

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
Northern District

SUPERIOR COURT

Jeffrey Frost,
Chretien/Tillinghast, LLC,
Frost Family, LLC

Plaintiffs,

v.

Michael Delaney, Individually and as Attorney General;
Peter Hildreth, Individually and as former Commissioner of the New Hampshire Banking
Department;
Karen Gorham, Individually and as former Assistant Attorney General;
Maryam Torben Desfosses, Individually and as Hearings Examiner for the New
Hampshire Banking Department;
Kathleen Sheehan, Individually and as Bank Examiner;
State of New Hampshire;
New Hampshire Banking Department.

Defendants.

Docket No. _____

DECLARATION TO WRIT OF SUMMONS

The Plaintiffs, Jeffrey Frost, Chretien/Tillinghast, LLC and Frost Family, LLC
(collectively "Plaintiffs"), by and through their attorneys, Devine, Millimet & Branch,
P.A., allege the following against the Defendants, Michael Delaney, Peter Hildreth,
Karen Gorham, Maryam Desfosses, Kathleen Sheehan, State of New Hampshire and
New Hampshire Banking Department (collectively "Defendants"):

Preliminary Statement

This is a civil action seeking compensation for the illegal, unconstitutional,
tortious and unjust investigative tactics used against Plaintiffs, as well as the subsequent
unconstitutional, malicious and abusive administrative and criminal proceedings brought
against Mr. Frost. After almost two years, those administrative and criminal proceedings

have now terminated, favorably, and confirmed what was or should have been evident all along: that Plaintiffs, by engaging in isolated instances of seller-financed real estate sales, had done nothing remotely illegal, much less criminal. Through this action, Plaintiffs seek recompense for the monetary, reputational, emotional, proprietary and other harm caused by the Defendants' tortious and unconstitutional actions.

I. Venue and Subject Matter Jurisdiction

1. The Superior Court has subject matter jurisdiction over this matter pursuant to RSA 491:7 and RSA 541-B:9, IV.

2. Venue is proper in Hillsborough County Superior Court, Northern District, because Plaintiffs reside in Manchester, New Hampshire. See RSA 507:9.

II. Parties

3. Plaintiff Jeffrey Frost is a resident of the State of New Hampshire with an address at 444 Walnut Street, Manchester, New Hampshire 03104. Mr. Frost is a member and the designated manager of Petitioner Chretien/Tillinghast, LLC. Mr. Frost is also a member of Petitioner Frost Family, LLC.

4. Plaintiff Chretien/Tillinghast, LLC is a limited liability company organized under the laws of the State of New Hampshire, with a business address at 444 Walnut Street, Manchester, New Hampshire 03104.

5. Plaintiff Frost Family, LLC is a limited liability company organized under the laws of the State of New Hampshire, with a business address at 444 Walnut Street, Manchester, New Hampshire 03104.

6. Defendant Michael Delaney is and was at all relevant times the Attorney General for the State of New Hampshire who currently maintains a professional address

of 33 Capitol Street, Concord, New Hampshire 03301, and, upon information and belief, a personal address of 376 N. Bend Drive, Manchester, New Hampshire 03104. Mr. Delaney is being sued in his official and individual capacities.

7. Defendant Peter Hildreth is the former Commissioner of the New Hampshire Banking Department who was, at all relevant times, charged with general supervision of all banks and similar institutions. See RSA 383:9, I. Upon information and belief, Defendant Hildreth resides at 32 Shawmut Street, Concord, New Hampshire 03301. Mr. Hildreth is being sued in his official and individual capacities.

8. Defendant Karen Gorham is a former Assistant Attorney General who was, at all relevant times, employed by the New Hampshire Office of the Attorney General. Ms. Gorham currently maintains a professional address at the Hillsborough County Attorney's Office, 300 Chestnut Street, Manchester, New Hampshire 03101, and, upon information and belief, a personal address of 26 Harvard Lane, Bedford, New Hampshire 03110. Ms. Gorham is being sued in her official and individual capacities.

9. Defendant Maryam Torben Desfosses is and was at all relevant times a hearings examiner with the New Hampshire Banking Department. Ms. Desfosses maintains a professional address at 53 Regional Drive, Suite 200, Concord, New Hampshire 03301. Upon information and belief, Ms. Desfosses maintains a personal address at 304 Cypress Street, Manchester, New Hampshire 03103. Ms. Desfosses is being sued in her official and individual capacities.

10. Defendant Kathleen Sheehan is and was at all times a Bank Examiner employed by the New Hampshire Banking Department. Ms. Sheehan maintains a professional address at 53 Regional Drive, Suite 200, Concord, New Hampshire 03301.

Upon information and belief, Ms. Sheehan maintains a personal address of 22 Edgerly School Road, Meredith, New Hampshire 03253. Ms. Sheehan is being sued in her official and individual capacities.

11. Defendant State of New Hampshire is represented by the New Hampshire Office of the Attorney General, which maintains an official address at 33 Capitol Street, Concord, New Hampshire 03301.

12. Defendant New Hampshire Banking Department ("NHBD") is an agency of the State of New Hampshire whose agents and employees exercise the delegated power of the Commissioner. See RSA 383:7-a, I. The NHBD maintains offices at 53 Regional Drive, Suite 200, Concord, New Hampshire 03301.

III. Factual Background

13. Prior to the events outlined below, Mr. Frost was a community and civic leader. He served as Chairman of the Board of Directors of the American Red Cross in Manchester. Mr. Frost had received awards from the Manchester Historic Association for historic restoration of certain properties.

14. For the last several years, Mr. Frost has been a member of two businesses—Frost Family, LLC and Chretien/Tillinghast, LLC. Each of these entities executed a single seller-financed real estate transaction several years ago. The two (isolated) instances of seller-financing were each lawful. Seller-financing had been common in New Hampshire for many years.

15. As set forth more fully below, the Defendants, upon learning of the seller-financing, commenced a full-blown (and unconstitutional) investigation of Mr. Frost. Based on the fruits of that investigation, the Defendants arrested Mr. Frost, issued a

defamatory press release, and then instituted malicious, unconstitutional and illegal administrative and criminal proceedings against Mr. Frost, individually.

A. Frost Family, LLC and the 2008 seller-financing transaction

16. Frost Family, LLC is a family real estate management and development business of which Mr. Frost owns half and manages. Mr. Frost's wife owns the other half of the entity.

17. In September 2008, Frost Family, LLC sold a condominium unit at 313 Bridge Street to a woman named Cheryl Cayer, who learned of the unit through her real estate agent. At Ms. Cayer's request, Frost Family, LLC agreed to finance a small portion of the purchase price, as Ms. Cayer was a single mother going to school. In September 2008, Frost Family, LLC and Ms. Cayer executed a promissory note and mortgage for \$32,000 of the \$137,000 purchase price. The warranty deed and the mortgage were each publicly filed.

18. The transaction with Ms. Cayer is the only instance of seller-financing for a residential real estate property (i.e., a "mortgage loan" within the meaning of RSA chapter 397-A) in which Frost Family, LLC had (and has) ever engaged.

19. Frost Family, LLC and Ms. Cayer have enjoyed a harmonious relationship since the sale of the property.

B. Chretien/Tillinghast, LLC and the 2009 seller-financing transaction

20. Chretien/Tillinghast, LLC is an entity owned and operated by Mr. Frost and his friend Marc Chretien. Mr. Frost and Mr. Chretien each have a fifty percent equity ownership interest in Chretien/Tillinghast, LLC.

21. Mr. Frost and Mr. Chretien formed Chretien/Tillinghast, LLC in 2006 for the purposes of "real estate holding, acquisition and development, including, but not limited to, residential rental property." This same purpose—"[r]eal estate acquisition, holding and development"—is reflected in the publicly filed certificate of formation.

22. In February 2006, Chretien/Tillinghast, LLC acquired lakeside real property in Alexandria, New Hampshire. After improvements were made to the property, Chretien/Tillinghast, LLC leased the lake house in 2006, 2007, 2008 and 2009.

23. In September 2009, a man named Robert Recio, an attorney from Connecticut, became interested in the Alexandria property.

24. Unbeknownst to Mr. Frost or Mr. Chretien, Mr. Recio had filed for personal bankruptcy at least five times, and was, at the time, in a dispute with his current landlord. Mr. Recio had also been the subject of professional grievances and ethically reprimanded in Connecticut.

25. Mr. Recio expressed an interest in leasing the lake house with an option to purchase and a seller-financed mortgage. As an inducement, Mr. Recio advised Chretien/Tillinghast, LLC that he was currently awaiting a large insurance settlement.

26. Following negotiations, Chretien/Tillinghast, LLC reluctantly agreed to seller-financing as an accommodation to Mr. Recio.

27. On September 27, 2008, Mr. Recio and his housemate William Secor executed a long-term lease with Chretien/Tillinghast, LLC for the lake house. Contemporaneous with the lease, the parties also executed an option to purchase the property for the price of \$475,000. If exercised, the option to purchase obligated Chretien/Tillinghast, LLC to provide a first mortgage in the amount of \$425,000 at

6.25% "fully due and payable on the third anniversary date of the real estate closing and the transfer of title."

28. Mr. Recio and Mr. Secor missed the first payment on the lease. After this was pointed out by Mr. Chretien, Mr. Recio assured him they would take care of the problem and would soon be consulting a mortgage broker to get a credit report. After renting for several months, Mr. Recio and Mr. Secor decided to exercise the option to purchase and wanted the property "ASAP." To that end, Mr. Recio requested owner financing, rejected any suggestion that they look for alternative long-term financing, and assured Chretien/Tillinghast, LLC that, once the sale was completed, Mr. Recio would seek to refinance. Mr. Recio continued to make assertions that they were expecting a large insurance settlement with which they would pay down or pay off the mortgage.

29. Chretien/Tillinghast, LLC's attorney, John Bisson of Cronin & Bisson, P.C., prepared a note and mortgage consistent with the terms proposed by Mr. Recio.

30. On March 13, 2009, Chretien/Tillinghast, LLC executed a promissory note secured by a mortgage for the lake house property.

31. Pursuant to the purchase agreement, Mr. Recio and Mr. Secor promised to pay \$425,000, plus interest at a rate of 6.25%, in installments of \$300 per month plus interest for the period between April 13, 2009 and March 13, 2012, at which time the balance became due and payable.

32. This is the only seller-financed "mortgage loan," RSA chapter 397-A, in which Chretien/Tillinghast, LLC has ever engaged.

C. The S.A.F.E. Act and Jeff Frost's Mortgage Loan Originator License

33. Following these two instances of seller-financing, Mr. Frost first became licensed with the NHBD in order to comply with state statutory amendments in 2009 responding to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act"), a federal law passed on July 30, 2008 giving states one year to pass legislation for minimum licensing and registration standards.

34. New Hampshire's statutory changes included a new requirement, effective April 1, 2009, that mortgage loan originators become licensed under RSA chapter 397-A. See RSA 397-A:3, II (Supp. 2008), as amended by Laws 2008, 333:1.

35. In late March 2009, (after both instances of seller-financing), Mr. Frost submitted a Mortgage Loan Originator MU4 application, sponsored by Academy Mortgage—a separate and unrelated entity employing Mr. Frost.

36. Mr. Frost became licensed with the Banking Department *effective April 1, 2009*, which was *after* the single instance of seller-financing by Frost Family, LLC in 2008 and *after* the single instance of seller-financing by Chretien/Tillinghast, LLC in 2009.¹

37. In addition to the new licensing requirement which became effective April 1, 2009, New Hampshire made other revisions to its mortgage code in response to the S.A.F.E. Act. Among these revisions were new substantive prohibitions on certain conduct within RSA 397-A:14, IV, together with an entirely new \$25,000 per-violation penalty set forth in RSA 397-A:, 17, VIII, IX. By their terms, these amendments to RSA

¹ Mr. Frost became licensed as a mortgage loan originator with Academy Mortgage—a mortgage company unrelated to Frost Family, LLC or Chretien/Tillinghast, LLC.

chapter 397-A (each part of Laws 2009, chapter 290) took effect July 31, 2009. See Laws 2009, 290:53.

38. The timing of these statutory changes is important because the NHBD, to a large extent, would later rely on these new S.A.F.E. Act provisions in the administrative proceeding against Mr. Frost.

D. Defendants Attack Mr. Frost With Legal Proceedings on Two Fronts

39. In late 2009, Chretien/Tillinghast, LLC instituted foreclosure proceedings on the Alexandria property due to non-payment.

40. In response, Mr. Recio filed for bankruptcy protection yet again (his sixth time) in November 2009, this time in New Hampshire. Chretien/Tillinghast, LLC sought relief from the automatic stay based on fraudulent misrepresentations in Mr. Recio's bankruptcy petition, including a statement under oath that he had never before filed for bankruptcy.

41. In or around December 2009, shortly after Chretien/Tillinghast, LLC pointed out Mr. Recio's fraudulent misrepresentations to the Bankruptcy Court, Mr. Recio filed a complaint with the Attorney General Office's Consumer Protection Bureau alleging that he was fraudulently induced to enter the sale for an inflated value.

42. Mr. Recio's complaint was forwarded to the Banking Department for investigation. At this point, a simple Google search would have revealed that Mr. Recio had been the subject of prior attorney-discipline grievances and was suspended from the practice of law. A similarly simple search of the United States Pacer System would have revealed the serial bankruptcy filings and the status of the current bankruptcy proceedings, which were dismissed on December 29, 2009.

43. Instead of exploring the motivation for Mr. Recio's complaint, Kathleen Sheehan, a NHBD examiner, paid an unannounced visit to Mr. Frost's residence on February 18, 2010. Mr. Frost was away restoring an historic property at the time. Ms. Sheehan telephoned Mr. Frost from outside his residence demanding immediate access to records and documents concerning Mr. Recio.

44. During that telephone conversation, Mr. Frost informed Ms. Sheehan that Frost Family, LLC had engaged in a similar seller-financed loan, and, further, that Mr. Frost did not think that these two, isolated instances of seller-financing came within the NHBD's jurisdiction. Mr. Frost further indicated that the paperwork Ms. Sheehan sought was in the law office of Cronin & Bisson, counsel for Chretien/Tillinghast, LLC. During this conversation, Ms. Sheehan was aggressive and made statements which Mr. Frost understood to be threatening or a show of force.

45. After the telephone conversation with Ms. Sheehan, Mr. Frost then telephoned and spoke with Attorney Maryan Toben Desfosses, a NHBD hearings examiner who was apparently overseeing Ms. Sheehan. When Mr. Frost stated that the NHBD lacked jurisdiction, Ms. Desfosses abruptly ended the conversation.

46. In another show of force, Ms. Sheehan later arrived, unannounced, at the offices of Cronin & Bisson demanding immediate review of Attorney Bisson's client files. Ms. Sheehan, however, lacked any documentation—a search warrant, a subpoena or even a copy of a complaint—evidencing that she was entitled to an immediate review of Attorney Bisson's privileged files and left.

47. The following day, Ms. Desfosses faxed Attorney Bisson a copy of Mr. Recio's complaint along with a letter. Attorney Bisson spoke with Ms. Desfosses

concerning Mr. Recio's doubtful credibility and motives, and whether Mr. Frost was even subject to the NHBD's jurisdiction given that the sale of the property in question was an isolated and private transaction. Undeterred, Ms. Desfosses insisted that Mr. Frost was subject to the NHBD's jurisdiction and demanded that Attorney Bisson produce the documents that day. Attorney Bisson declined to produce his confidential and privileged client files until having a chance to investigate the situation.

48. On Monday, February 22, 2010, Attorney Bisson arrived at his law office around 4:55 p.m. to find two police officers at his office awaiting a search warrant. The officers informed Attorney Bisson that they expected the warrant would soon be procured by a representative of the Attorney General's office (presumably Karen Gorham). Attorney Bisson was forced to wait until 6:30 p.m., when everyone left due to the evident failure to obtain a search warrant.

49. On February 23, 2010, Ms. Sheehan appeared before the Manchester District Court and presented a supporting affidavit for search warrants of Attorney Bisson's office and Mr. Frost's residence. Paragraph 5 of the supporting affidavit stated "Sheehan learned that Frost, as a member of Chretien/Tillinghast, had acted as a Mortgage Banker in the above complaint." Paragraph 7 noted that "Frost further stated that he executed an additional Mortgage as well."

50. In response to a direct question from Judge Ryan, Ms. Sheehan stated that she had looked at the registry of deeds and the mortgage listed Chretien/Tillinghast as "the Mortgage Banker."

51. Judge Ryan granted the warrants based upon Ms. Sheehan's representation that Chretien/Tillinghast, LLC was listed as the "mortgage banker" in the mortgage on file with the Registry of Deeds.

52. Ms. Sheehan's representations to Judge Ryan were false and the mortgage, in fact, contains no such designation of the LLC. Even a cursory examination of the publicly available document would have confirmed that fact.

53. Armed with the search warrant, Assistant Attorney General Karen Gorham, Ms. Sheehan and several police officers returned to Attorney Bisson's office after lunch on February 23. Attorney Bisson provided them with a copy of his documents and a privilege log for documents subject to the attorney-client privilege.

54. The police then proceeded to Mr. Frost's residence, where they forcibly entered through the front door, causing damage to the door frame, and seized several items of personal property, including Mr. Frost's financial records, cellular phone and several family computers.

55. On March 9, 2010, the Attorney General's Office arrested Mr. Frost, detained him in a lockup for at least one hour, and brought four Class-A misdemeanor complaints against him, individually,² in the Manchester District Court, alleging various criminal violations of RSA chapter 397-A and other law.

56. One of the Complaints alleged that Mr. Frost *criminally* violated an informal Banking Commissioner Order, which was an administrative policy pronouncement the NHBD had not promulgated as an administrative rule.

² The relevant statutes addressing mortgage licensure contained an express four-loan exemption for seller-financing by "natural persons." See RSA 397-A:4, III (Supp. 2008) (amended 2009).

57. Another Complaint alleged that Mr. Frost violated RSA 397-A:3 by engaging in unlicensed mortgage banking.

58. The third Complaint alleged Mr. Frost violated RSA 397-A:3 by engaging in unlicensed mortgage loan origination.

59. The final Complaint alleged Mr. Frost violated RSA 397-A:12, II by "fail[ing] to allow banking department examination of records when, during business hours, he knowingly failed to allow access to banking records, books, papers, files and related materials in his possession when so requested by a bank examiner, stating that his lawyer had all of the records in question, when in fact they were in his possession."

60. Attorney General Michael A. Delaney, then-NHBD Commissioner Peter C. Hildreth, and Manchester Police Department Chief David Mara announced Mr. Frost's arrest in a press release on March 10th. Among other things, the press release stated that Mr. Frost was arrested for "failing to allow the Banking Department to examine records, violating a Banking Commissioner Order, and 2 counts of Unlicensed Mortgage Banking, all in violation of RSA 397-A." The press release noted that "[t]he charges are all Class A misdemeanors, which carry a maximum penalty of 12 months in the House of Corrections and a \$2,000 fine per charge." The press release suggested that Mr. Frost had engaged in "predatory lending tactics." The press release concluded by trumpeting these actions: "These criminal charges are a result of a joint investigation conducted by the New Hampshire Attorney General's Office, the New Hampshire Banking Department and the Manchester Police Department Financial Crimes Unit." Mr. Frost's mug shot appeared in the press release and again the next day in the Union Leader.

61. As a result of the arrests, Mr. Frost was forced to resign from his position as Chairman of the Manchester American Red Cross.

62. On March 23, 2010, two weeks after arresting Mr. Frost, the NHBD (acting through Ms. Desfosses) filed a twenty-three count Staff Petition against Mr. Frost *individually*. The NHBD (acting through Mr. Hildreth) also issued an Order to Show Cause with Immediate Emergency Suspension and Cease and Desist Order.

63. Through this separate administrative action, the NHBD sought various forms of emergency and permanent relief, including, but not limited to:

- a finding that Mr. Frost “no longer demonstrates the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the person subject to RSA Chapter 397-A will operate honestly, fairly, and efficiently within the purposes of RSA Chapter 397-A”;
- immediate license suspension;
- an order directing Mr. Frost “to cease and desist from conducting business in New Hampshire”;
- an order directing Mr. Frost “to cease and desist from violating New Hampshire state law and federal law and any rules or orders thereunder”;
- an order directing Mr. Frost “to show cause why he should not be banned or removed from office”;
- an order directing Mr. Frost “to rescind, give restitution, or disgorge profits”;
- an assessment of administrative fines and penalties against Mr. Frost of \$25,000 penalty for each alleged violation of RSA chapters 397-A and 397-B (\$575,000 in total).

64. The Staff Petition charged Mr. Frost with retroactive statutory enactments and penalties. The Staff Petition, to a large extent, duplicated many alleged violations and penalties, giving the false impression that Mr. Frost was subject to up to \$575,000 in fines and penalties.

65. These actions were, individually and together, calculated to leverage Mr. Frost into a financial settlement and/or intimidate Mr. Frost and/or make an example of Mr. Frost and/or a show of force and/or to retaliate against what NHBD interpreted as Mr. Frost's earlier refusal to cooperate with the NHBD investigation.

66. While Mr. Frost fought to regain possession of the lake house from Mr. Recio and his seven dogs, who were causing extensive property damage, counsel for Mr. Frost attempted to informally resolve the criminal and administrative matter.

67. In addition to publicly available records, the Defendants, as a result of the seizure (by way of an improperly obtained search warrant) of Mr. Frost's financial records, had more than enough information to understand that Plaintiffs had done nothing illegal or even close to illegal.

68. Mr. Frost's counsel contacted Mr. Delaney seeking informal resolution, and also wrote to Celia Leonard, then-General Counsel for the NHBD, on April 16, 2010 setting forth extensive legal analysis and citation concerning the scope of the NHBD's jurisdiction. Mr. Frost's Counsel met with Ms. Leonard and Ms. Gorham, of the Attorney General's Office, on April 20, 2010. Mr. Frost's counsel provided a supplemental legal analysis to Ms. Leonard on May 10, 2010 further explaining why Mr. Frost's conduct fell well outside of the Banking Department's subject matter jurisdiction.

69. Mr. Frost's criminal counsel—Cathy Green—made similar overtures to Ms. Gorham. Attorney Green outlined, among other things, the NHBD's lack of jurisdiction, the reputational harm caused Mr. Frost, and the continuing pain and anxiety caused by the pending criminal charges.

70. After these attempts to informally resolve the dispute failed, Mr. Frost, together with Frost Family, LLC and Chretien/Tillinghast, LLC (who were not parties to the NHBD action) were forced to seek a resolution of the jurisdictional issues by filing a Verified Petition for Declaratory and Injunctive Relief ("Verified Petition") with the Merrimack County Superior Court.

71. Contemporaneous with the Verified Petition, the Petitioners filed a motion for temporary restraining order and preliminary injunction seeking to halt the administrative proceeding until the issue of subject matter jurisdiction could be resolved.

72. On June 10, 2010, the trial court (McNamara, J.) conducted a hearing. By Order dated June 29, 2010, the trial court granted a preliminary injunction against further administrative proceedings. Among other things, Judge McNamara found that "[n]either Frost nor either LLC can be said to be in the business of making or brokering mortgage loans, by virtue of a single isolated transaction." See Order 6/29/10 at 5. For this reason, there was "no doubt that Frost did not violate RSA 397-A." See Order 6/29/10 at 7.

73. Though the Court found no need to reach the issue of retrospectivity in light of the absence of subject matter jurisdiction, the Court stated in a footnote that the NHBD was improperly attempting to apply the S.A.F.E. Act amendments retroactively.

74. In the parallel criminal proceedings against Mr. Frost, Ms. Gorham objected to Mr. Frost's motion to dismiss and contemporaneously filed four new Class A misdemeanor complaints against Mr. Frost. Ms. Gorham also began threatening to indict one or both LLCs.

75. The District Court, however, issued an Order dated August 23, 2010 granting Mr. Frost's motion to suppress, which invoked Part I, Article 19 of the State Constitution and the Fourth and Fourteenth Amendments to the Federal Constitution. The Court granted the motion to suppress on the basis that Ms. Sheehan, the Banking Department Examiner, misrepresented material facts to the Court in the course of obtaining the search warrants.

76. In particular, the Court found that Ms. Sheehan, in response to a direct question by Judge Ryan, had falsely stated that Chretien/Tillinghast, LLC was listed as the "Mortgage Banker" in the Recio transaction when, in fact, the mortgage did not "refer to Chretien, Tillinghast as either the Mortgage Lender or the Mortgage Banker." The Court further found that Mr. Frost had "in fact told Sheehan that he had been involved in an additional mortgage transaction, but it was under the name Frost Family, LLC," but that Ms. Sheehan's affidavit for the search warrant falsely stated that Mr. Frost had not disclosed Frost Family, LLC's involvement in this transaction.

77. Based on these findings, the Court concluded "that after excising the misstated facts there would not be sufficient information that constitutes probable cause to issue the Warrant," and ordered the suppression of all evidence obtained pursuant to the improperly obtained search warrant.

78. By Order dated November 22, 2010, the District Court granted Mr. Frost's motion to dismiss all criminal charges in light of Judge McNamara's findings and rulings. The State did not appeal.

79. The declaratory judgment action, however, lingered on after the NHBD appealed Judge McNamara's order.

80. On March 16, 2012, the New Hampshire Supreme Court issued an opinion affirming Judge McNamara's order and finding "that the LLCs were not engaged in the business of making mortgage loans." Frost v. Commissioner, ___ N.H. ___, 2012 WL 892215, *7 (N.H. 2012). As support for its holding, the Court cited cases which appeared within the prior letters sent to the NHBD in an attempt to informally resolve this matter prior to litigation. The Court also noted recent legislation (enacted after the prosecution of Mr. Frost) which expanded the scope of licensing exemptions for seller-financing in order to "combat the excessive enforcement of the SAFE Act" and to "restore common sense to New Hampshire law." Id. *8 (quotations omitted).

81. In the course of defending himself against the baseless criminal and administrative actions, Plaintiffs have incurred total fees and costs of over \$180,000. Plaintiffs, moreover, were forced to pay the same through a line of credit, meaning interest has been and continues to accrue.

82. Plaintiffs, and particularly Mr. Frost, experienced significant reputational harm.

83. Mr. Frost also suffered severe emotional distress throughout the two-year process of achieving vindication.

84. In later legislative proceedings concerning this matter, the House standing committee on Redress of Grievances heard statements from several individuals involved in the investigation and prosecution. A majority of that committee ultimately concluded the grievance was founded, noting:

(1) that the New Hampshire Banking Department pursued criminal and civil complaints against the Petitioner despite having had ample notice from his attorneys that its assertion of authority over him was wrongful, illegal, and contrary to public policy, and that in any event he had acted

pursuant to advice of competent legal counsel and thus lacked the requisite intent; (2) that as asserted by the Petitioner and confirmed by Merrimack District Court Judge Clifford Kinghorn, an investigator for the New Hampshire Banking Department recklessly or intentionally made a materially false representation in an affidavit supporting search warrants for the Petitioner's business records, leading to unlawful searches of the Petitioner's home and his attorneys' files; (3) that as asserted by the Petitioner, confirmed by Merrimack County Superior Court Judge Richard B. McNamara, and affirmed by the New Hampshire Supreme Court, the Banking Department had and should have known it had no authority over the Petitioner or over Chretien/Tillinghast LLC or Frost Family, LLC (limited liability companies of which the Petitioner was a member) under RSA 397-A in that none was engaged in the business of making or brokering mortgage loans secured by real estate, each of the two mortgage financing transactions in question clearly having been an isolated private one outside the normal scope of the business of the limited liability company concerned; (4) that the Banking Department knew or should have known that its attempted imposition of \$525,000 in civil penalties against the petitioner by applying the 2009 amendments to RSA 397-A:4 retrospectively violated NH Const., Pt 1, Art 23; and (5) that the Office of the Attorney General (a) knew or should have known that the Banking Department's affidavit supporting issuance of its search warrant contained a materially false assertion of fact; (b) knew or should have known that the Banking Department's assertion of authority over the Petitioner and his limited liability companies was wrongful and illegal; (c) should have exercised its authority to bring about immediate termination of the Banking Department's proceedings against the Petitioner; and (d) should have exercised its prosecutorial discretion to decline to defend in the Supreme Court the Banking Department's cross-appeal [*sic*] from Judge McNamara's decision.

85. Plaintiffs now seek compensatory and punitive damages for their financial, emotional, reputational and other injuries, including but not limited to lost business opportunities.

Count I

(42 U.S.C. § 1983: Michael Delaney, Peter Hildreth, Karen Gorham, Maryam Desfosses, Kathleen Sheehan)

86. Plaintiffs incorporate herein the preceding allegations.

87. Michael Delaney, Peter Hildreth, Karen Gorham, Maryam Desfosses, and Kathleen Sheehan (referred to collectively as "the Individual Defendants") violated 42 U.S.C. § 1983.

88. Acting under color of state law, the Individual Defendants subjected Plaintiffs or caused Plaintiffs to be subjected to the deprivation of rights secured by the Federal Constitution, including but not limited to the rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

89. More specifically, the Individual Defendants deprived Plaintiffs of:

i. Plaintiffs' Fourth Amendment right to be free from unreasonable seizure (including but not limited to Mr. Frost's false imprisonment, his being maliciously prosecuted, as alleged more fully below, and the Individual Defendants' execution of a search warrant secured through material misrepresentations of fact);

ii. Plaintiffs' Fourth Amendment right to be free from unreasonable search (including but not limited to the Individual Defendants' execution of a search warrant secured through material misrepresentations of fact);

iii. Mr. Frost's Fourteenth Amendment right to substantive due process (including but not limited to Mr. Frost's false imprisonment, his being maliciously prosecuted, as alleged more fully below, and/or defaming Mr. Frost while at the same time depriving him of other liberty/property interests, including but not limited to the property seized through the unlawful search warrant, Mr. Frost's mortgage loan originator license, and Mr. Frost's freedom of movement);

iv. Mr. Frost's Fourteenth Amendment right to procedural due process and Article 1, Section 10 right to protection against Ex Post Facto laws or application of laws

(including but not limited to the attempt to retroactively apply newly enacted statutory liabilities and penalties against Mr. Frost in the NHBD and/or criminal proceedings, and alleged violations of informal, un-promulgated administrative policy pronouncements).

90. Defendants participated in, knew of and/or were deliberately indifferent to the foregoing deprivations of constitutional rights.

91. Defendants overtly or tacitly approved of or purposely disregarded the foregoing deprivations of constitutional rights.

92. Plaintiffs suffered actual injury as a result of the foregoing deprivations of constitutional rights.

93. Plaintiffs are entitled to all general and special damages in an amount within the jurisdiction of this Court.

94. Plaintiffs are entitled to an award of punitive damages because the Individual Defendants' harmful conduct was malicious, oppressive and/or in reckless disregard of the Plaintiffs' rights.

95. Plaintiffs are entitled to an award of all attorney's fees incurred in connection with this action.

Count II

(Negligent Supervision: Michael Delaney, Peter Hildreth, Maryam Torben Desfosses, State of New Hampshire, NHBD)

96. Plaintiffs incorporate herein the preceding allegations.

97. Mr. Delaney, Mr. Hildreth and Ms. Desfosses had a legal duty of reasonable care to supervise subordinate employees with the NHBD and the Office of the Attorney General.

98. Mr. Delaney, Mr. Hildreth and Ms. Desfosses breached their legal duty of reasonable care by failing to supervise subordinate employees within the NHBD and the Office of the Attorney General.

99. Mr. Delaney, Mr. Hildreth and Ms. Desfosses knew or should have known of the risk and/or commission of their employees committing unconstitutional and/or illegal and/or tortious acts.

100. These breaches of duty have proximately caused Plaintiffs to suffer damages in an amount within the jurisdiction of this Court.

101. These breaches of duty were wanton, malicious and/or oppressive.

102. Plaintiffs are entitled to recover all general, special and enhanced compensatory damages in an amount within the jurisdiction of this Court.

103. Plaintiffs, moreover, are entitled to recover all attorney's fees incurred in connection with this civil action.

104. Mr. Delaney, Mr. Hildreth and Ms. Desfosses are, or were at all relevant times, employees and/or agents of the State of New Hampshire and/or the New Hampshire Banking Department.

105. The State of New Hampshire and/or New Hampshire Banking Department are vicariously liable for the negligent supervision of Mr. Delaney, Mr. Hildreth and Ms. Desfosses.

Count III

(State Constitutional Tort: Michael Delaney, Peter Hildreth, Maryam Desfosses, Kathleen Sheehan, State of New Hampshire, NHBD)

106. Plaintiffs incorporate herein the preceding allegations.

107. Plaintiffs had protected rights under Part I, Articles 15 (unreasonable search and seizure), 19 (due process) and 23 (retrospective laws) of the State Constitution.

108. The Individual Defendants, state officials acting under color of state law, violated those rights.

109. These violations were wanton, malicious and/or oppressive.

110. To the extent Plaintiffs lack an adequate cause of action, or an available statutory cause of action does not provide monetary compensation against the Individual Defendants, the Court should craft a tort remedy to vindicate constitutional violations.

See Khater v. Sullivan, 160 N.H. 372, 374 (2010).

111. The Individual Defendants are, or were at all relevant times, employees and/or agents of the State of New Hampshire and/or the New Hampshire Banking Department.

112. The foregoing tortious and unconstitutional acts were each committed within the scope of employment and/or agency of the Individual Defendants.

113. The State of New Hampshire and/or New Hampshire Banking Department are vicariously liable for each of the foregoing tortious and unconstitutional acts of the Individual Defendants.

Count IV

(Abuse of Process: Michael Delaney, Peter Hildreth, Maryam Desfosses, Kathleen Sheehan, State of New Hampshire, NHBD)

114. Plaintiffs incorporate herein the preceding allegations.

115. The Individual Defendants used the legal process, both criminal and administrative, against Plaintiffs primarily to accomplish a purpose for which the legal process is not designed.

116. The Individual Defendants used the legal process to coerce Mr. Frost for an ulterior purpose, including but not limited to using the legal process as a threat or a club.

117. The Individual Defendants committed willful acts in using and/or threatening to use legal process which are not proper in the regular conduct of the proceeding.

118. These acts were wanton, malicious and/or oppressive.

119. The Individual Defendants' abuses of process against Plaintiffs have caused general, special and enhanced compensatory damages in an amount within the jurisdiction of this Court.

120. The Individual Defendants are, or were at all relevant times, employees and/or agents of the State of New Hampshire and/or the New Hampshire Banking Department.

121. The State of New Hampshire and/or New Hampshire Banking Department are vicariously liable for the abuses of process by the Individual Defendants.

Count V

(Malicious Prosecution: Michael Delaney, Peter Hildreth, Maryam Desfosses, Kathleen Sheehan, State of New Hampshire, NHBD)

122. Plaintiffs incorporate herein the preceding allegations.

123. The Individual Defendants subjected Mr. Frost to criminal and/or administrative prosecution.

124. The Individual Defendants initiated and procured the institution of the criminal and/or administrative proceedings.

125. The Individual Defendants initiated and procured the institution of the criminal and/or administrative proceedings with malice, in that the Individual Defendants did not initiate and procure the institution of the criminal and/or administrative proceedings for purpose of bringing Mr. Frost to justice or enforcement of

state or federal laws, but, instead, primarily for reasons of ill will or hostility or a desire to do harm for harm's sake, or primarily to obtain an advantage that might have legitimately have been obtained in other proceedings.

126. The criminal and administrative proceedings ended in Mr. Frost's favor.

127. The Individual Defendants' malicious prosecution of Mr. Frost caused general, special and enhanced compensatory damages in an amount within the jurisdiction of this Court.

128. The Individual Defendants are, or were at all relevant times, employees and/or agents of the State of New Hampshire and/or the New Hampshire Banking Department.

129. The State of New Hampshire and/or New Hampshire Banking Department are vicariously liable for the malicious prosecutions by the Individual Defendants.

Count VI

(False Imprisonment: Michael Delaney, Peter Hildreth, Maryam Desfosses, Kathleen Sheehan, State of New Hampshire, NEBD)

130. Plaintiffs incorporate herein the preceding allegations.

131. Mr. Frost was arrested and imprisoned for at least one hour before his release on bail.

132. The Individual Defendants acted with the intention to restrain and/or confine Mr. Frost within boundaries defined by the Individual Defendants.

133. In the alternative, the Individual Defendants acted with the knowledge that the restraint and/or confinement of Mr. Frost within boundaries defined by the Individual Defendants would, to a substantial certainty, result from the Individual Defendants' acts.

134. The Individual Defendants acts directly or indirectly resulted in such a restraint and/or confinement of Mr. Frost.

135. Mr. Frost was conscious of and/or harmed by the restraint and/or confinement.
136. Mr. Frost's false imprisonment was wanton, malicious and/or oppressive.
137. Mr. Frost is entitled to recover all general, special and enhanced compensatory damages in an amount within the jurisdiction of this Court.
138. The Individual Defendants are, or were at all relevant times, employees and/or agents of the State of New Hampshire and/or the New Hampshire Banking Department.
139. The State of New Hampshire and/or New Hampshire Banking Department are vicariously liable for the false imprisonment committed by the Individual Defendants.

Count VII

(IIED: Michael Delaney, Peter Hildreth, Maryam Desfosses, Kathleen Sheehan, State of New Hampshire, NHBD)

140. Plaintiffs incorporate herein the preceding allegations.
141. As outlined above, the Individual Defendants acted intentionally and/or recklessly in investigating Mr. Frost and/or in instituting the criminal and administrative proceedings against Mr. Frost.
142. The Individual Defendants' acts were extreme and outrageous.
143. The Individual Defendants' acts caused Mr. Frost severe emotional distress.
144. These acts were wanton, malicious and/or oppressive.
145. Mr. Frost is entitled to recover all general, special and enhanced compensatory damages in an amount within the jurisdiction of this Court.
146. The Individual Defendants are, or were at all relevant times, employees and/or agents of the State of New Hampshire and/or the New Hampshire Banking Department.
147. The State of New Hampshire and/or New Hampshire Banking Department are vicariously liable for Individual Defendants' intentional infliction of emotional distress.

Count VIII

(Defamation: Michael Delaney, Peter Hildreth, Maryam Desfosses,
Kathleen Sheehan, State of New Hampshire, NHBD)

148. Plaintiffs incorporate herein the preceding allegations.

149. The Individual Defendants intentionally or without reasonable care communicated or published defamatory statements of or concerning Plaintiffs to third parties who understood their defamatory meaning.

150. The defamatory statements were false.

151. The Individual Defendants made the defamatory statements wantonly, oppressively or maliciously, or with reckless disregard of whether it was false or not.

152. As a result of the Individual Defendants' actions, Plaintiffs have suffered presumed and/or actual harm or injury, including but not limited to impairment of reputation and/or standing in the community, personal humiliation and mental anguish and suffering.

153. As a result of the Individual Defendants' actions, Plaintiffs have suffered special damages in an amount within the jurisdiction of this Court.

154. Plaintiffs' are also entitled to liberal and/or enhanced compensatory damages due to the Individual Defendants' ill will, hatred, hostility, or evil motive in publishing the defamatory statements.

155. The Individual Defendants are, or were at all relevant times, employees and/or agents of the State of New Hampshire and/or the New Hampshire Banking Department.

156. The State of New Hampshire and/or New Hampshire Banking Department are vicariously liable for the defamatory statements made by the Individual Defendants.

WHEREFORE, Petitioners respectfully request that this Honorable Court:

- a) Conduct a jury trial on all claims so triable
- b) Award Plaintiffs are general and special damages;
- c) Award Plaintiffs punitive damages;
- d) Award Plaintiffs enhanced compensatory damages;
- e) Award Plaintiffs all attorney's fees incurred in connection with this action in accordance with §§ 1983, 1988 and/or any other applicable statutory and/or common law fee-shifting doctrine;
- f) Award to Plaintiffs such other relief as may be equitable, just and proper.