

IN THE SUPREME COURT OF IOWA

No. 23-0719

ESTATE OF SHIRLEY KAY GOMEZ, by GLORIA ANN SHONTZ,
Administrator, ANDREA MARIE BELL, individually, KRISTINA CHRISTIAN
LINCOLN, individually, and KIM MARIE KERR, individually,

Plaintiffs-Appellees

vs.

MERCY MEDICAL CENTER-CLINTON, INC., and AMARESHWAR
CHIRUVELLA, M.D.,

Defendants-Appellants

**APPEAL FROM THE CLINTON COUNTY DISTRICT COURT CASE
NO. LACV048488
THE HONORABLE STUART WERLING
PRESIDING JUDGE**

PLAINTIFFS-APPELLEES' FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the District Court was correct in finding that Plaintiffs' Certificates of Merit were in substantial compliance with Iowa Code Section 147.140 and therefore denying Defendants' Motion to Dismiss.

II. Whether Plaintiffs are limited to a single theory of liability against Dr. Chiruvella.

ROUTING STATEMENT

This appeal involves the application of well-established legal principles. Transfer to The Court of Appeals would seem appropriate. *See*, Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

This case is an appeal from an Order denying Defendants' Motion to Dismiss in the Iowa District Court for Clinton County in the matter of case number LACV048488, *Estate of Gomez, et al. v. Mercy Medical Center-Clinton, Inc., et al.* The case involves claims for the injuries and subsequent death of Plaintiffs' decedent Shirley Gomez arising out of a surgery on September 2, 2020, and subsequent related care in the time period following by Defendant Amareshwar Chiruvella, M.D. *See*, App 5-16. The Petition in this matter was filed on August 26, 2022. *See, id.* On September 21, 2022, (26 days after the filing of Plaintiffs'

Petition and 21 days prior to the filing of an Answer by Defendants on October 12, 2022), Plaintiff filed the Certificate of Merit of Leo A. Gordon, M.D., certifying that Dr. Chiruvella's medical care and treatment of Ms. Gomez did not meet the standard of care for a general surgeon. *See*, App 17-19.

Pursuant to a stipulation by the Parties to extend the Certificate of Merit deadlines (which also addressed other matters), filed on December 1, 2022, Plaintiffs' deadline to file Certificates of Merit was extended to February 9, 2023. On January 24, 2023, Plaintiffs filed the Certificate of Merit of Leo A. Gordon, M.D., certifying that the medical care and treatment of Ms. Gomez by Amareshwar Chiruvella, M.D., as an employee of Defendant Mercy Medical Center – Clinton, Inc., did not meet the standard of care for a general surgeon. *See*, App 33-34.

On February 24, 2023, Defendants filed a Motion to Dismiss, asking that the Court dismiss all of Plaintiffs' claims against Defendants. The alleged basis for Defendants' motion was a failure by Plaintiffs to comply with Iowa Code § 147.140. After being granted an enlargement of time to file a Resistance, on March 13 2023, Plaintiffs filed a Resistance and supporting documentation to Defendants' Motion to Dismiss.

On April 4, 2023, a Hearing was held on Defendants' Motion for Summary Judgment before the Honorable Stuart P. Werling. On May 1, 2023, the Honorable Stuart P. Werling entered a ruling denying Defendants' Motion to Dismiss, holding

that Plaintiffs' Certificates of Merit were in substantial compliance with Iowa Code § 147.140. On May 3, 2023, Defendants filed an Application for Interlocutory Appeal, which Plaintiffs resisted on May 17, 2023. On July 17, 2023, this Court granted Defendants' Application and stayed district court proceedings.

STATEMENT OF THE FACTS

Shirley Gomez underwent abdominal surgery performed by Defendant Amareshwar Chiruvella, M.D. on September 4, 2020. *See*, App 5-16. Ms. Gomez received follow-up treatment from Dr. Chiruvella in the weeks following this surgery. *See, id.* On September 16, 2020, Ms. Gomez passed away from a massive pulmonary embolism. *See, id.*

On August 26, 2022, Plaintiffs filed their Petition alleging medical negligence against, among others, Amareshwar Chiruvella, M.D. ("Defendant Chiruvella"). *See, id.*

On September 21, 2022, twenty-six days after the filing of Plaintiffs' Petition and prior to the filing of Defendants' Answer, Plaintiffs filed a Certificate of Merit from Leo Gordon, M.D. regarding Defendant Amareshwar Chiruvella, M.D., which stated as follows:

"In compliance with Iowa Code § 147.140, Leo A. Gordon, M.D., does hereby affirm and state as follows:

1. I am a physician licensed to practice and in good standing to practice

medicine in the state of California presently and for all times relevant to the issues in this case.

2. In the five (5) years prior to September 2020 and through the present, I have not had my license revoked or suspended in any state.

3. In the five (5) years prior to September 2020 and through the present, I have actively practiced as a general surgeon in the same or substantially similar areas of care as that area of care provided to Shirley Gomez by Amareshwar Chiruvella, M.D. in September 2020.

4. I am Board-Certified in general surgery by the American Board of Surgery since 1979 with re-certification in 1986, 1998, 2006, 2019, and 2021, with the same or substantially similar training and experience as Amareshwar Chiruvella, M.D. has or should have in providing care to Shirley Gomez.

5. I am familiar with the applicable standards of care relating to a general surgeon and the direct standard of care for performing post-operative care such as provided to Shirley Gomez by Amareshwar Chiruvella, M.D.

6. I have reviewed the medical records for Shirley Gomez pertaining to her care by Dr. Amareshwar Chiruvella in August and September 2020.

7. Based upon my review of the medical records in this matter relating to the September 2, 2020 surgery and the post-operative care performed in part

by Amareshwar Chiruvella, M.D., I hereby certify, to a reasonable degree of my medical and surgical experience and knowledge, that Amarshwar Chiruvella, M.D. breached the standard of care for a general surgeon with respect to his care and treatment of Shirley Gomez in September 2020 by failing to timely refer Mrs. Gomez for an appropriate work-up and treatment of pulmonary embolism.”

This Certificate of Merit was dated September 12, 2022, and signed by Dr. Gordon. *See*, App 17-19. On October 12, 2022, after being granted an enlargement of time in which to serve their Answer, Defendants filed their Answer. *See*, App 20-29. On December 1, 2022, the Parties filed a Stipulation which provided, among other items, that the deadline for Plaintiffs to file Certificates of Merit would be extended by 60 days, with the new deadline being February 9, 2023. *See*, App 30-32. On January 24, 2023, Plaintiffs filed a Certificate of Merit from Leo Gordon, M.D. regarding Defendant Mercy Medical Center – Clinton, Inc., which stated as follows:

“In compliance with Iowa Code § 147.140, Leo A. Gordon, M.D., does hereby affirm and state as follows:

1. I am a physician licensed to practice and in good standing to practice medicine in the state of California presently and for all times relevant to the issues in this case.

2. In the five (5) years prior to September 2020 and through the present, I have not had my license revoked or suspended in any state.

3. In the five (5) years prior to September 2020 and through the present, I have actively practiced as a general surgeon in the same or substantially similar areas of care as that area of care provided to Shirley Gomez by Amareshwar Chiruvella, M.D. in September 2020.

4. I am Board-Certified in general surgery by the American Board of Surgery since 1979 with re-certification in 1986, 1998, 2006, 2019, and 2021, with the same or substantially similar training and experience as Amareshwar Chiruvella, M.D. has or should have in providing care to Shirley Gomez.

5. I am familiar with the applicable standards of care relating to a general surgeon and the direct standard of care for performing post-operative care such as provided to Shirley Gomez by Amareshwar Chiruvella, M.D.

6. I have reviewed the medical records for Shirley Gomez pertaining to her care by Dr. Amareshwar Chiruvella in August and September 2020.

7. Based upon my review of the medical records in this matter relating to the September 2, 2020 and the post-operative care performed in part by Amareshwar Chiruvella, M.D., and the emails from Dr. Chiruvella's attorney regarding Dr. Chiruvella's employment, I hereby certify, a

reasonable degree of my medical and surgical experience and knowledge, that Amareshwar Chiruvella, M.D., as an employee of Mercy Medical Center – Clinton, Inc., breached the standard of care for a general surgeon with respect to the care and treatment of Shirley Gomez in September 2020 by failing to timely refer Mrs. Gomez for appropriate work-up on treatment of possible pulmonary embolism.”

This Certificate of Merit was dated January 23, 2023, and signed by Dr. Gordon. *See*, App 17-19.

ARGUMENT

I. Plaintiffs’ Certificates of Merit Were in Substantial Compliance With Iowa Code section 147.140

A. Standard of Review

Rulings on motions to dismiss are reviewed for correction of errors of law. *Struck v. Mercy Health Servs.*, 973 N.W.2d 533 at 538 (Iowa 2022). “[M]otions to dismiss are rarely granted and nearly every case will survive a motion to dismiss.” *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 217 (Iowa 2018), citing *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009) and *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). “Generally, a motion to dismiss should not be granted.” *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 217 (Iowa 2018).

B. Argument

As the District Court correctly held, Plaintiffs' Certificates of Merit were in substantial compliance with Iowa Code § 147.140. Therefore, this Court should affirm the District Court's Order denying Defendants' Motion to Dismiss.

Plaintiffs do not dispute that Iowa Codes §§ 147.139 and 147.140 apply to this matter. As the District Court correctly held, the Certificates of Merit filed by the Plaintiffs in this matter were in substantial compliance with Iowa Code § 147.140, and the district court therefore correctly denied Defendants' Motion to Dismiss. Iowa Code § 147.140(b)(1) and (2) provide that a Certificate of Merit must certify that the expert is familiar with the applicable standard of care, and that the standard of care was breached by the health care provider named in the petition. The Certificates in this matter clearly did so. Iowa Code §147.140(a) further provides that the expert witness must meet the qualifying standard of Iowa Code §147.139, although there is no requirement that the qualifications be contained in the Certificate of Merit itself.

Iowa Code § 147.140 states as follows:

147.140 Expert witness – certificate of merit affidavit

1. *a.* In any action for personal injury or wrongful death against a health care provider based upon the alleged negligence in the practice of that profession or occupation or in patient care,

which includes a cause of action for which expert testimony is necessary to establish a prima facie case, the plaintiff shall, prior to the commencement of discovery in the case and within sixty days of the defendant's answer, serve upon the defendant a certificate of merit affidavit signed by an expert witness with respect to the issue of standard of care and an alleged breach of the standard of care. The expert witness must meet the qualifying standards of section 147.139.

b. A certificate of merit affidavit must be signed by the expert witness and certify the purpose for calling the expert witness by providing under the oath of the expert witness all of the following:

(1) The expert witness's statement of familiarity with the applicable standard of care.

(2) The expert witness's statement that the standard of care was breached by the health care provider named in the petition.

c. A plaintiff shall serve a separate certificate of merit affidavit on each defendant named in the petition.

2. An expert witness's certificate of merit affidavit does not preclude additional discovery and supplementation of the expert witness's opinions in accordance with the rules of civil procedure.

3. The parties shall comply with the requirements of section 668.11 and all other applicable law governing certification and disclosure of expert witnesses.

4. The parties by agreement or the court for good cause shown and in response to a motion filed prior to the expiration of the time limits specified in subsection 1 may provide for extension of the time limits. Good cause shall include but not be limited to the inability to timely obtain the plaintiff's medical records from health care providers when requested prior to filing the petition.

5. If the plaintiff is acting pro se, the plaintiff shall have the expert witness sign the certificate of merit affidavit or answers to interrogatories referred to in this section and the plaintiff shall be bound by those provisions as if represented by an attorney.

6. Failure to substantially comply with subsection 1 shall result, upon motion, in dismissal with prejudice of each cause of action to which expert testimony is necessary to establish a prima facie case.

7. For purposes of this section, “*health care provider*” means the same as defined in section 147.136A.

2017 Acts, ch 107, §4, 5

The Certificates of Merit filed in this matter by the Plaintiffs substantially complied with Iowa Code § 147.140(1). Therefore, under § 147.140(6), the District Court properly denied Defendants’ Motion to Dismiss. In this case, Dr. Gordon’s Certificates of Merit did not state that they were “sworn” to, and were not signed in front of a notary. However, both began with the following statement: “In compliance with Iowa Code § 147.140, Leo A. Gordon, M.D., does hereby affirm and state as follows.” There is a long history in American law of the terms “swear” and “affirm” being interchangeable. As the United States Court of Customs and Patent Appeals stated in *Amtorg Trading Corporation*, “That an affirmation is equivalent to an oath is well settled. The Constitution makes it such in the oath of the President, article 2, Sec. 1; when the Senate tries impeachments, article 1, Sec. 3; and in the oaths of state and United States officers, article 6.” *See, Amtorg*

Trading Corporation v. United States, 71 F.2d 524 (Cust. & Pat. App 1934) (emphasis added). In *People v. Sullivan*, the Court of Appeals of New York stated, with regards to the constitutional requirement regarding an “oath or affirmation” in support of a search warrant, “There is no constitutional prescription as to the particular form of the ‘oath or affirmation’ or the exact manner in which it is to be administered. In the usual case, there will be a formal swearing before a notary to the truth of the information provided, and any written statements submitted in support of the warrant application generally will contain the traditional jurat. This does not mean, however, that such procedural formality is a *sine qua non* of the ‘oath or affirmation’ requirement. *People v. Sullivan*, 56 N.Y.2d 378, 383 (New York 1982).

The language used by Dr. Gordon in his Certificates of Merit - “In compliance with Iowa Code § 147.140, Leo A. Gordon, M.D., does hereby affirm and state as follows” – amounts to substantial compliance with Iowa Code § 147.140. This is especially true in the context of Certificates of Merit which contain all of the information required by Section 147.140 and were timely served, as was this case with the Certificates of Merit in this matter. As the Iowa Supreme Court stated in *Superior/Ideal, Inc.*, “Substantial compliance is said to be compliance in respect to essential matters necessary to assure the reasonable objectives of the statute.” *Superior/Ideal, Inc. v. Board of Review of City of*

Oskaloosa, 419 N.1.2d 405 at 406 (Iowa 1988) (internal citations omitted). The statutory objective of Iowa Code § 147.140 was to weed out frivolous medical malpractice claims by mandating early review of cases by qualified experts. As the Iowa Supreme Court stated in *Struck v. Health Services*, “We conclude that the legislature enacted section 147.140 to provide a mechanism for early dismissal with prejudice of professional liability claims against healthcare providers *when supporting expert testimony is lacking.*” *Struck v. Health Services*, 973 N.W.2d 533 (Iowa 2022) (emphasis added). Here, as Dr. Gordon’s Certificates of Merit substantiate, there is qualified expert support for Plaintiffs’ claims in this matter, of which Defendants were given early notice.

Struck dealt with a situation in which the Plaintiff did not timely serve any certificate of merit against the defendant health care provider. This case is not such a situation. Here, Plaintiffs timely produced a statement from a qualified expert that Dr. Chiruvella (and therefore, also, vicariously, his employer) breached of the standard of care. This statement also conveyed all the other information about Dr. Gordon’s qualifications to levy these criticisms against Dr. Chiruvella as are required by Iowa Code § 147.140. With respect to the timeliness aspect of substantial compliance with Iowa Code § 147.140, Plaintiffs served Dr. Gordon’s Certificate of Merit regarding Dr. Chiruvella before it was even required, less than a month after Plaintiffs filed their Petition and before Defendants had even served

their Answer. In fact, since pursuant to Iowa Code § 147.140 Plaintiffs were required to serve a Certificate of Merit within 60 days of Defendants' Answer on October 12, 2022 (i.e., by December 11, 2022), Dr. Gordon's Certificate of Merit regarding Dr. Chiruvella was served a full 81 days before it was due.

As the Iowa Supreme Court stated in *Bontrager Auto Service, Inc. v. Iowa City Bd. of Adjustment*, “[S]ubstantial compliance’ means the statute or rule ‘has been followed sufficiently so as to carry out the intent for which it was adopted.’” *Bontrager Auto Service, Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483 at 488 (Iowa 2008), quoting *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193 at 194 (Iowa 1988). Therefore, Plaintiffs met the standard for substantial compliance because Dr. Gordon's Certificates of Merit fulfilled the statutory goal of Iowa Code § 147.140 – that is, to weed out frivolous medical malpractice cases by offering the endorsement of a breach of the standard of care by a qualified expert.

As the Iowa Supreme Court stated in *Dix*, “Moreover, we apply apply substantial compliance to many other statutory requirements with potentially serious consequences.” *See, Dix v. Casey's General Stores, Inc.*, 961 N.W.2d 671 at 682 (Iowa 2021), citing, *State v. Weitzel*, 905 N.W.2d 397 at 406 (Iowa 2017) (guilty plea colloquy), *E. Cent. Cmty. Sch. Dist. v. Miss. Bend Area Educ. Agency*, 813 N.W.2d 741 at 746 (Iowa 2012) (school district reorganization), and *State v. Bird*, 663 N.W.2d 860

at 862 (Iowa 2003) (preliminary breath test machine calibration).

Defendants do not explain how their interpretation of Iowa Code § 147.140 would amount to anything other than a requirement for strict compliance, rather than substantial compliance. As the Iowa Supreme Court held in *East Central Community School District*, Iowa law defines substantial compliance as being something distinguished from “precise and exact compliance.” See *East Cent. Community School Dist.*, citing *Turnis v. Bd. of Educ.*, 109 N.W.2d 198 at 205 (1961). In this matter, even if Plaintiffs did not reach the level of *precise and exact compliance* with Iowa Code § 147.140, they certainly have met the threshold of substantial compliance.

Defendants have cited to no Iowa cases holding that a Certificate of Merit similar to those furnished in this matter by Dr. Gordon are not in substantial compliance with Iowa Code § 147.140. *State v. Carter*, 618 N.W.2d 374 (Iowa 2000) (en banc), cited by Defendants, is easily distinguishable from this matter. *Carter* did not involve Iowa’s Certificate of Merit statute or substantial compliance therewith. Rather, it involved prosecuting someone for the crime of perjury, and discussed the essential elements for such a criminal charge. None of the Iowa cases cited by Defendant held that “substantial compliance” with Iowa Code § 147.140 means that a Certificate of Merit must be signed in front of a notary. While Defendants have cited to cases from other jurisdictions (including an unpublished

opinion of the California Court of Appeals¹) which they cite as being relevant to this issue, none of these cases are binding precedent on this Court, and none of them relate to the interpretation of Iowa’s substantial compliance standard.

Defendants have not pointed to any prejudice that they have suffered as a result of Dr. Gordon’s allegedly deficient Certificate of Merit – nor could they. There is no additional evidence or information about the meritoriousness of Plaintiffs’ claims that would have been conveyed to them if Dr. Gordon had stated that he “swore” to his statement (instead of stating that he “affirmed” it) or if it had been signed in front of a notary.

Essentially, what this Appeal comes down to is that Defendants are asking the Court to dismiss an entire wrongful death case – deemed to be meritorious by a licensed, actively practicing, physician in the same field as the Defendant - because a single document was not signed before a notary. The District Court correctly held that Plaintiffs’ Certificates of Merit of Dr. Gordon substantially complied with Iowa Code § 147.140. Therefore, the district court properly denied Defendants’ Motion to Dismiss. Plaintiffs respectfully submit that Iowa law, common sense, and the interests of justice all strongly support upholding the District Court’s ruling.

¹Under California Rule of Court 8.115 (Citation of Opinions), except for situations involving law of the case, res judicata, collateral estoppel, or criminal or disciplinary actions against the same Defendant, unpublished California Court of Appeal opinions “must not be cited or relied on by a court or party in any other action.” *See*, 2024 Cal. R. Ct 8.1115.

II. Plaintiffs Should Not Be Limited to a Single Theory of Liability Against Dr. Chiruvella

A. Standard of Review

Rulings on motions to dismiss are reviewed for correction of errors of law. *Struck v. Mercy Health Servs.*, 973 N.W.2d 533 at 538 (Iowa 2022). “[M]otions to dismiss are rarely granted and nearly every case will survive a motion to dismiss.” *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 217 (Iowa 2018), citing *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009) and *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). “Generally, a motion to dismiss should not be granted.” *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 217 (Iowa 2018).

B. Argument

Separately, Defendants also contend that the District Court erred in denying as premature the Defendants’ Motion to Dismiss all other theories of liability against Defendants beyond the discrete instance specified by Dr. Gordon in his Certificates of Merit. Under Defendants’ interpretation of Iowa Code § 147.140, because Dr. Gordon’s Certificates of Merit specify one manner in which Dr. Chiruvella was negligent in his care and treatment of Plaintiffs’ decedent Shirley Gomez – “by failing to timely refer Mrs. Gomez for appropriate work-up and treatment of possible pulmonary embolism” – that this is the only basis on which

Plaintiffs can claim negligence by Dr. Chiruvella, for the entirety of this litigation. This assertion is overly broad and without basis in Iowa Code § 147.140. Iowa Code § 147.140 imposes an initial requirement to be met by Plaintiffs in a medical malpractice civil action. It is not meant to impose upon Plaintiffs the requirement to disclose their full expert testimony in a medical malpractice matter close to the outset of litigation. Essentially, this is the requirement that Defendants - incorrectly - read into the statute.

Essentially, Defendants' interpretation of Iowa Code § 147.140, the plaintiffs in any Iowa medical malpractice claim would be required to have their entire case figured out shortly after the outset of litigation and before any discovery can be conducted, and would thereafter be pigeonholed into a single theory of the case which could not later be altered in any way, even after depositions of the relevant parties or other individuals had been conducted. This interpretation is without basis.

Iowa Code § 147.140(2) states that "An expert witness's certificate of merit affidavit does not preclude additional discovery and supplementation of the expert witness's opinions in accordance with the rules of civil procedure." The word *supplementation* clearly implies that additional opinions can be added. In this matter, Plaintiffs have put forth an expert opinion that Dr. Chiruvella (and vicariously, his employer, Mercy Medical Center – Clinton, Inc.) breached the

standard of care in *at least one* manner. This is enough for Plaintiffs to meet the preliminary heightened threshold for bringing a medical malpractice claim under Iowa Code § 147.140.

The case cited by Defendants for the proposition that Plaintiffs should be limited to the single theory of negligence put forth by Dr. Gordon in his Certificates of Merit, *Butler v. Iyer*, 928 N.W.2d 98 (Iowa Ct. App. 2022) (Unpublished) involved a case in which the plaintiffs did not timely serve *any* Certificates of Merit. This situation is not applicable here, and *Butler* does not stand for the proposition that if the Parties were to conduct discovery and learn more about the facts and circumstances of what actually happened when Dr. Chiruvella cared for Mrs. Gomez, that Plaintiffs should be foreclosed from pursuing other specific allegations of negligence by Dr. Chiruvella (and vicariously his employer). The District Court's decision to deny as premature Defendants' Motion to Dismiss all other theories of liability against Dr. Chiruvella beyond the limited specification of liability delineated in Dr. Gordon's Certificates of Merit was correct and should be upheld.

CONCLUSION

Plaintiffs substantially complied with the requirements of Iowa Code § 147.140. Therefore, Defendants were not entitled to dismissal with prejudice on Plaintiffs' claims. The district court's ruling denying Defendants' Motion to

Dismiss all of Plaintiffs' claims with prejudice was the correct outcome and should be affirmed. Additionally, the District Court's ruling denying as premature Defendants' Motion to Dismiss all of Plaintiffs' claims other than the single theory of liability against Dr. Chiruvella (and vicariously, his employer) was also correct because Defendants have misinterpreted Iowa Code § 147.140 to require that each theory of liability against a particular Defendant be set forth in a separate Certificate of Merit, when the statute requires no such thing. This aspect of the District Court's ruling was also correct and should be affirmed.

REQUEST FOR ORAL ARGUMENT

Plaintiffs-Appellees believe that oral argument is not required for this appeal since the issues involved require application of well-established legal principles.

Plaintiffs-Appellees request that the appeal be submitted without oral argument.

Respectfully submitted,

/s/ Jon Specht

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PROOF OF FILING AND SERVICE

The undersigned hereby certifies that he, or a person acting on his behalf, electronically filed the Plaintiff-Appellee’s Final Brief on the 6th day of March, 2024, and further certifies that he, or a person acting on his behalf, served the Appellee’s Final Brief on all other parties to this appeal via EDMS.

By: /s/ Jon Specht
Jon Specht AT0012576

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME,
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

I. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

this brief contains 4247 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or this brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

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By /s/ Jon Specht
Jon Specht AT0012576