Volume 33, Number 12, April 30, 2026

FLORIDA LAW WEEKLY FLW SUPPLEMENT

A PUBLICATION OF JUDICIAL AND ADMINISTRATIVE RESEARCH ASSOCIATES, INC.

Pages 487-521

Reports of Decisions of:

THE CIRCUIT COURTS OF FLORIDA
THE COUNTY COURTS OF FLORIDA
and
Miscellaneous Proceedings of Other Public Agencies

Readers are invited to submit for publication any decisions of these courts and any reports from other public bodies which are not generally reported and which would, because of the issues involved, be of interest to the legal community.

SUMMARIES

Summaries of selected opinions or orders published in this issue.

- **CRIMINAL LAW—DRIVING UNDER INFLUENCE—MANSLAUGHTER—EVIDENCE—EXPERT SCIENTIFIC EVIDENCE. A *Daubert* challenge to a toxicologist's testimony about the measurable level of Delta-9 THC found in the defendant's blood was denied. The court found that the expert's testimony as it related to the scientific reliability of the impairing effects of Delta-9 THC and its additive effect with alcohol was based on reliable peer-reviewed science, the testimony was relevant to proving an element of the DUI manslaughter charge at issue, and the testimony was not improperly prejudicial to the defendant's case.** *STATE v. VAETH. Circuit Court, 15th Judicial Circuit in and for Palm Beach County. Filed February 7, 2026. Full Text at Circuit Courts-Original Section, page 507a.*

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FLW SUPPLEMENT

CASES REPORTED.

FLW Supplement **includes reports of decisions of Florida circuit and county courts, and miscellaneous reports of the proceedings of other public agencies. Sections are divided as follows:**

CIRCUIT COURT - APPELLATE	**Opinions in those cases in which circuit courts were reviewing decisions of county courts or administrative agencies.**
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MISCELLANEOUS	**Other proceedings.**

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M	**Miscellaneous Reports**

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April 30, 2026
Cite as 33 Fla. L. Weekly Supp. ___

CIRCUIT COURTS—APPELLATE

Municipal corporations—Zoning—Variances—Design review board order denying variance does not satisfy city resiliency code requirement that order include findings of fact where order merely states board's conclusions that plans and documents do not comply with hardship and practical difficulties criteria and cites pertinent code provisions, but does not specify why variance request did not comply with criteria

MICHAEL A. SAIGER, 9 CENTURY LANE LLC, & 10 CENTURY LN LLC, Petitioners, v. CITY OF MIAMI BEACH, FLORIDA, Respondent. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2025-53-AP-01. February 2, 2026. On a Petition for Writ of Certiorari from an order of the Design Review Board of the City of Miami Beach. Counsel: Etan Mark, Jordan Nadel, and Charles M. Garabedian, of Mark Migdal & Hayden, for Petitioners. Ricardo Dopico, City Attorney, and Freddi Mack, First Assistant City Attorney, City Attorney's Office, for Respondent.

(Before TRAWICK, ARECES, R., and DE LA O, JJ.)

OPINION

(TRAWICK, J.) Petitioners Michael A. Saiger, 9 Century Lane LLC & 10 Century Ln LLC ("Petitioners") filed a Petition for Writ of Certiorari wherein they contend this Court should quash the order rendered on April 30, 2025, by the Design Review Board of the City of Miami Beach.

Petitioners are the owners of three properties, located at 8, 9, and 10 Century Lane in Miami Beach. Petitioners sought a variance of the area's RM-1 Zoning requirements (residential, multifamily, low intensity structures) to combine the three separate properties together and build a new four-story single-family home on the property.

The Design Review Board held a hearing on April 10, 2025, and voted to deny the variance request, determining that the Petitioner had failed to meet their burden of proof to establish that there was a practical difficulty that would support a variance. The Board further determined that none of the eight variance criteria[1] for a hardship contained in the Miami Beach Resiliency Code, Section 2.8.3.a, were met.[2] A written order ("DRB Order") was rendered on April 30, 2025, denying the variance request.

Petitioner contends, among other arguments, that the DRB Order fails to comply with the dictates of the Resiliency Code. Respondent maintains that the Board's written findings satisfy the Resiliency Code and the disapproval of a variance in its conclusions that the Petitioner failed to establish both practical difficulties and the eight variance criteria for a hardship waiver of the zoning requirements for the area.

Section 2.2.4.2. [General Hearing Procedures] of the City of Miami Beach Resiliency Code provides that:

> [a]ny decision must take the form of an approval, approval with conditions, or denial, and must include written findings supporting the decision. If the decision is a denial, the city shall include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the application.

In determining whether the above cited Resiliency Code provision was satisfied by the DBR Order, the Court must determine "how much is enough" for the findings that must be included in an order of an administrative board or agency. The Third District Court of Appeal has provided guidance in answering that question: ". . . [E]very final order entered by an administrative agency in the exercise of its quasi-judicial functions must contain specific findings of fact upon which its ultimate action is taken." *Hayes v. Monroe Cnty*, 337 So. 3d 442, 446 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D170b] (citation omitted).

Here, the DRB Order concluded that "[t]he applicant has submitted plans and documents with the application that **do not** satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property." (emphasis in the original) The DRB Order further concluded that "the plans and documents submitted with the application **do not** comply with the following hardship criteria, as they relate to the requirements of Section 2.8.3 of the Land Development Regulations." (emphasis in the original). The eight variance criteria were thereupon listed. No specificity was provided as to why the variance request did not comply with the practical difficulties or hardship requirements.

While there is no precise standard as to the extent of findings that an administrative agency must include in an order to support its action, barebones conclusions accompanied by cites to code provisions will not suffice. As a result, the DRB Order does not contain the requisite specific findings of fact as required in *Hayes.*

While the Court agrees with Petitioner that the DRB order fails to comply with the essential requirements of law, the Court finds that the remaining arguments made by Petitioner lack merit.

For the aforementioned reasons, the decision by Respondent's Design Review Board is **QUASHED**. The matter is hereby **REMANDED** to the Design Review Board to provide support for each of the conclusions it reaches in its Order with specific findings of fact which are supported by competent substantial evidence. The Petition is hereby **DENIED** in all other respects. (ARECES, R. and DE LA O, JJ., concur.)

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[1]The variance criteria are as follows:

I. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

II. The special conditions and circumstances do not result from the action of the applicant;

III. Granting the variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings, or structures in the same zoning district;

IV. Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant;

V. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

VI. The granting of the variance will be in harmony with the general intent and purpose of these land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

VII. The granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan; and

VIII. The granting of the variance will result in a structure and site that complies with the sea level rise and resiliency review criteria in chapter 7, article I, as applicable.

[2]It should be noted that all eight variance criteria must be satisfied.

* * *

Municipal corporations—Code enforcement—Animals—Licensing and vaccination—Hearing officer's finding that dog owner had not timely vaccinated her dog for rabies and renewed dog's license was not supported by competent substantial evidence—Although records submitted by owner's veterinarian indicated that she purchased one-year vaccination and tag two years previously, it was undisputed at hearing that records were erroneous and dog had actually received three-year vaccine and tag

MARIA DE LOS SANTOS, Appellant, v. MIAMI-DADE COUNTY ANIMAL SERVICES DEPARTMENT, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2025-00058-AP-01. February 12, 2026. On Appeal from a Final Administrative Order entered by the City of Miami Code Enforcement Board. Counsel: Maria de los Santos, Pro se. Veronica Sanchez, for Appellee.

OPINION

(DE LA O, J.,) Appellant, Maria de los Santos ("Appellant"), appeals from a final administrative decision rendered by a Miami-Dade County Code Enforcement Hearing Officer which affirmed two citations issued against Appellant by the Miami-Dade County Animal Services Department. The citations were for (1) failure to vaccinate a dog against rabies, in violation of Miami-Dade County Code section 5-6, and (2) failure to obtain a required license tag for an intact dog, in violation of Miami-Dade County Code section 5-7.

Section 5-6 requires that all dogs be vaccinated ("(d) It shall be a violation of this section to fail to timely vaccinate or revaccinate an animal."). Section 5-7 requires dog owners to register their dog and obtain a license. Appellant was fined pursuant to section 5-7(c), which provides: "If the dog is not timely revaccinated, and the license not timely renewed, then the registered owner shall be subject to civil penalties in accordance with this chapter."

The issue before the hearing officer was whether the Appellant *timely* vaccinated her dog and renewed his license. The hearing officer ruled that she did neither because the records submitted by Appellant's veterinarian indicated she had purchased a one-year vaccination and one-year tag. Consequently, the issue before us is whether there was competent substantial evidence to support that finding.

Miami-Dade County notes that on January 19, 2024 the only records in its possession demonstrated that Appellant's dog had received a one-year vaccine and tag. The County argues that, therefore, the hearing officer's conclusion are supported by competent substantial evidence.

However, the records were erroneous. It was undisputed at the hearing that the veterinarian's office made a mistake and that Appellant had, in fact, purchased—and her dog had, in fact, received—a three-year vaccine and thus Appellant had also obtained a three-year tag for her dog. By the time of the hearing, the veterinarian had ordered the records corrected.

Two things can be true at the same time. The County did not have proof of the three-year vaccination and tag (because of the veterinarian's mistake) *and* Appellant's dog had received a three-year vaccine and Appellant had purchased a three-year tag. Neither section 5-6 nor section 5-7 impose penalties for incorrect paperwork. Section 5-7(c) only imposes penalties if "the dog is not *timely* revaccinated, and the license not *timely* renewed." (emphasis added).

Because Appellant's dog was, in fact, timely vaccinated and licensed, the hearing officer's conclusion is not supported by competent substantial evidence. Accordingly, the Final Administrative Order is **REVERSED**.

* * *

Municipal corporations—Code enforcement—Short-term rentals—Finding that owner violated code was not supported by competent substantial evidence—Final administrative order reversed

76 NW 44, LLC, Appellant, v. THE CITY OF MIAMI, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2025-00004-AP-01. February 9, 2026. On Appeal from a Final Administrative Order entered by the City of Miami Code Enforcement Board. Counsel: Marko F. Cerenko, for Appellant. George K. Wysong, III, and Marguerite C. Snyder, for Appellee.

OPINION

(Before TRAWICK, DE LA O, and ARECES, R., JJ.)

(PER CURIUM.) Appellant, 76 NW 44, LLC ("Appellant"), appeals from a Final Administrative Order entered by the City of Miami Code Enforcement Board ("Board"), which found that Appellant violated the City's zoning code by engaging in short-term rentals of real property. Appellant contends the Board erred because it rendered a decision that was unsupported by competent and substantial evidence. We agree. *See 102 NE 50 Holdings, LLC v. City of Miami,* Case No. 2025-00003-AP-01 (issued January 14, 2025). Accordingly, the Final Administrative Order is REVERSED.

* * *

EUGENIA CABALLERO, Appellant, v. MIAMI PARKING AUTHORITY, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 2024-56-AP 01. February 12, 2026. On appeal from a Final Order of the Miami Parking Violations Bureau. Counsel: Eugenia Caballero, Pro se. Bryan E. Capdevila, Assistant City Attorney for George Wysong, III, City Attorney, for Appellee.

(Before TRAWICK, DE LA O, and ARECES, JJ.)

(PER CURIAM.) AFFIRMED. *See Applegate v. Barnett Bank of Tallahassee,* 377 So. 2d 1150 (Fla. 1979).

* * *

Municipal corporations—Code enforcement—Conducting commercial party venue in residential community—Special magistrate's order imposing code enforcement fine and lien and administrative fine for repeat violation affirmed—Magistrate appointed by town commission as an alternate special magistrate had authority to decide issues—No merit to argument that enforcement action was invalid because it was based on anonymous complaint about recent event held at property—Although anonymous complaint was made, enforcement action was initiated by town based on police officer's investigation of event occurring in plain view—No merit to argument that property owner's due process rights were violated because one link advertising event was not listed as evidence to be used at hearing—There is no requirement that documents and witnesses to be used at hearing be listed and produced—Moreover, there could be no unfair surprise or prejudice where link at issue was provided to town by property owner—Where appellate court affirmed previous special magistrate's final orders finding violations and denying rehearing, current magistrate is precluded by res judicata, collateral estoppel, and law of the case from entertaining property owner's claims in current action for repeat violations—Continued use of property as commercial event venue with no single-family dwelling on property is impermissible and constitutes repeat violation of town ordinances

ATLAS INVESTMENTS, LLC, Appellant, v. TOWN OF SOUTHWEST RANCHES, Appellee. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE25-008987. L.T. Case No. 2025-146. January 28, 2026. Appeal from Atlas Investments, LLC, Harry Hipler, Special Magistrate. Magistrate's Order dated May 19, 2025. Counsel: Robert C. Volpe, Holtzman, Vogel, Baran, Torchinsky, and Josefiak, PLLC, Tallahassee, for Appellant. Richard J. DeWitt, Government Law Group, PLLC, Fort Lauderdale, for Appellee.

OPINION

(PER CURIAM.) Having carefully considered the briefs, the record, and the applicable law, the Final Order Imposing Municipal Code Enforcement Fine and Lien and Administrative Fine on May 19, 2025 is hereby **AFFIRMED**. (BOWMAN, CARBUCCIA, and ODOM, JR., JJ., concur.)

THE TOWN OF SOUTHWEST RANCHES, Broward County, Florida, a Florida Municipal Corporation, Petitioner, v. ATLAS INVESTMENTS LLC, 4680 SW 148 AVE, TOWN OF SOUTHWEST RANCHES, FL 33330, Respondent. Town of Southwest Ranches Code Enforcement, Special Magistrate. Case No. 2025-146. May 19, 2025. Harry Hipler, Special Magistrate. Counsel: Richard DeWitt, Government Law Group, Fort Lauderdale, for Petitioner. Robert Volpe, Holtzman, Vogel, Baran, Torchinsky, and Josefiak, Tallahassee; and Cody German, of Cole, Scott, and Kissane, for Respondent.

FINAL ORDER IMPOSING MUNICIPAL CODE ENFORCEMENT FINE AND LIEN AND ADMINISTRATIVE FINE

THIS CAUSE came before the Special Magistrate on May 16, 2025 beginning at 9:00 am. This case relates to violations involving

035-080 (D), 045-050, and 045-060 ASSEMBLY SHALL BE DEEMED AN ACCESSORY USE OF AN OCCUPIED SINGLE-FAMILY DETACHED RESIDENCE and violations stated in these Town code provisions and as a Repeat Violation. The subject real property is located at 4680 SW 148 AVENUE, SOUTHWEST RANCHES FL 33330 , Town of Southwest Ranches, Florida 33330, and whose folio/ id number is 5040 27 01 0242, and whose legal description is as follows: FLA FRUIT LANDS CO SUB NO 1 2-17 D 27-50-40 TR 42 N1/2.

After considering the evidence presented, including testimony, witnesses, exhibits, previously entered orders, and arguments of counsel, the Special Magistrate makes the following findings of facts and conclusions of law:

BACKGROUND

1. ATLAS INVESTMENTS LLC, d/b/a CIELO FARMS NURSERY (hereinafter called "ATLAS" or "CIELO FARMS NURSERY" or "Respondent") was charged with the code violations involving 035-080 (D), 045-050, and 045-060 as a Repeat Violation. During former proceedings, Respondent was charged and found to be in violation of 035-080 (D), 045-050, and 045-060 in Case Nos. 2024-089, 2024-090, 2024-091, and 2024-092. The Special Magistrate entered a Final Order ("Final Order") Imposing Municipal Code Enforcement Fine and Lien and Administrative Fine on June 10, 2024 (certified copy of the FO was recorded in the public records of Broward County), and a Final Order Denying Rehearing, Reconsideration, and/or Clarification was entered on June 28, 2024 by Special Magistrate again finding violations as stated in the Final Order and Final Order Denying Rehearing, Reconsideration, and/or Clarification, thereby requiring Respondent to comply with the Final Order. The Final Order also imposed fines in the amount of $1,000.00 plus $150.00 administrative costs for each of the four violations totaling $4,600.00. The violations involve TSWR CODE SECTIONS 035-080 (D), 045-050, and 045-060, and as more particularly stated in the Special Magistrate's Final Order and Final Order Denying Rehearing, Reconsideration, and Clarification. Respondent appealed the Final Order and Final Order Denying Rehearing, etc., to the Circuit Court sitting in its appellate capacity, and the Circuit Court affirmed the Special Magistrate in all respects. Respondent then filed a Petition for Certiorari with the Fourth District Court of Appeal, which denied Respondent's petition (Town's Exh. 4 as a composite).

2. Respondent advertises itself as a farm and nursery as well as a commercial wedding and party and event venue in order to avail itself of "agritourism." Based upon the evidence the Special Magistrate found in the Final Order and Final Order Denying Rehearing., etc, that Respondent failed to have one single-family detached dwelling on a lot of record (the dwelling on the subject land is a "barn" which was constructed and used by unrelated members of the general public as a commercial party venue and contains a TV among other entertainment devices). It has been and continues to be utilized primarily as a commercial party venue, and therefore, the primary purpose of the real property and the barn is for commercial related assemblies and events including weddings, party events, where groups of persons rent the grounds and premises and which do not have an accessory use of an occupied single-family detached residence, nor are they agricultural related events. The Town of Southwest Ranches is primarily a residential community and their goal is to preserve its rural character. It also contains large residential lots often one acre or more, and its rural, equestrian-friendly atmosphere.[1]

In prior proceedings, the Special Magistrate found that the use by Respondent of the subject real property is primarily used for commercial events and not for a commercial agricultural purpose, nor were the assemblies and events held by Respondent related to any agricultural activity. It was also determined at the prior hearing and in these proceedings that the subject real property has been and continues to be used not to primarily grow and sell plants or to primarily maintain a viable farm with sheep or goats, which do exist on the subject real property although their numbers are limited, but rather for commercial events for use of the subject real property and the barn which is their main purposes. Similarly, over 16,000 square feet of the property is paved on the subject real property, which strongly suggests that the real property is more consistent with and primarily used for commercial events to the general public than a retail nursery or growing nursery or farm. There are also about seven (7) pergolas which have been built on the subject real property and which do not lend itself primarily for a nursery or farm and are not just for family and friends. In sum, the use of the subject real property by Respondent was impermissible and in violation of the Town's code of ordinances, which the Special Magistrate found (Town Exh. 4).[2]

THE INSTANT PROCEEDINGS BEFORE THE SPECIAL MAGISTRATE

3. Respondent, ATLAS INVESTMENTS LLC, d/b/a CIELO FARMS NURSERY was charged with code violations involving 035-080 (D), 045-050, and 045-060 as a Repeat Violation for a commercial event that was held on April 3, 2025.[3] Respondent had an unpermitted event on the subject real property involving PINK-O de MAYO and Breast Cancer Previvors, Patients, and Survivors with the net proceeds to be contributed to Sylvester Comprehensive Cancer Center, a part of the University Miami Health System and the University of Miami - Miller School of Medicine.[4] The event was advertised and set to be held on Respondent's real property on April 3, 2025 and did in fact occur on this date in order to attract attendees and financial contributions of various amounts. Witnesses stated that the attendees who in fact did attend included business people, medical personnel including doctors and health care professionals, and other attendees who were "well to do" folks. As many as 250-350 attendees including vendors were involved, and the vendors of various types of businesses included vendors of libation, food, liquor, restaurants, law firms, and other types of businesses were present to serve attendees. The event began during the mid-afternoon of April 3, 2025 and lasted until sometime after 7:30 pm. There was also testimony and a video showing a 2- 3 lane roadway with as many as 8 to 10 vehicles waiting and stacked up to turn into the event from the turning lane, but the testimony was inconclusive as to whether a traffic jam resulted (Town Exh 2, 5). It also appears that due to the vehicles stacking on one lane awaiting entry into the event, some attendees did in fact self-park their vehicles once inside the event, while others parked across the street at a Publix parking lot and walked across the street to the event. Further, the venue also contained band and bass music that came from the event and could be heard well beyond the property and street line. It appears that an unknown person reported this event via SaferWatch, but there were few, if any, residents who complained about this event. Based upon additional testimony from Richie Allen, the investigator hired by Respondent for security and traffic concerns, and Officer Timothy Church, who was called to investigate the event and videotaped the situation from his vehicle. The video speaks for itself, but Officer Church provided a police narrative report about his observations. There was no prosecution of the latter events by the Town as there was insufficient evidence to support such a violation for excessive noise or traffic concerns involving the health, safety and welfare of the community.

4. Petitioner was represented by Richard DeWitt, Assistant Town Attorney, and Respondent was represented by Robert Volpe, Esquire, Holtzman, Vogel, et al.; and Cody German, Esquire, of Cole, Scott, and Kissane.

PRELIMINARY OBJECTIONS AND CLAIMS AS TO SPECIAL MAGISTRATE

5. Respondent argues that the Special Magistrate did not have authority to decide these matters, because he was never "appointed" by the Town Commission. This is the same argument that was presented in the prior proceeding by virtue of the Respondent's Motion for Rehearing of the Special Magistrate's Final Order entered on June 10, 2024, which was denied by the Special Magistrate on June 28, 2024 with an explanation. This issue was never raised in the first appeal and at all times thereto and pursuant to the arguments made in the prior proceeding, Respondent has satisfied the fine and recorded lien by virtue of its payment in the amount of $4,600.00. Regardless, the undersigned Special Magistrate was hired by the Town's assistant Town Attorney as an alternate Special Magistrate and in order to serve as a Special Magistrate due to an alleged conflict of interest with the current duly appointed Special Magistrate, Michael Garcia, PA, and Respondent. Regardless, that issue was not raised on appeal, the undersigned Special Magistrate was acknowledged in the Town's minutes as a Special Magistrate, and regardless of those previously made claims the undersigned Special Magistrate has in fact been appointed by Resolution No. 2025-053 by the Town Commission as an alternate Special Magistrate. As such, there is no basis to support that argument by Respondent as the undersigned individual has been appointed as an alternate Special Magistrate.[5]

INITIATION OF CODE ENFORCEMENT PROCEEDINGS

6. Respondent claims that there was an anonymous claimant before the code enforcement proceeding was initiated. The facts are undisputed that a complaint or some sort of claim was lodged on SaferWatch by an unknown individual as to some type of event at Respondent's real property. Law enforcement Officer Timothy Church was dispatched to visit and investigate the site. When Officer Church arrived on the scene he video-taped the event from his vehicle with sound occurring beyond the property and street line and which showed stacked vehicles waiting to turn into the event and music sound traveling well beyond the event and the property line as stated. A narrative report was submitted by Officer Church to his commanding officer in the Town of Davie providing what he witnessed. That narrative report was forwarded to the Town's code enforcement officer, Julio Medina, who ultimately decided to bring code enforcement proceedings for the event held on April 3, 2025 and that has culminated in this proceeding. Based upon the evidence presented and that will be further discussed, this was a Repeat Violation by Respondent,[6] and further the source was Officer Church after he heard the sound and described the traffic and event held on April 3, 2025 by Respondent and which was forwarded to the Town.[7] As such, there is no basis to argue that an anonymous complaint was the result of a complaint; rather an individual made the complaint or brought it to the attention of SaferWatch which forwarded this claim to Davie police in as much as SaferWatch is an app where persons are encouraged to provide information to law enforcement and local governments for the benefit of the local government's health, safety, and welfare so that a decision may be made whether a violation occurred. Ultimately, after reviewing the narrative and the facts provided,[8] it appears that the Town initiated a code enforcement proceeding. While the loud noise and traffic concerns were not subject to a violation as was ultimately determined by the Town under these facts and at this time, the public event is subject to a code enforcement proceeding as Officer Church in his report and at the hearing testified in no uncertain terms that a public event occurred on April 3, 2025 in the late afternoon and early evening as well stacking vehicles and the loud band music. It was incumbent on the code officer to consider whether a claim could be filed and in fact this unpermitted event came on to be heard by the Special Magistrate for a second time to determine if this was a violation and whether the event constituted a violation of prior Special Magistrate Orders and the Town's code provisions as cited. It should also be stated that promos by Pink-O de Mayo and a link were voluntarily provided to the Town by Respondent showing that the public event did in fact occur and those documents and the link speak for themselves that showing a commercial public event on the real property.

Generally, the plain view or plain sound doctrine allows code officers and law enforcement officers to make investigation if an alleged violation exists in their presence, and assuming *arguendo* that the Fourth Amendment strictly applies here (these are not criminal proceedings), the plain view or plain sound doctrine is an exception to any Fourth Amendment claim that may be made thereby eliminating any requirement for the name and address of the complainant who apparently was unknown when it was made on the app. Here, it was the law enforcement officer who wrote a police report narrative and sent it to the Town for the Town to decide what to do and whether any further action was necessary. As such, if Respondent desires to argue that an anonymous complaint was filed, then it was the law enforcement officer who did the investigation via his report, not the code officer. Here, no decision was made until the report was reviewed by the Town, which decided to move forward with the instant proceedings as a Repeat Violation as well as a violation of the pertinent code provisions.

As such, there was no violation by the Town in its conduct here when these violations were seen in plain view and observation by a law enforcement officer and who submitted to the Town to decide if a code enforcement proceeding was necessary. As such, there is no violation of Section 162.06 and in fact the Special Magistrate finds that this statute did not come into play, and assuming *arguendo* that it did there was no violation as the law enforcement officer acted prudently in writing a police or incident report and submitting it to the Town for its consideration.

RIGHT TO DISCOVERY IN CODE ENFORCEMENT PROCEEDINGS

7. Respondent claims that one link as to the subject event (Town, Exh 8) was not listed as evidence to be used at the hearing, and suggests that this constitutes a procedural due process violation. This link was voluntarily provided by Respondent to Petitioner to show that an even occurred. Literature was also provided admitting that an event occurred. It is undisputed that no permit was ever applied for or received by Respondent to allow this event to occur on the real property held on April 3, 2025.[9] Regardless, both Petitioner and Respondent voluntarily provided written answers to written questions raised in this matter. Both provided evidence of what may be used at the hearing. Both exchanged links and documents voluntarily. In code enforcement proceedings, there is no right to discovery. See *City of Key West, Tree Commission v. Havlicek,* 57 So.3d 900, 902 (Fla. 3rd DCA 2011) [36 Fla. L. Weekly D544b], where the appellate court stated: "... code enforcement matters are not governed by the Florida Rules of Civil Procedure. Chapter 162, Florida Statutes (2010), controls code enforcement matters, which as the City accurately points out, contains no provision regarding discovery." Although Respondent argues that procedural due process requires disclosure, there is no requirement that witnesses and documents be listed and produced for use at any hearing. Still, documents and written answers to Respondent's questions were provided and answered by the Town, and in any event the link that Respondent complains—that Respondent was never advised that the link would be used, nor was it listed on a witness or exhibit list—was provided to the Town by Respondent. Petitioner did not surprise Respondent with a newly discovered

document, nor was the document first produced by the Town or anyone else at the hearing. There could not have been any surprise or prejudice to anyone. As such, not only is there no prejudice, there is no violation here by Town.[10]

ON TO THE MERITS OF THE CASE AND HOW MANY BITES AT THE APPLE DOES A PARTY HAVE IN LITIGATION?

8. The questions involved here are as follows: (1) do the doctrines of res judicata, collateral estoppel, and/or law of the case apply here thereby precluding the Special Magistrate from reviewing this case? (2) whether Respondent has violated the pertinent Town Code provisions, which are sections involving 035-080 (D), 045-050, and 045-060 of the Town code as per the charging documents; (3) does this violation constitute a Repeat Violation in accordance with the Town Code and Section 162.09, 162.04 (5), Fla. Stats and the charging documents;[11] (4) if so, then what amount may be assessed against Respondent?

9. The Special Magistrate must decide whether res judicata and/or collateral estoppel and/or law of the case precludes further re-consideration of already decided matters as concerns claims and defenses made again by Respondent in these proceedings.[12] The concept of *collateral estoppel* means that a final judgment on a specific issue in a prior case precludes the same issue from being re-litigated in a subsequent case, even if the new case involves a different cause of action. This doctrine applies if the issue was actually litigated and determined in a prior case, and the parties in the subsequent case are the same parties or are in privity with the parties in a prior case, or if the issue could have been raised but it was not raised. *Res judicata* prohibits parties from re-litigating a claim that has already been decided in a final judgment in a prior suit and therefore it cannot be re-litigated again. *Law of the case* doctrine provides that once a question of law and fact have been decided on appeal, that decision must govern all subsequent proceedings in the same case or a similar case. This means that lower courts and appellate courts in the same case must follow the prior appellate court's ruling on that issue. These doctrines' ensure finality of litigated administrative and quasi-judicial rulings and court decisions and prevent endless re-litigation of the same issues. These concepts apply not only to final judgments entered in court proceedings, but they also apply to code enforcement proceedings where the Circuit Court sitting in its appellate capacity specifically ruled that it specifically affirmed the Special Magistrate's Final Order and Final Order Denying Rehearing, etc. See *Ricketts v. Village of Miami Shores,* 232 So.3d 1095, 1098 (Fla. 3rd DCA 2017) [42 Fla. L. Weekly D2352a]; *Kirby v. City of Archer,* 790 So.2d 1214 (Fla. 1st DCA 2001) [26 Fla. L. Weekly D1907h]; *David Oliver Thomas v. City of Lakeland, et al.,* Case No. 8:16-cv-2029-T-36MAP (United States District Court, M.D. Fla.), *affirmed* in *David Oliver Thomas v. City of Lakeland*, No.17-13544 (United States Court of Appeals, Eleventh Circuit April 6, 2018); *Zikofsky v. Marketing 10, Inc.,* 904 So. 2d 520 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D1343a]; *Bomwell v. Bomwell,* 720 So. 2d 1140, 1141 (Fla. 4DCA 1998) [23 Fla. L. Weekly D2499b].

10. In light of the appellate courts affirmance of the Special Magistrate's Final Order and the Final Order Denying Rehearing, Reconsideration, etc., the issues raised or which could have been raised in the instant matter cannot be re-litigated and raised again and again and again. In the instant case, Respondent has raised the identical issues that were raised and decided in the earlier Special Magistrate's rulings again. Both involve the same issues involving the same parties and the same subject matter and the same facts. See *Ricketts v. Village of Miami Shores,* 232 So.3d 1095, 1098 (Fla. 3rd DCA 2017) [42 Fla. L. Weekly D2352a]; *Kirby v. City of Archer,* 790 So.2d 1214 (Fla. 1st DCA 2001) [26 Fla. L. Weekly D1907h]; *David Oliver Thomas v. City of Lakeland, et al,* Case No. 8:16-cv-2029-T-36MAP (United States District Court, M.D. Fla.), *affirmed* in *David Oliver Thomas v. City of Lakeland*, No.17-13544 (United States Court of Appeals, Eleventh Circuit April 6, 2028); *Zikofsky v. Marketing 10, Inc.,* 904 So. 2d 520 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D1343a]; *Bomwell v. Bomwell,* 720 So. 2d 1140, 1141 (Fla. 4DCA 1998) [23 Fla. L. Weekly D2499b]. As such, the Final Order and Final Order Denying Rehearing, Reconsideration, etc, precludes the Special Magistrate from entertaining Respondent's claims on the grounds of res judicata, collateral estoppel, and law of the case.

A DISCUSSION OF THE MERITS OF THE INSTANT CASE

11. This question has already been litigated before the Special Magistrate, Circuit Court in its appellate capacity which affirmed the Special Magistrate, and the District Court of Appeal, Fourth District. In each event, the rulings were based on the identical or nearly identical evidence presented or that could have been presented where the Special Magistrate sustained the Town's position and made findings that it was unlawful for Respondent to engage in assemblies and parties and public events on the subject real property as described in these sections and the previously entered rulings. As stated here as well as in prior rulings, it was determined that assemblies described in the code provisions could not be held. It was also found that Respondent failed to have a one single-family detached dwelling on a lot of record (the dwelling on the subject land, a "barn" which was used primarily by unrelated members of the general public as a party and event venue for commercial purposes along with the subject real property and which is also primarily used as a commercial event venue), and along with the subject property *in toto* was and is being utilized primarily as a commercial party and event venue in the past and now, and all of the subject real property and its structures and use is part and parcel a commercial event venue in these proceedings, which is prohibited; and further that the primary purpose of the real property was and is for commercial related assemblies and events and parties which are not related to an accessory use of an occupied single-family detached residence and as such Respondent's use of the subject real property is prohibited; and further that the primary use of the property was and is not for a commercial agricultural purpose, or "agritourism," nor were the assemblies related to any agricultural activity or "agritourism." In these proceedings, Respondent allowed the real property to be used for a party event involving a private foundation that advertises itself as an entity for financial cancer contributions, and this event allowed 250-350 persons to experience food and drink and sponsors and libation and whose sponsors were also on the subject real property. Knowing of the prohibition for these events, which could have been held elsewhere, this commercial event was held on Respondent's real property.[13] The annual Pink-O de Mayo event in support of Breast Cancer Previvors, Patients, and Survivors and which promotes itself as a Charitable Foundation is no different than the use of the subject real property for weddings and parties and commercial events with or without a barn and where there is a "barn" the subject real property has been and is being used primarily as a commercial event venue and for entertainment, its primary purpose was for entertainment, not agriculture, and this was in violation of the Town's code which prohibits improperly built structures on real property along with the improper use of the real property and parking facilities which are being used for parties and public events. While a portion of this real property is classified as agriculture, based upon the evidence as has already been decided and regardless of the amount of acreage which has been designated as agriculture or not, the subject real property and barn is not being used

primarily for agricultural purposes, but rather for non-related events having nothing to do with agriculture and "agritourism."

12. While Respondent claims it is a farm and/or nursery, its primary function is not a farm or nursery, but rather it is a commercial event party venue. This is so based on the parking, the barn's primary use which is entertainment for party events, the fixtures and structures on the subject real property, and the lay-out of the subject real property in order to attempt to avail itself of "agritourism." Based upon the evidence the Special Magistrate found in the Final Order and Final Order Denying Rehearing., etc., and here that Respondent fails to have one single-family detached dwelling on a lot of record (the dwelling on the subject land is a "barn" with entertainment items such as a TV which was constructed and used by unrelated members of the general public as a commercial party venue). The venue has been and continues to be utilized primarily as a commercial party venue, and therefore, the primary purpose of the real property and the barn is for commercial related assemblies and events including weddings and parties and parties as Pink-O de Mayo requiring contributions and substantial deposits for its use (Town, Exh 3), which have nothing to do with agriculture, and which do not have an accessory use of an occupied single-family detached residence which is required in accordance with the Town's Code. Further, as was found by the Special Magistrate previously and here, the use by Respondent is primarily used for commercial events and was and is not for a commercial agricultural purpose, nor were the assemblies and events held by Respondent related to any agricultural activity. It was also determined at the prior hearing and at this hearing that the subject real property has been and continues to be used not to grow and sell plants or to maintain a viable farm with sheep or goats and nursery, which do exist on the subject real property, but rather primarily for commercial events for use of the subject real property and the barn which is part of the entertainment venue. Most of the sales of the plants and flowers are sold to its friends and relatives (Resp. Exh 3, see page 4/5 and 5/5; and Resp. Exh 4). More than 16,000 square feet of the property is paved which strongly suggests that the real property is more consistent with and primarily used for commercial events to the general public and for parking at those commercial events than a retail nursery or growing nursery (Resp. Exh 3, see page 4/5 and 5/5; and Resp. Exh 4). And seven (7) pergolas which do not lend themselves primarily for a nursery are present and are not present just for and primarily for family and friends, but rather for party events. In sum, the use of the subject real property by Respondent was impermissible and in violation of the Town's code of ordinances, which the Special Magistrate found.

13. Special Magistrate has again painstakingly parsed through the facts and provided in detail the ruling of the Final Order and Final Order Denying Rehearing, etc., and here again in these proceedings, which provides identical evidence or nearly identical evidence and identical documents and records which were provided by Respondent at the prior hearing as has been provided at this hearing as well.

14. In sum, by virtue of the Special Magistrate's independent evaluation in the prior ruling, as well as the instant ruling, the use of the subject property by Respondent was and is impermissible, and it is in violation of the Town's code of ordinances previously alleged and proved, as well the evidence provided as concerns the April 3, 2025 event. Further, not only did the unpermitted assembly violate the Town's code, there was loud noise and traffic concerns as stated, but the noise and traffic concerns did not rise to the level of being violations of the Town code provisions, and therefore any noise violation or traffic concern was not sustained based upon the Town's position and the evidence presented. The traffic and music and band sounds, however, do support the fact that the instant event was a commercial event which is prohibited and do not fall within "agritourism." However, there was and is no single-family detached dwelling on the lot of record, the commercial event use here was and is impermissible for the reasons stated herein, and therefore the Town's position as to use is again sustained as the subject real property has been and is being used as a party event venue. As such, based upon the evidence, there was substantial competent evidence to again sustain the Town's position for the reasons stated herein above.

DOES THIS CONSTITUTE A REPEAT VIOLATION, AND IF SO HOW MUCH MAY BE ASSESSED?

15. The next question is whether this constitutes a repeat violation? Based upon the evidence, the Special Magistrate finds that this was a Repeat Violation as alleged and proven as the prior violations occurred within five (5) years before the April 3, 2025 for unlawful assembly and use in violation of the Town's code provisions. See Section 162.09, Fla Stat. (2025). As such, the Special Magistrate assesses a fine in the amount of $5,000.00 against Respondent as said violations constituted repeat violations.

16. Based upon the evidence presented by Petitioner that is stated above and that was introduced at the hearing, Petitioner met its burden of proving by substantial competent evidence that the violations as alleged in the Notices of Violations did in fact occur on the subject real property, that violations of TSWR-ULDC Sections 035-080(D), 045-050, and 045-060 of the Town Code and as alleged by Petitioner were properly and duly alleged and proved by the Town by substantial competent evidence, and therefore, the Special Magistrate sustains the Town's Notices of Violations as alleged.

17. In light of this ruling, in the case *of Ricketts v. Village Shores,* 232 So.3d 1095, 1100 (Fla. 3rd DCA 2017) [42 Fla. L. Weekly D2352a], the appellate court ruled that res judicata barred further review from a prior decision which rejected for a second time plaintiff's claims against the local government. In this ruling, the appellate court stated: "We agree with the trial court's parting observation that the appellants "still have a remedy. They can petition the Village Council to change the ordinance."

ORDER

A. THEREFORE, BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE SPECIAL MAGISTRATE FINDS THAT THE TOWN MET ITS BURDEN OF PROOF BY SUBSTANTIAL COMPETENT EVIDENCE THAT THE VIOLATIONS OCURRED AS ALLEGED AND HEREBY FINDS RESPONDENT GUILTY OF VIOLATING THE TOWN CODE SECTIONS. RESPONDENT IS ASSESSED $5,000.00 FOR THESE VIOLATIONS, WHICH CONSTITUTE REPEAT AND IRREVERSIBLE AND IRREVOCABLE VIOLATIONS. IF THE AMOUNT OF $5,000.00 IS NOT PAID IN FULL, THE FINES SHALL CONSTITUTE A LIEN ON THE SUBJECT REAL PROPERTY ONCE RECORDED IN THE PUBLIC RECORDS OF BROWARD COUNTY AS PER THIS FINAL ORDER. IF NECESSARY, THIS MATTER SHALL BE REFERRED BACK TO THE SPECIAL MAGISTRATE FOR ANY FUTURE ORDER IMPOSING FINES AND LIEN AND OTHER RELIEF, AND THE SPECIAL MAGISTRATE IS HEREBY AUTHORIZED TO ENTER A FINAL ORDER CERTIFYING THE CODE ENFORCEMENT FINE AND LIEN THAT SHALL BE RECORDED IN THE PUBLIC RECORDS OF THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR BROWARD COUNTY, FLORIDA AND SAID FINAL ORDER IMPOSING FINE AND LIEN SHALL CONSTITUTE A LIEN.

B. AN ADMINISTRATIVE FEE OF $150.00 IS HEREBY ASSESSED FOR THIS HEARING.

C. A FINE AND LIEN IMPOSED BY THE A SPECIAL MAGISTRATE SHALL CONTINUE TO ACCRUE WITH INTEREST UNTIL THE RESPONDENT AND VIOLATOR COMPLY AND

SATISFY SAID FINAL ORDER AND LIEN. THE SPECIAL MAGISTRATE RESERVES JURISDICTION TO ENTER SUCH FURTHER ORDERS AS ARE NECESSARY AND PROPER INCLUDING ANY FURTHER ADMINISTRATIVE FINES AND FEES AND COSTS IF NECESSARY FOR ENFORCEMENT AS IS ALLOWED BY LAW.

D. If THE SPECIAL MAGISTRATE FINDS ANY FUTURE VIOLATIONS TO CONSTITUTE A REPEAT VIOLATION AND/OR AN IRREPARABLE AND/OR IRREVERSIBLE VIOLATION IN NATURE AND IN ACCORDANCE WITH SECTION 162.09 (2)(a), A FINE MAY BE IMPOSED NOT TO EXCEED THE MAXIMUM AMOUNT PER VIOLATION AS ALLOWED BY LAW.

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[1]See https://www.southwestranches.org/, which is the Internet site for the Town.

[2]Town also noticed before the Special Magistrate a request for authorization by the Town to file a foreclosure action, see section 162.09 (3), Fla. Stat., that was set for hearing on May 16, 2025, but Respondent did in fact pay the fine and lien and administrative fee thereby satisfying the recorded Final Order and lien thereby complying with the Final Order.

[3]For purposes of a record and the evidence, the Special Magistrate incorporates by reference all Exhibits identified and admitted into evidence at the hearing without attaching them to this Final Order due to the voluminous nature of the documents and records submitted. Copies of all exhibits have been scanned and emailed to all parties and their representatives and counsel of record in lieu of attachment them here, including a cover page.

[4]Pink-O de Mayo advertises itself as a Charitable Foundation in support of Breast Cancer Previvors, Patients, and Survivors. Literature and slides and a link were provided by Respondent to Petitioner and the Special Magistrate before the hearing and at the hearing. This event was set to be held at Respondent's real property and it was also advertised by the University of Miami Miller School of Medicine as well as the Sylvester Medical School, which are non-profit institutions via 501 (c) of the IRC (Town Exh. 3, 8; Resp. Exh 8).

[5]For purposes of clarification, please see Hipler, H. M. (2012). Developments in the Law on Local Government Code Enforcement Proceedings: Quasi-Judicial Proceedings Pursuant to Chapter 162, Florida Statutes. *Stetson L. Rev., 42,* 681, 690-2. The author discusses immunity by administrative and quasi-judicial appointees in accordance with Florida case law. *Fuller v. Truncale,* 50 So.3d 25, 27-28 (Fla. 1st DCA 2010) [35 Fla. L. Weekly D2437b] and others cited therein, which provide that administrative officials and magistrates have immunity from suit and are treated like Judges for these purposes. Please also see *Filarsky v. Delia,* 132 S.Ct, 1657 (2012) [23 Fla. L. Weekly Fed. S266a], which involved the hiring of attorneys temporarily from the private sector, who upon being hired are granted immunity from civil suits in this 9-0 USSC decision.

[6]Section 162.04 (5) "Repeat violation" means "a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations." Section 162.09, Fla. Stat., provides: "Such fines shall not exceed $1,000 per day per violation for a first violation, $5,000 per day per violation for a repeat violation, and up to $15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature."

[7]It has been conceded that Respondent never applied for, nor did Respondent obtain a permit for these events.

[8]Code Officer Medina stated that he had nothing to do with filing of the event's narrative or otherwise, he was not on the scene at the event, but rather as is the prerogative of the Town, code enforcement decided to file a code enforcement complaint so that the matter could be aired out at a future code enforcement proceeding to determine if a violation(s) existed.

[9]Respondent, Miguel Rodriguez, who was present with Georgina Rodriguez, his wife, appear to be the co-owners of Respondent. Both decided not to testify upon the advice of counsel, but Mr. Rodriguez did state voluntarily but not under oath via supplemental statements that he believed that a permit would not have been granted by the Town had one been applied for.

[10]It may very be in everyone's best interest if the legislature amended discovery provisions of Chapter 162 beyond a public records request and what is now required pursuant to Chapter 162, Fla Stat. (2024). However, the issue or remedy is not within the province of the Special Magistrate; rather it is up to the state legislature to consider amending Chapter 162. Here, both parties counsel were open and acted professionally in providing the other information and answers to written questions and documents and links as to this hearing. See *Massey v. Charlotte County,* 842 So. 2d 142, 146 (Fla. 2d DCA 2003) [28 Fla. L. Weekly D407b], which provides that to the extent Respondent claims a denial of procedural a court determines what process is constitutionally required by evaluating: (1) the affected interest; (2) the risk of erroneous deprivation under the procedures used and the probable value of additional safeguards; and (3) the government's interests, including the fiscal and administrative burdens of any additional requirements. *Id.* Here, there was no violation of procedural due process or Chapter 162 as both sides voluntarily complied with informal disclosure after one continuance was granted as requested by Respondent. .

[11]Section 162.04 (5) "Repeat violation" means "a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations." Section 162.09, Fla. Stat., provides: "Such fines shall not exceed $1,000 per day per violation for a first violation, $5,000 per day per violation for a repeat violation, and up to $15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature."

[12]At the hearing, the Special Magistrate emphasized res judicata, however, in whatever concept is argued, the bottom line is that Respondent is raising issues and questions already determined in the prior Special Magistrate Orders. As such, these concepts preclude further re-litigation of the same matters already decided previously.

[13]Whether this was known or unknown, respectfully, code violations found to exist on an owner's real property makes that owner's real property strictly liable for any code violations. See Harry M. Hipler (2017) "Do Code Violations and Liens Run with the Land? Carving out a Changing Landscape to Section 162.09(3), Florida Statutes, with Enactment of Section 723.024, Florida Statutes, Mobile Home Park Lot Tenancies," *Barry Law; Review:* Vol. 22 : Iss. 2 , pgs 163-5; Article 2.

* * *

Appeals—Corporate appellant—Failure to retain legal counsel—Dismissal

SUPERIOR LOGISTICS, LLC, Plaintiff, v. CITY OF HALLANDALE BEACH, Defendant. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE25015446. Division AW. February 4, 2026.

FINAL ORDER OF DISMISSAL

(JOHN BOWMAN, J.) **THIS CAUSE** is before the Court, in its appellate capacity, upon this Court's Order to Show Cause dated December 16, 2025. Petitioner was directed by this Court to obtain legal counsel through a Florida BAR licensed Attorney within 30 days. As of the date of this Order, Petitioner has failed to comply with this Court's December 16, 2025, Order.

Accordingly, it is hereby **ORDERED** that this Appellate proceeding is **DISMISSED** and the Clerk of Court is **DIRECTED** to close this case.

* * *

Appeals—Dismissal—Failure to file initial brief and appendix within deadline specified in court order

WILLIAM SIMON SOLOMON, Plaintiff, v. MIRAMAR POLICE DEPARTMENT, CODE COMPLIANCE DIVISION, Defendant. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE25014141. January 27, 2026.

FINAL ORDER OF DISMISSAL

(JOHN BOWMAN, J.) **THIS CAUSE** is before the Court, in its appellate capacity, upon this Court's Order to Show Cause dated December 16, 2025. Appellant was directed by this Court to file an Initial Brief that complies with Florida Rule of Appellate Procedure 9.210 and Appendix within 30 days. As of the date of this Order Appellant has failed to comply with this Court's December 16, 2025, Order.

Accordingly, it is hereby **ORDERED** that this Appellate proceeding is **DISMISSED** and the Clerk of Court is **DIRECTED** to close this case.

* * *

Volume 33, Number 12
April 30, 2026
Cite as 33 Fla. L. Weekly Supp. ____

CIRCUIT COURTS—ORIGINAL

Torts—Prisoners—Negligence—Intentional infliction of emotional distress—Summary judgment entered in favor of defendants on tort claims and requests for injunctive and equitable relief brought against state entities and officials by victim of inmate-on-inmate violence—Sovereign immunity—Sovereign immunity was not waived where plaintiff failed to provide presuit notice required by section 768.28—Two notices provided by plaintiff within three years of accrual of claim were deficient—First notice did not contain any information about incident, and there is no evidence that plaintiff sent either notice to Department of Financial Services—Damages claims also fail where claims are only supported by plaintiff's conclusory notes—Injunctions—Stalking—There is no case law supporting stalking injunction against state entity and no evidence that state officials named as defendants ever interacted with plaintiff—Plaintiff not entitled to injunction for protection against sexual violence where there is no evidence that such violence occurred or that plaintiff reported sexual violence to law enforcement agency—Further, requested injunctions are likely barred by sovereign immunity—Equitable relief—Plaintiff's failure to employ an adequate legal remedy at the proper time not basis for circumventing section 768.28's presuit notice requirement

CHAVALIER DWAYNE JOHNSON, SR., DC# 700939, Plaintiff, v. LARS SEVENSON, et al., Defendants. Circuit Court, 2nd Judicial Circuit in and for Leon County. Case No. 2019-CA-2660. December 29, 2025. Michael Beato, Judge. Counsel: Chavalier Dwayne Johnson, Sr., Pro se, Plaintiff. Lars Sevenson, et al., Pro se, Defendants.

ORDER GRANTING SUMMARY JUDGMENT

This is a prison tort case. In December 2015, Chavalier Dwayne Johnson, an inmate at the Okeechobee Correctional Institution, was a victim of inmate-on-inmate violence. Four years later, Mr. Johnson sued several state entities and officials over the accident. He sought damages for negligence and intentional infliction of emotional distress, sought stalking and sexual violence injunctions, and sought equitable relief.

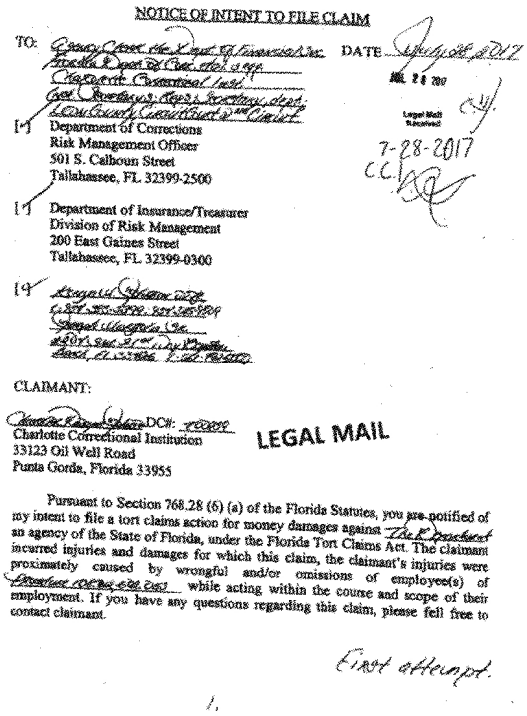
After motion practice and a few amended complaints, the case reached summary judgment. Having reviewed the docket and the summary judgment papers and hearing transcript, summary judgment is **GRANTED** to the defendants.

Undisputed Material Facts

At summary judgment, all evidence is viewed, and all inferences are given, in a light most favorable to the non-moving party. *Smith v. Carlisle Indust. Brake & Friction, Inc.,* 379 So. 3d 11, 13 (Fla. 1st DCA 2023) [48 Fla. L. Weekly D1531a]. Here, that's Mr. Johnson. Note that, in this order, all docket citations are referred to as "Doc."

On December 8, 2015, Mr. Johnson was an inmate at the Okeechobee Correctional Institution. Doc.186 at 25 (exhibit A, page 3/10). That day, he was the victim of inmate-on-inmate violence. Doc.186 at 25 (exhibit A, page 3/10). His right cheek was lacerated as a result of the accident. Doc.186 at 29 (exhibit A, page 7/10).

Years later, Mr. Johnson wanted to sue over his injuries. As far as can be told by the record, Mr. Johnson filled out two notices of intent to file a claim. The first notice was completed on July 28, 2017. Doc.213 at 3.



NOTICE OF INTENT TO FILE CLAIM

TO: [illegible] DATE [illegible]

[illegible]

[illegible] Department of Corrections
Risk Management Officer
501 S. Calhoun Street
Tallahassee, FL 32399-2500

7-28-2017
CC

[illegible] Department of Insurance/Treasurer
Division of Risk Management
200 East Gaines Street
Tallahassee, FL 32399-0300

[illegible]

CLAIMANT:

[illegible] DC#: [illegible]
Charlotte Correctional Institution
33123 Oil Well Road
Punta Gorda, Florida 33955

LEGAL MAIL

Pursuant to Section 768.28 (6) (a) of the Florida Statutes, you are notified of my intent to file a tort claims action for money damages against [illegible] an agency of the State of Florida, under the Florida Tort Claims Act. The claimant incurred injuries and damages for which this claim, the claimant's injuries were proximately caused by wrongful and/or omissions of employee(s) of [illegible] while acting within the course and scope of their employment. If you have any questions regarding this claim, please feel free to contact claimant.

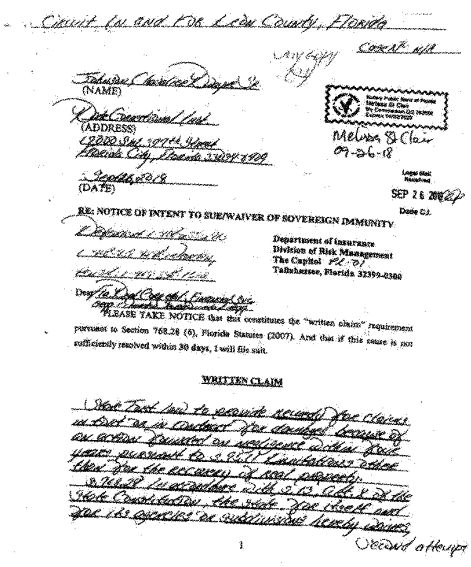
First attempt.

The First Notice. Doc.213 at 3

The first notice appears to be addressed to the Department of Corrections and the "Department of Insurance/Treasurer." Both of those entities include addresses—even though the Department of Insurance didn't exist at the time Mr. Johnson completed this form. *See generally* Fla. Stat. § 20.121. Below those entities and addresses, Mr. Johnson wrote another entity and its address. But the entity and address can't be easily read. Above those entities and addresses, Mr. Johnson wrote the names of a number of other entities: the Department of Financial Services, Florida Department of Corrections, Charlotte Correctional Institution, Leon County, Second Judicial Circuit, and a few other entities that can't be easily read. Those entities, however, don't contain addresses.

Mr. Johnson then described his claim. He intended to "file a tort claims action for money damages against *the Department*." Mr. Johnson didn't identify which department. Three—corrections, financial services, and insurance—are mentioned on his notice. His "injuries and damages," Mr. Johnson wrote, "were proximately caused by wrongful and/or omissions of employee(s) of *procedure 108.012-602.053*."

The following year, on September 26, 2018, Mr. Johnson provided a second notice. Doc.214 at 3.



Circuit Ct. and FOR Lee County, Florida

(NAME)

(ADDRESS)

(DATE)

RE: NOTICE OF INTENT TO SUE/WAIVER OF SOVEREIGN IMMUNITY

Department of Insurance
Division of Risk Management
The Capitol
Tallahassee, Florida 32399-0300

PLEASE TAKE NOTICE that this constitutes the "written claim" requirement pursuant to Section 768.28 (6), Florida Statutes (2007). And that if this issue is not sufficiently resolved within 30 days, I will file suit.

WRITTEN CLAIM

The Second Notice. Doc.214 at 3 (first page)

This notice was addressed to the Department of Insurance. Mr. Johnson wrote another entity and address. But it can't be read. This notice, unlike the earlier one, provided details about the December 2015 accident. Doc.214 at 5.

An employee of the Florida Department of Financial Services stated that her department didn't receive any pre-suit notice from Mr. Johnson before he filed his complaint. Doc.294 at 6 (exhibit A).

In any event, in November 2019, Mr. Johnson initiated this case. Doc. 1. His second amended complaint is his operative complaint. Doc.97. He named the following as defendants: the Department of Corrections, its secretary, and its general and assistant general counsels; the attorney general and an assistant attorney general; over a dozen correctional staff members; and the Okeechobee Correctional Institution. Doc.97 at 2. Mr. Johnson sought damages on his negligence and intentional infliction of emotional distress claims, sought stalking and sexual violence injunctions against purportedly all defendants, and sought equitable relief Doc.97 at 4.

The defendants later moved to dismiss the operative complaint, Doc.143, but were ordered to file a summary judgment motion instead, Doc.162. The defendants did so, Doc.186, and they later supplemented their motion to include a Florida Statutes section 768.28 pre-suit notice argument, Doc.293.

Mr. Johnson didn't file a response, and he didn't provide a document containing specific record cites. Fla. R. Civ. P. 1.510(c). Instead, he filed over twenty-five docket entries, spanning hundreds of pages of material, much of it duplicative attachments and handwritten notes. Even so, each docket entry was reviewed.

In March 2024, the parties presented summary judgment argument. Doc.304. The defendants reiterated their pre-suit notice arguments, and Mr. Johnson indicated that he's suing the corrections secretary in his personal capacity. Doc.317 at 17-19.

Legal Standard

Florida's summary judgment standard matches the federal standard. Summary judgment is warranted when there's no dispute as to material facts, and the movant is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(a). Again, all evidence is viewed, and all inferences are given, in a light most favorable to the non-moving party.

At this stage, conclusory allegations and assertions are disregarded. When a moving party presents evidence, or identifies that the non-moving party lacks evidence, the non-moving party must present evidence in response. Bare assertions to the contrary—be they in discovery documents or summary judgment papers—can't defeat a summary judgment motion. *See, e.g., TocMail, Inc. v. Microsoft Corp.*, 67 F.4th 1255, 1264 (11th Cir. 2023) [29 Fla. L. Weekly Fed. C2418a] ("All we have is TocMail's claim of billions of dollars in losses. The problem is that a conclusory (and unsupported) claim won't do it"); *McKenny v. United States,* 973 F.3d 1291, 1303 (11th Cir. 2020) [28 Fla. L. Weekly Fed. C1775a] ("we have held that conclusory affidavits lack probative value," and the "interrogatory response is conclusory").

Discussion

Summary judgment is warranted. The defendants are entitled to judgment as a matter of law. Mr. Johnson failed to comply with section 768.28, so his negligence and intentional infliction of emotional distress damages claims are barred. His stalking and sexual violence injunction requests, along with his request for equitable relief, also fail as a matter of law.

Even if Mr. Johnson's claims are legally appropriate, he failed to provide any evidence to support those claims. After a thorough review of the record, Mr. Johnson's claims are only supported by his conclusory, handwritten assertions to the contrary. Such bare assertions can't defeat summary judgment.

I. Again, Mr. Johnson sought negligence and intentional infliction of emotional distress damages claims against the defendants. Mr. Johnson therefore had to comply with Florida Statutes section 768.28.

Section 768.28 waives sovereign immunity in certain tort actions against the state. Fla. Stat. § 768.28(1). For a claimant to avail himself of this waiver, he's required to provide the state with pre-suit notice. As section 768.28 makes plain:

> An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality, county, or the Florida Space Authority, presents such claim in writing to the Department of Financial Services, within 3 years after such claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing[.]

Fla. Stat. § 768.28(6)(a).

This is a condition precedent to filing a claim, and as a waiver of sovereign immunity, the provision is strictly construed. *Maynard v. Dep't of Corrections,* 864 So. 2d 1232, 1233 (Fla. 1st DCA 2004) [29 Fla. L. Weekly D303a].

The notice should provide key pieces of information: details about "the accident, its time, location, the injuries suffered and that a claim was being made." *Sch. Bd. of Broward Cnty. v. City of Coral Springs,* 187 So. 3d 287, 289 (Fla. 4th DCA 2016) [41 Fla. L. Weekly D531a]. *See also Brower v. Dep't of Nat. Resources,* 698 So. 2d 568, 570 (Fla. 2d DCA 1997) [22 Fla. L. Weekly D1755a] (pre-suit notice, which contained the accident date, deemed sufficient); *Franklin v. Palm Beach County,* 534 So. 2d 828, 830 (Fla. 4th DCA 1988) (pre-suit notice, which included accident date and location, deemed sufficient).

It's also "incumbent upon the claimant to notify" the Department of Financial Services *and* the appropriate "agency" himself. *Hamide v. Dep't of Corrections,* 584 So. 2d 136, 137 (Fla. 1st DCA 1991). A claimant doesn't comply with section 768.28, for example, when a third party—and not the claimant himself or his agent—provides notice to the appropriate agency. *Hamide,* 584 So. 2d at 137. A claimant also doesn't comply with the provision when he provides notice to the wrong agency. *Maynard,* 864 So. 2d at 1234.

Here, Mr. Johnson was injured on December 8, 2015. His section 768.28 clock therefore ran out on December 8, 2018. *See City of Jacksonville v. Boman,* 320 So. 3d 931, 933 (Fla. 1st DCA 2021) [46 Fla. L. Weekly D1112a]. To be sure, Mr. Johnson filled out two notices within that timeframe. The first was completed on July 28, 2017. The second was completed on September 26, 2018. But both notices fail to comply with section 768.28's strict requirements.

The July 28, 2017 notice is deficient. It doesn't contain sufficient descriptions of the accident. Nor did Mr. Johnson establish that he sent the notice to the Department of Financial Services.

Again, a proper pre-suit notice contains details about "the accident, its time, location, the injuries suffered and that a claim was being made." *Sch. Bd.,* 187 So. 3d at 289. Mr. Johnson's notice didn't do that. It provides no information about his accident. It doesn't mention that he was attacked. It doesn't mention that he received a laceration on his right cheek. Mr. Johnson's notice doesn't mention the date, time, or location of the accident. Mr. Johnson's notice contains none of the kind of information needed in a proper pre-suit notice—one that would "giv[e] the appropriate entities an opportunity to investigate and time to respond" to the claim. *Maynard,* 864 So. 2d at 1233-34. Instead, Mr. Johnson's notice just mentions that "*the Department*" is responsible, due to the acts or omissions of "employee(s) of *procedure 108.012-602.053*."

Not only that, Mr. Johnson failed to provide any evidence that he sent his notice to the Department of Financial Services. That makes sense, since his notice contained no address for the Department of Financial Services.

All told, the July 28, 2017 notice fails to comply with section 768.28.

So does Mr. Johnson's September 26, 2018 notice. True, it contains descriptions of the accident. But section 768.28 required Mr. Johnson to send his notice to the Department of Financial Services and the appropriate state agency. Fla. Stat. § 768.28(6). As far as can be read, Mr. Johnson sent the notice to only one entity: the Department of Insurance. That doesn't satisfy section 768.28.

This comports with the evidence produced by the defendants: the Florida Department of Financial Services never received any pre-suit notice from Mr. Johnson. Doc.294 at 6 (exhibit A).

In sum, neither of Mr. Johnson's two notices is legally sufficient. His negligence and intentional infliction of emotional distress claims are therefore barred as a matter of law. *E.g., Hamide,* 584 So. 2d at 137 (granting summary judgment).

Even if they aren't, the claims lack the evidence needed to survive summary judgment. As far as can be told, these claims are only supported by Mr. Johnson's conclusory, handwritten notes. Mr. Johnson failed to present any evidence, for example, that an assistant attorney general (who's one of the defendants in this case) intentionally caused Mr. Johnson emotional distress. Nor is there any evidence that any of the defendants acted in bad faith, maliciously, or with wanton or willful disregard, so as to hold them personally liable. Fla. Stat. § 768.28(9)(a). *See also Clemente v. Horne,* 707 So. 2d 865, 867 (Fla. 3d DCA 1998) [23 Fla. L. Weekly D609a] (noting the extremely high bar to establish an intentional infliction of emotional distress claim).

Mr. Johnson's damages claims fail.

II. Mr. Johnson also sought stalking and sexual violence injunctions against the defendants. These claims fail, too.

Mr. Johnson can't obtain a stalking injunction. Florida Statutes section 784.0485 allows courts to grant stalking injunctions. Stalking is defined as "willfully, maliciously, and repeatedly follow[ing], harass[ing], or cyberstalk[ing] another." Fla. Stat. § 784.048(2)(a). When stalking is based on harassment, the conduct must objectively cause substantial emotional distress and must serve "no legitimate purpose." Fla. Stat. § 784.048(1)(a).

No case supports Mr. Johnson's request. In fact, in a repeat violence injunction case, one appellate judge raised a separation of powers concern when an inmate sought an injunction against a detention deputy. *Trowell v. Crawford,* 232 So. 3d 533, 534-35 (Fla. 2d DCA 2017) [43 Fla. L. Weekly D83c] (Villanti, J., dissenting). No case supports granting a stalking injunction against a state entity. No evidence has been presented that each state official defendant, such as the assistant attorney general, even interacted with Mr. Johnson. No evidence establishes substantial emotional distress, and interactions with state officials, in a prison setting, would serve a legitimate purpose. If that wasn't enough, sovereign immunity likely bars Mr. Johnson's request. It doesn't appear that the state legislature expressly, clearly, and unequivocally waived immunity for such a claim. *See generally Fla. Fish & Wildlife Conservation Cmn'n v. Daws,* 256 So. 3d 907, 912 (Fla. 1st DCA 2018) [43 Fla. L. Weekly D1891a] (explaining the doctrine and exceptions to it).

Mr. Johnson isn't entitled to a sexual violence injunction, either. Section 784.046 allows courts to grant sexual violence injunctions. Sexual violence includes "sexual battery, as defined in chapter 794." Fla. Stat. § 784.046(1)(c)(1). Before this kind of injunction can be granted, the petitioner must establish that he "reported the sexual violence to a law enforcement agency and is cooperating in any criminal proceeding." § 784.046(2)(c)(1).

No case supports granting a sexual violence injunction against a state entity. No evidence was produced that sexual violence occurred. Evidence only establishes that Mr. Johnson had his right cheek lacerated. No evidence was produced that Mr. Johnson reported any purported sexual violence to a law enforcement agency. This relief, too, is likely barred by sovereign immunity.

Mr. Johnson's requests for injunctive relief fail.

III. Mr. Johnson sought broad equitable relief as well. But the "failure to employ an adequate legal remedy at the proper time is not a ground for equitable relief." *Am. Sur. Co. of N.Y. v. Murphy,* 13 So. 2d 442, 443 (Fla. 1943). Here, Mr. Johnson had adequate remedies at law his negligence and intentional infliction of emotional distress claims. He just simply failed to comply with section 768.28's pre-suit notice requirement. An appeal to equity can't circumvent section 768.28.

There are exceptions to the rule—fraud, accident, mistake, or circumstances beyond the party's control. *Am. Sur Co.,* 13 So. 2d at 443. Mr. Johnson, however, hasn't produced evidence that puts these exceptions at issue.

Conclusion

The defendants are entitled to summary judgment. Mr. Johnson's contentions fail as a matter of law, and an absence of evidence, and bare conclusory assertions, don't create genuine disputes of material fact. Therefore, it is:

ORDERED that the defendants' summary judgment motion is **GRANTED**. Final judgment will be separately entered. All remaining motions are **DENIED AS MOOT**. The clerk is directed to **CLOSE** this case.

* * *

Cemeteries—Disposition of remains—Dispute between private parties—Court infers that it was decedent's intent to be buried rather than cremated where daughter of decedent testified to mother's long-time fear of burning, superseded 2019 will directs that mother's remains be buried, and change in desire to be buried cannot be inferred from 2021 will that is silent on issue of disposition of remains

IN RE: ESTATE OF MILDRED VANN ARPEN. Circuit Court, 4th Judicial Circuit

in and for Duval County. Case No. 2026-CP-000164-XXXX. Division PR-A. February 20, 2026. Kevin Blazs, Judge. Counsel: Catherine V. Arpen, for Objecting Party. Donald Matthews, for Potential Personal Representative.

ORDER ON OBJECTION TO CREMATION

THIS CAUSE came on to be heard at the February 6, 2026 evidentiary hearing on the Objection to Cremation and Motion for Determination of Decedent's Intent, as filed with the Clerk by the Decedent's daughter, Catherine V. Arpen, on February 2, 2026, and this Court having taken judicial notice of the court file per ***Section 90.202(6), Florida Evidence Code***, and having taken testimony from Jeanne Henderson Scott, Catherine Arpen, and Allen Arpen, and having observed the candor and demeanor of the foregoing witnesses and having read the objecting party's Exhibit 1, and having read the objecting party's Memorandum of Law Regarding Objection to Cremation and Motion for Determination as to Decedent's Intent, as submitted for this Court's review by Catherine Arpen on February 10, 2026, which this Court construes as the objecting party's written closing argument, and having read the Petitioner's Memorandum of Law in Support of Determination of Decedent's Intent and Authorization of Cremation and proposed Order Determining Decedent's Intent Regarding Disposition of Remains and Authorizing Cremation, as received by this Court from Petitioner's counsel, Donald Matthews, on February 10, 2026, which this Court construes as the Petitioner's written closing argument, and having considered applicable statutes and case law, and having heard argument of the pro se objecting party who is also a licensed attorney, from Petitioner's counsel, and from the Decedent's son, Allen Arpen, and being otherwise fully advised of the premises therein, makes the following findings of fact and conclusions of law:

1. Decedent's daughter, Catherine Arpen, filed an Objection to Cremation and Motion for Determination of Decedent's Intent. Her mother's body is currently being held at a funeral home, pending a ruling on the foregoing Objection. The Decedent's son, Allen Arpen, seeks to have his mother's remains cremated while his sister, Catherine Arpen, seeks to have her mother's remains buried.

2. When a Decedent's remains are disputed by family members, common law controls the dispute resolution. ***Giat v. SCI Funeral Services of Florida, LLC, 308 So.3d 642 (Fla. 4th DCA 2020)*** [45 Fla. L. Weekly D2735a] and ***Wilson v. Wilson, 138 So.3d 1176 (Fla. 4th DCA 2014)*** [39 Fla. L. Weekly D1037a]. The Decedents survivors have a right to be heard regarding the disposition of the body. ***Crocker v. Pleasant, 778 So.2d 978 (Fla. 2001)*** [26 Fla. L. Weekly S61a]. Where a dispute among family members occurs as to the Decedent's wishes, each party has a right to present evidence at an evidentiary hearing. See ***Giat*** and ***Barone v. Rogers, 930 So.2d 761 (Fla. 4th DCA 2006)*** [31 Fla. L. Weekly D1334a]. The Court's determination is to be made based on clear and convincing evidence in the record, per ***Giat.***

3. Catherine Arpen testified that her mother had a life-long fear of burning. The foregoing statement is not hearsay because it is not offered to prove the truth of the matter asserted. ***Section 90.801(1)(b), Florida Evidence Code***. Rather, it is offered to provide a rationale for the Decedent's purported intent to be buried. Ms. Arpen also testified that, on multiple occasions, her mother expressed her desire to be buried following death. Testimony regarding conversations between the witness and Decedent are hearsay and were not offered under any exception. ***Sections 90.801, 90.802***, and ***90.804, Florida Evidence Code***. However, there was no objection raised at the hearing to the foregoing hearsay statements. Furthermore, although not challenging the validity of the Decedent's most recent Will, the witness relied on the content of the Decedent's Will previously executed in 2019. The first sentence of Article I of the foregoing document provides that *"I direct that my remains be buried. . . "*. While the Will executed in 2021 is not being challenged by the witness, Ms. Arpen relies on the language from the 2019 Will as a basis to infer intent, even though the 2019 Will is superseded and thus revoked. ***Section 732.505, Florida Statutes***. Ms. Arpen asks this Court to construe the 2019 Will as her *"written instruction"* from the Decedent regarding burial, per ***Section 732.804, Florida Statutes***. Her membership in the Florida Bar and resulting obligation of candor to the Court increases her credibility.

4. Testifying in opposition was the Decedent's son, Allen Arpen. Although he is a convicted felon by his own admission, that fact goes to his credibility as a witness, but does not render his testimony inherently unreliable. ***McCrae v. State, 395 So.2d 1145 (Fla. 1982)***, ***Lawson v. State, 966 So.2d 412 (Fla. 4th DCA 2007)***. This Court finds that his felony conviction does negatively impact his credibility. He contends that this Court should construe the absence of burial instructions in the operative Will as reflecting a change in the Decedent's intent as to the disposition of her body. Per his testimony, he had numerous conversations with his mother over the past three years wherein she expressed her desire to be cremated. This change of heart came as a result of attending the funerals of family and friends who were cremated and whose ashes were scattered over a place of personal significance. In the case of the Decedent, Mr. Arpen testified that she wanted her ashes scattered over the garden where she spent much of her time. Per his testimony, his sister had little contact with her mother during this period. The foregoing statements of the witness regarding the Deceased's intent constitute hearsay evidence as they relate to the purported expression of the Decedent's intent to be cremated, per ***Section 90.801(1)(b), Florida Evidence Code***. However, the statement expressing the Decedent's desire to have her ashes sprinkled over her garden is not offered to prove the truth of the matter asserted. Rather it is offered to provide an explanation as to any motive regarding changed intent.

5. It is undisputed that the objecting party, Catherine Arpen, had a troubled relationship with her mother, the Deceased. The 2021 Will that has been admitted to probate disinherits Ms. Arpen. This Court takes judicial notice of the fact that the cost of cremation is generally lower than the cost of burial in this jurisdiction. ***Section 90.202(11), Florida Evidence Code***. It has been represented by counsel that the estate has no assets. Thus, this Court is mindful that sustaining the objection will place an increased cost on an estate that may be strained to bear those expenses, at no cost to Ms. Arpen.

6. Conversely, this Court is mindful that Allen Arpen has the opposite interest. As a named beneficiary in the Will, it is in his interest to minimize the cost associated with the disposition of Decedent's remains. He has no interest in increasing the costs of disposing of Decedent's remains through burial because it will tax limited resources and reduce any potential he has for inheritance.

7. Even so, given the clear and convincing evidence that is in the record, this Court finds that it can draw no inference as to intent from the 2021 Will. To do so would be to rule on an argument from silence. Given the testimony of Catherine Arpen regarding her mother's long-time fear of burning and the written instructions referenced in the prior Will, this Court infers that it was the Decedent's intent to be buried and it is, therefore,

ORDERED AND ADJUDGED:

1. The Objection to Cremation and Motion for Determination of Decedent's Intent, as filed with the Clerk by the Decedent's daughter, Catherine V. Arpen, on February 2, 2026, is hereby **SUSTAINED**.

2. The Decedent shall be buried, consistent with her determined intent, absent any Court approved stipulation between the interested parties.

* * *

Criminal law—Sexual abuse against child—Evidence—Hearsay—Exceptions—Statement of child victim—Out of court statement made by child victim of sexual abuse to member of child protective services team is admissible—Statement found to be trustworthy and reliable in light of totality of circumstances, including open-ended style of questioning and candor and demeanor of victim—Statement not improperly cumulative of statements of other child victims, as it corroborates those statements and provides additional detail

STATE OF FLORIDA, v. EDWARD CULBERTSON, Defendant. Circuit Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2019-CF-005596. Division CR-G. December 15, 2022. Kevin Blazs, Judge. Counsel: Elizabeth Beck McEwan, Assistant State Attorney, for State. Katherine Littell Hinchey, Assistant Public Defender, for Defendant.

ORDER ON STATE'S THIRD NOTICE OF CHILD HEARSAY (M.S.)

THIS CAUSE came on to be heard at the April 22, 2022 hearing on the State's Third Notice of Child Hearsay Evidence, as filed with the Clerk on December 1, 2021, and the Defendant's corresponding oral objection thereto, and this Court having taken judicial notice of the court file per ***Section 90.202(6), Florida Evidence Code***, and having viewed the CPT interview (State's Exhibit 2) (two DVD's reflecting the 2005 CPT interviews of N.S., M.S., T.M., and H.B. (05) and H.B. (07), and having read relevant portions of the January 13, 2022 deposition of Neveah Schumacher, the December 4, 2019 deposition of Brooke Schumacher, the February 11, 2021 deposition of Brooke Schumacher, the September 8, 2021 deposition of H.B., the second September 8, 2021 deposition of H.B., the February 26, 2020 deposition of Katie Smith, the January 7, 2022 deposition of Mackenzie Schumacher, and the September 14, 2021 deposition of T.M., (State's Composite Exhibit 1), and having considered the State's demonstrative aide witness chart (State's Composite Exhibit 3), and having read the State's Argument Regarding Admission of Child Hearsay Evidence, as served on May 23, 2022, and having read the Defendant's Arguments Against the Entry Into Evidence of Child Hearsay, as served by email on May 23, 2022, and having considered applicable caselaw, and having heard argument of counsel and being otherwise fully advised of the premises therein makes the following findings of fact and conclusions of law:

1. By way of a twelve count Information filed with the Clerk on July 9, 2019, the Defendant is charged with two counts of sexual battery, one count of attempted capital sexual battery, one count of lewd or lascivious molestation, one count of lewd or lascivious conduct, one count of lewd or lascivious exhibition, and one count of showing obscene materials to a minor, against N.S. He is also charged with one count of lewd or lascivious conduct, one count of lewd or lascivious exhibition, and one count of showing obscene materials to a minor, against M.S. Finally, he is also charged with one count of lewd or lascivious exhibition and one count of showing obscene materials to a minor, against T.M. There is no pending Motion to Sever the Counts. Consequently, and consistent with ***Rule 90.803(23), Florida Evidence Code,*** the State seeks to introduce child hearsay evidence purported to be statements made by M.S. to Katie Smith of the Child Protection Team wherein M.S. described crimes that are the subject of pending prosecution. In contrast, the State asserts that the statement made by M.S. reflected age appropriate terminology, referring to genitalia as a *"thing"* as well as other euphemisms for sexual acts. There is no motive to fabricate, the statements are sufficiently specific, there is no evidence of domestic influence, and M.S. confirmed the ability to distinguish between the truth and a lie.

2. In opposition, the Defendant filed a Motion to Exclude Child Hearsay Evidence, contending that the statements lack *"trustworthiness"*, per ***State v. Townsend, 635 So.2d 949 (Fla. 1994)***. Furthermore, it is claimed that the time, content, and circumstances of the statements do not provide reliability safeguards and various factual assertions are made in support thereof, in reliance on ***Jaggers v. State, 536 So.2d 321 (Fla. 2nd DCA 1988)***. Furthermore, it is alleged that the statements at issue lack inherent trustworthiness and thus violate the confrontation clause, per ***Idaho v. Wright, 497 U.S. 805 (S. Ct. 3139 (1990)***. Finally, even if admissible as hearsay, the Defendant contends that the statement should be excluded in that its prejudice would significantly outweigh the probative value and that the evidence would also be cumulative, contrary to ***Section 90.403, Florida Evidence Code. Pardo v. State, 596 So.2d 665 (Fla. 1992)***.

3. More specifically, according to the Defendant, the statement of M.S. made to the CPT interviewer is not reliable or trustworthy because it was not spontaneous nor made at the first opportunity following the alleged incident and was made in response to adult questioning. Because M.S. is older than N.S. and had several opportunities to report the alleged abuse to adult family members after choosing not to be in the company of the Defendant due to improper conduct, the foregoing behavior is inconsistent with the severity of the allegations and corresponding credibility of the witness, per the Defendant. It is further claimed that allowing this child hearsay statement to be played to the jury would be cumulative if other statements are also played, in violation of ***Section 90.403, Florida Evidence Code***.

4. Given the requirements of ***Section 90.803(23), Florida Evidence Code,*** admissibility is determined by assessing the reliability of *". . .the source of the information through which the statement was reported. . ."* requiring that it *". . .must indicate trustworthiness" along with "the time, content, and circumstances of the statement. . ."* such that *"...the statement provides sufficient safeguards of reliability"*. ***Townsend*** citing ***Weatherford v. State, 561 So.2d 629 (Fla. 1st DCA 1990)*** and ***Salter v. State, 500 So.2d 184 (Fla. 1st DCA 1986).*** Again, for a child hearsay statement to be admissible under the referenced evidence code, *"the source of the information through which the statement was reported must indicate trustworthiness and the time, content, and circumstances of the statement must reflect that the statement provides sufficient safeguards of reliability"*. ***Cabrera v. State, 206 So.3d 768 (Fla. 1st DCA 2016)*** [41 Fla. L. Weekly D2481b] citing ***Townsend***. Furthermore, *"the time of the out of court statements, relative to the time of the incident charged and the circumstances of the statements, are critical to a determination of reliability"*. ***Jaggers*** citing ***Perez v. State, 536 So.2d 206 (Fla. 1988).*** Under ***Townsend***, *". . .in evaluating whether a hearsay statement contains sufficient guarantees of trustworthiness, a court must look at the totality of the circumstances surrounding the making of the statement"*. ***Townsend*** citing ***Idaho v. Wright, 497 U.S. 805 (1990)***.

5. As a further safeguard for use at trial, the court must make required findings of fact, per ***Section 92.53(7), Florida Statutes,*** *"...to support its determination that. . . child witnesses, whose testimonies were videotaped, would suffer at least moderate emotional or mental harm if they were required to testify in open court",* per ***Jaggers.*** Given that the witness disclosed the allegations to another person, then to the child protection team, and again under oath at a deposition, this Court finds that recounting the details of the alleged sexual assault a fourth time before a jury would result in at least moderate emotional or mental harm from testifying yet again in open court, consistent with ***Section 92.53(7), Florida Statutes,*** and ***Jaggers.*** Still, the State has indicated that M.S. will testify at trial.

6. Having viewed the CPT interview at issue, this Court finds the candor and demeanor of M.S. to be consistent with truthfulness and thus credible. Still, because there is no explanation for the child witness to delay disclosure, particularly when she found the conduct

so disturbing as to disassociate herself with the Defendant, the statement becomes more suspect. Even so, there is no motive to lie and no evidence of improper domestic pressure. Given that questioning was open ended, and in light of the candor and demeanor of the witness, this Court finds the statements to be trustworthy and reliable in light of the *"totality of the circumstances"* and thus admissible, per ***Section 90.803(23), Florida Evidence Code.*** As for a violation of ***Section 90.403, Florida Evidence Code,*** this Court finds that the testimony of M.S. is not cumulative in that it corroborates the testimony of N.S. by adding detail omitted in the statement by T.M. It is, therefore,

ORDERED AND ADJUDGED:

1. The Defendant's objection to State's Third Notice of Child Hearsay Evidence, as filed with the Clerk on December 1, 2021 is respectfully **OVERRULED**.

2. The Defendant's implicit Motion to Exclude is hereby respectfully **DENIED**.

* * *

Estates—Wills—Challenge—Fact that son of decedent may not have received proper notice of probate administration is irrelevant to will challenge where son has not been deprived of any remedy or prejudiced by any procedural defect—Testamentary capacity—Son's averment that decedent suffered from dementia is given little weight in absence of expert opinion—Son's testimony that he observed mental and other changes in decedent not long before his death is not sufficient to establish that decedent lacked testamentary capacity where decedent executed will two years prior to his death, and attorney/notary testified to his capacity at time of will's execution—Undue influence—Claim of undue influence fails where only factor favoring finding of undue influence was fact that decedent's girlfriend secured witnesses to will's execution, and will's allocation of assets among decedent's children and girlfriend is reasonable

IN RE: ESTATE OF DANIEL R. WYNN, a/k/a DANIEL RUBEN WYNN a/k/a, DANIEL WYNN, Deceased, Adversary Proceeding. CHRISTOPHER K. WYNN, Petitioner, v. FAYE G. MORGAN as Personal Representative of the Estate of Daniel R. Wynn, Respondent. Circuit Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2025-CP-00592-XXXX. Division PR-A. February 4, 2026. Kevin Blazs, Judge. Counsel: Kaydell Wright-Douglas, for Petitioner. Noel G. Lawrence, for Respondent.

ORDER

THIS CAUSE came on to be heard at the November 20, 2025 evidentiary hearing on the Petitioner's Petition Contesting Probate of Will, as filed with the Clerk on May 5, 2025, and this Court, having taken judicial notice of the court file per ***Section 90.202(6), Florida Evidence Code***, and having taken read the Last Will and Testament of Daniel Ruben Wynn, as executed on December 6, 2022 and attached to the foregoing Petition as Exhibit *"B"*, and having also read the Inventory, as filed with the Clerk on August 14, 2025, and having read Christopher Wynn's Memorandum of Law, as filed with the Clerk on December 16, 2025, and having read the Respondent's Memorandum of Law (Statement of the Case and Facts), as filed with the Clerk on December 10, 2025, and having taken *"live"* testimony from Christopher Wynn, Faye Morgan, and Athiel Jones, and having observed the candor and demeanor of the foregoing witnesses, and having heard argument of counsel and being otherwise fully advised of the premises therein, makes the following findings of fact and conclusions of law:

1. The Petition at issue asserts that the Petitioner did not receive notice from the Respondent of the Respondent's Formal Petition to Admit the Will to Probate nor timely receive notice of the Respondent's Petition for Administration prior to the admission of the Will at issue. Furthermore, the Petitioner asserts that the Last Will and Testament of the Decedent is invalid and voidable because the Decedent was not sound and of disposing mind, had been diagnosed with a degenerative brain disorder prior to 2021, and the testator was subject to undue influence of the Respondent. Consequently, the Petitioner asks this Court to vacate and set aside the prior Order Admitting Will and, by implication, to find the Will void and the estate subject to intestate administration.

2. Testifying for the Petitioner was himself, Christopher Wynn. Per his testimony, the Decedent was his father. He met the Respondent, Faye Morgan, only once prior to 2021. During the time period at issue, he traveled from Washington, DC to Jacksonville to check on his father. He merely *"popped up"* at his father's home, and was met by the Respondent. She was displeased that he arrived without warning. He left his father's residence and returned the following day only to be questioned by her regarding his identity. To his knowledge, the Respondent moved from the Decedent's home to her own residence. The Respondent told him of his father's decline but never indicated that she was his *"girlfriend"*. She wanted the Petitioner to go through her to talk to his father. Thereafter, he learned that the Decedent and Respondent were romantically involved. A few days prior to his father's passing, the Respondent called him to come to the residence. The Respondent was not present when he arrived, but his brother was there. According to Mr. Wynn's testimony, the Notice of Probating the Estate, with a Will, was sent to the incorrect address. He testified that the Will is ambiguous regarding the contents of the home, and he believes that he was to get the home and the adjoining lot. When he saw his father, he believed there were changes to his voice and eyes. He saw a deterioration in his memory, given that his father repeatedly asked the same questions. His father was also unsure of the passage of time. When the Petitioner examined the Will, it did not look like his father's signature.

3. On cross examination, Mr. Wynn testified that he did not see the original Will in the Clerk's office. He acknowledged that his father remembered him, knew where he was, and knew who he was. Mr. Wynn has four sisters and two brothers that were given specific items in the Will, except for his brother Dereck, whom his father did not mention in the document. All the siblings were to receive life insurance money. According to his testimony, the Decedent's death certificate indicates the cause of death as Parkinson's Disease and Dementia. He further testified that the Decedent suffered from a degenerative brain disorder. Mr. Wynn had a key to the house and was told that it was his home his entire life. Having examined the candor and demeanor of the witness, this Court finds Mr. Wynn to be credible.

4. In response, the Respondent called Athiel Jones, the notary of the Will, to testify. Per her testimony, she is an attorney who has drafted wills. She knew the Decedent for approximately four to six months prior to his death and has no interest in the outcome of the case. She is not a beneficiary in the Will. According to her testimony, the document was signed in the Respondent's home. She does not recall whether the Respondent was present at the Will's execution, but two witnesses were in attendance. Ms. Jones actually saw the Decedent sign the Will at issue. She had no concern regarding the soundness of the Decedent's mind at the time of the document's execution. There were no distractions as the Decedent reviewed the document. No one suggested how he should distribute the assets, prior to the document's signing. She witnessed no doubt or confusion on the Decedent's part, with no sign of Dementia or Alzheimer's. He appeared *"normal"*.

5. On cross examination Ms. Jones was merely asked to talk to the Decedent, knowing that he had a Will but not knowing who prepared the document. After speaking with him, she confirmed that the Decedent wanted to make a Will. While the Decedent could come to

her office to execute the document, he chose to have her go to his home. Again, the witness did not remember whether or not the Respondent was present in the room when the document was signed. The witness was not compensated for her attendance or service in notarizing the Will. Per her testimony, there was a *"pleasant atmosphere"* at the time of signing and he knew it was a distribution of his assets. This Court finds Ms. Jones to be a credible witness.

6. Finally, the Respondent called herself, Faye Morgan, to testify. She met the Decedent in first or second grade while in elementary school in Jacksonville. Thereafter, she moved to Miami while he lived in Washington, DC. The Decedent returned to Jacksonville in 1996 and the relationship was renewed in 2001. Beginning in 2007, they entered a romantic relationship that lasted until the Decedent's death. The Decedent lived alone until a fall in March of 2022, when he became concerned about living by himself. Thereafter, he came to live with her from 2022 until he became ill and passed away. During that time, she provided primary care, offering meals three times per day, taking him to a physician, and ensuring that he took medication. She also took care of his bank accounts, given his glaucoma diagnosis. Any proceeds paid as a premium for insurance were automatically withdrawn from his bank account. He did not change the beneficiary of that policy, except to add *"Lisa"*. On cross examination, she acknowledged that the Decedent's newly discovered daughter, Lisa Wynn Muse, received $30,000.00. She confirmed that she knew the witnesses to the Will. Carolyn Glover was her sister-in-law. Eileen Scott was her sister-in-law's sister, and the second witness to the Will. The witness confirmed that she does not know who the attorney was who prepared the Will. She also confirmed that she did not pay for the preparation of the document.

7. That the Petitioner may or may not have received proper notice of probate administration is irrelevant to the outcome of this proceeding. While regrettable, his purported failure to receive Notice has been remedied by this evidentiary hearing. Matters that could have been raised prior to the Will at issue are being raised at this time. Thus, the Petitioner has not been deprived of a potential remedy and, while perhaps inconvenienced, he has not been prejudiced by any procedural defect regarding notice.

8. In Florida, a Will is valid when in writing, signed by the testator at the end, and witnessed by at least two attesting witnesses in the testator's presence and in the presence of each other, ***Section 732.502, Florida Statutes***. The testimony of Ms. Jones persuades this Court that the foregoing requirements have been met, despite the Petitioner's testimony that his father's signature may not have been genuine. Ms. Jones testified that she witnessed the signatures of the Decedent, two witnesses, and that she notarized the document in light thereof. Even so, the Will's authentication is not at issue. Rather, the Petitioner contends that the Decedent, at the time of the Will's execution, lacked capacity and/or was the subject of undue influence by the Respondent.

9. As to a lack of testamentary capacity, the Will may be invalidated if such was the case at the time the document was executed. ***Newman v. Smith, 77 So.3d 1042 (Fla. 5th DCA 2011)***. To establish a lack of testamentary capacity, the Petitioner is not required to place a specific medical diagnosis before the Court. ***Raimi v. Furlong, 702 So.2d 1273 (Fla. 3rd DCA 1997)*** [22 Fla. L. Weekly D2184j] and ***In Re: Estate of Edwards, 433 So.2d 1349 (Fla. 5th DCA 1983)***. In this case at issue, the cause of death has been excised from the death certificate. While this Court considers Mr. Wynn to be a credible witness, his hearsay statement that the Decedent suffered from dementia is given little weight as there is no expert opinion in the record to support that conclusion. Still, Mr. Wynn testified that when he observed the Decedent not long before his death, he observed *"mental"* and other changes that included an aged appearance, voice change, eye change, a distortion of the passage of time, and memory loss. However, the Decedent passed away on February 23, 2025. The foregoing description would apply to a time period shortly before the Decedent's passing. It is important to recall that the Will was executed on December 6, 2022, a little over two years prior. The issue is whether or not he had testamentary capacity at the time the Will was executed in 2022. For that, this Court finds the testimony of Ms. Jones persuasive. At the time he executed the document, there was no indication of mental impairment. The Decedent reviewed the Will, understood it was a distribution of his assets, showed no sign of doubt or confusion, and was otherwise *"normal"*. In light of the foregoing, this Court finds that the Petitioner failed to meet his burden of proof as it relates to establishing impaired testamentary capacity.

10. When evaluating a claim of undue influence, the case of ***In Re: Estate of Carpenter, 253 So.2d 697 (Fla. 1971)*** lays out criteria to consider when making that determination. Per the testimony of Ms. Jones, she did not recall whether the Respondent was present in the room when the Will was signed. The Petitioner offered no direct evidence on the issue, and the foregoing ***Carpenter*** factor has not been established. There is no evidence to establish that the Respondent was present when the testator expressed the desire to make a Will. It is uncontested that the Respondent did not know who drafted the Will and it was not prepared on the recommendation of the Respondent. There is no direct or indirect evidence indicating Respondent's knowledge of the content of the Will prior to the Decedent's death. There is also no evidence suggesting that the Respondent gave instructions as to the preparation of the Will to the attorney who drafted the document. The Clerk's receipt for the Will (2025-WD-201) confirms that it was deposited by Respondent's counsel but there is no record evidence confirming that the document was placed in the Respondent's exclusive possession prior to deposit. The only ***Carpenter*** factor that has been established is that, consistent with the testimony of Ms. Jones and the Respondent, the Respondent secured the witnesses to the Will's execution. While there is some evidence of relational friction between the Petitioner and Respondent, there is no evidence that she precluded Petitioner's visits with the Decedent.

11. Because the Decedent's mental capacity at the time the Will was executed has not been established, there is no evidence of any mental inequality between the Respondent and the Decedent at the time the Will was executed. With respect to the reasonableness of the Will, specific, detailed, itemized bequests are made to the Petitioner, to Lisa Wynn Muse, Tatiana Danielle Wynn, Brandi Nicole Wynn, Sierra Wynn Lucas, the Respondent, and Dr. Michael Hernandez. Finally, Article V of the Will bequeaths the remainder of any property *". . .to my children who survive me in equal shares"*. That the Decedent chose to give items to the Respondent, as referenced in the Will, is understandable in light of her consistent care at the end of life. The specifically detailed bequests to children and other named heirs, along with the equal division of any residual property, appears eminently reasonable. Thus, when this Court considers that the Petitioner has only established one of the Carpenter factors, this Court concludes that the Petitioner has failed to meet his burden of proof as to the establishment of undue influence. It is, therefore,

ORDERED AND ADJUDGED:

1. The Petitioner's Petition Contesting Probate of Will, as filed with the Clerk on May 5, 2025, is hereby respectfully **DENIED**.

2. The Petition to Charge Attorney's Fees and Costs against Christopher Karl Wynn's share of the Estate, as filed with the Clerk on August 14, 2025, was not properly noticed for hearing and may be set for hearing by either counsel.

* * *

Criminal law—Murder—Counsel—Standby counsel—Interest of justice—Standby counsel appointed at request of pro se defendant—Discussion of role of standby counsel

STATE OF FLORIDA, v. CHRISTOPHER KREIGHBAUM, Defendant. Circuit Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2021-CF-001653-AXXX. Division CR-G. July 19, 2023. Kevin Blazs, Judge. Counsel: Theresa Simak, Assistant State Attorney, for State. Christopher Michael Kreighbaum, Pro se, Defendant. C. Michael Williams, Stand-By Counsel.

ORDER ON STANDBY COUNSEL

THIS CAUSE came on for consideration at the July 7, 2023 pretrial conference and this Court, having taken judicial notice of the court file per ***Section 90.202(6), Florida Evidence Code***, and being otherwise fully advised of the premises therein, and the pro se Defendant having expressed a desire for stand-by counsel, finds that appointing standby counsel is in the interest of justice, and makes the following conclusions of law:

1. Pursuant to ***Faretta v. California, 422 U.S. 806 (1975)***, a defendant has a right to self-representation in a criminal proceeding. However, there is no constitutional right to standby counsel. ***Jones v. State, 449 So.2d 253 (Fla. 1984)***. Per ***Jones***, the trial court has discretion to appoint standby counsel. When a defendant elects self-representation, the Court may appoint standby counsel over the objection of the defendant, subject to an abuse of discretion standard. ***Neal v. State, 60 So.3d 1132 (Fla. 4th DCA 2011)*** [36 Fla. L. Weekly D999b]. Still, the right to self-representation "*. . .is not a license to abuse the dignity of the court or to frustrate orderly proceedings, and a defendant may not manipulate the proceeding by willy-nilly leaping back and forth between the choices*". ***Brown v. State, 45 So.3d 110 (Fla. 1st DCA 2010)*** [35 Fla. L. Weekly D2134a], quoting ***Jones v. State, 449 So.2d 253 (Fla. 1984)***. While the dignity of the courtroom may not be abused through self-representation, "*neither is it a license not to comply with relevant rules of procedure and substantive law. Thus,. . . a defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of 'effective assistance of counsel' *". ***Faretta, 422 U.S. at 835, n. 46***.

2. The role of standby counsel has been described as "*assist[ing] the court in conducting orderly and timely proceedings*". ***Behr v. Bell, 655 So.2d 1055 (Fla. 1996)*** [21 Fla. L. Weekly S7a]. ***Faretta*** confirmed that a trial court may appoint standby counsel *". . .to aide the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary*". ***442 U.S. at 834, n. 46***. Furthermore, in ***McKaskle v. Wiggins, 465 U.S. 168 (1984)***, standby counsel may assist the court by relieving it of any need "*. . .to explain and enforce basic rules of courtroom protocol or [by assisting] the defendant in overcoming routine obstacles that stand in the way of the defendant's achievement of his own clearly indicated goals*" such that "*participation by counsel to steer a defendant through the basic procedures of trial is permissible*". However, where the court appoints standby counsel over defendant's objection, any limitation on the use of standby counsel by the trial court may not be argued for purposes of appeal ". . . *when the defendant made clear that he did not want standby counsel*". ***Paul v. State, 152 So.3d 635 (Fla. 4th DCA 2014)*** [39 Fla. L. Weekly D2167b]. It is important to note that "*a defendant who decides to represent himself bears the entire responsibility for his defense, even if he is appointed standby counsel*". ***Paul*** citing ***Behr v. Bell, 655 So.2d 1055 (Fla. 1996)*** [21 Fla. L. Weekly S7a].

3. It is also important to consider that ***Faretta*** was decided before ***Strickland v. Washington, 466 U.S. 668 (1984)***. In ***Strickland,*** a two-part test for ineffective assistance of counsel was established. This Court reads ***Faretta*** in light of ***Strickland***. When the Defendant elects self-representation, he bears the consequence of that choice and looses his ability to appeal any adverse verdict based on ineffective assistance of counsel, per ***Strickland*** and under ***Rule 3.850, Florida Rules of Criminal Procedure***. There is no constitutional right to "*hybrid representation*". Standby counsel is either representing the defendant as counsel of record or is merely standing by waiting to provide assistance. In light of the foregoing, the "*help*" that the defendant may request of standby counsel is limited to responding to inquiries related to "*basic rules of courtroom protocol and procedure" and "basic procedures of trial*", per ***McKaskle***. Moving beyond the foregoing requested assistance allows a pro-se defendant to "*have his cake and eat it too*" by representing himself at trial and then appealing any assistance provided by standby counsel as if the foregoing were counsel of record.

4. In light of the above, standby counsel may, when requested, consult with the defendant and provide assistance for the sole purpose of aiding the defendant in complying with basic rules of courtroom protocol and procedure and basic trial procedure, per ***McKaskle*** and ***United States v. Bertoli, 994 F. 2d 1002 (3rd Cir. 1993)***. The foregoing may include consultation regarding the introduction of evidence or objections to testimony, per ***Bertoli***, ***McKaskle***, and ***Faretta.*** Otherwise, the role of standby counsel is "*. . .to be available to represent the accused in the event that termination of the defendant's self-representation is necessary "* or he requests the reappointment of counsel, per ***Faretta***. It is, therefore,

ORDERED AND ADJUDGED:

1. C. Michael Williams is hereby appointed as standby counsel.

2. Standby counsel may consult with the defendant at his request, and provide assistance for the sole purpose of aiding the defendant in complying with basic rules of courtroom protocol and procedure and basic trial procedure. The foregoing may include consultation regarding the introduction of evidence or objections to testimony. Otherwise, the only role of standby counsel is "*. . .to be available to represent the accused in the event that termination of the defendant's self-representation is necessary*" or he requests the reappointment of counsel.

* * *

Criminal law—Murder—Search and seizure—Arrest—Motion for reconsideration of recused judge's order denying motion to suppress is denied under tipsy coachman doctrine—Pending appeal of denial of first motion to disqualify predecessor judge, construed as petition for writ of prohibition, does not divest trial court of jurisdiction absent appellate court show cause order—Irrespective of whether predecessor judge correctly found that exigent circumstances of weather and darkness warranted removing defendant from scene of homicide to police station for questioning, denial of motion was correct where officers had probable cause to take defendant into custody for further questioning when victim was found outside of defendant's tent, victim's blood was found inside tent and on defendant's body, and knife consistent with victim's wounds was found in tent

STATE OF FLORIDA, v. CHRISTOPHER KREIGHBAUM, Defendant. Circuit Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2021-CF-001653-AXXX. Division CR-G. January 12, 2024. Kevin Blazs, Judge. Counsel: Theresa Simak, Assistant State Attorney, for State. Christopher Michael Kreighbaum, Pro se, Defendant. C. Michael Williams, Stand-By Counsel.

ORDER ON MOTION FOR RECONSIDERATION OF SUPPRESSION ORDER

THIS CAUSE came on for consideration on the pro se Defendant's Motion for Reconsideration of Recused Judge's "Order Denying Defendant's Motion to Suppress", as filed with the Clerk on July 14, 2023, and this Court, having taken judicial notice of the court file per ***Section 90.202(6), Florida Evidence Code***, and having read the April

27, 2023 and May 1, 2023 transcripts from the Motion to Suppress hearing, and having read the June 8, 2023 deposition transcript of Detective R. R. Brooks of the Jacksonville Sheriff's Office, and having read the pro se Defendant's corresponding Memorandum of Law, and having read Judge Anthony Salem's Order Denying Defendant's Motion to Suppress, as filed with the Clerk on May 4, 2023, and being otherwise fully advised of the premises therein, makes the following conclusions of law:

1. After an evidentiary hearing and in response to the pro se Defendant's Motion to Suppress, as filed with the Clerk on March 24, 2023, Circuit Court Judge Anthony Salem entered an Order Denying Defendant's Motion to Suppress as executed on May 4, 2023. The pro se Defendant filed a Motion to Reconsider on May 16, 2023 which was denied pursuant to Judge Salem's Order entered on May 17, 2023. Thereafter, the pro se Defendant filed multiple Motions to Disqualify Judge Salem, which were summarily denied as legally insufficient. A Notice of Appeal was filed with the Clerk on May 19, 2023, which challenged Judge Salem's Order Denying Defendant's Motion to Disqualify, as filed on May 9, 2023. Although the matter remains on appeal, Judge Salem entered an Order of Recusal on June 27, 2023 and an Order of Reassignment transferring the case to felony division CR-G was entered by Chief Judge Mahon on June 28, 2023.

2. In light of the foregoing, the pro se Defendant filed a Motion for Reconsideration of the Recused Judge's "Order Denying Defendant's Motion to Suppress", on July 14, 2023. In the Defendant's Motion for Reconsideration, paragraphs 1 through 3 with subparts, the pro se Defendant seeks a reconsideration of the Order at issue based on alleged factual disputes. In support of his position, the Defendant cites to the deposition transcript of Detective Brooks. Transcript pages are attached as exhibits to the pending Motion. In light of the foregoing, the pro se Defendant moves this Court to "*. . .correct and amend Judge Salem's mistaken denial of the Defendant's Motion to Suppress*" and to suppress the "*. . . interrogation statement, consent to search, DNA buccal swabs and knife*".

3. The pro se Defendant's Notice of Appeal as to the denial of his first Motion to Disqualify is appropriately construed as a Petition for Writ of Prohibition. A Writ of Prohibition is the appropriate vehicle to test the legal validity of a denial of a Motion to Disqualify. ***Hauter v. State, 287 So.3d 1263, 1264n. 1 (Fla. 5th DCA 2019)*** [45 Fla. L. Weekly D17b] citing ***Kline v. JRD Mgmt. Corp., 165 So.3d 812 (Fla. 1st DCA 2015)*** [40 Fla. L. Weekly D1306b]. A Writ of Prohibition does not divest the trial court of jurisdiction without a District Court Show Cause Order being issued. ***Byrd-Green v. State, 40 So.3d 848 (Fla. 3rd DCA 2010)*** [35 Fla. L. Weekly D1565c]. There has been no DCA Show Cause Order issued. Thus, this Court has jurisdiction to entertain the pending Motion for Reconsideration.

4. As for reconsidering Judge Salem's suppression order in light of his recusal order, ***Rule 2.330(j), Florida Rules of Judicial Administration***, provides that "*[p]rior factual and legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a Motion for Reconsideration. . .*". For purposes of reconsidering past rulings, it does not matter whether the predecessor judge was disqualified or recused. ***Buckner v. Cowling, 135 So.3d 383 (Fla. 5th DCA 2014)*** [39 Fla. L. Weekly D256c] (*voluntary recusal),* ***Doe ex rel. Doe v. Publix Supermarkets, Inc., 814 So.2d 1249 (Fla. 2nd DCA 2002)*** [27 Fla. L. Weekly D995b] *(although a disqualification case, recusal and disqualification are used interchangeably)* and ***Barber v. Mackenzie, 562 So.2d 755 (Fla. 3rd DCA 1990)***. In such circumstances, a successor judge should view all prior orders as voidable, but not automatically void. ***Publix Supermarkets, 814 So.2d at 1251*** *("[A] party may not have [an order entered by a predecessor judge] vacated as a matter of right. 'Orders entered by a disqualified judge are voidable, not void' ".* (Quoting ***Schlesinger v. Chemical Bank, 707 So.2d 868 (Fla. 4th DCA 1998)*** [23 Fla. L. Weekly D624b].

5. Consequently, a successor judge faced with Motions for reconsideration, per ***Rule 2.330(1), Florida Rules of Judicial Administration***, should look to the record and determine the nature and propriety of the prior Order. ***Rath v. Network Marketing, 944 So.2d 485 (Fla. 4th DCA 2006)*** [31 Fla. L. Weekly D3064a](*"[A]fter review of the motion and the record, the Court can determine on the record whether reconsideration of a motion should occur. . .*". Thus, a successor judge should reconsider any prior order *"based on a clearly mistaken interpretation of the law*". ***Ognenovic v. David J. Gainnone, Inc., 184 So.3d 1135 (Fla. 4th DCA 2015)*** [40 Fla. L. Weekly D2261a], quoting ***Russ v. City of Jacksonville, 734 So.2d 508 (Fla. 1st DCA 1990).*** Also, it may be appropriate to reconsider discretionary decisions to "*remove the taint*" of perceived bias. ***Ognenovic, 184 So.3d at 1137,*** quoting ***Rath, 944 So.2d at 487***. Still, the successor judge should be alert to the fact that reconsideration "*should not be used merely to obtain 'a second bite at the apple' with respect to prior judicial rulings*". ***Rath, 944 So.2d at 487***. Consequently, if the successor judge finds reconsideration is warranted, the Court may issue a modified ruling based on the existing record or reopen argument and evidence, as appropriate. ***Rath, 944 So.2d at 487***.

6. In this case at issue, the Defendant contends that he was arrested when involuntarily transported from the crime scene to the Police Memorial Building for purposes of facilitating an interview. Contending that the de facto arrest was without probable cause and in violation of ***Section 901.151, Florida Statutes***, the Defendant asserts that his detention was an illegal arrest and that Judge Salem committed "*clear error*", citing ***M.J. v. State, 121 So.3d 1154 (Fla. 3rd DCA 2013)*** [38 Fla. L. Weekly D1992a], by denying his Motion. In Judge Salem's Order Denying Defendant's Motion to Suppress, as filed with the Clerk on May 4, 2022, Judge Salem found that JSO officers held the Defendant for purposes of investigation "*. . .no longer than is necessary to effectuate the purpose of the stop*", referencing ***Florida v. Roper, 460 U.S. 491 (1983).*** In this case, the purpose of the "*stop*" was to investigate a homicide. ***Section 901.151, Florida Statutes,*** is the State's codification of "*stop and frisk law*".

7. Where an officer has reasonable suspicion that a person is involved in criminal activity, the officer may conduct an investigatory stop. ***M.J.*** citing ***Popple v. State, 626 So.2d 185 (1993).*** The investigation cannot extend *". . .beyond the place of initial encounter*". ***M.J.*** citing ***Kollmer v. State, 977 So.2d 712 (Fla. 1st DCA 2008)*** [33 Fla. L. Weekly D833a]. Where a suspect is involuntarily transported from the crime scene to another location for further questioning, the de facto arrest requires probable cause. ***M.J.*** citing ***Saturnino-Boudet v. State, 682 So.2d 188 (Fla. 3rd DCA 1996)*** [21 Fla. L. Weekly D2173j].

8. Considering the "*totality of circumstances*" for purposes of determining probable cause supporting an arrest, the subjective intent of the officer is not at issue. The question is whether objective facts in the record support a probable cause determination. Officers may rely on information provided by other officers to form probable cause to support an arrest. ***Johnson v. State, 660 So.2d 648 (Fla. 1995)*** [20 Fla. L. Weekly S347a]. See also ***Walker v. State, 606 So.3d 1220 (Fla. 2nd DCA 1992)***. In this case at issue, Judge Salem found that there was no evidence that officers intentionally delayed their investigation of the Defendant. Given the "*. . .dark conditions, location of the crime scene, and weather, officers worked diligently to maintain order at the crime scene in an efficient manner*", per Judge Salem's Order. In essence, he found that exigent circumstances at the crime scene justified conducting questioning in the light and out of the extreme elements at the Police Memorial Building.

9. Consistent with transcripts in the record, the victim's body was found outside the Defendant's tent. Blood was located in the tent and on the Defendant's body. Consistent with inflicted wounds, a knife was found in the Defendant's tent. The Defendant gave a version of events at the scene that was inconsistent with physical evidence observed by the officers. Given the foregoing, officers had probable cause to take the Defendant into custody for purposes of further questioning. ***Section 901.15, Florida Statutes.*** Regardless of whether exigent circumstances justified questioning the Defendant at the PMB, under the "*Tipsy Coachman Doctrine*" (***Robertson v. State, 829 So.2d 901 (Fla. 2002)*** [27 Fla. L. Weekly S829a], because the arrest was not illegal, Judge Salem reached the correct conclusion regarding the suppression of evidence. It is, therefore,

ORDERED AND ADJUDGED:

1. The pro se Defendant's Motion for Reconsideration of Recused Judge's "Order Denying Defendant's Motion to Suppress", as filed with the Clerk on July 14, 2023, is hereby **GRANTED,** ***in part***, in that the substance of the Motion at issue was reconsidered in light of transcript evidence.

2. The pro se Defendant's Motion for Reconsideration of Recused Judge's "Order Denying Defendant's Motion to Suppress", as filed with the Clerk on July 14, 2023, is respectfully **DENIED,** ***in part***, in that the ruling rendered by Judge Salem in the Order at issue is correct in its result and remains the law of the case.

* * *

Criminal law—Pro se filings—Warning that continued filing of pleadings that are legally insufficient, frivolous, or redundant; attempt to relitigate decided issues or seek continuances of hearings or trial based on pro se status; or request appointment of counsel may result in revocation of right to self-representation or other sanctions

STATE OF FLORIDA, v. CHRISTOPHER KREIGHBAUM, Defendant. Circuit Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2021-CF-001653-AXXX. Division CR-G. January 12, 2024. Kevin Blazs, Judge. Counsel: Theresa Simak, Assistant State Attorney, for State. Christopher Michael Kreighbaum, Pro se, Defendant. C. Michael Williams, Stand-By Counsel.

ORDER WARNING DEFENDANT OF POSSIBLE SANCTIONS IN LIGHT OF ABUSE OF THE JUDICIAL PROCESS

THIS CAUSE came on for consideration pursuant to the Court's own Motion and in light of its obligation under ***Rule 2.545, Florida Rules of Judicial Administration,*** and this Court, having taken judicial notice of the court file per ***Section 90.202(6), Florida Evidence Code,*** and being otherwise fully advised of the history of this case, following its review of the 543 clerk docket lines (now 644), spanning in excess of 2 years, explained to the *pro se* Defendant on the record at his July 20, 2023 pretrial conference that, the Court having granted the Defendant's right to self-representation, finds that, as of January 12, 2024, the Defendant has filed well over 30 substantive motions (not including numerous administrative motions) with this Court in his *pro se* capacity and another pending appeal, the vast majority of them frivolous on substantive matters or attempting to relitigate issues already ruled upon. Also, this Court finds that the Defendant has filed a Notice of Appeal which was dismissed. Furthermore, this Court finds that the Defendant has discharged appointed counsel or exercised his right to self-representation on 4 occasions in close temporal proximity to a set trial date, thereby necessitating a continuance and frustrating efforts to obtain a jury verdict. As a result of prior filings, this Court warned the *pro se* Defendant at the July 20, 2023 pretrial conference that his right to self-representation is not absolute, and can be revoked when abused (***McCray v. State, 71 So.3d 848, 868 (Fla. 2011)*** [36 Fla. L. Weekly S383a]; see ***Faretta v. California, 422 US 806, 834n.46 (1975)***). It is, therefore,

ORDERED:

The pro se Defendant shall only file legally sufficient, non-frivolous, non-redundant Motions or other pleadings and provide copies to all parties, consistent with the applicable Florida Rule of Criminal Procedure. Consequently, the Defendant is therefore **CAUTIONED** that any subsequent filings of Motions or other pleadings that are legally insufficient, frivolous, redundant, or attempt to relitigate decided issues without stating a specific legal or factual basis in support thereof or seeks a continuance of any substantive evidentiary hearing or seeks a continuance of any jury trial by discharging, retaining, seek pro se status, or having the Court reappoint counsel in close temporal proximity so as to necessitate a continuance of any substantive evidentiary hearing or jury trial, may result in either a revocation of his right to self-representation (stand-by counsel having already been appointed) or other appropriate sanctions in the pending criminal matter. (See ***Perry v. Mascara, 959 So.2d 771, 773 (Fla. 4th DCA 2007)*** [32 Fla. L. Weekly D1480a].

* * *

Criminal law—Second-degree murder—Immunity—Stand Your Ground law—Court finds claim of self-defense not credible where defendant has told multiple versions of events surrounding death of victim who was invited into defendant's tent and later stabbed by defendant, photographs reflect that defendant had few wounds that would be consistent with his claim to have fended off an attack by the victim, and location and severity of stab wounds on victim show that defendant was primary aggressor—Motion to dismiss is denied

STATE OF FLORIDA, v. CHRISTOPHER KREIGHBAUM, Defendant. Circuit Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2021-CF-001653-AXXX. Division CR-G. June 25, 2024. Kevin Blazs, Judge. Counsel: Theresa Simak, Assistant State Attorney, for State. Christopher Michael Kreighbaum, Pro se, Defendant. C. Michael Williams, Stand-By Counsel.

ORDER ON DEFENDANT'S MOTION TO DISMISS: STAND YOUR GROUND IMMUNITY

THIS CAUSE came on to be heard at the April 23, 2024 evidentiary hearing on the Defendant's Motion to Dismiss: Stand Your Ground Immunity, as filed with the Clerk on April 22, 2024, and this Court, having taken judicial notice of the court file per ***Section 90.202(6), Florida Evidence Code,*** and having considered Defendant's Composite Exhibit 1, and having taken live testimony from the Defendant, Christopher Kreighbaum, and having taken live testimony from Detective R. Brooks of the Jacksonville Sheriff's Office, and having evaluated the candor and demeanor of the foregoing witnesses, and being mindful of Judge Salem's Order Denying Defendant's Motion to Determin (sic) Stand Your Ground Immunity, as filed with the Clerk on June 24, 2022, and being aware of this Court's Order on Motion to Dismiss Based on the Defendant's Use of Deadly Force to Prevent Commission of a Forcible Felony, as served on January 12, 2023, and having considered applicable statutes, court rules, and case law, and having considered all photographs in State's Composite Exhibit 1, and having heard argument of counsel and being otherwise fully advised of the premises therein, makes the following findings of fact and conclusions of law:

1. In this case, the Defendant is charged with a single count of Murder in the Second Degree, by way of an Information filed with the Clerk on March 12, 2021. Pursuant to ***Sections 776.012, 776.013(4),*** and ***776.032, Florida Statutes,*** and under the authority of ***Rule 3.190(b), Florida Rules of Criminal Procedure,*** the Defendant seeks to have pending criminal charges dismissed pursuant to ***Section 776.032, Florida Statutes.*** According to the Defendant's Motion at issue, he is entitled to immunity because he committed the homicide in self-defense. Consequently, he seeks immunity from prosecution pursuant to ***Section 776.032(1), Florida Statutes,*** and again, to have

pending charges dismissed under ***Section 776.032, Florida Statutes***. ***Dennis v. State, 51 So.3d 456 (Fla. 2010)*** [35 Fla. L. Weekly S731b].

2. Under ***Section 776.032(1), Florida Statutes***, "*a person who. . . threatens to use force as [legally] permitted. . . is justified in such conduct and is immune from criminal prosecution*". Since 2017, ". . .the *Stand-Your-Ground Law. . . provide[s] that 'once a prima facie case of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution*' ". ***Bouie v. State, 292 So.3d 471 (Fla. 2nd DCA 2020)*** [45 Fla. L. Weekly D415a] quoting ***Section 776.032(4), Florida Statutes***. Again, pursuant to ***Section 776.032(4), Florida Statutes***, "*. . .once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1)*". This Court finds that the Defendant's Motion at issue has asserted a prima facie claim of self-defense immunity. Furthermore, the ***Bouie*** Court *". . .held that a pretrial assertion of immunity under the Statute requires that (1) defendant file a 3.190(b) Motion to Dismiss that makes allegations that establish a prima facie claim to immunity and that (2) if the defendant makes a sufficient motion, the trial court must hold an evidentiary hearing at which the state must prove by clear and convincing evidence that the defendant is not entitled to immunity*". ***Bouie*** citing ***Jefferson v. State, 264 So.3d 1019 (Fla. 2nd DCA 2018)*** [44 Fla. L. Weekly D135a]. The evidentiary hearing was held on May 3, 2024, consistent with ***Bouie*** and ***Jefferson,*** as a supplement to a prior evidentiary hearing on the same issues.

3. Even so, the justification for the use of deadly force only occurs ". . .*when he or she reasonably believes such force is necessary to prevent imminent death or great bodily harm to him or to herself or another, or to prevent the imminent commission of a forcible felony*". ***Bretherick v. State, 170 So.3d 766 (Fla. 2015)*** [40 Fla. L. Weekly S411a] citing ***Section 776.012, Florida Statutes***. If no "*imminent*" threat exists at the time of the charged offense, the defendant is not entitled to statutory immunity for the use of deadly force, per ***Morris v. State 325 So.3d 1009 (Fla. lst DCA 2021)*** [46 Fla. L. Weekly D1765b].

4. Under ***Section 776.013(2), Florida Statutes***, "*a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself. . . when using. . . defensive force that is intended to. . . cause death. . . if the person against whom the defensive force was used. . . unlawfully and forcibly entered a dwelling. . .*". Also, ***Florida Standard Jury Instruction 3.6(f)*** provides that the "*defendant is presumed to have held a reasonable fear of imminent peril or death or great bodily harm to himself when using defensive force if the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered a dwelling. . .* " and the "*defendant knew that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred*". In this case at issue, the Defendant contends that an unlawful forcible act was occurring when deadly force was used. Although, per his testimony, the victim was an invited guest at the time of his killing, the Defendant contends that his guest was instructed to leave and refused to do so.

5. To properly assess a Stand-Your-Ground Motion, the Court must consider the specific circumstances faced by Mr. Kreighbaum at the time of the alleged offense. ***Garcia v. State, 286 So.3d 348 (Fla. 2nd DCA 2019)*** [44 Fla. L. Weekly D2859c] citing ***Garrett v. State, 148 So.3d 466 (Fla. 1st DCA 2014)*** [39 Fla. L. Weekly D1783a]. More specifically, "*[T]o justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force*", under ***Garcia.*** In reaching its decision, ". . .*the trial court's task [is] to weigh conflicting evidence and make determinations regarding witness credibility in reaching its decisions*". ***Huckelby v. State, 313 So.3d 861 (Fla. 2nd DCA 2021)*** [46 Fla. L. Weekly D321c] citing ***Edwards v. State, 257 So.3d 586 (Fla. 1st DCA 2018)*** [43 Fla. L. Weekly D2345a] and ***Finkelstein v. State, 157 So.3d 1085 (Fla. lst DCA 2015)*** [40 Fla. L. Weekly D536a]. Burglary is a forcible felony for purposes of immunity from prosecution. ***Cummings v. State, 310 So.3d 155 (Fla. 2nd DCA 2021)*** [46 Fla. L. Weekly D216g] citing ***Section 776.08*** and ***Cook v. State, 192 So.3d 681 (Fla. 2nd DCA 2016)*** [41 Fla. L. Weekly D1347b]. Consequently, permission to be present in a residence may be revoked if the invitee commits a criminal act therein, under ***Cummings***. Consistent with ***Leasure v. State, 105 So.3d 5 (Fla. 2nd DCA 2012)*** [37 Fla. L. Weekly D2481b], a Defendant's inconsistent statements as to circumstances surrounding a confrontation may ". . .*cast significant doubt on [his] assertions that [he] had a reasonable fear of death or great bodily harm*". In this case at issue, photographic evidence confirms the observations of Detective Brooks regarding the minor injuries, if any, sustained by the Defendant from the confrontation with the victim.

6. Per the Defendant's testimony, he invited the victim into his dwelling, a tent. The victim was physically larger than the Defendant. Thereafter, a confrontation ensued when the victim requested a "*beer*" that the Defendant was unwilling to provide. The disagreement escalated until the Defendant was allegedly "*rushed*" by the victim who took the Defendant to the ground. Thereafter, the victim held the Defendant on the ground with his right hand on the Defendant's throat, choking him, and with the victim's left hand on the Defendant's right shoulder, pinning him to the ground. Because the Defendant allegedly feared for his life, he retrieved a knife and repeatedly stabbed the victim in self-defense.

7. In this case at issue, the testimony of Detective Brooks (which this this Court finds credible) and other record evidence reflects multiple stories given by the Defendant as to how he initially encountered the victim and circumstances surrounding the death. In evaluating the Defendant's self-defense version of events, photographs of the Defendant taken shortly after the homicide reflect few wounds to the Defendant that would be consistent with his fending off an attack. Rather, the State's medical examiner photographs reflect thirty-six sharp object wounds to the victim. On cross examination, the Defendant contended that only twelve of the wounds resulted from stabbing. The number of stab wounds appear inconsistent with the Defendant's alleged effort to merely keep the victim from pressing the attack. Given the number of stab wounds and their location, this Court finds that the photographs show the Defendant to be the primary aggressor. Furthermore, defensive slash wounds to both palms of the victim and both forearms of the victim are far more consistent with the victim's effort to defend himself from the Defendant. This Court finds so. Finally, this Court is at a loss to understand how the victim's right palm, which is allegedly on the Defendant's throat, and the victim's left palm, which is allegedly on the Defendant's shoulder, could be repeatedly slashed. This Court finds such to be an impossibility. Given the Defendant's multiple versions of events surrounding the victim's injuries, the location and severity of the victim's wounds, and after observing the Defendant's candor and demeanor while testifying, this Court finds the Defendant less than credible.

8. Consistent with the requirements of ***Bouie*** and ***Jefferson***, this Court held an evidentiary hearing on the Motion at issue. In light of

the foregoing, this Court finds, by clear and convincing evidence, that the Defendant was the aggressor in the confrontation and that he did not face imminent death or great bodily harm when he slashed the victim's palms and forearms and repeatedly stabbed the deceased, per ***Bretherick***. In light of the victim's extensive defensive slash wounds, this Court concludes that there was no "*imminent threat*" to the Defendant when he inflicted multiple stab wounds such that the Defendant is not entitled to immunity, under ***Morris***. Because the victim was an invited guest of the Defendant and the Defendant was the aggressor, the Defendant is not entitled to any presumption under ***Section 776.013(2), Florida Statutes***. Consistent with the requirements of ***Section 776.032(4), Florida Statutes***, this Court concludes that the State has met its burden of proof by "*clear and convincing evidence*" such that immunity from criminal prosecution does not apply to the Defendant in this case at issue. It is, therefore,

ORDERED AND ADJUDGED:

The Defendant's Motion to Dismiss: Stand Your Ground Immunity, as filed with the Clerk on April 22, 2024, is hereby respectfully **DENIED**, consistent with this Court's pronouncement from the bench on June 12, 2024.

* * *

Arbitration—Torts—Enforceability of arbitration clause—Ride share service—Motion to compel arbitration in suit stemming from injuries sustained by rider in ride-share vehicle is granted—Valid arbitration agreement exists between rider and companies that supply rider app, claims arising from use of services available through companies' rider app fall squarely within scope of agreement, and companies did not actively participate in lawsuit or waive right to arbitrate

NICOLAS YUNG MCCARTHY-DONOVAN, Plaintiff, v. LISSET REYES GARCIA, RASIER-DC, LLC and UBER TECHNOLOGIES, INC., Defendants. Circuit Court, 15th Judicial Circuit in and for Palm Beach County. Case No. 50-2025-CA-007199-XXXA-MB. December 24, 2025. Maxine Cheesman, Judge. Counsel: Tiffany M. Fanelli, Kogan and DiSalvo, P.A., Boynton Beach, for Plaintiff. Jeff Greenberg, Roig Lawyers, Orlando, for Raiser-DC, LLC and Uber Technologies, Inc., Defendants.

ORDER GRANTING DEFENDANTS UBER TECHNOLOGIES, INC. AND RASIER-DC, LLC'S MOTION TO COMPEL ARBITRATION AND TO STAY ACTION

THIS CAUSE having come before the Court on Uber Technologies, Inc. ("Uber") and Rasier-DC, LLC's (incorrectly named as "Rasier (FL), LLC") ("Rasier") (collectively "Defendants") September 16, 2025 Motion to Compel Arbitration and to Stay Action with Memorandum of Law, and after hearing arguments, reviewing the parties' submission, and being otherwise fully advised in the premises, the Court finds and concludes as follows:

Factual and Procedural Background

Uber is a technology company that uses its proprietary technology to develop and maintain digital multi-sided marketplace platforms. Rasier, LLC is a wholly owned subsidiary of Uber, and Rasier-DC, LLC is a wholly owned subsidiary of Rasier, LLC. On one side of the marketplace, businesses and individuals utilize Uber's platforms in order to connect with customers and obtain payment processing services. One of Uber's multi-sided platforms is the Rides platform. Riders, like Plaintiff Nicholas Yung McCarthy-Donovan ("Plaintiff"), download the rider version of the Uber App ("Rider App"), and drivers, like Lisset Reyes Garcia ("Ms. Garcia"), download the driver version of the Uber App ("Driver App"); together, the Apps allow users to access the platform that facilitates the connection of individuals in need of a ride with individuals willing to provide transportation services, and after completing all the necessary steps required to gain access to the Rider App, the Rider App enables Riders and Drivers to connect.

Plaintiff initiated this action in Palm Beach County, Florida state court alleging injuries arising from a May 7, 2024 accident when he was a rider in Ms. Garcia's vehicle. Plaintiff claims that he was injured as a result of the accident and that Ms. Garcia was at fault for causing the accident.

Prior to the accident, and according to Uber's business records, Plaintiff signed up to utilize the Rider App on or about May 31, 2021. (*See* Declaration of Kristina Lastovich, attached to Uber's Motion to Compel Arbitration at Ex. B). On May 18, 2023 Plaintiff was presented with an in-app blocking pop-up screen and expressly agreed to Defendants' January 2023 Terms of Use ("January 2023 terms"), which included an arbitration provision. *Id*. As such, Plaintiff agreed to Uber's terms, which required Plaintiff to resolve any claims that he may have against Defendants in arbitration and included a delegation clause, which gave the arbitrator *exclusive authority* to determine threshold questions of arbitrability.

Legal Standard

Where a party to an agreement to arbitrate refuses to submit to arbitration, Florida law permits the aggrieved party to move for an order compelling arbitration. *See* Fla. Stat. § 682.03(1). Pending determination of such a motion, the Court should stay any related judicial proceedings. *See* Fla. Stat. § 682.03(6); *Open MRI of Okeechobee, LLC v. Aldana,* 969 So. 2d 589, 590 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D2920b] ("It is clear that the statute [§ 682.03] mandates a stay while a motion for arbitration is pending"); *Miller & Solomon General Contractors, Inc. v. Brennan's Glass Co., Inc.,* 824 So. 2d 288, 290 (Fla. 4th DCA 2002) [27 Fla. L. Weekly D1902a]. "In ruling on a motion to compel arbitration, Florida courts should resolve all doubts in favor of arbitration rather than against it." *Medanic v. Citicorp Inv. Servs.,* 954 So. 2d 1210, 1211 (Fla. 3d DCA 2007) [32 Fla. L. Weekly D1007a]. Florida courts routinely find that "arbitration clauses are to be given the broadest possible interpretation in order to accomplish the purpose of resolving controversies outside of the courts." *See e.g., Royal Caribbean Cruises, Ltd. v. Universal Employment Agency,* 664 So. 2d 1107, 1108 (Fla. 3d DCA 1995) [20 Fla. L. Weekly D2711a].

Legal Conclusions

A "trial court's jurisdiction is limited to three issues: (1) whether a valid written agreement to arbitrate exists; (2) whether arbitrable issues exist; and (3) whether the right to arbitrate has been waived." *Seifert v. U.S. Home Corp,* 750 So. 2d 638 (Fla. 1999) [24 Fla. L. Weekly S540a]. Here, the Court finds that Defendants satisfied the three-part test and Plaintiff's claims are subject to Defendants' arbitration clause.

A valid written agreement to arbitrate exists between Plaintiff and Defendants. Plaintiff expressly agreed to Defendants' January 2023 terms. The January 2023 terms provide that Plaintiff was "required to resolve any claim that [he] may have against Uber on an individual basis in arbitration as set forth in this Arbitration Agreement." (*See* Declaration of Kristina Lastovich, attached to Uber's Motion to Compel Arbitration at Ex. C). The Court finds that the Arbitration Agreement is not unconscionable. The Court further finds that the Arbitration Agreement is not a contract of adhesion and was not offered to Plaintiff on a " "take-it-or-leave-it" basis. There is no record evidence to support a claim that Defendants coerced Plaintiff into accepting the Arbitration Agreement.

Likewise, prong two is satisfied as Plaintiff's claims clearly arise from and relate to Plaintiff use of the services available through the Rider App, and as a result, fall squarely within the scope of the Arbitration Agreement. The Agreement states that ". . .**any dispute, claim, or controversy in any way arising out of or relating to. . . (ii)**

your access to or use of the Services at any time; (iii) incidents or accidents resulting in personal injury to you or anyone else that you allege occurred in connection with your use of the Services . . . will be settled by binding individual arbitration between you and Uber, and not in a court of law." This includes the May 7, 2024 accident from which this case emanates. In agreeing to the terms of the Arbitration Agreement, Plaintiff waived his right to a jury trial.

The Court further finds that Defendants did not actively participate in this lawsuit or waive their right to arbitrate. Defendants filed their Motion to Compel Arbitration as their responsive pleading. Plaintiff received notice of Defendants' intent to arbitrate Plaintiff's claims on or before the time that Defendants filed their Motion to Compel Arbitration on September 16, 2025. Further, Defendants' January 2023 terms contain a delegation clause that evince the parties' intent to delegate issues, including threshold issues, to the arbitrator. *See Suarez v. Uber Technologies, Inc.,* 2016 WL 2348706 at *4 (M.D. Fla. May 4, 2016) ("Defendants' motion [to compel arbitration] should be granted on this basis alone and adjudication of Plaintiff's attacks on Arbitration Provision should be left to the arbitrator because it is clear and unmistakable that the parties agreed to arbitrate arbitrability").

Based on the foregoing, it is hereby ORDERED and ADJUDGED as follows:

Defendants Uber Technologies, Inc. and Rasier-DC, LLC's Motion to Compel Arbitration and to Stay Action is **GRANTED**.

It is further **ORDERED** that Plaintiff shall initiate arbitration within thirty (30) days of this order and all remaining issues in this action as to all parties are **STAYED** for three (3) months pending completion of arbitration pursuant to the terms of the Arbitration Agreements. The parties shall notify the Court upon completion of arbitration, and either party shall have the right to resolve any remaining issues of contention in this case.

* * *

Criminal law—Driving under influence—Manslaughter—Evidence—Expert scientific evidence—*Daubert* challenge to toxicologist's testimony about measurable level of Delta-9 THC found in defendant's blood is denied—Testimony as it relates to scientific reliability of impairing effects of Delta-9 THC and its additive effect with alcohol is based on reliable peer-reviewed science, testimony is relevant to proving element of DUI manslaughter charge, and testimony is not improperly prejudicial to defendant's case

STATE OF FLORIDA, v. JESSICA RENEE VAETH, Defendant. Circuit Court, 15th Judicial Circuit in and for Palm Beach County, Criminal Division. Case No. 2023CF007185AMB. Division U. February 7, 2026. Sherri L. Collins, Judge.

ORDER DENYING *DAUBERT* CHALLENGE

THIS CAUSE having come before the Court upon the Defense's Motion for Daubert Hearing on February 5, 2026; it is hereby ORDERED AND ADJUDGED that the Defense's *Daubert* challenge is **DENIED.** It is further ORDERED AND ADJUDGED that State of Florida may introduce evidence of Delta-9-Tetrahydrocannabinol (Delta-9 THC) at trial.

Florida adopted the *Daubert* standard in May of 2019. *Daubert* tasks the trial judge with ensuring an expert has both a reliable foundation for their opinion and that the opinion is relevant to the task at hand. *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579, 579-580. (1993). The scientific evidence in question in this case is a measurable level of Delta-9 THC found in the Defendant's blood.[1] The Court finds that Delta-9 THC, the active impairing substance in marijuana, has been thoroughly researched by the scientific community and its impairing effects are well documented. The Defense raises the issue that because there is no correlation between a specific level of Delta-9 THC and actual impairment, the State should not be able to present evidence of the Delta-9 THC and the testimony of the toxicologist.

However, as noted by the toxicologist and the scientific literature, the level of impairment depends on a number of factors including dosage, the frequency of use, tolerance, concentration in blood, and absorption rate. It is nearly settled science, at this point, that there is no *per se* level of Delta-9 THC that equates to any level of impairment. Alcohol, by contrast, has a level that is both generally accepted and is codified in Florida's Driving Under the Influence Statute—0.080 is impairing. *See* Fla. Stat. § 316.193(1)(b). Additionally, the toxicologist explained that the Delta-9 THC and alcohol, as central nervous system depressants, have an additive effect on each other. This means that even lower levels of both alcohol and Delta-9 THC could create higher level of impairment than each substance could cause on its own.

Therefore, the Court finds that the toxicologist's testimony as it relates to the scientific reliability of the impairing effects of Delta-9 THC and its additive effect with alcohol is based on reliable, peer reviewed science, satisfying the foundational requirement of *Daubert*.

The Court further finds that the toxicologist's testimony is reliable for the task at hand. In order for the State of Florida to prove the crime of Driving Under the Influence Manslaughter, the State must prove, *inter alia,* that the Defendant was under the influence of alcohol and/or controlled substances to the extent that her normal faculties were impaired. Fla. Stat. § 316.193(1)(a). Should the State of Florida choose to pursue a normal faculties impaired theory at a trial, the toxicologist's explanation of Delta-9 THC's impairing effects on the body, including slowing reaction time, impairing the Defendant's ability to divide her attention, and her ability to operate a motor vehicle safely would be relevant information for the jury. The toxicologist's testimony is relevant to proving the second element of Driving Under the Influence Manslaughter. Therefore, the State has satisfied the requirements of *Daubert* for admissibility of introducing evidence of Delta-9 THC at trial; the Court finds that the testimony is relevant to the task at hand of explaining impairment to the jury.

Lastly, the Court evaluated the evidence pursuant to Fla. Stat. 403 and agrees with the prior ruling by the predecessor judge that the introduction of a measurable amount of Delta-9 THC is not improperly prejudicial to the Defendant. Relevant evidence should not be excluded unless the probative value of the evidence is substantially outweighed by the unfair prejudice the evidence's introduction would cause. The Florida Supreme Court has ruled that an immeasurably small amount of a controlled substance should be excluded at trial. *State v. McClain*, 525 So.2d 420, 421 (Fla. 1988). The Florida Supreme Court surmised that because the State's own chemist was unable the even quantify the minuscule amount of cocaine found in the McClain's blood, that there was no likelihood that McClain's normal faculties were impaired, concluding that the trace amount "added little to the State's proof of intoxication." *Id.* at 423. Inversely, in *State v. Tagner,* Tagner had a quantifiable amount of cocaine found in his blood—.34 milligrams per liter. *State v. Tagner,* 673 So.2d 57, 58 (Fla. 4th DCA 1996) [21 Fla. L. Weekly D710a]. The Fourth District Court of Appeal determined that because the amount of cocaine in Tagner's system was quantifiable, it could be distinguished from *McClain* and concluded that the State's inability to determine a degree of the impairment was not a bar on its admissibility. *Id.* at 60. Notably, the Fourth District Court of Appeal found that "[t]he State's inability here to show a specific measurable effect of the cocaine on defendant did not per se render the evidence inadmissible." *Id.*

In the instant case, the Court has determined that on balance, a quantifiable level of Delta-9 THC is not improperly prejudicial to the Defendant in this case. This is not a case like *McClain* where there is a trace amount of cocaine; an amount so minuscule that it was barely relevant. The case before the Court involves a measurable amount of

Delta-9 THC—3.0 +/- .07 nanograms per milliliter. Although the State's expert cannot testify that any level of Delta-9 THC is *per se* impairing, the Court has determined that the level of impairment from the Delta-9 THC, either in conjunction with the alcohol found in the Defendant's blood or standing alone, is a question for the jury, and that the Defendant would not be substantially prejudiced by the jury hearing this information. Therefore, the Defense's *Daubert* challenge is DENIED.

[1]A previous Motion in Limine, by agreement by the State and Defense, has already excluded Delta-9 THC metabolites.

* * *

Torts—Defamation—Discovery—Plaintiff is ordered to produce tax returns reflecting all income derived or earned from rendering professional legal services in past three years, with permission to redact income from other sources, and all documents identifying clients who have declined to continue doing business with plaintiff or sought new legal representation as result of defendant's publication—Plaintiff also ordered to produce all documents identifying persons whose attitude toward him has changed, prospective clients who have declined to hire him, attorneys who have ceased referring business to him, and any demotions or removals from boards or associations as result of publication

KEITH M. POLIAKOFF, Plaintiff, v. BROWARD BULLDOG, INC., Defendant. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. CACE25005303. Division 12. February 13, 2026. Keathan Frink, Judge. Counsel: Paul D. Turner, Oliver Birman, and David Robbins, Perlman, Bajandas, Yevoli & Albright, P.L., Fort Lauderdale, for Plaintiff. Dana J. McElroy and Daniela Abratt-Cohen, Thomas & Locicero PL, Fort Lauderdale; and Linda Riedemann Norbut, Tampa, for Defendant.

ORDER ON DEFENDANT'S MOTION TO COMPEL DOCUMENTS AND BETTER RESPONSES FROM PLAINTIFF

THIS CAUSE came before the Court upon Defendant Broward Bulldog, Inc., d/b/a Florida Bulldog's ("*Florida Bulldog*") Motion to Compel Documents and Better Responses from Plaintiff to Defendant's Discovery Requests, filed January 8, 2026 (the "Motion"). The Court, having reviewed the Motion, and having heard argument of counsel at a hearing on February 10, 2026, with a court reporter present, it is hereby:

ORDERED and ADJUDGED as follows:

1. Plaintiff filed this defamation action on April 11, 2025, seeking compensatory damages.

2. The *Florida Bulldog* filed an Answer and Affirmative Defenses on September 16, 2025, asserting various affirmative defenses, including that Plaintiff has not suffered any damages.

3. On January 8, 2026, the *Florida Bulldog* moved to compel documents and better responses from Plaintiff. As discussed below, *Florida Bulldog*'s Motion is **GRANTED in part** and **DENIED in part**, with details stated on the record.

4. Plaintiff shall comply with this Order and produce the documents and amended responses as mandated below within ten (10) days of February 10, 2026, the hearing on this matter.

Request Nos. 27, 32, 33, and 34

5. With respect to Nos. 27, 32, 33, and 34 in Defendant's First Request for Production, the Motion is **DENIED**. Plaintiff has represented in his Second Supplemental Response that he has no other documents other than the email produced and identified in response to No. 27.

Request Nos. 40 and 41

6. With respect to Nos. 40 and 41, these requests seek, respectively, state and federal tax returns, including all schedules and attachments, as well as documents reflecting salary, distribution, and/or compensation payments made to Plaintiff by any company in which he has or had an ownership interest.

7. Plaintiff objected to these requests based only on relevance. Plaintiff's objections are hereby **OVERRULED** and the Motion as to these requests is **GRANTED**. Plaintiff shall produce his tax returns and attached schedules for the past three (3) years. If Plaintiff has not yet filed his 2025 tax return, Plaintiff shall produce his 2025 tax return and attached schedules upon filing. In addition, Plaintiff requested at the hearing that certain information be excluded from disclosure. Accordingly, as the Court ruled, Plaintiff must produce his tax returns and attached schedules reflecting all income derived or earned from his rendering of professional legal services. Plaintiff may, however, redact from the tax returns and attached schedules income derived or earned from sources other than professional legal services, such as income from investments in accordance with the Court's ruling.

8. Plaintiff shall also produce all documents responsive to No. 41 for the past three (3) years.

Request Nos. 43 and 49

9. Request No. 43 seeks all documents sufficient to identify pre-existing business or clients who have declined to continue doing business with Plaintiff or have sought new legal representation as a result of the publication. Request No. 49 seeks all documents reflecting all legal matters at Plaintiff's law firm Government Law Group PLLC for which he is listed as the originating and/or lead attorney.

10. Plaintiff objected to these requests based only on relevance. Plaintiff's objections are **OVERRULED** and the Motion is **GRANTED** as to the requests. Plaintiff shall produce all responsive documents to these requests for the past three years.

Request Nos. 42, 44, 45, 50

11. Finally, in Nos. 42, 44, 45, and 50, Defendant seeks documents identifying, respectively, individuals whose attitude toward Plaintiff changed as a result of the publication, prospective business or clients who declined to hire him, attorneys who ceased referring business to him, and any demotions or removals from any boards, memberships, or associations.

12. Plaintiff objected to these requests as being "impossible for Plaintiff to respond." Plaintiff's objections are **OVERULED** and the Motion is **GRANTED**. Plaintiff shall provide an amended response to these requests and produce responsive documents to the extent they exist.

* * *

Arbitration—Motion to compel arbitration is granted—Plaintiff cannot stay claims against defendants, defer arbitration, and proceed against co-defendant

ANDREI PETERMAN, Plaintiff, v. UBER TECHNOLOGIES, INC., et al., Defendants. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. CACE25013448. Division 14. February 6, 2026. N. Hunter Davis, Judge. Counsel: Christopher A. Marzwanian, Marz Law, PLLC, Boca Raton, for Plaintiff. Jeff Greenberg, Roig Lawyers, Orlando, for Defendant.

ORDER GRANTING DEFENDANTS UBER TECHNOLOGIES, INC. AND RASIER-DC, LLC'S MOTION TO COMPEL ARBITRATION AND TO STAY ACTION

THIS CAUSE having come before the Court on Uber Technologies, Inc. and Rasier-DC, LLC's (incorrectly named as "Rasier (FL), LLC") (collectively "Defendants") October 28, 2025 Motion to Compel Arbitration and to Stay Action with Memorandum of Law, and after hearing arguments on February 3, 2026, reviewing the parties' submissions, and being otherwise fully advised in the

premises, the Court finds and concludes as follows:

1. A valid written agreement to arbitrate exists between Plaintiff and Defendants.

2. Plaintiff's claims against Defendants fall squarely within the scope of the Arbitration Agreement.

3. Defendants did not actively participate in this lawsuit or waive their right to arbitrate.

4. Defendants properly invoked their right to arbitrate Plaintiff's claims.

5. Plaintiff may not stay the court claims against Defendants, defer arbitration proceedings, and proceed against Co-Defendant Frantz Honorius Sabbat Jr., as requested.

Based on the foregoing, it is hereupon ORDERED and ADJUDGED as follows:

Defendants Uber Technologies, Inc. and Rasier-DC, LLC's Motion to Compel Arbitration and to Stay Action is **GRANTED**.

It is further **ORDERED** that Plaintiff shall initiate arbitration within thirty (30) days of this Order. If arbitration is not timely initiated by Plaintiff within this time period, Defendants shall be dismissed from this case with prejudice.

All remaining issues in this action as to all parties are **STAYED** pending completion of arbitration pursuant to the terms of the Arbitration Agreements. The parties shall notify the Court upon completion of arbitration, and either party shall have the right to resolve any remaining issues of contention in this case.

Dismissal of Defendants prior to the expiration of the 30 days will deem this order moot and the case will proceed against Co-Defendant Frantz Honorius Sabbat, Jr.

* * *

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April 30, 2026
Cite as 33 Fla. L. Weekly Supp. ____

COUNTY COURTS

Insurance—Property—Insurer entitled to summary judgment where it is undisputed that insureds withdrew claim shortly after it was reported—No merit to argument that insureds were confused about two claims submitted to insurer and did not intend to withdraw claim where evidence shows that any confusion was resolved when insureds called insurer and withdrew claim—Argument that repair estimate sent to insurer after withdrawal shows that insureds pursued claim lacks merit where insureds advised insurer that estimate related to prior claim and confirmed withdrawal of claim at issue

BENITO ADORNO and MICHELLE ADORNO, Plaintiffs, v. AMERICAN INTEGRITY INSURANCE COMPANY OF FLORIDA, Defendant. County Court, 4th Judicial Circuit in and for Duval County. Case No. 16-2023-CC-012488. August 1, 2025. Michael I. Bateh, Judge. Counsel: David Heil, David R. Heil, P.A., Winter Park, for Plaintiffs. Andrew Bickford, Bickford & Chidnese, LLP, Tampa, for Defendant.

FINAL ORDER GRANTING DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before this Honorable Court at the hearing on Defendant's Motion for Final Summary Judgment on May 21, 2025, and the Court having reviewed the filings of the parties and the summary judgment evidence, heard arguments of counsel, and otherwise being duly advised in the premises, finds as follows:

Undisputed Material Facts

On October 11, 2022, Plaintiffs submitted an insurance claim alleging wind and hail damage to their property located at 8856 Cherry Hill Dr. Jacksonville, FL (the "Claim"). American Integrity assigned claim number CHO-00151581 to the Claim. Three days after reporting the Claim, Plaintiffs spoke with American Integrity's representative, Justin Hardin, via telephone and advised they wished to withdraw the Claim. Following this conversation, Justin Hardin prepared and mailed a letter to Plaintiffs on October 14, 2022, which memorialized their phone conversation and confirmed the Claim was withdrawn. Plaintiff Michelle Adorno testified at her deposition that the October 14, 2022 letter prepared by Justin Hardin accurately represents their phone conversation and the withdrawal of the Claim.

After the Claim was withdrawn, Plaintiffs did not contact American Integrity nor were they aware of anyone contacting American Integrity to reopen or otherwise pursue the Claim on their behalf. Despite Plaintiffs not contacting American Integrity to pursue the Claim, Justin Hardin received an estimate of damages related to the Claim after it was withdrawn. Plaintiffs informed Justin Hardin that the estimate was intended for a prior claim and confirmed their withdrawal of the Claim at issue in this lawsuit. Plaintiffs testified at deposition that American Integrity did not have an opportunity to adjust the Claim because it had been withdrawn.

Analysis and Conclusion

A party is entitled to summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a). The Florida Supreme Court amended Florida Rule of Civil Procedure 1.510 to "align the State's summary judgement standard with that of the federal courts." *In re Amends. to Fla. Rule of Civ. Procedure 1.510,* 317 So. 3d 72, 73 (Fla. 2021) [46 Fla. L. Weekly S95a] (hereinafter *In re Amends.*). The new rule will continue to be guided by the Celotex Trilogy. *Id.* (explaining that the Celotex Trilogy consists of the following cases: (1) *Celotex Co. v. Catrett,* 484 U.S. 1066 (1988); (2) *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986); and (3) *Matsushita Electric Industrial Co. v. Zenith Radio Co.*; 475 U.S. 574 (1986)). The new version of rule 1.510 governs the adjudication of any summary judgment motion decided on or after May 1, 2021, including pending cases. *In re Amends.,* 317 So. 3d at 77.

The new rule contains three key distinctions articulated by the Court. *Id.* at 75-76. First, those applying the new standard must first recognize the "fundamental similarity" between the directed verdict standard and that of the new summary judgement. *Id.* at 75; *see also Anderson,* 477 U.S. at 251 (noting that "the impact under each is the same"). Secondly, those applying rule 1.510 must recognize that the party moving for summary judgment does not bear the burden of disproving the nonmovant's case but may either disprove it or, alternatively, show that the moving party lacks the evidence to prove its case. *In re Amends.,* 317 So. 3d at 75. Lastly, the correct test for the existence of a genuine factual dispute is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* (quoting *Anderson,* 477 U.S. at 248).

In sum, to survive a motion for summary judgment, the party moved against by summary judgment or summary decree must come forward with facts contradicting those submitted by the movant and demonstrate a real issue between the parties. *See Pritchard v. Peppercorn and Peppercorn, Inc.,* 96 So. 2d 769, 770-71 (Fla. 1957). If the party's response consists of nothing more than a repetition of conclusory allegations, the court must enter a summary judgment in the moving party's favor. *Pino v. Lopez,* 361 So. 2d 192, 193 (Fla. 3d DCA 1978). In addition to the non-moving party's burden of providing disputed facts, the moving party must possess admissible evidence. *Magee v. American Southern Home Ins. Co.,* 982 So. 2d 1255, 1257 (Fla. 1st DCA 2008) [33 Fla. L. Weekly D1433a]; *Albritton v. Ferrera,* 913 So. 2d 5, 8 (Fla. 1st DCA 2005) [30 Fla. L. Weekly D2099a].

Here, summary judgment turns on the undisputed fact that Plaintiffs withdrew the Claim. As a result of this withdrawal, American Integrity was not afforded the opportunity to adjust the Claim and therefore cannot be in breach of the insurance contract. Because there is no genuine issue as to any material fact and Plaintiffs have not presented any competent or admissible evidence to the contrary, American Integrity is entitled to summary judgment as a matter of law.

I. Plaintiffs Withdrew the Claim

Based on the deposition testimony of both Plaintiffs and the affidavit of Justin Hardin, it is undisputed that the Claim was withdrawn on October 14, 2022. In Plaintiffs' Response in Opposition to Defendant's Motion for Final Summary Judgment and at the hearing on Defendant's Motion for Final Summary Judgment, Counsel for the Plaintiffs argued that Plaintiffs were confused about the two separate claims they submitted to American Integrity, and that said confusion resulted in the inadvertent withdrawal of the Claim.

The Court rejects Plaintiffs' argument that confusion resulted in the inadvertent withdrawal of the Claim. It appears that the Plaintiffs were confused at some point in this process, but that was *before* they withdrew the Claim. Specifically, Michelle Adorno testified at her deposition that the confusion arose after she reported a second claim for roof damage to American Integrity regarding an August 2022 date of loss (the Claim) after having previously reported a claim for a separate May 2020 date of loss ("Prior Claim"). This confusion was resolved when she called Justin Hardin and withdrew the second claim. Mrs. Adorno informed her public adjuster that they withdrew the Claim so that he could pursue the Prior Claim on their behalf. Further, Mrs. Adorno testified at deposition that they filed this lawsuit

to get more money from American Integrity than was previously paid out on the Prior Claim. Unfortunately for Plaintiffs, this lawsuit does not involve the Prior Claim. The Complaint references the date of loss and claim number for the Claim.[1]

Counsel for Plaintiffs then directed the Court to a letter from his office dated January 20, 2023, enclosing an estimate prepared by Plaintiffs' public adjuster, Todd Romazko, as well as an affidavit from Mr. Romazko, in arguing that Plaintiffs pursued the Claim after it was withdrawn. American Integrity does not dispute that Plaintiffs' representatives contacted American Integrity via letter in January 2023 and submitted a repair estimate. The unrefuted affidavit of Justin Hardin states the following with respect to this letter:

> "[s]everal months after the Claim had been withdrawn, I received an estimate of damages from the Adornos' representative(s) related to the Claim. Following receipt of this estimate I contacted the Adornos to determine if this was received in error or if they wished to pursue the Claim. The Adornos advised the estimate I received was intended for a previous claim filed with American Integrity, claim number CHO-00104424. The Adornos confirmed the withdrawal of the Claim."

See the Affidavit of Justin Hardin, attached as **Exhibit B** to Defendant's Motion.

Mr. Hardin's testimony confirms that the estimate was related to the Prior Claim and that Plaintiffs instructed American Integrity to disregard it. Because this testimony is unrebutted, the Court rejects Plaintiffs' argument that the Claim was somehow reinstated.

Accordingly, the record evidence supports the conclusion that the Claim was withdrawn and that the Plaintiffs did not intend to pursue the Claim after it was withdrawn on October 14, 2022. The record evidence also supports the conclusion that American Integrity honored the withdrawal and stood down solely because Plaintiffs asked it to stand down.

II. American Integrity Did Not Breach the Insurance Policy as a Matter of Law Because Plaintiffs Withdrew the Claim.

To prevail in a breach of contract action, a plaintiff must prove that a valid contract existed, a material breach of the contract, and damages. *Deauville Hotel Mgmt, LLC v. Ward,* 219 So. 3d 949, 953 (Fla. 3d DCA 2017) [42 Fla. L. Weekly D1219a]. To breach a contract under Florida law, the defendant must fail to do something that the contract requires the defendant to do. *See, e.g., JD Dev. I, LLC v. ICS Contractors, LLC,* 351 So. 3d 57, 61 (Fla. 2d DCA 2022) [47 Fla. L. Weekly D1982a] ("Stated differently, the bid did not require ICS Contractors to perform those work activities and in turn did not require JD Development to compensate ICS Contractors for performing those work activities."); *Ferk Family, LP v. Frank,* 240 So. 3d 826, 834 (Fla. 3d DCA 2018) [43 Fla. L. Weekly D469a] (holding that a party could not be in breach for failure to do something that the contract did not require). The record evidence establishes that American Integrity did not fail to do something the insurance contract required it to do, as Plaintiffs withdrew the Claim and instructed American Integrity to stand down. Accordingly, American Integrity cannot be held liable for breach of the insurance contract. In the context of a claim for breach of an insurance policy, it is axiomatic that an insurer cannot be held liable for breach based on an insurance claim that was never submitted. *See Tristar Lodging, Inc. v. Arch Specialty Ins. Co.,* 434 F. Supp. 2d 1286, 1296 (M.D. Fla. June 1, 2006) ("The claim was not rejected; Plaintiff was not ignored. At the time suit was filed, no breach had occurred.").

In Defendant's Motion, and at the hearing on Defendant's Motion, Counsel for Defendant relied upon the case of *1231 Euclid Homeowners Association v. State Farm Fire & Casualty Co.,* 37 Cal. Rptr. 3d 795, 795 (Cal. Ct. App. Jan. 20, 2006). In *Euclid,* a homeowners' association ("HOA") submitted an earthquake claim to the defendant insurer, State Farm. *Id.* at 798. Following an initial inspection of the property, the HOA advised State Farm that it was withdrawing the claim. *Id.* State Farm memorialized the withdrawal by way of a letter dated March 2, 1994. *Id.* State Farm then closed its file. *Id.* at 796. Years later, the HOA sued State Farm for breach of contract. *Id.* at 800. As in this case, there was no legitimate factual dispute that the HOA had withdrawn its claim. *Id.* at 798-99. The appellate court recognized that by accepting the HOA's claim withdrawal, State Farm "did not at any time fail or refuse to provide demanded policy benefits." *Id.* at 803. "Thus, as of the date that HOA filed its complaint, State Farm **was not in breach of the policy**." *Id.* (emphasis added).

The analysis in *Euclid* is dispositive, especially because Counsel for Plaintiffs provided no case law to the contrary. Like the HOA in *Euclid,* Plaintiffs withdrew their Claim shortly after reporting same to American Integrity. Like the insurer in *Euclid,* American Integrity confirmed the withdrawal in writing shortly thereafter. Justin Hardin memorialized his conversation with Plaintiffs and confirmed the Claim had been withdrawn in his letter dated October 14, 2022. During her deposition, Plaintiff Michelle Adorno testified that the October 14, 2022 letter accurately represented their phone conversation wherein Plaintiffs withdrew the Claim. Even though the Claim had been withdrawn, Plaintiffs sued American Integrity for breach of the parties' insurance policy.

Like the HOA in *Euclid*, Plaintiffs "did nothing further" after withdrawing the Claim. *Euclid,* 37 Cal. Rptr. 3d at 803. Plaintiffs did not personally contact American Integrity, nor were they aware of anyone contacting American Integrity on their behalf to reopen or otherwise pursue the Claim. When presented with a repair estimate after the Claim was withdrawn, American Integrity confirmed with Plaintiffs that the estimate was submitted in error and intended for the Prior Claim. Indeed, Plaintiffs acknowledged and testified at deposition that because of the withdrawal, American Integrity did not have an opportunity to adjust the Claim.

American Integrity cannot have breached the policy as a matter of law because it accepted Plaintiffs' claim withdrawal and therefore "did not at any time fail or refuse to provide demanded policy benefits." 37 Cal. Rptr. 3d at 803 ("Although HOA alleges that State Farm had breached the contract of insurance, there is no factual basis for such a conclusion that is either alleged in HOA's complaint or supported by any admissible evidence submitted in opposition to State Farm's motion for summary judgment. This record reflects only that State Farm accepted HOA's claim withdrawal and took no further action.").

Plaintiffs' voluntary withdrawal necessarily terminated American Integrity's contractual obligation to investigate and adjust the Claim. *Id.* at 804 (holding that withdrawal of the claim "terminated both State Farm's obligation and reason to conduct an appropriate investigation"). Thus, as of August 7, 2023, when Plaintiffs filed the instant lawsuit, American Integrity was not in breach of the policy. *Id.* at 803. Plaintiffs did not present any admissible evidence to create a genuine dispute regarding the single, dispositive material fact that they affirmatively withdrew—and never reopened or otherwise pursued—the Claim.

Accordingly, it is hereby:

ORDERED and ADJUDGED as follows:

1. Defendant's Motion for Final Summary Judgment is GRANTED.

2. Final Judgment is entered in favor of Defendant, American Integrity Insurance Company of Florida. Plaintiffs, Benito and Michelle Adorno, shall take nothing from this action and Defendant shall go henceforth without day.

3. The Court reserves jurisdiction to determine entitlement to, and

the amount of, reasonable attorney's fees and taxable costs, and to enter such other orders as may be necessary to enforce this Final Summary Judgment.

[1]At no point during litigation did Plaintiffs' counsel seek to amend the Complaint to include the Prior Claim.

* * *

Landlord-tenant—Return of security deposit—Landlord was relieved of obligation to send 30-day notice of intent to impose claim on security deposit where tenant failed to give landlord written notice of forwarding address, as required by lease and statute—Any claims regarding landlord's handling of security deposit during tenancy became moot and were waived when tenancy was terminated by agreed eviction without tenant preserving any rights or claims under lease—Claim regarding sufficiency of landlord's disclosure of holding institution for security deposit was waived where tenant paid rent and remained in premises for nearly one year with knowledge that disclosure named bank but not specific address

KAC 2021-1, LLC, a/a/o Todd Schlott, Plaintiff, v. SUNSHINE PROPERTIES, LLC, Defendant. County Court, 5th Judicial Circuit in and for Lake County. Case No. 35-2022-CC-002479-AXXX-XX. January 6, 2026. Carla R. Pepperman, Judge. Counsel: Daniel Bialczak, Korte & Associates, PLLC, Loxahatchee, for Plaintiff. Samuel Sachs, Stok Kon + Braverman, P.A., Fort Lauderdale, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This case came before the Court on Plaintiff, KAC 2021-1, LLC AS ASSIGNEE OF TODD SCHOLOTT's Motion for Partial Summary Judgment and Defendant SUNSHINE PROPERTIES LLC's Motion for Summary Judgment on Count I, II, and III of Plaintiff's Fourth Amended Complaint. Having considered the parties' submissions, the record evidence, and the arguments of counsel, the Court finds that no genuine issue of material fact exists and that Defendant is entitled to judgment as a matter of law. The Court therefore enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Lease Agreement: In February 2021, Defendant Sunshine Properties LLC ("Sunshine") and tenant Todd Schlott (the "Tenant") executed an Apartment Lease Contract ("Lease Agreement") for the property located at 831 Oakley Seaver Drive, Unit 409, Clermont, Florida. Section 48 of the Lease Agreement required the Tenant, upon vacating the premises, to provide Sunshine with a written forwarding address, and states:

> *You must give us and the U.S. Postal Service, in writing, each resident's forwarding address.*

B. Security Deposit Terms: The Tenant paid a security deposit (in the amount of $300) under the Lease Agreement. Sunshine held this deposit in a separate, non-interest-bearing account at Bank of America in Orlando, Florida. The Lease Agreement notified the Tenant of the bank holding the deposit. The Tenant never requested Sunshine to provide an exact address for the Bank of America account prior to vacating the Property.

C. Tenant's Default and Eviction: The Tenant failed to pay the rent due under the lease, which led Sunshine to initiate an eviction action in late 2021. The Tenant, represented by counsel, filed an answer in that eviction case. On January 24, 2022, this Court entered an Agreed Order in the eviction action (Case No. 2021-CC-6251) under which the Tenant consented to vacate the premises and Sunshine regained possession effective January 21, 2022.

D. Vacating Without Forwarding Address: The Tenant vacated the apartment prior to the expiration of the term written in the Lease. Before leaving, he did not provide Sunshine with any forwarding address or written notice of his new address, as Section 48 of the Lease required. The Tenant had ample opportunity to furnish a forwarding address—the Lease Agreement itself, tracking the section 83.49, Florida Statutes, reminded him to do so, and he was represented by counsel during the eviction proceedings, yet, the Tenant never gave Sunshine a new address for after he moved out.

E. No Preservation of Lease Rights: When the Tenant agreed to vacate the Property, he did not preserve or assert any remaining rights under the Lease Agreement. The Plaintiff waived the argument with respect to the landlord failing to provide an exact address for Bank of America as the institution holding his security deposit by not raising it prior to, or in the underlying eviction action.

F. Plaintiff's Role: Plaintiff, KAC 2021-1, LLC ("KAC") is an entity that acquired or was assigned whatever rights the Tenant may have had in the security deposit. KAC, standing in the Tenant's shoes, filed this lawsuit against Sunshine. In its Fourth Amended Complaint, KAC sought automatic forfeiture of the security deposit based on Sunshine's lack of a 30-day claim notice and asserts additional related claims for relief.

CONCLUSIONS OF LAW

1. **No Automatic Forfeiture without Tenant's Compliance:** The decisive legal question is whether a landlord's obligation to send a deposit withholding notice under section 83.49(3)(a), Florida Statutes, is triggered when the tenant fails to give the landlord notice of intent to vacate and a forwarding address as required by the Lease. Plaintiff's position is that the tenant's failure to give such notice is irrelevant, and that Defendant automatically forfeits the deposit to the Plaintiff.

Pursuant to section 83.49(3)(a), Florida Statutes,

> Upon the vacating of the premises for termination of the rental agreement, if the landlord does not intend to impose a claim on the security deposit, the landlord must return the security deposit together with interest if otherwise required within 15 days after the termination of the rental agreement. If the landlord intends to impose a claim on the deposit, the landlord must, within 30 days after the termination of the rental agreement, provide the tenant written notice by certified mail to the tenant's last known mailing address or by e-mail in accordance with s. 83.505 of his or her intention to impose a claim on the deposit and the reason for imposing the claim.

§ 83.49(3)(a), Fla. Stat. Ann

Further, pursuant to section 83.49(5), Florida Statutes,

> **Except when otherwise provided by the terms of a written rental agreement,** any tenant who vacates or abandons the premises before the expiration of the term specified in the rental agreement, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, must give at least 7 days' written notice by certified mail or personal delivery to the landlord before vacating or abandoning the premises which notice must include the address where the tenant may be reached. **Failure to give such notice relieves the landlord of the notice requirement of paragraph (3)(a) but does not waive any right the tenant may have to the security deposit or any part of it.**

§ 83.49(5), Fla. Stat. Ann (emphasis added.

Finally, Section 4 of the Lease Agreement and section 83.49(2)(d), Florida Statutes, expressly informed the Tenant,

YOUR RENTAL AGREEMENT REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT.

§ 83.49(2)(d)[1], Fla. Stat. Ann.

Section 48 of the Lease Agreement required the Tenant to give Sunshine a written forwarding address when he moved out. Proper notice to the landlord is a prerequisite to the landlord's obligation to send a claim notice under Section 83.49(3)(a). Because the Tenant failed to provide any forwarding address, Sunshine's duty to send a 30-day security deposit claim letter never arose. In other words, the law does not reward a tenant who ignores the forwarding-address requirement by imposing an automatic deposit forfeiture on the landlord. Accordingly, KAC's claim that Sunshine must forfeit the security deposit to them has no legal basis under these circumstances.

In this case, upon vacating the premises, 'the tenant['s] failed to properly notify the landlord of her new forwarding address as required by the lease and section 83.49(5), Florida Statutes (2022)." § 83.49(3)(a), Fla. Stat. (2022). *Pierre Woodland Meadows, LLC v. KAC 2021-1 LLC*, 4D2023-1712, 2024 WL 253326, at *1 (Fla. 4th DCA Jan. 24, 2024) [49 Fla. L. Weekly D237a].

The Fourth District Court of Appeal in *Plakhov v. Serova*, 126 So. 3d 1221 (Fla. 4th DCA 2012) [37 Fla. L. Weekly D2520a], had the opportunity to address the implications of a renter's failure to provide proper notice to a landlord for return of a security deposit. In rejecting the renter's argument that the property owner failed to provide the proper notice under section 83.49(3)(a), Florida Statues, the Court expressed "the Landlord's obligation to provide this notice was excused by the Renter's failure to give the seven-day notice implicated when a 'tenant . . . vacates or abandons the premises prior to the expiration of the term specified in the written lease.' . . . The failure of the tenant to give this notice "shall relieve the landlord of the notice requirement of [section 83.49(3)(a)]." *Id.* at 1223 (citing § 83.49(5), Fla. Stat.); see also Final Judgment for Defendant, *Laster v. Rhoden*, 19 Fla. L. Weekly Supp. 666a, Case No. 12-2767 COCE (55), (May 2, 2012) ("The Landlord did not have to send this letter as the Tenant failed to give 7 days written notice prior to vacating the premises"); Final Judgment Awarding Costs and Attorney's Fees, *Gorman v. D'annunzio*, 24 Fla. L. Weekly Supp. 633b, Case No. 2012-SC-7804-O, (March 28, 2016) ("Florida Statute sec 83.49(5) excuses the notice requirement of 83.49(3)(a) when the tenant vacates early or abandons the premises and fails to provide the Landlord with a forwarding address").

A deposit claim notice is excused by the tenant's failure to comply with their notice requirements. Because the Tenant gave no forwarding address, Sunshine had no duty to send a claim notice under § 83.49(3)(a). Because the Tenant's noncompliance relieved Sunshine of the notice obligation, Sunshine is not automatically penalized for not sending the withholding notice. Plaintiff chose to pursue a claim for automatic forfeiture instead of a claim directly challenging Sunshine's entitlement to the deposit. Plaintiff elected to pursue a theory of automatic forfeiture under section 83.49(3)(a), Florida Statutes, rather than contest the legitimacy of Sunshine's retention of the deposit on the merits.

2. **Mootness of Remaining Claims:** KAC's other claims are moot and cannot proceed. The tenancy was terminated by an agreed eviction, and the Tenant vacated the premises without preserving any rights or claims under the Lease Agreement. Once the tenancy ended and Sunshine regained possession by mutual agreement, there were no remaining contractual rights or obligations to enforce. Any claim that depended on the Lease or on statutes applicable during an active tenancy, such as a claim about Sunshine's handling of the deposit during the tenancy, became moot and waived when the Tenant surrendered the Property.

3. **Waiver of Deposit-Disclosure Argument:** Finally, KAC cannot pursue any argument or claim based on Sunshine's alleged failure to disclose the exact location of the security deposit. Florida law requires a landlord to inform a tenant of the holding institution for a deposit, but any issue with the completeness of Sunshine's deposit disclosure needed to be raised by the tenant during the tenancy. See § 83.56(5)(a) ("[i]f the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance").

The Tenant paid rent and remained in the apartment for nearly a year with full knowledge that Sunshine's deposit disclosure named the bank, but not a specific address, the Tenant waived any right to later sue over any alleged technical noncompliance. By the same token, KAC as the Tenant's assignee is barred from resurrecting the issue after the tenancy's conclusion.

The Tenant never objected to Sunshine's disclosure, which named the bank but not a specific address, during the tenancy or in the eviction proceedings. By failing to raise this issue prior to surrendering the Property, the Tenant—and thus KAC, as his assignee—waived the right to complain about it now. The Court will not entertain a belated deposit-disclosure claim that should have been brought up, if at all, in the earlier proceeding.

ORDERED AND ADJUDGED: Defendant Sunshine Properties LLC's Motion for Summary Judgment is **GRANTED**. Summary judgment is hereby entered in favor of Defendant on all counts of the Fourth Amended Complaint. Final judgment is entered for Defendant Sunshine Properties LLC, and Plaintiff shall take nothing further on its claims. The Court reserves jurisdiction to consider any timely motion for attorneys' fees and costs by the Defendant, if applicable.

It is further **ORDERED** and **ADJUDGED** that within 5 days from the date of e-service of this Order/Judgment, the attorney submitting this Order/Judgment shall furnish a copy of this Order/Judgment to each self-represented party by U.S. Mail, first class, postage paid; and, file a certificate signed by that attorney that delivery of this Order/Judgment has been made as set forth herein.

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[1]The Statute also provides "YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY."

* * *

Insurance—Personal injury protection—Coverage—Rescission of policy—Material misrepresentations on application—Failure to disclose household members—Medical provider's motion for summary judgment on material misrepresentation defense is granted where insurer failed to present any admissible evidence that alleged unreported household members were actually household members at time of application or testimony of underwriter that alleged misrepresentation was material—Further, ambiguity on application as to need to list names of drivers and non-drivers must be interpreted liberally in favor of coverage—Waiver—Insurer waived right to rescind policy where record shows that prior to insurer's decision to rescind policy it had notice of additional household members, added members to policy, and charged additional premium to insured's account

ALLIED HEALTHCARE OF CENTRAL FLORIDA, INC., a/a/o Admilor Neston, Plaintiff, v. PERMANENT GENERAL ASSURANCE CORPORATION, Defendant. County Court, 9th Judicial Circuit in and for Orange County. Case No. 2020-SC-

12434-O. August 11, 2023. Brian Sandor, Judge. Counsel: Pamela Rakow-Smith, Eiffert & Associates, P.A., Orlando, for Plaintiff. Bret Dubbert, Quintairos Prieto Wood & Boyer, P.A., Orlando, for Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO COVERAGE AND DEFENDANT'S AFFIRMATIVE DEFENSE OF MATERIAL MISREPRESENTATION

THIS MATTER came before the Court on June 22, 2023 on Plaintiff's Motion for Summary Judgment as to Coverage and Defendant's Affirmative Defense of Material Misrepresentation and, being considered by the Court after reviewing the Court file, relevant legal authority and having heard arguments of counsel and otherwise being fully advised of the premises; it is hereby **ORDERED AND ADJUDGED** that:

1. Plaintiff's Motion for Summary Judgment as to Coverage and Defendant's Affirmative Defense of Material Misrepresentation is hereby **GRANTED.**

2. Defendant, issued a policy of insurance to Admilor Neston which provided Personal Injury Protection benefits pursuant to Florida Statutes §627.730-627.7405. The policy was in full force and effect on the date of the accident.

3. Mr. Neston was involved in the subject motor vehicle accident on January 5, 2019 and was injured as a result of that accident.

4. Mr. Neston received medical treatment from Plaintiff for injuries sustained in the subject motor vehicle accident.

5. On January 5, 2019, Defendant received notice of the subject accident.

6. On February 6, 2019, Defendant claims it rescinded the subject policy based on a material misrepresentation made by Mr. Neston for failing to list Susan Neston and Adelina Luxce on the subject policy.

7. On March 25, 2020, Plaintiff filed its Complaint against Defendant for breach of contract for failure to pay medical bills pursuant to Florida Statute §627.736.

8. On June 4, 2021, Defendant filed its Amended Answer and Affirmative Defenses asserting as its Second Affirmative Defense that:

> Defendant is not required to pay a claim or charges when a misrepresentation, omission, concealment of fact, or incorrect statement has been made pursuant to a contract or policy for personal injury protection benefits. Relevant facts were not disclosed on the policy application. Specifically, Admilor Neston did not list his spouse Suan Neston on the policy application. Defendant's policy states: A. This policy may be void from its inception if "you" or any "insured driver": 1. Have made false statements in connection with the application or any request for a change for this policy; 2. Have made fraudulent statements or have engaged in fraudulent conduct in connection with any loss, or a claim arising out of any loss; or 3. Have directed others to make fraudulent statements or engage in fraudulent conduct in connection with any loss, or a claim arising out of any loss.

9. On June 30, 2022, Plaintiff filed its Motion for Summary Judgment as to Coverage and Defendant's Affirmative Defense of Material Misrepresentation based on waiver and June 2, 2023, Plaintiff's filed its Supplemental Memorandum of Law in support of its Motion for Summary Judgment.

10. Rule 1.510(a) states that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fla. R. Civ. P. 1.510(a)*. "Summary judgment is proper 'if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See Celotex v. Catrett*, 106 S.Ct. 2548, 91 L. Ed. 2d 265, 477 U.S. 317 (1986). In other words, "the plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* Moreover, "facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts" and the court should not adopt a version of the facts that is "blatantly contradicted by the record" when ruling on a motion for summary judgment. *Scott v. Harris*, 550 U.S. at 380.

11. The Court has applied the current standard and burden of proof required by Florida Rule of Civil Procedure 1.510 (2021), governing motions for summary judgment. *Celotex*, 477 U.S. at 322.

12. In Florida, a material misrepresentation is

> (1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and not a warranty. Except as provided in subsection (3), a misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply:
>
> (a) The misrepresentation, omission, concealment, or statement is fraudulent or is material to the acceptance of the risk or to the hazard assumed by the insurer.
>
> (b) If the true facts had been known to the insurer pursuant to a policy requirement or other requirement, the insurer in good faith would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

13. Thus, a misrepresentation in an insurance contract application *may* prevent recovery under the contract if, had the true facts been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, or in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss. *Fresh Supermarket Foods, Inc. v. Allstate Ins*., 829 So. 2d 1000 (Fla. 2d DCA 2002) [27 Fla. L. Weekly D2477c].

14. When an insurer is on notice of a potential misrepresentation, it is bound by what a reasonable investigation would have shown. *Cox v. Am. Pioneer Life Ins. Co.*, 626 So. 2d 243, 246 (Fla. 5th DCA 1993). *See also Columbian Nat. Life Ins. Co. v. Lanigan*, 154 Fla. 760, 19 So. 2d 67 (1944); *Shelby Life Ins. Co. v. Paolasini*, 489 So. 2d 89 (Fla. 3d DCA1986).

15. On a claim to rescind a policy based on a misrepresentation that falls short of fraud, "the insurer must prove that the insured's statement is a misrepresentation, that it is **material**, and that the insurer detrimentally relied on it." *Mora v. Tower Hill Prime Ins. Co.*, 155 So. 3d 1224, 1227-28 (Fla. 2d DCA 2015) [40 Fla. L. Weekly D262c]. A misrepresentation by an insured is "material" so as to permit avoidance of policy if it does not enable reasonable insurer to adequately estimate nature of risk in determining whether to assume risk. *Singer v. Nationwide Mut. Fire Ins. Co*., 512 So. 2d 1125 (Fla. 4th DCA1987).

16. Defendant contends in its Second Affirmative Defense that it's named insured, Admilor Neston, made a material misrepresentation for failing to disclose Susan Neston and Adelina Luxce as household members in his application for insurance and therefore, the subject policy was *void ab initio*.

17. Florida Law is clear that Defendant bears the burden of proving its affirmative defense. *Custer Med. Ctr. v. United Auto. Ins. Co*., 62 So. 3d 1086, 1088 (Fla. 2010) [35 Fla. L. Weekly S640a].

18. Under the amended summary judgment rule and *Celotex*, Defendant is required to produce evidence to support its affirmative

defense and if Plaintiff proves the absence of evidence, summary judgment is proper for Plaintiff as to the defense. *See In re: Amendments to Fla. Rule of Civ. Procedure 1.510,* 2021 Fla. LEXIS 682 (Fla. 2021). "A movant for summary judgment need not set forth evidence when the nonmovant bears the burden of persuasion at trial. *Wease v. Ocwen Loan Servicing, LLC,* 915 F.3d 987, 997 (5th Cir. 2019).

19. The Court finds Defendant did not meet its burden of proving its affirmative defense as to material misrepresentation. Defendant has not presented any admissible summary judgment evidence that Mr. Neston made a misrepresentation in his application for insurance, let alone that "misrepresentation" was "material." Defendant did not provide any evidence that Susan Neston and Adelina Luxce were household members of Admilor Neston at the time of the policy application or prior to the date of loss. The unrefuted record evidence established that Defendant did not run any searches of the policy address at the time of the application or any time prior to the subject date of loss and there is no evidence that Mr. Neston was required to list Susan Neston and Adelina Luxce on the subject policy application.

20. Moreover, Defendant was required to submit evidence in the form of sworn testimony of its underwriter to meet its burden on materiality of the misrepresentation. *Affirmative Insurance Co. v. Bayview Medical & Rehab Center, Inc (a/a/o Felipe Posas),* 16 Fla. L. Weekly Supp. 213c (Fla. 13th Jud. Cir. Ct., Hillsborough Cty. [Appellate]) January 15, 2009) *citing to GRG Transport Inc. v. Certain Underwriters at Lloyd's London,* 896 So.2d 922 (Fla. 3d DCA 2005) [30 Fla. L. Weekly D600a] (holding that affidavit of underwriter is required to opine regarding the increase of insurance premiums); *See also, Direct General Ins. Co. v. Nydreka Williams,* 30 Fla. L. Weekly Supp. 173a (Fla. 13th Jud. Cir. Hillsborough Cty. June 12, 2022); *Conroy Chiropractic, Inc. a/a/o Simmie Brown v. Infinity Auto Ins. Co.,* 25 Fla. L. Weekly Supp. 638b (Fla. Ninth Jud. Cir. Orange Cty. March 27, 2017). The record is completely devoid of any testimony by an underwriter to support Defendant's rescission based on material misrepresentation.

21. At the hearing, the only materials Defendant relied on was the testimony of its Corporate Representative/Personal Injury Protection adjuster, Carrie Caskey. Ms. Caskey testified in her deposition that she was the Personal Injury Protection adjuster and only handled this claim after the lawsuit was filed. She is not an underwriter nor is she qualified to testify to the matters regarding the materiality of the alleged misrepresentation. Therefore, her testimony is insufficient to meet Defendant's burden and the Court cannot rely on same.

22. Accordingly, Defendant has zero record evidence to support its affirmative defense of material misrepresentation and thus, failed to meet its burden at summary judgment.

23. The Court further finds the record evidence cited and relied upon by Plaintiff supports a finding of coverage under the policy. The undisputed facts establish Defendant had actual notice of the alleged misrepresentation, accepted the changes to add Ms. Neston and Ms. Luxce to the policy, Defendant charged additional premiums, and continued to bind the policy prior to its purported rescission. Defendant's unequivocal actions recognize the continued existence of the policy and are wholly inconsistent with the forfeiture of coverage. Thereby, Defendant waived any material misrepresentation defense by its own actions.

24. It is well settled under Florida law that material misrepresentation is an affirmative defense that can be waived. *See, e.g., Johnson v. Life Ins. Co. of Ga.,* 52 So. 2d 813, 815 (Fla.1951); *Frisbie v. Carolina Cas. Ins. Co.,* 103 So. 3d 1011 (Fla. 5th DCA 2012) [38 Fla. L. Weekly D49d]; *Graham v. Lloyd's Underwriters at London,* 964 So. 2d 269, 276 (Fla. 2d DCA 2007) [32 Fla. L. Weekly D2212c]. When an insurer has knowledge of the existence of facts justifying a forfeiture of the policy, any unequivocal actions that recognize a continued existence of a policy are wholly inconsistent with an allegation of rescission will constitute a waiver. *Johnson v. Life Ins. Co. of Ga.*, 52 So. 2d 813 (Fla. 1951). An insurer can waive its forfeiture of an insurance policy, where the insurer, by its acts, recognized the policy as valid, with full knowledge of the facts giving rise to the forfeiture. *Queen Ins. Co. v. Patterson Drug Co.,* 73 Fla. 665, 673, (Fla. 1917). Waiver is the voluntary relinquishment of a known right. *Independent Fire Ins. Co. v. Arvidson*, 604 So. 2d 854 (Fla. 1992).

25. In *Johnson*, the insurer had knowledge of the fact that the insured was suffering from tuberculosis only two months after the date of the issuance of the policy; and, from the very nature of this disease. The Supreme Court found that the only reasonable inference is that the insured was suffering therefrom on the date of the issuance of the policy. Noting that instead of making the further inquiry dictated by reasonable prudence, the insurer deliberately disregarded this information. The Supreme Court held that the insurer must be held to be charged with knowledge of the facts which such an inquiry would have disclosed, and upon which insurer now relies as a defense to the payment of the full amount due under the policy.

26. The Court agrees the facts here are analogous to *Johnson.* Defendant was aware of Susan Neston and Adelina Luxce, prior to its purported rescission in this case. Defendant's Corporate Representative testified that Defendant had notice of Susan Neston and Adelina Luxce on January 11, 2019. That same day, Defendant added them to Mr. Neston's policy, accepted and finalized the changes and bound the policy by charging an additional premium to be auto drafted from Mr. Neston's account, prior to its decision to rescind the policy on February 6, 2019. Despite this actual notice, Defendant did not void and/or rescind the policy at that time.

27. The record evidence in this case further demonstrates that Defendant continued to conduct itself as if the policy was in full force and effect several months after its purported rescission. Specifically, on September 3, 2019, Defendant sent correspondence to its insured, approximately seven (7) months after its alleged rescission, advising it was still investigating to determine if coverage would be afforded under the policy. This unequivocally supports a waiver of the right to rescind the subject policy.

28. The unrefuted evidence undoubtedly demonstrates Defendant failed to prove its defense that Mr. Neston made a misrepresentation in his application for insurance nor that the alleged misrepresentation was material. Defendant failed to furnish any testimony of its underwriter to establish materiality of the misrepresentation.

29. Moreover, Defendant's insurance application is not clear that it required Mr. Neston to list names of drivers and non-drivers on the application and therefore is ambiguous as a matter of law. The ambiguity in the subject application must be interpreted liberally in favor of Mr. Neston and against Defendant. Therefore, coverage under the policy must be afforded.

30. This Court further finds that Defendant waived its defense of material misrepresentation based on Defendant's unequivocal acts of continuing to bind Mr. Neston's policy and recognizing the policy as valid, several months after learning of the alleged misrepresentation.

31. Based on the foregoing, Plaintiff's Motion for Summary Judgment as to coverage under the policy and Defendant's Affirmative Defense as to material misrepresentation is hereby **GRANTED**.

* * *

Criminal law—Probation—Non-resident probationer—Probationer who no longer resides within state is authorized to pay all outstanding conditions of probation, including payment of community service hours at rate of $15.00 per hour—Motion to dismiss violation will be decided after satisfaction of all conditions of probation

STATE OF FLORIDA, Plaintiff, v. DAVID ANDRAS GALINAC, Defendant, County

Court, 9th Judicial Circuit in and for Osceola County. Case No. 2015 CT 000271. February 10, 2026. Juna M. Pulayya, Judge. Counsel: Adrian Delgado, Assistant State Attorney, State Attorney's Office, Kissimmee, for Plaintiff. Ira D. Karmelin, The Ticket Clinic, Kissimmee, for Defendant.

ORDER AUTHORIZING DEFENDANT TO PAY ALL OUTSTANDING CONDITIONS OF PROBATION, INCLUDING COMMUNITY SERVICE HOURS

THIS CAUSE was before the Court on January 15, 2026, upon Defendant's Motion for Authorization to Pay All Outstanding Conditions of Probation, including community service hours and dismissing the violation upon payment in full. The Court having reviewed the motion; heard from the Parties; and, being otherwise fully advised in the premises, **IT IS**

ORDERED AND ADJUDGED that Defendant is authorized to pay all outstanding conditions of probation, including community service hours at the rate of $15.00 per hour, as the Defendant no longer resides in Florida; thus, community service outside the State does not benefit the aggrieved Party, the State of Florida. Defendant's motion to dismiss the violation upon payment in full will be addressed upon all conditions of probation being satisfied. Probation is directed to notify the Court accordingly.

* * *

Insurance—Personal injury protection—Attorney's fees—Confession of judgment—Insurer's post-suit payment of benefits to plaintiff is functional equivalent of confession of judgment entitling plaintiff to award of attorney's fees and costs

JOSE RODRIGUEZ, Plaintiff, v. INFINITY ASSURANCE INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County. Case No. 25-CC-051901. Division H. February 20, 2026. James Salvadore Giardina, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff.

ORDER DENYING DEFENDANT'S MOTION FOR ENTRY OF ORDER DENYING PLAINTIFF'S REQUEST FOR DECLARATORY RELIEF AS TO COVERAGE AND DECLARING NO ENTITILEMENT TO FEES

THIS CAUSE came before the Court on February 9, 2026 on Defendant's Motion for Entry of Order Denying Plaintiff's Request for Declaratory Relief as to Coverage and Declaring No Entitlement to Fees. (DE 25). The Court having considered the parties' memoranda of law and the Court, having heard arguments, of counsel, reviewed the record and applicable law, and being otherwise fully advised in the premises, hereby finds as follows:

FINDINGS OF FACT

1. Plaintiff filed this action seeking declaratory relief pursuant to 86.121, Florida Statutes, to determine insurance coverage for PIP benefits.

2. Defendant paid certain benefits but suspended payment of additional submitted medical charges.

3. After suit was filed, Defendant tendered payment of the disputed PIP benefits in accordance with the applicable fee schedule and statutory interest.

CONCLUSIONS OF LAW

4. In resolving fee entitlement, the Court applies the governing statutes according to their plain meaning. The Court's role is limited to applying the law as written, not to expanding or narrowing the Legislature's chosen language based upon policy considerations. Where the statutory text is clear, it controls. *See Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942 (Fla. 2020) [46 Fla. L. Weekly S9a].

5. Florida Statute § 86.121(1)(b), provides that the Court shall award reasonable attorney fees to the named insured upon rendition of a declaratory judgment in the insured's favor in an action to determine insurance coverage after a total coverage denial of claim. The Court gives these terms their ordinary legal meaning and declines to add requirements not expressed in the statute.

6. Florida law recognizes that when an insurer pays disputed benefits after suit is filed, such payment operates as a functional equivalent of a confession of judgment or verdict in favor of the insured. *Wollard v. Lloyd's & Cos. of Lloyd's*, 439 So.2d 217, 218 (Fla. 1983); *Ivey v. Allstate Ins. Co.,* 774 So. 2d 679 (Fla. 2000) [25 Fla. L. Weekly S1103a]. A confession of judgment operates as the equivalent of a judgment or rendition for purposes of fee-shifting statutes applicable to insurance coverage litigation.

7. Defendant suspended benefits based upon a peer review. Defendant's post-suit payment constitutes functional equivalent of a confession of judgment establishing coverage in Plaintiff's favor. Plaintiff is entitled to an award of reasonable attorney's fees pursuant to *F.S.* 86.121. *Katia Caballero v. Direct Gen. Ins. Co.*, (Fla. 13th Jud. Cir. Ct., Hillsborough Cty., Case No. 25-CC-005872, James Salvatore Giardina, Judge) [33 Fla. L. Weekly Supp. 483a].

8. The only way to view the request for payment from Geico for PIP benefits after an automobile accident is to consider the request for a payment a "claim." The only way to determine Geico's determination "that no payment is due in response to your correspondence is that the insurer made a total coverage denial of the claim. Because this action was brought for declaratory relief after Geico made a total coverage denial of a claim, Plaintiff is entitled to reasonable attorney's fees and costs. *Juan Calderon v. GEICO Casualty Co.*, 32 Fla. L. Weekly Supp. 437b (Fla. 13th Jud. Cir. Ct., Hillsborough City., Case No. 23-CC-21211, December 30, 2024, Francis M. Perrone, Judge).

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Defendant's Motion for Entry of Order Denying Plaintiff's Request for Declaratory Relief as to Coverage and Declaring No Entitlement to Fees is **HEREBY DENIED**.

2. The Court reserves jurisdiction as to attorney's fees and costs.

* * *

Insurance—Personal injury protection—Coverage—Exhaustion of policy limits—Absent showing of bad faith or gratuitous payment, insurer that has fully paid all contractually available benefits is relieved of any further obligation to insured

UNIVERSAL PAIN SPECIALISTS, INC., a/a/o Pierre Siliona, Plaintiff, v. GEICO GENERAL INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Small Claims Division. Case No. 23-CC-123463. Division M. June 10, 2025. Lisa A. Allen, Judge. Counsel: Benjamin Kincer, Morgan & Morgan, P.A., Tampa, for Plaintiff. Katelyn Wood, Law Office of Peter A. Cirrinicione, Tampa, for Defendant.

ORDER GRANTING MOTION FOR FINAL SUMMARY JUDGMENT FROM DEFENDANT AND ENTRY OF FINAL JUDGMENT

THIS CAUSE having come before the Court on May 20, 2025, on Defendant's Motion for Summary Judgment - Exhaustion of PIP Benefits - and Memorandum of Law, and Plaintiff, Universal Pain Specialists, Inc., a/a/o Pierre Siliona's, Response in Opposition to Defendant's Motion for Summary Judgment as to Exhaustion of PIP Benefits, and the Court having heard argument of counsel, and being otherwise advised in the premises, makes the following findings and decision:

Findings And Analysis

In the absence of a showing of bad faith or a gratuitous payment by Defendant, "once the PIP benefits are exhausted through the payment of valid claims, an insurer has no further liability on unresolved, pending claims." *Northwoods Sports Med. and Physical Rehab., Inc. v. State Farm Mut. Auto. Ins. Co.*, 137 So. 3d 1049, 1057 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D491a]. The Defendant has carried its evidentiary burden as the moving party establishing that it fully and properly exhausted the policy's limits of $10,000 in personal injury protection ("PIP") benefits on behalf of the Plaintiff's assignor. "When the moving party has carried its burden under [the summary judgment rule], its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Plaintiff's argument in its response to the motion and at the hearing on the motion was not supported by specific factual evidence in the record presenting a sufficient disagreement to require submission to a jury. Therefore, the Defendant, by paying all contractually available PIP benefits, has fully performed its obligations and is relieved of any further obligations to its insured under the policy of insurance and no further payments are owed.

ORDERED AND ADJUDGED as follows:

1. Defendant's Motion for Summary Judgment - Exhaustion of PIP Benefits - and Memorandum of Law filed on June 20, 2024, is hereby **GRANTED**.

2. Final Summary Judgment is entered in favor of Defendant, GEICO General Insurance Company. Plaintiff shall take nothing by this action and Defendant shall go hence without day.

3. The Court reserves jurisdiction to consider any time motion relative to entitlement to and amount of attorneys' fees and costs, if applicable.

* * *

Insurance—Summary judgment—Supporting affidavit— Hearsay—Business records exception—Motion to strike affidavit is denied

MRI ASSOCIATES OF WINTER HAVEN, a/a/o Michelle Dacres Smith, Plaintiff, v. GEICO INDEMNITY COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Small Claims Division. Case No. 24-CC-018472. February 3, 2026. Colleen O'Brien, Judge. Counsel: Matthew D. Brumley, Semago & Associates, PLLC, Tampa, for Plaintiff. Ebony V. Walker and Nigel F. Northe, Law Office of Peter A. Cirrinicione, Tampa, for Defendant.

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE THE DEFENDANT'S AFFIDAVIT/DECLARATION OF KATHLEEN GODKE FILED IN SUPPORT OF THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE, came before the Court for hearing on February 2, 2026, on Plaintiff's Motion to Strike the Defendant's Affidavit/Declaration of Kathleen Godke Filed in Support of the Defendant's Motion for Summary Judgment (Doc. 29). The Court, having reviewed the pleadings, heard argument of counsel, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Court finds that the affidavit complies with Florida Rule of Civil Procedure 1.510 and the business records exception set forth in section 90.803(6), Florida Statutes.

2. The Court relies upon *Boyd v. Universal Prop. & Cas. Ins. Co*. 409 So. 3d 635, 637-38 (Fla. 4th DCA 2025) [50 Fla. L. Weekly D713a] and *United Auto. Ins. Co. v. Chiropractic Clinics of South Florida, PL.*, 345 So. 3d 952, 955 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D1730a] in finding that the affidavit demonstrated that the affiant possessed sufficient personal knowledge of the matter and the business records within.

3. Plaintiff's Motion to Strike the Defendant's Affidavit/Declaration of Kathleen Godke Filed in Support of the Defendant's Motion for Summary Judgment is **DENIED**.

* * *

Criminal law—Competency to stand trial—Dismissal during continuing incompetency—Rule 3.213(a)(1), which provides for dismissal of misdemeanor charge if defendant remains incompetent after one year and court does not find reason to believe that defendant is expected to become competent to proceed, requires court to make findings regarding continuing incompetency or possibility of becoming competent after one-year mark—New competency evaluation is ordered

STATE OF FLORIDA, Plaintiff, v. FRANCESCA BURDICK, Defendant. County Court, 18th Judicial Circuit in and for Brevard County. Case No. 05-2024-MM-18220-AXXX-XX. November 25, 2025. Benjamin B. Garagozlo, Judge. Counsel: Ben Fox, Assistant State Attorney, State Attorney's Office, Viera, for Plaintiff. Lisa Elkhouri, Public Defender's Office, Viera, for Defendant.

ORDER RESERVING RULING ON DEFENDANT'S MOTION TO DISMISS INFORMATION AND DIRECTING COMPETENCY EVALUATION

THIS CAUSE came before the Court on the Defendant's Motion to Dismiss Information filed on October 27, 2025. The State of Florida (hereinafter referred to as the "State") filed a response to the motion on November 7, 2025. A hearing was held on the motion on November 19, 2025 with closing arguments heard on November 21, 2025. The Court, having reviewed the official Court file, the motion and response, and the arguments of counsel, makes the following findings of fact and conclusions of law:

a. The Court previously found the Defendant incompetent to proceed on October 22, 2024. Dr. Jeffrey Williamson, who conducted the Defendant's evaluation, indicated the Defendant's prognosis is good for competency restoration.

b. On August 29, 2025, the Court ordered the Defendant to participate in outpatient competency restoration training provided for through Circles of Care known as Assisted Outpatient Treatment (AOT). This restoration training in large part mimics the program in place for felony cases as offered through Circles of Care's Forensic Multidisciplinary Team (FMT).

c. The Defendant has complied with this order and has reportedly made significant progress towards regaining competency.

d. According to Florida Rule of Criminal Procedure 3.213(a), the Court must find that a defendant remains incompetent to stand trial before a case can be dismissed. However, even with such a finding, the case should not be dismissed if the Court specifies reasons why the defendant is expected to become competent. *State v. Decatur,* 30 Fla. L. Weekly Supp. 324a (Fla. Brevard Cty. Ct. June 29, 2002).

e. The Defendant argues that Rule 3.213(a)(1) requires the Court to dismiss misdemeanor charges one year after a finding of incompetency if the Defendant remains incompetent to stand trial. However, the Court interprets the rule to mean that it does not have the authority to dismiss until one year has elapsed from the original finding of incompetency. *See Decatur, supra.*

f. The Court finds another competency evaluation is necessary before the Court can make its required findings. Therefore, the Court appoints Dr. Jeffrey Williamson to examine the Defendant and prepare a written report addressing the Defendant's competency to proceed pursuant to Florida Rule of Criminal Procedure 3.211. Said report to be completed by ***December 16, 2025***—with a copy furnished to respective counsel.

g. Defendant shall cooperate with the evaluation, and the parties shall ensure Dr. Williamson is provided access to the Defendant, relevant records, and any other information necessary to complete the

evaluation.

h. Upon receipt of the evaluation, the Court will schedule a competency hearing shortly thereafter pursuant to Florida Rule of Criminal Procedure 3.210(b) to determine whether the Defendant is competent to proceed.

Accordingly, it is **ORDERED AND ADJUDGED:**

The Court **RESERVES RULING** on the Defendant's Motion to Dismiss Information pending further determination of the Defendant's competency to proceed.

* * *

Criminal law—Speedy trial—Motion to dismiss for violation of right to speedy trial is denied—Need to determine defendant's competency constituted good cause to toll time for speedy trial during state's recapture period

STATE OF FLORIDA, Plaintiff, v. KIM LEON WELLS, II, Defendant. County Court, 18th Judicial Circuit in and for Brevard County. Case No. 05-2025-MM-029772-A. December 19, 2025. Kelly Ingram, Judge. Counsel: Ben Fox, Assistant State Attorney, State Attorney's Office, Viera, for Plaintiff. Kim Leon Wells, II, Pro se, Seminole, Defendant.

ORDER DENYING MOTION TO DISMISS

THIS CAUSE came before the Court on December 18, 2025, on the Defendant's Motion to Dismiss and the Court being fully advised in the premises, it is therefore ORDERED AND ADJUDGED that:

The Defendant's Motion to Dismiss for Violation of Speedy Trial is DENIED.

The Defendant argues that his speedy trial rights cannot be tolled during the State's speedy trial recapture period. The Court disagrees with the Defendant.

In *Brown v. State*, the Florida Supreme Court found that, "Speedy trial extension that was granted during five/ten-day recapture window for bringing defendant to trial was valid based on exceptional circumstance of lead prosecutor's emergency surgery; "periods of time established by this rule" within meaning of rule allowing extension of such periods for exceptional circumstances were not limited to 175-day speedy trial period, but included recapture period." *Brown v.* State, 715 So. 2d 241 (Fla. 1998) [23 Fla. L. Weekly S266a].

Furthermore, *Fla. R. Crim. P. Rule 3.191 (i) (4),* states:

> "(i) When Time May Be Extended. The periods of time established by this rule may be extended, provided the period of time sought to be extended has not expired at the time the extension was procured. An extension may be procured by:
>
> (4) written or recorded order of the court for a period of reasonable and necessary delay resulting from proceedings including but not limited to an examination and hearing to determine the mental competency or physical ability of the defendant to stand trial. . ."

In the instant case, the time for speedy trial was tolled during the State's recapture period to determine if the Defendant was competent to stand trial. The Court finds that the determination of the Defendant's competency is good cause to toll the Defendant's speed trial rights.

The Court also finds that the Defendant is competent to stand trial as of this date. Although the Defendant was not fully cooperative with Dr. Williamson during the competency evaluation, Dr. Williamson opined that the Defendant understood the charges against him.

Therefore, the Defendant's motion is DENIED, and the case is set for Calendar Call on January 6, 2026 at 8:30am.

* * *

Consumer law—Debt collection—Florida Consumer Collection Practices Act—Action for statutory and actual damages—Affirmative defenses—Bona fide error and consumer debt defenses struck with leave to amend, stating ultimate facts when re-pleading—Lack of standing and subject-matter jurisdiction defense struck

HIRAM ROSARIO, Plaintiff, v. MANDARICH LAW GROUP, LLP, Defendant. County Court, 18th Judicial Circuit in and for Seminole County, General Division. Case No. 2025CC003317. October 7, 2025. Sylvia Grunor, Judge. Counsel: Shawn Wayne and Robert Wayne, The Law Office of Robert Wayne, for Plaintiff. John Marees, Messer Strickler Burnette, for Defendant.

ORDER ON PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES AND DEFENDANT'S MOTION FOR RELIEF FROM TECHNICAL ADMISSIONS

THIS CAUSE came before the Court during a hearing on October 1, 2025, on Plaintiff's Motion to Strike Defendant's Affirmative Defenses (DIN #25) and Defendant's Motion for Relief from Technical Admissions (DIN #16), and the Court having reviewed both motions and the case law, having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED:

1. Defendant's first affirmative defense, the bona fide error defense, is **STRICKEN** with leave to amend. Should Defendant re-raise this defense, it shall state ultimate facts when pleading same.

2. Defendant's second affirmative defense, lack of standing and subject matter jurisdiction, is **STRICKEN** without leave to amend. The FCCPA complaint alleges both statutory damages and actual damages in the form of emotional distress and time-wasted. Defendant may raise subject matter jurisdiction later in the proceedings following the close of discovery if it believes it is applicable.

3. Defendant's third affirmative defense, labeled "consumer debt", is **STRICKEN** with leave to amend. Should Defendant re-raise this defense, it shall state ultimate facts when pleading same.

4. Defendant shall have 20 days from the date of this Order to file amended defenses to #1 and #3.

5. Defendant's Motion for Relief from Technical Admissions is **GRANTED** following Plaintiff's agreement to withdraw its previously filed Notice of Deeming Admissions Technically Admitted (DIN #13) at the beginning of the hearing.

* * *

Consumer law—Debt collection—Florida Consumer Collection Practices Act—Defendant's response to motion for summary judgment as to liability under FCCPA cannot create genuine issue of fact necessary to defeat motion, absent affidavit or valid defenses

HIRAM ROSARIO, Plaintiff, v. MANDARICH LAW GROUP, LLP, Defendant. County Court, 18th Judicial Circuit in and for Seminole County, General Division. Case No. 2025 CC 003317. February 11, 2026. Wayne Culver, Judge. Counsel: Shawn Wayne and Robert Wayne, The Law Office of Robert Wayne, for Plaintiff. John Marees, Messer Strickler Burnette, for Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY

THIS MATTER came before the Court on January 28, 2026, on Plaintiff's partial summary judgment motion as to liability. The parties appeared in-person and the Court having reviewed the record, hearing argument and otherwise being fully advised in the premises, finds as follows:

Plaintiff moved for partial summary judgment as to liability on November 23, 2025. (Doc. 37). Plaintiff's motion was supported by an affidavit from Hiram Rosario. *Id*. The deadline to respond to Plaintiff's motion was January 2, 2026. Defendant moved for an extension of time to respond to Plaintiff's motion on December 30, 2025. (Doc. 39). Plaintiff agreed to provide Defendant with an additional two (2) weeks to file a response to its motion. On January 16, 2026, Defendant filed its response in opposition to Plaintiff's motion. (Doc. 42). There was no supporting affidavit or declaration

accompanying Defendant's response. *Id.* The record is also absent any amended affirmative defenses by Defendant following leave that was given to Defendant after its initial affirmative defenses were stricken. (Doc. 31).

Defendant's response to Plaintiff's motion asserts mere legal argument that is not admissible evidence for summary judgment purposes. *Sloan v. Sloan*, 393 So.2d 642 (Fla. 4th DCA 1981)(It is, of course, fundamental that representations by counsel, absent a stipulation, when not made under oath is not evidence). Moreover, without an affidavit, Defendant's response cannot rebut the facts established both in the record and by Plaintiff's affidavit supporting his motion. Without an affidavit or valid defenses, Defendant's response cannot creature a genuine issue of material fact necessary to defeat Plaintiff's request for relief. *Capotosto v. Fifth Third Bank*, 230 So. 3d 891 (Fla. 4th DCA 2017) [42 Fla. L. Weekly D2471a] (A litigant cannot avoid summary judgment by merely asserting a fact without any evidence to support it nor may a defendant raise an unpled affirmative defense as a basis for resisting a motion for summary judgment.)

The Court **FINDS** that Defendant had actual knowledge of and was attempting to collect an inflated consumer debt balance from Plaintiff that it had no right to collect in violation of the Florida Consumer Collection Practices Act, namely Fla. Stat. 559.72(9).

Accordingly, Plaintiff has established that it is entitled to judgment as to liability as a matter of law. Therefore, it is hereby **ORDERED AND ADJUDGED** that Plaintiff's motion is **GRANTED** and Defendant is found liable for violating the Florida Consumer Collection Practices Act.

* * *

Criminal law—Driving with unlawful blood alcohol level—Evidence—Breath test result affidavit—Agreed order on admissibility of breath test result affidavit—Affidavit is admissible and does not violate Confrontation Clause so long as state makes breath test operator and agency inspector available for cross-examination—Testimony of department inspector is not necessary to satisfy Confrontation Clause—Affidavit does not violate *Daubert* or expert testimony provisions of Evidence Code—Proof of blood alcohol level of .08 percent may be substituted for proof of impairment—Defense may argue that jury need not accept test results, but it cannot argue that jury can find defendant not guilty if it finds that test results accurately reflect defendant's blood alcohol level

STATE OF FLORIDA, Plaintiff, v. PATRICIA ANN QUINLIVAN, Defendant. County Court, 18th Judicial Circuit in and for Brevard County. Case No. 052023CT051429AXXXXX. October 10, 2025. David C. Koenig, Judge. Counsel: Ben Fox, Assistant State Attorney, State Attorney's Office, Viera, for Plaintiff. Tamara Meister, Indialantic, for Defendant.

AGREED UPON ORDER AS TO DEFENDANT'S "MOTION TO SUPPRESS AND/OR MOTION IN LIMINE WITH REGARD TO THE BREATH TEST RESULT AFFIDAVIT"

THIS CAUSE came before the Court on the Defendant's "Motion to Suppress and/or Motion in Limine with Regard to the Breath Test Result Affidavit" and on the State's Response thereto. At the hearing held on September 26, 2025, the parties informed the Court that they had agreed on several issues and had narrowed the focus of the issues before the Court. After further discussion in open court, the parties reached agreement on the following matters:

1. Both parties agree that because the allegations in Defendant's Motion did not qualify as grounds for a motion to suppress pursuant to Fla. R. Crim. P. 3.190, the Motion must be treated as a motion in limine, for which the moving party (in this case the Defendant) has the burden of proof.

2. The Defendant's Motion had argued that the breath test affidavit authorized pursuant to section 316.1934 does not meet the scientific reliability standards set forth in the *State v. Donaldson,* 479 So.2d 728 (Fla. 1991). However, the Defendant now concedes that the State can meet the predicate for admissibility of the breath test affidavit without having to satisfy the standards announced in *Donaldson* based on the holding in *State v. Irizarry*, 698 So.2d 912, 914 (Fla. 4th DCA 1997) [22 Fla. L. Weekly D2075a] ("Because *Donaldson* has been superseded by the statute, and the affidavit complies with the statute, we conclude that the affidavit was admissible without proof that the testing of the machine showed it to be accurate.")

3. Nevertheless, both parties also agree that the rulings in *Donaldson* and *Irizarry* were based solely on statutory construction of the applicable implied consent statutes. Therefore, the parties agree that these cases did not address the impact of the Confrontation Clause, as announced in *Crawford v. Washington*, 541 U.S. 36 (2004) [17 Fla. L. Weekly Fed. S181a], on the breath test predicate. As to that issue, based on the subsequent Florida appellate cases applying *Crawford* to the breath test predicate (*Belvin v. State*, 922 So.2d 1046 (Fla. 4th DCA 2006) [31 Fla. L. Weekly D744b], *affirmed, State v. Belvin*, 986 So.2d 516 (Fla. 2008) [33 Fla. L. Weekly S279a]; *Shiver v. State*, 900 So.2d 615 (Fla. 1st DCA 2005) [30 Fla. L. Weekly D653a]; and *Pflieger v. State*, 952 So.2d 1251 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D931b]), the parties agree to the following:

a. Pursuant to *Belvin* and *Shiver*, the breath test result affidavit remains admissible and does not violate *Crawford*, so long as the State makes available for cross-examination (i.e., presents the testimony of) the breath test operator (per *Belvin*) and the police agency inspector (per *Shiver*) at trial.

b. Pursuant to *Pflieger,* the State does not need to present testimony from the FDLE department inspector to satisfy the Confrontation Clause.

c. Accordingly, the State intends to have both the breath test operator and the agency inspector testify at trial herein, but does not intend to present the testimony of the FDLE department inspector (unless it becomes necessary for strategic or evidentiary reasons).[1]

4. The parties agree that the breath test result affidavit does not violate *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and does not violate the expert testimony provisions of sections 90.702, 90.704, and 90.705.

5. The Defendant's Motion had argued "the introduction of the breath test result affidavit as prima facie evidence of the breath test results constitutes a mandatory irrebuttable presumption which unconstitutionally shifts the burden of proof to the Defendant." However, the Defendant now concedes that based on the applicable case law (*Wilhelm v. State*, 568 So.2d 1 (Fla. 1990); *State v. Rolle*, 560 So.2d 1154 (Fla. 1990); *Register v. State*, 582 So.2d 762 (Fla. 1st DCA 1991); and *Euceda v. State*, 711 So. 2d 122, 124 (Fla. 3d DCA 1988)), the introduction of the breath test result affidavit does not create an unconstitutional irrebuttable presumption. Instead, the parties agree that, as stated in *Rolle*: "Essentially, section 316.193 allows proof of a blood-alcohol level of 0.10 [now .08] percent or higher to be substituted for proof of impairment—not as an unconstitutional presumption, but as an alternate element of the offense." 560 So.2d at 1156. And the parties agree that under the DUBAL method proving a DUI, as stated in *Euceda*: "Having the unlawful blood alcohol level is itself the offense. The State need not prove impairment." 711 So.2d at 124.

6. The parties also agree that despite this case law, the Defendant is obviously not foreclosed from mounting a defense to the DUI charge just because she had a breath test result above .08. The parties agree that the Defendant is allowed to argue to the jury that they are not required to accept the results of the breath test, particularly if they

determine that the test results are unreliable, and particularly if the results appear to be inconsistent with video evidence showing few, if any, signs of impairment. However, based on the above-cited case law, the parties agree that it would be a misstatement of law for the Defendant to argue that the jury can find the Defendant not guilty even if it finds that the breath test results accurately reflects the Defendant's breath alcohol level in this case.

This Court accepts the parties' agreements and adopts these agreements as an ORDER of this Court.

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[1]The State has pointed out that the Fourth DCA in *Belvin v. State*, 922 So.2d 1046 (Fla. 4th DCA 2006) [31 Fla. L. Weekly D744b], *affirmed, State v. Belvin*, 986 So.2d 516 (Fla. 2008) [33 Fla. L. Weekly S279a] and *Pflieger v. State,* 952 So.2d 1251 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D931b] made a number of comments about the nontestimonial nature of maintenance or inspection records which tend to suggest that the Fourth DCA would find, if the issue were squarely before it, that the introduction of not only the annual inspection records but also the monthly maintenance records (i.e., agency inspection records) would not violate the Confrontation Clause, even without testimonial evidence from the maintenance technician (i.e., agency inspector). However, the State concedes that the comments in those cases amount to dicta only. Accordingly, the State accepts the ruling in *Shiver* as binding precedent at this time, and acknowledges that in order to satisfy the Confrontation Clause, the State must make available for cross-examination (i.e., must present the testimony of) the police agency inspector at trial.

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