

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
WILLIAM CRAIN; THE EAST HAMPTON GROUP
FOR WILDLIFE; BETSY PETROSKI SMITH; ROBERT
SILVERSTEIN; GALE FRIEDMAN; DR. ELLEN
CRAIN; RON BRACH; A.W. NOONAN; NANCY
CARDOSO; LORI SCHIAFFINO; ZELDA PENZEL;
CAROL BUDA; SARI THOMPSON; MONICA NAVIA;
AMELINA SIEKLUSKA; MARY STONE; and THE
EVELEN ALEXANDER WILDLIFE RESCUE CENTER,

Index No.: 33432/13

COUNSEL'S
SUPPORTING
AFFIDAVIT

plaintiffs,

- against -

THE TOWN BOARD OF EAST HAMPTON; THE
TRUSTEES OF THE FREEHOLDERS AND
COMMONALITY OF THE TOWN OF EAST
HAMPTON; and HAMLETS AND VILLAGES OF THE
TOWN OF EAST HAMPTON, INCLUDING EAST
HAMPTON, AMAGANSETT, MONTAUK, NEPEAGUE,
SPRINGS, and WAINSCOTT,

defendants,

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MICHAEL J. DEVEREAUX, ESQ., hereby duly sworn, deposes and says under the penalties of perjury as follows:

1. I am an attorney duly admitted to practice law before the courts of the State of New York, a member of the law firm DEVEREAUX, BAUMGARTEN, a d/b/a of Michael J. Devereaux & Associates, PC (hereinafter 'DEVEREAUX LAW GROUP'), the attorney for the plaintiffs, familiar with the pleadings and prior proceedings heretofore had herein based on a review of the files maintained in my offices and, as such, familiar with the facts and circumstances of and relating to this matter.

2. I respectfully submit my Affidavit in support of the relief requested in the instant Order To Show Cause. The accompanying original Affidavits of the Expert Statistician William Dougherty, MS; the Plaintiff William Crain; and Counsel's Emergency Affidavit are also submitted in support of the relief requested in this Order To Show Cause.

DEFENDANTS' MATERIALLY CRUCIAL PLEADING
ADMISSIONS WARRANT GRANTING OF STAY
ENJOINING DEER CULL

3. The summons and verified petition and complaint ("complaint"), with attached exhibits, is attached hereto as Exhibit 1.

4. The verified answer of the defendant The Town Board of East Hampton ("Town Board") is attached as Exhibit 2.

5. The verified answer of the defendant The Trustees of the Freeholders and Commonality of the Town of East Hampton ("Trustees") is attached hereto as Exhibit 3.

6. The verified answer of the Village of East Hampton ("Village") is attached hereto as Exhibit 4.

7. The remaining defendants have not answered nor otherwise responded although service of process was effectuated. True and accurate copies of the affidavits or proofs of service are attached as Exhibit 5.

8. It is well-settled that admissions in pleadings bind a party (McKinney's CPLR §3018 (a); *Thompson v. Postal Life Ins. Co.*, 226 NY 363, 123 NE 750 [1919] (Cardoza, J.) (agreement pled in complaint and admitted in answer cannot be contested); *Gusinsky v. Genger*, 74 AD3d 539, 540, 906 NYS2d 6 [1st Dept 2010] (defendants' argument in opposition to summary judgment, refuted by defendants' admission in their pleadings resulting in grant of summary judgment); *Miller v. Bah*, 74 AD3d 761, 762, 902 NYS2d 174, 176 [2d Dept 2010]; *Maplewood v. Wood*, 21 AD3d 933, 801 NYS2d 60 [2d Dept 2005]; *Urraro v. Green*, 106 AD2d

567, 483 NYS2d 80 [2d Dept 1984], *Kuester v. Paige Sales*, 6, 209 AD 294, 204 NYS 547 [4th Dept 1924]; *Pennachio v. Greco*, 107 AD 225, 94 NYS 1061 [2d Dept 1905]).

9. Parties cannot dispute nor proffer evidence inconsistent with their pleading admissions (*Thompson*, 266 NY at 368, 123 NE at 751 (court cannot consider evidence inconsistent with pleading admissions); *Miller*, 74 AD3d at 762, 902 NYS2d at 176 (“admissions...in pleadings are always in evidence for all purposes...”); *Kuester*, 209 AD at 296, 204 NYS at 549 (“The defendant must abide by that admission”)).

10. Pleading admissions are not vitiated by a later amendment (*Levy v. Delaware, L. & W. R. Co.*, 211 AD 503, 505, 207 NYS 592, 594 [4th Dept 1925] (“Even after amendment, an admission in an original pleading is evidence of the fact admitted [citations omitted]”); *Arinsky v. Arinskiy*, 280 AD 820, 113 NYS2d 883 [2d Dept 1952])).

11. In *Thompson*, 226 NY at 363, the defendant, by their answer, admitted an agreement (id.) Defendant thereafter attempted to introduce evidence - a letter - inconsistent with the pleading admission (id.) It was held that the letter was inadmissible: “we are not at liberty to consider it,” based on the pleading admission (id, at 368).

12. The defendant, at bar, admitted in their verified answer to the complaint that the Town’s Deer Management Plan (entitled “Management of the White-tailed Deer Population in East Hampton Town”), is inaccurate, arbitrary and capricious. As such, defendant cannot now submit evidence inconsistent with their pleading admissions. The defendant, having admitted the salient averments cannot now attempt to dispute it. Any evidence they are proffering and any arguments made to attack the admitted to averments cannot and should not be considered (*Thompson*, 226 NY at 363). Defendant “must abide by [their] admission[s].” (*Kuester*, 209 AD at 296, 204 NYS at 549).

13. The defendant's verified answer admitted the following materially crucial allegations that are now indisputable facts:

"25. The Town of East Hampton is located in Suffolk County, Long Island.

...

29. The Town Board consists of five (5) people.

...

32. The original town government of the Town of East Hampton is the Trustees of the Freeholders and Commonality of the Town of East Hampton.

...

34. The Town Board adopted the Deer Management Plan, by Resolution 2013-723, on June 20, 2013, a copy of which is attached as Exhibit 1.

35. The Town Board's Deer Management Plan is entitled "Management of the White-tailed Deer Population in East Hampton Town," a copy of which is attached as Exhibit 2 (hereinafter "Deer Management Plan").

...

39. The Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3, was received on November 3, 2006, by the Town of East Hampton Natural Resources Department.

40. The Town Board's Deer Management Plan cited to the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3, at page 10 ¶ 16 of the Deer Management Plan.

41. The Town Board's Deer Management Plan relied upon the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.

42. The Town Board's Deer Management Plan accepted the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.

43. The Town Board's Deer Management Plan used the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.

44. The Town Board's Deer Management Plan adopted the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.

45. The Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3, stated that “wildlife managers consider the average acceptable density in the Eastern United States to be 20-40 deer per square mile.”
46. The Town Board’s Deer Management Plan, attached as Exhibit 2, stated at page 10 ¶ 16, entitled “Distance Sampling,” that “20-40 deer/mi² was recommended.”
47. The Town Board’s Deer Management Plan, at page 27, entitled “Addendum I,” cited to the Wildlife Biometrics survey, by Frank Verret, attached as Exhibit 2, stating the estimated deer population in 2006 in the Town of East Hampton to be 3, 293.
48. The Town Board’s Deer Management Plan, at page 27, entitled “Addendum I,” estimated, based on “anecdotal evidence,” that there are “now (in 2010),” “between 3,000 and 4,000 deer.”
49. The Town Board’s Deer Management Plan stated at page 10 ¶ 16 “Distance Sampling,” that “[i]t is possible to repeat this study [Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3] to obtain a more up-to-date estimate” of the deer population.
50. The Town Board has not used or relied on any scientific survey other than the Wildlife Biometrics survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.
51. The Town Board authorized a scientifically-based up-to-date or current survey of the deer population in the Town of East Hampton.
52. The Town Board allocated taxpayer money for a scientifically-based up-to-date or current survey of the deer population in the Town of East Hampton.
53. The Town Board paid monies for a scientifically-based up-to-date or current survey of the deer population in the Town of East Hampton.
54. The Town Board obtained a scientifically-based up-to-date or current survey of the deer population by Vision Air Research, Inc.
55. The Town Board rejected the scientifically-based up-to-date or current survey of the deer population done by Vision Air Research, Inc., although the Town Board retained and paid them.
56. The Town Board relied solely on what it calls “anecdotal evidence,” with respect to the deer population in the Town of East Hampton since the Wildlife Biometrics survey, by Frank Verret, done in 2006, attached as Exhibit 3.

...

62. The Town Board knows the estimated deer population in the Town of East Hampton in 2012.

...

75. The Town Board has no survey done in 2011, 2012 and/or 2013 to support their statement in the Town Board's Deer Management Plan at page 1 that there is an "uncontrolled explosion in the deer population," in the Town of East Hampton.

...

89. Vision Air Research undertook an aerial survey of the deer in the Town of East Hampton in 2012.

90. Vision Air Research's aerial survey of the deer in the Town of East Hampton in 2012, was reported by Vision Air Research, by report, dated May 28, 2013, a copy of which is attached as Exhibit 4.

...

92. The Certified Wildlife Biologist Susan Bernatos submitted the Vision Air Research report, dated May 28, 2013, to East Hampton's Planning Department.

...

94. Vision Air Research's aerial survey, a copy of which is attached as Exhibit 4, of the estimated deer population in the Town of East Hampton estimated the number of deer in 2012 to be 877.

...

96. The Town Board's Deer Management Plan at page 6 recommended that the "most reliable baseline survey of the current of deer herd," be obtained.

...

98. The Vision Air Research aerial survey report, dated May 28, 2013, attached as Exhibit 4, estimated the deer population to be 877, a reduction of almost 70% from the last scientific-based survey by Wildlife Biometrics, by Frank Verret, dated October 20, 2006, attached as Exhibit 3.

...

104. There is no "uncontrolled explosion in the deer population" in East Hampton.

105. The Town Board's statement in the Deer Management Plan that there is an "uncontrolled explosion in the deer population" in East Hampton is unfounded, unsupported by science, reason and the evidence.

106. The Town Board's statement in the Deer Management Plan that there is an "uncontrolled explosion in the deer population" in East Hampton is inaccurate.

107. The Town Board in the Deer Management Plan stated on page 1 that “[w]e have too many deer.”

108. **The Town Board’s statement in the Deer Management Plan that “[w]e have too many deer,” is unfounded, unsupported by science, reason and the evidence.**

109. **The Town Board’s statement in the Deer Management Plan that “[w]e have too many deer,” is inaccurate.**

110. **The Town Board’s statement in the Deer Management Plan at page 1 that there is an “uncontrolled explosion in the deer population” in East Hampton is arbitrary and capricious.**

111. **The Town Board’s statement in the Deer Management Plan at page 1 that “[w]e have too many deer,” is arbitrary and capricious.**

112. **The deer population in the Town of East Hampton decreased from 2006 to the present.**

113. The Town Board’s Deer Management Plan, at page 1, states that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment.”

...

115. The Wildlife Biometric survey, by Frank Verret, dated October 20, 2006, attached as Exhibit 3, cited to and relied on by the Town Board, stated that “wildlife managers consider the average acceptable density in the Eastern United States to be 20-40 deer per square mile” (see also *Druyan v. Village Rd. of Trustees of Village of Cayuga Heights*, 33 Misc3d 1203(A) [Supreme Court 2011], aff’d, 96 AD3d 1207 [3d Dept 2012] (fifteen (15) deer per square mile is acceptable)).

...

117. **The Town Board’s Deer Management Plan, at page 1, stating that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment,” is unfounded, unsupported by science, reason and the evidence.**

118. **The Town Board’s Deer Management Plan, at page 1, stating that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment,” is inaccurate.**

119. **The Town Board’s Deer Management Plan, at page 1, stating that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment,” is contradicted by science, reason and the evidence.**

120. **The Town Board’s Deer Management Plan, at page 1, stating that there is an “emerging emergency” because “the white-tailed deer population exceeds the community’s cultural carrying capacity or is extremely near exceeding the human populations ability to absorb without meaningful threats to public safety, public health, personal property and the environment,” is arbitrary and capricious.**

121. The Town Board’s Deer Management Plan states there is an “emerging public health crisis,” based on the increasing incidence of Lyme disease.

122. The Town Board’s Deer Management Plan states “[a] report from a local doctor said the number of Lyme disease cases among his patients more than doubled from 60 in 2010 to 125 in 2011.”

123. The Town Board’s Deer Management Plan does not identify the “local doctor.”

124. **The Town Board’s Deer Management Plan does not provide any copy of a report, study or survey from the “local doctor,” nor a certified or credible report, study or survey.**

125. **The Town Board’s Deer Management Plan provided no expert or medical reports and/or studies evidencing any causal relationship between the increase of Lyme disease and the deer population.**

...

128. **Deer do not cause Lyme disease.**

129. The Town Board’s Deer Management Plan states that “[t]he relationship between deer populations and the incidence of tick-borne diseases is not clear and is the subject of on-going scientific research.”

...

149. **The Town Board’s Deer Management Plan to reduce the deer population based on the incidence of Lyme disease cases in the Town of East Hampton is arbitrary and capricious.**

150. **The Town Board’s Deer Management Plan to reduce the deer population based on the incidence of Lyme disease cases in the Town of East Hampton is an inappropriate and wasteful use of limited and valuable taxpayer resources.**

...

162. **The Town Board never obtained approval, permission and/or acceptance by the Trustees of the Freeholders and Commonality of the Town of East Hampton for the Town Board’s Deer Management Plan.**

...

167. **Resident hunters in the Town of East Hampton do not support the Town Board’s Deer Management Plan.**

...

169. Laws of and relating to the regulation of culling and hunting of wild animals come under the auspices of the New York State Department of Environmental Conservation.

170. These laws include how and under what conditions a locality can pass laws regulating and effecting animal hunting and culls in their locality.

...

174. **Local Assemblyman Fred Thiele sponsored a bill in the New York State Assembly, under Bill Number A6428, to amend the State Environmental Law to permit the Town Board’s Deer Management Plan.**

175. **The Bill Number A6428 has not passed.**

...

180. Resolution 2013-723 states that the “Town’s Plan is consistent with the New York State Department of Environmental Conservation’s Deer Management Plan.”

181. The Town Board’s Deer Management Plan is attached as Exhibit 2.

...

185. The Town Board’s Councilman Dominick Stanzione is the only named Town Board Councilperson to appear on the cover of the Town Board’s Deer Management Plan.

186. The Town Board’s Councilman Dominick Stanzione’s name appears numerous and multiple times throughout the Town Board’s Deer Management Plan.

187. The Town Board’s Councilman Dominick Stanzione headed the Deer Management Plan committee called “Deer Management Working Group,” or “DMWG.”

...

189. The Town Board's Councilman Dominick Stanzione lost his 2013 re-election bid to continue as Councilman."

(emphasis added). These are, of course, crucial and material admissions warranting the requested injunctive relief, including a TRO enjoining any deer cull pursuant to and/or in connection with the Town's Deer Management Plan. The defendant's admission that there is no "uncontrolled explosion in the deer population," and that there is no scientific evidence – no survey of any kind – supporting the defendants' assertion that there is an "uncontrolled explosion in the deer population" (¶ 75), and "that there is an emerging emergency," are materially crucial admissions. **The defendant's admission at ¶ 112 that the deer population decreased since 2006 to the present is another materially crucial admission** (emphasis added). The defendants admit that these statements are "unfounded, unsupported by science, reason and the evidence," and are inaccurate, arbitrary and capricious (¶¶ 104-113, 115, 117, 118-120). These are materially crucial admissions supporting the granting of the requested TRO.

14. The defendant's admission that "[d]eer do not cause Lyme disease," and that the "local doctor" relied upon by the defendants' Deer Management Plan is not supported by any credible report, study or survey (¶¶ 121-125, 128), are also crucial material admissions warranting the granting of the requested TRO.

15. Importantly, *the defendant admits that the Town's Deer Management Plan is "arbitrary and capricious," and "is an inappropriate and wasteful use of limited and valuable taxpayer resources"* (¶¶ 149-150) (emphasis added). This indisputable fact alone warrants the TRO enjoining the implementation of the Town's Deer Management Plan.

16. The defendant also admitted that the resident hunters do not support the Town Board's Deer Management Plan (¶ 167).

The Defendant Admits That The Town's Deer Management Plan Is Not Authorized By And/or Sanctioned By The State Of

New York

17. Importantly, the defendant admitted that the State of New York has not yet authorized or sanctioned the Town's Deer Management Plan (§§ 169-170, 174-175). Accordingly, the Town's plan to proceed with the deer cull per the Deer Management Plan should be stayed.

18. The defendant Town's Meeting Minutes, dated Tuesday, November 19, 2013, cited to Resolution 2013-1218, entitled "Deer Project," on page 4 of the Minutes. A true and accurate copy of the Town's Meeting Minutes, dated Tuesday, November 19, 2013, is attached hereto as Exhibit 6. The Town's Meeting Minutes, at page 1 of "Packet Pg. 7," 3.3, states that the Resolution 2013-1218, entitled Deer Project was "adopted," and is dated 11/19/13 10:00 AM. It also states that it is "updated: 11/15/2013 3:33 PM by Kimberly Shaw."

19. The Town's November 19, 2013 Meeting Minutes (Exhibit 6), states:

"Whereas, the Town Board discussed participation in the Long Island Deer Project, a collaboration between the Long Island Farm Bureau (LIFB) and the United States Department of Agriculture (USDA) to reduce the deer herd in the five east end towns [sic]
Whereas the LIFB proposal will be undertaken in an effort to reduce deer damage to crops, reduce the risk of tick-borne diseases, restore biodiversity and reduce car-versus-deer accidents, among other issues
Whereas there is sufficient funding available in A 8790-54502 to adequately fund the towns cost share [sic]
RESOLVED, that the Town Board hereby authorizes the Supervisor to enter into an agreement with the Long Island Farm Bureau to pursue the Deer Management Project in East Hampton Town; and be it further
RESOLVED, that further authorization by the Board will be provided upon development of a firm proposal."

(*id.*) These Meeting Minutes indisputably establish, among other undeniable facts, that the State of New York has not approved the Town's Deer Management Plan because it is, of course, not yet finalized (*id.*)

20. Furthermore, and, very importantly, the Town's Meeting Minutes, dated November 19, 2013, definitively vitiate all the defendant's affirmative defenses and/or arguments that the plaintiffs' complaint is time-barred by CPLR 217 (1).

The Defendant Also Admits That They Never Obtained Approval Of The Trustees

21. The defendant, very importantly, admitted that they never obtained the approval of the Trustees (§ 162), thus indisputably establishing that the Deer Management Plan is overbroad, including within its scope, property on which they are not authorized to hold a deer cull. The Trustees have objected to the Town's Deer Management Plan by "Memorandum," dated January 2, 2013, a copy of which is attached hereto as Exhibit 7.

22. The Trustees' verified answer, which incorporates the Trustees' Memorandum, is attached as Exhibit 3. The Town has done absolutely nothing to resolve or cure the fatal defect in the Town's Deer Management Plan, impermissibly killing deer on the Trustees' common property.

23. The defendant Village admitted that the "newly elected and constituted Town Board reflecting the will of the 2013 voters should weigh-in consider and reconsider and vote on the plan after noticing and holding public hearings based on science, reason and evidence" (§ 193). Thus the Village supports the requested TRO otherwise the "newly elected and constituted Town Board," cannot consider, reconsider and hold a vote on the Deer Management Plan reflecting the will of the 2013 voters.

The Likelihood Of Success; Irreparable Harm And Balance of Equities Favor Injunctive Relief

24. The requested injunction should be granted because of the likelihood of success on the merits, the irreparable harm if the injunction is not granted and the balance of equities favors enjoining the Town's Deer Management Plan (*Laro v. Culkin*, 255 AD2d 560 [2d Dep't,

1998]; *Carpenter v. Zimpher*, Supreme Court, Special Term, Broome County Index No. 2011-3121 [Supreme Court, Special Term, Broome County 12/22/11] (Molly Fitzgerald, J.) (copy of Decision And Order attached as Exhibit 8) (TRO granted enjoining deer cull); *Raritan Baykeeper, Inc. v. The City of New York*, 43 Misc3d 1208(A) [Supreme Court, Kings County 2013]; *Union Square Park Community Coalition Inc. v. New York City Department of Parks*, 38 Misc3d 1215 (A) [Supreme Court, New York County 2013]; *Western New York Immediate Medical Care PLLC v. Healthnow New York Inc.*, 42 Misc3d 1206 (A) [Supreme Court, Erie County 2013]).

25. Judge Molly Fitzgerald's Decision And Order (Exhibit 8), in *Carpenter*, granted a TRO against the very same Deer Management Plan that is used as a template by the herein Town of East Hampton (*id.*) The *Carpenter* case is almost on point. The therein plaintiffs argued that a "safety study" was never conducted before a decision was made on the method of deer population management of deploying sharpshooters using rifles. This is akin to the case at bar wherein the plan is to use snipers and sharpshooters with high-powered weapons but no safety study was conducted nor provided.

26. The plaintiffs in *Carpenter*, also argued that in the event a deer was merely wounded, the deer would have to be tracked down to finish the kill and, in some cases, that could result in trespassing onto plaintiffs' lands (*id.*) Similarly, the Trustees in the case at bar, exclusively and solely responsible for the Town's common property, notified the Town that they objected to the Town's cull being held on the Trustees' common property for which they are solely and exclusively responsible (Exhibits 3 and 7). The Town's herein Deer Management Plan also does nothing to ensure that trespasses on private property will not occur. In fact, it appears that the Town's herein Deer Management Plan mandates trespasses and thus mandates

violations of applicable laws, rules and regulations, including the shooting of weaponry where it is not permitted for obvious safety reasons.

27. In *Carpenter*, the plaintiffs also argued, among other things, that the therein defendants' Deer Management Plan did not comply with New York State's Environmental Quality Review Act ("SEQR"). Similarly, in the case at bar, plaintiffs argue that the State of New York has not authorized nor approved the herein Town's Deer Management Plan and that same failed to comply with SEQR (Exhibit 6).

28. The Court in *Carpenter*, granted a TRO enjoining the deer culling plan, finding, among other things, that the therein defendants had failed to comply with the "law, both procedural and substantive." Significantly, the Court found that the therein defendants failed to substantiate or corroborate the classification that they asserted (*id.*)

29. The herein Town's material and crucial pleading admissions definitively establish that the herein plaintiffs have a likelihood of success on the merits. Additionally, the accompanying original Affidavits of the Plaintiff William Crain; the Expert Statistician William Dougherty, M.S., and Counsel's Affidavit of Emergency, all also establish the herein plaintiffs likelihood of success on the merits.

30. The irreparable harm caused if the restraining order does not go into effect is grave, plain and obvious. The scientific survey done by Vision Air, a nationally and internationally renowned, credentialed and accomplished scientific surveyor established the deer population to be less than 1,000, that is, about 877, and that the Town has a decreasing deer population.

31. Furthermore, and, very significantly, scientific studies establish that reducing the deer population may cause an increase in tick-borne diseases (§§ 133-145).

32. The Town's Deer Management Plan will kill off the deer to extinction, if not near extinction. The Town admitted at ¶ 150 that the Deer Management Plan "is an inappropriate and wasteful use of limited and valuable taxpayer resources." If the Court decides that the plaintiffs are correct and that the Town's Deer Management Plan is, among other things, not sanctioned by the State and is arbitrary and capricious, and no stay had been granted to stay the cull scheduled to begin in February, 2014, the harm is plainly irreparable.


33. These facts also establish that the balance of the equities favors injunctive relief.

34. Injunctive relief is not an award of ultimate relief but it preserves the status quo until a full determination of the lawsuit can be adjudicated. The status quo cannot be maintained in the instant case, if the Town's Deer Management Plan proceeds while the lawsuits wind their way through the courts.

35. The herein requested relief has not been previously sought in this and/or any other court.

WHEREFORE, the Court is respectfully requested to grant the requested relief, and the requested TRO, together with such other and further relief as is just and proper in the circumstances.

Dated: January 29, 2014
New York, New York


Michael J. Devereaux, Esq.

Sworn to before me this
29th of January, 2014


Notary Public

Edward LEBEAUX
State of New York
No. 4352262
Qualified in Nassau County
Commission Expires March 17, 2014