

**COPY**

SUPREME COURT-STATE OF NEW YORK  
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, J.S.C.

SUPREME COURT : ORANGE COUNTY

-----X  
MARY LANGTON,

Plaintiff,

- against -

SUSSMAN & WATKINS, MICHAEL SUSSMAN, ESQ.,  
FABRICANT, LIPMAN & FRISHBERG, PLLC, NEAL  
FRISHBERG, ESQ., GOLDBERG SEGALLA,  
JONATHAN BERNSTEIN, ESQ., MACCABE & MACK,  
LLP, DAVID POSNER, ESQ., GREENWALD DOHERTY  
LLP, KEVIN M. DOHERTY, ESQ.,  
Defendants.

-----X

To commence the statutory time  
period for appeals as of right  
(CPLR 5513[a]), you are advised  
to serve a copy of this order, with  
notice of entry, upon all parties.

Index No. 4931-2020

**DECISION AND ORDER**

Motion Date: November 25, 2020  
Motion ## 1-4

The following papers numbered 1 to 19 were read and considered on (1) a motion by the Defendants Fabricant, Lipman & Frishberg, PLLC and Neal Frishberg, pursuant to CPLR 2004 and CPLR 3012(d), for an extension of time to answer the complaint; (2) a motion by the Defendants Greenwald Doherty LLP and Kevin Doherty, Esq., pursuant to CPLR 3211(a)(7), to dismiss the complaint and all cross claims insofar as asserted against them; and to enjoin the Plaintiff from filing any further actions; (3) a motion by the Defendants McCabe & Mack LLP and David Posner, Esq., pursuant to CPLR 3211(a)(7), to dismiss the complaint and all cross claims insofar as asserted against them; (4) a motion by the Defendants Fabricant, Lipman and Frishberg PLLC and Neal Frishberg, Esq., pursuant to CPLR 3211(a)(7), to dismiss the complaint and all cross claims insofar as asserted against them.

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Upon the foregoing papers, it is hereby,

ORDERED, that the motions are decided as set forth herein.

#### Introduction

The action at bar is one of several commenced by the Plaintiff Mary Langton arising from her removal as a trustee from the Town of Chester Library Board (hereinafter "Library Board").

The removal was purportedly based, at least in part, on a report commissioned by the Town of Chester concerning complaints received against the Plaintiff by then library director Maureen Jagos. According to all of the Defendants in the various actions, the report concluded that the complaints against the Plaintiff were founded, and that she had engaged in abusive conduct.

The Plaintiff alleges, *inter alia*, that the copy of the report that has been produced to the various courts and to her and her counsel is not in fact the actual report, but rather is a fraudulent report drafted by one or more of the Defendants and/or their counsel. The authentic report, the Plaintiff alleges, exonerates her. Indeed, she alleges, she was removed as a trustee not based on the actual report, but as retaliation after she raised questions about finances and expenditures at the library.

The Plaintiff commenced the action at bar against five attorneys and their law firms alleging, *inter alia*, that each had conspired and colluded to suppress the actual report, and to deceive the courts with the fraudulent report.

Each Defendant has moved to dismiss the complaint and all cross claims as against them.

The motions are granted.

A lynchpin of all of the allegations at bar is a finding that the report produced to date is

fraudulent, and that there exists an authentic version of the report which exonerates the Plaintiff. However, it has already been judicially determined that the report that has been produced is in fact the authentic report, and this determination is entitled to collateral estoppel effect. Thus, the complaint must be dismissed as against all Defendants.

### Factual/Procedural Background

#### The Federal Action

In 2014, the Plaintiff commenced an action in federal court arising from her termination entitled *Langton v Town of Chester*, under Index No. 14 CIV 9474 (hereinafter referred to as the “federal action”). The Plaintiff alleged (1) First Amendment retaliation claims, actionable under 42 U.S.C. § 1983, as against Alex Jamieson (the Town of Chester Supervisor), the Town of Chester, Teresa Mallon (a member of the Library Board) and the Library Board, and (2) violations of her right to procedural due process under the Fourteenth Amendment against Mallon and the Library Board.

A decision issued by Magistrate Lisa Smith in the federal action sets forth a good summary of the relevant background facts (*WL 6988708*). Magistrate Smith noted as follows.

The Plaintiff was appointed to serve as a trustee on the Town of Chester Library Board (the “Library Board”) in January of 2012.

In 2013, she began voicing her concerns regarding the performance of then library director Maureen Jagos.

In January of 2014, Plaintiff prepared a performance review of Jagos, in which she outlined what she described as the Library Board's “substantial and collective dissatisfaction with Jagos' job performance.” The performance review concluded that Jagos needed improvement

and would be reevaluated by the Library Board in six months.

In January of 2014, Jagos filed a complaint against Plaintiff, purportedly in response to the adverse performance review. Alex Jamieson, then the town supervisor and a member of the Library Board, arranged for an investigation into Jagos' complaint.

The investigation, which commenced in May of 2014, cost the Town of Chester over \$23,000.00, and was conducted by Devora Lindeman, an attorney with Greenwald Doherty LLP. The investigation resulted in a report (hereinafter "Lindeman Report").

On August 12, 2014, the Library Board voted to remove the Plaintiff as a trustee, without stating a reason. The Plaintiff appeared for the meeting with counsel, but the decision was made in a executive session in her absence.

The Plaintiff alleges that the investigation was motivated by Jamieson's desire to "suppress criticism of the functioning of the operation of the library[.]"

During the course of the investigation, Lindeman interviewed the Plaintiff on two occasions, for more than seven hours in total.

On July 31, 2014, Jamieson conducted a meeting with the Plaintiff and Teresa Mallon, president of the Library Board, at which he allegedly demanded that the Plaintiff resign from the Library Board, claiming that the Lindeman Report had been critical of the Plaintiff, and had found that she "was a liar and had been abusive."

The Plaintiff refused to resign and requested a copy of the Lindeman Report. Jamieson rejected this request, and prohibited Plaintiff from reading the Lindeman Report.

The following day, Mallon, in her capacity as president of the Library Board, informed the Plaintiff that the board was planning to propose an action at an upcoming meeting to remove

her as a trustee.

On August 5, 2014, one week before the meeting, Langton's then counsel (Michael Sussman, Esq. and Mary Jo Whately, Esq.) demanded copies of the charges against their client, which the Library Board refused to provide.

During the August 12, 2014, meeting, the Library Board adjourned to executive session, which the Plaintiff and her counsel were prevented from attending.

Following the adjournment of the executive session, the Library Board voted to remove the Plaintiff as a trustee, without specifying any reason for its action.

Initially, the Plaintiff's repeated requests to access the Lindeman Report were denied.

The Plaintiff then commenced the federal action.

On March 2, 2016, in a prior decision in the federal action, the District Court (Roman, J.) dismissed the Plaintiff's First Amendment retaliation claims and procedural due process claims against Mallon on the grounds of qualified immunity.

On September 26, 2016, the Magistrate Smith ordered the Lindeman Report be made available to the Plaintiff through her then counsel (Sussman).

In October 2016, Sussman and Whately requested and were granted leave to withdraw as counsel for the Plaintiff in the federal action.

On April 25, 2017, Magistrate Smith ordered that the Plaintiff herself be provided with a copy of the Lindeman Report.

Magistrate Smith described the Lindeman Report as a thirty-plus page document which details the investigation into Jagos' claims of harassment by the Plaintiff. The report includes, *inter alia*, a discussion of the Library Board's policies, a basic chronology of relevant events,

descriptions as to how the Plaintiff and Jagos were each described by those interviewed, Lindeman's observations and assessments of the Plaintiff and Jagos, and in-depth descriptions of various altercations that occurred within the Town of Chester Library and among members of the Library Board. The Executive Summary section of the report reads as follows:

In short, I find [Jagos'] complaints of mistreatment by [the Plaintiff] to be credible. I did not come to the same conclusion with regard to the complaints asserted by [the Plaintiff]. While some of the events that [the Plaintiff] complains about appear to have occurred, I do not find them to have the meaning or intent that she ascribes to them. The other complaints asserted by [the Plaintiff] could not be supported and thus I do not find them to be credible.

Magistrate Smith noted that, in the action that the Plaintiff had commenced in New York State Supreme Court alleging defamation (*infra*), Lindeman had submitted a copy of her report, along with an affidavit attesting to the authenticity of the same.

In the federal action, Magistrate Smith noted, the Plaintiff claimed that the Lindeman Report produced to the court and her was a "fraudulent, false, and defamatory" document prepared by Jamieson and Mallon, and that the "authentic report," which had not been produced (hereinafter the "Authentic Lindeman Report"), cleared her of any wrongdoing, and concluded that she had been verbally abused by members of the Library Board.

In the federal action, Magistrate Smith noted, the Plaintiff alleged that, in September and October of 2013, Elizabeth Reilly, to Chester Town Clerk, "prepared false instruments for filing in her capacity as Town Cleric [sic], in part to discredit" the Plaintiff, and that, in May of 2014, Reilly relayed to Lindeman a fabricated story that the Plaintiff had spoken in an abusive manner toward staff in the Town of Chester Clerk's Office in order to provide a justification for removing Plaintiff from the board. Further, she alleged, Jagos had verbally abused and otherwise

mistreated her and other library employees, and had verbally abused the Plaintiff during an August 2013, meeting of the Library Board; and that the Authentic Lindeman Report had found that the Plaintiff had been the victim of a “pattern of retaliatory harassment” which included “staff members making her needlessly wait unusual lengths of time for service as a patron,” and “denying her service altogether.” In addition, the Plaintiff alleged, the Authentic Lindeman Report concluded that Plaintiff had been discriminated against as a member of a protected class. However, the Plaintiff alleged, in July of 2014, Mallon and Jamieson conspired to alter the Authentic Lindeman Report in order to “reverse its findings, hide its criticism of themselves and others, and justify plaintiff’s removal from the Library Board.”

Based on the above, Magistrate Smith noted, the Plaintiff had moved to amend her complaint in the federal action to add claims that Jamieson, Mallon and the Town of Chester had conspired to deprive the Plaintiff of her constitutional rights in violation of 42 U.S.C. § 1985(2).

Magistrate Smith denied the motion.

Magistrate Smith found that the Plaintiff had not shown good cause for the untimely motion, as was required by Rule 16(b) of the Federal Rules of Civil Procedure.

In any event, Magistrate Smith held, the substantive cause of action required a showing that the conspirators’ actions were motivated by discriminatory “racial, ethnic, or class-based animus,” which was not alleged.

Further, she noted, the Plaintiff alleged that Jamieson and Mallon violated Section 1985(2) by “conspiring to re-write the Lindeman report” and that Jamieson and the Town of Chester violated Section 1985(2) by “providing the fraudulent version of the Lindeman report to the Magistrate Court and to plaintiff in lieu of the authentic report[.]” However, Magistrate

Smith held, both of the claims were devoid of any substantiating factual allegations, to wit: Although the Plaintiff detailed at length the purported discrepancies between the Authentic Lindeman Report and the "fraudulent, false and defamatory" Lindeman Report, which was allegedly forged by Jamieson and Mallon, the Plaintiff did not aver that any of the defendants entered into an agreement, express or tacit, to engage in conspiratorial conduct. For example, she noted, the Plaintiff did not allege any facts that suggested that the defendants met to discuss their agreement to falsify the Lindeman Report, either in person, by phone, or e-mail, or that some meeting of the minds had otherwise occurred. Rather, the Plaintiff simply alleged that a conspiracy existed.

Finally, Magistrate Smith held, allowing the amendment as to the Plaintiff's proposed section 1985(2) claims would also be futile because she failed to allege facts that the defendants sought to deter her, or any witness, "by force, intimidation, or threat" from attending any court in the United States or from testifying freely therein, as is required by the statute.

(It appears that the federal action remains pending.)

#### The Prior State Action

In 2015, the Plaintiff commenced an action in Supreme Court, Orange County, entitled *Langton v Mayberg*, under Index No. 7452-2015, seeking damages for defamation (hereinafter "state action"). The state action was based on an article that appeared in local newspaper, *The Chronicle*, written by Nathan Mayberg, discussing her removal as a trustee. The Plaintiff alleged that Mayberg and Town Supervisor Alex Jamieson had defamed her regarding the reason for her removal as a trustee from the Library Board, purportedly based on the findings of abuse in the Lindeman Report.



The Defendants moved for summary judgment dismissing the complaint on the ground, *inter alia*, that the article was an accurate report of the Lindeman Report.

In opposition, the Plaintiff argued that the Linderman Report produced by the defendants to the Court was fraudulent, and that the Authentic Lindeman Report exonerated her.

By order dated April 3, 2017, the Supreme Court (Slobod, J.) granted the motions and dismissed the complaint. Justice Slobod held, “the Defendants have conclusively established that defendant Jamieson related in substance to defendant Mayberg an accurate account of the report of the investigation conducted regarding the plaintiff, and that defendant Mayberg’s newspaper article was also accurate. Therefore, there is no basis for the plaintiff’s claims of defamation.

#### The Action at Bar

In 2020, the Plaintiff commenced the action at bar. The complaint, which spans over 80 pages, and has 310 numbered paragraphs, arises from the many of the facts *supra*.

The Plaintiff’s additional and different allegations may be summarized as follows.

In August 2014, prior to the Library Board meeting at which Plaintiff was removed, the Plaintiff met with attorneys Benjamin Ostrer and David Darwin of Ostrer and Associates to discuss the meeting. Prior to that time, both “learned the contents of the authentic Lindeman report from Chester Town attorney Scott Bonacic.” Indeed, Darwin told her that the Chester Town Board was “lying” about the contents of the report. However, when she asked Darwin about what to do, Darwin told her to “forget” about getting the authentic report, and that no judge would back her as against the library board.

On September 20, 2014, she met with the Defendant Michael Sussman, Esq. to discuss legal action. Sussman advised her that the Library Board’s actions violated Education Law §

228, and that she could bring a lawsuit for First Amendment retaliation.

She paid Sussman a retainer and the fee necessary to file the federal action (*supra*). Her primary goals in the federal action were to obtain the Authentic Lindeman Report, obtain a name-clearing hearing, and to be reinstated to her position as trustee.

Sussman thereafter learned that the Authentic Lindeman report cleared her name. However, due to his personal and professional relationship with Elizabeth Reilly, the Chester Town Clerk, he kept this information from her, and worked against the goal of clearing her name. Sussman also colluded with Ostrer to keep the Authentic Lindeman Report concealed.

On October 31, 2014, The Chronicle newspaper published a false and defamatory article about her termination which was based on negative characterizations of her which did not appear in the Authentic Lindeman Report.

She asked Sussman to include a defamation claim in the complaint he was going to file, but Sussman refused in furtherance of his goal of suppressing the Authentic Lindeman Report. Thus, the federal action did not include a defamation claim.

On December 3, 2014, the Times-Herald Record also published a defamatory article about her.

On March 30, 2015, she asked Sussman to amend the complaint in the federal action to add a cause of action against the Times-Herald Record for defamation. However, he declined to do so in furtherance of his goal of suppressing the Authentic Lindeman Report.

Further, she alleges, he attempted to "deceive" her by stating that she did not have to file a separate lawsuit alleging defamation, and by asserting that New York State allows the removal of a library trustee without due process.

Sussman also refused her requests to file a CPLR article 78 proceeding challenging her removal, and deceived her by stating that such a proceeding was time-barred.

In addition, she alleges, Sussman falsely stated that her criticisms of Jagos, etc. were not constitutionally protected speech, and attempted to convince her to abandon her procedural due process claims.

On April 15, 2015, Sussman withdrew her request for a name-clearing hearing in the federal action without her consent, in furtherance of his goal of concealing the Authentic Lindeman Report.

Consequently, in a March 2, 2016, opinion, the federal court declined to address the merits of her name-clearing claim, based on the "unequivocal statement that the Complaint does not allege an entitlement to a name-clearing hearing."

On March 2, 2015, the Defendant David S. Posner, counsel for the library in the federal action, claimed that a name-clearing hearing was not warranted because the complaint did not allege any negative public statements about the Plaintiff from the Library Board.

Further, Posner argued that the speech at issue by the Plaintiff was not on a matter of public concern, but was a private matter, and therefore was not entitled to First Amendment protections.

The Defendant Jonathan Bernstein, counsel for the Town Board in the federal action, made similar arguments.

The Plaintiff alleges that such arguments were made because Sussman deliberately omitted allegations concerning the defamatory newspaper article from the complaint in the federal action, and did not correct his omissions in the responsive papers.

On March 18, 2015, she met with Sussman at his office and again asked him to amend the complaint to include allegations concerning the newspaper articles.

The next day, Sussman sent her a letter that he had drafted, for her to edit as she saw fit, that she could send to the author of the newspaper article in the Chronicle. The letter demanded a copy of the Authentic Lindeman Report used by the author, and noted that, if he did not produce the same, she would assume that he had misused the report and would commence an action against him.

On May 26, 2015, Sussman sent her an email stating that Benjamin Ostrer did not have a copy of the Authentic Lindeman Report, and that he would seek the same from Darwin.

However, she alleges, Sussman knew that neither Ostrer nor Darwin had the report, and he made the requests only in furtherance of his goal of concealing the Authentic Lindeman Report.

Sussman also demanded the report from Jamieson, which he knew would be unsuccessful, and which he only did in furtherance of his goal of concealing the Authentic Lindeman Report.

Further, Sussman refused to prosecute a defamation case on the ground that he had not seen the Authentic Lindeman Report, and therefore could not determine whether there had been defamation. However, by that time, she alleges, he had known of the contents of the Authentic Lindeman Report for over eight months, having been informed of its contents by Ostrer, and his delays and refusals to prosecute were in furtherance of his goal of concealing the Authentic Lindeman Report.

On September 25, 2015, the Plaintiff consulted with the Defendant Neal Frishberg, Esq.

(of the Defendant Fabricant, Lipman and Frishberg, PLLC) about Sussman's refusal to file a defamation action. Frishberg told her that a separate action was not necessary, and that Sussman would amend the complaint in the federal action if she asked. When she told him that Sussman had declined to do so based on the missing Authentic Lindeman Report, Frishberg replied, "you can't get the proof if you don't make the claim."

Frishberg thereafter commenced the state defamation action against Jamieson, the Chronicle, and Mayberg (the reporter) (*supra*).

Frishberg also vouched for the Defendant Kevin Doherty, Esq.

As part of the state defamation action, the Defendant Jonathan Bernstein (of the Defendant Goldberg Segalla) provided Frishberg with a copy of the Lindeman Report which Bernstein knew to be false. Based on the same, Bernstein asked that the state action be discontinued, as the proffered fraudulent copy of the report was properly characterized in the article. However, she alleges, Bernstein provided only a single page of the report, which was highly redacted to omit criticisms of Jamieson and Mallon.

Further, she alleges, Frishberg kept this information from her for four months.

On February 26, 2016, Sussman told her that Ostrer had indicated that he had read the Lindeman Report, and that it did in fact contain the challenged language critical of the Plaintiff. The Plaintiff alleges that this contradicted Sussman's prior representation that Ostrer had not seen the report, and that the communication was in furtherance of a conspiracy between Sussman and Ostrer to conceal the Authentic Lindeman Report.

On March 2, 2016, Bernstein moved to dismiss the state court action as against his client. However, Bernstein did not claim the alleged defamatory statements were true. Thus, she argues,

Bernstein, *sub silentio*, admitted that the statements were false.

Further, she alleges, although Jamieson submitted an affidavit in support of the motion claiming that the statements at issue were true, the affidavit was submitted in an effort to deceive the court.

On April 16, 2016, Frishberg received a letter from counsel to the newspaper (Laura Handman) asserting the paper had accurately reported the contents of the Lindeman Report. However, she alleges, this was because Bernstein had knowingly sent a fraudulent excerpt from the Lindeman Report to Frishberg and Handman.

On April 25, 2016, she met with Frishberg at his office. Initially, Frishberg denied receiving the excerpt from the Lindeman Report. However, when confronted with the letter from Handman indicating the contrary, Frishberg admitted that he had received the excerpt some four months earlier, and produced the same. Frishberg told her that he could obtain the full report if she signed a confidentiality statement. However, she declined, as this "would only spur the defendants to provide a completely forged report."

On August 16, 2016, Sussman sent a letter to the court in the federal case in which he indicated that he had conferred with Frishberg concerning the defamation action. That Plaintiff alleges that this was one of multiple communications between Sussman and Frishberg whose purpose was to collude against the disclosure of the Authentic Lindeman Report.

Thereafter, Frishberg ignored her requests for bills, and for him to oppose any further delays in the state court action.

On June 30, 2016, Handman filed a motion to dismiss the defamation case. The basis of the motion was that the alleged defamatory statements were true, based on the Lindeman Report.

Frishberg did not oppose the motion, and ignored her requests for documents and information.

On August 5, 2016, during a court conference on the defamation case, Bernstein stated that he had a copy of the full Lindeman Report, not just one page.

The assigned Justice at the time, Gretchen Walsh, J.S.C. indicated that she did not think that the motion would succeed.

After the conference ended, the Plaintiff consulted with Frishberg, who urged her to sign a confidentiality agreement to obtain a copy of the report. However, she questioned such advice, given that Justice Walsh had just indicated that the motion to dismiss would not be granted. In response, she alleges, Frishberg became very agitated and told her that she should sign the confidentiality agreement or she would risk angering the judge. The Plaintiff alleges that Frishberg advocated for the confidentiality agreement because he was a colluder and wanted the agreement himself. She declined.

After the court in the federal action ordered disclosure of the Authentic Lindeman Report to Sussman, she repeatedly wrote to Sussman concerning the same. However, Sussman took no action to move the federal case forward with one exception: he subpoenaed Jamieson, who was not a party, to be deposed and to produce a copy of the Authentic Lindeman Report.

However, she alleges, Sussman did this knowing that the request would get nowhere, to wit: that Jamieson would not produce a copy of the Authentic Lindeman Report. Indeed, the Plaintiff alleges Sussman issued the subpoena in furtherance of his goal of suppressing production of the Authentic Lindeman Report. The deposition did not occur.

On September 9, 2016, Sussman called and asked if he could bring by a HIPAA form for

the Plaintiff to sign, given that she had alleged anxiety and emotional distress from her termination as a trustee, and the records were needed on the issue of damages.

When he arrived, Sussman stated that Library Board members had claimed that the Plaintiff had come to their homes to harass and menace them. However, she alleges, this was the invention of Sussman, Bernstein and the Defendant David Posner, Esq., who colluded at a September 8, 2016, conference on the federal case to intimidate the Plaintiff with the threat of criminal charges in an effort to get her to abandon her efforts to obtain the Authentic Lindeman Report.

On September 26, 2016, the Town of Chester and Bernstein complied with the order in the federal case to provide the court with a copy of the Lindeman Report. However, she alleges, they provided the court with a "fraudulent, false, and defamatory report that was written by Chester Town Supervisor Alex Jamieson and the Library Board president Teresa Mallon, both of whom were criticized in the authentic report."

That same date, the federal court ordered a copy of the report provided to Sussman. However, on September 29, 2016, Bernstein provided Sussman with a copy of the report he knew was "false, fraudulent and defamatory."

On October 1, 2016, Sussman wrote to her and stated that the report provided by Bernstein supported the defendants' position, and indicated that the Plaintiff had been abusive toward Jagos. Given such, Sussman attempted to dissuade her from reading the report. However, she alleges, the "real reason" that Sussman did not want her to read the report is that, if she did, "she would be able to point out specific areas of the report that are directly contradicted by the evidence that Lindeman obtained before writing her report, thus confirming that what was



handed over to the Court and to Sussman is a fraudulent document.”

Initially, Sussman indicated that he wanted to depose Lindeman. However, he subsequently indicated that her testimony was not relevant to the (procedural due process) claims remaining in the federal action. However, she alleges, the “real reason” that Sussman never deposed Lindeman is that he wanted to keep the Authentic Lindeman Report concealed.

The Plaintiff protested to Sussman, claiming that the proffered report was a fraud and forgery, and that Lindeman needed to be deposed to prove the same.

Sussman replied that remaining causes of action had little to do with the truth or content of the report. However, she alleges, this statement contradicted a prior statement he made to the federal court, in which he indicated that the content of the report was important to the case.

After the Plaintiff read the report, she pointed out to Sussman several inaccuracies and falsehoods as to the events at issue. As to one in particular, she denied that the Town Clerk, Elizabeth Reilly, had seen the Plaintiff acting abusively toward staff, and had needed to intervene. However, Sussman rebuffed her denials. Further, he rebuffed her contention that the report was not the Authentic Lindeman Report, even though the contents of the same were contradicted by upwards of 40 documents provided to Lindeman.

At the same meeting, Sussman claimed that a name clearing hearing was not being held because the judge in the federal case “made the mistake.”

At the next meeting on October 4, 2016, Sussman urged her to settle the federal case for \$5,000.00, which is the amount the board had offered two years prior.

He also pointed out other perceived flaws in her case, and “raised the spectre [sic] of perjury in order to deceive and intimidate plaintiff into accepting a settlement that would keep

the Lindeman Report concealed.”

Sussman also ignored her claims that the report was fraudulent and inaccurate, and gave her deceitful and inaccurate advice. Most significantly, he refused to depose Lindeman.

On October 6, 2016, Sussman withdrew as counsel in the federal case, asserting that she had insulted him.

On October 24, 2016, the Plaintiff received a confirmation that Justice Walsh had scheduled a conference to discuss the dismissal of the state defamation case. This “sparked a flurry of activity among the lawyer-colluders designed to prevent that hearing from taking place.”

Thereafter, she alleges, Sussman and Bernstein colluded to provide Frishberg with the fraudulent Lindeman Report.

Frishberg told her that he intended on seeking an adjournment of the conference pending his receipt of the report. She, again objected to any further adjournment of the defamation case, and reminded Frishberg that the report that would be proffered was false and fraudulent.

In response, she alleges, Frishberg became agitated and accused her of trying to be the lawyer. When she opined that they could subpoena Lindeman after the motion to dismiss was denied, as Justice Walsh indicated it would be, Frishberg told her that he would not subpoena Lindeman as Kevin Doherty was already “very upset” that the Plaintiff had received a copy of the report.

The Plaintiff alleges that Frishberg and Doherty communicated on multiple occasions during the defamation case, and that Doherty “corruptly” persuaded Frishberg to engage in endless delays and unnecessary research in the case with the goal of concealing the Authentic Lindeman Report.

The defamation case was adjourned after a question arose whether Sussman was able to provide Frishberg with the copy of the report he obtained in the federal action.

On October 30, 2016, the Plaintiff discharged Frishberg and proceeded *pro se* in the state defamation action.

She submitted opposition to the motions to dismiss in which she claimed that the proffered Lindeman Report was false and fraudulent.

On November 10, 2016, Sussman wrote Magistrate Smith in the federal action and stated that he had no basis to believe that the proffered Lindeman Report was false or fraudulent.

Further, she alleges, Posner sent four library trustees scheduled to be deposed a copy of the report (in violation of the order of Magistrate Smith) in order to suborn perjury, and to have the report "go viral" to discredit the Plaintiff.

Posner also emailed the fraudulent report to Justice Walsh, along with a fraudulent affidavit from Linderman, which he created, in order to "corruptly win summary judgment" in the defamation case.

In addition, the Plaintiff alleges, during a deposition of Mallon in the federal case, Mallon testified that the Lindeman Report was read to the Library Board when deciding whether to terminate the Plaintiff. Posner interrupted and asked if he could speak to Mallon outside of the room. The Plaintiff alleges that, as they were leaving, but before Posner got the door closed behind them, Mallon, who was agitated, stated, "Alex [Jamieson] rewrote the report. I had nothing to do with it."

When they returned, Mallon testified that she could not remember whether the report was in the room during the board meeting.

By such actions, the Plaintiff alleges, Posner suborned perjury.

On January 23, 2017, the Defendant Goldberg Segalla were substituted for Posner (of the Defendant McCabe & Mack, LLP) as counsel for Jamieson in state defamation case.

Posner requested on adjournment in the defamation case to secure an affidavit from Lindeman. However, the Plaintiff alleges, the true basis of the request was to allow Posner time to have Doherty create false documents. Indeed, she alleges, Posner was never in contact with Lindeman, but rather had Doherty sign an affidavit in Lindeman's name.

Ultimately, the Supreme Court (Slobod, J.) granted dismissal of the state defamation action.

The Plaintiff alleges that she would have prevailed in the defamation case against all Defendants had Doherty, Posner and Bernstein not provided the court with false and misleading documents.

The Plaintiff notes that Lindeman was scheduled for a deposition on April 26, 2017, but that the deposition was cancelled purportedly because Lindeman needed to undergo surgery.

However, she alleges, Posner fabricated the surgery, and the purported telephone call from Lindeman asserting the same, in order to thwart the deposition.

Thereafter, Posner sent eleven letters, dated through February 2019, all of which falsely claimed that Lindeman was still unable to testify.

When Posner made similar representations to the court in the federal action, the federal court ordered Posner to produce medical evidence of Lindeman's condition. In response, she alleges, Posner submitted a "declaration purportedly signed by Dr. Perel Schneid, and a second declaration purportedly signed by Lindeman" concerning the same.

As a first cause of action, the Plaintiff alleges that Sussman violated Judiciary Law § 487 by the conduct alleged *supra*.

As a second cause of action, the Plaintiff alleges that Frishberg violated Judiciary Law § 487 by the conduct alleged *supra*.

As a third cause of action, the Plaintiff alleges that Bernstein, while acting as counsel for the Town of Chester in the federal case, and as counsel for Jamieson in the defamation case, violated Judiciary Law § 487 by the conduct alleged *supra*.

As a fourth cause of action, the Plaintiff alleges that Posner, while acting as counsel for the Library Board and Jamieson, violated Judiciary Law § 487 by the conduct alleged *supra*.

As a fifth cause of action, the Plaintiff alleges that Doherty created and introduced false and fabricated documents to the federal and state courts in order to mislead the courts, and colluded with Frishberg to conceal the Authentic Lindeman Report and, with the assistance of Posner, fabricated evidence that he submitted in the defamation action, without which she would have prevailed in the case.

#### **The Motion of Doherty and Greenwald Doherty LLP**

The Defendants Doherty and Greenwald Doherty LLP (hereinafter referred to collectively as the "Doherty Defendants") move to dismiss the complaint and all cross claims as against them, and to enjoin the Plaintiff from commencing any further actions.

The Doherty Defendants assert that the only claim as against them is that they provided false and fraudulent documents in the state defamation case that resulted in the dismissal of the same.

However, they argue, the Plaintiff's remedy as to the same is to move to vacate the

judgment dismissing the state defamation action, not a plenary action against counsel.

In any event, they assert, the Plaintiff's allegations concerning the alleged wrongful conduct at issue, and the scienter as to the alleged collusion, are merely conclusory and lack the required specificity.

In addition, they argue, the Plaintiff did not allege damages arising from the alleged collusive conduct.

Finally, the Doherty Defendants assert, the Plaintiff's claim that the Linderman Report that has been provided is fraudulent has already been rejected several times. However, they opine, that has not stopped the Plaintiff from continuing actions, or commencing new ones. Thus, they argue, she should be enjoined from commencing any new actions.

In opposition to the motion, the Plaintiff argues that the matter could be resolved if Lindeman was deposed.

In any event, she asserts, although the federal court did not allow her to amend her complaint to allege that the report was false, this was because Magistrate Smith was deceived by Sussman, who vouched for the report.

Indeed, she notes, the Doherty Defendants did not offer as exhibits the affidavit from Lindeman or from Dr. Schneid submitted in the federal case. This, she argues, is because they know that the documents are fraudulent.

Further, she asserts, although Justice Slobod accepted the proffered Lindeman Report, she did so only because she was deceived. This is true, she argues, again, because Lindeman has never been deposed. The Plaintiff notes that, according to Lindeman's GoFundMe page, curated by her daughter, Lindeman was not showing signs of the condition for which she allegedly

underwent surgery until a year after she was served with a subpoena to testify. Moreover, the Plaintiff asserts, since the purported surgery, Lindeman had traveled and engaged in other activities more strenuous and stressful than a deposition.

As to damages, the Plaintiff notes that she has incurred attorney's fees in excess of \$20,000.00, and will incur more and related litigation costs.

Further, she asserts, she lost the damages she would have otherwise been awarded in the defamation case.

Finally, she argues, she was entitled to bring this separate, plenary action against the Doherty Defendants.

In reply, the Doherty Defendants argues that a plenary action is not appropriate, and that the Plaintiff had not alleged damages arising from the alleged deceit by them.

Finally, they note, the Plaintiff did not oppose their request for injunctive relief.

#### **The Motion of the Defendants McCabe & Mack LLP and Posner**

The Defendants McCabe & Mack LLP and Posner (hereinafter referred to collectively as the "Posner Defendants") move to dismiss the complaint and all cross claims insofar as asserted against them.

The Posner Defendants argue that, as is shown by the appended documents, there is no merit to any of the allegations made as against them.

Appended as exhibits to the Posner Defendants' motion papers are, *inter alia*:

(1) A copy of Lindeman's affidavit attesting to the accuracy of the proffered Lindeman Report, and the conclusion that the Plaintiff had engaged in abuse of Jagos (Exhibit B).

(2) A letter from the Plaintiff to Magistrate Smith in the federal action, dated December

15, 2019, asking that a status conference in the case be cancelled, as she was ready for trial (Exhibit H). At the foot of the letter is a note from Magistrate Smith stating that, given such, she considered the Plaintiff's request to depose Lindeman to have been withdrawn.

In opposition to the motion by the Posner Defendants, the Plaintiff argues that the fraudulent nature of the proffered Lindeman Report is demonstrated by the various (enumerated) incorrect statements therein, and because it does not accurately reflect the things she told Lindeman.

In addition, she asserts, the issue of the authenticity of the report is not precluded by the doctrine of collateral estoppel or res judicata, as the issues in this case and the issues in the other cases are not the same. Moreover, she argues, the issue of the authenticity report was not exhaustively litigated in any other proceeding.

In reply, the Posner Defendants argue, *inter alia*, that the Plaintiff has put forth no evidentiary basis upon which to find that the proffered Lindeman Report is not the actual report.

**The Motion of the Defendants Fabricant, Lipman and Frishberg PLLC and Frishberg**

The Defendants Fabricant, Lipman and Frishberg PLLC and Frishberg (hereinafter referred to collectively as the "Frishberg Defendants") move to dismiss the complaint and all cross claims insofar as asserted against them.

The Frishberg Defendants argue that the Plaintiff failed to plead the alleged deceptive conduct and scienter needed for a Judiciary Law § 478 cause of action with the required specificity.

In any event, they assert, Justice Slobod already held that the proffered Lindeman Report was an accurate account of the investigation of the Plaintiff's behavior. Thus, they argue, the



Plaintiff's allegations to the contrary are precluded by collateral estoppel.

Moreover, they note, the Plaintiff has offered no evidence whatsoever that a different, authentic version of the report exists.

In any event, they argue, the Plaintiff's remedy for the alleged fraud is to seek to set aside the judgment in the state defamation action, not a separate plenary action against counsel.

In addition, the Frishberg Defendants assert, the Plaintiff's allegations of legal malpractice are time-barred.

In any event, they argue, given the Lindeman Report, the defamation action would not have been successful.

In opposition to the Frishberg Defendants' motion, the Plaintiff argues that she was entitled to commence a separate plenary action on her allegations, and that her claims are not barred by collateral estoppel.

Indeed, she asserts, Magistrate Smith denied her motion to amend on procedural grounds, not on a finding the proffered Lindeman Report was the authentic report.

Finally, she notes, she had not asserted a claim of legal malpractice.

In reply, the Frishberg Defendants argue (1) that the action is barred by collateral estoppel and res judicata; (2) that the Plaintiff's motion in the federal action was denied on both procedural and substantive grounds; (3) that the Plaintiff may not bring this plenary action, but must seek to set aside the judgment in the state defamation action; and (4) that all allegations lack merit, and should be dismissed based on documentary evidence.

#### Discussion/Legal Analysis

In determining the facial sufficiency of a pleading on a motion to dismiss pursuant to

CPLR §3211(a)(7), the court must give the pleading a liberal construction, take the facts alleged in the complaint as true, and afford the plaintiff the benefit of every reasonable inference in determining whether the allegations fit within any cognizable legal theory. *Leone v Martinez*, 84 N.Y.2d 83 (1994); *Uzzle v Nunzie Court Homeowners Association, Inc.*, 70 A.D.3d 928 [2<sup>nd</sup>Dept.2010]; *Jesmer v. Retail Magic, Inc.*, 55 A.D.3d 171 [2<sup>nd</sup>Dept.2008]. However, bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss for failure to state a cause of action. Further, when the moving party offers evidentiary material, the court is required to determine whether the proponent of the pleading has a cause of action, not just whether he or she has stated one. *Jesmer v Retail Magic, Inc.*, 55 A.D.3d 171 [2<sup>nd</sup>Dept.2008]. A plaintiff may submit affidavits to remedy defects in the complaint and to preserve inartfully pleaded but potentially meritorious claims. *Cron v Hargro Fabrics, Inc.*, 91 N.Y.2d 362 (1998); *Lester v Braue*, 25 A.D.3d 769 [2<sup>nd</sup>Dept. 2006]. Such additional submissions are also given their most favorable intendment. *Cron v Hargro Fabrics, Inc.*, 91 NY2d 362 (1998); *Lester v Braue*, 25 A.D.3d 769 [2<sup>nd</sup> Dept. 2006].

Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one. Unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all, or that no significant dispute exists regarding it, dismissal should be denied. *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 274–275 (1977); *Patel v. Primary Const., LLC*, 115 A.D.3d 834 [2<sup>nd</sup> Dept. 2014].

Judiciary Law § 487 imposes civil and criminal liability on any attorney who “(1) [i]s

guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or, (2)[w]ilfully delays his client's suit with a view to his own gain."

*Judiciary Law § 487; Betz v. Blatt*, 160 A.D.3d 689 [2<sup>nd</sup> Dept 2018]. A plaintiff may state a Judiciary Law § 487 cause of action by relying upon a defendant's intentional deceit during the course of an underlying action. A cause of action alleging a violation of Judiciary Law § 487 must be pleaded with specificity, and is focused on the attorney's intent to deceive, not the deceit's success. *Betz v. Blatt*, 160 A.D.3d 689 [2<sup>nd</sup> Dept 2018]. Accordingly, although injury to the plaintiff is an essential element of a Judiciary Law § 487 cause of action, recovery of treble damages under Judiciary Law § 487 does not depend upon the court's belief in a material misrepresentation of fact in a complaint. *Betz v. Blatt*, 160 A.D.3d 689 [2<sup>nd</sup> Dept 2018]. Rather, because defending the action is a result of the misrepresentation, a party's legal expenses in defending the lawsuit may be treated as the proximate result of the misrepresentation. *Betz v. Blatt*, 160 A.D.3d 689 [2<sup>nd</sup> Dept 2018]; *see also, Sammy v. Haupel*, 170 A.D.3d 1224 [2<sup>nd</sup> Dept. 2019].

Here, the lynchpin to all of the Plaintiff's allegations is the existence of the alleged Authentic Lindeman Report which exonerates her. If such a report does not exist, and the proffered Lindeman Report is in fact the authentic version, then none of the collusion and deceit alleged could have occurred, or resulted in damages.

As a threshold issue, the Court finds that the issue of the authenticity of the proffered Lindeman Report has already been decided, and that further litigation of the issue is barred by the doctrine of collateral estoppel.

The doctrine of collateral estoppel, a narrower species of res judicata, precludes a party

from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. *Clifford v. County of Rockland*, 140 A.D.3d 110 [2<sup>nd</sup> Dept 2016]; *Paar v. Bay Crest Ass'n*, 140 A.D.3d 113 [2<sup>nd</sup> Dept 2016]. Collateral estoppel comes into play when four conditions are fulfilled: (1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits. *Clifford v. County of Rockland*, 140 A.D.3d 110 [2<sup>nd</sup> Dept 2016]. The party seeking to invoke collateral estoppel has the burden to show the identity of the issues, while the party trying to avoid application of the doctrine must establish the lack of a full and fair opportunity to litigate. *Clifford v. County of Rockland*, 140 A.D.3d 110 [2<sup>nd</sup> Dept 2016].

An issue is not actually litigated if, for example, there has been a default, a confession of liability, a failure to place a matter in issue by proper pleading, or even because of a stipulation. *Kaufman v. Eli Lilly and Co.*, 65 N.Y.2d 449 (9165). Generally, for a question to have been actually litigated so as to satisfy the identity requirement, it must have been properly raised by the pleadings or otherwise placed in issue and actually determined in the prior proceeding. *D'Arata v. New York Cent. Mut. Fire Ins. Co.*, 76 N.Y.2d 659; *Curley v. Bon Aire Properties, Inc.*, 124 A.D.3d 820 [2<sup>nd</sup> Dept. 2015].

In the end, the fundamental inquiry is whether re-litigation should be permitted in a particular case in light of fairness to the parties, conservation of the resources of the court and the litigants, and the societal interests in consistent and accurate results. No rigid rules are

possible, because even these factors may vary in relative importance depending on the nature of the proceedings. *Buechel v. Bain*, 97 N.Y.2d 295 (2001).

Here, one basis of the defendants' motions for summary judgment in the state defamation action was that the article at issue was an accurate report of the relevant facts, including the Lindeman Report, which found that the Plaintiff had engaged in misconduct.

In opposition to the motion, the Plaintiff argued that the proffered Lindeman Report was fraudulent, and that the actual, authentic report exonerated her.

Thus, Justice Slobod necessarily determined the issue of the authenticity of the proffered report when she granted the Defendants summary judgment dismissing the complaint on the ground that "the Defendants have conclusively established that defendant Jamieson related in substance to defendant Mayberg an accurate account of the report of the investigation conducted regarding the plaintiff, and that defendant Mayberg's newspaper article was also accurate. Therefore, there is no basis for the plaintiff's claims of defamation."

Thus, the issue of whether the proffered Lindeman Report was authentic was actually litigated and determined against the Plaintiff in state defamation action.

Applying collateral estoppel to the finding, the complaint in the action at bar is dismissed as against all moving Defendants.

Further, upon search of the record, the Court grants such relief against the non-moving Defendants, Sussman & Watkins and Sussman. *Teller v. Bill Hayes, Ltd.*, 213 A.D.2d 141 [2<sup>nd</sup> Dept. 1995].

This is a complete and discrete basis to dismiss the complaint as against all Defendants.

The Court notes that it agrees with the Plaintiff that the issue of whether the proffered

Lindeman Report was authentic was not actually litigated and decided in the federal action. Thus, collateral estoppel may not be applied to any decision issued in the federal action.

In any event, the Court notes, even if collateral estoppel did not apply, and the issues were litigated anew, the Court would still dismiss the complaint as against all Defendants.

As noted *supra*, bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on a motion to dismiss for failure to state a cause of action. Further, where, as here, the parties offer evidentiary material, the court is required to determine whether the plaintiff has a cause of action, not just whether he or she has stated one.

Here, the submissions on the motions include, *inter alia*, the affidavit from Lindeman attesting to the authenticity of the produced (and appended) report, and of the conclusions therein that the Plaintiff had engaged in misconduct.

In opposition, the Plaintiff merely offers the wholly conclusory assertion that the proffered affidavit and report are both fraudulent, and that there exists an authentic version which reaches a contrary conclusion.

Indeed, the Court notes, although the Plaintiff was removed as a trustee almost seven years ago, and has been engaged in litigation concerning the same for almost as long, she has yet to identify any even facially reasonable basis for her assertion (*e.g.*, she saw the authentic report, or was told by a credible source of its existence and contents). Rather, from her pleadings, it appears that the Plaintiff bases such an assertion on her view that the proffered report does not accurately portray the documents and evidence provided to Lindeman, or what she believes to be the correct conclusions and facts to be drawn therefrom.

In sum, if the Court were to reach the issue anew in this action, it would dismiss the

complaint on the ground that the proffered Lindeman Report is in fact authentic.

Further, the Court would find pleading issues with the complaint.

As noted *supra*, a Judiciary Law § 487 must be pleaded with specificity.

Here, the Plaintiff has pleaded in only the broadest and most conclusory terms that the Defendants colluded to suppress the Authentic Lindeman Report and to deceive her and the courts. The complaint is completely devoid of any specifics.

Further, it is noted, although not controlling, the Plaintiff has not proffered any even facially plausible reason why Sussman or Frishberg would have engaged in such collusion. There is no evidence or allegation that either the proffered report or the alleged authentic report have any significance to Frishberg or Sussman personally. Otherwise, setting aside the ethics and legality of the alleged conduct, and the potential destruction of Frishberg's and Sussman's licensing, reputations and livelihoods from engaging in the same, the authenticity of the proffered Lindeman Report essentially ended the defamation case, and diminished the federal case; cases which Frishberg and Sussman were being paid to prosecute.

In addition, the Court notes, the Defendants appear correct that the Plaintiff's allegations of fraud should be raised in the underlying lawsuits in a motion pursuant to CPLR 5015; not in a plenary action collaterally attacking the judgment in the original action. *Urias v Daniel P. Buttafuoco & Assoc., PLLC*, 173 A.D.3d 1244 [2<sup>nd</sup> Dept. 2019].

In sum, if reached, the Court would dismiss the complaint as against all Defendants even if collateral estoppel was not applicable.

In light of the foregoing, the motion by the Frishberg Defendants for an extension of time to answer the complaint is denied as moot.

Finally, the Court notes, although public policy generally mandates free access to the courts, a party may forfeit that right if he or she abuses the judicial process by engaging in vexatious litigation. *Lew v. Sobel*, 151 A.D.3d 954 [2<sup>nd</sup> Dept. 2017]; *Ram v. Hershowitz*, 76 A.D.3d 1022 [2<sup>nd</sup> Dept. 2010].

Here, as noted *supra*, this is just one of several actions commenced by the Plaintiff in which she asserts that the proffered Lindeman Report is fraudulent, and that an authentic version of the same exists in which she is exonerated. However, again, although the Plaintiff was removed as a trustee almost seven years ago, and has been in litigation for almost as long, she is no closer today than she was seven years ago to demonstrating (or even raising a triable issue of fact) that there exists an authentic version of the Lindeman Report that exonerates her. This cannot be attributed solely to the fact that she has never deposed Lindeman (a right the federal court found that she had and relinquished). At a minimum, for example, she could have sought to depose the persons who witnessed or were directly involved in the events at issue.

Further, there are several concerning aspects to this litigation.

First, the Plaintiff, who is proceeding *pro se*, makes broad, conclusory allegations of a wide-spread conspiracy among a large and diverse group of litigants and attorneys to suppress the authentic Lindeman Report with no evidence of or specifics as to the same. Moreover, several of the accused group lack even a facially colorable motive to suppress the report.

Second, the Plaintiff characterizes (and discounts) every document or submission that does not support her position as being the product of fraud, including items routinely admitted as evidence, and easily detected as fraud, such as sworn affidavits.

Similarly, she characterizes the conduct of every party who does not agree with her as that



of a colluder intending to deceive the court and her, and to suppress the Authentic Lindeman Report.

In sum, the Plaintiff has demonstrated, in effect, that no quantum or quality of proof will satisfy her that the Lindeman Report that has been produced is authentic, and that the alleged Authentic Lindeman Report which exonerates her does not exist.

Given such, the Plaintiff is ordered enjoined from commencing any new action arising from her removal without the prior written permission of the Supreme Court.

Accordingly, and in conformity with the foregoing, it is hereby,

ORDERED, that the motion of the Defendants Fabricant, Lipman & Frishberg, PLLC and Neal Frishberg for an extension of time to answer the complaint is denied as having been rendered moot; and it is further,

ORDERED, that the motion of the Defendants Greenwald Doherty LLP and Kevin Doherty, Esq. which seeks to dismiss the complaint and all cross claims insofar as asserted against them, and to enjoin the Plaintiff from filing any further actions, is granted as set forth herein; and it is further,

ORDERED, that the motion of the Defendants McCabe & Mack LLP and David Posner, Esq., which seeks to dismiss the complaint and all cross claims insofar as asserted against them is granted; and it further,

ORDERED, that the motion of the Defendants Fabricant, Lipman and Frishberg PLLC and Neal Frishberg, Esq., which seeks to dismiss the complaint and all cross claims insofar as asserted against them is granted; and it is further


ORDERED, that the causes of action asserted against the non-moving Sussman

Defendants is likewise dismissed for the reasons set forth herein.

This constitutes the Decision and Order of the Court.

Dated: February 8, 2021  
Goshen, New York

ENTER

  
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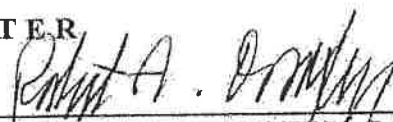
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Defendants is likewise dismissed for the reasons set forth herein.

This constitutes the Decision and Order of the Court.

Dated: February 8, 2021  
Goshen, New York

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