No. 17-208

In The
Supreme Court of the United States

RICHARD DUANE BARTELS,

Petitioner,

v.

402 EAST BROUGHTON STREET, INC.
d/b/a SOUTHERN MOTORS ACURA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF OF PETITIONER

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ARGUMENT

Respondent 402 East Broughton Street, Inc. d/b/a Southern Motors Acura ("SMA") ignores its own pleading, the course of these proceedings, and the decisions of the Eleventh Circuit in arguing that Petitioner Richard Duane Bartels did not previously raise the issues of whether the motivating factor standard applies to his claims under the Family and Medical Leave Act of 1993 ("FMLA"), and whether the United States Department of Labor regulation implementing the FMLA is entitled to controlling deference under *Chevron v. Nat. Res. Def. Council*, 467 U.S. 837 (1984). (Resp. Br., pp. 11-13.) From the very beginning of this case, the parties knew that Mr. Bartels asserted claims to which the mixed motive or motivating factor standard applies because the Eleventh Circuit had held fifteen years before that FMLA claims are governed by this standard in *Smith v. BellSouth Telecomm., Inc.*, 273 F.3d 1303, 1313-14 (11th Cir. 2001). Accordingly, SMA asserted in its Answer the "same decision" affirmative defense, which only applies in mixed motive or motivating factor cases like this one. *See* Appendix to Petitioner's Reply ("R. App.") 1-2. SMA's argument that Mr. Bartels only raised the motivating factor standard for the first time on appeal is thus belied not only by what the parties believed the controlling law in the Eleventh Circuit to be, but also by SMA's own pleading.

SMA also flatly misstates the record when it asserts that Mr. Bartels never argued to the Eleventh Circuit that 29 C.F.R. § 825.220(c) is entitled to *Chevron* deference. Resp. Br., pp. 1, 2, 4. After the Eleventh

Circuit's intervening decision in *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227 (11th Cir. 2016), and the District Court's erroneous decision granting summary judgment to SMA, App. 16, he argued at his first opportunity on appeal that the motivating factor standard should have been applied to his claims, in part because *Chevron* deference is due to 29 C.F.R. § 825.220(c). *See* Appellant's 11th Cir. Init. Br., pp. 32-38. The latter argument is clearly set forth in his Initial Brief. *Id.* at 36. SMA's argument that this issue is not properly before this Court is thus entirely without merit.

SMA's arguments that the but for standard applies to FMLA claims are also meritless. *See* Resp. Br., pp. 23-36. SMA argues that FMLA claims should be governed by the standard applicable to Title VII retaliation claims set forth by this Court in *Univ. of Tx. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517 (2013), but SMA completely ignores this Court's analysis and interpretation of Title VII before and after the 1991 amendments. And SMA essentially concedes that the question of *Chevron* deference is paramount by noting that the language of the FMLA does not explicitly provide which causation standard applies. Resp. Br., p. 28.

SMA is also incorrect in arguing that whether the motivating factor standard or the but for standard is applied "would not change the outcome of this case." Resp. Br., pp. 2, 4, 12. Despite the Eleventh Circuit's erroneous conclusion that "there is no genuine dispute of material fact with respect to SMA's same-decision defense," App. 12, the question of whether Mr. Bartels

must prove motivating factor causation or but for causation is critical. If the motivating factor standard applies to FMLA claims, which it does according to the Second and Third Circuits, then the Eleventh Circuit's intervening decision in *Quigg* relieved Mr. Bartels of the burden of proving pretext under the framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Accordingly, he did not need to disprove the reason SMA gave for his termination. He therefore should have survived summary judgment with the substantial evidence he presented that SMA was motivated to fire him because he requested future FMLA leave for his wife and unborn daughter.

This is the case in which the fundamental question of which causation standard applies to FMLA claims makes a determinative difference. This Court must grant the writ of certiorari to resolve a fundamental circuit split on the issue and correct a grave miscarriage of justice for this Petitioner.

A. The Parties Clearly Understood Mr. Bartels to Assert Mixed Motive Claims as Shown by the Law in the Eleventh Circuit and SMA's Answer

Puzzlingly, SMA asserts that Mr. Bartels only argued that the motivating factor standard should apply to his claims for the first time on appeal, Resp. Br., pp. 11-13, but both parties knew this to be the law in the Eleventh Circuit when Mr. Bartels first filed this case. Indeed, fifteen years before he filed his Complaint, the Eleventh Circuit explicitly held that if the plaintiff

"proves that his past use of FMLA leave was a *motivating factor* in BellSouth's refusal to rehire him, this is precisely the type of discrimination that the FMLA seeks to prohibit." *Smith*, 273 F.3d at 1314. Lower courts in the Eleventh Circuit have since applied the motivating factor standard to FMLA claims. *See*, *e.g.*, *Williams v. Crown Liquors of Broward, Inc.*, 880 F. Supp. 2d 1286, 1289 (S.D. Fla. 2012) (upholding a verdict for the plaintiff that her leave was a "motivating factor" in her termination); *Sprinkle v. City of Douglas, Ga.*, 621 F. Supp. 2d 1327, 1342 (S.D. Ga. 2008) (applying the "motivating factor" standard to FMLA claims); *Harley v. Health Ctr. of Coconut Creek, Inc.*, No. 04-61309CIV, 2008 WL 155045, at *1 (S.D. Fla. Jan. 10, 2008); *Kaylor v. Fannin Regional Hosp., Inc.*, 946 F. Supp. 988, 1002 (N.D. Ga. 1996). It simply makes no sense for SMA to argue that Mr. Bartels did not want the District Court to apply what everyone in the Eleventh Circuit believed the law to be.

Indeed, SMA's own Answer shows that it knew Mr. Bartels asserted claims to which the mixed motive or motivating factor standard applies. SMA's Third Affirmative Defense is the "same decision" affirmative defense that, even if SMA "took action regarding [Mr. Bartels] based on some illegal or retaliatory motive, there exists valid, nondiscriminatory and nonretaliatory reasons which would have resulted in the same action by [SMA]." R. App. 1-2. This Court has clearly explained that the same decision defense applies only

in mixed motive cases and not in cases to which the but for standard applies. *See Gross v. FPL Fin. Srvcs., Inc.*, 557 U.S. 167, 173-180 (2009) (reversing the lower court's decision to permit a mixed motive jury instruction in a case involving claims under the ADEA because the but for standard applies to those claims and the same decision defense can only be asserted as to mixed motive claims. SMA cannot be heard to argue now that Mr. Bartels did not assert mixed motive claims when it asserted from the very beginning of this case an affirmative defense reserved *only for such claims*.[1]

The reason the parties only discussed which causation standard applies to FMLA claims at the Eleventh Circuit is because *Quigg* was decided after they submitted their summary judgment briefing in the District Court. Before *Quigg*, Mr. Bartels was required to prove pretext regardless of whether the motivating factor standard or the but for standard applied to his

[1] Mr. Bartels pointed this out to the Eleventh Circuit in his Reply Brief below, *see* Appellant's 11th Cir. Corr. Reply Br., pp. 16-17. Apparently recognizing from this and its prior decision in *Smith* that the parties understood the mixed motive standard to apply, the Eleventh Circuit then held that Mr. Bartels' claims failed even under that standard because "there is no genuine dispute of material fact with respect to SMA's same decision defense." App. 12. Such a holding is so absurd in light of the record evidence, *see* Pet. at pp. 28-33, that it amounts to a refusal to actually apply the correct standard.

claims. 814 F.3d at 1237-38.[2] The Eleventh Circuit held in *Quigg* that plaintiffs asserting motivating factor claims need not disprove the reason given by the employer for the challenged employment action in order to survive summary judgment. *Id.* The intervening decision in *Quigg* thus raised the important question now before this Court of whether *Nassar* requires plaintiffs asserting FMLA claims to prove pretext under the but for causation standard, or whether, because 29 C.F.R. § 825.220(c) should be accorded *Chevron* deference and for other reasons, the motivating factor standard applies to claims brought under the FMLA.

B. Mr. Bartels Explicitly Argued in the Eleventh Circuit that the United States Department of Labor's Implementing Regulation is Entitled to Chevron Deference

SMA also argues that the question of whether the motivating factor regulation promulgated by the Department of Labor should be accorded *Chevron* deference was never raised until now. (Resp. Br., p. 4.) This is completely false. In his Initial Brief on appeal to

[2] Notably, neither party ever asserted that the but for standard applied to FMLA claims in the District Court. *See*, *e.g.*, District Court Doc. 40-12, p. 18 (arguing that the employee must show his employer's actions were "motivated by an impermissible retaliatory" animus); Doc. 62, p. 23 (noting "the factual issue centers on whether discriminatory animus motivated the employer") (citation omitted).

the Eleventh Circuit, Mr. Bartels explicitly argued that the motivating factor standard should be applied not only because the Eleventh Circuit had held that this standard applied in *Smith*, but also because

> the FMLA regulations provide for the "motivating factor" standard because they explain that the statute prohibits employers from using an employee's taking of FMLA leave "as a negative factor in employment actions." *See* 29 C.F.R. § 825.220(c) (emphasis supplied). This regulation was duly promulgated by the United States Department of Labor under 29 U.S.C. § 2654 and carries the force of law because it is a reasonable interpretation of the FMLA and therefore entitled to *Chevron* defence. *See Chase* [*v. U.S. Post. Serv.*], 149 F. Supp. 3d at 209-11. Accordingly, because of this regulation, "any meaningful causal connection between the taking of FMLA leave and an adverse employment action constitutes retaliation, even if the taking of leave was not sufficient to cause the adverse action on its own." *Id*. at 209.

Appellant's 11th Cir. Init. Br., p. 36. As noted above, the Eleventh Circuit sidestepped this question and erroneously held that Mr. Bartels did not establish a genuine issue of material fact under the mixed motive or motivating factor standard, App. 12, but it is simply untrue that he did not present this question, answered in the affirmative by the Second and Third Circuits, to the Eleventh Circuit. The Eleventh Circuit simply ignored

the issue and erroneously affirmed summary judgment against Mr. Bartels.

C. SMA Offers no Persuasive Argument Why the Second and Third Circuits are not Correct that the Motivating Factor Standard Applies to FMLA Claims

SMA argues that the but for standard should apply to FMLA claims, but never explains why this Court's decisions interpreting other different statutes answer the question. *See* Resp. Br., pp. 23-36. SMA urges that the retaliation provision of the FMLA was modeled on the retaliation provision of Title VII and therefore *Nassar* should apply to claims under the FMLA. *Id.* at pp. 28. But SMA totally ignores this Court's presumption that "differences in language . . . convey differences in meaning," *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1723 (2017), and the FMLA does not contain the "because of" language that Title VII does and which this Court held in *Nassar* to require but for causation. SMA also does not deal with the fact that, even if the FMLA and Title VII should be construed in *pari materia*, the FMLA must be construed to retain the motivating factor standard for Title VII in effect when the FMLA was passed in 1993. *See* 2B Sutherland Statutory Construction § 51:7 (noting that when one statute specifically references a second statute by title or section, subsequent changes to the second statute are not included or incorporated

into the first statute);[3] *New Hampshire Motor Transp. Ass'n v. Rowe*, 448 F.3d 66, 76 (1st Cir. 2006) (rejecting the argument that subsequent judicial construction of a similar but different statute could be applied to the Federal Aviation Act), *aff'd*, 552 U.S. 364 (2008).

SMA's textual analysis of the FMLA similarly misses the mark. Resp. Br., pp. 30-32. SMA suggests it is appropriate that "courts have conflated the language in [the FMLA] with that of Title VII," and points to an unreported district court opinion in which the court stated that the word "for" is "within the range of phrases whose ordinary meaning indicates a 'but-for' causal relationship." *Id.* at p. 31 (citing *Jones v. Allstate Ins. Co.*, No. 2:14-CV-1640-WMA, 2016 WL 4529753, *4 (N.D. Ala. Aug. 12, 2016)). With respect to SMA and the United States District Court for the Northern District of Alabama, this analysis is inadequate in comparison with that of the Second Circuit in *Woods v. START Treatment & Recovery Centers, Inc.*, 864 F.3d 158 (2d Cir. 2017), and the Third Circuit in *Egan v. Delaware River Port Auth.*, 851 F.3d 263 (3d Cir. 2017). In *Egan*, the Third Circuit explained that the text of the FMLA does not expressly provide a causation standard for interference and retaliation claims. *Id.* at 272-74. As a result, analysis of whether the Department of Labor's motivating factor regulation at 29 C.F.R.

[3] The legislative history of the FMLA makes specific, not general, reference and citation to the retaliation provision of Title VII, 42 U.S.C. § 2000e-3(a), in effect at that time. *See* S. Rep. 103-3, *35.

§ 825.220(c) is entitled to *Chevron* deference is warranted.

Chevron review compels the conclusion that the motivating factor standard applies to FMLA claims. Congress "has endorsed the use of a lessened causation standard in Title VII's anti-discrimination provisions," and in enacting the FMLA, "Congress chose to ensure that those who need to address serious health issues may do so without interference." *Egan*, 851 F.3d at 273. The use of the phrase "negative factor" in 29 C.F.R. § 825.220(c) reflects the choice that Congress made in Title VII to outlaw adverse employment practices for which a protected class status was one motivating factor, even if it was not the sole one. *See id.*, 851 F.3d at 273-74 (citations omitted); *see also Hunter v. Valley View Local Sch.*, 579 F.3d 688, 692 (6th Cir. 2009) (holding that the phrase "negative factor" in § 825.220(c) "envisions that the challenged employment decision might also rest on other, permissible factors" and that a mixed motive or motivating factor standard applied to FMLA retaliation claims after *Gross*). The Second Circuit reached exactly the same conclusion that the text of the FMLA does not contain a causation standard and *Chevron* deference is due to the implementing regulation at 29 C.F.R. § 825.220(c) which provides one. *Woods*, 864 F.3d at 167-68. SMA offers no persuasive argument to the contrary.

D. The Question of Which Causation Standard Applies to FMLA Claims is Determinative for the Petitioner in this Case

SMA also argues that whether the motivating factor standard or the but for standard is applied "would not change the outcome of this case." Resp. Br., pp. 2, 4, 12. SMA could not be more wrong. Mr. Bartels produced a wealth of evidence demonstrating that, even if SMA was motivated to fire him because of the complaint against him by a charity event volunteer, it was also motivated to do so because he requested FMLA leave to care for his wife and unborn child. Specifically, he showed that (1) he had excellent performance and received an award only six days before he was fired; (2) SMA told him it was "purely a business decision" to fire him and he had done nothing wrong; (3) SMA's reasons for the termination shifted during the litigation from unsubstantiated allegations submitted to the Georgia Department of Labor to only a single complaint; (4) SMA routinely allowed employees to smooth over complaints with customers, which it admits Mr. Bartels did before he was fired; (5) SMA allowed other managers to engage in worse misconduct without firing them, including another manager's intoxication in front of customers; and (6) other employees submitted declarations showing they were also fired after disclosing health conditions or the need for medical leave. *See* Pet., pp. 30-32. Even the District Court found that SMA gave one reason for firing Mr. Bartels at the time and a different one during litigation, and that this ordinarily precludes summary judgment. App. 40-41. Mr. Bartels maintains that he established a genuine issue of material fact as to

pretext, but there can be no doubt that his evidence is sufficient to survive summary judgment under the motivating factor standard. Contrary to SMA's argument, this is the case in which the causation standard makes all the difference.

CONCLUSION

Respondent has offered no reason why this Honorable Court should not grant certiorari to clarify the law and correct a grave miscarriage of justice. The decisions of both the Second Circuit and the Third Circuit are correct: this Court's decision in *Nassar* does not require Petitioner to prove but for causation to survive summary judgment on his FMLA claims because *Chevron* deference is due to the Department of Labor's implementing regulation. Petitioner prays that this Court correct the errors of the Eleventh Circuit and District Court below and grant him a chance to vindicate his federal right to take leave from work to care for his wife and unborn child in their serious illness.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

DUANE BARTELS, Plaintiff, vs. SOUTHERN MOTORS OF SAVANNAH, INC. D/B/A SOUTHERN MOTORS ACURA, Defendant.	)	Civil Action No. 4:14-CV-00075-BAE-GRS

ANSWER

(Filed May 8, 2014)

COMES NOW Defendant, 402 East Broughton Street, Inc. d/b/a Southern Motors Acura (misidentified as Southern Motors of Savannah, Inc. d/b/a Southern Motors Acura) (hereinafter referred to as "Defendant"), and files its Answer to Plaintiff's Complaint as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted and should be dismissed.

SECOND DEFENSE

Any employment actions taken by Defendant regarding Plaintiff were not prompted by any illegal, improper or retaliatory motive, but were taken for

legitimate, nondiscriminatory and nonretaliatory reasons.

THIRD DEFENSE

Defendant denies that it took any action regarding Plaintiff based on any illegal, improper or retaliatory motive. However, to the extent Plaintiff claims Defendant took action regarding him based on some illegal or retaliatory motive, there exists valid, nondiscriminatory and nonretaliatory reasons which would have resulted in the same action by Defendant.

FOURTH DEFENSE

Plaintiff suffered no adverse employment action in retaliation for allegedly exercising any right protected by the Family and Medical Leave Act, and any adverse employment action experienced by Plaintiff would have occurred regardless of the alleged exercise of any such right.

FIFTH DEFENSE

Plaintiff's claims, in whole or in part, are barred by his failure to mitigate his alleged damages.

SIXTH DEFENSE

Defendant answers the specific allegations contained in Plaintiff's Complaint in numbered paragraphs

which correspond with the numbered paragraphs of Plaintiff's Complaint as follows:

1.

Defendant admits Plaintiff has brought an action alleging interference and retaliation violation of the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, *et seq.*, but denies liability.

JURISDICTION AND VENUE

2.

Defendant admits the allegations contained in Paragraph 2 in Plaintiff's Complaint.

THE PARTIES

3.

Defendant admits the allegations contained in Paragraph 3 in Plaintiff's Complaint.

4.

Defendant does not possess current knowledge of the allegations contained in the first sentence of Paragraph 4 of Plaintiff's Complaint. Defendant admits the allegations contained in the second sentence of Paragraph 4 of Plaintiff's Complaint.

5.

Defendant denies the allegations contained in Paragraph 5 of Plaintiff's Complaint as stated.

6.

Defendant admits the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7.

Defendant admits the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8.

Defendant admits the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9.

Defendant admits the allegations contained in Paragraph 9 of Plaintiff's Complaint.

THE FACTS

10.

Defendant admits the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11.

Defendant denies as stated the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12.

Defendant denies as stated the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13.

Defendant denies as stated the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14.

Defendant denies as stated the allegations contained in Paragraph 14 of Plaintiff's Complaint, but for further answer, Defendant admits that Plaintiff was employed by Defendant for a number of years.

15.

Defendant denies as stated the allegations contained in Paragraph 15 of Plaintiff's Complaint

16.

Defendant denies as stated the allegations contained in Paragraph 16 of Plaintiff's Complaint, but admits that Plaintiff at some point informed it that he had attended a doctor's visit with his wife.

17.

Defendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Complaint and can neither admit nor deny the same, but in further answer, Defendant states that sometime in mid-October 2012, Plaintiff informed Defendant that his wife may need to attend an appointment, evaluation or test, at some unspecified time/date, concerning their unborn child; however, no further information was given by Mr. Bartels regarding whether he would need to take time off to care for his wife and/or family member due to an illness, impairment or physical or mental condition that involved inpatient care in a hospital, hospice or residential care facility or continuing treatment.

18.

Defendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Complaint and can neither admit nor deny the same.

19.

Defendant denies the allegations contained in Paragraph 19 as stated; however, Defendant states Mr. Bartels was absent from work on October 13, 15 and 16, 2012.

20.

Defendant denies the allegations contained in Paragraph 20 as stated; however, as further answer, Defendant admits Mr. Bartels notified Ross Kaminsky he planned to attend a medical appointment with his wife to evaluate their unborn child' s condition; however, no further specific information was given by Mr. Bartels, including but not limited to regarding whether he would need to take time off to care for his wife and/or family member due to an illness, impairment or physical or mental condition that involved inpatient care in a hospital, hospice or residential care facility or continuing treatment.

21.

Defendant admits the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22.

Defendant denies the allegations contained in Paragraph 22 of Plaintiff's Complaint.

23.

Defendant admits Mr. Bartels worked Wednesday through Saturday (with the exception of October 22, 2012) per his schedule; however Defendant does not have knowledge as to whether Mr. Bartels attended a doctor's appointment with his wife on October 22, 2012.

24.

Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint.

25.

Defendant denies the allegations contained in Paragraph 25 of Plaintiff's Complaint.

26.

Defendant denies the allegations contained in Paragraph 26 of Plaintiff's Complaint.

27.

Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Complaint.

28.

Defendant denies as stated the allegations contained in Paragraph 28 of Plaintiff's Complaint.

COUNT I
INTERFERENCE WITH FMLA LEAVE

29.

Defendant incorporates by reference all of the preceding paragraphs of its Answer to Plaintiff's Complaint.

30.

Defendant denies as stated the allegations contained in Paragraph 30 of Plaintiff's Complaint.

31.

Defendant denies as stated the allegations contained in Paragraph 31 of Plaintiff's Complaint.

32.

Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Complaint.

33.

Defendant denies as stated the allegations contained in Paragraph 33 of Plaintiff's Complaint.

34.

Defendant denies the allegations contained in Paragraph 34 of Plaintiff's Complaint.

35.

Defendant denies the allegations contained in Paragraph 35 of Plaintiff's Complaint.

36.

Defendant denies the allegations contained in Paragraph 36 of Plaintiff's Complaint.

37.

Defendant denies the allegations contained in Paragraph 37 of Plaintiff's Complaint.

38.

Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

COUNT II
RETALIATION FOR EXERCISE OF FMLA RIGHTS

39.

Defendant incorporates by reference all the preceding paragraphs of its Answer to Plaintiff's Complaint.

40.

Defendant denies as stated the allegations contained in Paragraph 40 of Plaintiff's Complaint.

41.

Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Complaint.

42.

Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Complaint.

43.

Defendant denies the allegations contained in Paragraph 43 of Plaintiff's Complaint.

44.

Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Complaint.

45.

Defendant denies the allegations contained in Paragraph 45 of Plaintiff's Complaint.

46.

Defendant denies the allegations contained in Paragraph 46 of Plaintiff's Complaint.

47.

Any allegation in Plaintiff's Complaint that is not admitted, denied or otherwise specifically responded to above is hereby specifically denied.

WHEREFORE, having fully responded to each and every allegations leveled against it in Plaintiff's Complaint, Defendant prays as follows:

(a) That this case be tried by a jury of twelve (12);

(b) That judgment be entered in its favor and this action be discharged without any liability as to Defendant;

(c) That costs be cast against Plaintiff, and

(d) That Defendant has such further relief that this Court deems proper.

This the 8th day of May, 2014.

BRENNAN, WASDEN & PAINTER LLC

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