

IN THE CIRCUIT COURT NO. 2 FOR CLARK COUNTY

STATE OF INDIANA

STATE OF INDIANA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 KEVIN ZIPPERLE, )  
 MARY LOU TRAUTWEIN- )  
 LAMKIN, SHARON )  
 CHANDLER, and FRANK )  
 PRELL, )  
 )  
 Defendants. )

CASE #: 30092-1208-Pl.088

FILED  
AUG 30 2012  
*Sharon Lamkin*  
CLERK-CLAS. CIRCUIT CLERK

**COMPLAINT**

The State of Indiana, by Attorney General Gregory F. Zoeller and Deputy Attorney General Paula J. Beller, petitions this Court pursuant to the Indiana Home Loan Practices Act, Ind. Code art. 24-9 and Ind. Code § 32-25.5-3-8(a) for injunctive relief, restitution, civil penalties, costs for investigation and prosecution, and all other just relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-9-8-3 and Ind. Code § 32-25.5-3-8(a).
2. The Defendant, Kevin Zipperle (“Zipperle”), individually, at all times relevant to this Complaint was an individual elected to serve as a Board member of The Harbours Condominium Association, Inc.

3. The Defendant, Mary Lou Trautwein-Lamkin (“Trautwein-Lamkin”), individually, at all times relevant to this Complaint was an individual elected to serve as a Board member of The Harbours Condominium Association, Inc.

4. The Defendant, Sharon Chandler (“Chandler”), individually, at all times relevant to this Complaint was an individual elected to serve as a Board member of The Harbours Condominium Association, Inc.

5. Pursuant to Ind. Code § 23-1-26-3, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder’s own acts or conducts.

6. The Plaintiff, State of Indiana, is seeking restitution on behalf of The Harbours Condominium Association, Inc. from Defendants Zipperle, Trautwein-Lamkin, and Chandler for their individual actions while serving as Board members of The Harbours Condominium Association, Inc.

7. The Plaintiff, State of Indiana, is seeking removal on behalf of The Harbours Condominium Association, Inc. of Defendants Zipperle, Trautwein-Lamkin, and Chandler for using their positions as Board members to commit fraud:

8. Defendants Zipperle, Trautwein-Lamkin, and Chandler should be barred from using The Harbours Condominium Association, Inc.’s funds for their individual legal defenses in this action since their actions are contrary to their fiduciary duties and have resulted in an action brought by the Office of the Indiana Attorney General (“OAG”) pursuant to Ind. Code § 32-25.5-3-8(a).

9. The Defendant, Frank Prell (“Prell”), individually, at all times relevant to this complaint was an individual who owned multiple condominium units at The Harbours.

## BACKGROUND

10. The Harbours is an eleven (11) story condominium building located at One River Point Plaza, Jeffersonville, Indiana, which was declared to be a Horizontal Property Regime created on June 13, 2000, and recorded in the office of the Recorder of Clark County, Indiana, in Miscellaneous Drawer 32, Instrument No. 10085 ("The Harbours"). A true and correct copy of the Declaration of the Harbours Horizontal Property Regime ("Declaration") (including as an exhibit the Code of By-Laws of The Harbours Condominium Association, Inc. ("By-Laws")) is attached hereto and incorporated herein as Exhibit A.

11. The Harbours includes one hundred eighty-four (184) condominium units including ten (10) townhomes.

12. The Harbours Condominium Association, Inc. ("HOA") is a mutual benefit corporation registered with the State of Indiana as an active non-profit domestic corporation with principal headquarters located at One River Point Plaza, Jeffersonville, Indiana 47130.

13. The purpose of the HOA is to provide for the maintenance, repair, replacement, administration and operation of The Harbours.

14. The membership of the HOA is composed of the owners of the condominium units in The Harbours ("HOA members"). Each owner is a member of the Harbours HOA, and membership terminates when a person ceases to be an owner of a unit. Membership automatically transfers to a new owner along with the transfer of any condominium unit.

15. The HOA is governed by a Board of Directors ("Board") which is elected annually in accordance with HOA by-laws.

16. The Board is elected by the HOA members.

17. The OAG received numerous complaints from HOA members regarding several issues including numerous allegations against Zipperle, Trautwein-Lamkin, and Chandler for breach of their fiduciary duties and self-dealing.

18. The OAG engaged in an investigation of the allegations contained in the consumer complaints.

19. During the investigation, the Plaintiff has identified violations of the fiduciary duty to the HOA and its members by certain Board members.

20. Zipperle, Trautwein-Lamkin and Chandler have a well-established association as Board members.

21. In or about 2004, the management of The Harbours was transferred from the Developer to the HOA.

22. Zipperle, Trautwein-Lamkin, and Chandler were members of the transition committee that oversaw the transition of management of The Harbours from the Developer to the HOA.

23. Zipperle, Trautwein-Lamkin, and Chandler have been members of the Board since the HOA took over management of The Harbours.

24. As do all members of the Board, Zipperle, Trautwein-Lamkin, and Chandler have a fiduciary duty to the HOA and its members regarding matters that affect the general well-being of the HOA and its members.

25. Zipperle served as President of the HOA from April 2004 until January 2008, and from June 2009 until February 2011. Currently, Zipperle is serving as a Board member.



26. As President and Board member of the HOA, Zipperle used his positions to control the flow of information to HOA members which precluded HOA members from having the ability to scrutinize his activities.

27. During the course of the OAG investigation, the OAG discovered information which led the OAG to believe that Zipperle used his position on the Board on an ongoing basis to deceive the HOA and its members for his own personal benefit and to benefit his friends and/or business associates which was detrimental to those to whom he had a fiduciary duty.

28. Based on information discovered by the OAG in the course of its investigation, Zipperle, Trautwein-Lamkin, and Chandler breached their fiduciary duties owed to the HOA and its members which constitutes fraud and pursuant to Ind. Code § 32-25.5-3-8(a) is actionable by the OAG on behalf of the HOA and its members.

29. Based on the information discovered by the OAG in the course of its investigation, Zipperle, Trautwein-Lamkin, and Prell violated the Home Loan Practice Act, Ind. Code art. 24-9 by committing deceptive acts in connection with mortgage and/or real estate transactions related to The Harbours.

### FACTS

#### Purchase of Condominium #312 and Parking Spaces by Defendant Zipperle

30. Parking spaces at The Harbours are a limited common area which were initially deeded upon condominium sale by the Developer to homeowners or sold and assigned separately by the Developer.

31. Per the Declarations, parking spaces are permitted to be purchased, exchanged, and sold among HOA members pursuant to the restrictions of the governing documents.

32. In 2005, the Developer offered to HOA members additional parking spaces ranging in price from \$7,500 to \$15,000 each. A true and correct copy of a flyer "From the Sales Staff" advertising parking spaces for sale is attached hereto and incorporated herein as Exhibit B.

33. Since as early as July 16, 2003, at the first meeting of the Transition Committee for the transition of The Harbours management from the Developer to the HOA, there had been discussion regarding the possibility of the HOA purchasing a unit as a community or common space area. A true and correct copy of the notes from "The First meeting of the Transition Committee for The Harbours Condominiums" is attached hereto and incorporated herein as Exhibit C.

34. Prior to the end of the sales phase of The Harbours, the Developer allowed the HOA to use Condominium Unit 1110 in The Harbours ("#1110") as a community space.

35. Gary Davis ("Davis") decided to purchase #1110 from the Developer.

36. The sale of #1110 would be the sale of the last condominium the Developer owned at The Harbours.

37. Davis owned Condominium Unit 312 in The Harbours ("#312") which needed to be sold prior to his purchase of #1110.

38. Zipperle owned Condominium Unit 311 in The Harbours ("#311").

39. Davis' #312 was physically adjacent to Zipperle's #311.

40. It is alleged that in 2006, the Developer approached Zipperle with a proposal that if the HOA purchased #312 from Davis, the Developer would include eight (8) parking spaces as added value even though the Developer was not a party to the transaction.

41. Without formal authorization or direction from the Board, Zipperle negotiated the purchase of #312 allegedly for the purpose of offering it to the HOA for use as a community space.

42. Zipperle structured the contract to purchase #312 so that his wife, Deborah, would be the purchaser.

43. The first offer for the purchase of #312 between Zipperle and Davis included a purchase price of \$315,000.

44. The second offer for the purchase of #312 between Zipperle and Davis included a purchase price of \$355,000.

45. The second contract included a condition that for an additional \$40,000, eight (8) parking spaces would be assigned to Deborah Zipperle by the Developer, who was not a party to the purchase agreement for #312, to allegedly "sweeten" the deal.

46. Without the additional \$40,000, Davis would have had to pay additional funds at closing to cover the two mortgages held by mortgagees on #312.

47. Without the additional \$40,000, Davis would not have received \$28,000 in proceeds allegedly to apply to the purchase of #1110 from the Developer.

48. The eight (8) parking spaces were assigned by the Developer to Deborah Zipperle prior to September 12, 2006, when #312 was allegedly offered to the HOA. A true and correct copy of the Assignment of Parking Spaces to Deborah Zipperle is attached hereto and incorporated herein as Exhibit D.

49. A purchase of a unit as a community space would have required the approval of a majority of HOA members.

50. As provided in the By-Laws, a majority of the HIOA members means not less than 51% of the total percentage vote to agree to the purchase.

51. The Minutes of the Meeting of the Board of the HOA held on July 19, 2006 (“July 19<sup>th</sup> Minutes”), reflect only that the topic of “Common Space Options” was tabled “due to constraints of time.” A true and correct copy of the July 19<sup>th</sup> Minutes are attached hereto and incorporated herein as Exhibit E.

52. The Minutes of the Meeting of the Board of the HOA held on August 16, 2006 (“August 16<sup>th</sup> Minutes”), reflect only that the topic of “Community Space Options” was “tabled due to the length of the meeting.” A true and correct copy of the August 16<sup>th</sup> Minutes are attached hereto and incorporated herein as Exhibit F.

53. On or about September 12, 2006, the HOA had the “Town Meeting.” The stated purpose of the Town Meeting was to “discuss building-wide cable television proposal and high speed internet connectivity.”

54. The July 19<sup>th</sup> Minutes under the topic of “Internet/Satellite/Cable” reflect that “[a] date will be set for a Town Meeting at which time this will be brought before the [HOA] for discussion.”

55. The August 16<sup>th</sup> Minutes under the topic of “Internet/Satellite/Cable” reflect that “[a] town meeting will be held on September 12, 2006 at 6:30 p.m. to discuss the proposal from [cable company]. A representative . . . is to be present. Location of the meeting will be announced in a mailing to homeowners.”

56. There was no reference in the July 19<sup>th</sup> Minutes or August 16<sup>th</sup> Minutes under “common space options” or “community space options” that these topics would be discussed at the Town Meeting.

57. Although the flyer advertising the meeting stated that “[a]s time allows there may be other topics of discussion,” the topic of community space was not specifically mentioned. A true and correct copy of the flyer (amended for change of location) is attached hereto and incorporated herein as Exhibit G.

58. Approximately thirty-nine (39) homeowners representing forty-three (43) condominiums were present at the town meeting.

59. It is averred that after discussion of the cable television proposal and a “cookie” break, two handouts entitled “Community Space Options” and “Community Space Options – Estimated Financials” (collectively “handouts”) were passed out to those HOA members who remained after the break. True and correct copies of the handouts are attached hereto and incorporated herein as Exhibit H.

60. Zipperle allegedly stated to the HOA members at the meeting that he agreed to purchase #312 with the additional parking spaces for the purpose of offering it to the HOA for community space.

61. The cost for purchasing and renovating #312 was estimated on the handout to be \$400,000. There was no support for estimations included on the handout.

62. Allegedly, after discussion of various options listed on the handout by a show of hands only, there was very little interest by an unknown number of remaining members of purchasing a condominium unit for community space.

63. In contrast to the show of hands vote for common space options, the cable television proposal had a form for condominium owners to sign and return. A true and correct copy of this form is attached hereto and incorporated herein as Exhibit I.

64. On or about September 14, 2006, Zipperle's wife, Deborah, closed on the purchase of #312 two days after the Town Meeting.

65. The Minutes of the Meeting of the Board of the HOA held on September 20, 2006 ("September 20<sup>th</sup> Minutes"), reflect under the topic "Community Space Options" that "[f]our options had been presented at the Town Meeting. Only two received any support, those being continue to rent space elsewhere or renovate some existing space. This was tabled until further study could be done." A true and correct copy of the September 20<sup>th</sup> Minutes are attached hereto and incorporated herein as Exhibit J.

#### **Prell's Acquisition of Additional Parking Spaces**

66. In mid 2001, the Developer entered into a contract to have the balcony railings painted at The Harbours.

67. Shortly after the balcony railings were painted, the materials showed intermittent signs of adherence failure.

68. For approximately two years after the initial application, the Developer sought a solution to the adherence issue from both the contractor and supplier of products.

69. In or about 2004, the HOA requested financial assistance from the Developer to remedy the balcony painting issue.

70. In or about 2004, the Developer filed suit to seek a remedy for the balcony painting issue.

71. In 2005, the Developer reached a settlement in litigation regarding liability issues related to painting of The Harbours' balconies. A true and correct copy of an email from Don K. Henry to Cindy Richards is attached hereto and incorporated herein as Exhibit K.

72. In September 6, 2006, when the sale of #1110 was about to close, Cindy Richards (“Richards”) requested communication from the Developer regarding what his thoughts were on resolving the balcony issue. A true and correct copy of an email from Richards to the Developer is attached hereto and incorporated herein as Exhibit L.

73. In November 2006, the Developer proposed an agreement to the Board to fund a future repainting of the balconies. A true and correct copy of the Developer’s faxed proposal is attached hereto and incorporated herein as Exhibit M.

74. The Developer’s proposal required the Board to market the Developer’s remaining parking spaces with the proceeds to be split between the Developer and the HOA.

75. According to the Developer’s proposal, at a minimum the sale of these parking spaces would have resulted in a gross profit of \$74,250 determined as follows:

\$ 9,000 (minimum sealed bid) x 3 spaces	= \$27,000
\$11,250 x 3 spaces	= \$33,750
\$13,500 x 1 space	= <u>\$13,500</u>

GROSS PROFIT = \$74,250

76. Further, the Developer provided a distribution of proceeds as follows:

The Association will receive the first \$30,000.00 to be used to help offset the costs associated with repainting of balcony railings.

All other proceeds derived from the sale will be split on a 50/50 basis between the association and the [Developer].

77. In late November 2006, each member of the Board was contacted to discuss the specifics of the agreement. By unanimous decision, each member agreed to waive a meeting and fully supported adoption of the Developer’s proposal. A true and correct copy of “Board Actions Taken in Lieu of Meetings” is attached hereto and incorporated herein as Exhibit N.

78. The December 19, 2006, minutes of the Board of the HOA reflect that an “Agreement with [Developer] relating to remaining parking spaces with portions of the sale to be retained by the Association to offset a majority portion of the expense to paint balcony railings.” A true and correct copy of the December 19<sup>th</sup> minutes is attached hereto and incorporated herein as Exhibit O.

79. According to the Developer’s proposal, a letter was to be mailed to homeowners advertising the availability of the parking spaces.

80. During the course of its investigation, the OAG found no evidence of a letter being mailed to HOA members advertising the sale of these spaces at a discounted price.

81. During the course of its investigation, the OAG found no evidence of parking spaces being offered to the HOA members for sealed bid as required by the Developer’s proposal.

82. According to the Developer’s proposal, the HOA “reserve[d] the right to target market those parties whom they feel may hold an interest (i.e. those who hold close proximity to offered spaces, those who have expressed interest, etc.)

83. During the course of its investigation, the OAG found no evidence of any board discussion of target marketing.

84. On January 24, 2007, Richards sent an email to the Developer and copied Zipperle with the subject line “parking assignments & Frank Prell.” A true and correct copy of the email from Richards to the Developer is attached hereto and incorporated herein as Exhibit P.

85. According to Richards’ email, total sale price for all seven (7) parking spaces was \$63,000 or \$9,000 per space.



86. According to the formula for distribution proposed by the Developer, the HOA should have received \$30,000 plus half of the remaining \$33,000 for a total of \$46,500.

87. The HOA only received \$43,000 rather than \$46,500.

88. According to the formula for distribution proposed by the Developer, the Developer should have received \$16,500.

89. The Developer received \$20,000 rather than \$16,500.

90. On or about February 4, 2007, Prell provided a check to the HOA in the amount of \$43,000.

91. Two months after the Developer's proposed Marketing Plan was accepted by the Board, the Minutes of the Meeting of the Board of Directors of the HOA dated February 22, 2007, reflect the following:

The developer has sold his remaining condominium and parking spaces and has gifted the Association \$43,000 to be earmarked for painting of the balconies. If a homeowner is interested in either selling or purchasing a parking space in the building, they may contact the office for information. A list of available parking spaces will be maintained with all negotiations held between buyer and seller.

A true and correct copy of the February 22, 2007 Minutes are attached hereto and incorporated herein as Exhibit Q.

#### **Control of Parking Space Prices**

92. On February 1, 2007, Richards received an inquiry from a HOA member regarding parking spaces for sale which she forwarded to Zipperle. A true and correct copy of the inquiry is attached hereto and incorporated herein as Exhibit R.

93. On February 1, 2007, Zipperle responds to Richards email:

It's really not your problem. We may need to compile and maintain an updated list of parking spaces available for purchase. Obviously, these would be homeowner-to-homeowner transactions. Prell's and mine would certainly go a long way in creating the list, but I don't want other homeowners overlooked. For

example, I know that Sharon [Chandler] has a client listing with an extra parking space that may be for sale.

See Exhibit R.

94. On or about April 11, 2007, HOA member, Betty Cantrell ("Cantrell") contacted Richards requesting information on advertising a parking spot for sale on The Harbours' website. A true and correct copy of the email from Cantrell to Zipperle is attached hereto and incorporated herein as Exhibit S.

95. Richards requested information from Zipperle who responded to Richards by email:

The four other Board members (Bobby, [Chandler], Barb, [Trautwein-Lamkin]) I consulted with yesterday morning said they were comfortable imposing the "minimum pricing" restriction on sellers wanting to add spaces to our available inventory list. This is the price established by your +/- system, which everyone understands is not foolproof.

This obviously should not prevent an owner from pricing their space above that minimum and adding it to the list. Anyone wanting to discount their list price simply chooses not to be on the list, but can freely promote their parking space thru other channels.

This is the response we will give to Betty Cantrell and anyone else wanting to price and sell a parking space. If you'd like, and if it becomes necessary, I can convey this message to Betty in lieu of yourself. Just let me know.

A true and correct copy of the email from Zipperle to Richards is attached hereto and incorporated herein as Exhibit T.

96. In response to a Subpoena Duces Tecum issued by the OAG, the Board provided the template referred to in the email above for pricing parking spots using a total of twenty-eight (28) parking spots held by Prell and Zipperle individually. A true and correct copy of the template provided to the OAG is attached hereto and incorporated herein as Exhibit U.

97. The template lists six (6) of the eight (8) parking spaces which were acquired by Zipperle from the Developer during the purchase of #312 for sale individually for a total sale price of \$49,500 which is \$9,500 more than he paid for all eight (8) parking spaces seven (7) months earlier.

98. On April 24, 2007, Zipperle included the following in an email to Cantrell:

Separately, the Board decided awhile back not to promote Harbours real assets—condos, parking spaces, etc.—at discounts to market prices. We have devised a system to ensure minimum market pricing on parking spaces. Please check with Cindy to ensure that the listed price on your spaces is at or above the value we calculate.

A true and correct copy of the email exchange between Zipperle and Cantrell is attached hereto and incorporated herein as Exhibit V. *See Exhibit V, p. 2.*

99. Cantrell responded to the email by questioning whether or not this paragraph was referring to an attempt at price fixing. *See Exhibit V, p. 1.*

100. On April 25, 2007, Zipperle responded via email to Cantrell's question on price fixing. *See Exhibit V, p. 1.*

101. Zipperle used his position as the President of the Board to devise a pricing scheme for parking spaces which assured Zipperle and Prell's parking spaces would not be undercut by other HOA members.

102. On or about May 15, 2007, Zipperle notified Cantrell that the Board had decided to take the price list down.

103. Subsequent to this decision, the Board decided to post parking spaces for sale by owner without the pricing template.

104. As of August 28, 2012, parking spaces owned by Prell and Zipperle remain advertised on The Harbours' website.

**Bulletins 1 and 2**

105. For several years starting in 2007, HOA members continued to question the acquisition of various parking spaces by Zipperle and the “gift” by the Developer of \$43,000.

106. In response, The Harbours Legal Committee (“Legal Committee”) issued *Bulletin No. 1: Parking Spaces Conveyed to Kevin Zipperle by the Developer* (“Bulletin No. 1”). A true and correct copy of Bulletin No. 1 is attached hereto and incorporated herein as Exhibit W.

107. In response, the Legal Committee issued *Bulletin No. 2: Balcony Railings, Parking Spaces Conveyed by the Developer and Funds gifted to the Association* (“Bulletin No. 2”). A true and correct copy of Bulletin No. 2 is attached hereto and incorporated herein as Exhibit X.

**Zipperle’s Involvement in the Preparation of Bulletins Nos. 1 and 2**

108. The Minutes of the Meeting of the Board of the HOA held on February 5, 2009, reflect that Board member, Doug Farnsley (“Farnsley”), “requested that any information related to parking space assignments be brought forward, especially if there is a belief that impropriety is involved.” A true and correct copy of February 5, 2009, minutes is attached hereto and incorporated herein as Exhibit Y.

109. On or about March 3, 2009, Zipperle drafted Bulletins No. 1 and 2 which offered an explanation for the acquisition of parking spaces by Zipperle and the “gift” by the Developer of \$43,000.

110. On or about March 3, 2009, Zipperle sent the following email to Farnsley and Davis, then-president of the HOA:

Hey guys,

With Cindy’s help, I have drafted a couple of documents (attached) for your review. These are Association “bulletins” that each deal with a topic of interest,

typically one that surfaces time and again by different homeowners. We can compose these and keep them on file for future use when a question arises.

Both of these deal with parking space issues and how the current situation came to be in each case. If they're OK with you guys, my suggestion is that we present them to the Board on Thursday for final approval. These and future bulletins will be kept in the office for routine distribution as needed.

A true and correct copy of the email exchange between Zipperle and Davis is attached hereto and incorporated herein as Exhibit Z.

111. Davis responded on March 3, 2009, stating that he approves of the bulletins.

112. Farnsley responded on March 9, 2009, stating that "[t]hey look good to me." A true and correct copy of Farnsley's response is attached hereto and incorporated herein as Exhibit AA.

113. The Minutes of the Meeting of the Board of the HOA held on March 5, 2009, reflect the following:

Kevin Zipperle discussed Bulletin 1 regarding parking spaces conveyed to Kevin Zipperle by the Developer upon purchase of Condo #312, and Bulletin 2 regarding balcony railings, parking spaces conveyed by the Developer and funds gifted to the Association. These have been approved by the Legal Committee and when such issues continue to arise, the bulletins will be the official response.

A true and correct copy of the March 5, 2009, minutes is attached hereto and incorporated herein as Exhibit BB.

114. On March 9, 2009, Zipperle forwarded via email Bulletins No. 1 and 2 to all Board members. A true and correct copy of Zipperle's email is attached hereto and incorporated herein as Exhibit CC.

115. On or before April 2, 2009, Thomas Pike, CPA ("Pike"), then-Board member and chair of the audit committee, questioned the approval process of the two bulletins. A true and

correct copy of an email from Pike to Farnsley is attached hereto and incorporated herein as Exhibit DD.

116. Zipperle responded to all Board members via email to Pike's inquiry in part as follows:

In truth, there isn't a need for formal review of documents like these since the originators are the people who were in the middle of the events. The primary reason for Doug's input is to deal with potentially legal issues that may result.

*See Exhibit DD.*

117. The Minutes of the Meeting of the Board of the HOA held on April 2, 2009 reflect the following:

Thom Pike questioned if the Board should not have approved Bulletins 1 and 2 as a matter of protocol prior to distribution and does not want his name attached to the bulletins. Doug Farnsley stated that the information had been prepared by those having direct knowledge, that he was comfortable with the content, and if anyone has any questions, comments or information, they should come directly to him. Thom Pike wants his vote regarding the bulletins to reflect nay.

A true and correct copy of the April 2, 2009, minutes is attached hereto and incorporated herein as Exhibit EE.

118. Bulletins No. 1 and 2 were both prepared by Zipperle with assistance from Richards.

119. Then-Board president, Davis, approved both Bulletins even though unbeknownst to HOA members, he personally benefitted by the transaction described in Bulletin No. 1 by getting more money for the sale of #312 to Deborah Zipperle than he would have received without the eight (8) additional parking spaces the Developer contributed.

120. The HIOA Members were never privy to the true nature of either transaction described in Bulletins Nos. 1 and 2 as pertinent information was concealed and never disclosed to them.

**Misrepresentation in Bulletin Nos. 1 and 2**

121. Paragraph 3 of Bulletin No. 1 is misleading in that #312 was never offered to a majority of homeowners; therefore, it could not have been refused by a majority of homeowners.

122. Paragraph 4 of Bulletin No. 1 is misleading in that the Developer offered the spaces as an inducement for the sale of #312 (owned by Davis) so that Davis allegedly would have sufficient funds to purchase #1110 owned by the Developer.

123. Without the inclusion of the parking spaces assigned by the Developer in the purchase price, allegedly Davis would not have had enough money from the sale of #312 to cover the mortgages on #312.

124. The idea that either the Developer or the homeowner (Davis) would consider accepting the parking space assignments in lieu of cash is patently misleading as cash was necessary to make the purchase of #1110 work.

125. The idea that Zipperle was compelled to take the parking space assignments with the purchase of the condo is patently misleading, as the parking assignments were clearly calculated as part of the purchase price and included allegedly to “sweeten” the deal.

126. While Zipperle claims to have offered the spaces to both the Developer and the homeowner in lieu of cash, Zipperle never offered the spaces to the HOA separate from #312.

127. In 2006, parking space assignments at The Harbours sold for between \$7,000 and \$13,000.

128. By purchasing the eight (8) assigned parking spaces for \$40,000 or \$5,000 for each, Zipperle could have anticipated a minimum profit of \$16,000 for the subsequent sale of the spaces.

129. Zipperle used his position as President of the HOA and/or director to personally benefit from the opportunity to purchase eight (8) parking spaces at a significantly reduced rate from the Developer without disclosing the details of the transaction to the HOA.

130. Zipperle used his position as President of the HOA and/or director to control the flow of information to HOA membership regarding the fact that he acquired the parking spaces from the Developer as an inducement to assist the Developer in the sale of his last condominium to Davis without which the sale of #312 may not have occurred.

131. By acquiring #312, Zipperle was able to combine #312 with condominium unit #311 which was his existing residence thus preventing the possibility of having the HOA community room next to his residence.

132. Bulletin No. 2 is misleading in that there is no mention of the lawsuit or settlement entered into by the Developer to resolve the balcony painting issue.

133. Bulletin No. 2 is misleading in that there is no mention that the Board and the Developer had agreed to a marketing plan which provided for letters to HOA members announcing the agreement and offering parking spaces at a discounted first come first serve basis for the first 30 days.

134. Bulletin No. 2 is misleading in that there is no mention that if three spaces did not sell in the first 30 days at a price of \$9,750, these three spaces would then be open to the HOA members for a sealed bidding process with a minimum bid of \$9,000.



135. Bulletin No. 2 is misleading in that there is no discussion regarding the difference in how the agreed distribution of proceeds were divided and how they were supposed to be divided.

136. Bulletin No. 2 is misleading in that there is no discussion of how Prell's offer for the purchase of the spaces was accepted at a lower price than the minimum price provided in the marketing plan.

137. Bulletin No. 2 is misleading in that there is no discussion of how Prell was allowed to submit an offer to purchase spaces prior to a sealed bid process.

138. According to a response by the Board to an OAG subpoena duces tecum requesting information on the preparation of Bulletin No. 2:

The data for Bulletin No. 2 was provided by Community Director, Cindy Richards. The bulletin was formatted by Kevin Zipperle and referred to Legal Committee chair, Doug Farnsley, Board President, Gary Davis, and Community Director, Cindy Richards, for initial review. The Bulletin was subsequently revised by the full Board . . .

Homeowner input was sought as documented at the Board meeting of 2/5/09 requesting any relevant facts be disclosed to Doug Farnsley. No additional information was forwarded to Mr. Farnsley.

A true and correct copy of this response from the Board to the OAG is attached hereto and incorporated herein as Exhibit FF.

139. According to the February 5, 2009, Minutes of the Board HOA, Farnsley requested that "any information related to parking space assignment be brought forward, especially if there is a belief that impropriety is involved."

140. No HOA members had information to bring forward to investigate, because the HOA members were not aware of the particulars of the marketing agreement between the Developer and the Board, nor were they aware of the particulars of the sale to Prell.

### **Cindy Richards Vacation Time**

141. For a number of years, Richards served as the Community Director and/or manager for the HOA.

142. At one time, Richards and Zipperle had a business relationship as they were co-owners of a condominium unit at The Harbours.

143. Following the filing of consumer complaints by HOA members with the OAG and the subsequent investigation by the OAG, animosity at The Harbours between certain HOA members and the Board increased.

144. According to the HOA's newsletter "First Order of Business" dated October 14, 2011, Richards "has decided to take a temporary leave of absence in combination with a significant amount of vacation time that she has also accumulated. She will continue to handle her bookkeeping responsibilities."

145. Richards allegedly had four (4) weeks of vacation time available to her in October 2011.

146. In an interview conducted by the OAG on December 12, 2011, Chandler, Treasurer of the HOA, stated that no one reviews Cindy's time sheets if any are even prepared.

147. In an interview conducted by the OAG on December 12, 2012, Zipperle stated that Richards continued to be paid her salary by the HOA and that no one monitored the use of her vacation time nor the hours she was actually working on bookkeeping.

148. From October 1, 2011, to December 15, 2011, even though Richards was not physically present at The Harbours and had only four (4) weeks of vacation time, she was paid her regular salary for ten (10) full weeks.

149. The pay period following the OAG interviews of Zipperle and Chandler on December 12, 2012, reflect a significant reduction in the amount of her pay.

150. Zipperle, Trautwein-Lamkin, and Chandler have breached their fiduciary duty by failing to monitor Richards' use of her vacation time and continuing to pay her during her leave from The Harbours without proper documentation and verification.

**Short Sale of Condominium Units 1103 and 1104**

151. In or about April 2005, Prell purchased condominium unit 1103 in The Harbours (“#1103”).

152. Bank of America (“BOA”) ultimately became the mortgagee on #1103.

153. In or about April 2005, Frank Prell purchased condominium unit 1104 in The Harbours (“#1104”).

154. BOA ultimately became the mortgagee on #1104.

155. Upon information and belief, Prell physically combined #1103 and #1104 by knocking out the dividing wall between them and remodeling the combined units so they had one kitchen between them and were for all intended purposes one condominium unit.

156. Prell did not seek permission from the mortgagees to combine the units.

157. Upon information and belief, Prell did not seek a building permit to combine #1103 and #1104.

158. Prell did not seek to amend The Harbours Declarations to reflect the combined units as provided for by The Harbours Declarations.

159. Prior to July 2010, Prell listed #1103 and #1104 with Prudential Indiana Realty Group for a list price of \$795,000 which subsequently expired or was withdrawn.

160. Prior to July 2010, Prell ceased making mortgage payments on #1103 and #1104.

161. In or about July 2010, upon information and belief, Prell and Zipperle approached Paige Pearman ("Pearman"), a real estate licensee, to negotiate a short sale with BOA for #1103 and #1104.

162. On or about July 6, 2010, Prell listed both #1103 and #1104 as a single condominium unit for sale at a listing price of \$595,000.

163. On or about July 13, 2010, Pearman on behalf of Zipperle submitted a purchase agreement with a purchase price of \$150,000 for #1103 to BOA as a short sale offer. This purchase offer was declined by BOA.

164. On or about July 13, 2010, Pearman on behalf of Zipperle submitted a separate purchase agreement with a purchase price of \$150,000 for #1104 to BOA as a short sale offer.

165. During the short sale negotiation for #1104, Pearman indicated to BOA that #1103 and #1104 were in reality one big unit with two separate loans.

166. On or about September 1, 2010, BOA referred the short sale of #1104 to their fraud department because Prell had illegally combined two units without authorization, and BOA declined the purchase offer from Zipperle for \$150,000.

167. On or about January 17, 2011, Pearman on behalf of Zipperle submitted a purchase agreement with a purchase price of \$151,000 for #1103 to BOA. This purchase offer was declined by BOA.

168. On or about January 17, 2011, Pearman on behalf of Zipperle submitted a purchase agreement with a purchase price of \$151,000 for #1104 to Bank of America. This purchase offer was declined by BOA.

169. In or about July 2011, Pearman on behalf of Zipperle submitted a purchase agreement with a purchase price of \$300,000 for #1103 and #1104 jointly. This purchase offer was declined by BOA.

170. In early July 2011, Zipperle approached Kathy Kennedy Bupp ("Bupp") regarding a possible purchase of #1103 and #1104 from him contingent upon his acquisition of them in a short sale.

171. Zipperle told Bupp that he could get #1103 and #1104 at short sale for her at a price of \$599,900, and that he would be making some money on the deal.

172. In or about 2011 during Zipperle's short sale negotiations with BOA for the purchase of #1103 and #1104, Prell and/or Zipperle caused to be constructed a wall to divide #1103 and #1104 in an apparent attempt to deal with the two separate mortgage loans.

173. During an encounter with Bupp, Chandler asked Bupp whether she had seen #1103 and #1104 since the wall had been constructed.

174. Chandler told Bupp that she had asked Zipperle why Prell had not constructed the wall legally.

175. Upon information and belief, Prell and/or Zipperle have caused this wall to be constructed and torn down more than once during the short sale negotiation process.

176. At no time did Prell and/or Zipperle seek a building permit for the wall.

177. When the OAG viewed #1104 in July 2012, the wall separating #1103 and #1104 ran literally down the middle of a two basin kitchen sink with the faucet located in #1104.

178. When the OAG viewed #1104 in July 2012, light switches in #1104 controlled lighting in #1103.

179. When the OAG viewed #1104 in July 2012, the wall separating #1103 and #1104 had a hole in it which allows one to peer into the other unit.

180. When the OAG viewed #1104 in July 2012, #1103 has a kitchen and #1104 did not.

181. When the OAG viewed #1104 in July 2012, the wall separating #1103 and #1104 was substandard and does not meet building code requirements.

182. Upon information and belief, the wall was not an accurate representation of the actual boundaries of #1103 and #1104.

183. On or about August 31, 2011, Pearman listed #1103 for a list price of \$200,000 as an "as is" short sale.

184. On or about August 31, 2011, Pearman on behalf of Zipperle submitted a purchase agreement with a purchase price of \$173,000 for #1103 to BOA.

185. On or about September 1, 2011, Pearman changed the status of #1103 from "active" to "pending."

186. On or about August 31, 2011, Pearman listed #1104 for a list price of \$200,000 as an "as is" short sale.

187. On or about August 31, 2011, Pearman on behalf of Zipperle submitted a purchase agreement with a purchase price of \$173,000 for #1104 to BOA.

188. On or about September 1, 2011, Pearman changed the status of #1104 from "active" to "pending."

189. On or about January 9, 2012, the purchase offer from Zipperle for #1104 was declined by BOA.

190. On or about January 31, 2012, Zipperle and BOA agreed on a purchase price of \$175,000 for #1103.

191. On or about February 2, 2012, Zipperle and Prell closed on the sale of #1103.

192. After a January 5, 2012, sheriff sale, #1104 was transferred from BOA to Fannie Mae.

193. Fannie Mae contracted with Diana Mayfield ("Mayfield"), a real estate licensee, to be the listing broker for #1104.

194. Fannie Mae requested that Mayfield complete a broker price opinion ("BPO") on #1104.

195. Mayfield completed a BPO dated February 2, 2012, which states in part:

The former owner also owned 1103 and removed the common wall to make for one large unit. At some point prior to foreclosure occupant put back a common wall that appears to possibly encroach into unit 1104 by approx. 3 feet. The kitchen was also retained by unit 1103 leaving no kitchen in unit 1104. All that is left is a cabinet and counter with double sink that the common wall divides down the middle leaving 1104 with a half sink and cabinet and spot for a refrigerator. There are no cabinets, no range, no counters and the way the unit is set, no place [to] set them.

196. On or about February 16, 2012, Pearman on behalf of Zipperle submitted a purchase offer with a purchase price of \$150,000 for #1104 to Fannie Mae.

197. On February 22, 2012, Zipperle signed Addendum A to the purchase agreement dated February 16, 2012, which states in part:

In his offer to purchase unit 1104, Buyer accepts the unit "AS IS" "WHERE IS" in its current condition. The buyer accepts the property with all knowing and unknowing defects including, but not limited to, the electrical, mechanical, survey, plumbing, water leakage, and mold issues.

198. Fannie Mae declined the offer as the property was not even on the market yet.

199. On or about May 24, 2012, Pearman on behalf of Zipperle and Trautwein-Lamkin submitted a purchase agreement with a purchase price of \$205,000 for #1104 which provides in part:

Condominium 1104 is being purchased as-is, where-is, with all defects, known or unknown, including but not limited to 1) all defects created by dividing condominiums 1103 and 1104 by a temporary wall of substandard construction, said defects being plumbing lines and electrical circuitry crossing through the wall, and kitchen cabinetry, a countertop, and a sink w/faucet extending through the wall and into both condominiums.

200. At no time during his purchase offer to Fannie Mae does Zipperle acknowledge that he is in part or in whole responsible for the substandard condition of #1104.

201. As part of their purchase agreement offer to Fannie Mae on May 24, 2012, both Zipperle and Trautwein-Lamkin sign the Fannie Mae Owner Occupant Certification in which they certify they are going to “occupy, establish and use the above-referenced property as my primary residence within 60 days after the Closing and will continue to occupy the property as my primary residence for at least one year after the date of occupancy.” A true and correct copy of the Owner Occupancy Certification signed by Zipperle and Trautwein-Lamkin is attached hereto and incorporated herein as Exhibit GG.

202. Owner occupants are given preferential treatment in the bidding process for Fannie Mae homes.

203. Both Zipperle and Trautwein-Lamkin have personal residences in The Harbours.

204. Both Zipperle and Trautwein-Lamkin have rental properties in The Harbours.

205. It is unclear how both Zipperle and Trautwein-Lamkin could both occupy #1104 as their primary residences.



206. On or about June 5, 2012, Larry Wallace, Building Inspector, Clark County, placed a Stop Work Order on #1104 noting that “the wall constructed between unit #1103 and unit #1104 did not have a building permit, and no inspections were performed by this office.”

207. In June 2012, during the course of its investigation, the OAG made inquiries of Pearman regarding the bid and Owner Occupant Certification submitted by Zipperle and Trautwein-Lamkin.

208. On or about June 29, 2012, Trautwein-Lamkin suddenly switched real estate agents and submitted a bid for #1104 through Mayfield rather than Pearman and signed the Owner Occupant Certification herself. Zipperle was not included on this bid. A true and Correct copy of Trautwein-Lamkin’s Owner Occupant Certification is attached hereto and incorporated herein as Exhibit HH.

209. On or about July 10, 2012, Trautwein-Lamkin’s bid for #1104 was accepted by Fannie Mae.

210. On or about July 24, 2012, Trautwein-Lamkin purchased #1104 for \$220,000, and title was conveyed to her by Special Warranty Deed.

211. According to the real estate closing file obtained by the OAG in the course of its investigation, Deborah Zipperle provided a check written on an account held by Kevin A. Zipperle and Deborah J. Zipperle in the amount of \$22,000 as earnest money to ReMax First (Mayfield’s brokerage) for the purchase of #1104.

212. According to the real estate closing file obtained by the OAG in the course of its investigation, Zipperle provided a letter dated July 6, 2012, which stated: “Pleased be advised that Mary Lou Trautwein-Lamkin will receive from me cash funds to close on the purchase of

Harbours condominium #1104.” The letter was signed “Kevin A. Zipperle.” A true and correct copy of the July 6, 2012, letter is attached hereto and incorporated herein as Exhibit II.

213. On or about July 24, 2012, Trautwein-Lamkin executed a “Quitclaim Deed with Retained Life Estate” which states as follows:

[F]or love and affection and other valuable considerations, the receipt whereof is acknowledged, does hereby, CONVEY AND QUITCLAIM to **MARY LOU TRAUTWEIN-LAMKIN . . .** for and during her natural life (Life Estate) with the remainder interest to **DEBORAH J. ZIPPERLE . . .** [#1104].

...

It is the intent of the Grantor, Mary Lou Trautwein-Lamkin, to retain a Life Estate in and to the above described real estate with the remainder interest in and to said real estate vesting in Deborah J. Zipperle.

A true and correct copy of the July 24, 2012, Quitclaim Deed with Retained Life Estate is attached hereto and incorporated herein as Exhibit JJ.

214. As of July 25, 2012, the Quitclaim Deed with Retained Life Estate was not recorded with the Clark County Recorder.

215. On or about July 24, 2012, Read Blasi, maintenance man at The Harbours, was seen removing the wall which separated #1103 and #1104.

216. Upon information and belief, the HOA Board did not give permission for #1103 and #1104 to be combined originally.

217. Upon information and belief, the HOA Board did not give permission for a substandard wall to be erected between #1103 and #1104 in or about July 2011 to July 24, 2012.

218. At all times relevant to the un-combining of #1103 and #1104, the short sale negotiations with BOA, and the purchase offers to Fannie Mae, both Zipperle and Trautwein-Lamkin served on the HOA Board.

219. Zipperle and Trautwein-Lamkin have used their positions on the HOA Board to personally benefit to the detriment of the HOA and its members.

**Intimidation, Retaliation, and Unequal Treatment of HOA Members**

220. Based on the allegations of fraud in this complaint, Zipperle has furthered his illegal actions by allegedly engaging in a pattern of fear, retaliation, and intimidation of HOA members.

221. Since 2004 it is averred that Zipperle maintains control of the HOA through the intimidation and retaliation directed at HOA members who question Board activities.

**Security Cameras and Intimidation**

222. In or about June 2011, two security cameras were mounted on the far west wall and far south wall near former Board member, Pike's, condominium.

223. According to the newsletter, these cameras were for "test purposes, and for future use in troubled areas."

224. The views of these two security cameras cross directly in front of Pike's door.

225. The camera mounted on the west wall looking east looks directly in the threshold of Pike's front door when opened.

226. As of August 28, 2012, the front elevator of Pike's floor and the penthouse lobby/party area are not monitored by video equipment.

**Letter Writing and Complaints**

227. On May 23, 2007, Zipperle wrote a letter to the Boca Raton Resort & Club on The Harbours' stationery ("May 23<sup>rd</sup> Letter") concerning Harbours' resident, Sheila Rudder ("Rudder"). A true and correct copy of the May 23<sup>rd</sup> Letter and attachment are attached hereto and incorporated herein as Exhibit KK.

228. In the May 23<sup>rd</sup> Letter, the subject line is “RE: Misuse of BRRC documents.”

229. In the May 23<sup>rd</sup> Letter, Zipperle writes:

I am the HOA president of a condominium property near Louisville, KY. We have a resident [Rudder] here with whom I’ve had some problems, one of which is spreading information that is harmful to the reputation of our property. In doing so, she has used third-party stationery and documents in an attempt to add credibility to her viewpoints. Copies of some recent documents originated by her and bearing your property’s identification are attached for your review.

This isn’t the first time she has been cited for this, although these are the first items we have recovered bearing the BRRC logo/name. In most instances, she has made reference to our condominium property, our management, and other real estate developments in an effort to cast us in a negative light. Of course, in doing so, she potentially soils the reputation of another party with whom she implies some sort of relationship. In a reversal of situations, I would definitely NOT want my property in any way associated with someone acting in this manner at another real estate development.

230. The attachment to the May 23<sup>rd</sup> Letter (the “documents” Zipperle refers to in his May 23<sup>rd</sup> Letter) appear to be nothing more than notes written on a common notepad available at most hotels. *See Exhibit KK.*

231. On June 18, 2007, Zipperle filed a complaint with the Office of the Indiana Attorney General against Rudder as follows:

Rudder is a licensed Indiana realtor. She has a long history of filing complaints against the Harbours Condominiums about the condition of the property and how it is managed. (A record of her communications with The Harbours is on file in the Association office.)

She is now bringing potential buyers/clients to the property without making full disclosure of the above. This is a direct violation of the Realtor Code of Ethics, and possibly state law.

Rudder needs to immediately and permanently stop her realtor-related activities at The Harbours.

232. On July 31, 2010, after several HOA members filed complaints with the OAG, Zipperle filed complaints against Becky Ledogar (“Ledogar”) and Pike who both had homes for sale in The Harbours. True and correct copies of the complaints by Zipperle against Ledogar and Pike are attached hereto and incorporated herein as Exhibit LL.

233. Zipperle alleged in his complaints that Ledogar and Pike had not answered truthfully on their sales disclosure forms.

234. Zipperle alleged that because both Ledogar and Pike had filed complaints with the OAG they should have answered “yes” to the questions 1) Have you received any notices by any governmental or quasi-governmental agencies affecting this property? and 2) Is there any threatened or existing litigation regarding this property?

235. The OAG promptly closed these complaints as having no merit and as an attempt to misuse the OAG.

236. On July 7, 2010, Zipperle sent an email to Betty Cantrell with the subject line “Re: Bets the Activist” as follows:

You losers have been “seeking remedy elsewhere” for awhile now. And what’s it gotten you? Zilch, nada, nothing, not a damn thing. You waste time plotting and congratulating each other on what you’re doing, and it’s all groupthink.

I know, you’re just around the corner, a new day is dawning, and Zipperle is getting his comeuppance. Slogans. Rhetoric. Feel good nonsense. And as always, you’re stupid to realize that’s all it is.

**Labeling HOA Members “Hard Core Malcontents”**

237. Zipperle has instructed office staff to neglect and/or ignore requests made from HOA members he considers “malcontents.”

Date: Wed, 07 Jul 2010 22:19:11 -0400 [07/07/10 22:19:11 EDT]

From: kzipperle@win.net

To: Betty Cantrell <bettycan@insightbb.com>

Bcc: debzip@yahoo.com

Subject: Re: Bets the Activist.

You losers have been "seeking remedy elsewhere" for awhile now. And what's it gotten you? Zilch, nada, nothing, not a damn thing. You waste time plotting and congratulating each other on what you're doing, and it's all groupthink.

I know, you're just around the corner, a new day is dawning, and Zipperle is getting his comeuppance. Slogans. Rhetoric. Feel good nonsense. And as always, you're stupid to realize that's all it is.

Good for you, Bets. Keep spinning your wheels...

Quoting Betty Cantrell <bettycan@insightbb.com>:

Kev,

Remember, I'm just an activist....an activist vigorously campaigns for change and/or to get someone's attention. If the change cannot come from within, then the activists must kick it up a notch and seek remedy elsewhere. Perhaps someone else will be educating you since it has proven to be impossible to get you literate in Association affairs.  
On Jul 7, 2010, at 10:52 AM, kzipperle@win.net wrote:

The last thing you'll ever do is educate me...

Quoting Betty Cantrell <bettycan@insightbb.com>:

Kev,

You have recently elevated my status from nutjob to Activist.

Thank you very much for that honor.

I will now send you Inspiring quotes by other women Activist.

Bets

In politics if you want anything said, ask a man. If you want anything done, ask a woman.  
Margaret Thatcher, British politician

Solemn or sassy, women have always had something important to say.

I am prepared to sacrifice every so-called privilege I possess in order to have a few rights.

Inez Milholland, Suffragist 1909

I do not know the word 'quit.' Either I never did, or I have abolished it.  
Susan Butcher, Iditarod winner, 1988

238. Trautwein-Lamkin and Chandler have acquiesced to Zipperle's wishes with regard to the treatment of HOA members Zipperle considers "malcontents."

239. In October 2011, in Zipperle's campaign letter for the HOA Board, Zipperle states:

A number of challenges lie ahead of us in 2012. The activities of a handful of hard-core malcontents in our community continue to occupy our time and cost us valuable resources. As much as we have tried to meet their attacks without bothering rank-and-file homeowners, that is no longer possible. We are seeing our community in newspaper headlines and on television. We are being smeared by hearsay and frivolous accusations. We are being investigated by outside legal and regulatory agencies based on trumped up, inflammatory charges of misconduct that would make *The Sopranos* proud.

The people behind these efforts live among us, maybe even next door to you. And they need to hear from you. They're costing you money and/or depriving you of the lifestyle for which you bought into The Harbours. A few of them are nothing more than troublemakers; the rest are supporters of troublemakers. I won't name them here, but if you want to know how to contact any of them, I'll help you with that.

A true and correct copy of Zipperle's campaign letter is attached hereto and incorporated herein as Exhibit MM.

240. On or about August 1, 2012, a message forum was started on [www.theharbours.com](http://www.theharbours.com). The message forum was created to allow residents of The Harbours to communicate with each other.

241. Initially Zipperle used as an avatar on the message forum the caricature of a man making a profane gesture involving the middle finger.

242. After complaints on the message forum regarding Zipperle's avatar, Zipperle appears to have altered the image to reflect a peace sign.

243. Ultimately, Zipperle replaced the avatar with another which reads “Previous avatar removed voluntarily at the request of the few it was intended for . . . .”

244. With no explanation, Zipperle began posting links to photos of combined #1103 and #1104 under each of his posts on the message forum which clearly show the wall has been removed between the units.

245. Zipperle has breached his fiduciary duty to the HOA and its members by acting in bad faith.

**AS TO DEFENDANT ZIPPERLE**

**COUNT I: FRAUD**

246. Plaintiff alleges and incorporates by reference the allegations contained in paragraphs 1 through 245 above.

247. By using his position on the Board to divert from the HOA the opportunity to purchase #312 and the additional parking spaces included by the Developer for his own benefit, Zipperle breached the fiduciary duty he owed to the HOA and its members.

248. By using his position on the Board to preclude or limit the flow of information and misleading homeowners as to the true nature of the transaction described in Bulletin #1, Zipperle breached the fiduciary duty he owed to the HOA and its members.

249. By using his position on the Board to preclude or limit the flow of information and misleading homeowners as to the true nature of the transaction described in Bulletin #2, Zipperle breached the fiduciary duty he owed to the HOA and its members.

250. By using his position on the Board to control the prices of parking spaces at The Harbours for his own benefit, Zipperle breached the fiduciary duty he owed to the HOA and its members.



251. By causing to be constructed a substandard wall between #1103 and 1104 in violation of the Declarations for his own benefit, Zipperle breached the fiduciary duty he owed to the HOA and its members.

252. By permitting a substandard wall to be erected in violation of the Declarations, Zipperle breached the fiduciary duty he owed to the HOA and its members.

253. By not properly accounting for Richards' vacation time and work hours, Zipperle breached the fiduciary duty he owed to the HOA and its members.

254. By instructing The Harbours' employees to not provide services to those HOA members he considers "malcontents," Zipperle breached the fiduciary duty he owed to the HOA and its members.

255. By breaching his fiduciary duties to the HOA, Zipperle engaged in fraud against the HOA and its members.

## **COUNT II: VIOLATIONS OF THE HOME LOAN PRACTICES ACT**

256. Plaintiff alleges and incorporates by reference the allegations contained in Paragraphs 1 through 245 above.

257. By erecting a substandard wall to divide #1103 and #1104, Zipperle committed a "deceptive act" in violation of Ind. Code § 24-9-3-7.

258. By offering to purchase #1104 from Fannie Mae without disclosing that he caused in part the waste and damage to #1104, Zipperle committed a deceptive act in violation of Ind. Code § 24-9-2-7.

259. By signing the Fannie Mae Owner Occupant Certification jointly with Trautwein-Lamkin when he did not intend to occupy #1104 and cohabit with Trautwein-Lamkin, Zipperle committed a "deceptive act" in violation of Ind. Code § 24-9-3-7.

**AS TO DEFENDANT TRAUTWEIN-LAMKIN**

**COUNT III: FRAUD**

260. Plaintiff alleges and incorporates by reference the allegations contained in paragraphs 1 through 245 above.

261. By permitting a substandard wall to be erected in violation of the Declarations for her own benefit in the negotiations of #1104, Trautwein-Lamkin breached the fiduciary duty she owed to the HOA and its members.

262. By not properly accounting for Richards' vacation time and work hours, Trautwein-Lamkin breached the fiduciary duty she owed to the HOA and its members.

263. By breaching her fiduciary duties to the HOA, Trautwein-Lamkin engaged in fraud against the HOA and its members.

**COUNT IV: VIOLATIONS OF THE HOME LOAN PRACTICES ACT**

264. Plaintiff alleges and incorporates by reference the allegations contained in paragraphs 1 through 245 above.

265. By signing the Fannie Mac Owner Occupant Certification jointly with Zipperle when she did not intend to occupy #1104 and cohabitate with Zipperle, Trautwein-Lamkin committed a "deceptive act" in violation of Ind. Code § 24-9-3-7.

**AS TO DEFENDANT CHANDLER**

**COUNT V: FRAUD**

266. Plaintiff alleges and incorporates by reference the allegations contained in paragraphs 1 through 245 above.

267. By permitting a substandard wall to be erected in violation of the Declarations, Chandler breached the fiduciary duty she owed to the HOA and its members.

268. By not properly accounting for Richards' vacation time and work hours, Chandler breached the fiduciary duty she owed to the IIOA and its members.

269. By breaching her fiduciary duties to the HOA, Chandler committed fraud against the HOA and its members.

**AS TO DEFENDANT PRELL**

**COUNT VI: VIOLATIONS OF THE HOME LOAN PRACTICES ACT**

270. Plaintiff alleges and incorporates by reference the allegations contained in Paragraphs 1 through 245 above.

271. By offering to sell combined #1103 and #1104, Prell violated Ind. Code § 24-9-3-7 by representing that combined #1103 and #1104 had improvements, appurtenances, uses, characteristics, or associated benefits, such as being legally combined and/or approved by the HOA, that Prell knew or reasonably should have known it did not have.

272. By causing to be constructed a substandard wall to divide #1103 and #1104, Prell committed a "deceptive act" in violation of Ind. Code § 24-9-2-7.

**RELIEF**

**AS TO DEFENDANT ZIPPERLE**

WHEREFORE, the Plaintiff, State of Indiana, requests this Court enter judgment against Defendant Zipperle for Count I, permanently enjoining him from the following:

- a. Serving in any capacity as a Board member of The Harbours HOA;
- b. Serving in any capacity on any committee of The Harbours HOA; and,
- c. Holding and/or voting "proxy votes" for any other The Harbours HOA member.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant Zipperle for violations of Count I for the following relief:

- a. Removal of Zipperle from the Board;
- b. Costs pursuant to Ind. Code § 32-25.5-3-8, awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action; and,
- c. Restitution to the HOA to be determined at trial.

AND WHEREFORE, the Plaintiff, State of Indiana, requests this Court enter judgment against Defendant Zipperle for violations of Count II, permanently enjoining him from the following:

- a. Committing any deceptive act or material misrepresentation with regard to a real estate transaction or mortgage transaction in violation of Ind. Code § 24-9-3-7.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant Zipperle for the following relief:

- a. Costs pursuant to Ind. Code § 24-9-8-3, awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- b. Restitution to be determined at trial; and,
- c. On Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-9-8-3 for Defendants violations of The Home Loan Practices Action, in the amount of Ten Thousand Dollars (\$10,000.00) per violation, payable to the State of Indiana.
- d. All other just and proper relief.

**AS TO DEFENDANT TRAUTWEIN-LAMKIN**

WHEREFORE, the Plaintiff, State of Indiana, requests this Court enter judgment against Defendant Trautwein-Lamkin for Count III permanently enjoining her from the following:

- a. Serving in any capacity as a Board member of The Harbours HOA;
- b. Serving in any capacity on any committee of The Harbours HOA; and,
- c. Holding and/or voting "proxy votes" for any other The Harbours HOA member.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant Trautwein-Lamkin for violation of Count III for the following relief:

- a. Removal of Trautwein-Lamkin from the Board.
- b. Costs pursuant to Ind. Code § 32-25.5-3-8, awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action; and,
- c. Restitution to the HOA to be determined at trial.

AND WHEREFORE, the Plaintiff, State of Indiana, requests this Court enter judgment against Defendant Trautwein-Lamkin for violations of Count IV, permanently enjoining her from the following:

- a. Committing any deceptive act or material misrepresentation with regard to a real estate transaction or mortgage transaction in violation of Ind. Code § 24-9-3-7; and,

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant Trautwein-Lamkin for the following relief:

- a. Costs pursuant to Ind. Code § 24-9-8-3, awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- b. Restitution to be determined at trial; and,
- c. On Count IV of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-9-8-3 for Defendants violations of The Home Loan Practices Action, in the amount of Ten Thousand Dollars (\$10,000.00) per violation, payable to the State of Indiana.
- d. All other just and proper relief.

**AS TO DEFENDANT CHANDLER**

WHEREFORE, the Plaintiff, State of Indiana, requests this Court enter judgment against Defendant Chandler on Count V permanently enjoining her from the following:

- a. Serving in any capacity as a Board member of The Harbours HOA;
- b. Serving in any capacity on any committee of The Harbours HOA; and,
- c. Holding and/or voting "proxy votes" for any other The Harbours HOA member.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant Chandler for violation of Count V for the following relief:

- a. Removal of Chandler from the Board.
- b. Costs pursuant to Ind. Code § 32-25.5-3-8, awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action; and,
- c. Restitution to the HOA to be determined at trial.

**AS TO DEFENDANT PRELL**

AND WHEREFORE, the Plaintiff, State of Indiana, requests this Court enter judgment against Defendant Prell, for violations of Count VI, permanently enjoining him from the following:

- a. Committing any deceptive act or material misrepresentation with regard to a real estate transaction or mortgage transaction in violation of Ind. Code § 24-9-3-7; and,
- b. Representing that real property that is the subject of a real estate transaction has characteristics, uses, or benefits that Defendants know or reasonably should know it does not have.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant Prell for the following relief:

- a. Costs pursuant to Ind. Code § 24-9-8-3, awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- b. Restitution to be determined at trial; and,
- c. On Count VI of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-9-8-3 for Defendants violations of The Home Loan Practices Action, in the amount of Ten Thousand Dollars (\$10,000.00) per violation, payable to the State of Indiana.
- d. All other just and proper relief.

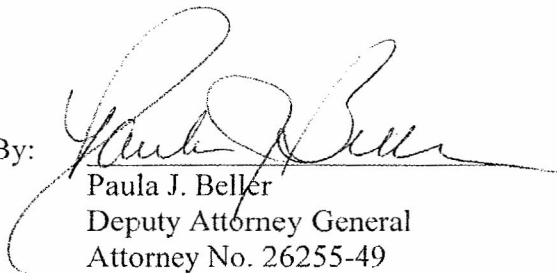
**ADDITIONAL RELIEF PURSUANT TO IND. CODE § 32-25.5-3-8**

AND WHEREFORE, the Plaintiff, State of Indiana, requests this Court order that no HOA funds be used in defense of Defendants Zipperle, Trautwein-Lamkin, and Chandler's breach of their fiduciary duties to the HOA.

AND WHEREFORE, the Plaintiff, State of Indiana, requests this Court order that copies of all bookkeeping records dating back to January 1, 2009, be turned over to the Office of the Indiana Attorney General for a forensic audit.

Respectfully submitted,

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INDIANA ATTORNEY GENERAL  
Attorney No. 1958-98

By:   
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