IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

BASTIN JOSEPH, on behalf of himself and all others similarly situated, **Plaintiff,** **v.** **RIZZETTA & COMPANY, INCORPORATED,** **Defendant.**	**CASE NO.: 23-CA-001470**

PLAINTIFF'S UNOPPOSED MOTION FOR CERTIFICATION OF SETTLEMENT CLASS AND PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SUPPORTING MEMORANDUM OF LAW

Plaintiff, Bastin Joseph, individually and on behalf of all others similarly situated, ("Joseph" or "Plaintiff"), by and through his undersigned counsel, files this Unopposed Motion for Certification of Settlement Class and Preliminary Approval of the proposed Class Action Settlement and Supporting Memorandum of Law. Rizzetta & Company, Incorporated ("Rizzetta" or "Defendant") does not oppose the relief requested in this motion.

In support of the motion, Plaintiff states as follows:

I. STANDARD FOR PRELIMINARY APPROVAL UNDER RULE 1.220

"Although class action settlements require court approval, such approval is committed to the sound discretion of the district court." *In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). In exercising that discretion, courts are mindful of the "strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The policy favoring settlement is especially relevant in class actions and other complex matters, where the inherent costs, delays and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to

obtain. *See, e.g.*, *Ass'n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) ("There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex.") (*citing Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)); *see also 4 Newberg on Class Actions* § 11.41 (4th ed. 2002) (citing cases).

However, courts may not approve class action settlements in reverse, by first determining that the settlement is fair, and thereby finding that certification is proper. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 622 (1997). Accordingly, in granting preliminary approval, courts typically first certify the class for settlement purposes, and then consider the fairness of the settlement. *E.g.*, *Grosso v. Fidelity National Title Ins. Co.*, 983 So.2d 1165, 1170 (Fla. 3d DCA 2008). A court "must conduct a rigorous analysis to determine whether the elements of class action requirements have been met," which requires "heightened scrutiny" when the parties seek "certification of the class and approval of their settlements simultaneously." *Id.*

To approve a class action settlement, the trial court must find that the agreement was fair, reasonable, and adequate. *Grosso v. Fid. Nat. Title Ins. Co.*, 983 So. 2d 1165, 1173-74 (Fla. 3rd DCA 2008) (*citing* Fed. R. Civ. P. 23(e)(1)(C), and *Ramos v. Philip Morris Cos.,* 743 So.2d 24, 31 (Fla. 3d DCA 1999)). Some of the factors that should be considered in making this determination include: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Id.* (*citing Bennett v. Behring Corp.,* 737 F.2d 982, 986 (11th Cir.1984)).

Courts have, at times, engaged in a "preliminary evaluation" of these factors to determine whether the settlement falls within the range of reason at the preliminary approval stage. *See, e.g.*, *Smith*, 2010 WL 2401149 at *2. In fact, Federal Rule of Civil Procedure 23 was amended in 2019 to require a fairness evaluation at the preliminary approval stage instead of waiting until final approval. Under the amended Rule 23(e), Federal judges must now determine whether it is "likely" to certify the class and give final approval to the settlement. Fed. R. Civ. P. 23(e).

Likewise, granting preliminary approval here will allow Settlement Class Members to receive notice of the proposed Settlement terms, and of the date and time of the Final Approval Hearing at which Settlement Class Members may be heard, and at which further evidence and argument concerning the fairness, adequacy, and reasonableness of the Settlement may be presented. *See Manual for Compl. Lit.*, §§ 13.14, 21.632. However, neither formal notice to the class nor an evidentiary hearing is required at the preliminary approval stage. *Id.* § 13.14. Instead, the Court may grant such relief upon an informal application by the settling parties, and may or may not conduct a hearing. *Id.*

II. BACKGROUND AND SETTLEMNT TERMS

This is a class action for alleged violations Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201, *et. seq.* ("FDUTPA") and breach of contract arising out of Estoppel Certificate Fees charged to sellers of real properties subject to HOA dues, where Plaintiff alleges such fees were unreasonable and/or exceed the statutory cap established in Section 720.30851(6) of the Florida Statutes.

On or around January 24, 2020, Plaintiff sold his property located at 9305 Merlot Circle in Seffner, Florida (the "Property") that was subject to the Toulon HOA. Because the Property is deed restricted by the Toulon HOA, Plaintiff's sale required an estoppel certificate pursuant to Section

720.30851(6) of the Florida Statutes. Toulon HOA hired Rizzetta to manage the property. Thus, Rizzetta was, at all relevant times, acting as the agent of the Toulon HOA for Plaintiff's estoppel certificate. Plaintiff paid a total of $279 for his estoppel certificate and other charges, which included: a $250 estoppel certificate charge to Rizzetta; a $23 service charge to a third party, HomeWise; and a $6 convenience fee to HomeWise.

Section 720.30851(6) of the Florida Statutes provides:

> An association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed $250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable parcel. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of $100. If a delinquent amount is owed to the association for the applicable parcel, an additional fee for the estoppel certificate may not exceed $150.

Plaintiff alleges that the $279 he paid to sell his property exceeded the $250 cap by $29, for preparation and delivery of an estoppel certificate. The lawsuit challenges the same charges imposed upon other similarly situated property owners by Rizzetta and seeks a refund of all amounts paid above the statutory cap.

After discovery and a full day voluntary mediation, the parties reached a proposed class action settlement. (See Exhibit 1). The Settlement Class is defined as follows:

> (i) The owner-seller of any property, in a Rizzetta managed community, (ii) who requested and received an estoppel certificate from Rizzetta (iii) and paid fees related thereto between February 17, 2019 and September 20, 2023 (iv) and the total fees exceeded the applicable statutory cap if Rizzetta's estoppel certificate fee is added together with the third-party convenience fee and the third-party service charge.

Defendant raised several defenses to the claims asserted. First, it argued that the amounts paid above the statutory cap of $250 ($23 Homewise Fee and $6 Convenience Fee) were not part of the estoppel fee, and were not collected or retained by Rizzetta, and other parties may have to

be added or may be liable for the amounts at issue. Second, Rizzetta also presented evidence that the Convenience Fee could have been avoided by requesting an alternative form of payment. This would reduce the amount of overcharge by $6. Finally, Rizzetta argued that Plaintiff may not be able to represent class members from different HOA's under Rule 1.220. For these reasons, both sides had a good faith basis to compromise the claims being asserted.

Under the negotiated settlement, each class member will receive a Settlement Payment of $16, which is just over 50% of the $29 total amount alleged to have been paid over the $250 cap. If the Convenience Fee is deducted, the settlement amount represents approximately 70% of the alleged overcharge. This amount if fair and reasonable in light of the defenses raised and the delay that would be caused by continued litigation. Defendant also stopped charging amounts above the statutory limit. For these reasons, the Court should find that the settlement amount falls within the "range of reasonableness" such that the class should be certified and notice should be issued to the Class.

III. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE PURSUANT TO FLORIDA RULE OF CIVIL PROCEDURE 1.220

For settlement purposes, Rizzetta does not oppose Plaintiff's request that this Court certify the Settlement Class as defined in the Settlement Agreement. "Because the certification of a class and settlement of the class representative's claims will ultimately bind absentee class members, there are constitutional due process implications which must be satisfied." *Grosso v. Fid. Nat. Title Ins. Co.*, 983 So. 2d 1165, 1170 (Fla. 3rd DCA 2008) (*citing Matsushita Elec. Indus. Co. v. Epstein,* 516 U.S. 367, 377-78, 116 S.Ct. 873, 134 L.Ed.2d 6 (1996)). Therefore, the trial court, "must conduct a rigorous analysis to determine whether the elements of the class action requirements have been satisfied." *Id.* (*citing Baptist Hosp. of Miami, Inc. v. Demario*, 661 So.2d 319, 321 (Fla. 3d DCA 1995)).

The Third District Court of Appeals provided trial courts with specific instructions on how to address certification of a settlement class:

> Where the parties, as here, seek certification of the class and approval of their settlement simultaneously, the trial court is required to apply heightened scrutiny and to take a more active role as a guardian of the interests of the absent class members. When a trial court "certifies for class action settlement only, the moment of certification requires 'heightene[d] attention,' to the justifications for binding the class members ... because certification of a mandatory settlement class, however provisional technically, effectively concludes the proceeding save the final fairness hearing." Ortiz v. Fibreboard Corp., 527 U.S. 815, 848-49, 119 S.Ct. 2295, 144 L.Ed.2d 715 (1999) (citation omitted) (*quoting* Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997) (alteration in original)); *see also* Simer v. Rios, 661 F.2d 655, 664-66 (7th Cir.1981) (requiring a higher showing of fairness where the settlement is negotiated prior to certification); Ace Heating & Plumbing Co. v. Crane Co., 453 F.2d 30, 33 (3d Cir.1971) (holding that the court must be doubly careful where negotiation occurs before certification and designation of class counsel).

Grosso v. Fid. Nat. Title Ins. Co., 983 So. 2d 1165, 1170 (Fla. 3d DCA 2008) (emphasis in original).

Certification of the proposed Settlement Class will allow notice of the proposed Settlement to issue, thereby informing class members of the existence and terms of the proposed Settlement, of their right to be heard on its fairness, of their right to opt out, and of the date, time and place of the formal fairness hearing. *See Manual for Compl. Lit.*, at §§ 21.632, 21.633. For purposes of this Settlement only, Defendant does not oppose class certification.

Class certification pursuant to Rule 1.220 requires that all four prerequisites to section (a) be satisfied and at least one prerequisite of section (b) be satisfied. The four elements that a party must show to satisfy to obtain class certification are:

> (1) The members of the class are so numerous that separate joinder of each member is impracticable [*numerosity*], (2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class [*commonality*], (3) the claim or defense of the representative party is typical of the claim or defense of each member of the class [*typicality*], and (4) the representative party can fairly and adequately protect and represent the interests of each member of the class [*adequacy*].

Fla. R. Civ. P. 1.220(a) (emphasis added). These elements are commonly referred to as numerosity, commonality, typicality, and adequacy of representation. *See Smith v. Glen Cove Apartments Condominiums Master Ass'n, Inc.*, 847 So. 2d 1107 (Fla. 4th DCA 2003). As discussed below, all of the requirements of Rule 1.220(a) and (b)(3) have been met under the facts of this case.

A. Certification Pursuant to Rule 1.220(a)

1. Numerosity

The first prerequisite for class certification under Rule 1.220(a) is numerosity, which requires that members of the class be so numerous that "separate joinder of each member is impracticable." Fla. R. Civ. P. 1.220(a)(1). There is no minimum or maximum number of class members to satisfy the numerosity requirement. However, classes as small as twenty-five (25) have satisfied the numerosity requirements. *See Terry L. Braun, P.A. v. Campbell*, 827 So. 2d 261, 264 (Fla. 5th DCA 2002) (Court held that class of 25 to 31 individuals met numerosity requirement); *see, e.g.*, *Estate of Bobinger v. Deltona*, 563 So. 2d 739, 743 (Fla. 2d DCA 1990). In addition to the number of class members, Florida courts also analyze whether separate joinder would be impractical. As the Fourth District Court of Appeals has stated, "'[i]mpractical' does not mean impossible, and numerosity is satisfied if it would be difficult to join all the members of the class." *Olen Props. Corp. v. Moss*, 981 So. 2d 515, 519 (Fla. 4th DCA 2008) (citation omitted), *review denied*, 996 So. 2d 858 (Fla. 2008).

Here, the members of the Settlement Class number over 12,000. Joinder of over 12,000 persons to this action would be "impractical." Therefore, the numerosity requirement has been satisfied.

2. Commonality

According to the Florida Supreme Court, the "primary concern" in the consideration of the commonality requirement of subdivision (a)(2) is "whether the representative's claim arises from the same practice or course of conduct that gave rise to the remaining claims and whether the claims are based on the same legal theory." *Sosa v. Safeway Premium Finance Co.*, 73 So. 3d 91, 103 (Fla. 2011) (*citing Morgan v. Coats*, 33 So.3d 59, 64 (Fla. 2d DCA 2010), which in turn cited *Powell v. River Ranch Prop. Owners Ass'n, Inc.*, 522 So.2d 69, 70 (Fla. 2d DCA 1988)). The core of the commonality requirement is satisfied if the questions linking the class members are substantially related to the resolution of the litigation. *See Morgan v. Coats*, 33 So. 3d at 64.

Here, the common business practice at issue is Defendant's practice of (a) allegedly charging an unreasonable fee for preparation and delivery of an estoppel certificate and/or (b) allegedly charging an amount in excess of Section 720.30851(6) of the Florida Statutes for preparation and delivery of an estoppel certificate. Regardless of whether the Plaintiff or Defendant are ultimately correct, the issue is common to all class members.

The questions of law and fact that are common to the Class include, but are not limited to:

(a) Whether Rizzetta charges an estoppel certificate fee that exceeds the statutory cap set forth in § 720.30851(6), Fla. Stat. (2022);

(b) Whether Plaintiff and Class Members suffered actual damages as a result of paying more than the statutory cap for the preparation and delivery of estoppel certificates from Rizzetta at closing;

(c) Whether it was an unlawful and deceptive practice under FDUTPA for Rizzetta to represent that the estoppel certificate fee complied with §720.30851, Fla. Stat. (2022); and

(d) Whether Rizzetta charged a "reasonable" fee for the preparation and delivery of its estoppel certificates.

The common issues will turn almost entirely on a review of Defendant's records. Since these factual issues are uniform, the legality of each will turn on common evidence. Either Defendant's conduct violates the law or it does not. In other words, each of these common questions will lead to answers common to the Class, advancing the litigation for all Class members "in one stroke." *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Thus, the commonality element of Rule 1.220(a) is also satisfied.

3. Typicality

"The test for typicality focuses generally on the similarities between the class representative and the putative class members." *See Sosa v. Safeway*, 73 So. 3d at 114 (the court characterized the "key inquiry" as addressing "whether the class representative possesses the same legal interest and has endured the same legal injury as the class members.") (*citing Morgan v. Coats*, 33 So. 3d at 65). The typicality requirement of subdivision (a)(3) does not require that the claims or defenses be identical. *Broin*, 641 So.2d at 891. Therefore, mere factual differences between the class representative's claims and the claims of the class members will not defeat typicality. *See Smith v. Glen Cove Apartments Condominiums Master Ass'n, Inc.*, 847 So. 2d 1107, 1111 (Fla. 4th DCA 2003).

Here, named Plaintiff, Bastin Joseph, is entirely typical of the putative class members he seeks to represent. Plaintiff is a Florida resident, who is a former resident of an HOA managed by Defendant. Plaintiff was charged a fee for preparation and delivery of an estoppel certificate that was typical of the class members. There is nothing peculiar about Plaintiff's experience with Defendant that makes him different from other members of the class. Because Plaintiff possesses

the same legal interest and has endured the same alleged legal injury as the other members of the class, the typicality requirement of Rule 1.220(a) is also satisfied.

4. Adequacy of Representation

To grant class certification, a trial court must determine that "the representative party can fairly and adequately protect and represent the interests of each member of the class." Fla. R. Civ. P. 1.220(a)(4). A trial court's inquiry concerning whether the adequacy requirement is satisfied contains two prongs. *Sosa v. Safeway*, 73 So. 3d at 115 (Fla. 2011). The first prong concerns the qualifications, experience, and ability of class counsel to conduct the litigation. *Id.* The second prong pertains to whether the class representatives' interests are antagonistic to the interests of the class members. *Id.*

First, Plaintiff's counsel have substantial experience in consumer class actions and are adequate to act as counsel in this class action lawsuit. (*See* Exhibit 2, Warwick Declaration). Additionally, Plaintiff's counsel have ample experience litigating various types of consumer cases, including other consumer class actions based on the FDUTPA violations in cases similar to this one. *Id.* Thus, the first prong of the "adequacy" requirement of Rule 1.220(a) is met.

Second, Plaintiff has shown that he is willing and able to take an active role as class representative on behalf of the class. Plaintiff has reviewed all the pleadings and exhibits, and met with counsel on numerous occasions. There has been no evidence uncovered in this case that indicates that Plaintiff has any interests antagonistic to the class he seeks to represent. Plaintiff diligently prosecuted this action from the outset and has sufficient knowledge of the nature of the lawsuit to be determined to be an adequate class representative. Therefore, the adequacy requirement under Rule 1.220(a)(4) is also met.

Accordingly, all of the prerequisites of Rule 1.220(a) have been established with regard to the proposed Settlement Class. Now, this Court's analysis must turn to whether the facts of this case also meet at least one of the requirements Rule 1.220(b) before the Settlement Class can be properly certified.

B. Certification Pursuant to Rule 1.220(b)(3).

In addition to the four requirements of Rule 1.220(a), the proponent of class certification must satisfy one of the three subdivisions of Rule 1.220(b). *See*, Fla. R. Civ. P. 1.220(b) (stating that a party may maintain a claim or defense on behalf of a class if it satisfies rule 1.220(a) and 1.220(b)). Pursuant to the Settlement Agreement, Plaintiff contends and Defendant do not contest (for the purposes of certification) that this case meets the requirements of Rule 1.220(b)(3). Rule 1.220(b)(3), provides in pertinent part:

> the claim or defense is not maintainable under either subdivision (b)(1) or (b)(2), but the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any questions of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

(Emphasis added). Generally, courts view the Rule 1.220(b)(3) analysis in two parts: predominance and superiority.

1. Common Issues Predominate

Rule 1.220(b)(3) first requires that the "questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any questions of law or fact affecting only individual members of the class." Fla. R. Civ. P. 1.220(b)(3) (emphasis added). Florida courts have held that common questions of fact predominate when the defendant acts toward the class members in a similar or common way. *See Stone v. CompuServe Interactive Servs., Inc.*, 804 So. 2d 383, 388 (Fla. 4th DCA 2001). More

specifically, predominance is established if the class representative demonstrates a reasonable methodology for generalized proof of class-wide impact. *See Inphynet Contracting Services, Inc. v. Soria*, 33 So. 3d, 766, 771 (Fla. 4th DCA 2010). It is not necessary to illustrate that all questions of fact or law are common. *See Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1178 (11th Cir. 2010). Rather, a showing that some questions are common, and that they predominate over individual questions is all that is necessary to meet the predominance inquiry. See *Id.* (*citing Klay v. Humana, Inc.*, 382 F.3d 1241, 1254 (11th Cir. 2004)).

Here, Defendant engaged in a common course of conduct, or common practice, of allegedly charging estoppel certificate fees that exceeded the statutory cap and/or unreasonable estoppel certificate fees. As a result, Plaintiff alleges that Defendant could not legally retain the excessive and unreasonable amounts collected. The legality of these common courses of conduct by Defendant is the predominating common question in this litigation. Therefore, the facts of this matter satisfy the predominance requirement of Rule 1.220(b)(3).

2. A Class Action is Superior to Individual Actions

To satisfy Rule 1.220(b)(3)'s superiority requirement, it must be shown that "class representation is superior to other available methods for the fair and efficient adjudication of the controversy." Fla. R. Civ. P. 1.220(b)(3). Three factors that courts consider when deciding whether a class action is the superior method of adjudicating a controversy are (1) whether a class action would provide the class members with the only economically viable remedy; (2) whether there is a likelihood that the individual claims are large enough to justify the expense of separate litigation; and (3) whether a class action causes of action is manageable. *Sosa v. Safeway*, 73 So. 3d at 116. In this case, the superiority factors weigh heavily in favor of class certification.

First, the only economically viable remedy for adjudicating this controversy is through a class action. Without the class action device, no class member would be able to obtain counsel and would not be able to afford to challenge Defendant's practices in order to recover their own estoppel certificate fees back. The small size of these recoveries combined with the large number of transactions within the class period makes a class action the only viable manner in which to litigate these claims.

Simply stated, absent a class action, it would be economically infeasible for individuals to obtain counsel willing to litigate to recover such small amounts. Finally, because the putative class members owned homes that are reflected in Defendant's documents, it would be easier to skip trace the class members. Therefore, there are no issues identifying or providing notice to the class which supports a finding of manageability. As a result, a class is superior to the other available methods of adjudicating these claims. Because all the elements of Rule 1.220(a) and (b)(3) are satisfied, class certification of the proposed Settlement Class is appropriate.

IV. THIS SETTLEMENT FALLS WITHIN THE "RANGE OF REASONABLENESS" AS TO ITS FAIRNESS, ADEQUACY AND REASONABLENESS.

Once the class has been found to meet the requirements for certification, this Court's analysis turns to the terms of the proposed Settlement. The purpose of preliminary evaluation of proposed class action settlements is to determine whether the settlement is within the "range of reasonableness" such that notice should be issued to the class. *4 Newberg* § 11.26. *Grosso v. Fid. Nat. Title Ins. Co.*, 983 So. 2d 1165, 1173-74 (Fla. 3d DCA 2008) (*citing* Fed.R.Civ.P. 23(e)(1)(C), and *Ramos v. Philip Morris Cos.,* 743 So.2d 24, 31 (Fla. 3d DCA 1999)). Some of the "*Bennett* factors" that should be considered in making this determination include: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk

of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Id.* (*citing Bennett v. Behring Corp.,* 737 F.2d 982, 986 (11th Cir.1984)).

At this preliminary approval stage, this Court can readily determine that each of the *Bennett* fairness factors weighs in favor of preliminarily approving the terms of this Settlement. First, the Settlement was reached in the absence of collusion, and is instead the product of good faith, informed and arm's length negotiations by competent counsel. Second, this matter is being settled by counsel experienced in this type of litigation after motions to dismiss, discovery, one and one-half days of mediation, and subsequent negotiation.

Third, a preliminary review of the *Bennett* fairness factors, in light of the terms of the settlement, indicates that the terms of the Settlement appear to be fair, adequate and reasonable. As alleged in Plaintiff's complaint, Plaintiff and all members of the Settlement Class claim they were charged unreasonable estoppel certificate fees and/or estoppel certificate fees that were in excess of Florida Statutes § 720.30851(6), which they claim violates FDUTPA.

As discussed above, Defendant raised several defenses to the claims asserted. First, it argued that the amounts paid above the statutory cap of $250 ($23 Homewise Fee and $6 Convenience Fee) were not part of the estoppel fee, and were not collected or retained by Rizzetta, and other parties may have to be added or may be liable for the amounts at issue. Second, Rizzetta also presented evidence that the Convenience Fee could have been avoided by requesting an alternative form of payment. This would reduce the amount of overcharge by $6. Finally, Rizzetta argued that Plaintiff may not be able to represent class members from different HOA's under Rule

1.220. For these reasons, both sides had a good faith basis to compromise the claims being asserted.

Under the negotiated settlement, each class member will receive a Settlement Payment of $16, which is just over 50% of the $29 total amount alleged to have been paid over the $250 cap. If the Convenience Fee is deducted, the settlement amount represents approximately 70% of the alleged overcharge. This amount if fair and reasonable in light of the defenses raised and the delay that would be caused by continued litigation. Defendant also stopped charging amounts above the statutory limit. As a result, this Court should find that the proposed Settlement appears to be within the range of reasonableness such that Notice should issue to the Settlement Class, a final fairness hearing should be scheduled, and the Settlement Class should be certified for settlement purposes.

V. PLAINTIFF HAS AN INDIVIDUAL CLAIM SEPARATE FROM THE CLASS CLAIM

The Settlement Agreement provides a $2,500.00 payment to Plaintiff for his service as class representative and for a general release of his individual claims that are distinct and independent of his estoppel certificate claim. This claim is related to Plaintiff's individual claims for the time, money, stress, mental anguish of dealing with the excessive estoppel certificate charges. Accordingly, the individual settlement set forth in the Settlement Agreement should be approved because of the value of his individual claim.

VI. PLAINTIFF'S ATTORNEY FEES AND EXPENSES

The proposed Settlement contemplates a payment of $165,000.00 in attorney fees and costs to Class Counsel. The fee and expense negotiations were conducted at arm's-length after an agreement for the class had been reached and is being paid over and above the relief to the class. Settlement agreements between plaintiffs and defendants in class actions are encouraged, particularly where the attorneys' fees are negotiated separately and only after material terms of the

settlement have been agreed to between the Parties. *See*, *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974) ("in cases of this kind, we encourage counsel on both sides to utilize their best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney fees").

The amount agreed upon represents the less than total time and expenses of Varnell & Warwick and Paul Knopf Bigger, PLLC representing the class at their normal hourly rates. Such a fee is certainly within the range of reasonableness such that notice should be issued to the class. Given the reasonable amount of Attorney Fees agreed upon, this Court should find that the Attorney Fee segment of the Settlement Agreement also falls with the range of reasonableness to warrant granting of preliminary approval.[1]

VII. THE PROPOSED CLASS NOTICE SATISFIES DUE PROCESS

The final issue for this Court to address at this Preliminary Approval stage is Notice to the Settlement Class. Notice is an integral part of Rule 1.220(b)(3). Class actions under this subdivision are only allowed when common questions of fact or law predominate and class-action treatment is thought to be superior to other available means of settling the controversy. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652 (1950). Without the notice requirement, it would be constitutionally impermissible to give the judgment binding effect against the absent class members. Notice to the class must be given before entry of judgment in order to allow class members the opportunity to either participate in the proceedings, or to opt out of the proceedings. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974) (notice and opportunity to opt out required by due process). Notice must be sent well before the merits of the case are adjudicated. *Brown v. Colegio de Abrogados de Puerto Rico*, 613 F.3d 44, 51 (1st Cir. 2010) (The

[1] Plaintiff's Counsel will submit a more detailed breakdown of their time in the case prior to Final Approval.

purpose of the rule regarding notice for a class action is to ensure that the plaintiff class receives notice of the action well before the merits of the case are adjudicated.)

The Eleventh Circuit's position on class notice in Rule 23(b)(3) certified class actions is one of strict adherence to due process. *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1078 (11th Cir. 2000) (holding that certification under Rule 23(b)(3) would require that the class members receive notice of the suit "well before the merits of it are adjudicated.") citing *Schwarzschild v. Tse*, 69 F.3d 293, 295 (9th Cir. 1995); See also Fed. R. Civ. P. 23(c)(2); 7B Wright, Miller & Kane.

Under Rule 1.220, "the notice shall inform each member of the class that (A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class, (B) the judgment, whether favorable or not, will include all members who do not request exclusion, and (C) any member who does not request exclusion may make a separate appearance within the time specified in the notice."[2]. This document will provide Settlement Class Members with all the information necessary to understand the claims, opt out, or file objections to this Settlement.

VIII. CONCLUSION

For the reasons set forth above, this Court should enter the Proposed Preliminary Approval Order[3] allowing notice to be issued to the class and taking this Settlement to the next stage of resolution.

DATED: FEBRUARY 7, 2023

VARNELL & WARWICK, P.A.

BY: /s/ Brian W. Warwick
Brian W. Warwick, FBN: 0605573
Jeffrey Newsome, FBN: 1018667

2 The Parties will submit a proposed class notice form prior to the hearing on Plaintiff's Motion for Preliminary Approval.

3 The Parties will submit an agreed Proposed Preliminary Approval Order prior to the hearing on Plaintiff's Motion for Preliminary Approval.

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2024, I electronically filed the foregoing document with the Clerk of Court using the Florida Courts E-Filing Portal. I also certify that the foregoing document is being served this day on all counsel of record and interested parties, via transmission generated by the Florida Courts E-Filing Portal.

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Counsel for Defendant

/s/ Brian W. Warwick
Brian W. Warwick

EXHIBIT 1

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

Bastin Joseph, on behalf of himself and all others similarly situated,

Plaintiffs,

v.

Rizzetta & Company, Incorporated,

Defendant.

_____/

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") dated the 22nd day of January 2024, by and between the Bastin Joseph ("Plaintiff"), on behalf of himself and all others similarly situated, and Rizzetta & Company, Incorporated a Florida Company ("Rizzetta" or "Defendant"). Plaintiff and Defendant collectively shall be the Settling Parties, as more fully defined below. This Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle on behalf of the entire class the Released Claims, as defined herein, upon and subject to the terms and conditions herein.

Recitals

WHEREAS, there is currently pending in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Court"), a putative class action lawsuit styled *Bastin Joseph, on behalf of himself and all others similarly situated v. Rizzetta & Company, Incorporated*, Case No. 23-CA-001470 (the "Lawsuit") for alleged violations of Florida Statutes § 720.30851(6) and Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201, *et. seq.* ("FDUTPA"), arising out of Estoppel Certificate Fees charged to sellers of real properties subject to HOA dues.

WHEREAS, the Lawsuit seeks money damages and injunctive relief; and

WHEREAS, by agreeing to the Settlement, Defendant does not admit or concede (but, to the contrary, expressly denies) any wrongdoing, liability, or improper conduct of any nature in connection with any facts or claims that have been or could have been raised against Rizzetta in the Lawsuit, as defined herein, or in any other forum. Defendant considers it desirable for the Lawsuit to be settled and dismissed because the Settlement will: (a) avoid the continued expense of litigation; (b) provide substantial benefits to Plaintiff and the Settlement Class Members; (c) avoid the uncertainties inherent in litigating the issues presented by the Lawsuit; and (d) resolve Plaintiff's claims and the Settlement Class Members' claims, as well as the underlying matters without undue expense to the Parties, and reduce the burdens and uncertainties associated with protracted litigation of those claims including increased attorneys' fees; and

WHEREAS, the Settling Parties agree that, notwithstanding the execution of the Settlement Agreement, that Defendant's modification of policies and practices agreed to by the Settling Parties herein, and approved by the Court hereafter, shall not be deemed to be or have been a violation of Florida Statutes § 720.30851(6) and FDUTPA as alleged in the Complaint; and

WHEREAS, the Settling Parties have concluded that it is desirable for the Lawsuit to be settled to avoid further inconvenience, delay, and expense, and to dispose of potentially burdensome and protracted litigation and to put to rest all claims that have been or might be asserted by Class Counsel and/or the Class Members arising out of or related to the subject matter of the Complaint; and

WHEREAS, the Settling Parties have engaged in extensive arms-length settlement negotiations, including mediation, and have determined that the terms of this Settlement Agreement constitute a fair and reasonable compromise of the claims and defenses of all Settling Parties; and

WHEREAS, this Settlement Agreement sets forth the terms and conditions for a proposed settlement of the claims described more fully below; and

WHEREAS, Class Counsel recognizes that these suits have an uncertain outcome and that pursuing this litigation through trial would involve substantial cost, risk, and inevitable delay. Based on their evaluation of the facts and law, and a weighing of the risks and benefits, which include, among other things, whether the facts support the alleged violations of Florida Statutes § 720.30851(6) and FDUTPA raised in Complaint, the expense and length of continued proceedings necessary to prosecute the Lawsuit against the Defendant through trial and any appeals, the minimal award available to Plaintiff and the Class Members, and the substantial benefits the Settlement confers upon the Class Members, Class Counsel has determined that the settlement set forth in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class; and

WHEREAS, the Class Representative, through Class Counsel, who has conducted an investigation into the relevant facts, law and circumstances and engaged in arm's-length negotiations with Defendant's Counsel, has concluded that it is in the best interests of the Class to settle the Class Members' Claims on the terms set forth herein, which are deemed to be fair, reasonable, and adequate; and

WHEREAS, in consideration of the foregoing and other good and valuable consideration, it is stipulated and agreed by the Parties and between Class Counsel and Defendant's Counsel that the claims of Plaintiff and the Class be and are hereby compromised and settled, subject to the approval of the Court, upon the following terms and conditions.

Definitions

A. Rules of Definitions

Unless otherwise indicated, defined terms include the plural as well as the singular. Any term herein defined by reference to a section of this Settlement Agreement shall have such meaning as set forth in this Settlement Agreement as of the Execution Date, and unless such meaning is expressly amended thereafter, such meaning shall remain in effect. Unless the context otherwise requires a reference to any law or governmental regulation includes any amendment, modification or successor thereto; a reference to any Person includes its successors and assigns, the words "include," "includes," and "including," are not limiting and shall be deemed to be followed by the words "without limitation" whether or not in fact followed by such words or words of like import; and the terms "hereof," "herein," "hereunder" and comparable terms refer to this entire Settlement Agreement with respect to which such terms are used, and not to any particular article, section, or other subsection or subdivision thereof.

B. Defined Terms

1. **Parties.** The Parties to this Class Action Settlement Agreement and Release are Bastin Joseph, individually and on behalf of a class of persons similarly situated (hereinafter referred to collectively as "Plaintiff" or "Class Members," as defined more fully below), and Defendant, Rizzetta & Company, Incorporated as more fully defined herein.

2. **Lawsuit.** Lawsuit means the above-captioned action, *Bastin Joseph, on behalf of himself and all others similarly situated v. Rizzetta & Company, Incorporated*, Case No. 23-CA-001470.

3. **Attorneys' Fees.** Attorneys' Fees means the reasonable attorneys' fees, costs of litigation, and expenses, as awarded by the Court at the current hourly rate of Class Counsel. As

set forth in this Settlement Agreement, the parties have agreed to reasonable attorneys' fees and costs. The determination of attorneys' fees and costs shall be submitted to the Court for approval at the time of the Final Approval Hearing in accordance with the Order of Preliminary Approval. Attorneys' Fees also include the fees and expenses incurred in preparing the settlement documents and proposed orders, attending Preliminary Approval and Final Approval Hearing, and answering questions from members of the Settlement Class. Attorneys' Fees do not include the Class Representative's payment or settlement administration costs and expenses. Attorneys' Fees are not taken from any award paid to the Class.

4. **Class Counsel.** Class Counsel means counsel for the Class Representative and the Class Members: Brian W. Warwick, Esq. and Jeffrey Newsome, Esq., Varnell & Warwick. 400 N Ashley Drive, Suite 1900 Tampa, FL 33602 and Brent Bigger, Esq. and Lance Curry, Esq., Paul Knopf Bigger, 511 W Bay St #450, Tampa, FL, 33606.

5. **Class Members.** Class Members shall mean: (i) The owner-seller of any property, in a Rizzetta managed community, (ii) who requested and received an estoppel certificate from Rizzetta (iii) and paid fees related thereto between February 17, 2019 and September 20, 2023 (iv) and the total fees exceeded the applicable statutory cap if Rizzetta's estoppel certificate fee is added together with the third-party convenience fee and the third-party service charge.

6. **Class Representative.** Class Representative means the Plaintiff, Bastin Joseph.

7. **Complaint.** Complaint means the Complaint filed in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, *Bastin Joseph, on behalf of himself and all others similarly situated v. Rizzetta & Company, Incorporated*, Case No. 23-CA-001470.

8. **Court.** The Court means the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, by the judge now assigned to the Lawsuit, the Honorable Alissa Ellison.

9. **Defendant.** Defendant means Rizzetta & Company, Incorporated, a Florida Corporation.

10. **Defendant's Counsel.** Defendant's Counsel means: Carter Andersen, Esq., and Lauren Yevich, Esq., Bush Ross, P.A., 1801 N Highland Ave, Tampa, Florida 33602.

11. **Effective Date**. Effective Date means the date on which the last Settling Party signs this Agreement.

12. **Final.** Final means the entry of the Final Judgment as defined in Paragraph 13, below, where the following has occurred: (a) if no appeal is filed, the expiration of the date for filing a notice of any appeal; (b) upon entry by the Court of the Final Judgment and the expiration of the applicable period for perfecting an appeal from such Final Judgment without perfecting the appeal; and/or (c) if an appeal is taken, upon entry by a final Appellate Court of an Order affirming the Final Judgment and the expiration of any right of further appeal, or upon the voluntary dismissal of such appeal.

13. **Final Judgment.** Final Judgment means the Final Approval Order provided for in Section V, below.

14. **Notice and Settlement Notice**. Notice and Settlement Notice means the Notice of Proposed Class Action Settlement to be approved by the Court.

15. **Notice Date.** Notice Date means the date that Notice is mailed to Class Members.

16. **Person.** Person (when used in the singular or in the plural form) means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity and any other recognizable legal entity.

17. **Preliminary Approval Order.** Preliminary Approval Order means the order certifying the proposed Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice, and setting a date for the Settlement Hearing.

18. **Related Parties.** Related Parties shall mean each Person's past or present officers, directors, trustees, members, employers, employees, partners, member firms, affiliates, principals, agents, shareholders, attorneys, accountants, auditors, advisors, personal and legal representatives, heirs, beneficiaries, assigns, predecessors, successors, parents, subsidiaries, divisions, associates, related or affiliated entities, any members of their immediate families, and all Related Parties' and Settling Parties' insurers and their reinsurers.

19. **Released Claims.** Released Claims, means the claims and liabilities released and discharged under Section II, Paragraph 5, below.

20. **Settlement.** Settlement means the terms and conditions set forth in this Agreement, including all Exhibits to the Joint Motion referenced herein.

21. **Settlement Amount.** Settlement Amount means the amounts paid to the Class Members, exclusive of the compensation paid to Class Counsel.

22. **Settlement Checks.** Settlement Checks are the checks used to pay Class Members. Settlement Checks that are returned undeliverable or remain uncashed for 90 days from the date upon which they were mailed to Class Members, shall have no legal or monetary effect.

23. **Settlement Hearing.** Settlement Hearing means the hearing to determine whether the settlement of the Class Action should be given final approval, whether the proposed Plan of Allocation should be approved, and whether the applications of Class Counsel for attorneys' fees, costs, and expenses should be approved.

24. **Settling Parties.** Settling Parties means the Plaintiff, individually and on behalf of

the Class Members, and the Defendant.

Terms of the Settlement

NOW THEREFORE, in light of the foregoing recitals, which are incorporated herein and made a part hereof, and in consideration of the mutual promises, agreements, and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, it is hereby stipulated and agreed, by, between and among the Parties, that the Lawsuit, and the matters that were or could have been raised therein, is hereby settled, compromised, and dismissed on the merits and with prejudice on the following terms and conditions, subject to the Court's approval.

Section I. PLAN OF ALLOCATION

1. **Relief to Class.** Within thirty (30) days after entry of an order finally approving settlement, Defendant will pay or cause to be paid to any Class Member payment of $16.00 for each estoppel certificate fee incurred by the Class Member during the Class Period. Any person who timely and effectively requests exclusion from the Settlement shall not be entitled to receive any Settlement Payment. Settlement checks to the Class Members shall expire 90 days from the date that they are issued.

Defendant will also pay or cause to be paid to Plaintiff in the care of Class Counsel the sum of Two Thousand Five Hundred Dollars ($2,500.00), as the Class Representative to compensate him for his role in this Lawsuit.

Any remaining balance or uncashed checks to the Class will be paid to Bay Area Legal Services as *cy pres* recipient. Within thirty (30) days of the expiration of the Class Member checks, the Class Administrator shall pay or cause to be paid the remaining balance of the Class Members relief to Bay Area Legal Services.

With regard to the fees charged in connection with providing estoppel certificates in the State of Florida, Rizzetta denies that it ever charged more than the applicable statutory cap. However, Rizzetta acknowledges Plaintiff's argument that if one adds Rizzetta's estoppel certificate fee together with the third-party convenience fee and the third-party service charge, the total of such fees sometimes exceeded the State of Florida statutory cap. Rizzetta confirms that after April 13, 2023, the total of such fees has not exceeded the statutory cap on any closing in the State of Florida for which Rizzetta provided an estoppel certificate. Rizzetta also confirms that after July 1, 2022, the total of such fees has not exceeded the statutory cap on any closing in the State of Florida for which Rizzetta provided an estoppel certificate other than 181 instances where the total of such fees exceeded the statutory cap by ninety-five cents ($0.95).

2. **Class Counsel's Attorneys' Fees and Expense Award to Class Counsel**

(a) **General:** The reasonable attorneys' fees and costs for Class Counsel shall be paid by Defendant in the amount of One Hundred Sixty Thousand Dollars ($160,000.00). The litigation costs incurred by Class Counsel to be paid by Defendant are in the amount of Five Thousand Dollars ($5,000.00). This amount was agreed upon by the parties.

(b) **Procedure**: Plaintiff, as the Representative Plaintiff, and Class Counsel shall request that the Court approve an award ("Attorney Fee Award") of reasonable attorneys' fees and costs, of a total of One Hundred Sixty Five Thousand Dollars ($165,000.00), at the same time as the Final Approval Order is entered. The award shall be deemed final at the same time that the Final Approval Order becomes final, as described herein above, or such other time as the Court directs.

(c) **Payment**: The reasonable attorneys' fees and costs of Class Counsel once determined in accordance herewith, shall be paid by Defendant within twenty (20) days of entry

of the Final Approval Order. Defendant shall issue or cause to be issued a single check to Class Counsel in care of Varnell & Warwick, P.A. Trust Account once the Attorney Fee Award is final. The inability to deliver a check to a Class Member shall not defeat the entitlement to fees and costs of Class Counsel on account of that Class Member's recovery.

3. **Settlement Administration.**

(a) **General:** The Class Administrator shall administer the Settlement and shall deliver Settlement Payments along with a letter identifying the date the estoppel certificate was issued, the address of the property that was sold, the name(s) of the Class Members associated with the specific sale which resulted in the Settlement Payment. Settlement Payments can be combined when multiple estoppel certificates are related to a single Class Member.

(b) **Limitation:** Costs of settlement administration do not include any attorneys' fees, expenses, costs or disbursements incurred by Class Counsel and/or any other counsel representing the Plaintiff, as the Representative Plaintiff or Class Members, or by Representative Plaintiff or the Class Members, or any of them, in connection with or related in any manner to this Settlement Agreement, the Settlement, and/or the administration of such Settlement, except as provided for herein.

4. **Class Notice and Settlement Checks.** The Class Administrator shall send the Notice in the time provided herein. Settlement Payments must be paid by Defendant to the Class Members through the Settlement Administrator no later than forty (40) days after entry of the Final Approval Order.

Section II. RELEASED CLAIMS

5. **General.** It is the agreement and intent of the Settling Parties that this Settlement Agreement be construed and enforced as a mutual release subject to the limitations and exclusions

provided herein. Accordingly, it is hereby agreed that upon the Effective Date of this Settlement Agreement, each Class Member and Class Representative not opting out and his, her, or its respective Related Parties, shall hereby be deemed to have, and by operation of this Settlement Agreement, shall have fully, finally, and forever released, relinquished, discharged, and waived, against the Defendant, including their respective Related Parties, any and all claims, direct or third-party or otherwise, of whatever kind or nature, including but not limited to, any contract, tort, breach of duty, fiduciary, extra-contractual, punitive, exemplary, statutory, common law, demands, debts, damages, costs, attorneys' fees, expenses, actions, causes of action, suit or suits, controversies, sum or sums of money, liabilities and penalties arising from any act, omission or occurrence from the beginning of time to the Effective Date hereof, on account of any and all loss or damages of any kind whatsoever, known or unknown, allegedly sustained or which may hereafter be sustained allegedly in consequence of, arising out of, resulting from or relating to all allegations, claims, liens or defenses which have been raised in the Complaint, including but not limited to any claims related to the statutory cap under Section 720.30851(6), Florida Statutes, the provisions of Florida's Deceptive and Unfair Trade Practices Act, Section 501.201, *et. seq.*, Florida Statutes, and/or the reasonableness of Defendant's Estoppel Certificate charge(s) (including the Rizzetta estoppel certificate fee, the third-party convenience fee, and the third-party service charge).

6. **Breach of Settlement Agreement.** The Settling Parties agree that the provisions of Paragraph 5, above, shall be construed to exclude, and shall not impair, any right or cause of action arising from a breach of this Settlement Agreement including, but not limited to, any future claims that may arise with regard to the implementation of the Settlement Agreement. The Settling Parties also understand and agree that the provisions of Paragraph 5, above, shall be construed to exclude,

and shall not impair, any right or cause of action currently pending against Plaintiff and/or Class Members in any Court of competent jurisdiction other than the current Lawsuit.

Section III. PRELIMINARY APPROVAL ORDER AND SETTLEMENT HEARING

7. **Preliminary Approval Motion.** In accordance with the procedures and time schedules below, the Settling Parties shall take such actions, and prepare and file, all appropriate notices, motions, and proposed order forms reasonably necessary to obtain both preliminary and final approval of this Settlement Agreement from the Court. All Settling Parties shall cooperate, and as appropriate, shall join in seeking to accomplish the following:

(a) Within 10 days of the Effective Date of this Agreement, the attorneys for the respective parties shall file a joint motion for preliminary approval of this Agreement, including a request that the Court approve the mailing of the Notice within twenty (20) days of the entry of an order granting preliminary approval of this Agreement. All Settling Parties shall join in that motion and shall support any order approving this Agreement through any appeal, if necessary. Without prior approval of any other Settling Party, Class Counsel may file memoranda in support of the preliminary (and final) approval of this Settlement Agreement; and

(b) The Preliminary Approval Order shall require, and the Notice shall set out, that any objections to this Settlement Agreement must be made in writing, filed with the Court, and served on counsel no later than twenty (20) days before the date of the Final Approval Hearing. The Notice shall provide that any objection that is not received within the time set by the Court is deemed waived; and

(c) The Settling Parties shall jointly request a Final Approval Hearing date, which is no more than ninety (90) days after the date of entry of the Preliminary Approval Order.

8. **Preliminary Approval Order.** The proposed Preliminary Approval Order submitted to the Court shall contain the following provisions:

(a) Certification of the Settlement Class pursuant to Florida Rule of Civil Procedure 1.220(a) and (b)(3) for settlement purposes only; and

(b) Preliminary approval of the Settlement Agreement set forth herein and, subject to any objections that may be presented to the Court and served on counsel no later than twenty (20) days before the date of the Approval Hearing, enter an initial finding that the Settlement Agreement appears to be fair, adequate, reasonable, and in the best interests of the Class; and

(b) Approval of the form of a Notice of Class Action Settlement, that includes the general terms of the settlement, as set forth in the Settlement Agreement, and the procedures for objections and opt-outs described below. Utilizing the most recent available contact information on the Class Members within Defendant's records, shall be mailed or cause to be mailed by the Settlement Administrator by first class mail the Notice to all Class Members within twenty (20) days from the date of said order; and

(c) A finding that the mailing of the Notice by regular first class mail to all Class Members whose address has been identified constitutes valid, due and sufficient notice to the Class Members and their Related Parties, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of Rule 1.220, Fla. R. Civ. P., due process requirements of the Florida and United States Constitution, and any other applicable law and that no further notice to the Class is required.

(d) Set a hearing (the "Final Approval Hearing"), to accomplish among other things:

(1) Review and determine the merits of any objections to the Settlement;

(2) Determine whether to approve in final this Settlement Agreement pursuant to Rule 1.220, Fla. R. Civ. P. as fair, reasonable, adequate, and in the best interests of the Class, and authorize all acts necessary to consummate and effectuate the terms and conditions of this Settlement Agreement;

(3) Determine whether the Court should enter a Final Order approving the Settlement in final and dismissing the Lawsuit with prejudice;

(4) Determine the reasonableness of the Attorneys' Fees and Costs to be paid to Class Counsel in the amount of One Hundred and Sixty-Five Thousand Dollars ($165,000.00).

(5) Determine such other matters as the Court may deem necessary and appropriate.

Section IV. OBJECTIONS AND EXCLUSIONS

9. **Objection to Settlement.** Any Class Member who objects to the Settlement contemplated by this Agreement shall have a right to appear and be heard at the Settlement Hearing provided that such Person files with the Court and delivers to Class Counsel and Defendant's Counsel a written statement of reasons for the objection no later than twenty (20) days before the Settlement Hearing date. Settlement Class Counsel and Defendant's Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law filed and served no later than five (5) business days prior to the Settlement Hearing. The manner in which a notice of objection should be prepared, filed, and delivered shall be stated in detail in the Notice. Only Class Members who have filed and delivered valid and timely written notices of objection will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise. Any Class Member who does

not make his or her objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the award of Attorneys' Fees to Class Counsel, unless otherwise ordered by the Court.

10. **Exclusion from Class.** Any Class Member may seek to be excluded from the Settlement. Any Class Member so excluded shall not be bound by the Settlement and shall not be entitled to any of its benefits. To be timely excluded from the class settlement, the Class Member must submit a written statement requesting to be excluded from the Class Settlement. To be valid, the Written Statement must include the Class Member's full name, address, signature, and date, and the following statement or words to this effect: "*I WANT TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE LAWSUIT "Bastin Joseph v. Rizzetta & Company, Incorporated."*

11. **Binding Effect.** All proceedings, orders and judgments, including the Final Order entered in the Lawsuit, will be binding on all Settlement Class Members who have not validly excluded themselves from the Settlement Class, even if such Settlement Class Members have objected to the Settlement. Additionally, the Releases contained Section II, above, will be binding on all Settlement Class Members who have not validly excluded themselves from the Settlement Class, even if such Settlement Class Members have objected to the Settlement.

12. **Appearance of Attorney for Settlement Class Member**. If a Settlement Class Member hires an attorney to represent him or her, the attorney must:

(a) File a notice of appearance with the Court no later than twenty (20) days prior to the date of the Approval Hearing; and

(b) Serve a copy of such notice of appearance on counsel for Defendant and the Class Counsel.

Section V. FINAL JUDGMENT

13. **Final Judgment.** The proposed Final Judgment set forth in the proposed Final Approval Order submitted to the Court prior to the Settlement Hearing shall act as a condition subsequent of this Settlement and shall, at a minimum, include the following provisions:

(a) A finding that the distribution of the Notice fully and accurately informs all Class Members and Related Parties entitled to notice of the material elements of the Settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with Rule 1.220, Fla. R. Civ. P., the Florida and United States Constitutions, and any other applicable law; and

(b) A finding that after proper notice to the Class, and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or a finding that all timely objections have been considered and denied; and

(c) Approval of the settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Class, in all respects under Rule 1.220, Fla. R. Civ. P., finding that the settlement is in good faith, and ordering the Parties to perform the settlement in accordance with the terms of this Settlement Agreement; and

(d) A finding that neither the Final Judgment nor the Settlement Agreement shall constitute an admission of liability by the Settling Parties, or any of them, of any liability or wrongdoing whatsoever; and

(e) Subject to reservation of jurisdiction for matters discussed in subparagraph (h), below, dismissing with prejudice the Complaint; and

(f) In accordance with the Florida Rules of Civil Procedure, finding that there is no just reason for delay, and ordering the entry of a Final Judgment; and

(g) A finding that all Class Members not opting out and their Related Parties shall, as of the entry of the Final Judgment, conclusively be deemed to have released and forever discharged Defendant and their Related Parties from all Released Claims, and forever enjoining and barring all Class Members and their Related Parties from asserting, instituting, or prosecuting in any capacity, before any court or governmental agency, any action or proceedings against Defendant that assert any Released Claims; and

(h) A reservation of exclusive and continuing jurisdiction over the Lawsuit and the Settling Parties for the purposes of, among other things, (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Class and resolving any disputes that may arise with regard to any of the foregoing.

Section VI. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, RESCISSION, OR TERMINATION

14. This Settlement Agreement, including the releases herein, shall be null and void, and the provisions of Section VI, Paragraph 15, below, shall apply, if each of the following conditions fails to occur or be satisfied prior to the date that the Final Judgment becomes Final:

(a) All non-settlement related activities regarding the Complaint shall be, and shall remain, stayed by the Court pending Final Judgment approving this Settlement Agreement; and

(b) All Settling Parties shall approve, execute, and perform all such acts or obligations that are required by this Settlement Agreement to be performed prior to the date that the Final Judgment becomes Final; and

(c) A Preliminary Approval Order, in substantially a form as described by Section III, Paragraph 8, above, shall be entered by the Court; and

(d) At or prior to the Settlement Hearing, no objections to this Settlement Agreement have been received, or if any such objections have been received, and all such objections have been considered and denied by the Court; and

(e) A Final Judgment, in a form substantially as described by Section V, Paragraph 13, above, shall be entered by the Court; and

(f) Subject to the reservation of jurisdiction for matters described in Section V, Paragraph 13(h), above, the Lawsuit must be dismissed with prejudice.

15. In the event that this Settlement Agreement is finally rejected upon the Settlement Hearing, or in the event a Final Judgment is not entered, or does not become Final, or in the event that the Settlement Agreement is rejected by the mandate of an appellate court, then the terms of this Agreement shall be null and void; and

(a) The terms of this Agreement shall have no further force and effect with respect to the Settling Parties; and

(b) This Agreement shall not be used in this litigation for any purpose; provided, however, this Agreement may be used for bringing an action for failure of a Settling Party to take steps required by this Agreement or required by such party's position as a fiduciary to secure judicial approval of this Agreement; and

(c) The Settling Parties shall be restored to their respective positions in the litigation as of the date the Settlement Agreement was reached, including but not limited to the fact that there has not been any class certification hearing or process and the Defendant reserves all of its rights to object to class certification and demand an evidentiary hearing regarding all issues relating to class certification; and

(d) Any Judgment or orders entered by the Court in accordance with this Settlement Agreement shall be treated as vacated.

Section VII. MISCELLANEOUS PROVISIONS

16. **Enforcement**. The Settling Parties acknowledge that violation of the Settlement Agreement or any of the releases will cause immediate irreparable injury for which no remedy at law is adequate. If any Party fails to perform his, her or its obligations hereunder, any other Party shall be entitled to specific performance, including through mandatory preliminary and injunctive relief, in addition to such other remedies as provided herein. Nothing contained herein shall be construed to preclude any party from applying for contempt or other remedies or sanction provided by the Florida Rules of Civil Procedure for breach of this Settlement Agreement.

17. **Agreement to Cooperate.** The Parties: (a) acknowledge that it is their intent to execute the Agreement; and (b) agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

18. **Good Faith Settlement and Advice of Counsel.** The Parties agree that the terms of the Settlement reflect a good-faith settlement of the Class Representative and the other Class Members' claims in the Lawsuit, reached voluntarily after consultation with experienced legal counsel.

19. **Incorporation.** All of the Exhibits to the Joint Motion for Preliminary Approval are material and integral parts of the Settlement and are fully incorporated herein by this reference. To the extent any term in an Exhibit to the Joint Motion for Preliminary Approval conflicts with a term of this Settlement Agreement, this Settlement Agreement will control.

20. **Failure to Reserve Notice.** The failure of any Settlement Class Member to receive Notice or any other document as described in this Settlement Agreement shall not be a basis for invalidating the Settlement, this Settlement Agreement, any order entered pursuant thereto, or any of the exhibits or documents referenced herein, or attached hereto, and the Settlement shall nevertheless be binding and the Final Order effective in accordance with its terms.

21. **No Waiver.** The waiver of one party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement; nor shall such a waiver be deemed a waiver by any other Party of that breach or a waiver by that Party of any other Party's breach.

22. **Modification.** The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their successors-in-interest.

23. **Headings.** The headings of the paragraphs herein are for convenience only and do not define, limit, or construe the contents of this Agreement.

24. **Entire Agreement.** Except as provided herein, the Agreement and the Exhibits attached to the Joint Motion for Preliminary Approval constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning the Agreement or accompanying Exhibits other than the representations, warranties, and inducements contained and memorialized in the Agreement and the accompanying Exhibits.

25. **Authority to Settle.** Class Counsel warrant that they are expressly authorized by the Class Representative to take all appropriate action to effectuate the terms and conditions of the Settlement and also are expressly authorized to enter into any modifications of, or amendments to, the Agreement on behalf of the Class which they deem appropriate.

26. **Authority to Execute.** Each counsel or other person executing the Agreement or any of its Exhibits on behalf of any Party hereto hereby warrants that he or she has the full authority to do so.

27. **Counterparts.** The Agreement may be executed in one or more counterparts, each of which shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts, and a complete set of executed counterparts shall be filed with the Court.

28. **Binding Effect.** The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto. All Settling Parties waive the right to appeal or collaterally attack the Final Judgment entered under this Settlement Agreement.

29. **Exclusive Jurisdiction and Venue for Enforcement.** Any dispute relating to this Agreement or Final Judgment shall be resolved exclusively in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, which Court shall retain exclusive jurisdiction and venue with respect to the consummation, implementation, enforcement, construction, interpretation, performance, and administration of the Agreement and/or Judgment. The Parties agree to submit to the exclusive jurisdiction and venue of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida for the purposes described above.

30. **Choice of Law.** This Agreement and any document executed in furtherance of the Settlement shall be governed by, subject to, and construed in accordance with the laws of the State of Florida, without regard to conflicts-of-laws principles.

31. **Costs and Expenses.** Except as otherwise provided herein, each Party shall bear its own costs and expenses.

32. **Interpretation.** All Settling Parties have participated in the drafting of this Settlement Agreement and, accordingly, any claimed ambiguity should not be presumptively construed for or against any of the Parties.

33. **Subsequent Discovery of Facts.** In connection with this Settlement Agreement, the Representative Plaintiff acknowledges that he is aware that he may hereafter discover facts, action, claims and causes of action presently unknown or unsuspected, or facts in addition to or different from those which he now knows or believes to be true with respect to the matters released herein. Nevertheless, it is the purpose of this Settlement Agreement and the intention of Representative Plaintiff and the Settlement Class Members to settle and release such matters and all actions, causes, causes of action, and claims relating to the Complaint, which exist, or might have existed.

34. **Waiver.** Class Counsel, Plaintiff, as Representative Plaintiff, and the Settlement Class Members expressly understand that certain federal or state laws, rights, rules, or legal principles which may be or become applicable may require different or additional modifications than those agreed to herein. Representative Plaintiff and the Settlement Class Members hereby agree that the provision of such laws are hereby knowingly and voluntarily forever waived and relinquished by Representative Plaintiff and the Settlement Class Members, and Representative Plaintiff and the Settlement Class Members hereby agree and acknowledge that this is an essential term of this Settlement Agreement.

35. **Final Resolution.** Nothing in this Lawsuit is intended to limit the generality of the release set forth above. It is the purpose and intent of this Settlement Agreement that all claims, actions and causes of action by the Representative Plaintiff and Settlement Class Members alleging violations of Florida Statutes § 720.30851(6) and Florida's Deceptive and Unfair Trade Practices

Act, Fla. Stat. 501.201, *et. seq.* ("FDUTPA") as set forth in the Lawsuit shall forever be barred. The doctrines of *res judicata* and collateral estoppel shall apply to all Settlement Class Members with respect to all issues of law and fact and matters of relief within the scope of all filed complaints in this Lawsuit, the Released Claims, and this Settlement Agreement. If a Person seeks, in a separate action or proceeding, relief that would be inconsistent with the terms of the Settlement Agreement, Defendant or any Released Party may by affidavit or otherwise in writing, advise the other Parties and the Court or other forum in which such action or proceeding is brought, that such relief in that action or proceeding is unwarranted.

36. **No Liability for Joint Settlement Class Members.** Defendant shall not be liable or responsible for allocating or dividing the Settlement Payments among Settlement Class Members who are jointly entitled to Settlement Payments shall be resolved solely between the contending Settlement Class Members and such Settlement Class Members shall be prohibited from joining Defendant's counsel, the Plaintiff or Class Counsel in any action to apportion a distribution made to the Settlement.

39. **Beneficiaries.** This Settlement Agreement and the Settlement contemplated herein, shall inure to the benefits of the Released Persons and/or Released Parties as well as the Settled Parties. The Settled Parties each acknowledge that this Settlement Agreement is being entered into for the benefit among others of the other above-referenced Released Persons and/or Released Parties and agree that the provisions of this Settlement Agreement may be enforced and relied on by the Released Persons and/or Released Parties in their own right without the aid or participation of Defendant or any other signatory to this Settlement Agreement. The Released Persons and/or Released Parties are intended third party beneficiaries of this Settlement Agreement.

40. **No Other Third Party Beneficiaries.** Except as set forth in the preceding Section 39, this Settlement Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation, or undertaking established herein to any third party as a beneficiary to this Settlement Agreement.

41. **Captions.** The captions or hearings of the Sections and Paragraphs of this Settlement Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Settlement Agreement.

42. **Computation of Time.** All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of Court, the day of the act, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or when the act to be done is the filing of a paper in court, a day in which weather or other conditions have made the office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, and to modify or supplement any notice contemplated hereunder.

[LEFT BLANK INTENTIONALLY; SIGNATURE PAGES BELOW]

/s/ *Jeffrey L. Newsome, II*
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Class Counsel and Counsel for Plaintiff

Bastin Joseph
Bastin Joseph (Jan 3, 2024 17:48 EST)

Bastin Joseph, *individually and on behalf of the Settlement Class*

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Rizzetta & Company, Incorporated, a Florida Company

By: WILLIAM J. RIZZETTA
Its: PRESIDENT

EXHIBIT 2

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

BASTIN JOSEPH, on behalf of himself and all others similarly situated, **Plaintiff,** **v.** **RIZZETTA & COMPANY, INCORPORATED,** **Defendant.**	**CASE NO.: 23-CA-001470** **DIVISION: J**

DECLARATION OF BRIAN W. WARWICK

I, Brian W. Warwick, declare as follows:

1. I am a partner in the law firm of Varnell & Warwick, PA ("V&W"), counsel of record for Plaintiff in this matter. I respectfully submit this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

2. V&W is a law firm headquartered in Florida that focuses on consumer protection, environmental protection, civil rights and other areas of high-impact public interest litigation. The attorneys of V&W have been appointed lead or co-lead class counsel in more than 50 class action cases certified in both state and federal courts across the nation including cases within this District. They have prosecuted a variety of multi-million-dollar disputes. The defendants in these cases have included governmental entities and international companies such as AT&T, Asplundh, Bank of America, Capital One, Citibank, Discover Bank, General Electric Capital Corp., HSBC, Home Depot, Progressive Insurance, State Farm Insurance, and Sallie Mae.

3. Since starting V&W in 2001, I have concentrated my practice on consumer financial protection litigation. Throughout my career, I have been engaged in complex litigation and frequently litigate under Federal and state consumer protection statutes.

4. I received a B.A. in Finance from the College of St. Francis in Joliet, Illinois in 1994. In 1999, I received my J.D. from Cumberland School of Law and my MBA from Samford University in Birmingham, Alabama.

5. After graduation from law school, I served as Law Clerk to the Honorable Champ Lyons, Jr. on the Alabama Supreme Court.

6. I am currently admitted in the following state and federal courts: Supreme Court of the United States (2004); State of Florida (2002); State of Alabama (1999-Alabama Bar license currently on inactive status); United States District Court, Southern District of Florida (2011); United States District Court, Middle District of Florida (2005); United States District Court, Northern District of Florida (2011); United States District Court of Colorado (2007); Tenth Circuit Court of Appeals (2010); Eleventh Circuit Court of Appeals (2008); and, Federal Circuit Court of Appeals (2010).

7. I have written the following publications related to class action litigation: Class Action Settlement Collusion: Let's Not Sue Class Counsel Quite Yet, American Journal of Trial Advocacy, Vol. 22:3 (Spring 1999); Claim Jumpers Beware: Alabama Takes Another Look at Class Action Certification, American Journal of Trial Advocacy, Vol. 22:1 (Summer 1998).

8. I have been a guest speaker on class action matters on several occasions for the National Consumer Law Center ("NCLC") and the National Association of Consumer Advocates ("NACA").

9. Along with my partner, Janet Varnell, I received the "2018 Trial Lawyer of the Year Award" from the Public Justice Foundation in Washington D.C. This nationally recognized award was presented for our class action work protecting consumers in the payday loan industry in the matter of *Inetianbor v. CashCall*, in the United Stated District Court, Southern District of Florida. The *CashCall* case involved payday lenders using tribal land to attempt to circumvent usury laws for internet loans. Florida consumers were charged between 90% and 300% interest on these loans. The complex issues involved in this matter included an arbitration clause that required arbitration under tribal law, a choice of law provision that dictated tribal law and numerous competing class actions. The matter was appealed twice to the Eleventh Circuit and once to the Supreme Court of the United States. Ultimately, Florida consumers received millions of dollars in terminated loans and refunds.

10. Varnell & Warwick has been named Class Counsel in the following cases:

- *Allen v. AT&T,* In the United States District Court, Eastern District of Oklahoma, CIV-00-023-S;
- *Anstead et al v. Sacred Heart Health System Inc et al*, In the United States District Court, Northern District of Florida, 3:22-cv-02553;
- *Baez v. LTD Financial Services, L.P.,* In the United States District Court, Middle District of Florida, 6:15-cv-1043;
- *Bayhylle, et al. v. Jiffy Lube International*, In the District Court for Cherokee County, Oklahoma, CJ-2002-352;
- *Bennett v. Coggin Cars, LLC*, In the Circuit Court of Duval County, Florida, 2004-CA-002883;
- *Briles v. Tiburon Financial, LLC, et al.,* In the United States District Court, District of Nebraska, 8:15-cv-00241
- *Brotz v. Simm Associates, Inc*., In the United States District Court, Middle District of Florida, 6:17-cv-1603-Orl-40EJK

- *Brown v. Johnson Distributors, et al.,* In the General Court of Justice Superior Court Division, State of North Carolina, County of Mecklenburg, 16-CVS-3445;

- *Brown v. Lohman Property Management Co., LLC, et al.,* In the Circuit Court of Duval County, Florida, 16-2018-CA-008274*;*

- *Bryant v. World Imports U.S.A., Inc., d/b/a World Imports,* In the Circuit Court of Duval County, Florida, 2015-CA-005185;

- *Burrow, et al. v. Forjas-Taurus SA and Braztech International, L.C.*, In the United States District Court, Southern District of Florida, 1:16-cv-21606-EGT;

- *Byrd v. Lohman Property Management Co., LLC, et al.,* In the Circuit Court of Duval County, Florida, 16-2018-CA-06668*;*

- *Covey v. American Safety Council, Inc. d/b/a Florida Online Traffic School*, In the Circuit Court of Orange County, Florida, 10-CA-009781;

- *Ebreo v Vystar Credit Union, In* the Circuit Court of Duval County, Florida, 2014-CA-000365;

- *Ferrari v. Autobahn, Inc., et al.,* In the United States District Court for the Northern District of California, 4:17-CV-00018-YGR;

- *Friedman v. Guthy-Renker,* In the United States District Court, Central District of California, 2:14-cv-06009.

- *Gagnon v. Kia Autosport of Pensacola, Inc., et al.,* In the Circuit Court of Escambia County, Florida, 2014-CA-000084;

- *Grant v. Ocwen Loan Servicing, LLC,* In the United States District Court, Middle District of Florida, 3:15-cv-01376-MMH-PDB;

- *Gjolaj v. Global Concepts Limited, Inc.,* United States District Court, Southern District of Florida, 1:12-cv-23064;

- *Law Offices of Henry E. Gare, P.A. v Healthport Technologies, LLC,* In the Circuit Court of Duval County, Florida, 2011-CA-010202;

- *Hardy v. N.S.S. Acquisition Corp.*, In the Circuit Court of Palm Beach County Florida, CL-99- 8628 AO;

- *Harvey v. Hospital Lien Strategies*, In the United States District Court, Middle District of Florida, 3:10-cv-00640-TJC-JRK

- *Holt v. HHH Motors, Inc.,* In the Circuit Court of Duval County, Florida, 2012-CA-010179;

- *Inetianbor v. CashCall and John Paul Reddam*, United Stated District Court, Southern District of Florida, 13-60066 – CIV – COHN – Seltzer.

- *Ioime, et al., v. Blanchard, Merriam, Adel & Kirkland, P.A.,* In the United States District, Middle District of Florida, 5:15-cv-13-Oc-30PRL;

- *Jackson v. Home Depot, USA, Inc.*, et al., In the Superior Court of the State of North Carolina for Mecklenburg County, 16-CVS-10961;

- *Jackson v. Worthington Ford of Alaska, Inc.,* In the Superior Court for the State of Alaska, Third Judicial District at Anchorage, 3AN-13-08258;

- *Kearney, et al., v. Direct Buy Associates, et al.,* In the Superior Court of the State of California for the County of Los Angeles, Central Civil West, BC539094;

- *Kilby, et al., v. Camaron at Woodcrest, LLC, et al.,* In the Circuit Court of Leon County Florida, 2013-CA-001300;

- *Koster, et al. v. Fidelity Assurance Associates, LLC, et al.,* In the Circuit Court of Lake County Florida, 2010-CA-003482;

- *Lankhorst v. Independent Savings Plan Company d/b/a ISPC,* In the United States District Court, Middle District of Florida, 3:11-cv-390-MMH-JRK;

- *McClure v. Avenue Motors, LTD*, In the Circuit Court of Duval County, Florida, 07-CA-009207;

- *Napoleon v. Worthington Imports of Alaska, Inc. d/b/a Mercedes Benz of Anchorage,* In the Superior Court for the State of Alaska, Third Judicial District at Anchorage, 3AN-14-09617 CI;

- *Newlin v. Florida Commerce Credit Union*, In the United States District Court, Northern District of Florida, 4:11-cv-00080-RH-WCS;

- *Neese, et al. v. Lithia Chrysler Jeep of Anchorage, Inc., et al.,* In the Superior Court in Anchorage Alaska, 3AN-06-4815;

- *Palasack v. Asbury Auto Group*, In the Circuit Court of Pulaski County, Arkansas, CV02-12712;

- *Page v. Panhandle Automotive, Inc.,* In the Circuit Court of Bay County, Florida, 11-CA-1611

- *Parish v. California Style, Inc., et al.*, In the District Court of Sequoyah County, Oklahoma, CJ- 00-342;

- *Petersen v. American General Life Ins. Co.*, United States District Court, Middle District of Florida, Case No. 3:14-cv-100-J-39JBT.

- *Peterson v. Progressive Corporation*, In the Court of Common Pleas, Cuyahoga County, Ohio, CV-03-510154;

- *Pool, et al. v. Rexall Sundown*, In the District Court of Sequoyah County, Oklahoma, CJ-2002-1253;

- *Plummer v. United Auto Group, Inc., et al.*, In the Circuit Court of Pulaski County, Arkansas, CV02-11804;

- *Prindle v. Carrington Mortgage Services, LLC,* In the United States District Court, Middle District of Florida, 3:13-cv-01349;

- *Reynolds v. Jim Moran & Associates*, In the Circuit Court of Wakulla County Florida, 04-CA- 259;

- *Riley v Home Retention Services, Inc. et al.,* United States District Court, Southern District of Florida, 2014-CV-20106;

- *Matthew W. Sowell, P.A. v. Bactes Imaging Solutions, Inc.*, In the Circuit Court of Duval County, Florida, 09-CA-018050;

- *St. John v. The Progressive Corporation*, In the Common Pleas Court of Cuyahoga County, Ohio, 392581;

- *Tate v. Navy Federal Credit Union,* In the Circuit Court of Duval County, Florida, 14-CA-000756;

- *Webb v. Touch of Class Catalog, Inc.*, In the District Court of Sequoyah County, Oklahoma, Case No. CJ-2000-306;

- *West v. City Auto Group-Tallahassee, LLC d/b/a City Hyundai*, In the Circuit Court of Leon County, Florida, 2012-CA-042109;

- *Williams v. New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, Inc.*, United States District Court, Middle District of Florida, 3:17-cv-570-25JRK;

- *Williams v. Tallahassee Property Investors, LLC and Apartment Management Consultants, L.L.C.*, In the Circuit Court of Leon County, Florida, 2015-CA-002097;

- *Wood, Atter & Wolf, P.A. v. Record Reproduction Service, Inc.,* In the Circuit Court of Duval County, Florida, 2015-CA-00763;

- *Wood, Atter & Wolf, P.A. v. Star-Med, LLC,* In the Circuit Court of Duval County, Florida, 2016-CA-6096;

- *Wood, Atter & Wolf, P.A. v. University of Florida Jacksonville Physicians, Inc.,* In the Circuit Court of Duval County, Florida, 16-2014-CA-005771.

- *Wolfe v. S2 Matthews, LP*, In the Circuit Court of Duval County, Florida, 16-2022-CA-001434;

- *Zilinsky v. LeafFilter North, LLC*, In the District Court for Southern District of Ohio, Case No. 2:20-CV-6229-MHW-KAJ

11. V&W also performs considerable appellate work on the class action cases it prosecutes throughout the United States. *See Home Depot U. S. A., Inc. v. Jackson*, 139 S. Ct. 1743 (2019) (successful defense of Fourth Circuit order remanding a consumer class action); *Baez v. LTD Fin. Servs., L.P.*, 757 F. App'x 842 (11th Cir. 2018) (successful appeal defending a consumer class action jury verdict); *Sellers v. Rushmore Loan Management Services, LLC*, 941 F.3d 1031, 1034 (11th Cir. 2019) (successful appeal reversing denial of class certification in a consumer class action); *Katrina Bushnell v. Portfolio Recovery Assoc., LLC,* 255 So.2d 473 (FLA. 2d DCA 2018) (successful amicus brief on appeal to Florida Supreme Court in an access to justice consumer case); *Dudley v. Eli Lilly & Co.*, 778 F.3d 909 (11th Cir. 2014) (successful defense of remand order in a consumer class action)*; Rainsbarger et. al. v. Alaska USA Federal Credit Union et al*., S-17360 (May 14, 2019) (successful affirmance by Alaska Supreme Court in a consumer class action); *Friedman v. Guthy Renker LLC*, Case No. 17-56456 (9th Cir. 2017) (successful defense of class settlement approval in appeal from objectors); *Asbury Auto Group v. Palasack*, 237 S.W.3d 462 (Ak. 2006) (appeal reversing trial court in Arkansas Supreme Court which granted class certification and summary judgment on appeal in consumer class action)*; HHH Motors, LLP v. Holt*, 152 So. 3d 745 (Fla. Dist. Ct. App. 2014) (successful affirmance of denial of motion to

compel arbitration in consumer class action); *AT&T Corp. v. Allen*, 541 U.S. 1027 (2004) (denial of certiorari from an Oklahoma Supreme Court affirmance of nationwide class certification); *A1A Burrito Works, et al. v. Sysco Jacksonville, Inc.*, 2023 WL 8440855 (11th Cir. 2023) (successful appeal reversing dismissal in a consumer class action). This complex appellate litigation and concomitant success is considerable for a very small firm indicating the firm's high level of experience and expertise in public interest and appellate law.

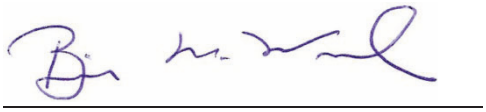
12. On May 28, 2019, the firm received a win for consumers in the Supreme Court of the United States in the matter of *Home Depot USA Inc. v. Jackson*, 2019 WL 2257158 139 S. Ct. 1743 (2019). The issue in the Jackson case was whether a third-party counterclaim defendant could remove a class action counterclaim from state court under either the general removal statutes or under the Class Action Fairness Act. Justice Thomas, writing for the majority, held to the strict construction of the statutes argued by Jackson and federal court jurisdiction was not further expanded.

13. Varnell & Warwick also employs Janet R. Varnell, Pamela Levinson, Jeffrey Newsome and Christopher Brochu as attorneys practicing in complex consumer litigation.

I declare under penalty of perjury of the state of Florida that the foregoing is true and correct to the best of my knowledge, and that I could competently testify to these facts if called as a witness.

Executed in Tampa, Florida.

Dated: February 7, 2024.



Brian W. Warwick