Volume 33, Number 3, July 31, 2025

FLORIDA LAW WEEKLY FLW SUPPLEMENT

A PUBLICATION OF JUDICIAL AND ADMINISTRATIVE RESEARCH ASSOCIATES, INC.

Pages 105-137

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.

- **JURISDICTION—COURTS—PROHIBITION. Jurisdiction of a proceeding on a petition for a writ of prohibition directed at the actions of a county court judge lies with the district court of appeal, not the circuit court acting in its appellate capacity. The Supreme Court decision in *English v. McCrary* is no longer controlling regarding this issue, as the State of Florida has adjusted the law and rules regarding jurisdiction.** *WHITE v. HURLEY. Circuit Court, Seventeenth Judicial Circuit (Appellate) in and for Broward County. Filed May 8, 2025. Full Text at Circuit Courts-Appellate Section, page 107a.*

- **EVIDENCE—EXPERT SCIENTIFIC TESTIMONY—*DAUBERT* ANALYSIS. In a question addressed by only a few Florida courts, the circuit court discussed the steps in a bench trial for analyzing whether expert scientific testimony is admissible under the *Daubert* test. The court ruled that, in a bench trial, a *Daubert* motion made contemporaneously with the expert testimony is timely. The court granted the plaintiff's motion to strike after finding that the testimony was unreliable.** *LEVI v. RADKO. Circuit Court, Seventeenth Judicial Circuit in and for Broward County. Filed April 21, 2025. Full Text at Circuit Courts-Original Section, page 109a.*

- **CHILD CUSTODY—UNDOCUMENTED IMMIGRANT MINOR—TEMPORARY CUSTODY—RELATIVE—BEST INTEREST OF CHILD. A motion filed pursuant to chapter 751 requesting a finding that it would be in the "best interests" of an undocumented immigrant minor not to return to the parents' home in Guatemala was denied. A "best interests" finding, which could have the effect of making the minor potentially eligible for a "special immigrant juvenile" classification under federal immigration law, is incompatible with the intent of chapter 751 proceedings to afford a relative temporary custody of a non-dependent minor. The Florida Legislature notably omitted from chapter 751 any authority to make SIJ findings, but specifically provided for making such findings in chapter 39 dependency proceedings.** *RAMON v. AMBROCIO. Circuit Court, Seventeenth Judicial Circuit in and for Broward County. Filed April 16, 2025. Full Text at Circuit Courts-Original Section, page 111a.*

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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.
CIRCUIT COURT - ORIGINAL	Opinions in those cases in which circuit courts were acting as trial courts.
COUNTY COURTS	County court opinions.
MISCELLANEOUS	Other proceedings.

Subject Matter Index and Tables

Page prefixes in the subject matter index and tables identify the courts in the following manner:

10CIR 25	**Circuit Court - Appellate** (**Bold** type) (10th Circuit, page 25)
20CIR 10	Circuit Court - Original (20th Circuit, page 10)
CO	County Court
M	Miscellaneous Reports

Bold denotes decision by circuit court in its appellate capacity.

LICENSING

Driver's license—Suspension—Refusal to submit to blood, breath or urine test—Implied consent warning—Language barrier **2CIR 105a**

Driver's license—Suspension—Refusal to submit to blood, breath or urine test—Implied consent warning—Sequence **13CIR 106a; 18CIR 108d**

MUNICIPAL CORPORATIONS

Code enforcement—Magistrate's order—Discrepancy between oral pronouncements and written order **17CIR 106b**

Code enforcement—Trespass on city-owned facilities—Docking of boat on city-owned property in absence of valid lease **17CIR 106b**

PROHIBITION

Judges—Petition for writ of prohibition directed at actions of county court judge—Jurisdiction—District court/circuit court acting in appellate capacity **17CIR 107a**

TRAFFIC INFRACTIONS

Citation—Mandatory hearing—Absence of defendant's signature—Dismissal CO 117a

Dismissal—Absence of defendant's signature on citation for mandatory hearing CO 117a

Hearings—Mandatory—Citation—Defects—Absence of defendant's signature—Dismissal CO 117a

Reckless driving—Jury instructions—Excessive speed—Special instruction—Insufficiency of excessive speed, standing alone, to support finding of reckless driving CO 118a

* * *

TABLE OF CASES REPORTED

TABLE OF CASES (continued)

* * *

TABLE OF STATUTES CONSTRUED

Florida Statutes and Rules of Procedure construed in opinions reported in this issue.

FLORIDA STATUTES

* * *

TABLE OF CASES TREATED

Case Treated / In Opinion At

TABLE OF CASES TREATED (continued)

TABLE OF CASES TREATED (continued)

* * *

Volume 33, Number 3
July 31, 2025
Cite as 33 Fla. L. Weekly Supp. ___

CIRCUIT COURTS—APPELLATE

Licensing—Driver's license—Suspension—Refusal to submit to breath test—No merit to licensee's argument that decision upholding his license suspension was not supported by competent substantial evidence because he did not understand consequences of refusing breath test due to language barrier—Traffic stop video demonstrates that licensee understood and spoke English, and licensee had two prior DUIs and a prior refusal

FRANCISCO PEDRO, Petitioner, v. STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 2nd Judicial Circuit (Appellate) in and for Leon County. Case No. 2024 AP 10. April 8, 2025. Counsel: Aaron Wayt, Pumphrey Law, for Petitioner. Kathy A. Jiminez-Morales, Chief Counsel for Driver Licenses, DHSMV, for Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

(ANGELA C. DEMPSEY, J.) **THIS CAUSE** comes before the Court on Petitioner's "Second Amended Petition for Writ of Certiorari," filed on January 7, 2025. Petitioner seeks certiorari review of Respondent's final order suspending his driving privileges for refusal to submit to a breath, blood, or urine test under Section 322.2615, Florida Statutes. This Court has jurisdiction pursuant to Article V, section 5(b), Florida Constitution, Florida Rule of Appellate Procedure 9.030(c), and Sections 322.2615(13) and 322.31, Florida Statutes. This Court reviewed the Second Amended Petition, the Appendix, the bodycam footage ("Video"), the DHSMV hearing transcript, the Response, and the Supplemental Appendix. Based upon review of these filings, this Court finds as follows:

1. On August 2, 2024, Petitioner was stopped by the Tallahassee Police Department for failure to stay within the lane of travel. (Pet'r's App. at 4; T. at 10-11). Throughout the entire encounter between the arresting officer and the Petitioner, Petitioner spoke and responded appropriately in English to questions asked by the officer and understood the officer throughout the entire encounter. (Video). At no time during the stop and arrest for DUI, did Petitioner communicate to the officer that he did not understand English or at any time request an interpreter. (Video; Pet'r's App. at 4-5; T. al 14). After his arrest for DUI, the officer requested Petitioner submit to a breath test, which he refused to do. After the officer read him the implied consent warning, Petitioner advised that he did not understand and wanted someone to explain it to him or translate it. (Video). The Officer subsequently suspended Petitioner's driving privilege for refusal to submit to a breath test. (Pet'r's App. at 3; Supp. App. at 1). The officer noted in his arrest report that Petitioner has two prior DUI convictions in 2005 and 2007, along with a prior implied consent refusal in 2007. (Pet'r's App. at 5).

2. A circuit court's review of an administrative agency decision is limited to the following standard of review: (1) whether procedural due process was accorded, (2) whether the essential requirements of law were observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant,* 419 So.2d 624, 626 (Fla. 1982). Further, "[i]t is axiomatic that where substantial competent evidence supports the findings and conclusions of the administrative agency and the record discloses neither an abuse of discretion nor a violation of law by the agency, [a] court should not overturn the agency's determination." *Cohen v. School Bd. of Dade Cnty., Florida,* 450 So. 2d 1238, 1241 (Fla. 3d DCA 1984) (citations omitted); *Campbell v. Vetter,* 392 So. 2d 6, 7 (Fla. 4th DCA 1980).

3. Petitioner argues that the hearing officer's decision to uphold the suspension is not supported by competent substantial evidence since the Petitioner did not understand the consequences of his refusal to submit to the breath test due to a language barrier. As the hearing officer's factual findings reflect, after reviewing the video of Petitioner's DUI arrest, the paperwork and the testimony of the arresting officer, she found that Petitioner spoke in English with the officer throughout the entire encounter and did not need any questions repeated. (Pet'r's App. at 13-14). Additionally, throughout the stop and the arrest and even while the Petitioner was transported to the jail facility, Petitioner spoke English to the officer and never asked for an interpreter. (Video). Petitioner admitted to taking two Oxycodone pills for pain in addition to consuming one Margarita drink that night. (*Id.*). The facts more accurately reflect that Petitioner's voluntary intoxication is the basis for not understanding the implied consent warning and not because of any language barrier.

4. Whether or not an individual understands English is a question of historical facts. *Soto v. State,* 751 So. 2d 633, 636 (Fla. 4th DCA 1999) [24 Fla. L. Weekly D2779a]. There was ample evidence in the instant case that Petitioner understood and spoke English, as he was observed speaking to the officer and responding appropriately to his questions in English. Further, the evidence indicates this is Petitioner's third DUI offense, having had two prior DUI convictions in 2005 and 2007, in addition to a prior refusal to submit to a breath, urine or blood test in 2007.

5. The facts in *Gotopo v. State,* 9 Fla. L. Weekly Supp. 30a (Fla. 17th Cir. Ct. Oct. 26, 2001), are similar to the instant matter. Gotopo testified at trial that he did not understand English well enough to understand the implied consent warning. Prosecutors presented evidence that Gotopo had been read implied consent warnings on two prior occasions during previous contact with law enforcement. The reviewing court held that it was readily apparent from the evidence presented, including Gotopo's prior experience with law enforcement, that he understood English well enough to understand the consequences of refusing to submit to a breath test.

6. "The competent, substantial evidence standard requires the circuit court to defer to the hearing officer's findings of fact . . . unless there is no competent evidence of any substance, in light of the record as a whole, that supports the findings." *Dep't of Highway Safety & Motor Vehicles v. Hirtzel,* 163 So. 3d 527, 529 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D1107a] (internal citation omitted); *O.H. v. Agency for Persons with Disabilities,* 332 So. 3d 27, 34 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D2510a] ("It is a longstanding principle that appellate courts do not either re-weigh the evidence or the credibility of witnesses."). There was competent substantial evidence from Officer King's reports, his testimony, and the Video to support the hearing officer's findings, and therefore this Court cannot reweigh the evidence. Considered in its totality, the record evidence shows that Petitioner understood what was transpiring during the stop and his arrest for DUI. Petitioner's refusal to submit to the breath test and his argument that he did not understand the implied consent warning because of a language barrier is contrary to the evidence before the hearing officer. The hearing officer did not err in affirming the license suspension.

7. Based on the foregoing, this Court concludes that the Department's decision to uphold the Petitioner's driver license suspension is supported by competent substantial evidence, that the Petitioner was accorded procedural due process, and that there was no departure from the essential requirements of the law.

Accordingly, it is **ORDERED AND ADJUDGED** that Petitioner's Second Amended Petition for Writ of Certiorari is hereby **DENIED**.

* * *

Licensing—Driver's license—Suspension—Refusal to submit to breath test—Hearing officer applied correct law in determining that licensee refused to provide breath sample subsequent to lawful arrest, after being informed that refusal would result in license suspension

THOMAS BENNETT, Petitioner, v. STATE OF FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 13th Judicial Circuit (Appellate) in and for Hillsborough County, General Civil Division. Case No. 24-CA-001724. Division C. April 4, 2025. Counsel: Linsey Sims-Bohnenstiehl, Assistant General Counsel, DHSMV, for Respondent.

ORDER DENYING PETITION FOR WRIT OF CERTIORARI

(MELISSA M. POLO, J.) THIS MATTER is before the Court on Petition for Writ of Certiorari filed October 30, 2023, and transferred to the 13th Judicial Circuit on February 28, 2024. The petition is timely. Rule 9.100(c)(2), Fla. R. App. P.; Rule 9.030(c)(3), Fla. R. App. P.; §322.31, Fla. Stat. Petitioner argues that the Department departed from the essential requirements of the law and violated his right to due process by upholding the revocation of his driving privileges because he was confused about the consequences of refusing to submit to a breath alcohol test subsequent to a lawful arrest and, as a result, his refusal should have been suppressed. Having reviewed the petition, response, reply, appendix, and being otherwise fully informed, the Court finds that the hearing officer applied the correct law in making his determination, Petitioner was provided adequate notice and an opportunity to be heard at the formal hearing where he was represented by counsel and presented evidence, and the Petition must therefore be denied.

On March 29, 2023, Petitioner was arrested for DUI. Petitioner initially agreed to submit to breath testing, but at the jail, Petitioner stated he would not provide a sample. After being read the Implied Consent warning, Petitioner again refused, stating that he wanted an attorney. On September 21, 2023 a hearing officer conducted an administrative formal review of Petitioner's license suspension. Petitioner was represented by counsel and had two witnesses testify as part of his defense. Counsel for Petitioner moved to invalidate the suspension on several grounds, including that Petitioner's refusal to provide a breath sample should be suppressed because Petitioner was confused about the requirements created by Florida's Implied Consent Law. In his written order, the hearing officer addressed Petitioner's motion to invalidate, and found there was insufficient evidence to establish that Petitioner was confused about the requirements.

Petitioner argues the hearing officer departed from the essential requirements of the law and denied Petitioner a fair and meaningful hearing because he denied Petitioner's motion to suppress Petitioner's refusal to provide a breath sample and "merely rubber stamped the suspension." In a DUI license suspension case, the hearing officer is limited to reviewing whether there was probable cause for the DUI arrest, whether the driver refused to submit to an alcohol or controlled substance test, and whether the driver was told that refusal to submit to the test would result in a mandatory suspension of their driver license. § 322.2615(7)(b), Fla. Stat. In reviewing this Petition, the Court is limited to considering "whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). In doing so, the Court is not permitted to reweigh evidence; "[c]ontrolling case law is clear that the circuit court [is] not permitted to scour the record for evidence which contradict[s] the hearing officer's conclusion." *DHSMV v. Baird*, 175 So. 3d 363, 365 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D2160a] (citing *DHSMV v. Porter,* 791 So. 2d 32, 35 (Fla. 2d DCA 2001) [26 Fla. L. Weekly D1161a]). The Florida Supreme Court has ruled "that 'applied the correct law' is synonymous with 'observing the essential requirements of law.' " *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a]. Rule 15A-6.013(7), Fla. Admin. Code.

Put simply, Petitioner was represented by counsel at a formal hearing where he presented evidence, including witness testimony, to support his argument that the suspension should be invalidated. The burden of proof at the formal hearing is whether the driver license suspension issued by law enforcement was supported by a preponderance of the evidence, and the hearing officer is the sole decision maker as to the weight, relevance, and credibility of any evidence presented. In this case, the hearing officer considered the evidence presented and found the suspension should be upheld. The hearing officer applied the correct law in making his determination that, subsequent to a lawful arrest, Petitioner refused to provide a breath sample after being informed that refusal would result in the suspension of his license.

Based on the foregoing the Petition for Writ of Certiorari is DENIED.

* * *

Municipal corporations—Code enforcement—Failure to obtain dock lease agreement—Special magistrates—Discrepancy between oral ruling and written order—Written order reversed and remanded where magistrate failed to incorporate some oral pronouncements in written order and included written directives that were not orally pronounced

EDMOND L. SUGAR, Appellant, v. CITY OF HOLLYWOOD, FLORIDA, Appellee. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE 24-008647. Administrative Hearing Case No. V23-12413. April 17, 2025. Counsel: Edmond L. Sugar, Pro se, Appellant. Christian Rosello, for Appellee.

OPINION

(PER CURIUM.) Appellant appeals the Administrative Order dated May 22, 2024, alleging that the Special Magistrate's Final Order improperly deviates from the hearing's verbal pronouncements made at the hearing.

Appellant requested an administrative hearing to address a Notice of Violation dated July 27, 2023. The Notice alleged that Appellant was in violation due to the absence of a valid boat dock lease agreement and failure to comply with the City's applicable protocols. The subject of the lease is a boat dock situated on property owned by the City, the existence and continued use of which requires a valid lease agreement with the City.

On May 22, 2024, a hearing was held, during which the Special Magistrate entered a Final Order finding that Appellant had failed to enter into, or renew, the City's boat dock lease agreement, and had also failed to pay outstanding fees and provide the required insurance coverage necessary for compliance. The Final Order provided Appellant with 45 days to achieve full compliance. Additionally, it stated that in the absence of compliance, after July 7, 2024, Appellant would be deemed trespassing and subject to immediate removal from all City-owned facilities. The Final Order also included a provision outlining potential future penalties, stating that failure to comply or repeated violations could result in fines of up to $5,000.00 per day.

This Appeal followed

FINAL ORDER IMPROPERLY DEVIATES FROM THE VERBAL RULING BY THE MAGISTRATE

Appellant alleges that "*the terms of the final order dated May 22, 2024 deviated drastically from the ruling by the Magistrate at the hearing. Instead of providing for 45 days to cure with a $1,000.00 per day fine, the final order provides that Appellant and others would be subject to trespass violations and could be fined "up to $5,000.00 per day*." Appellant does not qualify this allegation as being a violation of due process or the essential requirements of law, he merely states that

it deviates from the hearing and recommendation of the City and therefore, qualifies as "error".

It is well established that "Oral pronouncements of an agency at a duly noticed hearing control over a written order which is inconsistent with those pronouncements" *Verleni v. Department of Health, Bd. of Podiatric Medicine,* 853 So. 2d 481 (Fla. 1st DCA 2003) [28 Fla. L. Weekly D1653a]; see also *Ulano v. Anderson,* 626 So.2d 1112 (Fla. 3d DCA 1993), "Reversal is required where a final judgment is inconsistent with a trial court's oral pronouncements." *Id.* Thus, the question is, whether the written order is in conflict or inconsistent with the oral pronouncement.

In addressing the 45-day compliance period, it is noted that the Final Order was entered on May 22, 2024, with a stated compliance deadline of July 7, 2024. This reflects the full 45-day period as pronounced at the hearing; therefore, there is no deviation from the court's original oral pronouncement in this regard.

Appellant correctly asserts that the $1,000.00 per day fine for non-compliance, which was part of the oral pronouncement, was not included in the Final Order. Conversely, the potential $5000.00 per day fine that was included in the last paragraph of the Order, is prospective in nature and pursuant to Florida Statute §162.09. This enhanced fine is applicable only if the property owner is later determined to be a repeat violator of the same or similar code violations. Under the statute, the City would be required to conduct a separate hearing to establish the existence of a repeat violation and assess whether the circumstances justify the imposition of the enhanced penalty. In contrast, the $1,000.00 per day fine was to be imposed immediately upon expiration of the 45-day compliance penod, without the need for further proceedings. Accordingly, while the inclusion of the statutory language regarding future penalties may serve as a warning to the property owner, it was improperly included in the written Final Order.

The issue of trespass is directly tied to non-compliance arising from the absence of a valid lease agreement—specifically, the unauthorized presence of "their property on our property" beyond the prescribed compliance deadline. The record submitted by Appellant includes general provisions from the City's Code of Ordinances, including §98.053—Noncompliance, which states: *"Any person that is determined to be in violation of a valid lease agreement shall be subject to removal from all City property, and such unwarranted use shall constitute a trespass, enforceable by the Police Department of the City."* However, while this provision may form a basis for potential enforcement actions, the Special Magistrate did not make any specific oral findings regarding trespass during, the hearing. As such, the inclusion of trespass-related consequences in the Final Order—absent any corresponding verbal pronouncement on the record—constitutes an improper addition.

It is well established that a written Final Order which conflicts with the oral pronouncement violates due process, as it deprives the affected party of the opportunity to object to or address the findings and conclusions later memorialized in writing. *See Verleni v. State,* 853 So. 2d 484, 484 (Fla. 5th DCA 2003) [28 Fla. L. Weekly D1646b]. [Editor's note: Citation for *Verleni v. State* is 853 So. 2d 481 (Fla. 1st DCA 2003) [28 Fla. L. Weekly D1653a].] the present case, the Special Magistrate failed to incorporate certain oral pronouncements into the Final Order, and instead included written directives that were not made on the record during the hearing.

Having carefully considered the brief, the record and the applicable law, the Special Magistrate's May 22, 2024 Final Order is **REVERSED and REMANDED.** (J. BOWMAN, L. ALPERSTEIN, and S. MOON, JJ., concur.)

* * *

Prohibition—Jurisdiction—Jurisdiction over proceeding on petition for writ of prohibition directed at county court judge lies with district court of appeal, not circuit court acting in its appellate capacity

NATALIE WHITE, Plaintiff, v. JOHN HURLEY (Judge), Defendant. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE25005242. Division AW. May 8, 2025.

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 Regarding Jurisdiction dated April 23, 2025. The parties were directed to show cause as to why or why not jurisdiction was proper before this Court regarding Petitioner's Petition for Writ of Prohibition. This proceeding was directed at the actions of the County Court. After review of Petitioner's Response and the Reply of Delwood West Condominium Association, Inc. and the relevant law, this Court has determined that jurisdiction of this proceeding is proper before the Fourth District Court of Appeal. Petitioner's reliance on *English v. McCrary,* 348 So. 2d 293 (Fla. 1977) is unpersuasive as the State of Florida has adjusted the law and rules regarding jurisdiction as recently as 2023, and *English v. McCrary* is no longer controlling regarding this issue.

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

* * *

CHRIS-AN KEYE, Plaintiff, v. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES DIVISION LICENSING, Defendant. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE24018247. Division AP. April 22, 2025.

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 March 10, 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 March 10, 2025, Order.

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

* * *

RIGOBERTO CID, et al., Plaintiff, v. TOWN OF SOUTHWEST RANCHES, FLORIDA, Defendant. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE24018452. Division AP. April 22, 2025.

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 March 10, 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 March 10, 2025, Order.

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

* * *

MARY QUANT, et al., Plaintiff, v. CITY OF MIRAMAR, Defendant. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE24016806. Division AP. April 22, 2025.

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 March 5, 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 March 5, 2025, Order.

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

* * *

703 NE 7 ST, LLC, Plaintiff, v. CITY OF HALLANDALE BEACH, Defendant. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE24012627. Division AP. April 29, 2025.

FINAL ORDER OF DISMISSAL

(JOHN BOWMAN, J.) **THIS CAUSE** is before the Court, in its appellate capacity, upon this Court's Order Granting Motion to Dismiss dated March 17, 2025. Appellant was directed by this Court to file an Amended Initial Brief and Appendix within 30 days. As of the date of this Order Appellant has failed to comply with this Court's March 17, 2025, Order and file an Amended Initial Brief and Appendix. Appellant's January 8, 2025, Initial Brief was dismissed by the Court, and as of the date of this Order there is no operative appellate brief filed for this Court's review. This appellate proceeding has been pending since September 4, 2024.

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

* * *

VSG CONSTRUCTION SERVICES, LLC., Appellant, v. CITY OF PARKLAND, Appellee. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Case No. CACE-24-010660. L.T. Case No. 24-214. April 17, 2025. Appeal from the City of Parkland Special Magistrate Michael D. Cirullo. Counsel: Frank Anzalone, Davie, for Appellant. Matthew T. Ramenda, Boca Raton, for Appellee.

OPINION

(**PER CURIAM**.) Having carefully considered the briefs, appendixes, the record, and the applicable law, this Court dispenses with oral argument, and the City of Parkland Special Magistrate Michael D. Cirullo's July 1, 2024, Final Order, in L.T. Case No. 24-214, is hereby **AFFIRMED**. (BOWMAN, MOON, and ALPERSTEIN, JJ., concur.)

* * *

Licensing—Driver's license—Suspension—Refusal to submit to breath test—Sequence—Because documents are hopelessly in conflict as to whether licensee's arrest preceded his refusal to submit to breath test, finding that arrest preceded refusal was not supported by competent substantial evidence —Reversed and remanded

JADON WILLIAM BEGERA, Petitioner, v. STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 18th Judicial Circuit (Appellate) in and for Brevard County. Case No. 05-2024-AP-043232-XXAP-BC. November 21, 2024. Counsel: Robert R. Berry, for Petitioner. Linsey Sims-Bohnenstiehl, for Respondent.

JURISDICTION AND STANDARD OF REVIEW

(**PER CURIAM.**) This Court has jurisdiction to review the decision of the Florida Department of Highway Safety and Motor Vehicles under sections 322.2615(13) and 322.31, Fla. Stat. (2024) and Fla. R. App. P. 9.030(c)(1)(C).

A circuit court conducting first-tier review of an administrative agency decision by certiorari is strictly limited to consideration of: (1) whether procedural due process was accorded to the parties; (2) whether the essential requirements of law were observed; and (3) whether the administrative findings are supported by competent substantial evidence. *See Nader v. Fla. Dep't of Highway Safety & Motor Vehicles,* 87 So. 3d 712, 723 (Fla. 2012) [37 Fla. L. Weekly S130a] (quoting *Haines City Cmty. Dev. v. Heggs,* 658 So. 2d 523, 530 (Fla. 1995) [20 Fla. L. Weekly S318a].

ANALYSIS

Petitioner seeks review of the Department of Highway Safety and Motor Vehicles' ("Department") decision to sustain the administrative suspension of Petitioner's driver's license for refusal to submit to a breath test in accordance with § 322.2615(a), Florida Statutes.

Petitioner contends the Department departed from the essential requirements of law in sustaining the suspension of his license because there is no competent substantial evidence he was arrested before he refused to submit to the breath test and relies on *Dep't of Highway Safety & Motor Vehicles v. Trimble,* 821 So. 2d 1084 (Fla. 1st DCA 2002) [27 Fla. L. Weekly D807a]; *Hall v. State of Florida, Dep't of Highway Safety & Motor Vehicles,* 4 Fla. L. Weekly Supp. 208a (Fla. 18th Cir. Ct. July 9, 1996); and, *Cobb v. Dep't of Highway Safety & Motor Vehicles,* 32 Fla. L. Weekly Supp. 116b (Fla. 18th Cir. Ct. Mar. 1, 2021).

Like *Trimble,* the evidence in this case is "hopelessly in conflict" as to whether Petitioner's arrest preceded his refusal and "the discrepancies on the critical facts went unexplained." *Id.* at 1086-87. The sworn Affidavit of Refusal to Submit to Breath and/or Urine Test states Petitioner was arrested for DUI on June 20, 2024 at 2106 (9:06 p.m.) and was asked to take a breath and urine test at 2106 (9:06 p.m.). The sworn affidavit was prepared and executed by Officer Rasmussen of the Titusville Police Department. This is the only document that establishes the time of the refusal. No other document establishes the time of the refusal with any particularity. The other documents are the probable cause and arrest affidavit with the time of arrest at 21:31 (9:31 p.m.); the Incident Report with CAD Narrative of "1015" (placed into custody) at 21:31 (9:31 p.m.); the Alcohol/Drug Influence Report with the time of arrest at 21:31 (9:31 p.m.); and, the Florida Uniform DUI Traffic Citation, which has a completely different time of arrest at 10:58 p.m. The narrative within the sworn probable cause and arrest affidavit is the only place where it can be found the request for a breath and urine test and refusal occurred after the arrest. Given the inherent reliability of the CAD Narrative and the sworn Affidavit indicates the time of the refusal at 9:06 p.m., the Department's finding the warnings preceded the refusal amounts to an arbitrary choice of one document over another. This does not meet the substantial, competent evidence test because it "could have rested as much on the flip of a coin as on the documentary evidence submitted." *Id.* at 1087.

Accordingly, we grant the petition for writ of certiorari and remand for further proceedings consistent with this opinion. *See Dep't of Highway Safety & Motor Vehicles v. Clay,* 152 So. 3d 1259, 1260 (Fla. 5th DCA 2014) [40 Fla. L. Weekly D51c] ("This court has consistently held that when a circuit court quashes an order issued by a hearing officer on due process grounds, the matter is to be remanded to the administrative agency for further proceedings.").

Petition **GRANTED** and **REMANDED** for further proceedings consistent with this opinion. (SEGAL, PAULK and DOOKHOO, JJ., concur.)

* * *

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CIRCUIT COURTS—ORIGINAL

Evidence—Expert scientific testimony—Discussion of steps necessary for analysis of whether expert scientific testimony is admissible under *Daubert* test—Timeliness of motion—In bench trial, *Daubert* motion raised contemporaneously with expert testimony is timely—Expert's testimony, which is rife with assertions without proof, is found to be unreliable and is stricken

SHAHAR LEVI, Petitioner, v. NATALIE RADKO, Respondent. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. FMCE15009182 (33). April 21, 2025. Johnathan D. Lott, Judge. Counsel: Linda M. Jaffe, for Petitioner. Gustavo E. Frances, for Respondent.

ORDER GRANTING MOTION TO STRIKE TESTIMONY OF PROPOSED EXPERT WITNESS UNDER DAUBERT

This Court has considered, with the benefit of the parties' argument presented at the hearings in this matter held on February 11 and February 20, 2025, Petitioner's February 11, 2025, Motion to Strike Testimony of Proposed Expert Witness under Daubert. For the reasons stated herein, the motion is GRANTED.

* * *

How does *Daubert* work in a bench trial? Few Florida courts have addressed the question.

Here, Respondent, without other notice, made an *ore tenus* motion to strike Petitioner expert on *Daubert* grounds before and after the testimony. Respondent objected to the timing of the motion.

In this bench trial—and, for the matter, in any trial—the Judge must at some point determine that expert testimony is admissible under Section 90.702, Florida Statutes. *Daubert* usually refers to a gatekeeping function that that is much more critical in jury trials—courts don't want juries to hear "experts," who may be impressive based on their credentials and titles alone, present scientifically unreliable evidence. By contrast, that gatekeeping function is relaxed in bench trials, since the judge as the finder of fact and law must regardless sort out the reliable from the unreliable at some point.

Accordingly, Respondent's motion was timely. And perhaps more importantly, it is the *proponent's burden* to ensure that the evidence they seek to introduce is admissible under the Rules of Evidence. Here, regardless of when the gatekeeping inquiry is conducted, the expert testimony as presented did not meet Rule 702's strictures. Accordingly, it is not admissible.

The motion to strike is therefore granted.[1]

I. ANALYSIS

A. *Daubert* and Section 90.702

Section 90.702, Florida Statutes, codifies the *Daubert* standard. *See Kemp v. State,* 280 So. 3d 81, 88 (Fla. 4th DCA 2019) [44 Fla. L. Weekly D1974a]. Under Section 90.702:

> If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:
>
> (1) The testimony is based upon sufficient facts or data;
>
> (2) The testimony is the product of reliable principles and methods; and
>
> (3) The witness has applied the principles and methods reliably to the facts of the case.

Courts have described the trial judge's role in this analysis as "gatekeeper." *See Walker v. State,* 308 So. 3d 193, 196 (Fla. 4th DCA 2020) [45 Fla. L. Weekly D2726b]. "The judge is to ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Id.* (quoting *Daubert,* 509 U.S. at 589) (cleaned up). The court assesses "whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." *Kemp* 280 So. 3d at 88 (quoting *Daubert,* 509 U.S. at 592-93) (cleaned up). A non-exhaustive list of factors bearing on reliability includes "(1) whether the theory can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error of a particular scientific technique, as well as the existence of standards controlling the technique's operation; and (4) general acceptance in the scientific community." *Id.* (quoting *Daubert,* 509 U.S. at 593-94). This test is "flexible," and the "list of specific factors neither necessarily nor exclusively applies to all experts or in every case." *Id.* (quoting *Kumho Tire Co., Ltd. v. Carmichael,* 526 U.S. 137, 147 (1999)).

Further, the reliability test concerns "not the correctness of the expert's conclusions but the soundness of his methodology." *Id.* (quotations omitted). "[A]n expert's opinion must be based upon knowledge, not merely subjective belief or unsupported speculation; nothing in *Daubert* requires a court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert, and a court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Id.* (cleaned up). Thus "Under *Daubert,* although an expert may be qualified by experience, it does not follow that experience, standing alone, is a sufficient foundation rendering reliable any conceivable opinion the expert may express. . . while the expert's qualifications may well remain germane, an expert witness must explain the logic and relevance of the expert opinion." *Baan v. Columbia Cnty.,* 180 So. 3d 1127, 1133 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D2707a].

Similarly, as the federal courts have put it, "expert testimony is admissible if (1) the expert is qualified to testify regarding the subject of the testimony; (2) the expert's methodology is sufficiently reliable as determined by the sort of inquiry mandated in Daubert; and (3) the expert's testimony will assist the trier of fact in understanding the evidence or determining a fact at issue." *Chapman v. Procter & Gamble Distrib., LLC,* 766 F.3d 1296, 1304 (11th Cir. 2014) [25 Fla. L. Weekly Fed. C416a]. "While there is inevitably some overlap among the basic requirements—qualification, reliability, and helpfulness—they remain distinct concepts and the courts must take care not to conflate them." *United States v. Frazier,* 387 F.3d 1244, 1260 (11th Cir. 2004) [17 Fla. L. Weekly Fed. C1132a]. Critically, "the reliability criterion remains a discrete, independent, and important requirement for admissibility." *Id.* at 1261. "Thus, it remains a basic foundation for admissibility that proposed expert testimony must be supported by appropriate validation—i.e., 'good grounds,' based on what is known." *Id.* (cleaned up). The Rule "assigns to the trial judge the task of ensuring that an expert's testimony rests on a reliable foundation." *Id.* (cleaned up).

B. *Daubert* in bench trials

Section 90.702 is the same in bench trials and jury trials, to be sure. The test for admissibility is the same. But the logistics are a bit different, for good reason.

The keys to understanding the different logistics are that (1) there is less need for "gatekeeping" since the judge, unlike a jury, will not be unfairly swayed by inadvertent exposure to expert testimony that does not clear Section 90.702's hurdles, (2) the proponent of the evidence has the burden to (when properly challenged) establish admissibility under Section 90.702, *e.g., Sanchez v. Cinque,* 238 So. 3d 817, 823 (Fla. 4th DCA 2018) [43 Fla. L. Weekly D359b]; (3) the

Court must, at some point, decide on the admissibility of expert testimony under Section 90.702 if it is challenged.

Only handful of Florida decisions appear to have addressed *Daubert* in the context of bench trials. The most exhaustive discussion is in *Philip Morris USA, Inc. v. Naugle,* 337 So. 3d 13, 17 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D530a]. The Court held:

> We also partially agree with Naugle that the procedure followed by the gatekeeper can vary during a bench trial. *See, e.g., United States v. Brown,* 415 F.3d 1257, 1268-69 (11th Cir. 2005) [18 Fla. L. Weekly Fed. C700a] ("There is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself."). But even when that relaxed approach is taken, at some point the court must determine whether the evidence is admissible. *See, e.g., Kan. City. S. Ry. Co. v. Sny Island Levee Drainage Dist.,* 831 F.3d 892, 900 (7th Cir. 2016) (citing *Metavante Corp. v. Emigrant Say. Bank*, 619 F.3d 748, 760 (7th Cir. 2010)) ("Where a trial judge conducts a bench trial, the judge need not conduct a Daubert (or Rule 702) analysis before presentation of the evidence, even though [they] must determine admissibility at some point"); *Cristin v. Everglades Corr. Inst.,* 310 So. 3d 951, 957 (Fla. 1st DCA 2020) [46 Fla. L. Weekly D67a] ("[T]his does not mean that the trial court—even during a bench trial—has the discretion to decide not to perform the gatekeeper function at all.").

The Court thus noted that "Ultimately, the circuit court needed to assess the relevance and reliability of Naugle's expert's testimony." *Naugle,* 337 So. 3d at 17. The Court reversed and faulted the circuit court for failing to, at any point after the objections were raised, "assess the reliability of Naugle's proposed expert testimony" or "consider whether the expert's testimony related to matters requiring his specialized knowledge." *Id.*

The federal courts have addressed the issue in even greater depth. In a bench trial, "the need for an advance ruling to exclude expert testimony is superfluous and unnecessary." *GLF Construction Corp. v. Fedcon Joint Venture,* 2019 WL 7423552, at *3 (M.D. Fla. Oct. 15, 2019) (cleaned up). "The Court as a fact finder is presumably competent to disregard what he thinks he should not have heard, or to discount it for practical and sensible reasons." *Id.* (cleaned up). And "at trial, the Court as fact finder is free to later decide to disregard testimony in whole or in part and/or to decide how much weight to give it." *Id.* (cleaned up). "The danger involved with such expert testimony, namely that the jury will be unduly influenced, is not implicated in a bench trial; the Court is confident that it can discern testimony that seeks to make legal conclusions from testimony that provides the Court with background, context and industry knowledge that are traditionally supplied by experts." *Apple Glen Inv'rs, L.P. v. Express Scripts, Inc.,* 2015 WL 3721100, at *4 (M.D. Fla. June 15, 2015) (cleaned up).

But "where a trial judge conducts a bench trial, [although] the judge need not conduct a Daubert (or Rule 702) analysis before presentation of the evidence, he must determine admissibility at some point." *Adams v. Paradise Cruise Line Operator Ltd., Inc.,* 2020 WL 3489366, at *3 (S.D. Fla. June 26, 2020) (quotations omitted). "Courts conducting bench trials have substantial flexibility in admitting proffered expert testimony at the front end, and then deciding for themselves during the course of trial whether the evidence meets the requirements of Rule 702." *Id.* (cleaned up). Courts should disregard the expert "in whole or in part if, at trial, it turns out not to meet the standard of reliability established by Rule 702." *Ass Armor, LLC v. Under Armour, Inc.,* 2016 WL 7156092, at *4 (S.D. Fla. Dec. 8, 2016).

The very term "*Daubert* motion" probably contributes to this confusion. A *Daubert* motion is best understood as a specific type of motion in limine, made to exclude expert testimony that does not meet Rule 702's strictures in advance of trial and outside of the presence of the jury. *E.g., Broberg v. Carnival Corp.,* 2018 WL 4778457, at *2 (S.D. Fla. June 11, 2018) ("A Daubert motion is a specific type of motion in limine."). *Daubert* motions are routinely accounted for in pre-trial procedures or trial orders in jury cases, and because it is often difficult to assess the reliability of an expert's testimony without extensive *voir dire* of the expert, separate, pre-trial *Daubert* hearings are commonplace. In a bench trial, the pre-trial *Daubert* motion, and certainly a pre-trial hearing, is unnecessary because the Court may simply hear the testimony at trial and then, just as it would in a pre-trial *Daubert* hearing, decide whether the testimony meets Rule 702's requirements and is thus admissible or not. A motion to strike, made after the expert testimony has been presented and the expert has been made subject to cross examination, is a perfectly acceptable vehicle to make this determination.

Indeed, motions in limine *in general* are disfavored in bench trials. *E.g., Alan L. Frank Law Associates, P.C. v. 000 RM Invest,* 2016 WL 9348064, at *1 (S.D. Fla. Nov. 30, 2016) ("It is unnecessary, in bench trials, for a court to determine whether to exclude evidence prior to the start of trial. . . The rationale underlying pre-trial motions in limine does not apply in a bench trial, where it is presumed that the judge will disregard inadmissible evidence and rely only on competent evidence. In fact, courts are advised to deny motions in limine in non jury cases.") (citations omitted). There is no reason for *Daubert* motions to be treated any differently.

C. Respondent's Motion Was Timely

With these principles in mind, this Court addresses Petitioner's timeliness argument.

Although Respondent did not raise her motion to strike in advance of trial, it was made contemporaneous to the testimony. When it was initially raised, the Court reserved ruling on it until the conclusion of the expert's testimony, whereupon it was renewed and subsequently reduced to writing.

Petitioner cited *Booker v. Sumter Cnty. Sheriff's Office/N. Am. Risk Services,* 166 So. 3d 189, 192 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D1291c], in support of his argument that the motion to strike is untimely. There, the Court held that a trial court did not abuse its discretion by finding that the failure to raise a *Daubert* challenge on motion until four days prior to the final hearing rendered the motion untimely.

Booker stands for the proposition that the trial court has great discretion in managing how *Daubert* and Rule 702 challenges are handled. It did not hold that a late-filed challenge cannot be heard; it held that a court did not abuse its discretion by failing to entertain one under the circumstances of that case. It also, given the facts before it, did not address the distinction between pre-trial *Daubert* motions and post-testimony motions to strike based on failing to clear Rule 702's hurdles. Pre-trial *Daubert* motions wholly deprive the proponent of an opportunity to present their evidence; post-hearing motions to strike test whether the proponent of the evidence met their own burden. Having the issue dealt with pre-trial is essential in a jury trial; it is difficult to un-ring the bell of expert testimony through a limiting instruction if jury hears such testimony that turns out to be unreliable or otherwise clear Rule 702. By contrast, as explained above, these concerns are minimized in a bench trial, and there is far less need for pre-trial exclusion procedure. Testing the sufficiency after the testimony is presented is a perfectly good way to do it, likely consuming fewer judicial resources than trying to assess the admissibility in some sort of pre-trial procedure. There is no "gotcha" risk to a post-testimony motion to strike in a bench trial; it is, after all, always the proponent's burden to show that proffered evidence is admissible. *Booker,* 166 So. 3d at 192 & n. 1.

Thus as the First District (from which *Booker* comes) recognized, the discretion afforded to a trial court in a bench trial in handling these procedural issues "does not mean that the trial court—even during a bench trial—has the discretion to decide not to perform the gatekeeper function at all." *Cristin v. Everglades Corr. Inst.,* 310 So. 3d 951, 957 (Fla. 1st DCA 2020) [46 Fla. L. Weekly D67a]. The court accordingly held that "Once Claimant raised a *Daubert* objection to Dr. Fischer's expert opinion testimony, the [court] had the responsibility to perform the necessary analysis." *Id.*

To be sure, the recipient of the challenge requires "notice so as to have the opportunity to address any perceived defect in the expert's testimony," *Booker,* 166 So. 3d at 193, but this a much more prescient concern in jury trials where admissibility is better determined pre-trial. *Cf. Rojas v. Rodriguez,* 185 So. 3d 710, 711 (Fla. 3d DCA 2016) [41 Fla. L. Weekly D423a] (noting, following appeal of jury verdict, that "Given the trial court's role as 'gatekeeper' in the *Daubert* context, it stands to reason that such an objection must be timely raised to allow the trial court to properly perform its role").

Here, Respondent raised the prospect of a *Daubert* challenge before the expert gave her testimony, and any further rebuttal testimony would have been futile given that the *Daubert* challenge raised fundamental concerns about the expert's failure to clear Rule 702's reliability bar. This was not a case where, for example, the expert needed the opportunity to address "conflicting medical literature and expert testimony" that might form the basis of a *Daubert* challenge. *Booker,* 166 So. 3d at 193. Again, the proponent of the evidence always has the burden to put on evidence that is admissible under the Rules. If a proponent, after cross examination, releases their witness without having cleared Rule 702's reliability bar, they do so at their own peril, as "at some point the court must determine whether the evidence is admissible." *Naugle,* 337 So. 3d at 17.

D. The Expert's Testimony Was Unreliable

Proceeding, then, to the merits of motion—this Court agrees that the testimony was unreliable under Rule 702's strictures.[2]

In general, the expert's testimony was unreliable because it was rife with *ipse dixit.* She failed to explain what procedures she used to conduct her evaluation, how the these procedures were scientifically valid and acceptable, what conclusions she could properly draw from these procedures, and how those conclusions contributed to her diagnoses and other more ultimate opinions. She relied on her own credibility determinations without explaining how she was qualified to do so or how doing so was scientifically supported. She relied on a test that was so outdated in the relevant community that it is no longer published, without adequately explaining why she chose to rely on it rather than more modern methods. She relied on heavily dated reports grounded in hearsay of circumspect value without convincingly explaining her basis for doing so. As noted, "Nothing in *Daubert* requires a court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert, and a court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Kemp,* 280 So. 3d at 81. That is exactly what happened here—there was too great an analytical gap between what the expert claimed she relied on and the opinions she proffered.

Accordingly, because the expert's testimony was not reliable as required by Rule 702, it is inadmissible, and this Court will not consider it.

II. CONCLUSION

For these reasons, Petitioner's Motion to Strike Testimony of Proposed Expert Witness under Daubert is GRANTED.

[1]The parties did meaningfully address the Motion to Strike in the post-hearing briefing given the court's oral pronouncement that regardless of its ultimate ruling on the motion to strike, it found the expert testimony at issue to be not credible and unconvincing. This court continues to hold that position, and will make those findings in the alternative. However, given the importance of this issue and the lack of clear authority, this Court finds it appropriate to address the *Daubert* issue fulsomely.

[2]No transcript of the expert testimony appears to exist. Although the parties provided what purports to be a transcript of the February 11, 2025 hearing in which the expert testified, that transcript appears to in fact be a transcript of the February 20, 2025 continuation hearing. To the best of this Court's recollection, no court reporter was present for the February 11, 2025 hearing. If any such a transcript is in fact available, this Court would consider it on motion for rehearing.

* * *

Child custody—Temporary custody of minor child by extended family—Undocumented immigrant minor—Chapter 751 proceeding to grant sister temporary custody of undocumented immigrant minor from Guatemala—Motion for finding that it would be in minor's "best interests" not to return to Guatemala, which would make minor potentially eligible for special immigrant juvenile classification under federal law, is denied—"Best interests" finding is incompatible with intent of chapter 751 proceedings to afford a relative temporary custody of non-dependent minor, which custody must be terminated at any time it is requested by a fit parent—Florida Legislature notably omitted from chapter 751 any authority to make SIJ findings, but specifically provided for making such findings in chapter 39 dependency proceedings—Mechanism established in chapter 39 for making SIJ findings is incompatible with chapter 751 proceedings

YOSELIN RAMON, Petitioner, v. SHENY AMBROCIO, Respondent. Circuit Court, 17th Judicial Circuit in and for Broward County. Case No. FMCE24013181 (33). April 16, 2025. Johnathan D. Lott, Judge. Counsel: Robert Sheldon, for Petitioner.

ORDER DENYING BEST INTEREST MOTION

This Court has considered, with the benefit of a hearing held on January 29, 2025 and additional briefing submitted on February 27, 2025, Petitioner's July 18, 2024 Best Interest Motion.

J.R., who is sixteen years old, left her parents' home in Guatemala in order to illegally cross into the United States; after being apprehended at the border, she was placed into the custody of her sister, Petitioner Yoselin Ramon, in Fort Lauderdale, Florida. Petitioner seeks, pursuant to Chapter 751, Florida Statutes, temporary custody of her sister. Petitioner also requests a finding pursuant to 8 U.S.C. § 1101(a)(27)(j)(2) that it would be in J.R.'s "best interests" not to return to Guatemala, which would have the effect of making her potentially eligible for "special immigrant juvenile" classification under federal immigration law.

Simply put, Chapter 751 does not allow for the "best interest" finding that Petitioner seeks. Accordingly, the motion is DENIED.

I. BACKGROUND

An evidentiary hearing was held in this matter on February 27, 2025. Petitioner and J.R. testified.[1]

Petitioner testified that she had lived in Florida for eight years and was fit to take care of J.R.

J.R. testified that in Guatemala, she lived in deplorable and impoverished conditions. She testified that her father was an alcoholic who would physically and emotionally abuse her. He made her drop out of school at age 15 in order to work menial jobs. He would take the money she earned and use it to buy alcohol.

With her mother's encouragement and assistance, she left her home and made the journey to the United States and illegally entered. She was apparently apprehended by law enforcement and was placed into the care of Petitioner.

J.R. testified that she enjoys a much better life in the United States than she did Guatemala, has access to good living conditions and sufficient food, and is enrolled in a local high school.

II. ANALYSIS

A. Statutory Interpretation

Florida courts' "approach to interpreting the constitution reflects

a commitment to the supremacy-of-text principle, recognizing that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Planned Parenthood of Sw. & Cent. Florida v. State,* 384 So. 3d 67, 77 (Fla. 2024) [49 Fla. L. Weekly S73a] (cleaned up). "In interpreting a statute, our task is to give effect to the words that the legislature has employed in the statutory text." *Lab. Corp. of Am. v. Davis,* 339 So. 3d 318, 323 (Fla. 2022) [47 Fla. L. Weekly S134a]. "We strive to determine the text's objective meaning through the application of the text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." *Levy v. Levy,* 326 So. 3d 678, 681 (Fla. 2021) [46 Fla. L. Weekly S287a] (cleaned up).

"Because the plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole," "judges must exhaust all the textual and structural clues that bear on the meaning of a disputed text." *Conage v. United States,* 346 So. 3d 594, 598 (Fla. 2022) [47 Fla. L. Weekly S199a] (cleaned up). "Viewed properly as rules of thumb or guides to interpretation, rather than as inflexible rules, the traditional canons of statutory interpretation can aid the interpretive process from beginning to end." *Id.* "Context is a primary determinant of meaning. . . Under the whole-text canon, proper interpretation requires consideration of 'the entire text, in view of its structure and of the physical and logical relation of its many parts.' " *Lab. Corp.,* 339 So. 3d at 324.

B. Statutory Framework

1. Chapter 751, Florida Statutes

Chapter 751, Florida Statutes, provides for an action for an extended family member to establish temporary or concurrent custody over a minor child. The Act states that its purpose is to "Recognize that many minor children in this state live with and are well cared for by members of their extended families." § 751.01(1), Fla. Stat. The Act notes that "Because of the care being provided the children by their extended families, they are not dependent children." *Id.* The Act is meant to provide those extended family members caring for the child with the means to make medical and educational decisions, obtain vital and other records, and do all other things necessary for the care of the child. § 751.01(2)-(3), Fla. Stat.

A Chapter 751 Petition is unavailable to extended family members who have a power of attorney or other documentation that would allow them to make the same decisions that would be provided by an order under Chapter 751. § 751.02(b), Fla. Stat.

Section 751.03, Florida Statutes, sets forth the requirements for a Petition seeking temporary custody by an extended family member. Before any Petition may issue, "reasonable notice and opportunity to be heard must be given to the parents of the minor child by service of process, either personal or constructive." § 751.04, Fla. Stat.

Following the hearing, "Unless the minor child's parents object, the court shall award temporary or concurrent custody of the child to the petitioner if it is in the best interest of the child." § 751.05(2), Fla. Stat. However, if the parents object to a petition for temporary custody, "the court shall grant the petition only upon a finding, by clear and convincing evidence, that the child's parent or parents are unfit to provide for the care and control of the child." § 751.05(3), Fla. Stat. "In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child, as defined in chapter 39." *Id.* Further, "At any time, either or both of the child's parents may petition the court to modify or terminate the order granting temporary custody." § 751.05(6), Fla. Stat. "The court shall terminate the order upon a finding that the parent is a fit parent," but may create conditions to facilitate the transition of the child from the temporary custodian back to the parent. § 751.05(6)(b)-(c), Fla. Stat.

2. 8 U.S.C. § 1101(a)(27)(J)

Congress created the Special Immigrant Juvenile (SIJ) classification in 1990[2] to provide a path to lawful permanent residence for certain foreign born minor children present in the United States who had been abandoned, abused, or neglected by a parent. In its original iteration, among other things, it was only available to those children who were in, or eligible for, long-term foster care; however, *The William Wilberforce Trafficking Victims Protection Reauthorization Act* (TVPRA) of 2008, enacted on December 23, 2008, removed this requirement. The TVPRA also further clarified and expanded the definition of a SIJ.

To demonstrate eligibility for SUS, and following the aforementioned TVPRA amendments, the minor child must first obtain a state issued court order, often referred to as the "predicate order," "best interests order," or the "SUS findings order," which encompasses certain eligibility requirements.

To establish said eligibility to apply for a SIJ classification, a petitioner must show that they are unmarried, under 21 years old, and have been subject to a state juvenile court order[3] determining that they cannot reunify with one ***or*** both parents due to abuse, neglect, abandonment, or a similar basis under state law. § 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual or entity appointed by the state or the juvenile court. § 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1). The record must also contain a judicial or administrative determination that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. § 101(a)(27)(J)(ii); 8 C.F.R. § 204.11 (c)(2).

U.S. Citizenship and Immigration Services (USCIS) that has the sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is *bona fide,* meaning that the primary reason for seeking the required juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. § 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 8 C.F.R. § 204.11(b)(5).

3. Chapter 39, Florida Statutes

Chapter 39, Florida Statutes, Proceedings Related to Children, broadly provides for procedures that ensure the safety of Florida's children, including proceedings for the care of children that are or may become dependents of the state.

Chapter 39 has a dedicated provision by which dependent children can seek SIJ status under federal law. § 39.5075, Fla. Stat. The statute provides when "Whenever a child is adjudicated dependent," DCF or the community care provider in charge of the child shall determine if the child is a citizen, and if not, shall recommend whether the child should remain in the US, and if so, "If the child may be eligible for special immigrant juvenile status, the department or community-based care provider shall petition the [circuit] court [overseeing the dependency proceedings] for an order finding that the child meets the criteria for special immigrant juvenile status." § 39.5075(2)-(4), Fla. Stat. If such an order is issued by the circuit court, "the department or community-based care provider shall, directly or through volunteer

or contracted legal services, file a petition for special immigrant juvenile status and the application for adjustment of status to the appropriate federal authorities on behalf of the child." § 39.5075(5), Fla. Stat.

For a juvenile to potentially be eligible for SIJ status, he or she must meet four criteria under Section 39.5075(1)(b): "1. The child has been found dependent based on allegations of abuse, neglect, or abandonment; 2. The child is eligible for long-term foster care; 3. It is in the best interest of the child to remain in the United States; and 4. The child remains under the jurisdiction of the juvenile court." "Eligible for long-term foster are" means "that reunification with a child's parent is not an appropriate option for permanency for the child." § 39.5075(1)(a), Fla. Stat.

C. This Court lacks any authority to make an SIJ "best interest" finding in a Chapter 751 proceeding

Considering the statutory framework described above, this Court finds that it lacks any authority in a Chapter 751 proceeding for temporary custody by an extended family member to make any "best interests" findings under 8 U.S.C. § 1101(a)(27)(J)(ii).

1. A "best interest" finding is incompatible with the plain language of Section 751.

Chapter 751 does not permit the Court to make the finding Respondent requests, that is, to find that "it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence." 8 U.S.C. § 1101(a)(27)(J)(ii).

Chapter 751 merely allows extended family members who are providing a child-relative with care with the logistical tools they need to obtain that care, such obtaining and making educational / medical records and decisions, until such time as the parent wishes the child returned (provided that they are a "fit" parent). §§ 751.01, 751.05(6), Fla Stat. Indeed, Chapter 751 relief is categorically unavailable to relatives who have obtained a power-of-attorney that would enable them to obtain those same records and make those same decisions, § 751.02(2)(b), Fla. Stat—having such decision-making power makes the relief that Section 751 could provide redundant and unnecessary.

And the relief Chapter 751 provides is ***temporary***. The Court "shall" terminate any Chapter 751 Order at any time upon the request of either parent—so long as that parent is "fit" at the time they request the relief. § 751.05(6)(b), Fla. Stat. A court ***cannot*** make a finding that "it would not [ever] be in the alien's best interest to be returned to the [child's] previous country," 8 U.S.C. § 1101(a)(27)(J)(ii), when it ***must*** return the child to the custody of any fit parent upon request.[4]

And notably, Chapter 751 is silent regarding SIJ findings. By contrast, the Florida Legislature expressly provided, in Section 39.5075, a procedure for a circuit court to make SIJ findings in Chapter 39 proceedings. *See In the Interest of Y.V.,* 160 So. 3d 576, 580 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D849a] ("The Florida Legislature has specifically contemplated Florida's participation in this [8 U.S.C. § 1101(a)(27)(J)(ii)] process by enacting a statute [Section 39.5075, Fla. Stat.] to facilitate the federal law."). The legislature's expression of this procedure in Chapter 39, combined with the lack of such a procedure in Chapter 751, suggests that Legislature did ***not*** mean for the procedure to be available in Chapter 751 proceedings. As a general rule, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Beach v. Great W. Bank,* 692 So. 2d 146, 152 (Fla. 1997) [22 Fla. L. Weekly S71a] (quoting *Russello v. United States,* 464 U.S. 16, 23, 104 S.Ct. 296, 300, 78 L.Ed.2d 17 (1983)). Likewise, "[w]hen the legislature has included a provision in one statute but omitted it in an analogous statute, courts should not read it into the statute from which it has been excluded." *Mesen v. State,* 271 So. 3d 164, 169 (Fla. 2d DCA 2019) [44 Fla. L. Weekly D1194a]. Language in other statutes may "show that the Legislature 'knows how to' accomplish what it has omitted in the statute in question." *Id.* (quotation omitted).

2. Chapter 39 provisions are not available in Chapter 751 proceedings, and the "purpose" and "intent" of the provisions cannot trump the plain language of the statutes.

Moreover, Chapter 39 mechanisms are unavailable in Chapter 751 proceedings. That much is readily apparent from the plain text of Chapter 751. Children placed in the temporary custody of extended family members under Chapter 751 "***are not dependent children***." § 751.01(a), Fla. Stat. (emphasis added).

In her post-hearing Brief on Best Interest Motion, Petitioner makes a number of arguments that this Court should, looking to the legislature's intent and purposes of the statute (as she defines it), rewrite both Chapters 39 and 751 to allow them to pursue a best interest motion. Some of these arguments are set forth in the margin by way of example.[5]

This Court cannot indulge such Brennanism Part II.A, above, sets forth how courts are meant to interpret statutes in Florida. The law is the text, and the text is the law. "The law consists not of what the Legislature appears to have intended, but what the words of its duly enacted statutes, in their context, mean to the ordinary speakers of the language who elected it." *DeSantis v. Dream Defs.,* 389 So. 3d 413, 422 (Fla. 2024) [49 Fla. L. Weekly S156b] (quotations omitted).

The Court must of course exhaust all valid methods and canons of interpretation to determine the plain and ordinary meaning of the text, *e.g., Conage,* 346 So. 3d at 598, but looking beyond that to generalized sentiments of "purpose" or "intent" "can result in the judicial imposition of meaning that the text cannot bear, either through expansion or contraction of the meaning carried by the text." *Advisory Opinion to Governor re Implementation of Amendment 4 , The Voting Restoration Amendment,* 288 So. 3d 1070, 1078 (Fla. 2020) [45 Fla. L. Weekly S10a]. This Court is not a legislature; it does not craft law, and looking beyond the text of Chapter 751 to write in, wholesale, provisions in other statutes that don't fit within the scheme that Chapter 751's text does provide is a naked request for legislation. *See also, e.g., Moncrief v. Kollmer,* 397 So. 3d 190, 195 (Fla. 5th DCA 2024) [49 Fla. L. Weekly D2310c] ("Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law." (quoting *Rodriguez v. United States,* 480 U.S. 522, 526 (1987)); *Mercury Indem. Co. of Am. v. Cent. Florida Med. & Chiropractic Ctr., Inc.,* 380 So. 3d 477, 482 (Fla. 5th DCA 2023) [48 Fla. L. Weekly D2090a] ("When a court interprets statutory text based on what 'makes sense' to the court, rather than what the text demands, the court creates a new statute.").

The Supreme Court has described such a view of law Petitioner asks this Court to adopt—one in which "it is the duty of the courts to be alert to provide such remedies as are necessary to make effective the congressional purpose" expressed by a statute—as an "*ancien regime*" of judicial lawmaking, long-since abandoned. *See Alexander v. Sandoval,* 532 U.S. 275, 287 (2001) [14 Fla. L. Weekly Fed. S206a]; *see also Ziglar v. Abbasi,* 582 U.S. 120, 131 (2017) [26 Fla. L. Weekly Fed. S655a]. The relief Petitioner requests might have been awarded at one time, but the Florida Supreme Court has made clear that any remnants of the *regime* have crumbled in Florida. *E.g., Conage,* 346 So. 3d at 598, *Lab. Corp,* 339 So. 3d at 323. This Court will heed its guidance.

3. Regardless, Section 39.5075 is incompatible with Chapter 751.

In any event, even if this Court *could* turn to the mechanism that the legislature has established for circuit courts to make SIJ findings in accordance with federal immigration law—Section 39.5075—in Chapter 751 proceedings (and, as set forth above, it cannot), that mechanism is plainly incompatible with Chapter 751 proceedings. Section 39.5075 provides a multi-step process a circuit court may follow to make the SIJ status finding that Petitioner now requests, but the plain text of every step in the process in incompatible with the Chapter 751 relief.

In the first step of the process, "Whenever a child is adjudicated dependent, the department or community-based care provider shall determine whether the child is a citizen of the United States." § 39.5075(2), Fla. Stat. The triggering condition, "Whenever a child is adjudicated dependent," fails in any Chapter 751 proceeding, as children in Chapter 751 proceedings "are not dependent children." § 751.01(1), Fla. Stat. Further, "the department or community-based care provider" cannot "determine whether the child is a citizen of the United States" in a Chapter 751 proceeding, because those entities are, by design, not part of any Chapter 751 proceeding. *Cf. O.I.C.L. v. Florida Dept. of Children & Families,* 205 So. 3d 575, 579 (Fla. 2016) [41 Fla. L. Weekly S405a] (Canady, J., concurring) (explaining that private petitions under Chapter 39 are ineligible for "best interest" finding after age 18 because that provision applies only to "[DCF] or a community-based care provider—not to petitions filed by a private party.").

In the second step of the process, "If the child is not a citizen, the department or community-based care provider shall include in the case plan developed for the child a recommendation as to whether the permanency plan for the child will include remaining in the United States." § 39.5075(3), Fla. Stat. Again, Chapter 751 proceedings are incompatible with this and provide no mechanism to carry it out.

And in the third step of the process, "If the child may be eligible for special immigrant juvenile status, the department or community-based care provider shall petition the court for an order finding that the child meets the criteria for special immigrant juvenile status." § 39.5075(4), Fla. Stat. This is the operative mechanism by which Florida courts are empowered by the legislature to make the "best interests" finding under federal immigration law, and as explained, there is no way for litigants in Chapter 751 proceeding to even meet the prerequisites. But regardless, "eligible for special immigrant status" is a defined term in the statute that means "1. The child has been found dependent based on allegations of abuse, neglect, or abandonment; 2. The child is eligible for long-term foster care; 3. It is in the best interest of the child to remain in the United States; and 4. The child remains under the jurisdiction of the juvenile court." § 39.5075(1)(b), Fla. Stat. Here, Prong 1 cannot be satisfied in Chapter 751 proceedings; as noted, children in those proceeds "are not dependent children," § 751.01(1), Fla. Stat., and so cannot be "found dependent [under Chapter 39]." Prong 2 likewise cannot be satisfied. ""Eligible for longterm foster care" is also defined and "means that reunification with a child's parent is not an appropriate option for permanency for the child." § 39.5075(1)(a), Fla. Stat. For the same reasons explained above, this Court *cannot* find, in a Chapter 751 proceeding, that "reunification with a child's parent is not an appropriate option for permanency," because the Court "shall" return the child to the parent's custody upon demand at any time, so long as the parent is "fit." § 751.05(6), Fla. Stat.

4. The federal statute, Section 1101(a)(27)(J), does not confer jurisdiction to any court to make the findings it requires.

Finally, this Court notes that the federal statute does not confer any jurisdiction or authority to make the "best interest" findings Petitioner requests. It merely recognizes the effect of such findings that are (properly) made by state courts in accordance with state law. This is so for at least four reasons.

First, the passive voice. 8 U.S.C. § 1101(a)(27)(J)(ii) allows for SIJ status consideration for children "for whom it has been determined in administrative or judicial proceedings [in a juvenile court[6]] that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence." The statute's use of the passive voice suggests that it does not mean to broadly confer jurisdiction to "juvenile courts" throughout the United States to make those findings in any case.

Second, the structure of the statute. Section 1101 merely provides "Definitions" for certain statutory classes of immigrants. Subsection (27) provides the definition of the term "special immigrant." Subsubection (J) in turn provides a three-pronged test, separated by the conjunctive "and" such that all three elements must be met, for the definition of a special immigrant juvenile. It is doubtful that Congress meant to broadly confer jurisdiction on state courts to make findings as part of sub-sub-subsection (ii) of that definition of a class of immigrants. The more plausible explanation is that the definition meant to recognize state court findings that might otherwise be made in accordance with state law.

Third, federalism. Section 1101(a)(27)(J)(ii) does not create a cause of action in federal court for individuals to determine their special immigrant juvenile status; the broad, comprehensive scheme set out in the INA provides the mechanisms for all immigrants to determine and seek adjustment of their status. The contention that Section 1101(a)(27)(J)(ii) therefore creates, and not just recognizes, some remedy in various state courts for those state courts to afford relief under the INA would in turn raise hairy questions of Tenth Amendment viability. There is no reason for this Court to journey down that road.

Fourth, Florida's own statutory scheme. As noted, Section 39.5075, Florida Statutes, creates precisely the sort of scheme for state courts to make Section 1101(a)(27)(J)(ii) findings that Congress appeared to envision. And as described above, Section 39.5075 suggests that the Florida Legislature knew how to create that mechanism and deliberately chose not to replicate it in Section 751 proceedings. Nothing in the federal statute suggests that it meant to give state courts more authority than the states themselves chose to give them in making these enactments. So even if state courts might otherwise have some plenary authority to make Section 1101(a)(27)(J)(ii) findings, they do not have authority to deviate from the scheme that the legislature set up to make those findings. And they certainly do not have authority to deviate from the very cause of action before them—here, Section 751 proceedings—in order to make those findings in contravention of the remedies available in that cause. *Cf. B.R.C.M. v. Florida Dep't of Children & Families,* 215 So.3d 1219, 1226 (Fla. 2017) [42 Fla. L. Weekly S472a] (Canady, J., dissenting) ("[T]he dependency claims regarding such children [seeking SIJS] must be evaluated based on the specific requirements of the dependency statute.").[7]

III. CONCLUSION

For these reasons, Petitioner's Best Interest Motion is DENIED.

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[1]There was "good cause" for J.R. to testify. *Cf.* Fla. Fam. L. R. P. 12.407.

[2]*Immigration Act of 1990,* Pub. L. 101-649, § 153(a), 104 Stat. 4978 (1990).

[3]A "*juvenile court*" is "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a) (2015).

[4]For these same reasons, it seems doubtful that a child placed into temporary custody under Chapter 751 would or could meet the requirement under 8 U.S.C. § 1101(a)(27)(J)(i) that "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law."

[5]*E.g.,*

- "[T]he purpose of Chapter 751 is to include minor children in the overall regime of protection created in Chapter 39," ¶ 6;
- "The Legislature, recognizing the need for legal capacity of the family sponsors to be empowered to "Do all other things necessary for the care of the child," (Sec. 751.01(3)(d)), made Chapter 751 to serve as a vehicle to allow the extended family members to provide the full spectrum of services deemed appropriate by the Legislature, that otherwise were to be provided by DCF or any other organization or individual appointed as custodians under chapter 39;" ¶ 8;
- "The point of the enactment is to put this subclass of minor children on the same footing as all the other minor children receiving services pursuant to Chapter 39, through DCF or non-DCF community based care providers appointed by the Circuit Court. Any other reading introduces an element of nonsense that is contrary to the Legislature's comprehensive statement of purpose in Ch. 39, Sec. 39.001, ¶ 9;
- "The next step in statutory interpretation is to use the statutory language to try to work out the Legislature's intent," ¶ 12
- "The intent of the Legislature has been called 'the polestar' of legislative interpretation, meaning that it serves as a fixed point to guide the judicial 'navigator' who is faced with the darkness and confusion attending the failure of the application of the plain language canon," ¶ 13;
- "The inescapable conclusion is that Chapter 751 is intended as an ancillary provision to Chapter 39, made to extend the operation of Chapter 39 principles and to effect the purposes of the Legislature in cases on the margins of the Chapter 39 regime of care for minor children," ¶ 20;
- "It is clear that a Temporary Custody placement under Chapter 751 is in harmony with the purposes of Chapter 39, and that it is intended to serve those same goals, though they be not stated in the text of Chapter 751 itself," ¶ 23
- "The first conclusion offered above, that Chapter 751 beneficiaries are meant to be included in the Chapter 39-based regime of care for all at-risk children in Florida, provides a context that clarifies the plain language of various sections in both Chapters, and allows a harmonious interpretation and non-absurd application of the Legislature's language," ¶ 24.
- "This is the reasonable way to give effect to the Legislature's intentions. The only other way is to allow for an unwarranted overextension of the emancipation statute, to intrude mindlessly into the delicate deliberations of the Court and cut them short, the very thing the Legislature is seeking to avoid," ¶ 29
- "The emancipation statute should not be read so broadly as to interfere with the reasoned and delicate decisions that have been placed in the hands of the Circuit Court, specifically for the exercise of the Honorable Judge's wisdom and sagacity in very particular matters," ¶ 32;
- "[I]t would not be proper to overextend the operation of the emancipating statute in derogation of the underlying Common Law principles, and the more or less clearly stated intent of the Legislature to allow—indeed, to require—extension of jurisdiction, so as to deprive the Petitioner and the Beneficiary of the benefits so sensitively provided for by decades of legislative effort," ¶ 33.

[6]This Court probably qualifies as a "juvenile court" within the meaning of the federal statute. *See* Note 3, above.

[7]Other courts considering the issue have reached the same conclusion. *See, e.g., Canales v. Torres Orellana,* 800 S.E.2d 208, 217 (Va. Ct. App. 2017) ("Nothing in the relevant federal statutory scheme can fairly be read as an attempt by Congress to convey jurisdiction to state courts to actively participate in immigration and naturalization decisions."); *Cabinet for Health & Family Services v. N.B.D.,* 577 S.W.3d 73, 77 (Ky. 2019) ("Nothing contained in the Immigration and Nationality Act directs a state court to take any additional steps beyond carrying out their duties under state law. . . The Policy Manual also recognizes that the federal law does not specifically direct the states to undertake a SIJ classification hearing."); *Rubio v. Rubio Herrera,* 541 S.W.3d 564, 573 (Mo. Ct. App. 2017) ("Our reading of the SIJ statute is in accordance with the analysis in *Canales,* which is consistent with the idea that federal law cannot mandate a state court to make findings but may rely on state courts in the proper circumstances to make such findings that are in a child's best interest and required of the court"); *Ramirez v. Menjivar,* 134 Nev. 999, 432 P.3d 745 & n.4 (2018) (collecting contrary authority and rejecting it as "unpersuasive").

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COUNTY COURTS

Traffic infractions—Citation for mandatory hearing—Absence of defendant's signature—Dismissal

STATE OF FLORIDA, v. DARWIN ANTONIO NAVA SANCHEZ, Defendant. County Court, 3rd Judicial Circuit in and for Madison County, Civil Traffic Division. Case No. 2024 TR 9744. March 21, 2025. E. Bailey Browning, III, Judge. Counsel: Ted L. Hollander and Jeremy E. Cohen, The Ticket Clinic - A Law Firm, West Palm Beach, for Defendant.

ORDER OF DISMISSAL

This matter having come before this Court for Defendant's Motion To Dismiss, and the Court being fully informed, it is therefore:

ORDERED AND ADJUDGED that:

1. The case is DISMISSED as the citation fails to comply with Florida Statute 318.14(2) as the citation issued for a mandatory hearing lacks the Defendant's signature.

* * *

Criminal law—Driving under influence—Search and seizure—Vehicle stop—Failure to maintain single lane—Officer who observed vehicle driving onto fog line and lane divider lacked probable cause to stop defendant for failure to maintain single lane where no traffic was impacted—Further, lane deviation and slow speed did not provide reasonable cause for stop to determine if driver was ill, tired, or impaired—Motion to suppress is granted

STATE OF FLORIDA, v. MOHAMMAD ASIF, Defendant. County Court, 7th Judicial Circuit in and for Flagler County. Case No. 2024 CT 1107. April 29, 2025. D. Melissa Distler, Judge. Counsel: Susan Bexley, Assistant State Attorney, Office of the State Attorney, for State. G. Kipling Miller, for Defendant.

ORDER ON DEFENDANT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED EVIDENCE

THIS MATTER came before the Court on Tuesday April 15, 2025 on the Defendant's Motion to Suppress Unlawfully Obtained Evidence. The Court, having heard testimony from Flagler County Deputy Hosier, who effectuated the traffic stop, reviewed the video recordings admitted into evidence, and heard argument from both Counsel for the State and the Defendant, the Court makes the following findings of fact:

Findings of Fact:

On September 28, 2024, Deputy Hosier stopped and ultimately charged the Defendant MOHAMMAD ASIF with Driving under the influence with priors within Flagler County. The Defendant filed a Motion to Suppress, challenging the basis for a traffic stop. Deputy Hosier was the sole witness at the hearing on the motion, and his testimony was uncontroverted.

Deputy Hosier testified that the he was driving southbound on South State Street (US1.) and approximately Elm Street when he noticed the Defendant's vehicle. The vehicle was in the right southbound lane, driving "very slow," approximately 35mph. Once the deputy got closer to the vehicle, its speed began to accelerate. This section of South State Street is a 45mph zone and soon thereafter increases to 55mph. Deputy Hosier described what he considered to be failure to maintain a single lane, with the vehicle crossing over the fog line when it was in the right hand lane and drifting over the lane markers dividing the two southbound lanes approximately three times. The deputy testified that there was no traffic in the area impacted by the vehicle's described behavior. Likewise, he was unable to specifically articulate how far over the vehicle went beyond the lane dividers, where those instances occurred along the mile and half stretch of road, and/or how long each deviation lasted. The deputy described the lane deviations as sporadic.

The deputy was apologetic that his video had not begun recording when he thought it had, at the beginning of the described driving pattern. Because it was not recorded, and because the driving pattern was not articulated in his arrest report, Deputy Hosier was unclear on details and unable to articulate a sufficient basis for stopping the vehicle with suspicion of an ill, tired, or impaired driver. The deputy told the driver he was stopped for failing to maintain his lane, but he did not issue a citation for the alleged traffic violation. The deputy did have a dash mounted camera, but it did not begin recording until 30 seconds before the traffic stop. The recording, which was admitted into evidence as Defense Exhibit 1, does not reflect any driving pattern or lane deviations as described by Deputy Hosier.

The Defendant contests the validity of the stop, arguing that any lane deviation did not impact traffic and therefore was not a lawful basis to stop the vehicle. The State argued that the deputy had reasonable suspicion to conduct a traffic stop to determine if the driver was ill, tired, or impaired.

Conclusions of Law:

Having heard the testimony of Deputy Hosier under oath, coupled with the video recording, the Court finds that there is insufficient evidence that the driver of the vehicle was potentially ill, tired, or impaired. The Court further finds that, because no traffic was impacted by the alleged driving, the deputy lacked probable cause for a traffic infraction of failing to maintain a single lane. Therefore, the Court finds that the State failed to meet its burden and concludes that, based upon the totality of the circumstances, there was insufficient reasonable cause for the deputy to perform a traffic stop on the vehicle.

Based upon the above findings of fact, it is therefore ORDERED AND ADJUDGED that the Defendant's Motion to Suppress is GRANTED. All evidence after the Defendant MOHAMMAD ASIF is seized by being pulled over, including any statements, admissions, or items seized, are suppressed.

* * *

Criminal law—Driving under influence—Evidence—Breath test results—Officer failed to substantially comply with twenty-minute observation period required by administrative rule where officer was driving patrol vehicle with defendant in rear seat for six minutes of observation period, and officer exited vehicle at police station and could not see or hear defendant inside vehicle for 32 seconds—State will not be allowed to admit test results using shortcut allowed by administrative code

STATE OF FLORIDA, v. JEOFFREY GORDOVE CURTIS, Defendant. County Court, 7th Judicial Circuit in and for Volusia County. Case No. 2024 118665 MMDB. Division 83. May 13, 2025. David A. Cromartie, Judge.

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS

THIS CAUSE came before this Court upon the Defendant's Motion to Suppress, and after a review of the Motion, the argument of counsel, the contents of the Court file and the applicable law, it is hereby ORDERED as follows:

Factual Findings

On October 20, 2024, Jeoffrey Gordove Curtis, Defendant, was placed under arrest for Driving Under the Influence and Driving Under the Influence with Damage to Person or Property by Officer Keelan Santos of the Daytona Beach Police Department. Per the time stamp on Officer Santos' body camera, Defendant was placed under arrest at 23:09 (11:09 P.M.). Officer Santos verbally stated on the body camera that he was beginning the twenty-minute observation

period required by Florida Administrative Code 11D-008.007 (3) at 23:13 and 44 seconds (11:13 P.M. and 44 seconds).

The Defendant was transported from the site of the arrest by Officer Santos to the Daytona Beach Police Department. Officer Santos arrived at the Daytona Beach Police Department at 23:20 and 20 seconds (11:20 P.M. and 20 seconds). At 23:21 and 16 seconds (11:21 P.M. and 16 seconds), Officer Santos exited the vehicle and left Defendant unobserved within the vehicle for 32 seconds. Defendant was taken out of Officer Santos' vehicle to the intoxilyzer room. The intoxilyzer at the Daytona Beach Police Department was inoperable. Officer Santos then took Defendant back to his vehicle. At 23:35 and 35 seconds (11:35 P.M. and 35 seconds), Officer Santos left the Daytona Beach Police Department with the Defendant in the back of his vehicle.

Officer Santos arrived at the Ormond Beach Police Department at 23:50 and 56 seconds (11:50 P.M. and 56 seconds). During the drive from the Daytona Beach Police Department to the Ormond Beach Police Department, it was dark outside with no dome light in the vehicle. Officer Santos was playing music, it was raining and the windshield wipers were on. Officer Santos exited his vehicle at 23:51 and 43 seconds (11:51 P.M. and 43 seconds). The Defendant was left in the vehicle unobserved by Officer Santos. Officer Santos went to the back of his vehicle and removed his body camera to prevent any radio interference with the intoxilyzer instrument. Once the body camera was placed in the rear of the vehicle, the video went black, but the audio remained. Based on the audio, the Court determines that Officer Santos recontacted with and removed Defendant from the vehicle at 23:52 and 2 seconds (11:53 P.M. and 2 seconds). Officer Santos took Defendant into the Ormond Beach Police Department and had him sit on a bench awaiting the availability of the intoxilyzer instrument. Officer Santos continued to observe Defendant.

Officer James Feeley of the Ormond Beach Police Department was in the intoxilyzer room to administer a breath test to Defendant. Officer Feeley was wearing a body camera. The camera did not have a time stamp that corresponds with the actual time of day, but did record the time from when the body camera was activated. Officer Feeley relied on Officer Santos' observations regarding the 20-minute observation period. The Defendant blew into the instrument 1 minute and 35 seconds after the body camera was activated. The instrument detected a radio frequency interferent. Officer Feeley believed the instrument detected his body camera and restarted the process to administer the breath test. The first breath sample without a radio frequency interference detected was taken at 12:05 A.M. The second breath sample without a radio frequency interference detected was taken at 12:08 A.M.

Ruling of Court

When a violation of Florida Administrative Code 11D-008.007 (3) is alleged, the State must demonstrate substantial compliance. *Department of Highway Safety and Motor Vehicles v. Farley,* 633 So.2d 69 (Fla. 5th DCA 1994). Substantial compliance does not require, continuous face to face contact, but the officer must observe the defendant close enough to "reasonably ensure" that the arrestee does not regurgitate or take anything by mouth. *Kaiser v. State,* 609 So.2d 768 (Fla. 2nd DCA 1992). Based on the above findings of facts, the Court concludes that Florida Administrative Code 11D-008.007 (3) was not complied with. Officer Santos failed to reasonably ensure that the subject did not regurgitate, burp, or ingest anything for at least the last twenty minutes prior to the administration of the breath test. The first breath test without a radio frequency detected was at 12:05 A.M. Twenty minutes prior to 12:05 A.M. is 11:45 P.M. Officer Santos arrived at the Ormond Beach Police Department at 11:50 P.M. and 56 seconds. That means that for around six minutes of the last twenty minutes of the observation period, Officer Santos was driving his vehicle. This is certainly not the best practice.

Furthermore, Officer Santos exited his vehicle with Defendant still inside. Officer Santos closed the vehicle's door and was not able to see or hear the Defendant for approximately 32 seconds. The first breath test without a radio frequency interferent detected was taken approximately 12 minutes after Officer Santos recontacted Defendant when getting him out of the vehicle. Another twenty-minute observation should have been performed once Officer Santos recontacted with Defendant prior to the administration of the breath test to comply with Florida Administrative Code 11D-008.007 (3).

Therefore, the State cannot rely on the administrative shortcut allowed under Florida Administrative code to admit the results of the breath test into evidence. The State may or may not be able to get the breath test into evidence through a traditional scientific predicate with an expert witness. Based on the above, the Defendant's Motion to Suppress is **GRANTED** and the breath test will not be admissible through the administrative short cut allowed under administrative code. The Defense withdrew the portion of the Motion to Suppress regarding actual physical control and the Court, therefore, did not address this issue.

* * *

Criminal law—Traffic infractions—Reckless driving—Jury instructions—Motion for special instruction that "excessive speed alone cannot be reckless driving" is granted

STATE OF FLORIDA, Plaintiff, v. ELIJAH DANIEL DICKHAUS, Defendant. County Court, 8th Judicial Circuit in and for Alachua County. Case No. 01-2025-CT-000044-A. Division I. April 11, 2025. Meshon T. Rawls, Judge. Counsel: Mark Dobo and David Margulies, State Attorney's Office, Gainesville, for Plaintiff. Andrew W. McCain and Caleb S. Kenyon, Turner O'Connor Kozlowski, P.L., Gainesville, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SPECIAL JURY INSTRUCTION

THIS CAUSE is before this Court on the Defendant's Motion for Special Jury Instruction. The Court, after reviewing the file and being otherwise fully advised in the premises, finds the following:

1. The motion is GRANTED.

2. To be entitled to a special jury instruction, a defendant "must prove: (1) the special instruction was supported by the evidence; (2) the standard instruction did not adequately cover the theory of defense; and (3) the special instruction was a correct statement of the law and not misleading or confusing." *Stephens v. State*, 787 So. 2d 747, 756 (Fla. 2001) [26 Fla. L. Weekly S161a]. The Court must view the evidence in the light most favorable to the Defendant, even though that theory is controverted. *Albury v. State*, 910 So. 2d 930, 933 (Fla. 2d DCA 2005) [30 Fla. L. Weekly D2242b] (citing *Florio v. Eng*, 879 So. 2d 678, 679 (Fla. 4th DCA 2004) [29 Fla. L. Weekly D1834a]).

3. The Court reviewed a dash-camera video admitted by stipulation of the parties and finds that it supports the special instruction.

4. The Court finds that the standard instructions do not adequately cover the theory of defense.

5. The Court finds that the requested special instruction is a correct statement of the law and is neither misleading nor confusing.

6. As such, the Court grants the Defendant's Motion for Special Jury Instruction. The Court will instruct the jury that "excessive speed alone cannot be reckless driving."

* * *

Criminal law—Traffic infractions—Reckless driving—Partial judgment of acquittal is granted as to charge of reckless driving at time of crash—Although there is evidence that defendant was speeding and swerving among vehicles prior to crash, there is no evidence of anything beyond speeding at time of crash, and speeding alone is legally insufficient to be reckless driving

STATE OF FLORIDA, Plaintiff, v. ELIJAH DANIEL DICKHAUS, Defendant. County Court, 8th Judicial Circuit in and for Alachua County. Case No. 01-2025-CT-

000044-A. Division I. April 11, 2025. Meshon T. Rawls, Judge. Counsel: Mark Dobo and David Margulies, State Attorney's Office, Gainesville, for Plaintiff. Andrew W. McCain and Caleb S. Kenyon, Turner O'Connor Kozlowski, P.L., Gainesville, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL JUDGMENT OF ACQUITTAL

THIS CAUSE is before this Court on the Defendant's Motion for Partial Judgment of Acquittal. The Court, after reviewing the file and being otherwise fully advised in the premises, finds the following:

1. The motion is GRANTED.

2. The Court, in viewing evidence in the light most favorable to the State finds that the State proved that Mr. Dickhaus did drive recklessly in driving at an excessively high speed, 169 miles per hour, and by swerving between multiple cars, as was testified to by Ms. Ashcraft.

3. However, even in viewing the evidence in the light most favorable to the State, the Court finds that the State failed to establish a prima facie case that Mr. Dickhaus drove recklessly at the time relevant to the crash. No witness testified and no evidence showed that Mr. Dickhaus engaged in anything beyond excessive speeding at the time of the crash resulting in property damage and injury. The State's expert witness, Corporal Hughes testified that any swerving prior to the crash could not have contributed to the crash. The Court therefore finds that the State failed to prove that the recklessness caused either personal injury or property damage.

4. Therefore, even viewing the evidence in the light most favorable to the State, the only evidence contributing to the crash was speeding, which is legally insufficient to be reckless driving. *See Miller v. State,* 636 So. 2d 144 (Fla. 1st DCA 1994) (holding that "excessive speed alone is insufficient to constitute evidence of reckless driving"). *See also Harris v. State,* 318 So. 3d 645 (Fla. 2d DCA 2021) [46 Fla. L. Weekly D1070b] (reversing the defendant's violation of probation when the evidence showed the defendant was driving "more than fifty mph over the speed limit," "on a four-lane road with a median in a mostly residential area. . . . He was driving during the day without evidence of swerving within his lane, without evidence of weaving outside his lane.").

5. Because the remaining lesser included offenses are now the same, and Reckless Driving is a continuing offense, double jeopardy prevents both counts from being submitted to the jury.

6. The jury will receive a verdict with a single count of reckless driving.

* * *

Insurance—Personal injury protection—Coverage—Exhaustion of policy limits—Summary judgment in favor of insurer is warranted where medical provider failed to provide any summary judgment evidence to dispute that all PIP benefits available under policy were exhausted in payment of valid claims—No merit to argument that insurer was required to produce cashed checks for benefits to prove exhaustion where PIP statute provides that payment will be treated as being made on date check is placed in mail—Provider's conclusory speculation regarding compensability of codes allegedly paid to other providers does not create genuine issue of material fact as to validity of claims paid

UNIVERSAL X RAYS CORP., a/a/o Alejandro Botero Cano, Plaintiff, v. INFINITY AUTO INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2023-003360-SP-05. Section CC06. May 15, 2025. Luis Perez-Medina, Judge. Counsel: Robert J. Lee, Robert J. Lee, P.A.; and Gregg M. Goldfarb, Gregg M. Goldfarb, LLP, for Plaintiff. Jared Lord and Ana Maria Rodriguez, Law Offices of Terry M. Torres & Associates, Doral, for Defendant.

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

THIS CAUSE, having come before the Court upon Defendant's Motion for Final Summary Judgment and Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment, Request for Judicial Notice, and Plaintiff's Counter-Motion for Summary Judgment, with Counsel for Plaintiff, Robert J. Lee, Esq., and Counsel for Defendant, Jared Lord, Esq., in appearance, and the Court having heard argument of Counsel, and the Court having considered all pertinent pleadings, and the Court being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** as follows:

Background and Undisputed Facts

1. Plaintiff filed its Statement of Claim on February 15, 2023, seeking payment of Personal Injury Protection (PIP) Benefits for the single service date, August 31, 2022.

2. On April 6, 2023, the Defendant filed its Answer and Affirmative Defenses, raising the affirmative defenses of proper payment under the insurance policy and compliance under the policy by expending the full $10,000.00 in PIP benefits under the policy being sued upon.

3. The parties appeared for a calendar call on April 9, 2025, and the trial was set to begin on April 21, 2025.

4. Because of the Plaintiff's trial conflicts and the court's unavailability due to trial conflicts, the case was continued to the May 19, 2025, trial docket.

5. On May 6, 2025, the Court heard Argument on Defendant's Motion for Final Summary Judgment and Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment, Request for Judicial Notice, and Plaintiff's Countermotion for Summary Judgment.

6. The Court reviewed record evidence, including the Affidavit in support of Defendant's Motion, the PIP Log, Deposition Testimony of Defendant's Corporate Representative, and relevant case materials in evaluating the case's merits.

7. The issue on summary judgment was whether Defendant properly exhausted benefits related to the subject matter.

8. Plaintiff argued that Defendant's Corporate Representative could not articulate what payments to other providers had been cashed, reasoning that the payment of $10,000 in PIP benefits could only be completed when a provider cashes the check submitted by the Defendant.

9. Plaintiff also sought an adverse inference at the time of summary judgment of both payments purportedly made, as well as the timeliness of services for which Defendant tendered payment, arguing that Plaintiff requested this information in its Request(s) for Production of Documents and Defendant objected to its production. Plaintiff never sought Court intervention, seeking to quash Defendant's objection or lack of production.

Summary Judgment Standard

"The summary judgment standard provided for in [Rule 1.510] shall be construed and applied following the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317, . . . (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 . . . (1986); and *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 . . . (1986)" *In re Amends. To Fla. Rule Civ. Proc. 1.510*, 317 So. 3d 72, 74 (Fla. 2021) [46 Fla. L. Weekly S95a] (citation omitted). "Summary judgment is warranted where 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. Fed. R. Civ. P. 56(a)." *Auriga Polymers Inc. v. PMCM2, LLC as Tr. For Beaulieu Liquidating Trust*, 40 F. 4th 1273, 1281 (11th Cir. 2022) [29 Fla. L. Weekly Fed. C1396a]. Under this standard, "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." *In re: Amendments*, 317 So. 3d at 75 (quoting *Anderson*, 477 U.S. at 248). This standard "mirrors the standard for a directed verdict . . ."

Chowdhury v. BankUnited, N.A., 366 So. 3d 1130, 1133 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D691a]. "When deciding the appropriateness of a directed verdict or JNOV, Florida trial and appellate courts use the test of whether the verdict is, for JNOVs, or would be, for directed verdicts, supported by competent, substantial evidence." *Forbes v. Millionaire Gallery, Inc.*, 335 So. 3d 1260, 1262 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D281a] (citation omitted).

The focus for determining whether a genuine dispute exists, to bar summary judgment, is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Like the standard for directed verdict, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id*. at 251-252.

Legal Analysis

Rule 1.510(c) places an initial burden on the moving party to demonstrate the absence of a genuine issue of material fact in a claim or defense raised by the nonmoving party. *Celotex*, 477 U.S. at 322-23 (citations omitted); *see also Nissan Fire & Marine Ins. Co v. Fritz Companies, Inc.*, 210 F.3d 199, 1102 (9th Cir. 2000) ("In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial."). If the moving party fails to satisfy its initial burden then the nonmoving party need not present any evidence in opposition to the motion for summary judgment. *Id*. at 1102-03 ("If a moving party fails to carry its initial burden of production, [then] the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial. In such a case, the nonmoving party may defeat the motion for summary judgment without producing anything.").

In support of its Motion for Summary Judgment, Defendant provided the affidavit of Defendant's Corporate Representative, Melissa Barnard, including the exhibited PIP Log showing payments totaling $10,000.00 and the policy declarations page for the policy of insurance. On the PIP Log, the only three medical providers were UHealth Jackson Urgent Care ("Jackson"), ALS Medical Group Miami ("ALS"), and Universal X Rays Corp (hereafter "Universal"), the Plaintiff in this matter.

In Plaintiff's Response to Defendant's Motion for Summary Judgment (hereafter "Plaintiff's Response"), the Plaintiff argues that the Defendant failed to establish that they made any payment or, in the alternative, that Defendant made payments for codes that Plaintiff believes are invalid. To attempt to support these assertions, Plaintiff relies on a request for judicial notice of the fee schedule, unauthenticated screenshots, unauthenticated EORs attached to Plaintiff's response to Defendant's Motion for Summary Judgment, and a deposition transcript of Defendant's Corporate Representative with no attachments. Further, Plaintiff requests a negative inference that payments were not made because Defendant "failed to produce checks."

This Court finds that Plaintiff's argument fails as a matter of law and that there exists no genuine issue of material fact, that Defendant exhausted all PIP benefits available under the policy to the payment of valid claims. Plaintiff failed to provide any summary judgment evidence to dispute that all PIP benefits available under the subject policy were exhausted to the payment of valid claims.

The PIP Log, the deposition of Defendant's Corporate Representative, along with Melissa Barnard's affidavit, establishes the following: Universal billed for a single date of service (August 31, 2022), which was paid on October 7, 2022, upon timely receipt of the bill. The defendant paid a portion of the bill received and disputed two CPT codes, seeking additional documentation as to necessity. Final benefits exhaustion occurred on October 28, 2022, through a payment issued to ALS for subsequent medical services.

Pursuant to the PIP Statute, payment shall be treated as being made on the date a check or other valid instrument is placed in the mail. *See* Fla. Stat. §§ 627.736(4)(b)(5), 672.736(10)(d). As such, the only relevant question is whether the checks were issued, not whether they were endorsed and/or cashed. The PIP Log details the amounts of each payment and the dates on which they were made. Defendant's Corporate Representative confirmed the existence of those payments totaling $10,000.00 as provided under the policy. Additionally, upon review of the record evidence and, specifically, the deposition testimony at page 37-38 of the Deposition relied on by the Plaintiff, the Defendant's Corporate Representative testified that the documents produced by the Defendant did include copies of the checks as issued. Thus, the only competent evidence in the record is that the Defendant issued checks totaling $10,000.00 in payment for the claimant's medical treatment, and the Plaintiff has failed to produce any summary judgment evidence to suggest that the checks were not issued.

Finally, the record shows that Defendant properly exhausted benefits by paying valid claims. Plaintiff's mere conclusory speculation regarding compensability of codes allegedly paid to other providers does not create a genuine issue of material fact. First, Plaintiff presents no summary judgment evidence of what codes were or were not paid to any other provider. Plaintiff attempts to rely on unauthenticated EORs attached to Plaintiff's response to Defendant's motion for summary judgment. At oral argument, Plaintiff argued that the EORs were authenticated at Defendant's corporate representative's deposition. However, there exist no attachments to the deposition filed by the plaintiff at docket index number 77. The EORs relied upon by the Plaintiff are unauthenticated and, therefore, not competent summary judgement evidence. The only competent summary judgment evidence in the record regarding this issue is the testimony of Defendant's Corporate Representative in the affidavit in support of summary judgment (Docket Index Number 61), including but not limited to, paragraph number 5 where the representative testified that "All Personal Injury Protection ("PIP") benefits available to ALEJANDRO BOTERO CANO under the policy of insurance with Infinity, exhausted after payment of valid claims on or about October 28, 2022." Second, even if Plaintiff had presented evidence that these allegedly invalid claims were paid to another provider, Plaintiff has failed to present any summary judgment evidence to establish that the codes were not valid. Plaintiff relies only on the attorney's conclusory statements in response to Defendant's Motion for Summary Judgment, judicial notice of the Medicare Fee Schedule, and unauthenticated screenshots. Plaintiff points to no section in the Medicare Fee schedule and presents no competent summary judgment evidence to establish that Defendant paid any invalid code. Further, Defendant's policy of insurance includes the following language on page 7: "All personal Injury Protection benefits will be payable in accordance with Florida Statute S627.736."

Florida Statutes Section 627.736(5) states:

(a) The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges:

1. For emergency transport and treatment by providers licensed under chapter 401, Florida Statutes, 200 percent of Medicare;

2. For emergency services and care provided by a hospital licensed under chapter 395, Florida Statutes, 75 percent of the hospital's usual and customary charges;

3. For emergency services and care as defined by Section 395.002, Florida Statutes, provided in a facility licensed under chapter 395, Florida Statutes, rendered by a physician or dentist, and related

hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community;

4. For hospital inpatient services, other than emergency services and care, 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services;

5. For hospital outpatient services, other than emergency services and care, 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services; and

6. For all other medical services, supplies, and care, 200 percent of the allowable amount under:

i. The participating physicians fee schedule of Medicare Part B, except as provided in ii. and iii.;

ii. Medicare Part B, in the case of services, supplies and care provided by ambulatory surgical centers and clinical laboratories.

iii. The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

However, if such services, supplies or care are not reimbursable under Medicare Part B, we will reimburse to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under Section 440.13 of the Florida Statutes, and rules adopted thereunder which are in effect at the time such services, supplies, or care are provided. Services, supplies, or care that are not reimbursable under Medicare or workers' compensation are not required to be reimbursed by us.

Plaintiff made no showing that the alleged codes were not compensable under workers' compensation. Again, The only competent summary judgment evidence in the record regarding this issue is the testimony of Defendant's Corporate Representative and the affidavit in support of summary judgment (Docket Index Number 61) at paragraph number 5 that "All Personal Injury Protection ("PIP") benefits available to ALEJANDRO BOTERO CANO under the policy of insurance with Infinity, exhausted after payment of valid claims on or about October 28, 2022."

Therefore, Plaintiff's mere speculation regarding the PIP log, checks, and payments as to the other non-party provider does not create evidence to overcome a properly supported motion for summary judgment. *Matsushita Elec. Indus. Co., Ltd.* 475 U.S. at 586. There is no evidence of bad faith on the part of the Defendant. Plaintiff, via assignment of benefits, stands in the shoes of the insured. Defendant gained nothing by way of its actions. Defendant performed fully on its contract, and the insured received the full benefit of the contract.

ACCORDINGLY, it is ORDERED and ADJUDGED that Defendant's Motion for Final Summary Judgment is hereby GRANTED.

It is further ORDERED and ADJUDGED that Plaintiff shall take nothing by this action and Defendant shall go hence without day. The Court shall reserve jurisdiction as to Defendant's attorneys' fees and taxable costs.

* * *

Insurance—Personal injury protection—Exhaustion of policy limits—Where medical provider was compensated in full for single date of service that was sued upon, court need not reach issue of whether insurer properly exhausted policy limits in later payments to another provider—Insurer's motion for final summary judgment is granted

ARTANG REHABILITATION CENTER, LLC, a/a/o Oscar Leal Ramos, Plaintiff, v. INFINITY AUTO INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2023-092191-SP-26. Section CL02. April 21, 2025. Kevin Hellmann, Judge. Counsel: Carlos Friger and Alan Alvarez, The Alvarez Friger Trial Law Firm; and Fernando Pomares, Law Office of Fernando Pomares, P.A, for Plaintiff. Robert Phaneuf, Law Offices of Terry M. Torres & Associates, Doral, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT ON EXHAUSTION

THIS CAUSE, having come before the court on April 10, 2025, to be heard on Defendant's Motion for Summary Judgment on Exhaustion, and after reviewing the record, hearing argument of counsel, and being otherwise dully advised in the premises, it is hereby **ORDERED AND ADJUDGED** as follows:

BACKGROUND AND UNDISPUTED FACTS

1. Plaintiff filed its Statement of Claim on August 8, 2023 seeking payment of Personal Injury Protection (PIP) Benefits for the single date of service March 20, 2023.

2. On November 17, 2023, the Defendant filed its Answer and Affirmative Defenses raising the affirmative defenses of proper payment under the insurance policy as well as compliance under the policy of insurance by expending the full $10,000.00 in PIP benefits under the policy being sued upon.

3. The parties appeared for calendar call on March 5, 2025. The Plaintiff made an *ore tenus* motion to compel the deposition of the Infinity Adjuster within ten days, and the Defendant moved to continue trial so that the matter may be resolved in full by the pending motion for summary judgment. Both motions were granted, and the trial was reset to the April trial period for purposes of the deposition and motion for summary judgment.

4. The deposition of Infinity's Corporate Representative Moneka Evans was taken on March 19, 2025 and filed into the court record.

5. Plaintiff filed its Response to Defendant's Motion for Summary Judgment as to Benefits Exhausted Defense and cited to excerpted testimony of the Adjuster Moneka Evans, as well as other record materials and case law.

6. The Final Summary Judgment Hearing continued in due course as previously set between the parties to occur on April 10, 2025.

7. The Court reviewed record evidence, including the PIP Log, Explanations of Review, Deposition Testimony of Defendant's Corporate Representative and relevant case materials in evaluating the merits of the case.

Summary Judgment Standard

"The summary judgment standard provided for in [Rule 1.510] shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 4477 U.S. 317, . . . (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 . . . (1986); and *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 . . . (1986)" *In re Amends. To Fla. Rule Civ. Proc. 1.510*, 317 So. 3d 72, 74 (Fla. 2021) [46 Fla. L. Weekly S95a] (citation omitted). "Summary judgment is warranted where 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. Fed. R. Civ. P. 56(a)." *Auriga Polymers Inc. v. PMCM2, LLC as Tr. For Beaulieu Liquidating Trust*, 40 F. 4th 1273, 1281 (11th Cir. 2022) [29 Fla. L. Weekly Fed. C1396a]. Under this standard, "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." *In re: Amendments*, 317 So. 3d at 75 (quoting *Anderson*, 477 U.S. at 248). This standard "mirrors the standard for a directed verdict . . ." *Chowdhury v. BankUnited, N.A.*, 366 So. 3d 1130, 1133 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D691a]. "When deciding the appropriateness of a directed verdict or JNOV, Florida trial and appellate courts use the test of whether the verdict is, for JNOVs, or would be, for directed verdicts supported by competent, substantial evidence." *Forbes v. Millionaire Gallery, Inc.*, 335 So. 3d 1260, 1262 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D281a] (citation omitted).

The focus for determining whether a genuine dispute exists, so as to bar summary judgment, is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Like the standard for directed verdict, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id*. at 251-252.

Legal Analysis

Rule 1.510(c) places an initial burden on the moving party to demonstrate the absence of a genuine issue of material fact in a claim or defense raised by the nonmoving party. *Celotex*, 477 U.S. at 322-23 (citations omitted); *see also Nissan Fire & Marine Ins. Co v. Fritz Companies, Inc.*, 210 F.3d 199, 1102 (9th Cir. 2000) ("In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial."). If the moving party fails to satisfy its initial burden then the nonmoving party need not present any evidence in opposition to the motion for summary judgment. *Id*. at 1102-03 ("If a moving party fails to carry its initial burden of production, [then] the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial. In such a case, the nonmoving party may defeat the motion for summary judgment without producing anything.").

In support of its Motion for Summary Judgment, Defendant provided the affidavit of Defendant's Corporate Representative, Moneka Evans, including the exhibited PIP Log showing payments totaling $10,000.00 well as the policy declarations page for the policy of insurance. On the PIP Log, only two medical providers were Oasis Therapy and Rehab Center ("Oasis") and Artang Rehabilitation Center LLC (hereafter "Artang"), the Plaintiff in this matter.

In Plaintiff's Response to Defendant's Motion for Summary Judgment (hereafter "Plaintiff's Response"), the Plaintiff argues that the Defendant "did not receive the Oasis bills for dates of service March 20-March23 until July 19, 2023."[1] The Plaintiff furthermore argues that Moneka Evans testified that the bills for the sole other provider, Oasis, were not timely received by Infinity, specifically arguing that the bills for Oasis were received over 90 days from the medical dates of service and should be therefore "considered late per billing requirements."[2]

Conversely, upon review of the record evidence and deposition testimony, the Defendant's Corporate Representative Moneka Evans also testified that Oasis also submitted proof of timely mailing its bills.[3]

This Court finds that the Plaintiff's argument fails as a matter of law and that there exists no genuine issue of material fact that Artang billed for the single date of service March 20, 2023 and was paid in accordance with the applicable fee schedule by payment issued on May 4, 2023.

The PIP Log indicates the following: Artang billed for a single date of service (March 20, 2023) which was paid on May 4, 2023, upon timely receipt of the bill. Final benefits exhaustion occurred on August 2, 2023 through a payment issued to Oasis for subsequent medical services. As all services billed by Artang were compensated prior to exhaustion, Plaintiff's rights were not harmed.

The Plaintiff's Statement of Claim listed a single date of service (March 20, 2023) that was sued upon. This date of service was fully compensated. Therefore, this Court does not have to reach the question as to whether the bills for Oasis paid (*after* issuance of payment to the Plaintiff) somehow harmed the Plaintiff, as the only bill sued upon, for a single date of service, was compensated in full. This compensation of PIP benefits was paid *prior to* the issuance of any additional payments to the only other clinic appearing on the PIP Log, to the satisfactory exhaustion of the full $10,000.00 in PIP benefits under the contract.

First, the Plaintiff does not have standing to dispute payment to another provider. *See Atlas Medical and Orthopedics, LLC d/b/a Dr. Rahat Faderani, DO, MHP, PA a/a/o Eliana Campos v. Progressive Express Ins. Co.* 25 Fla. L. Weekly Supp. 984a (Broward Cty. Ct. Oct. 30, 2017); *Susanti K. Chowdhury, MD PA a/a/o Angela Hammel v. Progressive Amer. Ins. Co.*, 24 Fla. L. Weekly Supp. 691c (Pinellas Cty. Ct. October 16, 2016). Secondly, even if this Court were to entertain the argument respecting the payments to the third party provider, the subsequent payments were issued after full payment to the Plaintiff and had no bearing on the manner of compensation, or the amount of compensation, to the Plaintiff.

Furthermore, pursuant to the PIP Statute, payment shall be treated as being made on the date a check or other valid instrument is placed in the mail. *See* Fla. Stat. §§ 627.736(4)(b)(5), 672.736(10)(d). The PIP Log details the amounts of each payment and the dates on which they were made. Defendant's Corporate Representative confirmed the existence of those payments to both Artang and Oasis totaling the $10,000.00 as provided under the policy. Additionally, the evidence shows that payments were made to Oasis *after* payment in full to Artang. Furthermore, Defendant's Corporate Representative Moneka Evans also indicated that Plaintiff enjoyed the benefit of overpayment in her testimony.

> "Q. [Phaneuf] If you were to run a calculation right now, just ballpark, as to how much Artang, the plaintiff, has been overpaid based on all these factors, do you have an approximation as to how much Artang has been overpaid?
>
> [Opposing counsel objection]
>
> A. [Corp Rep Moneka Evans] $104.11"[4]

Finally, the record shows that Defendant properly exhausted benefits through the payment of valid claims. Plaintiff's mere speculation regarding compensability or timing of the payments to Oasis would have no bearing on the amount of compensation to the Plaintiff, as those bills were for future dates of medical billing, occurring both prior to the date of benefits exhaustion, and subsequent to the compensation the PIP benefits of all medical services rendered by the Plaintiff in this action. Therefore, Plaintiff has no legal capacity to challenge payments issued to the only other provider, even if made subsequently.

Therefore, Plaintiff's mere speculation as to the other non-party provider does not create evidence to overcome a properly supported motion for summary judgment. *Matsushita Elec. Indus. Co., Ltd.* 475 U.S. at 586. There is no evidence of bad faith on the part of the Defendant, Plaintiff, via assignment of benefits, stands in the shoes of the insured. Defendant gained nothing by way of its actions. It performed fully on its contract, and the insured received the full benefit of the contract.

ACCORDINGLY, it is ORDERED and ADJUDGED that Defendant's Motion for Final Summary Judgment is hereby GRANTED.

It is further ORDERED and ADJUDGED that Plaintiff shall take nothing by this action and Defendant shall go hence without day. The Court shall reserve jurisdiction as to Defendant's attorneys' fees and taxable costs.

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[1]Page 4, Unnumbered Paragraph 3 of Plaintiff's Response.

[2]Page 4, Unnumbered Paragraph 3 of Plaintiff's Response citing to Evans Depo 17:1-10

[3]Evans Depo 23:3-25

[4]Evans Depo 28:8-13

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Reimbursement—Medicare budget neutrality adjustment is not applicable when determining reimbursement amounts under Florida PIP law

UNIVERSAL X RAYS CORP., a/a/o Danay Rodriguez, Plaintiff, v. STATE FARM MUTUAL AUTO. INS. CO., Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2022-048778-SP-23. Section ND06. April 30, 2025. Ayana Harris, Judge. Counsel: Robert B. Goldman, Florida Advocates, Dania Beach, for Plaintiff. Gregory Willis, Cole Scott and Kissane, for Defendant.

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

THIS CAUSE, came before the court on: Defendant's Motion for Summary Judgment and Memorandum of Law on 9810A Policy filed April 15, 2024 [Index: 50]; Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment on 9810A Policy and Cross-Motion for Partial Summary Judgment, filed August 30, 2024 [Index: 70]; and Defendant's Opposition to Plaintiff's Motion for Summary Judgment as to the Applicability of Budget Neutrality Factor and Supplemental Memorandum of Law in Support of Defendant's Motion for Summary Judgment Regarding 9810A policy, filed February 5, 2025 [Index: 87]. The Court, after reviewing the record, hearing the arguments of counsel, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

FACTUAL BACKGROUND

1. Danay Rodriguez was the named insured under a State Farm Car Policy, that includes coverage for personal injury protection (PIP) benefits and medical payments coverage, and which provides notice that Defendant will use the schedule of maximum charges set forth in section 627.736(5)(a)1.-5., Fla. Stat., for the reimbursement of medical benefits.

2. On or about February 28, 2019, Danay Rodriguez was involved in a motor vehicle accident (the "Motor Vehicle Accident"), after which Ms. Rodriguez received diagnostic imaging services provided by Defendant, consisting of radiologic examinations of the cervical spine (CPT code 72040), thoracic spine (CPT code 72070), lumbosacral spine (CPT code 72100) and right and left shoulder (CPT code 73070) (the "Diagnostic Imaging Services").

3. Plaintiff billed Defendant directly for the Diagnostic Imaging Services under an assignment of benefits.

4. The Court must now determine whether the amount paid by Defendant for the CPT codes at issue satisfies its obligations under Florida law.

PROCEDURAL BACKGROUND

1. The parties agree that the appropriate payment methodology to be used in determining reimbursement is the 2007 non-facility limiting charge fee schedule as set forth by the Third District Court of Appeal in *Priority Med. Centers, LLC v. Allstate Ins. Co.*, 319 So. 3d 724 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D978b].

2. Defendant filed a motion for summary judgment, arguing that it is entitled to Final Summary Judgment because it properly applied the PFS (physician fee schedule) payment formula found in the schedule of maximum charges pursuant to section 627.736, Florida Statutes.

3. Plaintiff filed a cross-motion for summary judgment asserting that Defendant underpaid the subject charges for the Diagnostic Imaging Procedures, as 200% of the 2007 limiting charge in Miami-Dade County for the Diagnostic Imaging Procedures is $421.38 based upon the Medicare General Formula, while Defendant reimbursed $413.14, which results in a discrepancy of $8.24.

4. Plaintiff has stipulated that Defendant properly elected the Medicare Part B Fee Schedule method of PIP benefit reimbursement.

5. Defendant has stipulated that the Diagnostic Imaging Services were both related to the Motor Vehicle Accident and medically necessary.

SUMMARY JUDGMENT STANDARD

Pursuant to Florida Rule of Civil Procedure 1.510(a) "[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." "The summary judgment standard provided for in [Rule 1.510] shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett,* 477 U.S. 317, . . . (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 . . . (1986); and *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574 . . . (1986)" *In re Amends. To Fla. Rule Civ. Proc. 1.510,* 317 So. 3d 72, 74 (Fla. 2021) [46 Fla. L. Weekly S95a] (citation omitted). "Summary judgment is warranted where 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. Fed. R. Civ. P. 56(a)." *Auriga Polymers Inc. v. PMCM2, LLC as Tr. For Beaulieu Liquidating Trust,* 40 F. 4th 1273, 1281 (11th Cir. 2022) [29 Fla. L. Weekly Fed. C1396a].

Under this standard, "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." *In re: Amendments,* 317 So. 3d at 75 (quoting Anderson, 477 U.S. at 248). This standard "mirrors the standard for a directed verdict . . ." *Chowdhury v. BankUnited, N.A.,* 366 So. 3d 1130, 1133 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D691a]. "When deciding the appropriateness of a directed verdict or JNOV, Florida trial and appellate courts use the test of whether the verdict is, for JNOVs, or would be, for directed verdicts supported by competent, substantial evidence." *Forbes v. Millionaire Gallery, Inc.,* 335 So. 3d 1260, 1262 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D281a] (citation omitted).

The focus for determining whether a genuine dispute exists, so as to bar summary judgment, is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. Like the standard for directed verdict, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-252.

ANALYSIS AND FINDINGS

Centers for Medicare and Medicaid Services ("CMS") uses the Medicare Fee Schedule to reimburse physician services. The Medicare Fee Schedule provides for the lowest possible reimbursement authorized by the No Fault Act. In other words, an insurance company may not reimburse a medical provider less than the amount proscribed by the Medicare Fee Schedule. *See Nationwide Mutual Fire Ins. Co. v. AFO Imaging, Inc.*, 71 So. 3d 134 (Fla. 2d DCA 2011) [36 Fla. L. Weekly D1463b] (". . .the participating physicians schedule of Medicare Part B is the operative fee schedule to be utilized in computing the minimum amount the Insurance Companies were statutorily authorized to remit."); *Windsor Imaging v. State Farm Mut. Auto. Ins. Co.*, 19 Fla. L. Weekly Supp. 215b (Broward Cty. Ct., Dec. 12, 2011) ("The No-Fault Act set the floor with respect to the *minimum* reimbursement under Florida Statute 627.736(5)(a)(2)(f). . .").

The Medicare Fee Schedule formula, which determines the allowable amount under the Medicare Part B participating physicians fee schedule, must be utilized by the carrier to ensure proper payment

by private payers to private medical providers.

The general formula for calculating the Medicare fee schedule amount for a given service and fee schedule area can be expressed as:

Payment =
[(RVU work x GPCI work) + (RVU PE x GPCI PE) + (RVU malpractice x GPCI malpractice)] x CF.

71. Fed. Reg. 69629 (the "General Formula").

Plaintiff, using the general formula for calculating the Medicare fee schedule amount for the five (5) Diagnostic Imaging Procedures at issue in this case, contends that 200% of the 2007 limiting charge in the applicable locality, Miami-Dade County, totals $431.64. Defendant, utilizing 200% of the 2007 limiting charge in the applicable locality (Miami-Dade), contends that the amount due to Plaintiff is $413.14. The difference is based on Defendant's use of the budget neutrality adjustment ("BNA") which resulted in a payment discrepancy of $8.24. A determination of whether Defendant properly utilized the BNA in calculating the amount due to Plaintiff requires a brief examination of the purpose and context of the BNA as it relates to the Medicare Fee Schedule:

In the mid-2000's, CMS instituted a plan to offset the increases in its expenditures for the purposes of balancing the Medicare budget. The solution chosen by CMS was to adopt the usage of a Budget Neutrality Adjustor Value, which was to be applied to the Medicare Fee Schedule. A Budget Neutrality Adjuster Value is a value which is injected into the "General Formula" by applying it to the "Work RVU" variable. This new variable is injected into the formula for the purpose of reigning in payments made by Medicare to Medicare beneficiaries in order to balance the Medicare budget. Medicare uses Budget Neutrality Adjustor Values to balance its budget year after year; the numerical value is changed in accordance with Medicare's budget needs.

In adopting the usage of its Budget Neutrality Adjustor Value, CMS took great care to recognize that its Medicare Fee Schedule was commonly and widely used by private payors to determine the reasonableness of medical charges. CMS was concerned that its adoption of the Budget Neutrality Adjuster Value could cause the resulting reduced payment amounts to be adopted in the private context. In other words, CMS was concerned about the integrity of its Medicare Fee Schedule being compromised by the improper adoption of its Medicare-only Budget Neutrality Adjustor Value.

Accordingly, CMS released a public statement reiterating that the Modified Formula was *solely* to be used for payment of claims by Medicare to Medicare providers and/or beneficiaries:

> Medicare law requires that CMS impose a budget neutrality adjustment if changes in RVUs will cause an increase or decrease in overall fee schedule outlays of more than $20 million, compared with what they would have been in the absence of the changes. CMS estimates that the proposed work RVU changes would increase expenditures by approximately $4.0 billion. CMS is proposing to create a separate budget neutrality adjuster that can be applied just to the work RVUs for Medicare purposes, without changing the number of work RVUs assigned to a particular service. **This would preserve the integrity of the existing work RVU structure, which is often adopted by other payers.**

See Press Release dated June 21, 2006, Centers for Medicare & Medicaid Services, https://www.cms.gov/newsroom/press-releases/cms-announces-proposed-changes-physician-fee-schedule-methodology. (emphasis added).

Pursuant to the CMS Final Rule in 2007, there was an added Budget Neutrality Adjustor Value to balance the budget, which applied a budget neutrality adjustor value of .8994 to the "Work RVU" variable. *See* Federal Register, 71 FR 231 pg. 69628, 69629 (Dec. 1, 2006). Therefore, the calculation for Medicare's budget neutrality was as follows:

[(Work RVU x Budget Neutrality Adjustor (.08994)) x (Work GPCI) + (Non-Facility PE RVU x PE GPCI) + (MP RVU x MP GPCI)] x Conversion Factor

Fla. Stat. § 627.736(5) allows an insurance carrier to pay the minimum amount owed to a provider by utilizing the allowable amount under the Medicare Fee Schedule for the subject year at issue so long as it is not less than the applicable fee schedule for 2007; however, a clear election of this payment methodology does not authorize the carrier to a carte blanche application of any and all potential Medicare payment reductions. Instead, the Legislature "intended for a specific Medicare schedule to be incorporated into the PIP statute, rather than either, any, or all of the schedules." *SOCC, P.L. v. Mut. Auto. Ins. Co.*, 95 So.3d 903, 908 (Fla. 5th DCA 2012) [37 Fla. L. Weekly D1663a]. "Consequently, while an insurer may limit reimbursement to 80% of 200 percent of the allowable amount under the participating physicians schedule of Medicare Part B, no other sources of limitations are permissible under Florida's No Fault law." *Id.*

The distinction between the actual Medicare Physician Fee Schedule and the budget neutrality payment amounts to Medicare Beneficiaries was further made clear in the Federal Register final rule published on December 1, 2006, and in effect March 2007:

> To calculate the payment for every physician service, the components of the fee schedule (physician work, PE, and malpractice RVUs) are adjusted by a geographic practice cost index (GPCI). The GPCIs reflect the relative costs of physician work, PEs, and malpractice insurance in an area compared to the national average costs for each component. Payments are converted to dollar amounts through the application of a CF, which is calculated by the Office of the Actuary and is updated annually for inflation.

76 Fed. Reg. 42772.

In PIP matters, such as the instant matter, the Defendant is a private payor whose policy relies on the full allowable amount under the Medicare Fee Schedule to determine the amount it will pay a medical provider. Defendant is neither Medicare, nor a Medicare contractor. Accordingly, due to its policy election, Defendant is required to utilize the Medicare Fee Schedule formula to determine the appropriate, allowable amount due and owing. Defendant's failure to properly calculate the allowable amount under the Medicare Part B fee schedule resulted in a breach of its insurance policy.

The Court also recognizes the holding in *Priority Med. Centers, LLC v. Allstate Ins. Co.*, 319 So. 3d 724 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D978b], a binding decision which requires a finding that Defendant's utilization of the BNA resulted in an underpayment to Plaintiff in the amount of $8.24, as Defendant improperly added the BNA to the general formula when determining the appropriate 2007 Medicare Non-facility Limiting Charge amount. Therefore, Defendant's payment fell below the 2007 Medicare Part B Non-facility Limiting Charge base "floor" amount by utilizing the BNA reduction.

Accordingly, for the foregoing reasons, it is hereby **ORDERED and ADJUDGED** that Plaintiff's Motion for Partial Summary Judgment is **GRANTED** and Defendant's Motion for Summary Judgment is **DENIED.**

* * *

Insurance—Personal injury protection—Coverage—Conditions precedent—Examination under oath—Failure to appear—Insurer's payment of PIP benefits to another provider did not waive insurer's right to maintain EUO No-Show defense in suit brought by provider whose entire claim was denied due to insured's failure to attend two scheduled EUOs

MANUEL V. FEIJOO, M.D., P.A., a/a/o Roberto Gonzalez, Plaintiff, v. INFINITY

INDEMNITY INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2020-005734-SP-25. Section CG02. April 15, 2025. Gloria Gonzalez-Meyer, Judge. Counsel: George David, George David, P.A., for Plaintiff. Robert Phaneuf, Law Offices of Terry M. Torres & Associates, Doral, for Defendant.

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

THIS CAUSE, having come before the court on April 3, 2025, to be heard on Defendant's Motion for Final Summary Judgment and Plaintiff's Motion for Final Summary Judgment and Plaintiff's Opposition to Defendant's Motion for Summary Judgment, and after reviewing the record, hearing argument of counsel, and being otherwise dully advised in the premises, it is hereby **ORDERED AND ADJUDGED** as follows:

BACKGROUND AND UNDISPUTED FACTS

1. Claimant Roberto Gonzalez made a claim for involvement in a motor vehicle accident dated May 29, 2019.

2. On August 16, 2019, Defendant sent a notice for an Examination Under Oath to Roberto Gonzalez setting the Claimant's Examination Under Oath for August 30, 2019.

3. After Claimant failed to appear for the EUO on August 30, 2019, Defendant sent a second notice for an Examination Under Oath.

4. Defendant sent a second Examination Under Oath notice, setting the EUO for September 23, 2019, and served the notice on the Claimant.

5. The Claimant again failed to appear for the September 23, 2019, Examination Under Oath.

6. Due to the Claimant's failure to comply with the condition precedent of appearing for the Examinations Under Oath, Defendant denied coverage as to this Plaintiff.

7. Defendant paid Miami Open MRI's Medical Bills in response to a presuit demand letter in the amount of $1,438.30. Plaintiff in this action is not Miami Open MRI.

8. The Plaintiff in this action has not been paid any PIP benefits, in any part.

THE EUO REQUIREMENT

9. Defendant is not responsible for payment of the medical bills after the Defendant timely submitted the requests for the claimant to sit for the EUOs, and the Claimant thereafter failed to comply with the contractual conditions of the policy.

10. Fla. Stat. § 627.736(6)(g) states, in pertinent part

> (g) An insured seeking benefits under ss. 627.730-627.7405, including an omnibus insured, must comply with the terms of the policy, which include, but are not limited to, submitting to an examination under oath. The scope of questioning during the examination under oath is limited to relevant information or information that could reasonably be expected to lead to relevant information. Compliance with this paragraph is a condition precedent to receiving benefits . . .
> § 627.736(6)(g).

11. Infinity's insurance policy tracks the statute, and it provides, in relevant part:

> **Examination Under Oath**
>
> As a condition precedent to receiving personal injury protection benefits under the policy, any insured making a claim for personal injury protection benefits must submit as often as we require to examinations under oath outside the presence of anyone other than the person's attorney and, if a minor, the legal guardian of the minor may also be present. The scope of questioning during the examination is limited to relevant information or information that could reasonably be expected to lead to relevant information.

12. The court has considered both the Defendant's Motion for Final Summary Judgment, including the affidavit in support thereof, as well as the transcript of Lindsey Archer as referenced by the Plaintiff's Motion for Summary Judgment.

13. Furthermore, the court has reviewed the entirety of the Plaintiff's argument concerning waiver and the chief cases relied upon by the Plaintiff which were provided by Plaintiff's counsel through e-mail on the day of the Summary Judgment Hearing in support of the Plaintiff's case in chief. Specifically, *Echo v. MGA Insurance Company*, 157 So. 3d 507 and *Ifergane v. Citizens Property Ins. Cor.*, 232 So. 3d 1063 were reviewed by the court in support of the Plaintiff's contention that Infinity functionally waived or forfeited any right to coverage by disbursing funds to any other medical provider besides the Plaintiff in this action.

14. Nothing in support of the Plaintiff's position has been shown to rebut or challenge the authenticity of the notices, the validity of the provision, or the factual contention that EUO notices were validly delivered and that the EUOs were requested of the claimant.

Summary Judgment Standard

"The summary judgment standard provided for in [Rule 1.510] shall be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317, . . . (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 . . . (1986); and *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 . . . (1986)" *In re Amends. To Fla. Rule Civ. Proc. 1.510*, 317 So. 3d 72, 74 (Fla. 2021) [46 Fla. L. Weekly S95a] (citation omitted). "Summary judgment is warranted where 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. Fed. R. Civ. P. 56(a)." *Auriga Polymers Inc. v. PMCM2, LLC as Tr. For Beaulieu Liquidating Trust*, 40 F. 4th 1273, 1281 (11th Cir. 2022) [29 Fla. L. Weekly Fed. C1396a]. Under this standard, "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." *In re: Amendments*, 317 So. 3d at 75 (quoting *Anderson*, 477 U.S. at 248). This standard "mirrors the standard for a directed verdict . . ." *Chowdhury v. BankUnited, N.A.*, 366 So. 3d 1130, 1133 (Fla. 3d DCA 2023) [48 Fla. L. Weekly D691a]. "When deciding the appropriateness of a directed verdict or JNOV, Florida trial and appellate courts use the test of whether the verdict is, for JNOVs, or would be, for directed verdicts supported by competent, substantial evidence." *Forbes v. Millionaire Gallery, Inc.*, 335 So. 3d 1260, 1262 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D281a] (citation omitted).

The focus for determining whether a genuine dispute exists, so as to bar summary judgment, is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Like the standard for directed verdict, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id*. at 251-252.

Legal Analysis

Rule 1.510(c) places an initial burden on the moving party to demonstrate the absence of a genuine issue of material fact in a claim or defense raised by the nonmoving party. *Celotex*, 477 U.S. at 322-23 (citations omitted); *see also Nissan Fire & Marine Ins. Co v. Fritz Companies, Inc.*, 210 F.3d 199, 1102 (9th Cir. 2000) ("In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial."). If the moving party fails to satisfy its initial burden then the nonmoving party need not present any evidence in

opposition to the motion for summary judgment. *Id.* at 1102-03 ("If a moving party fails to carry its initial burden of production, [then] the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial. In such a case, the nonmoving party may defeat the motion for summary judgment without producing anything.").

In support of its Motion for Summary Judgment, Defendant provided the affidavit of LaDonna Newton (Docket 135) which provided, in relevant part, that Roberto Gonzalez claimed benefits under his policy of insurance, that Infinity sent a notice of Examination Under Oath on two occasions, and that Roberto Gonzalez failed to appear for each.

Additionally, the deposition of Lindsey Archer, corporate representative for Defendant, confirmed in multiple parts of her deposition testimony as to the proper notice.[1]

The court has reviewed all record evidence including the testimony of both Lindsey Archer as well as the affidavit of LaDonna Newton as exhibited in both Plaintiff and Defendant's court filings. Additionally, the court has reviewed the policy, the PIP Log and two filed dismissals in unrelated cases as attached to the Plaintiff's Motion.

There is no genuine issue of material fact. The parties agree that this matter is ripe for summary disposition based on the established record.

The sole argument raised by Plaintiff in hearing is

- Whether Defendant waived its right to maintain its EUO No-Show Defense by issuing payment to another medical provider (Miami Open MRI)
- Whether the payment of PIP benefits to Miami Open MRI constituted a "confession of judgment" in this instance with respect to Plaintiff Manuel V. Feijoo. Specifically, as argued in hearing, Plaintiff relies exclusively on *Ifergane v. Citizens Prop. Ins. Corp.*, 232 So. 3d 1063 (Fla. 3d DCA 2017) [42 Fla. L. Weekly D2198a] and *Echo v. MGA Ins. Co.*, 157 So. 3d 507 (Fla. 1st DCA 2015) [40 Fla. L. Weekly D442a] and thereafter submitted copies of those opinions on request of the court during hearing.

Or in other words, did the payment to Miami Open MRI constitute a "confession of judgment" under the above-referenced cases.

As a preliminary matter, "[t]he confession of judgment doctrine applies where the insurer has denied benefits the insured was entitled to, forcing the insured to file suit, resulting in the insurer's change of heart and payment before judgment." *State Farm Fla. Ins. Co. v. Lorenzo*, 969 So. 2d 393, 395. Generally speaking, when a litigant receives a payment of the thing sued upon after filing suit, this would be considered a functional equivalent of judgment. In the case at bar, this suit remains between Manuel V. Feijoo, M.D., P.A. and Infinity Indemnity Insurance Company. There is no dispute between the parties that no PIP benefits were conferred upon the Plaintiff in this action, presuit or otherwise. The sole point of contention is the claim that payment was made to another provider as indicated on the PIP Log.

Generally, "[. . .] courts [. . .] do not apply the [confession of judgment] doctrine where the insureds were not forced to sue to receive benefits; applying the doctrine would encourage unnecessary litigation by rewarding a race to the courthouse for attorney's fees even where the insurer was complying with its obligations under the policy." *Id.* at 395. In the case at bar, there were no payments issued to the Plaintiff in this action, during presuit, or post-suit.

This is distinguishable from *Ifergane* as relied upon by the Plaintiff. Most noteworthy is that the carrier in that case issued an initial payment to the Plaintiffs and sought to conduct an EUO on request for additional payment. *See also*, "Citizens made an initial payment of $44,955.08 on the claim. When Haim requested additional payment, Citizens requested a sworn proof of loss and sought examinations under oath of both Haim and Alexandra. Haim complied; Alexandra did not. Citizens notified Alexandra that without her examination under oath (EUO), it could not complete its investigation of the claim or determine whether Haim was entitled to coverage under the policy as a "resident spouse" at the time of loss." *Id.* 1064.

The facts of the present case are materially distinguishable in that no initial payment was made to the Plaintiff in this action. And even if a payment had been made, the 3d DCA ruled in *Ifergane* that payment, in and of itself, is not a dispositive factor in determining the validity of an EUO request under a policy. *See also* "If the letter was not a denial, but a request for further information, then **Citizens did not waive its right to demand an EUO**, and under our prior decision in *Ifergane I*, Alexandra's noncompliance precludes coverage" *Ifergane v. Citizens Prop. Ins. Corp.*, 232 So. 3d 1063, 1065. [Emphasis supplied].

Accordingly, by Plaintiff's own case law, an initial payment does not necessarily vitiate the clause permitting an insurance company to conduct an EUO. As to the facts at hand, not only was there no initial payment to Plaintiff prior to requesting the EUOs in this PIP case, the Plaintiff cannot argue that any payment to another medical provider at some point would have been a forfeiture of the policy provisions.

The Plaintiff also provided a second opinion regarding material misrepresentation. Upon review, this second opinion provided that the ruling of summary judgment in favor of the insurance carrier was indeed partly affirmed on appeal. This is wholly different and inapplicable to the facts in this matter, as there was no claimed rescission of the policy in this case. Infinity did not rescind the policy but instead denied PIP benefits specifically to this Plaintiff for failure to comply with conditions precedent, consistent with a prospective coverage defense. In ruling partly for the insurance carrier, it is noted that the appellate court "[. . .] affirm[ed] the trial court's granting of partial summary judgment in favor of MGA on the issue of material representation. [. . .] however, the trial court's conclusions that Appellant lacked standing to establish that MGA forfeited its right to rescind the contract at issue, based on that misrepresentation." *Echo v. MGA Ins. Co.*, 157 So. 3d 507, 514 (1st DCA 2015) [40 Fla. L. Weekly D442a].

In this case, standing is not at issue between the parties. One of the main contentions in *Echo* was based on rescission of the policy. To fully understand the depth of the "confession" doctrine advanced in *Echo*, this court takes note that the PIP Log for Mrs. Gwendolyn Echo (the claimant) at the trial level reflected a total payout of $10,000.00 including $358.21 as indicated in the record evidence before the lower court. This is vastly different from the case at bar.

In the case of *Echo*, full PIP benefits were paid to the claimant (after an initial denial). These facts are distinct in that the Plaintiff in this matter was not paid any PIP benefits at any point, and specifically not the full $10,000.00 plus applicable interest as in the case cited by the Plaintiff.

Therefore, in the facts stipulated between the parties and in the case at bar, it is without dispute between the parties that the claimant failed to appear for the requested EUOs and that the policy was in full force and effect during the time of the requesting of the EUOs. It is also without dispute that the Plaintiff did not receive any PIP benefits or indication from Defendant that Defendant would agree to cover the medical providers' benefits due to the failure of the claimant to attend the requested EUOs.

Based on the foregoing, and pursuant to Florida Rule of Civil Procedure 1.510, there exist no triable issue and there remains no genuine dispute as to any material fact. The assignor failed to submit to two EUOs in accordance with the Policy and the provisions of Fla. Stat. 627.736(6)(g) of the Florida No Fault Law, which is a condition precedent to receiving PIP coverage. Furthermore, the Defendant

never denied the existence of the policy.

ACCORDINGLY, it is ORDERED and ADJUDGED that Defendant's Motion for Final Summary Judgment is hereby GRANTED; Plaintiff's Motion for Final Summary Judgment is DENIED.

It is further ORDERED and ADJUDGED that Plaintiff shall take nothing by this action and Defendant shall go hence without day. The Court shall reserve jurisdiction as to Defendant's attorneys' fees and taxable costs.

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[1]*See also* "Q. Can you give me the next date that something occurred please? A. On September 11, the adjuster ran the EUO tracking and noted that it had been delivered for that EUO."

* * *

Insurance—Automobile—Windshield repair—Appraisal— Appraisal is premature where insurer has not provided meaningful exchange of information sufficient to substantiate existence of genuine disagreement—Further, motion to compel appraisal cannot be granted before adjudication of plaintiff's challenges to enforceability of appraisal provision

CNC TECHNICAL SERVICES, LLC, a/a/o Natalia Swaebe, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2023-033037-SP-25. Section CG01. January 5, 2025. Jorge A. Perez Santiago, Judge. Counsel: Andrew B. Davis-Henrichs and Emilio R. Stillo, Emilio Stillo, P.A.; and Lawrence Kopelman, Lawrence M. Kopelman, P.A., for Plaintiff.

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT OR IN THE ALTERNATIVE, MOTION TO ABATE AND COMPEL APPRAISAL

THIS CAUSE, having come before the Court on December 5, 2024 on Defendant's Amended Motion to Dismiss Plaintiff's Amended Complaint or in the alternative, Motion to Abate and Compel Appraisal, the Court having reviewed the motion, court file, applicable law, and having heard argument from counsel it is hereby ORDERED and ADJUDGED as follows:

Plaintiff's three count declaratory action challenges the enforceability of the appraisal and other policy provisions. Defendant contends that following receipt of Plaintiff's invoice, it determined the cost to repair pursuant to the policy and paid accordingly. It argues that since the amount of the invoice was different from the amount it determined to be the cost to repair there was a disagreement between the parties allowing Defendant to invoke appraisal. Plaintiff argues in part that appraisal is not ripe because Defendant failed to determine the cost to repair in accordance with the terms of the policy and/ or that those terms are vague and ambiguous requiring a resolution of the declaratory action before appraisal can be invoked based on a disagreement between the parties.

In an unbroken line of cases, the Florida Third District Court of Appeal has held that appraisal is premature when one party has not provided a meaningful exchange of information sufficient to substantiate the existence of a genuine disagreement. *Certain Underwriters at Lloyd's v. Lago Grande 5-D Condo. Ass'n, Inc.*, 337 So. 3d 1277 (Fla. 3d DCA 2022) [47 Fla. L. Weekly D981a]; *State Farm Fla. Ins. Co. v. Hernandez*, 172 So. 3d 473 (Fla. 3d DCA 2015) [40 Fla. L. Weekly D1433a]. The Court finds Defendant has not provided a meaningful exchange of information as contemplated by the Third District. Further, the Court cannot grant the motion to compel appraisal prior to adjudicating Plaintiff's challenges to the enforceability of the appraisal provision and the other issues set forth in the petition for declaratory relief. See *Progressive American Ins. Co. v. Dr. Car Glass*, 327 So. 2d 447, 448 (Fla. 3d DCA, 2021) [46 Fla. L. Weekly D2030c]; *People's Tr. Ins. Co. v. Marzouka*, 320 So.3d 945, 948 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D1155a]. Accordingly, the Court must resolve the declaratory judgment actions before compelling appraisal.

ORDERED AND ADJUDGED that the Defendant's Amended Motion to Dismiss Plaintiff's Amended Complaint or in the alternative, Motion to Abate and Compel Appraisal is hereby DENIED.

* * *

Insurance—Automobile—Windshield repair—Appraisal—Motion to compel appraisal cannot be granted before adjudication of plaintiff's challenges to enforceability of appraisal provision

AFFORDABLE AUTO & TRUCK GLASS, INC., a/a/o Maria Rudisill, Plaintiff, v. STATE FARM MUTUAL INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2023-021293-SP-26. Section SD06. May 7, 2025. Christopher Green, Judge. Counsel: Andrew B. Davis-Henrichs and Emilio R. Stillo, Emilio Stillo, P.A.; and Lawrence Kopelman, Lawrence M. Kopelman, P.A., for Plaintiff.

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT OR IN THE ALTERNATIVE, MOTION TO ABATE AND COMPEL APPRAISAL

THIS CAUSE, having come before the Court on April 29, 2025 on Defendant's Amended Motion to Dismiss Plaintiff's Amended Complaint or in the alternative, Motion to Abate and Compel Appraisal, the Court having reviewed the motion, court file, applicable law, and having heard argument from counsel it is hereby ORDERED and ADJUDGED as follows:

Plaintiff's three count declaratory action challenges the enforceability of the appraisal and other policy provisions. The Court is persuaded by the reasoning set forth in the *Order Denying Defendant's Amended Motion to Dismiss Plaintiff's Amended Complaint or in the alternative, Motion to abate and Compel Appraisal* entered in *CNC Technical Services, LLC v. State Farm Mutual Auto Ins. Co., Case No. 2023-033037-SP-25* by the Honorable Jorge Perez Santiago on January 5, 2025 [33 Fla. L. Weekly Supp. 127a]. The Court cannot grant the motion to compel appraisal prior to adjudicating Plaintiff's challenges to the enforceability of the appraisal provision and the other issues set forth in the petition for declaratory relief. See *Progressive American Ins. Co. v. Dr. Car Glass*, 327 So. 2d 447, 448 (Fla. 3d DCA 2021) [46 Fla. L. Weekly D2030c].

ORDERED AND ADJUDGED that the Defendant's Amended Motion to Dismiss Plaintiff's Amended Complaint or in the alternative, Motion to Abate and Compel Appraisal is hereby DENIED. Defendant shall have 20 days to file a responsive pleading.

* * *

Insurance—Automobile—Rescission—Summary judgment—Supporting affidavits—Motion to strike insurer's affidavits in support of motion for summary judgment claiming to have rescinded policy is granted—Depositions of underwriter and litigation adjuster show that they did not have personal knowledge of statements in affidavits regarding materiality of misrepresentations or information provided in support of rescission

PATH MEDICAL, LLC, a/a/o Kayla Castor, Plaintiff, v. UNITED AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 12th Judicial Circuit in and for Sarasota County. Case No. 2023 CC 006450 NC. Division B. May 12, 2025. Kennedy Legler, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff.

ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AFFIDAVITS IN SUPPORT OF DEFENDANT'S MOTION FOR FINAL SUMMARY

THIS CAUSE having come before this Honorable Court on May 9, 2025, in regard to Plaintiff's Motion to Strike Defendant's Affidavits in Support of Defendant's Motion for Final Summary Judgment. The Court having heard arguments from both parties, having reviewed the Motions, file, applicable law, and the Court otherwise being fully advised in the premises, it is hereby ORDERED AND ADJUDGED as follows:

1. On or about December 10, 2024, Defendant filed its Motion for Final Summary Judgment and attached affidavits from its underwriting manager, Jorge De La O and litigation adjuster, Jennifer Mcinnis.

2. On March 20, 2025, Plaintiff conducted the deposition of Defendant's underwriting manager, Jorge De La O. The transcript of said deposition was attached to Plaintiff's motion, as well as the transcript of the deposition of Ms. Mcinnis conducted on April, 2025.

3. Mr. De La O admitted during the deposition that he does not have any personal knowledge as to the accuracy of the premium rate numbers that the actuarial department generates.

4. The Court has reviewed the subject affidavits and has reviewed the controlling precedent of *Sunita Roberts v. Direct General Ins. Co.*, 337 So. 3d 889, [47 Fla. L. Weekly D737b] (Fla. 2d DCA 2022). While the affidavit does track the personal knowledge language contained in *Roberts*, the affidavit does not contain any explanation as to how the alleged premium increase was calculated or determined. Based upon striking of underwriter's affidavit, carrier had no admissible evidence regarding the materiality of alleged misrepresentation/omission. Final summary judgment granted for insured. *Direct Gen. Ins. Co. v. Melissa Bailey Grooms & Julie Grooms,* 32 Fla. L. Weekly Supp. 122a (Fla. 13th Jud. Cir. Ct., Hillsborough Cty., Case No. 22-CA-007911, June 11, 2024, Mark R. Wolfe, Judge).

5. Ms. Mcinnis admitted that she does not have any personal knowledge as to any of the information that was provided by the claims department to support this particular rescission. Further, Ms. Mcinnis is not even an underwriter.

6. As such, Plaintiff's Motion to Strike Defendant's Affidavits in Support of Defendant's Motion for Final Summary Judgment is **HEREBY GRANTED**.

* * *

Insurance—Automobile—Windshield replacement—Appraisal—Declaratory action—Complaint seeking declaration that insurer's use of repricing methodology to adjust repair shop's claim constitutes breach of policy that relieves shop of obligation to participate in pre-suit appraisal—Complaint requests advisory opinion that is not proper function of declaratory relief—Where insurer does not dispute that coverage exists for loss but disputes amount of loss, there is no coverage issue to be determined by court, and shop has failed to show bona fide present need for declaratory relief—Motion to dismiss is granted

AUTO GLASS AMERICA, LLC, a/a/o Virgil Lacey, Plaintiff, v. STAR CASUALTY INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, County Civil Division. Case No. 24-CC-020639. Division J. May 13, 2025. Jennifer P. Johnson, Judge. Counsel: Donald J. Masten, Donald James Masten, LLC, Orlando, for Plaintiff. Lisa M. Lewis, Cole, Scott, & Kissane, P.A., Tampa, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS COUNTS I THROUGH VIII OF PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY RELIEF

THIS CAUSE came before the Court for hearing on April 14, 2025, on Defendant, Star Casualty Insurance Company's ("Star") *Motion to Dismiss Counts I Through VIII of Plaintiff's Amended Complaint for Declaratory Relief and Incorporated Memorandum of Law* (the "Motion), filed December 12, 2024. Plaintiff, Auto Glass America, LLC ("AGA"), as assignee of Virgil Lacey, filed a Response to the Motion on April 7, 2025. Having considered the Motion, Response, arguments of counsel, and being otherwise fully apprised in the premises, the Court hereby finds as follows:

I. BACKGROUND

This action for declaratory relief originates from a windshield replacement performed by AGA for Star's insured, Virgil Lacey (the "Insured"). In exchange for its services, AGA received an assignment of benefits under the insurance policy issued to the Insured, and thereafter sent an invoice for the windshield replacement to Star. Star paid only a portion of the total amount claimed and simultaneously invoked pre-suit appraisal to resolve the disputed portion of AGA's claim.

On December 3, 2024, AGA filed an eight-count Amended Complaint for Declaratory Relief (the "Amended Complaint), requesting that this Court determine the proper interpretations of the Policy's Limits of Liability and Appraisal Provisions. As summarized in AGA's Response to Star's Motion, Plaintiff seeks the following determinations:

> a. "the effect of Defendant's willful first material breach of the insurance contract prior to any alleged breach of the appraisal provision" (Count I through Count V);
>
> b. "whether the Limits of Liability provision as used by Defendant is procedurally and substantively unconscionable" (Count VI);
>
> c. "whether the appraisal provision, by its definitions, intentionally excluded assignees from the appraisal process" (Count VII);
>
> d. "whether any appraisable issue exists" (Count III);
>
> e. "Whether Defendant has waived any right to appraisal" (Count VIII).

Pl.'s Resp. at p. 5 [Doc. 51].

Star filed the instant Motion on December 10, 2024, moving for the dismissal of all counts of AGA's Amended Complaint for failure to state a claim.

II. STANDARD

To state a valid cause of action, a complaint must allege sufficient ultimate facts to show the pleader is entitled to relief. Fla. R. Civ. P. 1.110(b); *see also Pizzi v. Central Bank & Trust Co.,* 250 So. 2d 895, 896 (Fla. 1971). The factual allegations of the complaint are taken as true for the purposes of a motion to dismiss, and all reasonable inferences are drawn in favor of the pleader. *The Florida Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006) [31 Fla. L. Weekly S171a]. In ruling on a motion to dismiss, a court's review is limited to the four corners of the complaint, including any exhibits attached to the pleading. *Santiago v. Mauna Loa Investments, LLC*, 189 So. 3d 752, 756 (Fla. 2016) [41 Fla. L. Weekly S91a] (citing *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So.2d 490, 494 (Fla. 3d DCA 1994)). The court may also take into consideration the terms of an agreement that is impliedly incorporated into the complaint, particularly when a plaintiff's standing is premised on the terms of the agreement. *Veal v. Voyager Prop. & Cas. Ins. Co*., 51 So. 3d 1246, 1249 (Fla. 2d DCA 2011) [36 Fla. L. Weekly D164a]. Here, AGA's invoice is attached to its Amended Complaint, and the Amended Complaint impliedly references the insurance policy issued to Star's Insured and the Star's letter to Plaintiff invoking appraisal.

III. ANALYSIS AND CONCLUSIONS OF LAW

A complaint for declaratory relief requires a showing of the following elements to survive a motion to dismiss:

> [T]here is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an

> actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interest[s] are all before the court by proper process or class representation and that the relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity.

Cintron v. Edison Ins. Co., 339 So. 3d 459, 461 (Fla. 2d DCA 2022) [47 Fla. L. Weekly D1079a] (quoting *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles,* 680 So. 2d 400, 404 (Fla. 1996) [21 Fla. L. Weekly S271a]).

Here, Star argues that AGA's Amended Complaint improperly seeks an advisory opinion from this Court as to issues regarding Star's claims handling practices, the amount of loss, bad faith, and the limits of liability provision of the insurance policy. Additionally, Star asserts that there is no bona fide, present need for the declarations sought in the Amended Complaint.

a. AGA's Amended Complaint improperly seeks an advisory opinion

In its Amended Complaint, AGA alleges that Star improperly relied on an undisclosed repricing methodology to determine the amount due for AGA's claim. Based on this allegation, AGA seeks a declaration from this Court that Star materially breached the insurance policy and that, therefore, AGA is relieved of its contractual obligation to participate in pre-suit appraisal. In response, Star argues that such relief would amount to an improper, across-the-board determination as to the propriety of Star's claims handling practices. The Court agrees with Star.

In *State Farm Mut. Auto. Ins. Co. v. Sestile*, cited in Star's Motion, the Second District Court of Appeal reversed a trial court's ruling on a similar request for declaratory relief. 821 So. 2d 1244 (Fla. 2d DCA 2002) [27 Fla. L. Weekly D1757a]. The trial court had ruled that an insurer's use of a computer database to determine the reasonableness of claims violated Florida's PIP statute and the insurance agreement. *Id.* at 1245. In reversing the trial court's decision, the Second District stated that "it is not a court's function to determine, across the board, that an insurer's internal method of gauging reasonableness does or does not comply with the statute." *Id.* Rather, such determinations must be reviewed on a case-by-case basis. *Id.* Here, AGA similarly seeks an across-the-board declaration that Star's internal claims handling practices violate the insurance policy. Thus, AGA's requested declarations would amount to an advisory opinion from the Court, which is not a proper function of declaratory relief. *See Kelner v. Woody*, 399 So. 2d 35 (Fla. 3d DCA 1981).

b. There is no bona fide, present need for a declaration

Furthermore, AGA has failed to demonstrate a bona fide, present need for the declarations requested in its Amended Complaint. A central disagreement between the parties concerns the nature of the issue presented in AGA's Amended Complaint. AGA claims it is seeking a determination regarding coverage under the insurance policy; however, Star contends that the subject of the dispute is the amount of loss. While disputes regarding coverage and the enforceability of contract provisions are appropriate matters for declaratory judgment, *Conley v. Morley Realty Corp.*, 575 So. 2d 253, 255 (Fla. 3d DCA 1991), disputes regarding the amount of loss and scope of repairs are appropriate matters for appraisal or, alternatively, an action for breach of contract. *People's Tr. Ins. Co. v. Portuondo*, 307 So. 3d 932, 934 (Fla. 3d DCA 2020) [45 Fla. L. Weekly D2274a]. In distinguishing the two, "the coverage question reserved for the court is merely whether the claim is arguably within the class of claims covered by the policy and, therefore, the arbitration provision." *J.J.F. of Palm Beach, Inc. v. State Farm Fire and Cas. Co.*, 634 So. 2d 1089, 1091 (Fla. 4th DCA 1994). In contrast, the amount-of-loss issue reserved for appraisal includes "calculating the cost of repair or replacement of property damaged, and ascertaining how much of the damage was caused by a covered peril. . ." *People's Tr. Ins. Co. v. Garcia*, 263 So. 3d 231, 234 (Fla. 3d DCA 2019) [44 Fla. L. Weekly D279a] (quoting *Citizens Prop. Ins. Corp. v. River Manor Condo. Ass'n, Inc.*, 125 So.3d 846, 854 (Fla. 4th DCA 2013) [38 Fla. L. Weekly D820a]).

The facts here are nearly identical to those in *NCI, LLC v. Progressive Select Ins. Co.*, 350 So. 3d 801 (Fla. 5th DCA 2022) [47 Fla. L. Weekly D2235f]. In *NCI*, the plaintiff replaced an insured's windshield and invoiced the insurer under an assignment of benefits agreement. *Id.* at 810. The insurer acknowledged coverage and paid less than the amount claimed in the invoice, whereafter the plaintiff brought a suit for breach of contract and declaratory judgment. *Id.* Under these facts, the Fifth District Court of Appeal held that "[a]n appraisable issue exists because the parties' *only* dispute is the amount of loss." *Id.* at 809 (emphasis added). Here, Star likewise does not dispute that coverage exists for the windshield replacement. Thus, there is no need for the Court to determine whether the windshield replacement "is arguably within the class of claims covered by the policy" and, consequently, no coverage issue to be determined by this Court. *J.J.F. of Palm Beach, Inc.*, 634 So. 2d at 1091; *see also Johnson v. Nationwide Mut. Ins. Co*., 828 So. 2d 1021, 1025 (Fla. 2002) [27 Fla. L. Weekly S779a] ("[W]hen the insurer admits that there *is* a covered loss, but there is a disagreement on the *amount* of loss, it is for the appraisers to arrive at the amount to be paid.").

Based on the foregoing, AGA has failed to show a bona fide, present need for declaratory relief. "[A]lthough the existence of other remedies does not preclude declaratory judgment, section 86.111, Florida Statutes (1979), it does bear on the proper exercise of the court's discretion in granting such relief, and the court may decline to grant a declaratory decree where more appropriate redress is available." *Kelner v. Woody*, 399 So. 2d 35, 38 (Fla. 3d DCA 1981). Here, AGA has a more appropriate remedy in the form of an action for breach of contract or appraisal. Accordingly, the Court finds that AGA's Amended Complaint fails to properly state a cause of action for declaratory relief.

WHEREFORE, it is hereby **ORDERED** that Star's Motion to Dismiss Counts I through Count VIII of AGA's Amended Complaint is hereby **GRANTED** and AGA's Amended Complaint is hereby **DISMISSED.**

* * *

Contracts—Account stated—Credit card debt—Periodic credit card billing statement attached to complaint which states balance due, but does not support any prior dealings or transactions between parties, was insufficient to state cause of action for account stated—Unjust enrichment—Cause of action for unjust enrichment is not available where there is express contract between parties—Complaint dismissed

CAPITAL ONE, N.A., Plaintiff, v. DONNA R. REUILLARD, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 24-CC-064635. Division H. April 29, 2025. James S. Giardina, Judge. Counsel: Ramiro G. Kruss, Pollack & Rosen, P.A., Coral Gables, for Plaintiff. Richard F. Cipriano, III, The Cipriano Law Firm, LLC., Brandon, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

THIS CAUSE having come before the Court at the hearing held on April 10, 2025, on Defendant's Motion to Dismiss Plaintiff's Complaint, and the Court having heard argument of Defendant's counsel, having considered Plaintiff's failure to appear at the duly noticed hearing, having reviewed the file, and being fully advised in the premises, the Court finds as follows:

1. On November 22, 2024, Plaintiff filed a Complaint against Defendant to collect the balance allegedly owed on a credit card

account.

2. The Complaint sounded in Count I (Account Stated) and Count II (Unjust Enrichment).

3. Paragraph 9 of the Complaint asserts that: "Before the institution of this action, Plaintiff and Defendant had business transactions between them and on May 14, 2024, they agreed to the resulting balance."

4. Paragraph 10 of the Complaint asserts that: "Plaintiff rendered a statement of it to [D]efendant a copy being attached thereto, and Defendant did not object to the statement."

5. Attached to the Complaint was only the first page of a periodic credit card billing statement which was for a billing cycle of April 13, 2024 to May 13, 2024, alleged to be rendered by Plaintiff to Defendant which reflects a balance due of $4,310.07. In pertinent part, the periodic credit card billing statement shows under the heading "Account Summary", a "Previous Balance" of $4,207.96, Payments" of $0.00, "Other Credits" of $0.00, and "Transactions" of $0.00. There were no other exhibits or statements attached to the Complaint.

6. Defendant asserts and this Court agrees that Plaintiff failed to state a cause of action for account stated

7. "An account stated must be based upon previous dealings and transactions between the parties, and while it is not necessary, in order to support a count upon account stated, to show the nature of the original debt, or to prove the specific items constituting the account, it must appear that at the time of the accounting there had been previous transactions and dealings between the parties of and concerning which an account was stated." *Daytona Bridge Co. v. Bond*, 36 So. 445 (Fla. 1904).

8. Where there has been no business transactions giving rise to the pre-existing obligation, a statement of account will not support an account stated action. *Architectonics, Inc. v. Salem-American Ventures, Inc.*, 350 So.2d 581, 585 (Fla. 2d DCA 1977).

9. This Court agrees with the Court's decision in the case of *Capital One Bank (USA), N.A. v. Deutsch*, 30 Fla. L. Weekly Supp. 124a, Fla. 13th Cir. Co. Ct. (April 2, 2022). In *Deutsch*, the court granted a motion to dismiss an account stated cause of action because the statement attached to the complaint stated a balance due, but did not support any prior dealings or transactions between the parties. Similarly, in the present case, the periodic credit card billing statement attached to Plaintiff's Complaint states a balance due, but does not support any prior dealings or transactions between Plaintiff and Defendant. Accordingly, Plaintiff has failed to state a cause of action for Account Stated.

10. Defendant also asserts and this Court agrees that Plaintiff's cause of action for unjust enrichment is not an available remedy where an express contract exits between the parties.

11. A credit card by its very nature must have an expressed agreement between the parties. *Unifund CCR, LLC. v. Hoppenbauer*, 22 Fla. L. Weekly Supp. 115b, Fla. 7th Cir. Co. Ct. (July 15, 2014). All consumer credit card accounts are required by federal law to have an express contract. *Unifund CCR, LLC. v. Hoppenbauer, Id.*

12. Florida courts have held that a plaintiff cannot pursue a quasi-contract claim for unjust enrichment if an express contract exists concerning the same subject matter. *Diamond "S" Development Corp. v. Mercantile Bank*, 989 So.2d 696, 697 (Fla. 1st DCA 2008) [33 Fla. L. Weekly D1943a]. A plaintiff cannot pursue an equitable theory, such as unjust enrichment or quantum meruit, to prove entitlement to relief if an express contract exists. *Ocean Communications, Inc. v. Bubeck*, 956 So.2d 1222, 1225 (Fla. 4th DCA 2007) [32 Fla. L. Weekly D1344a].

13. In the present case, Plaintiff's own allegations of its Complaint, patently show, on its face, that an express contract existed between Plaintiff and Defendant. As alleged by Plaintiff, Defendant requested an extension of credit from Plaintiff and in response to said request, Plaintiff opened a credit card account for Defendant, who caused various charges to be made through the use of a credit card that remain due and owing. As an express contract existed between Plaintiff and Defendant, Plaintiff cannot pursue a quasi-contract claim for unjust enrichment. Accordingly, Plaintiff has failed to state a cause of action for Unjust Enrichment.

ACCORDINGLY, IT IS ORDERED AND ADJUDGED THAT:

1. Defendant's Motion to Dismiss Plaintiff's Complaint is **GRANTED.**

2. Count I (Account Stated) of Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE.**

3. Count II (Unjust Enrichment) of Plaintiff's Complaint is **DISMISSED WITH PREJUDICE.**

4. Plaintiff shall have twenty (20) days from the date of this Order within which to file an Amended Complaint. Upon a failure of Plaintiff to timely file an Amended Complaint within the stated time, the Court, *sua sponte*, without further notice, shall dismiss this action with prejudice.

* * *

Insurance—Automobile—Windshield repair—Insurer is entitled to judgment as a matter of law where insurer provided affidavit with two screenprints from online database to support price it used to adjust claim for windshield replacement, and repair shop provided affidavit with only undated page from paper catalog to support its contention that correct price is higher

PEOPLE'S AUTO GLASS, LLC, a/a/o Charles Harter, Plaintiff, v. PEAK PROPERTY AND CASUALTY INSURANCE CORPORATION, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County. Case No. 23-CC-048005. Division M. May 20, 2025. Lisa A. Allen, Judge. Counsel: Juan Croussett and Ronald Haynes, Chris Ligori & Associates, Tampa, for Plaintiff. Daniella Mogg, Staff Counsel, Sentry Insurance Company, Stevens Point, Wisconsin, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT AND FOR DISMISSAL

THIS CAUSE, having come before the Court on January 22, 2025 and May 19, 2025 upon Defendant's Motion for Final Summary Judgment, and having heard arguments from the parties and reviewing the Supplemental Affidavits filed on January 23, 2025 and January 28, 2025, and otherwise being advised in the premises, this Court hereby finds as follows:

1. This is a lawsuit brought by People's Auto Glass, LLC a/a/o Charles Harter ("Plaintiff") against Peak Property and Casualty Insurance Corporation ("Defendant") stemming from replacement of a windshield for a 2016 Dodge Durango.

2. The events prior to litigation are not in dispute. On November 1, 2022, Defendant issued an automobile policy of insurance to Charles Harter which included comprehensive coverage. On November 27, 2022, a loss occurred involving the insured vehicle resulting in physical damage to the windshield. On November 30, 2022, Plaintiff replaced the damaged windshield and sent an invoice to Defendant totaling $1,122.63. On December 9, 2022, Defendant cleared coverage, applied the terms and conditions of the policy to the amounts invoiced, and sent a check to Plaintiff totaling $543.15. On December 19, 2022, Plaintiff cashed Defendant's check.

3. On March 23, 2023, Plaintiff filed the underlying action alleging that Defendant breached its contract with Charles Harter when it failed to "make full payment to [Plaintiff] for the services provided." On September 18, 2023, Defendant responded to Plaintiff's Amended Complaint, asserting that Defendant did not breach its policy and, to the extent Plaintiff disagreed with the payment structure within the

policy, Plaintiff lacked privity of contract to challenge the terms and conditions as it was not a party to the policy.

4. On January 24, 2024, Plaintiff's corporate representative Wendy Starks testified in deposition that the amounts allowed by Defendant for this windshield replacement matched the amounts in effect according to the National Auto Glass Specifications on the date Plaintiff provided its services; to wit, $592.45 was the price of the specific windshield replaced by Plaintiff on November 30, 2022.

5. On May 3, 2024, Defendant filed its Motion for Final Summary Judgment and advanced the pleaded arguments that it did not breach its policy with Charles Harter and that Plaintiff was a third-party beneficiary lacking privity of contract to challenge the payment structure agreed to by Defendant and its insured. Defendant attached a certified copy of its policy stating that it would reimburse an invoice for windshield replacement as follows: *58% of the pricing for nonoriginal equipment manufacturer windshield glass as set forth in the National Auto Glass Specifications ("NAGS") on the date the covered windshield replacement installation occurs; $40.00 per recommended [labor] hour as set forth in NAGS on the date the covered windshield replacement installation occurs; $30.00 per [urethane] kit or $15.00 per half [urethane] kit, with the number of kits determined by NAGS; $15.00 per [other urethane] kit; and 100% of the manufacturer list price for molding on the date the covered windshield replacement installation occurs.* Defendant attached admissible evidence, including the Affidavit of Jim Ash, supporting its arguments that Plaintiff was paid in full for the services rendered on November 30, 2022 under the terms and conditions of the policy.

6. On January 2, 2025, Plaintiff filed its Response to Defendant's Motion for Final Summary Judgment challenging only the price of the windshield allowed by Defendant before applying the 58% reduction pursuant to the policy. Plaintiff attached the Affidavit of Phillip Dean who testified that $770.19 was the price of the specific windshield replaced by Plaintiff on November 30, 2022.

7. On January 22, 2025, the Court heard oral arguments from the parties on Defendant's Motion for Final Summary Judgment. Regarding the price of the specific windshield replaced on November 30, 2022, Defendant argued it was $592.45 and Plaintiff argued it was $770.19. The Court reserved ruling and directed the parties to each file a supplemental affidavit containing evidence supporting its price.

8. On January 23, 2025, Defendant filed its Supplemental Affidavit and attached two screenprints from the NAGS online database dated November 30, 2022 supporting its price of $592.45.

9. On January 28, 2025, Plaintiff filed its Supplemental Affidavit and attached an undated page from a NAGS paper catalog supporting a new price of $669.55.

10. On May 19, 2025, the parties appeared for a continued hearing on Defendant's Motion for Final Summary Judgment. Plaintiff withdrew its Supplemental Affidavit. With respect to pricing according to NAGS, Defendant complied with the Court's request and provided admissible evidence that the price of the specific windshield replaced by Plaintiff on November 30, 2022 was in fact $592.45. This Court was not persuaded by Plaintiff's pricing of $770.19 or $665.55 as Plaintiff failed to provide the requisite supporting evidence.

11. This Court finds that Defendant did not breach the contractual obligations with its insured as Defendant followed the agreed-upon terms and conditions relating to the payment of comprehensive benefits, specifically for windshield replacement. Defendant's Motion for Final Summary Judgment included a breakdown of how the services performed by Plaintiff were applied to the policy language along with a copy of the check it issued in response to Plaintiff's invoice. The assignment of benefits executed by Charles Harter allowed Plaintiff to take only what was contracted for by Defendant and its insured.

12. Accordingly, this Court finds that Defendant, as the moving party, has sustained its burden under Florida Rule of Civil Procedure 1.510 that no genuine issue as to any material fact exists. Therefore, Defendant is entitled to a judgment as a matter of law.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED**:

13. Defendant's Motion for Final Summary Judgment is **GRANTED**. Judgment is entered in favor of Defendant. Plaintiff shall take nothing by this action.

14. The Court reserves jurisdiction to hear argument on Defendant's pending Motions for Sanctions Pursuant to Section 57.105 of the Florida Statutes and any forthcoming Motions to Tax Attorney's Fees and Costs.

* * *

Insurance—Automobile—Windshield repair—Insurer's motion for summary judgment on issue of whether insurer issued proper payment for windshield repair is denied where insurer failed to demonstrate admissibility of its evidence on issue

MELTON & MELTON MARKETING, LLC, d/b/a FIRST CLASS AUTO GLASS, a/a/o Laura Rullison-Lange, Plaintiff, v. GOVERNMENT EMPLOYEES INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, Civil Division. Case No. 23-CC-037299. Division L. May 1, 2025. Michael C. Baggé-Hernández, Judge. Counsel: James T. Tanton, Keith P. Ligori, Meaghann C. Ligori, Eliot Veith, and Nicole Seeley, Ligori & Ligori, Tampa, for Plaintiff. Jaskirat Asti and Sheri Lewis, Law Office of Jaskirat K. Asti, Tampa; and Lindsey R. Trowell, Ariane J. Smith, and Chloe Orta, Rivkin Radler LLP, Jacksonville, for Defendant.

AMENDED ORDER DENYING DEFENDANT'S AMENDED MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE

THIS CAUSE came before the Court on an April 28, 2025 hearing on Defendant's Amended Motion for Summary Judgment (DN#74). Counsel appeared on behalf of the parties. The Court, having considered the motion, the arguments of counsel, and the record, and being otherwise advised on the premises,

ORDERS AND ADJUDGES as follows:

1. This Court finds that Defendant failed to authenticate and establish a sufficient foundation to demonstrate the admissibility of its evidence concerning that the amount Defendant paid for the windshield ($307.68) was the amount required by the applicable policy of insurance. Specifically, that $307.68 was "50% of the pricing for like kind and quality windshield glass as set forth in National Auto Glass Specifications ("NAGS") on the date the approved windshield installation occurs" as required under the applicable policy for Plaintiff's windshield replacement claim.

2. Therefore, this Court finds that there are genuine disputed issues of material fact that preclude summary judgment on the question of whether Defendant issued the proper amount of payment to Plaintiff in compliance with the insurance policy's limit of liability provision.

3. Based on the foregoing, the Defendant's Amended Motion for Summary Judgment (DN #74) is **denied without prejudice**.

* * *

Insurance—Personal injury protection—Coverage—Medical provider's motion for summary judgment is granted in part where corporate representative admitted that explanation of benefits denying benefits due to exhaustion of reduced benefits available in absence of emergency medical condition was issued in error

AJ THERAPY CENTER, INC., a/a/o Michel Hernandez, Plaintiff, v. PROGRESSIVE SELECT INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, County Civil Division. Case No. 23-CC-060086. Division J. May 29, 2025. Jennifer P. Johnson, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff. Deonte Trovell Franklin, Tampa; Joseph Daniel Nall, Riverview; and Michael Ernesto Bringuier, Riverview, for Defendant.

AMENDED ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON WHEREFORE CLAUSES A, B & C

THIS MATTER having come before the court on April 24, 2025 on Plaintiff's Motion for Partial Summary Judgment on Wherefore Clauses A, B & C. The Court, having reviewed the record, considered the motion, the arguments of counsel, and the applicable law, and being otherwise advised in the premises, finds:

1. The Wherefore clause of Plaintiff's Amended Petition for Declaratory Judgment sought the following:

> WHEREFORE, Plaintiff respectfully requests this Honorable Court enter a declaratory judgment determining that:
>
> a. PROGRESSIVE did not support their October 4, 2022 denial of coverage wherein PROGRESSIVE alleged that Plaintiff had not submitted documentation sufficient to support that an EMC has been submitted. As such, PROGRESSIVE wrongfully denied coverage to Plaintiff on this basis;
>
> b. PROGRESSIVE did not support their October 4, 2022 denial of coverage wherein PROGRESSIVE alleged that Plaintiff needed to submit a signed report from the initial evaluation. As such, PROGRESSIVE wrongfully denied coverage to Plaintiff on this basis;
>
> c. PROGRESSIVE did not support their October 4, 2022 denial of coverage wherein PROGRESSIVE alleged that Plaintiff's charges were no reimbursable as the patient has reached their reduced $2,500.00 available PIP medical benefit limits for a non-emergency medical condition. As such, PROGRESSIVE wrongfully denied coverage to Plaintiff on this basis.

2. Plaintiff attached the transcript of the deposition of Defendant's Corporate Representative, Jennifer Macahuachi. conducted on July 28, 2023. Defendant's corporate representative admitted that this Explanation of Benefits was issued in error.

3. Plaintiff's Motion as to Wherefore Clauses A and B is **HEREBY DENIED**.

4. The Court finds that PROGRESSIVE did not support their October 4, 2022 denial of coverage wherein PROGRESSIVE alleged that Plaintiff's charges were non-reimbursable as the patient has reached their reduced $2,500.00 available PIP medical benefit limits for a non-emergency medical condition, as the Court finds that language to be a denial of coverage. As such, PROGRESSIVE wrongfully denied coverage to Plaintiff on this basis.

5. As such, Plaintiff's Motion as to Wherefore Clause C is **HEREBY GRANTED**.

* * *

Insurance—Personal injury protection—Coverage—Conditions precedent—Examination under oath—Insurer's motion for summary judgment/disposition on EUO no-show defense is denied where there are issues of fact as to whether EUO notice was delivered to insured

AJ THERAPY CENTER, INC., a/a/o Michel Hernandez, Plaintiff, v. PROGRESSIVE SELECT INSURANCE COMPANY, Defendant. County Court, 13th Judicial Circuit in and for Hillsborough County, County Civil Division. Case No. 23-CC-060086. Division J. May 29, 2025. Jennifer P. Johnson, Judge. Counsel: Timothy A. Patrick, Patrick Law Group, P.A., Tampa, for Plaintiff. Deonte Trovell Franklin, Tampa; Joseph Daniel Nall, Riverview; and Michael Ernesto Bringuier, Riverview, for Defendant.

ORDER DENYING DEFENDANT'S AMENDED MOTION FOR FINAL SUMMARY DISPOSITION OR FINAL SUMMARY JUDGMENT

THIS MATTER having come before the court on May 2, 2025 on Defendant's Amended Motion for Final Summary Disposition or Final Summary Judgment (certificate of service 09/25/2024). The Court, having reviewed the record, considered the motions, the arguments of counsel, and the applicable law, and being otherwise advised in the premises, finds:

1. The Court finds that there are issues of fact and insufficient evidence surrounding whether or not Progressive provided appropriate notice to the insured of the Examination Under Oath ("EUO") at issue.

2. Defendant did not provide sufficient evidence to prove what was provided to Fed Ex was the subject EUO notice dated December 22, 2022. Defendant did go to lengths to submit the subject EUO notice to Michel Hernandez by delivering to five (5) different addresses, including the address listed on the policy.

3. As such, Defendant's Amended Motion for Final Summary Disposition/Judgment is **HEREBY DENIED**.

* * *

Insurance—Property—Standing—Assignment—Validity—Motion to dismiss based on invalid assignment is denied—Although itemized per unit cost estimate was not attached to assignment filed with complaint, statutory requirement for contemporaneous itemized estimate is satisfied where record demonstrates that estimate was prepared on same date and appears as addendum to assignment—If there are factual disputes about assignment and itemized estimate, factual issues are not proper subject for motion to dismiss—Electronic execution of assignment meets form and delivery standards established by statute

DRI-MAX RESTORATION, LLC, Plaintiff, v. CITIZENS PROPERTY INSURANCE CORPORATION, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX24027612. Division 62. April 1, 2025. Woody R. Clermont, Judge. Counsel: Maximo Santiago and Jonathan J. Manoy, Your Insurance Attorney PLLC, for Plaintiff. Evelyn Maria Veras and C. Dewitt Revels III, for Defendant.

ORDER

THIS CAUSE came before the Court on Defendant's Motion to Dismiss, alleging that the Assignment of Benefits (AOB) executed on April 27, 2021, is noncompliant with the requirements of section 627.7152, Florida Statutes. The Court, having reviewed the motion, response, supporting documents, and being otherwise fully advised in the premises, hereby finds as follows:

1. "Section 627.7152 . . . was enacted by the Florida legislature in 2019 to regulate assignment agreements that seek to transfer insurance benefits from the policyholder to a third party." *Total Care Restoration, LLC v. Citizens Prop. Ins.,* 337 So. 3d 74, 75-76 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D926a]; *see also* ch. 2019-57, Laws of Fla.

2. Under the statute, an "[a]ssignment agreement" is "any instrument by which post-loss benefits under a residential property insurance policy . . . are assigned or transferred, or acquired in any manner . . . to or from a person providing services to protect, repair, restore, or replace property or to mitigate against further damage to the property." § 627.7152(1)(b), Fla. Stat. (2024). "This expansive definition has three parts: (1) any instrument (2) by which post-loss insurance benefits are acquired in any manner (3) to or from a person providing services to protect, repair, restore, or replace property or to mitigate against further property damage." *Holding Insurance Companies Accountable, LLC v. American Integrity Insurance Company of Fla.,* 399 So.3d 1232, 1234 (Fla. 5th DCA 2025) [50 Fla. L. Weekly D111a].

3. Based on reading of the four corners of the Amended Complaint, the assignment of benefits ("AOB") is dated April 27, 2021,[1] and is attached to the Amended Complaint alongside the itemized invoice dated April 27, 2021, documenting the work to be performed. *See Kidwell Group, LLC v. SafePoint Insurance Company,* 376 So. 3d 48, 51 (Fla. 4th DCA 2023) [49 Fla. L. Weekly D16a] ('Both the assignment agreement and invoice were attached to the amended complaint, and both were dated December 29, 2021. Additionally, the assignment agreement stated that "an itemized per unit cost estimate/invoice has been provided with this contract and is fully incorporated herein.'

(emphasis added).").

4. The itemized estimate, also dated April 27, 2021 supports the existence of a contemporaneous agreement which satisfies the requirements of section 627.7152(2)(a)4., Florida Statutes. "The law is well established that two or more documents executed by the same parties, at or near the same time, and concerning the same transaction or subject matter are generally construed together as a single contract." *Citicorp Real Estate, Inc. v. Ameripalms 6B GP, Inc.,* 633 So. 2d 47, 49 (Fla. 3d DCA 1994) (citations omitted). This rule bears the moniker "contemporaneous instrument rule," *Popwell v. Abel,* 226 So. 2d 418, 421 (Fla. 4th DCA 1969). Thus it appears that the contemporaneous requirement is met. *See Wilson v. Terwillinger,* 140 So. 3d 1122, 1124 (Fla. 5th DCA 2014) [39 Fla. L. Weekly D1313a] ("We, therefore, think it would be superfluous to require that the lease repeat the provision included in the addendum when both documents are read together as one encompassing instrument.").

5. While the Defendant argues the estimate was not attached, the record demonstrates the estimate was prepared on the same date and appears as an addendum to the assignment, thereby satisfying the statutory timing and reference requirements. However, if there is a factual dispute about the assignment and the itemized estimate, such factual issues are not a proper subject for a motion to dismiss. *Advance Mold Services, Inc. v. Universal North America Insurance Company,* 389 So. 3d 649, 651 (Fla. 3d DCA 2023) [49 Fla. L. Weekly D7a] ("On appeal, Advance Mold argues that the nature of the fee in question involves a factual dispute and therefore could not be resolved at the motion to dismiss phase. We agree."); *see also Apex Roofing and Restoration LLC v. United Services Automobile Association,* 399 So.3d 354, 356 (Fla. 1st DCA 2024) [49 Fla. L. Weekly D1982a].

6. The assignment includes the mandatory statutory language required under section 627.7152(2)(a), including the notice provisions and limitations on recovery. To that end, "[s]ection 627.7152 establishes mandatory requirements which an AOB must include to be enforceable." *Air Quality Experts Corp. v. Fam. Sec. Ins.,* 351 So. 3d 32, 37 (Fla. 4th DCA 2022) [47 Fla. L. Weekly D2592c].

7. The assignment also contains a provision addressing assignor interference, which from a reasonable standpoint, means that the assignor cannot take actions which interfere with the ability of the assignor to comply with the work promised. The assignment of benefits otherwise, contains the required provision requiring the assignee to indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs. *See Indoor Environmental Restoration Now, Inc. v. Citizens Property Insurance Corporation,* 388 So.3d 977, 978 (Fla. 3d DCA 2024) [49 Fla. L. Weekly D456a].

8. Electronic signatures are valid under Florida law, and the two-page assignment executed electronically meets the form and delivery standards established by the statute. *See, e.g., Fla. Dept. of Agriculture and Consumer Services v. Haire,* 836 So. 2d 1040, 1060 (Fla. 4th DCA 2003) [28 Fla. L. Weekly D245b] (finding that it was not improper for a magistrate or judge to sign a warrant with an electronic signature). The Florida Supreme Court affirmed indicating, "[w]e agree with this reasoning, which is consistent with the general rule that in absence of a statute or rule prescribing the method of a signature, a signature may be validly affixed by a number of different means." *Haire v. Fla. Dept. of Agriculture and Consumer Services,* 870 So. 2d 774, 789 (Fla., 2004) [29 Fla. L. Weekly S67a]

In short, the assignment of benefits is compliant under Florida law. *See* §627.7152, Fla. Stat. (2024).

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

Defendant's Motion to Dismiss is ***DENIED.***

The Assignment of Benefits dated April 27, 2021, complies with the requirements of section 627.7152, Florida Statutes, and the case shall proceed accordingly.

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[1]In the original Complaint, the itemized estimate contained a date which read April 29, 2021 at the bottom of some pages and used it as a completion date for the first page. In the Amended Complaint, that estimate now reads April 27, 2021. The Court can only consider the Amended Complaint at this juncture.

* * *

Torts—Unjust enrichment—Automotive repair services—Repair shop was entitled to reasonable value of claimed repairs where work was performed, defendants received the benefits of that work, and it would be inequitable for defendants to retain benefits without paying in absence of competent evidence that the work was unauthorized or performed negligently—Defendants failed to meet burden of proving that customer signature on invoice was a forgery—Final judgment entered in favor of plaintiff—Damages awarded are less than those claimed by plaintiff because several charges exceeded reasonable market value for similar services in the area where plaintiff operates

EUROMOTIVE PERFORMANCE, Plaintiff, v. JORDAN WATSON and DEREK WATSON, Defendants. County Court, 17th Judicial Circuit in and for Broward County. Case No. COSO23004244. Division 62. March 31, 2025. Woody R. Clermont, Judge. Counsel: Liz Farinas, Liz R. Farinas Law PLLC, Miami Beach, for Plaintiff. Andrea Grillon, Ocala, for Defendant Jordan Watson.

ORDER

ORDER ON BENCH TRIAL

THIS CAUSE came before the Court for a non jury trial on March 20, 2025. The Plaintiff, **Euromotive Performance**, appeared and presented testimony and evidence in support of its claim. Plaintiff was represented by Liz R. Farinas. Defendant Jordan Watson was represented by Andrea Grillon. **Dwayne Hughes** appeared as the witness for Plaintiff Euromotive Performance. The Defendant, **Jordan Watson**, appeared and presented testimony in defense. The Court, having considered the testimony, evidence admitted, arguments of the parties, and being otherwise fully advised in the premises, hereby finds as follows:

FINDINGS OF FACT:

1. Plaintiff, **Euromotive Performance**, is a business located in Hallandale, Florida, specializing in the repair of luxury vehicles including BMW, Audi, Mercedes-Benz, and Porsche.

2. Defendants, **Jordan Watson** and **Derek Watson**, brought their 2020 BMW X5 SDrive 40i to Plaintiff's facility for service after the vehicle sustained water damage. The vehicle had previously been towed from the BMW dealership in Pembroke Pines to Plaintiff's shop by Alpine Towing.

3. Plaintiff paid the towing fee to Alpine Towing in the amount of **$284.36** on behalf of Defendants.

4. The evidence and testimony of **Dwayne Hughes**, President of Euromotive Performance, established that Defendants requested Plaintiff to perform repairs short of a full engine replacement, which was quoted at approximately **$30,000** and declined by Defendants as too expensive.

5. Based on Hughes' testimony and **Plaintiff's Exhibit 1**, the following repairs and services were performed:

Plaintiff submitted an invoice totaling **$6,422.23** for services performed. While the Court finds that work was performed and Defendants received the benefit of those services, it further finds that several of the charges exceeded reasonable market value for similar services in the South Florida area. As the finder of fact and relying on common experience, the Court adjusts the costs as follows, making its own determination of damages:

Service/Item	Claimed Amount	Adjusted Market Rate	Notes
Towing (Alpine Towing)	$284.36	**$284.36**	No adjustment—standard tow fee
Oil change	$622.95	**$250.00**	High for synthetic oil change; adjusted downward
Battery replacement	$1,984.67	**$1,984.67**	Reasonable for battery replacement for this type of vehicle
Spark plug replacement	$976.22	**$400.00**	Typical BMW spark plug replacement (6 plugs)
Air filter	$115.17	**$60.00**	OEM or equivalent filter
Transmission service	$952.72	**$400.00**	Market average for fluid change and inspection
Intercooler replacement	$1,000.00	**$650.00**	Reasonable estimate using aftermarket/OEM
Shop materials	$29.99	**$29.99**	No adjustment

TOTAL REASONABLE DAMAGES: $4,058.02

6. Hughes testified that prior to each stage of the repair, Derek Watson was contacted for approval, and Jordan Watson ultimately signed the invoice. Plaintiff's Exhibit 1, which included the estimate and invoice, was admitted into evidence.

7. The vehicle was completed around **May 5, 2023**. Jordan Watson attempted to pay with an **American Express card**, which Plaintiff does not accept. She then attempted to use a business credit card belonging to her employer, **Jose Santiago**, though she was not an authorized user and the cardholder was not present to sign. Plaintiff declined to accept this payment method.

8. Jordan Watson became upset and contacted law enforcement. The police declined to intervene, determining the matter was civil in nature.

9. Plaintiff retained possession of the vehicle until Jordan Watson filed a **bond to obtain release** of the vehicle, asserting a dispute over the charges. The vehicle was driven away, and not towed, from Plaintiff's facility.

10. Subsequently, Defendants alleged that the vehicle was not in proper working condition and claimed the repairs were unsatisfactory.

11. **Jordan Watson** testified that she believed Euromotive Performance overcharged and did not perform satisfactory work. She also claimed that the signature on the estimate authorizing repairs was not hers and alleged fraud. Jordan Watson testified that she did not agree to the repairs, and did not give the approval Plaintiff claims she did.

12. The defense presented **no documentary evidence** and called only Jordan Watson to testify. No expert testimony or mechanical evaluation of the car post-repair was provided. No testimony was offered by Derek Watson.

13. Derek Watson was not properly excused from the lawsuit. He should have attended the trial. This Court will treat his absence as a waiver of his right to contest damages with Euromotive Performance—that he voluntarily absented himself from the proceedings.

CONCLUSIONS OF LAW:

1. The Court finds the testimony of Dwayne Hughes credible and consistent with the documentary evidence admitted.

2. The Court will not rule one way or another on the Defendants' assertion that the signature was forged. No handwriting expert or other corroborating evidence was presented to support this claim. Nonetheless, the Court will credit that Jordan Watson objected to the charges.

3. The Defendants requested services and received the benefit of those services. The vehicle was repaired, driven away, and no competent evidence was presented to establish that the services were unauthorized or the repairs negligently performed.

4. The defense failed to meet its burden in proving fraud or forgery. The Defendants claimed no proper contract was formed between them, due to their objections. Nonetheless the Court is reviewing Plaintiffs claim under unjust enrichment theory.

5. The elements of a cause of action for unjust enrichment are: (1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff. *Hillman Const. Corp. v. Wainer,* 636 So. 2d 576, 577 (Fla. 4th DCA 1994); *see also Henry M. Butler Inc. v. Trizec Properties Inc.,* 524 So. 2d 710 (Fla. 2d DCA 1988).

6. The Court finds that Plaintiff Euromotive Performance conferred a benefit on Jordan and Derek Watson, that both Defendants accepted and retained the benefit conferred, and the circumstances are such that it would be inequitable for the Defendants to retain the benefit without paying the reasonable value to the Plaintiff.

ORDER:

IT IS HEREBY ORDERED AND ADJUDGED:

1. Final Judgment is entered **in favor of Plaintiff**, **Euromotive Performance**, and **against Defendants, Jordan Watson and Derek Watson**, jointly and severally.

2. Plaintiff is awarded damages in the amount of **$4,058.02**, consisting of the reasonable costs for repair and towing as supported by the evidence.

3. Plaintiff is entitled to recover court costs.

* * *

Insurance—Personal injury protection—Coverage—Exhaustion of policy limits—In absence of any evidence of bad faith, insurer has no liability for medical provider's claim where benefits were exhausted through payment of valid claims—Provider lacks standing to challenge payments made to another provider

TELEEMC, LLC., a/a/o Rose-Marie Gonzalez, Plaintiff, v. PROGRESSIVE SELECT INSURANCE COMPANY, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX23042635. Division 80. March 21, 2024. Olga Gonzalez Levine, Judge. Counsel: Vincent Rutigliano, for Plaintiff. Sadiq Asheik Mohamed, Progressive PIP House Counsel, Ft. Lauderdale, for Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT/DISPOSITION AND ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on March 6, 2024, to be heard on Defendant's Motion for Final Summary Judgment/Disposition and Plaintiff's Motion for Summary Judgment based on exhaustion of benefits, and the Court having reviewed the file, declarations, pleadings, record evidence, and considered the arguments of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

FACTS

1. Plaintiff filed a Personal Injury Protection ("PIP") suit, as assignee of Rose-Marie Gonzalez (the "Claimant"), against Defendant for reduced medical bills for services rendered as a result of injuries allegedly sustained in an automobile accident on March 19, 2022.

2. At the time of the accident, the Claimant was covered under a policy of insurance issued by the Defendant that provided up to

$10,000.00 in PIP benefits.

3. The policy provided PIP benefits in conformance with the Florida Motor Vehicle No-Fault Law and Florida Statute §627.736.

4. The plain reading of the record evidence, including but not limited to Defendant's Declaration and Certification of Business Records in Support of Defendant's Motion for Final Summary Judgment, demonstrate that Defendant exhausted all available PIP benefits under the policy on July 19, 2022.

5. Plaintiff filed suit on May 24, 2023.

6. Defendant maintains that benefits were properly exhausted through the payment of $10,000.00 in valid claims on behalf of the Claimant, which entitles Defendant to Final Summary Judgment as a matter of law.

SUMMARY JUDGMENT STANDARD

Pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, effective May 01, 2021,

> The 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. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard. . . *See. Fla. R. Civ. P. 1.510*

"[S]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part" of rules aimed at "the just, speedy and inexpensive determination of every action." *Celotex*, 477 U.S. at 327 (quoting Fed. R. Civ. P. 1). Facts must be viewed in the light most favorable to the non-moving party only if there is a "genuine" dispute as to those facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007) [20 Fla. L. Weekly Fed. S225a]. When faced with a "properly supported motion for summary judgment, [the nonmoving party] must come forward with specific factual evidence, presenting more than mere allegations." *Gargiulo v. G.M. Sales, Inc.*, 131 F. 3d 995, 999 (11 Cir. 1997). "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. 242, 249 (1986).

"[J]udges [are not] required to submit a question to a jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such character that it would warrant the jury in finding a verdict in favor of that party. . . [I]n every case before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed. *Id*. at 251 (citations omitted). The inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Id*. at 251-52. Summary judgment may be granted if no "reasonable jury could return a verdict for the nonmoving party." *Id.* at 248.

LEGAL ANALYSIS

Absent a showing of bad faith, once PIP benefits have been exhausted through the payment of valid claims, the insurance company has no further liability to pending or unresolved claims. *See Northwoods Sports Medicine and Physical Rehabilitation, Inc. v. State Farm Mutual*, 137 So. 3d 1049 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D491a]; *GEICO Indem. Co. v. Gables Ins. Recovery, Inc.*, 159 So. 3d 151 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D2561a]; *Millennium Radiology, LLC v. State Farm Mut. Auto.*, 152 So. 3d 797 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D2600d]; *Sheldon v. United Services Auto. Ins. Co.*, 55 So. 3d 593 (Fla. 1st DCA 2011) [36 Fla. L. Weekly D23a]; *Progressive American Ins. Co. v. Stand-Up MRI of Orlando*, 990 So. 2d 3 (Fla. 5th DCA 2008) [33 Fla. L. Weekly D1746a]; and *Simon v. Progressive Express Ins. Co.*, 904 So. 2d 449 (Fla. 4th DCA 2005) [30 Fla. L. Weekly D1156b].

In this case, the record evidence shows that Defendant exhausted benefits to the full policy limit. This court finds that Plaintiff lacks standing to challenge Defendant's payments to third party providers absent the payment of untimely bills. The Fourth District Court of Appeal ruled that providers lack standing to challenge an insurer's payments to other providers. Specifically, the court held ". . . except for untimely payments, we would hold that an insurance company's 'improper' payments to another provider do not constitute bad faith sufficient to overcome the insurance company's exhaustion of benefits defense to a provider who sues for payment after the policy limits have been exhausted." *Progressive Select Ins. Co. v. Dr. Rahat Faderani, DO, MPH, P.A.*, 330 So. 3d 928 (Fla. 4th DCA 2021) [46 Fla. L. Weekly D2420a]. In that case, the Fourth District Court of Appeal rejected Plaintiff's allegations and ruled that "[w]e construe that to mean bad faith in the handling of the claim at issue, not a claim by a third party, particularly where there is no evidence that the third party contested how the insurance company handled that party's claim. In other words, the conduct of the insurance company must be directed at the provider attempting to avoid the exhaustion of benefits claim." *Id.* at 930. In the case at hand, this Court finds that Plaintiff has failed to demonstrate that Defendant improperly exhausted benefits. Defendant has not issued payment for untimely bills, nor has Defendant exercised bad faith in handling the claim at issue.

Plaintiff argues that the Defendant's payment to non-party provider; Cor Medical for CPT A4556 does not constitute payment of a valid claim, and thus argues that Defendant made a gratuitous payment of $5.18 and Defendant acted in bad faith when they assessed payments against available benefits. As held by the Fourth District Court of Appeal, Plaintiff does not have standing to challenge payments to another provider. *Id.* at 930. *See Atlas Medical and Orthopedics, LLC d/b/a Dr. Rahat Faderani, DO, MHP, PA a/a/o Eliana Campos v. Progressive Express Ins. Co.*, 25 Fla. L. Weekly Supp. 984a (Broward Cty. Ct. Oct. 30, 2017); *Susanti K. Chowdhury, MD, PA a/a/o Angela Hammel v. Progressive Amer. Ins. Co.*, 24 Fla. L. Weekly Supp. 691c (Pinellas Cty. Ct. October 16, 2016). Furthermore, Plaintiff presented no admissible evidence showing that Defendant reimbursed a non-compensable service. . Progressive exhausted insured's PIP benefits by the payment of valid claims and thus is not liable for payment in excess of policy limits. *See Northwoods Sports Medicine and Physical Rehabilitation, Inc. v. State Farm Mutual*, 137 So. 3d 1049 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D491a]. There is no evidence of bad faith on the part of Defendant as such any allegations to same are hereby denied.

ACCORDINGLY, it is ORDERED and ADJUDGED that Defendant's Motion for Final Summary Judgment is hereby GRANTED; Plaintiffs Motion for Summary Judgement is DENIED, furthermore Plaintiff's specific request for Summary Judgment a.-g. and a.-d under the Breach of Contract are hereby DENIED.

it is further ORDERED and ADJUDGED that Plaintiff shall take nothing by this action and Defendant shall go hence without day. The Court shall reserve jurisdiction as to Defendant's attorneys' fees and taxable costs.

* * *

Insurance—Property—Standing—Assignment—Validity—Assignment of benefits under property insurance policy is invalid and unenforceable where assignment does not contain written itemized per-unit cost estimate of services to be performed by assignee—"Itemized Per-Unit Cost Emergency Invoice" is not substitute for statutorily required estimate—Invoice also fails to satisfy statutory requirements due to bundling of multiple services

THE MOLD MAN INC., Plaintiff, v. CITIZENS PROPERTY INSURANCE CORPORATION, Defendant. County Court, 17th Judicial Circuit in and for Broward County. Case No. COINX22018364. Division 62. April 24, 2025. Woody R. Clermont, Judge. Counsel: Leo Manon III, The Florida Insurance Law Group, Miami, for Plaintiff. Michael K. Mittlemark, Michaud Mittelmark Marowitz & Asrani, Boca Raton, for Defendant.

REHEARING ORDER FINDING ASSIGNMENT OF BENEFITS NONCOMPLIANT AND GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

THIS MATTER came before the Court on rehearing of Defendant's motion for judgment on the pleadings. This Court has for review of the Assignment of Benefits ("AOB") executed between Jose Rossi and The Mold Man, in connection with property insurance claim no. 00100283387, under policy number 05067115-1. The Court had previously granted the Defendant's motion for judgment on the pleadings. The rehearing took place on April 11, 2025. This Order replaces and supersedes all prior issued orders with respect to Defendant's motion. The Court, having reviewed the AOB and being otherwise fully advised in the premises, finds as follows:

1. Section 627.7152, Florida Statutes, sets forth strict requirements for assignments of post-loss benefits under property insurance contracts, including but not limited to:

(a) Be in writing and executed by and between the assignor and the assignee,

(b) Attachment of an itemized, per-unit cost estimate,

(c) Be executed under a residential property insurance policy or under a commercial property insurance policy as that term is defined in s. 627.0625(1), issued on or after July 1, 2019, and before January 1, 2023,

(d) Contain a provision that allows the assignor to rescind the assignment agreement without a penalty or fee by submitting a written notice of rescission signed by the assignor to the assignee within 14 days after the execution of the agreement, at least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed, or at least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property,

(e) Relate only to work to be performed by the assignee for services to protect, repair, restore, or replace a dwelling or structure or to mitigate against further damage to such property.

(e) Contain a provision requiring the assignee to provide a copy of the executed assignment agreement to the insurer within 3 business days after the date on which the assignment agreement is executed or the date on which work begins, whichever is earlier,

(f) Bolded, uppercase, 18-point font, conspicuous statutory notice: "YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY."

2. The Assignment of Benefits submitted in this case is compliant appears to be compliant with the statutory requirements, except as with respect to section (b).

3. The Court had previously been concerned in its prior ruling with whether or not the scope of the work, was not fully detailed in the AOB if it should be the case that a supplement is necessary. Plaintiff has pointed to section 627.7152(4)(a), where it reads: "Must provide the assignor with accurate and up-to-date revised estimates of the scope of work to be performed **as supplemental or additional repairs are required**." Therefore the Court is no longer concerned with this issue.

4. The AOB submitted in this matter purports to attach an "Itemized Per-Unit Cost Emergency **Invoice**." The problem with this line is that an estimate is an estimate and an invoice is an invoice. The next portion reads, "Please see attached. The itemized per unit cost **invoice** is merely an initial **invoice** for the emergency services. Actual scope and cost of services may exceed the initial itemized per unit cost and will be sent in a supplemental **invoice**." Thus the term invoice has been used four times at this point. In *JD Restoration Inc. a/a/o Paula Schlenker v. American Integrity Ins. Co. of Fla.,* 31 Fla. L. Weekly Supp. 498a, No. 2022-SC-049920-O (Fla. Orange Cty. Ct., Dec. 11, 2023), another County Court granted a motion for judgment on the pleadings for this exact reason. "Based on the plain language of the AOB itself—particularly the numerous references therein to the invoice—the AOB provides the assignor with an invoice—not an estimate. Since an invoice is not an estimate, an invoice is not a substitute for the statutory requirement that valid AOBs contain a 'a written, itemized, per-unit cost estimate of the services to be performed by the assignee.' Since no estimate is located elsewhere in the AOB attached to Plaintiff's Complaint, Plaintiff's AOB does not strictly comply with the statute." Interestingly enough in the second paragraph, appears the line, "Client acknowledges that it has received a copy of the 627.7152(2)(a)(6) statutory notice and an itemized per unit cost estimate, both of which are attached to this assignment agreement and fully incorporated herein." Thus the AOB purports to call the invoice an estimate but this is a legal conclusory statement being done to influence a factual determination.

5. More importantly, Court had been concerned with whether Plaintiff was engaged in **bundling**. The Court views bundling as the opposite of **itemization**. Itemization, as required by § 627.7152, Florida Statutes, involves providing a detailed, per-unit breakdown for each separate service or material to be provided, with a corresponding price for each. Bundling, by contrast, combines multiple services into a single charge, making it impossible to discern the individual costs or to evaluate the necessity or reasonableness of each specific component. Therefore, the bundled 'invoice' submitted by the assignee fails to meet the statutory requirement for an itemized, per-unit cost estimate and is noncompliant with Florida law, though this Court must admit, this appears to be an issue of first impression.

6. A typical estimate usually contains a portion that addresses the cost of parts, quantities of which are reflected in units. It then contains a portion that addresses the units of labor and the going labor rate. This invoice contains neither.

7. To discern legislative intent, this Court looks first to the plain and obvious meaning of the statute's text, which a court may discern

from a dictionary. *See Rollins v. Pizzarelli,* 761 So. 2d 294, 297-298 (Fla. 2000) [25 Fla. L. Weekly S331a]. If that language is clear and unambiguous and conveys a clear and definite meaning, this Court will apply that unequivocal meaning and not resort to the rules of statutory interpretation and construction. *See Holly v. Auld,* 450 So. 2d 217, 219 (Fla. 1984).

8. The Court felt that bundling of services into a single line item or in this case, two line items, flew against the requirement of an itemized per-unit cost estimate. For an example of a case where the term of itemizing is contrasted against bundling, *see Com. Land Title Ins. Co. v. Robertson,* 5 N.E.3d 394, 399 (Ind.App. 2014) ("The Steckler Memo noted that some agents **itemized** charges for title searches and other costs on the appropriate lines, whereas others **bundled** all the charges with the title premium on line 1108. The Steckler Memo instructed agents that entered a bundled charge on line 1108 to designate in the parenthetical section directly beneath it the various line items that were included in the **bundled** charge line 1108.") (emphasis added). Bundling multiple things together goes against the idea of each item itemizing a single thing rather than multiple things. By contrast, where bundling is permissible, in the field of legislation, there are some instances where the **bundling** of multiple topics together does not offend the single subject rule. *See Detzner v. Anstead,* 256 So. 3d 820, 825 (Fla. 2018) [43 Fla. L. Weekly S467c] ("We further hold the proposed amendments are not defective for bundling independent and unrelated measures.").

9. This Court feels that itemization and bundling are well defined as terms as anyone can see consulting a dictionary. The bundling of charges done here, necessarily goes against the requirement of itemization.

10. Section 627.7152(2)(a)5., Florida Statutes, requires that every assignment agreement include "[a] written, itemized, per-unit cost estimate of the services to be performed by the assignee."

11. However, upon review, the invoice **bundles multiple services together** under each compensation line, such as:

• "Pre-Remediation and Post-Remediation Inspection (if necessary), damage assessment, documentation, and report: $1,150.00"

• "Microbial/Mold Sampling and Lab Analysis: $1,000.00"

1. The "itemized" estimate does **not separately list the specific services, labor, materials, quantities, or units being performed or provided**. Instead, it presents combined ("bundled") charges for groups of tasks or services.

2. It stands to reason that itemizing means the act of listing things separately, often including details about each thing. It defies logic that if the first line contains: (1) pre-remediation inspection; (2) post-remediation inspection; (3) damage assessment; (4) documentation; and (5) report, that five separate things are listed under one line. This is not itemizing.

3. It stands to reason that if the second line contains: (1) microbial sampling; (2) mold sampling; and (3) lab analysis, that three things are listed on one line. This is not itemizing

4. Putting five items together in the first line, means that five items have been bundled together. Putting three things together in the second line, means three items have been bundled together. This is not proper itemization as within the plain and obvious meaning of section 627.7152, Florida Statutes.

5. The idea of bundling is contrary to the idea of itemizing. For example, in *Fernandez v. City of Miami,* 147 So. 3d 553, 555 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D1182c], the City Attorney of Miami was responsible for itemizing his expenses if he wanted the City to evaluate each item to determine whether each was properly reimbursable as part of his business as an officer in the City. Instead however, he used the practice of **bundling** to mix a bit of legitimate expenses with ones which by all rights, should not have been reimbursable. *Fernandez,* 147 So. 3d at 555 ("The objective was to consume the allowed amount *without itemizing* the receipts or indicating the relationship to the City's business. Mr. Fernandez submitted the *bundled* receipts with a personal memorandum, which he initialed. . . .") (emphasis added).

6. **Bundling services in this way does not satisfy the statutory requirement for a detailed, per-unit itemization** as required by § 627.7152(2)(a)5., Florida Statutes. The intent of the statute is to allow both the insured and insurer to see exactly what work is being proposed and at what unit price for each distinct service, material, or item.

7. The failure to provide a true, line-by-line itemization **prevents meaningful review of the reasonableness and necessity of the charges,** undermining the consumer protections of the statute.

IT IS THEREFORE ORDERED AND ADJUDGED:

The Assignment of Benefits submitted in this case is **noncompliant with section 627.7152, Florida Statutes, because the so-called "itemized per-unit cost estimate" consists of bundled services, rather than a true itemized, per-unit breakdown of services and materials as required by law**. As such, the Assignment of Benefits is **not valid or enforceable** for purposes of pursuing insurance benefits under § 627.7152. This result is dispositive. Therefore, Defendant's Motion for Judgment on the Pleadings is **GRANTED**, Plaintiff shall go without day.

Pursuant to Rule 2.516(h)(1), the Court hereby orders counsel to furnish copies of this Order/Judgment to any party who does not have an email address shown on this document.

* * *

Criminal law—Driving under influence—Search and seizure—Arrest—Probable cause—Officer who made warrantless DUI arrest did not have probable cause supported by "witnessing each element of DUI offense"—Motion to suppress is granted

STATE OF FLORIDA, Plaintiff, v. MICHAEL HOWLEY, Defendant. County Court, 19th Judicial Circuit in and for Saint Lucie County. Case No. 562024CT002732A. April 25, 2025. Jeffrey Hendriks, Judge. Counsel: Danielle Bayles, Assistant State Attorney, for Plaintiff. Jonathon Alford and Ted L. Hollander, The Ticket Clinic - A Law Firm, West Palm Beach, for Defendant.

ORDER GRANTING MOTION TO SUPPRESS

THIS CAUSE, having come before the Court on April 16, 2025 on the motion filed by the defendant on March 14, 2025 and having considered the witness testimony and the arguments of the parties and the controlling case law and appellate authority and the Court being further advised in the premises finds:

1. A strict, plain language reading of *Atwell v. State,* 398 So.3d 459 (Fla. 4th DCA 2024) [50 Fla. L. Weekly D3b] reveals the arresting officer must "have probable cause supported by [. . .] witnessing **each** element of a DUI offense" (emphasis added).

2. Additionally, "officers may also make a warrantless arrest for one of the limited number of misdemeanors for which the statute specifically authorizes such an arrest. DUI's are not among those offenses." See Florida Statute 901.15 & David Demers, *Florida DUI Handbook,* §4:14, at 413 (2025 ed.)

As such, it is therefore,

ORDERED AND ADJUDGED that the defendant's Motion is GRANTED.

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