IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

WENDY RUIZ; NOEL SAUCEDO; CAROLINE ROA; KASSANDRA ROMERO; and JANETH AMERICA PEREZ, on behalf of themselves and all others similarly situated, Plaintiffs, v. GERARD ROBINSON, Florida Commissioner of Education, sued in his official capacity; and FRANK T. BROGAN, Chancellor of the State University System, sued in his official Capacity, Defendants.	)	Civil Case No. 1:11-cv-23776-KMM

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND INCORPORATED MEMORANDUM OF LAW

Plaintiffs Wendy Ruiz, Noel Saucedo, Caroline Roa, Kassandra Romero, and Janeth America Perez, on behalf of themselves and all others similarly situated, hereby respectfully move the Court for an order certifying this matter as a class action.

Introduction

This action challenges regulations adopted by the Florida State Board of Education and the Florida Board of Governors and implemented through their executive officials, Defendants Robinson and Brogan, which treat certain United States citizen students who reside in Florida as "non-residents" of the state solely because their parents are undocumented immigrants. F.A.C. §§ 6A-10.044(4), 72-1.001(5). These policies invidiously discriminate against such United States citizen students in violation of the United States Constitution.

Florida's public colleges and universities classify dependent applicants and students who are unable to show that their parents have federal immigration status as "non-residents," even though the applicants are United States citizens who reside in Florida. Being classified as a "non-resident" of the state of Florida more than triples the cost of tuition at public colleges and universities. As a result, many talented American students must either forego higher education or incur extraordinary costs, in both money and time, to obtain the same education made available to other Florida residents at a small fraction of the cost.

The individuals who bring this action are all United States citizens who graduated from Florida high schools and have lived in Florida for many years. Some have lived in Florida all of their lives. The only difference between the Plaintiffs and the students to whom Defendants accord in-state tuition status is that the Plaintiffs cannot prove that their *parents* have lawful immigration status. Defendants' actions violate fundamental constitutional rights. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and all others similarly situated.

Plaintiffs seek to certify a class defined as follows:

> All past, present, and future United States citizens who are, were, or will be able to establish Florida residency for purposes of determining in-state tuition rates at Florida public institutions of higher learning but for their parents' immigration status at the time of the application to or matriculation in such institutions.

Compl. ¶ 19.

I. Legal Framework.

Certification of a class is appropriate where the plaintiffs satisfy the four requirements of Rule 23(a) and at least one of the standards under Rule 23(b). *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250-51 (11th Cir. 2004). Rule 23(a) requires that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the

class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). These requirements are generally referred to as "numerosity, commonality, typically, and adequacy." *DeLeon-Granados v. Eller and Sons Trees, Inc.*, 497 F.3d 1214, 1220 (11th Cir. 2007) (quoting *Piazza v. Ebsco Indus. Inc.*, 273 F.3d 1341, 1346 (11th Cir. 2001)). Rule 23(b) is satisfied where, as here, "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

II. Argument.

As discussed below, all of the requirements for certification pursuant to Rule 23(a) and (b)(2) have been met in this case.

A. The Plaintiffs Meet All of the Rule 23(a) Requirements for Class Certification.

1. Numerosity.

The numerosity requirement of Rule 23(a) is satisfied where the number of potential plaintiffs is "so numerous that joinder of all members" of the class would be "impracticable." Fed. R. Civ. P. 23(a)(1). Although there is no fixed number required to demonstrate numerosity, "generally less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors." *Cox v. American Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986) (citations omitted). *See also Kilgo v. Bowman Transp. Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (affirming numerosity finding in employment discrimination case where class consisted of 31 identified members and possibly others).

With respect to establishing size, "a plaintiff need not show the precise number of members in the class." *Evans v. U.S. Pipe & Foundry Co.*, 696 F.2d 925, 930 (11th Cir. 1983). "Estimates as to the size of the proposed class are sufficient for a class action to proceed." *Wright v. Circuit City Stores, Inc.*, 201 F.R.D. 526, 537-38 (N.D. Ala. 2001). "When the exact number of class members cannot be ascertained, the court may make 'common sense assumptions' to support a finding of numerosity." *Susan J. v. Riley*, 254 F.R.D. 439, 458 (M.D. Ala. 2008) (citation omitted).

In this case, Plaintiffs easily satisfy the numerosity requirement. Although the precise size of the class is not known, "common sense" dictates that there are many more than forty students seeking higher education at Florida's public colleges or universities who are United States citizens and residents of the State of Florida but whose parents lack immigration status, causing these American students to be classified as "non-residents" for tuition purposes as a result of Defendants' policies.

A review of the available data shows that there are likely thousands of public college and university students who are the U.S. citizen children of undocumented immigrants living in the State of Florida. *See* Exh. 1, Decl. of E. Roman.

In the United States, there are roughly 4.5 million U.S.-born citizen children of undocumented immigrant parents. Exh. 1, Decl. of E. Roman ¶ 5 (citing Pew Hispanic Center, *Unauthorized Immigrant Population: National and State Trends, 2010*, 1, 13 (Feb 1, 2011) (Attachment A)). The total population of undocumented immigrants is about 11.2 million nationwide. *Id.* The ratio of U.S.-born citizen children of undocumented parents to the total number of undocumented immigrants is therefore 0.4 to 1.0. *Id.*

In Florida, there are approximately 825,000 undocumented immigrants who reside in the state. Exh. 1, Decl. of E. Roman ¶ 6. Applying the national ratio of U.S.-born citizens of undocumented immigrant parents to the total number of undocumented immigrants, there are likely about 330,000 U.S.-born citizen children of undocumented parents residing in the State of Florida. (Multiplying 825,000 by 0.4 = 330,000). *Id.*

In addition, of the total population in Florida, approximately 9% are ages 18 to 24. Exh. 1, Decl. of E. Roman ¶ 7 (citing Office of Economic and Demographic Research, Florida Census Day Population: 1970 to 2030, page 4) (Attachment B). It is therefore likely that there are approximately 29,700 U.S. citizen children of undocumented parents who fall within that age group. (Multiplying 330,000 by .09.) *Id.*

Also, of the total population in Florida, approximately 38% of those ages 18 to 24 enroll in higher education; nearly 80% of those students attend public colleges or universities in Florida. Exh. 1, Decl. of E. Roman ¶ 8 (citing American Fact Finder, U.S. Census Bureau, Florida S1401: School Enrollment (2005-2009) (Attachment C). It is therefore likely that about 11,826 U.S. citizen children of undocumented parents enroll in higher education. (Multiplying 29,700 by .38.) *Id.* Of this group, it is likely that roughly 8,984 students attend public colleges and universities. (Multiplying 11,826 by .796.) *Id.* ¶ 9.

The only "reasonable inference" from this statistical evidence is that the numerosity requirement has been met in this case. Exh. 1, Decl. of E. Roman, ¶ 10 ("Based on the available data, I believe it is reasonable to conclude that, throughout the State of Florida, there are thousands of public college and university students who are the U.S. citizen children of undocumented immigrants."). *See also Association for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 462 (S.D. Fla. 2002) (finding numerosity based on reasonable inferences

about class size from United States Census Bureau Population Reports); *Dahlgren's Nursery v. E.I. Du Pont de Nemours & Co*, 1994 U.S. Dist. LEXIS 17918, at *11-*12 (S.D. Fla. June 9, 1994) (finding numerosity based, among other things, on statistical evidence); *Pottinger v. Miami*, 720 F. Supp. 955, 958 (S.D. Fla. 1989) (finding numerosity in class action lawsuit on behalf of homeless people susceptible to arrest in Miami based on reasonable inferences from studies about the population).

In addition, Plaintiffs submit individualized evidence to further show that the proposed plaintiff class contains many more than forty members. This evidence consists of declarations from current and aspiring students, as well as a children's rights attorney, who are directly affected or personally aware of individuals in Florida who have been denied in-state tuition status or dissuaded from applying to school because of Defendants' policies. *See generally* Exh. 2-9. *See also* Exh. 7, Decl. of S. Rincon (affirming that she is a United States citizen and resident of Florida who was accepted to Florida International University but classified as out-of-state due to her parents' immigration status, making higher education unaffordable); Exh. 8, Decl. of A. Moten (affirming that he is a United States citizen and resident of Florida who was advised by his guidance counselor that he would be classified as an out-of-state student at Miami-Dade College based on his parents' immigration status and was therefore unable to attend college due to cost).

Future members of the class who will suffer the same harm may also be considered in the numerosity determination when the action seeks only injunctive and declaratory relief, as this case does. *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975) ("Smaller classes are less objectionable where, as in the case before us, the plaintiff is seeking injunctive relief on behalf of future class members as well as past and present members.") (citation omitted); *Tonya K. v.*

Chicago Bd. of Educ., 551 F. Supp. 1107, 1109 (N.D. Ill. 1982) (in case involving exclusion of student with disabilities from public school, court considered class to include students who in the future would require placement in numerosity determination). *See also* Exh. 3, Decl. of N. Saucedo (affirming knowledge of Florida resident United States citizen family members who attend Florida public high schools and will be unable to prove their parents' immigration status when applying for college); Exh. 9, Decl. of A. Dinis (children's rights attorney who, in the course of her practice, consults with high school guidance and bilingual counselors and has received several inquiries about Florida graduating high school students who will be classified as out-of-state due to Defendants' policies even though they are U.S. citizens and Florida residents).

Although Rule 23 does not require Plaintiffs to show the precise number of class members, the foregoing evidence demonstrates that the proposed plaintiff class consists of far more than the forty members that are generally "adequate" to meet the numerosity requirement. *See Cox*, 784 F.2d at 1553.

Moreover, it is plain from this evidence that the class is not only numerous, but also that joinder would be impracticable. "Practicability of joinder depends on many factors, including, for example … ease of identifying [class members'] numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion." *Lewis v. ARS Nat'l Servs.*, 2011 U.S. Dist. LEXIS 100139, at *7 (M.D. Ala. Sept. 6, 2011) (quoting *Kilgo v. Bowman Transp., Inc.*, 789 F. 2d 859, 878 (11th Cir. 1986)). In assessing impracticability, "courts should take a common-sense approach which takes into account the objectives of judicial economy and access to the legal system." *Bradley v. Harrelson*, 151 F.R.D. 422, 426 (M.D. Ala. 1993) (quoting 1 Newberg on Class Actions, 2d ed. §3.03 at 142 (1985)). More than forty class

members typically raises a presumption that joinder is impractical. *Cox.*, 784 F.2d at 1553 (citations omitted).

Several factors support a finding of impracticability here. First, the challenged regulations apply to potential class members throughout the State of Florida in all three federal judicial districts, making joinder highly impracticable. *See, e.g.*, Exh. 9 (Decl. of A. Dinis (children's rights attorney estimating there are likely dozens of affected students in Hillsborough County alone). Second, the class members are young people under the age of 24 who have little or no exposure to the legal system. *See* Exh. 2-8; *see also* Exh. 1, Decl. of E. Roman (of the total population of the State, approximately 9% are ages 18 to 24). Most, if not all, of these young people rely on public education and have limited financial resources. Compl. ¶¶ 4, 6, 9, 10, 12; Exh. 2-6. Where the proposed class consists of unsophisticated individuals or persons who are unlikely to access the judicial system, courts have found that joinder is impracticable. *Rosario-Guerro v. Orange Blossom Harvesting, Inc.*, 265 F.R.D. 619, 622-626 (M.D. Fla. 2010) (finding that joinder of immigrant workers "who do not speak English fluently, and who lack familiarization with the American legal system would be burdensome."); *Gerardo v. Quong Hop & Co.*, 2009 U.S. Dist. LEXIS 60900, at *6 (N.D. Cal. July 7, 2009) (certifying class of thirty-six (36) workers where "potential class members are not legally sophisticated" making it difficult to bring individual claims). Judicial economy would also be served by certification of the class, so as to avoid a multiplicity of lawsuits asserting the same claims and challenging the same regulations.

Finally, joinder is impracticable because the class members in this case cannot be easily identified. *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981) (noting that an important factor in numerosity is "the ease with which class members may be

identified"). Many students who would be class members have been dissuaded from completing their college applications or terminate the registration process once they learn they will be required to prove their parents' immigration status. Exh. 2-7. Others still are unwilling to come forward over fear of repercussions to their families. Exh. 9, Decl. of A. Dinis (high school students afraid to give their names to counselors for fear of repercussions to their parents). Finally, the proposed class includes aspiring college students who are currently in high school; as they are not yet affected by Defendants' policies, identifying and joining these potential class members would be impracticable. Exh. 2, 3, 8, 9.

As the proposed class is so numerous that joinder would be impracticable, Plaintiffs have met the requirement of 23(a)(1) for certification.

2. Commonality.

The commonality requirement of Rule 23(a)(2) is satisfied when there are common questions of fact or law. Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (internal quotation omitted). To meet the commonality requirement, there must be some "issues that are susceptible to class-wide proof." *Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004) (quoting *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001)). While the claims of the class members must arise from the same event or practice and be based on the same legal theory, *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984), the commonality requirement does not require that all class members share identical claims. *D.W. by M.J. v. Poundstone*, 165 F.R.D. 661, 670 (M.D. Ala. 1996). "[F]actual differences among the claims of the putative class members do not defeat certification." *Cooper*, 390 F.3d at 714 (quoting *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir.

1994)). The threshold for satisfying the commonality prerequisite is "not high." *Groover v. Michelin N. Am., Inc.*, 187 F.R.D. 662, 666 (M.D. Ala. 1999) (quoting *Morris v. Transouth Fin. Corp.*, 175 F.R.D. 694, 697 (M.D. Ala. 1997)).

Allegations of common discriminatory "policies" or "practices" that treat an entire class unlawfully, such as the allegations here, satisfy the commonality requirement. *Cox*, 784 F.2d at 1557-58; *Poundstone*, 165 F.R.D. at 670 (the commonality requirement was clearly met where "Plaintiff, through his complaint, has launched a systematic attack on the standard admissions procedure of the Alabama [Department of Mental Health] for children who are committed due to mental illness."). In such cases, commonality is shown "because the common question becomes whether the defendant in fact acted through the illegal policy or procedure." *Saur v. Snappy Apple Farms, Inc.*, 203 F.R.D. 281, 287 (W.D. Mich. 2001).

In this case, Defendants Robinson and Brogan, acting in their official capacities, have implemented policies or practices that have the purpose or effect of denying in-state tuition rates to United States citizen residents of Florida on the basis of their parents' federal immigration status. Compl. ¶¶ 13, 14, 31-36. These policies and practices apply with equal force to all of the proposed class members. As a result, all class members have suffered the same injury, namely their inability to be recognized as Florida residents for purposes of tuition classification.

The essential questions in this case do not vary among class members. Common legal questions include: (1) whether Defendants' policy and practice of requiring a Florida resident to show proof of his or her parents' federal immigration status in order to establish residency for the purpose of in-state tuition violates the Equal Protection Clause of the United States Constitution; and (2) whether Defendants' policy and practice are preempted by the United States Constitution

and federal law. The resolution of the claims in this case will involve legal theories and facts common to all class members.

Finally, courts have found that commonality is satisfied when, as here, plaintiffs request only declaratory and injunctive relief against a common discriminatory practice or policy. *See Baby Neal*, 43 F.3d at 57 (3d Cir. 1994) (commonly established "where plaintiffs request declaratory and injunctive relief against a defendant engaging in a common course of conduct toward them, and there is therefore no need for individualized determinations of the propriety of injunctive relief."); *Anderson v. Department of Public Welfare*, 1 F. Supp. 2d 456, 461-462 (E.D. Pa. 1998) ("Commonality is easily established in cases seeking injunctive relief."); 7A Charles A. Wright, *Federal Practice and Procedure* §1763, 226 (3d ed. 2005) ("[C]lass suits for injunctive or declaratory relief by their very nature often present common questions satisfying Rule 23(a)(2).").

3. Typicality.

To establish typicality, the representative plaintiffs must show that there is "a nexus between the class representative's claims or defenses and the common questions of fact or law which unite the class." *Kornberg*, 741 F.2d at 1337. "A sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Id.*

In this case, the claims of the representative Plaintiffs are typical of the claims of the class because, as with the named Plaintiffs, the claims of all class members arise from Defendants' discriminatory regulations. Compl. ¶¶ 31-36, Exh. 2-6. All of the named Plaintiffs are United States citizens and residents of Florida. Compl. ¶¶ 4-12; Exh. 2-6. All of them have been classified as "non-residents" for tuition purposes solely because they are unable to prove

their parents' immigration status. *Id.* As a result of these discriminatory regulations, the named Plaintiffs, as well as all other members of the proposed class, have suffered the same injury – namely, the denial of residency status for tuition purposes. *See Williams v. Mohawk Indus.*, 568 F.3d 1350, 1357 (11th Cir. 2009) ("A class representative must … suffer the same injury as the class members in order to be typical under Rule 23(a)(3)."") (citations omitted).

Further, the same legal theories underlie the claims of all class members. *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 n. 14 (11th Cir. 2000) (quoting *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985)) ("a strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences."). The named Plaintiffs have alleged that a policy that denies Florida residents the same access to tuition as is provided to other Florida residents violates the equal protection and supremacy clauses of the United States Constitution. Compl. ¶¶ 49-51, 53-56. Any class member who pursues an individual action would likely rely on the same constitutional theories as those of the named Plaintiffs. The typicality requirement has therefore been met.

4. Adequacy of Representation.

The representative Plaintiffs will also fairly and adequately represent the class, as required by the final prong of Rule 23. Fed. R. Civ. P. 23(a)(4). To determine adequacy, courts look to whether there are any "substantial conflicts of interest" between the representatives and the class, and whether the representatives will "adequately prosecute the action." *Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003) (citing *In re HealthSouth Corp. Securities Litigation*, 213 F.R.D. 447, 460-61 (N.D. Ala 2003)). In other words, the class representatives must show that their interests are not antagonistic to those of the

class, and that their counsel is "qualified, experienced, and generally able to conduct the litigation." *Id*.

The representative plaintiffs have no interests antagonistic to those of the class. They are seeking declaratory and injunctive relief which will provide the identical remedy for all members. They will suffer the same harm as all other members of the proposed class if denied equal access to affordable higher education. The legal theory is the same for the representative plaintiffs and the rest of the members of the proposed class.

Plaintiffs' counsel is fully qualified and prepared to pursue this action on behalf of the class. The Southern Poverty Law Center and Plaintiffs' attorneys are experienced at litigating class action cases. Exh. 10-12. In addition, the Southern Poverty Law Center has sufficient financial and human resources to litigate this matter. *See* http://splcenter.org/who-we-are/financial-information (annual report and audited financial statement). For these reasons, the adequacy requirement of Rule 23(a)(4) is satisfied.

B. The Class Meets the Requirements of Rule 23 (b)(2) for the Purpose of Seeking Declaratory and Injunctive Relief.

Lastly, this action meets the requirement of Rule 23(b)(2) that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Civil rights cases, such as this one, "against parties charged with unlawful, class-based discrimination are prime examples" of Rule 23(b)(2) class actions. *Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997).

Two basic requirements must be met to satisfy Rule 23(b)(2). First, the class members must have been harmed in essentially the same way by the defendant's acts. Second, the common injury may properly be addressed by class-wide injunctive or equitable remedies.

Williams v. Nat'l Sec. Ins. Co., 237 F.R.D. 685, 693-94 (M.D. Ala. 2006) (citing *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155 (11th Cir. 1983)).

1. Class Members Have Been Harmed in Essentially the Same Way.

"The term 'generally applicable' does not require 'that the party opposing the class … act directly against each member of the class.'" *Anderson v. Garner*, 22 F. Supp. 2d 1379, 1386 (N.D. Ga. 1997) (quoting 7A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure: Civil § 1764 (1st ed. 1972)). Rather, the key is whether the defendants' actions "would affect all persons similarly situated so that [their] acts apply generally to the whole class." *Id.*

Here, the Defendants have implemented constitutionally deficient policies and practices that prevent certain United States citizens and residents of Florida from receiving equal protection of the law. Compl. ¶¶ 13-14, 31-36. These unlawful policies and practices apply with equal force to all members of the proposed plaintiff class. *See Williams*, 237 F.R.D. at 694 (conduct "uniformly harming a specific class of people, falls squarely within the ambit of Rule 23(b)(2)."). Each and every class member is affected in the same way by the challenged policies – they are classified as "non-residents" because they are unable to provide proof of their parents' federal immigration status in the United States. Compl. ¶¶ 31-36. As a result of this classification, they are charged dramatically higher tuition to attend public colleges and universities. Thus, all of the putative class members have been harmed in the same way by acts that apply generally to the class. *See Holmes*, 706 F.2d at 1155 n.8 ("[i]njuries remedied through (b)(2) actions are really group, as opposed to individual injuries."). The first requirement of Rule 23(b)(2) is met.

2. Plaintiffs Seek Class-Wide Injunctive and Declaratory Relief.

Further, the representative Plaintiffs seek only declaratory and injunctive relief on behalf of the class. Compl. *Prayer for Relief*. The requirements of Rule 23(b)(2) are "almost automatically satisfied in actions primarily seeking injunctive relief." *Baby Neal*, 43 F.3d at 58 (citing *Weiss v. York Hosp*., 745 F.2d 786, 811 (3d Cir. 1984)); *see also Ass'n for Disabled Americans*, 211 F.R.D. at 465 (finding that class certification under Rule 23(b)(2) was appropriate when "the Class Plaintiffs sought exclusively injunctive relief based upon their allegations."). Because declaratory and injunctive relief is the exclusive relief sought by the class, certification pursuant to Rule 23(b)(2) is appropriate. *See , e.g., Access Now, Inc. v. AHM CGH, Inc.*, 2000 U.S. Dist. LEXIS 14788, at *15 (S.D. Fla. July 12, 2000).

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for class certification and certify the proposed class pursuant Rule 23(b)(2), Federal Rules of Civil Procedure.

Date: January 20, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of January, 2012, I electronically filed the foregoing, along with all cited Exhibits, with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record as follows: Blaine H. Winship, Special Counsel, Office of the Attorney General of Florida, The Capitol, Suite PL-01, Tallahassee, Florida 32399, blaine.winship@myfloridallegal.com.

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