

ALLYN & FORTUNA LLP
Nicholas Fortuna, Esq. (9191)
Jesse A. Kaplan, Esq. (4594)
200 MADISON AVENUE, 5TH FLOOR
NEW YORK, NEW YORK 10016
(212) 213-8844

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LAN LAN WANG; PRINCIPAL CONNECTIONS, LTD.,
d/b/a MLX.com

Case No.

Plaintiffs,

vs.

**COMPLAINT AND
JURY DEMAND**

ELLIOT SPITZER, in his official Capacity as Governor of the State of New York; LORRAINE CORTES-VAZQUEZ, in her official capacity as Secretary of State of the State of New York; RANDY DANIELS, individually and as former Secretary of State of the State of New York; FRANK MILANO, individually and as former Secretary of State of the State of New York; BRUCE STUART, individually and as former employees of the Department of State of the State of New York; WHITNEY CLARK, Individually and as employee of the Department of State of the State of New York

Defendants.

Plaintiff Lan Lan Wang and Principal Connections, Ltd., d/b/a MLX.com

(referred to collectively as “Plaintiffs”), by and through their attorney, Allyn & Fortuna LLP, respectfully allege as follows:

INTRODUCTION

1. This is an action for damages brought pursuant to 42 U.S.C. § 1983, against defendants for violating Plaintiffs’ rights under the First and Fourteenth

Amendments of the United States Constitution. Specifically, Plaintiffs allege that defendants violated Plaintiffs' Fourteenth Amendment right to Equal Protection, Fourteenth Amendment right to substantive due process, Fourteenth Amendment right to procedural due process, and First Amendment right to exercise free speech. Plaintiffs also allege that defendants violated the New York State Constitution, Article 1, §§ 6 and 11.

2. The State of New York, including its Department of State (the "DOS"), determined that New York Real Property Law, Article 12-C, better known as the Apartment Information Vendors License Law (the "AIV Law"), is antiquated, obsolete, and ripe for reform. Moreover, defendants have consistently allowed apartment information vendors, as defined by the AIV Law, to flagrantly violate that law without recourse. At the same time, defendants have maliciously denied plaintiff Wang's application to obtain an apartment information vendor license, and have denied Plaintiffs' ability to operate a real estate broker business due to, and in retaliation for plaintiff Wang's outspoken criticism of the AIV Law, her criticism of the DOS' application of the AIV Law, and Plaintiffs' legal challenges of that law.

3. In 2000, the DOS suspended Wang's real estate broker license on the ground that Wang was allegedly operating an unlicensed apartment information vendor business (an "AIV"). Rather than accept the DOS' suspension of plaintiff Wang's real estate brokers license, Plaintiffs chose to exercise their constitutional rights by commencing an Article 78 proceeding to review the DOS' decision, and commencing an action in the United States District Court for the Southern District of New York, to declare the AIV Law unconstitutional.

4. In 2003, plaintiff Wang applied for an AIV license so that the DOS would restore her real estate broker license. In retaliation for Plaintiffs' outspoken criticism, pursuit of the Article 78 Proceeding, and Plaintiffs' constitutional challenge of the AIV Law, defendants went out of their way to make sure that plaintiff Wang's applications for an AIV license and for the reinstatement of her real estate broker license would not be granted. In doing so, the DOS sought to punish Plaintiffs for exercising their constitutional rights.

JURISDICTION AND VENUE

5. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983.

6. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343, and 2201.

7. Venue is appropriate pursuant to 28 U.S.C. § 1391(b).

8. Plaintiffs' claim for attorney's fees is conferred by 42 U.S.C. § 1988.

PARTIES

9. At all pertinent times mentioned herein, plaintiff Lan Lan Wang ("Wang") was a citizen of the United States of America and a resident of New York.

10. At all pertinent times mentioned herein, plaintiff Principal Connections, Ltd., d/b/a MLX.com ("PCL") is a New York business Corporation with a principal place of business in the State of New York, New York County.

11. Defendant Elliot Spitzer is the Governor of the State of New York. As such, Governor Spitzer is vested with the executive power of the State of New York and

is required to ensure that the laws of the State of New York are faithfully and fairly executed and administered.

12. Lorraine Cortes-Vazquez is the Secretary of State of the State of New York.

13. Randy Daniels is a former Secretary of State of the State of New York.

14. Frank Milano is a former Secretary of State of the State of New York.

15. Upon information and belief, defendant Bruce Stuart is or was an employee of the DOS.

16. Upon information and belief, defendant Robert Leslie is or was an employee of the DOS.

17. Upon information and belief, defendant Whitney Clark is or was an employee of the DOS.

PLAINTIFFS' BUSINESS

18. Wang is a licensed real estate broker and the Chief Executive Officer and representative corporate broker for PCL, which she founded in 1993. PCL is an Asian-American owned business that provides real estate brokerage services.

19. Due to the high demand for rental units in the New York City apartment rental market, renters rather than landlords, typically pay a real estate broker's commission for finding an apartment. The standard broker's commission is 15% of the first year's rent. Renters must pay a broker's commission even if the apartment was openly listed, meaning that the renter could have found it without the broker's assistance.

20. PCL sought to provide the consumer with an innovative and affordable alternative to paying cost prohibitive broker's commissions. While offering traditional

brokerage services, PCL also provided the consumer with access to an online electronic bulletin board which allowed consumers and landlords to exchange listings and communicate with each other over the Internet.

21. For a modest one-time fee, consumers could access PCL's services, including both offline brokerage services and participate in the online electronic bulletin board. Consumers could also register online for a free guest account that allowed them to preview PCL's services.

THE AIV LAW

22. In 1975, New York State Legislature enacted Real Property Law, Article 12-C (the "AIV Law") in order to prevent the dissemination of fraudulent information relating to the apartment rental market.

23. In or around 1994, Wang proactively initiated contact with New York's then Secretary of State, Alexander F. Treadwell, to express her concerns with the AIV Law. Wang noted her concern that the law, if applied to PCL, would impose substantial burdens on PCL's business and would do little to protect consumer welfare.

24. Initially, Secretary Treadwell supported Wang's concerns with the AIV Law and agreed that it should not be applied to PCL.

25. In 1995, Wang initiated contact with New York State Senator, Roy Goodman, to voice her concerns regarding the AIV Law.

26. Subsequently, Senator Goodman supported AIV Law reform.

27. Senator Goodman contacted Secretary Treadwell requesting an investigation into the matter and possibly exempting licensed brokers from the requirements of the AIV Law.

28. By letter dated April 5, 1995, Secretary Treadwell responded to Senator Goodman's request. Secretary Treadwell stated that he agreed with Wang and believed that the AIV Law was onerous and should be amended since the statutory requirements made it almost impossible to carry on an apartment information vendor business in New York. Secretary Treadwell offered his assistance in fashioning a legislative solution to this problem. Treadwell stated: "*I agree with Ms. Wang that the [AIV] is onerous and should be amended.*"

29. Treadwell initiated some legislation to repeal the AIV Law. Under the proposed legislation, a real estate broker who engaged in what is perceived as an AIV business would be accountable under his real estate broker's license.

**THE DOS' SUSPENSION OF PLAINTIFFS' REAL ESTATE BROKER
LICENSE**

30. Subsequently, as traditional real estate groups became increasingly apprehensive about alternative real estate services, the DOS, suddenly and without warning, drastically changed its attitude towards its enforcement of the AIV Law against Wang.

31. On February 8, 1999, the DOS Division of Licensing Services commenced a quasi-judicial administrative proceeding against Wang entitled, *In the matter of the New York State Department of State, Division of Licensing Services v. Lan Lan Wang, Representative Broker, Principal Connections Limited*. Pursuant to Article 12-A of the Real Property Law, the Division of Licensing Services' complaint, dated February 8, 1999, sought to suspend or revoke Plaintiffs' real estate broker license on the basis that they were "[e]ngaging in the business of apartment information vendor without license; demonstrating untrustworthiness and incompetence."

32. On July 27, 1999, a hearing in this matter was held before Administrative Law Judge, Roger Schneier (“ALJ Schneier”).

33. In a decision dated January 31, 2000, ALJ Schneier found that Wang was operating an unlicensed apartment information business, and that in doing so, Wang demonstrated untrustworthiness and incompetence as a real estate broker pursuant to Real Property Law §441-c. Accordingly, ALJ Schneier suspended Wang’s real estate broker license effective April 1, 2000, “[u]ntil such time as she has presented proof satisfactory to the Department of State that she, either directly or through any business controlled by her, is no longer engaged in the business of Apartment Information Vendor as defined by General Business Law §446-a(2).”

34. Plaintiff immediately attempted to comply with ALJ Schneier’s order. The DOS, however, was not responsive to Plaintiffs’ requests for clarification as to how they could comply with ALJ Schneier’s order. In particular, the DOS refused to define what Plaintiffs would need to demonstrate in order to have their real estate broker license reinstated.

35. In 2000, Wang asked Scott NeJame of the DOS what she needed to prove to comply with ALJ Schneier’s order. NeJame responded by merely stating that it is difficult to prove a negative.

36. In 2000, Wang contacted Usha Barrett of the DOS and requested that Barrett explain what the DOS would require Wang to prove in order to establish that Wang was no longer operating an unlicensed AIV business. Barrett ignored Wang’s request.

37. In November, 2002, Wang submitted an affidavit as proof that Wang was

no longer engaging in an AIV business. Barrett rejected the affidavit. Moreover, Barrett ignored Wang's requests for an explanation as to why she rejected the affidavit.

PLAINTIFFS' EXERCISE OF THEIR LEGAL RIGHTS

38. On or about April 7, 2000, Plaintiffs appealed ALJ Schneier's decision suspending their real estate broker license to the Secretary of State.

39. On December 12, 2000, while that appeal was pending, Plaintiffs commenced an action in the United States District Court for the Southern District of New York, entitled *Wang v. Pataki et al.*, Civ. No. 00-9425 (the "Federal Action").

40. In the Federal Action, Plaintiffs challenged the AIV Law on the grounds that:

- (1) it violated the Interstate Commerce Clause of the United States Constitution by impermissibly burdening interstate commerce;
- (2) that it violated the First and Fourteenth Amendments to the United States Constitution by banning or impermissibly regulating constitutionally protected speech; and,
- (3) that it violated the Fifth and Fourteenth Amendments to the United States Constitution because it is unconstitutionally vague.

41. On January 4, 2001, while the Federal Action was still pending, the Secretary of State, affirmed ALJ Schneier's determination and ordered the Division of Licensing Services to suspend Plaintiffs' real estate broker's license "forthwith."

42. On or about May 7, 2001, Wang commenced an Article 78 proceeding in the Supreme Court, New York County by petition entitled *In the matter of the application of LAN LAN WANG, Real Estate Broker, Petitioner, for a judgment annulling or modifying her suspension as a licensed real estate broker, v. Randy A. Daniels, Secretary*

of State of the State of New York, index number 109389/01. The petition sought to vacate the suspension of Wang’s real estate broker license.

WANG’S APPLICATION FOR AN AIV LICENSE

43. In a June 14, 2001, letter to Congressman Carolyn B. Maloney, then Secretary of State, Randy A. Daniels, suggested that Plaintiffs’ real estate broker license would be reinstated if Wang obtained an AIV license. Secretary Daniels stated that “She [Wang] is eligible to obtain an apartment information license immediately, if she chooses to apply.”

44. As a result of the DOS’ suspension of Plaintiff’s real estate broker license, Plaintiffs modified MLX.com in a good faith effort to comply with the AIV Law. In good faith, Plaintiffs believed that due to the modifications that they had made, they were no longer operating an AIV business as defined by the AIV Law.

45. Under plaintiffs’ remodeled MLX.com business, customers could access MLX.com and obtain, without a fee, certain general information concerning the location and availability of apartments and other housing. By paying a fee, customers could upgrade to “insider” status and obtain more detailed property information.

46. By decision dated May 8, 2003, the New York Supreme Court, Appellate Division First Department, rendered a per curiam decision and order denying the petition and dismissing the Article 78 proceeding. Wang subsequently petitioned the New York State Court of Appeals for leave to appeal the Appellate Division First Department’s decision. Wang’s petition was denied.

47. As a result, Wang decided that although she disagreed with the Appellate Division’s ruling, she would obtain the required AIV license.

48. By application dated August 24, 2003, Wang applied for an AIV License under Article 12-C of the Real Property Law.

49. The DOS, however, failed to process Wang's AIV application in a timely manner. In fact, the DOS essentially ignored Wang's application. Wang's application was not processed until she made numerous phone calls and wrote several letters inquiring into the status of her application.

50. In the fall 2003, Wang contacted Vince Sculco at the Governor's Office of Regulatory Reform ("GORR") in order to obtain assistance in obtaining an AIV license. After initial discussions with Wang, Sculco indicated that he was a sympathetic supporter of Plaintiffs and their position. According to Mr. Sculco, he was making headway in persuading the DOS to issue Wang an AIV license and reinstate her real estate broker license. Several months later he broke off contact with Wang.

51. In or around November 2003, the DOS performed an investigation of Plaintiffs' business. This investigation was conducted by Edwin Barker, a DOS licensing investigator.

52. The investigation involved an inspection of Plaintiffs' place of business and a review of Plaintiff's website, MLX.com. Based on this investigation, the DOS concluded that MLX.com contained no fee apartment listings. Mr. Barker reported this finding to Chief Investigator Bernard Friend.

53. Subsequently, the DOS requested that Wang appear at the DOS' offices for an interview.

54. On January 20, 2004, at the request of the DOS, Wang met with Chief Investigator Friend, District Manager Ernita Gantt, and Edwin Barker at the Chief Investigator's office. At that meeting, Wang was questioned regarding the nature of her business.

55. In February 2004, Wang corresponded with the DOS to follow up with the status of her AIV license. Wang also notified the DOS that licensed apartment information vendors were violating the AIV Law on a daily basis. Wang noted that in contravention of the AIV Law, that licensed apartment information vendors do not maintain hard copies of contracts, do not execute escrow agreements, do not obtain listings in writing from landlords prior to distribution to consumers, do not refund fees, and improperly advertise specific properties. Wang also formally complained against a number of licensed apartment information vendors that were breaking the law.

56. The DOS responded by stating that there was not enough information to warrant an investigation.

57. Based on the DOS response, Wang provided the DOS with detailed documentation of violations by a number of licensed AIVs along with evidence of these violations.

58. The DOS continued to ignore Wang.

59. Through letters dated March 16, 2004, and March 20, 2004, the DOS Division of Licensing Services denied Wang's application for an AIV license, alleging that Wang lacked the good character and trustworthiness required for licensure.

60. Despite the Division of Licensing Services' characterization of Wang as untrustworthy, Wang had a spotless reputation and was highly regarded in the New York

real estate community.

61. By letter dated April 13, 2004, Wang requested a quasi-judicial administrative hearing to review the Division of Licensing Services' denial of her application for an AIV license.

62. In Spring 2004, after the U.S. Supreme Court denied plaintiffs' writ of certiorari, Wang telephoned Mr. Sculco at the GORR. During this conversation, Sculco indicated that although he was still sympathetic to her cause, the DOS was extremely unhappy with Plaintiffs due to Plaintiffs' various legal proceedings.

63. In or around July 2004, Wang retained Matthew Cohen of Schlassberg: Flynn, as a consultant to assist her obtain an AIV license and have her broker license restored.

64. On a number of occasions, Cohen spoke to DOS representatives on Wang's behalf. In particular, Cohen spoke to Scott NeJame regarding what was required to restore Wang's real estate broker license. NeJame stated that Wang would have to reapply for a real estate broker license and would likely have to retake the real estate broker exam.

65. Cohen also spoke to Sculco at the GORR. Sculco told Cohen that Wang would have to throw herself at the mercy of the Division of Licensing Services and beg for forgiveness if the Division of Licensing Services was going to even begin to consider granting her license.

66. On October 26, 2004, and continuing on December 7, 2004, a quasi-judicial administrative hearing was held before the Supervising Administrative Law Judge Felix Neals ("ALJ Neals"). Those hearings included the live testimony by a total

of six (6) witnesses and an examination of a large number of exhibits.

67. During those hearings, the DOS vigorously opposed Wang's petition for an AIV license.

68. On December 13, 2004, ALJ Neals issued a corrected decision finding that Wang had proved by substantial evidence that she possessed the good character and trustworthiness for licensure as an AIV. Accordingly, ALJ Neals ordered that Wang's application for an AIV license be granted.

69. On or about January 11, 2005, acting Secretary of State Frank Milano issued Wang an AIV license in light of ALJ Neal's decision.

70. Upon information and belief, from January 11, 2005, through June 15, 2006, the DOS did not receive any complaints concerning Plaintiffs.

71. Subsequently, the Division of Licensing Services appealed ALJ Neals' decision and order granting Wang's application for an AIV license.

72. By Memorandum of Appeal dated January 3, 2005, the Division of Licensing Services alleged that Wang had been operating an unlicensed AIV business, and by engaging in an AIV business without first obtaining a license to do so, Wang lacked the trustworthiness and reputation for good and fair dealing required of an applicant for an AIV license.

73. By decision and order dated May 16, 2005, the then First Deputy Secretary of State, Frank P. Milano, remanded this matter to the Office of Administrative Hearings to conduct further proceedings to elicit evidence regarding the nature of MLX.com, in order to determine whether Wang was operating an unlicensed AIV business, and whether Wang lacked the trustworthiness and reputation for good and fair

dealing required of an applicant for an AIV license.

74. Subsequently, on October 21, 2005, Wang requested that her real estate broker license be reinstated.

75. By letter dated January 9, 2006, the DOS Division of Licensing Services denied Wang's application to reinstate her real estate broker's license, alleging that notwithstanding the decision of ALJ Neals, Wang had not presented proof that she is not operating an AIV business.

76. Subsequently, on January 18, 2006, Wang requested a quasi-judicial administrative hearing to review the DOS' denial of her application to reinstate her real estate broker license.

77. An administrative hearing regarding Wang's AIV application was scheduled for June 1, 2006.

78. On February 22, 2006, the remanded matter regarding Wang's application for an AIV license came on for a hearing before ALJ Schneier.

79. On March 26, 2006, ALJ Schneier issued a decision.

80. ALJ Schneier found that it was clear that Wang had always acted in good faith and with the belief that her conduct was lawful.

81. ALJ Schneier also found that had Wang applied for an AIV license immediately after her real broker license was suspended, "there is little doubt that her application would have been granted." He also noted that rather than doing so, Wang went on a crusade to reform the AIV law. He further noted that "She should not be penalized for that."

82. ALJ Schneier found that Wang changed MLX.com's operation under the

incorrect belief that she had brought her business into compliance with the law. ALJ Schneier further found that this did not indicate that she was untrustworthy, and that “[i]t is apparent that she acted in good faith and not with the intent to violate the law.”

83. ALJ Schneier also noted that since Wang was issued an AIV license, there was no evidence of any complaints against her or that she was in anyway violating the law.

84. Accordingly, ALJ Schneier held that Wang was sufficiently trustworthy to be granted a license to operate an AIV business, and granted Wang’s application for same.

85. Finally, ALJ Schneier noted that he was aware that Wang had applied to reinstate her real estate broker license which had been suspended as a result of the 1999 hearing. ALJ Schneier further noted that the Division of Licensing Services’ proposed denial of Wang’s application to reinstate her real estate broker’s license was purportedly based on Wang’s alleged failure to prove that she was no longer engaging in an AIV business. As that reason had obviously become moot, ALJ Schneier suggested that the Division of Licensing Services reinstate Wang’s real estate broker license.

86. In light of Schneier’s decision, Wang contacted the DOS to determine how it intended on proceeding with respect to Plaintiffs’ application to reinstate her real estate broker license. The DOS, however, ignored her request.

87. Instead, the DOS Division of Licensing Services sought to adjourn the hearing to determine said application indefinitely, pending the DOS anticipated appeal of ALJ Schneier’s decision to grant Wang an AIV license.

88. On June 16, 2006, Plaintiffs reluctantly entered into a Stipulation and

Order of Settlement and Discontinuance whereby the New York Attorney General's Office agreed to reinstate Wang's broker's license and withdraw the administrative proceeding concerning Wang's AIV license in return for Plaintiffs' discontinuance of their constitutional challenge of the AIV Law.

89. Despite Defendants' stonewalling of Wang's application for an AIV license and application and to reinstate Plaintiffs' real estate broker license, defendants have virtually ignored malfeasance by other licensed real estate brokers and licensed AIVs.

90. Defendants have made generous decisions, diametrically opposed to the important "trustworthy" issues levied at Plaintiffs, to other licensed AIVs and real estate brokers that were being prosecuted for numerous consumer complaints.

COUNT I

(§ 1983 Fourteenth Amendment Equal Protection Violation – Selective Treatment)

91. The Plaintiffs repeat and incorporate by reference the allegations in paragraphs 1-90, inclusive.

92. Defendants selectively treated Plaintiffs in comparison to others similarly situated, namely other persons with real estate broker licenses, persons applying for real estate broker license, persons applying for AIV licenses, and AIV license holders.

93. Defendants suspended Plaintiffs' real estate broker license, continuously denied Plaintiffs' application for an AIV license, overzealously appealed decisions awarding Plaintiffs with an AIV license, continuously blocked Plaintiffs' attempts to obtain an AIV license, and continuously blocked Plaintiffs' attempts to reinstate their real estate broker license.

94. Defendants expended and allocated a large and disproportionate amount of time, personnel, and recourses to prevent Plaintiffs from obtaining an AIV license and reinstating their real estate broker license.

95. Defendants did so under color of State law.

96. While defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, defendants failed to take action against those that operated an AIV business without an AIV license, including licensed brokers.

97. While defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, defendants failed to revoke the licenses of other licensed brokers that operated an AIV business without an AIV license.

98. While defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, defendants failed to take any action against licensed brokers or licensed AIVs that violated the AIV Law and/or demonstrated untrustworthy behavior.

99. While defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, defendants liberally granted other applications for AIV licenses, including the applications of persons that had previously been operating an AIV business without an AIV license.

100. While defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their broker license, defendants did not vigorously oppose

other applications for AIV licenses, including the applications of persons that had previously been operating an AIV business without an AIV license.

101. While defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, defendants liberally granted other applications for real estate broker licenses, including the applications of persons that had previously been operating an AIV business without an AIV license and had demonstrated untrustworthy behavior.

102. Defendants' selective treatment of Plaintiffs was based on impermissible considerations in that defendants' conduct was motivated by defendants' animus towards the Plaintiffs.

103. Defendants' selective treatment was motivated by Plaintiffs' activism, outspoken criticism of the AIV Law, the State of New York's enforcement of the AIV Law, the DOS' incompetence and corruption, Plaintiffs' attempts to protect and exercise their constitutional rights, and defendants' general dislike for the Plaintiffs.

104. In particular, defendants' selective treatment was motivated by the underlying Federal Action and Article 78 Proceeding (referred to collectively as the "Civil Actions").

105. Through their selective treatment, defendants intended on inhibiting and punishing Plaintiffs from protecting and exercising their constitutional rights, including but not limited to, Plaintiffs' 1st Amendment right to criticize the AIV Law and the State of New York, as well as Plaintiffs' rights to pursue the Civil Actions.

106. Through their selective treatment, defendants maliciously and in bad faith, abused their power in order to injure Plaintiffs and Plaintiffs' business.

107. Defendants' selective treatment was irrational and wholly arbitrary, and did not further any legitimate State interests.

108. Defendants' selective treatment constitutes a violation of Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment.

109. As a result of this violation, Plaintiffs have suffered injuries, including injuries to their business and reputation.

COUNT II

(§ 1983 First Amendment Violation – Retaliation for Exercise of Free Speech)

110. The Plaintiffs repeat and incorporate by reference the allegations in paragraphs 1-109, inclusive.

111. Plaintiffs' criticism of the AIV Law, criticism of the State of New York's enforcement of the AIV Law, and criticism of the DOS' incompetence and corruption, constitutes protected speech.

112. Plaintiffs' attempts to protect and exercise their constitutional rights through the underlying Civil Actions, constitutes protected speech.

113. Defendants took adverse action against Plaintiffs by preventing Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, and preventing Plaintiffs from conducting their business.

114. Defendants' efforts to prevent Plaintiffs from obtaining an AIV license, reinstating their real estate broker license, and conducting business, were in direct response to and in retaliation for Plaintiffs' protected speech, including Plaintiffs' prosecution of the Civil Actions.

115. Through their conduct, defendants sought to punish Plaintiffs for their activism, outspoken criticism, and for prosecuting the Civil Actions.

116. Through their conduct, defendants sought to impede and discourage Plaintiffs from prosecuting the Civil Actions and to curb Plaintiffs' protected speech.

117. Defendants' conduct was irrational and wholly arbitrary, and did not further any legitimate State interests.

118. Defendants' conduct was motivated by their desire to retaliate against, impede, and discourage Plaintiffs' protected speech.

119. Defendants did so under color of State law.

120. Defendants conduct therefore violates Plaintiffs' First Amendment right to free speech.

121. As a result of this violation, Plaintiffs have suffered injuries, including injuries to their business and reputation.

COUNT III

(§ 1983 Fourteenth Amendment Violation -Substantive Due Process)

122. The Plaintiffs repeat and incorporate by reference the allegations in paragraphs 1-122, inclusive.

123. Plaintiffs have a property interest in maintaining their real estate broker license, obtaining an AIV license, and conducting their business.

124. Defendants took adverse action against Plaintiffs by preventing Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, and preventing Plaintiffs from conducting their business.

125. Defendants' conduct was irrational, arbitrary, capricious, conscience shocking, and/or done in bad faith.

126. Defendants did so under color of State law.

127. Defendants' conduct therefore violates Plaintiff's Fourteenth Amendment right to substantive due process.

128. As a result of this violation, Plaintiffs have suffered injuries, including injuries to their business and reputation.

COUNT IV

(§ 1983 Fourteenth Amendment Violation -Procedural Due Process)

129. The Plaintiffs repeat and incorporate by reference the allegations in paragraphs 1-128, inclusive.

130. Plaintiffs have a property interest in maintaining their real estate broker license, obtaining an AIV license, and conducting their business.

131. Plaintiffs have a legitimate claim and entitlement in maintaining their real estate broker license, obtaining an AIV license, and conducting their business.

132. Defendants were required to act on Plaintiffs' application for an AIV license and application to reinstate their real estate broker license.

133. Defendants ignored and failed to act on Plaintiffs' application for an AIV license and application to reinstate their real estate broker license.

134. Such action constitutes a deprivation of a protected right and liberty interest.

135. Defendants' intentionally, maliciously, in bad faith, deprived Plaintiffs of a protected right and liberty interest by failing to act on Plaintiffs' application for an AIV license and application to reinstate their real estate broker license.

136. In the alternative, defendants deprivation of a protected right and liberty interest was a result of defendants' gross negligence and/or deliberate indifference.

137. Defendants did so under color of State law.

138. Defendants' conduct therefore violates Plaintiff's Fourteenth Amendment right to procedural due process.

139. As a result of this violation, Plaintiffs have suffered injuries, including injuries to their business and reputation.

COUNT V

(New York State Constitution Violation –Equal Protection of Laws)

140. The Plaintiffs repeat and incorporate by reference the allegations in paragraphs 1-139, inclusive.

141. Defendants selectively treated Plaintiffs in comparison to others similarly situated, namely other persons with real estate brokers licenses, persons applying for real estate broker licenses, persons applying for AIV licenses, and AIV license holders.

142. Defendants suspended Plaintiffs' real estate broker license, continuously denied Plaintiffs' application for an AIV license, overzealously appealed decisions awarding Plaintiffs with an AIV license, continuously blocked Plaintiffs' attempts to obtain an AIV license, and continuously blocked Plaintiffs' attempts to reinstate their real estate broker license.

143. Defendants expended and allocated a large and disproportionate amount of time, personnel, and recourses to prevent Plaintiffs from obtaining an AIV license and reinstating their real estate broker license.

144. Defendants did so under color of State law.

145. While Defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, Defendants failed to take action against others that operated an AIV business without an AIV license, including licensed brokers.

146. While Defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, Defendants failed to revoke the licenses of other licensed brokers that operated an AIV business without an AIV license.

147. While Defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, Defendants failed to take any action against licensed brokers or licensed AIVs that violated the AIV Law and/or demonstrated untrustworthy behavior.

148. While Defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, Defendants liberally granted other applications for AIV licenses, including the applications of persons that had previously been operating an AIV business without an AIV license.

149. While Defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their broker license, Defendants did not vigorously oppose

other applications for AIV licenses, including the applications of persons that had previously been operating an AIV business without an AIV license.

150. While Defendants overzealously prevented Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, defendants liberally granted other applications for real estate broker licenses, including the applications of persons that had previously been operating an AIV business without an AIV license and had demonstrated untrustworthy behavior.

151. Defendants' selective treatment of Plaintiffs was based on impermissible considerations in that defendants' conduct was motivated by defendants' animus towards the Plaintiffs.

152. Defendants' selective treatment was motivated by Plaintiffs' activism, outspoken criticism of the AIV Law, the State of New York's enforcement of the AIV Law, the DOS' incompetence and corruption, Plaintiffs' attempts to protect and exercise their constitutional rights, and defendants' general dislike for the Plaintiffs.

153. In particular, defendants' selective treatment was motivated by the underlying Civil Actions.

154. Through their selective treatment, defendants intended on inhibiting and punishing Plaintiffs from protecting and exercising their constitutional rights, including but not limited to, Plaintiffs' First Amendment right to criticize the AIV Law and the State of New York, as well as Plaintiffs' rights to pursue the Civil Actions.

155. Through their selective treatment, defendants maliciously and in bad faith, abused their power in order to injure Plaintiffs and Plaintiffs' business.

156. Defendants' selective treatment was irrational and wholly arbitrary, and did not further any legitimate State interests.

157. Defendants' selective treatment constitutes a violation of Plaintiffs' rights under the New York State Constitution, Article 1, § 11.

158. As a result of this violation, Plaintiffs have suffered injuries, including injuries to their business and reputation.

COUNT VI

(New York State Constitution Violation –Freedom of Speech)

159. The Plaintiffs repeat and incorporate by reference the allegations in paragraphs 1-158, inclusive.

160. Plaintiffs' criticism of the AIV Law, criticism of the State of New York's enforcement of the AIV Law, and criticism of the DOS' incompetence and corruption, constitutes protected speech.

161. Plaintiffs' attempts to protect and exercise their constitutional rights through the underlying Civil Actions, constitutes protected speech.

162. Defendants took adverse action against Plaintiffs by preventing Plaintiffs from obtaining an AIV license and reinstating their real estate broker license, and preventing Plaintiffs from conducting their business.

163. Defendants' efforts to prevent Plaintiffs from obtaining an AIV license, reinstating their real estate broker license, and conducting business, were in direct response to and in retaliation for Plaintiffs' protected speech, including Plaintiffs' prosecution of the Civil Actions.

164. Through their conduct, defendants sought to punish Plaintiffs for their activism, outspoken criticism, and for prosecuting the Civil Actions.

165. Through their conduct, defendants sought to impede and discourage Plaintiffs from prosecuting the Civil Actions and to curb Plaintiffs' protected speech.

166. Defendants' conduct was irrational and wholly arbitrary, and did not further any legitimate State interests.

167. Defendants' conduct was motivated by their desire to retaliate against, impede, and discourage Plaintiffs' protected speech.

168. Defendants did so under color of State law.

169. Defendants conduct therefore constitutes a violation of Plaintiffs' rights under the New York State Constitution, Article 1, § 6.

170. As a result of this violation, Plaintiffs have suffered injuries, including injuries to their business and reputation.

WHEREFORE, Plaintiffs demands judgment against the defendants as follows:

a. As to the First Cause of Action Award, damages in an amount to be determined plus pre-judgment and post-judgment interest, costs and attorney's fees;

b. As to the Second Cause of Action Award, damages in an amount to be determined plus pre-judgment and post-judgment interest, costs and attorney's fees;

c. As to the Third Cause of Action Award, damages in an amount to be determined plus pre-judgment and post-judgment interest, costs and attorney's fees;

d. As to the Fourth Cause of Action Award, damages in an amount to be determined plus pre-judgment and post-judgment interest, costs and attorney's fees;

- e. As to the Fifth Cause of Action Award, damages in an amount to be determined plus pre-judgment and post-judgment interest, costs and attorney's fees;
- f. As to the Sixth Cause of Action Award, damages in an amount to be determined plus pre-judgment and post-judgment interest, costs and attorney's fees;
- g. Reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and
- h. Such other and further relief as this Court deems to be reasonable, necessary and just.

Dated: March 8, 2007
New York, New York

Respectfully submitted,
ALLYN & FORTUNA LLP

By: _____
Nicholas Fortuna, Esq. (9191)
Jesse A. Kaplan, Esq. (4594)
200 Madison Avenue, 5th Floor
New York, New York 10016
(212) 213-8844
(212) 213-3318 (facsimile)