

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:
THE STATE OF NEW YORK	:
	:
<u>ex rel.</u>	: Case No. 15-cv-7826
	:
ERIC RASMUSEN,	: Removed from:
	:
Plaintiff,	: Supreme Court of the State of New
	: York, County of New York
- against -	:
	: Index No. 100175/2013
CITIGROUP, INC.,	:
	:
Defendant.	:
	:
-----	X

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Citigroup Inc. (“Citigroup”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1441 & 1446 and Local Civil Rule 81.1, and removes to this Court the action known as State of New York ex rel. Rasmusen v. Citigroup, Inc., Index No. 100175/2013, (the “Action”) previously filed in the Supreme Court of the State of New York, County of New York.¹ In support of this notice of removal, Defendant states as follows:

1. On information and belief, the Action was commenced on or about January 24, 2013 by the filing of a summons and complaint (the “Summons and Complaint”) under seal in the Supreme Court of the State of New York, New York County.
2. On information and belief, the Summons and Complaint were unsealed on September 2, 2015 so that the qui tam plaintiff could serve Defendant.

¹ Defendant does not waive and expressly reserves all rights, claims, and defenses, including without limitation all defenses relating to jurisdiction and venue. By filing this Notice of Removal, Defendant specifically does not waive any defenses it may have to service of process and personal jurisdiction.

3. On information and belief, Plaintiff served the Summons and Complaint on the Secretary of State of the State of New York, who received them on September 3, 2015. Defendant received a copy of the Summons and Complaint through its agent on September 11, 2015.

4. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is being filed within thirty days after receipt by Defendant, through service or otherwise, of copies of the Summons and Complaint.

5. Defendant's time to answer or move to dismiss the Summons and Complaint has not expired, and it has not yet served or filed an answer or motion to dismiss.

6. On information and belief, no further proceedings have occurred in the Action in New York Supreme Court.

7. In accordance with 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders filed in the Supreme Court of the State of New York, County of New York, to date are attached as Exhibit A to this Notice of Removal, with the exception of any that remain sealed and unavailable to Defendant.

GROUND FOR REMOVAL

8. Removal is appropriate under 28 U.S.C. § 1441(a) because this court has federal question jurisdiction under 28 U.S.C. § 1331. In particular, this court has jurisdiction under 28 U.S.C. § 1331 because the claim "arises under" the Internal Revenue Code (the "IRC"), 26 U.S.C. § 1 *et seq.*, and certain guidance promulgated thereunder, *see* IRS Notice 2008-83, IRS Notice 2009-38, IRS Notice 2010-2, as well as under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. § 5201 *et seq.* (the "EESA"), the Troubled Asset Relief Program ("TARP"), and the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009) (the

“ARRA”). Plaintiff’s claim for relief here necessarily depends on resolution of substantial questions of federal law involving these federal statutes.

9. In this putative qui tam action—which Eric Rasmusen seeks to bring on behalf of the State of New York—Plaintiff claims that Defendant “knowingly” took “excessive and improper” deductions from taxable income on its tax returns, even though the deductions at issue were expressly authorized under certain Revenue Notices of the United States Internal Revenue Service. On the basis of that assertion, Plaintiff seeks to recover pursuant to the New York False Claims Act, N.Y. Fin. Law. § 187 et seq.

10. In particular, Plaintiff claims that Defendant prepared and filed tax returns with allegedly excessive net operating loss (“NOL”) deductions. As set forth in the Complaint, the NOL deduction is authorized and described in Section 172 and other provisions of the federal IRC and is interpreted by the U.S. Internal Revenue Service. (See Compl. ¶¶ 13 – 28; IRC §§ 172, 382, 7805.) New York’s franchise tax “incorporates the NOL deduction under section 172 of the IRC” (Compl. ¶ 18), and “the New York NOL is ‘presumably’ the same as the federal NOL calculated under section 172 of the IRC, with certain modifications” (Compl. ¶ 17).

11. Plaintiff’s central claim is that the purchase and sale of certain of Defendant’s equity securities by the United State Department of the Treasury (“Treasury”) pursuant to TARP triggered a provision in the IRC that would have prohibited Defendant from carrying forward its NOLs from year to year. (See Complaint ¶¶ 13 – 22 (citing IRC § 382(c)).) Specifically, Plaintiff claims that the Treasury’s sale of securities amounted to an “ownership change” of Defendant within the meaning of the IRC, which Plaintiff claims should have prevented Defendant from carrying forward its NOL. (Id.)

12. Plaintiff acknowledges in the Complaint that three separate Revenue Notices issued by the IRS expressly said exactly the opposite: that the U.S. Treasury’s actions did not

impair Defendant's ability to carry forward its NOL under the IRC. But Plaintiff claims that Defendant was not entitled to rely on the three federal Revenue Notices because Plaintiff claims the Revenue Notices are themselves invalid under federal law. (Complaint ¶ 33.) Specifically, Plaintiff asserts:

Upon information and belief, the IRS Notices were not approved by Congress, are contrary to the language and purpose of section 382 of the IRC, defy ARRA's prohibition on preferential treatment of classes of taxpayers, conflict with the requirements of EESA, and constitute arbitrary and capricious action by Treasury.

(Compl. ¶ 32.)

13. In short, Plaintiff claims that three separate interpretations of federal law by a federal agency were each invalid because they were allegedly inconsistent with three separate federal statutes and improperly promulgated as a matter of federal administrative law.

14. Whatever the dubious merits of these claims—each of which Defendant contests—they are federal in nature. Even where state law creates a plaintiff's causes of action, federal jurisdiction lies if the well pleaded complaint establishes that the plaintiff's right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties. See City of Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 164 (1997) (upholding removal of state court action where plaintiff used state administrative review statute to raise federal constitutional challenges to local landmarks ordinances). As a corollary to this rule, the federal courts may assert jurisdiction in the absence of a federal law claim on the face of the complaint where the plaintiff has, through artful pleading, sought to avoid removal "by framing in terms of state law a complaint the real nature of [which] is federal, regardless of plaintiff's characterization, or by omitting to plead necessary federal questions in a complaint." Marcus v. AT&T Corp., 138 F.3d 46, 55 (2d Cir. 1998) (alterations and internal quotation marks omitted) (upholding removal where plaintiff's state law breach of warranty claim arose from tariff that defendant was required by federal statute to file with the FCC).

15. In this case, plaintiff's federal law claims are apparent on the face of the complaint. The vast majority of Plaintiff's substantive allegations concern the interpretation of various provisions of federal law, including the Internal Revenue Code. (See Compl. ¶¶ 13 – 33.) These are quintessentially federal questions. "The meaning of the federal tax provision is an important issue of federal law that sensibly belongs in a federal court." Grable & Sons Metal Prods. v. Darue Eng'g & Mfg., 545 U.S. 308, 315 (2005) (holding removal proper under 28 U.S.C. §§ 1331 and 1441 where complaint in state court turned on question of federal tax law). Plaintiff's claim that ARRA "prospectively repealed" Revenue Notice 2008-83, Complaint ¶ 24, similarly calls on the court to interpret the effect of one federal enactment upon another.

16. Finally, in alleging that Defendant's reliance on the Revenue Notices was improper because the Revenue Notices were "arbitrary and capricious," unauthorized by Congress, and in conflict with the IRC, Complaint ¶ 32, Plaintiff asserts a claim under state law whose "vindication . . . necessarily turn[s] on some construction of federal law." Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 808 (1986) (internal quotation marks omitted). This claim turns on a question of federal law. See generally Hughes v. Chevron Phillips Chem. Co., 478 F. App'x 167, 170 (5th Cir. 2012) (affirming denial of motion to remand where state law claim required court to determine validity of IRS's administrative tax levy); Cohen v. United States, 650 F.3d 717, 723 (D.C. Cir. 2011) (holding that challenges to IRS guidance are subject to review in federal court under Administrative Procedure Act).

17. For these reasons, this Court has federal question jurisdiction over Plaintiff's claims. Plaintiff's complaint raises on its face substantial federal issues "by way of a cause of action created by state law," City of Chicago, 522 U.S. at 164, and frames in state law terms a claim whose real nature is federal, see Marcus, 138 F.3d at 55. "By raising several claims that

arise under federal law, [Plaintiff] subjected itself to the possibility that [Defendant] would remove the case to the federal courts.” City of Chicago, 522 U.S. at 164.

18. For all claims (if any) not subject to jurisdiction under 28 U.S.C. § 1331, supplemental jurisdiction lies under 28 U.S.C. § 1367 because all claims in this case form part of the same case or controversy. See id. at 164 – 65.

19. Removal is therefore proper under 28 U.S.C. § 1441(a).

VENUE

20. Pursuant to 28 U.S.C. § 1446(a), venue in this action is proper in this Court as the division within which the state court action was brought.

FILING OF REMOVAL PAPERS

21. Pursuant to 28 U.S.C. § 1446(d), Defendant will file a copy of this Notice of Removal with the Clerk of Court for the Supreme Court of the State of New York, County of New York. Defendant will also promptly serve a copy of this Notice of Removal on counsel for Plaintiff.

WHEREFORE, Defendant hereby removes this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated: New York, New York
October 2, 2015

DAVIS POLK & WARDWELL LLP

By: /s/ Edmund Polubinski III

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Attorneys for Defendant Citigroup Inc.

EXHIBIT A

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

ANONYMOUS

Plaintiff,

- against -

ANONYMOUS

Defendant(s).

Index No. **13100175**

Filed Under Seal Pursuant to
The New York False Claims
Act §§190(2)(b)

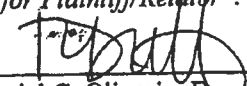
SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York). In the event of your failure to appear or answer, judgment may be taken against you by default for the relief demanded in the Complaint. Venue is proper in this county under C.P.L.R. § 503(a) as one or more of the parties are, and were at all times relevant, residents of the County of New York.

Dated: Buffalo, New York
January 24, 2013

HODGSON RUSS LLP
Attorneys for Plaintiff/Relator

By: 
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John L. Sinatra, Jr., Esq.
Reetuparna Dutta, Esq.
140 Pearl Street, Suite 100
Buffalo, New York 14202-4040
Telephone: (716) 856-4000

FILED

JAN 24 2013

COUNTY CLERK'S OFFICE
NEW YORK

NOTICE:

The nature of this action is a violation of the New York False Claims Act, State Finance Law §§ 187, *et seq.*, as amended (the "Act"), for which Plaintiff-Relator seeks damages on behalf of New York State for approximately \$800,000,000 in tax dollars, trebled, plus penalties, interest, and costs and fees under the Act, for the use and submission of false income tax returns with excessive and improper net operating loss deductions used to reduce taxable income between 2010 and 2012.

WARNING:

Upon your failure to appear, judgment may be taken against you by default.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NEW YORK

THE STATE OF NEW YORK

ex rel.

ERIC RASMUSEN,

CONFIDENTIAL
FILED UNDER SEAL

Plaintiff,

v.

Index No.: 13 100175

CITIGROUP, INC.,

FILED

Defendant.

SEP 02 2015

COUNTY CLERK'S OFFICE
NEW YORK

COMPLAINT

Plaintiff, the State of New York *ex rel.* Eric Rasmusen, alleges as its Complaint against Defendant as follows:

INTRODUCTION

1. This is an action to recover damages, treble damages, and penalties on behalf of the State on account of false and fraudulent records or statements made, used, or caused to be made or used by Defendant, as well as its agents, employees, co-conspirators, and consolidated subsidiaries¹ (collectively, "Defendant" or "Citigroup") material to an obligation to pay money to the State in violation of the New York False Claims Act, State Finance Law §§

¹ Upon information and belief, Citigroup consolidates subsidiaries in which it holds, directly or indirectly, more than 50% of the voting rights or where it exercises control.

187, *et seq.*, as amended (“the Act”). These violations involve the intentional and knowing failure to pay approximately \$800 million in taxes owed to the State, including its agencies and departments (in particular, the Department of Taxation and Finance), through unlawful deductions from taxable income.

2. Specifically, upon information and belief, Citigroup defrauded the State by failing to pay taxes owed pursuant to the State’s franchise tax through the improper deduction of net operating losses from taxable income after undergoing ownership changes resulting from the federal government’s purchase and sale of stock.

3. The Act provides that any person who knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State shall be liable to the State for a civil penalty of between \$6,000 and \$12,000 for each violation of the Act, plus three times the amount of damages sustained by the State from the violation. The Act’s *Qui Tam* provisions further allow any person (“the relator”) to bring a civil action for violations of the Act on behalf of the person and the State and to share in any recovery.

4. Based on these provisions of the Act, Eric Rasmusen, as plaintiff/relator, seeks to recover damages, treble damages, and civil penalties arising from materially false records and statements, knowingly made, used, or caused to be made or used by Citigroup to avoid the payment of taxes lawfully owed to the State. Rasmusen also seeks to recover attorneys’ fees and costs of this civil action brought to recover the statutory penalties and damages from Citigroup for violations of the Act.

PARTIES

5. Plaintiff/relator Eric Rasmusen is the Dan R. and Catherine M. Dalton Professor of Business Economics and Public Policy at Indiana University's Kelley School of Business. Rasmusen is a resident of the State of Indiana.

6. Rasmusen brings this action for violations of section 187, *et seq.*, of the Act, on behalf of himself and the State pursuant to section 190(2) of the Act.

7. Upon information and belief, Citigroup is a global diversified financial services holding company providing a broad range of financial products to consumers, institutions, corporations, and governments. It is incorporated in Delaware and has its principal executive offices at 399 Park Avenue, New York City, New York, 10022.

8. Upon information and belief, the net income or sales of Citigroup exceeds one million dollars for the relevant taxable years, and the damages to the State resulting from Citigroup's violations of the Act exceed \$350,000.

JURISDICTION AND VENUE

9. Citigroup is doing business in New York and is subject to this Court's jurisdiction.

10. Upon information and belief, Citigroup is authorized to do business in New York.

11. Venue is proper in this county under CPLR 503(a).

ALLEGATIONS OF FACT

The Deduction from Taxable Income of Net Operating Losses under Federal and New York State Law

12. At all relevant times, Citigroup has been subject to both federal and New York State income taxation.

13. The Internal Revenue Code (“IRC”) sets forth a number of deductions that can be taken, under federal law, when computing taxable income. 26 U.S.C. § 161. One of these deductions is the net operating loss,² or “NOL,” deduction. Federal law allows as a deduction an amount equal to the aggregate of the NOL carryovers to the taxable year plus the NOL carrybacks to such year. *Id.* at § 172.

14. Section 382 of the IRC, however, limits the ability of a corporation to carry forward NOLs if the corporation experiences an “ownership change” between the time it incurs the NOLs and the time it uses the NOLs to reduce its taxes. *Id.* at § 382(a), (c).

15. The purpose of this provision is to prevent “loss trafficking” by ensuring that NOLs cannot be used to reduce taxes for corporate shareholders who did not actually bear the corporation’s losses. In other words, NOLs can only be carried forward to reduce a corporation’s taxes if the corporation is owned by substantially the same shareholders that incurred the losses in the first place.

² A “net operating loss” is defined as the excess of deductions over gross income. *Id.* at § 172(c).

16. New York imposes a franchise tax on banking corporations based on a percentage of their entire net income or an alternative minimum tax. *See* N.Y. Tax Law §§ 1451, 1455. Unless the alternative minimum tax applies, the franchise tax is calculated, for taxable years after January 1, 2007, at 7 1/10% of entire net income or the portion thereof allocated to New York State. *Id.* at 1455.

17. Like federal law, New York allows a corporation to take a NOL deduction and, for taxable years beginning on or after January 2001, the New York NOL is “presumably” the same as the federal NOL calculated under section 172 of the IRC, with certain modifications. N.Y. Tax Law § 1453(k-1).

18. The franchise tax incorporates the NOL deduction under section 172 of the IRC and, thus, also incorporates the NOL limitation on carryovers in section 382 of the IRC.

**The 2008 Recession and the
Government’s Bailout of Citigroup**

19. In 2008, Congress enacted the Emergency Economic Stabilization Act of 2008 (“EESA”), which authorized the Department of the Treasury (“Treasury”) to take steps to restore liquidity and stability to the financial system. In exercising this authority, EESA required that Treasury prevent the unjust enrichment of financial institutions and generally required Treasury to maximize overall returns to taxpayers.

20. One of the programs established by EESA was the Troubled Asset Relief Program (“TARP”). Through TARP, Treasury purchased equity interests in publicly traded companies, one of which was Citigroup.

21. Specifically, in October 2008, Treasury purchased \$25 billion of preferred stock in Citigroup. Then, in November 2008, Treasury invested an additional \$20 billion in Citigroup.

22. These transactions constituted an ownership change within the meaning of section 382 for Citigroup.

23. In October 2008, in an attempt to bolster the failing economy, the IRS issued Revenue Notice 2008-83, which provided preferential tax treatment for banks that had undergone an ownership change within the meaning of section 382.

24. Congress, however, prospectively repealed this notice when it enacted the American Recovery and Reinvestment Act of 2009 ("ARRA"). Congress expressly stated in ARRA that the IRS was not authorized to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

25. Then, effectively ignoring the prohibition on preferential treatment expressed by Congress in ARRA, the IRS issued Notice 2009-38 in April 2009 as "guidance" to corporate issuers. This notice provided relief from the restrictions on carrying forward NOLs in section 382 for Citigroup and other businesses benefitted by Treasury's purchases of stock. In other words, this Notice cancelled the restriction on the use of NOLs carried forward after the ownership change triggered by Treasury's purchases of stock.

26. In December 2009, the IRS superseded Notice 2009-38 with Notice 2010-2. This Notice, similar to the previous one, was issued as "guidance" and provided that the section 382 limitation would not be triggered by Treasury's purchase of stock. But, the Notice

went further, providing that Treasury's *sale* of stock also would not trigger the NOL limitation in section 382.

27. Citigroup purchased back the \$20 billion of Treasury's stock in December 2009 and, in February 2009, Treasury converted its \$25 billion of preferred stock into common stock.

28. In April 2010, approximately four months after the government issued Notice 2010-2, Treasury began to sell its Citigroup common stock and, as of December 2010, Treasury no longer owned any Citigroup stock.

29. Treasury's sale of its Citigroup stock constituted another ownership change within the meaning of section 382.

30. The federal government realized \$6,850,000,000 of profit from its sale of Citigroup stock. But, while the federal government realized a short-term profit, it will lose significantly more through the loss in tax revenue as a result of Citigroup's avoidance of the restriction on NOL deductions set forth in section 382.

31. Moreover, shareholders who purchased Treasury's stock in Citigroup in 2010 paid more for that stock than they would have if Citigroup adhered to the section 382 limitation because Citigroup was worth more as a company with the unrestricted use of its NOLs.

32. Upon information and belief, the IRS Notices were not approved by Congress, are contrary to the language and purpose of section 382 of the IRC, defy ARRA's

prohibition on preferential treatment of classes of taxpayers, conflict with the requirements of EESA, and constitute arbitrary and capricious action by Treasury.

33. Upon information and belief, because the IRS Notices were improperly promulgated by the IRS, Citigroup was not entitled to rely upon them to reduce its taxable income for purposes of the IRC or, for that matter, the New York Tax Law.

34. Upon information and belief, even if the IRS Notices are valid as a matter of federal law, they were not adopted or incorporated into the New York State Tax Law and, thus, Citigroup was not entitled to rely upon them to reduce its New York State tax liability.

35. Nevertheless, on information and belief, Citigroup did just this on its federal and state tax returns.

Violations of the False Claims Act

36. Upon information and belief, between 2010 and 2012, Citigroup knowingly made, used, or caused to be made or used, or is knowingly making, using or causing to be made or used, false records or statements material to an obligation to pay money to the State.

37. Specifically, upon information and belief, Citigroup knowingly prepared false State tax returns with excessive and improper NOL deductions to reduce its taxable income and avoid the payment of taxes owed to the State pursuant to the State's franchise tax.

38. Upon information and belief, as a result of the knowingly false records or statements used by Citigroup to avoid the payment of taxes to the State, the State did not receive approximately \$800 million in tax revenues to which it was entitled.

39. Upon information and belief, as a result of the knowingly fraudulent conduct of Citigroup, Citigroup is liable to the State for taxes owed to the State, trebled, plus penalties, interest, and attorneys' fees under the Act. *See* N.Y. State Fin. Law § 189(1)(g).

JURY DEMAND

40. Rasmusen demands a jury on all issues and matters triable by a jury.

RELIEF REQUESTED

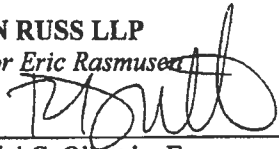
WHEREFORE,

- a) For treble damages under State Finance Law §§ 189(1)(g) in an amount to be determined at trial, plus penalties, costs, interest, and attorneys' fees;
- b) For the damages sustained by the State; and
- c) For award of such other and further relief as this Court deems proper as a matter of law or under the New York False Claims Act, State Finance Law §§ 187, *et seq.*

Dated: Buffalo, New York
January 24, 2013

HODGSON RUSS LLP
Attorneys for Eric Rasmussen

By: _____


Daniel C. Oliverio, Esq.
John L. Sinatra, Jr., Esq.
Reetuparna Dutta, Esq.

140 Pearl Street, Suite 100
Buffalo, New York 14202-4040
Telephone: (716) 856-4000

At IAS Part _____ of the Supreme Court of the State of New York, held in and for the County of _____, at the Courthouse at _____, on the ____ day of _____, 2013.

PRESENT Hon. _____
Justice of the Supreme Court

-----x
ANONYMOUS, :

Plaintiff, :

-against-

ANONYMOUS, :

Defendant

ORDER

FILED
COUNTY CLERK
NEW YORK COUNTY

JAN 2 4 2013

Unsigned Order to ..
Show Cause

Index No.:

**Filed Under Seal Pursuant to
New York False Claims Act,
N.Y. State Fin. L. § 190(2)(b)**

**[PROPOSED] ORDER
GRANTING EX PARTE
MOTION TO FILE
COMPLAINT IN CAMERA
AND UNDER SEAL**

NOW, this ____ day of _____, 2013, upon consideration of Plaintiff-Relator's application that this matter be filed *in camera* and under seal pursuant to the New York False Claims Act, N.Y. State Finance Law §§ 187-194, specifically § 190(2)(b) thereof, it is hereby:

ORDERED, that the application is granted; and it is further

ORDERED, that the County Clerk shall issue an Index Number in this matter in the name of the above-captioned action, ANONYMOUS against ANONYMOUS; and it is further

ORDERED, that the County Clerk is directed to seal the file for this case, and the file shall remain sealed and the government's time to make an election and provide notice of such election pursuant to N.Y. State Finance Law §190(2)(c), is hereby extended until further order of the Court; and it is further

ORDERED, that the government shall provide the Court with an under seal, *ex parte* report describing the status of its investigation of the matters raised in the *qui tam* complaint, within six (6) months of the date of entry of this Order, and at six (6) month increments thereafter until such time as the Court shall order that the seal be lifted and the government's time to make an election pursuant to N.Y. State Finance Law §190(2)(c) be terminated; and it is further

ORDERED, that, absent further order of the Court, the County Clerk shall not enter the Complaint or any other document in any electronic case filing system, and shall deny access to the Complaint and other documents filed with the Court in this action to anyone except for counsel of record to any party to the case, parties to the action, the Office of the New York Attorney General, and any agents designated in writing by counsel; and it is further

ORDERED, that Plaintiff-Relator's attorney shall serve a copy of this Order, the Complaint and any written disclosure of substantially all material evidence and information that Plaintiff-Relator possesses upon the Attorney General of the State of New York pursuant to CPLR 307(1) and 13 N.Y.C.R.R. § 400.4 within ten (10) days from the date hereof.

ENTER:

J.S.C.