

**IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION**

CITIBANK, N.A.

CASE NUMBER:

Plaintiff  
v.

50-2020-CC-005756-XXXX-MB

EVAN S. GUTMAN,

Defendant, Pro Se

**DEFENDANT'S SECOND MOTION TO  
DISQUALIFY JUDGE EDWARD GARRISON  
BASED ON NEWLY DISCOVERED INFORMATION  
CONTAINED IN TRIAL TRANSCRIPT**

"Without publicity, all other checks are insufficient, in comparison of publicity, all other checks are of small account. **Recordation, appeal**, whatever other institutions might present themselves in the character of checks, would be found to **operate rather as cloaks than checks**, . . . as checks only in appearances."

In Re Oliver, (U.S. Supreme Court) 333 U.S. 257, 271 (1948)

AL JOLSON (Larry Parks) - "**Folks, you ain't Heard Nothin' Yet !!!** . . . .

JULIE BENSON (Wife) - **You see, what he didn't have at Home; Mama was an Audience.** Live Faces !! Isn't that it Steve ?? . . . You see Papa, Al was sure that he didn't want to **SING** Anymore. Because he wanted to be with me. **I think I let him make the Wrong Decision.** . . .

MANAGER (William Demarest) - I don't get this Julie.

JULIE - I think Papa does.

. . . .

AL JOLSON - You Heard 'em Professor !! Though April Showers may come your way. They bring the Flowers, that Bloom in May. So, if it's Rainin', **HAVE NO REGRETS !!** Because, it isn't Rainin', Rain you know. **It's Rainin' VIOLETS !!**

. . . .

JULIE - Excuse me. (Leaves Table)

MANAGER - Julie, where do you think you're going?

JULIE - Home. Throw some things in the Car. I'll be gone by the time he gets back. . . . **He tried Awfully Hard, Steve. But, you and I know, he's got to do that !!** . . . . See that he's on that Plane with Tom, tonight. They'll do a Great Show.

MANAGER - You know, this is gonna kill him, Julie.

JULIE - It isn't gonna be so good for me, either. **But, Look, when did you last see him as HAPPY as that ??** . . . . And Steve, when he gets home, Nights after the Show, don't let him **SING** too Long. "

From "**THE JOLSON STORY**" Starring Larry Parks (1946) - The FINAL Scene  
Available on YOUTUBE - **PART 13 of Movie**

## MOTION

Defendant Evan Gutman, JD, CPA humbly and graciously MOVES Judge Edward Garrison for a Second Time to Disqualify himself from further proceedings based on newly discovered information. Defendant incorporates by reference herein, all matters previously presented in his First Motion to Disqualify Judge Edward Garrison and also supplements such with newly discovered information as follows:

1. The Trial Transcript indicates Judge Edward Garrison **EITHER** possesses "**SUPERHUMAN**" **Intellectual Abilities** beyond Mere Mortals in the Secular World; **OR** Alternatively he engaged in Deception warranting disqualification the day of trial. The Trial Transcript also indicates Judge Garrison erroneously denied Defendant's First Motion to Disqualify based on an incorrect assertion that Defendant had not attached an Affidavit to the First Motion to Disqualify; which was in fact properly attached thereto as Exhibit 3(a)-3(b) in that Motion.
2. Trial should not have proceeded because the case was not "At Issue" as indicated by Defendant's Motion to Postpone Trial erroneously denied by Judge Garrison; and **Citibank Counsel Kenneth M. Curtin, Esq. falsely represented to the Court that Citibank's pending Motion to Strike was not timely filed; when in fact it was timely filed** (See Exhibits 1(a), 2(h) and 3(a) herein).

This Motion is supported by the Affidavit of Defendant Evan Gutman attached hereto as Exhibit 6; **in the same manner as an Affidavit was also attached to the First Motion to Disqualify notwithstanding Judge Garrison's Erroneous failure to recognize such**; and also attaches hereto the Transcript of Trial held September 15, 2022 (Exhibit 2).

## FACTS

Prior to trial held on September 15, 2022, Defendant filed a Motion to Disqualify Judge Edward Garrison, which was denied. At that time, Defendant also filed a Motion to Postpone the trial date since the case was not legally "At Issue" as required by FRCP 1.440. Judge Garrison also denied that Motion. Defendant intentionally did not appear at trial on September 15, 2022; since the case was not legally "At Issue" as required by FRCP 1.440 and accordingly Judge Garrison lacked authority to set the trial date or proceed with the trial.

If Defendant had appeared, an assertion could have mistakenly been made that Defendant was Waiving the Rule 1.440 issue. Accordingly, by intentionally not appearing, there could be no legitimate argument of a Waiver of the ironclad inescapable Rule that Judge Garrison overtly violated. Subsequent to the trial, Judge Garrison rendered a "Final Judgment" in favor of Citibank, N.A. on September 19, 2022. Defendant timely filed a Notice of Appeal and also requested and paid for a full and complete Transcript of the trial that was held in his absence. A complete copy of that Transcript is attached hereto as Exhibit 2 and indicates Judge Garrison engaged in conduct during the course of the Trial warranting his Disqualification, in addition to those matters previously delineated in the First Motion to Disqualify.

## **ARGUMENT**

Defendant is constitutionally entitled to a fair trial in a fair tribunal. See In Re Murchison, 349 U.S. 133, 136 (1955), Tumey v Ohio, 273 U.S. 510, 532 (1927). In Murchison, supra, the Court wrote (emphasis added):

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always **endeavored to prevent even the probability of unfairness**. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "**every procedure which would offer a possible temptation** to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, **denies the latter due process of law.**" Tumey v Ohio, 273 U.S. 510, 532."

Thus, under Murchison, as well as the time-honored Tumey v Ohio, 273 U.S. 510 (1927) cited in Murchison, a fair trial requires an endeavor to prevent "**even the probability of unfairness**." In addition, "**every procedure which would offer a possible temptation . . . not to hold the balance nice, clear and true**" denies due process. Defendant has identified multiple issues, resulting in the balance not being held "nice, clear and true." Accordingly, Judge Garrison should disqualify himself. The key points are as follows.

1. **The Trial Transcript indicates Judge Edward Garrison EITHER possesses "SUPERHUMAN" Intellectual Abilities beyond Mere Mortals in the Secular World; OR Alternatively he engaged in Deception warranting disqualification the day of trial. The Trial Transcript also indicates Judge Garrison erroneously denied Defendant's First Motion to Disqualify based on an incorrect assertion that Defendant had not attached his Affidavit to the First Motion to Disqualify; which was in fact properly attached thereto as Exhibit 3(a)-3(b).**

On September 14, 2022, Defendant filed a Motion to Disqualify Judge Edward Garrison and all other Palm Beach County Judges. In addition, on that date, Defendant filed a Motion to Postpone the Trial Date set for the next day, on the ground the case was not "At Issue" as required by FRCP 1.440. Since Defendant knew the trial was illegally scheduled because the case was not "At Issue," he intentionally did not appear for trial on September 15, 2022. That decision was based upon the premise if he had appeared and proceeded, some case law indicates he arguably might have "Waived" the Rule 1.440 issue. Thus, by not appearing and firmly standing his ground the case was not "At Issue," there could be no legitimate assertion of a Waiver of Rule 1.440.

Judge Garrison and Citibank Counsel proceeded with trial on September 15, 2022 without Defendant present. Subsequent to the trial, Defendant requested and paid for a full and complete Transcript of the purported "Trial," which has been provided and filed with the trial court (Exhibit 2). The Transcript confirms Judge Garrison should have granted the Motion to Disqualify; as well as the Motion to Postpone. The reasons are as follows.

The Trial Transcript indicates Judge Garrison EITHER possesses "SUPERHUMAN" Intellectual and Cognitive Abilities beyond those anticipated of Mere Mortals; OR Alternatively he engaged in deception warranting his disqualification on the day of trial. Put simply, if Judge Garrison's representations presented in the Transcript are honest, true and correct, then Judge Garrison possesses intellectual cognitive and analytical abilities far surpassing those of virtually any human being who has ever existed, including but not limited to Einstein

or Physicist Stephen Hawking. Alternatively, if his representations were not honest, then he engaged in "Trickery" and "Deception" at trial, thereby confirming matters set forth in the Motion to Disqualify. Defendant now utilizes his Skills as a Forensic Accountant with decades of experience to easily demonstrate the latter is the case. The "Forensic" CPA analysis of the Trial Transcript, included as Exhibit 2 herein is as follows.

As shown by Exhibit 2(b), the Transcript Cover Page indicates the trial began at 9:04 a.m. and concluded at 9:24 a.m. Thus, the entire Trial lasted about 17 minutes. The substantive part of the transcript reflecting words spoken begins on Page 5 (Exhibit 2(f)) and concludes on Page 16 (Exhibit 2(q)). Thus, the transcript reflecting the words spoken is only 12 pages. The 17 minutes of the trial equates to 1,020 Seconds (17 times 60). Assuming the words spoken by Judge Garrison and Citibank Counsel were timed evenly, each Transcript page equates to a duration of 85 seconds (1,020 divided by 12). As shown by Exhibits 2(f) and 2(g), beginning at the bottom of Page 5 and continuing to the bottom of Page 6, the following exchange took place before Judge Garrison and Citibank Counsel (emphasis added) :

" MR. CURTIN : Your Honor, I think we have a few preliminary issues we have to get over with first. At 5:00 - 4:00 or 5:00 last night, Mr. Gutman filed a motion to recuse Your Honor.

THE COURT : **Haven't seen it.**

...

THE COURT : Okay. **Is there an affidavit somewhere in here ?**

MR. CURTIN : It seems like he signed it. I don't know if it was an affidavit, per se, as a first exhibit.

THE COURT : Yeah, he signed the motion, but **I don't actually see an affidavit** or -

MR. CURTIN : Now, he mentioned it. I didn't see the affidavit either. Quite frankly, I kind of stopped reading it after a while.

THE COURT : It's a real page-tuner. All right. **For the record, I have reviewed the motion. The motion is denied. "**

The above exchange encompassed about one page of the transcript and thus based on time calculations presented; would have lasted about 85 seconds in total. Judge Garrison himself referred to the Motion to Disqualify as a "real page-turner" (spelled incorrectly as "tuner."). The entire First Motion to Disqualify Judge Garrison including exhibits was 139 pages. The majority consisted of exhibits. The Motion exclusive of the exhibits was only 19 pages. Accordingly, even if we hypothetically assume Judge Garrison did not have a due process judicial duty to read each Exhibit page in detail, he certainly had a due process duty to at least read the 19 pages of the Motion. In fact, in the cited exchange above, Judge Garrison forthrightly confirms he did so by stating:

**"For the record, I have reviewed the motion. The motion is denied."**

(Exhibit 2(g) attached hereto)

So, now here's the problem. If Judge Garrison was telling the truth in the Transcript passages cited above, he does in fact have **"SUPERHUMAN" intellectual abilities, extending beyond those of mere mortals in the Secular World.** The reason is as follows. It means within a time frame of only 85 seconds, he engaged in the above verbal exchange; also read 19 pages of the motion to disqualify; also carefully considered legal precedent both with respect to Federal constitutional law and Florida substantive law; conscientiously complied with his Judicial Duty to carefully Weigh and Balance the critical due process rights of the litigants; and then with legal expertise the public expects from Judges rendered a carefully crafted, well-thought out judicial decision. The calculations indicate he would have had to read each of the 19 pages and considered them in **4.47 seconds for each page,** even if he did not so much as "glance" at any Exhibit pages (85 Seconds Divided by 19 = 4.47). While notions of due process seemingly suggest that he should have at least "looked"

at the Exhibits, the fact is that if he did so that brings the calculations down to about **1/2 of one Second for each Page** of the Motion to Disqualify (85 Seconds Divided by 139 Pages = .61 Fractional Second. Probably, unlikely even our "Genius" Judge could do that.

Of course, there is another possibility. Perhaps, although Judge Garrison is obviously quite intelligent (and rather "Tricky"), he is not exactly the "Genius" the foregoing analysis suggests. Often people with enhanced intellectual skills assert ridiculous propositions easily disproven by simple analysis. So, it is now left to Judge Garrison to either stand his ground and assert he is in fact the "**SUPERHUMAN**" Intellectual "Law and Order" Judge the Transcripts indicates; or perhaps concede that he is just a tad bit less, and recuse himself.

In the above exchange, Judge Garrison also asserts he didn't see an Affidavit with the Motion. Perhaps if he turned just a few more pages in the Motion, he would have seen the Affidavit was attached as Exhibit 3 to the Motion. This rudimentary error on his part also seems to detract from the "**SUPERHUMAN**" Intellectual Genius Theory postulated.

**2. The Trial Transcript indicates that Trial should not have proceeded because the case was not "At Issue" as indicated by Appellant's Motion to Postpone Trial erroneously denied by Judge Garrison.**

On September 14, 2022, in addition to the Motion to Disqualify, Defendant filed a Motion to Postpone the Trial focusing on the fact Judge Garrison lacked legal authority to set the trial date because the case was not "At Issue" as required by FRCP 1.440. The reason the case was not "At Issue" was because at that time, Citibank's Motion to Strike Affirmative Defenses, Timely filed on June 30, 2021, had not yet been either heard or ruled upon by the Court. Specifically, Rule 1.440 states as follow (emphasis added) :

**"Rule 1.440. Setting Action for Trial**

**(a) When at Issue.** An action is at issue after any motions directed to the last pleading served **have been disposed** of or, if no such motions are served, 20 days after service of the last pleading. . . .

**(b) Notice for Trial.** Thereafter any party may file and serve a motion that the action is at issue and ready to be set for trial. . . . The clerk, shall then submit the notice and the case file to the court.

**(c) Setting for Trial.** If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. . . . "

In addition, Citibank's Motion to Extend Discovery had also not yet been heard or ruled upon by the Court. Accordingly, Judge Garrison lacked legal authority to set the trial date.

The following case cites are indicative of the importance of this issue:

**"Strict compliance** with rule 1.440 is required and **failure to adhere to it is reversible error.** See *Lauxmont Farms, Inc. v Flavin*, 514 So.2d 1133, 1134 (Fla. 5th DCA 1987). **"Indeed a trial court's obligation to hew strictly to the rule's terms is so well established that it may be enforced by a writ of mandamus** compelling the court to strike a noncompliant notice for trial or to remove a case from the trial docket." *Gawker Media, LLC*, 170 So.3d at 130 (citing *R.J. Reynolds Tobacco Co. v Anderson*, 90 So.3d 289 (Fla.2nd DCA 2012)."

*Melbourne HMA, LLC v Janet B. Schoof*, 190 So.3d 169 (2016)

"Rule 1.440(a) states that "an action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading" . . . **Appellee concedes, and we agree, that the trial court improperly issued an order setting a non-jury trial. . . . Accordingly, we reverse and remand for a new trial in compliance with rule 1.440(a).**"

*Lurtz v The Bank of New York Mellon*, 162 So.3d 11 (2014)

"On appeal, U.S. Bank properly concedes that the final judgment must be reversed as the case not "at issue" pursuant to Rule 1.440. . . .

**Because "failure to adhere strictly to the mandates of Rule 1.440 is reversible error,"** *Precision Constructors, Inc. v Valtec Constr. Corp.* 825 So.2d 1062, 1063 (Fla. 3d DCA 2002) we reverse the final judgment in favor of U.S. Bank and remand for a new trial.,"

*Lopez v U.S. Bank*, 116 So.3d 640 (2013)



As shown by Exhibit 2(h) attached herein, the Trial Transcript indicates the following exchange took place on the "At Issue" premise (emphasis added) :

" **MR. CURTIN:** No, Your Honor. Just for the record, on the motion to delay the trial, Your Honor, that - just for any appellate purposes, when he's talking about the motion to strike affirmative defenses, **that was filed by previous counsel in October 2020. So assuming that the answer was filed on October 2020, the motion to strike affirmative defenses was filed in June of 2021.** Obviously, he hadn't filed the previous -- plaintiff's counsel would have had that file capped at 20 days. **So that motion to strike affirmative defenses is moot anyway. It was filed too late. And Citibank would drop it.** And it has been, on the record, it's dropped that motion to strike affirmative defenses.

**THE COURT:** All right. Well, the **pending** motion to strike does not render the case not at issue anyway.

**MR. CURTIN:** Thank you, Your Honor. "

(Exhibit 2(h) attached hereto)

**As shown by Exhibit 1, on June 11, 2021 Judge Sandra Bosso-Pardo granted Citibank's Motion for an Extension to file a Response to Defendant's Answer and Counterclaim** and provided Citibank with an additional 20 days from the date of the Order to file such. As shown by Exhibit 3, Citibank then Timely filed its Motion to Strike on June 30, 2021. Thus, Mr. Curtin Falsely represented to the Court on the day of trial for purposes of avoiding the "At Issue" Rule, that Citibank's Motion to Strike was not timely filed. Put simply, it was in fact filed within the period allowed by Judge Sandra Bosso-Pardo, pursuant to Citibank's own Request for the Extension. And as a point of fact, even if their Motion had not been timely filed, the fact that it was filed Meritlessly still does not allow Citibank to escape the "At Issue" principle of Rule 1.440.

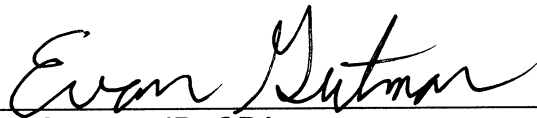
The analysis is as follows. The crux of Citibank's argument apparently according to their Counsel, Mr. Curtin is that since Citibank's Motion was Meritless the "Pendency" of the Motion was negated. Notably, as indicated above, even Judge Garrison referred to the

Motion as the "pending motion." Therefore, Mr. Curtin was apparently trying to argue with a straight face that Citibank was entitled to an advantage in setting the trial date precisely because they filed a "Meritless" Motion, which he openly asserts had no legitimate legal basis whatsoever. Thus, he concludes Citibank's motion was not in fact "pending," because it was Meritless. That is in fact a rather "Novel" legal argument to state the matter mildly. The argument is so abjectly absurd that it is actually "funny" and brings semantic manipulation of logic to a hitherto unknown level in the secular world.

The evidence indicates Judge Garrison made a willful and conscious decision to intentionally violate FRCP 1.440 by setting a trial date when he knew he lacked legal authority to do so. The case was simply not "At Issue" on the day of trial and everybody knows that. Judge Garrison can not fairly contend he was unaware of FRCP 1.440 for the following reasons. First, Defendant understands he has been on the bench for almost four decades. So, it's inconceivable he would be unaware of FRCP 1.440. Put simply, he can't claim "Rookie Status" so to speak. Similarly, since a Hearing was actually Set on the Motion to Strike for August 31, 2022 (Exhibit 4) (notably by Consent of Plaintiff's Counsel and Defendant); and since Judge Garrison "Sua Sponte" cancelled that Hearing (Exhibit 5) apparently attempting to "RAM THROUGH" a Biased Judgment for Plaintiff, it is inescapable he knew about the pendency of the Motion to Strike and in fact "Confessed" to such at trial.

Due to the blatant and serious nature of Judge Garrison's violation of Rule 1.440 (one of the most important court rules as evidenced by multiple Florida District Court of Appeals opinions) and for all other reasons delineated herein, Judge Garrison should Disqualify himself from further proceedings in this matter. Additionally, he should acknowledge that he incorrectly denied Defendant's First Motion for Disqualification.

Submitted humbly, graciously and respectfully, and DATED this 5th day of  
January, 2023.

A handwritten signature in black ink that reads "Evan Gutman". The signature is written in a cursive style and is positioned above a horizontal line.

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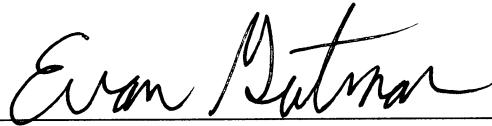
Evan Gutman JD, CPA  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
1675 NW 4th Avenue, #511  
Boca Raton, FL 33432  
561-990-7440

## CERTIFICATE OF SERVICE

I Evan Gutman, hereby Certify a true copy of the foregoing was sent via E-Mail on this 5th day of January, 2023 and a follow up copy will be sent via U.S. Mail addressed as follows:

Adams and Reese LLP  
Attn: Kenneth M. Curtin, Esq.  
100 N. Tampa Street, Suite 4000  
Tampa, Florida 33602

DATED this 5th day of Janaury, 2023.

A handwritten signature in black ink that reads "Evan Gutman". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Evan Gutman CPA, JD  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
Admitted to Federal Sixth Circuit Court of Appeals  
Admitted to Federal Ninth Circuit Court of Appeals

1675 NW 4th Avenue, #511  
Boca Raton, FL 33432  
561-990-7440

IN THE COUNTY COURT IN THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NUMBER: 50-2020-CC-005756-XXXX-MB DIV:

CITIBANK, N.A.,  
Plaintiff,

vs.

EVAN S GUTMAN,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME

THIS CAUSE having come before the Court upon Plaintiff's Motion for Extension of Time to Respond to Defendant's Counterclaim and Answer and Affirmative Defenses, and the Court, having considered the motion, it is hereby:

ORDERED AND ADJUDGED:

1. Plaintiff's Motion for Extension of Time to Respond to Defendant's Counterclaim and Answer and Affirmative Defenses is hereby GRANTED.
2. Plaintiff shall file Plaintiff's response to Defendant's Counterclaim and Answer and Affirmative Defenses on or before the twentieth (20) day from the date of this Order.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 11 day of  
June, 2021.

50-2020-CC-005756-XXXX-MB 06/11/2021

Sandra Bosso-Pardo County Judge

50-2020-CC-005756-XXXX-MB 06/11/2021

Sandra Bosso-Pardo  
County Judge

County Court Judge

Copies to:

Michael Thiel Debski  
Attorney for Plaintiff  
Debski & Associates, P.A.  
P.O. Box 47718  
Jacksonville, FL 32247

EVAN S GUTMAN  
Defendant

1675 NW 4TH AVE APT 511  
BOCA RATON FL 33432-3505

K1903856

**In the Matter Of:**  
**CITIBANK N.A. V. GUTMAN**

50-2020-CC-005756-XXXX-MB

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**NON JURY TRIAL**

*September 15, 2022*

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IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO.: 50-2020-CC-005756-XXXX-MB

CITIBANK N.A.,  
Plaintiff/Petitioner

vs.

EVAN S GUTMAN,  
Defendant/Respondent.

\_\_\_\_\_ /

PROCEEDINGS HELD BEFORE  
THE HONORABLE EDWARD A. GARRISON  
SEPTEMBER 15th, 2022  
9:07 A.M. - 9:24 A.M.

PALM BEACH COUNTY COURTHOUSE  
205 NORTH DIXIE HWY  
WEST PALM BEACH, FL 33401

Reported by TAYLOR JONES  
Notary Public, State of Florida  
Esquire Deposition Solutions



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APPEARANCES :

On behalf of the Plaintiff/Petitioner:

KENNETH CURTIN, ESQUIRE

ADAMS AND REESE, LLP

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(813) 227-5521

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Also Appeared:

JUDY DELAGE

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WITNESS:                      DIRECT      CROSS              REDIRECT      RECROSS

JUDY DELAGE

BY MR. CURTIN                      8

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E X H I B I T S  
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Plaintiff's Exhibits

NUMBER	DESCRIPTION	PAGE
1	Monthly billing statements	10
2	Final statement	12
3	Copies of payments	13

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P R O C E E D I N G S

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BE IT REMEMBERED that the following proceedings were had and testimony adduced before the Honorable Edward A. Garrison at the Palm Beach County Courthouse beginning at the hour of 9:07 a.m. on the 15th day of September, 2022, with appearances as herein noted to-wit:

THE COURT: Good morning, everyone. Have a seat, please. Mr. Curtin, I presume?

MR. CURTIN: Yes, Your Honor.

THE COURT: Good morning.

MR. CURTIN: Good morning.

THE COURT: All right. And your witness is?

MR. CURTIN: Judy Delage of Citibank.

THE COURT: Raise your right hand, please, ma'am. Do you swear to tell us the truth, the whole truth, and nothing but the truth?

MS. DELAGE: Yes, I do.

MR. CURTIN: Your Honor, I think we have a few preliminary issues we have to get over with first. At 5:00 - 4:00 or 5:00 last night, Mr. Gutman filed a motion to recuse Your Honor.

THE COURT: Haven't seen it.

MR. CURTIN: I have a copy if you want, Your Honor.

THE COURT: I'd be happy to. If it was e-filed, it's

1 not in the clerk's system, or at least it's not reflected on  
2 the docket yet.

3 MR. CURTIN: I don't think it's legally sufficient, but  
4 I'll let Your Honor read it.

5 THE COURT: Is this the same motion that he filed -  
6 I've seen this motion before.

7 MR. CURTIN: He filed - it's very, very similar. It  
8 has some items related to you for what, I guess, he got off  
9 the internet.

10 THE COURT: Okay. Is there an affidavit somewhere in  
11 here?

12 MR. CURTIN: It seems like he signed it. I don't know  
13 if it was an affidavit, per se, as a first exhibit.

14 THE COURT: Yeah, he signed the motion, but I don't  
15 actually see an affidavit or -

16 MR. CURTIN: Now, he mentioned it. I didn't see the  
17 affidavit either. Quite frankly, I kind of stopped reading  
18 it after a while.

19 THE COURT: It's a real page-tuner. All right. For  
20 the record, I have reviewed the motion. The motion is  
21 denied.

22 You can proceed, Mr. Curtin.

23 MR. CURTIN: He also - Mr. Gutman also filed yesterday  
24 morning a motion to postpone the trial. I have a copy of  
25 that. I don't know if Your Honor wants to review that or -

1 THE COURT: If you've got it, I'll take a look at it.  
2 It's not in the clerk's system yet.

3 MR. CURTIN: I will say -- I do have something to say  
4 about that after Your Honor has reviewed it.

5 THE COURT: All right. The late-filed motion to  
6 postpone the trial date is denied. Anything else that he  
7 filed that I don't know about?

8 MR. CURTIN: No, Your Honor. Just for the record, on  
9 the motion to delay the trial, Your Honor, that - just for  
10 any appellate purposes, when he's talking about the motion  
11 to strike affirmative defenses, that was filed by previous  
12 counsel in October 2020.

13 So assuming that the answer was filed on October 2020,  
14 the motion to strike affirmative defenses was filed in June  
15 of 2021. Obviously, he hadn't filed the previous --  
16 plaintiff's counsel would have had that file capped at 20  
17 days. So that motion to strike affirmative defenses is moot  
18 anyway. It was filed too late. And Citibank would drop it.

19 And it has been, on the record, it's dropped that motion to  
20 strike affirmative defenses.

21 THE COURT: All right. Well, the pending motion to  
22 strike does not render the case not at issue anyway.

23 MR. CURTIN: Thank you, Your Honor. We would call Ms.  
24 Judy Delage.

25 THE COURT: Your full name, please?

1 THE WITNESS: My name is Judy Delage.

2 THE COURT: And what is your relationship to Citibank?

3 THE WITNESS: I am Custodian of Records. I'm also  
4 Assistant Vice President for Citibank.

5 MR. CURTIN: Do you want Ms. Delage to talk here or on  
6 the witness stand?

7 THE COURT: She's fine there.

8 - - -

9 DIRECT EXAMINATION

10 BY MR. CURTIN:

11 Q. For the record, Ms. Delage, can you please state  
12 your name?

13 A. Yes, my name is Judy Delage. That's, D-E-L-A-G-E.

14 Q. And who do you work for?

15 A. I work for Citibank, N.A.

16 Q. And what's your position at Citibank and your job  
17 duties?

18 A. My officer title is Assistant Vice President. I'm  
19 also Custodian of Records. And I participate in trials,  
20 mediations, arbitrations, and my goal is to recover unpaid  
21 receivables in the form of credit card debt.

22 Q. Thank you. How long have you been with Citibank?

23 A. It's been over 22 years.

24 Q. Can you take us briefly through your work history at  
25 Citibank?

1           A.     Yes.  I began as a collections associate.  I was on  
2 the phones calling customers who were one to six months past due  
3 on their credit card and working out payment arrangements.  
4 Then, I became manager of the collections team, and I did that  
5 for, approximately, 10 to 12 years.  And then after that, I came  
6 into this role.

7           Q.     And throughout your history at Citibank, have you  
8 been trained on how Citibank uploads, stores, retrieves  
9 information at Citibank?

10          A.     Yes, I have.

11          Q.     And that information - you maintain information on  
12 account holders and credit card holders at Citibank in the  
13 routine business manners?

14          A.     Yes.

15          Q.     And what type of documents does Citibank maintain on  
16 credit card holders?

17          A.     We retain everything from the beginning of the  
18 inception of the cards, which is the card agreement, the  
19 application.  We also retain the monthly billing statements, as  
20 well as any communications between the customer and Citibank,  
21 any updates to the account.  All of that would be reflected in  
22 our database.

23          Q.     And have you reviewed those documents and retrieved  
24 those documents and files in the Defendant's, Mr. Gutman's,  
25 credit card account at Citibank?



1 A. Yes.

2 Q. Let me show you what I marked as Exhibit No. 1. Do  
3 you recognize Exhibit 1?

4 A. Yes, I do.

5 Q. What is Exhibit No. 1?

6 A. These are copies of the monthly billing statements  
7 that were sent to Mr. Gutman. These are all the billing  
8 statements since the beginning of the account up until the  
9 account was charged off.

10 Q. What is the first statement, the activity of the  
11 first billing statement?

12 A. The first statement is April 20th of 2010, through  
13 May 19th, 2010.

14 Q. And when is the last billing statement?

15 A. The last one has a closing date of June 19th of  
16 2019.

17 MR. CURTIN: I'd like to enter Exhibit No. 1 into  
18 evidence, Your Honor.

19 THE COURT: Admitted.

20 (Thereupon, Plaintiff's Exhibit 1 was entered into  
21 evidence)

22 BY MR. CURTIN:

23 Q. Have you reviewed those statements?

24 A. Yes, I have.

25 Q. They're consistently from 2010 until - can you look

1 at the statement? When was the last time Mr. Gutman made any  
2 payments?

3 A. This last payment was on October 23rd of 2018. That  
4 was in the amount of \$254.81.

5 Q. Between that April 2010 and November of 2018, did  
6 Mr. Gutman consistently make payments and make charges on that  
7 account?

8 A. Yes, he did.

9 Q. Thank you. Did there come a time where he stopped  
10 paying on the account?

11 A. Yes. After that last payment in October of 2018,  
12 there were no more payments.

13 Q. But there's several monthly statements thereafter?

14 A. Yes, there were.

15 Q. Why would Citibank send monthly statements  
16 thereafter even after -- well, answer this. How many monthly  
17 statements thereafter, after the last payment, did Citibank send  
18 out?

19 A. It was, approximately, six or seven months after  
20 that. Once the account was six months past due, at that point  
21 we stopped sending the monthly billing statements.

22 Q. And why did you do that?

23 A. At the six-month mark, by Federal Banking Law, at  
24 that point, the account is charged off. The account is still  
25 due and owing, it's just no longer listed as a receivable on

1 Citibank's book.

2 Q. And that is per the Federal Banking Regulations?

3 A. Yes.

4 Q. Let me show you what I marked as Exhibit No. 2. Do  
5 you recognize this one account statement?

6 A. Yes, I recognize this. This is the final statement  
7 that was sent to Mr. Gutman.

8 Q. And how much is due and owing? Well, what date is  
9 this statement?

10 A. It's June 19th of 2019.

11 Q. And what is the amount due and owing on June 19th,  
12 2019?

13 A. The balance is \$11,292.15.

14 MR. CURTIN: I'd like to admit Exhibit No. 2 into  
15 evidence, Your Honor.

16 THE COURT: Admitted.

17 (Thereupon, Plaintiff's Exhibit 2 was entered into  
18 evidence)

19 BY MR. CURTIN:

20 Q. As part of Citibank's normal record keeping  
21 procedures, would Citibank keep records on any checks that are  
22 sent in for payments?

23 A. Yes.

24 Q. And did you recover any checks for payments by Mr.  
25 Gutman?

1 A. Yes, I did.

2 Q. Let me show you what I've marked as Exhibit No. 3.  
3 Do you recognize that?

4 A. Yes, I do. These are copies of some monthly billing  
5 - sorry. Copies of payments that were made towards this  
6 account.

7 Q. And did Mr. Gutman also make payments electronically  
8 throughout almost the ten years of this account?

9 A. Yes, that was -- actually the majority of the  
10 payments were electronic.

11 Q. And these checks are just some of the large payments  
12 he sent in via check?

13 A. Yes.

14 MR. CURTIN: I'd like to enter Exhibit No. 3 into  
15 evidence.

16 THE COURT: Admitted.

17 (Thereupon, Plaintiff's Exhibit 3 was entered into  
18 evidence)

19 BY MR. CURTIN:

20 Q. Did you look at all the account notes on this  
21 account?

22 A. Yes, I did. I looked at the customer service notes,  
23 the collections notes. I did.

24 Q. Now if there was a dispute on the account, would  
25 that be in the customer service collection notes?

1 A. Yes.

2 Q. Were there any unresolved disputes throughout the  
3 almost ten years he used this card?

4 A. No, there weren't.

5 Q. Was there a time where Mr. Gutman called about a  
6 card either being lost or stolen?

7 A. Yes, in October of 2017, he did report a lost or  
8 stolen card.

9 Q. What did Citibank do in that report?

10 A. At that point, we talked to him. It was a phone  
11 conversation. We went through the transactions. There was one  
12 transaction he did not recognize.

13 We removed that from his balance and then we issued him a new  
14 credit card, transferred the balance to that new credit card,  
15 and proceeded as normal.

16 Q. And that one charge that he did not recognize, did  
17 that ever even make it to a monthly statement?

18 A. No, it didn't.

19 Q. Did he dispute any of the charges thereafter on the  
20 monthly statements?

21 A. No.

22 Q. In Exhibit No. 1, the nine to ten years of account  
23 statements, did the account number change?

24 A. Yes, it does. It changes right around that time  
25 when he called in for the lost card.

1 Q. And that's a normal practice, that the account  
2 itself wouldn't change, but the account number would change if  
3 the card was stolen or lost?

4 A. Correct.

5 Q. Did you review all the correspondence up until the  
6 time the account was charged off after the last statement?

7 A. I did review some letters that were exchanged, yes.

8 Q. Well, prior to the account being charged --  
9 eventually, after the account was charged off, it was sent to  
10 collection counsel, correct?

11 A. Yes.

12 Q. Prior to being sent to collection counsel, did Mr.  
13 Gutman ever dispute, anywhere in the account notes or any  
14 letters, any of the charges on the account?

15 A. No, he didn't.

16 MR. CURTIN: The Plaintiff rests, Your Honor.

17 THE COURT: Okay. There being no defense presented to  
18 the charges, I find in favor of the Plaintiff the amount set  
19 forth in the testimony. Do you have a proposed final  
20 judgement?

21 MR. CURTIN: I will do a - excuse me, Your Honor?

22 THE COURT: I said, do you have the prepared judgement?

23 MR. CURTIN: I do not have a prepared judgement, Your  
24 Honor.

25 THE COURT: You can send -

1 MR. CURTIN: I will prepare a judgement and send it to  
2 your office. Do you also want me to prepare a judgement, an  
3 order, on the motion to disqualify to Your Honor?

4 THE COURT: And the motion to continue.

5 MR. CURTIN: I will do that.

6 THE COURT: I need three orders from you.

7 MR. CURTIN: Three orders.

8 THE COURT: And I have just three exhibits? Okay,  
9 we're good. All right, thank you all for coming in.

10 MR. CURTIN: Thank you.

11 (PROCEEDINGS CONCLUDED)

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C E R T I F I C A T E

I, Taylor Jones, certify that I was authorized to and did digitally report the foregoing proceedings and that the transcript is a true and complete record of my notes.

Dated this 9th day of November, 2022.



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TAYLOR JONES



TAYLOR JONES  
Commission # 1441183306  
Expires August 10, 2026  
Notary Public, State of Maryland



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IN THE COUNTY COURT IN THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NUMBER: 50-2020-CC-005756-XXXX-MB DIV:

CITIBANK, N.A.,

Plaintiff,

vs.

EVAN S GUTMAN,

Defendant.

---

PLAINTIFF'S RESPONSE AND MOTION TO STRIKE AFFIRMATIVE DEFENSES

COMES NOW Plaintiff, CITIBANK, N.A., by and through its undersigned attorneys, and pursuant to Rule 1.140(f) of the Florida Rules of Civil Procedure, responds to Defendant's Answer and hereby respectfully moves this Court to strike Defendant's affirmative defenses as either being legally insufficient or as being redundant, immaterial, impertinent or scandalous. Moreover, Plaintiff hereby denies each and every affirmative defense and demands strict proof thereof. In support thereof, Plaintiff shows as follows:

1. Pursuant to Florida Rule of Civil Procedure, 1.140(f), "[a] party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time." A motion to strike a defense tests only the legal sufficiency of the defense. Gonzalez v. NAFH Nat. Bank, 93 So.3d 1054, 1057 (Fla. 3d DCA 2012). More importantly, Rule 1.140 provides that all "substantial matters of law intended to be argued shall be stated specifically and with particularity..." Fla. R. Civ. P., 1.140(b). "It is insufficient to plead opinions, theories, legal conclusions or argument." Barrett v. City of Margate, 743 So.2d 1160, 1163 (Fla. 4th DCA 1999). Furthermore merely citing defenses without setting forth "the substantial matter of law intended to be argued" and without stating "with particularity" in turn shall be stricken. See Roach v. Totalbank, 85 So.3d 574, 578 (Fla. 4th DCA 2012). As the Florida courts have pointed out "[t]he ground on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in any responsive pleading or motion. Id. at 578 (emphasis added).

## EXHIBIT 3(b)

2. A motion to strike should be granted, if the material is “wholly irrelevant, and can have no bearing on equities, and no influence on decision.” Rice-Lamar v. City of Fort Lauderdale, 853 So.2d 1125, 1133 (Fla. 4th DCA 2003) (quoting, Pentecostal Holiness Church, Inc., v. Mauney, 270 So.2d 762, 769 (Fla. 4th DCA 1972)). Additionally, Rule 1.1.40, Fla. R. Civ. P., does specifically allows this Court to utilize its discretion in striking any pleading due to an insufficient defense. Dover v. Dover, 241 So.2d 740, 741 (Fla. 4th DCA 1970). Finally, any party who merely asserts conclusory statements as a defense shall have such defenses stricken. See Cady v. Chevy Chase Sav. & Loan, Inc., 528 So.2d 136, 137-8 (Fla. 4th DCA 1988).

3. Plaintiff responds to and moves to strike Defendant’s First, Third, Fourth, Fifth, Sixth, and Seventh Affirmative Defenses , as they are not a legal defenses but appear to be a cause of action which has already been set forth in Defendant’s Counterclaim and nor are they affirmative defenses under Rule 1.110(d) of the Florida Rules of Civil Procedure. See Fla.R.Civ.P., Rule 1.140(b). Plaintiff moves to strike these Affirmative Defenses as legally insufficient. Aside from being an ambiguous assertion, Defendant fails to allege and provide supporting facts and arguments. Rule 1.140(b) of the Florida Rules of Civil Procedure provides that “the grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion.” Defendant’s Affirmative Defenses fail and should be stricken.

4. Plaintiff responds to and moves to strike Defendant’s Second , Eighth and Additional Affirmative Defenses, as they are legally insufficient. If the applicable statute of limitation has run and the action is barred, then Defendant should so allege and provide supporting facts and arguments. Defendant has failed to provide the applicable statute of limitations, and Defendant also has not alleged any facts in support of his assertion. Defendant fails to even cite which statute they are referring to, even in light of the Plaintiff attaching a statement to the Complaint. Rule 1.140(b) of the Florida Rules of Civil Procedure provides that “the grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion.” Defendant’s Affirmative Defenses fails and should be stricken.

## EXHIBIT 3(c)

5. The Defendant's Affirmative Defense are not only completely devoid of any particularity (ultimate facts), merit, but its fails to recognize Florida law and as a result should be viewed as nothing more than a baseless "conclusion of law." Bliss v. Carmona, 418 So.2d 1017, 1019 (Fla. 3d DCA 1982).

6. As uniformly acknowledged by the Florida courts each affirmative defense must be complete in itself and each individual element(s) must be clearly represented. Trawick, P., Henry, Florida Practice Procedure § 11-4 (2006. Ed). In turn, the Florida courts have echoed that any affirmative defense that is asserted by a party shall have the same requirements as a counterclaim and therefore must be pled with certain "specificity and proof." Barrett v. City of Margate, 743 So.2d 1160, 1163 (Fla. 4th DCA 1999); see also Cady v. Chevy Chase Sav. & Loan, Inc., 528 So.2d 136, 137-8 (Fla. 4th DCA 1988). A failure to plead with such specificity and/or provide any such ultimate facts, supported by any proof, negates such defense as an immaterial defense and must stricken. See Berrios v. Deuk Spine, 76 So. 3d 967, 970 (Fla. 5th DCA 2011 ("Florida is fact-pleading state not a notice state and as result failure to plead ultimate facts is fatal. Florida is a fact-pleading state; "not lawful" and "not properly payable" are conclusions, not facts"); see also Louie's Oyster, Inc. v. Villaggio Di Las Olas, Inc., 915 So. 2d 220, 222 (Fla. Dist. 4th DCA 2005) ("Florida Rules of Civil Procedure require fact pleading.").

7. In tur, the Court based upon its inherent authority can and should strike all such immaterial, redundant or scandalous affirmative defenses that lack any merit or particularity. Cady, 528 So.2d at 1318; Fla. R. Civ. P. 1.140.

WHEREFORE, Plaintiff respectfully requests this Court to grant its Motion to Strike Affirmative Defenses.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished on June 30,  
2021, to: EVAN S GUTMAN, Defendant, EGUTMAN@GUTMANVALUATIONS.COM by Email.

DEBSKI & ASSOCIATES, P.A.

BY: 

Michael Thiel Debski  
Attorney for Plaintiff  
P.O. Box 47718  
Jacksonville, FL 32247  
Phone: (904) 425-0901 / (800) 733-0717  
RULE 2.516 DESIGNATED EMAIL:  
rd@ecert.comcastbiz.net  
Florida Bar #084840

K1903856

*This communication is from a debt collector*

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

COUNTY CIVIL DIVISION RL  
CASE NO. 50-2020-CC-005756-XXXX-MB

CITIBANK N.A.,  
Plaintiff/Petitioner

vs.

EVAN S GUTMAN,  
Defendant/Respondent.

**ORDER SPECIAL SETTING HEARING**  
**(30 minutes minutes reserved)**

THIS CAUSE came before this Court and is hereby set for hearing on **Motion to Strike** on **Wednesday, August 31, 2022 at 11:30 AM** at the Palm Beach County Judge Daniel T. K. Hurley Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401 in Courtroom 6K. **This matter may not be canceled without a Court Order.**

One or more of the parties who may be affected by the motion are self represented.

**DONE AND ORDERED** in West Palm Beach, Palm Beach County, Florida.

**COPIES TO:**

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IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

COUNTY CIVIL DIVISION: RL  
CASE NO.: 50-2020-CC-005756-XXXX-MB

CITIBANK N.A.,  
Plaintiff/Petitioner

vs.

EVAN S GUTMAN,  
Defendant/Respondent.

**ORDER SETTING NON-JURY TRIAL**

THIS CAUSE is set for Non-Jury Trial before Judge EDWARD A. GARRISON on SEPTEMBER 8, 2022 at 01:00 pm in Courtroom 6-K at Main Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401.

**THIS IS NOT A ZOOM HEARING.** The personal appearance of the parties, witnesses and/or counsel is required.

The hearings scheduled for August 24 and 31, 2022 are **CANCELLED**.

**THIS MATTER CANNOT BE CANCELLED WITHOUT FURTHER COURT ORDER.**

**If the case is resolved before trial, this Court directs Plaintiff to immediately contact this Court's Judicial Assistant at CAD-DivisionRL@pbcgov.org. Failure to appear could result in Plaintiff's claim being dismissed or Default Judgment against Defendant.**

**DONE AND ORDERED** in Chambers, at West Palm Beach, Palm Beach County, Florida, this 19th day of July, 2022.

50-2020-CC-005756-XXXX-MB 07/19/2022

Edward A. Garrison County Judge

50-2020-CC-005756-XXXX-MB 07/19/2022

Edward A. Garrison  
County Judge

**COPIES TO:**

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IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION

CITIBANK, N.A.

Plaintiff

v.

EVAN S GUTMAN

Defendant, Pro Se

CASE NUMBER:

50-2020-CC-005756-XXXX-MB

**AFFIDAVIT OF EVAN GUTMAN**

**AFFIDAVIT OF EVAN GUTMAN**

I, Evan Gutman, hereby swear and certify the following facts are true and correct to the best of my belief and knowledge. I understand I am swearing and affirming to the truthfulness of the matters stated in this affidavit and punishment for knowingly making a false statement includes fines and/or imprisonment. I swear and certify as follows:

1. I have personally prepared and will be submitting to the Palm Beach County Court during the first week of January, 2023 a document titled "DEFENDANT'S SECOND MOTION TO DISQUALIFY JUDGE EDWARD GARRISON BASED ON NEWLY DISCOVERED INFORMATION IN TRIAL TRANSCRIPT."
2. The above referenced document contains delineation of numerous facts, circumstances and citations to law, which I have personally prepared and attest to.
3. I hereby adopt and affirm that the facts, circumstances and citations to law, to the best of my knowledge and belief as stated in the above referenced document (i.e. Motion), are true and correct to the best of my knowledge and belief, and I am willing to submit sworn testimony regarding such, if necessary.

I, Evan Gutman, hereby swear and certify the foregoing to be true and correct to the best of my belief and knowledge. I understand I am swearing and affirming to the truthfulness of the matters stated in this affidavit and punishment for knowingly making a false statement includes fines and/or imprisonment.

EXHIBIT 6(b)

DATED: 1/3/23

Evan Gutman

Evan Gutman  
1675 NW 4th Avenue, #511  
Boca Raton, FL 33432

STATE OF FLORIDA  
COUNTY OF PALM BEACH

This instrument was acknowledged before me on this 3rd day of January, 2023, by  
Evan Gutman:

Personally Known Mark Johnson  
NOTARY PUBLIC

Produced Identification Mark Johnson

Drivers License  
Print, Type or Stamp Commissioned name of Notary

