IN THE SUPREME COURT OF FLORIDA

THE ESTATE OF EDWARD HENRY CLARK, by and through GAYLE SHOTTS, Personal Representative,

Petitioner,

v.

OP WINTER HAVEN, INC., *et al.*

Respondents.
_____/

CASE NO.: SC08-1774
L.T. CASE NO.: 2D07-2635

AMICUS CURIAE BRIEF OF HEARTLAND OF ZEPHYRHILLS FL, LLC IN SUPPORT OF RESPONDENTS

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

Heartland of Zephyrhills FL, LLC, doing business as Heartland of Zephyrhills ("Heartland"), operates a nursing home in Zephyrhills, Florida. Heartland is part of the HCR Manor Care family of nursing and rehabilitation centers. Like many nursing homes, Heartland offers its residents the opportunity to agree to resolve disputes through an expeditious and voluntary arbitration proceeding. Heartland's agreements have been enforced in Florida's trial and appellate courts. *E.g., Bland v. Health Care & Retirement Corp.*, 927 So. 2d 252 (Fla. 2d DCA 2006).

Heartland believes that the parties' briefs in this appeal raise an important issue regarding arbitration law: whether the court, or the arbitrator, should resolve a public policy challenge to remedial limitations applicable under an agreement to arbitrate. *See* Petitioner's Ini. Br. at 30-34; Respondent's Ans. Br. at 41-42. This issue goes to the heart of federal arbitration law and is the subject of a body of case law not discussed in the parties' principal briefs. In this brief, Heartland respectfully directs the Court toward the governing principles and cases that Heartland believes should control the outcome on this issue and discusses them in the specific context of disputes between nursing home facilities and residents.

Heartland acknowledges that it prevailed on this issue before the Second District in *Bland*. Heartland further acknowledges that related corporate entities

within the HCR Manor Care family of nursing homes are litigating this issue in other cases, such as the Second District's decision in *Gessa v. Manor Care, Inc.*, 4 So. 3d 679 (Fla. 2d DCA 2008), which is currently on petition for review in this Court in case number SC09-768. Counsel for Petitioner in this case represent the petitioner in *Gessa*, and counsel for Heartland represent the respondent in *Gessa*.

SUMMARY OF ARGUMENT

Where arbitration agreements touch upon interstate commerce, as most nursing home arbitration agreements do, they are governed not only by Florida arbitration law but federal arbitration law. Under federal and state law, the court's role is minimal when presented with a motion to compel arbitration. The court should resolve only gateway issues and, if an arbitrable issue exists, then arbitration should be compelled.

A public policy challenge to an agreement's remedial limitations is not a gateway issue for two independent reasons. First, it is not a challenge to the arbitration clause and whether the parties made an agreement to arbitrate in the first place; rather, it is a challenge to a limitation on remedies available in arbitration. Numerous federal courts, including the First Circuit, Third Circuit, Seventh Circuit, and Eighth Circuit, have so held and referred such challenges to the agreed-upon arbitrator. The Second District has expressly followed this line of federal authorities and reached the same result. Other districts have held that

public policy challenges to remedial limitations are for the court to decide, and in so holding ignored these federal authorities and their underlying, controlling principle that remedial limitations challenges do not challenge the arbitration clause itself.

A public policy challenge to an agreement's remedial limitations is also not a gateway issue where the challenged provisions are severable, since the challenge does not go to the validity of the agreement to arbitrate. Therefore, a court should first determine whether the challenged provisions are severable. If so, then arbitration should be compelled, since even if the challenged provisions are unenforceable they can be severed and an agreement to arbitrate still stands. The Eleventh Circuit has expressly adopted this approach, and the Second District has correctly followed it. Other districts have erroneously ignored these controlling principles and in doing so violated the requirement that courts should resolve only gateway issues before sending a case to arbitration.

For both of these reasons, which are each well supported in the case law, the Court should approve the Second District's decision to allow the arbitrator to resolve Petitioner's public policy challenge. It is not a gateway issue.

ARGUMENT

UNDER FEDERAL AND FLORIDA LAW, A PUBLIC POLICY CHALLENGE TO AN ARBITRATION AGREEMENT'S REMEDIAL LIMITATIONS IS A MATTER FOR THE ARBITRATOR TO RESOLVE.

A. NURSING HOME ARBITRATION AGREEMENTS ARE GENERALLY GOVERNED BY FEDERAL LAW AS WELL AS FLORIDA LAW, BOTH OF WHICH REFLECT POLICIES FAVORING ARBITRATION.

Arbitration is governed by federal and state law. Where an agreement calls for arbitration, a Florida court will generally apply the Florida Arbitration Code, which is codified at chapter 682, Florida Statutes. In addition, the Federal Arbitration Act, 9 U.S.C. § 2 *et seq.*, applies to any contract evidencing a transaction involving interstate commerce. 9 U.S.C. § 2. Congress intended that act to apply broadly, to the furthest reaches of the Commerce Clause. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115 (2001). The central purpose of the Federal Arbitration Act is "to ensure that private agreements to arbitrate are enforced according to their terms." *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 53-54 (1995). The federal act leaves parties "generally free to structure their arbitration agreements as they see fit." *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 479 (1989).

Both laws favor arbitration as a means of resolving disputes. The Federal Arbitration Act reflects a strong national public policy that favors enforcing arbitration agreements. *Global Travel Mktg., Inc. v. Shea*, 908 So. 2d 392, 396

(Fla. 2005). Likewise, the Florida act reflects Florida's public policy, which "favors resolving disputes through arbitration when the parties have agreed to arbitrate." *Maguire v. King*, 917 So. 2d 263, 266 (Fla. 5th DCA 2005). These laws were adopted to combat a perceived hostility by the judiciary toward arbitration agreements. *See Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 272 (1995) ("We therefore proceed to the basic interpretive questions aware that we are interpreting an Act that seeks broadly to overcome judicial hostility to arbitration agreements . . . ."); *Pierce v. J.W. Charles-Bush Sec., Inc.*, 603 So. 2d 625, 627-28 (Fla. 4th DCA 1992).

Florida case law recognizes that nursing home residents and facilities may enter agreements to arbitrate their disputes. *E.g., Richmond Healthcare, Inc. v. Digati*, 878 So. 2d 388, 390 (Fla. 4th DCA 2004) (upholding the enforceability of an agreement to arbitrate Chapter 400 claims). Where they do so, the agreement generally triggers both the federal and state arbitration laws. The minimal connection to interstate commerce necessary to trigger the Federal Arbitration Act is usually satisfied in any number of ways. For instance, some nursing homes are part of national corporate networks. Some are incorporated outside Florida, and thus contracts with their residents are between residents of different states. Also, many nursing homes accept Medicare payments from residents and are governed by numerous federal nursing home regulations. *See* 42 C.F.R. §483.01 *et seq.*

The arbitration agreement between Petitioner and Respondent expressly states it is governed by the Federal Arbitration Act. The agreement also states various factual bases to establish a connection between the residency and interstate commerce. The Federal Arbitration Act thus applies to this agreement.

B. WHERE A PARTY SEEKS TO ENFORCE AN ARBITRATION AGREEMENT, COURTS RESOLVE ONLY GATEWAY ISSUES.

Where a party seeks to enforce an arbitration agreement, courts may not assume the parties intended courts to decide anything other than "gateway matters, such as whether the parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy." *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 452 (2003). Simply put, the court's role is minimal. The court should resolve only gateway issues and, if an arbitrable issue exists, then arbitration should be compelled.

This Court has recognized Florida and federal law to be the same on this point. In *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999), the Court held that under both the federal and state arbitration laws, "there are three elements for courts to consider in ruling on a motion to compel arbitration of a given dispute: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived." *See also Raymond James Fin. Servs. v. Saldukas*, 896 So. 2d 707, 711 (Fla. 2005)

(citing *Seifert* as setting forth the proper test under federal law and Florida law).

Thus, in determining whether an arbitration agreement subject to Florida law requires a claim to be heard in arbitration, Florida courts apply Florida and federal law in the same manner. Consequently, the result should be the same under Florida and federal law. *E.g.*, *Auchter Co. v. Zagloul*, 949 So. 2d 1189, 1191 (Fla. 1st DCA 2007) ("[F]or purposes of this appeal, it is irrelevant which law applies because the analysis is the same in either case.").

C. A CHALLENGE TO AN ARBITRATION AGREEMENT'S REMEDIAL LIMITATIONS IS NOT A GATEWAY ISSUE.

Petitioner challenges certain provisions of the parties' arbitration agreement that limit the remedies available in arbitration, asserting those limitations are unenforceable and void the entire agreement. A court presented with such a challenge can resolve it only if it constitutes a gateway issue. Petitioner contends it is such a challenge under the first prong of *Seifert*'s three-part test, which asks "whether a valid written agreement to arbitrate exists." Petitioner is incorrect.

Petitioner's challenge is not a gateway issue for two independent reasons. First, Petitioner's challenge is not one that attacks the "agreement to arbitrate" itself, as that term must be construed under controlling federal law. Second, where the challenged provisions are severable, the challenge is not one that would render the agreement to arbitrate invalid. Each of these reasons is supported by case law

holding that challenges such as Petitioner's are not gateway issues for courts to resolve.

1. A Remedial Limitations Challenge Is Not A Gateway Issue Because It Does Not Challenge That The Parties Made An Agreement To Arbitrate.

The first prong of *Seifert* permits a court to inquire into whether a valid written agreement to arbitrate exists. Petitioner argues this includes *any* challenge to any provision within the parties' agreement. That expansive view of a gateway issue, however, would violate federal law and contravene the Federal Arbitration Act. The Court was previously led to apply that type of broad reading of *Seifert*'s first prong in *Cardegna v. Buckeye Check Cashing, Inc.*, 894 So. 2d 860 (Fla. 2005). The United States Supreme Court reversed that decision in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006).

In *Buckeye*, the parties entered a check-cashing agreement that included an agreement to arbitrate disputes. The plaintiff opposed the defendant's effort to compel arbitration by asserting that the agreement's interest rate was usurious, thereby rendering the parties' entire agreement, including its arbitration clause, void. This Court agreed and held that, as a matter of Florida public policy and contract law, the parties' entire agreement was void and no arbitration agreement ever came into existence. *Cardegna*, 894 So. 2d 860 (Fla. 2005).

The United States Supreme Court reversed. It relied upon its prior decision

in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395 (1967), where it held a party's claim that it was fraudulently induced to enter an agreement containing an arbitration provision should be resolved by the arbitrator:

> [W]ith respect to a matter within the jurisdiction of the federal courts save for the existence of an arbitration clause, *the federal court is instructed to order arbitration to proceed once it is satisfied that* "*the making of the agreement for arbitration* or the failure to comply (with the arbitration agreement) *is not in issue*." Accordingly, if the claim is fraud in the inducement of the *arbitration clause* itself—an issue which goes to the "making" of the agreement to arbitrate—the federal court may proceed to adjudicate it.

388 U.S. at 403-04 (quoting 9 U.S.C. § 4) (footnotes omitted) (emphasis added). *Prima Paint* established that the focus of whether the parties made an agreement to arbitrate belongs on the specific language where the parties agreed they would arbitrate their claims:

> In the present case no claim has been advanced by *Prima Paint* that F & C fraudulently induced it to enter into the agreement to arbitrate "(a)ny controversy or claim arising out of or relating to this Agreement, or the breach thereof."

388 U.S. at 406. Because the fraudulent inducement challenge raised in *Prima Paint* was not directed at the arbitration clause, the challenge was not to the making of the agreement to arbitrate and was thus an issue for the arbitrator.

Buckeye applied the teachings of *Prima Paint* and held that the arbitration clause in the parties' agreement must be severed from the remainder of the agreement, including the allegedly usurious interest provision. Rejecting this

Court's decision that the arbitration clause was invalidated by the inclusion of the challenged interest provision, the Supreme Court explained: "[W]e cannot accept the Florida Supreme Court's conclusion that enforceability of the arbitration agreement should turn on 'Florida public policy and contract law . . . .'" 546 U.S. at 446. Because there was no contention that the arbitration clause itself was contrary to public policy, the public policy challenge to the interest provision was an issue for the arbitrator, not the court. *Id.*

Buckeye gave two examples of challenges the Supreme Court has held are challenges to the arbitration clause and thus for a court to resolve: whether it is lawful to arbitrate the claim at issue and whether the specific arbitration clause itself, as opposed to the entire agreement, was fraudulently induced. *Id.* at 444. *Buckeye* also gave three examples of challenges other courts have held are challenges to the arbitration clause and thus for a court to resolve: whether the alleged obligor signed the contract, whether the signor lacked capacity to bind the alleged principal, and whether the signor lacked mental capacity to assent. *Id.* at 444 n.1. In all of those examples, the challenge is to whether the parties in fact made an agreement to arbitrate a claim that can lawfully be arbitrated. None of them was a challenge, as here, to other terms in the agreement, including terms that govern the remedies potentially available to a prevailing claimant.

Together, *Buckeye* and *Prima Paint* establish that a challenge to the

arbitration clause—which is for a court to resolve—is a challenge to whether the parties validly *made* an agreement to arbitrate in the first place. Petitioner contends the provisions challenged here are part of the agreement to arbitrate and so a challenge to them constitutes a challenge to the arbitration clause. Petitioner is incorrect.

The "arbitration clause" of which the Supreme Court spoke is the language wherein the parties mutually assented to arbitrate certain disputes. Under *Buckeye*, that clause is severable from the remainder of the contract, and arbitration should be compelled where that clause is not challenged. Challenges to portions of the agreement other than the arbitration clause itself, by which the parties agreed to arbitrate their disputes, are to be resolved by the arbitrator.

Consistent with these teachings, a body of case law from federal and Florida courts holds that challenges to remedial limitations in arbitration agreements are *not* challenges to whether the parties made an agreement to arbitrate. For instance, in *Hawkins v. Aid Ass'n for Lutherans*, 338 F.3d 801, 807 (7th Cir. 2003), the Seventh Circuit held that, "[b]ecause the adequacy of arbitration remedies has nothing to do with whether the parties agreed to arbitrate or if the claims are within the scope of that agreement, these challenges must first be considered by the arbitrator." The First Circuit similarly concluded that the enforceability of an arbitration agreement's elimination of certain remedies "must be brought to the

arbitrator because it does not go to the arbitrability of the claims but only to the nature of available relief." *MCI Telecomm. Corp. v. Matrix Comm. Corp.*, 135 F.3d 27, 33 n.12 (1st Cir. 1998). *See also Arkcom Digital Corp. v. Xerox Corp.*, 289 F.3d 536, 539 (8th Cir. 2002); *Great Western Mtg. Corp. v. Peacock*, 110 F.3d 222, 230 (3d Cir. 1997).

In this case, Petitioner challenges the agreement's provisions relating to punitive damages: specifically, the provision requiring that AHLA guidelines be followed, which Petitioner claims impermissibly increases the burden of proof necessary to recover punitive damages, and the agreement's waiver of punitive damages. Federal courts have squarely held that challenges to limitations on the ability to recover punitive damages in arbitration are issues for the arbitrator to resolve. *E.g.*, *Larry's United Super, Inc. v. Werries*, 253 F.3d 1083, 1086 (8th Cir. 2001) (where arbitration agreement limited punitive damages and other relief, enforceability of those limitations was an issue for the arbitrator); *Faust v. Command Ctr., Inc.*, 484 F. Supp. 2d 953, 955 (S.D. Iowa 2007) ("[T]he particular issue of whether a waiver of punitive damages violates public policy is, at least in the first instance, a matter for the arbitrator to decide.").

The Second District has followed this line of federal authorities. For example, in *Rollins, Inc. v. Lighthouse Bay Holdings, Ltd.*, 898 So. 2d 86 (Fla. 2d DCA 2005), the Second District reversed a trial court's decision that an arbitration

agreement's remedial limitations rendered the agreement to arbitrate unenforceable and instead compelled arbitration. *Rollins* squarely held that "the determination of whether an arbitration provision is unenforceable because it limits statutory remedies is for the arbitrator, not the trial court." *Id.* at 87. *Rollins* specifically relied upon many of the federal authorities cited above, observing that "[t]he consensus among those courts is that the arbitrator should decide in the first instance whether particular remedial limitations are permissible." *Id.* at 88. The Second District later followed *Rollins* when it compelled arbitration of the plaintiff's claims in *Bland v. Health Care & Retirement Corp.*, 927 So. 2d 252 (Fla. 2d DCA 2006).

By comparison, the First, Fourth, and Fifth Districts have rejected the view that a remedial limitations challenge is an issue for the arbitrator. *E.g.*, *Alterra Healthcare Corp. v. Estate of Linton*, 953 So. 2d 574, 577 (Fla. 1st DCA 2007); *Alterra Healthcare Corp. v. Bryant*, 937 So. 2d 263, 270 (Fla. 4th DCA 2006); *SA-PG-Ocala, LLC v. Stokes*, 935 So. 2d 1242 (Fla. 5th DCA 2006). The Fourth District in *Bryant* specifically rejected an argument that, under *Buckeye*, the challenge should be for the arbitrator. *Bryant* concluded that a challenge to remedial limitations applicable in arbitration is a challenge to the arbitration agreement itself, making *Buckeye* inapposite. 937 So. 2d at 268.

Bryant misread the core principles underlying *Buckeye* and ignored the body

of federal law, and *Rollins*, holding that challenges to remedial limitations are issues for the arbitrator. The First and Fifth Districts likewise failed to appreciate the limited inquiry required when courts determine whether to compel arbitration. Their approach contravenes the policies underlying the federal and Florida arbitration laws. It throws out the baby with the bathwater by improperly rejecting altogether the use of arbitration where a limitation on remedies may be unenforceable.

It is notable in this regard that not only are nursing home arbitration agreements appropriate and consistent with the policies favoring arbitration, but section 400.151(2), Florida States, requires nursing homes and residents to enter a contract and to agree as they "deem appropriate." Furthermore, unlike some Florida statutory schemes, nothing in Chapter 400 prevents nursing homes and their residents from agreeing in the required contract to waive or limit remedies that may be available under a Chapter 400 claim. *Cf.* §§ 520.12-.13, Fla. Stat. (providing a nonwaivable right to attorney's fees).

Dissenting in part in *Linton*, then-Judge Polston addressed the merits of the public policy challenge and pointed out that a party's decision to contract away possible statutory remedies should be honored unless prohibited by the legislature. *Linton*, 953 So. 2d at 579-82 (Polston, J., dissenting in part). *Bland* likewise recognized the arguments in favor of enforcing the agreed-upon limitations at issue

in that case as "compelling." 927 So. 2d at 258. In all events, courts should not reach the merits of the public policy challenge because it is not a gateway issue and thus is an issue for the arbitrator, not the courts.

In sum, as a matter of controlling federal law, a challenge to an agreement's remedial limitations does not challenge the arbitration clause and so is not a gateway issue for a court to decide. A host of federal authorities have reached this result, and the Second District correctly relied on such cases in *Rollins*. By following *Rollins* in the decision below, the Second District correctly left Petitioner's remedial limitations challenge for the arbitrator.

2. A Remedial Limitations Challenge Is Not A Gateway Issue Where The Limitations Are Severable Because, In That Event, The Challenge Cannot Render The Agreement To Arbitrate Invalid.

Petitioner's remedial limitations challenge is not a gateway issue under *Seifert*'s first prong for a second reason. If the challenged provisions are severable, then even a successful challenge will not render the agreement invalid for purposes of determining whether a valid written agreement to arbitrate exists. Thus, the court should determine at the outset only whether the challenged provisions can be severed. If they can be severed, then a public policy challenge to them is an issue for the arbitrator. The Eleventh Circuit adopted this precise rationale in *Anders v. Hometown Mortgage Servs., Inc.*, 346 F.3d 1024, 1032 (11th Cir. 2003), and the Second District has followed it in multiple cases, including the decision below.

In *Anders*, an arbitration agreement provided that the arbitrator could not award punitive damages, treble damages, penalties, or attorney's fees. The plaintiff sued and the defendant sought to compel arbitration. The plaintiff argued that the remedial limitations were invalid because they negated potential statutory remedies and that this rendered the entire agreement invalid. The Eleventh Circuit rejected that argument and ordered arbitration to proceed.

Noting that severability is a matter of state contract law, the court held that where the challenged provisions are severable under state law, *no further analysis is required* under federal arbitration law to enforce the agreement to arbitrate. 346 F.3d at 1032. The court explained that whether the challenged provisions are valid or invalid will not invalidate the agreement as a whole because if they are invalid, they will be severed. Thus, the plaintiff's challenge to those limitations was an issue to be decided by the arbitrator.

Under *Anders*, a court faced with a remedial limitations challenge should at first determine only whether the challenged provisions are severable. If they are, then the arbitration agreement will survive as a valid agreement *regardless of whether the limitations are enforceable*, and that enforceability issue will be resolved by the arbitrator.

The Second District expressly relied on *Anders* and these principles when it decided *Rollins* and accordingly left the public policy challenges in that case for

the arbitrator after determining the challenged limitations could be severed. The Second District relied on *Rollins* in reaching the same result in *Bland*, and did so again in the decision below and in *Gessa v. Manor Care, Inc.*, 4 So. 3d 679 (Fla. 2d DCA 2008), *petition for rev. pending*, Case No. SC09-768. As the Second District recognized in the decision below, the arbitrator can determine the extent to which remedies apply and should be granted. *Shotts v. OP Winter Haven*, 988 So. 2d 639, 644 (Fla. 2d DCA 2008)("Nothing suggests that the arbitrators could not easily resolve this case using proper elements of damages under Florida law and with the appropriate burden of proof.").

In contrast, the Fourth District's decision in *Bryant* directly conflicts with the federal and state requirement that courts resolve no more than gateway issues before sending a case to arbitration. In *Bryant*, the court *first* addressed whether the limitations at issue there violated public policy, held they were unenforceable, and *then* proceeded to determine those provisions were severable and ordered arbitration. That analysis was backwards.

The *Bryant* court's public policy analysis was not a gateway issue because, as the decision shows, no matter how the issue was resolved, the result would be that a valid agreement to arbitrate existed and the parties would proceed to arbitration. As *Anders* recognizes, the gateway issue for the court is only whether the challenged limitations are severable. If they are, then the judicial labor ends

because arbitration must in all events be compelled, and the arbitrator can resolve the public policy challenge. *Bryant*'s actions in resolving an issue it did not need to resolve to compel arbitration violated the important principle that courts should resolve only gateway issues before compelling arbitration.

In short, where the challenged provision is severable, there is no need for a court to examine its enforceability. The enforceability issue may never even become ripe in the arbitration, and if it does, then the arbitrator whom the parties agreed upon can resolve it.

Accordingly, based on *Anders* and *Rollins*, the court below correctly considered only whether the challenged provisions are severable. If so, then Petitioner's challenge should be resolved by the agreed-upon arbitrator, not the courts. As the Second District explained below, the challenged provisions in this case are severable based upon the agreement's severability provision and, upon this determination, the court's role in resolving Petitioner's public policy challenge comes to an end. A public policy challenge to severable limitations is not a gateway issue.

CONCLUSION

For all of the foregoing reasons, Heartland supports Respondent's position that the Second District correctly determined that Petitioner's public policy challenge did not present a gateway issue for the courts to resolve and properly left that issue to the arbitrator.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2009, a copy of the foregoing was served by U.S. Mail on the following: Susan B. Morrison, Susan B. Morrison, P.A., 1200 W. Platt Street, Suite 100, Tampa, Florida 33606, counsel for Petitioner; Isaac R. Ruiz-Carus, Wilkes & McHugh, P.A., One N. Dale Mabry Highway, Suite 800, Tampa, Florida 33609, counsel for Petitioner; Antonio Cifuentes, Mancuso & Dias, P.A., 5102 Laurel Street, Suite 700, Tampa, Florida 33607, counsel for Respondents.

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CERTIFICATE OF COMPLIANCE

I further certify that the type size and style used throughout this brief is 14-point Times New Roman double-spaced, and that this brief complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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