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March 25, 2010

**VIA FACSIMILE – (518) 873-3376**

Hon. Richard B. Meyer  
Essex County Courthouse  
7559 Court Street  
Elizabethtown, New York 12932

**RE: Lewis Family Farm v. Adirondack Park Agency  
(Index No. 315-08/332-08)**

Dear Judge Meyer:

Please accept this letter on behalf of the Lewis Family Farm, Inc. ("Farm"), in support of the pending evidentiary issues related to this Court's grant of the Farm's motion for counsel fees and expenses pursuant to Article 86 of the CPLR.

The Adirondack Park Agency ("APA") requested that the Court cancel the scheduled evidentiary hearing as to the reasonable amount of the Farm's fee award. The APA declined the opportunity to cross-examine the Farm's witnesses. During the February 22, 2010, conference call, Your Honor indicated that no additional briefing was to be submitted. The Court directed the submission of only admissible evidence on the select open issues identified in the February 3, 2010, Decision and Order.

Yet, on March 19, 2010, the APA submitted a 25-page memorandum of law, which is replete with misstatements, factual inaccuracies, irrelevant statements and inapplicable case citations. The APA's unauthorized brief is nothing but a bitter reargument of the motion that this Court has already granted, abusing the process and falsely referring to the Lewis Family Farm, Inc., the sole Petitioner, as Sandy Lewis's "corporate alter ego". (See APA's Unauthorized Memorandum of Law, pg. 6). We stand ready to appear at an evidentiary hearing to air all of the Court's concerns and answer all of the Court's questions.

In persuading this Court to accept paper proof in lieu of an open-court hearing, the APA's motive is now revealed. The APA endeavors to present one of my firm's own invoices to another client without allowing an explanation of the special circumstances of that case. (See Ex. A to Affirmation of Loretta Simon). In *Westwood Chemical Corp.*, a 2005 bankruptcy case—which was venued in Poughkeepsie, not Manhattan—I accepted the terms of engagement that were imposed by the court-appointed trustee because I was intrigued by the public interests at stake. The Court can take judicial notice of the fact that attorneys sometimes charge different

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Hon. Richard B. Meyer  
Page 2  
March 25, 2010

rates for private parties than for public institutions. In any event, the bankruptcy fee application further confirms that my firm's billing rates, even for public clients, were more than reasonable in 2005.

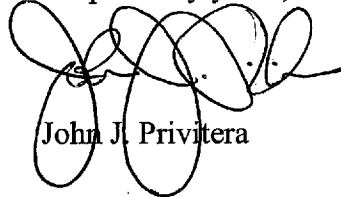
The APA has wasted considerable time and resources by failing to recognize that the answer to the "critical question" it seeks to cast doubt upon is already in the record. The APA wants to know how much my firm charged the Farm to bring this case and at what hourly rate. (See APA's Unauthorized Memo of Law, pg. 1). This question was answered in the initial motion papers. (See Affidavit of Salim B. "Sandy" Lewis, sworn to August 13, 2009, ¶ 8; Affirmation of John J. Privitera, dated August 12, 2009, ¶¶ 11-13 and Ex. B).

There is no "windfall" to the Farm as the APA suggests. The fact that Article 86 of the CPLR provides for a modicum of justice here is not a windfall. Indeed, as the petitioner's affidavits show, it is still not clear whether the Farm will survive the massive business interruption caused by the APA's illegal onslaught against the Petitioner's right to farm. Also, there is no "windfall" to my firm because the Farm is obliged, so my fees are paid notwithstanding any further finding by this Court.

The Lewis Family Farm does not wish to encumber the public fisc or try this Court's patience by submitting a reply brief in response to the State's unauthorized memorandum of law. However, we ask for an additional \$525 in fees, based on my 1.25 hours of time and 1.0 hours for Jacob Lamme, for having to review the State's unauthorized papers and respond in this letter.<sup>1</sup> We will, of course, bill the Farm for these services in accordance with our agreement. We bill monthly.

We look forward to the Court's final ruling on the Lewis Family Farm's motion for counsel fees. Thank you for Your Honor's continued attention to this matter.

Respectfully yours,



John J. Privitera

cc: Loretta Simon, Esq. (via facsimile to 518-473-2534)  
Cynthia Feathers, Esq. (via facsimile to 518-587-0128)

<sup>1</sup> The APA's suggestion that the Farm's fee request is capped at 5% for preparation, notwithstanding the State's full litigation of the matter, is not supported by the jurisprudence. Indeed, it is clear that the Farm's fee award must include all litigation as to the amount, including any appeal prosecuted by the APA based on its Notice of Appeal, which was filed in response to this Court's Decision and Order of February 3, 2010.