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JAMES E. WHITE
DEREK R. YOUNG

February 12, 2010

VIA FACSIMILE

Honorable Charles A. Francis
Chief Judge, Second Judicial Circuit
Leon County Courthouse, Room 365K
301 South Monroe Street
Tallahassee, Florida 32301

**Re: City of Weston, Florida, et al. v. The Honorable Charlie Crist, et al.
Case No.: 09-CA-2639**

Dear Chief Judge Francis:

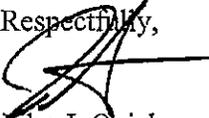
Enclosed please find a courtesy copy of Plaintiffs' Response in Opposition to Defendants' Notice and Motion Pursuant to Section 11.111, Florida Statutes and corresponding exhibits, which are being filed contemporaneously herewith.

The response and motion relate to a hearing on the parties' motion and cross-motion for summary judgment which are scheduled for hearing before Your Honor on February 22, 2010. Given that counsel for the Local Governments will be traveling to Tallahassee for the hearing on this matter, the undersigned hereby requests expedited disposition of the Notice and Motion filed by Senator Atwater and Representative Cretul and a telephonic hearing prior to the February 22, 2010 scheduled hearing.

Honorable Charles A. Francis
February 12, 2010
Page 2

Should you have any questions or concerns, please do not hesitate to have your judicial assistant contact us.

Respectfully,



John J. Quick

JJQ
470.250
Enclosure

cc: Jonathan A. Glogau, Esq. (w/encl.)
Lynn C. Hearn, Esq. (e/encl.)
Jamie A. Cole, Esq. (w/o encl.)
John J. Quick, Esq. (w/o encl.)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

CITY OF WESTON, FLORIDA;
VILLAGE OF KEY BISCAYNE,
FLORIDA; TOWN OF CUTLER BAY,
FLORIDA; LEE COUNTY, FLORIDA;
CITY OF DEERFIELD BEACH,
FLORIDA; CITY OF MIAMI
GARDENS, FLORIDA; CITY OF
FRUITLAND PARK, FLORIDA, CITY
OF PARKLAND, FLORIDA, CITY OF
HOMESTEAD, FLORIDA; COOPER
CITY, FLORIDA; CITY OF POMPANO
BEACH, FLORIDA; CITY OF NORTH
MIAMI, FLORIDA; VILLAGE OF
PALMETTO BAY, FLORIDA; CITY OF
CORAL GABLES, FLORIDA; CITY OF
PEMBROKE PINES, FLORIDA;
BROWARD COUNTY, FLORIDA;
LEVY COUNTY, FLORIDA; ST.
LUCIE COUNTY, FLORIDA;
ISLAMORADA, VILLAGE OF
ISLANDS, FLORIDA; and TOWN OF
LAUDERDALE-BY-THE-SEA,
FLORIDA,

Plaintiffs,

vs.

THE HONORABLE CHARLIE CRIST,
Governor of the State of Florida; THE
HONORABLE KURT S. BROWNING,
Secretary of State, State of Florida; THE
HONORABLE JEFF ATWATER,
President of the Senate, State of Florida;
THE HONORABLE LARRY CRETUL,
Speaker of the House, State of Florida,

Defendants.

CASE NO. 09-CA-2639

RESPONSE AND
MEMORANDUM OF LAW
IN OPPOSITION TO
DEFENDANTS' NOTICE
AND MOTION PURSUANT
TO § 11.111, FLORIDA
STATUTES

**PLAINTIFFS' RESPONSE AND MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANTS' NOTICE AND MOTION PURSUANT
TO § 11.111, FLORIDA STATUTES**

Plaintiffs, City of Weston, Florida; Village of Key Biscayne, Florida; Town of Cutler Bay, Florida; Lee County, Florida; City of Deerfield Beach, Florida; City of Miami Gardens, Florida; City of Fruitland Park, Florida; City of Parkland, Florida; City of Homestead, Florida; Cooper City, Florida; City of Pompano Beach, Florida; City of North Miami, Florida; Village of Palmetto Bay, Florida; City of Coral Gables, Florida; City of Pembroke Pines, Florida; Broward County, Florida; Levy County, Florida; St. Lucie County, Florida; Islamorada, Village of Islands, Florida; and Town of Lauderdale-By-The-Sea, Florida (collectively, the "Local Governments"), hereby file their response in opposition to defendants' notice and motion pursuant to § 11.111, Florida Statutes ("Motion"), and in support thereof, states as follows:

INTRODUCTION

Notwithstanding their *express and repeated agreement* to conduct a summary judgment hearing on February 22, 2010 (and defendants' detrimental reliance upon such agreement), Senator Atwater and Representative Cretul now – on the eve of the hearing – seek to continue the hearing to an undetermined date after May 17, 2010, because the Legislative Session starts eight days *after* the scheduled hearing (even though there is no indication that either of them will need to appear at the hearing, which is a purely legal argument). Such continuance is

improper and should not be granted. Senator Atwater and Representative Cretul are estopped and/or have waived any rights available to them under Section 11.111, Florida Statutes. Furthermore, the application of the Statute to the facts of this case would constitute an unconstitutional invasion of the judiciary.

DISCUSSION

1. This case involves a claim of great public importance asserted by the Local Governments to invalidate SB 360 for constitutional violations of the (a) single subject rule; and (b) unfunded mandate provision.

2. Shortly after denial of defendants' motion to dismiss, the parties entered into an *agreed-upon* briefing schedule in order to bring this matter to a conclusion in the most expeditious manner possible. This agreement is reflecting in oral conversations between counsel for the parties, as well as written communication.

3. After "checking with [his] clients," counsel for the defendants agreed to an initial briefing schedule which included a "mid-March" hearing date for potential motions for summary judgment. *See* email dated December 2, 2009, attached hereto as Exhibit "A."

4. Upon receiving available hearing dates from the Court, the parties adjusted their agreed-upon schedule, and agreed to the following:

Plaintiffs' motion for summary judgment	January 8, 2010
Defendants' response and cross-motion for summary judgment (if any)	January 25, 2010
Plaintiffs' Reply and Response to Cross-Motion	February 8, 2010
Defendants' Reply regarding Cross-Motion	February 18, 2010
Final Summary Judgment Hearing	February 22, 2010 ¹

See emails attached hereto as Composite Exhibit "B."²

5. To date, the parties have complied with this schedule, and Senator Atwater and Representative Cretul, on January 28, 2010, filed a cross-motion for summary judgment seeking to hold SB 360 to be valid.

6. The date in which the Legislative session was scheduled to begin was established prior to the parties' agreed-upon schedule and was well known to both Senator Atwater and Representative Cretul.

I. Senator Atwater and Representative Cretul Waived Their Right To Invoke The Statute.

7. The continuance authorized by Section 11.111, Florida Statutes, is not absolute. Instead, it is subject to waiver by a Legislator as well as the

¹ / Unlike the original agreed-upon schedule, the summary judgment hearing is scheduled to occur eight days before the Legislative Session, not during the Session.

² / Discussions regarding the agreed-upon schedule took place both telephonically and via email.

Constitutional bounds set forth in prevailing case law. *See* Section 11.111, Florida Statutes; *A.B.C. Bus. Forms, Inc. v. Spaet*, 201 So. 2d 890 (Fla. 1967).

8. The facts here clearly establish that both Senator Atwater and Representative Cretul waived their right to a continuance pursuant to the Statute by agreeing to a schedule, and a hearing date, that fall within 15 days of the start of the Legislative session (and by not raising the issue until the last minute). *Destin Sav. Bank v. Summerhouse of FWB, Inc.*, 579 So. 2d 232, 235 (Fla. 1st DCA 1991); *Florida Med. Center v. Dep't of Health & Rehab. Servs.*, 511 So. 2d 677, 678 (Fla. 1st DCA 1987) (holding that statutory rights may be waived).

9. Both Legislators – after consultation with their attorney – agreed to a final summary judgment hearing date which fell *within* the 2010 Legislative session. Then, after obtaining available hearing dates from the Court, *agreed again* to the current hearing date of February 22, 2010.

10. Senator Atwater and Representative Cretul cannot now seek to invoke the Statute at the eleventh hour after explicitly agreeing to the February 22, 2010 hearing date. *Id.*; *see also Destin Sav. Bank*, 579 So. 2d at 235; *Ellis v. Gen. Motos Acceptance Corp.*, 160 F.3d 703, 709 (11th Cir. 1998) (“parties can waive statutory protections”) (citing *Northside Iron & Metal Co., Inc. v. Dobson & Johnson, Inc.*, 480 F.2d 798, 800 (5th Cir. 1973)).

11. In reliance on this agreement, counsel for the Local Governments (as well as the City Manager of one of the Local Governments) has purchased non-

refundable airline tickets in order to participate in the hearing. *See* travel arrangements attached hereto as Composite Exhibit “C.” Counsel has also booked hotel and car rental reservations in advance of this hearing. As a result, Senator Atwater and Representative Cretul are estopped from now invoking the Statute on such a late date. *Florida Dep’t of Health & Rehab. Servs. v. S.A.P.*, 835 So. 2d 1091, 1096 (Fla. 2002) (“estoppel is applicable in *all* cases” and “arises who one party lulls another party into a disadvantageous position”).

12. Moreover, there is no reason to believe – and the notice and motion do not provide any basis to believe – that the presence of Senator Atwater and/or Representative Cretul is necessary to conduct a fair and proper hearing on the Local Governments’ motion for summary judgment and defendants’ cross-motion. The hearing is not evidentiary in nature and neither Senator Atwater nor Representative Cretul will be called upon to testify. The hearing will simply be argument of counsel.

II. The Statute Is Unconstitutional As Applied To These Facts.

13. Moreover, the application of the Statute here would be unconstitutional. *See A.B.C. Bus. Form*, 201 So. 2d at 892.

14. The *A.B.C.* court held that where a case involves “emergency relief and irreparable harm” that the application of the Statute “is an invasion of the judicial field and violative of constitutional prohibition.” *Id.*

15. Here, the underlying action is for declaratory relief, which may be expedited by the Court. Section 86.111, Florida Statutes (“The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.”)

16. Moreover, the issue is of great public importance, and delay would greatly prejudice the Local Governments, which are currently being forced to take (and refrain from taking) numerous actions based upon an unconstitutionally enacted law. *See* Local Governments’ Memorandum of Law on Ripeness, served on September 29, 2009.

17. To the extent the Court allows Senator Atwater and Representative Cretul to invoke the Statute at this time, the Local Governments will be irreparably harmed by being forced to continue to comply with the unconstitutionally enacted provisions of SB 360.

III. The Statute Cannot Be Used As A Sword To Delay Resolution Of This Lawsuit.

18. Lastly, it is ironic, to say the least, that Senator Atwater and Representative Cretul seek to accomplish one of the very acts that was disapproved of in the lone case cited in their notice and motion.

19. Specifically, Senator Atwater and Representative Cretul are seeking to use the Statute not as a shield to prevent the miscarriage of justice, but instead as “sword to be used to delay the administration of justice.” *A.B.C. Bus. Forms*,

201 So. 2d at 892 (quoting *Johnson v. Theodoron*, 155 N.E. 481, 484 (Ill. 1927)).

Such a result cannot be permitted here.

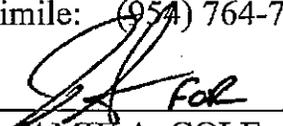
CONCLUSION

The Notice and Motion filed by Senator Atwater and Representative Cretul is ineffectual here. Both Legislators explicitly waived their rights under the Statute and are estopped from invoking them at this late date. Furthermore, even assuming *arguendo* that waiver had not occurred, application of the Statute to this case would unconstitutionally invade the province of the judicial branch. Lastly, Senator Atwater and Representative Cretul should not be permitted to utilize the Statute as a sword to delay the administration of justice and further prejudice and harm the Local Governments.

Respectfully submitted,

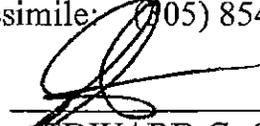
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By: _____


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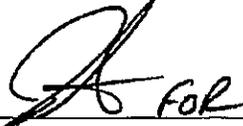
By: _____


EDWARD G. GUEDES
Florida Bar No. 768103
eguedes@wsh-law.com
JOHN J. QUICK
Florida Bar No. 648418
jquick@wsh-law.com

Counsel for the Local Governments

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent via email and U.S. Mail to **Jonathan A. Glogau, Esq.**, *Attorney for the Governor, Senate President and Speaker*, 400 South Monroe Street, Room PL-01, Tallahassee, Florida 32399-6536; and **Lynn C. Hearn, Esq.**, General Counsel, and **Staci A. Bienvenu, Esq.**, Assistant General Counsel, *Attorneys for the Secretary*, Department of State, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, FL 32399-0250, this 12th day of February, 2010.



EDWARD G. GUEDES

John J. Quick

From: Jon Glogau [Jon.Glogau@myfloridalegal.com]
Sent: Wednesday, December 02, 2009 11:08 AM
To: Edward G. Guedes
Cc: Jamie Alan Cole; John J. Quick; Susan L. Trevarthen
Subject: RE: City of Weston v. Crist

checking with my clients on the proposed schedule

"Edward G.
Guedes"
<EGuedes@wsh-law.com>
12/01/2009 03:33
PM

To
Jon Glogau
<Jon.Glogau@myfloridalegal.com>,
Jamie Alan Cole
<JCole@wsh-law.com>, "Susan L.
Trevarthen"
<STrevarthen@wsh-law.com>, "John J.
Quick" <JQuick@wsh-law.com>
cc
Subject
RE: City of Weston v. Crist

Jon,

We have no objection to your one-week extension. I would propose, however, that we agree to the following schedule going forward:

Defendants' answer	
Dec 14	
Reply to Aff defenses	
Dec 19	
Plaintiff's MSJ and memo	
Jan 15	
Defendants Response and Cross Motion	Feb 1
Plaintiffs Reply and Response to Cross Mot	Feb 15
Defendants' Reply Re Cross Motion	Feb 25
Final Hearing	
Early March	

Please let us know whether this schedule is agreeable to you and your clients.

Thanks,

Ed

-----Original Message-----

From: Jon Glogau [mailto:Jon.Glogau@myfloridalegal.com]
Sent: Tuesday, December 01, 2009 2:46 PM
To: Jamie Alan Cole; Susan L. Trevarthen; Edward G. Guedes; John J. Quick
Subject: City of Weston v. Crist



Folks: It has come to my attention that my answer in this case is due thursday. I was out all last week and most of the week before getting ready for trial in another case (and eating turkey in Orlando!) Not surprisingly, I have not had the opportunity to draft and circulate an answer to my clients, so I would greatly appreciate an extension of 10 more days to 12/14 to file my answer. Thank you in advance for your courtesies.

Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure.

Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure.

John J. Quick

From: Jon Glogau [Jon.Glogau@myfloridalegal.com]
Sent: Friday, December 18, 2009 11:40 AM
To: John J. Quick
Subject: Re: SB 360 - final hearing

I CAN DO THE 22ND BUT WOULD MUCH PREFER THE 9 AM TIME IF POSSIBLE

"John J. Quick"
<JQuick@wsh-law.com>
12/17/2009 02:54 PM

To
'Jon Glogau'
<Jon.Glogau@myfloridalegal.com>, "lchearn@dos.state.fl.us"
<lchearn@dos.state.fl.us>
cc
Jamie Alan Cole
<JCole@wsh-law.com>, "Edward G. Guedes" <EGuedes@wsh-law.com>, Louisa Martinez
<LMartinez@wsh-law.com>
Subject
SB 360 - final hearing

Jon and Lynn,

Judge Francis' JA provided us with potential hearing dates for the final summary judgment(s) in this case. Those dates are as follows:

2/22/10 @ 9:00 am or 1:30 pm - 2 hours
2/24/10 @ 1:30 pm - 2 hours
2/26/10 @ 9:00 am - 2 hours
3/1/10 @ 9:00 am or 1:30 pm - 2 hours

Lynn - since you may not be aware, we previously agreed to a summary judgment filing schedule with Jon, and the Court's dates are based upon that schedule. For your convenience, below is the previously agreed-upon schedule:

Defendants' answer	
Dec 14	
Reply to Affirmative defenses	Dec 19
Plaintiff's MSJ and memo	Jan
15	
Defendants' Response and Cross-Motion (if any)	Feb 1
Plaintiff's Reply and Response to Cross-Motion	Feb 15
Defendants' Reply Re Cross-Motion	Feb 25

Our office is available on the February 22 and 24 dates at 1:30pm provided by the JA. Unfortunately, Weston has a regularly scheduled commission meeting on March 1 which may prove prohibitive of that date. As a result, we wanted to see if you are available either February 22 or 24 at 1:30 for the final hearing in this matter. If you are, we would



propose adjusting the briefing schedule to move everything up 1 week. The new briefing schedule would be as follows:

Plaintiff's motion for summary judgment	Jan. 8
Defendants' Response and Cross-Motion (if any)	Jan. 25
Plaintiff's Reply and Response to Cross-Motion	Feb. 8
Defendants' Reply re: Cross-Motion	Feb. 18
Final Hearing	
Either Feb. 22 or 24	

Please advise as to your availability for final hearing and agreement to the proposed revised briefing schedule.

In the meantime, should you have any questions or comments, please do not hesitate to contact us.

Regards,
John

John J. Quick, Esq.

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
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www.wsh-law.com
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Fax: (305) 854-2323

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Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure.

John J. Quick

From: Hearn, Lynn C. [LCHearn@dos.state.fl.us]
Sent: Thursday, December 17, 2009 4:05 PM
To: John J. Quick; Jon Glogau
Cc: Jamie Alan Cole; Edward G. Guedes; Louisa Martinez
Subject: RE: SB 360 - final hearing
Attachments: ~WRD000.jpg

John,

I am available either Feb. 22 or 24 for the final hearing.

I defer to Jon regarding the proposed revised briefing schedule. I have no objection.

Regards,

Lynn C. Hearn
General Counsel
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250
(850) 245-6536

Please take a few minutes to provide feedback on the quality of service you received from our staff. The Florida Department of State values your feedback as a customer. Kurt Browning, Florida Secretary of State, is committed to continuously assessing and improving the level and quality of services provided to you. Simply click on the link to the "DOS Customer Satisfaction Survey." Thank you in advance for your participation. [DOS Customer Satisfaction Survey](#)

From: John J. Quick [mailto:JQuick@wsh-law.com]
Sent: Thursday, December 17, 2009 2:54 PM
To: 'Jon Glogau'; Hearn, Lynn C.
Cc: Jamie Alan Cole; Edward G. Guedes; Louisa Martinez
Subject: SB 360 - final hearing

Jon and Lynn,

Judge Francis' JA provided us with potential hearing dates for the final summary judgment(s) in this case. Those dates are as follows:

2/22/10 @ 9:00 am or 1:30 pm - 2 hours
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Lynn – since you may not be aware, we previously agreed to a summary judgment filing schedule with Jon, and the Court's dates are based upon that schedule. For your convenience, below is the previously agreed-upon schedule:

Defendants' answer	Dec 14
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2/12/2010

Defendants' Reply Re Cross-Motion

Feb 25

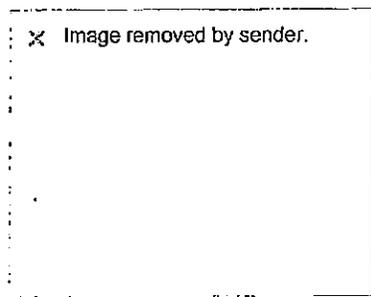
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Please advise as to your availability for final hearing and agreement to the proposed revised briefing schedule.

In the meantime, should you have any questions or comments, please do not hesitate to contact us.

Regards,
John



John J. Quick, Esq.

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2/12/2010

John J. Quick

From: John J. Quick
Sent: Friday, December 18, 2009 5:26 PM
To: 'Hearn, Lynn C.'
Subject: RE: SB 360 - final hearing
Attachments: image002.jpg

Thank you, Lynn. Jon is available Feb. 22, so we will let the Court know and send out a notice of hearing.

Regards,
John

From: Hearn, Lynn C. [mailto:LCHearn@dos.state.fl.us]
Sent: Thursday, December 17, 2009 4:05 PM
To: John J. Quick; Jon Glogau
Cc: Jamie Alan Cole; Edward G. Guedes; Louisa Martinez
Subject: RE: SB 360 - final hearing

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Regards,

Lynn C. Hearn
General Counsel
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250
(850) 245-6536

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Cc: Jamie Alan Cole; Edward G. Guedes; Louisa Martinez
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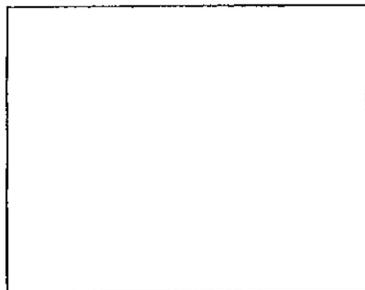
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Plaintiff's motion for summary judgment	Jan. 8
Defendants' Response and Cross-Motion (if any)	Jan. 25
Plaintiff's Reply and Response to Cross-Motion	Feb. 8
Defendants' Reply re: Cross-Motion	Feb. 18
Final Hearing	Either Feb. 22 or 24

Please advise as to your availability for final hearing and agreement to the proposed revised briefing schedule.

In the meantime, should you have any questions or comments, please do not hesitate to contact us.

Regards,
John



John J. Quick, Esq.

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
www.wsh-law.com
Tel: (305) 854-0800
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2/12/2010

John J. Quick

From: John R. Flint [JFlint@westonfl.org]
Sent: Friday, February 12, 2010 1:20 PM
To: Jamie Alan Cole
Subject: FW: JAMIE C FT LAUDERDALE 21FEB10

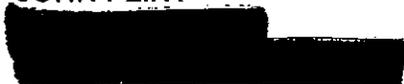
From: DeltaElectronicTicketReceipt@delta.com [mailto:DeltaElectronicTicketReceipt@delta.com]
Sent: Monday, January 04, 2010 3:03 PM
To: John R. Flint
Subject: JAMIE C FT LAUDERDALE 21FEB10



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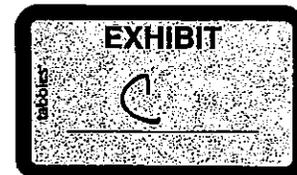
DELTA CONFIRMATION #: EIBWEO
 TICKET #: 00623190891341

Day	Date	Flight	Status	Bkng Class	City	Time	Meals/ Other	Seat/ Cabin
Sun	21FEB	DELTA 6760*	OK	U	LV FT LAUDERDALE	745P		**
					AR TALLAHASSEE	914P		COACH
*Operated by COMAIR								
Mon	22FEB	DELTA 5252*	OK	U	LV TALLAHASSEE	655P		**
					AR FT LAUDERDALE	822P		COACH
*Operated by ATLANTIC SOUTHEAST								

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- *SS - Multiple seats
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- B - Breakfast
- C - Bagels/Beverages
- D - Dinner
- F - Food available for purchase
- L - Lunch
- LV - Departs
- M - Movie
- R - Refreshments - Complimentary
- S - Snack
- T - Cold meal
- V - Snacks for Sale

Passenger Information

JAMIE COLE

Billing Details

Receipt Information

Fare Details: FLL DL TLH176.75UR21A0NQ DL FLL176.74UR21A0NQ USD353.49END ZP F
LTLH XF FLL4.5TLH4.5

Fare:	353.49 USD	Form of Payment	
Tax:	47.91 TX		
Total:	401.40 USD		

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Total Tax: 47.91 USD

XF	9.00	ZP	7.40	AY	5.00	US	26.51
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 Issuing Agent Id: DL/WW
 Ticket Issue date: 04JAN10
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Flight Information

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 TICKET #: 00623190891330

Day	Date	Flight	Status	Bkng Class	City	Time	Meals/ Other	Seat/ Cabin
Sun	21FEB	DELTA 6760*	OK	U	LV FT LAUDERDALE	745P		**
					AR TALLAHASSEE	914P		COACH
*Operated by COMAIR								
Mon	22FEB	DELTA 5252*	OK	U	LV TALLAHASSEE	655P		**
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L - Lunch
LV - Departs
M - Movie
R - Refreshments - Complimentary
S - Snack
T - Cold meal
V - Snacks for Sale

Passenger Information

JOHN FLINT

SkyMiles Number: *****970

Billing Details

Receipt Information

Fare Details: FLL DL TLH176.75UR21A0NQ DL FLL176.74UR21A0NQ USD353.49END ZP F
LLTLH XF FLL4.5TLH4.5

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Ticket Issue date: 04JAN10
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