

JONES DAY

600 BRICKELL AVENUE • BRICKELL WORLD PLAZA • SUITE 3300 • MIAMI, FLORIDA 33131

TELEPHONE: +1.305.714.9700 • JONESDAY.COM

DIRECT NUMBER: (305) 714-9717

December 14, 2023

VIA E-MAIL

Louis Caplan, Esq.
Sachs Sax Caplan, P.L.
6111 Broken Sound Pkwy. NW
Suite 200
Boca Raton, FL 33487
Email: [REDACTED]

Re: Fair Housing Act Violations Against Orthodox Jews

Mr. Caplan:

Jones Day, together with its co-counsel from the law firms of First Liberty Institute and Lawson, Huck, Gonzalez, represent Rabbi Naftaly Hertzal and his wife Henya Hertzal (together, the “Hertzels”) in response to a long series of antisemitic actions taken by Loggers’ Run Inc. (“Loggers’ Run” or the “HOA”) against them and their family. Please direct all future communications regarding this matter to my attention.

The Hertzels have a right to enjoy their home free from religious discrimination under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* Unfortunately, Loggers’ Run has flagrantly discriminated against the Hertzels because of their orthodox Jewish faith, in retaliation for efforts to build a centrally located synagogue within the HOA. Loggers’ Run has repeatedly treated the Hertzels worse than their neighbors, selectively enforced its rules against the Hertzels, fostered a hostile housing environment, and interfered with the Hertzels’ statutory rights in violation of the FHA. The Hertzels have faced reprehensible antisemitism and vandalism, with HOA staff and residents expressly invoking Nazi Germany. The HOA’s leadership has openly admitted that the HOA has gone after the Hertzels because they are religious Jews. This antisemitic behavior has escalated in severity since 2016 and has recently reached new levels in recent years.

We demand that the Loggers’ Run HOA and its individual leaders cease and desist from discriminating against the Hertzels and their family. To protect the Hertzels from this unlawful harassment and discrimination, we are reaching out in hopes of finding an amicable course correction in lieu of seeking court intervention. If, however, the Loggers’ Run HOA is unwilling to change course, we will not hesitate for a moment to file suit on their behalf.

Factual Background

The Hertzels have been residents of the Loggers’ Run HOA for fourteen years, currently residing with their five children at 21812 Reflection Lane, Boca Raton, Florida, 33428 (the “Home”). They are also owners of an adjacent property located at 21813 Reflection Lane, Boca Raton, Florida, 33428 (the “Chabad House”). Rabbi Hertzal serves as the local rabbi at the Chabad Israeli Center

(the “Chabad”), which meets at 11443 West Palmetto Park Road, Boca Raton, Florida 33428 in a commercial shopping center within the HOA territory. The Hertzels provide the only religious services for orthodox Jews in a six-mile radius in West Boca Raton, Florida. For the orthodox community, walkable proximity to a synagogue is essential, as their sincerely held religious beliefs prevent them from driving to religious services on the Sabbath and Jewish holidays. Rabbi Hertzels is proud to live in the neighborhood and serve this large Jewish congregation in Loggers’ Run.

For the first four years, the Hertzels lived in Loggers’ Run without any issues with the HOA. That changed in 2015 when the Hertzels approached the HOA Board about acquiring land within the HOA to build a larger synagogue to serve the local Jewish community. Although the congregation has been able to meet in the Chabad for services and at the Home for other events, the size of these existing venues often limits the congregation. Thus, the Hertzels hoped to acquire land to build a permanent meeting location that could more easily accommodate the number of congregants that they serve in a central location. Orthodox Jews are prohibited by their faith from operating a motor vehicle on the Sabbath and Jewish holidays and, thus, must walk to their house of worship. Thus, for Jewish residents of Loggers’ Run, their choices are narrow. Either meet at the space-limited Chabad, build a larger place of worship within walking distance of their home on land owned by the HOA, or leave the area entirely. Because numerous Christian churches meet within the HOA’s property—and have even purchased land from, or been gifted land by, the HOA for their permanent buildings—the Hertzels had no reason to expect the negative responses and retaliatory behavior that followed.

Once the HOA Board Learned of the Hertzels’ Desire to Build a Synagogue, the HOA Board Campaigned and Colluded to Keep Them and Other Jews Off the Elected Board.

Unfortunately, the Hertzels’ once-cordial relationship with the HOA soured following their initial discussions about building a synagogue and has since devolved into ongoing, open antisemitism and discrimination. The Hertzels have faced numerous types of antisemitism from the HOA’s leadership and employees. The first instances of this discrimination involved the HOA Board’s meetings and elections.

The Chabad started working in earnest toward the possibility of establishing a synagogue location in 2015 and 2016. The Hertzels met with current and former board members about what steps would be necessary to acquire land for the synagogue. In particular, the Hertzels met with Mr. Rodni Smith, who was Loggers’ Run HOA President from 2011 to 2012. Mr. Smith expressed receptiveness to their proposal to acquire land for a synagogue and gave guidance on how to prepare a formal proposal. The Hertzels also spoke about establishing a synagogue with Robert Storch, Norman Defusco, Richard Green, and Robert Lawrence, then members or former presidents of the HOA Board. Although some HOA board members were supportive of a synagogue, the Chabad members began to see that other board members did not like the idea.

To increase their likelihood of establishing a synagogue, several Chabad members decided to run for the HOA Board in the February 2017 board election. At the board meeting for the February 2017 election, the Chabad candidates had enough support to win election onto the HOA Board. The candidates arrived with more than 150 proxy supporting votes in hand. When the current board saw that was the likely outcome, voting members left the meeting one by one until there was not a quorum of members who were present or represented by proxy. Some members who had not yet

arrived to the meeting declined to attend. Many of the members who left represent all the proxy votes in their gated communities, so their decision to leave was pivotal in denying a quorum. The Hertzels were in attendance and described that you stood up and announced that there was no quorum, and that the election would be held over until next year.

During the same time period, the Hertzels began the painstaking process of preparing a viable proposal, which included the synagogue as well as additional buildings that the Chabad would not use but was willing to build to benefit the HOA community. The synagogue would be located near several churches where sizable religious congregations already regularly meet and within easy walking distance to the Chabad's members. Based on the seemingly positive conversations up to that point with Mr. Smith, a former board member, and some other current board members, the Hertzels believed that HOA board members would formally begin discussions during one of their upcoming meetings.

The Hertzels sent their proposal to the HOA Board at the end of 2017. But the Board never allowed a formal approval process to commence. In order for the proposal to receive a vote, HOA rules required a board member to raise the proposal and seek a second to place it on the meeting agenda for a vote, but no board member would do so. Henya spoke during the board meeting to ask members to raise the topic formally, but the board members would not. One of the Hertzels' friends, who is an attorney, asked to sit down for a meeting with you and members of the HOA Board. During that meeting, you explained that your client "didn't want Jews" in Loggers' Run.

The Chabad members then focused their efforts on running for the HOA Board as a means of acquiring land within the HOA for a synagogue. Elections resumed as normal the following year, and the Chabad candidates unsuccessfully tried to run again in 2018, 2019, and 2022. The candidates never saw the same support again because the existing HOA Board members succeeded in convincing other residents to withdraw their support for the Chabad candidates. For instance,

- During the 2018 election, in his position as HOA president, Ron Harp used the HOA email list to encourage HOA residents not to vote for the Jewish candidates. (The Loggers' Run management team denied requests by Chabad candidates to access that email list to promote their candidacy.)
- In 2019, before the list of candidates was publicly announced, an anonymous letter was delivered to the HOA community urging voters to oppose the Chabad candidates by name. The letter to Loggers' Run residents asked: "***IS IT A COINCIDENCE THAT SINCE OUR BOARD OF GOVERNORS DECLINED ICC SYNAGOGUE'S PROPOSAL THAT THEY ARE NOW ATTEMPTING TO GAIN 5 SEATS ON OUR BOARD?***" The letter urged that residents "**NEED TO VOTE and RE-ELECT OUR CURRENT BOARD MEMBERS.**" See Exhibit A (emphasis in original).
- And, during this past election, Mr. Harp went door-to-door to neighbors urging them to vote against the Chabad candidates in the preliminary gated community election. He campaigned saying that the "Jews are trying to take over" and to not vote for them. Another anonymous letter went out to Loggers' Run residents before the election saying that "IF YOU CAN '**READ BETWEEN THE LINES**' YOU CAN SEE HOW CRITICAL YOUR

VOTE IS TO RETAIN OUR CURRENT BOARD AND PREVENT A HOA BOARD ‘TAKEOVER.’” *See Exhibit B (emphasis in original).*

Ever Since the Hertzels First Sought to Build a Synagogue, the HOA Has Selectively Enforced Its Rules Against these Orthodox Jews, While Ignoring Violations from Neighbors.

At the same time, the Loggers’ Run HOA also began to persecute the Hertzels and other Orthodox Jews by taking formal actions to harass them in an effort to prevent the Hertzels from celebrating religious services and Jewish cultural events at the Home and at the Chabad House. For the first time since they moved into Loggers’ Run, the HOA began sending notices of enforcement actions to the Hertzels. Until they asked about land for a synagogue, the Hertzels never received notice of any violations. After they did, the HOA has sent a long series of notices at their Home and to the Chabad house.

The HOA cited the Hertzels about the types of materials used on a driveway, even though the houses around them in the neighborhood use a wide variety of building materials and colors in their driveways without penalty by the HOA. The HOA sent a notice about an unauthorized structure in their lawn when the Hertzels put up a Sukkot for a religious event, but the HOA did not cite the Hertzels’ immediate neighbors for having an unauthorized chicken coop in their yard. The HOA sent notices about painting the mailbox, having the trash can out a day too long, cleaning the driveway, mowing the lawn, moving trash that someone else left in front of their Home, and fixing their gate, to name only a few. During one year alone, the Hertzels received over 15 citations. Henya estimates that the HOA has sent at least 40 such citations since 2016.

The HOA maintains a list of violation letters. The Hertzels have asked to see these records, and to their knowledge, until the Hertzels threatened legal action over the paver dispute, no other HOA residents received any comparable citations or threats of lawsuits. When Henya complained about the pavers dispute and explained that it seemed like no neighbors had received any enforcement actions, the HOA manager, Harry Dietz, told her that the HOA *only* looks at the Hertzels.

The Hertzels also faced lengthy delays in receiving approval for construction projects at the Chabad House, a house they purchased across the street from their residence at the Home. The Hertzels intended to use the Chabad House as a home for an assistant rabbi or congregants and for religious gatherings. HOA residents are allowed to have worship meetings in private homes, and several current residents host such meetings in their homes on a weekly basis.

In fact, the Hertzels’ neighbors (the house with the chicken coop) hosts multiple weekly meetings for a Baptist church in his front room, including Bible studies on Thursdays and Fridays (which the Hertzels support and encourage). The Hertzels requested permission for various home improvement projects to improve the Chabad House, but the HOA initially delayed consideration of the requests and then denied all of the proposed projects. On each front, the HOA has treated the Hertzels differently and worse than their neighbors because they are Orthodox Jews.

The HOA’s Leadership Has Engaged in Open Antisemitism Against Rabbi Hertzel and Is Aware of Similar Ongoing Hostile Behavior Within the HOA Community, Without Any Effort to Stop Such Abuse Against Orthodox Jews Residing in the Neighborhood.

Pernicious antisemitism is at work within the HOA, extending far beyond the adverse actions taken by the HOA against the Hertzels because of their Jewish faith. During a meeting in front of the HOA attorney, members of the HOA Board told the Hertzels directly and expressly that they did not want Jews in Loggers' Run. The HOA manager Mr. Dietz told the Hertzels that they should have ended them [the Jews] during the Nazi time period. When Henya spoke to Ron Harp about these issues and the possibility of a synagogue, he said the Hertzels would "never" have a synagogue in Loggers' Run "over his dead body." And when she asked him about his public support for the nation of Israel during the ongoing war against Hamas, he said that he supports Israel but does not support having religious Jews here in Loggers' Run. During this past year, when the Hertzels tried to place an article in the HOA newsletter re-introducing themselves to their neighbors—an amenity that is typically free to HOA-dues-paying residents—the management team rejected the article. When Henya spoke to the HOA Board about it, one board member Norman Defusco said that the "Jews were trying to get a freebie."

Similarly, it appears that the HOA is aware of and has failed to intervene against the most egregious and despicable forms of antisemitism in the Loggers' Run community. Over the past few years, and again in the past months since the October 7th attack in Israel, Loggers' Run residents have yelled "heil Hitler" at the Hertzels in the neighborhood near their Home and at the Chabad. The Chabad has been vandalized multiple times. A Hannukah menorah and a mezuzah at the Chabad have been broken. Vandals have broken windows at the Chabad and spraypainted the building. HOA residents have yelled at the orthodox congregation that "the Jews think they can do whatever they want" during a religious gathering at the Chabad.

Since they started seeking to build a synagogue in 2016, every time the Hertzels host large gatherings with other congregants at their Home, to celebrate the Passover and Purim and other religious holidays, neighbors call the police or code enforcement. The sheriff's office has been called to their Home countless times to investigate harassing complaints by neighbors. During a recent visit to the Hertzels' Home by guests from the Israeli consulate, a neighbor flew a drone over the building. At the time, the Hertzels could not tell if the drone was surveilling them with a camera, or if it presented an even graver threat, such as an explosive. Security had to evacuate everyone and investigate.

As a result of the distressing conduct and antisemitic harassment, the Hertzels are afraid for their safety in their own Home and have been ostracized from their community. The Hertzels requested and were granted a security grant from the Department of Homeland Security to protect the Home by installing a security system, cameras, impacted windows, and a gate around the property. The security grant also included funds for the Hertzels to hire a security guard for the Chabad events that they host at the Home. Despite the added security, the Hertzels' school-aged children are afraid to play outside and fear when cars drive past their Home. Their youngest daughter has been confronted by other children in the neighborhood, and she now suffers from anxiety and is afraid to sleep alone.

The Hertzels' fear is only exacerbated in the current political climate, as antisemitic incidents have increased by 316 percent nationwide from last year.¹ Since the October 7th massacre of over 1,200 people in Israel by Hamas, antisemitic actors and Hamas supporters have targeted Jewish and Israeli individuals at significantly increased rates across the globe.² As the ongoing saga with the Loggers' Run HOA illustrates, the Hertzels are no newcomers to antisemitic discrimination and hate. But they fear that the situation in Loggers' Run will continue to deteriorate in the current climate without court intervention or a change of heart by the HOA.

Legal Analysis

The Loggers' Run HOA is engaged in an ongoing pattern of discrimination, harassment, and hostility against Rabbi Hertzel and his family because of their Jewish faith, in blatant violation of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3604, 3617, and the Florida Fair Housing Act ("FFHA"), Fla. Stat. § 760.20 *et seq.* Each of these violations requires your immediate attention.

I. The FHA Prohibits the Loggers' Run HOA from Discriminating Against the Hertzels Because of Their Jewish Faith.

The HOA discriminates against the Hertzels—residents of your community—by treating them worse than comparably situated neighbors because they are religious orthodox Jews. This treatment flouts federal and Florida statutory prohibitions against such discrimination in housing under the FHA, 42 U.S.C. § 3604(b), and the FFHA, Fla. Stat. § 760.23.³

42 U.S.C. § 3604(b) prohibits discrimination “against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.” The FHA’s language is “broad and inclusive,” and it “prohibits a wide range of conduct,” “has a broad remedial purpose,” and “is written in decidedly far-reaching terms.” *Ga. St. Conf. of the NAACP v. City of LaGrange*, 940 F.3d 627, 631–32 (11th Cir. 2019) (internal citations omitted). Section 3604(b) reaches post-acquisition conduct that relates “to the provision of services, as long as those services are connected to the sale or rental of a dwelling.” *Id.* at 632. “Discrimination” refers to “differential” or “less favorable” treatment of similarly situated individuals, *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005), “by reason of” or “on account” of the plaintiff’s religion or other protected class, *see Gross v. FBL Fin. Servs.*, 557 U.S. 167, 176 (2009). *See also Fox v. Gaines*, 4 F.4th 1293, 1296 (11th Cir. 2021) (explaining the FHA adopts the analytical framework regarding discrimination claims from the Title VII context).

¹ Press Release, *One Month Following Hamas Massacre, ADL Documents Dramatic Surge in Antisemitic Incidents in the U.S.*, ADL (Nov. 13, 2023), <https://www.adl.org/resources/press-release/one-month-following-hamas-massacre-adl-documents-dramatic-surge-antisemitic>.

² *Global Antisemitic Incidents In the Wake of Hamas' War on Israel*, ADL (Nov. 13, 2023), <https://www.adl.org/resources/blog/global-antisemitic-incidents-wake-hamas-war-israel>.

³ *See Bhogaita v. Altamonte Heights Condominium Ass'n, Inc.*, 765 F.3d 1277 (11th Cir. 2014) (explaining that the FHA and FFHA “are substantively identical, and therefore the same legal analysis applies to each”).

The HOA's treatment of Rabbi Hertzels is a textbook case of discrimination under the FHA. The Hertzels are Orthodox Jews, a group protected because of their religion and race, who live in the HOA. Ever since they tried to build a synagogue where they could worship in a central location that other congregants can travel to by foot during the Sabbath, the HOA has treated them differently and worse than their neighbors.

While they used to have a pleasant relationship with the HOA, since this pivot point, the HOA has targeted them in, among others, the following ways:⁴ *First*, the HOA sent the Hertzels citation letters noticing mundane and otherwise overlooked violations of HOA rules on a regular basis, even though other residences in the Hertzels' neighborhood have visible ongoing violations for which they receive no citations. Some of those homes host Christian prayer meetings and religious gatherings, just as the Hertzels do, and are never cited. *Second*, in his role as the HOA President, Ron Harp campaigned against electing Jews to the HOA Board, but does not appear to have taken similar actions against other candidates. And *third*, the HOA has taken these steps to prevent construction of a synagogue within the HOA territory while allowing and encouraging several Christian churches to build permanent houses of worship within the HOA, including a church that Mr. Harp attends. To our understanding, the HOA has relabeled the land that the Hertzels were interested in as a "park" and is considering rezoning to place a commercial development on the land instead.

This disparate treatment against the Hertzels and their family because of religion is unlawful and enjoys no support from any legitimate, non-discriminatory justification. The HOA allows other religious groups to have both permanent and informal meeting places within the HOA's territory. A meeting place for orthodox Jews presents no unique issue compared to other houses of worship.

The HOA has not even attempted to offer some pretextual explanation for why it treats a disfavored religious group worse than its peers. The HOA Board told the Hertzels that it tabled the synagogue proposal because the board "didn't want Jews" in Loggers' Run. Mr. Dietz, the HOA manager, told the Hertzels that they "should have ended them [the Jews]" back in Nazi times. To our understanding, Mr. Harp said he "doesn't want Jews here" in Loggers' Run and specified that he especially meant "religious Jews." When orthodox Jews ran for the HOA Board, Mr. Harp said that the "Jews are trying to take over" and campaigned door-to-door so residents would vote

⁴ This pattern of discriminatory behavior started in 2016 and has continued to the present. While the FHA is subject to a two-year statute of limitations under 42 U.S.C. § 3613, the Supreme Court has long clarified that the continuing violation doctrine applies to FHA claims. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982). The Court has admonished against "wooden application" of the statute of limitations in cases like this, where imposing rigid time limits "only undermines the broad remedial intent of Congress embodied in the [Fair Housing] Act." *Id.* Thus, "where a plaintiff, pursuant to the [FHA], challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within [the limitations period, starting at] the last asserted occurrence of that practice." *City of Miami v. Bank of Am. Corp.*, 800 F.3d 1262, 1285 (11th Cir. 2015), *vacated and remanded on other grounds*, 581 U.S. 189 (2017). While the Hertzels have ample evidence to point to since 2021, we believe that a court may and should consider the complete history of relevant conduct because of the HOA's continuing discrimination against the Hertzels.

against their candidacy. And when the Hertzels complained about selective enforcement, Mr. Dietz said that the HOA only looked at the Hertzels.

This treatment not only violates basic decency, but clearly violates the HOA's obligations under federal law. These facts lay out a prima facie case of discrimination against the Hertzels under the FHA Section 3604(b) and establish a strong disparate treatment claim.

II. The Loggers' Run HOA Has Created and Ignored a Hostile Housing Environment, Violating the FHA.

The Loggers' Run HOA also runs afoul of the FHA by ignoring, and in some instances, fostering a hostile housing environment of ongoing harassment against the Hertzels because of their orthodox Jewish faith. *See Fox*, 4 F.4th at 1295. Again, adopting the Title VII framework, a hostile housing environment is one in which "a series of separate acts . . . collectively constitute one 'unlawful [housing] practice.'" *McCann v. Tillman*, 526 F.3d 1370, 1378 (11th Cir. 2008) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002)); 42 U.S.C. § 2000E-5(e)(1). These claims are based "on the cumulative effect of individual acts" like repeated "discriminatory intimidation, ridicule, and insult." *Morgan*, 536 U.S. at 114–16 (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)).

Rabbi Hertzels and his family have been subjected to "unwelcome harassment" because of their religion. *See Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1275 (11th Cir. 2002) (laying out elements). As described, the former HOA manager Harry Dietz and senior leadership, including Mr. Harp, have told the Hertzels that they are not wanted in the HOA community or on the HOA Board. The HOA manager harkened to Nazi Germany and said that Jews should have been ended then. In the past years, neighborhood teenagers have screamed "heil Hitler" in front of the Chabad. Religious symbols at the Chabad have been knocked down, and the Chabad has been vandalized with spray paint and broken windows. The HOA Board does not let Henya Hertzels speak during meetings and treats her passively aggressively, such as using the "silent treatment" during meetings. After one neighbor complained to the HOA Board that it seemed that the Chabad was trying to establish a synagogue at the Chabad House, the HOA Board held a meeting during Simchat Torah (a Jewish religious celebration of completing the annual reading of the Torah) when no Jews from the Chabad could attend because of their religious obligations during the meeting time. Neighbors repeatedly call the police when the Hertzels host large religious gatherings at the Home, such as celebrations of Passover or Purim. The Hertzels have been surveilled by neighbors whenever they hold religious gatherings, including a recent incident when a neighbor flew a drone over a gathering with the Israeli consulate. As a result of the drone appearing overhead, the congregation had to evacuate out of fear of a possible bomb threat. That the drone was merely surveilling the Jewish congregation does not lessen the harassment. Each instance of harassment was directly tied to the Hertzels' Jewish faith.

This harassment has been "sufficiently severe or pervasive to alter the terms and conditions of [housing] and create a discriminatorily abusive [housing] environment." *See id.* Determining whether harassment was sufficiently severe or pervasive involves both objective and subjective inquiries. *Id.* at 1276. The objective element looks at "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or

humiliating, or a mere offensive utterance; and whether it unreasonably interferes with the [resident's housing]." *Morgan*, 536 U.S. at 116.

These conditions are all met. The antisemitic conduct displayed by both the HOA's leadership and neighboring residents are ongoing and constant. These incidents have been ongoing since 2015. As a result of the harassment, the Hertzels feel subjected to hate. The experiences have made both the Hertzel family and the Chabad members to whom they minister feel alien, unwanted, and distanced from the HOA community. The Hertzels' children are afraid to go outside of their Home. The youngest daughter has anxiety, cannot sleep alone, and is especially afraid when Rabbi Hertzel leaves to travel. Rabbi Hertzel has taken proactive steps to improve security measures at the House. Likewise, because of the security concerns, the Hertzels received a Homeland Security grant to install a security system, cameras, impacted windows, and a gate around their Home.

The Loggers' Run HOA "is responsible for such [a hostile housing] environment under either a theory of vicarious or of direct liability." *See Miller*, 277 F.3d at 1275. The HOA's manager and leadership have often personally made the antisemitic statements and actions against the Hertzels while acting on behalf of the HOA. And to our understanding, the HOA is aware of the hostile behavior directed at the Hertzels by other HOA residents but has not taken any steps to prevent such harassment from taking place.

III. The Loggers' Run HOA Has Unlawfully Interfered with the Hertzels' Enjoyment of their Own Home, Violating the FHA.

The HOA's selective enforcement actions and refusal to grant construction permits have prevented the Hertzels from using the Chabad House in the way they intended. The FHA makes it "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by [§§] 3603, 3604, 3605, or 3606." 42 U.S.C. § 3617; *Moore v. Camden Prop. Tr.*, 816 F. App'x 324, 335 (11th Cir. 2020). The Hertzels have a right to use the Chabad House for housing and religious worship, as well as to improve it as they desire for those purposes.

After the HOA Board stymied their first attempt to establish a permanent synagogue, the Hertzels purchased the Chabad House across the street in summer 2021, which they planned to use to house an assistant rabbi and host religious gatherings, including observances for Jewish high holidays. *See* 42 U.S.C. §§ 3603–3606. They believed this use was well within the normal practices within the HOA, as a local Christian church meets regularly in a home directly beside the Hertzels' back yard. Shortly after the Hertzels purchased the Chabad House, they received a letter from Sachs Sax Caplan stating that use of the Chabad House as a synagogue and for religious events was an "anticipatory breach" of various Loggers' Run HOA rules, in large part because the Chabad House events would attract vehicular traffic, lack appropriate parking, and create noise issues, and thus pose a nuisance. The letter deemed these uses "improper" and threatened to pursue legal remedies if the Hertzels used the Chabad House as planned. They have not been able to use the Chabad House since that letter.

In hopes that they could prepare the Chabad House for their planned uses and stay within the HOA rules, the Hertzels sought to improve the house through several construction projects. But the HOA

prevented the Hertzels from moving forward with any projects, thus interfering with their rights, by delaying and denying all requests. It was during the disputes over pavers at the Chabad House that the HOA manager told Henya that they should have ended them [the Jews] during the Nazi time period.

Mr. Dietz made these inflammatory and antisemitic statements in his official capacity as the HOA manager and during these disputes over the Hertzels' construction requests. Likewise, he stated that the HOA was only going after the Hertzels. And in his capacity as HOA President, Mr. Harp indicated that he did not want "religious Jews" in the HOA community. This overt animus in his official capacities differentiates this case from similar cases where personal animus by HOA leadership did not translate into liability by the HOA itself. See *Watters v. Homeowners' Ass'n at Preserve at Bridgewater*, 48 F.4th 779, 788–89 (7th Cir. 2022). The antisemitic animus displayed by HOA leadership interfered with the Hertzels' ability to improve the Chabad House and use it for housing and worship meetings. This interference was "more than a quarrel among neighbors or an isolated act of discrimination, but rather [was] a pattern of harassment, invidiously motivated." *Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009) (en banc) (simplified).

The discriminatory conduct here was "so severe or pervasive" that it had "the effect of causing a protected person to abandon the exercise of his or her housing rights." *Lawrence v. Courtyards at Deerwood Ass'n*, 318 F. Supp. 2d 1133, 144 (S.D. Fla. 2004). Without approval for the construction projects, the Hertzels could not improve the home. The Hertzels eventually gave up on the endeavor and tried to sell the Chabad House, but they were ultimately unable to because of changes in the real estate market. Thus, the HOA and its leadership in their official capacities unlawfully interfered with the Hertzels' rights to use the Chabad House in direct contravention of the FHA.

Conclusion

In the spirit of cooperation, and in hopes that the parties can reach an amicable resolution, we would be pleased to meet with you at the HOA office or another location at your convenience to discuss this matter. We invite you to participate in mediation with the Hertzels before a neutral third-party mediator to resolve this matter without requiring court involvement, pursuant to Florida Statute § 720.311. Otherwise, we stand prepared to take any and all legal action necessary to safeguard the Hertzels' statutory rights. To that end, we respectfully request that you respond to this letter by Friday, January 19, 2024. We further demand that the HOA and all of its officers, employees, and members of its board take all appropriate steps to preserve any and all documents related to the Hertzels as well as any of the matters described in this letter.

Thank you for your attention to this matter. Please direct all communications relating to this matter to us in future. If we may be of service, please do not hesitate to call or email us.

Respectfully,



Eliot Pedrosa (FL Bar No. [REDACTED])
Priscilla Ruiz (FL Bar No. [REDACTED])
JONES DAY

600 Brickell Avenue, Suite 3300
Miami, FL 33131
Tel: (305) 714-9717

[REDACTED]

John Brinkerhoff
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113
Tel: (202) 879-3939

[REDACTED]

Jason Gonzalez (FL Bar No. 146854)
Bob Minchin (FL Bar No. 1033022)
LAWSON HUCK GONZALES
215 South Monroe Street, Suite 320
Tallahassee, FL 32301
Tel: (850) 825-4334

[REDACTED]

Jeremy Dys
FIRST LIBERTY INSTITUTE
2001 West Plano Parkway, Suite 1600
Plano, TX 75075
Tel: (972) 941-4444

[REDACTED]

Camille P. Varone
FIRST LIBERTY INSTITUTE
1331 Pennsylvania Avenue, N.W., Suite 1410
Washington, DC 20004
Tel: (202) 921-4105

CC: Mr. Noah Sacks
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

The Hon. Ashley Moody
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050

EXHIBIT A

ALERT TO LOGGERS' RUN RESIDENTS

If you were not aware, in the October HOA Meeting our Board of Governors (BOG) received a proposal from ICC Synagogue, Inc. located in the Shoppes of Loggers' Run pertaining to Heritage Park, the undeveloped 14 acre property across from Walgreens and Publix.

The proposal was for Loggers' Run to "give" the ICC Synagogue our 14 acre Heritage Park. In exchange, they would construct 3 buildings on the property. A 15,000 sq ft. Clubhouse for Loggers' Run, a 16,500 sq ft. ICC Synagogue and a 40,000 sq ft. ICCS Special Needs Center.

- Heritage Park is currently valued between 7 - 8 million dollars. The cost of the proposed Clubhouse would be about \$2 million. Loggers' Run (we) would lose at least \$5 million.
- Loggers' Run would be responsible for operating and maintaining the proposed Clubhouse. This is a huge expense. Our quarterly HOA dues would increase dramatically.
- In ICCS's words, "within 3 years, the complex is forecasted to serve up to 1,000 people." This additional traffic around Loggers' Run Middle School, Publix and The Shoppes of Loggers' Run would make this area even more congested and dangerous.

THE PROPOSAL WAS UNANIMOUSLY DECLINED BY OUR BOARD OF GOVERNORS.

The Annual Meeting for the Election of Board of Governors is on February 25th. The Board of Governors has a total of 16 members. There are SEVEN positions/seats up for election.

- Menachem Krinsky was the individual that presented the ICCS/Heritage Park proposal to our BOG. He has now submitted the names of FIVE persons that are now running for the 7 available BOG positions. They are: Menachem Krinski, Henya Hertzal, Sharon Malka, Tal Shani & Marc Rosen.

IS IT A COINCIDENCE THAT SINCE OUR BOARD OF GOVERNORS DECLINED ICC SYNAGOGUE'S PROPOSAL THAT THEY ARE NOW ATTEMPTING TO GAIN 5 SEATS ON OUR BOARD???

IF YOU DON'T WANT to see our natural and grassy Heritage Park "given away" for construction and more congestion YOU NEED TO VOTE and RE-ELECT OUR CURRENT BOARD MEMBERS. They are: Dino Dentale, Carol Himes, Maria Matthews, Ellen Winikoff, Richard Zapulla & Jerrold Zipperstein.

ALSO, DO NOT SIGN OVER YOUR PROXY TO ANYONE KNOCKING ON YOUR DOOR THAT YOU DON'T KNOW. EITHER COME TO THE MEETING ON FEB. 25TH OR MAIL IN YOUR PROXY VOTE IN THE ENVELOPE THAT WILL BE INCLUDED WITH THE ELECTION INFORMATION THAT YOU WILL RECEIVE IN NEXT WEEKS MAIL.

Thank you,
Concerned LR resident (I am not a board member)

EXHIBIT B

LOGGERS' RUN BOARD OF GOVERNORS ELECTION

The annual elections for our Loggers' Run Board of Governors (BOG) will be held at the February HOA meeting. In reviewing my voting package for the election, I have serious concerns that I want to share with you, my neighbors. We have 15 candidates running for 7 positions.

7 CURRENT BOARD MEMBERS

DINO DENTALE
CAROL HIMES
DONNA GREENBERG
MARIA MATTHEWS
PHILIP RATNER
ELLEN WINIKOFF
RICHARD ZAPPULLA

8 "NEW" CANDIDATES SEEKING HOA SEAT

Yael Benaruya
TZOOK BAR NOY
ARON YEFRAIMOV
GOLDA SHAUL
MENDY KRINSKY
LEEOR COHEN
MICHAEL NAGAR
ALLEN PIHA

FACT: IN THE OCTOBER 2018, THE ICC SYNAGOGUE, INC. LOCATED IN THE SHOPPES OF LOGGERS RUN PRESENTED A PROPOSAL TO OUR LOGGERS' RUN BOG TO "GIVE" THE ICC SYNAGOGUE OUR 14 ACRE GREEN SPACE PROPERTY ACROSS FROM PUBLIX AND WALGREENS. THEY WOULD BUILD A 15,000 SQ FT CLUBHOUSE FOR LOGGERS' RUN, A 16,500 SQ FT ICC SYNAGOGUE FOR 3,500 MEMBERS AND A 40,000 SQ FT ICCS SPECIAL NEEDS CENTER ON THE PROPERTY. 15,000 FT FOR US 56,500 FT FOR THE ICCS. THE PROPOSAL WAS DECLINED BY OUR BOARD OF GOVERNORS.

FACT: 3 MONTHS LATER, IN FEB 2019, 5 ICCS SYNAGOGUE CANDIDATES RAN FOR THE 7 HOA/BOG POSITIONS AFTER VIGOROUS CAMPAIGNING, NONE WERE ELECTED.

FACT: IN THE FALL OF 2021, THE ICC SYNAGOGUE ANNOUNCED ON THEIR WEBSITE THAT THEY HAD PURCHASED A HOME IN WINDING LAKES II AND SAID THE HOME WOULD BE CONVERTED IN TO A FACILITY FOR RELIGIOUS SERVICES AND CEROMONIES. MANY CONCERNED WINDING LAKES II RESIDENTS LOUDLY VOICED THEIR OPPOSITION AT THE HOA/BOG MEETINGS THAT FOLLOWED. THE USAGE CHANGE WAS IN VIOLATION OF OUR RULES AND REGULATIONS AND WAS STOPPED BY OUR BOARD OF GOVERNORS.

FACT: THERE ARE NOW 8 "NEW" CANDIDATE NAMES ON THE 2023 BALLOT IN ADDITION TO OUR CURRENT 7 BOARD MEMBERS. 15 CANDIDATES ONLY 7 POSITIONS OPEN!!!

IF YOU CAN "READ BETWEEN THE LINES" YOU CAN SEE HOW CRITICAL YOUR VOTE IS TO RETAIN OUR CURRENT BOARD AND PREVENT A HOA BOARD "TAKEOVER." DO NOT SIGN OVER YOUR PROXY TO SOME STRANGER KNOCKING AT YOUR DOOR. VOTE IN PERSON AT THE FEB. MEETING OR PERSONALLY MAIL IN YOUR PROXY VOTE TO THE MANAGEMENT OFFICE.

Thanks for your time, LR neighbor