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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Perry M. Buckner, Circuit Court Judge
R. Markley Dennis, Circuit Court Judge

Civil Action No. 2019-CP-10-03739

Shirley M.B., Williams, individually, and as Personal Representative of the Estate of Jason Lynn Williams, deceased, ... Respondent,

v.

Lyft, Inc., Lyft Drives South Carolina, Inc., Kaitlyn Meadows

Of whom Lyft, Inc. d/b/a Lyft Drives South Carolina, Inc. ("Lyft") is the ..... Appellant.

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STATEMENT OF ISSUES ON APPEAL

This is an appeal of a $10.5 million default judgment the circuit court entered against Lyft, Inc., following an automobile accident. This appeal presents several issues for the Court's consideration:

I. Lyft missed its answer deadline by less than two weeks; and Lyft missed the deadline because its trial counsel experienced technological problems resulting from Hurricane Dorian and was then in an automobile accident that left him concussed. Did the circuit court err by refusing to grant Lyft relief from the entry of default?

II. The circuit court found that it lacked the power to reconsider the issue of relief from default despite this being an interlocutory decision that could be revisited at any time. Was this error?

III. The Respondent also sued co-defendant Kaitlyn Meadows ("Meadows"), seeking to hold Lyft and Meadows jointly liable. Meadows timely answered, denied the material allegations, and demanded a jury trial. Did the circuit court err by entering default judgment against Lyft and assigning it 100% liability for the Respondent's damages without:

   (a) first conducting a jury trial to allow the jury to decide whether Meadows was also liable;

   (b) allowing a jury to apportion fault; and

   (c) allowing a jury to determine whether punitive damages were warranted and, if so, in what amount?

IV. The circuit court entered a punitive damages award against Lyft based on the purported theory that Lyft's mobile application can create distractions for drivers using its platform despite no evidence in the record and explicit testimony showing the opposite—that Meadows was not distracted. The court's award also exceeded the 3:1 statutory cap and did not address the *Mitchell* factors. Did the circuit court err in awarding punitive damages despite these statutory and due process violations and the lack of any causal link at all between the underlying injury and the stated basis for punitive damages?

If this matter proceeds beyond this Court, Lyft respectfully submits that this appeal should consider an additional issue:

V. Should the South Carolina Supreme Court revisit and reconsider its jurisprudence that prevents a defaulting defendant from conducting discovery in advance of or presenting a defense during a damages hearing?

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The $10.5 million default judgment against Lyft contains several reversible legal errors and cannot stand. Those errors include:

Improper Default. Lyft found itself in default only after its trial counsel's docketing system failed due to a technological problem caused by Hurricane Dorian. Then, less than a week after attempting to docket the answer deadline, trial counsel was in an automobile accident that left him with a concussion and other injuries. Once trial counsel learned that the deadline had passed less than two weeks earlier—but before receiving any motion for or entry of default—he contacted the Respondent's counsel seeking an extension of the response deadline. Opposing counsel declined to grant Lyft any grace, and the circuit court held Lyft in default—in a wrongful death action seeking punitive damages—despite a natural disaster and personal injury to trial counsel.

Erroneous refusal to reconsider the default issue. The circuit court erred as a matter of law in rejecting Lyft's request that it reconsider setting aside the entry of default at the May 6, 2021 hearing. The entry of default is an interlocutory order that can be revisited by the court at any time and it was error for the court to hold otherwise and outright refuse to consider the issue.

Ignored Constitutional and Statutory Rights. Lyft is not the only defendant. The Respondent also sued Meadows, the independent contractor driver with whom Lyft had contracted, and alleged that Lyft and Meadows were jointly responsible for the accident and injuries. Meadows timely answered, demanded a jury trial, and denied the material allegations.

The presence of an answering co-defendant should have put this case on a jury-trial track where a jury would assess (1) whether Meadows had any liability, and if so, (2) whether Meadows's liability could be imputed to Lyft, (3) the relative proportion of fault each party had for the Respondent's injuries, and (4) whether punitive damages were warranted. Instead, the circuit court pressed forward with a default damages hearing through which Lyft was denied the right to present any evidence or conduct any discovery, its proportion of fault was presumed to be 100%, and the judge presumed to decide whether punitive damages were appropriate. Each of these procedural missteps was a legal error that warrants reversal. Viewed together, the record unambiguously demonstrates that the lower court violated Lyft's constitutional and statutory rights protected by South Carolina law.

The Punitive damages exceeded the statutory cap, failed to demonstrate a causal connection to the evidence, and violated due process. First, the punitive damages award exceeded the statutory 3:1 cap, which was erroneous regardless of the record evidence. On that basis alone, the award warrants reversal. Second, after misappropriating the jury's fault-determination role and making clear statements in the record that punitive damages would not be awarded at all, the court entered an order that assessed $8 million in punitive damages against Lyft because "Lyft was aware that causing push notifications to appear on the driver's screen while driving is distracting and that using a screen in general while driving is distracting." (R. p. ___.) However, the undisputed record is exactly the opposite: Meadows conclusively testified that she was ***not*** looking at her screen when the accident happened, and the Respondent's own witnesses agreed on that crucial causation point. Accordingly, the sole basis for the punitive damages award finds no support at all in the record because the alleged misconduct of Lyft has no causal

connection to any injuries suffered. Finally, compounding these errors, the court refused to apply the required post-judgment due process analysis under the *Mitchell*/*Gore* guideposts.

* * * * *

All told, the entry of default should never have happened, and the default judgment should never have happened, either. For the reasons discussed below, the circuit court's judgment should be reversed, and this case should be remanded to give Lyft an opportunity to answer the complaint, defend itself against the Respondent's allegations, and invoke the protections South Carolina law affords to it with respect to joint liability, trial by jury, and punitive damages.

The trial court committed a threshold error by holding Lyft in default despite its failure to file a timely answer being attributable to a natural disaster and its attorney's subsequent automobile accident. That ruling should be reversed, and this appeal can be resolved on that issue alone.

STATEMENT OF THE CASE & FACTS[1]

The Accident. This case arises out of a motor vehicle accident that occurred on March 20, 2018, in Charleston County. That evening, Jason Lynn Williams (the "Decedent") requested a ride from Lyft, Inc., d/b/a Lyft Drives South Carolina, Inc. ("Lyft") using its mobile application.[2] Meadows responded to the request and picked up the Decedent. According to the Complaint, Meadows negligently made a left turn and was involved in a collision with a vehicle driven by third-party co-defendant Vannario McCray ("McCray") which led to the Decedent's death. (Compl. ¶¶ 67 & 69; R. p. ___.) As to Lyft, the Complaint contended that Lyft was vicariously liable for the motor vehicle accident and the resulting damages under common law principles,

[1] Appellant combines the statement of the case and statement of the facts to eliminate repetition due to considerable overlap between the procedural history and facts in this case.

[2] Lyft was incorrectly identified in the Complaint and case caption as separate corporate entities Lyft, Inc., and Lyft Drives South Carolina, Inc.

including respondeat superior. The Complaint pled both compensatory and punitive damages. (*See id.* ¶ 29; R. __.)

Pre-Litigation Discussions. Shirley M.B. Williams (the "Respondent") is the Decedent's mother and personal representative of his estate. Prior to the commencement of this litigation, both the Respondent and Lyft retained counsel to handle any potential claims arising out of the accident. Lyft hired Gary Lovell, an AV-rated Charleston-based litigator who has practiced law for over 35 years and has been a member of the South Carolina Bar since 2002.

On February 5, 2019, Attorney Lovell contacted Respondent's counsel to advise of his retention. (Aff. Lovell ¶ 3; R. p. ___.) Counsel exchanged information and materials and discussed the potential for pre-litigation mediation of the Respondent's potential claims. (*Id.*)

Pre-suit mediation did not happen, so on May 30, 2019, counsel for the Respondent advised Attorney Lovell that she would be filing suit and inquired as to whether Attorney Lovell could accept service on behalf of Lyft. (*Id.* ¶ 5; R. p. ___.) Attorney Lovell explained that he would have to check with Lyft to see if he was authorized to accept service, but did not have any further communications with Respondent's counsel on this point. (*Id.*)

Commencement of Litigation. According to the Public Index, Respondent filed this suit on July 15, 2019, and served process on Lyft through certified mail to its registered agent on September 3, 2019. (*Id.* ¶ 6.) Despite their pre-suit communications, Respondent's counsel did not notify Attorney Lovell that the pleadings had been filed or served. (*Id.*) Lyft's deadline to respond to the Complaint was October 3, 2019.

Hurricane Dorian. Just days before the Respondent served the pleadings on Lyft, threats of Hurricane Dorian were in the consciousness of South Carolinians. On August 31, 2019, Governor McMaster declared a state of emergency "to protect against the possible effects of

Hurricane Dorian," which was anticipated to be a Category 4 hurricane. S.C. Governor's Executive Order 2019-26 (Aug. 31, 2019), *available at* 2019-08-31 FILED Executive Order No. 2019-26 - Declaring State of Emergency Due to Hurricane Dorian.pdf (sc.gov).

The next day, Dorian was upgraded to a Category 5 hurricane, prompting Governor McMaster to issue three additional executive orders:

- One ordered a "mandatory medical evacuation" for several coastal counties, including Charleston, S.C. Governor's Executive Order 2019-27 (Sept. 1, 2019), *available at* 2019-09-01 FILED Executive Order No. 2019-27 - Mandatory Medical Evacuation Due to Hurricane Dorian.pdf (sc.gov);

- Another ordered an evacuation of "all persons" except "critical or emergency response personnel" in coastal counties, including Charleston, S.C. Governor's Executive Order 2019-28 (Sept. 1, 2019), *available at* 2019-09-01 FILED Executive Order No. 2019-28 - General Population Evacuation Due to Hurricane Dorian.pdf (sc.gov); and

- The third closed all state government offices in those counties, again including Charleston, S.C. Governor's Executive Order 2019-29 (Sept. 1, 2019), *available at* 2019-09-01 FILED Executive Order No. 2019-29 - State Gov't Office & School Closures Due to Hurricane Dorian.pdf.[3]

Hurricane Dorian made landfall in South Carolina on September 5, 2019. That same day, a Lyft representative emailed copies of the Summons and Complaint to Attorney Lovell. (Aff. Lovell ¶ 7; R. p. ___.) Because of Governor McMaster's evacuation orders, Attorney Lovell's office had been closed the entire week, causing him to work from home, and he had only

[3] The Supreme Court also issued an Order concerning Hurricane Dorian on September 9, 2019. The court explained that Hurricane Dorian "passed along the entirety of the South Carolina coastline" on September 5, 2019. The court noted that this resulted in closure of government offices in twenty-three counties, over 270,000 homes and businesses losing electrical power, and evacuation of an estimated 360,000 to 441,000 persons. The court found that this "adversely affected the ability of many lawyers and litigants to comply with deadlines in court proceedings" and declared Tuesday, September 3, 2019 through Friday, September 6, 2019 to be statewide "holidays" for the purpose of computing time under all South Carolina rules of court. *In re: Hurricane Dorian,* S.C. Sup. Ct. Order dated Sept. 9, 2019 (Shearouse Adv. Sh. No. 36).

"intermittent electrical and email service" due to the hurricane. (*Id.*) As he testified via sworn affidavit:

> I was working from home with intermittent electrical and email service when I received the email regarding the Summons and Complaint on my portable devices iPhone and iPad. I had no home internet or Wi-Fi service at the time due to the storm, but was able to intermittently receive and send email through my iPhone and iPad via my wireless phone service. I thought I had successfully forwarded the client email regarding this lawsuit with its attachments to my paralegal's email box at the office that day, to be included in the office's answer docket list once we re-opened for business.

(*Id.*; R. pp. ___–___.)

But because of technological problems that resulted from Hurricane Dorian, Attorney Lovell's email never made it to his paralegal, and this case never made it to his firm's calendaring system for responding to the Complaint. Again, in his words:

> Thus, for reasons unknown to me, it appears that the forwarded client email about this lawsuit and its attachments did not go out from my device or through to my paralegal or office and, as a result, the Summons and Complaint were not placed in the office's answer docket list and no reminder to file the Answer by its due date was generated.

(*Id.*; R. p. ___.)

Compounding the problem, Attorney Lovell himself was in an automobile accident less than a week later. As he testified:

> In addition to recovering from the hurricane and other out of town matters in the weeks after the office re-opened from the hurricane, I was in an auto accident on 9/10 that required a trip to the emergency room for a mild concussion and other injuries. As a result of all of the above, I did not follow up on the placement of the Summons and Complaint on our firm Answer docket list and missed the 10/3 deadline to file the Answer.

(*Id.*)

Lyft's Subsequent Response. On October 14, 2019—less than two weeks after the response was due—the case was brought back to Attorney Lovell's attention. (*Id.* ¶ 8; R. p. ___.)

Attorney Lovell investigated the situation and discovered the answer deadline had likely passed, but no proof of service on Lyft or motion for entry of default had been filed yet. (*Id.*) He also discovered that his office had missed this deadline due to the technological problems with his email system during Hurricane Dorian. (*Id.* ¶ 7; R. p. ___.)

Accordingly, Attorney Lovell's office contacted opposing counsel the very next day to seek an extension of the time to respond to the Complaint, but was informed that counsel had already mailed[4] a motion for entry of default to the circuit court for filing—even though counsel had not yet even filed proof of service, which was required by Rule 5(d), SCRCP, to have been filed over a month earlier. (*Id.* ¶ 8; R. p. ___.) On October 16th, Attorney Lovell checked the Public Index and saw that the Respondent's motion for entry of default had been uploaded with a filing date of October 15th, prompting him to again contact opposing counsel and seek an extension of Lyft's deadline to respond to the Complaint. (*Id.*; R. p. ___.)

Respondent's counsel did not respond to Attorney Lovell's request. With time being of the essence, and before default had even been entered, Attorney Lovell filed a motion to set aside the potential entry of default and to allow Lyft to respond to the Complaint. Attorney Lovell filed that motion and accompanying affidavit on October 17th—only two weeks after the deadline to answer had lapsed, only two days after Respondent's motion for entry of default had been filed, and before the entry of default against Lyft. (Motion to Set Aside Entry of Default; R. p. ___.)

Service on Defendant Meadows. The same day that Lyft moved to be relieved from default, the Respondent served the Complaint on Meadows, Lyft's co-defendant. (Acceptance of

[4] Charleston County was still under the paper filing system at this time. Perhaps ironically, the Supreme Court delayed implementation of the e-filing system in Charleston County from its original date of September 18, 2019 to October 21, 2019 because of Hurricane Dorian. *See In Re: Postponement of Electronic Filing Pilot in Charleston County*, Appellate Case No. 2015-002439, South Carolina Supreme Court Order 2019-09-09-01.

Service; R. p. ___.) Meadows answered the Complaint on November 8, 2019, demanded a jury trial, and denied the Complaint's material allegations. (Meadows Answer; R. p. ___.) She also asserted an affirmative defense that the accident was the result of the "sole negligence of another." (*Id.* ¶ 41; R. p. ___.)

Lyft's Motion to Set Aside Default is Denied. Judge Buckner heard Lyft's motion to set aside entry of default on February 28, 2020. He denied the motion, finding—without any evidence to support this statement—that "[p]arties to litigation regularly experience Wi-Fi problems and are not excused from filing deadlines as a result." (Order at 6; R. p. ___.) Judge Buckner also faulted Attorney Lovell for his "failure to forward an email" to his staff for purposes of docketing Lyft's answer deadline, and for failing to follow up on his email despite "knowing there was a technical issue" with it. (*Id.*)

These statements were contrary to uncontroverted evidence. Attorney Lovell did not "fail" to forward the email, and he had no idea that there was a "technical issue" that caused his email not to reach its intended recipient until after the answer deadline had passed. Nevertheless, Judge Buckner found that technological problems caused by a hurricane and Attorney Lovell's subsequent automobile accident did not "amount to good cause shown" to set aside the default. (*Id.*)

Judge Buckner failed to examine the *Wham* factors. (*Id.* at 6–7; R. pp. ___–___.)

Lyft timely moved to reconsider that order on April 6, 2020, which was denied via a Form 4 order on April 23, 2020. (Mot. to Recons.; R. p. ___; Form 4 Order; R. p. ___.)

Subsequent Proceedings. Discovery ensued among the Respondent, Meadows, and a variety of third parties generating considerable motions practice. Notably, Meadows was deposed in a parallel case brought by the driver of the car that collided with the one Meadows was driving,

and she testified conclusively to two key facts: (1) the driver of the other vehicle did not have his headlights on during their nighttime collision, and (2) she was not looking at the Lyft app on her phone at the time of the accident. (Dep. Meadows 37:7–38:14; R. p. ___.)

Additionally, on March 17, 2021, the circuit court approved a $100,000 settlement between the Respondent and GEICO for underinsured motorist coverage. (Order Approving Wrongful Death Settlement; R. p. ___.)

And on March 19, 2021, the circuit court granted the Respondent's motion to enter default against Lyft. (Form 4 Order Granting Entry of Default; R. p. ___.) All told, Lyft was precluded from defending itself in this litigation for over eighteen months before default was actually entered.

Default Damages Hearing. The order entering default against Lyft also indicated that a damages hearing would be scheduled. (*Id.*) Accordingly, Lyft filed two motions on April 8, 2021: (1) a motion to stay any damages hearing until after a jury was able to assess the relative liabilities of Meadows and all other potential contributors to the Respondent's damages (R. p. ___); and (2) a motion to participate in discovery regarding the Respondent's alleged damages (R. p. ___).

On May 4, 2021, Lyft also filed a notice of proffer of the evidence that supported its meritorious defenses on the merits of the Respondent's claims and that rebutted the Respondent's anticipated damages evidence. (Not. of Proffer; R. p. ___.) The proffer included:

- a report from an engineering expert opining that the other driver was at fault for the accident and that Meadows and Lyft were not the proximate cause of the Decedent's fatal injuries because of the other driver's excessive speed and the Decedent's failure to wear a seatbelt;
- Meadows's deposition testimony that the other vehicle did not have its headlights on and she was not looking at the Lyft app at the time of the accident; and
- deposition testimony from an EMT and a highway patrolman regarding the accident and the Decedent's condition at the scene.

(*Id.*; R. pp. ___–___.)

The circuit court heard Lyft's motions on May 6, 2021. These motions and the default damages hearing were assigned to Judge Markley Dennis due to Judge Buckner's retirement. At the outset of the hearing, Judge Dennis held that he could not reconsider letting Lyft out of default because Judge Buckner had previously denied Lyft's motion on that issue. He then found that:

1. Lyft could not conduct any discovery regarding damages;

2. Lyft would be restricted to only cross-examining the Respondent's witnesses and objecting to the Respondent's evidence at a damages hearing;

3. Lyft's proffered evidence would be given no weight; and

4. The damages hearing would proceed over Lyft's objection despite creating the potential problem of an inconsistent jury verdict with respect to Meadows's potential liability or non-liability.

(Hr'g Tr. *passim* (May 6, 2021); R. pp. ___–___.) Judge Dennis did, however, express concerns with this procedure, and suggested that perhaps the state's appellate courts will "start doing more" with default hearings beyond what is currently permitted by *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013). (*Id.* at 4:17–18; R. p. ___.)

The circuit court proceeded with the damages hearing on June 25, 2021. The Respondents presented five witnesses.[5] Lyft was prohibited from presenting any witnesses or evidence. Despite the one-sided nature of the hearing, the evidence showed that Lyft did nothing to contribute to the Respondent's damages and there was no basis whatsoever for punitive damages. Even one of the Respondent's own witnesses acknowledged that the undisputed evidence demonstrated Meadows "was not looking at the [Lyft] app as she initiated the turn" at the time of the collision. (Hr'g Tr. 68:12–21 (June 25, 2021); R. p. ___.)

[5] Plaintiff's witnesses were: Shirley Williams, Kimberly Reen, BSN, BS, RN, CLCP (life care planner), Stephanie Borzendowski, Ph.D. (human factors expert), Perry Woodside, Ph.D. (economist), and Marshall White, MD (neurologist and brain injury specialist).

In light of this undisputed evidence, Judge Dennis declared during the hearing: "So I'm just telling you right now. ***There is no way I'm giving you punitive damage on this***." (*Id.* 147:11–13; R. p. ___ (emphasis added).) Judge Dennis noted that since Respondent did not introduce any testimony that Meadows was looking at the phone, the evidence did not "rise to th[e] level" of recklessness. (*Id.* 156:11-19; R. p. ___.)

Damages Order. Despite the absence of any evidence to support a punitive damages award and his prior statement at the hearing, Judge Dennis entered an order awarding the Respondent $2.5 million in actual damages and an additional $8 million in punitive damages. (Order Granting Default Judgment at 9 (Aug. 19, 2021); R. p. ___.) Judge Dennis based his punitive damages award on the fact that the Lyft app can cause "push notifications to appear on the driver's screen while driving," which he indicated may distract a driver, (*id.* at 7; R. p. ___.), even though there was no evidence Meadows was looking at her phone when the accident occurred. The order looked to the *Gamble*[6] factors in evaluating the propriety of the award of punitive damages and did not address the *Mitchell*/*Gore* guideposts. (*Id.* at 6-9; R. __.) Moreover, Judge Dennis provided no explanation as to why he exceeded the cap on punitive damages of three times the actual damages found in South Carolina Code § 15-32-530(A).

Lyft timely raised a host of errors in a post-judgment motion under Rules 52, 59, and 60. (Mot. to Reconsider; R. p. ___.) It also appealed the default judgment, fearing that Judge Dennis—who had recently retired—would be unable to consider the post-judgment motion, and Lyft might be left without a future ability to appeal the default judgment. On November 18, 2021, this Court remanded the appeal to the circuit court so that the reconsideration motion could be heard. (Order in *Williams v. Lyft, Inc.*, Appellate Case No. 2021-001029.)

[6] *See Gamble v. Stevenson*, 305 S.C. 104, 110-11, 406 S.E.2d 350, 354 (1991).

After remand, Judge Dennis heard Lyft's motion to reconsider the default judgment on April 22, 2022, and denied it via a Form 4 Order shortly thereafter. (Form 4 Order (May 11, 2022); R. p. ___.) This appeal followed. The claims against Meadows have not proceeded to a jury trial.

STANDARD OF REVIEW

The issues presented on appeal arise under Rules 55 and 60, which are reviewed for an abuse of discretion. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012). Questions of law, however, are reviewed de novo. *Ex parte TLC Laser Eye Ctrs. (Piedmont/Atlanta), LLC*, 404 S.C. 385, 392, 745 S.E.2d 105, 109 (2013).

ARGUMENT

I. The circuit court erred in refusing to relieve Lyft from entry of default.

A. Good cause exists under these facts.

South Carolina's courts have made clear that disputes should be resolved on their merits. *E.g.*, *Mictronics, Inc. v. S.C. DOR*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001); *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 524 (Ct. App. 1986). Accordingly, a defendant should be excused from entry of default when it has "good cause" for the default. Rule 55(c), SCRCP.

Wham v. Shearson Lehman Bros., 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989) set forth the standard for evaluating a Rule 55(c) motion, and provided that relief from an entry of in examining whether there is good cause, *Wham* stated that a court "***shall*** consider: (1) the timing of [the defendant's] motion for relief; (2) whether [the defendant] has a meritorious defense; and

(3) the degree of prejudice to [the plaintiff] if relief is granted." *Id.* (emphasis added).[7] This is not a high standard, and is to be liberally applied to ensure that the State's policy of resolving claims on their merits is honored. *See Sundown Operating Co.*, 383 S.C. at 607, 681 S.E.2d at 888 ("***[A]n entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment***.").

Here, Lyft readily meets the "good cause" standard. Its default is not the result of derelict behavior by Lyft itself, but instead is the direct result of a technological glitch in the email system of Lyft's counsel that was created by Hurricane Dorian. (Aff. Lovell ¶ 7; R. p. ___.) Worse, Lyft's counsel failed to catch this glitch, and was unaware that his email attempting to docket the answer deadline never made it to his paralegal's inbox, in part because he was involved in an automobile accident and suffered a concussion shortly after the hurricane passed. (*Id.*; R. p. ___.)

Courts regularly excuse hurricane-induced defaults. *See, e.g., Campbell v. AlphaTelekom, LLC*, No. 618CV157ORL37GJK, 2018 WL 7253071, at *1 (M.D. Fla. Sept. 17, 2018) (excusing a default for good cause because the defendants experienced "ongoing communications issues after Hurricane Maria hampered their ability to respond in a timely manner to Plaintiff's Complaint"); *Access for the Disabled, Inc. v. Milan Consulting, Inc.*, No. 12-62008-CIV, 2013 WL 322517, at

[7] The Supreme Court issued two decisions only a week apart which discussed the *Wham* factors differently, which appears to have confused the circuit court. In *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009), the court provided that "[o]nce a party has put forth a satisfactory explanation for good cause, the court must also consider [the *Wham* factors]." *Sundown* explained that the trial court need not make "specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause." *Id.* While this language in *Sundown* could arguably suggest that "good cause" is a threshold issue, a close reading shows that the Supreme Court ***did not*** excuse a court examining a Rule 55(c) motion from examining the factors entirely. Rather, it merely provided that the court is not required to make specific findings on each factor. This reading is supported by the other Supreme Court decision, issued only one week after *Sundown*, which provided that "[i]n deciding whether good cause exists, the trial court should consider the [*Wham*] factors." *Richardson v. P.V., Inc.*, 383 S.C. 610, 616, 682 S.E.2d 263, 266 (2009).

*1 (S.D. Fla. Jan. 28, 2013) (excusing a default for good cause because the defendant's counsel "was traveling in areas affected by Hurricane Sandy, limiting his ability to communicate with his office to ensure that the Answer was properly filed"); *Dawson v. Charleston County Sch. Dist.*, No. 2016-CP-10-04994, 2017 S.C. C.P. LEXIS 280, at *11 (Charleston County C.P. May 5, 2017) (finding good cause existed to excuse a default that resulted from a complaint being served "in the midst of the impending approach and landfall of Hurricane Matthew").[8]

Courts also excuse defaults that result from personal calamity for the defendant's attorney. *See, e.g.*, *Butler v. United States*, No. 5:20-CV-480-BO, 2021 WL 1095306, at *1 (E.D.N.C. Mar. 22, 2021) (excusing default because "the sole attorney assigned to the matter for the government had an unexpected family medical emergency, requiring extended stays at a hospital and significant sick leave and time away from work"); *Johnson v. Rye (In re Rye)*, 560 B.R. 724, 727 (Bankr. W.D. Mich. 2016) (finding good cause to set aside entry of default because "the Ryes' failure to answer the complaint was not the product of their culpable conduct, but rather the unfortunate result of their counsel's personal difficulties following his car accident, hospitalization, and recuperation"); *see also* Oral Argument (18:18 minute mark), in *Morris v. BB&T Corp.*, Appellate Case No. 2020-001494 (S.C. Sup. Ct. Feb. 2, 2022), *available at* https://media.sccourts.org/videos/2020-001494.mp4 (Acting Justice Konduros rhetorically asking an agency's appellate counsel, "Do you want a car wreck? Do you want him to be sick?," in order to show good cause sufficient to excuse a lawyer missing a deadline).

[8] Judge Nicholson issued the *Dawson* opinion. He now works at the O'Shea Law Firm, which represents the Respondent here.

This case has both. Attorney Lovell followed his normal procedures to ensure that Lyft had a timely answer filed in this case, but a natural disaster followed by a personal disaster caused Lyft to miss its answer deadline by less than two weeks.

This Court confronted a strikingly similar situation in *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 505-07, 868 S.E.2d 400, 402-03 (Ct. App. 2021) (Hill, J.). *Jordan* involved an inadvertent calendaring mistake due to a miscommunication between counsel and his paralegal. This led to a procedural default in a workers compensation matter. This Court reversed the lower court and held that this type of issue constituted "good cause" for excusing the default.

As this Court explained:

> The good cause standard exists to ensure the interests of justice are protected even when a party missteps, so a harmless procedural foot fault does not spring a trap door that mindlessly jettisons innocent parties out of court, regardless of the circumstances. . . .
>
> [T]he practice of law is challenging enough without having to endure the overbearing enforcement of technicalities when prejudice is absent from the scene. . . .
>
> To be sure, miscalendaring is not always good cause. But a reflexive refusal to consider that a calendaring mistake could be good cause is an abuse of discretion. . . .
>
> The touchstone here is good cause, a standard designed to excuse honest, harmless human mistakes so a case may be judged on its merits rather than its missteps.

Id.; *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) (noting that refusal to exercise discretionary authority when warranted is an equal abuse of discretion as to exercise it improperly).

Lyft cannot say it any better than Judge Hill. As the *Jordan* Court acknowledged, there are situations where attorneys or parties willfully ignore, or act in reckless disregard towards, a deadline. This is not one of those cases. Here the ***only*** evidence in the record unequivocally supports that the default was a result of Hurricane Dorian and Attorney Lovell's subsequent

automobile accident. This is exactly the type of "procedural foot fault" Rule 55(c) is designed to excuse. If these facts do not constitute good cause, it is hard to envision a situation where this "liberal" standard could ***ever*** be met.

The circuit court abused its discretion in refusing to grant Lyft relief from the entry of default considering Lyft's more than "satisfactory" explanation. This Court should vacate the entry of default, and the case should be remanded with instructions to allow Lyft to answer the Complaint and litigate this matter consistent with the South Carolina Rules of Civil Procedure.

B. The *Wham* factors further support that good cause exists under these facts.

The circuit court further committed an error of law by failing to analyze any of the "good cause" factors—amount of delay, meritorious defenses, and prejudice to the plaintiff—when denying Lyft's motion for relief from default, all of which also favor lifting default.

1. Lyft promptly sought relief from the entry of default.

As to the first factor, Lyft sought relief from default (which had not yet been entered) two days after the Respondent moved for entry of default, and before co-defendant Meadows had even been served. Lyft's immediate request for relief is more than adequate under South Carolina precedent to satisfy the first "good cause" factor. *See, e.g.*, *Melton v. Olenik*, 379 S.C. 45, 55-56, 664 S.E.2d 487, 493 (Ct. App. 2008) (remanding the case to the trial court because a Rule 55(c) motion was made only one month after the entry of default).

2. Lyft has meritorious defenses.

Likewise, regarding the second factor, Lyft has numerous meritorious defenses to liability for the Respondent's claims and damages. As Lyft set forth in its motion to set aside the entry of default: (1) Lyft cannot be held vicariously liable for the negligence of an independent contractor driver; (2) Respondent's theories of liability raised new and untested theories of liability in South

Carolina, (3) there are issues as to intervening and superseding proximate cause. (Mot. to Set Aside Entry of Default p. 10; R. __.)[9] These defenses are precisely why Lyft placed its proffer in the record.

"To establish a meritorious defense, the party does not have to show he would prevail on the merits." *Williams v. Watkins*, 384 S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009). "Rather, a meritorious defense need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." *Id.*; *see also Rockwell v. Sterling & King*, No. C2:04-CV-586, 2005 WL 8161781, at *2 (S.D. Ohio Apr. 1, 2005) (explaining the degree to which the defendant must show that it has a meritorious defense is "minimal" and the question is merely "whether there is even a 'hint of a suggestion' that the proffered defense[,] if proven at trial, would constitute a complete defense").

Lyft's defenses easily satisfied this plausibility standard. First, the Respondent alleges that Lyft should be vicariously liable for any negligence by Meadows. However, Meadows is an independent contractor who merely used the Lyft platform to connect with other platform users looking for a ride pursuant to Lyft's Terms of Service. *See* Lyft, Inc., Terms of Service (last updated April 1, 2021), *available at* https://www.lyft.com/terms ("As a Driver on the Lyft Platform, you acknowledge . . . the relationship between the parties under this Agreement is solely that of independent contracting parties. . . . Lyft does not, and shall not be deemed to, direct or control you generally . . . in connection with your provision of Rideshare Services, your acts or

[9] Meadows demanded a jury trial and asserted affirmative defenses of: (1) failure to state a claim, (2) sole negligence of another, (3) punitive damages (constitutional arguments), and (4) statutory limitation on punitive damages. (*See* Am. Ans. of Meadows; R. __.) Each of these is equally applicable to Lyft as well.

omissions, or your operation and maintenance of your vehicle.").[10] As such, Lyft cannot be vicariously liable for her conduct. *See Duane v. Presley Constr. Co., Inc.*, 270 S.C. 682, 683, 244 S.E.2d 509, 510 (1978) (holding that a defendant is not vicariously liable for the negligent acts of an independent contractor).

Second, there are several intervening or superseding acts that could have caused the accident underlying this case. There is no dispute that the other driver was speeding at the time of impact. (Proffer; R. pp. ___, ____.) McCray's vehicle's Airbag Control Module (ACM) data showed his vehicle was traveling 65.9 mph at 2.5 and 1.5 seconds prior to impact, slowing to 58.4 mph at impact. (Proffer, Ex. 1-A at 9; R. __.) The posted speed limit at the accident location was 45 mph. (Proffer, Ex. 1-C at 42:3-6; R. __.)[11] Additionally, Meadows testified that McCray's headlights were off, despite the accident occurring at night, and there is no evidence contradicting her sworn testimony. (Meadows Dep. 37:7–13; R. p. ___.) Either or both of these third-party acts could relieve Lyft of liability here. S.C. Code Ann. § 15-38-15(D).

Third, Lyft has a meritorious defense as to the proximate cause of the Decedent's fatal injuries. It is undisputed that the Decedent was unbelted at the time of the accident and his unbelted status enhanced his injuries. The excess speed of McCray's vehicle further enhanced Decedent's injuries. Using Rogers' accident reconstruction findings as to the speed of the vehicles, biomechanical expert Amber Stern ("Stern") modeled occupant kinematics inside Meadow's

[10] The Court may take judicial notice of the Terms of Service. *See, e.g., Jeandron v. Bd. of Regents of Univ. Sys. of Md.*, 510 F. App'x 223, 227 (4th Cir. 2013) (stating courts may take judicial notice of information on a web site where the web site's authenticity is not in dispute); *O'Tolle v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) ("It is not uncommon for courts to take judicial notice of factual information found on the world wide web.").

[11] As the accident reconstruction expert, Joshua Rogers of ESI, Inc. ("Rogers"), opined, had McCray been traveling at the posted speed limit of 45 mph, his vehicle would have been approximately 130 feet from the "Area of Impact." (Proffer, Ex. 1-A at 12). In other words, "but for" McCray's speed, this accident would not have happened.

vehicle to evaluate the effect of belted status and speed on the rear, far-side occupant (the Decedent) and the Head Injury Criteria (HIC).[12] That analysis determined that the Decedent's failure to wear his seatbelt and the speed of McCray's vehicle both significantly enhanced his injuries. Thus, the unbelted status and excess speed were the true proximate cause of the Decedent's ***fatal*** injuries. (*See* Proffer, Ex. 1-A at 19; R. __.) Officer Wojslawowicz of the Highway Patrol's accident investigation team shared Stern's opinion that high speed combined with unbelted status would have a significant impact on the severity of the injury. (*See* Proffer, Ex. 1-C at 86:14-87:7, 88:4-10; R. __.)

Fourth, there is testimony from an EMT who responded to the accident that the Decedent was completely unresponsive at the scene, providing a defense specifically to the Respondent's survival claim. (Wilkin Dep. 15:1–21, 21:22–25:9; R. pp. ___–___.)

Finally, Lyft has a meritorious defense as to the amount of damages. *See McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011) (Toal, C.J., dissenting on other grounds) ("I agree with Petitioners that a meritorious defense can relate not only to the liability of the defendant, but also to the amount of damages awarded. . . . Restricting the scope of a meritorious defense to liability alone incentivizes a party who may otherwise concede liability to deny any wrongdoing. I do not believe our courts wish to encourage that practice.").

3. Respondent would suffer no prejudice.

As to the last factor, the Respondent would suffer no prejudice at all if the default were excused and Lyft was allowed to defend itself like any other defendant. In fact, the Respondent sought entry of default against Lyft ***before it had even served Meadows with the Complaint***. If

[12] Their collective findings and opinions are contained in Exhibit A to the Proffer, which includes QR codes for use with any cell phone to view the seven simulations. (*See* Proffer, Ex. 1-A at 23; R. __.)

the default had been excused, Lyft could have participated in this case right alongside the Respondent and Meadows from the outset of the litigation process without any added delay or expense. Requiring a plaintiff to prove her case against a defendant is not prejudicial; it is exactly what the South Carolina courts seek through the policy that claims should be resolved on their merits. *See generally* 10 James Wm. Moore et al., *Moore's Federal Practice* § 55.70 [2][c] (3d ed. 2010) ("Prejudice is not significant unless it is something greater than would be experienced by the ordinary litigant in being required to litigate on the merits.").

The circuit court committed an error of law by failing to analyze any of the "good cause" factors—amount of delay, meritorious defenses, and prejudice to the plaintiff—when denying Lyft's motion for relief from default, all of which also favor lifting default. The default should be vacated for this reason as well.

II. The circuit court erred by finding that it was unable to consider the issue of relief from entry of default at the May 6, 2021 hearing.

The circuit court's refusal to reconsider the entry of default compounded its abuse of discretion in denying Lyft's motion for relief. Since a court's refusal to set aside the entry of default is a preliminary ruling, it is not final and the court may revisit it at any time. It is well established that the denial of a request for relief from entry of default is an interlocutory order. *See Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 267, 834 S.E.2d 204, 207 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 633, 856 S.E.2d 150 (2021); *see also Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E .2d 205, 208 (2005) (explaining that an interlocutory order is "not final"). Until the final judgment, the circuit judge "controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment or decree." *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 334-35 (Ct. App. 1988).

Applying these principles, South Carolina courts have held that a renewed motion like the one brought before the court at the hearing on May 6, 2021 is permissible despite the denial of the initial motion, particularly where new facts have come to light. *Cf. Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 325, 605 S.E.2d 12, 18 (2004) ("That a different trial judge previously denied the motion for summary judgment did not preclude APAC from renewing its motion for summary judgment once new evidence came to light."); *Smith v. Breedlove*, 377 S.C. 415, 421, 661 S.E.2d 67, 70 (2008) (same). It is not prohibited and is, in fact, commonplace.

Therefore, Judge Dennis erred when he refused to reconsider setting aside the entry of default, particularly in light of the evidence presented to the court via Lyft's notice of proffer, much of which was new and not considered by Judge Buckner. This Court should also reverse the refusal to set aside the entry of default as a result of this additional error.

III. The circuit court deprived Lyft of rights provided by South Carolina law by entering a default judgment without first allowing a jury to assess Meadows's fault, to apportion liability, to establish actual damages, or to consider punitive damages.

In South Carolina, a defendant in default does not automatically become a broken slot machine for a plaintiff; the state's procedural and substantive law still remains operative. Thus, even had Lyft rightly been held in default—it was not—the circuit court committed numerous errors of law by proceeding with the damages hearing against Lyft without first conducting a jury trial regarding Ms. Meadows's potential liability or Lyft's punitive damages liability.

A. Lyft cannot be liable if Meadows is not liable as Lyft's agent.

The circuit court committed its first legal error by pressing forward to a default judgment against Lyft without first conducting a jury trial to determine whether the Respondent was entitled to recover anything from the defendants in the first place.

In South Carolina, even in a default setting, if a complaint does not actually allege facts sufficient to state a claim, the defaulting defendant is entitled to judgment in its favor. *See, e.g.*, *Williams v. Am. Ry. Express Co.*, 118 S.C. 121, 125-27, 110 S.E. 125, 126–27 (1921) (vacating a default judgment because the plaintiff's claim was barred as a matter of law); *Gadsden v. Home Fertilizer & Chem. Co.*, 89 S.C. 483, 488, 72 S.E. 15, 17 (1911) (vacating a default judgment that awarded the plaintiff all of the damages sought in the complaint because "[t]he complaint in this case fails to state the facts necessary to entitle plaintiff to recover the special damages which were awarded by the verdict," and reiterating that "[t]he facts pleaded must accordingly be sufficient to form a legal basis for the judgment taken by default, or it will be reversed on appeal or set aside on proper application"); *Masters v. Rodgers Dev. Group*, 283 S.C. 251, 254, 321 S.E.2d 194, 196 (Ct. App. 1984) ("An objection that the complaint does not state facts sufficient to constitute a cause of action is not waived by a default.").

As a consequence, where there are multiple defendants and claims of joint liability—precisely what the Respondent has alleged here—but only one defendant is in default, the case must first proceed to a jury trial against the remaining defendants to assess whether the plaintiff should recover anything from any defendant:

> As a general rule then, when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted. . . . Thus, a plaintiff who prevails on liability against the nondefaulting defendants is entitled to a judgment against both the defaulting and nondefaulting parties. On the other hand, ***if the action is dismissed, it should be dismissed as to the defaulting party as well as the remaining defendants***.

10A Wright, Miller & Kane, *Federal Practice & Procedure Civ.* § 2690 (4th ed. 2022) (emphasis added).

This sequencing is the only way to avoid an inconsistent judgment where a defaulting party is held liable for the same conduct for which a non-defaulting party is released from liability. *See, e.g.*, *Wells v. One Way Logistics, LLC*, No. CV 3:19-3578-CMC-SVH, 2021 WL 682098, at *3 (D.S.C. Feb. 1, 2021) (reasoning that a motion for a default judgment against one defendant should be denied until after the liability of his answering co-defendant was resolved because "logically inconsistent judgments resulting from an answering defendant's success on the merits and another defendant's suffering of a default judgment are to be avoided" (quoting *Jefferson v. Briner, Inc.*, 461 F. Supp. 2d 430, 434 (E.D. Va. 2006))), *report and recommendation adopted*, No. 3:19-CV-3578-CMC-SVH, 2021 WL 678675 (D.S.C. Feb. 22, 2021); *MAG Mut. Ins. Co. v. Brown*, No. 6:14-CV-353, 2015 WL 13648556, at *8 (D.S.C. July 24, 2015) ("[W]hen a default of a defendant in a multi-defendant case can lead to inconsistent rulings by the court, the court should not enter judgment against the defaulting defendant. . . . [because] if the nondefaulting defendants prevail, ***the plaintiff is no longer entitled to the relief against the defaulted defendant***." (citing *Frow v. De La Vega*, 82 U.S. 552, 554 (1872))) (emphasis added).[13]

Here, the Complaint is a kitchen-sink listing of claims and theories of liability against both Lyft and Meadows. Even for claims asserted only against Lyft, the Complaint seeks a single set of damages and specifies throughout that Lyft's alleged liability flows from the accident involving Meadows, not from the acts or conduct of anyone else or from any other situation.[14]

[13] Because there does not appear to be any state-level case addressing this same situation, and because the operative state and federal procedural rules are the same, this Court should look to federal authority for the governing principles. *See Unisun Ins. v. Hawkins*, 342 S.C. 537, 542, 537 S.E.2d 559, 561-62 (Ct. App. 2000) ("In the absence of prior state law on the issue in question, federal cases interpreting the rule are persuasive.").

[14] (*See, e.g.*, Compl. ¶¶ 80–86 (cause of action for "vicarious liability"); *id.* ¶ 95 (cause of action for negligence against Lyft arises "under the doctrines of respondeat superior, vicarious liability, and agency"); *id.* ¶ 101 (cause of action for breach of warranty results from alleged acts of Lyft and "all other Defendants in combination" with Lyft); *id.* ¶ 114 (cause of action for negligent

Under these circumstances, South Carolina law prohibits a judgment against a company unless there is also a finding of liability by its alleged employee or agent. *See, e.g.*, *Kirby v. Gulf Refining Co.,* 173 S.C. 224, 234–35, 175 S.E. 535, 539 (1934) (holding "[i]t was error not to set aside the verdict for punitive damages against the company alone" when the jury decided that the employee's conduct at issue did not warrant punitive damages); *Cherry v. Singer Sewing Mach. Co.*, 165 S.C. 451, 454, 164 S.E. 126, 127 (1932) ("The defendant corporation could only act through its agent. If the agent did nothing which subjected him to liability while acting in and about the corporation's business, it is illogical to hold the master in damages, either actual or punitive, for the conduct of the agent."); *Johnson v. Atl. Coast Line R. Co.,* 142 S.C. 125, 133, 140 S.E. 443, 445 (1927) ("When the master and the servant are sued together for the same act of negligence or willful tort, and the master's liability rests solely upon the servant's conduct, a verdict against the master alone is illogical and cannot stand."); *Austin v. Specialty Transp. Srvcs., Inc.*, 358 S.C. 298, 319, 594 S.E.2d 867, 878 (Ct. App. 2004) ("[W]hen a principal and servant are sued together, a principal is not responsible for punitive damages under respondeat superior when the agent [is] exonerated from liability.") (emphasis in original removed).

Accordingly, even assuming that Meadows is an agent of Lyft as alleged (which she is not as the Terms of Service unequivocally state), the Respondent is not lawfully entitled to any damages award—actual or punitive—against Lyft ***unless and until*** Meadows is also found liable. If a jury finds that she was not liable for the Respondent's damages, then Lyft also is not liable. Any other result "creates 'an absurdity.'" *Mag Mutual Insurance*, 2015 WL 13648556, at *9 (quoting *Frow,* 82 U.S. at 554). By entering a default judgment against Lyft without first allowing

representation resulted from the Decedent's "ride with Defendant Meadows"); *id.* ¶¶ 116–34 (bringing a variety of claims, including one captioned "joint venture," against "all defendants"); R. pp. ___–___.)

a jury to determine whether Meadows has any fault, the circuit court committed an error of law that requires vacating the default judgment in its entirety.[15]

B. A jury must apportion fault for the Respondent's alleged injuries.

The circuit court committed its second legal error by assigning the entirety of the judgment to Lyft despite the General Assembly's protections against such liability in cases involving multiple defendants. Statutory procedures governing damages still operate even in a default context. *See, e.g.*, *Campbell v. City of N. Charleston*, 431 S.C. 454, 462–64, 848 S.E.2d 788, 793–94 (Ct. App. 2020) (reducing a default judgment from $5.25 million in actual damages to $300,000 because the statutory cap on the government's liability under the Tort Claims Act remained in effect even though the government had defaulted); Rule 55(b)(2), SCRCP (requiring a jury trial, even in a default setting, on "the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter" when "required by any statute").

As a matter of South Carolina law, when tort claims are asserted against multiple defendants, a jury (when, as here, one is demanded) must apportion fault among the litigants, or it can assign the entirety of liability to a third party. S.C. Code Ann. §§ 15-38-15(C), (D). If a defendant's fault is determined to be less than 50%, then it is liable only for that percentage of damages. *Id.* § 15-38-15(A).

[15] Moreover, even if Lyft is in default, Meadows is entitled to have a jury assess the Respondent's alleged actual damages, and that determination "is entitled to substantial deference." *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996). By attempting to determine the Respondent's alleged actual damages through a default hearing, the circuit court improperly took this issue away from the jury—a legal error the circuit court itself appeared to recognize. (*See* Hr'g Tr. 8:16-19 (May 6, 2021) ("That's the issue. What does my ruling [on actual damages] do with the jury's decision on the issue? And I've never seen it, I don't—maybe I just didn't find it, but that's an issue that's always been a concern to me."); R. p. ___.)

By flipping the proper sequence and entering a default judgment of 100% against Lyft prior to any jury trial, the circuit court eliminated: (1) the jury's role in apportioning liability among the litigants; (2) the potential "empty chair" defense that the General Assembly specifically preserved by statute, which is a legitimate defense in this case due to the other driver's excessive speed and lack of headlights at the time of the accident; and (3) eliminated the statutory protection that Lyft has against paying the entirety of the Respondent's damages if a jury determines that the Decedent, Meadows, or both were at least 51% at fault for the alleged injuries. These errors run contrary to the South Carolina Uniform Contribution Among Tortfeasors Act's protections for litigants in a multi-defendant setting, and they require vacating the default judgment in its entirety so that a jury can do its statutorily-required jobs.

C. A jury must determine punitive damages.

The circuit court committed its third legal error by awarding punitive damages against Lyft and bypassing statutory safeguards regarding such awards. In South Carolina, the General Assembly has committed the decision to award punitive damages, and the amount of punitive damages, to the jury. S.C. Code Ann. §§ 15-32-520(A), (E). A party seeking punitive damages has a heightened burden of proof. *Id.* § 15-32-520(D). And the Legislature has placed a cap on punitive damages of three times actual damages, as detailed below. *Id.* § 15-32-530(A).

Only after the jury has awarded punitive damages does the trial judge get involved in the process. At that point, the judge measures the award against eleven specific statutory criteria to "ensure that the award is not excessive or the result of passion or prejudice," *id.* § 15-32-520(F), and the judge must reduce the award if it exceeds the statutory cap, *id.* § 15-32-530(B).

Here, the circuit court entered a punitive damages award against Lyft without any involvement of a jury, in violation of South Carolina law. *Id.* §§ 15-32-520(A), (E); *see also Hollis*

v. Stonington Dev., LLC, 394 S.C. 383, 405, 714 S.E.2d 904, 916 (Ct. App. 20110 ("Both the plaintiffs and the defendant have a federal and state constitutional right to a trial by jury on the question of punitive damages.").

* * * * *

Lyft specifically moved to stay the default damages hearing until after a jury trial that would resolve all these issues. (Mot. to Stay; R. p. ___.) The circuit court denied that motion. (Hr'g Tr. 8:5–9:17 (May 6, 2021); R. pp. ___–___.) By doing so, the circuit court committed numerous legal errors discussed above, each of which requires vacating the default judgment and remanding this matter for a jury trial.

IV. The circuit court's award of punitive damages was in violation of the statutory cap, unsupported by the evidence, and not subjected to the required due process analysis.

Even if the Court maintains Lyft should remain in default and the circuit court rightly disregarded all the authorities outlined above when entering its default judgment, the punitive damages award must still be vacated because it exceeded the statutory cap, there is no causal connection between the circuit court's basis for awarding punitive damages and the injuries alleged, and the circuit court failed to subject it to the required due process evaluation.

In South Carolina, a defaulting defendant does not automatically concede the amount of damages. The plaintiff still bears the burden of proving "by competent evidence the amount of his damages." *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct. App. 1988); *see Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 561, 274 S.E.2d 287, 289 (1981) ("Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount of damages based on the proof[.]").

Critically, because a defaulting defendant's potential liability is cabined by the allegations of the complaint, a damages award cannot exceed the scope of the allegations in the pleadings and the evidence presented. *See Limehouse*, 404 S.C. at 116, 744 S.E.2d at 579 ("It is well established that the relief granted in a default judgment is limited to that supported by the allegations in the Complaint and the proof submitted at the damages hearing."); *Lewis*, 275 S.C. at 560, 274 S.E.2d at 289 ("In the case of unliquidated damages a defendant, though in default as to liability, has a right to expect that the judgment of the court, or the verdict of the jury, will be in keeping not only with the allegations of the complaint and the prayer for relief, but also the proof which has been submitted."); Rule 54(c), SCRCP ("A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.").

Accordingly, a plaintiff cannot seek and obtain damages that lack a causal connection to the conduct alleged in a complaint. The damages requirement would be meaningless if the court merely rubber-stamped whatever damages a plaintiff claimed. Instead, any damages hearing must ensure that the damages claimed are actually proven with admissible evidence. That did not happen here with respect to the punitive damages, not even remotely so.

On this record, punitive damages were not appropriate for the many reasons detailed herein Additionally, default does not obviate the trier of fact's obligation to each and all required factors under the law. At a minimum, the punitive damages award should be vacated and reversed.

A. The amount of punitive damages awarded was excessive as a matter of law because it exceeds the 3:1 ratio permitted by statute.

The South Carolina Code notes, in relevant part, that "an award of punitive damages may not exceed the greater of three times the amount of compensatory damages." S.C. Code Ann. § 15-32-530. Awarding actual damages in the amount of $2,500,000 and punitive damages in the amount of $8,000,000 exceeded the 3:1 ratio and was erroneous as a matter of law. The lower

court did not give any rationale as to why the 3:1 ratio should not apply or even cite the applicable statute and the evidence and testimony does not support exceeding the cap. As the Supreme Court recently explained, the court is required to reduce the award to a 3:1 ratio unless it finds that one of these exceptions apply. *See Garrison v. Target Corp.*, 435 S.C. 566, 583, 869 S.E.2d 797, 807 (2022) (remanding to trial court to conduct this analysis where jury's verdict exceeded a 3:1 ratio). The clear error by the circuit court's ignoring of the 3:1 cap supports reversal of the entire award.

B. The lower court erred by awarding punitive damages because they were not proven by clear and convincing evidence.

"On the issue of punitive damages, the highest burden of proof known to the civil law is applicable." *Mellen v. Lane*, 377 S.C. 261, 290, 659 S.E.2d 236, 251 (Ct. App. 2008). "To receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Solanki v. Wal-Mart Store No. 2806*, 410 S.C. 229, 236-37, 763 S.E.2d 615, 618-19 (Ct. App. 2014).

Here, the record reveals no such evidence, let alone evidence that satisfies the clear and convincing standard. The Complaint has a ***sole*** allegation, which simply states a legal conclusion that the alleged facts supporting negligence also constitute "willful, wanton, or reckless" conduct by Lyft. (Compl. ¶ 88; R. p. ___.) But this is not generally true in tort law, as negligence and reckless/willful/wanton conduct are hardly equivalent.

In the damages hearing, the Respondent called five witnesses to establish her damages. Only one, "human factors" expert Stephanie Borzendowski, even remotely addressed the Respondent's claim for punitive damages.[16] Dr. Borzendowski opined that the Lyft mobile phone

[16] Again, the other witnesses were Respondent, Kimberly Reen (life care planner), Dr. Woodside (economist), and Dr Marshall White (physician).

application could be distracting to Lyft drivers. But that is only one part of the fundamental proximate-cause proof requirement. When pressed about whether the Lyft phone application actually distracted Meadows in this case, Borzendowski conceded that it did not:

> Q: Do you have any information that Meadows was actually looking at the app and relying on the app to get her to her destination?
>
> A: I believe that she testified that she was not looking at the app when she turned.

(Hr'g Tr. 69:24–70:3 (June 25, 2021); R. pp. ___–___.)

That testimony was consistent with Meadows's own testimony during a deposition, where she conclusively stated that she was not looking at the Lyft app at the time of the collision. (Dep. Meadows 37:7–38:14; R. p. ___.)

In the hearing itself, the circuit court recognized the complete absence of evidence to support an award of punitive damages. The court emphasized that the Respondent had presented nothing beyond a "clearly negligent" act by the driver, and "[t]he reckless act, other than the fact that [plaintiff] alleged it, I just don't see it." (Hr'g Tr. 147:12–17, 149:15–19 (June 25, 2021); R. pp. ___–___.) The court unequivocally stated: "So I'm just telling you that right now. ***There is no way I'm giving you punitive damage on this***." (*Id.* 147:11-13; R. p. ___ (emphasis added).) In fact, the court repeatedly made this same point:

> But you really aren't going to get punitive damages. I will tell you that right now from what I have heard. You can ask for it, but I'm not going to give it to you and the reason for it is I don't think there's enough evidence there to support punitive damages.

(*Id.* 146:21–147:1; R. pp. ___–___.)

> Let me give you where I would have gone had there been any testimony of this person [Meadows] looking at the phone. You're darned right. Failure to turn—turning in front of something, that happens all the time, and it's not necessarily reckless. It's negligence. No question about that. But it's—it

> doesn't rise to that level [of recklessness that could justify punitive damages].

(*Id.* at 156:11-19; R. __ (emphasis added).)

In a complete about-face on the issue, the circuit court later awarded $8 million in punitive damages, but it cited no evidence from the hearing (because there is none) supporting its finding of "reckless, willful, or wanton" conduct; instead, the court relied entirely on the "procedurally admitted" allegations of the Respondent's Complaint, which are not evidence. That was legal error, because—as has been made clear through decades of South Carolina jurisprudence—those admissions go to ***liability only, not damages***. *See Lewis*, 275 S.C. at 561, 274 S.E.2d at 289 (explaining that if a "defendant has made an appearance but is in default, liability is admitted but the amount of damages is not; the amount must be proved").

Compounding its error, the "procedurally admitted" allegations on which the circuit court relied do not actually support its ruling.

First, the circuit court made a purported finding that "Lyft was aware that causing push notifications to appear on the driver's screen while driving is distracting and that using a screen in general while driving is distracting." (Order at 7; R. __.) Even if this actually had been proven with competent evidence—which it was not—this finding has nothing to do with whether Lyft's app contributed in any way to the accident or proximately caused the injuries alleged in the Complaint. It cannot be the law that any company that sponsors an app with push notifications exposes itself to a potential $8 million punitive damages award in South Carolina.

Next, the order referenced the "admitted fact" that Meadows was "distracted by the use of the Lyft mobile application." (*Id.*) But there is no such "fact" alleged in the Complaint. The passages from the Complaint cited by the circuit court in support of this finding are Paragraph

88(ll) and (nn). (*Id.*) They are reproduced below in full, and they contain no allegations that Meadows was "distracted by the use of the Lyft mobile application" at the time of the accident:

> ll. In failing to perform an adequate background and driving record check on Defendant Meadows or ignoring the information discovered from a background and driving check and approving her as a Lyft driver;
>
> * * *
>
> nn. In promoting and/or allowing reckless driving by sending notifications to drivers while they are operating a motor vehicle and requiring Lyft drivers, including to Defendant Meadows, to respond to customers' requests for driving services in a limited period of time;

(Compl. ¶ 88(ll), (nn); R. p. ___.)

Worse yet, both of these "findings" were flatly contradicted by the record evidence as demonstrated already. Contrary to the court's representation, Meadows expressly testified that she was ***not*** distracted by the Lyft app at the time of the accident. (Dep. Meadows 38:3–17; R. p. ___.) She stated that immediately prior to turning into the intersection, she was "focusing on the intersection turn" and looking for vehicles in the intersection. (*Id.*) She ***was not*** looking at the Lyft app, a fact which Borzendowski also acknowledged on cross-examination. (Hr'g Tr. 69:24–70:3 (June 25, 2021); R. pp. ___–___.)

The court also cited Lyft's December 31, 2021 10-k Annual Report in its Order as a basis for its finding of "numerous . . . trust and safety incidences" with "similar facts." This document was ***never even placed in evidence*** and appears to have been reviewed by the court (or improperly added to a proposed order by the Respondent) without any testimony, cross-examination, explanation, or opportunity for Lyft to object.[17] Moreover, the court's "finding" is entirely unsupported by that filing, which merely states that Lyft, like any major corporation, is "regularly

[17] The lower court relied heavily on these SEC filings in assessing the *Gamble* factors. Just as a juror is prohibited from bringing outside materials into the jury room, the lower court should not have relied on materials that were never placed in evidence.

subject to claims, lawsuits, investigations and other legal proceedings relating to injuries to, or deaths of, riders, drivers or third parties that are attributed to us through our offerings."

Ultimately, it is indisputable that there is no ***evidence*** that Meadows was actually distracted by the Lyft phone application when the crash occurred. Given that, how can the allegedly distracting nature of the application have any causal connection to the injuries at issue in this lawsuit? And how can the existence of a mobile app possibly form the legal basis for an $8 million punitive damages award? The answer is it cannot, legally or factually. The punitive damages award must be reversed. Not reduced, not remanded, but reversed and judgment rendered in favor of Lyft on that aspect of the case, no matter what else this Court may decide.[18]

[18] Lyft was forced to demonstrate the complete disconnect between its mobile app and the Respondent's alleged injuries during the damages hearing without the ability to conduct any pre-hearing discovery, to introduce any exhibits of its own at the hearing, or to present any testimony from its own witnesses. Because a plaintiff must still put forth evidence to prove its damages, it is unreasonable and does not comport with due process, to require a defaulting litigant to defend itself against such proof without the ability to learn about or test the plaintiff's evidence in discovery or to rebut it through contrary exhibits or testimony. Yet, that is the procedure compelled by *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013).

The problem caused by the *Limehouse* rule is further demonstrated by the fact that it is permissible and possible that a defendant might answer a complaint and admit liability but deny the claimed damages. Such a defendant would be permitted to fully litigate the issue of damages. However, under the judicially imposed rule of *Limehouse*, if that same defendant inadvertently failed to file a timely answer, but otherwise appeared and attended the damages hearing, he is limited to only cross-examination and objection to plaintiff's evidence. The two defendants in these examples are in identical positions (conceding or admitting liability, but not damages), but treated in a manifestly different way.

This case provides a perfect example of why *Limehouse*'s procedure is inadequate, as Lyft's proffer of evidence demonstrates the numerous points that it would have raised at the hearing if it had been allowed to do so under controlling case law. Accordingly, in the event this appeal proceeds beyond this Court, Lyft respectfully reserves the right to challenge *Limehouse*'s procedures and to request that the Supreme Court change its precedent on this point. Rule 217, SCACR. Lyft is excluding such arguments from this brief, though, in recognition that this Court does not have the authority to stray from controlling decisions of the Supreme Court, thus making such an argument futile at this stage of the appellate proceedings.

C. The lower court erred by failing to subject the punitive damages award to the required post-judgment constitutional review.

In *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 588, 686 S.E.2d 176, 186 (2009), the Supreme Court set forth the applicable requirements for ***mandatory*** constitutional due process review of all punitive damage awards under South Carolina law. The *Mitchell* court explained that the court must conduct a ***post-judgment*** review of punitive damages in accordance with *BMW of North America v. Gore*, 517 U.S. 559 (1996) by assessing: (1) the degree of reprehensibility of the defendant's conduct, (2) the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award, and (3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. *Id.* The *Mitchell* court noted that the eight *Gamble* factors[19] remain "relevant to the post-judgment due process analysis, but only insofar as it adds substance to the *Gore* guideposts." *Id.* at 587, 686 S.E.2d at 185; *see also Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 396, 714 S.E.2d 904, 911 (Ct. App. 2011) (assessing the constitutionality of a punitive damages award "requires us to determine whether the award was reasonable in light of the . . . [*Gore*] guideposts"). Following Mitchell, the Legislature made this post-judgment review an essential part of any punitive damages award. S.C. Code Ann. § 15-32-520(F).

Here, the lower court did not even apply the *Mitchell* guideposts. And even when conducting that analysis, the circuit court failed to actually examine all of the factors required by statute when awarding punitive damages. *Compare* S.C. Code Ann. § 15-32-520(E) (listing eleven

[19] These are: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble v. Stevenson*, 305 S.C. 104, 110-11, 406 S.E.2d 350, 354 (1991).

factors the trial judge must account for when reviewing punitive damages awards), *with* Default Judgment Order at 6, R. p. ___ (listing ten factors the trial judge considered here, which do not account for certain statutorily-required factors like "the extent to which the plaintiff's own conduct contributed to the harm," other punitive damages awards against the defendant for the same conduct, any criminal penalties imposed on the defendant for the same conduct, and the amount of other civil penalties imposed on the defendant for the same conduct—all of which heavily favor Lyft here). The court only considered the *Gamble* factors in its Order. It appears the lower court simply signed Respondent's proposed order without conducting a close inspection of the clearly self-serving arguments or without engaging in the appropriate constitutional scrutiny. By failing to subject the punitive damages award to the required due process review under the *Mitchell/Gore* guideposts, the court committed reversible error as a matter of law. The default posture of this matter did not eliminate this requirement. In detailing the proper procedure for handling a default damages hearing, the Supreme Court has reiterated that "there are due process safeguards for cases involving punitive damages" and stated that "***trial judges and appellate courts conduct a review of the award to ensure the verdict is not excessive and is supported by the evidence***." *Limehouse v. Hulsey*, 404 S.C. 93, 116, 744 S.E.2d 566, 578-79 (2013) (emphasis added) (citing *Mitchell*).

D. The punitive damages award does not withstand constitutional scrutiny under the *Mitchell* guideposts.

1. There was no evidence of reprehensible conduct.

Turning first to reprehensibility, a court must consider whether (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *Mitchell*, 385 S.C. at

587, 686 S.E.2d at 185. The evidence here did not support a finding that Lyft's actions were reprehensible.

First, although the Decedent undoubtedly suffered physical harm as a result of his accident, which, in turn, caused emotional and financial harm to his mother, there is no evidence that the accident was caused by Lyft other than the vicarious liability allegations in the Complaint, which do not constitute evidence.

Second, there is nothing in the record indicating that Lyft was wanton, willful, or in any way indifferent to Respondent or anyone else.

Third, the Decedent was not financially vulnerable. As Respondent went to great lengths to show, the Decedent was gainfully employed, ironically by virtue of his ability to travel to work utilizing the Lyft platform or similar ride sharing applications despite his suspended driver's license. There is no evidence the Decedent was forced to use Lyft over any other ride-sharing application due to his financial vulnerability. In fact, it appears he was actually an enthusiastic repeat customer.

As to the *fourth* factor, Respondent presented no evidence of prior conduct at the hearing.

And, as to the *fifth* factor, there is no evidence that Lyft's actions were intentional, malicious, or deceitful.

In sum, there is no evidence that Lyft's actions were reprehensible, much less clear and convincing evidence.

2. There was an unreasonable disparity between the actual and punitive damages.

In evaluating this prong, a court is charged with considering the "likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." *Mitchell*, 385 S.C. at 588,

686 S.E.2d at 185. Here, even assuming Respondent was entitled to the full amount of actual damages awarded by the lower court (she was not), the court's imposition of a punitive damages award that not only impermissibly exceeds a 3:1 ratio is grossly disproportionate to the wrongs alleged in the Complaint and requires reversal on due process grounds.

3. The lower court failed to compare the propriety of the punitive damages with awards or civil penalties in similar cases.

Lastly, the Final Order does not make any attempt to compare other awards in similar cases or available civil penalties as required by *Mitchell*. Again, the lower court committed error as a matter of law by failing to subject the judgment to this scrutiny.

* * * * *

The punitive damages award exceeded the 3:1 statutory cap, was not causally connected to any evidence presented by Respondent at the damages hearing, and was not subjected to the required post-judgment due process review. For all these reasons, the award of punitive damages is unsupported by the evidence and by the law and should be set aside.

CONCLUSION

A generation ago, the Supreme Court of South Carolina warned circuit courts about adding to what it described as "a series of cases which have given the court great concern. They involve large awards in default claims involving unliquidated damages." *Lewis*, 275 S.C. at 559, 274 S.E.2d at 289. That court gave a clear mandate that the trend must stop: "It is generally recognized that courts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits." *Id.* at 560, 274 S.E.2d at 289.

This case provides a shocking example of the "harsh results" and "drastic action" that drew the *Lewis* Court's ire: a default judgment of $10.5 million against Lyft even though it is undisputed that the app had nothing to do with the underlying accident or injuries. Because the entry of default

and the default judgment are riddled with legal errors, this Court should vacate the default judgment, set aside the entry of default, and remand this matter with instructions to allow Lyft to answer the Complaint and litigate this matter consistent with the South Carolina Rules of Civil Procedure and the State's underlying policy to resolve disputes on their merits.

Failing that, the Court should reverse and vacate the award of punitive damages against Lyft. The theory that Lyft's mobile app can potentially be distracting to drivers does not support any award of punitive damages in this case where the unrebutted evidence was that the driver was not in any way distracted by the Lyft app.

Signature on Following Page

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