

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RESOLUTE FP CANADA INC.

Plaintiff

- and -

RAINFOREST ALLIANCE, INC., RAINFOREST ALLIANCE CANADA,  
CHRISTINE KOROL and CHRIS WEDELES

Defendants

**STATEMENT OF CLAIM**

Notice of Action issued on May 6, 2014

1. The plaintiff's claim is for:
  - (a) A declaration that the defendants are in breach of their contractual obligations pursuant to the FSC Service Agreements, as defined below;
  - (b) A declaration that the defendants have breached the duty of care owed to the plaintiff;
  - (c) An interim, interlocutory and permanent injunction restraining the defendants, their agents, substitutes or any persons under the instruction of any of the aforesaid persons, directly or indirectly, from releasing, publishing, distributing, communicating or otherwise disseminating the Audit Reports, as defined below, or the details therein;

- (d) An Order requiring the defendants to fulfill their contractual obligation pursuant to the FSC Service Agreements, as defined below, to produce unbiased audit reports in accordance with the standards set by the Forest Stewardship Council (“**FSC**”);
- (e) Damages in the amount of \$400,000.00;
- (f) The costs of the action on a substantial indemnity basis; and
- (g) Such further and other relief as this Honourable Court may deem just.

### **The Parties**

2. Resolute FP Canada Inc. (“**Resolute**”) is a federally incorporated company with its head office in the city of Montreal in the Province of Québec. Resolute is a global leader in the forest products industry with a diverse range of products, including newsprint, commercial printing papers, market pulp and wood products. Critical to Resolute’s business model is that it maintain recognition as a company in good standing with leading independent forest conservation organizations.

3. As the result of a corporate reorganization caused by Companies’ Creditors Arrangement Act (“**CCAA**”) proceedings, Resolute has been assigned any contracts entered into by its predecessor corporations, including Abitibi Consolidated Inc. and Abitibi-Bowater Thunder Bay Woodlands (Bowater Canadian Forest Products Inc.).

4. The defendant, Rainforest Alliance, Inc., is a New York based organization that conducts forest management, chain-of-custody, controlled wood forest management and

controlled wood supplier certification evaluations (pre-assessments and assessments) and audits. Rainforest Alliance, Inc. is accredited by FSC to audit FSC certificates for compliance with certain FSC standards, and in particular, the FSC National Boreal Standard.

5. The defendant, Rainforest Alliance Canada, is a company incorporated pursuant to the laws of Canada. Rainforest Alliance Canada is an affiliated company with Rainforest Alliance, Inc. and performs the same functions of Rainforest Alliance, Inc. in Canada.

6. Hereinafter, Rainforest Alliance, Inc. and Rainforest Alliance Canada are collectively referred to as "Rainforest Alliance".

7. The defendant, Christine Korol, is an auditor employed by Rainforest Alliance as Associate Manager, Forest Management in Canada. As part of her duties, Ms. Korol conducts audits and assessments of FSC certifications on behalf of Rainforest Alliance.

8. The defendant, Chris Wedeles, is a wildlife biologist and an Associate Member of the Ontario Professional Foresters Association. Mr. Wedeles is retained by Rainforest Alliance as an independent contractor to conduct audits and assessments of FSC certificates.

### **Overview**

9. Resolute contracted with Rainforest Alliance to perform audits of two FSC certificates associated with tenures in Ontario's boreal forest. The contractual terms provided that Rainforest Alliance and its auditors would be qualified, independent and

unbiased, and that the audits to be conducted would be unbiased and performed in accordance with all FSC Standards, including the FSC National Boreal Standard.

10. The audits performed by Rainforest Alliance, through its auditors, Ms. Korol and Mr. Wedeles, did not conform to the FSC National Boreal Standard. Not only were the audits technically flawed, but they were procedurally unfair and contrary to the rules of fundamental justice.

11. In addition, following the audits, Resolute discovered that Mr. Wedeles, an auditor retained by Rainforest Alliance to audit Resolute's FSC certificates, is a supporter of Greenpeace Canada ("**Greenpeace**"), an organization with a long and well publicized history of opposing Resolute's operations. More specifically, Mr. Wedeles is a supporter of Greenpeace's current campaign that targets Resolute's operations in the boreal forest and seeks to revoke Resolute's FSC certificates. Mr. Wedeles's support of this campaign placed him in an irreconcilable conflict of interest such that he could not have acted as an auditor.

12. The defendants are liable for their failure to conduct unbiased audits in accordance with all FSC Standards.

***Resolute pursues FSC Certification***

13. As part of Resolute's commitment to sustainable forestry, all of the forests it manages are third-party certified to one or more internationally recognized sustainable forest management standards, including the FSC National Boreal Standard.

14. Greenpeace and other environmental non-governmental organizations (“**ENGOS**”) have actively promoted FSC certification as the standard that should be embraced by the market. FSC certification is very important to Resolute’s major customers and in many cases, Resolute’s customers will only purchase FSC certified products.

15. In pursuing FSC certification for the forests it manages, Resolute understood and expected that FSC certification would be assessed, granted and audited impartially, objectively and in accordance with all applicable FSC standards, requirements and guidelines.

***FSC standards, requirements and guidelines***

16. As an accredited FSC “Certification Body” (as designated by FSC), any audits conducted by Rainforest Alliance must be performed in accordance with the standards, requirements and guidelines established by FSC.

17. In particular, Rainforest Alliance is subject to the *General Requirements for FSC Accredited Certification Bodies* (the “**General Requirements**”), which outlines various requirements with which Rainforest Alliance must comply. The General Requirements prescribe that Rainforest Alliance must be impartial, objective and avoid conflicts of interest in carrying out its audits.

18. In addition, the General Requirements incorporate by reference international standard ISO/IEC Guide 65:1996 (E), which was superseded by the international standard ISO/IEC 17065:2012: Conformity Assessment – Requirements For Bodies

Certifying Products, Processes and Services (the “**ISO Assessment Standard**”) in 2012, prior to the audits in question.

19. The ISO Assessment Standard contains detailed information concerning the obligations of a Certification Body such as Rainforest Alliance, which include the responsibility for “the impartiality of [the certification body’s] certification activities” (s. 4.2.2 of the ISO Standard) and the obligation that “all certification body personnel (either internal or external) [...] who could influence the certification activities shall act impartially” (s.4.2.12 of the ISO Standard). The ISO Assessment Standard also includes a statement of the “Principles for product certification bodies and their certification activities”, which states, among other things:

#### **A.1 General**

A.1.1. The overall aim of certification is to give confidence to all interested parties that a product fulfills specified requirements. The value of certification is the degree of confidence and trust that is established by an impartial and competent demonstration of fulfilment of specified requirements by a third party. Parties that have an interest in certification include, but are not limited to the following:

a) the clients of the certification bodies;

[...]

#### **A.2 Impartiality**

A.2.1 It is necessary for certification bodies and their personnel to be impartial, and to be perceived as impartial, in order to give confidence in their activities and their outcomes.

A.2.2. Risks to impartiality include bias that may arise from the following:

[...]

c) advocacy (e.g. a certification body or its personnel acting in support of, or in opposition to, a given company which is at the same time its client);

20. All FSC standards and requirements, including those prescribed by the General Requirements and the ISO Assessment Standard, apply to any independent contractors retained by Rainforest Alliance to carry out its audits, such as Mr. Wedeles. Specifically, section 5.1 of the General Requirements states:

The certification body may subcontract (outsource) work related to certification to an external body or person. In such a case the certification body shall ensure that the subcontractor complies with the applicable provisions of this and other FSC standards and requirements relevant to evaluations or other technical activities, including all provisions concerning qualifications, experience, performance review, objectivity, impartiality and confidentiality.

***The National Boreal Standard***

21. In addition to the General Requirements and the ISO Assessment Standard, Rainforest Alliance is required to carry out its audits in the boreal forest in accordance with the principles set out in the FSC National Boreal Standard.

22. The FSC National Boreal Standard sets out 10 principles, each supported by several criteria that provide a method of measuring whether the principles have been met in practice.

23. The audits of Resolute's FSC certificates which were performed by the defendants, and which are discussed in detail below, relate, in particular, to Criterion 6.4 of the FSC National Boreal Standard. Criterion 6.4 states:

Representative samples of existing ecosystems within the landscape shall be protected in their natural state and recorded on maps, appropriate to the scale and intensity of operations and the uniqueness of the affected resources.

24. The Criterion of the FSC National Boreal Standard has subsections that are referred to therein as "Indicators". Each Indicator is informed by "verifiers". The following

Indicators, and their associated verifiers, form part of Criterion 6.4 and were areas of focus in the recent audits of Resolute's FSC certificates:

- 6.4.1 The applicant completes (or makes use of) a peer-reviewed scientific gap analysis to address the need for protected areas in the eco-region(s) and ecodistrict(s) in which the forest is situated. The applicant uses the gap analysis and elements including representation, connectivity, intactness, age of the forest, rare ecosystems and other HCVF attributes to identify the location and extent of additional protected areas.

Verifiers:

- Terms of reference for gap analysis.
- Completed gap analysis subjected to peer review.
- Evidence that the applicant is supportive of and working towards the development of a protected area network at a scale larger than the average sized, individual management unit.

**Intent, 6.4.1**

This indicator may be achieved using a gap analysis methodology developed by the World Wildlife Fund, or an equivalent methodology.

- 6.4.2 The applicant designs, identifies and contributes candidate protected areas that make a maximum contribution to filling gaps in the protected areas system (per 6.4.1) based on the relative responsibility of the applicant. The level of the applicant's responsibility is determined by:

- The level of representation of enduring features within the forest; and
- The regional significance of the conservation values (e.g., quality or rarity).

Verifiers:

- Contributions of protected areas.
- Records and analysis assessing potential contributions of protected areas.
- Gap analysis (as per 6.4.1).

- 6.4.3 The applicant works cooperatively with interested parties (e.g., Environmental-NGOs, Indigenous People) in the analysis of gaps and candidate protected areas.

Verifiers:

- Gap analysis methodology.
- Interviews with preparers of the gap analysis.
- Interviews with representatives of interested parties.



- Interviews with those involved in protected areas selection process.

6.4.4 Results of the candidate protected area identification process described in indicator 6.4.2 are mapped.

6.4.5 The applicant has documentation demonstrating support by interested parties (e.g. Environmental NGOs and Indigenous Peoples)

Verifiers:

- Letters of support from interested parties
- Minutes of meetings with interested parties

6.4.6 Forest operations including harvesting, silviculture and road building are not undertaken in protected areas or candidate protected areas.

Verifiers:

- Operational plans, including access construction.
- Maps of actual harvest areas, silviculture operations, and access.
- Operations compliance records.
- Field inspection of candidate or designated protected areas.

6.4.7 The applicant is working within their sphere of influence to move candidate protected areas to full regulated protection as soon as possible.

Verifiers:

- Interviews with relevant staff of applicant.\
- Interviews with staff of relevant government agency.
- Review of records and files.

***Resolute engages Rainforest Alliance to perform audits in accordance with FSC standards***

25. In March 2009 and October 2010, Resolute (through its predecessors, Abitibi Consolidated Inc. and Abitibi-Bowater Thunder Bay Woodlands (Bowater Canadian Forest Products Inc.) entered into agreements with Rainforest Alliance (the “**FSC Service Agreements**”). Pursuant to the FSC Service Agreements, Rainforest Alliance was to provide periodic audits of Resolute’s operations in the Caribou Forest and the Black Spruce-Dog River Matawin Forest in Ontario in order to assess compliance with FSC

standards. The initial audits were performed to determine whether to grant FSC certificates to Resolute for these forests. Subsequent audits were performed to determine whether Resolute's FSC certificates continued to be compliant, and should be upheld.

26. The FSC Service Agreements provide that Rainforest Alliance is subject to FSC accreditation requirements (which, as stated above, include the General Requirements and ISO Assessment Standard) and that FSC standards, requirements and guidelines will apply to the audits.

27. Prior to entering into the FSC Service Agreements, Rainforest Alliance sent two proposals to Resolute which made certain representations to Resolute concerning the scope of the proposed FSC audits (the "**Proposals**"). Notably, the proposals represented to Resolute that the FSC audits would include all the fundamental elements and procedures required to meet the FSC policy and that audits would comply with the FSC National Boreal Standard.

28. The Proposals are explicitly referred to in the FSC Services Agreements. The representations and covenants in the Proposals are incorporated by reference into the FSC Service Agreements or, in the alternative, they constitute implied terms of the FSC Service Agreements.

29. In addition, the FSC Service Agreements contain an implied term that the audits would be conducted fairly and in accordance with principles of fundamental justice.

30. Pursuant to the FSC Service Agreements, Resolute obtained FSC certificates for the Caribou Forest and the Black Spruce-Dog River Matawin Forest in 2009 and 2011 respectively.

***Subsequent audits***

31. After being granted FSC certification, Rainforest Alliance engaged in annual audits of Resolute's certificates for the Caribou Forest and the Black Spruce-Dog River Matawin Forest.

32. In the period from May 2010 to May 2013, Resolute, a founding member and signatory to the Canadian Boreal Forest Agreement ("**CBFA**") worked collaboratively with ENGO signatories to the CBFA (the "**ENGO Signatories**") to develop a gap analysis that could concurrently fulfil FSC requirements and the goals of CBFA.

33. A gap analysis is used to ensure that representative samples of existing ecosystems within the landscape are protected in their natural state. Ecological gap analysis is used to compare a region's distribution of biodiversity to the distribution of existing protected areas, in order to identify under-represented ecological features. By identifying shortfalls in ecological representation, gap analysis helps to identify high-priority areas for conservation, such as those with low levels of existing protection. The object of the gap analysis in the FSC National Boreal Standard is to address the need for protected areas in the eco-region(s) and ecodistrict(s) in which the forest is situated.

34. Greenpeace, one of the ENGO Signatories to the CBFA, pulled out of CBFA in December 2012, at which point it commenced a public campaign targeting Resolute.

Shortly thereafter, on January 11, 2013, Greenpeace made a complaint to Rainforest Alliance concerning Resolute's FSC certifications, which led to a Complaint Investigation Audit by Rainforest Alliance in April 2013. This Complaint Investigation Audit resulted in the issuance of a minor non-conformance report ("**NCR**") by Rainforest Alliance related to Indicator 6.4.5 of the FSC National Boreal Standard. More particularly, the Minor NCR, which stemmed directly from Greenpeace's complaint, related to Greenpeace's lack of support for Resolute's proposed protected areas plan for the Caribou Forest.

35. Following a breakdown of the CBFA Northwestern Ontario protected areas process in May, 2013, the ENGO Signatories withdrew their support for Resolute's proposed protected areas plan and stated that they would no longer work collaboratively with Resolute. In subsequent audits in 2013, Rainforest Alliance concluded that, without the support of the ENGO Signatories (which were deemed by Rainforest Alliance to be "interested parties" for the purposes of its FSC audits), Resolute had not demonstrated compliance with Indicator 6.4.5 of the FSC National Boreal Standard, which requires "documentation demonstrating support by interested parties".

36. Previously, during Rainforest Alliance's annual audit of Resolute's FSC certificate for the Caribou Forest in October-November, 2013, Rainforest Alliance reviewed the previously issued Minor NCR and decided that further evidence was required to satisfy Indicator 6.4.5. This finding was the direct result of the unwillingness of Greenpeace and the other ENGO Signatories to express support for the CBFA gap analysis which they had developed with Resolute. This finding resulted in the escalation of the previously issued Minor NCR to a Major NCR.

37. At or around the same time, an audit was conducted to address a Major NCR on the Black Spruce–Dog River Matawin Forest. Again, the ENGO Signatories withheld their expression of support for the CBFA gap analysis work and as a result, Resolute’s certificate for the Black Spruce-Dog River Matawin Forest was temporarily suspended.

38. The perceived issues raised by Rainforest Alliance in these two fall 2013 audits did not involve Resolute’s on-the-ground practices or its compliance with any laws or regulations. As stated, in both cases, the issues related to the unwillingness of the ENGO Signatories to provide documented support for the CBFA gap analysis work and the candidate site submission to the Ministry of Natural Resources (“**MNR**”) that Resolute had previously presented (and Rainforest Alliance had accepted) to fulfil the gap analysis requirements of Criterion 6.4 of the FSC National Boreal Standard.

39. Resolute had great concerns with Rainforest Alliance’s conclusions in the audits of October-November 2013. Nevertheless, Resolute sought to work collaboratively with Rainforest Alliance to resolve the perceived issues. Resolute sought direction from Rainforest Alliance to better understand the concerns expressed and to clarify what was required by Rainforest Alliance to certify Resolute’s compliance with Criterion 6.4 of the National Boreal Standard.

40. In response to Resolute’s inquiries, Krista West, Manager for Rainforest Alliance, communicated to Resolute that, if the ENGO Signatories were unwilling to express documented support for Resolute’s protected areas work, the company could comply with the FSC National Boreal Standard by providing documented support from “other stakeholders”. This statement is consistent with the wording of Indicator 6.4.5: “The

applicant has documentation demonstrating support by interested parties (e.g. Environmental NGOs and Indigenous Peoples)”. The FSC National Boreal Standard does not say that support from any specific interested party, or all interested parties, is required. In fact, if support from any specific interested parties (or all interested parties) was a requirement, the effect would be to give a veto to such parties on FSC certification, which is not a reasonable interpretation of the FSC National Boreal Standard.

41. Given that the ENGO Signatories had stated that they would not provide support for the gap analysis developed in the context of the CBFA and the fact that the CBFA gap analysis work that had been done was highly confidential and could not be shared publically without approval of ENGO Signatories (which was very unlikely to be forthcoming), Resolute undertook to completely redo its gap analysis work for the next compliance audit. Resolute decided to do its gap analysis work in a manner that would allow Resolute to seek the input, participation and support of other interested parties, including local communities and First Nations, which Resolute understood from Rainforest Alliance would satisfy all elements of Criterion 6.4.

42. As a result, Resolute worked diligently and in good faith to address the perceived issues that had been raised by Rainforest Alliance in its previous audits. Resolute’s efforts were intended to ensure that its FSC certificate for the Black Spruce-Dog River Matawin Forest would be reinstated and that its FSC certificate for the Caribou Forest would be upheld and found to be in good standing, even in the absence of support from the ENGO Signatories. In addition, these efforts were intended to allow for new FSC certification of the English River Forest, which was to be added to the scope of Resolute’s FSC certificate for the Caribou Forest.

43. Following Rainforest Alliance's verbal confirmation of the requirements of Criterion 6.4, and Resolute's review of the steps taken by other FSC certificate holders to achieve a finding of conformance with Criterion 6.4, such that Resolute knew that its course of conduct was consistent with that of other certificate holders, Resolute was confident that the next Rainforest Alliance audits would result in findings of conformance with the FSC National Boreal Standard. In particular, but without limitation, Resolute took the following steps to address the perceived issues raised by Rainforest Alliance in the previous audits:

- (a) Resolute commissioned independent scientists Dr. Ulf Runesson (Dean of Natural Resource Management Program Lakehead University) and Dr. Ashley Thomson (Thomson Consulting) to
  - (i) complete a gap analysis based on MNR GapTool outputs. The use of the MNR GapTool for the purpose of identifying gaps in ecological representation (as per 6.4.1 of the FSC standard) has been a long-standing accepted practice for certificate holders in Ontario; and
  - (ii) carry out an analysis with the Marxan Tool to optimize the selection of under-represented Landscape/Vegetation (LV) types within each ecodistrict. This process provided an objective way to assign LV types across the ecodistrict.
- (b) Resolute used the High Conservation Value Forest (HCVF) Assessment to identify other conservation values in each of its four forests being audited (Caribou, English River, Dog River-Matawin, and Black Spruce Forests) as

well as sites that were identified through a previous protected area process (Room to Grow Process for the Thunder Bay Sawmill) that involved Resolute (predecessor company), the Partnership for Public Lands (an ENGO coalition) and the Ministry of Natural Resources.

- (c) Resolute created a candidate protected area site submission for the MNR that included under-represented ecosystems (LV types) identified through the gap analysis assigned to Resolute tenures through the Marxan analysis in combination with High Conservation Values identified through the HCVF assessment, and candidate sites associated with the Room to Grow Process for the Thunder Bay Sawmill.
- (d) Resolute sought two independent peer reviews of the gap analysis, the Marxan analysis, and the candidate protected areas sites submitted to the Ministry of Natural Resources that were prepared by Dr. Ulf Runesson and Dr. Ashley Thomson. The peer reviews were conducted by Dr. Kandyd Szuba and Dr. Rob Foster, both recognized experts in this field. The peer reviews confirmed that, with the documents prepared by Dr. Ulf Runesson and Dr. Ashley Thomson, Resolute had satisfied the requirements of Indicators 6.4.1 and 6.4.2 of the FSC National Boreal Standard.
- (e) Resolute sought a review of the gap analysis and the candidate site submission from the MNR, which confirmed that Resolute's gap analysis was consistent with the MNR's protected area planning methodology, and



that Resolute had made a maximum contribution in filling gaps in ecological representation of the ecodistricts that overlap Resolute tenures.

- (f) Resolute augmented past efforts at consultation with interested parties through an extensive outreach program on the gap analysis and the candidate site submission. The interested parties consulted by Resolute to fulfill the requirements of Indicators 6.4.3 and 6.4.5 of the FSC National Boreal Standard included First Nations, local communities, and a wide variety of other stakeholder groups. As a result of Resolute's extraordinary communications efforts seeking participation, cooperation and support from these "interested parties", Resolute was able to provide the auditors with approximately 30 letters of support for Resolute's gap analysis and the candidate site submission. This approach to consultation was pursued at the recommendation of Rainforest Alliance who had previously confirmed that it would meet the requirements of the FSC National Boreal Standard, notwithstanding the lack of cooperation from the ENGO Signatories.

### ***The April 2014 Audits***

44. Finally, in April 2014, Rainforest Alliance engaged in an audit of Resolute's FSC certificate for the Black Spruce-Dog River Matawin Forest to determine whether the prior perceived finding of non-conformance had been rectified and if the FSC certificate should be reinstated. Concurrently, Rainforest Alliance engaged in an audit of Resolute's FSC certificate for the Caribou Forest, which was not, at that time, suspended, to consider the Major NCR that had been previously found in respect of Indicator 6.4.5.

45. Rainforest Alliance engaged Ms. Korol, an employee, and Mr. Wedeles, an independent contractor, to perform the audits. Ms. Korol and Mr. Wedeles were also engaged by Rainforest Alliance to prepare two reports summarizing the findings of the audit (the “**Audit Reports**”). In performing the audits and preparing the Audit Reports, Ms. Korol and Mr. Wedeles were required to comply with all FSC policies and procedures, as aforesaid, and in particular, perform the audits in accordance with the FSC National Boreal Standard.

46. Draft versions of the Audit Reports were provided to Resolute on April 22, 2014 which concluded that Resolute was non-compliant with four of the seven indicators of Criterion 6.4 of the FSC National Boreal Standard in both the Caribou Forest and Black Spruce-Dog River Matawin Forest. Contrary to standard audit practice, during the audit, no indication was provided to Resolute by the auditors that they believed there were gaps in evidence that might warrant a finding of non-conformity. In the result, and particularly given the substantial diligent good-faith efforts by Resolute’s foresters to ensure that any issues raised by Rainforest Alliance in previous audits were addressed, the conclusions of the Audit Reports came as a complete shock to Resolute.

47. Following receipt of the draft Audit Reports, Resolute requested a meeting with Rainforest Alliance to address the perceived deficiencies expressed therein. Resolute also provided, within an extremely short time frame, very substantive (if preliminary) comments on the Audit Reports and requested that Rainforest Alliance agree not to release the Audit Reports while the issues were being discussed. Rainforest Alliance, however, did not respond to Resolute’s comments on the draft Audit Reports or its

request not to release the Audit Reports. Moreover, Rainforest Alliance refused Resolute's request to meet prior to the publication of the Audit Reports.

48. If publically released, the Audit Reports will have the effect of suspending Resolute's FSC certificate in the Caribou Forest and prevent the reinstatement of the FSC certificate for the Black Spruce-Dog River Matawin Forest.

49. Contrary to the findings expressed in the Audit Reports, Resolute is in full compliance with the FSC National Boreal Standard in the Caribou Forest and Black Spruce-Dog River Matawin Forest. Resolute pleads that the incorrect findings in the Audit Reports were caused by the misapplication of FSC principles by Ms. Korol, Mr. Wedeles and Rainforest Alliance, and constitute a breach of the FSC Service Agreements.

***Misapplication of FSC principles***

50. The audits performed by the defendants contain numerous misapplications of the FSC National Boreal Standard. These misapplications relate to or result in two key errors:

- (a) The incorrect finding, in relation to Indicators 6.4.1 and 6.4.2, that the gap analysis conducted by Resolute failed to conform to the requirements of the FSC National Boreal Standard; and
- (b) The incorrect finding, in relation to Indicators 6.4.3 and 6.4.5, that Resolute failed to consult with and obtain support from interested parties.

***Gap analysis was in accordance with Indicator 6.4.1***

51. The auditors misapplied FSC principles (and in particular, Indicator 6.4.1 of the FSC National Boreal Standard), leading to the incorrect finding that the gap analysis conducted by Resolute does not conform to the requirements of the FSC National Boreal Standard.

52. As part of the audits, Resolute provided extensive documentation fulfilling the requirements of Indicator 6.4.1 of the FSC National Boreal Standard (and its associated verifiers). This documentation included:

- (a) Gap analysis and supporting documentation prepared by independent experts, Dr. U.T. Runesson (Associate Professor and Dean of Natural Resource Management at Lakehead University) and Dr. Ashley Thomson (Thomson Consulting);
- (b) Terms of Reference for ecological gap analysis of Black Spruce, Caribou, Dog River Matawin and English River Forests;
- (c) A peer review report from Dr. Kandyd Szuba, an independent expert, confirming that the gap analysis and Resolute's conduct was in conformity with Criterion 6.4 of the FSC National Boreal Standard;
- (d) A second peer review report from Dr. Robert Foster, an independent expert, supporting Resolute's approach to the gap analysis and thereby confirming that Resolute's conduct was in conformity with Criterion 6.4 of the FSC National Boreal Standard; and

- (e) A letter of support from the MNR acknowledging that the approach used by Resolute to identify gaps in ecological representation was consistent with government requirements. After the MNR reviewed the gap analysis and the candidate protected areas site submission, it concluded that Resolute had made a maximum contribution to filling gaps in representation on the ecodistricts that overlap Resolute tenures.
- (f) Evidence of the long legacy of Resolute's work to create protected areas, including the Wabakimi Provincial Park, to which Resolute contributed 515,738 hectares.

53. A second independent peer review was not required by the FSC National Boreal Standard; however, Resolute went beyond the minimum requirements in a transparent effort to ensure the gap analysis was of high quality, defensible and met FSC requirements.

54. As required by Indicator 6.4.1 of the FSC National Boreal Standard, Resolute used the gap analysis and elements including representation, connectivity, intactness, age of the forest, rare ecosystems and other High Conservation Value Forest attributes to identify the location and extent of additional protected areas.

55. The auditors, Mr. Wedeles and Ms. Korol, disregarded the conclusions of two independent Ph.D. forestry experts who had produced the gap analysis. In addition, Mr. Wedeles and Ms. Korol chose to disregard the independent Ph.D. peer reviewers' explicit expressions of support for the gap analysis. Further, Mr. Wedeles and Ms. Korol ignored

substantial evidence of the long legacy of Resolute's work to create protected areas, which was documented in the voluminous evidence package submitted by Resolute.

56. In concluding that Resolute's certificates did not conform to the requirements of Indicator 6.4.1 of the FSC National Boreal Standard, Rainforest Alliance breached its contractual obligation to conduct the audit in accordance with the National Boreal Standard.

***Candidate protected areas are in accordance with Indicator 6.4.2***

57. As required by Indicator 6.4.2, Resolute designated, identified and contributed candidate protected areas that make a maximum contribution to filling gaps in the protected areas system.

58. In fact, the MNR reviewed Resolute's analysis package and determined that the areas identified for protection would maximize contributions needed to enhance representation by filling remaining gaps within the extent of Resolute's tenures.

59. Notwithstanding the above, and the MNR's explicit finding that Resolute made a maximum contribution, the auditors wrongly found that the "gap analysis is considered incomplete because insufficient attention was paid to addressing landscape scale considerations such as connectivity, intactness and age of forest." In fact, and as explained above, Resolute's gap analysis and candidate site submission to the MNR did address the connectivity, intactness and age of forest.

60. This incorrect finding was the premise that supported the auditors' incorrect conclusion that "there was no basis upon which to assess whether maximum contribution

had been made.” In fact, representation can and is regularly assessed with the MNR’s GapTool, which was provided to the auditors by Resolute, and on numerous occasions, the use of the MNR GapTool has been deemed to be acceptable for FSC certification in the boreal forest region.

61. The auditors made several other errors in considering Resolute’s compliance with Indicator 6.4.2. For example, in discussing the existing protected areas, the auditors ignored Resolute’s contribution of 515,738 hectares to the Wabakimi Park, Ontario’s second largest park. This omission resulted in the mischaracterization of the existing network of protected areas, which was considered by the auditors in this Indicator.

62. In fact, the auditors failed to recognize that Resolute contributed more of its tenures to the existing protected areas network in Ontario than any other forest products company. Further, the candidate sites proposed by Resolute as part of the audits exceed contributions of any other FSC certificate holder in the province. In this regard, if Resolute was assessed on the same standard as other FSC certificate holders, a finding of compliance would have had to have been made.

63. The auditors’ errors and misapplication of Indicator 6.4.2 of the FSC National Boreal Standard in this instance resulted in a breach by Rainforest Alliance of the FSC Service Agreements.

***Consultation was in accordance with Indicators 6.4.3 and 6.4.5***

64. Resolute had meaningful consultation with and provided numerous support letters from interested parties concerning Resolute’s gap analysis methodology and its

submissions to the MNR concerning the proposed protected areas. Resolute thereby satisfied its obligation to work cooperatively with and demonstrate support from interested parties, as required by Indicators 6.4.3 and 6.4.5 respectively.

65. These letters of support came from the Municipality of Ignace, the United Steelworkers Union, the Northwestern Fur Trappers Association Inc., the Rainy Lake Tribal Council and many others. Resolute also provided correspondence with ENGOs such as Ontario Nature, David Suzuki Foundation, Forest Ethics and Wildlands League concerning its gap analysis.

66. As a result, Mr. Wedeles and Ms. Korol were forced to recognize in their draft Audit Reports that “Resolute communicated with, and sought support from a large number of potentially interested parties [...]” and that “[t]here was a clear tone supporting Resolute’s efforts in much, but not all, of the correspondence provided [...]”

67. Notwithstanding the above, the auditors incorrectly concluded that Resolute had not met the Indicator for consultation concerning the gap analysis (set out in Indicator 6.4.3 of the FSC National Boreal Standard). The auditors state that “there is no indication of meaningful involvement of either the newly-engaged stakeholders or the previously involved interested parties in the analysis of gaps and candidate protected areas as is required by the indicator”.

68. The auditors’ finding is incorrect. First, Indicator 6.4.3 of the FSC National Boreal Standard does not require consultation with every “interested party” nor any specific “interested party”. Second, as demonstrated by the evidence submitted by Resolute to the auditors, Resolute has a long established and well-recognized history of working



cooperatively with interested parties on various protected areas initiatives. This history was noted in past audit reports and the reports of the peer-review experts, but excluded from the current audit.

69. Resolute met the requirements of Indicator 6.4.3 of the FSC National Boreal Standard and the auditors' finding to the contrary is a breach by Rainforest Alliance of its obligation to conduct an audit in accordance with FSC standards.

70. The incorrect application of Indicator 6.4.3 of the FSC National Boreal Standard directly led to the incorrect application of Indicator 6.4.5. In particular, the auditors wrongly concluded that "because 6.4.3 concludes that there was no meaningful involvement of the interested parties in the analysis of gaps, 6.4.5 cannot be met either".

71. Not only is this conclusion based on an incorrect premise (that Resolute failed to comply with Indicator 6.4.3), but it is also based on an interpretation statement issued by FSC Canada that was not released until April 16, 2014, which was many days after the audit period had ended (the "**Interpretation Statement**").

72. The Interpretation Statement was issued by FSC Canada following a request submitted by Rainforest Alliance in January 2014 to the FSC Canada, on which Resolute was permitted to comment. In its request, Rainforest Alliance provided its own interpretation of FSC National Boreal Standard Indicator 6.4.5, which stated:

1. RA's interpretation is that an interested party in the context of 6.4.5 is an individual or organization who possess the experience and expertise to meaningfully comment on the gap analysis process as described in 6.4.1 and 6.4.2.

2. RA's interpretation is that there needs to be documented support from at least one interested party (as defined in 1 above).
3. RA's interpretation is that while it is ideal that the interested parties involved in the processes described in 6.4.1 to 6.4.4 provide documented support, it is not essential.
4. While RA strongly believes that a single party shouldn't have the ability to 'veto' an applicant's chance at obtaining an FSC certificate, it is RA's interpretation that the complete absence of documented support by interested parties is not an acceptable option for conformance to indicator 6.4.5.

73. At the time of the audits at issue, the foregoing interpretation from Rainforest Alliance was the only information available to Resolute concerning the proper interpretation of Indicator 6.4.5. This interpretation had, moreover, been verbally confirmed by Rainforest Alliance on a number of occasions. Applying the interpretation of Rainforest Alliance cited above, the numerous examples of documented support from interested parties that were submitted to Rainforest Alliance's auditors by Resolute was unquestionably sufficient to meet the requirements of Indicator 6.4.5, even if such supporters are considered to have not been involved in the processes described in 6.4.1 to 6.4.4 (which is not admitted by Resolute).

74. It was in its Interpretation Statement of April 16, 2014 that, for the first time, FSC Canada instructs that it is the intent that the evidence of support required by Indicator 6.4.5 be received *from those who have been involved in the gap analysis and candidate protected areas process*. This is in direct contradiction to what Rainforest Alliance had previously told Resolute that it understood to be the case.

75. As a result, the requirement that Resolute produce evidence of support from interested parties *who were consulted in the development of the gap analysis* did not

arise until weeks *after* Resolute's deadline to provide such evidence to Rainforest Alliance's auditors (let alone solicit it) had passed.

76. The auditors' application *ex post facto* of the interpretation of Indicator 6.4.5 to a completed audit is not only procedurally unfair and contrary to the rules of fundamental justice (as further described below), but it amplified the problem caused by the auditors' incorrect application of Indicator 6.4.3. The auditors' failure to properly apply Indicators 6.4.3 and 6.4.5 constitutes a breach of the FSC Service Agreements by Rainforest Alliance.

***Breach of obligation to be impartial, objective and avoid conflicts of interest in carrying out its audits***

77. Following the audits, Resolute learned that Mr. Wedeles is a supporter of Greenpeace Canada, an ENGO with a long and well publicized history of opposing Resolute's operations and, in particular, in seeking the suspension of Resolute's FSC certificates. In fact, Mr. Wedeles is a supporter of Greenpeace Canada's current campaign that specifically targets Resolute's operations in the boreal forest, which includes the Caribou Forest and Black Spruce-Dog River Matawin Forest.

78. Mr. Wedeles' support of Greenpeace's campaign against Resolute places him in a conflict of interest and is a breach by Rainforest Alliance of the express and implied terms of the FSC Service Agreements that Rainforest Alliance, and its auditors, would be qualified, independent and unbiased.

79. In coming to his conclusions, Mr. Wedeles unduly relied on criticisms raised by certain ENGOs including Greenpeace, when their views should have been looked at with

scepticism, particularly because Greenpeace has been actively engaged in an aggressive campaign against Resolute. Mr. Wedeles' support of the Greenpeace campaign made it impossible to consider such views with scepticism or impartiality.

***Procedural improprieties and unfair playing field***

80. In addition to the misapplication of FSC principles and the improper involvement of Mr. Wedeles in the audits, as described above, the audits were fundamentally flawed in several respects:

- (a) The auditors failed to apply the FSC National Boreal Standard consistently and instead subjected Resolute to a higher level of scrutiny than other FSC certificate holders;
- (b) The auditors accepted and integrated criticisms from ENGOs, such as Greenpeace, into the Audit Reports, and in doing so, created a new, elevated, audit standard that went beyond the requirements of the FSC National Boreal Standard;
- (c) The auditors did not share all of the criticisms from ENGOs with Resolute and, in doing so, deprived Resolute of the opportunity to respond;
- (d) The auditors applied the newly released Interpretation Statement to a completed audit which entirely deprived Resolute of an opportunity to tailor evidence to the new interpretation, or to understand or rebut the interpretation; and

- (e) Contrary to standard audit practice, the audit lacked transparency in that Resolute was given no forewarning that the auditors perceived there to be a deficiency in the evidence, and was provided no opportunity to rebut such a conclusion.

81. As a result of these fundamental flaws, the audits were performed unfairly and not in accordance with the rules of fundamental justice. In the result, Rainforest Alliance breached the express or implied terms of the FSC Service Agreements which required that the Audits be performed fairly and in accordance with the rules of fundamental justice.

***Personal Liability of Ms. Korol and Mr. Wedeles***

82. Ms. Korol and Mr. Wedeles owed a duty of care to Resolute to carry out the FSC audits in accordance with FSC principles, without bias and in accordance with the principles of fundamental justice. Resolute reasonably relied on Ms. Korol and Mr. Wedeles to do so. By failing to properly discharge the duty they owed to Resolute in the conduct of the audits, the particulars of which are set out in paragraphs 44-81 above, both Ms. Korol and Mr. Wedeles breached the duty of care which they owed to Resolute, as a result of which Resolute has suffered damages by reason of the continued suspension of its certificate for Black Spruce-Dog River Matawa Forest and the cloud over the status of Caribou Forest. Consequently, Ms. Korol and Mr. Wedeles are personally liable to Resolute.

***Vicarious liability of Rainforest Alliance***

83. As stated, at the material times that the audits in issue were conducted, Ms. Korol was an employee, and Mr. Wedeles was an engaged independent contractor, of Rainforest Alliance. As such, Rainforest Alliance bears responsibility in law for the manner in which they conducted the audits. Rainforest Alliance is therefore vicariously liable for the acts and omissions of Ms. Korol and Mr. Wedeles in breach of their duty of care in respect of the conduct of the audits as set out above.

***Irreparable harm***

84. Rainforest Alliance advised Resolute that it intended to make the results of the Audit Reports and suspension of Resolute's FSC certificates public on Thursday, May 8, 2014.

85. FSC certification is of critical importance to Resolute's reputation and business relationships. Resolute will suffer reputational damage if Rainforest Alliance's Audit Reports are released. These damages will be impossible to quantify and fully rectify and, thus, publication of the Audit Reports would cause irreparable harm to Resolute.

86. Resolute, in addition, has suffered damages attributable to the costs and expenses it has incurred in the FSC audit process conducted by Rainforest Alliance, which are now thrown away due to the breach of the FSC Service Agreements.

**Service Outside of Ontario**

87. Service of this Statement of Claim on Rainforest Alliance, Inc., outside of Ontario is permitted without leave. Resolute pleads and relies on Rules 17.02(f)(iv), (i), (o) and (p) of the *Rules of Civil Procedure*, RRO 1990, Reg 194.

88. Resolute proposes that this action be tried in the City of Thunder Bay.

June 5, 2014

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Defendants

Court File No. CV-2014-171

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
THUNDER BAY

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**STATEMENT OF CLAIM**

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