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JAMES F. KOVACH and
MICHAEL BEN MONTALBANO,

Plaintiffs,

VS.

HARRIS COUNTY APPRAISAL
DISTRICT,

Defendant.

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**(1) PLAINTIFF'S ORIGINAL PETITION and
(2) PLAINTIFF'S REQUESTS FOR INITIAL DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, JAMES F. KOVACH and MICHAEL BEN MONTALBANO, "Plaintiffs," complaining of Defendant HARRIS COUNTY APPRAISAL DISTRICT, "Defendant," and would respectfully show the court as follows:

**I.
PLAINTIFF'S ORIGINAL PETITION**

1. This case is appropriate for Discovery Level Two Plan.
2. Plaintiffs are individuals residing in Harris County, Texas. Plaintiffs own the property at 5100 Scotland, Houston, Harris County, Texas 77007 and 103 Roy St., Houston, Harris County, Texas 77007, hereinafter referred to as "the Property." The Property is listed under HCAD account numbers 0400340000006 and 0400340000007.
3. Defendant HARRIS COUNTY APPRAISAL DISTRICT may be served thru its Chief Appraiser, Sands Steifer, at 13013 Northwest Freeway, Houston, TX 77040. It is a political subdivision of the State of Texas operating pursuant to Chapter Six of the Texas Tax Code (the "Code").
4. Venue is proper in Harris County, Texas pursuant to Chapter 42.22 of the Code.

5. This is an appeal from the order of the Harris County Appraisal Review Board determining the market value and appraised value of the Property and for failing to honor the 10% CAP limit for increases of the appraised value of residential homestead property. The Board improperly raised the market value of the improvements on the property from \$52,100.00 to \$213,275.00 which resulted in an unfair assessment. There were no upgrades made to the improvements during this time, and in fact the improvements have deteriorated during this time. The improvement at 5100 Scotland is over 42 years old and has suffered severe deterioration over the last several years from foundation issues to leaks from the storms and destruction of the stucco plaster. The improvement at 103 Roy is a negative value to the property as it is an original 1930 bungalow that will need to be removed to increase the property value. The improper and unsupportable position that the improvements to the property have increased 400% over the last year is without any basis in fact or reality. Defendant HCAD has arbitrarily and improperly increased the Market Value and Appraised Value without any evidence or facts to support its position.

6. Further, Defendant has improperly failed to maintain the appraised value cap of 10% per year for the Property despite the fact that at all times the Property (both 5100 Scotland and 103 Roy St.) have been homestead and subject to such 10% CAP. In 2014 the property accounts for 5100 Scotland and 103 Roy St. were combined and despite the fact that the combining was of two equally noted and designation Homestead properties, HCAD improperly increased the market value and assessed value of the combined homestead property above the allowable 10% restriction CAP. The mistake and wrongful increase was promised that it would be investigated and correct but it was not and in 2015 the Defendant has continued to use the improper valuations as a basis for additional increases.

7. 5100 Scotland, Houston, TX 77007 has always been listed as HCAD Account No. 0400340000007 as a homestead property. It is a corner piece of property. Until 2014 the contiguous and adjacent property at 103 Roy St., Houston, TX 77007 was listed as HCAD Account No. 0400340000006 and was also homestead because they are contiguous, adjoining corner properties. In 2014 103 Roy Street was combined with HCAD Account No. 0400340000007 as a sub-account. HCAD wrongfully has failed to maintain the 10% appraised value cap on the properties which had no additions or changes but rather merely combined under one account number. Further, they continue to refuse to correct the mistake.

8. Plaintiffs inquired about joining the property in order to write on tax check and in doing so, HCAD incorrectly advised Plaintiff that it would have no effect on the Homestead status of the accounts. However, after the accounts were combined HCAD did increase the property beyond the 10% Cap and refused to correct its error. Defendant has failed to maintain the 10% Cap on the properties and continues to improperly appraise the property in relation to its market value and Defendant has unequally valued it. Defendant also failed to properly calculate and apply the cap to the Properties' appraised value . Plaintiffs sue Defendant HCAD for fraud and negligent misrepresentation in addition to failure to properly administer the Homestead Residential CAP that Plaintiffs are entitled to under the law.

9. Plaintiffs sue Defendant for wrongfully making an excessive appraisal of the fair market value of the properties. The levying of a tax on Plaintiffs' property based on a higher than fair market valuation is an unlawful levy, it creates an unlawful lien, and is a cloud on Plaintiff's property. Plaintiffs seek relief from the District's excessive value as provided by section 42.25 of the Code.

10. Plaintiffs sue Defendant for making an unequal appraisal based on a

reasonable and representative sample of other properties in the district that are similarly situated to, or of the same general kind or character as the Property or a reasonable number of comparable properties after proper adjustments. Defendant's appraisal violates Sections 41.43 and 42.26 of the Code.

11. The Texas Constitution requires that property not be appraised at a value higher than its fair market cash value and that all taxation be equal and uniform. Defendant has violated Plaintiffs' constitutionally protected rights.

12. All conditions precedent to filing have been met.

13. Plaintiffs request the recovery of their attorneys' fees. Plaintiffs designate James F. Kovach and Kevin T. McGuire as experts to testify as to their reasonable and necessary attorneys' fees in this matter.

II.

PLAINTIFF'S REQUEST FOR DISCLOSURES

14. Pursuant to Tex. R. Civ. P. 194, Defendants are requested to disclose, fifty (50) days after service of this request, the information or material described in Rule 194.2 (a)-(k).

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, pray that Defendant be cited to appear and answer herein, and that upon final hearing, Plaintiffs have and recover judgment of, from, and against Defendant as follows:

1. That this Court fix the value at the lower of the its market value or equal value of Plaintiff's Property;
2. That this Court order and fix the appraised value of the property value to comply with the 10% Residential Homestead Cap for every year as required;
3. That this Court enter all orders necessary to ensure that Plaintiff's property is valued in such an amount and in such manner as to comply with the Texas Constitution and the Texas Property Tax Code

3. That this Court order the Defendant to properly undertake all post-appeal administrative procedures specified in the Texas Property Tax Code;
4. That Plaintiffs recover their reasonable and necessary attorneys' fees as provided by the Texas Property Tax Code;
5. That Plaintiffs be awarded recovery of all lawful interest at the maximum rate allowable by law together with their costs of court herein expended;
6. for lawful post-judgment interest, at the maximum rate allowable by law, from and after the date of judgment until paid; and
7. for such other and further relief, general and special, at law or in equity, to which Plaintiff may show itself justly entitled.

Respectfully submitted,

KOVACH LAW FIRM, PLLC

By:



James F. Kovach
State Bar No. 11694585
Jim@Kovachlaw.net
170 Westcott Street
Houston, Texas 77007
(713) 877-1881
(713) 877-8833 (FAX)
Attorneys for Plaintiffs

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