IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 2017-008285-CA-01
SECTION: CA 43

George Suarez, et al.,

Plaintiff(s),
vs.

City of Opa-Locka Florida,

Defendant(s).
_____/

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

This Cause came before the Court at an evidentiary hearing on February 26, March 28, and April 10, 2019 on Plaintiffs' Motion for Class Certification, and the Court having reviewed the file, Motion, Response, Reply, heard testimony from class Plaintiffs and witnesses, reviewed evidence, and having heard argument of counsel, and being fully advised, it is hereby ORDERED as follows:

The Motion for Class Certification is **GRANTED** pursuant to Florida Rule of Civil Procedure 1.220. The Court hereby issues the following Findings of Fact and Conclusions of Law:

I. Statement of Case and Procedural History

1. George Suarez, along with other similarly situated residents, businesses, and water customers ("Plaintiffs"), filed a class action lawsuit on April 7, 2017 against the City of Opa-Locka, Florida ("Defendant" or "City") on behalf of thousands of similarly situated residents and City water customers, alleging

that the Defendant City of Opa-Locka's water billing system was both flawed and corrupt.

2. Pursuant to Chapter 21 of the Code of the City of Opa-Locka, Plaintiffs were required to purchase water from the City of Opa-Locka.

3. Based upon the above allegations, Plaintiff alleges on behalf of himself and the Plaintiffs the following cases of action:

    Count I: Breach of Contract:

    Count II: Conversion.

    Count III Request for Preliminary and Permanent Injunction

4. After a three day evidentiary hearing, on April 10, 2019, the Court indicated that it was going to grant class certification.

II. Class Definition

5. Based upon the Court's findings and conclusions set forth herein, the Court certifies the following two classes:

CLASS I:

All City of Opa-Locka residents and businesses, commencing as of the period of the statutes of limitations, required to place water deposits with the City, who are entitled to have those deposits safeguarded in segregated accounts, who are entitled to the return of those deposits, and who have not received the return of deposits from the City.

CLASS II:

All City of Opa-Locka water utility customers, commencing as of the period of the applicable statutes of limitations, who paid for water utility services in excess of the amounts they were liable to pay as calculated based on reasonable rates and functioning and accurate water meters and readings.

III. Testimony of Witnesses and Class Plaintiffs

A. Charmaine Parchment.

6. Plaintiffs' witness, Charmaine Parchment[1] testified and is presently the Controller of the City of Clearwater. The Defendant's billing department was under her management and control from 2015 to 2017. Ms. Parchment was also the utility billing supervisor, and of particular relevance in this case, supervised the customer service department. The testimony elicited during the evidentiary hearing by Ms. Parchment was that every water customer in Opa-Locka had to procure water service through the City utility and that the procedure was the same for everyone. The water deposits were required to be held in a separate segregated water account,[2] which was common knowledge in her department.
7. Ms. Parchment testified that at the time she left employment with the Defendant, the City still had a bank account for water deposits. The water deposits were never to be intermingled and she stated that the deposit money was restricted - if a customer wanted their deposit back, the Defendant should be able to repay that money. She testified that the customer deposit funds belonged to the customer. The Defendant did not have the right to spend the water deposit on something else.
8. She testified to $1.6 million in the restricted customer account belonging to the customers who paid deposits, and it was projected to grow to $1.8 million due to an estimated increase in customer deposits.

---

[1] Ms. Parchment's background includes a MBA, CPA, and Master's degree. Her employment history with the City of Opa-Locka dates back to 2009 where she rose through the ranks from a branch grant writer for four years to the accounts department, promoted to assistant finance director, and then ultimately, the finance director for the City of Opa-Locka.

.

[2] Ms. Parchment testified that everyone who worked in the finance department knew there were three bank accounts: a general operating account, a reserve bank account, and a City customer deposit account She testified in great detail about how to the money was transferred to each account.

9. According to her testimony, the City went through a hardship, and the prior director transferred the deposit money into the general account for payroll and other expenses.
10. Through Ms. Parchment, the Plaintiffs introduced the Defendant's proposed budget for 2018-2019 which indicated that the City is required to replenish the $1.6 million in water deposits, which had been depleted. There was a plan to have that payment/repayment accomplished within five years.
11. Ms. Parchment explained that the City was required by Code to have agreements with all water customers that applied equally to all water customers. All customers had to have an agreement to use the City's water. The City was required to collect a deposit. The City was required to provide accurate billing and the customer was required to pay monthly; billing was supposed to be accurate.
12. Ms. Parchment further testified about numerous complaints about water bills; sometimes her department spent the "whole day dealing with complaints."
13. In 2006, Ms. Parchment learned that the City was estimating the water bill. She testified that bills were very high. She would take the high water bills and the customer complaints to the City manager. The billing problems were "across the board."
14. She also testified that at almost every commission meeting the water billing problem came up. People lined up at commission meetings complaining about water bills.
15. Plaintiffs introduced Exhibit 2, the "Avanti Report,"[3] attached hereto as "Exhibit A" through Ms. Parchment, and it was certified as a public record. It was a

[3] The "Avanti Report" was a study commissioned by the City of Opa-Locka and Miami-Dade County to discuss the execution of an automatic meter reading (AMR) System Analysis to assess the condition and operability of the City's AMR System. The study commenced in November 2016, and the report was issued on March 14, 2017. The AMR System survey is used to determine the effort and the

study commissioned to look at the operation of the water meters in the City. In one of the findings, the water meter system, AMR, was operating at a 57 percent read rate, with an accuracy of 34 percent, well below that national industry standard of 98.5 percent read rate.

16. Almost 70 percent of the water meter readings were not accurate. The City had to estimate the bills since 2006. Mrs. Parchment left the City of Opa-Locka in 2017. At that time, according to the Avanti report,[4] out of 5,637 meters, 3,049, or 52 percent needed work (repair and/or replacement, etc).

17. Plaintiffs introduced Exhibit 3 through Mrs. Parchment, a memo from the City Manager to the Mayor and the Commissioners as to why it was imperative for the City to continue to estimate bills. The report and this memo answers that question because on December 21, 2016, it was reported that it would be unfair to bill based on actual read amounts and therefore the City stopped reading meters across the board - for everyone in the City. The City had to adopt a policy of not reading meters.

18. Plaintiffs introduced Exhibit 4 – the minutes of the City Commission meeting of February 8, 2017, through Ms. Parchment. The City Manager is quoted as having difficulty establishing for almost ten years accuracy in water billing, and that the meters were not being read properly. No one disputed the report. It applied to all Opa-Locka residents.

---

estimated cost of bringing the City's water and sewer AMR System to the industry standard 98.5 percent read rate. Avanti Report, p. 4.

[4] Avanti Report, p. 4.

19. During cross-examination, Ms. Parchment, referring to water customer accounts, testified that the City Code makes this relationship a contract; the ordinance makes it a contract. She further testified that the City ordinance requires the City to provide services and establishes the proper equipment.

20. The Court gives great weight to Ms. Parchment's testimony. The Court finds her to be extremely professional both on direct and cross-examination, she did not hesitate or equivocate during any of her testimony. She was also very knowledgeable about the facts and circumstances for which she was called to testify.

B. <u>George and Tanya Suarez.</u>

21. The next witness, George Suarez, the named class representative, testified along with his wife Tonya. They are citizens of Opa-Locka, and he and his wife opened their residential water account May 23, 2015. Mr. Suarez testified he paid his water bills on time without incident until water bill anomalies arose. He stated by way of example that he received irregular water bills totaling $1,100, $1,200, and a $900 bill. Mr. Suarez testified that his "normal bill" had been in the range of $57 to $71 per month.

22. Mrs. Suarez testified that she went to the City of Opa-Locka to complaint about the irregular bills and was told by the City that she must have a water leak in her home and recommended she hire a plumber. Mr. and Mrs. Suarez hired a plumber who examined the plumbing at their home and found no water leaks. Their water bill was not withdrawn by the City, and they received threats that their water would be turned off. Mr. Suarez claimed he went to the City

Commission to complain. He claims that he has complained more than 15 times. He testified that he was advised at the Commission meetings that the meters were not accurate. He claims he has spoken to other residents with similar problems and agrees to serve as a class representative.

23. Tanya Suarez further testified and corroborated her husband's testimony that between 2015 and 2016, their bill ranged from $51 to $71. She claimed that she is also aware of other people who had inflated bills. She testified that she has heard that people similarly situated had bills ranging from $48 all the way to $900. Mrs. Suarez stated that she made a deposit.

24. The Court finds the testimony of Mr. and Mrs. Suarez credible as both witnesses testified professionally and consistently on both direct and cross-examination.

C. <u>Roscoe Pendleton.</u>

25. Roscoe Pendleton, another Opa-Locka resident, testified that when he purchased his home in Opa-Locka in 1971, he opened an account and paid a water deposit. Mr. Pendleton testified that he expects to get his deposit back and he claims he expects the deposit to be in a segregated account. He was told that the money would be kept in trust; he both: 1) did not give anybody permission to spend the deposit money and 2) did not authorize the City to use the money. Mr. Pendleton testified that he has a home in Miami Lakes, and one in Opa-Locka. He stated that the water bill is high for his Opa-Locka house even when he is staying in his Miami Lakes home and not using water in Opa-Locka.

26. The Court finds the testimony of Mr. Pendleton credible as he testified professionally and consistently on both direct and cross-examination.

D. Christofer Moscoso

27. Christofer Moscoso, another City of Opa-Locka resident, testified that he purchased his home in 2013 and moved there in 2014. His bills ranged from $20 a month to $657, which was the highest bill he received. He also received a bill for $421, a $300 bill, and a $200 bill, however, his average bill ranged from $60 to $80 until they "skyrocketed." Mr. Moscoso claims he complained to the City of Opa-Locka and was told he must have a leak which he had inspected by a plumber who found no leak. Mr. Moscoso complained to the billing department, but there was no remedy. Mr. Moscoso testified that he learned about some residents have higher bills than his. He has spoken to several residents about this matter.

28. Mr. Moscoso testified that he paid a $170 water deposit to be held in trust and believes that no one was supposed to use that water deposit.

29. Mr. Moscoso attended City Commission meetings and encountered other citizens with the same problems regarding water bills. Through this witness, a letter from the City of Opa-Locka to each water customer was introduced into evidence. Mr. Moscoso received the letter attached to one of his water bills. This letter from the City advised him the City was going to estimate his bill. He testified he could not afford to pay the $421 water bill which accompanied the letter. The letter read in part: "Dear Valued Customer, we have new equipment, training, and your water bill will reflect the same amount of consumption. This is intentional so you can anticipate your bill."

30. The Court found Mr. Moscoso's testimony to be very credible and professional, and he did not appear biased. He answered questions in the same professional manner on direct and on cross-examination.

E. Joanna Flores

31. The Plaintiff also called Joanna Flores the City Clerk for the City of Opa-Locka, and the custodian of records as a witness. Ms. Flores has worked for Opa-Locka since 1995. She has attended all Commission Meetings since 2012. Ms. Flores testified that people do regularly complain about their water bill at Commission Meetings, and she provided the evidentiary foundation for the recording of the March 13, 2019 Commission Meeting which was played in court.

32. The Commission Meeting video footage depicted numerous Opa-Locka residents complaining about their water bills for the same or similar reasons testified to by the above referenced witnesses.

F. Charaf Raad

33. Charaf Raad, another City resident testified that she has lived in Opa-Locka for 36 years and has a water account with the City. She thought that her water deposit would be kept in trust, and never agreed that the City could spend her money. She received bills regular bills in the amount of $165, and then they "spiked" to $650 and $700. Ms. Raad has complained to the City of Opa-Locka four or five times about her water bill. She was told when she complained that she must have a leak in her house. The Court gives great weight to her testimony wherein she claims that after being told about a possible leak, she hired a plumber and replaced two toliets and all the pipes in her house four to five years

ago. The Court finds Ms. Raad to be credible. She testified she is to be a member of the class and be a representative.

H. Airia Austin

34. The defense called Airia Austin as the Director of Public Works for the City of Opa-Locka water department. According to Mr. Austin, in 2008, Opa-Locka closed its water plant and began purchasing water from Miami-Dade because the cost of running the water plant was greater than what they were collecting; they were reporting 60 percent loss.

35. He testified about the City's procedure and equipment for collecting water usage data. Mr. Austin testified about the different types of water meters and generally how they operated. He verified how the Avanti report came to be sponsored by the City and Miami-Dade County. Mr. Austin testified that the City has thousands of water customers and everyone is required to obtain water from the City. He verified that according to the Avanti Report, the number of inoperable water meters resulted in the City deciding to pay Miami-Dade County to supply their water. He also verified that $1.6 million had to be replaced in the water deposit account. Mr. Austin also testified he was aware about the City giving "freebies" to certain residents. He also testified that the former City Manager confessed to giving away free water and charging a fee to turn on water.

36. The Court found him credible and professional and gives great weight to his testimony.

IV. Standards Governing Class Certification

37. To obtain class certification, a movant is required to satisfy all four elements of Rule 1.220(a) and at least one element of Rule 1.220(b). If a movant's submission establishes the requirements for a class action, the court must certify the class.

38. To satisfy Florida Rule of Civil Procedure 1.220(a), the Court must conclude that:

    a. Rule 1.220(a)(1) – The Members are so numerous that separate joinder of each member is Impracticable
    b. Rule 1.220(a)(2) – There are Questions of Law or Fact Common to each Class Member
    c. Rule 1.220(a)(3) – The Representative's Claims are Typical of the Class
    d. Rule 1.220(a)(4) – The Representative parties will fairly and adequately protect the interests of the class.

39. Before addressing the four prerequisites to class certification, the Court will address the threshold issue of standing.

V. Standing

40. To satisfy the standing requirement for a class action claim, "the class representative must illustrate that a case or controversy exists between him or her and the defendant, and that this case or controversy will continue throughout the existence of the litigation."[5] "A case or controversy exists if a party alleges an actual or legal injury."[6] An actual injury includes an economic injury for which the relief sought will grant redress.[7]

41. The Court finds that Plaintiffs have proven the threshold issue of standing by Ms. Parchment's testimony regarding the requirement that deposits be kept in segregated bank accounts. Statute §180.135(3), Florida Statutes, requires the City to segregate the funds. City Code 21-38 defines the contract nature of the utility agreement with regard to water customers.

VI. The Proposed Class satisfies the Criteria in Rule 1.220(a)

[5] *Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 116 (Fla. 2011).

[6] *Sosa* at 117.

[7] *Id.*

a. Rule 1.220(a)(1) – The Members are so numerous that separate joinder of each member is Impracticable.

42. Having determined that the putative class has standing, the Court now turns to the discussion of the criteria in Rule 1.220. The Florida Supreme Court has held that "no specific number and no precise count are needed to sustain the numerosity requirement", and "class certification is proper if the class representative does not base the projected class size on mere speculation."[8] A class of forty people or more is generally considered adequate for such purpose.[9] The testimony demonstrates that there are thousands of City water customers who received incorrect water bills.

43. The Plaintiffs have satisfied the burden of establishing numerosity. Approximately 6,000 active water accounts were identified by Miami-Dade County. Citizens of Opa-Locka are all required to maintain a water account through Opa-Locka. Incontrovertible evidence established that a large percentage of water meters are in disrepair affecting thousands of people. As such, under the numerosity prong, the large number of affected citizens would make separate trials impractical. The Court finds that the numerosity standard is met.

b. Rule 1.220(a)(2) – There are Questions of Law or Fact Common to each Class Member

44. The threshold of 'commonality' is not high, and "the rule requires only that resolution of the common questions effect all or a substantial number of the class

[8] *Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 114 (Fla. 2011) (citing *Toledo v.Hillsborough Cty. Hosp. Auth.*, 747 So. 2d 958, 961 (Fla. 2d DCA 1999)).

[9] See *Cox v. Am. Cast Iron Pipe Co.*, 784 F. 2d 1546, 1553 (11th Cir. 1986).

members.[10] Moreover, "Rule 1.220 does not require denial of class certification 'merely because the claim of one or more class representative arises in a factual context that varies somewhat from that of other plaintiffs."[11] The commonality prong only requires that resolution of a class action affect all or a substantial number of the class members, and that the subject of the class action presents a question of common or general interest.[12] The Court finds that the commonality element is established because members of the class have common issues of law and fact arising from the same course of conduct resulting from the actions of the City of Opa-Locka.

c. Rule 1.220(a)(3) – The Representative's Claims are Typical of the Class

45. "The test for typicality is not demanding and focuses generally on the similarities between the class representative and the putative class members." The claims of each member are typical of those of the class representatives. "The key inquiry for a trial court when it determines whether a proposed class satisfies the typicality requirement is whether the class representative possesses the same legal interest and has endured the same legal injury as the class members.[13] The Court finds that the typicality standard is met.

b. Rule 1.220(a)(4) – The Representative parties will fairly and adequately protect the interests of the class.

---

[10] *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472 (5th Cir. 1986)(citations omitted).

[11] *Broin v. Philip Morris Companies,* 641 So. 2d 888, 890 (3rd DCA 1994)(citations omitted).

[12] *See Colonial Penn Ins. Co. v. Magnetic Imaging Sys.* I, Ltd., 694 So. 2d 852, 853 (Fla. 3d DCA 1997).

[13] *Sosa*, 73 So. 3d at 114.

46. The Florida Supreme Court stated that in examining adequacy, a trial court's inquiry is two pronged: (1) whether class counsel has the qualifications, experience, and ability to conduct the litigation; and (2) whether the class representative's interest are antagonistic to the interest of the class members.[14]

47. The adequacy of representation "requirement is met if the named representatives have interests in common with the proposed class members and the representatives and their qualified attorneys will properly prosecute the class action."[15] Mr. Suarez has testified that he is ready, willing, and able to represent the Class. He is responsible and is employed as a chef at a major local university; he has appeared in court on multiple occasions and testified to being committed to this litigation and to the other class members. The Court finds that Mr. Suarez is qualified to serve as class representative. In terms of the adequacy of representation of counsel, Plaintiffs' lawyers all appear knowledgeable in class action litigation with many years of experience as litigators. The Court finds that the adequacy standard is met.

VI. Rule 1.220(b) elements and analysis

48. In addition to satisfying the four elements of Fla. R. Civ. P. 1.220(a), Rule 1.220 also requires that at least on subsection of 1.220(b) be satisfied in order to warrant class certification.

1. Class Certification under rule 1.220(b)(3)

---

[14] *See Sosa,* 73 So. 3d at 115, *See also Leibell v. Miami-Dade Cty.*, 84 So. 3d 1078, 1085 (Fla. 3d DCA 2012).

[15] *Broin*, 641 at 892 (citing *Pottinger v. City of Miami,* 720 F. Supp. 955, 957 (S.D. Fla. 1989)).

Plaintiff also seeks certification of a 1.220(b)(3) class which requires that Plaintiff prove:

> (3) ...the question 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 question 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. The conclusions shall be derived from consideration of all relevant facts and circumstances, including (A) the respective interest of each member of the class individually controlling the prosecution of separate claims or defenses, (B) the nature and extent of any pending litigation to which any member of the class is party and in which any question of law or fact controverted in the subject action is to be adjudicated, (C) the desirability or undesirability of concentrating the litigation in the forum where the subject action is instituted, and (D) the difficulties likely to be encountered in the management of the claim or defense on behalf of a class.

A. Analysis of 1.220(b)(3) Predominance

49. "To meet the requirement of Rule 1.220(b)(3), the Plaintiff must establish that the class members' common questions of law and fact predominate over individual class member claims. The Court does not the existence of a predominance issue that would affect class certification as the common questions of law and fact previously articulated do predominate over all class members even though there are slight differences in the facts for some of the residents based on water usage due to family size.

B. Superiority

50. "Pursuant to Rule 1.220(b)(3), Plaintiffs must prove that a class action is a manageable and superior to other available methods, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. "Three factors for courts to 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 cause of action is manageable."[16] The Court finds that the superiority element is met.

CERTIFICATION OF CLASS

51. The Court grants Plaintiffs' Motion for Class Certification based on the record evidence and the prongs as enumerated in the case law, Rule 1.220, and in particular the recent Third District Court of Appeal case of Pinnacle Condominium Association v. Richard Haney. Pinnacle held that the trial court did not abuse its discretion in certifying a class of condominium unit owners encumbered by a settlement agreement in a prior case.

52. The Court does not find the defenses cited — the voluntary payment doctrine or the set-off — would bar class certification here or would create a mini-trial for each of the class members. The Court concludes that for the reasons articulated by Plaintiffs' counsel both in their papers and in court, the amount of damages can be easily ascertained based on the financial records of the City regarding water usage, bills and invoices, usage readings, the Avanti Report, statistics regarding water usage, and the other factors.

53. For these reasons, the Court certifies the Class as stated above for both Class I and Class II. Class I, the failure to segregate customer deposits, Class II the irregular and inaccurate water billing. The court makes the following findings: All members of each Class are City of Opa-Locka water customers, all members paid

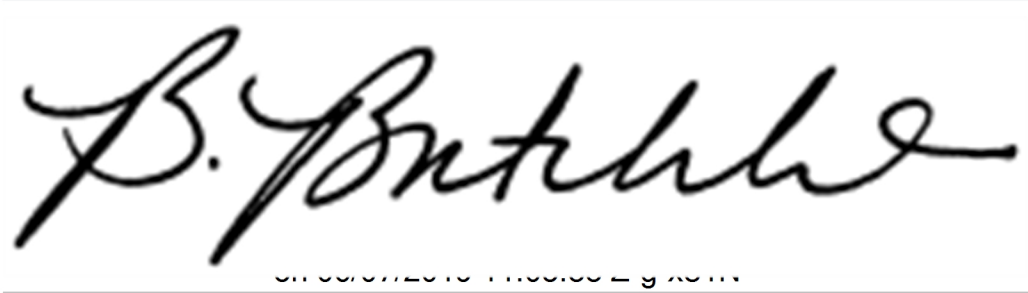
[16] *Sosa*, 73 So. at 116.

a deposit, all members must use water provided by the City of Opa-Locka and based on the Avanti Report[17], the members of the Class have received inaccurate billing. Furthermore, each class members' claim is based on the same legal theory, even though there are some differences in the amount of water erroneously billed. Lastly, none of the deposits were maintained segregated as required.

54. The Court finds the applicable statutes of limitations for the causes of action are four (4) years for the conversion in Count II, and five (5) years for the breach of contract in Count I as of the filing date of the complaint on April 7, 2017.

55. The Court **GRANTS** Plaintiffs' Motion for Class Certification and in-turn **DENIES** the City of Opa-Locka's Motion to Strike Class Allegations for the reasons stated.

DONE AND ORDERED in chambers, at Miami-Dade County, Florida, this 7th day of June, 2019.



Beatrice Butchko
CIRCUIT COURT JUDGE

Electronic Service List:
Benedict P Kuehne <ben.kuehne@kuehnelaw.com>, <efiling@kuehnelaw.com>, <cmelo@kuehnelaw.com>
Michael Terrell Davis <mdavis@kuehnelaw.com>, <cmelo@kuehnelaw.com>, <efiling@kuehnelaw.com>
Michael A Pizzi Jr <mpizzi@pizzilaw.com>, <annecates@comcast.net>

[17] Please see FN 3.

CBL Division Service <cbl43@jud11.flcourts.org>
Vincent T Brown <vtblaw@bellsouth.net>, <eservice@thebrownlawgroup.net>
David P Reiner II <eservice@reinerslaw.com>, <efile@reinerslaw.com>
Detra Shaw-Wilder, Esq. <dps@kttlaw.com>
Opa Locka Warehouse Condominium Assoc <mpizzi@pizzilaw.com>
Detra Shaw-Wilder Mrs <dps@kttlaw.com>, <es@kttlaw.com>
Robert Neary <rn@kttlaw.com>, <sf@kttlaw.com>
Rachel Sullivan <rs@kttlaw.com>, <rcp@kttlaw.com>
Dwayne A. Robinson <drobinson@kttlaw.com>, <ems@kttlaw.com>
Michele Samaroo <msamaroo@opalockafl.gov>
David P Reiner <dpr@reinerslaw.com>