

In the Supreme Court of Florida

CASE NO. SC18-357
Lower Tribunal Case No.: 2D15-2038

CYNTHIA L. JACKSON and THOMAS JACKSON

Petitioners,

vs.

HOUSEHOLD FINANCE CORP III,

Respondent.

***Amicus Curiae* Brief in Support of Respondent
Submitted by the American Legal and Financial Network (“ALFN”)**

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RECEIVED, 10/04/2018 11:58:25 AM, Clerk, Supreme Court

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THE IDENTIFY OF *AMICUS CURIAE* AND ITS INTEREST IN CASE

The American Legal and Financial Network (“ALFN”) is a national coalition of legal and residential mortgage banking and servicing professionals offering high quality educational and training resources to its members. Founded in 2001, the ALFN is now the largest organization of its kind with a membership of over 250 businesses reaching more than 10,000 professionals in the residential mortgage lending, investing, and servicing industries.

The ALFN’s interest in this case arises from the need for clarity with the business records exception to the hearsay rule and for uniformity in its application. This will better enable mortgagees, their servicers and attorneys to know what to expect at trial, contested or not, and to train and prepare their witnesses accordingly. The lack of clarity and uniformity in application of the rule leads to inconsistent rulings, what should be unnecessary re-filings, re-trials, appeals, delay, excessive workloads, and significant cost to investors and the rest of the industry even where, in masses of cases, the fact and amount of mortgage debt is not seriously in dispute.

The ALFN does not question the obligation of foreclosing plaintiffs to “prove their case,” but the standard of proof is by a preponderance of evidence, not more. Too often credible evidence, often undisputed, is being excluded on what is effectively judicial cross-examination for the benefit of the party in default, who is then required to do nothing to draw the undisputed accuracy of records into question.

STANDARD OF REVIEW

The trial court's ruling on admissibility of evidence is reviewed for an abuse of discretion, but the standard of review to resolve the conflict over interpretation of the evidence code is *de novo*. *Pantoja v. State*, 59 So.3d 1092, 1095 (Fla. 2011).

SUMMARY OF ARGUMENT

The Second District Court of Appeals is correct. The Florida Evidence Code does not require a proponent of evidence to do more than satisfy the “four prongs” of § 90.803(6) for business records to be admitted into evidence. Indicia of reliability are inherent in satisfaction of the four prongs. Once the prongs are satisfied, the burden shifts to the opponent to prove the records untrustworthy. Use of the “magic words,” as the Fourth District calls them, is sufficient provided the witness confirms that he or she has knowledge of the business's record-keeping process. The alternative, espoused by the Fourth District, is to require unquantifiable efforts on behalf of the proponent to meet a standard that moves from court to court and from judge to judge.

Where the testimony is disputed, the Florida Evidence Code requires a “mini-trial” on admissibility. The initial burden is on the proponent. The standard of proof is by a preponderance of evidence. Once the predicate for admissibility is established, the burden shifts to the opposing party to prove untrustworthy the documents offered into evidence pursuant to the witness's testimony. Opponents

cannot do so when they do not appear for trial, or offer credible impeachment or direct evidence that the business records are untrustworthy. Nor should a trial judge stand in for them or their counsel.¹

The problem is a national one. Because Florida, like many states, patterns its evidence code after the Federal Evidence Code, federal court interpretations of the Federal Evidence Code should be given great(er) weight to provide uniformity and consistency among courts. Moreover, the Federal Evidence Code was written with an eye toward overcoming the “burdensome and crippling” requirements of getting business records into evidence in the modern day. Imposing greater requirements, acting as judicial advocates for more exacting rules and proof (particularly in cases where the fact and amount of default are not seriously in dispute), greatly hinders the ability of mortgagees/investors to recover losses. This Court is in a position to correct conflicting interpretations of § 90.803(6) as presently written. Any conflict should be resolved in favor of the Second District Court of Appeal.

ARGUMENT

I. The Florida Evidence Code does not require a proponent of evidence to do more than satisfy the “four prongs” of § 90.803(6) to make out a *prima facie* case for the admissibility of evidence.

A. The Second District is correct.

¹ The ALFN is not suggesting the trial judge did so in *Maslak*, or even that the Fourth District erred under the specific facts in that case. The ALFN is simply and respectfully disagreeing with the manner in which the Fourth District interprets the rule.

The issue before this Court is whether a proponent of evidence must do more than satisfy the plain language of the business records exception to the hearsay rule (“BRE”) before the burden shifts to the party opposing admission to show why the records should not be admitted. *See Jackson v. Household Finance Corp.* III, 236 So. 3d 1170, 1174 (Fla. 2d DCA 2018) certifying conflict with *Maslak v. Wells Fargo Bank, N.A.*, 190 So. 3d 656, 659 (Fla. 4th DCA 2016). The Second District is correct. The answer is “No.”

Employing the “magic words” (as the Fourth District has dubbed them) to confirm satisfaction of the four prongs is sufficient to satisfy the BRE provided the proponent establishes a foundation for the witness’s testimony. The Second and Fourth District seem to agree on the requirement of a foundation; they disagree about what is required to establish it. The Fourth District demands an unquantifiable, amorphous quanta of evidence to establish the foundation. Its limits are never exhausted and necessarily subjective.

The Second District applies § 90.803(6) as written, by reference to the four prongs. They are easily quantified, and the Florida legislature sought to quantify them. The foundation is established once a witness confirms he or she has sufficient procedural knowledge to answer the four key questions in the affirmative. In *Jackson*, the Second District recited that the “[w]itness [may] be any qualified person with knowledge of each of the elements.” *Jackson*, 236 So. 3d at 1172. In

other words, the Second DCA found it sufficient *for admissibility* that the witness confirmed he had knowledge of whether the four prongs were met. *See Jackson*, 236 So.3d at 1172-1173. The Second District’s opinion aligns with a prior ruling of this Court, Fla. Stat. § 90.803(6)(a), Fla. Stat. § 90.105, and other scholarly authorities.

The conflict lies in where the legislature placed the burden regarding “trustworthiness.” This Court addressed the issue in *Love v. Garcia*, 634 So. 2d 158 (Fla. 1994). Although dealing with medical records, the Court concluded that “[a]s with other forms of business records, medical records can be entered if [the Rule’s predicate is satisfied].” *Id.* at 160 (emphasis supplied). “Once this predicate is laid, the burden is on the party opposing introduction *to prove the untrustworthiness* of the records. If the opposing party is unable to carry this burden, then the record will be allowed into evidence as a business record.” *Id.* (emphasis supplied).

In a civil case governed by the preponderance of the evidence standard, one can hardly find an inherent lack of trustworthiness in business records admitted after the four prongs have been satisfied, even if by a mere “Yes.” The Rule does not require the proponent to elicit from the witness information to undermine his or her own testimony, then rehabilitate the witness even before cross-examination. The witness is under oath, available for cross-examination, and testifies subject to the penalties of perjury. Nevertheless, the Petitioners here, who did not appear at their

own trial, claim the proponent must take additional, unspecified steps before the burden shifts to the party opposing admission to prove anything. That position is mistaken and would effectively rewrite the governing statutes and other authorities.

The BRE is codified at Fla. Stat. § 90.803(6)(a). Its plain language directs that business records be admitted into evidence upon testimony affirming the four prongs “unless the sources of information or other circumstances show lack of trustworthiness.” Fla. Stat. § 90.803(6)(a). The quoted language is a “negative” requirement. The proponent of the evidence is not required to prove a negative, or to show the evidence’s general trustworthiness beyond what is intrinsically shown by satisfying the four prongs. After that, and absent self-evident indicia of untrustworthiness, the burden shifts to the opposing party to prove that the evidence is so untrustworthy that it must be excluded as *inadmissible* for any purpose. The focus here is on admissibility, not weight. The trial court considers the weight later, provided at least that some conflicting evidence is presented.

This is because indicia of reliability are built into, or inherent in, the “four prongs”—confirmation that the record being offered into evidence (1) was made at or near the time by, or from information transmitted by; (2) a person with knowledge; (3) that it was kept in the ordinary course of regularly conducted business activity; and (4) that it was the regular practice of that business activity to make such a record. The Florida legislature could easily have added a fifth prong requiring additional

indicia of trustworthiness beyond that inherent in the four prongs as a condition precedent to admission of the evidence; but it did not. Unless the lack of trustworthiness emanates from the testimony and records themselves, it is the opponent's burden to demonstrate untrustworthiness sufficient to block admission.

In short, Petitioners offer no cogent justification for exceeding the plain requirements of § 90.803(6)(a). The legislature set forth a clear and precise predicate for admissibility, subject to cross-examination, or *voir dire*, by the party opposing admission of the evidence. Indeed, this plain reading of § 90.803(6)(a) is buttressed by Fla. Stat. § 90.105(1), which implements a simple process to effectuate the Evidence Code: a “mini-trial” on the admissibility of evidence.

B. The Evidence Code requires a “mini-trial” prior to the admission of evidence, during which both sides have the opportunity to make their case for or against admissibility.

1. *The initial burden is on the proponent.*

Under Fla. Stat. § 90.105(1), “the court shall determine preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence.” Whether evidence is admissible under the BRE “is a preliminary fact for the court to determine pursuant to § 90.105 . . .” *See Mariano v. State*, 933 So. 2d 111, 115-16 (Fla. 4th DCA 2006) (applying this rule when analyzing whether a statement qualified as an excited utterance) (citation omitted); *Arnett v. State*, 843 So. 2d 340, 342-43 (Fla. 1st DCA 2003) (“In

determining whether the hearsay exception of section 90.803(6)(a) [(the business records exception)] applies, the trial court must make a preliminary factual determination of the admissibility of evidence pursuant to section 90.105(1).”) (Booth, J., dissenting). Effectively, this invites a “mini-trial” on the admissibility of evidence prior to its admission.

The initial burden of proof is on the party offering the evidence. *Love*, 634 So. 2d at 160 (Fla. 1994); *Moncus v. State*, 69 So. 3d 341, 343 (Fla. 4th DCA 2011) (“The burden of proof is on the offering party to prove the disputed fact . . .”) (citing *Romani v. State*, 542 So. 2d 984 (Fla. 1989)). Thereafter, “[t]he party opposing the introduction of the evidence has the right to test the sufficiency of the foundation through cross-examination.” *Johnson v. State*, 108 So. 3d 707, 710 (Fla. 5th DCA 2013) (citing Charles W. Ehrhardt, Florida Evidence § 609.1 (2012) (addressing cross-examination when impeaching a witness)).² When ruling on these preliminary questions, “the judge acts as a trier of fact.” *See* Law Revision Council Note (1976) to Fla. Stat. § 90.105(1). “Of necessity, he will receive evidence, both pro and con, on the issue in dispute.” *Ibid*.

² This appears to be modeled after the Federal Rules of Evidence, under which “[i]t is well-settled that there is a right to voir dire on Rule 104(a), competence issues.” *See* Edward J. Imwinkelried, *Determining Preliminary Facts Under Federal Rule 104*, 45 Am. Jur. Trials 1, § 62 (2018). The federal rule, however, does not bind the court to the rules of evidence, except those on privilege. Rule. 104(a), Fed. R. Evid.

Section 90.803(6)(a), Fla. Stat., complements § 90.105(1) by providing the four elements through which the proponent can make a *prima facie* case for admission and satisfy its initial burden. *See McKendry v. State*, 641 So. 2d 45, 46 (Fla. 1994) (“a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms.”) (citation omitted). After the proponent satisfies the four prongs, and provided there is no patent, or inherent, indication of untrustworthiness, the burden shifts to the opposing party to dispute these preliminary facts. *See Love*, 634 So. 2d at 160 (“Once this predicate [in § 90.803(6)(a)] is laid, the burden is on the party opposing the introduction to prove the untrustworthiness of the records. If the opposing party is unable to carry this burden, then the record will be allowed into evidence as a business record.”).

2. *If the preliminary facts are disputed, the proponent must prove its case at the mini-trial by a preponderance of the evidence.*

An opponent disputes the preliminary facts by contending that any of the four prongs has not been confirmed, or that the evidence is inherently untrustworthy. If the testimony supporting admission is disputed, the standard of proof for the trial judge conducting the mini-trial is by a “preponderance of the evidence.” *Romani*, 542 So. 2d at 985 n. 3 (Fla. 1989) (citation omitted) (If “preliminary facts are disputed, the offering party must prove them by a ‘preponderance of the evidence’”); *Pierce v. State*, 718 So. 2d 806, 809 (Fla. 4th DCA 1997) (reiterating that “[a]ll

preliminary facts constituting the foundation for admissibility of evidence must be proven to the court only by a preponderance of the evidence . . .”) (citation omitted); *Moncus*, 69 So. 3d 341, 343 (Fla. 4th DCA 2011) (“The burden of proof is on the offering party to prove the disputed fact by a preponderance of the evidence.”) (citing *Romani*); *First Union Nat. Bank v. Turney*, 824 So. 2d 172, 184 (Fla. 1st DCA 2001) (“These predicate factual questions fall to the trial court for decision under a preponderance of the evidence standard.”) (citations omitted). The preponderance of the evidence standard “requires the evidence ‘as a whole [to show] that the fact sought to be proved is more probable than not.’” *Romani*, 542 So. 2d at 985 n. 3 (quotation omitted; alteration in original).

3. *If the preliminary facts are undisputed, satisfaction of the four prongs is sufficient.*

Provided the four prongs are met and there is no inherent indication of untrustworthiness, there is nothing for the judge to resolve unless conflicting evidence is presented. In short, confirming the four prongs, even by answering “yes” to the four “magic questions” is sufficient to make out a *prima facie* case in the mini-trial. The burden then shifts to the opponent to draw into question the trustworthiness of the evidence being offered. *See Love*, 634 So. 2d at 160; *WAMCO XXVIII, Ltd. v. Integrated Electronic Environments, Inc.*, 903 So.2d 230, 233 (Fla. 2d DCA 2005) (burden to prove lack of trustworthiness is on party opposing admission). There would be no need for a “standard of review” or a “preponderance

of the evidence” evaluation unless the law contemplated a mini-trial for the judge to resolve by reference to that standard and when confronted with conflicting evidence.

The BRE permits the opponent to offer virtually *anything* to “show lack of trustworthiness;” and § 90.105(1) places that burden of disputing the preliminary facts (the witness’s testimony) on the opponent. As this Court has explained, “[i]f the opposing party is unable to carry this burden, then the record will be allowed into evidence as a business record.” *Love*, 634 So. 2d at 160. If sufficient evidence is drawn to bring trustworthiness into question, however, then the trial judge resolves the competing facts in the mini-trial under a preponderance of the evidence standard. *See Romani*, 542 So. 2d at 985 n. 3.

Here, the Petitioners are apparently asking this Court to place upon the proponent both the burden of establishing its statutory *prima facie* case for admission *and* the vague, undefined burden of disproving what would necessarily be a presumed lack of trustworthiness by additional means, which is not required by the statute. In other words, it would require the proponent to disprove a negative. But all § 90.803(6)(a) requires of the proponent is proof of the four elements. As the Second District noted, since this can be done by certification, there is “no basis for the imposition of a heavier burden” on a proponent offering live testimony. *Jackson*, 236 So.3d at 1175. Section 90.105(1), in turn, places the burden of disputing the preliminary facts and proving untrustworthiness on the party opposing admission.

See Love, 634 So. 2d at 160. If nothing is offered, nothing is (dis)proven. If sufficient evidence is drawn to bring trustworthiness into question, however, then the burden shifts back to the proponent, until both sides have exhausted their efforts and the trial judge resolves the mini-trial.

Because the preliminary facts were undisputed below, the records were properly allowed into evidence as business records.

II. The BRE problem is not just local, but national, and state courts routinely look to federal law construing correlating federal rules for guidance in applying state law.

A. The problem is a national one.

Judge Learned Hand described the problem, even in his day, as follows:

The routine of modern affairs, mercantile, financial and industrial, is conducted with so extreme a division of labor that the transactions cannot be proved at first hand without the concurrence of persons, each of whom can contribute no more than a slight part, and that part not dependent on his memory of the event. Records, and records alone, are their adequate repository, and are in practice accepted as accurate upon the faith of the routine itself, and of the self-consistency of their contents. Unless they can be used in court without the task of calling those who at all stages had a part in the transactions recorded, nobody need ever pay a debt, if only his creditor does a large enough business. That there should not be checks and assurances of veracity we do not suggest; it is indeed possible to expose adversaries to genuine danger, but to continue a system of rules, originally designed to relieve small shopkeepers from their incompetence as witnesses, into present day transactions is to cook the egg by burning down the house.

Massachusetts Bonding & Ins. Co. v. Norwich Pharmacal Co., 18 F.2d 934, 937 (2d Cir. 1927). In 1943, the United States Supreme Court called this description

of the problem, “well stated.” *Palmer v. Hoffman*, 318 U.S. 109, 63 S.Ct. 477, 87 L.Ed. 645, fn. 2 (U.S. 1943). The problem is all the more complex today, warranting a clear, uniform, objective standard by which to determine the admissibility of business records.

B. The Florida Evidence Code, and the Codes of many other states, are patterned after the Federal Evidence Code, thereby helping foster national uniformity.

It is no coincidence that the Florida rule and the federal rule excepting business records from hearsay objections are Fla. R. Evid. § 90.803(6) and Fed. R. Evid. § 803(6), respectively. In construing a section of the Florida Evidence Code that was patterned after a federal rule of evidence, this Court construes the state rule in accordance with federal court decisions interpreting the federal rule. *See Moore v. State*, 452 So.2d 559 (Fla. 1984). Accordingly, “[t]he federal courts’ interpretation of the Federal Rules of Evidence may be relied upon as a persuasive authority when interpreting the corresponding provisions of the Florida Evidence Code.” *Rich v. Kaiser Gypsum Co.*, 103 So.2d 903, 908 (Fla. 4th DCA 2012) (citations omitted); *L.L. v. State*, 189 So.3d 252, 255 (Fla. 3d DCA 2018) (same).

While space does not permit of an exhaustive string cite, many other states look to federal courts when applying their own rules of evidence as well. *See e.g.*, *Stewart v. Rice*, 47 P.3d 316, as modified after denial of rehearing (Col. 2002) (Colorado courts look to federal authority for guidance in construing state rules that are similar to federal rules); *State v. Anglemeyer*, 269 Neb. 237, 691 N.W.2d 153

(Neb. 2005) (Nebraska, same); *State v. Farzaneh*, 468 N.W.2d 638, 641 (N.D. 1991) (North Dakota state rules conformed to federal rules for purposes of uniformity between state and federal law); *Jones v. State*, 812 S.E. 2d 337, 345 Ga. App. 14, 18 (Ga. App. 2018) (Georgia, same); *State Farm Mut. Auto. Inc. Co. v. Andes*, 965 N.E. 2d 1056, 1063 (Ohio App. Ct. 2012) (Ohio, same).

Addressing what the Commentary to Federal Rule 803(6) described as the “burdensome and crippling effect” of satisfying the BRE, the writers too explained that state evidence rules have often followed federal enactments:

Exception (6) represents an area which has received much attention from those seeking to improve the law of evidence. The Commonwealth Fund Act was the result of a study completed in 1927 by a distinguished committee under the chairmanship of Professor Morgan. Morgan et al., *The Law of Evidence: Some Proposals for its Reform* 63 (1927). With changes too minor to mention, it was adopted by Congress in 1936 as the rule for federal courts. 28 U.S.C. §1732. A number of states took similar action. The Commissioners on Uniform State Laws in 1936 promulgated the Uniform Business Records as Evidence Act, 9A U.L.A. 506, which has acquired a substantial following in the states...

C. In recognition of the “national problem,” federal Rule 803(6), after which Florida and other corresponding state rules are patterned, is more liberally construed to admit business records into evidence.

Federal Rule 803(6) was amended in 2014 to clarify expressly that the burden to prove untrustworthiness rests with the opponent. However, federal courts interpreted the rule the same way prior to its express clarification. *See Jordan v.*

Binns, 712 F.3d 1123, 1136 (7th Cir. 2013) (holding under the prior version of 803(6) that the party opposing introduction of the business record bears burden of demonstrating untrustworthiness); *Shelton v. Consumer Products Safety Comm’n*, 277 F.3d 988, 1010 (8th Cir. 2002) (same); 2014 Advisory Committee Note to Fed. R. Evid. 803(6) (noting that the rule was amended to clarify that if the proponent satisfies the four federal prongs, “the burden is on the opponent to show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness”), cited in *NRMM, LLC v. Choice Manufacturing Co., Inc., et al.*, 2015 WL 1859851 *3 (N.D. Ill. April 21, 2015). Federal law on this point should be given significant consideration.

Federal Rule 803(6) “‘favors the admission of evidence rather than its exclusion if it has any probative value at all.’ *United States v. Carranco*, 551 F. 2d 1197, 1200 (10th Cir. 1977).” *In re Ollag Constr. Equipment Corp.*, 665 F. 2d 43, 46 (2d Cir. 1981). The federal rule “allows business records to be admitted ‘if witnesses testify that the records are integrated into a company’s records and relied upon in its day to day operations.’” *United States v. Jakobetz*, 955 F. 2d 786, 801 (2d Cir. 1992). Section 803(6) requires that the witness be knowledgeable about the procedures used to create the alleged business records to testify; however, the testifying witness does not need firsthand knowledge of the contents of the records, of their authors, or even of their preparation. *See In re Int’l Mgmt. Assocs. LLC*, 781

F.3d 1262 (11th Cir. 2015). This establishes a predicate sufficient for the witness to confirm the four prongs.

The United States Court of Appeals for the Eleventh Circuit has found records properly admitted under the BRE provided “the witness [is] able to identify the record as authentic and specify that it was made and preserved in the regular course of business.” *United States v. Atchley*, 699 F.2d 1055, 1059 (11th Cir. 1983). Rule 803(6) is satisfied if the proponent establishes simply that “it was the business practice of the recording entity to obtain such information from persons with knowledge [*i.e.*, the witness need not have personal knowledge] and the business practice of the proponent to maintain the records produced by the recording entity.” *See United States v. Bueno-Sierra*, 99 F.3d 375, 379 (11th Cir. 1996).

In *United States v. Langford*, 647 F.3d 1309 (11th Cir. 2011), the Eleventh Circuit virtually validated the sufficiency of single word responses to the “magic questions” formula. In *Langford*, the witness testified that she was the records custodian, that, although she did not have personal knowledge of their contents, she had personal knowledge of the process involved in gathering the documents, that the documents had been gathered from ongoing business at the bank, and that they were part of, or appeared to be part of, documents routinely held in the normal course of business. *Id.* at 1327. The opponent raised no challenge to authenticity, and the Court found the following testimony sufficient to meet the four-pronged test:

Q. ...did the bank designate you the custodian of records for these documents that are in front of you?

A. Yes.

Q. And to be clear, you don't have personal knowledge of the content of those documents?

A. Correct.

Q. But do you have personal knowledge of the process that was involved with gathering those documents?

A. Yes.

Q. And were those documents gathered from business at the bank, ongoing business.

A. They were.

Id. at 1327-1338. This parallels the testimony the Second District found sufficient in *Jackson*. *Jackson*, 236 So.3d at 1172-1173.

Absent proof of untrustworthiness sufficient to overcome the preponderance of evidence standard, any objection to the foregoing should go to weight, not admissibility; and weight is to be factored in later, after a consideration of all evidence presented, provided the opposing party introduces at least some evidence to bring trustworthiness in question. Indeed, similar to *Langford*, the U.S. District Court for the Northern District of Alabama has noted that "several courts have explicitly held that blanket statements that the declaration is made based on

“personal knowledge, observations and business records kept in the ordinary course of business’ are [neither] conclusory [n]or improper.” *Duke v. Nationstar Mortg., L.L.C.*, 893 F. Supp.2d 1238, 1245 (N.D. Ala. 2012) (numerous citations omitted).

In short, relevant evidence should be admitted unless precluded by law. *Burton v. State*, 237 So. 3d 1138, 1141 (Fla. 3d DCA 2018) citing *Wright v. State*, 19 So. 3d 277, 291 (Fla. 2009). Evidence is relevant if it intends to prove or disprove a material fact (*id.*), as do business records relating to a mortgagor’s payment history, etc., particularly where the information contained therein goes undisputed. The exception is where unfair prejudice *substantially outweighs the probative value*. *Id.* This is a hard standard for an opponent to meet in a bench trial—particularly a residential mortgage foreclosure case. While weight is always subject to measure, admissibility should be kept as objective as possible.

CONCLUSION

The Second District Court of Appeal is correct and any conflict between its decision in *Jackson* and the Fourth District decision in *Maslak* should be resolved in favor of the Second District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 4th day of October, 2018, a copy of the foregoing was served via e-mail upon the parties in the service list attached.

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.210(a) (2), I certify that this brief has been prepared using Time New Roman 14-point font.

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