Filing # 38965405 E-Filed 03/14/2016 11:55:42 AM

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC15-1858
L.T. Case Nos. 4D11-4806, 4D11-4833, 4D11-4834, 08-29706 19

NORTH BROWARD HOSPITAL DISTRICT, ROB ALEXANDER, M.D., ANESCO NORTH BROWARD, LLC and EDWARD PUNZALAN, CRNA, et al.,

Appellants,

vs.

SUSAN KALITAN,

Appellee.

ON APPEAL OF A DECISION OF
THE FOURTH DISTRICT COURT OF APPEAL

APPELLANTS' REPLY BRIEF

HEATH & MARCANTONIO, CHARTERED
888 S.E. Third Avenue, Suite #202
Ft. Lauderdale, FL 33316

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
One East Broward Blvd., Suite #1200
Ft. Lauderdale, FL 33301

HICKS, PORTER, EBENFELD & STEIN, P.A.
799 Brickell Plaza, 9th Floor
Miami, FL 33131

RECEIVED, 03/14/2016 11:58:34 AM, Clerk, Supreme Court

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

Cases

Statutes

Other Authorities

ARGUMENT

I. SECTION 766.118'S PER CLAIMANT CAPS CONSTITUTIONALLY APPLY TO KALITAN'S SINGLE-CLAIMANT PERSONAL INJURY ACTION.

The record is clear. The trial court applied §766.118(2) & (3)'s "per claimant" noneconomic damage caps to Kalitan's single-claimant personal injury action and ruled the statute did not violate any provisions of the Florida Constitution. (R.46.7948-53; 52.8198-8204; A.B.13 n.4). The Fourth District reversed finding those statutory caps violated equal protection. *See North Broward Hosp. Dist. v. Kalitan*, 174 So. 3d 403, 405-12 (Fla. 4th DCA 2015). The Fourth District did not cite much less analyze this Court's controlling decisions in *University of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) and *St. Mary's Hospital, Inc. v. Phillipe*, 769 So. 2d 961 (Fla. 2000) on the per claimant issue. Instead, the Fourth District misinterpreted and erroneously extended the limited holding in *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014). Kalitan's arguments to this Court are likewise flawed and only highlight why the Court, on de novo review, should hold that the caps validly apply to Kalitan's claims against Defendants, including sovereign-entity NBHD. (A.B.13-43).

A. *Echarte* and *Phillipe* hold per claimant medical malpractice caps do not violate equal protection.

Kalitan's analysis of *Echarte* and *Phillipe* is woefully deficient. (A.B.21-22). *Echarte* expressly upheld the constitutionality of not only §766.207 but §766.209

where damages are capped after the case goes to trial. (I.B.10-16). *See* 618 So. 2d at 191 ("The Echartes filed an action for a declaratory judgment questioning the constitutionality of sections 766.207 and 766.209."); *id.* at 193 ("Section 766.209(4) provides that if a claimant refuses a defendant's offer to arbitrate, then a claimant proceeds to trial; however, noneconomic damages are capped at $350,000 per incident."); *id.* at 198 ("[W]e hold that sections 766.207 and 766.209 are constitutional."). Significantly, the majority in *Echarte* rejected dissenting Chief Justice Barkett's "minor versus serious injury" equal protection argument -- the same argument made by Kalitan and accepted by the Fourth District. (I.B.10-11).

Phillipe did not strike down §766.207's damage cap but instead interpreted it to apply to individual claimants, as opposed to multiple claimants in the aggregate, to uphold the statute's constitutionality against any unequal protection challenge. *See* 769 So. 2d at 967-72. This Court found that the "reasonable relationship" test only applied to the multiple claimant/aggregate cap scenario and thus construed the statutory caps to apply to each claimant individually to be "consistent with the federal and Florida Constitutions." *Id.* (I.B.11-13).

Kalitan further ignores that *Echarte* and *Phillipe* were expressly reaffirmed in *McCall*. (I.B.14-16). Moreover, Kalitan overlooks that the plaintiffs in *McCall* conceded that *Phillipe* controlled and that, unlike aggregate/per incident caps, per claimant caps do not violate equal protection. *See* 134 So. 3d at 930 (Polston, C.J.,

dissenting) ("McCall contends that the cap at issue in this case violates Florida's equal protection guarantee because it applies on a per incident, rather than a per claimant basis."); *see also Estate of McCall v. United States*, 642 F.3d 944, 951 (11th Cir. 2011) ("Plaintiffs ask us to second guess the legislature's judgment in enacting a 'per incident' rather than 'per claimant' statutory cap.").[1]

B. Splintered 2-3-2 *McCall* decision's limited holding finding aggregate/per incident caps invalid as applied in a multiple-claimant wrongful death case.

Contrary to Kalitan's contention, *McCall* does not mandate affirmance. (A.B.18). *McCall* narrowly found the aggregate/per incident cap provisions of §766.118 invalid in a multiple-claimant wrongful death case. (I.B.17-19). *See Weaver v. Myers*, 170 So. 3d 873, 881 (Fla. 1st DCA 2015). The present case involves the application of §766.118's per claimant caps to a single-claimant personal injury action. Kalitan's action is controlled by *Echarte* and *Phillipe* which upheld per claimant caps and "is directly on point." 134 So. 3d at 919.

Kalitan's analysis of the three separate opinions in *McCall* is flawed and fails to support affirmance in the case at bar. First, even assuming Justice Lewis's 2-member opinion is properly considered a "plurality" opinion, Kalitan disregards

[1]Plaintiffs argued to this Court in *McCall*: "Florida's cap on noneconomic damages irrationally treats cases with multiple claimants differently and less favorably than those with a single claimant, thereby exacting an irrational cost when, as here, the victim of medical malpractice has a large family adversely affected by the verdict." (*McCall* I.B.5,8-10)[R.44.7414].

that plurality opinions establish no binding precedent. (I.B.20).

Second, because Justice Lewis's opinion garnered the same number of votes as Chief Justice Polston's dissent, Justice Pariente's 3-member "concurring in result" holds the only majority consensus. Significantly, the "result" in which Justice Pariente concurred is the law of the case holding finding the aggregate caps invalid in a multiple-claimant wrongful death case. Justice Pariente's "concurrence in result" did not create any binding precedent outside the facts of *McCall*. (I.B.20-22). *See Floridians For A Level Playing Field v. Floridians Against Expanded Gambling*, 967 So. 2d 832, 834 (Fla. 2007); ANSTEAD, KOGAN, HALL & WATERS, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L.Rev. 431, 460-61 (2005).

Kalitan cannot cite any legal authority holding that a "plurality" and "concurrence in result" create a binding precedential "opinion" as opposed to a "decision" which is merely law of the case. Further, no case distinguishes between a "concurring in result" and "concurring in result only" opinion.[2]

Moreover, Kalitan disregards that Justice Pariente stated no less than five times she was solely agreeing to an "as applied" holding. 134 So. 3d at 916, 918,

[2]Because Justice Pariente's opinion in *McCall* "receiv[ed] more votes than any other opinion," some courts might consider that to be the true "plurality" opinion in the case. *See Tedder v. State*, 12 So.3d 197, 198 n.2 (Fla. 2009) (Lewis, J., specially concurring). In either event, no binding precedent was created. (I.B.20).

921 ("I agree as to the as-applied unconstitutionality of the statutory cap"). Plaintiffs in *McCall* advanced a narrow "as applied" argument. (*McCall* I.B.11) [R.44.7414] ("As applied to this multiple-claimant case, the cap violates equal protection."). An "as applied" holding is distinct from one holding a statute "facially" invalid. An "as applied" ruling, by definition, is limited to a particular set of facts and "the result is not binding on other parties." *See Accelerated Benefits Corp. v. Dep't of Insurance*, 813 So. 2d 117, 120 (Fla. 1st DCA 2002); *Travis v. State*, 700 So. 2d 104, 106 (Fla. 1st DCA 1997).[3]

In *Silvio Membreno and Florida Association of Vendors, Inc. v. City of Hialeah*, 2016 WL 889178 (Fla. 3d DCA Mar. 9, 2016), the Third District recently ruled that *McCall*'s "as applied" holding and rational basis analysis are extremely limited in scope and effect. *Id.* at *13-14. The court deemed both Justice Lewis's and Justice Pariente's opinions to be "plurality opinions" and held that "neither of the plurality opinions garnered a majority of the Court." *Id.* *McCall* is a narrow "as applied" decision.

Kalitan's analysis of this Court's "certified question" jurisdiction in *McCall*

[3]*See also, e.g., Cook v. Gates*, 528 F.3d 42, 56 n.8 (1st Cir. 2008) ("A plaintiff asserts an as-applied challenge by claiming that a statute is unconstitutional as-applied to his or her particular conduct, even though the statute may be valid as to other parties."); *Combs v. STP Nuclear Operating Co.*, 239 S.W.3d 264, 272 n.8 (Tex. Ct. App. 2007) ("[A]s-applied challenges are fact specific and must be brought on a case-by-case basis. ... [W]hen a court finds a statute unconstitutional as applied to a particular set of facts, the statute may be constitutionally enforced under different facts.").

is likewise totally off the mark. (A.B.24-26). Federal certification does not control this Court's opinion writing process or the effects of any opinions issued. (I.B.23). This Court in *McCall* had jurisdiction to review the constitutionality of §766.118's per incident wrongful death caps because it was determinative of the cause and there was no controlling precedent. *See* Art.V §3(b)(6), Fla. Const. State court decisions answering federal certified questions, however, have the same preclusive effect as any other decision and that simply depends on how the justices voted and drafted their opinions. *See Western Helicopter Servs., Inc. v. Rogerson Aircraft Corp.*, 811 P.2d 627, 633 (Or. 1991) ("The answer to a certified question...has the same force and effect as any other decision of this court. ... As to the parties to the case, the decision answering the certified questions is the law of the case....").

Contrary to Kalitan's suggestion, the federal certification process does not change the fundamental nature of a "plurality" opinion, which does not constitute binding precedent, or a decisive "concurring in result" opinion, which by definition only creates law of the case. Kalitan has not cited any certification case law involving plurality and concurring in result opinions. (A.B.26).

Given the concession in *McCall* that application of the cap on "a per claimant basis" would not violate equal protection or other constitutional provisions, *see* 134 So. 3d at 930; 642 F.3d at 951, Kalitan's argument that *McCall* "mandates" finding §766.118's per claimant caps unconstitutional in this case is

baseless. (A.B.18). Contrary to the Fourth District's characterization, the only thing "disingenuous" is Kalitan's failure to give due consideration to *Echarte*, *Phillipe*, and the limited holding of *McCall*. (A.B.10). Justice Pariente not only relied upon *Phillipe* but found it "directly on point." 134 So. 3d at 919.

C. Kalitan has failed to prove any "change in conditions."

Kalitan's cursory "change in conditions" arguments are also wholly without merit. (A.B.27; I.B.23-27). Kalitan concedes that she offered no evidentiary proof and that the Fourth District's holding was solely based on *McCall*. The Fourth District focused on "whether there *currently* exists 'a rational relationship,'" "the *current* status of medical malpractice in Florida," and whether "the *current* data reflects [the crisis] has subsided." 174 So. 3d at 409-10 (*italics* in original). Based on *McCall*, the Fourth District concluded that, for purposes of deciding the constitutional "issue of first impression" in *Kalitan*, the crisis and legislative objective "no longer exis[t]." 174 So. 3d at 405,411.

Because *McCall*'s "as applied" holding was only law of the case, "not binding on other parties," and inapplicable to per claimant caps, however, *McCall*'s findings are simply not established fact or res judicata for this proceeding. *See Accelerated*, 813 So. 2d at 120; *Travis*, 700 So. 2d at 106; *Combs*, 239 S.W.3d at 272 n.8; 29 Nova L.R. at 460-61. Defendants herein squarely reject the notion that any change in conditions occurred to render §766.118's per claimant personal

injury caps invalid. The case law demands that a change in conditions be established by record evidence. (I.B.23-27).

Similarly, it is hornbook law that an "as applied" constitutional challenge must be based on record evidence in the case at hand. *See State v. Peters*, 534 So. 2d 760, 766 n.11 (Fla. 3d DCA 1988) ("there is no evidence presently in the record that would allow us to consider [an as-applied] attack"); *Town of Bay Harbor Islands v. Burk*, 114 So. 2d 225, 228 (Fla. 3d DCA 1959) ("It is to the facts presented by the evidence to which we must look, and these facts establish only that the wisdom of the legislative body enacting the ordinance may be debatable.").

Section 766.118's per claimant personal injury caps do not raise equal protection concerns and, in any event, have a rational basis. The only reports before this Court show that the changes to the law furthered the legislative objectives in enacting it and that §766.118 retains utility. (I.B.5,25-26).

D. Defendants' vested/organic rights to cap application.

Kalitan's arguments in favor of a retroactive ruling by this Court (should it invalidate §766.118's per claimant caps) ignore that a majority of Justices in *McCall* deemed §766.118 constitutionally valid in 2007 when Kalitan's action accrued and, thus, Defendants herein have vested/organic rights to have the cap statute applied. (A.B.28-30; I.B.27-31).

Contrary to Kalitan's suggestion, vested rights are not limited to plaintiffs.

(A.B.29). The case law uniformly holds that defendants also have a vested right to have the substantive law applicable at the time of a plaintiff's injury applied. Any subsequent change in events making a statute "no longer valid" cannot divest defendants of rights obtained under a then constitutionally valid statute. *See Wiley v. Roof*, 641 So. 2d 66, 68 (Fla. 1994) ("Once the defense of the statute...has accrued, it is protected as a property interest just as the plaintiff's right to commence an action is a valid and protected property interest.").

Miles v. Weingrad, 164 So. 3d 1208 (Fla. 2015) presented the flip-side to the case at bar. In *Miles*, this Court held that the plaintiff had a right to be free of retroactive cap application because plaintiff's medical malpractice action accrued prior to the enactment of §766.118, a substantive statute. *Id.* at 1211-12.

Here, Defendants' right to defend on the basis of §766.118 accrued after the cap statute was enacted, and while it was constitutionally valid. (I.B.27-31). Kalitan does not dispute her action accrued in 2007 or that the Fourth District erred in stating that the trial court applied the 2011 version of the statute. Kalitan conceded below the 2007 version applied. (I.B.27-28 n.5).

Significantly, a majority of Justices in *McCall* did not conclude §766.118 was constitutionally invalid when enacted or at any time prior to 2007. Rather, Justice Pariente at most agreed that events from 2010 and after demonstrated the statute was no longer valid. First, Justices Pariente and Lewis both heavily relied

on the 2011 repeal of §627.062(8) to show there was no assurance that savings would be passed on to insureds and thus no "*current*" rational relationship between caps and medical malpractice premiums. 134 So. 3d at 912, 920.[4] Second, Justices Pariente and Lewis both concluded there no longer was any medical malpractice crisis based on "*current*" data from 2010-2013 including the "2013 Annual Report." 134 So. 3d at 912-14. Unlike Justice Lewis, however, Justices Pariente and Polston determined the Legislature's findings and policy decisions "were fully supported by available data" and that the statute was "constitutionally valid when enacted." 134 So. 3d at 916, 920, 931-32.

Diametrically contrary to Kalitan's analysis, therefore, there clearly was a rational basis between the Legislature's desired goal and the caps, and it was at most because of a long passage of time and change of conditions after Kalitan's injury in 2007 that §766.118 no longer remained valid. Indeed, the Fourth District's conclusion that "the objective no longer exists" and that "766.118 presently lacks a rational [basis]" underscores the fact the caps were previously valid and enforceable. 174 So. 3d at 411. Because Defendants' rights under

[4]Pursuant to §627.062(8)(a)(2) (2003), "all medical malpractice insurance companies that offered coverage in Florida were directed to submit a rate filing for medical malpractice insurance that reflected 'an overall rate reduction at least as great as the presumed factor.'" 134 So. 3d at 911. Data from 2012 and 2013, however, allegedly showed that Florida premiums remained high. *Id.* at 912. Justices Lewis and Pariente thus found critical that §627.062(8) was repealed as obsolete in 2011. *Id.* at 912, 920.

§766.118 (2007) vested, the caps must be applied. *See Wiley*, 641 So. 2d at 68.

For all of the legal, factual and equitable reasons outlined in the initial brief, if this Court finds the caps invalid, it should make its decision apply prospectively only to actions that have not yet been filed. (I.B.27-31).

E. Kalitan's other constitutional arguments are meritless.

The Justices in *McCall* who addressed the merits of the other constitutional arguments raised by Kalitan correctly rejected them. *See* 134 So. 3d at 922 (Polston, C.J., dissenting) ("[Section 766.118] does not violate the access to courts, jury trial, and separation of powers provisions of the Florida Constitution.").[5]

1. Access to courts.

Kalitan's access to courts arguments are unavailing. (A.B.31-33; I.B.32-37). As Chief Justice Polston stated in *McCall*:

> ... [B]ecause the Legislature has shown an overpowering public necessity for the cap on noneconomic damages and that there is no alternative method of meeting the public necessity, the second prong of *Kluger [v. White*, 281 So. 2d 1 (Fla. 1973)] (as applied in *Echarte*) is satisfied. Therefore, section 766.118(2)(b) does not violate the right of access to court guaranteed by the Florida Constitution.

134 So. 3d at 936 (Polston, C.J., dissenting).

Kalitan argues there is an access to courts violation under the second prong of *Kluger* for the same reasons she contends there is an equal protection violation,

[5]Justice Lewis stated that any answer to these constitutional questions would constitute an impermissible advisory opinion. *See* 134 So. 3d at 915-16.

i.e., there allegedly was (1) no insurance crisis, and (2) no mechanism to ensure insurance premiums would be reduced. (A.B.33). But a majority of the Justices in *McCall* held the Legislature's findings were fully supported and Kalitan has failed to submit any evidence showing a change of conditions. 134 So. 3d at 916,933-36.

2. Trial by jury.

Kalitan's trial by jury arguments are equally unpersuasive. (A.B.33-36). This Court has repeatedly held that statutory damage caps and other damage limitations do not violate jury trial rights. (I.B.37-39). *Echarte* expressly upheld §766.209's medical malpractice noneconomic damage caps imposed after a jury trial. 618 So. 2d at 190-91. Kalitan's reliance on dicta in *Smith v. Department of Insurance*, 507 So. 2d 1080 (Fla. 1987), and holdings by a minority of other courts, is misplaced. Florida follows the vast majority of state and federal courts rejecting similar challenges. Further, per claimant caps are not "arbitrary."

3. Separation of powers.

Kalitan's separation of powers challenge is likewise totally without merit. (A.B.36-40; I.B.39-41). Section 766.118's damage caps are substantive in nature, *see Miles*, 164 So. 3d at 1212-13, and, as such, were within the Legislature's power to enact. *See McCall*, 134 So. 3d at 938 (Polston, C.J., dissenting) ("[T]he statutory cap on noneconomic damages at issue here addresses the substantive rights of parties with regard to the recovery of damages. And because section

766.118(2) addresses substantive rights, it does not violate the separation of powers clause of the Florida Constitution."). No Florida case remotely supports Kalitan's contention that §766.118 is an impermissible legislative remittitur.

F. Section 766.118 cap protection extends to NBHD.

Kalitan's arguments against extension of cap protection to sovereign NBHD are also unpersuasive. (A.B.40-43). The Legislature surely did not intend to only give non-sovereign entities cap protection. Its intent was merely to bar the argument that the caps statute waived sovereign immunity. (I.B.41-43). Because a literal interpretation of §766.118(7) would lead to absurd results, this Court should extend cap protection to NBHD notwithstanding its status as a sovereign under §768.28. *See, e.g., Maddox v. State*, 923 So. 2d 442, 446-47 (Fla. 2006) (declining to give literal interpretation to statute which "would lead to 'unreasonable or ridiculous' results"); *Contractpoint Florida Parks, LLC v. State*, 958 So. 2d 1035, 1036-37 (Fla. 1st DCA 2007) (declining to interpret state-agency sovereign immunity statute "in a manner which would lead to an absurd or unreasonable result"). Moreover, Kalitan's failure to plead the statutory exception in a reply resulted in a waiver in the first instance. (I.B.42-43).

II. New trial required by infusion of baseless brain injury claim.

Lastly, this Court should reject Kalitan's contention that Defendants are not entitled to a new trial due to Kalitan's grossly prejudicial infusion of an unfounded

brain injury claim. (A.B.44-50; I.B.43-46). Significantly, Kalitan implicitly concedes it was not a "moot" issue on appeal and that the Fourth District erred in failing to address it on the merits. 174 So. 3d at 405. Kalitan also tacitly concedes that the new trial test enunciated in *Special v. W.Boca Med. Ctr.*, 160 So. 3d 1251 (Fla. 2014) controls. Kalitan has the affirmative burden on appeal to prove "that the error complained of did not contribute to the verdict." *Id.* at 1265.

Kalitan goes to great lengths to convince this Court to ignore her pretrial stipulation that she had no brain damage claim. (R.46.7886). Of course, the trial court on motions for directed verdict essentially confirmed Kalitan's stipulation by noting there was no evidence to support such a claim and the court would not let it stand. (T.4524-29) ("THE COURT: ... She didn't have brain damage ... You guys went through the EKG's extensively on that."). Kalitan's own expert neurologist, Dr. Emery, squarely testified at trial based on his examination of Ms. Kalitan: "I know that she has spinal cord dysfunction ... and not brain damage." (T.2042).

Kalitan's counsel's whole argument at trial was that because there was evidence of spinal cord injury -- which is a separately listed catastrophic injury under §766.118(a)(1) that was rejected by the jury -- and because the spinal cord is part of the central nervous system, a jury could infer brain damage. (T.4524-29). In the face of Kalitan's own medical expert's specific contrary opinion, however, a jury was not authorized to infer "a severe brain or closed-head injury" based on

evidence pertaining to Kalitan's alleged psychological and emotional problems following her surgery and esophagus injury. No case supports such an argument.

Kalitan cannot prove harmless error. The infusion of an irrelevant and highly prejudicial issue in the jury instructions, verdict form, and closing arguments warranted a new trial on both liability and damages. *See Special*, 160 So. 3d at 1265; *Hurtado v. Desouza*, 166 So. 3d 831, 835-36 (Fla. 4th DCA 2015) (erroneous admission of evidence concerning mental anguish damages required new trial under *Special*); *R.J. Reynolds Tobacco Co. v. Grossman*, 96 So. 3d 917, 921-22 (Fla. 4th DCA 2012) (improper issue injection and placement of question on verdict form infected jury's determination and required new trial).

CONCLUSION

Defendants request the relief stated in the Conclusion of their Initial Brief.

Respectfully submitted,

HEATH & MARCANTONIO, CHARTERED
888 S.E. Third Avenue, Ste. 202
Ft. Lauderdale, FL 33316
Telephone: (954) 635-4350
Facsimile: (954) 635-4499
E-Mail: pleadings@hmchartered.com
Counsel for North Broward Hospital District d/b/a Broward General Medical Center

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
One East Broward Boulevard, Suite 1200
Fort Lauderdale, FL 33301

Telephone: (954) 523-7008
Facsimile: (954) 523-7009
E-Mail: rcousins.pleadings@qpwblaw.com
Counsel for Rob Alexander, M.D., Edward Punzalan, CRNA and ANESCO North Broward, LLC

HICKS, PORTER, EBENFELD & STEIN, P.A.
799 Brickell Plaza, Suite 900
Miami, FL 33129
Phone: (305) 374-8171
Fax: (305) 372-8038
E-Mail: mhicks@mhickslaw.com
E-Mail: dstein@mhickslaw.com
E-Mail: eclerk@mhickslaw.com
Appellate Counsel for North Broward Hospital District d/b/a Broward General Medical Center, Rob Alexander, M.D., Edward Punzalan, CRNA and ANESCO North Broward, LLC

BY: /s/Dinah Stein
MARK HICKS
Fla. Bar No. 142436
DINAH STEIN
Fla. Bar No. 98272

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Court's E-Portal and furnished via electronic mail this **14th day of March, 2016** to: Crane A. Johnstone, Esq., Sheldon J. Schlesinger, P.A., 1212 S. E. Third Avenue, Fort Lauderdale, FL 33316, SLOPA.Service@SchlesingerLawOffices.com, rhoehn@schlesingerlaw.com;

Jeffrey R. Creasman, Esq., Quintairos, Prieto, Wood & Boyer, 9300 South Dadeland Blvd., 4th Floor, Miami, FL 33156, rortiz@qpwblaw.com; Thomas A. Valdez, Esq., Quintairos, Prieto, Wood & Boyer, 1410 N. Westshore Boulevard, Suite 200, Tampa, FL 33607, tvaldez.pleadings@qpwblaw.com,tvaldez@qpwblaw.com, dcull@qpwblaw.com; and Philip M. Burlington, Esq., Nichole Segal, Esq., Burlington & Rockenbach, P.A., Courthouse Commons/Suite #430, 444 West Railroad Avenue, West Palm Beach, FL 33401, pmb@FLAppellateLaw.com; njs@flaappellatelaw.com; jew@flappellatelaw.com.

By: */s/Dinah Stein*
MARK HICKS
Florida Bar No. 142436
DINAH STEIN
Florida Bar No. 98272

CERTIFICATE OF COMPLIANCE

This brief complies with the font requirements of Rule 9.210. It is typed in Times New Roman 14 point type.

BY: /s/ *Dinah S. Stein*
DINAH S. STEIN
Fla. Bar No. 98272