

NO. 17-14194

UNITED STATES COURTS OF APPEALS
FOR THE ELEVENTH CIRCUIT

CAROL WILDING, *et al.*,

Plaintiffs,

vs.

DNC SERVICES CORPORATION, *et al.*,

Defendants.

Appeal from the United States District Court
for the Southern District of Florida

**DEFENDANTS' POSITION REGARDING THE COURT'S
SUPPLEMENTAL JURISDICTIONAL QUESTION OF
NOVEMBER 9, 2017**

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

To the best of undersigned's knowledge, the following is a complete list of the trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have or may have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

1. Kimberly Alberts, Plaintiff/Appellant.
2. Connie Anderson, Plaintiff/Appellant.
3. Antonino Hernandez, P.A., trial and appellate counsel for Plaintiffs/Appellants.
4. Kayite Ashcraft, Plaintiff/Appellant.
5. Lester John Bates, Plaintiff/Appellant.
6. Beck & Lee P.A., trial and appellate counsel for Plaintiffs/Appellants.
7. Elizabeth Lee Beck, trial and appellate counsel for Plaintiffs/Appellants.
8. Jared H. Beck, trial and appellate counsel for Plaintiffs/Appellants.
9. Mark Bedard, Plaintiff/Appellant.
10. Nancy Berners-Lee, Plaintiff/Appellant.
11. Jen Betterley, Plaintiff/Appellant.

12. Harris Bierhoff, Plaintiff/Appellant.
13. Timothy Bingen, Plaintiff/Appellant.
14. Stephanie Birdsong, Plaintiff/Appellant.
15. Marianne Blair, Plaintiff/Appellant.
16. Richard Booker, Plaintiff/Appellant.
17. Barbara Bowen, Plaintiff/Appellant.
18. Richard Boylan, Plaintiff/Appellant.
19. Matthew Joseph Brady, Plaintiff/Appellant.
20. Kyle Braund, Plaintiff/Appellant.
21. Chris Bubb, Plaintiff/Appellant.
22. Tristan Burgener, Plaintiff/Appellant.
23. D.J. Buschini, Plaintiff/Appellant.
24. Bruce Busto, Plaintiff/Appellant.
25. Joseph Callan, Plaintiff/Appellant.
26. Mark R. Caramanica, counsel for Defendants/Appellees.
27. Patricia Cassidy, Plaintiff/Appellant.
28. Susan Catterall, Plaintiff/Appellant.
29. Vincent Cauchi, Plaintiff/Appellant.
30. Cynthia Chan, Plaintiff/Appellant.

31. Torsha Childs, Plaintiff/Appellant.
32. Karlie Cole, Plaintiff/Appellant.
33. Aimee Coleman, Plaintiff/Appellant.
34. Rosalie Consiglio, Plaintiff/Appellant.
35. Daniel Cooper, Plaintiff/Appellant.
36. Yalonda Dye Cooper, Plaintiff/Appellant.
37. Suzanne Cork, Plaintiff/Appellant.
38. Rhiannon Crandall, Plaintiff/Appellant.
39. William Crandall, Plaintiff/Appellant.
40. Sharon Crawford, Plaintiff/Appellant.
41. Phyllis Criddle, Plaintiff/Appellant.
42. John Crowe, Plaintiff/Appellant.
43. Cullin O'Brien Law P.A., trial and appellate counsel for Plaintiffs/Appellants.
44. Craig Richard Currier, Plaintiff/Appellant.
45. Catherine Cyko, Plaintiff/Appellant.
46. Heather Dade, Plaintiff/Appellant.
47. Alecia Davis, Plaintiff/Appellant.
48. Sherry Davis, Plaintiff/Appellant.
49. Tammy Deitch-Coulter, Plaintiff/Appellant.

50. DNC Services Corporation, Defendant/Appellee.
51. Kathleen Dodge, Plaintiff/Appellant.
52. Diane Emily Dreyfus, Plaintiff/Appellant.
53. Dan Ellis Dudley, Plaintiff/Appellant.
54. Amalie Duvall, Plaintiff/Appellant.
55. Marc. E. Elias, counsel for Defendants/Appellees.
56. Eliza Feero, Plaintiff/Appellant.
57. Erik Michael Ferragut, Plaintiff/Appellant.
58. Elizabeth Figueroa, Plaintiff/Appellant.
59. Diana Flores, Plaintiff/Appellant.
60. William Scott Franz, Plaintiff/Appellant.
61. Susan Frisbie, Plaintiff/Appellant.
62. Elisabeth C. Frost, counsel for Defendants/Appellees.
63. Erik Furreboe, Plaintiff/Appellant.
64. Lisa Gale, Plaintiff/Appellant.
65. Laura Genna, Plaintiff/Appellant.
66. Ryan Ghan, Plaintiff/Appellant.
67. Joseph Gleason, Plaintiff/Appellant.
68. Jeffrey Goldberg, Plaintiff/Appellant.

69. Estrella Gonzalez, Plaintiff/Appellant.
70. Jose Alberto Gonzalez, Plaintiff/Appellant.
71. Prabu Gopalakrishnan, Plaintiff/Appellant.
72. Luke Grim, Plaintiff/Appellant.
73. Lucille Grooms, Plaintiff/Appellant.
74. Anthony Grudin, Plaintiff/Appellant.
75. Lauren Hale, Plaintiff/Appellant.
76. Julie Hampton, Plaintiff/Appellant.
77. Zachary James Haney, Plaintiff/Appellant.
78. Gayle Ann Harrod, Plaintiff/Appellant.
79. Jarath Hemphill, Plaintiff/Appellant.
80. Antonino Hernandez, trial and appellate counsel for Plaintiffs/Appellants.
81. Kirsten Hoffman, Plaintiff/Appellant.
82. Rebecca Hohm, Plaintiff/Appellant.
83. Kim Marie Houle, Plaintiff/Appellant.
84. Stephen Houseknecht, Plaintiff/Appellant.
85. Lewis Humiston, Plaintiff/Appellant.
86. United States Magistrate Judge Patrick M. Hunt.
87. Kirsten Hurst, Plaintiff/Appellant.

88. Benjamin Ilarraza, Plaintiff/Appellant.
89. Bakh Inamov, Plaintiff/Appellant.
90. Danielle Ingrassia, Plaintiff/Appellant.
91. Carolyn Jacobson, Plaintiff/Appellant.
92. Tukoi Jarrett, Plaintiff/Appellant.
93. Timo Johann, Plaintiff/Appellant.
94. Tamara Johnston, Plaintiff/Appellant.
95. Heather Jordan, Plaintiff/Appellant.
96. Rana Kangas-Kent, Plaintiff/Appellant.
97. Brandy Kincaid, Plaintiff/Appellant.
98. Amber Rae Knowlton, Plaintiff/Appellant.
99. Theda Larson-Wright, Plaintiff/Appellant.
100. Peggy Lew, Plaintiff/Appellant.
101. Melissa Liang, Plaintiff/Appellant.
102. Sarah Lopez, Plaintiff/Appellant.
103. Ruthzee Louijeune, counsel for Defendants/Appellees.
104. Edwin Lugo, Plaintiff/Appellant.
105. John Lynch, Plaintiff/Appellant.
106. Sean Lynch, Plaintiff/Appellant.

107. Christine Maiurano, Plaintiff/Appellant.
108. Melissa Marcotte, Plaintiff/Appellant.
109. Raymond Maxwell, Plaintiff/Appellant.
110. Lisa Anne Meneely, Plaintiff/Appellant.
111. David Meuli, Plaintiff/Appellant.
112. Greta Mickey, Plaintiff/Appellant.
113. Carl Miller, Plaintiff/Appellant.
114. Teri Monaco, Plaintiff/Appellant.
115. Angela Monson, Plaintiff/Appellant.
116. Brittany R. Musick, Plaintiff/Appellant.
117. Cullin O'Brien, trial and appellate counsel for Plaintiff/Appellant.
118. Daniel O'Meara, Plaintiff/Appellant.
119. Andrew Orrino, Plaintiff/Appellant.
120. Perkins Coie LLP, counsel for Defendants/Appellees.
121. Steve Philipp, Plaintiff/Appellant.
122. Susan Phillips, Plaintiff/Appellant.
123. Jane Ellen Plattner, Plaintiff/Appellant.
124. Alette Prichett, Plaintiff/Appellant.
125. Kenneth Puckett, Plaintiff/Appellant.

126. David Pulaski, Plaintiff/Appellant.
127. David Pyles, Plaintiff/Appellant.
128. Valerie Elyse Rasch, Plaintiff/Appellant.
129. Michael Reed, Plaintiff/Appellant.
130. Susan Reed, Plaintiff/Appellant.
131. Daniel Reynolds, Plaintiff/Appellant.
132. Stanley Rifken, Plaintiff/Appellant.
133. Diane Robinson, Plaintiff/Appellant.
134. Rachel Roderick, Plaintiff/Appellant.
135. Jeff Rogers, Plaintiff/Appellant.
136. Dominic Ronzani, Plaintiff/Appellant.
137. Susan Lynne Roppel, Plaintiff/Appellant.
138. Andrew Rousseau, Plaintiff/Appellant.¹
139. Deborah Wasserman Schultz, Defendant/Appellee.
140. Lisa Settle, Plaintiff/Appellant.
141. Julianna Seymour, Plaintiff/Appellant.
142. Matthew Shaw, Plaintiff/Appellant.

¹ In Plaintiff-Appellants' First Amended Complaint, one of the proposed Plaintiff-Appellants' names is spelled Andrew "Rousseau," but is spelled "Andrew Rosseau" in their Certificate of Interested Persons and Corporate Disclosure Statement. The proper spelling is unclear.

143. Zeke Shaw, Plaintiff/Appellant.
144. James Simon, Plaintiff/Appellant.
145. Susan Singer, Plaintiff/Appellant.
146. Erika Sitzer, Plaintiff/Appellant.
147. Brenda Lee Smith, Plaintiff/Appellant.
148. Elesha Snyder, Plaintiff/Appellant.
149. Erich Sparks, Plaintiff/Appellant.
150. Bruce Spiva, counsel for Defendants/Appellees.
151. Marlowe St. Cloud Primack, Plaintiff/Appellant.
152. Alaina Talboy, Plaintiff/Appellant.
153. Felicia Michelle Taylor, Plaintiff/Appellant.
154. Brett Teegardin, Plaintiff/Appellant.
155. Thomas & Locicero PL, counsel for Defendants/Appellees.
156. George Thomas, Plaintiff/Appellant.
157. Gregg Thomas, counsel for Defendants/Appellees.
158. Laura Michelle Vaughn, Plaintiff/Appellant.
159. Carlos Villamar, Plaintiff/Appellant.
160. Beverly Virues, trial and appellate counsel for Plaintiff/Appellant.
161. Rick Washik, Plaintiff/Appellant.

162. Duffy Robert Weiss, Plaintiff/Appellant.
163. Mary Jasmine Welch, Plaintiff/Appellant.
164. Rebecca White-Hayes, Plaintiff/Appellant.
165. Carol Wilding, Plaintiff/Appellant.
166. Catherine Willott, Plaintiff/Appellant.
167. AnnMarie Wilson, Plaintiff/Appellant.
168. Graham Wilson, counsel for Defendants/Appellees.
169. Gregory Witkowski, Plaintiff/Appellant.
170. Emma Young, Plaintiff/Appellant.
171. United States District Court Judge William J. Zloch.

**DEFENDANTS' RESPONSE TO SUPPLEMENTAL
JURISDICTIONAL QUESTION**

Defendants DNC Services Corporation and Congresswoman Deborah Wasserman Schultz submit this response to the Supplemental Jurisdictional Question issued by this Court on November 9, 2017. Defendants incorporate herein their responses to the Court's Jurisdictional Question issued on October 11, 2017. *See* Defs.' Response to Jurisdictional Question (Oct. 30, 2017). Plaintiffs have filed a Motion to file a Second Amended Complaint. Defendants consent to these amendments for the sole purpose of Plaintiffs' attempt to cure their failure to plead citizenship properly.

As the District Court found, *see* Dist. Ct.'s Op., Doc. 62 - Pgs. 11-12, Plaintiffs failed to plead their own citizenship. In their initial response to this Court's Jurisdictional Question, Plaintiffs refused to admit their failure to allege citizenship. *See* Pls. Oct. 25, 2017 Response to Jurisdictional Question, Pgs. 17-18. They argued that it is "apodictic" that each of their purported classes contains at least one member who is a citizen of a state different from either of the Defendants for jurisdictional purposes pursuant to 28 U.S.C. § 1332(d), but the law in this Circuit is clear that alleging residence is insufficient to plead citizenship, and that courts cannot simply assume jurisdictional facts as Plaintiffs would have this Court do. *See, e.g., Travaglio v. Am. Exp. Co.*, 735 F.3d 1266, 1267-68 (11th Cir. 2013); *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1273 (11th Cir. 2000).

In their response to this Court's Supplemental Jurisdictional Question, Plaintiffs argue that the District Court did not explicitly afford them an opportunity to amend their deficient complaint, but acknowledge that the District Court dismissed their Complaint without prejudice. *See* Pls. Nov. 24, 2017 Response to Jurisdictional Question, Pg. 16. A dismissal without prejudice necessarily means that Plaintiffs could have sought leave to amend in the District Court. However, Plaintiffs failed even to move for amendment in the District Court.

For the reasons stated in Defendants' previous response to this Court's Jurisdictional Question, the current record evidence does not establish Plaintiffs' citizenship. *See* Defs.' Oct. 30, 2017 Response to Jurisdictional Question, Pgs. 4-5. Defendants oppose any supplementation of the record to demonstrate citizenship. *See id.* But because Defendants seek expeditious resolution of this matter by this Court, including affirmance of the District Court's holding that Plaintiffs do not have standing, Defendants reiterate that they do not oppose permitting Plaintiffs to amend their pleadings on appeal for the sole purpose of attempting to cure their failure to plead citizenship properly. Plaintiffs have filed

a Proposed Second Amended Complaint to which Defendants consent.

Dated: November 27, 2017

Respectfully submitted,

/s/ Bruce V. Spiva

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CERTIFICATE OF COMPLIANCE

Type-Volume. This document complies with the word limit of Fed. R. App. P. 32 because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and applicable rules, this document contains 422 words according to Microsoft Word word-processing software, version 2010. **Typeface and Type-Style.** This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface in Times New Roman Type-Style and size 14 font.

/s/ Bruce V. Spiva
Bruce V. Spiva

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by CM/ECF on November 27, 2017 on all counsel or parties of record on the service list.

/s/ Bruce V. Spiva
Bruce V. Spiva

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