

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA**

OFFICE OF THE ATTORNEY GENERAL,  
STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

Case No.:

RIVERSIDE CHEVROLET, LLC d/b/a  
RIVERSIDE CHEVROLET, and  
ANDREW LARRY FERGUSON, JR.,

Defendants.

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**MOTION TO APPROVE AND ENTER CONSENT FINAL JUDGMENT  
AND STIPULATED PERMANENT INJUNCTION**

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, hereby files this Motion to Approve and Enter Consent Final Judgment and Stipulated Permanent Injunction, and states as follows:

1. Defendants Riverside Chevrolet, LLC d/b/a Riverside Chevrolet and Andrew Larry Ferguson, Jr. have agreed to the entry of a Consent Final Judgment and Stipulated Permanent Injunction (“Consent Final Judgment”) against them. A true and correct copy of the Consent Final Injunction is attached hereto as Exhibit A.

2. Plaintiff respectfully requests that the Court approve the attached Consent Final Injunction and enter the proposed Order attached hereto as Exhibit B

WHEREFORE, the Attorney General respectfully requests that the Court approve the attached Consent Final Judgment and enter the attached proposed Order Approving Consent Judgment.

Dated August 2, 2019

Respectfully submitted,

**ASHLEY MOODY**

**ATTORNEY GENERAL**

*/s/ Steven Gard*

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Steven Gard, Esq.

Counsel for Plaintiff

Florida Bar No. 20897

Senior Assistant Attorney General

Consumer Protection Division

OFFICE OF THE ATTORNEY GENERAL

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# **EXHIBIT A**

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA**

OFFICE OF THE ATTORNEY GENERAL,  
STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

Case No.:

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RIVERSIDE CHEVROLET, and  
ANDREW LARRY FERGUSON, JR.,

Defendants.

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**CONSENT FINAL JUDGMENT AND STIPULATED PERMANENT  
INJUNCTION AGAINST DEFENDANTS RIVERSIDE CHEVROLET, LLC  
d/b/a RIVERSIDE CHEVROLET, and ANDREW LARRY FERGUSON, JR.**

The Plaintiff, OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS (“Attorney General”), and Defendants RIVERSIDE CHEVROLET, LLC d/b/a RIVERSIDE CHEVROLET (“RIVERSIDE”), and ANDREW LARRY FERGUSON, JR. (“FERGUSON”), 16615 AREZO COURT, MONTEVERDE, FL 34756 (collectively “the Defendants”) have agreed to and consent to entry of this Consent Final Judgment and Stipulated Permanent Injunction (“Judgment”) and the findings set forth below. This Court, having reviewed the file and necessary papers, does hereby **ORDER**

and **ADJUDGE:**

Final Judgment is hereby entered in favor of the Office of the Attorney General, State of Florida, Department of Legal Affairs, 1300 Riverplace Blvd, Suite 405 Jacksonville, Florida 32207, and against RIVERSIDE and FERGUSON as follows:

### **I. FINDINGS**

1. The Attorney General is an enforcing authority under the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018) (“FDUTPA”).

2. RIVERSIDE is a Florida limited liability company with ANDREW LARRY FERGUSON as its sole member and manager. From 2016 until 2018, RIVERSIDE owned and operated a Chevrolet automobile dealership located at 3494 Phillips Highway, Jacksonville, Florida 32207.

3. In 2018, the Attorney General initiated an investigation (“Investigation”) into allegations that RIVERSIDE engaged in acts or practices that were misleading, unfair, deceptive, or unconscionable in the sale and purchase of motor vehicles from consumers.

4. The Attorney General’s Investigation was prompted by consumer complaints, including that:

- a. outstanding liens were not being paid by RIVERSIDE on vehicles that consumers traded in to RIVERSIDE; and
  - b. RIVERSIDE was not promptly transferring titles to vehicles purchased by consumers or traded in to RIVERSIDE by consumers.
5. On August 2, 2019, the Attorney General filed a Complaint against RIVERSIDE and FERGUSON in this matter, alleging that the Defendants' acts and practices constituted direct violations of FDUTPA.
6. The Complaint arose from the Attorney General's Investigation wherein the Attorney General determined that an enforcement action served the public interest. The Attorney General had full authority to bring this action.
7. During the relevant time period, namely from 2016 through August 2018, RIVERSIDE marketed, advertised, sold, and provided services to consumers relating to its motor vehicle dealership in Jacksonville, Florida.
8. During the relevant time period, RIVERSIDE failed to pay off outstanding liens on motor vehicles traded in by consumers and failed to promptly transfer titles on vehicles purchased by and traded in by consumers.
9. The practices of RIVERSIDE described above constituted unfair, deceptive, or unconscionable acts or practices in violation of section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida

Statutes (2018), which states that “unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

10. Consumers in the state of Florida were injured by the unfair, deceptive or unconscionable practices of RIVERSIDE.

11. During the relevant time period, FERGUSON directed and controlled the acts of RIVERSIDE, or had the authority to direct or control those acts, or directly participated in the acts or practices engaged in by RIVERSIDE that violated FDUTPA.

12. Only for the purpose of this action, RIVERSIDE and FERGUSON admit the facts necessary to establish this Court’s jurisdiction over the parties and the subject matter of this action pursuant to the provisions of FDUTPA, and that venue is proper in this Court as the actions at issue took place in more than one county in the state of Florida, including Duval County.

13. RIVERSIDE, at all material times, solicited consumers within the definitions of section 501.203(7), Florida Statutes (2018).

14. RIVERSIDE, at all material times, provided goods or services as defined within section 501.203(8), Florida Statutes (2018).

15. RIVERSIDE, at all material times, engaged in trade or commerce as defined within section 501.203(8), Florida Statutes (2018).

## II. ORDER

16. The purpose of FDUTPA is to “protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Section 501.202(2), Florida Statutes (2018).

17. Pursuant to section 501.207(1)(b), Florida Statutes (2018), the Attorney General is authorized to bring an action to enjoin any person who has violated, is violating, or is otherwise likely to violate this part. Further, the Attorney General is entitled to seek equitable relief in the form of restitution for all consumers who have been injured, in addition to ancillary equitable relief, civil penalties, and attorney’s fees pursuant to sections 501.207 and 501.2075, Florida Statutes (2018).

18. Based upon the Findings contained herein, it is hereby **ORDERED** and **ADJUDGED** that the Defendants have violated section 501.204(1) of the Florida Unfair and Deceptive Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018).

### A. INJUNCTIVE TERMS

19. “Permanent injunctive relief is appropriate when ‘the defendant’s past conduct indicates that there is a reasonable likelihood of further violations in the future.’” FTC v. Lalonde, 545 Fed. App’x. 825, 841 (11th Cir. 2013). To that end, “reasonable restrictions upon the future activities of any defendant to impede her or



him from engaging in or establishing the same type of endeavor” are permitted by the Act. Section 501.207(3), Florida Statutes (2018).

20. The Court hereby permanently **ENJOINS RIVERSIDE** and **FERGUSON**, and any person or entity acting on their behalf, as well as those persons in active concert or participation with them who receive actual notice of this Judgment, directly or indirectly, from owning, operating, or managing an automobile or truck dealership within the State of Florida.

#### **B. EQUITABLE MONETARY RELIEF**

21. FDUTPA authorizes equitable relief to consumers who have been injured by deceptive or unfair trade practices. Section 501.207(3), Florida Statutes (2018).

22. “Among the equitable powers of a court is the power to grant restitution and disgorgement.” FTC v. Gem Merch. Corp., 87 F.3d 466, 469 (11th Cir. 1996). Disgorgement and restitution are measured by a defendant’s unjust enrichment. FTC v. Lalonde, 545 Fed. App’x. 825, 841 (11th Cir. 2013). Restitution for consumer injury is calculated by determining the defendants’ net revenues, i.e. gross receipts minus refunds. Id.

23. Judgment is hereby entered against **RIVERSIDE** for equitable restitution in the total amount of \$1,215,219.03 (“Restitution Amount”), which represents the amount of outstanding liens on vehicles traded in to **RIVERSIDE** by

consumers between August 2017 and August 2018. The outstanding liens have been paid off by Beaver Chevrolet, LLC under the terms of a management agreement entered into between RIVERSIDE and Beaver Chevrolet, LLC under which Beaver Chevrolet, LLC operated RIVERSIDE's dealership between April 2018 and August 2018. Beaver Chevrolet, LLC was, in turn, reimbursed for the payment of these outstanding liens by RIVERSIDE through a deduction from the purchase price paid by Beaver Chevrolet, LLC for RIVERSIDE's assets under the terms of an Asset Purchase Agreement that closed on August 27, 2018 ("the Beaver Purchase Agreement") whereby Beaver Chevrolet, LLC purchased all of the assets and real estate owned by RIVERSIDE. Because RIVERSIDE has already paid the Restitution Amount through the means described above in this paragraph, it is not required to make any further payment of the Restitution Amount under the terms of this Final Judgment.

### C. CIVIL PENALTIES

24. FDUTPA provides that any person, firm, corporation, association, or entity, or any agent or employee of the foregoing, who is willfully using, or has willfully used, a method, act, or practice declared unlawful under FDUTPA ... is liable for a civil penalty. Section 501.2075, Florida Statutes (2018). Willful violations occur when the person knew or should have known that his or her conduct was unfair, deceptive or prohibited by rule. Id.

25. Civil penalties in the amount of up to Ten Thousand Dollars (\$10,000.00) per violation may be assessed against any person who has willfully engaged in an unfair or deceptive act or practice, pursuant to section 501.2075, Florida Statutes (2018), and up to Fifteen Thousand Dollars (\$15,000), against any person willfully using an act or practice that violates FDUTPA which victimizes a senior citizen, or a person who has a disability, or is directed at a military service member or the spouse or dependent child of a military service member, pursuant to section 501.2077, Florida Statutes (2018).

26. In this case, more than 71 transactions, of which 18 involved seniors, of unfair or deceptive conduct occurred in which RIVERSIDE willfully violated FDUTPA by failing to promptly pay off outstanding liens on consumers' traded-in vehicles. Given the nature of the violations and the egregiousness of the consumer harm, the appropriate penalty is at least \$3,310.00 per violation, for a total penalty of Two Hundred Thirty Five Thousand Dollars (\$235,000.00), with \$58,750 attributable to transactions involving seniors.

27. Judgment is hereby entered against RIVERSIDE for civil penalties pursuant to section 501.2075, Florida Statutes (2018), in the amount of Two Hundred Thirty Five Thousand Dollars (\$235,000.00) ("Penalty Amount"), plus interest as prescribed pursuant to section 55.03, Florida Statutes (2018), for which let execution issue forthwith. The Penalty Amount shall be paid via wire transfer, cashier's check or other certified funds payable to the Department of Legal Affairs

for deposit in the General Revenue Fund or as otherwise directed by the Attorney General from funds that are being held in escrow by the law firm of Glast, Phillips & Murray, P.C., a Texas Professional Corporation (“the Escrow Agent”), pursuant to an escrow agreement between Beaver Chevrolet, LLC, RIVERSIDE, and the Escrow Agent established under the terms of the Beaver Purchase Agreement. The Defendants are **ORDERED** to provide whatever cooperation or documentation is necessary to accomplish the transfer of funds held in escrow as provided herein.

28. RIVERSIDE agrees that the Penalty Amount is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7). RIVERSIDE further agrees not to object to or otherwise dispute any claim for non-dischargeability of the Penalty Amount in any voluntary or involuntary bankruptcy proceedings. In any bankruptcy proceeding relating to the non-dischargeability of the Penalty Amount, RIVERSIDE stipulates that the allegations of the Complaint and the findings of this Court may be taken as true and correct without further proof.

29. Further, RIVERSIDE agrees that the facts alleged in the Complaint establish all elements necessary to find the Penalty Amount is not subject to discharge pursuant to section 523(a)(2)(A) of the Bankruptcy Code, and this Judgment will have collateral estoppel effect for such purposes.

#### D. ATTORNEY'S FEES AND COSTS

30. Section 501.2105, Florida Statutes (2018), provides that the prevailing party may recover fees and costs from the non-prevailing party. Humane Society of Broward County v. the Florida Humane Society, 951 So. 2d 966, 969 (Fla. 4th DCA 2007); Smith v. Bilgin, 534 So. 2d 852, 854 (Fla. 1st DCA 1998). Section 501.2075, Florida Statutes (2018), also entitles the enforcing authority to recover attorney's fees upon assessment of civil penalties. The parties stipulate and agree that the Attorney General is entitled to payment of its attorney's fees and costs in the amount of Fifteen Thousand Dollars (\$15,000.00).

31. Judgment is hereby entered against RIVERSIDE for attorney's fees and costs in the amount of Fifteen Thousand Dollars (\$15,000.00) ("Fees Amount"), plus interest as prescribed pursuant to section 55.03, Florida Statutes (2018), for which let execution issue forthwith. The Fees Amount shall be paid via wire transfer, cashier's check or other certified funds payable to Department of Legal Affairs Revolving Trust Fund or as otherwise directed by the Attorney General from funds that are being held in escrow by the Escrow Agent under the terms of the Beaver Purchase Agreement. Such payment may be used by the Attorney General for purposes that may include current and future enforcement cases and initiatives and associated attorneys' fees and other costs of investigation and litigation, consumer education, or used to defray the costs of the inquiry leading hereto, monitoring and

potential enforcement of this Consent Judgment, including, but not limited to, consumer restitution, at the sole discretion of the Attorney General. The Defendants are **ORDERED** to provide whatever cooperation or documentation is necessary to accomplish the transfer of funds held in escrow as provided herein.

#### **E. FUTURE VIOLATIONS**

32. **IT IS FURTHER ORDERED** that any failure by one or more of the Defendants to comply with the terms and conditions of this Judgment is by statute prima facie evidence of a violation of FDUTPA and will subject the offending Defendant to any and all additional civil penalties and sanctions authorized by law, including attorney's fees and costs.

33. Any sanction or payment provided by this Judgment does not preclude the Attorney General from pursuing any other action, relief, or sanction available to the Attorney General for any act which, independent of this Judgment, would constitute a violation of the laws of Florida.

#### **F. COMPLIANCE MONITORING AND REPORTING REQUIREMENTS**

34. No Defendant shall effect any change in the form of doing business or the organizational identity of any of the existing business entities or create any new business entities as a method of avoiding the obligations and terms and conditions set forth in this Judgment.

### **G. EFFECTIVE DATE**

35. The "Effective Date" of this Judgment is the date upon which the Judgment is entered by the Court.

### **H. GENERAL AND ADMINISTRATIVE PROVISIONS**

36. Acceptance by the Attorney General shall be established by the signature of the Deputy Attorney General.

37. The receipt by the Attorney General of any monies pursuant to the Judgment does not constitute acceptance by the Attorney General, and any monies received shall be returned to RIVERSIDE if this Judgment is not accepted and fully executed by the Attorney General.

38. It is further agreed that facsimile copies of signatures and notary seals may be accepted as original for the purposes of establishing the existence of this Judgment, and this Judgment may be executed in counterparts, the compilation of which shall constitute the full and final Consent Final Judgment and Stipulated Permanent Injunction.

39. Nothing herein constitutes approval by the Attorney General of any person or corporation's past, present, or future business practices. No Defendant shall make any representation contrary to this paragraph.

40. Notwithstanding any other provision of this Judgment, nothing herein shall be construed to impair, compromise or affect any right of any government

agency other than the Attorney General solely in its enforcement of FDUTPA except as expressly limited herein.

41. Nothing herein shall be construed as a waiver or release of any private rights, causes of action, or remedies of any person against RIVERSIDE or FERGUSON.

42. Notwithstanding the foregoing, the Attorney General may institute an action or proceeding to enforce the terms and provisions of this Judgment or to take action based on future conduct by the Defendants, or any of them, or conduct relating to matters not released by this Judgment. The fact that such conduct was not expressly prohibited by the terms of this Judgment shall not be a defense to any such enforcement action.

43. Each Defendant releases and forever discharges the Office of the Attorney General (including any of its past, present or future administrators, employees, officers, attorneys, agents, representatives, officials acting in their official capacities, agencies, departments, commissions, and divisions) from any and all manner of civil claims, demands, actions, suits and causes of action, damages whenever incurred, liabilities of any nature whatsoever, whether known or unknown, accrued or unaccrued, legal, equitable or statutory, arising out of or in any way related to, in whole or in part, the subject matter of the litigation of this lawsuit.



44. Each of the Defendants waives all rights to appeal or otherwise challenge or contest the validity of this Judgment.

45. Nothing herein relieves RIVERSIDE or FERGUSON of their continuing duty to comply with applicable laws of the State of Florida nor constitutes authorization by the Attorney General for the Defendants, or any of them, to engage in acts and practices prohibited by such laws.

46. Each of the Defendants expressly acknowledges that he or it has obtained or had the opportunity to obtain the advice and counsel of an independent attorney of their choosing to assist in the negotiation and preparation of this Judgment. Each of the Defendants has read this Judgment, is aware of its terms and has voluntarily agreed to and signed this Judgment. Further, each of the Defendants acknowledges that to the extent they have waived any rights or defenses by entry into this Judgment, such waiver was made voluntarily and with full knowledge of the ramifications of such waiver.

47. Further, the parties acknowledge that this Judgment constitutes the final, complete, and exclusive statement of the parties' agreement on the matters contained in this Judgment, and it supersedes all previous negotiations and agreements. Other than any representation expressly stated in this Judgment, the parties have not made any promises, representations or warranties to each other, and

neither party's decision to enter into this Judgment is based upon any statements by the other party outside of those reflected in this Judgment.

48. If any term of this Judgment is to any extent unenforceable, invalid, or illegal, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

49. This Judgment shall be governed by laws of the State of Florida.

50. This Court retains jurisdiction of this case to enforce the terms of this Judgment and enter any further Orders as may be necessary to ensure compliance with this Judgment, including by issuing additional injunctive relief and enforcing the Judgment and any orders by contempt proceedings, civil and/or criminal.

51. This document is signed in anticipation of this Judgment being submitted to the Court for approval, without necessity of hearing, which is hereby WAIVED by all parties. The signatures below indicate the parties' consent and agreement to this Judgment.

**SIGNATURES ON FOLLOWING PAGES**

OFFICE OF THE ATTORNEY GENERAL:

By:   
Patricia A. Conners

Deputy Attorney General  
Office of the Attorney General  
State of Florida  
Department of Legal Affairs  
PL-01, The Capitol  
Tallahassee, FL 32399-1050

By:   
Victoria Butler

Director, Consumer Protection Division  
Office of the Attorney General  
State of Florida  
Department of Legal Affairs  
3507 Frontage Rd, Suite 325  
Tampa, FL 32399

By:   
Steven Gard

Senior Assistant Attorney General  
Office of the Attorney General  
State of Florida  
Department of Legal Affairs  
1300 Riverplace Blvd, Suite 405  
Jacksonville, Florida 32207

**SO ORDERED.** Approved and Entered in Chambers in Duval County, Florida this

\_\_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Circuit Court Judge

**AGREED TO BY THE DEFENDANTS:**

RIVERSIDE CHEVROLET, LLC

BY: *A. L. Ferguson*

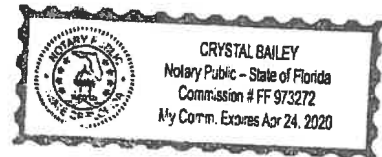
ITS: *MANAGER*

STATE OF FLORIDA)  
COUNTY OF LAKE )

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, ANDREW LARRY FERGUSON, JR. personally appeared and acknowledged before me that he executed the foregoing instrument as the Manager of RIVERSIDE CHEVROLET, LLC for the purposes therein stated on the 20 day of JUNE, 2019, and that he was authorized to do so.

Subscribed to before me this 20 day of JUNE, 2019.

*Crystal Bailey*  
NOTARY PUBLIC



CRYSTAL BAILEY  
(print, type, or stamp commissioned Notary Public)

Personally known \_\_\_\_\_ or Produced Identification  (check one)

Type of Identification Produced: FLORIDA DRIVER LICENSE

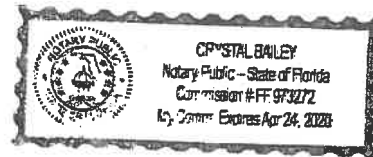
Andrew Larry Ferguson, Jr.  
ANDREW LARRY FERGUSON, JR., individually

STATE OF FLORIDA)  
COUNTY OF LAKE )

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, ANDREW LARRY FERGUSON, JR. personally appeared. He acknowledged before me that he executed the foregoing instrument for the purposes therein stated on the 20 day of JUNE, 2019.

Subscribed to before me this 20 day of JUNE, 2019.

Crystal Bailey  
NOTARY PUBLIC



CRYSTAL BAILEY  
(print, type, or stamp commissioned Notary Public)

Personally known \_\_\_\_\_ or Produced Identification  (check one)

Type of Identification Produced: FLORIDA DRIVER LICENSE

# **EXHIBIT B**

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR DUVAL COUNTY, FLORIDA**

OFFICE OF THE ATTORNEY GENERAL,  
STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

Case No.:

RIVERSIDE CHEVROLET, LLC d/b/a  
RIVERSIDE CHEVROLET, and  
ANDREW LARRY FERGUSON, JR.,

Defendants.

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**ORDER APPROVING CONSENT FINAL JUDGMENT**

This matter having come before the Court on the Plaintiff's Motion to Approve a Consent Final Judgment and Stipulated Permanent Injunction Against Riverside Chevrolet, LLC d/b/a Riverside Chevrolet and Andrew Larry Ferguson, Jr. ("Consent Final Judgment"), and the Court noting the agreement of the parties as evidenced by their signatures on the Consent Final Judgment, and having reviewed the Consent Final Judgment, it is hereby ORDERED:

1. The Court hereby approves the Consent Final Judgment between the parties. It is ORDERED that the Consent Final Judgment is hereby entered as the final Order of the Court in this matter.

2. The Court retains jurisdiction of this litigation solely for the purpose of enforcing the terms, provisions, and conditions of the Consent Final Judgment, and for the entry of such orders as may be necessary or reasonably required in connection with the performance of the Consent Final Judgment.

DONE AND ORDERED in Chambers this \_\_\_\_ day of August, 2019.

\_\_\_\_\_  
Circuit Court Judge ,

Copies to: Steven Gard, Esq. (steven.gard@myfloridalegal.com)  
Leonard Collins, Esq. (Leonard.Collins@nelsonmullins.com)