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**IN THE SUPREME COURT OF FLORIDA
CASE NO. SC15-1924**

L.T. Case Nos. 3D13-1923; 3D14-0048, 08-47844 CA 02

MONICA A. GUTIERREZ, by and
through her parents and natural
guardians, MONICA GUTIERREZ
and JAVIER GUTIERREZ,
MONICA GUTIERREZ,
individually, and JAVIER
GUTIERREZ,

Petitioners,

v.

JOSE LUIS VARGAS, M.D.,
individually, and JOSE LUIS
VARGAS, M.D., P.A., a Florida
inactive corporation,

Respondents.

**MOTION TO RECONSIDER ORDER
DISPENSING WITH ORAL ARGUMENT**

Respondents, JOSE LUIS VARGAS, M.D., and JOSE LUIS VARGAS, M.D., P.A., respectfully request that the Court reconsider its October 10, 2016 order dispensing with oral argument, and submit as follows:

1. This Court accepted discretionary jurisdiction following Petitioner's submission of a jurisdictional brief asserting decisional conflict between the Third District's decision below and five other district court decisions. In its order

accepting jurisdiction, the Court held that it was dispensing with oral argument pursuant to Rule 9.320, Fla.R.App.P.

2. Respondents respectfully request that the Court reconsider the portion of its order dispensing with oral argument, and grant oral argument, for the reasons that follow.

3. The Third District below reversed a judgment for Petitioners on three separate grounds: (1) the trial court's improper admission of expert testimony from pathologists listed solely as fact witnesses; (2) Petitioner's counsel's intentional fabrication of causation testimony in closing; and (3) Petitioner's presentation of a fourth pathologist expert in purported rebuttal, which constituted an improper rebuttal and resulted in a 4-1 expert advantage for Petitioners. The Third District also affirmed the trial court's denial of a directed verdict for Respondents.

4. The initial and answer briefs on the merits necessarily address all of the new-trial issues addressed by the Third District, including all three bases for reversal. In addition, Respondents' brief on the merits asks this Court to exercise its inherent discretion to review the Third District's denial of a directed verdict in favor of Respondents.

5. As a result, the initial and answer briefs are fact-intensive, and address issues that may be distinct from the jurisdictional issue(s) but nonetheless significant to the instant case.

6. To the extent the Court's discretionary review requires it to analyze these other issues, Respondents submit that oral argument would assist the Court in its resolution of the issues, and in particular identifying any portions of the record that are pertinent to the issues raised by both sides.

WHEREFORE, Respondents, JOSE LUIS VARGAS, M.D., individually, and JOSE LUIS VARGAS, M.D., P.A., respectfully request that the Court reconsider its October 10, 2016 order dispensing with oral argument and grant oral argument in this matter.

Respectfully submitted,

ILISA W. HOFFMAN, P.A.
4601 Ponce De Leon Boulevard
Coral Gables, Florida 33146
Tel: (305) 667-1074
Fax: (305) 667-1075
pleadings@ihoffmanlaw.com
Counsel for Respondents

HICKS, PORTER, EBENFELD
& STEIN, P.A.
799 Brickell Plaza, Suite 900
Miami, FL 33131
Tel: (305) 374-8171
Fax: (305) 372-8038
dstein@mhickslaw.com
mhicks@mhickslaw.com
eclerk@mhickslaw.com
Appellate Counsel for Respondents

BY: /s/Dinah Stein
DINAH STEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Court's E-Portal and furnished by Electronic Mail this **12th** day of **December, 2016** to: Marvin Kurzban, Esq., Jed Kurzban, Esq., Kurzban, Kurzban, Weinger & Tetzeli, P.A., 2650 S.W. 27th Avenue, 2nd Floor, Miami, Florida 33133, mkurzban@kkwtlaw.com, jed@kkwtlaw.com, sarabnia@kkwtlaw.com, zpino@kkwtlaw.com, and Bambi Blum, Esq., Bambi G. Blum, P.A., 46 S.W. 1st Street, 4th floor, Miami, FL 33130, bblumlaw@bellsouth.net, cassandre.bblumlaw@gmail.com.

BY: /s/Dinah Stein
DINAH STEIN
Fla. Bar No.: 98272

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