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IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, SECOND DISTRICT
CASE NO. 2D24-0947
L.T. CASE NO. 2023-CA-013412

SMARTSCIENCE LABORATORIES, INC., a Florida corporation, and GENE C. WEITZ, an individual,

Appellants,

vs.

GPG HOLDINGS, LLC, a Florida limited liability company, GLOBAL PRODUCTS GROUP, LLC, a Florida limited liability company, EDWARD BROGAN, JOHN LOGAN, TREVOR GRACE, and CAMPHORA CORP.,

Appellees.
_________________________________/

APPELLANTS, SMARTSCIENCE LABORATORIES, INC. AND GENE C. WEITZ'S INITIAL BRIEF

ON APPEAL FROM THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

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III. <u>REFERENCE TO THE RECORD</u>

Plaintiffs/Appellants, Smartscience Laboratories, Inc. ("Smartscience") and Gene C. Weitz ("Weitz"), shall together be referred to herein as the "Appellants."

Defendants/Appellees, GPG Holdings, LLC ("GPG Holdings"), Global Products Group, LLC ("Global Products"), Edward Brogan ("Brogan"), John Logan ("Logan"), Trevor Grace ("Grace"), and Camphora Corp. ("Camphora"), shall collectively be referred to herein as the "Defendants."

References to the "Appendix" shall be by designation [Apx. ___] with all pinpoint citations referring to the page number(s) of the "Appendix to Appellants' Initial Brief" filed by the Appellants contemporaneously with this Initial Brief.

IV. STATEMENT OF APPELLATE JURISDICTION

This is an appeal of the "Order Granting Defendants' Motion to Stay and Compel Arbitration" (the "Order") [Apx. 2 at 18-28] entered by the trial court ("Trial Court") on Martch 21, 2024, granting the "Motion to Stay and Compel Arbitration" (the "Arbitration Motion"), filed by the Defendants on August 3, 2023. [Apx. 4]. The Appellants timely filed its notices of appeal on April 19, 2024. [Apx. 1 at 5-6]. This Court possesses jurisdiction of the instant appeal pursuant to Florida Rules of Appellate Procedure 9.130(a)(3)(c)(iv).

V. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the Trial Court erred in granting the Arbitration Motion, thereby compelling arbitration over all of the Appellants' claims despite the fact that none of them fell within the scope of the Arbitration Provision at issue.

VI. STATEMENT OF THE CASE

A. NATURE OF THE CASE

This Appellate Proceeding centers around a criminally usurious lending relationship (the "Usurious Lending Relationship") violative of Florida Statutes §§ 687.01 et seq (the "Florida Usury Statute").

The Usurious Lending Relationship involved many documents,

including a set of four (4) promissory notes (collectively, the "Notes"), as between Smartscience and GPG Holdings.

Each of the Notes contains an arbitration provision (the "Arbitration Provision"), as follows:

> ARBITRATION. In the event any dispute or controversy, arising from or relating to this Note (collectively Agreement for this paragraph), including, but not limited to, arbitrability issues, declaration of the rights of the parties, the entitlement and amount of attorney's fees due to any person, that arises under the terms of or as a result of this Agreement and/or the performance or failure to perform by the parties as required by this Agreement and the parties are unable to resolve the dispute or controversy within ten (10) days of the first notice by a party of a dispute, the dispute or controversy shall be resolved only by binding arbitration administered by the American Arbitration Association pursuant to the applicable rules of the American Arbitration Association, which arbitration is to be held in North Carolina, U.S.A., before a single arbitrator. By including this provision the parties acknowledge that they are liable for and agree to pay for their portion of the arbitration costs when due as provided for in the AAA Rules and AAA procedures; provided, however, the expenses of the Arbitrator shall be paid based upon the percentage that the amount actually contested by not awarded to SMART SCIENCE LABORATORIES, INC and GPGH, respectively, bears to the aggregate amount actually contested by SMART SCIENCE LABORATORIES, INC and GPGH. The arbitrator shall have the authority to grant dispositive motions, evaluated in accordance with the provisions of the AAA Rules relating to dispositive motions, if any, and if none then the dispositive motion shall be evaluated in accordance with the laws and rules of civil procedure of the State of North Carolina. All notices of the arbitration and papers in the arbitration may be

> served as provided for in the notice provisions herein above. Notwithstanding the foregoing, if it is necessary for a party to this Agreement to seek injunctive or other temporary relief pending the conclusion of the arbitration, such action may be commenced in the appropriate state court sitting in North Carolina or in an arbitration proceeding. Any non-resident of North Carolina party, as a result of this Agreement is doing business in the State of North Carolina, and hereby appoints the Secretary of the State of NC as his/her/its agent for the service of process.

[Apx. 3 at 64-65].

The origin of the Notes stems from a meeting that occurred between Weitz and Brogan during the Fall of 2021. [Apx. 3 at 33]. By this time, Weitz had grown Smartscience into a successful enterprise operating in the wholesale and retail marketing of a number of health supplements manufactured and distributed by Smartscience to its broad array of customers. [Apx. 3 at 32-33]. Weitz was so successful in his efforts, that by the time he met with Brogan, Weitz had received an offer to sell a one-half interest in Smartscience for $3,008,000. [Apx. 3 at 33].

With this knowledge, Brogan took an interest in Smartscience, held himself out as an arbitrage expert with worldwide expertise, and proposed to be a lender. [Apx. 3 at 33]. On October 26, 2021, Smartscience executed the First Note, in the original principal

amount of $350,000, in favor of Brogan. [Apx. 3 at 60-67]. The interest rate under the First Note was thirty (30%) percent per annum, with a 360-day year and based upon thirty (30) day months. [Apx. 3 at 60]. Two months later, on December 11, 2021, Smartscience executed the Second Note, in the original principal amount of $615,000, again in favor of Brogan. [Apx. 3 at 69-80]. The interest rate under the Second Note was twenty (20%) percent per annum, with it being noted that the principal balance reflected the sum of the First Note's outstanding balance plus an additional advance to bring the total to $615,000. [Apx. 3 at 69].

Brogan's efforts to lend continued through 2022. On January 21, 2022, Smartscience executed the Third Note, in the original principal amount of $915,000, in favor of Brogan. [Apx. 3 at 82-90]. As with the Second Note, the interest rate under the Third Note was twenty (20%) percent per annum, with it being noted that the principal balance reflected the sum of the Second Note's outstanding balance plus an additional advance to bring the total to $915,000. [Apx. 3 at 82]. On April 4, 2022, Smartscience executed the last and final Fourth Note, in the original principal amount of $1,178,000, again in favor of Brogan, and again carrying an interest rate of twenty

(20%) percent per annum, with the principal balance reflecting the sum of the Third Note's outstanding balance plus an additional advance to bring the total to $1,178,000. [Apx. 3 at 34].

In addition to the interest to be collected under the terms of the Notes, Brogan also required that Smartscience agree to allow Global Products to contract directly with its customers, thereby allowing Global Products to receive a portion of ever sale of Smartscience's products. [Apx. 3 at 36-37]. This practice in turn naturally greatly increased the effective interest rate during the time period in question. For instance, in 2022, Global Products skimmed approximately $254,000 of approximately $771,000 of Smartscience's products sold to its customers, leaving Smartscience with only approximately $417,000 net. [Apx. 3 at 36]. This not only increased the rate of return to Brogan under the Notes, but diminished the actual value received by Smartscience, and impacted Smartscience's ability to pay back the Notes when due – which had an effective maturity date of December 31, 2022. [Apx. 3 at 36].

Following the maturity date, the Defendants shuffled their respective positions before making demand on the Usurious Lending Relationship. Brogan assigned the Notes to Global Products, whose

equity was, upon information and belief, acquired by Grace. [Apx. 3 at 38]. On February 24, 2023, Global Products sent its initial demand letter to Smartscience. [Apx. 3 at 38]. By this time, Smartscience had already caused to be paid $224,447 in payments to Camphora, at the direction of Brogan, on top of the "sales" skimmed by Brogan. [Apx. 3 at 37].

On April 24, 2023, and June 15, 2023, Global Products would send two additional demand letters to Smartscience on account of the Usurious Lending Relationship, demanding both monetary and non-monetary concessions by the Appellants. The Appellants would not acquiesce, and instead, sought protection from the Trial Court by initiating the action below.

B. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

On June 26, 2023, the Appellants initiated action below against the Defendants by the filing of their "Verified Complaint" (the "Complaint") [Apx.3], based upon the Defendants attempts to collect on a criminally usurious debt in violation of Florida Statutes § 687.01 et seq. (the "Florida Usury Statute"). The Complaint contains three (3) similar counts as follows:

Count I, seeking damages against the Defendants for violation

of the Florida Usury Statute;

Count II, seeking damages for conspiracy to commit criminal usuary as against the Defendants; and

Count III, seeking injunctive relief enjoining the Defendants from any action taken to enforce the Usurious Lending Relationship.

On August 3, 2023, the Defendants filed their Arbitration Motion. [Apx. 4]. Under the Arbitration Provision, the Defendants sought to compel arbitration based upon their belief that the inclusion of the language "arising from or relating to" necessarily "encompass[es] virtually all disputes between the contracting parties" [cite], without actually making an effort to analyze whether the statutory claims at issue meet the two-prong "significant relationship" "contractual nexus" test as set forth under Florida law.

Five days later, on August 8, 2023, the Appellants filed their Arbitration Response [Apx. 5], detailing that despite including the "relating to' language, the scope of the Arbitration Provision was still not broad enough to encompass the statutory claims at issue as asserted by the Appellants in the Complaint.

The Arbitration Motions and Arbitration Response were

considered by the Trial Court at a hearing that occurred on January 23, 2024 (the "Hearing"), following which the Trial Court requested that the Parties submit proposed orders by close of business on January 30, 2024. On March 21, 2024, the Trial Court rendered the Arbitration Order, thereby granting the Arbitration Motion and staying the action below pending completion of arbitration. [Apx. 2]. This appeal follows.

VII. SUMMARY OF ARGUMENT

The crucial step in any arbitration proceeding is to determine arbitrability; that is, what claims the parties agreed to arbitrate. The Appellants cannot be compelled to arbitrate their claims as against the Defendants – all of which are brought under the Florida Usury Statute in light of the criminal usurious interest sought and extracted by the Defendants pursuant to the Usurious Lending Relationship – as the same fail to satisfy the two-prong standard as set forth in the Florida Supreme Court's holdings in Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999) and Jackson v. Shakespeare Found, Inc., 108 So. 3d 587, 593 (Fla. 2013). As recently set forth in the Third District Court of Appeal's decision in BREA 3-2 LLC v. Hagshama Florida 8 Sarasota LLC, 327 So. 3d 926 (Fla. 3d DCA 2021), a claim

sounding in usury does not emanate from an inimitable duty created by the parties' unique contractual relationship, but is instead is a duty imposed by law in recognition of public policy and is generally owed to others besides the contracting parties. Accordingly, none of the claims asserted in the Complaint fall within the scope of the Arbitration Provision.

VIII. STANDARD OF REVIEW

An order granting a motion to compel arbitration is reviewed de novo. Hernandez v. Crespo, 211 So. 3d 19, 24(Fla. 2016) (citing DFC Homes of Fla. v. Lawrence, 8 So. 3d 1281, 1282 (Fla. 4th DCA 2009)); Sherwood v. Slazinski, 162 So.3d 229, 231 (Fla. 2d DCA 2015); Yam Exp. & Imp. LLC v. Nicaragua Tobacco Imps., Inc., 298 So. 3d 1173, 1175 (Fla. 3d DCA 2020). "[T]he 'scope of the arbitration clause' is a pure matter of contractual interpretation." MacDougald Family Limited Partnership, LLP v. Rays Baseball Club, LLC, 371 So.3d 988, 991 (Fla. 2d DCA 2023) (quoting Beck Auto Sales, Inc. v. Asbury Jax Ford, LLC, 249 So. 3d 765, 768 (Fla. 1st DCA 2018)).

IX. ARGUMENT

The record in this Litigation does not support the rulings of the Trial Court or the relief granted in favor of the Defendants.

Accordingly, the Arbitration Order is due to be reversed.

A. THE TRIAL COURT ERRED WHEN IT CONCLUDED AS A MATTER OF LAW THAT THE EQUITABLE AND STATUTORY CLAIMS ASSERTED BY THE APPELLANTS WITHIN THE COMPLAINTS FELL UNDER THE LIMITED SCOPE OF THE ARBITRATION PROVISION

It is black letter law that a party cannot be required to arbitrate disputes that they did not agree to arbitrate. The criminally usurious Notes – the only agreements signed by Smartscience and the Defendants – did not provide that claims sounding in tort or arising under statute would be submitted to an arbitrator. [Apx._3 at 64-65]. Thus, the Trial Court committed reversable error when it granted the Arbitration Motion, thereby coercing the Appellants to arbitrate claims that they never mutually agreed to arbitrate.

"In determining whether a dispute is subject to arbitration, the courts consider at least three issues: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived." Hillier Grp., Inc. v. Torcon, Inc., 932 So. 2d 449, 452 (Fla. 2d DCA 2006) (quoting Stacy David, Inc. v. Consuegra, 845 So. 2d 303, 306 (Fla. 2d DCA 2003)); accord Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999). "Because arbitration is a matter of contract, a party cannot

be required to submit to arbitration any dispute which he has not agreed so to submit." Dea v. PH Fort Myers, LLC, 208 So. 3d 1204, 1207 (Fla. 2d DCA 2017) (quoting Rolls-Royce PLC v. Royal Caribbean Cruises, Ltd., 960 So. 2d 768, 770 (Fla. 3d DCA 2007)). "Determining whether an arbitrable issue exists requires the court to examine the plain language of the parties' arbitration agreement." Bailey v. Women's Pelvic Health, LLC, 309 So.3d 698, 701 (Fla. 1st DCA 2020).

The question presented is whether the usury claims, and the related claim injunctive relief, are arbitrable under the Arbitration Provision. Under Florida law, there are said to be two types of arbitration provisions – that are narrow in scope and those that are broad in scope. Jackson, 108 So. 3d at 593. Narrow arbitration provisions generally require arbitration for claims or controversies "arising out of" the subject contract, whereas arbitration provisions that are broad in scope usually require arbitration for claims or controversies "arising out of or relating to" the subject contract. Id.

The Arbitration Clause at issue covers "any dispute or controversy, arising from or relating to this Note[.]" [Apx. 3 at 64]. Admittedly, the inclusion of the words "relating to" broadens the

scope of the arbitration provision. Jackson, 108 So. 3d at 593. Merely finding that the Arbitration Clause is "broad", however, does not end the analysis.

In Seifert, 750 So. 2d at 638-39, the Florida Supreme Court explained that, even with a general policy favoring arbitration, to submit a claim to arbitration under a "broad" arbitration provision, the "significant relationship' test requires "some nexus between the dispute and the contract containing the arbitration clause." See Verizon Wireless Personal Communications, LP v. Bateman, 264 So.3d 345, 351 (Fla. 2d DCA 2019); Vanacore Constr. Inc. v. Osborn, 260 So. 3d 527, 530 (Fla. 5th DCA 2018). The Court further explained:

> [T]he mere fact that the dispute would not have arising but for the existence of the contract and consequent relationship between the parties is insufficient by itself to transform a dispute into one "arising out of or relating to' the agreement.
>
> ***
>
> [F]or a tort claim to be considered "arising out of or relating to" an agreement, it must, at a minimum, raise some issue the resolution of which requires reference to or construction of some portion of the contract itself.
>
> ***
>
> If the contract places the parties in a unique relationship that creates new duties not otherwise imposed by law,

> then a dispute regarding a breach of a contractually-imposed duty is one that arises from the contract. Analogously, such a claim would be one arising from the contract terms and therefore subject to arbitration where the contract required it. **If, on the other hand, the duty alleged to be breached is one imposed by law in recognition of public policy and is generally owed to others besides the contracting parties, then a dispute regarding such a breach is not one arising from the contract, but sounds in tort.** Therefore, a contractually-imposed arbitration requirement ... would not apply to such a claim.

Seifert, 750 So. 2d at 638-39 (emphasis added) (citations and quotation omitted).

This "contractual nexus" component of the significant relationship test was reaffirmed by the Florida Supreme Court in Jackson:

> A "significant relationship" between a claim and an arbitration provision does not necessarily exist merely because the parties in the dispute have a contractual relationship. See [Seifert, 750 So.2d at 637-38]. Rather, a significant relationship is described to exist between an arbitration provision and a claim if there is a "contractual nexus" between the claim and the contract." See id. at 638. A contractual nexus exists between a claim and a contract if the claim presents circumstances in which the resolution of the disputed issue requires either reference to, or construction of, a portion of the contract. See id. More specifically, a claim has a nexus to a contract and arises from the terms of the contract if it emanates from an inimitable duty created by the parties' unique contractual relationship. See id. at 639. In contract, **a claim does not have a nexus to a contract if it pertains**

> **to the breach of a duty otherwise imposed by law or in recognition of public policy, such as a duty under the general common law owed not only to the contracting parties but also to third parties and the public**. See id.

Jackson v. Shakespeare Foundation, Inc., 108 So. 3d 587, 593 (Fla. 2013) (emphasis added). Thus, it is not enough that a contract merely exists amongst the litigating parties. Instead, the Florida Supreme Court has confirmed that a claim pertaining to a breach of a duty imposed by law or in recognition of public policy, **does not** have a nexus to a contract. A claim arising under the Usury Statute is such a claim that, on its own, will not meet the "contractual nexus" component of the "significant relationship" test set forth in Seifert and Jackson's.

This issue was most recently analyzed in depth by the Third District Court of Appeal in BREA 3-2 LLC v. Hagshama Florida 8 Sarasota, LLC, 327 So.3d 926 (Fla. 3d DCA 2021). In BREA 3-2, as here, the appellants, BREA 3-2, LLC, Michael Bednarski, and Peggy Tseung ("BREA"), initiated litigation against their lender, Hagshama, alleging that the two loans in question were criminally usurious under Florida's Usury Statute. The complaint at issue alleged that Hagshama was attempting to collect on two "criminally usurious

debts" in violation of Florida Statutes § 687.071, and sought damages under the same, declaratory relief that the agreements are illegal and unenforceable, and injunctive relief enjoining Hagshama from enforcing the agreements. 327 So. 3d at 929. The agreements in question contained identical arbitration provisions, providing that "any dispute under this Agreement or any Exhibit attached hereto shall be submitted to arbitration under the American Arbitration Association..." Id. at 928. Based upon the foregoing, Hagshama moved to stay the action before the trial court and compel arbitration, relying solely on decision in Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440 (2006). Id. at 929. Hagshama argued that because BREA's usury claims "challenged the 'contract as a whole' as 'void for illegality,' the claims must be 'considered by an arbitrator, not a court." Id. The trial court ultimately agreed, concluding that the arbitration clause "of the subject Agreement is broad, valid and enforceable" and ordered BREA to refile their claims in an arbitration proceeding before the AAA in New York. Id. BREA appealed the trial court's decision to the Third District Court of Appeal, which ultimately reversed the trial court, finding that the usury claims at

issue did not come within the scope of the narrow arbitration provision at issue.

Although the arbitration provision in BREA 3-2 is narrower than what is at issue before this Court, in reversing the trial court in BREA 3-2 the Third District Court of Appeal necessarily undertook an analysis of whether the statutory usury claims met the "contractual nexus/significant relationship" test as set forth in Seifert and Jackson's. The Third District rationalized that if the statutory usury claims were unable to meet the less-rigorous significant relationship test, which is easier to satisfy, then the claims could not meet the more-rigorous "direct relationship" test for arbitrability of narrow provisions. 327 So. 3d at 934. In doing so, the Third District held:

> We recognize that this usury claim satisfies one portion of the significant relationship/contractual nexus test, which requires that "for a tort claim to be considered 'arising out of or relating to' an agreement, it must, at a minimum, raise some issue the resolution of which requires reference to or construction of some portion of the contract itself." Seifert, 750 So. 2d at 638. See also Jackson, 108 So. 3d at 593 ("A contractual nexus exists between a claim and a contract if the claim presents circumstances in which the resolution of the disputed issue requires either reference to, or construction of, a portion of the contract.")[.] **Nevertheless, this is only one aspect of what Seifert and Jackson require, even when analyzing the scope**

> **of a broad arbitration provision**. The narrow arbitration provision agreed to by the parties in the instant case cannot satisfy the remaining aspects of the contractual nexus test because the usury claim does not "emanate[] from an inimitable duty created by the parties' unique contractual relationship**," but instead is a claim that "pertains to the breach of a duty otherwise imposed by law or in recognition of public policy, such as a duty under the general common law owed not only to the contracting parties but also to third parties and the public**." Jackson, 108 So. 3d at 593.

327 So.3d at 936 n.6 (Fla. 3d DCA 2021) (emphasis added).

The Third District went on to conclude that the statutory usury claims "simply cannot satisfy Seifert and Jackson's requirement that the claim 'emanate[] from an inimitable duty created by the parties' unique contractual relationship;' instead, the instant claim is one that 'pertains to the breach of a duty otherwise imposed by law or in recognition of public policy, such as a duty under the general common law owed not only to the contracting parties but also to third parties and the public.'" Id. at 935-36 (quoting Jackson, 108 So. 3d at 593).

This Court should reach a similar conclusion here. Although the Arbitration Provision at bar includes the broader "arising from or relating to" language, this does not alter the Third District's holding that the statutory claims of usury – the same claims at issue below –

"simply cannot satisfy Seifert and Jackson's requirement" to meet the "contractual nexus" "significant relationship" tests. Accordingly, the Trial Court erred when it held that the statutory usury claims fall within the scope of the Arbitration Provision.

This is not to say that **all** claims asserting statutory claims or even usury claims can never be subject to a contract's arbitration provision. To be sure, as the Third District explained, "a usury claim can be subject to arbitration if the language of the arbitration provision is broad enough to express the parties' intent that such a claim or dispute will be subject to arbitration[.]" BREA 3-2, 327 So. 3d at 936. In Buckeye, the scope of the parties' arbitration provision was never at issue. See Granite Rock Co. v. International Broth. of Teamsters, 561 U.S. 287 (2010). This is because the arbitration provision in Buckeye required arbitration of "[a]ny claim, dispute, or controversy … arising from or relating to this Agreement … **or the validity, enforceability, or scope of this Arbitration Provision or the entire Agreement**. …." Buckeye, 546 U.S. at 442 (emphasis added). The provision expressly covered "[a]ny claim, dispute, or controversy (whether in contract, tort or otherwise … including statutory, common law, intentional tort, and equitable claims…"

Cardegna v. Buckeye Check Cashing, Inc., 894 So. 2d 860, 861 (Fla. 2005). Thus, Buckeye did not specifically address the scope of the specific arbitration provision that was at issue. Instead, Buckeye merely reestablished that so long as an issue falls squarely within the scope of the particular arbitration provision, the issue was for the arbitrator and not the court. And because the arbitration provision in Buckeye covered all tort claims, all statutory claims, and all disputes regarding the validity, enforceability, or scope of the arbitration provision, in undoubtedly covered the statutory usury claims at issue that attacked the legality and enforceability of the agreement in question. That is not the case here.

Before the Trial Court below, the Defendants did very little to address, let alone refute, the Third District's holding in BREA 3-2. Nor did the Trial Court fully analyze the Third District's analysis and application of the two- prong test set forth in Seifert and Jackson's. But because the parties never agreed to arbitrate the specific dispute at issue, the Trial Court's Arbitration Order must be reversed. See Nelson v. Westport Shipyard, Inc., 140 Wash.App.102, 112-13, 163 P.3d 807 (2007) (holding that the decision in Buckeye did not apply to the facts of the case as the arbitration provision at issue only

required arbitration of “only those dispute ‘arising out of this Agreement’” and did not “expressly encompass disputes about the validity, enforceability, or scope of the Agreement as a whole.”).

X. CONCLUSION

For all of the foregoing reasons, this Court should reverse the order compelling arbitration and should direct the entry of an order denying arbitration so that the case may proceed on the merits at the Trial Court below.

DATED this 10th day of May, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic transmission and/or regular U.S. mail, on this 10th day of May, 2024, to:

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Pursuant to Florida Rule of Appellate Procedure 9.045(e), undersigned counsel hereby certifies that this brief complies with the applicable font and word count requirements, as same is submitted in Bookman Old Style 14-point font and does not exceed 13,000 words.

/s/ Andrew J. Ghekas
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