

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION FILE
	:	NO. 1:18-CV-05774-AT
NANCY ZAK, CLAUD CLARK	:	
III, ECOVEST CAPITAL, INC.,	:	
ALAN N. SOLON, ROBERT M.	:	
MCCULLOUGH, RALPH R.	:	
TEAL, JR.,	:	
	:	
Defendants.	:	

**DEFENDANTS ECOVEST, SOLON, MCCULLOUGH, AND TEAL’S  
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S  
COMPLAINT**

Defendants EcoVest Capital, Inc. (“EcoVest”), Alan N. Solon (“Mr. Solon”), Robert M. McCullough (“Mr. McCullough”), and Ralph R. Teal, Jr. (“Mr. Teal”) (collectively, “EcoVest Parties”), for their Answer to Plaintiff’s Complaint, state as follows:

The EcoVest Parties emphatically deny the Government’s allegations of fraud and other misconduct, and look forward to clearing their good name at trial at the earliest available date for the Court. Federal law has long sought to encourage

the preservation of natural resources and undeveloped land by providing tax deductions for conservation easements. Far from seeking to subvert the law, the evidence will show that the EcoVest Parties went to great lengths to ensure that all of their projects fully complied with the law.

EcoVest is a real estate company that balances economic, environmental, and social gains through the preservation of natural resources and promotion of sustainable business practices. Investors in projects managed by EcoVest choose whether to build on their property in accordance with comprehensive development plans, to hold it for appreciation, or to preserve it via a conservation easement, which not only protects such property in perpetuity but also provides the potential for limited development. EcoVest—through the very projects Plaintiff seeks to enjoy—has helped to preserve in perpetuity nearly 20,000 acres of undeveloped property, including forests, meadows, wetlands, streams, and coastal plains.

The EcoVest Parties comply fully with all of their legal obligations. EcoVest undertakes rigorous processes to ensure its projects, and the independent qualified appraisals of the value of conservation easements, are valid and lawful. Additionally, real estate projects managed by EcoVest are distributed by FINRA-

registered,<sup>1</sup> independent broker-dealers. FINRA rules and regulations require broker-dealers to perform substantial due diligence before offering investments for sale.

EcoVest's efforts are led by Mr. Solon, who has over three decades of experience in marketing, finance, and real estate development; Mr. McCullough, who has extensive experience in finance and accounting, including with real estate investment trusts and other real estate investment programs; and Mr. Teal, who has extensive residential real estate experience, including as a founding partner in several successful homebuilding companies, and has experience investing in and managing other extensive real estate development projects.

Congress and the Internal Revenue Service ("IRS") have for decades provided tax incentives aimed at encouraging Americans to enter into conservation easements, at once conserving valuable natural resources and providing relief to taxpayers. In fact, Congress recently enhanced these tax incentives and later enacted legislation to make such enhancements permanent. As a result of these perfectly legal tax deductions, the amount of land preserved in perpetuity under conservation easements has grown from 500,000 acres in 1990 to more than 30

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<sup>1</sup> FINRA is the Financial Industry Regulatory Authority, a not-for-profit organization authorized by Congress to protect U.S. investors by ensuring the broker-dealer industry operates fairly and honestly.

million acres today. In keeping with the intent of Congress, EcoVest manages real estate projects that protect the environment and comply fully with all applicable laws.

In response to the allegations in the separately numbered paragraphs of the Complaint, the EcoVest Parties respond as follows:

1. EcoVest is a real estate company that incorporates an innovative mix of sustainable land management strategies. While the particulars of each project differ, each generally involves research and analysis regarding the acquisition of real estate with development and/or conservation value; significant investment and planning to develop property to put it to its “highest and best use”; independent qualified appraisals; a legal opinion regarding certain tax matters; and tax and other advice from law firms and other consultants with relevant subject matter expertise. FINRA-registered, independent broker-dealers offer for sale interests in the real estate projects to accredited investors, *i.e.*, persons meeting certain financial criteria under federal securities laws. Investors decide by majority vote whether to (a) develop the real estate in accordance with a comprehensive development plan, (b) hold it for appreciation, or (c) donate an easement on the real estate to a land trust for the benefit of the public in perpetuity, which also provides the potential for limited development. Messrs. Solon, McCullough, and

Teal are individuals involved in the management and/or ownership of EcoVest.

The EcoVest Parties otherwise deny the allegations of Paragraph 1.

2. Denied.

3. Denied.

4. Denied.

5. The EcoVest Parties admit that they have managed real estate projects, in which investors ultimately decided to donate conservation easements. These conservation easements have resulted in the preservation of nearly 20,000 acres, which, consistent with federal tax law enacted to encourage conservation, resulted in tax deductions. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 regarding Ms. Zak and Mr. Clark, and therefore those allegations are denied.

The EcoVest Parties deny the remaining allegations in Paragraph 5.

6. Paragraph 6 purports to summarize relief sought by Plaintiff, and no response is required. To the extent that a response is deemed required, the EcoVest Parties deny the allegations in Paragraph 6, including all of its subparagraphs, and specifically deny that Plaintiff is entitled to any relief at all.

7. Paragraph 7 purports to describe other relief sought by Plaintiff, and no response is required. To the extent that a response is deemed required, the

EcoVest Parties deny the allegations in Paragraph 7, and specifically deny that Plaintiff is entitled to any relief at all.

8. The EcoVest Parties do not possess information sufficient to admit or deny the allegations made in Paragraph 8, and therefore those allegations are denied.

9. Admitted.

10. Admitted that venue is proper in this Court. The EcoVest Parties deny the remaining allegations of Paragraph 10.

11. The EcoVest Parties admit that an agency of the United States Government filed this lawsuit. The EcoVest Parties deny the remaining allegations of Paragraph 11.

12. The EcoVest Parties admit that, from 2012 until her shares were repurchased in August 2013, Ms. Zak owned a 12.05% interest in EcoVest, and that she provided limited consulting services to EcoVest during a portion of this time period. As a further response, the EcoVest Parties state that Ms. Zak has had no ownership interest or other role in EcoVest since August 2013. The EcoVest Parties are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and therefore those allegations are denied.

13. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13, and therefore those allegations are denied.

14. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, and therefore those allegations are denied.

15. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore those allegations are denied.

16. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and therefore those allegations are denied.

17. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17, and therefore those allegations are denied.

18. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18, and therefore those allegations are denied.

19. The EcoVest Parties admit that Claud Clark III is an independent appraiser based in Alabama, and further state that Mr. Clark's qualifications have been recognized by the Internal Revenue Service, courts, and others. *See, e.g., Kiva Dunes Conservation, LLC v. C.I.R.*, 97 T.C.M. (CCH) 1818, 2009 WL 1748862 at \*6 (U.S. Tax Court June 22, 2009) ("We conclude that Mr. Clark's testimony is credible and his assumptions are reasonable and amply supported by the evidence presented at trial and in his report."). In fact, the U.S. Tax Court has adopted a definition of "highest and best use" consistent with the methodology Mr. Clark used in providing qualified appraisals for EcoVest projects, a definition developed by the Appraisal Institute, a global professional association of real estate appraisers, with more than 18,000 members. *See, e.g., Palmer Ranch Holdings Ltd. v. Comm'r*, 107 T.C.M. (CCH) 1408, 2014 WL 1796362 at \*9 (U.S. Tax Court May 6, 2014) (citing *Whitehouse Hotel L.P. v. Comm'r*, 139 T.C. 304, 331 (2012)), *aff'd in relevant part*, 812 F.3d 982 (11th Cir. 2016). The EcoVest Parties further admit that Mr. Clark, on a non-exclusive basis, provided independent qualified appraisals related to projects managed by EcoVest. Mr. Clark's qualified appraisals are tested by a second qualified appraiser via peer review. The EcoVest Parties are otherwise without knowledge or information sufficient to form a belief



as to the truth of the allegations in Paragraph 19, and therefore those allegations are denied.

20. The EcoVest Parties admit that Claud Clark III is an independent appraiser based in Alabama, and further state that Mr. Clark's qualifications have been recognized by the Internal Revenue Service, courts, and others. *See, e.g., Kiva Dunes Conservation, LLC v. C.I.R.*, 97 T.C.M. (CCH) 1818, 2009 WL 1748862 at \*6 (U.S. Tax Court June 22, 2009) ("We conclude that Mr. Clark's testimony is credible and his assumptions are reasonable and amply supported by the evidence presented at trial and in his report."). In fact, the U.S. Tax Court has adopted a definition of "highest and best use" consistent with the methodology Mr. Clark used in providing qualified appraisals for EcoVest projects, a definition developed by the Appraisal Institute, a global professional association of real estate appraisers, with more than 18,000 members. *See, e.g., Palmer Ranch Holdings Ltd. v. Comm'r*, 107 T.C.M. (CCH) 1408, 2014 WL 1796362 at \*9 (U.S. Tax Court May 6, 2014) (citing *Whitehouse Hotel L.P. v. Comm'r*, 139 T.C. 304, 331 (2012)), *aff'd in relevant part*, 812 F.3d 982 (11th Cir. 2016). The EcoVest Parties further admit that Mr. Clark, on a non-exclusive basis, provided independent qualified appraisals related to projects managed by EcoVest. Mr. Clark's qualified appraisals are tested by a second qualified appraiser via peer review. The EcoVest

Parties are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20, and therefore those allegations are denied.

21. The EcoVest Parties admit that Claud Clark III is an independent appraiser based in Alabama, and further state that Mr. Clark's qualifications have been recognized by the Internal Revenue Service, courts, and others. *See, e.g., Kiva Dunes Conservation, LLC v. C.I.R.*, 97 T.C.M. (CCH) 1818, 2009 WL 1748862 at \*6 (U.S. Tax Court June 22, 2009) ("We conclude that Mr. Clark's testimony is credible and his assumptions are reasonable and amply supported by the evidence presented at trial and in his report."). In fact, the U.S. Tax Court has adopted a definition of "highest and best use" consistent with the methodology Mr. Clark used in providing qualified appraisals for EcoVest projects, a definition developed by the Appraisal Institute, a global professional association of real estate appraisers, with more than 18,000 members. *See, e.g., Palmer Ranch Holdings Ltd. v. Comm'r*, 107 T.C.M. (CCH) 1408, 2014 WL 1796362 at \*9 (U.S. Tax Court May 6, 2014) (citing *Whitehouse Hotel L.P. v. Comm'r*, 139 T.C. 304, 331 (2012)), *aff'd in relevant part*, 812 F.3d 982 (11th Cir. 2016). The EcoVest Parties further admit that Mr. Clark, on a non-exclusive basis, provided independent qualified appraisals related to projects managed by EcoVest. Mr. Clark's qualified

appraisals are tested by a second qualified appraiser via peer review. The EcoVest Parties are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, and therefore those allegations are denied.

22. The EcoVest Parties admit that Claud Clark III is an independent appraiser based in Alabama, and further state that Mr. Clark's qualifications have been recognized by the Internal Revenue Service, courts, and others. *See, e.g., Kiva Dunes Conservation, LLC v. C.I.R.*, 97 T.C.M. (CCH) 1818, 2009 WL 1748862 at \*6 (U.S. Tax Court June 22, 2009) ("We conclude that Mr. Clark's testimony is credible and his assumptions are reasonable and amply supported by the evidence presented at trial and in his report."). In fact, the U.S. Tax Court has adopted a definition of "highest and best use" consistent with the methodology Mr. Clark used in providing qualified appraisals for EcoVest projects, a definition developed by the Appraisal Institute, a global professional association of real estate appraisers, with more than 18,000 members. *See, e.g., Palmer Ranch Holdings Ltd. v. Comm'r*, 107 T.C.M. (CCH) 1408, 2014 WL 1796362 at \*9 (U.S. Tax Court May 6, 2014) (citing *Whitehouse Hotel L.P. v. Comm'r*, 139 T.C. 304, 331 (2012)), *aff'd in relevant part*, 812 F.3d 982 (11th Cir. 2016). The EcoVest Parties further admit that Mr. Clark, on a non-exclusive basis, provided independent

qualified appraisals related to projects managed by EcoVest. Mr. Clark's qualified appraisals are tested by a second qualified appraiser via peer review. The EcoVest Parties are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, and therefore those allegations are denied.

23. The EcoVest Parties admit that Mr. Clark, on a non-exclusive basis, provided independent qualified appraisals, including qualified appraisals related to certain EcoVest-managed projects, each of which is reflected in a qualified appraisal report, the contents of which speak for themselves. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, and therefore those allegations are denied.

24. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, and therefore those allegations are denied.

25. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25, and therefore those allegations are denied.

26. The EcoVest Parties admit that Mr. Solon is a Georgia resident and that he serves as the President, Chief Executive Officer, and Chairman of the Board of Directors of EcoVest. The other allegations of Paragraph 26 are denied.

27. Mr. Solon admits the allegations of Paragraph 27. The other EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 27, and therefore they deny those allegations.

28. Admitted.

29. Mr. Solon admits that from the date of the formation of Conservation Resources, Inc., until 2012, that company provided conservation easement consulting services. Mr. Solon denies the remaining allegations of Paragraph 29. The other EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 29, and therefore they deny those allegations.

30. Admitted.

31. Mr. Solon admits that Conservation Resources, Inc., provided conservation easement consulting services. Mr. Solon denies the remaining allegations of Paragraph 31. The other EcoVest Parties are without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 31, and therefore they deny those allegations.

32. Mr. Solon admits that, in his role at Conservation Resources, Inc., he provided consulting services related to real estate projects and conservation-related issues. Mr. Solon denies the remaining allegations of Paragraph 32. The other EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32, and therefore they deny those allegations.

33. The EcoVest Parties admit that Mr. Solon was one of the founders of EcoVest, a real estate company that incorporates sustainable land management strategies in its projects. The remaining allegations of Paragraph 33 are denied.

34. Denied.

35. The EcoVest Parties admit that Mr. Solon has worked on numerous real estate projects, in which investors ultimately decided to donate conservation easements. The remaining allegations of Paragraph 35 are denied.

36. Admitted.

37. EcoVest was formed as a Delaware limited liability company in 2012, and it was later converted to a Delaware Corporation. The EcoVest Parties admit that EcoVest's headquarters are located at 3424 Peachtree Road NE, Suite 1550,

Atlanta, Georgia. EcoVest is a real estate company that incorporates sustainable land management strategies in its projects. The remaining allegations of Paragraph 37 are denied.

38. The EcoVest Parties admit that Mr. Solon, Mr. McCullough, and Mr. Teal hold the positions at EcoVest referred to elsewhere in this Answer, and that the company currently has 20 employees. The remaining allegations of Paragraph 38 are denied.

39. The EcoVest Parties admit that EcoVest manages real estate projects, which include options for conservation easements, including by working with land trusts and engaging independent appraisers. The remaining allegations of Paragraph 39 are denied.

40. The EcoVest Parties admit that EcoVest manages real estate projects, which include options for conservation easements, and that FINRA-registered independent broker-dealers sell interests in companies that undertake those projects. The EcoVest Parties admit that the following FINRA-registered independent broker-dealers—as well as numerous additional broker-dealers—have offered investments in real estate projects on which EcoVest has worked: Strategic Financial Alliance, Arque Capital, and Triloma Financial Group. Each of Strategic

Financial Alliance, Arque, and Triloma is registered with FINRA and the SEC.

The remaining allegations of Paragraph 40 are denied.

41. The EcoVest Parties admit that, from 2012 until her shares were repurchased in August 2013, Ms. Zak owned a 12.05% interest in EcoVest, and that she provided limited consulting services to EcoVest during a portion of this time period. As a further response, the EcoVest Parties state that Ms. Zak has had no ownership interest or other role in EcoVest since August 2013. The EcoVest parties deny the remaining allegations of Paragraph 41.

42. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42, and therefore those allegations are denied.

43. Denied.

44. The EcoVest Parties admit that, since 2012, EcoVest managed or was otherwise involved in numerous real estate projects, in which investors ultimately decided to donate conservation easements, and through which nearly 20,000 acres of land have been preserved in perpetuity. The remaining allegations of Paragraph 44 are denied.

45. Admitted.



46. The EcoVest Parties admit that Mr. McCullough is a resident of the State of Georgia and that he currently serves as EcoVest's Senior Vice President, Chief Financial Officer, Treasurer, and Secretary. The remaining allegations of Paragraph 46 are denied.

47. The EcoVest Parties admit that EcoVest is a real estate company that incorporates sustainable land management strategies in its projects, and further admit that Mr. McCullough, as a senior leader of the company, is involved in EcoVest's operations. The remaining allegations of Paragraph 47 are denied.

48. Denied.

49. Admitted.

50. Admitted.

51. The EcoVest Parties admit that Mr. Teal is a member of the board of directors of EcoVest, a real estate company that incorporates sustainable land management strategies in its projects. The remaining allegations of Paragraph 51 are denied.

52. Denied.

53. Mr. Teal admits that he is subject to this Court's jurisdiction. He denies the remaining allegations of Paragraph 53. The other EcoVest Parties are

without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53, and therefore they deny those allegations.

54. The EcoVest Parties state that conservation easements, including the tax implications of such arrangements, are defined by law. To the extent that Plaintiff's summary allegations in Paragraph 54 are in any way inconsistent with the law, those allegations are denied.

55. Paragraph 55 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code permits deductions related to conservation easements.

56. Paragraph 56 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code permits deductions related to conservation easements and includes a definition of the term "qualified conservation contribution."

57. The EcoVest Parties admit that they have managed real estate projects involving limited liability companies ("LLCs"), and further state that LLCs are a perfectly legal and appropriate form for conducting business. The EcoVest Parties also admit that, in certain circumstances, the law requires different tax treatment

for different types of corporate entities. The remaining allegations of Paragraph 57 are denied.

58. Paragraph 58 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code contains provisions regarding partnership taxation, and further state that those provisions of the Internal Revenue Code speak for themselves.

59. Paragraph 59 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code contains provisions regarding partnership taxation, and further state that those provisions of the Internal Revenue Code speak for themselves.

60. Paragraph 60 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code contains provisions regarding partnership taxation, and further state that those provisions of the Internal Revenue Code speak for themselves.

61. The EcoVest Parties admit that EcoVest is a real estate company that strives to incorporate an innovative mix of sustainable land management strategies.

While the particulars of each project differ, each generally involves research and analysis regarding the acquisition of real estate with development and/or conservation value; significant investment and planning to develop property to put it to its “highest and best use”; independent qualified appraisals; a legal opinion regarding certain tax matters; and tax and other advice from law firms and other consultants with relevant subject matter expertise. FINRA-registered, independent broker-dealers and SEC- and state-Registered Investment Advisors offer for sale interests in the real estate projects to accredited investors, *i.e.*, persons meeting certain financial criteria under federal securities laws. Investors decide by majority vote whether to (a) develop the real estate in accordance with a comprehensive development plan, (b) hold it for appreciation, or (c) donate an easement on the real estate to a land trust for the benefit of the public in perpetuity, which also provides the potential for limited development. Documents related to each project—such as membership interest purchase agreements, development plans, market studies, construction cost estimates, operating agreements, qualified appraisal reports, appraisal peer reviews, appraisal peer review legal reliance letters, and tax opinion letters—speak for themselves. The EcoVest Parties deny the remaining allegations of Paragraph 61, including all of its subparagraphs.

62. The EcoVest Parties admit that the particulars of each project on which EcoVest works differ and that some involve the formation of two entities. As a further response, the EcoVest Parties state that LLCs are a perfectly legal and appropriate form for conducting business. The remaining allegations of Paragraph 62 are denied.

63. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63, and therefore those allegations are denied.

64. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64, and therefore those allegations are denied.

65. Mr. Solon admits that he was President of Conservation Resources, Inc., between 2010 and 2012. Mr. Solon also admits that he began working with Ms. Zak on real estate projects, including projects on which investors ultimately decided to donate conservation easements, in or around 2010. Mr. Solon denies the remaining allegations of Paragraph 65. The other EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65, and therefore those allegations are denied.

66. The EcoVest Parties admit that EcoVest was formed in 2012, that it began providing consulting services for real estate projects, which included options for conservation easements, that year, and that in or around 2013, it started managing such projects. The EcoVest Parties admit that FINRA-registered independent broker-dealers and SEC- and state-Registered Investment Advisors have sold units in the real estate projects on which EcoVest works. The EcoVest Parties admit that Mr. Solon has worked at EcoVest since its formation, that Mr. Teal has been associated with EcoVest since 2013, and that Mr. McCullough joined EcoVest in 2014. The EcoVest Parties admit that each of those three individuals have worked on EcoVest's real estate projects during their respective tenures at the company. The remaining allegations of Paragraph 66 are denied.

67. The EcoVest Parties admit that Ms. Zak owned a 12.05% ownership interest in EcoVest from 2012 until August 2013. As a further response, the EcoVest Parties state that, in August 2013, EcoVest repurchased from Ms. Zak the shares in the company that she had held up until that time and that Ms. Zak has had no ownership interest or other role in EcoVest since August 2013. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 67, and therefore those allegations are denied.

68. To the extent these allegations are directed at the EcoVest Parties, they are denied. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 regarding Ms. Zak and Mr. Clark, and therefore those allegations are denied.

69. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69, and therefore those allegations are denied. As a further response, the EcoVest Parties state that they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

70. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70, and therefore those allegations are denied. As a further response, the EcoVest Parties state that they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

71. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71, and therefore those allegations are denied. As a further response, the EcoVest Parties state that they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

72. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72, and therefore those allegations are denied. As a further response, the EcoVest Parties state that they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

73. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73, and therefore those allegations are denied. As a further response, the EcoVest Parties state that they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

74. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74, and therefore those allegations are denied. As a further response, the EcoVest Parties state that they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

75. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 75, and therefore those allegations are denied. As a further response, the EcoVest Parties state that



they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

76. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76, and therefore those allegations are denied. As a further response, the EcoVest Parties state that they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

77. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77, and therefore those allegations are denied. As a further response, the EcoVest Parties state that they had no involvement in the alleged transactions referenced in Paragraphs 69-77.

78. The EcoVest Parties admit that, in 2012, EcoVest provided consulting services to Red Oak Equestrian, LLC (“Red Oak Equestrian”), which was organized as a Georgia LLC with a registered address in Rome, GA. Defendants McCullough and Teal were not affiliated with EcoVest in 2012 and had no involvement with the provision of consulting services to Red Oak Equestrian that year. The other allegations of Paragraph 78 are denied.

79. The EcoVest Parties admit that Red Oak Equestrian owned approximately 324.90 acres of land in Georgia that was generally wooded. The EcoVest Parties deny the remaining allegations of Paragraph 79.

80. The EcoVest Parties admit that, on or about December 12, 2012, Red Oak Equestrian offered for sale in a Regulation D private placement 900 to 950 membership interests at \$1,799 per unit and that EcoVest provided consulting services to the manager of the project. The EcoVest Parties do not possess information sufficient to admit or deny the other statements made in this paragraph, and therefore those allegations are denied.

81. The EcoVest Parties admit that the law firm Sirote & Permutt, PC (“Sirote” or “the Sirote law firm”) wrote a 30-page tax opinion letter regarding Red Oak Equestrian; that the letter stated, *inter alia*, that “it is our opinion that, more likely than not, the Company [Red Oak Equestrian] will be classified as a ‘partnership’ and not as an ‘association taxable as a corporation’ for federal income tax purposes . . .”; that the letter stated, *inter alia*, that if Red Oak Equestrian and its members made a charitable contribution of a conservation easement, the “deduction attributable to the Conservation Easement will flow-through to the Members in a manner consistent with the intent of Subchapter K”; and that the tax opinion letter was included with the Red Oak Equestrian private

offering summary. As a further response, the EcoVest Parties state that Sirote is a highly-regarded law firm with deep experience in the law relating to conservation easements and their tax implications. The EcoVest Parties deny that they provided any incorrect facts or documents to Sirote, and note that Plaintiff's contrary allegation is wholly conclusory and unsupported by any evidence. The EcoVest Parties deny the remaining allegations of Paragraph 81.

82. The EcoVest Parties admit that, in 2012, units of Red Oak Equestrian were offered by FINRA-registered independent broker-dealers to accredited investors pursuant to documents, including a detailed private offering memorandum and accompanying exhibits, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Red Oak Equestrian offering documents and otherwise deny the allegations of Paragraph 82.

83. The EcoVest Parties admit that, in 2012, units of Red Oak Equestrian were offered by FINRA-registered independent broker-dealers to accredited investors pursuant to documents, including a detailed private offering memorandum and accompanying exhibits, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Red Oak Equestrian offering documents and state that it is wholly

appropriate and oftentimes required to disclose risks in offering documents. The EcoVest Parties otherwise deny the allegations of Paragraph 83.

84. The EcoVest Parties admit that, in 2012, units of Red Oak Equestrian were offered by FINRA-registered independent broker-dealers to accredited investors pursuant to documents, including a detailed private offering memorandum and accompanying exhibits, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Red Oak Equestrian offering documents and otherwise deny the allegations of Paragraph 84.

85. The EcoVest Parties admit that, in 2012, units of Red Oak Equestrian were offered by FINRA-registered independent broker-dealers to accredited investors pursuant to documents, including a detailed private offering memorandum and accompanying exhibits, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Red Oak Equestrian offering documents and otherwise deny the allegations of Paragraph 85.

86. The EcoVest Parties admit that Mr. Clark was engaged to provide independent qualified appraisal services relating to the Red Oak Equestrian property. The EcoVest Parties further admit that Clark prepared an independent

qualified appraisal report, the terms of which speak for themselves, and that it was included in the offering summary. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the above-referenced qualified appraisal report and otherwise deny the allegations of Paragraph 86.

87. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87 related to Defendant Ms. Zak, and therefore those allegations are denied. The EcoVest Parties deny the remaining allegations of Paragraph 87.

88. The EcoVest Parties admit that Red Oak Equestrian entered into a Soliciting Dealer Agreement with The Strategic Financial Alliance, Inc., a FINRA-registered independent broker-dealer, related to the property, the terms of which agreement speak for themselves. The EcoVest Parties deny the remaining allegations of Paragraph 88.

89. Admitted.

90. Admitted.

91. Denied.

92. Denied.

93. The EcoVest Parties admit that Red Oak Equestrian reported on its tax year 2012 Form 1065 a charitable contribution deduction arising from the

conservation easement in the amount listed on that Form, which speaks for itself. The remainder of Paragraph 93 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties deny the remaining allegations of Paragraph 93.

94. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94, and therefore those allegations are denied.

95. The EcoVest Parties admit that, in 2015, EcoVest managed a real estate project called Cypress Cove Marina. Cypress Cove Marina Holdings, LLC, (“CCM Holdings”) was organized as a Delaware limited liability company on May 18, 2015, with its principal office in Atlanta, Georgia. The EcoVest Parties admit that CCM Holdings’ principals included Mr. McCullough. The EcoVest Parties deny the remaining allegations of Paragraph 95.

96. Denied.

97. The EcoVest Parties admit that Cypress Cove Marina, LLC, (“CCM”) was organized as a Delaware limited liability company on May 19, 2015, that its principal office was in Atlanta, Georgia, and that CCM acquired a 28.04-acre parcel of real property in South Carolina. The EcoVest Parties deny the remaining allegations of Paragraph 97.

98. The EcoVest Parties admit that, according to the deed for the property at issue, Christian Academy, Inc., acquired that property in December 2011. The EcoVest Parties deny the remaining allegations of Paragraph 98.

99. The EcoVest Parties admit that on or about June 8, 2015, CCM Holdings and Christian Academy entered into a Membership Interest Purchase Agreement related to the acquisition of membership interests in CCM, which owned the subject 28.04-acre parcel of real property. The terms of that agreement speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the CCM Holdings offering documents, which included that agreement as an attached exhibit, and otherwise deny the allegations of Paragraph 99, including each of its subparagraphs.

100. Paragraph 100 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties deny the allegations of Paragraph 100.

101. The EcoVest Parties admit that on or about July 10, 2015, Mr. Clark provided a preliminary qualified appraisal of the CCM property. The terms of that qualified appraisal speak for themselves. The appraisal was peer reviewed; a second independent qualified appraiser reviewed Mr. Clark's qualified appraisal to ensure his appraisal methodologies were in compliance with Uniform Standards of

Professional Appraisal Practices (USPAP). This peer review was then reviewed to determine that the appraisal peer review did not raise any material concerns or issues pertaining to Mr. Clark's qualified appraisal. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 101 regarding Mr. Clark, and therefore those allegations are denied. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the CCM Holdings offering documents—which included a copy of that qualified appraisal—and otherwise deny the remaining allegations of Paragraph 101.

102. The EcoVest Parties admit that, in 2015, units of CCM Holdings were offered by FINRA-registered independent broker-dealers to accredited investors pursuant to documents, including a detailed private offering memorandum and accompanying exhibits, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the CCM Holdings offering documents and otherwise deny the allegations of Paragraph 102.

103. The EcoVest Parties admit that, in 2015, units of CCM Holdings were offered in a Regulation D private placement by FINRA-registered independent broker-dealers to accredited investors pursuant to documents, including a detailed private offering memorandum and accompanying exhibits, the terms of which



speak for themselves. Those documents were rendered in full compliance with FINRA rules and regulations. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the CCM Holdings offering documents and otherwise deny the allegations of Paragraph 103.

104. The EcoVest Parties admit that, in 2015, units of CCM Holdings were offered in a Regulation D private placement by FINRA-registered independent broker-dealers to accredited investors pursuant to documents, including a detailed private offering memorandum and accompanying exhibits, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the CCM Holdings offering documents and state that it is wholly appropriate and oftentimes required to disclose risks in offering documents. The EcoVest Parties otherwise deny the allegations of Paragraph 104.

105. The EcoVest Parties admit that, in 2015, units of CCM Holdings were offered in a Regulation D private placement by FINRA-registered independent broker-dealers to accredited investors pursuant to documents, including a detailed private offering memorandum and accompanying exhibits, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the CCM Holdings offering documents and otherwise deny the allegations of Paragraph 105.

106. The EcoVest Parties admit that on or about December 15, 2015, CCM executed a conservation easement and declaration of restrictions and covenants, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the CCM Holdings offering documents and to the recorded conservation easement and declaration of restrictions and covenants for the CCM property. The EcoVest Parties otherwise deny the allegations of Paragraph 106.

107. The EcoVest Parties admit that Mr. Clark was engaged to provide independent qualified appraisal services relating to the CCM property. The EcoVest Parties further admit that Mr. Clark prepared qualified appraisal reports, the terms of which speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the above-referenced qualified appraisal reports and otherwise deny the allegations of Paragraph 107.

108. Denied.

109. Denied.

110. The EcoVest Parties admit that CCM filed a Form 1065 for tax year 2015, the terms of which speak for themselves. The remainder of Paragraph 110 contains legal assertions to which no response is required. To the extent that a

response is deemed required, the EcoVest Parties deny the remaining allegations of Paragraph 110.

111. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111, and therefore those allegations are denied.

112. The EcoVest Parties admit that they have worked on numerous real estate projects, in which investors ultimately decided to donate conservation easements, in multiple states, including Georgia. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112 that relate to Ms. Zak and Mr. Clark, and therefore those allegations are denied. The EcoVest Parties deny the remaining allegations of Paragraph 112.

113. The EcoVest Parties admit that EcoVest has managed numerous real estate projects, in which investors ultimately decided to donate conservation easements. These conservation easements resulted in preservation of nearly 20,000 acres, which, consistent with federal tax law, resulted in tax deductions. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 113 regarding Ms. Zak and Mr.

Clark, and therefore those allegations are denied. The EcoVest Parties deny the remaining allegations in Paragraph 113.

114. The EcoVest Parties admit that EcoVest provided to FINRA-registered independent broker-dealers documents related to its real estate projects for due diligence purposes, including membership interest purchase agreements, real estate development plans, market studies, construction cost estimates, operating agreements, qualified appraisal reports, tax opinion letters, and related documents. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114 regarding Ms. Zak, and therefore those allegations are denied. The EcoVest Parties deny the remaining allegations of Paragraph 114.

115. The EcoVest Parties admit that EcoVest provided to FINRA-registered independent broker-dealers documents related to its real estate projects for due diligence purposes, including real estate development plans, qualified appraisal reports, tax opinion letters, and related documents, and that some statements in these documents were based on qualified appraisals. The EcoVest Parties deny the remaining allegations of Paragraph 115.

116. The EcoVest Parties admit that interests in real estate projects managed by EcoVest are sold through FINRA-registered independent broker-

dealers and SEC- and state-Registered Investment Advisors. The EcoVest Parties deny the remaining allegations of Paragraph 116.

117. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 117, and therefore those allegations are denied.

118. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118, and therefore those allegations are denied.

119. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 119, and therefore those allegations are denied.

120. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 120, and therefore those allegations are denied.

121. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 121, and therefore those allegations are denied.

122. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 122, and therefore those allegations are denied.

123. The EcoVest Parties admit that EcoVest made available to FINRA-registered independent broker-dealers documents related to its real estate projects for due diligence purposes, including real estate development plans, qualified appraisal reports, tax opinion letters, and related documents. The EcoVest Parties deny the remaining allegations of Paragraph 123.

124. Denied.

125. The EcoVest Parties admit that Mr. Solon, Mr. McCullough, and Mr. Teal worked on EcoVest-managed real estate projects, in which investors ultimately decided to donate conservation easements, and that this work involved the preparation of documents related to those projects. The remaining allegations of Paragraph 125 are denied.

126. Denied.

127. The EcoVest Parties admit that they engaged the Sirote law firm, a well-respected firm with deep subject-matter expertise in the relevant areas of law, to provide legal advice regarding conservation easements. The EcoVest Parties further admit that the Sirote law firm prepared a Conservation Easement Overview,

summarizing the law relating to conservation easements and related tax issues.

The EcoVest Parties further state that FINRA reviewed the Conservation Easement Overview for use as an educational tool during the offering and sales process. The EcoVest Parties deny the remaining allegations of Paragraph 127.

128. The EcoVest Parties admit that the Sirote law firm prepared a document entitled Conservation Easement Overview summarizing the law relating to conservation easements and related tax issues, which speaks for itself. The EcoVest Parties further state that FINRA reviewed the Conservation Easement Overview for use as an educational tool during the offering and sales process. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Conservation Easement Overview and otherwise deny the allegations of Paragraph 128.

129. The EcoVest Parties admit that the Sirote firm prepared the Conservation Easement Overview, which is a document the content of which speaks for itself. The EcoVest Parties further state that FINRA reviewed the Conservation Easement Overview for use as an educational tool during the offering and sales process. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Conservation Easement Overview and otherwise deny the allegations of Paragraph 129.

130. The EcoVest Parties admit that real estate projects on which they work involve entities treated as partnerships for tax purposes, and further state that there is nothing improper or unusual about utilizing this business structure. The EcoVest Parties deny the remaining allegations of Paragraph 130.

131. Denied.

132. Denied.

133. Denied.

134. Paragraph 134 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties deny the allegations of Paragraph 134.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Paragraph 139 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code and federal regulations provide criteria for “qualified conservation contribution[s],” which provisions speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to



the Internal Revenue Code and the cited portions of the Code of Federal Regulations and otherwise deny the allegations of Paragraph 139.

140. Denied.

141. Denied.

142. Paragraph 142 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code and federal regulations provide criteria for determining “fair market value,” which provisions speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Internal Revenue Code and the quoted portions of the Code of Federal Regulations and otherwise deny the allegations of Paragraph 142.

143. Paragraph 143 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code and federal regulations provide criteria for determining “fair market value,” which provisions speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Internal Revenue Code and the cited portions of the Code of Federal Regulations and otherwise deny the allegations of Paragraph 143.

144. Paragraph 144 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code and federal regulations provide criteria for determining “fair market value” that speak for themselves and that appraisers generally consider certain criteria in determining the “highest and best use” of a property. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Internal Revenue Code and the quoted regulations and otherwise deny the allegations of Paragraph 144.

145. Paragraph 145 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties admit that the Internal Revenue Code and federal regulations provide criteria for determining “fair market value,” which provisions speak for themselves. To the extent a further response is required, the EcoVest Parties refer Plaintiff to the Internal Revenue Code and the cited portions of the Code of Federal Regulations and otherwise deny the allegations of Paragraph 145.

146. The EcoVest Parties admit that Mr. Clark is an independent appraiser based in Alabama, and further state that Mr. Clark’s qualifications have been recognized by the Internal Revenue Service, courts, and others. *See, e.g., Kiva Dunes Conservation, LLC v. C.I.R.*, 97 T.C.M. (CCH) 1818, 2009 WL 1748862 at

\*6 (U.S. Tax Court June 22, 2009) (“We conclude that Mr. Clark’s testimony is credible and his assumptions are reasonable and amply supported by the evidence presented at trial and in his report.”). In fact, the U.S. Tax Court has adopted a definition of “highest and best use” consistent with the methodology Mr. Clark used in providing qualified appraisals for EcoVest projects. *See, e.g., Palmer Ranch Holdings Ltd. v. Comm’r*, 107 T.C.M. (CCH) 1408, 2014 WL 1796362 at \*9 (U.S. Tax Court May 6, 2014) (citing *Whitehouse Hotel L.P. v. Comm’r*, 139 T.C. 304, 331 (2012)), *aff’d in relevant part*, 812 F.3d 982 (11th Cir. 2016). While the EcoVest Parties are not certain what is meant by the allegation that Clark “holds himself out” as a professional, qualified appraiser, they admit that he is in fact so qualified.

147. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 147, and therefore those allegations are denied.

148. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 148, and therefore those allegations are denied.

149. The EcoVest Parties admit that, consistent with standard industry practice, Mr. Clark charged reasonable fees for his independent qualified appraisal services. The remaining allegations of Paragraph 149 are denied.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 154, and therefore those allegations are denied.

155. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 155, and therefore those allegations are denied.

156. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 156 that pertain only to Mr. Clark, and therefore those allegations are denied. The EcoVest Parties deny the remaining allegations of Paragraph 156.

157. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 157, and therefore those allegations are denied.

158. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 158, and therefore those allegations are denied.

159. The EcoVest Parties admit that EcoVest assisted in the preparation of Forms 8283 that were filed by entities treated as partnerships in order to report applicable noncash charitable contributions. The allegations of Paragraph 159 are denied to the extent they allege that EcoVest assisted in the preparation of Forms 8283 on behalf of individual partners in real estate partnerships. The other allegations of Paragraph 159 are denied.

160. Denied.

161. Denied.

162. Denied.

163. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 163, and therefore those allegations are denied.

164. Denied.

165. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 165 as they pertain to Ms. Zak and Mr. Clark, and therefore those allegations are denied. The EcoVest Parties deny the remaining allegations of Paragraph 165.

166. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 166 as they pertain to how the IRS “expend[s]” its “time and resources,” and therefore those allegations are denied. The EcoVest Parties deny the remaining allegations of Paragraph 166.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

171. To the extent these allegations are directed at the EcoVest Parties, they are denied. The EcoVest Parties state that they continue to manage real estate projects, which include options for conservation easements—and that they do so in full compliance with the law. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 171 regarding Ms. Zak, and therefore those allegations are denied. The EcoVest Parties deny the remaining allegations of Paragraph 171.

172. Paragraph 172 contains a legal assertion to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited Notice dated December 23, 2016, which speaks for itself.

173. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 173 as they pertain to Ms. Zak and Mr. Clark, and therefore those allegations are denied. The EcoVest Parties admit that EcoVest complied with the legal requirement to file Form 8918 for each real estate project in which it was involved. The EcoVest Parties deny the remaining allegations of Paragraph 173.

174. The EcoVest Parties are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 174 as they pertain to Ms. Zak and Mr. Clark, and therefore those allegations are denied. The EcoVest Parties admit that EcoVest continues to manage real estate projects, which include options for conservation easements, and state that they do so in full compliance with the law. The EcoVest Parties deny the remaining allegations of Paragraph 174.

**ANSWER TO COUNT I**  
**(Against All Defendants)**

175. The EcoVest Parties incorporate and restate by reference the foregoing responses to Paragraphs 1 through 174 of the Complaint, inclusive, as if they were fully set forth herein.

176. Paragraph 176 contains a legal assertion to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited statute, which speaks for itself.

177. Paragraph 177 contains a legal assertion to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited statute, which speaks for itself.

178. Paragraph 178 contains a legal assertion to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited statute, which speaks for itself.

179. Paragraph 179 contains a legal assertion to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited statute, which speaks for itself.

180. Denied.

181. Denied.

182. Denied.



183. Denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

**ANSWER TO COUNT II**  
**(Against Defendants Ms. Zak and Mr. Clark)**

189. Paragraph 189 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

190. Paragraph 190 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

191. Paragraph 191 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

192. Paragraph 192 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

193. Paragraph 193 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

194. Paragraph 194 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

195. Paragraph 195 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

196. Paragraph 196 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

197. Paragraph 197 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

198. Paragraph 198 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

199. Paragraph 199 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

200. Paragraph 200 contains allegations in support of a claim against only defendants other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

**ANSWER TO COUNT III**  
**(Against Defendant Mr. Clark)**

201. Paragraph 201 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

202. Paragraph 202 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

203. Paragraph 203 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

204. Paragraph 204 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

205. Paragraph 205 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

206. Paragraph 206 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

207. Paragraph 207 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

208. Paragraph 208 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

209. Paragraph 209 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

210. Paragraph 210 contains allegations in support of a claim against only a defendant other than the EcoVest Parties. Because the allegations do not relate to any claim against the EcoVest Parties, no response is required.

**ANSWER TO COUNT IV**  
**(Against All Defendants)**

211. The EcoVest Parties incorporate and restate by reference the foregoing responses to Paragraphs 1 through 210 of the Complaint, inclusive, as if they were fully set forth herein.

212. Paragraph 212 contains a legal assertion to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited statute, which speaks for itself.

213. Paragraph 213 contains legal assertions to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited statute, which speaks for itself.

214. Denied.

215. Denied.

216. Denied.

217. Denied.

218. Denied.

219. Denied.

220. Denied.

221. Denied.

222. Denied.

**ANSWER TO COUNT V**  
**(Against All Defendants)**

223. The EcoVest Parties incorporate and restate by reference the foregoing responses to paragraphs 1 through 222 of the Complaint, inclusive, as if they were fully set forth herein.

224. Paragraph 224 contains a legal assertion to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited statute, which speaks for itself.

225. Denied.

226. Denied.

227. Paragraph 227 contains a legal assertion to which no response is required. To the extent that a response is deemed required, the EcoVest Parties refer to the language of the cited statute, which speaks for itself.

228. All allegations of the Complaint not expressly admitted herein are denied.

**DEFENSES**

**FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted. As related to the EcoVest Parties, none of the allegations of fact, even if proven, would constitute a violation of 26 U.S.C. §§ 6700, 6701, 7402, 7407, or 7408.

**SECOND DEFENSE**

Plaintiff's claims are barred by the applicable statute of limitations.

**THIRD DEFENSE**

Plaintiff's claims are barred by the doctrine of laches.

**FOURTH DEFENSE**

Plaintiff's claims are barred under the doctrine of estoppel.

**FIFTH DEFENSE**

Plaintiff's claims are barred because the EcoVest Parties' actions were at all times justified and proper under applicable law.

**SIXTH DEFENSE**

Plaintiff's purported claim for relief seeking disgorgement of the EcoVest Parties' gross receipts and prejudgment interest would violate the Excessive Fines Clause of the Eighth Amendment of the United States Constitution.

**SEVENTH DEFENSE**

Plaintiff's claims are barred because Plaintiff and/or its attorneys lack the statutory authority to seek the relief that Plaintiff's Prayer for Relief purports to seek, including at least the request for disgorgement.

\* \* \*

Defendants reserve the right to assert, and hereby give notice that they intend to rely upon, any other defense that may become available or appear during discovery proceedings or otherwise in this case and hereby reserve the right to amend their Answer to assert any such defense.

**RELIEF SOUGHT**

In response to the “Relief Sought” contained in the unnumbered paragraph following paragraph 227 of the Complaint and in response to Plaintiff’s unnumbered headings throughout the Complaint, the EcoVest Parties deny that Plaintiff is entitled to any relief in this action and deny all liability and allegations of misconduct alleged in the “Relief Sought” and unnumbered headings.

WHEREFORE, the EcoVest Parties request that the Court set this matter for trial at the earliest available date and pray for the following relief against Plaintiff:

- a. That this Court find that the EcoVest Parties have not engaged in any conduct subject to injunction, disgorgement, or other penalty under 26 U.S.C. §§ 6700, 6701, 7402, 7407, or 7408;
- b. That this Court find that Plaintiff is not entitled to the injunctive or other relief it seeks under 26 U.S.C. §§ 7402, 7407, or 7408;
- c. That this Court render judgment in favor of the EcoVest Parties with respect to all counts and causes of action alleged against them in the



Complaint, and that this Court dismiss the Complaint in its entirety with prejudice as it relates to the EcoVest Parties;

- d. That this Court order that Plaintiff take nothing from the EcoVest Parties by reason of its Complaint;
- e. That this Court award the EcoVest Parties their costs and attorneys' fees;
- f. That this Court grant the EcoVest Parties such other relief as the Court deems appropriate.

Dated: February 20, 2019

Respectfully submitted,

ANDERSEN, TATE & CARR, P.C.

/s/ Thomas T. Tate

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Thomas T. Tate  
State Bar No. 698879  
Elizabeth L. Clack-Freeman  
Georgia Bar No. 126888

One Sugarloaf Centre  
1960 Satellite Blvd., Suite 4000  
Duluth, Georgia 30097  
Tel: (770) 822-0900  
Fax: (770) 822-9680  
Email: ttate@atclaw.com  
Email: lcfreeman@atclawfirm.com

Benjamin J. Razi (*pro hac vice* application submitted)  
Sean Akins (*pro hac vice* application forthcoming)  
Marianna F. Jackson (*pro hac vice* application forthcoming)  
Matthew V. Miller (*pro hac vice* application forthcoming)  
Nicholas Pastan (*pro hac vice* application forthcoming)  
COVINGTON & BURLING LLP  
850 Tenth St. NW  
Washington, DC 20001  
Tel.: (202) 662-6000  
Fax: (202) 662-6291  
Email: brazj@cov.com

*Attorneys for Defendants EcoVest Capital, Inc., Alan N. Solon, Robert M. McCullough, and Ralph J. Teal, Jr.*

\*I certify that this pleading has been prepared with one of the font and point selections approved by the Court in LR 5.1C.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 20, 2019, I caused a true and correct copy of the foregoing to be served on the following counsel for Plaintiff via the Court's electronic filing system:

Erin R. Hines, Esq.  
US Department of Justice  
P. O. Box 7238  
Ben Franklin Station  
Washington, DC 20004

Neeli Ben-David, Esq.  
Assistant U.S. Attorney  
Office of the United States Attorney  
Northern District of Georgia  
600 U.S. Courthouse  
75 Ted Turner Drive, SW, Suite 600  
Atlanta, Georgia 30303

ANDERSEN, TATE & CARR, P.C.

/s/ Thomas T. Tate

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Thomas T. Tate  
State Bar No. 698879  
Elizabeth L. Clack-Freeman  
Georgia Bar No. 126888  
*Attorneys for Defendants*  
*EcoVest Capital, Inc., Alan N.*  
*Solon, Robert M. McCullough and*  
*Ralph R. Teal, Jr.*

One Sugarloaf Centre  
1960 Satellite Blvd., Suite 4000  
Duluth, Georgia 30097  
Tel: (770) 822-0900  
Fax: (770) 822-9680  
Email: ttate@atclaw.com  
Email: lcfreeman@atclawfirm.com