

2013 WL 7172666 (Fla.Cir.Ct.) (Trial Pleading)  
Circuit Court of Florida.  
Seventeenth Judicial Circuit  
Broward County

David VOGEL and Ilana Vogel, Plaintiffs,

v.

Rachel KRAUS, Bahaaeldien Moustafa Waziry, Barbara Crowe, Richard Behar,  
Josephine Shamam, Leonard Tatarsky, Christine Lorber, Anna Behar, Paula  
Waziry, Judi Lee Stein, and L'etoile Homeowners' Association, Inc., Defendants.

No. 13027808.  
December 21, 2013.

Division: 09

**Complaint**

The Law Offices of Ryan D. Gesten, P.A., Attorneys for Plaintiffs David Vogel and Ilana Vogel, [Ryan D. Gesten](mailto:Ryan.D.Gesten@GestenLaw.com), Esq., [Ryan@GestenLaw.com](mailto:Ryan@GestenLaw.com), Florida Bar Number: 240760, [David M. Vogel](mailto:David.M.Vogel@GestenLaw.com), Esq., [David@GestenLaw.com](mailto:David@GestenLaw.com), Florida Bar Number: 151180, 6824 Griffin Road, Davie, Florida 33314, Phone: (954) 791-1345/ (888) 791-1345, Facsimile: (954) 791-1688, [www.GestenLaw.com](http://www.GestenLaw.com).

Plaintiffs, DAVID VOGEL and ILANA VOGEL sue Defendants RACHEL KRAUS, BAHAAELDIEN MOUSTAFA WAZIRY, BARBARA CROWE, RICHARD BEHAR, JOSEPHINE SHAMAM, LEONARD TATARSKY, CHRISTINE LORBER, ANNA BEHAR, PAULA WAZIRY, JUDI LEE STEIN, and L'ETOILE HOMEOWNERS' ASSOCIATION, INC., and hereby allege as follows:

**JURISDICTION AND VENUE**

1. This is an action for specific performance and damages in which the amount in controversy exceeds Fifteen Thousand Dollars (\$15,000), exclusive of costs, interest and attorney's fees.
2. At all material times, Plaintiffs DAVID VOGEL and ILANA VOGEL were, and remain, adult residents of Broward County, Florida, and are otherwise sui juris.
3. At all material times, Defendant RACHEL KRAUS (hereinafter, "KRAUS") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
4. At all material times, Defendant BAHAAELDIEN MOUSTAFA WAZIRY (hereinafter, "B. WAZIRY") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
5. At all material times, Defendant BARBARA CROWE (hereinafter, "CROWE") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
6. At all material times, Defendant RICHARD BEHAR (hereinafter, "R. BEHAR") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.

7. At all material times, Defendant JOSEPHINE SHAMAM (hereinafter, "SHAMAM") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
8. At all material times, Defendant LEONARD TATARSKY (hereinafter, "TATARSKY") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
9. At all material times, Defendant CHRISTINE LORBER (hereinafter, "LORBER") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
10. At all material times, Defendant ANNA BEHAR (hereinafter, "A. BEHAR") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
11. At all material times, Defendant PAULA WAZIRY (hereinafter, "P. WAZIRY") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
12. At all material times, Defendant JUDI LEE STEIN (hereinafter, "STEIN") was, and remains, an adult resident of Broward County, Florida, and is otherwise sui juris.
13. Defendant, L'ETOILE HOMEOWNERS' ASSOCIATION, INC. (the "HOA") is a Florida corporation with its principal place of business in, and located in Broward County, Florida.
14. Venue is proper in this county, as all individual parties reside in Broward County, Florida, the HOA's principal office is located in Broward County, Florida, and the events giving rise to this action occurred in Broward County, Florida.
15. All conditions precedent to filing this action have been met, excused, or waived.

#### **STATEMENT OF FACTS AND CHRONOLOGY OF CASE**

16. Plaintiffs are owners of their residence located at 3845 Amalfi Drive in the L'Etoile community in Hollywood, Broward County, Florida, and they have been L'Etoile residents since March, 2005. From March, 2005 through December, 2012, for seven and a half years, Plaintiffs and their then infant children resided peacefully and harmoniously in the L'Etoile community without incident.

#### **July. 2012 - January. 2013 - Attempt to Amend HOA's Declaration of Covenants**

17. In or around July, 2012, the Board members decided to make substantial revisions to the HOA's Declaration of Covenants. Without conducting any type of "straw poll", presenting such proposed revisions at a duly notice Board meeting, or otherwise seeking to determine the individual members' positions about such revisions, or the HOA incurring the expense thereof, the Board commissioned legal counsel to draft the extensive proposed revisions.
18. In or around September, 2012, the Board mailed out a package of documents to the owners/members of the HOA seeking to make 17 substantive amendments to the HOA's Declaration of Covenants (hereinafter, the "Amendment Referendum"), and noticing a vote on the Amendment Referendum for October 17, 2012.
19. At the October 17, 2012 meeting, the L'Etoile homeowners soundly defeated the Board's Amendment Referendum.

20. On November 7, 2012, the Board's attorneys held a "workshop" to educate the L'Etoile owners on what it perceived as the importance of the Amendment Referendum. Thereupon, again without seeking any feedback from its owners, the Board voted to send out "revised amendment packages." On December 21, 2012 the Board's attorneys send out "revised amendment packages" with Board's one-sided explanation of the meaning and effect of each proposed amendment, re-noticing the vote on the amended Amendment Referendum for January 16, 2012.

21. Once again, on January 16, 2012, the Amendment Referendum was soundly defeated.

22. On information and believe, the Board spent approximately \$30,000 of Association funds in legal fees on the failed Amendment Referendum.

**November 2012 - March. 2013 - Plaintiffs' Request for Statutory Records  
Inspection and HOA's Four Month Delay in Production of Records**

23. Based, in large part, on the Amendment Referendum fiasco, on November 2, 2012, Plaintiffs submitted their first request to inspect certain of the HOA's records (the "Records Inspection Request") to the HOA and its Management Company pursuant to [Fla. Stat. §720.303](#). On the same date, the HOA's legal counsel and registered agent confirmed receipt of the Inspection Request, and copied CROWE, as President of the Board of Directors, on such confirmation. Attached hereto as composite Exhibit "A" is a true and correct copy of the Records Inspection Request, the Board's response thereto, and subsequent follow-up correspondence between Plaintiffs and the HOA's counsel.

24. The Board's response to the Records Inspection Request was, in substantial part, that "you will receive a formal response in accordance with Florida law..." and [i]n order to ensure all future correspondence is received and due to the fact that the association has been advised that a recall of the board is being attempted, I respectfully request that all future correspondence be provided to my office in writing or via email."

25. The HOA failed to comply with the request, prompting Plaintiffs to send follow up requests on November 20, 2012 and November 21, 2012. In response, the HOA's counsel responded, in pertinent part "I have again forwarded your request to both the members of the board and management and have requested that they contact you to schedule same, so as to avoid additional unnecessary legal fees and costs from being incurred." (emphasis supplied).

26. On November 28, 2012, Plaintiffs received correspondence from the HOA's legal counsel advising "[t]he Association's management... are gathering all of the requested documents and should have same completed by Friday [November 30th]. However, they advised that they are currently waiting on a response from the board as to where the inspection will take place."

27. On November 30<sup>th</sup>, having received no access to the requested records, or the copies promised by the HOA's counsel, Plaintiffs again renewed their demand for inspection and for the minimum statutory damages of \$500 mandated by F.S. 730.302. HOA counsel responded, instead, that the HOA's one-month delay was somehow justifiable because the "Association has been fully corresponding with [Plaintiffs]," has in fact prepared copies of the documents that it has in its possession for you...as I stated before, I was just waiting to here [sic] back regarding an inspection date." (See composite Exhibit "A").

28. On December 3, 2012, rather than comply with Plaintiffs' repeated inspection requests, the HOA provided Plaintiffs with a stack of photocopies selected by the HOA and/or its counsel, consisting primarily of documents submitted to the Association by Plaintiffs, and otherwise unresponsive or only minimally responsive to items requested by Plaintiffs. Plaintiffs advised HOA's counsel (in writing) of the inadequacy of the documents provided by the HOA, and on November 6, 2012, its counsel replied, in writing that "[t]he management company prepared and provided the documents which were then provided to you ... and "[t]he association advised these are all the documents it has in its possession from the request provided, per management and there [sic] review of your letter.

29. Plaintiffs made additional inspection requests directly to all Board members and legal counsel on December 11, 2012 and December 13, 2012.

30. On December 14<sup>th</sup>, the HOA's management representative finally contacted Plaintiffs, offering to make all requested documents available at the HOA's attorney's office.

31. It was not until February 11, 2013, over three months after Plaintiffs' initial request, that the HOA, through its management company, permitted Plaintiffs access to inspect the HOA documents, and even then, many of the **financial** documents initially requested were missing from among the records provided. (See Plaintiffs' 02/12/2012 email exchange with management representative, Raphael Gutierrez attached as part of composite Exhibit "A").

32. On February 15, 2013, the HOA's management representative provided a portion of the requested attorneys' invoices, and in or around March, 2013, four months after the initial Records Inspection Request, Plaintiffs received the remaining requested copies.

33. During the four months of correspondence between Plaintiffs and the HOA and its representative Board members, attorneys and management representatives, Plaintiffs (a) made repeated demand for payment of \$500 as the minimum statutory damages payable to them by the HOA for its denial of access to the Association records; and (b) Plaintiffs made the HOA aware of the time sensitivity of the records inspection, as same related to suspected improprieties by Board members and/or counsel and may be required in connection with a statutory recall proceeding. In each instance, the HOA rejected Plaintiffs' demand for payment of such damages, and ignored Plaintiffs' numerous reminders and demands for compliance.

**12/25/2012 - Plaintiffs Discover Board Members Appearing to  
be Receiving Landscaping Services from HOA's Landscapers**

34. On December 25, 2012, Plaintiffs viewed KRAUS directing employees of the HOA's contract landscaping service entering the backyard of KRAUS's son and daughter, who happen to live across the street from Plaintiffs.

35. When confronted about this at a scheduled Board meeting, Board President CROWE confirmed that this is a prohibited practice for any homeowner to appropriate time and/or services from any contractor of the Association, and "especially Board Members."

36. At that same meeting, Board member BEHAR also admitted to regularly appropriating employees, the same landscaper, "to trim my bougainvilleas."

37. Behar attempted to excuse his actions by advising the Board he would pay the workers who would come into his yard. Kraus remained silent.

**December, 2012 Recall of Board Members**

38. In or around mid-December 2012, as a result of perceived mismanagement, irresponsible spending practices and lack of accountability to the members of the L'Etoile Homeowners Association, a group of homeowners in the L'Etoile community organized a coalition to obtain support of a simple majority of the 195 homeowners in the L'Etoile subdivision to recall the entire Board of Directors of the HOA (the "Board"), including Defendants B. WAZIRY, KRAUS, R. BEHAR, SHAMAM, and CROWE.

39. Plaintiffs, both members in good standing of the Florida Bar, participated in the vocal opposition to certain of the Board's actions and support of the recall process with their neighbors, and Plaintiffs were vocal and zealous advocates of their neighbors and fellow owners in the L'Etoile community and homeowners' association.

40. On February 22, 2013, a "Recall Petition" was filed on behalf of 107 out of 195 homeowners in the L'Etoile community seeking to recall the entire Board of the HOA (the "Recall Proceedings").

41. On or about March 1, 2013, HOA Board filed a petition for arbitration with the Florida Department of Business and Professional Regulation ("DBPR") styled L'Etoile Homeowners' Association, Inc. v. Homeowners Voting for Recall, Case No. 2013-00-9407, contesting the validity of the Recall (the "Recall Arbitration").

42. The Recall Arbitration conducted by the DBPR was ongoing at the time of the HOA's annual election on May 29, 2013; and by its June 26, 2013 Final Order of Dismissal, the DBPR Arbitrator ruled the Arbitration Proceedings moot as a result of such election.

43. During the above time period (i.e., from the commencement of the Recall Proceedings in December, 2012 to the termination of the Arbitration Proceedings at the end of June, 2013), the Board undertook a series of deliberate, well-orchestrated acts calculated to intimidate Plaintiffs and discredit them in the community by contriving false "incidents", mischaracterizing such events to cast Plaintiffs in a bad light, and publishing such events in a false and/or misleading manner to the L'Etoile community, and to damage them and their family, personally and professionally.

#### **01/07/13 & 01/28/13 Frivolous Bar Complaints Against Plaintiff David Vogel**

44. On or about January 7, 2013, upon learning of the Recall Proceedings, the Board filed a complaint against Plaintiff David Vogel with the Florida Bar (the "Bar Grievance"), seeking to have the Bar take punitive action against him. The Bar Grievance was signed by Defendant KRAUS, in her capacity as Director of the HOA. A true and correct copy of the Bar Grievance is attached hereto as part of Composite Exhibit "B".

45. By the Bar Grievance, the Board alleged, inter alia, that Plaintiff David Vogel engaged in "unethical behavior," including, specifically, "threats, intimidation and blackmail." In support of the complaint, the Board provided the Bar with copies of self-serving contrived emails between Defendant KRAUS and fellow Board members R. BEHAR and CROWE and board "advisor", STEIN.

46. Without any inquiry to David Vogel or request for response, in a letter dated January 24, 2013 (the "First Bar Reply", attached as part of Exhibit "B"), the Florida Bar advised KRAUS that David Vogel had committed no Bar violation whatsoever.

47. Upon receipt of the First Bar Reply, on or about January 28, 2013, the Board, again through KRAUS, filed a second complaint with the Bar (the "Second Bar Grievance," attached as part of Exhibit "B"), demanding the Bar reconsider its refusal to sanction David Vogel, alleging anew that "Mr. Vogel has been using his 'law knowledge' to intimidate members of the L'Etoile community."

48. By its letter dated February 14, 2013 (the "Second Bar Reply", attached as part of Exhibit "B"), the Florida Bar again summarily dismissed the Second Bar Grievance, reasoning that "Mr. Vogel has a First Amendment right to express his concerns."

#### **03/08/13 Stalking Incident by Kraus and Plaintiffs' Report to HOA**

49. - On March 8, 2013, while inside their home, Plaintiffs witnessed KRAUS standing on the street in front of Plaintiffs' home holding a video recorder pointed at Plaintiffs' living room, appearing to be recording Plaintiffs' minor children playing inside Plaintiffs' house.

50. Plaintiffs reported same to the HOA's management representative by email, and were advised "there isn't anything [management] can do about that."

#### 04/12/13 - DCF Complaint Against Plaintiffs

51. On or about the morning of Friday, April 12, 2013, after a telephonic hearing in the Recall Arbitration, David Vogel reported to the community on an internet blog what he believed to be a successful outcome to the hearing.

52. Also on April 12, 2013, just hours after the Recall Arbitration hearing, a complaint was filed against both Plaintiffs with Department of Children and Families (the "DCF Complaint")<sup>1</sup>. Upon information, belief, and the circumstances described in this Complaint, the DCF Complaint was made by a Board member or agent of the Board.

53. By the DCF Complaint, the "anonymous" complainant reports, essentially, that the child's father, Plaintiff David Vogel, endangers and is neglectful of his five year old son by advertising the child's pressure washing services on the father's website, forcing the child to operate a "commercial" grade pressure washer unsupervised and without any assistance from his father.<sup>2</sup>

54. By contrast, the Department of Children and Families, in its Final Investigative Report, (a redacted copy of which, together with the Broward Sheriff's Office Report, is attached hereto as Composite Exhibit "C".<sup>3</sup>) paints an entirely different picture - that virtually every material allegation by the complainant to be untrue or exaggerated, to wit: (a) the five year old child is actually seven years old; (b) the Child Protective Services Officer "did not observe any hazardous conditions in the home" and found "no reports of death or serious injury of another child," "no history of violent [*sic*]," and "no criminal history;" (c) CPS Officer "observed lana and David speaking to the v/children in a positive manner;" and "both parents are very protective of the children;" (d) when the "children were interviewed separately," they "advised that XXXXX helps his father with the pressure wash and is never alone," and XXXX denied ever getting hurt or being left alone to use the pressure washer;" (e) and upon inspection of the subject pressure washer, Broward Sheriff Officer Dean and the CPS Officer reported "[t]he pressure washer is not for commercial use but for residential. This machine is small;" and (f) concluded; *inter alia*, that "[t]here are no presented indicators of any threats of harm," the "children do not present any conditions indicative of **abuse** or neglect," "[t]he parent can provide for v/child's immediate needs," "[t]here are no presented indications of physical or sexual **abuse**," "[t]here was no medical attention required...," "[t]here are no other signs of present danger are presented at this time," "no signed of vulnerability," "no priors found for this family," and "no out of home custody placement with this family." DCF's "OVERALL SAFETY ASSESSMENT" was that "**[t]hroughout this investigation there were /sic/ no evidence found to support the allegations**" made by the complainant.

.55. Nevertheless, the DCF Complaint resulted in Plaintiffs' two minor children being subjected to a traumatic and frightening in-home interrogation and investigation by a Hollywood Police Officer and a Child Protective Services, while Plaintiffs were forced to wait outside the house, and a permanent DCF record on file for Plaintiffs' family.

#### 04/12/13 - First Police Report Against Plaintiff by Defendants for No Reason

56. On or about April 12, 2013, while David Vogel was driving through the L'Etoile community, David Vogel and Defendant/ Board Member B. WAZIRY became involved in a verbal altercation in the community. Defendant P. WAZIRRY joined in the argument and at one point jumped on the hood of David Vogel's car, prohibiting him from driving off. Eventually, P. WAZIRY stepped off the car, and David Vogel drove off.

57. Shortly after the April 12, 2013 incident, one or more of Defendants B. WAZIRY, P. WAZIRY and CROWE called Hollywood Police; and based on the statements of B. WAZIRY, P. WAZIRY and CROWE, the responding officers filed an Incident/Investigation Report of the same date (the “4/12/13 Incident Report” attached hereto as Exhibit “D”). The 4/12/13 Incident Report documents only that (a) B. WAZIRY initiated oral contact with DAVID VOGEL, (b) profanities were exchanged between them, and (c) P. WAZIRY subsequently joined in the argument, and (d) DAVID VOGEL reversed his car and swiftly drove off. There were no allegations of criminal mischief or behavior against David Vogel. Responding officers advised all parties “to remain separated to prevent any further conflict.”

#### **04/14/13 - Assault on Plaintiffs' Family and Second Police Report Against Plaintiff by Defendants**

58. On April 14, 2013, while Plaintiffs David Vogel and liana Vogel were driving home in the community with their two minor children in the car; and less than 15 yards from Plaintiffs' home, Defendants B. WAZIRY, R. BEHAR, and A. BEHAR, joined by the Behars' minor (13 year old) son (referred to herein as “S.B.”), jumped in the middle of the street to block Plaintiffs from driving into their driveway and returning home.

59. All of B. WAZIRY, R. BEHAR, A. BEHAR and the 13 year old child S.B., continued to block Plaintiffs' way home, allowing all other traffic unobstructed passage.

60. While shifting in the middle of the road to totally obstruct Plaintiffs' passage to their home, Defendants B. WAZIRY, R. BEHAR and A. BEHAR continued to approach Plaintiffs' vehicle, taking videos of them, screaming obscenities at them, challenging Plaintiff David Vogel (the driver) to run them over; and encouraging the minor child, S.B., to stand in front of Plaintiffs' two-ton vehicle taking videos of Plaintiffs surrounded family.

61. Plaintiffs remained in their vehicle at all times, while David Vogel honked his horn repeatedly to draw attention from neighbors and demanded that Defendants B. WAZIRY, R. BEHAR, and A. BEHAR, and the minor child S.B. disperse and allow them to pass without further molestation.

62. Defendants B. WAZIRY, R. BEHAR, A. BEHAR and the minor child S.B. did not relent, and when Plaintiffs' six and eight year old children became terrified of the attackers, though yards away from their home, Plaintiffs' retreated, and returned home later by an alternate route

63. When Plaintiffs' returned home, B. WAZIRY, R. BEHAR, A. BEHAR and the minor child S.B. followed Plaintiffs, standing in the street screaming at Plaintiffs and their minor children.

64. Defendant B. WAZIRY again called Hollywood Police, and falsely reported that Plaintiff David Vogel was trying to run into B. WAZIRY's vehicle and trying to run him over with his automobile while B. WAZIRY was walking. All video and other evidence shows that such allegations are untrue, and in fact, reveal these Defendants and the minor child S.B. laughing and smiling during the assault on Plaintiffs, (see the 4/14/13 Dispatch Report, attached hereto as Exhibit “E”).

#### **4/17/13 - Wazirv's Petition for Restraining Order for Alleged Stalking Against Plaintiff**

65. On April 17, 2013, B. WAZIRY filed with the Domestic Violence/Family Division of the Broward County Circuit a verified Petition for Injunction for Protection against Stalking against David Vogel (the “Waziry Restraining Order Petition,” a copy of which is attached hereto as Exhibit “F”), seeking both an emergency injunction to limit David Vogel's movement about the L'Etoile community and a permanent injunction against him for alleged stalking.

66. The Waziry Restraining Order Petition was supported only by the testimony of B. WAZIRY's spouse and fellow Board member, with no independent witness corroboration whatsoever; and the Petition is replete with material prevarication and inconsistencies, to wit, B. WAZIRY swears under oath that David Vogel:

a. attempted to commit “vehicle [sic] homicide” against him and/or his wife during their April 12, 2013 argument; however, at the June 26, 2013 hearing on the Waziry Restraining Order Petition, no evidence whatsoever was offered to the Court to support such a claim; no police report was filed by Waziry complaining of being run down by David Vogel; and, in fact, co-Defendant, P. WAZIRY, testified that she jumped on the back of David Vogel's car to prevent him from driving away;

b. committed hate crimes against B. WAZIRY and his family, though no evidence was offered to the Court in support of such allegation, other than B. WAZIRY's own testimony that David Vogel called him names and questioned his manhood;

c. has prevented, or is preventing, him and his family from moving freely in the community, and threatened to harm B. WAZIRY or his family members or individuals closely associated with him; though video and photographic evidence reveals B. WAZIRY strolling in front of Plaintiffs' house, smiling before and after the April 14, 2013 argument, his wife and co-Defendant, P. WAZIRY rollerblading in front of Plaintiffs' house around that time, and the WAZIRY's minor children splashing around the L'Etoile community swimming pool, unsupervised by either parent, while Plaintiffs David Vogel and Ilana Vogel were swimming feet away;

d. “previously threatened, harassed, stalked, cyberstalked, or physically **abused**” B. WAZIRY, though no testimony or other evidence was presented to the Court to support any such allegations;

e. “owns, has, and/or is known to have guns or other weapons,” despite that David Vogel has never owned a gun or other weapon, has never been licensed to own a firearm, and does not now own or carry any kind of weapon;

f. used, or threatened to use, against Petitioner any weapons such as guns or knives,” despite that David Vogel has never owned a gun or other weapon, has never been licensed to own a firearm, and does not now own or carry any kind of weapon, and B. WAZIRY offered no testimony or evidence whatsoever to support such allegation;

g. has “a criminal history involving violence or the threat of violence;” though David Vogel has no criminal history, or any history of violence or threat of violence whatsoever (as confirmed by the DCF Investigation prompted by another of Defendants' malicious complaints against Plaintiffs), and B. WAZIRY offered no testimony or evidence whatsoever to show the Court otherwise;

h. “holding [B. WAZIRY and his family] hostage by controlling when [they] leave and return home... and controlling [their] movements and following [them] in the community,” though video and photographic evidence reveals B. WAZIRY strolling in front of Plaintiffs' house, smiling before and after the April 14, 2013 argument, his wife and co-Defendant, P. WAZIRY rollerblading in front of Plaintiffs' house around that time, and the WAZIRY's minor children splashing around the L'Etoile community swimming pool, unsupervised by either parent, while Plaintiffs David Vogel and liana Vogel were swimming feet away;

67. Though B. WAZIRY swears to all of the foregoing under oath in the verified Petition he filed with the Court, and the alleged incidents of stalking, hate crimes, attempted vehicular homicide, etc. against him and his family all putatively occurred in broad daylight, B. WAZIRY was unable to produce in Court a single witness, photograph, video or document to support even one of the outrageous allegations of D. Vogel's conduct in his Restraining Order Petition. Moreover, in their statements to the Hollywood Police Report made nearly contemporaneously with (within an hour of) the alleged incident, none of B. WAZIRY, P. WAZIRY or CROWE make any mention whatsoever of any attempted vehicular homicide, battery, or any type of assault by D. Vogel.



68. Despite all of B. WAZIRY's allegations made in his Restraining Order Petition, Honorable Michael Kaplan of the Family Division refused to grant B. WAZIRY a temporary restraining order against David Vogel, and instead, set the matter for Final Hearing on June 26, 2013.

69. At the June 26, 2013 hearing on Waziry Restraining Order Petition, Circuit Court Judge Kaplan heard B. WAZIRY's testimony, the testimony of all of B. WAZIRY's witnesses, and considered all other evidence offered by B. WAZIRY. Thereupon, without requiring David Vogel to put on a case as respondent," granted David Vogel's ore tenus Motion to Dismiss B. WAZIR's Restraining Order Petition "for failure to state a claim." In its Order Granting David Vogel's Motion to Dismiss, the Court found specifically that the evidence presented was insufficient to allow the Court to issue an injunction for protection against domestic, repeat violence, dating, or sexual violence, or stalking.

#### **04/22/13 - Special Board Meeting to Add Board Members**

70. On the evening of Sunday, April 21, 2013, the Board caused to be posted at the community's mailboxes notice of a special meeting of the Board at 6:00 pm on Monday, April 22, 2013. As shown on the posted agenda, the items to be addressed were (1) Board Nominees to replace vacancies and (2) Management Company.

71. At this special, short-noticed meeting, the Board did, indeed, officially introduce the two new Board members, including Defendant TATARSKY and David Berkowitz; and the Board announced it had terminated the services of the Association's prior management company, and had hired a new management company.

72. Though the Board did not acknowledge his resignation, Plaintiffs later learned that Defendant R. BEHAR (in the wake of his assault of Plaintiffs and their family eight days earlier) had resigned from the Board.

73. The apparent emergency meeting was held (a) without more than 24 hours' notice to the community (which notice was posted on a Sunday night), (b) without allowing members of the Association opportunity to speak or have any input at all, (c) lasted only approximately 10 minutes, and (d) was held at a time and date when most Association members are still returning home from work, at a location where most L'Etoile homeowners have never been, and in a conference room that appears to seat no more than 12 people.

74. There was no Association business conducted at this special meeting; and upon information and belief, none of the Association business revealed at the special meeting was actually conducted at the meeting, or any duly noticed meeting open to Association members. Rather, the resignation of BEHAR and appointment of TATARSKY and Mr. Berkowitz, the firing of the Association's management company, and the hiring of a new one, were all completed in secrecy, outside the watchful eyes of the Association's homeowners.

#### **April, 2013 Filings in Recall Arbitration**

75. In the Recall Arbitration, the HOA, through its Board and legal counsel, filed several pleadings falsely accusing both Plaintiffs, inter alia, of (a) illegal conduct (in the Arbitration Proceeding), (b) tampering with and illegally altering "a plethora of" the recall ballots, (c) committing fraud upon the DBPR, (d) illegally influencing the outcome of the recall, and (d) lying to the Arbitrator, accusing Plaintiff David Vogel, personally, illegally checking boxes on already-submitted recall ballots, thereby changing the expressed voting intent of owners.

76. In fact, the HOA's filings in the Recall Arbitration are replete with invective and scandalous, baseless accusations of impropriety, only against Plaintiffs; yet, during the entire Recall Arbitration, the HOA presented to the Arbitrator no proof of any such impropriety or misconduct by Plaintiffs, or any other member of the respondents in the Recall Arbitration.

### **05/13/13 - Kraus's Petition for Restraining Order for Alleged Stalking Against Plaintiff**

77. After B. WAZIRY's failed attempt to obtain a restraining order against D. Vogel to restrict his movement about the L'Etoile community, on May 13, 2013, Defendant KRAUS filed her own Petition for Injunction for Protection against Stalking against D. Vogel (the "Kraus Restraining Order Petition," a copy of which is attached hereto as Exhibit "G"), seeking the same relief against David Vogel as the Waziry Restraining Order Petition.

78. The allegations made in the Kraus Restraining Order Petition are almost identical to those contained in B. WAZIRY's Petition denied weeks earlier by the Court. Like B. WAZIRY, KRAUS swears under oath to the Court that David Vogel and/or Ilana Vogel, among other things: (a) "used his car to come at [my husband and I] while walking to our son's house and almost ran us over;" (b) called her a Nazi; (c) has taken away her freedom; (d) threatened to harm him or his family members or individuals closely associated with him; (e) "previously threatened, harassed, stalked, cyberstalked, or physically **abused**" her; (f) "owns, has, and/or is known to have guns or other weapons" in his home; (g) continuously stalks her when she walks in the community; (h) "watches out for [me] on Friday nights, Saturday mornings and Saturday evenings" (the Jewish Sabbath); (h) caused her to be "afraid for [my] life" and "petrified that he will kill [us] or harm [us] physically;" (i) "made [me] a prisoner in [my] home." The above are but a representative sample of the false statements and accusations contained in the Kraus Restraining Order Petition. As with B. WAZIRY's Petition, KRAUS's is replete with fictive statements, and phantom events that never occurred. None of KRAUS's allegations is true, there is no evidence to show any of them are true; and video evidence and contemporaneous statements of KRAUS and controvert the perjured statements in the Petition.

79. In Judge Michael Kaplan's absence, the sitting substitute Judge, unfamiliar with the community history among the parties, was compelled to find that "[t]he statements made under oath by Petitioner make it appear that... Petitioner is a victim of stalking..." Based on such finding, the Court issued to KRAUS a Temporary Injunction for Protection Against Stalking, prohibiting David Vogel from moving about his community pending final hearing during a critical time leading up to the HOA's annual election.

80. On July 2, 2013, after more than six weeks of being subjected to a frustrating and humiliating Temporary Restraining Order, the Final Hearing was held on the Kraus Restraining Order Petition before the Honorable Peggy Judge Gehl (again sitting for Judge Kaplan). Just as with WAZIRY's Petition, the Court recognized the frivolity and/or dubious credibility of KRAUS's Petition, and dismissed the Kraus Restraining order Petition without requiring David Vogel to present any defense at all.

### **05/29/2013 HOA Annual Meeting and Election**

81. On May 29, 2013 the HOA held its annual meeting and election (the "Annual Meeting"), which was attended by approximately 80 homeowners of the L'Etoile community.

82. Before or at the Annual Meeting, Defendants disseminated information and/or documentation to several homeowners of the B. WAZIRY and KRAUS Restraining Order Petitions, the police reports, and the DCF reporting in an obvious attempt to subject Plaintiffs to distrust, hatred, contempt, ridicule and obloquy by their neighbors and voters just moments before the HOA annual election.

83. Defendant STEIN, appointed Board "Advisor" and a former Board member, authored, circulated among the attendees and read aloud at the Annual Meeting her open letter to the community (the "Stein Letter"), revealing to the owners/voters false "facts", including (a) the existence of pending temporary restraining order against David Vogel (including the several false accusations contained therein); (b) misrepresentations regarding the disposition of a prior civil action involving Plaintiffs and a former employer; (c) mischaracterizations of the procedural and substantive history of both the B. WAZIRY and KRAUS Restraining Order Petitioners. STEIN warned Plaintiffs' L'Etoile neighbors that "David Vogel wants to be a Board member to

have access to [our] money, for his benefit, to bill [us] for his legal work as [our] attorney, for his benefit, to negotiate contracts for his benefit and to enforce or not our HOA rules for his benefit.” A copy of the Stein Letter is attached hereto as Exhibit “H”.

84. Also at the Annual Meeting, prior to the election of the Board of Directors, Defendant LORBER, who was voted that evening to the HOA Board primarily by proxy votes collected by the then current Board members, made certain defamatory statements about Plaintiffs' actions in the community, also making specific reference to the pending restraining order proceedings and other fabricated incidents by Defendants, evidently to cast Plaintiffs in a bad light immediately prior to the Board election.

85. Also at the Annual Meeting, prior to the election of the Board of Directors, addressing the homeowners in attendance, Defendant P. WAZIRY, wife of Defendant B. WAZIRY, likened David Vogel to a child molester. Specifically, P. WAZIRY cautioned the L'Etoile HOA members that entrusting David Vogel to serve on the HOA's Board would be comparable to permitting a child molester to babysit your child. Ironically, David Vogel had previously decided not to run for election to the Board due to the success of the Defendants' intimidation of, and threats upon, his family. Nominated for such position at the Annual Meeting, David Vogel in fact declined the nomination.

#### **06/13/2013 Threatening Phone Calls to Plaintiff Calls to Plaintiff Ilana Vogel**

86. On June 13, 2013, Plaintiff Ilana Vogel received a series of anonymous threatening phone calls to her personal cell phone. Three days later, on Father's Day (June 16, 2013), Ilana Vogel received additional anonymous lewd and threatening calls. During one of such calls, the unknown male caller stated to Ilana Vogel in the presence of David Vogel and Plaintiffs' 7 and 8 year old children “your husband needs to be killed.” David Vogel recognized the voice as that of Defendants BEHARS' 13 year old son, S.B. Plaintiffs immediately reported the threat to the Hollywood Police. While at the Hollywood Police Department, Ilana Vogel received another anonymous call. The Hollywood Police Officer answered the call, and the caller abruptly hung up, and did not call again.

87. Several days after the incidents, David Vogel confronted R. BEHAR about S.B.'s involvement in the threatening calls; R. BEHAR would neither confirm nor deny his son's involvement but, rather, advised D. Vogel he would speak with his son and let D. Vogel know what he finds out R. BEHAR has not communicated with D. Vogel since.

88. In light of their participation in the 04/14/2013 assault on Plaintiffs and their children, Plaintiffs believe it reasonable to conclude R. BEHAR and A. BEHAR had prior knowledge of their minor son, S.B.'s, participation in the threatening phone calls, and endorsed and ratified his actions by their repose thereafter.

#### **3125 N. 36<sup>th</sup> Avenue Property**

89. Pursuant to a foreclosure action filed by the HOA, on August 8, 2008, the Clerk of Court executed and filed a Certificate of Sale with regard to that certain residential property located at 3125 N. 36<sup>th</sup> Avenue, Hollywood, Florida, in the L'Etoile community (hereinafter referred to as the “36<sup>th</sup> Ave. Property”); and on February 11, 2009, the HOA took title to the 36<sup>th</sup> Ave. Property by virtue of a Certificate of Title issued by the Clerk of Court, subject to a mortgage securing the interest of first mortgagee Deutsche Bank.

90. At the February 15, 2012 meeting of the HOA's Board of Directors, as reflected in the minutes of that meeting “[i]t was RESOLVED that the association was to deed the newly foreclosed property 3125 N 36 Ave back to the bank.”

91. Since the Board's vote to quit-claim the property back to the lender bank, the HOA has failed to transfer the property back to the bank

92. When Plaintiffs asked about the status of the 36<sup>th</sup> Ave. Property at the November 20, 2013 Board meeting, most of the Board members in attendance claimed ignorance. Only Board member SHAMAM acknowledged that there “may be a contract” to sell the property; and though she confirmed she knew the identity of the prospective buyer, she refused to disclose at the open meeting the identity of the supposed buyer, the terms of any contract; and when asked why this prospective transaction has not been discussed at any duly noticed Board meeting, the Board insisted they are not required to disclose any prospective sale of the property to the Association because, they claim “the bank owns the property.”

93. During the HOA's ownership of the 36<sup>th</sup> Ave. Property, the HOA neglected to perform any maintenance on the property and allowed the asset to deteriorate and diminish in value. Currently, the exterior of the property remains in disrepair and is an eyesore in the L'Etoile community; and, upon information and belief, the interior of the property has sat without air conditioning or power for many months with no attempt by the Board to restore it to the condition of habitability when the HOA first took title to it to rent it or otherwise convert it back to an income producing asset for the HOA.

### **Continuing Acts of Violence and Intimidation Against Plaintiffs**

94. Even after the May 29, 2013 HOA meeting and annual election, and the multitude of failed, false and malicious filings (a) against Plaintiffs' professional licensure (with the Florida Bar), (b) against Plaintiffs' children (with DCF), and (c) against Plaintiffs' liberty (with the Broward County Circuit Court and the Hollywood Police), Defendants have continued to their campaign to harass, intimidate and terrorize Plaintiffs in and around the L'Etoile community, to wit:

a. During the November 20, 2013 meeting of the Board of Directors (the “November 20 Board Meeting”), Defendant/Board member TATARSKY accosted Plaintiff D. Vogel. During a heated exchange between the two, TATARSKY left his seat at the Directors' table, came around into the audience where D. Vogel was standing addressing him, and moved violently toward D. Vogel in a fighting posture, yelling “COME ON OUTSIDE, IT'S TIME TO GET KNOCKED ON YOUR ASS.” TATARSKY had to be restrained by three other homeowners who stepped in front of him and prevented TATARSKY's intended assault and/or battery of D. Vogel.

b. At the most November 20 Board Meeting, TATARSKY also warned Plaintiff D. Vogel “[w]e have documentation of how much you have done.”

c. At the November 20 Board Meeting, with Plaintiffs' minor children only eight or 10 feet in front of her, Defendant/Board member LORBER acknowledge the children's presence, and nevertheless shouted “EXCUSE ME, THERE ARE CHILDREN IN THE ROOM. SHUT THE F\*\*K (expletive) UP!”

d. At the subsequent Board meeting on December 18, 2013 (the “December 18, 2013 Meeting”), the Board attempted to prohibit Plaintiffs from manually videotaping the meeting from their seat in the back corner of the room, in an area not obstructing the view of any members.

e. At the December 18, 2013 Meeting, the Board permitted STEIN to make false, malicious attacks against Plaintiffs, including (i) that Plaintiffs “have had restraining orders against them,” (ii) that “certain people are no longer on the board because of intimidation by Mr. and Mrs. Vogel,” (iii) that “Mrs. Vogel was on [my] property videoing my home when I wasn't there,” (iv) that “every time we pass Mr. Vogel he does what we started to call the F-U dance” and “puts his two hands up, makes the gesture and shakes his butt to my 14 year old daughter.” When Plaintiff D. Vogel requested an opportunity to respond to STEIN's misstatements, the Board censored him after a few words, and then terminated the meeting.

f. At prior meetings, the Board and its manager have prohibited Plaintiffs from asking questions during the meeting and that they must wait until the end of the meeting; yet, other residents are often permitted to comment on each topic.

g. Plaintiffs have made repeated requests for almost one year for the Association to make vital repairs to the broken drainage system and neglected tree roots tearing up Plaintiffs' driveway and front yard, all of which are the Association's obligation to maintain under its Declaration of Covenants, the Association has failed to effect the repairs to date, causing continuing health and safety hazards to Plaintiffs, and their minor children, their guests and invitees. The Board has acknowledged that the tree roots on the Vogel property are a dangerous tripping hazard and a liability, and that the tree was the Board's responsibility; and at the December 18, 2013 Meeting, the Board indicated that the tree removal has been approved, but failed to give any timetable for the repairs.

95. During, and since, the series of events described herein:

- a. Plaintiffs' children have suffered emotional trauma, and are frightened to walk or riding bicycles in the L'Etoile community, or play in the front yard of their home, even when accompanied by their parents; only when accompanied by their parents
- b. Plaintiffs have been shunned by many of their neighbors once their friends, and subjected to ridicule disparagement by others;
- c. Plaintiffs have been received by neighbors with hostility have been subjected to verbal **abuse** and disparagement at homeowners' meetings, and have been told by other community members to leave the community; and
- d. Plaintiffs have been deprived of the quiet enjoyment of their home; and

in addition, during Defendants' eight-month reign of terror against the Plaintiffs and their children, Plaintiffs have incurred substantial legal fees, costs and lost time and business opportunity defending against Defendants' repeated specious and malicious Complaints to the Florida Bar, reports of **abuse** and neglect to the Department of Children and Families, reports of violence, stalking and attempted murder to the Hollywood Police Department, Petitions for Restraining Orders Against Stalking and Repeat Violence, and allegations of fraud and other illegal actions with the Arbitration Section of the Department of Business and Professional Regulation.

#### **Attorney's Fees to Prevailing Party**

96. Plaintiffs are bringing this action as members of the Association against Defendant HOA as the Association and against the individual defendants, each as a member and/or director and/or officer of the Association.

97. Plaintiffs have retained the services of The Law Offices of Ryan D. Gesten, P.A. and have agreed to pay a reasonable fee for said services. Pursuant to [Florida Statute §720.305\(1\)](#) Defendants are liable for Plaintiffs' attorneys' fees.

#### **COUNT I - **ABUSE** OF PROCESS AS TO FLORIDA BAR GRIEVANCE NO. 13-11488**

98. Plaintiffs sue Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE for **Abuse** of Process, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count I.

99. On or about January 7, 2013 and January 28, 2013, Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE by and through KRAUS, willfully and intentionally submitted the Bar Grievance to the Florida Bar, supported only by self-serving hearsay emails by co-Defendants R. BEHAR, CROWE and STEIN.

100. In submitting the Bar Grievance, said Defendants displayed callous disregard for the potential consequences (or with knowledge of the potential consequences) to Plaintiff David Vogel or his family's livelihood.

101. The Bar Grievance was resolved in favor of David Vogel. As stated in the Bar's multiple responses to Defendant/Board Member KRAUS, based on all evidence submitted by or on behalf of the Defendant HOA, David Vogel committed no violation of the Rules of Professional Conduct. The Bar found no evidence of the putative violations by David Vogel of "using his law knowledge" to intimidate other L'Etoile community members or engaging in "threats" and "blackmail."

102. When asked by Plaintiffs to openly censure the practice by a Board member of baseless, malicious reporting of a member of the community it serves to his or her own professional licensing body seeking punitive actions, the HOA and its Board members refused. Instead, the Board chose to stand by Kraus's malicious Bar Complaints, thereby endorsing and ratifying same.

103. The Bar Grievance was submitted for the improper ulterior purposes of (a) intimidating Plaintiffs into abandoning their opposition to the Board's actions and/or support of the Recall Proceeding, (b) exacting retribution against them for their open opposition to the Board's actions, and/or (c) embarrassing and discrediting them in the eyes of their friends and neighbors to gain a competitive advantage in a community association recall proceeding. None of such purposes are intended to be advanced by the Florida Bar's grievance process.

104. At all times material to this action, Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE (herself an active member, in good standing, of the Florida Bar) knew, or should have known, that the Bar Grievance was baseless and not supportable by existing law.

105. As a direct and proximate result of the actions of Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE, Plaintiff D. Vogel has incurred substantial legal fees, costs and lost time and business opportunity defending against Defendants', and Plaintiffs have suffered humiliation, emotional distress, mental anguish, betrayal by their own Board of Directors, and loss of capacity of the quiet enjoyment of their home. The losses are either permanent or continuing, and the Plaintiffs will continue to suffer these losses in the future.

WHEREFORE, Plaintiffs request a judgment against Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

**COUNT II - ABUSE OF PROCESS AS TO BROWARD COUNTY  
DEPARTMENT OF CHILDREN & FAMILIES CASE NO. 2013-XXXXX-01**

106. Plaintiffs sue Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE for Abuse of Process, and Plaintiffs reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count II.

107. Upon information and belief, Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE, either themselves or by an agent, willfully and intentionally submitted to the Broward County, Florida Department of Children and Families a false and indefensible DCF Complaint.

108. The comprehensive DCF Final Investigative Report issued to Plaintiffs rejected every material allegation by the complainants against Plaintiffs; and DCF concluded "throughout this investigation, there were [sic] no evidence found to support the allegations."

109. The DCF Complaint was submitted by said Defendants for the improper and contemptuous ulterior purposes of (a) intimidating Plaintiffs into abandoning their opposition to the Board's actions and/or support of the Recall Proceeding, (b) exacting retribution against them for their open opposition to the Board's actions, and/or (c) embarrassing and discrediting them in the eyes of their friends and neighbors to gain a competitive advantage in a community association recall proceeding. None of such purposes are intended to be advanced by the Florida Bar's grievance process.

110. In submitting the false DCF Complaint, said Defendants knew, and displayed callous disregard for, the traumatic effect the ensuing investigation would have on Plaintiffs' 7 and 8 year old children, and the potential irrevocable consequences to Plaintiffs' family if Department of Children and Families and Broward Sheriff's Office had believed such lies about Plaintiffs' treatment of their children.

111. By submitting the false DCF Complaint, said Defendants also knew that their use of the DCF process to secure victory and retain control over their homeowners association Board was an intentional and shameful **abuse** of a process intended to protect and rescue **abused**, battered and neglected children from parents, spouses or other persons who constitute a present and continuing threat to the children's safety and welfare.

112. At all times material to this action, Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE, or their agent, knew that the filing of the DCF Complaint was contemptible, baseless and not supportable by existing law.

113. As a direct and proximate result of the actions of Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE, Plaintiffs have incurred substantial legal fees, costs and lost time and business opportunity defending against Defendants', and Plaintiffs and their minor children have suffered terrifying trauma, humiliation, emotional distress, mental anguish, betrayal by their own Board of Directors, now have a permanent record with DCF, and plaintiffs have suffered a loss of the quiet enjoyment of their home. The losses are either permanent or continuing, and the Plaintiffs will continue to suffer these losses in the future.

WHEREFORE, Plaintiffs request a judgment against Defendants HOA, KRAUS, B. WAZIRY, R. BEHAR, SHAMAM, and CROWE for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

### **COUNT III - **ABUSE** OF PROCESS AGAINST WAZIRY CIRCUIT COURT CASE NO. 13002565 (59)**

114. Plaintiffs sue Defendant B. WAZIRY for **Abuse** of Process, and reallege each and every allegation set forth in paragraphs I through 97, inclusive, as though fully set forth in this Count III.

115. On April 17, 2013, Defendant B. WAZIRY filed with the Broward County, Florida Circuit Court the Waziry Restraining Order Petition.

116. By filing the Waziry Restraining Order Petition, B. WAZIRY knowingly, willingly and intentionally misused the Court process for injunction against domestic violence, sexual violence, repeat violence and/or stalking for his and his cohorts wrongful and unlawful objects and/or ulterior purposes not intended by Florida law to effect, to wit: (a) to retaliate and exact retribution against Plaintiffs for their open opposition to the Board's actions, (b) to intimidate Plaintiffs into abandoning their vocal opposition to the Board's actions and/or support of the Recall Proceeding, (c) to embarrass and discredit Plaintiffs in the eyes of their friends and neighbors to gain a competitive advantage in a community association recall proceeding; and (d) to limit Plaintiffs' movement in the L'Etoile community in the days leading up to the Association's annual election. None of such purposes is contemplated by Florida law, or could have been intended by the Florida legislature in enacting statutes for the protection of spouses, children, partners and other vulnerable persons from the tragic real incidents of domestic violence, sexual violence, repeat violence and/or stalking.

117. As a direct and proximate result of the actions of B. WAZIRY, Plaintiff D. Vogel has incurred substantial legal fees, costs and lost time and business opportunity defending against the specious Waziry Restraining Order Petition, and Plaintiffs have suffered humiliation, emotional distress, mental anguish, and loss of capacity of the quiet enjoyment of their home and community. The losses are either permanent or continuing, and the Plaintiffs will continue to suffer these losses in the future.

WHEREFORE, Plaintiffs request a judgment against Defendants B. WAZIRY for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

**COUNT IV - ABUSE OF PROCESS AGAINST KRAUS CIRCUIT COURT CASE NO. 13003166 (59)**

118. Plaintiffs sue Defendant KRAUS for Abuse of Process, reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count IV.

119. On April 17, 2013, Defendant KRAUS filed with the Broward County, Florida Circuit Court the Kraus Restraining Order Petition.

120. By filing the Kraus Restraining Order Petition, KRAUS knowingly, willingly and intentionally misused the Court process for injunction against domestic violence, sexual violence, repeat violence and/or stalking for her and her cohorts wrongful and unlawful objects and/or ulterior purposes not intended by Florida law to effect, to wit: (a) to retaliate and exact retribution against Plaintiffs for their open opposition to the Board's actions, (b) to intimidate Plaintiffs into abandoning their vocal opposition to the Board's actions and/or support of the Recall Proceeding, (c) to embarrass and discredit Plaintiffs in the eyes of their friends and neighbors to gain a competitive advantage in a community association recall proceeding; and (d) to limit Plaintiffs' movement in the L'Etoile community in the days leading up to the Association's annual election. None of such purposes is contemplated by Florida law, or could have been intended by the Florida legislature in enacting statutes for the protection of spouses, children, partners and other vulnerable persons from the tragic real incidents of domestic violence, sexual violence, repeat violence and/or stalking.

121. As a direct and proximate result of the specious actions of KRAUS, Plaintiff D. Vogel has incurred substantial legal fees, costs and lost time and business opportunity defending against the Kraus Restraining Order Petition, and Plaintiffs have suffered humiliation, emotional distress, mental anguish, and loss of capacity of the quiet enjoyment of their home and community. The losses are either permanent or continuing, and the Plaintiffs will continue to suffer these losses in the future.

WHEREFORE, Plaintiffs request a judgment against Defendant KRAUS for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just.

**COUNT V - MALICIOUS PROSECUTION AGAINST BAHAAELDIEN  
MOUSTAFA WAZIRY -CIRCUIT COURT CASE NO. 13002565 (59)**

122. Plaintiffs sue Defendant B. WAZIRY for Malicious Prosecution, reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count V.

123. By the Waziry Restraining Order Petition filed under Case No. 13002565 (59), B. WAZIRY sought protection from Plaintiff D. Vogel against, stalking, hate crimes and attempted vehicular homicide. In the Petition, B. WAZIRY makes, inter alia, eight separate allegations (more particularly enumerated in Paragraph 71 above) against D. Vogel.

124. Plaintiff D. Vogel prevailed at the Final Hearing.

125. B. WAZIRY's prosecution of this action against D. Vogel was malicious and brought without any cause to believe that D. Vogel had committed any of the acts alleged in the Waziry Restraining Order Petition.

126. Though only Plaintiff D. Vogel was named in the Waziry Restraining Order Petition, such Petition was brought vindictively and for an ulterior motive; for the purpose of attempting to legally intimidate, harass, embarrass, defame and retaliate against,



and damage, both Plaintiffs and their family for their vocal opposition to the Board's actions, AND so that B. WAZIRY could retain a seat on the Board of Directors of the L'Etoile Association.

127. The bringing and continuing of such action constituted malicious prosecution on the part B. WAZIRY against Plaintiffs, and B. WAZIRY's conduct, being willful, wanton and malicious, warrants punitive damages.

128. As a result of the malicious prosecution Plaintiff D. Vogel was obliged to defend himself and to expend money and time in his defense, all in an amount to be proven at the trial; he lost time from the ordinary pursuits in his professional and personal life, and the quality of life of both Plaintiffs has been diminished by it, all to their great damage, as will be shown at the trial.

129. B. WAZIRY failed to meet his burden of proof in his Restraining Order Petition action against D. Vogel; and B. WAZIRY's allegations against D. Vogel were unfounded and frivolous, without probable cause to believe that the action filed would succeed, and such action was brought and prosecuted for an improper purpose.

130. B. WAZIRY's Restraining Order Petition action proved even more unfounded because Defendant failed so completely to address or present any evidence to support his multitude of shocking claims such as attempted homicide, hate crimes, stalking, and false imprisonment, against D. Vogel, as respondent in that action that, immediately upon the close of B. WAZIRY's case, Circuit Court Judge Kaplan granted D. Vogel's *ore tenus* Motion to Dismiss "for failure to state a claim," finding specifically that the evidence presented was insufficient to allow the Court to issue an injunction for protection against domestic, repeat, dating, or sexual violence, or stalking.

WHEREFORE, Plaintiffs request a judgment against Defendant B. WAZIRY for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

**COUNT VI - MALICIOUS PROSECUTION AGAINST  
RACHEL KRAUS - CIRCUIT COURT CASE NO. 13003166 (59)**

131. Plaintiffs sue Defendant KRAUS for Malicious Prosecution, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count VI.

132. By filing the Waziry Restraining Order Petition filed under Case No. 13003166 (59), KRAUS sought protection from Plaintiff D. Vogel against, stalking, attempted vehicular homicide and violence. In the Petition, KRAUS makes numerous separate allegations (more particularly enumerated in Paragraph 83 above) against Plaintiffs D. Vogel and I. Vogel.

133. Defendant failed to address or provide any testimony or other evidence to support any of her allegations or claims against either D. Vogel or I. Vogel in her action for permanent injunction.

134. KRAUS's prosecution of this action against D. Vogel was malicious and brought without any cause to believe that D. Vogel had committed any of the acts alleged in the Kraus Restraining Order Petition.

135. Though only Plaintiff D. Vogel was named in the Kraus Restraining Order Petition, such Petition was brought vindictively and for an ulterior motive; for the purpose of attempting to legally intimidate, harass, embarrass, defame and retaliate against, and damage, both D. Vogel and his wife, I. Vogel, and their family for their vocal opposition to the Board's actions, AND so that KRAUS could retain a seat on the Board of Directors of the L'Etoile Association.

136. The bringing and continuing of such action constituted malicious prosecution on the part KRAUS against Plaintiffs, and KRAUS's conduct, being willful, wanton and malicious, warrants punitive damages.

137. As a result of the malicious prosecution Plaintiff D. Vogel was obliged to defend himself and his wife and to expend money and time in their defense, all in an amount to be proven at the trial; Plaintiffs lost time from the ordinary pursuits in their professional and personal lives, and the quality of life of both Plaintiffs has been diminished by it, all to their great damage, as will be shown at the trial.

138. KRAUS failed to meet her burden of proof in her Restraining Order Petition action against D. Vogel; and KRAUS's allegations against D. Vogel were unfounded and frivolous, without probable cause to believe that the action filed would succeed, and such action was brought and prosecuted for an improper purpose.

139. KRAUS's Restraining Order Petition action proved even more unfounded because she failed so completely to address or present any evidence to support her numerous shocking claims such as attempted vehicular homicide, hate crimes, stalking, and false imprisonment, against D. Vogel, as respondent in that action that, immediately upon the close of KRAUS's case, Circuit Court Judge Gehl dismissed KRAUS's Petition without requiring D. Vogel to put on any case as respondent.

WHEREFORE, Plaintiffs request a judgment against Defendant KRAUS for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT VII - DEFAMATION PER SE AGAINST KRAUS**

140. Plaintiffs sue Defendant KRAUS for Defamation Per Se, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count VII.

141. By the statements and accusations made in the Bar Complaint, the DCF Complaint and, under penalties of perjury, in the Kraus Restraining Order Petition, KRAUS has published statements about Plaintiffs which are false and malicious.

142. Upon information and belief, KRAUS then orally communicated or disseminated copies of the Bar Complaint, the DCF Complaint and the Kraus Restraining Order Petition to the co-Defendants and other members of the L'Etoile community for the purpose of spreading such false and malicious statements about the Plaintiffs throughout the L'Etoile community where Plaintiffs live.

143. KRAUS's written publications, and her oral communications of such publications, were false and not privileged and their natural and proximate consequences necessarily caused injury to the Plaintiffs in their social, official, and business relations in life.

144. The false and malicious statements made by KRAUS impute to Plaintiffs conduct and characteristics incompatible with the proper exercise of their lawful professions as a probate and elder law attorney (David Vogel) with a close fiduciary relationship with his clients in the administration of trusts, guardianships and probate estates, and a criminal defense attorney (Iana Vogel) also requiring heightened trust and confidentiality with clients, both Plaintiffs being subject to strict financial scrutiny by the Florida Bar.

145. KRAUS's oral and written communications impute to Plaintiffs felonious criminal offenses, namely attempted homicide, blackmail, stalking and assault, and other conduct and characteristics incompatible with the proper exercise of their lawful profession.

146. KRAUS knew such false statements would likely result in material and substantial defamation of Plaintiffs and their business practices.

147. KRAUS published and then communicated her defamatory statements with the intent to slander and irreparably harm Plaintiffs and their reputation. This has resulted in other residents in HOA to disparage Plaintiffs, verbally **abuse** and mock Plaintiffs at homeowners meetings, taunt Plaintiffs to move out of HOA, assault them and their minor children while driving in the community, and deprived them of their right of quiet enjoyment of their home and the community in which they live.

WHEREFORE, Plaintiffs request a judgment against Defendant KRAUS for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT VIII - DEFAMATION PER SE AGAINST B. WAZIRY**

148. Plaintiffs sue Defendant B. WAZIRY for Defamation Per Se, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count VIII.

149. By the statements and accusations made in the DCF Complaint and, under penalties of perjury, in the Waziry Restraining Order Petition, B. WAZIRY has published statements about Plaintiff D. Vogel which are false and malicious.

150. Upon information and belief, B. WAZIRY then orally communicated or disseminated copies of the Waziry Restraining Order Petition to the co-Defendants and other members of the L'Etoile community for the purpose of spreading such false and malicious statements about the Plaintiff D. Vogel throughout the L'Etoile community where Plaintiffs live.

151. B. WAZIRY's written publications, and his oral communications of such publications; were false and not privileged and their natural and proximate consequences necessarily caused injury to the Plaintiffs in their social, official, and business relations in life.

152. The false and malicious statements made by B. WAZIRY impute to Plaintiff D. Vogel conduct and characteristics incompatible with the proper exercise of his lawful profession as a probate and **elder** law attorney requiring a close fiduciary relationship with his clients in the administration of trusts, guardianships and probate estates, and being subject to strict **financial** scrutiny by the Florida Bar.

153. B. WAZIRY's oral and written communications impute to Plaintiff D. Vogel felonious criminal offenses, namely attempted homicide, false imprisonment, stalking and assault, and other conduct and characteristics incompatible with the proper exercise of his lawful profession.

154. B. WAZIRY knew such false statements would likely result in material and substantial defamation of Plaintiffs and their business practices.

155. B. WAZIRY published and then communicated his defamatory statements with the intent to slander and irreparably harm Plaintiffs and their reputation. This has caused other residents in HOA to disparage Plaintiffs, verbally **abuse** and mock Plaintiffs at homeowners meetings, taunt Plaintiffs to move out of HOA, assault them and their minor children while driving in the community, and deprived them of their right of quiet enjoyment of their home and the community in which they live.

WHEREFORE, Plaintiffs request a judgment against Defendant B. WAZIRY for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT IV - DEFAMATION PER SE AGAINST STEIN**

156. Plaintiffs sue Defendant STEIN for Defamation Per Se, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count IV.

157. During the Association's annual meeting and election on May 29, 2013, STEIN embarked on a course of conduct to make false and defamatory statements about the Plaintiffs.

158. In front of the general membership including approximately 80 to 90 of Plaintiffs' neighbors and fellow members in the Association, STEIN identified each of the Plaintiffs by name and circulated the Stein Letter, containing numerous false allegations and statements of fact, and made such false allegations and statements orally to Plaintiffs' fellow Association members

159. Specifically, in the Stein Letter, an open letter to the Association membership, STEIN states “[t]here are several facts that I feel you, homeowners and neighbors, need to know about both David and Ilana Vogel before you consider giving them access to our HOA checking account or you allow them to negotiate contracts or handle any HOA business...”. STEIN proceeded to accuse Plaintiffs of (a) “behavior that caused the authorities to issue [this] restraining order” which “should trigger your concern”, (b) that “a board member was just granted an extension of [this] restraining order by the City of Hollywood Police Department,” (referring to the Waziry Restraining Order, which was continued by the Court upon Plaintiff D. Vogel's motion), (c) that “Mr. Vogel has displayed similar behaviors to me, and other in the community, in the past” (referring to the acts alleged in both the Waziry and Kraus Restraining Order Petitioner - e.g., attempted homicide, stalking, repeat violence, false imprisonment), (d) “Plaintiff David Vogel was ordered to pay his employer \$42,000 due to a fraud claim,” (e) “Mr. Vogel and his wife have intimidated many of us.”

160. Despite that D. Vogel was not even a candidate for a seat on the Board at the annual election, STEIN misinformed the membership (a) “I know we should not elect a board member that has a current restraining order from a homeowner to our board,” and (b) I know that we should not elect a board member that has been ordered to pay their ex-employer a significant amount of money due to a fraud claim to our board,” and falsely advises Plaintiffs' neighbors “I believe that the only reason Mr. Vogel wants to be a Board Member is to: have access to our money, for his benefit, to bill us for his legal work as our attorney, for his benefit, to negotiate contracts, for his benefit, to enforce, or not, our HOA rules, for his benefit.” By the Stein Letter, Defendant STEIN also reports to the community that “[l]ies and accusations have been posted on line and stuffed in our doors” [by the Vogels].

161. By her false and malicious statements and accusations against Plaintiffs, STEIN exposed Plaintiffs to distrust, hatred, contempt, ridicule and obloquy among their neighbors just moments before the Association's annual election.

162. STEIN's written letter to the community and her oral communication of such publication was false, malicious, and not privileged; and the natural and proximate consequences of such publication and oral communication necessarily caused injury to the Plaintiffs in their social, official, and business relations in life.

163. The false and malicious statements made by STEIN impute to Plaintiffs conduct and characteristics incompatible with the proper exercise of their lawful professions as a probate and **elder** law attorney (D. Vogel) requiring a close fiduciary relationship with his clients in the administration of trusts, guardianships and probate estates, and as a criminal defense attorney (I. Vogel) requiring a heightened relationship of trust and confidence with clients; both Plaintiffs being subject to strict **financial** regulation and scrutiny of the Florida Bar.

164. STEIN's oral and written communications impute to one or both Plaintiffs felonious criminal offenses, namely theft, embezzlement, attempted homicide, false imprisonment, stalking and assault, and other conduct and characteristics incompatible with the proper exercise of their respective lawful professions.

165. Even if STEIN's defamatory statements did not reflect negatively upon Plaintiffs' character and ability to properly exercise their respective professions, the necessary result of STEIN's imputations was to hold Plaintiffs David and Ilana Vogel up to public hatred, contempt, ridicule, or to prejudice them in their profession, office, occupation or employment in the community where they live.

166. STEIN knew such false statements would likely result in material and substantial defamation of Plaintiffs and their business practices, and hold them up to public hatred, contempt, ridicule, and/or prejudice them in their profession, office, occupation or employment in the community where they live.

WHEREFORE, Plaintiffs request a judgment against Defendant STEIN for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT X - SLANDER PER SE AGAINST P. WAZIRY**

167. Plaintiffs sue Defendant P. WAZIRY for Slander Per Se, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count X.

168. At the May 29, 2013 annual election meeting, Defendant P. WAZIRY made several disparaging statements about Plaintiffs based mostly on the specious filings of her husband and other co-defendants described herein; and while making such statements P. WAZIRY specifically likened D. Vogel to a child molester before an open assembly of the membership of the Association

169. By making such disparaging statements based on information known to her to be untrue, and by making such a shocking comparison, Defendant P. WAZIRY intended to impugn the character and trustworthiness of Plaintiffs, subject them to ridicule, disparagement and distrust by their neighbors, and to intimidate, harass, embarrass, defame, and damage, Plaintiffs and their family.

170. P. WAZIRY's oral statements to the membership of the Association were false and not privileged, and their natural and proximate consequences necessarily caused injury to the D. Vogel in their social, official, and business relations in life.

171. The false and malicious statements made by P. WAZIRY impute to Plaintiff D. Vogel conduct and characteristics incompatible with the proper exercise of his lawful profession as a probate and **elder** law attorney requiring a close fiduciary relationship with his clients in the administration of trusts, guardianships and probate estates, and being subject to strict **financial** scrutiny by the Florida Bar.

172. P. WAZIRY's oral communications impute to Plaintiff D. Vogel felonious criminal offenses, namely child molestation, theft, embezzlement, and other conduct and characteristics incompatible with the proper exercise of his lawful profession.

173. P. WAZIRY knew such false statements would likely result in material and substantial defamation of Plaintiffs and their business practices.

174. P. WAZIRY communicated her defamatory statements with the intent to slander and irreparably harm Plaintiffs and their reputation. This has resulted in other residents in the Association to disparage Plaintiffs, verbally **abuse** and mock Plaintiffs at homeowners meetings and in the community, taunt Plaintiffs to move out of community, assault them and their minor children while driving in the community, and deprive them of their right of quiet enjoyment of their home and the community in which they live.

WHEREFORE, Plaintiffs request a judgment against Defendant B. WAZIRY for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT XI - SLANDER PER SE AGAINST LORBER**

175. Plaintiffs sue Defendant LORBER for Slander Per Se, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XI.

176. At the May 29, 2013 annual election meeting, Defendant LORBER re-published false, malicious misleading statements made by her co-Defendants about Plaintiff D. Vogel and his putative felonious behavior against Defendants B. WAZIRY and KRAUS; and LORBER pronounced before the membership of the Association just before the annual election (at which she, previously unknown in the community, was elected to the Board) that D. Vogel's behavior during the April 14, 2013 incident (when Plaintiffs and their children were assaulted in their automobile by several of the Defendants) was contemptible, that D. Vogel put his children in danger, and based on the above, she addressed D. Vogel in front of the audience, stating "I am scared of you."

177. Defendant LORBER knew the false statements she re-published and her absurd commentary about D. Vogel's response to being assaulted by LORBER's co-Defendants would likely result in material and substantial defamation of Plaintiff and his business practices,

178. Defendant LORBER's false and malicious statements imputes to others conduct, characteristics, and/or conditions incompatible with the proper exercise of Plaintiff D. Vogel's lawful business, trade, and/or profession.

179. LORBER communicated her defamatory statements with the intent to slander and irreparably harm Plaintiffs and their reputation. This has resulted in other residents in the Association to disparage Plaintiffs, verbally **abuse** and mock Plaintiffs at homeowners meetings and in the community, taunt Plaintiffs to move out of community, assault them and their minor children while driving in the community, and deprive them of their right of quiet enjoyment of their home and the community in which they live.

WHEREFORE, Plaintiffs request a judgment against Defendant LORBER for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT XII - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST KRAUS**

180. Plaintiffs sue KRAUS for Intentional Infliction of Emotional Distress, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XII.

181. By her malicious and fraudulent filings with the Florida Bar, the Broward County Family Court, Department of Children and Families, and Hollywood Police Department, and her malicious prosecution of such actions, and by communicating false and/or misleading information about Plaintiffs to Plaintiffs' neighbors, Defendant KRAUS intended to intimidate, harass, embarrass, defame and retaliate against, and damage, Plaintiffs and their family, and to cause Plaintiffs to suffer emotional distress.

182. Each of KRAUS's separate actions, and certainly all of such actions cumulatively, were extreme and outrageous, caused Plaintiffs and their family to be subject to ridicule, disparagement and verbal **abuse** by their neighbors, to fear moving about their community in safety, caused Plaintiffs and their minor children severe anxiety, fear, and emotional and medical distress.

183. KRAUS's actions were so extreme and outrageous in character, and so extreme in degree, that they went beyond all possible bounds of decency, and were atrocious, and utterly intolerable in a civilized community.

WHEREFORE, Plaintiffs request a judgment against Defendant KRAUS for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT XIII - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST B. WAZIRY**

184. Plaintiffs sue Defendant B. WAZIRY for Intentional Infliction of Emotional Distress, and reallege each and every allegation set forth in paragraphs I through 97, inclusive, as though fully set forth in this Count VIII.

185. By his malicious and fraudulent filings with the Florida Bar, the Broward County Family Court, Department of Children and Families, and the Hollywood Police Department, and his malicious prosecution of such actions, by communicating false and/or misleading information about Plaintiffs to Plaintiffs' neighbors, and by accosting Plaintiffs and their minor children on the streets of their community, thereby inducing fear and terror in them, Defendant B. WAZIRY intended to intimidate, harass, embarrass, defame and retaliate against, and damage, Plaintiffs and their family, and to cause Plaintiffs to suffer emotional distress.

186. Each of B. WAZIRY's separate actions, and certainly all of such actions cumulatively, were extreme and outrageous, caused Plaintiffs and their family to be subject to ridicule, disparagement and verbal **abuse** by their neighbors, to fear moving about their community in safety, caused Plaintiffs and their minor children severe anxiety, fear, and emotional and medical distress.

187. B. WAZIRY's actions were so extreme and outrageous in character, and so extreme in degree, that they went beyond all possible bounds of decency, and were atrocious, and utterly intolerable in a civilized community.

WHEREFORE, Plaintiffs request a judgment against Defendant B. WAZIRY for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT XIV - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST R. BEHAR**

188. Plaintiffs sue Defendant R. BEHAR for Intentional Infliction of Emotional Distress, and Plaintiffs reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XIV.

189. By accosting Plaintiffs and their minor children in the streets of their community, and by encouraging or allowing his 13 year old child to make threatening phone calls to Plaintiffs, thereby inducing fear and terror in Plaintiffs and their family, Defendant R. BEHAR intended to intimidate, harass, embarrass, defame and retaliate against, and damage, Plaintiffs and their family, and to cause Plaintiffs to suffer emotional distress.

190. Each of R. BEHAR's separate actions, and certainly all of such actions cumulatively, were extreme and outrageous, caused Plaintiffs and their family to be subject to ridicule, disparagement and verbal **abuse** by their neighbors, to fear moving about their community in safety, caused Plaintiffs and their minor children severe anxiety, fear, and emotional and medical distress.

191. R. BEHAR's actions were so extreme and outrageous in character, and so extreme in degree, that they went beyond all possible bounds of decency, and were atrocious, and utterly intolerable in a civilized community.

WHEREFORE, Plaintiffs request a judgment against Defendant R. BEHAR for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT XV - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST A. BEHAR**

192. Plaintiffs sue Defendant A. BEHAR for Intentional Infliction of Emotional Distress, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XV.

193. By accosting Plaintiffs and their minor children in the streets of their community, and by encouraging or allowing her 13 year old child to make threatening phone calls to Plaintiffs, thereby inducing fear and terror in Plaintiffs and their family, Defendant A. BEHAR intended to intimidate, harass, embarrass, defame and retaliate against; and damage, Plaintiffs and their family, and to cause Plaintiffs to suffer emotional distress.

194. Each of A. BEHAR's separate actions, and certainly all of such actions cumulatively, were extreme and outrageous, caused Plaintiffs and their family to be subject to ridicule, disparagement and verbal **abuse** by their neighbors, to fear moving about their community in safety, caused Plaintiffs and their minor children severe anxiety, fear, and emotional and medical distress.

195. A. BEHAR's actions were so extreme and outrageous in character, and so extreme in degree, that they went beyond all possible bounds of decency, and were atrocious, and utterly intolerable in a civilized community.

WHEREFORE, Plaintiffs request a judgment against Defendant A. BEHAR for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damaes.

#### **COUNT XVI - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST TATARSKY**

196. Plaintiffs sue Defendant TATARSKY for Intentional Infliction of Emotional Distress, Plaintiffs reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XVI.

197. By the acts of assaulting Plaintiff D. Vogel at the November 20, 2013 Board meeting, threatening battery upon him, and communicating false and/or misleading information about Plaintiffs to the members of the Association, and threatening that he and his fellow Board members have been compiling "documentation" on Plaintiffs, Defendant TATARSKY intended to intimidate, harass, embarrass, defame and retaliate against, and damage, Plaintiffs and their family, and to cause Plaintiffs to suffer emotional distress.

198. Each of TATARSKY's separate actions, and certainly all of such actions cumulatively, were extreme and outrageous, caused Plaintiffs and their family to be subject to ridicule, disparagement and verbal **abuse** by their neighbors, to fear moving about their community in safety, caused Plaintiffs and their minor children severe anxiety, fear, and emotional and medical distress.

199. TATARSKY's actions were so extreme and outrageous in character, and so extreme in degree, that they went beyond all possible bounds of decency, and were atrocious, and utterly intolerable in a civilized community.

WHEREFORE, Plaintiffs request a judgment against Defendant TATARSKY for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.



### **COUNT XVII - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST LORBER**

200. Plaintiffs sue Defendant LORBER for Intentional Infliction of Emotional Distress, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XVII.

201. By the acts of screaming profanities in front of Plaintiffs and their minor children (“SHUT THE [expletive] UP”) at the November 20, 2013 Board meeting, and by republishing false statements about Plaintiffs made by others (namely, the then pending restraining order proceedings and other fabricated incidents by her co-Defendants), and advising the membership of the Association she is “scared” of D. Vogel, without having previously met Plaintiffs or having any personal knowledge of the proceedings, Defendant LORBER intended to intimidate, harass, embarrass, defame and retaliate against, and damage Plaintiffs and their family and to cause Plaintiffs to suffer emotional distress.

202. Each and all of LORBER's actions was extreme and outrageous, caused Plaintiffs and their family to be subject to ridicule, disparagement and verbal **abuse** by their neighbors, to fear moving about their community in safety, caused Plaintiffs and their minor children severe anxiety, fear, and emotional and medical distress.

203. LORBER's actions were so extreme and outrageous in character, and so extreme in degree, that they went beyond all possible bounds of decency, and were atrocious, and utterly intolerable in a civilized community.

WHEREFORE, Plaintiffs request a judgment against Defendant LORBER for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

### **COUNT XVII- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST STEIN**

204. Plaintiffs sue Defendant STEIN for Intentional Infliction of Emotional Distress, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XVIII.

205. During several meetings of the Association's Board of Directors, STEIN has openly maligned Plaintiffs and on one occasion attacked Plaintiff I. Vogel and tried to break Plaintiffs' video recorder. By such aggressive and violent behavior toward Plaintiffs, and by her publication and communication (at the May 29, 2013 annual meeting and election) of the malicious and false accusations contained in the Stein Letter, Defendant STEIN intended to intimidate, harass, embarrass, defame and retaliate against, and damage, Plaintiffs and their family, and to cause Plaintiffs to suffer emotional distress.

206. Each of STEIN's separate actions, and certainly all of such actions cumulatively, were extreme and outrageous, caused Plaintiffs and their family to fear moving about their community in safety, caused Plaintiffs and their minor children emotional and medical distress, and caused Plaintiffs community severe emotional distress.

207. STEIN's actions were so extreme and outrageous in character, and so extreme in degree, that they went beyond all possible bounds of decency, and were atrocious, and utterly intolerable in a civilized community.

WHEREFORE, Plaintiffs request a judgment against Defendant STEIN for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

### **COUNT XIX - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST P. WAZIRY**

208. Plaintiffs sue Defendant P. WAZIRY for Intentional Infliction of Emotional Distress, realleging each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XIX.

209. By the acts of jumping onto the hood of Plaintiff D. Vogel's automobile during the April 12, 2013 argument between D. Vogel and B. WAZIRY, and likening D. Vogel to a child molester before an open assembly of the membership of the Association at the May 29, 2013 annual election meeting, Defendant P. WAZIRY intended to impugn the character and trustworthiness of Plaintiffs, subject them to ridicule, disparagement and distrust by their neighbors, and to intimidate, harass, embarrass, defame, retaliate against, and damage, Plaintiffs and their family, and to cause Plaintiffs to suffer emotional distress.

210. P. WAZIRY's actions were extreme and outrageous, caused Plaintiffs and their family to fear moving about their community in safety, and caused Plaintiffs and their minor children to suffer severe emotional distress.

211. P. WAZIRY's actions were so extreme and outrageous in character, and so extreme in degree, that they went beyond all possible bounds of decency, and were atrocious, and utterly intolerable in a civilized community.

WHEREFORE, Plaintiffs request a judgment against Defendant P. WAZIRY for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

**COUNT XX - BREACH OF DECLARATION OF COVENANTS  
AND REQUEST FOR SPECIFIC PERFORMANCE AGAINST HOA**

212. Plaintiffs sue Defendant HOA for Breach of the Association's Declaration of Covenants, and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XX

213. Pursuant to the HOA's Declaration of Covenants, the HOA is exclusively responsible for maintaining all landscaping originally installed about the front yard areas serving dwelling Units upon the Lots and side yard areas which are easily accessible and visible from the front Yard areas of such Lots.

214. The HOA has neglected to perform proper maintenance of landscaping about Plaintiffs' front yard at their residence located at 3845 Amalfi Drive.

215. As a proximate result of HOA's neglect of the maintenance of Plaintiffs' landscaping, several out-of-control tree roots have (a) caused the drainage system at the base of Plaintiffs' driveway to fail, (b) broken up and displaced Plaintiffs' concrete driveway, and (c) caused erosion, flooding and destruction of a substantial portion of Plaintiffs' front yard; creating, inter alia, tripping hazards and unhealthy standing murky water at the base of Plaintiffs' driveway.

216. Over the past 18 months, Plaintiffs have repeatedly reported such neglect and hazardous conditions to the HOA, and requested their repair.

217. The HOA has specifically and expressly acknowledged its obligation to maintain such front yard areas and elements upon Plaintiffs' residence, has acknowledged that the root system is the cause of the flooding on Plaintiffs' property, poses a hazard to Plaintiffs and others, and is a liability to the HOA, but has neglected to act to cure same.

218. Plaintiffs are prohibited by the Declaration of Covenants from obtaining self-help by repairing such hazards upon their limited common element front yard caused by the HOA's neglect. Accordingly, there is no adequate remedy at law for the HOA's breach of its maintenance duties of the Association's Declaration of Covenants by neglecting to maintain Plaintiffs' front yard and landscaping thereon in a manner which is safe and healthy, which preserves the value and integrity of Plaintiffs' residence,

and which meets the aesthetic standards of L'Etoile community. Because Plaintiffs are powerless to effect such repairs to their front yard, specific performance of the HOA's duties to maintain same is a necessary remedy.

219. Pursuant to Florida State [§720.305](#), the prevailing party in this litigation is entitled to recover reasonable attorney's fees and costs.

WHEREFORE, Plaintiffs ask this Court to issue such orders for specific performance and/or injunctive relief against the HOA for the repair of Plaintiffs' limited common element front yard, including (a) pruning of tree roots to stop the destruction of Plaintiffs' driveway, drainage system and front lawn and yard, or alternatively, the removal of such tree completely, (b) the restoration of Plaintiffs' driveway and front yard lawn and landscaping to a condition consistent with the aesthetic character and standards of the L'Etoile community in general, and (c) repair of the storm water drainage system at the base of Plaintiffs' driveway to prevent flooding, (d) reasonable attorney's fees and costs, and such other relief as this Court deems fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

### COUNT XXI - VIOLATION [FLA STAT. §720.303](#) AGAINST HOA

220. Plaintiffs sue Defendant HOA for its willful noncompliance with Plaintiffs' requests to inspect the Association's records, in violation of [Fla. Stat. §720.303](#), and reallege each and every allegation set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XXI.

221. [Fla. Stat §720.303](#) provides, in pertinent part:

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and rinted uon reuest.

*(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this subsection.*

*(b) A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be \$50 per calendar day up to 10 days, the calculation to begin on the 11<sup>th</sup> business day after receipt of the written request.*

222. On November 2, 2012, Plaintiffs made their initial records inspection request to the HOA; and Plaintiffs made at least five additional requests and demands to inspect the HOA's records between November, 2012 and March, 2013.

223. The HOA willfully and intentionally withheld the Association records from Plaintiffs' inspection for over four months; but in any event, were not made available to the Plaintiffs as required by [Fla. Stat §720.303](#).

224. The Plaintiffs are entitled to receive damages in accordance with [Fla. Stat §720.303\(5\)\(b\)](#).

225. Pursuant to Florida State [§720.305](#), the prevailing party in this litigation is entitled to recover reasonable attorney's fees and costs.

WHEREFORE, Plaintiffs request judgment against Defendant HOA for damages pursuant to the provisions of [Fla. Stat §720.303\(5\)](#), that Plaintiffs be awarded their reasonable attorneys' fees and costs in this action; and that the Court grant any

other relief deemed fair and just under Fla. Stat §720.305 and other applicable provisions of Florida law. Plaintiffs reserve the right to amend this lawsuit to seek unitive damaes.

#### **COUNT XXII - BREACH OF FIDUCIARY DUTY BY COMMISSION OF WASTE AGAINST HOA**

226. Plaintiffs sue Defendant HOA for Breach of Fiduciary Duty by Commission of Waste, and reallege each and every allegation set forth in paragraphs I through 97, inclusive, as though fully set forth in this Count XXII.

227. Plaintiffs and Defendant share a relationship whereby (a) Plaintiff reposes trust and confidence in Defendant HOA, and (b) Defendant undertakes such trust and assumes a duty to protect the interests of Plaintiffs and the remaining members of the Association.

228. Defendant HOA breached its duties to Plaintiffs by:

- a. taking title to the 36<sup>th</sup> Ave. Property in foreclosure;
- b. voting on 2/15/2012 quitclaim the 3125 N 36 Ave Property back to the bank;
- c. failing to ever transfer the 3125 N 36 Ave Property back to the bank or take any action with regard to the 36<sup>th</sup> Ave Property;
- d. failing to adequately maintain the 3125 N. 36 Ave. Property or take any action to maintain it as an income-producing property for the Association;
- e. denying ownership of the Property at an open meeting of the Board; and
- f. failing, when Plaintiffs inquired about it, to disclose the status of a rumored sale of the property. Instead, the Board collectively claimed ignorance. Only Board member Shamam acknowledged that there “may be a contract” to sell the property, and confirmed knowing the identity of the prospective buyer, but refused to disclose at the open meeting the identity of the buyer, or any other information regarding the sale.

229. Defendant HOA's breach of its duty to its members has caused Plaintiffs to suffer damages, including, but not limited to, deterioration, disrepair and diminishment of value of the property, and lost income.

WHEREFORE, Plaintiff demands damages against Defendant for breach of fiduciary duty, reasonable attorneys' fees and costs, and such other relief this Court deems just and proper. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT XXIII - BREACH OF GOOD FAITH AND FAIR DEALING AGAINST HOA**

230. Plaintiffs sue the HOA for Breach of Implied Covenant of Good Faith & Fair Dealing, and reallege each and every allegation as set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XXIII.

231. Plaintiffs and HOA are parties to a written contract, to wit, the Association's Declaration of Covenants.

232. The Board of the HOA owed to the Plaintiffs a duty of good faith and fair dealing in the performance and enforcement of their duties arising out of the Association's Declaration of Covenants.

233. As set more fully herein, the Board breached the implied covenant of good faith and fair dealing toward Plaintiffs by, inter alia, the following:

- a. Actively participating in the actions as complained of herein;
- b. Permitting the actions as complained of herein to take place and taking no action to stop said wrongdoings;
- c. Refusing to allow Plaintiffs the right to speak for three minutes on each matter presented to the Board at Board meetings, or to address certain questions and issues as presented by Plaintiffs at Board meetings, hence subjecting the Association to further legal fees and costs;
- d. Undertaking wholesale amendments to the Association's Declaration of Covenants, at a cost of tens of thousands of Association dollars without first seeking to determine whether the membership was even receptive to such amendments (the proposed amendments were twice soundly rejected and defeated by the membership).
- e. Refusing to provide Plaintiffs access to official documents as required by Florida Statute, thereby subjecting the Association to further fees and costs.
- f. Engaged in and/or acquiescing to the actions as set forth in this Complaint with the intent and the result of depriving the Plaintiffs of their right to enjoy and defend life and liberty, to pursue happiness;
- g. Conducted a portion of Association business in secret, and not in scheduled meetings as set required by Florida Statutes;
- h. Attacking the Plaintiffs for their efforts to speak out as to the authority, decisions and actions of the HOA: and
- i. Inciting other residents to take action against the Plaintiffs.

The HOA's breach as set forth herein deprived the Plaintiffs of the benefit of the Agreement, i.e., the Association Documents.

234. As a direct result of the HOA's breach, as set forth herein, the Plaintiffs have suffered damages.

235. The acts of the HOA and its Board of Directors were done knowingly, willfully, and with malicious intent, and the Plaintiffs are entitled to damages in an amount to be determined by proof at trial.

236. As direct result of the HOA's actions as set forth herein, the Plaintiffs suffered damages.

237. As a direct and proximate result of the HOA's actions, the Plaintiffs have suffered humiliation, emotional distress, mental anguish, betrayal, loss of capacity for enjoyment of life, and the loss of capacity for the enjoyment and use of their property. The losses are either permanent or continuing, and the Plaintiffs will continue to suffer the losses in the future.

WHEREFORE, Plaintiffs request a judgment against Defendant B. WAZIRY for damages, costs, attorneys' fees, and that the Court grant such other relief deemed fair and just. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

#### **COUNT XXIV - CIVIL CONSPIRACY**

238. Plaintiffs sue the HOA for Breach of Implied Covenant of Good Faith & Fair Dealing, and reallege each and every allegation as set forth in paragraphs 1 through 97, inclusive, as though fully set forth in this Count XXIV.

239. Defendants KRAUS, WAZIRY, CROWE, R. BEHAR, SHAMAM, TATARSKY, LORBER, A. BEHAR, P. WAZIRY, STEIN, and HOA are parties to a civil conspiracy.

240. Defendants KRAUS, WAZIRY, CROWE, R. BEHAR, SHAMAM, TATARSKY, LORBER, A. BEHAR, P. WAZIRY, STEIN, and HOA conspired to do the unlawful acts described herein or to do a lawful acts described herein by unlawful means.

241. Defendants, KRAUS, WAZIRY, CROWE, R. BEHAR, SHAMAM, TATARSKY, LORBER, A. BEHAR, P. WAZIRY, STEIN, and HOA conspired to (a) defame Plaintiffs, (b) cause Plaintiffs emotional distress, (c) deprive Plaintiffs of their right of quiet enjoyment of their property, (d) deprive Plaintiffs of their right to fairly participate in Association meetings, interfere with Plaintiffs' ability to earn a livelihood for their family, (e) file specious and malicious documents with the Court seeking injunctions against Plaintiff D. Vogel to deprive him of his First Amendment rights and ability to move about his community, Undertaking wholesale amendments to the Association's Declaration of Covenants, at a cost of tens of thousands of Association dollars without first seeking to determine whether the membership was even receptive to such amendments (the proposed amendments were twice soundly rejected and defeated by the membership); (f) obstruct Plaintiffs' rightful access to Association records, and (g) incite Plaintiffs' neighbors to take action against the Plaintiffs.

242. Defendants KRAUS, WAZIRY, CROWE, R. BEHAR, SHAMAM, TATARSKY, LORBER, A. BEHAR, P. WAZIRY, STEIN committed overt acts in further of their conspiracy, including (a) filing malicious and false Bar Complaints against Plaintiff D. Vogel with the Florida Bar, (b) filing malicious and false complaint with Florida Department of Children and Families against Plaintiffs, (c) filing multiple malicious and false Petitions for Injunctive Relief Against Stalking and Repeat Violence against Plaintiff D. Vogel, (d) filing numerous malicious and false police reports against Plaintiffs, (e) assaulting Plaintiffs in their automobile while driving in their community, (f)

243. Defendants' conspiracy and their respectful overt acts caused Plaintiff to suffer damages.

**WHEREFORE**, Plaintiff demands damages against Defendants KRAUS, WAZIRY, CROWE, R. BEHAR, SHAMAM, TATARSKY, LORBER, A. BEHAR, P. WAZIRY, STEIN, and HOA for damages related to the civil conspiracy and such other relief this Court deems just and proper. Plaintiffs reserve the right to amend this lawsuit to seek punitive damages.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully Submitted,

**The Law Offices of Ryan D. Gesten, P.A.**

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Footnotes

- 1 Though the allegations in the DCF Investigative Report are directed at David Vogel, the mother, liana Vogel, is the named respondent therein.
- 2 Specifically, the DCF Investigative Report, the “anonymous” complainant reported:  
*“... concerns about inadequate supervision of XXXXX (child's name redacted). The father advertises five year old XXXXX to do pressure washing on his website, and the child has been observed operating a full-sized commercial pressure washer, which may be dangerous for him. The pressure washer can eject water hard enough to remove skin, so it may be dangerous for XXXXX to operate. XXXXX does all the pressure washing, not the father. The father has been a house or two away from XXXXX when XXXXX operates the pressure washer. ”*
- 3 Such reports have been redacted to protect Plaintiffs' minor children, and in accordance with applicable Florida Statutes. Un-redacted copies of both reports are available for in camera inspection by the Court.

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