

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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MYMEONA DAVIDS, *et al.*,

Plaintiffs,

- against -

THE STATE OF NEW YORK, *et al.*,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED
FEDERATION OF TEACHERS, Local 2, American Federation
of Teachers, AFL-CIO,

Intervenor-Defendant,

SETH COHEN, *et al.*,

Intervenors-Defendants,

PHILIP A. CAMMARATA, *et al.*,

Intervenors-Defendants.

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JOHN KEONI WRIGHT, *et al.*,

Plaintiffs,

- against -

THE STATE OF NEW YORK, *et al.*,

Defendants

-and-

SETH COHEN, *et al.*,

Intervenors-Defendants,

PHILIP A. CAMMARATA, *et al.*,

Intervenors-Defendants,

NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendant,

MICHAEL MULGREW, as President of the UNITED
FEDERATION OF TEACHERS, Local 2, American Federation
of Teachers, AFL-CIO,

Intervenor-Defendant.

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Consolidated Index No. 101105/14
DCM Part 6

**REPLY AFFIRMATION OF JANICE
BIRNBAUM**

Hon. Philip G. Minardo, J.S.C.

JANICE BIRNBAUM, an attorney duly admitted to practice law before the Courts of the State of New York, affirms pursuant to CPLR § 2106 that the foregoing statements are true upon penalty of perjury.

1. I am an Assistant Corporation Counsel for the City of New York and represent the New York City Department of Education and the City of New York (collectively “City Defendants”), Defendants and Defendant-Intervenor in the above-captioned consolidated actions. I am fully familiar with the facts set forth in this reply affirmation, which is submitted in further support of City Defendants’ motion for an order (1) pursuant to Rule 3211(a)(2) New York Civil Practice Law and Rules (“CPLR”) dismissing the above-captioned consolidated actions for mootness and lack of justiciability, (2) pursuant to CPLR 2221(e) granting leave to renew City Defendants’ prior motion to dismiss, and upon renewal, dismissal of the above-captioned consolidated actions on the grounds that there have been changes in law upon which City Defendants’ prior motion to dismiss should be granted, and (3) if this action is not dismissed in its entirety, for a stay of proceedings in this action pursuant to CPLR 2201, pending the outcome of the pending appeals of this Court’s Decision and Order entered on March 20, 2015, and/or any appeals of any order issued regarding the instant motion (“City Defendants’ Motion for Dismissal, Leave to Renew, and Other Relief”). In their moving papers, City Defendants adopted and incorporated by reference the motion made by the State of New York, the Board of Regents of the University of the State of New York, and the New York State Education Department (“State Defendants”) for the same relief including the State Defendants’ supporting memorandum of law and the affirmation of Steven L. Banks, Assistant Attorney General, with exhibits annexed thereto (“State Defendants’ Motion to Dismiss, for Leave to Renew, or Alternatively for a Stay”). City Defendants also provided copies of their papers filed in support of their prior motion to dismiss.

2. By this reply affirmation and in further support of City Defendants’ Motion for Dismissal, Leave to Renew and Other Relief, City Defendants rely upon, and adopt and

incorporate by reference the Reply Memorandum of Law in Further Support of State Defendants' Motion to Dismiss and/or for Leave to Renew, or Alternatively for a Stay of the Proceedings and the supporting Supplemental Affirmation of Assistant Attorney General Steven L. Banks, in Support of State Defendants' Motion to Dismiss, for Leave to Renew and for a Stay, including the exhibit annexed thereto. State Defendants' reply memorandum and supplemental affirmation are both dated July 7, 2015 ("State Defendants' Reply Papers").

3. In conclusion, for the reasons set forth in the State Defendants' Motion to Dismiss, for Leave to Renew, or Alternatively for a Stay, and the State Defendants' Reply Papers, both of which are adopted by and incorporated by reference in this reply affirmation submitted on City Defendants' behalf and in support of City Defendants' Motion for Dismissal, Leave to Renew and Other Relief, the Court should dismiss the amended complaints, with prejudice, in their entirety, and grant the City Defendants such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 7, 2015



Janice Birnbaum
Senior Counsel