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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

THIRD DISTRICT

CASE NO. 3D 2024-1115

Lower Tribunal Case No. 2021-000089-CC-05

DAWN E DUBOIS, individually, and
DD BEAUTY & WELLNESS, INC.
Appellant/Defendant.

V.

THE AFFILIATI NETWORKS, INC
A Florida Corporation
Appellee/Plaintiff

ON APPEAL FROM THE COUNTY COURT

IN AND FOR MIAMI-DADE COUNTY, FLORIDA

APPELLANT'S INITIAL BRIEF

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PREFACE

This case is a contract dispute regarding online advertising. Plaintiff/Appellee sought $13,350. The Trial court rendered a Final Judgment for a reduced $8,400 after a non-jury trial March 1, 2023. Appellant appealed the Final Judgment (3D 2023-0640), which was affirmed by this Court for lack of a trial transcript in its order dated November 15, 2023. The Appellant believes it was erroneously denied

a trial transcript and therefore its right to appeal. The Trial Court awarded an erroneous, unreasonable and excessive $76,597.57 in Attorney Fees and Costs in a Final Order dated May 21, 2024, after a special-set hearing dated May 17, 2024.

STATEMENT OF THE CASE AND FACTS

1. This is an appeal from a final judgment awarding Attorney's Fees and Costs entered after a special-set hearing held May 17, 2024, before the County Court, In and for the County of Miami-Dade (R.700-704). There was a court reporter present, therefore a transcript of the hearing is part of the record under review.

2. On August 17, 2020, DD Beauty & Wellness (DDBW), Inc signed a contract with Appellee Affiliati to drive online traffic to its website (R.159-175). Appellant Dubois is allegedly a personal guarantor. Under the contract, Appellee would be paid a onetime commission of $150 for the first $219 order delivered by Appellee per new customer. Subsequent orders from the new customer delivered by Appellee would be commission free.

3. Fraudulent online traffic was prohibited under the contract and Appellee was required to comply with all laws regarding advertising and consumer contact. This was to be a self-financing advertising campaign; DDBW would receive $219 and give Appellee a $150 finder's fee per new customer delivered. Otherwise, Appellee would be paid nothing for their efforts.

4. From August 19 to September 6, 2020, Appellee sent visitors to DDBW's website. DDBW received over 100 messages from people contacted by Appellee on DDBW's behalf. These messages complained about receiving ten to twenty unsolicited texts and emails per day, even after opting out. This is illegal and a breach of the contract. These people were irate and threatened to file complaints with the authorities regarding DDBW's business practices since the advertisements were sent by Appellee in DDBW's name.

5. In addition to violating laws regarding customer contact by phone and email, Appellee and their third-party publishers also composed fraudulent ads. These ads featured fake celebrity endorsements and "as seen on Shark Tank" for example. And misleading offers like "try a bottle for free" when no such offer was made. Whatever it took to get the customer to click the buy button and thereby record a commission no matter how unlikely it was that DDBW would ever see any payment from the deceived customer.

6. For their services, Appellee presented three weekly invoices. In the first week, four sales were made that qualified for a $150 commission each or a $600 total fee. However, Appellee presented their first invoice in the amount of $10,350. DDBW timely objected in writing and Appellee agreed to revise the invoice. Appellee never did and a month later insisted it be paid or "he would tell the industry we're not paying our bills". This would have resulted in other

advertising networks not promoting DDBW's products or requiring payments in advance. This was extortion. Appellee stopped promoting DDBW's product after three weeks when DDBW refused to pay their first erroneous invoice.

7. Also, 70% of the visitors delivered by Appellee to DDBW's website who attempted to place an order, were rejected by DDBW's credit card processing company. On August 25, 2020, DDBW's credit card processing company sent us an email informing us that they would not release any funds for 45 days due to the high rejection rate and the high probability that sales previously approved would prove to be fraudulent and charged back by the legitimate cardholder in the future. In this email the card processing company stated that the industry average rejection rate where the legitimate customer enters card info in error was 1% or less (compared to 70%! Delivered by the Appellee). The rejection rate did not improve the following week, so the credit card processing company closed DDBW's account due to excessive fraud. DDBW cannot sell online without the ability to process credit card payments. Fraudulent traffic is a breach of the contract.

8. After the Final Judgment, Appellant has discovered that Appellee may be the identity thief driving fraudulent traffic from stolen credit card numbers rather than simply being a victim of fraudulent actors and delivering poor service to the Appellant. The District Attorney's office in San Diego County CA has obtained a conviction for: *"(1) conspiracy to commit money laundering, (2) conspiracy to*

advertise falsely, (3) conspiracy to access computers without authorization, and (4) identity theft." against a third-party publisher/partner of the Appellee. The DA has also assessed the Appellee to be a criminal organization directing this criminal activity against many of the Appellee's clients. Appellant believes they are one of the victims of Appellee's criminal activity.

In addition to suing us, Appellee has sued more than fifty of their clients in Miami-Dade County Florida alone. This is their business model: fraudulent advertising, identity theft, thereby create commissions due from clients, followed by aggressive legal collection action and forced settlements. We are apparently just one of his many victims.

9. It's important to note that in our lawsuit (and in many lawsuits), Appellee obtained a protective order purportedly to protect his proprietary information specifically the identities of his third-party publishers/partners. But in hindsight, it appears the protective order was to limit discovery and conceal Appellee's criminal activity and convicted felon partners. This is a fraud on the Court and on the Appellant. The final judgment (and any claim for attorney fees and cost) was obtained via this fraud and the Trial Court had an obligation to consider this when awarding fees at the special-set hearing held May 17, 2024.

I. The amount of attorney fees & costs on the final order is incorrect and differs from the amount awarded by the Trial Court at the special-set hearing of May 17, 2024. The Trial

Court erred in signing the erroneous Final Order prepared by the Appellee's attorney.

10. The Final Order, which was prepared by the Appellee, states that total attorney fees and costs awarded is $76,597.57 (R.702) but the amount awarded at the special-set hearing of May 17, 2024, is $73,549 (R.668 lines 14-20):

(R.668 lines 14-20):
THE COURT: Thank you.
14 Based upon my reading of the information
15 that I have with the dockets, the affidavits,
16 hearing the expert witnesses, I find that the
17 $73,549 -- I thought there was 50 cents, but I
18 didn't come up with the 50 cents -- is awarded total
19 fees and costs.
20 Thank you very much, folks.

The Trial Court erred, this is a violation of Civil Rule 1.540(a) and (b)(2)

II. The Trial Court Erred as a Matter of Law by awarding any Attorney's Fees and Costs in the absence of an Independent Fee Expert.

11. In 2007, *In re Amendments to Florida Rules of Civil Procedure,* The Florida Bar Civil Procedure Rules Committee recommended adding Rule 1.526 to The Florida Rules of Civil Procedure. The proposed rule was entitled "Expert Opinion Testimony on Costs and Attorneys' Fees" and included "[e]xpert opinion is not required to support or oppose a claim or an award of costs, attorneys' fees, or both, unless by prior order of the court." Essentially, the proposed rule would leave it to the trial judge to determine whether or not he or she would require "guidance" in

the form of an expert's opinion regarding the determination of attorneys' fees. In rejecting the proposed rule, the Florida Supreme Court opined *"that the issue of whether expert opinion testimony is required in this context is not one that is appropriately addressed in a rule of procedure"* and declined to adopt the proposed rule. In doing so, the Florida Supreme Court declined to give trial courts the discretion to eliminate the requirement of an **independent** expert in determining fees.

12. In Roshkind V. Machiela, decided in 2010, the Fourth District Court of appeal again addressed the long-standing requirement of independent expert witness testimony to support a claim for attorney's fees. The Court recognized generally *"where a party seeks to have the opposing party in a lawsuit pay for attorney's fees incurred . . . **independent** expert testimony is required" and "case law throughout this state has adhered to the requirement of an **independent** expert witness to establish the reasonableness of fees, regardless of whether a first or third party is responsible for payment."*

Although the opinion recognizes *Island Hoppers* and the previously questioned judicially-created requirement of **independent** expert testimony to establish the reasonableness of attorney's fees, it ruled the judicially-created requirement *"remains etched in our case law."*

13. The Fourth District certified a question to the Florida Supreme Court regarding whether or not an expert witness is required to testify to establish attorney's fees, seeking a final determination of the issue. The Florida Supreme Court initially accepted jurisdiction but later issued an opinion *"upon further consideration, we have determined to deny review and discharge jurisdiction"* thereby denying a review and ruling on the issue. Therefore, an **independent** expert continues to be required as a matter of law in Florida.

14. During cross examination at the special-set hearing of May 17, 2024, the Plaintiff's fee expert, attorney Stephen Padula, testified that he made no reductions to Appellee's fee application accepting 100% of it and admitted that he (Padula) had acted as a fee expert for Appellee's attorney Ruben Socarras *"several times"* and that attorney Socarras had acted as a fee expert for him (Padula) *"a few times"*. (R.655 lines 3-25, R.656 lines 1-3):

3 THE COURT: Thank you very much. Ms.
4 Wimmer, do you have any questions for Mr. Padula?
5 MS. WIMMER: Just briefly.
6 CROSS-EXAMINATION
7 BY MS. WIMMER:

8 Q. Just to be clear, you made no reductions
9 to any of the time claimed for Plaintiff's counsel
10 nor their appellate counsel in this case; is that
11 accurate?

12 A. That is accurate.
13 Q. And you testified that you've been a fee
14 expert for Mr. Socarras or his firm previously?
15 A. I have.
16 Q. Do you know on how many occasions?
17 A. Several times for sure, Ms. Wimmer, but I
18 did not, you know, count them all up, but it's been
19 several times that I've acted as a fee expert for
20 Mr. Socarras and his firm.
21 Q. And has he ever been a fee expert for you
22 or your firm?
23 A. He has, but only probably a few times to
24 my recollection, but I can't recall how many times.
25 But he -- the answer is yes, he has been my fee
1 expert as well.
2 MS. WIMMER: I have no further questions.
3 THE COURT: Thank you.

15. Also, during direct examination Appellee's fee expert (Steve Padula) testified that he reduced his hourly rate from $600 to $500 and capped his work at 4 hours because of his long 16-year relationship with Appellee's attorney (Socarras) and to benefit Socarras's client, the Appellee (R.650 lines 24-25, R.651 lines 1-10):

24 Q. And what is your hourly rate, Steve?
25 A. Well, normally, my hourly rate is 600, but
1 I reduced it to $500 based on our relationship and

2 for the benefit of your client.

3 Q. How long have you and I known each other?

4 Approximately 16 years.

5 Q. And how -- what's the nature of our

6 relationship?

7 A. We used to work together a million years

8 ago, and then since that time have consulted on

9 various cases, and I have acted as your fee expert

10 in numerous matters as well.

16. Two attorneys who regularly testify as to the reasonableness of each other's fees, at reduced rates and capped hours, are not **independent** fee experts as required by Florida law. They are business associates or business partners or vendors with a business relationship. This fee expert (Padula) is effectively part of the Appellee's legal team. If you're on the "Friends & Family Plan" of reduced rates and capped hours, then you are not an independent expert as required by law.

17. Also, although Appellee's fee expert (Padula) accepted 100% of the Appellee's fee application, the final order eliminated Appellee's claim for the mediation fee (R.702 paragraph S). This was an obvious violation of the Statewide Uniform Guideline for Taxation of Costs in Civil Actions that was nevertheless accepted by the Appellee's fee expert (Padula). This calls into question how closely any of the Appellee's fee application was scrutinized by (Padula) the Not Independent Fee Expert/ business partner of the Appellee's attorney (Socarras).

18. In addition, the Appellee sought time in its fee application to: *"Request court reporter for March 1, 2023, trial."* (R.524 & 525). No court reporter was ever provided, which erroneously denied the Appellant a trial transcript and therefore her right to appeal. Again, this time entry was accepted by the Appellee's fee expert (Padula). Did the fee expert scrutinize any of the Appellee's fee request? Or did he simply accept the fee request of his friend of 16 years whom he charges a discounted hourly rate and caps hours *"...based on our relationship and for the benefit of your client"* (R.651 lines 1-2). Clearly the fee expert is not independent dispassionate or unbiased when it comes to his friend and fee expert business partner. The Trial Court erred as a matter of law awarding any attorney fees or costs in the absence of an independent fee expert as required by law.

III. The Trial Court Erred as a Matter of Law by refusing to consider "Significant Issues" and limiting the special-set hearing of May 17, 2024, to the four corners of the Appellee's fee application only. Three examples follow.

19. Significant Issues Test: In Trytek v. Gale Industries, Inc. 3So.3d 1194 (Fla 2009), the prevailing party's net judgement was reduced, and the Florida Supreme Court found that: "*the Significant Issues Test Applied. And therefore, the trial court has discretion to examine all factors including issues litigated, claim amount, amount recovered, and counterclaims. The trial court can determine that neither*

party was the prevailing party for attorney's fees." Likewise in this case, Plaintiff's claim was $13,350 but judgment was for $8,400 or 37% less. Even though the judgment is erroneous and/or excessive, the Significant Issues Test still applies.

20. The special-set hearing of May 17, 2024, was scheduled to be presided over by Hon. Luis Perez-Medina the trial judge in this case. But without notice or explanation Hon. Jeffery Rosinek (Senior Judge) presided. Judge Rosinek had no familiarity with the case or the significant issues therein. This was prejudicial to the Appellant. During the special-set hearing, David Gallant, corporate representative for DD Beauty & Wellness, Inc (DDBW) testified.

21. **Example 1:** In this testimony below, the Trial Court does not consider anything from the original trial record significant to attorney fees. And explicitly states *"I can't hear that again"*. This is a misapplication of the law in Trytek v. Gale Industries, Inc. 3So.3d 1194 (Fla 2009), which requires the Trial Court to "hear it again" and consider the significant issues when deciding the amount of attorney fees to award if any. The Trial Court erred as a matter of law.

Gallant testifies (R.626 lines 16-25, R.627 lines 1-12):

16 MR. GALLANT: I understand, Your Honor,
17 but as -- as I -- as I understand the way the
18 significant issue test works, you know, for example,
19 in -- in Trytek v. Gale Industries, Inc., the net
20 judgment was reduced, and the Florida Supreme Court
21 found that, quote, "The significant issues test
22 applied; and therefore, the trial court has

23 discretion to examine all factors, including issues
24 litigated, claimed amounts, amounts recovered in
25 counterclaims. The trial court''
1 THE COURT: Stop. So what does that have
2 to do with issues, any one of those four points that
3 you just made?
4 MR. GALLANT: Again, Your Honor, the
5 the premise that the Plaintiff's attorney just put
6 out was that it's a simple case about they -- they
7 -- they delivered terrific service and they just
8 wanted to get paid, when in fact, they did not
9 deliver good service.
10 THE COURT: I can't hear that. Again, do
11 you understand that is not significant for
12 attorneys' fees.

22. **Example 2:** in this testimony that follows, Mr. Gallant is detailing the fraudulent online traffic delivered by the Appellee in violation of the agreement. This includes specific page references in the trial record and sharing the trial record on the screen during the zoom hearing. These are Significant Issues which must be considered by the Trial Court when deciding on awarding attorney fees. However, the Trial Court considered this, "*retrying the case"* and refused to consider it. The Trial Court erred. The Trial Court must review the significant issues in the trial record, or the "Significant Issues Test" has no meaning or practical application.

Mr. Gallant testified (R.629 lines 14-25, R.630 lines 1-20):

14 MR. GALLANT: Okay. Thank you, Your
15 Honor. Okay. Well, okay. The -- the -- the
16 original claim by the -- by the Plain ti ff was for
17 $13,350. The award was for $8,400. That's a 37
18 percent reduction; therefore, the significant issue
19 test applies, which means that the trial court has
20 the discretion to award no fees at all if they find
21 -- if they -- if they want to within their

22 discretion.
23 The significant issues are -- involved are
24 as follows: the original agreement does not allow
25 for a Plaintiff to deliver fraudulent activity to
1 our websites. But they did -- the -- the trial
2 record does say that they deliver fraudulent traffic
3 to our website.
4 So again, I'm going to show this is our
5 agreement, the so-called insertion order, the amount
6 that's -- the -- the area that's circled says that
7 their restrictions are there's no trials; there's no
8 incentives; there's no fraud.
9 So the agreement clearly says that no
10 fraud is allowed to be delivered by the Plaintiff.
11 In this next exhibit, which is page 166 in the trial
12 record, the Plaintiff has -- you know, we received
13 14 sales. 34 were declined by the –
14 THE COURT: Are you trying this case
15 again?
16 MR. GALLANT: -- by the credit card
17 company.
18 THE COURT: Mr. Gallant, again, you're
19 going back to what was done in the trial. I'm not
20 -- I'm not retrying this case. Do you understand?

23. **Example 3:** in this testimony that follows Mr. Gallant describes how the Appellee provided incorrect invoicing (was $10,350 should be $600) (R.176), which the Appellant timely disputed in writing, and the Appellee agreed to revise (R.191). However, the Appellee did not revise the disputed invoice within 30 days (or ever) as required in the agreement (R.165 section 4b). This is a breach of the agreement and a Significant Issue resulting in at least a 37% reduction in the Appellee's claim as described in the final order (R.207-210). The trial Court had an obligation to consider this before awarding attorney fees. The Trial Court erred as a matter of law.

Mr. Gallant testifies (R.633 lines 3-25, R.634 lines 1-18):

MR. GALLANT: Okay. I I guess my point
is going to -- my third point is going to be that
Exhibit 7 -- 7 in this Skype chat, Your Honor, we
offered to settle this -- this agreement. They –
they gave us invoices that were incorrect. They
they acknowledged that they're incorrect. Let's do
that right here.
So on page 165 in the trial record,
there's a Skype chat which is on the screen now. We
received their first . . invoice, and Anthony Macabe
(phonetic), who's Anthony in this -- which is the IT
contractor for the Defendant, says, "Question on the
invoices you sent through."
This is their first invoice that they sent
to us. "Thirty credits and 39 sales. There's only
four showing in Everflow. How did you come up with
39 sales?"
And the –
THE COURT: Interrupt you again. Sir,
this was at trial.
MR. GALLANT: Yeah.
THE COURT: I'm not retrying it. Whether
there was an offer or not, apparently, there was
nothing accepted. At this point in time, your third
point is gone. Next, fourth point.
MR. GALLANT: Okay. So Your Honor, the
fact that they sent us an invoice that was
incorrect, and they they –
THE COURT: Correct. That should have
been done at trial. You had an opportunity of
speaking to the -- the -- the other side months ago.
Again, it's over.
Any facts that were brought up in trial lS
gone. I can't do anything about it. The whole
purpose of this lS for -- not to try this case
again, but it's to -- for -- whether they get
attorneys' fees or not.
So if you have any of those points
you're up to point number four. Let me know what
point number four is. Hopefully, it's in reference
to attorney fees.

IV. Appellee's Proposal for Settlement was rejected. Therefore, the Trial Court lacked authority to award attorney fees and costs in this case.

24. During the special-set hearing of May 17, 2024, the Appellee's attorney testified that his client made a pre-litigation offer to settle of $11,000 and a second offer of settlement during mediation for $12,000 in May 2022 (R.612 lines 20-25, R.613 lines 1-2):

MR. SOCARRAS:
20 Okay. So at this point, it's important to
21 note that the offer to settle, before even
22 litigation was filed, was -- was reduced to 11,000.
23 .About a year-and-a-half after that, May of
24 2022, my client again asked for $12,000 and offered
25 to waive all of their legal fees and costs and
1 interest at the time, which was already a year-and
2 a-half into this litigation.

25. **Attorney's Fees- Plaintiff's Proposal for Settlement:** Under Florida Statute 768.79 and Civil Rule 1.442, if Plaintiff makes an offer to settle and it is rejected by the Defendant. Then Plaintiff can only be awarded its attorney's fees if the resulting judgment is 25% greater than the rejected offer. On May 3, 2022, Plaintiff/Appellee served a Proposal for Settlement on Appellant's attorney via an email during mediation, to settle for $12,900 and each party would be responsible for their own attorney's fees (R.348). Defendant/Appellant rejected this offer (R.349).

26. The final judgment in this case (which the record shows to be erroneous or excessive) is $8,400. That is **35% less** than the rejected offer of $12,900, **not 25% more** as required under this rule. Therefore, the Appellee's offer must be seen as unreasonable, Appellant was right to reject it, and no attorney's fees can be awarded by the trial court. Note: Fla R. Civ. P. 1.442(j) states that *"Effect of mediation. Mediation shall have no effect on the dates during which parties are permitted to make or accept a proposal for settlement under the terms of the rule."* An offer is an offer under the rule. Also, the terms of this offer are already disclosed by the Appellee in the trial record: 56 sales plus 30 credits times $150/ea equals $12,900. No case should have been filed. No Attorney Fees are allowed. No Interest should attach. In fact, Appellant should be prevailing party.

V. The Trial Court Erred in not considering the amount involved in the case and the results obtained when determining the amount of Attorney Fees awarded. The final judgment was just $8,400 a small claims case. The Trial Court awarded an unreasonable $76,597 in attorney fees!

27. Under R. Regul. FL. Bar 4-1.5 (b)(1)(D):

"(b)Factors to Be Considered in Determining Reasonable Fees and Costs.
(1) *Factors to be considered as guides in determining a reasonable fee include:*
(D) *the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;"*

28. It's irrational, unbelievable and defies common sense that Appellee would spend $76,000 in legal costs to chase a $13,000 claim and end up with an $8,400 final judgment. No evidence was provided that the Appellee actually paid this amount of attorney fees or is liable for it. Therefore, it is not recoverable from Appellant. Appellee's attorney is effectively his business partner in what has been assessed by law enforcement to be a criminal organization (see VIII below).

29. The Trial Court awarded an unreasonable and excessive $76,597.57 in attorney fees and costs (100% of the Appellee's application less a $712 mediation fee). In the testimony that follows during the special-set hearing of May 17, 2024, David Gallant, corporate representative for defendant DD Beauty & Wellness, Inc, brings to the Trial Court's attention the fact that Appellee's original claim was $13,350 and he prevailed on just $8,400 a 37% reduction. The final judgment of just $8,400 is a small claims case. Fees would be limited in a small claims case to 15% of the judgment or $1,260 in this case not $76,000! The fees awarded in this case are 9 times the judgment obtained! This is unreasonable on its face. Gallant testifies (R.636 lines 7-16):

7 MR. GALLANT: Okay. All right. So my
8 I guess the only point I have left is the the
9 judgment was for -- the -- the claim was for
10 $13,350. The judgment was for 8,400, which is 37
11 percent less, which is $400 more than a small claims
12 case, and a small claims case is 15 percent would be
13 the -- the attorneys' fees, and this guy is looking
14 for 72,000, which is 800 times -- 800 percent of the

15 judgment, which unreasonable on its face.
16 THE COURT: Thank you.

VI. DEFENDANT WAS ERRONEOUSLY DENIED TRIAL TRANSCRIPT

It is undisputed that: (1) a party (Plaintiff) requested a court reporter, and (2) no court reporter was provided in violation of rule 2.535(b). This denied Appellant her right to appeal. Appellant is entitled to discovery as to why. And relief from final judgment.

Rule 2.535(b) ***"When Court Reporting Required.*** *Any proceeding shall be reported on the request of any party. The party so requesting shall pay the reporting fees, but this requirement shall not preclude the taxation of costs as authorized by law."*

30. It is not disputed that the Appellee requested a court reporter. This was stipulated in the Appellee's own attorney billing records used to support their claim of attorney's fees (R.524 & 525). Appellee has not disputed that he had requested a court reporter instead complaining that Appellant had not requested a court reporter. But Rule 2.535(b) states that *"Any proceeding shall be reported on the request of ANY party."* It doesn't have to be the Appellant.

31. Also, Appellee has argued *Defendant was represented by counsel at the trial. Whether or not Defendant personally realized no court reporter was present, her attorney must have known and presumably appreciated the risks associated with that."* But it is just as likely that Defendant's attorney was aware that Plaintiff had requested a court reporter, and he was just as surprised as the

Defendant was to learn after the fact that no recording or transcript of the trial had been created.

32. The undisputed facts are: (1) a court reporter was requested by a party (Plaintiff/Appellee) and (2) no court reporter was provided. This is a violation of rule 2.535(b). Whether the Appellee pulled a last minute "bait and switch", or the Court's administrative staff made an error, the Appellant was denied her right to appeal. Appellant is entitled to discovery as to why no court reporter was present at trial in violation of rule 2.535(b) and relief from final judgment under rule 1.540(b).

33. Also, the lack of a trial transcript is effectively waiving one's right to appeal given how courts apply *Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979*), as in this case. But in Florida when a defendant waives a right, *the court must ensure that the waiver is voluntary, knowing, and intelligent. The defendant must be informed of the nature of the right and the consequences of waiving it.* None of that happened in this case. The Appellant had no idea that no trial transcript was created and that as a result she effectively waived her right to appeal. Appellant thought the person handling exhibits was the Court Reporter. The Trial Court and/or Appellant's attorney have an obligation and a duty to avoid having any party unknowingly waive any right. The Florida and U.S. constitutions

require this in their due process protections. Appellant is entitled to relief from Final Judgment under rule 1.540(b).

VII. THE FINAL JUDGMENT IS ERRONEOUS ON ITS FACE.

Appellant is entitled to relief under Zarate v. Deutsche Bank Nat'l Tr. Co. Tr. 81 So. 3d 556, 558 (Fla. 3d DCA 2012). The Final Judgment is erroneous on its face and relief is allowed even without trial transcript. The Court should Permit Discovery and Conduct an Evidentiary Hearing on Defendant's Motion to Stay and Rule 1.540(b) Relief.

34. Appellant argues that the Final Judgment (prepared by Plaintiff) is erroneous on its face. The Final Judgment acknowledges that the invoicing was incorrect and denies $4,500 of the claim in the first invoice (R.175, Plaintiff Ex. 7). In fact, Plaintiff bills three invoices for 89 sales and $13,350 in their complaint. But Final Judgment is just 56 sales and $8,400. Incorrect invoicing is a breach of section 4(b) of the agreement (R.165, Plaintiff Ex. 5). The Final Judgment then finds no breach by Plaintiff and no merit to Defendant's affirmative defenses, one of which is incorrect invoicing (R.86-87, first affirmative defense). The Final Judgment confirms the invoicing was incorrect. The Final Judgment describes an event that is a breach by Plaintiff (incorrect invoicing) then states there was no breach. Both can't be true, the final judgment conflicts with itself and is erroneous on its face.

35. Appellee has argued *"... Defendant contends that this finding somehow renders the judgment erroneous on its face, but there was no error because the court did not award that $4,500 sum."* The opposite is true. The Appellee's original complaint was for $13,350. The court erroneously awarded $8,400 (should be zero due to breach). That means the original $13,350 invoicing was incorrect as Appellant's affirmative defenses claimed. Therefore, there is merit to the Appellant's affirmative defenses and the Final Judgment is erroneous on its face. Had the court awarded the full $13,350 then the Plaintiff's invoices would have been found correct by the court and no breach by Plaintiff and no merit to Defendant's affirmative defenses. **If you find the invoices incorrect, as the Final Judgment does, then you must find the Plaintiff breach section 4(b) of the agreement and you must find merit in Defendant's affirmative defenses. Therefore, the Final Judgment is erroneous on its face.** Also, the Final Judgment as written finds that the Appellee sued for an amount, he knew to be incorrect. That's Prima Facie "unclean hands" which is Appellant's fourth affirmative defense. Also, with merit. Appellant is entitled to relief from Final Judgment. At a minimum Appellee is not entitled to pre-judgment interest, or attorney's fees as they breached the agreement and sued for an amount they acknowledged (on the record at R.165) to be incorrect. Appellant is also entitled to offset against the principal judgement for Appellee's's breach at minimum.

36. The common law rule that "*One who comes into equity must come with clean hands else all relief will be denied him regardless of merit of his claim, and it is not essential that act be a crime; it is enough that it be condemned by honest and reasonable men."* Roberts v. Roberts, 84 So.2d 717 (Fla. 1956). The Appellant's actions are actual crimes as assessed by law enforcement.

The Trial Record:

14. Plaintiff presented his first invoice which is incorrect (R.175, Plaintiff Ex. 7). Defendant timely disputed the invoice per section 4(b) of the contract (R165, Plaintiff Ex. 5). Plaintiff agrees to revise the incorrect invoice (R.191, Plaintiff Ex.13 PL25). "*Anthony (defendant's I.T. contractor) 5:34pm: Question on the invoice you sent through… 30 credits then 39 sales. There's only 4 showing in Everflow. How did you come up with 39 sales? "Sonny (Plaintiff) 11:05pm: I see the issue … I can get it revised."* Plaintiff never corrects the invoice and sues for an amount he admits on the record is incorrect. Defendant answers complaint and includes affirmative defenses which include that the Plaintiff provided incorrect invoices in breach of the agreement. On page two of the final judgment (R.208) in the first paragraph, it states *"Although Plaintiff sought an additional $4,500.00 based on an additional 30 credited sales, the Court finds that the evidence did not support that there was an agreement by the parties for those credited sales."* This means that the Plaintiff presented invoicing that was incorrect (R.175, Plaintiff Ex. 7) and did not correct it after being given notice of dispute, which is a breach of the agreement. It also means that Defendant's affirmative defenses have merit although the Final Judgment states they do not. The Final Judgment conflicts with itself and is erroneous on its face. Defendant is entitled to relief from Final Judgment under rule 1.540(b). And Zarate v. Deutsche Bank Nat'l Tr. Co. Tr. 81 So. 3d 556, 558 (Fla. 3d DCA 2012).

VIII. The Trial Court Erred in not considering the Appellant's claim of fraud on the court by the Appellee.

THE APPELLEE IS A CRIMINAL ORGANIZATION.

37. Under R. Regul. FL. Bar 4-1.5 (a)(2): *"(a)* ***Illegal, Prohibited, or Clearly Excessive Fees and Costs.*** *(2) the fee or cost is sought or secured by the lawyer by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee."*

Appellant is also entitled to relief from final judgment under civil rule l.540(b)(2) and (3): ***(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.*** *On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons:* ***(2)*** *newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing;* ***(3)*** *fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.*

The Trial Court had an obligation to consider claims of fraud regarding the awarding of attorney fees and costs during the special-set hearing of May 17, 2024. The Trial Court erred in not doing so.

38. In the testimony below, Appellant was prevented from introducing a declaration from Damon C. Mosler, deputy District Attorney for San Diego County, CA. Mosler details a conviction the DA obtained against *Podgurski,* a third-party publisher/partner of *Sanjay Palta* the principal of the Appellee (R.403-406). Per the Mosler Declaration, the conviction against the Appellee's partner is:

" (1) conspiracy to commit money laundering, (2) conspiracy to advertise falsely, (3) conspiracy to access computers without authorization, and (4) identity theft. "

The DA assesses that the Appellee is a criminal organization and *Palta* is the ringleader directing the convicted partner's criminal activity. The DA stated he would have charged the Appellant with the same crimes but lacked geographic jurisdiction to do so. From the Mosler Declaration (R.403-406):

"12. Based on the SDCDA investigation into the criminal activities of Podgurski, including our review of certain documents obtained by the SDCDA reflecting communications and interactions between Podgurski and Palta, our office has concluded that: (i) Podgurski was operating his criminal advertising scheme through, among other entities, AP Media and APR Media (also referred to as "Affiliate 2106"); (ii) Podgurski, through Affiliate 2106, was responsible for developing and promoting fraudulent advertisements, on behalf of Palta and Affiliati, to drive high-volume, but low-quality, internet sales leads to FitCrew and others; (iii) these low~quality sales leads and fraudulent advertisements generated significant sales, but ultimately resulted in dissatisfied consumers who returned the products and demanded refunds; and (iv) Palta and Affiliati were aware that Podgurski was developing and promoting these fraudulent advertisements, and retained Affiliate 2106 to perpetrate this criminal advertising scheme that inflated the commission payments Palta, Affiliati, and Podgurski would receive on those sales."

"13. Based on these conclusions, Palta and Affiliati have been the subjects of a criminal investigation by the SDCDA, and, but for the SDCDA 's limited jurisdictional reach, the SDCDA would have brought criminal charges against Palta and Affiliati for, among other things, advertising fraud arising from the services they performed for Wanamaker, FitCrew, and others."

This information was discovered by the Appellant post final judgment in this case.

39. It is the same illegal behavior exhibited by the Appellee in this case. The Appellee obtained a protective order in this case (R.96-128), purportedly to protect its proprietary information. Specifically, the identities of its third-party publishers. In hindsight, it appears this protective order was designed to limit discovery and conceal the Appellee's criminal activity and its convicted felon partners. This is a fraud on the Court and on the Appellant.

Gallant testified at the special-set hearing of May 17, 2024, as follows (R.624 lines 21-25, R.625 lines 1-25, R.626 lines 1-15):

MR. GALLANT: You can see the screen now, Your Honor?
THE COURT: Yes.
MR. GALLANT: Thank you, Your Honor.
Okay. So once we go to -- that's right. I'm nervous. I've admitted I'm nervous. It's right here. Here, Your Honor.
The Defendants -- we realize that the purpose of this hearing is to determine attorneys' fees, but we believe the significant issue test applies to this case. We want to bring eight significant issues to the Court's attention, its consideration, before deciding awarding any attorneys' fees.
First of all, the -- the Plaintiff has been assessed to be a criminal organization by the District Attorney of the San Diego County in California.
On the screen here, we have a declaration by the Deputy District Attorney Damon C. Mosler.
MR. SOCARRAS: Your Honor, if I may interject. Your Honor, if I may interject. You know, we've got limited time for this hearing today, and honestly, the underlying merits of the case are not at issue, and this is what's happened along the entire way.
This is entirely irrelevant to a fee hearing. This isn't -- doesn't even involve this case whatsoever, and so I'm not sure why this is even being brought up and why counsel for the Defendants are not addressing the fee hearing at issue.
THE COURT: Okay. Do you understand, Mr. Gallant, you can present anything you like? I'm not going to retry the case. The case was tried. The -- the -- the appeals were taken place.
Today, I'm just -- whether they get whether the Plaintiff's attorneys receive any money, and if so, how much. That's it.
So if you want to take up and talk about this, to me, it's totally irrelevant. I -- because I have nothing to do with it. But if you want to spend your time and tell me this, that's fine, but it's not going to affect attorneys' fees. understand?

Gallant also testifies (R.627 lines 13-20):

13 MR. GALLANT: I get that, Your Honor, but
14 I would think that if the fraud was committed on the
15 Court, that that would be significant about
16 attorneys' fees. If we show that in fact, the
17 invoices that they presented were incorrect
18 THE COURT: That should have been done in
19 the court and a trial court, not here. Do you
20 understand?

40. The final judgment (and therefore any claim for fees) was obtained by fraud, and the Trial Court erred in not considering it when awarding attorney fees and cost during the special-set hearing of May 17, 2024.

41. Appellant has three additional declarations from clients of the Appellee describing the same fraudulent activity as in this case and as described by the DA's declaration: Declaration of Owen Nunez (R.412-415), David McMenomey (R.416-419) and Ather Ahmed (R.420-422).

42. The Trial Court also erred in not allowing the Appellant to describe the fraudulent online traffic delivered to the Appellant's website by the Appellee as described in paragraph 22 above and in the trial record as follows:

43. Fraudulent online traffic is prohibited in the agreement (see Appellee's/Plaintiff's Exhibit 4 Insertion Order, *"Restrictions: no Trials, no Incent, no Fraud"*) (R.159). However, rather than delivering legitimate paying customers as required, Appellee (and his convicted sub-contracted publishers) engaged in illegal spamming and delivered credit card fraudsters; 70% of whom

were rejected by Appellant's credit card processing company. A 70% rejection rate is demonstrated in the trial record as follows:

44. In the Skype Chat marked as Plaintiff's Exhibit 13 PL00026 at 11:24am (R.192) Defendant (Corp. Rep. David Gallant) states "*It looks like we got 14 sales on 600 clicks 2.34% CR. $3.50 EPC by my math. Not great but not the worst. I wonder how many more good sales are available in the 34 declines. Also, how many bad sales are in the 14?*" To which Plaintiff (Sonny) replies at 11:50am ''*25 Card was Declined - this is the one id like to dissect further*". This means that 48 people tried to place orders (14 successful orders + 34 declined by credit card company) and that 70% (34/48) were declined by the bank.

45. For comparison, the industry standard is just 1% rejection rate (as stated in Appellant/Defendant's Exhibit A an email from Appellant's credit card company "Stripe") (R.206). Note: this email is dated August 25, 2020, just two days after Appellant received Appellee's first weekly invoice dated August 23, 2020 (R.175) and is a direct, real-time response to Appellee's fraudulent activity the previous week. As stated in this email, and because of Appellee's first breach and illegal activity, Appellant's credit card processing company withheld funds and later closed Appellant's credit card processing account due to excessive fraud delivered by Appellee (Appellant's Exhibit A) (R.206). Appellee's breach caused great

harm to Appellant as online selling requires the ability to process credit card payments or "you're out of business". Appellant's Exhibit A (R.206) is an email from Appellant's credit card processing company (Stripe) stating they are withholding funds because they expect sales already received will be disputed in the future as fraud, given the charges that have come through so far (from Appellee). This email letter from Appellant's credit card company is in response to a 70% rejection rate delivered by Appellee to Appellant's credit card company during the previous week. Industry standard is that real customers are rejected about 1% of the time due to data entry errors, losing track of available credit, etc. A 70% rejection rate means the Appellee delivered frauds/identity thieves not real customers as required in the agreement. When 7 in 10 customers don't know their credit card numbers (34/48 rejected), they're not customers, they're crooks. The San Diego DA's declaration above states that in fact the Appellee is the crook.

46. Therefore, the trial record states that: (1) online Fraud is not allowed under the agreement (R.159), and (2) Appellee delivered online fraud (70% rejection vs 1% industry average) (R.192, 206). This was also brought to the trial court's attention in Appellant's motion to vacate (R.221-222 paragraphs 11-14). This motion was denied in a zoom hearing held May 31, 2023, at 9am (R.354-355). This hearing, lasting less than five minutes, in which the judge stated *"I was never going to give you a new trial. If they reverse me, I'll deal with it then"*. The trial

court erred in its final judgment finding Appellee did not breach the agreement (R.207-210) and denying Appellant's motion to vacate. Appellant should be prevailing party.

47. In Pelekis v. Florida Keys Boys Club, 302 So.2d 447 (Fla. 3rd DCA 1974), the Third DCA noted that fabrication of evidence allegations are *"a serious charge which requires a complete explanation of the circumstances of the alleged wrong and, therefore, merits a full opportunity to present all the available facts to the court."* The Honorable Court held it is error to summarily deny a Rule 1.540(b) Motion that specifically alleges fraud that affects the outcome of the case with particularity. Denying Appellant's Rule 1.540 motion in a five-minute hearing was an error by the Trial Court. Subsequently, Appellant has become aware of the conviction of Appellee's business partner, the San Diego DA's assessment that Appellee is a criminal organization, and the declarations of at least four other victims of the Appellee. A full hearing on an amended 1.540 motion to vacate due to fraud is required.

In Pino v. Bank of New York, Mellon, 57 So. 3d 950, 954 (Fla. 4th DCA 2011). The majority opinion in Pino held that: " *'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or*

unfairly hampering the presentation of the opposing party's claim or defense." Illegal fraud is the Appellee/Plaintiff's on-going business model in this case and many other cases. Appellant is entitled to a full hearing on an amended 1.540 motion.

SUMMARY OF THE ARGUMENT

The trial court erred by permitting, denying and/or ordering any one or a combination of the following:

(I) Signing a final order awarding attorney fees & costs with an incorrect amount on it. Final Order (R.702) $76,597.57 versus Special-Set Hearing transcript of $73,549 (R.668 lines 14-20). The final order was prepared by the Appellee.

(II) Awarding any attorney fees & costs in the absence of an independent fee expert as required by Florida Law.

(III) Refusing to consider the "Significant Issues" at the special-set hearing of May 17, 2024, as was required. Appellee's claim was $13,350 and the final judgment was $8,400 or 37% less. Therefore, the Significant issues test applies, and the court had an obligation to consider them in awarding attorney fees and costs.

(IV) Appellee served an offer to settle for $12,900 on Appellant's attorney during mediation. The final judgement was $8,400 or 35% less. Florida Statute 768.79 and Civil Rule 1.442 required the final award to be at least 25% higher than the

rejected offer for the trial court to have authority to award attorney fees and costs. The trial court erred in awarding any fees.

(V) Under R. Regul. FL. Bar 4-1.5 (b)(1)(D), the Trial Court is required to consider: "*the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;"*. The final judgement of $8,400 is a small claims amount, results achieved are 37% less than original claim and the $76,597 fee award is nine times the judgment amount and erroneous, unreasonable and excessive on its face. The Trial Court erred.

(VI) The Trial Court erred in erroneously denying Appellant a court reporter after one was requested. Thereby denying the Appellant a trial transcript and her right to an appeal of the Trial Court's final judgment.

(VII) Appellant is entitled to relief under Zarate v. Deutsche Bank Nat'l Tr. Co. Tr. 81 So. 3d 556, 558 (Fla. 3d DCA 2012). The Final Judgment is erroneous on its face and relief is allowed even without trial transcript. The Trial Court erred in not providing such relief from the final judgment.

(VIII) Under R. Regul. FL. Bar 4-1.5 (a)(2) & Civil Rule l.540(b)(2) and (3), the Trial Court has an obligation to consider allegations of fraud before awarding attorney fees and costs. The Trial Court erred in not allowing the Appellant to enter the Declaration of the San Diego, CA District Attorney during the special-set

hearing of May 17, 2024 and declarations of fraud from other clients of the Appellee. The DA's declaration detailed the conviction of the Appellee's partner and assessed that the Appellee was a criminal organization directing the crimes. Crimes that are the same behavior exhibited by the Appellee in this case. The court had an obligation to hear the allegations of fraud which arose from evidence discovered after the final judgment in this case. Also, under Pelekis v. Florida Keys Boys Club, 302 So.2d 447 (Fla. 3rd DCA 1974), the Trial Court erred in summarily denying Appellant's rule 1.540 motion during a 5-minute hearing on May 31, 2023. Finally, the Appellee's use of a protective order (in this case and several others) to limit discovery and hide the identities of his convicted business partners and Appellee's own criminal activity is "…*some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense."* As in Pino v. Bank of New York, Mellon, 57 So. 3d 950, 954 (Fla. 4th DCA 2011).

STANDARDS OF REVIEW

(I) The Trial Court signing a final order awarding attorney fees & costs with an incorrect amount on it. This constitutes a *"mistake or inadvertence"* under *civil rule 1.540(a) and (b)(2)* warranting relief from final judgment awarding attorney

fees and costs. **(II)** Awarding any attorney fees & costs in the absence of an independent fee expert as required by Florida Law. This is a legal error in applying the law in *Roshkind V. Machiela*, decided in 2010, by the Fourth District Court of appeal and this was allowed to stand by the Florida Supreme Court. Therefore, de Novo review applies. **(III)** Refusing to consider the "Significant Issues" at the special-set hearing of May 17, 2024, as was required. Again, this is a legal error in applying the law in *Trytek v. Gale Industries, Inc. 3So.3d 1194 (Fla 2009).* Therefore, de Novo review applies. **(IV)** Appellant rejected Appellee's offer to settle. Since the final judgment was 35% less than the rejected offer (not 25% higher as the law requires) the Trial Court lacked authority to award any attorney fees per *Florida Statute 768.79 and Civil Rule 1.442*. Again, this is a legal error, and de Novo review applies. **(V)** The Trial Court erred in not considering the amount involved in the case, and the results obtained. The Trial Court abused its discretion in awarding attorney fees equal to nine times the final judgment of $8,400; a small claims case. The final award was 37% less than Appellee's claim. Under *R. Regul. FL. Bar 4-1.5 (b)(1)(D)*, the Trial Court is required to consider: "*the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;"*. The trial Court seemed to take the position that it was going to

award 100% of what was asked if Appellant didn't disprove it. That's the wrong premise under law. Appellee had the burden. **(VI)** It is undisputed that: (1) a party (Plaintiff/Appellee) requested a court reporter, and (2) no court reporter was provided in violation of *rule 2.535(b)*. This denied Appellant her right to appeal. Appellant is entitled to discovery as to why. And relief from final judgment. The lack of a court reporter to preserve testimony and a complete trial record also constitutes a "mistake or inadvertence" Under civil rule 1.540(a) and (b)(2) warranting relief from final judgment. **(VII)** Appellant is entitled to relief under *Zarate v. Deutsche Bank Nat'l Tr. Co. Tr. 81 So. 3d 556, 558 (Fla. 3d DCA 2012)*. The Final Judgment is erroneous on its face and relief is allowed even without trial transcript. The Trial Court erred in not providing such relief from the final judgment. **(VIII)** The final judgment (and therefore right to attorney fees), was obtained by fraud on the Court. Under *R. Regul. FL. Bar 4-1.5 (a)(2) & Civil Rule l.540(b)(2) and (3)*, the Trial Court has an obligation to consider allegations of fraud before awarding attorney fees and costs.

Pelekis v. Florida Keys Boys Club, 302 So.2d 447 (Fla. 3rd DCA 1974). In Pelekis, the Third DCA noted that fabrication of evidence allegations are *"a serious charge which requires a complete explanation of the circumstances of the alleged wrong and, therefore, merits a full opportunity to present all the available facts to the court."* The Honorable Court held it is error to summarily deny a Rule

1.540(b) Motion that specifically alleges fraud that affects the outcome of the case with particularity. In Pino v. Bank of New York, Mellon, 57 So. 3d 950, 954 (Fla. 4th DCA 2011). The majority opinion in Pino held that: " *'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense."* Illegal fraud is the Plaintiff's on-going business model in this case and many other cases.

ARGUMENT

As detailed above in the Statement of the case and the facts, the Summary of the Argument and the Standards of Review, the trial court erred by permitting, denying and/or ordering any one or a combination of the following eight issues: **(I)** The Trial Court signed a final order awarding attorney fees & costs with an incorrect amount on it. **(II)** Awarding any attorney fees & costs in the absence of an independent fee expert as required by Florida Law. **(III)** Refusing to consider the "Significant Issues" at the special-set hearing of May 17, 2024, as was

required. **(IV)** Trial Court lacked authority to award any attorney fees per *Florida Statute 768.79 and Civil Rule 1.442* as the final judgment was 35% less than the rejected offer to settle, not 25% more as required by law. **(V)** The Trial Court erred in not considering the amount involved in the case, and the results obtained. It was only a small claims judgment of $8,400 which was 37% less than Appellee's claim. Awarding $76,597 in attorney fees and costs in erroneous, unreasonable and excessive. **(VI)** It is undisputed that: (1) a party (Plaintiff/Appellee) requested a court reporter, and (2) no court reporter was provided in violation of *rule 2.535(b)*. **(VII)** The Final Judgment is erroneous on its face and relief is allowed even without trial transcript. **(VIII)** The final judgment (and therefore right to attorney fees), was obtained by fraud on the Court.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests that this Court enter a mandate reversing the trial court's entry of final judgment and reversing the final judgment awarding attorney fees and costs with instructions that it vacate the final judgment and find Appellant as prevailing party. Or instruct the trial court to stay the final judgments and hold a hearing on an Appellant's amended rule 1.540 motion. Or otherwise proceed in a manner consistent with this Court's decision.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished via Electronic Service via the Florida Courts E-filing E-Portal on August 26, 2024 to: Rueben Socarras, Esq. at rsocarras@cslawfl.com, service@cslawfl.com , DD Beauty & Wellness, Inc at support@shopbellalavita.com, Warren Kwavnick at warren@kwavnickappeals.com, kwavnickappeals@gmail.com, Michael A Hurkes, Esq. at mh@mahadvising.com and legal@mahadvising.com, Nicole Wimmer, Esq. at nicolemalick21@gmail.com, Clerk Miami-Dade at cocedca@miamidade.gov, Hon. Luis Perez-Medina at lperezmedina@jud11.flcourts.org, Hon. Jeffrey Rosinek at jrosinek@jud11.flcourts.org

CERTIFICATE OF COMPLIANCE

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

Date: August 26, 2024

s/ Dawn E. Dubois
Dawn E Dubois
Appellant Pro Se