IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

EVAN S. GUTMAN,

Petitioner,

vs.

CAVALRY SPV I, LLC as
Assignee of CITIBANK, N.A.,

Respondent.

CASE NO.: 4D22-2201
LT NO.: 50-2021-CA-000114-XXXX-XB

ANSWER BRIEF OF RESPONDENT, CAVALRY SPV I, LLC, AS ASSIGNEE OF CITIBANK, N.A.[1]

Gennifer L. Bridges, Esq. (FL Bar #0072333)
Email: gbridges@burr.com; nwmosley@burr.com
R. Frank Springfield, Esq. (FL Bar #0010871)
Email: fspringfield@burr.com; sthompson@burr.com
BURR & FORMAN LLP
200 S. Orange Avenue, Suite 800
Orlando, Florida 32801
Telephone: (407) 540-6600
Facsimile: (407) 540-6601
Counsel for Respondent,
Cavalry SPV I, LLC as Assignee of Citibank, N.A.

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[1] Cavalry submits this brief to respond to the issues raised by Petitioner, Evan S. Gutman, in his Initial Brief, which the Court has deemed to be a petition for writ of certiorari. Contemporaneously herewith, Cavalry will submit a response to the Court's order to show cause entered on December 6, 2022. Cavalry files the instant brief out of an abundance of caution in the event that the Court considers the merits of Gutman's arguments in the Initial Brief/Petition.

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STATEMENT OF CASE AND FACTS

Respondent, Cavalry SPV I, LLC,[2] as Assignee of Citibank, N.A. ("Cavalry") initiated this account stated case to recover a debt owed by Petitioner, Evan S. Gutman ("Gutman"). Gutman fails to identify any genuine dispute of material fact or point of law that would require reversal of the summary judgment ("Judgment") entered in favor of Cavalry below. Instead, Gutman attempts to turn a straightforward claim of account stated into a vehicle to call into question a Florida Bar admission requirement and the constitutionality of a basic local rule. The Court should reject Gutman's arguments and affirm the Judgment.

I. The Subject Account

On November 11, 2013, Gutman opened a credit card from Citibank, N.A. ("Citibank"), creating an account ending in 0080 ("Subject Account"). (Appx. 8, 141, 240.)[3] By May 20, 2019, Gutman owed $13,084.23 on the Subject Account, and Citibank charged off

[2] Gutman incorrectly identifies Cavalry SPV I, LLC as "Calvary SPV 1, LLC."

[3] In light of the Court's determination that the record on appeal is considered an Appendix, Cavalry's citations are to "Appx." rather than "R."

the Subject Account on June 20, 2019. (Appx. 141-44.) Cavalry purchased the Subject Account from Citibank on September 13, 2019, and Citibank provided Cavalry with a Bill of Sale and Assignment reflecting the purchase of the Subject Account. (Appx. 141, 145-49.)

II. Gutman's Dispute of Another Citibank Account

In addition to the Subject Account, Gutman also had Citibank accounts ending in 6457 ("6457 Account") and 8431 ("8431 Account"). (Appx. 240.) On August 13, 2019, Debski & Associates, P.A. ("Debski"), counsel for Citibank, sent Gutman correspondence regarding amounts owed on the 6457 Account. (*Id.*) Gutman responded on August 28, 2019, sending Debski a letter in which he stated, "I am in receipt of your letter dated August 13, 2019 (copy attached) regarding Citibank, N.A. account ending in #6457, which you allege has an amount owed. Please be advised that pursuant to your letter, **I hereby dispute the validity of this alleged debt.**" (*Id.* (emphasis in original).) Gutman continued with an acknowledgment of the existence of not only the 6457 Account, but also the Subject Account and the 8431 Account. (*Id.*) He then stated that he "contest[ed] the full amount you allege is due," but wished to "[s]ettle

all three Citibank accounts." (*Id.*) Gutman did not state that he disputed the amount owed on the Subject Account, but rather the "full amount" owed to Citibank—*i.e.*, the total amount owed on all three Citibank accounts, including the disputed amounts owed on the 6457 Account.

On May 21, 2020, Debski sent Gutman another letter enclosing statements issued over twelve months for the 6457 Account and providing information regarding the dates on which the 6457 Account was opened and last paid. (R. 245.) Debski did not address the Subject Account or the 8431 Account in its correspondence, and there is no evidence indicating that Debski represented Citibank on any account other than the 6457 Account.

III. Gutman's Eventual Dispute of the Subject Account

On November 27, 2020—eighteen months after Citibank's issuance of the May 2019 account statement showing that Gutman owed $13,084.23 on the Subject Account—Gutman sent correspondence to Cavalry and its counsel. (R. 235-39.) In his letters, Gutman claimed to "dispute the validity of any and all alleged debts asserted as owed to Calvary [sic]" and asserted that he did not "owe

Calvary [sic] any amounts on any alleged accounts, or stated alternatively, the amount of ZERO." (*Id.*)

IV. The Proceedings Below

On January 6, 2021, Cavalry filed a Complaint against Gutman for account stated, seeking to recover the debt owed on the Subject Account. (Appx. 8-11.) Gutman responded by filing an Answer and Affirmative Defenses on January 17, 2021. (Appx. 12-35.) Additionally, Gutman filed a Counterclaim based on alleged actions taken within the course of Cavalry's account stated litigation. (Appx. 36-62.) The trial court dismissed Gutman's Counterclaim without prejudice on April 4, 2022 based on the litigation privilege and gave Gutman 20 days in which to amend. (Appx. 134-38.)

On April 11, 2022, Cavalry filed a Motion for Summary Judgment and supporting evidence, including an affidavit attesting to Cavalry's purchase of the Subject Account from Citibank and the amount owed on the Subject Account, as well as supporting business records. (Appx. 139-49.)

On April 22, 2022, while the Motion for Summary Judgment remained pending, Gutman filed an Amended Counterclaim. (Appx. 150-201.)

Cavalry contacted Gutman in an effort to resolve the Motion for Summary Judgment, reflected by a Notice of Compliance filed by Cavalry on June 16, 2022. (Appx. 208.) Gutman subsequently filed a response in opposition to the Motion for Summary Judgment on July 12, 2022 (Appx. 210-49) and a supplemental response on July 29, 2022. (Appx. 250-56.)

The trial court conducted a hearing on the Motion for Summary Judgment on August 5, 2022. (Appx. 253.) That same day, the court entered the Judgment in favor of Cavalry, finding that there were no genuine issues of material fact. (Appx. 258-59.) Specifically, the trial court found that it was not necessary for Gutman to have a direct business relationship with Cavalry, because Gutman had such a relationship with Citibank, which then assigned the Subject Account to Cavalry. (Appx. 258.) The court also determined that Gutman's August 28, 2019 letter to Citibank's counsel seeking to enforce the 6457 Account could not constitute an objection to the Subject Account, given that there was no evidence that Citibank's counsel represented Citibank with regard to the Subject Account. (*Id.*) Gutman's November 27, 2020 objection to the Subject Account was not made within a reasonable time. (*Id.*) Thus, the trial court

reasoned that Cavalry met all elements for a prima facie case for account stated. (*Id.*)

Gutman filed a Notice of Appeal on August 12, 2022. (Appx. 260-64.)

SUMMARY OF THE ARGUMENT

The Court should find that the trial court correctly determined that Cavalry had standing to bring an account stated claim against Gutman and that no genuine dispute of material fact prevented the entry of summary judgment in Cavalry's favor. Under Florida law, Cavalry, as Citibank's assignee, stood in Citibank's shoes and could recover the debt owed by Gutman on the Subject Account. Furthermore, the evidence demonstrated that Gutman did not dispute the Subject Account within a reasonable time and that Cavalry established a prima facie case of account stated.

Gutman's remaining arguments are irrelevant to the entry of the Judgment and to this appeal. Gutman baselessly attacks the Florida Bar's "good moral character" requirement for Bar admission and the constitutionality of Palm Beach County Local Rule 4, which requires counsel to conduct good faith conferences prior to noticing a motion for hearing. Neither point relates to whether the trial court

correctly found that there are no genuine disputes of material fact preventing the Judgment in favor of Cavalry as a matter of law. The Court should therefore affirm the Judgment on appeal.

STANDARD OF REVIEW

Orders granting summary judgment are reviewed de novo. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

ARGUMENT

I. As Citibank's Assignee, Cavalry Stood in Citibank's Shoes and was Entitled to Enforce the Account.

Gutman does not claim that he did not have a business relationship or engage in transactions with Citibank, the original creditor on Gutman's credit card account. Instead, Gutman argues that even if Citibank assigned Gutman's account to Cavalry, Cavalry cannot assert an account stated claim because Gutman did not have direct "previous dealings or transactions" with Cavalry. This argument fails under black-letter Florida law.

It is axiomatic that an assignee is "entitled to all the beneficial rights, interests, and remedies" as its assignor. *Personnel One, Inc. v. John Sommerer & Co., P.A.*, 564 So. 2d 1217, 1218 (Fla. 3d DCA 1990)

(finding that for res judicata purposes, privity rendered the assignee of an account the same as the assignor; "[w]hen Personnel assigned its rights to Financial in the first lawsuit [for account stated], Financial, as assignee, was entitled to all the beneficial rights, interests, and remedies as Personnel"); *see also Dove v. McCormick*, 698 So. 2d 585, 589 (Fla. 5th DCA 1997) ("On the subject of assignments, the common law speaks in a loud and consistent voice: *An assignee stands in the shoes of his assignor*.") (emphasis in original).

In light of the manifest principle that an assignee receives the rights and interests of the assignor, Florida courts have apparently never felt the need to address whether an assignee may assert an account stated claim. However, other jurisdictions that have addressed this issue have uniformly held that an assignee may assert an account stated claim. *See, e.g.*, *Portfolio Recovery Assocs., LLC v. King*, 55 A.D.3d 1074, 866 N.Y.S.2d 395 (N.Y. App. Div. 2008), *reversed on other grounds*, *Portfolio Recovery Assocs., LLC v. King*, 927 N.E.2d 1059 (N.Y. 2010) (assignee who sued for breach of contract and account stated "has standing to sue"); *Accounts Receivable Servs., LLC v. Ojika*, No. A16-1536, 2017 WL 1436086, at *3 (Minn.

Ct. App. Apr. 24, 2017) (assignee who established debtor-creditor relationship had standing to bring account stated claim; "a debtor has no standing to question the validity of an assignment which is accepted as valid between the creditor and his assignee"); *Butler v. Hudson & Keyse, L.L.C.*, No. 14-07-00534-CV, 2009 WL 402329, at *1-2 (Tex. Ct. App. Feb. 19, 2009) (affirming summary judgment on account stated claim when assignee demonstrated that the issuer of a credit card assigned the right to collect on the debt).

Here, Cavalry presented summary judgment evidence in the form of affidavits and a Bill of Sale and Assignment demonstrating that it purchased Gutman's account from Citibank on September 13, 2019. (Appx. 141, 145-49.) As Citibank's assignee, Cavalry obtained Citibank's rights to enforce the account against Gutman, including bringing a claim for account stated.

Gutman does not challenge the sufficiency of Cavalry's summary judgment evidence demonstrating the assignment from Citibank to Cavalry. Instead, Gutman relies on *Daytona Bridge Co. v. Bond*, 47 Fla. 136, 36 So. 445 (1904), *C. & H. Contractors, Inc. v. McKee*, 177 So. 2d 851 (Fla. 2d DCA 1965), and *Ham v. Portfolio Recovery Associates, Inc.*, 308 So. 3d 942 (Fla. 2020), for the

proposition that Cavalry cannot sue for account stated if it did not have a direct business relationship with Gutman. Aside from the fact that Cavalry, as Citibank's assignee, *does* have a direct business relationship with Gutman, Gutman also appears to misinterpret *Bond*, *McKee*, and *Ham*.

Neither *Bond* nor *McKee* involved an assignee enforcing an account. Instead, in *Bond*, the debtor alleged that a different person or entity owed the amounts at issue. *See Bond*, 36 So. at 446 ("The witness . . . testified that . . . the general manager of the defendant called upon him and disclaimed all liability, and said the work had been done under a contract by one T. White, and he did not know previously of the intention of the plaintiffs to claim that defendant was responsible."). In *McKee*, the court found that an individual who purchased a bulldozer and later transferred it to the defendant corporation did not bind the corporation to a debt allegedly owed by the individual to the seller. *See McKee*, 177 So. 2d at 853 (where the buyer purchased a bulldozer "individually and used it individually prior to the creation of the corporation . . . the plaintiff totally failed to prove a contract on behalf of the corporate defendant made by its promoter or agent"). Therefore, *Bond* and *McKee* do not support

Gutman's argument that Cavalry, as the purchaser of Gutman's account and the assignee of Citibank's rights to enforce the account, lacks standing to assert a claim for account stated.

Additionally, *Ham* supports Cavalry's position, not Gutman's. In *Ham*, the Florida Supreme Court held that under the reciprocal fee provision of § 57.105(7), Florida Statutes, a debtor could recover attorneys' fees from the assignee of a creditor who did not prevail on an account stated claim. *See Ham*, 308 So. 3d at 943. The Court reasoned that absent the existence of a credit card agreement, neither the original creditor nor its assignee would be able to assert an account stated claim. *See id.* at 948. Claims under the agreement and for account stated were inextricably intertwined, thus implicating the language of § 57.105(7) permitting the reciprocal recovery of fees in any action "with respect to the contract" in a case for account stated. *See id.* Therefore, the prevailing debtor could recover fees in a failed account stated case brought by the assignee of the original creditor. *See id.* at 950.

If a debtor and the assignee of an original creditor are in sufficient privity to permit the debtor's recovery of § 57.105(7) fees from the assignee in an account stated case, it necessarily follows that

the assignee has the corresponding right to enforce the account against the debtor. Gutman's argument that "it is not fair to allow an assignee to 'piggyback' upon the original creditor's status" is therefore unavailing. (Pet. 9.) *Ham* shows that Cavalry, as Citibank's assignee, has standing to assert an account stated claim against Gutman.

For these reasons, this Court should reject Gutman's arguments and affirm the Judgment entered below.

II. The Trial Court Correctly Found that Gutman Did Not Dispute the Subject Debt Within a Reasonable Time and that Cavalry Proved a Prima Facie Case of Account Stated.

This Court should affirm the trial court's determination that Gutman did not dispute the subject debt in a reasonable time and that summary judgment was appropriate.

To prevail on its account stated claim, Cavalry was required to demonstrate "'an agreement between persons who have had previous transactions, fixing the amount due in respect of such transactions, and promising payment.'" *Farley v. Chase Bank, U.S.A., N.A.*, 37 So. 3d 936, 937 (Fla. 4th DCA 2010) (quoting *Martyn v. Arnold*, 36 Fla. 446, 18 So. 791, 793 (1895)). Such an agreement does not need to be explicit. When a debtor receives an account statement and fails to

object in a reasonable time, it is presumed that the account is correct and the debtor is liable. *See id.* (citing *Bond*, 36 So. at 447). "A debtor may overcome a prima facie case of an account stated by 'meeting the burden of proving fraud, mistake[,] or error' in the account." *Id.* (quoting *Robert C. Malt & Co. v. Kelly Tractor Co.*, 518 So. 2d 991, 992 (Fla. 4th DCA 1988)); *see also Gendzier v. Bielecki*, 97 So. 2d 604, 608 (Fla. 1957).

Cavalry is unaware of any Florida case law interpreting what a "reasonable time" is for objecting to an account statement. However, generally speaking, in circumstances in which the law implies that performance or action must occur within a "reasonable time," and the facts are undisputed, the question of whether performance occurred in a "reasonable time" is a question of law. *See Richland Grove & Cattle Co. v. Easterling*, 526 So. 2d 685, 687 (Fla. 1988) (where contract did not specify amount of time for performance, and law implied performance within a reasonable time, broker abandoned contract as a matter of law after not contacting seller for two and a half years). As *Farley* demonstrates, the law implies that a debtor must object to an alleged debt within a reasonable time to defeat the presumption that the debt is correct and owed by the debtor in an

account stated case.

The material facts are also undisputed. Gutman does not dispute that Citibank issued notice in May 2019 that he owed $13,084.23 on the Subject Account. (Appx. 142-44.) In an August 28, 2019 letter, Gutman acknowledged the Subject Account. (Appx. 240.) The August 28, 2019 letter demonstrates that Gutman disputed the balance of the *6457 Account* and offered a lump-sum amount to pay off his three outstanding Citibank accounts, including the Subject Account and the 6457 Account. (*Id.*) Based on Gutman's own summary judgment counterevidence, Gutman did not dispute the subject debt until November 27, 2020. (Appx. 235-39.) As Gutman himself recognizes, Cavalry did not acknowledge a dispute of the debt owed on the Subject Account until the beginning of December 2020. (Pet. 12; Appx. 241-44.) Gutman does not point to any factual issues that precluded him from objecting to the debt owed on the Subject Account at the same time that he disputed the 6457 Account, nor does he identify any basis in fact or law for arguing that an eighteen-month delay in objecting to a debt is objectively reasonable.

Insofar as the Subject Account is concerned, Gutman argues only an agency theory to support the notion that the August 28, 2019

letter is sufficient to constitute a dispute of the Subject Account. (Pet. 11 ("[A]s Citibank's attorney, the law firm of Debski & Associates had an agency relationship with Citibank and was functioning within the parameters of that agency.").) This is inadequate to transform Gutman's dispute of the 6457 Account into a dispute of the Subject Account. The scope of agency is limited to the parameters of representation. *See Stalley v. Transitional Hosps. Corp. of Tampa, Inc.*, 44 So. 3d 627, 630 (Fla. 2d DCA 2010) ("[T]he scope of the agent's authority is limited to what the principal has authorized the agent to do."). The scope of representation by counsel for Citibank at the time was limited to the collection of the 6457 Account, as Gutman acknowledged in his August 28, 2019 letter. (Appx. 240.) Therefore, Gutman's contention that the agency of counsel for Citibank was broad enough to encompass the Subject Account fails.

Therefore, because Florida law required Gutman to object to the debt owed on the Subject Account within a reasonable time, and the material facts are undisputed, it was within the purview of the trial court to determine whether Gutman objected to the subject debt within a reasonable time as a matter of law. The trial court was correct to find that Gutman failed to object to the amount owed on the

Subject Account within a reasonable time.

Because Cavalry established a prima facie case for its account stated claim, the burden shifted to Gutman to prove fraud, mistake, or error on the subject account. *See Farley*, 37 So. 3d at 937. Gutman did not meet his burden. Gutman did not argue below, nor does he argue on appeal, any facts demonstrating that Citibank or Cavalry were mistaken in the amount owed on the Subject Account. While Gutman submitted letters to Cavalry on November 27, 2020 claiming that he owed "zero" to Cavalry, he acknowledged the Subject Account eighteen months prior in his letter to Citibank and did not dispute the debt owed at that time.

Under Florida's recently adopted summary judgment standard, a defendant must do more than merely dispute a fact in order to avoid summary judgment—he or she must present counterevidence sufficient to demonstrate a genuine dispute of material fact. *See In re: Amendments to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 75 (Fla. 2021). Under the new version of Rule 1.510, "the correct test for the existence of a genuine factual dispute is whether 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Id.* It is no longer enough "to maintain that 'the existence

of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised.'" *Id.* at 75-76.

Gutman did not submit any counterevidence demonstrating that the amount that Cavalry sought to recover on the Subject Account was erroneous, mistaken, or fraudulent. He therefore did not meet his burden to overcome the presumption of Cavalry's prima facie case for account stated. Accordingly, this Court should affirm entry of the Judgment below.

III. The Florida Bar's "Good Moral Character" Requirement is Irrelevant to this Appeal.

Without clearly tying his arguments to the instant case (except for impugning the moral character of the trial judge), Gutman questions the requirement that applicants to the Florida Bar provide evidence of their "good moral character." *See* Fla. Bar R. 16-1.4(f). Specifically, Gutman contends that licensed attorneys and judges should be required to periodically provide evidence of their "good moral character" in a manner akin to Bar applicants. Gutman's arguments are not properly before this Court in these proceedings.

Gutman's issues with the Florida Bar or the rules regarding the admittance of attorneys to the practice of law are best left to proceedings that do not involve the simple attempt of a creditor to enforce an account stated. Cavalry is not the entity charged with determining who may and may not practice law in the State of Florida and what requirements licensed attorneys and judges must meet. Accordingly, it should not be embroiled in a larger dispute regarding the constitutionality of the Florida Bar's rules, over which it has absolutely no influence. Simply put, Cavalry is not the proper party against which Gutman seeks relief. *See* Fla. R. Civ. P. 1.110(b) ("A pleading . . . must state a cause of action and shall contain . . . a short and plain statement of grounds which the court's jurisdiction depends."). Gutman does not claim that counsel for Cavalry or the trial judge was not properly licensed under Florida law. Instead, Gutman questions whether the Florida Bar adequately monitors the moral character of its members. Such an issue belongs in a proceeding against the Bar, not Cavalry.

Not only is this point immaterial to these proceedings, but the Florida Supreme Court has long upheld the Bar's "good moral character" requirement. *See Fla. Bd. of Bar Examiners v. G. W. L.*, 364

So. 2d 454, 458 (Fla. 1978) ("The Court,[4] under its constitutional authority to 'regulate the admission of persons to the practice of law,' has the authority to require proficiency in the law and good moral character before it admits an applicant to practice before the courts of this state. The sole purpose of these requirements is to protect the public."); *In re Fla. Bd. of Bar Examiners*, 358 So. 2d 7, 10 (Fla. 1978) (observing that the purpose of the "good moral character" requirement is to ensure "confidence that [the client] has employed an attorney who will protect his interests" and to guarantee society "that the applicant will not thwart the administration of justice"); *see also Schware v. Bd. of Bar Examiners*, 353 U.S. 232, 238-39 (1957) (finding that a state "can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar,"" provided that the qualification has a "rational connection with the applicant's fitness or capacity to practice law").

This Court should reject Gutman's attempt to oppose a simple account stated claim with philosophical arguments concerning what

[4] Fla. Bar R. 16.2.2 recognizes the Florida Bar as "an official arm of [the Florida Supreme] Court."

requirements the Florida Bar should impose on licensed attorneys and judges. Cavalry is entitled to enforce its account regardless of what ills Gutman may claim against the Florida Bar.

IV. The Constitutionality of Palm Beach County Local Rule 4 has No Relevance to the Judgment on Appeal.

Gutman also takes issue with the constitutionality of Palm Beach County Local Rule 4, which, like a multitude of local rules in this state (not to mention federal local rules), requires attorneys to conduct a good faith conference before noticing a motion for hearing. Gutman complains that this rule "deprives Pro Se Litigants of a fair and impartial adjudication by excluding them from its contours, provisions, protections and penalties" based on the rule's statement that it does not apply to pro se litigants. (Pet. 22.) However, Gutman does not argue that he was not afforded a good faith conference on Cavalry's Motion for Summary Judgment. In fact, the record demonstrates that Cavalry actually did contact Gutman in a good faith effort to resolve the Motion for Summary Judgment. (Appx. 208.) Gutman does not, and cannot, contend that he was prejudiced by Local Rule 4 due to his pro se status. *Cf. Greenberg v. Simms Merchant Police Serv.*, 410 So. 2d 566, 566-67 (Fla. 1st DCA 1982)

(finding appellant "failed to demonstrate any prejudice resulting from" alleged due process issue). Thus, whether Local Rule 4 is constitutional is irrelevant to this appeal. *See Waddington v. Baptist Med. Ctr. of Beaches, Inc.*, 78 So. 3d 114, 117 (Fla. 1st DCA 2012) (finding appeal frivolous where arguments presented were "wholly irrelevant to the summary judgment entered in Appellees' favor" and did not challenge "the legal basis for the judgment").

Even if Gutman's constitutional arguments regarding Local Rule 4 had any bearing on the instant proceedings, his points fail. Florida courts have long balanced the right of pro se parties to participate in the judicial process with courts' ability to manage cases and preserve the functioning and integrity of the judicial system. *See, e.g.*, *Windsor v. Longest*, 347 So. 3d 379, 380 (Fla. 5th DCA 2021) (upholding order barring petitioner from filing further pro se pleadings; trial court "properly balanced" petitioner's right of access to the courts against the need to prevent repetitive and abusive filings that diverted judicial resources); *Woodson v. State*, 100 So. 3d 222, 223 (Fla. 3d DCA 2012) ("While we acknowledge that pro se parties must be afforded a genuine and adequate opportunity to exercise their constitutional right of access to the courts, that right is not

unfettered."). If they are afforded a meaningful ability to access the courts, pro se parties are not constitutionally guaranteed that every procedural or ministerial rule will apply equally to licensed counsel as to them.

Finally, after appearing to argue that Local Rule 4 is unconstitutional because he, as a pro se party, should be included in the good faith conference requirement, Gutman then asserts multiple arguments that requiring counsel to conduct good faith conferences damages represented litigants. (Pet. 27-29.) Gutman, who is not represented by counsel, does not have standing to assert such arguments. *See Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 941 (Fla. 2002) ("Under traditional *jus tertii* jurisprudence, 'In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.'") (quoting *Powers v. Ohio*, 499 U.S. 400, 410 (1991)).

For these reasons, the Court should find that the constitutionality of Local Rule 4 has no bearing on the entry of the Judgment at issue, reject this argument, and affirm.

CONCLUSION

In the proceedings below, Cavalry demonstrated that Citibank assigned the Subject Account to it, thus entitling Cavalry to bring an account stated claim against Gutman. Furthermore, no genuine dispute of material fact existed regarding Gutman's failure to dispute the debt owed on the Subject Account within a reasonable time. Cavalry therefore established a prima facie case against Gutman, who did not meet his burden to rebut the presumption that he owed the debt at issue.

Regarding Gutman's arguments concerning the Florida Bar's "good moral character" requirement and Local Rule 4, Gutman fails to tie these points to the instant proceedings or the issues considered by the trial court. The Court should therefore reject these arguments outright and affirm the entry of the Judgment.

Respectfully submitted this 13th day of December, 2022.

/s/ Gennifer L. Bridges
Gennifer L. Bridges
FL Bar #0072333
Email: gbridges@burr.com
Secondary: nwmosley@burr.com
R. Frank Springfield
FL Bar #0010871
Email: fspringfield@burr.com
Secondary: sthompson@burr.com

BURR & FORMAN LLP
200 S. Orange Avenue, Suite 800
Orlando, Florida 32801
Telephone: (407) 540-6600
Facsimile: (407) 540-6601
Counsel for Respondent,
Cavalry SPV I, LLC as Assignee of Citibank, N.A.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief meets the length and typeface requirements of the Florida Rules of Appellate Procedure. This Brief consists of 4,639 words and is prepared in Bookman Old Style 14-point font.

/s/ Gennifer L. Bridges
Gennifer L. Bridges
Florida Bar No. 0072333

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 13, 2022, a true and correct copy of the foregoing was filed via the eDCA E-Filing Portal and served via U.S. Mail on Evan S. Gutman, 1675 N. W. 4th Avenue, Apt. 511, Boca Raton, Florida 33432.

/s/ Gennifer L. Bridges
Gennifer L. Bridges
Florida Bar No. 0072333