

IN THE SUPREME COURT OF FLORIDA

LES KROL,

Petitioner,

Fla. S. Ct. No. SC19-952

DCA No. 5D18-2149

v.

**GIBSON AUTO SALES, INC., d/b/a
GIBSON TRUCK WORLD**

Respondent.

RESPONDENT'S ANSWER BRIEF

On Appeal from the Fifth District Court of Appeal

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STATEMENT OF THE CASE AND FACTS

This case involves a conflict between the Fifth District's opinion in *Krol v. FCA US*, 273 So. 3d 198 (Fla. 5th DCA 2019) and the Third District's opinion in *Larrain v. Bengal Motor Co. Ltd.*, 976 So. 2d 12 (Fla. 3d DCA 2008). The question is whether the Fifth District Court of Appeal correctly held that arbitration agreements were not informal dispute settlement mechanisms and thus not covered by the Federal Trade Commission's ("FTC") single document rule regarding informal dispute settlement mechanisms.

Here, Petitioner, Les Krol ("Petitioner"), purchased a vehicle from Respondent, Gibson Auto Sales, Inc. d/b/a Gibson Truck World ("Gibson Auto"). Respondent's Appendix, pp. 15-19, 98-100. The vehicle also came with a written limited warranty. *Id.* at 21-81. At the same time and in order to purchase the vehicle, Petitioner executed a Retail Installment Sales Contract and a Buyer's Order, which included an arbitration agreement (the "Arbitration Agreement"). *Id.* at 15-19, 98-100. Pursuant to the Arbitration Agreement, Petitioner and Gibson Auto agreed to arbitrate nearly any type of dispute that could arise between them. *Id.* at 100. Specifically, the Arbitration Agreement indicates, in relevant part:

Dealer and customer agree that any controversy, claim, suit, demand, counterclaim, cross claim, or third party complaint, arising out of, or relating to this Order or the parties' relationship (whether statutory or otherwise), including, but not limited to any matter that may have induced the Customer to enter into any relationship with

Dealer and any disputes regarding the validity or enforceability of this clause (collectively referred to as “Claim”), shall be submitted to final and binding arbitration ...

The arbitration shall be final and binding on all parties.

Id.

On or about November 1, 2017, Petitioner filed a Complaint and Jury Demand for alleged violations of the Magnuson-Moss Warranty Act (“MMWA”). Respondent’s Appendix, pp. 1-94. In response, Gibson Auto filed its Amended Motion to Stay and Compel Arbitration (the “Motion”) based upon the Arbitration Agreement and its Affidavit in Support of the Motion, which authenticated the Arbitration Agreement. *Id.* at 97-110. At the hearing on the Motion, Petitioner agreed that he entered into the Arbitration Agreement with Gibson Auto and that Gibson Auto did not waive its right to arbitrate. *See Id.* at 114. Further, during the hearing on the Motion, Petitioner presented no case law from Florida or the Eleventh Federal Circuit holding that MMWA claims could not be arbitrated. *See Id.* at 114-15.

On June 21, 2018, the trial court granted Gibson Auto’s Motion and compelled arbitration of Petitioner’s claims. Respondent’s Appendix, pp. 111-15. In the Order Granting Defendant’s Motion to Stay and Compel Arbitration (the “Order”), the trial court held that Petitioner’s MMWA claims could be subject to binding arbitration relying partially upon *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir.

2002). *Id.* In the Order, the trial court also rejected Petitioner’s reliance on *Cunningham v. Fleetwood Homes of Georgia, Inc.*, 253 F.3d 611 (11th Cir. 2001) regarding the single-document rule. *Id.* at 115. Petitioner appealed to the Fifth District Court of Appeal.

On May 10, 2019, the Fifth District Court of Appeal entered its opinion (the “Opinion”) affirming the trial court and concluded 1) “that the MMWA does not prohibit binding arbitration of written warranty claims” and 2) “that the arbitration agreement here [did] not violate Federal Trade Commission disclosure rules.” *Krol v. FCA US*, 273 So. 3d 198, 200 (Fla. 5th DCA 2019). The court reached its holding after “considering the MMWA and its legislative history, the federal policy favoring binding arbitration, and the persuasive federal circuit court opinions.” *Id.* at 201.

As to its first holding, the Fifth District Court of Appeal made clear that the FTC had been given authority by Congress to regulate “informal dispute settlement procedures,” but that “binding arbitration is not comparable to the informal dispute settlement procedures described in the MMWA because it is not a prerequisite to litigation- it is a substitute for litigation.” *Id.* at 202, 203. Further, the court noted that the “only federal circuit court to consider the reasonableness of the FTC’s interpretation [that arbitration is an informal dispute settlement procedure] has found it unreasonable.” *Id.* at 205. The court emphasized that the FTC could not have been given authority to regulate binding arbitration because “Congress appears to have

understood binding arbitration to be a substitute for a judicial forum, not an informal dispute settlement mechanism.” *Id.* Accordingly, “given the limited scope of the FTC’s authority to regulate only non-binding, pre-dispute settlement procedures and the federal policy favoring arbitration enforcement,” the court concluded that the “FTC’s prohibition of arbitration is based on an impermissible construction of the statute” and held that “MMWA claims [could] be subject to binding arbitration.” *Id.* at 206.

Importantly, Petitioner agrees with the Fifth District Court’s first ruling and has made it clear that he does not seek a review of the Fifth District’s first holding, i.e. that MMWA claims can be arbitrated because they are not informal dispute settlement procedures. *See Krol*, 273 So. 3d at 206; Petitioner’s Initial Brief, n. 4. Instead, Petitioner seeks to focus on the second part of the Fifth District’s ruling relating to the “single document rule”. It is clear, however, that the very reasoning behind the Fifth District’s first holding that is undisputed by Petitioner is also dispositive of the issues relating to the inapplicability of the FTC’s single document rule to arbitration agreements.

In its analysis of the second issue, the Fifth District acknowledged that “Congress delegated authority to the FTC to establish the items warrantors must disclose,” that pursuant to this authority the FTC requires warrantors to disclose certain warranty terms in a single document, and that “informal dispute settlement

mechanisms” are one of the terms that must be disclosed within the single document. *See Krol*, 273 So. 3d at 206, 15 U.S.C. § 2302(a); 16 C.F.R. § 701.3(a)(6). Based on *Larrain and Cunningham v. Fleetwood Homes of Georgia*, 253 F. 3d 611 (11th Cir. 2001), Petitioner argued below that the Arbitration Agreement was unenforceable because it did not comply with the FTC’s single document rule as the Arbitration Agreement was not in a single document with the other required warranty terms. *Krol*, 273 So. 3d at 206. The court rejected Petitioner’s argument because it was based on “an incorrect understanding that the terms ‘binding arbitration’ and ‘informal dispute settlement procedures’ are interchangeable.” *Krol*, 273 So. 3d at 207.

The court found that the trial court’s rejection of *Cunningham* made sense since *Davis*, more recently decided by the Eleventh Circuit, “[made] clear that binding arbitration is not an informal dispute settlement procedure or a prerequisite to litigation, a notion that also aligns with the Supreme Court’s view of binding arbitration.” *See Id.*; *Cunningham*, 253 F.3d 611 (11th Cir. 2001); *Davis*, 305 F.3d 1268 (11th Cir. 2002). Further, the court noted that the “FTC’s disclosure regulations [did] not explicitly mention binding arbitration” and that enforcing disclosure requirements that were not expressly included would “encroach on the MMWA’s statutory and regulatory framework by unilaterally constructing a judicial rule that neither Congress nor the FTC has seen fit to create.” *Krol*, 273 So. 3d at 208 (quoting

Patriot Mfg., Inc. v. Dixon, 399 F. Supp. 2d 1298, 1309 (S.D. Ala. 2005).). Accordingly, the Fifth District court held that “the FTC’s single-document rule [did] not apply to binding arbitration agreements.” *Krol*, 273 So. 3d at 208.

Larrain v. Bengal Motor Co., Ltd

It was this second ruling in *Krol* that conflicts with the ruling in *Larrain*. In *Larrain*, the Third District Court of Appeal held that a third-party beneficiary could not enforce a stand-alone arbitration agreement over the plaintiffs’ MMWA claims. *Larrain*, 976 So. 2d at 14-15. The *Larrain* court acknowledged that Congress delegated authority to the FTC over informal dispute settlement procedures. *Id.* at 14. The court explained that based on such delegation, the FTC established the single-document rule, which required warrantors to disclose informal dispute settlement procedures in a single document. *Id.*

Then, based on *Cunningham* and the FTC’s single document rule, the court held that the arbitration agreement was unenforceable because it was not disclosed within the warranty. *Larrain*, 976 So. 2d at 14. The court reached this conclusion without an analysis of the legislative history to discern Congress’ intent and, to date, Congress has not stated that it intended for arbitration agreements to be disclosed within the same document as the warranty. The court “[found] that the clear language of the MMWA express[ed] Congress’ intent that any arbitration agreement must be

disclosed within the written warranty and not as a stand-alone document.” The court thus treated binding arbitration as an informal dispute settlement procedure.

The Fifth District certified conflict with the Third District and this Court accepted jurisdiction based on such conflict. To resolve this conflict, this Court will have to answer whether arbitration is an informal dispute settlement procedure.

SUMMARY OF THE ARGUMENT

This Court should resolve the certified conflict by approving the Fifth District Court’s opinion in *Krol* and disapproving the Third District Court’s opinion in *Larrain*.

As the Fifth District aptly concluded in its first holding, the FTC cannot prohibit binding arbitration because the FTC only has the authority to regulate “informal dispute settlement mechanisms” and binding arbitrations are not “informal dispute settlement mechanisms.” *Krol*, 273 So. 3d at 202-206. For purposes of this appeal, Petitioner has not challenged the Fifth District Court’s ruling regarding these issues as Petitioner has not challenged the arbitrability of MMWA claims in their entirety. Petitioner’s Initial Brief, n. 4. However, the same basic reasoning that supports the court’s first holding is also dispositive of Petitioner’s efforts to appeal the court’s second holding regarding the inapplicability of the FTC’s single document rule to arbitration agreements.

To state it simply, because Congress only granted the FTC the limited authority to regulate informal dispute settlement procedures in the MMWA context, and because binding arbitrations are not informal dispute settlement procedures, then it logically follows that the FTC's single document rule requiring the disclosure of informal dispute settlement mechanisms cannot require the disclosure of binding arbitration as part of a single document containing warranty terms. To hold otherwise would require either 1) the FTC to have the authority to regulate things other than informal dispute settlement mechanism under the MMWA or 2) for binding arbitration to be an informal dispute settlement mechanism.

The analysis is easy and the Fifth District's holding makes sense because the MMWA does not expressly reference binding arbitrations. Further, due to the favorable view of binding arbitration that has been taken by the United States and Florida Supreme Courts when interpreting both the Federal Arbitration Act and Florida Arbitration Code, binding arbitration is seen as a substitute for court litigation. Thus, binding arbitration cannot be properly characterized as an informal dispute resolution procedure. Additionally, the majority of federal circuit courts, state supreme courts, and federal district courts that have looked at this issue have concluded that binding arbitration is not an informal method to settle disputes between parties.

Also, Petitioner has done nothing to address the longstanding principle that documents executed at the same time concerning the same transaction must be read together as a single contract. Thus, even if this Court considered arbitrations to be informal dispute settlement mechanisms, then this Court should still affirm the Opinion because the Arbitration Agreement, the warranty, the Retail Installment Sales Contract, and Buyer's Order must all be read together as a single document.

Accordingly, this Court should reject the Third District's opinion and approve the Fifth District's opinion in *Krol*.

STANDARD OF REVIEW

Gibson Auto agrees with Petitioner that this Court has jurisdiction over this matter due to the certified conflict between the Third and Fifth district courts of appeal. *See* Fla. Const. Art. V, § 3(b)(4); Fla. R. App. P. 9.030(a)(2)(A)(iv).

Further, the issue in this case presents a pure question of law regarding the applicability of the FTC's single document rule to arbitration agreements. Accordingly, the applicable standard of review is de novo. *D'Angelo v. Fitzmaurice*, 863 So. 2d 311, 314 (Fla. 2003) ("The standard of review for the pure questions of law before us is de novo."); *Daniels v. State*, 121 So. 3d 409, 413 (Fla. 2013) ("The conflict issue in this case presents a pure question of law and this Court's review is therefore de novo.").

Additionally, Petitioner has waived any argument not raised in his Initial Brief and cannot raise any new arguments in his Reply Brief. *See Polyglycoat Corp. v. Hirsch Distributors, Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983) (“When points, positions, facts and supporting authorities are omitted from [the initial] brief, a court is entitled to believe that such are waived, abandoned, or deemed by counsel to be unworthy.”); *Parker-Cyrus v. Justice Admin. Com’n*, 160 So. 3d 926, 928 (Fla. 1st DCA 2015) (“An argument may not be raised for the first time in a reply.”).

ARGUMENT

I. THE FTC’S SINGLE DOCUMENT RULE DOES NOT APPLY TO ARBITRATION AGREEMENTS BECAUSE THE FTC ONLY HAS AUTHORITY OVER INFORMAL DISPUTE SETTLEMENT PROCEDURES

In his brief, Petitioner extensively focused on the consumer protection purpose of the MMWA, a purpose that Respondent does not dispute. This purpose, however, does nothing to advance Petitioner’s argument. In fact, the Fifth District acknowledged the consumer protection purpose of the MMWA as part of its holding that MMWA claims were subject to binding arbitration. *Krol*, 273 So. 3d at 202, 204. Crucially, the Fifth Circuit recognized that whether a statute pertaining to consumer protection was not dispositive of the issue of arbitration, noting that the “Supreme Court has repeatedly enforced binding arbitration of statutory claims where the purpose of the statute was consumer protection.” *Id.* at 204 (citing *Davis*, 305 F.3d at 1276 (collecting cases)).

The parties seem to agree that Congress never referenced binding arbitration agreements in the text of the MMWA. *See* 15 U.S.C. §2301, *et seq.* Further, it cannot be disputed that Congress only required the disclosure of “informal dispute settlement procedures” and only delegated authority over “informal dispute settlement procedures” to the FTC. 15 U.S.C. §§ 2302(a)(8), 2310. It is here that the parties’ disagreement begins as they seemingly disagree over the type of proceedings that constitute “informal dispute settlement procedures.”¹

To resolve this disagreement, this Court must first understand the limited authority Congress gave the FTC regarding the MMWA. Congress delegated authority to the FTC to prescribe rules over any “informal dispute settlement procedures.” 15 U.S.C. § 2310(a). Congress established that the FTC was to “prescribe rules setting forth minimum requirements for any informal dispute settlement procedure...” 15 U.S.C. § 2310(a)(2). Based on this authority, the FTC has established that “[i]nformation respecting the availability of any informal dispute settlement mechanism” must be “clearly and conspicuously disclose[d] in a single document” as part of a written warranty. 16 C.F.R. § 701.3(a)(6); *See also* 16 C.F.R. § 703.2. The FTC’s disclosure requirement regarding informal dispute settlement

¹ In reaching its first holding, the Fifth District Court of Appeal made clear that it did not “accept the notion that Congress considered binding arbitration an informal dispute settlement mechanism.” *Krol*, 273 So. 3d at 205. Petitioner did not appeal this holding.

procedures, and other key warranty terms, in a single document has been called “the single document rule”. *Krol*, 273 So. 3d at 206.

A. The MMWA Does Not Expressly Reference Arbitration Agreements

Petitioner argues that “the MMWA expressly requires any binding arbitration provision be included in the written warranty” pursuant to the single document rule. Initial Brief, pp. 9-15. However, Petitioner fails to cite to any specific language of the MMWA expressly requiring the disclosure of binding arbitration agreements in the written warranty itself. *See Id.* Petitioner also failed to cite to any legislative history providing that Congress intended for binding arbitration agreements to be disclosed within written warranties. *See Id.* Petitioner’s lack of citations to any specific language within the MMWA makes sense because the text of the MMWA does not include any reference to binding arbitration agreements at all, let alone provide any express requirement that binding arbitration agreements be included in the warranty documents themselves. *See* 15 U.S.C. §§2301, *et seq.*; *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268, 1274 (11th Cir. 2002) (“The MMWA’s text ... fails to directly mention either binding arbitration or the FAA.”). Further, the MMWA’s legislative history “only addresses ‘internal dispute settlement procedures’ [and] never directly addresses the role of binding arbitration.” *Davis*, 305 F.3d at 1275. It should also be noted that the regulations regarding the key terms

that must be disclosed within a single document also do not include any reference to the disclosure of binding arbitration agreements. *See* 16 C.F.R. § 701 *et seq.*

Left with no statutory language to cite, Petitioner baldly argues that the text of the MMWA and the FTC rules “without question would require a warrantor to disclose a binding arbitration provision within the text of its written warranty.” Initial Brief, p. 15. Petitioner attempts to rely on *Cunningham*, where the Eleventh Circuit, in 2001, concluded that a third-party beneficiary could not enforce an arbitration agreement because the beneficiary had failed to disclose the use of an informal dispute resolution mechanism in the warranty and thus violated the disclosure requirements of the MMWA. *Cunningham v. Fleetwood Homes of Ga.*, 253 F.3d 611, 622-24 (11th Cir. 2001).

Undeniably the ruling in *Cunningham* is based on the misinterpretation of binding arbitration as an “informal dispute settlement mechanism.” *Id.* This erroneous interpretation of what binding arbitration is by the Eleventh Circuit was corrected in *Davis* less than fifteen months later in 2002. 305 F.3d 1268. In *Davis*, the Eleventh Circuit expressly concluded that the FTC impermissibly defined “informal dispute settlement mechanisms” to include binding arbitration in its regulations. 305 F.3d at 1277-80. The *Davis* court then concluded that because binding arbitration was not an informal dispute settlement mechanism, MMWA claims could be subject to binding arbitration. *Id.* Since its issuance, courts across

the country have followed *Davis* when presented with the question of whether MMWA claims are arbitrable because, as will be further explained below, binding arbitrations are not informal dispute settlement mechanisms.

B. Arbitration Is Not an Informal Dispute Settlement Procedure

Because Congress was clear that it was only delegating limited authority to the FTC regarding informal dispute settlement procedures, then the FTC's single document rule enacted based on this delegated authority, can only apply to informal dispute settlement procedures. Conversely, the FTC's single document rule cannot apply to procedures that fall outside the definition of informal dispute settlement procedures because to do so would exceed the delegated authority of the FTC.

Whether binding arbitration is an informal dispute settlement procedure so as to be covered by the FTC's single document rule is the very question that this Court must answer. In doing so, this Court must consider the liberal policy favoring arbitration and the prevalent view of arbitration as a substitute to litigation, the precedent by the only federal circuit courts to address this issue concluding that arbitration is not an informal dispute settlement mechanism, and the holdings of the majority courts across the country also agreeing that arbitration is not an informal dispute settlement mechanism. Accordingly, this Court must approve the Fifth District Court's opinion in *Krol* and hold that the FTC's single document rule is inapplicable to arbitration agreements.

i. Arbitration is a Formal Substitute to Litigation

The United States Supreme Court has made clear that the Federal Arbitration Act (the “FAA”) ensures the enforcement of private arbitration agreements and has repeatedly enforced the liberal federal policy favoring arbitration. *AT&T Mobility v. Concepcion*, 563 U.S. 333, 344 (2011); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 625 (1985); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 (1991); *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983). This Court has also upheld the liberal policy favoring binding arbitration. *See Midwest Mutual Insurance Company v. Santiesteban*, 287 So. 2d 665 (Fla. 1974) (“[C]ourts favor arbitration to expedite claims and reduce litigation.”); *Seifert v. United States Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999) (“Today, arbitration provisions are common, and their use generally favored by the courts.”); *Oppenheimer & Co. v. Young*, 456 So. 2d 1175, 1177 (Fla. 1984) (“Arbitration agreements are valid, irrevocable, and enforceable and public policy favors arbitration as an alternative to litigation.”), *vacated by, Oppenheimer & Co. v. Young*, 470 U.S. 1078 (1985). This clear liberal policy favoring arbitration has led courts to view arbitration as a substitute for litigation. *B.L. Harbert Int’l v. Hercules Steel Co.*, 441 F.3d 905, 906 (11th Cir. 2006) (The FAA “liberally endorses and encourages arbitration as an alternative to litigation.”); *Baldwin v. Boise Paper Holdings, L.L.C.*, 631 Fed. Appx. 831, 832 (11th Cir. 2015) (The FAA “reflects a

federal policy in favor of arbitration as an alternative to litigation...”); *North Am. Van Lines v. Collyer*, 616 So. 2d 177, 178 (Fla. 5th DCA 1993) (“[P]ublic policy favors arbitration as an alternative to litigation.”).

Make no mistake, for Petitioner to prevail in this appeal, Petitioner must establish that binding arbitration is an informal dispute settlement mechanism within the authority of the FTC. However, Petitioner cannot prevail on this argument because arbitration is intended to be a substitute for litigation and is widely favored by the United States Supreme Court and this Court. *Concepcion*, 563 U.S. 333 (2011); *Mitsubishi Motors*, 473 U.S. 614 (1985); *Gilmer*, 500 U.S. 20 (1991); *Santiesteban*, 287 So. 2d 665 (Fla. 1974); *See also B.L. Harbert Int'l*, 441 F.3d 905, 906 (11th Cir. 2006). Petitioner failed to address the clear policy favoring binding arbitration as a litigation substitute in his Initial Brief. Petitioner also failed to explain why binding arbitration is an informal dispute settlement mechanism.

Remarkably, this Court has previously ruled on this issue in a different context and in doing so concluded that there is a clear distinction between an informal proceeding and “a formal arbitration hearing pursuant to section 682.06, Florida Statutes.” *Allstate Insurance Company v. Suarez*, 833 So. 2d 762, 765 (Fla. 2002). In *Suarez*, this Court contrasted an appraisal procedure found in the parties’ insurance policy, which it found to be an informal process, with a binding arbitration proceeding pursuant to Florida’s Arbitration Code. *Id.* This Court affirmed the Third

District Court of Appeal's decision and expressly held that since the parties agreed to an informal procedure, "[i]t is difficult to imagine that a formal arbitration hearing was within the contemplation of the parties when entering into the agreement." *Id.* at 766.

While the context may be different, the distinction between binding arbitration and an informal procedure that was recognized by this Court in *Suarez* would apply equally to the case at bar. Accordingly, based on the well-established policy favoring arbitration as a substitute for litigation and this Court's clear distinction between arbitration and informal procedures, an arbitration cannot be an informal dispute settlement procedure.

ii. The Only Two Federal Circuit Courts to Address this Issue Agree that Arbitration is Not an Informal Dispute Settlement Procedure

The Fifth and Eleventh Circuit Courts are the only two federal circuits to have addressed the arbitrability of MMWA claims and both agree that arbitrations are not informal dispute settlement procedures. *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir. 2002); *Walton v. Rose Mobile Homes LLC*, 298 F.3d 470 (5th Cir. 2002).² This court should follow the precedent established by the federal circuit courts and also find that arbitration is not an informal dispute settlement procedure.

² The Ninth Circuit held that MMWA claims could not be submitted to binding arbitration. *Kolev v. Euromotors West/The Auto Gallery*, 658 F.3d 1024 (9th Cir. 2011). However, the Ninth Circuit withdrew its opinion and the same cannot be

In *Davis*, the Eleventh Circuit conducted an exhaustive analysis of the text, legislative history, and intent of the MMWA and held that MMWA claims could be subject to binding arbitration. *Davis*, 305 F.3d 1268. The court determined that the text of the statute did not expressly prohibit arbitration, that the existence of a judicial forum with concurrent jurisdiction was insufficient evidence of an intent to preclude arbitration, and that the fact that the MMWA permitted informal dispute settlement procedures did not prohibit the enforcement of binding arbitration. *Id.* at 1274-75. When analyzing the legislative history, the court noted that Congress distinguished between informal dispute settlement mechanisms and binding arbitration as an earlier version of the MMWA reflected “Congress’ intent that warrantors of consumer products cooperate with government and private agencies to establish informal dispute settlement mechanisms that take care of consumer grievances without the aid of litigation *or formal arbitration*.” *Id.* at 1276 (emphasis in original). The court also concluded that the MMWA’s consumer protection purpose did not conflict with arbitration and noted that the “Supreme Court has repeatedly enforced arbitration of statutory claims where the underlying purpose of the statutes are to protect and inform consumers.” *Id.* at 1276-77.

cited. *Kolev v. Euromotors West/The Auto Gallery*, 676 F.3d 867 (9th Cir. 2012). Thus, only the Fifth and Eleventh Circuit opinions can be cited as precedent.

The Eleventh Circuit also specifically addressed and rejected the FTC's regulations classifying binding arbitrations as informal dispute settlement procedures. *Davis*, 305 F. 3d at 1277-80. The court first acknowledged that Congress "authorize[d] the FTC to promulgate regulations for the MMWA's internal dispute settlement procedures" and that "the FTC has defined 'mechanism' broadly, to include all non-judicial resolution procedures, including arbitration." *Id.*; 15 U.S.C. § 2310(a); 40 Fed. Reg. 60167, 60210 (1975). The court then conducted an analysis under *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984) to determine whether deference should be given to the FTC's rules on this issue. *Davis*, 305 F.3d at 1277-80.

After analyzing the FTC's interpretation of the MMWA and the MMWA's text, legislative history, and purpose, the court concluded that the FTC's inclusion of binding arbitration as a form of informal settlement mechanism was not reasonable and no deference should be given. *Id.* In doing so, the court explained that the legislature's granting of concurrent jurisdiction to state and federal courts to enforce the MMWA did not preclude the enforcement of binding arbitration. *Id.* at 1278-79. More importantly, the court noted that the FTC's interpretation of the interplay between the MMWA and binding arbitration was based on a hostile view towards arbitration and that such an interpretation was no longer permissible due to the "Supreme Court's abandonment of its hostile attitude toward arbitration" and its

“acknowledgement and continual enforcement of the strong federal policy toward arbitration.” *Id.* at 1279-80.

Similarly, in *Walton*, the Fifth Circuit thoroughly analyzed the MMWA’s text, legislative history, and purpose, and held that MMWA claims were subject to binding arbitration. *Walton v. Rose Mobile Homes LLC*, 298 F.3d 470 (5th Cir. 2002). When analyzing the MMWA’s text, legislative history, and purpose, the court distinguished between binding arbitration and informal dispute settlement procedures at every step. *Id.*

As for the text of the MMWA, the court provided that there was no specific reference to arbitration, that the informal dispute settlement procedures referenced in the MMWA were intended to be used before filing a court claim, and that “binding arbitration generally is understood to be a *substitute* for filing a lawsuit, not a prerequisite.” *Walton*, 268 F.3d at 475-76. The court also “note[d] that binding arbitration is not normally considered to be an ‘informal dispute settlement procedure,’ and it therefore seems to fall outside the bounds of the MMWA and of the FTC’s power to prescribe regulations.” *Id.* at 476.

As for the legislative history, the court found “no evidence that Congress intended binding arbitration to be considered an informal dispute settlement procedure.” *Walton*, 298 F.3d at 476. The court noted that “[b]inding arbitration simply is not part of [Congress’] reports,” but that the “reference to ‘informal dispute

settlement procedure’ seemingly precludes binding arbitration from its scope, as binding arbitration is not normally considered an informal procedure.” *Id.* at 476-77. The court also examined the Conference Committee Report, which required “provision [by the warrantor] for governmental or consumer participation in internal or other private dispute settlement procedures.” *Id.* at 477 (internal citations omitted). The court concluded that the “Committee [could not] have had in mind binding arbitration in its comments, as the government does not normally participate in private binding arbitration procedures.” *Id.*

Last, the court analyzed the MMWA’s purpose, and concluded that there was no conflict between the MMWA’s purpose and arbitration as consumers could still vindicate their rights in arbitration and “[a]rbitration [was] not inherently unfair to consumers.” *Id.* at 477-78.

Based on the analysis done on the MMWA’s text, legislative history, and purpose by the Eleventh and Fifth Circuit, it is clear that there is a distinction between informal dispute settlement procedures and binding arbitration. *See Davis*, 305 F. 3d 1268; *Walton*, 298 F. 3d 470.

In the case before this Court, the Fifth District followed *Davis* and, after conducting its own analysis of the MMWA’s text, legislative history, and purpose, also concluded that the FTC did not have authority to regulate binding arbitration because it rejected the argument that arbitration was an informal dispute settlement

mechanism. *Krol*, 273 So. 3d at 205. Based on the precedent in *Davis* and *Walton*, this Court should also distinguish between arbitrations and informal dispute settlement mechanisms and approve *Krol*.

iii. The Majority of Courts Agree that Arbitration is Not an Informal Dispute Settlement Procedure

As has been explained above, binding arbitration is a substitute for court proceedings and there is a distinction between arbitrations and the types of informal dispute settlement procedures that can be regulated by the FTC under the MMWA. Petitioner incorrectly argued that “[t]he majority position is that binding arbitration provisions must be included within the warranty” by relying on seven cases across the country. Initial Brief, pp. 16-23. However, the fact is that the majority of state and federal appellate courts across the country agree that arbitration is not an informal dispute settlement procedure, which would then preclude the FTC’s single document rule from having any impact on an arbitration agreement.

State Supreme Courts across the country have distinguished between arbitration and informal dispute settlement procedures. For example, in *Jackson*, the Alabama Supreme Court held that MMWA claims were subject to binding arbitration even though the warranty documents did not include the arbitration agreement because the disclosure requirement for informal dispute settlement mechanisms is inapplicable to arbitration agreements. *See Patriot Mfg., Inc. v. Jackson*, 929 So. 2d 997 (Ala. 2005). Importantly, in rejecting the single document

rule the court reversed itself because it had previously held, based on *Cunningham*, that a stand-alone arbitration agreement was unenforceable because the MMWA required disclosure of the agreement within the warranty documents. *Id.* at 1002- 06; *Ex parte Thicklin*, 824 So. 2d 723 (Ala. 2002).

The Alabama Supreme Court had no issues with rejecting *Cunningham* and relying on *Davis* because it found that the purpose of the MMWA was not frustrated by the enforcement of an arbitration agreement not contained in the actual written warranty. *Jackson*, 929 So. 2d at 1005. When interpreting *Davis* and *Cunningham*, the court noted that “the *Davis* court explicitly rejected any notion that arbitration is equivalent to or a variety of an informal dispute-settlement mechanism” and that it “read *Davis* to discredit the assumption unavoidably present in *Cunningham* that arbitration, for purposes of determining whether there was sufficient disclosure, is a type of informal-dispute settlement mechanism.” *Id.* at 1004-05. Specifically, the Supreme Court of Alabama stated:

[W]e consider a key feature of the rationale of *Cunningham* significantly undermined by *Davis*, and the remainder of the *Cunningham* rationale insufficient to justify its holding, and we no longer regard *Cunningham* as reliable authority on the question whether a stand-alone arbitration agreement may be used to compel arbitration. The Magnuson–Moss Act requires disclosure in the warranty itself only “to the extent required by the rules of the [FTC],” and the FTC has seen fit to require disclosure of required resort to an informal dispute-settlement mechanism, not the completely separate process of binding arbitration.

Patriot Mfg., Inc. v. Jackson, 929 So. 2d 997, 1006 (Ala. 2005) (emphasis added).

Similarly, the Texas and Illinois Supreme Courts have held that MMWA are subject to binding arbitration and concluded that binding arbitration is not an informal dispute settlement procedure. *See In re American Homestar of Lancaster, Inc.*, 50 S.W.3d 480 (Tex. 2001); *Borowiec v. Gateway 2000, Inc.*, 808 N.E.2d 957 (Ill. 2004).

In *In re American Homestar*, the Texas Supreme Court rejected the single document rule, holding that MMWA claims were subject to arbitration even though the arbitration agreement between the parties was separate from the warranty and purchase documents because there was “no clear congressional intent in the Magnuson–Moss Act to override the FAA policy favoring arbitration”. 50 S.W.3d at 492. The court focused on the Supreme Court’s favorable view of arbitration and the Supreme Court’s enforcement of arbitration even when a statute provides for out-of-court dispute resolution. 50 S.W.3d at 485-87 (citing *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991)). The court also found that the MMWA’s text or legislative history did not show an intent to override arbitration and that arbitration was not in conflict with the MMWA’s consumer protection purpose. *In re American Homestar*, 50 S.W.3d at 487-90. Further, the court acknowledged the FTC’s authority over informal dispute settlement procedures

and found that its interpretation of arbitration as a form of informal dispute settlement procedure was not permissible or reasonable and thus owed no deference under *Chevron*. *Id.* at 490-92.

Additionally, the Illinois Supreme Court, after a thorough analysis of the federal circuit courts' interpretation of the MMWA and FTC's regulations held that MMWA were subject to binding arbitration and that the FTC's interpretations were owed no deference. *Borowiec*, 808 N.E.2d 957. The court started its analysis by acknowledging that the FTC had authority over informal dispute settlement procedures, but that the term was not defined in the MMWA's text and that the text did not reference arbitrations. *Id.* at 964. The plaintiffs relied on the FTC's interpretation of the MMWA and arbitration and argued that the legislative history of the MMWA supported their position. *Id.* at 965. The appellate court rejected the plaintiffs' argument and explained that all federal circuit courts had also rejected the FTC's interpretation. *Id.* The court explained,

As discussed above, in *Walton* and *Davis*, the Fifth Circuit and the Eleventh Circuit ruled that the FTC's interpretation of the Magnuson-Moss Act is incorrect and a clause requiring binding arbitration of a consumer's claim does not violate the statute. And in *Harrison*, the Third Circuit cast doubt upon the FTC's ruling that informal dispute resolution procedures include arbitration. Accordingly, the federal circuit courts of appeals are in agreement in their interpretation of this federal statute.

Borowiec, 808 N.E.2d at 970.

State appellate courts also agree that arbitration is not an informal dispute settlement procedure. In *Walker*, the Court of Appeals of Indiana, held that MMWA claims were subject to binding arbitration and rejected the FTC's interpretation regarding binding arbitration after conducting the *McMahon* and *Chevron* analysis. *Walker v. DaimlerChrysler Corp.*, 856 N.E.2d 90 (Ill. App. Ct. 2006); *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987). The court started its analysis by noting that Congress only gave the FTC authority over informal dispute settlement mechanisms and "did not explicitly leave a gap for the agency to fill regarding the permissibility of mandatory binding arbitration." *Walker*, 856 N.E.2d at 97; 15 U.S.C. § 2310(a)(2). The court, based on *Walton* and *American Homestar of Lancaster*, explained that "binding arbitration generally is understood to be a substitute for filing a lawsuit." *Walker*, 856 N.E.2d at 97. The court also provided that **"of the eight federal appellate and state supreme courts that have addressed the issue in this case, four have addressed the reasonableness of the FTC's construction of the MMWA. All of those courts found the FTC's construction to be unreasonable."** *Id.* (emphasis added). Accordingly, the court found that the FTC's interpretation of the MMWA regarding arbitration was unreasonable and thus owed no deference. *Id.* at 98-99.

Similarly, in *Howell*, a Louisiana Court of Appeal, held that MMWA claims were subject to binding arbitration and rejected the FTC's interpretation of the

MMWA. *Howell v. Cappaert Manufactured Hous., Inc.*, 819 So. 2d 461 (La. Ct. App. 2002). The court distinguished between informal dispute resolution procedures and “binding arbitration which is governed by federal regulations is formal, strives to insure impartiality, and alleviates abuse.” *Id.* at 464. The court rejected the FTC’s regulations because the MMWA “merely gives the warrantor an option to include informal dispute resolution procedures in the warranty,” but “does not address other means of settling disputes, such as binding arbitration agreements.” *Id.* at 465. *See also Hemphill v. Ford Motor Co.*, 41 Kan. App. 2d 726 (Kan. Ct. App. 2009) (concluding that the MMWA did not prohibit arbitration of statutory claims based on the text, legislative history, and purpose of the statute and explaining that the “federal appellate courts that have applied the *Chevron* test to the FTC’s interpretation of [the MMWA] have refused to give *Chevron* deference to it”).

Not surprisingly, federal courts have also concluded that arbitrations are not informal dispute settlement procedures. Following *Davis*, the United States District Court for the Southern District of Alabama concluded that formal arbitration is not an “informal dispute settlement mechanism” for purposes of the MMWA. *Patriot Mfg., Inc. v. Dixon*, 399 F. Supp. 2d 1298 (S.D. Ala. 2005). In *Dixon*, the court analyzed *Cunningham*, *Davis*, and the MMWA and compelled arbitration of MMWA claims based on a standalone arbitration agreement. 399 F.2d 1298. The court first acknowledged the “single document rule” required by the MMWA and

the requirement to disclose any informal dispute settlement mechanisms within that “single document.” *Id.* at 1301-02. However, based on *Davis*, the court noted that “*Cunningham's* assumption that an arbitration agreement is an ‘informal dispute settlement mechanism’ for purposes of the MMWA's single document rule is no longer valid in this Circuit.” *Id.* at 1303. The court then provided:

In the wake of *Cunningham* and *Davis*, then, what is the present status of the MMWA's disclosure requirements? **Clearly, the single document rule remains alive and well. But the statutory and regulatory scheme does not require that *all* information having any bearing on the warranty must be disclosed within the warranty.** To the contrary, the MMWA—and more precisely § 2302(a)—plainly provides that a warrantor's required disclosures under the single document rule are limited to those specifically enumerated in the FTC regulations. **Those regulations do not identify arbitration agreements as items that must be disclosed, but they do mandate disclosure of ‘informal dispute settlement mechanisms.’** The *Davis* case, which is binding precedent to this Court, decided that arbitration agreements are not ‘informal dispute settlement mechanisms’ in the context of the MMWA. Under this synopsis of the law, then, it is plain that, **while the single document rule enjoys continued vitality, arbitration agreements lie beyond the scope of the disclosures required pursuant to that rule.**

Dixon, 399 F. Supp 2d at 1303–04.

Similarly, in *Jones v. Gen. Motors Corp.*, the court held that MMWA claims were subject to binding arbitration, even though the arbitration agreement was not part of the warranty document itself. 640 F. Supp. 2d 1124 (D. Ariz. 2009). The

court started its analysis by noting the liberal federal policy favoring arbitration and by citing to the only two federal appellate courts that had addressed the issue and had compelled arbitration of MMWA claims. *Id.* at 1135-36. The court also conducted the *McMahon* and *Chevron* test to analyze the FTC's interpretation regarding arbitration agreements given its authority over informal dispute settlement procedures. *Id.* at 1136-44. Under the *McMahon* test, the court concluded that nothing in the MMWA's text, legislative history, or purpose prohibited the arbitration of MMWA claims. *Jones*, 640 F. Supp. 2d at 1137-39. In concluding that the FTC's interpretation was impermissible, the court explained,

The essence of the Court's reasoning is the same under both tests: **a statute that delegates to an administrative agency the authority to prescribe rules governing 'informal dispute settlement procedures' does not imbue that agency with authority to prohibit the use of arbitration** as a forum in which the merits of a dispute may be finally, formally, and legally resolved.

Id. at 1137 (emphasis added).

Under the *Chevron* test, the court concluded that “no deference is due the FTC's conclusion that it has the power to prohibit the formal resolution of claims through binding arbitration by virtue of its authority to regulate ‘informal settlement’ procedures. *Id.* at 1139. The court explained that under the plain meaning of the words “binding arbitration” and “informal dispute settlement procedure,” “binding arbitration is not an ‘informal settlement’” and is instead a formal and final

resolution to a legal claim. *Id.* at 1139-40. The court also noted that the Senate Conference Report's discussion of "informal dispute settlement procedures" reflected the use of such procedures as a prerequisite for court action, which would be incompatible with binding arbitration as a method to formally and finally resolve a claim. *Id.* at 1140. Further, the court explained that it did not "quarrel with the FTC's conclusion that informal dispute settlement procedures should not be binding -- but that conclusion simply demonstrates that binding arbitration is not an 'informal dispute settlement procedure,' and thus that the FTC has no authority to preclude its application to MMWA claims, especially in light of the FAA." *Id.* at 1141.

Additionally, the court rejected *Cunningham* because it "predicated its holding on the conclusion that binding arbitration is an informal dispute settlement mechanism," which is a view that was reversed by the Eleventh Circuit in *Davis. Jones*, 640 F. Supp. 2d at 1143. *See also Krusch v. TAMKO Bldg. Prods.*, 34 F. Supp. 3d 584 (M.D. NC 2014) (concluding that MMWA did not preclude binding arbitration and that the FTC's interpretation of the MMWA was owed no deference based on *Walton*); *Brown v. BYRV Inc.*, 2015 U.S. Dist. LEXIS 97438 (D. OR 2015) (enforcing arbitration of MMWA claims relying on *Walton* and *Davis* and recognizing that "binding arbitration is more properly characterized a substitute for filing a lawsuit, not an 'informal dispute settlement procedure.'")

Based on the precedent above, this Court should not follow *Cunningham* because in it the Eleventh Circuit incorrectly concluded that arbitration was an informal dispute settlement procedure in reliance on an FTC position that has been repeatedly rejected. The Eleventh Circuit corrected its interpretation of the MMWA and binding arbitration in *Davis*. However, *Larrain* followed the incorrect interpretation in *Cunningham* and ignored the precedent set by the majority of state Supreme Courts, federal and state appellate courts, and federal district courts distinguishing between binding arbitration and an informal dispute settlement procedure.

This Court should recognize that the reasoning employed by *Davis*, *Walton*, and the cited sister supreme courts from across the country is the sound legal decision. Further, as held in *Jackson* and *Dixon*, this Court should not follow *Cunningham* because the MMWA only requires disclosure of informal dispute settlement procedures and binding arbitration is not an informal dispute settlement procedure. Accordingly, this Court should disregard *Cunningham* and *Larrain* and approve *Krol* because binding arbitration is not an informal dispute settlement procedure and thus outside the authority of the FTC.

C. The Single Document Rule Does Not Apply to Binding Arbitration Unless It Is an Informal Dispute Settlement Procedure

As has been explained above, Congress delegated limited authority to the FTC over informal dispute settlement procedures. 15 U.S.C. § 2310(a). 15 U.S.C. §

2310(a)(2). Based on this limited authority, the FTC has promulgated the single document rule, which requires warrantors to disclose informal dispute settlement mechanisms within the same document as the warranty. *See* 16 C.F.R. § 701.3(a)(6); 16 C.F.R. § 703.2. Because Congress was clear that it was only delegating limited authority to the FTC regarding informal dispute settlement procedures, then the FTC's single document rule enacted based on this delegated authority, can only apply to informal dispute settlement procedures. Conversely, the FTC's single document rule cannot apply to procedures that fall outside the definition of informal dispute settlement procedures. Accordingly, Petitioner can only prevail in his argument regarding the applicability of the FTC's single document rule over arbitration agreements if he can establish that binding arbitration is an informal dispute settlement procedure. Petitioner cannot meet this burden and thus his argument fails.

Petitioner cannot successfully argue that binding arbitration is an informal dispute settlement procedure because this Court has distinguished between an informal proceeding and binding arbitration and arbitration is viewed as a substitute for court litigation. *See Suarez*, 833 So. 2d 762 (Fla. 2002); *B.L. Harbert Int'l*, 441 F.3d 905 (11th Cir. 2006); *North Am. Van Lines*, 616 So. 2d 177 (Fla. 5th DCA 1993).

Also, Petitioner cannot successfully argue that binding arbitration is an informal dispute settlement procedure and thus covered by the FTC's single document rule because the FTC's broad interpretation of an informal dispute settlement procedure to include arbitration has been widely rejected. *See Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268, 1277-80 (11th Cir. 2002); *Walton v. Rose Mobile Homes LLC*, 298 F.3d 470 (5th Cir. 2002). As explained by the cited sister state supreme courts, the "FTC has seen fit to require disclosure of required resort to an informal dispute-settlement mechanism, not the completely separate process of binding arbitration." *Patriot Mfg., Inc. v. Jackson*, 929 So. 2d 997, 1006 (Ala. 2005); *See also In re American Homestar of Lancaster, Inc.*, 50 S.W.3d 480 (Tex. 2001) (finding that the FTC's interpretation of arbitration as a form of informal dispute settlement procedure was not permissible or reasonable); *Borowiec v. Gateway 2000, Inc.*, 808 N.E.2d 957 (Ill. 2004) (finding that FTC's interpretation of the MMWA was incorrect).

Accordingly, this Court should not apply the FTC's single document rule to arbitration agreements because the FTC only has authority over informal dispute settlement procedures and binding arbitrations are not informal dispute settlement procedures.

II. THE ARBITRATION AGREEMENT AND WARRANTY DOCUMENTS MUST BE READ AS A SINGLE DOCUMENT BECAUSE THEY ARE PART OF THE SAME TRANSACTION

As has been explained above, this Court should not apply the FTC's single document rule to arbitration agreements because the FTC only has authority over informal dispute settlement procedures and arbitrations are not informal dispute settlement procedures. However, assuming *arguendo* that this Court applied the FTC's single document rule to arbitration agreements, then this Court should still find that the Arbitration Agreement complied with the single document rule under the well-recognized principle of Florida law that documents concurrently executed in the course of one transaction must be construed as a single document. *See Wilson v. Terwillinger*, 140 So. 3d 1122, 1124 (Fla. 5th DCA 2014); *Dodge City, Inc. v. Byrne*, 693 So. 2d 1033, 1035 (Fla. 2d DCA 1997); *Holcomb v. Bardill*, 214 So. 2d 522, 524 (Fla. 1st DCA 1968); *Stacy David, Inc. v. Consuegra*, 845 So. 2d 303 (Fla. 2d DCA 2003).

In *Wilson*, the Fifth District Court of Appeal held that a lease addendum providing for liquidated damages was enforceable against a tenant even though the lease itself did not contain such provisions and the statute required disclosure of such provisions in the lease. *Id.* at 1122-1124. The court noted that the addendum and lease were signed at the same time and executed as part of one transaction. *Id.* at 1124. Thus, the court concluded that when the parties "executed the lease and the

addendum at the same time and as part of the same transaction, they intended the addendum and its provision for liquidated damages to be a part of the lease, thus sufficiently complying with the statutory provision ‘as provided in the rental agreement.’” *Id.* at 1125. Further, in *Consuegra*, the Second District Court of Appeal compelled arbitration of a MMWA claim when the arbitration agreement was included in the retail order based on this same principle of law. *Stacy David, Inc. v. Consuegra*, 845 So. 2d 303, 305 (Fla. 2d DCA 2003); *See also Mnemonics, Inc. v. Max Davis Assocs.*, 808 So. 2d 1278, 1280 (Fla. 5th DCA 2002) (“When an agreement between the parties consists of several instruments executed by them at or near the same time and concern the same transaction or subject matter, they are generally construed together as a single contract.”)

Here, like in *Wilson* and *Consuegra*, the mere fact that the Arbitration Agreement was not included in the warranty itself must not affect this Court’s analysis. Like in *Wilson*, where the tenant contemporaneously executed the addendum and lease agreement as part of one transaction, here Petitioner contemporaneously executed the warranty and Arbitration Agreement as part of the purchase of the Vehicle. In fact, without the Buyer’s Order and Installment Sales Contracts, Petitioner would not have purchased anything through the warranty. Thus, like in *Wilson*, this Court must construe all of the documents executed at the same time, including the Arbitration Agreement and warranty, together and interpret

them as one document. The analysis in *Wilson* is particularly relevant given that the court considered the liquidated damages clause in the addendum to be a part of the lease itself and as sufficient to satisfy the statutory requirement of disclosure of such damages in the lease agreement itself.

Even though the Fifth District Court considered this principle and explained that courts have repeatedly read documents together, Petitioner completely failed to address this point in his initial brief. This Court should follow the same analysis as in *Wilson*, construe the Arbitration Agreement and warranty documents as one, and thus sufficient to satisfy the FTC's single document disclosure requirement, assuming it is even applicable in this case. This analysis is further supported by the fact that the Second District Court of Appeal has compelled arbitration of MMWA claims where the Arbitration Agreement was not disclosed in the warranty itself.

Accordingly, even if this Court is persuaded by *Cunningham*, this Court should construe the Arbitration Agreement and warranty as one document as they are treated under Florida common law and thus sufficient to satisfy the disclosure requirements of the MMWA. Therefore, this Court must affirm the trial court's Order compelling arbitration.

CONCLUSION

This Court should resolve the certified conflict by approving the Fifth District's decision in *Krol* and disapproving the Third District's decision in *Larrain*.

As has been explained above, the Fifth District Court of Appeal correctly held that that arbitration agreements were not subject to the FTC's single document rule because the FTC only has authority over informal dispute settlement procedures, which does not include binding arbitration. This view is shared by the majority of state supreme courts and federal appellate courts, as well as federal and state trial courts across the country. In contrast, *Larrain* is based on an incorrect classification of arbitration as an informal dispute settlement procedure based on the Eleventh Circuit's opinion in *Cunningham*, but later corrected in *Davis*. Accordingly, this Court should disapprove *Larrain* and approve *Krol*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2020, a true and correct copy of
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I HEREBY CERTIFY that the foregoing Answer Brief is submitted in Times New Roman 14-point font, which satisfies the requirements of Florida Rules of Appellate Procedure and 9.210(a)(2).

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