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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059608
Party	Defendant Scott E. Grebler
Correspondence Address	SCOTT E GREBLER 3114 HARBOR VIEW AVENUE TAMPA, FL 33611 UNITED STATES sg@thegreblergroup.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Alla Zagrebelsky., Esq.
Filer's e-mail	eservice@zagrebelskylaw.com
Signature	/Alla Zagrebelsky, Esq./
Date	08/25/2014
Attachments	2014-08-22 Motion for Suspension with Exhibit.pdf(828249 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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CAROLL A. DELO,  
Petitioner,

Cancellation No.: 92059608  
Registration Nos.: 3563065, 3598550

v.

SCOTT E. GREBLER,  
Respondent.

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**MOTION TO SUSPEND PROCEEDING IN VIEW OF PENDING CIVIL  
ACTION PURSUANT TO TRADEMARK RULE 2.117(a)**

Respondent, Scott E. Grebler, (“Respondent”) by and through his undersigned counsel, hereby respectfully moves for suspension of this cancellation proceeding (“Cancellation Proceeding”) pending the outcome of a related civil matter, pursuant to Trademark Rule 2.117(a), 37 C.F.R. §2.117(a), and in support states the following:

1. If the parties to a cancellation proceeding have a pending civil suit that may have a bearing on the Board case, the Board may suspend the proceeding for cancellation until the final determination of that civil action. *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933, 1937 (TTAB 1992); *Tokaido v. Honda Associates Inc.*, 179 USPQ 861, 862 (TTAB 1973); and *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805, 807 (TTAB 1971).
2. The suspension of the Board proceedings may be caused by the civil action pending between the parties in a state court. *Mother's Restaurant Inc. v. Mama's Pizza, Inc.*, 221 USPQ 394, 395 (Fed. Cir. 1983); *Professional Economics Incorporated v.*

*Professional Economic Services, Inc.*, 205 USPQ 368, 376 (TTAB 1979); and *Argo & Co. v. Carpetsheen Manufacturing, Inc.*, 187 USPQ 366, 367 (TTAB 1975).

3. The determination in the civil proceeding need not decide the same issues as are found in the Board proceeding, instead for a suspension to be proper the final determination of the civil proceeding “*need only have a bearing on the issues before the Board*” [*emphasis added*]. *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011) (the civil action does not need to be dispositive of the Board proceeding, but only needs to have a bearing on issues before the Board); *Professional Economics Incorporated v. Professional Economic Services, Inc.*, 205 USPQ 368, 376 (TTAB 1979) (decision of state court, although not binding on the Board, was considered most persuasive on the issue of the Board proceeding);

4. On August 5, 2014, Respondent GREBLER filed a state civil suit, case no.: 14-CA-007981 (“Civil Action”), against the Petitioner in the Circuit Court for the Thirteenth Judicial Circuit in Hillsborough County, Florida. The respondent submits herewith a copy of the Civil Action Complaint as Exhibit “A” to this Motion.

5. The Civil Action contains claims for Conversion, Trespass to Chattel, Intentional Misrepresentation, Fraud, and Deceit, and Replevin, as they relate to a certain domain and website [www.simplysmoothlasercenter.com](http://www.simplysmoothlasercenter.com) (“Website”), which is the center of the issue of use in the abandonment claim made by the Petitioner in this Cancellation Proceeding. *See* Petition for Cancellation of Trademarks, ¶¶ 19 – 21.

6. The final determination of the Civil Action will have a direct bearing on the issues of the instant Cancellation Proceeding because the determination of ownership of the Website, together with any determination of fraud, are pivotal to the Cancellation

Proceeding and will substantially affect Respondent's defense position in this Cancellation Proceeding.

THEREFORE, the Respondent respectfully requests suspension of this Cancellation Proceeding pending the final determination of the Civil Action pursuant to Trademark Rule 2.117(a), 37 C.F.R. §2.117(a).

Respectfully submitted,

s/ Alla Zagrebelsky

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Alla Zagrebelsky, Esq.  
Florida Bar No. 54106  
Attorney for Respondent Grebler  
Zagrebelsky Law P.A.  
2202 N. West Shore Blvd., Suite 200  
Tampa, Florida 33607  
Tel: 813-528-5107  
Fax: 813-425-7741  
[eservice@zagrebelskylaw.com](mailto:eservice@zagrebelskylaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing *Motion to Suspend Proceeding in View of Pending Civil Action* has been served on Brad F. Barrios by mailing said copy on August 25, 2014, via First Class Mail, to Brad F. Barrios, BAJO | CUVA | COHEN | TURKEL, 100 North Tampa Street, Suite 1900, Tampa, FL 33602, and via email to [brad.barrios@bajocuva.com](mailto:brad.barrios@bajocuva.com).

Dated: August 25, 2014

s/ Alla Zagrebelsky  
\_\_\_\_\_  
Alla Zagrebelsky, Esq.  
Florida Bar No. 54106  
Attorney for Respondent Grebler  
Zagrebelsky Law P.A.  
2202 N. West Shore Blvd., Suite 200  
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# Exhibit A

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION

**Scott E. Grebler**

Plaintiff(s)

vs

**Joseph J. Castellano; Castellano Cosmetic Surgery  
Center, P.A.; Unknown Defendant #1; Carol Ann  
Delo**

Defendant(s)

Case No.: **14-CA-007981**

Division L

**SUMMONS**

**THE STATE OF FLORIDA:**

To Each Sheriff of the State:

**YOU ARE COMMANDED** to serve this summons and a copy of the complaint or petition in this action on defendant(s)

**Carol Ann Delo**  
**2513 West Azele Street**  
**Tampa FL 33609**

Each defendant is required to serve written defenses to the complaint or petition on **ALLA ZAGREBELSKY**, plaintiff's attorney, whose address is **ZAGREBELSKY LAW PA 2202 N WEST SHORE BLVD STE 200 TAMPA FL 33607** within 20<sup>1</sup> days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

**DATED** on August 6, 2014.

Attorney: **ALLA ZAGREBELSKY**

Attorney For: **Scott E. Grebler**

Address: **ZAGREBELSKY LAW PA**  
**2202 N WEST SHORE BLVD STE 200**  
**TAMPA FL 33607**

Florida Bar No: **54106**

**PAT FRANK**

As Clerk of the Court





Dana Caranante, Deputy Clerk

Prepared By: Nancy Hipson, Deputy Clerk  
(813)276-8100 extension 4365

<sup>1</sup> Except when suit is brought pursuant to section 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to be inserted as to it is 40 days. When suit is brought pursuant to section 768.28, Florida Statutes, the time to be inserted is 30 days.

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Hillsborough County Courthouse, 800 E. Twiggs St., Room 604, Tampa, Florida 33602, (813) 272-7040, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.**

#### IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the court you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named in the documents.

#### IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, podría perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

#### IMPORTANT

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cette citation pour déposer une réponse écrite à la plainte ci-jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligés de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of the Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075.

**I. CASE STYLE**

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

Case No.: \_\_\_\_\_  
Judge: \_\_\_\_\_

Scott E. Grebler  
Plaintiff

vs.

Caroll Ann Delo, Dr. Joseph J. Castellano, Castellano Cosmetic Surgery Center, P.A., Unknown Dedendant #1  
Defendant

**II. TYPE OF CASE**

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
  - Business governance
  - Business torts
  - Environmental/Toxic tort
  - Third party indemnification
  - Construction defect
  - Mass tort
  - Negligent security
  - Nursing home negligence
  - Premises liability – commercial
  - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
  - Commercial foreclosure \$0 - \$50,000
  - Commercial foreclosure \$50,001 - \$249,999
  - Commercial foreclosure \$250,000 or more
  - Homestead residential foreclosure \$0 – 50,000
  - Homestead residential foreclosure \$50,001 - \$249,999
  - Homestead residential foreclosure \$250,000 or more
  - Non-homestead residential foreclosure \$0 - \$50,000
  - Non-homestead residential foreclosure \$50,001 - \$249,999
  - Non-homestead residential foreclosure \$250,00 or more
  - Other real property actions \$0 - \$50,000

- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
  - Malpractice – business
  - Malpractice – medical
  - Malpractice – other professional
- Other
  - Antitrust/Trade Regulation
  - Business Transaction
  - Circuit Civil - Not Applicable
  - Constitutional challenge-statute or ordinance
  - Constitutional challenge-proposed amendment
  - Corporate Trusts
  - Discrimination-employment or other
  - Insurance claims
  - Intellectual property
  - Libel/Slander
  - Shareholder derivative action
  - Securities litigation
  - Trade secrets
  - Trust litigation

**COMPLEX BUSINESS COURT**

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes  No

**III. REMEDIES SOUGHT** (check all that apply):

- Monetary;
- Non-monetary
- Non-monetary declaratory or injunctive relief;
- Punitive

**IV. NUMBER OF CAUSES OF ACTION: ( )**  
(Specify)

4

**V. IS THIS CASE A CLASS ACTION LAWSUIT?**

- Yes
- No

**VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- No
- Yes – If “yes” list all related cases by name, case number and court:

**VII. IS JURY TRIAL DEMANDED IN COMPLAINT?**

- Yes
- No

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I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature s/ Alla Zagrebelsky  
Attorney or party

FL Bar No.: 54106  
(Bar number, if attorney)

Alla Zagrebelsky  
(Type or print name)

08/05/2014  
Date

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL ACTION

SCOTT E. GREBLER,  
Plaintiff,

CASE NO.:  
DIVISION:

vs.

CAROLL ANN DELO, DR. JOSEPH J.  
CASTELLANO, CASTELLANO COSMETIC  
SURGERY CENTER P.A., UNKNOWN  
DEFENDANT #1,  
Defendants.

**Demand for Jury Trial  
Writ of Replevin Sought**

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**COMPLAINT**

COMES NOW, SCOTT E. GREBLER, Plaintiff, by and through his attorney, and files this Complaint against Defendants, CAROLL ANN DELO, DR. JOSEPH J. CASTELLANO, CASTELLANO COSMETIC SURGERY CENTER P.A., and UNKNOWN DEFENDANT #1, and in support thereof alleges as follows:

**The Parties**

1. Plaintiff, Scott E. Grebler (GREBLER), is an adult individual residing in Hillsborough County, Florida.
2. Defendant, Carol Ann Delo (DELO), is an adult individual residing in Hillsborough County, Florida.
3. Defendant, Dr. Joseph J. Castellano (DR. CASTELLANO), is an adult individual, who upon information and belief is residing in Hillsborough County, Florida.
4. Defendant, Castellano Cosmetic Surgery Center P.A. (CASTELLANO COSMETIC SURGERY CENTER) is a Florida Professional Corporation, with its principal offices located in Hillsborough Country Florida.
5. Plaintiff has no information on the identity or whereabouts of Unknown Defendant #1 (UNKNOWN DEFENDANT #1)

### **Jurisdiction and Venue**

6. This Court has subject matter jurisdiction of this case pursuant to Florida Tort Common Law.
7. Personal Jurisdiction and venue are proper in Hillsborough County, Florida, as all known parties reside or have a principal place of business in this county and state, and all pertinent facts giving rise to this action also occurred in Hillsborough County, Florida.
8. This is an action for replevin and damages greater than \$15,000.00.
9. The subject matter of this case is a dispute over the rightful ownership of an Internet domain name, a type of intellectual property;
10. Therefore this suit is properly brought in the Complex Business Litigation Division.

### **Factual Allegations**

11. On May 28, 2005 Plaintiff, GREBLER, purchased a Internet domain name “SimplySmoothLaserCenter.com” (Domain) from Network Solutions, LLC (Network Solutions).
12. Plaintiff GREBLER has kept the Domain current and renewed while he was in possession of said Domain.
13. This Domain was purchased by and for GREBLER as an individual, and not on behalf of any company or third party, hence the Domain is GREBLER’s personal chattel.
14. During the period between approximately June 2005 and August 2010, GREBLER permitted the Domain to be used by Simply Smooth Laser Center, Inc., a Florida Corporation, which was jointly owned by GREBLER and DELO at the time.
15. Simply Smooth Laser Center, Inc., has since been liquidated beginning approximately in August 2010 and has been administratively dissolved on September 28, 2012.
16. Around the time of liquidation, on or about August 6, 2010, DELO, knowingly, intentionally, and unlawfully obtained and used GREBLER’s existing Account Holder Identification and Password with Network Solutions to unlawfully transfer the Account Holder and Password to DELO’s own name.
17. This unlawful transfer effectively hijacked the Domain and has prevented GREBLER from having any access to the Domain whatsoever.

18. Upon information and belief, after DELO unlawfully transferred the Domain to her name, she has subsequently transferred the Domain using a private registration to an unknown third party, who is UNKNOWN DEFENDANT #1.
19. Upon information and belief, DELO is an employee of or an independent contractor for Defendant CASTELLANO COSMETIC SURGERY CENTER.
20. Upon information and belief, DELO has given permission to Defendants CASTELLANO COSMETIC SURGERY CENTER and DR. CASTELLANO permission to use the Domain to advertise their business on the Internet.
21. Defendants DR. CASTELLANO and CASTELLANO COSMETIC SURGERY CENTER have taken over the use of the Domain and are currently using the Domain to advertise their business on the Internet.
22. The Domain has significant monetary value as well as search engine optimization value, and repeatedly generates search results on the first page of major search engines such as Google.com for laser hair removal services in Tampa and the surrounding region.
23. Consequently, the Domain brings in consistent and substantial amount of business and revenue to Defendants DR. CASTELLANO, CASTELLANO COSMETIC SURGERY CENTER, and DELO.
24. Plaintiff GREBLER has made repeated demands to Defendants DELO, DR. CASTELLANO, and CASTELLANO COSMETIC SURGERY CENTER for the return of the Domain as well as damages incurred as a result of the unlawful transfer and use of the Domain by DELO, DR. CASTELLANO, and CASTELLANO COSMETIC SURGERY CENTER, but these Defendants have refused to comply with these demands.
25. All conditions precedent to bringing this action have occurred or been waived.
26. Plaintiff GREBLER has retained counsel and is obligated to pay said counsel a reasonable fee for their services.

**Count I – Conversion**  
**(Against All Defendants)**

27. The allegations contained in paragraphs 1-26 are hereby re-alleged as if fully set forth herein.

28. The acts of Defendants, as alleged in paragraphs 1-26, have interfered with Plaintiff GREBLER's right of possession in the Domain by completely dispossessing Plaintiff of the Domain.

29. Defendants' actions have caused and continue to cause complete loss of access and use of the Domain by the Plaintiff.

30. The interference with Plaintiff's possessory interest in the Domain was caused, and is continued to be caused, by the Defendants' actions, as alleged in paragraphs 1-26.

31. Plaintiff have sustained actual harm by being dispossessed of the Domain and has incurred continuous damages as a result.

**Count II- Trespass to Chattel**

**(Against All Defendants)**

***Plead in the Alternative to Count I***

32. The allegations contained in paragraphs 1-26 are hereby re-alleged as if fully set forth herein.

33. The acts of Defendants, as alleged in paragraphs 1-26, have interfered with Plaintiff's right of possession in the Domain by dispossessing Plaintiff of the Domain.

34. Defendants had intent to perform the acts which brought about the interference with Plaintiff's right of possession.

35. The interference with Plaintiff's possessory interest in the Domain was caused, and is continued to be caused, by the Defendants' actions, as alleged in paragraphs 1-26.

36. Plaintiff has sustained actual harm by being dispossessed of the Domain and has incurred continuous damages as a result.

**Count III – Intentional Misrepresentation, Fraud, and Deceit**

**(Against Defendant Carol Ann Delo)**

37. The allegations contained in paragraphs 1-26 are hereby re-alleged as if fully set forth herein.

38. Defendant DELO has knowingly, intentionally, and unlawfully obtained Plaintiff GREBLER's Network Solutions Account Holder Identification and Password.

39. Defendant DELO did hereby use Plaintiff GREBLER's Network Solutions Account Holder Identification and Password to effectuate the unlawful transfer of GREBLER's Domain to her own name and thereby preventing Plaintiff GREBLER from having access to his Domain.

40. Defendant DELO had actual knowledge that she was falsely impersonating Plaintiff GREBLER when she signed on to GREBLER's Network Solutions account with his Account Holder Identification and Password, and transferred GREBLER's Domain into her own name.

41. Defendant DELO had intent to induce reliance of Network Solutions that she was in fact Plaintiff GREBLER when she requested that the Domain be transferred to herself.

42. Network Solutions transferred the Domain to DELO in actual reliance on DELO's misrepresentation and impersonation that she was in fact Plaintiff GREBLER.

43. Defendant DELO then further transferred the Domain to an unknown third party, UNKNOWN DEFENDANT #1, to prevent Plaintiff GREBLER from being able to seek, find the location, and repossess the Domain.

44. Plaintiff GREBLER has incurred damages from the dispossession of this Domain, as a result of DELO's intentional misrepresentation to Network Solutions, and the resulting fraudulent transfer of the Domain to DELO.

#### **Count IV – Replevin**

##### **(Against Defendant Caroll Ann Delo and Unknown Defendant #1)**

45. The allegations contained in paragraphs 1-26 are hereby re-alleged as if fully set forth herein.

46. Defendant DELO has transferred the Domain to an unknown third party, UNKNOWN DEFENDANT #1, to prevent Plaintiff GREBLER from being able to seek, find the location, and repossess the Domain.

47. Plaintiff is hereby seeking his rightful repossession of the Domain by requesting this Court enter of *Writ of Replevin* against Defendant DELO and the current possessor of the Domain, UNKNOWN DEFENDANT #1.

**Relief Sought**

WHEREFORE, Plaintiff GREBLER respectfully requests that the Court:

(A) Order Defendants DELO, DR. CASTELLANO, and CASTELLANO COSMETIC SURGERY CENTER to pay Plaintiff GREBLER damages of a minimum of \$72,000.00 for the past unlawful use of the Domain (or \$1,500 per month for every month the Domain was unlawfully possessed and used by the Defendants), damages for any future use, should it occur, court costs, and attorneys fees, as allowed by Florida law.

(B) Order Defendant DELO to pay Plaintiff GREBLER damages incurred as a result of her acts of intentional misrepresentation, fraud, and deceit, court costs, and attorneys fees, as allowed by Florida law.

(C) Order Defendants DELO, DR. CASTELLANO, and CASTELLANO COSMETIC SURGERY CENTER to pay Plaintiff GREBLER interest on the damages Plaintiff has suffered, as allowed by Florida Law.

(C) Require Defendants to disgorge all revenue, and all interest or proceeds derived therefrom, generated as a result of the conversion or trespass to chattel of the Domain, as set forth in this complaint, as allowed by Florida Law.

(D) Enter a *Writ of Replevin* against Defendant DELO and UNKNOWN DEFENDANT #1 Ordering them to relinquish actual possession of the Domain over to Plaintiff GREBLER.

**Jury Trial Demand**

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Alla Zagrebelsky

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Alla Zagrebelsky, Esq.  
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