

SC 99007

IN THE SUPREME COURT OF MISSOURI

ALL STAR AWARDS & AD SPECIALTIES, INC.,

Appellant/Respondent

v.

HALO BRANDED SOLUTIONS, INC.,

Respondent/Appellant

Appeal from the Circuit Court of Jackson County

16th Judicial Circuit

The Honorable John M. Torrence

Circuit Court No. 1816-CV06419

AMICUS CURIAE BRIEF OF THE MISSOURI ASSOCIATION OF TRIAL
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Table of Contents

Table of Authorities.....	4,5
Introduction and Interests of Amicus Curiae.....	6,7
Argument and Authorities.....	7-23
I. This Court Should Overrule the Circuit Court’s Reduction of All Star’s Punitive Damage Award Because Such a Reduction Violated All Star’s Constitutional Right to a Trial by Jury.....	7-22
A. This Court’s Precedent Clearly Recognizes All Star’s Constitutional Rights Were Violated When Their Punitive Damage Award was Reduced.....	9-11
B. Missouri’s Current Constitutional Interpretation of the Right to Jury Trial is Common Amongst Other States.....	11-14
C. The <i>Adams</i> Decision was Overturned Because it Violated the Missouri Constitution, while <i>Watts</i> and <i>Lewellen</i> were Established to Protect the Rights of Missouri Citizens.....	14-19
1. The <i>Adams</i> ruling fundamentally misconstrues the nature to the right of trial by jury.....	15,16
2. <i>Adams</i> ’ legal analysis permits legislative limitations on the individuals constitutional rights.....	16-17
3. <i>Adams</i> incorrectly holds that the right to jury trial does not extend to determination of damages.....	18
4. <i>Adams</i> reached a conclusion without citation to any applicable Missouri law which became the basis for all the cases to come until the <i>Watts</i> decision.....	18,19

D. The Doctrine of *Stare Decisis* Should be Respected and Protect *Watts* and *Lewellen* from Being Overturned.....19-23

1. *Watts* and *Lewellen* were decided to correct an erroneous precedent.....20-23

2. Alternatively, this Court should hold that overturning *Watts* and *Lewellen* is neither required nor appropriate here.....23

Conclusion.....23-24

Certification Pursuant to Rule 84.06(c).....25

Table of Authorities

Cases

<i>Adams By and Through Adams v. Children’s Mercy Hosp.</i> , 832 S.W.2d 898 (Mo. banc 1992).....	14, 15, 16, 17, 18, 19, 20, 21
<i>All Star Awards & Ad Specialties Inc. v. HALO Branded Solutions, Inc.</i> , 2021 WL 96073 (Mo. App. January 12, 2021).....	7, 10
<i>Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt</i> , 286 Ga. 731 (2010)....	12, 16
<i>Estate of Overbey v. Chad Franklin Nat’l Auto Sales N., LLC</i> , 361 S.W.3d 364 (Mo. banc 2012).....	8, 11
<i>Independence-Nat. Educ. Ass’n v. Independence Sch. Dist.</i> , 223 S.W.3d 131, 137 (Mo. banc 2007).....	20
<i>Lee v. Conran</i> , 111 S.W. 1151, 1153 (Mo. 1908).....	15
<i>Lewellen v. Franklin</i> , 441 S.W.3d 136 (Mo. 2014).....	7, 9, 10, 11, 14, 15, 17, 19, 20, 21, 22
<i>Med. Shoppe Intern., Inc. v. Dir. Of Revenue</i> , 156 S.W.3d 333, 335 (Mo. banc 2005).....	20, 22
<i>Missouri Alliance for Retired Am. v. Dept. of Labor and Indust. Relations</i> , 277 S.W.3d 670, 682 (Mo. banc 2009).....	17
<i>Moore v. Mobile Infirmary Ass’n</i> , 592 So.2d 156, 163 (Ala. 1991).....	13
<i>Mountain Grove Bank v. Douglas Cnty.</i> , 146 Mo. 42, 47 (1898).....	21
<i>Ordinola v. Univ. Physician Assoc.</i> , 625 S.W.3d 445 (Mo. 2021).....	22,23
<i>Richardson v. State Highway & Transp. Comm’n</i> , 863 S.W.2d 876 (Mo. banc 1993).....	8
<i>Sanders v. Ahmed</i> , 364 S.W.3d 195 (Mo. banc 2012).....	22,23
<i>Scott v. Blue Springs Ford Sales, Inc.</i> , 176 S.W.3d 140, 142 (Mo. banc 2005).....	10, 11
<i>Smith v. Dep’t of Ins.</i> , 507 So.2d 1080 (Fla. 1987).....	13
<i>Sofie v. Fibreboard Corp</i> , 112 Wash.2d 636 (1989).....	12, 16, 18

State ex rel. Diehl v. O'Malley, 95 S.W.3d 82, 87 n. 9 (Mo. banc 2003).....10, 15, 16

Tull v. United States, 481 U.S. 412 (1987).....18, 19

Watts v. Lester E. Cox Medical Centers, 376 S.W.3d 633 (Mo. 2012).....7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22

Statutes

Mo. Const. Art. 1, § 22(a).....8, 9, 15, 18

RSMo. § 510.265.....6, 7, 10, 11, 14, 17, 22

Va. Const. art. 1, § 11.....19

INTERESTS OF AMICUS CURIAE

The Missouri Association of Trial Attorneys (MATA) is a non-profit, professional organization of approximately 1,400 trial lawyers in Missouri, most of whom are engaged in personal injury litigation involving Missouri citizens. For over fifty years, MATA lawyers have vigilantly worked to protect their clients and Missouri citizens from injustice. In doing so, MATA strives to promote the administration of justice, to preserve the adversary system, and to apply its knowledge and experience in the field of law to advance the interests and protect the rights of individuals.

The determination of whether a jury's punitive damage award in a civil claim involving deceit and trespass is subject to a reduction under RSMo. § 510.265 is a question of importance with far reaching consequences for Missouri citizens. As such, MATA's members and their clients will be directly affected by the Court's decision in this case.

As discussed herein, MATA supports Appellant/Respondent All Star Awards & Ad Specialties, Inc.'s position in accordance with the Western District of the Court of Appeals ruling that the trial court erred in reducing the jury's punitive damage award because the damages were not subject to the cap in § 510.265.

Amicus Curiae believe that the Western District's ruling interprets and applies the interplay between RSMo. § 510.265 and jury awards in a civil case correctly. Public policy calls for those who have been injured by tortious conduct to have the ability to be made whole in court.

On behalf of the citizens of the State of Missouri, MATA urges this court to find that the Western District appropriately ruled the reduction in the jury's damage award was error and maintain the established precedent of *Watts and Lewellen*.

ARGUMENT AND AUTHORITIES

I. This Court Should Overrule the Circuit Court's Reduction of All Star's Punitive Damage Award Because Such a Reduction Violated All Star's Constitutional Right to a Trial by Jury

A jury awarded All Star \$5.5 million in punitive damages against HALO, which was then reduced by the circuit court to \$2,627,709.40 in accordance with the statutory damages cap under RSMo. § 510.265. *All Star Awards & Ad Specialties Inc. v. HALO Branded Solutions, Inc.*, 2021 WL 96073 (Mo. App. January 12, 2021). Section 510.265 provides, "No award of punitive damages against any defendant shall exceed the greater of: (1) Five hundred thousand dollars; or (2) Five times the net amount of the judgment awarded to the plaintiff against the defendant." The Western District for the

Missouri Court of Appeals correctly asserted that the Circuit Court’s application of this statute to All Star’s claims of civil conspiracy and tortious interference with business expectancy divests the jury of its function in determining damages and, thereby, deprives All Star of their right to a trial by jury guaranteed by article 1, section 22(a) of the Missouri Constitution.¹

Missouri law has historically recognized that one of the jury’s primary functions is to determine the plaintiff’s damages. *Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633, 639 (Mo. 2012). This Court specifically recognized that the Missouri Constitution gives the jury the responsibility to determine damages when it stated, “[T]he jury here assessed liability and determined damages, thus fulfilling its constitutional task.” *Richardson v. State Highway & Transp. Comm’n*, 863 S.W.2d 876, 880 (Mo. banc 1993). It is beyond dispute that Missouri law has consistently recognized that “the jury’s role in a civil case is to determine the facts relating to both liability and damages and to enter a verdict accordingly.” *Estate of Overbey v. Chad*

¹ MO CONST Art. 1, § 22(a) states, “That the right of trial by jury as heretofore enjoyed shall remain inviolate; provided that a jury for the trial of criminal and civil cases in courts not of record may consist of less than twelve citizens as may be prescribed by law, and a two-thirds majority of such number concurring may render a verdict in all civil cases; that in all civil cases in courts of record, three-fourths of the members of the jury concurring may render a verdict; and that in every criminal case any defendant may, with the assent of the court, waive a jury trial and submit the trail of such case to the court, whose finding shall have the force and effect of a verdict of a jury.”

Franklin Nat'l Auto Sales N., LLC, 361 S.W.3d 364, 382 (Mo. banc 2012). As such, the punitive damages awarded to All Star was a fact determined by the jury and is subject to the protection of article 1, § 22(a).

A. This Court's Precedent Clearly Recognizes All Star's Constitutional Rights Were Violated When Their Punitive Damage Award was Reduced

This Court recognized in previous decisions in *Watts* and *Lewellen* that statutory imposed caps on damages awarded to the plaintiff violates the constitutional right to a jury trial where there existed a right to a jury determination of the amount of punitive damages in a cause of action in 1820. See *Lewellen v. Franklin*, 441 S.W.3d 136, 142-43 (Mo. 2014); *Watts*, 376 S.W.3d 633 (Mo. 2012).

In *Watts*, this Court held that applying a statutory cap, similar to the one currently at issue here, on non-economic damages violated the Missouri constitutional right to a trial by jury. *Watts*, 376 S.W.3d at 638. Two years later, this Court extended that interpretation to statutory caps on punitive damages as well. *Lewellen*, 441 S.W.3d at 143-44. Both decisions contended that the phrase "shall remain inviolate" in article 1, § 22(a) meant that any change in the right to a jury determination of damages as it existed in 1820 is unconstitutional. *Id.*

Here, All Star clearly falls within the Court's prior *Lewellen* analysis. While the *Lewellen* case dealt with an issue of fraud, the court did not suggest that its interpretation, was restricted to only applying to other fraud claims. Instead, the bulk of the analysis focuses on the effects of the statutory cap in § 510.265. *Id.* All that truly is required for the analysis about the right to a jury trial within *Watts* and *Lewellen* to flow into All Star's case is that their claim could have been considered by juries in 1820. *Lewellen*, 441 S.W.3d 143. As the Western District noted in its opinion, the two claims brought by All Star would have been cognizable at English common law when our constitution was adopted in 1820 because they were wrongs to the person or property for which money damages could be claimed. *All Star*, 2021 WL 96073 (Mo. App. January 12, 2021) (citing *State ex rel. Diehl v. O'Malley*, 95 S.W.3d 82, 87 n. 9 (Mo. banc 2003)). Additionally, the determination of the amount of punitive damages was a clear function for the jury in 1820 under the common law. *Lewellen*, 441 S.W.3d at 142.

The Court has repeatedly demonstrated that the constitutional right to a jury trial guarantees that an individual's punitive damage award shall be determined by the jury. In *Scott v. Blue Springs Ford Sales, Inc.*, this Court held that a claimant seeking damages on a claim pursuant to the Missouri Human Rights Act had the right to have a jury determine the punitive

damage award. 176 S.W.3d 140, 142 (Mo. banc 2005). Therefore, when a statute provided for punitive damages is to be precluded from a jury's determination, the Missouri Constitution was violated. *Id.* The Court reiterated this holding again in 2012 when it stated that there is a right to a jury trial on punitive damages. *Overbey*, 361 S.W.3d 364 (Mo. banc 2012). These cases, along with *Watts*, lead the Court to conclude that § 510.265 "necessarily change[d] and impair[ed] the right of a trial by jury as heretofore enjoyed." *Lewellen*, 441 S.W.3d at 144 (*quoting Watts*, 376 S.W.3d at 640).

All Star's case clearly falls within the precedent of *Lewellen* and *Watts*. All Star's award for punitive damages was reduced from \$5.5 million to \$2,627,709.40 by the circuit court because of the misapplication of the statutory damages cap in § 510.265. Further, MATA agrees with the continued analysis discussing why the claims at issue were the type to exist at common law in 1820 for all of the reasons discussed in their brief.

B. Missouri's Current Constitutional Interpretation of the Right to Jury Trial is Common Amongst Other States

The foregoing analysis discussed in *Watts* and *Lewellen* have been utilized by several other states with constitutions which, like Missouri's, require that the right to a jury trial shall "remain inviolate." *Watts*, 376 S.W.3d at 640 (Mo. 2012). These other states have similarly concluded that because the

assessment of damages is one of the factual findings assigned to the jury rather to a judge, any limit on damages that restricts the jury's fact-finding role therefore violates the constitutional right to trial by jury. *Id.*

- The state of Washington recognized in *Sofie v. Fibreboard Corp*, 112 Wash.2d 636 (1989) that “the jury’s fact-finding function included the determination of damages. This evidence can only lead to the conclusion that our constitution...protects the jury’s role to determine damages.” *Id.* at 716. The Supreme Court of Washington went on to state, “when you start to put limitations on [the jury’s ability to find damages], you have, in fact, invaded the province of the jury and have not preserved the right to a trial by jury inviolate.” *Id.* at 722 (quoting Washington Senate Journal, 49th Legislature 1986, at 449).
- The Supreme Court of Georgia concluded in *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 286 Ga. 731 (2010) that statutory caps infringe on a party’s constitutional right, as embodied by their state constitution to a jury determination of non-economic damages. *Id.* at 735.
- Alabama held that statutory damage caps on common law causes of action violate the right to trial by jury because “the trial judge is

- required summarily to disregard the jury's assessment of the amount of noneconomic loss, that species of damages lying most peculiarly within the jury's discretion. *Moore v. Mobile Infirmary Ass'n*, 592 So.2d 156, 163 (Ala. 1991).
- Similarly, the state of Florida recognized these limitations on the amount of damages that can be recovered by an injured party violated Florida's constitutional guarantee to both the right to jury trial and the right of access to the courts. *Smith v. Dep't of Ins.*, 507 So.2d 1080 (Fla. 1987). In a strong rebuke, the court stated, "Access to courts is granted for the purpose of redressing injuries. A plaintiff who receives a jury verdict for, e.g., \$1,000,000 has not received a constitutional redress of injuries if the legislature statutorily, and arbitrarily, caps the recovery at \$450,000. Nor, we add, because the jury verdict is being arbitrarily capped, is the plaintiff receiving the constitutional benefit of a jury trial as we have heretofore understood the right. Further, if the legislature may constitutionally cap recovery at \$450,000, there is no discernible reason why it could not cap the recovery at some other figure, perhaps \$50,000, or \$1,000, or even \$1." *Id.* at 1088-89.

The constitutional analysis that was used by this Court when deciding *Watts* and *Lewellen* is not unique to the state of Missouri. Instead, several other states have used similar frameworks to interpret their own state constitutions, which also use the phrase “remain inviolate” when addressing the right to a jury trial and have similarly found that statutory caps limiting a damage award infringes on that right. Contrary to what HALO and other organizations may want the Court to believe, the right to jury trial is protected in a similar manner across the country.

C. The *Adams* Decision was Overturned because it Violated the Missouri Constitution, while *Watts* and *Lewellen* Were Established to Protect the Rights of Missouri Citizens

Up until the *Watts* decision, Missouri law interpreted statutory caps on damages as not limiting the jury’s constitutional role in determining damages. *Adams By and Through Adams v. Children’s Mercy Hosp.*, 832 S.W.2d 898 (Mo. banc 1992). *Adams* stated that a damage cap, similar to the one in § 510.265 would not violate the right to trial by jury because the cap is to be applied by the trial court after the “jury completed its constitutional task” of determining the plaintiff’s economic and non-economic damages. *Id.* at 907. In other words, *Adams* determined the application of the damage cap to be “a matter of law, not fact, and not within the purview of the jury.” *Id.*

However, this Court identified four key flaws in the *Adams* rationale, which are no less a cause of concern today. Should the Court overrule *Watts* and *Lewellen*, these four major flaws are very likely to return in the Missouri court legal interpretation of the right to jury trial.

1. *The Adams ruling fundamentally misconstrues the nature to the right of trial by jury*

This Court noted that Article 1, § 22(a) specifically guarantees an individual a right to a trial by jury. *Watts*, 376 S.W.3d at 642. While the *Adams* interpretation of statutory damage caps potentially permits the jury to perform its constitutional role, it certainly deprives the individual plaintiff his or her right to the damages awarded by the jury. *Id.* The constitutional significance of the jury's role in determining damages is reflected in the analytical basis for determining whether the right to trial by jury attaches—if the action is a civil claim for damages, then the right to a jury trial attaches and must “remain inviolate.” *State ex. rel. Diehl v. O'Malley*, 95 S.W.3d 82, 84 (Mo. banc 2003). Here, All Star brought a civil action for civil conspiracy and tortious interference with business relations. Therefore, the right to a jury trial clearly attached and were infringed upon when their individual guarantee to a jury's determination of damages were reduced by a statutory cap.

Further, the argument that All Star's rights were not interfered with because the jury made a determination and then it was reduced should not be persuasive. All this would afford the jury is a practically meaningless opportunity to assess damages and simply pay lip service to the forms of the jury while robbing it of its function. *Sofie*, 112 Wash.2d at 655; *see also Nustlehutt*, 286 Ga. at 735 (“[b]y requiring the court to reduce a noneconomic damages award determined by a jury that exceeds the statutory limit, [a statutory cap] clearly nullifies the jury’s findings of fact regarding damages and thereby undermines the jury’s basic function”).

2. Adams’ legal analysis permits legislative limitations on the individuals constitutional rights

Adams justifies statutory caps by arguing the jury is permitted to find the facts while the judge statutorily is required to make a separate legal determination and apply the damage cap. *Watts*, 376 S.W.3d at 642. This Court concluded the unavoidable result of *Adams* rationale is that right to trial by jury is directly subject to legislative limitation because a statutory limit on the state constitutional right to trial by jury amounts to an impermissible legislative alteration of the constitution. *Diehl*, 95 S.W.3d at 85, 92 (“[t]he right to trial by jury, where it applies, is a constitutional right, applies ‘regardless of any statutory provision,’ and is ‘beyond the reach of

hostile legislation”) (citing *Lee v. Conran*, 111 S.W. 1151, 1153 (Mo. 1908)). RSMo. § 510.265, as a statute may not infringe on a constitutional right; and if the statute and the Missouri Constitution are in conflict, then it is the statute rather than the constitution that must give way. *Watts*, 376 S.W.3d at 642 (citing *Missouri Alliance for Retired Am. v. Dept. of Labor and Indust. Relations*, 277 S.W.3d 670, 682 (Mo. banc 2009)).

The only justification that Adams offers up in favor of these legislative limitations is the mantra, “[i]f the legislature has the constitutional power to create and abolish causes of action, the legislature also has the power to limit recovery in those causes of action.” *Adams*, 832 S.W.2d at 907. Until the *Watts* and *Lewellen* decisions, this analysis was simply repeated in any case upholding statutory damage caps without any further analysis or reasoning. *Watts*, 376 S.W. at 643. If the legislature were able to strip constitutional protections from a plaintiff seeking relief under an existing cause of action, such as All Star here, then constitutional protections would only be reduced to a theoretical value that only exist at the whim of the legislature. *Id.* The damages awarded to plaintiffs under this interpretation would not be the only thing reduced, as the rights of Missouri citizens would similarly be reduced to mere privileges that could be withdrawn at any moment.

3. *Adams incorrectly holds that the right to jury trial does not extend to the determination of damages*

The Adams decision cited to the United States Supreme Court decision *Tull v. United States*, 481 U.S. 412 (1987), to propose the right to jury trial does not extend to the determination of damages. *Adams*, 832 S.W.2d at 907. Setting aside the fact that the jury's primary function is determining the facts, as stated previously, Missouri has long recognized it is the jury's role to determine both liability and damages and that article 1, § 22(a) guarantees that the jury shall have this role. *Watts*, 376 S.W.3d 643. This renders *Tull* rather irrelevant in the current situation. Additionally, *Tull* is irrelevant to the matters before the Court because *Tull* interpreted the federal constitution and deals only with civil penalties, not common law damages. *See Sofie*, 112 Wash.2d at 662. While federal interpretations of civil penalties may be persuasive on some level, cases grounded in Missouri law that analyze unconstitutional statutory caps should be far more compelling.

4. *Adams reached its conclusion without citation to any applicable*

Missouri law which became the basis for all the cases to come until the Watts decision

The Court in *Watts* was particularly concerned that the lasting precedent in the state of Missouri concerning constitutionality of statutory damage caps

was reached without citation to applicable Missouri law. Instead, *Adams* relied on a Virginia case from 1989 and the *Tull* decision. *Watts*, 376 S.W.3d 644. Not only was the Court contending that the interpretation of the Missouri Constitution should be informed by Missouri law, but also that the cases being relied on be discussing an issue that is directly on point rather than just similar. The Virginia case that *Adams* so heavily relied on is irrelevant, just like *Tull*. While the Missouri Constitution guarantees the right to trial by jury shall “remain inviolate,” the Virginia Constitution merely states that “trial by jury is preferable to any other, and ought to be held sacred.” Va. Const. art. 1, § 11. The connotations of these two statements are drastically different, and this Court held that the Virginia Constitution simply did not provide the same unyielding jury trial right as is provided by the Missouri Constitution. *Watts*, 376 S.W.3d 644. The different language then warrants a different analysis. *Id.*

The cases cited to above in Section B of this brief would be far more persuasive, because even though they are not grounded in Missouri law, they at the very least interpret a state constitution with language that is just as strong and unyielding.

D. The Doctrine of *Stare Decisis* Should be Respected and Protect *Watts* and *Lewellen* From Being Overturned

The doctrine of *stare decisis* should protect *Watts* and *Lewellen* from being overturned and potentially returning to the previous precedent under *Adams*. This Court explained the importance of the doctrine of *stare decisis* when it stated that it, “promotes security in the law by encouraging adherence to previously decided cases.” *Independence-Nat. Educ. Ass’n v. Independence Sch. Dist.*, 223 S.W.3d 131, 137 (Mo. banc 2007). However, “adherence to precedent is not absolute, and the passage of time and the experience of enforcing a purportedly incorrect precedent may demonstrate a compelling case for changing course.” *Med. Shoppe Intern., Inc. v. Dir. Of Revenue*, 156 S.W.3d 333, 335 (Mo. banc 2005).

1. *Watts and Lewellen were decided to correct an erroneous precedent*

Watts and *Lewellen* do not need to be corrected, because they were decided to protect Missourians from an erroneous precedent. Therefore, they should be respected and protected from overturning under the doctrine of *stare decisis*. This Court stressed its typical hesitance to overturn precedent, but nonetheless decided in *Watts* that *Adams* required overturning because it violated the constitutional rights of Missouri citizens. *Watts*, 376 S.W.3d at 644. Overturning erroneous precedent like *Adams* was of particular importance because the precedent violated a constitutional right. *Id.* The Court stated, “[i]f the people [were] dissatisfied with the construction of a

statute, the frequently recurring sessions of the legislature afford easy opportunity to repeal, alter, or modify the statute, while the constitution is organic, intended to be enduring until changed conditions of society demand more stringent or less restrictive regulations, and, if a decision construes the constitution in a manner not acceptable to the people, the opportunity of changing the organic law is remote. Moreover, no set of judges ought to have the right to tie the hands of their successors on constitutional questions, any more than one general assembly should those of its successors on legislative matters.” *Id.* (quoting *Mountain Grove Bank v. Douglas Cnty.*, 146 Mo. 42, 47 (1898)).

The *Watts* decision came down in 2012, which overturned the *Adams* case from 1992. *Lewellen*, then reaffirmed the Court’s commitment to the *Watts* analysis in 2014. If the Court were to now overturn *Watts* and *Lewellen*, the rights of Missouri citizens would once again be subject to a reevaluation and changing every couple of years like a legislative session. *Adams* was overturned because it infringed on constitutional rights. *Watts* and *Lewellen* were decided as a means to protect those rights. Now is the time for there to be security in the law and for the doctrine of stare decisis to apply. *Watts* was one of the examples in American history where instances of “experience and changing needs of society trump[ed] adherence to precedent and

demonstrate[d] the fallacy of an earlier interpretation.” *Medicine Shoppe Intern*, 156 S.W.3d at 335. This change was made for the good of Missouri citizens, and it should continue to be protected and adhered to for the protection of Missouri citizens.

Further, there is no inconsistency in Missouri law created by *Ordinola v. Univ. Physician Assoc.*, 625 S.W.3d 445 (Mo. 2021) that needs to be resolved in the current appeal. *Ordinola* addressed the statutory caps on non-economic damages in the statutory cause of action for medical negligence. *Id.* at 449. Notably there were no claims of punitive damages in *Ordinola*, and the cap that was at issue did not address punitive damages. *Id.* Instead, the issue the Court dealt with was whether Mr. Ordinola could collect non-economic damages without the interference of caps in a wrongful death case. *Id.* The Court, relying on *Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. banc 2012) held that wrongful death did not exist at common law in 1820 and was created by the legislature; therefore, the right to trial by jury did not attach. *Id.* at 203.

The Court in the *Ordinola* decision expressly noted that the General Assembly abolished medical malpractice in the common law. The new § 538.210 “*replac[ed] any such common law cause of action.*” 625 S.W.3d at 450 (emphasis in original). The Court explained, “because a medical

negligence action is a statutorily created cause of action, the General Assembly had the legislative authority to enact statutory non-economic damage caps.” *Id.* Therefore, as with wrongful death, the right to trial by jury did not attach.

This Court is not presented with the same questions. This case is limited to common law claims of tortious interference and civil conspiracy, which are not statutory actions. All Star’s causes of action were never abolished and re-created in statutory form. Therefore, *Ordinola* is not relevant.

2. Alternatively, this Court should hold that overturning Watts and Lewellen is neither required nor appropriate here

Should this Court nevertheless feel the need to discuss the effects of the *Watts* and *Lewellen* cases, MATA agrees with All Star that the facts and posture of this case present no need or an appropriate opportunity for the Court to reverse its precedents and impose a new test on the § 510.265 caps for all of the reasons discussed in All Star’s brief.

Conclusion

This Court should deny the relief sought by HALO, reverse the ruling on the post-trial motion requesting reduction and restore the full \$5.5 million

award in punitive damages as it is in the interest of justice and in accordance with the Missouri Constitution.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that a copy of the computer diskette containing the full text of Brief of *Amicus Curiae* Missouri Association of Trial Attorneys In Support of Respondent is attached to the Brief and has been scanned for viruses and is virus-free.

Pursuant to Rule 84.06(c), the undersigned hereby certifies that: (1) this Brief includes the information required by Rule 55.03; (2) this Brief complies with the limitations contained in Rule 84.06(b); and (3) this Brief contains 4,085 words, as calculated by the Microsoft Word software used to prepare this brief.

Leland F. Dempsey #30756