

APPLICATION FOR NOMINATION TO THE DISTRICT (FIFTH) COURT

(Please attach additional pages as needed to respond fully to questions.)

DATE: _____ Florida Bar No.: 0473626

GENERAL: _____ Social Security No.: 263-75-6011

1. Name Anthony Michael Tatti E-mail: atatti@circuit5.org
Date Admitted to Practice in Florida: May 31, 1985
Date Admitted to Practice in other States: n/a

2. State current employer and title, including professional position and any public or judicial office.
Florida State Courts System, Circuit Judge, Fifth Judicial Circuit of Florida

3. Business address: 110 NW 1st Avenue, Suite 4017
City Ocala County Marion State FL ZIP 34475
Telephone (352) 401-6740 FAX (352) 401-6789

4. Residential address: [REDACTED]
City Ocala County Marion State FL ZIP [REDACTED]
Since 1998 Telephone [REDACTED]

5. Place of birth: Tampa, FL
Date of birth: March 9, 1961 Age: 58

6a. Length of residence in State of Florida: 44 years

6b. Are you a registered voter? Yes No
If so, in what county are you registered? Marion

7. Marital status: Married
If married: Spouse's name Sandra Judd Tatti
Date of marriage December 18, 1983
Spouse's occupation Self-employed (home childcare)

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

n/a

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
Diana C. Tatti	█	█	█
Jennifer N. Tatti	█	█	█
Alexander M. Tatti	█	█	█
Aaron M. Tatti	█	█	█

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
none			
Rank at time of discharge	_____	Type of discharge	_____
Awards or citations _____			
<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
Rank at time of discharge	_____	Type of discharge	_____
Awards or citations _____			

HEALTH:

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

No

11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes No

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

n/a

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite
- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes No

If yes, please explain.

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes No

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes No

Describe such problem and any treatment or program of monitoring or counseling.

13. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.

No

14. During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

No

15. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

16. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

No

17. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No

EDUCATION:

18a. Secondary schools, colleges and law schools attended.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Brandon High School	top 5%	1975-1978	H.S. Diploma
Hillsborough Community Coll.	unknown	1978-1979	
University of So. Florida	unknown	1979-1981	B.A.
University of Florida	top 50%	1981-1984	J.D.

18b. List and describe academic scholarships earned, honor societies or other awards.
National Honor Society (BHS);
Hillsborough Community College Trustees Scholarship
Phi Kappa Phi National Honor Society (USF)

Pi Sigma Alpha National Political Science Honor Society (USF)
 Bachelor of Arts in Political Science, cum laude (USF)
 University of Florida Academic Merit Scholarship/Loan

NON-LEGAL EMPLOYMENT:

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
None	All of my full-time employment since age 21 has been in legal positions		

PROFESSIONAL ADMISSIONS:

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

Florida Supreme Court/The Florida Bar (May 31, 1985)

LAW PRACTICE: (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Law Clerk	William N. DeCarlis, P.A.	5000 NW 27 th Court #D, Gainesville, FL 32606	May 1983-August 1985
Assistant Public Defender	Public Defender, 5 th Circuit	123 N. Sinclair Ave., Tavares, FL 32778	August 1985-October 1988
Assistant State Attorney	State Attorney, 5 th Circuit	110 NW 1 st Ave., Suite 5000, Ocala, FL 34475	October 1988-March 2011

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if

you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

Former law practice was almost exclusively criminal

23. What percentage of your appearance in courts in the last five years or last five years of practice (include the dates) was in:

Court		Area of Practice	
Federal Appellate	_____ %	Civil	_____ %
Federal Trial	_____ %	Criminal	<u>99</u> %
Federal Other	_____ %	Family	_____ %
State Appellate	_____ %	Probate	_____ %
State Trial	<u>99</u> %	Other	<u>1</u> %
State Administrative	_____ %		
State Other	<u>1</u> %		
	_____ %		
TOTAL	<u>100</u> %	TOTAL	<u>100</u> %

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury? approx. 100 Non-jury? approx. 50
 Arbitration? _____ Administrative Bodies? _____

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

26. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

No

(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)

- 27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

January 2011 - State of Florida v. Adrian D. Brown, Marion County 2008CF4862

Defendant's counsel: Tricia C. Jenkins, Fmr Assistant Public Defender (352) 857-6243
John Tedder, Assistant Public Defender, (352) 671-5454
Co-counsel: Rock Hooker, Fmr Assistant State Attorney (352) 620-2143

Note: This case was my last jury trial as an attorney. The case tried to conclusion, but resulted in a mistrial when the jury failed to reach a unanimous verdict.

July 2009 - State of Florida v. Arnold L. Evans, Marion County 2004CF2010

Defendant's counsel: Candace A. Hawthorne (352) 742-5200
Brenda Smith (352) 669-4667
Co-counsel: Rock Hooker, Fmr Assistant State Attorney (352) 620-2143

May 2009 - State of Florida v. William M. Kopsho, Marion County 2000CF3762

Defendant's counsel: William A. Miller, Chief Asst. Public Defender (352) 338-7378
John Tedder, Assistant Public Defender (352) 671-5454
Co-counsel: Brad King, State Attorney (352) 671-5800

April 2009 - State of Florida v. Larry J. Eargle, Marion County 2003CF3321

Defendant's counsel: Douglas Kirkland (352) 895-3283
Paul Militello, presently County Judge, (352) 569-6930
Co-counsel: Rock Hooker, Fmr Assistant State Attorney (352) 620-2143

September 2008 - State of Florida v. Robert M. Greene, Marion County 2006CF3321

Defendant's counsel: Susan Bailey, Assistant Public Defender (352) 671-5454

February 2008 - State of Florida v. Renaldo McGirth, Marion County 2006CF2999

Defendant's counsel: Candace A. Hawthorne (352) 742-5200
Brenda Smith (352) 669-4667
Co-counsel: Brad King, State Attorney (352) 671-5800

27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

n/a

27c. During the last five years, how frequently have you appeared at administrative hearings?
0 average times per month

- 27d. During the last five years, how frequently have you appeared in Court?
5-7 average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs?
 _____% Defendants? _____%
28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.
 n/a
29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.
 n/a
30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.
 Please see attached pages.
31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.
 I personally wrote the attached orders in In re Villeda, State v. Wright, and O'Hanrahan v. O'Hanrahan. I was substantially responsible, with the assistance of a staff attorney, for writing the attached order in Bank of America v. Creative Choice Homes, et. al.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

- 32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.
 Yes. Candidate for Circuit Judge, Fifth Circuit, 2004. Quailified candidate between May 5, 2004 and August 31, 2004, lost election in the primary. Appointed as Circuit Judge, Fifth Circuit, March 2011.

State of Florida v. Freddie Lee Hall, Sumter Co. Case No. 1978-CF-52

Judge: Hon. Richard Tombrink, Jr., Circuit Judge

Trial date(s): December 2-10, 1991

Defense: T. Michael Johnson, Michael A. Graves, Patricia C. Jenkins

Participation: Chief counsel with J. Reginald Black representing the State

Citations: 403 So. 2d 1321 (Fla. 1981); 420 So. 2d 872 (Fla. 1982); 565 F. Supp. 1222 (M.D. Fla.1983); 733 F. 2d 766 (11th Cir. 1986) cert. denied 471 U.S. 1107; 805 F. 2d 945 (11th Cir. 1986) cert. denied 484 U.S. 905; 531 So. 2d 76 (Fla. 1988); 541 So. 2d 1125 (Fla. 1989); 614 So. 2d 473 (Fla. 1993); 742 So. 2d 225 (Fla. 1999); 792 So. 2d 447 (Fla. 2001) cert. denied 534 U.S. 1136 (2002). Hall v. Florida, 572 U.S. 701 (2014) and Hall v. State, 201 So.3d 628 (Fla. 2016).

Significance: The Hall case was one of the first capital cases assigned to me when I started work at the State Attorney's Office. The case had been remanded by the Florida Supreme Court for a re-trial of the sentencing phase due to errors in the jury instructions during Hall's original trial. The case was remarkable in that the evidence of both the aggravating circumstances and the mitigating circumstances was lengthy and significant, including complicated mental health evidence. Hall was sentenced to death. Hall's death sentence was subsequently reversed after the United States Supreme Court determined that the Florida Supreme Court's treatment of intellectual disability was unconstitutional.

State of Florida v. Pamela Colbert, Hernando County Case No. 1991-CF-762

State of Florida v. Michael Frazier, Hernando County Case No. 1991-CF-757

State of Florida v. Alfred Fennie, Hernando County Case No. 1991-CF-756

Judge: Hon. Jack Springstead, Circuit Judge

Trial date(s): October 19-November 13, 1992

Defense: Osa J. Harp, Cliff Travis (Colbert); James M. Brown, John Vitola (Frazier); Alan Fanter, Hugh Lee (Fennie)

Participation: Chief counsel with William Gross representing the State

Citations: Colbert v. State, 646 So. 2d 234 (Fla. 5th DCA 1994); 660 So. 2d 701 (Fla. 1995); Frazier v. State, 633 So. 2d 1206 (Fla. 5th DCA 1994) and 697 So. 2d 862 (Fla. 5th DCA 1997); Fennie v. State, 648 So. 2d 219 (Fla. 1994) cert. denied 513 U.S. 1159 (1995) and 855 So. 2d 597 (Fla. 2003) cert. denied 541 U.S. 975 (2004)

Significance: All three defendants were charged with First Degree Murder and Kidnapping in connection with the abduction, rape and murder of a woman who had been taken from Tampa and murdered in Eastern Hernando County. The case was significant in that the three defendants were tried consecutively over a period of four weeks. All three were found guilty; Fennie was sentenced to death.

State of Florida v. Edwin Michael Kaprat, Hernando Co. Case No. 1993-CF-921

Judge: Hon. Jack Springstead, Circuit Judge

Trial date(s): January 5-14, 1995

Defense: Alan Fanter, Dan Lewan

Participation: Co-counsel with Brad King representing the State

Citations: none

Significance: Kaprat was charged with a series of murders of elderly women in Spring Hill, Florida committed over a period of several months in 1993. While there was some physical evidence linking Kaprat to two of the crimes, the case turned on the legal admissibility of Kaprat's statements to law enforcement authorities. Kaprat was convicted and sentenced to death. He was killed by another death-row inmate before his appeal was considered by the Florida Supreme Court.

State of Florida v. David C. Smith, Marion Co. Case No. 2001-CF-2226-A-X

Judge: Hon. David B. Eddy, Circuit Judge

Trial date(s): December 17-20, 2002

Defense: Jack R. Maro

Participation: Chief counsel with Amy Berndt representing the State

Citations: 842 So. 2d 131 (Fla. 5th DCA 2003); 866 So. 2d 1230 (Fla. 5th DCA 2004); 885 So. 2d 388 (Fla. 2004); 906 So. 2d 1059 (Fla. 2005)

Significance: Smith was charged with Attempted First Degree Murder, Kidnapping, Sexual Battery and Aggravated Child Abuse. The case was unusual in that the victim never appeared during the trial; she was 21 months old at the time of offense. Smith was convicted and sentenced to life in prison.

State of Florida v. Renaldo D. McGirth, Marion Co. Case No. 2006-CF-2999-A-W

Judge: Hon. Brian D. Lambert, Circuit Judge

Trial date(s): January 22-February 8, 2008

Defense: Candace Hawthorne, Brenda Smith

Participation: Co-counsel with Brad King representing the State

Citations: McGirth v. State, 48 So.3d 777 (Fla. 2010); 209 So.3d 1146 (Fla. 2017)

Significance: McGirth was charged, along with two co-defendants, with First Degree Murder, Attempted First Degree Murder, Home Invasion Robbery While Armed, Kidnapping While Armed and Felony Fleeing or Attempting to Elude. McGirth and his co-defendants entered the home of a retired couple on the pretense of visiting their daughter, killing the wife and shooting the husband in the head before leaving with the couple's daughter. McGirth and the other defendants were captured after a high-speed police chase. The case was remarkable in that McGirth and one of the co-defendants proceeded to trial together resulting in a prolonged trial

and creating numerous complex legal issues. McGirth was convicted and sentenced to death. At the time of his conviction, McGirth was the youngest person on Florida's death row. McGirth is now pending a re-sentencing hearing as the result of a Hurst reversal.

State of Florida v. Frederick L. Harris, Marion Co. Case No. 2006-CF-1000-A-Z

Judge: Hon. Hale R. Stancil, Circuit Judge

Trial date(s): February 3, 2010-February 10, 2008

Defense: Candace Hawthorne, Brenda Smith

Participation: Co-counsel with Brad King representing the State

Citations: No appeal filed

Significance: Harris was charged with First Degree Murder and Burglary of a Dwelling While Armed. Harris waited for the victim to leave her home and broke in for the purpose of committing a burglary. The victim returned to the home and found Harris who then stabbed her to death. The case ended when Harris stood up at the beginning of the defense case and announced that he wanted to plead guilty. Harris went on to confess to the murder and apologize to the victim's family. He was sentenced to life and never filed an appeal.

32b. List any prior quasi-judicial service:

Dates

Name of Agency

Position Held

Types of issues heard:

32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

No

32d. If you have had prior judicial or quasi-judicial experience,

(i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.

Darryl W. Johnston
29 South Brooksville Avenue, Brooksville, FL 34601
352-796-5123

Daniel M. Hernandez
902 North Armenia Avenue, Tampa, FL 33609
813-875-9694

M. Thomas Bond, Jr.
101 SW 3rd Street, Ocala, FL 34471
352-622-1188

Steven L. Laurence
781 Douglas Avenue, Altamonte Springs, FL 32714
407-862-2529

Amy Berndt
110 NW 1st Avenue, Suite 5000, Ocala, FL 34475
352-671-5800

John N. Spivey
123 North Sinclair Avenue, Tavares, FL 32778
352-742-4270

(ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

Thousands of cases in the areas of Foreclosure, Probate, Family Law, Juvenile Dependency, General Civil, and Criminal Felony

- (iii) List citations of any opinions which have been published.

- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.

Bank of America v. Creative Choice Homes, Hernando County Case No. 2010-CA-3113
Mark D. Solov - Counsel for the Plaintiff
E. Cole FitzGerald III, James A. Burnham, Darryl W. Johnston, Gary Woodfield,
Mandel Sundarsingh - Counsel for the Defendants

The case was significant as it was the first complex civil case that I had ever been involved with as a lawyer or a judge. The case involved a multi-million dollar commercial foreclosure with fairly complex legal issues. On September 4, 2012, I entered a 20-page Order granting summary judgment for the plaintiff which was affirmed on appeal.

O'Hanrahan v. O'Hanrahan, Marion County Case No. 2012-DR-3111-FC
Thomas J. Donnelly - Counsel for the Husband
M. Thomas Bond, Jr. - Counsel for the Wife

This dissolution case involved significant marital assets and a prenuptial agreement. After hearing on February 6 and 9, 2015, on March 17, 2015 I entered a 27-page Order which invalidated the prenuptial agreement. The Order was affirmed on appeal.

State v. Amber Wright, Marion County Case No. 2011-CF-1491-E-Z
Junior Barrett - Counsel for the Defendant
Amy Berndt and Robin Arnold - Counsel for the State

The defendant was a juvenile and one of five co-defendants charged with the murder and dismemberment of a teen-age boy. I was assigned to the case after the District Court reversed and remanded for a new trial. The case was unusual in that I was asked to rule on a motion filed by the State that would have effectively overruled the instructions of the District Court that the defendant be given a new trial. Despite finding that the reversal appeared to have been based on an incorrect assessment of the facts, I denied the motion in a 23-page Order which was affirmed by the District Court on the State's interlocutory appeal. The re-trial was held on January 11, 2016-January 14, 2016.

State v. Laquan Barrow, Michael Smith, and Gary King
Marion County Case No. 2015-CF-2902-ABC-Z
Michael Gourley, Daniel Hernandez, and Candace Hawthorne - counsel for the Defendants
Timothy McCourt and Jennifer Kipke - Counsel for the State

The defendants were charged with second-degree murder in connection with a shooting at a crowded nightclub resulting in the death of one victim and the shooting of several other victims. A speedy trial demand by one of the defendants

resulted in the selection of two juries to try the case. The case was one of intense interest in the community and was the first Marion County trial live-streamed over the internet. The trial was held on November 27, 2017-December 6, 2017.

State v. Michael Shane Bargo, Marion County Case No. 2011-CF-1491-A-Z
Candace Hawthorne and Brenda Smith - Counsel for the Defendant
Amy Berndt and Robin Arnold - Counsel for the State

The defendant was the primary co-defendant of Amber Wright, charged with the murder and dismemberment of a romantic rival. I was assigned to the retrial of the penalty phase after the original death sentence was reversed pursuant to Hurst. The second resentencing proceeding resulted in the first post-Hurst unanimous death penalty verdict in Marion County. The new sentencing hearing was held on April 1, 2019-April 9, 2019.

(v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

No

(vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.

No

(vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

BUSINESS INVOLVEMENT:

33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

n/a

33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

Yes. Between 2000 and 2005, I was employed part-time as an Adjunct Instructor by the Criminal Justice Institute of the College of Central Florida

33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

No

POSSIBLE BIAS OR PREJUDICE:

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you as a general proposition believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

No

MISCELLANEOUS:

35a. Have you ever been convicted of a felony or a first degree misdemeanor?

Yes _____ No x If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes _____ No x If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No x If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.

No

36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?

No

36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.

No

37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?

No

- 37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.

No

38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.

Yes.

Donald Clyde Johnson, Sr. v. L.J. Hindery, Sheriff; Winnefred Phillips; Anthony Tatti; Marvin Padgett; Kevin Crosier; and Andy Hamilton
US District Court for the Northern District of Florida, Case No. 93-3181-CA-B

Mr. Johnson sued, claiming violations of the 14th Amendment, the Federal and Florida Wiretap Acts, federal and state rights to privacy and a state common law tortious invasion of privacy. The case was dismissed by the District Court.

Fleet Finance and Mortgage v. William Edward Adams; Dreama K. Adams; John C. Buckheister; Doretha M. Buckheister; State of Florida; County of Marion, Florida; Munroe Regional Medical Center; Anthony M. Tatti; and Matthies, Cross, DeBoisblanc, Robbins, & Rice, P.A.
Circuit Court, Fifth Judicial Circuit of Florida, Case No. 1994-CA-3181-B

The plaintiff mortgage company sued Adams for foreclosure of a mortgage on property owned by Adams. My name appeared on a Public Defender lien entered against Adams as a result of my representation of him while I was employed as an Assistant Public Defender. I was eventually dropped as a defendant in the action by the plaintiff.

Charles P. Horn v. Munroe Regional Health System, Inc., et al.
US District Court for the Middle District of Florida, Case No. 5:02:OC:CV-00268

I was listed among several defendants in an action for malicious prosecution. The suit was dismissed by the District Court.

William Todd Overcash v. Mark D. Shelnett, et. al
US District Court for the Middle District of Florida, Case No. 5:15-W-555-OC-41PRL

Mr. Overcash sued his former wife's attorney, several individuals, public and private entities and nine (9) sitting or former Circuit Judges alleging violations of sections 1983 and 1985 of the Civil Rights Act. The cases against all of the judges, including myself, were dismissed by the District Court, which subsequently entered an Order sanctioning the plaintiff's attorney for filing a frivolous lawsuit.

39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.

No

40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).

No

41. Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.

No

42. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No

43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes No If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes No If yes, please explain what and why. In 1986, 1991, 1992, and 1993, I paid nominal tax penalties (less than \$20) for opting to pay my federal income tax in payments

43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

Among the materials prepared by the faculty of the "Handling Capital Cases" and "Capital Case Refresher" classes, I am responsible for "Conducting the Penalty Phase of a Capital Case", a 250-page "outline" of cases addressing the conduct of the penalty phase of a death penalty trial. The material is updated twice anually and made available to Florida judges through the Florida Judicial Branch Education intranet website.

45. List any honors, prizes or awards you have received. Give dates.

46. List and describe any speeches or lectures you have given.

47. Do you have a Martindale-Hubbell rating? Yes If so, what is it? ___ No

PROFESSIONAL AND OTHER ACTIVITIES:

48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.

Marion County Bar Association

D. R. Smith American Inn of Court, President 2015-2017

48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

Florida Prosecuting Attorneys' Association, Education Committee

Florida Prosecuting Attorneys' Association, County Court Chiefs Committee

Florida Conference of Circuit Judges, Education Committee

Saint Paul's United Methodist Church of Ocala, numerous church commitees

48c. List your hobbies or other vocational interests.

Golf, cooking, backpacking

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No

48e. Describe any pro bono legal work you have done. Give dates.

My former employment as an Assistant State Attorney and my current position as a Circuit Judge have restricted my opportunities to engage in the practice of law outside of my official duties.

SUPPLEMENTAL INFORMATION:

- 49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

Yes. Family Law, Civil Law, Dependency, Criminal Law, Professionalism

- 49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

Yes. I have lectured for the Florida Homicide Investigators Assn., the Florida Prosecuting Attorneys' Assn., and the Fifth Circuit State Attorney's Office in the areas of criminal law and trial practice. I have taught courses in criminal law at the Florida Conference of Circuit Judges Education Program and the Florida College of Advanced Judicial Studies. I am currently a member of the faculty team for the mandatory "Handling Capital Cases" and "Capital Cases Refresher" courses.

50. Describe any additional education or other experience you have which could assist you in holding judicial office.

In my eight (8) years on the bench, I have been assigned to virtually every division of the circuit court, so there is no area of the law that I have not been exposed to as a judge. The bulk of my experience as a lawyer involved defending and prosecuting capital cases. As a judge, I am one of a handful of judges in the State charged with the responsibility to mentor and instruct other judges presiding over capital cases. Capital litigation is an area of the law driven by the decisions of appellate courts and requires a much greater knowledge and understanding of appellate practices and a constant awareness of potential areas of change in the body of appellate decisions. I believe that experience would assist me in making an effective transition from a trial court to an appellate court in much the same way my experience as a trial lawyer prepared me to handle and teach the complexities of death penalty cases as a judge.

51. Explain the particular potential contribution you believe your selection would bring to this position.

I have been, and remain, a student of the law. I have been recognized for my ability to manage cases and make timely and correct rulings on legal issues. I possess strong skills in legal research and writing. I have the character, intellect, and legal ability to serve as a judge of the Fifth District Court of Appeal. More importantly, I have spent my legal career face-to-face with the people that our laws are intended to serve and protect. I have held the hands, and looked into the eyes, of the families of people charged with crimes and the victims of crimes. As a judge, I have kept those memories close to me, to inform and shape my understanding and appreciation of the law, and of the human impact of every decision I make. In this way, I am continually reminded that we look to the law to mean what it says, to apply to every person without regard to color, creed or station, and to respect the dignity of all who are governed by it.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

Fifth Circuit Judicial Nominating Commission - August 1995, July 2005, January 2007, August 2007, July 2010, January 2011. Fifth DCA Judicial Nominating Commission - May 2018. Florida Supreme Court Nominating Commission - September 2018.

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

REFERENCES:

54. List the names, addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for judicial position and of whom inquiry may be made by the Commission.

Hon. S. Sue Robbins
110 NW 1st Avenue, Ocala, FL 34475
352-401-7820

Brad King
110 NW 1st Avenue, Suite 5000, Ocala, FL 34475
352-671-5800

Michael A. Graves
123 North Sinclair Avenue, Tavares, FL 32778
352-742-4270

David R. Ellspermann
110 NW 1st Avenue, Ocala, FL 34475
352-671-5604

Darryl W. Johnston
29 South Brooksville Avenue, Brooksville, FL 34601
352-796-5123

Hon. Alan S. Apte
425 N. Orange Avenue, Orlando, FL 32801
407-836-0535

Hon. Frederick J. Lauten
1115 Shorewood Drive, Orlando, FL 32806
407-432-6124

J. Thodore Schatt
328 NE 1st Avenue, Ocala, FL 34470
352-789-6520

Hon. Brian D. Lambert
300 South Beach Street, Daytona Beach, FL 32114
386-947-1530

Hon. Terrance R. Perkins
1769 E. Moody Blvd, Kim C. Hammond Justice Center, Bunnell, FL 32110
386-313-4510

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(I), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 12 day of August, 2019.

Anthony M. Tatti

Printed Name



Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date _____

List Last 3 years _____

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date _____

List Last 3 years _____

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current year to date _____

List Last 3 years _____

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current year to date _____

List Last 3 years _____

For the year Jan. 1–Dec. 31, 2016, or other tax year beginning _____, 2016, ending _____, 20

Your first name and initial **ANTHONY M** Last name **TATTI** Your social security number [REDACTED]

If a joint return, spouse's first name and initial **SANDRA J** Last name **TATTI** Spouse's social security number [REDACTED]

Home address (number and street). If you have a P.O. box, see instructions. [REDACTED] Apt. no. [REDACTED]

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions). [REDACTED]

Foreign country name _____ Foreign province/state/county _____ Foreign postal code _____

▲ Make sure the SSN(s) above and on line 6c are correct.
 Presidential Election Campaign
 Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. You Spouse

Filing Status
 1 Single
 2 Married filing jointly (even if only one had income)
 3 Married filing separately. Enter spouse's SSN above and full name here. ▶
 4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
 5 Qualifying widow(er) with dependent child

Exemptions
 6a Yourself. If someone can claim you as a dependent, do not check box 6a
 b Spouse
 c Dependents:
 (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) if child under age 17 qualifying for child tax credit (see instructions)

ALEXANDER M	TATTI	[REDACTED]	Son	<input type="checkbox"/>
MARGARITA	JUDD	[REDACTED]	Parent	<input type="checkbox"/>
AARON M	TATTI	[REDACTED]	Son	<input checked="" type="checkbox"/>
				<input type="checkbox"/>

d Total number of exemptions claimed

Boxes checked on 6a and 6b 2
 No. of children on 6c who:
 • lived with you 2
 • did not live with you due to divorce or separation (see instructions) _____
 Dependents on 6c not entered above 1
 Add numbers on lines above **5**

Income

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	151,089.
8a	Taxable interest. Attach Schedule B if required	8a	
b	Tax-exempt interest. Do not include on line 8a	8b	
9a	Ordinary dividends. Attach Schedule B if required	9a	
b	Qualified dividends	9b	
10	Taxable refunds, credits, or offsets of state and local income taxes	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ <input type="checkbox"/>	13	
14	Other gains or (losses). Attach Form 4797	14	
15a	IRA distributions	15a	
b	Taxable amount	15b	
16a	Pensions and annuities	16a	
b	Taxable amount	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	22,876.
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits	20a	
b	Taxable amount	20b	
21	Other income. List type and amount	21	
22	Combine the amounts in the far right column for lines 7 through 21. This is your total income ▶	22	173,965.

Adjusted Gross Income

23	Educator expenses	23	
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25	Health savings account deduction. Attach Form 8889	25	
26	Moving expenses. Attach Form 3903	26	
27	Deductible part of self-employment tax. Attach Schedule SE	27	
28	Self-employed SEP, SIMPLE, and qualified plans	28	
29	Self-employed health insurance deduction	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ▶	31a	
32	IRA deduction	32	
33	Student loan interest deduction	33	
34	Tuition and fees. Attach Form 8917	34	
35	Domestic production activities deduction. Attach Form 8903	35	
36	Add lines 23 through 35	36	
37	Subtract line 36 from line 22. This is your adjusted gross income ▶	37	173,965.

**SCHEDULE A
(Form 1040)**

Itemized Deductions

OMB No. 1545-0074

2016
Attachment
Sequence No. **07**

Department of the Treasury
Internal Revenue Service (99)

► Information about Schedule A and its separate instructions is at www.irs.gov/schedulea.
► Attach to Form 1040.

Name(s) shown on Form 1040

Your social security number

ANTHONY M & SANDRA J TATTI

Medical and Dental Expenses		Caution: Do not include expenses reimbursed or paid by others.			
1	Medical and dental expenses (see instructions)	1			
2	Enter amount from Form 1040, line 38	2			
3	Multiply line 2 by 10% (0.10). But if either you or your spouse was born before January 2, 1952, multiply line 2 by 7.5% (0.075) instead	3			
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-	4			
Taxes You Paid		5 State and local (check only one box):			
a	<input type="checkbox"/> Income taxes, or	5	1,494.		
b	<input checked="" type="checkbox"/> General sales taxes	6	4,031.		
6	Real estate taxes (see instructions)	7	100.		
7	Personal property taxes	8			
8	Other taxes. List type and amount ►				
9	Add lines 5 through 8	9			5,625.
Interest You Paid		10 Home mortgage interest and points reported to you on Form 1098		10	15,019.
Note: Your mortgage interest deduction may be limited (see instructions).		11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address ►		11	
		12 Points not reported to you on Form 1098. See instructions for special rules		12	
		13 Mortgage insurance premiums (see instructions)		13	
		14 Investment interest. Attach Form 4952 if required. (See instructions.)		14	
		15 Add lines 10 through 14		15	15,019.
Gifts to Charity		16 Gifts by cash or check. If you made any gift of \$250 or more, see instructions		16	3,410.
If you made a gift and got a benefit for it, see instructions.		17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500		17	1,430.
		18 Carryover from prior year		18	
		19 Add lines 16 through 18		19	4,840.
Casualty and Theft Losses		20 Casualty or theft loss(es). Attach Form 4684. (See instructions.)		20	
Job Expenses and Certain Miscellaneous Deductions		21 Unreimbursed employee expenses—job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.) ► See Schedule A, Line 21 Statement		21	565.
		22 Tax preparation fees		22	
		23 Other expenses—investment, safe deposit box, etc. List type and amount ►		23	
		24 Add lines 21 through 23		24	565.
		25 Enter amount from Form 1040, line 38		25	173,965.
		26 Multiply line 25 by 2% (0.02)		26	3,479.
		27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-		27	0.
Other Miscellaneous Deductions		28 Other—from list in instructions. List type and amount ►		28	
Total Itemized Deductions		29 Is Form 1040, line 38, over \$155,650?		29	25,484.
		<input type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40.			
		<input checked="" type="checkbox"/> Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.			
		30 If you elect to itemize deductions even though they are less than your standard deduction, check here			

Name(s) shown on return. Do not enter name and social security number if shown on other side.

Your social security number

ANTHONY M & SANDRA J TATTI

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations Note: If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section. Yes No

Table with 5 columns: (a) Name, (b) Enter P for partnership; S for S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) Check if any amount is not at risk. Rows A-D for TATTI TOTS, INC.

Table with 5 columns: (f) Passive loss allowed, (g) Passive income from Schedule K-1, (h) Nonpassive loss from Schedule K-1, (i) Section 179 expense deduction from Form 4562, (j) Nonpassive income from Schedule K-1. Rows A-D, 29a Totals, b Totals, 30, 31, 32.

Part III Income or Loss From Estates and Trusts

Table with 2 columns: (a) Name, (b) Employer identification number. Rows A, B.

Table with 4 columns: (c) Passive deduction or loss allowed, (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Rows A, B, 34a Totals, b Totals, 35, 36, 37.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder

Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedules Q, line 2c, (d) Taxable income (net loss) from Schedules Q, line 1b, (e) Income from Schedules Q, line 3b. Rows 38, 39.

Part V Summary

Table with 2 columns: Description, Amount. Rows 40, 41, 42, 43.

**Education Credits
(American Opportunity and Lifetime Learning Credits)**

Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040 or Form 1040A.
▶ Information about Form 8863 and its separate instructions is at www.irs.gov/form8863.

Name(s) shown on return

ANTHONY M & SANDRA J TATTI

Your social security number

[REDACTED]



Complete a separate Part III on page 2 for each student for whom you're claiming either credit before you complete Parts I and II.

Part I Refundable American Opportunity Credit

1	After completing Part III for each student, enter the total of all amounts from all Parts III, line 30	1	2,476.
2	Enter: \$180,000 if married filing jointly; \$90,000 if single, head of household, or qualifying widow(er)	2	180,000.
3	Enter the amount from Form 1040, line 38, or Form 1040A, line 22. If you're filing Form 2555, 2555-EZ, or 4563, or you're excluding income from Puerto Rico, see Pub. 970 for the amount to enter	3	173,965.
4	Subtract line 3 from line 2. If zero or less, stop; you can't take any education credit	4	6,035.
5	Enter: \$20,000 if married filing jointly; \$10,000 if single, head of household, or qualifying widow(er)	5	20,000.
6	If line 4 is: • Equal to or more than line 5, enter 1.000 on line 6 • Less than line 5, divide line 4 by line 5. Enter the result as a decimal (rounded to at least three places)	6	0.302
7	Multiply line 1 by line 6. Caution: If you were under age 24 at the end of the year and meet the conditions described in the instructions, you can't take the refundable American opportunity credit; skip line 8, enter the amount from line 7 on line 9, and check this box ▶ <input type="checkbox"/>	7	748.
8	Refundable American opportunity credit. Multiply line 7 by 40% (0.40). Enter the amount here and on Form 1040, line 68, or Form 1040A, line 44. Then go to line 9 below.	8	299.

Part II Nonrefundable Education Credits

9	Subtract line 8 from line 7. Enter here and on line 2 of the Credit Limit Worksheet (see instructions)	9	449.
10	After completing Part III for each student, enter the total of all amounts from all Parts III, line 31. If zero, skip lines 11 through 17, enter -0- on line 18, and go to line 19	10	
11	Enter the smaller of line 10 or \$10,000	11	
12	Multiply line 11 by 20% (0.20)	12	
13	Enter: \$131,000 if married filing jointly; \$65,000 if single, head of household, or qualifying widow(er)	13	
14	Enter the amount from Form 1040, line 38, or Form 1040A, line 22. If you're filing Form 2555, 2555-EZ, or 4563, or you're excluding income from Puerto Rico, see Pub. 970 for the amount to enter	14	
15	Subtract line 14 from line 13. If zero or less, skip lines 16 and 17, enter -0- on line 18, and go to line 19	15	
16	Enter: \$20,000 if married filing jointly; \$10,000 if single, head of household, or qualifying widow(er)	16	
17	If line 15 is: • Equal to or more than line 16, enter 1.000 on line 17 and go to line 18 • Less than line 16, divide line 15 by line 16. Enter the result as a decimal (rounded to at least three places)	17	
18	Multiply line 12 by line 17. Enter here and on line 1 of the Credit Limit Worksheet (see instructions) ▶	18	
19	Nonrefundable education credits. Enter the amount from line 7 of the Credit Limit Worksheet (see instructions) here and on Form 1040, line 50, or Form 1040A, line 33	19	449.

Name(s) shown on return

ANTHONY M & SANDRA J TATTI

Your social security number

[REDACTED]



Complete Part III for each student for whom you're claiming either the American opportunity credit or lifetime learning credit. Use additional copies of page 2 as needed for each student.

Part III Student and Educational Institution Information
See instructions.

20 Student name (as shown on page 1 of your tax return) ALEXANDER M TATTI	21 Student social security number (as shown on page 1 of your tax return) [REDACTED]
--	--

22 Educational institution information (see instructions)	
a. Name of first educational institution UNIVERSITY OF FLORIDA	b. Name of second educational institution (if any)
(1) Address. Number and street (or P.O. box). City, town or post office, state, and ZIP code. If a foreign address, see instructions. P.O. BOX 114050 Gainesville FL 32611	(1) Address. Number and street (or P.O. box). City, town or post office, state, and ZIP code. If a foreign address, see instructions.
(2) Did the student receive Form 1098-T from this institution for 2016? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	(2) Did the student receive Form 1098-T from this institution for 2016? <input type="checkbox"/> Yes <input type="checkbox"/> No
(3) Did the student receive Form 1098-T from this institution for 2015 with box 2 filled in and box 7 checked? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	(3) Did the student receive Form 1098-T from this institution for 2015 with box 2 filled in and box 7 checked? <input type="checkbox"/> Yes <input type="checkbox"/> No
If you checked "No" in both (2) and (3), skip (4).	If you checked "No" in both (2) and (3), skip (4).
(4) If you checked "Yes" in (2) or (3), enter the institution's federal identification number (from Form 1098-T). 59-6002052	(4) If you checked "Yes" in (2) or (3), enter the institution's federal identification number (from Form 1098-T).

23 Has the Hope Scholarship Credit or American opportunity credit been claimed for this student for any 4 tax years before 2016?	<input type="checkbox"/> Yes — Stop! Go to line 31 for this student. <input checked="" type="checkbox"/> No — Go to line 24.
24 Was the student enrolled at least half-time for at least one academic period that began or is treated as having begun in 2016 at an eligible educational institution in a program leading towards a postsecondary degree, certificate, or other recognized postsecondary educational credential? See instructions.	<input checked="" type="checkbox"/> Yes — Go to line 25. <input type="checkbox"/> No — Stop! Go to line 31 for this student.
25 Did the student complete the first 4 years of postsecondary education before 2016? See instructions.	<input type="checkbox"/> Yes — Stop! Go to line 31 for this student. <input checked="" type="checkbox"/> No — Go to line 26.
26 Was the student convicted, before the end of 2016, of a felony for possession or distribution of a controlled substance?	<input type="checkbox"/> Yes — Stop! Go to line 31 for this student. <input checked="" type="checkbox"/> No — Complete lines 27 through 30 for this student.



You can't take the American opportunity credit and the lifetime learning credit for the same student in the same year. If you complete lines 27 through 30 for this student, don't complete line 31.

American Opportunity Credit

27 Adjusted qualified education expenses (see instructions). Don't enter more than \$4,000	27	3,905.
28 Subtract \$2,000 from line 27. If zero or less, enter -0-.	28	1,905.
29 Multiply line 28 by 25% (0.25)	29	476.
30 If line 28 is zero, enter the amount from line 27. Otherwise, add \$2,000 to the amount on line 29 and enter the result. Skip line 31. Include the total of all amounts from all Parts III, line 30, on Part I, line 1	30	2,476.

Lifetime Learning Credit

31 Adjusted qualified education expenses (see instructions). Include the total of all amounts from all Parts III, line 31, on Part II, line 10	31	
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Paid Preparer's Due Diligence Checklist
Earned Income Credit (EIC), Child Tax Credit (CTC), and American Opportunity Tax Credit (AOTC)
 ▶ To be completed by preparer and filed with Form 1040, 1040A, 1040EZ, 1040NR, 1040SS, or 1040PR.
 ▶ Information about Form 8867 and its separate instructions is at www.irs.gov/form8867.

Taxpayer name(s) shown on return: ANTHONY M & SANDRA J TATTI
 Taxpayer identification number: [REDACTED]

Enter preparer's name and PTIN: TERREL HOOD, CPA
 P01209028

Due Diligence Requirements

Please complete the appropriate column for all credits claimed on this return (check all that apply).	EIC	CTC/ACTC	AOTC
1 Did you complete the return based on information for tax year 2016 provided by the taxpayer or reasonably obtained by you?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2 Did you complete the applicable EIC and/or CTC/ACTC worksheets found in the Form 1040, 1040A, 1040EZ, or 1040NR instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3 Did you satisfy the knowledge requirement? Answer "Yes" only if you can answer "Yes" to both 3a and 3b. To meet the knowledge requirement, did you:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
a Interview the taxpayer, ask adequate questions, and document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
b Review adequate information to determine that the taxpayer is eligible to claim the credit(s) and in what amount?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4 Did any information provided by the taxpayer, a third party, or reasonably known to you in connection with preparing the return appear to be incorrect, incomplete, or inconsistent? (If "Yes," answer questions 4a and 4b. If "No," go to question 5.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
a Did you make reasonable inquiries to determine the correct or complete information?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
b Did you document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
5 Did you satisfy the record retention requirement? To meet the record retention requirement, did you keep a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility or to compute the amount for the credit(s)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
In addition to your notes from the interview with the taxpayer, list those documents, if any, that you relied on. _____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6 Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for and the amount of the credit(s) claimed on the return?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7 Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year? (If credits were disallowed or reduced, go to question 7a; if not, go to question 8.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
a Did you complete the required recertification form(s)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
8 If the taxpayer is reporting self-employment income, did you ask adequate questions to prepare a complete and correct Form 1040, Schedule C?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Due Diligence Questions for Returns Claiming EIC (If the return does not claim EIC, go to question 10.)

	EIC	CTC/ACTC	AOTC
9a Did you explain to the taxpayer the rules about claiming the EIC when a child is the qualifying child of more than one person (tie-breaker rules), and have you determined that this taxpayer is, in fact, eligible to claim the EIC for the number of children for whom the EIC is claimed?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
b Did you explain to the taxpayer that he/she may not claim the EIC if the taxpayer has not lived with the child for over half the year, even if the taxpayer has supported the child?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Due Diligence Questions for Returns Claiming CTC and/or additional CTC (If the return does not claim CTC or Additional CTC, go to question 11.)

10a Does the child reside with the taxpayer who is claiming the CTC/ACTC? (If "Yes," go to question 10c. If "No," answer question 10b.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
b Did you ask if there is an active Form 8332, Release/Revocation of Claim to Exemption for Child by Custodial Parent, or a similar statement in place and, if applicable, did you attach it to the return?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
c Have you determined that the taxpayer has not released the claim to another person?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Due Diligence Questions for Returns Claiming AOTC (If the return does not claim AOTC, go to Credit Eligibility Certification.)

11 Did the taxpayer provide substantiation such as a Form 1098-T and receipts for the qualified tuition and related expenses for the claimed AOTC?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	---

- ▶ **You have complied with all due diligence requirements with respect to the credits claimed on the return of the taxpayer identified above if you:**
 - A. Complete this Form 8867 truthfully and accurately and complete the actions described in this checklist for all credits claimed;
 - B. Submit Form 8867 in the manner required;
 - C. Interview the taxpayer, ask adequate questions, document the taxpayer's responses on the return or in your notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and in what amount(s); and
 - D. Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under *Document Retention*.
 - 1. A copy of Form 8867,
 - 2. The applicable worksheet(s) or your own worksheet(s) for any credits claimed,
 - 3. Copies of any taxpayer documents you may have relied upon to determine eligibility for and the amount of the credit(s),
 - 4. A record of how, when, and from whom the information used to prepare this form and worksheet(s) was obtained, and
 - 5. A record of any additional questions you may have asked to determine eligibility for and amount of the credits, and the taxpayer's answers.

▶ **If you have not complied with all due diligence requirements for all credits claimed, you may have to pay a \$510 penalty for each credit for which you have failed to comply.**

Credit Eligibility Certification

12 Do you certify that all of the answers on this Form 8867 are, to the best of your knowledge, true, correct and complete?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	---

Depreciation and Amortization (Including Information on Listed Property)

Department of the Treasury
Internal Revenue Service (99)

▶ Information about Form 4562 and its separate instructions is at www.irs.gov/form4562.

▶ Attach to your tax return.

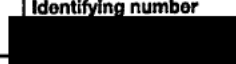
Name(s) shown on return

Business or activity to which this form relates

Identifying number

ANTHONY M & SANDRA J TATTI

Section 179 Summary



Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount (see instructions)	1	500,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	2,010,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	0.
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	500,000.
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
	from Schedule K-1		666.
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	666.
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	666.
10	Carryover of disallowed deduction from line 13 of your 2015 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	174,631.
12	Section 179 expense deduction. Add lines 9 and 10, but don't enter more than line 11	12	666.
13	Carryover of disallowed deduction to 2017. Add lines 9 and 10, less line 12	13	0.

Note: Don't use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Don't include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Don't include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2016	17	
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here <input type="checkbox"/>		

Section B—Assets Placed in Service During 2016 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only—see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a	3-year property					
b	5-year property					
c	7-year property					
d	10-year property					
e	15-year property					
f	20-year property					
g	25-year property		25 yrs.		S/L	
h	Residential rental property		27.5 yrs.	MM	S/L	
			27.5 yrs.	MM	S/L	
i	Nonresidential real property		39 yrs.	MM	S/L	
				MM	S/L	

Section C—Assets Placed in Service During 2016 Tax Year Using the Alternative Depreciation System

20a	Class life				S/L	
b	12-year		12 yrs.		S/L	
c	40-year		40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions	22	
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

Noncash Charitable Contributions

OMB No. 1545-0908

▶ Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.

Attachment Sequence No. **155**

▶ Information about Form 8283 and its separate instructions is at www.irs.gov/form8283.

Name(s) shown on your income tax return

Identifying number

ANTHONY M & SANDRA J TATTI

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities—List in this section only items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities even if the deduction is more than \$5,000 (see instructions).

Part I Information on Donated Property—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description of donated property (For a vehicle, enter the year, make, model, and mileage. For securities, enter the company name and the number of shares.)
A	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD ITEMS & CLOTHING
B	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD ITEMS & CLOTHING
C	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD ITEMS & CLOTHING
D	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD ITEMS & CLOTHING
E	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	CLOTHING & HOUSEHOLD ITEMS

Note. If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A	01/26/2016	01/2011	Purchase		150.	Thrift shop value
B	03/13/2016	12/2014	Purchase		395.	Thrift shop value
C	05/17/2016	02/2015	Purchase		190.	Thrift shop value
D	06/23/2016	10/2015	Purchase		400.	Thrift shop value
E	07/10/2016	11/2015	Purchase		295.	Thrift shop value

Part II Partial Interests and Restricted Use Property—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ _____
 If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ _____
 (2) For any prior tax years ▶ _____

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):
 Name of charitable organization (donee) _____

Address (number, street, and room or suite no.) _____

City or town, state, and ZIP code _____

d For tangible property, enter the place where the property is located or kept ▶ _____

e Name of any person, other than the donee organization, having actual possession of the property ▶ _____

	Yes	No
3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?		
b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?		
c Is there a restriction limiting the donated property for a particular use?		

Additional information from your 2016 Federal Tax Return**Schedule A: Itemized Deductions****Line 21 - Employee Business Expenses Subject to 2% Limitation****Continuation Statement**

Description	Amount
Union and professional dues	300.
Professional Subscriptions	265.
Total	565.

SMART WORKSHEET FOR: Schedule A: Itemized Deductions**Mortgage Interest and Points (3)****Ln 10. Mortgage interest****Itemization Statement**

Description	Amount
ORLANDO	2,582.
PANAMA CITY	566.
Total	3,148.

For the year Jan. 1–Dec. 31, 2017, or other tax year beginning _____, 2017, ending _____, 20

Your first name and initial: **ANTHONY M** Last name: **TATTI** Your social security number: [REDACTED]

If a joint return, spouse's first name and initial: **SANDRA J** Last name: **TATTI** [REDACTED] number: [REDACTED]

Home address (number and street). If you have a P.O. box, see instructions. [REDACTED] Apt. no. [REDACTED]

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions). [REDACTED]

Foreign country name: [REDACTED] Foreign province/state/county: [REDACTED] Foreign postal code: [REDACTED]

Presidential Election Campaign: Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. You Spouse

Filing Status

1 Single

2 Married filing jointly (even if only one had income)

3 Married filing separately. Enter spouse's SSN above and full name here. ▶

4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5 Qualifying widow(er) (see instructions)

Exemptions

6a Yourself. If someone can claim you as a dependent, do not check box 6a

b Spouse

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input type="checkbox"/> if child under age 17 qualifying for child tax credit (see instructions)
ALEXANDER M	TATTI	[REDACTED]	Son	<input type="checkbox"/>
MARGARITA	JUDD	[REDACTED]	Parent	<input type="checkbox"/>
AARON M	TATTI	[REDACTED]	Son	<input checked="" type="checkbox"/>
				<input type="checkbox"/>

If more than four dependents, see instructions and check here

d Total number of exemptions claimed

Boxes checked on 6a and 6b: 2

No. of children on 6c who: • lived with you: 2

• did not live with you due to divorce or separation (see instructions): 1

Add numbers on lines above ▶ 5

Income

7 Wages, salaries, tips, etc. Attach Form(s) W-2 7 154,636.

8a Taxable interest. Attach Schedule B if required 8a

b Tax-exempt interest. Do not include on line 8a 8b

9a Ordinary dividends. Attach Schedule B if required 9a

b Qualified dividends 9b

10 Taxable refunds, credits, or offsets of state and local income taxes 10

11 Alimony received 11

12 Business income or (loss). Attach Schedule C or C-EZ 12

13 Capital gain or (loss). Attach Schedule D if required. If not required, check here 13

14 Other gains or (losses). Attach Form 4797 14

15a IRA distributions 15a b Taxable amount 15b

16a Pensions and annuities 16a b Taxable amount 16b

17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E 17 -5,328.

18 Farm income or (loss). Attach Schedule F 18

19 Unemployment compensation 19

20a Social security benefits 20a b Taxable amount 20b

21 Other income. List type and amount 21

22 Combine the amounts in the far right column for lines 7 through 21. This is your total income ▶ 22 149,308.

Adjusted Gross Income

23 Educator expenses 23

24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ 24

25 Health savings account deduction. Attach Form 8889 25

26 Moving expenses. Attach Form 3903 26

27 Deductible part of self-employment tax. Attach Schedule SE 27

28 Self-employed SEP, SIMPLE, and qualified plans 28

29 Self-employed health insurance deduction 29

30 Penalty on early withdrawal of savings 30

31a Alimony paid b Recipient's SSN ▶ 31a

32 IRA deduction 32

33 Student loan interest deduction 33

34 Tuition and fees. Attach Form 8917 34 2,000.

35 Domestic production activities deduction. Attach Form 8903 35

36 Add lines 23 through 35 36 2,000.

37 Subtract line 36 from line 22. This is your adjusted gross income ▶ 37 147,308.

	38	Amount from line 37 (adjusted gross income)	38	147,308.
Tax and Credits	39a	Check <input type="checkbox"/> You were born before January 2, 1953, <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1953, <input type="checkbox"/> Blind. Total boxes checked 39a <input type="checkbox"/>		
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here 39b <input type="checkbox"/>		
Standard Deduction for— • People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions. • All others: Single or Married filing separately, \$6,350 Married filing jointly or Qualifying widow(er), \$12,700 Head of household, \$9,350	40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	20,778.
	41	Subtract line 40 from line 38	41	126,530.
	42	Exemptions. If line 38 is \$156,900 or less, multiply \$4,050 by the number on line 6d. Otherwise, see instructions	42	20,250.
	43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	106,280.
	44	Tax (see instructions). Check if any from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972 c <input type="checkbox"/>	44	18,048.
	45	Alternative minimum tax (see instructions). Attach Form 6251	45	
	46	Excess advance premium tax credit repayment. Attach Form 8962	46	
	47	Add lines 44, 45, and 46	47	18,048.
	48	Foreign tax credit. Attach Form 1116 if required	48	
	49	Credit for child and dependent care expenses. Attach Form 2441	49	
	50	Education credits from Form 8863, line 19	50	
	51	Retirement savings contributions credit. Attach Form 8880	51	
	52	Child tax credit. Attach Schedule 8812, if required	52	
53	Residential energy credits. Attach Form 5695	53		
54	Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	54		
55	Add lines 48 through 54. These are your total credits	55		
56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-	56	18,048.	
Other Taxes	57	Self-employment tax. Attach Schedule SE	57	
	58	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
	60a	Household employment taxes from Schedule H	60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage <input checked="" type="checkbox"/>	61	
	62	Taxes from: a <input type="checkbox"/> Form 8959 b <input type="checkbox"/> Form 8960 c <input type="checkbox"/> Instructions; enter code(s)	62	
63	Add lines 56 through 62. This is your total tax	63	18,048.	
Payments	64	Federal income tax withheld from Forms W-2 and 1099	64	18,706.
	65	2017 estimated tax payments and amount applied from 2016 return	65	
	66a	Earned income credit (EIC) <input type="checkbox"/> No <input type="checkbox"/>	66a	
	b	Nontaxable combat pay election 66b	66b	
	67	Additional child tax credit. Attach Schedule 8812	67	
	68	American opportunity credit from Form 8863, line 8	68	
	69	Net premium tax credit. Attach Form 8962	69	
	70	Amount paid with request for extension to file	70	
	71	Excess social security and tier 1 RRTA tax withheld	71	
	72	Credit for federal tax on fuels. Attach Form 4136	72	
73	Credits from Form: a <input type="checkbox"/> 2439 b <input checked="" type="checkbox"/> Reserved c <input type="checkbox"/> 8885 d <input type="checkbox"/>	73		
74	Add lines 64, 65, 66a, and 67 through 73. These are your total payments	74	18,706.	
Refund	75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid	75	658.
	76a	Amount of line 75 you want refunded to you. If Form 8888 is attached, check here <input type="checkbox"/>	76a	658.
	b	Routing number 0 6 3 1 0 4 6 6 8 c Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings		
d	Account number 0 0 8 4 6 3 9 9 5 4			
77	Amount of line 75 you want applied to your 2018 estimated tax	77		
Amount You Owe	78	Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions	78	
	79	Estimated tax penalty (see instructions)	79	

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? Yes. Complete below. No

Designee's name **TERREL HOOD, CPA** Phone no. **(352) 732-2660** Personal identification number (PIN) **42188**

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of income I received during the tax year. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature **TERREL HOOD, CPA** Date **03/16/2018** Your occupation **JUDGE** Daytime phone number **[REDACTED]**

Spouse's signature. If a joint return, both must sign. Date **03/16/2018** Spouse's occupation **Corporate Officer** PIN, enter it here (see inst.) **[REDACTED]**

Paid Preparer Use Only

Print/Type preparer's name **TERREL HOOD, CPA** Preparer's signature **TERREL HOOD, CPA** Date **03/16/2018** Check if self-employed PTIN **P01209028**

Firm's name **Terrel Hood PA** Firm's EIN **59-3545158**

Firm's address **514 SW 2nd Ave Ocala FL 34471-0911** Phone no. **(352) 732-2660**

**SCHEDULE A
(Form 1040)**

Itemized Deductions

OMB No. 1545-0074

▶ Go to www.irs.gov/ScheduleA for instructions and the latest information.
▶ Attach to Form 1040.

2017

Attachment
Sequence No. **07**

Department of the Treasury
Internal Revenue Service (99)

Caution: If you are claiming a net qualified disaster loss on Form 4684, see the instructions for line 28.

Name(s) shown on Form 1040

Your social security number

ANTHONY M & SANDRA J TATTI

Medical and Dental Expenses	Caution: Do not include expenses reimbursed or paid by others.			
	1	Medical and dental expenses (see instructions)	1	
	2	Enter amount from Form 1040, line 38 2		
	3	Multiply line 2 by 7.5% (0.075).	3	
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-	4	
Taxes You Paid	5 State and local (check only one box):			
	a	<input type="checkbox"/> Income taxes, or	5	1,551.
	b	<input checked="" type="checkbox"/> General sales taxes }		
	6	Real estate taxes (see instructions)	6	3,386.
	7	Personal property taxes	7	100.
	8	Other taxes. List type and amount ▶	8	
	9	Add lines 5 through 8	9	5,037.
	Interest You Paid	10	Home mortgage interest and points reported to you on Form 1098	10
11		Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address ▶	11	
12		Points not reported to you on Form 1098. See instructions for special rules	12	
13		Mortgage insurance premiums (see instructions)	13	
14		Investment interest. Attach Form 4952 if required. See instructions	14	0.
15		Add lines 10 through 14	15	12,365.
Gifts to Charity	16	Gifts by cash or check. If you made any gift of \$250 or more, see instructions	16	126.
	17	Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500	17	3,250.
	18	Carryover from prior year	18	
	19	Add lines 16 through 18	19	3,376.
Casualty and Theft Losses	20	Casualty or theft loss(es) other than net qualified disaster losses. Attach Form 4684 and enter the amount from line 18 of that form. See instructions	20	
Job Expenses and Certain Miscellaneous Deductions	21	Unreimbursed employee expenses—job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. See instructions. ▶ <u>Professional Subscriptions</u>	21	565.
	22	Tax preparation fees	22	300.
	23	Other expenses—investment, safe deposit box, etc. List type and amount ▶	23	
	24	Add lines 21 through 23	24	865.
	25	Enter amount from Form 1040, line 38 25 147,308	25	147,308.
	26	Multiply line 25 by 2% (0.02)	26	2,946.
	27	Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-	27	0.
Other Miscellaneous Deductions	28	Other—from list in instructions. List type and amount ▶	28	
Total Itemized Deductions	29	Is Form 1040, line 38, over \$156,900? <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. <input type="checkbox"/> Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.	29	20,778.
	30	If you elect to itemize deductions even though they are less than your standard deduction, check here		

Name(s) shown on return. Do not enter name and social security number if shown on other side.

ANTHONY M & SANDRA J TATTI

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations Note: If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section. Yes No

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	TATTI TOTS, INC.	S	<input type="checkbox"/>	[REDACTED]	<input type="checkbox"/>
B	TATTI TOTS, INC.	S	<input type="checkbox"/>	[REDACTED]	<input type="checkbox"/>
C			<input type="checkbox"/>		<input type="checkbox"/>
D			<input type="checkbox"/>		<input type="checkbox"/>

Passive Income and Loss		Nonpassive Income and Loss		
(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A		2,664.		
B		2,664.		
C				
D				
29a Totals				
b Totals		5,328.		
30	Add columns (g) and (j) of line 29a			30
31	Add columns (f), (h), and (i) of line 29b			31 (5,328.)
32	Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below			32 -5,328.

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer identification number
A		
B		

Passive Income and Loss		Nonpassive Income and Loss	
(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A			
B			
34a Totals			
b Totals			
35	Add columns (d) and (f) of line 34a		35
36	Add columns (c) and (e) of line 34b		36 ()
37	Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below		37

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) — Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b
39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below				39

Part V Summary

40	Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40
41	Total income or (loss). Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18	41 -5,328.
42	Reconciliation of farming and fishing income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code V; and Schedule K-1 (Form 1041), box 14, code F (see instructions)	[REDACTED]
43	Reconciliation for real estate professionals. If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	[REDACTED]

Investment Interest Expense Deduction

Department of the Treasury
Internal Revenue Service (99)

▶ Go to www.irs.gov/Form4952 for the latest information.

▶ Attach to your tax return.

2017
Attachment
Sequence No. 51

Name(s) shown on return

ANTHONY M & SANDRA J TATTI

Identifying number

Part I Total Investment Interest Expense

1	Investment interest expense paid or accrued in 2017 (see instructions)	1	4,136.
2	Disallowed investment interest expense from 2016 Form 4952, line 7	2	
3	Total investment interest expense. Add lines 1 and 2	3	4,136.

Part II Net Investment Income

4a	Gross income from property held for investment (excluding any net gain from the disposition of property held for investment)	4a		
4b	Qualified dividends included on line 4a	4b	0.	
4c	Subtract line 4b from line 4a	4c		0.
4d	Net gain from the disposition of property held for investment	4d		
4e	Enter the smaller of line 4d or your net capital gain from the disposition of property held for investment (see instructions)	4e		
4f	Subtract line 4e from line 4d	4f		0.
4g	Enter the amount from lines 4b and 4e that you elect to include in investment income (see instructions)	4g		
4h	Investment income. Add lines 4c, 4f, and 4g	4h		0.
5	Investment expenses (see instructions)	5		
6	Net investment income. Subtract line 5 from line 4h. If zero or less, enter -0-	6		0.

Part III Investment Interest Expense Deduction

7	Disallowed investment interest expense to be carried forward to 2018. Subtract line 6 from line 3. If zero or less, enter -0-	7	4,136.
8	Investment interest expense deduction. Enter the smaller of line 3 or 6. See instructions	8	0.

Tuition and Fees Deduction

Department of the Treasury
Internal Revenue Service
Name(s) shown on return

▶ Attach to Form 1040 or Form 1040A.
▶ Go to www.irs.gov/Form8917 for the latest information.

2017
Attachment
Sequence No. **60**

ANTHONY M & SANDRA J TATTI

Your social security number



You cannot take both an education credit from Form 8863 and the tuition and fees deduction from this form for the same student for the same tax year.

Before you begin: ✓ To see if you qualify for this deduction, see *Who Can Take the Deduction* in the instructions below.

✓ If you file Form 1040, figure any write-in adjustments to be entered on the dotted line next to Form 1040, line 36. See the 2017 Form 1040 instructions for line 36.

1 (a) Student's name (as shown on page 1 of your tax return)		(b) Student's social security number (as shown on page 1 of your tax return)	(c) Adjusted qualified expenses (see instructions)
First name	Last name		
ALEXANDER M	TATTI		3,186.
2 Add the amounts on line 1, column (c), and enter the total			2 3,186.
3 Enter the amount from Form 1040, line 22, or Form 1040A, line 15		3 149,308.	
4 Enter the total from either:			
• Form 1040, lines 23 through 33, plus any write-in adjustments entered on the dotted line next to Form 1040, line 36, or			
• Form 1040A, lines 16 through 18.		4	
5 Subtract line 4 from line 3.* If the result is more than \$80,000 (\$160,000 if married filing jointly), stop; you cannot take the deduction for tuition and fees			5 149,308.
*If you are filing Form 2555, 2555-EZ, or 4563, or you are excluding income from Puerto Rico, see <i>Effect of the Amount of Your Income on the Amount of Your Deduction</i> in Pub. 970, chapter 6, to figure the amount to enter on line 5.			
6 Tuition and fees deduction. Is the amount on line 5 more than \$65,000 (\$130,000 if married filing jointly)?			
<input checked="" type="checkbox"/> Yes. Enter the smaller of line 2, or \$2,000. }			6 2,000.
<input type="checkbox"/> No. Enter the smaller of line 2, or \$4,000. }			

Also enter this amount on Form 1040, line 34, or Form 1040A, line 19.

Noncash Charitable Contributions

OMB No. 1545-0908

▶ **Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.**

Attachment Sequence No. **155**

▶ **Information about Form 8283 and its separate instructions is at www.irs.gov/form8283.**

Name(s) shown on your income tax return

Identifying number

ANTHONY M & SANDRA J TATTI

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities—List in this section **only** items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities even if the deduction is more than \$5,000 (see instructions).

Part I Information on Donated Property—If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) If donated property is a vehicle (see instructions), check the box. Also enter the vehicle identification number (unless Form 1098-C is attached).	(c) Description of donated property (For a vehicle, enter the year, make, model, and mileage. For securities, enter the company name and the number of shares.)
A	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD GOOD
B	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD & CLOTHING ITEMS
C	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD & CLOTHING ITEMS
D	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD & CLOTHING ITEMS
E	GOODWILL 2830 SW 27TH AVE. OCALA FL 34471	<input type="checkbox"/>	HOUSEHOLD & CLOTHING ITEMS

Note. If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

	(d) Date of the contribution	(e) Date acquired by donor (mo., yr.)	(f) How acquired by donor	(g) Donor's cost or adjusted basis	(h) Fair market value (see instructions)	(i) Method used to determine the fair market value
A	12/16/2017	03/2010	Purchase	500.	250.	Thrift shop value
B	11/20/2017	04/2014	Purchase		660.	Thrift shop value
C	07/08/2017	04/2013	Purchase		610.	Thrift shop value
D	11/10/2017	06/2014	Purchase		955.	Thrift shop value
E	04/26/2017	08/2015	Purchase		775.	Thrift shop value

Part II Partial Interests and Restricted Use Property—Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ _____
 If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: **(1)** For this tax year ▶ _____
(2) For any prior tax years ▶ _____

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):
 Name of charitable organization (donee) _____

Address (number, street, and room or suite no.) _____

City or town, state, and ZIP code _____

d For tangible property, enter the place where the property is located or kept ▶ _____

e Name of any person, other than the donee organization, having actual possession of the property ▶ _____

	Yes	No
3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?	<input type="checkbox"/>	<input type="checkbox"/>
b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?	<input type="checkbox"/>	<input type="checkbox"/>
c Is there a restriction limiting the donated property for a particular use?	<input type="checkbox"/>	<input type="checkbox"/>



Additional information from your 2017 Federal Tax Return

Form 4952: Investment Interest Expense

Line 1

Itemization Statement

Description	Amount
MARRIOTT OWNERSHIP RESORTS ORLANDO	3,284.
MARRIOTT OWNERSHIP RESORTS PANAMA CITY	852.
Total	4,136.

Filing status: Single Married filing jointly Married filing separately Head of household Qualifying widow(er)

Your first name and initial: ANTHONY M Last name: TATTI Your social security number: [REDACTED]

Your standard deduction: Someone can claim you as a dependent You were born before January 2, 1954 You are blind

If joint return, spouse's first name and initial: SANDRA J Last name: TATTI Spouse's social security number: [REDACTED]

Spouse standard deduction: Someone can claim your spouse as a dependent Spouse was born before January 2, 1954 Spouse is blind Spouse itemizes on a separate return or you were dual-status alien Full-year health care coverage or exempt (see inst.)

Home address (number and street). If you have a P.O. box, see instructions. [REDACTED] Apt. no. [REDACTED] Presidential Election Campaign (see inst.) You Spouse

City, town or post office, state, and ZIP code. If you have a foreign address, attach Schedule 6. [REDACTED] If more than four dependents, see inst. and here

(1) First name		Last name	(2) Social security number	(3) Relationship to you	(4) <input checked="" type="checkbox"/> If qualifies for (see inst.):	Child tax credit	Credit for other dependents
ALEXANDER M	TATTI	[REDACTED]	[REDACTED]	Son	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MARGARITA	JUDD	[REDACTED]	[REDACTED]	Parent	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AARON M	TATTI	[REDACTED]	[REDACTED]	Son	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Sign Here Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature: [REDACTED] Date: [REDACTED] Your occupation: JUDGE

Spouse's signature. If a joint return, both must sign. [REDACTED] Date: [REDACTED] Spouse's occupation: Corporate Officer

Joint return? See instructions. Keep a copy for your records.

If the IRS sent you an Identity Protection PIN, enter it here (see inst.) [REDACTED]

If the IRS sent you an Identity Protection PIN, enter it here (see inst.) [REDACTED]

Paid Preparer Use Only

Preparer's name: TERREL HOOD, CPA Preparer's signature: [Signature] PTIN: P01209028 Firm's EIN: 59-3545158 Check if: 3rd Party Designee Self-employed

Firm's name: Terrel Hood PA Phone no. (352) 732-2660

Firm's address: 514 SW 2nd Ave Ocala FL 34471-0911

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Form 1040 (2018) Page 2

1	Wages, salaries, tips, etc. Attach Form(s) W-2	1	165,260.
2a	Tax-exempt interest	2a	
3a	Qualified dividends	3a	
4a	IRAs, pensions, and annuities	4a	
5a	Social security benefits	5a	
6	Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22 <u>-1,798.</u>	6	163,462.
7	Adjusted gross income. If you have no adjustments to income, enter the amount from line 6; otherwise, subtract Schedule 1, line 36, from line 6	7	163,462.
8	Standard deduction or itemized deductions (from Schedule A)	8	24,000.
9	Qualified business income deduction (see instructions)	9	0.
10	Taxable income. Subtract lines 8 and 9 from line 7. If zero or less, enter -0-	10	139,462.
11	a Tax (see inst.) <u>22,561.</u> (check if any from: 1 <input type="checkbox"/> Form(s) 8814 2 <input type="checkbox"/> Form 4972 3 <input type="checkbox"/>) b Add any amount from Schedule 2 and check here <input type="checkbox"/>	11	22,561.
12	a Child tax credit/credit for other dependents <u>3,000.</u> b Add any amount from Schedule 3 and check here <input checked="" type="checkbox"/>	12	4,018.
13	Subtract line 12 from line 11. If zero or less, enter -0-	13	18,543.
14	Other taxes. Attach Schedule 4	14	0.
15	Total tax. Add lines 13 and 14	15	18,543.
16	Federal income tax withheld from Forms W-2 and 1099	16	17,682.
17	Refundable credits: a EIC (see inst.) <u>No</u> b Sch. 8812 <u> </u> c Form 8863 <u>678.</u> Add any amount from Schedule 5 <u> </u>	17	678.
18	Add lines 16 and 17. These are your total payments	18	18,360.
19	If line 18 is more than line 15, subtract line 15 from line 18. This is the amount you overpaid	19	
20a	Amount of line 19 you want refunded to you. If Form 8888 is attached, check here <input type="checkbox"/>	20a	
b	Routing number <u>X X X X X X X X X X</u> c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
d	Account number <u>X X X X X X X X X X X X X X X X X X</u>		
21	Amount of line 19 you want applied to your 2019 estimated tax	21	
22	Amount you owe. Subtract line 18 from line 15. For details on how to pay, see instructions	22	183.
23	Estimated tax penalty (see instructions)	23	

SCHEDULE 1
(Form 1040)

Department of the Treasury
Internal Revenue Service

Additional Income and Adjustments to Income

▶ Attach to Form 1040.
▶ Go to www.irs.gov/Form1040 for instructions and the latest information.

OMB No. 1545-0074

2018
Attachment
Sequence No. 01

Name(s) shown on Form 1040

ANTHONY M & SANDRA J TATTI

Additional Income	1-9b	Reserved			
	10	Taxable refunds, credits, or offsets of state and local income taxes		10	
	11	Alimony received		11	
	12	Business income or (loss). Attach Schedule C or C-EZ		12	
	13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ <input type="checkbox"/>		13	
	14	Other gains or (losses). Attach Form 4797		14	
	15a	Reserved		15b	
	16a	Reserved		16b	
	17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17	-1,798.
	18	Farm income or (loss). Attach Schedule F		18	
	19	Unemployment compensation		19	
	20a	Reserved		20b	
	21	Other income. List type and amount ▶ _____		21	
22	Combine the amounts in the far right column. If you don't have any adjustments to income, enter here and include on Form 1040, line 6. Otherwise, go to line 23		22	-1,798.	
Adjustments to Income	23	Educator expenses	23		
	24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106	24		
	25	Health savings account deduction. Attach Form 8889	25		
	26	Moving expenses for members of the Armed Forces. Attach Form 3903	26		
	27	Deductible part of self-employment tax. Attach Schedule SE	27		
	28	Self-employed SEP, SIMPLE, and qualified plans	28		
	29	Self-employed health insurance deduction	29		
	30	Penalty on early withdrawal of savings	30		
	31a	Alimony paid b Recipient's SSN ▶ _____	31a		
	32	IRA deduction	32		
33	Student loan interest deduction	33			
34	Reserved	34			
35	Reserved	35			
36	Add lines 23 through 35		36		

For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule 1 (Form 1040) 2018

SCHEDULE 3
(Form 1040)

Nonrefundable Credits

OMB No. 1545-0074

Department of the Treasury
Internal Revenue Service

▶ **Attach to Form 1040.**
▶ **Go to www.irs.gov/Form1040 for instructions and the latest information.**

2018
Attachment
Sequence No. **03**

Name(s) shown on Form 1040

ANTHONY M & SANDRA J TATTI

Nonrefundable Credits	48	Foreign tax credit. Attach Form 1116 if required	48	
	49	Credit for child and dependent care expenses. Attach Form 2441	49	
	50	Education credits from Form 8863, line 19	50	1,018.
	51	Retirement savings contributions credit. Attach Form 8880	51	
	52	Reserved	52	
	53	Residential energy credit. Attach Form 5695	53	
	54	Other credits from Form a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/> _____	54	
	55	Add the amounts in the far right column. Enter here and include on Form 1040, line 12	55	1,018.

For Paperwork Reduction Act Notice, see your tax return instructions.

REV 12/21/18 PRO

Schedule 3 (Form 1040) 2018

Name(s) shown on return. Do not enter name and social security number if shown on other side.

ANTHONY M & SANDRA J TATTI

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations - Note: If you report a loss, receive a distribution, dispose of stock, or receive a loan repayment from an S corporation, you must check the box in column (e) on line 28 and attach the required basis computation. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (f) on line 28 and attach Form 6198 (see instructions).

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section. Yes No

Table with 6 columns: (a) Name, (b) Enter P for partnership; S for S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) Check if basis computation is required, (f) Check if any amount is not at risk. Rows include TATTI TOTS, INC.

Table with 5 columns: (g) Passive loss allowed, (h) Passive income from Schedule K-1, (i) Nonpassive loss from Schedule K-1, (j) Section 179 expense deduction from Form 4562, (k) Nonpassive income from Schedule K-1. Includes totals for 29a, 29b, 30, 31, and 32.

Part III Income or Loss From Estates and Trusts

Table with 2 columns: (a) Name, (b) Employer identification number. Rows A and B.

Table with 4 columns: (c) Passive deduction or loss allowed, (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Includes totals for 34a, 34b, 35, 36, and 37.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder

Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedules Q, line 2c, (d) Taxable income (net loss) from Schedules Q, line 1b, (e) Income from Schedules Q, line 3b. Includes line 39.

Part V Summary

Summary table with 2 columns: Description, Amount. Includes lines 40, 41, 42, and 43.

Education Credits
(American Opportunity and Lifetime Learning Credits)

Department of the Treasury
Internal Revenue Service (99)

▶ Attach to Form 1040.
▶ Go to www.irs.gov/Form8863 for instructions and the latest information.

Name(s) shown on return

ANTHONY M & SANDRA J TATTI

Your social security number



Complete a separate Part III on page 2 for each student for whom you're claiming either credit before you complete Parts I and II.

Part I Refundable American Opportunity Credit

1	After completing Part III for each student, enter the total of all amounts from all Parts III, line 30	1	2,051.
2	Enter: \$180,000 if married filing jointly; \$90,000 if single, head of household, or qualifying widow(er)	2	180,000.
3	Enter the amount from Form 1040, line 7. If you're filing Form 2555, 2555-EZ, or 4563, or you're excluding income from Puerto Rico, see Pub. 970 for the amount to enter	3	163,462.
4	Subtract line 3 from line 2. If zero or less, stop ; you can't take any education credit	4	16,538.
5	Enter: \$20,000 if married filing jointly; \$10,000 if single, head of household, or qualifying widow(er)	5	20,000.
6	If line 4 is: • Equal to or more than line 5, enter 1.000 on line 6 • Less than line 5, divide line 4 by line 5. Enter the result as a decimal (rounded to at least three places)	6	0.827
7	Multiply line 1 by line 6. Caution: If you were under age 24 at the end of the year and meet the conditions described in the instructions, you can't take the refundable American opportunity credit; skip line 8, enter the amount from line 7 on line 9, and check this box <input type="checkbox"/>	7	1,696.
8	Refundable American opportunity credit. Multiply line 7 by 40% (0.40). Enter the amount here and on Form 1040, line 17c. Then go to line 9 below	8	678.

Part II Nonrefundable Education Credits

9	Subtract line 8 from line 7. Enter here and on line 2 of the Credit Limit Worksheet (see instructions)	9	1,018.
10	After completing Part III for each student, enter the total of all amounts from all Parts III, line 31. If zero, skip lines 11 through 17, enter -0- on line 18, and go to line 19	10	
11	Enter the smaller of line 10 or \$10,000	11	
12	Multiply line 11 by 20% (0.20)	12	
13	Enter: \$134,000 if married filing jointly; \$67,000 if single, head of household, or qualifying widow(er)	13	
14	Enter the amount from Form 1040, line 7. If you're filing Form 2555, 2555-EZ, or 4563, or you're excluding income from Puerto Rico, see Pub. 970 for the amount to enter	14	
15	Subtract line 14 from line 13. If zero or less, skip lines 16 and 17, enter -0- on line 18, and go to line 19	15	
16	Enter: \$20,000 if married filing jointly; \$10,000 if single, head of household, or qualifying widow(er)	16	
17	If line 15 is: • Equal to or more than line 16, enter 1.000 on line 17 and go to line 18 • Less than line 16, divide line 15 by line 16. Enter the result as a decimal (rounded to at least three places)	17	
18	Multiply line 12 by line 17. Enter here and on line 1 of the Credit Limit Worksheet (see instructions) ▶	18	
19	Nonrefundable education credits. Enter the amount from line 7 of the Credit Limit Worksheet (see instructions) here and on Schedule 3 (Form 1040), line 50	19	1,018.

Name(s) shown on return

ANTHONY M & SANDRA J TATTI

Your social security number



Complete Part III for each student for whom you're claiming either the American opportunity credit or lifetime learning credit. Use additional copies of page 2 as needed for each student.

Part III Student and Educational Institution Information. See instructions.

<p>20 Student name (as shown on page 1 of your tax return) ALEXANDER M TATTI</p>	<p>21 Student social security number (as shown on page 1 of your tax return)</p>		
<p>22 Educational institution information (see instructions)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; vertical-align: top;"> <p>a. Name of first educational institution UNIVERSITY OF FLORIDA</p> <p>(1) Address. Number and street (or P.O. box). City, town or post office, state, and ZIP code. If a foreign address, see instructions. P.O. BOX 114050 Gainesville FL 32611</p> <p>(2) Did the student receive Form 1098-T from this institution for 2018? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(3) Did the student receive Form 1098-T from this institution for 2017 with box 2 filled in and box 7 checked? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>(4) Enter the institution's employer identification number (EIN) if you're claiming the American opportunity credit or if you checked "Yes" in (2) or (3). You can get the EIN from Form 1098-T or from the institution. 59-6002052</p> </td> <td style="width:50%; vertical-align: top;"> <p>b. Name of second educational institution (if any)</p> <p>(1) Address. Number and street (or P.O. box). City, town or post office, state, and ZIP code. If a foreign address, see instructions.</p> <p>(2) Did the student receive Form 1098-T from this institution for 2018? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(3) Did the student receive Form 1098-T from this institution for 2017 with box 2 filled in and box 7 checked? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(4) Enter the institution's employer identification number (EIN) if you're claiming the American opportunity credit or if you checked "Yes" in (2) or (3). You can get the EIN from Form 1098-T or from the institution.</p> </td> </tr> </table>		<p>a. Name of first educational institution UNIVERSITY OF FLORIDA</p> <p>(1) Address. Number and street (or P.O. box). City, town or post office, state, and ZIP code. If a foreign address, see instructions. P.O. BOX 114050 Gainesville FL 32611</p> <p>(2) Did the student receive Form 1098-T from this institution for 2018? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(3) Did the student receive Form 1098-T from this institution for 2017 with box 2 filled in and box 7 checked? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>(4) Enter the institution's employer identification number (EIN) if you're claiming the American opportunity credit or if you checked "Yes" in (2) or (3). You can get the EIN from Form 1098-T or from the institution. 59-6002052</p>	<p>b. Name of second educational institution (if any)</p> <p>(1) Address. Number and street (or P.O. box). City, town or post office, state, and ZIP code. If a foreign address, see instructions.</p> <p>(2) Did the student receive Form 1098-T from this institution for 2018? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(3) Did the student receive Form 1098-T from this institution for 2017 with box 2 filled in and box 7 checked? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(4) Enter the institution's employer identification number (EIN) if you're claiming the American opportunity credit or if you checked "Yes" in (2) or (3). You can get the EIN from Form 1098-T or from the institution.</p>
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<p>23 Has the Hope Scholarship Credit or American opportunity credit been claimed for this student for any 4 tax years before 2018? <input type="checkbox"/> Yes — Stop! Go to line 31 for this student. <input checked="" type="checkbox"/> No — Go to line 24.</p>			
<p>24 Was the student enrolled at least half-time for at least one academic period that began or is treated as having begun in 2018 at an eligible educational institution in a program leading towards a postsecondary degree, certificate, or other recognized postsecondary educational credential? See instructions. <input checked="" type="checkbox"/> Yes — Go to line 25. <input type="checkbox"/> No — Stop! Go to line 31 for this student.</p>			
<p>25 Did the student complete the first 4 years of postsecondary education before 2018? See instructions. <input type="checkbox"/> Yes — Stop! Go to line 31 for this student. <input checked="" type="checkbox"/> No — Go to line 26.</p>			
<p>26 Was the student convicted, before the end of 2018, of a felony for possession or distribution of a controlled substance? <input type="checkbox"/> Yes — Stop! Go to line 31 for this student. <input checked="" type="checkbox"/> No — Complete lines 27 through 30 for this student.</p>			



You can't take the American opportunity credit and the lifetime learning credit for the same student in the same year. If you complete lines 27 through 30 for this student, don't complete line 31.

American Opportunity Credit

27 Adjusted qualified education expenses (see instructions). Don't enter more than \$4,000	27 2,203.
28 Subtract \$2,000 from line 27. If zero or less, enter -0-	28 203.
29 Multiply line 28 by 25% (0.25)	29 51.
30 If line 28 is zero, enter the amount from line 27. Otherwise, add \$2,000 to the amount on line 29 and enter the result. Skip line 31. Include the total of all amounts from all Parts III, line 30, on Part I, line 1	30 2,051.

Lifetime Learning Credit

31 Adjusted qualified education expenses (see instructions). Include the total of all amounts from all Parts III, line 31, on Part II, line 10	31
---	-----------

Investment Interest Expense Deduction

Department of the Treasury
Internal Revenue Service (99)

▶ Go to www.irs.gov/Form4952 for the latest information.
▶ Attach to your tax return.

Name(s) shown on return

ANTHONY M & SANDRA J TATTI

Part I Total Investment Interest Expense

1 Investment interest expense paid or accrued in 2018 (see instructions)	1	0.
2 Disallowed investment interest expense from 2017 Form 4952, line 7	2	4,136.
3 Total investment interest expense. Add lines 1 and 2	3	4,136.

Part II Net Investment Income

4a Gross income from property held for investment (excluding any net gain from the disposition of property held for investment)	4a			
b Qualified dividends included on line 4a	4b	0.	4c	0.
c Subtract line 4b from line 4a				
d Net gain from the disposition of property held for investment	4d			
e Enter the smaller of line 4d or your net capital gain from the disposition of property held for investment (see instructions)	4e			
f Subtract line 4e from line 4d			4f	0.
g Enter the amount from lines 4b and 4e that you elect to include in investment income (see instructions)			4g	
h Investment income. Add lines 4c, 4f, and 4g			4h	0.
5 Investment expenses (see instructions)			5	
6 Net investment income. Subtract line 5 from line 4h. If zero or less, enter -0-			6	0.

Part III Investment Interest Expense Deduction

7 Disallowed investment interest expense to be carried forward to 2019. Subtract line 6 from line 3. If zero or less, enter -0-	7	4,136.
8 Investment interest expense deduction. Enter the smaller of line 3 or 6. See instructions	8	0.

Paid Preparer's Due Diligence Checklist

Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC) (including the Additional Child Tax Credit (ACTC)) and Credit for Other Dependents (ODC), and Head of Household (HOH) Filing Status
 ▶ To be completed by preparer and filed with Form 1040, 1040NR, 1040SS, or 1040PR.
 ▶ Go to www.irs.gov/Form8867 for instructions and the latest information.

Taxpayer name(s) shown on return ANTHONY M & SANDRA J TATTI	Taxpayer identification number [REDACTED]
Enter preparer's name and PTIN TERREL HOOD, CPA	P01209028

Part I Due Diligence Requirements

	EIC	CTC/ ACTC/ODC	AOTC	HOH
Please check the appropriate box for the credit(s) and/or HOH filing status claimed on this return and complete the related Parts I-V for the benefit(s), and/or HOH filing status claimed (check all that apply).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1 Did you complete the return based on information for tax year 2018 provided by the taxpayer or reasonably obtained by you?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
2 If credits are claimed on the return, did you complete the applicable EIC and/or CTC/ACTC/ODC worksheets found in the Form 1040, 1040SS, 1040PR, or 1040NR instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
3 Did you satisfy the knowledge requirement? To meet the knowledge requirement, you must do both of the following. • Interview the taxpayer, ask questions, and document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status. • Review information to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status and the amount of any credit(s) claimed.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
4 Did any information provided by the taxpayer or a third party for use in preparing the return, or information reasonably known to you, appear to be incorrect, incomplete, or inconsistent? (If "Yes," answer questions 4a and 4b. If "No," go to question 5.)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
a Did you make reasonable inquiries to determine the correct, complete, and consistent information?	<input type="checkbox"/> Yes <input type="checkbox"/> No			
b Did you document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.)	<input type="checkbox"/> Yes <input type="checkbox"/> No			
5 Did you satisfy the record retention requirement? To meet the record retention requirement, you must keep a copy of your documentation referenced in 4b, a copy of this Form 8867, a copy of any applicable worksheet(s), a record of how, when, and from whom the information used to prepare Form 8867 and any applicable worksheet(s) was obtained, and a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility for the credit(s) and/or HOH filing status or to compute the amount of the credit(s) List those documents, if any, that you relied on. _____ _____	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
6 Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for the credit(s) and/or HOH filing status and the amount of any credit(s) claimed on the return if his/her return is selected for audit?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
7 Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year? (If credits were disallowed or reduced, go to question 7a; if not, go to question 8.)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
a Did you complete the required recertification Form 8862?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
8 If the taxpayer is reporting self-employment income, did you ask questions to prepare a complete and correct Form 1040, Schedule C?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			

Part II Due Diligence Questions for Returns Claiming EIC (If the return does not claim EIC, go to Part III.)				
	EIC	CTC/ ACTC/ODC	AOTC	HOH
9a Have you determined that this taxpayer is, in fact, eligible to claim the EIC for the number of children for whom the EIC is claimed, or to claim the EIC if the taxpayer has no qualifying child? (Skip 9b and 9c if the taxpayer is claiming the EIC and does not have a qualifying child.)	<input type="checkbox"/> Yes <input type="checkbox"/> No			
b Did you ask the taxpayer if the child lived with the taxpayer for over half of the year, even if the taxpayer has supported the child the entire year?	<input type="checkbox"/> Yes <input type="checkbox"/> No			
c Did you explain to the taxpayer the rules about claiming the EIC when a child is the qualifying child of more than one person (tiebreaker rules)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			

Part III Due Diligence Questions for Returns Claiming CTC/ACTC/ODC (If the return does not claim CTC, ACTC, or ODC, go to Part IV.)				
	EIC	CTC/ ACTC/ODC	AOTC	HOH
10 Have you determined that each qualifying person for the CTC/ACTC/ODC is the taxpayer's dependent who is a citizen, national, or resident of the United States?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
11 Did you explain to the taxpayer that he/she may not claim the CTC/ACTC if the taxpayer has not lived with the child for over half of the year, even if the taxpayer has supported the child, unless the child's custodial parent has released a claim to exemption for the child?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		
12 Did you explain to the taxpayer the rules about claiming the CTC/ACTC/ODC for a child of divorced or separated parents (or parents who live apart), including any requirement to attach a Form 8332 or similar statement to the return?		<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A		

Part IV Due Diligence Questions for Returns Claiming AOTC (If the return does not claim AOTC, go to Part V.)				
	EIC	CTC/ ACTC/ODC	AOTC	HOH
13 Did the taxpayer provide the required substantiation for the credit, including a Form 1098-T and/or receipts for the qualified tuition and related expenses for the claimed AOTC?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Part V Due Diligence Questions for Claiming HOH (If the return does not claim HOH filing status, go to Part VI.)				
	EIC	CTC/ ACTC/ODC	AOTC	HOH
14 Have you determined that the taxpayer was unmarried or considered unmarried on the last day of the tax year and provided more than half of the cost of keeping up a home for the year for a qualifying person?				<input type="checkbox"/> Yes <input type="checkbox"/> No

Part VI Eligibility Certification				
<p>▶ You will have complied with all due diligence requirements for claiming the applicable credit(s) and/or HOH filing status on the return of the taxpayer identified above if you:</p> <p>A. Interview the taxpayer, ask adequate questions, document the taxpayer's responses on the return or in your notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and/or HOH filing status and to determine the amount of the credit(s) claimed;</p> <p>B. Complete this Form 8867 truthfully and accurately and complete the actions described in this checklist for any applicable credit(s) claimed and HOH filing status, if claimed;</p> <p>C. Submit Form 8867 in the manner required; and</p> <p>D. Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under <i>Document Retention</i>.</p> <ol style="list-style-type: none"> 1. A copy of Form 8867; 2. The applicable worksheet(s) or your own worksheet(s) for any credit(s) claimed; 3. Copies of any documents provided by the taxpayer on which you relied to determine eligibility for the credit(s) and/or HOH filing status; 4. A record of how, when, and from whom the information used to prepare this form and the applicable worksheet(s) was obtained; and 5. A record of any additional questions you may have asked to determine eligibility to claim the credit(s), and/or HOH filing status and the amount(s) of any credit(s) claimed and the taxpayer's answers. <p>▶ If you have not complied with all due diligence requirements, you may have to pay a \$520 penalty for each failure to comply related to a claim of an applicable credit or HOH filing status.</p>				
15 Do you certify that all of the answers on this Form 8867 are, to the best of your knowledge, true, correct, and complete?				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**FORM 6
FULL AND PUBLIC
DISCLOSURE OF
FINANCIAL INTEREST**

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of _____, 20____ was \$_____.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is \$ _____

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET

PART C - LIABILITIES

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments*, ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
 (if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITTY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

SIGNATURE

STATE OF FLORIDA

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____ by _____

(Signature of Notary Public—State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

FOR OFFICE USE ONLY:

AMENDED

*****AUTO**MIXED AADC 323 T6 P1 132 669

Hon Anthony Michael Tatti
Circuit Judge
Judicial Circuit (5Th)
Elected Constitutional Officer
110 NW 1st Ave
Ocala, FL 34475-6601



ID Code



ID No. 16626

Conf. Code

Tatti, Anthony Michael

CHECK IF THIS IS A FILING BY A CANDIDATE

PART A -- NET WORTH

Please enter the value of your net worth as of December 31, 2018 or a more current date. [Note: Net worth is not calculated by subtracting your reported liabilities from your reported assets, so please see the instructions on page 3.]

My net worth as of June 14, 20 19 was \$ ~~\$495,758.80~~ \$486,296.04

PART B -- ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use, whether owned or leased.

The aggregate value of my household goods and personal effects (described above) is \$ \$249,500.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required - see instructions p.4)	VALUE OF ASSET
Residence, [REDACTED]	\$390,000.00
Condominium Unit, [REDACTED]	\$63,000.00
Marriott Vacation Club International (Timeshare)	\$115,000.00

PART C -- LIABILITIES

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Regions Mortgage, 1700 SE 17th Street, Ocala, FL 34471 (Primary residence)	\$261,168.29
Regions Mortgage, 1700 SE 17th Street, Ocala, FL 34471 (home equity line of credit)	\$60,572.91
MidFlorida Community Credit Union, P.O. Box 8008, Lakeland, FL 33802 (car loan)	\$9,462.76

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D -- INCOME

Identify each separate source and amount of income which exceeded \$1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2018 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission's website.

I elect to file a copy of my 2018 federal income tax return and all W2's, schedules, and attachments.
 [If you check this box and attach a copy of your 2018 tax return, you need not complete the remainder of Part D.]

PRIMARY SOURCES OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State Courts System	P.O. Box 7800, Tavares, FL 32778	\$160,688.00

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person--see instructions on page 5]:

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

PART E -- INTERESTS IN SPECIFIED BUSINESSES [Instructions on page 6]

	BUSINESS ENTITY # 1	BUSINESS ENTITY # 2	BUSINESS ENTITY # 3
NAME OF BUSINESS ENTITY	n/a	n/a	n/a
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

PART F - TRAINING

For officers required to complete annual ethics training pursuant to section 112.3142, F.S.

I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.

OATH

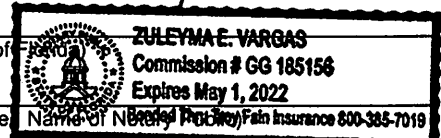
I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

[Handwritten Signature]
 SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE

STATE OF FLORIDA
 COUNTY OF Marion

Sworn to (or affirmed) and subscribed before me this 25 day of June, 2019 by Anthony M. Tatti.

[Handwritten Signature]
 (Signature of Notary Public--State of Florida)



(Print, Type, or Stamp Commission Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced _____

If a certified public accountant licensed under Chapter 473, or attorney in good standing with the Florida Bar prepared this form for you, he or she must complete the following statement:

I, _____, prepared the CE Form 6 in accordance with Art. II, Sec. 8, Florida Constitution, Section 112.3144, Florida Statutes, and the instructions to the form. Upon my reasonable knowledge and belief, the disclosure herein is true and correct.

 Signature Date

Preparation of this form by a CPA or attorney does not relieve the filer of the responsibility to sign the form under oath.

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: _____

JNC Submitting To: Fifth District Court of Appeal

Name (please print): Anthony Michael Tatti

Current Occupation: Circuit Judge

Telephone Number: 352-401-6740 Attorney No.: 0473626

Gender (check one): Male Female

Male

Female

Ethnic Origin (check one): White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Marion

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Printed Name of
Applicant:

Anthony M. Tatti

Signature of Applicant:



Date: August 12, 2019

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN
AND FOR HERNANDO COUNTY, FLORIDA

FILED FOR RECORD
MARLEN NICOLA, CLERK
HERNANDO COUNTY, FL.
2012 SEP -5 AM 11:32

BANK OF AMERICA, N.A.,
A national banking association, as
Administrative Agent and a Lender, and
on behalf of Comerica Bank, a Texas
banking corporation, and JP Morgan Chase
Bank, N.A., a national banking association,
as Lenders,

Plaintiff,

vs.

Case No: 2010 – CA – 3113

CREATIVE CHOICE HOMES XXXIII, LTD.,
a Florida limited partnership;
CREATIVE CHOICE HOMES, INC.,
A Florida corporation;
DILIP BAROT, Individually;
PROXYPRO MANAGEMENT, INC.,
a Florida corporation; and
SUPERIOR SITE DEVELOPMENT, INC.,
d/b/a P/C MILLER, a Florida corporation,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court on Plaintiff's Motion for Summary Judgment, pursuant to Florida Rule of Civil Procedure 1.510, filed on, or about, April 13, 2012. This Court, having reviewed the file, the Motion, and being otherwise fully advised in the premises hereby finds as follows:

BACKGROUND

Plaintiff, Bank of America, N.A., hereafter referred to as "Lender" and Defendant, Creative Choice Homes XXXIII, Ltd., hereafter referred to as "Borrower", entered into a Construction Loan Agreement for construction of a multi-unit condominium project, to be known

as Villas at Spring Hill. The loan commitment was to be funded in several phases, as defined in the loan agreement. Borrower secured the loan with a mortgage to Lender on the land and improvements, a security interest in the personal property situated thereon, and rents and profits derived from the project. In addition, the loan was secured by personal guarantees of (1) Dilip Barot, owner, controller, and founder of Creative Choice Group, and (2) Creative Choice Homes, Inc.¹ Near completion of Phase I of the project, a downturn in the economy forced Borrower to reevaluate the feasibility of the project. As a result, the Borrower decided to transform the nature of the project from a condominium development to a "market rate" apartment complex. The Lender agreed to modify the loan to reflect this change.

This agreement to modify, identified as the first loan modification, was signed on April 11, 2009. This modification extended the maturity date of the original note from April 11, 2009 to October 31, 2009. The modification also evidenced the parties' agreement to cancel Phase II of the construction project, and the funding commitment related thereto. In accordance, the parties agreed that the maximum funding that the Bank would commit to provide for Phase I of construction was \$18,485,255.21. At the time this modification was ratified, Lender had already disbursed funds to Borrower in the amount of \$17,842,009.91.

Although the parties had just modified the loan, the amount of loan proceeds disbursed to fund construction exceeded the deteriorating market value of the property. The original loan agreement required that the total amount of the loan not exceed eighty percent (80%) of the property's value.² Recognizing that additional collateral had to be secured in order to protect the Lender's investment, the parties began negotiating a second loan modification agreement. This

¹ Borrower is an entity that is part of the Creative Choice Group. Dilip Barot serves as corporate representative of Creative Choice Homes, Inc. and the Borrower.

² At the time that the first amendment was signed, the loan to value ratio was estimated at 120%.

second modification, which was signed on March 31, 2010³, further extended the maturity date of the loan to April 30, 2010 and identified additional collateral to be used to secure the loan. In addition, this modification permitted the Borrower to extend the maturity date of the loan in the future, provided that the Borrower satisfied certain payment obligations.

As a prerequisite to extension of the maturity date from April 30, 2010 to December 31, 2010, Borrower was required to pay all fees and interest payments required by the second amendment and the loan documents. These included interest payments, two principal reduction payments, and certain extension fees. By May 2010, Borrower had failed to make April's interest payment, either of the last two principal payments⁴, nor pay any extension fees. As of April 30, 2010, the loan had matured, and the requirements for extension had not been met. From this point on, the loan remained past due, as Borrower did not make any further payments.

Lender filed suit to foreclose on October 13, 2010. Borrower filed their answer and affirmative defenses on December 1, 2010, claiming four defenses. Borrower's affirmative defenses include: (1) breach of the loan agreement by failure to pay the loan proceeds to the borrower, (2) setoff, (3) unclean hands, and (4) breach of the implied covenant of good faith and fair dealing. On March 8, 2012, borrower filed an amended counterclaim, asserting eight counts against the Lender. These counts are: (1) breach of contract, (2) breach of oral contract, (3) promissory estoppel, (4) negligent misrepresentation, (5) breach of contract – line of credit, (6) negligent misrepresentation – line of credit, (7) breach of fiduciary duty, and (8) breach of duty of good faith and fair dealing. Lender then filed this motion for summary judgment on April 13, 2012.

DISCUSSION

³ Although this second modification was signed on March 31, 2010, it had an effective date of October 31, 2009 – the date the loan was scheduled to mature under the first amendment.

⁴ Borrower tendered April's principal payment, but the check was returned for insufficient funds.

SUMMARY JUDGMENT STANDARD

A moving party is entitled to summary judgment if there are no genuine issues of material fact and the party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(c). “The moving party bears the burden of showing conclusively the absence of any genuine issue of material fact.” *Laurencio v. Deutsche Bank Nat. Trust Co.*, 65 So.3d 1190, 1192 (Fla. 2nd DCA 2011). Every possible inference must be drawn in favor of the non-moving party. *Servedio v. U.S. Bank Nat. Ass’n*, 46 So.3d 1105 (Fla. 4th DCA 2010). “It is well established that in order for a plaintiff to obtain a summary judgment when the defendant has asserted affirmative defenses, the plaintiff must either disprove those defenses by evidence or establish their legal insufficiency. Thus, summary judgment is appropriate only where each affirmative defense has been conclusively refuted on the record.” *Pavolini v. Williams*, 915 So.2d 251, 253 (Fla. 5th DCA 2005). “If the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” then summary judgment cannot be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Lender asserts in their motion for summary judgment that they are entitled to judgment as a matter of law, as no genuine issue of material facts exists. Lender also contends that each of Borrower’s affirmative defenses and counterclaims can be refuted by the record or fail as a matter of law. This Court agrees with Lender’s position. “It is essential that valid contracts be safeguarded and the right of enforcement in the event of breach be accorded. The obligation of a mortgagor to pay and the right of a mortgagee to foreclosure in accordance with the terms of the note and mortgage are absolute and are not contingent on the mortgagor’s health, good fortune, ill fortune, or other personal circumstances affecting his ability to pay.” *Fed. Home Loan Mortg.*

Corp. v. Taylor, 318 So.2d 203, 207 (Fla. 1st DCA 1975).

The undisputed facts of this case clearly illustrate that Borrower breached the loan agreement in several ways. First, Borrower did not tender the outstanding balance due and owing on the date that the loan matured. Second, Borrower failed to pay two of the three required principal payments in the amount of \$33,333.⁵ Third, Borrower failed to tender April's interest payment. Fourth, property taxes were not paid by Borrower for the years of 2009 and 2010 as required by the loan documents.

Although Borrower does not dispute the fact that they breached the loan agreement, they assert affirmative defenses which they believe mitigate or justify their breach, and establish that the Lender is not entitled to proceed in foreclosure. "Once an affirmative defense is raised, the movant has the burden of either disproving it or establishing the legal insufficiency of the affirmative defense." *Florida Dept. of Agric. v. Go Bungee, Inc.*, 678 So. 2d 920, 921 (Fla. 5th DCA 1996). Lender has disproved or established the legal insufficiency of all of Borrower's affirmative defenses.

BREACH OF CONTRACT

Borrower's first affirmative defense is that Lender breached the loan agreement by failing to pay all of the loan proceeds to the Borrower. Borrower asserts this same claim and argument in Count one of the counterclaim. At the time of the first modification, when Phase II of construction was cancelled, the Lender had already disbursed \$17,842,009.91 of \$18,485,255.21 – the larger of which was the maximum amount Lender pledged to loan on Phase I of the project. This left \$643,245.30 as the remaining funds that could be disbursed to Borrower for the final

⁵ In accordance with the second amendment, borrower was required to tender three payments to Lender, to reduce the principal balance of the loan. The first payment was due on or before execution of the second amendment. The first payment was paid by Borrower at the time the second amendment was signed. Borrower tendered the second payment, but it was returned for insufficient funds.

payment of contractors and other such construction related expenses. As a condition of release of this retainage, Borrower was required by Lender to satisfy certain conditions. Among these were a submission of a final draw request, satisfaction of any contractor's liens filed against the property, and providing unconditional final affidavits from the general contractor, architect, and engineer. On April 22, 2010, Borrower did submit a final draw request, but failed to satisfy the remaining conditions of disbursement. Evidence suggests that Borrower was not only aware, but repeatedly reminded of the outstanding conditions to be met, to fund the final draw request. Consequently, when the loan matured on April 30, 2010, Lender was prevented, by the express terms of the loan agreement, from disbursing any funds until the maturity date of the loan was extended and all other defaults were cured.⁶ Therefore, Lender did not breach the loan agreement by failing to fund the final draw request. Borrower's failure to satisfy the requisite conditions of the loan prevented disbursement of the retainage.

Borrower also asserts in the counterclaim, that Lender breached the loan agreement by refusing to extend the maturity date of the loan. The second amendment of the loan agreement provided that extension of the maturity date of the loan, to December 31, 2010, could be granted if the Borrower satisfied a series of conditions. These included a request to extend the loan, payment of an extension fee, a \$500,000 principal payment, and five monthly payments of \$31,250. In addition, Borrower had to be in compliance with all other terms and conditions as defined in the loan documents. The facts irrefutably evidence that Borrower did not meet the conditions, as outlined, to extend the maturity date of the loan. Again, evidence suggests that Borrower was repeatedly informed of the outstanding requirements and was told that the loan

⁶ Exhibit "F", pg. 2 of the original loan agreement reads, "4. Conditions to All Advances. As conditions precedent to each advance made pursuant to a Draw Request, in addition to all other requirements contained in this Agreement, if and to the extent required by Administrative Agent: a. the Maturity Date shall not have passed..."

could not be extended without satisfaction of these conditions.⁷ Failure to extend the loan was due solely to Borrower's shortcomings, not because a breach of the loan agreement by the Lender.

BREACH OF ORAL CONTRACT

Borrower alleges in count two of the counterclaim that Lender breached an oral agreement, in which the Lender agreed to fund the final retainage, if Borrower negotiated and obtained the necessary final lien releases. Borrower asserts that this oral agreement was not memorialized in the second amendment due to Lender's concern that this would delay execution of the amendment. As a result, Borrower asserts that they paid the contractors directly and obtained the required lien releases, but Lender defaulted on the oral agreement and failed to fund the retainage.

"A debtor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." Fla. Stat. §687.0304(b). A credit agreement is defined as "an agreement to lend or forbear repayment of money, goods, or things in action, to otherwise extend credit, or to make any other financial accommodation." *Id.* at 1(a). This rule, better known as the banking statute of frauds "was enacted to protect lenders from liability for actions or statements a lender might make in the context of counseling or negotiating with the borrower which the borrower construes as an agreement, the subsequent violation of which is actionable against the lender." *Dixon v. Countrywide Fin. Corp.*, 664 F. Supp.2d 1304, 1309 (S.D.Fla.2009). Although this rule does not prevent a debtor from asserting an affirmative defense based on an oral credit agreement, a direct claim based on an oral agreement will be barred. *Maynard v. Central*

⁷ Borrower was given ample time to comply with the conditions of extension. An email was even sent to Borrower by the Lender on May 11, 2010 (11 days after the loan had matured), informing them of the matured status of the loan and inquiring as to whether Borrower intended to request an extension.

National Bank, 640 So.2d 1212 (Fla. 5th DCA 1994).

The law is clear that Borrower may not maintain a claim based on breach of oral contract, when through negotiations with Ms. Rodriguez, a representative of the Lender, Borrower asserts that a promise was made to fund the retainage. As discussed above, the retainage and final draw could not be funded due to Borrower's failure to satisfy the requisite conditions. Assertion of an oral agreement to the contrary is barred by the banking statute of frauds. Therefore, count two of Borrower's counterclaim fails.

PROMISSORY ESTOPPEL

Count three of Borrower's counterclaim predicates relief based on the same facts asserted in Borrower's claim for breach of oral contract. Borrower asserts entitlement to enforcement of Lender's alleged promise to fund the retainage based upon the principal of equity, as Borrower claims detrimental reliance. The doctrine of promissory estoppel states that, "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires." *Advanced Mktg. Sys. Corp. v. ZK Yacht Sales*, 830 So. 2d 924, 927 (Fla. 4th DCA 2002). Promissory estoppel is available as a way to enforce an oral agreement, in a limited number of circumstances. It "does not apply to oral statements made prior to the written contract, where the contract covers the same subject matter." *Id.* at 928. "[M]ere expectations based upon oral representations regarding future rights of parties to a contract specific in its written terms has been held to be insufficient to support a cause of action." *W.R. Grace & Co. v. Geodata Services Inc.*, 547 So.2d 919, 925 (Fla. 1989). When a party makes a claim based on promissory estoppel, it must demonstrate that reliance on the statement

was justified. When the alleged oral promise is “completely inconsistent and irreconcilable with the express terms of the parties’ written agreement,” reliance is not deemed justified. *Regions Bank v. Old Jupiter, LLC.*, 2010 WL 5148467 (S.D. Fla. 2010).

Borrower’s claim for relief based on the doctrine of promissory estoppel fails as a matter of law. “Promissory estoppel is not a doctrine designed to give a party to a negotiated commercial bargain a second bite at the apple in the event it fails to prove breach of contract.” *Advanced Mktg. Sys. Corp.*, 830 So.2d at 928. The oral agreement that Lender is alleged to have made with the Borrower, took place before the signing of the second amendment. Because the alleged oral agreement relates to the disbursement of retainage, which is a matter clearly covered in the written agreement between the parties, Borrower cannot rely on the doctrine of promissory estoppel to obtain relief. Additionally, this claim has already been determined to be barred by the banking statute of frauds, as an oral agreement to lend money or make a financial accommodation, is considered to be a credit agreement and required to be in writing.

NEGLIGENT MISREPRESENTATION

Count four of Borrower’s counterclaim again relies on the same alleged oral representations of the Lender through Ms. Rodriguez. This time, Borrower alleges that Lender intended to induce Borrower to act upon the alleged misrepresentation, fully knowing that Lender did not intend to follow through with their alleged promise. “To prove negligent misrepresentation, the plaintiff must show that (1) there was a misrepresentation of material fact; (2) the representer either knew of the misrepresentation, made the misrepresentation without knowledge of its truth or falsity, or should have known the representation was false; (3) the representer intended to induce another to act on the misrepresentation; and (4) injury resulted to a party acting in justifiable reliance upon the misrepresentation.” *Locke v. Wells Fargo Home*

Mortg., 2010 WL 4941456 (S.D. Fla. 2010). Even if the Borrower could prove negligent misrepresentation, Florida courts have consistently held that a claim of negligent misrepresentation must be dismissed when it is “premised on the same conduct and representations that were insufficient to form a contract and are merely derivative of the unsuccessful contract claim,” in accordance with the banking statute of frauds. *Dixon v. Countrywide Fin. Corp.*, 664 F. Supp. 2d 1304, 1310 (S.D. Fla. 2009).

In this claim of negligent misrepresentation, Borrower relies on the same alleged oral representations made by Ms. Rodriguez that failed to form an oral contract, in count two of the counterclaim. Because the representations made by Ms. Rodriguez, failed to form an oral contract—the breach of which would be actionable by the Borrower—does not mean that Borrower is entitled to make the same argument and disguise it under a different doctrine of relief. For the court to permit every failed breach of contract claim to transform into a claim for negligent misrepresentation, would casually dismiss the well settled law of contracts. *Id.* As such, Borrowers claim for relief based on negligent misrepresentation, fails as a matter of law.

BREACH OF CONTRACT – LINE OF CREDIT

Borrowers allege in count five of the counterclaim that through negotiations with a representative of the Bank, while the parties were trying to finalize the terms of the second amendment, Lender agreed to extend Borrower a \$10 million line of credit. In exchange for the line of credit, Borrower was required to pledge \$2.5 million in cash collateral and \$4.225 million in other collateral to secure the loan. There is no evidence that this alleged agreement, to extend a line of credit to Borrower, was in writing. As discussed above, this unwritten agreement to extend credit to the Borrower, falls within the definition of a credit agreement.⁸ Accordingly,

⁸ A credit agreement is defined as “an agreement to lend or forbear repayment of money, goods, or things in action, to otherwise extend credit, or to make any other financial accommodation.” Fla. Stat. § 687.0304(a)(1).

because it is not in writing, this alleged oral agreement is barred by the banking statute of frauds.

Additionally, this claim based on oral contract is barred by the parole evidence rule. The parole evidence rule, a substantive rule of law, prohibits a party from admitting evidence such as verbal agreements made before or at the execution of the contract, that contradict the terms of a written instrument. *Pavolini v. Williams*, 915 So.2d 251 (Fla. 5th DCA 2005). However, “[the parole evidence rule] does not apply to the admission of subsequent oral agreements that alter, modify, or change the former existing agreement between the parties.” *Id.* Borrower, through their own statement of facts, admits that the negotiations they claim gave rise to an oral contract, took place before the signing of the written contract. As such, the terms of any negotiations made prior to the signing of the second amendment, which were not memorialized in the agreement, cannot be enforced when they alter the terms of the written agreement. The written agreement was considered the “entire understanding and agreement of the [parties] with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Borrower, Administrative Agent and Lenders with respect to the matters addressed in the Loan Documents.”⁹ Therefore, Borrower’s claim for relief predicated on a breach of oral contract fails as a matter of law.

NEGLIGENT MISREPRESENTATION – LINE OF CREDIT

In count six of Borrower’s counterclaim, relief is again predicated on the same alleged fact, that through negotiations with Lender’s agent, Lender orally agreed to extend to borrower a \$10 million line of credit. This claim for relief is based in tort, rather than the law of contracts. Just as Borrower’s other claims based on oral agreement, this claim also fails under Fla. Stat. §687.0304, the banking statute of frauds.

Even if this claim for relief was not barred by statute, it would fail under both the

⁹ This provision of the original loan agreement is contained in Section 6.22 on page 34.

economic loss rule and the parole evidence rule. The economic loss rule provides that where the relationship between the plaintiff and defendant is based solely on contract, non-contract claims which have no independent basis outside the breach of contract cannot be maintained. *Zaki Kulaibee Establishment v. McFlicker*, 788 F. Supp. 2d 1363 (S.D. Fla. 2011). Torts committed independent of a breach of contract, may serve as a basis for recovery, if the claimant is required to prove facts separate and distinct from the breach of contract. *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So.2d 1238 (Fla. 1996). The tort action must be for either intentional or negligent acts. *Id.* Borrower offers up no evidence to prove that this claim for negligent misrepresentation is predicated on a separate cause of action outside the Lender's alleged breach of contract. There is no indication that Lender negligently misrepresented any fact to induce Borrower into pledging collateral in exchange for a line of credit. A line of credit was not extended to Borrower because of loan defaults and Lender's concern for the increased credit exposure of the bank.

Borrower asserts in their counterclaim that Lender intended to induce Borrower into signing the second amendment and offering up the \$2.5 million cash collateral by misrepresenting Lender's intention to extend the line of credit. In reliance, Borrower asserts that they detrimentally relied on the misrepresentation, and expended finances that then made them unable to pay obligations owed to Lender under the second amendment. Although Borrower does not term the Lender's alleged action as "fraud in the inducement", it appears to the Court that this is what the Borrower is claiming. Borrower claims that the parole evidence rule does not bar this claim, because of an exception to the parole evidence rule that permits the admission of an oral agreement which "is shown by clear, precise, and indubitable evidence to establish a contemporaneous oral agreement to induce the execution of the written contract." *First National*

Bank of Lake Park v. Gay, 694 So.2d 784, 787 (Fla. 4th DCA 1997). What Borrower fails to establish though is that the agreement to extend the line of credit was made contemporaneously with the signing of the second amendment. Rather, the evidence suggests that in January 2010, Borrower was informed that the bank could not extend a credit line because of existing loan defaults. The second amendment was ratified on March 31, 2010, making it impossible for the Borrower to argue that the alleged misrepresentation induced them to sign the second amendment. At the time that the second amendment was signed, Borrower had already been noticed regarding the Lender's inability to offer a line of credit to the Borrower. Therefore, Borrower's claim does not fall within the exception to the parole evidence rule and is consequently barred.

BREACH OF FIDUCIARY DUTY

Borrower asserts in count seven of the counterclaim, that Lender owed a fiduciary duty to Borrower. Borrower claims that Lender breached this duty, by (1) in bad faith, failing to fund the retainage, causing the loan to go into default, (2) wrongfully fostering a close, personal relationship with Borrower in order to gain Borrower's trust and dependence, and (3) wrongfully exploiting the relationship between the parties to induce Borrower into pledging additional collateral and investing in unrelated ventures with the Lender.

"Generally, the relationship between a bank and its borrower is that of creditor to debtor, in which parties engage in arms-length transactions, and the bank owes no fiduciary responsibilities." *Capital Bank v. MVB, Inc.*, 644 So.2d 515, 518 (Fla. 3rd DCA 1994). But, a fiduciary relationship may be recognized where the parties are involved in a transaction that exceeds an ordinary commercial transaction, and the bank has knowledge or reason to know that a customer places trust and confidence in the bank. *Id.* Other special conditions that may imply a

fiduciary relationship, “include where the lender (1) takes on extra services for the customer, (2) receives any greater economic benefit than from a typical transaction, or (3) exercises extensive control. In order for a fiduciary relationship to be implied, the relationship must be reciprocal – confidence has to be placed by the borrower and accepted by the lender. *Hogan v. Provident Life and Acc. Ins. Co.*, 665 F. Supp. 2d 1273 (M.D. Fla. 2009).

Borrower fails to offer adequate evidence that a fiduciary relationship existed between the parties. There is no indication that Lender took on any extra services for Borrower or conducted any business with Borrower outside the scope of a normal commercial transaction. The construction loan agreement between the parties does not give rise to a presumption that Lender received any greater economic benefit than from a typical transaction. Rather, Borrower’s default on the loan has come at a great economic cost to Lender. The Lender had no joint proprietary interest in the transaction at issue and had no expectation to share in profits or loss.

Additionally, under Florida law, to imply a fiduciary relationship, the borrower must allege both that borrower placed trust in the lender and lender accepted that trust. *Id.* Borrower conclusively states that Lender accepted a fiduciary duty toward Mr. Barot and Borrower, but provides no support for this assertion. This court cannot identify any facts supporting acceptance by Lender, express or implied, of any such duty. The fact that Lender has conducted a series of commercial transactions with the Borrower and provides personal wealth management advice to Mr. Barot does not give rise to a special circumstance in which the court may impose a fiduciary duty upon the Lender. The court has held that without more, a long standing relationship between a bank and a borrower is not enough to transform a creditor-debtor relationship into a fiduciary relationship. *Jaffe v. Bank of America, N.A.*, 2010 WL 3449139 (11th Cir. Sept. 3,

2010). Even if there was evidence to support a fiduciary duty between Mr. Barot and Lender, this duty cannot be implied to exist between Lender and Borrower, merely through mutual association with a guarantor. Therefore, Borrower's counterclaim for breach of fiduciary duty cannot be maintained, as this Court finds that no such relationship exists between Lender and Borrower outside that of creditor-debtor.

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

Next, Borrower, as both an affirmative defense and an independent claim for relief (count eight of the counterclaim), asserts that Lender breached the duty of good faith and fair dealing. Borrower claims that Lender's breach of contract and failure to perform was due to a deliberate and conscious plot to frustrate the parties' agreement and extract as much cash and collateral out the Borrower, without intending to uphold the benefit of the bargain. Borrower claims that Lender's failure to fund the retainage, refusal to extend the maturity date of the loan, acceleration of the loan, filing of suit, acceptance of the extension fee and confiscation of the pledged collateral were all part of Lender's scheme to frustrate the rights and expectations of the Borrower. The duty of the parties to a contract to act in good faith and deal fairly with each other is an implied covenant. It prevents parties from "capriciously exercis[ing] discretion accorded to [them] under the contract so as to thwart the contracting parties' reasonable expectations." *National Franchisee Ass'n v. Burger King Corp.*, 715 F. Supp. 2d 1232 (S.D. Fla. 2010).

"To allege a breach of the implied covenant, the [claiming] party must demonstrate a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence; but, rather by a conscious and deliberate act, which unfairly frustrates the agreed common purpose and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement." *Shibata v. Lim*, 133 F. Supp.

2d 1311, 1319 (M.D. Fla. 2000). This implied covenant is a gap-filling provision; it does not apply when the appropriateness of the conduct is addressed by the terms of the contract. *Id.*

Borrower fails to identify with any particularity, a conscious or deliberate act committed by the Lender, to frustrate or hinder the rights of the Borrower under the contract. As already discussed, Lender's actions under the contract, which Borrower mistakenly categorizes as contractual breaches, were justified under the express terms of the loan documents. The actions taken by Lender were a direct response to Borrower's failure to satisfy the requisite conditions for disbursement of the retainage, extension of the maturity date, and prevention of foreclosure. Because Lender's reactions were justified by the express terms of the parties' agreement, Borrower may not uphold this claim that Lender breached the implied duty of good faith and fair dealing.

As part of their affirmative defense, predicated on a breach of the implied duty of good faith and fair dealing, Borrower asserts that Lender took several actions in violation of their fiduciary duty. First, they claim Lender took Borrower's funds prior to providing a proper default notice. Borrower fails to present any facts that indicate what funds they believe were taken prior to providing a default notice, and why they allege the default notice was improper. "Where there are no facts pled to support general allegations of affirmative defenses, the defenses are legally insufficient." *Leal v. Deutsche Bank Nat. Trust Co.*, 21 So. 3d 907, 909 (Fla. 3d DCA 2009). Second, they argue that Lender declared a default when an extension was approved. The facts clearly indicate that an extension of the maturity date was never approved, due to Borrower's failure to satisfy the requisite conditions. This Court has already established in the discussion above that Borrower cannot establish that there was an oral contract to extend the loan. As such, Lender was justified in declaring a default, as the maturity date of the loan had passed and was

not extended.

Third, Borrower claims Lender held adequate funds of the Borrower to pay any charges related to the loan and its extension. The essence of Borrower's argument is that Borrower wanted to use the excess retainage—the amount that was not disbursed to satisfy final payment to contractors—to pay the extension fees, principal payment, and past due interest payments. Borrower asserts, without adequate support, that their desire to use the excess retainage for this purpose was communicated to the Lender and that Lender acquiesced or approved this desired application of funds. The Borrower fails to identify, however, any provision in the loan agreement which provides for the financing of these fees. The retainage was dedicated to fund “hard costs” – those costs relating to the actual construction of Phase I of the project. The Lender was not required to fund any excess amount over hard costs, as the amount of funds Lender agreed to disburse was a maximum commitment, not an absolute set figure. Accordingly, if Borrower only needed \$302,000 to satisfy and obtain lien releases from the remaining unpaid contractors, the bank was not required to fund the maximum commitment amount under the loan. Therefore, because the facts do not support any part of Borrower's affirmative defense predicated on a breach of the duty of good faith and fair dealing, this defense fails.

SETOFF

Borrower argues, as an affirmative defense, that they are entitled to a setoff for money that Lender did not disburse, including the retainage and insurance escrows. In a claim for setoff, the borrower alleges that lender owes borrower money, which should be subtracted from the amount of money that lender claims they are owed. Borrower is entitled to a setoff, only if they are actually entitled to the money which they claim setoff should apply. As discussed in the Court's response to Borrower's breach of contract claim, Lender did not breach the loan

agreement by failing to fund the retainage. Borrower's claim for breach of contract failed because Borrower failed to satisfy the requisite conditions for disbursement, including failing to cure defaults such as obtaining lien releases from contractors, failing to make required payments under the terms of the loan agreement, and allowing the loan to go into mature status. Because Borrower was not entitled to the retainage, Borrower is unable to assert setoff as an affirmative defense to this foreclosure action.

Additionally, in Borrower's second affirmative defense, Borrower alleges that Lender failed to disburse insurance escrows. In order to maintain an affirmative defense, the Borrower is required to provide ample support to sustain the claim. In this instance, Borrower offers no facts to support this conclusion that they affirmatively plead. As such, this defense is legally insufficient and fails as a matter of law.

UNCLEAN HANDS

Borrower also argues, as an affirmative defense, that the Lender comes before the Court with unclean hands, because Lender allegedly failed to extend the loan and disburse the retainage. "A lender can be estopped from foreclosing on an accelerated basis, however, where the borrower establishes that the lender has unclean hands." *City First Mortg. Corp. v. Barton*, 988 So.2d 82, 85 (Fla. 4th DCA 2008). "Equity is a court of conscience; it demands fair dealing in all who seek relief, and requires decency, good faith, fairness, and justice." *Epstein v. Epstein*, 915 So. 2d 1272, 1275 (Fla. 4th DCA 2005). Borrower fails to adequately prove that the actions taken by the Lender were done so, outside of the bounds of the written contract, or without good faith or proper cause. As discussed in numerous other counts that the Borrower has alleged before this Court, the Lender's failure to disburse the retainage and extend the maturity date of the loan were due to the Borrower's failure to meet certain requirements that were set forth by

the agreement between the parties. In both cases, the Borrower's failure to meet the conditions prevented the Lender from taking the actions that Borrower alleges gives rise to a cause of action. Because of this, Borrower may not maintain that Lender comes to this Court with unclean hands. This affirmative defense fails.

CONCLUSION

All of Borrower's affirmative defenses and counterclaims are either not supported by substantial facts or fail as a matter of law. Lender has satisfied the burden of establishing that no genuine issue of material fact exists and, as such, Lender is entitled to a judgment as a matter of law.

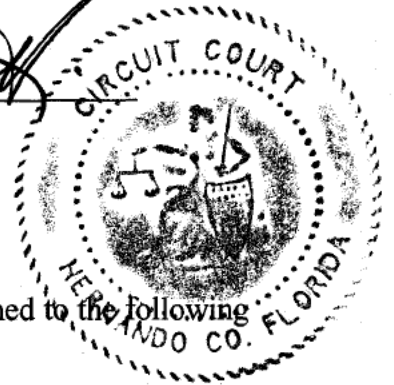
BASED ON THE FOREGOING, it is

ORDERED AND ADJUDGED:

Final Summary Judgment is hereby entered in favor of Plaintiff. Defendants have thirty (30) days from the date of this Order to file an appeal.

DONE AND ORDERED in chambers, Hernando County, Florida, on this 4 day of September, 2012.


ANTHONY M. TATTI
CIRCUIT JUDGE



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following individuals by U.S. Mail delivery this 4 day of September, 2012:

Mark D. Solov
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Judicial Assistant

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA

IN THE INTEREST OF:

Case No.: 2006-271-DPA, B
Juvenile Division

VILLEDA, Alexsander C. (M) (08/30/2006)
VILLEDA, Alexzandra M. (F) (08/30/2006)

Minor Children

FILED FOR RECORD
KAREN NICOLA OLIVER
HERNANDO COUNTY, FL
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**ORDER OF ADJUDICATION AND
FINAL JUDGMENT OF TERMINATION OF PARENTAL RIGHTS**

THIS CAUSE came before this Court on November 8, 2012, for an adjudicatory hearing on the Petition for Termination of Parental Rights (“TPR”) filed by the children’s caregivers, Arthur and Leslie Williams. Present before the Court were Arthur and Leslie Williams, Petitioners/caregivers; Melissa A. Tartaglia, Esq., attorney for the Petitioners/caregivers; Michael Plager, Esq., attorney for the Department of Children and Families (“DCF”); Stephanie Lecavalier, Dependency Case Manager (“DCM”) for the Children’s Home Society (“CHS”), the community based care provider; Jessica Villeda, mother; Lisa E. Yeager, Esq., the mother’s attorney; Aaron Porter, the mother’s legal guardian; Melanie J. Burpee, Esq., the attorney for the mother’s guardian; Lisa Burgess, Case Coordinator for the Guardian ad Litem (“GAL”) Program; Edward Greip, GAL; and Sylvia Y. Simmons, Esq., attorney for the GAL Program. The father, Hipolito Arvizu Zara-Zua, was not present and has not appeared before the Court since the filing of the TPR petition.

The Court has carefully considered and weighed the testimony of all witnesses. The attorney for the caregivers offered numerous documentary exhibits into evidence, all or most of which appear in the court file, without objection. The Court has considered the written arguments of counsel.

The Court finds that grounds for termination of the rights of the Mother and Father have been established by clear and convincing evidence under §39.806(1) Florida Statutes. The Court finds that termination of parental rights is clearly in the manifest best interests of the Children, and return of the Children to the custody of the Mother and/or Father would place the

child at substantial risk of serious harm. More specifically, the findings of fact by clear and convincing evidence, and conclusions of law, supporting this decision are as follows:

1. *Legal Representation and Appointment of GAL:*

The parents of the children were informed of their right to counsel at all hearings that they attended. Additionally, the mother, who was judicially declared totally incapacitated, was represented by her guardian, Aaron Porter, at all stages of the TPR proceedings. Mr. Porter was represented by his attorney, Melanie Burpee, Esq. On January 25, 2012, Lisa E. Yeager, Esq. was appointed by the Court as counsel for the mother. The GAL was appointed for the children and has been active in representing the children's best interests.

2. *Findings and Legal Analysis Concerning Grounds for Termination:*

The following is a summary of some of the significant facts concerning the children and the parents:

The biological mother is Jessica Villeda, born on December 2, 1982, and who currently resides at 18741 US 41, Spring Hill, FL 34610, during the week, and 12194 Club House Road, Brooksville, FL 34610, during the weekend. She is the ward of a guardianship, pursuant to Case No.: H-27-GA-2010-42, Hernando County, Florida.

The biological father of the children is Hipolito Arvizu Zara-Zua. The father was never married to the mother and is not named on the children's birth certificates; however, he did submit to DNA testing, which established his paternity of the children. His present location is unknown.

The children were sheltered from their biological parents on or about September 7, 2006. An order adjudicating the children dependent was entered on July 23, 2007 *nunc pro tunc* to November 8, 2006, on the following grounds:

- a) The mother's substance abuse problem threatens the newborn children;
- b) On August 30, 2006, the mother gave birth to the children, with whom the mother abused drugs during pregnancy.
- c) The mother, while pregnant, testified positive for barbiturates on or about August 21, 2006, tested positive for cocaine on or about August 2, 2006, and tested positive for cocaine and tricyclic antidepressants on or about July 29, 2006.

- d) On or about September 8, 2006, the child Aleksandra Villeda tested positive for cocaine.
- e) The mother admitted she enjoys using cocaine.
- f) The mother's inability to adequately care for the newborn children threatens the newborn children.
- g) The mother has the comprehension level of a child and, because of same, receives disability benefits.
- h) The mother's disability greatly affected her ability to adequately care for the children's sibling, Sofia Villeda, to the point that the department had to remove the sibling from her care.
- i) On or about October 7, 2005, the court granted the department's petition to place then one-month-old Sofia Villeda with the maternal grandmother, Olga Villeda, in shelter care, due to the mother's inability to adequately care for Sofia. The case closed April 26, 2006, with the sibling remaining in the custody of the maternal grandmother, Olga Villeda, in long-term relative care.

The children have resided continuously with the Petitioner, Leslie Williams (f/k/a Leslie Jones), since July 11, 2007. The children were placed with her and her then husband, Christopher Jones, in Spring Hill, Florida, after the parties, including the mother, stipulated to such placement. Though Christopher and Leslie Jones separated in early 2008, the children remained with Leslie. The Joneses divorced on October 12, 2009. Leslie and the children moved to Georgia in October of 2008. Leslie married Arthur Douglas Williams in November of 2009, at which time she, the children and Mr. Williams, moved to Colorado.

The custodial rights of the former permanent guardian, Christopher Jones, were terminated on January 10, 2012.

Arthur and Leslie Williams filed their original Petition for Termination of Parental Rights Pending Adoption in the instant case on July 11, 2011. After a protracted period motions, hearings and legal argument concerning the procedural posture of the case, the Petitioners filed an Amended TPR petition on June 20, 2012. The mother appeared, with counsel, at the TPR advisory hearing on the Amended TPR petition on July 16, 2012, and entered a plea of denial. After a diligent search by the Petitioners, the father's whereabouts are unknown. The Amended

TPR Petition was served on the father by publication, pursuant to the Florida Rules of Civil Procedure and Florida Statutes, Chapter 49, in accordance with Florida Statute 39.801(3)(b). A statutory consent was entered against the father for failure to appear for the TPR Advisory Hearing on August 13, 2012.

The Petitioners called three (3) witnesses, including the mother, at the adjudicatory hearing. The mother called Olga Villeda, the maternal grandmother, and Katherine Cappucci, the former Family Care Manager assigned to the children's dependency case.

Grounds for termination of the parent's rights were alleged under Florida Statutes, Sections 39.806(1)(b); and 39.806(1)(e)1.

Florida Statutes, Section 39.806(1) provides:

Grounds for termination of parental rights may be established under any of the following circumstances:

...(b) Abandonment as defined in s. 39.01(1) ["Abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.]...

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. The failure of the parent or parents to substantially comply with the case plan for a period of 9 months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. The 9-month period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the court's approval of a case plan having the goal of reunification with the parent, whichever occurs first...

By clear and convincing evidence as to mother:

As to the "abandonment" grounds:

Despite having the ability to do so, the mother has not paid child support or provided any other financial support for the children since they were removed from her custody. The mother testified that she is given a \$300.00 per month "allowance" from her Social Security Disability benefit and that she spends it on her horse, the maternal grandmother's cell phones and cell phone bills, and Busch Garden passes. The mother also testified that she never filled out the paperwork to begin child support because her mother, Olga Villeda, told her she didn't have to.

Leslie Williams testified that, other than the price of one haircut for the children, neither parent has contributed financially for the children since they've been in the Petitioners' custody. Neither parent sent gifts to the children for Christmases of 2008, 2009, 2010 or 2011, for the children's third, fourth and fifth birthdays, or for any other occasion during the last four years. On the children's sixth birthday (August 30, 2012), after the TPR Advisory Hearing and prior to the Adjudicatory Hearing, the mother sent appropriate gifts for the children.

The mother has failed to establish or maintain a substantial and positive relationship with the children. Throughout the dependency proceedings and after the case was closed in permanent guardianship, the mother has had the opportunity to have visitation with the children. After the case was closed in July of 2008, the mother engaged in several visits with the children. Mrs. Williams then moved with the children to Georgia in October of 2008. Mrs. Williams and the mother stayed in contact via telephone and e-mail after the move, and unsuccessfully attempted to schedule three separate visitations. The children have not seen their mother face to face since their second birthday in 2008.

Mrs. Williams testified that the mother sporadically contacted her in Georgia via telephone and via e-mail, but then stopped. By September 2009, the mother had not contacted Leslie for several weeks. Leslie tried to call her, but her number had been disconnected. During 2009, the mother changed her phone number six times, and her address four times, and Mrs. Williams didn't have a current phone number for her. The mother made no attempt to contact Mrs. Williams.

In November 2009, Leslie married Arthur Douglas Williams, and they and the children moved to Colorado. Mrs. Williams kept her Florida phone number for four or five weeks after moving to Colorado, but no contact was made by the mother.

Mrs. Williams testified that from September of 2009, until September of 2011, the mother made no contact with her. On September 6, 2011, three months after the original petition to terminate parental rights was filed, the mother sent a "friend request" to Mrs. Williams from Facebook. Mrs. Williams testified that she denied the request because she didn't want the mother to have access to all of her friends and personal information on her private Facebook page. However, she continuously maintained the email account by which the mother had made contact in the past. Mrs. Williams testified that the mother made no attempt to contact her by email after the Facebook request was denied. Mrs. Williams deactivated her Facebook account five months later.

In February of 2012, the mother began sending text messages to Mrs. Williams at various times of the day and night, inquiring about the children. Mrs. Williams attempted to establish parameters for the mother to have phone visitation with the children, however the mother failed to abide by the schedule and no visitations with the children took place. In June of 2012, after a court-ordered schedule was established, the mother began having regular telephone visitation with the children.

The children, having not had contact with the mother for almost four years, have not responded well to the telephone visits. After the first phone visit, Alexzander had a nightmare that he was being abandoned by the Leslie and Doug and Aleksandra (Michelle). Since that time, he has expressed that he doesn't like his mother, that she's not his family, and that he doesn't want to talk to her. Aleksandra began asking the Petitioners if she was going to keep living with them, and has said that she doesn't love her mother. The GAL volunteer, Edd Griep, testified that the relationship between the mother and the children is, at times, antagonistic, and the children are left agitated by their visits with her.

Despite the mother's attempts to suggest that her failure to establish or maintain a substantial and positive relationship with the children is due to the actions of the Petitioners, the evidence established that Mrs. Williams has consistently acted in the best interests of the children and has attempted to balance the mother's inconsistent efforts at visitation with her own

efforts to care for the children. Whether due to her own mental disabilities or her difficulties with substance abuse, the children have never been the central focus of the mother's life. Having "rediscovered" the children largely as a result of the Petitioners' efforts in the TPR proceedings, the mother's recent attempt at establishing a relationship with the children has resulted in the disruption of their lives and their six-year-old sense of permanency. This development, more than any other consideration, led the Court to the conclusion that the limitations imposed on the caregivers by the permanent guardianship order were no longer in the best interests of the children.

The Court finds by clear and convincing evidence that the mother has made no provision for the children's support and has failed to "establish or maintain a substantial and positive relationship" with the children. Her visitations with the children have been infrequent and irregular and amount to no more than token visits or communication. The Court finds by clear and convincing evidence that the mother has "abandoned" the children within the meaning of Florida Statutes, Sections 39.806(1)(b) and 39.01(1).

As to the "failure to substantially comply with the case plan" grounds:

Both parents agreed to and executed a case plan with a goal of reunification. The case plan was filed with, and approved by the court on July 23, 2007, nunc pro tunc to November 8, 2006, as to the mother¹. The parents failed to substantially comply with their case plans for a period of twelve months after the adjudication of the children as dependent children or the children's placement into shelter care. The mother failed to substantially comply with the following tasks:

A. Stable, safe, adequate housing. The mother has never provided proof of stable, safe, and adequate housing. Leslie Williams' uncontroverted testimony was that the mother changed residences four times in 2009 alone. The mother has "run away" from home several times, for months at a time, usually returning to Olga Villeda's and Aaron Porter's homes only after lapsing into the abuse of illegal drugs.. While she has lived with the maternal grandmother consistently from May of 2011 to the present, the maternal grandmother's residence cannot be considered stable housing. According to Katherine Cappucci (f/k/a Katie Robinson), the

¹ The father's case plan was never accepted or ordered by the Court, apparently because he never made a court appearance after the case plan was executed.

assigned family care manager throughout the dependency proceedings, the maternal grandmother's criminal history and child abuse registry history precluded the Department from being able to consider Olga Villeda's home stable housing for the mother.

B. Psychological evaluation. The mother went to the initial appointment for her psychological evaluation, but never finished it. The psychologist reported that the mother "would have difficulty making parenting decisions without the help of family or an outside agency." Edward Griep, the guardian ad litem volunteer, testified that the mother's mental challenges could be harmful to the children.

C. Parenting course. The mother completed a parenting course in July of 2007. However, problems continued to arise regarding the mother's ability to properly care for the children. Mrs. Williams testified that, during unsupervised visit with the mother, one of the children was burned on a radiator. During another unsupervised visit, the mother allowed the children to ride on the floorboards of the maternal grandmother's car. Notwithstanding these isolated incidents suggesting deficiencies with the mother's parenting skills, the mother's intellectual and mental deficits are significant, and perhaps insurmountable, obstacles to her fitness to properly care for a single child, much less two children.

The mother was first witness called by the Petitioners at the adjudicatory hearing. She testified on direct, cross and re-direct examination by the parties for the better part of an hour. Her affect and demeanor was appropriate and polite, but distinctly child-like. In her responses to questions and reactions to various subject matter, her manner was that of an adolescent—a child, perhaps 12 or 13 years of age. The mothers' demeanor clearly affected the manner in which the attorneys conducted their questioning.

The mother was judicially declared totally incapacitated on March 3, 2010. During the TPR advisory hearing on the original TPR petition, the guardian's attorney moved to dismiss the petition because the mother had been judicially declared incapacitated and restoration of her competency was "medically improbable." That finding, however, has apparently never been made by the guardianship court.

D. Substance evaluation and treatment. While pregnant with the children, the mother at various times testified positive for barbiturates, cocaine and tricyclic antidepressants.

On or about September 8, 2006, within ten days of birth, the child Aleksandra Villeda tested positive for cocaine.

Pursuant to the case plan, the mother completed a substance abuse evaluation in 2007. However, the mother testified at the adjudicatory hearing that she continued to use cocaine during the periods of time that she “ran away” from home, specifically from November of 2009 to January of 2010, and from September of 2010 to March of 2011. On November 12, 2009, the mother was charged with possession of paraphernalia. She entered a plea of *nolo contendere*, adjudication was withheld, and she was placed on probation. On April 22, 2011, the mother tested positive for cocaine and marijuana, and was charged with violation of probation. While the VOP case was pending, the mother enrolled in a 3-day drug education course which she completed on May 6, 2011. Three days later, the mother used cocaine again. On January 12, 2012, the mother admitted the violation of probation and was adjudicated guilty. The mother claims to have been drug-free since May 9, 2011.

It is apparent from the testimony adduced at the adjudicatory hearing, that the mother’s substance abuse issues are intertwined with her intellectual and mental health deficits. Absent the supervision of her mother or her legal guardian, the mother has consistently lapsed into the use and abuse of illegal drugs.

E. Domestic violence/Co-dependency counseling. The mother completed this task, however has continued the behaviors that would place the children at risk if they were placed in her care. During an unsupervised visit in late 2007, the mother allowed a man into her home without notifying the family care manager, which was a violation of her case plan. In March of 2008, the mother married Gustavo Lopez, a man she had known only a short time. The marriage, apparently done without the knowledge or consent of her mother or guardian, caused the mother to lose her subsidized housing. Mr. Lopez later withdrew all of the mother’s savings from her bank account and left the mother for Guatemala.

The mother testified that in September of 2010 she was riding with a friend who put her out of the vehicle in Dade City. Unable to get home, the mother remained in the Dade City area for six months. She testified that the people that she lived with “beat her up a lot.”

The mother clearly depends on her mother, Olga Villeda, and her legal guardian, Aaron Porter, for her financial welfare, housing, and safety. It is only with the maternal grandmother’s

assistance, that the mother was able to obtain her own housing during the pendency of the case plan. Despite having some of her independence legally restored, her dependence on her mother and guardian has not changed. Olga Villeda testified that she is presently building an addition to her home, a free-standing apartment behind the main residence, for the purpose of providing the mother her "own" place to live with the children.

Clear and convincing evidence was adduced at the adjudicatory hearing establishing that the circumstances which led to the children's shelter have not been remedied by the mother. There is no evidentiary basis to conclude that the mother is any better equipped to care for children than she was when they were removed from her custody. The mother's failure to substantially comply with her case plan was not due to the mother's lack of financial resources or to the failure of the Department to make reasonable efforts to reunify the mother and children. The sum total of the evidence is of sufficient weight to convince the Court, without hesitancy, that grounds under Section 39.806(1)(e)1. have been proven by clear and convincing evidence.

By clear and convincing evidence as to father:

A diligent search was conducted for Hipolito Arvizu Zara-Zua. The petitioners provided proper notice of the August 13, 2012, TPR Advisory hearing by publication, pursuant to the Florida Rules of Civil Procedure and Florida Statutes, Chapter 49, in accordance with Florida Statute 39.801(3)(b). A statutory consent was entered against the father for failure to appear for the TPR Advisory Hearing on August 13, 2012. By his failure to appear at the published time and place of the TPR Advisory hearing, the father consented to the termination of his parental rights on the grounds asserted in the Amended TPR Petition.

According to Leslie Williams, the father's last contact with the children was in early 2008, before the case was closed in permanent guardianship. He has not made contact with Mrs. Williams since that time. Other than perhaps contributing to the payment of a single haircut for the children early in the case, the father has made no provision for the children's support and made no financial contribution to the children's upbringing.

The Court finds by clear and convincing evidence that the father has made no provision for the children's support and has failed to "establish or maintain a substantial and positive relationship" with the children. He has not seen or attempted to see the children in nearly five

years. The Court finds by clear and convincing evidence that the father has “abandoned” the children within the meaning of Florida Statutes, Sections 39.806(1)(b) and 39.01(1).

3. Findings and Legal Analysis Concerning Least Restrictive Means:

Parental rights constitute a fundamental liberty interest. The Court, therefore, must consider whether termination of parental rights is the least restrictive means of protecting the children from serious harm. DCF ordinarily must show that it has made a good faith effort to rehabilitate the parent and reunite the family, such as through a current performance agreement or other such plan for the present children. *Padgett v. Department of Health and Rehabilitative Services*, 577 So.2d 565, 571 (Fla. 1991). In *M.M. v. DCF*, 931 So.2d 280 (Fla. 5th DCA 2006) and *K.B. v. DCF*, 834 So.2d 368, 369 (Fla. 5th DCA 2003), the Fifth DCA held that the ‘least restrictive means’ test simply requires that measures short of termination be utilized if such measures would permit the safe re-establishment of the parent-child bond.”

On clear and convincing evidence, the Court finds that other than termination, there are no less restrictive means which can restore or maintain the bond between parents and children and still assure the safety and the welfare of the children. Prior to the filing of the Amended TPR Petition by Mr. and Mrs. Williams, DCF made a good faith effort to rehabilitate the parents and reunite the family, through a reunification case plan for the children. The tasks of the case plan were appropriately designed to address the problems which gave rise to the children’s removal and dependency. The mother has not substantially complied with the case plan, and is unlikely ever to overcome the intellectual and mental health deficits that have negatively impacted her ability to safely and appropriately parent the children. The father long ago abandoned any attempt to comply with his case plan and has abandoned the children.

The least restrictive means element of a TPR proceeding does not turn on the consideration of relative placements. In the instant case, although the maternal grandmother, Olga Villeda, is a source of support for the mother and the permanent guardian of the mother’s first child, she was determined not to be appropriate for the placement of the children at the time of their shelter. The children have been in the care of Leslie Williams since July of 2007. Pursuant to Section 39.810(1):

If a child has been in a stable or preadoptive placement for not less than 6 months, the availability of a different placement, including a placement with a relative, may not be considered as a ground to deny the termination of parental rights.

4. Findings Concerning Substantial Risk of Serious Harm:

On clear and convincing evidence, the Court finds that return of the children to the custody of either parent would place the children at substantial risk of serious harm for the following reasons:

The mother's problems which existed at the time children had to be removed have not been substantially remedied. While her drug use has apparently ceased or diminished, the mother lacks the intellectual and mental capacity to adequately care for two young children. From her own testimony, the mother's relationship with her first child, Sofia, is more akin to a sibling relationship than one of parent and child. While it is clear that the mother has a genuine emotional attachment to the children, it is remarkably similar to her attachment to the miniature pony that she cares for. No evidence was presented establishing that the mother could, without the direct assistance and supervision of her mother or guardian, live on her own. Rather, the evidence established that when she is away from the supervision of her mother and Mr. Porter she has engaged in illegal drug use and in relationships with men that she barely knows. The father has failed to establish any relationship with the children. Returning the children to his custody would be the equivalent of placing them with a disinterested stranger.

5. Findings Concerning Manifest Best Interests:

On clear and convincing evidence, the Court makes the following findings of fact concerning the factors enumerated in Section 39.810, Florida Statutes:

a. *Suitable permanent custody arrangements with a relative.* No evidence was adduced at the TPR adjudicatory hearing establishing that any relative is available for the children's non-adoptive placement. Alex and Michelle have been in the home of Leslie Williams since they were eleven (11) months old, a period of more than five years. Accordingly, placement with someone else, including another relative if one were available, is not a basis to deny TPR under the applicable statute.

b. *The ability and disposition of the parent or parents to provide the children with food, clothing, medical care or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the children.* While the mother has avoided the drug use and stability issues that persisted during the period of her case plan and in

the months following the filing of the original TPR petition, her intellectual and mental health deficits remain a concern. The mother is child-like in demeanor and in the way she processes information. Without her own support system it is unlikely that mother would make appropriate choices for herself, let alone two small children. While no expert testimony was presented during the adjudicatory hearing concerning the mother's mental and intellectual capacities, the Court had ample opportunity to hear and observe the mother during her testimony in the adjudicatory hearing. The father has never provided any support for the children or expressed any interest in being a part of their lives and upbringing.

c. *The capacity of the parent or parents to care for the children to the extent that the children's safety, well-being, and physical, mental, and emotional health will not be endangered upon the children's return home.* As discussed above the mother, by clear and convincing evidence, lacks the capacity to care for the children to the extent that their safety and well-being would not be endangered by their return home. As the father has absented himself from the children's lives and the dependency proceedings, there is no evidentiary basis to conclude that he possesses the capacity to appropriately care for the children.

d. *The present mental and physical health needs of the children and such future needs of the children to the extent that such future needs can be ascertained based on the present condition of the children.* The children both suffer from asthma which is controlled by medication. The mother's drug use during and after her pregnancy has not had any apparent impact on the children. Alex and Michelle's present mental and physical health needs are being appropriately met by the Petitioners. As they have initiated the TPR proceedings in order to adopt the children, there is no reason to believe that Mr. and Mrs. Williams are not prepared and willing to provide for the children's future mental and physical health needs even if their current status should change.

e. *The love, affection, and other emotional ties existing between the children and parent and the degree of harm to the children likely to arise from termination of parental rights.* As a result of the TPR proceedings, the children are aware that Mr. and Mrs. Williams are not their biological parents. As the children had no contact with the mother between their second birthday in 2008 and the middle of 2012, they have developed no apparent love, affection or emotional ties to the mother. The telephone visitation between the children and the mother

which commenced in June of 2012, has been problematic for the children. Both Alex and Michelle have questioned whether the contact with the mother means that they will no longer be living with the Williams family. Rather than producing harm, the termination of the parental rights of Jessica Villeda and Hipolito Arvizu Zara-Zua would re-establish, and confirm, the permanency the children have enjoyed in the custody of Mr. and Mrs. Williams.

f. *The likelihood of older children remaining in long-term foster care upon termination of parental rights due to emotional or behavioral problems or any special needs of the children.* Mr. and Mrs. Williams initiated the instant TPR proceedings for the express purpose of adopting the children. If TPR is granted by the Court, there is little likelihood that the children would ever return to foster care even if emotional or behavioral problems or special needs would develop in the children as they grow older.

g. *The children's ability to form a significant relationship with a parental substitute and the likelihood that the children will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties.* As discussed above, the TPR proceedings have disturbed an already established parent-child relationship between the Petitioners and the children. Alex and Michelle consider themselves part of the Williams family and have experienced emotional distress as a result of the recent visitations with the mother. The termination of the parental rights of the biological mother and father will allow the children to return to the feeling of permanency and security they have always known with Mrs. Williams. The TPR will give the Petitioners the right to decide how and when the children should be permitted contact with their birth mother.

h. *The length of time that the children have lived in a stable, satisfactory environment and the desirability of maintaining continuity.* The children have lived with Leslie Williams since July of 2007, and with Mr. Williams since 2009. The children's home environment is stable and satisfies their needs.

i. *The depth of the relationship existing between the children and the present custodians.* The evidence established that the children are happy and firmly bonded to the Petitioners. Until the TPR proceedings were initiated, the children would have had no reason to believe that they were not the biological offspring of the Petitioners.

j. *The reasonable preferences and wishes of the children, if the court deems the children to be of sufficient intelligence, understanding, and experience to express a preference.* The children are likely still too young to testify in court regarding their preference about these proceedings. However, the testimony of Mrs. Williams and the GAL at the adjudicatory hearing clearly established that the children do not want to be removed from the custody of Mr. and Mrs. Williams.

k. *The recommendations for the children provided by the children's guardian ad litem or legal representative.* The GAL recommends termination of the rights of the parents and permanent commitment of both children for adoption by the Petitioners.

THEREFORE, after weighing credibility of witnesses, weighing all statutory factors, and based on the findings of fact and conclusions of law above, it is therefore

ORDERED AND ADJUDGED that:

6. The Amended TPR Petition filed by Arthur and Leslie Williams is granted as to the mother, Jessica Villeda.

7. The parental rights of the mother, Jessica Villeda, are hereby terminated as to the child, Alexsander C. Villeda, born August 30, 2006, and terminated as to the child, Alexzandra M. Villeda, born August 30, 2006.

8. The Amended TPR Petition filed by Arthur and Leslie Williams is granted as to the father, Hipolito Arvizu Zara-Zua.

9. The parental rights of the father, Hipolito Arvizu Zara-Zua, are hereby terminated as to the child, Alexsander C. Villeda, born August 30, 2006, and terminated as to the child, Alexzandra M. Villeda, born August 30, 2006.

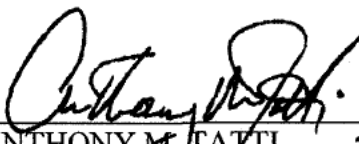
10. The children, Alexsander C. Villeda and Alexzandra M. Villeda, are hereby permanently committed to the custody of the Department of Children and Families for the purpose of subsequent adoption by the Petitioners, Arthur and Leslie Williams.

11. The Court will hear and consider the 30-day permanency plan required by §39.811(8), Florida Statutes, on **January 16, 2013, at 1:30 p.m.**, at the Hernando County Courthouse, Courtroom E, 20 N. Main Street, Brooksville, FL 34601.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, if you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator at the Hernando County Courthouse, 20 N. Main Street, Brooksville, FL 34601 or (352)754-4402, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing impaired or voice impaired call 711.

PARTIES HAVE THE RIGHT TO APPEAL FROM THE TERMINATION OF PARENTAL RIGHTS JUDGMENT AND DISPOSITION ORDER. PARENTS HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL ON APPEAL. IF A PARENT IS INDIGENT HE OR SHE IS ENTITLED TO HAVE COUNSEL APPOINTED FOR APPEAL. IF YOU (A PARENT) WISH TO APPEAL, YOU MUST FILE YOUR NOTICE OF APPEAL WITHIN THIRTY DAYS. FAILURE TO TIMELY FILE A NOTICE OF APPEAL CAN RESULT IN LOSS OF YOUR RIGHT TO HAVE YOUR CASE REVIEWED BY THE APPELLATE COURT.

DONE AND ORDERED in Chambers, at Brooksville, Hernando County, Florida on this 19 day of December, 2012.


ANTHONY M. TATTI
Circuit Judge



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by

U.S. Mail delivery this 19 day of December, 2012 to:

Arthur and Leslie Williams
c/o Melissa A. Tartaglia, Esq.
Attorney for Petitioners
Post Office Box 1409
Port Richey, Florida 34673

Jessica Villeda
c/o Lisa Yeager, Esq.

Aaron Porter
c/o Melanie Burpee, Esq.

DCF/CLS
Michael Plager, Esquire
Courthouse Mail

Guardian Ad Litem Program
Sylvia Y. Simmons, Esquire
Courthouse Mail

Children's Home Society
201 Howell Ave., Suite 300
Brooksville, FL 34601



Judicial Assistant

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO.: 2011-CF-1491-E-Z

AMBER ELIZABETH WRIGHT,

Defendant.

Filed in Open Court
The 1 Day of Dec, 2014
By K. Roman D.C.

**ORDER DENYING STATE'S
MOTION TO RECONSIDER APPELLATE RULING**

THIS CAUSE having come before the Court on November 12, 2014 for hearing on the State of Florida's Motion to Reconsider Appellate Ruling, and the Court having heard the testimony of the witnesses, the argument of counsel, and being otherwise fully advised in the premises, finds as follows:

I. PROCEDURAL HISTORY

1. On June 12, 2012, the Defendant was found Guilty of Murder in the First Degree after a jury trial. On August 22, 2012, the Defendant was adjudicated guilty and sentenced to Life Imprisonment.

2. On August 30, 2012, the Defendant filed a Notice of Appeal to the Fifth District Court of Appeal.

3. On May 30, 2014, the Fifth District Court of Appeal filed its Opinion reversing the Defendant's conviction and remanding the case for a new trial. The District Court issued a Mandate on July 22, 2014, which was received on the same date by the Clerk of Court.

4. On September 2, 2014, a Status Conference was conducted before the Court. The Defendant was present with her attorney and, at that time, waived the time requirements of

Florida Rule of Criminal Procedure 3.191(m). The Defendant's retrial was scheduled to commence on Monday, December 1, 2014.

5. On September 24, 2014, the State of Florida filed a Motion to Reconsider Appellate Ruling.

6. On October 15, 2014, the Court conducted a hearing on the Defendant's Motion to Determine Court's Jurisdiction. The Defendant was present at the hearing with her attorney. At the said hearing the Court ruled on the Defendant's Motion and found that the State's Motion to Reconsider Appellate Ruling was properly before the Court and would be considered as a motion in limine to determine the admissibility of evidence prior to the Defendant's retrial. The hearing on the State's Motion to Reconsider Appellate Ruling was scheduled for November 12, 2014.

7. Prior to the November 12, 2014 hearing, upon the agreement of the parties, the Court requested and received DVD copies of three (3) video-recorded interviews of the Defendant conducted on April 19, 2011, and a DVD recording of a group conversation between the Defendant, co-defendants, Charlotte Ely, Kyle Hooper, and Justin Soto, and the Defendant's mother, Tracey Wright. The Court also requested and received, upon the parties' agreement, transcripts of all four (4) of the DVD recordings¹ prior to the November 12, 2014 hearing.

8. On November 12, 2014, an evidentiary hearing was conducted on the State's Motion to Reconsider Appellate Ruling. At the hearing the Court received testimony from Deputy David Rasnick, Lt. Brian Spivey, and Det. Rhonda Stroup, all of the Marion County

¹ Transcripts of the Defendant's three (3) interviews on April 19, 2011, had previously been prepared by the State and provided to the Defendant in discovery prior to her original trial. Subsequent to the issuance of the Mandate from the Fifth District Court of Appeal, the State commissioned the preparation of a transcript of the digital video recording of the group conversation which was provided to the Court and the Defendant prior to the November 12, 2014 hearing.

Sheriff's Office, and all of whom were called by the State and cross-examined by the Defendant. Upon the consent and agreement of the parties, the Court also inquired directly of all three (3) witnesses. At the hearing, the State introduced DVD copies of the April 19, 2011 video-recorded interviews of Kyle Hooper (Ex. 1 and Ex. 3), the Defendant (Ex. 2, Ex. 4, and Ex. 7), and the video recording of a group conversation between the Defendant, co-defendants, Charlotte Ely, Kyle Hooper, and Justin Soto, and the Defendant's mother, Tracey Wright (Ex. 5).²

9. In its consideration of the State's Motion, the Court has also reviewed the following documents, all of which are contained in the court file maintained by the Clerk of Court in the instant case or are part of the Record on Appeal and/or the appellate court records of the instant case before the Fifth District Court of Appeal:

- a. Motion to Suppress Statements Made by Defendant During In-Custody Interrogation filed on March 28, 2012;
- b. State's Response to Defendant's Motion to Suppress Statements filed on April 23, 2012;
- c. Transcript of Suppression Hearing before the Honorable David B. Eddy, Circuit Judge, on April 25, 2012;
- d. Order Granting In Part/Denying In Part Defendant's Motion to Suppress Statements Made by Defendant During In-Custody Interrogation entered on May 1, 2012;
- e. Initial Brief of Appellant filed on May 12, 2013;
- f. Answer Brief of Appellee filed on or about June 7, 2013;
- g. Reply Brief of Appellant filed on August 13, 2013;
- h. Notice of Supplemental Authority filed on or about April 10, 2014;
- i. Corrected Opinion of the Fifth District Court of Appeal entered on May 30, 2014;

² Exhibit 6 was a copy of the written *Miranda* warning signed by the Defendant, and signed and dated by Det. Stroup.

- j. Motion for Rehearing/Rehearing *En Banc* filed on or about June 12, 2014; and
- k. Response to Motion for Rehearing/Rehearing *En Banc* filed on June 23, 2014.

10. The Court has also reviewed the video recording, maintained on the District Court's website, of the oral argument on the Defendant's appeal conducted on April 10, 2014, before the assigned panel of the Fifth District Court of Appeal.

II. TIMELINE OF EVENTS AND THE FIRST TWO (2) STATEMENTS OF THE DEFENDANT AND KYLE HOOPER ON APRIL 19, 2011

1. On April 19, 2011 at approximately 9:33 a.m., Deputy David Rasnick of the Marion County Sheriff's Office received a telephone call from the Defendant's mother, Tracey Wright. Dep. Rasnick knew Ms. Wright as a family relation by marriage. As a result of the family relationship, Dep. Rasnick knew both the Defendant and her brother, Kyle Hooper. Dep. Rasnick arrived at Ms. Wright's residence at approximately 10:18 a.m. and spoke with Ms. Wright and with Kyle Hooper. Deputy Rasnick communicated the information he received from Tracey Wright and Kyle Hooper to his superiors and he was instructed to request that Kyle Hooper, the Defendant, Charlotte Ely, Justin Soto and Tracey Wright accompany him back to the Sheriff's Office for interviews.

2. At approximately 10:30 a.m. Detective Rhonda Stroup and several other detectives were summoned to a meeting at the Sheriff's Office by Lt. Brian Spivey and briefed as to the information received by Dep. Rasnick. The detectives were also advised that a number of subjects would be en route to the Sheriff's Office. At that time, Det. Stoup was assigned to interview Kyle Hooper and the Defendant. Det. Donald Buie was assigned to interview Charlotte Ely and Det. Miriam Diaz was assigned to interview Justin Soto.

3. At 10:41 a.m. Dep. Wright transported the Defendant, Charlotte Ely, Kyle Hooper and Justin Soto to the Marion County Sheriff's Office Operations Center. Ms. Wright followed behind in her own vehicle. Dep. Wright arrived at the Sherriff's Office with the Defendant and the other subjects at approximately 11:05 a.m.

4. There are three (3) adjacent interview rooms at the Marion County Sheriff's Office Operations Center, all of which are located in an area of the building near the space occupied by Major Crimes Unit. Two (2) of the rooms are furnished only with metal chairs (hard rooms). The third room is furnished with a small, soft leather sofa and a soft leather chair (soft room). All three rooms are equipped with audio and video recording equipment although on April 19, 2011, the video recorders were set to different times and dates. Det. Stroup testified that based upon her review of the recordings and the written waivers of rights signed by several of the subjects, the time and date reflected on the recorder in the soft room was accurate.

A. KYLE HOOPER'S FIRST INTERVIEW (SOFT ROOM RECORDING #1)

5. According to the time stamp on the soft room video recorder the recording of Kyle Hooper's first interview begins at 11:13 a.m. Kyle Hooper is brought into the room approximately three minutes and forty-six seconds (3:46) later by Lt. Brian Spivey. Tracey Wright is led into the room at 4:10 of the recording (approximately 11:17 a.m.). Det. Stroup enters the room approximately forty (40) seconds later. After conversation between the three, Det. Stroup asked Ms. Wright for permission to speak to Kyle Hooper alone. Ms. Wright agreed and left the room with Det. Stroup at approximately 23:10 of the recording (11:36 a.m.). Det. Stroup reentered the room approximately 50 seconds later and began a conversation with Kyle Hooper. At 55:13 of the recording (12:08 p.m.) Det. Stroup left the room, leaving Kyle Hooper alone. At 1:06:43 of the recording (approx. 12:20 p.m.), Det. Stroup reentered the room and then

left briefly, returning to the room with Tracey Wright at 1:07:56 of the recording. At 1:09:51 of the recording Det. Stroup left the room again, returning at 1:16:06 of the recording. At that point Det. Stroup escorted Kyle Hooper out of the soft room and returned with the Defendant at 1:16:43 of the recording (approx. 12:30 p.m.), leaving the Defendant alone in the room with her mother, Tracey Wright. The Defendant remained in the soft room with her mother until the end of the recording at 1:31:38 (approx. 12:45 p.m.).

B. DEFENDANT'S FIRST INTERVIEW (SOFT ROOM RECORDING #2)

6. The Defendant's first interview recording begins at 12:48 p.m. according to the time stamp on video recorder in the soft room. The recording is almost one (1) hour and thirty-nine minutes in overall length (1:38:48) and ends at approximately 2:27 p.m. The Defendant and her mother are present in the room when the recording begins and they are joined by Det. Stroup approximately 16 seconds after the recording begins. **At 18:34 of the recording (1:06 p.m.), Det. Stroup exits the room, leaving the Defendant and her mother in the room alone.** At 40:08 of the recording Ms. Wright leaves the room and reenters almost three (3) minutes later. At 58:27 of the recording (approx. 1:46 p.m.) the Defendant exits the room with an evidence technician and returns at 1:11:01 of the recording (approx. 1:59 p.m.). **At 1:36:35 of the recording (approx. 2:24 p.m.) Det. Stroup reenters the room, removes the Defendant, and returns with Kyle Hooper approximately one (1) minute later.** Kyle Hooper and Ms. Wright remain alone in the soft room for the remaining minute of the recording.

C. KYLE HOOPER'S SECOND INTERVIEW (HARD ROOM RECORDING #1)

7. The title menu of the recording of Kyle Hooper's second interview bears the incorrect date and time "Jan/ 6/09 11:27AM". The recording is from one of the hard rooms and is approximately one hour, three and one half minutes (1:03:32) in overall length. The recording

begins with an empty room. Det. Stroup testified that she left the soft room in order to have Kyle Hooper moved into the adjacent hard room where she interviewed him alone. Based on the recording from the soft room, Det. Stroup left the soft room to have Kyle Hooper brought to the hard room at approximately 1:06 p.m. At 3:23 of the hard room recording Det. Stroup enters the room with Kyle Hooper. Det. Stroup remains in the hard room with Kyle Hooper until 48:38 of the recording when she exited the room, leaving Kyle Hooper alone until she returned at 59:54 of the recording. At 1:02:42 of the recording Det. Stroup again left the hard room, returning approximately thirty (30) seconds later to remove Kyle Hooper and escort the Defendant into the hard room at 1:03:29 of the recording. **Based on the time of the recording from the Defendant's first interview in the soft room, she and Kyle Hooper switched rooms at approximately 2:24 p.m.**

D. DEFENDANT'S SECOND INTERVIEW (HARD ROOM RECORDING #2)

8. The recording of the Defendant's second interview in the hard room begins with Det. Stroup already speaking to the Defendant. Det. Stroup exits the hard room at 13:35 of the recording leaving the Defendant alone in the room until the Defendant exits the room at 15:45 of the recording. The recording is fifteen (15) minutes and fifty (50) seconds in total length.

9. A third recording in the soft room begins at 2:33 p.m. according to the title menu time stamp. The recording begins with Tracey Wright and Kyle Hooper alone in the soft room. Ms. Wright exits the room at 2:31 of the recording and returns at 4:42 of the recording. **At 15:04 of the recording (approx. 2:48 p.m.) the Defendant is led into the room by a uniformed deputy and Tracey Wright to leaves the room.** Based on the time extrapolated from the second and third recordings made in the soft room and the Defendant's video-recorded

movements in an out of the soft room, **the Defendant's second interview in the hard room occurred between 2:24 p.m. and 2:48 p.m.**

E. THE GROUP CONVERSATION (SOFT ROOM RECORDING #3)

10. The recording of the group conversation in the soft room, begun at 2:33 p.m., is approximately one hour, forty-seven minutes in overall length (1:47:59). After Tracey Wright exited the soft room and the Defendant entered at 2:48 p.m., she immediately stated "You told?" to Hooper. Hooper replied "I had to. They knew we were lying." Charlotte Ely is led into the room by Det. Buie approximately twenty-five (25) seconds after the Defendant entered the room. The three (3) then engaged a discussion comparing what they told the detectives. At 17:07 of the recording, Hooper stated "I don't want to see you or Charlie go down." To which Ely responded "But we already are" and the Defendant stated "We were the ones that lured him down there."

11. At 18:06 of the group conversation recording Ely asked "Did anyone ask for a lawyer?" Hooper replied "You, you can't...who's got money for a lawyer or an attorney?" Ely responded "They...they will appoint one to you." Hooper replied "They can appoint one to you, but what's the sense of having one...one's going to get appointed to you anyways when you go into the...when you go into court." The Defendant then interrupted and said "What's the point of having one when we're the ones who did it and we just told the truth. What's the point? We're all gone." Hooper replied "The only thing we can do is have a lawyer and...and put everything on Mike. That's the only thing we have left."

12. At 20:44 of the recording, Hooper stated "Listen...whatever they ask you tell the complete truth and nothing but the truth." The Defendant stated "But Mike did tell us both to stay in the room and not to come out." Hooper replied "I know. But when they ask you, you tell

the truth and nothing but the truth. Understand me? 'Cause the only way this detective can help us if you say the fucking truth.”

13. At 21:35 of the recording, Hooper stated “I need this detective to come in here and I need to talk to her.” Ely replied “And she’s not going to you with all of us.” Hooper stated “That’s what I’m saying. We’ll go in together and we’ll talk to her and ask...” and followed with the statement “I’m going to ask her what’s going to happen to us...what’s going on.”

14. At 22:52 of the recording, Hooper stated “No listen...we’ll all talk to this detective in here and we’ll all three going to talk to them. Do you understand me? We’re all three going to sit in here and tell them the same thing. ‘Cause it’s...’cause it’s all out in the open now...And we did not kill an innocent kid, ‘cause this kid is not innocent...so beyond that.”

15. At 29:14 of the recording Ely stated “I’m scared it’s going to be held against us that we lied in the first place.” Hooper replied “See, that’s why I said I need to talk to that detective. Because we’re scared. And she knows, ‘cause I was in here fucking balling my eyes out...”

16. At 36:49 of the recording, Ely stated “Cause I’m actually going to an actual jail and then an actual prison. It isn’t only juvenile shit.” The Defendant replied “Same here.” Hooper stated “Well, I’m probably be going to prison...” Ely interrupted “You can’t. You’re 15.” Hooper stated “Yep. They can trial me as an adult because of what we did.” The Defendant agreed “They can trial both of us as an adult because we both took part in it.” Ely responded “They can’t try you as an adult. They can try someone sixteen as an adult.” Hooper replied “No, they can trial a ten-year-old as an adult.” The Defendant completed Hooper’s comment “Depending on what he’s done.”

17. At 47:50 of the recording, Ely is led out of the room by Det. Buie to use the restroom. When Ely returns to the room at 51:50 of the following conversation ensued:

ELY: I talked to her. She's the one who took me to the bathroom. I was...like...we all wanted to talk to you. Like all of us...all three together wanted to talk to you.

DEFENDANT: Is that the lady that you were talking to?

HOOPER: Which one was it?

DEFENDANT: With the black hair. I was...got the one with the red hair.

HOOPER: That's the one I had. Was...was she a cop?

ELY: No.

DEFENDANT: That's the one Roach had.

ELY: I...well...I asked her...I said, "Were you with..."

HOOPER: We talked to the one with the red hair.

ELY: Okay. But why don't you get Uncle or whatever his...he is. Why don't you get his attention and ask him to find her.

18. At 56:05 of the recording, Ely stated "You know that like...there's like a camera somewhere around in here. The Defendant replied "Yep." Hooper stated "I was...like...yeah, but I was..." Ely stated "I was trying to look and see where it was. And I'm sure there's...like...microphones." The Defendant agreed "Hm-hmm." Hooper replied "That's alright."

19. At 1:05:42 of the recording, Det. Stroup entered the room and asked the Defendant where the clothes she had been wearing were located. After a brief dialogue between the Defendant and Det. Stroup about her clothing, at 1:06:31 of the recording, Hooper asked Det. Stroup "Can you tell us anything what's going to happen to us?" Det. Stroup answered affirmatively, but indicated she would be back shortly to do so. After Det. Stroup left the room, Det. Buie entered the room and engaged in a brief conversation with Ely about what she had been wearing.

20. At 1:08:32 of the recording Det. Stroup re-entered the room and, after confirming information about clothing with Hooper, began an approximately six (6) minute conversation

with the Defendant, Ely and Hooper wherein the detective informed the group that: (1) they would all be booked for first degree premeditated murder; (2) Hooper and the Defendant would go to the Juvenile Assessment Center and Ely would go to the Marion County Jail; and (3) they would have no bond, and wouldn't be getting out. The Defendant asked "Like, for how many years?" which prompted an explanation by Det. Stroup about the extent of the group's involvement in the murder.

21. At 1:10:03 of the recording, in response to Ely's suggestion that she was afraid not to participate because co-defendant Bargo had a gun, Det. Stoup stated "Stop it. Stop it. Stop it. Do you think we haven't been listening to everything you guys have been saying in here? Are you...are you that stupid really?"

22. At 1:10:25 of the recording the following conversation ensued:

DET. STROUP: But anyway, that's what's going to happen. It is one step at a time. Remember to breathe. That's how we get through stuff like this, okay. But you know what I will say...you, sir...I have a lot of admiration for, because at least you told the truth, okay. And you told these guys hat anything they say best well be the truth and nothing but the truth, which is a very smart thing to tell them. This was...you guys made some bad decisions.

DEFENDANT: Yes, ma'am.

DET. STROUP: Very bad decisions. And I know, looking at ya'll now, that when you look back on those decisions, you can admit they were very bad decisions, okay.

HOOPER: Yes, ma'am.

DET. STROUP: But now we're all going to man up to the fact that we made some bad decisions, okay, and we're going to look take this one thing at a time. You'll be booked into the jail. You'll be formally charged. However, this is not the...the...the...your guilty phase or sentencing phase. You still have a trial to look forward to and all that good stuff, okay.

ELY: Hm-hmm.

DET. STROUP: So when you leave here today, I can't tell you...yeah, well you're going away 25 to life, or something like that. That's not what this is about, okay. We established here today that there was a plan to murder someone. We established who was involved in that plan. We've established that the plan did take place, and that we do have somebody that's been murdered. That's what we established today, so...

ELY: Is there any way that we can get ahold of my mother-in-law?

DET. STROUP: Absolutely. You will have...when you get booked into the jail, they will let you make...

ELY: I don't know her number though. It's in my phone.

DET. STROUP: Okay, we'll get your phone to you.

DEFENDANT: What...how...is Roach going to go through the same thing as us?

DET. STROUP: Yes, he is, too. He's admitted his part. He will be booked also.

DEFENDANT: All right.

DET. STROUP: Yes, he is too. It was just because of the way we had the rooms set up that we...Roach had to be last. Okay? I know that...you know, I can't imagine what ya'll feel right now. I really can't. I mean, I can imagine but, I can't. You guys are looking at...this is a very serious crime. I don't think it gets much more serious than this. Okay?

But you know what? I'm glad that you guys told the truth. I think that you guys will all feel better for it. And you who lies...obviously, when a couple tell the truth and one lies, that's a bad thing to be. Don't be the liar. That's the thing you don't want to be in a situation like this. You want to be the one that everybody can look at and go, "Hey, that one told the truth."

DEFENDANT: Is there any way that we're going to be able to talk to my mom?

DET. STROUP: Yeah, I told your mom that I would let you guys see her before you left, okay.

HOOPER: All right.

DET. STROUP: So everybody be calm.

ELY: Can I get a couple of numbers out of my phone?

DET. STROUP: Absolutely. We'll get you everything you need before you get booked in, okay. Now nobody has to wonder what's going to happen to them, okay. If you've got any questions, I'm always going to be here, okay. It's not like, you know, I just go away. Okay?

HOOPER: Yeah.

Det. Stroup then left the room at 1:14:42 of the recording.

23. At 1:21:52 of the recording, Justin Soto enters the soft room.
24. At 1:23:33 of the recording, Kyle Hooper is removed from the room.
25. At 1:33:55 (approx. 4:07 p.m.) of the recording, the Defendant is removed from the room.
26. At 1:41:24 of the recording, Charlotte Ely is removed from the room.
27. The group conversation recording ends at 1:47:59 (approx. 4:21 p.m.) as Justin Soto is handcuffed and removed from the soft room.

F. DEFENDANT'S THIRD INTERVIEW (SOFT ROOM RECORDING #4)

28. **The Defendant's third interview recording begins at 5:50 p.m. on April 19, 2011, according to the time stamp on video recorder in the soft room.** The recording is just over twenty-seven minutes in overall length (27:14) and ends at approximately 6:17 p.m.

29. Based on the time extrapolated from the third and fourth recordings made in the soft room, **at least three (3) hours and two (2) minutes elapsed between the conclusion of the Defendant's second interview and the beginning of her third interview.**

30. Det. Stoup testified that during the period between the conclusion of the group conversation (approx. 4:21 p.m.) and the beginning of the Defendant's third interview, the Defendant remained in the Sheriff's Office Operations Center in the area of the building where the Major Crimes Unit was located. Det. Stoup testified that the Defendant spent the time prior to her third interview either seated in a chair next to Det. Stoup's desk in a large room, divided by cubicle partitions, in which all of the detectives' desks were located, or in a large conference room located near the detective bay where the Defendant would have been seated at a large table with her mother.

III. THE ADMISSIBILITY OF THE DEFENDANT'S THIRD STATEMENT

1. Notwithstanding its title, the State's Motion to Reconsider Appellate Ruling is a pretrial request by the State of Florida for a ruling on the admissibility of the Defendant's third video-recorded statement to Detective Rhonda Stroup made at the Marion County Sheriff's Office on April 19, 2011.

2. The admissibility of the Defendant's first two (2) statements to Det. Stoup on April 19, 2011 are not raised by the State's Motion and will not be addressed herein other than a general consideration of the time and length of the said statements and a determination as to the

circumstances and voluntariness of the Defendant's second statement as those issues relate to the admissibility of the Defendant's third statement.

3. Under the facts and circumstances established by the video recordings and the testimony adduced at the hearing, the admissibility of the Defendant's third statement to Detective Rhonda Stroup on April 19, 2011 is governed by the decisions of the United States Supreme Court in *Oregon v. Elstad*, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985), and of the Florida Supreme Court in *Davis v. State*, 859 So.2d 465 (Fla. 2003).

The United States Supreme Court explained in *Oregon v. Elstad*, that the failure to administer the *Miranda* warnings before eliciting a confession does not *necessarily* render any subsequently warned statement inadmissible. Instead, if a "careful and thorough administration" of the *Miranda* warnings are later given, and the *Miranda* rights are waived, the condition that "rendered the unwarned statement inadmissible" is "cure[d]." *Elstad*, 470 U.S. at 311, 105 S.Ct. 1285. In *Elstad*, the police first questioned the defendant, who was eighteen and in his home in the presence of his parents, without the *Miranda* warnings having been administered. 470 U.S. at 300-01, 105 S.Ct. 1285. The defendant responded to the questioning with inculpatory statements. *See id.* at 301, 105 S.Ct. 1285. Police then transported him to the station and fully advised him of his rights, whereafter he executed a written statement. *See id.* at 301-02, 105 S.Ct. 1285. The Supreme Court concluded that the first statements were properly suppressed, but that it was not necessary to suppress the statements made after the *Miranda* waiver, which was knowing, intelligent and voluntary. *See id.* at 315-18, 105 S.Ct. 1285.

The Supreme Court explained:

It is an unwarranted extension of *Miranda* to hold that a simple failure to administer the warnings, unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will, so taints the investigatory process that a subsequent voluntary and informed

waiver is ineffective for some indeterminate period. Though *Miranda* requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made.

Id. at 309, 105 S.Ct. 1285, 1293. The Supreme Court also explained that the suspect's knowledge that he has "let the cat out of the bag" during a voluntary, but un-*Mirandized* statement, does not, by itself, taint a subsequent statement given after receiving the constitutional warnings:

The Oregon court nevertheless identified a subtle form of lingering compulsion, the psychological impact of the suspect's conviction that he has let the cat out of the bag and, in so doing, has sealed his own fate. But endowing the psychological effects of *voluntary* unwarned admissions with constitutional implications would, practically speaking, disable the police from obtaining the suspect's informed cooperation even when the official coercion proscribed by the Fifth Amendment played no part in either his warned or unwarned confessions. As the Court remarked in *Bayer*:

"[A]fter an accused has once let the cat out of the bag by confessing, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed. He can never get the cat back in the bag. The secret is out for good. In such a sense, a later confession may always be looked upon as fruit of the first. But this Court has never gone so far as to hold that making a confession under circumstances which preclude its use, perpetually disables the confessor from making a usable one after those conditions have been removed." 331 U.S., at 540-541, 67 S.Ct., at 1398.

Even in such extreme cases as *Lyons v. Oklahoma*, 322 U.S. 596, 64 S.Ct. 1208, 88 L.Ed. 1481 (1944), in which police forced a full confession from the accused through unconscionable methods of interrogation, the Court has assumed that the coercive effect of the confession could, with time, be dissipated. See also *Westover v. United States*, *supra*, 384 U.S., at 496, 86 S.Ct., at 1639.

This Court has never held that the psychological impact of voluntary disclosure of a guilty secret qualifies as state compulsion or compromises the voluntariness of a subsequent informed waiver. The Oregon court, by adopting this expansive view of Fifth Amendment compulsion, effectively immunizes a suspect who responds to pre-*Miranda* warning questions from the consequences of his subsequent informed waiver of the privilege of remaining silent. See 61 Ore.App., at 679, 658 P.2d, at 555 (Gillette, P.J., concurring). This immunity comes at a high cost to legitimate law enforcement activity, while adding little desirable protection to the individual's interest in not being *compelled* to testify against himself. *Cf.*

Michigan v. Mosley, 423 U.S. 96, 107–111, 96 S.Ct. 321, 328–330, 46 L.Ed.2d 313 (1975) (WHITE, J., concurring in result). When neither the initial nor the subsequent admission is coerced, little justification exists for permitting the highly probative evidence of a voluntary confession to be irretrievably lost to the factfinder.

Id. at 311-12, 105 S. Ct. 1285, 1294-95.

While Det. Stroup is direct and perhaps aggressive in her insistence that the Defendant tell her the truth at the outset of the second statement, there is nothing coercive or otherwise inappropriate about the interrogation and clearly nothing to suggest that the Defendant's statement was not voluntarily made. Though done more than three (3) hours after her second thirteen (13) or fourteen (14) minute statement to Det. Stroup, the reading of the Defendant's rights prior to the third statement was complete. The video recording of the Defendant's third statement begins with Det. Stroup advising the Defendant that she "needed" to read her rights and pointing out that she incorrectly thought she had done it earlier. After telling her again "this is something I have to do," Det. Stroup read the printed form to the Defendant and had her initial and sign the document. The Defendant acknowledged that "it was out" and knowingly and voluntarily waived her rights before giving the third statement.

The Defendant's comments and behavior during the hour and a half that she is seated in a room with her co-defendants, immediately after her second interview, confirm that her statements during the second interview were voluntary. The Defendant's first words to her brother ("You told them") makes it abundantly clear that her primary motivation in making the second unwarned statement was the fact that Det. Stroup already knew what had happened. After comparing their statements to the detectives, the Defendant, her brother, Kyle Hooper, and Charlotte Ely all agreed that they must now tell the complete truth about their involvement in the offense. They express an understanding of their right to appointed counsel, and an understanding

that even as juveniles, the Defendant and her brother could be charged as adults. All three agree that they should speak again to Det. Stroup together, and Charlotte Ely actually makes that request of an officer when she is allowed to use the restroom. Seated next to the Defendant on a sofa, Ely looked around the room and announced her belief that the room was being monitored by a camera and microphones. Near the end of the group conversation, Det. Stroup, in response to the group's request, enters the room and explains that all three (3) were going to be charged with First Degree Murder and that all three (3) would be held without bail and would not be getting out. Significantly, Det. Stroup makes it clear to all three that their conversations were, in fact, being monitored.

4. In *Davis v. State*, 859 So.2d 465 (Fla. 2003), the Florida Supreme Court relied on *Elstad* to distinguish its own decision in *Ramirez v. State*, 739 So. 2d 568, 574-75 (Fla. 1999) and affirm the denial of a motion to suppress. Davis, a suspect in a murder, was arrested in Texas after a high-speed chase with Texas officials. Two Florida detectives traveled to Texas and questioned Davis while he was being held in a local Texas jail. After interviewing a co-defendant, the Florida officers questioned Davis without administering *Miranda* warnings for approximately eight to ten minutes during which Davis admitted that he had killed the victim. The officers then advised Davis of his *Miranda* rights, had him sign a written waiver and began recording Davis's statements. *Davis*, at 470-471.

The Court explained why *Elstad* rather than *Ramirez* controlled:

Davis relies upon this Court's decision in *Ramirez v. State*, 739 So.2d 568 (Fla.1999), to argue that, like *Ramirez*, the circumstances surrounding this case are distinguishable from *Elstad*. We disagree and find that the trial court properly distinguished *Ramirez* in denying Davis's motion to suppress.

In *Ramirez*, the defendant had discussed his participation in a crime with police officers prior to being given a *Miranda* warning. In considering whether the statements given after Ramirez was read his *Miranda* rights were admissible, this Court applied *Elstad*. This Court, however, concluded that the circumstances

surrounding the statements in *Ramirez* were distinguishable from *Elstad* because Ramirez was not given a careful and thorough administration of his *Miranda* warnings. This Court found that the officers in that case instead employed a concerted effort to downplay and minimize the significance of the *Miranda* rights, thus exploiting the statements previously made to the officers and tricking Ramirez into not exercising his rights. *Ramirez*, 739 So.2d at 576. This Court noted that Ramirez had just turned seventeen years old and that the officers in that case lulled the young defendant into a false sense of security that they were not arresting him and did not permit him to contact his parents before questioning. Finally, the officers administered the *Miranda* rights orally and did not secure a written waiver until after Ramirez had fully confessed to his involvement in the crime. *Id.* at 577–78. This Court therefore held that Ramirez's confession should have been suppressed.

Davis, at 471-72.

Like the instant case, the facts of *Davis* suggested no failure by the officers to give a careful and complete administration of *Miranda* warnings, no improper effort to minimize or downplay the significance of the warnings and no trickery. *Elstad*, rather than *Ramirez*, dictated the outcome of *Davis*'s appeal. Seven years later, the Florida Supreme Court would again discuss *Davis* and *Elstad* in a case involving a “mid-stream” administration of *Miranda* warnings.

In *Ross v. State*, 45 So.3d 403 (Fla.2010), the Florida Supreme Court reviewed the law governing the effectiveness of “mid-stream” *Miranda* warnings, meaning those delayed until after the start of questioning. *Ross* reiterated the long-standing rule that places a “heavy burden” on the State to show that an interviewee who confesses after *Miranda* warnings were given waived his or her rights knowingly and intelligently. 45 So.3d at 418. Normally, this happens at the start of an interrogation. The court observed that *Miranda* warnings are not always sufficient when their administration is delayed until well into an interrogation. *Id.* at 418–19. The court concluded that

[t]he analysis of the admissibility of statements made following a custodial interrogation and after the delayed administration of *Miranda* warnings is based on the totality of the circumstances, with the following being factors important in making this determination: (1) whether the police used improper and deliberate tactics in delaying the administration of the *Miranda* warnings in order to obtain the initial statement; (2) whether the police minimized and downplayed the significance of the *Miranda* rights once they were given; and (3) the circumstances surrounding both the

warned and unwarned statements including “the completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and second [interrogations], the continuity of police personnel, and the degree to which the interrogator's questions treated the second round as continuous with the first.” In addition, there are other circumstances to consider on a case-by-case basis, such as the suspect's age, experience, intelligence, and language proficiency.

Id. at 424.

Wright v. State, --- So.3d ---, 39 Fla. L. Weekly D1143, 2014 WL 2217310, at *5 (Fla. 5th DCA 2014).

5. The pretrial order denying the Defendant’s Motion to Suppress the third statement included no findings of fact. Furthermore, this Court’s review of the record on appeal revealed no clear description of the time and circumstances of the recorded group conversation that occurred between the Defendant’s second and third statements. Based on the record it was presented, the District Court treated the Defendant’s second and third statements as “one ‘integrated and proximately conducted questioning,’ and not separate events...” and held that the Florida Supreme Court’s decision in *Ross* required suppression of the Defendant’s third statement. Having determined that Det. Stroup had not deliberately delayed the administration of *Miranda* warnings to obtain the first inculpatory statement from the Defendant, and that the Detective did not minimize or downplay the significance of the warnings during the following statement, the District Court focused its analysis on what it believed to be the “other circumstances” of the Defendant’s warned and unwarned statements.

Specifically, we look at whether the two statements were made under circumstances sufficiently similar to indicate that the interrogation was, in actuality, one “integrated and proximately conducted questioning” and not two separate events. 45 So.3d at 432. Here, much like the two rounds of questioning in *Ross*, all the interviews were conducted in the same building, by the same officer *within a short span of time*, and covered almost exactly the same information. After receiving her waiver, Detective Stroup referred repeatedly to Wright's earlier statements, and urged her to reiterate her earlier statements and

clarify inconsistencies in the earlier interviews. The only difference was the manner of questioning: intense, accusatory and confrontational in the second interview, but calm and patient in the third. *The second and third interviews were separated by at most forty-five minutes (and perhaps as little as fifteen minutes), during which time Wright was arrested and handcuffed.* Thus, we conclude that the second and third interviews constituted one “integrated and proximately conducted questioning,” and not separate events as the State asserts. *See Ross*, 45 So.3d at 432. (Emphasis added)

Wright, at *6.

6. The evidence presented to this Court, leads it to the conclusion that *Elstad* and *Davis* support the admissibility of the Defendant’s third statement to Detective Rhonda Stroup on April 19, 2011. *Ross*, while helpful in its careful description and discussion of the circumstances to be considered in evaluating the delayed or “mid-stream” administration of *Miranda* warnings in a single custodial interrogation, does not require suppression of the Defendant’s third statement. The second and third interviews were separated by more than three hours during which time the Defendant was permitted to sit, unrestrained for a period of approximately ninety (90) minutes, and discuss the case and the content of her statement with her co-defendants. After being advised that she would be arrested, charged with murder and incarcerated, the Defendant was nevertheless permitted to sit with the detective at her desk or in a large conference room with her mother for approximately another ninety (90) minutes. The recorded group conversation reveals that even in the absence of a *Miranda* warning, the Defendant had an understanding of her rights and of the criminal justice system. Having been encouraged by her co-defendants to tell the truth and having articulated a desire to speak with Detective Stroup again after her unwarned statement, there is no basis to conclude that the Defendant’s third statement, given after a full and complete *Miranda* warning, is in any way tainted or rendered involuntary by the failure of the detective to advise the Defendant of her rights during the second statement.

IV. APPLICABILITY OF THE LAW OF THE CASE DOCTRINE

1. The State of Florida relies on the holding of *Thornton v. State*, 963 So.2d 804 (Fla. 3d DCA 2007) to suggest that this Court is at liberty to permit the admission of the Defendant's third statement notwithstanding the decision and order of the Fifth District Court of Appeal.

The doctrine of the law of the case requires that "questions of law *actually decided on appeal* govern the case in the same court and the trial court, through all subsequent stages of the proceeding." See *State v. McBride*, 848 So.2d 287, 289 (Fla.2003); *Florida Dep't of Transp. v. Juliano*, 801 So.2d 101, 105 (Fla.2001); *U.S. Concrete Pipe Co. v. Bould*, 437 So.2d 1061 (Fla.1983); *State, Dep't of Revenue v. Bridger*, 935 So.2d 536, 538 (Fla. 3d DCA 2006). This doctrine "is limited to rulings on questions of law actually presented and considered on a former appeal." *U.S. Concrete*, 437 So.2d at 1063; see also *Juliano*, 801 So.2d at 106 ("Additionally, the law of the case doctrine may foreclose subsequent consideration of issues implicitly addressed or necessarily considered by the appellate court's decision."). These rulings are then, necessarily, "except in exceptional circumstances, no longer open for discussion or consideration in subsequent proceedings in the case." *Greene v. Massey*, 384 So.2d 24, 28 (Fla.1980). A trial court, therefore, generally lacks discretion to change the law of the case. *Bridger*, 935 So.2d at 539. There are two exceptions to the confines of the doctrine: first, a trial court is not bound to follow the prior ruling if the facts upon which the prior ruling was made are no longer the facts of the case; and, second, an appellate court may reconsider and correct an erroneous ruling that has become the law of the case where a manifest injustice would result. See *Juliano*, 801 So.2d at 106.

Thornton, at 809.

2. It is apparent from this Court's review of the original motion, response and the transcript of the original hearing on the Defendant's Motion Suppress Statements Made by Defendant During In-Custody Interrogation conducted on April 25, 2012, no mention was made, or evidence presented, establishing the existence of the group conversation recording and/or the passage of more than three (3) hours of time between the Defendant's second and third statements. During the trial, the State elicited, through Det. Stroup, the fact that after the individual interviews were conducted, the Defendant, Kyle Hooper, Justin Soto and Charlotte

Ely were all placed in an interview room together and that their conversation was recorded. (Vol. 10, 689-690). A single statement by the Defendant during the group conversation was introduced through the testimony of Det. Stroup. (Vol. 10, 690). Based upon the manner in which the question was asked, it is entirely possible that the trial judge and the jury would have concluded that the group conversation occurred after the Defendant's third interview.

At the hearing on November 12, 2014, this Court inquired of the Defendant's counsel as to whether he had received a DVD copy of the group conversation in discovery, whether he was aware of the conversation, and whether he understood when in the sequence of events on April 19, 2011, it had occurred. After receiving an affirmative reply, this Court inquired of both counsel as to whether or not the trial judge was ever advised of the existence of the group conversation in any off-the-record conversation. Both counsel replied "No."

3. Other than the evidence of the group conversation during the trial described above and a brief comment by the Assistant Attorney General during oral argument that the group discussion had occurred prior to the third interview and the erroneous comment that a recording of the group conversation was played for the jury, this Court was unable to find any definitive indication in the record before the District Court which would have revealed exactly when the group conversation had occurred, the content of the conversation, or that a period in excess of three (3) hours elapsed between the Defendant's second and third statements.

4. Based upon this Court's review of the record, the facts upon which the District Court based its ruling were incomplete and presented a view of the circumstances surrounding the Defendant's third statement that was inaccurate. Under the exceptions to the doctrine of the law of the case recognized by *Thornton*, whether the facts upon which the District Court's ruling are "no longer the facts of the case" is a determination that this Court is not prepared to make,

particularly in light of the District Court's directive that "a new trial must be conducted without introducing Wright's third statement." The applicability of *Thornton's* second exception lies solely in the hands and collective wisdom of the Judges of the District Court.

BASED ON THE FOREGOING, it is therefore

ORDERED AND ADJUDGED that the State of Florida's Motion to Reconsider Appellate Ruling is hereby **DENIED**. Having determined that the State's Motion is in the nature of a pretrial request for ruling on the admissibility of a confession or admission, the instant Order is an Order of suppression and subject to interlocutory appeal by the State pursuant to Florida Rule of Appellate Procedure 9.140(c)(1)(B). The State shall have fifteen (15) days from the rendition of this Order within which to file its Notice of Appeal.

DONE AND ORDERED in Chambers at Ocala, Marion County, Florida this 1 day of December, 2014.


ANTHONY M. VATTI
Circuit Judge


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of December, 2014 a true copy of this order was furnished by electronic service to:

Amy Beth Berndt
Assistant State Attorney
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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA

IN RE: The Marriage of

CASE NO: 42-2012-DR-3111-FC

EDWARD J. A. O'HANRAHAN,
Petitioner/Husband,

and

TRACY ANN O'HANRAHAN,
Respondent/Wife.

FILED
DEPENDENCY
15 MAR 17 AM 11:50
DAVID R. ELLSPEERHANN
CLERK OF CIRCUIT COURT
MARION COUNTY, FL

**ORDER ON HUSBAND'S MOTION TO DETERMINE
THE VALIDITY OF THE ANTENUPTIAL AGREEMENT DATED
FEBRUARY 1, 1996**

THIS CAUSE came before the Court for hearing on February 6 and 9, 2015 on the Petitioner/Husband's Motion to Determine the Validity of the Antenuptial Agreement Dated February 1, 1996. The Court, having reviewed the file, the Petitioner/Husband's Motion, the testimony of the witnesses and having considered the argument and legal authority presented by counsel for both parties at the hearing, and being otherwise fully advised in the premises hereby finds as follows:

I. GENERAL MATTERS

1. The Husband filed a Verified Petition for Dissolution of Marriage and Other Relief on August 31, 2012. The Wife was served by substitute service (Attorney Bond) on September 24, 2012, and filed her Answer to Husband's Petition for Dissolution of Marriage and Other Relief, Affirmative Defenses, and Counter-Petition for Dissolution of Marriage and as well as her Verified Motion for Temporary Relief on October 15, 2012.

2. The Wife's Answer raises the affirmative defenses of: (1) "undue influence" or "overreaching"; (2) "coercion" and "duress"; (3) "fraud" and "misrepresentation"; and (4) that

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the agreement “makes unfair or unreasonable provisions for the Wife given the circumstances of the parties.”

3. The Motion for Temporary Relief requested majority time-sharing with the parties’ minor child, temporary child support, and alimony. The motion also requested that the Court order the Husband to pay all mortgage and other expenses related to the marital home, pay for health insurance and other health-related expenses for the Wife and the minor child, and to pay for the Wife’s automobile and other living expenses.

4. On November 20, 2012, the Wife filed her Notice of Specific Relief Requested, specifically requesting that the Court order the Husband to pay \$10,000.00 per month in temporary support, \$3,800.00 per month in child support, temporary attorney’s fees of \$20,000.00, and temporary CPA fees of \$10,000.00.

5. On December 3, 2012, a hearing was held on the Wife’s Verified Motion for Temporary Relief and her Notice of Specific Relief Requested. On January 18, 2012, the Court entered an Order providing, in pertinent part, that the Husband pay \$12,400.00 per month in temporary alimony, \$3,800.00 per month in child support, \$20,000.00 in temporary attorney’s fees, and suit monies and costs in the amount of \$5,000.00.

6. On March 14, 2014, the Husband filed the Petitioner’s Amended Verified Motion for Partial Final Summary Judgment seeking the Court’s ratification of a pre-nuptial agreement entered into by the parties on February 1, 1996, and judgment on the issues of equitable distribution and alimony. The Husband’s motion alleged that based on the “pleadings in this cause, the affidavits in the record, the transcripts of the depositions of the parties, and the Agreement itself, there are no genuine issues as to any material fact...”

7. On August 4, 2014, the Court entered an Order Denying Petitioner’s Amended

Verified Motion for Partial Final Summary Judgment.

8. On September 10, 2014, the Husband filed the instant Motion to Determine the Validity of the Antenuptial Agreement Dated February 1, 1996.

9. At the hearing, the Husband presented the live testimony of himself, the Wife, and Richard Sirmans. The Wife presented testimony from her mother, Patricia Canatsey. The parties stipulated to the admission of the deposition testimony of both of the parties and of numerous witnesses who were either deceased or who lived more than 100 miles from Ocala, Florida, including:

- a. David Levenreich - I (Husband's Exhibit 9);
- b. David Levenreich - II (Husband's Exhibit 10);
- c. Theodore Culbertson (Husband's Exhibit 11);
- d. Jean Bridges (Husband's Exhibit 12);
- e. Kimberly Sirmans (Husband's Exhibit 13);
- f. Douglas Buchwalter (Husband's Exhibit 14);
- g. Tracy Ann O'Hanrahan (Husband's Exhibit 16); and
- h. Edward J.A. O'Hanrahan, Jr. (Wife's Exhibit 2).

II. THE CIRCUMSTANCES OF THE PARTIES PRIOR TO THE MARRIAGE

1. According to the testimony of the parties, they became romantically involved in October 1990. At that time the Wife was employed as the manager of a car wash/service station in Inverness, Florida. The Husband was the sales representative and part owner of the company that supplied car wash chemicals and equipment to the Wife's place of employment. At the time their relationship began, the Wife was 20 years old and the Husband was 28 years old.

2. The parties' romantic relationship progressed quickly and they began living together within four to six weeks of their first "date." When the parties' relationship began, both were married, separated from their former partners and in the process of divorcing.

3. The parties' first shared home was a house in Dunedin, Florida owned by the Husband's father that the Husband rented. In 1991, the parties moved into a larger home, purchased by the Husband, in Safety Harbor, Florida where they resided together until early 1992. According to the Husband, the parties moved from the Safety Harbor home to reduce expenses as the Wife was pregnant and expecting the parties' first child in July 1992.

4. Prior to the birth of the parties' son, Michael, on July 30, 1992, the Husband sold the Safety Harbor residence and purchased a home on Pineland Drive in Clearwater, Florida. The Pineland Drive home was described by both parties as being much smaller and located in a much less desirable location than their home in Safety Harbor. The parties lived in the Pineland Drive home until after their marriage in 1996.

5. During the period of time that the parties lived together prior to marriage, the Husband maintained employment with, and a minority ownership interest in, A.J. Galloway Company, a business owned by the Husband's father. A.J. Galloway Company, is now Galloway Chemical Division of O'Hanrahan Consultants, Inc. and the Husband's ownership interest has grown from 25 percent during the time prior to the parties' marriage to "94 or 95" percent at the time of his deposition.

6. At the beginning of the parties' relationship the Husband testified that he was earning between \$375.00 and \$550.00 per week from his employment with the family business.

7. Both parties' testified that there were instances of domestic violence in their relationship although they differed on who was the aggressor during those instances. In his

deposition, the Husband testified that the couple had “plenty of arguments” but denied ever striking or hitting the Wife; rather, the Husband indicated that the Wife had struck him in the past. The Husband offered the testimony of Richard Sirmans, who testified that he witnessed the Wife strike the Husband on one occasion while the parties were married. The Wife testified in her deposition that she had been “beaten up...a minimum of 14 or 15 times.” According to the Wife, the violence in the parties’ relationship began prior to the birth of their first child, Michael. When pressed during her deposition, the Wife was only able to describe two (2) instances of violence by the Husband: the first occurring prior to the birth of Michael and the second in late 1996 after the parties’ marriage. During the hearing, when asked how many arguments between the parties became physical, the Wife answered “three, four, five...I can’t give you a number.”

8. Both parties testified that the subject of marriage was discussed at various times during their relationship, but was not seriously considered until the Husband purchased and presented the Wife with an engagement ring in early January 1995. The parties agreed that a date for their marriage was not seriously discussed until the Wife learned she was pregnant with what was believed to be triplets in late December 1995.

III. THE PREPARATION OF THE “ANTENUPTIAL AGREEMENT”

1. During his deposition, the Husband testified that the subject of a prenuptial agreement was first discussed by the parties in 1991, when the Husband indicated that he told the Wife that if he ever got married again he would want a “prenup.” According to the Husband, his desire to have a prenuptial agreement drafted was communicated to the Wife when the couple set a wedding date in late 1995. In her deposition, the Wife testified that the subject of a prenuptial agreement was first “sprung” on her after the wedding plans had been made and paid for, and the wedding invitations had been sent.

2. According to the Husband, he first discussed the preparation of a prenuptial agreement with his attorney, Douglas Buchwalter, in late 1995, and believed he was provided an initial draft of an agreement in late December 1995 or the first week of January 1996. The Husband testified that a copy of the first draft was provided to the Wife on the same day it was received from Mr. Buchwalter.

3. During her deposition, the Wife's recollection of first seeing a copy of the agreement centered around her belief that she and her mother took the agreement to her mother's attorney, David Levenreich, on the Saturday prior to the wedding day (Thursday, February 1, 1996). Based on her recollection of that Saturday meeting, she testified that she believed that she first gave her mother a copy of the agreement on the Thursday prior to the visit to the attorney's office. Despite accompanying her mother to Mr. Levenreich's office, the Wife maintained in her deposition that she never spoke with Mr. Levenreich about the agreement and only met him in passing in the waiting area of his office. Significantly, during her deposition the Wife made no mention of the Husband being out of town on business between January 27, 1996, and January 31, 1996.

4. At the hearing, the Wife testified that she first received a copy of the agreement on the evening that the Husband returned from a business trip to the Miami area just prior to the wedding. The Wife repeated her deposition testimony that her only meeting with Mr. Levenreich occurred when she met him briefly in the lobby of his office after her mother had concluded a meeting with him regarding the prenuptial agreement. The Wife's hearing testimony was vigorously cross-examined by the Husband's counsel regarding the inconsistencies concerning the dates she first saw the agreement and her meeting with Mr. Levenreich. The Wife acknowledged the inconsistencies and attempted several times during

cross examination to expand her responses to explain the difference in her recollection, but was limited by the nature of the questions being posed by the Husband's counsel. The Wife was never asked to completely explain on re-direct examination.

5. Douglas Buchwalter died prior to the hearing, but his deposition testimony was received into evidence on behalf of the Husband pursuant to the parties' stipulation (Husband's Exhibit 14). During his deposition testimony, Mr. Buchwalter expressed that his recollection was unclear as to the sequence of events preceding the signing of the "Antenuptial Agreement" on the morning of February 1, 1996. Although he was not certain, he testified that he believed he had discussions with the Husband about a prenuptial agreement approximately four or five weeks prior to a letter, dated January 27, 1996, that he received from the Husband.

The letter, the first document in Mr. Buchwalter's file, related the Husband's request that a provisions be included in the agreement regarding: (1) the requirement that the Husband purchase a life insurance policy for the benefit of the parties' children in the amount of "\$100,000 per child" in the event of the dissolution of the "O'Hanrahan Living Trust" or the sale of certain property held by the trust, and (2) the payment of "limited alimony" to the Wife. Mr. Buchwalter was equivocal when questioned regarding when the first draft of the agreement was prepared. He initially suggested that the first draft was prepared prior to Mr. O'Hanrahan's letter of January 27, 1996, and then later in the deposition testified that he did not believe that a draft of the agreement had been provided to the Husband prior to the January 27 letter. Mr. Buchwalter testified that on January 29, 1996, he faxed a draft of an agreement, including the provisions requested by the Husband, to a hotel in Deerfield Beach where the Husband was staying on business.

According to Mr. Buchwalter, the same draft agreement was then faxed on January 30,

1996, to David C. Levenreich, who had been identified in the Husband's January 27 letter, as the Wife's attorney. Mr. Buchwalter testified that he spoke with Mr. Levenreich on the telephone on January 30 or January 31, and made notes from the conversation on the original cover letter that had been faxed with the draft agreement to Mr. Levenreich. Based upon his notes, Mr. Buchwalter testified that Mr. Levenreich requested that, rather than making the purchase of life insurance contingent upon the status of the trust, the Husband instead be required to immediately purchase a term life insurance policy with the Wife as beneficiary, and that he be required to purchase additional insurance within thirty or sixty days of the birth of any child in the future.

6. Douglas Buchwalter's original case file concerning the "Antenuptial Agreement" was introduced into evidence at the hearing as Wife's Exhibit 1. The file, an 8½ x 14 inch manila folder, bears a typed adhesive label on the front cover with: the Husband's name; the file number "96-2"; the Husband's address; the words "Antenuptial Agreement"; the date "1/96" and a telephone number. The name "Ed" and another telephone number are written in blue ink on the label below the typed telephone number. The file contains a total of sixteen (16) typed pages, some bearing handwritten notes and/or signatures. Beginning with the document at the "bottom" of the file, the file is comprised of the following:

- a. A single-page typed letter, dated "1/27/96", addressed to "Douglas" bearing the typed name and handwritten initials of the Husband. The letter is typed on thin, "onion skin" type paper, which bears creases from being folded in a manner consistent with having been placed in an envelope.
- b. A typed facsimile cover sheet on the stationary letterhead of Douglas M. Buchwalter addressed to the Husband at the "Wellsley Inn" in Deerfield Beach from Mr. Buchwalter, dated "1/29/96". The document indicates that twelve (12) pages were faxed and requests that the Husband contact Mr. Buchwalter's office after review.
- c. A single-page typed document bearing the names of the Husband and the Wife, as well as their son. The document bears two lists of assets, one for the Husband and one for the Wife. The document is typed on the same "onion skin" type paper as

the letter described in paragraph "a" above, and also bears creases from being folded in a manner consistent with having been placed in an envelope.

- d. A typed facsimile cover sheet on the stationary letterhead of Douglas M. Buchwalter addressed to David C. Levenreich, Esq. from Mr. Buchwalter, dated "1/30/96". The document indicates that twelve (12) pages were faxed and requests that Mr. Levenreich contact Mr. Buchwalter's office after review.
- e. A photocopy of the signed "Antenuptial Agreement" comprised of nine (9) pages and two (2) pages of exhibits (Exhibit "A" – EDWARD J.A. O'HANRAHAN ASSETS; Exhibit "B" – TRACY ANN VONPITNER ASSETS). The photocopied agreement appears to have, at some time, been stapled together as there are staple holes in the upper left corner of each page.
- f. A single-page letter on plain paper addressed to "David L. Levenreich" from "Douglas M. Buchwalter, Esq." the first line of which reads: "Enclosed please find a copy of the executed Antenuptial Agreement for Mr. O'Hanrahan and Ms. Vonpitrner." The letter is unsigned and bears no handwritten initials or any other writing.

7. Neither party introduced, or claimed to have possession of, any other signed copies of the Antenuptial Agreement. The original signed agreement was never produced. Mr. Buchwalter testified that he believed that the original agreement was given to the Husband after it was executed by the parties on February 1, 1996.

8. At the hearing, the Wife presented the testimony of her mother, Patricia Canatsey. Ms. Canatsey testified that she first learned of the Husband's insistence on the Wife signing a prenuptial agreement on the Friday evening prior to the wedding when the Wife called her to discuss the issue. Ms. Canatsey testified that on Saturday (January 27, 1996) she arranged to meet her attorney, David Levenreich, at his office to discuss the legality of a prenuptial agreement. According to Ms. Canatsey, the Wife was not present during her Saturday meeting with Mr. Levenreich. Ms. Canatsey testified that she "believed" that she first saw a draft of the agreement on Tuesday (January 30, 1996) when the Wife gave it to her. On that day, or perhaps the next (Wednesday, January 31), Ms. Canatsey and the Wife took the agreement to Mr.

Levenreich's office. Ms. Canatsey testified that she met with Mr. Levenreich alone and discussed the particulars of the agreement in his office while the Wife remained in the waiting area. Ms. Canatsey was vigorously cross-examined by the Husband's counsel and repeatedly confronted with inconsistencies from her deposition testimony concerning the date she first saw the agreement and her meetings with Mr. Levenreich.

9. David Levenreich was deposed by the parties on March 26, 2013 and again on November 22, 2013. During the March 2013 deposition, while he declined to answer questions regarding any communication he may have had with the Wife, he testified that he had *no independent recollection* of: (1) reviewing the antenuptial agreement; (2) speaking with Douglas Buchwalter; (3) contacting Mr. Buchwalter's office after reviewing a draft of the agreement; (4) meeting with the Wife prior to the agreement being signed; (5) whether he was present when the agreement was signed; or (6) where the agreement was signed. When asked by the Wife's counsel if it was possible that he signed the agreement "after the fact," Mr. Levenreich testified that it was "possible."

10. During his November 2013 deposition, Mr. Levenreich testified that he had a "vague recollection" of speaking with the Wife, although he could not recall whether he spoke with her in person or spoke to her on her mother's cell phone. He recalled that he was retained to represent the Wife by her mother, Patty Canatsey. He recalled that the Wife was pregnant, the wedding was imminent and that the agreement was presented as a "take-it-or-leave-it" proposition to the Wife. Mr. Levenreich again denied having any clear recollection of when or where he signed the agreement. When pressed on any recollection he had regarding his conversation with the Wife, Mr. Levenreich he responded:

Well, again, I remember the factual context because she was pregnant, it was the eve of the wedding and there wasn't much movement from the other side on the

economics, apart from some minor points. I remember something to the effect that, you know, it's a take-it-or-leave-it deal and what should I do or what are my options was asked. And my response is, Don't sign it, don't marry him. And the response, reply to that was that, well, you know, the invitations have gone out, people are coming to the wedding. That's not an option...

(Husband's Exhibit 10 - page 17, lines 1-11). Mr. Levenreich testified that he possessed no file documenting his representation of the Wife.

11. Notwithstanding the Husband's testimony that he received a draft copy of an agreement in late December 1995 or early January 1996, the Court finds no credible evidence supporting the existence of any draft copy of the antenuptial agreement prior to January 27, 1996. A plain reading of the Husband's January 27, 1996 letter to Douglas Buchwalter suggests that, while the subject of a prenuptial agreement had been discussed by the Husband and Mr. Buchwalter, the agreement had not yet been prepared. While the typed page bearing the lists of assets of the parties is separated from the January 27 letter in Mr. Buchwalter's file, the fact that: (1) both documents are typed on the same style of paper; (2) both bear the same style and size of font; and (3) both documents are creased as if they had originally been folded and placed into an envelope, all suggest strongly that both documents were provided to Mr. Buchwalter in the same envelope on January 27. January 27, 1996, was a Saturday and, according to the Husband, he dropped the letter¹ through the mail slot at Mr. Buchwalter's office on his way out of town for a business trip to south Florida where the Husband remained until his return to the Clearwater area on Wednesday, January 31, 1996 – the day prior to the signing of the agreement and the parties' wedding.

12. At the hearing, the Husband, in response to a question by the Court, produced the

¹ At the hearing, the Husband testified that the asset list had been prepared from a list that the parties had written on a napkin while discussing the prenuptial agreement at a restaurant over dinner. The Husband suggested that the typed list, appearing in Mr. Buchwalter's file, had been provided to Mr. Buchwalter during his one of his initial meetings with the attorney in late 1995.

original faxed agreement that he received from Mr. Buchwalter at the Wellsley Inn in Deerfield Beach on January 29, 1996. The original document was introduced, without objection, as Husband's Exhibit 15. The document is comprised of twelve (12) pages, printed on thermal paper and bears a handwritten note, "Room 408", on the first page. The document's print is severely faded and barely legible. The first page appears to be a copy of the facsimile cover letter dated "1/29/96" from Mr. Buchwalter's file. The eleven-page agreement contains provisions consistent with the requests made by the Husband in his letter to Mr. Buchwalter dated "1/27/96" which are slightly different than the provisions in the signed agreement.

13. Based upon the testimony of the parties and Ms. Canatsey, the Court finds that it is highly unlikely that the Wife saw any typed version of the agreement prior to Tuesday, January 30, 1996, and most probably saw the agreement for the first time when she was handed a copy by the Husband upon his return from south Florida on Thursday, January 31, 1996. While both the Wife and Ms. Canatsey, the Wife's mother, testified during their depositions that the agreement was provided to the Wife sometime during the week prior to the week of the wedding, Mr. Buchwalter's file does not support that either party, much less the Wife, was provided any typed version of an agreement prior to the draft agreement that was faxed to the Husband on January 29, 1996. As the Husband had not returned from his business trip, and Mr. Levenreich was first provided a faxed version of the agreement on January 30, 1996, the Wife could not have seen the agreement prior to that date.

14. Notwithstanding what is apparent, at least to the Court, from Mr. Buchwalter's file regarding the sequence of events surrounding the preparation of the antenuptial agreement, the Husband urges the Court conclude that the Wife was in possession of a typed draft of the agreement for more than a week prior to the wedding. The Husband argues that his testimony

and the deposition testimony of the Wife and her mother support that conclusion. While it is evident that the Wife and her mother, Ms. Canatsey, had conversation between the time of their deposition testimony and their testimony at the hearing, and may have discussed their recollections of the events surrounding the preparation and signing of the agreement, the Court does not find that the inconsistencies in their deposition and hearing testimony should control the Court's conclusions regarding the totality of the evidence in the record. Neither the Wife, nor Ms. Canatsey changed their versions of the sequence of events or the substance of any conversation with Mr. Levenreich; rather, both changed only the dates on which they believed the events occurred. While it is possible that the change in their testimony was the result of some contrivance, what is more likely, based on the evidence presented to the Court, is that both the Wife and Ms. Canatsey simply failed to recall during their depositions that the Husband had left town on business for several days immediately prior to the wedding. The timing and circumstances of the business trip, facts *introduced* by the Husband, along with Mr. Buchwalter's file cannot be reconciled with the notion that a draft version of the antenuptial agreement existed prior to Monday, January 29, 1996.

IV. THE WEDDING DAY

1. The parties agree that the discovery that the Wife was pregnant with triplets in late December 1995, precipitated their decision to set a wedding date. According to the Wife, the date, February 1, 1996, was selected within two (2) weeks after the Wife's pregnancy was confirmed on December 26, 1995. In mid-January 1996, the Wife testified that she was told by her doctor that one of her unborn children had been lost. In July 1996, the Wife gave birth to the parties' daughter, Jessica. Both parties testified that they were advised by the Wife's doctor that Jessica's unborn twin had been "assimilated" by the Wife's body during the pregnancy.

2. The Husband testified that the wedding caterer and the cruise vessel on which the wedding was to take place were paid for on January 24, 1996. Invitations were mailed to the parties' friends and family earlier in January.

3. During her deposition, the Wife testified that she was first advised by the Husband that she would have to sign a prenuptial agreement approximately two (2) weeks before the wedding date--after the wedding invitations had been mailed and all of the details surrounding the ceremony and reception had been scheduled and confirmed. According to the Wife, she asked why she had to sign an agreement and was advised by the Husband that he was not going to repeat what he went through with his former wife. When the Wife advised that she did not want to sign a prenuptial agreement because she believed it was "a kiss of death of marriage," she testified that the Husband replied that she had two choices, either sign an agreement or they would not get married. According to the Wife, the subject of the prenuptial agreement was the cause of repeated arguments between the parties in the days prior to February 1, 1996.

4. In the Husband's deposition, he testified that he advised the Wife sometime in 1991 that he would never get married again without a prenuptial agreement. When the wedding day was set he, for the first time, advised the Wife that he would not marry her unless she signed a prenuptial agreement. At the hearing, the Husband testified that his position regarding the prenuptial agreement was not the source of any argument between the parties, but agreed that he steadfastly maintained that if an agreement was not signed by the wife there would be no wedding and, as everything was already paid for, they along with their friends and family would simply have a party.

5. On the morning of Thursday, February 1, 1996, the parties drove together to the office of Douglas Buchwalter. Both agree that upon their arrival at Mr. Buchwalter's office they were separated and led to different rooms. The Wife acknowledged during her deposition and at the hearing that she signed the agreement in Mr. Buchwalter's office on the morning of February 1, 1996. The Wife testified that the agreement she signed did not have attached exhibits and that she did not recall ever seeing a list of the Husband's assets. She maintains in both her deposition and in her testimony at the hearing, that she did not see David Levenreich in Mr. Buchwalter's office on February 1, 1996, and that he was not present in the room when she signed the agreement. The Wife testified that she signed the agreement because she wanted to marry the Husband and she understood that marriage would not take place unless she signed. Patricia Canatsey testified that she advised the Wife not to sign the agreement.

6. The Wife's signature on the Antenuptial Agreement is witnessed by Theodore R. Culbertson and Jean M. Hollander and was notarized by Karen J. Murburg.

7. Theodore Culbertson's deposition testimony was introduced by the Husband and admitted into evidence during the hearing as Husband's Exhibit 11. Mr. Culbertson testified that on February 1, 1996, he recalled being asked to witness the signature of Tracy VonPitner on an Antenuptial Agreement in the office of Douglas Buchwalter. Mr. Culbertson testified that the notary for Ms. VonPitner's signature, Karen J. Murburg, was his secretary and that she also separately witnessed the signature of the Husband in another room in Mr. Buchwalter's office. According to Mr. Culbertson, Jean Hollander, Mr. Buchwalter's secretary, also witnessed Ms. VonPitner's signature and then separately acted as the notary for the Husband's signature on the agreement in a separate room. Mr. Culbertson testified that he knew David Levenreich, but did not recall Mr. Levenreich being present when the Wife signed the agreement.

8. Jean Bridges' (formerly Jean Hollander) deposition testimony was introduced by the Husband and admitted into evidence as Husband's Exhibit 12. Ms. Bridges testified that she was employed as Douglas Buchwalter's secretary between 1988 and 1998. She was able to identify Mr. Buchwalter's file and recognized her handwriting as well as Mr. Buchwalter's handwriting on the various documents in the file. Ms. Bridges testified that she typed both of the facsimile cover sheets as well as the Antenuptial Agreement for Mr. Buchwalter. Ms. Bridges' recalled the occasion of the signing of the agreement although not in any significant detail. She testified that she remembered that, in addition to her, "Ted" (Theodore Culbertson), "Doug" (Douglas Buchwalter) and "Tracy" (the Wife) were present in the conference room when the agreement was signed. She did not recall anyone else being present and was not specifically asked whether she recalled seeing David Levenreich.

9. The Antenuptial Agreement states that it was "made this 1st day of February, 1996 at 10:07 a.m." The parties were married on a boat in Clearwater Harbor on the afternoon of the day that the agreement was executed.

10. The Court finds that the Wife's claim that Exhibit "A" and Exhibit "B," the schedules of assets of the parties, were not attached to the Antenuptial Agreement at the time she executed the agreement is not supported by the evidence. However, it is unlikely, based upon the circumstances under which the agreement was presented to the Wife that she ever thoroughly read the agreement or was ever disturbed or otherwise concerned about its *contents*. Rather, it was the notion of signing an agreement in anticipation of the eventual demise of the marriage she had not yet entered that disturbed the Wife.

V. THE LAW

1. The grounds upon which a trial court may vacate or modify a prenuptial² or postnuptial agreement in a final dissolution proceeding were explained by the Florida Supreme Court in *Casto v. Casto*, 508 So. 2d 330 (Fla. 1987):

Postnuptial agreements regarding alimony and marital property are properly enforceable in dissolution proceedings. There are, however, two separate grounds by which either spouse may challenge such an agreement and have it vacated or modified.

First, a spouse may set aside or modify an agreement by establishing that it was reached under fraud, deceit, duress, coercion, misrepresentation, or overreaching. *Masilotti v. Masilotti*, 158 Fla. 663, 29 So.2d 872 (1947); *Hahn; O'Connor*. See also *Del Vecchio v. Del Vecchio*, 143 So.2d 17 (Fla.1962).

The second ground to vacate a settlement agreement contains multiple elements. Initially, the challenging spouse must establish that the agreement makes an unfair or unreasonable provision for that spouse, given the circumstances of the parties. *Del Vecchio*, 143 So.2d at 20. To establish that an agreement is unreasonable, the challenging spouse must present evidence of the parties' relative situations, including their respective ages, health, education, and financial status. With this basic information, a trial court may determine that the agreement, on its face, does not adequately provide for the challenging spouse and, consequently, is unreasonable. In making this determination, the trial court must find that the agreement is "disproportionate to the means" of the defending spouse. *Id.* This finding requires some evidence in the record to establish a defending spouse's financial means. Additional evidence other than the basic financial information may be necessary to establish the unreasonableness of the agreement.

Once the claiming spouse establishes that the agreement is unreasonable, a presumption arises that there was either concealment by the defending spouse or a presumed lack of knowledge by the challenging spouse of the defending spouse's finances at the time the agreement was reached. The burden then shifts to the defending spouse, who may rebut these presumptions by showing that there was either (a) a full, frank disclosure to the challenging spouse by the defending spouse before the signing of the agreement relative to the value of all the marital property and the income of the parties, or (b) a general and approximate knowledge by the challenging spouse of the character and extent of the marital property sufficient to obtain a value by reasonable means, as well as a general knowledge of the income of the parties. The test in this regard is the adequacy of

² The *Casto* grounds for a trial court to set aside a postnuptial agreement, have also been held to apply to prenuptial agreements. *Watson v. Watson*, 887 So.2d 419, 423 n. 1 (stating that *Casto* controls as to prenuptial agreements); *Gordon v. Gordon*, 25 So. 3d 615, 616 (Fla. 4th DCA 2009).

the challenging spouse's knowledge at the time of the agreement and whether the challenging spouse is prejudiced by the lack of information. *Id. See Belcher v. Belcher*, 271 So.2d 7 (Fla.1972); *Del Vecchio*.

Casto at 333.

2. The Wife asserts that both of the *Casto* grounds support her request to vacate the Antenuptial Agreement in the instant case.

3. The “duress” that supports the first *Casto* ground has been explained as

“a condition of mind produced by an improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or make a contract not of his own volition.” *Williams v. Williams*, 939 So.2d 1154, 1157 (Fla. 2d DCA 2006) (quoting *Herald v. Hardin*, 95 Fla. 889, 116 So. 863, 864 (1928)). Two factors must be proven to establish duress: “(a) that the act sought to be set aside was effected involuntarily and thus not as an exercise of free choice or will and (b) that this condition of mind was caused by some improper and coercive conduct of the opposite side.” *City of Miami v. Kory*, 394 So.2d 494, 497 (Fla. 3d DCA 1981). Duress involves a “dual concept of external pressure and internal surrender or loss of volition in response to outside compulsion.” *Id.* (citing 17 C.J.S. Contracts, s. 168 at 943 (1963)).

Francavilla v. Francavilla, 969 So.2d 522, 524-25 (Fla. 4th DCA 2007).

In Florida, it is black letter law that parties to an antenuptial agreement do not deal at arm’s length with one another and that the relationship is, instead, one based on trust and confidence. *McNamara v. McNamara*, 40 So. 3d 78, 80 (Fla. 5th DCA 2010).

While such agreements are not per se suspect in the law, the courts nevertheless scrutinize them with care; and the parties must exercise the highest degree of good faith, candor and sincerity in all matters bearing on the terms and execution of the proposed agreement, with Fairness being the ultimate measure. Moreover, a presumption of undue influence or overreaching arises in transactions or contracts between persons in such a confidential relationship when it is clear that the dominant party thereto is the grossly disproportionate beneficiary of the transaction. It is well settled, for example, that with respect to the issue of full disclosure of the prospective husband’s wealth, a disproportionate benefit to the husband in an antenuptial agreement casts upon him the burden of showing that the wife in fact did have full or sufficient knowledge of the husband's wealth.

The presumption which arises in these cases operates against the party receiving such benefit and imposes upon him the burden of coming forth with

evidence sufficient to rebut it to the extent necessary to avoid its preponderating on the issue to which it relates. We see no reason why the burden on the part of the husband ought be any less with respect to the issue of *voluntariness* on the part of the wife in entering into such an agreement, than it is with respect to the issue of full disclosure, when there is a grossly disproportionate benefit to him *together with* sufficient coercive circumstances surrounding the execution of the agreement as to give rise to a presumption of undue influence or overreaching.

Lutgert v. Lutgert, 338 So. 2d 1111, 1115-16 (Fla. 2nd DCA 1976).

4. The facts of the instant case parallel those considered by the court in *Lutgert*. The Lutgerts became acquainted while married to other partners and had known each other socially for a considerable period of time before their marriage. Their relationship became more serious after their respective former spouses became romantically involved with each other and two divorces ensued. The Lutgerts dated for approximately a year and became engaged approximately four weeks prior to their marriage, on the early morning hours of April 30, 1965. On April 26 the husband called and suggested that they be married shortly after midnight on April 29, provided they could book passage for an extended honeymoon cruise on a ship scheduled to sail from New York later on that same day. The wife agreed. On the morning of April 27, the husband advised the wife by telephone that he had succeeded in getting passage on the ship and that the wedding plans could go ahead. The parties met shortly thereafter and spent the rest of that day purchasing clothes, attending to their passports, getting blood tests, arranging for a judge to marry them, acquiring the use of a V.I.P. room at the airport, and inviting family and friends to the wedding. On April 28, the wife purchased her wedding dress, after which the parties met at their jewelers to select and fit wedding rings. Thereafter, a marriage license was procured. On April 29, the parties met again at the jewelers to finalize the sizing of the wedding rings. *Lutgert*, at 1113-14.

While they were being readied the husband took the antenuptial agreement out of his pocket and for the first time presented it to appellant and asked her to sign it.

She objected, saying that it indicated lack of trust on his part and that she didn't want the marriage to start out on such a weak footing. He made light of that suggestion, proclaiming that the agreement was of no consequence anyway since they wouldn't be getting a divorce. He joked about being married for some 80 years, getting married at their age. The wife still objected; so the husband called his Chicago lawyers, Cummings and Wyman, while still at the jewelers and apparently some conversation ensued between the lawyers and the wife after the husband put her on the telephone. While the evidence is conflicting as to whether this phone conversation resulted in any change in the wording of the agreement (the husband contends it did), the documentary evidence itself irrefutably demonstrates that the document was in fact drawn up and finally drafted the preceding Monday, April 26, and was not changed in any respect thereafter.

Id. at 1114.

The parties agreed that the subject of an antenuptial agreement had been brought up on more than one occasion for perhaps a year before the marriage. The husband testified that he wanted such an agreement because his father had advised it and because he had had extreme difficulty during his first divorce. No specific agreement or draft was made, however, until the agreement was prepared on April 26 and presented to the wife on April 29. The wife maintained that she consistently objected to such an agreement, whatever its terms, and the only testimony in rebuttal of this was the husband's statement that "there was no refutation of any willingness to sign such an agreement." *Id.*

The wife agreed to sign the agreement after the phone call with the lawyers, and the agreement was signed at the airport just after midnight on the day of the wedding. The husband's nephew, a notary public, and one of the husband's attorneys were witnesses to the wife's signature and both testified that they did not hear the wife voice any objections to the agreement as she executed it. *Id.*

In concluding that the antenuptial agreement should have been set aside by the trial court, the District Court explained

Surely, particularly at the last moment, a prospective wife ought not be forced into a position of being “bought” at the price of losing all if she does not agree to a grossly disproportionate benefit to the husband should she leave him under any and all circumstances, any more than she should be permitted to “sell” herself at zero hour for an agreement resulting in a grossly disproportionate gain to her upon the same eventuality. Along with public policy considerations this is the very reason why ‘fairness’ is the polestar in these agreements; and fairness would certainly include an opportunity to seek independent advice and a reasonable time to reflect on the proposed terms.

Clearly, in our view, all the circumstances surrounding the execution of the agreement in this case, including its disproportionate terms, militate against fairness and are sufficient to support a presumption, as a matter of law, of undue influence and overreaching which bore adversely on the free exercise of the wife's will. We certainly couldn't indulge a contrary presumption; the wife could hardly say more in rebuttal. Nor need we go so far as to say that the wife proved *in* voluntariness as a matter of law. The device of a presumption such as that we employ here is the prevalent judicial tool commonly used in the determination *vel non* of undue influence or overreaching in transactions arising out of confidential relationships.

The burden thus shifted to the husband to rebut this presumption by coming forth with *some* competent evidence to the contrary. We have searched the record in vain to find it—it simply isn't there. The mere statement by the husband that “there was no refutation of any willingness (on the part of the wife) to sign such an agreement,” which alluded to prior discussions of an antenuptial agreement generally and *not* to the specific one involved here which *was* objected to, will not alone suffice.

The question here is not whether the wife knew what she was signing or what she was or was not getting. The agreement is clear on its face and she can't be heard to deny its contents. The question is whether she, in the free exercise of her will, *voluntarily* signed it. Evidence that she may have gotten some legal advice has no great impact on this issue either. For one thing, the only evidence of legal advice is that within twenty four hours before the wedding, when the husband first presented the antenuptial agreement and she rebelled, she spoke on the telephone to *his* lawyers; and we have already indicated that the documentary evidence conclusively demonstrates that this conversation could not and did not result in any change in the agreement enuring to the benefit of the wife. Additionally, in the face of the grossly disproportionate benefit to the husband, whatever legal advice she may have gotten at that time certainly wouldn't tend to neutralize the other coercive factors bearing on her volition. In short, the presumption of undue influence and overreaching which we perceive to have been established as a matter of law is not rebutted at all and thus, remaining in the case, it must prevail as though the conclusion to which it points is admitted. The wife is entitled to avoid the agreement.

Id. at 1116-17.

5. The instant facts are also strikingly similar to the facts of *Hjortaaas v. McCabe*, 665 So.2d 168 (Fla. 2nd DCA 1995).

When Gayle Hjortaaas met Philip McCabe in 1984, she was a real estate office secretary who occasionally handled rentals. Philip was the owner of a “bed and breakfast” in Maine but he leased a villa in Naples, Florida, through Gayle's real estate firm. They dated briefly in November of 1984, and ultimately they spent a short New Year's holiday together in Canada. In the spring of 1985 Gayle stayed at the Maine inn. Philip spent the following winter season in Florida, during which he purchased some land in Naples with the idea of constructing a hotel.

Gayle and Philip became engaged in the spring of 1986. The couple lived together in an apartment while Philip pursued his hotel construction plans. In March of 1987, he opened the Inn of Naples. In November of 1986 Gayle left her real estate job and began to work for Philip at the construction site.

In early April of 1987 Philip proposed that he and Gayle marry on his fortieth birthday-May 1. He also told Gayle that he wanted her to execute a prenuptial agreement. She was opposed to the idea because she did not contemplate divorce. Philip, however, met with his attorney and provided him with the terms of a prenuptial agreement he desired. This conversation occurred in early April, and although Gayle knew the purpose of the meeting, she was not a party to any discussions involving either the terms of an agreement or Philip's net worth. The agreement was actually drafted on April 28, 1987, and was executed in identical form two days later, the day before the scheduled wedding. At that time no financial disclosure documents were appended as exhibits, and in fact Philip did not create such a form until a month later. His statement reflected a net worth of almost two million dollars. Gayle's net worth was zero.

Six years later, when the marriage had disintegrated, Philip sought enforcement of the prenuptial agreement, which according to a schedule provided Gayle with a lump sum payment of \$48,000. The agreement had been structured so that Gayle would receive a payment of between zero and \$98,000, the specific amount being determined pursuant to a sliding scale depending upon the length of the marriage. Gayle attempted to have the agreement set aside, alleging that it was unfair, unreasonable, inequitable and the product of Philip's coercion, undue influence, and duress.

Hjortaaas at 169-70. The District Court agreed with the wife.

We agree with Gayle. The contract should have been nullified by the trial court and we expressly find that the trial court incorrectly applied the test set out in *Casto v. Casto*, 508 So.2d 330, 333 (Fla.1987):

[Quote from *Casto* omitted]

First, the timing of the signing of the document indicates that Gayle's signature was the product of duress. Two days before the wedding Gayle was presented with a document, the actual terms of which were previously unknown to her and which contained no information about Philip's finances. She had only one day to seek counsel from her own attorney, to make an independent evaluation of the contract, or to cancel her wedding. The only rational conclusion is that her signature was the product of unwarranted compulsion, and the document should have been set aside on that basis. *Lutgert v. Lutgert*, 338 So.2d 1111 (Fla. 2d DCA 1976).

Id. at 170.

6. The Fourth District Court of Appeals' decision in *Francavilla v. Francavilla*, 969 So. 2d 522 (Fla. 4th DCA 2007) distinguishes *Hjortaaas* and reaches a contrary result on the validity of a prenuptial agreement. The reasoning supporting the Courts' view that *Hjortaaas* was distinguishable clearly supports the Wife's position in the instant case that the Antenuptial Agreement should be vacated or set aside.

The wife finds duress in the following facts: she was seven months pregnant at the time the agreement was signed, her pregnancy forced her to leave her job as a flight attendant, and the agreement was not signed until an hour before the wedding ceremony.

Focusing on the entire prenuptial negotiations, and not just on the endgame, leads to the conclusion that competent, substantial evidence supports the trial court's decision finding that there was no duress.

The prenuptial negotiations stretched over some months. *See Waton*, 887 So.2d at 421. The husband properly disclosed the extent of his assets. The husband and wife went back and forth over the terms. The wife used the services of an attorney who drafted the agreement. After the agreement was drafted, the wife negotiated a favorable cost of living increase reflected in the handwritten changes. *See Herrera v. Herrera*, 895 So.2d 1171, 1175 (Fla. 3d DCA 2005). Other facts softened the coercive effect of the pregnancy on the wife, but we see no reason to air them in a public document. The husband's ultimatum that he would not marry the wife without a prenuptial agreement does not constitute duress because there is nothing improper about taking such a position. *See Doig v. Doig*, 787 So.2d 100, 102 (Fla. 2d DCA 2001); *Eager v. Eager*, 696 So.2d 1235, 1236 (Fla. 3d DCA 1997)(where the court wrote that “[i]t is not a threat or duress for the

proponent of the agreement to make it clear that there will be no marriage in the absence of the agreement.”).

This case lacks the time pressure aspects of cases finding duress like *Hjortaaas v. McCabe*, 656 So.2d 168, 170 (Fla. 2d DCA 1995), where the wife was first presented with a prenuptial agreement two days before the wedding, with no financial disclosure, and she faced the choice of signing the agreement or cancelling the wedding. Here, the parties negotiated the prenuptial agreement for months with attorneys, counterproposals, and fair financial disclosure by the husband. The wife did not first confront a prenuptial agreement with a planned wedding ceremony and reception looming; the couple married at the courthouse, an event that could have been postponed with limited stress if further negotiations were needed. This case presents a less egregious fact pattern for duress than *Waton*, where we rejected a claim that duress invalidated a prenuptial agreement; *Waton* pointed out that the wife received the agreement two weeks before the wedding, the husband told the wife about the terms of the agreement before its preparation, and the husband made a list of his assets and showed the list to the wife before contacting a lawyer to draft the agreement. 887 So.2d at 422.

Francavilla at 525.

7. In the instant case “[f]ocusing on the entire prenuptial negotiations, and not just on the endgame” leads this Court to the conclusion that competent, substantial evidence supports a finding that the Wife was under duress when the instant agreement was signed. The only evidence of any negotiation regarding the terms of the Antenuptial Agreement is gleaned from several handwritten notations by Douglas Buchwalter as the result of a telephone call with David Levenreich, which neither lawyer specifically recalled. The “negotiation” resulted in a single minor change to the substance of the agreement.

There is *no* evidence that any negotiation occurred between the Husband and the Wife and no evidence that the negotiation that may have occurred between the attorneys was ever communicated to the Wife. The evidence is undisputed that David Levenreich was Patricia Canatsey’s attorney and his legal work in connection with the agreement, two days before the scheduled wedding, was at Ms. Canatsey’s request and was paid for by Ms. Canatsey.

The Wife's testimony that she never directly discussed the terms of the agreement with Mr. Levenreich is un rebutted by the evidence and is bolstered by Mr. Levenreich's acknowledgment that: (1) he did not recall personally meeting the Wife; (2) he did not recall discussing the terms of the agreement with the Wife; and (3) it was "possible" that he signed the agreement "after the fact." Both the Husband and Mr. Buchwalter testified that they saw and spoke with Mr. Levenreich at Mr. Buchwalter's office on the day the agreement was signed, although neither was able to recall seeing Mr. Levenreich in the same room with the Wife. Significantly, *both* witnesses to the Wife's signature on the agreement did not recall seeing David Levenreich when the agreement was signed by the Wife.

Other than the limited financial disclosure indicated on the Exhibits to the agreement, the instant case bears all of the time pressure aspects mentioned in *Hjortaaas*: (1) the Wife was presented with the agreement no more than two days, and perhaps only one day, before the wedding; (2) she faced the choice of signing the agreement or cancelling the wedding; and (3) the Wife *was* first confronted with a prenuptial agreement with a planned wedding ceremony and reception looming, and not a simple courthouse ceremony that could easily have been postponed.

8. Based upon the evidence presented by the parties at the hearing and under the applicable law, the Court finds that the Wife has established that her execution of the Antenuptial Agreement on February 1, 1996 was the product of duress under the first ground of *Casto* and that she should not be bound by the terms of the said agreement.

9. While an analysis of the instant facts under the second ground established by *Casto* is unnecessary given this Court's finding of duress under the first ground, *Hjortaaas* suggests that the instant agreement may also fail on the second ground.

Even assuming that Gayle did acquire some knowledge about the proposed terms of the agreement when they met with Philip's attorney some three weeks prior to

the wedding, thus diminishing the probability that she was coerced, the agreement cannot withstand that second test of *Casto*. First, the provision for Gayle is inequitable. She is to leave the marriage with a lump sum of \$48,000 and nothing else. The marital home was titled solely in Philip's name, and Gayle was employed by Philip. A comparison of the net worth of Philip and Gayle at the time of the execution of the contract-approximately two million dollars to zero-is merely reflective of the financial power that Philip was able to exert over Gayle. The provision for Gayle is truly disproportionate to Philip's means. *Casto*, 508 So.2d at 333 (citing *Del Vecchio v. Del Vecchio*, 143 So.2d 17, 20 (Fla.1962)).

Hjortaas at 170. Under the terms of the instant agreement the Wife will leave the marriage with assets, all of which she brought to the marriage, totaling less than \$20,000 and the entitlement to spousal support in the amount of \$300 per month for a period not to exceed five (5) years. Under the agreement she would have no claim to the marital home or any of the other myriad of assets accumulated by the Husband during the 19-year marriage. A comparison of the net worth of the parties at the time of the execution of the agreement-approximately one million dollars to \$20,000-is reflective of the financial power that the Husband was able to exert over the Wife. The provision for the Wife is truly disproportionate to the Husband's means.

Based upon the foregoing, it is therefore

ORDERED AND ADJUDGED that the Antenuptial Agreement executed by the parties on February 1, 1996, is voidable by the Wife and is hereby vacated and set aside.

DONE AND ORDERED in Chambers at Ocala, Marion County, Florida, on this 17 day of March, 2015.



ANTHONY M. TATTI
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true copy of the foregoing has been furnished to the following individuals by U.S. Mail delivery this 17 day of March, 2015:

Thomas J. Donnelly, Esquire
service@thomasjdonnelly.com

M. Thomas Bond, Jr., Esquire
Kathy@bap-law.com


Judicial Assistant