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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(San Francisco Division)

OSCAR BRAUN, ANDREA BRAUN,
AND THE OSCAR A. BRAUN TRUST
DATED 1996

Plaintiffs,

vs.

COUNTY OF SAN MATEO,

Defendants.

Case No.

COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS

42 U.S.C. § 1983

1. First Amendment
2. Fourteenth Amendment - Procedural
Due Process

Demand for Jury Trial

Plaintiffs Oscar Braun and Andrea Braun allege as follows:

JURISDICTION AND VENUE

1. This action arises under 42 U.S.C. § 1983. The jurisdiction of the court is pursuant to 28 U.S.C. §§ 1331 and 1343(a)(1).
2. Venue is proper in the Northern District of California because a substantial number of the events, acts or omissions giving rise to the claim occurred in this District.

PARTIES AND INTRODUCTION

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

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

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

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

17 7. After this reversal, Plaintiffs filed an action on October 7, 2002 seeking a writ of
18 administrative mandamus in San Mateo Superior Court in an action entitled Half Moon Bay
19 Coastside Foundation aka Save Our Bay, Bernie Neves, Oscar Braun, and Andrea Braun vs. County
20 of San Mateo Case No. CIV 426174. Plaintiffs sought to overturn the Board's refusal to grant the
21 permits.

22 8. On July 24, 2003 plaintiffs filed an action under 42 U.S.C. section 1983 in the Northern
23 District of California entitled Oscar A. Braun, et al., v. County of San Mateo, No C 03-03415 MJJ
24 ("*Braun I*"). The complaint as subsequently amended alleged that the County retaliated against the
25 Brauns for Mr. Braun's vigorous exercise of his First Amendment rights to free speech and freedom
26 to petition for redress. On December 19, 2004, on the County's motion for summary judgment,
27 Judge Jenkins denied summary judgment on Plaintiff's First Amendment retaliation claim,
28

1 determining that a rational trier of fact could infer that the Board's actions were retaliation for Mr.
2 Braun's protected speech. That action is currently pending and set for trial on May 9, 2005.

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

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

14 11. On July 27, 2004 the Board violated the settlement agreement. In its meeting Board acted
15 on an "application" for a coastal development permit, although the Brauns had not applied for
16 such a permit. The Board was supposed to summarily issue the coastal development permit as
17 per the settlement agreement. Instead, the County apparently submitted an "application"
18 presumably on behalf of the Brauns without giving notice to the Brauns, their counsel, or the
19 mandamus court. In approving the "application" the Board imposed new conditions and made
20 the approval subject to appeal to the California Coastal Commission, all in violation of the terms
21 of the settlement agreement. The Brauns protested the additional terms and conditions. Finally,
22 through discussions with the County at a November 30, 2004 settlement conference in the *Braun*
23 *I* case, Plaintiffs thought their environmental health and building permit applications were
24 complete and would be finally approved shortly thereafter. In fact, the County continued to be in
25 violation of the settlement agreement by refusing to process the applications for building and
26 environmental health permits even though the applications were complete.

27 12. Plaintiffs eventually received in January 2005 a letter from County Counsel dated
28 December 16, 2005 which acknowledged that although the Brauns' applications for building and

1 environmental health permits had been received, they had not been “officially submitted.” The
2 Brauns protested that nothing more was required of them and believed the County was finally
3 about to issue the permits. In the meantime Plaintiffs attempted to settle *Braun I*. In fact, the
4 County continued to delay the permitting process, using pretexts to continue to violate the
5 settlement agreement.

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

16 14. Section 1983 of Title 42 of the U.S. Code, enacted by Congress pursuant to § 5 of the
17 Fourteenth Amendment, creates an action for damages and injunctive relief against local
18 governmental bodies, including counties, as well as individuals acting under color of state law,
19 who deprive a plaintiff of rights, privileges, or immunities secured by the Constitution. Section
20 1983 incorporates the Fourteenth Amendment, which incorporates the Bill of Rights and applies
21 them to the states. Constitutional violations actionable through Section 1983 include violations
22 of the Fourteenth Amendment standing alone, such as procedural due process or equal protection,
23 or violations of the Bill of Rights. First Amendment provisions for Freedom of Speech,
24 Freedom of the Press and Freedom to Petition are among the rights applicable to the states
25 through the Fourteenth Amendment.

26 15. Plaintiffs are informed and believe, and thereon allege, that the County’s violations of the
27 settlement agreement, bad faith actions and continuing refusal to issue environmental health, and
28 building permits are all intended to punish Andrea and Oscar Braun for their political beliefs and

1 for Oscar Braun's enthusiastic exercise of his Constitutional rights under the First Amendment,
2 including but not limited to his highly public criticism of the Board of Supervisors and certain of
3 its projects as well as his right to seek redress in the courts by way of the writ of administrative
4 mandamus, court proceedings challenging local agency actions and the pending *Braun I* case.

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

10 **THE BRAUNS' EXERCISE OF CONSTITUTIONALLY PROTECTED SPEECH**

11 17. Plaintiff Oscar Braun is the president of the Half Moon Bay Coastside Foundation, aka
12 Save Our Bay (hereinafter "Save Our Bay"), and the Brauns' residence serves as the headquarters
13 for Save Our Bay. Save Our Bay is a community-based, 501(c)(3) nonprofit,
14 environmental-watchdog, charitable corporation, which was established at the personal request of
15 the late United States Secretary of Commerce Ron Brown and was later incorporated on
16 December 23, 1999. Save Our Bay is a recognized member and active participant in the NOAA
17 Water Quality Protection Program aka WQPP, the RWQCB Stormwater Pollution Prevention
18 Program aka STOPPP, the California Coordinated Resource Management Planning Council aka
19 Coastside CRMP Council, and the Coastside Fire Safe Council (representing San Mateo County
20 Coastal Zone which comprises approximately 73% of County's land area). Mr. Braun also co-
21 founded the Half Moon Bay Chapter of the Surfrider Foundation in 1995.

22 18. Through his work with Save Our Bay, Oscar Braun has actively sought to establish a
23 comprehensive watershed management program in San Mateo County to avert catastrophic
24 environmental damage to the Peninsula watershed from natural and human-made causes,
25 including environmental terrorism, firestorm and drinking water contamination. In so doing,
26 among other controversial projects, and in criticizing the status quo and drawing attention to the
27 vulnerability of existing neglected and unmanaged watershed conditions in the County, Plaintiffs
28 have taken positions that are politically unpopular with the County, its representatives,

1 employees, and others.

2 19. Plaintiff Oscar Braun has long been outspoken on issues of public interest. In addition to
3 being the president of Save Our Bay, Oscar Braun is also the online publisher of the California
4 Watershed Posse Town Hall forum, and the co-founder of the San Mateo County rural lands
5 farming community organization, the Coastal Family Alliance. Many of Mr. Braun's written
6 opinions on political matters can be found at the web links: California Watershed Posse aka
7 "www.cwposse.org"; Half Moon Bay Coastside Foundation aka Save Our Bay
8 "www.saveourbay.org"; Enemies In Our Midst "www.enemiesinourmidst.us"; No RICO gov 4
9 Us at "www.noricogov4.us"; No Invasive Species 4 Us at "www.noinvasivespecies4.us"; Wise
10 Use 4 Us at "www.wiseuse4.us"; The Pebble News at "www.thepebble.us" Eco-Justice 4 Us
11 Forum at "www.ecojustice4.us"; Lake Berryessa Visitors Services Planning Taskforce at
12 "www.lbvstpt.info"; and Oscar Knows Inc at "www.oscarknows.com"; Mr. Braun is also
13 spearheading a drive to incorporate approximately 100,000 acres of unincorporated rural coastal
14 lands in the County, and publishes a website in support of the incorporation project, "Rural
15 Lands Inc" at "www.rlinc.org".

16 20. Mr. Braun has utilized these forums to discuss matters of public concern under his First
17 Amendment rights of freedom of speech and of the press as a frequent critic of the Board of
18 Supervisors and various County practices, policies and programs, including the Devil's Slide
19 project and the failure of the County to provide adequate services to coastal residents. He is a
20 frequent speaker before the County Board of Supervisors and other local, state and federal
21 agencies. He uses the website as a clearinghouse for news, reports and other information on
22 public issues concerning coastal San Mateo County. Mr. Braun regularly sends e-mails to a list
23 of recipients that includes local residents, government officials at the local, county, state, and
24 federal level, and members of the press.

25 21. Mr. Braun is disliked by many in the so-called "environmental community," presumably
26 because of his position that the agenda of some of these groups is "anti-community" and results
27 in negative impacts for local residents. Mr. Braun has been outspoken in his belief that the
28 "environmental community" has exerted its influence with the County to limit affordable and

1 available housing in the coastside by a technique of restricting use and development of housing,
2 agriculture, police protection, fire protection, roads, sewer systems, water, watershed and
3 schools.

4 22. Plaintiff Oscar Braun has been a "whistle-blower" regarding environmental damage in the
5 coastside and rural lands of the County and has assisted the enforcement of environmental laws
6 in the County. In so doing, Mr. Braun was exercising his First Amendment rights to petition
7 grievances and take an active role in government. One of the main goals of Mr. Braun's
8 enforcement activities is to ensure that local governments and agencies comply with state and
9 federal law so they do not lose state and federal funding. His whistleblowing efforts include, for
10 example, reporting in 1993 the illegal dumping of solid waste material into the tributaries of the
11 Arroyo Leon in the Johnston Ranch property. Over the next few years, Mr. Braun stayed active
12 in monitoring contamination and environmental damage from illegal dumping and other
13 activities on the Johnston Ranch property. Also in the early 1990's Mr. Braun reported on illegal
14 dumping and other environmentally damaging activities by his neighbors the Giovannonis who
15 owned and operated Half Moon Bay Paving and Sealing. In 1995 Mr. Braun and his attorney, the
16 late Alan Beaven, commenced litigation in 1995 that forced the Sewer Authority Midcoast to
17 update and improve its sewer system, stopping hundreds of egregious environmental violations
18 and the repeated exposure of the public beaches to raw sewage. In 1998, Mr. Braun
19 photo-documented the County's long history of dumping tons of road-slide dirt and debris into
20 the Arroyo Leon Creek's Environmentally Sensitive Habitat Area ("ESHA"), including the creek
21 bed stream for steelhead trout. In response to Mr. Braun's evidence, the State of California
22 forced the County to cease its unlawful practices.

23 23. Mr. Braun's whistle-blowing activity includes a 1997 lawsuit he and the Costal Family
24 Alliance filed against the County of San Mateo's adoption of the Devil's Slide Tunnel
25 Alternative in order to prevent violations of the Clean Water Act, the Endangered Species Act
26 and the California Coastal Act.

27 24. Plaintiff Oscar Braun has also spoken out publicly on the subject of County elections.
28 San Mateo County is the only county out of 48 counties in the State of California that does not

1 have district elections for its Board of Supervisors. Accordingly, the San Mateo County coastal
2 population has traditionally been under-represented in County government, because supervisors
3 are customarily elected from the "Bay" side of the County with greater population centers.
4 Many on the San Mateo coast believe that the coast receives less than its fair share of County
5 resources.

6 25. For at least the last four years, Mr. Braun has spoken out publicly on behalf of a great
7 number of coastal residents who feel ignored by the County government. Mr. Braun's notoriety
8 has even made him the subject of insults and derogatory comments by at least one County
9 official in candid comments.

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

14 27. Oscar Braun has also been a whistle-blower in regards to improprieties arising from the
15 annexation of the San Mateo County Coastal Area into the Mid-Peninsula Regional Open Space
16 District. This project requires the approval, among other entities, of the San Mateo Local
17 Agency Formation Commission ("San Mateo LAFCO"), an ostensibly independent agency which
18 is actually overseen by the Board of Supervisors. Mr. Braun and SOB have issued numerous
19 press releases criticizing MPROSD and San Mateo LAFCO.

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

26 29. On May 4, 2004, John Plock, on behalf of Save Our Bay, again wrote to San Mateo
27 LAFCO and invoked a statutory protest hearing to reconsider the approval of the annexation.
28 The letter points out legal irregularities in the process as well as evidence that open space land

1 transfers are being conducted at inflated property values. Finally the letter points out that San
2 Mateo LAFCO, which is supposed to be an agency independent of the County, is run by a County
3 employee. SOB questioned the independence of the San Mateo LAFCO and requested the
4 agency disclose its relationship to the County.

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

11 31. On June 9, 2004 Mr. Braun, and his attorney, on behalf of Save Our Bay appeared in
12 court to argue for an order suspending the protest hearing, because San Mateo LAFCO had failed
13 to include matters required by statute in the hearing notice, as well as other deficiencies. The
14 court found that the protest notice and proceedings were defective and note that the court was
15 "highly troubled" by San Mateo LAFCO's failure to follow statutory requirements.

16 32. San Mateo LAFCO's failure to follow statutory procedure in noticing the protest hearing
17 raised the risk that voters who wished to submit written protests may be disenfranchised. As
18 such on July 8, 2004, Mr. Braun and SOB filed for a Temporary Restraining Order ("TRO")
19 preventing San Mateo LAFCO from proceeding with the annexation application because of
20 inaccuracies and errors in the process.

21 33. On July 13, 2004 the San Mateo Superior Court issued a TRO prohibiting San Mateo
22 LAFCO from proceeding with the annexation application.

23 34. Rich Gordon and Jerry Hill and members of the San Mateo Board of Supervisors and are
24 also commissioners of San Mateo LAFCO. Plaintiffs are informed and believe and thereupon
25 allege that Rich Gordon and Jerry Hill were fully aware of Mr. Braun's involvement in the
26 LAFCO/MPROSD litigation. Plaintiffs are informed and believe and thereupon allege that
27 political allies of Board members stand to benefit financially and otherwise if MPROSD is
28 successful in its annexation application.

35. The Brauns further exercised their First Amendment rights to petition the government for redress by instituting various legal actions, including the state writ of mandamus, and the §1983 action *Braun I*.

THE BEGINNING OF THE ONGOING RETALIATION:

THE PERMIT APPLICATION PROCESS AND RELATED EVENTS

36. Plaintiffs are informed and believe thereupon allege that the acts herein complained of are part of Defendant's continuing pattern and practice of unlawful retaliation, and arbitrary and vindictive acts designed to punish the Brauns for the exercise of First Amendment rights. This pattern and practice began in approximately 1998 and Plaintiffs herein provide a background context in which to better highlight Defendants' unlawful acts.

37. On March 4, 1998, the County conducted an investigation of Plaintiff's Property in response to a request by politically connected neighbor, Cynthia Giovannoni. On March 12, 1998, the County cited Plaintiff Oscar Braun for development in the Resource Management-Coastal Zone without a development review permit. The County also stated that the Brauns needed a farm labor housing permit for Mr. Neves' residence and a stable permit for the stable. Based on a 1994 County memorandum authored by Defendant Terry Burnes, Oscar Braun understood that farm labor housing fees were waived and had submitted the appropriate paperwork to the San Mateo County Farm Bureau. The County also insisted that the Brauns be assessed permit fees under an old stable ordinance which contained a higher fee schedule than the new stable ordinance. In what would be one of many pretextual, legally dubious and often erroneous explanations the County insisted that the new stable ordinance could not be applied because it had not been approved by the Coastal Commission, despite the fact that the Coastal Commission did not need to and indeed could not approve a county-wide ordinance.

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

39. On September 15, 1998, while Mr. Braun was meeting with Ms. Thompson in the County's offices at the time and date she requested, a Sheriff's officer interrupted Mr. Braun as he

1 was attempting to complete the application and pay whatever fees were required, directed planner
2 Thompson to leave the room, and then served Mr. Braun with a citation for nuisance for
3 maintaining the very structures Mr. Braun was in the process of legalizing.

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

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

15 42 At the direction of the court, the parties met the following day to complete the
16 applications and pay the fees. The Brauns paid the full fee calculated during trial by Ms.
17 Thompson - \$3,720 - and received a receipt therefore. Subsequently, as alleged below, the
18 County failed to credit the Brauns with this payment and threatened the Brauns with denial of
19 their permit applications if they did not pay these same monies again.

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

27 44. On July 26, 1999, the County notified Plaintiffs that the topographical map, including
28 driveway profile survey, met the County's requirements. However, the County then demanded

1 that the elevation drawings be revised. The County then added several new requirements not
2 included in the court's January 20, 1999, order or otherwise made or disclosed by the County in a
3 timely fashion.

4 45. On April 28, 2000, without prior notice to Plaintiffs, the County recorded a Notice of
5 Continuing Nuisance with respect to the Property. The County recorded such notice even though
6 it had communicated to the Brauns that there application was complete.

7 46. Plaintiffs Brauns lawfully sought to use their property and lease a portion of it for the
8 purpose of cell phone communications antennae. From 1998 - 2000, Nextel and Spring
9 respectively investigated with Plaintiffs Braun and with the County installing several cell-phone
10 antennae on Plaintiffs' Property. Thereafter, the Brauns signed and recorded leases for multiple
11 telephone tree antennas with both companies.

12 47. The sites would have provided cellular service to the rural coastal zone area from Half
13 Moon Bay to Pacifica, and over the life of the lease would have produced millions of dollars of
14 rental income to the Brauns. A Sprint PCS representative informed Mr. Braun that a County
15 staff member told the Sprint PCS representative that the staff member's superior at the County
16 Planning Department had instructed the staff member to block or frustrate any applications for
17 the Plaintiffs' Property because of Mr. Braun's outspokenness and willingness to sue the County.
18 The Sprint Representative was also told to look elsewhere for their antennae sites, and that the
19 County "knows how to deal with Oscar." On July 6, 2000, Mr. Braun complained by letter to the
20 County, but the County never changed positions.

21 48. The County's intentional and retaliatory obstruction tactics ultimately caused Sprint PCS
22 and Nextel to back out of the leases, resulting in significant financial damages to the Brauns into
23 the millions of dollars. The Brauns are informed and believe the County maintained the nuisance
24 claim "to deal with Oscar" and thereby preclude the Brauns from earning rental income from the
25 lucrative practice of providing cell phone antennae at this unique location.

26 49. The Planning Department finally determined in October, 2000, that the permit
27 applications had been completed. At that point, the permitting process had taken over two years.
28 The Brauns are informed and believe and thereon allege that the County delayed and obstructed

1 the permitting process because Oscar Braun has been a critic of the County and has been willing
2 to stand up to the County in the public's interest and expend all necessary resources to do so
3 whereas others often do not have the resources to do so.

4 **PLANNING COMMISSION DECISION APPROVING ALL PERMITS**

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

11 51. On November 14, 2001, three and a half years after the process began the Planning
12 Commission unanimously approved the Coastal Development Permit, Resource
13 Management-Coastal Zone Permit and Stable Permit with the conditions noted by the staff. In so
14 doing, the Planning Commission legalized the stable, tractor shed, and agricultural barn,
15 approved replacement of one 8,000-gallon water tank with two 5,000-gallon water tanks, and
16 assigned a floating density credit to Mr. Neves' residence thus designating it as an affordable
17 housing unit. At the same time, the Planning Commission rejected all objections to approval
18 made by three objectors.

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

20 52. On December 3 and 4, 2001, two of the objectors to approval of the permits filed appeals
21 of the Planning Commission decision to the Board of Supervisors. The appellants were Ms.
22 Giovannoni, the neighbor whose complaint started the County investigation into Plaintiffs'
23 Property, and the self-proclaimed 'sixth member' of the Board of Supervisors and land use power
24 broker, Lennie Roberts.

25 53. At the Board of Supervisors meeting on January 15, 2002, Ms. Roberts used her
26 considerable influence over the Board of Supervisors to criticize Mr. Braun in opposition to his
27 permit application. She recited the following activities as reasons why the application should be
28 denied: Mr. Braun filed complaints against state parks and the county public works department;

1 appealed coastal development permit applications of neighbors he alleged to be in violation of
2 environmental and land use laws; alleged the presence of an unpermitted waste dump on
3 adjoining land owned by a local land trust; and made appeals to the assessor's office regarding
4 tax impacts of local environmental problems on adjoining properties. Each of these activities
5 attributed to Oscar Braun is protected by the First Amendment.

6 54. On January 15, 2002, the San Mateo County Board of Supervisors made interim rulings
7 on the appeals from the Planning Commission decision that approved Plaintiffs' permits. First,
8 the Board of Supervisors determined that all building permit fees and penalties for building
9 without building permits were due on December 2, 1998, when the initial permit applications
10 were filed. The Board of Supervisors directed the County planning staff to calculate and collect
11 all building, development, stable and planning fees, including all "penalties," that, allegedly,
12 should have been charged and collected by the County on December 2, 1998. Second, the Board
13 of Supervisors directed its staff to inspect Plaintiffs' Property yet again for any other building,
14 planning or development permit violations that were not included in the current legalization
15 application.

16 55. On February 11, 2002, the County informed Plaintiffs that the additional fees assessed by
17 the Board of Supervisors on January 15, 2002, totaled \$27,238.50, which the County described as
18 "payment of all fees due for planning, building and environmental health permits, including all
19 applicable investigation fees and penalties due for construction without permits."

20 56. On or about March 13, 2002 the County recorded a notice of Continuing Violation
21 against the Property.

22 57. On or about April 2, 2002, the County conducted a "SWAT" type raid on the Property,
23 looking for any additional violations to include on the application. The incursion consisted of
24 several armed County officers and at least three patrol vehicles from the County's 'Rural Crimes
25 Unit,' in addition to at least three other County vehicles. Plaintiffs are aware of no other such
26 display of force, intimidation and overkill for inspection of similarly situated applicants for a
27 residential permit. Plaintiffs are informed and believe this display of force was designed to
28 intimidate Mr. Braun from speaking out publicly on political issues or in the public interest as he

1 had done in the past.

2 58. On April 10, 2002, the County's planning staff amended its report of February 11, 2002,
3 and forwarded the amended report to the Board of Supervisors. The amended staff report stated
4 that staff had determined that the Brauns had roofed a patio area without permits and that the
5 application for legalization should be amended to include this, along with a "storage shed
6 adjacent to stable" that is actually a movable shade for horses, and a "storage container" that was
7 illegally placed on the Property by the spouse of the Brauns' neighbor, appellant Cynthia
8 Giovannoni. This "storage container," which in later testimony before the Board of Supervisors
9 the Giovannonis admitted to placing on the Brauns' Property, is actually a huge, landfill
10 solid-waste disposal trailer.

11 59. The County now claimed Plaintiffs owed \$45,073.24 of which \$5,718.50 had been paid.
12 Of the total, the County described \$36,543.08 as "investigation fees," i.e., penalty assessments.

13 60. In communications with the County, Plaintiffs amended their applications to include the
14 patio enclosure. Plaintiffs disputed the need for a building permit for the movable horse shade
15 and denied seeking legalization of the neighbors' landfill-solid-waste-disposal trailer that was
16 trespassing on the Property. Despite this trespass, the County has never ordered the neighbor to
17 remove the trailer, and it remains on the Brauns' Property.

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

25 62. On July 17, 2002, County Counsel Thomas F. Casey, III, submitted a further report
26 regarding the status of the dispute with Plaintiffs. County Counsel reported that Plaintiffs'
27 application complied with all County regulations as to the enclosure of the patio, the stable, the
28 tractor shed, the agricultural barn, the water tanks and the storage shed adjacent to the stable.

1 County Counsel reported that as to these items (not the affordable housing unit), the only dispute
2 was Plaintiff's refusal to pay sums assessed for investigation fees, which Plaintiffs assert are
3 unlawful charges. In an apparent concession that the County had assessed unlawful fees, County
4 Counsel reduced the County's demand for so-called "investigation fees" from \$36,543.08 to
5 \$20,132.80 between April and July 2002.

6 63. Throughout the appeal process, Plaintiffs Braun were subjected to the County's capricious
7 demands that they pay all County fees - even fees that the County eventually admitted were either
8 unlawful or already paid - by particular dates and were subjected to the County's position that the
9 Brauns' failure to meet such demands in full would cause the County to uphold the appeal and
10 deny the permits.

11 64. Plaintiffs objected to the arbitrary penalties and investigative fees charged by the County,
12 because the fees and charges violate provisions of the California Government Code that require
13 that such fees and charges be equivalent to the reasonable estimated cost of processing permits
14 and reviewing structures.

15 65. Plaintiffs contend that these fees were unlawful under the California Constitution,
16 California Statutory Law and County ordinance. These repeated demands for payment of
17 unlawful charges further demonstrate that the County's actions toward Plaintiffs were unlawful,
18 arbitrary and retaliatory.

19 66. The County ultimately alleged that Plaintiffs do not comply with County regulations
20 regarding only one structure to be legalized - the affordable housing unit, which has been Mr.
21 Neves' residence for approximately 10 years. The County asserted that the septic tank for the
22 unit is in violation of county ordinance, because it is too close to the unit. At the time the unit
23 was placed on the property, the Brauns were in compliance with the then-existing ordinance.
24 The County is now wrongly asserting that the Brauns must comply with the current septic
25 ordinance when the Brauns contend they are "grandfathered" in.

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

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

The foregoing actions form the basis for the complaint in *Braun I*.

THE BRAUNS SEEK RELIEF IN THE COURTS

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

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

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

(a) Plaintiffs were to pay \$12,000 in additional fees prior to the Board's decision on issuance of the permits. The \$12,000 would constitute full payment of all permit and investigation fees for each and every permit involved in the action, which included planning permits, building permits, and environmental health permits;

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

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

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

1 (e) The County would remove the notice of continuing violation and nuisance.
2 The settlement agreement was ratified with the same terms by the Board of Supervisors on July
3 2, 2004.

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

10 **THE COUNTY RETALIATES AGAIN IN 2004**

11 73. In late July 2004 Plaintiffs became aware through a third party that the Board was
12 planning to violate the settlement agreement by engaging in some kind of *de novo* review of the
13 Brauns' costal development and resource management permit applications, rather than the
14 summary review and approval required by the settlement agreement. This bizarre proceeding
15 essentially meant that the County itself was bringing an "application" on behalf of the Brauns.
16 This procedure was not contemplated or authorized by the settlement agreement, and the County
17 did not notify the Brauns, their counsel or the mandamus court of its intent to engage in this
18 proceeding. Moreover, the proceeding further violated the settlement agreement and the
19 mandamus court's specific instruction by making the Board's decision appealable to the
20 California Coastal Commission. This in turn would expose the Brauns to further delays and
21 raised the specter that "interested parties" such as Lennie Roberts and Cynthia Giovanonni would
22 once again appeal the permits to the Commission.

23 74. Plaintiffs' former counsel Ted Hannig of the Hannig Law Firm filed an ex parte
24 application to the San Mateo Superior Court that retained jurisdiction over the settlement to
25 prevent the County's imminent breach of the settlement agreement. The Superior Court asked
26 Deputy County Counsel Soosaipillai to remove the language in the staff report and proposed
27 resolution that declared the permit appealable, but the County refused to remove the appeal
28 condition. The Court then took a recess, conducted its own research, and then returned,

1 explaining that precedent dictated that since the permits were not part of the normal
2 administrative process but rather were under the jurisdiction of a separate judicial proceeding, the
3 County could not subject the permit approval to appeal to the Coastal Commission. Deputy
4 County Counsel indicated that although she had not read the case in question, she did not agree
5 with it and the County refused to remove the appeal condition.

6 75. Plaintiffs are informed and believe, and thereon allege, that these actions were retaliatory,
7 wrongful, unlawful, and a prejudicial abuse of the County's authority, and were ultimately
8 motivated by a desire to punish Mr. Braun for his outspoken criticisms of the County's policies
9 and practice and for his use of legal process to seek redress from the County.

10 76. Plaintiffs are further informed and believe, and thereon further allege that these actions
11 and the County's blatant disregard of the authority of the mandamus court denied Plaintiffs a
12 right to a fair and impartial decision maker in violation of Plaintiffs' right to due process of law.

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

22 78. The staff report acknowledged that under the terms of the settlement agreement the Board
23 was required to approve the settlement agreement. Nonetheless, the report ignored the terms of
24 the settlement and treated the proceeding as if the Board could consider additional evidence or
25 take actions beyond that authorized under the terms of the settlement agreement. There were
26 three attachments provided to the Board by the County: an executive summary by Director of
27 Environmental Services Marcia Raines, the staff report by Ms. Raines, and various maps, plans
28 and elevations previously submitted by Plaintiffs as part of their earlier application. The County

1 did not provide the Board with a copy of the settlement agreement nor was it part of the exhibits
2 listed on the agenda.

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

9 80. Video tapes of these proceedings were not disclosed to Plaintiffs in *Braun I* in violation
10 of the County's discovery obligations in that case. The tapes were only received in March 2005
11 pursuant to a Public Records Act request. The tapes reveal that Planning Administrator Terry
12 Burnes presented the applications to the Board as an *appeal* of the applications that were
13 previously before the Board; this flatly contradicts the published agenda of the meeting which
14 characterizes the proceeding as a "hearing to consider an application" for various permits. Mr.
15 Burnes does not indicate who the appellants were, nor does he acknowledge that the Board was
16 bound under the settlement agreement to approve the applications. Plaintiffs are informed and
17 believe and thereon allege that this "bait and switch" was intended to create an alternative de
18 novo hearing in which the County could try to escape its obligations under the settlement
19 agreement and further obstruct and delay the process.

20 81. Ted Hannig was present at the hearing and placed objections on the record including
21 evidence that the entire proceeding, much less the new conditions of approval, violated the terms
22 of the settlement agreement as well as evidence that the Brauns had complied with the terms of
23 the settlement agreement. Mr. Hannig further informed the Board that just the prior week the
24 San Mateo Superior Court had asked County Counsel to remove the appealability provision of
25 the staff report and recommendation. Despite this, the Board approved the permits subject to a
26 number of conditions - including the appealability of the application and payment of additional
27 fees - that violated the terms of the settlement. The Board even went so far as to condition
28 approval of the permits on Plaintiffs' compliance with Half Moon Bay Fire District requirements

1 including the payment of fees to the District.

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

7 83. Plaintiffs are informed and believe, and thereon further allege that these actions denied
8 Plaintiffs a right to a fair and impartial decision maker in violation of Plaintiffs' right to due
9 process of law.

10 84. On July 29, 2004 Plaintiffs received a Notice of Final Local Action from the County
11 which indicated that permits would be approved subject to conditions and subject to the
12 expiration of the appeals period. Plaintiffs objected and asserted that under the terms of the
13 settlement they were entitled to the permits within 40 days of payment of the fees, that is, by
14 August 9, 2004. Plaintiffs further objected that the County had violated the settlement agreement
15 by adding additional terms and by making the permit appealable. Since the permit approval
16 process was not complete until either the expiration of the appeal period or the final decision of
17 the Coastal Commission (either of which would occur after August 9, 2004), Plaintiffs were
18 justified in arguing that the permit had not been issued within the required time period.

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

23 86. Finally, through discussions with the County at a November 30, 2004 settlement
24 conference in *Braun I*, Plaintiffs were led to believe that their building and environmental health
25 permit applications were complete and would be finally approved shortly thereafter. In fact, the
26 County continued to be in violation of the settlement agreement and refuses to process the
27 applications for building and environmental health permits even though the applications are
28 complete.

1 87. In January 2005, Plaintiffs' co-counsel, Frank Iwama received a copy of a December 16,
2 2004 letter that County Counsel claims to have sent to Bill Warhurst of the Hannig Law Firm,
3 Plaintiffs former counsel in *Braun I*. Mr. Warhurst never received the December 16, 2004 letter.
4 In this letter, County Counsel admits that the Brauns had submitted building and environmental
5 health permit applications but disingenuously claims that these permit applications had never
6 been "officially submitted." This claim is made despite the fact that Deputy County Counsel
7 Soosaipillai represented directly to Mr. Braun that she would walk the building and
8 environmental health applications through the permitting process to insure the County's
9 compliance with the terms of the settlement agreement. Moreover, the December 16, 2004 letter
10 indicates that complete sets of plans for each permit were still required. However, Plaintiffs have
11 already submitted such plans as part of their original application process, as the County is
12 undoubtedly aware. The County continues to use the same file number (PLN1999-00079) for the
13 Brauns' application and the allegedly missing plans were part of the attachments to the public
14 record of the July 27, 2004 Board proceedings. Indeed, Planning Administrator Terry Burnes
15 displayed these very plans in his discussion of the application at the July 27, 2004 Board hearing.
16 In other words there was no basis whatsoever for the County's assertion that the Brauns had not
17 submitted the required plans or other documentation for approval of the building and
18 environmental health permits.

19 88. Until Ms. Soosaipillai's letter of December 2004 and received in January 2005, the
20 County had never informed Plaintiffs of its position that there were any remaining obstacles to
21 the granting of the environmental health and building permits.

22 89. Thus Plaintiffs are informed and believe and thereon allege that the County's insistence
23 that the permit applications are incomplete is not in good faith and is intended only to further
24 delay the legalization of the Brauns' property and is part of the continuing campaign to harass
25 Plaintiffs in retaliation for Mr. Brauns' outspoken criticisms of the County's policies and
26 practices and the Brauns' instigation of legal proceedings against the County.

27 90. Plaintiffs are further informed and believe, and thereon allege, that through these actions
28 the County violated Plaintiffs' Fourteenth Amendment right to procedural due process in that

1 they were arbitrary and malicious and thereby deprived them of the right to have land use
2 determinations made by a fair and impartial decision maker.

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

9 92. This campaign of unlawful and discriminatory conduct and violation of Plaintiff Oscar
10 Braun's constitutional rights resulted in the County's violation of the settlement agreement in
11 July, 2004 and its continued violation of the agreement. Of course, the settlement agreement
12 itself was necessitated by the Board's unwarranted July 23, 2002 denial of the Brauns' permit
13 applications.

14 93. The County undertook these acts in retaliation for Oscar Braun's vigorous exercise of his
15 rights guaranteed by the First Amendment to the U.S. Constitution, including freedom of speech,
16 freedom of the press, and freedom to petition grievances. The County's actions have had a
17 'chilling' effect on Mr. Braun's exercise of his First Amendment rights, as he must now think
18 twice before publicly voicing his opinions. The County's impermissible motive was in part
19 politically grounded and was directed at the content of his speech and to attempt to deter him
20 from speaking out in the future.

21 94. Had Mr. Braun not been a vocal and critic of the County, the Brauns would have been
22 treated differently. Had Mr. Braun been aligned with powerful 'environmental' groups and their
23 influential consultants such as self-proclaimed 'sixth member' of the Board of Supervisors Lennie
24 Roberts, the Brauns would have been treated differently.

25 **THE COUNTY'S CAMPAIGN OF CONTINUING RETALIATION**

26 95. In conducting this campaign, the County's improper motivation to punish Mr. Braun is
27 shown by a pattern and practice of unfair, arbitrary and unlawful conduct, including but not
28 limited to:

- 1 (a) Undue delays and charges by the Planning Commission prior to the unanimous approval
2 of the applications;
- 3 (b) Prosecution of a misdemeanor nuisance charge while the Brauns were working to
4 complete the applications;
- 5 (c) Personal insults about Mr. Braun by County staff during the application process;
- 6 (d) Obstruction (to the point of a constructive denial) of the application for cellular phone
7 antennae on the Property, along with a staff member's admission that Mr. Braun was being
8 treated differently because of his political speech and lawsuits;
- 9 (e) Orchestrating a "SWAT" type incursion onto the property at the behest of the Board of
10 Supervisors in the guise of an investigation;
- 11 (f) The assessment of unlawful and unjust fees and 'penalties' for the permit applications;
12 including demands that the Brauns pay certain fees a second time despite the fact that they had
13 already been paid;
- 14 (g) The imposition of ever-changing permit requirements and illegal penalties, including
15 penalties for a septic system that was legal when built;
- 16 96. The County's arbitrary and capricious reversal on July 23, 2002 of the Planning
17 Commission's unanimous approval of the Braun's permit application was only one part of an
18 ongoing pattern and practice of discriminatory treatment against the Brauns at the hands of
19 County officials and policymakers dating back to 1998.
- 20 97. It became the County's standard operating practice to obstruct and oppose the Braun's
21 applications and their ability to make reasonable use of their property. This standard operating
22 practice may be described in a county officials own words as "how to deal with Oscar."
- 23 98. The County employed this pattern and practice of 'dealing with Oscar' in retaliation for
24 Mr. Braun's vigorous exercise of his First Amendment rights, most notably the right to petition
25 grievances, the right to free speech and the right to freedom of the press.
- 26 99. The County continued its pattern and practice of retaliatory conduct in 2004 and 2005 by
27 violating the terms of the state court settlement agreement in that:
- 28 (a) Board of Supervisors failed to summarily issue the permits but rather engaged in some

1 kind of unwarranted de novo hearing;

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

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

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

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

8 100. The County further engaged in a pattern and practice of retaliation against Mr. Braun's
9 exercise of his First Amendment rights by once again obstructing Plaintiffs' building and
10 environmental health permits. Mr. Braun submitted his application at the time of the settlement
11 agreement and was assured that it was all permits would be taken care of. Instead, the County is
12 stalling and delaying the issuance of permits on pretextual grounds. It was not until late January
13 2005 that Plaintiffs became aware that the County was taking the position that the applications
14 were incomplete or deficient in some manner. The County's position was spelled out in a letter
15 to Plaintiffs' former counsel Bill Warhurst dated December 16, 2004. However, Mr. Warhurst
16 never received the letter, and Plaintiffs are informed and believe that the letter was intentionally
17 withheld until after the *Braun I* court reached its decision on Defendant's Motion for Summary
18 Judgement.

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

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

12 **FIRST COUNT**

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

15 103. Plaintiffs reallege and incorporate herein by reference each and every allegation contained
16 in paragraphs 1 through 102, inclusive, as though fully incorporated herein and made a part
17 hereof.

18 104. The Brauns are entitled to the protections of the First Amendment to the United States
19 Constitution, including but not limited to the Freedom of Speech, Freedom of the Press, and
20 Freedom to Petition Grievances. These First Amendment rights apply to the Plaintiffs pursuant
21 to the Fourteenth Amendment.

22 105. As alleged herein, the County has deprived the Brauns of their civil rights by its conduct
23 alleged above, by penalizing the Brauns unfairly in retaliation for their protected First
24 Amendment activities.

25 106. The Brauns are informed and believe, and thereon allege, that this improper conduct was
26 pursuant to a County policy and/or custom under which County officers and policymakers
27 directed that planning decisions be implemented in a retaliatory and disparate fashion as against
28 the Brauns, based on the Brauns' protected activities, and under which county officers and

1 policy-makers ratified said disparate treatment of the Brauns.

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

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

6 **SECOND COUNT**

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

8 109. Plaintiffs reallege and incorporate herein by reference each and every allegation contained
9 in paragraphs 1 through 108, inclusive, as though fully incorporated herein and made a part
10 hereof.

11 110. The Brauns are entitled to procedural due process under the Fourteenth Amendment to
12 the United States Constitution.

13 111. As alleged herein, the County has deprived the Brauns of their civil rights by its conduct
14 alleged above, by utilizing government processes for illegitimate purposes including, *inter alia*,
15 penalizing the Brauns unfairly in retaliation for their protected First Amendment activities.

16 County officials and policymakers acted in bad faith and with the intent to harm the Brauns and
17 thereby deprived the Brauns of their right to a fair and impartial decision maker.

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

21 113. As alleged herein, the County's conduct was malicious, arbitrary and unreasonable.. The
22 County officers and policymakers acted engaged in grave unfairness in the discharge of their
23 legal responsibilities, and deliberate and arbitrary abuse of government power. The County
24 improperly interfered with the process by which permits should be issued, where the Brauns were
25 otherwise entitled under law to the permits, and the County officers and policymakers acted for
26 improper motives, based on political animus and/or personal animosity.

27 114. The Brauns are informed and believe, and thereon allege, that this improper conduct was
28 also pursuant to a County policy and/or custom under which County officers and policymakers

1 directed that planning decisions be implemented in a retaliatory and disparate fashion as against
2 the Brauns, based on the Brauns' protected activities, and under which county officers and
3 policymakers ratified said disparate treatment of the Brauns.

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

7 116 Plaintiffs are personally obligated to pay their attorney for attorney services to prosecute
8 this action. Plaintiffs are entitled to recover attorney fees if they prevail in this lawsuit, on the
9 ground that the County's decision was the result of retaliatory, arbitrary, and capricious action.

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

12 **PRAYER**

13 WHEREFORE, Plaintiffs pray that they recover as follows:

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

18
19 Dated: April 8, 2005

MINAMI, LEW & TAMAKI LLP

20
21
22 By:

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

26 **REQUEST FOR JURY TRIAL**

27 Plaintiffs hereby request a jury trial pursuant to F.R.C.P. 38(b).
28

1 Dated: April 8, 2005

MINAMI, LEW & TAMAKI LLP

2
3
4 By:

5 Brad Yamauchi
6 Attorneys for Plaintiffs
7 Oscar Braun and Andrea Braun
8 And THE OSCAR A. BRAUN TRUST DATED 1996
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