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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

The Honorable Diane S. Goodstein

Case No.: 2020-CP-18-01856

Joseph R. Davis and Jennifer Davis, individually
and as representative of all those similarly situated……Appellants-Respondents,

v.

River Oaks Homeowners Association, Inc……Respondent-Appellant

Halcyon Real Estate Services, LLC, and
Dorchester Real Estate Services, Inc……Respondents.

RESPONDENT-APPELLANT'S FINAL BRIEF OF APPELLANT

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    b. Whether the lack of any efforts to uncover any qualifying members of his class or discern their interests renders Davis inadequate.

    c. Whether Joseph Davis has standing to sue on behalf of others because he has not lived in River Oaks since 2013 and has no current interest in the impact of this action.

2. Whether the Circuit Court erred in finding that numerosity exists because it failed to conduct any analysis of practicality of joinder and ignored evidence that defeats numerosity.

3. Whether the Circuit Court erred in finding that commonality and typicality exist because the differences amongst the class outweigh any single question of law or fact.

    a. Whether commonality can where individual investigations are required as to the merits of, and defenses to, the individual claims of the class members.

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STATEMENT OF THE CASE

On October 11, 2017, Appellant-Respondents Joseph R. Davis and Jennifer Davis filed a lawsuit against Respondent-Appellant River Oaks Homeowners Association ("River Oaks") challenging its validity and its authority to act as the homeowners association for nine neighborhoods located in Dorchester County. (R. 60.) The Davises asserted ten separate causes of action against River Oaks and two property management entities that at various times have contracted with River Oaks to perform services. (R. 88-102.)[1] The claims include an individual claim for unfair trade practices and nine class-wide claims ranging from a declaratory judgment action to unjust enrichment to slander of title. *Id*.

The Davises moved for certification of a class action on December 14, 2018. (R. 42.) The case was stricken from the docket on November 6, 2019, pursuant Rule 40(j), SCRCP, and restored on November 20, 2020. Hearings were conducted on the Davises' motion for class certification on March 24, 2021; June 4, 2021, and July 7, 2022 before the Hon. Diane Goodstein ("Circuit Court"). The Circuit Court entered an order on August 16, 2022, partially granting the Davises' motion. (R. p. 19.) The Circuit Court's Order approved Appellant-Respondent Joseph Davis as a class representative[2] and certified a class defined as:

> For the time period commencing January 1, 2014 to present for any homeowner who owns or has owned real property identified on the Woodington I Plat and Woodington II Plat who did not execute the Declaration and from whom River Oaks, Halcyon, and/or DRES have sought to collect or collected from said homeowners assessments, late fees, administrative fees, covenant fines, interest, filing fees, bad check fees, attorney fees, other fees or charges and/or filed a lien against the homeowners' real property pursuant to the Woodington Covenants

[1] River Oaks contracted with Dorchester Real Estate Services prior to August 1, 2015. It contracted with Halcyon Real Estate Services in August 2015 before terminating that contract in 2017 and returning to Dorchester Real Estate Services.

[2] Appellant-Respondent Jennifer Davis withdrew her request to serve as a class representative.

(R. pp. 30-31.) River Oaks filed a motion for reconsideration pursuant to Rule 59(e), SCRCP, on August 26, 2022. The Circuit Court denied that motion by Form 4 Order entered December 6, 2022.

On July 24, 2024, the case proceeded to a bench trial before Hon. Thomas L. Hughston ("Trial Court"). During the pre-trial arguments on outstanding motions, the Trial Court granted summary judgment to River Oaks as to all of the Davises' claims. The Davises moved for reconsideration on August 3, 2024. The Circuit Court denied the motion by Form 4 Order entered August 15, 2024. The Davises filed a notice of appeal of that order on September 13, 2024, and that matter is the primary appeal pending before the Court of Appeals. To maintain its objections to the Circuit Court's Order on Class Certification, River Oaks filed the instant appeal on September 16, 2024.

STATEMENT OF RELIEF SOUGHT

River Oaks submits that the Trial Court properly granted River Oaks' motion for summary judgment and that this Court should affirm that ruling. In the event that this Court affirms summary judgment, then this appeal would be rendered moot and River Oaks would withdraw this appeal. River Oaks files this appeal, however, in the event that this Court reverses that order and remands the case for trial. In such an event, River Oaks asks this Court to decertify the class and permit Appellants-Respondents to proceed only on their individual claims.

STATEMENT OF FACTS

Along the banks of the Ashley River in Dorchester County at the intersection of Dorchester Road and Ashley Phosphate Road, there are nine neighborhoods unified under a single homeowners association, the River Oaks Homeowners Association. (*See gen.* R. pp. 36-41.) These neighborhoods are known individually as Appian Landing I, II, and III; Ashley Point; Palmetto Plantation, River Chase; and Woodington I, II, and III.[3] Before the homeowners of these neighborhoods established River Oaks, each neighborhoods had a set of covenants and restrictions but no governing body to enforce them. *Id.*, p. 2. Homeowners organized and formed River Oaks in the late 1990s to create a governing body for their community and unify the neighborhoods. *Id.*, pp. 2-3. The organization of River Oaks was completed in 2002 and River Oaks began enforcing as mandatory the covenants of its member neighborhoods and the rules of River Oaks, including the mandatory payment of association dues. *Id.*

Joseph Davis purchased a home located at 3213 Wynnefield Drive in 2005. *Id.*, p. 4. This home is located within the Woodington I neighborhood that forms a part of River Oaks. Davis lived at this home with his wife, Jennifer Davis, for eight (8) years. *Id*. During their time as residents of River Oaks, the Davises were actively involved in multiple aspects of their community. Jennifer Davis served as a member of the River Oaks Board of Directors and Joseph Davis performed a complimentary financial audit for the Board of Directors. *Id*. The Davises knowingly and voluntarily paid association dues to River Oaks each year of their residency within the community from 2005 until 2013. *Id*.

[3] Today, there are eleven neighborhoods that are a part of River Oaks. The neighborhoods of Marsh Hall and Marsh Side joined in the years after River Oaks formed. Appellants-Respondents do not contest the validity of River Oaks as to these neighborhoods, and this appeal and the underlying lawsuit concern only the nine original neighborhoods.

In November 2013, the Davises moved to Walterboro, South Carolina, and entered into an installment sale contract for their home in Woodington 1. (R. p. 40.) The agreement allowed a tenant to live at the home on a rent-to-own basis. *Id*. The terms of the agreement required the tenant to pay mortgage payments, property taxes, insurance, utilities, and annual homeowners association dues; however, the tenant failed to pay association dues for three (3) consecutive years from 2014 through 2016. *Id*. As a result of nonpayment, liens were filed against the property on two (2) separate occasions. *Id*. The first lien was filed in 2014 by River Oaks' then property manager, Dorchester Real Estate Services. *Id*. The second lien was filed in 2016 by McCabe Trotter & Beverly, P.C., which is a law firm retained by River Oaks' then property manager, Halcyon Real Estate Services. *Id*. The Davises allege that the second lien was filed in an amount greater than the actual balance of their account and was filed after Joseph Davis had already paid McCabe Trotter & Beverly. (*See gen.* R. pp. 21-22 at ¶¶ 116-122.) The Davises allege total balance of their account was $480.00, but that McCabe Trotter & Beverly filed a lien in the amount of $1,035.28. *Id*. The Davises filed a lawsuit against McCabe Trotter Beverly in 2017. (R. p. 321 n. 12.) After that matter was settled, the Davises then filed the instant lawsuit against River Oaks.

STANDARD OF REVIEW

On appeal, this Court generally defers to the Circuit Court's discretion in granting class certification. *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003). Accordingly, the Circuit Court's ruling must stand unless it is based on an error of law or grounded in factual conclusions that are not supported by the evidence. *State v. Oates*, 421 S.C. 1, 13, 803 S.E.2d 911, 918 (Ct. App. 2017). The appellant bears the burden of showing an abuse of discretion. *Em-Co Metal Prods., Inc. v. Great Atl. & Pac. Tea Co.*, 280 S.C. 107, 110, 311 S.E.2d 83, 85 (Ct. App. 1984). While a court cannot consider the merits of a claim in determining class certification, it may not simply accept the allegations of complaint at face value in making class action findings. *See Gariety v. Grant Tornton, LLP*, 368 F.3d 356, 365 (4th Cir. 2004). Instead, the Circuit Court "must apply a rigorous analysis to determine each prerequisite is satisfied." *Gardner*, at 21, 577 S.E.2d at 200.

ARGUMENT

1. The Circuit Court erred in finding that Joseph Davis is an adequate class representative.

Due process requires that the named plaintiff in a class action "at all times adequately represent the interests of the absent class members." *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 457, 661 S.E.2d 81, 90 (2008). "The fact that a proposed class representative is a property owner in a large or highly populated development does not, in and of itself, qualify him to bring a class action on behalf of the remaining property owners." *Waller v. Seabrook Island Prop. Owners Ass'n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990) (citation omitted). The class representative must demonstrate the absence of antagonistic interests or conflicts with the interests of the class. *Id.* In this case, the Circuit Court merely relied upon the allegations that Joseph Davis suffered a harm related to his home in River Oaks to find that Davis was qualified to represent the interests of other current and former River Oaks homeowners. In doing so, the Circuit Court ignored evidence that Davis no longer lives in River Oaks, does not have any knowledge of who qualifies for his class, does not have any interests in identifying anyone who shares his interests, and has clearly stated goals to disband the homeowners association that provides a service the River Oaks Community and the qualifying class members who still live in the community..

a. Joseph Davis has personal interests that are antagonistic to the interests of his class because his stated goal is to disband River Oaks.

Davis readily acknowledges that it is impossible for him to achieve his goals unless River Oaks is forced to disband. (R. p. 320.) Despite that admission, the Circuit Court found that "[t]here is no antagonism or adverse interests between Joseph R. Davis and the putative class members." (R. p. 28.) This finding ignores the facts and evidence that a large portion of Davis' class continues to live in and contribute to River Oaks. Through the active participation of these class members,

River Oaks actively provides benefits and services to the community. Very simply, there is a direct conflict between Davis and the majority of his class because Davis' interests and goals require the disbanding of River Oaks.

As defined, Davis' class contains distinct groupings of class members who may not all have sustained the same harms or have the same interest. First, a class member may qualify simply by having owned at home within River Oaks at some point since 2014 with the only disqualifier being for those who signed the River Oaks Declaration.[4] These class members may be current or former or homeowners and the interests of these two groups are necessarily different. Current homeowners have an interest in maintaining property values, community appearance, and uniformity. Former homeowners no longer have these interests and are arguably more interested in the financial payouts that could be achieved through litigation. The class members may be further subdivided between those who simply paid homeowner association dues to River Oaks and those who were assessed fines and fees for covenant violations. The amounts paid, and the reasons for the fines and fees, provide even further levels of differences amongst the class members. Finally, yet another group exists for those like Davis who had liens filed against their property. Davis belongs to this last group of former homeowners who have had liens filed against their property. While this group is undoubtedly the smallest of the class, it is the group with the greatest interest in maximizing financial payouts and the least interest in preserving River Oaks. The Circuit Court's Order places the interests of the smallest group ahead of the majority of the class by allowing Davis to pursue his individual claims in their name despite the fact that his desired outcome may not be the same outcome that his class desires.

[4] Under this framework, even the members of River Oaks' Board of Directors could qualify to – in essence – sue themselves.

The United States Supreme Court has noted that it is difficult for a single class representative to maintain class actions with diverse groups of class members. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231 (1997) (affirming decertification of class). This holding was based on the sensible premise that good intentions alone are not enough:

> The class representatives may well have thought that the Settlement serves the aggregate interests of the entire class. But the adversity among subgroups requires that the members of each subgroup cannot be bound to a settlement except by consents given by those who understand that their role is to represent solely the members of their respective subgroups."

Id. at 627, 117 S. Ct. at 2251. Logically, classes that contain multiple groupings of people require separate and independent representatives to ensure that conflicts are avoided. In *Amchem*, the Supreme Court affirmed the decertification of class action settlement involving asbestos claims. The class involved both claimants who have sustained a manifest injury and those who have not, (i.e., "exposure only claimants.") These "exposure only" claimants had less interest in immediate payments and more interest protection against future treatment and recoveries. "Already injured parties, in contrast, would care little about such provisions and would rationally trade them for higher current payouts." *Id.*, at 611, 117 S. Ct. at 2243. Recognizing the disparity in the position of these two groups, the court found that no single representative could adequately represent both.

Here, the certified class faces the same risk. It includes homeowners who actively pay homeowners association dues without objection. Indeed, it even includes members of the Board of Directors of River Oaks. Given this wide range of class members, it is evident that the class includes qualifying class members who do not wish for the disbanding of their neighborhood homeowners association. Yet, Davis plainly admits that it is "not possible" for him to achieve his personal goals without stripping River Oaks of its ability to collect association dues. (R. p. 320.)

By doing so, Davis would deprive River Oaks of its funding mechanism and ability to maintain community landscaping, community lighting, and community activities. (R. p. 320.) Because of this, Davis cannot be a fair and adequate class representative for all of his qualifying class.

b. Joseph Davis has made no efforts to uncover any qualifying members of his class or discern their interests.

In a clear demonstration of his inadequacy, Davis has never made any effort to identify his class or their concerns. While Davis is familiar with his personal claims, he has made no effort to familiarize himself with the class that he represents. They are but simply a means to maximize the size of his own personal lawsuit. At his deposition, Davis testified that he: had not seen his complaint until two days before the deposition, (R. p. 323); did no research into who may be a member of his proposed class, *Id*); and made no efforts to locate or identify any members of his class. *Id*. A plaintiff in South Carolina has an affirmative duty to know his or her own case and the pleadings they have filed. *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 91, 399 S.E.2d 16, 18 (Ct. App. 1990). In the class action context, court have found the class representative to be inadequate "when the plaintiff displays an alarming unfamiliarity with the suit." *See, e.g., Koenig v. Benson*, 117 F.R.D. 330 (E.D.N.Y. 1987) (denying certification where a class representative had no familiarity with the case and relied upon his son and lawyers for guidance). As Judge Posner has explained, "a named plaintiff who has serious credibility problems or who is likely to devote too much attention to rebutting an individual defense may not be an adequate class representative." *CE Design Ltd. V. King Architectural Metals, Inc.*, 637 F.3d 721, 736 (7th Cir. 2011). Davis' apathy toward his class and their claims is the very type of problem contemplated by adequacy of representation requirements. The Circuit Court erred in overlooking this problem and certifying Davis as an adequate class representative.

c. Joseph Davis has not lived in River Oaks since 2013 and has no current interest in the impact of this action.

The Circuit Court further erred in disregarding the fact that Davis has not lived in the River Oaks community since 2013 and has not owned property there since 2020. The Circuit Court declined to find that Davis lacked standing or that his claims were moot despite the fact that he sought declaratory and injunctive relief to halt the operations of River Oaks after he moved away and sold his home within River Oaks. In the context of restrictive covenants, South Carolina law holds that a person seeking to enforce a covenant lacks standing if they no longer own real property which would benefit from enforcement. *McLeod v. Baptiste*, 315 S.C. 246, 247, 433 S.E.2d 834, 835 (1993). "A plaintiff who is unable to secure standing for himself is certainly not in a position to fairly insure the adequate representation of those alleged to be similarly situated." *Cox v. Babcock & Wilcox Co.*, 471 F.2d 13, 16 n.3 (4th Cir. 1972) (citation and quotation marks omitted). River Oaks submits that even if Davis had standing to seek recoveries for his already incurred losses, his standing to represent class members would necessarily be limited to a class of only those who have suffered a similar harm. (i.e., other homeowners that have had liens filed against their homes). The Circuit Court erred by failing to take these limitations into consideration and certifying a class of plaintiffs with whom Davis' interests do not align.

2. The Circuit Court erred in finding that numerosity exists because it failed to conduct any analysis of the size of the class or the practicality of joinder.

The Circuit Court correctly declined to certify Davis' entire proposed class, but it nonetheless erred in certifying a class at all because it improperly found that numerosity exists. The sole basis upon which the Circuit Court based its finding of numerosity exists is the fact that

there are 131 lots within the Woodington I and II neighborhoods.[5] (R. p. 25.) The Circuit Court did not conduct any analysis of which lot owners, if any, qualified for the class nor did it consider any other factor relevant to a numerosity analysis. This assumption failed to meet the "rigorous analysis" that the Circuit Court was required to apply to each and every prerequisite of Rule 23. *See Gardner*, at 21, 577 S.E.2d at 200. In determining whether numerosity exists, the Circuit Court should have conducted an analysis of whether or not joinder would have been practical. *Id.* Had the Circuit Court conducted that analysis, it would have necessarily considered whether all of the owners of these lots qualified for the class at all and the geographic location of the lot owners among other factors. *See, e.g.*, *In re Zetia (Ezetimibe) Antitrust Litig.*, 7 F.4th 227, 234 (4th Cir. 2021) (listing a non-exhaustive list). Without this analysis, the Circuit Court failed to take into account the lots which were excluded by definition and whether the remaining lots were sufficiently numerous. The failure to conduct this analysis is a *per se* abuse of discretion. *Id.*

3. The Circuit Court erred in finding that commonality and typicality exist because the differences amongst the class defeat the commonality of any single question of law or fact.

The Circuit Court found that all class members face the same common question of whether River Oaks' governing documents are valid and binding, but this finding only goes so far and does not address the vast differences between the class members that must necessarily be addressed to properly litigate their claims. "[A] representative plaintiff cannot establish commonality . . . if the court must investigate each plaintiff's individual claim." *Gardner*, at 22, 577 S.E.2d at 201. The typicality and commonality requirements tend to overlap to "ensure that only those plaintiffs" who can "advance the same factual and legal arguments may be grouped together as a class." *Broussard*

[5] This finding, of course, presupposes that each and every lot owner qualifies as a member of the class. They do not. No less than thirty-seven identified lot owners either do not qualify for the class or have opted out and an additional forty-one lot owners purchased their lots from non-qualifying lot owners. (*See* R. p. 1980.)

v. Meineke Discount Muffler Shops, Inc., 155 F.3d 331, 340 (4th Cir. 1998) (internal quotation and citation omitted). The varying levels of class members within the defined class who have distinct claims means that differing groups of class members will have differing merits to their claims and, of course, differing damages. The individual claims of the class certified here require extensive review and that requirement defeats any commonality or typicality.

a. Commonality cannot exist because individual investigations are required as to the merits of, and defenses to, the individual claims.

The Circuit Court's ruling found that Davis' claims were typical of the claims of the lot owners within Woodington I and Woodington II because their homes were all subject to the same set of covenants and restrictions. (R. p. 27.) The Circuit Court conducted no analysis of the extent to which the individual claims of the class members and River Oaks' defenses require scrutiny and examination. A class action cannot be maintained if the individual claims of the members may be subject to separate defenses depending on the facts and circumstances of each case. *Benjamin v. S.C. Nat. Bank of Charleston*, 269 S.C. 250, 255, 237 S.E.2d 72, 74 (1977). While it is true that the mere existence of individual issues will not defeat a class action, the individualized issues negate the benefit of a class action when they predominate the case. *Gardner*, at 22, 577 S.E.2d at 201. In this case, the claims of the class must be heavily examined to determine the merits of the claims and also any resulting damages. Homeowners who lived within River Oaks for varying periods of time will have paid varying amounts of dues. (*See, e.g.*, R. p. 30 (noting that homeowners pay assessments "slightly over $100.00" annually.)) Likewise, not all homeowners have been fined for covenant violations and Davis did not present to the Circuit Court any evidence as to the commonality of claims for these damages. Likewise, the Circuit Court did not conduct any inquiry into what fact-based investigation is required to determine the merits of claims based upon fines and fees.

More importantly, the defenses to each of these claims will vary amongst the class members and individualized questions notice, waiver, standing, and estoppel, among others must be investigated. The Circuit Court certified a class of plaintiffs that will necessarily include owners who owned their home before 2014 and may be subject to a statute of limitations defense and others will be subject to waiver and estoppel based upon their participation within the River Oaks community and on its Board of Directors. Just as the Circuit Court did not conduct any analysis into the numerosity of the class, it overlooked the evidence that individualized defenses will outweigh any commonality of the class and erred in finding commonality.

b. Typicality cannot exist because not all class members have suffered the same harm of Joseph Davis

The Circuit Court erred in finding that typicality exists because the certified class includes members who have not suffered the same harm as Davis. In narrowing down the proposed class, the Circuit Court found that all homeowners within Woodington I and II shared typicality with Davis because they were subjected to River Oaks' enforcement of those covenants. (R. p. 27.) This ruling was in error because it assumed that all of the homeowners from these neighborhoods have suffered the same harm as Davis alleges without any evidence to support the assumption. For example, Davis alleges a class-wide cause of action for slander of title but not all class members have had liens filed against their home and the claim would fail as a matter of law for a majority of the class. *See Solley v. Navy Federal Credit Union, Inc.*, 397 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct. App. 2012) (listing elements for a cause of action for slander of title). If Davis had been successful on his claims, then a class of plaintiffs would have succeeded and been compensated for claims that they otherwise could not have brought on their own.

Likewise, some class members will not have any claims against at least one of the defendants to this action. The Circuit Court certified a class of claims against not only River Oaks but also Dorchester Real Estate Services and Halcyon Real Estate Services. Because these entities provided property management services at differing times during the class period, some of the class members cannot have any claims at all against one or the other property manager defendants. By way of illustration, River Oaks terminated its contract with Halcyon Real Estate Services in 2017. Homeowners who purchased property within River Oaks in 2018 and afterward do not have any claims against Halcyon yet would be permitted to participate in a class action lawsuit against Halcyon where they would otherwise have been subject to a dispositive motion in an individual action.

Put simply, Joseph Davis is an atypical plaintiff and he asserts claims that very few, if any, other class members can match. Davis claims to have suffered more than just harm in the form of association dues. Davis claims that his association dues turned into a lien far in excess of any stated balance owed. His damages are not the association dues which he voluntarily paid and for which he received services in exchange; his damages are the claimed fines and attorney fees imposed upon him by a nonparty. It is because of this very issue that the Circuit Court erred in certifying such a broadly defined class. River Oaks submits that the only class of plaintiffs whom Davis could adequately represent is a class comprised of similarly situated plaintiffs who have had liens filed against those home in excess of the balance claimed by or owed to River Oaks. River Oaks submits than less than a handful of these claimants exist, if any others exist at all. This poses a fatal dilemma for class certification: Davis' claims are too unique to be considered "typical" of the class, while those whose claims align with Davis' are too few to support numerosity.

Conclusion

The Trial Court properly granted summary judgment to River Oaks and that order should be affirmed; however, in the event that the Court of Appeals reverses that order, it should also reverse the Circuit Court's Order granting class certification. The Circuit Court erred in certifying any class at all because of Davis' personal goals outweighing any class-wide interest and the total lack of commonality or typicality amongst the claims. At the very least, the only plausible class which could be certified is a class limited to participants that have suffered the same harm as Davis and those numbers are too few to warrant class certification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 24th day of September 2025, I have served the Respondent-Appellant's Final Brief of Appellant upon Appellants-Respondents via U.S. Regular Mail and via electronic transmission addressed to their attorneys of record, D. Conor Keys, Esquire and Mary Leigh Arnold, Esquire and via electronic transmission upon all other counsel of record listed as follows:

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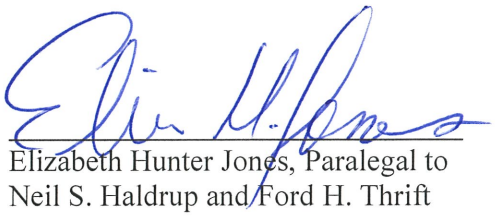

Elizabeth Hunter Jones, Paralegal to
Neil S. Haldrup and Ford H. Thrift

Dated: September 24, 2025
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