UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

GALE FORCE ROOFING AND RESTORATION, LLC, *et al.*, Plaintiffs, v. MELANIE GRIFFIN, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation, Defendant.	Case No. 4:21-cv-00246-MW-MAF

JOINT SUGGESTION OF MOOTNESS

The Parties jointly file this Suggestion of Mootness and ask that this Court dismiss the case. The Parties will continue working towards a resolution of entitlement to attorney's fees and costs.

I.

Plaintiff and Plaintiff-Intervenors brought single-count complaints challenging Section 489.147(1), Florida Statutes, as a violation of the First

Amendment to the U.S. Constitution. At the time Plaintiffs and Plaintiff-Intervenors filed their complaint, the challenged language provided:

> "Prohibited advertisement" means any written or electronic communication by a contractor that encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage. The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and emails.

Fla. Stat. § 489.147(1)(a).

On May 26, 2022, the Governor signed Senate Bill 2-D ("SB 2-D") into law. Section 5 of the bill substantially revises the statutory language in Section 489.147(1)(a), amending the definition of "prohibited advertisement" to encompass only written or electronic advertisements that lack a specific written disclaimer. The amended statute prohibits only contractor advertisements that:

> do[] not state in a font size of at least 12 points and at least half as large as the largest font size used in the communication that:
>
> 1. The consumer is responsible for payment of any insurance deductible;
>
> 2. It is insurance fraud punishable as a felony of the third degree for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a property insurance policy; and

> 3. It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information.

CS for SB 2-D, 1st Engrossed, Fla. Leg. (Special Sess. 2022), pg. 20-21, ln. 571-84.

II.

In most cases, "a challenge to the constitutionality of a statute is mooted by repeal of the statute." *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1329 (11th Cir. 2004); *see also Tanner Advert. Grp., LLC v. Fayette Cnty.*, 451 F.3d 777, 789 (11th Cir. 2006) (en banc). That's because "the repeal of a challenged statute is one of those events that makes it absolutely clear that the allegedly wrongful behavior . . . could not reasonably be expected to recur." *Flanigan's Enters., Inc. of Ga. v. City of Sandy Springs*, 868 F.3d 1248, 1255 (11th Cir. 2017) (citing *Coral Springs*, 371 F.3d at 1328-29).

When challenged statutes are repealed, and in this case substantially amended, the voluntary cessation exception to mootness doesn't apply either "unless there is some reason to believe that the law may be reenacted after dismissal of the suit." *Id.* at 1256. Three factors can be used to determine whether a repealed law is likely to be reenacted post-dismissal. *Id.* at 1257. First, the reviewing court must ask "whether the change in conduct resulted from substantial deliberation or is merely an attempt to manipulate [the court's] jurisdiction." *Id.* Second, the court inquires "whether the government's decision to terminate the challenged conduct was 'unambiguous.'" *Id.*

Third, the court "ask[s] whether the government has consistently maintained its commitment to the new policy or legislative scheme." *Id.*

III.

SB 2-D is now law and resolved the complaints that Plaintiffs and Plaintiff-Intervenors raised. The Parties further agree that *Flanigan*'s three factors tilt the balance in favor of dismissal of the case.

First, the legislative changes were the product of serious deliberation on the part of the Florida Legislature, which met in a special session to enact comprehensive reforms to the State's insurance laws. *Flanigan's Enters.*, 868 F.3d at 1257. Second, the changes were "unambiguous," taking the form of a bill passed by the Florida Legislature and signed into law by the Governor. *Id*. Finally, the State will "maintain[] its commitment to the new policy" because the State doesn't enforce statutory provisions that the Florida Legislature has repealed. *Id.*

IV.

In sum, the declaratory and injunctive relief sought in the complaints is now "inappropriate" and the case is moot. *Diffenderfer v. Cent. Baptist Church of Miami, Inc.*, 404 U.S. 412, 414-15 (1972). The only remaining controversy concerns whether attorney's fees and costs should be awarded and, if so, in what amount. The Parties ask for a 30-day extension of the deadline to file any motions for attorney's fees and costs so that they may continue to work towards a resolution of the issue.

Dated: June 10, 2022

Respectfully submitted by:

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LOCAL RULE CERTIFICATION

The foregoing complies with the size and font requirements in the local rules. The foregoing also contains 752 words, excluding the case style, signature block, and any certificate of service.

/s/ Mohammad O. Jazil
Mohammad O. Jazil

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to all counsel of record through the Court's CM/ECF system on June 10, 2022.

/s/ Mohammad O. Jazil
Mohammad O. Jazil