SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

STEPHEN PHILLIP ROMINE PLAINTIFF,	) **INDEX NO. 16-1351**)) **AFFIRMATION IN REPLY**) **TO DEFENDANT'S**) **OPPOSITION**
VS.	) **TO PLAINTIFF'S**) **MOTION AND**) **AMENDED MOTION TO**) **VACATE AND ENTER**) **A DEFAULT JUDGMENT**)
JAMES P. LAURITO and STEVEN V. LANT DEFENDANTS	) ASSIGNED TO :) JUDGE C. E. CAHILL

AFFIDAVIT OF TRUTH AND FACT

I, Stephen Philip Romine, the plaintiff, pro se, pro per, sui juris litigant and affiant, permitted to represent himself in the Courts of New York State, respectfully affirms under penalty of perjury, states as follows:

1. I am a flesh and blood living man endowed with certain inalienable rights granted by God, guaranteed and protected by the U.S. Constitution.
2. I am the plaintiff in the above captioned action and using my constitutionally guaranteed inalienable rights representing myself in New York State Supreme Court of Ulster County.
3. I am the plaintiff making this Reply to the defendant's Affirmation of Opposition to Plaintiff's Motion and Amended Motion to Vacate

4. Plaintiff will rebut defendant's aforementioned opposition document items, point-by-point, referencing plaintiff's Motion to Vacate and Enter a Default Judgment exhibits A to Z and exhibits AA to OO and additionally supplying in this document exhibits PP to XX,

5. Rebutting item #3 & #4: Defendants omit that plaintiff seeks to enter a default judgment against defendants. Plaintiff cited CPLR 3016 (b) making it clear that specificity for fraud claims was required by CPLR and plaintiff would provide such details in his document making the case for misrepresentation and fraud pursuant to CPLR 5015(a)(3) to get relief from the February 14, 2018 summary judgment order of the New York State Supreme Court of Ulster County:

   CPLR R. 5015 Relief from judgment or order:

   (a) On motion

   (1) excusable default…

   (2) newly-discovered evidence…

   (3) *fraud, misrepresentation, or other misconduct of an adverse party*

   Rebutting item #5: Nowhere in the February 14, 2018 decision/order of Supreme Court of Ulster County was any mention made to the plaintiff's claims of fraud. It is these unmentioned claims of fraud that has made this motion necessary. The Supreme Court must review and decide to vacate a summary judgment decision, if only one of them were found to be true. Defendants have remained silent on the fraud

claim of the plaintiff exposing that James P. Laurito failed to disclose is a current member of the Central Hudson Gas and Electric Corporation's (hereinafter called "Central Hudson) Board of Directors and has been since 2014 while he has maintained he "left Central Hudson" in court documents (see exhibits R, S,). *"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior... This sort of deception will not be tolerated and if this is routine it should be corrected immediately."* U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932. Fraus omnia vitiate,"Fraud vitiates everything." "Fraud vitiates everything it touches" Nudd v. Burrows (1875) 91 U.S. 416. Fraud destroys the validity of everything into which it enters. Boyce's Executors v. Grundy (1830) 28 U.S. 210.Fraud vitiates the most solemn contracts, documents and even judgments. United States v. Throckmorton (1878), 98 JU.S. 61, 70.

6. Rebutting item #6: Defendants have not provided any case law or CPLR that states a motion to vacate cannot be submitted while waiting for other pending motions to be decided. When fraud is an issue or even fraud on the court, it is in the interest of justice and maintaining the integrity of the court to hear that pleading (id.).
7. Rebutting item #7: The plaintiff is pinpointing the many frauds of the defendants. Fraud defined by Blacks Law-Fifth Edition (see exhibit

PP): An intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false presentation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives another so that he shall act on it to his legal inquiry. Any kind of artifice employed by one person to deceive another. [Goldstein v. Equitable Life Assur. Soc. U.S. 16 Misc. 364, 289,N.Y.S 1064, 1067] [Maher v. Hibernia Ins. Co., 67 N. Y. 292; Studer v. Bleistein. 115 N.Y. 31G, 22 X. E. 243, 7 L. R.] Elements of a cause of action for "fraud" include false representation of a present or past act made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation. In the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq. Jur. (see exhibit PP).

In accordance with CPLR 3016(b) the plaintiff has documented 26 instances of fraud by defendants itemized in plaintiff's uncontested Amended Affirmation of Support Affidavit and uncontested Memorandum of Law. The defendants have not rebutted point by point those instances of fraud in their Opposition to Plaintiff's Motion

to Vacate and therefore those unrebutted facts stand as facts on the record and admitted as evidence.

8. Rebutting Item #8: The plaintiff is not arguing an isolated instance of fraud. When the defendants and their agents and representatives swear to tell the truth under penalty of perjury and instead intentionally misrepresent the facts and knowingly, willfully and intentionally commit fraud in multiple instances as the plaintiff's uncontested Affirmation of Support Affidavit, uncontested Memorandum of Law and uncontested exhibits A to OO (except "JJ") document, the issue of fraud becomes fraud on the court and that is a very serious proportion. The defendants have no defense against the 26 claims of fraud so they are now arguing in generalities, while the plaintiff has been very specific in his uncontested Amended Affirmation of Support Affidavit w/exhibits and Memorandum of Law in keeping with CPLR 3016(b) and presenting rebuttal point-by-point in this Reply Affidavit.

9. Rebutting item #9: The Public Service Commission (hereinafter "PSC") decision regarding case 14-M-0196 in no way dealt with the issues of fraud being discussed here. The aforementioned PSC deliberation gave no opportunity to provide any witnesses or cross examine any witnesses or confront the adversaries in an actual hearing so it was devoid of the most important points of due process as that deliberation was online. The plaintiff has submitted evidence in this

motion that document the multiple counts fraud of the defendants, their agents and representatives that the PSC decision never considered as they do not have jurisdiction to deliberate on fraud. The aforementioned PSC decision did not prove any of the evidence the plaintiff has submitted in this motion or past motions as false (see exhibit QQ).

10. Rebutting item #10: `Defendants have incorrect information to say that the plaintiff is involved with Stop Smart Meters NY, which he is not, and is involved with the independent group, Stop Smart Meters Woodstock NY.

11. Rebutting item 11: The PSC misrepresents the facts and commit fraud when it states available research shows digital meters pose no threat as they did not cite any peer-reviewed scientific medical research to support their claim. They have previously cited three "reports" by engineers and a physicist who are employed by industry in promoting smart meters (see exhibit-HH page 2 bottom paragraph). The PSC "reports" were in fact not real scientific medical studies with subjects (animals or humans), but were only biased articles written by industry people in industry journals and in an Federal Communications Committee (hereinafter "FCC"), an industry captured agency, pamphlet, and who are not medical authorities on biological health. It should be noted that in exhibit U, Utilities Telecom Council (Hereinafter "UTC") is the author of one of the so-called studies cited

by the PSC, who obviously considers UTC to be an authority on smart meters (see exhibit HH, bottom of page 2). The aforementioned PSC decision contradicts its own authority, the UTC, as incorrect in designating an AMR meter as a smart meter, which was the case for years before the faulty PSC decision. In addition, the PSC ignored two thousand scientific medical peer-reviewed studies performed by world leading EMF researchers, cited by the Bioinitiative Report of 2012, as somehow flawed (see exhibit QQ, page 16). PSC officials themselves, nor the engineers and physicists they refer to, are trained medical experts in the biology of electromagnetic radiation exposure and certainly not credible to label scientific medical peer-reviewed studies as flawed (see exhibit RR). The only acceptable critique of a peer-reviewed medical study is another medical peer-reviewed study which is what the peer reviewed process is. That being said and documented (see exhibit RR), a government agency's criticisms of a peer-reviewed medical study, is not credible in the academic and medical world. The PSC's criticisms of the Bioinitiative Report of 2012 is baseless and without merit and for the PSC to mention them without documentation is hearsay and inadmissible in any court of law. Meanwhile the PSC decision of December 14, 2018 did not offer any peer-reviewed scientific medical peer-reviewed studies to support their claim of biological safety of transmitting smart digital utility meters (GE I-210) or any other transmitting smart meters. The

PSC cited an industry funded Electrical Power Research Institute (hereinafter "EPRI") study, a Vermont Dept. Of Health (hereinafter "VDH") Study and a California Council of Science and Technology (hereinafter "CCST"). The aforementioned studies were done by engineers and physicists and only showed the emissions of smart meters were below the 30year outdated and inadequate FCC standards. The Environmental Protection Agency and the U.S. Dept. of Interior affirm plaintiff's just mentioned declaration that the FCC's guidelines as outdated and inadequate to be true and uncontested by the defendants (see exhibits H 2nd page, highlighted paragraph), exhibit I enclosure A, page 1, 2nd paragraph). The so-called studies cited by the PSC are of smart meters, not animals and humans, and all of which were not peer-reviewed medical studies and not superior to the Bioinitiative Report of 2012. On the contrary the Bioinitiative Report was based on 2000 peer-reviewed medical studies (see exhibit KK). On the contrary the uncontested peer-reviewed study of Dr. Frederica Lamech documented the adverse biological health effects of smart meters on people whose homes they were installed on (see exhibit J1, J2). The defendants, the Utilities, The PSC, The EPRI, The VDH and the CCST have all failed to conduct or produce a study like Dr. Lamech and Harvard trained physicist Ron Powell PhD. who have done studies and surveys on the adverse health effects on actual human subjects (power consumers) after installations of smart

meters (Exhibit J1, J2). For the aforementioned reasons and more the PSC decision of December 14, 2018 is not, and cannot be, a guarantee of the biological safety from transmitting smart digital utility meters (GE I-210) without peer-reviewed scientific medical studies. In addition to the Bioinitiative Report of 2102, the plaintiff has submitted an additional 128 uncontested peer-reviewed medical studies that was not submitted in time for the December 14, 2018 PSC decision, that document adverse–health-effects of the emissions of wireless devices below the outdated FCC maximum permissible exposure standards (see exhibit OO). Plaintiff has also submitted the uncontested peer-reviewed study by Prof. Martin Pall, an expert in biological cellular medicine (see exhibit K). Furthermore the claim by the defendants, in collusion with the PSC and their decision that electromechanical/analog utility meters (hereafter called analog utility meters) are obsolete is without merit and an intentional misrepresentation of facts and words. Blacks Law-Fifth Edition defines "obsolete" as "That which is no longer in used" (see exhibit SS). Webster's Dictionary New World Dictionary (2nd College Edition) defines "obsolete" "no longer in use or practice; discarded" (see exhibit TT). Analog utility meters most certainly are still in use and being used to measure the electrical consumption of half of Central Hudson's customer base of 300,000 people. Analog meters are being remanufactured/refurbished by 3 companies nationwide, and being

supplied as opt-out meters by major utilities in at least a dozen states including California and Vermont, both of which the PSC cites ("VDH" and "CCST") in their decision as authorities on smart meters. Therefore analog meters most certainly are not obsolete and a good example of a misrepresentation of the facts by the defendants in collusion with the PSC (see exhibits L, M, N). For the reasons aforementioned and more, the PSC decision should be annulled.

12. Rebutting Item #12: The PSC decision contradicts it's own authority, the UTC and their designation of an AMR meter as a smart meter, which was the case for years before the faulty PSC decision (see exhibit U page 7 figure 1). It should be noted that the UTC is the author of one of the aforementioned "reports" cited by the PSC who obviously considers the UTC to be an authority on smart meters (see exhibit HH, bottom of page 2). In addition the defendants claim that the ERT (GE I-210) transmitting smart digital utility meter that Central Hudson and the PSC was trying to force on the plaintiff "does not use the technology that he was complaining about" is wholly without merit and a complete misrepresentation of the facts. ERT is an acronym for Encoder Receiver Transmitter. The transmitting is done via microwave radiation, which in the process exposes the occupant to a class 2B carcinogen and host of biological effects (exhibits J, K, KK, OO). The ERT transmitting smart digital utility meter most certainly uses technology that the plaintiff is complaining about

and gave no physical informed consent to allow it on his home. To say otherwise is fraud considering the plaintiff is being denied his right to electrical service based on these intentional misrepresentations.

13. Rebutting item #13: The defendants and the PSC have now admitted that analog utility meters are "commercially available" when they previously have been telling people they are not available (see exhibit A pages 3 & 4, paragraph 6, exhibit B page 3 paragraph 10, exhibit C pages 3 paragraph 11, exhibit D paragraph 3 paragraph 8). The Court should take notice that the defendants agreeing with the PSC who stated: "no NY Utilities have chosen to use them," confirms what the plaintiff has been stating all along. Central Hudson under the supervision of the defendants and their policies have not made analog utility meters available, not because they are not available, but because they "chose not to", thereby committing fraud in Court documents and on their website saying they are not available. The PSC erroneously stating that because remanufactured/refurbished analog utility meters are in diminishing supply, purportedly because no new analog utility meters are manufactured, ignores Central Hudson's own current in-use-analog utility meters that could be refurbished and good for another 20 to 30 years. Central Hudson's customer base has 150, 000 analog utility meters still on homes and only a small percentage (less than 10%) of power consumers will actually opt-out because most are unaware of the biological effects of the emissions of

transmitting smart digital utility meters and wireless devices documented in plaintiff's exhibits (see exhibit J, K, KK, OO). Those used analog utility meters being removed from homes that test accurate can be reinstalled immediately on customers who request them without PSC approval as they are already approved. There is no PSC rule that prohibits use of a used Central Hudson analog utility meter (see exhibit E). Then we have the commercially available remanufactured/refurbished analog utility meters the PSC has admitted could be used if the Utility would "chose" to do so (see exhibit O and exhibit QQ page 21, 22). It should be very clear to this Court the fraud Central Hudson, under the supervision of the defendants and their policies, have perpetrated on the plaintiff, withholding the basic necessity of electrical service from him by claiming analog utility meters are not available anymore, knowing full well they could very easily be made available, thereby committing fraud (see exhibit E).

14. Rebutting item# 14: The aforementioned decision in PSC case 14-M-0196 decided it "will not require Central Hudson" to supply remanufactured/refurbished analog utility meters. That decision is not a prohibition on remanufactured/refurbished analog utility meters. Central Hudson could supply remanufactured/refurbished analog utility meters without further PSC approval, provided they are not retrofitted with aftermarket parts and would not need re-approval (see exhibit O). To say

otherwise is fraud when the plaintiff is being denied basic electrical service on these intentional misrepresentations.

15. Rebutting item #15: The PSC has primary jurisdiction meaning it should first be involved but does not have exclusive jurisdiction especially when the PSC states it does not have the power to grant the relief requested. (see exhibit II). The deference the PSC is afforded is only for "highly technical matters" regarding technology not health issues. Furthermore the PSC has no jurisdiction on claims of breach of contract, continuing a private nuisance, multiple counts of fraud, constitutional violations, international human right violations and violating the Nuremberg Code which the plaintiff claims Central Hudson under the leadership of the defendants and their policies have committed, which were not considered in the PSC decisions of July 16, 2013 and March 3, 2014 (see exhibit HH, II).
16. Rebutting item #16: Central Hudson under the leadership of the defendants and the policies they created and/or supervised, most certainly have not acted appropriately. They have colluded with the PSC to manufacture consent to deploy transmitting smart digital utility meters on peoples homes that emit a carcinogen, a genotoxin, and a neurotoxin every 10 seconds 24 hours a day without obtaining physical informed consent of the occupant. They did so by indirect notification, which no one knew about, and by stealth not informing anyone of when installation was going to happen or happened. (see exhibits Z, AA) . When asked to remove the transmitting smart digital utility meter and replace it with a time tested

biologically safe analog utility meter, Central Hudson under the leadership of the defendants and the policies they created and/or supervised, committed fraud by declaring analog utility meters are no longer manufactured or available and that Central Hudson is not in a position to offer them anymore, which is pure fraud. Central Hudson claiming that it obtained consent from the public or the plaintiff, to install microwave-emitting carcinogens, neurotoxins and genotoxin transmitting smart digital utility meters is fraud. Central Hudson claiming that medical studies prove transmitting smart digital utility meters are biologically safe is fraud. Central Hudson claiming the PSC prohibits the use of remanufactured/refurbished analog meter is fraud. Central Hudson under the leadership of the defendants and the policies they created and/or supervised was most certainly not practicing appropriate behavior in intentionally depriving the plaintiff of his fundamental human rights and his right to electrical service knowing full well the many misrepresentations defendants put forth are in fact false. The list of fraud and misrepresentation goes on and can be read in the plaintiff's uncontested Amended Affirmation of Support Affidavit, which has not been rebutted point-by-point and stands as fact on the record. *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.) 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 8

17. Rebutting item #17: The defendants have their facts wrong as the events being discussed did not occur at 86 Fitzsimmons Lane but at 8 Fitzsimmons lane, Woodstock, NY. This case does not revolve around the installation of the "ERT digital utility meter" which happened 5 years before the plaintiff became aware of what was causing his physical complaints and his significant other, Nicole Nevins physical complaints, and to say otherwise is a misrepresentation. This case revolves around the adamant refusal of Central Hudson to correct their problem of having their transmitting smart meter devices harming the plaintiff and his partner who were power customers of Central Hudson, ignoring 5 sets of lawful notices sent certified mail demanding the offending meter be removed, not ever informing plaintiff of his analog utility meter being switched, not ever informing him of the potential hazard of the carcinogenic, genotoxic and neurotoxic emissions from their transmitting smart digital utility meters (GE I-210), not ever having obtained physical informed consent to make the switch on the plaintiff's home, breaching an agreement the plaintiff established with the defendants using the principles of acquiescence outlined in the classic legal reference Restatement of Law/Contracts (chapter 69) "Acceptance by Silence", violating plaintiffs constitutional and international human rights and continuing a private nuisance based on multiple counts of fraud. This case could have been resolved

immediately had Central Hudson under the supervision and policies of the defendants ordered the issue of a Central Hudson used analog utility meter to accommodate the plaintiff and his significant others medical conditions which were extremely dire having just had a stroke. Instead Central Hudson under the leadership of the defendants and the policies they created and/or directed committed fraud by claiming analog utility meters were not available. The defendants would like this Court to believe that all this case is about is the installation of a "digital utility meter." Nothing could be farther from the truth.

18. Rebutting item#18: The defendants again have their facts wrong as the upgrade to the plaintiff's home was not at 86 Fitzsimmons Lane but at 8 Fitzsimmons lane, Woodstock. NY. The upgrade could have been accomplished with an analog meter as they can handle up to 200 amps and all the upgrade the plaintiff was requesting was from 60 to 100amp upgrade (see exhibit JJ).
19. Rebutting item #19: Plaintiff arranged for electrical contractor James Ferraro to sign the affidavit but when arrived to the notary he had misplaced and couldn't locate his license, which he needed for proof of ID. Plaintiff revised and read affidavit to James Ferraro in person and verbally stated he agreed with everything in it. Plaintiff then gave sworn testimony in an affidavit to what James Ferraro stated in person to the plaintiff (see exhibit-JJ).

20. Rebutting item#20: Plaintiff did not give physical informed consent to install a microwave emitting device on his home that sends out pulses of electromagnetic radiation approximately every 10 seconds, 24 hours a day. Neither was the plaintiff informed of the switch after the fact. The defendant's agents/representatives have committed criminal intent to deprive the plaintiff of his fundamental rights to be secure in his home, to be in control of his home and what will be placed on his home.
21. Rebutting item#21: The defendants are confused and have referred to the incorrect exhibit. Exhibit C is the affidavit of Daniel Harkenrider. The correct exhibit should be exhibit-D, which is the PSC approval of the GE I-210 transmitting smart digital utility meter. The PSC approval did not consider health or biological effects in this document and there were 0 public comments because Central Hudson's customer base was not informed of the existence of the New York Register or that a public comment period would be taking place on the PSC website. This could have been very easily been avoided with a simple plain insert in every customers electric bill thereby giving direct notice which Central Hudson does with other less important issues. It appears that Central Hudson under the leadership of the defendants and their policies they directed and/or created, did not want the customer base to be informed of something that every customer should have been made aware of. Plaintiff has supplied 17

uncontested affidavits of Central Hudson customers affirming the aforementioned facts (see exhibit Z). Presenting the approval of the GE I-210 meter as somehow being agreed to by the public and the plaintiff is outright fraud as Central Hudson in collusion with the PSC have been operating a system of manufacturing purported consent and to say that the plaintiff or the public gave informed physical consent is fraud. The plaintiff and the public cannot object to something they have no idea is being placed on their homes that have been placed there by stealth, which Woodstock Town Supervisor complained of (see exhibit AA). To say that no one objected is an intentional misrepresentation of the facts and fraud.

22. Rebutting item #22: The defendants misrepresent the evens by conveniently omitting the facts that before any removal of offending transmitting smart digital utility meter occurred, plaintiff first sent lawful notices certified mail, to defendants and also to Central Hudson, demanding they remove the transmitting smart digital utility meter. Lawful notices sent certified mail/return receipt requested, demanding the removal of said meter, which occurred on March 21st, 2013 and April 9th 2013 (see exhibit EE). The defendants and their agents and representatives willfully ignored the lawful notices and the terms and conditions and did not respond to those proper notices. Plaintiff's significant other then had a stroke standing near the transmitting smart digital utility meter (GE I-210) for which she was

hospitalized, forcing the plaintiff to remove the offending meter himself in defense of his family household. Plaintiff installed an ANSI C12 approved remanufactured/refurbished analog utility meter. Plaintiff had hoped that the defendant's agents or representatives would make the meter switch but was forced to use his constitutional protected inalienable right to self-defense to protect his family and household. Defendants refused to accommodate the plaintiff and ignored lawful notices demands. The defendants, by omitting all these important facts, have intentionally created a narrative that is a misrepresentation of the events and facts, and because of those intentional misrepresentations have caused the plaintiff to live without necessary electrical service thereby committing fraud. Miller v. U.S., 230 F. 2d. 486, 490; 42 "There can be no sanction or penalty imposed upon one, because of his exercise of constitutional rights." Miranda v. Arizona, 384 US 436, 491. "The claim and exercise of a constitutional right cannot be converted into a crime."

23. Rebuttal of item #23: The issue of the plaintiffs electrical service termination could have been easily been quickly resolved by Central Hudson, under the leadership of the defendants and their policies, issuing a used Central Hudson analog utility meter that needed no further PSC approval and became available through analog utility meter removals from customer homes due to upgrades, or renovations. The plaintiff had a bona-fide major health crisis as

Northern Dutchess Hospital warned him and his significant other, Nicole Nevin, that she was at high risk for a major stroke in 90 days, which could have meant a major disability or even death. There was no way the plaintiff and Ms. Nevin would take the chance with another digital meter. Central Hudson under the supervision and policies of the defendants discontinued electrical service to the plaintiff knowing full well that his significant other, Ms. Nicole Nevin, just had a stroke and was at high risk for a major one. This info was as communicated to them in the letter of May 16, 2013 when transmitting digital meter was returned (see exhibit EE4). To make matters much worse Central Hudson has had 5 years to locate one used previously PSC approved analog utility meter and has not done so, and continue to commit fraud saying they are not available, thereby depriving the plaintiff of electrical service.

24. Rebuttal of item#24: The defendants have not responded to the many of the fraud claims of the Plaintiff. First of all there is no rebuttal of the plaintiffs claim of fraud for not disclosing that James P. Laurito most certainly did not depart Central Hudson and is still on the Board of Directors. To say he departed is intentional fraud when that contributed to the plaintiff not having discovery as indicated by the Feb. 14, 2018 decision order of Supreme Court of Ulster County (see exhibit Q, bottom of page 5, top of page 6). The defendants have not responded to the fact that a used Central Hudson previously PSC

approved analog meter could have been supplied to the plaintiff in light of the May 16, 2017 official PSC Freedom of Information Law (hereinafter "FOIL") response (see exhibit E). To say analog utility meters are unavailable is fraud when the agents and representatives of the defendants and the defendants themselves know full well a used Central Hudson previously PSC approved analog utility meter can be found for the plaintiff to end his 5 plus years of being forced off the grid. The rest of the 26 claims of fraud are found in the uncontested Amended Affirmation of Support Affidavit.

25. Rebuttal of item#25: a) Analog utility meters are remanufactured, a type of manufacturing that produces an original equipment analog utility meter that is more accurate than when first manufactured and has a longer guarantee then when first produced (see exhibit L, M, N, O). b) To claim ERT transmitting smart digital utility meters (GE I-210) are biologically safe when no scientific peer-reviewed medical studies document biological safety and the defendants promotes them as safe for children and pregnant women when no maximum exposure standards account for those more vulnerable members of society is serious fraud (see exhibit H, I, J, K, KK, OO)). c) To claim the ERT transmitting smart digital utility meter (GE I-210) is not a smart meter when the UTC, that defendants reference as an authority on smart meters, proclaims the AMR meters which includes GE I-210 ERT meters, are "first generation smart meters", is an intentional

misrepresentation and fraud by a Utility who knows better (see exhibit U page 7 fig. 1). d) To say the public or the plaintiff consented to the deployment transmitting smart digital utility meters (GE I-210) is fraud when the defendants and the PSC acknowledged there was no public participation (see exhibit F, bottom of page 1) and no physical informed consent was given by the public or the plaintiff. The defendants continue to misrepresent the facts by stating the "public… unintentionally consented to the use of the meter." The truth of the matter is the public did not consent to the meter at all, there was no public comments and there was no consent, and to misrepresent the truth intentionally to manufacture consent is fraud. (e) Plaintiff has a constitutional right to protect his family and himself when Central Hudson under the leadership of the defendants and their policies refused to do so after being lawfully given proper notice. To say the plaintiff does not have a constitutional right to defend his family and himself from potential harm is fraud. e) It is fraud to say that analog utility meters must be replaced because of an upgrade as analog utility meters can service up to 200 amp service, and did so before ERT meters came along, (see exhibit JJ). Furthermore there was no mandate from the PSC that orders a transmitting smart digital utility meter, only a request (see exhibit B, page 3, bottom quarter of page). f) It is fraud to say that installing a used Central Hudson analog utility meter previously approved by the PSC needs additional PSC approval

before installing one on a customers home who requests one, thereby refusing to supply used analog utility analog meters when requested. Items a) through f) are fraud because in concert they are being used by Central Hudson to intentionally deny the plaintiff a basic human right and a single used Central Hudson analog utility meter could have been made available to the plaintiff 5 years ago (see exhibit E, O).

26. Rebutting item#26 & 27: The defendants claim that "testing was performed by the PSC and extensive studies reviewed regarding the safety of the meter" (GE I-210). The exhibit referred to (see exhibit F) documenting the PSC approval of the GE I-210 transmitting smart digital utility meter, nowhere mentions any reference to biological safety and it is certain that no testing was done in that regard. That document does not mention health once or biological safety. The tests performed were for physical safety like electrical shock, accuracy and performance. To claim that the GE I-210 meter is biologically safe when no scientific peer-reviewed medical studies by health professionals have been done is fraud and a misrepresentation when the potential for harm can occur and has occurred with the plaintiff and Ms. Nicole Nevin.

27. Rebuttal of item #28: The defendants continue to get the facts wrong and are confused with their own exhibits. The plaintiff sent lawful notices to the defendants and their agents and representatives as well as letters with sets of the lawful notices attached on 5 separate

occasions (March 21, April 9, May 16, June 25, and Sept. 12 of 2013 (see exhibits EE). Furthermore there are no exhibits with the defendant's opposition papers of the plaintiff sending a letter to the PSC where the plaintiff ask the PSC to be able to install his own analog utility meter himself. The defendants are misrepresenting events and supplying incorrect facts as documented throughout their Opposition papers and their narrative is fraudulent. The referenced June 25, 2013 letter in defendants exhibit E was not to the PSC as the defendants again misrepresent, but to Central Hudson Counsel Paul Colbert (see exhibit EE4). There are no letters from the plaintiff to the PSC in the defendants opposition document. The correct story is the plaintiff as a paying customer of Central Hudson respectfully requested in telephone calls to customer service with no result, demanded the offending transmitting smart digital utility, meter (GE I-210) be removed by Central Hudson because of a serious health crisis. Plaintiff in fact did not want to have to remove the meter himself. When Central Hudson, under the leadership and policies of the defendants refused to accommodate the stroke ridden family member of the plaintiff, plaintiff acted in self-defense, and removed it himself as he notified the defendants and Central Hudson he would do if they didn't. To claim that the plaintiff did anything improper is a misrepresentation of what occurred as the plaintiff has the right to defend his family and himself from harm, The defendants and their

agents and representatives were notified with lawful notices what was to take place if they refused to act to a serious situation (see exhibit E1). The PSC was the one who initiated the phone calls after the plaintiff filed a complaint with the PSC. To say "Mr. Romine's many phone calls and letters" is a misrepresentation that puts the plaintiff in an unfavorable light. The PSC phone calls were brief and accomplished nothing except for the defendants who now claim that the PSC decision of July 16, 2013 was actual ligation when in fact it was those phone calls that determined the PSC arriving at their administrative decision on aforementioned date. To say there was litigation when there was no hearing with the PSC is fraud, when in fact only phone calls took place between the plaintiff and the PSC. For lawyers who can't claim ignorance of the law to say phone calls are litigation is fraud, when it is used to deny the plaintiff actual litigation and a hearing (see exhibit HH).

28. Rebutting Item#29: There is no PSC law, rule or regulation that mandates the installation of a transmitting smart digital utility meter (GE I-210) must be replaced with an upgrade or renovation, only a request of the PSC (see exhibit B, bottom quarter of page 3). The defendants have submitted no such PSC order and the defendants have provided none for this Court to see. Central Hudson in collusion with the PSC deployed transmitting smart digital meters without the physical informed consent of the plaintiff and the public. To say that

Central Hudson complied with the PSC is a misrepresentation and would be more appropriate to say Central Hudson colluded with the PSC to manufacture consent and violate the rights of the plaintiff and an unknowing public by stealth, forcing on it's customer base a utility meter that emits a carcinogen, a neurotoxin and a genotoxin, (see exhibit J, K, Z, AA, KK, OO).

29. Rebutting Item #30: Evidently the defendants and the PSC want to ignore their authority, the UTC, who identifies all AMR meters, which the transmitting smart digital utility meter GE I-210 is one, as a "first generation smart meter". The PSC and Central Hudson under the leadership of the defendants and their policies and the current leadership colluding to rewrite history will not change that fact and constitutes fraud. It becomes fraud when the aforementioned intentional misrepresentations are used to deprive the plaintiff and the public of the scientific literature that refer to all transmitting meters as smart meters which document the emissions of said meters that produce adverse biological effects resulting in subsequent health problems. By attempting to call a smart meter as only an ERT meter, Central Hudson under the leadership of the defendants and the current leadership in collusion with the PSC, are trying to conceal the health ramifications of the transmitting smart digital utility meter (GE I-210) they want to refer to an ERT meter. It should be noted that when GE produced the GE I-210 meter they listed it in their line of

210-smart-meter-family (see exhibit P). To not call an AMR meter a smart meter is a misrepresentation of what it really is according to the UTC (see exhibit U, page 7, fiG.1).

30. Rebutting item#31: The plaintiff sent lawful notices as a paying customer of Central Hudson demanding that the offending toxic emitting meter be removed from his home that he did not give physical informed consent to be there. Central Hudson under the leadership and policies of the defendants refused to accommodate plaintiff's reasonable demands that utilities in other states have no problem doing (exhibit N). The lack of responsible response to the demands of the plaintiff and the urgent nature of the health crisis warranted the plaintiff to remove offending meter, which was creating a continuing private nuisance. The PSC does not have jurisdiction to rule on a private nuisance
31. Rebutting Item# 32: Plaintiff did not appeal the decision of PSC Officer Ramona Munoz because there was no grounds to appeal as she cited 16NYCRR 12.5(a) which clearly states an informal hearing can be denied if officer is without power to grant the relief requested. The exhaustion of administrative remedies does not apply if the relief sought is not within the power of the agency to grant. Furthermore PSC officer Ramona Munoz in an official capacity directed the plaintiff away from the PSC and toward the FCC or his local government. (see exhibit II).

32. Rebutting item #33,34 and 35: The affidavit of David McGowan (see exhibit UU) contains blanket statements without any references to the PSC rules, no Tariff citations, many misrepresentations and perpetuates fraud: a) Paragraph 8: Mr. McGowan fraudulently declares under oath that PSC approved analog utility meters were not available when the plaintiff requested one in 2013 because supposedly they were not being manufactured anymore. McGowan fails to disclose the fact that already PSC approved used Central Hudson analog utility meters that are operating just fine were constantly being obtained regularly from upgrades and renovations of power consumers homes and there were no PSC laws, rules or regulations that prohibit their reuse to a customer who requests one. Its been over 5 years now and Central Hudson under the leadership and policies of the defendants and the current leadership continue to commit fraud by claiming analog utility meters are not available as does Mr. McGowan in his fraudulent affidavit. Mr. McGowan is swearing to something he does not know as he nor any Central Hudson agent or representative ever visually inspected the installation of the remanufactured/refurbished analog utility meter Plaintiff installed, nor did they request any documents of the ANSI approved meter to be able to say it was "improperly installed". The Plaintiff installed the subject meter with the power turned off inside the home which is much safer than installing the subject meter with

the power turned on inside the home which Central Hudson does all the time. The fact that the plaintiff was forced to replace the Central Hudson meter in self-defense is the fault of the Central Hudson for ignoring lawful notices sent certified mail, and not adequately responding to a major health crisis situation in the plaintiffs home caused by the transmitting smart digital meter (GE I-210). B) Paragraph 10: Mr. McGowan fraudulently claims under oath that analog utility meters are not available for use throughout service territory. Analog utility meters can be made available with a policy change and Central Hudson claiming they are not in a position to provide them when that is outright fraud (see exhibit W, page 3). c) Mr. McGowan stating that Central Hudson not removing analog utility meters from one property and use them on another, not storing them for later use or recycle analog meters is not credible testimony. Central Hudson can remove analog utility meters from one property and use them on another, or store them for later use or recycle analog meters as there is no PSC Law, rule or regulation that prohibits them from doing just that (see exhibit E), What Mr. McGowan has described in paragraph 11, is "policy" not PSC laws, rules or regulations are preventing the issue of a used CH analog utility meter. Mr. McGowan has inadvertently verified what the plaintiff has been claiming all along that under the leadership of the defendants and their "policies". Defendants created the continuing private nuisance that the plaintiff

and his significant other, Nicole Nevin, were and still are subjected to, deprivation of the basic human need of electrical service. d) Paragraph 12: Mr. McGowan, being the meter ordering specialist, should know that original equipment remanufactured/refurbished analog utility meters do not need additional PSC approval if no aftermarket parts were installed in the refurbishing process. To say refurbished original equipment analog utility meters need additional PSC approval is fraud (see exhibit O). To imply that the PSC has not ever approved original equipment remanufactured/ refurbished analog utility meters is fraud (see exhibit M5). Mr. McGowan's Affidavit has been vitiated by fraud (see exhibit UU).

33. Rebutting item#36: Whether the 14 analog utility meters are new or unused original equipment in the original boxes with the manufacturers packing labels stating they were manufactured in 2002 , the fact is they have 50 year lifespan. The glaring fact is, while Central Hudson has been claiming that analog utility meter are not available, the plaintiff being a layman was able to locate 14 unused like brand new perfectly fine analog utility meters 5 years later, while the professionals at Central Hudson under the leadership and policies of the defendants and the current leadership have not been able to locate one analog utility meter, used or unused, in that time period (see exhibit DD). The defendants misrepresent the situation around analog utility meters when they use the word "obsolete" when

referring to analog utility meters. Webster's dictionary defines "obsolete" as "no longer in use, no longer useful" (see exhibit TT). Blacks Law defines "obsolete" as "that which is no longer used"(see exhibit TT). Analog utility meters are certainly still in use and still being remanufactured and refurbished and they most certainly are not obsolete. To say they are obsolete is a complete and intentional misrepresentation to this Court (see exhibits L, M1, M2, M3, M4, N)

34. Rebuttal of item #37: The fact that new analog utility meters were not being manufactured in 2013 has no bearing on the fact that a single used Central Hudson previously PSC approved analog utility meter could have been obtained during the operations of Central Hudson over the course of 5 years alleviating the hardships that living off the grid that have been imposed on the plaintiff and his significant other Nicole Nevin. Used analog utility meters were readily being obtained whenever an upgrade or a renovation required them to be removed because of company policy. Plaintiff has proved with an official PSC response to a FOIL request that there is no PSC law, rule or regulation that prohibits Central Hudson who under the leadership and policies of the defendants and the current leadership from issuing a used Central Hudson analog utility meter to a customer who requests it, including the plaintiff (see exhibit E). To claim that because analog utility meters were not being manufactured new in 2013 is a reason

that the plaintiff cannot have an analog utility meter is an intentional misrepresentation and fraud.

35. Rebutting item #38:The defendants are once again misrepresenting what the plaintiff expected of Central Hudson under the leadership of the defendants and their policies. The plaintiff expected Central Hudson to locate an unused or used Central Hudson analog utility meter from their operations, from their storage, from a supplier, from back stock, or from a remanufacturer. Plaintiff was told Central Hudson was not in a position to offer any of those options. As time passed the plaintiff uncovered that there are no PSC prohibitions against used Central Hudson analog utility meters and there are no PSC prohibitions against remanufactured/refurbished original equipment analog utility meters and that neither of those options needed PSC approval provided they were originally approved, except in the case of a remanufactured/refurbished analog utility meter having aftermarket parts added during the refurbishing process. If no aftermarket parts were added no additional PSC approval would be needed (see exhibit O). Used Central Hudson analog utility meters and remanufactured/refurbished analog utility meters could be used if Central Hudson "chose to do so". The plaintiff expected Central Hudson to find a way to supply their customer, the plaintiff, an analog utility meter and stop irradiating his home environment that he did not give physical consent to do (see exhibit E, O,).

36. Rebuttal of item# 39: Mr. McGowan and Mr. Harkenrider have both committed fraud by stating in their affidavits (see exhibit UU, XX)that analog utility meters are not available to Central Hudson attempting to convince this Court even though it has been previously pointed out and not rebutted, used Central Hudson analog utility meters are regularly obtained from renovations and upgrades and could be made available very easily as there is no PSC law, rule or regulation stating they cannot be offered to a customer who request one (see exhibit E,). Remanufactured/refurbished original equipment analog utility meters also are not prohibited and it is totally up to Central Hudson to "chose to use" them (exhibit QQ, page 22, exhibit O). To continually claim with fraudulent affidavits from multiple affiants that analog utility meters are not available throughout these proceedings together with the other frauds and misrepresentations pointed out and documented by the plaintiff in this reply and in the unrebutted Amended Affirmation of Support Affidavit rises to the level of fraud on the court by the defendants (see exhibit A pages 3 & 4, paragraph 6, exhibit B page 3 paragraph 10, exhibit C pages 3 paragraph 11, exhibit D paragraph 3 paragraph 8).
37. Rebuttal of Item#40: The defendants make some very clear misrepresentations in this chapter regarding what the plaintiff believes, what the PSC decided and whether remanufactured/refurbished analog utility meters are permitted in

New York State. First the plaintiff believes and knows he has a fundamental inalienable right to object to potentially harmful toxic technologies being placed on his home without his physical informed consent. Central Hudson under the leadership of the defendants and their policies did not obtain any physical informed consent from the plaintiff or anybody else the plaintiff has spoken to before these microwave emitting genotoxic and neurotoxic transmitting smart digital utility meters (GE I-210) were placed on power consumers homes, including the plaintiff (see exhibit Z). Secondly the PSC decision did not say Utilities are prohibited from using remanufactured/refurbished analog utility meters, only that they "chose no to". The PSC has not prohibited the use of remanufactured/refurbished analog meters. The PSC has only decided it "will not require utilities" to supply them (see exhibit QQ page 22). The Utility on the other hand can supply them if they chose to. "It was further noted that while refurbished analog utility meters are commercially available, the fact that no new analog utility meters are being produced necessarily means that refurbished devices will be in diminishing supply and no New York Utility has chosen to use them:" "Finally given the uncertainties surrounding the use of refurbished meters, Central Hudson and other New York Utilities have, to date, been unwilling to sponsor them and the Commission will not require Central Hudson to so now." Plaintiff submitted a FOIL

request to the PSC and they responded on May 16,2017. They officially stated there is no rule law or regulation that prohibits the Utility from using remanufactured/refurbished original equipment analog utility meters. The only stipulation was if the remanufactured/refurbished analog utility meter needed repaired with anything other than original equipment parts, that repaired meter would need PSC approval as a new type of meter (see exhibit O). Furthermore there is no prohibition in this recent PSC order defendants are referring to, only the PSC saying that they will not force Central Hudson to supply them (see exhibit Q, pages 21,22, exhibit O). The defendants have intentionally misrepresented what the PSC has stated, to defraud the plaintiff, as there was no prohibition on remanufactured/refurbished analog utility meters up until May 16, 2017 and presently according to the aforementioned PSC decision. Defendants stating that Central Hudson issuing remanufactured/refurbished analog utility meters, cannot be done in New York State is intentional fraud (see exhibit M5).

38. Rebuttal of item#41: Defendant misrepresent what the plaintiff has stated about the lawful notices sent certified mail on 5 separate occasions (March 21, April 9, May 16, June 25 and September 12, of 2013). Breach of Contract was named as the complaint concerning the lawful notices. Now in the process of proving that to this court, the defendants have colluded with their agents and representatives to

make misrepresentations and commit fraud to avoid the liabilities associated with the agreement established with the lawful notices.

39. Rebuttal of item#42: Plaintiff does not suggest that an agreement was established with the defendants, the plaintiff declares an agreement was established with the defendants and Central Hudson, based on the legal principles laid out in the classic legal reference Restatement of Law/Contracts second, chapter 69, "Acceptance by Silence". The defendants have not rebutted or debated anything stated in this volume, which is located in the library of the Supreme Court of Ulster County. The defendants are not bound by the lawful notice sent March 21, 2013, but are bound by their failure to respond to said lawful notice with a sworn affidavit contesting the terms and conditions of the agreement and did not declare objection to the agreement. Defendants were notified by certified mail in the lawful notices that no response to the lawful notice would be taken as acceptance as detailed in chapter 69, "Acceptance by Silence" in Restatement of Law/Contracts published by the American Law Institute (see exhibit Y). The Central Hudson and the PSC operate using the same legal principles of acquiescence that plaintiff has used in lawful notices when Central Hudson and the PSC approved the purported agreement to deploy the transmitting smart digital utility meters on the plaintiff and the public. The plaintiff though gave direct physical informed and proper notice in the form of the lawful notices, sent certified mail on

five separate occasions (March 21, April 9, May 16, June 25 and September 12, 2013. The PSC on the other hand only gave the public and the plaintiff indirect notice via the New York Register, which does not meet that criteria for "proper notice" and does not meet the minimum constitutional requirement for an action that would affect liberty or property according to NY State Appeals Court. "*Notice by publication and posting is unlikely to reach those who, although they have an interest in the property, do not make unusual efforts to stay abreast of such notices. A county's use of these indirect forms of notice is not reasonable where there are inexpensive and efficient direct alternatives--such as personal delivery or mailing. Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party"* (Matter of McCann v Scaduto Court of Appeals of New York December 23, 1987 71 N.Y.2d 164519 N.E.2d 309}. Preferred Mut. Ins.Co. v Donnelly, Court of Appeals of New York. April 03, 2014, 22 N.Y.3d,11698 N.E.3d 847

40. Rebuttal of item #43: The defendants offer a complete and intentional misrepresentation of what occurred with the communications of Central Hudson Service Supervisor Daniel Harkenrider and Central Hudson Counsel Paul Colbert that constitutes fraud concerning their letters to the plaintiff dated June 21, 2013 and April 1, 2013. When

any executive responds to a letter or notice that response always contains “Re:” in the beginning of the letter with the date and name of the notice just above where the communication begins. Neither Paul Colbert nor Daniel Harkenrider identified the lawful notices by name, the date of the letters they were responding to, did not mention any terms or conditions of the lawful notices or acknowledged the proposed agreement, let alone objected to it (see exhibit GG). Paul Colbert’s letter began with “Re: Complaint 325148 Concerning Central Hudson Gas & Electric Corporation ‘s disconnection of electrical services at 8 Fitzsimmons Lane, Woodstock N.Y. 12498” (see exhibit W). Additionally Counsel Paul Colbert stated in an email sent to Nicole Nevin and PSC Consumer Specialist Karen Anderson, that his June 25, 2013 letter was in response to the PSC complaint submitted by the plaintiff and Nicole Nevin (see exhibit MM). To now say that Paul Colbert’s letter is a response to the plaintiff’s lawful notices is an intentional misrepresentation and collectively with the other frauds cited in the plaintiff’s motion to vacate, constitutes clear and convincing “Fraud on the Court.” Daniel Harkenrider’s letter had at the beginning of his letter “Re: concerns about the installation of Smart Meters” (see exhibit GG) and in no way gave any indication that he was responding to the plaintiff’s lawful notices or that he objected to the proposed agreement or it’s terms and conditions. To say now that he responded to the lawful notices is also a complete fabrication

and misrepresentation of what the purpose his letter was and what it did not do. Neither Paul Colbert nor Daniel Harkenrider sent a sworn affidavit to the plaintiff as required by the lawful notices documenting any objections to the proposed agreement. The Court should take notice that Counsel Paul Colbert has not given a sworn affidavit that his letter was a response to the lawful notices. The fact that two attorneys, Christina M. Bookless and Paul Colbert (who has not objected to Ms. Bookless misrepresentation of his June 21, 2013 letter,) would attempt to represent what is obviously not true, violates the rules of professional conduct. *"[A]n attorney's duty to zealously represent a client is circumscribed by an 'equally solemn duty to comply with the law and standards of professional conduct . . . to prevent and disclose* ***frauds*** *upon the* ***court****' " (*People v DePallo*, 96 NY2d 437, 441 [2001], quoting* Nix v Whiteside*, 475 US 157, 168-169 [1986]). To that end, the Rules of Professional Conduct expressly prohibit an attorney from, among other things, "mak[ing] a false statement of fact or law to a tribunal" (Rules of Professional Conduct [22 NYCRR 1200.0] rule 3.3 [a] [1]), "offer[ing] or us[ing] evidence that [he or she] knows to be false" (Rules of Professional Conduct [22 NYCRR 1200.0] rule 3.3 [a] [3]), "suppress[ing] any evidence that [he or she] or the client has a legal obligation to reveal or produce" (Rules of Professional Conduct [22 NYCRR 1200.0] rule 3.4 [a] [1]), "knowingly us[ing] perjured testimony*

or false evidence" (Rules of Professional Conduct [22 NYCRR 1200.0] rule 3.4 [a] [4]).

41. Rebuttal of item #44: Central Hudson has analog utility meters and transmitting digital meters that provide the same function of measuring electrical usage. As the plaintiff has been declaring it is Central Hudson under the leadership of the defendants and their policies that prevented the plaintiff from having an analog utility meter and not the availability nor any prohibition of the PSC and as such are defendants and central Hudson are liable for keeping the plaintiff without electrical service for almost 6 years as of this May 20, 2019. The plaintiff had a time tested safe analog meter on his home when he arranged to have electrical service turned on. He did not ask for his analog meter to be replaced. The meter was switched for a microwave emitting neurotoxic, genotoxic device that plaintiff was not informed of nor gave physical informed consent to said transmitting smart digital utility meter (GE I-210). The plaintiff has every right to object and rectify to a continuing private nuisance created at his home. The defendants continue to intentionally misrepresent what the actual issue is.

42. Rebuttal of item# 45: The defendants disregard the classic legal reference respected in all of American Jurisprudence, Restatement of Law, published by the American Law Institute whose chapters are cited in New York State courts all the way up to New York Appeals

Court and whose volumes are located in the library of the Supreme Court of New York , Ulster County. [93 N.Y.2d 195, 711 N.E.2d 626, 689 N.Y.S.2d 411, 1999 N.Y. Slip Op. 03022Donald S. Engel, Appellant, et al., Plaintiff, v. CBS, Inc., et al., Respondents., 65 N.Y.2d 189, 480 N.E.2d 679, 491 N.Y.S.2d 90, Richard E. Schultz, Individually and as Administrator of the Estate of Christopher Schultz, Deceased, and as Father and Natural Guardian of Richard Schultz, et al., Appellants, v. Boy Scouts of America, Inc., et al. Respondents, et al., Defendants.] Defendants intentionally omit any reference to chapter 69 “Acceptance by Silence” in that prestigious legal reference. Defendants cited court case is not applicable because that court case is referring to letters that were involving disputes not about contracts between parties that had a previous course of dealings that utilized silence as acceptance as Central Hudson has utilized in obtaining a purported agreement for the tariff and the deployment of transmitting smart digital utility meters (GE I-210). Furthermore the Court of Appeals of the State of New York held when regarding a letter written to another in a dispute “ It does not appear that the defendant ever answered the letter. We see no ground upon which the letter is admissible. It is not in the nature of a declaration and admits by not answering” and “did not demand an answer” [Bank of B.N. A v. Delafield (June 1891) Court of Appeals of the State of New York]. On the contrary the plaintiff Stephen Phillip Romine did send certified mail/ return receipt lawful

notices on 5 separate occasions (March 21, April 9, May 16, June 25 and September 12 of 2013 in the form of a lawful notice declaration and demanded an answer in the form of sworn affidavit. The legal reference Restatement of Law/Contracts, chapter 69 "Acceptance by Silence" states: " where the offeror has stated or given reason to understand that assent may be manifested by silence or inaction" (page 68), Where because by previous dealings or otherwise, it is reasonable that the offeree should notify the offeror if he does not accept". (page 68), Explicit statement by the offeree, usage of trade, or a course of dealings between the parties may give offeror to understand that silence will constitute acceptance" (page 69). The defendants have misrepresented the plaintiffs lawful notices as merely a "writing" and not as the lawful notices giving "proper notice" of something that may affect the property Central Hudson under the leadership of the defendants and their polices that has created a continuing private nuisance in the plaintiff's home environment from 2008 to 2019. (Matter of McCann v Scaduto Court of Appeals of New York December 23, 1987 71 N.Y.2d 164519 N.E.2d 309}. Preferred Mut. Ins.Co. v Donnelly, Court of Appeals of New York. April 03, 2014, 22 N.Y.3d,11698 N.E.3d 847

43. Rebuttal of item #46: Defendants continue to misrepresent the letters that were sent to the Plaintiff by Central Hudson Service Supervisor Daniel Harkenrider, April 1, 2013, and Counsel Paul

Colbert, June 21, 2013, were not a response to the lawful notices as they did not mention them by name, date, terms and conditions, or any objections to the agreement contained therein the lawful notices. Paul Colbert and Daniel Harkenrider said right at the beginning of their letters what they were regarding and it was not about the terms and conditions or agreement in the lawful noticeswhich needed to be responded to (see exhibits GG, W). Daniel Harkenrider in his recent sworn affidavit has admitted that his only intent of his letter was to inform the plaintiff about smart meters, which was what the letter was regarding ("Re: Concerns about the Installation of Smart Meters"). Mr. Harkenriders admits in that an ERT digital meter is an "AMR" meter in his sworn affidavit yet maintains throughout his affidavit to maintain that an "AMR" ERT digital transmitting meter is "not a smart meter" while not discussing or mentioning anything about disagreeing with the terms and conditions of the lawful notices or objecting to the agreement in the lawful notices as it required. Mr. Harkenrider assertions about "AMR" ERT transmitting meter flies in the face of the , the UTC, the PSC (exhibit U page 2) and Central Hudson (on their website) have chosen as an authority on smart meters. The UTC plainly states "Smart Meters are electronic measurement devices used by utilities to communicate information for billing customers and operating their electric systems." What makes a smart meter smart, is that it

communicates (transmits information) which an AMR ERT meter does one way. The UTC illustrates this in the chart that an AMR meter is a "first generation smart meter" on page 7 figure1 of their document "Smart Meters and Smart Meter and Systems". The two way AMI communicating meter that the PSC and Mr. Harkenrider are maintaining are the only real smart meter, is simply an advanced smart meter with two way communication as the UTC affirms (see exhibit U page 7). Mr. Harkenrider's letter and Affidavit (see exhibits GG, XX) are incorrect about smart meters and attempt to mislead this Court in tandem with the PSC and Central Hudson who are contradicting their own smart meter authority, the UTC. Mr. Harkenrider's affidavit is vitiated by the fraud he joins in on with his fraudulent statements about smart meters and the attempted claim that he responded to the terms and conditions of the lawful notices or in anyway objected to the agreement within and as required. His communications did no such thing. Furthermore the Colbert and Harkenrider 2013 letters were not sworn affidavits, which are necessary considering the lawful notices demand and circumstances. The attempt by the defendants to intentionally misrepresent the truth is fraud as they attempt to defraud the plaintiff of his terms and conditions of the aforementioned agreement contained in the lawful notices. The plaintiff has not ever stated or conceded that the defendants have responded to the

lawful notices only that he received letters from their representatives Daniel Harkenrider and Paul Colbert, which both letters obviously had nothing to do with the terms and conditions and agreement in the lawful notices. The defendants continue to misrepresent the truth. Furthermore in 2013, Steven V. Lant , besides being CEO of Central Hudson was also on the Board of Directors of Central Hudson. Central Hudson's Business Code of Ethics states on page 5, section 1, item 5 (see exhibit VV): "*We expect our management to provide accurate, complete and timely information to the Board on opportunities, challenges and problems facing the Company. We believe our spirit of communication is key to building the trust and confidence that is essential for enabling all directors and members of management to work together cooperatively as strategic partners. We expect our Chief Executive Officer to make sure the Board is fully informed so that directors can participate meaningfully in key decisions and can provide knowledgeable guidance, support and oversight.*" The situation with the plaintiff threatening a lawsuit was a "problem" that according their own code of ethics, needed to be shared between "management and the board", yet the defendants would have this Court believe defendants knew nothing about a possible lawsuit in the making.

44. Rebuttal of item# 47: The plaintiff has argued the manufacturing of consent and the forced deployment of said transmitting smart digital utility meters on the publics and plaintiff's homes without physical informed consent, education of potential adverse health effects and the right to obtain a safe time tested analog utility meter is fraud and the deprivation of basic fundamental human rights.
45. Rebuttal of item # 48: The petition was filed, no peer-reviewed medical studies were provided, the comment period was announced by indirect notice and Central Hudson did not alert its customers with a simple insert in customer electric bills, like they do for other more mundane reasons, so zero comments were received on the PSC website deliberation page (see exhibit BB). The public and the plaintiff had no idea of what was taking place or the ramifications. The defendants and the PSC say that failure to object on PSC comment period, of which the public was indirectly notified through the New York Register, is implied consent to the PSC plan to deploy transmitting smart digital utility meters (GE I-210), (see exhibit F, page 1), When it comes to the defendants own failure to reply to the plaintiffs direct notice to the defendants primary place of business on 5 separate occasions purportedly does not constitute consent to the plaintiffs lawful and proper notice terms and conditions. To say the plaintiff and the public gave consent to transmitting smart digital utility meters is fraud as their constitutional

rights were violated. The public and the Public has a right to be secure in their homes without the government or any state actors acting in concert installing devices that emit carcinogenic, genotoxic, neurotoxic emitting devices on their homes without their physical informed consent. The defendants may cite all kinds of state rules and regulations to assert their claims but US Supreme Court has he last word and has held: *Where rights secured by the US Constitution are involved, there can be no rulemaking or legislation which would abrogate them"* (Davis v. Wechsler, 263 US 22, 24).

46. Rebuttal of item# 49: The defendants rambling statements are creating confusion as it is unclear if they are referring to the PSC meter approval which happened in 2005, which would seem logical as that is what was discussed in previous item # 48 or they are referring to the PSC administrative decision against the plaintiff's complaint which happened in 2013. If the defendants are referring to the 2005 PSC meter approval, the plaintiff was never notified of a PSC meter approval decision or the ability to appeal. Defendants falsely claim: "plaintiff was advised on numerous occasions, PSC determinations could be appealed and/or an Article78 filed." One can't appeal and/or file an Article 78 if one was not given direct proper notice of the subject proceeding and therefore had no idea what was taking place (Matter of McCann v Scaduto Court of Appeals

of New York December 23, 1987 71 N.Y.2d 164519 N.E.2d 309}.

Preferred Mut. Ins.Co. v Donnelly, Court of Appeals of New York. April 03, 2014, 22 N.Y.3d,11698 N.E.3d 847.

If the defendants are referring to the 2013 PSC decision of the plaintiff's complaint, then they conveniently forget that exceptions to administrative remedies exist and that the plaintiff qualifies as Appellate Court case law indicates: "[t]he requirement of exhaustion of administrative remedies assumes that adequate relief may be obtained" (*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) New York Appellate Court First Department held: "The exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or when its pursuit would cause irreparable injury" (Coleman v. Daines 79 A.D.3d 554, 913 N.Y.S.2d 83, 2010 (*Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978]). PSC official Ramona Munoz cited 16NYCRR12.50(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," directing the plaintiff away from the PSC. After much consideration plaintiff filed a complaint with his New York State Supreme Court in his local County of Ulster. The defendants are attempting to defraud the plaintiffs of his right to seek relief and justice claiming the plaintiff has not exhausted all of his administrative remedies when he has a clear case for an exemption and Lawyers cannot claim ignorance of the law.

47. Rebuttal of item# 50: The defendants seemed to be confused as the plaintiff has never stated it would be futile to appeal the 2005 PSC meter approval. Plaintiff has stated it would be futile to appeal the 2013 PSC administrative decision against his complaint. If the defendants are referring to the PSC meter approval one can't exhaust his administrative remedies if he has no idea that a PSC decision is going to affect him because he was never given direct proper notice (Matter of McCann v Scaduto Court of Appeals of New York December 23, 1987 71 N.Y.2d 164519 N.E.2d 309}. Preferred Mut. Ins.Co. v Donnelly, Court of Appeals of New York. April 03, 2014, 22 N.Y.3d,11698 N.E.3d 847). If the defendants are referring to the PSC administrative decision against his complaint then they intentionally

ignore and misrepresent the exemption rule to exhausting ones administrative remedies. It should be clear in this New York case law from Appellate Court citation that the requirement to exhaust ones administrative remedies "need not be followed" if the agency does not have the power to grant the relief sought. New York Appellate Court First Department held: "The exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or when its pursuit would cause irreparable injury" (Coleman v. Daines 79 A.D.3d 554, 913 N.Y.S.2d 83, 2010 (*Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978]) Furthermore many of the plaintiffs claims such as multiple counts of fraud, breach of contract, continuing a private nuisance, constitutional and international human right violations and violating the Nuremberg Code, are not in the jurisdiction of the PSC.

48. Rebuttal of item# 51: Plaintiff cannot object to something he has not been made aware of without proper direct notice of. The plaintiff nor Central Hudson's customer base had any idea of the existence of the New York Register where indirect notice of the comment period was published because Central Hudson did not inform it's customer base that Central Hudson's petitions would be on the

New York Register and the PSC website. (see exhibit Z) Preferred Mut. Ins.Co. v Donnelly, Court of Appeals of New York. April 03, 2014, 22 N.Y.3d,11698 N.E.3d 847. Procedural dues process rights of the plaintiff and the public was violated. The central meaning of procedural due process has long been clear. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified" at a reasonable time and in a reasonable manner *(Baldwin v Hale,* 1 Wall [68 US] 223, 233, quoted in *Fuentes v Shevin,* 407 US 67, 80). Notice by publication is unreasonable because: *"Notice by publication and posting is unlikely to reach those who, although they have an interest in the property, do not make unusual efforts to stay abreast of such notices. A county's use of these indirect forms of notice is not reasonable where there are inexpensive and efficient direct alternatives--such as personal delivery or mailing. Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding, which will adversely affect the liberty or property interests of any party* (Matter of McCann v Scaduto Court of Appeals of New York December 23, 1987 71 N.Y.2d 164519 N.E.2d 309}. Therefore the plaintiff nor the public had the opportunity to object or appeal or file an article 78 because no one was informed the existence of the New York Register as evidenced by the lack of any comments on the proceedings and the 17 uncontested affidavits (see exhibits F, bottom

of page 1, Z, BB). Furthermore the issue of the approval of the transmitting smart digital utility meter is not central to the other claims of the plaintiff especially fraud and fraud on the court which the motion to vacate is deliberating on.

49. Rebuttal of Item# 52: Plaintiff's claims of fraud, and even fraud on the court, revolves around many instances of intentional misrepresentations and multiple frauds, one being the continuous fraudulent claim in the Answer to plaintiffs 2nd Amended Complaint, Opposition to Motion to Reargue and Defendant Reply that James P. Laurito left Central Hudson for other employment, stated as well in defendant James P. Laurito's sworn affidavit, has imputed "unclean hands" to the defendants and their lawyers for failing to disclose Mr. Lauritos true position in the operations of Central Hudson being on the Board of Directors and concealing that fact from the plaintiff and this Court (see exhibits S, R). To prove fraud on the claim that Mr. Laurito has not left Central Hudson and actually is a key figure in making decisions about its operations, is of vast importance to demonstrating defendants have "unclean hands" and their affidavits are vitiated. Defendant Steven Lant knew full well that defendant James P. Laurito did not depart Central Hudson and both defendants colluded with their attorneys to defraud the plaintiff of subject matter. ["It is not beyond the power of our courts in any case to deny judicial relief to a litigant

who comes into court with unclean hands," Nishman v De Marco, 62 N.Y.2d 926, 468 N.E.2d 23, 479 N.Y.S.2d 185 (1984) Court of Appeals] Therefore the defendants: "defrauded the adversary (plaintiff) in the subject matter of the action (summary judgment motion) and will not be heard to assert right in equity." Blacks Law 5th Edition "Unclean Hands Doctrine" (see exhibit WW). Summary judgment should therefore be vacated pursuant to CPLR 5015(a)(3) due to "*fraud, misrepresentation, or other misconduct of an adverse party.*"

50. Rebuttal of item# 53: Defendants again misrepresent the plaintiff's claims. Plaintiff's claim of breach of contract and fraud is predicated on the defendant's individual capacity for defaulting on the terms and conditions of lawful notices. The plaintiffs claims of continuing a private nuisance, gross negligence, fraud, constitutional violations, international human right violations and violating the Nuremberg Code are predicated upon their individual capacity as chief executives and policymakers of Central Hudson who have committed criminal intent to deprive the plaintiff of his fundamental rights with policies they created and/or supervised and made sure were carried out.

51. Rebuttal of item# 54: Discovery could have uncovered evidence that would support multiple counts of fraud and fraud on the court and that would certainly vitiate the summary judgment decision and enter a default judgment. (70 Am. Jur. 2nd Sec. 50, VII Civil

Liability “Fraud destroys the validity of everything into which it enters,” Boyce v. Grundy, 3 Pet. 210 "Fraud vitiates the most solemn contracts, documents and even judgments."

52. Rebuttal of item# 55: The plaintiff intended to prove with discovery that analog utility meters were and are available. The defendant intended to prove with discovery the defendants are lying about the fact they did not know about the issue with plaintiff and the lawful notices. The plaintiff intended to prove with discovery that the defendants were grossly negligent in their responsibilities to their power customers, which included the plaintiff. The plaintiff intended to prove with discovery that the defendants created and/or supervised the policies that caused the plaintiffs current dilemma of having lived 5 years without electrical service. Without discovery this all becomes very hard to prove and resulted in the Court ruling against the plaintiff with a summary judgment because of the multiple frauds of the defendants, which the plaintiff has documented in his uncontested Affirmation of Support Affidavit and uncontested exhibits A to Z and AA to OO (except “JJ”) and his uncontested Memorandum of Law.

53. Rebuttal of Item# 56: Plaintiff should have the same opportunity as the defendants had to conduct discovery with no conditions of having to prove the existence of material facts before demanding answers to them. This violates the fundamental fairness of a court

proceeding. U. S. Supreme Court held:" Reciprocal discovery is required by fundamental fairness" WARDIUS v. OREGON (1973).

54. Rebuttal of item# 57: The procedural grounds that the summary judgment decision was based on frauds committed by the defendants. The claim that primary jurisdiction of the PSC is exclusive is fraud. The claim that primary jurisdiction of the PSC covers breach of contract, fraud, gross negligence, continuing a private nuisance, violating constitutional rights, violating international human rights, and violating the Nuremberg Code is intentional misrepresentation and fraud as a lawyer cannot claim ignorance of the law. The claim that the plaintiff does not have a lawful exception to the rule of exhaustion of administrative remedies, when the PSC has stated that they do not have the power to grant the relief the plaintiff seeks, is intentionally misrepresenting the facts. The claim that the PSC informal hearing officer, Ramona Munoz, has ruled against the plaintiff is a misrepresentation and fraud as all that happened was a hearing was denied, not the issues decided in a quasi-judicial hearing as required by due process. The claim that collateral estoppel is applicable is fraud as no quasi-judicial hearing took place and to say that such litigation took place and therefore collateral estoppel is applicable is a misrepresentation of the facts and fraud as again lawyers cannot claim ignorance of the law. The plaintiff has documented in many instances the defendants with their agents

and representatives and through their lawyers have intentionally misrepresented the facts and misled the Court using multiple instances of fraud (see uncontested Amended Affirmation of Support Affidavit).

55. Rebuttal of item# 58: The defendants continue to misrepresent the facts by claiming: "Further, plaintiff argues that the employment status of the defendants, Laurito and Lant, was the sole basis for finding no liability against them and that they were employed by Central Hudson and should have responded to his demand." First of all plaintiff did not ever argue defendants employment status was sole basis for liability or no liability. Secondly Mr. Laurito and Mr. Lant were most definitely employed at Central Hudson when the meter events with the plaintiff transpired and were directing and supervising its operations that the plaintiff has complained of. Plaintiff filed his complaint in 2016 within the statue of limitations for his claims. Mr.Laurito and Mr. Lant were named in the lawful notices as the liable parties as well as Central Hudson and all of its policymakers. The defendants through acquiescence defaulted on the agreement in the lawful notices sent on 5 separate occasions certified mail and were made liable. Defendant James P. Laurito fraudulently claiming he has departed Central Hudson does not free him from the tacit agreement he made with the plaintiff in 2013. Neither does the legal liabilities of fraud committed by both defendants against the plaintiff disappear with claims of purportedly

departing Central Hudson. In the next sentence the defendants state “as can be seen from their affidavits, neither were employees of Central Hudson at the time of the lawsuit filed,” The plaintiff has documented James P. Laurito was on the Board of Directors in 2014 and currently still is. To claim that James P. Laurito is no longer part of Central Hudson is fraud and the failure to disclose Mr. Laurito’s Board of Director status is fraud as it was done knowing what the real truth is, it was intentional, it attempts to cause the Court to depend on that fraud when making it’s judicial decisions and it harms the plaintiff in obtaining the justice and the relief he is seeking.

56. Rebuttal of Item # 59 & 60: The defendants here admit that the employment status of the defendants was a factor in the summary judgment decision. The affidavits, of Mr. Laurito and Mr. Lant are vitiated by their failure to disclose his position with Central Hudson as a Board of Director. Both defendant’s affidavits are vitiated by the fraudulent proposition put forth that because agents/representatives of the defendants handled certified mail that contained the potential for a lawsuit. Lawful notices were addressed to both defendants individually and personally at their primary place of business in 2013 and that those agents/representatives who handled defendants mail purportedly did not communicate that important information of a potential for a lawsuit that would affect

the defendants is intentional fraud. The defendants would have this Court believe the doctrine of "Notice to Impute" does not apply to the CEO and President of a corporation and were just "co-employees." [*"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 91st Dept 2001)]. [" *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}]. Furthermore the defendants can be held liable according to Central Hudson's Business Code of Ethics states on page 6 of section 12: "*PERSONAL ACCOUNTABILITY: Each director, officer and employee should understand that he or she will be held accountable for complying with this Code. A failure to observe the provisions of this Code may result in disciplinary action, up to and including termination. In addition, to the extent a violation of the Code also violates an applicable law, rule or regulation, or another person's rights, it may result in civil and criminal liability"* (see exhibit 3). The plaintiffs rights were violated by the policies the defendants directed and/or created. The proposition put forth by the defendants that they were never informed about the lawful notices is clear and convincing fraud and both affidavits and

any papers submitted by the defendants with these fraudulent claims cannot be trusted [“Fraud vitiates everything it touches” Nudd v. Burrows (1875) 91 U.S. 416. Fraud destroys the validity of everything into which it enters. Boyce’s Executors v. Grundy (1830) 28 U.S. 210.Fraud vitiates the most solemn contracts, documents and even judgments. United States v. Throckmorton (1878) 98 JU.S. 61, 70.]. The defendants are not being held liable for merely being “co-employees” but because they supervised and created and/or directed policy that harmed the plaintiff and violated his fundamental rights. They are being held liable because they acquiesced to the plaintiff’s lawful notices sent directly to them personally and individually and willingly defaulted to the terms and conditions contained therein. They are being held liable for all the claims of the plaintiff in his 2nd Amended Complaint. This motion though is deliberating about the multiple counts of fraud perpetrated on the plaintiff under the watch of the defendants and through their lawyers. Plaintiff has documented all of this in his uncontested Amended Affirmation of Support Affidavit and uncontested Memorandum of Law.

57. Rebuttal of item# 61: The defendants admit here that defendants “are liable if they participated in the tort or wrongful act.” Central Hudson was supervised under the leadership of the defendants and their policies they created and/or directed. Creating and/or directing policy is participating in any tort or wrongful act that is a direct result

of the policies defendants created and/or directed. On page 2 line 11 of Central Hudson's Director of Meter Services, David McGowan's affidavit, he states "Central Hudson's policies and procedures and the controlling tariffs regulate the use of meters" (see exhibit UU). The PSC has officially stated in a May 16, 2017 FOIL response that there is no rule, regulation or law that prohibits Central Hudson from using a used previously PSC approved Central Hudson analog meter for a customer who requests such a meter (see exhibit E). That being understood the only reason a used CH analog meter cannot be used is because of Central Hudson's policies that the defendants created and/or directed. The fact that the plaintiff has suffered extreme hardship for 5 years because of defendants policies is a direct result of the defendant's having created and/or directed said policy that ultimately has harmed the plaintiff making defendants liable, in addition to being liable for other claims of the plaintiff. Furthermore the defendants can be held liable according to Central Hudson's Business Code of Ethics states on page 6 of section 12: "*PERSONAL ACCOUNTABILITY: Each director, officer and employee should understand that he or she will be held accountable for complying with this Code. A failure to observe the provisions of this Code may result in disciplinary action, up to and including termination. In addition, to the extent a violation of the Code also violates an applicable law, rule or regulation, or another person's rights, it may result in civil and criminal liability*"

(see exhibit VV). The plaintiffs rights were violated by the policies the defendants directed and/or created.

58. Rebuttal of Item# 62: Plaintiff asserts in his previous submissions to this Court and in this document in great detail that plaintiffs claims were not properly dismissed considering the volume of fraud employed by the defendants to make their claims. Defendants frauds are itemized in the plaintiffs uncontested Amended Affirmation of Support Affidavit and uncontested Memorandum of Law. The defendants Affirmation in Opposition did not rebut plaintiffs Amended Affirmation of Support Affidavit point by point, did not rebut or object to any of the defendant's exhibits except exhibit "JJ" and did not rebut plaintiff 's Memorandum of Law point by point. Plaintiff's Amended Affirmation of Support Affidavit and, all the exhibits (except possibly exhibit "JJ") stands as fact on the record as controlling and binding NY case law mandates:

I) 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.

II) 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.

3d1,63 N.Y.S. 3d 352, 2052, 2017 N.Y. Slip Op. 07578.N.Y.

II) 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.

IV) 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.N.Y.,

V) 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

VI) 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.

VII) *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.*

VIII) *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*

IX) 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.

X) 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.

XI) 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.N.Y. XII) 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.

XIII) *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.

XIV) 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.

XV) 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.N.Y.

59. Summary: The plaintiff laid out specific clear and convincing fraud of the defendants in his uncontested Amended Affirmation of Support Affidavit, which the defendants did not rebut point by point. The Opposition document of the defendants did not rebut or include evidence that controverted any of the plaintiff's exhibits that documented the plaintiff's affirmations and 26 declaratory statement of facts. The affidavits in the defendants Affirmation of Opposition to the plaintiffs Motion and Motion to Vacate, being the bulk of purported support for their opposition, were in fact rebutted in the plaintiff's uncontested Memorandum of Law, uncontested Amended Affirmation of Support Affidavit, and in this Reply, and documented defendants Opposition affidavit exhibits to have many misrepresentations and blanket statements without specifics. Furthermore the defendants did not state once that the

plaintiff misrepresented any of the facts he submitted to this Court. The defendants instead chose to reargue their original claims in general terms without addressing or denying any of specific 26 frauds cited in plaintiff's uncontested Amended Affirmation of Support. The uncontested multiple counts of fraud are grounds for vacating summary judgment dismissal and for entering a default judgment and due to the obvious collusion of the defendants and their agents and representatives to commit fraud, as "Fraud on the Court". Fraud therefore has been established as the plaintiff documented Central Hudson under the leadership of the defendants and the policies they directed and/or created, could have easily supplied a used Central Hudson previously PSC approved analog utility meter when the Plaintiff's original request was made and when the Lawful Notice of Demand was sent on 5 separate occasions. The defendant's many misrepresentations and fraud has been utilized to deny the plaintiff a simple analog meter that all his neighbors on his street have had on their homes these past 5 years, while the plaintiff and his significant other have been forced to live without electrical service. The defendants and their agents and representatives, have consistently used a pattern and practice of misrepresentation and fraud, to intentionally, willingly and knowingly deprive the plaintiff of his fundamental rights, due process, due justice and proper relief. In view of the plaintiffs

uncontested Amended Affirmation of Support Affidavit with uncontested exhibits A to Z and AA to OO (except possibly "JJ"), and plaintiff's uncontested Memorandum of Law, this Court should move to vacate summary judgment dismissal and enter a default judgment against the defendants, James P. Laurito and Steven V. Lant, and in favor of the plaintiff, Stephen Phillip Romine.

I, Stephen Phillip Romine, do swear and declare, under pain and penalty for perjury, that everything I have stated in this Reply Affidavit of Truth and Fact is true to the best of my knowledge and understanding.

________________________________ ____________

Stephen Phillip Romine **Date**

________________________________ ____________

Notary **Date**