UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

BRIAN P. RUSH, et al.

Plaintiffs,

CASE NO.: _____

vs.

DIVISION: ____

BRANDON FAULKNER,
THOMAS BOPP,
THE GRIEVANCE COMMITTEE OF THE THIRTEENTH JUDICIAL CIRCUIT,
THE FLORIDA BAR,
ALOYMA SANCHEZ,
SAMUEL HENDERSON,
MARK A. LINSKY,
THE FLORIDA DEPARTMENT OF TRANSPORTATION,
KIMBERLY STEPHENSON WALBOLT, ESQUIRE,
In her official capacity as Florida Bar Counsel,
PATRICIA ANN TORO SAVITZ,
In her official capacity as Florida Bar Counsel,
KATRINA BROWN, ESQUIRE,
In her official capacity as Florida Bar Counsel,
JOSHUA E. DOYLE, ESQUIRE, In his official capacity as Executive Director of the Florida Bar,
ELIZABETH TARBERT, ESQUIRE, In her official capacity as Director of Lawyer Regulation Division of the Florida Bar,
ALLISON SACKETT, ESQUIRE, In her official capacity as Director of the Legal Division of the Florida Bar,

Defendants.
_____/

FIRST AMENDED COMPLAINT

Plaintiffs, BRIAN P. RUSH and the Rush law firm: WOODLIEF & RUSH, P.A. ("Rush, P.A."), et al., sue Defendants, BRANDON FAULKNER, THOMAS BOPP, THE GRIEVANCE COMMITTEE OF THE THIRTEENTH JUDICIAL CIRCUIT, THE FLORIDA BAR, ALOYMA SANCHEZ, SAMUEL HENDERSON, MARK A. LINSKY, THE FLORIDA DEPARTMENT OF TRANSPORTATION, KIMBERLY STEPHENSON WALBOLT, ESQUIRE, PATRICIA ANN

TORO SAVITZ, ESQUIRE, KATRINA BROWN, ESQUIRE, JOSHUA E. DOYLE, ESQUIRE, ELIZABETH TARBERT, ESQUIRE and ALLISON SACKETT, ESQUIRE and alleges:

INTRODUCTION

For many years, the Florida Bar has set itself apart from the rest of the United States in the restrictiveness of the Florida Bar's Rules governing the out of court speech and the ordinary oral and written communications of lawyers, often in regard to the Bar's Regulation of Lawyers' commercial speech and advertising, but also in the Bar's current effort to control the content of public and private speech by Florida lawyers. The Bar Rules as written and applied now purport to regulate, control or prohibit the content of a range of out of Court private and public communications of the sort that attorneys in other States routinely make, and these out of Court communications pose no risk to disrupt Court proceedings and do not mislead anyone. All or almost all of these out of Court communications are protected by the First Amendment of the United States Constitution, as either commercial speech or as non-commercial free speech.

Increasing Regulation of Attorney's Out of Court Speech

Until recently, Florida lawyers' out of Court speech, either oral, written, or symbolic, was largely exempt from the Bar's regulation and control of content. Until recently, Florida lawyers believed that they could freely and frankly share explicit communications and opinions with their friends, family, clients, other attorneys, and the public, in regard to disputed commercial, economic, legal and factual issues. Until recently, Florida lawyers believed that they were free to communicate their **sometimes "upsetting" opinions** and commercial views to the government, attorneys, and members of the public in regard to disputed economic and commercial matters. Until recently, Florida lawyers have been able to freely communicate in out of Court settings, in regard to disputed commercial, and government actions, especially through a lawyer's out of Court speech critical of

government takings, interference or misconduct and to secure the lawyers' own constitutionally protected property, lien and contractual rights. As long as Florida lawyers spoke truthfully or stated their opinions and otherwise avoided false or misleading statements, they were free to fully and frankly communicate with anyone outside of the courtroom, without fear of any professional discipline.

Of course, freedom of speech does not extend to communications inside the courtroom or to filings in the Court file, and freedom of speech does not extend to communications directly to the Court or concerning Court controlled or ordered proceedings, such as a deposition or mediation. These narrow restrictions on free speech are limited to Court related proceedings and exist primarily to maintain decorum and order while an attorney is participating in such court-controlled proceedings. However, the rationale for controlling the content of speech during a Court proceeding does not extend outside of the courtroom and outside of Court ordered or controlled proceedings.

Absence of Legitimate Government Interest

Because there is no legitimate governmental interest in restricting the content of Florida lawyers' out of Court truthful or opinion speech, including commercial speech to secure lawful property rights and criticism of government takings, interference and misconduct, the Florida Bar Rules cannot lawfully be applied to discipline a Florida lawyer for his out of Court speech in regard to such disputed facts or opinions. This is true for the lawyer's criticism of alleged government misconduct and especially for the lawyer's commercial speech designed to secure the lawyer's protected commercial, property, lien and contractual rights from government interference, takings or misconduct. This protected speech remains protected, even if some people, especially the government or opposing parties or competitor attorneys, find the lawyer's

out of Court speech to be "upsetting." See, *Terminello v. United States*, 337 U.S. 1 (1949). (First Amendment exists to protect unpopular speech, which may well be upsetting); (however, true threats accounting to a clear and present danger have no First Amendment protection).

Censorship and Chilling of Lawyer's Commercial and Free Speech

Unfortunately, the Florida Bar's disciplinary goals have now changed, and the Florida Bar Rules are now being applied to control the content of lawyer's commercial speech, free speech and symbolic speech to discipline Florida lawyers for their out of Court truthful or opinion communications. The Florida Bar and certain competitor lawyers now claim the right to regulate attorney's out of Court speech **twenty-four hours per day**, including out of court attorney criticism of government misconduct, takings and interference with the lawyer's lawful commercial rights, contract rights, property rights and lien rights. This attorney commercial speech and free speech harms no one and is specifically protected by the First Amendment. This improper regulation occurs, even when the lawyers' lawful commercial, property, lien and contractual rights are explicitly recognized and protected by Florida case law and by the Florida Bar Rules. The Florida Bar Rules are now being applied to threaten discipline and thereby chill all Florida lawyers' First Amendment Speech, even when the lawyers are confronted with the government's direct attack on the lawyers' lawful commercial, property, reputation, lien and contractual rights.

Florida Bar's Censorship of Lawyer's Speech Improperly Advances Florida Bar's Preferred "Image" for Lawyers

The Florida Bar has now decided to threaten and censor lawful out of court attorney communications to governmental entities and their attorneys, which allegedly reflect badly on the Florida Bar's preferred image, and thereby allegedly give a "black-eye" to the Florida Bar. As part of this censorship process, the Florida Bar has decided that the content of lawyers'

commercial speech and free speech when opposing government interference and misconduct and also in defense of the lawyers' lawful property, lien and contractual rights must be censored and punished through disciplinary proceedings, even if this disciplinary process violates the First Amendment. When the lawyer-competitors controlling the Grievance Committee begin their investigation, the Bar Rules are applied to chill, censor, punish and silence Florida lawyers' lawful defense of their constitutionally protected out of court speech. Anything the target lawyer says to anyone, out of court, will be used as evidence against the attorney that the Florida lawyer's speech is "adversarial" or "unprofessional" criticism of government agencies or the lawyer has **"a conflict" with or is "disparaging"** the government, or the target lawyer's speech is in conflict with or otherwise "upsetting" to the attorney's former clients or to competitor-lawyers. Even when the attorney is making truthful statements or is asserting good faith opinions in regard to disputed legal, economic, commercial, ethical and factual issues, the lawyer's protected out of court speech is subject to anti-competitive censorship by the competitor-lawyers' controlling the Grievance Committee in their investigation, findings and discipline of the target lawyer's speech, all in violation of the First Amendment.

Prior Restraint of Plaintiffs' Speech

The Florida Bar is now applying its Rules in a manner where the State affirmatively restricts and censors the content of the lawyer's truthful out of Court free speech and commercial speech when the lawyer seeks to collect a "reasonable" fee from a non-client government entity, even though the Florida Statutes, the Florida Bar Rules and Florida case law specifically protect the lawyer's right to seek payment and file a lien to secure payment of a "reasonable fee". See, Rule 4-1.5 (attorneys may charge reasonable fees); and Rule 4-1.6, Rules Regulating the Florida Bar (attorneys may obtain an attorneys liens to secure payment of attorneys fees and costs). The

application of the Rules by the Florida Bar and the competitor lawyers controlling the Grievance Committee, amount to a prohibited prior restraint and now impair Florida lawyers' free speech, commercial speech, lawful written contracts, reputation rights, property rights and lawful attorney's liens. Where an attorney uses out of court speech in a public place to complain of government interference and misconduct, to secure payment of a reasonable fee, against a non-client government entity which is statutorily obligated to pay a reasonable attorney's fee, the Florida Bar now applies the Bar Rules to restrain, censor and discipline the attorney for alleged "upsetting" and "unprofessional" opinions or statements.

Nothing about the target lawyer's out of Court communications singled out by the Florida Bar against the attorney in this case distinguishes these statements from those other lawyers routinely make to opposing counsel and non-clients, especially when the attorney seeks to defend the attorney's lawful rights or pursue a contested claim, in our adversarial legal system. Indeed, lawyers are often required to communicate their adversarial opinions, claims and legal theories in out of Court communications, either by Florida Law or by other Bar Rules. In every instance, the Plaintiff's oral and written out of court statements and communications to a state government agency, opposing counsel, former clients and third-parties were either true statements, written communication authorized by Florida Law and specifically authorized by Plaintiffs' fee agreements, or opinions in regard to disputed issues, which are fully protected under the First Amendment to the United States Constitution.

Defendants' Anti-Competitive Conduct Violates Anti-Trust Statutes and is Tortious Interference

The Florida Bar's new attempt to discipline attorneys for the attorneys' enforcement of lawful contracts, lawful liens, and lawful competition with the attorney's competitors who control the local Grievance Committee amounts to anticompetitive conduct and unlawful

restraint of trade in violation of Federal Anti-Trust Statutes. This unfair and anti-competitive conduct, chills all Florida lawyers' commercial speech and free speech and amounts to tortious interference with Plaintiffs' lawful fee agreements, lawful attorneys lien, and lawful motion to recover attorneys fees, experts fees and costs.

The local Grievance Committee is controlled and directed by private competitor attorneys, who are **non-sovereign actors and active market participants in competition with the Plaintiffs** in the local civil litigation marketplace. These competitor lawyers have engaged in anti-competitive conduct and tortious interference against Plaintiffs by attacking Plaintiff's lawful fee agreements, lawful attorney's lien, and lawful motions to recover fees and costs. At least three other competitor attorneys and three other government lawyers are directly involved in the government's tortious interference and misconduct and are actively aligned with the Florida Bar's improper prosecution of Plaintiff Rush, by the private competitor attorneys controlling the local Grievance Committee.

Preliminary and Permanent Injunctive Relief Requested

The Plaintiff seeks a declaration and a preliminary and permanent injunction determining that the Florida Bar Rules and the Florida Bar's application of the Rules violate the First Amendment, and that these Rules are unconstitutionally vague and overbroad and deny equal protection in violation of the Fourteenth Amendment, and unconstitutionally impair and take the Plaintiffs' lawful property rights, lien rights, reputational rights and contractual rights in violation of the Fifth Amendment and the Contracts Clause. Also, the Plaintiff seeks a declaration and a preliminary and permanent injunction determining that the Florida Bar Rules and the Florida Bar's application of the Rules, along with the actions of certain Defendant

competitor attorneys violate the Federal Anti-Trust Statutes and are an unlawful restraint of trade.

JURISDICTION

1. The Court has jurisdiction under 28 U.S.C. §1331 and §1343.

2. The Court has jurisdiction under 42 U.S.C. Section 1983, et seq.

3. The Court has jurisdiction under §§1 and 2 of the Sherman Act, 15 U.S.C. 1 et seq., and the Court has jurisdiction under the Clayton Act, 15 U.S.C. 1-27, et seq.

PARTY PLAINTIFFS

4. Plaintiff, BRIAN P. RUSH **("Rush")**, is a resident of Tampa, Hillsborough County, Florida. Rush was admitted to the Florida Bar in 1982, and since then Rush has actively practiced law in the State of Florida. Rush is a trial lawyer with substantial litigation and jury trial experience, and Rush has thirty-five years of experience in eminent domain law. Rush is the owner and president of Plaintiff **Woodlief & Rush, P.A.** (**"Rush, P.A."**), with offices in Tampa, Florida. Plaintiff Rush and Plaintiff Rush, P.A. have significant economic interests in publicly and privately speaking out to defend Plaintiffs' commercial speech rights and Plaintiffs' first amendment free speech rights.

5. Plaintiff Rush has been a member of the Florida Bar since 1982, and Rush has never before been charged or disciplined by the Florida Bar in his nearly forty (40) years of law practice. Also, Plaintiff Rush has never been investigated by or been charged with an ethics violation by the Florida Ethics Commission during Rush's eight (8) years of prior government service. Further, when Rush served in the Florida House of Representatives, Plaintiff Rush repeatedly defended the First Amendment and the Bill of Rights, and Rush authored the Florida Press Shield law to protect the Free Press and the First Amendment, which was passed by the legislature, but then vetoed.

6. In 1982, Plaintiff Rush began practicing law at the Holland & Knight law firm and for forty years, Rush has practiced continuously as a civil trial lawyer. Rush has tried many complex civil cases in State and Federal Courts, and Rush has substantial expertise in eminent domain and complex real estate litigation.

7. Plaintiff Rush has never been sanctioned by the Courts for misconduct or for filing frivolous claims. In the underlying eminent domain case, no Court of law has determined that Rush filed any improper or frivolous pleading, motion, lien or lis pendens. In fact, all of Rush's filings are specifically authorized by the Rules of Civil Procedure, the Rules of Judicial Administration, the Florida Bar Rules and/or Florida Supreme Court precedent.

8. From 2014 to 2018, Rush represented the North Park Companies (**"North Park"**) in the underlying eminent domain case. From 2014 to 2018, Rush devoted more than seven hundred (700) hours of attorney time to pursue North Park's eminent domain litigation goals. However, Rush has received no payment from North Park or anyone else. In the Spring of 2018, North Park repeatedly repudiated, in writing, North Park's fee agreements with Plaintiffs and breached North Park's contractual promises to "fully cooperate" and "join in" Rush's motions and applications for fees and costs against FDOT. In June of 2018, North Park filed a false Florida Bar Grievance against Plaintiff Rush, and requested that the Florida Bar declare that North Park's fee agreements with Plaintiff Rush were illegal. In the Summer of 2018, after North Park filed a Bar Grievance against Plaintiff Rush, Rush reasonably refused North Park's improper and unlawful demands that Rush waive, impair or silence Rush's lawful attorneys lien and Rush's motions, claims for attorney's fees and costs against FDOT.

9. When FDOT's statutory obligation to pay reasonable attorney's fees became an impediment to North Park obtaining from FDOT certain nonmonetary concessions **valued at over**

five million dollars, North Park embarked on a deliberate scheme to force Rush to rescind his lawful fee agreements and surrender his claims for attorney's fees and costs which North Park had expressly guaranteed pursuant to two separate signed fee agreements. Thereafter, North Park and its counsel, Richard Pettit and FDOT and its counsel and its attorneys, Samuel Henderson, Mark A. Linsky, and Aloyma Sanchez, improperly used Jack Suarez' perjurious Bar Grievance against Rush to impair Rush's First Amendment Rights and Rush's lawful contracts and fee agreements and to prejudice Rush's lawful attorneys lien and claim for attorney's fees and costs against FDOT, **thereby saving FDOT hundreds of thousands of dollars in fees and costs.**

Plaintiff Rush's and Plaintiff Rush, P.A.'s Protected Commercial and Economic Speech

10. Plaintiff Rush and Rush, P.A. are engaged in the business of practicing law, and have substantial commercial, economic and business interests related to Rush's law practice, which are protected by and are dependent upon Rush's First Amendment rights. As a result, Rush and Rush, P.A. both have commercial speech rights, as well as free speech rights under the United States Constitution.

11. Plaintiff Rush and Plaintiff Rush, P.A. are also consumers of legal services, who have hired numerous attorneys who are also members of the Florida Bar to protect Rush's and Rush, P.A.'s First Amendment rights and their substantial economic and business interests related to Plaintiffs' law practice. As a consumer, Rush and Rush, P.A. are dependent upon these attorneys/members of the Florida Bar, who must be able to freely use their First Amendment rights to speak outside the courtroom in regard to misconduct by State departments and the government's attorneys, without fear of Bar discipline. Rush's and Rush, P.A.'s attorneys should not be subject to discipline for using their out of Court commercial speech and free speech rights to protect Plaintiffs' law practice, especially in the face of government misconduct and violations of Federal Law. As

consumers of legal services, Rush and Rush, P.A. are also clients who are dependent upon Plaintiffs' Florida attorneys not being the target of retaliatory and anti-competitive conduct by the Florida Bar and the non-sovereign actor member attorneys who control the Grievance Committee through a majority of active market participant attorneys and who directly compete with Plaintiff Rush and his law firm, Rush. P.A.

Plaintiff Rush's Law Firm

12. Plaintiff, **Woodlief & Rush, P.A. ("Rush, P.A.")**, is a professional association incorporated in the State of Florida, and is Plaintiff Rush's law firm with offices in Tampa, Florida. Plaintiffs, Rush and Rush, P.A., practice in the area of civil trial law, especially eminent domain, complex personal injury, real property disputes, contract actions and commercial litigation. Plaintiff Rush and Plaintiff Rush, P.A. compete with other Florida attorneys in the above areas of practice, including the non-sovereign actors who make up the decision makers and a majority of the Grievance Committee, which is engaged in anti-competitive activity, controlled by the Grievance Committee's non-sovereign and active market attorney competitors.

PARTY DEFENDANTS

13. Defendant, **THE FLORIDA BAR**, is an arm of the Florida Supreme Court and is a government agency or entity, which is part of the government of the State of Florida. The Florida Bar is responsible for promulgating the Rules Regulating the Florida Bar (the "Rules"), and the Florida Bar has directed its various staff prosecuting attorneys to apply the Florida Bar Rules against Plaintiffs, such that these Rules as written or applied violate Plaintiffs' First Amendment rights and Plaintiffs' Constitutional Rights under the Fifth Amendment, the Fourteenth Amendment and the Contract Clause. However, the Defendant Grievance Committee for the 13th Judicial Circuit, and its attorney members and decision makers are separate **non-sovereign actors,**

controlled by active market participant attorneys, who compete with Plaintiff Rush and Plaintiff Rush, P.A. These competitor attorney members and decision makers are responsible for improperly investigating and charging Plaintiff Rush with alleged violations of the Rules, especially the Rules referenced herein and below.

14. At all times material, Defendant, **BRANDON FAULKNER**, is a non-sovereign actor, decision maker and active market participant attorney competing with Plaintiffs, and Defendant is or was the Chairman of the Grievance Committee for the Thirteenth Judicial Circuit. This attorney is sued individually and as an agent for the above Grievance Committee, and as a non-sovereign actor and active market participant attorney, who is actively competing with Plaintiff and his law firm in Tampa, Florida. At all times material, this Florida lawyer and his law firm are engaged in a trial practice, real estate litigation and commercial litigation practice competing with Plaintiff Rush and Rush, P.A. for litigation and trial business. At all times material, this Florida lawyer has improperly pursued the filing of the Chairman's own report and the Grievance Committee's disciplinary probable cause finding against Plaintiff Rush, even though this Florida lawyer is a competing non-sovereign actor and active market participant in the Tampa/Hillsborough County legal market. At all times material, the Grievance Committee's finding of probable cause and the resulting Florida Bar Complaint against Plaintiff violate Federal Anti-Trust laws and the United States Constitution, the Bill of Rights and the First Amendment to the United States Constitution.

15. At all times material, Defendant, **THOMAS BOPP**, is a non-sovereign actor, decision maker, and active market participant attorney, and Defendant is or was a supervising member of Defendant Faulkner and of the Grievance Committee for the Thirteenth Judicial Circuit. This attorney is sued individually and as an agent for the above Grievance Committee, as a non-

sovereign actor and as an active market participant attorney, who is actively competing with Plaintiff and his law firm in Tampa, Florida. At all times material, this Florida lawyer and his law firm are engaged in a trial practice, property damage claim litigation and commercial/civil litigation practice, competing with Plaintiff Rush for commercial/civil litigation and real property damage litigation. At all times material, this Florida lawyer has improperly pursued the filing of the Grievance Committee's finding of probable cause and the resulting Florida Bar Complaint against Plaintiff Rush, even though this Florida lawyer is a competing non-sovereign actor and active market participant in the Tampa/Hillsborough County legal market. At all times material, the Grievance Committee's findings of probable cause and the resulting Bar Complaint violate Federal Anti-Trust Statutes and the United States Constitution, the Bill of Rights and the First Amendment to the United States Constitution.

16. At all times material, Defendant, **THE GRIEVANCE COMMITTEE FOR THE 13TH JUDICIAL CIRCUIT OF FLORIDA ("Grievance Committee")**, is a non-sovereign actor, which is controlled by Defendant Faulkner, Defendant Bopp and the active market participant/members, who make up a majority and control the Grievance Committee. The Grievance Committee and its competing members, especially Faulkner and Bopp, are sued as agents of each other and as agents of the above Grievance Committee, which is comprised of numerous Florida attorneys, who are non-sovereign actors and active market participant attorneys, who are competing with Plaintiff and his law firm in Tampa, Florida. At all times material, the Grievance Committee and its active market participant/members are engaged in competing law practices involving civil litigation, trial practice, property damage claims and litigation practice, competing with Plaintiffs. At all times material, the Grievance Committee and its competing attorney members have improperly pursued the filing of the Grievance Committee's finding of probable cause and the

resulting Florida Bar Complaint against Plaintiff Rush, even though Plaintiff Rush is a competing active market participant in the Tampa legal market, and the probable cause filing and the Bar Complaint violate Federal Anti-Trust Statutes and the United States Constitution, the Bill of Rights, the First Amendment, Fifth Amendment and the Fourteenth Amendment to the United States Constitution, including the Contracts Clause.

17. At all times material, Defendant, **ALOYMA SANCHEZ, ESQUIRE**, is an assistant general counsel of the Florida Department of Transportation **("FDOT")** who provided materially false sworn testimony in an effort to conceal and alter critical evidence showing that the FDOT, Sanchez and other FDOT attorneys had materially altered and/or concealed FDOT documents, in an effort to present false evidence against Plaintiff and violate Plaintiff Rush's First Amendment rights, Fifth Amendment rights, Fourteenth Amendment rights, and Plaintiff's constitutionally protected contract, property and lien rights, all of which violated Plaintiff's due process rights. All of these rights are protected under the United States Constitution, the Bill of Rights, the Contract Clause, the First Amendment, the Fifth Amendment and the Fourteenth Amendment. At all times material, Defendant Sanchez has combined with and has actively participated in the ongoing effort of Defendants, Faulkner and Bopp, the Florida Bar and the other attorney Defendants to violate Plaintiff Rush's and Plaintiff Rush, P.A.'s constitutional rights and violate the Federal Anti-Trust Statutes through anti-competitive conduct. At all times material, Sanchez is also a competitor of Plaintiffs in the Tampa legal market.

18. At all times material, Defendant, **SAMUEL HENDERSON, ESQUIRE**, is the general counsel of the Florida Department of Transportation who executed a materially false sworn Affidavit in an effort to conceal and assist in the alteration of critical evidence showing that the FDOT, Aloyma Sanchez and other FDOT attorneys and agents had materially altered FDOT

documents, in an effort to present false evidence and testimony, and thereby violate Plaintiff Rush's and Plaintiff Rush, P.A.'s First Amendment rights, Fifth Amended rights, Fourteenth Amendment rights, and Plaintiffs' constitutionally protected contract, property and lien rights, which violated Plaintiff's due process rights. All of these rights are protected under the United States Constitution, the Contracts Clause, the Bill of Rights, the First Amendment and the Fourteenth Amendment. At all times material, Defendant Henderson has combined with Defendant Sanchez and other FDOT attorneys and agents and has participated in the ongoing effort of Defendants, Faulkner and Bopp, the Florida Bar and other attorney Defendants to violate Plaintiff Rush's and Plaintiff Rush, P.A.'s constitutional rights and violate the Federal Anti-Trust Statutes through anti-competitive conduct.

19. At all times material, Defendant, **MARK A. LINSKY, ESQUIRE**, is a non-sovereign actor and active market participant attorney, who is competing with Plaintiff and his law firm in Tampa, Florida. At all times material, this Florida lawyer and his law firm are engaged in an eminent domain practice and a trial practice and commercial litigation practice competing with Plaintiff Rush. At all times material, this Florida lawyer has improperly engaged in anti-competitive behavior and has combined to actively assist Defendants, Sanchez, Henderson, Faulkner and Bopp, in their anti-competitive activity arising out of Defendants' improper probable cause finding and the Florida Bar's disciplinary complaint against Plaintiff Rush, even though the resulting Florida Bar Complaint violates the United States Constitution, the Contracts Clause, the Bill of Rights and the First Amendment to the United States Constitution, as well as Federal Anti-Trust Law.

20. At all times material, Defendant, **MARK A. LINSKY, ESQUIRE**, is special private counsel hired by Defendant Henderson and the Florida Department of Transportation, and Defendant Linsky defended the depositions of Aloyma Sanchez, taken by Plaintiff in the underlying Florida Bar disciplinary proceeding. During the first deposition of Aloyma Sanchez, Defendant

Linsky combined with the other Defendants and made over **seventy-five (75) speaking objections** in an intentional effort to conceal and assist in the alteration and concealment of critical evidence showing that the FDOT and other FDOT attorneys and agents had materially altered FDOT evidentiary documents, in an effort to violate Plaintiff Rush's and Plaintiff Rush, P.A.'s First Amendment rights, Fifth Amendment rights, Fourteenth Amendment rights, and Plaintiff's constitutionally protected contract, reputation, property and lien rights, which violated Plaintiff's due process rights. All of these rights are protected under the United States Constitution, the Bill of Rights, the Contract Clause, the First Amendment, the Fifth Amendment and the Fourteenth Amendment. At all times material, Defendant Linsky has participated in the ongoing effort of Defendants, the FDOT, Sanchez, Henderson and FDOT agents, the Florida Bar and other attorney Defendants, including Faulkner and Bopp, to violate Plaintiff Rush's and Plaintiff Rush, P.A.'s constitutional rights and violate the Federal Anti-Trust Statutes through anti-competitive conduct.

21. Defendant, **KIMBERLY STEPHENSON WALBOLT**, is employed by the Florida Bar as a Staff Attorney in the Florida Bar's Tampa office, and she is sued in her capacity as an agent and attorney for the Florida Bar, who has assisted the above competing non-sovereign actors in their anti-competitive conduct, especially in regard to the above active market participants actions to regulate their own profession through anti-competitive conduct.

22. At all times material, this Florida lawyer, **KIMBERLY STEPHENSON WALBOLT,** presented false or misleading testimony by Defendant Aloyma Sanchez and presented documentary evidence which Defendants had concealed and altered, which Walbolt then knew was false, fabricated, concealed and altered evidence. At all times material, this Florida lawyer has actively assisted the above competing non-sovereign actors in their anti-competitive conduct and has improperly pursued the finding of probable cause and the filing of the Florida Bar's disciplinary

complaint, even though the Bar Complaint violates the United States Constitution, the Bill of Rights and the First Amendment, the Fifth Amendment, the Fourteenth Amendment and the Contracts Clause to the United States Constitution and also violates Federal Anti-Trust Law. At all times material, Attorneys Faulkner, Bopp and Walbolt, knew that Plaintiffs' fee agreements, attorneys lien and related motions to secure and recover attorneys fees were protected and authorized by the Florida Bar Rules and Florida Supreme Court Precedent.

23. Defendant, **PATRICIA ANN TORO SAVITZ**, is employed by the Florida Bar as Staff Counsel to the Florida Bar's Division of Lawyer Regulation, who is also a Florida Bar Staff Attorney in the Florida Bar's Tallahassee and Tampa office, and she is sued in her representative and official capacity as an agent and attorney for the Florida Bar, who has assisted Defendant Walbolt and has assisted the above competing non-sovereign actors in their anti-competitive conduct, especially in regard to the above active market participants actions to regulate their own profession through anti-competitive conduct. At all times material, this Florida lawyer has actively assisted the above non-sovereign actors in their anti-competitive conduct and has improperly pursued the finding of probable cause and the filing of the Florida Bar's disciplinary complaint, even though the finding of probable cause and the Bar Complaint violate the United States Constitution, the Bill of Rights and the First Amendment, the Fifth Amendment, the Fourteenth Amendment and the Contracts Clause to the United States Constitution and also violates Federal Anti-Trust Law.

24. Defendant, **KATRINA BROWN**, is employed by the Florida Bar as a Staff Attorney in the Florida Bar's Tampa office, and she is sued in her representative and official capacity as an agent and attorney for the Florida Bar, who has assisted the above competing non-sovereign actors in their anti-competitive conduct, especially in regard to the above active market

participants actions to regulate their own profession. At all times material, this Florida lawyer has actively assisted the above non-sovereign actors in their anti-competitive conduct and has improperly pursued the Grievance Committee's finding of probable cause and the filing of the Bar's disciplinary complaint, even though the Bar Complaint violates Federal Anti-Trust Law and violates the United States Constitution, the Bill of Rights and the First Amendment, the Fifth Amendment, the Fourteenth Amendment and the Contracts Clause to the United States Constitution.

25. Defendant, **ELIZABETH TARBERT** is employed by the Florida Bar as Director of Lawyer Regulation of the Legal Division in the Florida Bar's Tallahassee office, and this lawyer is sued in their representative and official capacity as an agent and attorney for the Florida Bar and as an agent of the Grievance Committee's anti-competitive conduct. At all times material, this Florida lawyer has assisted the above non-sovereign actors in their anti-competitive conduct and pursued the filing of the Bar's disciplinary complaint, even though the Bar Complaint violates Federal Anti-Trust Law and violates the United States Constitution, the Bill of Rights and the First Amendment, the Fifth Amendment, the Fourteenth Amendment and the Contracts Clause to the United States Constitution.

26. Defendant, **ALLISON SACKETT** is employed by the Florida Bar as Director of the Legal Division in the Florida Bar's Tallahassee office, and this lawyer is sued in their representative and official capacity as an agent and attorney for the Florida Bar and as an agent of the Grievance Committee's anti-competitive conduct. At all times material, this Florida lawyer has assisted the above non-sovereign actors in their anti-competitive conduct and pursued the filing of the Bar's disciplinary complaint, even though the Bar Complaint violates Federal Anti-Trust Law and violates the United States Constitution, the Bill of Rights and the First Amendment, the Fifth

Amendment, the Fourteenth Amendment and the Contracts Clause to the United States Constitution.

27. Defendant, **JOSHUA E. DOYLE**, is employed by the Florida Bar as the Executive Director of the Florida Bar, and he is sued in his representative and official capacity as an agent and as Executive Director for the Florida Bar.

Florida Bar's Unconstitutional Claim that the Florida Bar Can Regulate and Discipline Florida Lawyers Twenty-Four Hours a Day and "All the Time"

28. In the June 11, 2021 Florida Bar News, the Florida Bar and its Lawyer Regulation Staff Counsel, Defendant, Patricia Ann Toro Savitz, reiterated the Florida Bar's improper claim that the Florida Bar actually regulates and can discipline attorneys for out of Court conduct and speech twenty-four hours a day and "**all the time**". In the Florida Bar News article, Savitz stated the Florida Bar's extraordinary and aggressive position that the Florida Bar can regulate attorneys "all the time", apparently even when they are enjoying the constitutional privacy of their own home, as follows:

> **"There's a very small amount of public discipline." … "With almost 110,000 lawyers in Florida and the number growing, the Supreme Court is sending an increasingly stronger message to transgressors, Savitz said". … "The Court's scrutiny of unprofessional conduct gets greater and greater every year." … "You cannot just take off your lawyer hat, this is a reminder, it's on the books." … "Everyone has their eyes on us, all the time." (underline added) Florida Bar News, (June 11, 2021), Ash, J., "The Court's Scrutiny of Unprofessional Conduct Gets Greater and Greater Every Year"**

29. The Florida Bar's statement of its ever expanding and invasive surveillance and supervision of Florida lawyers provides the predicate for the Florida Bar to investigate and discipline lawyers who criticize or actively oppose through their public or private, First Amendment protected speech, the actions and misconduct of the government. The Florida Bar's overly broad claim of governmental "scrutiny", authority and regulation is unprecedented, and by itself is a prior

restraint which chills Florida lawyer's First Amendment speech, whether commercial speech or free speech, and whether oral, written, symbolic, or conduct-based, and invades Florida lawyer's First Amendment protected rights of association and Fourteenth Amendment rights of privacy. See, Citizens United v, Federal Elections Commission, 558 U.S. 310 (U.S. 2010). See, Griswold v. Connecticut, 381 U.S. 479 (1965). See, Florida's Constitutional Privacy Amendment and Florida's Declaration of Rights.

Plaintiff's Out of Court Complaints of Sanchez' and FDOT's Misconduct is Protected Speech

30. The FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT") is a government agency, which is part of the State of Florida. At all times material, FDOT is responsible for taking property from citizens for road construction and transportation purposes, and the FDOT is the largest condemnor of private property in the State of Florida. These takings are governed by the Fifth Amendment to the United States Constitution and by Florida Statutes and Florida Decisional Law. Defendant Samuel Henderson is the general counsel for the FDOT, District Seven, located in Hillsborough County, Florida, and Defendant Henderson approved and authorized FDOT's hiring of Defendant Linsky.

31. Plaintiff Rush's and Plaintiff Rush, P.A.'s public or private criticism of the State of Florida's FDOT, especially alleged misconduct by FDOT's agents and attorneys is always protected First Amendment criticism of the State and its government, especially during the FDOT's process of taking private property. Plaintiffs' criticism and any communication to FDOT and its attorneys are protected commercial speech and free speech, and Plaintiffs' out of Court criticism of Defendants and FDOT's governmental misconduct cannot lawfully be the basis for the Grievance Committee's finding of probable cause and the resulting Florida Bar disciplinary proceedings.

Grievance Committee's Probable Cause Findings Against Plaintiff

32. On or about February of 2020, Defendants, Faulkner and Bopp, investigated, drafted and approved the filing of the Grievance Committee's probable cause Finding and Notice alleging Plaintiff had violated seven (7) separate Bar Rules, but these Defendants failed to denote any specific conduct supposedly supporting the Grievance Committee's alleged findings. In fact, Defendants, Faulkner, Bopp and the Grievance Committee found probable cause by prosecuting Plaintiff's protected commercial speech, free speech and written communications and Plaintiffs' lawful agreements signed by the North Park clients, which are constitutionally protected by the United States Constitution, the Bill of Rights, the First Amendment to the United States Constitution, and are also protected by the Fourteenth Amendment, the Fifth Amendment and the Contract Clause. The Grievance Committee's findings of probable cause were signed by Defendants, Faulkner and Bopp.

Defendant Faulkner's Improper Pre-Finding Prosecutorial Discovery Deposition

33. Prior to making their probable cause findings against Plaintiff Rush, Defendant Faulkner and Defendant Bopp improperly attempted to take a prosecutorial discovery deposition of Plaintiff Rush, unilaterally noticing Plaintiff Rush for a deposition, based upon a subpoena issued by Defendant Faulkner. Defendant Faulkner's prosecutorial "discovery" deposition was not designed for Plaintiff Rush to "testify", before the Committee and was not a subpoena to "testify" and is not authorized by the Florida Bar Rules. When Plaintiff Rush properly objected to this improper prosecutorial discovery deposition, Defendant Faulkner and the Grievance Committee unilaterally scheduled this one-sided prosecutorial discovery deposition in order to obtain adverse evidence against Plaintiff Rush, before any finding of probable cause. At the same time, Defendants, Faulkner and Bopp, refused Plaintiff Rush's lawful request to testify live and under oath before the

full Grievance Committee, where such live testimony is specifically authorized by the Florida Bar Rules. At the same time, Defendants, Faulkner and Bopp, refused to require that the North Park accusers testify before the Grievance Committee as properly requested by Plaintiff, all of which furthered Defendants' violation of Plaintiffs' Constitutional Rights and which furthered Defendants' anti-competitive conduct.

The Florida Bar's Disciplinary Action Against Plaintiff

34. The Grievance Committee's initial charging document and finding of probable cause only refers to the alleged violation of seven (7) Florida Bar Rules, but references no actual alleged conduct by Plaintiff, as follows:

a. **Rule 4-1.2 (Objectives and Scope of Representation)**

b. **Rule 4-1.4 (Communication Between Attorney and Clients)**

c. **Rule 4-1.5 (Fees and Costs for Legal Services)**

d. **Rule 4-1.7 (Conflict of Interest; Current Clients)**

e. **Rule 4-3.1 (Meritorious Claims and Contentions)**

f. **Rule 4-3.4 (Fairness to Opposing Party and Counsel)**

g. **Rule 4-8.4 (Misconduct)**

35. In November of 2020, Florida Bar prosecutors filed a Bar Complaint **approved by Defendants Faulkner and Bopp which adopted all of the Grievance Committee's probable cause findings against Plaintiff Rush**, asserting that Plaintiff Rush had allegedly violated the same seven Florida Bar Rules, primarily based upon Rush's out of court commercial speech and free speech arising from Plaintiff Rush's defense of Plaintiffs' lawful fee agreements, lawful attorneys lien, lawful signed and written client authorizations, and Plaintiff's out of Court statements and communications arising from Rush's efforts to enforce Plaintiffs' lawful fee agreements and

attorneys lien. Thereafter, the Florida Bar prosecutors demanded that Plaintiff Rush plead guilty to all seven charges contained in the Florida Bar's Complaint, allegedly in return for some sort of lighter discipline, which Plaintiff rejected.

Plaintiffs' First Amendment Protected Out of Court Communications Regarding Plaintiffs' Lawful Fee Agreements and Lawful Attorneys Lien

36. Faulkner, Bopp and their Grievance Committee sought to discipline Plaintiff primarily for out of Court speech in regard to Plaintiff entering into and enforcing two (2) signed and notarized written fee agreements which are recognized as lawful contracts under current Florida Law. These two fee agreements are extremely competitive with the fees charged and collected by Defendants Faulkner, Bopp and the other competing private attorneys who control the Grievance Committee.

37. The Florida Bar now seeks to discipline Plaintiff Rush for making lawful out of Court oral and written statements and communications to FDOT and its attorneys and to opposing competitor attorneys, which were truthful statements or were Plaintiffs' lawful opinions in regard to disputed legal, factual, governmental, economic, commercial or political issues and in defense of Plaintiffs' lawful and enforceable contracts, property rights and attorneys liens.

Florida's Eminent Domain Statutes Require that FDOT Pay All Reasonable Costs, Including Appraisal Fees and All Attorney's Fees, Including Fees for Non-Monetary Benefits

38. Section 73.091, Florida Statutes, **Costs of the Proceedings** requires the FDOT to pay all reasonable attorneys fees, expert fees and costs, and states in part as follows:

> **73.091 Costs of the proceedings.**—
>
> (1) **The petitioner shall pay attorney's fees as provided in s. 73.092 as well as all reasonable costs incurred in the defense of the proceedings in the circuit court,** including, but not limited to, reasonable appraisal fees and, when business damages are compensable, a reasonable accountant's fee, to be assessed by that court.

39. Section 73.092, Florida Statutes, **Attorney's Fees** sets forth a statutory framework for determining the amount of attorneys fees, and states in part as follows:

> **73.092 Attorney's fees.—**
>
> (1) **Except as otherwise provided in this section and s. 73.015, the court, in eminent domain proceedings, shall award attorney's fees based solely on the benefits achieved for the client.**
>
> (a) As used in this section, **the term "benefits" means the difference, exclusive of interest, between the final judgment or settlement and the last written offer made by the condemning authority** before the defendant hires an attorney. If no written offer is made by the condemning authority before the defendant hires an attorney, benefits must be measured from the first written offer after the attorney is hired.
>
> (b) **The court may also consider nonmonetary benefits obtained for the client through the efforts of the attorney, to the extent such nonmonetary benefits are specifically identified by the court and can, within a reasonable degree of certainty, be quantified.**
>
> (2) **In assessing attorney's fees incurred in** defeating an order of taking, or for apportionment, or **other supplemental proceedings**, when not otherwise provided for, the court shall consider:
>
> **(a)** The novelty, difficulty, and importance of the questions involved.
>
> **(b)** The skill employed by the attorney in conducting the cause.
>
> **(c)** The amount of money involved.
>
> **(d)** The responsibility incurred and fulfilled by the attorney.
>
> **(e)** The attorney's time and labor reasonably required adequately to represent the client in relation to the benefits resulting to the client.
>
> **(f)** The fee, or rate of fee, customarily charged for legal services of a comparable or similar nature.
>
> **(g)** Any attorney's fee award made under subsection (1).

Eminent Domain Fee Agreement is Not a Contingency Fee Agreement

40. At all times material, the Defendants knew and had actual knowledge that the Florida Supreme Court has determined that eminent domain fee agreements are not contingency fee agreements, because generally the attorney is entitled to recover a reasonable fee from the condemning authority, under the above statutes when the eminent domain case is initiated. Eminent domain attorney's fees are not contingency fees because **payment of a "reasonable" attorney's fee in eminent domain is "assured," and the fees are paid, as part of "just compensation."** *Standard Guarantee Insurance Company v. Quanstrom* 555 So.2d 828, 835 (Fla. 1990) **(eminent domain attorney's fees have "special, distinct factors", and "the attorney is assured of a (reasonable) fee when the action commences");** See, *Schick v. Department of Agriculture and Consumer Services* 599 So.2d 641, 644 (Fla. 1992) **(eminent domain attorney is not entitled to a contingency risk multiplier);** See, *City of North Miami Beach v. Reed* 863 So.2d 351, 353 (Fla. 3rd DCA 2003) **(contingency risk multiplier is unavailable in eminent domain cases).** While both eminent domain and probate cases are subject to statutory percentage fee schedules, neither of these types of cases are contingency fee cases. See, *Quanstrom* (supra) at 834-36. See, *FDOT v. Skinners Wholesale Nursery*, 736 So.2d 3, 8 (Fla. 1st DCA 1998) **("enhancement (of) fees based on contingency risk factor is inappropriate in this eminent domain case."** (applying new 1994 Statute.).

41. At all times material, the Defendants knew and had actual knowledge that because North Park's 2014 Eminent Domain Fee Agreement is not a contingency fee agreement, the statutory fee cannot possibly be a **"contingency termination penalty."** Also, because North Park's 2018 **Hourly** Fee Agreement is not a contingency fee agreement, the hourly fee of $395.00 per hour cannot possibly be a penalty. Neither the 2014 Fee Agreement or the 2018 Fee Agreement can

possibly result in an unreasonable or excessive fee, and cannot possibly be a penalty or liquidated damages clause because upon termination any fee claim is subject to Florida Bar Arbitration and any arbitration award must be approved by a Circuit Court and affirmed by an Appellate Court, if appealed. See, Florida Arbitration Code Chapter 682, Florida Statutes. Therefore, these two (2) Fee Agreements do not violate Rule 4-1.5, Rule Regulating the Florida Bar.

42. At all times material, the Defendants knew and had actual knowledge that under the Florida Constitution and Florida Statutes, the **FDOT is absolutely required to pay "reasonable" attorney's fees and costs in an eminent domain case.** See, Florida Constitution and Florida Supreme Court cases defining fees and costs in eminent domain cases as part of **Constitutional "just-compensation."** See, *Jacksonville Expressway Authority v. Henry G. Du Pree Co.*, 108 So.2d 289 (Fla. 1959); *Dade County v. Brigham*, 47 So.2d 602 (Fla. 1950); *Lee County v. Sager*, 595 So.2d 177 (Fla. 2d DCA 1992). FDOT's duty to pay reasonable fees and costs is part of Florida's constitutional **"just-compensation" and is an absolute statutory obligation**, even though the **final amount** of reasonable attorney's fees is **unliquidated at the beginning of the case**. Under Florida Law, **FDOT's obligation to pay "reasonable fees and costs" is absolute and is not contingent.** *Standard Guaranty Insurance Company v. Quanstrom*, 555 So.2d 828, 835 (Fla. 1990) **(eminent domain attorney's fees have "special, distinct factors", and "the attorney is assured of a (reasonable) fee when the action commences"). If the landowner waives these attorney's fees, then the landowner becomes liable to pay these fees to his attorney.** See, *Winn v. City of Cocoa*, 75 So.2d 909, 912 (Fla. 1954).

Liability and Collectability Are Not at Issue in Any Eminent Domain Case and Damages are Presumed and are Prepaid by the State

43. At all times material, the Defendants knew and had actual knowledge that unlike true contingency fee cases, liability and collectability against the State are presumed and are not

disputed in eminent domain cases. In an eminent domain case, the condemning authority is the Plaintiff, and the condemning authority has no defenses to its liability or collectability. Unlike **true** contingency cases, the property owner does not have to prove liability, insurability, or collectability and the property owner's costs and expert fees must be paid by condemning authority. Unlike **true** contingency cases, the State and FDOT have no defenses to liability, reasonable fees or collectability. Finally, unlike **true** contingency cases, damages are presumed and the state is required to prepay and deposit in the Court registry the minimum good faith estimated damages as a condition precedent to the order of taking. **In eminent domain practice, there is no true contingency.** In any case, the statutory fee schedule is mandatory and is only used to "calculate" a reasonable fee, as specifically provided by Statute.

The Florida Bar Rules and the Defendants' Application of the Rules Violate the First Amendment to the US Constitution and Violate Plaintiffs' Other Constitutional Rights and Violate Federal Anti-Trust Statutes by Unlawfully Restraining Competition

44. This suit is brought under 42 U.S.C. §1983 against Defendants, especially the Florida Bar and various Defendant Bar officials and agents, and also against the various competitor attorneys, including Defendants, Faulkner, Bopp and the Grievance Committee and its competitor non-sovereign attorneys who controlled the Grievance Committee. Initially, the Grievance Committee and its competitor attorney members have wide and unlimited discretion to investigate the alleged Rule violation and interpret initially the application of the Rules Regulating the Florida Bar (together the **"Rules"**), and Defendants, Faulkner and Bopp, are responsible for the Grievance Committee's probable cause finding and the resulting Florida Bar charges against the Plaintiff, as part of the various Defendants' anti-competitive effort against Plaintiffs.

45. In many instances, Defendants' and the Florida Bar's application of the Rules alone directly violates Plaintiff's First Amendment Rights, and the Florida Bar's interpretation of the

Rules act as a prior restraint and unreasonably chills the First Amendment Rights of all Florida lawyers, in regard to both commercial speech and free speech. The Defendants' application of the Rules directly regulates, prohibits and disciplines out of court oral and written lawyer speech and communications by the Plaintiffs which are common lawyer communications in our adversarial legal system.

46. Plaintiffs seek a declaration that portions of the Rules and their application by the Florida Bar and the other Defendants, especially Faulkner, Bopp and the competitor lawyer-controlled Grievance Committee, and the other Defendants violate the First, Fifth and Fourteenth Amendments to the United States Constitution and also violate the Contracts Clause of the United States Constitution. This declaration is especially appropriate where the Rules or the application of the Rules do not further any important or legitimate governmental interest, especially to control and punish lawyer's out of court speech and communication, in violation of the First Amendment.

47. Plaintiffs also challenge and seek a declaration that provisions of the Rules and the Florida Bar's application of those Rules improperly regulate and discipline the lawyer for the attorney's and the client's lawful **contractually agreed upon objectives and scope of representation** and also violate the First Amendment as protected and authorized attorney commercial speech. See, Rule 4-1.2 and related comments authorizing Florida attorneys to communicate to and agree with clients in regard to **limits on "objectives and scope of representation".** Plaintiffs also challenge and seek a declaration that the Florida Bar's Rules and their application in regard to lawful communications to Plaintiffs' clients and third parties. This declaration is especially appropriate where the Rules or the application of the Rules impair, regulate, discipline and punish out of court speech commonly engaged in by Florida lawyers in our

adversarial Justice system and do not further any important or legitimate governmental interest. See, Rule 4-1.2, Rules Regulating the Florida Bar. (Objectives/scope)

48. Plaintiffs seek a declaration and challenge provisions of the Rules and the Florida Bar's and the Defendants' application of those Rules which regulate and discipline the attorney's lawful **truthful and contractually agreed upon communications** to non-clients, especially in regard to contractually agreed payment of attorney's fees and enforcement of the resulting lawful attorneys lien. Plaintiffs' also challenge the Bar's Rules and their application to the Plaintiffs' lawful communications to Plaintiffs' clients in regard to Plaintiffs' lawful attorneys fees and a lawful lien. This declaration is especially appropriate where the Rules or the application of the Rules do not further any important or legitimate governmental interest. See, Rule 4-1.4, Rules Regulating the Florida Bar. (Communication)

49. Plaintiffs seek a declaration and challenge provisions of the Rules and the application of the Rules by the Defendants, which regulate, discipline and seek to rescind and declare illegal Plaintiffs' **lawful attorney's fee agreements and Plaintiffs' lawful attorneys lien for fees and costs** for legal services. This declaration is especially appropriate where the Rules or the application of the Rules do not further any important or legitimate governmental interest and as applied contradict current Florida law in regard to lawful attorneys liens and reasonable fees. See, Rule 4-1.5, Rules Regulating the Florida Bar. (Reasonable attorneys fees)

50. Because the Florida Bar and the other Defendants do not actually ever regulate or discipline the attorneys fees charged by Defendants, Faulkner and Bopp and by their large commercial and corporate law firms, including the exorbitant hourly fees and flat fees charged by Defendant Faulkner and his law firm, and Defendant Bopp and his law firm, and the Bar's own private counsel, the Florida Bar Rules or their application do not further any important or legitimate

governmental interest and infringe on Plaintiffs' protected First Amendment rights of commercial speech.

51. Plaintiffs seek a declaration and challenges provisions of the Rules and the application of the Rules which regulate alleged **conflict of interest with current clients, after the North Park Client's repudiation, termination and breach of the attorney's employment and fee agreements,** especially as they relate to protecting Plaintiffs' lawful Attorney's Lien and attorneys' fee agreements from interference by non-client third parties and the FDOT government entity and Defendants, Sanchez, Henderson and Linsky. This declaration is especially appropriate where the Rules or the application of the Rules do not further any important or legitimate governmental interest and as applied contradict Florida law. See, Rule 4-1.7, Rules Regulating the Florida Bar.

52. At all times material, the Defendants knew and had actual knowledge that a fee dispute arising from a lawful fee agreement and a lawful attorneys lien, is not a conflict of interest under the Bar Rules, because Rule 4-1.7, by its terms, does not apply to attorney-client fee disputes, but rather focuses almost exclusively on conflicts of interest arising from an attorneys joint representation of multiple clients with conflicting interests and non-attorney business relationships with clients. Because Rule 4-1.7, does not apply to Plaintiff's fee dispute, the Rules or the application of the Rules do not further any important or legitimate governmental interest and violates Plaintiffs' protected commercial and free speech rights.

53. Plaintiffs seek a declaration and challenges provisions of the Rules and the application of the Rules which regulate **meritorious claims and contentions**, especially as they relate to lawful attorney's fee agreements, arbitration agreements and attorney's liens, and the client's **contractually agreed objectives and expert strategy**. This declaration is especially

appropriate as they relate to enforcement of the Plaintiffs' lawful fee agreements, lawful attorney's lien, lawful lis pendens, and resulting equitable lien and arbitration rights, where the Rules or the application of the Rules do not further any important or legitimate governmental interest and contradict Florida law. See, Rule 4-3.1, Rules Regulating the Florida Bar.

54. Under Florida Law, the filing of a lis pendens is authorized and proper when a Plaintiff is pursuing an equitable lien. See, S and T Builders v. Globe Properties, Inc., 944 So.2d 302 (Fla. 2006). Because Plaintiffs filed a lawful attorneys lien, based upon Plaintiffs' lawful 2014 eminent domain fee agreement and Plaintiffs' lawful 2018 hourly fee agreement, and because an attorneys lien is an equitable lien recognized by Florida Law, the Plaintiffs' filing of a lis pendens to secure this equitable lien is specifically authorized by Florida Supreme Court Case Law. Therefore, Plaintiffs' claims were meritorious and not a violation of Rule 4-3.1, Rules Regulating the Florida Bar, especially where no party to the litigation asserted and no Florida Court found that Plaintiff's lis pendens was meritless or frivolous.

55. Plaintiffs seek a declaration and challenge provisions of the Rules and the Bar's application of the Rules which regulate **fairness to opposing parties and counsel**, and also challenge the Rules relating to out of Court communications which allegedly regulate and discipline lawful speech between attorneys, which is authorized by Florida Law. Further, Plaintiffs seek a declaration that the **Plaintiffs' communications to FDOT and its government attorneys** were truthful or were opinion in regard to disputed economic, legal, governmental, factual or public issues. This declaration is especially appropriate where the Plaintiffs' constitutionally protected oral and written communications provided notice to opposing counsel and third parties to avoid interference with Plaintiffs' lawful fee agreements and attorneys lien and to avoid violating Court

orders securing Plaintiffs' claims for attorneys fees and costs, especially where such notice is required or allowed by Florida law. See, Rule 4-3.4, Rules Regulating the Florida Bar.

56. Because the first six (6) listed Bar Rules, as written or applied, violate the United States Constitution, Plaintiff Rush has not violated Rule 4-8.4, Rules Regulating the Florida Bar, in regard to misconduct arising from and based on these alleged violations of the first six (6) Bar Rules.

Bar Rules are Vague, Overbroad, Arbitrary, Conflicting and Contrary to Supreme Court and Eleventh Circuit Precedent, Especially Regarding the First Amendment

57. The Florida Bar Rules set forth in the Grievance Committee's Finding of Probable Cause signed by Defendants, Faulkner and Bopp, and set forth in the Florida Bar's Disciplinary Complaint are vague, overbroad, arbitrary, conflicting, and contrary to United States Supreme Court precedent and contrary to 11th Circuit Court of Appeals precedent protecting the lawyer's commercial speech and free speech rights. These Court precedents protect the Plaintiffs' freedom to criticize government actions/misconduct, and also protect the Plaintiffs' freedom of speech, freedom of commercial speech, freedom of interpersonal communication, freedom of association, due process rights, property rights, rights to just compensation and the right to enter into, enjoy, enforce and protect the benefits of private contracts, without improper interference and impairment by government action or regulation. Therefore, the above Rules or the application of the Rules do not further any important or legitimate governmental interest.

Bar Rules and Application of Rules Violate First Amendment Especially in Regard to Private Opinion and Truthful Statements and Out of Court Speech Criticizing Government Actions

58. Plaintiffs challenge provisions of the Florida Bar Rules or the Bar's application of the Rules which violate the First Amendment to the United States Constitution, in that the Rules purport to prohibit and punish through disciplinary proceedings **Plaintiffs' private free speech and**

commercial speech and voluntary communication between a Florida lawyer and a non-client, government attorney and agent for FDOT, Defendant Aloyma Sanchez, where the lawyer's speech is truthful, or in the alternative is opinion in regard to disputed commercial, business, legal, governmental, economic, factual or public issues, all of which occurred outside of any courtroom and in the presence of numerous law enforcement officers/security officers who were present to assure good order and the safety of all participants. This protected speech is not misleading and has no potential to deceive anyone, and is part of customary and appropriate communication in our adversarial legal system, and this speech is protected under the First Amendment, even if this private speech is **"upsetting"** to any one, especially a **government agency like FDOT and its attorney/agent, who are involved in an impairment and taking of property under the Fifth Amendment.**

59. Plaintiffs challenge provisions of the Florida Bar Rules and the Bar's application of the Rules which violate the First Amendment to the United States Constitution, in that the Rules purport to regulate and discipline the Plaintiffs' **private and voluntary oral communications occurring outside of any courtroom between opposing attorneys**, and in the presence of numerous law enforcement officers who were present to assure good order and the safety of all participants. Because the attorney's oral and written communications are truthful, or in the alternative are opinion in regard to disputed legal, governmental, economic, factual or public issues the Rules violate the First Amendment. Because this private speech is not misleading and has no potential to deceive anyone, and is part of customary and appropriate private communication in our adversarial legal system, all of these oral and written communications are protected under the First Amendment and the Bar's Rules or application of the Rules violate the United States Constitution.

60. Plaintiffs' challenge provisions of the Florida Bar Rules and the Bar's application of the Rules which violate the First Amendment to the United States Constitution, in that the Rules purport to regulate Plaintiffs' **private and voluntary oral and written communications which were between an attorney and opposing counsel** occurring **outside of any courtroom in a public lobby, in the presence of law enforcement officers/bailiffs**, where the attorney communicated to the opposing counsel in regard to the pending case, and where the attorney's communications are truthful, or in the alternative are opinion in regard to disputed legal, economic, commercial, business and property issues. In any event, this speech is not misleading and has no potential to deceive anyone, such that all of these communications are protected under the First Amendment to the United States Constitution, especially where the Rules as written or applied do not further any important or legitimate government interest.

Bar Rules and Application of Rules Violate Fourteenth Amendment

61. Plaintiffs challenge provisions of the Florida Bar Rules and the Florida Bar's application of the Rules which violate the Fourteenth Amendment to the United States Constitution, in that the Rules purport to regulate and punish through discipline constitutionally protected free speech and commercial speech, which Plaintiffs have used to protect and enforce contractually agreed upon and lawful case objectives and the contractually agreed upon scope of the attorney's representation and related attorney efforts, all of which are authorized by the Florida Bar Rules. See, North Park's 2014 eminent domain fee agreement and North Park's 2018 hourly fee agreement, under which Plaintiffs were employed by North Park and which the Defendants falsely claims are illegal fee agreements.

62. Plaintiffs challenge provisions of the Florida Bar Rules and the Florida Bar's application of the Rules which violate the Fourteenth Amendment to the United States Constitution

where the Rules are unconstitutionally vague, overbroad, arbitrary, conflicting, and contrary to United States Supreme Court precedent and contrary to 11th Circuit Court of Appeals precedent, especially where the Rules as written or applied do not further any important or legitimate government interest, thereby resulting in a violation of the Plaintiffs' Fourteenth Amendment due process rights.

Bar Rules and Application of the Rules Violate Fifth Amendment

63. Plaintiffs challenge provisions of the Florida Bar Rules and the Florida Bar's application of the Rules which violate the Fifth Amendment to the United States Constitution, in that the Rules purport to regulate and punish through discipline constitutionally protected free speech and commercial speech and related activity which protect valuable and Constitutionally protected property rights, reputation rights, lien rights and contractual rights.

64. Plaintiffs challenge provisions of the Florida Bar Rules and the Florida Bar's application of the Rules which violate the Fifth Amendment to the United States Constitution, where the Rules are unconstitutionally vague, overbroad, arbitrary, conflicting, and contrary to United States Supreme Court precedent and contrary to 11th Circuit Court of Appeals precedent, especially where the Rules as written or applied **result in an unconstitutional impairment and taking of the Plaintiffs property rights, reputation rights, lien rights and contractual rights**, and where the Rules as written or applied do not further any important or legitimate government interest.

Bar Rules and Application of the Rules Violate Contracts Clause

65. Plaintiffs challenge provisions of the Florida Bar Rules and the Florida Bar's application of the Rules which violate the Contracts Clause of the United States Constitution, in that the Rules purport to regulate and punish through discipline the constitutionally protected right to

enter into, enjoy, protect and enforce private contracts, which are lawful under Florida Law and which are free from unreasonable interference or impairment by the government under the United States Constitution.

66. Plaintiffs challenge provisions of the Florida Bar Rules and the Florida Bar's application of the Rules which violate the Contracts Clause of the United States Constitution, where the Rules are unconstitutionally vague, overbroad, arbitrary, conflicting, and contrary to United States Supreme Court precedent and contrary to 11th Circuit Court of Appeals precedent, and where the Rules and the application of the Rules to the Plaintiffs result in an unconstitutional impairment and taking of the Plaintiffs property and contractual rights, especially where the Rules as written or applied do not further any important or legitimate government interest.

67. Plaintiff's oral and written statements to enforce Plaintiffs' lawful contracts and lawful attorneys lien were out of Court communications which were made to protect and enforce Plaintiffs' lawful contractual and lien rights under the Fifth and Fourteenth Amendments to United States Constitution and under the Contracts Clause of the United States Constitution and are protected commercial speech. As such, Plaintiffs' out of Court statements in regard to Plaintiffs' lawful contracts and liens are protected commercial speech and are protected First Amendment free speech and are not subject to Florida Bar Regulation or Florida Bar Discipline.

FACTUAL ALLEGATIONS

68. This lawsuit and the underlying materially false North Park Bar Grievance and the resulting Florida Bar Complaint arise out of a fee dispute, fraudulently initiated by Plaintiffs' former clients, North Park Isles, PTC, LLC and JT North Park, LLC (the "North Park Companies" or "North Park"), to unfairly enrich the clients and to avoid paying any attorney's fees to Plaintiffs for

over seven hundred (700) hours of legal services rendered by Plaintiffs over a four (4) year period (2014-2018).

69. The Florida Bar's disciplinary action arises directly from the Plaintiffs' fee dispute with the Florida Department of Transportation ("FDOT") and Plaintiff's former clients, and from Plaintiffs' protected out of Court speech in defense against the false accusations by FDOT and the former client, the North Park Companies, and arise from the Plaintiff's lawful pursuit of Plaintiff's lawful attorneys lien filed pursuant to Florida Law to secure payment of Plaintiff's attorneys fees and costs from the FDOT. See, Rule 4-1.8 (i)(1), Rules Regulating the Florida Bar. ("**Lawyer may acquire a lien granted by law to secure the lawyer's fee or expenses.**")

FDOT's Taking and the Resulting Just Compensation/Damages

70. In approximately May/June of 2017, FDOT filed an eminent domain action against Plaintiff Rush's client, the North Park Companies, seeking to take approximately seven (7) acres of North Park's land for the construction of two connected drainage ponds, plus various drainage pipes, ditches, structures and easements in order to drain and retain surface water from Sam Allen Road which FDOT was widening substantially.

71. The FDOT's taking resulted in the taking of approximately 7.0 acres of North Park's land, and also encumbered an additional 2.3 acres, such that the total amount of land taken or encumbered by the Order of Taking equaled 9.3 acres of valuable uplands. These 9.3 acres were located on a portion of North Park's property which was planned for multi-family development, and were the most valuable residential uplands on North Park's property. The FDOT taking resulted in total just compensation and severance damages valued at between approximately Five Million Dollars ($5,000,000.00) and Eleven Million Dollars ($11,000,000.00).

72. The Order of Taking and FDOT's construction plans and easements economically "disabled" North Park's development, and North Park repeatedly demanded that Plaintiff Rush force FDOT to provide to North Park valuable nonmonetary benefits consisting of substantial plan modifications and engineering concessions. North Park repeatedly demanded that FDOT relocate FDOT's drainage ponds and restore unfettered ingress/egress by relocating FDOT's drainage ponds and modifying FDOT's construction plans, structures and easements, but FDOT refused to so, and FDOT blamed North Park's misconduct for FDOT refusal.

Grievance Committee's Findings and Florida Bar's Complaint Chill Speech

73. The Grievance Committee's findings of probable cause and the Florida Bar's disciplinary Complaint adopting the Grievance Committee's findings of Florida Bar Rule violations violate the Plaintiffs' First Amendment rights to speak and communicate in defense of the Plaintiffs' reputation rights, property rights, lien rights and contractual rights, arising out of the Plaintiffs' lawful fee agreements, lawful attorney's lien, lawful equitable lien and lawful arbitration agreements.

74. The Florida Bar's disciplinary action seeks to discipline Plaintiff Rush and to economically damage the Plaintiffs for their protected defensive free speech and commercial speech, employed by Plaintiffs to protect Plaintiffs' economic, business, reputational, contractual, lien and property rights. Because the Plaintiffs' First Amendment speech and communications are necessary to protect and defend Plaintiffs' due process constitutional rights under the Fourteenth Amendment, and Plaintiffs' reputation, property, lien and contracts rights under the Fifth Amendment and the Contracts Clause, the Bar's disciplinary action substantially violates Plaintiffs' First Amendment Rights and effectively chills all Florida lawyers' First Amendment rights, now and in the future.

Former Client's Improper Financial Motive to Initiate Fraudulent Fee Dispute

75. The North Park Companies initiated this fee dispute in order to avoid or eliminate their liability for a substantial amount of eminent domain attorney's fees and expert fees and related amounts which the North Park Companies owed to Plaintiffs. The North Park Companies 2014 Eminent Domain Fee Agreement and 2018 Hourly Fee Agreement with Plaintiffs required that the Plaintiffs' attorney's fees be paid by either FDOT, the state condemnor, or alternatively be paid jointly by the North Park Companies and their managers/owner.

76. The North Park Companies also initiated this fee dispute so that the North Park Companies could trade to the FDOT a waiver of Plaintiff Rush's substantial eminent domain attorney's fees and costs to the Florida Department of Transportation, so that the North Park Companies could then obtain valuable non-monetary benefits from FDOT, including promises of FDOT's cooperation in regard to obtaining environmental permitting and for North Park to obtain modifications to FDOT's construction plans and drainage structures described in the 2017 Order of Taking obtained by FDOT.

North Park's 2014 Eminent Domain Fee Agreement and North Park's 2018 Hourly Fee/Reasonable Fee Agreement

77. On or about September 25, 2014, the North Park Companies signed and entered into a 2014 fee agreement which is titled **"Eminent Domain Fee Agreement,"** whereby the North Park Companies retained the Plaintiffs' Brian P. Rush and Woodlief & Rush, P.A. (the **"Rush Attorneys"**) to represent the North Park Companies in an eminent domain matter involving the Florida Department of Transportation ("FDOT"), in regard to an FDOT taking which substantially impaired access and significantly damaged the value of the North Park Companies' 400 acre residential development in Plant City, Florida.

2014 Fee Agreement

78. North Park's 2014 Eminent Domain Fee Agreement (the **"2014 Fee Agreement"**), is lawful and a fully enforceable agreement under Florida Law, supported by Plaintiffs' ample consideration and over seven hundred (700) hours of attorney's services provided over a four year period (2014-2018), for which Plaintiffs have been paid nothing.

79. The 2014 Fee Agreement sets forth the parties' contractually agreed upon scope of the representation, objectives and goals, strategy and plan of action for the Plaintiffs' representation of the clients, and the clients' agreement to **"fully cooperate"** with this agreed upon strategy. A copy of the 2014 Fee Agreement is attached to this Complaint as **Exhibit "A,"** which provides in part:

AGREEMENT FOR REPRESENTATION
EMINENT DOMAIN

> **TODD R. TAYLOR, MANAGING MEMBER, as authorized agent of NORTH PARK ISLES PTC, LLC and JT NORTH PARK, LLC** (known together as "Client"), hereby retains and employs Brian P. Rush, Esq., Brian P. Rush, P.A., and Woodlief and Rush, P.A. ("Attorney") to represent Client in a condemnation proceeding **for damages, loss of land value, impairment of access, loss of furniture, fixtures and equipment and/or business loss claims or other losses/claims** involving the State of Florida, and/or the Florida Department of Transportation. (bold emphasis added) Page 1 of North Park's 2014 fee agreement.
>
> **BEFORE YOU SIGN THIS AGREEMENT YOU SHOULD CONSIDER CONSULTING WITH ANOTHER LAWYER…** Page 1 of North Park's 2014 fee agreement.

ATTORNEYS FEES

> **As set forth in this Agreement, Attorney's fees and costs for this representation will be limited to the amount paid to Attorney by the condemning authority or the State of Florida or the Department of Transportation or their agents through a settlement or the amount awarded by the Court if Attorneys cannot reach a settlement of their claim for fees.** (underline added).

Attorney has enclosed copies of Florida Statutes, Section 73.091 and 73.092 regarding the obligation of the government to pay Client's attorney's fees, costs, and expert fees in defending this case. Page 2 of North Park's 2014 fee agreement.

OFFERS OF JUDGEMENT
[CLIENT'S OBLIGATION TO PAY ATTORNEY'S FEES]

Chapter 73, Florida Statutes, and Rule 1.442 provide an explanation of the procedures when an "offer of judgment" or "proposal for settlement" is made. **Generally, if the final judgment or trial verdict award is equal to or less than the Offer of Judgment, Client would be responsible for any attorney's fees and costs billed by Attorneys, after the date the Offer of Judgment is rejected or expires.** (bold emphasis added)(underline added) (title in brackets added).

TERMINATION OF REPRESENTATION
[CLIENT'S OBLIGATION TO PAY ATTORNEY'S FEES]

Client shall at all times have the right to terminate Attorney's services upon written notice to that effect, but Client would then be obligated to pay to Attorney the reasonable value of his services. (bold emphasis added) (underline added) (title in brackets added).

[Client's Full Cooperation to Recover Attorney's Fees]

If required by Attorney or the Court, **Client agrees to fully cooperate and to join in a petition to the Court for Attorney's fees and costs and expert fees** based on a consideration of the above factors, and Florida Statutes and case law. (bold emphasis added) (underline added) (title in brackets added).

[Fee Disputes to be Resolved by Florida Bar Arbitration Program]

At either party's option, any and all such disputes, past, present or future, shall be arbitrated through binding arbitration **before the Florida Bar Arbitration Program…**

The Parties specifically request that the Court broadly enforce this Arbitration Agreement in favor of binding Arbitration of all disputes, and construe this agreement equally between the Parties. Page 5 of North Park's 2014 fee agreement.

80. North Park's 2014 Fee Agreement specifically protects and insures North Park's right to settle its litigation case with the FDOT, at North Park's sole discretion. The 2014 Fee Agreement also preserves and protects North Park's right to determine the goals of North Park's case, while also preserving and authorizing Plaintiffs' development of strategies to carry out North Park's goals and objectives:

STRATEGY DECISIONS

> **Client agrees that the Client sets the overall goals of the litigation and ultimately makes all settlement decisions.**
>
> **The Attorney utilizes his judgment to develop strategies to achieve Client's goals.**
>
> Client understands that other attorneys might disagree with the judgments and strategies of Attorney, **and Client agrees that he is free to consult with other attorneys**.
>
> **Client specifically agrees that if Client objects to Attorney's judgments or strategies, Client will notify Attorney of Client's objections in writing promptly within thirty (30) days.** (underlines added)

81. The 2014 Fee Agreement also sets forth the North Park clients' contractually agreed upon duty to **"fully cooperate"** with the payment of North Park's retained experts and to carry out the agreed upon strategy to "secure full compensation for the taking," as follows:

EXPERT WITNESSES

> It is anticipated that **Attorneys will retain, on Client's behalf, such additional experts or consultants as are necessary to ensure that Attorneys secure the right and full compensation for the taking of Client's property.** (bold emphasis added) (underline added).
>
> Attorneys will apply to the court for payment/reimbursement of all such recoverable costs and expenses incurred in connection with this case and **Client will fully cooperate with these applications for payment of such experts/consultants fees and costs.** (bold emphasis added) (underline added).

Plaintiffs' Protected Property and Contractual Rights in 2014 Agreement

82. The 2014 Fee Agreement and the Plaintiffs' lawful attorney's lien established valuable property rights and contractual rights in the Plaintiff Rush attorneys, which the Plaintiffs sought to protect through their out of Court communications and statements to the clients, governmental departments and opposing attorneys and others, all of which are protected by the First Amendment to the U.S. Constitution.

83. At all times material, when Plaintiff Rush made oral and written statements in regard to the Plaintiffs lawful reputation rights, property rights, contractual rights, lien rights and constitutional rights, Plaintiff was speaking on behalf of himself individually and on behalf of Plaintiff's law firms, including Woodlief & Rush, P.A.

84. The property rights and contractual rights set forth in the 2014 Fee Agreement are in addition to and supplement the Plaintiff's rights to be paid and collect attorney fees and costs from the North Park clients directly, as provided to Plaintiff in the 2018 Hourly Fee Agreement described below.

2018 Hourly Fee Agreement

85. On or about April 6, 2018, the North Park Companies and their authorized manager/agent, Todd Taylor, entered into an additional 2018 Hourly Fee Agreement, which is titled **"Hourly Fee/Reasonable Fee Agreement."** Under the 2018 Fee Agreement the North Park Companies promised to pay hourly fees to Plaintiff Rush and his law firm (the **"Rush Attorneys"**) to represent the same North Park Companies in the same subject eminent domain matter, involving the same Florida Department of Transportation ("FDOT"), in regard to the same taking of property. Additionally, Plaintiff Rush agreed to draft a detailed settlement proposal with a Memorandum of Understanding for **a flat fee of only one dollar ($1.00).** A copy of the 2018 Hourly Fee Agreement

is attached to this Complaint as **Exhibit "B".** The 2018 Fee Agreement also confirms North Park's agreement to **pay Plaintiff Rush hourly fees of $395.00 per hour**, and provides in pertinent part:

HOURLY FEE/REASONABLE FEE AGREEMENT (2018)

> **Client agrees to pay an initial non-refundable fee retainer payment of One Dollar ($1.00) to Attorney at the time of signing this fee agreement.**
>
> ***
>
> **"For any additional legal work, Client agrees to pay Attorney an hourly rate of $395.00 per hour for each hour of Attorney's time, which shall increase annually by five percent (5%) on January 1st of each year. Interest shall accrue on unpaid balances at one percent (1%) per month. It is anticipated that this litigation will require substantial additional legal work"** (Underline added).

Plaintiffs' Protected Property/Contractual Rights in 2018 Hourly Agreement

86. The 2018 Hourly Fee Agreement and the Plaintiffs' lawful attorney's lien vested valuable property rights, lien rights and contractual rights in Plaintiff Rush, which are additional to the rights provided in the 2014 Eminent Domain Fee Agreement. These property, lien and contractual rights in the 2018 fee agreement are protected under the Fifth Amendment and the Fourteenth Amendment and the Contracts Clause of the United States Constitution.

Plaintiffs' First Amendment Speech Against Unlawful Interference and Impairment of Plaintiffs' Constitutionally Protected Property Rights and Contractual Rights Created by the 2014 Agreement

87. In the Spring and Summer of 2018, the Plaintiff Rush Attorneys sought to protect their reputation, property, lien and contractual rights through First Amendment protected oral and written communications to provide notice to government agencies, opposing parties, opposing counsel and third parties who otherwise might have impaired or interfered with the Plaintiffs' reputation, contractual and property rights, including Plaintiffs' valuable lien rights.

Taylor's Competency and Contract Authority

88. North Park's managing member and authorized agent, Todd Taylor, executed **eight (8) similar written fee agreements** with Plaintiff Rush's law firm over the previous eight years, before Taylor and North Park signed the 2014 Eminent Domain Agreement and the 2018 Hourly Fee Agreement. All of these previous eight written fee agreements recommended that the Client should seek "**independent legal counsel**", before signing the previous eight fee agreements. These eight (8) previous fee agreements with the Rush attorneys bear the notarized signature of Todd Taylor and are not in dispute.

89. Taylor is a licensed real estate broker-real estate agent in the State of Florida, and Taylor was a 40 year plus real estate developer and investor, who was involved in signing numerous commercial contracts and attorney's fee agreements. Throughout the ten years that Todd Taylor knew Plaintiff Rush, Taylor was signing real estate, lending and commercial contracts with various third parties, not just fee agreements with Plaintiff's law firm, but contracts for all manner of business activities. Also, Todd Taylor's and Jack Suarez' subsequent sworn admissions directly contradicted North Park's materially false 2018 Bar Grievance signed by Jack Suarez and directly contradict the Grievance Committee's bad faith findings and the Florida Bar's bad faith Complaint against Plaintiff Rush.

Taylor's and Suarez' Subsequent Sworn Admission Contradict North Park's and Bar's Bad Faith Complaints Against Rush

90. Contrary to North Park's Bar Grievance against Rush, Todd Taylor and Jack Suarez subsequently admitted that the North Park member/partners gave Todd Taylor permission to hire Attorney Rush and the Rush, P.A., and Todd Taylor was mentally competent to sign the fee agreements, and that Taylor was a managing member of North Park when Taylor signed North Park's fee agreement, again contradicting North Park's 2018 Bar Grievance signed by

Jack Suarez under penalties of perjury. Also, Taylor's subsequent admissions under oath directly contradicted the Grievance Committee's anti-competitive and bad faith probable cause findings and the Florida Bar's Complaint against Plaintiff Rush.

Plaintiff Rush's Communications to Client and Opposing Attorneys Regarding FDOT's Unlawful Interference with Plaintiffs' Constitutionally Protected Property, Lien and Contractual Rights

91. At all times material, Plaintiff Rush protected Plaintiffs' property and contractual rights through protected First Amendment oral and written communications and speech to parties who otherwise would have or may have impaired and interfered with the Plaintiff's lawful contractual, lien and property rights. This type of notice/speech to potential defendants is notice required by Florida law and is reasonable, and such protected speech does not violate any Florida Bar Rule.

North Park Companies' May 2018 Repudiation Letters to Plaintiffs Threatening Bar Complaint to Coerce Rush Attorneys to Terminate Plaintiffs' Lawful Fee Agreements

92. On May 18, 2018, the North Park Companies sent an unlawful demand letter to the Plaintiffs, demanding that the Plaintiff and the Rush Attorneys terminate their Fee Agreements with North Park, and enter into a new unlawful one-page fee agreement, which itself violated the Florida Bar's communication/competency rules and the requirement that the Attorney act with "independent judgment" when representing a client. A copy of the North Park Companies' May 18, 2018 demand letter and one page fee agreement are attached as **Exhibit "C",** and states in pertinent part:

> **"The Engagement Agreement is unenforceable for a number of reasons, which include, without limitation, the following:**
>
> 1. **It violates the Rules Regulating the Florida Bar, in that it contains an illegal termination provision that purports to require the Clients to pay you a fee if they terminate the attorney-client relationship, even if the contingency is not fulfilled. The Florida Bar and the courts have been**

consistent in holding that such a termination provision is void and unenforceable in the context of contingent fee agreements. See, e.g. *Guy Bennett Rubin, P.A. v. Guettler*, 73 So. 3d 809 (Fla. 2011).

2. **The Engagement Agreement is inconsistent, overreaching, and confusing.**
3. **Todd Taylor did not have the mental capacity to understand the Engagement Agreement.**
4. **Todd Taylor did not have the actual or apparent authority of the Clients to execute the Engagement Agreement."**

93. On May 21, 2018, the North Park Companies sent a second demand letter to Plaintiffs again demanding that Plaintiffs rescind and terminate Plaintiff's Fee Agreements or face a Bar Complaint. A copy of the North Park Companies' May 21, 2018 letter is attached as **Exhibit "D,"** and states in part:

> **"As for the Clients' intentions regarding the illegal engagement agreement, that is dependent on the choice you make. The Clients have given you path to enter into a new, legal engagement agreement. The Clients await your response. If you persist in insisting that the current engagement agreement is valid and enforceable, then the Clients will pursue their legal remedies. Although the precise course of action is still under consideration, I disagree that the Clients are bound by the purported arbitration provision in the illegal engagement agreement."**

94. The May 18, 2018 and May 21, 2018 demand letters contain North Park's explicit threat to the Rush Attorneys that unless the Plaintiffs agreed to terminate their lawful contractual and property rights in their 2014 and 2018 fee agreements, the North Park Companies would pursue their legal remedies against Plaintiff Rush including a Bar Grievance. North Park's threats included the threat that the Plaintiffs' Fee Agreement was illegal, unethical and unenforceable because **"it violates the Rules Regulating the Florida Bar in that it contains an illegal termination provision," which is "unenforceable in the context of a contingency fee agreement."** This accusation was false and legally incorrect, when made.

North Park's Extortionate Demand on Plaintiff Rush

95. In fact, the North Park Companies' demand letter appears to be extortionate in that North Park's letter demands the transfer of Plaintiffs' valuable contractual rights to North Park, under the explicit threat that North Park would pursue a Bar Grievance and Florida Bar prosecution of Plaintiff, and included the implicit threat that Plaintiff Rush would be disciplined by the Florida Bar for defending Plaintiff's First Amendment Rights and contractual rights/lien rights.

North Park Companies' May 2018 Repudiation of Fee Agreements and Anticipatory/Constructive Termination of Rush Attorneys

96. The North Park Companies' May 18, 2018 demand letter is a breach and repudiation of North Park's 2014 and 2018 Fee Agreements with the Plaintiff, and also amounts to North Park's anticipatory termination and/or constructive termination of Plaintiff's employment and Plaintiffs' 2014 and 2018 Fee Agreements with the North Park Companies. After North Park's breach, repudiation and constructive termination of Plaintiff's representation of North Park, North Park cannot lawfully demand that Plaintiff undertake any new efforts or new obligations on behalf of North Park, especially where North Park had retained Attorney Richard Petitt as substitute counsel and Petitt had filed a Noticed of Appearance in the Court file in May of 2018.

North Park's/Suarez'/Pettit's June 2018 Bar Complaint

97. On or about June 6, 2018, Jack Suarez **("Suarez")**, the newly appointed managing agent of North Park Isles, PTC, LLC and JT North Park, LLC (the **"North Park Companies"**) filed a materially false and fraudulent Bar Grievance against Attorney Brian P. Rush. Mr. Suarez' May 2018 Bar Grievance alleged three or four violations of the Bar Rules, all of which attacked and repudiated the Rush Attorneys' Fee Agreements:

a. Jack Suarez alleged that the Plaintiff's Fee Agreement was illegal, unethical and unenforceable because the North Park Companies could terminate the Rush attorney's at

any time, but then the North Park Companies would be responsible for paying the **"reasonable value of the attorney's services"**, where the **"reasonable value of attorney's services" would be determined through binding arbitration before the Florida Bar Arbitration Program** and could be zero.

b. Jack Suarez alleged that the Plaintiff's Fee Agreement was illegal, unethical and unenforceable because Jack Suarez falsely alleged that the Plaintiff's fee agreements had been obtained by the Rush Attorneys by taking advantage of Todd R. Taylor, the managing agent of the North Park Companies, **allegedly because Mr. Taylor was "mentally incompetent" when Taylor signed North Park's 2014 and 2018 fee agreements, even though Suarez had simultaneously authorized Taylor to be the managing agent for the North Park Companies and Taylor had executed various contracts and agreements with Suarez and others, both before and after the Plaintiff's fee agreements**, including a 2016 Agreement for the sale of the subject North Park property for **ten million dollars ($10,000,000.00).**

c. Jack Suarez falsely alleged that the 2014 and 2018 fee agreements were unfair, over-reaching and contained a "penalty" for "termination" and that North Park's fee agreements were "contingency fee" agreements, including North Park's 2018 Hourly Fee Agreement, when these fee agreements are clearly not contingency fee agreements.

d. Jack Suarez filed this factually false Florida Bar Grievance alleging personal knowledge of the alleged facts, even though Suarez had little substantive involvement in the North Park eminent domain case for the four (4) years prior to April 18, 2018.

e. At the end of Jack Suarez' June 2018 Bar Grievance, Suarez tellingly requested that the Florida Bar give North Park an advisory opinion that the Plaintiff's fee agreement was

illegal and unenforceable, so that the North Park Companies could avoid paying any fees and could win their fee dispute which North Park had fraudulently initiated with the Plaintiff Rush Attorneys.

f. Jack Suarez' false Florida Bar Grievance was signed by Jack Suarez "under penalties of perjury", and Suarez' subsequent sworn admissions show that the North Park/Suarez signed Grievance was materially false when filed.

Plaintiffs' 2018 Attorney's Lien

98. After receiving the North Park Companies' May 18, 2018 repudiation letter and constructive termination notice, the Plaintiff filed a notice of attorney's lien against FDOT (only), as specifically authorized by and provided by Rule 4-1.8(i)(1) and by Florida Case Law. A copy of the Plaintiff's May 18, 2018 Notice of Lien to Recover Attorney's Fees against FDOT (only), states in part:

NOTICE OF LIEN AGAINST PETITIONER, FLORIDA DEPARTMENT OF TRANSPORTATION AND MOTION TO ADJUDICATE LIEN AND RECOVER ATTORNEY'S FEES, EXPERT FEES AND COSTS

Brian P. Rush, Esquire, Brian P. Rush, P.A. and Woodlief & Rush, P.A., hereby file this **Notice of Lien** Against Petitioner, Florida Department of Transportation **("FDOT") and Motion to Adjudicate Lien and Recover Attorney's Fees, Expert Fees and Costs,** and states in part:

Defendants' Required Cooperation in Motion for Fees and Costs

Defendants, North Park Isles PTC, LLC and JT North Park, LLC and Defendants' Attorneys, Brian P. Rush, Esquire and Brian P. Rush, P.A. d/b/a Woodlief & Rush, P.A. have previously entered into a written fee agreement under which the above **Defendants have agreed to fully cooperate with the above Attorneys and to join in the filing of motions to recover all amounts owed to the undersigned Attorneys, including but not limited to the above Attorney's attorneys' fees and costs, plus all expert witness fees and costs.** (bold added)

FDOT's Obligation to Avoid Interference

> Because of Petitioner FDOT's constitutional and statutory obligation to pay attorney's fees, expert fees and costs arising out of this eminent domain proceeding, the State of Florida, the FDOT and their attorneys are obligated under Florida law to pay all attorney's fees, expert fees and costs reasonably incurred by Defendants in this eminent domain proceeding. Further, the State of Florida, the **FDOT and their attorneys are obligated under Florida law to avoid interfering with the above described attorney's fee agreement and the expert fee agreements and contracts described below.** (bold added)

Attorney's Lien is an Equitable Lien Recognized by Florida Law

99. An attorney's lien has long been recognized and approved by the Florida Supreme Court, as an equitable means to create a lien and property right which protects and insures the payment of an attorney's reasonable attorney's fees and costs. See, Rule 4-1.8(a) and (i), R.R.F.B. See, Miller v. Scobie, 11 So.2d. 892 (Fla., 1943); See, Mabry v. Knabb, 10 So.2d 330 (Fla. 1942); See, Brown v. Vermont Mutual Insurance Company, 614 So.2d 574, 580 (Fla. 1st DCA 1993).(**"Although the parties to a lawsuit that are represented by attorneys may settle the dispute between themselves, without the participation of their attorney, any such settlement made without knowledge of or notice to a party's attorney, and without payment of the attorney's fee due such attorney, operates as a fraud upon the attorney, whether intended or not, and the attorney may continue the litigation in the name of the parties to enforce the right to be paid a fee."**) (Underline added)

First Amendment Authorizes Attorney to Make Oral and Written Statements to Pursue, Explain and Protect Attorney's Lien and Attorney's Contractual/Property Rights

100. The First Amendment authorizes Plaintiff Rush to make truthful oral and written out of Court statements to secure and protect Plaintiff Rush's lawful attorney's lien and to warn third parties, especially the government (FDOT and Sanchez) not to interfere with Plaintiffs' property, contractual, commercial and lien rights. Naturally, the filing of the attorney's lien and

related notices and motions led to conversations and communications by Plaintiffs to North Park, North Park's attorneys, FDOT, and with opposing counsel and third parties, and these communications which are protected under the First Amendment, especially after North Park repudiated North Park's 2014 and 2018 Fee Agreements with Plaintiffs Rush and Rush, P.A.

Attorney's Lien Authorized Plaintiff to File Renewed Motions in Response to North Park/FDOT Ongoing Attacks on Lien and Fee Motions

101. In the eminent domain case, Plaintiff Rush filed various motions to enforce, secure and/or protect the Plaintiff's attorney's lien and collect attorney's fees, as provided by Florida Law. Brown v. Vermont Mutual Insurance Company, 614 So.2d 574, 580 (Fla. 1st DCA 1993): **("the attorney may continue the litigation in the name of the parties to enforce the right to be paid a fee in those instances where the attorney has asserted a claim or charging lien for such fees before the lawsuit has been reduced to judgment or dismissed pursuant to settlement.") Id. at 580.** (Underline added).

102. As North Park and FDOT made new attacks on Rush's attorneys lien and motions for attorney's fees, expert fees and costs, Plaintiff Rush lawfully renewed Rush's fee claims and lawfully filed updated motions for attorney's fees, expert fees and costs, based upon Rush's lawful lien, especially where these motions for fees and costs are specifically authorized in North Park's 2014 and 2018 Fee Agreements with Plaintiffs.

Attorney's Right to Notify Parties and Counsel of the Attorney's Lien/Fee Agreements and of Defendants' Duty Not to Interfere with The Attorney's Lien and Fee Agreements

103. In the Spring and Summer of 2018, the Rush Attorneys repeatedly made oral and written out of Court statements to various attorneys and third parties properly notifying them of Plaintiffs' liens, contracts and property rights under Florida law. See, Rule 4-1.8(i) **("the lawyer**

may (1): acquire a lien granted by law to secure the lawyer's fee or expenses;"). See also, comment to Rule 4-1.8(a) and (i).

104. Where an attorney has asserted a claim for unpaid fees and costs, and has filed an attorney's lien, the attorney pursuing the attorney's lien has a protected First Amendment right to communicate out of Court notice to opposing counsel and provide notice to all parties, so that all parties and their attorneys will be on notice to take reasonable steps to avoid violating the attorney's lien or interfering with the attorney's written fee agreements or violating court orders retaining jurisdiction to award fees and costs. In the eminent domain case, the Trial Court had specifically stated that the Court would recognize an attorney's lien and specifically retained jurisdiction to hear Plaintiff's motions to recover attorney's fees, expert fees and costs. See, Hearing Transcripts and the Court's July 12, 2018 and July 18, 2018 orders protecting Plaintiffs' motions for fees and costs.

105. Where Florida law authorizes an attorney's lien, Plaintiff has a First Amendment right to communicate to anyone that the Plaintiff Rush Attorneys possess these protected property and commercial rights and interests, and that these other persons or entities should not interfere with or impair Plaintiff's property, contractual and lien rights, including FDOT and its attorneys, which would include Aloyma Sanchez.

A Lis Pendens is Appropriate to Protect an Equitable Lien

106. Under Florida Law, an Attorney's Lien is an equitable lien which is a protected property right, which can lawfully attach to real property and is properly protectable by the filing of a Lis Pendens. See, *S and T Builders v. Globe Properties, Inc.,* 944 So.2d. 302 (Fla. 2006). Because an attorney's lien is a protected and favored equitable lien, Plaintiffs were authorized to file a lis

pendens against North Park's property. While the trial court ultimately dissolved the lis pendens, the trial court did not determine that the lis pendens was frivolous.

Federal Court's Previous Determinations that Florida Bar's Rules and Application of Bar Rules Have Violated First Amendment

107. In at least three (3) recent cases, the Federal Courts in Florida have held that the Rules and the Bar's enforcement of the Rules have violated the First Amendment primarily in the context of commercial free speech. In *Mason v. The Florida Bar*, the Eleventh Circuit held that the Bar had violated the First Amendment and had failed to meet its burden of proving that consumers were misled by statements about the quality of a lawyer's services, noting that the Bar has "presented no studies, nor empirical evidence of any sort" to back up its alleged concern. 208 F.3d 952, 957-57 (11th Cir. 2000). A later version of the same rule was again held unconstitutional on remand from the Eleventh Circuit in *Harrell v. The Florida Bar,* 915 F. Supp. 2d 1285 (M.D. Fla. 2011). *Harrell* held that the Bar violated the First Amendment when it applied the rule to prohibit the slogan "Don't settle for less than you deserve." *Id.* at 1308. It also held the rules' prohibition on background sounds as unconstitutional under the First Amendment, and declared the rules against "manipulative" ads allowing only "useful, factual information" to be unconstitutionally vague. *Id.* at 1310-12. In *Searcy v. The Florida Bar*, 140 F. Supp. 3d 1290 (N.D. Fla. 2015), the Northern District of Florida held that the Florida Bar Rules violated the First Amendment by prohibiting Florida lawyers **"from making truthful statements on a website, blog or social medium including statements of opinion in regard to disputed political and economic matters."** *Id*. at 1299.

108. In *Searcy*, the Federal Courts also prohibited the Florida Bar from regulating Florida's attorneys' public opinions in regard to commercial, economic and business matters. Additionally, law firms such as Rush, P.A. now have substantial First Amendment Free Speech rights which now extend to corporate speech protecting the company's political, property,

contractual and economic rights. *Citizens United v. Federal Elections Commission,* 558 U.S. 310 (U.S. 2010).

Florida Attorneys Retain First Amendment Rights

109. Florida Supreme Court Justices have also stated that the Rules and the Florida Bar's enforcement of the Rules cannot lawfully infringe on the First Amendment where the Florida lawyers' conduct involves the presentation of truthful statements. See, *In Re: Petition to Amend the Rules Regulating the Florida Bar*, 571 So.2d 451 (Fla. 1990), Justice Barkett stated that many of the Florida Bar Rules regulating the commercial speech of lawyers **"only regulate decorum,"** and Justice Barkett stated **"a lawyer cannot be forced to surrender all first amendment freedom as the price for practicing law."**

Plaintiffs' Criticisms of FDOT and its Attorneys' Misconduct are Out of Court Free Speech Critical of the Government and Government Agents, Which are Protected by the First Amendment

110. On July 11, 2018, the Florida Department of Transportation, through its attorneys carried out an in Court ex parte attack on a then unrepresented expert witness appraiser, Richard Harris, who had no prior notice of FDOT's intention to attack his appraisal fees, who was not present at the Court hearing, and who was not represented by counsel at the Court hearing. The hearing transcript shows that FDOT's attorney, Aloyma Sanchez, ridiculed and disparaged Mr. Harris' invoices for expert services, knowing full well that the same Judge hearing this ex parte attack by the government attorney would be the same Judge to resolve any disputes in regard to the amount of Mr. Harris' appraisal invoices. See, July 11, 2018 Hearing Transcript. Aloyma Sanchez' ex parte disparagement of the unrepresented expert appraiser, Richard Harris, was deliberate and violated the Florida Bar Rule prohibiting "disparagement" … "on any basis" of a witness. See, Rule 4-8.4 (d), Rules Regulating the Florida Bar.

111. After a subsequent July 18, 2018 hearing, in a large public lobby far removed from the Courtroom, Plaintiff Rush engaged in a direct conversation with FDOT's attorney, Aloyma Sanchez, and Plaintiff expressed Rush's concern that FDOT's ex parte attack on Mr. Harris was very unfair, and that Mr. Harris was facing difficult personal circumstances, such that the FDOT's ex parte attack was improper and unreasonable. This out of Court private conversation is protected by the First Amendment and is specifically authorized by the Florida Bar Rules. See, Preamble to Bar Rules, R.R.F.B. (Attorneys are required to counsel other attorneys to follow the Bar Rules).

112. Thereafter, Plaintiff Rush confirmed the substance of the above oral conversation with FDOT's attorney in two (2) detailed letters dated August 1, 2018 and August 6, 2018, emailed to FDOT's legal counsel, Aloyma Sanchez, copies of which are attached to this Complaint as **Composite Exhibit "E".** These written communications to Aloyma Sanchez are lawful notice letters and are protected First Amendment communications, as both commercial speech and as free speech criticism of FDOT and its government attorney's conduct.

Plaintiff's July 18, 2018 Out of Court Speech Regarding FDOT's Misconduct

113. Plaintiffs out of Court July 18, 2018 statements were made to FDOT and its attorney in a public courthouse lobby, in the presence of Sheriff's deputies and other Courthouse security personnel and Plaintiff specifically criticized the FDOT's unfair governmental actions and FDOT Attorney Sanchez disparagement of North Park's expert appraiser, Richard Harris. The Defendant's disciplinary actions violated Plaintiff's Constitutional Rights, because Plaintiff's out of Court criticisms of the FDOT and its attorneys' actions are always protected speech. FDOT and its government agents are generally precluded from punishing any citizen's opinions or criticism of government action or potential misconduct. See, *Terminiello*. (supra) See, *Citizens United* (supra).

114. On or about July 31, 2018, Plaintiff Rush first received notice that FDOT and Aloyma Sanchez were falsely asserting that Plaintiff Rush had allegedly communicated to FDOT's attorney, Aloyma Sanchez that Plaintiff Rush intended to file a Bar Complaint against Sanchez. The next day, on August 1, 2018, Plaintiff Rush emailed a detailed letter to Attorney Sanchez confirming Rush's lengthy discussion with Aloyma Sanchez, in the presence of FDOT appraiser, Philip Hobby. Rush's detailed four-page August 1, 2018 letter specifically addressed Plaintiff Rush's notice to Aloyma Sanchez that she had improperly disparaged North Park's expert appraiser, Richard Harris, on the record, at the July 11, 2018 Court hearing. In pertinent part, Rush's August 1, 2018 letter to Sanchez stated:

> 7. During our July 18th discussion, you advised me that you and FDOT would strenuously oppose Mr. Harris' claims for expert appraisal fees, because you feel that his appraisal work was unnecessary and excessive. I responded to you that this position was very unfair when you and the FDOT had previously demanded that Mr. Harris "**finish your appraisal**." FDOT's position is especially unfair when FDOT and you knew that an appraisal of this $15 million dollar property would be extremely complicated and expensive.
>
> 8. When you stated that the FDOT would strenuously oppose Mr. Harris' claim for expert appraisal fees, I told you that FDOT's position was especially unfair to Mr. Harris and his family, because Mr. Harris is the sole support for his family. As you may know, Mr. Harris' appraisal work is the sole support for his wife, who is quite ill and his appraisal work provides support for their institutionalized, intellectually disabled, adult son (Downs Syndrome). **Because you and the FDOT had specifically demanded that Mr. Harris "finish" this expensive appraisal for this 15 million dollar property, I told you that Mr. Harris would likely be somewhat upset by FDOT's unfair and unreasonable position**.
>
> 14. In our previous conversations, you have warned me that your Client managers at FDOT may try to attack and avoid paying the Defendants' claim for attorneys' fees and expert fees in order to save FDOT money, and you would have to carry out your Client's direction to do so.
>
> 15. During our July 18th discussion, I advised you that the Judge's July 12th and July 18th Orders should not be violated, frustrated or interfered with by FDOT's actions or by any party's actions.

> 16. During our July 18th discussion, you advised me that you and FDOT would follow Florida Law and the Florida Constitution and you and FDOT would not violate any Court order.
>
> 17. I am not now aware that you have violated any of the Florida Bar Rules and I have never threatened that I would file a Florida Bar Complaint against you. You have repeatedly advised me that you will follow Florida Law.

115. On August 1, 2018, for the first time, Aloyma Sanchez sent a short email to Plaintiff Rush asserting that Sanchez disagreed with everything in Rush's August 1, 2018 letter and asserted Sanchez' unsubstantiated false accusation that during the July 18, 2018 out of Court conversation Rush had threatened to file a Bar Grievance against Sanchez, apparently based upon Sanchez' previous on the record disparagement of North Park's expert appraiser, Richard Harris, during the July 11, 2018 Court hearing.

116. On August 6, 2018, Plaintiff Rush emailed a second letter to Aloyma Sanchez, specifically refuting Sanchez' false claim that Rush had threatened to file a Bar Grievance against Sanchez, for any reason and especially to solely to obtain an advantage in a pending civil claim. Plaintiff Rush's August 6, 2018 letter to Sanchez stated, in pertinent part:

> Dear Aloyma:
>
> While I do not wish to send another detailed letter to you or engage in a detailed point by point response to your August 1, 2018 email, I did want to briefly and specifically disagree with some of your incorrect statements in your August 1, 2018 email, as follows:
>
> 1. My August 1, 2018 letter clearly confirmed that you and the FDOT have now promised not to interfere with my fee agreement or induce a breach in that Fee Agreement by entering into some sort of combination or agreement where you and FDOT somehow reward or induce any party for their breach of my Fee Agreement.
> 2. **Based upon your promises to obey Florida law, obey the Court's orders and not induce a breach in my Fee Agreement, I see no reason why you should be personally sued for anything. However, if you or FDOT break these promises and induce a breach in the Fee Agreement, then you and FDOT will likely be sued for tortious interference, as provided by Florida law.**

3. Inducing a breach in someone else's contract or otherwise interfering with that written contract or other business relationship is fully actionable under Florida law. See, Bankers Risk Management Services, Inc. v. Av-Med Managed Care, Inc., 697 So.2d 158 (Fla. 2nd DCA 1997) **(tortious interference with contractual relationship is actionable in Florida)**. See, Johnson Enterprises of Jacksonville, Inc. v. FPL Group, Inc., 162 F.3d 1290 (11th Circuit 1998) **(under Florida law, elements of tortious interference with contract are: (1) existence of contract, (2) defendants knowledge of contract, (3) defendant's intentional procurement of contract's breach, (4) absence of privilege, and (5) damages resulting from breach.) You are now on Notice.**

4. **I, Brian P. Rush, did not threaten that I, Brian Rush would file a Bar complaint against you or anyone else. Instead, I suggested to you that if you interfered with my Fee Agreement and thereby violated the Court's Order and thereby eliminated my expert's ability to support their family, one of my experts would likely be very unhappy, and I did not know whether or not he would pursue a Complaint to the Florida Bar. As you know, I cannot reasonably predict your future actions or anyone else's future actions.**

5. I, Brian P. Rush, have never filed a bar complaint against another attorney and I do not prepare or draft bar complaints to be filed by other people against other attorneys. Of course, any citizen is free to file any Bar complaint, on their own.

6. **As stated in paragraph 17 of my August 1, 2018 letter to you, I am not aware that you have violated any Florida Bar Rules. If you feel like you have violated a Bar Rule (of which I am not aware) then, you should consider reporting yourself. At any rate, I have no interest, in doing so.**

Again, to be clear, I do not know whether you are "conspiring with" the North Park Defendants or Richard Petitt, Esquire, and I have not accused you of any such conspiracy. Instead, I have provided you Notice of my Fee Agreement, and I have provided you with Notice of Florida tortious interference law, and I have provided you with Notice that interference would probably violate the Court's July 18, 2018 Order. Of course, you are an expert in eminent domain law, and I will not advise you on how to proceed.

(Bold print added) (Underline added)

Original Unaltered Hobby Memorandum, Dated July 19, 2018

117. On July 19, 2018, FDOT and Aloyma Sanchez directed Philip Hobby, an FDOT appraiser controlled by FDOT, Sanchez and Defendant Samuel Henderson, to draft a memorandum (the **"Hobby Memo"**) confirming Hobby's alleged recollection of Plaintiff Rush's

July 18, 2018 discussions with Aloyma Sanchez, in the Courthouse lobby, in the presence of law enforcement/bailiffs. The original (unaltered) **Hobby Memo, dated July 19, 2018, specifically does not reference any threat by Plaintiff to file a Bar Complaint against Aloyma Sanchez or anyone else.** The phrase "Bar Complaint" is not contained in the original Hobby Memo.

Defendant Henderson's Anti-Competitive Conduct Against Plaintiff Rush

118. Plaintiff Rush served a subpoena for documents on FDOT, but FDOT failed to produce the original Hobby Memo to Plaintiff Rush. Instead, Defendant, Samuel Henderson concealed the existence of this original July 19, 2018 Hobby Memo, until the seventh day of Plaintiff Rush's eight-day Florida Bar trial, in violation of a subpoena signed by the Bar Referee, and issued and served at the request of Plaintiff Rush, and in violation of Defendant Henderson's own sworn Affidavit that he had fully complied with the subpoena and had produced all versions of the Hobby Memo including all drafts of the Hobby memo. At all times material, Defendant Samuel Henderson is Aloyma Sanchez' superior, and was directly involved in FDOT's and Sanchez' concealment of the alteration/fabrication of evidence, misconduct, interference and anti-competitive actions.

Sanchez' E-Mail Request to Hobby for Alteration of Original Hobby Memo

119. On or about August 13, 2018, FDOT's Tallahassee, General Counsel, Clinton Doud sent a detailed email memo and case law to Aloyma Sanchez, detailing the level of corroboration necessary to support Sanchez' unsubstantiated accusations against Plaintiff Rush. In response, Sanchez forwarded the FDOT General Counsel's case law to Phillip Hobby, with a request that Hobby **"corroborate"** Sanchez' unsubstantiated accusations against Plaintiff Rush.

120. On August 16, 2018, Aloyma Sanchez sent an eight (8) page email to Philip Hobby falsely claiming that Sanchez had allegedly misplaced Hobby's original memo, dated

July 19, 2018. In her 8-page email, Sanchez attached Florida case law from FDOT's Tallahassee counsel, which concluded that the testimony of a single attorney witness, accusing another attorney of making threats, was insufficient evidence to support the complaining attorney's unsubstantiated assertion of attorney misconduct, especially where there was no corroborating witness. In her 8-page email, Sanchez encouraged Hobby to review the attached case law and then send a new revised Hobby Memo, so that Philip Hobby would now be Sanchez' "corroborating witness." The introductory paragraph of Sanchez' cover email to Hobby states as follows:

> Phil
> Please send your memo that **I know you did the day after the incident** with Mr. Rush
> As you can see from the 3 DCA case below-**the result was he said/she said.**
>
> **Of course, I do not have that problem because I have a corroborating witness-YOU!**
>
> Thank you.

121. On or about August 16, 2018, Aloyma Sanchez or some other FDOT agent materially altered Hobby's original July 19, 2018 Memo to fabricate a new accusation that Rush had threatened to file a "**Florida Bar Complaint**" against Aloyma Sanchez. This altered/fabricated August 2018 Hobby Memo now specifically referenced for the first time a "Florida Bar Complaint" allegedly to be filed by Plaintiff Rush.

Aloyma Sanchez False Testimony

122. In her sworn deposition, taken in the Summer of 2021, FDOT's attorney, Aloyma Sanchez falsely testified that she could not remember the words that Plaintiff Rush allegedly

used to threaten her with the filing of a Bar Complaint, and Sanchez could not explain why she could not remember this important event.

123. At the time that Sanchez gave the above deposition testimony, FDOT, Samuel Henderson, Mark Linsky and Aloyma Sanchez knew that there was no substantial credible evidence to support Sanchez' false accusation against Plaintiff Rush, and FDOT, Henderson, Linsky and Aloyma Sanchez knew that Sanchez' alleged corroborating witness, Phillip Hobby, had not made any "material" alterations to Hobby's original memorandum, and Hobby did not know "anything" in regard to the falsely alleged threat to file a "Florida Bar Complaint" against Sanchez.

124. In Aloyma Sanchez' in-court sworn testimony, given on _____, 2022, in response to direct examination by Florida Bar counsel, Kimberly Walbott, FDOT's attorney, Aloyma Sanchez falsely testified that she did not know the exact words of Rush's alleged "Bar Complaint" threat, but that Sanchez believed that the FDOT appraiser, Phillip Hobby, would corroborate all of her false accusations against Plaintiff Rush.

125. At the time that Sanchez gave the above in-court testimony, Aloyma Sanchez knew that no such threat had occurred and there was no substantial credible evidence to support Sanchez' false accusation against Plaintiff Rush, and Aloyma Sanchez knew that Sanchez' alleged corroborating witness, Phillip Hobby, had not made any "material" alterations to Hobby's memorandum and Hobby did not know "anything" in regard to an alleged Plaintiff Rush threat to file a "Florida Bar Complaint" against Sanchez.

126. At all times material, FDOT and FDOT's counsel, Henderson, Linsky and Aloyma Sanchez, knew that a comparison between Hobby's July 19, 2018 initial memorandum and the altered and fabricated Hobby memorandum dated on or about August 16, 2018, would

show that someone had altered the original Hobby memorandum by inserting the phrase "**Florida Bar Complaint**" into the second page of the Hobby memorandum, in an effort to fabricate evidence of a false corroboration of Aloyma Sanchez' false accusations against Plaintiff Rush.

127. Because Hobby's initial July 19, 2018 Hobby memo did not contain any reference to a "Florida Bar Complaint", and because Hobby testified that he had not made any material change to Hobby's initial July 19, 2018 Hobby memo, and because Hobby testified that Aloyma Sanchez had requested that he make "changes" to the initial Hobby memo, and because FDOT's Tallahassee counsel has specifically advised Sanchez in writing that her unsubstantiated accusations were insufficient, without specific corroboration from Hobby, it is highly likely that Aloyma Sanchez or some other FDOT agent altered the Hobby memo on or about August 16, 2018 to include the new false accusation against Rush in regard to a "Florida Bar Complaint."

Florida Bar Prosecutors' Continuous Access to and Cooperation from FDOT, Sanchez, Hobby and Henderson

128. At all times material, the Florida Bar and its trial counsel, Kimberly S. Walbolt, had ongoing access to these original and altered FDOT/Hobby memos, prior to the beginning of the Bar proceeding on September 22, 2021, but Florida Bar prosecutors failed to notify Plaintiff Rush of the original unaltered Hobby memo and FDOT, Henderson and Sanchez deliberately failed to comply with a subpoena to produce all drafts of the Hobby memo. Neither FDOT, nor the Florida Bar Prosecutor complied with their legal obligation to Plaintiff Rush to timely provide these key documents to Plaintiff Rush. In any event, the original July 19th Hobby Memo was concealed by FDOT and its attorneys and **was not discovered by Plaintiff Rush until day seven (7) of the eight (8) day Florida Bar proceeding,** after the Florida Bar prosecutors had already called Aloyma Sanchez as a prosecution witness and after Sanchez gave materially false

testimony against Plaintiff Rush, and after FDOT and Henderson had falsely certified by Affidavit that FDOT has fully complied with the subpoena for documents.

Plaintiff Rush's Motion for FDOT to Show Cause Arising from FDOT's Violation of Subpoena

129. On August 20, 2021, the Honorable W. Douglas Baird signed an amended subpoena duces tecum for deposition, which was served on the Florida Department of Transportation ("FDOT") in Tampa, Florida. The subpoena sought all written communications including "all drafts" of the Hobby Memo and other documents between FDOT's appraiser, Philip R. Hobby and Florida Bar Counsel in regard to Plaintiff Rush, **"including all metadata and including all drafts of any such documents."** However, FDOT, Henderson and Sanchez failed to produce all of the requested documents, including Philip Hobby's original first draft of the July 19, 2018 "Hobby memo", so that the first draft could be compared with the apparent sixth draft, and any other non-produced drafts of the Hobby Memo.

Defendant Samuel Henderson's False Affidavit

130. On or about Thursday, September 30, 2021 (the seventh day of the eight-day Florida Bar Prosecution), Plaintiff Rush discovered that FDOT and Samuel Henderson, had filed a false affidavit and thereby violated the Referee's subpoena, and failed to disclose the above first draft of Hobby Memo and other drafts, created prior to the final Hobby memo, which was revised sometime between August 16-20, 2018. On October 2, 2021, Plaintiff Rush filed Rush's Motion for Order to Show Cause, seeking contempt sanctions against FDOT and Defendant Henderson. Rush's Motion for Order to Show Cause stated in pertinent part:

PLAINTIFF RUSH'S MOTION FOR ORDER TO SHOW CAUSE

3. On or about August 19, 2021, FDOT responded to the FDOT Subpoena. Among the documents produced was an electronic document, in Microsoft Word format, bearing the file name "Events of Hearing on NPI.2 8-15-2018.docx" (the "Revised Hobby Memo"). A true and correct copy of the Revised Hobby Memo1 is attached hereto as Exhibit "B."

4. FDOT's response to the FDOT Subpoena was accompanied by a business records certification, pursuant to § 90.902, Florida Statutes, made under penalty of perjury by Samuel J. Henderson, District Seven Chief Counsel for FDOT. A true and correct copy of the FDOT business records certification is attached hereto as Exhibit "C."

5. Examination of the metadata contained in the Revised Hobby Memo revealed that the Revised Hobby Memo was authored by Phillip Hobby ("Mr. Hobby), last modified on August 16, 2018, and that there had been five (5) previous versions of the document. However, prior to Mr. Hobby's testimony FDOT did not produce any other version of the Revised Hobby Memo to Plaintiff, notwithstanding that the FDOT Subpoena clearly and unequivocally demanded "all drafts" of any documents responsive thereto. See Ex. A, at p. 6.

***

10. Examination of the metadata contained in the Original Hobby Memo revealed that the Original Hobby Memo was authored by Mr. Hobby, and originally created on July 19, 2018 – nearly a month prior to the Revised Hobby Memo.

11. Mr. Hobby testified at the Final Hearing that he had not made any substantive changes to the Original Hobby Memo when altering the same to create the Revised Hobby Memo other than changing the manner in which he identified certain individuals referenced therein from personal initials to surname.

***

13. When Plaintiff used the Microsoft Word "compare" utility to compare the Original Hobby Memo and the Revised Hobby Memo, the resulting blackline revisions clearly demonstrated that Mr. Hobby made several other significant changes from the Original Hobby Memo to the Revised Hobby Memo. A true and correct copy of the aforementioned blackline comparison is attached hereto as Exhibit "E."

14. In addition to changing personal references from individual initials to surnames, Mr. Hobby removed several sentences from the Original Hobby Memo, added, rephrased, and/or added qualifying language to several other sentences, and corrected certain spelling and grammar errors.

15. **Perhaps most critically for purposes of the case at bar, on the second page of the Original Hobby Memo, Mr. Hobby included a bullet point that initially read as follows: My observation is that no reasonable person would view Aloyma Sanchez as raising her voice at BPR, only being stern as to making sure she understood that he was planning on attacking her personally through a lawsuit alleging fraud and tortuous interference. See Ex. D, at p. 2.**

16. However, on the same page of the Revised Hobby Memo, Mr. Hobby revised the foregoing bullet point to read as follows: My observation is that no reasonable person would view Aloyma Sanchez as raising her voice at Rush, only being stern as to making sure she understood that he was planning on attacking her personally through a Florida Bar complaint lawsuit alleging fraud and tortious interference. See Ex. B, at p. 2 (emphasis supplied); see also Ex. E, at p. 2 (showing blackline addition of the phrase "Florida Bar complaint" made by Mr. Hobby).

***

18. Indeed, Mr. Hobby's testimony, when viewed in context alongside the Original Hobby Memo and the Revised Hobby Memo, clearly demonstrates that Ms. Sanchez prevailed upon Mr. Hobby to significantly alter his memorandum to specify not that Mr. Rush had threatened to file a mere civil action for fraud and tortious interference, but instead that he had threatened to file a "Florida Bar complaint" – i.e., a bar grievance – against Ms. Sanchez.

Florida Bar Rules and Rules of Professional Conduct Are Vague, Contradictory and Unconstitutional

131. The Florida Bar's actions to censor, impair, violate and discipline Plaintiff Rush's for his out of court, First Amendment protected communications, statements and opinions involve the Bar's interpretation and application of the following Rules Regulating the Florida Bar, and these rules are vague, contradictory and provide unreasonable and sometimes unlimited discretion for

prosecution, such that the following Florida Bar Rules are either unconstitutional as written or as applied by the Florida Bar to Plaintiff Rush and his law firm, Rush, P.A.

132. The Preamble to Chapter 4 of the Florida Rules of Professional Conduct specifically provides that Florida lawyers are required to communicate to other attorney's the obligation **"for observance of the Rules," in order to "aid in securing their observance by other lawyers."** The Preamble also provides that "**no disciplinary action should be taken when the lawyer acts within the bounds of that discretion**."

133. Rule 4-1.2, Rules Regulating the Florida Bar: Objectives and Scope of Representation, specifically provides that a Florida **"Lawyers may take action on behalf of a client that is impliedly authorized to carry out the representation."** Rule 4-1.2 also provides that Florida lawyers **"may agree to limit the objectives or scope of the representation."** Further, Rule 4-1.2 provides that the Attorney **is responsible for "tactical issues"**, and the Client's fee agreement **"may authorize the lawyer to take specific action on behalf of client without further consultation."** Finally, Rule 4-1.2 provides that the lawyer **"shall not counsel or assist a client in conduct that … is criminal or fraudulent."**

134. Rule 4-1.4, Rules Regulating the Florida Bar: **Communication**, provides that **"a lawyer shall reasonably consult with a client about the means by which the client's objectives are to be accomplished"** and **"keep the client reasonably informed about the status of the matter."** In other words, the **"means" (tactics)** are controlled by the attorney, but the **"objectives" (goals)** are set by the client. However, the lawyer is not required to explain to the client every Rule or Statute or custom which the lawyer is obligated to follow during the lawyer's representation.

135. Rule 4-1.5, Rules Regulating the Florida Bar: **Fees and Costs for Legal Services**, provides that a lawyer's fee agreement **"must not charge or collect in illegal, prohibited or**

clearly excessive fee or cost…" Additionally, the rule provides that **"A fee or cost is clearly excessive when"** one of Florida's 110,000 lawyers, hypothetically **"reviews the facts"** and applies **"ordinary prudence"**, and then this hypothetical lawyer is **"left with a definite and firm conviction that the fee exceeds a reasonable fee."** This Rule provides no real guidance at all, and is susceptible to 110,000 different opinions, which results in unlimited discretion for Bar prosecutors to prosecute and chill the speech of Florida lawyers, who use protected speech to secure payment of reasonable fees, under lawful fee agreements and lawful attorneys liens.

136. Rule 4-1.7, Rules Regulating the Florida Bar: **Conflict of Interest; Current Clients**, only applies to actual conflict of interest situations when an attorney is simultaneously representing adverse multiple clients **"in a single matter,"** or where the representation **"will be materially limited by the lawyer's responsibility to another client… or by a personal interest of the lawyer."** However, this Rule does not apply to lawful fee agreements or a lawful attorneys lien, where an attorney uses protected speech to enforce or secure payment of reasonable fees and costs. A fee dispute, especially a fee dispute initiated by the client's repudiation of a lawful fee agreement, cannot be a prohibited "conflict of interest". Quite simply, a fee dispute is not a conflict of interest, as defined by Rule 4-1.7. Rule 4-1.7 states in part as follows:

RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS

> **(a) Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer must not represent a client if:
>
> (1) the representation of 1 client **will be directly adverse to another client**; or
>
> (2) there is a substantial risk **that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**

> **(a) Informed Consent.** Notwithstanding the existence of a conflict of interest **under subdivision (a)**, a lawyer may represent a client if:
>
> (1) the lawyer **reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client**;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a position **adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal**; and
>
> (4) **each affected client gives informed consent**, confirmed in writing or clearly stated on the record at a hearing.
>
> **(b) Explanation to Clients.** When representation of **multiple clients** in a single matter is undertaken, the consultation must include an explanation.
>
> **(c) Lawyers Related by Blood or Marriage.** (Omitted)
>
> **(d) Representation of Insureds.** (Omitted)
>
> (Bold print added) (Underline added)

137. Rule 4-1.8, Rules Regulating the Florida Bar: **Conflict of Interest; Prohibited and Other Transactions**, specifically does not apply to attorney-client fee agreements, and Rule 4-1.8 (i)(1) **authorizes an attorney's lien** and provides that a lawyer **"may acquire a lien granted by law to secure the lawyer's fee or expenses."** Rule 4-1.8, including its Commentary are attached as **Exhibit ___,** and state in part as follows:

> **RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS**
>
> **(a) Business Transactions With or Acquiring Interest Adverse to Client.** A lawyer is prohibited from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client, **except a lien granted by law to secure a lawyer's fee or expenses, unless:**

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) (c) (d) (e) (f) (g) (h) are omitted.

(i) Acquiring Proprietary Interest in Cause of Action. A lawyer is prohibited from acquiring a proprietary interest in the cause of action or RRTFB January 27, 2022 subject matter of litigation the lawyer is conducting for a client, **except that the lawyer may**:

(1) **acquire a lien granted by law to secure the lawyer's fee or expenses; and**

(2) **contract with a client for a reasonable contingent fee**.

Comment

Business transactions between client and lawyer

The rule applies to lawyers engaged in the sale of goods or services related to the practice of law. See rule 4-5.7. **It does not apply to ordinary fee arrangements between client and lawyer, which are governed by rule 4-1.5** … **Likewise, subdivision (a) does not prohibit a lawyer from acquiring or asserting a lien granted by law to secure the lawyer's fee or expenses.**

(Bold print added) (Underline added)

138. Rule 4-3.4, Rules Regulating the Florida Bar: **Fairness to Opposing Party and Counsel**, specifically provides that a lawyer, including government lawyers, **"must not obstruct, alter, destroy or conceal a document (or other evidence) and must not fabricate evidence."**

The comment to the Rule specifically confirms that an attorney may **attack the credibility of a witness, by asserting that the witness' lies, lied or is a "liar."** Rule 4-3.4, states in part as follows:

RULE 4-3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer must not:

(a) unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act;

(b) fabricate evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness, except a lawyer may pay a witness reasonable expenses incurred by the witness …;

(c) knowingly disobey an obligation under the rules of a tribunal **except for an open refusal based on an assertion that no valid obligation exists**;

(d) in pretrial procedure, make a frivolous discovery request or **intentionally fail to comply with a legally proper discovery request by an opposing party**;

(e) omitted.

(f) omitted.

(g) omitted.

(h) present, participate in presenting, **or threaten to present disciplinary charges under these rules solely to obtain an advantage in a civil matter**.

139. Rule 4-4.1, Rules Regulating the Florida Bar: **Truthfulness in Statements to Others**, provides that **"a lawyers shall not knowingly make a false statement of material fact or law or fail to disclose a material fact to a third person."** In other words, attorneys may not tell lies or conceal alteration or fabrication of evidence. Rule 4-4.1 states in part as follows:

4-4. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS RULE
4-4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4-1.6.

Plaintiffs' Out of Court Criticism of Government's Unfair Tactics are Highly Protected Speech and Bar Rules are not Narrowly Tailored and Bar Rules Require Strict Scrutiny

140. When the Plaintiff and Attorney Brian Rush criticized the actions of the Florida Department of Transportation and criticized the unfair statements of the FDOT's agents and attorneys, the Plaintiff and Plaintiff Rush **were criticizing government policies and actions associated with the taking of property subject to FDOT's obligation to pay just compensation under eminent domain.** All such out of Court oral or written statements by Plaintiff are criticisms of the government and government policies and agents which are free speech strictly protected by the First Amendment of the United States Constitution for both Plaintiff Rush and his company law firms. See, *Citizens United v. F.E.C*, 558 U.S. 310 (U.S. 2010)

141. Under the First Amendment, a citizen's criticisms of the government and of government actions, through its agents and attorneys, is highly protected and subject to strict scrutiny by the Court. See, *Terminiello v. City of Chicago* 337 U.S. 1 (1949). (First Amendment protects speech unless there is a clear and present danger of imminent violence).

Bar Rules are Unconstitutionally Vague, Overbroad or in Conflict and Chill Plaintiffs' First Amendment Speech and Violate Plaintiffs' Fourteenth Amendment Due Process Rights

142. Rule 4-1.2 Rules Regulating the Florida Bar **(Objectives/Scope)** is unconstitutional as written or as applied, for the reasons stated herein, and because the undisputed evidence shows

that from 2014 to 2018, Plaintiff Rush pursued the client's lawful objectives, and that Rush was not ever obligated to silence or surrender Plaintiff's claims for attorney's fees against FDOT, but especially after Plaintiffs filed their attorney's lien. Further, the 2014 and 2018 North Park Fee Agreements confirm in writing the North Park case objectives and the attorney's authority to pursue those case objectives, including Plaintiff Rush's filing of Motions and Applications to recover attorney's fees, expert fees and costs from FDOT.

143. Rule 4-1.4 Rules Regulating the Florida Bar **(Communication)** is unconstitutional as written or applied, for the reasons stated herein, and because the undisputed evidence shows that Rush repeatedly communicated to North Park's appointed managers in regard to Plaintiff's pursuit of North Park's lawful objectives, **in over one hundred (100) written communications and a similar number of meetings with North Park's appointed agents from 2014 to 2018**. See, sworn testimony of North Park's managing member, Todd Taylor confirming four (4) years of numerous meetings and correspondence with Plaintiff Rush, including almost "weekly" lunch meetings between Taylor and Rush.

144. Rule 4-1.5, Rules Regulating the Florida Bar **(Reasonable Fees)** is unconstitutional as written or as applied for the reasons stated herein, and because Rush's 2014 and 2018 Fee Agreements are lawful and contain no penalty provision for the client's termination of Plaintiff's employment. Neither the 2014, nor the 2018 fee agreements are contingency fee agreements. Additionally, Plaintiff Rush's 2018 Fee Agreement is extremely competitive when compared with the fees charged/collected by the Grievance Committee's competing attorney members, especially by Defendants Brandon Faulkner and his law firm and Defendant Thomas Bopp and his law firm. Because the Grievance Committee and the Florida Bar are applying the Rules in an anti-competitive manner to restrain competition and prevent lower cost legal services, this Rule is unconstitutionally

applied because it impairs Plaintiffs' property rights, contract rights and lien rights. Also, Rule 4-1.5 is unconstitutionally vague on its face and is unlawful because it carries out a restraint of price competition, in violation of Federal Anti-Trust law, where the State has no legitimate goal of penalizing Plaintiffs' lower cost legal services which directly compete with and undercut Defendant Faulkner's and his law firm's fees and Defendant Bopp's and his law firm's fees.

145. Rule 4-1.7, Rules Regulating the Florida Bar **(Conflict of Interest)** is unconstitutional as written or as applied, for the reasons stated herein, and because Rush's 2014 and 2018 Fee Agreements are lawful and contain no penalty or liquidated damage provision for the client's permitted termination of Plaintiff's employment. In any event, Rule 4-1.7 does not apply to fee disputes at all, and as applied impairs Plaintiffs' property, contract and lien rights, which are Constitutionally protected under the Fifth and Fourteenth Amendments, and under the Contract Clause. Additionally, Plaintiff Rush's 2018 Fee Agreement is extremely competitive when compared with the fees charged by the Grievance Committee's competing private attorney members, especially by Defendants Brandon Faulkner and his law firm and by Defendant Thomas Bopp and his law firm. Because the Grievance Committee and the Florida Bar are applying the Rules in an anti-competitive manner to restrain competition and prevent lower cost legal services, this Rule is unlawful and unconstitutionally applied. Also, Rule 4-1.7 is unconstitutionally vague on its face and is unlawful because it carries out a restraint of price competition, in violation of Federal Anti-Trust law, where the State has no legitimate goal of penalizing Plaintiff's lower cost legal services which directly compete with and undercut Defendant Faulkner's and his law firm fees and Defendant Bopp's and his law firm fees.

146. Rule 4-3.1, Rules Regulating the Florida Bar **(Meritorious Claims)** is unconstitutional as written or applied, for the reasons stated herein, and because Plaintiff Rush's

2014 and 2018 Fee Agreements are lawful and contain no penalty provision for the client's termination of Plaintiff's employment. Additionally, this Rule is unconstitutional as applied because it punishes lawyer's free speech and commercial free speech, which is commonly employed by Florida lawyers in our adversarial system of justice especially when pursuing a lawful attorney's lien, pursuant to lawful motions, authorized by the two fee agreements and the Trial Court's July 11, 2018 and July 18, 2018 Court orders. Also, Plaintiff Rush's 2018 Fee Agreement is extremely competitive when compared with the fees charged by the Grievance Committee's competing attorney members, especially by Defendants Brandon Faulkner and his law firm and Defendant Thomas Bopp and his law firm. Because the Grievance Committee and the Florida Bar are applying the Rules in an anti-competitive manner to restrain competition and prevent lower cost legal services, this Rule is unconstitutionally applied. Also, Rule 4-3.1 is unconstitutionally vague on its face and is unlawful because it carries out a restraint of price competition, in violation of Federal Anti-Trust law, where the State has no legitimate goal of penalizing Plaintiffs' motions to recover fees and costs for lower cost legal services which directly compete with and undercut Defendant Faulkner's law firm fees and Defendant Bopp's law firm fees.

147. Rule 4-3.4, Rules Regulating the Florida Bar **(Fairness to Opposing Party/Counsel)** is unconstitutional as written or applied, for the reasons stated herein, and because Rush's criticism of FDOT and Aloyma Sanchez are protected speech and provided no real advantage to Plaintiff in a pending civil matter. Certainly, Plaintiff Rush's criticism of Attorney Sanchez and FDOT was not done "solely" to gain some sort of advantage in a civil matter. Additionally, this Rule is unconstitutional because it punishes lawyer free speech and commercial free speech, which is commonly employed by Florida lawyers in our adversarial system of justice and in pursuing a lawful attorney's lien, pursuant to lawful motions, authorized by the Trial Court's

July 11, 2018 and July 18, 2018 Court orders. Because the Grievance Committee and the Florida Bar are applying the Rules in an anti-competitive manner to restrain competition and prevent lower cost legal services, this Rule is unconstitutionally applied. Also, Rule 4-3.4 is unconstitutionally vague on its face and is unlawful because it amounts to a prior restraint of free speech and commercial speech.

148. Rule 4-8.4, Rules Regulating the Florida Bar **(Misconduct/Generally)** is unconstitutional as written or applied, because Rush's 2014 and 2018 Fee Agreements are lawful and contain no penalty provision for the client's termination of Plaintiff's employment. Additionally, this Rule is unconstitutional as applied to Rush, because it punishes lawyer free speech and commercial free speech, which is commonly employed by Florida lawyers in our adversarial system of justice and in pursuing a lawful attorney's lien, pursuant to lawful motions, authorized by the Trial Court's July 11, 2018 and July 18, 2018 Court orders. Because the Grievance Committee and the Florida Bar are applying the Rules in an anti-competitive manner to restrain competition and prevent lower cost legal services, this Rule is unconstitutionally applied because there is no legitimate governmental interest for the reasons set forth above, especially Plaintiff's non-violation of any other Bar Rules.

Plaintiffs' Attorney's Lien and Related Communications/Statements are Protected and Proper Under Florida Law

149. The Plaintiffs' Attorney's Lien and subsequent motions described in the Circuit Court's orders, dated July 11, 2018 and July 18, 2018, are authorized by Plaintiff's lawful fee agreements and by Florida Law in regard to enforcing Attorney's Liens and are generally protected under Florida law. As such, the Plaintiff's attorneys lien and related motions for attorneys fees and costs are a property and contract right, protected by the Fifth Amendment, the Fourteenth Amendment and the Contracts Clause of the United States Constitution.

150. As specifically authorized by Florida law and the Florida Bar Rules, the Plaintiffs' filed an attorneys lien against FDOT (only) to "secure payment of fees and costs", and the Plaintiffs also filed Court papers in the Court file to protect the Plaintiffs' legal rights and to notify the Court and opposing attorneys/parties of the existence of the Plaintiffs' lawful property rights, lien rights, arbitration rights and contractual rights. The Rules and the Florida Bar's regulatory reach do not lawfully extend to prohibit Plaintiffs' Court papers filed to protect the Plaintiffs' contractual, lien and property rights, all of which are specifically recognized by the Florida Bar Rules and Florida case law. Further, none of these filings were determined to be frivolous by any Florida Court.

151. These Court filings are protected under the Fourteenth Amendment and also under the Fifth Amendment where they were filed as part of a claim for just compensation in an eminent domain action (which includes fees and costs), brought by the FDOT as part of a taking under the Fifth Amendment to the United States Constitution.

Section 1983

152. Section 1983 was enacted to protect against the deprivation of every person's and any citizen's Constitutional Rights, under color of law, which includes all Florida attorneys. 42 U.S.C. §1983 states in pertinent part:

> **"§ 1983. Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Underline added.**

CLAIMS FOR RELIEF

Plaintiffs, BRIAN P. RUSH and WOODLIEF & RUSH, P.A., request that this Court grant the following relief against all of the above-named Defendants:

COUNT I: Violation of First Amendment-Free Speech and Commercial Speech (Under 42 U.S.C. §1983)

153. This is an action for declaratory and injunctive relief declaring certain Florida Bar Rules unconstitutional, either as written or as applied, and enjoining the Florida Bar's enforcement of these Rules against the Plaintiff.

154. Plaintiffs realleged paragraphs 1 through 155 above.

155. As written and as applied, the delineated Florida Bar Rules violate the First Amendment to the U.S. Constitution and violate 42 U.S.C. Section 1983, and should be enjoined.

156. Rule 4-1.2, Rule 4-1.4, Rule 4-1.5, Rule 4-1.7, Rule 4-3.1, Rule 4-3.4, and Rule 4-8.4, Florida Bar Rules violate Plaintiffs' First Amendment rights because these Rules punish Plaintiffs' out of Court oral and written statements to the government's attorneys or opposing attorneys and parties, where the statements are truthful or are opinion in regard to disputed matters. In any case, the Florida Bar Rules and the Florida Bar do not have a substantial government interest in regulating lawful and truthful out of Court communications between Plaintiffs and various attorneys, third-parties and opposing parties.

157. In extending its Bar Rules to regulating private out of Court speech, which is either truthful or is in regard to disputed issues, the Bar has failed to meet its burden of showing that its restrictive regulations are necessary to protect consumers, attorneys or the Courts. The Bar Rules regulation of Florida lawyers' oral and written communications make it effectively impossible for lawyers to criticize actions by the government and the government's attorneys, and there is no evidence that restricting Florida lawyers communications to opposing attorneys and parties,

especially government attorneys serve any purpose other than to immunize governments and its attorneys from hearing something that might "upset" them.

158. The U.S. Supreme Court has repeatedly held that to justify restrictions on free speech and criticism of the government and its agents, the State has the burden of proving the prohibited forms of speech create **a "clear and present danger"** for a violent and wrongful act. See, *Terminiello v. City of Chicago*, 337 U.S. 1 (1949). No such showing has been made or is even possible.

159. All of the Plaintiffs are entitled to First Amendment protection for their out of Court speech related to notifying the government and any third parties and their attorneys of the Plaintiffs economic rights and interest in the Plaintiffs' property rights, lien rights, arbitration rights and contractual rights. The only way that the Plaintiffs can protect and vindicate these rights is by resort to oral and written communications which are protected by the First Amendment.

160. The U.S. Supreme Court has repeatedly held that to justify restrictions on commercial speech, States have the burden of proving that the prohibited forms of speech are false and misleading. See, *44 Liquormart v. Rhode Island*, 517 U.S. 484, 516 (1996). Any Florida Bar Rule that requires that the Plaintiffs prove that their out of Court oral or written communications are true or verifiable reverses the constitutional burden, and such a reversal and burden prohibits commercial speech by a lawyer unless the lawyer can prove it to be true. If such proof must be made before making the oral or written speech, then the Florida Bar Rules amount to a prohibited prior restraint which significantly chills all Florida lawyer's First Amendment rights and opinion.

161. The Bar Rules and the Bar's application of the Rules serve to prohibit provable truthful statements of a lawyer or reasonable opinion communications by a lawyer which make the Bar Rules as written or as applied extremely burdensome to truthful statements and lawful opinions.

162. By barring truthful statements and by barring oral and written opinions in regard to disputed issues, the Rules and the Florida Bar's application of the Rules censor the opinions of Florida lawyers and infringe on the First Amendment rights of Florida lawyers and also third-parties, by chilling or depriving them from receiving valid information and opinions which are relevant to pending matters.

163. Regardless of whether the prohibited speech is treated as commercial or political speech, the Rules and the Bar's application of the Rules create restrictions on free speech which cannot survive First Amendment scrutiny. There is no evidence that the prohibited speech is false or harmful to the consumers or the Courts of Florida, and there is no clear or present danger of any kind to the FDOT or Florida government or Plaintiffs' former clients. Florida has no legitimate interest in prohibiting the subject free speech, and the Rules do not directly advance any such claimed interest, and the Rules are far more extensive than necessary to serve any legitimate interest claimed by the State. See, *Terminiello v. City of Chicago*.

164. The truthful communications between an attorney and his client are voluntary and must be a free and frank exchange of ideas, so that facts and strategy can be fully discussed. Similarly, an attorney's opinions must not be regulated by the State, so long as they are lawful. There is no evidence that Plaintiffs' opinions in regard to these disputed issues of law or strategy was in any way unlawful. The fact that the clients ultimately rejected Plaintiffs' advice does not support State intrusion into or State regulation of an attorney's truthful statements or opinion communications to his own client.

165. The government interest in maintaining decorum and order in Court proceedings and filings does not extend to private out of Court communications between a lawyer and his client, or private communications between a lawyer and another attorney, or private

communications between a lawyer and another person, so long as these communications are **truthful, not misleading, and not designed to unfairly take advantage of a third person**.

166. There is no governmental interest in regulating Florida lawyers out of Court oral or written opinions in regard to disputed factual, political, economic, business or legal issues, of which there are many in the modern world and in the practice of law.

167. The First Amendment to the United States Constitution precludes State regulation and discipline under the Florida Bar Rules for a Florida lawyer's lawful public and private communications which are not part of any Court proceedings.

168. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and award attorneys fees and costs to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT II: Violation of Fourteenth Amendment-Void for Vagueness (Under 42 U.S.C. §1983)

169. This is an action for declaratory and injunctive relief declaring certain Florida Bar Rules unconstitutional, either as written or as applied, and enjoining the Florida Bar's enforcement of these Rules against the Plaintiffs.

170. Plaintiffs realleged paragraphs 1 through 155 above.

171. As written and as applied, the delineated Florida Bar Rules violate the First Amendment and the Fourteenth Amendment to the U.S. Constitution and violate 42 U.S.C. Section 1983.

172. Rule 4-1.2, Rule 4-1.4, Rule 4-1.5, Rule 4-1.7, Rule 4-3.1, Rule 4-3.4, and Rule 4-8.4, Florida Bar Rules violate Plaintiffs' First Amendment rights in these Rules punish Plaintiffs' out of Court oral and written statements which are truthful or are opinion in regard to disputed matters. All of these Rules are void for vagueness. In any case, the Florida Bar Rules and the

Florida Bar do not have a substantial or legitimate government interest in regulating private out of Court communications between Plaintiffs and third-parties and between Plaintiffs, opposing parties and their attorneys.

173. Rule 4-3.4 Florida Bar Rules requirement that a Florida lawyer's statements be solely unrelated to any economic interest of the lawyer does not provide any reasonable guidance for what speech is permitted and invites arbitrary and discriminatory enforcement. The standard set forth in this Rule is not defined by the Florida Bar Rules or its comments and the Bar's investigatory counsel could not delineate any specific conduct which allegedly violated this Rule, and there is no guidance as to what evidence the Rule requires in regard to enforcement or discipline.

174. All of the above Rules are void for vagueness and make the potential for professional discipline turn on whether a lawyer is able to satisfy an undefined level of proof and whether the lawyer can correctly guess the particular conduct and surrounding circumstances that the Bar will consider pertinent to determination of whether enforcement of discipline is required. It is therefore, unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

175. The above Rules fail to provide Florida lawyers with any specific definition of the conduct that exactly is prohibited, and fails to provide Bar officials with explicit standards for enforcement. It is therefore, unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

176. In any case, Plaintiffs' statements that opposing counsel (both Mr. Petitt and Ms. Sanchez) were being unfair when they made unfair or unlawful verbal or written attacks on Plaintiffs and Plaintiffs' Fee Agreements are protected opinion and were a reasonable response to

these unfair and defamatory statements. All of the Plaintiffs' statements are protected under the First Amendment.

177. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and award attorney's fees and costs to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT III: Violation of Fourteenth Amendment- Void for Overbreadth (Under 42 U.S.C. §1983)

178. This is an action for declaratory and injunctive relief declaring certain Florida Bar Rules unconstitutional, either as written or as applied, and enjoining the Florida Bar's enforcement of these Rules against the Plaintiffs.

179. Plaintiffs realleged paragraphs 1 through 155 above.

180. As written and as applied, all of the delineated Florida Bar Rules are overbroad and violate the First Amendment and the Fourteenth Amendment to the U.S. Constitution and violate 42 U.S.C. Section 1983.

181. The above listed rules, Rule 4-1.2, Rule 4-1.4, Rule 4-1.5, Rule 4-1.7, Rule 4-3.1, Rule 4-3.4, and Rule 4-8.4, Florida Bar Rules are overbroad and violate Plaintiffs' First Amendment rights in that this Rule punishes Plaintiffs' out of Court oral and written statements which are truthful or are protected opinion in regard to disputed matters.

182. The above Rules requirement that a Florida lawyer's statements be solely unrelated to any economic interest of the lawyer does not provide guidance for what speech is permitted such that the Rule applies to a range of constitutionally protected actions, and invites arbitrary and discriminatory enforcement. The standard set forth in this Rule is not defined by the Florida Bar Rules or its comments and the Bar's investigatory counsel could not provide any specific conduct

which allegedly violated this Rule, and there is no guidance as to what evidence the Rule requires in regard to enforcement or discipline.

183. All of the above Rules are overbroad and make the potential for professional discipline turn on whether a lawyer is able to satisfy a broad and undefined level of proof and whether the lawyer can correctly guess the broad range of conduct and surrounding circumstances that the Bar will consider pertinent to determination of whether enforcement of discipline is required. It is, therefore unconstitutionally overbroad under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

184. All of the above Rules are overbroad and fail to provide lawyers with a discrete description of conduct which is prohibited exactly, and fails to provide Bar officials with explicit and limited standards for enforcement. It is therefore, unconstitutionally overbroad under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

185. In any case, Plaintiffs' statements that opposing counsel (both Mr. Petitt and Ms. Sanchez) were being unfair when they made unlawful or unreasonable verbal or written attacks on Plaintiffs and Plaintiffs' Fee Agreements are protected opinion and were a reasonable response to these unfair and defamatory statements. All of the Plaintiffs' statements are protected under the First Amendment.

186. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and award attorneys fees and costs to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT IV: Violation of Contract Clause-Impairment of Attorney-Client Agreements (Under 42 U.S.C. §1983)

187. This is an action for declaratory and injunctive relief declaring certain Florida Bar Rules unconstitutional, either as written or as applied, and enjoining the Florida Bar's enforcement of these Rules against the Plaintiffs.

188. Plaintiffs realleged paragraphs 1 through 155 above.

189. As written and as applied, the delineated Florida Bar Rules violate the Contract Clause to the U.S. Constitution and violate 42 U.S.C. Section 1983.

190. Rule 4-1.2 and Rule 4-1.5, Florida Bar Rules, violate Plaintiffs' rights under the Contract Clause in that this Rule punishes Plaintiffs for simply attempting to enjoy, benefit and enforce lawful contracts which Plaintiffs have entered into with their clients.

191. Plaintiffs' Fee Agreements with their North Park clients provide clear and lawful contractual agreements covering the agreed client objectives and the agreed attorneys' scope of representation. None of Plaintiffs' legal services violated these contractually agreed matters and these Bar Rules improperly infringed on Plaintiffs' lawful contract rights and infringed on the client's lawful agreement with their attorneys.

192. In any case, the Florida Bar Rules and the Florida Bar do not have a substantial or legitimate government interest in regulating otherwise lawful contracts between Plaintiffs and their clients, especially where the subject contracts only provide for "reasonable" attorney's fees and lawful objectives, and where the subject contracts have been determined previously to be enforceable by Florida Courts, and this determination have been affirmed by the Florida Appellate Courts.

193. Rule 4-1.5's requirement that a Florida lawyer's fee agreements must not charge an excessive fee or be an illegal contract does not reasonably prohibit Plaintiffs' fee agreements which

only required that the attorneys be paid the **"reasonable value of the attorney's services"** and also provided that the attorneys would be paid **only a one dollar ($1.00) flat fee, plus $395.00 per hour** for attorney time, which would be a reasonable **"hourly fee or reasonable fee,"** set by the Court or set by arbitrators, especially where the parties agreed to resolve **"any fee disputes"** through binding arbitration, before the Florida Bar Fee Arbitration Program.

194. Rule 4-1.5's requirement that a Florida lawyer's fee agreements must provide for a "reasonable fee" which is not excessive and is not illegal does not provide reasonable or sufficient guidance for what type or amount of fee is permitted in an eminent domain case and invites arbitrary and discriminatory enforcement.

195. The standard set forth in this Rule is not defined by the Florida Bar Rules or its comments, and the Bar's investigatory counsel could not provide any specific conduct or language which allegedly violated this Rule. Further, the Rule provides no real guidance as to what evidence the Rule requires in regard to enforcement or discipline. As such this Rule is vague and overbroad and violates the Fourteenth Amendment to the United States Constitution.

196. Because the Florida Supreme Court has repeatedly approved fee agreement language providing for **"reasonable fees"** or a reasonable fee based upon the **"reasonable value of the attorney's services,"** the Plaintiffs fee agreements cannot reasonably be said to unlawful or illegal. Additionally, by its very nature and terms any Fee Agreement providing for a "reasonable fee" or a fee equal to the "reasonable value of the attorney's services" cannot be a penalty and cannot be unreasonable, unlawful or illegal. See, *Roe v. Patients Compensation Fund*, 472 So.2d 1145 (Fla. 1985).

197. The vague and overbroad Bar Rules, the Grievance Committee's anti-competitive and undefined probable cause finding, and the Bar's Disciplinary Action impairs Plaintiffs'

contracts and violate the Contracts Clause of the United States Constitution, especially where the State has no legitimate interest in regulating or impairing the subject lawful attorney-client contracts for "reasonable" fees. Additionally, the Rules and the Bar's anti-competitive application of the Rules do not advance and are far more extensive than necessary to serve any interest which the State or the Bar might claim.

198. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and award attorneys fees and costs to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT V: Violation of Fifth Amendment Through Impairment and Taking of Plaintiffs' Contractual Rights, Lien Rights and Property Rights (Under 42 U.S.C. §1983)

199. This is an action for declaratory and injunctive relief declaring certain Florida Bar Rules unconstitutional, either as written or as applied, and enjoining the Defendants and the Grievance Committee's and the Florida Bar's enforcement of these Rules against the Plaintiffs.

200. Plaintiffs realleged paragraphs 1 through 155 above.

201. The Defendants, especially the Grievance Committee and its individual competitor attorneys, and the Florida Bar have used Rule 4-1.5 in conjunction with Rules 4-1.2, 4-1.4, Rule 4-1.7, Rule 4-3.1, Rule 4-3.4 and Rule 4-8.4, Rules Regulating the Florida Bar, to impair and interfere with Plaintiff's lawful contracts, and take Plaintiff's contact, reputation, property, and lien rights.

202. As written or as applied, the above delineated Florida Bar Rules violate the Fifth Amendment to the U.S. Constitution and violate 42 U.S.C. Section 1983.

203. Rule 4-1.5, Florida Bar Rules and the above delineated Florida Bar Rules, violate Plaintiffs' rights under the Contract Clause and under the Fifth Amendment in that this Rule "takes" the property, lien and contractual rights of Plaintiffs for simply attempting to enjoy, benefit and

enforce lawful contracts for "reasonable" attorney's fees and costs, for which Plaintiffs have lawfully entered into with their clients.

204. Plaintiffs' Fee Agreements with their North Park clients provide clear and lawful contractual agreements covering the agreed client objectives and the agreed attorneys' scope of representation. None of Plaintiffs' legal services violated these contractually agreed matters and these delineated Bar Rules improperly infringed on Plaintiffs' lawful contract rights and infringed on the client's lawful agreement with their attorneys.

205. The Florida Bar Rules, the Grievance Committee and the Florida Bar do not have a substantial government interest in regulating otherwise lawful attorney-client contracts for "reasonable" fees between Plaintiffs and their clients, and the Florida Bar does not have any substantial government interest in disciplining Plaintiffs for their enforcement of their otherwise lawful contracts for "reasonable" fees between Plaintiffs and their clients.

206. In any case, the Florida Bar Rules and the Florida Bar do not have a substantial government interest in regulating otherwise lawful contracts between Plaintiffs and their clients, especially where the subject contracts only provide for "reasonable" attorney's fees and lawful objectives, and where the subject 2018 contracts provide that North Park is liable for **only one dollar ($1.00), plus hourly fees of $395.00 per hour** for any future litigation services provided by Plaintiff.

207. Rule 4-1.5's requirement that a Florida lawyer's fee agreements must not charge an excessive fee or be an illegal contract cannot reasonably prohibit Plaintiffs' fee agreements. The 2014 Fee Agreement only required that the attorneys be paid the **"reasonable value of the attorney's services"** and the 2018 Fee Agreement also provided that the attorneys would be paid an **"hourly fee"** of only $395.00 per hour. Where the Plaintiff and the client parties agreed to resolve

"any fee disputes" through binding arbitration, before the Florida Bar Fee Arbitration Program, the Grievance Committee and the Florida Bar has not substantial interest to discipline a Florida attorney for a fee agreement requiring that fee disputes be resolved by resort to the Florida Bar's own Fee Arbitration Program, which the Florida Bar itself strongly recommends that Florida attorneys use to resolve all fee disputes. See, Rule 4-1.5, Rules Regulating the Florida Bar.

208. Rule 4-1.5's requirement that a Florida lawyer's fee agreements must provide for a reasonable fee which is not excessive and is not illegal does not provide reasonable or sufficient guidance for what type or amount of fee is permitted in an eminent domain case and invites arbitrary and discriminatory enforcement, especially where an hourly fee agreement is limited to only $395.00 per hour.

209. The standards set forth in these Rules are not defined by the Florida Bar Rules or its comments, and the Grievance Committee and the investigatory members could not list or provide any specific conduct or contract language which allegedly violated this Rule. Further, the Rule provides no guidance as to what evidence the Rule requires in regard to enforcement or discipline, which is no definition at all. As such this Rule is vague and overbroad and violates the Fourteenth Amendment to the United States Constitution.

210. Because the Florida Supreme Court has repeatedly approved fee agreement language providing for **"reasonable fees"** or a reasonable fee based upon the **"reasonable value of the attorney's services,"** the Plaintiffs fee agreements do not authorize any "penalty" for the client's termination of the attorneys and cannot reasonably be said to unlawful or illegal. Additionally, by its very nature and terms any Fee Agreement providing for a "reasonable fee" or a fee equal to the "reasonable value of the attorney's services" cannot be unreasonable, unlawful or illegal.

211. Because any fee awarded by an arbitrator or a Court must be approved by a Florida Court as a "reasonable fee", the 2014 Fee Agreement and 2018 Fee Agreement cannot lawfully result in an excessive, unlawful or unreasonable fee. The delineated Florida Bar Rules, as written and as applied to Plaintiffs amounts to a complete impairment and taking of Plaintiffs' constitutionally protected contract rights, lien rights and property rights. Therefore, the delineated Rules violate the Plaintiffs' rights under the Fifth Amendment to the United States Constitution.

212. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and award attorneys fees and costs to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT VI: Violation of Fifth and Fourteenth Amendments-Impairment of Vested Attorney's Lien and Property Rights
(Under 42 U.S.C. §1983)

213. This is an action for declaratory and injunctive relief declaring certain Florida Bar Rules unconstitutional, either as written or as applied, and enjoining the Florida Bar's enforcement of these Rules against the Plaintiffs.

214. Plaintiffs realleged paragraphs 1 through 155 above.

215. As written and as applied, the delineated Florida Bar Rules violate the First Amendment and the Fifth Amendment and the Fourteenth Amendment and the Contract Clause to the U.S. Constitution and violate 42 U.S.C. Section 1983, et seq.

216. Rule 4-1.2, Rule 4-1.4, Rule 4-1.5, Rule 4-1.7, Rule 4-3.1, Rule 4-3.4, and Rule 4-8.4, Florida Bar Rules violate Plaintiffs' rights under the Fifth and Fourteenth Amendments in that this Rule punishes Plaintiffs for simply attempting to enjoy, benefit and enforce the Plaintiffs' lawful Fee Agreements, which Plaintiffs have with their clients. The Fee Agreements provide and vest valuable property rights to and in Plaintiffs, which are protected under the Fifth Amendment.

217. The above Florida Bar Rules violate Plaintiffs' rights under the Fifth and Fourteenth Amendments where the specific Arbitration Agreements between the parties have been found to be fully enforceable by Florida Courts. Further, this enforceability judicial finding in regard to the Arbitration Agreements has been affirmed on Appeal by a Florida Appellate Court, such that this determination is Res Judicata and Collateral Estoppel.

218. The delineated Florida Bar Rules, as written and as applied to Plaintiffs, amount to a complete impairment and taking of Plaintiffs' constitutionally protected contract rights, arbitration rights, lien rights and property rights. Therefore, the delineated Rules violate the Plaintiffs' rights under the Fifth Amendment and the Fourteenth Amendment to the United States Constitution.

219. In any case, the above Florida Bar Rules and the Florida Bar do not have a substantial or legitimate government interest in regulating these otherwise lawful contracts between Plaintiffs and their clients.

COUNT VII: Violation of Federal Anti-Trust Statutes

220. This is an action for declaratory and injunctive relief declaring Defendants' anti-competitive conduct and certain Florida Bar Rules in violation of §§1 and 2 of the Sherman Act, 15 U.S.C. 1 et seq., either as written or as applied, and enjoining the Defendants' and the Florida Bar's enforcement of these Rules against the Plaintiff and all other similarly situated Florida attorneys. Additionally, this is an action for damages in excess of $500,000.00, plus treble damages, plus punitive damages and attorneys fees and costs against all Defendants, except the Florida Bar and the Grievance Committee.

221. Plaintiff realleged paragraphs 1 through 155 above.

Nature of the Case

222. This action arises from the anti-competitive conduct and price fixing findings of probable cause, carried out by a majority of the Grievance Committee's members who are engaged in the active practice of law, which is the profession they regulate, and Defendants are colluding to impair lawful fee agreements and other contracts, in an effort to sanction Plaintiff for charging fees which are substantially more competitive than the fees charged by a majority of the Grievance Committee's members who are engaged in the active practice of law.

223. The anti-competitive conduct and findings by a majority of the Grievance Committee's members who are engaged in the active practice of law has been actively advanced and prosecuted by the Florida Bar and the other Defendants through further anti-competitive conduct, in combination with the above Grievance Committee members, in violation of Federal Anti-Trust Statutes.

Federal Anti-Trust Statutes

224. The actions and conduct of the Defendants, including the majority of the Grievance Committee's members who are engaged in the active practice of law unreasonably restrain competition, fix prices for attorneys fees, and violate §§1 and 2, of the Sherman Act, 15 U.S.C. 1 et seq., (the "Sherman Act").

225. Under §§1 and 2, of the Sherman Act, 15 U.S.C. 1 et seq., Rules 4-1.2, 4-1.4, 4-1.5, 4-1.7, 4-3.1, 4-3.4, 4-8.4, imposed and enforced by the State Supreme Court of Florida violate Federal Anti-Trust laws because these Rules as written or as applied restrain competition and unlawfully seek to restrain competition in regard to attorneys fees charged by Plaintiff and other Florida lawyers for litigation services in the State of Florida.

226. The Sherman Act serves to promote robust competition, which in turn empowers the State and its citizens to pursue their own and the public's welfare, and the Sherman Act generally precludes price fixing and anti-competitive conduct by private attorney competitors, especially when these non-sovereign actors purportedly act under State authority.

State's Unsupervised Delegation of Authority to Grievance Committee

227. The State Supreme Court of Florida has delegated unsupervised control over the investigation and charging authority against Florida attorneys to the various Circuit Court disciplinary committees, including in this case to the Grievance Committee for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Grievance Committee").

228. As part of the above delegation of control, the State Supreme Court has delegated interpretation and enforcement of the Rules Regulating the Florida Bar to the Grievance Committee, which acts independently of the Florida Supreme Court. At all times material, the Grievance Committee acts as a separate independent fact-finder and Rule enforcer, which necessarily must act independently of the Florida Supreme Court which is the ultimate decision maker in regard to the guilt or innocence of the Plaintiff.

229. At all times material, the Grievance Committee for the Thirteenth Judicial Circuit is a non-sovereign actor whose conduct does not automatically qualify as that of the sovereign state itself, because the State Supreme Court has delegated unsupervised control over a relevant local market, and the Grievance Committee regulates thousands of attorneys by non-sovereign actors who are authorized to regulate their own profession, even though the Displinary Committee is dominated by active market participants.

230. The anti-competitive conduct of the Grievance Committee and its non-sovereign market participant attorneys are not directly supervised by the Florida Supreme Court and the above

anti-competitive conduct circumvents any alleged supervision, review or oversight by the State or the Florida Supreme Court.

Private Attorney Competitors Control Grievance Committee

231. At all times material, the Grievance Committee is made up of at least six (6) private attorneys and two (2) laypersons, who are effectively controlled by the Committee Chairman, Defendant Faulkner, and the Committee's Supervising Member, Defendant Bopp. Both Defendant Faulkner and Defendant Bopp are private litigation and trial attorneys, who are non-sovereign actors who are authorized to regulate their own trial practice competitors in the legal profession.

232. At all times material, Defendant Faulkner and his law firm are actively engaged in real estate litigation and complex civil litigation in competition with Plaintiff and similarly situated small and medium firm private attorneys, and Defendant Faulkner's law firm charges hourly rates which are substantially higher than the $395.00 per hour rate set forth in Plaintiff's 2018 Fee Agreement, such that Defendant Faulkner has a significant interest and motive to carry out Defendant Faulkner's anti-competitive conduct against Plaintiff.

233. At all times material, Defendant Faulkner and his law firm are actively engaged in real estate litigation and complex civil litigation in competition with Plaintiff and similarly situated small and medium firm private attorneys, and Defendant Faulkner's law firm charges flat fees which are substantially higher than the one dollar ($1.00) flat fee Plaintiff charged to draft complex engineering and settlement proposals and a detailed Memorandum of Understanding as set forth in Plaintiff's 2018 Fee Agreement, such that Defendant Faulkner has a significant interest and motive to carry out Defendant Faulkner's anti-competitive conduct against Plaintiff.

234. At all times material, Defendant Bopp and his law firm are actively engaged in complex trial practice and complex civil litigation in competition with Plaintiff and similarly

situated small and medium firm private attorneys, and Defendant Bopp and his law firm collect attorneys fees, paralegal fees and costs which are substantially more profitable for Bopp and his law firm, than the one dollar ($1.00) flat fee and $395.00 hourly fee, set forth in Plaintiff's 2018 Fee Agreement, such that Defendant Bopp has a significant interest and motive to carry out Defendant Bopp's anti-competitive conduct against Plaintiff.

235. At all times material, Defendants Faulkner and Bopp, and the private attorney Defendants on the Grievance Committee are non-sovereign actors, who were engaged in competition with Plaintiff, and each and all of these Defendants have a significant interest and motive to carry out their anti-competitive conduct against Plaintiff, including sanctioning Plaintiff's below-market hourly fees and flat fees and sanctioning Plaintiff for Plaintiff's competitive Fee Agreements, including but not limited to the 2014 Fee Agreement, the 2018 Fee Agreement, and the resulting April 2018 Memorandum of Understanding/Settlement Proposal to FDOT.

236. The Florida Supreme Court has empowered a controlling number of decision makers on the Grievance Committee, who are active market participants, such that these attorney competitors can act unsupervised in an anti-competitive manner to find probable cause against Plaintiff and to charge Plaintiff with violations of seven separate Florida Bar Rules, to sanction the Plaintiff and limit the financial and fee terms under which a competing attorney, like Plaintiff, can participate in the relevant market.

Grievance Committee and Defendant Attorneys are Engaged in Anti-Competitive Behavior

237. Except to the extent the competition has been restrained as alleged herein, and depending upon geographic location, the non-sovereign market participants on the Grievance Committee compete with the Plaintiff and other non-Grievance Committee members in the private litigation and trial practice market.

238. The Defendants and the Grievance Committee attorney members have engaged in extra-judicial activities aimed at impairing and precluding the enforcement of Plaintiff's lawful contracts, especially the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding in regard to detailed engineering and settlement proposals to FDOT.

Federal Anti-Trust Law Prohibits Defendants Anti-Competitive Conduct

239. The Defendants and the Grievance Committee attorney members do not qualify for a State action defense, nor is the alleged anti-competitive conduct reasonably related to any efficiencies or other benefits sufficient to justify its harmful effect on competition.

240. Federal Anti-Trust law is a central safeguard for the nation's free-market structures. In this regard it is "as important to the preservation of economic freedom as the Bill of Rights is to the protection of fundamental personal freedoms." *United States v. Topco Associates, Inc.*, 405 U.S. 596, 610 (1972). Defendants' anti-competitive conduct serves no legitimate State policy, and sanctioning Plaintiff's low-cost legal services is not a clearly articulated, affirmative State policy, and no Florida Supreme Court Rule provides such authority.

241. Only when States are acting in their sovereign capacity can a State attempt to claim immunity on anti-competitive conduct by the State (*Parker v. Brown*, 317 U.S. 341, at 350-353). However, a non-sovereign actor controlled by active market participants only enjoys Parker immunity if, first, the challenged restraint of competition is clearly articulated and affirmatively expressed as State policy, and second, the policy is actively supervised by the State. *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. 494 (2015).

242. For purposes of Parker immunity, a non-sovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. State agencies and the State Supreme

Court are not simply sovereign actors for purposes of Parker State action immunity. See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members").

243. Limits on State-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants for established ethical standards may blend with anti-competitive motives in a way difficult even for market participants to discern. See, *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. 494 (2015) ("Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from anti-trust accountability").

244. In the instant case, the Florida Supreme Court has not articulated a clear policy to allow anti-competitive conduct by the Grievance Committee and its private attorney members to restrain Plaintiff's low-cost legal services and to prevent enforcement of otherwise lawful fee agreements, such as the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

245. At all times material, there is no Florida general State law authorizing the Florida Supreme Court or the non-State actor and competing private attorneys in control of the Grievance Committee to sanction Plaintiff's low-cost legal services and to prevent enforcement of otherwise lawful fee agreements, such as the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

246. Because the Florida Supreme Court has routinely approved and authorized attorney Fee Agreements for hourly fees, flat fees, and reasonable fees set by a Court far in excess of the fees charged by Plaintiff in the 2014 Fee Agreement and the 2018 Fee Agreement, there is no State

policy to declare Plaintiff's low-cost fees unreasonable or in violation of any legitimate State policy or Florida Bar Rule.

247. The United States Supreme Court has repeatedly held that a State agency, including a State Supreme Court, cannot simply delegate the State's authority to non-sovereign entities, who are controlled by active market participants. In Goldfarb, the Court denied immunity to the Virginia State Bar controlled by market participants (lawyers) because the Virginia Supreme Court was not actually actively supervising the market participants anti-competitive activity. In this case, the Florida Supreme Court has not actively supervised the specific probable cause decision of the Grievance Committee and the specific anti-competitive conduct of the Grievance Committee and its controlling private attorneys.

248. Plaintiff requests that this Court provide preliminary and permanent injunctive relief against the Florida Bar, the individual Defendants and the Grievance Committee's finding of probable cause in regard to the above seven Florida Bar Rules, as all of these Rules have been used together to sanction Plaintiff and prevent enforcement of Plaintiff's lawful contracts, including the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

249. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and enter judgment in favor of Plaintiff for damages in excess of $500,000.00, plus treble damages, plus punitive damages against all Defendants, except the Florida Bar and the Grievance Committee, and award attorneys fees and costs against all Defendants to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT VIII: Tortious Interference with Contracts, Liens and Agreements

250. This is an action for declaratory and injunctive relief declaring that Defendants' actions amount to tortious interference with Plaintiff's contracts, liens, and agreements and

enjoining the Florida Bar's enforcement of these Rules against the Plaintiffs. Additionally, this is an action for damages in excess of $500,000.00, plus punitive damages and attorneys fees and costs against all Defendants, except the Florida Bar and the Grievance Committee. This is also an action for declaratory and injunctive relief, declaring that the above-named individual Defendants have intentionally and tortiously interfered with Plaintiff's contracts, including but not limited to the 2014 Fee Agreement, the 2018 Fee Agreement and the resulting April 2018 Memorandum of Understanding.

251. Plaintiffs realleged paragraphs 1 through 155 above, and paragraphs 220 through 249 above.

252. Defendants' actions and anti-competitive conduct have intentionally interfered with Plaintiff's lawful contracts, including but not limited to the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

253. Plaintiff requests that this Court provide preliminary and permanent injunctive relief against the Florida Bar, the individual Defendants and the Grievance Committee's finding of probable cause in regard to the above seven Florida Bar Rules, as all of these Rules have been used together to sanction Plaintiff and prevent enforcement of Plaintiff's lawful contracts, including the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

254. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and enter judgment in favor of Plaintiff for damages in excess of $500,000.00, plus punitive damages against all Defendants, except the Florida Bar and the Grievance Committee, and award attorney's fees and costs against all Defendants to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT IX: Conspiracy to Violate Plaintiff's Civil Rights

255. This is an action for damages and for declaratory and injunctive relief declaring that Defendants' actions and combination to violate Plaintiffs' Civil Rights under Section 1983, et seq. and Plaintiffs' Constitutional Rights, for alleged but non-existent violations of certain Florida Bar Rules which are unconstitutional, either as written or as applied.

256. Plaintiffs realleged paragraphs 1 through 155 above.

257. As written and as applied, the above delineated Florida Bar Rules violate the First Amendment to the U.S. Constitution and violate 42 U.S.C. Section 1983, et seq., causing damages to the Plaintiffs and Defendants continuing combination and conspiracy to carry out the violation of Plaintiffs' Civil Rights and the enforcement of these Rules should be enjoined.

258. Rule 4-1.2, Rule 4-1.4, Rule 4-1.5, Rule 4-1.7, Rule 4-3.1, Rule 4-3.4, and Rule 4-8.4, Florida Bar Rules violate Plaintiffs' First Amendment rights because these Rules punish Plaintiffs' out of Court oral and written communications to the FDOT government and to the government's attorneys or opposing attorneys and parties, where the statements are truthful or are opinion in regard to disputed matters. In any case, the Florida Bar Rules and the Florida Bar do not have a substantial government interest in regulating or disciplining lawful and truthful out of Court communications between Plaintiffs and various attorneys, third-parties and opposing parties.

259. In extending its Bar Rules to regulating private out of Court speech, which is either truthful or is opinion in regard to disputed issues, the Bar has failed to meet its burden of showing that its restrictive regulations are necessary to protect consumers, attorneys or the Courts. The Florida Bar Rules regulation of Florida lawyers' oral and written out of court communications make it effectively impossible for lawyers to criticize actions by the government and the government's attorneys, and there is no evidence or reasonable argument that the Defendants' combined actions to

restrict Florida lawyers' out of court communications to FDOT, opposing attorneys and parties, especially government attorneys, serve any purpose other than to immunize governments and their attorneys from hearing something that might "upset" them.

260. All of the Plaintiffs are entitled to First Amendment protection for their out of Court communications and protected speech related to notifying or criticizing the government and any third parties and their attorneys of the Plaintiffs economic rights and interest in the Plaintiffs' property rights, lien rights, arbitration rights and contractual rights. The only way that the Plaintiffs can protect and vindicate these rights is by resort to oral and written communications which are protected by the First Amendment.

261. The U.S. Supreme Court has repeatedly held that to justify restrictions on commercial speech, States have the burden of proving that the prohibited forms of speech are false and misleading. See, *44 Liquormart v. Rhode Island*, 517 U.S. 484, 516 (1996).

262. Any Florida Bar Rule that requires that the Plaintiffs prove that their out of Court oral or written communications are true or verifiable reverses the constitutional burden, and such a reversal and burden prohibits commercial speech by a lawyer unless the lawyer can prove it to be true. If such proof must be made before making the oral or written speech, then the Florida Bar Rules amount to a prohibited prior restraint which significantly chills all Florida lawyer's First Amendment rights and opinion.

Defendants' Combination and Conspiracy

263. The Bar Rules and the Bar's application of the Rules serve to prohibit provable truthful statements of a lawyer or reasonable opinion arguments by a lawyer which make the Bar Rules as written or as applied extremely burdensome to truthful statements and lawful opinions. All of the Defendants have entered into a combination and conspiracy to violate the Plaintiffs' Civil

Rights and Constitutional Rights, by alleging that Plaintiffs have violated certain Bar Rules which impair and infringe upon Plaintiffs' Constitutional Rights, either as written or applied.

264. By barring out of court truthful statements and by barring out of court oral and written opinions in regard to disputed issues, the Rules and the Florida Bar's application of the Rules censor the opinions of Florida lawyers and infringe on the First Amendment rights of Florida lawyers and also third-parties, by chilling or depriving them from receiving valid information and opinions which are relevant to pending matters. All of the Defendants have entered into a combination and conspiracy to violate the Plaintiffs' Civil Rights and Constitutional Rights.

265. Regardless of whether the prohibited speech is treated as commercial speech, free speech or political speech, the Florida Bar Rules and the Bar's application of the Rules create restrictions on Conditionally protected speech which cannot survive First Amendment scrutiny. All of the Defendants have entered into a combination and conspiracy to violate the Plaintiffs' Civil Rights and Constitutional Rights.

266. There is no evidence that the prohibited speech is false or harmful to the consumers or the Courts of Florida, and there is no clear or present danger of any kind of violence or criminal activity against the FDOT or Florida government, or their attorney agents or against Plaintiffs' former clients. The State of Florida and the Defendants have no legitimate interest in prohibiting the subject out of Court communications which are protected speech, and the Rules do not directly advance any such claimed interest, and the Rules are far more extensive than necessary to serve any legitimate interest claimed by the Florida Bar, FDOT, the State or the other Defendants. See, *Terminiello v. City of Chicago*.

267. The truthful communications between an attorney and his client are voluntary and must be a free and frank exchange of ideas, so that facts and strategy can be fully discussed.

Similarly, an attorney's opinions must not be regulated by the State, so long as they are lawful. There is no evidence that Plaintiffs' opinions in regard to these disputed issues of law or strategy was in any way unlawful. The fact that the clients ultimately rejected Plaintiffs' advice does not support State intrusion into or State regulation of an attorney's truthful statements or opinion communications to his own client.

268. The government interest in maintaining decorum and order in Court proceedings and filings does not extend to private out of Court communications between a lawyer and his client, or private communications between a lawyer and another attorney, or private communications between a lawyer and another person, so long as these communications are **truthful, not misleading, and not designed to unfairly take advantage of a third person**.

269. There is no governmental interest in regulating Florida lawyers out of Court oral or written opinions in regard to disputed factual, political, economic, business or legal issues, of which there are many in the modern world and in the practice of law.

270. The First Amendment to the United States Constitution precludes State regulation and discipline under the Florida Bar Rules for a Florida lawyer's lawful public and private communications which are not part of any Court proceedings.

271. At all times material, Defendants Faulkner and Bopp and Defendants, the Florida Bar and Walbolt and Defendants, FDOT, Sanchez, Henderson and Linsky, entered into an unlawful combination and conspiracy to violate Plaintiffs' Civil Rights and Constitutional Rights to falsely accuse Plaintiffs of entering into an illegal termination clause in Plaintiffs' fee agreements with North Park, when these Defendants knew that Plaintiffs' fee agreements were in fact lawful and did not contain an unlawful penalty for termination clause and were not in

violation of Rule 4-1.5 (Fee Agreements and Reasonable Fees) and the other above delineated Rules, for the reasons set forth above in paragraphs 1 through 155.

272. At all times material, Defendants Faulkner and Bopp and Defendants, the Florida Bar and Walbolt and Defendants, FDOT, Sanchez, Henderson and Linsky, entered into an unlawful combination and conspiracy to violate Plaintiffs' Civil Rights and Constitutional Rights to falsely accuse Plaintiffs of acting in a conflict of interest against North Park, when Plaintiffs merely carried out North Park's agreed contractual objectives and scope of representation set forth in North Park's 2014 eminent domain fee agreement and North Park's 2018 hourly fee agreement with Plaintiffs, both of which were properly signed and approved by North Park and its managing agent. At all times material, these Defendants knew that Plaintiffs' fee agreements were in fact lawful and that Plaintiffs had no conflict of interest in carrying out North Park's contractually directed and authorized objectives and were not in violation of Rule 4-1.2 (Objectives and Scope of Representation) and Rule 4-1.4 (Communication) and the other above delineated Rules, for the reasons set forth above in paragraphs 1 through 155.

273. The Defendants actions and breaches of duty amount to a conspiracy and combination to act together against Plaintiffs and have caused Plaintiffs to suffer injury and damages, arising from Defendants' violation of Plaintiffs' Constitutional Rights and Civil Rights by their written statements, admissions and allegations and through their false testimony. The Defendants acting together have manifested a combination and agreement with one another to conspire in furtherance of a common purpose to violate Plaintiffs' Civil Rights and Constitutional Rights, which is an illegal objective carried out by the Defendants' overt acts, pursuant to the Defendants' agreement, conspiracy and combination resulting in injury and damages to Plaintiffs.

274. At all times material, Defendants Faulkner and Bopp and Defendants, the Florida Bar and Walbolt and Defendants, FDOT, Sanchez, Henderson and Linsky, entered into an unlawful combination and conspiracy to violate Plaintiffs' Civil Rights and Constitutional Rights to falsely accuse Plaintiffs of entering into an illegal termination clause in Plaintiffs' fee agreements with North Park, when these Defendants knew that Plaintiffs' fee agreements were in fact lawful and did not contain an unlawful penalty for termination clause and were not in violation of Rule 4-1.7 (Conflict of Interest; Current Clients) and the other above delineated Rules, for the reasons set forth above in paragraphs 1 through 155.

275. At all times material, Defendants have acted together with specific intent to engage in and carry out an unlawful combination and conspiracy to violate Plaintiffs' Civil Rights and Constitutional Rights and to intentionally infringed upon and damage Plaintiffs' contractual rights, lien rights, reputational rights, and other property rights protected by State and Federal Law, all of which have caused injury and damages to Plaintiffs.

276. At all times material, the Defendants agreed and reached an understanding to carry out an unlawful scheme to violate Plaintiffs' Civil Rights and Constitutional Rights and to intentionally infringed upon and damage Plaintiffs' contractual rights, lien rights, reputational rights, and other property rights protected by State and Federal Law, all of which have caused injury and damages to Plaintiffs.

Injunctive and Declaratory Relief, Plus Damages Requested

277. Plaintiff requests that this Court provide preliminary and permanent injunctive relief against the Florida Bar, the individual Defendants and the Grievance Committee's finding of probable cause in regard to the above seven Florida Bar Rules, as all of these Rules have been used

together to sanction Plaintiff and prevent enforcement of Plaintiff's lawful contracts, including the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

278. Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and enter judgment in favor of Plaintiff for damages, plus punitive damages against all Defendants, except the Florida Bar and the Grievance Committee, and award attorney's fees and costs against all Defendants to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT X: Conspiracy to Violate Anti-Trust Laws

279. Plaintiffs reallege paragraphs 1 through 155 above and 220 through 249, as if fully set forth herein.

Defendants' Conspiracy

280. This action arises from the Defendants' unlawful combination and conspiracy to carry out anti-competitive conduct and price fixing, through Defendants' false findings of probable cause, carried out by a majority of the Grievance Committee's members who are engaged in the active practice of law, which is the profession they regulate, and Defendants are colluding together and with the other Defendants to impair lawful fee agreements and other contracts, in an effort to sanction and discipline Plaintiff Rush for charging fees which are substantially more competitive than the fees charged by a majority of the Grievance Committee's members who are engaged in the active practice of law, in the same marketplace as Plaintiffs.

281. The anti-competitive conduct and findings by a majority of the Grievance Committee's members who are engaged in the active practice of law has been actively advanced and prosecuted by the other Defendants, including by the Florida Bar and Defendant Walbolt and Walbolt's associate attorneys and including by the FDOT, Sanchez, Henderson, Linsky and the

other Defendants and their agents through their false testimony and through their anti-competitive conduct, in combination with the above Defendants, including the Defendant Grievance Committee, in violation of Federal Anti-Trust Statutes.

Federal Anti-Trust Statutes

282. The actions and conduct of the Defendants, including the majority of the Grievance Committee's members who are engaged in the active practice of law unreasonably restrain competition, fix prices for attorneys fees, and violate §§1 and 2, of the Sherman Act, 15 U.S.C. 1 et seq., (the "Sherman Act").

283. Under §§1 and 2, of the Sherman Act, 15 U.S.C. 1 et seq., Rules 4-1.2, 4-1.4, 4-1.5, 4-1.7, 4-3.1, 4-3.4, 4-8.4, imposed and enforced by the State Supreme Court of Florida violate Federal Anti-Trust laws because these Rules as written or as applied restrain competition and unlawfully seek to restrain competition in regard to attorneys fees charged by Plaintiff and other Florida lawyers for litigation services in the State of Florida.

284. The Sherman Act serves to promote robust competition, which in turn empowers the State and its citizens to pursue their own and the public's welfare, and the Sherman Act generally precludes price fixing and anti-competitive conduct by private attorney competitors, especially when these non-sovereign actors purportedly act under State authority.

Private Attorney Competitors are Non-Sovereign Actors Engaged in Non-Competitive Conduct Against Plaintiffs

285. At all times material, Defendants Faulkner and Bopp, and the private attorney Defendants on the Grievance Committee are non-sovereign actors, who were engaged in competition with Plaintiff, and each and all of these Defendants have a significant interest and motive to carry out their anti-competitive conduct against Plaintiff, including sanctioning Plaintiff's below-market hourly fees and flat fees and sanctioning Plaintiff for Plaintiff's competitive Fee

Agreements, including but not limited to the 2014 Fee Agreement, the 2018 Fee Agreement, and the resulting April 2018 Memorandum of Understanding/Settlement Proposal to FDOT.

286. A controlling number of decision makers on the Grievance Committee, are active market participants, such that these attorney competitors can act unsupervised in an anti-competitive manner to find probable cause against Plaintiff and to charge Plaintiff with violations of seven separate Florida Bar Rules, to sanction the Plaintiff and limit the financial and fee terms under which a competing attorney, like Plaintiff, can participate in the relevant market.

287. The Defendants and the Grievance Committee attorney members have engaged in extra-judicial activities aimed at impairing and precluding the enforcement of Plaintiff's lawful contracts, especially the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding in regard to detailed engineering and settlement proposals to FDOT.

Federal Anti-Trust Law Prohibits Defendants Anti-Competitive Conduct

288. The Defendants and the Grievance Committee attorney members do not qualify for a State action defense, nor is the alleged anti-competitive conduct reasonably related to any efficiencies or other benefits sufficient to justify its harmful effect on competition.

289. Only when States are acting in their sovereign capacity can a State attempt to claim immunity on anti-competitive conduct by the State (*Parker v. Brown*, 317 U.S. 341, at 350-353). However, a non-sovereign actor controlled by active market participants only enjoys Parker immunity if, first, the challenged restraint of competition is clearly articulated and affirmatively expressed as State policy, and second, the policy is actively supervised by the State. *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. 494 (2015).

290. For purposes of Parker immunity, a non-sovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. State agencies and the State Supreme Court are not simply sovereign actors for purposes of Parker State action immunity. See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members").

291. Limits on State-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants for established ethical standards may blend with anti-competitive motives in a way difficult even for market participants to discern. See, *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. 494 (2015) ("Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from anti-trust accountability").

292. In the instant case, the Florida Supreme Court has not articulated a clear policy to allow anti-competitive conduct by the Grievance Committee and its private attorney members to restrain Plaintiff's low-cost legal services and to prevent enforcement of otherwise lawful fee agreements, such as the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

293. Because the Florida Supreme Court has routinely approved and authorized attorney Fee Agreements for hourly fees, flat fees, and reasonable fees set by a Court far in excess of the fees charged by Plaintiff in the 2014 Fee Agreement and the 2018 Fee Agreement, there is no State policy to declare Plaintiff's low-cost fees unreasonable or in violation of any legitimate State policy or Florida Bar Rule.

Defendants' Combination and Conspiracy to Carry Out Anti-Competitive Conduct and Scheme in Violation of Federal Anti-Trust Statutes

294. All of the Defendants have entered into a combination and conspiracy to violate the Plaintiffs' Civil Rights and Constitutional Rights, and all of the Defendants conduct in violation of Federal Anti-Trust Statutes. All of the Defendants have acted in an anti-competitive combination and conspiracy by alleging that Plaintiffs have violated certain Bar Rules which impair and infringe upon Plaintiffs' contract rights, lien rights, reputational rights and other property rights, either as written or applied.

295. All of the Defendants have acted in an anti-competitive combination and conspiracy by improperly charging and enforcing the Florida Bar Rules to discipline and sanction Plaintiff Rush for entering into lawful fee agreements, which provide for lawful attorney's fees and for properly filing a lawful attorney's lien and related lawful motions for attorney's fees and lawful applications for payment of attorney's fees, expert fees and costs and for filing a lawful lis pendens in order to secure the payment of Plaintiffs' attorney's fees and costs, as specifically provided for by Rule 4-1.8, Rules Regulating the Florida Bar and as specifically provided for by controlling Florida Supreme Court and Appellate Court Decisions authorizing both attorney's lien and lis pendens to secure an equitable attorney's lien.

296. All of the Defendants have acted in an anti-competitive combination and conspiracy by improperly charging and enforcing the Florida Bar Rules to discipline and sanction Plaintiff Rush for improperly charging and asserting that Plaintiffs have violated certain Bar Rules which impair and infringe upon Plaintiffs' lawful contract rights, lien rights, reputational rights and other property rights, either as written or applied.

297. Regardless of whether the prohibited speech is treated as commercial speech, free speech or political speech, the Florida Bar Rules and the Bar's application of the Rules create

restrictions on protected speech which cannot survive First Amendment scrutiny. All of the Defendants have entered into a combination and conspiracy to violate the Plaintiffs' Civil Rights and Constitutional Rights, through the Defendants' anti-competitive conduct through violation of the Plaintiffs' protected rights under the Federal Anti-Trust Statutes.

Defendants' Unlawful Combination to Use Florida Bar Rules to Carry Out Scheme to Unlawfully Impair Plaintiffs' Lawful Fee Agreements, Attorney's Lien, Lis Pendens and Lawful Motions and Applications to Recover Attorney's Fees, Expert Fees and Costs

298. At all times material, Defendants Faulkner and Bopp and Defendants, the Florida Bar and Walbolt and Defendants, FDOT, Sanchez, Henderson and Linsky, entered into an unlawful combination and conspiracy to violate Plaintiffs' Civil Rights and Constitutional Rights to falsely accuse Plaintiffs of entering into an illegal termination clause in Plaintiffs' fee agreements with North Park, when these Defendants knew that Plaintiffs' fee agreements were in fact lawful and did not contain an unlawful penalty for termination clause and were not in violation of Rule 4-1.5 (Fee Agreements and Reasonable Fees) and the other above delineated Rules, for the reasons set forth above in paragraphs 1 through 155.

299. At all times material, Defendants Faulkner and Bopp and Defendants, the Florida Bar and Walbolt and Defendants, FDOT, Sanchez, Henderson and Linsky, entered into an unlawful combination and conspiracy to violate Plaintiffs' Civil Rights and Constitutional Rights to falsely accuse Plaintiffs of acting in a conflict of interest against North Park, when Plaintiffs merely carried out North Park's agreed contractual objectives and scope of representation set forth in North Park's 2014 eminent domain fee agreement and North Park's 2018 hourly fee agreement with Plaintiffs, both of which were properly signed and approved by North Park and its managing agent. At all times material, these Defendants knew that Plaintiffs' fee agreements were in fact lawful and that Plaintiffs had no conflict of interest in carrying out North Park's

contractually directed and authorized objectives and were not in violation of Rule 4-1.2 (Objectives and Scope of Representation) and Rule 4-1.4 (Communication) and the other above delineated Rules, for the reasons set forth above in paragraphs 1 through 155.

300. The Defendants actions and breaches of duty amount to a conspiracy and combination to act together against Plaintiffs and have caused Plaintiffs to suffer injury and damages, arising from Defendants' violation of Plaintiffs' Constitutional Rights and Civil Rights by their written statements, admissions and allegations and through their false testimony. The Defendants acting together have manifested a combination and agreement with one another to conspire in furtherance of a common purpose to violate Plaintiffs' Civil Rights and Constitutional Rights, which is an illegal objective carried out by the Defendants' overt acts, pursuant to the Defendants' agreement, conspiracy and combination resulting in injury and damages to Plaintiffs.

301. At all times material, Defendants Faulkner and Bopp and Defendants, the Florida Bar and Walbolt and Defendants, FDOT, Sanchez, Henderson and Linsky, entered into an unlawful combination and conspiracy to violate Plaintiffs' Civil Rights and Constitutional Rights to falsely accuse Plaintiffs of entering into an illegal termination clause in Plaintiffs' fee agreements with North Park, when these Defendants knew that Plaintiffs' fee agreements were in fact lawful and did not contain an unlawful penalty for termination clause and were not in violation of Rule 4-1.7 (Conflict of Interest; Current Clients) and the other above delineated Rules, for the reasons set forth above in paragraphs 1 through 155.

302. At all times material, Defendants have acted together with specific intent to engage in and carry out an unlawful combination and conspiracy to violate Plaintiffs' Civil Rights and Constitutional Rights and to intentionally infringed upon and damage Plaintiffs' contractual rights,

lien rights, reputational rights, and other property rights protected by State and Federal Law, all of which have caused injury and damages to Plaintiffs.

303. At all times material, the Defendants agreed and reached an understanding to carry out an unlawful scheme to violate Plaintiffs' Civil Rights and Constitutional Rights and to intentionally infringed upon and damage Plaintiffs' contractual rights, lien rights, reputational rights, and other property rights protected by State and Federal Law, all of which have caused injury and damages to Plaintiffs.

Injunctive and Declaratory Relief, Plus Damages Requested

304. Plaintiff requests that this Court provide preliminary and permanent injunctive relief against the Florida Bar, the individual Defendants and the Grievance Committee's finding of probable cause in regard to the above seven Florida Bar Rules, as all of these Rules have been used together to sanction Plaintiff and prevent enforcement of Plaintiff's lawful contracts, including the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

305. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and enter judgment in favor of Plaintiff for damages in excess of $500,000.00, plus punitive damages against all Defendants, except the Florida Bar and the Grievance Committee, and award attorneys fees and costs against all Defendants to Plaintiff, plus any and all other appropriate relief allowed by law.

306. Plaintiff requests that this Court provide preliminary and permanent injunctive relief against Faulkner, Bopp, the Florida Bar, Defendant Walbolt, and the other Florida Bar attorneys sued in their official and representative capacity, and against the other individual Defendants, including the Grievance Committee, FDOT, Sanchez, Henderson and Linsky, as all of these Florida Bar Rules have been used together to sanction Plaintiff and prevent enforcement of Plaintiff's

lawful contracts, including the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding, and including Plaintiffs' lawful attorney's lien and related motions for attorney's fees, expert fees and costs.

307. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and enter judgment in favor of Plaintiff for damages in excess of $500,000.00, plus treble damages, plus punitive damages against all Defendants, except the Florida Bar and the Grievance Committee, and award attorney's fees and costs against all Defendants to Plaintiff, plus any and all other appropriate relief allowed by law.

COUNT XI: Conspiracy to Tortiously Interfere with Plaintiffs' Contracts, Liens and Agreements

308. This is an action for declaratory and injunctive relief declaring that Defendants' actions amount to tortious interference with Plaintiff's contracts, and enjoining all of the Defendants from continued tortious interference with Plaintiff's contracts, liens, and motions for attorney's fee and enjoining the Florida Bar's enforcement of the above delineated Rules against the Plaintiffs. Additionally, this is an action for damages in excess of $500,000.00, plus punitive damages and attorney's fees and costs against all Defendants, except the Florida Bar and the Grievance Committee.

309. This is also an action for declaratory and injunctive relief, declaring that the above-named individual Defendants have intentionally conspired to tortiously interfere with Plaintiff's contracts, agreements, liens, and property rights, including but not limited to the 2014 Fee Agreement, the 2018 Fee Agreement and the resulting April 2018 Memorandum of Understanding, as well as Plaintiffs' attorney's lien and Plaintiffs' right to file a lis pendens to secure payment of attorney's fees and costs pursuant to Plaintiffs' equitable attorney's lien.

310. Plaintiffs realleged paragraphs 1 through 155 above, and paragraphs 187 through 212 above and paragraphs 298 through 303.

311. Defendants' actions and anti-competitive conduct have intentionally interfered with Plaintiff's lawful contracts, including but not limited to the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding as well as Plaintiffs' attorney's lien and Plaintiffs' right to file a lis pendens to secure payment of attorney's fees and costs pursuant to Plaintiffs' equitable attorney's lien.

Injunctive and Declaratory Relief, Plus Damages Requested

312. Plaintiff requests that this Court provide preliminary and permanent injunctive relief against the Florida Bar, the individual Defendants and the Grievance Committee's finding of probable cause in regard to the above seven Florida Bar Rules, as all of these Rules have been used together to sanction Plaintiff and prevent enforcement of Plaintiff's lawful contracts, including the 2014 Fee Agreement, the 2018 Fee Agreement and the April 2018 Memorandum of Understanding.

313. Wherefore, Plaintiff requests that the Court grant the above requested relief, including injunctive relief and declaratory relief, and enter judgment in favor of Plaintiff for damages in excess of $500,000.00, plus punitive damages against all Defendants, except the Florida Bar and the Grievance Committee, and award attorneys fees and costs against all Defendants to Plaintiff, plus any and all other appropriate relief allowed by law.

RELIEF REQUESTED FOR ALL COUNTS

The Plaintiffs seek a declaration that the delineated Rules and their application by the Florida Bar are vague and overbroad, and violate the First, Fifth and Fourteenth Amendments of the US Constitution and the Contracts Clause to the United States Constitution, such that the subject Rules are not enforceable as written and/or as applied. The Plaintiffs also seek a preliminary and

permanent injunction against the enforcement of these Rules by the Florida Bar and the Florida Bar's disciplinary agents and all other relief provided under Section 1983, et seq.

The Plaintiffs seek a declaration that the delineated Rules and their application by the Florida Bar and the other Defendants are in violation of the Sherman Antitrust Act and the Clayton Antitrust Act, such that the subject Rules are not enforceable as written and/or as applied. The Plaintiff also seeks a preliminary and permanent injunction against the enforcement of these Rules by the Florida Bar and the Florida Bar's disciplinary agents and al other relief provided under the Sherman Act and Clayton Act.

The Plaintiffs seek damages against Defendants for violation of Plaintiffs' Constitutional Rights, violation of Federal Civil Rights Statutes, and violation of Federal Anti-Trust Statutes, all of which have impaired and taken Plaintiffs' lawful contract, liens and property rights. Plaintiffs also seek damages, punitive damages, treble damages, plus costs, interest and attorneys fees and all other relief available under law against Defendants.

GENERAL DEMAND FOR ATTORNEY'S FEES AND COSTS

Plaintiffs demand an award of attorney's fees and costs against the attorney Defendants, Faulkner, Bopp, Sanchez, Henderson, Linsky, who are primarily the private competitor lawyers controlling the Grievance Committee, and the Defendants government attorneys for the FDOT, and against the Florida Bar, pursuant to 42 United States Code, Section 1983 and et seq., Section 1988, et seq and pursuant to the Federal Anti-Trust Statute; §§1 and 2, of the Sherman Act, 15 U.S.C. 1 et seq. and the Clayton Act 15 U.S.C. §1-27, et seq.

GENERAL DEMAND FOR JURY TRIAL

Plaintiffs' hereby demand a trial by Jury for all claims, defenses and issues raised in Plaintiffs' First Amended Complaint and Defendants' Answers, Defenses and other issues raised by Defendants' pleadings, as amended in the future.

Respectfully submitted,

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