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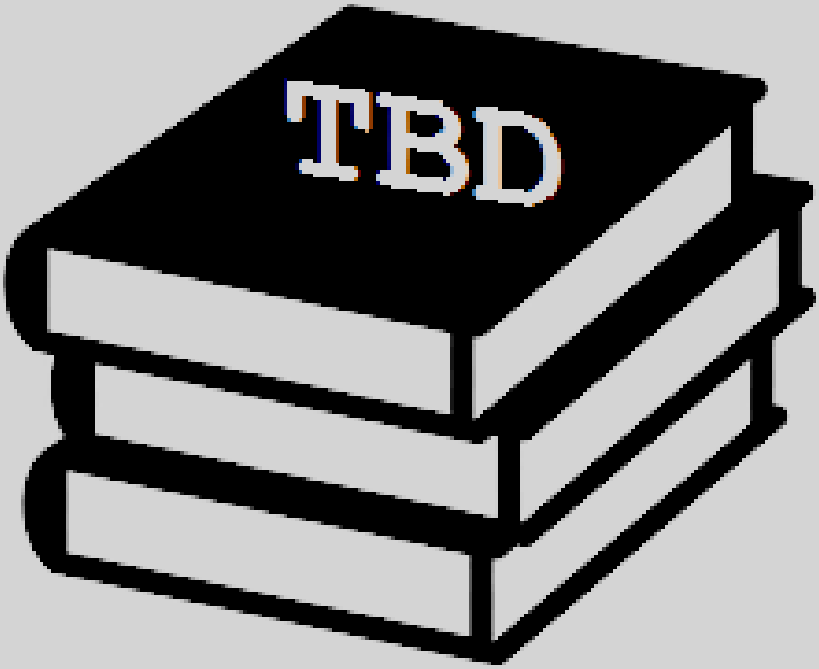

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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

ELI COHEN,
Plaintiff,
v.
JEFF ATLAS and SUSAN ATLAS,
Defendants.
_____ /

CASE NO: 2020-746-CA01

DEFENDANTS' MOTION FOR MANDATORY TRANSFER TO COUNTY COURT

SUMMARY: This Court must transfer this case to County Court because Plaintiff's own Motion to Transfer explicitly admitted damages of only $12,726.49—well below any Circuit Court jurisdictional threshold. Under binding Florida law, transfer is mandatory, not discretionary.

EXHIBIT 1: Plaintiff's Motion to Transfer to Circuit Court (County Docket #73, filed December 12, 2019). Page 2, Paragraph 4 explicitly states: **"Plaintiff's total claimed damages amount to $12,726.49."**

DENIAL WOULD CONSTITUTE REVERSIBLE ERROR: Any final judgment issued without subject matter jurisdiction would be void and automatically reversed on appeal. Florida appellate courts consistently hold that jurisdictional limits must be strictly enforced. Failure to transfer will result in unnecessary appellate proceedings, causing further delay and judicial inefficiency.

TIMELINESS OF THIS MOTION: This Motion is timely and properly before the Court because:

Jurisdiction Can Be Raised Any Time: "A court's lack of subject matter jurisdiction may be raised at any time, even for the first time on appeal."

Garcia v. Stewart, 906 So. 2d 1117, 1122 (Fla. 4th DCA 2005).

Cannot Be Waived: "Subject matter jurisdiction cannot be created by waiver, acquiescence or agreement of the parties."

Harrell v. Accurate Eng'g, Inc., 628 So. 2d 1108, 1109 (Fla. 4th DCA 1993).

Jurisdictional Defects Not Cured By Time: Jurisdictional defects "cannot be cured by the passage of time," and courts have a "continuing duty to dismiss an action that fails to invoke their subject matter jurisdiction."

Metcalf v. Lee, 952 So. 2d 624, 627–29 (Fla. 4th DCA 2007).

REQUEST FOR EXPEDITED RULING: Defendants respectfully request an immediate written ruling based solely on the record, as this Motion presents a purely legal jurisdictional issue requiring no further factual inquiry or oral hearing.

KEY POINTS:

- **Plaintiff's Binding Judicial Admission:** Plaintiff's own Motion to Transfer (Exhibit 1) explicitly states: "Plaintiff's total claimed damages amount to $12,726.49."
- **Mandatory Transfer Required:** When jurisdictional amount is not satisfied, "**transfer to the proper court is mandatory, not discretionary.**" *Smith v. Sanitairy Chemical Co.*, 591 So. 2d 288, 289 (Fla. 2d DCA 1991).

- **Jurisdictional Thresholds:** Plaintiff's admitted damages fall below all applicable Circuit Court thresholds—whether $15,000 (pre-2020), $30,000 (2020-2022), or $50,000 (2023-present).[1]
- **Attorney's Fees Cannot Establish Jurisdiction:** "Potential attorney's fees cannot be used to satisfy jurisdictional requirements." *Fields v. Klein*, 946 So. 2d 119, 121 (Fla. 4th DCA 2007).
- **Reversible Error if Retained:** Any judgment rendered without subject matter jurisdiction would be void and **must be reversed on appeal**. *National Loan Investors, L.P. v. Joymar Assocs.*, 767 So. 2d 549, 551 (Fla. 3d DCA 2000).

[1]*Note: Even under Florida's current jurisdictional thresholds, Plaintiff's damages remain well below the required amount ($12,726.49 is less than $15,000, $30,000, and $50,000), further confirming Circuit Court lacks jurisdiction.*

COMES NOW the Defendants, Jeff Atlas and Susan Atlas, pro se, pursuant to Article V, Section 20(c)(3) of the Florida Constitution, Florida Rule of Civil Procedure 1.060(b), and Florida Statute § 26.012(2)(a), and move this Honorable Court to transfer this case to County Court. Defendants bring this motion in good faith and not for any improper purpose, but solely because Circuit Court lacks jurisdiction, and Florida law mandates transfer.

I. LACK OF SUBJECT MATTER JURISDICTION

Plaintiff's own Motion to Transfer admits that total damages amount to only $12,726.49—**well below this Court's jurisdictional threshold.**

Plaintiff's own filing explicitly confirms:

EXHIBIT 1: Plaintiff's Motion to Transfer (County Docket #73, p. 2, ¶4) explicitly states:

> In the Complaint, Plaintiff sought damages for three items totaling only $12,726.49:
>
> Return of Security Deposit—$4,200
>
> Money spent remediating mold—$6,500
>
> Installation of a replacement washer and dryer—$2,026.49"

Any judgment rendered without subject matter jurisdiction is void. The Florida Supreme Court mandates a strict construction of jurisdictional limits, and binding Third District precedent requires automatic transfer when a court lacks jurisdiction.

II. PROCEDURAL HISTORY

- **Original & Amended Complaints** (County Docket #1, #33): Both confirmed damages under $15,000, stating "This is an action at law for damages ranging from $5,000.00 to $15,000.00."
- **Defendants' Answer** (County Docket #40): Immediately raised subject matter jurisdiction as Affirmative Defense #1.
- **Plaintiff's Motion to Transfer** (County Docket #73, Exhibit 1, p. 2, ¶4): Explicitly stated "**Plaintiff's total claimed damages amount to $12,726.49.**" Despite this admission below the jurisdictional threshold, the case was transferred to Circuit Court.
- **Consistent Jurisdictional Challenges**: Jurisdiction has been challenged through original Motion for Summary Judgment (2020); Amended Motion (Circuit Docket #135, December 22, 2024); and this motion.
- Without resolving the jurisdictional challenge, the Court issued its **Order Setting Jury Trial** (February 27, 2025).

III. GROUNDS FOR EXPEDITED RULING

This Court's February 27, 2025, Trial Order imposes imminent deadlines that necessitate immediate jurisdictional resolution, as reinforced by the Florida Supreme Court and binding appellate precedent:

1. Mandatory Mediation: March 20, 2025 (21 days away)
2. Calendar Call: March 26, 2025 (27 days away)
3. Trial: March 31, 2025 (32 days away)

Florida courts are **DUTY-BOUND** to confirm jurisdiction **BEFORE** addressing the merits of a case, as unequivocally mandated by the Florida Supreme Court:

> **"Courts have an independent obligation to satisfy themselves of their own jurisdiction."**
> *Polk County v. Sofka*, 702 So. 2d 1243, 1245 (Fla. 1997)
>
> **"Jurisdiction is a threshold inquiry that must be resolved before addressing the merits."**
> *Weiner v. Maulden*, 267 So. 3d 1045, 1048 (Fla. 4th DCA 2019)

court that proceeds without resolving jurisdiction acts ultra vires—beyond its power.

"Jurisdiction is the power to act. Its absence renders a judgment void." Metcalf v. Lee, 952 So. 2d 624, 627 (Fla. 4th DCA 2007). This Court must resolve jurisdiction immediately—before any further proceedings.

IV. PLAINTIFF'S BINDING JUDICIAL ADMISSION

Once a party makes a judicial admission, that admission is conclusively binding and cannot be contradicted or withdrawn. The Third District Court of Appeal—binding in this Circuit—has firmly established this principle:

> **Judicial admissions are conclusively binding on the party making them."**
>
> *Fernandez v. Fernandez*, 648 So. 2d 712, 713 (Fla. 1994)
>
> **"Such admissions relieve the opposing party of the burden of proof as to the facts admitted."**
>
> *West v. Kawasaki Motors Mfg. Corp.*, 595 So. 2d 92, 94 (Fla. 3d DCA 1992)
>
> **"A party may not contradict or take a position inconsistent with its own pleadings."**
>
> *Irwin v. Blake*, 589 So. 2d 973, 975 (Fla. 4th DCA 1991)
>
> **"A party is bound by the admissions in its pleadings for jurisdictional determinations."**
>
> *Wane v. Loan Corp.*, 552 So. 2d 1132, 1133 (Fla. 3d DCA 1989)

V. TRANSFER IS MANDATORY, NOT DISCRETIONARY

Florida law **prohibits** courts from retaining jurisdiction when the statutory amount in controversy is not met. Transfer is **MANDATORY**—binding precedent leaves **no room for discretion**:

> **"The burden of proving facts which would establish jurisdiction is on the plaintiff."**

> *Lowenthal v. Lennar Homes, Inc.*, 311 So. 3d 878, 880 (Fla. 3d DCA 2021)
>
> **"Subject matter jurisdiction cannot be created by waiver, acquiescence or agreement of the parties, or by error or inadvertence of the parties or their counsel, or by the exercise of power by the court; it is a power that arises solely by virtue of law."**
> *Strasser v. Strasser*, 409 So. 2d 148, 149 (Fla. 3d DCA 1982)
>
> **"Where the jurisdictional amount is not satisfied, transfer to the proper court is mandatory, not discretionary."**
> *Smith v. Sanitairy Chemical Co.*, 591 So. 2d 288, 289 (Fla. 2d DCA 1991)
>
> **"Because jurisdiction is conferred upon courts by constitution or by statute, jurisdictional requirements established by statute must be strictly construed."**
> *Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So. 2d 858, 861 (Fla. 1994)
>
> **"A court cannot retain a case when it lacks subject matter jurisdiction."**
> *Fleck v. National Property Mgmt., Inc.*, 198 So. 3d 1085, 1087 (Fla. 2d DCA 2016)

VI. ATTORNEY'S FEES CANNOT ESTABLISH JURISDICTION

Florida courts **consistently reject** the use of potential attorney's fees to establish jurisdiction. Plaintiff may argue that attorney's fees can satisfy jurisdictional requirements, but this position fails for three dispositive reasons:

1. The Lease Contains Only a Standard Prevailing Party Provision: Section XXIII states:

> *"In any lawsuit brought to enforce the Lease or under applicable law, the party in whose favor a judgment or decree has been rendered may recover its reasonable court costs, including attorneys' fees, from the non-prevailing party."*
>
> **This is a contingent fee provision, not a guaranteed one.**

2. Controlling Precedent Prohibits Using Potential Fees for Jurisdiction:

> **"Only liquidated, contractually promised fees count toward jurisdiction; speculative fees do not."**
>
> *Thibadeau v. Santini Bros.*, 315 So. 2d 550, 552 (Fla. 4th DCA 1975)
>
> **"Potential attorney's fees cannot be used to satisfy jurisdictional requirements."**
>
> *Fields v. Klein*, 946 So. 2d 119, 121 (Fla. 4th DCA 2007)
>
> **"A contingent prevailing party fee provision does not contribute to the jurisdictional amount."**
>
> *Wane v. Loan Corp.*, 552 So. 2d 1132, 1133 (Fla. 3d DCA 1989)

3. Plaintiff's Reliance on *PTS of Gainesville* is Misplaced:

- Plaintiff cites *PTS of Gainesville, Inc. v. Olivetti Corp. of Am*., 334 So. 2d 324 (Fla. 1st DCA 1976), but that case involved contractually promised, liquidated, and determinable attorney's fees.

- **By contrast, Plaintiff has failed to provide any quantifiable attorney's fees at filing, making them entirely speculative.**

VII. PROCEEDING WITHOUT JURISDICTION CREATES REVERSIBLE ERROR

Delaying a jurisdictional ruling serves no purpose and guarantees inefficiency, wasted resources, and inevitable reversal. Resolving jurisdiction now preserves judicial resources and prevents unnecessary litigation:

> **"When a court lacks subject matter jurisdiction, its judgment is void and must be reversed on appeal."**
> *National Loan Investors, L.P. v. Joymar Assocs.*, 767 So. 2d 549, 551 (Fla. 3d DCA 2000)
>
> **"Delaying resolution of jurisdictional issues until after trial results in greater inefficiency, not less."**
> *Metcalf v. Lee*, 952 So. 2d 624, 629 (Fla. 4th DCA 2007)
>
> **"Jurisdictional defects cannot be overlooked or ignored for the sake of convenience."**
> *Christian v. Brinson*, 198 So. 3d 45, 47 (Fla. 2d DCA 2015)
>
> **"The obligation to enforce jurisdictional limits is not tempered by considerations of convenience, fairness, or judicial economy."**
> *Transglobal Contractors, Inc. v. JPG Enterprises, Inc.*, 341 So. 2d 259, 260 (Fla. 4th DCA 1977)

Time spent in litigation does not create jurisdiction. The Florida Supreme Court has held that "substantial proceedings in an improper forum cannot cure jurisdictional defects." Dragomirecky v. Gordon, 497 So. 2d 961, 962 (Fla. 2d DCA 1986).

Jurisdiction must exist at filing and cannot be created by waiver, acquiescence, or error. Strasser v. Strasser, 409 So. 2d 148, 149 (Fla. 3d DCA 1982).

VIII. DAMAGES FAIL TO MEET CIRCUIT COURT JURISDICTION

County Docket #73 explicitly lists the following damages as the basis for transfer:

CLAIM	**AMOUNT**
Security Deposit Hold	$4,200.00
Alleged Remediation	$6,500.00
Washer/Dryer Estimate	$2,026.49
TOTAL	**$12,726.49**

This total falls below all applicable Circuit Court jurisdictional thresholds:

- **$15,000** (pre-2020)
- **$30,000** (2020-2022)
- **$50,000** (2023-present)

IX. IRREPARABLE HARM TO DEFENDANTS

Forcing Defendants to prepare for trial in Circuit Court creates irreparable harm:

- **Disproportionate Financial Burdens** – Circuit Court proceedings impose significantly higher litigation costs, which are disproportionate to this $12,726.49 controversy.
- **Legislative Intent Undermined** – The Florida Legislature explicitly established jurisdictional limits to prevent excessive litigation costs and ensure that "the amount of litigation expense [remains] at a level appropriate to the amount of potential recovery." *Leon v. ADT Sec. Servs., Inc*., 121 So. 3d 1136, 1139 (Fla. 3d DCA 2013).
- **Heightened Burden on Pro Se Litigants** – The harm is especially severe for pro se Defendants, who must personally bear the financial strain of wrongful retention in Circuit Court.

X. NO PREJUDICE TO PLAINTIFF FROM TRANSFER

Transferring this case imposes no substantive prejudice on Plaintiff:

- All claims remain fully viable in County Court.
- Only the forum changes to one specifically designated for cases under $15,000.
- The existing record transfers in full, avoiding duplication or delay.
- County Court provides streamlined procedures, benefiting all parties through efficiency and lower litigation costs.

Florida courts consistently hold that jurisdictional requirements cannot be circumvented, regardless of procedural posture:

> **"It is the obligation of the court to dismiss an action which is determined to be outside its subject matter jurisdiction."**
> *Christian v. Brinson*, 198 So. 3d 45, 47 (Fla. 2d DCA 2015)

Plaintiff suffers no prejudice from this transfer, as all claims remain fully intact. This motion seeks only to ensure that litigation proceeds in the correct forum, preserving judicial efficiency and fairness.

REQUEST FOR RELIEF

WHEREFORE, Defendants respectfully request that this Honorable Court:

1. **FIND** that the amount in controversy **does not exceed $15,000**;
2. **STAY** all deadlines set forth in the **February 27, 2025, Trial Order** pending transfer;
3. **TRANSFER** this case **IMMEDIATELY** to **Miami-Dade County Court (Case No. 2018-011311-CC-05)** pursuant to **Fla. R. Civ. P. 1.060(b).**
4. **ISSUE** an immediate written ruling based on this **indisputable jurisdictional defect**.

Respectfully Submitted,

Jeff Atlas
Pro Se Defendant
6462 Colomera Dr
Boca Raton, FL 33434
845-359-6990

Susan Atlas
Pro Se Defendant
6462 Colomera Dr
Boca Raton, FL 33434
845-596-9408

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2025, a true and correct copy of the foregoing has been furnished via electronic mail utilizing the Florida Courts E-Filing Portal and e-mail to all parties on the attached Service List.

SERVICE LIST (SERVICE VIA E-PORTAL)

Ariella J. Gutman, Esq.

Haber Law

E-Mail: agutman@haber.law, jlewin@haber.law, aginsburg@haber.law

The Honorable Judge Reemberto Diaz

Circuit Judge, **11th Judicial Circuit**

E-Mail: VELGUEZABAL@JUD11.FLCOURTS.ORG

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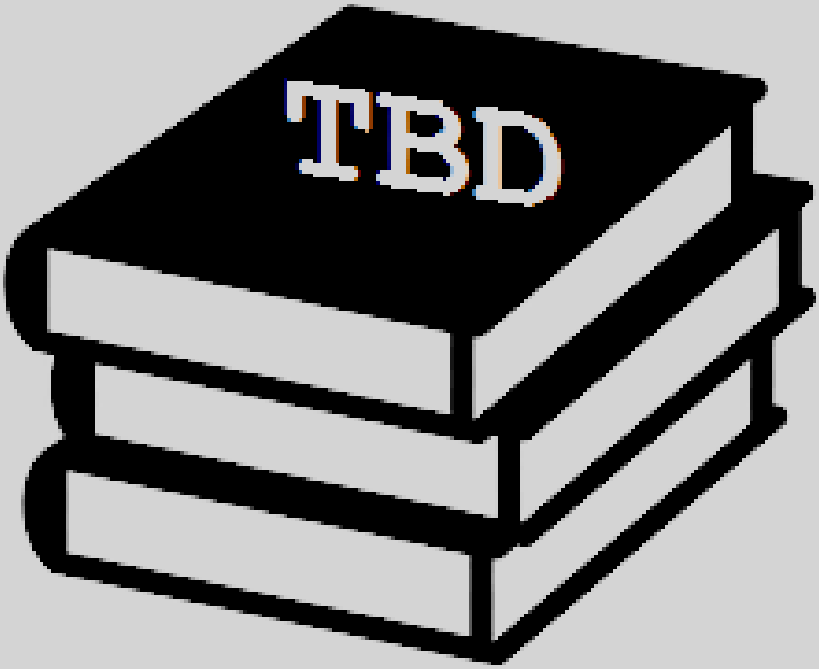

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