IN THE SUPREME COURT OF FLORIDA

CASE NO. SC21-1717

Eleventh Circuit Court of Appeals Case No. 21-11742

1944 BEACH BOULEVARD, LLC,
Plaintiff/Appellant

v.

LIVE OAK BANKING COMPANY,
Defendant/Appellee

BRIEF OF *AMICUS CURIAE*, THE COMMERCIAL LAW AMICUS INITIATIVE, NOT DIRECTLY SUPPORTING EITHER PARTY

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INTEREST OF AMICUS CURIAE

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SUMMARY OF THE ARGUMENT

This case concerns the effect of an error in the debtor's name on a financing statement filed with the Florida Secured Transactions Registry (the "Florida Registry"). Pursuant to § 9-506 of the Uniform Commercial Code ("UCC"), enacted without change as Fla. Stat. § 679.5061, a filed financing statement is not rendered ineffective by such an error if a search under the debtor's correct name, using the filing office's standard search logic, would disclose the financing statement. However, § 9-506 expressly contemplates that a filing office might not have a standard search logic, in which case an error in the debtor's name renders the financing statement ineffective.

The search system employed by the Florida Registry does include a search logic because it does not identify which records are hits when a search is performed. Any conclusion to the contrary would create intractable problems and undermine the goals of the system. Accordingly, a financing statement with an error in the debtor's name and filed in the Florida Registry is ineffective.

ARGUMENT

I. UCC ARTICLE 9 PLACES THE BULK OF THE BURDEN OF AN ERROR WITH RESPECT TO THE DEBTOR'S NAME IN A FINANCING STATEMENT ON THE FILER, NOT ON THE SEARCHER

A. *Because Filed Financing Statements Are Indexed under and Searched for by the Debtor's Name, Use of the Debtor's Correct Name Is Critical*

Article 9 requires that a financing statement indicates the debtor's name and that the filing office indexes its records of filed financing statements by the debtor's name. *See* U.C.C. §§ 9-502(a)(1), 9-519(a)(3)-(4), (c)(1); Fla. Stat. §§ 679.5021(1)(a), 679.519(1)(c)-(d), (3)(a).[2] The original version of Article 9 (in effect before the 1998 revision), was premised on a paper-based filing system. Filing offices received and maintained financing statements on paper, filing officers manually created the index, and filing officers manually conducted searches. Under such a system, a creditor requesting a search – which was conducted by looking in the index of debtors' names – could rely on the human judgment of the filing officers to retrieve the relevant filed financing statements,

[2] For simplicity and ease of reading, the remaining citations in this brief to the U.C.C. omit a parallel citation to the correlative Florida statute, which is in all material respects identical unless otherwise indicated.

while disregarding those that were irrelevant. Because these paper-based systems relied on human judgment, filers were given some leeway with respect to errors in the debtor's name. *See* Fla. Stat. § 679.407(f) (repealed). This leeway was useful because there was often uncertainty about what the debtor's correct name was.

The 1998 revision of Article 9 (the "Revision") provided an opportunity to update the rules to account for the computerization of the records of filing offices. By that time, in most states computers created the index and searchers conducted searches using the exactitude of automated systems. As a result, a minor error in the debtor's name on a financing statement often resulted in the financing statement not being disclosed in response to a search of the debtor's correct name.

In formulating the Revision, the drafters were aware that the relative burdens on filers and searchers are inversely proportional. That is, the more forgiving the law is of errors by filers, the more difficult the searcher's task becomes. Conversely, the more precision required by filers, the easier the searcher's task is. But they were also aware of two additional and potentially more important points.

First, although the burdens are inversely related, they are often not equal. Thus, it is sometimes possible to alleviate a big burden on one party by putting a small burden on the other.

Second, false positives – that is, the disclosure in response to a search request of filed financing statements that are not about the person the searcher is interested in – are not benign. That is because filed financing statements provide merely inquiry notice to searchers, who must then contact the filer to ascertain the relevant facts. This is evidenced by the fact that filed financing statements provide very limited information: the name of the debtor, the name of the secured party, and a general indication of the collateral. *See* U.C.C. § 9-502(a). Financing statements need not describe with precision the property encumbered by the security interest or say anything at all about the amount of the secured obligation. They do not provide reliable information with which to distinguish debtors with similar names. Moreover, unlike a mortgage on real property, they need not evidence an actual security interest at all. That is because the filer might have filed in anticipation of a proposed transaction that never closed or because the secure obligation

might have been fully paid off and the financing statement never terminated.[3]

Consequently, searchers must contact the filer of each relevant financing statement to ascertain: (i) whether the listed debtor is the same person that the searcher is concerned about; (ii) whether the filer truly has a security interest and, if so in what property; and (ii) what the amount of the secured obligation is and whether the collateral secures future advances. All financing statements disclosed in response to a search require investigation. False positives add to the burden on the searcher.

With this in mind, the drafters of the Revision did two things: (i) they provided greater certainty about what the debtor's correct name is;[4] and (ii) they allocated with precision the burden of an error in the debtor's name in a filed financing statement.

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[3] *See* U.C.C. §§ 9-502(d) (authorizing pre-filing), 9-513 (requiring the secured party to file a termination statement in limited circumstances).

[4] *See* U.C.C. § 9-503(a). The rules in § 9-503 were modified by amendments in 2010 to provide even more clarity.

B. *The UCC Excuses An Error in the Debtor's Name Only If the Financing Statement Would Be Disclosed in Response to a Search against the Debtor's Correct Name Using the Filing Office's "Standard Search Logic"*

U.C.C. § 9-506 governs the effect of an error in any of the information required to be in a filed financing statement. Subsection (a) provides the basic standard for all such errors: a minor error does not render a financing statement ineffective unless the error is "seriously misleading." Subsections (b) and (c) provide a specific rule with respect to an error in the debtor's name. They provide, respectively, as follows:

• In general, a financing statement that indicates an incorrect name for the debtor is seriously misleading, and hence ineffective under subsection (a).

• However, if the filing office has a standard search logic, and if a search conducted against the debtor's correct name using that standard search logic would disclose the financing statement with the erroneous name, then the error in the debtor's name does not render that financing statement ineffective.

It is vital to note that subsection (c), by referring to "the filing office's standard search logic, ***if any***" (emphasis added), explicitly

recognizes that a filing office might not have a standard search logic.

Under these rules, a searcher need search only against the debtor's correct name. If the filing office has a standard search logic, the searcher need be concerned only with the financing statements that are disclosed in response to that search. If the filing office does not have a standard search logic, the searcher need be concerned only with financing statements that show the debtor's correct name exactly.

These rules, which were added in the Revision, supplanted the "reasonably diligent searcher test" that some courts used under old Article 9. *See, e.g., In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 389 (Bankr. S.D. Fla. 2007). *See also Pankratz Implement Co. v. Citizens Nat'l Bank*, 130 P.3d 57, 68 (Kan. 2006) ("The object of the revisions was to shift the responsibility to the filer by requiring the not too heavy burden of using the legal name of the debtor, thereby relieving the searcher from conducting numerous searches using every conceivable name variation of the debtor."); *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347, 354–55 (Bankr. M.D. Fla. 2003) ("Revised Article 9 requires more accuracy in filings,

and places less burden on the searcher to seek out erroneous filings."). Both parties acknowledge as much. *See* Initial Brief of Appellant at 4, 17-27; Answer Brief of Appellee at 33-34 (apparently conceding that the searcher need not search under any name other than the debtor's correct name but arguing that the searcher must review search results with "reasonable diligence").

Instead, the efficacy of a financing statement that indicates the debtor's name incorrectly now depends solely on whether the filing office uses a search logic and, if it does, whether a search against the debtor's correct name, using that search logic, would disclose that financing statement.

Many UCC filing offices follow the Model Administrative Rules promulgated by the International Association of Commercial Administrators (the "IACA Rules"), the professional organization for filing officers. The IACA Rules include rules on search logic. *See* IACA, Model Admin. Rules §§ 503.1.2, 503.1.3 (2018) (available at https://www.iaca.org/wp-content/uploads/MARS-May-2018.pdf). In a jurisdiction that follows the IACA Rules, a financing statement that erroneously includes or erroneously omits a space or punctuation mark in the debtor's name will be disclosed in

response to a search conducted against the debtor's correct name, with the result that the financing statement will not be rendered ineffective because of that error.[5]

However, the IACA Rules do not protect filers against a misspelling in the debtor's name[6] or from the erroneous inclusion[7]

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[5] The filing system in Florida accomplishes the same thing, not by its search logic but by how the debtor's name is entered and recorded in the system. Specifically, punctuation is converted into spaces and spaces between words are removed. *See* UCC DEBTOR Name Compaction and Search Rules Prepared by the Florida Department of State at 1-2 (available at https://www.floridaucc.com/uccweb/forms/UCC_Debtor_Name_Compaction_and_Search_Rules.pdf).

[6] *See, e.g., In re Fuell*, 2007 WL 4404643 (Bankr. D. Idaho 2007) (a filed financing statement listing the debtor's last name as "Fuel" instead of "Fuell" was ineffective); *Pankratz Implement Co. v Citizens Nat'l Bank*, 130 P.3d 57 (Kan. 2006) (a filed financing statement listing the debtor's first name as "Roger" instead of Rodger" was ineffective). *See also In re PTM Techs., Inc.*, 452 B.R. 165 (Bankr. M.D.N.C. 2011) (financing statements that omitted the "h" in the debtor's name and which were not disclosed in a "standard" web search but were disclosed in a "non-standard" web search were ineffective to perfect because the filing office's rules provide for an exact word match and the "standard" search is the one that follows these rules).

[7] *See, e.g.*, *Fishback Nursery, Inc. v. PNC Bank*, 2017 WL 6497802 (Bankr. N.D. Tex. 2017) (filed financing statements were ineffective to perfect because they identified the debtor as "BFN Operations, LLC abn Zelenka Farms" instead of as "BFN Operations, LLC," and an official search in each of those states would not have disclosed the filings); *In re EDM Corp.*, 2009 WL 367773 (Bankr. D. Neb 2009) (a filed financing statement listing the debtor as "EDM Corporation

or omission of a word.[8] Nor do they treat abbreviations as the equivalent of the non-abbreviated word. Consequently, a financing statement that incorrectly uses "Blvd." instead of "Boulevard" in the debtor's name (or vice-versa) will not, in a system that uses IACA's Rules, be disclosed in response to a search conducted against the debtor's correct name, and will therefore be ineffective to perfect a security interest.

Some other jurisdictions employ search logic that requires an exact match between the name searched and the name in a filed financing statement. In such a jurisdiction, even a trivial error, such as an erroneous space or punctuation mark in the debtor's

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d/b/a EDM Equipment" instead of its registered name, "EDM Corporation," was ineffective because it was undisputed that a search under the registered name using the filing office's standard search engine does not reveal the filing); *In re Jim Ross Tires, Inc.*, 379 B.R. 670 (Bankr. S.D. Tex. 2007) (a filed financing statement which added "dba HTC Tires & Automotive Centers" after the debtor's correct name was ineffective to perfect because a search under the debtor's correct name would not disclose the filings).

[8] *See, e.g., In re Tyringham Holdings, Inc.*, 354 B.R. 363 (Bankr. E.D. Va. 2006) (a filed financing stated that omitted the designation "Inc." in the debtor's name was ineffective to perfect because it was not disclosed in response to a search of the debtor's correct name).

name, will cause a filed financing statement to be ineffective.[9] The search logic in these states minimizes the number of financing statements disclosed in response to a search request, and therefore minimizes the due diligence burden that false positives place of the searcher.

[9] *See, e.g.*, *SEC v. ISC, Inc.*, 2017 WL 3736796 (W.D. Wis. 2017) (a filed financing statement that erroneously had a space between the "Inc" and the period that follows it was insufficient to perfect because a search against the debtor's correct name using the filing office's standard search logic did not reveal the financing statement); *In re C.W. Mining Company*, 488 B.R. 715 (D. Utah 2013) (financing statements identifying the debtor as "CW Mining Company," rather than as "C. W. Mining Company," its registered name, were ineffective to perfect because a search under the debtor's correct name would not have disclosed the filings that lacked the periods and space); *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, 588 S.E.2d 831 (Ga. Ct. App. 2003) (a filed financing statement listed the debtor as "Net work Solutions, Inc." – with an erroneous space in the first word – was ineffective to perfect because a search conducted against the debtor's correct name pursuant to the filing office's search logic did not disclose the filed financing statement); *Host Am. Corp. v. Coastline Fin., Inc.*, 2006 WL 1579614 (D. Utah. 2006) (a filed financing statement that omitted periods in the debtor's name was ineffective because the filing office's standard search logic did not compensate for any errors, even the absence of periods).

II. BECAUSE FLORIDA'S FILING OFFICE DOES NOT USE A SEARCH LOGIC, ANY ERROR IN THE DEBTOR'S NAME IN A FILED FINANCING STATEMENT RENDERS THE FINANCING STATEMENT INEFFECTIVE

A. *A System that Discloses All Filed Financing Statements in Response to a Search Does Not Use Search Logic*

The U.C.C. does not define the term "search logic," but the meaning of the term follows from its function in the statute. A search is conducted with "search logic" only if, when a name is entered, the system scans through the records and returns a list of entries in the office's database that count as hits. In other words, a search logic necessarily entails culling through the existing records and disclosing only those that are highly relevant. Such a process has long been familiar to legal practitioners who use the Westlaw and Lexis databases.

Florida's system does not do that. The response to every search is – quite literally – the entire index of filed financing statements, arranged alphabetically by debtor name. The searcher is simply placed, initially, at a particular location in that index, but then permitted to scroll through the entire index, page by page. No indication is given that any particular records are hits in response to the search.

Given that every filed financing statement is disclosed in response to every search, treating the search response as one generated by "search logic" would lead to disastrous results. A filed financing statement that states the debtor's name with any random string of characters would be effective to perfect a security interest in similarly described property held by the secured party against *every other* Florida individual or organization.

Such a literal application of § 9-506 would render the Florida filing system virtually useless by placing an almost limitless burden on searchers, while eliminating one, small burden on filers: to indicate the debtor's correct name.

Both parties recognize this and, for that reason, suggest that the second certified question – whether search results consist of all filed financing statements – be answered "no." *See* Initial Brief of Appellant at 38; Answer Brief of Appellee at 38. What neither party explains, however, is why the Florida system is one that uses "search logic" at all. They simply presume as much, without analysis or discussion. *See* Initial Brief of Appellant at 15; Answer Brief of Appellee at 16, 31. The only two courts that, to date, have discussed Florida's search process did the same: they assumed

that search results are the product of "search logic" without explaining why or even entertaining the possibility that they are not. *See In re John's Bean Farm*, 378 B.R. at 394; *Summit Staffing*, 305 B.R. at 353.[10] Instead, those courts focused on what the "results" of the search are or which "results" the searcher must investigate. *See In re John's Bean Farm*, 378 B.R. at 394; *Summit Staffing*, 305 B.R. at 355.

Other authorities have, however, identified the essential attributes of "search logic." The most important is that the process results in the designation of a "set (which might be empty) of financing statements on file that constitute hits for the search. . . . A procedure that does not identify which financing statements are hits and which are not is alien to the purpose of the rule." Kenneth C. Kettering, *Standard Search Logic under Article 9 and the Florida Debacle*, U. MIAMI L. REV. 907, 913 (2012). In other words, a search process that does not cull the filed financing statements and

[10] Before certifying its questions to this Court, the U.S. Court of Appeals for the Eleventh Circuit did the same. *See In re NRP Lease Holdings, Inc.*, 20 F.4th 746, 754 (11th Cir. 2021) (stating that the Florida "Registry's search logic takes a user to the point in the alphabetical list of all debtor names contained in the Registry," without explain why that process involves the use of "search logic.").

produce meaningful results, simply does not qualify as one that uses "search logic" within the meaning of § 9-506:

> [A] search procedure that returns as hits, for any search string, all financing statements in the filing office's database cannot rationally be treated as a "standard search logic." If it were, then section 9-516(c) would validate a filing in that office that has any random string of characters at all in the debtor's name field.

Id. Professors Harris and Mooney, the co-reporters for revised Article 9 – and thus the principal authors of the statutory text and official comments – agree:

> The Florida search logic presents an extreme version of the opposite approach. Rather than identify specific financing statements, a web-based search makes available to the searcher the entire index. It places the closest match at the top of the page shown to the searcher and allows the searcher to navigate the remainder of the index from there. Inasmuch as the system does not yield particular "hits," it should not be considered a "standard search logic."

STEVEN L. HARRIS & CHARLES W. MOONEY, JR., TEACHER'S MANUAL FOR SECURITY INTERESTS IN PERSONAL PROPERTY: CASES, PROBLEMS AND MATERIALS 51 (6th ed. 2016).

Recognizing that Florida's search process does not use "search logic" would not create any problems or undermine any of the policies underlying Article 9. Indeed, § 9-506(c) expressly

recognizes that a filing office need not have or use search logic. Instead, treating the Florida search process as one that does not use search logic would simply mean that filed financing statements that use an erroneous name for the debtor cannot be saved by § 9-506(c). As a result, filed financing statements that use the correct name of the debtor (and are not otherwise deficient) will be effective and financing statements that use an incorrect name for the debtor will be ineffective. Such a result is wholly consistent with the text and policy underlying the Revision: which put a premium on the filer successfully complying with the rather ministerial task of indicating the debtor's correct name.

B. *The Approaches Suggested by the Appellant and the Appellee Incorrectly Treat Florida's System as Having Search Logic, Are Not Supported by the Statutory Text, and Would Create Intractable Problems*

Both the Appellant and the Appellee recognize that treating the entire index as disclosed in response to a search – which is precisely what the Florida Registry does – would make the system unworkable. Accordingly, the Appellant argues that the searcher need not look beyond the initial page (*i.e.*, only the initial page should be regarded as disclosed). Initial Brief of Appellant at 37-

38.[11] This is essentially the approach adopted by the court in *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. at 395-96. The Appellee, in contrast, argues that the searcher must use "reasonable diligence and common sense," which "at minimum should include the searcher utilizing the Previous and Next buttons at least once to confirm the existence (or non-existence) of the financing statement." Answer Brief of Appellee at 38-39. The Appellee thus argues that even though the Revision removed the requirement that a reasonable searcher *search* under incorrect debtor names, such a searcher must employ "reasonable diligence" in *examining the results* of a search. This is essentially the approach adopted by the court in *In re Summit Staffing Polk County, Inc.*, 305 B.R. at 355.

But neither approach – treating some, but not all, of the financing statements listed in the search results as if they had been disclosed pursuant to the filing office's search logic – is consistent

[11] Presumably, Appellant would agree that if there were more than 20 filed financing statements that identified the debtor by its *correct name*, the filed financing statements not listed on the first page of the search results are effective to perfect. But that conclusion results from the application of § 9-502, not from § 9-506.

with the text of or comments to U.C.C. § 9-506(c). Nothing in the text or comments suggests that some, but not all, of the search results are to be treated as disclosed for the purposes of § 9-506(c). And nothing in the text or comments provides any guidance for distinguishing the portion of the results that should be treated as disclosed from the portion that should not be. Hence, both the Appellant and the Appellee advocate for a judicial gloss on the statute that is simply not there.

The Appellee's approach is particularly problematic, and would undermine the purpose underling the Revision more than the Appellant's approach. The Appellee refers to pages which, "at minimum," the searcher should be expected to examine, and hence the pages which, "at minimum," would be regarded as disclosed in response to the search. But by not providing a clear rule how many "previous" or "next" pages" contain results that § 9-506(c) would validate, the Appellee's approach would introduce enormous uncertainty to a task as to which the Revision sought to eliminate uncertainty altogether. That uncertainty would impel searchers to further extend the due diligence process, all for the limited benefit of protecting a filer that failed to use the debtor's correct name.

1. The Appellee's Approach Is Premised on a Misunderstanding of how the Search Process Works

The Appellee's approach rests on a misconception about how searching works. By suggesting that the searcher could, by looking at the previous and subsequent pages, "confirm the existence (or non-existence) of ***the*** financing statement" (emphasis added), the Appellee presumes that such information exists and would be readily discernable. That is not the case. The Appellee's reference to "***the*** financing statement" incorrectly implies that there is or can be at most only one relevant financing statement. But there could be multiple or even dozens of financing statements filed against the individual or business entity that is the subject of the search.

Moreover, it is not possible to discern readily which financing statements on the disclosed and adjoining pages relate to the subject of the search precisely because of what § 9-506(c) does. If the financing statements on those pages are deemed to be disclosed in response to a search against the debtor's correct name using the filing office's standard search logic, then they all would be effective to perfect a security interest granted by the person searched against, regardless of how much that person's name differs from the

name indicated on those financing statements. A searcher would need to investigate further by contacting the filer of each of the financing statements listed on those three or more pages: all 20 per page.

Perhaps, by referring to "reasonable diligence and common sense," Answer Brief at 16, the Appellee is suggesting that only those filed financing statements that list a similar name for the debtor would be deemed effective. But similarity is a vague and elusive concept, and the Appellee offers no guidance on how similarity would be determined. More important, that approach is precisely what the Revision rejected.

2. The Approaches of the Appellant and the Appellee Would Create Intractable Problems

The approaches of both the Appellant and the Appellee would create two additional problems, each relating to the priority of security interests.

The first of these problems emanates from the fact that neither the Appellant nor the Appellee recognizes that the search process does not end when the searcher contacts the filer of each relevant

financing statement to request information. The full search process involves far more.

This is because priority is generally based on time of filing, regardless of when the security interest attached or was perfected. *See* U.C.C. § 9-322(a)(1). Consequently, merely confirming with the filer of each filed financing statement that the filer *currently* has no security interest in the property of the person the searcher was interest in would be insufficient to protect the searcher. The filer could later acquire such a security interest, and that later-arising security interest would have priority over the security interest acquired by the searcher. So, for the searcher to ensure the priority of its own security interest – which is the whole point of searching – the searcher would need to get the filer of each filed financing statement to either file a termination statement or enter into a subordination agreement, something that none of those filers would have a duty to do. False positives are not benign.

The second problem emanates from the fact that the index is not static. As financing statements are filed and terminated, the index will change. Thus, the financing statements listed on the initial page of the search results (with respect to the Appellant's

proposal), or on the initial, previous, and next pages (with respect to the Appellee's proposal) will change. Consequently, the effectiveness under their approaches, of a previously filed financing statement that gives an incorrect name for the debtor could change for reasons outside the parties' control, having nothing to do with the parties or the transaction, and without any notice to anyone.

Consider the following hypothetical:

> Secured Party A files a financing statement that erroneously identifies the debtor's name, perhaps by using "1999 Beach Boulevard, LLC" instead of "1944 Beach Boulevard, LLC. In the index, the financing statement appears 41 entries after the first financing statement that list the debtor's name correctly. Secured Party B conducts a search and does not discover the erroneous financing statement because the financing statement is not on the initial page of the search results or on the immediately "next" page. Sometime later, one financing statement listing a different debtor and indexed within that interval expires or is terminated, and is removed from the index.[12] Now the erroneous financing statement is within 40 entries in the index and would be indicated on the immediate "next" page (with slightly different facts, the financing statement could move from the immediate next page to the initial page, or from a remote "previous" page to the immediate "previous" page).

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[12] The filing office is not supposed to remove a financing statement from the index until one year after the financing statement ceases to be effective. *See* UCC §§ 9-519(g), 9-522(a). But regardless of when the index is updated, the point is that it will be updated.

The erroneous financing statement would, under Appellee's approach, no longer be ineffective due to the error in the debtor's name, with the result that the filer's security interest might now be perfected. If priority is determined based on the time of filing, *see* U.C.C. § 9-322(a)(1), the searcher – Secured Party B – will lose priority even though it conducted a proper search. If priority is determined by when the financing statement fell within the applicable range of the index (*i.e.*, the erroneous financing statement is deemed filed on that date), that information might be unknown and undiscoverable. The system would simply not work. Neither the Appellant nor the Appellee addressed these problems.

CONCLUSION

For the foregoing reasons, this Court should respond to all three questions certified by the Court of Appeals for the Eleventh Circuit with the following, single response:

> By disclosing in response to a search request the index of all filed financing statements, rather than the filed financing statements or a list of the filed financing statements with a name for the debtor that matches or

closely matches the name searched, the filing office does not use any "standard search logic" as that term is used in Florida Statute § 679.5061(3). Accordingly, a filed financing statement that does not identify the debtor by the debtor's correct name within the meaning of Florida Statute § 679.5031(1) is seriously misleading under Florida Statute § 679.5061(2) and ineffective to perfect.

Dated: February 28, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of February, 2022, served a true and correct copy of the foregoing application by mail and electronically to the following: Ezra Z. Scrivanich, Esq., 3550 Engineering Drive, Suite 260, Peachtree Corners, Georgia 30092 (escrivanich@mtglaw.com), and Richard R. Thames, at 50 North Laura Street, Suite 1600 Jacksonville, Florida 32202 (rrt@thamesmarkey.law).

/s/ Scott G. Hawkins
Scott G. Hawkins, Esq.

CERTIFICATION OF COMPLIANCE FOR COMPUTER-GENERATED BRIEFS

Pursuant to Rules 9.045(e) and 9.210 of the Florida Rules of Appellate Procedure, I hereby certify that the foregoing brief is submitted in 14-point Bookman Old Style font and contains 4,902 words, excluding those parts specified by Rule 9.045(e) to be excluded.

/s/ Scott G. Hawkins
Scott G. Hawkins, Esq.

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