

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LEROY M. DOUGLAS and THE DOUGLAS
CORPORATION OF SILVER LAKE

Civil Case No.: _____

Plaintiffs,

-against-

COMPLAINT

NEW YORK STATE ADIRONDACK PARK AGENCY;
PAUL VAN COTT, individually and as an employee and
attorney for N.Y.S. Adirondack Park Agency; DOUGLAS
MILLER, individually and as an employee of N.Y.S.
Adirondack Park Agency; MARK ROOKS, individually
and as an employee of N.Y.S. Adirondack Park Agency;
JOHN BANTA, individually and as an employee and
attorney for N.Y.S. Adirondack Park Agency; CURT F.
STILES, individually and as a commissioner of N.Y.S.
Adirondack Park Agency; CECIL WRAY, individually
and as a commissioner of N.Y.S. Adirondack Park Agency;
THE ADIRONDACK COUNCIL, INC.; BRIAN
HOUSEAL, individually and as a director of The
Adirondack Council, Inc.; SCOTT M. LOREY, individually
and as an employee and officer of The Adirondack Council,
Inc.; BRIAN RUDER, individually, as a member and
Chairman of the board of directors of The Adirondack
Council, Inc., and as a member, director and officer of
Hawkeye Conservationists, Inc.; HAWKEYE
CONSERVATIONISTS, INC.; and, "JOHN DOES '1'
through '10'" (representing as of yet unknown and unidentified
employees or commissioners of N.Y.S. Adirondack Park
Agency or employees or officers of The Adirondack Council,
Inc. or Hawkeye Conservationists, Inc.),

Trial by Jury Demanded

Defendants.

Plaintiffs complaining of defendants, by and through their attorneys, Briggs Norfolk LLP,
allege as follows:

ALLEGATIONS CONCERNING JURISDICTION AND VENUE

1. That this action arises under: (a) the First, Fourth and Fourteenth Amendments to the Constitution of the United States; (b) 42 U.S.C. §1983; (c) 42 U.S.C. §1985; (d) 28 U.S.C. §1331 (a), which grants this Court original jurisdiction of all civil actions arising “under the Constitution, laws or treaties of the United States;” and, (e) 28 U.S.C. §1367, which grants this Court “supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of United States Constitution.”

2. That venue in the Northern District of New York is proper pursuant to 28 U.S.C. §1391 (b) in that defendants are located with said District and plaintiffs’ claims arise in said District.

ALLEGATIONS CONCERNING THE PARTIES

3. That plaintiff Leroy Douglas (hereinafter referred to as “Douglas”) is an individual over 18 years of age.

4. That Douglas maintains residency in the State of New York.

5. That plaintiff The Douglas Corporation of Silver Lake (hereinafter referred to as “The Douglas Corporation”) is an active corporation duly created, organized and existing by virtue of the laws of the State of New York.

6. That Douglas is the President of The Douglas Corporation.

7. That The Douglas Corporation is a family-run business.

8. That Douglas is a known figure in Essex and Clinton Counties and the Adirondack State Park having ownership of considerable tracts of land in New York State and, in particular, within the Adirondack State Park.

9. That it is known in the community that plaintiffs sell their land for income to financially survive due to, among other things, the ever-increasing real property taxes in the State of New York.

10. That Douglas is a member of an identifiable group of native Adirondackers born and bred and living within the Adirondack Park that have spoken out against the Adirondack Park Agency, The Adirondack Council, Inc., and have challenged and opposed the environmental policies, philosophies and views of the Adirondack Park Agency and The Adirondack Council, Inc.

11. That Douglas' association with said group motivated the conduct of defendants complained of herein, in whole or in part.

12. That defendant New York State Adirondack Park Agency (hereinafter referred to as "APA") is a duly constituted agency or department of the State of New York, created and existing by virtue of Article 27 of New York Executive Law, with an office and place of business at P.O. Box 99, Route 86, Ray Brook, Essex County, New York.

13. That defendant Paul Van Cott (hereinafter referred to as "Van Cott") is an enforcement attorney and officer of APA and, upon information and belief, responsible for setting enforcement policy for APA, supervising and controlling APA employees in the APA Enforcement Officers Unit and is directly involved in participating in, directing and overseeing the conduct complained of herein.

14. That in all instances involved in this Complaint, Van Cott acted under color of law.

15. That defendant Douglas Miller (hereinafter referred to as "Miller") is an enforcement officer of APA and is directly involved in the conduct complained of herein.

16. That in all instances involved in this Complaint, Miller acted under color of law.

17. That defendant Mark Rooks (hereinafter referred to as "Rooks") is an Associate Adirondack Park Project Analyst of APA and is directly involved in the conduct complained of herein.

18. That in all instances involved in this Complaint, Rooks acted under color of law.

19. That defendant John Banta (hereinafter referred to as "Banta") is Counsel to APA and, upon information and belief, responsible for setting policy for APA, supervising, counseling and controlling APA members, employees and staff, and is directly involved in participating in, directing and overseeing the conduct complained of herein.

20. That in all instances involved in this Complaint, Banta acted under color of law.

21. That defendant Curt F. Stiles (hereinafter referred to as "Stiles") is a commissioner of APA and, upon information and belief, responsible for setting policy for APA, supervising and controlling APA members, employees and staff, and is directly involved in participating in, directing and overseeing the conduct complained of herein.

22. That in all instances involved in this Complaint, Stiles acted under color of law.

23. That defendant Cecil Wray (hereinafter referred to as "Wray") is a commissioner of APA and, upon information and belief, responsible for setting policy for APA, supervising and controlling APA members, employees and staff, and is directly involved in participating in, directing and overseeing the conduct complained of herein.

24. That Wray is the Chair of the APA Enforcement Committee.

25. That in all instances involved in this Complaint, Wray acted under color of law.

26. That of the eight commissioners of APA, three of them are former members or officers of The Adirondack Council, Inc.

27. That Stiles and Wray are two of the three APA commissioners that are former members, directors or officers of The Adirondack Council, Inc.

28. That Banta and Van Cott are part of the Legal Division of APA.

29. That APA's Legal Division is responsible for all the legal business of APA, which primarily involves the administration of the Adirondack Park Agency Act (N.Y. Executive Law, Article 27); the Wild, Scenic and Recreational Rivers System Act (N.Y. Environmental Conservation Law, Title 15, Article 27), and the Freshwater Wetlands Act (N.Y. Environmental Conservation Law, Title 8, Article 24).

30. That APA's Legal Division is also responsible for application of related statutes such as New York's State Environmental Quality Review Act (SEQRA), the Open Meetings Law (N.Y. Public Officers Law, Article 7), and the Freedom of Information Law (N. Y. Public Officers Law, Article 6).

31. That APA's Legal Division consists of three major components: the Office of Counsel, the Jurisdictional Inquiry Unit, and the Enforcement Officers Unit.

32. That defendant The Adirondack Council, Inc. (hereinafter referred to as "The Adk Council") is an active not-for-profit corporation duly created, organized and existing by virtue of the laws of the State of New York, with its principal place of business located in Elizabethtown, Essex County, New York.

33. That, according to its website, The Adk Council is a not-for-profit environmental group that has been working since 1975 to protect the open-space resources of New York State's six-million-acre Adirondack Park and to help sustain the natural and human communities of the region, and is the largest "environmental group in New York State working full-time, on a daily basis in the Adirondack Park, in the state capital and in Washington to **preserve** this six-million-

acre treasure.” (Emphasis added.) (See The Adk Council website at <http://www.adirondackcouncil.org/aboutus3.html> (last visited March 3, 2010, by the undersigned)).

34. That The Adk Council is directly involved in the conduct complained of herein.

35. That defendant Brian Houseal (hereinafter referred to as “Houseal”) is an individual over 18 years of age.

36. That Houseal is a member of The Adk Council.

37. That Houseal is the Executive Director of The Adk Council.

38. That Houseal is directly involved in the conduct complained of herein.

39. That defendant Brian Ruder (hereinafter referred to as “Ruder”) is an individual over 18 years of age.

40. That Ruder is a member of The Adk Council.

41. That Ruder is the Chairman of the Board of Directors of The Adk Council.

42. That Ruder is a member of Hawkeye Conservationists, Inc.

43. That Ruder is an officer of Hawkeye Conservationists, Inc.

44. That Ruder is a director of Hawkeye Conservationists, Inc.

45. That Ruder is directly involved in the conduct complained of herein.

46. That defendant Scott M. Lorey (hereinafter referred to as “Lorey”) is an individual over 18 years of age.

47. That Lorey is a member of The Adk Council.

48. That Lorey is the Legislative Director of The Adk Council.

49. That Lorey is directly involved in the conduct complained of herein.

50. That, upon information and belief, Houseal, Ruder and Lorey maintained residency in the State of New York.

51. That Ruder maintains a residency and owns real property on Silver Lake in the Town of Black Brook, Clinton County.

52. That defendant Hawkeye Conservationists, Inc. (hereinafter referred to as "Hawkeye") is an active not-for-profit corporation duly created, organized and existing by virtue of the laws of the State of New York, with its principal place of business located in Clinton County, New York.

53. That, upon information and belief, Hawkeye claims to have a mission as an environmental advocacy organization to preserve the natural environment in and around Silver Lake in the Town of Black Brook, Clinton County, New York.

54. That, upon information and belief, Hawkeye is directly involved in the conduct complained of herein.

55. That at all times relevant herein defendants referenced herein as "John Does '1' through '10,'" are unknown and unidentified employees or commissioners of APA or employees, members, directors or officers of The Adk Council or Hawkeye.

56. That, upon information and belief, "John Does '1' through '10,'" are directly involved in the conduct complained of herein.

57. That in all instances involved in the Complaint, "John Does '1' through '10'" acted under color of law.

NOTICE OF INTENTION TO FILE CLAIMS

58. That on or about February 8, 2010, plaintiffs caused a written Notice of Intention to File Claims to be served upon New York State Attorney General's Office for the State

defendants named herein.

59. That said Notice of Intention to File Claims set forth the name and post office address of plaintiffs, the nature of their claims, the time when, the place where and the manner in which the State claims herein sued upon arose, and the item of damages or injuries claimed to have been sustained, so far as then practicable.

60. That a true and accurate copy of the said Notice of Intention to File Claims, with related affidavit of service, is annexed hereto as **Exhibit A**, made a part hereof, and incorporated by reference herein.

61. That at least thirty days have elapsed prior to the commencement of this action since the service of the Notice of Intention to File Claims on New York State Attorney General's Office, and payment of plaintiffs' claims has been refused or not made by the State defendants named herein.

FACTUAL ALLEGATIONS

62. That each and every defendant as alleged herein below conspired and worked together and in concert to violate plaintiffs' Constitutional and civil rights and to otherwise harm, injure and harass plaintiffs, thereby making all defendants mutual agents of each other.

63. That through said conspiracy, each and every defendant violated plaintiffs' Constitutional and civil rights and otherwise harmed, injured and harassed plaintiffs based on the conduct of each other.

64. That at all times relevant, The Adk Council, Houseal, Ruder, Lorey, Hawkeye and those private individuals not yet identified, but referenced herein, in part, as "John Does '1' through '10'" (hereinafter collectively referred to as the "Environmentalists") had an improper, close, symbiotic relationship with APA, Van Cott, Miller, Rooks, Banta, Stiles, Wray and those

APA employees or members not yet identified, but referenced herein, in part, as “John Does ‘1’ through ‘10’” (hereinafter collectively referred to as the “Agency Defendants”) that allowed the Environmentalists to have preferential, unfettered access to the Agency Defendants and other APA employees and their unpublished email addresses, facsimile numbers and telephone numbers, including residential and cellular telephone numbers, while other members of the public, including plaintiffs, and non-environmental organizations did not possess, enjoy or have available to them such information and access.

65. That at all times relevant, other members of the public, including plaintiffs and non-environmental organizations, could not freely communicate with the Agency Defendants and other APA employees in the unfettered and easily accessible manner in which the Environmentalists did.

66. That at all times relevant, the Environmentalists were given preferential treatment by the Agency Defendants and other APA employees in that the Agency Defendants would allow the Environmentalists to regularly be heard on issues involving the Adirondack Park and its management, environment and development, including administrative enforcement proceedings, while other members of the public, including plaintiffs and non-environmental organizations did not have such opportunities.

67. That the opinions, comments, requests and statements of the Environmentalists made to the Agency Defendants and other APA employees would be given greater weight and consideration by the Agency Defendants and other APA employees than the opinions and statements of other members of the public, including plaintiffs and non-environmental organizations.

68. That, unlike the Environmentalists, other members of the public, including plaintiffs and non-environmental organizations, were prevented by the Agency Defendants and their unwritten and unfair policies from submitting comments, requests, opinions or other statements about APA administrative enforcement proceedings, land regulatory issues or APA permit applications directly to the Agency Defendants, APA's Enforcement Committee and other APA employees via email or telephone or other means, and were required to submit their comments in accordance with APA's (official) Public Comment Policy, which can be viewed and found at APA's website (last visited by the undersigned on March 4, 2010) at http://www.apa.state.ny.us/Documents/Policies/Public_Comment_Policy.pdf.

69. That for administrative enforcement proceedings, the Agency Defendants' published public comment policy is as follows: (a) For oral comments – **“In order to avoid potential *ex parte* issues and to maintain fundamental fairness, public comments concerning the following topics will be prohibited during the initial public comment period but may, at the discretion of the commenting party, be reserved for the public comment period provided at the close of each Agency meeting: * * * Any enforcement case which is before the Agency for action at the meeting in question”**; (b) For written comments – **“Written comments related to permit proceedings and enforcement cases before the Agency or any Committee will be accepted so long as such comments are received by noon on the day prior to the scheduled commencement of the Agency meeting.”**

70. That according to the Agency Defendants' published policy on public comment, and in accordance with New York State Administrative Procedure Act (“SAPA”) §307 (2), APA's ex parte rules set forth in 9 NYCRR §581-4.12, and Public Officers Law Article 7, all

comments received from the public were/are to be fully disclosed to the public and the landowner/respondent dealing with APA in an administrative enforcement proceeding.

71. That 9 N.Y.C.R.R. §581-4.12, entitled, "Ex parte rule," which governs APA administrative enforcement proceedings states:

- (a) **Except as provided below, a hearing officer must not communicate, directly or through a representative, with any person in connection with any issue that relates in any way to the merits of the hearing without providing notice and an opportunity for all parties to participate.**
- (b) **A hearing officer may consult on questions of law or procedure with any Agency staff provided such staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory hearing under consideration or a factually-related adjudicatory hearing.**
- (c) **A hearing officer may communicate with any person on ministerial matters, such as scheduling or the location of a hearing.**
- (d) **Parties and their attorneys must not communicate with the hearing officer or the Agency, or any person advising or consulting or eligible to advise or consult with the hearing officer or Agency, in connection with any issue without providing proper notice to all other parties.**

72. That SAPA §307 (2), which governs APA administrative enforcement proceedings states, in pertinent part:

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate.

73. That New York Public Officers Law §74, entitled "Code of ethics," which governs the Agency Defendants' conduct states, in pertinent part:

1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

* * * *

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

* * * *

3. Standards.

* * * *

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

* * * *

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

* * * *

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

* * * *

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or I of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be

subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

74. That the Agency Defendants regularly received opinions, requests, statements demands and comments from the Environmentalists in a manner contrary to and in violation of the Agency Defendants' published public comment policy, 9 NYCRR §581-4.12, SAPA §307 (2) and Public Officers Law Article 7, and regularly did not disclose this inappropriate and unlawful communication to the public or the interested party dealing with the Agency Defendants on a particular issue, including in plaintiffs' case.

75. That APA has evolved from a zoning and land planning agency to a State funded enforcement regime driven by personal agendas and pressures from environmental organizations and zealots, including the Environmentalists, who seek to prevent private property owners from building sensible, needed projects that in no way threaten the environment, even when there clearly is no law or regulation against them, and who seek to extract or remove the human population from the Adirondack State Park, or at the very least, corral the human population to limited places in the Park.

76. That plaintiffs hereby allege, many members of the public, including many Adirondackers, believe, that APA is used as a tool of environmentalists and wealthy downstate residents or residents of other States to create their own private playground in the Adirondack State Park, to the exclusion of native Adirondackers, or individuals who live full-time in the Park.

77. That the Agency Defendants regularly consulted with, cooperated with and acted in concert with the Environmentalists to investigate and prosecute APA enforcement matters to meet their common goals and agendas concerning management of the Adirondack Park.

78. That The Douglas Corporation owns and possesses, in fee, real property located on Silver Lake in the Town of Black Brook, County of Clinton, State of New York, bearing tax map parcel No. 308-2-1 (hereinafter referred to as the "Premises"), in addition to other lands surrounding Silver Lake.

79. That Douglas resides, owns and possesses real property located at 18 Douglas Lane in the Town of Black Brook, County of Clinton, State of New York, which is located at the east end of Silver Lake, and less than one mile by road from the Premises.

80. That Ruder resides, owns and possesses real property on Silver Lake in the Town of Black Brook, County of Clinton, State of New York, near the Premises and Douglas' residence.

81. That Ruder is a neighbor of Douglas.

82. That, in 2005, APA commenced an administrative enforcement proceeding against The Douglas Corporation bearing APA file number E2005-200.

83. That, in APA administrative enforcement proceeding E2005-200, the Agency Defendants alleged that The Douglas Corporation and its members or officers unlawfully deposited fill in various alleged wetland areas on the Premises without an APA permit.

84. That, on November 9, 2006, plaintiffs and APA entered into a written, comprehensive settlement agreement to resolve APA E2005-200 administrative enforcement proceeding (hereinafter referred to as the "Settlement Agreement").

85. That Douglas is a party to the Settlement Agreement or, in the alternative, a third-party beneficiary to the Settlement Agreement possessing the rights to enforce the terms of the Settlement Agreement and enjoy and receive the benefits of the Settlement Agreement.

86. That the Settlement Agreement was executed by Douglas on behalf of The Douglas Corporation.

87. That the Settlement Agreement was recorded with the Clinton County Clerk's Office on November 15, 2006.

88. That the Settlement Agreement related to the Agency Defendants' allegations that fill was placed in wetlands on the Premises to widen an existing road and also to replace an existing culvert that had rusted and partially collapsed.

89. That the Settlement Agreement resolved all pending violations against plaintiffs, relating to, or existing on, the Premises, alleged or asserted by the Agency Defendants.

90. That the Settlement Agreement was in full satisfaction of all alleged violations against plaintiffs, relating to, or existing on, the Premises as asserted by the Agency Defendants.

91. That the Settlement Agreement resolved, and was in full satisfaction of, all violations or potential violations of APA rules and regulations and Article 27 of the New York State Executive Law and Articles 15 and 24 of Environmental Conservation Law possibly committed by plaintiffs that may have existed on the Premises prior to, or at the time of, execution of the Settlement Agreement.

92. That the Settlement Agreement expressly and correctly provides that the "fill was used to widen an existing road."

93. That annexed hereto as **Exhibit B** is a true and accurate copy of the Settlement Agreement entered into between plaintiffs and APA in connection with APA enforcement proceeding bearing APA file number E2005-200.

94. That the Settlement Agreement was entered into contemporaneously with APA's issuance of a non-jurisdictional letter to the benefit of plaintiffs, APA having no objection or jurisdiction over a nine-lot subdivision of the Premises.

95. That, on November 20, 2006, at Douglas' request, Douglas met with APA employee Rooks at the Premises to allow Rooks to inspect the remediation work Douglas had performed pursuant to the Settlement Agreement, upon information and belief, to insure Douglas met the December 1, 2006 remediation work deadline set forth in the Settlement Agreement.

96. That, during the November 20, 2006, site visit by Rooks, Rooks advised Douglas that certain aspects of the remediation work performed would need to be revised or done differently and Rooks directed Douglas to stop work due to the fact that the ground was frozen.

97. That, during the November 20, 2006, site visit, Rooks advised and agreed with Douglas that the work should be postponed to summer of 2007, and Rooks expressly agreed on behalf of APA to extend the December 1, 2006, deadline set forth in the Settlement Agreement to July 1, 2007, thereby modifying that specific term of the Settlement Agreement.

98. That, in February of 2007, plaintiffs' attorney, Jamie Martineau, Esq., received a letter from Van Cott wherein Van Cott referenced Rooks' November 20, 2006 site inspection, and confirmed that APA extended the Settlement Agreement deadline for the work to be completed in 2007.

99. That, however, on March 22, 2007, plaintiffs' attorney, Jamie Martineau, received another, contradictory letter from Van Cott informing Mr. Martineau that the APA had opened a new enforcement file regarding alleged non-compliance with the Settlement Agreement, and threatening plaintiffs that if the remediation work was not complete by the spring of 2007 with the help of an outside contractor, which was a new term not contained in the Settlement

Agreement, APA would impose penalties; such action by Van Cott and APA was a material breach of the Settlement Agreement.

100. That Van Cott's letter sent on March 22, 2007, and the Agency Defendants' opening or commencement of a new enforcement proceeding was at the behest of the Environmentalists, part of a conspiracy between the Agency Defendants and the Environmentalists, and was done in bad faith without any legitimate motive or justification, and designed to harm, injure, harass and violate the civil and Constitutional rights of plaintiffs.

101. That, prior to July 1, 2007, during the spring months of 2007, plaintiffs completed all remediation work required by the Settlement Agreement, including but not limited to, removing fill from the alleged wetlands, narrowing the road where it crosses the alleged wetlands, reducing the slopes around the stream and road to 2:1 ratio, putting down grass seed and straw to stabilize the soil and correctly installing the silt fence.

102. That the Agency Defendants were acting in concert with the Environmentalists, under the color of law, to strategize and plot against plaintiffs for no legitimate purpose and to stop lawful development and sales of the Premises, and to impede plaintiffs' use and enjoyment of the Premises and their livelihood.

103. That, on March 22, 2007, at 3:13 pm, upon information and belief, Ruder, individually and in his capacity as a member and Chair of The Adk Council and as a member, officer and director of Hawkeye, sent Miller and Van Cott an email summarizing their past conversations wherein it was decided between the Agency Defendants and the Environmentalists that APA would commence an enforcement proceeding against plaintiffs.

104. That said March 22, 2007, email sent at 3:13 pm from Ruder was sent on his individual or personal behalf and on behalf of the other Environmentalists.

105. That, in said March 22, 2007, email sent at 3:13 pm, upon information and belief, Ruder urged, pleaded, influenced, caused, conspired with, and directed the Agency Defendants to disregard and breach the Settlement Agreement and, among other things, commence a new enforcement proceeding (E2007-47) against plaintiffs.

106. That in said March 22, 2007, email sent at 3:13 pm, upon information and belief, Ruder summarizes his telephone conversation had earlier that day with Miller about the enforcement proceeding to be commenced against plaintiffs, instructing the Agency Defendants to keep him apprised of the developments and to send to him carbon copies of written correspondence from the Agency Defendants to plaintiffs to send a letter to plaintiffs advising them that they had failed to remedy an alleged violation in 2006 and that, among other things, a new enforcement proceeding (E2007-047) had been open or commenced against them.

107. That, upon information and belief, Ruder in his March 22, 2007, email sent at 3:13 pm to Miller and Van Cott offered his "own legal team" to assist the Agency Defendants in prosecuting plaintiffs and indicates that he will also perform legal research on "town law" to help the Agency Defendants obtain jurisdiction over plaintiffs' purported subdivision plans.

108. That, in said March 22, 2007, email sent at 3:13 pm, and other communications with the Agency Defendants after that, the Environmentalists caused, conspired with, directed, compelled, and assisted the Agency Defendants to (1) commence a meritless enforcement proceeding and prosecute plaintiffs for the same violations resolved by the Settlement Agreement; (2) attempt to force plaintiffs to prepare a master plan for development of plaintiffs' land on Silver Lake; (3) provide plaintiffs with notice of plaintiffs' alleged failure to comply with the Settlement Agreement and demand that plaintiffs obtain an "outside contractor to complete the work;" (4) send letters to Town of Black Brook supervisor and code enforcement

officer advising them of plaintiffs' alleged misconduct and commencement of a new APA enforcement proceeding and requesting that the Town of Black Brook not issue plaintiffs a subdivision permit; and (5) attempt to revoke the APA's non-jurisdictional letter issued earlier to plaintiffs for the Premises.

109. That many of the directives contained in the March 22 email sent at 3:13 pm from Ruder have been executed or at least attempted by the Agency Defendants.

110. That a true and accurate print-out of said March 22, 2007, email from, upon information and belief, Ruder in redacted form is annexed hereto as **Exhibit C**.

111. That on March 22, 2007, at 2:29 pm as agreed to and directed by Ruder, Van Cott emailed APA employee Mary Reardon and instructed her to open a new enforcement file and send "bcc" copies of the "Martineau.Douglasltr.2.23.07" letter to "the Town CEO" and another individual whose name is redacted in the email printout provided by APA.

112. That, upon information and belief, the individual whose name is redacted and who was to receive a blind-copy ("bcc") of the "2.23.07" letter from Van Cott to Jamie Martineau, Esq., the attorney for plaintiffs at the time, was Ruder.

113. That on March 22, 2007, at 3:57 pm, upon information and belief, Ruder, sent Miller an email responding to Miller's telephonic voice-mail message left earlier that day to provide his fax number so APA staff could provide him with a copy of Van Cott's letter to plaintiffs' attorney, Jamie Martineau, Esq., as directed in his earlier email sent at 3:13 pm.

114. That on March 22, 2007, at 4:22 pm, APA employee Mary Reardon emailed Miller to confirm that she faxed, upon information and belief, Ruder the "leroy douglas" letter at about 4:05 pm that day.

115. That on March 22, 2007, Van Cott, via regular mail, sent plaintiffs' attorney at the time, Jamie Martineau, Esq., the letter informing plaintiffs of the new enforcement proceeding and the Agency Defendants' position that they remain in violation of wetlands regulations, as directed by Ruder and the other Environmentalists.

116. That, in addition, to said March 22, 2007, emails, upon information and belief, Ruder, individually and as a representative of The Adk Council and Hawkeye and another member of The Adk Council and Hawkeye sent emails on March 21, 2007, to the Agency Defendants concerning plaintiffs and demanding or requesting the Agency Defendants take action to stop plaintiffs from subdividing the Premises or other lands on Silver Lake as part of defendants' overall plan to disregard the Settlement Agreement and to violate plaintiffs' Constitutional and civil rights.

117. That true and accurate copies of print-outs of said March 21, 2007, emails, in redacted form are annexed hereto as **Exhibit D**.

118. That, in addition to sending written communications to the Agency Defendants, the Environmentalists regularly communicated verbally with the Agency Defendants and engaged in conduct to assist, urge, conspire with, direct and cause the Agency Defendants to disregard plaintiffs' Constitutional and civil rights before and during APA administrative enforcement proceeding E2007-47.

119. That defendants used their political and financial influences to pervert and manipulate the APA administrative enforcement process as it pertained to plaintiffs and to harm, injure, harass and violate the Constitutional and civil rights of plaintiffs.

120. That, on or about August 13, 2007, APA served plaintiffs' counsel with Notice of Hearing and Complaint for a new APA administrative enforcement proceeding bearing APA file number E2007-047.

121. That annexed hereto as **Exhibit E** are true and accurate copies of the Agency Defendants' Notice of Hearing and Complaint, both dated August 13, 2007.

122. That the Complaint in APA administrative enforcement proceeding E2007-47 did not allege a violation premised on an alleged breach or violation of the Settlement Agreement thereof; rather, the Complaint reasserted the original claims asserted in the E2005-200 enforcement proceeding complaint as if the Settlement Agreement never existed.

123. That plaintiffs interposed an answer to the Agency Defendants' E2007-47 complaint, denying commission of the violations alleged therein and affirmatively asserting as a defense that all alleged wetland violations at the Premises were resolved by the Settlement Agreement.

124. That annexed hereto as **Exhibit F** is a true and accurate copy of plaintiffs' Answer filed and served in APA administrative enforcement proceeding E2007-47.

125. That in later submissions in support of the allegations in the E2007-047 APA complaint, the Agency Defendants expressly asserted that they were no longer honoring or recognizing the Settlement Agreement.

126. That, on or about January 25, 2008, the Agency Defendants filed a motion in APA administrative enforcement proceeding E2007-47 for an order without hearing finding plaintiffs to have violated the wetlands violations alleged in the APA complaint.

127. That plaintiffs cross-moved to dismiss the E2007-47 APA complaint, inter alia, on grounds that the violations alleged were settled by the Settlement Agreement, and plaintiffs

had fulfilled their obligations under the Settlement Agreement, as they had, indeed, fulfilled them.

128. That annexed hereto as **Exhibit G** are true and accurate copies of, upon information and belief, all papers submitted by the Agency Defendants in support of their motion for an order without a hearing, to wit: (1) Notice of Motion for Agency Order Without Hearing; (2) Affidavit of Mark Rooks, sworn to January 24, 2008, with exhibits; (3) Affirmation of Paul Van Cott, Esq., affirmed on January 25, 2008, with exhibit; (4) Memorandum of Law in Support of Agency Staff's Motion for an Agency Order Without Hearing Pursuant to 9 N.Y.C.R.R. §581-4.16; (5) Reply Affidavit of Douglas Miller, sworn to March 27, 2008, with exhibits; (6) Reply Affidavit of Daniel Spada, sworn to March 26, 2008, with exhibit; (7) Reply Affidavit of Brian Grisi, sworn to March 26, 2008, with exhibits; (8) Reply Affidavit of Susan Parker, sworn to March 26, 2008; (9) Reply Affidavit of Mary O'Dell, sworn to March 25, 2008; and (10) Reply Memorandum of Law in Support of Agency Staff's Motion for an Agency Order Without Hearing Pursuant to 9 N.Y.C.R.R. §581-4.16.

129. That APA, Stiles and Wray denied plaintiffs' cross-motion to dismiss the E2007-47 APA complaint and ordered a hearing to be conducted on the violations alleged in the E2007-47 APA administrative enforcement proceeding.

130. That the Agency Defendants breached and refused to recognize the Settlement Agreement with plaintiffs and its terms and conditions when they opened or commenced a second administrative enforcement proceeding (E2007-047) against plaintiffs.

131. That the Agency Defendants breached the Settlement Agreement by commencing a new enforcement proceeding for the same alleged violations contained in the E2005-200 APA complaint.

132. That the Agency Defendants breached the Settlement Agreement by prosecuting or continuing to prosecute plaintiffs for the same alleged violations asserted in the E2005-200 APA administrative enforcement proceeding, and for seeking substantial and additional penalties and fines for a matter already settled.

133. That the Agency Defendants breached the Settlement Agreement by refusing to acknowledge and accept the factual findings and stipulations contained therein, such as the fact that a right-of-way, driveway or road did, indeed, exist on the Premises.

134. That the Agency Defendants breached the implied covenants of good faith inherent and contained in the Settlement Agreement.

135. That the Settlement Agreement was a valid and lawful contract in effect when the Agency Defendants commenced the APA administrative enforcement proceeding E2007-47.

136. That, in 2007, 2008 and 2009, the Environmentalists caused, convinced, influenced, manipulated, instructed, assisted and conspired with the Agency Defendants to commence and continue to prosecute an enforcement proceeding against plaintiffs without any legal or factual basis and for improper and malicious motives, for the same alleged violations asserted in APA administrative enforcement proceeding 2005-200, while having knowledge of the existence and valid effect of the Settlement Agreement and that there was no legal or factual justification for the commencement and prosecution of the E2007-47 APA administrative enforcement proceeding.

137. That the Environmentalists conspired with, caused and assisted the Agency Defendants to breach the Settlement Agreement and commence the APA administrative enforcement proceeding E2007-47 for their personal benefit and gain, inter alia, to stop land development by plaintiffs on Silver Lake, which the Environmentalists had long opposed.

138. That the Environmentalist caused the Agency Defendants to breach the Settlement Agreement and commence APA administrative enforcement proceeding E2007-47 for Ruder's personal gain and benefit in an attempt to force plaintiffs from exercising their legal right to use, enjoy, sell and develop the Premises, and to harass, oppress and harm plaintiffs.

139. That Ruder caused the Agency Defendants to breach the Settlement Agreement and commence APA administrative enforcement proceeding E2007-47 for Ruder's personal gain and benefit as he perceived plaintiffs' use and plans of the Premises and other lands plaintiffs' own on Silver Lake, and plaintiffs' personal and commercial use of the waters of Silver Lake, to be contrary to Ruder's vision, environmental philosophies and personal use and enjoyment of Silver Lake and the land surrounding it.

140. That Ruder abused his power and position with The Adk Council and Hawkeye when he committed the conduct complained of in the paragraphs above.

141. That the Environmentalists caused the Agency Defendants to breach the Settlement Agreement and commence APA administrative enforcement proceeding E2007-47 for Ruder's personal gain and benefit in an attempt to safeguard the value of Ruder's real property on Silver Lake and prevent further people from buying land on Silver Lake and using the waters of Silver Lake in a way contrary to the Environmentalists' philosophies and views.

142. That The Adk Council, Houseal, Lorey and Ruder used The Adk Council, a not-for-profit corporation in an unlawful and inappropriate manner contrary to New York Not-for-Profit Corporation Law and the U.S. Internal Revenue Code.

143. That the Environmentalists caused the Agency Defendants to breach the Settlement Agreement and commence APA administrative enforcement proceeding E2007-47, and then continue to prosecute the proceeding, in an attempt to stop lawful land development by

plaintiffs, to force plaintiffs to sell the Premises and other lands to The Adk Council, New York State or the Nature Conservancy, or alternatively, to members of The Adk Council, or Hawkeye, or to members of the public who would not develop the land, to financially harm plaintiffs, and to punish plaintiffs as a result of their dislike for plaintiffs and for opposing The Adk Council and Hawkeye's objectives, philosophies and policies, and as retribution and retaliation for an alleged altercation that Houseal claims he had with Douglas during a Town of Black Brook Planning Board meeting in 2007, and because of other contentious past dealings plaintiffs had with Ruder.

144. That the other Environmentalists conspired with, condoned and supported Ruder and his role in the procurement of the Agency Defendants' breach of the Settlement Agreement.

145. That the Agency Defendants commenced APA administrative enforcement proceeding E2007-47 against plaintiffs to give favor and appease the Environmentalists and to injure, harm and harass plaintiffs and improperly and unlawfully try to force plaintiffs to sell or relinquish ownership of the Premises to defendants, the Nature Conservancy or the State of New York, and to impede the lawful development of the Premises, and drive down the fair market value of the Premises to impede plaintiffs from selling the Premises to a third-party other than those named above.

146. That the Environmentalists and the Agency Defendants had substantial and an unjustified personal animus towards plaintiffs that was a consequence of past dealings with plaintiffs, plaintiffs' different views and philosophies of land use in the Adirondack State Park, plaintiffs' refusal to sell land to New York State, Ruder or other Environmentalists, and plaintiffs' refusal not to develop to the Premises.

147. That defendants had personal animus towards plaintiffs and viewed Douglas as an anti-environmentalist with contrary political, environmental stewardship and social policies, philosophies, opinions and views to those of defendants.

148. That the Agency Defendants had personal animus towards plaintiffs as a result of Douglas forcing Miller off the Premises and objecting to Miller's unauthorized entry on the Premises and an alleged altercation with Miller, on or about September 6, 2007, which motivated defendants to continue to unlawfully prosecute plaintiffs after E2007-47 enforcement proceeding was commenced.

149. That defendants made the decision to commence and did, indeed, commence and prosecute APA administrative enforcement proceeding E2007-47 against plaintiffs because of their personal animus towards plaintiffs to cause plaintiffs harm, and injury, to harass plaintiffs, to retaliate against plaintiffs, and to stop plaintiffs from developing, subdividing and selling to third-parties the Premises and to oppress plaintiffs.

150. That the commencement and prosecution of APA administrative enforcement proceeding E2007-47 had no legitimate purpose, was without merit, not supported by the facts, and driven by improper motives while defendants knew or should have known they had no likelihood of success in the enforcement proceeding.

151. That APA administrative enforcement proceeding E2007-47 was initiated in bad faith by defendants working in concert and conspiring together for purposes of harassment, retaliation and other improper motives and to deter constitutionally protected conduct by plaintiffs.

152. That defendants intended to inhibit and punish the exercise of Constitutional and civil rights of plaintiffs, with malicious and bad faith intent to injure, punish and harass plaintiffs with the initiation and prosecution of APA administrative enforcement proceeding E2007-47.

153. That Ruder abused his power and position at The Adk Council and Hawkeye for his own personal gain in violation of federal and state laws that are applicable to, or govern the conduct of, officers and directors of not-for-profit corporations, by conspiring with the Agency Defendants to prosecute plaintiffs within APA administrative enforcement proceeding E-2007-47.

154. That defendants did not and have not disclosed to plaintiffs or their attorneys the fact that the Environmentalists were communicating directly to the Agency Defendants about prosecuting plaintiffs and APA administrative enforcement proceeding E2007-47 in violation of general ex parte rules, 9 N.Y.C.R.R. § 581-4.12, Public Officers Law Article 7, SAPA §307 (2), and due process clause of the Fourteenth Amendment.

155. That the Environmentalists knew or should have known that their conduct, actions and representations made to the Agency Defendants would result in a meritless APA administrative enforcement proceeding to be commenced and prosecuted against plaintiffs and that plaintiffs would be unjustifiably injured and harmed.

156. That Van Cott, Rooks and Miller were selectively screened, employed, trained and supervised by Stiles, Wray, Banta and APA for numerous tasks relating to their enforcement duties, including but not limited to investigation, witness preparation, identification, enforcement proceeding preparation and other tasks relating to the enforcement of rules and regulations administered by and under the jurisdiction of APA.

157. That defendants accused plaintiffs of various wetlands violations in APA administrative enforcement proceeding E2007-47.

158. That plaintiffs maintained their innocence and that they did not commit the violations alleged.

159. That plaintiffs did not commit violations alleged in APA administrative enforcement proceeding E2007-47.

160. That there was no credible evidence available to the Agency Defendants that plaintiffs committed the violations alleged in APA administrative enforcement proceeding E207-47.

161. That the defendants knowingly and intentionally based APA administrative enforcement proceeding E2007-47 on misleading, false statements and suspicious, while lacking inculpatory information or evidence.

162. That defendants failed to investigate or further investigate, before and after APA administrative enforcement proceeding E2007-47 was opened or commenced, whether plaintiffs were innocent despite the available exculpatory information and circumstances provided or known to them by eyewitnesses' statements and other evidence they had available to them.

163. That defendants knew of the existence of exculpatory information favoring plaintiffs, but did not disclose this to plaintiffs or their defense counsel, or further investigate plaintiffs' conduct as alleged in APA administrative enforcement proceeding E2007-47.

164. That no justifiable cause or rationale existed to permit the Agency Defendants to lawfully commence and prosecute APA administrative enforcement proceeding E2007-47 against plaintiffs.

165. That the Agency Defendants intentionally, maliciously and without a proper motive or purpose opened an enforcement file and commenced and prosecuted plaintiffs without adequate investigation.

166. That the Agency Defendants failed to make further inquiries of plaintiffs' involvement in the wetlands violations alleged when, under the circumstances, a reasonable person or competent law abiding APA enforcement personnel would have done so.

167. That the Agency Defendants had an affirmative duty to intervene to protect the Constitutional rights of citizens, including plaintiffs, from infringement by APA employees of the Enforcement Officers Unit and failed to fulfill this duty and intercede to prevent the infringement of plaintiffs' Constitutional and civil rights by the other defendants despite knowing plaintiffs were unlawfully being subjected to a meritless APA administrative enforcement proceeding.

168. That these intentional, malicious and reckless actions of defendants were specifically designed to prevent plaintiffs and their defense counsel from preparing an adequate defense and to secure an unjust and unlawful prosecution and APA Enforcement Committee ruling in violation of well established ethical and professional standards relating to their employment and various rights, privileges and immunities guaranteed by the First, Fourth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution and various rights, privileges and immunities guaranteed under the constitution and laws of the state of New York.

169. That throughout APA administrative enforcement proceeding E2007-47, no new information or evidence came into existence or was discovered to give defendants cause for pursuing a violation or an APA Enforcement Committee ruling against plaintiffs.

170. That the Agency Defendants intentionally, maliciously and recklessly misled plaintiffs and their defense counsel in an attempt to prevent counsel from adequately preparing a defense for plaintiffs, thereby violating plaintiffs' right to due process and attempting to deny plaintiffs their lawful right to legal assistance in violation of well established ethical and professional standards relating to their employment with APA and various rights, privileges and immunities guaranteed by the First, Fourth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution and various rights, privileges and immunities guaranteed under the constitution and laws of the state of New York.

171. That the Agency Defendants by their conduct involving plaintiffs and APA administrative enforcement proceeding E2007-47 provided a reasonable basis for the impression that the Environmentalists could improperly influence them or unduly enjoy their favor in the Agency Defendants' performance of their official duties and that the Agency Defendants were affected by the position and rank of the Environmentalists.

172. That defendants disliked Douglas and allowed their dislike, in whole or in part, to be motivation to act and behave as alleged and complained of in this Complaint.

173. That Agency Defendants and other APA employees share the same or much of the same environmental views, philosophies and policies as those of the Environmentalists and to further, to accomplish, to satisfy and to promote those views, philosophies and policies, the Agency Defendants commenced APA administrative enforcement proceeding E2007-47, disregarding all principles and notions of fairness, the law, the Settlement Agreement and plaintiffs' constitutional and civil rights, in violation of plaintiffs' constitutional and civil rights, resulting in irreparable harm and injury to plaintiffs.

174. That defendants unlawfully prosecuted plaintiffs in APA administrative enforcement proceeding E2007-47 in the name of "environmentalism" ignoring the laws APA was created to administer and enforce, other laws of the State of New York and the U.S. Constitution and the New York Constitution.

175. That on or about September 6, 2007, Rooks and Miller unlawfully entered upon the Premises without plaintiffs' permission and without a judicial warrant or order allowing them on the Premises.

176. That during Rooks and Miller's illegal entry upon and inspection of the Premises, Douglas discovered their presence and directed Rooks and Miller off the Premises, objecting to their illegal entry and trespass on the Premises.

177. That Miller claimed Douglas threatened and physically removed Miller from the Premises.

178. That APA, Stiles, Wray, Banta, Van Cott and other supervisory personnel of APA directed and instructed Miller to file criminal charges alleging Douglas committed crimes against Miller, when he discovered Rooks and Miller unlawfully on the Premises on September 6, 2007.

179. That APA, Stiles, Wray, Banta, Van Cott and other supervisory personnel of APA controlled and pursued the criminal proceeding filed by Miller against Douglas.

180. That the criminal charges filed and criminal action were without justification and probable cause.

181. That the criminal charges filed against Douglas by Miller at the direction of APA, Stiles, Wray, Banta, Van Cott and other supervisory personnel of APA were dismissed in favor of Douglas.

182. That the Agency Defendants filed said criminal complaint against Douglas and facilitated a criminal action against Douglas to retaliate against plaintiffs, to appease and be in the favorable light of the Environmentalists, to cover-up and evade Miller's unlawful and unauthorized trespass and search of the Premises, to threaten and compel plaintiffs to acquiesce and admit guilt in APA administrative enforcement proceeding E2007-47, and to otherwise harass, injure and harm plaintiffs.

183. That in their pursuit to find plaintiffs in violation of APA rules and regulations within APA administrative enforcement proceeding E2007-047, Van Cott, Rooks, and Miller improperly and with retaliatory motives based their case on, and claimed that plaintiffs should be found guilty of violating the wetlands regulations alleged because, Douglas had an alleged verbal and physical altercation with Miller on September 6, 2007, while Rooks and Miller were trespassing on the Premises, resulting in criminal charges to be filed.

184. That on or about April 7, 2008, The Adk Council and Leroy sent Wray, an APA Commissioner and member of the Enforcement Committee presiding over APA administrative enforcement proceeding E2007-47, and Van Cott a two-page letter specifically discussing the proceeding, asserting facts against plaintiffs, and urging Wray to impose a substantial fine against Douglas, who Lorey asserts, among other things, is "infamous for his bullying and bulldozing."

185. That Wray and the other Agency Defendants received via facsimile and, upon information and belief, regular mail said letter from The Adk Council and Lorey, dated April 7, 2008.

186. That the letter from The Adk Council and Lorey, dated April 7, 2008, was copied to Van Cott, who, again, was responsible for enforcement of the violations allegedly committed by plaintiffs. A true and accurate copy of Lorey's letter is attached hereto as **Exhibit H**.

187. That in said letter from The Adk Council and Lorey, the Environmentalists make several derogatory and false factual accusations against plaintiffs directly relating to the issues and allegations raised in APA administrative enforcement proceeding E2007-47, and urge the Agency Defendants to impose a substantial fine against plaintiffs, among other things.

188. That Lorey of The Adk Council advised Wray that plaintiffs' land is "recognized by the state as a conservation priority in the 2005 Open Space Plan."

189. That said letter from The Adk Council and Lorey, dated April 17, 2008, was sent to Wray a mere four days before the Enforcement Committee rendered its April 11, 2008, ruling which denied plaintiffs' meritorious motion to dismiss the complaint in the enforcement proceeding.

190. That, upon information and belief, Wray voted for denial of plaintiffs' motion to dismiss.

191. That, upon information and belief, Wray shared the letter he received from The Adk Council and Lorey with other members of APA's Enforcement Committee.

192. That plaintiffs had no knowledge of the ex parte communication from The Adk Counsel and Lorey, and defendants did not disclose the letter at the time.

193. That the Agency Defendants' failure to disclose The Adk Council and Lorey's ex parte communication upon its receipt violates 9 N.Y.C.R.R. §581-4.12 and SAPA §307 (2), and constitutes grounds for sanctions and penalties under Public Officers Law §74.

194. That there was other, ongoing, improper and undisclosed ex parte communication between the Agency Defendants and other members or employees of APA and persons outside APA, including the Environmentalists, in connection with issues of law and fact involved in the APA administrative enforcement proceeding E2007-47 against plaintiffs in direct violation of 9 N.Y.C.R.R. § 581-4.12 and SAPA §307 (2) and Public Officers Law §74.

195. That, as a result of the conduct of defendants complained of herein, plaintiffs were damaged in that they (1) were caused to incur substantial professional services fees and attorneys' fees and other costs and expenses to defend against the frivolous APA administrative enforcement proceeding E2007-47, (2) suffered the loss of enjoyment and use of the Premises, (3) suffered a substantial diminution of the fair market value of the Premises, (4) suffered a substantial loss of future profits or income to be derived from the Premises as plaintiffs' plans to subdivide and sell portions of the Premises were thwarted or impeded due to APA administrative enforcement proceeding E2007-47 and the allegations made therein, (5) suffered damages to their personal and business reputations, and (6) were deprived of their livelihood.

196. That defendants anticipated, had knowledge of, and intended the damages incurred by plaintiffs as alleged herein.

197. That, in the fall of 2009, after more than two years of prosecuting plaintiffs in APA administrative enforcement proceeding E2007-47, the Agency Defendants discontinued the proceeding with prejudice, after plaintiffs filed a motion to dismiss alleging violations of Public Officers Law §74 and applicable ex parte rules, and alleging collusion between the Agency Defendants and the Environmentalists in the prosecution of plaintiffs.

198. That over the course of a few days immediately following the filing of the motion, but before discontinuing the proceeding, plaintiffs' counsel received several emails and voice-mail messages from Van Cott during both business and non-business hours.

199. That the emails and voice-mail messages from Van Cott to plaintiffs' counsel were threats or attempts by Van Cott to intimidate plaintiffs and their counsel and prevent plaintiffs and their counsel from going forward with their motion to dismiss and shedding light on the unlawful conduct of the Agency Defendants, and an attempt to force plaintiffs to enter into another settlement agreement and admit some wrongdoing.

200. That the Environmentalists had a symbiotic relationship with the Agency Defendants to be considered State actors acting under the color of law when conducting themselves the way they did as alleged herein.

CAUSES OF ACTION

As And For A First Cause of Action Against All Defendants Selective Enforcement and Denial of Due Process and Equal Protection Under the Law (Violations of Fourteenth Amendment)

201. That plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though each were fully set forth herein.

202. That, upon information and belief and at all times herein mentioned, defendants were acting under color of law, as State actors specifically under color of the constitution, statutes, rules, regulations, customs and usages of the state of New York and pursuant to their authority as public officers and in the regular course of employment with APA.

203. That all persons similarly situated must be treated alike by State governments and their agencies, divisions and employees and representatives.

204. That compared with other persons similarly situated with plaintiffs, plaintiffs were selectively and adversely treated different by defendants and such treatment was based on an intent by defendants to inhibit or punish the exercise of the Constitutional rights by plaintiffs and otherwise motivated by defendants' malicious and bad faith intent to injure, punish and harass plaintiffs and the Agency Defendants intent and desire to appease and give favor to the Environmentalists.

205. That others similarly situated with plaintiffs who allegedly violate an enforcement settlement agreement entered into with APA are treated differently in that such other persons are ultimately subject to another administrative enforcement proceeding wherein the settlement agreement is acknowledged and recognized and the similarly situated person is specifically charged with violating the settlement agreement in an APA administrative enforcement proceeding, but nonetheless given the benefits of the settlement agreement.

206. That, here, plaintiffs, unlike others similarly situated, were subjected to the commencement and continual prosecution of an administrative enforcement proceeding wherein the Agency Defendants ignored, disregarded and considered null and void the Settlement Agreement as a part of all defendants' unlawful, illegitimate and improper plan or scheme to prosecute plaintiffs again for the same alleged violations in the APA administrative enforcement proceeding E2005-200 and force plaintiffs to stop lawful development or otherwise exercise their bundle of rights as owners of the Premises.

207. That there is no rational basis for the foregoing difference in treatment.

208. That in the manner stated above, each of the defendants, jointly and severally, acting maliciously, willfully and wantonly, and outside the scope of their lawful authority, although under color of law and acting as State actors, deprived plaintiffs of rights secured to them by the Constitution and laws of the United States, including but not limited to their Fourteenth Amendment rights to due process of law and equal protection under the law, their Fourth Amendment right to be free from unjustified and excessive force utilized by government, their Fourth Amendment right to be free from unlawful search of property, their Fourth and Fourteenth Amendment rights to be apprised of the specific nature of the charges against them, and other rights secured by the provisions of the Constitution of the United States of America, by Title 42 United States Code §§1983 and 1985, and by the constitution, statutes and laws of the state of New York.

209. That plaintiffs in no way instigated, caused or contributed to the complained of conduct.

210. That at all times herein mentioned, plaintiffs conducted themselves in a prudent, peaceful and lawful manner.

211. That at all times herein mentioned APA, Stiles, Wray, Banta and other supervisory personnel of APA were aware of and approved, caused, condoned and ratified the complained of conduct committed by the defendants and their agents, servants and employees.

212. That the intentional, malicious and grossly reckless failure by APA, Stiles, Wray and Banta to intervene or deter the unjust, wrongful and illegal, selective enforcement and deprivation of due process and plaintiffs' equal protections under the law constitutes an intentional, reckless and callously indifferent breach of their duty to do so under the Constitution of the United States and 42 U.S.C. §1983.

213. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

214. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, plaintiffs demand judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For A Second Cause Of Action Against All Defendants
Illegal Search of Property and Denial of Due Process and Equal Protection Under The Law
(Violations of Fourth and Fourteenth Amendments)**

215. That plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though each were fully set forth herein.

216. That defendants, under the color of law and acting as State actors, subjected plaintiffs to a deprivation of their rights and privileges secured by the Constitution and laws.

217. That defendants violated the due process clause of the Fourteenth Amendment of the U.S. Constitution by commencing and prosecuting APA administrative enforcement proceeding E2007-47 to enforce alleged wetlands violations by plaintiffs without justifiable cause, factual cause, legal cause or legal authority to support such enforcement action, and defying the Settlement Agreement.

218. That defendants violated plaintiffs' Fourteenth Amendment rights to due process of law and equal protection under the law, their Fourth Amendment right to be free from unjustified and excessive force utilized by government, their Fourth Amendment right to be free from unlawful search of property and other civil rights of plaintiffs and laws by searching the

Premises (plaintiffs' property) unlawfully, without a warrant or judicial decree from a court of competent jurisdiction, and without permission from plaintiffs.

219. That defendants violated plaintiffs' Fourteenth Amendment rights to due process of law and equal protection under the law, their Fourth Amendment right to be free from unjustified and excessive force utilized by government, their Fourth Amendment right to be free from unlawful search of property and other civil rights of plaintiffs and laws by not disclosing the improper, unlawful and ex parte communications had between the Agency Defendants and the Environmentalists, and the identification of complainants the Agency Defendants alleged existed and were making accusations against plaintiffs.

220. That defendants' commencement and continual prosecution of APA administrative enforcement proceeding E2007-47 against plaintiffs for alleged wetlands violations was unjustified, arbitrary and capricious, driven by vindictive and malicious, and later retaliatory motives of defendants to harass, harm and cause injury to or punish plaintiffs and to appease and give favor to the Environmentalists.

221. That defendants violated the due process clause of the Fourteenth Amendment of the U.S. Constitution by conspiring and scheming with each other to use APA administrative enforcement proceeding E2007-47 to harm, harass and oppress plaintiffs, by authorizing and seeking to enforce the alleged wetlands violations by plaintiffs after the same violations were resolved in the Settlement Agreement, while all times relevant having knowledge that plaintiffs did not breach the Settlement Agreement or commit the violations alleged.

222. That, as set forth herein, the defendants, independently and conspiring with each other, caused or authorized duplicative filings or commencements of APA administrative enforcement proceedings against plaintiffs for the same or similar conduct arising out of the

same or similar facts and circumstances ignoring well-established law and principles of issue preclusion, claim preclusion, collateral estoppel, res judicata, contract law, and the Constitutional freedom guarantees afforded plaintiffs.

223. That said re-filing and duplicative prosecution of the administrative enforcement proceedings by defendants against plaintiffs violated fundamental principles of liberty and justice for plaintiffs that are protected by the procedural and substantive due process clause(s) of the Fourteenth Amendment of the U.S. Constitution.

224. That, in light of the Settlement Agreement and the facts and circumstances surrounding the Premises and plaintiffs' conduct, defendants' filing and prosecuting of APA administrative enforcement proceeding E2007-47 was arbitrary, capricious, so egregious, and so outrageous, that it may fairly be said to shock the contemporary conscience.

225. That in the manner stated above, each of the defendants, jointly and severally, acting maliciously, willfully and wantonly, and outside the scope of their lawful authority, although under color of law and as State actors, deprived plaintiffs of rights secured to them by the Constitution and laws of the United States, including but not limited to their Fourteenth Amendment rights to due process of law and equal protection under the law, their Fourth Amendment right to be free from unjustified and excessive force utilized by government, their Fourth Amendment right to be free from unlawful search of property, their Fourth and Fourteenth Amendment rights to be apprised of the specific nature of the charges against them, and other rights secured by the provisions of the Constitution of the United States of America, by Title 42 United States Code §§1983 and 1985, and by the constitution, statutes and laws of the state of New York.

226. That plaintiffs in no way instigated, caused or contributed to the complained of conduct.

227. That at all times herein mentioned, plaintiffs conducted themselves in a prudent, peaceful and lawful manner.

228. That at all times herein mentioned APA, Stiles, Wray, Banta and other supervisory personnel of APA were aware of and approved, caused, condoned and ratified the complained of conduct committed by defendants and their agents, servants and employees.

229. That the intentional, malicious and grossly reckless failure to intervene or deter the unjust, wrongful and illegal actions of defendants by APA, Stiles, Wray and Banta constitutes an intentional, reckless and callously indifferent breach of their duty to do so under the U.S. Constitution and 42 U.S.C. §1983.

230. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

231. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, plaintiffs demand judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For A Third Cause Of Action Against All Defendants
Malicious Prosecution of APA Enforcement Proceeding
(42 U.S.C. §1983)**

232. That plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though each were fully set forth herein.

233. That defendants, under the color of law and as State actors, subjected plaintiffs to a deprivation of their rights and privileges secured by the Constitution and laws of the United States and the State of New York with the commencement of the unjustified, meritless and unsubstantiated administrative enforcement proceeding (E2007-47).

234. That despite easily obtainable and irrefutable proof of plaintiffs' innocence and compliance with Settlement Agreement, defendants initiated an unlawful prosecution and continued to use the APA administrative enforcement process in furtherance of their unlawful and malicious prosecution of plaintiffs to further harm plaintiffs despite having knowledge that there was no actual evidence or lawful cause for continuing said unlawful and malicious prosecution.

235. That defendants, acting individually and severally, each failed to sufficiently investigate whether plaintiffs committed the wetlands violations alleged in E2007-47, and instead acted under color of law and as State actors to knowingly accuse, charge, impose and prosecute false wetlands violations against plaintiffs in a manner intended to do harm to plaintiffs without excuse or justification, and for the Agency Defendants to appease and give favor to the Environmentalists.

236. That as a direct result of the unlawful and malicious prosecution, Douglas suffered continued emotional damage, including prolonged stress and anxiety, fear, humiliation

and frustration as a result of being unlawfully forced to defend against said false and maliciously imposed allegations of violations of wetlands rules and regulations, in violation of his rights, privileges and immunities guaranteed by the U.S. Constitution and various rights, privileges and immunities guaranteed under the constitution and laws of the state of New York.

237. That as a direct result of unlawful and malicious prosecution, plaintiffs suffered financial harm and injury and their ability to sell, in whole or in part, the Premises was impeded by the pending APA administrative enforcement proceeding E2007-47, making the Premises' title unmarketable.

238. That APA administrative enforcement proceeding E2007-47 against plaintiffs terminated in their favor.

239. That defendants lacked any reasonable, justifiable or probable cause to commence and then continue APA administrative enforcement proceeding E2007-47.

240. That defendants' motivation to prosecute plaintiffs was actual malice and driven by the Agency Defendants' desire to appease and give favor to the Environmentalists, defendants' desire to retaliate and punish Douglas for removing or directing Miller off the Premises when Miller was trespassing thereon and Douglas' alleged altercation with Houseal at a town meeting, and driven by defendants' desire to force plaintiffs to stop unlawful development plans and subdividing of the Premises, and to force plaintiffs to relinquish ownership of the Premises (by way of a distressed sale) to the Environmentalists, the Nature Conservancy, State of New York or a third-party who would not develop or subdivide the Premises, in total indifference and disregard for plaintiffs or their rights.

241. That defendants acted wrongly, and prosecuted plaintiffs for improper and illegitimate reasons and motives thereby denying plaintiffs substantive due process, equal

protection under the law, protections from unlawful search of property, and denial of other Constitutional and civil rights.

242. That the illegal search of the Premises, the commencement of the unsubstantiated APA administrative enforcement proceeding E2007-47 against plaintiffs and the prosecution of same by defendants, and all of the other wrongful, unjust and unlawful acts conducted against plaintiffs by defendants within the context of APA administrative enforcement proceeding E2007-47 as alleged herein, were done without justification, without a warrant or reasonable cause, in breach of standard APA policies and laws relating to APA enforcement investigation and prosecutions, the rules of ethics governing public officers, attorneys and prosecutors, and in violation of plaintiffs' Constitutional and civil rights under federal and state laws.

243. That as a direct result of said malicious prosecution, defendants unlawfully shifted the burden of proof onto plaintiffs, who suffered continued emotional damage, including prolonged stress and anxiety, fear, humiliation and frustration as a result of being unlawfully forced to defend against the meritless charges which were intentionally filed and maintained by defendants.

244. That plaintiffs did not consent to the commission of aforesaid conduct and actions against him, nor was said conduct and actions otherwise legal, authorized or privileged.

245. That no legal basis existed for the aforesaid conduct and actions taken against plaintiffs.

246. That plaintiffs in no way instigated, caused or contributed to the complained of conduct and actions against them.

247. That at all times herein mentioned, plaintiffs conducted themselves in a prudent, peaceful and lawful manner.

248. That by reason of the aforesaid conduct and actions against plaintiffs, they have suffered harm, damages and injury, including emotional and mental distress and financial losses.

249. That in the manner stated above, each of the defendants, jointly and severally, acting maliciously, willfully and wantonly, and outside the scope of their lawful authority, although under color of law and as State actors, deprived plaintiffs of rights secured to them by the Constitution and laws of the United States, including but not limited to their Fourteenth Amendment rights to due process of law and equal protection under the law, their Fourth Amendment right to be free from unjustified and excessive force utilized by government, their Fourth Amendment right to be free from unlawful search of property, their Fourth and Fourteenth Amendment rights to be apprised of the specific nature of the charges against them, and other rights secured by the provisions of the Constitution of the United States of America, by Title 42 United States Code §§1983 and 1985, and by the constitution, statutes and laws of the state of New York.

250. That at all times herein mentioned APA, Stiles, Wray, Banta and other supervisory personnel of APA were aware of and approved, caused, condoned and ratified the complained of conduct committed by defendants and their agents, servants and employees.

251. That the intentional, malicious and grossly reckless failure to intervene or deter the unjust, wrongful and illegal actions of defendants by APA, Stiles, Wray and Banta constitutes an intentional, reckless and callously indifferent breach of their duty to do so under the U.S. Constitution and 42 U.S.C. §1983.

252. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

253. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, plaintiffs demand judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For A Fourth Cause Of Action Against All Defendants
Malicious Prosecution Under State Law of APA Enforcement Proceeding
(State Law Claim)**

254. That plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though each were fully set forth herein.

255. That defendants initiated and prosecuted APA administrative enforcement proceeding E2007-47 against plaintiffs which ended in plaintiffs' favor and which was entirely lacking in probable cause and motivated by malice.

256. That plaintiffs suffered special injuries and damages beyond attorneys' fees and legal costs as a result of the defendants' malicious prosecution of plaintiffs, including but not limited to interference with plaintiffs' rights to sell, use, enjoy and develop the Premises, interference with plaintiffs' livelihood, and injuries and damages to plaintiffs' business and personal reputations and character in the community.

257. That despite easily obtainable and irrefutable proof of plaintiffs' innocence and compliance with Settlement Agreement, defendants initiated an unlawful prosecution and continued to use the APA administrative enforcement process in furtherance of their unlawful and malicious prosecution of plaintiffs to further harm plaintiffs despite having knowledge that

there was no actual evidence or lawful cause for continuing said unlawful and malicious prosecution.

258. That defendants, acting individually and severally, each failed to sufficiently investigate whether plaintiffs committed the wetlands violations alleged in E2007-47, and instead accused, charged, imposed and prosecuted false wetlands violations against plaintiffs in a manner intended to do harm plaintiffs without excuse or justification, and for the Agency Defendants to appease and give favor to the Environmentalists.

259. That defendants' motivation to prosecute plaintiffs was actual malice and driven by the Agency Defendants' desire to appease and give favor to the Environmentalists, defendants' desire to retaliate and punish Douglas for removing or directing Miller off the Premises when Miller was trespassing thereon and for Douglas' alleged altercation with Houseal, and driven by defendants' desire to impede plaintiffs' livelihood, to force plaintiffs to stop unlawful developmental plans and subdividing of the Premises and to force plaintiffs to relinquish ownership of the Premises (by way of a distressed sale) to the Environmentalists, the Nature Conservancy, State of New York, or a third-party who would not develop or subdivide the Premises, in total indifference and disregard for plaintiffs or their rights.

260. That the illegal search of the Premises, the commencement of the unsubstantiated APA administrative enforcement proceeding E2007-47 against plaintiffs and the prosecution of same by defendants and all of the other wrongful, unjust and unlawful acts conducted against plaintiffs by defendants within the context of APA administrative enforcement proceeding E2007-47 as alleged herein were done without justification, without a warrant or reasonable cause, in breach of standard APA policies and laws relating to APA enforcement investigation

and prosecutions, the rules of ethics governing public officers, attorneys and prosecutors, and in violation of plaintiffs' Constitutional and civil rights under federal and state laws.

261. That at all times herein mentioned APA, Stiles, Wray, Banta and other supervisory personnel of APA were aware of and approved, caused, condoned and ratified the complained of conduct committed by the Agency Defendants and their agents, servants and employees.

262. That the intentional, malicious and grossly reckless failure to intervene or deter the unjust, wrongful and illegal actions of defendants by APA, Stiles, Wray and Banta constitutes an intentional, reckless and callously indifferent breach of their duty to do so.

263. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

264. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, plaintiffs demand judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For A Fifth Cause Of Action Against All Defendants
Abuse of Process of APA Enforcement Proceeding and Criminal Action
(42 U.S.C. §1983)**

265. That plaintiff repeats and reiterates each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though each were fully set forth herein.

266. That the opening of APA enforcement file E2007-47 and commencement and prosecution of APA administrative enforcement proceeding E2007-47 and the other wrongful acts conducted against plaintiffs by defendants as alleged herein constitute an abuse of process, abuse of authority, breach of standard APA enforcement procedures, and ethical and professional standards, violations of numerous state and federal laws and Constitutional rights guaranteed by federal and state laws to plaintiffs.

267. That said abuse of process is further evidenced by defendants' refusal to adequately investigate plaintiffs' conduct on the Premises in connection with the alleged wetlands thereon, the circumstances and facts of the alleged violations filed against plaintiffs, and defendants' failure to properly review, supervise and investigate the actions of the Agency Defendants and the Environmentalists.

268. That defendants failed to investigate and verify both the veracity of plaintiffs' repeated claims that they had not violated the Settlement Agreement or committed wetlands violations, and the overwhelming and easily obtainable evidence supporting plaintiffs' innocence.

269. That defendants failed to investigate and verify the veracity of those witnesses who stated plaintiffs had complied with the Settlement Agreement and did not violate any wetlands regulations

270. That defendants intentionally prevented and delayed plaintiffs' defense counsel from obtaining the identification of witnesses and alleged complainants and the exculpatory information or evidence available to defendants in an effort to prevent plaintiffs' counsel from preparing an adequate defense in violation of plaintiffs' Constitutional rights to due process and to be apprised of the true nature of all charges against them.

271. That defendants intentionally prevented and delayed plaintiffs' defense counsel from obtaining communication between the Agency Defendants and the Environmentalists in an effort to prevent plaintiffs' counsel from preparing an adequate defense in violation of plaintiffs' Constitutional rights to due process and to be apprised of the true nature and reasons behind the charges against them.

272. That defendants intentionally used APA administrative enforcement proceeding E2007-47 as a motive, excuse and justification to unlawfully enter upon and trespass upon the Premises to in an attempt to illegally search to find violations of New York Executive Law Article 27 and Environmental Conservation Law Articles 15 and 24.

273. That the Agency Defendants intentionally and unlawfully caused an unsubstantiated and baseless criminal complaint to be filed in Town of Black Brook Justice Court to intimidate, harass, harm and cause injury to plaintiffs as retaliation for Douglas' removal Miller from the Premises on September 6, 2007.

274. That defendants, acting individually and severally, under color of law and as State actors knowingly imposed and continue to impose baseless accusations against plaintiffs and prosecuted plaintiffs in APA administrative enforcement proceeding E2007-47 notwithstanding the Settlement Agreement and conclusive proof and evidence of their innocence within their possession.

275. That defendants employed regularly issued administrative enforcement process against plaintiffs in violation of well established ethical and professional standards relating to their employment with APA, and in violation of rights, privileges and immunities guaranteed by the U.S. Constitution and various rights, privileges and immunities guaranteed under the

constitution and laws of the state of New York in a manner evidencing malice, gross negligence and recklessness.

276. That in furtherance of defendants' unlawful intentions, lawful administrative enforcement processes were perverted by all defendants to obtain a collateral objective of harassing and oppressing plaintiffs, to impede plaintiffs' livelihood, to severally reduce the fair market value of the Premises to force plaintiffs to sell or relinquish ownership of the Premise, under distress, to either the Environmentalists, the Nature Conservancy, the State of New York, or a third-party who would not subdivide or develop the Premises, to appease and give favor to the Environmentalists, to punish and intimidate Douglas for removing Miller from the Premises while found trespassing, to punish and intimidate Douglas for an alleged altercation with Houseal, to stop the lawful subdividing and development of the Premises, and to lend favor to Ruder, as a neighbor of plaintiffs, all in violation of well established ethical and professional standards relating to their employment with APA and various rights, privileges and immunities guaranteed by the First, Fourth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution and various rights, privileges and immunities guaranteed under the constitution and laws of the state of New York.

277. That said actions were done in a manner evidencing malice, gross negligence and/or recklessness without excuse or justification.

278. That in addition to the abuse of process in the context of APA administrative enforcement proceeding E2007-47, the Agency Defendants performed an abuse of process by intentionally filing of a criminal complaint and subsequent pursuit of the criminal action against Douglas in the Town of Black Brook Justice Court, with malice, for the improper, collateral objective to intimidate plaintiffs, cover-up Miller's trespassing on the Premises, and force to

plaintiffs to acquiesce and admit guilt in the ongoing APA administrative enforcement proceeding E2007-47.

279. That as a direct result of said abuses of process, plaintiffs have suffered emotional damage, including prolonged stress and anxiety, fear, humiliation and frustration, and significant financial injury and loss as a result of their rights as owners of the Premises being deprived, and being unlawfully forced to clear plaintiffs of said false and maliciously imposed enforcement proceeding and criminal action.

280. That plaintiffs did not consent to the commission of the aforesaid conduct and actions against them.

281. That no reasonable basis existed for the aforesaid conduct and actions against plaintiffs.

282. That plaintiffs in no way instigated, caused or contributed to the complained of conduct and actions against them.

283. That at all times herein mentioned plaintiffs conducted themselves in a prudent, peaceful and lawful manner.

284. That at all times herein mentioned APA, Stiles, Wray, Banta and other supervisory personnel of APA were aware of and approved, caused, condoned and ratified the complained of conduct committed by the Agency Defendants and their agents, servants and employees.

285. That the intentional, malicious and grossly reckless failure to intervene or deter the unjust, wrongful and illegal actions of defendants by APA, Stiles, Wray and Banta constitutes an intentional, reckless and callously indifferent breach of their duty to do so under the U.S. Constitution and 42 U.S.C. §1983.

286. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

287. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, plaintiffs demand judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For A Sixth Cause Of Action Against All Defendants
Abuse of Process of APA Enforcement Proceeding and Criminal Action
(State Law Claim)**

288. That plaintiff repeats and reiterates each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though each were fully set forth herein.

289. That the opening of APA enforcement file E2007-47 and commencement and prosecution of APA administrative enforcement proceeding E2007-47 and the other wrongful acts conducted against plaintiffs by defendants as alleged herein constitute an abuse of process, abuse of authority, breach of standard APA enforcement procedures, and ethical and professional standards, violations of numerous state and federal laws and violated Constitutional rights guaranteed by federal and state laws to plaintiffs.

290. That said abuse of process is further evidenced by defendants' refusal to adequately investigate plaintiffs' conduct on the Premises in connection with the alleged wetlands thereon, the circumstances and facts of the alleged violations accused and filed against

plaintiffs, and to properly review, supervise and investigate the actions of the Agency Defendants and other APA employees and involvement of the Environmentalists.

291. That defendants failed to investigate and verify both the veracity of plaintiffs' repeated claims that they had not violated the Settlement Agreement or committed wetlands violations, and the overwhelming and easily obtainable evidence supporting plaintiffs' innocence.

292. That defendants failed to investigate and verify the veracity of those witnesses who stated plaintiffs had complied with the Settlement Agreement and did not violate any wetlands regulations.

293. That defendants intentionally prevented and delayed plaintiffs' defense counsel from obtaining the identification of witnesses and alleged complainants and the exculpatory information or evidence available to defendants in an effort to prevent plaintiffs' counsel from preparing an adequate defense in violation of plaintiffs' Constitutional rights to due process and to be apprised of the true nature of all charges against them.

294. That the Agency Defendants intentionally prevented and delayed plaintiffs' defense counsel from obtaining communication between the Agency Defendants and the Environmentalists in an effort to prevent plaintiffs' counsel from preparing an adequate defense in violation of plaintiff's Constitutional rights to due process and to be apprised of the true nature of, and reasons behind, all charges against them.

295. That defendants intentionally used APA administrative enforcement proceeding E2007-47 as a motive, excuse and justification to unlawfully enter upon and trespass upon the Premises to in an attempt to search and find violations of New York Executive Law Article 27 and Environmental Conservation Law Articles 15 and 24.

296. That the Agency Defendants intentionally and unlawfully caused an unsubstantiated and baseless criminal complaint to be filed in Town of Black Brook Justice Court to intimidate, harass, harm and cause injury to plaintiffs as retaliation for Douglas removing Miller from the Premises.

297. That defendants, acting individually and severally, under color of law knowingly imposed and continue to impose baseless accusations against plaintiffs and prosecuted plaintiffs in APA administrative enforcement proceeding E2007-47 notwithstanding the Settlement Agreement and conclusive proof and evidence of their innocence within their possession.

298. That defendants employed regularly issued administrative enforcement process against plaintiffs in violation of well established ethical and professional standards relating to their employment with APA, and in violation of rights, privileges and immunities guaranteed by the U.S. Constitution and various rights, privileges and immunities guaranteed under the constitution and laws of the state of New York in a manner evidencing malice, gross negligence and recklessness.

299. That in furtherance of defendants' unlawful intentions, lawful administrative enforcement processes were perverted by all defendants to obtain a collateral objective of harassing and oppressing plaintiffs, to impede plaintiffs' livelihood, to severally reduce the fair market value of the Premises to force plaintiffs to sell or relinquish ownership of the Premise, under distress, to either the Environmentalists, the Nature Conservancy, the State of New York, or a third-party who would not subdivide or develop the Premises, to appease and give favor to the Environmentalists, to punish and intimidate Douglas for removing Miller from the Premises while found trespassing, and for Douglas' alleged altercation with Houseal, to stop the lawful subdividing and development of the Premises, and to lend favor to Ruder, as a neighbor of

plaintiffs, all in violation of well established ethical and professional standards relating to their employment with APA and various rights, privileges and immunities guaranteed by the First, Fourth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution and various rights, privileges and immunities guaranteed under the constitution and laws of the state of New York.

300. That said actions were done in a manner evidencing malice, gross negligence and recklessness without excuse or justification.

301. That in addition to the abuse of process in the context of APA administrative enforcement proceeding E2007-47, the Agency Defendants performed an abuse of process by intentionally filing of a criminal complaint and subsequent pursuit of the criminal action against Douglas in the Town of Black Brook Justice Court, with malice, for the improper, collateral objective to intimidate plaintiffs, cover-up Miller's trespassing on the Premises, and force to plaintiffs to acquiesce and admit guilt in the ongoing APA administrative enforcement proceeding E2007-47.

302. That as a direct result of said abuses of process, plaintiffs have suffered emotional damage, including prolonged stress and anxiety, fear, humiliation and frustration, and significant financial injury and loss as a result of their rights as owners of the Premises being deprived, and being unlawfully forced to clear plaintiffs of said false and maliciously imposed enforcement proceeding and criminal action.

303. That plaintiffs did not consent to the commission of aforesaid conduct and actions against them.

304. That no reasonable basis existed for the aforesaid conduct and actions against plaintiffs.

305. That plaintiffs in no way instigated, caused or contributed to the complained of conduct and actions against them.

306. That at all times herein mentioned plaintiffs conducted themselves in a prudent, peaceful and lawful manner.

307. That at all times herein mentioned APA, Stiles, Wray, Banta and other supervisory personnel of APA were aware of and approved, caused, condoned and ratified the complained of conduct committed by defendants and their agents, servants and employees.

308. That the intentional, malicious and grossly reckless failure to intervene or deter the unjust, wrongful and illegal actions of defendants by APA, Stiles, Wray and Banta constitutes an intentional, reckless and callously indifferent breach of their duty to do so under the U.S. Constitution and 42 U.S.C. §1983.

309. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

310. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, plaintiffs demand judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For A Seventh Cause Of Action Against the Agency Defendants
Intentional/Reckless Supervisory Misconduct
(42 U.S.C. §1983)**

311. That plaintiff repeats and reiterates each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though each were fully set forth herein.

312. That the Agency Defendants failed or refused to adequately instruct, teach, direct or supervise each other and APA's agents and employees in their duties and responsibilities as they related to the proper methods of protecting the civil rights of landowners and respondents subject to enforcement proceeding, and such failure or refusal, in view of the multitudinous historical occurrences of such unlawful and grossly negligent and reckless supervisory behavior, indicates a calculated and systemic pattern of deliberate indifference to the rights of citizens and residents of the Adirondack Park without remedial and rudimentary investigation.

313. That said failure to properly supervise each other and APA's agents and employees was done in a manner evidencing malice, gross negligence and recklessness without excuse or justification.

314. That as a direct result of said unlawful and unconstitutional activities, plaintiffs suffered continued emotional damage, including prolonged stress and anxiety, fear, humiliation and frustration, deprivation of their livelihood, and significant financial injury and loss due to being unlawfully subjected to a baseless enforcement proceeding, illegal search of property, baseless criminal action, and the other conduct complained of herein.

315. That the intentional, malicious and grossly reckless failure to supervise, intervene or deter the unjust, wrongful and illegal actions of defendants by APA, Stiles, Wray and Banta

constitutes an intentional, reckless and callously indifferent breach of their duty to do so under the U.S. Constitution and 42 U.S.C. §1983.

316. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

317. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, plaintiffs demand judgment against the Agency Defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against said defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For An Eighth Cause Of Action Against All Defendants
Conspiracy
(42 U.S.C. §§1983 and 1985)**

318. That plaintiff repeats and reiterates each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though each were fully set forth herein.

319. That the Agency Defendants and the Environmentalists conspired together, acted in concert and schemed and planned together the illegal search of plaintiffs' property, the abuses of process alleged herein, violations of plaintiffs' Constitutional and civil rights alleged herein and the malicious prosecutions and other wrongful, unjust and unlawful acts conducted against plaintiffs alleged herein.

320. That the illegal search, abuses of process, violations of plaintiffs' Constitutional and civil rights, malicious prosecutions and other wrongful, unjust and unlawful acts conducted against plaintiffs as alleged herein were done without justification and said actions or conduct

were performed or attempted in furtherance of a conspiracy by the Agency Defendants and the Environmentalists, in a manner evidencing malice, gross negligence and recklessness without excuse or justification.

321. That defendants conspired to interfere with plaintiffs' civil rights and impede, hinder, obstruct and defeat the due course of justice with the intent to deny plaintiffs equal protection of the laws and due process, and to injure plaintiffs and deprive them of having and exercising their rights and privileges as a citizen of the United States.

322. That defendants conduct complained herein is actionable under 42 U.S.C. §1985 (3).

323. That the aforesaid conspiratorial conduct and actions of defendants were intentionally and purposefully performed or attempted to harm, harass, oppress, punish, injure and damage plaintiffs.

324. That by reason of the aforesaid conspiratorial conduct and actions of defendants, deprived plaintiffs of substantive and procedural due process and equal protections under the law and subjected plaintiffs to unlawful search of property, emotional and mental distress, financial injury and loss, and loss of livelihood.

325. That by reason of the aforesaid conspiracy against plaintiffs, they demand judgment, pursuant to 42 U.S.C. §§1983 and 1985, against all defendants in the sum of SEVEN MILLION DOLLARS (\$7,000,000.00), together with punitive and exemplary damages against all defendants acting in their personal capacities in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs.

**As And For A Ninth Cause Of Action Against All Defendants
Intentional/Reckless Infliction of Emotional Distress
(State Law Claim)**

326. That plaintiff repeats and reiterates each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though each were fully set forth herein.

327. That the acts of all defendants were egregious, willful, wanton, malicious and oppressive, and were motivated by a desire to harm plaintiffs with complete disregard for plaintiffs' well being and were based on a lack of concern and ill-will towards plaintiffs.

328. That defendants' conduct alleged here in was extreme and outrageous conduct against plaintiffs.

329. That defendants had the intent to cause, or the disregard of a substantial probability of causing, severe emotional distress for Douglas.

330. That defendants' conduct caused Douglas severe emotional distress and mental anguish, with attending physical ailments and injuries.

331. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

332. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, Douglas demand judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For A Tenth Cause Of Action Against All Defendants
Prima Facie Tort
(State Law Claim)**

333. That plaintiff repeats and reiterates each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though each were fully set forth herein.

334. That the acts of all defendants were egregious, willful, wanton, malicious and oppressive and were motivated by a desire to harm plaintiffs with complete disregard for plaintiffs' well being and were based on a lack of concern and ill-will towards plaintiffs.

335. That defendants' conduct alleged here in was extreme and outrageous conduct against plaintiffs.

336. That defendants had the intent to cause, or the disregard of a substantial probability of causing injury or harm to plaintiffs.

337. That defendants conduct alleged herein was done intentionally to inflict plaintiffs with harm and without justification.

338. That as a result of defendants' intentional infliction of harm plaintiffs were indeed harmed and sustained special damages such as deprivation of their livelihood, and other significant financial injury and loss due to being unlawfully subjected to a baseless enforcement proceeding, illegal search of property, a baseless criminal action, and the inability to sell the Premises, in whole or in part, or develop the Premises.

339. That by reason of the aforesaid conduct and actions against plaintiffs and its resulting effects, plaintiffs demand judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against

all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For An Eleventh Cause Of Action Against The Agency Defendants
Breach of Contract
(State Law Claim)**

340. That plaintiff repeats and reiterates each and every allegation contained in the foregoing paragraphs of this complaint with the same force and effect as though each were fully set forth herein.

341. That the Agency Defendants had a valid contract with plaintiffs referred to herein as the Settlement Agreement.

342. That the Agency Defendants materially breached and completely disregarded the Settlement Agreement.

343. That as a result of the Agency Defendants' breach of the Settlement Agreement plaintiffs suffered and sustained consequential and actual damages, including significant financial losses, including attorneys' fees and loss of income and livelihood due to not being able to sell the Premises.

344. That by reason of the aforesaid breach of contract, and its resulting effects, plaintiffs demand judgment against the Agency Defendants in the sum of THREE MILLION ONE HUNDRED THOUSAND DOLLARS (\$3,100,000.00).

**As And For A Twelfth Cause Of Action Against The Agency Defendants
Malicious Prosecution of Criminal Action
(42 U.S.C. §1983)**

345. That plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though each were fully set forth herein.

346. That the Agency Defendants, acting under color of law and as State actors, with malice, caused an unsubstantiated and baseless criminal complaint to be filed in Town of Black Brook Justice Court to intimidate, harass, harm and cause injury to plaintiffs as retaliation for Douglas removing Miller from the Premises on September 6, 2007 and for their dislike of Douglas and personal animus against Douglas.

347. That the Agency Defendants, with malice, caused the filing of a criminal complaint and the criminal prosecution of Douglas without probable cause or justification.

348. That the criminal action terminated in favor of Douglas.

349. That as a direct result of the unlawful and malicious prosecution, Douglas suffered continued emotional damage, including prolonged stress and anxiety, fear, humiliation and frustration as a result of being unlawfully forced to defend against said false and maliciously imposed criminal charges that he had threatened, assaulted or harassed Miller in violation of his rights, privileges and immunities guaranteed by the U.S. Constitution and various rights, privileges and immunities guaranteed under the constitution and laws of the state of New York.

350. That as a direct result of unlawful and malicious criminal filing and prosecution, Douglas suffered personal, physical and emotional injuries.

351. That the Agency Defendants' motivation to prosecute plaintiffs was actual malice and driven by the Agency Defendants' desire to appease and give favor to the Environmentalists, the Agency Defendants' desire to retaliate and punish Douglas for removing or directing Miller off the Premises when Miller was trespassing thereon, to intimidate plaintiffs to acquiesce in the administrative enforcement proceeding and driven by the Agency Defendants' desire to force plaintiffs to stop unlawful developmental plans and subdividing of the Premises and/or to force plaintiffs to relinquish ownership of the Premises (by way of a distressed sale) to the

Environmentalists, the Nature Conservancy, State of New York or a third-party who would not develop or subdivide the Premises, in total indifference and disregard for plaintiffs or their rights.

352. That at all times herein mentioned APA, Stiles, Wray, Banta and other supervisory personnel of APA were aware of and approved, caused, condoned and ratified the complained of conduct committed by the Agency Defendants and their agents, servants and employees.

353. That the intentional, malicious and grossly reckless failure to intervene or deter the unjust, wrongful and illegal actions of the Agency Defendants by APA, Stiles, Wray and Banta constitutes an intentional, reckless and callously indifferent breach of their duty to do so under the U.S. Constitution and 42 U.S.C. §1983.

354. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

355. That by reason of the aforesaid conduct and actions against Douglas and its resulting effects, Douglas demands judgment against the Agency Defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against said defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs.

**As And For A Thirteenth Cause Of Action Against All Defendants
(Violation of First Amendment Rights)**

356. That plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though each were fully set forth herein.

357. That defendants, under the color law and as State actors, subjected plaintiffs to a deprivation of their rights and privileges secured by the Constitution, and the First Amendment and the laws enacted thereunder.

358. That defendants subjected plaintiffs to APA administrative enforcement proceeding E2007-47 and the criminal action in the Town of Black Brook Justice Court to punish or cause injury to plaintiffs, to prevent plaintiffs from exercising their protected right to freely speak out against defendants, and the actions they were taking against plaintiffs, and to chill plaintiffs' protected freedom of speech for challenging the defendants' unlawful enforcement of rules and regulations as they pertain to the Premises and defendants' political and environmental policies, views, and philosophies regarding the Adirondack State Park, and for Douglas expressing or stating his criticisms and adverse opinions and views of the Agency Defendants and their unlawful enforcement of rules and regulations as they pertain to the Premises.

359. That as a result of defendants' actions alleged herein, Douglas has been caused to suffer damages, including loss of or a chilling effect on his First Amendment rights, injury to character and reputation in the community and emotional distress, and attorneys' fees incurred to defend against the administrative enforcement proceeding E2007-47 and also to prosecute the above-captioned action.

360. That this action falls under the exceptions of §§1602 (5) and 1602 (11) of Article 16 of the Civil Practice Law and Rules of the State of New York, and by reason thereof the limitations on joint and several liability contained in said Article do not apply to this action.

361. That by reason of the aforesaid conduct and actions against Douglas and its resulting effects, Douglas demands judgment against defendants in the sum of FIVE MILLION

DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs, and a permanent injunction enjoining defendants from depriving Douglas of his First Amendment right to speak freely.

AMOUNT OF DAMAGES AND OTHER RELIEF REQUESTED

362. On the First Cause of Action, judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs.

363. On the Second Cause of Action, judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs.

364. On the Third Cause of Action, judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs pursuant to 42 U.S.C. §1988.

365. On the Fourth Cause of Action, judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs.

366. On the Fifth Cause of Action, judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages in an

appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs pursuant to 42 U.S.C. §1988.

367. On the Sixth Cause of Action, judgment against all defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs.

368. On the Seventh Cause of Action, judgment against the Agency Defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against said defendants acting in their personal capacities in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs pursuant to 42 U.S.C. §1988.

369. On the Eighth Cause of Action, judgment against all defendants in the sum of SEVEN MILLION DOLLARS (\$7,000,000.00), together with punitive and exemplary damages in an appropriate amount as determined by the trier of fact of this action and attorneys' fees and costs pursuant to 42 U.S.C. §1988.

370. On the Ninth Cause of Action, judgment against defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants acting in their personal capacities in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs.

371. On the Tenth Cause of Action, judgment against defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants acting in their personal capacities in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs.

372. On the Eleventh Cause of Action, judgment against defendants in the sum of THREE MILLION ONE HUNDRED THOUSAND DOLLARS (\$3,100,000.00), together with punitive and exemplary damages against all defendants acting in their personal capacities in an appropriate amount as determined by the trier of fact of this action, and attorneys' fees and costs.

373. On the Twelfth Cause of Action, judgment against all defendants in the sum of SEVEN MILLION DOLLARS (\$7,000,000.00), together with punitive and exemplary damages in an appropriate amount as determined by the trier of fact of this action and attorneys' fees and costs pursuant to 42 U.S.C. §1988.

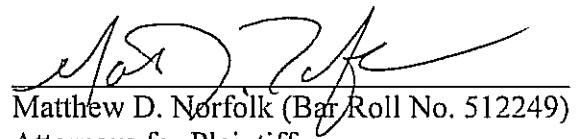
374. On the Thirteenth Cause of Action, judgment against defendants in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), together with punitive and exemplary damages against all defendants in an appropriate amount as determined by the trier of fact in this action, and attorneys' fees and costs, and a permanent injunction enjoining defendants from depriving Douglas of his First Amendment right to speak freely.

375. Judgment granting such other legal and equitable relief as the Court deems just and proper.

Dated: Lake Placid, New York
March 15, 2010

Briggs Norfolk LLP

By:


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