IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

10295 COLLINS AVENUE, HOTEL CONDOMINIUM ASSOCIATION, INC.

Plaintiff,

vs.

THE RESIDENCES AT ONE BAL HARBOUR CONDOMINIUM ASSOCIATION, INC., ONE BAL HARBOUR CORPORATION, a Florida not-for-profit corporation, AND LK HOTEL, LLC, a Florida limited liability company,

DefendantS.

CASE NO. 2019-003480-CA-01

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Defendants, The Residences at One Bal Harbour Condominium Association, Inc. (the "Residences") and One Bal Harbour Corporation ("OBHC") (collectively the "Defendants"), move to dismiss Plaintiff's Amended Complaint on the grounds that the Original Tower Declaration authorized the Residences to amend the allocation of expenses among the entities governed by that Declaration, including Plaintiff. In support of this Motion, Defendants state as follows:

1. Plaintiff initially brought this action seeking to invalidate the Amended Tower Declaration amending the Original Tower Declaration which, until 2014, governed the One Bal Harbour Property ("Property") and the entities associated with that Property, including Plaintiff. After the Residences moved to dismiss Plaintiff's Complaint with prejudice, Plaintiff voluntarily amended its Complaint and significantly narrowed the issues before this Court.

2. Plaintiff no longer seeks to invalidate all or nearly all of the Amended Tower Declaration. Instead, in Count I of Plaintiff's Amended Complaint ("AC"), Plaintiff seeks a judicial declaration invalidating only those amendments pertaining to the allocation of expenses

among the various entities governed by the Amended Tower Declaration, arguing the expense allocations set forth in the Original Tower Declaration should control. In Count II, Plaintiff seeks damages under a breach of contract theory, arguing it is entitled to recover the expenses it was assessed under the Amended Tower Declaration which exceeded those expenses it would have been assessed under the Original Tower Declaration.

3. Plaintiff's narrowed Amended Complaint presents this Court with the following case-dispositive issue: whether the amended expense allocations should be invalidated based upon Plaintiff's legal argument that the Residences did not have the authority under the Original Tower Declaration to amend those provisions (AC, Para. 52).

4. More precisely, the issue before this Court is whether Section 14.7 of the Original Tower Declaration, entitled "Amendments", authorized the Residences to amend the expense allocations.

5. In its Amended Complaint, Plaintiff ignores the first sentence in Section 14.7 and only focuses on the remaining portion of that provision. According to Plaintiff, Section 14.7 did not authorize the amendments to the expense allocation because, it incorrectly alleges, this provision only authorized the Residences to amend the Original Tower Declaration in the event the Residences further developed the Property by adding adjacent or nearby properties. Because there was no development of adjacent or nearby properties, Plaintiff then disingenuously concludes Section 14.7 is inapplicable. Having thus dispensed with Section 14.7 based on what is nothing more than a classic straw man argument, Plaintiff's Amended Complaint concludes that the amendments at issue are invalid because they were unauthorized. (AC, Paras. 53-56.)

6. Plaintiff seeks to divert this Court's attention from Section 14.7 because Section 14.7 proves fatal to Plaintiff's entire case. As amply demonstrated herein, the plain language of the first sentence of Section 14.7 broadly granted the Residences, as the Hotel Lot Owner, the right to amend any and all provisions in the Original Tower Declaration at any time. This grant

was in no way limited by the additional grant of authority permitting the addition to the Property and amendments necessary to effectuate such additions.

7. Because Section 14.7 unambiguously permitted the Residences to amend the expense allocations, the Amended Complaint should be dismissed. Moreover, because Plaintiff will never be able to plead any set of facts establishing that the amendments to the allocation of were unauthorized by the Original Tower Declaration, the Amended Complaint should be dismissed with prejudice.

MEMORANDUM

I. FACTUAL BACKGROUND.

A. Chronology of Events.[1]

The Property is not a condominium governed by Fla. Stat. 718. The Original Tower Declaration was the governing document of the Property from 2007 until 2014, when the Property was purchased by a subsidiary of the Residences, and then amended by the Residences as reflected in the Amended Tower Declaration. (The Original Tower Declaration and Amended Tower Declaration are attached to the Amended Complaint as Exhibits A and D, respectively.) The Original Tower Declaration refers to the original developer WCI as the "Declarant" and defines the successor to the Declarant as the **"Hotel Lot Owner**."

After WCI recorded the Original Tower Declaration in 2007, portions of the Property were dedicated to the condominium form of ownership to create the **Residences Condominium** (i.e., Defendant, the Residences) and the **Hotel Condominium** (i.e., the Plaintiff). The balance of the Property consisted of the Hotel Lot, the Spa Lot, and the Restaurant Lot.

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[1] The dates and events included in this Section are found within the four corners of Plaintiff's Amended Complaint as part of the Amended Tower Declaration. Should the Court wish to review a comprehensive history of the Property's ownership history, the Residences refers the Court to the "History of the Dedication" set forth in the Amended Tower Dec, pg. 1, §A.

WCI filed for bankruptcy on August 8, 2008. On June 22, 2009, WCI conveyed the Property, less the two condominium associations, to Elcom Hotel and Spa, LLC ("Elcom") in addition to 51 hotel condominium units. Under the Original Tower Dec, Elcom became the successor Declarant, the Hotel Lot Owner, the Spa Lot Owner, and the Restaurant Lot Owner, as defined therein.

Elcom filed for bankruptcy on January 2, 2013. On January 27, 2014, Elcom sold the Property, less the two condominium associations, to **One Bal Harbour Hotel Facilities ("OBHHF".)** OBHHF was as a for-profit subsidiary of the Residences formed in order to take title. As Plaintiff correctly acknowledges, upon the sale by Elcom to OBHHF, OBHHF succeeded to the rights of the Hotel Lot Owner in addition to the Spa Lot Owner and the Restaurant Lot Owner. (AC, Para. 43.) Plaintiff did not object to this transaction in the bankruptcy proceedings.

Upon taking title, OBHHF – as the Hotel Lot Owner -- amended the Original Tower Declaration and recorded the Amended Tower Declaration on September 25, 2014. Contemporaneously with this amendment and pursuant to the Original Tower Declaration, OBHHF created within the Property a third condominium known as the "Hotel Facilities Condominium" which consisted of the Spa Lot, the Restaurant Lot, and the newly designated "Lobby Unit." The Lobby Unit was created from the portions of the Hotel Lot required to operate the Hotel and was sold to LK Hotel (Lionstone) which Plaintiff joined in this action when it filed the Amended Complaint. The expenses under the Amended Tower Declaration are shared among Plaintiff, the Residences, and the Hotel Facilities Condominium.

At or around this time, the Residences also formed a not-for-profit subsidiary, Defendant **One Bal Harbour Corporation ("OBHC"),** to own and operate the Hotel Lot. The Amended Tower Declaration renamed the Hotel Lot to the "**OBH Facilities**". The OBH Facilities consisted of the Hotel Lot, as depicted by the Original Tower Declaration, less the Hotel

Facilities Condominium and less the Residential Swimming Pool which was conveyed to the Residences.

Upon the conveyance by OBHHF to OBHC, all powers of the Hotel Lot Owner set forth in the Original Tower Declaration vested in OBHC.

B. The Original Tower Declaration.

1. Section 14.7, entitled Amendment, broadly granted the Hotel Lot Owner authority to amend any provision of the Original Tower Declaration.

The first sentence of Section 14.7 of the Original Tower Declaration, entitled "Amendment", broadly granted the Residences – as the Hotel Lot Owner – authority to amend any provision of the Original Tower Declaration. Section 14.7 states in its entirety the following:

> Amendment. ***In addition, but subject, to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges, liens and other provisions of this Declaration may be amended, changed or added to at any time and from time to time upon the execution and recordation of an instrument executed by Declarant and Declarant's Mortgagee, prior to the Sellout Date and thereafter by the Hotel Lot Owner.*** Each Owner taking title to any of the Properties acknowledges and agrees by virtue of taking such title that (a) the Declarant may develop the Properties in connection with other adjacent or nearby properties (including, without limitation, the ST Property); and (b) in such an event, the Declarant prior to Sellout Date, and the Hotel Lot Owner thereafter, may amend this Declaration (i) to include such other adjacent or nearby properties within the term "Properties"; (ii) except as otherwise expressly prohibited by this Declaration grant such nearby properties access to or the use or benefit of portions of the Hotel Lot, including, without limitation, the Pool Deck Shared Facilities, the Shared Facilities Garage and the General Shared Facilities; and (iii) except as otherwise expressly prohibited by this Declaration, amend this Declaration in such a manner as Declarant (prior to the Sellout Date) and thereafter (the Hotel Lot Owner) deems helpful or necessary to accomplish any of the foregoing purpose or actions or the integration of such other property or properties into the integrated project constituting the Properties.

(*OTD, 14.7*) (Emphasis added.)

Based on the plain language and meaning of the first sentence in this provision, highlighted above, Section 14.7 broadly granted the Hotel Lot Owner (i.e., the Residences) the following authority:

(1) to amend the Original Tower Declaration "**in addition to**" any other manner provided therein for amendment of that Declaration;

(2) to amend, change, or add to the "covenants, restrictions, easements, ***charges, liens and other provisions***" of that Declaration; and

(3) to do so "***any time and from time to time upon the execution and recordation of an instrument executed by … the Hotel Lot Owner.***"

The balance of Section 14.7 grants the Hotel Lot Owner the additional right to further develop the Property and to amend the Original Tower Declaration in connection with such further development. Specifically, Section 14.7(a) provides that the Hotel Lot Owner may develop the Property with adjacent or nearby properties. In the event the Hotel Lot Owner choses to further develop the Property, Section 14.7(b) provides that the Hotel Lot Owner had the right to amend the Original Tower Declaration in three respects. First, pursuant to Section 14.7(b)(i), the Hotel Lot Owner could amend the Original Tower Declaration to include the newly added adjacent or nearby properties within the term "Properties". Second, pursuant to Section 14.7(b)(ii), the Hotel Lot Owner could amend the Original Tower Declaration to grant the new properties access to the Hotel Lot and other facilities. And third, pursuant to Section 14.7(b)(iii), the Hotel Lot Owner could amend the Original Tower as it deemed "helpful or necessary to accomplish any of the foregoing purpose or actions or the integration of such other property or properties into the integrated project constituting the Properties."

The plain language in Section 14.7 addressing the Hotel Lot Owner's right to further develop the Property and the concomitant right to amend the Original Tower Declaration upon the exercise of such right in no way limited or restricted the broad authority also granted to the

Hotel Lot Owner in the first sentence of that provision to amend ***any*** provision of the Original Tower Declaration ***at any time***, ***in addition*** to any other provision allowing for amendments of the Original Tower Declaration. Moreover, these two provisions do not conflict and are not ambiguous. This Court should therefore apply the plain meaning of the first sentence to the facts at issue and dismiss Plaintiff's Amended complaint with prejudice.

2. The Original Tower Declaration must be liberally construed in favor of the Hotel Lot Owner.

The Original Tower Declaration provides that it shall be liberally construed to protect the Hotel Lot Owner's rights, benefits, and privileges under that Declaration. *See OTD, §1.2* Although Section 14.7 is clear and unambiguous and should only be applied according to its plain meaning, as the Hotel Lot Owner, the Residences amended the Original Tower Declaration and this Court should therefore liberally construe Section 14.7 in favor of protecting the rights of the Residences should it find any ambiguity within that provision.

C. Plaintiff misstates the percentage allocations under the Original Tower Declaration.

Plaintiff's allegations pertaining to the allocation of expenses and subsequent their amendments are so grossly generalized and incomplete that they are in fact misleading and become emblematic of Plaintiff's entire claim.

In general, both the Original and Amended Tower Declarations allocate expenses based on usage by the various entities which generate income on the Property. Contrary to the allegations in Plaintiff's Amended Complaint that it was allocated a fixed and immutable 13% of the total expenses under the Original Tower Declaration, the Original Tower Declaration

evidences that the allocation of expenses were premised on more complex and detailed calculations and were not limited to 13%.

For example, the Amended Complaint fails to allege that items identified in Paragraph 64were expense items included in various "Shared Facilities" allocations in the Original Tower Declaration which carried much higher allocations than 13%. Under the Original Tower Declaration, for example, Plaintiff was allocated: 100% of the Hotel Condominium Shared Facilities Expenses, which included utilities, electrical, plumbing and other systems used exclusively by the Hotel Condominium Lot as well as use of the elevators (OTD, 1.1.22); 33.3% of the Pool Deck Shared Facilities Assessments which was eliminated under the Amended Tower Declaration (OTD, 11.1.4); 78% of "Non-Residential Shared Facilities Assessments" (OTD, 11.1.8); 60% of "Hotel Condominium Spa Shared Facilities Expenses" (OTD, 11.1.9); and a per use charge for valet in addition to the 26% of Plaintiff's Shared Facilities Garage expense allocation (OTD, 1.1.59.7).

Finally, and fatal to Plaintiff's claims, Plaintiff's allegations fail to recognize that the Original Tower Declaration allowed Plaintiff to amend all provisions including those pertaining to charges or liens. (OTD, Para. 14.7.))

4. The alleged failure to to negotiate during the bankruptcy proceedings is legally irrelevant.

Plaintiff alleges that the Residences failed to negotiate with it during the bankruptcy proceedings in which the Residences purchased the Property from Elcom. Assuming only for purposes of this Motion that no such negotiations took place (which in fact took place over a one year period), the failure to engage in such negotiations is legally irrelevant because Plaintiff never had the right to participate in any decision making process as part of the Original Tower

Declaration or in the bankruptcy proceedings. The transcript attached to the Complaint reveals that the Residences agreed to negotiate, but were under no obligation to do so.

As with Plaintiff's other allegations, Plaintiff's allegations with respect to the bankruptcy negotiations are unsupported by the record and otherwise legally not cognizable.

II. APPLICABLE LAW.

A. Motion to Dismiss.

A motion to dismiss tests the legal sufficiency of the complaint. *Fla. Bar v. Greene*, 926 So. 2d 1195 (Fla. 2006). In determining the merits of a motion to dismiss, the trial court must limit itself to the four corners of the complaint, including any attached or incorporated exhibits, assuming the allegations in the complaint to be true and construing all reasonable inferences therefrom in favor of the non-moving party. *Greene,* 926 So. 2d at 1199. Affirmative defenses are generally matters raised in an answer and not a motion to dismiss. *Rigby v. Liles*, 505 So. 2d 598, 601 (Fla. 1st DCA 1987). However, where the facts constituting the defense affirmatively appear on the face of the complaint and establish conclusively that the defense bars the action as a matter of law, a motion to dismiss raising the defense is properly granted. *Saltponds Condo. Ass'n v. Walbridge Aldinger Co.,* 979 So. 2d 1240, 1244-45 (Fla. 3d DCA 2008); *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1057 (Fla. 3d DCA 2002).

In this case, the documents attached to the Amended Complaint establish conclusively that Plaintiff's Amended Complaint fails to state a cause of action. "When considering a motion to dismiss, a trial court is required to consider any exhibit attached to, or incorporated in the pleading." *Bott v. City of Marathon, 949* So. 2d 295, 296 (Fla. 3d DCA 2007), citing *Harry Pepper & Assoc., Inc. v. Lasseter*, 247 So. 2d 736, 736 (Fla. 3d DCA 1971). Moroever, the documents attached to the Amended Complaint establish as a matter of law that Plaintiff fails to state a cause of action – and that it never could. "A trial court should give leave to amend a

deficient complaint unless . . . the complaint shows on its face that there is a deficiency which cannot be cured by amendment." *Unitech Corp. v. Atl. Nat'l Bank of Miami*, 472 So. 2d 817, 818 (Fla. 3d DCA 1985); *see also Thompson v. Bank of N.Y.*, 862 So. 2d 768, 770 (Fla. 4th DCA 2003). This is such a case. Plaintiff's Amended Complaint should be therefore dismissed with prejudice.

B. Rules of Contract Interpretation.

The interpretation of the Original Tower Declaration provisions is a question of law for this Court to decide under Florida's well-settled rules of contract interpretation. *Peacock Constr. Co. v. Modern Air Conditioning, Inc.*, 353 So. 2d 840, 842 (Fla. 1977) (the general rule is that interpretation of a document is a question of law rather than of fact.)

It is a fundamental rule of contract interpretation that a contract which is clear, complete, and unambiguous does not require judicial construction. *Jenkins v. Eckerd Corp.*, 913 So. 2d 43, 50 (Fla. 1st DCA 2005), citing *Hunt v. First Nat'l Bank of Tampa*, 381 So. 2d 1194, 1197 (Fla. 2d DCA 1980); *Dolphins Plus, Inc. v. Hobdy*, 650 So. 2d 213, 214 (Fla. 3d DCA 1995); *Med. Ctr. Health Plan v. Brick*, 572 So. 2d 548, 551 (Fla. 1st DCA 1990); *Neisner Bros., Inc. v. Palm Corp.*, 394 So. 2d 1106, 1107 (Fla. 3d DCA 1981); *Saltzman v. Ahern*, 306 So. 2d 537, 539 (Fla. 1st DCA 1975).

Under Florida law, the entire contract should be considered and provisions should not be considered in isolation to other provisions in the contract. *Burlington & Rockenbach, P.A. v. Law Offices of E. Clay Parker*, 160 So. 3d 955, 958 (Fla. 5th DCA 2015), citing *Specialized Mach. Transp., Inc. v. Westphal*, 872 So. 2d 424, 426 (Fla. 5th DCA 2004); *Story v. Culverhouse*, 727 So. 2d 1128, 1130 (Fla. 2d DCA 1999). The contract should not be interpreted to achieve an absurd result. *Specialized Mach. Transp.*, 872 So. 2d at 426; *see also Whitley*, 910 So. 2d at

383 ("The court should reach a contract interpretation consistent with reason, probability, and the practical aspect of the transaction between the parties." (citation omitted)).

Florida law assumes that a contract is made for and will accomplish only lawful purposes; and no strained or unusual meaning will be attributed to it so as to render it unlawful. *Diversified Enters., Inc. v. West*, 141 So. 2d 27, 30 (Fla. 2d DCA 1962). Courts should "arrive at a reasonable interpretation of the text of the entire agreement to accomplish its stated meaning and purpose." *Nabbie v. Orlando Outlet Owner, LLC*, 43 Fla. L. Weekly D325 (Fla. 5th DCA February 9, 2018). To that end, "[w]hen provisions in a contract appear to be in conflict, they should be construed so as to be reconciled, if possible." *Id, citing Seabreeze Rest., Inc. v. Paumgardhen*, 639 So. 2d 69, 71 (Fla. 2d DCA 1994) (citing *Arthur Rutenberg Corp. v. Pasin*, 506 So. 2d 33 (Fla. 4th DCA 1987)). "An interpretation of a contract which gives a reasonable, lawful and effective meaning to all of the terms is preferred to an interpretation which leaves a part unreasonable, unlawful or of no effect." *Id, citing Herian v. Se. Bank, N.A.*, 564 So. 2d 213, 214 (Fla. 4th DCA 1990.)

Here, the only reasonable interpretation of the Original Tower Declaration is that the Residences – as the Hotel Lot Owner – was authorized by Section 14.7 to amend the Original Tower Declaration and, more specifically, to amend the expense allocations.

III. Argument.

A. Section 14.7 of the Original Tower Declaration authorized the Residences to amend the Original Tower Declaration.

Under Florida's rules of contract interpretation, this Court must not only read Section 14.7 as a whole according to its plain meaning, but it must also read it together with all other provisions in the Original Tower Declaration in order to give all the terms a "reasonable, lawful

and effective" meaning and not one leading to provisions which are "unreasonable, unlawful or of no effect."

The plain language of the first sentence set forth in Section 14.7 of the Original Tower Declaration broadly grants the Residences, as the Hotel Lot Owner, the power to amend the Original Tower Declaration as to any provision contained therein, in addition to any other manner of amendment provided for therein, and at any time from time to time. The amendments to the provisions allocating expenses under the Original Tower Declaration were therefore authorized by Section 14.7 and Plaintiff's claim fails as a matter of law.

Moreover, the plain language of the provisions after the first sentence in Section 14.7 can in no way be construed to limit, restrict, or qualify the right to amend as set forth in the first sentence of that provision. Reading Section 14.7 as a whole leads to the only reasonable conclusion that the first sentence is not limited by 14.7(b)(i – iii), which is applicable only when the Hotel Lot Owner exercises its right to add adjacent or nearby properties to One Bal Harbour. A contrary interpretation would otherwise render the first sentence of Section 14.7 entirely meaningless. The only interpretation of Section 14.7 which would give meaning to both the first sentence and the balance of Section 14.7 is that Section 14.7 grants Hotel Lot Owner the broad power to amend the existing Original Tower Declaration AND also gives the Hotel Lot Owner the power to further develop the Property and to amend the Original Tower Declaration accordingly once it has done so.

The other provision which this Court should take into account when applying Section 14.7 to these facts is that found at Section 1.2 of the Original Tower Declaration which requires this Court to construe the Original Tower Declaration in favor of the Hotel Lot Owner. This provision, which is binding upon Plaintiff, further mandates dismissal of this action.

Although the Property is not a condominium, case law interpreting amendments to condominium declarations are instructive to the extent they rely on general notice provisions and

not on the specific provisions of Chapter 718, Florida's condominium statute. Under Florida law, amendments to condominium declarations are *"clothed with a very strong presumption of validity." See, Woodside Vill. Condo. Ass'n v. McClernan*, 806 So. 2d 452, 457 (Fla. 2002) (emphasis added.) This presumption arises from the fact that "each individual unit owner purchases its unit knowing of and accepting the restrictions to be imposed. Such restrictions are very much in the nature of covenants running with the land and they will not be invalidated absent a showing that they are wholly arbitrary in their application, in violation of public policy, or that they abrogate some fundamental constitutional right." *Woodside* at 806 So. 2d 452, 457 (Fla. 2002), citing *White Egret Condominium, Inc. v. Franklin,* 379 So. 2d 346 (Fla. 1979). *See also, Flagler Fed. Sav. & Loan Ass'n v. Crestview Towers Condo. Ass'n*, 595 So. 2d 198, 200 (Fla. 3d DCA 1992), citing *Hidden Harbour Estates v. Basso*, 393 So. 2d 637, 639 (Fla. 4th DCA 1981).

In this case, the hotel condominium unit owners who purchased their units when the Original Tower Declaration was in effect purchased those units with notice that the Hotel Lot Owner could amend any provision at any time, which would include amendments to the allocation of expenses. Those amendments are therefore valid.

Moreover, the hotel condominium unit owners have no vested rights in the alleged 13% allocation which, as shown above, is fictional. As previously stated, the Property is not a condominium; nevertheless, case law is clear that even condominium owners have "no vested rights in the status quo *ante.*" "In the absence of a provision either in the Amendment or in the original Declaration, condominium owners do not have vested rights in the status quo *ante*." *Woodside,* 806 So. 2d 452, 460 (Fla. 2002), citing *Crest Builders, Inc. v. Willow Falls Improvement Association* (1979), 74 Ill. App. 3d 420, 30 Ill. Dec. 452, 393 N.E. 2d 107 (party challenging amendment has no vested interest in the Declaration as originally written); *McElveen-Hunter v. Fountain Manor Association, Inc.* (1989), 96 N.C. App. 627, 386 S.E.2d

435 (changes to a condominium declaration are binding upon both previous and subsequent owners). *See also, Flagler Federal Savings & Loan Ass'n of Miami v. Crestview Towers Condominium Ass'n*, 595 So. 2d 198 (Fla. 3d DCA 1992) (unit owners were on notice of the recorded declaration's provisions for amendments to the declaration when they purchased the unit and were bound by the subsequent amendments to the declaration.)

In this case, the individual Hotel Condominium Unit Owners have no vested rights in the status quo *ante* in which they were allocated 13% of the expenses, even assuming that allocation was accurate. The Residences was therefore not prohibited from amending those allocations and was expressly authorized to do so under Section 14.7.

Finally, Plaintiff's inflammatory language alleging a "power grab" by the Residences, that Residences "foisted" expenses on Plaintiff, and that the Residences failed to negotiate with Plaintiff are simply not legally cognizable, even if assumed to be true. Thus, like condominium owners, Plaintiff is bound by the amendments to Original Tower Declaration notwithstanding any alleged loss of power, lack of participation in the amendment process, or the allocation of increased expense allocations.

WHEREFORE, Defendants respectfully request that this Court dismiss Plaintiff's Amended Complaint with prejudice.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

/s/ Leonor M. Lagomasino

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 22, 2019, a true and correct copy of the foregoing was filed and served through the *Florida Courts E-Filing Portal* to all counsel of record.

/s/ Leonor M. Lagomasino
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