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**Dec 03 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 REQUEST and MOTION for an EXTENSION of TIME to FILE REPLY to  
RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR REINSTATEMENT

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The Appellant Heidi Gersten (“GERSTEN”) in the above-captioned case, hereby requests and moves this South Carolina Court of Appeals (“COURT”), pursuant of/to The Golden Rule, Title II of the ADA Reasonable Accommodation Request, S.C. App. Ct. R. 240, and S.C. App. Ct. R. 263(a), as well as any and all applicable law, seeking a grant of her request and motion to accept this instant document as timely filed and grant the request and motion for an extension of time of an additional five (5) business days, excluding weekend days of Saturday and Sunday and holidays, up until and including December 10, 2024, to file her reply to the Respondent Kevin Carter’s (“CARTER”) return to GERSTEN’s motion for reinstatement filed on November 15, 2024.

The grounds, reasons, and basis for this request and motion are set forth in the attached memorandum in support.

Respectfully submitted this 3<sup>rd</sup> of December 2024,

\_\_\_\_\_/S/Heidi Gersten\_\_\_\_\_  
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MEMORANDUM in SUPPORT of  
APPELLANT's TITLE II of the AMERICANS with DISABILITIES ACT ("ADA")  
REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT  
APPELLANT's REQUEST and MOTION for an EXTENSION of TIME to FILE REPLY to  
RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR REINSTATEMENT

1. On November 15, 2024, CARTER filed his return to GERSTEN's motion for reinstatement.
2. On November 22, 2024, GERSTEN filed a Title II of the ADA Reasonable Accommodation Request to accept and grant her request and motion for an extension of time to file her reply to CARTER's return to her motion for reinstatement.
3. On November 25, 2024, GERSTEN filed an amended Title II of the ADA Reasonable Accommodation Request to accept and grant her request and motion for an extension of time to file her reply to CARTER's return to her motion for reinstatement in accordance with state holidays to a due date of December 3, 2024.
4. Shortly after GERSTEN's filings, the temperature decreased dramatically to around 19 degrees and her heating unit failed to provide heat. Due to the federal and state holiday of Thanksgiving, she was unable to get her heater to function and spent many days isolated under a pile of blankets, which included one electric blanket that was not working properly and only heated in a single square patch approximately two (2) feet in length and two (2) feet in width. It wasn't until regular business hours resumed that she was able to communicate with someone and was able to have her heater restored. During this time, due to her disability of being paralyzed, she was unable to move much and began to experience signs of fever, cough, and hunger. Now that GERSTEN has heat she has been able to slowly function better.
5. 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 ADA. She has no caregiver, personal aid, or assistance to help her with daily functions. She lives under extreme hardship and extraordinary circumstances.

6. 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)).

7. 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.

8. GERSTEN has been diligently working on all aspects of perfecting this instant appeal and doing her best to comply with all due dates in spite of coping with and managing secondary complications of paralysis that include, but are not limited to, an illness of multiple pressure wounds. One is located on her left buttocks that prevents her from sitting down for extended periods of time without further injury. There are other wounds that develop and heal, as she is prone to them. Managing bowels and incontinence issues that she has no control over is unimaginable to an abled body. GERSTEN suffers with this daily. She experiences frequent diarrhea attacks, explosions, and accidents that include unexpected bouts of urination throughout the day. It takes her 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 frequently and changes clothes and linens multiple times a day because of the excreta leakage out of the diaper. The time spent dealing with the nuances of being paralyzed negatively affects GERSTEN's quality of life and causes increased emotional, psychological, and social distress, in addition to the maddening physical pain she feels caused by paralysis and its secondary complications, among other things. It takes her approximately fifty-two (52) times longer to perform basic daily functions an abled body can do. Due to the years of paralysis, the weight of her upper body crushing down on her lower half, especially while sitting, prolapse has occurred. GERSTEN must periodically push organs that protrude from her vagina and anus back into place. For these reasons and more, additional time is required for her to file her reply. (Pictures and video available upon request; this is an offer of proof of evidence.)

9. 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, and redact personal information required to do so under privacy law, which is challenging, to state the least. GERSTEN lacks technological resources and a proper wheelchair to sit in and use, in addition to the litany of other previously stated misfortunes she 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 CARTER.

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

11. Public policy advocates for appeals to be tried on their merits and the appellate courts

often grant extensions of time at various stages.

12. A grant of this ADA request and motion does not fundamentally alter this COURT's policies, practices, or procedures, nor does it create any undue burden or financial or otherwise hardship on this COURT.

13. This COURT has previously granted GERSTEN rehearing and reinstatement in this matter.

14. CARTER and other Respondents are not prejudiced; a remittitur should not be issued at this time.

This reasonable 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, GERSTEN respectfully requests this COURT to grant her Title II of the Americans with Disabilities Act Reasonable Accommodation Request to accept this filing as timely and grant her request and motion for extension of time to file her reply to CARTER's return to GERSTEN's motion for reinstatement up until and including December 10, 2024, applying The Golden Rule.

Respectfully submitted this 3<sup>rd</sup> day of December 2024,

\_\_\_\_\_/S/Heidi Gersten  
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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 And GRANT APPELLANT's REQUEST and MOTION for an EXTENSION of TIME to FILE REPLY to RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR REINSTATEMENT, and Cover Sheet [Total of 11 Pages including Cover Sheet and this PROOF or CERTIFICATE of SERVICE] in the above-captioned cases was made upon all parties and counsel of record by email, per Court order, on December 3, 2024:

Wesley Brian Sawyer, Esquire  
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Respectfully submitted this 3<sup>rd</sup> day of December 2024

/S/Heidi Gersten

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**SC Court of Appeals**

December 3, 2024  
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The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate St.  
Columbia, SC 29301  
ctappfilings@sccourts.org

Re: 2022-001312; 2022-001390

APPELLANT's TITLE II of the AMERICANS with DISABILITIES ACT ("ADA")  
REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT  
APPELLANT's REQUEST and MOTION for an EXTENSION of TIME to FILE REPLY to  
RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR REINSTATEMENT  
and PROOF or CERTIFICATE of SERVICE

Dear Ms. Kitchings and/or to ALL CONCERNED:

Good day to you!

Enclosed for filing, please find a copy of the above stated Appellant's Title II of the Americans with Disabilities Act ("ADA") reasonable accommodation request to accept and grant the Appellant's request and motion for an extension of time to file reply to Respondent's return to Appellant's motion for reinstatement and proof or certificate of service, along with this cover letter.

Pursuant to Rule 240(d), which states in part, "...In extraordinary cases, the appellate court may relieve a party from paying the filing fee." Please waive any filing fee, as a Title II of the "ADA's" Reasonable Accommodation Request.

Please file stamp the documents with today's date of December 3, 2024, place in the court file, and email me a time-stamped copy.

Please call the above number or email me if you have any questions.

Thank you for your time and assistance regarding this matter.

Kind regards,

\_\_\_/S/Heidi Gersten \_\_\_\_\_  
Heidi Gersten, Appellant

HG/Enclosures/APPELLANT's TITLE II of the AMERICANS with DISABILITIES ACT ("ADA") REASONABLE ACCOMMODATION REQUEST to ACCEPT And GRANT APPELLANT's REQUEST and MOTION for an EXTENSION of TIME to FILE REPLY to RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR REINSTATEMENT, and PROOF or CERTIFICATE of SERVICE, and Cover Letter

Total Pages: Eleven (11) including this cover letter