

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00347-RPM-MEH

EDWARD J. KLEN,
STEPHEN J. KLEN,
DIVERSE CONSTRUCTION, INC. (A Colorado Corporation), and
HOLSTEIN SELF-SERVICE STORAGE, LLC (Organized under Colorado Law)

Plaintiffs,

v.

CITY OF LOVELAND, COLORADO (A Colorado Municipal Corporation),
THOMAS HAWKINSON, CITY OF LOVELAND BUILDING OFFICIAL, in his individual
and official capacities,
GREG GEORGE, CITY OF LOVELAND COMMUNITY SERVICES DIRECTOR, in his
individual and official capacities,
DONALD WILLIAMS, CITY OF LOVELAND MANAGER, in his official capacity,
RICHARD HOSKINSON, CITY OF LOVELAND BUILDING INSPECTOR, in his individual
and official capacities,
JOHN R. DUVAL, CITY OF LOVELAND ATTORNEY, in his individual and official
capacities,
KRISTINE BURNS, CITY OF LOVELAND BUILDING PERMIT COORDINATOR, in her
individual and official capacities,
DAVID SPRAGUE, CITY OF LOVELAND PLANS REVIEWER, in his individual and official
capacities,
JEFF McKEE, CITY OF LOVELAND PLANNING TECHNICIAN, in his official capacity,
CINDY WORAYETH, CITY OF LOVELAND EMPLOYEE, in her individual and official
capacities,
JOHN DOE, and/or JANE DOE, in their individual and official capacities.

Defendants.

SECOND AMENDED VERIFIED COMPLAINT AND JURY DEMAND

COME NOW the Plaintiffs, Edward J. Klen, Stephen J. Klen, Holstein Self-Service Storage, LLC, and Diverse Construction Corporation, by and through their attorneys of record, The Law Offices of John Kenneth Pineau, P.C., and the Law Offices of Ingrid J. DeFranco, and hereby submit their Second Amended Verified Complaint and Jury Demand, alleging and averring as follows:

- 1) This action is brought and jurisdiction lies pursuant to the damages suffered by Plaintiffs and caused by Defendants' violations of Plaintiffs' rights as guaranteed by law, particularly, 42 U.S.C. § 1983 and the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution. This Court has federal question jurisdiction under 28 U.S.C. § 1331.
- 2) Plaintiffs also invoke the Court's supplemental jurisdiction over their state tort claims pursuant to 28 U.S.C. § 1391.
- 3) The violations of Plaintiffs' rights which form the basis for this suit occurred entirely within the State of Colorado. Venue is proper in the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1391.
- 4) Plaintiff EDWARD J. KLEN (hereinafter, Ed Klen or Ed) is a citizen of the United States, resident of the State of Colorado, and partner/shareholder in Plaintiff Holstein Self-Service Storage, LLC and Diverse Construction Corporation, respectively
- 5) Plaintiff STEPHEN J. KLEN (hereinafter, Steve Klen or Steve) is a citizen of the United States, resident of the State of Colorado, and partner/ shareholder in Plaintiff Holstein Self-Service Storage, LLC and Diverse Construction Corporation, respectively.
- 6) Plaintiff DIVERSE CONSTRUCTION CORPORATION (hereinafter Diverse) is, and was at all times relevant, a closely-held Colorado CORPORATION, pursuant to C.R.S. §

7-101-101, *et seq.*, with a physical address of 6909 Shannon Court, Loveland, Colorado 80538, and Ed and Steve Klen as its sole shareholders

- 7) Plaintiff HOLSTEIN SELF-SERVICE STORAGE, LLC (hereinafter, Holstein) is, and was at all times relevant, a limited liability company organized under the laws of the State of Colorado and owner of certain of the property and structures involved in this lawsuit, with Ed, Steve, and Marjorie Klen as principals and equal partners.
- 8) In 2004, Holstein contracted with Diverse to develop the Anasazi Phase 2 Property, at issue in this case, and assigned its exclusive right of possession to Diverse and its shareholders, Steve and Ed Klen, general contractor, in order to effectuate that development.
- 9) Defendant CITY OF LOVELAND, COLORADO (hereinafter City or Loveland) is, and was at all times relevant, a Colorado municipal corporation.
- 10) Defendant THOMAS HAWKINSON is and was at all times relevant employed as the Building Official for Defendant Loveland, and is sued in his individual and his official capacities.
- 11) Defendant GREG GEORGE is, and was at all times relevant, employed as the Development Director for Defendant Loveland, and is sued in his individual and official capacities
- 12) Defendant DON WILLIAMS is, and was at all times relevant, employed as the City Manager for Defendant Loveland, and is sued in his individual and official capacities
- 13) Defendant KRISTINE BURNS is, and was at all times relevant, employed in various capacities in building permit issuance, administration, and code enforcement by Defendant Loveland, and is sued in her individual and official capacities.

- 14) Defendant DAVID SPRAGUE is, and was at all times relevant, employed as the Plans Reviewer for Defendant Loveland, and is sued in his individual and his official capacities.
- 15) Defendant JEFF McKEE is, and was at all times relevant, employed as a Planning Technician for Defendant Loveland and is sued in his official capacity.
- 16) Defendant CINDY WORAYETH is, and was at all times relevant, employed in Defendant Loveland's Building Department and is sued in her official and individual capacities.
- 17) Defendant RICHARD HOSKINSON is, and was at all times relevant, employed as a Building Inspector by Defendant Loveland and is sued in his official and his individual capacities.
- 18) Defendant JOHN R. DUVAL is, and was at all times relevant, employed by Defendant Loveland as the City Attorney and is sued in his official and individual capacities.
- 19) Defendants JOHN DOE and JANE DOE are individuals who are known to exist and to be proper Defendants in this action but whose current names and positions are unknown to Plaintiffs, and whose names are anticipated to be learned by Plaintiffs during the discovery process and added by amendment.
- 20) Notice was given to all required Defendants in a timely manner pursuant to C.R.S. § 24-10-109 on or about April 20, 2006 and was subsequently re-submitted as a Corrected Notice Pursuant to C.R.S. § 24-10-109, "to correct errors contained in the original Notice", to add GREG GEORGE as a Respondent, and to itemize additional economic damages.
- 21) Notice of Intent to Sue pursuant to C.R.S. § 24-10-109 was filed and served on

Defendants on May 8, 2006, by the Plaintiffs. The Notice was timely filed within 180 days of Plaintiffs first discovering the nature of their injuries, which occurred in or about March 1, 2006.

- 22) Plaintiffs itemized their claims arising from the search/trespass/coverup conspiracy as well as other claims under the United States Constitution and the Constitution of the State of Colorado arising from Defendants' interactions with Plaintiffs in their administration of the construction of Phase 2 in the August 28, 2006, Notice of Intent to Sue.

GENERAL ALLEGATIONS

- 23) The Plaintiffs are in the business of investing, developing, improving, and selling real estate in and around Loveland and have been engaged in that business for more than fifteen years, during which time they have worked closely together, and been directly involved with, Loveland's Building Department and its processes.
- 24) Ed Klen served on the Construction Advisory Board, which acts as a Building Code interpretation panel and review board for decisions of the Building Department, for six years from 1999 to 2005.
- 25) The Plaintiffs are the owner/developers of a 69,000 square foot commercial project known as Anasazi Park in east Loveland (hereinafter, Phase 1), begun in 2000 and completed in 2003.
- 26) In January 2004, Plaintiffs began to plan the development of a commercial construction project for a 49,000 square foot industrial building to be known as Phase 2 and located adjacent to Phase 1, Anasazi Park in east Loveland.
- 27) The Phase 2 project plans were for a "Core and Shell" permit, because the Building

Official, Defendant Hawkinson, directed Steve and Ed Klen to withdraw their permit application containing tenant finishes and resubmit it as a Core and Shell permit. Once the shell was complete, the Klens would obtain a Special Use Permit to accommodate tenants who intended to create a firearms shooting range and a martial arts studio.

- 28) Thus, the initial construction of Phase 2 was by means of a permit for “use by right” requiring only that the Klens comply with certain property-line setbacks and other minor requirements, which were met by Plaintiffs' engineers and timely filed with the City in July, 2004.
- 29) The Klens finished the research and groundwork for the building permit and by March, 2004, had a planning meeting with Loveland Building and Planning Departments to determine whether there were any requirements still unmet.
- 30) During the past eight years it has been the custom and practice of many contractors and builders working in Loveland to begin work on commercial and residential construction projects after plans are submitted, but before obtaining actual, final building permits from the City, with the City’s actual knowledge, and without objection or any adverse action by the City. *Exhibit 1, Affidavit of Former Senior Building Inspector Jim Cook dated 11-8-2005 (¶¶5-6); Exhibit 2 Affidavit of Former Senior Building Inspector Jim Cook 3-6-2008 (¶¶5-7); Exhibit 3, Affidavit of Building Inspector Marlaine Maslen (¶¶ 5,8).*
- 31) Even before the plans were completed for Phase 2, Plaintiffs had two potential anchor tenants and purchasers for space in Phase 2 and also had a contract in Phase 1 that was contingent upon the completion of Phase 2.
- 32) Defendants knew this because the accommodation of those tenants required a special use review which the City ordered once the Plaintiffs notified them of the proposed tenant.

- 33) Because Phase 2 was similar to Phase 1 in size, construction materials, and planned uses, the same firm which had performed successfully in Phase 1, Landmark Engineering, was retained in February 2004 to engineer and draft the plans for Phase 2.
- 34) Relying on their long experience as developers in the City generally, and on their experience with Phase 1, specifically, the Klens accepted the City's assurances that it would take six to eight weeks from the date of their application to secure the Phase 2 building permit.
- 35) Defendant Hawkinson, the Building Official, Rich Becker, an engineer for the City, and Sherry Albertson-Clark, then head planner for the City made those express assurances to the Klens.
- 36) City of Loveland Building Department records reflect that similar applications for building permits were typically approved in six to seven weeks. *Exhibit 4, Loveland Building Dept. Records, 2004.*
- 37) In August, 2005, Defendant Greg George told the Loveland Reporter Herald Newspaper, that applications for building permits in the City were typically approved in six to seven weeks. *Exhibit 5, Loveland Reporter Herald, August 5, 2005.*
- 38) Under Loveland's governing statutes, the Loveland Municipal Code, once the prerequisites for a building permit have been met by an applicant, the City is without discretion to deny the permit and must issue a permit to the applicant. *Exhibit 6, Loveland Municipal Code § 15.04.060.*
- 39) About six months before the Klens anticipated beginning the development of Phase 2, they contacted the City and explained the project, and during a series of meetings with the City over the next six months, worked to schedule necessary meetings and provide all

the studies, specifications, and information to meet the City's requirements, in order to make the permitting process as rapid and efficient as possible.

- 40) The Klens "prescheduled" special use permit reviews with the City in order to manage any later possible problems with the tenant finishes, and building department officials noted on the special review materials that time was of the essence in the permitting process and that the Plaintiffs were at risk should the permit be unduly delayed.
- 41) The Plaintiffs submitted their permit and plans for Phase 2, on July 6, 2004, at which time they reasonably expected and relied on Hawkinson's assurances that, due to all their preplanning, diligence, and cooperation, the permit would issue no later than mid-September, 2004.
- 42) The City formally estimated that completion of all phases of the permit process would occur on or before September 2, 2004. *Exhibit 7, Loveland Application Tracking Steps.*
- 43) When the Klens submitted their Phase 2 permit application together with plans and fees to the City's building department on July 6, 2004, Hawkinson told them that the process would be faster, and more efficient, if they resubmitted the plans and fees under a "Core and Shell" application, without any tenant finishes, and asked them to do so.
- 44) On August 11, 2004, the Klens attempted to submit the revised application, but Defendant Worayeth refused to accept or process the building permit submitted by Ed Klen on behalf of Holstein, Diverse, and the individual plaintiffs, each of whom had a financial interest and stake in the development of the Anasazi Property.
- 45) Worayeth continued to refuse even after being advised by her supervisor, Hawkinson, that he had personally instructed the Klens to submit the permit as written, and that this was how both he and the planning department (headed by Sherry Clark) wanted to

proceed.

- 46) Worayeth began yelling that she didn't give a damn what 'Planning' wanted and told Hawkinson, "I'll be damned if I am going to process this application."
- 47) Hawkinson insisted that she accept the permit and documents, and Worayeth accepted the package, but, unbeknownst to the Klens, "shelved" the application and took no further action until mid-September, 2004.
- 48) Ed Klen learned from a former Loveland building inspector that Worayeth possessed a malignant animosity toward him and was resolved to harm him if possible.
- 49) The \$300.00 fee was not processed for more than twelve weeks *Exhibit 8, July 6, 2004 check, processed on October 4, 2004.*
- 50) In anticipation of the regular permit issuance process and express assurances by the City and its employees, Holstein took a \$2,100,000.00 loan for the Phase 2 project, with a construction start date in September 2004.
- 51) Steve, Ed, and Marjorie Klen were required to pledge their personal assets and to assume personal liability for the loan. *Exhibit 9, Loan Commercial Guaranties Ed, Steve, Marjorie Klen.*
- 52) Once the application and fees were tendered, Steve and Ed Klen checked in regularly with the building department in general and Sprague, in particular, who told Steve expressly that any issues regarding peripheral structures could, and would, be addressed during the tenant finish phase of the construction process, rather than at the core and shell phase, to expedite processing of the permit application.
- 53) Sprague noted this directive and representation on the plans and permit application. *Exhibit 10, Plan Tracking Action Log for June 9, 2005.*

- 54) On September 14, 2004, Edward and Steven Klen were told by Defendant Sprague that he would not review or process the permit application until he received electrical, plumbing, and mechanical drawings.
- 55) Edward Klen advised Sprague that he had obviously not even looked at the permit application, because it stated on its face that it was for a “core and shell”, without tenant finish, and because Sprague was present with his boss, Hawkinson, when the Klenes were told to submit the application as one for a core and shell, without any finish.
- 56) Klen asked Sprague why he was lying about having reviewed the permit, and what the hell was going on over there (at the building department), and Sprague became angry.
- 57) Simultaneously, planning division employee, Defendant McKee, advised the Klenes that he would not continue to process the permit without a “special review”.
- 58) The Klenes informed McKee that his boss, Sherry Clark, had previously determined, and told both the Klenes and McKee, that no special review was required, as the permit application was for a “use by right” and that a special review would only be necessary if certain tenant finishes were later contemplated.
- 59) Once the mid-September, 2004 start date had passed without a permit, the Klenes and the City knew there would be significantly-increased material and labor costs, and increased weather problems and downtime which would adversely affect schedules and run the construction costs for Phase 2 up considerably and force the Klenes to turn down other opportunities.
- 60) On October 1, 2004, the Klenes discovered that both Sprague and McKee had failed to correct their errors on the permit application and tracking log and that the permit was still being delayed.

- 61) Ed Klen contacted Hawkinson demanding to know what he was playing at, because Hawkinson had been aware of the problem for months but, despite the Klens' weekly (and sometimes, daily) visits, he had never mentioned it.
- 62) Ed and Steve questioned the competence of both Sprague and Hawkinson, asking, "when the hell are you going to get your shit together in this department?"
- 63) Ed demanded to know why Hawkinson didn't subcontract the application to an outside firm, which was how the City typically handled an application overload. Hawkinson insisted that, "we can handle it in-house," to which Ed responded, "obviously not!"
- 64) Steve Klen asked the building department to issue an immediate "footing and foundation" (F&F) permit, which required nothing more than the City's determination that the building was appropriate in its location (already done when the Klens were given a "use by right"), and a verification that the building met the necessary setback requirements.
- 65) F&F permits were the standard means of allowing a contractor to proceed immediately with beginning work while the building permit was processed and any structural, safety, or other important considerations, addressed.
- 66) Hawkinson attempted to placate the Klens with assurances of an immediate permit.
- 67) The Klens then told Hawkinson again, as they had earlier, that they were faced with the potential loss of tenants and rents of at least \$30,000 per month and suggested that Hawkinson and his employees were not conducting themselves honorably or competently.
- 68) The Klens also expressed their concern for the damage to their reputation for professionalism and timely performance that the delay of the permit was causing, and directly and openly made Hawkinson, Sprague, McKee, and the planning department

aware of these concerns, as their reputation in their professional community is of tremendous importance to them.

- 69) Ed Klen told Hawkinson that he was obligated, as a public official, to take responsibility for his employees, remedy their errors, require them to comply with his directives, and move the application along. Hawkinson became angry and defensive.
- 70) On November 18, the Klens learned that Sprague's and McKee's errors still had not been remedied, and angrily contacted Hawkinson again, demanding to know what was going on with their permit.
- 71) Hawkinson told the Klens that everything was fine, and the permit would issue shortly.
- 72) The Klens called and visited the building department frequently over the next two weeks.
- 73) On December 1, 2004, Hawkinson told the Klens he was "not aware of any major issues" with the permit and that they could, "go ahead" with the work.
- 74) On December 28, 2004, Hawkinson issued a Stop Work Order (SWO) which was delivered to the site in the middle of a large concrete pour. The SWO was delivered to the Klens on that date by Inspector Richard Hoskinson, who had been previously barred (and notice given to the City that he was so barred) from any and all of the Klens' job sites after he arrived intoxicated in his official capacity during the Phase 1 construction. The Klens also were aware that Hoskinson had been arrested for DUI twice from 1999 to 2005, and told Hawkinson that they could not be responsible for having him on the property. *Exhibit 11, Colorado Courts Database.*
- 75) When Hoskinson presented the SWO, the Klens were in the process of pouring some 300 yards of concrete, which could not be returned to the plant, and had to be poured as prescribed or dumped on the ground.

- 76) In conformity with standard practice, the Klens advised Hoskinson that they would contact Hawkinson as soon as the pour was completed; Hoskinson stated that he had the authority to send everyone home but would forbear and left the premises.
- 77) It was, at that time, the custom and practice of the City to issue SWOs and immediately rescind them as soon as the individual on whom the Order was served contacted Hawkinson. *Exhibits 1,2,3.*
- 78) When the concrete pour was completed, Ed called Hawkinson, who was out of the office for the day.
- 79) The first thing on December 29, 2004, Steve and Ed went to the Building Department to see Hawkinson. During the meeting with Hawkinson and Sprague, the Klens discovered that the building department, and Sprague in particular, had done nothing whatever to review the permit for more than four months.
- 80) The Klens questioned the integrity and competence of both Sprague and Hawkinson, and Hawkinson told the Klens that the department was “very back-logged” but that it would do whatever was necessary to expedite the permit and catch up.
- 81) Hawkinson then explicitly gave the Klens permission to proceed while waiting for the permit, a common, accepted, practice at the time in Loveland. *Exhibits 2, 3.*
- 82) The Klens continued to contact the building department on a near-daily basis and asked regularly for status reports and developments.
- 83) Relations were, and remained, very strained, and tempers flared on both sides during this period, with arguments between the Klens, Burns, Worayeth, Sprague, and Hawkinson.
- 84) Between December, 2004 and March, 2005, an issue arose concerning the land plat for Phase 1, which was resolved in a series of meetings between the head of the planning

department, the City Attorney's office, and the Klens' attorney. An agreement was reached on March 9, 2005, but on March 18, the Klens' attorney advised them that Defendant Duval had suddenly decided he didn't like the resolution which had been agreed to, and was going to require an entirely different approach to the problem, undoing months of work by everyone involved, without explanation even to the Klens' attorney.

- 85) The Klens contacted the City Manager and demanded a meeting. There were continual heated discussions at this time between the Klens and Williams, George, Hawkinson, and Duval.
- 86) On March 21, 2005, still without a permit, the Klens met with Defendant City Manager Williams in an attempt to gain his assistance in resolving the problem(s) with the permit. A frustrated and angry Edward Klen told an unhelpful and unconcerned Williams that Hawkinson was incompetent, untrustworthy, and an "asshole", and called Defendant City Attorney Duval a "boob" for being nakedly obstructionist.
- 87) Edward Klen told Williams that it appeared he was losing his integrity as a result of his (Williams's) new position as City Manager. Williams reacted angrily and confrontationally and the Klens left the meeting without any attempt at resolution. Williams closed with the remark to the Klens that, "you're big boys and you know what you are getting into."
- 88) The next day, while the Klens were visiting the building department, as usual, in hopes that there might have been progress on the permit or on an F&F, they encountered Hawkinson, who greeted them with, "so I'm an asshole, huh? We'll see about that."
- 89) The day after the confrontation with Hawkinson, March 23, Duval unilaterally cancelled

a public meeting which had been scheduled the previous May between the Klens and another department of the city, and which was necessary for a special review of the Klens' proposed finish and use.

- 90) Duval refused to explain his actions.
- 91) On March 28, Ball met with Williams to complain about the city officials involved in the process, specifically advising the City Manager, in highly critical terms, that these individuals were not doing their respective jobs, were not cooperating with the Klens, and were making no attempt to deliver a permit to the Klens, to which they had a right, and for which they had fulfilled every requirement.
- 92) As an example of the City's bad faith, Ball advised Williams that the Klens were, from the beginning of the process, eligible for a footing and foundation permit and that there was no conceivable justification for failing to provide it so that they could work. Ball also complained to Williams about Duval's cancellation of the public meeting without justification or explanation.
- 93) The next day, Hawkinson charged Ed Klen with the offense of building without a permit on March 28, 2005.
- 94) On March 29, 2005, the Klens discovered that Sprague still had not reviewed the plans or corrected the errors of the previous September. Ed communicated this fact to Hawkinson, together with his unflattering opinion of Hawkinson's performance, and Hawkinson served him with the ticket for violating a Stop Work Order.
- 95) Ostensibly, the ticket referred to the *rescinded* December 28, 2004 SWO, but that was not clear to Ed or Steve Klen or to their attorney.
- 96) Never before had any individual, builder, or contractor been issued a citation for violating

a Stop Work Order. *Exhibit 2 ¶8; Exhibit 3 ¶ 6.*

- 97) On April 6, 2005, Sprague finally communicated with the Klens by letter. In that letter, Sprague attempted to justify his conduct through a series of lies, stating that a necessary code analysis (submitted with the permit and pointed out to him in September, 2004 as having been stapled to the plans submitted as original documents) was delayed for months.
- 98) Sprague also claimed that he still needed architectural drawings, after admitting that he found them the previous week.
- 99) Sprague further claimed, though he knew it was untrue, that he required needed plumbing, mechanical and electrical drawings.
- 100) Sprague also stated, untruthfully, that he had spoken to the Klens' architect about obtaining documents.
- 101) On April 8, 2005, at a meeting between the Klens, their attorney, Duval, Clark, and George, the Klens learned that all departments but the building department had signed off on the permit, and that Hawkinson had refused to do so, without advising the Klens, in response to their continual inquiries, that there were any remaining problems.
- 102) Sprague was contacted after the meeting, when George and the Klens went to his office from the meeting. Sprague claimed that he needed elevations although those had been submitted eight months previously, with the original documents, on both July 6 and August 12, 2004.
- 103) When reminded of this, Sprague claimed that he needed to have the architect's name, rather than the engineering firm's on the elevations, and told everyone present that the elevations were the only remaining requirement for the permit. Sprague said to George,

“as soon as I have the elevations, the Klens will have a permit.”

- 104) Before leaving the meeting, Rich Ball asked what George proposed to do about the ticket. George laughed and stated, “Hawkinson can make it go away.”
- 105) On April 12, 2005, the building, planning, and development departments were blasted by independent consulting firm (R. S. Tipton), hired by the city to evaluate the development process, when the firm reported to a public meeting of the City Council, and in a formal report, that there was, “...little to no focus on project management discipline and communication strategies...”
- 106) According to the Report, the “process is too time consuming and too costly...Even developers who are promised ‘special priority’ in scheduling do not receive the results they expect...Development review takes far too long...” and, after an analysis of the dysfunctional departments, the report went on to recommend “...shooting’ some elephants in the room.” *Exhibit 12, Tipton Report, at 30-31, 35.*
- 107) Tipton told the council, “the process can drive up the cost of residential housing and commercial development,” and that he found the process to be, “inefficient and onerous.” *Exhibit 13, City Council Minutes, at 1.*
- 108) City Manager Williams, admitted on the record that, “the city has known for a long time that the City needed to change but that no one understood the depth and convolution of the process.” *Exhibit 13, at 1.*
- 109) The City conceded the validity of Tipton’s conclusions:

City officials got a polite tongue-lashing Tuesday night about the city’s development process – a process that drives up the cost of residential housing and commercial development. . . . Tipton said the city has no set system, no set schedules, and no set standards. . . . Some developments get pushed aside when new ones come in, city planners play “favorites” and different rules exist for different developers, he

said. “Who you know sometimes is more important (for developers) than following the process.” . . . Greg George, director of development services for the city, said planners have no basis for development requirements. “There are no real standards, we’re not using the zoning code, so there’s a lot of testing and a lot of negotiating.”

Exhibit 14, Loveland Reporter-Herald, April 14, 2005.

- 110) On April 26, 2005, Duval told Ball he was going to require the Klens to obtain an Affidavit of Correction from every member of the HOA before he would lift his objection to the permit. Duval told Ball that once these affidavits were obtained and filed, the permit would issue immediately.
- 111) Steve Klen immediately issued the requested affidavit, rounded up thirteen signatures from individual HOA members who attested to the lot line, and Ball filed the package on May 9, 2005, notifying Duval at the same time. *Exhibit 15, Letter to City Attorney Duval.*
- 112) Although the building permit for Phase 2 did not issue, Duval told Ball the Klens could resume work.
- 113) The next day, May 10, 2005, Steve had a phone conversation with Greg George regarding the permit delay. During the conversation, Steve told George that the City had treated the Klens “like shit,” and George became angry.
- 114) Seven days later, Hawkinson issued twenty-one secret citations to Ed Klen for building without a permit.
- 115) On May 17, 2005, the Klens appeared at the building department and spoke with Burns. They had discovered that the footing and foundation (F&F) permit records had been manipulated or tampered with by someone with access to those records. Exasperated, the Klens expressed that they considered this to be, “ridiculous...bullshit” and demanded to know, “where’s our fucking permit?”

- 116) They Klen were then referred to Hawkinson, and went back into his office where they complained that for the building department to rescind or tamper with the footing and foundation permit, which should have issued at least eight months earlier, and more like nine, without notifying them or having any reason to do so was “bullshit...crap...and where’s our goddamned permit?”
- 117) Hawkinson responded that the permit “isn’t ready...and I have been told by my supervisors that I must write you more tickets....it’s out of my hands.”
- 118) Hawkinson asked Ed to sign the tickets, implying that Duval and Williams were to blame. Ed refused and left, unaware of how many tickets had issued. The tickets were not served on Ed.
- 119) On May 23, 2005, Edward Klen appeared in court on the original ticket, advised the court that his attorney was out of town, and asked to have his arraignment reset. The court agreed, and inquired whether Klen was willing to meet with Duval in order to discuss a possible disposition. Ed Klen was, and did so.
- 120) Despite having been advised that Klen was represented and had invoked his right to counsel, Duval began to interrogate Ed Klen and attempted to obtain inculpatory statements from him.
- 121) When he became displeased with Klen’s answers, Duval began to shriek at Klen, “liar, liar, liar”, while waving his arms at Klen to intimidate him and keep Klen from leaving. Ed Klen finally broke away from Duval and left the building immediately.
- 122) The incident was witnessed by Ed’s wife, and reported to Richard Ball upon his return.
- 123) On May 26, Ball contacted Duval to ask what he had done at the arraignment. Ball reported to his clients that he believed Duval, whom he had known for twenty years, had

- lied to him about his conduct on May 23. Ball told Steve Klen that he had found it difficult to believe what the Klens told him, but that after speaking with Duval, he could not doubt them and apologized for questioning what they told him.
- 124) Ball was sufficiently troubled by Duval's conduct that he requested a meeting with Williams to discuss what had occurred. The meeting took place on June 3, 2005, with Ed and Deborah Klen and Rich Ball present.
- 125) Deborah told Williams what she had witnessed. Williams did nothing.
- 126) While the permit languished, the Defendants told the Klens that they had permission to build four times, on December 1, 2004, and December 29, 2004, by Hawkinson, on May 10, 2005, by Duval, and by implication, on April 8, 2005, during the meeting between the Klens and Ball and City employees when all aspects of the issue were discussed, and George indicated that Hawkinson would rescind the ticket.
- 127) At no time during that meeting did the Defendants tell or even suggest to the Klens that they should wait for the permit, which was to issue "immediately" upon receipt of yet another set of elevations.
- 128) City officials were still smarting from the public drubbing occasioned by the Tipton Report when Burns told the Klens that they needed to resubmit plans because she had "lost" them.
- 129) Ed Klen, Deborah Klen, and Ball arrived on June 3, 2005, with a replacement copy of the plans. At the counter, Ed Klen complained that it was a "bunch of crap" that Burns had lost the plans. Burns stated that the contractors were "dickheads," and took the replacement plans.
- 130) On June 10, 2005, the Klens received a call from Loveland City Water Department

employee Colleen Cameron, who told them that she had finally received the plans from Burns, and signed off on them, so there were no further obstacles to the permit.

131) Ed and Steve Klen set off for the building department desk to get their permit, only to find that the fees Burns had assessed were far too high. Ed asked to see a copy of the permit fee schedule and for an explanation of how Burns had calculated the permit fees.

132) Burns told Ed that she could not find the fee schedule and that the Klens would have to come back the following Monday.

133) On June 13, 2005, the Klens returned to try to resolve the fees and pay for their building permit. Burns told the Klens she still could not find the fee schedule.

134) The Klens suggested she check for a fee schedule at the City's website. She told them there was none posted there.

135) The Klens asked to see Hawkinson. He appeared and claimed that he couldn't find a fee schedule, either. Steve Klen asked Hawkinson, "what kind of an idiot are you if you can't even run your own goddamned department?" No permit issued.

136) On June 15, 2005, at 11:30 a.m., Ed and Steve went to an appointment with Burns at the Building Department, to try once again to resolve the fees. Burns refused to disclose the fee schedule, or how the fees were calculated, and told the Klens, "If you continue to piss me off, I'll double your fees."

137) Burns ultimately did so, charging the Klens more than \$7,000.00 in "double fees".

Exhibit 17, Miscellaneous Inquiries Statement

138) At the June 15 meeting, Burns also lied to the Klens, stating that fees for industrial and commercial permits were identical and that the fee schedule was not posted on the internet. *Exhibit 18, Internet posting of Loveland fee schedule, including commercial and*

industrial.

- 139) Ed Klen then produced two Fee Estimates which had been prepared earlier by Worayeth, showing an amount of \$181,747.84 for an entirely industrial use permit and of \$307,571.95 for an entirely commercial use permit. *Exhibit 19, Worayeth Fee Schedule - Entirely Industrial ; Exhibit 20, Worayeth Fee Schedule- Entirely Commercial.*
- 140) Burns snatched the pages from Ed, tore them up, and threw them in the garbage. She then told the Klens she was the only one with a fee schedule (which she couldn't find), that Worayeth's estimates were wrong, and that if the Klens wanted their permit they had better "bring in your checkbook and no more questions."
- 141) Some time that same day, Hawkinson issued thirteen more secret citations against Ed Klen and assessed a \$7,117.80 penalty against him.
- 142) Never before in the history of Loveland had there been such a penalty assessed, either in type or amount. *Exhibit 21, City Records Disclosure.*
- 143) On June 16, 2005, Ed and Steve Klen returned to the Building Department. Burns and Hawkinson both told the Klens that they could not find the fee schedule. The Klens said they would return in one hour with their attorney.
- 144) When the Klens returned with Ball, they found Hawkinson, Burns, and Duval waiting for them at the counter. Burns now reported that she had "found" the fee schedule on the internet and that the Klens were obliged to pay the fees she had assessed.
- 145) Burns, Hawkinson and Duval were present when the Klens were presented with the illegally-inflated permit fees of \$315,853.31 which the Klens paid under threat and under protest. *Exhibit 22, Permit Fees.*
- 146) Between \$44,000 and \$134,000 was extorted from the Klens and has not been refunded.

- 147) The Klens have since been told there would never be any sort of refund on fees, once paid.
- 148) During the prosecution of Ed Klen, his then-attorney, Thomas French, moved to dismiss the case on grounds that the prosecution violated Klen's Fourteenth Amendment Right to Equal Protection because it was a selective, retaliatory, prosecution.
- 149) In response to French's motion, Duval solicited and presented the court with a perjured affidavit by Hawkinson in which Hawkinson falsely averred that he had posted Stop Work Orders on four occasions and repeatedly asked Ed Klen to stop construction. *Exhibit 23, Affidavit of Thomas Hawkinson (§ 4)*, falsely averred that he had never given approval to the Klens to build without a permit. *Exhibit 23, §5*, and falsely averred that he had never known of a builder who defied a SWO.
- 150) Hawkinson knew that the affidavit was false when he made it, and Duval knew that the affidavit was false when he presented it to the court. Based on the perjured affidavit, and Hawkinson's claim that there was no selective enforcement, the court permitted the prosecution to proceed.
- 151) On or about April 26, 2005, building inspector Fred Ward was dispatched by Hawkinson to take pictures of anyone working at the Anasazi site, but couldn't see from the road, so he approached Steve on the jobsite to ask if he could take a picture, telling Steve that Hawkinson was giving him a hard time.
- 152) Steve told Ward that if Hawkinson was so concerned about guys working without a permit that he should go across the street and take pictures of the work going on at the *Oroweat* site. Fred responded that Hawkinson was aware of that project proceeding without a permit but didn't care – he just wanted the Klens busted.

- 153) In March, 2006, Burns threatened the Klens with jail. City employee Kevin Gingery told the Klens' engineer, based on the office scuttlebutt, "the Klens are going to jail".
- 154) According to Building Department Records, the written admission of Loveland's Building Official, Hawkinson, the customary practices of developers and builders in the area, and the sworn statement of Loveland Building Inspectors Cook and Maslen, no other person or firm in the building construction industry had ever received even a single such citation in the preceding five or more years. *Exhibit 2, ¶7; Exhibit 22, City Records Disclosure, Exhibit 3 ¶ 6.*
- 155) The Klens submitted the permit application on July 6, 2004. *Exhibit 24, Original Building Permit Application.* Worayeth, Burns, and Doe(s) destroyed the Klens' original application, fabricated a new form, and forged every entry on that form. *Exhibit 25, Forged Building Permit Application.*
- 156) On their faces, the two documents are materially dissimilar. Among more than 20 forged entries, the forgers intentionally inserted the name "Ed Klen" to support the retaliatory citations issued to Ed Klen personally. Worayeth, Burns, and Doe(s) also forged sections of the application to permit them to impose as much as \$134,000 of additional capital expansion fees.
- 157) The Klens referred the two documents to Certified Forensic Documents Examiners, Judith A. Houseley & Associates, who concluded, "It is this examiner's opinion someone other than 'Ed Klen' authored the document in question identified as Q-1 (*Exhibit 26*)."
Exhibit 26, Houseley Report at 2.
- 158) When the Klens confronted building department employees, Burns admitted to making one alteration to the original Application and stated that Worayeth had made various

other alterations, and that a third person(s) [Doe(s)] had made the rest.

- 159) Defendants Burns, Worayeth, and John/Jane Doe deliberately and maliciously forged entries, including (in part) Ed Klen's signature, the address of the property, dates, values, and fraudulent notations by building department employees in order to fabricate evidence against Ed Klen, harm the Plaintiffs, delay the issuance of the permit, and expedite a planned prosecution of Ed Klen, and the Defendants acted without legal justification or excuse for their conduct.
- 160) Upon information and belief, a person or persons now unknown instructed Burns, Worayeth, and Doe(s) to create the forgery, and explained that it was necessary to “punish” the Klens.
- 161) Only Ed Klen was directly accused or charged with alleged violations of City Ordinances; Ed Klen alone was prosecuted, on the basis of his forged name and signature on the permit application, which all Defendants knew or should have known was not the original application for the permit and was, in fact, a forgery.
- 162) By May of 2006, long-time subcontractors and engineers were refusing to work with the Klens, and stated that they would be retaliated against by the City and did not dare to accept the jobs for fear of such retaliation.
- 163) On May 3, 2006, the Klens filed a Notice of Intent to Sue with the Defendants. *Exhibit 27, Notice of Intent to Sue.*
- 164) Eight days later, on May 11, 2006, the conspirators retaliated with an illegal, sunrise, clandestine search of the Anasazi property (Phase 2).
- 165) When Hoskinson entered the property he did so knowing that he had been previously, and expressly, excluded.

- 166) Hoskinson entered property which was enclosed in a manner designed to exclude intruders and was caught far inside the building after he broke the close and entered the property.
- 167) Neither Duval, Hawkinson, George, nor Hoskinson notified the Klens of Hoskinson's intent to enter, search, or inspect as required by law.
- 168) Neither of the above-named defendants, nor any agent or employee of Loveland sought or obtained a warrant before Hoskinson's entry and search.
- 169) No exigent circumstances obtained at the time of the entry, and no defendant had any basis to believe, or did believe, that any exigency existed.
- 170) The Loveland Municipal Code provides and the Defendants knew that it so provides:

Whenever necessary to make an inspection to enforce any ordinance or resolution, or whenever there is reasonable cause to believe there exists an ordinance or resolution violation in any building or premises within the jurisdiction of the city, or when there is reasonable cause to believe that an ordinance or resolution violation is occurring in any building or upon any premise within the jurisdiction of the city any authorized official of the city, may, upon proper presentation of credentials, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him by ordinance; provided, that except in emergency situations or when the consent of the owner and/or occupant to the inspection has been otherwise obtained, he shall give the owner and/or occupant, if they can be located after reasonable effort, twenty four hours written notice of the authorized official's intention to inspect. The notice transmitted to the owner and/or occupant shall state that the property owner has the right to refuse entry and that in the event such entry is refused, the inspection may be made only upon the issuance of the warrant by a duly authorized magistrate. In the even the owner and/or occupant refuses entry after such request has been made, the official is empowered to seek assistance for any court of competent jurisdiction in obtaining such entry.

Exhibit 28, Loveland Municipal Code, § 1.08.010-.020.

The right of entry provision of any ordinance codes heretofore or hereafter adopted by the city, by reference, and the right of entry provisions currently part of the municipal code of the city, are not repealed by this chapter.

However, the notice provisions of Section 1.08.010 are hereby specially made applicable to all such right of entry provisions in all cases not involving emergencies and where the consent of the owner and/or occupant has not been obtained. It is the specific intent of this chapter that all entries of authorized officials and employees of the city are subject to the notice provisions of Section 1.08.010 except where there is an emergency or such consent has been obtained.

Id. § 1.08.020.

Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or upon a premise a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

Exhibit 29, International Building Code, § 104.6, Right of Entry.

The International Building Code (IBC) has been “Adopted” and incorporated into the Loveland Municipal Code. *Exhibit 28, Loveland Municipal Code § 15.08.010.*

The International Code Council goes on to describe the principles controlling any non-consensual search,

First, to protect the right of privacy, the owner or occupant must grant the building official permission before an interior inspection of the property can be conducted. . . . Second, such access may be denied by the owner or occupant. . . . Third, building officials must present proper identification . . . and request admittance during reasonable hours – usually the normal business hours of the establishment – to be admitted. Fourth, inspections must be aimed at securing or determining compliance with the provision and the intent of the regulations that are specifically within the established scope of the building official’s authority. Searches to gather information for the purpose of enforcing the other codes, ordinances, or regulations are considered unreasonable and are prohibited by the Fourth Amendment to the U.S. Constitution.

Exhibit 29, IBC, § 104.6, ICC Comments.

- 171) When the Klens caught Hoskinson, he claimed that he was “bored and just killing time” and stated categorically that no one from the City had sent or instructed him to trespass or search. When he made this statement, Hoskinson lied, knew he lied, and lied deliberately as part of the conspirators' scheme to trespass and violate the victims' Fourth Amendment rights, and to cover-up the violations and actions of his co-conspirators.
- 172) The Klens then attempted to contact Hawkinson who was out of the office. On the next morning, May 12, 2006, the Klens went to the City to inquire about the trespass and confronted Greg George, who admitted that he and other City officials, including Duval and Hawkinson, had agreed to instruct Hoskinson to conduct a search and inspection without the Klens' knowledge or permission and had sent Hoskinson to do so.
- 173) George told the Klens that he and the other conspirators instructed Hoskinson to lie if he was discovered, so as to keep the Klens from rearranging things or covering up any unlawful conduct or condition on their property.
- 174) George also lied to the Klens, stating that he had “every right” under the Loveland Municipal Code and International Building Code to make or direct a subordinate to conduct a search and entry of their property without their knowledge or permission.
- 175) These false statements concerning the illegal search, trespass, and burglary, were deliberately made in order to cover up the unlawful conduct, and in an attempt to trick the Klens into believing the conduct was lawful.
- 176) The Klens reported the trespass to the Loveland Police Department. After an investigation, the investigating officer informed the Klens that George and Duval told the officer that the entry was expressly permitted under the 2003 International Building Code. This statement was false and contrary to the Code, § 104.6, and also violated

Loveland Municipal Code § 1.08.010. *See Exhibits 28 and 29.*

- 177) Duval, Hawkinson, and George agreed to and did make knowingly false statements to the Loveland Police Department Detective in order to cover up their illegal search, trespass, and burglary, as part or in furtherance of their continuing conspiracy. *Exhibit 30, Police Report dated May 12, 2006.*
- 178) After Hoskinson's trespass, Hawkinson and Duval attempted to change the rules to cover their crime, demanding that all applicants for a building permit waive their fourth amendment rights in writing.
- 179) The Klens objected and sought a hearing on this issue before the CAB. *Exhibit 31, Diverse Letter, dated August 29, 2007.* Hawkinson and Duval immediately abandoned and retreated from the illegal change in the rules. *Exhibit 32, Loveland Response, dated September 11, 2007.*
- 180) City Manager Williams refused, after each of a series of meetings between himself and the Klens between June and September 2006, to take action of any kind against the officials who had committed unlawful acts against the Klens, to take notice of or respond to the wrongdoing, or to make any provision to address future occurrences of such conduct, thus ratifying, adopting, and abetting the conduct.
- 181) After the Klens discovered the forgery of the building permit and reported it to police on March 2, 2006, Hawkinson and Burns made false statements to the investigating officer from the Loveland Police Department, on or about April 10, 2007, in order to cover up the forgery.
- 182) Hawkinson lied to the officer, telling the officer that he did not recognize Worayeth's, Burns's, or anyone else's handwriting. *Exhibit 33, Police Report dated March 5, 2007.*

- 183) The conduct of Loveland officials and employees as complained of herein and described above has been repeatedly ratified, adopted, endorsed, and abetted by the City. Williams, charged with the management of the City and its personnel, refused to act against, mitigate the harm done by, or censure the wrongdoing employees whom he is charged to supervise, ratifying the specific acts and basis for their conduct; the Loveland City Council refused to act, mitigate the harm done by, or censure its wrongdoing agents, officials, and employees, ratifying the specific acts and basis for their conduct.
- 184) Between June 28, 2006 and the date of the filing of this complaint, Duval, George, Hawkinson and Williams, deliberately, and from an evil motive, interfered with and denied Plaintiffs a hearing to which they were entitled by law, an appeal of the building department's decisions and an opportunity to submit their claims of official malfeasance and misfeasance to the City Construction Advisory Board, without legal justification or excuse and in furtherance of Defendants' conspiracies to violate Plaintiffs' constitutionally-protected rights and to cover up their unlawful misconduct. *Exhibit 34, District Court Judge, Terrence Gilmore's C.R.C.P. 106 Order dated July 16, 2007.*

FIRST CLAIM FOR RELIEF

**42 U.S.C. § 1983 - VIOLATION OF FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO DUE
PROCESS OF LAW (SUBSTANTIVE)
HOLSTEIN, DIVERSE, ED, AND STEVE KLEN AGAINST DEFENDANTS
LOVELAND, WILLIAMS, DUVAL, GEORGE, HAWKINSON, WORAYETH, BURNS, AND SPRAGUE**

- 185) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 186) From August 11, 2004, when Worayeth refused to accept or process the building permit

submitted by Ed Klen on behalf of Holstein Self Storage, Diverse Construction, and the individual plaintiffs, until June 16, 2005, when the core and shell permit finally issued, after the tender of illegal and extortionate fees, ten months later than promised, the above-named Defendants engaged in a continuous campaign of harassment, deceit, and delay against the Klens, intended to injure Ed and Steve Klen and their associates in a way unjustifiable by any government interest.

- 187) The law prohibiting governmental officials from interfering with a liberty or property interest from a desire to cause harm, was clearly established when the named Defendants acted, from an evil motive, and with knowledge that their conduct was unlawful and violated the Plaintiffs' constitutional rights.
- 188) The above-named Defendants, operating from a bare desire to harm and a malignant animosity toward Ed and Steve Klen, deliberately decided to, and did, delay and deny the Plaintiffs a permit for nearly a year, and did so unjustifiably, out of an evil motive, in gross disregard of the Plaintiffs rights, knowing that the Plaintiffs had a protected interest in the permit and in violation of Plaintiffs' right to fundamental fairness at the hands of the government.
- 189) Defendant City of Loveland's policies and practices, negligent and/or reckless failure to train, discipline, supervise, and properly hire officials, permitted and encouraged this conduct knowing that it created a pervasive and unreasonable risk of constitutional injury, was deliberately indifferent to that risk and harm, and to the Plaintiffs' rights, and its policymakers ratified the actions of its employees, officers, and agents, in reckless disregard of the Plaintiffs' rights.
- 190) As a direct and proximate result of the Defendant City's violation of the Plaintiffs'

constitutional rights to Due Process of Law, the Plaintiffs have suffered, still suffer, and will continue to suffer, harm. Specifically, Holstein suffered economic damages including, but not limited to, interest on the construction loan, lost rents, loss of potential income, increased construction costs, time loss of money, higher costs due to the need for subcontractors, lost opportunity, tenant concessions to avoid suit or loss of tenants, increased and unlawful permit fees and fines, attorney fees and costs, and other damages to be proven at trial. Diverse suffered economic damages including, but not limited to, loss of income, lost profits, lost opportunity, loss of reputation, fines, attorney fees and costs. Ed and Steve Klen suffered economic damages including, but not limited to, lost income, profits, capital losses and loss of reputation, and stigma, noneconomic damages including emotional distress, loss of enjoyment, pain and suffering past, present, and future.

- 191) Plaintiffs seek actual and compensatory damages, attorneys' fees, interest from March 1, 2006, and costs against all Defendants and punitive damages against named individual Defendants in their individual capacities.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 - VIOLATION OF PLAINTIFFS' FOURTEENTH AMENDMENT RIGHT TO THE EQUAL PROTECTION OF THE LAWS HOLSTEIN, DIVERSE, ED, AND STEVE KLEN AGAINST DEFENDANTS LOVELAND, GEORGE, HAWKINSON, DUVAL

- 192) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 193) Defendants Loveland and its agents George, Duval, Hawkinson, and Burns, all officials of the City of Loveland, acting from animus and ill will, intentionally withheld and

delayed a core and shell permit from the Plaintiffs for nearly a year, refused to outsource the permit in the Plaintiffs' case, as they did for others, selectively enforced the building code against the Plaintiffs while ignoring the identical conduct by other builders and developers, including a large project directly across the street which was proceeding without a permit, expedited the permits of other developers while deliberately delaying Plaintiffs', and treated the Plaintiffs differently from other, similarly-situated landowner/developers, without a rational basis for doing so, in violation of their right to Equal Protection of the Laws.

- 194) The law prohibiting selective enforcement of the laws, and disparate treatment of individuals for an irrational or improper reason was clearly established when the Defendants acted, from an evil motive, and with knowledge that their conduct was unlawful and in violation of the Plaintiffs' rights.
- 195) Defendant City of Loveland's policies and practices, negligent and/or reckless failure to train, discipline, supervise, and properly hire officials, permitted and encouraged this conduct knowing that it created a pervasive and unreasonable risk of constitutional injury, was deliberately indifferent to that risk and harm, and to the Plaintiffs' rights, and its policymakers ratified the actions of its employees, officers, and agents, in reckless disregard of the Plaintiffs' rights.
- 196) As a direct and proximate result of the Defendant City's violation of the Plaintiffs' constitutional rights to Due Process of Law, the Plaintiffs have suffered, still suffer, and will continue to suffer, all such damages as set forth previously, under Plaintiffs First Claim for Relief. Holstein suffered economic damages including, but not limited to, interest on the construction loan, lost rents, loss of potential income, increased

construction costs, time loss of money, higher costs due to the need for subcontractors, lost opportunity, tenant concessions to avoid suit or loss of tenants, increased and unlawful permit fees and fines, attorney fees and costs, and other damages to be proven at trial. Diverse suffered economic damages including, but not limited to, loss of income, lost profits, lost opportunity, loss of reputation, fines, attorney fees and costs. Ed and Steve Klen suffered economic damages including, but not limited to, lost income, profits, capital losses, loss of past and future earning capacity, loss of past and present productivity, which will continue into the future, loss of reputation, and stigma, noneconomic damages including physical and mental pain and suffering, emotional distress, impairment of the quality of life, loss of enjoyment, and attorneys' fees, costs, and interest from March 1, 2006.

- 197) Plaintiffs seek actual and compensatory damages, attorneys' fees, interest from March 1, 2006, costs against all Defendants and punitive damages against named individual Defendants in their individual capacities.

THIRD CLAIM FOR RELIEF

42 U.S.C. § 1983 - VIOLATION OF ED KLEN'S FOURTEENTH AMENDMENT RIGHT TO THE EQUAL PROTECTION OF THE LAWS (SELECTIVE ENFORCEMENT AND PROSECUTION) AGAINST DEFENDANTS LOVELAND, WILLIAMS, GEORGE, HAWKINSON, DUVAL

- 198) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 199) Defendants Loveland, Williams and Duval instructed Hawkinson to issue citations to Ed Klen and the Defendants then prosecuted Ed Klen for conduct while ignoring identical conduct by other, similarly-situated developers, including members of the Construction

Advisory Board and City Council, with the improper purpose of interfering with and retaliating against Klen for his exercise of his First Amendment rights to criticize those officials in the performance of their duties.

- 200) The law forbidding such retaliation was clearly established when George, Duval, Williams, and Hawkinson acted from an evil motive, knowing that the law forbade their conduct.
- 201) When Klen's attorney challenged the selective enforcement and prosecution, Duval and Hawkinson contrived to generate and file a false affidavit with the court in which Hawkinson made a number of untrue statements and other misleading statements concerning enforcement actions by the building department. This affidavit was intended to, and did, permit the prosecution to proceed.
- 202) Defendant City of Loveland's policies and practices, negligent and/or reckless failure to train, discipline, supervise, and properly hire officials, permitted and encouraged this conduct knowing that it created a pervasive and unreasonable risk of constitutional injury, was deliberately indifferent to that risk and harm, and to the Plaintiffs' rights, and its policymakers ratified the actions of its employees, officers, and agents, in reckless disregard of Ed Klen's rights.
- 203) As a direct and proximate result of the Defendant City's violation of Ed Klen's constitutional rights to Equal Protection of the Laws, Ed Klen suffered, still suffers, and will continue to suffer, damages, as set forth previously herein. Specifically, Ed has suffered lost income, loss of reputation, loss of past and future earning capacity, loss of past and present productivity, which will continue into the future, physical and mental pain and suffering, emotional distress, impairment of the quality of life, loss of

enjoyment, and attorneys' fees, costs, and interest from March 1, 2006.

- 204) Ed Klen seeks actual and compensatory damages, attorneys' fees, interest from March 1, 2006, and costs against all Defendants and punitive damages against named individual Defendants in their individual capacities for selective enforcement of the law.

FOURTH CLAIM FOR RELIEF

**42 U.S.C. § 1983 - VIOLATION OF PLAINTIFF ED KLEN'S FOURTEENTH AMENDMENT
RIGHT TO DUE PROCESS OF LAW (CONVICTION BASED ON FALSE EVIDENCE)
AGAINST DEFENDANTS LOVELAND, (ACTING THROUGH DUVAL AND HAWKINSON, WHO ARE
IMMUNE), BURNS, WORAYETH, AND DOE(S)**

- 205) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 206) Defendants Worayeth, Burns, and Doe(s) forged a building permit application in order to permit Hawkinson to charge Ed Klen with violations of the Loveland Municipal Code and in order to secure fines against him. Hawkinson and Duval used that forged application, knowing it to be false, to effect a prosecution of Ed Klen for violations of the Loveland Municipal Code.
- 207) Hawkinson and Duval both gave Ed Klen permission to work and then charged him with an offense for doing so, while lying about having given permission, in violation of his right to be treated with fundamental fairness.
- 208) Loveland and its agent Duval obtained a guilty plea from and criminal conviction against Ed Klen through the use of the false permit application and a perjured affidavit generated by Hawkinson and tendered by Duval to the court, which affidavit Duval knew to be false, in violation of Ed Klen's Fourteenth Amendment Right to Due Process of Law.

- 209) Defendant City of Loveland's policies and practices, negligent and/or reckless failure to train, discipline, supervise, and properly hire officials, permitted and encouraged this conduct knowing that it created a pervasive and unreasonable risk of constitutional injury, was deliberately indifferent to that risk and harm, and to the Plaintiffs' rights, and its policymakers ratified the actions of its employees, officers, and agents, in reckless disregard of Ed Klen's rights.
- 210) As a direct and proximate result of the Defendant City's violation of Ed Klen's constitutional rights to Equal Protection of the Laws, Ed Klen has suffered, still suffers, and will continue to suffer, damages, as set forth previously herein. Specifically, Ed has suffered lost income, loss of reputation, loss of past and future earning capacity, loss of past and present productivity, which will continue into the future, physical and mental pain and suffering, emotional distress, impairment of the quality of life, loss of enjoyment, and attorneys' fees, costs, and interest from March 1, 2006.
- 211) Plaintiff Ed Klen seeks actual and compensatory damages, attorneys' fees, interest from March 1, 2006, and costs against all non-immune Defendants and punitive damages against Burns, Worayeth, and Doe(s) in their individual capacities and against any presently-undiscovered person or persons who instructed them or conspired with them to commit these acts.

FIFTH CLAIM FOR RELIEF

42 U.S.C. § 1983 - VIOLATION OF PLAINTIFFS' FIRST AMENDMENT RIGHTS TO FREE SPEECH AND ASSOCIATION

HOLSTEIN, DIVERSE, ED, AND STEVE KLEN AGAINST DEFENDANTS LOVELAND, WILLIAMS, GEORGE, HAWKINSON, DUVAL, BURNS, AND SPRAGUE

- 212) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 213) Loveland, by and through its agents Williams, George, Hawkinson, Duval, Burns, and Sprague, acted under color of law against Plaintiffs to withhold and delay their building permit, prosecute Ed Klen, and cause them grave harm in direct retaliation for the Plaintiffs' ideas and statements about the competency and integrity of public officials in the exercise of their governmental authority.
- 214) George, Duval, Williams, Hawkinson, Burns, and Sprague acted deliberately to silence Steve and Ed Klen and retaliate against them for the exercise of their First Amendment Rights, violating clearly-established law prohibiting retaliation against persons exercising their First Amendment Rights to criticize governmental administration, and prohibiting actions taken with the intent to chill that expression.
- 215) Defendants George, Duval, Williamson, Hawkinson Burns, and Sprague retaliated against Diverse and Holstein for Ed and Steve Klen's protected statements, and in violation of their well-settled rights of association which are protected by the First Amendment. George, Duval, Williamson, Hawkinson, Burns, and Sprague acted from an evil motive and knew that the law forbade their conduct.
- 216) Defendant City of Loveland's policies and practices, negligent and/or reckless failure to train, discipline, supervise, and properly hire officials, permitted and encouraged this

conduct knowing that it created a pervasive and unreasonable risk of constitutional injury, was deliberately indifferent to that risk and harm, and to the Plaintiffs' rights, and its policymakers ratified the actions of its employees, officers, and agents, in reckless disregard of the Plaintiffs' rights.

- 217) As a direct and proximate result of the Defendant City's violation of Plaintiffs' constitutional rights, the Plaintiffs have suffered, still suffer, and will continue to suffer, damages, as set forth previously herein. Holstein sustained economic damages including, but not limited to, interest on the construction loan, lost rents, loss of potential income, increased construction costs, time loss of money, higher costs due to the need for subcontractors, lost opportunity, tenant concessions to avoid suit or loss of tenants, increased and unlawful permit fees and fines, attorneys' fees and costs, and other damages to be proven at trial. Diverse suffered economic damages including, but not limited to, loss of income, lost profits, lost opportunity, loss of reputation, fines, attorneys' fees and costs. Ed and Steve Klen suffered economic damages including, but not limited to, lost income, profits, capital losses, loss of past and future earning capacity, loss of past and present productivity, which will continue into the future, loss of reputation, and stigma, noneconomic damages including physical and mental pain and suffering, emotional distress, impairment of the quality of life, loss of enjoyment, and attorneys' fees, costs, and interest from March 1, 2006.
- 218) Plaintiffs seek actual and compensatory damages, attorneys' fees, interest from March 1, 2006, and costs against all Defendants and punitive damages against named individual Defendants in their individual capacities.

SIXTH CLAIM FOR RELIEF

42 U.S.C. § 1983 - VIOLATION OF ED AND STEVE KLEN'S FOURTH AMENDMENT RIGHT TO BE FREE OF UNREASONABLE SEARCH AND SEIZURE AGAINST DEFENDANTS LOVELAND, GEORGE, HAWKINSON, DUVAL, AND HOSKINSON

- 219) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 220) On May 11, 2006, George, Hawkinson, Hoskinson, and Duval, acting under color of law, conspired to, and did, execute an illegal search of and trespass onto Steve and Edward Klen's property in violation of their right to be free from unreasonable search and seizure, without permission, a warrant, or the existence of an exigency.
- 221) George, Hawkinson, Hoskinson, and Duval deliberately violated Steven and Edward Klen's Fourth Amendment Right, acting with an evil motive and full knowledge that the law forbade their conduct.
- 222) Defendant City of Loveland's policies and practices, negligent and/or reckless failure to train, discipline, supervise, and properly hire officials, permitted and encouraged this conduct knowing that it created a pervasive and unreasonable risk of constitutional injury, was deliberately indifferent to that risk and harm, and to the Plaintiffs' rights, and its policymakers ratified the actions of its employees, officers, and agents, in reckless disregard of the Plaintiffs' rights.
- 223) As a direct and proximate result of the Defendant City's violation of the Klens' constitutional rights, Ed and Steve Klen have suffered, still suffer and will continue to suffer, economic damages, including, but not limited to, lost income, profits, capital losses, loss of past and future earning capacity, loss of past and present productivity, which will continue into the future, loss of reputation, and stigma, noneconomic damages

including physical and mental pain and suffering, emotional distress, impairment of the quality of life, loss of enjoyment, and attorneys' fees, costs, and interest from May 11, 2006.

- 224) Plaintiffs seek actual, compensatory, and nominal damages, attorneys' fees, interest from May 11, 2006, costs against all Defendants and punitive damages against named individual Defendants in their individual capacities.

SEVENTH CLAIM FOR RELIEF

STATE LAW CLAIM FOR TRESPASS – PLAINTIFFS ED AND STEVE KLEN AGAINST DEFENDANTS HAWKINSON, GEORGE, DUVAL, AND HOSKINSON

- 225) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 226) Defendant Hoskinson deliberately, intentionally, and unlawfully trespassed on Plaintiffs' Phase 2 property on May 11, 2006, in agreement with and at the express direction and agency of Defendants Hawkinson, George, and Duval who acted maliciously and intentionally to violate Plaintiffs' rights under the law and to cause Plaintiffs harm.
- 227) Hawkinson, George, Duval and Hoskinson unlawfully orchestrated and committed a trespass on Plaintiffs' Phase 2 property in an attempt to conduct an illegal search for evidence of noncompliance with a deferred sentence agreement, cause a wrongful conviction to enter against Ed Klen, and to retaliate against and destroy Plaintiffs' reputation, business, and standing in the community.
- 228) As a direct and proximate result of the Defendants' trespass, Ed and Steve Klen have suffered, still suffer, and will continue to suffer, economic damages, including but not

limited to lost income and profits, incurred while the Klens reported the criminal conduct to the police and attempted to compel an investigation, sought assistance from the City and its officials and boards to contend with the wrongdoing, nominal damages for the trespass, noneconomic damages including physical and mental pain and suffering, emotional distress, impairment of the quality of life, loss of enjoyment, and attorneys' fees, costs, and interest from May 11, 2006.

- 229) Plaintiffs seek actual, compensatory, and nominal damages, costs, interest from May 11, 2006, and attorneys' fees.

EIGHTH CLAIM FOR RELIEF

STATE LAW CLAIM FOR OUTRAGEOUS CONDUCT – PLAINTIFFS STEVE AND ED KLEN AGAINST DEFENDANTS HAWKINSON, HOSKINSON, GEORGE, DUVAL, BURNS, WORAYETH, AND DOE(S)

- 230) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 231). All individual Defendants named in this Claim engaged in extreme and outrageous conduct by each of their actions described in this Verified Complaint, and these Defendants acted recklessly or with the express intent of causing Plaintiffs to suffer severe emotional distress and emotional and physical damage.
- 232) Defendants' conduct was outrageous in that it constituted criminal acts against the Plaintiffs, by public officials, including burglary by Hoskinson at the direction of complicitors Duval, Hawkinson, and George, by entering the Phase 2 property without being privileged to do so and with the intent to commit a crime of official misconduct therein in violation of C.R.S. § 18-4-203, obstruction of justice in violation of C.R.S. §

18-8-101 *et seq.*, by the same individuals, by lying to prosecutors and police officers, forgery by Burns, Worayeth, and Doe(s), in violation of C.R.S. § 18-5-102-104, in which Hawkinson and Duval were complicitous, official misconduct by Burns, Worayeth, and Doe(s), in which Hawkinson and Duval were complicitous in violation of C.R.S. § 18-8-404, abuse of public records in violation of C.R.S. § 18-18-114, in which Hawkinson and Duval were complicitous, robbery by Burns, Hawkinson, and Duval, in violation of C.R.S. § 18-4-301, and defacing of written instruments by Burns, Worayeth and Doe(s) in violation of C.R.S. § 18-4-507, and in which Hawkinson and Duval were complicitous.

233) As a direct and proximate result of the Defendants' outrageous conduct and intentional infliction of emotional distress, Ed and Steve Klen have suffered, still suffer, and will continue to suffer, economic damages, including, but not limited to, lost income, profits, capital losses, loss of past and future earning capacity, loss of past and present productivity, which will continue into the future, loss of reputation, and stigma, noneconomic damages including physical and mental pain and suffering, extreme emotional distress, impairment of the quality of life, loss of enjoyment, and attorneys' fees, costs, and interest from May 11, 2006.

234) Plaintiffs seek actual, compensatory, damages, costs, interest from May 11, 2006, and attorneys' fees.

NINTH CLAIM FOR RELIEF

CIVIL CONSPIRACY TO TRESPASS ONTO AND COVER UP THE TRESPASS ONTO PLAINTIFFS' PROPERTY – ED AND STEVE KLEN AGAINST HOSKINSON, HAWKINSON, GEORGE AND DUVAL

- 235) Plaintiffs incorporate herein by reference each and every allegation contained in this Second Amended Verified Complaint and Jury Demand.
- 236) Hoskinson, Hawkinson, George, and Duval entered into an agreement by words or conduct to trespass on Plaintiff's Phase 2 property on or about May 11, 2006, and, in order to further and cover up that conspiracy, lied about their trespass and the legality of their actions, after admitting having instructed Hoskinson to commit the trespass in a conversation with Ed and Steve Klen.
- 237) As a direct and proximate result of the Defendants' conspiracy to trespass, Ed and Steve Klen have suffered, still suffer, and will continue to suffer, economic damages, including, but not limited to, lost income and profits, incurred while the Klens reported the criminal conduct to the police and attempted to compel an investigation, sought assistance from the City and its officials and boards to contend with the wrongdoing, nominal damages for the trespass, noneconomic damages including physical and mental pain and suffering, emotional distress, impairment of the quality of life, loss of enjoyment, and attorneys' fees, costs, and interest from May 11, 2006.
- 238) Plaintiffs seek actual, compensatory damages, interest from May 11, 2006, attorneys' fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them for the violation of their federal constitutional and statutory rights and other tortious conduct as follows:

1. For compensatory damages in an amount to be determined by the trier of fact.
2. For punitive damages against individual Defendants for deliberate violations of Plaintiffs' civil rights in an amount to be determined by the trier of fact.
3. For nominal damages against the appropriate Defendants in an amount to be determined by the trier of fact.
4. For pre-judgment and post-judgment interest from the dates on which the claims accrued.
5. For attorneys' fees and costs.
6. For such other and further relief, including injunctive relief, as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all claims presented herein.

Respectfully Submitted this 7th day of March, 2008

/s/ John Kenneth Pineau
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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

I, Stephen J. Klen, having first been duly sworn, hereby state that all facts contained in this Second Amended Verified Complaint and Jury Demand are true and correct to the best of my knowledge, information, and belief.

/s/ Stephen J. Klen
Stephen J. Klen

Subscribed and sworn to before me this 7th day of March, 2007, by Stephen J. Klen.

Witness my hand and official seal

s/ Kelsey L. Weber
Notary Public

[SEALED]

My commission expires: 8-11-2009

Originals on file at offices of counsel

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

I, Edward J. Klen, having first been duly sworn, hereby state that all facts contained in this Amended Verified Complaint and Jury Demand are true and correct to the best of my knowledge, information, and belief.

/s/ Edward J. Klen
Edward J. Klen

Subscribed and sworn to before me this 7th day of March, 2007, by Edward J. Klen.

Witness my hand and official seal

[SEALED]

s/ Kelsey L. Weber
Notary Public

My commission expires: 8-11-2009

Originals on file at offices of counsel