Alleged Breaches of Model Code of Conduct by Judge Jennifer Schecter in Hall v Middleton et al Case 655003_2019

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Brief Introduction

By a letter agreement dated 13th February 2019 (exhibit 1 Carl Brundidge Affirmation attached) Sheridan England (England) became "Of Counsel" to the firm of Brundidge & Stanger (B&S): patent attorneys (as clearly stated on the letterhead), having relevant company/commercial litigation expertise and experience to offer to the clients of B&S. It was a reciprocal arrangement, which, inter alia, provided for payment terms including specific payment rates for his work for the firm's client; Veritaseum.

By an action dated 30th August 2019, Hall sued Middleton et al for essentially the determination of ownership of patents, unfortunately the plaintiff's allegations were not properly tested as the defendants were precluded from producing evidence and witnesses and denied the opportunity of challenging the plaintiff's evidence by order of Judge Schecter, due entirely to "office failures", as subsequently referred to in this submission.

Although an Answer was filed on 3rd October 2019 by Ms. M. Lee; an employee of B&S, and went on record at that point, she received considerable assistance and input from England in drafting and submitting the same, a point the Judge failed to appreciate, perhaps due to an oversight. Due to "office failures", crucial deadlines were not met, entirely down to England's failure to file, denying the defendant; Middleton, to properly present his case, and as such was denied due process; a breach of his Constitutional Rights, which the Judge had sworn an Oath to uphold. It is clear from Brundidge's and Middleton's affirmations attached, that England had deliberately and intentionally failed to make the appropriate filings, but that he did so without the permission nor knowledge of B&S and Middleton, indeed when the affirmation of Brundidge is closely examined, England had falsely represented that he had indeed "satisfied" the order.

England then files a motion to be withdrawn from the case, see England's affirmations attached, wherein he complains about alleged non-payment of fees, for which no evidence was provided, and completely contradicted by the affirmations of Brundidge and Middleton. Furthermore, exhibit 2 to Brundidge's affirmation shows an attempt to pay for pre-trial and trial work, requesting England to provide a figure. The non-payment of fees by a client was a spurious argument in that Middleton was not the client of England, but the client of B&S, and B&S were responsible for payment of England's fees. Unbeknown to the Judge, a special arrangement had been made between Brundidge and Middleton, whereby B&S would cover Of Counsel fees to England, through the potential recovery of substantial damages on a separate contingency case concerning patent infringement. Further inquiry by the court would no doubt have revealed this. The Judge allowed England to withdraw from the case, improperly in our view, and without disciplining him for his ethical misconduct. With respect, we believe the Judge erred in that she allowed England to withdraw arguing that Middleton already had representation through Ms Lee because she had filed an Answer and a letter on behalf of Middleton, however, the Judge overlooked the fact that England had largely drafted the Answer, and the whole raison d'etre for England's appointment as Of Counsel, was because B&S were patent attorneys and did not have the relevant expertise and experience with company/commercial litigation matters. Had she properly considered the situation, the Judge should have either ordered England to remain, or in view of the admitted lack in his capabilities, in his own affirmation, she should have given time for Middleton to find alternative suitably qualified representation, so as not to harm his position, and that justice could be done and be seen to be done.

Model Code of Judicial Conduct: Canon 1

A Judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

The contents of the following are intended to paint a broad picture of the Hall v Middleton et al case but fuller and more specific details appear in the following alleged breaches contained within Canon 2 below.

Definition of Judicial Corruption

Under New York law, judicial corruption involves actions taken by a Judge that are:

1. **Illegal or Unethical**: Violating legal or ethical standards purposefully.
2. **Improper and Prejudicial**: Engaging in behavior that unjustly disadvantages one party.
3. **For Personal Gain or Under Undue Influence**: Acting with motivations of personal benefit or external pressures.

Elements of Alleged Corruption in Judge Schecter's Actions

1. **Intentional Wrongdoing**
   - **Preclusion without Just Cause**: Judge Schecter precluded Middleton's evidence, defense witnesses and denied Middleton of the ability to question the plaintiff's evidence based on procedural non-compliance, attributed entirely down to his former attorney's "office failures". Such harsh sanctions without clear evidence of willful and contumacious non-compliance by Middleton imply an arbitrary and unfair judicial process. These sanctions disproportionately harmed Middleton's defense, indicating an underlying bias, lack of just cause and improper intentions.
2. **Improper and Prejudicial Conduct**
   - **Corroborated and Uncontested Testimonies Overlooked**: Affirmations from Reggie Middleton, Carl Brundidge, and Sheridan England (attached) consistently prove that Middleton was not informed of critical court deadlines by England. The Judge ignored these testimonies without substantiating her decision with countervailing evidence. Judge Schecter dismissed these corroborated testimonies, which undermines the trustworthiness and impartiality expected of a Judge. Ignoring substantial evidence questions the integrity and fairness of the judicial process.
3. **Personal Gain or Undue Influence**

- **SEC Allegations and Consent Orders Utilized Wrongfully**: The Judge employed non-evidentiary sources such as SEC allegations and consent orders (which did not admit wrongdoing) to support excessive punitive damage awards. The Judge stated “Punitive damages of a similar magnitude are warranted here…". These actions were instrumental in unduly prejudicing Middleton by relying on hearsay and external allegations. Utilizing such sources signals potential bias or undue influence, as it deviated significantly from relying on trial evidence and sound judicial practices.

4. **Comparison of Disparate Treatment**
   - **Inconsistent Handling of Procedural Violations**: Judge Schecter severely penalized Middleton for procedural missteps while often allowing similar errors by Charles Hall to go unpunished. For example, the return dates favoring the plaintiff, carte blanche acceptance of the plaintiff's late filings, and dismissal of the defendant’s legitimate motions characterize an imbalanced judicial approach. This inconsistent application of rules underscores preferential treatment towards the plaintiff. The fairness mandated by judicial conduct rules is thus breached, indicating improper judicial behavior motivated by bias or external pressures.
5. **Additional Supporting Evidence**:
   - **Judge's Language and Prejudiced Comments**: Judge Schecter's harsh terminology towards Middleton versus more favorable treatment of Hall suggests an unbalanced and prejudiced mindset. This inequitable vernacular undermines judicial neutrality and fairness.
6. **Taking Personal Assets**
   - **Legal Standard**: Judicial decisions involving personal assets must be fair and based on sound legal principles.
   - Judge Schecter’s decision to place Middleton's patents into a company with no assets to defend them, despite knowing they were under attack, indicates a potential abuse of power. This action disregarded the security of Middleton’s personal assets and the company's ability to defend its intellectual property.
7. **Economic Liability on the Company**
   - **Legal Standard**: In derivative shareholder actions, the best interests of the shareholders must be paramount.
   - Imposing a $450,000 attorney fee judgment on a company unable to pay and providing a $1 million punitive damage award without considering Middleton’s ability to pay shows disregard for the company’s financial health and shareholder interests. This creates an unfunded liability, undermining the company's viability.
8. **Ignoring Pleas of Inability to Pay**
   - **Legal Standard**: Judges must consider all relevant factors, including the financial capacity of individuals and entities affected by their rulings.
   - By ignoring Middleton’s pleas about his inability to pay the punitive award, Judge Schecter demonstrated a lack of consideration for critical financial information. This action could be seen as prejudicial and improper.
9. **Constructive Trust Attempt**
   - **Legal Standard**: Judicial actions must prevent unjust enrichment and ensure fair proceedings.
   - Knowing that the plaintiff sought to take patents through a constructive trust, the Judge’s decisions favored the plaintiff's strategy without adequate safeguards for Middleton’s interests, indicating potential bias and improper conduct.

Further Evidence of Corruption Elements

Judge Schecter’s handling of the case involving Reggie Middleton raises substantial concerns regarding the impartial evaluation of testimonies. Notably, the Judge consistently dismissed Middleton's credibility without thoroughly considering corroborated and uncontested evidence. This analysis examines the transcripts, affirmations, letters, and depositions to demonstrate the discrepancy between the Judge’s assessments and the actual records.

1. Detailed Examination of Testimonies and Evidence

- **Judge's Dismissal of Middleton's Testimony**:
  - Judge Schecter dismissed Reggie Middleton's testimony as "baseless" and his procedural applications as “frivolous delay tactics," despite no substantial evidence of inconsistency or dishonesty in Middleton’s statements.

2. Inconsistencies in Charles Hall's Testimony:
- **Contradictions and Discrepancies**:
  - Hall exhibited numerous inconsistencies in his testimony, notably about his role concerning Veritaseum, marketing efforts, and how investment decisions were influenced by the video evidence.
  - Despite these evident contradictions, Judge Schecter did not emphasize or critique Hall's inconsistencies as she did with Middleton's consistent testimony.

3. Judge's Language and Prejudicial Comments:
- **Use of Disparaging Terms**:
  - Judge Schecter criticized Middleton's defense, using terms like "revisionist history," and accused him of "throwing Mr. England under the bus" and described his conduct as "willful violation, contumacious conduct, and egregious," showcasing a hostile attitude.
- **Impartiality Issues**:
  - Contrarily, the rulings and remarks regarding Charles Hall painted a picture of neutrality and credibility, even while the evidence pointed towards frequent inconsistencies in Hall's testimony.

4. Procedural Fairness and Judicial Conduct:
- **Ignoring Substantial Evidence**:
  - The Judge's dismissal of substantiated and uncontested affirmations provided by Middleton without thorough investigation significantly undermines judicial fairness. Such an approach violates judicial conduct rules requiring due diligence and impartial assessment of all evidence.

Case Law and Supporting Judicial Conduct Rules

1. **Judicial Conduct and Discipline (NY Judiciary Law § 44)**
   - Judges must avoid impropriety and the appearance of impropriety. Judge Schecter's actions exhibit clear favoritism towards the plaintiff and disregard for an impartial process.
2. **Case Law**:
   - **Matter of Greenfield, 76 N.Y.2d 293 (1990)**:
     - **Summary**: Judges are obligated to report attorney misconduct.
     - Judge Schecter failed to act on clear indications of misconduct by Middleton's attorneys England and Lee, challenging her fulfillment of this duty.
   - **Matter of Sims, 61 A.D.3d 1 (1st Dept. 2009)**:
     - **Summary**: Ensuring compliance with professional conduct standards is paramount.
     - The Judge ignoring documented attorney failures aligns with a neglect of her supervisory responsibilities.
   - **Matter of Schiff, 23 N.Y.3d 32 (2014)** & **Matter of Duckman, 92 N.Y.2d 141 (1998)**:
     - **Summary**: It is the responsibility of Judges to maintain the integrity of the legal profession by addressing attorney misconduct.
     - Judge Schecter's inaction against clear misconduct on the part of England failed to preserve judicial process integrity.

Ordering of Return Dates Favoring the Plaintiff

1. **Pattern of Favoritism in Setting Motion Practice Return Dates**:
   - **Example 1**:
     - **Document**: Stipulation adjourning the motion for contempt filed by Plaintiff Charles Hall.
     - **Details**: The return date for the plaintiff's motion for contempt initially set for June 15, 2023, was adjourned to July 14, 2023, and then further adjourned to August 25, 2023.
     - The multiple adjournments granted to the plaintiff allowed greater flexibility and preparation time for the plaintiff while restraining the defendant Middleton's ability to respond effectively.
2. **Multiple Instances Allowing Plaintiff's Late Motions and Filings**:
   - **Example 2**:
     - **Document**: Court order details related to Charles Hall's filings.

        - **Details**: On several occasions, the court accommodated late filings and extensions for the plaintiff without similarly extending such courtesies to the defendant.
        - A pattern of accepting the plaintiff's late filings while strictly penalizing the defendant for similar procedural lapses indicates preferential treatment.
3. **Denied Requests by Defendant for Extensions or Introduction of Evidence**:
    - **Example 3**:
        - **Document**: Transcripts and court orders regarding denied motions from Reggie Middleton.
        - **Details**: Requests for extensions and introduction of evidence by Middleton were repeatedly denied, often characterized dismissively as "non-compliant" or "delayed".
        - The stark contrast in treatment—granting plaintiff's adjournment requests while denying the defendant's similar requests—demonstrates procedural bias and inconsistency. This biased handling undermines procedural fairness required by judicial codes.

Violation of Judicial Codes and Procedural Fairness:
- **Requirement of Impartiality**: Judicial codes mandate fairness and impartiality in procedural settings and decision-making. Setting return dates that unreasonably favor one party over another circumvents these ethical standards.
- **Impact on Case Fairness**: The consistent pattern of favoring the plaintiff's procedural requests while denying similar requests from the defendant disadvantages the defendant in preparing and arguing their case. This impairs the defendant's right to a fair trial.

Comparative Disadvantages:
- **Imbalanced Preparation Time**: Favoring adjournments for the plaintiff quantifiably extends their preparation time while compressing or denying the defendant's time to respond. This asymmetry in preparation time can critically affect the quality of the defense and the overall balance of the trial.
- **Denial of Equitable Relief**: These actions deny the defendant equitable relief typically available under similar circumstances, pointing towards a prejudiced procedural conduct from the court.

Conclusion

Based on Judge Schecter's demonstrated bias, improper conduct, and failure to uphold judicial standards, there stands a substantial case for judicial corruption. The documented actions indicate:
- **Illegal or Unethical Behavior**: Purposefully dismissing crucial evidence and testimonies.
- **Improper Conduct**: Favoring one party and undermining due process.
- **Undue Influence**: Prejudicial reliance on unrelated SEC allegations.

Judge Schecter's actions reveal a discrepancy between her stringent assessments of Middleton's credibility and the lenient treatment of Hall's inconsistencies. By systematically devaluing consistent and substantiated testimonies provided by Middleton while overlooking the numerous contradictions in Hall's account, the Judge's impartiality is called into question. This analysis supports the assertion that Judge Schecter's handling of the case was biased, and her credibility assessments were unjustified. Judge Schecter's actions in this case exhibit elements of judicial corruption, including purposeful illegal actions that were improper and prejudicial. Her decisions disadvantaged Middleton by ignoring corroborated evidence, imposing severe sanctions without just cause, favoring one party over another, and utilizing hearsay to justify punitive damages. These actions collectively undermine the fairness and integrity of the judicial process and given the extensive evidence of bias and improper conduct, a strong and valid argument for corruption against Judge Schecter can indeed be made. The documented instances of prejudicial actions and failure to adhere to judicial standards highlight the need for rigorous evaluation by judicial oversight authorities.

Model Code of Judicial Conduct: Canon 2

Rule 2.2: Impartiality and Fairness

A Judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

The contents of this section are equally repeated in their entirety, insofar as they are appropriate, for Rule 2.3, Rule 2.5, Rule 2.6 and Rule 2.15 below.

A Judge, in any proceedings, has the unenviable task of having to balance the interests of the parties to any proceedings without favour to one or the other, and must be able to demonstrate that impartiality in the proceedings and on the record. Justice must not only be done, it must be seen to be done. It is alleged that the Judge has potentially failed to exercise those duties in this case. The main issues revolve around the Judge's decisions to preclude Middleton from filing a proper defence to the action in not allowing Middleton to introduce evidence and witnesses to support his case and not giving Middleton the opportunity of challenging the plaintiff's evidence, and further, subsequently striking out his post-trial memorandum. In addition, the Judge's decision to allow Middleton's former attorney; Sheridan England, to withdraw from the case on the eve of trial, despite evidence of ethical misconduct, discussed in Rule 2.15 below, without disciplining him, again reviewed in the following sections. Whilst the Judge's actions can be understood from a strictly legal perspective, from an equitable and fairness position they could be interpreted as leaving much to be desired. Although the Judge, in subsequent motions, did not strike out Middleton's Answer which would have prepared the way for judgment in default, so that Middleton could proceed to trial with his oral testimony only, we suspect there may have been ulterior motives for this, based upon the **Benedict v Thaler Case** (covered in Rule 2.3). It is difficult to get a bird to fly once its wings have been clipped. We believe the Judge erred in her findings and will attempt to show that. The Judge's depictions of character and evidence of bias are covered in the following section headed Rule 2.3.

Instances of Lack of Impartiality and Lack of Fairness:

- The reader is encouraged to peruse the four affirmations, two from England and one each from Carl Brundidge of Brundidge and Stanger; patent attorneys, and Middleton, attached.
- The striking out of Middleton's post-trial memorandum without adequately considering the attached affirmations from his former attorney; England, Brundidge and Middleton, and the communications breakdown is documented in the record and could indicate a lack of thoroughness and preparation in ensuring fairness in the judicial process.
- The Judge's actions in imposing the severe sanctions, without fully considering the impact of Middleton's attorney's "office failures" on his ability to comply with court orders and crucial deadlines may reflect a lack of diligence in ensuring due legal process.
- The Judge's acceptance of the inadequate information contained in the affirmation of attorney England, which failed to provide specific dates and details, potentially undermines the requirement for clear and timely communication necessary for informed decision-making by Middleton.
- By potentially accepting and relying on incomplete or misleading affirmations from Middleton's former attorney without thorough investigation and verification, the Judge might have overlooked false statements or failed to ensure all relevant facts were accurately presented.
- It is generally accepted that attorneys acting in litigation matters charge for their time by the hour. The time spent is usually split between personal attendances on the client, including phone calls to the client, opposing counsel and the court, interviewing and taking witness statements, reading and perusing documents, Statutes and legal precedents, preparing depositions and documents for filing, including motions and all correspondence, and travelling and the list goes on. The important thing to note is that when personal attendances and phone calls are made, the attorney, in accordance with good and diligent practice, will make contemporaneous notes in the circumstances, so that a record is kept of both what was said, what time and date it was said and the time spent, both for accurate billing purposes and, should the need arise, reference made to those contemporaneous notes, should the need arise.
  In the attached affirmations from England, he alleges non or late payment of his invoices from B&S but fails to provide any substantive documented proof, and his allegations are completely contradicted by the affirmations from Brundidge and Middleton. These allegations were made by England in an effort to support his application for withdrawal from the case. It is believed that the Judge both failed to make further investigations to prove or disprove the accuracy of such allegations and failed to give due weight to the affirmations from Brundidge and Middleton, which argued to the contrary. This may indicate both a lack of attention to detail and a lack of impartiality and fairness to Middleton.

- By a court order dated 13th October 2021 the parties were required to make filings by two deadlines; 17th November 2021 and 1st February 2022. England was aware of this order and the deadlines but failed to communicate those deadlines to Middleton, please see the affirmations attached.
- England failed to make the appropriate filings, despite falsely communicating to B&S that he had "satisfied" the court order (see Brundidge affirmation).
- It was finally discovered on 16th February 2022 that England had intentionally and deliberately failed to make the appropriate filings following a phone call England had received from the court clerk; Mr Michael Rand, berating him for ethical misconduct, immediately following which England called Brundidge to admit to these failures. This is discussed in more detail in rule 2.15 below.
- Judge Schecter, in view of the allegations of "office failures", ordered England to provide an answer giving specific times and dates as to when England claims to have advised Middleton of these crucial deadlines, and whether he still wished to withdraw from the case.
  England's response was that he could not recall when he notified Middleton but felt sure that he had. In light of the previous points made above about good and diligent attorney practice, this failure to be specific should have been unacceptable to the Judge, especially in view of today's technology where calls can be recorded on one's phone or when a record can be made on one's phone, describing what was said and when. In accepting his incredulous claim that he could not recall and his failure to be specific, the Judge erred in not investigating this further, and should have given more weight to the affirmations from Middleton and Brundidge, which perhaps indicates a lack of impartiality and fairness to Middleton. Furthermore, by stating that Middleton was attempting to "throw {him} under the bus" was portraying England as the victim and not Middleton, clearly indicative of unfairness to Middleton.
- Judge Schecter's decisions to preclude Middleton from presenting evidence in his defence, produce defence witnesses, challenge the plaintiff's evidence and to strike Middleton's post-trial memorandum without adequately considering and giving due weight to the affirmations of Brundidge and Middleton and the "office failures" of his attorney to inform him of crucial deadlines is severe and could indicate a lack in ensuring fairness in the judicial process.
- The issue of allowing England to withdraw from the case, and not allowing Middleton the opportunity of finding alternative suitably qualified counsel is discussed in more detail in section headed Rule 2.15 below.

Case Law:

- **Matter of Glavin, 107 A.D.2d 1008 (3d Dept. 1985)**: This case highlights the importance of diligence in legal representation and the consequences of neglect.

- **Matter of Kelly, 23 N.Y.3d 999 (2014)**: This case discusses the duty of diligence and the impact of failing to act promptly in legal matters.

- **Matter of Holtzman, 78 N.Y.2d 184 (1991)**: This case emphasizes the importance of clear and timely communication between attorneys and clients.

- **Matter of Kahn, 38 A.D.3d 33 (1st Dept. 2006)**: This case discusses the duty of attorneys to inform clients of material developments in their cases.

- **Matter of Schiff, 23 N.Y.3d 32 (2014)**: This case discusses the duty of attorneys to avoid making false statements of fact or law to a tribunal.

- **Matter of Kavanagh, 38 A.D.3d 1 (1st Dept. 2006)**: This case highlights the importance of correcting false statements made to a tribunal.

- **Matter of Holtzman, 78 N.Y.2d 184 (1991)**: This case discusses the duty of fairness to opposing parties and counsel.

- **Matter of Ginsberg, 1 N.Y.3d 144 (2003)**: This case highlights the importance of fairness in legal proceedings.

Abuse of Discretion

Legal Framework for Abuse of Discretion: In New York, an abuse of discretion occurs when a court makes a decision that is arbitrary, capricious, or without a sound basis in law or fact. It can also be found if the court fails to consider relevant evidence or gives undue weight to irrelevant factors.

1. **Knowledge of Deadlines**: **-** Middleton's consistent claims that he was not aware of the deadlines is substantiated by multiple pieces of evidence:
   - Emails to England from Middleton, purposely precluded from the evidentiary record, show he was actively seeking information about deadlines and enquiring what are the next steps.
   - Affirmations from Carl Brundidge and Middleton, both attesting that Middleton was not informed of the deadlines by his attorney and was completely unaware of such deadlines.
   - Affirmation from Sheridan England clearly indicating that he failed to provide any specific times and dates when he informed Middleton of the deadlines, which effectively corroborated Middleton's claims.
2. **Judge's Awareness**: **-** The Judge was aware of Middleton's and Brundidge's claims in the supporting affirmations for which the Judge ordered England to provide specific times and dates of when he informed Middleton about the court order and deadlines and England's failure to provide this information left Middleton's and Brundidge's claims completely uncontested, creating a strong presumption in favor of Middleton's version of events.
3. **Lack of Contrary Evidence**: **-** There was no contrary testimony or evidence presented to dispute Middleton's claims. The absence of any contesting evidence means that the Judge had no basis to disbelieve Middleton's testimony and the corroborating affirmations.
4. **Severity of Sanctions**: **-** The severe sanctions imposed, including preclusion of evidence, witnesses and not being able to challenge the plaintiff's evidence and the striking out of the post-trial memorandum, were disproportionate, given the circumstances. According to precedents such as **Benedict v. Thaler**, such severe sanctions should only be imposed for clear cases of willful and contumacious conduct, which was not evident in Middleton's case.
5. **Judicial Obligation to Consider All Evidence**: **-** The Judge is obligated to consider all relevant evidence. Ignoring the uncontested affirmations of Middleton and Brundidge in this regard and the absence of any contrary evidence may constitute an abuse of discretion. By imposing severe sanctions without clear evidence of willful non-compliance, the Judge may have acted arbitrarily.
6. **Precedent and Legal Standards**: - The decision in **Benedict v. Thaler** underscores the need for clear evidence of intentional misconduct before imposing severe sanctions. Middleton's case, where the evidence shows a lack of awareness due to his attorney's "office failures", does not meet this threshold.
7. **Severity of Non-Compliance: -** There was only one court order with two deadlines; 17th November 2021 and 1st February 2022 and the first discovery of failures to file was made on 16th February 2022. So that only three months had elapsed from the first deadline and a mere two weeks had elapsed from the second deadline when the failures were discovered, suggesting that this does not constitute contumacious conduct warranting such severe sanctions.

Conclusion: **-** The Judge's decision to impose severe sanctions without clear evidence of willful and contumacious non-compliance was arbitrary and capricious, constituting an abuse of discretion. The corroborating testimonies and the absence of any contrary evidence supports this claim.

Order for Middleton to Replace Funds, Findings of Contempt and Excessive Punitive Damages

- The court ordered Middleton to transfer patents from himself to the company, which required legal counsel, whilst also restraining Middleton from using his own funds to do so. These orders are conflicting and highly contradictory. In addition, Middleton was forced to use his own funds to protect the company against legal actions, such as the IPR proceedings with Coinbase, and prosecute additional patents. Judge Schecter created a $450,000 unfunded liability within the company, which had no income and no assets other than Mr. Middleton's freshly transferred patents, in direct contravention of N.Y. Bus. Corp. Law § 626. while also managing personal and corporate essentials like heat, electricity, and basic living costs.

- This order compounds the financial strain on Middleton and negatively impacts the company by rerouting resources needed for its defense and operational growth, directly conflicting with precedent where courts typically refrain from actions causing undue financial strain on the party already financially incapacitated.
- Judge Schecter ordered $1 million in punitive damages against Reggie Middleton. Middleton's later affirmation claims that this award was financially overwhelming given his current destitute status, living below the poverty line, with no income from the company or at all, and struggling to meet basic living expenses for himself and his family.
- Despite these conditions, the court rationale included the intention to impose a significant penalty for deterrence of corporate misconduct as reflected in the decision's emphasis on moral and legal deterrence, with a heavy reliance on non-evidentiary hearsay and matters that were not before her honor's court.
- The court's failure to account for Middleton's financial situation while issuing such high punitive damages has been contended as unreasonable and impractical. The Judge appears to have overlooked the arguments in judicial precedents which emphasize the consideration of the financial state of defendants when awarding punitive damages as detailed in **Rupert v. Sellers**, and its reference to how a significant penalty disproportionately affects individuals of different wealth brackets.

Legal Precedents and Applicable Law:

- **Equity and Fairness in Enforcement:** Decisions like **Stilwell v. Carpenter**, **Ladew v. Hart**, and **Littlefield v. Albany County Bank** establish that equity must prevent enforcement actions that result in unjust and oppressive outcomes, providing for equitable relief such as set-offs where parties are otherwise disenfranchised.
- **Due Process in Contempt and Compliance Challenges:** Legal precedents including **Lueker v. Lueker** and **Farkas v. Farkas** underscore that inability to comply due to financial incapacity is a viable defense against contempt, which bears directly on Middleton's current position under extreme financial duress.
- Middleton's affirmations claim he is destitute, living below the poverty line, and unable to pay for basic living expenses due to the severe financial strain imposed by the court orders against him.
- Judge Schecter held Middleton in civil contempt for violating restraining notices by using his own funds to protect Veritaseum Inc.'s interests, specifically against the IPR attack by Coinbase. The Judge ordered Middleton to remit $131,962 to Hall and threatened coercive measures if compliance was not met by a specified date.
- Judge Schecter repeatedly warned Middleton regarding noncompliance and set forth potential coercion measures to induce adherence. The appropriateness of such measures align with precedents like **El-Dehdan** focusing on enforcing judicial compliance, especially when defendants showcase patterns of noncooperation. There were no such patterns of noncompliance in Middleton's case.
- Restraining Middleton's personal assets to the degree where basic living conditions are compromised treads a fine line between enforcing legal judgments and ensuring basic human rights. This may conflict with principles of equity, which advocate balanced harm and fairness (**Levandusky v. One Fifth Ave. Apt. Corp., 75 NY2d 530 [1990])**. This is particularly alarming where Judge Schecter stated in her previous decision that it is uncontested that Middleton does not owe Hall any money.
- **El-Dehdan v. El-Dehdan** (114 AD3d 4 [2d Dept 2013]) establishes the necessity for clear evidence when imposing contempt sanctions. The contempt ruling focused on Middleton's failure to comply with restraining notices, which, despite his justifications of using funds for necessary corporate defenses, to protect the company's main asset, was seen as undermining the court's mandates.
- Middleton's actions to use his personal funds were aimed at safeguarding Veritaseum's intellectual property assets, an argument grounded in fiduciary duty (**Matter of Kemp & Beatley, Inc., 64 NY2d 63 [1984]**). However, failing to seek formal relief from the court before using those funds resulted in a violation verdict, which the judge noted that Middleton was aware of the need to seek permission to use funds since he sought permission in the past – despite the judge refusing said permission at each request.

The punitive damages imposed, along with the enforced personal asset restraints against Middleton have likely disregarded applicable legal standards that necessitate consideration of his financial position and ability to pay. These actions have not only caused significant personal financial distress contrary to equity principles but also potentially harmed corporate interest and shareholder value, contradicting demarcated legal protections intended for derivative suits under New York law, and can also be viewed as lacking both impartiality and fairness. The Judge failed to apply an equitable distribution and proportional penalties in alignment with financial realities which could have better served justice. Issues of corporate versus personal liability must clearly delineate responsibility, ensuring restraints do not endanger personal existence unduly, and measures like set-off mechanisms might have offered mitigated relief without compromising judicial integrity. For these reasons, we believe the Judge has acted without impartiality and lacking fairness and above all equitable principles.

Rule 2.3: Bias, Prejudice, and Harassment

(A) A Judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A Judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the Judge's direction and control to do so.

There appears to be numerous indications that the Judge may have exhibited bias against the Defendant, Reggie Middleton and favoritism towards the Plaintiff, Charles Hall:

1. Material Differences in Characterizations

- **Charles Hall, Plaintiff**: There is no evidence of harsh, accusatory or racially charged language used towards Hall in the available documents. On the contrary it was generally more favorable, and focused on the merits.
- The evidence and testimonies presented by Hall were accepted without noted scepticism in the Judge's decision, portraying a generally favorable view of Hall.
- **Reggie Middleton, Defendant**: During a pretrial conference, Judge Schecter used the phrase "cracking the whip" to describe her approach to enforcing compliance with court deadlines and discovery. "In December of 2020, I issued an order that was pretty much cracking the whip, because there were problems with many compliance and discovery...". Although "cracking the whip" is accepted vernacular, it comes across as a racially insensitive remark given the circumstances.
- In a post-trial decision, Judge Schecter referred to Middleton's arguments as "revisionist history" in an attempt to undermine his credibility and intentions. "Furthermore, in the post-trial decision, the court found that Middleton's arguments were based on revisionist history proffered in an attempt to steal the Company's primary assets for himself'..."
- Judge Schecter described the defendants' motions as "baseless" and "frivolous delay tactic," questioning their integrity and intentions. "This motion is nothing more than yet another frivolous delay tactic…" framing their legal strategy as solely intended to delay the proceedings without merit. This accusation suggests a dismissive attitude toward the Defendants' legal rights.
- Judge Schecter criticised Middleton's defence strategy, accusing him of trying to delay proceedings by blaming his former attorney, Mr. England. The Judge characterised Middleton's pleading as baseless, despite the fact that Middleton's testimony was corroborated by other testimony of a member of the bar and his former attorney: Mr England, never disputed or contested Middleton's version of the facts. "They baselessly pled ignorance and threw Mr. England under the bus in an attempt to delay pre-trial proceedings..."
- The court emphasised Defendant's failure to comply with the pre-trial order, stating that Defendants "willfully violated the Court's October 13, 2021 pre-trial order" and repeatedly cited Defendants' willful and contumacious non-compliance as justification for precluding their evidence.

- The Judge described Defendants' introduction of new exhibits during oral testimony as "blatant violations," using strong language such as "flout this Court's clear instruction" and referring to "unfair surprise" and "unfairly prejudicial" consequences as reasons for penalising the Defendants, indicating a priority on procedural timing over the content of the defence, reflecting a strict interpretation possibly biased against the Defendants.
- The court's opinion frequently used terms that imply severe misconduct by the Defendants. Words like "willful violation," "contumacious conduct," and "egregious" were employed to characterise the Defendants' actions, suggesting an unusually negative view of the Defendants' behavior.
- The Judge found Middleton's oral testimony "evasive and incredible," labelling his answers on cross-examination and his conduct resulting in the SEC consent order as evidence of his willingness to misrepresent the facts. The reader is to note that Middleton neither admitted or denied any of the SEC allegations, and none of the allegations were adjudicated, hence they remained just allegations, and the behavior referred to is hearsay, at best.
- Middleton's arguments were consistently described as lacking credibility, with the court eventually rejecting his claims about the ownership and assignment of patents.

2. Denied Motions and Orders to Show Cause

- **Reggie Middleton**: Multiple motions denied. Transcript of Proceedings, March 11, 2022 Judge Schecter precluded Defendant Middleton from presenting evidence and calling witnesses, as well as denying him the ability to challenge the plaintiff's evidence– all due to procedural issues that were wholly beyond his control – in direct contravention to both statutory and case law. The affirmations of Reggie Middleton, Carl Brundidge, and Sheridan England collectively demonstrate that Middleton was not informed of the deadlines for the required filings until it was too late. The relevant content from each affirmation highlights this critical issue.
- The Judge frequently threatened sanctions and the possibility of striking the Defendants' pleadings in response to their actions. The repeated mention of such serious punitive measures may indicate a predisposition towards penalizing the Defendants' conduct in the pre-trial phase.
- Multiple requests by Middleton for stays of enforcement were denied, with the Judge showing little flexibility or consideration of Middleton's personal circumstances, which could be seen as a partial stance.
- **Charles Hall**: Materially fewer motions denied compared to Middleton.

3. Judge's Assessment of Credibility: Evidence of Impeachment or Lying

- Judge Schecter dismissed Middleton's testimony based on credibility, often characterizing his motions and arguments as "baseless" and "frivolous delay tactics".
- Despite no explicit instances of Middleton being caught in a lie nor inconsistent comment, nothing was found in any of the documents, even so, his credibility was frequently undermined by the Judge.
- Hall exhibited multiple inconsistencies in his testimony regarding his role at the company, marketing efforts, reliance on videos and share purchases. These inconsistencies were not similarly highlighted or criticized by the Judge, suggesting a more favorable treatment.
- Hall claimed he was not an officer or agent of Veritaseum in some instances, while other documents and testimonies indicate he acted in such a capacity.
- Hall provided differing reasons for not marketing Veritaseum as having patents or patent-pending technology to his UK contacts, despite his claiming he believed the company had patents-pending and that that fact would have been critical to an investor.
- Hall gave conflicting statements regarding whether he bought shares in the name of the Lears; co-investors.
- Hall gave conflicting statements by contradicting himself about the reliance on a video for his investment decision. Initially, he stated he did not solely rely on the video, but later, under pressure, he acknowledged it played a part in his decision process. Hall's shifting stance, in reliance on the video, damages his credibility. Initially diminishing its role, then admitting to its partial influence under examination, shows uncertainty or possible obfuscation of facts.

- Judge Schecter did not have a legitimate reason to dismiss Middleton's testimony based on credibility, especially when compared to Hall. Middleton's testimony lacked inconsistencies, whereas Hall exhibited multiple inconsistencies. Middleton was more consistent and corroborated by the actual evidence the plaintiff submitted. Hall's multiple inconsistencies and contraventions to the evidentiary record were not adequately addressed by the Judge, indicating potential bias in favor of Hall.
- Middleton consistently testified that he informed the Plaintiff that the invention, patent application, and patents were owned by himself and Bogosian, not Veritaseum Inc. This aligns with previous affirmations and other corroborative testimonies
- Both Hall and supporting affirmations acknowledged that Middleton communicated the ownership status of the intellectual property clearly.
- The Judge often stressed Middleton's non-compliance with court orders and described Defendants' actions in strong terms like "willfully violated," "contumacious," and "egregious," which could indicate a biased viewpoint.
- The court seemed to place substantial weight on procedural timing over substantive defenses raised by Middleton, possibly reflecting undue penalization relative to Middleton's control over missed deadlines and filings by his attorney, Mr England.
- The decision to preclude Middleton's evidence and the submission of witnesses and preclude the ability to challenge the Plaintiff's evidence based upon procedural issues, despite his claims and corroborative affirmations regarding his lack of knowledge of missed deadlines, indicates a potential lack of impartiality. The court opted to penalize Middleton heavily for his counsel's failures even when corroborated evidence substantiated Middleton's claims of ignorance.

This analysis suggests that Judge Schecter's credibility assessments were biased, with a harsher tone and more frequent dismissals directed at Middleton despite his consistent testimony. Hall's inconsistencies were overlooked, not scrutinized in the same way and showing a bias, clearly an imbalance, leading to an unfair judicial process. There is ample evidence of inconsistencies in testimonies that affect credibility, particularly concerning Charles Hall. Reggie Middleton's consistent testimony enhances his credibility. However, the Judge's handling of defensible claims, reliance on procedural penalties, and strong language critically portraying Middleton's actions suggest possible partiality.
Middleton consistently testified regarding the ownership and disclosure of patent information, which was corroborated by other affirmations and testimonies. This consistency adds a layer of credibility to his statements even if procedural missteps by his attorney were present.

4. "Office Failure" And Its Treatment By Judge Schecter

- Middleton's affirmation and Letter to the Court stated that he was not informed by attorney Sheridan England about the Court Order October 13, 2021 requirements, despite his multiple inquiries and was surprised and unaware that England missed filing the required documents.
- Mr Middleton's affirmation stated, inter alia, that "I was not informed by Attorney Sheridan England of the requirements of the Court Order even though I specifically asked on several occasions what are the next steps". And, "I was incredibly surprised to learn after the due dates had passed that England chose not to file the required documents", and "I had no knowledge that England did not conduct the required filings according to the Court Order and only first became aware that the required filings had not been made on or about February 16, 2022 from Mr. Brundidge, long after the due dates had passed."
- In Carl Brundidge's affirmation, he confirmed that neither he nor his firm knew that Mr England had intentionally failed to file the critical documents, and did not learn about this failure until on or about 16th February 2022, well after the due dates had passed. He corroborated Middleton's claim that England never informed Middleton about the filing requirements and did not have Middleton's permission to not comply.
- Carl Brundidge's affirmation also states the "Defendants and Brundidge & Stanger did not give their permission or had knowledge that England intentionally chose not to file critical documents as required by the Court Order until after the due dates for the required filings had long passed." And "Mr. Middleton was not informed by England of the requirements of the Court Order even though he specifically asked England on several occasions "what are the next steps". And "Mr. Middleton had

numerous discussions with England and not once did England inform him of the required filings nor seek his permission not to comply with the Court Order."

- Judge Schecter acknowledged the seriousness of Middleton's claims of being uninformed about deadlines and ordered Sheridan England to respond, requiring him to explain when he first informed Middleton of the Court's Order October 13, 2021 and the deadlines contained therein and why those deadlines were violated.
- Sheridan England, by affirmation, admitted to missing the deadlines but failed to provide specific dates when he informed Middleton about the Court's Order, which he was required to do. He stated "I do not have a specific recollection of a date in which I personally informed Mr Middleton of the Court's order and the pre-trial deadline." England's failure to provide specific dates of informing Middleton about the Court Order was crucial. England's failure to provide detailed dates and reasons constituted noncompliance with the court's order. This gap in clarity should have tilted the judicial consideration in favor of verifying the Defendant's claims more thoroughly rather than issuing severe penalties.
- Despite England's lack of specificity and Middleton's corroborated claims of innocence, the Judge precluded Middleton from introducing evidence or witnesses and also precluded Middleton from challenging the Plaintiff's evidence due to the missed deadlines.
- The Judge's decision shows an apparent lack of consideration for Middleton's situation, especially after it became evident that England had failed in his duties to inform his client and his client's firm.
- On March 11, 2022, an order to show cause was issued for striking defendants' pleadings due to continued non-compliance.
- On May 12, 2022, Judge Schecter struck Middleton's post-trial memorandum for attempting to introduce evidence in his defense, further prejudicing his case.
- The affirmations provided by Middleton and Brundidge clearly indicated that England did not inform Middleton or his firm about the required filings. Despite this, the Judge held Middleton accountable for the missed filings, which were beyond his knowledge or control.

Case Precedent: Benedict v. Thaler, 23 A.D.3d 440 (2d Dept. 2005) and its application to Hall vs. Middleton.

Case Summary
In **Benedict v. Thaler**, the lower court struck the defendant's answer due to failure to provide discovery responses, effectively precluding the defendant from presenting their defense and leading to a potential default judgment.

Appellate Decision
The Appellate Division, Second Department, reversed the lower court's decision, emphasizing that severe sanctions such as striking an answer should only be imposed when there is clear evidence of willful and contumacious non-compliance. The appellate court found that the record did not support a finding that the defendant's non-compliance was intentional and without justification. Clear evidence of intentional refusal to comply is necessary for non-compliance to be deemed willful and contumacious. Sanctions should not be imposed if there is a reasonable justification for the non-compliance. Severe sanctions like striking a party's pleadings are reserved for clear and intentional misconduct.

Application to Hall vs. Middleton
1. **Lack of Evidence for Willful and Contumacious Conduct**: **-** The affirmations and emails from Middleton show that his non-compliance was not intentional. He repeatedly sought information and confirmation from his attorney, Sheridan England, but did not receive the necessary guidance. This lack of intentional non-compliance parallels **Benedict v. Thaler**, where the appellate court found insufficient proof of intentional misconduct.
2. **Reasonable Justification for Non-Compliance**: **-** The evidence suggests that Middleton was not timely informed of critical deadlines by his attorney. His emails, consistently seeking updates and expressing concerns about upcoming deadlines, demonstrate a reasonable justification for any delays or failures in compliance. This aligns with the justification requirement outlined in **Benedict v. Thaler**.
3. **Severity of Sanctions**: **-** The preclusion of introducing evidence and witnesses, the inability to challenge the Plaintiff's evidence and striking out of the post-trial memorandum are severe sanctions. According to **Benedict v. Thaler**, such sanctions should only be imposed for clear cases of willful misconduct.

Middleton's situation, where he was actively trying to comply but was hindered by his attorney's failures, suggests that the sanctions were disproportionate.

Conclusion
The evidence provided, including the affirmations and the procedural lapses by attorney England, suggests that severe sanctions imposed by Judge Schecter were not justified. Middleton's efforts to comply and the lack of intentional misconduct point to an abuse of discretion in the sanctions applied. Specifically, the Judge's decision to preclude critical evidence and defence witnesses was pivotal to the Defendant's case and, with respect, was disproportionate.

5. Denial of Basic Needs and Defense Expenses and Harassment

The Judge denied Reggie Middleton's request to use his own money to provide food for himself and his daughter, as well as to defend the company's primary asset, its patents. Several points from the court documents highlight critical aspects of this decision:

- Middleton argued that the funds were used to cover personal living expenses and the defense of the company's patents against invalidation challenges, which were essential for the company's survival and benefited all shareholders.
- There was substantial evidence showing that a significant portion of the funds was used to benefit the company, including defending against an inter partes review (IPR) filed by Coinbase Global, Inc., which posed a threat to the patents' validity.
- The legal principles of equity cited suggest that the Court should consider the necessity and benefit to the Company when evaluating the use of funds.
- Middleton's inability to comply with the Court's orders without these funds should have been considered as a defense to civil contempt, as recognized in previous case law where inability to comply is a valid defense.
- Courts generally require clear and unequivocal evidence of prejudice to the plaintiff to establish contempt. The evidence here showed that Middleton's actions benefited the Company and indirectly preserved the plaintiff's stake.
- The Court's decision to deny Middleton's request to use his own money for basic living expenses and legal defense, despite evidence showing the benefits to the Company and the lack of personal gain, raises questions about potential bias.
- For a finding of contempt, there must be clear and convincing evidence of willful violation of the Court's order. Middleton presented evidence that his use of funds was necessary and beneficial for the Company, challenging the assertion of willfulness.
- Equity principles require the Court to consider the fairness of its orders, especially when compliance would result in undue hardship or when the actions in question benefit all parties involved.
- The Judge's decision included a finding that Middleton did not owe Hall money directly, acknowledging that enforcement for payment of legal fees should target the Company's assets. Notwithstanding this, restraining orders were imposed on Middleton's personal assets as well as on his corporate properties. This can be seen as conflicting and placing an undue burden on Middleton personally, tantamount to harassment.
- The Judge held Middleton in contempt for violating restraining notices by selling personal assets, despite the judgment not being directly enforceable against him as per the Court's findings.
- Therefore, the Judge's decision to impose restraining orders on Middleton while also stating that Middleton did not owe Hall money directly appear to be contradictory based on the evidence and orders issued.
- The Judge appears to have shown bias and taken a prejudicial stance against Middleton when denying his request to use his own monies for basic living essentials including food, shelter, heat, and electricity for himself and his minor daughter, all of which were necessary expenses due to his financial destitution, and to use his personal funds to defend the Company against attacks against its primary and only asset, which Middleton would have been incapable of doing without accessing these funds.
- The Judge's decision included the issuance of coercive measures if Middleton did not comply by a specific date.

- Middleton argued that using funds to protect the Company's assets, including legal defenses in the Coinbase IPR proceedings to invalidate the patents, was necessary to meet his fiduciary responsibilities and preserve the Company's only significant asset.
- The Court held him in contempt for these actions without acknowledging his representations of personal poverty and the impracticality of meeting both personal and corporate obligations given the restrictions.
- Contempt orders and coercive measures require consideration of individual capacity to comply. New York decisions emphasize that sanctions should not be excessively punitive where the defendant demonstrates compliance efforts within their actual capacity (**ElDehdan v El-Dehdan, 114 AD3d 4 [2d Dept. 2013**).
- Additionally, equitable principles suggest basic human necessities such as food, shelter, and utilities should not be forfeited, especially when these needs serve to uphold fiduciary obligations and lack clear, uncontested wrongfulness.
- The determination to deny Middleton access to necessary funds for living expenses while ordering the enforcement of complete asset restraints imposes severe hardships inconsistent with New York equity principles. It appears as disproportionate penalization, likely demonstrating judicial overreach, bias and harassment. Fairness and basic rights, along with compliance capacity, suggest Middleton's petitions deserved more measured consideration without excessive coercive threats. Middleton's ability to use funds for essential living costs and corporate defense aligns with the practical application of fiduciary duty amidst poverty claims, meriting a re-evaluation of the stringent restrictions imposed. Furthermore, it contradicts earlier findings within the same court rulings stating he, individually, does not owe money to Hall. This inconsistency has led to Middleton facing extreme financial hardship and inability to support his family adequately.
- New York Business Corporation Law allows for corporate shields (BCL §626) which mean liabilities from derivative actions should rest with the corporation, not the individual officers, unless the corporate veil has been pierced—something denied in this case.

Equitable Relief and Set-Offs:

- Courts have a historical precedent of offering equitable relief or set-off remedies where enforcement actions unduly harm the financial stability or operational capacity of the involved entities and individuals (**Guardian Loan Co. v Early, 47 NY2d 515 [1979]**; **Debtor and Creditor Law §151**).
- Equity permits the conditioning of enforcement via set-offs, supporting Middleton's contention that his usage of funds for corporate defense should mitigate his liabilities to Hall.
- Middleton's use of funds did contravene explicit restraining notices. However, evidence suggests his actions served broader fiduciary obligations facilitating the company's protection rather than malicious defiance (**Gomes v Gomes, 106 AD3d 868 [2d Dept. 2013]**; **Ferraro v Ferraro, 272 AD2d 510 [2d Dept. 2000]**).
- Judicial overreach, bias and harassment potentially occurred where restraining 100% of Middleton's assets left him and his family destitute, conflicting with the principle that punitive actions should be proportionate. No alternative or lesser intrusive remedies were considered sufficiently by Judge Schecter for temporary relief to sustain basic living conditions (**El-Dehdan v ElDehdan, 114 AD3d 4 [2d Dept. 2013]**).

Conclusion

Based on the documented evidence and legal principles, it appears that the Judge's denial of Middleton's request to use his own money for basic needs and corporate legal defense could be viewed as biased and harassment not fully aligned with equitable standards. The denial may reflect a prejudicial stance, given the lack of clear and convincing evidence of malfeasance and the clearly demonstrated benefit to the Company and its shareholders from Middleton's use of funds in defending its intellectual property. Judge Schecter's orders demonstrated a potential lapse in balancing equity with legal adherence by denying the necessity of using funds for both corporate defense and personal survival, critical for fulfilling fiduciary responsibilities, and imposing disproportionate penalties and threats of coercive measures, failing to account for Middleton's plea of financial incapacity and his efforts aimed at maintaining corporate stability.

Did Judge Schecter Knowingly Endanger the Well-Being of the Company in Order to Favor the Plaintiff

- Did the Judge fail to protect the best interests of the Company and its shareholders?
- The Defendant, Reggie Middleton, claims that Charles Hall's actions have severely compromised Veritaseum Inc. by hampering its only employee, restraining its only source of capital, and prioritizing the repayment of Hall's attorney fees over the Company's defense and patent prosecution. Middleton contends these actions are against the fiduciary duties outlined in New York's derivative shareholder laws.
- Under New York law, a derivative plaintiff bears the responsibility to act in the best interests of the corporation and its shareholders, free from personal interests that may conflict with those of the corporation. Middleton argues that Hall's enforcement actions have critically and potentially lethally endangered the company's primary asset: the patents, by financially crippling the company at a crucial litigation juncture.
- Middleton asserts that Hall's actions are not in the fiduciary spirit required by derivative shareholder actions. He claims Hall is incapable of acting as a fiduciary due to his self-interested motives and actions that purportedly prioritize his financial recovery over the company's survival and growth.
- Hall allegedly constrained the Company's sources of operating capital, significantly restricting Middleton's ability to support Veritaseum Inc. financially and operationally.
- Hall's enforcement actions imposed a priority on repaying his legal fees, which Middleton argues the Company cannot afford without monetizing its patents.
- Due to Hall's restraining notices, Middleton faced operational disruption that jeopardized the Company's ability to defend its intellectual property and pursue monetization opportunities.
- The documents reflect claims that the Judge failed to adequately protect the Company and its shareholders by not mitigating Hall's damaging actions.
- The Judge's failure to intervene implicitly favored Hall, undermining the fiduciary standards intended to safeguard the Company's interests. The Court documents show repeated attempts by Middleton to seek relief and highlight the adverse impact of Hall's actions on the Company's ability to monetize its patents and defend its intellectual property.
- The court ordered the transfer of Middleton's patented inventions to Veritaseum, Inc. without compensation, alongside the payment of $1 million in punitive damages and attorney fees amounting to $450,000 to Hall.
- The documents highlight that Hall employed enforcement mechanisms (e.g., restraining notices and garnishments) that limited Middleton's and Veritaseum's access to operating capital and essential resources.

Legal Principles: New York Business Corporation Law §720 allows actions against unlawful conveyance and requires fiduciaries to act in the best interests of the company. The cited cases emphasize the need for conscientious fairness and the obligation to avoid personal interest conflicts. The protection of the corporation's assets, specifically through IP defense and continued patent prosecution, falls within a director's fiduciary duties (**Matter of Kemp & Beatley, Inc., 64 NY2d 63 [1984]**; **Auerbach v. Bennett, 47 NY2d 619 [1979]**)

Conclusion: The documents indicate substantial arguments suggesting Hall's actions directly harmed Veritaseum Inc. and conflict with New York's fiduciary and derivative shareholder laws. The Court's decisions and actions, as described, could be interpreted as a failure to protect the Company's interests adequately. This could indicate potential judicial bias and harassment or a lack of appropriate judicial intervention in derivative litigation, the "best interests of the corporation" principle should predominate—justifying a re-assessment of contempt penalties to better align with fiduciary duties and practical equity. Middleton's arguments facilitate reasonable grounds for seeking modified enforcement remedies, enabling compliance while preserving essential lifelines for sustained corporate defense and personal maintenance.

Rule 2.4: External Influences on Judicial Conduct

(B) A Judge shall not permit family, social, political, financial, or other interests or relationships to influence the Judge's judicial conduct or judgment.

Although this content has been included here, it could easily have been included in Rule 2.3 above for bias, or impropriety and for that reason, the contents below are hereby repeated for the other rules to which they may more appropriately apply. It is inserted here however, as there may have been political pressure for the Judge to have been unduly swayed by the allegations contained in the Complaint made by the SEC in their entirely separate case, since it was a Federal Regulatory Body.

Improper References to Matters Outside the Scope of the Courtroom

- The Judge's opining on the SEC matter where there was no adjudication nor admission or denial of wrongdoing by Middleton could be seen as prejudicial and outside the scope of the Judge's courtroom. These opinions were noted on the record.
- The Judge referenced the SEC Final Judgment by consent which resulted in a significant financial penalty for Middleton. The Consent Judgment expressly stated in the preamble that Middleton neither admitted nor denied the allegations, yet said allegations were explicitly used as a substantial basis for assessing punitive damages.
- The Judge emphasized Middleton's alleged "securities-law violations" and "illegal ICO", which were tied to the SEC complaint allegations. These allegations were cited as "aggravating and outrageous circumstances" justifying punitive damages, even though Middleton did not admit to these allegations and none of them were adjudicated. Essentially, the Judge apparently (as gleaned directly from her after trial decision) based her punitive damage award justifications on hearsay from another court's matter, materially and considerably outside of the scope of the matter before her.
- The Court imposed punitive damages without what should have been "clear and convincing evidence" of wrongdoing specifically proven before Schecter in the court trial, entirely separate from the SEC Final Judgment by consent. The Judge's decision pointed heavily toward the conclusions drawn in the SEC's mere unadjudicated allegations without independent proofs reevaluated in this trial. In addition, the vast majority of the SEC's allegations were substantially addressed and countered in Middleton's answer to the complaint and OSC used to obtain the emergency TRO. Judge Schecter remained silent as to the content of that voluminous document.
- The Judge's reliance on the contents of the SEC's complaint and the allegations contained therein, while remaining silent on Middleton's rebuttal and the 11 declarations and ample evidence contained therein, as well as rather than solely the independently evaluated evidence in her court indicates a potential impartiality issue. The Judge pointed towards the SEC's allegations as the basis for punitive damages without substantial reinforcement from the trial records, or any reference to the rebuttal provided by Middleton, which was substantial.
- The Judge's decision consistently disparaged Middleton's credibility, referring to his actions as "evasive and incredible" and characterized them as attempts to misrepresent facts, strongly influenced by allegations in the SEC complaint, and not recognizing that Middleton had pointed out several inconsistencies and errors in the SEC's complaint and allegations.
- In stark contrast, Charles Hall's credibility was not similarly scrutinized, indicating an imbalance in the assessment of both parties' testimonies, suggesting both bias and lack of impartiality.

Case Law:

- Matter of Duckman, 92 N.Y.2d 141 (1998): This case discusses the impropriety of a Judge making references to matters outside the scope of the courtroom.
- Matter of Sims, 61 A.D.3d 1 (1st Dept. 2009): This case highlights the importance of Judges staying within the bounds of the matters before them.

Conclusion:

Based on the evidence reviewed, it appears that the Judge significantly relied on SEC allegations without any admission of guilt by Middleton. This reliance raises questions regarding the fairness and impartiality of the punitive damages awarded, as they were strongly influenced by external non-adjudicated allegations rather than stand-alone investigation and the evidence presented in this trial. Furthermore, SEC allegations may have tainted the Judge's view of Middleton and was thereby swayed by such with numerous negative portrayals concerning Middleton's character without any empirical, discernible or factual reasons given.

Rule 2.5: Competence, Diligence, and Cooperation

(A) A Judge shall perform judicial and administrative duties, competently and diligently.

It is accepted that a Judge can only make a final determination based upon the evidence presented in court, but in this case the Judge had imposed such severe sanctions for what was a relative "minor infraction" (just one court order and a maximum delay of three months from the first deadline and just two weeks from the second deadline) that had been unintentional and through no fault on the part of Middleton. By doing so, the Judge had precluded vital evidence that was exculpatory and proved Middleton's case. Whether this is considered intentional by the Commission is for you to investigate and decide, but the Judge did say in her reasoning for the judgment that the "plaintiff's theory" would have to be accepted, since there was no evidence allowed to be presented to the contrary, and that she was clearly made aware of this evidence as a result of Middleton's desperate attempts to introduce it both in oral testimony by exhibit and his post-trial memorandum, which were both struck out by the Judge. Whilst her actions may have, strictly speaking, been within the "rules", as a result of imposing severe sanctions, she had effectively boxed herself in, which led to a grave miscarriage of justice. Strict adherence to the rules must surely not be at the expense of justice. Given the limitations of only being able to attach four documents to this submission the Commission is respectfully requested to investigate and review the matter in full.

Misapprehension or Errors in Evidence Submission, Preclusion and Procedure

1. **Preclusion of Evidence of Earlier Patent Application**: The court precluded the introduction of critical evidence regarding patent ownership, which Middleton argued was central to his defense. The court sided with Hall's submissions, rejecting earlier applications that predate the corporation's formation. This exclusion severely impacted Middleton's ability to argue his case. It was an error to preclude Middleton from entering Exhibit '2' in his oral testimony, which reflected the first filing of the provisional patent application. The court decided to exclude evidence showing the start of the patent history and instead adopted the allegation submitted by Hall. Middleton was clearly prejudiced by this preclusion.
2. **Timeliness and Security**: The court's handling of Middleton's motion for security under Business Corporation Law § 627 was criticized. It was argued that Hall should have posted security due to the fair value of his holdings being under $50,000, which the court overlooked:
Defendants meet the conditions under Business Corporation Law § 627. The court overlooked that Hall owns less than $50,000 in fair value in the company.
3. **Representation and Delay Tactics**: The court's refusal to grant a stay for replacement counsel was also contentious. Despite Middleton's claims regarding his counsel's competency and associated delays, the court maintained that effective representation was present:
The court refused to issue a stay citing pre-trial delay tactics, disregarding that Ms. Lee was deemed counsel of record but criticized as ineffective by Middleton.
4. **Credibility and Punitive Damages**: The court's decision to impose punitive damages was based on the judgment that Middleton's actions were egregious and warranted deterrence. However, the defendant alleged that these damages were excessively punitive and based on speculative valuations which might unjustly enrich Hall:
The punitive-damages judgment should ensure that the company can reimburse Hall, even if speculative valuations later yield significantly lower amounts, potentially unjustly enriching Hall.
5. **Operational Impact**: By enforcing judgements that restrict financial assets and operational capacities, the court's decisions have left Veritaseum Inc. unable to defend its key intellectual properties and maintain functioning operations, potentially counter to the best interest of the shareholders:
Post-judgment actions have left the company unable to defend patents, making it impossible to fight claims which will invalidate patents, and operationally paralyse it.

Analysis in Light of NY Derivative Shareholder Law

• **Best Interest of Shareholders**: Actions taken in derivative suits are meant to address corporate wrongs and benefit all shareholders collectively. Here, the enforcement actions, while addressing breaches by Middleton, have led to severe operational and financial constraints on the company, potentially compromising its viability.
• **Legal and Fiduciary Boundaries**: The court's decisions, particularly in excluding evidence and denying motions crucial for Middleton's defense, suggest an adherence to legal procedures but arguably overlook broader fiduciary principles aimed at preserving the integrity and functionality of the corporation.
• **Punitive vs. Remedial Actions**: The focus on punitive damages intended to deter future misconduct may align with broader deterrence goals but could be seen as excessively punitive given the resultant financial and operational paralysis.

Overall, while the Judge's decisions have elements grounded in legal reasoning and deterrence principles, the impact on Veritaseum Inc.'s operational ability and the exclusion of critical defense evidence could be perceived as overly punitive and potentially biased, as argued by the defendant.

NY Derivative Shareholder Law Framework Context

The defendant's arguments in the **Charles Hall v. Reggie Middleton et al.** case highlight several points indicating that Hall's actions may not align with the best interest of Veritaseum Inc. and its shareholders.

Key Concerns Raised by the Defendant:

1. **Company's Inability to Defend Its Intellectual Property**:
   - The defendant's filings emphasize that Hall's actions have incapacitated Veritaseum Inc. from defending its intellectual property, specifically, valuable patents, which are critical to the company's value: "Plaintiff's frivolous and aggressive post-judgment discovery and enforcement actions have starved the Company of resources, making it impossible to fight multiple third-party filing claims which will invalidate the patents, leaving the company worthless".
2. **Impact on Company's Operations**:
   - The actions to enforce judgments against Middleton have left the company without any employees or officers, fundamentally crippling its operations: "Plaintiff's actions have forced the Company's only remaining employee and officer, Reggie Middleton, to focus entirely on defending against these enforcement actions rather than running and generating revenue for the Company".
3. **Jeopardizing Financial Viability**:
   - Defendant further argues that Hall's actions have left the company financially paralyzed, unable to manage its routine obligations or defend against critical legal threats: "The numerous restraining orders have essentially foreclosed the Company from accessing its financial assets to pay necessary operational expenses, thus ensuring financial ruin".

Legal Framework and Fiduciary Duties
Actions Must Benefit the Entirety of Shareholders:

- In a derivative suit, actions must be taken to benefit all shareholders collectively and remedy wrongs done to the corporation.
- The claims against Hall suggest that his enforcement actions serve primarily his interests, particularly his legal fees, rather than broader shareholder or corporate interests: "The punitive damages and attorney fee award sought by Charles Hall do not equate to a net benefit for all shareholders but rather prioritize reimbursement of his personal legal expenses".
- "Hall's ownership of approximately 0.65% of the Company's shares raises significant questions about acting in the best interest of all shareholders". It should be noted here that Hall was unable to convince any of the other shareholders to join in this derivative action.

Court's Orders

- The court's orders have thus far supported Hall's right to enforce judgments derivatively on behalf of Veritaseum Inc. Despite understanding the company's current financial incapacity, these decisions were framed around the necessity to correct and prevent fiduciary breaches by Middleton: according to Judge Schecter, "This Court emphasizes the need for fairness and preventing future misconduct, leading to granting enforcement powers to a derivative plaintiff to rectify severe fiduciary breaches". Hall's actions have created a significant strain on Veritaseum Inc. and potentially do not align with the broader requirement under NY law that derivative actions should benefit the corporation and its shareholders collectively. The concerns about hindering the company's ability to function and defend its critical intellectual properties suggest a potential misalignment with the overarching principles of acting in the corporation's best interests.

The points made above serve to illustrate significant tension between the asserted derivative plaintiff rights and the practical impact on the company's viability and shareholder value amidst Hall's enforcement efforts.

Legal Fee Award

The discrepancy between the $450,000 attorney fee award granted to the Plaintiff and the apportionment of its direct benefit of $75,000 to the company as calculated by the Defendant, especially in the context of a punitive award of $1,000,000, raises questions regarding the reasonableness and proportionality of the fee award relative to the outcomes and financial circumstances involved.

Analysis:

1. **Discrepancy in Fee Award and Direct Benefit**:
   - The sizable difference between the attorney fee award and the direct benefit to the company brings into question the proportionality and justification for such a substantial fee in relation to the returns obtained by the company.
2. **Punitive Award and Defendant's Financial Situation**:
   - The punitive award of $1,000,000, juxtaposed with the uncertainty about Middleton's ability to afford it, raises concerns about the financial feasibility of such an immense punitive award and the reasoning behind the attorney fee decision.
3. **Reasonableness in Attorney Fee Determination**:
   - The Judge's decision to grant a $450,000 attorney fee with a known direct benefit of just $75,000 suggests potential oversight in aligning the fee with the practical outcomes achieved in the case. The disparity requires scrutiny for fairness and reasonableness.
4. **Evaluation of Affordability and Proportionality**:
   - Considering the punitive award and financial constraints, the attorney fee award should be evaluated in light of Middleton's capacity to afford it and the proportional relationship between the fee, benefits obtained, and punitive obligations.
5. **Perception of Unjust Enrichment**
   - The Judge created an unfunded liability by granting an attorney fee award to Hall to be paid by a punitive award to the company against Middleton, without an evidentiary hearing to ascertain Middleton's ability to pay such a punitive award. Assuming, arguendo, that Middleton could afford such an award, the Court's actions are called into question for explicitly using punitive awards to fund attorney fees, essentially forcing the Defendant to pay the liabilities of the Company. In addition, the attorney fee award is nearly half of the entire payment to the Company, again assuming such a payment can be made. That is an extremely disproportionate gain to Hall relative to the other shareholders and the tangible, provable value to the Company.

1. **Hall's Lack of Evidence on Reliance**:
   - The documents indicate that Hall did not provide concrete evidence that he relied on any specific statements made by Middleton before investing. Hall admitted that he did not check the ownership status of the patent applications and relied on Middleton's emails, presentations, and conversations.
2. **Creation of the Invention Before the Company Existed**:
   - The documents confirm that the invention was indeed conceived by Middleton and Bogosian before the formation of Veritaseum, Inc. Middleton and Bogosian filed the first provisional patent applications before Hall's investment and the formation of the company.
3. **Transfer of Ownership**:
   - According to the evidence, Veritaseum, Inc. was granted a royalty-free right to use Middleton and Bogosian's intellectual property. However, Middleton and Bogosian did not consent to transferring the ownership to the company in writing, as per federal law. Therefore, the ownership remained with the inventors, and not Veritaseum, Inc.
4. **Judge's Potential Factual Error**:
   - The Judge's decision emphasized the fiduciary duty of Middleton as CEO of Veritaseum, Inc. The court found that Middleton breached this duty by transferring ownership of the patents to himself.

> The court focused on Middleton's fiduciary responsibilities and his representations to investors that the patents were corporate assets. However, this interpretation does not directly address the factual issue that Middleton and Bogosian retained ownership of the invention and the patent applications, as they did not consent to transfer these assets to Veritaseum, Inc. in writing.

In conclusion, based upon the oral testimony of Middleton at trial, there appears to be a discrepancy between the factual ownership of the patents and the Judge's interpretation of fiduciary duty and asset ownership. Middleton's and Bogosian's lack of written consent to transfer the invention to Veritaseum, Inc. suggests that Middleton did not usurp ownership from the company, as the patents were never legally transferred to the company in the first place, as the company never existed when the first patents were filed and was well before Hall made any investment in the company. Therefore, it is argued that the Judge factually erred in concluding that Middleton transferred ownership of the patent applications to himself, given that he always retained ownership.

Based on the evidence presented at trial and the Judge's written decision, there are several key points to address:

1. **State Power to Determine Ownership**: The Judge asserted that the state has the power to determine the ownership of patents and patent rights. This is consistent with precedent, as state courts can adjudicate the ownership of patents, while federal courts typically handle issues of patent validity and infringement.
2. **Middleton's Ownership of the Patent Applications**: The oral testimony given by Middleton at trial clearly showed that Middleton and Bogosian, as the inventors, always held ownership of the patent applications. Multiple sources confirm that the invention was created before the formation of Veritaseum, Inc., and Middleton informed Hall that the patents were owned by him and Bogosian, and not by Veritaseum, Inc.
3. **Judge's Findings on Transfer of Patents**: The Judge's decision stated that Middleton wrongfully caused patents belonging to Veritaseum, Inc. to be transferred to himself personally. However, this conclusion clearly conflicts with the factual evidence that Middleton and Bogosian invented the device and never transferred the patent rights to the company in writing.
4. **Misrepresentation and Fiduciary Duty**: The court found that Middleton breached his fiduciary duty by representing to investors that the company owned the patents, while later claiming personal ownership. The Judge viewed these actions as a misappropriation of corporate assets, despite the lack of written assignments transferring ownership from Middleton and Bogosian to Veritaseum, Inc. and without recognising that the invention was devised and patents filed before the formation of the company and well before any investment from Hall.

In summary, Middleton's oral testimony at trial along with attempted presentation of the first filings for the patent (which were excluded by the Judge) supports the conclusion that Middleton and Bogosian held the patent rights and did not transfer them to Veritaseum, Inc. The Judge's decision that Middleton transferred the patents to himself does not accurately reflect the facts that the patents existed before formation of the company and well before any investment was ever made by Hall and could not have transferred ownership of the patents to the company in the first place. Therefore, the Judge's decision clearly contradicts the factual evidence presented at trial, which showed that Middleton retained ownership of the patents and never "transferred" them from the company to himself. The Judge's decision on punitive damages heavily relied on the SEC's consent judgment, which included substantial penalties against Middleton and did not require Middleton to admit or deny any of the allegations. The court incorrectly interpreted the SEC's findings and the circumstances around the ICO for "VERI" tokens (which the Judge erroneously assumed in her Decision After Trial were issued by Veritaseum, Inc., when they were not) and patent statements as aggravating factors, justifying punitive damages.

Conclusion:

Based on the evidence and the legal context discussed, it appears that the Judge's decision may indeed have factual errors, which, if taken prima facie, cannot in any way, form or fashion be justified or supported by the evidence presented at trial. Further, the evidence that was attempted to be presented both at trial and post-trial memorandum, yet precluded and stricken, runs in direct contravention to the Judge's findings. These lead to unavoidable questions that arise as to competency. The evidence – even that presented by the Plaintiff, who completely controlled the evidentiary record due to Middleton's preclusion – clearly shows that Middleton and Bogosian owned the patent applications from inception and did not transfer them to the company, undermining the claim that Middleton transferred them to himself. One cannot transfer to himself that which he already owns. Additionally, the reliance on non-admitted SEC allegations for punitive damages raises questions about the fairness and impartiality of the ruling. The Judge issued conflicting orders by allowing restraining orders against Middleton and his corporate properties whilst accepting that Middleton did not personally owe Hall any money, and more confusingly, ordered Middleton to transfer patent properties in both local and foreign jurisdictions in a matter that required legal counsel, which requires the expenditure of money which the Judge had just restrained. The Judge then held Middleton in contempt for paying legal counsel to defend the patents that were ordered to be transferred to Veritaseum Inc., without compensation to Middleton, before threatening “coercive measures” to force the purging of said contempt. All of this was done while Middleton claimed to be living below the poverty line and having problems feeding himself and his daughter.

Court Actions Contrary to Prior Denial of Veil Piercing:

Instances of Allowing Collection Against Middleton’s Personal Assets:

- Despite denying piercing the corporate veil, Judge Schecter allowed enforcement actions against Middleton’s assets, contradicting her initial ruling. This included restraining notices on Middleton’s personal accounts and that of other corporate entities that he owned or controlled.
- Furthermore, despite arguments and rulings underscoring that support enforcement should target the corporation, multiple orders pursued Middleton’s assets directly, effectively bypassing the corporate liability shield established by her prior decisions, showing inconsistency on its face.
- The latest order required Middleton to replace his own funds used to protect the company against Coinbase in an IPR proceeding, prosecute additional patents, and cover personal and family living expenses, including heating and utilities costs. Middleton highlighted that such enforcement actions, while he lives below the poverty line, severely jeopardize the company’s financial health and shareholder interests. The order for Middleton to pay Hall for using his own monies to feed himself and his daughter is such a rare occurrence that it may come close to being unprecedented in the NY Court system.

Legal Implications and Relevant New York Law:
Applicable Laws and Case Precedents:

- **Business Corporation Law (BCL) §626(e):** Stipulates that the corporation benefiting from litigation must bear the associated legal costs.
- **Noone v. Frederick (209 A.D.2d 366 [2d Dept. 1994]):** Supports the principle that piercing the corporate veil requires clear showing of complete domination used to commit fraud or wrong causing injury.

Inconsistencies in Judgment:
Judge Schecter’s initial findings disallowed piercing the corporate veil and individual liability for Middleton. However, subsequent enforcement actions seemingly contradicted this, creating legal inconsistencies. Enforcement of personal liability directly against Middleton without satisfying veil-piercing criteria shows clear judicial inconsistency and misapplication of the aforementioned legal principles. Judge Schecter’s orders and enforcement actions present conflicting directives, specifically regarding who is responsible for paying the legal fees associated with the derivative lawsuit and in targeting Middleton’s personal assets. These actions contradict New York’s legal standards and her own prior determinations regarding the corporate veil. The severity of these enforcement actions against Middleton’s personal assets undermines the viability of Veritaseum, Inc., causing undue harm to the corporation and its shareholders while disproportionately benefiting Hall and his personal attorneys. For these reasons, it is believed that the Judge’s competency in this regard leaves much to be desired and also reflects a lack of due diligence, especially with the inconsistencies shown.

Rule 2.6: Ensuring the Right to Be Heard

(A) A Judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

The contents of Rule 2.15 are repeated herein in their entirety in so far as any of the content applies and is appropriate to this Rule.

The Commission is reminded of the contents in the introduction above and are repeated herein and, not that it is necessary, but for the sake of completeness, the Constitutional Rights endowed in The US Constitution and the Judge's Oath in that regard. In order to better understand what may have been misapprehended by the Judge in this case, it would perhaps be sensible to review here the relevant Attorney Rules for Professional Conduct. Specifically:

RPC 1.16 - Declining or Terminating Representation
Rule 1.16(e): Even when withdrawal is otherwise permitted or required, upon termination of representation, a lawyer shall take steps to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for employment of other counsel, and delivering to the client all papers and property to which the client is entitled.

- The Judge's decision to allow England to withdraw from the case on the eve of trial, without disciplining him, and stating that Middleton had representation through Ms M Lee and B&S is disingenuous, to say the least. This is not to cast any aspersions on Ms M Lee or Carl Brundidge (admitted as pro hac vice), but to highlight that they were, in essence, patent attorneys, as per their letterhead, and that they had very little input in this case. It is admitted that Ms M Lee did file the Answer but she had considerable input from England to do so, and in the middle of this case fell chronically ill and spent many months in Seoul, South Korea, for treatment. All of this was knowledge within the Judge's domain and had she properly considered the position, may have arrived at a different outcome. This aspect is covered in more detail in 2.15 below with further points made.
- Once discovery of England's intentional failure to file on 16th February 2022 was made, England immediately filed an application to be removed as counsel, serving drafts on Middleton, B&S, the court and the parties that very same day, to be dealt with the next day.
- In essence, the Judge's decision to allow withdrawal of England left Middleton without suitably qualified representation by an attorney experienced in company/commercial litigation, and not affording Middleton time to find a suitable replacement, instead forcing him to proceed with patent attorneys, was questionable. It would have been far better had the Judge simply given Middleton time to find someone else.
- We would remind the Commission that England was contracted as Of Counsel (see Exhibit 1 in Brundidge affirmation), specifically because B&S did not possess the skillset to handle such matters, again something the Judge knew.

Case Law:

- **Matter of Cooperman, 83 N.Y.2d 465 (1994)**: This case discusses the responsibilities of attorneys when terminating representation, including avoiding foreseeable prejudice to the client.
- **Matter of Weinstock, 40 A.D.3d 1 (1st Dept. 2007)**: This case highlights the importance of taking steps to avoid prejudice to the client upon termination of representation.

Highlighting Potential Abuse of Discretion Concerning "Office Failures"
It is bordering on humorous to refer to England's deliberate and intentional failure to make the appropriate filings in accordance with the court's order dated 13th October 2021, instead to euphemistically refer to it as "office failures", is a tragic misnomer in this case. Furthermore, England falsely represented to B&S, see Brundidge affirmation, that the said order was "satisfied", so up until 16th February 2022, Middleton and

B&S were under the mistaken belief that all was well. As a matter of fact, the week before, Middleton asked England, twice via email, for updates and "next steps", without a response. Although this subject has been covered in detail in other sections in this submission it is repeated here, so we would crave the Commission's indulgence, with additional points to consider:

1. Judge's Misapprehension of Facts:

- Middleton asserted he was not timely informed by England of the court's order and the crucial deadlines, despite repeated email inquiries, recently discovered, which unfortunately were not produced to the court, that included requests "what are the next steps". Indeed, he expressed surprise upon learning of missed filings well after the due dates. See Middleton affirmation.
- Brundidge affirmed that Middleton was unaware of England's failure to comply with the court's order. He corroborated Middleton's claims of not being informed about the necessary filings and informed the court that England had falsely represented to B&S that he had "satisfied" the order. It is believed that the Judge must have overlooked this vital fact.
- In England's affirmation, he states that he could not recall the specific date that he claims to have informed Middleton about the deadlines. Which is totally incredulous when considered with good, sound attorney practice in keeping accurate records, and as previously mentioned.
- All the affirmations attached collectively support the clear position that Middleton was not informed about deadlines, and any failures on his part were innocent, not intentional and involved just one single court order, hardly willful and contumacious behavior, being the language condescendingly used by the Judge to justify her decision to preclude defense evidence and witnesses and deny Middleton the opportunity to challenge the plaintiff's evidence. It does not help the Judge in using such language when this is not borne out by the facts.
- The severity of the preclusion ordered by the Judge greatly hindered Middleton's ability to mount a meaningful defense, thereby impacting the fundamental fairness which underpins judicial proceedings and denied him of his right to be heard.

Analysis: Benedict v. Thaler
Case Summary:
In **Benedict v. Thaler**, the appellate court reversed a lower court's decision that struck the defendant's answer due to discovery response failures, noting the absence of intentional non-compliance.
1. **Intentionality Requirement**: Severe sanctions require clear evidence of willful noncompliance.
2. **Justification for Non-Compliance**: Sanctions should not be imposed if non-compliance is reasonably justified.
3. **Severity of Sanctions**: Striking pleadings or precluding evidence are severe measures reserved for cases of clear and intentional misconduct.

- All the evidence here clearly showed that Middleton's non-compliance was innocent and unintentional and was due entirely down to England's failures, yet it was Middleton that was severely penalised.
- Although the Judge did not strike out Middleton's Answer, potentially preparing the way for Plaintiff's application for default Judgment, we believe that this was intentional as the case of **Benedict v. Thaler** would clearly have applied on an appeal in that eventuality, and we believe the Judge knew this.

Conclusion
Based upon the detailed analysis, the actions of the Judge in severely sanctioning Middleton through the preclusion ordered appears to constitute an abuse of discretion and the denial of Middleton's right to be heard. The sanctions were disproportionate in nature of the non-compliance and were not supported by clear evidence of willful and contumacious misconduct which greatly impacted the fairness of the judicial process.

Rule 2.15: Responding to Judicial and Lawyer Misconduct

(B) A Judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

The contents of this section are equally repeated in their entirety, insofar as they are appropriate, for Rule 2.2, Rule 2.3, Rule 2.5 and Rule 2.6 above.

Analysis of Court Clerk's Knowledge and Judge's Responsibility

Paragraph 24 of Carl Brundidge's Affirmation:

"On February 16, 2022, I received a frantic call from Sheridan explaining that he was very upset with being questioned regarding ethical violations by the Clerk conducting the February 16, 2022 Hearing. I asked Sheridan why he was being questioned in this manner and what happened. Sheridan then explained that he did not conduct the required filings on November 17, 2021 and February 1, 2022."

1. Role of Court Clerk:

- Court clerks play a crucial role in managing the procedural aspects of court cases. They are responsible for ensuring that all filings and court orders are properly recorded and communicated to relevant parties.
- In cases where ethical violations are suspected, clerks typically bring these issues to the attention of the Judge or higher court officials.

2. Imputation of Knowledge:

- Constructive Knowledge: Legal doctrine often imputes knowledge of clerks to the Judge, especially when the information pertains to procedural or ethical violations. This is because clerks act as agents of the court, and their knowledge is considered to be within the scope of the Judge's oversight responsibilities.
- Duty to Act: If a court clerk is aware of significant procedural violations or ethical misconduct, the Judge has a duty to investigate and take appropriate action. Ignorance of the clerk's knowledge is generally not a defense for the Judge, especially if the matter is serious and affects the fairness of the judicial process.

3. Specific Case Context:

- In the case of Charles Hall v. Reggie Middleton et al., the court clerk; Mr Rand, was aware of the ethical violations committed by Sheridan England, as evidenced by Brundidge's affirmation.
- Given the severity of the allegations (failure to file critical documents), it is reasonable to assert that the clerk's knowledge should have been communicated to the Judge, and the Judge should have been aware of the situation.

4. Judge's Responsibility:

- Model Code of Judicial Conduct: Requires Judges to perform their duties impartially and diligently. This includes taking appropriate action when informed of potential ethical violations by attorneys.
- Failure to Act: If Judge Schecter did not take action after being aware (or should have been aware) of the ethical violations by Sheridan England, it constitutes a failure to uphold judicial standards. This failure undermines the fairness of the judicial process and the due process rights of the defendants.

Exhibit 3 To Carl Brundidge Affirmation

Exhibit 3 contains various correspondence between England, the plaintiff's lawyers; Troy Froderman and the firm of Ford Marrin, and the Court's Clerk; Mr Michael Rand. The first section contains emails dated 7th October 2021, followed by a letter, partly redacted, dated 10th August 2021 and then a further set of emails, dates ranging from 24th March 2020 to 26th June 2020. The contents of this exhibit were retrieved from England's case file, following his withdrawal, and Carl Brundidge, in his affirmation, expresses complete surprise with this correspondence, as he had absolutely no knowledge of the same.

- On the face, the emails look fairly innocuous but you will recall that England was Of Counsel to B&S and should have been using both the email domain that he had been provided by B&S as well as using their letterhead concerning any letter correspondence on behalf of B&S clients, as in this case.
- By using his own firm's email address and his own firm's letterhead for correspondence, raises serious issues of potential conflict of loyalty since this would have been hidden from B&S and the client; Middleton et al.
- The next set of emails with earlier dates are even more concerning since they are between England, on his own firm's email domain, with opposing counsel and the Court's Clerk; Mr Michael Rand. You will note that communications were made concerning the next procedural steps in the proceedings to various email addresses but not including Ms Lee of B&S, nor B&S. That is, the Court's clerk was emailing procedural steps for the case but **did not** include any notifications to the other counsel of record; Ms M Lee, on behalf of the defendant; Middleton. This is highly unusual since the Judge relied on the fact that Middleton had counsel to continue to represent him, hence why she allowed England to withdraw.
- It is unlikely that Mr Rand would have issued separate notifications to Ms M Lee as this would have been too cumbersome to manage. If Ms M Lee was on record, then she should also have received notifications of any procedural steps, and since it is clear she was not included in these various email threads, the assumption must mean that she was inadvertently removed or excluded from record. This provides confirmation that Ms M Lee and B&S did not receive all communications and notifications from the court.
- Since Mr Rand knew that Ms M Lee was not receiving such notifications then the Judge knew or should have known, on the basis of implied or imputed knowledge or constructive knowledge, meaning she should not have allowed the withdrawal of England or at least given time for Middleton to have sought suitable alternative representation.

Conclusion:

Based on the legal framework and the context provided in the affirmation, it is reasonable to conclude that the knowledge of the court clerk regarding the ethical violations by England should be imputed to Judge Schecter. The Judge's failure to act on this information, despite the severity of the violations, represents a significant lapse in judicial responsibility. Furthermore, the knowledge of the court clerk that Ms M Lee and B&S were not included in all court communications must also be implied or imputed to the Judge, and therefore should not have allowed England to withdraw or allowed Middleton to seek alternative suitably qualified counsel. This was an error or oversight on the part of the Judge. Whereas it is accepted that the whole raison d'etre of this court is to expedite company/commercial disputes, such a dogged pursuit should not be so strictly followed where it may lead to grave injustices, as it has done in this case.

Judge's Role in Addressing Violations of Professional Conduct

- **Rule**: A Judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action.
- The Judge's failure to address the potential violations of professional conduct by Middleton's attorney, despite clear indications of such violations, could be seen as neglecting her disciplinary responsibilities.

Case law:

1. **Matter of Greenfield, 76 N.Y.2d 293 (1990)**
   - This case emphasizes the duty of Judges to report attorney misconduct when they become aware of actions that may constitute a violation of professional conduct rules.
2. **Matter of Sims, 61 A.D.3d 1 (1st Dept. 2009)**

- This case discusses the obligations of Judges to ensure that attorneys appearing before them adhere to professional conduct standards and to take action when violations are observed.

3. **Matter of Schiff, 23 N.Y.3d 32 (2014)**
    - This case highlights the importance of judicial oversight in maintaining the integrity of the legal profession by addressing attorney misconduct.
4. **Matter of Duckman, 92 N.Y.2d 141 (1998)**
    - This case underscores the responsibility of Judges to report and address attorney misconduct to preserve the integrity of the judicial process.
5. **Matter of Kavanagh, 38 A.D.3d 1 (1st Dept. 2006)**
    - This case discusses the duty of Judges to ensure that attorneys comply with professional conduct rules and to take corrective action when necessary.