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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY
Court Of Common Pleas

FEB 10 2016

SC Court of Appeals

The Honorable George C. James, Jr., Judicial Circuit Court Judge
Case No.: 2012-CP-08-1801

Appellate Case No. 2015-002481

Charles Taylor.....Appellant,

v.

Stop "N" Save, Inc., d/b/a El Cheapo Plus #7 and
Roy Rahal.Respondents.

RESPONDENTS' MOTION TO DISMISS APPEAL OR IN THE ALTERNATIVE
STRIKE IMPROPER PORTIONS OF APPELLANT'S INITIAL BRIEF AND
DESIGNATION OF MATTER FOR NON-COMPLIANCE

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ATTORNEYS FOR RESPONDENTS

Pursuant to Rules 240, 208, 209, 210, and 269 of the South Carolina Appellate Court Rules, the undersigned, as attorneys for Respondents Stop “N’ Save, Inc., d/b/a El Cheapo Plus #7 and Roy Rahal (hereinafter “Respondents”), hereby move this Court for an order striking Appellant’s Initial Brief for deficiencies and dismissing the appeal, or in the alternative, striking improper portions of Appellant’s Initial Brief and Designation of Matter to be Included in the Record on Appeal. In support of this Motion and in accordance with Rule 240(c), SCACR, Respondents have incorporated a memorandum of authority and exhibits hereto.

ARGUMENT

Appellant’s Initial Brief and Designation of Matter to be Included in the Record on Appeal (“Designation of Matter”) contain numerous failures and deficiencies, which are willful violations of South Carolina’s Appellate Court Rules and have hindered Respondents ability to defend this appeal and comply with the Rules. Thus, this Court should dismiss the appeal, or in the alternative, strike non-compliant and improper portions of Appellant’s Initial Brief and Designation of Matter.

I. Appellant’s Initial Brief and Designation of Matter Violate the Form and Substance Provisions of the Appellate Court Rules.

A. Appellant’s Initial Brief Contains Numerous Form and Procedural Deficiencies.

Appellant’s Initial Brief contains numerous form and procedural errors. First, Appellant has failed to include a Statement of the Case in his initial brief. Rule 208, SCACR states that “the brief of appellant *shall* contain under appropriate headings and in the order here indicated . . . a statement of the case,” which “*shall* contain a concise history of the proceedings, insofar as

necessary to an understanding of the appeal” and “shall not contain contested matters.”¹ The use of the word “shall” indicates that Appellant’s inclusion of a Statement of the Case was mandatory. *See Abbeville County Sch. Dist. v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999) (“Since the education clause uses the term ‘shall’, it is mandatory.”). Appellant’s failure to do so is a violation of Rule 208 and fails to properly apprise this Court of the issues before it.²

Additionally, Rule 208, SCACR provides that a

“[B]rief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used.”

Further, Rule 208 states that all briefs shall comply with the form requirements of Rule 267, SCACR. Rule 267 requires double spacing and that briefs be “clean, neat and clearly legible.” Moreover, the typewritten pages must have a blank margin of an inch and a half on the left. *Id.*

Here, Appellant woefully fails to adhere to the aforementioned rules. First, Appellant fails to cite to the specific material being referenced. Instead, Appellant repeatedly uses citations such as “R. p. 000-000” or “Aff’d’s; R. p. 000 para 1.” These examples are merely a few of the

¹ Rule 208(b)(1)(C) further states that the Statement of the Case shall contain:

as a minimum, the following information: the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal; and any changes made in the parties by death, substitution, or otherwise. Any matters stated or alleged in appellant’s statement shall be binding on appellant.

² Appellant’s brief includes a “Factual Statement of the Case.” However, this section includes contested matters and Appellant’s factual assertions in support of his arguments. Thus, it is not properly considered a Statement of the Case.

numerous improper citations to the matters or items Appellant purportedly seeks to rely on and which he designated in his Designation of Matter. However, Appellant's improper record citations have greatly hindered Respondents' and this Court's ability to intelligibly and responsibly respond to his arguments.

In addition to the improper record citations, Appellant's brief does not have a blank margin of an inch and a half on the left, nor does he refrain from using single spacing.³ Not only are these deficiencies violations of Rule 267, SCACR, they also potentially violate Rule 208(b)(5), SCACR, which limits the briefing to fifty (50) pages. In light of Appellant's selective use of single spacing and lack of proper margins, combined with the length of his brief, Respondents cannot discern if Appellant's brief is in compliance with the page limitation of fifty (50) pages set forth in 208(b)(5). Moreover, Appellant's use of italics, bold, and underlining in his substantive arguments is not "clean, neat and clearly legible" and has the effect of distracting Respondents from the purported arguments Appellant attempts to make therein. Respondents are not raising these deficiencies for the sake of argument—rather, the deficiencies, just like the improper record citations, have greatly hindered the reader's ability to understand and respond to the issues Appellant raises.⁴

B. Appellant's Initial Brief and Designation of Matter Contain Numerous Substantive Deficiencies.

Moving beyond Appellant's numerous form failures, Appellant's Initial Brief and Designation of Matter contains numerous substantive deficiencies that he cannot overcome. These deficiencies are enumerated below.

³ Respondents acknowledge that when block quoting, a party is required or encouraged to use single spacing. However, nowhere in Appellant's brief does the single spacing occur during a block quotation.

⁴ Moreover, if Appellant has exceeded the page limit delineated in Rule 208(b)(5), SCACR by failing to comply with Rule 267, SCACR, Appellant has attempted to gain an unfair advantage in briefing.

i. Deficiencies in Appellant's "Factual Statement of the Case"

First, the vast majority of Appellant's "Factual Statement of the Case," is not at all factual. Rather, it is a recitation of his complaint allegations, again with no citation to actual evidentiary support thereof. Moreover, Appellant's "Factual Statement of the Case" contains assertions that, even if couched as facts, are wholly irrelevant to the appeal at hand. Specifically, the following paragraphs are improper for the following reasons:

- ¶ 2 is irrelevant;
- ¶ 3 is irrelevant and contains "facts" not contained in the record below;
- ¶ 4 contains "facts" not contained in the record below;
- ¶ 5 is irrelevant, contains "facts" not contained in the record below, and makes improper and irrelevant references to "drug dealing" and "gun running" of a non-party;
- ¶ 6 contains improper and untrue references to Respondent Rahal's nationality and completely unsupported allegations of forgery⁵;
- ¶ 7 is irrelevant and contains "facts" not contained in the record below;
- ¶ 8 contains "facts" not contained in the record below;
- ¶ 9 is irrelevant and contains "facts" not contained in the record below;
- ¶ 10 contains "facts" not contained in the record below;
- ¶ 11 contains "facts" not contained in the record below and which are otherwise inappropriate for an appellate statement of facts;
- ¶ 12 is composed of statements which are not considered facts, even if true.

⁵ Appellant's continued reference to "Palestinian/Jordanian/Syrian" when mentioning Respondent Rahal and Zaher Mohammad, the owner of Respondent El Cheapo, is abhorrent and such conduct has been severely admonished by our Supreme Court. See *Toyota of Florence v. Lunch*, 314 S.C. 257, 442 S.E.2d 611 (1994) (reversing and remanding jury verdicts where counsel's "abhorrent conduct" consisted of using Oriental features in posters to identify defendants with the Japanese and bombings in closing arguments).

ii. Deficiencies in Appellant's "Arguments" and "Conclusion"

The substance of Appellant's "Arguments" and "Conclusion" sections is merely a continuation of improper citations, allegations, and arguments which are in violation of the appellate court rules. Specifically, Appellant's "Arguments" are improper for the following reasons:

- ¶ 1-A: Contains improper statements of forgery, which were not considered or ruled upon by the circuit court and have never been charged or proven in any court of law (also repeated throughout the brief);
- ¶ 1-B: contains assertions that find absolutely no evidentiary support in the record (specifically the underlying section of the upper paragraph on page 4);
- ¶¶ 1-B; 1-C: contains disingenuous statements regarding Respondents' alleged concessions; despite Appellant's blatantly inaccurate statements, Respondents have opposed each of Appellant's motions to date, in totality, including Appellant's assertion of damages;
- ¶¶ 2-B – 2-L: Appellant never argued the elements of an Intentional Infliction of Emotional Distress ("IIED") claim to the circuit court;
- ¶ 3-J: Contains disingenuous statements regarding an insurance claim, as there is no evidence in the record suggesting Reginald Morton reported a claim to the designated third-party administrator that handles U-Haul claims;
- ¶3-L:
 - Contains improper ramblings regarding Odell Morton's lack of testimony, Respondents' defense counsel's money expended to defend the case, and statements implying that Odell Morton's lack of testimony is a factual admission regarding the rental, all of which are improper and were not before the circuit court;
 - Contains irrelevant references regarding "facts" not supported by evidence or contained in the record before the circuit court (notably the last six lines of page 21 and the first full paragraph of page 22);
- ¶¶ 3-L(a) – 3-L(k): Contains wholly irrelevant information which is not in evidence in the record before the circuit court;
- ¶ 3-K: Contains improper statements of forgery, which were not considered or ruled upon by the circuit court and have never been charged or proven in any

court of law (also repeated throughout the brief);

- ¶ 4-E: Contains improper statements and arguments regarding Respondents' defense counsel "manufactur[ing]" a defense, "making and signing .the necessary 12 false statements" and implying counsel is unethical because the first set of "reasonable" attorneys "quit[]" because of the false defense;
- ¶ 4-G: Refers to Respondent Rahal as a "foreign national"⁶;
- ¶ 4-I: Contains improper statements regarding Respondents' previous defense counsel's "quitting" instead of perpetuating a "false defense";
- ¶5-A: Refers to Mohammad and Respondent Rahal as "Palestinian/Jordanian/Syrian," other "red flags," their "run back to [the] Middle East," and the dangers of seeking collection of a judgment in the Middle East;⁷
- ¶ 5-D: Refers to Mr. Randy Soriano, *pro hac vice* admitted, and implies that his representation of U-Haul entities throughout the country equates to knowledge of agency liability;
- "Important Note(s) 1-10 below": Contains repeated assertions noted herein that were not in the record below and have no basis in fact or law.

These are the most glaring errors and improprieties contained in Appellant's Initial Brief, but they are not the only ones.⁸ In addition to these deficiencies and others, Appellant also continually uses italic sentences, which appear to be case quotations, without citation to the legal authority from which they were derived.

iii. Deficiencies in Appellant's Designation of Matter

Appellant cites numerous items to be included in his Designation of Matter which were not properly before the circuit court and which could not have formed the basis for the appealed rulings of the circuit court.

⁶ See Footnote 5, *supra*, for impropriety of such reference.

⁷ See Footnote 5, *supra*, for impropriety of such reference.

⁸ These improper arguments were addressed in Respondents' Motion to Dismiss for Vexatious Litigation, which is attached hereto as Exhibit A, and before this Court because Appellant has appealed the circuit court's non-ruling on the matter. Moreover, Respondents have fully briefed their legal arguments regarding preservation, abandonment, and improprieties of bald assertions in their Initial Brief, filed contemporaneously herewith.

The South Carolina Appellate Court Rules make clear that Appellant must certify that his Designation of Matter contains no “matter which is irrelevant to the appeal,” Rule 209(b),(c), SCACR, and “only propose[s] to include portions of . . . materials which may be properly included in the Record on Appeal.” Further, “[t]he Record shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. *See also State v. White*, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007 (holding witness statement which was not presented to the lower court could not be properly included in the record on appeal); *see also Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (stating “[w]e previously noted, however, pursuant to Rule 209(c), SCACR, the matter would not be given substantive consideration if it was not presented to the trial court”).

Due to the sheer number of Appellant’s communications and papers sent to the circuit court and/or Respondents since the litigation began, and in light of Appellant’s poor choice of words when describing documents, it is difficult to discern which documents were before the circuit court regarding the appealed order.⁹ However, the following matters, though not an exhaustive list, should be struck from Appellant’s Designation of Matter because they were not before the circuit court on the specific motions:

- Item 16, Appellant’s 10/26/15 Affidavit re: Reginald Morton’s Deposition (sent to circuit court, unsolicited, 12 days after the hearing);
- Item 17, Appellant’s 10/26/15 Affidavit re: Defendants’ 10/14/15 Memorandums (sent to circuit court, unsolicited, 12 days after the hearing);
- Item 29, Appellant’s 5/28/14 Affidavit re: Odell Morton Never Spoke in this Case (filed with circuit court prior to filing of any of the appealed motions heard by the circuit court);
- Item 30, Appellant’s 2/9/15 Affidavit re: Odell Morton valid license when apply to move in (filed with circuit court prior to filing of any of the appealed motions

⁹ Appellant’s improper and unintelligible record citations discussed in section A, *supra*, create further confusion regarding the record and Designation of Matter and therefore warrant dismissal.

heard by the circuit court);

- Item 51, 2 other forge-sign Odell Morton signatures by someone on 2 other u-haul truck rental documents.

In addition to those enumerated and upon information and belief, many of Appellant's other designated items were not properly before the circuit court. Moreover, Appellant has designated numerous items which are irrelevant to the appeal or otherwise not properly considered evidence, including but not limited to:

- Appellant's testimony affidavits, found in Items 16-17; 19; 21-30;
- Appellant's notice to Respondents' of the worsening IIED effects, found in Items 41-46;
- Irrelevant Documents Purporting to Concern Reginald and Odell Morton, found in Items 31; 32; 47.

Additionally, throughout the Designation of Matter, Appellant improperly injects implied assertions into the description of the items to be designated. For example, Item 37 is labeled "The forge-sign 3 U-Haul truck rental documents by reginal Morton." Such injection is utterly inappropriate. The plain language of Rule 210(c), SCACR, requires that the enumerated items be excluded from the Record and not considered by this Court.

These improprieties in the Initial Brief and Designation of Matter discussed in sections i, ii, and iii, *supra*, are in violation of the appellate court rules and have greatly hindered Respondents' and this Court's ability to intelligibly and responsibly respond to Appellant's arguments.

C. Appellant's Appeal Should be Dismissed, or in the Alternative, Portions of the Initial Brief and Record on Appeal Should be Struck.

The aforementioned rule violations and form and substance deficiencies of both Appellant's Initial Brief and Designation of Matter require that the appeal be dismissed, or in the

alternative, the improper portions and items be struck and excluded.

Respondents anticipate that Appellant will attempt to his excuse his numerous violations under the guise of being a pro se litigant. However, “[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 589 S.E.2d 6, 9 n.5 (2003) (emphasis added). Furthermore, “pro se filings do not serve as an ‘impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.”” *Patterson v. Aiken*, 841 F.2d 386, 387 (11th Cir. 1988) (internal quotations omitted).¹⁰

As the Supreme Court advised the bar in *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992), the Appellate Court Rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." The *Henning* court addressed numerous deficiencies in the appellate brief at issue, including that “the components of the brief [were] incorrectly organized and labeled, the issues [were] not distinctively headed, the table of authorities [was] not alphabetized or referenced to the body of the brief, the statement of the case contain[ed] contested matter and omit[ted] required information, and the arguments contain[ed] no citations to the record or to the cases listed in the table of authorities.” *Id.* at *1-2, 415 S.E.2d at 795.

In *Henning*, the Supreme Court noted that an appellate court is justified in dismissing an appeal based upon numerous violations of appellate court rules. *Id.* at *2, 415 S.E.2d at 795.

¹⁰ Respondents also ask the Court to take judicial notice of Appellant’s previous lawsuits in which he appeared pro se, including *Charles Taylor v. Thomas Davis and State Farm Mutual Automobile Insurance Company*, appellate case number 2012-212896. In that matter, Appellant was found to be in violation of the appellate court rules on multiple occasions, and the court held that Appellant repeatedly failed to comply with deficiency orders. Thus, in light of his appellate experience, Appellant cannot feign ignorance of the rules.

Furthermore, Rule 269, SCACR, states that “[w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.”

Here, Appellant’s errors are far greater than those in *Henning*. Not only are the deficiencies and violations discussed in sections A and B, *supra*, in disregard to the appellate court rules, they also have greatly prejudiced Respondents in defending this appeal. The voluminous and permeating deficiencies, both form and substance, have greatly hindered Respondents’ and this Court’s ability to intelligibly and responsibly respond to Appellant’s arguments.

Moreover, the prejudice is circular, as the improper items in the Designation of Matter have led to an improper brief, and Appellant’s improper citations in the brief have prohibited Respondents from discerning which portions of the brief or Designation of Matter, if any, should survive a motion to strike. As such, the only course which remedies Appellant’s willful violations and promotes fairness to Respondents is dismissing the appeal pursuant to Rule 269, SCACR. However, in the alternative, Respondents respectfully request that the Court strike the enumerated portions of Appellant’s brief, any assertions within the brief that are supported by unintelligible record citations, and the enumerated improper items designated to be included in the Record on Appeal.

CONCLUSION

In light of the foregoing, Respondents respectfully move for an Order of this Court striking Appellant’s Initial Brief for the above-cited deficiencies and dismissing the appeal. In

the alternative, Respondents respectfully move for an Order of this Court striking improper portions of Appellant's Initial Brief and Designation of Matter.

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.

By:



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Roy Rahal.Respondents.

PROOF OF SERVICE

I, Regina Maples, the undersigned employee of Gallivan, White & Boyd, P.A., attorneys for Respondents, hereby certify that on February 10, 2016, I served a copy of Respondents' MOTION TO DISMISS APPEAL OR IN THE ALTERNATIVE STRIKE IMPROPER PORTIONS OF APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER FOR NON-COMPLIANCE by United States Mail, postage prepaid to the following:

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February 10, 2016

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ATTORNEYS AT LAW

February 10, 2016

RECEIVED

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SC Court of Appeals

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Charles Taylor v. U-Haul Corporation, et al.
Appellate Case No. 2015-002481
GWB File No.: 8566-1

Dear Ms. Kitchings:

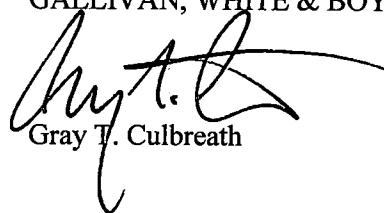
Please find enclosed the original and six copies of Respondents' Motion to Dismiss Appeal or in the Alternative, Motion to Strike Improper Portions of Appellant's Initial Brief and Designation of Matter for Non-Compliance. Please file these documents and return two filed copies to this office via our courier. I have also enclosed my firm's check in the amount of \$25.00 as payment of the required filing fee.

By copy of this letter, as evidenced on the attached Proof of Service, I am serving the *Pro Se Appellant* with the same.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Gray T. Culbreath

GTC/ct

Enclosures

cc: Charles Taylor, *Pro Se Appellant*