THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Diane Shafer Goodstein, Circuit Court Judge

Case No. 2014-001683

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

APPELLANT'S RESPONSE TO
WELLS FARGO'S REPLY TO RETURN TO MOTION TO STRILE

March 11, 2015

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I. Let it be known that *18 US Code § 1621* clearly states in pertinent parts; "[W]hoever— (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States."

II. And...*28 U.S. Code § 1746* clearly states in pertinent parts; "[W]herever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)". "

III. Finally, *Rule 11(c), SCRCP* clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

IV. Based on the above Rule and Laws, the Appellant, Dorothy Sistrunk, declares; under the PENALTY of PERJURY and in compliance with *Rule 11(c), SCRCP*, that the following stated facts are true and correct. Executed on March 11, 2015.

Dorothy Sistrunk

Comes now the Appellant, Dorothy Sistrunk, to file her *Response to Wells Fargo's Reply to Return to Motion to Strike,* i.e., Wells Fargo Bank, N. A., Respondent v. Dorothy Sistrunk, Appellant - Case 2014-001683. .

V. PREFACE TO PAGE 2 DECLARATION AND THE ENSUING NOTARY CERTIFICATION TO FOLLOW

1. Based upon the Court's Records, the Appellant's **Notarized**, **Sworn** and/or **Verified** **Pleadings** were never considered by the Lower Court nor denied, refuted, contested and/or proven false by Wells Fargo. Since the Appellant's **Notarization**, **Certification** and/or **Verification** was at the very end of the Pleading, the Appellant has simply reversed it... and...placed her **Declaration** at the very beginning of the Pleading rather than at the very end to remove any doubt that this is a **Verified** *Response*.

2. Therefore, neither Judge, Jury nor Wells Fargo has to read through 10 or 100 pages in a Pleading just to discover the Pleading was **Notarized**, **Certified** as **Sworn** **Testimony**, pursuant to *Rule 11(c), SCRCP* and/or **Verified** pursuant to *28 U.S. Code § 1746*. The Appellant's **Judicial** and/or **Evidentiary** **Admissions** are binding admissions that should have been dealt with accordingly and properly by the Lower Court. This was not done and this failure is also an *Abuse of Discretion.*

> **(A)** *Schroeder v. McDonald, 55 F.3d 454, 460 n. 10 (9th Cir.1995)* (pleading counts as "verified" if the drafter states under penalty of perjury that the contents are true and correct).
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> **(B)** "[T]hus, a court is entitled to rely, in determining whether a genuine issue of material fact exists on a particular issue, only upon those portions of the verified pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits submitted, specifically called to its attention by the parties." *Gover v. Speedway Super America, LLC, 284 F Supp. 2d 858 (S.D. OH. 2003).*
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> **(C)** *Whitehurst v. Corey, 364 SE 2d 728 (N.C. Ct App. 1988)* "[W]e disagree. Defendants' verified answer and counterclaim constitute an "affidavit" for purposes of determining either party's right to summary judgment. *See Schoolfield v. Collins, 281 N.C. 604, 612, 189 S.E.2d 208, 213 (1972)* (to extent verified pleadings meet requirements of Rule 56(e), pleadings are "affidavit"). It is true that Rule 56(e) also requires that

"opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated [t]herein." However, while defendants' verified pleadings arguably do not conform to the formal requirements of Rule 56(e), plaintiff's failure to move to strike these allegations waives any objection to their formal defects. *See* North Carolina Nat'l Bank v. Harwell, *38 N.C App. 190, 192, 247 S.E 2d 720, 722, disc. rev. denied, 296 N.C. 410, 267 S E 2d 656 (1979)* (failure to object to form or sufficiency of pleadings and affidavits waives objection on summary judgment); Noblett v. General Electric Credit Corp., *400 F.2d 442, 445 (10th Cir.1968), cert. denied, 393 U.S. 935, 89 S.Ct. 295, 21 L.Ed.2d 271 (1969)* (affidavit not conforming to Rule 56(e) is subject to motion to strike, but objection waived absent motion); *see also 10A C. Wright & A. Miller, Federal Practice and Procedure Sec. 2738 at 507-09 (1983)* (party must move to strike affidavit not conforming with Rule 56(e) before appeal).

(D) American Title Ins Co. v. Lacelaw Corp., *861 F. 2d 224 (9th Cir 1988)* "[T]he admissability of evidence, however, is generally a procedural matter governed by the *Federal Rules of Evidence. 9 C. Wright & A Miller, Federal Practice and Procedure § 2405 (1971).* "[U]nder federal law, stipulations and admissions in the pleadings are generally binding on the parties and the Court. Not only are such admissions and stipulations binding before the trial court, but they are binding on appeal as well." Ferguson v. Neighborhood Housing Services., *780 F.2d 549, 551 (6th Cir 1986)* (citations omitted). "Judicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." In re Fordson Engineering Corp., *25 B.R. 506, 509 (Bankr.E.D Mich 1982).* "[F]actual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them." *See* White v. Arco/Polymers, Inc., *720 F.2d 1391, 1396 (5th Cir 1983),* Fordson, *25 B.R. at 509.*

(E) "[A]n abuse of discretion arises where the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." Tri-County Ice & Fuel Co. v. Palmetto Ice Co., *303 S.C. 237, 242, 399 S E.2d 799, 782 (1990).* "[A] failure to exercise discretion amounts to an abuse of that discretion." Samples v. Mitchell, *329 S.C. 105,112, 495 S.E.2d 213, 216 (Ct. App. 1997).*

(F) "[T]rial courts possess "[a] discretionary range of control over parties and proceedings" that allows reasonable accommodations to self-represented litigants." Blair v. Maynard, *324 S.E.2d 391, 396 (West Virginia 1984)* "[W]hen a trial judge is vested with discretion; but his ruling reveals no discretion was in fact exercised, an error of law has occurred." Ballon Plantation, Inc. v. Head Balloons, Inc., *303 S.C 152, 155, 399 S.E.2d 439, 441 (1990).*

3. Over a 6 year period and approaching 7 years, the Appellant has reviewed many rulings relative to her **Notarized Pleadings** that were filed from 2008 to 2013. Since no objections or motions were filed to challenge the Appellant's testimony and **Statements of Fact** in her early **Notarized Pleadings**, the Appellant has since discovered, it is well settled law among federal and state courts that testimony to which no objection is made may be and/or must be considered by the Trier of Facts.

> **(A)** *State v Harrington, 627 S.W 2d 345 (Tenn 1981)*, "[W]hen no objection to testimony is interposed, it may properly be considered and given its natural probative effect as if it were in law admissible." *Also see State v. Bennett, 549 S.W 2d 949, 950 (Tenn. 1977).*
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> **(B)** *North River Ins. Co. v. CIGNA Reinsurance Co., 52 F. 3d 1194 (3rd Cir. 1995)* "[A] proper motion to alter or amend judgment "must rely on one of three major grounds: `(1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or] (3) the need to correct clear error [of law] or prevent manifest injustice'" *Natural Resources Defense Council v United States Envtl. Protection Agency, 705 F.Supp. 698, 702 (D.D C 1989) (quoting All Hawaii Tours, Corp v. Polynesian Cultural Ctr., 116 F R.D. 645, 649 (D.Haw 1987).*
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> **(C)** "[E]vidence received without objection is competent." *Toyota of Florence v Lynch, 314 S.C. 257, 266, 442 S.E 2d 611, 616 (1994).*
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> **(D)** *United States v. Ebersole, 411 F.3d 517 (4th Cir 2005)* "[B]y definition, "a court abuses its discretion when it makes an error of law."

4. The Court's failure to consider **Judicial Admissions** is an injustice and constitutes a clear *Error of Law* by the Lower Court. The Appellant has already dealt with this issue in her "Briefs" filed in the Appellant Court and in Pleadings filed in the Lower Court and will not address the issue here. In the interest of judicial economy and time, rather than write another 400..or..500 pages restating what has already been written going on 7 years and pursuant to *Rule 10(c), SCRCP*, the Appellant incorporates her;

> **(A)** "*Appellant Objects to Wells Fargo's Motion "to Strike*", [31 pgs], plus [21 pgs] of attached Exhibits, that was filed on February 24, 2015.
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> **(B)** "*Reply Brief*", [25 pgs] plus 18 Appendices of Exhibits and **Verified**, **Sworn** or **Notarized** Pleadings that was filed on February 12, 2015,

(C) *"The Appellant Does Not Object to Wells Fargo's Motion to Extend Time to February 2, 2015"*, [21 pgs], filed on January 6, 2015.

(D) "*Initial Brief*", [50 pgs] filed on October 8, 2014,

(E) "*Objections to Wells Fargo's Motion to Dismiss*", [11 pgs] plus Exhibits filed on September 10, 2014. Exhibits attached to **Verified Pleadings** are also **Verified**.

> *Rule 10(c), SCRCP* clearly states; "[S]tatements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading."

(F) "*Statement of the Evidence*", [150 pgs], that was filed on August 14, 2014, found in **Appendix 3** and is included in the *Record on Appeal.*

(G) "*Defendant Dorothy Sistrunk's Reasons for Opting Out of the Fladell Settlement and Filed with the United States District Court for the Southern District of Florida. Re: Case No. 0 13-cv-60721-(FAM)*", [70 pgs] that was filed on July 29, 2014 and in the Court of Common Pleas on July 28, 2014, found in **Appendix 9** and is included in the *Record on Appeal.*

(H) "*Defendant Dorothy Sistrunk's Reasons for Consenting to Order Granting a Continuance, the Fladell Settlement & Violations of the 7th Amendment to the United States Constitution*", [105 pgs] that was filed on July 14, 2014, found in **Appendix 9** and is included in the *Record on Appeal.*

(I) "*Defendant Dorothy Sistrunk Objects to Notice of Motion and Motion for Continuance and Any Proposed Order Granting Continuance Due to Extrinsic Fraud upon the Court by Officers of the Court, Wells Fargo's Mortgage is Defective and Filed Motions to Vacate the Plaintiff's Partial Summary Judgment Order of Reference and a New Trial with Jury Pursuant to Rules 38(a)-(d), 39, 59(a)(2) & 60(b)(1), SCRCP*", [26 pgs] that was filed on June 9, 2014, found in **Appendix 8** and is included in the *Record on Appeal.*

(J) "*Statement of Uncontested Facts and Material Facts in Support of Motion and Legal Memorandum of Law and Authorities to Vacate the Plaintiff's Partial Summary Judgment Order Pursuant to Rule 60(b), SCRCP for Extrinsic Fraud upon the Court by Officers of the Court in Conjunction with 28 U.S C § 455 & 42 U.S.C. § 1983, This is a Verified Pleading and my Official Complaint*", [86 pgs] filed on May 28, 2014, found in **Appendix 8**, and is included in the *Record on Appeal.*

(K) "*Legal Memorandum of Law and Authorities to Support my Notice*

of Motion and Motion for a New Trial with a Jury Pursuant to Rules 38(a)-(d), 39, 59(a)(2) & 60(b)(1), SCRCP for Extrinsic Fraud upon the Court by Officers of the Court in Conjunction with 28 U.S.C § 455 & 42 U.S.C. § 1983", [37 pgs] filed on May 28, 2014, found in **Appendix 8** and is included in the *Record on Appeal.*

(L) "*Defendant Dorothy Sistrunk Objects to the Order Granting Partial Summary Judgment, Due to the Plaintiff's Misstatement of Facts, Mischaracterization of Facts and in Some Instances Outright Lies*", [61 pgs] filed on April 7, 2014, found in **Appendix 11** and is included in the *Record on Appeal.*

(M) "*Defendant Dorothy Sistrunk Objects to Order Granting Partial Summary Judgment, Prejudicial Treatment & to the Violation of Rule 30(b)(2), SCRCP & Enters a Formal Protest into the Record*", [22 pgs] filed on March 31, 2014, also found in **Appendix 11** and is included in the *Record on Appeal.*

(N) "*Defendant Dorothy Sistrunk's Objects to the Plaintiff's Motion for Order of Reference. There is No Valid Mortgage on 423 Bayne Street Due to False Certification*", [17 pgs] also filed on March 31, 2014. This Pleading is in **Appendix 11** and is included in the *Record on Appeal.*

(O) "*Defendant Objects to the Plaintiff's Motion and Order of Continuance. A Rule 41(b), SCRCP Dismissal was Filed on 08/15/2011 That Has Never Been Properly Opposed by the Plaintiff and Qualifies for Judgment Pursuant to Rule 56(c), SCRCP*" [34 pgs] filed on March 28, 2014. This Pleading is in **Appendix 11** and is included in the *Record on Appeal.*

(P) "*Defendant Dorothy Sistrunk's Legal Memorandum Supporting Notice of Motion & Motion to Alter or Amend the Partial Summary Judgment Order & Rescind the Order of Reference*", [35 pgs] filed on March 25, 2014. This Pleading is in **Appendix 11** and is also included in the *Record on Appeal.*

(Q) "*Defendant Dorothy Sistrunk Objects to Plaintiff Wells Fargo Bank, N.A.'s Second Motion and Order for Continuance and Demands Trial Roster Placement on November 18, 2013, Judicial Notice Requested Pursuant to Rule 201, SCRE*", [66 pgs] that was filed on November 8, 2013, found in **Appendix 13** and is included in the *Record on Appeal.*

(R) "*Defendant Dorothy Sistrunk Objects to Plaintiff Wells Fargo Bank, N A.'s Motion and Order for Continuance and Demands Trial Roster Placement on October 7, 2013, Judicial Notice Requested Pursuant to Rule 201, SCRE*", [65 pgs] filed on September 30, 2013. This Pleading is in **Appendix 13** and is included in the *Record on Appeal.*

(S) "*Defendant Dorothy Sistrunk Demand for a Jury Trial and Legal Memorandum Supporting Opposition to Plaintiff Wells Fargo Bank, N. A 's Motion for Summary Judgment*", [35 pgs] filed on July 17, 2013,

found in **Appendix 7**, and is included in the *Record on Appeal.*

(T) "*Defendant Dorothy Sistrunk's Opposition to Plaintiff Wells Fargo Bank, N. A.'s Motion for Summary Judgment and a Demand for Jury Trial*", [97 pgs] also filed on July 17, 2013, found in **Appendix 7**, and is also included in the *Record on Appeal.*

(U) "*The Defendant Dorothy Sistrunk Filed Objections to the Plaintiff's Motions for Sanctions and Demands for an Oral Only Deposition Subject to Rule 38(b) a Priority Matter*", [29 pgs] filed on May 25, 2012, can be found in **Appendix 12**, and is included in the Record on Appeal. This Pleading is background to the ***Deposition Scam*** of Nelson Mullins Riley & Scarborough, LLP that occurred on September 6, 2012.

(V) "*The Defendant's Fourth Filed Objection to Notice of Taking Deposition of Defendant Dorothy Sistrunk*", [9 pgs] filed on May 7, 2012, can be found in **Appendix 12**, and is included in the Record on Appeal. This Pleading is more background relative to the ***Deposition Scam*** of Nelson Mullins Riley & Scarborough, LLP that occurred on September 6, 2012.

(W) "*Objection to Notice of Taking Deposition of Defendant Dorothy Sistrunk*", [8 pgs] filed on April 27, 2012, can be found in **Appendix 12** and is included in the Record on Appeal. This Pleading is additional background to the ***Deposition Scam*** of Nelson Mullins Riley & Scarborough, LLP that occurred on September 6, 2012.

(X) "*Objection to Order Granting Motion to Compel Discovery, Issuing Stay, and Granting Motion for Continuance Subject to Rule 38(b) a Priority Matter*", [42 pgs] filed on March 23, 2012, can be found in Appendix 12 and is also included in the *Record on Appeal.* This Pleading is relative to the ***Deposition Scam*** of Nelson Mullins Riley & Scarborough, LLP that occurred on September 6, 2012.

(Y) "*Objection to Plaintiff's Second Motion to Compel Discovery by Deposition of Defendant Dorothy Sistrunk and for Sanctions Subject to Rule 38(b) a Priority Matter*", [29 pgs] filed on March 15, 2012, can be found in **Appendix 12** and is also included in the *Record on Appeal.* This Pleading is forerunner to the ***Deposition Scam*** of Nelson Mullins Riley & Scarborough, LLP that occurred on September 6, 2012.

(Z) "*Defendant Dorothy Sistrunk Legal Memorandum in Support of Notice of Motion and Motion to Dismiss with Prejudice*", [40 pgs] filed on August 15, 2011, can be found in **Appendix 10** and is included in the *Record on Appeal.* **(Note: the typographical errors on Index Page ii, that must wait for correction until the Respondent's *Motion to Strike* is decided.)**

by reference as though she had written them herein verbatim.

Rule 8(d), SCRCP clearly states in pertinent parts; "[A]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." **The Appellant's Facts should have been deemed admitted.**

5. In addition to the above, an analogous rule applies to testimony provided within an affidavit, whereby improper affidavits may be considered by the court as long as the statements are true and sets forth facts that are...or....can be admissible as evidence. This rule applies to the Appellant's **Notarized Pleadings** filed from July 2008 to 2013.

(A) *Davis v. Sears, Roebuck & Co., 708 F.2d 862, 864 (1st Cir. 1983)* (holding that objections are waived where "a party submits an inadmissible affidavit and the opposing party does not move to have it stricken," but noting that the memorandum in opposition did not include an objection to the affidavit); *Scharf v. United States Attorney General, 597 F.2d 1240, 1243 (9th Cir. 1979)*("Generally, . . . formal defects are waived absent a motion to strike or other objection, neither of which occurred here."); *Assoc. Press v. Cook, 513 F.2d 1300, 1303 (10th Cir. 1975); Klingman v Nat'l Indemnity Co., 317 F.2d 850, 854 (7th Cir. 1963).*

(B) "[A]ccordingly, in the absence of a motion by counsel opposing admissibility of an improper affidavit, formal defects within the affidavit ordinarily are waived." *Auto Drive-Away Co. of Hialeah*, 360 F.2d 446 at 449 *(citing U.S for Use and Benefit of Austin v. W. Elec Co., 337 F.2d 568 (9th Cir. 1964)).*

(C) While the Court views summary judgment briefing as an appropriate and adequate opportunity to call affidavit improprieties to a court's attention, it recognizes that "the federal rules provide no other technique for challenging affidavits, . . . [and that] courts have been willing to view motions to strike as calling the propriety of affidavits into question." *Monroe v. Bd. of Educ., 65 F.R.D. 641, 647 (D. Conn. 1975).*

(D) *Morgan v. Sears, Roebuck and Co., 700 F.Supp. 1574, 1576 (N.D.Ga.1988)* (proper method for challenging admissibility of evidence in affidavit is to file a notice of objection to the challenged testimony).

6. By including *18 U.S. Code § 1621* on page 2, the Appellant is sending a clear signal to the Appellate Court that she understands what the penalty is for lying. Thus, the Appellant addressed and settled the issue raised in *Tishcon Corp. v. Soundview Communications, Inc., 2005 WL 6038743, at n.4 (N D. Ga. 2005)* and *United States v.*

Bueno-Vargas, 383 F.3d 1104, 1111 (9th Cir. 2004). ("true test" for whether a declaration is made under oath or affirmation "is whether the procedures followed were such that perjury could be charged therein if any material allegation contained therein is false.").

7. Since the Appellant is aware of the consequences for lying, this is not relevant to the Appellant's **Notarized**, **Sworn** and **Verified** Pleadings and/or **Affidavits**. Therefore, any other argument/s raised by Respondent Wells Fargo relative to the Appellant's Pleadings and/or Affidavits should be considered as frivolous and/or moot by the Appellate Court.

8. Going on 7 years, the Appellant has always responded to every document, pleading and/or motion filed by Wells Fargo's attorney/s. Therefore, in the abundance of caution, the Appellant must respond to Attorney Anzelmo's *Reply to Return to Motion to Strike,* and why Wells Fargo's *Motion to Strike* must be denied.

> **(A)** *Beveridge v. Nw. Airlines, Inc., 259 F. Supp. 2d 838, 845 (D. Minn. 2003)* (explaining propriety of reply affidavits "when necessary to address factual claims ... not reasonably anticipated" *(quoting D Minn LR. 7.1, Advisory Committee Note to 1999 Amendment))*
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> **(B)** *Springs Indus., Inc. v. Am. Motorists Ins. Co., 137 F.R D. 238, 239 (N.D. Tex. 1991)* ("In our jurisprudence the party who must persuade the court of the merits of the relief it seeks is almost always given the final word.").

VI. ATTORNEY ANZELMO HAS AGAIN MISREPRESENTED, MISSTATED OMITTED OR MISCHARACHERIZED ESSENTIAL FACTS

9. **Response to ¶ 1, Pg 1 & Reason #37 for Denial**: In ¶ 1 on pg 1, Attorney Anzelmo basically repeats the same unsubstantiated argument he made when he filed his *Motion to Strike*. Attorney Anzelmo once again has conveniently overlooked and/or omitted the Authority of the Appellate Court to extend time and there is no language in any Appellate Court Rule, that would allow the Appellant to ignore an

Appellate Court Order. *{Review SCACR Rules 101-207}*

10. The Appellate Court's authority is clearly stated in Rule *240(b) & (j), SCACR*. (b) **"[U]nless otherwise provided by these Rules, or ordered by the appellate court.."** and (j), **"[a]n individual judge or justice may grant or deny any motion or petition on behalf of the court...."** *{Review "Appellant Objects to Wells Fargo's Motion to Strike", ¶¶ 1-9, pgs 2-4 & Rules 240(b) & (j), SCACR}*

11. **Response to ¶ 2, Pg 1 & Reason #38 for Denial**: In ¶ 2, on pg 1, Attorney Anzelmo deliberately misstates, misrepresents or mischaracterizes a fact. The Appellant did not claim anything. The Appellant clearly stated an irrefutable an undeniable fact. Wells Fargo's time to file the "Initial Brief" was extended to February 2, 2015, by Order of the Appellate Court and the Appellant submitted documentation to verify her Statement of Fact. *{Review Filed Exhibit 381}* Even though the following citations refer to documented facts for a summary judgment motion, the citations are relevant for any judicial decision making process.

> **(A)** *Conward v. Cambridge School Committee, 171 F. 3d 12 (1st Cir 1999)* "[T]o facilitate this process, we — like the trial court — accept the properly documented facts in the light most favorable to the nonmovant, resolving all genuine conflicts in his favor, while at the same time refusing to indulge rank speculation or unsupportable hyperbole. *See Mesnick, 950 F.2d at 822; Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir.1990).*
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> **(B)** *Quaker State Oil Refining Corp. v. Garrity Oil Co., 884 F. 2d 1510 (1st Cir 1989)* "[I]n conducting this tamisage, we must grant the benefit of any genuinely disputed datum, and all reasonable inferences plausibly extractable from properly documented facts of record, to the nonmovant. *Mack, 871 F.2d at 181, Greenberg v. Puerto Rico Maritime Shipping Auth, 835 F 2d 932, 934 (1st Cir.1987).* **[Note: Tamisage means sieving or sifting.]**
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> **(C)** *Kelly v. US, 924 F. 2d 355 (1st Circuit 1991)* "[R]hetoric, unsupported by facts, remains only rhetoric, even if stridently proclaimed." **Attorney Anzelmo has presented no Citations to Authority or Affidavits to support his arguments.**

12. On pg 1, ¶ 1, in sentence #2, Attorney states, "This argument lacks merit." This statement is based on an unsubstantiated claim in sentence #1. There is no Appellate Court Order extending time to January 26, 2015. In addition, the Appellant did not get off the "Turnip Truck" yesterday. The Appellant is well aware that February 6, 2015 is well within the guidelines established by the Appellate Court's Order.

A. Attorney Anzelmo's Respondent's "Initial Brief" created the need for a Notarized and Verified "Reply" to the "Initial Brief" complete with the documented evidence to verify the Appellant's Statements of Fact. The 18 Appendices are Affidavits in the form of Pleadings.

13. As stated in **Reason #5 for Denial**: (¶ 11, pg 4, in the "*Appellant Objects to Wells Fargo's Motion to Strike*") Attorney Anzelmo's "Respondent's Initial Brief" created the need for a ***Notarized*** & ***Verified*** "Reply". *{Review Appellant's Objects to Wells Fargo's Motion to Strike" Pgs 4-6}*

(A) As stated in **Reason #6 for Denial**: (pgs 4-5) The Appellant has no evidence tying attorney Anzelmo to the misrepresentations, misstatements, mischaracterizations, distortion of facts, fabrications and false testimony of attorneys Brian A. Calub, James H. Burns and/or Elizabeth Scott Moise or to the ***Massive Filing Fraud*** of attorneys Elizabeth Scott Moise, James H. Burns and Wells Fargo during the TRO/Stay from 2009 to 2011. Therefore, his actions, could not have been included in the Record on Appeal.

(B) As stated in **Reason #7 for Denial**: (pg 5) Attorney Anzelmo's actions, misrepresentations, misstatements, mischaracterization of facts and false testimony were filed in the Appellate Court, not the Lower Court. Therefore, they could have been included in the Record on Appeal or be Supplemental Material to the Record on Appeal. *{See Rule 212, SCACR}*

(C) As stated in **Reason #8 for Denial**: (pg 5) Attorney Anzelmo's misrepresentations, misstatements, mischaracterizations, distortion of facts, fabrications and false testimony are the same as attorneys Burns, Moise and Calub. Therefore, a "Reply" with supporting documentation and exhibits was also necessary. *{See App.s 1-18}*

(D) As stated in **Reason #9 for Denial**: (pg 5) Attorney Anzelmo's misrepresentations, misstatements, mischaracterizations, distortion of facts, fabrications and false testimony cannot legally be considered Negligent Misrepresentations. The law firm has had this case for over 6 years and received Attested True Copies of every pleading the Appellant has filed in the Court of Common Pleas in Orangeburg, South Carolina, since August of 2008.

(E) As stated in on pg 5, in addition, the Appellant's filed Pleadings are all **Notarized** or **Verified**. Therefore, attorney Anzelmo's misrepresentations, misstatements, mischaracterizations, distortion of facts, fabrications and false testimony must be construed as being deliberate. Attorney Anzelmo is an Officer of the Court whose Bar No. is 72933.

(F) As stated in **Reason #10 for Denial**: (pgs 5-6) All Courts agree on this reality... **Whenever an Officer of the Court purposely distorts, misrepresents, conceals, misstates, and/or omits facts and/or lies during the presentation of a case in any Court of Law, that attorney has committed a Fraud upon the Court**. Statements in attorney Anzelmo's "Brief" constitute the physical evidence of the violation. *{Initial Brief, pgs 2 & 9-13 - **Note:** Citations in Objection to Motion Omitted}*

14. After reviewing Wells Fargo's "Initial Brief" with her husband, the decision was made to provide ample documentation that would expose attorney Anzel-

mo's misstated, misrepresented, omitted and mischaracterized facts; as well as, his false testimony. Since the Order extended time to February 2, 2015, from January 28, 2015 (the date, the "Brief" was received) to February 12, 2015 gave the Appellant ample time to assemble the documentation, schedule days off from work to take the Appendices to Columbia, South Carolina for printing, obtain Notary Certification and file the "Reply Brief:"by February 12, 2015. (No printer in Orangeburg, had any experience with "*Appellate Court Briefs*". Printers in Charleston or Columbia were recommended. An online search, took the Appellant to Columbia, rather than Charleston because it was closer.) *{Review Filed Exhibits D & D-1 to Verify Printer's Location & Cost}*

B. Every incident to date that has necessitated a motion has been instigated by Wells Fargo's attorney/s actions or lack thereof.

15. **Response to ¶ 1 on Pg 2**: Paragraph #1 on pg 2, has already been answered. There was no need for the Appellant to file a motion, when the Appellant "*Substantially Complied*" with the Appellate Court's Rules, Authority and Order. The Appellant will not speculate. However, there may be other motives behind the actions the Appellant has experienced from Wells Fargo's attorneys, including attorney Anzelmo. Every incident to date that has necessitated a *Motion to Dismiss* or *Strike* has been instigated by Wells Fargo's attorney/s actions or lack thereof. **Could it be Wells Fargo's attorney/s realize they got away with one in the Lower Court and are heavily engaged in diversionary tactics to reflect attention away from this truth?**

> **(A)** *Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1105 (9th Cir 2000)* ("In a typical case ... the moving party will have made reasonable efforts, using the normal tools of discovery, to discover whether the nonmoving party has enough evidence to carry its burden of persuasion at trial."); *Digital Equip Corp., 601 F. Supp. at 317* ("I urge counsel to defer filing motions for summary judgment in every instance in which there is any doubt, before discovery is completed, whether some fact on which the legal argument for the motion is premised will be disputed.").

(B) *City of Dothan v. Eighty-Four W., Inc., 738 So 2d 903, 909 (Ala. Civ. App. 1999)* (quoting Champ Lyons, Jr., Alabama Rules of Civil Procedure Annotated, [section] 56.5, at 103 (3d ed. 1996)); see also Fed. R. Civ. P. 56(c) ("The judgment ... should be rendered if ... there is no genuine issue as to any material fact...."); *Pike v. Caldera, 188 F.R.D. 519, 531 (S.D. Ind 1999)* ("[T]o defeat a summary judgment motion, the nonmovant need only demonstrate a single genuine issue of material fact."); *Digital Equip. Corp., 601 F. Supp. at 316* ("[I]f, as counsel for a moving party, you know that even one of the facts essential to a motion for summary judgment is in dispute, you cannot properly file the motion.").

(C) *City of Dothan, 738 So 2d at 909* (explaining obligation of moving party in filing motion for summary judgment); *see also Ritt by Ritt v Lenox Hill Hosp., 582 N Y S 2d 712, 714 (N.Y App. Div. 1992)* ("[I]f a movant, in preparation of a motion for summary judgment, cannot assemble sufficient proof to dispel all questions of material fact, the motion should simply not be submitted.")

16. **Response to ¶ 1, Pg 2 & Reason #39 for Denial**: The Appellant is far more comfortable addressing attorneys rather than Wells Fargo. Simply because, Wells Fargo is an entity created by law and has no human essence. Therefore, Wells Fargo, the legal entity, could not, did not...and...cannot take on a physical human form or become a living human being and submit any "Initial Brief" to the Appellate Court.

(A) *In re James River Coal Co, 360 BR 139 - (Bankr. Ct. E.D Va. 2007)* "[A] corporation, being an entity created by law, is incapable of formulating or acting with intent."

(B) In *State v. Wells, 191 S C 468, 5 S.E.2d 181 (1939), modified by In re: Unauthorized Practice of Law Rules, 309 S.C. 304, 442 S.E.2d 123 (1992),* the Supreme Court of South Carolina stated; "[A] corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys." *State v Wells, 191 S.C. at 480, 5 S.E.2d at 186.*

17. Therefore, it is attorney Anzelmo's argument in ¶ 2 on pg 2, that is rendered moot and without any merit by Merriam Webster's definition of the word **[attach]**.

Merriam Webster's online dictionary defines attach as; "[f]asten or join one thing *to* another, to be or become joined or connected, to associate or connect one thing with another."

18. **Response to ¶ 2, Pg 2 & Reason #40 for Denial**: Attorney Anzelmo's argument is also rendered moot and without any merit by this undeniable fact. Every document in the Appellant's 18 Appendices Wells Fargo has already received an Attested True Copy stamped by the Clerk of Court at the Court of Common Pleas in Orangeburg, South Carolina and are therefore in the Court's Records and are already included in the *Record on Appeal*. This is an important distinction because of *Rule 210(h), SCACR* that clearly states in pertinent parts;

> **(A)** "[E]xcept as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal." This is supported by.....
>
> **(B)** *Fox v. Wardy, 234 SW 3d 30 (Tex.App. 8th Dist. 2007)* "[W]ith limited exceptions not relevant here, an appellate court may not consider matters outside the appellate record. *Siefkas v Siefkas, 902 S W.2d 72, 74 (Tex.App -El Paso 1995, no writ), citing Sabine Offshore Service v. City of Port Arthur, 595 S.W.2d 840, 841 (Tex.1979)*. "[T]he appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record. TEX.R.APP.P. 34.1. The attachment of documents as exhibits or appendices to briefs is not formal inclusion in the record on appeal and, therefore, the documents cannot be considered."

19. In addition to **Reason # 13 for Denial** that is stated in "*Appellant Objects to Wells Fargo's Motion to Strike*" in ¶ 14 on pgs 8-9, there is also **Reason #41 for Denial**;

> **(A)** *Rule 10(c), SCRCP* clearly states in pertinent; "[A] copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is **attached** to such pleading." {**Boldness** added for emphasis}
>
> **(B)** *Shark v. Thompson, 373 NW 2d 859 (N.D. 1985)* "[C]ounsel has provided us with no citations to authority or supportive reasoning to buttress this assertion."

20. **Response to ¶ 3, Pgs 2-3 & Reason #42 for Denial**: Based on Rule *240(c), SCACR*, there are 7 mandatory requirements for filing a motion in the Appellate Court. Missing any requirement is fatal to the motion. [1] All motions or petitions filed in an appellate court shall be in writing, [2] shall state the grounds thereof, [3] shall comply

with the requirements of Rule 267, [4] The pages of the motion or petition and all supporting documents shall be consecutively numbered, [5] Shall include a certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition. [6] **A memorandum with citation of authorities in support of the motion.** [7] Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, **the parties shall file affidavits and other documents in support of their positions.**"

21. Attorney Anzelmo did not filed a *Memorandum with Citations to Authorities* and he did not file any *Affidavit* or any other documentation to support his position/s with his *Motion to Strike.* **Consequently, Wells Fargo's Motion to Strike is fatally flawed and fails for non compliance with the mandatory requirements of Rule 240(c), SCACR**.

22. As stated in the "*Appellant Objects to Wells Fargo's Motion to Strike*", the Appellant must struggle in legal darkness. The Appellant must grope about in ignorance of court procedures and without knowledge of judicial decisions that number into the hundreds of thousands. **Reason #43 for Denial**: It is neither practical nor reasonable for any Judge or Jury to conclude that the Appellant should possess the knowledge of a practicing trial lawyer that may have taken years to accumulate, experience, understand and master. In addition, there are enough precedents that mandate treating pro se litigants with a some degree of respect for their claims and defenses. The following are just a few.

> **(A)** *Erickson v. Pardus, 127 S. Ct 2197 (2007)* "[T]he Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed *pro se* is "to be liberally construed," *Estelle, 429 U S, at*

106, 97 S. Ct 285, and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice")."

(B) *Balistreri v. Pacifica Police Dept., 901 F 2d 696 (9th Cir 1990)* "[T]his court recognizes that it has a duty to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements." *Borzeka v Heckler, 739 F.2d 444, 447 n. 2 (9th Cir.1984)* (defective service of complaint by pro se litigant does not warrant dismissal); *Garaux v. Pulley, 739 F.2d 437, 439 (9th Cir 1984)* "[D]efendants suggest no reason to treat pro se appellate briefs any less liberally than pro se pleadings."

23. **Reason #44 for Denial**: **There is no Appeal to Perfect**. The "*Respondent's Initial Brief*" and "*Motion to Strike*" are fatally flawed. To Amend the documents would require acknowledging the truth. Wells Fargo and its attorneys have been substituting misrepresented, mischaracterized, misstated and distorted facts for truth going on 7 years and there is little hope of that changing in the immediate future.

VII. SUMMATION

24. The Appellant now has presented 44 reasons why Wells Fargo's *Motion to Strike* should be denied. The Appellant does not want the "*Respondent's Initial Brief*", "*Motion to Strike*" or "*Reply to Return to Motion to Strike*" stricken from the record. This might prevent these documents from being used as evidence when compared to the facts.

VIII. CONCLUSION

25. For all the reasons stated in the "*Appellant Objects to Well Fargo's Motion to Strike*" and in this "*Response*"; Wells Fargo's *Motion to Strike* must be denied and this case remanded back to the Circuit Court from which it came for the Jury Trial that has been denied going on 7 years.

Respectfully submitted,

March 11, 2015

/s Dorothy Sistrunk

Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly ***SWORN***, and under the ***PENALTY OF PERJURY*** declares the facts in her "Appellant's Response to Wells Fargo's Reply to Return to Motion to Strike" are true and correct as of her own knowledge. When it comes to matters stated therein that are based upon information and belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts; Re: Case No. 2014-001683, has signed, sealed, attested and executed this 11th day of March 2015 in the year 2015 in City and County of Orangeburg, in the State of South Carolina.

> Rule 11(c), SCRCP clearly states in pertinent parts, "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true "

Appellant's Signature: Dorothy Sistrunk

Notary's Signature as Witness (1): Lillian D Buck

Signed, sealed and delivered in the presence of:

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

On 3/11/15 before me appeared Dorothy Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and by her signature on the "Appellant's Response to Wells Fargo's Reply to Return to Motion to Strike " and this Notary Certification presents this document to the Appellate Court. WITNESS my hand and official seal.

Notary's Signature Lillian D. Buck

Commission Expires My Commission Expires July 24, 2022

(Seal)

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of Common Pleas

Diane Shafer Goodstein, Circuit Court Judge

2014-001683

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

PROOF OF SERVICE

I certify that I served a copy of my "Appellant's Response to Wells Fargo's Reply to Return to Motion to Strike" on Wells Fargo Bank, N.A., by depositing a copy of it in United Parcel Service (UPS), prepaid, on March 11, 2015, addressed to Wells Fargo's attorney/s of record that are listed below.

Today's Date: March 11, 2015

/s Dorothy Sistrunk
Dorothy Sistrunk
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Orangeburg, South Carolina 29115
(803) 268-0716

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Dorothy Sistrunk

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March 11, 2015

The Honorable Jenny Abbot Kitchings Clerk of Court
& Deputy Clerk of Court V. Claire Allen
South Carolina Court of Appeals
POB 11629
Columbia, SC 29211

RE: Wells Fargo Bank, N.A. v. Dorothy Sistrunk
Civil Action Case #2008-CP-38-1024
Appellate Case #2014-001683

Ms. Kitchings and/or Ms. V. Claire Allen

I am new at this so...please advise me of errors and/or any incorrect protocol. I am enclosing my **"Appellant's Response to Wells Fargo's Reply to Return to Motion to Strike"**. In accordance with *Rule 240(e), SCACR*, I am enclosing an original and six (6) copies of my objection; paper clipped and not stapled, and I have also served a copy on all parties listed below.

Thank you.

/s Dorothy Sistrunk
Dorothy Sistrunk

CC:

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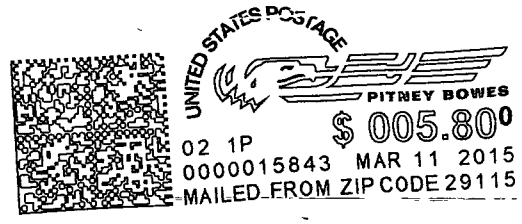

The Honorable Jenny Abbott Kitchings
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South Carolina Court of Appeals
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