 {1985}].

An agent is presumed to communicate to his employer what he learns in the discharge of his expected duties."(Seward Park Hous. Corp. v Chen, 287

S2d 157, 166 [1st Dept 2001].

In the case of the defendants/respondents, not only did agent Daniel Harkenrider , service supervisor, have possession and the knowledge of the lawful notices (R46, 4th paragraph), but Central Hudson counsel Paul Colbert also had possession and knowledge of the lawful notices as he received a set on June 25, 2013 (R436 to R438) and September 12, 2013 (R461) and such knowledge is imputed to the President and CEO of that organization, Mileasing Co. v Hogan, 87A.D.2d 961,451 N.Y.S 2d 211 (1984).

"Notice given to one person generally will be imputed to another person if an agency relationship exists between the parties" (Seward Park Hous. Corp. v Chen, 287 S2d 157, 166 [1st Dept 2001].)

Furthermore the lawful notices were not rebutted to with sworn affidavits as stipulated in said notices and as New York case law states in 18 binding/controlling NY case law citations:

1. N.Y. Court of Appeals: "Facts appearing in the movants papers which the opposing party does not controvert may be deemed to be admitted." Kuehne & Nagel, Inc., Appellant v. F.W .Baiden et.al. Respondents 36 N.Y. 2d 539.330 N.E. 2d 624, 369 N.Y. 2d 667.

2. N.Y. Court of Appeals: "Facts appearing in the movant's papers which the opposing party does not controvert may be deemed to be admitted." Laye v. Shepard, 48 Misc 2d 478. affd 25 AD2d 498: Siegel, Practice Commentaries, Mckinney's Cons. Laws of NY, Book 7B, CPLR 3212: 16; p 437.

3. N.Y. Court of Appeals: "The uncontroverted affidavits submitted at Special Term unquestionably establish ..." Matter of Montero v Lum 68 N.Y.2d 253, 501, N.E.2d 5, 508 N.Y.S2d 397.

4. N.Y. Appellate Division - Third Dept.: "In light of this uncontested affidavit" Noble v Kowalenko 32 A.D.2d 703, 299, N.Y.S.2d 889.

5. N.Y. Appellate Division - Third Dept.: "An uncontested affidavit...." Matter of Winnie v Poston 36 A.D.2d 991, 320 N, Y, S, 2d 96.

6. N.Y. Appellate Court - First Dept.: "Facts appearing in the movant's papers which the opposing party does not controvert may be deemed to be admitted"-- Bank of America, National Association, Appellant v. Sara Brannon, Respondent October 31,2017 156 A.D. 3d1,63 N.Y.S. 3d 352, 2052, 2017 N.Y. Slip Op. 07578.

7. N.Y. Appellate Division - First Dept.: "The unjust enrichment causes of action against the individual Defendants were also properly dismissed in light of their unrebutted affidavits explaining why they were not unjustly enriched..." Underhill Holdings, LLC, t v. Travelsuite, Inc 137 A.D. 3d 533, 27 N.Y.S. 3d 521, 2016 Slip Op. 01760.'

8. N.Y. Appellate Division - First Dept.: "Furthermore, the unrebutted affidavit of the project superintendent for Tishman construction at 3 Times Square establishes...." Amarosa v City of New York) 51 A.D. 3d 596, 598, 858 N.Y.S 2d 173, 2008, N.Y.S. Slip Op. 04783.

9. N.Y. Appellate Division - First Dept.: "The motion, which was supported by a detailed and unrebutted affidavit..." City of New York v Welsbach Elec. Corp. 30 A.D.3d 157, 817 N.Y.S.2d 11, 2006 N.Y. Slip. Op. 04314.

10. N.Y. Appellate Division - First Dept.: "Given the facts as set forth in the unrebutted affidavit" Matter of Bombardier Transp. (Holdings) USA, Inc. v Telephonics Corp. 14 A.D.3d 358, 788 N.Y. Slip. 00094.

11. N.Y. Appellate Division - Second Dept.: "In addition, the unrebutted affidavit ...." Valentin v. Bretting, Mfg, Co. 278 A.D.2d 230, 717 N.Y.S.2d 281, 2000 N.Y. Slip Op.10724.

12. N.Y. Appellate Division - First Dept.: "The malpractice claims were properly dismissed as conclusory, the Plaintiffs' assertion that their claimed losses were caused by the use of inexperienced attorneys were flatly contradicted by the unrebutted affidavit of the law firm partner who supervised their work." Schonfeld v Thompson 243 A.D.2d 343, 663 N.Y.S.2d 166, 1997 N.Y. Slip Op. 08799.

13. N.Y. Appellate Division - First Dept.: 'The unrebutted affidavits of the attorneys who had participated in the settlement demonstrate that , rather than having been disabled, the granddaughter had effectively employed the potential for publicity" Matter of Bobst 234 A.D.2d 7, 651 N.Y.S.2d 26.

14. N.Y. Appellate Division - First Dept.: "However, the record discloses an unrebutted affidavit..." Matter of Treotola v New York City Off-Track Betting Corp. 86 A.D. 822, 477 N.Y.S.2d 268.

15. N.Y. Appellate Division - First Dept.: "Plaintiff made a prima facie showing of his entitlement to a summary judgement on a promissory note by submitting the executed note and his uncontested affidavit." Mann v Green 159 A.D.3d 545, 73 N.Y.S.3d 42, 3018 N.Y. Slip Op. 01886.

16. N.Y. Appellate Division - First Dept.: "Supreme Court found that the production of the report was inadvertent, and that finding is supported by the uncontested Chenis and Nugent affidavits" New York Times Newspaper Div. of New York Times Co. Lehrer Mcgovern Bovis 300 A.D.2d 169, 752 N.Y.S.2d 642, 2002 N.Y. Slip op. 09577.

17. N.Y. Appellate Division - First Dept.: "Their uncontested affidavits and the police reports of the accident establish the meritoriousness of their cause of action. "To Yiu Yeung v City of New York 282 A.D.2d 217,722 N.Y.S.2d 382 (Mem), 2001 N.Y. Slip Op. 02924.

18. N.Y. Appellate Division - First Dept.: "The IAS Court properly dismissed the petition without a hearing, based upon the uncontested affidavits...." Jerez v City of New York 244 A.D. 188, 664. N.Y.S.2d 11 1997, Slip Op. 09385.

Also declared on the last page of the Notice of Demand (R669) is the statement:

"*Delivery of this document by certified mail represents and constitutes legal service*"

Just above the notarized signature of the plaintiff/appellant in the Notice of demand is the following:

"NOTICE OF ENTRY INTO EVIDENCE"

"This Notice and Demand shall be entered into evidence in any civil or criminal proceeding that may arise in connection with the subject matter set forth herein and will supersede any document not authored and sworn to by an authorized, qualified and responsible party."

There are no sworn affidavits from the defendants/respondents or their agents rebutting or contesting the terms and conditions set forth in those lawful notices prior to the filing of the Ulster County Supreme Court complaint which was a 3 year period.

In spite of this evidence the Ulster County Supreme Court concluded

In their Feb. 14, 2108 decision order: "In this courts opinion the defendants have adequately demonstrated they had no knowledge of the plaintiff's claims., and that in any case , neither took any action nor failed to take any

action which would result in their personal liability (Lloyd v. Moore 115 AD3d 1309 (4th Dept. 2014)"

This court case applies to negligence and does not apply to breach of contract. A contract is a contract and the defendants/respondents allowed an agreement to be accepted by their silence and based on the terms and conditions set forth in the lawful notices by implied consent and acquiescence as outlined in the legal reference The Restatement of Contracts 2nd chapter 69 "Acceptance by Silence". This is the principle that Central Hudson under the leadership of the defendants/respondents and the current leadership colluding with the PSC uses in all their operations (R633) where 0 public input (R80, R633, is determined to be purported consent without physically informing the public once. Meanwhile the public is determined to be bound by such a contract called the Tarff (R145- 2nd paragraph) and purportedly bound by an deployment of purported smart meters agreement (R633)

The Ulster County Supreme Court cannot now claim that the defendants/respondents had no knowledge of the lawful notices that were specifically addressed to them by name and signed for by their appointed agent and sent to them certified mail.

The defendants/respondents supervised a corporation that operates and functions under the Tariff, which they claim is a contract between the utility and the power consumer (R145). That purported contract was foisted on power consumers and proclaimed as binding without obtaining anyone's physical informed consent. If that can be so with the power consumer then it can be so with the defendants/respondents through their acquiescence of the Lawful Notices (R633, R635, R658). The Ulster County Supreme Court errs in law to say the defendants/respondents have no part in the meter dispute (R19). As President and CEO they were the responsible parties for overseeing the complete operations of the utility, including creating and directing policies, overseeing purchasing, deploying microwave radiation emitting utility meters on homes without the physical informed consent of those homes occupants. Therefore they were bound by the terms and conditions of an agreement plaintiff/appellant sent physically and directly to them 5 times by certified mail/return receipt. They were warned their silence would mean they accepted agreement, which is in accordance with the legal principles laid out in the pages of the prestigious classic legal reference, Restatement of Contracts (2nd) chapter 69, "Acceptance by Silence." Ironically these legal principles are used by CenHud to deploy digital meters on private homes without occupant's physical informed consent (R153).

To say the defendants have no part in the meter dispute gives the appearance of bias when the Ulster County Supreme Court in granting summary judgment in the courts own words: "the courts main function is issue identification, not issue determination"(Barr v. County of Albany (50 NY2d 851 [1985].

POINT IX

WHETHER ULSTER COUNTY SUPREME COURT ERRED BY OVERLOOKING SOCIETAL INTEREST BY GRANTING SUMMARY JUDGMENT FOR DEFENDANTS/RESPONDENTS JAMES P. LAURITO AND STEVEN V. LANT?

A-Factual Background:

The plaintiff/appellant is but one of many power consumers who are upset that they are being forced to live with a microwave emitting digital transmitting or a non-transmitting meter that both irradiate the living environment of the customer base of Central Hudson. This was put in place without the informed physical consent before the fact and without the informed knowledge of said microwave emitting meters on the power consumer's homes after the fact (R635 to R656). This dilemma for the plaintiff/appellant and his partner Ms. Nicole Nevin is also a dilemma to other health conscious people and is a nationwide issue. There is an

abundance of peer-reviewed scientific medical research and papers to justify the opposition to this toxic meter measuring program (R510 to R563, R577 to R576, R577 to R632, R689 to R739, R771 to R777, R799 to R845 and no peer-reviewed scientific medical research to justify the deployment of digital smart utility meters on the plaintiff/appellant home or the publics homes.

A-Discussion:

Summary Judgment is not appropriate where the interest of more than just plaintiff/appellant is concerned and the most vulnerable in society will be affected. This case needs to be thoroughly litigated with an exhaustive discovery process as the results of this case could affect New York generations to come. The toxic emissions of microwave emitting devices including smart digital meters have been found to affect children and pregnant women more that the rest of society (R406 to R418). This case represents a societal issue above and beyond the plaintiff/appellant and therefore summary judgment is wholly inappropriate. US Supreme Court held in Kennedy v. Silas mason Co., 334 U.S. 249, 256 (1948):

(b) "Summary procedures under Rule 56 of the Federal Rules of Civil Procedure, however salutary where issues are clear-cut and simple, present a treacherous record for deciding issues of far-flung import, on which this Court should draw inferences with caution from complicated courses of legislation, contracting and practice."Pp. 334 U. S. 256-257.

(c) "As a matter of good judicial administration, this Court will not attempt to decide these far-reaching issues on such a record, presenting an indefinite factual foundation and involving such a welter of new contentions and statutory provisions, but will await the presentation of these issues on a record containing a more solid basis of findings based on litigation or on a comprehensive statement of agreed facts."]

POINT X

WHETHER THE PLAINTIFF/APPELLANT WAS A VICTIM OF FRAUD ON THE COURT?

A-Factual Background:

A- The defendants/respondents claim they notified the plaintiff/appellant and got his consent for the approval and deployment of the GE I-210 smart meter.

B- The defendants/respondents claimed they have "numerous medical scientific studies" that demonstrate smart digital meters are biologically safe for the public and plaintiff/appellant.

C- The defendants/respondents claim they did not know that they were sent lawful notices even though said notices were sent certified mail on several occasions.

D- The defendants/respondents claim James P. Laurito left CenHud for other employment and had no access to the information sought by the plaintiff/appellant in discovery.

E- The defendants/respondents claim they have no part in the meter dispute of the plaintiff/appellant.

F- The defendants/respondents claim analog meters are not available to them anymore when plaintiff/appellant was requesting one.

B-Discussion:

A- Plaintiff/appellant had no idea that a digital transmitting smart meter was installed on his home nor did other CenHud customers which constitutes fraud to claim they did and deprive them of a right to say what is installed on their home and deprive them of the right to protect their family (R575 to R576, R635 to R658).

B- Defendants/respondents have submitted absolutely no peer-reviewed medical scientific studies that document their claim of "numerous medical scientific studies" (R136) which they quoted from the PSC Official Letter of July 16, 2013 (R673 to R675). To claim there are "numerous medical scientific studies" which document biological safety of smart digital meters is fraud when there are in fact no peer-reviewed scientific medical studies done with subjects exposed to pulsing smart digital utility meters daily

over a period of time and power consumers are depending on this false claim of biological safety and CenHud under the leadership and supervision of the defendants./respondents have provided none . Conversely there are reports from health professionals and medical peer-reviewed studies that documents biological harm from the same electromagnetic radiation emitted from smart digital meter (R510 to R563, R577 to R576, R577 to R632, R689 to R739, R771 to R777, R799 to R845).

C- Defendants/respondents are imputed the knowledge of the lawful notices and cannot claim they had no knowledge especially when multiple lawful notices were sent certified mail and to deny they had no knowledge of the lawful notices is fraud when that fraudulent claim is partially responsible for the plaintiff/appellant not receiving his sought after relief because of it. (."(Seward Park Hous. Corp. v Chen, 287 S2d 157, 166 [1st Dept 2001] & (Mileasing Co. v Hogan, 87A.D.2d 961,451 N.Y.S 2d 211 (1984), "Notice given to one person generally will be imputed to another person if an agency relationship exists between the parties" (see 42 NY Jur, Notice and Notices, § 4, p 384).

D- Defendant James P. Laurito became Vice president of the Fortis, Inc. the parent company of CenHud (R117 paragraph 1) and most certainly had the ability to access the information sought by the plaintiff/appellant. To deprive

the plaintiff/appellant of information he needed to obtain relief, based on false statements is fraud.

E- Defendants/respondents as the top executive leadership of CenHud orchestrated the whole meter dispute with their policies they directed and supervised, kept the plaintiff/appellant from having electrical service for 6 years now. To say they were not part of the meter dispute is fraud.

F- The defendants/respondents claim that analog meters were not available to them anymore so they couldn't supply the plaintiff/appellant with one single analog meter I s outright fraud. The PSC Foil response of May 16, 2013 states there is no rule, regulation or law prohibiting the defendants/respondents, from making and instituting policies and orders to provide a used analog meter taken off of one of a CenHud's 300,000 customers homes doing an upgrade or renovation and be supplied to a customer who requests one (R787).

G- The claim by CenHud Service Supervisor, Daniel Harkenrider, that refurbished/remanufactured analog utility meters need to be approved by the PSC is fraud (R48). Certainly a CenHud executive who is supervising "service applications" (page R46 bottom of page) should know that only refurbished/remanufactured analog meters that were originally PSC approved that are using aftermarket replacement parts needs new approval,

but if no aftermarket parts were installed in the remanufacturing process the analog meters don't need a second PSC approval having been originally approved (R789 re: refurbished analog meter questions). Hialeah Meter Company uses no after-market parts (R922 paragraph 2).

CONCLUSION:

The plaintiff/appellant has submitted 500 plus pages of documentation, much of which is scientific research documenting the real harm of being chronically exposed to low levels of electromagnetic radiation, also emitted from smart utility meters. Those exposure radiation levels are below the FCC's (a "captured agency": R846 to R904) purported safety guidelines the defendants/respondents case rests on (R689 to R704). The defendants/respondents have submitted no scientific medical research to document the biological safety of smart digital utility meters. The defendants/respondents have not controverted any of the abundant exhibits the plaintiff/appellant has submitted, thus they are deemed by the N.Y. Court of Appeals as all undisputed facts on the record: *"Facts appearing in the movants papers which the opposing party does not controvert may be deemed to be admitted." Kuehne & Nagel, Inc., Appellant v. F.W .Baiden et.al. Respondents 36 N.Y. 2d 539.330 N.E. 2d 624, 369 N.Y. 2d 667*

The Supreme Court of Ulster County overlooked all the undisputed facts and misapprehended the clear pattern and practice of fraud by the defendants/respondents, rising to the level of fraud on the court. Together with the plaintiff/appellants claims of serious violations to not only the plaintiff/appellant , but the public as well (R575.5 to R576). The errors of judgment by the aforementioned Court, detailed in Items I through X in the above document , causes the plaintiff/appellant to move this honorable court to vacate, annul or reverse the Summary Judgment decision against the plaintiff/appellant , which was issued February 14, 2018 by the New York State Supreme Court of Ulster County, and case 16-1351 remanded to the aforementioned Court for a fair trial with complete due process and thorough discovery.

I, Stephen Phillip Romine , flesh and blood person of we the people, plaintiff, appellant, pro se, pro per, sui juris litigant and affiant , do swear under pain and penalty for perjury, do declare that everything I have stated in the above document is true to the best of my knowledge and belief .

Stephen Phillip Romine — Nov. 14, 2019
Stephen Phillip Romine — Date

Notary — 11/14/19
Notary — Date

GEORGENE G. FREDERICKS
Notary Public, State of New York
Reg. #01FR4799992
Qualified in Ulster County
Commission Expires 6/30/23

Please Take Note:

Plaintiff/appellant affirms he a prima facie case based on 500 pages of undisputed facts as not one of the plaintiff/appellants exhibits have been rebutted or controverted by defendants/respondents. In the event this honorable Court dismisses this appeal, plaintiff/appellant respectfully requires "Findings of Fact and Conclusions of Law".

Stephen Phillip Romine — Nov 14, 2019

Stephen Phillip Romine — Date

PRINTING SPECIFICATIONS STATEMENT

Pursuant to 22 NYCRR § 1250.8 (j)

The foregoing brief was prepared on a computer. A proportional spaced typeface was used, as follows:

Name of typeface: Times New Roman
Point size: 14
Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc. is 13,487

Dated: Nov. 13, 2019

Signed: Stephen Phillips Romine

APPELLANT DIVISION, THIRD DEPARTMENT
ALBANY COUNTY, STATE OF NEW YORK

Stephen Phillip Romine Appellant,	)	
	) Appellant case No.:	**528147**
VS.	)	
James P. Laurito and Steven V. Lant Respondents,	)	

APPEAL BRIEF

Stephen P. Romine
Pro se, Pro per, Sui juris
Litigant and Petitioner
8 Fitzsimmons Lane
Woodstock, New York 12498

(845) 532-5120
pilgrimpeace@gmail.com