



1 **PARTIES AND INTRODUCTION**

2 3. Plaintiffs Oscar Braun and Andrea Braun (collectively "the Brauns") are citizens of the State  
3 of California, residing at 1589 Higgins Canyon Road in the unincorporated Half Moon Bay area of  
4 San Mateo County, California (hereinafter the "Property"). At all times relevant to this action, the  
5 Brauns have been the beneficial owners of the Property.

6 4. At all times mentioned in this complaint, Defendant County of San Mateo (the "County") is  
7 a local public entity, located within the jurisdiction of the United States District Court, Northern  
8 District of California. The County administers and controls the process for issuance of planning,  
9 development, horse stable, affordable housing, environmental health and building permits in the  
10 unincorporated areas of the County of San Mateo.

11 5. At all times relevant to this complaint, Michael D. Nevin was a member of the San Mateo  
12 County Board of Supervisors.

13 6. At all times relevant to this complaint, Richard S. Gordon was a member of the San Mateo  
14 County Board of Supervisors.

15 7. In 1998, Plaintiffs made applications for legalization of a mobile home in which a  
16 developmentally disabled farm laborer (Mr. Bernie Neves) resided as affordable housing, as well as  
17 a stable, tractor shed, agricultural barn and shed, and to replace a code-mandated, but leaking, water  
18 tank used for fire suppression.

19 8. After years of delay, their applications were finally unanimously approved and granted by  
20 the County's Planning Commission in 2001. However, the County's Board of Supervisors (the  
21 "Board") then demanded the Brauns pay illegal and unjustly disproportionate fees and penalties, and  
22 ultimately reversed the unanimous decision of the Planning Commission and denied Plaintiffs'  
23 applications. This reversal is and was part of a continuing pattern of discriminatory conduct by  
24 *Defendants* including the imposition of unfair, ever-changing and escalating conditions and  
25 impediments on the Plaintiffs, not imposed upon others.

26 9. After this reversal, Plaintiffs filed an action on October 7, 2002 seeking a writ of  
27 administrative mandamus in San Mateo Superior Court in an action entitled Half Moon Bay  
28 Coastside Foundation aka Save Our Bay, Bernie Neves, Oscar Braun, and Andrea Braun vs. County

1 of San Mateo Case No. CIV 426174. Plaintiffs sought to overturn the Board’s refusal to grant the  
2 permits.

3 10. On July 24, 2003 plaintiffs filed an action under 42 U.S.C. section 1983 in the Northern  
4 District of California entitled Oscar A. Braun, et al., v. County of San Mateo, No C 03-03415 MJJ  
5 (“*Braun I*”). The complaint as subsequently amended alleged that the County retaliated against the  
6 Brauns for Mr. Braun’s vigorous exercise of his First Amendment rights to free speech and freedom  
7 to petition for redress.

8 11. In June of 2004, Plaintiffs reached a settlement agreement in the state court mandamus  
9 proceeding, wherein Plaintiffs would pay reduced fees which would cover all permits and the  
10 County would issue coastal development and resource management planning permits within 40  
11 days after payment. The Brauns were then to submit new building and environmental health  
12 permit applications which would be approved by the County pursuant to the settlement.  
13 Plaintiffs applied for all permits on June 30, 2004.

14 12. Shortly after the state court settlement agreement was reached, Plaintiffs became aware  
15 that the County was intending to violate the settlement agreement by engaging in a de novo  
16 hearing rather than summarily issuing the permits, by only approving the permits subject to new  
17 conditions, by not issuing a final decision within 40 days and by making the approvals appealable  
18 to the California Coastal Commission. Plaintiffs objected, but to no avail.

19 13. On July 27, 2004 the Board violated the settlement agreement. In its meeting, the Board  
20 acted on an “application” for a coastal development permit, although the Brauns had not in fact  
21 submitted an application. The Brauns’ application was moribund once the Board had denied it in  
22 2002. The administrative process had been exhausted, and therefore there was no application  
23 pending. The Board was supposed to simply summarily issue the coastal development permit as  
24 per the settlement agreement. Instead, the County apparently submitted an “application” -  
25 presumably on behalf of the Brauns - without giving notice to the Brauns, their counsel, or the  
26 mandamus court. In approving the “application” the Board imposed new conditions and made  
27 the approval subject to appeal to the California Coastal Commission, all in violation of the terms  
28 of the settlement agreement. The Brauns protested the additional terms and conditions. Finally,

1 through discussions with the County at a November 30, 2004 settlement conference in the *Braun*  
2 *I* case, Plaintiffs thought their environmental health and building permit applications were  
3 complete and would be finally approved shortly thereafter. In fact, the County continued to be in  
4 violation of the settlement agreement by refusing to approve the applications for building and  
5 environmental health permits even though those applications were complete and had been on file  
6 for many years.

7 14. Plaintiffs eventually received in January 2005 a letter from County Counsel dated  
8 December 16, 2005 which acknowledged that the Brauns' applications for building and  
9 environmental health permits had been received, but indicated that they had not been "officially  
10 submitted." The Brauns protested that nothing more was required of them and believed the  
11 County was finally about to issue the permits. In the meantime Plaintiffs attempted to settle  
12 *Braun I*. In fact, the County continued to delay the permitting process, using pretexts to continue  
13 to violate the settlement agreement.

14 15. Plaintiffs were not aware that the County was continuing to violate the settlement  
15 agreement until discovery had closed and shortly before the original February 14, 2004 trial date  
16 in *Braun I*. The County's willful and numerous violations of the settlement agreement as well as  
17 their continued obstruction and delay constitute continuing acts of retaliation against Plaintiffs as  
18 well as violations of procedural due process and violations of Plaintiffs' right to equal protection  
19 of the laws. Plaintiffs now realize that the County has not been acting in good faith, and that the  
20 County intends to continue its pattern of disrespecting courts, making false representations and  
21 delaying and obstructing any resolution to the pending permit matter. Rather than seek to amend  
22 the complaint so close to trial, Plaintiffs elected to pursue this new, related action based on the  
23 County's further and continuing acts of retaliation and denial of due process and equal  
24 protection.

25 16. Section 1983 of Title 42 of the U.S. Code, enacted by Congress pursuant to § 5 of the  
26 Fourteenth Amendment, creates an action for damages and injunctive relief against local  
27 governmental bodies, including counties, as well as individuals acting under color of state law,  
28 who deprive a plaintiff of rights, privileges, or immunities secured by the Constitution. Section

1 1983 incorporates the Fourteenth Amendment, which incorporates the Bill of Rights and applies  
2 them to the states. Constitutional violations actionable through Section 1983 include violations  
3 of the Fourteenth Amendment standing alone, such as procedural due process or equal protection,  
4 or violations of the Bill of Rights. First Amendment provisions for Freedom of Speech,  
5 Freedom of the Press and Freedom to Petition are among the rights applicable to the states  
6 through the Fourteenth Amendment.

7 17. Plaintiffs are informed and believe, and thereon allege, that the County's violations of the  
8 settlement agreement, bad faith actions and continuing refusal to issue environmental health, and  
9 building permits are all intended to punish Andrea and Oscar Braun for their political beliefs and  
10 for Oscar Braun's enthusiastic exercise of his Constitutional rights under the First Amendment,  
11 including but not limited to his highly public criticism of the Board of Supervisors and certain of  
12 its projects as well as his right to seek redress in the courts by way of the writ of administrative  
13 mandamus, court proceedings challenging local agency actions and the pending *Braun I* case.

14 18. Plaintiffs are also informed and believe, and thereon allege, that Defendants violated  
15 Plaintiffs' Fourteenth Amendment right to procedural due process by depriving them of the right  
16 to have land use determinations made by a fair and impartial decision maker, and unfairly  
17 depriving them of a property interest (the permits) due to them under law (the settlement  
18 agreement).

19 19. Plaintiffs are also informed and believe, and thereon allege, that Defendants violated  
20 Plaintiffs' Fourteenth Amendment right to equal protection of the laws by treating plaintiffs  
21 differently than other similarly situated landowners and thereby drawing an arbitrary and  
22 irrational distinction between the class of landowners who support Defendants' policies and  
23 political agenda and the class of landowners who oppose such policies and agenda.

#### 24 **THE BRAUNS' EXERCISE OF CONSTITUTIONALLY PROTECTED SPEECH**

25 20. Plaintiff Oscar Braun is the president of the Half Moon Bay Coastside Foundation, aka  
26 Save Our Bay (hereinafter "Save Our Bay"), and the Brauns' residence serves as the headquarters  
27 for Save Our Bay. Save Our Bay is a community-based, 501(c)(3) nonprofit,  
28 environmental-watchdog, charitable corporation, which was established at the personal request of

1 the late United States Secretary of Commerce Ron Brown and was later incorporated on  
2 December 23, 1999. Save Our Bay is a recognized member and active participant in the NOAA  
3 Water Quality Protection Program aka WQPP, the RWQCB Stormwater Pollution Prevention  
4 Program aka STOPPP, the California Coordinated Resource Management Planning Council aka  
5 Coastside CRMP Council, and the Coastside Fire Safe Council (representing San Mateo County  
6 Coastal Zone which comprises approximately 73% of County's land area). Mr. Braun also  
7 co-founded the Half Moon Bay Chapter of the Surfrider Foundation in 1995.

8 21. Through his work with Save Our Bay, Oscar Braun has actively sought to establish a  
9 comprehensive watershed management program in San Mateo County to avert catastrophic  
10 environmental damage to the Peninsula watershed from natural and human-made causes,  
11 including environmental terrorism, firestorm and drinking water contamination. In so doing,  
12 among other controversial projects, and in criticizing the status quo and drawing attention to the  
13 vulnerability of existing neglected and unmanaged watershed conditions in the County, Plaintiffs  
14 have taken positions that are politically unpopular with the County, its representatives,  
15 employees, and others.

16 22. Plaintiff Oscar Braun has long been outspoken on issues of public interest. In addition to  
17 being the president of Save Our Bay, Oscar Braun is also the online publisher of the California  
18 Watershed Posse Town Hall forum, and the co-founder of the San Mateo County rural lands  
19 farming community organization, the Coastal Family Alliance. Many of Mr. Braun's written  
20 opinions on political matters can be found at the web links: California Watershed Posse aka  
21 "[www.cwposse.org](http://www.cwposse.org)"; Half Moon Bay Coastside Foundation aka Save Our Bay  
22 "[www.saveourbay.org](http://www.saveourbay.org)"; The Pebble News at "[www.thepebble.us](http://www.thepebble.us)" Eco-Justice 4 Us Forum at  
23 "[www.ecojustice4.us](http://www.ecojustice4.us)"; Lake Berryessa Visitors Services Planning Taskforce at  
24 "[www.lbvspt.info](http://www.lbvspt.info)"; and Oscar Knows Inc at "[www.oscarknows.com](http://www.oscarknows.com)"; Mr. Braun is also  
25 spearheading a drive to incorporate approximately 100,000 acres of unincorporated rural coastal  
26 lands in the County, and publishes a website in support of the incorporation project, "Rural  
27 Lands Inc" at "[www.rlinc.org](http://www.rlinc.org)".

28 23. Mr. Braun has utilized these forums to discuss matters of public concern under his First

1 Amendment rights of freedom of speech and of the press as a frequent critic of the Board of  
2 Supervisors and various County practices, policies and programs, including the Devil's Slide  
3 project and the failure of the County to provide adequate services to coastal residents. He is a  
4 frequent speaker before the County Board of Supervisors and other local, state and federal  
5 agencies. He uses the website as a clearinghouse for news, reports and other information on  
6 public issues concerning coastal San Mateo County. Mr. Braun regularly sends e-mails to a list  
7 of recipients that includes Defendants, local residents, government officials at the local, county,  
8 state, and federal level, and members of the press.

9 24. Mr. Braun is disliked by many in the so-called "environmental community," presumably  
10 because of his position that the agenda of some of these groups is "anti-community" and results  
11 in negative impacts for local residents. Mr. Braun has been outspoken in his belief that the  
12 "environmental community" has exerted its influence with the County to limit affordable and  
13 available housing in the coastside by a technique of restricting use and development of housing,  
14 agriculture, police protection, fire protection, roads, sewer systems, water, watershed and  
15 schools.

16 25. Plaintiff Oscar Braun has been a "whistle-blower" regarding environmental damage in the  
17 coastside and rural lands of the County and has assisted the enforcement of environmental laws  
18 in the County. In so doing, Mr. Braun was exercising his First Amendment rights to petition  
19 grievances and take an active role in government. One of the main goals of Mr. Braun's  
20 enforcement activities is to ensure that local governments and agencies comply with state and  
21 federal law so they do not lose state and federal funding. His whistleblowing efforts include, for  
22 example, reporting in 1993 the illegal dumping of solid waste material into the tributaries of the  
23 Arroyo Leon in the Johnston Ranch property. Over the next few years, Mr. Braun stayed active  
24 in monitoring contamination and environmental damage from illegal dumping and other  
25 activities on the Johnston Ranch property. Also in the early 1990's Mr. Braun reported on illegal  
26 dumping and other environmentally damaging activities by his neighbors the Giovannonis who  
27 owned and operated Half Moon Bay Paving and Sealing. In 1995 Mr. Braun and his attorney, the  
28 late Alan Beaven, commenced litigation in 1995 that forced the Sewer Authority Midcoast to

1 update and improve its sewer system, stopping hundreds of egregious environmental violations  
2 and the repeated exposure of the public beaches to raw sewage. In 1998, Mr. Braun  
3 photo-documented the County's long history of dumping tons of road-slide dirt and debris into  
4 the Arroyo Leon Creek's Environmentally Sensitive Habitat Area ("ESHA"), including the creek  
5 bed stream for steelhead trout. In response to Mr. Braun's evidence, the State of California  
6 forced the County to cease its unlawful practices.

7 26. Plaintiff Oscar Braun has also spoken out publicly on the subject of County elections.  
8 San Mateo County is one of only two counties out of 58 counties in the State of California that  
9 does not have district elections for its Board of Supervisors. Accordingly, the San Mateo County  
10 coastal population has traditionally been under-represented in County government, because  
11 supervisors are customarily elected from the "Bay" side of the County with greater population  
12 centers. Many on the San Mateo coast believe that the coast receives less than its fair share of  
13 County resources.

14 27. For at least the last five years, Mr. Braun has spoken out publicly on behalf of a great  
15 number of coastal residents who feel ignored by the County government. Mr. Braun's notoriety  
16 has even made him the subject of insults and derogatory comments by Defendant Nevin in  
17 candid comments at a public function and Defendant Gordon made a statement to the press  
18 deriding Mr. Braun's political activism. In 2002, during or about the same time the appeal of the  
19 Brauns' application was pending before the BOS, Supervisor Gordon's campaign committee  
20 made a \$500 civic donation to Green Foothills Foundation. Lennie Roberts is the Legislative  
21 Advocate for the Committee for Green Foothills.

22 28. Mr. Braun has been a key player in bringing a lawsuit under the California Environmental  
23 Quality Act challenging the sufficiency of the Environmental Impact Report for the proposed  
24 annexation of 140,000 acres in coastal San Mateo County by the Mid-Peninsula Regional Open  
25 Space District ("MPROSD").

26 29. Oscar Braun has also been a whistle-blower in regards to improprieties arising from the  
27 annexation of the San Mateo County Coastal Area into the Mid-Peninsula Regional Open Space  
28 District. This project requires the approval, among other entities, of the San Mateo Local



1 Agency Formation Commission (“San Mateo LAFCO”), an ostensibly independent agency which  
2 is actually overseen by the Board of Supervisors. Mr. Braun and SOB have issued numerous  
3 press releases criticizing MPROSD and San Mateo LAFCO.

4 30. On February 24, 2004 Mr. Braun, on behalf of Save Our Bay, sent a letter to the  
5 Executive Director of the San Mateo LAFCO pointing out deficiencies in MPROSD’s  
6 application, fiscal irregularities in the documentation submitted in support of the application and  
7 describing MPROSD’s history of seeking to evade environmental regulation to hide the presence  
8 of toxics in the MPROSD. Mr. Braun urged San Mateo LAFCO to re-open MPROSD’s  
9 application. Despite Mr. Braun’s protests, LAFCO approved the annexation on April 7, 2004.

10 31. On May 4, 2004, John Plock, on behalf of Save Our Bay, again wrote to San Mateo  
11 LAFCO and invoked a statutory protest hearing to reconsider the approval of the annexation.  
12 The letter points out legal irregularities in the process as well as evidence that open space land  
13 transfers are being conducted at inflated property values. Finally the letter points out that San  
14 Mateo LAFCO, which is supposed to be an agency independent of the County, is run by a County  
15 employee. SOB questioned the independence of the San Mateo LAFCO and requested the  
16 agency disclose its relationship to the County.

17 32. On May 31, 2004, Oscar Braun, on behalf of Save Our Bay, wrote to San Mateo LAFCO  
18 with an Addendum to SOB’s early request for reconsideration. Mr. Braun pointed out that based  
19 on the just-released state budget, MPROSD would be facing a more than 50% funding cut. Mr.  
20 Braun argued that this severe cut raised serious questions about MPROSD’s ability to adequately  
21 administer the annexation, and to meet the financial obligations which were imposed on  
22 MPROSD as conditions of the approval of the annexation plan.

23 33. On June 9, 2004 Mr. Braun, and his attorney, on behalf of Save Our Bay appeared in  
24 court to argue for an order suspending the protest hearing, because San Mateo LAFCO had failed  
25 to include matters required by statute in the hearing notice, as well as other deficiencies. The  
26 court found that the protest notice and proceedings were defective and note that the court was  
27 “highly troubled” by San Mateo LAFCO’s failure to follow statutory requirements.

28 34. San Mateo LAFCO’s failure to follow statutory procedure in noticing the protest hearing

1 raised the risk that voters who wished to submit written protests may be disenfranchised. As  
2 such on July 8, 2004, Mr. Braun and SOB filed for a Temporary Restraining Order (“TRO”)  
3 preventing San Mateo LAFCO from proceeding with the annexation application because of  
4 inaccuracies and and errors in the process.

5 35. On July 13, 2004 the San Mateo Superior Court issued a TRO prohibiting San Mateo  
6 LAFCO from proceeding with the annexation application.

7 36. Defendant Gordon is also a commissioner of San Mateo LAFCO. Plaintiffs are informed  
8 and believe and thereupon allege that Defendant Gordon was fully aware of Mr. Braun’s  
9 involvement in the LAFCO/MPROSD litigation. Plaintiffs are informed and believe and  
10 thereupon allege that political allies of Board members stand to benefit financially and otherwise  
11 if MPROSD is successful in its annexation application.

12 37. The Brauns have for many years been vocal and active opponents of the Devil’s Slide  
13 Tunnel Bypass Project, which is a proposal to bypass a treacherous section of California Route 1  
14 in the area known as the Devil’s Slide by boring two tunnels through Montara Mountain. The  
15 Brauns have actively opposed the project and in 1997 filed a lawsuit in San Mateo Superior  
16 Court to block the project. The gravamen of the Brauns’ concerns focuses on a regulatory sleight  
17 of hand directed by Defendants. The Brauns alleged in the suit and in multiple public documents  
18 that: the County of San Mateo knowingly violated the U.S. Corp of Engineers Section 404 permit  
19 directive not to conduct any mitigation or construction activities in their statutory delineated  
20 sensitive habitat for the red legged frogs; violated the Endangered Species Act with illegal  
21 mitigation activities; violated the U.S. District Court injunction against any construction  
22 activities within the Devil’s Slide project area prior to Court approval; and permitted plans to go  
23 forward even though the County had admitted that the project did not comply with the Local  
24 Coastal Plan and the Coastal Act. In the Summer of 2000, the Brauns attempted to get support  
25 from the Board to put forward another alternative bypass project on the ballot. Defendant  
26 Gordon replied to Mr. Braun in a August 8, 2000 letter accusing Mr. Braun of using false  
27 information and misstatements of fact in his attempt to get support from the Board. Defendant  
28 Gordon released this letter to the press. The Brauns also uncovered the fact that CalTrans, as part

1 of the tunnel project, had engaged in an unauthorized “take” (i.e. killing) of an endangered frog  
2 species in the area of the north portal entrance to tunnel site. The Brauns publicized this  
3 unlawful act and called for federal investigations. Most recently, in May of 2004, after the Board  
4 granted the Tunnel Project a Coastal Permit the Brauns appealed to the Coastal Commission.

5 38. Plaintiffs are informed and believe and thereon allege that Defendants Gordon and Nevin  
6 have substantial political interests in seeing the Devil’s Slide Tunnel project succeed. Plaintiffs  
7 are similarly informed and believe and thereon allege that Plaintiffs’ whistle-blowing activities  
8 exposing the County’s various statutory and regulatory violations in the Tunnel planning process  
9 threatened to undermine the political viability of the Tunnel project, and by extension threatened  
10 significant damage to the political careers of Defendants Gordon and Nevin.

11 39. The Brauns further exercised their First Amendment rights to petition  
12 the government for redress by instituting various legal actions, including the state writ of  
13 mandamus, and the §1983 action *Braun I*. Such actions fostered consternation in the Board and  
14 individual defendants and provided further motivation for their ongoing retaliatory efforts.

15 **THE BEGINNING OF THE ONGOING RETALIATION:**

16 **THE PERMIT APPLICATION PROCESS AND RELATED EVENTS**

17 40. Plaintiffs are informed and believe thereupon allege that the acts herein complained of are  
18 part of Defendant’s continuing pattern and practice of unlawful retaliation, and arbitrary and  
19 vindictive acts designed to punish the Brauns for the exercise of First Amendment rights and to  
20 deprive them of an neutral and objective decision maker. This pattern and practice began in  
21 approximately 1998 and Plaintiffs herein provide a background context in which to better  
22 highlight Defendants’ unlawful acts.

23 41. On March 4, 1998, the County conducted an investigation of Plaintiff’s Property in  
24 response to a request by politically connected neighbor, Cynthia Giovannoni. On March 12,  
25 1998, the County cited Plaintiff Oscar Braun for development in the Resource  
26 Management-Coastal Zone without a development review permit. The County also stated that the  
27 Brauns needed a farm labor housing permit for Mr. Neves' residence and a stable permit for the  
28 stable. Based on a 1994 County memorandum authored by Defendant Terry Burnes, Oscar

1 Braun understood that farm labor housing fees were waived and had submitted the appropriate  
2 paperwork to the San Mateo County Farm Bureau. The County also insisted that the Brauns be  
3 assessed permit fees under an old stable ordinance which contained a higher fee schedule than  
4 the new stable ordinance. In what would be one of many pretextual, legally dubious and often  
5 erroneous explanations the County insisted that the new stable ordinance could not be applied  
6 because it had not been approved by the Coastal Commission, despite the fact that the Coastal  
7 Commission did not need to and indeed could not approve a county-wide ordinance.

8 42. The County issued a Final Notice of Violation on or about July 20, 1998. Mr. Braun  
9 arranged to meet with County planner Laura Thomson at her convenience to prepare and file all  
10 necessary applications.

11 43. On September 15, 1998, while Mr. Braun was meeting with Ms. Thompson in the  
12 County's offices at the time and date she requested, a Sheriff's officer interrupted Mr. Braun as  
13 he was attempting to complete the application and pay whatever fees were required, directed  
14 planner Thompson to leave the room, and then served Mr. Braun with a citation for nuisance for  
15 maintaining the very structures Mr. Braun was in the process of legalizing.

16 44. On December 1, 1998, the trial of the nuisance citation for maintaining unpermitted  
17 structures was held before Municipal Court Referee Kathleen Henry as Case No. 941588. The  
18 Brauns established that they had attempted to and were prepared to make all appropriate  
19 applications for permits to legalize the structures and to pay all appropriate fees, and that they  
20 were well on their way to finishing the process when the County interrupted, ejected the planner,  
21 and served the citation.

22 45. During the court hearing, Ms. Thompson, on behalf of the County and as its agent,  
23 requested a court recess to calculate the fees due from the Brauns, which request the Court  
24 granted. After the recess, Ms. Thompson informed the Court that the total fees required for  
25 Plaintiffs to submit with their applications for legalization of the stable, tractor shed, agricultural  
26 barn, and farm labor housing unit was \$3,720.

27 46. At the direction of the court, the parties met the following day to complete the  
28 applications and pay the fees. The Brauns paid the full fee calculated during trial by Ms.

1 Thompson - \$3,720 - and received a receipt therefore. Subsequently, as alleged below, the  
2 County failed to credit the Brauns with this payment and threatened the Brauns with denial of  
3 their permit applications if they did not pay these same monies again.

4 47. On January 20, 1999, Referee Henry heard argument regarding the completeness of the  
5 legalization application. Following testimony by planner Thompson, Referee Henry ruled that  
6 the application lacked just two items to be complete: (1) A topographical site plan, and (2)  
7 elevation drawings of structures to be legalized. The Court then entered an order requiring that  
8 those two items - nothing else - needed to be submitted to complete the permit applications.  
9 Thereafter, Plaintiffs submitted the items identified in the Court order, and the application was  
10 complete.

11 48. On July 26, 1999, the County notified Plaintiffs that the topographical map, including  
12 driveway profile survey, met the County's requirements. However, the County then demanded  
13 that the elevation drawings be revised. The County then added several new requirements not  
14 included in the court's January 20, 1999, order or otherwise made or disclosed by the County in a  
15 timely fashion.

16 49. On April 28, 2000, without prior notice to Plaintiffs, the County recorded a Notice of  
17 Continuing Nuisance with respect to the Property. The County recorded such notice even though  
18 it had communicated to the Brauns that their application was complete.

19 50. Plaintiffs Brauns lawfully sought to use their property and lease a portion of it for the  
20 purpose of cell phone communications antennae. From 1998 - 2000, Nextel and Sprint PCS  
21 respectively investigated with Plaintiffs Braun and with the County installing several cell-phone  
22 antennae on Plaintiffs' Property. Thereafter, the Brauns signed and recorded leases for multiple  
23 telephone tree antennas with Sprint PCS.

24 51. The sites would have provided cellular service to the rural coastal zone area from Half  
25 Moon Bay to Pacifica, and over the life of the lease would have produced millions of dollars of  
26 rental income to the Brauns. A Sprint PCS representative informed Mr. Braun that a County  
27 staff member told the Sprint PCS representative that the staff member's superior at the County  
28 Planning Department had instructed the staff member to block or frustrate any applications for

1 the Plaintiffs' Property because of Mr. Braun's outspokenness and willingness to sue the County.  
2 The Sprint Representative was also told to look elsewhere for their antennae sites, and that the  
3 County "knows how to deal with Oscar." On July 6, 2000, Mr. Braun complained by letter to the  
4 County, but the County never changed positions.

5 52. The County's intentional and retaliatory obstruction tactics ultimately caused Sprint PCS  
6 to back out of the leases, resulting in significant financial damages to the Brauns in a amount to  
7 be proved at trial. The Brauns are informed and believe the County maintained the nuisance  
8 claim "to deal with Oscar" and thereby preclude the Brauns from earning rental income from the  
9 lucrative practice of providing cell phone antennae at this unique location.

10 53. The Planning Department finally determined in October, 2000, that the permit  
11 applications had been completed. At that point, the permitting process had taken over two years.  
12 The Brauns are informed and believe and thereon allege that the County delayed and obstructed  
13 the permitting process because Oscar Braun has been a critic of the County and has been willing  
14 to stand up to the County in the public's interest and expend all necessary resources to do so  
15 whereas others often do not have the resources to do so.

16 **PLANNING COMMISSION DECISION APPROVING ALL PERMITS**

17 54. On November 14, 2001, Planning Commission staff informed the Planning Commission  
18 that the Property with the structures to be legalized complied with all applicable General Plan  
19 policies, and was in conformance with the Local Coastal Program. Planning staff recommended  
20 approval of the permit on payment of \$3,720 in initial fees (ignoring the fact that the Brauns had  
21 already paid the initial fees), and a "penalty" of \$3,720 that had never been assessed by the  
22 County in the preceding three years since the application was first filed.

23 55. On November 14, 2001, three and a half years after the process began the Planning  
24 Commission unanimously approved the Coastal Development Permit, Resource  
25 Management-Coastal Zone Permit and Stable Permit with the conditions noted by the staff. In so  
26 doing, the Planning Commission legalized the stable, tractor shed, and agricultural barn,  
27 approved replacement of one 8,000-gallon water tank with two 5,000-gallon water tanks, and  
28 assigned a floating density credit to Mr. Neves' residence thus designating it as an affordable

1 housing unit. At the same time, the Planning Commission rejected all objections to approval  
2 made by three objectors.

3 **HEARINGS BEFORE BOARD OF SUPERVISORS 2001-2002**

4 56. On December 3 and 4, 2001, two of the objectors to approval of the permits filed appeals  
5 of the Planning Commission decision to the Board of Supervisors. The appellants were Ms.  
6 Giovannoni, the neighbor whose complaint started the County investigation into Plaintiffs'  
7 Property, and the self-proclaimed "sixth member" of the Board of Supervisors and Legislative  
8 Advocate for the Committee for Green Foothills, Lennie Roberts.

9 57. At the Board of Supervisors meeting on January 15, 2002, Ms. Roberts used her  
10 considerable influence over the Board of Supervisors to criticize Mr. Braun in opposition to his  
11 permit application. She recited the following activities as reasons why the application should be  
12 denied: Mr. Braun filed complaints against state parks and the county public works department;  
13 appealed coastal development permit applications of neighbors he alleged to be in violation of  
14 environmental and land use laws; alleged the presence of an unpermitted waste dump on  
15 adjoining land owned by a local land trust; and made appeals to the assessor's office regarding  
16 tax impacts of local environmental problems on adjoining properties. Each of these activities  
17 attributed to Oscar Braun is protected by the First Amendment.

18 58. On January 15, 2002, the San Mateo County Board of Supervisors made interim rulings  
19 on the appeals from the Planning Commission decision that approved Plaintiffs' permits. First,  
20 the Board of Supervisors determined that all building permit fees and penalties for building  
21 without building permits were due on December 2, 1998, when the initial permit applications  
22 were filed. The Board of Supervisors directed the County planning staff to calculate and collect  
23 all building, development, stable and planning fees, including all "penalties," that, allegedly,  
24 should have been charged and collected by the County on December 2, 1998. Second, the Board  
25 of Supervisors directed its staff to inspect Plaintiffs' property yet again for any other building,  
26 planning or development permit violations that were not included in the current legalization  
27 application. The Board also directed staff to record a notice of continuing violation on the  
28 Brauns' property. The Board then continued the hearing for 90 days for the staff to report back.

1 Defendant Gordon proposed the payment of all fees in advance as well as the filing of the notice  
2 of continuing violation.

3 59. On February 11, 2002, the County informed Plaintiffs that the additional fees assessed by  
4 the Board of Supervisors on January 15, 2002, totaled \$27,238.50, which the County described as  
5 “payment of all fees due for planning, building and environmental health permits, including all  
6 applicable investigation fees and penalties due for construction without permits.”

7 60. On or about March 13, 2002 the County recorded a notice of Continuing Violation  
8 against the Property.

9 61. On or about April 2, 2002, the County conducted a “SWAT” type raid on the Property,  
10 looking for any additional violations to include on the application. The incursion consisted of  
11 several armed County officers and at least three patrol vehicles from the County’s “Rural Crimes  
12 Unit,” in addition to at least three other County vehicles. Plaintiffs are aware of no other such  
13 display of force, intimidation and overkill for inspection of similarly situated applicants for a  
14 residential permit. Plaintiffs are informed and believe this display of force was designed to  
15 intimidate Mr. Braun from speaking out publicly on political issues or in the public interest as he  
16 had done in the past.

17 62. On April 10, 2002, the County’s planning staff amended its report of February 11, 2002,  
18 and forwarded the amended report to the Board of Supervisors. The amended staff report stated  
19 that staff had determined that the Brauns had roofed a patio area without permits and that the  
20 application for legalization should be amended to include this, along with a “storage shed  
21 adjacent to stable” that is actually a movable shade for horses, and a “storage container” that was  
22 illegally placed on the Property by the spouse of the Brauns’ neighbor, appellant Cynthia  
23 Giovannoni. This “storage container,” which in later testimony before the Board of Supervisors  
24 the Giovannonis admitted to placing on the Brauns’ property, is actually a huge, landfill  
25 solid-waste disposal trailer.

26 63. The County now claimed Plaintiffs owed \$45,073.24 of which \$5,718.50 had been paid.  
27 Of the total, the County described \$36,543.08 as “investigation fees,” i.e., penalty assessments.

28 64. In communications with the County, Plaintiffs amended their applications to include the



1 patio enclosure. Plaintiffs disputed the need for a building permit for the movable horse shade  
2 and denied seeking legalization of the neighbors' landfill-solid-waste-disposal trailer that was  
3 trespassing on the Property. Despite this trespass, the County has never ordered the neighbor to  
4 remove the trailer, and it remains on the Brauns' property.

5 65. On April 16, 2002, and again on June 18, 2002, the Board of Supervisors heard further  
6 evidence. The Board of Supervisors continued the matter for further review and evaluation. At  
7 all times before the Board of Supervisors, the employees of the County, including Planning  
8 Administrator Terry Burnes, asserted that the Brauns' property development was consistent with  
9 the type of land planning and use that would routinely be approved if applied for and that there  
10 were no valid planning issues the County needed to be concerned with other than environmental  
11 health issues with respect to water and septic systems.

12 66. On July 17, 2002, County Counsel Thomas F. Casey, III, submitted a further report  
13 regarding the status of the dispute with Plaintiffs. County Counsel reported that Plaintiffs'  
14 application complied with all County regulations as to the enclosure of the patio, the stable, the  
15 tractor shed, the agricultural barn, the water tanks and the storage shed adjacent to the stable.  
16 County Counsel reported that as to these items (not the affordable housing unit), the only dispute  
17 was Plaintiff's refusal to pay sums assessed for investigation fees, which Plaintiffs assert are  
18 unlawful charges. In an apparent concession that the County had assessed unlawful fees, County  
19 Counsel reduced the County's demand for so-called "investigation fees" from \$36,543.08 to  
20 \$20,132.80 between April and July 2002.

21 67. Throughout the appeal process, Plaintiffs Braun were subjected to the County's  
22 capricious demands that they pay all County fees - even fees that the County eventually admitted  
23 were either unlawful or already paid - by particular dates and were subjected to the County's  
24 position that the Brauns' failure to meet such demands in full would cause the County to uphold  
25 the appeal and deny the permits.

26 68. Plaintiffs objected to the arbitrary penalties and investigative fees charged by the County,  
27 because the fees and charges violate provisions of the California Government Code that require  
28 that such fees and charges be equivalent to the reasonable estimated cost of processing permits

1 and reviewing structures.

2 69. Plaintiffs contend that these fees were unlawful under the California Constitution,  
3 California Statutory Law and County ordinance. These repeated demands for payment of  
4 unlawful charges further demonstrate that the County's actions toward Plaintiffs were unlawful,  
5 arbitrary and retaliatory.

6 70. The County ultimately alleged that Plaintiffs do not comply with County regulations  
7 regarding only one structure to be legalized - the affordable housing unit, which has been Mr.  
8 Neves' residence for approximately 10 years. The County asserted that the septic tank for the  
9 unit is in violation of county ordinance, because it is too close to the unit. At the time the unit  
10 was placed on the property, the Brauns were in compliance with the then-existing ordinance.  
11 The County is now wrongly asserting that the Brauns must comply with the current septic  
12 ordinance when the Brauns contend they are "grandfathered" in. Regardless, the Brauns have  
13 stated throughout the permit process that they would comply with whatever requirements the  
14 County imposed with regard to the septic tank.

15 71. At the June 18, 2002 Board hearing, Ted Hannig appeared on behalf of the Brauns to set  
16 the record as to any remaining outstanding issues. Mr. Hannig told the Board that the location of  
17 the drain field was in a suitable site, but that the County had no records that could confirm this.  
18 Regardless, Mr. Hannig told the Board that the Brauns would comply with any environmental  
19 health requirements. Mr. Hannig also told the Board that there were several disputes over the  
20 propriety of the fees the County was demanding. First, some fees were time barred and thus  
21 could not be assessed. Others fees were being assessed under the old stable ordinance when they  
22 should be assessed under the new stable ordinance for considerably less money. Finally, the  
23 investigative fees could not be imposed because the County never enacted the appropriate  
24 legislation to impose such fees. Nonetheless, Mr. Hannig indicated that the Brauns would  
25 voluntarily pay the fees that were statutorily time-barred, as well as the fees assessed under the  
26 old stable ordinance. Supervisor Gordon proposed that the matter be continued until July 23,  
27 2002 with a resolution to approve the permits if the outstanding issues are resolved or to deny the  
28 permits and order abatement if the issues are not resolved.

1 72. On July 23, 2002, the County, acting by its Board of Supervisors, granted the appeal from  
2 the unanimous Planning Commission decision that had approved Plaintiffs' permits and instead  
3 denied all permit applications outright.

4 73. On August 28, 2002 the County issued an Abatement Order against the Property. The  
5 County demanded that the Brauns obtain demolition permits to remove all the unpermitted  
6 structures, including the affordable housing unit, the enclosed porch, the shed and the water tank.  
7 The Abatement Order included the highly unusual condition that the planning, building, and  
8 other permits could never be re-applied for.

9 **THE BRAUNS WERE TREATED DIFFERENTLY THAN SIMILARLY SITUATED**  
10 **LANDOWNERS**

11 74. The Brauns are informed and believe and thereon allege, that their treatment at the hands  
12 of the Defendants differs from others similarly situated. The owners of the Johnston Ranch, also  
13 located in Higgins Canyon in the coastal zone, are one such example. The current owners, the  
14 Peninsula Open Space Trust ("POST") purchased the land from Towne Pacific LLP in 1998.  
15 The ranch contained illegal (unpermitted) stables just as the Brauns did. Moreover, the ranch  
16 contained an illegal landfill on it. Unlike the Brauns, the owners did not have to pay their fees in  
17 advance, even though the fact that the violations were preexisting was the County's excuse for  
18 charging the fees up front. Moreover, the owners were not charged excessive investigation fees  
19 the way the Brauns were. Finally, Mr. Braun appealed the Planning Commission's approval of  
20 the permits to the Board. The Board denied the appeal and approved the permits. When Mr.  
21 Braun's permits were approved by the Planning Commission and subsequently appealed by the  
22 Board's political allies, the Board upheld the appeal and denied the permits. POST is a political  
23 ally of the Board and Defendants Gordon and Nevin.

24 75. Half Moon Bay Paving and Sealing ("HMBPS") owned and operated by the Giovannonis  
25 and located at 1780 Higgins Canyon Road, is another entity that was similarly situated to the  
26 Brauns in terms of code violations, yet did not receive the same harsh treatment at the hands of  
27 the Board. HMBPS had unpermitted structures including farm labor housing just as the Brauns  
28 did. Also like the Brauns, HMBPS was cited with regard to water and septic requirements on its

1 property. Moreover, HMBPS ran a paving and sealing business using heavy machinery and toxic  
2 chemicals without a permit to engage in that business. HMBPS had never applied for permits.  
3 Unlike the Brauns, however, HMBPS was not required to pay fees in advance. Indeed, despite  
4 the Brauns' numerous complaints about HMBPS's activities to various county agencies,  
5 including the District Attorney's office, only the barest of enforcement actions were undertaken.  
6 In fact, in order to investigate the allegations of toxic dumping on the Giovannoni's land, the  
7 District Attorney's office contracted with Gary Giovannoni to perform excavation as part of the  
8 site investigation.

9 76. The Brauns are informed and believe and thereon allege that these other land owners were  
10 not subjected to arduous requirements or the unprecedented step of requiring fees to be paid in  
11 advance because Defendants sought to punish the Brauns for their political activism. The Brauns  
12 are further informed and believe and thereon allege that the Brauns were subjected to arbitrary  
13 and capricious procedures with regard to the permitting process not imposed on others similarly  
14 situated.

#### 15 **THE BRAUNS SEEK RELIEF IN THE COURTS**

16 77. On October 7, 2002, Plaintiffs sought a writ of administrative mandamus in the San  
17 Mateo Superior Court in an action entitled Half Moon Bay Coastside Foundation aka Save Our  
18 Bay, Bernie Neves, Oscar Braun, and Andrea Braun vs. County of San Mateo Case No. CIV  
19 426174. Plaintiffs sought the writ to reverse the decision of the Board of Supervisors denying  
20 Plaintiffs' permit applications outright, and seeking relief from the County's imposition of  
21 unlawful fines.

22 78. While the mandamus proceedings were pending, in 2003 Plaintiffs brought the federal  
23 civil rights action described herein as *Braun I*.

24 79. On June 29, 2004, the Plaintiffs and the County reached settlement terms in the state  
25 court mandamus proceeding, subject to approval by the Board of Supervisors. The terms of the  
26 agreement included the following:

27 (a) Plaintiffs were to pay \$12,000 in additional fees prior to the Board's decision on  
28 issuance of the permits. The \$12,000 would constitute full payment of all permit and

1 investigation fees for each and every permit involved in the action, which included planning  
2 permits, building permits, and environmental health permits;

3 (b) Once Plaintiffs paid the fees, the County was required to grant planning permits  
4 within 40 days;

5 (c) Plaintiffs were required to make separate applications for building and environmental  
6 health permits within 180 days;

7 (d) Plaintiffs were required to show that Plaintiffs could comply with the requirements of  
8 the septic ordinance for the waste disposal system and the well ordinance for the water source

9 (e) The County would remove the notice of continuing violation and nuisance.

10 The settlement agreement was ratified with the same terms by the Board of Supervisors on July  
11 2, 2004.

12 80. Plaintiffs paid the \$12,000 on June 30, 2004 the day after settlement conference by  
13 providing a check directly to Deputy County Counsel Miruni Soosaipillai. On this same  
14 occasion Ms. Soosaipillai asked Mr. Braun to sign several building and environmental health  
15 permit applications and assured Mr. Braun that she would take care of insuring that applications  
16 were received and processed expeditiously through the appropriate channels. She further assured  
17 Mr. Braun that these documents would take care of the permit application process.

#### 18 **THE COUNTY RETALIATES AGAIN IN 2004**

19 81. In late July 2004 Plaintiffs became aware through a third party that the Board was  
20 planning to violate the settlement agreement by engaging in some kind of *de novo* review of the  
21 Brauns' costal development and resource management permit applications, rather than the  
22 summary review and approval required by the settlement agreement. This bizarre proceeding  
23 essentially meant that the County itself was bringing an "application" on behalf of the Brauns.  
24 This procedure was not contemplated or authorized by the settlement agreement, and the County  
25 did not notify the Brauns, their counsel or the mandamus court of its intent to engage in this  
26 proceeding. Moreover, the proceeding further violated the settlement agreement and the  
27 mandamus court's specific instruction by making the Board's decision appealable to the  
28 California Coastal Commission. This in turn would expose the Brauns to further delays and

1 raised the specter that “interested parties” such as Lennie Roberts and Cynthia Giovanonni would  
2 once again appeal the permits to the Commission.

3 82. Plaintiffs’ former counsel Ted Hannig of the Hannig Law Firm filed an *ex parte*  
4 application to the San Mateo Superior Court that retained jurisdiction over the settlement to  
5 prevent the County’s imminent breach of the settlement agreement. The Superior Court asked  
6 Deputy County Counsel Soosaipillai to remove the language in the staff report and proposed  
7 resolution that declared the permit appealable, but the County refused to remove the appeal  
8 condition. The Court then took a recess, conducted its own research, and then returned,  
9 explaining that precedent dictated that since the permits were not part of the normal  
10 administrative process but rather were under the jurisdiction of a separate judicial proceeding, the  
11 County could not subject the permit approval to appeal to the Coastal Commission. Deputy  
12 County Counsel indicated that although she had not read the case in question, she did not agree  
13 with it and the County refused to remove the appeal condition.

14 83. Plaintiffs are informed and believe, and thereon allege, that these actions were retaliatory,  
15 wrongful, unlawful, and a prejudicial abuse of the County’s authority, and were ultimately  
16 motivated by a desire to punish Mr. Braun for his outspoken criticisms of the County’s policies  
17 and practice and for his use of legal process to seek redress from the County.

18 84. Plaintiffs are further informed and believe, and thereon further allege that these actions  
19 and the County’s blatant disregard of the authority of the mandamus court denied Plaintiffs a  
20 right to a fair and impartial decision maker in violation of Plaintiffs’ right to due process of law.

21 85. The staff report presented to the Board for the July 27, 2004 hearing contained inaccurate  
22 and misleading information and distorted the record of the Brauns’ permitting process. For  
23 example, although the report discusses the alleged difficulties in getting the Brauns to pay  
24 permitting fees, it totally ignores the Brauns’ initial payment of \$3,720 in fees in 1998. The  
25 record omits a variety of actions taken by the Board against the Brauns including the  
26 unprecedented step of requiring advance payment of permit fees and issuing the permanent  
27 abatement order, as well as ordering investigation of issues outside the scope of the pending  
28 application and ordering multiple notices of violation and a SWAT-style enforcement raid to

1 serve the notice. Defendants were aware of the deficiencies on the record, but proceeded  
2 anyway.

3 86. The staff report acknowledged that under the terms of the settlement agreement the Board  
4 was required to approve the settlement agreement. Nonetheless, the report ignored the terms of  
5 the settlement and treated the proceeding as if the Board could consider additional evidence or  
6 take actions beyond that authorized under the terms of the settlement agreement. There were  
7 three attachments provided to the Board by the County: an executive summary by Director of  
8 Environmental Services Marcia Raines, the staff report by Ms. Raines, and various maps, plans  
9 and elevations previously submitted by Plaintiffs as part of their earlier application. The County  
10 did not provide the Board with a copy of the settlement agreement nor was it part of the exhibits  
11 listed on the agenda.

12 87. On July 27, 2004, the Board of Supervisors met to engage in their renegade proceeding.  
13 Under the terms of the settlement agreement, since Plaintiffs had paid the required fees, the  
14 Board was required to grant the permits. Thus Plaintiffs had a property interest in the permits as  
15 they were entitled to them pursuant to a court-approved and brokered settlement agreement.  
16 Instead, the Board approved the issuance of permits subject to various conditions, made the  
17 approval subject to appeal and otherwise acted as if there were no binding settlement agreement.

18 88. Video tapes of these proceedings were not disclosed to Plaintiffs in *Braun I* in violation  
19 of the County's discovery obligations in that case. The tapes were only received in March 2005  
20 pursuant to a Public Records Act request. The tapes reveal that Planning Administrator Terry  
21 Burnes presented the applications to the Board as an *appeal* of the applications that were  
22 previously before the Board; this flatly contradicts the published agenda of the meeting which  
23 characterizes the proceeding as a "hearing to consider an application" for various permits. Mr.  
24 Burnes does not indicate who the appellants were, nor does he acknowledge that the Board was  
25 bound under the settlement agreement to approve the applications. Plaintiffs are informed and  
26 believe and thereon allege that this "bait and switch" was intended to create an alternative de  
27 novo hearing in which the County could try to escape its obligations under the settlement  
28 agreement and further obstruct and delay the process. Moreover, there was no acknowledgment

1 that the Brauns had already exhausted the administrative process by being denied by the Board,  
2 and that this proceeding was part of a court-supervised settlement agreement.

3 89. Ted Hannig was present at the hearing and placed objections on the record including  
4 evidence that the entire proceeding, much less the new conditions of approval, violated the terms  
5 of the settlement agreement as well as evidence that the Brauns had complied with the terms of  
6 the settlement agreement. Mr. Hannig further informed the Board that just the prior week the  
7 San Mateo Superior Court had asked County Counsel to remove the appealability provision of  
8 the staff report and recommendation. Moreover, Mr. Hannig on the record told the Board that as  
9 part of the settlement, County Counsel had stipulated that the terms of the settlement agreement  
10 would prevail over any other terms and conditions. County Counsel Casey was present at this  
11 hearing and was asked to comment. Mr. Casey made several comments but did not contradict  
12 Mr. Hannig's assertion that the terms of the settlement agreement would prevail.

13 Despite this, the Board approved the permits subject to a number of conditions - including the  
14 appealability of the application and payment of additional fees - that violated the terms of the  
15 settlement. The Board even went so far as to condition approval of the permits on Plaintiffs'  
16 compliance with Half Moon Bay Fire District requirements including the payment of fees to the  
17 District.

18 90. Plaintiffs are informed and believe, and thereon allege, that these actions were part of a  
19 continuing pattern and practice of retaliatory, wrongful, unlawful, and a prejudicial abuse of the  
20 County's authority, and were ultimately motivated by a desire to punish Mr. Braun for his  
21 outspoken criticisms of the County's policies and practices and his initiation of legal process to  
22 seek redress from the County's actions.

23 91. Plaintiffs are informed and believe, and thereon further allege that these actions denied  
24 Plaintiffs a right to a fair and impartial decision maker in violation of Plaintiffs' right to due  
25 process of law.

26 92. On July 29, 2004 Plaintiffs received a Notice of Final Local Action from the County  
27 which indicated that permits would be approved subject to conditions and subject to the  
28 expiration of the appeals period. Plaintiffs objected and asserted that under the terms of the



1 settlement they were entitled to the permits within 40 days of payment of the fees, that is, by  
2 August 9, 2004. Plaintiffs further objected that the County had violated the settlement agreement  
3 by adding additional terms and by making the permit appealable. Since the permit approval  
4 process was not complete until either the expiration of the appeal period or the final decision of  
5 the Coastal Commission (either of which would occur after August 9, 2004), Plaintiffs were  
6 justified in arguing that the permit had not been issued within the required time period.

7 93. Based on the representations of Deputy County Counsel Soosaipillai to Mr. Braun on  
8 June 30, 2004 that the building and environmental health permits were in process, Plaintiffs  
9 believed that the County was complying in good faith with the settlement agreement and that  
10 permits would soon be issued. Defendant County never informed Plaintiffs to the contrary.

11 94. Finally, through discussions with the County at a November 30, 2004 settlement  
12 conference in *Braun I*, Plaintiffs were led to believe that their building and environmental health  
13 permit applications were complete and would be finally approved shortly thereafter. In fact, the  
14 County continued to be in violation of the settlement agreement and refuses to process the  
15 applications for building and environmental health permits even though the applications are  
16 complete.

17 95. In January 2005, Plaintiffs' co-counsel, Frank Iwama received a copy of a December 16,  
18 2004 letter that County Counsel claims to have sent to Bill Warhurst of the Hannig Law Firm,  
19 Plaintiffs former counsel in *Braun I*. Mr. Warhurst never received the December 16, 2004 letter.  
20 In this letter, County Counsel admits that the Brauns had submitted building and environmental  
21 health permit applications but disingenuously claims that these permit applications had never  
22 been "officially submitted." This claim is made despite the fact that Deputy County Counsel  
23 Soosaipillai represented directly to Mr. Braun that she would walk the building and  
24 environmental health applications through the permitting process to insure the County's  
25 compliance with the terms of the settlement agreement. Moreover, the December 16, 2004 letter  
26 indicates that complete sets of plans for each permit were still required. However, Plaintiffs have  
27 already submitted such plans as part of their original application process, as the County is  
28 undoubtedly aware. The County continues to use the same file number (PLN1999-00079) for the

1 Brauns' application and the allegedly missing plans were part of the attachments to the public  
2 record of the July 27, 2004 Board proceedings. Indeed, Planning Administrator Terry Burnes  
3 displayed these very plans in his discussion of the application at the July 27, 2004 Board hearing.  
4 In other words there was no basis whatsoever for the County's assertion that the Brauns had not  
5 submitted the required plans or other documentation for approval of the building and  
6 environmental health permits.

7 96. Until Ms. Soosapillai's letter of dated December 2004 and received in January 2005, the  
8 County had never informed Plaintiffs of its position that there were any remaining obstacles to  
9 the granting of the environmental health and building permits.

10 97. Thus Plaintiffs are informed and believe and thereon allege that the County's insistence  
11 that the permit applications are incomplete is not in good faith and is intended only to further  
12 delay the legalization of the Brauns' property and is part of the continuing campaign to harass  
13 Plaintiffs in retaliation for Mr. Brauns' outspoken criticisms of the County's policies and  
14 practices and the Brauns' instigation of legal proceedings against the County.

15 97. Plaintiffs are further informed and believe, and thereon allege, that through these actions  
16 the County violated Plaintiffs' Fourteenth Amendment right to procedural due process in that  
17 they were arbitrary and malicious and thereby deprived them of the right to have land use  
18 determinations made by a fair and impartial decision maker.

19 98. Many other coastal residents would like to speak out in opposition to County practices  
20 and policies on issues ranging from infrastructure improvement and the proposed Devil's Slide  
21 highway project to open space district annexation and land use issues, but are afraid of retaliation  
22 by the County. If an applicant aligns with the "environmental community" and is not critical of  
23 the County, they will be treated one way; if they are outspoken against County policies and  
24 practices, they will be treated another.

25 99. This campaign of unlawful and discriminatory conduct and violation of Plaintiff Oscar  
26 Braun's constitutional rights resulted in the County's violation of the settlement agreement in  
27 July, 2004 and its continued violation of the agreement. Of course, the settlement agreement  
28 itself was necessitated by the Board's unwarranted July 23, 2002 denial of the Brauns' permit

1 applications.

2 100. The County undertook these acts in retaliation for Oscar Braun’s vigorous exercise of his  
3 rights guaranteed by the First Amendment to the U.S. Constitution, including freedom of speech,  
4 freedom of the press, and freedom to petition grievances. The County’s actions have had a  
5 ‘chilling’ effect on Mr. Braun’s exercise of his First Amendment rights, as he must now think  
6 twice before publicly voicing his opinions. The County’s impermissible motive was in part  
7 politically grounded and was directed at the content of his speech and to attempt to deter him  
8 from speaking out in the future.

9 101. The Brauns are informed and believe, and thereon allege that had Mr. Braun not been a  
10 vocal and critic of the County, the Brauns would have been treated differently. Similarly, the  
11 Brauns are informed and believe, and thereon allege that had Mr. Braun been aligned with  
12 powerful “environmental” groups and their influential consultants such as self-proclaimed “sixth  
13 member” of the Board of Supervisors Lennie Roberts, the Brauns would have been treated  
14 differently.

15 **THE COUNTY’S CAMPAIGN OF CONTINUING RETALIATION**

16 102. In conducting this campaign, the County’s improper motivation to punish Mr. Braun is  
17 shown by a pattern and practice of unfair, arbitrary and unlawful conduct, including but not  
18 limited to:

- 19 (a) Undue delays and charges by the Planning Commission prior to the unanimous approval  
20 of the applications;
- 21 (b) Prosecution of a misdemeanor nuisance charge while the Brauns were working to  
22 complete the applications;
- 23 (c) Personal insults about Mr. Braun by County staff during the application process;
- 24 (d) Obstruction (to the point of a constructive denial) of the application for cellular phone  
25 antennae on the Property, along with a staff member's admission that Mr. Braun was being  
26 treated differently because of his political speech and lawsuits;
- 27 (e) Orchestrating a “SWAT” type incursion onto the property at the behest of the Board of  
28 Supervisors in the guise of an investigation;

1 (f) The assessment of unlawful and unjust fees and 'penalties' for the permit applications;  
2 including demands that the Brauns pay certain fees a second time despite the fact that they had  
3 already been paid;

4 (g) The imposition of ever-changing permit requirements and illegal penalties, including  
5 penalties for a septic system that was legal when built.

6 103. The County's arbitrary and capricious reversal on July 23, 2002 of the Planning  
7 Commission's unanimous approval of the Braun's permit application was only one part of an  
8 ongoing pattern and practice of discriminatory treatment against the Brauns at the hands of  
9 County officials and policymakers dating back to 1998.

10 97. It became the County's standard operating practice to obstruct and oppose the Braun's  
11 applications and their ability to make reasonable use of their property. This standard operating  
12 practice may be described in a county officials own words as "how to deal with Oscar."

13 98. The County employed this pattern and practice of 'dealing with Oscar' in retaliation for  
14 Mr. Braun's vigorous exercise of his First Amendment rights, most notably the right to petition  
15 grievances, the right to free speech and the right to freedom of the press.

16 99. The County continued its pattern and practice of retaliatory conduct in 2004 and 2005 by  
17 violating the terms of the state court settlement agreement in that:

18 (a) the Board of Supervisors failed to summarily issue the permits but rather engaged in  
19 some kind of unwarranted de novo hearing;

20 (b) the County refused the Superior Court's demand that it remove the appealability clause of  
21 the permit approval;

22 (c) the Board of Supervisors added additional terms to the approval of the permits;

23 (d) the Board of Supervisors failed to issue the planning permits within the time period  
24 required by the state court settlement agreement

25 (e) the Board allowed an incomplete and inaccurate record to be presented at the July 2004  
26 hearing which omitted important facts such as the state court settlement agreement even though it  
27 was aware of the agreement and the terms thereof.

28 This pattern and practice shows the County's continuing retaliation and improper motivation.

1 100. The County further engaged in a pattern and practice of retaliation against Mr. Braun's  
2 exercise of his First Amendment rights by once again obstructing Plaintiffs' building and  
3 environmental health permits. Mr. Braun submitted his application at the time of the settlement  
4 agreement and was assured that it was all permits would be taken care of. Instead, the County is  
5 stalling and delaying the issuance of permits on pretextual grounds. It was not until late January  
6 2005 that Plaintiffs became aware that the County was taking the position that the applications  
7 were incomplete or deficient in some manner. The County's position was spelled out in a letter  
8 to Plaintiffs' former counsel Bill Warhurst dated December 16, 2004. However, Mr. Warhurst  
9 never received the letter, and Plaintiffs are informed and believe that the letter was intentionally  
10 withheld until after the *Braun I* court reached its decision on Defendant's Motion for Summary  
11 Judgement.

12 101. In the December 16, 2004 letter, the County indicated that Mr. Braun's applications were  
13 incomplete because he still needed to submit various plans and drawings. The County also  
14 indicated that the Brauns must submit an application for their security gate with telephone access  
15 system. Not only was this last item not part of the settlement agreement, it was not even part of  
16 the additional terms the County imposed in its approval of July 27, 2004. On January 20, 2005  
17 when Plaintiffs became aware of Ms. Soosaipillai's December 16, 2004 letter, Mr. Warhurst  
18 responded in a letter dated January 28, 2005 indicating that it was Mr. Braun's belief, based on  
19 the previous representations of the County, that the applications were complete. The Plaintiffs  
20 heard nothing from the County until April 5, 2005 when Ms. Soosaipillai called Mr. Warhurst to  
21 inquire if the Brauns intended to submit applications for permits.

22 102. To this day, the Brauns have not received their permits and remain at the mercy of the  
23 County. The resulting uncertainty creates great anxiety for the Brauns as they continually  
24 wonder what if any further arbitrary enforcement actions the County may take. This uncertainty  
25 casts a cloud over the title to the Brauns' property and acts as an impediment to selling the  
26 property.

27 103. Plaintiffs are informed and believe that the County is continuing to delay and obstruct the  
28 approval of Plaintiffs building and environmental health permits despite the fact that the

1 applications are complete, and that this delay and obstruction is a further continued form of  
2 retaliation against the Brauns for their exercise of their First Amendment rights. Plaintiffs are  
3 further informed and believe that the County's willful violation of the settlement agreement, and  
4 continued refusal to act in good faith, have deprived Plaintiffs of their rights to a fair and  
5 impartial decision maker in violation of Plaintiffs right to due process of law. Plaintiffs are  
6 informed and believe that Defendant's withheld evidence of their lack of compliance with the  
7 settlement agreement until after the close of formal discovery and shortly before trial in the  
8 earlier action in an effort to prevent Plaintiffs' from amending their complaint and to prejudice  
9 Plaintiffs' case.

10 104. Plaintiffs are informed and believe and thereupon allege that the County Board of  
11 Supervisors was aware of the above described actions of the County's agents and the Board  
12 ratified such actions either through explicit or implicit action.

13 105. Throughout the many years of Plaintiffs' dealings with the Defendants, the Brauns have  
14 consistently indicated their willingness to comply with any and all lawfully enacted code  
15 requirements and/or related fees. The Brauns' attempts to legalize their property have been met  
16 with Kafka-esque machinations and obfuscation. Their legitimate efforts to challenge the  
17 County's erroneous assessment of fees and inconsistent or inaccurate application of various  
18 ordinances has been met with hostility denial and retaliation. Their only refuge and shelter has  
19 been in the even hands of justice as administered by the courts.

20 **FIRST COUNT AS TO ALL DEFENDANTS**

21 (Violation of Civil Rights, 42 U.S.C. §1983, in Retaliation for Exercise of Free Speech, Freedom  
22 of Press and Freedom to Petition Protected by First Amendment)

23 106. Plaintiffs reallege and incorporate herein by reference each and every allegation contained  
24 in paragraphs 1 through 105, inclusive, as though fully incorporated herein and made a part  
25 hereof.

26 107. The Brauns are entitled to the protections of the First Amendment to the United States  
27 Constitution, including but not limited to the Freedom of Speech, Freedom of the Press, and  
28 Freedom to Petition Grievances. These First Amendment rights apply to the Plaintiffs pursuant

1 to the Fourteenth Amendment.

2 108. As alleged herein, the County and Defendants Gordon, and Nevin have deprived the  
3 Brauns of their civil rights by its conduct alleged above, by penalizing the Brauns unfairly in  
4 retaliation for their protected First Amendment activities.

5 109. The Brauns are informed and believe, and thereon allege, that this improper conduct was  
6 pursuant to a County policy and/or custom under which County officers and policymakers  
7 directed that planning decisions be implemented in a retaliatory and disparate fashion as against  
8 the Brauns, based on the Brauns' protected activities, and under which county officers and  
9 policy-makers ratified said disparate treatment of the Brauns.

10 110. Said County officers and policymakers acted and continued to act under color of state law  
11 in depriving the Brauns of their civil rights, in violation of 42 U.S.C. § 1983.

12 111. Defendants Gordon and Nevin acted and continued to act under color of state law in  
13 depriving the Brauns of their civil rights, in violation of 42 U.S.C. § 1983.

14 112. The actions of all defendants have constituted a systematic pattern and practice of  
15 retaliation.

16 113. As a proximate result of the County's conduct, and the facts alleged herein, Plaintiffs  
17 have been damaged in an amount to be proven at trial.

18 **SECOND COUNT AS TO ALL DEFENDANTS**

19 (Violation of Civil Rights, 42 U.S.C. §1983, Violation of Procedural Due Process)

20 114. Plaintiffs reallege and incorporate herein by reference each and every allegation contained  
21 in paragraphs 1 through 113, inclusive, as though fully incorporated herein and made a part  
22 hereof.

23 115. The Brauns are entitled to procedural due process under the Fourteenth Amendment to  
24 the United States Constitution.

25 116. As alleged herein, the County and Defendants Gordon and Nevin have deprived the  
26 Brauns of their civil rights by its conduct alleged above, by utilizing government processes for  
27 illegitimate purposes including, *inter alia*, penalizing the Brauns unfairly in retaliation for their  
28 protected First Amendment activities. County officials and policymakers acted in bad faith and

1 with the intent to harm the Brauns and thereby deprived the Brauns of their right to a fair and  
2 impartial decision maker.

3 117. As alleged herein, Plaintiffs had a property interest in the granting of the permits as these  
4 permits were guaranteed to be issued under the terms of the settlement agreement, to which  
5 Plaintiffs have adhered but which Defendant has breached.

6 118. As alleged herein, all Defendants' conduct was malicious, arbitrary and unreasonable.  
7 The County officers and policymakers and Defendants Gordon, and Nevin engaged in grave  
8 unfairness in the discharge of their legal responsibilities, and deliberate and arbitrary abuse of  
9 government power. The County improperly interfered with the process by which permits should  
10 be issued, where the Brauns were otherwise entitled under law to the permits, and the County  
11 officers and policymakers acted for improper motives, based on political animus and/or personal  
12 animosity.

13 119. The Brauns are informed and believe, and thereon allege, that this improper conduct was  
14 also pursuant to a County policy and/or custom under which County officers and policymakers  
15 directed that planning decisions be implemented in a retaliatory and disparate fashion as against  
16 the Brauns, based on the Brauns' protected activities, and under which county officers and  
17 policymakers ratified said disparate treatment of the Brauns.

18 120. Defendants Gordon, Nevin, and Hill acted and continued to act under color of state law in  
19 depriving the Brauns of their civil rights, in violation of 42 U.S.C. § 1983.

20 121. The actions of all defendants have constituted a systematic pattern and practice of  
21 discriminatory conduct.

22 122. As a proximate result of the County's conduct, and the facts alleged herein, Plaintiffs  
23 have sustained damages for expenses and attorney fees to oppose the unlawful actions of the  
24 County, and other damages in an amount to be proven at trial.

25 123. Plaintiffs are personally obligated to pay their attorney for attorney services to prosecute  
26 this action. Plaintiffs are entitled to recover attorney fees if they prevail in this lawsuit, on the  
27 ground that the County's decision was the result of retaliatory, arbitrary, and capricious action.

28 124. As a proximate result of the County's conduct, and the facts alleged herein, Plaintiffs



1 have been damaged in an amount to be proven at trial.

2 **THIRD COUNT AS TO ALL DEFENDANTS**

3 (Violation of Civil Rights, 42 U.S.C. §1983, Violation of Equal Protection of the Law under the  
4 Fourteenth Amendment)

5 125. Plaintiffs reallege and incorporate herein by reference each and every allegation contained  
6 in paragraphs 1 through 124, inclusive, as though fully incorporated herein and made a part  
7 hereof.

8 126. The Brauns are entitled to equal protection of the laws, a right protected by the Fourteenth  
9 Amendment to the United States Constitution.

10 127. As alleged herein, the Defendants deprived the Brauns of their civil rights by its conduct  
11 alleged above, by treating the Brauns in a manner unlike similarly situated persons, by imposing  
12 conditions on the Brauns' residential permit application that were not imposed on similarly  
13 situated persons.

14 128. Defendants treatment of the Brauns with regard to the permitting process drew an  
15 arbitrary and irrational distinction between permit applicants who were politically aligned  
16 with the Board and its land use goals and permit applicants who opposed the Board's land use  
17 goals.

18 129. The Brauns are informed and believe, and thereon allege, that this improper conduct was  
19 pursuant to a County policy and/or custom under which County officers and policymakers  
20 directed that planning decisions be implemented in a retaliatory and disparate fashion as against  
21 the Brauns, based on the Brauns' protected activities, and under which county officers and  
22 policymakers ratified said disparate treatment of the Brauns.

23 130. Defendants acted and continued to act under color of state law in depriving the Brauns of  
24 their civil rights, in violation of 42 U.S.C. § 1983.

25 129. The actions of all defendants have constituted a systematic pattern and practice of  
26 discrimination.

27 131. As a proximate result of the County's conduct, and the facts alleged herein, Plaintiffs  
28 have been damaged in an amount to be proven at trial.

1 **PRAYER**

2 WHEREFORE, Plaintiffs pray that they recover as follows:

- 3 1. Plaintiffs recover their damages according to proof, with interest thereon;  
4 2. Plaintiffs recover their costs incurred in this matter;  
5 3. Plaintiffs recover their attorney fees pursuant to 42 U.S.C. § 1988; and  
6 3. Such other and further relief be granted that the Court considers proper.

7  
8 Dated: May 16, 2005

MINAMI, LEW & TAMAKI LLP

9  
10  
11 By: /s/

12 Brad Yamauchi  
13 Attorneys for Plaintiffs  
14 Oscar Braun and Andrea Braun  
And THE OSCAR A. BRAUN TRUST DATED 1996

15 **REQUEST FOR JURY TRIAL**

16 Plaintiffs hereby request a jury trial pursuant to F.R.C.P. 38(b).

17  
18 Dated: May 16, 2005

MINAMI, LEW & TAMAKI LLP

19  
20  
21 By: /s/

22 Brad Yamauchi  
23 Attorneys for Plaintiffs  
24 Oscar Braun and Andrea Braun  
And THE OSCAR A. BRAUN TRUST DATED 1996