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**Apr 19 2024**

**SC Court of Appeals**

THE STATE of SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

John C. Hayes, III, Circuit Court  
Brian M. Gibbons, Circuit Court Judge  
J. Mark Hayes, II, Circuit Court Judge

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Appellate Case Nos. 2022-001312 and 2022-001390

Trial Court Case Nos. 2018CP1200117 and 2018CP1200074

Heidi Gersten, Ivanka Ayoub, Daniel Hubbard, Plaintiffs,

Of whom Heidi Gersten is the Appellant,

v.

Kevin Carter, Richard Davis, Joseph Tirbovich, Nationwide Insurance Company, Interinsurance Exchange of the Automobile Co, John Ammendola, Trustgard Insurance Company, Blackwell, SC Department of Public Safety, Chevrolet, GMC, Unknown John Does, Respondents.

Of whom Kevin Carter is the Respondent.

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APPELLANT’S TITLE II of the AMERICANS with DISABILITIES ACT (“ADA”)  
REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT  
APPELLANT’S MOTION to Accept as Timely Filed with Leave of Court  
the ORIGINAL RECORD on APPEAL And/or FINAL BRIEF

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MEMORANDUM OF POINTS And AUTHORITIES in SUPPORT of “GERSTEN’S”  
TITLE II of the AMERICANS with DISABILITIES ACT (“ADA”)  
REASONABLE ACCOMMODATION REQUEST to ACCEPT as Timely Filed  
APPELLANT’S Amended  
ORIGINAL RECORD on APPEAL And/or FINAL BRIEF

1. On April 9, 2024, this “Court” issued an order stating, “The time for serving the record on appeal is hereby .”
2. This request and motion are made before the expiration of time permitted under said letter.
3. “GERSTEN” is paralyzed disabled as a result of the collision in controversy in this matter which causes her to be substantially limited on one or more of her major life activities and she is now a qualified individual of and protected under the Americans with Disabilities Act (“ADA”). She has no caregiver, personal aid, or assistance to help her with daily functions. She lives under extreme hardship and extraordinary circumstances.
4. A “qualified individual with a disability” is defined as “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” United States v. Georgia, 546 U.S. at 153– 54, 126 S.Ct. 877 (quoting 42 U.S.C. § 12131(2)).
5. Despite the previous, “GERSTEN” has been diligently working on perfecting her appeal as best as she can, while coping with secondary complications of paralysis, such as, an illness of multiple pressure wounds [One of which is located on her left buttocks that prevents her from sitting down for extended periods of time without further injury. (Pictures and video available upon request; this is an offer of proof of evidence.)]; in addition to others; as well as toes that have lost their nailbeds; coupled with managing bowels and incontinence issues that she

has no control over. She experiences frequent diarrhea attacks, explosions, and accidents that include multiple unexpected bouts of urination throughout the day, as it takes “GERSTEN” between two to five hours to perform the task of extracting at least one bowel movement daily. Using the digital stimulation technique often leaves her fingers pruned and numb and causes her to feel exhausted afterwards. She changes her diaper multiple times a day. It takes her approximately 52 times longer to perform functions an abled body can do. For these reasons and more, additional time is required for her to file her original record on appeal and/or final brief.

6. “GERSTEN’s” disability of being paralyzed renders her incapable of asserting her claims or defenses in a timely manner. Under South Carolina law, “GERSTEN” is a “vulnerable adult” defined, in part, as a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection.

7. “GERSTEN” has spent much time on this instant appeal producing information which was voluminous and required her to scan thousands of documents, research, and type information into comprehensible and acceptable formats, which is challenging between lacking technological resources and a proper wheelchair to sit in and use, in addition to the litany of other previously stated misfortunes “GERSTEN” lives with, as she navigates through on her journey towards a single step; vindicating her rights in response to her victimization of paralysis and its secondary complications, including, but not limited to, her claims against Respondent Kevin Carter.

8. In addition to “GERSTEN’s” health crisis, she has other court matters in other states with deadlines within proximity of this case here.

9. Public policy advocates for appeals to be tried on their merits and the appellate courts often grant extensions of time at various stages. “GERSTEN’s” hopeful that her original record

on appeal and/or final brief will be filed on or before March 22, 2024.

10. The Respondent Kevin Carter and other Respondents are not prejudiced.

11. This request and motion are not made for the purposes of delay; rather in the interest and furtherance of justice and to prevent and avoid its miscarriage.

THEREFORE, having shown more than good cause; extraordinary circumstances, and for the previous reasons, the Appellant Heidi Gersten (“GERSTEN”) respectfully requests this “Court” to grant her Title II of the Americans with Disabilities Act Reasonable Accommodation Request to accept as timely filed her amended original record on appeal.

Respectfully submitted this 19<sup>th</sup> day of April 2024,

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PROOF OR CERTIFICATE OF SERVICE

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I hereby certify that service of a true and accurate copy of the APPELLANT’S TITLE II of the AMERICANS with DISABILITIES ACT (“ADA”) REASONABLE ACCOMMODATION REQUEST to ACCEPT APPELLANT’S Amended RECORD on APPEAL And/or FINAL BRIEF, and Cover Sheet [Total of Sixty (60) Pages including Cover Sheet] in the above-captioned cases was made upon all parties and counsel of record by email on April 19, 2024:

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Respectfully submitted this 19<sup>th</sup> day of April 2024

          /S/Heidi Gersten          

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