

APPLICATION FOR NOMINATION TO THE COURT

(Please attach additional pages as needed to respond fully to questions.)

DATE: 08/09/2019 Florida Bar No.: 96323

GENERAL: Social Security No.: XXX-XX-9361

1. Name Christopher DelBene E-mail: cmdelbene@gmail.com

Date Admitted to Practice in Florida: 05/04/2012

Date Admitted to Practice in other States: N/A

2. State current employer and title, including professional position and any public or judicial office.

Phelan Hallinan Diamond & Jones, PLLC, Litigation Associate

3. Business address: Remote attorney in St. Johns County, but main office location: 2001 NW 64th St #100,

City Fort Lauderdale County Broward State Florida ZIP 33309

Telephone (904) 599 - 5702 FAX () -

4. Residential address: 3412 S. Ravello Drive

City St. Augustine County St. Johns State Florida ZIP 32092

Since 03/01/2014 Telephone (904) 392 - 3612

5. Place of birth: Bronxville, New York

Date of birth: 08/30/1985 Age: 33

6a. Length of residence in State of Florida: 13+ years

6b. Are you a registered voter? ☒ Yes ☐ No

If so, in what county are you registered? St. Johns County

7. Marital status: Married

If married: Spouse's name Heather DelBene

Date of marriage 03/11/2011

Spouse's occupation Analyst with Enterprise Rent-A-Car

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
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1. Reagan DelBene, Age 5, Student, 3412 S. Ravello Dr., St. Augustine, Florida 32092

2. Nathan DelBene, Age 5, Student, 3412 S. Ravello Dr., St. Augustine, Florida 32092

9. Military Service (including Reserves) - N/A - Not a member of the military

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
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Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
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Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

No.

- 11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes ☐ No ☒

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite
- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes ☐ No ☒

If yes, please explain.

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes ☐ No ☒

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes ☐ No ☐

Describe such problem and any treatment or program of monitoring or counseling.

13. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.

No.

14. During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

No.

15. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

16. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

No.

17. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No.

EDUCATION:

- 18a. Secondary schools, colleges and law schools attended.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
1. Florida Coastal School of Law	Top 35%,	01/2009 - 01/2011	J.D. - Law
2. Mercy College	N/A	01/2007 - 08/2007	Paralegal Certificate
3. Flagler College	Top 50%	09/2003 - 05/2006	B.A. in Political Sci.

- 18b. List and describe academic scholarships earned, honor societies or other awards.

1. Florida Coastal School of Law Moot Court,
2. Appellate Advocacy Book Award

NON-LEGAL EMPLOYMENT:

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
06/2006 - 03/2011	Waiter	PF Changs	125 Westchester Ave. White Plains, NY

PROFESSIONAL ADMISSIONS:

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.
- Member of the Bar, State of Florida, 2012 - Active Member
 - Member, U.S. District Court of Florida, Northern (6/18/13) , Middle (6/13/13) and Southern (7/17/13) - Active Member

LAW PRACTICE: (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
1. Litigation Attorney	Phelan Hallinan Diamond & Jones PLLC	2001 NW 64th St #100, Fort Lauderdale, FL 33092	04/2013 - Present
2. Default Case Manager	Homeward Residential	4875 Belfort Rd., Jacksonville, FL 32256	03/2012 - 04/2013
3. Law Clerk, Law Office of Amy Warpinski for Liberty Mutual		1301 Riverplace Blvd, Jacksonville, FL 32207	01/2010 - 09/2010
4. Paralegal	First Investors Corp.	110 Wall St., NY, NY 10005	12/2007 - 09/2008

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

My practice focuses on civil litigation arising from residential real estate transactions involving creditor foreclosure actions, code enforcement hearings, transactional work involving residential real estate transactions including writing title policies and closings, as well as appellate practice.

23. What percentage of your appearance in courts in the last five years or last five years of practice (include the dates) was in:

Court		Area of Practice	
Federal Appellate	<u> </u> %	Civil	<u> 90 </u> %
Federal Trial	<u> </u> %	Criminal	<u> </u> %
Federal Other	<u> 20 </u> %	Family	<u> </u> %
State Appellate	<u> 5 </u> %	Probate	<u> </u> %
State Trial	<u> 70 </u> %	Other	<u> 10 </u> %
State Administrative	<u> 5 </u> %		
State Other	<u> </u> %		
	<u> </u> %		
TOTAL	<u> 100 </u> %	TOTAL	<u> 100 </u> %

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury?	<u> 0 </u>	Non-jury?	<u> 100+ </u>
Arbitration?	<u> 0 </u>	Administrative Bodies?	<u> 0 </u>

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

26. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

No.

(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)

- 27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

See attached document.

- 27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

See attached document.

- 27c. During the last five years, how frequently have you appeared at administrative hearings?
1 average times per month

- 27d. During the last five years, how frequently have you appeared in Court?
20 average times per month

- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? N/A %
Defendants? _____ %

28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

N/A

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.

N/A as I did not handle any arbitrations within my practice.

30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.

See attached document.

31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

See attached document.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

- 32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

None.

32b. List any prior quasi-judicial service:

Dates

Name of Agency

Position Held

Types of issues heard:

32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

Yes: [Turnbull Creek Community Development District, Seat 3, St. Johns County, FL - 01/2019 - Present](#)

32d. If you have had prior judicial or quasi-judicial experience,

- (i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.
- (ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.
- (iii) List citations of any opinions which have been published.
- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.
- (v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.
- (vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.
- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

BUSINESS INVOLVEMENT:

- 33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

- 33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

No.

- 33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

No.

POSSIBLE BIAS OR PREJUDICE:

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you as a general proposition believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

None.

MISCELLANEOUS:

- 35a. Have you ever been convicted of a felony or a first degree misdemeanor?

Yes _____ No X If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

- 35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes _____ No X If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

- 35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No X If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

- 36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.
- No.
- 36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?
- No.
- 36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.
- No.
- 37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?
- No.
- 37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.
- No.
38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.
- No.
39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.
- No.
40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).
- No.
41. Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.
- No.

42. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No.

- 43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes ☒ No ☐ If no, please explain. _____

- 43b. Have you ever paid a tax penalty?

Yes ☐ No ☒ If yes, please explain what and why. _____

- 43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No.

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

45. List any honors, prizes or awards you have received. Give dates.

46. List and describe any speeches or lectures you have given.

47. Do you have a Martindale-Hubbell rating? Yes ☐ If so, what is it? ____ No ☒

PROFESSIONAL AND OTHER ACTIVITIES:

- 48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.

None.

- 48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

None.

- 48c. List your hobbies or other vocational interests.

Playing baseball/softball, beach volleyball, traveling, and attending kid's dance recitals.

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

48e. Describe any pro bono legal work you have done. Give dates.

None.

SUPPLEMENTAL INFORMATION:

49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

Yes, in Real Property and Bankruptcy areas.

49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

No.

50. Describe any additional education or other experience you have which could assist you in holding judicial office.

No additional training or education other than described herein.

51. Explain the particular potential contribution you believe your selection would bring to this position.

Having tried hundreds of bench trials throughout Florida I believe I have experienced all types of judges and believe I would be consistent in my rulings while being openminded, tactful and patient.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

N/A

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

No additional information to provide.

REFERENCES:

54. List the names, addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for judicial position and of whom inquiry may be made by the Commission.

See attached document.

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(I), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 9 day of August, 2019.

Christopher DeBene
Printed Name

Christopher DeBene
Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date	<u>\$87,500 per year</u>		
List Last 3 years	<u>\$87,500</u>	<u>\$87,500</u>	<u>\$82,000</u>

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date	<u>\$39,765</u>		
List Last 3 years	<u>\$62,691</u>	<u>\$62,691</u>	<u>\$57,791</u>

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current year to date	<u>\$10,000 - Rental house income.</u>		
List Last 3 years	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$15,000</u>

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current year to date	<u>\$0</u>		
List Last 3 years	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FORM 6

FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTEREST

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of 08, 20 19 was \$ 113,000.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is \$ 50,000

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

Primary Residence - 3412 S. Ravello Drive, St. Augustine, FL 32092	\$325,000
Rental Property - 258 Casa Sevilla Avenue, St. Augustine, FL 32092	\$220,000
Car - 2017 GMC Acadia	\$35,500
Car - 2008 Honda Civic	\$4500

PART C - LIABILITIES

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

GMC Acadia	\$26,380
Navient Student Loans	\$175,341
Primary Residence - 3412 S. Ravello Drive, St. Augustine, FL 32092	\$195,380
Rental Property - 258 Casa Sevilla Avenue, St. Augustine, FL 32092	\$86,599

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments*, ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

- ☒ I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
 (if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

PART E - INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITTY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☐

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

Christopher Del Bene
 SIGNATURE

STATE OF FLORIDA

COUNTY OF St Johns

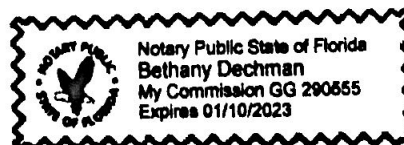
Sworn to (or affirmed) and subscribed before me this 9th day of August, 2019, by Christopher Del Bene

Bethany Dechman
 (Signature of Notary Public—State of Florida)

Bethany Dechman
 (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced FCL



INSTRUCTIONS FOR COMPLETING FORM 6:

PUBLIC RECORD: The disclosure form and everything attached to it is a public record. **Your Social Security Number is not required and you should redact it from any documents you file.** If you are an active or former officer or employee listed in Section 119.071(4)(d), F.S., whose home address is exempt from disclosure, the Commission is required to maintain the confidentiality of your home address **if you submit a written request for confidentiality.**

PART A – NET WORTH

Report your net worth as of December 31 or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases.

To total the value of your assets, add:

- form;
- (1) The aggregate value of household goods and personal effects, as reported in Part B of this form;
 - (2) The value of all assets worth over \$1,000, as reported in Part B; and
 - (3) The total value of any assets worth less than \$1,000 that were not reported or included in the category of “household goods and personal effects.”

To total the amount of your liabilities, add:

- (1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the “joint and several liabilities not reported above” portion; and,
- (2) The total amount of unreported liabilities (including those under \$1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN \$1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

The value of your household goods and personal effects may be aggregated and reported as a lump sum, if their aggregate value exceeds \$1,000. The types of assets that can be reported in this manner are described on the form.

ASSETS INDIVIDUALLY VALUED AT MORE THAN \$1,000:

Provide a description of each asset you had on the reporting date chosen for your net worth (Part A), that was worth more than \$1,000 and that is not included as household goods and personal effects, and list its value. Assets include: interests in real property; tangible and intangible personal property, such as cash, stocks, bonds, certificates of deposit, interests in partnerships, beneficial interest in a trust, promissory notes owed to you, accounts received by you, bank accounts, assets held in IRAs, Deferred Retirement Option Accounts, and Florida Prepaid College Plan accounts. You are not required to disclose assets owned solely by your spouse.

How to Identify or Describe the Asset:

— Real property: Identify by providing the street address of the property. If the property has no street address, identify by describing the property’s location in a manner sufficient to enable a member of the public to ascertain its location without resorting to any other source of information.

— Intangible property: Identify the type of property and the business entity or person to which or to whom it relates. **Do not list simply “stocks and bonds” or “bank accounts.”** For example, list “Stock (Williams Construction Co.),” “Bonds (Southern Water and Gas),” “Bank accounts (First

National Bank),” “Smith family trust,” Promissory note and mortgage (owed by John and Jane Doe).”

How to Value Assets:

— Value each asset by its fair market value on the date used in Part A for your net worth.

— Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.

— Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.

— Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.

— Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.

— Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.

— Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.

— Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by “buy-out” agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.

— Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net worth (Part A) in an amount that exceeded \$1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you. You are not required to disclose liabilities owned *solely* by your spouse.

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owned to the company of issuance, or contingent liabilities. A “contingent liability” is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. If you are a “co-maker” on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.

How to Determine the Amount of a Liability:

— Generally, the amount of the liability is the face amount of the debt.

— If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

— If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirety or jointly, with right of survivorship, report 100% of the total amount owed.

— If you are only jointly (not jointly and severally) liable with another person or entity, your share of the liability should be determined in the same way as you determined your share of jointly held assets.

Examples:

— You owe \$10,000 to a bank for student loans, \$5,000 for credit card debts, and \$60,000 with your spouse to a saving and loan for the mortgage on the home you own with your spouse. You must report the name and address of the bank (\$10,000 being the amount of that liability) and the name and address of the savings and loan (\$60,000 being the amount of this liability). The credit cards debts need not be reported.

— You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability. If your liability for the loan is only as a partner, without personal liability, then the loan would be a contingent liability.

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

List in this part of the form the amount of each debt, for which you were jointly and severally liable, that is not reported in the “Liabilities in Excess of \$1,000” part of the form. Example: You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability, as you reported the other 50% of the debt earlier.

PART D – INCOME

As noted on the form, you have the option of either filing a copy of your latest federal income tax return, including all schedules, W2's and attachments, with Form 6, or completing Part D of the form. If you do not attach your tax return, you must complete Part D.

PRIMARY SOURCES OF INCOME:

List the name of each source of income that provided you with more than \$1,000 of income during the year, the address of that source, and the amount of income received from that source. The income of your spouse need not be disclosed; however, if there is a joint income to you and your spouse from property you own jointly (such as interest or dividends from a bank account or stocks), you should include all of that income.

“Income” means the same as “gross income” for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report that income to you, as calculated for income tax purposes, rather than the income to the business.

Examples:

— If you owned stock in and were employed by a corporation and received more than \$1,000 of income (salary, commissions, dividends, etc.) from the company, you should list the name of the company, its address, and the total amount of income received from it.

— If you were a partner in a law firm and your distributive share of partnership gross income exceeded \$1,000, you should list the name of the firm, its address, and the amount of your distributive share.

— If you received dividend or interest income from investments in stocks and bonds, list only each individual company from which you received more than \$1,000. Do not aggregate income from all of these investments.

— If more than \$1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

— If more than \$1,000 of your income was in the form of interest from one particular financial institution (aggregating interest from all CD's, accounts, etc., at that institution), list the name of the institution, its address, and the amount of income from that institution.

SECONDARY SOURCE OF INCOME:

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported as a "Primary Source of Income." You will **not** have anything to report **unless**:

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and

(2) You received more than \$1,000 in gross income from that business entity during the period.

If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's more recently completed fiscal year), the source's address, the source's principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income.

Examples:

— You are the sole proprietor of a dry cleaning business, from which you received more than \$1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).

— You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded \$1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership's gross income, the tenant's address and principal business activity.

PART E – INTERESTS IN SPECIFIED BUSINESS

The types of businesses covered in this section include: state and federally chartered banks; state and federal savings and loan associations; cemetery companies; insurance companies; mortgage companies, credit unions; small loan companies; alcoholic beverage licensees; pari-mutuel wagering companies; utility companies; and entities controlled by the Public Service Commission; and entities granted a franchise to operate by either a city or a county government.

You are required to make this disclosure if you own or owned (either directly or indirectly in the form of an equitable or beneficial interest) at any time during the disclosure period, more than 5% of the total assets or capital stock of one of the types of business entities listed above. You also must complete this part of the form for each of these types of business for which you are, or were at any time during the year an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process).

If you have or held such a position or ownership interest in one of these types of businesses, list: the name of the business, its address and principal business activity, and the position held with the business (if any). Also, if you own(ed) more than a 5% interest in the business, as described above, you must indicate that fact and describe the nature of your interest.

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: August 9, 2019

JNC Submitting To: 7th Circuit Judicial Nominating Commission

Name (please print): Christopher DelBene

Current Occupation: Litigation Attorney

Telephone Number: (904) 392-3612 Attorney No.: 96323

Gender (check one): ☒ Male ☐ Female

Ethnic Origin (check one): ☒ White, non Hispanic
☐ Hispanic
☐ Black
☐ American Indian/Alaskan Native
☐ Asian/Pacific Islander

County of Residence: St. Johns County

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Printed Name of
Applicant:

Christopher DelBene

Signature of Applicant:

Christopher DelBene

Date:

8/9/19

CHRISTOPHER M. DELBENE

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1. Ditech v. Garcia, 7th Judicial Circuit, St. Johns County, CA18-0710
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 - b. Phone Number: (904) 810-1025
2. Licciardello v. Cenlar, 5th Judicial Circuit, Marion County, 2015-CA-1545
 - a. Opposing Counsel, Mitchel Crouse, Esq.
 - b. Phone Number: (941) 306-3672
3. BB&T v. Wisecup, 5th Judicial Circuit, Marion County, 2016-CA-1536
 - c. Opposing Counsel, Daniel Hicks, Esq.
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30. SIGNIFICANT CASES:

1. Warren v. U.S. Bank N.A., as Trustee, 5D17-2051, (Fla. 5th DCA 2017)
 - a. St. Johns County
 - b. Judge Smith.
 - c. Opposing Counsel, Nicole Moskowitz, Esq.
 - d. Tried March 29, 2017.
 - e. Significance: Appellant unsuccessfully argued the trial court erred in allowing the collection of damages outside of the five year statute of limitations period. Ultimately, this case was a precursor to the 5th District Court of Appeal reversing its position regarding the collection of total debt owed on a negotiable instrument.
 - f. Involvement: I was the trial attorney during the bench trial and handled all aspects of the appeal in which the 5th DCA issued a per curium affirmation of the judgment.
2. Licciardello v. Cenlar, 2015-CA-1545 (Fla. 5th Cir. Ct. 2019).
 - a. Marion County.
 - b. Judge Herndon.
 - c. Opposing Counsel, Mitchel Crouse, Esq.
 - d. Summary Judgment hearing July 11, 2019.
 - e. Significance: Opposing counsel brought a lawsuit against my client, Cenlar FSB alleging breach of contract and statutory negligence seeking to create an equitable tolling period where all claims would otherwise be barred by the Statute of Limitations. During hearing on both parties' Motion for Summary Judgment, Judge Herndon found in favor of my client, ruling that the Statute of Limitations barred all such claims and as the Florida Legislature had already enumerated specific instances of tolling, equitable tolling is inappropriate under the facts of this case.
 - f. Involvement: I handled all aspects of this case from initially drafting the Motion to Dismiss and Answer and Affirmative Defenses to drafting and arguing the Motion for Summary Judgment.

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31. WRITING SAMPLE:

This is an Answer Brief I wrote for the 5th District Court of Appeal of Florida. I handled all aspects of the appeal on behalf of US Bank and was the trial attorney during the bench trial. This case was significant as Appellant unsuccessfully argued the trial court erred in allowing the collection of damages outside of the five year statute of limitations period. Ultimately, this case was a precursor to the 5th District Court of Appeal reversing its position regarding the collection of total debt owed on a negotiable instrument.

IN THE FIFTH DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA

Fifth DCA Case No. 5D17-2051

Trial Court Case No. CA15-0845

VIRGINIA L. WARREN AND RON WARREN

Appellant,

v.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR ARMT 2005-5

Appellee.

Appeal from the Circuit Court
of the Seventh Judicial Circuit
in and for Saint Johns County, Florida

Appellee's Answer Brief

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TABLE OF CONTENTS

TABLE OF CITATIONS	i-iv
PRELIMINARY STATEMENT.....	1
STATEMENT OF CASE AND FACTS.....	1
SUMMARY OF ARGUMENT.....	4
STANDARD OF REVIEW.....	5
ARGUMENT.....	6
ISSUE I.....	6
THE TRIAL COURT PROPERLY ADMITTED THE PAYMENT HISTORY INTO EVIDENCE AT TRIAL.	
ISSUE II	9
PLAINTIFF PROVED ITS DAMAGES AND INTEREST RATE AT TRIAL.	
ISSUE III.....	11
THE TRIAL COURT’S RULING THAT THE STATUTE OF LIMITATIONS IS INAPPLICABLE TO THIS ACTION AND SHOULD NOT PRECLUDE ENTRY OF FINAL JUDGMENT OR THE AWARD OF THE DAMAGES SOUGHT BY APPELLEE SHOULD BE AFFIRMED.	
a. The statute of limitations is inapplicable to this case	11
b. US Bank is entitled to recover all amounts due and owing ...	15
c. Res judicata is inapplicable to this case.....	21
ISSUE IV.....	24
THE TRIAL COURT PROPERLY ADMITTED THE BREACH LETTER AS EVIDENCE.	

a. US Bank’s Breach Letter was properly admitted under the business records exception to the hearsay rule.....	24
b. US Bank proved mailing of the Breach Letter.....	27
CONCLUSION.....	30
CERTIFICATE OF SERVICE.....	31
CERTIFICATE OF COMPLIANCE.....	31

TABLE OF CITATIONS

Cases

<i>Basulto v. Hialeah Auto.</i> 141 So.3d 1145, 1155 (Fla. 2014).....	5
<i>Stone v. BankUnited</i> 115 So.3d 411, 412 (Fla. 2d DCA 2013).....	5
<i>Bare Necessities, Inc. v. Estrada</i> 02 So.2d 184, 185 (Fla. 3d DCA 2005).....	5
<i>Toler v. Bank of America</i> 78 So.3d 699, 701 (Fla. 4th DCA 2012).....	6
<i>Booker v. State</i> 397 So.2d 910, 914 (Fla. 1981).....	6
<i>Lamarr v. Lang</i> 796 So. 2d 1208, 1209 (Fla. 5th DCA 2001)	6
<i>Connell v. Guardianship of Connell</i> 476 So. 2d 1381, 1382 (Fla. 1st DCA 1985).....	6
<i>Dale v. Ford Motor Co..</i> 409 So. 2d 232, 234 (Fla. 1st DCA 1982).....	7
<i>Arsali v. Chase Home Fin. LLC.</i> 121 So. 3d 511, 519 (Fla. 2013).....	7
<i>Canakaris v. Canakaris.</i> 382 So. 2d 1197, 1203 (Fla. 1980).....	7
<i>Fogarty v. Nationstar Mortg., LLC</i> 224 So. 3d 313, 315 (Fla. 5th DCA 2017).....	10
<i>Boyette v. BAC Home Loans Servicing, LP</i> 164 So. 3d 9, 10 (Fla. 2d DCA 2015).....	10

<i>Michel v. Bank of N.Y. Mellon</i> 91 So. 3d 981, 983-84 (Fla. 2d DCA 2016).....	10
<i>Hicks v. Wells Fargo Bank, N.A.</i> 178 So. 3d 957 (Fla 5 th DCA 2015).....	12
<i>Klebanoff v. Bank of N.Y. Mellon</i> 228 So. 3d 167 (Fla. 5th DCA 2017)	12
<i>Collazo v. HSBC Bank USA, N.A.</i> 213 So. 3d 1012 (Fla. 3d DCA 2016).....	13
<i>Bollettieri v. The Bank of New York Mellon</i> 198 So. 3d 1140, 1142-43 (Fla. 2d DCA 2016),	13, 14
<i>Allie v. Ionata</i> 503 So. 2d 1237, 1241-42 (Fla. 1987).....	15
<i>David v. Sun Fed. Sav. & Loan Ass’n</i> 461 So. 2d 93, 96 (Fla. 1984).....	15
<i>Singleton v. Greymar Associates</i> 882 So. 2d 1004 (Fla. 2004).....	15, 16, 17
<i>Olympia Mortg. Corp. v. Pugh</i> 774 So. 2d 863, 866-67 (Fla. 4th DCA 2000).....	16
<i>Star Funding Sols., LLC v. Krondes</i> 101 So. 3d 403 (Fla. 4th DCA 2012).....	17
<i>Nationstar Mortg., LLC v. Brown</i> 175 So. 3d 833, 834 (Fla. 1st DCA 2015).....	17
<i>Bartram v. U.S. Bank, N.A.</i> 41 Fla. L. Weekly 493 (Fla. 2016).....	17, 18, 19
<i>Evergrene Partners, Inc. v. Citibank, N.A., No.</i> 143 So. 3d 954 (Fla. 4th DCA June 25, 2014).....	18

<i>PNC Bank, N.A. v. Neal</i> 147 So. 3d 32, 32 (Fla. 1st DCA 2013).....	19, 20
<i>Torres v. Countrywide Home Loans, Inc.</i> 25 Fla. L. Weekly Fed. D270 (U.S. S.D. Fla. July 28, 2014).....	20
<i>Romero v. SunTrust Mortg., Inc.</i> 15 F. Supp. 3d 1279 (S.D. Fla. 2014).....	20
<i>Kaan v. Wells Fargo Bank, N.A.</i> 981 F. Supp. 2d 1271 (S.D. Fla. 2013)	20
<i>U.S. Bank, N.A. v. Diamond</i> 228 So. 3d 177 (Fla. 5th DCA 2017)	20
<i>Velden v. Nationstar Mortg., LLC</i> No. 5D16-3628, 2018 Fla. App. LEXIS 359 (5th DCA Jan. 12, 2018)	20
<i>Dorta v. Wilmington Tr. Nat'l Ass'n</i> 2014 U.S. Dist. LEXIS 41596	21
<i>Brown v. M & T Bank,</i> 183 So. 3d 1270, 1270-71 (Fla. 5th DCA 2016).....	21
<i>Cutler v. Hayes,</i> 818 F.2d 879, 888, 260 U.S. App. D.C. 230 (D.C. Cir. 1987).....	21, 22
<i>McCarney v. Ford Motor Co.,</i> 657 F.2d 230, 233 (8th Cir. 1981).....	22
<i>Batterman v. Wells Fargo Ag Credit Corp.</i> 802 P.2d 1112, 1118 (Colo. App. 1990).....	22
<i>Gilbert v. Nampa Sch. Dist. No. 131</i> 104 Idaho 137, 657 P.2d 1, 4 (Idaho 1983).....	22
<i>Fed. Home Loan Mortg. Corp. v. Schwartzwald</i> 134 Ohio St. 3d 13, 2012 Ohio 5017, 979 N.E.2d 1214, 1223 (Ohio 2012).....	22, 23

<i>Streicher v. United States Bank Nat'l Ass'n.</i> No. 14-cv-80265-KAM, 2016 U.S. Dist. LEXIS 33235 (S.D. Fla. Mar. 14, 2016).. <i>23</i>	
<i>Drady v. Hillsborough Cty. Aviation Auth.</i> 193 So. 2d 201, 205 (Fla. 2d DCA 1966)..... <i>23-24</i>	
Yisrael v. State 993 So. 2d 952, 956 (Fla. 2008)..... <i>26</i>	
<i>Degruipe v. Sprint Corp.</i> 279 F.3d 333, 337 (5th Cir. 2002)..... <i>27, 28</i>	
<i>United States v. McGlory,</i> 202 F.3d 664, 673 (3rd Cir. 2000)..... <i>28</i>	
<i>CitiMortgage, Inc. v. Hoskinson</i> 200 So. 3d 191, 192-93 (Fla. 5th DCA 2016)..... <i>28</i>	
Statutes and Other Authorities	
§ 90.803(6)(a) <i>25</i>	
Fla. R. Civ. P. 1.420(b) <i>23, 24</i>	

PRELIMINARY STATEMENT

U.S. Bank National Association, as Trustee for ARMT 2005-5, was the Plaintiff in the lower tribunal proceedings and is the Appellee before this Court. This party will hereinafter be referred to in this brief as “US Bank.” Virginia L. Warren and Ron Warren were the Defendants in the lower tribunal proceedings and are the Appellants before this Court. Virginia L. Warren and Ron Warren shall hereinafter be referred to in this brief as “Warren.” Citations to the record on appeal will be designated by the symbol “R.” followed by the applicable page number(s). Citations to the Trial Transcript will be designated by the symbol “T.” and the applicable page number(s), followed by the applicable line number(s).

STATEMENT OF THE CASE AND FACTS

US Bank argues that the statement of facts as presented by Warren is incomplete and therefore provides this statement of the case and facts for this honorable Court.

On January 26, 2005, Shannon E. Warren Jr., deceased, and Virginia L. Warren executed and delivered a Promissory Note and Mortgage in favor of Homesouth Mortgage Corporation. (R. 11-12, 16-33, 275-292). The Note contains one allonge from Homesouth Mortgage Corporation to SunTrust Mortgage, Inc. (R. 21, 280). The Note contains one endorsement from SunTrust Mortgage, Inc. to Blank. (R. 19, 278).

US Bank initiated the foreclosure proceedings by filing the Verified Complaint to Foreclose Residential Mortgage with the lower Court on July 30, 2015 seeking to foreclose its interest on the property located at 430 Marsh Point Circle, Saint Augustine, Florida 32080, which is currently owned by Warren. (R. 11-37). US Bank alleged a default under the terms of the note and mortgage for Warrens' failure to make the payment due on March 1, 2010, and all subsequent payments and Warren has not cured the default (R. 12). SunTrust Mortgage Inc., (hereinafter, "SunTrust") alleged itself, in its complaint, to be the servicer and attorney in fact for US Bank. (R. 12). US Bank attached to its Complaint a copy of the original note, mortgage, and copy of the Default Letter a/k/a Breach Letter a/k/a Notice of Intent to Foreclose (hereinafter "Breach Letter"). (R.11-37).

On February 16, 2017 the lower Court ordered Plaintiff to produce/answer Warrens' discovery requests and produce all trial exhibits intended for use at trial by end of business February 28, 2017. (R. 168). US Bank filed/served its Response to Defendants' Amended Notice to Produce and Amended Response to Request for Production on February 28, 2017. (R. 170-175).

Prior to the scheduled trial on March 29, 2017, the lower Court denied Warrens' Motion in Limine as to US Bank's payment history. (R. 256, T. 5 - 14). Warren argued the payment history at trial was substantively different from that of the payment history used during the deposition and the payment history being used

at trial should be restricted to the payment history produced for the deposition of US Bank's witness on March 20, 2018 or for the Trial Court to restrict the trial witness' testimony to that of the deposition. (T. 5 – 14). Warren further argued that US Bank's deponent, Lauren Allen (hereinafter, "Allen"), was unable to provide the default date based on the payment history during the deposition. (T. 10, lines 12 – 21). US Bank argued the payment history being used at trial was substantively the same document as that produced prior to the deposition and the only difference was its formatting so that the year appears on its own separate page. (T. 7 – 14). Furthermore, US Bank informed the lower Court that during the deposition Allen identified in the payment history the default date, principal, interest, and escrow amounts due on the loan. (T. 13, lines 15 – 25; T. 14, lines 1 – 8; R. 374). US Bank informed the Trial Court "[it] possesses both payment histories, we're ready to testify, however, substantively the document is the exact same document produced with a different spacing pattern. That's the only difference. And that spacing pattern is both for the Court, the defendant and for the plaintiff so that its more readily readable for all parties involved in the case." (T. 8, lines 12-19). The Trial Court denied Warrens' Motion in Limine as to Plaintiff's Payment History. (R. 256, T. 5 - 14).

On March 29, 2017, the trial Court held a Non-Jury trial, whereupon US Bank and Warren were afforded the opportunity to present testimony and evidence to the Court. US Bank entered six exhibits into evidence, which included, the Original

Note, the Mortgage, Limited Power of Attorney, Breach Letter, Payment History, and Pay4 Screen. (R. 275-328). During trial the witness for US Bank testified as to US Bank's standing, SunTrust's role as service for US Bank, the Warrens' default on the loan, creation and mailing of the breach letter, and the amount owed on the loan. The trial Court entered judgment in favor of US Bank on April March 29, 2017. (R. 259 - 262).

Warren filed a Motion for Rehearing on Final Judgment Entered March 29, 2017 on April 12, 2017. US Bank filed its Response in Opposition to Defendants' Motion for Rehearing on June 2, 2017. (R. 571 - 577). The lower Court denied Defendants' Motion for Rehearing on June 28, 2017. (R. 580).

Warren filed a Notice of Appeal, and this proceeding ensued. (R. 595).

SUMMARY OF ARGUMENT

The Trial Court properly entered Final Judgment of Foreclosure as all evidence was properly admitted and the foreclosure action was not barred by the statute of limitations or res judicata.

The Trial Court did not error in admitting US Bank's trial exhibits into evidence. The Trial Court has broad discretion when ruling on evidentiary matters. The witness had personal knowledge, training and experience in order to meet the standards required by the business record exception to the hearsay rule. (T. 23 – 25; 46, lines 13-22). The payment history entered as trial evidence did not prejudice

Warren as the document was substantively the same document produced by US Bank on February 28, 2017. (R. 170 - 172). Additionally the Breach Letter admitted into evidence was a document created by US Bank, by its servicer, SunTrust, and mailing was verified by SunTrust through its process and procedure and identification of the mailing stamp placed upon the letter after its creation. (T. 33 – 38). As such, US Bank's exhibits were properly admitted into evidence by the Trial Court and all damages were correctly accounted for within the Final Judgment.

The Trial Court correctly held the statute of limitations and res judicata inapplicable to this foreclosure action. US Bank's pleadings and evidence show a continuing default from March 1, 2010 and all subsequent payments. (R. 12; T. 36, lines 19 – 22).

STANDARD OF REVIEW

The lower court's findings of fact are not disturbed on appeal unless they are *clearly erroneous*. *Basulto v. Hialeah Auto.*, 141 So.3d 1145, 1155 (Fla. 2014). "When reviewing a judgment rendered after a nonjury trial, the trial court's findings of fact come to the appellate court with a presumption of correctness and will not be disturbed unless they are clearly erroneous." *Stone v. BankUnited*, 115 So.3d 411, 412 (Fla. 2d DCA 2013); *see also Bare Necessities, Inc. v. Estrada*, 902 So.2d 184, 185 (Fla. 3d DCA 2005) ("when competent, substantial evidence supports a trial court's ruling, the appellate court will not second-guess the trial court").

This court reviews all pure questions of law *de novo*. *Toler v. Bank of America*, 78 So.3d 699, 701 (Fla. 4th DCA 2012).

This Court reviews admissibility of evidence by the abuse of discretion standard. *Booker v. State*, 397 So.2d 910, 914 (Fla. 1981). Generally, under this standard, "discretion is abused only where no reasonable person would take the view adopted by the trial court." *Toler*, 78 So. 3d at 702.

ARGUMENT

I. THE TRIAL COURT PROPERLY ADMITTED THE PAYMENT HISTORY AS EVIDENCE AT TRIAL.

The payment history entered as evidence during trial was within the discretion of the Trial Court and not prejudicial to Warren as it was substantively the same document as produced prior to the deposition. Furthermore, US Bank's deponent clearly identified the amounts due and owing on the loan at the time of deposition.

"Generally, rulings on evidentiary matters are within the sound discretion of the trial court." *Lamarr v. Lang*, 796 So. 2d 1208, 1209 (Fla. 5th DCA 2001) (citing *Connell v. Guardianship of Connell*, 476 So. 2d 1381, 1382 (Fla. 1st DCA 1985)). "A trial court has wide discretion in determining the admissibility of evidence, and, absent an abuse of discretion, the trial court's ruling on evidentiary matters will not be overturned." *LaMarr v. Lang*, 796 So. 2d 1208, 1209 (Fla. 5th DCA 2001) (citing *Dale v. Ford Motor Co.*, 409 So. 2d 232, 234 (Fla. 1st DCA 1982)). "If reasonable

men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. The discretionary ruling of the trial judge should be disturbed only when his decision fails to satisfy this test of reasonableness." *Arsali v. Chase Home Fin. LLC*, 121 So. 3d 511, 519 (Fla. 2013) (citing *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980)).

Warren argues US Bank's payment history was produced late and was highly prejudicial as the deponent was unable to provide answers to Warrens' questions regarding the payment history during the deposition. However, during the deposition, Allen produced detailed responses regarding payments made, hazard insurance payments/amounts due, tax payments/amounts due, transaction codes (and their meaning), as well as the total amounts due and owing on the loan. (R. 353 - 370). Furthermore, Allen, reading from the payment history, clearly stated the default date, the monthly payment amount, the interest rate, the current principal balance due, and the escrow balance due:

Q: On the face of the payment history, does it identify the default date for this loan?

A: Yes, it does.

Q: What is the default date?

A: March 1 of 2010.

Q: Does it state the amount for the payment?

A: The total payment amount is – yes, it does.

Q: And what is that amount?

A: \$1846.47.

Q: And what is the interest rate as noted by the payment history?

A: 3.25

Q: And what is the current principal balance due based on the payment history?

A: \$475,967.79.

Q: And does it also reflect a current negative escrow balance?

A: Yes, of \$42,370.03.

(R. 374, lines 5 – 22).

Prior to the trial, the Trial Court heard Warrens’ Motion in Limine to preclude US Bank from introducing a differently spaced payment history alleging its highly prejudicial nature. US Bank informed the Trial Court that during the deposition Allen identified in the payment history the default date, principal, interest, and escrow amounts due on the loan as shown above. (T. 13, lines 15 – 25; T. 14, lines 1 – 8; R. 374). Additionally, US Bank informed the Trial Court “[it] possesses both payment histories, we’re ready to testify, however, substantively the document is the exact same document produced with a different spacing pattern. That’s the only difference. And that spacing pattern is both for the Court, the defendant and for the plaintiff so that its more readily readable for all parties involved in the case.” (T. 8,

lines 12-19). The lower Court denied Warrens' Motion in Limine as to Plaintiff's Payment History. (R. 256, T. 5 - 14).

The Trial Court, having heard argument of both parties, and being presented with the facts that Allen was previously deposed and gave in depth testimony regarding the loan based on the payment history, made a reasonable determination in allowing the subsequent payment history to be entered as evidence and used to prove US Banks' damages. For the foregoing reasons, the Trial Court's ruling on this issue should affirmed.

II. PLAINTIFF PROVED ITS DAMAGES AND INTEREST RATE AT TRIAL.

The Trial Court properly admitted the payment history as evidence at trial and US Bank properly published the amounts due and owing on Warrens' loan through Allen's testimony regarding the payment history. Allen's testimony for US Bank at the time of trial stated:

Q: What is the default date of this loan?

A: 3/1/2010.

Q: What is the principal amount based on this payment history?

A: \$475,967.79.

Q: And does this document also state what the escrow balance is?

A: Yes. This history says it's \$42,370.03.

Q: Does this document also state what the interest rate is of the loan?

A: It does. It says its 3.25%.

(T. 47, lines 18 – 25; T. 48, lines 4 – 6).

Allen further identified taxes paid through the date of default, hazard insurance paid through the date of default, late fees, property preservation fees, and all other expenditures from the time of default. (T. 48 – 52). US Bank presented all evidence of the amounts owed on Warrens' loan through Allen's testimony regarding the payment history and admission of the payment history and Pay4 Screen as evidence.

US Bank clearly identified the interest rate of the adjustable rate note in order to collect all interest charged thereon. Values awarded in a foreclosure judgment must be based on competent, substantial evidence." *Fogarty v. Nationstar Mortg., LLC*, 224 So. 3d 313, 315 (Fla. 5th DCA 2017) (citing *Boyette v. BAC Home Loans Servicing, LP*, 164 So. 3d 9, 10 (Fla. 2d DCA 2015)). It is incumbent upon US Bank to show interest rate changes to prove damages as the note in this case was an Adjustable Rate Note. See *Michel v. Bank of N.Y. Mellon*, 191 So. 3d 981, 983-84 (Fla. 2d DCA 2016) (reversing an award of interest where "[t]he bank did not introduce records in support of the claimed interest or the actual amount contained in the final judgment" and failed to demonstrate "what the applicable interest rate was from the time of default or how much interest accrued from that point forward").

The Trial Court admitted US Bank's Pay4 Screen evidence which clearly indicated that the interest charged from 2/1/10 to 2/1/16 was 2.875%, from 2/1/16 to 2/1/17 was 3.375%, and from 2/1/17 through trial the interest charged was 4.00%.

(R. 328). Allen further identified the rate of interest at the time of trial based on the Pay4 Screen:

Q: Does the Pay4 screen currently identify the current interest rate of the loan?

A: Yes, it shows each year from 2010 to '16 and '17, the interest rate changes.

Q: What is the current interest rate based on that – on the Pay4 screen?

A: For 2/1 of 2017, it would change to 4 percent.

(T. 55, lines 3 – 6).

At the time of presentation of the Final Judgment to Allen, Allen confirmed the amounts listed within the Final Judgment, including the interest rate were correct based on her review of the payment history and Pay4 screen. (T. 57, lines 8 – 25; T. 58, line 1). For the foregoing reasons, the Trial Court's entry of Final Judgment based on the damages proven from the payment history and Pay4 Screen should be affirmed.

III. THE TRIAL COURT'S RULING THAT THE STATUTE OF LIMITATIONS IS INAPPLICABLE TO THIS CASE SHOULD BE AFFIRMED.

a. The statute of limitations is inapplicable to this case.

The Trial Court's ruling that the statute of limitations is inapplicable to this case was proper as US Bank pled a continuing date of default beginning on March 1, 2010 and all subsequent payments thereto. As such, Warrens' argument this case is similar to *Hicks v. Wells Fargo Bank, N.A.*, 178 So. 3d 957 (Fla. 5th DCA 2015) is contrary to the pleadings and evidence.

US Bank's Verified Complaint to Foreclose Residential Mortgage filed July 30, 2015, pled:

“There is a default under the terms of the Note and Mortgage for failure by the original mortgagor, the current property owner, or anyone on behalf of those liable on the Note and Mortgage to make the payment due on March 1, 2010, *and all subsequent payments.*” [emphasis added] (R. 12).

Additionally, Allen testified at trial:

Q: Based on the -- based on this [Breach] letter, after mailing it out, was this document – was a default ever cured by the defendants?

A: No.

(T. 36, lines 19 – 22).

This case is similar to *Klebanoff v. Bank of N.Y. Mellon*, 228 So. 3d 167 (Fla. 5th DCA 2017) where this Court affirmed Final Judgment in favor of the Bank, where the Bank's complaint, filed June 26, 2014, alleged “...a default under the terms of the Note and Mortgage for the March 1, 2009 payment *and all subsequent payments due thereafter.*”

This Court distinguished its previous holding in *Hicks v. Wells Fargo Bank, N.A.*, 178 So. 3d 957 (Fla. 5th DCA 2015), where the parties proceeded to trial on stipulated facts that referenced only the initial default, which was more than five years prior to the filing of the Complaint. The Court then explained how the Third District's holding in *Collazo v. HSBC Bank USA, N.A.*, 213 So. 3d 1012 (Fla. 3d

DCA 2016), where the parties also proceeded to trial on a single default, more than five years from the filing of the complaint, was also factually distinguishable.

Hicks is consistent with the Third District Court of Appeal's later opinion in *Collazo v. HSBC Bank USA, N.A.*, 213 So. 3d 1012 (Fla. 3d DCA 2016). In *Collazo*, our sister court similarly reversed a final judgment of foreclosure because the complaint was filed more than five years after the alleged payment default. 213 So. 3d at 1012. Notably, in his concurring opinion, Judge Shepherd emphasized that the bank had proceeded at trial only as to the initial default:

[T]he foreclosure action in the case before us was commenced on January 24, 2014, based on a default in payment alleged to have occurred on April 1, 2008. Counsel for HSBC insisted on trying the case on the basis of that default. After hearing the evidence, the trial court entered final judgment and calculated all amounts due and payable based upon that default date over borrowers' objections and involuntary dismissal motions. In short, unlike counsel for the lenders in both the [*U.S. Bank National Association v. Bartram*, 140 So. 3d 1007 (Fla. 5th DCA), review granted, 160 So. 3d 892 (Fla. 2014) and *Deutsche Bank Trust Company Americas v. Beauvais*, 188 So. 3d 938 (Fla. 3d DCA 2016), proceeding stayed, No. SC16-732 (Fla. May 31, 2017)] cases, who circumvented the statute of limitations in those cases by alleging a default within the five-year limitation period, counsel for HSBC, when challenged, doubled down on a stale default outside the limitation period.

Id. at 1013-14 (Shepherd, J., concurring).

By contrast, in the instant case, the Bank both alleged and proved that the Klebanoffs had defaulted on each and every mortgage payment from March 1, 2009, and onward. Because the Bank alleged and proved missed payments within the five years prior to the filing of its complaint, its action was not barred by the statute of limitations. See *Bollettieri Resort Villas Condo. Ass'n v. Bank of N.Y. Mellon*, 198 So. 3d 1140, 1142-43 (Fla. 2d DCA 2016), review granted, No. SC16-1680 (Fla. Nov. 2, 2016) (holding that although mortgagor's initial default occurred more than five years prior to bank's foreclosure complaint, bank's allegation that mortgage was currently in default and that no

payments had been made since initial default was sufficient to establish that foreclosure could be based on any of missed payments since initial breach, and was therefore not barred by applicable five-year statute of limitations); see also *Dorta v. Wilmington Tr. Nat'l Ass'n*, 25 Fla. L. Weekly Fed. D267, 2014 U.S. Dist. LEXIS 41596 (M.D. Fla. Mar. 24, 2014) ("While [mortgagee] may be barred from seeking foreclosure based on defaults more than five years old, it is not barred from seeking foreclosure or from invoking its right to accelerate the entire indebtedness based on more recent defaults . . ."); *Bartram v. U.S. Bank Nat'l Ass'n*, 211 So. 3d 1009, 1011 (Fla. 2016) ("Once there were future defaults, however, the Bank had the right to file a subsequent foreclosure action—and to seek acceleration of all sums due under the note—so long as the foreclosure action was based on a subsequent default, and the statute of limitations had not run on that particular default.").

As a result of its decision in *Klebanoff*, this Court held that *Hicks* is no longer in conflict with the Second District's opinion in *Bollettieri*. Accordingly, on October 12, 2017, the Supreme Court of Florida entered an order relinquishing jurisdiction in *Bollettieri v. The Bank of New York Mellon*, Case No.: SC16-1680 (Fla. October 12, 2017).

In this instant case, just as in *Klebanoff v. Bank of N.Y. Mellon*, 228 So. 3d 167 (Fla. 5th DCA 2017), US Bank proved Warrens' default from March 1, 2010 and all subsequent payments. For the foregoing reasons, the Trial Court's entry of Final Judgment, ruling the statute of limitations inapplicable to the instant case, should be affirmed.

b. US Bank is entitled to recover all amounts due and owing.

US Bank is entitled to accelerate the entire debt due on the loan. Statutes of limitation are procedural and do not affect the underlying substantive rights and obligations of the parties. *Allie v. Ionata*, 503 So. 2d 1237, 1241-42 (Fla. 1987). Repayment of the mortgage debt “goes to the heart of the agreement between a mortgagor and mortgagee.” *David v. Sun Fed. Sav. & Loan Ass’n*, 461 So. 2d 93, 96 (Fla. 1984).

The mortgage at issue provides in paragraph 1 that “Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and charges due under the Note...” (R.282). The Note is defined under the mortgage as “...the promissory note signed by Borrower and dated January 26, 2005...Borrower owes Lender Four Hundred Seventy-Six Thousand and no/100 Dollars (U.S. \$476,000.00) plus interest. (R. 281). Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than February 01, 2035.” (R. 281). Accordingly, the statute of limitations does not run against installments. It runs against the causes of action for failure to pay those installments.

The Florida Supreme Court has recognized that a note securing a mortgage creates liability for a total amount of principal and interest, and that the borrower has an ongoing liability for the entire amount of the indebtedness. *Singleton v. Greymar Associates*, 882 So. 2d 1004 (Fla. 2004) (emphasis added). In *Singleton*, a

mortgagee's foreclosure action was dismissed for failure for them to appear at a case management conference and the mortgagee later brought a second foreclosure action based on defaults that occurred after the defaults alleged in the first action. Both the trial court and Fourth DCA rejected the mortgagor's argument that the second suit was barred by res judicata. *Id.* The Florida Supreme Court went on to state, due to this ongoing liability, a subsequent foreclosure action is entirely proper "when [the] second and separate action for foreclosure is sought for a default that involves a separate period of default from the one alleged in the first action." *Singleton*, 882 So. 2d at 1006-07. An "acceleration and foreclosure predicated upon subsequent and different defaults presents a separate and distinct issue" than a foreclosure action and acceleration based on the same default at issue in the first foreclosure action. *Id.* (citing *Olympia Mortg. Corp. v. Pugh*, 774 So. 2d 863, 866-67 (Fla. 4th DCA 2000) (holding that an acceleration of debt in a mortgage foreclosure action did not place future installments at issue allowing the mortgagee to proceed with a third foreclosure action, filed on October 13, 1998 alleging a default date of May 1, 1995, after the first two had been voluntarily dismissed on February 16, 1998 and May, 28, 1998, respectively)).

The *Singleton* court concluded that because of "the unique nature of the mortgage obligation and the continuing obligations of the parties in that relationship," an "adjudication denying acceleration and foreclosure" does not bar

subsequent foreclosure actions based on separate and distinct defaults. See *Id.* at 1007. As the Fourth District explained, under *Singleton*, a “new default, based on a different act or date of default not alleged in the dismissed action, creates a new cause of action.” *Star Funding Sols., LLC v. Krondes*, 101 So. 3d 403 (Fla. 4th DCA 2012) (emphasis added). That is because, as the First District has also explained, this Court’s “analysis in *Singleton* recognizes that a note securing a mortgage creates liability for a total amount of principal and interest, and that the lender’s acceptance of payments in installments does not eliminate the borrower’s ongoing liability for the entire amount of the indebtedness.” *Nationstar Mortg., LLC v. Brown*, 175 So. 3d 833, 834 (Fla. 1st DCA 2015).

The Florida Supreme Court recently re-emphasized the *Singleton* decision that each new default presents a new separate cause of action in *Bartram v. U.S. Bank, N.A.*, 41 Fla. L. Weekly 493 (Fla. 2016). In *Bartram*, the Court answered a very limited certified question:

DOES ACCELERATION OF PAYMENTS DUE UNDER A RESIDENTIAL NOTE AND MORTGAGE WITH A REINSTATEMENT PROVISION IN A FORECLOSURE ACTION THAT WAS DISMISSED PURSUANT TO RULE 1.420(B), FLORIDA RULES OF CIVIL PROCEDURE, TRIGGER APPLICATION OF THE STATUTE OF LIMITATIONS TO PREVENT A SUBSEQUENT FORECLOSURE ACTION BY THE MORTGAGEE BASED ON PAYMENT DEFAULTS OCCURRING SUBSEQUENT TO DISMISSAL OF THE FIRST FORECLOSURE SUIT? *Id.*

In answering this narrow certified question, the Court held a lender is not barred from filing a subsequent foreclosure action based on a default after a first foreclosure action is involuntarily dismissed, provided the subsequent default occurred within five years of the new foreclosure action.

In *Bartram*, almost six years after the Bank filed its foreclosure complaint and a year after the Bank dismissed the initial foreclosure action, Bartram filed a cross claim against the Bank in a separate action. Bartram's cross claim sought a declaratory judgment to cancel the Mortgage and to quiet title to the Property, asserting that the statute of limitations barred the Bank from bringing any subsequent foreclosure action. *Id.* The trial court granted Bartram's motion for summary judgment, quieted title, found the Bank had no further ability to enforce its rights under the note and Mortgage that were the subject matter of the Bank's dismissed foreclosure action, and cancelled the note and Mortgage. On appeal before the Fifth DCA, the Bank relied on the decision in *Singleton* for its position that the trial court's dismissal of the initial foreclosure action "nullified [the Bank's] acceleration of future payments; accordingly, the cause of action on the accelerated payments did not accrue and the statute of limitations did not begin to run on those payments, at least until default occurred on each installment." *Id.* (emphasis added).

On certified question from the Fifth DCA, the Florida Supreme Court analyzed and reaffirmed its prior holding in *Singleton* stating "[w]hile a foreclosure

action with an acceleration of the debt may bar a subsequent foreclosure action based on the same event of default, *it does not bar subsequent actions and acceleration based upon different events of default.*" Id. (emphasis added) (citing *Evergrene Partners, Inc. v. Citibank, N.A.*, No., 143 So. 3d 954 (Fla. 4th DCA June 25, 2014) (holding "the trial court properly dismissed an owner's action to cancel a lender's mortgages under § 95.281(1), Fla. Stat. (2012) as untimely because the lender's voluntary dismissal of a foreclosure action did not adjudicate the claims of acceleration and subsequent acts of default on their merits and *any acts of default still within the statute of limitations could be raised in a subsequent suit*") (emphasis added)). Thus, the answer to the certified question had to be in the negative since any default post the 2011 dismissal would clearly be within the statute of limitations. It is clear the Bartram holding merely confirms that the statute of limitations has not run on all of the payments due pursuant to the note, and the mortgage is still enforceable based upon subsequent instances of default so long as those defaults are within the statute of limitations.

Similarly, in *PNC Bank, N.A. v. Neal*, 147 So. 3d 32, 32 (Fla. 1st DCA 2013), the First District held that an initial foreclosure action that sought acceleration and was dismissed with prejudice did not bar the mortgagee from "instituting a new foreclosure action based on a different act or a new date of default not alleged in the dismissed action." Likewise, in *Torres v. Countrywide Home Loans, Inc.*, 25 Fla. L.

Weekly Fed. D270 (U.S. S.D. Fla. July 28, 2014), the court noted that "each payment default that is less than five years old creates a basis for a subsequent foreclosure or acceleration action." See also *Romero v. SunTrust Mortg., Inc.*, 15 F. Supp. 3d 1279 (S.D. Fla. 2014) (holding that the installment nature of the note remained in effect after dismissal of a foreclosure action where the mortgagee had sought acceleration); *Kaan v. Wells Fargo Bank, N.A.*, 981 F. Supp. 2d 1271 (S.D. Fla. 2013).

While US Bank acknowledges this Court's held in *U.S. Bank, N.A. v. Diamond*, 228 So. 3d 177, 178 (Fla. 5th DCA 2017) and *Velden v. Nationstar Mortg., LLC*, No. 5D16-3628, 2018 Fla. App. LEXIS 359 (5th DCA Jan. 12, 2018) that the mortgagee may not seek damages outside of the five year statute of limitations period, but seeks reversal of those decisions based on the preceding case law and Judge Lambert's concurring opinion within *Velden*:

I also agree that the majority opinion is consistent with the recent precedent from this court [*4] that is cited in the opinion, providing that monies owed due to defaults that occurred more than five years prior to the filing date of the lawsuit must be excluded from the foreclosure judgment. However, if I were writing on a clean slate, I would not exclude these sums from the judgment and would affirm the final judgment of foreclosure for the entire balance owed on the thirty-year note at issue.

Id. at 3-4.

Just as was the case in *Velden*, US Bank's Mortgage contained an optional acceleration clause and US Bank has the opportunity to accelerate the loan upon default any time within the date of maturity. (R. 287). As such, based on the

foregoing decisions and concurring opinion, this Court should not seek to curtail the contractual rights of US Bank in seeking amounts owed on the loan.

Warrens' position that US Bank is not entitled to recover amounts that were due and owing more than five years prior to the date the Complaint was filed is without support. As the United States District Court, Middle District of Florida, held in *Dorta v. Wilmington Tr. Nat'l Ass'n*, "if the mortgagee's foreclosure action is unsuccessful for whatever reason, the mortgagee still has the right to file subsequent foreclosure actions—and to seek acceleration of the entire debt—so long as they are based on separate defaults." 2014 U.S. Dist. LEXIS 41596 (emphasis added). For the foregoing reasons, the Trial Court's entry of Final Judgment, including all amounts proven as owed to US Bank, should be affirmed.

c. Res judicata is inapplicable to this case.

The instant action is not barred by res judicata because the prior case was dismissed based on a lack of standing and the dismissal was without prejudice. (R. 251).

Dismissal of a foreclosure action for lack of standing does not operate as an adjudication on the merits for purposes of res judicata. *Brown v. M & T Bank*, 183 So. 3d 1270, 1270-71 (Fla. 5th DCA 2016). See *Cutler v. Hayes*, 818 F.2d 879, 888, 260 U.S. App. D.C. 230 (D.C. Cir. 1987) ("Standing ranks amongst those questions of jurisdiction and justiciability not involving an adjudication on the merits, whose

disposition will not bar relitigation of the cause of action originally asserted, but may preclude, or collaterally estop, relitigation of the precise issues of jurisdiction adjudicated." (footnotes omitted)); *McCarney v. Ford Motor Co.*, 657 F.2d 230, 233 (8th Cir. 1981) ("[A] dismissal based on standing is not "on the merits" and therefore will not act as a bar to a later suit."); *Batterman v. Wells Fargo Ag Credit Corp.*, 802 P.2d 1112, 1118 (Colo. App. 1990) (noting that dismissal of a suit for lack of standing is also not "on the merits" of the underlying substantive claim and thus does not bar relitigation of cause of action previously asserted based on res judicata); *Gilbert v. Nampa Sch. Dist. No. 131*, 104 Idaho 137, 657 P.2d 1, 4 (Idaho 1983) (holding that prior dismissal for lack of standing was not an adjudication on the merits under language identical to rule 1.420(b); subsequent suit not barred by [*1271] res judicata); *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St. 3d 13, 2012 Ohio 5017, 979 N.E.2d 1214, 1223 (Ohio 2012) ("The lack of standing at the commencement of a foreclosure action requires dismissal of the complaint; however, that dismissal is not an adjudication on the merits and is therefore without prejudice. Because there has been no adjudication on the underlying indebtedness, our dismissal has no effect on the underlying duties, rights, or obligations of the parties." (internal citation omitted)).

Additionally, the South District held in *Streicher v. United States Bank Nat'l Ass'n.*, No. 14-cv-80265-KAM, 2016 U.S. Dist. LEXIS 33235, at *29 (S.D. Fla. Mar. 14, 2016):

Rule 1.420(b) excepts certain inherently non-merits based dismissals, including those for lack of jurisdiction, from the default rule that involuntary dismissals are adjudications on the merits. The Court concludes that the reference to dismissals for lack of jurisdiction in Rule 1.420(b) encompasses dismissals for lack of standing. Therefore, the dismissal for lack of standing in the prior foreclosure action was not an adjudication on the merits and consequently has no res judicata effect as a matter of law.

The prior foreclosure action, St. Johns County Case number CA14-0733, was dismissed without prejudice as the Dismissal Order merely reflects the case was dismissed without leave to amend and does not state the case was dismissed with prejudice. (R. 251).

“The dismissal of a cause of action can either be with prejudice, same being an adjudication on the merits, or without prejudice, which is not an adjudication on the merits and is no bar to a subsequent suit on the same cause of action.” *Drady v. Hillsborough Cty. Aviation Auth.*, 193 So. 2d 201, 205 (Fla. 2d DCA 1966).

Additionally, Florida Rules of Civil Procedure 1.420(b) states:

Any party may move for dismissal of an action or of any claim against that party for failure of an adverse party to comply with these rules or any order of court. Notice of hearing on the motion shall be served as required under

rule 1.090(d). After a party seeking affirmative relief in an action tried by the court without a jury has completed the presentation of evidence, any other party may move for a dismissal on the ground that on the facts and the law the party seeking affirmative relief has shown no right to relief, without waiving the right to offer evidence if the motion is not granted. The court as trier of the facts may then determine them and render judgment against the party seeking affirmative relief or may decline to render judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication on the merits.

As lack of standing has been determined to be an extension of a claim of lack of jurisdiction and the order of dismissal in St. Johns County Case number CA14-073 does not state dismissal is with prejudice, there has been no ruling on the merits of the prior action and res judicata is inapplicable to this instant case. For the foregoing reasons, the Trial Court denial of Warrens' Motion for Involuntary Dismissal based on res judicata, should be affirmed.

IV. THE TRIAL COURT PROPERLY ADMITTED THE BREACH LETTER AS EVIDENCE.

- a. US Bank's Breach Letter was properly admitted under the business records exception to the hearsay rule.**

US Bank's Breach Letter was properly admitted into evidence at trial as Allen's testimony far exceeds the requirements of the business records exception to the hearsay rule.

Florida Statute Section 90.803(6)(a), provides:

(a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or as shown by a certification or declaration that complies with paragraph (c) and s. 90.902(11), unless the sources of information or other circumstances show lack of trustworthiness.

§ 90.803(6)(a), Fla. Stat. (2013).

Hearsay evidence is admissible under the business records exception to the hearsay rule if the following elements are proven:

(1) the record was made at or near the time of the event; (2) was made by or from information transmitted by a person with knowledge; (3) was kept in the ordinary course of a regularly conducted business activity; and (4) that it was a regular practice of that business to make such a record.

Yisrael v. State, 993 So. 2d 952, 956 (Fla. 2008).

Allen's testimony exceeds the elements to establish a business record exception to the hearsay rule in that Allen stated:

Q: Handing you a fifth document. Can you please identify that for the court?

A: This is a copy of the breach letter. It's also known as the demand letter.

Q: Is this document – is this document regularly created by a person with knowledge of the default?

A: Yes.

Q: Would that document be created and maintained within SunTrust Mortgage Systems?

A: Yes.

Q: Would it be a document that is regularly created as business record of SunTrust Mortgage?

A: Yes.

Q: Would that document be created and maintained within SunTrust Mortgage Systems?

A: Yes.

Q: Would it be a document that is regularly created as a business record of SunTrust Mortgage?

A: Yes.

(T. 33 lines 20 -25; T. 34, line 1).

Furthermore, Allen testified the breach letter is automatically created at the time of default by SunTrust Mortgage's automated system subject to quality control checks:

Q: You previously testified that RR Donnelley prints these letters and mails them – and mails them out. How does RR Donnelley – what is SunTrust Mortgage's process and procedure to give that document to RR Donnelley?

A: SunTrust, they create the letter. *The letter is automatically generated. If the loan meets all of the default requirements, then the – it will generate a letter such as this.* And then the letter, once it's generated, it automatically goes straight to RR Donnelley to print, and the RR Donnelley will stamp it with a certified stamp up top, and then they mail it out. And once they do all that, then they send us back a copy that looks similar to this with a stamp on it and then it gets imaged into our system. [emphasis added]

Q: Is the letter automatically generated based on a default in the loan?

A: Yes.

Q: Is there a quality control check for the default procedure at SunTrust Mortgage?

A: Yes. If the loan does not meet the criteria, then the – then a letter would not be sent out. It has to meet specific criteria in order for it to be sent out. If it doesn't then it has to be reviewed by a lead.

Q: And do you know what department would handle the default letters?

A: The collections department. It will tell you on the letter, collections department handles them.

(T. 36, lines 23 – 25; T. 37, lines 1 – 12; T. 37, lines 15 – 17; T. 38, lines 2 – 12).

Allen's testimony clearly proved that SunTrust created the Breach letter at the time of default, it was created by a person of knowledge of the default, was kept in the ordinary course of a regularly conducted business activity for SunTrust, and that it was a regular practice of SunTrust to make such a record. For the foregoing reasons, the Trial Court's admission of the Breach Letter should be affirmed.

b. US Bank proved mailing of the Breach Letter.

US Bank proved it mailed the Breach Letter through the creation of the Breach Letter, the certified mail receipt stamped atop of the document after its creation, Allen's testimony regarding the use of RR Donnelley as the vendor that prints/mailed this document, and testimony regarding SunTrust's quality control process for the same. (T. 36, lines 23 – 25; T. 37, lines 1 – 12; T. 37, lines 15 – 17; T. 38, lines 2 – 12).

Certified mail is a form of first class mail. *Degrise v. Sprint Corp.*, 279 F.3d 333, 337 (5th Cir. 2002) (Sprint sent Degrise's notification letter via certified mail-

-a special type of first class mail whose primary purpose is to provide evidence of an individual's receipt of delivery.) See *United States v. McGlory*, 202 F.3d 664, 673 (3rd Cir. 2000) (citations omitted); see also *United States Postal Service, Domestic Mail Manual*, Issue 54, § 912.1.2 (12/2/1999) (on the Web at <http://pe.usps.gov/>) ("Only mailable matter on which postage is paid at a First-Class mail rate (including Priority Mail) may be accepted as certified mail")).

In *CitiMortgage, Inc. v. Hoskinson*, 200 So. 3d 191, 192-93 (Fla. 5th DCA 2016) this Court held:

A rebuttable presumption of mailing can be shown through evidence of an organization's routine practice. The witness testified to her personal knowledge of Appellant's general practice of delivering breach letters to the mail room, where they are collected by the postal service. Although the witness did not see the postal carrier collect the mail on the date in question, she had seen the carrier collect the mail at other times. This testimony created a rebuttable presumption that the letter was mailed in accordance with Appellant's general practice. Appellees did not rebut that presumption.

Allen testified about her knowledge of SunTrust's routine practices in creation and mailing of the Breach Letter:

Q: You previously testified that RR Donnelley prints these letters and mails them – and mails them out. How does RR Donnelley – what is SunTrust Mortgage's process and procedure to give that document to RR Donnelly?

A: SunTrust, they create the letter. The letter is automatically generated. If the loan meets all of the default requirements, then the – it will generate a letter

such as this. And then the letter, once it's generated, it automatically goes straight to RR Donnelley to print, and the RR Donnelley will stamp it with a certified stamp up top, and then they mail it out. And once they do all that, then they send us back a copy that looks similar to this with a stamp on it and then it gets imaged into our system.

(T. 36, lines 23 – 25; T. 37, lines 1 – 12)

This evidence presented by US Bank was un rebutted by Warren. Furthermore, as certified mail is considered first class mail, US Bank proved the document was mailed as it was stamped with a certified mail receipt atop the document and Allen testified as to SunTrust's routine business practice in mailing the document. (T. 36, lines 23 – 25; T. 37, lines 1 – 12; T. 38, lines 2 – 12). Proof of receipt, as alleged by Warren, is not necessary as Paragraph 15 of the Mortgage states "Any notice to Borrower in connection with this Security Instrument shall be to have been given to Borrower when mailed by first class mail...." (R. 286). For the foregoing reasons, the Trial Court's ruling that US Bank's evidence demonstrated proof of mailing of the Breach Letter should be affirmed.

CONCLUSION

Warrens' statute of limitations/res judicata argument, as well as their arguments against US Bank's exhibits being admitted and lack of evidence of the damages sought in US Bank's Final Judgment, must all be denied. US Bank established with the Trial Court and has demonstrated to this Court that admission of the payment history was not prejudicial to Warren. Furthermore, US Bank proved the statute of limitations/res judicata arguments of Warren are inapplicable in this action as US Bank alleged/proved a continuous default and the dismissal of the prior case was not an adjudication on the merits as it was dismissed without prejudice. Moreover, US Bank's demonstrated its breach letter met the requirements of the business records exception to the hearsay rule and that certified mailing required only a showing of mailing the letter. Accordingly, this Court should affirm the Trial Court's order of Final Judgment of Foreclosure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief was served on February 12, 2018 by U.S. mail to: Nicole Moskowitz, 18305 Biscayne Blvd., Ste. 250, Aventura, FL 33160, and by Electronic Mail to: NLGLaw@yahoo.com and Marissa@neusteinlaw.com.

By: /s/ Christopher DelBene
Christopher DelBene, Esq. FBN: 96323

CERTIFICATE OF COMPLIANCE

This brief satisfies the requirements of rule 9.100.

By: /s/ Christopher DelBene
Christopher DelBene, Esq. FBN: 96323

CHRISTOPHER M. DELBENE

3412 S. Ravello Drive • St. Augustine, Florida 32092
(904) 392-3612 • cmdelbene@gmail.com

54. REFERENCES

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Jessica Morris, Esq.	208 N Laura St., Jacksonville, FL 32202	(412) 601-2429
William McDaniel, Esq.	1710 Shadowood Ln Ste 210 Jacksonville, FL	(904) 391-0030
Jared Loucel, Esq.	PO Box 601022, Jacksonville, FL 32260	(904) 436-5016
Kendra Taylor, Esq.	1201 S Orlando Ave., Winter Park, FL 32789	(407) 212-0057
Greg Hale, Esq.	3426 NW 43rd St., Ste. A, Gainesville, FL 32606	(352) 682-9564
Emilio Lenzi, Esq.	2001 NW 64th St #100, Fort Lauderdale, FL 33309	(954) 551-8983

Form W-2 Wage and Tax Statement 2018

18383

Copy C, for employees records

d Control number 0426-X126 000000080-000100		Void		e Employer's name, address, and ZIP code PHELAN HALLINAN DIAMOND & JONE 2001 NW 64TH ST SUITE 100 FT LAUDERDALE FL 33309		Department of the Treasury - Internal Revenue Service OMB No. 1545-0008	
b Employer's identification number 27-3620831		c Employee's social security number		1 Wages, tips, other compensation 79516.36		2 Federal income tax withheld 7651.03	
13 Statutory employee		Retirement plan		3 Social security wages 83800.62		4 Social security tax withheld 5195.63	
12 See Instrs. for Box 12 C 34.19 D 4284.26 DD 21684.84		14 Other		5 Medicare wages and tips 83800.62		6 Medicare tax withheld 1215.11	
				7 Social security tips		8 Allocated tips	
				10 Dependent care benefits 1923.00		11 Nonqualified plans	
				9 Verification Code e40c-0d40-3685-0255			
15 State Employer's state ID No.		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
						19 Local income tax	
						20 Locality name	

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Form W-2 Wage and Tax Statement 2018

d Control number		Void		e Employer's name, address, and ZIP code		Department of the Treasury - Internal Revenue Service OMB No. 1545-0008	
b Employer's identification number		a Employee's social security number		1 Wages, tips, other compensation		2 Federal income tax withheld	
13 Statutory employee		Retirement plan		3 Social security wages		4 Social security tax withheld	
12 See Instrs. for Box 12		14 Other		5 Medicare wages and tips		6 Medicare tax withheld	
				7 Social security tips		8 Allocated tips	
				10 Dependent care benefits		11 Nonqualified plans	
				9 Verification Code			
15 State Employer's state ID No.		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
						19 Local income tax	
						20 Locality name	

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Form W-2 Wage and Tax Statement 2018

d Control number		Void		e Employer's name, address, and ZIP code		Department of the Treasury - Internal Revenue Service OMB No. 1545-0008	
b Employer's identification number		a Employee's social security number		1 Wages, tips, other compensation		2 Federal income tax withheld	
13 Statutory employee		Retirement plan		3 Social security wages		4 Social security tax withheld	
12 See Instrs. for Box 12		14 Other		5 Medicare wages and tips		6 Medicare tax withheld	
				7 Social security tips		8 Allocated tips	
				10 Dependent care benefits		11 Nonqualified plans	
				9 Verification Code			
15 State Employer's state ID No.		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
						19 Local income tax	
						20 Locality name	

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Filing status: <input type="checkbox"/> Single <input type="checkbox"/> Married filing jointly <input checked="" type="checkbox"/> Married filing separately <input type="checkbox"/> Head of household <input type="checkbox"/> Qualifying widow(er)		HEATHER DELBENE	
Your first name and initial CHRISTOPHER M		Last name DELBENE	
Your standard deduction: <input type="checkbox"/> Someone can claim you as a dependent <input type="checkbox"/> You were born before January 2, 1954 <input type="checkbox"/> You are blind		Your social security number [REDACTED]	
If joint return, spouse's first name and initial		Last name	
Spouse standard deduction: <input type="checkbox"/> Someone can claim your spouse as a dependent <input type="checkbox"/> Spouse was born before January 2, 1954 <input checked="" type="checkbox"/> Full-year health care coverage or exempt (see inst.)		Spouse's social security number [REDACTED]	
<input type="checkbox"/> Spouse is blind <input type="checkbox"/> Spouse itemizes on a separate return or you were dual-status alien		Presidential Election Campaign (see inst.) <input type="checkbox"/> You <input type="checkbox"/> Spouse	
Home address (number and street). If you have a P.O. box, see instructions. 3412 S RAVELLO DRIVE		Apt. no.	
City, town or post office, state, and ZIP code. If you have a foreign address, attach Schedule 6. SAINT AUGUSTINE FL 32092		If more than four dependents, see inst. and ✓ here <input type="checkbox"/>	

Dependents (see instructions):		(2) Social security no.	(3) Relationship to you	(4) ✓ if qualifies for (see inst.):	
(1) First name	Last name			Child tax credit	Credit for other dependents
REAGAN	DELBENE	[REDACTED]	DAUGHTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NATHAN	DELBENE	[REDACTED]	SON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

Sign Here

Joint return?
See instructions.
Keep a copy for
your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.	
Your signature _____ Spouse's signature. If a joint return, both must sign.	Date _____ Date _____ Your occupation ATTORNEY Spouse's occupation _____
	If the IRS sent you an Identity Protection PIN, enter it here (see inst.) _____ If the IRS sent you an Identity Protection PIN, enter it here (see inst.) _____

Paid Preparer Use Only	Preparer's name MARIA CORNELL	Preparer's signature _____	PTIN P00777807	Firm's EIN 203823054	Check if: 3rd Party Designee <input type="checkbox"/> Self-employed <input type="checkbox"/>
	Firm's name ▶ H AND R BLOCK		Phone no. 904-230-8080		
	Firm's address ▶ 2849 COUNTY RD 210 W JACKSONVILLE FL 32259				

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions.

Form 1040 (2018)

Attach Form(s) W-2. Also attach Form(s) W-2G and 1099-R if tax was withheld.

Standard Deduction for-

- Single or married filing separately, \$12,000
- Married filing jointly or Qualifying widow(er), \$24,000
- Head of household, \$18,000
- If you checked any box under Standard deduction, see instructions.

Refund

Direct deposit?
See instructions.

Amount You Owe

1	Wages, salaries, tips, etc. Attach Form(s) W-2	DCB \$1923	1	81,439
2a	Tax-exempt interest	2a	2b	Taxable interest
3a	Qualified dividends	3a	3b	Ordinary dividends
4a	IRAs, pensions, and annuities	4a	4b	Taxable amount
5a	Social security benefits	5a	5b	Taxable amount
6	Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22		6	81,439
7	Adjusted gross income. If you have no adjustments to income, enter the amount from line 6; otherwise, subtract Schedule 1, line 36, from line 6		7	81,439
8	Standard deduction or itemized deductions (from Schedule A)		8	12,000
9	Qualified business income deduction (see instructions)		9	
10	Taxable income. Subtract lines 8 and 9 from line 7. If zero or less, enter -0-		10	69,439
11	a Tax (see instr.) 11,213 (check if any from: <input type="checkbox"/> Form(s) 8814 <input type="checkbox"/> Form 4972 <input type="checkbox"/> 3) b Add any amount from Schedule 2 and check here <input type="checkbox"/>		11	11,213
12	a Child tax credit/credit for other dependents 4,000 b Add any amount from Schedule 3 and check here <input type="checkbox"/>		12	4,000
13	Subtract line 12 from line 11. If zero or less, enter -0-		13	7,213
14	Other taxes. Attach Schedule 4		14	
15	Total tax. Add lines 13 and 14		15	7,213
16	Federal income tax withheld from Forms W-2 and 1099		16	7,651
17	Refundable credits: a EIC (see inst.) b Sch. 8812 c Form 8863 Add any amount from Schedule 5		17	
18	Add lines 16 and 17. These are your total payments		18	7,651
19	If line 18 is more than line 15, subtract line 15 from line 18. This is the amount you overpaid		19	438
20a	Amount of line 19 you want refunded to you. If Form 8888 is attached, check here <input type="checkbox"/> b Routing number c Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings d Account number		20a	438
21	Amount of line 19 you want applied to your 2019 estimated tax		21	
22	Amount you owe. Subtract line 18 from line 15. For details on how to pay, see instructions		22	
23	Estimated tax penalty (see instructions)		23	

Go to www.irs.gov/Form1040 for instructions and the latest information.

Form 1040 (2018)

#1

**SCHEDULE E
(Form 1040)**Department of the Treasury
Internal Revenue Service (99)**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

▶ **Attach to Form 1040, 1040NR, or Form 1041.**▶ **Go to www.irs.gov/ScheduleE for instructions and the latest information.**

OMB No. 1545-0074

2018Attachment
Sequence No. **13**

Name(s) shown on return

CHRISTOPHER M DELBENE

Your social security number

Part I **Income or Loss From Rental Real Estate and Royalties** **Note:** If you are in the business of renting personal property, use **Schedule C** or **C-EZ** (see instructions). If you are an individual, report farm rental income or loss from **Form 4835** on page 2, line 40.**A** Did you make any payments in 2018 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☒ No
B If "Yes," did you or will you file required Forms 1099? ☐ Yes ☐ No

1a	Physical address of each property (street, city, state, ZIP code)			
A	258 CASA SEVILLA AVENUE SAINT AUGUSTINE FL 32092			
B				
C				
1b	Type of Property (from list below)	2	For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.	
A	1	A	Fair Rental Days 365	Personal Use Days QJV
B		B		
C		C		

Type of Property:

- | | | | |
|---------------------------|------------------------------|-------------|--------------------|
| 1 Single Family Residence | 3 Vacation/Short-Term Rental | 5 Land | 7 Self-Rental |
| 2 Multi-Family Residence | 4 Commercial | 6 Royalties | 8 Other (describe) |

Income:		Properties:		A	B	C
3	Rents received	3		12,000		
4	Royalties received	4				
Expenses:						
5	Advertising	5				
6	Auto and travel (see instructions)	6				
7	Cleaning and maintenance	7				
8	Commissions	8				
9	Insurance	9		533		
10	Legal and other professional fees	10				
11	Management fees	11				
12	Mortgage interest paid to banks, etc. (see instructions)	12		3,143		
13	Other interest	13				
14	Repairs	14		1,100		
15	Supplies	15				
16	Taxes	16				
17	Utilities	17				
18	Depreciation expense or depletion	18		4,454		
19	Other (list) ▶ SEE ATTACHMENT	19		3,823		
20	Total expenses. Add lines 5 through 19	20		13,053		
21	Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21		-1,053		
22	Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22	()	()	()	()
23a	Total of all amounts reported on line 3 for all rental properties	23a		12,000		
b	Total of all amounts reported on line 4 for all royalty properties	23b				
c	Total of all amounts reported on line 12 for all properties	23c		3,143		
d	Total of all amounts reported on line 18 for all properties	23d		4,454		
e	Total of all amounts reported on line 20 for all properties	23e		13,053		
24	Income. Add positive amounts shown on line 21. Do not include any losses	24				
25	Losses. Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25	()			
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Schedule 1 (Form 1040), line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26				

For Paperwork Reduction Act Notice, see the separate instructions.

Schedule E (Form 1040) 2018

Paid Preparer's Due Diligence ChecklistEarned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC)
(including the Additional Child Tax Credit (ACTC) and Credit for Other Dependents (ODC)),
and Head of Household (HOH) Filing Status► **To be completed by preparer and filed with Form 1040, 1040NR, 1040SS, or 1040PR.**► **Go to www.irs.gov/Form8867 for instructions and the latest information.****2018**Attachment
Sequence No. 70

Taxpayer name(s) shown on return

CHRISTOPHER M DELBENE

Taxpayer identification number

Enter preparer's name and PTIN

MARIA CORNELL P00777807**Part I Due Diligence Requirements**

Please check the appropriate box for the credit(s) and/or HOH filing status claimed on this return and complete the related Parts I-V for the benefit(s), and/or HOH filing status claimed (check all that apply).	EIC <input type="checkbox"/>	CTC/ACTC/ODC <input checked="" type="checkbox"/>	AOTC <input type="checkbox"/>	HOH <input type="checkbox"/>
1 Did you complete the return based on information for tax year 2018 provided by the taxpayer or reasonably obtained by you?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		
2 If credits are claimed on the return, did you complete the applicable EIC and/or CTC/ACTC/ODC worksheets found in the Form 1040, 1040SS, 1040PR, or 1040NR instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	
3 Did you satisfy the knowledge requirement? To meet the knowledge requirement, you must do both of the following. • Interview the taxpayer, ask questions, and document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status. • Review information to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status and the amount of any credit(s) claimed	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		
4 Did any information provided by the taxpayer or a third party for use in preparing the return, or information reasonably known to you, appear to be incorrect, incomplete, or inconsistent? (If "Yes," answer questions 4a and 4b. If "No," go to question 5.)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
a Did you make reasonable inquiries to determine the correct, complete, and consistent information?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
b Did you document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
5 Did you satisfy the record retention requirement? To meet the record retention requirement, you must keep a copy of your documentation referenced in 4b, a copy of this Form 8867, a copy of any applicable worksheet(s), a record of how, when, and from whom the information used to prepare Form 8867 and any applicable worksheet(s) was obtained, and a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility for the credit(s) and/or HOH filing status or to compute the amount of the credit(s)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		
List those documents, if any, that you relied on. HEALTH CARE PROVIDER STATEMENT CHILD CARE PROVIDER RECORDS				
6 Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for the credit(s) and/or HOH filing status and the amount of any credit(s) claimed on the return if his/her return is selected for audit?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		
7 Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	
(If credits were disallowed or reduced, go to question 7a; if not, go to question 8.) a Did you complete the required recertification Form 8862?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	
8 If the taxpayer is reporting self-employment income, did you ask questions to prepare a complete and correct Form 1040, Schedule C?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> N/A	

For Paperwork Reduction Act Notice, see separate instructions.Form **8867** (2018)

Part II Due Diligence Questions for Returns Claiming EIC (If the return does not claim EIC, go to Part III.)

	EIC	CTC/ ACTC/ODC	AOTC	HOH
9a Have you determined that this taxpayer is, in fact, eligible to claim the EIC for the number of children for whom the EIC is claimed, or to claim the EIC if the taxpayer has no qualifying child? (Skip 9b and 9c if the taxpayer is claiming the EIC and does not have a qualifying child.)	<input type="checkbox"/> Yes <input type="checkbox"/> No			
b Did you ask the taxpayer if the child lived with the taxpayer for over half of the year, even if the taxpayer has supported the child the entire year?	<input type="checkbox"/> Yes <input type="checkbox"/> No			
c Did you explain to the taxpayer the rules about claiming the EIC when a child is the qualifying child of more than one person (tiebreaker rules)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			

Part III Due Diligence Questions for Returns Claiming CTC/ACTC/ODC (If the return does not claim CTC, ACTC, or ODC, go to Part IV.)

	EIC	CTC/ ACTC/ODC	AOTC	HOH
10 Have you determined that each qualifying person for the CTC/ACTC/ODC is the taxpayer's dependent who is a citizen, national, or resident of the United States?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
11 Did you explain to the taxpayer that he/she may not claim the CTC/ACTC if the taxpayer has not lived with the child for over half of the year, even if the taxpayer has supported the child, unless the child's custodial parent has released a claim to exemption for the child?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		
12 Did you explain to the taxpayer the rules about claiming the CTC/ACTC/ODC for a child of divorced or separated parents (or parents who live apart), including any requirement to attach a Form 8332 or similar statement to the return?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		

Part IV Due Diligence Questions for Returns Claiming AOTC (If the return does not claim AOTC, go to Part V.)

	EIC	CTC/ ACTC/ODC	AOTC	HOH
13 Did the taxpayer provide the required substantiation for the credit, including a Form 1098-T and/or receipts for the qualified tuition and related expenses for the claimed AOTC?			<input type="checkbox"/> Yes <input type="checkbox"/> No	

Part V Due Diligence Questions for Claiming HOH (If the return does not claim HOH filing status, go to Part VI.)

	EIC	CTC/ ACTC/ODC	AOTC	HOH
14 Have you determined that the taxpayer was unmarried or considered unmarried on the last day of the tax year and provided more than half of the cost of keeping up a home for the year for a qualifying person?				<input type="checkbox"/> Yes <input type="checkbox"/> No

Part VI Eligibility Certification

► You will have complied with all due diligence requirements for claiming the applicable credit(s) and/or HOH filing status on the return of the taxpayer identified above if you:

- Interview the taxpayer, ask adequate questions, document the taxpayer's responses on the return or in your notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and/or HOH filing status and to determine the amount of the credit(s) claimed;
- Complete this Form 8867 truthfully and accurately and complete the actions described in this checklist for any applicable credit(s) claimed and HOH filing status, if claimed;
- Submit Form 8867 in the manner required; and
- Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under Document Retention.
 - A copy of Form 8867;
 - The applicable worksheet(s) or your own worksheet(s) for any credit(s) claimed;
 - Copies of any documents provided by the taxpayer on which you relied to determine eligibility for the credit(s) and/or HOH filing status;
 - A record of how, when, and from whom the information used to prepare this form and the applicable worksheet(s) was obtained; and
 - A record of any additional questions you may have asked to determine eligibility to claim the credit(s), and/or HOH filing status and the amount(s) of any credit(s) claimed and the taxpayer's answers.

► If you have not complied with all due diligence requirements, you may have to pay a \$520 penalty for each failure to comply related to a claim of an applicable credit or HOH filing status.

15 Do you certify that all of the answers on this Form 8867 are, to the best of your knowledge, true, correct, and complete?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	---

Passive Activity Loss Limitations

▶ See separate instructions.

▶ Attach to Form 1040 or Form 1041.

▶ Go to www.irs.gov/Form8582 for instructions and the latest information.**2018**Attachment
Sequence No. **88**

Name(s) shown on return

CHRISTOPHER M DELBENE**Part I 2018 Passive Activity Loss**

Caution: Complete Worksheets 1, 2, and 3 before completing Part I.

Rental Real Estate Activities With Active Participation (For the definition of active participation, see**Special Allowance for Rental Real Estate Activities** in the instructions.)

1a Activities with net income (enter the amount from Worksheet 1, column (a))	1a	
b Activities with net loss (enter the amount from Worksheet 1, column (b))	1b	()
c Prior years' unallowed losses (enter the amount from Worksheet 1, column (c))	1c	()
d Combine lines 1a, 1b, and 1c	1d	

Commercial Revitalization Deductions From Rental Real Estate Activities

2a Commercial revitalization deductions from Worksheet 2, column (a)	2a	()
b Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b	()
c Add lines 2a and 2b	2c	()

All Other Passive Activities

3a Activities with net income (enter the amount from Worksheet 3, column (a))	3a	
b Activities with net loss (enter the amount from Worksheet 3, column (b))	3b	(1,053)
c Prior years' unallowed losses (enter the amount from Worksheet 3, column (c))	3c	()
d Combine lines 3a, 3b, and 3c	3d	-1,053

4 Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used	4	-1,053
--	----------	--------

- If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
 - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
 - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, **do not** complete Part II or Part III. Instead, go to line 15.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See instructions for an example.

5 Enter the smaller of the loss on line 1d or the loss on line 4	5	
6 Enter \$150,000. If married filing separately, see instructions	6	
7 Enter modified adjusted gross income, but not less than zero (see instructions).	7	
Note: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.		
8 Subtract line 7 from line 6	8	
9 Multiply line 8 by 50% (0.50). Do not enter more than \$25,000. If married filing separately, see instructions	9	
10 Enter the smaller of line 5 or line 9	10	0

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

11 Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12 Enter the loss from line 4	12	
13 Reduce line 12 by the amount on line 10	13	
14 Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15 Add the income, if any, on lines 1a and 3a and enter the total	15	
16 Total losses allowed from all passive activities for 2018. Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return	16	0

For Paperwork Reduction Act Notice, see instructions.

Form **8582** (2018)

M DELBENE

Keep a copy of the worksheets for your records.

DO NOT PAPER FILE
NOT AVAILABLE
AT TIME OF REVIEW

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Keep a copy of the worksheets for your records.

On Worksheet 5, enter the name of each activity and the form or schedule and line number on which the loss will be reported. Identify any deduction from Worksheet 2 on a separate line (even if the amount is from an activity also shown on Worksheet 1 or 3) and add "CRD" after the name of the activity.

Column (b): Divide each of the individual losses shown in column (a) by the total of all the losses in column (a) and enter this ratio for each activity in column (b). The total of all the ratios must equal 1.00.

A. Enter as a positive amount line 4 of Form 8582	1,053
B. Add lines 10 and 14 of Form 8582	
C. Subtract line B from line A	1,053

[illegible]

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CHRISTOPHER M DELBENE

Column (c): Subtract column (b) from column (a). These are your allowed losses for 2018. Report the amounts in this column on the forms and schedules normally used.

[illegible]

Depreciation and Amortization
(Including Information on Listed Property)▶ Attach to your tax return.
▶ Go to www.irs.gov/Form4562 for instructions and the latest information.**2018**Attachment
Sequence No. **179**

Name(s) shown on return

CHRISTOPHER M DELBENE

Business or activity to which this form relates

FOR SCHEDULE E #1

Identifying number

Part I Election To Expense Certain Property Under Section 179**Note:** If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount (see instructions)	1	
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	
6	(a) Description of property	(b) Cost (busn. use only)	(c) Elected cost
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2017 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5. See instructions.	11	
12	Section 179 expense deduction. Add lines 9 and 10, but don't enter more than line 11	12	
13	Carryover of disallowed deduction to 2019. Add lines 9 and 10, less line 12	13	

Note: Don't use Part II or Part III below for listed property. Instead, use Part V.**Part II Special Depreciation Allowance and Other Depreciation (Don't include listed property. See instructions.)**

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year. See instructions	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Don't include listed property. See instructions.)**Section A**

17	MACRS deductions for assets placed in service in tax years beginning before 2018	17	4,454
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B -- Assets Placed in Service During 2018 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depr. (business/investment use only -- see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			27.5 yrs.	MM	S/L	
			39 yrs.	MM	S/L	

Section C -- Assets Placed in Service During 2018 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 30-year			30 yrs.	MM	S/L	
d 40-year			40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations -- see instructions	22	4,454
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.Form **4562** (2018)

**Limitation on Business Interest Expense
Under Section 163(j)**

▶ Attach to your tax return.

OMB No. 1545-0123

▶ Go to www.irs.gov/Form8990 for instructions and the latest information.

Taxpayer name(s) shown on return

CHRISTOPHER M DELBENE

Identification number

Part 1 Computation of Allowable Business Interest Expense

Part I is completed by all taxpayers subject to section 163(j). Schedule A and Schedule B need to be completed before Part I when the taxpayer is a partner or shareholder of a pass-through entity subject to 163(j).

Section I—Business Interest Expense

1	Current year business interest expense (not including floor plan financing interest expense), before the section 163(j) limitation	1	3143	
2	Disallowed business interest expense carryforwards from prior years. (Does not apply to a partnership)	2		
3	Partner's excess business interest expense treated as paid or accrued in current year (Schedule A, line 44, column (h))	3		
4	Floor plan financing interest expense. See instructions	4		
5	Total business interest expense. Add lines 1 through 4	5		3143

Section II—Adjusted Taxable Income**Taxable Income**

6	Taxable income. See instructions	6		69439
---	---	---	--	-------

Additions (adjustments to be made if amounts are taken into account on line 6)

7	Any item of loss or deduction which is not properly allocable to a trade or business of the taxpayer. See instructions	7		
8	Any business interest expense not from a pass-through entity. See instructions	8	3143	
9	Amount of any net operating loss deduction under section 172	9		
10	Amount of any qualified business income deduction allowed under section 199A	10		
11	Deduction allowable for depreciation, amortization, or depletion attributable to a trade or business	11		
12	Amount of any loss or deduction items from a pass-through entity. See instructions	12		
13	Other additions. See instructions	13		
14	Total current year partner's excess taxable income (Schedule A, line 44, column (f))	14		
15	Total current year S corporation shareholder's excess taxable income (Schedule B, line 46, column (c))	15		
16	Total. Add lines 7 through 15	16		3143

Reductions (adjustments to be made if amounts are taken into account on line 6)

17	Any item of income or gain which is not properly allocable to a trade or business of the taxpayer. See instructions	17	()	
18	Any business interest income not from a pass-through entity. See instructions	18	()	
19	Amount of any income or gain items from a pass-through entity. See instructions	19	()	
20	Other reductions. See instructions	20	()	
21	Total. Combine lines 17 through 20	21	()	
22	Adjusted taxable income. Combine lines 6, 16, and 21. (If zero or less, enter -0-.)	22		72582

Section III—Business Interest Income

23	Current year business interest income. See instructions	23		
24	Excess business interest income from pass-through entities (total of Schedule A, line 44, column (g), and Schedule B, line 46, column (d))	24		
25	Total. Add lines 23 and 24	25		

For Paperwork Reduction Act Notice, see the instructions.

Form **8990** (12-2018)

Section IV-163(j) Limitation Calculations**Limitation on Business Interest Expense**

26	Multiply adjusted taxable income (line 22) by 30% (0.30). See instructions	26	21775	
27	Business interest income (line 25)	27		
28	Floor plan financing interest expense (line 4)	28		
29	Total. Add lines 26, 27, and 28	29		21775

Allowable Business Interest Expense

30	Total current year business interest expense deduction. See instructions	30	3143
-----------	---	-----------	------

Carryforward

31	Disallowed business interest expense. Subtract line 29 from line 5. (If zero or less, enter -0-.)	31	
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Part II Partnership Pass-Through Items

Part II is only completed by a partnership that is subject to section 163(j). The partnership items below are allocated to the partners and are not carried forward by the partnership. See the instructions for more information.

Excess Business Interest Expense

32	Excess business interest expense. Enter amount from line 31	32	
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Excess Taxable Income (If you entered an amount on line 32, skip lines 33 through 37.)

33	Subtract the sum of lines 4 and 25 from line 5. (If zero or less, enter -0-.)	33	
34	Subtract line 33 from line 26. (If zero or less, enter -0-.)	34	
35	Divide line 34 by line 26. Enter the result as a decimal. (If line 26 is zero, then enter -0-.)	35	
36	Excess Taxable Income. Multiply line 35 by line 22	36	

Excess Business Interest Income

37	Excess Business Interest Income. Subtract the sum of lines 1, 2, and 3 from line 25. (If zero or less, enter -0-.)	37	
-----------	---	-----------	--

Part III S Corporation Pass-Through Items

Part III is only completed by S corporations that are subject to section 163(j). The S corporation items below are allocated to the shareholders. See the instructions for more information.

Excess Taxable Income

38	Subtract the sum of lines 4 and 25 from line 5. (If zero or less, enter -0-.)	38	
39	Subtract line 38 from line 26. (If zero or less, enter -0-.)	39	
40	Divide line 39 by line 26. Enter the result as a decimal. (If line 26 is zero, then enter -0-.)	40	
41	Excess Taxable Income. Multiply line 40 by line 22	41	

Excess Business Interest Income

42	Excess Business Interest Income. Subtract the sum of lines 1, 2, and 3 from line 25. (If zero or less, enter -0-.)	42	
-----------	---	-----------	--

Form **8990** (12-2018)

SCHEDULE A Summary of Partner's Section 163(j) Excess Items

Any taxpayer that owns an interest in a partnership subject to section 163(j) should complete Schedule A before completing Part I.

(a) Name of partnership	(b) EIN	Excess Business Interest Expense			(f) Current year excess taxable income	(g) Current year excess business interest income	(h) Excess business interest expense treated as paid or accrued (lessor of (e) or (f))	(i) Current year excess business interest expense carryforward ((e) minus (h))
		(c) Current year	(d) Prior year carryover	(e) Total ((c) plus (d))				
43								
44 Total								

SCHEDULE B Summary of S Corporation Shareholder's Excess Taxable Income and Excess Business Interest Income

Any taxpayer that is required to complete Part I and is a shareholder in an S corporation that has excess taxable income or excess business interest income should complete Schedule B before completing Part I.

(a) Name of S corporation	(b) EIN	(c) Current year excess taxable income	(d) Current year excess business interest income
45			
46 Total			

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[illegible]

2018 WAGES AND SALARIES SUMMARY ATTACHMENT

CHRISTOPHER M DELBENE
[REDACTED]

Employer Name	Employer EIN	T or S	Wages	Federal Withholding	Social Security Tax Withheld	State	State Wages	State Tax Withheld	Local Tax Withheld
PHELEN HALLINAN LC	27-3620831	T	79,516	7,651	5,196				
TOTAL			79,516	7,651	5,196				

2018 FEDERAL TAX WITHHOLDINGS ATTACHMENT

CHRISTOPHER M DELBENE
[REDACTED]

W-2 PHELEN HALLINAN LC
TOTAL TO FORM 1040 LINE 16

7,651
7,651

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AT TIME OF RE

CHRISTOPHER M DELBENE

18_LSEOTHER

2018 DETAIL STATEMENTS

ELBENE

PAGE 1

STATEMENT #1 - TP STUDENT LOAN INTEREST DEDN (FORM 1040 PG 1 LINE 33)

NAVIENT
DEPT OF EDUCATION

TOTAL CARRIED TO FORM 1040 PG 1 LINE 33

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NOT AVAILABLE
AT TIME OF REVIEW

2018 STATE AND LOCAL INCOME TAX REFUND WORKSHEET – SCHEDULE 1, LINE 10

CHRISTOPHER M DELBENE

Publication 525

1. 2017 state and local income tax refund from Form(s) 1099-G (or similar statement)	1. _____
2. Amount of state and local income tax paid in 2017 relating to this refund	2. _____
3. Amount of state and local income tax paid in 2018 relating to this refund	3. _____
4. Total state and local income tax paid relating to line 1 refund. Line 2 plus line 3	4. _____ 0
5. Line 3 divided by line 4. Round to 4 decimal places	5. _____
6. Line 5 multiplied by line 1. This is the portion of the refund relating to 2018 (reduction on Schedule A, line 5)	6. _____ 0
7. Line 1 less line 6	7. _____ 0
8. 2017 Form 1040, line 41 less line 42. If negative, enter as negative. If positive or filed Form 1040A/EZ in prior year, enter zero.	8. _____ 0
9. Potentially taxable refund before limitations. Combine lines 7 and 8. If line 9 is zero, do not complete the rest of this worksheet. None of the refund is taxable	9. _____ 0
SEE STATEMENT BELOW	
Sales Tax Limitation:	
10. 2017 state and local income tax deducted	10. _____
11. 2017 state and local general sales tax that could have been deducted on 2017 Form 1040, Schedule A, line 5	11. _____
12. Sales tax limitation. Line 10 less line 11	12. _____
Standard Deduction Limitation:	
13. Taxpayer(s) required to itemize deductions in 2017?	13. <input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, skip lines 14–19 and enter N/A next to line 20.	
14. Total allowable itemized deductions from 2017 Schedule A, line 29	14. _____
15. Allowable standard deductions for 2017 based on 2017 filing status *	15. _____
16. Extra standard deduction for blind/over 65 based on 2017 taxpayer and spouse **	16. _____
17. Add lines 15 and 16	17. _____
18. Standard deductions limitation. Line 14 less line 17, but not less than zero	18. _____
Taxable Refund Limitations Based on Unused Prior Year Credits, or Prior Year AMT:	
19. 2017 Unused prior year credits limitation. Amount from line 29	19. _____
20. 2017 AMT in limitation. Amount from line 32	20. _____
21. Taxable refund before other adjustment. Lesser of lines 9, 12, 18, 19, and 20	21. _____
22. Other adjustment: _____	22. _____
23. Taxable refund in 2018 Line 21 less line 22	23. _____

* S/MFS = \$6,350; MFJ/QW = \$12,700; HOH = \$9,350
 ** MFJ/MFS/QW = \$1,250; S/HOH = \$1,550

*** DEDUCTED STATE AND LOCAL SALES TAX IN 2017.
 THEREFORE, THE REFUND IS NOT TAXABLE.**

Disclaimers:

This worksheet only calculates for refunds from the 2017 year received in 2018. The worksheet cannot calculate the taxable portion of state and local income tax refunds received from other tax years or refunds based on amended returns. For these types of refunds, manual calculations and adjustments may be necessary on line 22 of the worksheet.

If multiple credits exist in the return, careful review should be made to ensure an accurate taxable refund calculation. In some cases, manual calculations and adjustments may be necessary on line 22 of the worksheet.

2018 CHILD TAX CREDIT AND CREDIT FOR OTHER DEPENDENTS WORKSHEET - LINE 12A

M DELBENE

Keep for Your Records

CAUTION!

- To be a qualifying child for the child tax credit, the child must be your dependent, **under age 17** at the end of 2018, and meet all the conditions in Steps 1 through 3 in the instructions for line 12a. Make sure you checked the "child tax credit" box in column 4 of the **Dependents** section on Form 1040 for each qualifying child.
 - If you don't have a qualifying child, you can't claim the child tax credit; but you may be able to claim the credit for other dependents for that child, see Step 3 under **Who Qualifies as Your Dependent** in the instructions.
 - To see if your qualifying relative qualifies you to take the credit for other dependents, see Step 5 under **Who Qualifies As Your Dependent** in the instructions.
 - Be sure to see **Social security number** under **Who Qualifies as Your Dependent** in the instructions.
 - Do **not** use this worksheet, but use Pub. 972 instead, if:
 - You are claiming the adoption credit, mortgage interest credit, District of Columbia first-time homebuyer credit, or a residential energy efficient property credit*;
 - You are excluding income from Puerto Rico; or
 - You are filing Form 2555, 2555-EZ, or 4563.
- * If applicable.

PART 1

- Number of qualifying children under age 17 with the required social security number: 2 x \$2,000. Enter the result. 1 4,000
- Number of other dependents, including qualifying children without the required social security number: 2 x \$500. Enter the result. 2 1,000
- Add lines 1 and 2. 3 5,000
- Enter the amount from Form 1040, line 7 or Form 1040NR, line 35 4 81,439
- Enter the amount shown below for your filing status.
 - Married filing jointly - \$400,000
 - All other filing statuses - \$200,0005 200,000
- Is the amount on line 4 more than the amount on line 5?
 - ☒ **No.** Leave line 6 blank. Enter -0- on line 7, and go to line 8.
 - ☐ **Yes.** Subtract line 5 from line 4 6 61,439
If the result isn't a multiple of \$1,000, increase it to the next multiple of \$1,000. For example, increase \$425 to \$1,000, increase \$1,025 to \$2,000, etc.
- Multiply the amount on line 6 by 5% (0.05). Enter the result 7 0
- Is the amount on line 3 more than the amount on line 7?
 - ☐ **No.** **STOP**
You can't take the child tax credit on Form 1040, line 12a; or Form 1040NR, line 49.
You also can't take the additional child tax credit on Form 1040, line 17b; or Form 1040NR, line 64.
Complete the rest of your Form 1040 or Form 1040NR.
 - ☒ **Yes.** Subtract line 7 from line 3. Enter the result. 8 5,000
Go to Part 2 on page 2 of this worksheet

2018 CHILD TAX CREDIT AND CREDIT FOR OTHER DEPENDENTS WORKSHEET, PAGE 2

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Before you begin Part 2: ✓ Figure the amount of any credits you are claiming on Schedule 3; Form 5695, Part II*; Form 8910; Form 8936; or Schedule R.

9. Enter the amount from Form 1040, line 11; or Form 1040NR, line 45.

9 11,213

10. Add the amounts from:

Schedule 3 or Form 1040NR

Line 48 Line 46 _____
 Line 49 Line 47 + _____
 Line 50 ----- + _____
 Line 51 Line 48 + _____
 Form 5695, line 30* + _____
 Form 8910, line 15 + _____
 Form 8936, line 23 + _____
 Schedule R, line 22 + _____

Enter the total.

10

11. Are the amounts on lines 9 and 10 the same?

☐ **Yes. STOP**

You can't take this credit because there is no tax to reduce. However, you may be able to take the **additional child tax credit** if line 1 is more than zero. See the **TIP** below.

☒ **No. Subtract line 10 from line 9.**

11 11,213

12. Is the amount on line 8 more than the amount on line 11?

☐ **Yes. Enter the amount from line 11.**

Also, you may be able to take the **additional child tax credit** if line 1 is more than zero. See the **TIP** below.

☒ **No. Enter the amount from line 8.**

This is your child tax credit and credit for other dependents.

12 4,000

Enter this amount on Form 1040, line 12a; or Form 1040NR, line 49.

TIP

You may be able to take the **additional child tax credit** on Form 1040, line 17b; or Form 1040NR, line 64, if you answered "Yes" on line 11 or line 12 above.

- First, complete your Form 1040 through line 17a (also complete Schedule 5, line 72) or Form 1040NR through line 63.
- Then, use Schedule 8812 to figure any additional child tax credit.

CAUTION!

If your child tax credit or additional child tax credit for a year after 2015 was reduced or disallowed, see Form 8862, who must file to find out if you must file Form 8862 to take the credit for 2018.

* If applicable.

2018 FEDERAL DEPRECIATION SCHEDULE

CHRISTOPHER M DELBENE

DESCRIPTION	DATE	METHOD - LIFE	COST	PRIOR 179	CURRENT 179	PR SPEC ALLOW	CURR SPEC ALLOW	BASIS	PRIOR DEPR	CURRENT DEPR	ACCUM DEPR	ADJ BASIS
SCHEDULE E #001												
RENTAL HOME	02-15-14	S/L-27.5	149500	0	0	0	0	122500	17260	4454	21714	100786
1 ASSETS		TOTALS:	149500	0	0	0	0	122500	17260	4454	21714	100786
1 ASSETS		GRAND TOTALS:	149500	0	0	0	0	122500	17260	4454	21714	100786

2018 FEDERAL AMT DEPRECIATION SCHEDULE

CHRISTOPHER M DELBENE
[REDACTED]

DESCRIPTION	DATE	METHOD - LIFE	COST	PRIOR 179	CURRENT 179	PR SPEC ALLOW	CURR SPEC ALLOW	BASIS	PRIOR DEPR	CURRENT DEPR	ACCUM DEPR	ADJ BASIS
SCHEDULE E #001												
RENTAL HOME	02-15-14	S/L-27.5	149500	0	0	0	0	122500	17260	4454	21714	100786
1 ASSETS		TOTALS:	149500	0	0	0	0	122500	17260	4454	21714	100786
1 ASSETS		GRAND TOTALS:	149500	0	0	0	0	122500	17260	4454	21714	100786

2019 CARRYFORWARD INFORMATION

CHRISTOPHER M DELBENE

Keep for Your Records

Itemized Returns Only – 2018 state and local tax refund (This amount may not be taxable in 2019)

Charitable contributions carryover to 2019	
Estimated short-term capital loss carryover	
Estimated long-term capital loss carryover	
2018 tax liability (for 2019 Form 2210 purposes)	7,213
Form 8839: 2018 carryover of unqualified expenses	
Refund amount applied to 2019	
Disallowed investment interest in 2018	
Additional state taxes paid	
Form 8396: Mortgage interest credit from 2016	
Mortgage interest credit from 2017	
Mortgage interest credit from 2018	
Form 8801: Minimum tax credit carryforward	
Potential 2019 IRA contribution from 2018 tax refund	

NOL carryforward:

Regular Tax

from 1998	from 2008
from 1999	from 2009
from 2000	from 2010
from 2001	from 2011
from 2002	from 2012
from 2003	from 2013
from 2004	from 2014
from 2005	from 2015
from 2006	from 2016
from 2007	from 2017
Gross NOL generated in 2018	
To be absorbed in carryback period	
Net carryforward from 2018	
Total carryforward to 2019	

AMT Tax

from 1998	from 2008
from 1999	from 2009
from 2000	from 2010
from 2001	from 2011
from 2002	from 2012
from 2003	from 2013
from 2004	from 2014
from 2005	from 2015
from 2006	from 2016
from 2007	from 2017
Gross AMT NOL generated in 2018	
To be absorbed in carryback period	
Net carryforward from 2018	
Total carryforward to 2019	

- The amounts carried to next year from Schedule(s) E, pages 1 and/or 2, are found on Form 8582, Worksheet 6. Carryover AMT amounts are found on the AMT Form 8582, Worksheet 6.
- Foreign Tax Credit carryforward to 2019
- General Business Credit carryforward to 2019
- First-Time Homebuyer Credit Repayment carryforward to 2019
- If there are Form(s) 6252 in this tax return, the gross profit ratio and prior payments received (including the current year payments) will carry forward from each Form 6252.
- Amounts from Form 6251, lines 16 through 18, lines 27 and 28 are automatically carried forward to 2019.

2018 FEDERAL WAGES SUPPORTING SCHEDULE

CHRISTOPHER M DELBENE
[REDACTED]

FORM 1040, PAGE 2
LINE 1 - MARGINAL ENTRIES

Description	Amount
DEPENDENT CARE BENEFITS (DCB)	1,923

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NOT AVAILABLE
AT TIME OF RE

2018 QUALIFIED BUSINESS INCOME DEDUCTION WORKSHEET SUMMARY

DELBENE

Qualified Business Income

1. Total Specified Business Income/Loss	1.	-1053
2. Total Non-Specified Business Income/Loss	2.	
Less Applicable Adjustments from 1040, Schedule 1		
3. QBID Qualified Losses and ST Gains from Asset Disposition	3.	
4. Net Qualified Business Losses from Prior Year (N/A for 2018)	4.	
5. Available Qualified Business Income (Sum L1 Through L4)	5.	-1053
6. Maximum Qualified Business Income Deduction (Line 5 x .20)	6.	

Qualified Other Income

7. Qualified REIT Sec 199A Dividends from 1099-DIV and K-1s	7.	
8. Total Qualified PTP Income from Detail WS L6	8.	
9. QOI Qualified Losses and ST Gains from Disposition incl Sale of PTP	9.	
10. Net Qualified Other Income Losses from Prior Year (N/A for 2018)	10.	
11. Net Qualified Other Income (loss) (Sum of L7 Through L10)	11.	
12. Maximum Qualified Other Income Deduction (L11 x .20)	12.	
13. Total Maximum Business Income Deduction (L6 + L12)	13.	

Taxable Income Limitation (For All Businesses)

14. Pre QBID Taxable Income (1040 L7 Less L8)	14.	69439
15. Net Capital Gain from Sch D, L16 (0 if L 16 is a loss) and Qualified Dividends	15.	
16. Net QBID Qualified Taxable Income for Deduction (L14 - L15)	16.	69439
17. Qualified Business Income Deductions based on Qualified QBID Taxable Income (L16 * .20)	17.	13888
18. Potential Allowable Business Income Deduction (Lesser of L13 or L17)	18.	
Is taxable income on L16 greater than 315,000 for MFJ or 157,500 for other filing statuses?		
Or, did you receive a cooperative distribution (Form 1099-PATR)?		NO
If No, stop and do not complete rest of worksheet and carry L18 to Form 1040 Line 9.		

Specified Services Business Limitation

19. Total Specified Business Income Deduction from Detail WS	19.	
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Non-Specified Business Limitation

20. Total Non-Specified Business Income Deduction from Detail Worksheets	20.	
21. Total Qualified Business Income Deduction (L19 + L20)	21.	
22. Allowable Qualified Business Income Deduction (lesser of L18 or L21) (Carry to Form 1040 L9 or 1040NR L38)	22.	

QPAI Deduction from Cooperatives

23. QPAI Deduction Identified in writing by cooperatives	23.	
24. Taxable Income before QPAI deduction and after QBI deduction (L14 - L22)	24.	
25. Allowable QPAI deductions from cooperative (lesser of L23 or L24) (Included amount in Form 1040 Line 10 with statement)	25.	
26. Net Qualified Section 199A Deduction Benefit (L22 + L25)	26.	

Loss Carryforward to Next Year

27. Qualified Business Loss Amount (L5 if loss)	27.	-1053
28. Qualified Other Income Loss Amount (L11 if loss)	28.	

**2018 QUALIFIED BUSINESS INCOME DEDUCTION WORKSHEET
DETAIL BY BUSINESS**

CHRISTOPHER M DELBENE

072-76-9361

Schedule/Form	SCH E #1
Business Name	SINGLE F
EIN/SSN	
Business Type	SPECIFIC
PTP Income	NO

Qualified Business Income (QBI)

1. Specified Business Income/Loss from Sch/Form	-1053
2. Non-Specified Business Income/Loss from Sch/Form Less applicable adjustments from 1040 Schedule 1 (includes SE Tax, SEHIN, & Qual Retirement plans)	
3. QBID Qualified Losses and ST Gains from Asset Disposition	
4. Net Qualified Business Income (QBI) (sum L1 - L3)	-1053
5. Qualified REIT Sec 199A Dividends from 1099-DIV and K-1s	
6. Qualified Other Income from PTPs	
7. QOI Qualified Losses and ST Gains from Disposition incl Sale of PTP	
8. Net Qualified Other Income (QOI) (L5 + L6 + L7)	
9. Net QBI and QOI (L4 + L8)	-1053
10. Maximum Qualified Business Income Deduction (L9 * .20)	

Taxable Income Limitation (For All Businesses)

11. Adjusted Gross Income (1040 Line 7)	81439
12. Itemized Deduction or Standard Deduction Claimed (1040 Line 8)	12000
13. Qualified Taxable Income (L11 - L12)	69439
14. Net Capital Gain from Schedule D Line 16 (0 if Line 16 is loss) plus Qualified Dividends	
15. Qualified Ordinary Taxable income (L13 - L14)	69439
16. Qualified Business Income Deductions based on Taxable Income (L15 * .20)	13888
17. Net Allowable Business Income Deduction by Business (Lesser of L10 or L16)	
Is taxable income on Line 15 greater than 315,000 for MFJ or 157,500 other filing statuses?	NO
If "No," Skip L18 through 34 and enter L17 on L38.	
Is taxable income on L15 greater than 415,000 for MFJ or 207,500 other filing statuses?	NO

Qualified Wages and Property Limitations

18. Maximum Qualified Business Income Deduction (L17)	
19. Wages paid by Qualified Businesses (Use DPAD method)	
20. Unadjusted Basis of Qualified Property	
21. Allowable QBID Wages (L19 * .50)	
22. Allowable Wage and Property QBID (L19*.25 + L20*.025)	
23. Allowed QBID based on Wages and Properties (Greater of L21 or L22)	
24. Base Allowed QBID (Lesser of L18 or L23)	

**2018 QUALIFIED BUSINESS INCOME DEDUCTION WORKSHEET, PAGE 2
DETAIL BY BUSINESS**

DELBENE

Phase In / Phase Out Limitation Percentage

- 25. Base Limitation Income – 315,000 for MFJ or 157,500 for other filing statuses
- 26. Taxable income less limitation base (L13 – L25)
- 27. Limitation Range – 100,000 for MFJ or 50,000 for other filing statuses
- 28. Limitation Percentage (L26/L27) (Max 100%)

Specified Services Business Limitation (Within Phase Out Range)

- 29. Diff Between Max QBID and Limitation (L10 – L24)
- 30. Limitation Reduction (L28 * L29)
- 31. Reduced QBI (L10 – L30)
- 32. Phase Out Percentage (1.00 – L28)
- 33. Phase out QBID (L31 * L32)

Non-Specified Business Limitation (Within Phase Out Range)

- 34. Diff between Max QBID and Limitation (L18 – L24)
- 35. QBID Phase In Reduction (L28 * L34)
- 36. Allowable QBID – Non-Specified Business (L18 – L35 or L24 if L34 = 0)

Non-Specified Business Limitation (Above Phase Out Range)

- 37. Allowable Qualified Business Income Deduction (L24)
- 38. Total Qualified Business Income Deduction before QPAI

QPAI Reduction for Qualified Payments from Cooperatives

- 39. Portion of QBI allocable to qualified payments received from cooperative included in Sch F/Form 4835
- 40. Cooperative QPAI Deduction identified in writing by cooperatives included in Sch F/Form 4835
- 41. 9% of QBI allocable to payments received from cooperative (L39 * 9%)
- 42. W-2 wages allocable to payments received from cooperative (L19 * L39/L9)
- 43. 50% of wages allocable to payments received from cooperative (L42 * 50%)
- 44. Lessor of 9% of QBI or 50% of Wages allocable to cooperative payments. (smaller of L41 or 43)
- 45. Total Qualified Business Income Deduction reduced for cooperative allocation (L38 – L44)

Form **8879**Department of the Treasury
Internal Revenue Service**IRS e-file Signature Authorization**

- Return completed Form 8879 to your ERO. (Don't send to the IRS.)
► Go to www.irs.gov/Form8879 for the latest information.

**CLIENT COPY
2018**Submission Identification Number (SID) 

Taxpayer's name

CHRISTOPHER M DELBENE

Social security number



Spouse's name

Spouse's social security number

Part I Tax Return Information -- Tax Year Ending December 31, 2018 (Whole dollars only)

1	Adjusted gross income (Form 1040, line 7; Form 1040NR, line 35)	1	81,439
2	Total tax (Form 1040, line 15; Form 1040NR, line 61)	2	7,213
3	Federal income tax withheld from Forms W-2 and 1099 (Form 1040, line 16; Form 1040NR, line 62a)	3	7,651
4	Refund (Form 1040, line 20a; Form 1040-SS, Part I, line 13a; Form 1040NR, line 73a)	4	438
5	Amount you owe (Form 1040, line 22; Form 1040NR, line 75)	5	

Part II Taxpayer Declaration and Signature Authorization (Be sure you get and keep a copy of your return)

Under penalties of perjury, I declare that I have examined a copy of my electronic individual income tax return and accompanying schedules and statements for the tax year ending December 31, 2018, and to the best of my knowledge and belief, it is true, correct, and accurately lists all amounts and sources of income I received during the tax year. I further declare that the amounts in Part I above are the amounts from my electronic income tax return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my return to the IRS and to receive from the IRS (a) an acknowledgement of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an ACH electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my federal taxes owed on this return and/or a payment of estimated tax, and the financial institution to debit the entry to this account. This authorization is to remain in full force and effect until I notify the U.S. Treasury Financial Agent to terminate the authorization. To revoke (cancel) a payment, I must contact the U.S. Treasury Financial Agent at **1-888-353-4537**. Payment cancellation requests must be received no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I further acknowledge that the personal identification number (PIN) below is my signature for my electronic income tax return and, if applicable, my Electronic Funds Withdrawal Consent.

Taxpayer's PIN: check one box only

- ☒ I authorize **H AND R BLOCK** to enter or generate my PIN **19361**
ERO firm name Enter five digits, but don't enter all zeros
as my signature on my tax year 2018 electronically filed income tax return.
- ☐ I will enter my PIN as my signature on my tax year 2018 electronically filed income tax return. Check this box **only** if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Your signature Date **3/7/2019****Spouse's PIN: check one box only**

- ☐ I authorize _____ to enter or generate my PIN _____
ERO firm name Enter five digits, but don't enter all zeros
as my signature on my tax year 2018 electronically filed income tax return.
- ☐ I will enter my PIN as my signature on my tax year 2018 electronically filed income tax return. Check this box **only** if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Spouse's signature _____

Date _____

Practitioner PIN Method Returns Only -- continue below**Part III Certification and Authentication -- Practitioner PIN Method Only**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN.

59516304540

Don't enter all zeros

I certify that the above numeric entry is my PIN, which is my signature for the tax year 2018 electronically filed income tax return for the taxpayer(s) indicated above. I confirm that I am submitting this return in accordance with the requirements of the Practitioner PIN method and **Pub. 1345**, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns.

ERO's signature **MARIA CORNELL**Date **3/7/2019**

ERO Must Retain This Form -- See Instructions
Don't Submit This Form to the IRS Unless Requested To Do So

For Paperwork Reduction Act Notice, see your tax return instructions.

Form **8879** (2018)

Form 8879

Department of the Treasury
Internal Revenue Service

IRS e-file Signature Authorization

For calendar year 2018, or tax year beginning _____, 2018, ending _____, 20 _____

- ▶ Return completed Form 8879 to your ERO. (Don't send to the IRS.)
▶ Go to www.irs.gov/Form8879 for the latest information.

OMB No. 1545-0074

2018

Submission Identification Number (SID) ▶

Taxpayer's name

CHRISTOPHER M DELBENE

Social security number

Spouse's name

Spouse's social security number

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Taxpayer's PIN: check one box only

☒ I authorize H AND R BLOCK to enter or generate my PIN as my signature on my tax year 2018 electronically filed income tax return.

Enter five digits, but don't enter all zeros

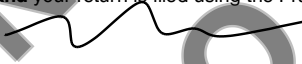
☐ I will enter my PIN as my signature on my tax year 2018 electronically filed income tax return. Check this box **only** if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Your signature ▶ Date ▶ 3/7/2019**Spouse's PIN: check one box only**

☐ I authorize to enter or generate my PIN as my signature on my tax year 2018 electronically filed income tax return.

Enter five digits, but don't enter all zeros

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Spouse's signature ▶ Date ▶ **Practitioner PIN Method Returns Only — continue below****Part III Certification and Authentication — Practitioner PIN Method Only**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN.

59516304540

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I certify that the above numeric entry is my PIN, which is my signature for the tax year 2018 electronically filed income tax return for the taxpayer(s) indicated above. I confirm that I am submitting this return in accordance with the requirements of the Practitioner PIN method and Pub. 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns.

ERO's signature ▶ MARIA CORNELLDate ▶ 3/7/2019

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Form 8879 (2018)

