

DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

CASE NO.: 3D21-1295
TRIAL COURT CASE NO.: 2018-28145 CA (44)

BASSEM EL MALLAKH,

Appellant,

v.

BELGIUM INVESTMENTS 960 BAY DR,

Appellee.

Answer Brief

Order Denying Motion to Vacate Final Judgment

FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

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STATEMENT OF THE CASE AND FACTS

This appeal is about El Mallakh's perjury and long-standing evasion of process, to shirk responsibility on the millions El Mallakh stole and lost. El Mallakh's has knowingly and intentionally waived participation in this lawsuit, despite repeated due process notices and opportunities to be heard. The trial court (Complex Business Division 44) properly denied El Mallakh's unverified and time-barred motion to vacate final judgment, after an evidentiary hearing, weighing the evidence, observing the demeanor and veracity of six witnesses, seeing El Mallakh and his sister perjure themselves, and ruling that El Mallakh was properly served at his home, where his car was registered, upon his adult sister and co-resident. There is no gross abuse of discretion and this Court must affirm.

A brief timeline of the key events are as follows:

Date	Event
8/17/18	Complaint filed.
8/29/18	Summons for El Mallakh issued.
1/8/19	Alias Summons for El Mallakh issued.
4/17/19	Summons substitute served on El Mallakh.
7/1/19	Return of Service and Authentication of Summons filed.
10/23/19	Motion for Judicial Default filed.
10/28/19	Notice of Hearing for Judicial Default served.
11/18/19	Order of Judicial Default rendered.
1/23/20	Motion for Final Judgment filed.
1/23/20	Notice of Evidentiary Hearing for Final Judgment served.
2/21/20	Request for Judicial Notice of Additional Affidavits filed.

2/25/20	Final Judgment rendered.
7/7/20	Summary Judgment rendered.
2/19/21	Motion to Vacate Final Judgment filed.
3/5/21	Motion to Compel Depositions filed.
3/9/21	Belgium's Objection to Hearing without Discovery filed.
3/17/21	EI Mallakh's Objections to Taking of Depositions filed.
3/18/21	Order Granting Depositions of EI Mallakh and Hanna rendered.
3/23/21	EI Mallakh's Notice of Filing Exhibits filed.
3/24/21	Belgium's Response in Opposition to Motion, with Exhibits and Transcripts filed.
3/24/21	Hearing on Motion to Vacate occurs.
5/15/21	Order Denying Motion to Vacate rendered.

A. The regular return of service showed EI Mallakh was properly served through his adult co-resident sister at his 116 Rockefeller home, that he owns, where his car was registered.

Between 2013 and 2017 EI Mallakh stole and squandered millions from Belgium in a false scheme to completely renovate a mid-rise condominium building in Miami Beach, using Belgium's capital.¹

EI Mallakh represented himself to be the Manager of the project and a CEO who had gained an upstanding reputation in developing billions of dollars of real estate projects.² EI Mallakh promised 30%+ returns and

¹ App. 525 (Response to Motion to Vacate at *1); App. 38–378, 383–403, 525–986 (affidavits, exhibits, and orders); App. 4–20, 37 (Complaint and default).

² App. 111 (Exhibit B(1)).

completion of the project in one year. *Id.* This was all a lie and fraud orchestrated by El Mallakh.

The Defendants³ ultimately left the building project “entirely gutted and in a state of demolition only,” after years of misrepresenting it was on the brink of completion with certificate of occupancy.⁴ El Mallakh was the only defendant who did not actively participate in the lawsuit below.

Belgium filed this case in August 2018 to recover its losses. By then, El Mallakh had absconded from Miami Beach with Belgium’s millions. Using social media investigation, Belgium narrowed its search for El Mallakh to the Los Angeles Metro area. Belgium then hired a private investigator team to search Los Angeles for El Mallakh.⁵

A skip trace showed El Mallakh owned and resided at 116 Rockefeller, Irvine CA, with no other possible addresses, and Reem Hanna as his co-resident there.⁶

Belgium properly served El Mallakh with a copy of the summons and pleadings through his adult co-resident sister Hanna in April 2019.⁷ Licensed

³ Belgium also sued El Mallakh’s co-conspirators, Bernard Petit and Spencer Blank, but they appeared, defended, and settled in this lawsuit.

⁴ App. 806 (Exhibit 9); App. 38–378, 383–403, 525–986 (affidavits, exhibits, and orders).

⁵ App. 721.

⁶ App. 561 (skip trace at *4, 6, 19–29 and 56).

⁷ App. 24 (return of service).

private investigator Britney Johnson provided a return of service and written testimony that El Mallakh's Hanna ("DOB 12/1982") received the pleadings and summons at El Mallakh's home after identifying herself as "Reem." *Id.*

Investigator Johnson's California DMV search showed El Mallakh had his 2016 Mercedes Benz C Class registered at 116 Rockefeller on the service date.⁸ El Mallakh admitted he owns 116 Rockefeller and that his car was registered there when process was served.⁹

Investigator Johnson's return of service stated when it came to hand (March 3, 2019), when it was served (April 17, 2019), the manner of service ("substitute"), the name of the person served ("Reem Hanna"), and that the pleadings and summons were served ("a true copy of this writ, together with a copy of the pleading"), and it is signed by the process server and notarized.¹⁰ This return was regular on its face, not defective.¹¹

Service was good and effective in 2019.

⁸ App. 721 (Johnson declaration).

⁹ App. 1042 (Tr. 1423, ln. 20–Tr. 1424, ln. 8).

¹⁰ App. 24.

¹¹ El Mallakh on appeal misunderstands the difference between the one-page return of service executed on May 6, 2019, and a later one-page summons authentication jurat executed three weeks later on May 27, 2019. App. 24–27. El Mallakh's misreading of these documents is unfortunately the linchpin of his appellate argument, and causes his appellate argument to fail.

B. El Mallakh squandered repeated notices and opportunity to be heard, in his campaign to evade Belgium and responsibility for his fraud.

After service, El Mallakh admitted in testimony that he was again made specifically aware of this lawsuit on October 9, 2019, and specifically aware that Belgium had served the summons and complaint by that time:

[EL MALLAKH]: [A]t that time, also [co-defendant] Bernard [Petit] asked me – I remember very well. He says ‘Did anybody try to serve you any documents?’

Q: from October 2019 . . . did he mention to you that you were being sued in a lawsuit here in Florida? Did you understand by that question that somebody was attempting to serve documents about a lawsuit on you?

[MALLAKH]: Right.”

App. 781 and 785.¹²

Between October 2019 and February 2020, El Mallakh continued to communicate with his co-defendant Petit as to this lawsuit, its stage of advance, and its impact on El Mallakh’s interests.¹³

On October 23, 2019, Belgium moved for an order of judicial default.¹⁴

On October 28, 2019, Belgium served a notice of a November 18, 2019

¹² Response Exhibit 5 (Mallakh deposition) at Tr. 55, In. 17–20 and Tr. 59, In. 18–Tr. 61, In. 1.

¹³ App. 1104 (Order *11) (making evidentiary findings on testimony).

¹⁴ App. 28 (10/23/19 motion for judicial default).

hearing on the motion for judicial default.¹⁵ On November 18, 2019, El Mallakh failed to show up at the hearing, and the trial court entered an order of judicial default.¹⁶

C. El Mallakh refused to show up for the duly noticed special set evidentiary hearing on damages, and the trial court entered final judgment against El Mallakh.

On January 23, 2020 (two months after the default order), Belgium filed a motion for final judgment against El Mallakh for breach of fiduciary duty, theft/conversion, and unjust enrichment.¹⁷ The motion attached 300+ pages of supporting evidence, including multiple affidavits and 48 exhibits of correspondence, photos, and spreadsheets supporting damages. *Id.* The same day, Belgium filed and served a notice of special set evidentiary hearing on the motion, set for February 21, 2020.¹⁸

The exhibits showed an authenticated history of the investment and El Mallakh's theft from escrow and mismanagement.¹⁹ The exhibits showed El Mallakh misrepresenting that he was managing the project and that it was proceeding well, with electrical, framing, and structure done, and all

¹⁵ App. 36 (10/28/19 notice of hearing on motion for judicial default).

¹⁶ App. 37 (11/18/19 order of judicial default).

¹⁷ App. 38 (1/23/20 motion).

¹⁸ App. 379 (1/23/20 notice of hearing).

¹⁹ App 111–36 (Exhibit B(1)–(7)).

materials purchased—all lies.²⁰ El Mallakh misrepresented that he was on the brink of finishing the entire project within 10 days on September 30, 2015 (lies). *Id.*

The exhibits showed Belgium principals (Jean-Claude Ruche) repeatedly requesting a detailed budget and accounting to finish everything, and El Mallakh falsely promising accountings that never materialized.²¹

The exhibits showed correspondence reflecting that El Mallakh had done almost none of the work represented and **had stolen the money**, as of October 2015, but that the project would be done by mid-2016 (it would not).²² The exhibits showed correspondence that the building was still not done in October 2017, wherein El Mallakh's partner Bernard Petit and their sub-manager Spencer Blank (all co-defendants in the claims) represented that El Mallakh has stolen all the money:

Due to . . . problems that were created by Bassem [El Mallakh] . . . **if Bassem [El Mallakh] would have done his job properly this project would have been completed a long time ago.** It was Bassem [El Mallakh] who chose to neglect the information that was given to him at the time. Bassem [El Mallakh] chose to not hire the arc and eng [architect and engineer], it wasn't Bernard. **Everyone learned that Bassem [El Mallakh] is not the guy that he said he was, and clearly was not capable of fully managing these kinds of projects.**

²⁰ App 137–69 (Exhibit B(7)–(12)).

²¹ App 170–201 (Exhibit B(12)–(16)).

²² App 202–12 (Exhibit B(17)–(21)).

App 218.²³

The exhibits showed a breakdown of the millions sent to El Mallakh and Petit as the co-managers of the property project, which money El Mallakh stole and squandered, including an independent developer's assessment of the millions gone and that the project was worse than demolition.²⁴

The exhibits showed demand letters sent by Belgium's attorney Pieter Weyts upon El Mallakh for his theft and mismanagement, and El Mallakh's response still representing himself to be the CEO managing this project alongside Petit (who was actively engaged in it in December 2017).²⁵ El Mallakh provided a listing of money lost and stolen from Belgium Investments, including stolen cash withdrawals, personal vacations, and a \$344K City lien for El Mallakh's violations. *Id.* In February 2018 the project was still unfinished, but again fraudulently misrepresented as on the brink of finishing (another lie). *Id.*

The exhibits showed Belgium's notification to part ways with El Mallakh; demanding his explanation for direct theft of \$1,549,500.00 from one of multiple escrows; and confronting "that you are not telling the truth,"

²³ Exhibit B(22) (email dated November 6, 2017).

²⁴ App 211–88 (Exhibit B(21)–(30)).

²⁵ App 289–333 (Exhibit B(31)–(39)).

“[w]e know that he [El Mallakh] robbed us” and “taken far more than we can get back.”²⁶ The exhibits showed El Mallakh falsely promising to review the wire thefts and provide an explanation in May 2018 (this was a lie), while still signing and representing himself to be manager of this real estate project.²⁷

The exhibits showed additional bids to work the property, requiring another \$1.358M, and showing that the project had to be started from scratch (all money had been lost and stolen).²⁸ Exhibit B ¶ 71 provided an affidavit with sworn statement and breakdown of the amount of money thus lost from El Mallakh’s mismanagement as \$4.255M.²⁹

The motion for final judgment was calendared for a February 21, 2020 special set evidentiary hearing, with notice filed and served to all parties on January 23, 2020.³⁰ The trial court took evidence on February 21, 2020 in favor of the judgment.³¹ No evidence was offered against the motion. *Id.* El Mallakh again refused to show or call for a court reporter at the hearing.

²⁶ App 334–49 (Exhibit B(40)–(42)).

²⁷ App 342 (Exhibit B(42)).

²⁸ App 342(Exhibit B(42)–(48)).

²⁹ App 37–110, 383 (verified complaint, affidavits).

³⁰ App. 379 (1/23/20 notice of hearing).

³¹ App. 392–98 (order stating as much).

On February 21, 2020, Belgium filed an additional set of affidavits with additional independent damages analysis and reports, and requested the trial court's judicial notice of them. App. 383.

On February 25, 2020, the trial court enter final judgment against El Mallakh on Counts VI–VIII, for El Mallakh's disastrous mismanagement, outright theft of Belgium's money, breach of fiduciary duty through theft and misrepresentation, and unjust enrichment.³² The multiple affidavits and exhibits filed before the evidentiary, along with the evidence presented at the evidentiary hearing, showed that the amount arose to \$4.255M lost and stolen by El Mallakh.³³

As to the damages evidence presented at the evidentiary hearing, the trial court's judgment expressly stated that "Plaintiffs have provided additional supporting documentation and evidence on damages, which remain uncontested by Defendant Bassem Essam El Mallakh" as to breach of fiduciary duty.³⁴ The trial court thereafter found that the Defendants left the building **"entirely gutted and in a state of**

³² App. 392) (2/25/20 final judgment and complaint).

³³ App 37–110, 383 (verified complaint, affidavits).

³⁴ App 396(2/25/20 final judgment at ¶ 9(w)).

demolition only” after years of representing it was on the brink of completion.³⁵

D. El Mallakh continued to sit idly by, evading this lawsuit, despite repeated notice of judgment against him.

El Mallakh again received notice on September 13, 2020, when process server Michael Hanley served judgment upon El Mallakh through Reem Hanna at El Mallakh’s home.³⁶

El Mallakh again received additional notice of the Florida judgment against him on November 16, 2020 when the County of Orange Clerk of Records sent a Courtesy Notice regarding a lien that was placed on his property.”³⁷ El Mallakh could not explain why he still did not come forward.³⁸

³⁵ App. 807 (Judgment as Response Exhibit 9).

³⁶ App. 1104 (5/15/21 Order *11) (citing Exhibit 10 (Declaration of Michael Danley) at ¶¶ 8–14); (Order *11) (citing Response Exhibit 21 (Transcript Hanna) at Tr. 71, ln. 17–Tr. 73, ln. 20 (“Q: at 116 Rockefeller at 9 o’clock p.m. on September 13, 2020, when this process server came to your house; is that right?” “[HANNA]: Right.”)).

³⁷ App. 1105 (Order *12) (citing Response Exhibit 13 (Mallakh CA affidavit) at ¶ 7).

³⁸ App. 1105 (Order *12–13) (citing Exhibit 5 (Transcript El Mallakh) at Tr. 59, ln. 18–Tr. 61, ln. 1).

E. El Mallakh finally appeared over a year later by filing an unverified motion to vacate final judgment, but not quash service or vacate the judicial default order.

On February 19, 2021, more than a year after order of judicial default, El Mallakh appeared and filed his unverified motion to vacate judgment, with no supporting affidavits or exhibits.³⁹ El Mallakh failed to submit a transcript of the February 21, 2020 evidentiary hearing determining damages, and failed to otherwise create the requisite record for this Court to review the trial court's evidentiary hearing on damages. El Mallakh did not take or request any discovery.

El Mallakh did not challenge facial regularity of the return of service below, because the return of service is regular on its face.⁴⁰ El Mallakh did not discuss Florida Statutes § 48.21 (return of execution of process) or § 48.031 (service of process on adult co-resident) in his motion to vacate. *Id.*

In written response Belgium notified El Mallakh of these omissions and errors, and Belgium expressly confirmed that the service was pursuant to Florida Statutes § 48.031.⁴¹ El Mallakh did not amend his motion to vacate and did not alter his argument in any way.

³⁹ App. 404 (2/19/21 motion to vacate).

⁴⁰ App. 404 (motion to vacate); App. 24 (return of service); App. 987 (transcript of hearing).

⁴¹ App. 525 (3/24/21 Response to Motion to Vacate).

In the three months between his February 2021 motion to vacate and the May 2021 order on appeal, El Mallakh failed to take any discovery or otherwise create a record for appeal as to the February 2021 damages judgment—wasting an additional three months of opportunity.

Instead, El Mallakh filed objections against allowing any discovery on March 17, 2021.⁴² Nevertheless, Belgium obtained the trial court's order allowing Belgium to take depositions of El Mallakh and his sister Reem Hanna.⁴³ At deposition, El Mallakh committed perjury by repeatedly lying about where he lived, being homebound in 2021, and being homebound at 525 Broadway in Santa Monica.⁴⁴

To prove El Mallakh was lying, Belgium had to employ four private investigators to sit on the 525 Broadway property for 30 days straight.⁴⁵ These investigators went to the door of 525 Broadway every day, at morning and night, and he was never there. *Id.* El Mallakh's name was not on the intercom, the front desk concierge never saw him there, and the multiple papers and notices laid on and around the front door did not move. *Id.*

⁴² App. 467 (3/17/21 Objections).

⁴³ App. 471 (3/18/21 order).

⁴⁴ App. 1033 (at Tr. 1414, ln. 21–Tr. 1419, ln. 5).

⁴⁵ App. 1059–1089 (transcript calling process servers).

Before evidentiary hearing, Belgium then filed its response in opposition to the motion to vacate, with 425 pages of evidence against vacating, and substantial case law against El Mallakh.⁴⁶

F. At the evidentiary hearing to vacate, El Mallakh and his sister Hanna committed perjury, while the evidence showed El Mallakh lived at the 116 Rockefeller service address.

At the March 24, 2021, El Mallakh adopted the return of service as regular and independently took on the duty to disprove that he lived at the service address:

[TRIAL COURT]: All right. Let's proceed.

[EL MALLAKH'S COUNSEL]: Okay. Your Honor, my first witness I am going bring up is Reem Hanna.

[TRIAL COURT]: You said bring up, is this – is this a video or something?

[EL MALLAKH'S COUNSEL]: It is an evidentiary hearing. No. This is going to be my exhibits.

[TRIAL COURT]: Okay. Maybe the witness is there . . .

. . .

[EL MALLAKH'S COUNSEL]: Your Honor, may I proceed?

[TRIAL COURT]: Yes, sir.

App. 989.⁴⁷

⁴⁶ App. 525 (3/24/21 Response to Motion to Vacate).

⁴⁷ 3/24/21 hearing transcript at Tr. 1370, In. 19–Tr. 1371, In. 17.

When Belgium attempted to discuss the return of service at any point, El Mallakh repeatedly objected and thereby ensured that the return of service itself was not at issue or preserved for appeal.⁴⁸

After hearing the live testimony of six witnesses, including El Mallakh and his sister Hanna; observing the demeanor, body language, tone of voice, eye contact, and other indicia of veracity; and weighing all of the record evidence, the trial court found that El Mallakh and Hanna were simply not credible:

[TRIAL COURT]: It is the finding of this Court that **El Mallakh and Hanna are not credible** and have failed to provide clear and convincing evidence that El Mallakh's usual place of abode is not 116 Rockefeller, Irvine CA.

App. 1102 (5/15/21 order at *9).

The trial court weighed competent, substantial evidence of good service of process, along with the credibility of numerous witnesses, and found good service at El Mallakh's 116 Rockefeller home, which he owns and where his car was registered. *Id.*⁴⁹

⁴⁸ App. 1003 (Tr. 1384, In. 18–Tr. 1385, In. 20; Tr. 1386, In. 12–18) (“Your Honor, I am going to object”).

⁴⁹ See *also* App. 1042 (Tr. 1423, In. 20–Tr. 1424, In. 8).

El Mallakh admitted to having repeated notice of the lawsuit and due process opportunity to be heard, from 2019 and thereafter, but simply chose to do nothing:

[BELGIUM]: So the reality is, is that at least as of October 2019, you knew you were getting sued in this lawsuit. And your co-defendant told you somebody was trying to serve papers on you; right?

[EL MALLAKH]: Yes.

[BELGIUM]: . . . and that was 15 months ago; right?

[EL MALLAKH]: Uh-huh.

[BELGIUM]: And you sat on your hands; isn't that right?

[EL MALLAKH]: Yes.

App. 1045.⁵⁰

Although El Mallakh tried to claim that his usual place of abode was at 525 Broadway rather than 116 Rockefeller, El Mallakh's own testimony about living at 525 Broadway was not credible:

[BELGIUM]: So to confirm, you have no roommate that can come forward. You have got no mail. You've got no utilities. Your car is registered somewhere else. And apparently nobody can find you at 525 Broadway; does that sound right?

[EL MALLAKH]: I mean, this is the truth.

⁵⁰ 3/24/21 hearing transcript at Tr. 1426, In. 15–Tr. 1433, In. 5.

App. 1044.⁵¹

El Mallakh then admitted in testimony that he intentionally evades service and notices of collection.⁵² El Mallakh also lied about his use of pseudonyms, as part of his practice of concealing his whereabouts.⁵³ El Mallakh could not explain why his property manager at 525 Broadway said El Mallakh was hardly ever at 525 Broadway, or why the process server testified that the intercom system at 525 Broadway had no name listed on it for El Mallakh.⁵⁴ Like his testimony, El Mallakh's demeanor and self-presentation at the actual hearing were also not believable.

El Mallakh could not explain why he was sleeping nights at 116 Rockefeller (the service address), both during his deposition and even on the day of the evidentiary hearing, unless it was truly his usual place of abode.⁵⁵

Instead of proving his credibility, El Mallakh repeatedly lied under oath and committed perjury as to when he first had notice of this lawsuit, through conflicting affidavits and deposition testimony submitted to the trial court:

⁵¹ 3/24/21 hearing transcript at Tr. 1425, In. 20–25; see *also* App. 1043 (Tr. 1424, In. 10–12); App. 1044 (Tr. 1425, In. 10 – 12); App. 1044 (Tr. 1425, In. 13–19).

⁵² App. 1038 (3/24/21 hearing at Tr. 1419, In. 17–21).

⁵³ App. 1040 (3/24/21 hearing at Tr. 1421, In. 17–Tr. 1423, In. 19).

⁵⁴ App. 1039 (3/24/21 hearing at Tr. 1420, In. 1–17).

⁵⁵ App. 1032 (Tr. 1413, In. 20 – Tr. 1414, In. 11).

CA Affidavit	FL Affidavit	Deposition (1)	Deposition (2)
<p>“I had no idea that the Judgment Creditor had filed an Application for Entry of Sister State Judgment, the Notice of Entry of Sister State Judgment, or the Sister State Judgment . . . <u>until I hired counsel to represent me and set the Sister State Judgment aside.</u>”</p> <p>CA Affidavit at ¶ 8.</p>	<p>“I only became aware of a judgment against me <u>on November 16, 2020</u> when the County of Orange Clerk of Records sent a Courtesy Notice regarding a lien that was placed on my property.”</p> <p>FL Affidavit at ¶ 7.</p>	<p>“And that’s when I actually found out that there is a lawsuit/judgment. So I found out about it in February of 2021 just from going to the bank.</p> <p>[Q: And that’s the very first time you heard anything about it?]</p> <p>“First time. First time, February 2021.”</p> <p>Depo. Tr. 48, In. 25–Tr. 49, In. 11.</p>	<p>“Q: from <u>October 2019</u> . . . did he mention to you that you were being sued in a lawsuit here in Florida? Did you understand by that question that somebody was attempting to serve documents about a lawsuit on you?</p> <p>[MALLAKH]: Right.”</p> <p>Tr. 59, In. 18–Tr. 61, In. 1.</p>

App. 541 (Response to Motion to Vacate at *17); App. 1098 (Order at *5).

This was perjury. El Mallakh lied about being “homebound” at 525 Broadway in the month preceding the evidentiary hearing.⁵⁶

El Mallakh’s only other witness—his sister Reem Hanna—committed perjury as well. Hanna lied under oath about previously being sued and

⁵⁶ App. 1033 (3/24/21 hearing at Tr. 1414, In. 21–Tr. 1419, In. 5).

accused of fraud and fraudulent statements.⁵⁷ When the trial court asked her to explain this perjury, Hanna admitted that she knowingly and selectively omits information that she personally deems irrelevant or unflattering, even while testifying under oath. *Id.* Hanna was trying to conceal a lawsuit alleging that she and her brother El Mallakh had committed fraud together, much like they did here. *Id.*

El Mallakh suborned Hanna’s falsely testified about any interaction with investigator Johnson in March and April 2019, and falsely testified that there was no middle-aged man with her upon receipt of service in September 2020.⁵⁸ In doing so, Ms. Hanna contradicted her California affidavit:

CA Affidavit of Hanna	FL Deposition Testimony of Hanna
<p>“[HANNA]: I have never been served with the Application for Entry of Sister State Judgment, Notice of Entry of Sister State Judgment, or the Sister State Judgment . . . First, I was never served.”</p> <p>California Declaration of Reem Hanna) at ¶¶ 4–6.</p>	<p>“Q: at 116 Rockefeller at 9 o’clock p.m. on September 13, 2020, when this process server came to your house; is that right?”</p> <p>“[HANNA]: Right.”</p> <p>Tr. 71, In. 17 –Tr. 73, In. 20</p>

⁵⁷ App. 1014 (3/24/21 hearing at Tr. 1395, In. 4–Tr. 1402, In. 5).

⁵⁸ App. 948 (citing Response Exhibit 21 (Transcript Hanna) at Tr. 71, In. 17 –Tr. 73, In. 20; *cf.* Response Exhibit 4 (declaration of investigator Johnson) and Response Exhibit 10 (declaration of process server Danley).

Further, as the recipient of service of process, Hanna could not explain who the middle-aged grown man was with her at 116 Rockefeller during service of process, who the process server testified was present during service and identified as El Mallakh.⁵⁹

Hanna could not explain why she would not tell El Mallakh that he had just been served. *Id.* Hanna could not credibly explain why she denied knowing her brother El Mallakh and instead slammed the door in the process server's face.⁶⁰ Hanna could not credibly explain why she and El Mallakh were sleeping in the same home, on the days of service of process and deposition.⁶¹

Additionally, both Mallakh and Hanna falsely testified about their personal background, both in where they live and in their role in a 2014 slander, fraud, and conspiracy case.⁶²

⁵⁹ App. 1012 (3/24/21 hearing at Tr. 1393, In. 8–Tr. 1394, In. 22); App. 1064 (3/24/21 hearing at Tr. 1445, In. 1–17) (“[THE COURT]: **can you see Mr. Bassem on the screen? Is that the person that you saw? . . . [WITNESS]: I feel it is . . .”).**

⁶⁰ App. 1010 (3/24/21 hearing at Tr. 1391, In. 20–25).

⁶¹ App. 1021 (3/24/21 hearing at Tr. 1402, In. 15–21).

⁶² App. 771 (citing Response Exhibit 5 (Transcript El Mallakh) at Tr. 45, In. 7–Tr. 48, In. 17 (denying having been sued or accused of slander, fraud, conspiracy, or the like); Exhibit 21 (Transcript Hanna) at Tr. 77, In. 7–Tr. 81, In. 4 (same); *cf.* Exhibit 2 (Complaint for slander, fraud, and conspiracy).

In contrast, four independent process servers testified against El Mallakh and Hanna.⁶³ The trial court found the four process servers were more credible.⁶⁴ The evidence showed El Mallakh does not live at 525 Broadway, he lives at 116 Rockefeller.⁶⁵ There was no other address for El Mallakh. There is nowhere else to attempt service or more diligence possible, then or now. El Mallakh lives at 116 Rockefeller, where he was served. *Id.*

The trial court properly found that El Mallakh and his sister were not credible:

[Trial Court]: It is the finding of this Court that El Mallakh and Hanna are not credible and have failed to provide clear and convincing evidence that El Mallakh's usual place of abode is not 116 Rockefeller, Irvine CA.

App. 1102 (5/15/21 order at *9). El Mallakh now appeals.

SUMMARY OF THE ARGUMENT

This appeal is about El Mallakh's perjury and long-standing evasion to shirk responsibility on the millions El Mallakh stole and lost, and re-victimize Belgium. El Mallakh's has knowingly and intentionally waived participation in the lawsuit, despite repeated due process notices and opportunities to be

⁶³ App. 1059 (Tr. 1440–1469) (Michael Danley, Carlos Corejo, Ruben King, and Dorian Wordlaw); App. 24 (return and declaration of Britney Johnson).

⁶⁴ See, e.g., App. 1063 (Tr. 1444, In. 22–Tr. 1445, In. 1); see *also* App. 1010 (Tr. 1391, In. 7–11); App. 1011 (Tr. 1392, In. 13 – Tr. 1393, In. 4).

⁶⁵ App. 1059 (at Tr. 1440–1469) (testimony of process servers).

heard, in the intentional perpetuation of his multi-year and multi-million-dollar fraud against Belgium, and intentionally evaded service and the long-overdue responsibility for his wrongs.

Competent substantial evidence showed good service of process upon El Mallakh at 116 Rockefeller home, which he owns and where his car was registered. The trial court weighed the credibility of five process servers against the perjury and conflicting statements of El Mallakh and his sister, and found the process servers more credible. This credibility determination cannot be disturbed on appeal.

Competent substantial evidence supported the damages awarded for El Mallakh's multi-year fraud and theft. El Mallakh cannot show otherwise, because he failed to properly create a record for appeal. There was no gross abuse of discretion, as required to reverse. Accordingly, the Court must affirm.

STANDARD OF REVIEW

The discretion reposed by Rule 1.540 in the trial judge to grant relief from judgment is of the broadest scope, and in order to reverse a judge's ruling thereunder, there must be a showing of **gross abuse of discretion**. *Schwab & Co., Inc. v. Breezy Bay, Inc.*, 360 So. 2d 117, 118 (Fla. 3d DCA 1978); *see also Fla. Recovery Adjusters, LLC v. Pretium Homes, LLC*, 261

So. 3d 664, 667 (Fla. 3d DCA 2018); *Torres v. Arnco Const., Inc.*, 867 So. 2d 583, 586–87 (Fla. 5th DCA 2004).

Review of trial court rulings on the admission of evidence calls for a determination of whether the court grossly abused its discretion, in the context of a motion to quash service. *Trupin v. Burgess*, 605 So. 2d 1296, 1297 (Fla. 4th DCA 1992); *Davidian v. JP Morgan Chase Bank*, 178 So. 3d 45, 47 (Fla. 4th DCA 2015). The Court will defer to the factual findings of the court if supported by substantial, competent evidence. *Id.*

ARGUMENT WITH REGARD TO EACH ISSUE

- I. The Court must affirm because El Mallakh waived these issues, invited the purported errors, and failed to address that the trial court found him not credible after weighing his demeanor, his perjury, and the competent substantial evidence against him.**
 - A. El Mallakh waived his arguments by failing to preserve them below, and instead invited the purported errors that he now appeals.**

Under well-established Florida law, this Court cannot consider appellate arguments: (1) that were unpreserved because no objection or specific legal argument was made below; (2) that were unpreserved because the objection or legal argument below was not sufficiently specific; or (3) if the purported error was “invited” by the appellant. *Goodwin v. State*, 751 So. 2d 537, 544 (Fla. 1999). These are the rule of preservation and the doctrine against invited error.

1. El Mallakh waived any argument to the return's *facial* regularity/defect, and instead made a *factual* argument that he did not live at his own home where his car was registered.

Under the rule of preservation, this Court cannot consider an issue that is raised for the first time on appeal. *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005) (holding party waived argument for appeal by failing to properly object and challenge below); *Porro v. Fla. Dep't of Children and Families*, 240 So. 3d 104, 104 (Fla. 3d DCA 2018) (same); *Wadley v. Nazelli*, 223 So. 3d 1118, 1122 (Fla. 3d DCA 2017) (“by failing to seek an amendment [] before the trial court, the plaintiffs have failed to preserve this issue for appellate review.”); *Vorbeck v. Betancourt*, 107 So. 3d 1142, 1147–48 (Fla. 3d DCA 2012).

The *specific* issue must be raised, presented, and argued first to the trial court, with a *specific* motion or objection at the appropriate stage of the proceedings, and with *the specific legal argument* made and presented to the trial court. *Sunset* at 928; *Porro* at 104; *Wadley* at 1122. As this Court recently stated:

As Florida courts have long recognized, ‘in order to be preserved for further review by a higher court, **an issue *must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation.***’

Wadley at 1122 (quoting *Sunset* at 928); *Vorbeck* at 1148 (same).

Thus, even if an issue is broadly raised at the trial level, this Court should still not address it if the appellant did not make and preserve the same specific legal argument below, fully briefed and presented specifically below. *Goodwin* at 544 n.7.

The failure to properly preserve an issue for appellate review constitutes a **waiver** of the right to seek reversal based on that error. *Vorbeck* at 1148. Further, even if an issue is preserved below, an appellant can still waive an argument by failing to then specifically raise and brief it in the Initial Brief in the appeal. *D.H. v. Adept Cmty., Servs., Inc.*, 271 So. 3d 870, 888 (Fla. 2018); *Polyglycoat Corp. v. Hirsch Distribs., Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983). Any arguments not expressly included in the Initial Brief are also **waived**. *Id.*

The Florida Supreme Court stated the importance of the rule of preservation through specific argument and briefing:

This requirement of specific argument and briefing is one of the most important concepts of the appellate process. Indeed, it is not the role of the appellate court to act as standby counsel for the parties. . . . [I]t is not the function of the Court to rebrief an appeal and thereby become an advocate. Moreover, it is only logical to require an argument to specifically be raised. In the end . . . an appellant who abandons an argument cannot benefit from that argument in the future. . . . [T]hese [are] well-established appellate principles.

D.H. at 889.

The Court cannot “depart from its dispassionate role and become an advocate by second guessing counsel and advancing for him [or her] theories and defenses which counsel either intentionally or unintentionally has chosen not to mention.” *Polyglycoat* at 960; *id.*

Additionally, if a defendant believes that a return of service is irregular, the burden is on that defendant to raise such an objection affirmatively, and on his failure to object any such facial defect is waived. *Voorhies v. Barnsley*, 116 Fla. 191, 192 (Fla. 1934) (holding defendant waived facial regularity without “special objection thereto”).

Here, El Mallakh failed to challenge the facial regularity of the return of service in any way below, and never argued the return’s facial defect or the return’s statutory compliance (Issue I). App. 404–1093. El Mallakh never even mentioned the return of service in his motion to vacate or in the evidentiary hearing, not once. *Id.* El Mallakh never mentioned facial irregularity or facial defect in his motion or in the hearing, not once. *Id.* That was El Mallakh’s choice; it was his strategy to the trial court.

El Mallakh did not discuss Florida Statutes § 48.21 or § 48.031 in his motion to vacate. App. 404. At the hearing, El Mallakh never mentioned § 48.21 or its requirements. App. 987–1093. El Mallakh did not challenge facial

regularity of the return below because the return of service is regular on its face. App. 24.⁶⁶

El Mallakh instead adopted the return of service as regular and non-defective on its face, and thereby waived appeal as to facial irregularity or defect. *Voorhies* at 192; *Sunset Harbour* at 928; *Goodwin* at 544 n.7; *Porro* at 104; *Wadley* at 1122; *Vorbeck* at 1147–48.

El Mallakh's trial court argument was a *factual*⁶⁷ argument that he did not live at his own condo where his car was registered, and that service did not occur through the Secretary of State under Florida Statutes § 48.171. App. 404–09.⁶⁸ El Mallakh repeatedly objected to discussion of the return at

⁶⁶ El Mallakh on appeal misunderstands the difference between the one-page return of service executed on May 6, 2019, and a later one-page summons authentication jurat executed three weeks later on May 27, 2019. App. 24–27. El Mallakh's misreading of these documents is the linchpin of his appellate argument, and causes his appellate argument to fail.

⁶⁷ *Robles-Martinez v. Diaz, Reus & Targ, LLP*, 88 So. 3d 177, 181 (Fla. 3d DCA 2011) (“The affidavits offered by Appellants did not challenge the facial regularity of the return of service; rather, by alleging the Appellants were not living at the apartment on the date process was served, the affidavits challenged the *veracity* of the information on the face of the return; Appellants' challenge is to the validity of the service of process itself, which created an issue of fact that required resolution at an evidentiary hearing.”).

⁶⁸ El Mallakh improvidently or mistakenly argued that service was done under Florida Statutes § 48.171 (service on motor vehicle owners) and § 48.161 (service through Secretary of State), and cited case law and issues as to those statutes (App. 404–09). Yet, Belgium's service was not done under the motor vehicle statute or through the Secretary of State, and thus these statutes did not (and do not) apply.

the evidentiary hearing.⁶⁹ Thus, El Mallakh chose to waive facial defect arguments. *Sunset Harbour* at 928; *Porro* at 104; *Wadley* at 1122; *Vorbeck* at 1147–48.⁷⁰

This Court cannot “depart from its dispassionate role and become an advocate by second guessing [El Mallakh and his] counsel and advancing for him theories and defenses which counsel either intentionally or unintentionally has chosen not to mention.” *Polyglycoat* at 960. It is important that this Court hold El Mallakh to his trial court choices, as the rule of

⁶⁹ In fact, when Belgium sought to discuss the return of service, El Mallakh repeatedly objected and thereby ensured that the return of service was not at issue or preserved for appeal. App. 1003 (Tr. 1384, ln. 18–Tr. 1385, ln. 20; Tr. 1386, ln. 12–18) (“Your Honor, I am going to object”).

⁷⁰ Even if El Mallakh had not waived these issues under the rule of preservation, which he has, his appellate arguments are entirely off the mark. The six issues he newly raises on appeal are inaccurate and do not make the return irregular: (1) El Mallakh misunderstands the difference between the May 6th one-page return of service and the May 27th authentication of executed summons; (2) Florida law does not require a process server to swear that a process recipient is actually over 15, actually resides with defendant, and actually has authority, as the recipient will almost never swear to these things at the door; (3) Rule 1.070(b) expressly states that “failure to make proof of service shall not affect the validity of the service,” contrary to El Mallakh’s argument; (4) whether El Mallakh’s sister confirmed that he resided at his own condo does not make the return irregular on its face; (5) El Mallakh’s sister’s receipt of process as a co-resident does not make the return irregular on its face; (6) a lack of notation that the recipient was over the age of 15 does not make a return irregular on its face; (7) newly alleging that the process server did not read aloud the entire complaint does not make a return irregular on its face; (8) newly alleging that El Mallakh’s sister answered the intercom does not make the return irregular on its face; and (9) lack of prompt filing does not make a return irregular on its face.

preservation “is one of the most important concepts of the appellate process.” *D.H.* at 889. “In the end . . . an appellant who abandons an argument cannot benefit from that argument in the future.” *D.H.* at 889. Thus, the Court must affirm.

2. El Mallakh invited the purported error by assuming the burden of disproving service by clear and convincing evidence.

Under the invited error doctrine, a defendant may not make or invite error at trial and then take advantage of the error on appeal. *Goodwin v. State*, 751 So. 2d 537, 544 n.8 (Fla. 1999); *Malha v. Losciales*, 306 So. 3d 1111, 1114 n.4 (Fla. 3d DCA 2020). As this Court recently reiterated:

It is well settled that under the invited error rule ‘a party cannot successfully complain about an error for which he or she is responsible or of rulings that he or she has invited the trial court to make.’

Malha at 1114 n.4. Even fundamental error is waived under the invited error doctrine. *Baptiste v. State*, 324 So. 3d 453, 456 (Fla. 2021); *Pineda v. State*, 211 So. 3d 1129, 1133 (Fla. 3d DCA 2017).

Here, at the evidentiary hearing El Mallakh unilaterally and independently took on the duty to disprove that he lived at the service address, rather than challenging the return on its face. App. 980 (Tr. 1370, ln. 19–Tr. 4, ln. 17). El Mallakh insisted that he be first to call witnesses, rather than Belgium, thereby taking on the initial burden of proof. *Id.*

When Belgium attempted to discuss the return of service at any point, El Mallakh repeatedly objected and thereby ensured that the return of service itself was not at issue or preserved for appeal. App. 1003 (Tr. 1384, In. 18–Tr. 1385, In. 20; Tr. 1386, In. 12–18) (“Your Honor, I am going to object”).

El Mallakh thereby invited the trial court to: (i) exclude facial review of the return of service documents, (ii) treat the return of service as regular on its face, (iii) thereby address evidence under a presumption of good service, and (iv) require El Mallakh have the burden to prove by clear and convincing evidence that service was ineffective. *Robles-Martinez* at 181–82.⁷¹ El Mallakh thereby invited and created the purported errors upon which he now appeals. The invited error rule prohibits this. *Baptiste* at 456; *Goodwin* at 544 n.8; *Malha* at 1114 n.4; *Pineda* at 1133; *Robles-Martinez* at 181–82. Therefore, there was no gross abuse of discretion and the Court must affirm.

⁷¹ *Robles-Martinez* is on-point. El Mallakh’s arguments, and the facts and posture of our case, are nearly the same. There too, the appellant alleged that service on his nuclear family member (his mother) at a family address was invalid because it was not his usual place of abode. *Robles-Martinez* at 181–82. By doing so, the appellant created an issue of fact that required resolution at an evidentiary hearing. *Id.* at 181. Because the appellant did not challenge to facial validity of the return, the appellee was entitled to the presumption that valid service was effectuated, and the appellant took on the burden of establishing by clear and convincing evidence that service was invalid. *Id.* He failed to do so at the trial level, and this Court would not overturn the credibility determinations of the trial court. *Id.* at 182. as *Robles-Martinez*. On nearly identical circumstances, this Court must again affirm.

B. Competent substantial evidence showed good service, after the trial court weighed the credible testimony of five process servers against El Mallakh and his sister’s perjury and *uncredible conflicting statements*, which cannot be disturbed on appeal.

Under Florida law, determinations regarding the weight of evidence or credibility of witnesses are peculiarly within the province of the finder of fact, come with a presumption of correctness, and will not be disturbed on appeal. *Anilus v. State*, 317 So. 3d 181, 181 (Fla. 3d DCA 2021); *C.W. v. Dep’t of Children & Family Servs.*, 904 So. 2d 588, 590 (Fla. 3d DCA 2005); *Southwin, Inc. v. Verde*, 806 So. 2d 586, 588 (Fla. 3d DCA 2002); *Robles-Martinez* at 181–82; *Davidian*, 178 So. 3d at 48–49 (*aff’ing* order denying motion to quash where conflicting testimony required court to weigh witness credibility, which cannot be disturbed on appeal).

As this Court has stated under nearly identical circumstances:

The testimony and other evidence presented by the parties required the trial court, as the factfinder, to make credibility determinations and resolve the conflicts in the evidence. *It is not the function of this court to re-weigh the evidence or substitute its judgment for that of the trial court.*

Robles-Martinez at 181–82.

Here, the trial court weighed competent, substantial evidence of good service of process, along with the credibility of numerous witnesses, and

found good service at El Mallakh's 116 Rockefeller home, which he owns and where his car was registered. App. 1094–1107 (5/15/21 order).

The trial court properly found that El Mallakh and his sister were not credible, which this Court cannot disturb on appeal without the benefit of observing the live testimony and the demeanor of the witnesses. App. 1102 (5/15/21 order at *9). There is no gross abuse of discretion. This cannot be disturbed on appeal, which requires the Court to affirm. *Robles-Martinez* at 181–82.

Further, the trial court had competent substantial evidence that El Mallakh and his sister Reem Hanna were not credible, and that service was properly effected at El Mallakh's home at 116 Rockefeller, where his car was registered, upon his adult co-resident sister. App. 24, 721 (return of service and declaration); App. 1042 (hearing transcript at Tr. 1423, In. 20–Tr. 1424, In. 8). Service was good and effective in 2019. Thus, the Court must affirm.

1. El Mallakh admitted repeated notice and opportunity to be heard over a 15-month period, but otherwise perjured himself.

Even after the good March 2019 service of process, El Mallakh admitted in testimony that he had additional and repeated notice of this lawsuit and due process opportunity to be heard in October 2019, November 2020, and February 2021, but simply chose to do nothing.

[BELGIUM]: So the reality is, is that at least as of October 2019, you knew you were getting sued in this lawsuit. And your co-defendant told you somebody was trying to serve papers on you; right?

[EL MALLAKH]: Yes.

...

[BELGIUM]: And you sat on your hands; isn't that right?

[EL MALLAKH]: Yes.

App. 1045 (hearing transcript at Tr. 1426, In. 15–Tr. 1433, In. 5); *see also* App. 1051 (hearing transcript at Tr. 1432, In 1 – Tr. 1433, In. 25).

Although El Mallakh tried to claim that his usual place of abode was at 525 Broadway rather than 116 Rockefeller, El Mallakh's own testimony about living at 525 Broadway was not credible:

[BELGIUM]: So to confirm, you have no roommate that can come forward. You have got no mail. You've got no utilities. Your car is registered somewhere else. And apparently nobody can find you at 525 Broadway; does that sound right?

[EL MALLAKH]: I mean, this is the truth.

App. 1044 (Tr. 1425, In. 20–25).

El Mallakh then testified that he intentionally evades service and notices of collection,⁷² and lied about his use of pseudonyms as part of his practice of concealing his whereabouts.⁷³ El Mallakh could not explain why

⁷² App. 1038 (hearing transcript at Tr. 1419, In. 17–21).

⁷³ App. 1040 (hearing transcript at Tr. 1421, In. 17–Tr. 1423, In. 19).

his property manager at 525 Broadway said he’s hardly ever there, or why the process server testified that the intercom system there had no name listed on it for El Mallakh. App. 1039 (Tr. 1420, In. 1–17).

El Mallakh could not explain why he was sleeping nights at 116 Rockefeller (the service address), both during his deposition and even on the day of the evidentiary hearing, unless it was truly his usual place of abode. App. 1032 (Tr. 1413, In. 20–Tr. 1414, In. 11). Like his testimony, El Mallakh’s demeanor and self-presentation at the actual hearing were also not believable.

Instead of proving his credibility, El Mallakh repeatedly lied under oath and committed perjury as to when he first had notice of this lawsuit, through conflicting affidavits and deposition testimony submitted to the trial court:

CA Affidavit	FL Affidavit	Deposition (1)	Deposition (2)
<p>“I had no idea that the Judgment Creditor had filed an Application for Entry of Sister State Judgment, the Notice of Entry of Sister State Judgment, or the Sister State Judgment . . .</p>	<p>“I only became aware of a judgment against me <u>on November 16, 2020</u> when the County of Orange Clerk of Records sent a Courtesy Notice regarding a lien that was placed on my property.”</p>	<p>“And that’s when I actually found out that there is a lawsuit/judgment. So I found out about it in February of 2021 just from going to the bank.</p> <p>[Q: And that’s the very first time you heard anything about it?]</p>	<p>“Q: from <u>October 2019</u> . . . did he mention to you that you were being sued in a lawsuit here in Florida? Did you understand by that question that somebody was attempting to serve documents about a lawsuit on you?</p>

<p><u>until I hired counsel to represent me and set the Sister State Judgment aside.</u></p>		<p>“First time. First time, <u>February 2021.</u>”</p>	<p>[MALLAKH]: Right.”</p>
<p>CA Affidavit at ¶ 8.</p>	<p>FL Affidavit at ¶ 7.</p>	<p>Depo. Tr. 48, In. 25–Tr. 49, In. 11.</p>	<p>Tr. 59, In. 18–Tr. 61, In. 1.</p>

App. 541 (Response to Motion to Vacate at *17); App. 1098 (Order at *5).

This was perjury.

El Mallakh’s perjury continued in the evidentiary hearing, when lying about being “homebound” at 525 Broadway in the month preceding the evidentiary hearing. App. 1033 (Tr. 1414, In. 21–Tr. 1419, In. 5). After four process servers sat on 525 Broadway for the 30 days prior to evidentiary hearing, with no El Mallakh there to be found, El Mallakh was simply caught in his lie.

Ultimately, El Mallakh showed himself to be exactly what he is—a deceitful, evasive, fraudulent thief. The trial court saw this, in El Mallakh’s statements, body language, and demeanor. There was no gross abuse of discretion and the Court cannot disturb these findings on appeal. *Anilus* at 181; *C.W.* at 590; *Southwin* at 588; *Robles-Martinez* at 181–82. Thus, the Court must affirm.

2. El Mallakh's sister perjured herself, took unbelievable positions, and was generally not credible.

El Mallakh's only other witness—his sister Reem Hanna—committed perjury as well. Hanna lied under oath about previously being sued and accused of fraud and fraudulent statements. App. 1014 (Tr. 1395, In. 4–Tr. 1402, In. 5). When the trial court asked her to explain this perjury, Hanna admitted that she knowingly and selectively omits information that she personally deems irrelevant or unflattering, even while testifying under oath. *Id.*

Hanna could not explain who the middle-aged grown man (El Mallakh) was with her at 116 Rockefeller during service of process, who the process server identified at the evidentiary hearing as El Mallakh. App. 1012 (Tr. 1393, In. 8–Tr. 1394, In. 22); App. 1064 (Tr. 1445, In. 1–17). She could not explain why she would not tell El Mallakh that he had just been served (*id.*), or why she denied knowing her brother El Mallakh and instead slammed the door in the process server's face. App. 1010 (Tr. 1391, In. 20–25).

Additionally, Hanna could not credibly explain why she and El Mallakh were sleeping in the same home, on the days of service of process and deposition, as anything more than pure and bizarre coincidence. App. 1021 (Tr. 1402, In. 15–21). All of Reem Hanna's testimony was simply *in*credible, and the trial court found it as such. This cannot be disturbed on appeal.

3. Four process servers, whom the trial court properly found more credible, testified against El Mallakh and his sister.

In contrast, five independent process servers testified against El Mallakh and Hanna.⁷⁴ The trial court found the five process servers were more credible than Hanna and El Mallakh. See, e.g., App. 1063 (Tr. 1444, In. 22–Tr. 1445, In. 1).⁷⁵ This Court cannot disturb these findings on appeal. *Anilus* at 181; *C.W.* at 590; *Southwin* at 588; *Robles-Martinez* at 181–82. Thus, there was no gross abuse of discretion and the Court must affirm.

C. El Mallakh failed to address dispositive factual findings and legal conclusions in the actual order, thus waiving those challenges and conceding good grounds to affirm.

1. El Mallakh waived appellate challenge to the trial court’s express legal citations and their application to the express factual findings.

Under Florida law, even if an issue is preserved below, an appellant still waives an argument by failing to then specifically raise and brief it in the Initial Brief in the appeal. *D.H.*, 271 So. 3d at 888 (Fla. 2018); *Polyglycoat*, 442 So. 2d at 960. Any arguments not expressly included in the Initial Brief are also waived. *Id.*

⁷⁴ App. 1059 (Tr. 1440–1469) (Michael Danley, Carlos Corejo, Ruben King, and Dorian Wordlaw); App. 24,721 (return and declaration of Britney Johnson).

⁷⁵ See also App. 1010 (Tr. 1391, In. 7–11); App. 1011 (Tr. 1392, In. 13 – Tr. 1393, In. 4).

Here, El Mallakh has failed to address or challenge the trial court's express legal analysis, express legal citations, and application of cited Florida law to the actual evidentiary findings in the order on appeal, thereby waiving these challenges. *Id.* The trial court relied on and applied **19 separate case law decisions** as the legal basis for its order below, **but El Mallakh does not mention a single one.** App. 1094–1107 (Order).⁷⁶

Likewise, El Mallakh failed to address how this Florida law applies to the trial court's factual evidentiary findings, including but not limited to that El Mallakh testified **“he knowingly and intentionally squandered his due process notice and opportunity to be heard for years**, after he continued to be aware that he was sued in this Florida lawsuit, but that he intentionally and knowingly refused to investigate, hire an attorney, or exercise his multiple opportunities to participate in this lawsuit” App. 1105 (Order *12).

As the *Kozinski v. Phillips* court discussed:

Further, cases addressing insufficient service of process have emphasized that a defendant may not ‘simply ignore the process, sit idly by, let default be entered against it,’ and then successfully move to set aside the judgment more than a year after it is rendered. *Craven v. J.M. Fields, Inc.*, 226 So. 2d 407, 410 (Fla. 4th DCA 1969). Instead, ‘a party complaining of an irregular service or return is required to move diligently to effectuate those

⁷⁶ The trial court's 20th case law citation, *Dowd Shipping, Inc. v. Lee*, 354 So. 2d 1252 (Fla. 4th DCA 1978), is referenced once by El Mallakh (Br. 46) in a parenthetical about a service recipient answering the house telephone.

remedies available to the party by our rules of civil procedure lest the party suffer the consequences.' *Id.*

Kathleen G. Kozinski, P.A. v. Phillips, 126 So. 3d 1264, 1268 (Fla. 4th DCA 2013) (emphasis added).

It is impossible for El Mallakh to show trial court error if he does not address the actual Florida law applied by the trial court to the actual factual findings made by the trial court. Initial Br. *1–67. Having failed to challenge the trial court's express legal grounds for the order on appeal, El Mallakh has waived this appellate challenge. *D.H.*, 271 So. 3d at 888 (Fla. 2018); *Polyglycoat*, 442 So. 2d at 960. This waiver is fatal to El Mallakh's appeal. There is no gross abuse of discretion shown and the Court must affirm.

D. El Mallakh failed to address the arguments and evidence from Belgium's response to motion to vacate, which provides Topsy Coachman grounds to affirm.

The Topsy Coachman doctrine requires an appellate court to affirm a trial court order that “reaches the right result, but for the wrong reasons” so long as “there is any basis which would support the judgment in the record.” *Wells Fargo Bank, N.A. v. Jidy*, 44 So. 3d 162, 163–64 (Fla. 3d DCA 2010); *Applegate v. Barnett Bank*, 377 So. 2d 1150, 1152 (Fla. 1979); *Johnson v. Christiana Trust*, 166 So. 3d 940, 943–44 (Fla. 4th DCA 2015). This is because the judgment of the trial court reached the district court clothed with

a presumption in favor of its validity. *Cohen v. Mohawk, Inc.*, 137 So. 2d 222, 225 (Fla. 1962).

1. El Mallakh's perjury and fraud on the trial court require affirming the order.

On the spectrum of conduct that is sanctionable, perjury is the most egregious conduct, because few acts strike more viciously against the integrity of the justice system than that of perjury. *Empire World Towers, LLC v. CDR Creances, S.A.S.*, 89 So. 3d 1034, 1038 (Fla. 3d DCA 2012). Florida appellate courts readily affirm default judgments and striking of motions against any party that engages in perjury, where it enters proceedings and is directly related to a party's claim. *Id.*

Similarly, a fraud on the court occurs where it can be demonstrated, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim. *Id.* at 1039–40; *Babe Elias Builders Inc. v. Pernick*, 765 So. 2d 119, 120–21 (Fla. 3d DCA 2000); *O'Vahey v. Miller*, 644 So. 2d 550, 550 (Fla. 3d DCA 1994) (holding trial court did not abuse its discretion by dismissing suit based on party's repeated lies under oath concerning his personal background and education). The fraud

on the court can occur by a showing of fraud, pretense, collusion, or similar wrongdoing. *Id.*

This Court has specifically held that lies made under oath by parties and their affiliates about their personal background necessitate dismissal with prejudice or striking of filings. *O’Vahey* at 550; *Empire* at 1039–40.

Here, both El Mallakh and Reem Hanna colluded to commit perjury in their attempt to vacate the order of default and default judgment. El Mallakh committed perjury in testifying as to when he first received notice of this lawsuit and judgment, about being homebound at 525 Broadway. App. 1033 (at Tr. 1414, In. 21–Tr. 1419, In. 5). Both Mallakh and Hanna falsely testified about their personal background, both in where they live and in their role in a 2014 slander, fraud, and conspiracy case. App. 771.⁷⁷ The false testimony here parallels *O’Vahey*, and the assiduous work it took to uncover it, provide Topsy Coachman grounds to affirm. *O’Vahey* at 550; *Empire* at 1038. Thus, there is no gross abuse of discretion and the Court must affirm.

⁷⁷ Citing Response Exhibit 5 (Transcript El Mallakh) at Tr. 45, In. 7–Tr. 48, In. 17 (denying having been sued or accused of slander, fraud, conspiracy, or the like); Exhibit 21 (Transcript Hanna) at Tr. 77, In. 7–Tr. 81, In. 4 (same); *cf.* Exhibit 2 (Complaint for slander, fraud, and conspiracy); App. 948 (citing Response Exhibit 21 (Transcript Hanna) at Tr. 71, In. 17 –Tr. 73, In. 20; *cf.* Response Exhibit 4 (declaration of investigator Johnson) and Response Exhibit 10 (declaration of process server Danley); App. 475 (California affidavit); *cf.* Exhibit 479 (Florida affidavit).

E. El Mallakh's new legal arguments on appeal, which were waived, are still erroneous.

El Mallakh makes numerous citations to Florida case law in newly arguing—in violation of the rules of preservation and invited error—that service was defective. However, El Mallakh's analysis of this case law is off the mark, and El Mallakh fails to accurately apply or address the evidence, testimony, burden assumption and shifting, record evasion and perjury, lack of criminal prosecution or suggestive line-ups, and credibility determinations made by our trial court below. None of these were present in the cases cited by El Mallakh. Many of El Mallakh's cases are inapplicable, as they dealt with service through mailing to the **Secretary of State** or building concierge, and all are factually distinguishable. Accordingly, the Court must affirm.

II. El Mallakh's arguments on diligence are inapplicable, as El Mallakh mistakes the statutory requirements for different forms of substitute service, and misapplies case law for substitute service through the Secretary of State.

A. El Mallakh erroneously argues the statutory requirements for service on the Secretary of State.

Not all substitute service is the same. There's a big difference between sending a letter to the Florida Secretary of State and hand-delivering a summons to a defendant's adult co-resident and sister, at his home, that he owns, where his car is registered.

For reasons unknown, El Mallakh erroneously continues to mix up the statutory and case law requirements for service on the Secretary of State or a private mailbox manager (under Florida Statutes §§ 48.031(6), 48.161, 48.171, and 48.181), conflating it with service on an adult co-resident at a defendant's usual place of abode (under Florida Statutes §§ 48.031(1)). The former all require proof of concealment and diligence, while the latter does not. *Cf.* §§ 48.031(6), 48.161, 48.171, and 48.181, Fla. Stat. (2021) with § 48.031(1), Fla. Stat. (2021). This does not show gross abuse of discretion.

All of El Mallakh's appellate case law citations⁷⁸ address these inapplicable statutes, not the service that occurred on an adult co-resident here. The trial court plainly understood and expressly stated that service was pursuant to § 48.031(1). App. 1101 (Order stating 48.031(1)).

Because service was not upon the Secretary of State or a private mailbox manager, none of the case law or statutory requirements in Issue II of the Initial Brief apply. Any other argument is now waived for failure to

⁷⁸ The only case El Mallakh cited that does not involve service through the Secretary of State or private mailbox, is *Baker v. Stearns Bank, N.A.*, 84 So. 3d 1122, 1126 (Fla. 2d DCA 2012). Initial Br. *42. Baker is inapplicable because there was no contradictory evidence as to whether the person served at the defendant's home was a short-term guest rather than a resident. Here, El Mallakh conceded that Hanna was a permanent resident (not short-term guest) at 116 Rockefeller. Thus, *Baker* is factually distinguishable in every way that matters, and does not apply.

properly and accurately argue it in the Initial Brief, and specifically brief it so that Belgium could respond in its Answer Brief. *D.H.*, 271 So. 3d at 888 (Fla. 2018); *Polyglycoat* at 958. Accordingly, the Court must affirm.

B. El Mallakh cannot have this Court redo the evidentiary hearing, hoping this Court will find him more credible without the benefit of observing his live testimony.

As already discussed *supra*, determinations regarding the weight of evidence or credibility of witnesses are peculiarly within the province of the finder of fact, come with a presumption of correctness, and will not be disturbed on appeal. *Anilus* at 181; *C.W.* at 590; *Southwin* at 588; *Robles-Martinez* at 181–82; *Davidian* at 48–49 (Fla. 4th DCA 2015) (*aff'ing* order denying motion to quash where conflicting testimony required court to weigh witness credibility, which cannot be disturbed on appeal).

Here, El Mallakh's other Issue II arguments are redundant vehicles to ignore the record evidence against him and attack the trial court's determination that El Mallakh and his sister Hanna were not credible.⁷⁹ After hearing the live testimony of six witnesses, including El Mallakh and his sister

⁷⁹ El Mallakh here again misunderstands the difference between the one-page return of service executed on May 6, 2019, and a later one-page summons authentication jurat executed three weeks later on May 27, 2019. (App. 24–27). El Mallakh's misreading of these documents is unfortunately the linchpin of his appellate argument, and causes his appellate argument to fail.

Hanna; observing the demeanor, body language, tone of voice, eye contact, and other indicia of veracity; and weighing all of the record evidence, the trial court found that El Mallakh and Hanna were simply not credible. App. 1102 (5/15/21 order at *9) (“It is the finding of this Court that El Mallakh and Hanna are not credible and have failed to provide clear and convincing evidence that El Mallakh’s usual place of abode is not 116 Rockefeller, Irvine CA.”).

Substantial competent evidence, *supra*, supported a finding that El Mallakh’s usual place of abode was 116 Rockefeller, which he owned, where his car was registered, where he was identified as being present by process server Michael Hanley, where he slept before deposition, and where he was sleeping before the evidentiary hearing. *Supra*. El Mallakh himself confirmed repeated notice and opportunity to be heard for over a year before judicial default was entered against him, confirming due process. *Supra*.

Again, El Mallakh’s case law citations are distinguishable in that they do not address circumstances where there is conflicting testimony and evidence, and a defendant’s admission of repeated notice and opportunity to be heard. Again, the large bulk of El Mallakh’s case law citations apply only to service through the Secretary of State or a private mailbox. They are inapplicable here. This case law and these statutes are inapplicable. Accordingly, there is no gross abuse of discretion and the Court must affirm.

C. Even if diligence were an issue, which it is not under accurate application of Florida law, Belgium performed the requisite diligence.

Under the inapplicable case law cited by El Mallakh, the test of reasonable diligence is:

The test is whether the complainant reasonably employed knowledge at his command, made diligent inquiry, and exerted an honest and conscientious effort appropriate to the circumstances, to acquire the information necessary to enable him to effect personal service on the defendant.

Coastal Capital Venture, LLC v. Integrity Staffing Sols., Inc., 153 So. 3d 283, 285 (Fla. 2d DCA 2014). Here, there has been no evidence that personal service could have been obtained through reasonable diligence; to the contrary, all evidence shows that unlimited diligence can still not obtain service on the illusive Mr. El Mallakh.

All the case law on diligence required proof that the plaintiff “failed to follow an obvious lead.” *Societe Hellin, S.A. v. Valley Commercial Capital, LLC*, 254 So. 3d 1018, 1025 (Fla. 4th DCA 2018); *Coastal* at 285. Here, contrary to a lead, we see that El Mallakh and his sister were intentionally obfuscating El Mallakh’s location at every step, through use of untraceable pseudonyms, outright misrepresentations about knowing each other or being homebound.

Our case is more akin to *Alvarado-Fernandez v. Mazoff*, 151 So. 3d 8, 17–18 (Fla. 4th DCA 2014). Belgium ran skip trace on El Mallakh, searched his social media and DMV records for El Mallakh, and checked property records for his property ownership. Belgium tracked El Mallakh down to Irvine, CA, from Miami, FL. The only address found for El Mallakh was 116 Rockefeller. This is because this was the address where El Mallakh had his car registered and which he owned (and, frankly, where he lives). The 525 Broadway address would not come up because El Mallakh falsely uses a pseudonym there, pays no utilities there, and is never there. *Supra*.

More importantly, El Mallakh does not live at 525 Broadway, he lives at 116 Rockefeller, as was made starkly apparent when Belgium hired four private investigators/process servers to sit on 525 Broadway for 30 days straight (when El Mallakh claimed to be “homebound” there) and El Mallakh was never there. There is no other address for El Mallakh. There is nowhere else to attempt service or more diligence possible, then or now. El Mallakh lives at 116 Rockefeller, where he was served. He had repeated notices and opportunity to be heard, over years, and squandered them. There has been no gross abuse of discretion. The Court must affirm.

III. The trial court properly awarded damages at a duly noticed evidentiary hearing on uncontested, competent, substantial evidence, which damages compensate for El Mallakh's documented six-year construction fraud and theft.

A. El Mallakh waived his challenge to damages when he failed to raise it below in any way, failed to attend the evidentiary hearing on damages despite notice, and failed to do anything to otherwise create a record for appeal.

Under the rule of preservation, this Court cannot consider an issue that is raised for the first time on appeal. *Sunset Harbour*, 914 So. 2d at 928; *Porro*, 240 So. 3d at 104; *Wadley*, 223 So. 3d at 1122; *Vorbeck*, 107 So. 3d at 1147–48.

Florida law requires that an appellant provide a transcript of the hearing to demonstrate error occurring at that hearing. Fla. R. App. P. 9.200(b) (5); *Applegate*, 377 So. 2d at 1152; *East Coast Capital Investment, LLC v. Naima Group, LLC*, 274 So. 3d 484, 484 (Fla. 3d DCA 2019); *Friedman v. Mercantil Commercebank, N.A.*, 211 So. 3d 310, 312 (Fla. 3d DCA 2017); *GMAC Mortg., LLC v. Palenzuela*, 208 So. 3d 181, 183 (Fla. 3d DCA 2016); *Allied Shelving & Equipment, Inc. v. Nat'l Deli, LLC*, 154 So. 3d 482, 484 (Fla. 3d DCA 2015).⁸⁰

⁸⁰ See also *Corning v. Wells Fargo Bank, NA*, 120 So. 3d 1278, 1280 (Fla. 5th DCA 2013) (*aff'ing* despite claim of insufficient notice, need for evidentiary hearing, and grossly disparate amount, where appellant failed to include transcript from hearing from which to demonstrate error).

It is the burden of the appellant-defendant to conclusively demonstrate that the appellee-plaintiff failed to submit sufficient evidence of damages of unliquidated damages to support default final judgment. *L.W.T., Inc. v. Schmidt*, 323 So. 3d 344, 345 (Fla. 5th DCA 2021) (affirming default judgment on unliquidated damages, where record did not conclusively demonstrate that plaintiff failed to submit evidence of damages).

Here, El Mallakh waived his challenge to the damages calculation and evidence by failing to raise it in any way below—this issue is barred under the rule of preservation. *Sunset Harbour* at 928; *Porro* at 104; *Wadley* at 1122; *Vorbeck* at 1147–48; *Keech* at 719.

Further, El Mallakh failed to submit a transcript of the February 21, 2020 evidentiary hearing determining damages, and had failed to otherwise create the requisite record for this Court to review that February 21, 2020 hearing on damages. *Applegate* at 1152; *Naima* at 484; *Friedman* at 312; *GMAC Mortg., LLC v. Palenzuela* at 183; *Allied* at 484; Fla. R. App. P. 9.200(b)(5).⁸¹

⁸¹ There need only be an evidentiary hearing for the judicial determination of the amount of unliquidated damages, which this trial court provided. *Whitehead v. Shutter Hangers, Inc.*, 322 So. 3d 221, 221–22 (Fla. 3d DCA 2021); *Paraud v. Suncoast East No. 2, Inc.*, 785 So. 2d 688, 688 (Fla. 3d DCA 2001); *Phillips v. Mitchell's Lawn Maintenance Corp.*, 306 So. 3d 305, 306 (Fla. 3d DCA 2020); *Zumpf v. Countrywide Home Loans, Inc.*, 43 So. 3d 764, (Fla. 2d DCA 2010).

Without a record of the trial proceedings, this Court cannot properly resolve the underlying factual issues so as to conclude that the trial court's judgment is not supported by the evidence or by an alternative theory. *Id.* There is no gross abuse of discretion shown and the Court must affirm.

El Mallakh cannot claim it is unfair to require him to produce a transcript of the hearing. El Mallakh has admitted that he had repeated notice and knowledge that this case was pending against him, and that he had been summoned to answer or be in default, long before Belgium moved for a judicial default order, much less a final judgment. El Mallakh admitted to knowingly sitting idle and letting default and final judgment be entered against him without preservation of record.

Further, even in the three months between his February 2021 motion to vacate and the May 2021 order on appeal, El Mallakh failed to take any discovery or otherwise create a record for appeal as to the February 2021 damages judgment—wasting an additional three months of opportunity. In fact, El Mallakh specifically objected to it on March 17, 2021 and otherwise waived creation of an alternative record for appeal. *Sunset Harbour*, 914 So. 2d at 928; *Porro*, 240 So. 3d at 104; *Wadley*, 223 So. 3d at 1122; *Vorbeck*, 107 So. 3d at 1147–48; Fla. R. App. P. 9.200(b) (5); *Applegate* at 1152;

Naima at 484; *Friedman* at 312; *Palenzuela* at 183; *Allied* at 484; *Corning* at 1280; *L.W.T.* at 345.

Because El Mallakh has failed to provide a transcript or otherwise create the requisite record for appeal, El Mallakh has failed to fulfill his appellate burden of conclusively demonstrating that Belgium did not submit sufficient evidence of damages to support default final judgment. *Supra*; *Schmidt* at 345. There is no gross abuse of discretion shown.

B. El Mallakh failed to show the required diligence, defense, and excusable neglect, and instead admitted to knowingly avoiding challenging the default order or judgment for over a year.

Under Florida law, an attack on summary judgment evidence for unliquidated damages requires a defendant to also show excusable neglect, meritorious defense, and due diligence to set aside the unliquidated damages award. *Specialty Solutions, Inc. v. Baxter Gypsum & Concrete, LLC*, 325 So. 3d 192, 195–96 (Fla. 5th DCA 2021).

Here, like in *Specialty*, El Mallakh attacks the written evidence submissions to determine damages after a default, while admitting notice and opportunity to be heard.⁸² Like in *Specialty*, this attack required El

⁸² This is not a case of fundamental error, because El Mallakh had due process, repeated notice and opportunity to be heard, and instead intentionally evaded this lawsuit to perpetuate his fraud and theft for nearly 10 years.

Mallakh to also show excusable neglect, diligence, and a meritorious defense, which he failed to do. He could not, and these are now waived. Accordingly, the Court must affirm.

C. The damages were not speculative and are not a windfall from El Mallakh’s multi-year fraud and theft scheme to extort Belgium of millions.

As already shown above, El Mallakh stole and squandered millions from Belgium Investments in a false scheme to completely renovate a mid-rise condominium building in Miami Beach. El Mallakh left the building “entirely gutted and in a state of demolition only” after years of representing it was on the brink of completion with certificate of occupancy. App. 806 (Response Exhibit 9).

As already shown above, the record that El Mallakh did provide still supports the damages awarded—including the 300+ pages of affidavits and 48 exhibits, with additional affidavits and damages reports filed thereafter, along with evidence given at the hearing. *See supra; Phillips*, 306 So. 3d at 306; *Himmelberg v. Himmelberg*, 244 So. 3d 1192, 1193 (Fla. 1st DCA 2018); *Pearce & Pearce, Inc. v. Kroh Bros. Dev. Co.*, 474 So. 2d 369, 370–71 (Fla. 1st DCA 1985); *S. Kornreich & Sons, Inc. v. Titan Agencies, Inc.*, 423 So. 2d 940, 941 (Fla. 3d DCA 1982); *Brewer v. City of Daytona Beach*, 228 So. 2d 916, 916 (Fla. 1st DCA 1969).

Although the undersigned would prefer to recapitulate all of this evidence, already discussed *supra* in the Statement of Case and Facts, appellate word-count limitations prevent it. Exhibits B(27)–(48), along with the affidavits of damages, showed a breakdown in the millions sent out the El Mallakh and Petit as the co-managers of the property project, which money El Mallakh stole and squandered.

The trial court’s judgment expressly stated that “Plaintiffs have provided additional supporting documentation and evidence on damages, which remain uncontested by Defendant Bassem Essam El Mallakh” as to breach of fiduciary duty. App. 396 (Fin. Jud. at ¶ 9(w)).

On this appeal, El Mallakh has failed to address any of this evidence in any way, and instead simply bulk-cites 317 pages of the Appendix (App. 375 – 691, 701). Initial Br. at *52. What El Mallakh wants the Court to take from those 317 pages is unexplained. Perhaps that explanation will come as a surprise argument in a Reply Brief, only when Belgium Investments cannot directly or specifically address it. Notwithstanding, the final judgment was supported by substantial competent evidence, provided both at the special set evidentiary hearing and in record filings with request for judicial notice. Accordingly, there is no gross abuse of discretion and the Court must affirm.

D. El Mallakh failed to provide case law with analogous facts or procedural posture to those here, and thus the Court must affirm.

El Mallakh has failed to provide any case law that has analogous facts or procedural posture to those here, when arguing his Issue III on damages. Initial Br. *51–54. El Mallakh’s case law is inapplicable, distinguishable, and does not provide a proper basis for reversal. El Mallakh’s case law citations address distinguishable and inapplicable matters of fiber-optics trespass claims, parental rights disputes, limitations on wrongful death damages in dynamite explosions, changing statutory requirements for mortgage defaults, and jury verdicts, and confirm Belgium’s conversion damages as the amount stolen and lost. None of these have any application to the facts, posture, and issues below. There is no gross abuse shown and the Court must affirm.

E. Even if this were a basis to challenge the amount of the damages awarded, it would not provide a basis to contest liability and vacate judgment for liability.

Under Florida law, even if there were a basis to contest the determination of unliquidated damages under a default judgment (and there is not here), this does not provide a basis to contest liability or vacate the liability determination in the judgment. *Comprehensive Health Center, Inc. v. Law Offices of Robert A Trilling*, 870 So. 2d 886, 886 (Fla. 3d DCA 2004);

Dysart v. An Ultimate Pool Service & Repair, Inc., 536 So. 2d 387, 388 (Fla. 3d DCA 1989).

Here, all of El Mallakh's arguments as to the damages determination provide no basis to reverse the judgment as to liability. There is no gross abuse of discretion shown there. Accordingly, the Court must affirm as to liability.

CONCLUSION

For the reasons stated, the lack of gross abuse of discretion, and because the Court must not reward El Mallakh's perjury and long-standing evasion to shirk responsibility and re-victimize Belgium, the Court must affirm.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that, in accordance with Fla. R. Jud. Admin. 2.516, a copy of this document was served on December 27, 2021.

CERTIFICATE OF COMPLIANCE

I CERTIFY that the foregoing document is in compliance with the Rule's font and word count requirements.