

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

Hon. George C. James, Jr., Circuit Court Judge

Appellate Case No: 2015-002481

Charles Taylor.....Appellant,

v.

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

FINAL BRIEF OF APPELLANT

**CHARLES TAYLOR, APPELLANT
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FOR THE APPELLANT PRO SE**

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ALSO-THIS CASE PRESENTS A NOVEL QUESTION OF LAW, SPECIFICALLY A FEDERAL LAW 49 U.S.C. 30106 (2005) i.e. THE "GRAVES AMENDMENT" FOR THIS COURT'S INTERPRETATION AS TO WHETHER OR NOT IT PROTECT AUTO RENTAL COMPANIES, THEIR AGENTS, & / OR AFFILIATES FROM VICARIOUS LIABILITY FOR NEGLIGENCE OR CRIMINAL WRONGDOING. THE APPELLANT ARGUES IT DOES NOT & THE RESPONDENTS ARGUES THAT IT DOES & THE LOWER COURT AGREED WITH RESPONDENTS SUMMARILY. Details under sec. 3 para. 3-E. p.15.

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STATEMENT OF ISSUES ON APPEAL

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FACTUAL STATEMENT OF THE CASE

1. That prior to 5-1-13 Appellant moved out of his house at 334 Myrtle Bch Hwy Sumter County, South Carolina 29153, and moved into the 1 room mini unit-332 Myrtle Bch Hwy Sumter County, South Carolina 29153, (R. p. 40); and;

2. That was done in order to rent the house to supplement Appellant's disability income (R. p. 47) to be able to afford a variety of health, and indeed, lifesaving medications, that disable Appellant, (**must have**), on a regular basis & in a timely manner etc., to prevent a host of health & life threatening, illnesses & complications etc., and to help pay other bills, including property mortgage, etc.; and;

3. That on or about, 5-1-12, a Reginald Morton & Dana Goins with Odell Morton, living for years on Plowden Mill Road in Sumter County S. C. prior to 5-1-12 (Aff'd: R. p. 1176 para. #1) wanted to rent the house, but when Apln't asked them for valid I.D., Reginald Morton & Dana Goins, said they had none at that time & Apln't being suspicious, refused to rent his house to them; but;

4. That being disable himself--Appln't felt sorry for & could relate to disable almost 80 yr old prostate cancer surgery, knee replacements, heart pacemaker, etc. (helpless) Odell Morton (as examp: R. p. 916 & 1176-7 & p. 999 L 22-24) & reluctantly rented house to them--notwithstanding the fact he--Odell Morton too, said he had no facially valid driv.'s license (Aff'd: R. p. 1176 para. #5) other than (R. p. 36 3rd 1), but all that notwithstanding, Appln't rented them the house anyway, for the reasons stated, &;

5. That proved to be a big mistake & eventually led to Appln't having to have them evicted by the Hon. Magistrate Judge Kristy F. Curtis, for Reginald Morton's drug dealing & illegal gun running, from the house that Appln't rented to them, & for non-rent payment, (R. p. 37); (by which time Reginald Morton & Dana Goins had obtain SC check cashing ID's (R. p. 36 1st & 2nd) &;

6. **That on 6-1-13;** Respondent--*Palestinian/Jordanian/Syrian Roy Rahal*; the manager of Resp'd Stop "N" Save, Inc., d/b/a, El Cheapo Plus #7--*owned by Palestinian/Iraqi/Syrian Zaher Mohammad*; all truck rental agents via their store, of U-Haul trucks (R. pp. 137-145); got together with, & rented a U-Haul truck to Reginald Morton intentionally with no driver's license; & knowing he had none (R. p. 210 L. 3-5 & R. p. 211 L. 13-15) & then oversaw him in the forge-signing of Odell Morton's name on the (3) U-Haul truck rental documents; (1).the rental contract; (2).the u-haul equipment damage responsibility requirement; & (3).the R & D Tag; (R. pp. 919-927 signature sec.; & R. pp. 290-291) & in a drug deal (R. p. 953 mid'l & R. p. 1165 para. #7); (**NOTE: copy Odell Morton signature on p. 1179**) &;

7. That he--Reginald Morton--was just fresh out of jail--*a month or so*--on bail for having committed yet another crime (R. p. 950), then came---because he was seething mad & looking for revenge because Appellant had them evicted by Judge Curtis as stated in para. number 5 above; &;

8. That Reginald Morton came with his illegally rented U-Haul truck 6-1-13 to move, (high up on marijuana pot/drugs etc)(R. p. 1173 para. 1st & R. p. 1165 para. #7) & intentionally tried to destroy Aplnt's house (R. pp. 41-43 & p. 1166) which damages ended Aplnt's \$650mt rental income (aff'd: R. p. 1172) &;

9. That as a result--Appellant could not get his--must have--medications et al. para 2 p.1 above, & (R. p. 31 para. #28-29) on a regular basis & in a timely manner, when/if at all; & these are just some of the variety of resulting damages but not limited thereto, to-date--Apln't suffered, suffers & will suffer until his death-(& Respd's were aware: R. pp. 928-943; 963-987; 1184-1201; & p. 1208) &;

10. That the house foundation ultimately collapsed & must be bulldoze & hauled to landfill (R. pp. 1169-1172) from damages cause by Reginald Morton w/U-haul truck on (6-1-13 at which time) Reginald Morton committed the INITIAL IIED on Apln't (Affd's: R. p. 1165 & 1173 & 1174) &;

11. That the foregoing is the gist of Aplnt's jury trial requested 6/9/14 amended complaint for (1).**Gross Negligence** for-property-house-emotional-damages &, (2).**IIED** damages; vicariously brought against--Respd's Stop "N" Save, Inc., d/b/a, EL Cheapo Plus #7, & Roy Rahal, for their knowingly renting Reginald Morton a U-Haul truck w/no driver's license etc. (R. pp. 210-211); **AFTER--they refuse--from beginning to present--demands for damages compensation by Appellant;** (*& that no one have seen the face yet of Zaher Mohammad, the owner of the operation, & neither he nor Rahal (except for 1, 3 hr. forced Rahal deposition outside of court) have ever appeared in court; while being sued for millions of dollars in this over 2yrs old case as of summary hearing date 10-14-15; the significance of which will become clearer later on down in argument sec. #5 of 6 p.34-35 below*); &;

12. The case ended on summary rulings to Respd's & denial of Aplnt's summary motion because, among other things, Respd's / Roy Rahal's--formal judicial admissions signed by their

counsels (1st one: R. p. 34) they were allowed to *in effect*-change their *judicial admissions* at summary, to change the outcome for summary on (rulings-being appealed in Order: R. pp. 5-25); & that it was prejudicial & reversible court err, to allow such change-s, Apln't argues *below*, among other things, **because**, formal judicial admissions, once made (repeatedly) & signed each time by no less than Respd's own counsels, settles the admitted issue (s) as fact(s) from there forward, **regardless**.

ARGUMENTS

Sec: 1 of 6: THE COURT ERR TO DENY APPELLANT'S SUMMARY MOTION ON HIS (VICARIOUS LIABILITY) GROSS NEGLIGENCE CLAIM AGAINST RESPONDENTS

Review Standard--De Novo

(Helpful 1st judicial admissions to remember Respd's admit renting truck to Reginald Morton (R. p. 34)

(& Reginald Morton too--admit-himself that he rented subject u-haul truck from Respd's (R. p. 39):

Paragraph 1-A: Apln't sued Respd's vicariously under (1).gross negligence claim for \$175,700 property (R. pp. 1166-1172) & emotional-manifesting into physical (R. pp. 1184-1208) damages-cause by Reginald Morton because Respd's ("Stop "N" Save, inc. d/b/a El Cheapo Plus #7 & Roy Rahal-hereafter Respd's &/ or Rahal") intentionally rented Reginald Morton a U-Haul truck, with **no** driver's license, (R. pp. 210-211), with which he came & intentionally tried to destroy Aplnt's rental house (R. pp. 41-43 & 1166-1172) & Rahal knew he had no driv.'s license which Rahal *judicial admit* in sworn interro. (R. p. 1147 L.7-8) & *judicially admit* **again** in sworn depo. (R. p. 210 L.3-5 & 211 L.13-15) & Rahal *judicially admit* knowing Reginald Morton forge--sign Odell Morton's name on the U-Haul truck rental documents (R. pp. 919-927 & R. pp. 290-291) (& forgery a felony under SC law w/ up to 10 year prison sentence for the perpetrator-s & all those involved (sc sec. 16-13-10) re sec. 3-G on p.18); & that all of Rahal's, (*Formal Judicial Admissions*), made them established fact from there forward, & as such, could not later be changed &/or contradicted at / in a motion for summary judgment

or at a trial; notwithstanding any other Resps's argument(s); & That in pertinent part-In-Barnes v. Michelotti, 237 Ill. App. 3d 923, 932, 604, N.E.2d 1144, 1151 (2d Dist. 1992) the court held that judicial admissions "withdraw a fact from issue" thus can't be contradicted; because, that would be subversive of all sound practice & tend largely to defeat the ends of justice, if the court should refuse to accept a fact as settled, which is distinctly admitted. Likewise in the case of; Zegarowicz v. Ripatti, 77 A.D.3d 650, 911 NY S2d 69 (2d Dep't 2009)-NY Supr. Court held that, "[F]acts admitted by a party's pleadings constitute--Formal Judicial Admissions. Thus-all Resp'd Rahal's formal judicial admissions, as a matter of law, was settled, & on that basis--but certainly not limited thereto, it was Apln't who was entitled to summary judgment & not Resps's, but for the prejudicial & reversible court err, Apln't argues; & judicial admissions contain in pleadings may be used to support summary judgment--see--Underhill v. Jefferson County Appraisal District, 725 S.W. 2d 301 (Tex. App. Beaum't 1987); & formal judicial admissions "withdraws a fact from issue" & thus may not be contradicted by the party or its witnesses-Knauerbaze v. Nelson, 361 Ill. App. 3d 538, 557-58, 836 N.E.2d 640, 658 (1st Dist. 2005). As one Illinois Appeals Court has held, a "party may contradict a judicial admission neither with his own contrary testimony nor that of other witness." Caponi v. Larry's 66, 236 Ill. App.3d 660, 671, 601 N.E.2d 1347, 1355 (2d Dist. 1992). **That the purpose of the rule is to remove the temptation from a party & their witnesses etc. to commit perjury-re-p. 21 and 32.**

Paragraph 1-B: That as to the 4 NEGLIGENCE elements to recover; (& GROSSNESS FOR PUNITIVE):

1st NEGLIGENCE element---that as to the 1st element--the court correctly acknowledged the Resps's duty to Apln't (R. p. 5 L. 16-17) satisfying 1st element; [more clearer tho--the duty owed Apln't by Respd's. was--a legal common law duty by operation of law--not to endanger (the public) Apln't & /or his property by renting vehicles to unlicensed persons see: sc. sec. 56-1-580 & 56-1-500] Apln't argues; & Respd's. arguing they had no such

Duty here, is to argue that; you can rent to unlicensed persons, all day long--*every day*--& they can then go & kill, maim, &/ or tear up—whatever--without fear of any liability to the renter, because they can then argue they had no duty to do otherwise, Apln't argues; & that Respd's argument (Order: R. p. 15 #1) seems untenable to-on public policy grounds, notwithstanding its illegality & criminality (sc-56-1-580; 56-1-440; 56-1-500; 56-1-20 & 56-1-620) Apln't argues; & that also--both the Resp'd Roy Rahal, & Reginald Morton, had **same combined** legal duty owed to Apln't, *to not* do as stated above, Apln't argues; (note: Respd's. being sued vicariously for all Reginald Morton conduct & resulting damages because they rented him the truck 1.wd/no license; 2.knew he had none; 3.did it intentionally; & 4.oversaw Reginald Morton forge--sign Odell Morton's name on the U-Haul truck rental documents to make it appear-bed ridden-dying sick-Odell Morton (Aff'd: R. p. 1176 & see para 4 on p. 2 above) had been there & did it—all admitted by Rahal's own stated judicial admissions) &

2nd NEGLIGENCE element--that as to the 2nd element—finding by the court that the duty was not breached by Respondents (Order: R. p. 16 #2) **but** in light of para. 1-A thru 1-B above; it seems quite obvious that Respd's combine with Reginald Morton to breach said duty in violating sc. law: 56-1-580, which makes it--criminally-unlawful for a person to “authorize” or “knowingly permit” a vehicle “under his control” to be driven, by a person not authorized to do so in “violation” of the motor vehicle statute, & see---all other similar sc. sec. 's violated by Resp'd Rahal & Reginald Morton (see: 5th L this p.) all “combining &/or concurred” to result in all Aplnt's proven damages (R. pp. 928-943, 963-987, 1184-1201, & 1208), & thus Respd's clearly indeed--did breached their duty as stated in para.1-B

1st negligence element para. above et al. etc., Apln't argues; & remember Resp'd Rahal have *judicially admitted* it all--**beginning** “Feb. 11, 2014” & signed by his own counsels **beginning** “Feb. 11, 2014”—see—(R. p. 34 & R. pp. 210 — 211), Apln't argues; &

3rd NEGLIGENCE element--that re the 3rd element, that Apln't suffered injury & damages, neither of which was disputed by Respd's at sum. hearing, & thus both, admitted; & even if it wasn't, it was obvious & proven (R. pp. 41-43 & R. p. 48-55 & R. p. 928-943 & R. p. 963-987 & R. p. 1184-1201 & R. p. 1208 & R. p. 210-211 & R. p. 301) Apln't argues, &;

4th NEGLIGENCE element--that re the 4th element---the injury & damages was proximately caused by Respd's' breach of their duty beginning under para. 1-B on bottom p. 5; the proximate cause is obvious, because, without their said & subject breach, Reginald Morton couldn't have rented a truck from nobody to commit the said, shown, & proven injury & damages with; having no driver's license to rent with, Appellant argues; &;

5th GROSSNESS--that as to the grossness of the negligence, it too is quite obvious because Respd Rahal, again, judicially admitted, that he intentionally rented Reginald Morton a truck knowing he had no license (as stated/shown); violating sc criminal laws (stated on p. 6), & thus, as a matter of law, the grossness is assumed &/or is self-evident (R. pp. 210-211), Apln't argues; &/or; whether one's actions is grossly negligent is for a jury to decide, unless the evidence, as above & throughout herein & in the ROA, supports only one reasonable inference, re: Clyburn v. Sumter County School District 17, 317 S.C. 50, 451 S.E.2d 885 (1994).

Paragraph 1-C: That as to Aplnt's, *property damages total loss \$175,700 +*, sought under his gross negligence claim--these damages was proven (R. pp. 1166-1174 et al) & / or not denied by Respd's & thus was admitted & / or was a jury issue at a minimum, & based on the foregoing, to award Respd's' & deny Aplnt's summary, both were reversible court err, Apln't argues; &;

Paragraph 1-D: That as to Aplnt's, *emotional—manifesting into physical damages*, sought under his gross negligence claim, these damages was not denied by Respd's, &/or was proven, &/or was supported by the evidence in (R. pp. 48-54 & 1184-1201 & 1208) & as to amount of medical bills (R. pp. 171 & 963-987) & any amount for pain & suffering (*a jury question*) at minimum & based on the foregoing--to award Respds' & deny Aplnt's summary--both were court err--Apln't argues--&;

Paragraph 1-E: That as to Aplnt's, *punitive damages*, sought under his gross negligence claim, the liability for these damages was admitted--see Rahal's *judicial admissions* (R. pp. 210-211 et al.), after which--punitive damages amount was (*a jury question*) at minimum & based on the foregoing, to award Respds' & deny Aplnt's summary, both were court err, Apln't argues; &;

Paragraph 1-F: That all the documentations, arguments, exh.'s, etc., that Apln't put forth in support of summary on his gross negli'g. claim are listed on this hear. ex.'s list (R. pp. 156-320 & 928-1201) &;

Paragraph 1-G: That in light of paragraphs 1-A thru 1-F above, taken in any parts or as a whole, & viewed in light most favorable to Respd's, it's clear it supports but one reasonable conclusion, which is, Apln't should've been awarded summary vicarious liability on his gross negligence cause of action, plus the undisputed actual property damages, (\$175, 700.00 + : R. pp. 1166-1174), & a jury trial to determine 1st) the amount of injury damages & 2nd) the amount of punitive damages, & neither was done due to, prejudicial & reversible court err, Apln't argues; & also; [That Summary Judgment is appropriate also when, "plain palpable, & indisputable facts exist on which reasonable minds cannot differ",--see--Byerly v. Connor, 307 S.C. 441, 445, S.E.2d 796, 799 (1992);-----(End Section 1 of 6; & ; Begin Section 2 of 6);

Sec: 2 of 6: THE COURT ERR TO DENY APPELLANT'S SUMMARY MOTION ON HIS
(VICARIOUS LIABILITY) IIED CLAIM AGAINST DEFENDANTS:

Review Standard--De Novo

Paragraph 2-A: Apln't sued Respd's vicariously for IIED for \$25,000,000.00 +; for resulting damages (re: para. 2-A---2-M: & R. pp. 928-943) & (iied damages ongoing to date: R. pp. 1184-1201 & 1208); because Respd's intentionally rented Reginald Morton a U-Haul truck w/no driv.'s license (R. pp. 210-211), with which Reginald Morton came & intentionally destroyed Aplnt's rental house (R. pp. 1140-1139) & in the process committed the initial IIED on Apln't (R. p. 1173 & 1165) & Rahal knew Reginald Morton had no driver's license--which Rahal, judicially admit, in his sworn interrog. (stated / shown before) & judicially admit again in sworn depo. (stated / shown before) & Rahal judicially admit knowing Reginald Morton forge--sign, Odell Morton's name, on the U-Haul truck rental documents (R. pp. 290-291--& forgery a felony-see-argument in para. 3-G below) & Rahal judicially admit he was aware of Aplnt's suffering from Morton actions (R. pp. 269-271) & so like under Aplnt's gross negligence claim, Respd's are vicariously liable for all Aplnt's damages suffered under the IIED claim as well--Apln't argues----if the 4 IIED elements were proven at summary; & that they were, Apln't argues; & here's the testimony / proof--in the record;

Paragraph 2-B: That as to the 4 IIED elements to recover; (& THE TRAUMA FOR THE PUNITIVE):

1st IIED element--Respd's vicariously, (i.e. Reginald Morton initially), intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain such distress would result from his conduct (R. pp. 1193-1196, *esp. para. 7 p. 1194*; & R. pp. 1165 & 1173) the testimony / proof, Appellant argues &;

2nd IIED element--The conduct was so extreme, & outrageous, so as to exceed all possible bounds of decency & must be regarded as atrocious, & utterly intolerable, in a civilized community, which conduct would cause an average member of the community, to immediately react in outrage (R. p. 1165 & 1173-4 & p. 951 & **2-D** below) the testimony/proof Apln't argues &

3rd IIED element--The actions of Respd's combined w/ that of (Reginald Morton's) caused Apln't emotional distress (R. pp. 48-54; 928-943; & 1208) the testimony/proof Apln't argues &

4th IIED element—The distress suffered was severe such that no reasonable man or woman could be expected to endure it (R. pp. 1184-1201 & 1208) the testimony/proof Apln't argue &

"5th TRAUMA": re: *Tudor v. Charleston Area Med. Ctr., Inc.*, 506 S.E.2d 554, 573-76 (W. Va. 1977) when emotional distress is accompanied by physical trauma, punitive damages too, may be awarded on an IIED claim (R. pp. 48-54 and 928-943 & 963-987 & 1184-1201 & 1208 & p.1194 para. 8-9) the proof, Appellant argues &;

Paragraph 2-C: re in--*Padget v. Colonial Wholesale Distributing Co.*, 232 S.C. 593, 103 S.E. (2d) 265 (1958), we affirm recovery of damages for shock, fright, & emotional upset despite the absence of any physical impact between the plaintiff & defendant. In that case, plaintiff alleged that his skin rash resulted from his emotional distress proximately caused, when the truck of defendant collided with plaintiff's house; & in relations to Aplnt's (R. pp. 48-54; 928-943; 963-987; 1184-1201 & 1208) &;

Paragraph 2-D: Further to describe the initial IIED conduct of Reginald Morton-which is: **(1).** *Morton's trying to destroying Aplnt's rental house while he watched--in obvious helpless & severe distress;*

(2). which house foundation eventually collapse from Morton's 6-1-13 conduct; (3).which rental income stopped & Apln't couldn't get the variety of medications as stated in para. #2 on p.1 above--& for the reasons stated in para. # 8, 9, 10 on p. 3 above; (4).& when such conduct was done intentionally to a disable person; (5).all as stated & shown throughout---that is extreme conduct; that is outrageous conduct; & that is conduct that exceeds all possible bounds of decency & must be regarded as atrocious & utterly intolerable in a civilized community—even where it must be taken cumulatively, Apln't argues—see--e.g., Boyle v. Wenk. 392 N.E.2d 1053-56 (Mass. 1979)--A plaintiff may be able to show outrageous conduct by showing a series of facts that are insufficient when considered alone, but are deemed sufficient when considered cumulatively;--& in the instant case add cumulative all Reginald Morton's conduct combine w/ Respds' conduct; it satisfies IIED element-s as required & (Aff'd R. p. 1165; Aff'd R. p. 1173; Aff'd R. p. 1174; Aff'd R. p. 951; & et al stated) Apln't argues &:

Paragraph 2-E: Effect of Relationship of Parties; *the extreme & outrageous character of the conduct of a person may arise from an abuse of a position or relationship to a plaintiff, which give such a person actual or apparent authority over a plaintiff or power to affect a plaintiff's interest; as in instant case per Respds' defense (see: sec. #4 below: & R. pp. 928-943 & 963-987 & 1184-1201; & 1208) & as to former tenant Reginald Morton, see (R. p. 1194 especially para. #6-7); Apln't argues, &;*

Paragraph 2-F: Susceptibility of Appellant; *the extreme & outrageous character of a person conduct may arise from that person knowing that a plaintiff is peculiarly susceptible to emotional distress by reason of some physical or mental conditions or peculiarity. The conduct may become extreme & outrageous in the face of such knowledge, where it would not be so--if that person didn't know such; as in instant case per Respds' defense (see: sec. #4 below: & R. pp. 928-943 & 963-987 & 1208) &; as to former tenant Reginald Morton, see (R. p. 1194 especially para. #6-7); Apln't argues &;*

Paragraph 2-G: Sometimes the very Nature of the Conduct in Question; will suffice to demonstrate that the victim suffered severe emotional distress. If the conduct is particularly disturbing, the plaintiff may not have to offer much evidence to support their claim; the conduct itself is so reprehensible that the emotional distress is almost assured; as in the instant case per Respsd's defense (see: sec. #4 below: and R. pp. 48-54 and 928-943 and 963-987 and 1184-1201 and p.1208), and as to former tenant Reginald Morton, see (R. p. 1165 & 1173 & 1174 & 951 & et al. stated) &;

Paragraph 2-H: Bodily Harm; also acts as an indicator that severe emotional distress has occurred. ulcers or headaches, for example, can show that plaintiff has suffered severe emotional distress that has reveal itself through these physical symptoms re instant case & (R. pp. 1193-1197 & 1194 para. 8-9) &;

Paragraph 2-I: Extreme & Outrageous Conduct; is anything that would be considered intolerable in a civilized society; (see: para. 2-D above & R. p. 1165 & 1173 & 1174 & 951 & section #4 below) &;

Paragraph 2-J: Although; a physical injury is not an element of an IIED claim, a showing of physical/ emotional injury serves as evidence of severe emotional distress. M. H. v. Contas Family Servs., 448 N.W.2d 282, 290 (Minn. 1992); as in instant case & (R. pp. 48-54 & p. 171 & p. 176 para. 8-9) &;

Paragraph 2-k: Bald Assertions, etc; that this paragraph is to address specifically the Respd's (Order: court ask them to prepare: R. pp. 5-23), wherein they repeatedly used the phrase as to Aplnt.'s most serious 2 claims of: (1).Gross Negligence & (2).IIED; as "bald assertion-s etc."; (R. p. 14 bot'm L.3 & R. p. 15 last para. L. 1 et al.) & "no proof etc." (R. p. 9 1st para. L. 11 et al.) & to refute such—Apln't simply asks the court to--see--this whole brief & corresponding (ROA) &;

Paragraph 2-L: re: Causation; Courts have held that causation can be found where emotional distress was either the intended or the “primary consequences” of Respds’ conduct, or where there is a “high probability that the Respds’ conduct would inflict severe emotional distress”. The testimony of the claimant alone, if sufficiently specific, may be enough to meet the burden of proving an actual injury caused by Respds’. *See-e.g., Webner v. Titan Distribution, Inc., 267 F.3d 828, 836-37 (8th Cir. 2001) (holding that a reasonable jury could have found that plaintiff was entitled to compensatory damages even though the only evidence he presented was his own testimony--that immediately after he was terminated, he felt “empty” like he lost his best friend & that there was “a hole in his chest”, despite the absence of medical, or expert evidence; a plaintiff own testimony may provide ample evidence when heard in combination with the other circumstances surrounding plaintiff’s termination-Mathieu v Gopher News Company, 273 F.3d 769, 782-83 (8th Cir. 2001); (Testimony by former customer services manager that he lost his job of thirty-four years--was forced to reduce his standard of living & had become depressed was sufficient to support a jury’s award of \$165,000.00 for emotional distress, despite the fact that he did not offer expert testimony. The testimony of a medical expert, is not a prerequisite for recovery for emotional harm and a plaintiff’s own testimony, along with the circumstances of a particular case, can suffice to sustain the plaintiff’s burden). See also Price v. City of Charlotte, 93 F.3d 1241, 1254 (4th Cir. 1996), cert. denied, 520 U.S. 1116 (1997); based on a comprehensive survey of circuit case law, the court concluded that, “a plaintiff’s testimony, standing alone, can support an award of compensatory damages for emotional distress”); Williams v. Trader Publishing Co., 218 F.3d 481, 486 (5th Cir. 2000)-(upholding a jury award of \$100,000.00 where plaintiff “testified specifically as to her emotional distress due to the [sex discrimination] discharge from her position [with defendant] resulting in sleep loss, beginning smoking & severe loss of weight”; “[s]uch evidence, although solely the testimony of the plaintiff, is sufficiently specific to support the jury’s determination of compensatory damages”). But of Brady v. Fort Bend County, 145 F.3d 691, 720 (5th Cir. 1998); (“when a plaintiff’s testimony is particularized & extensive, such that it speaks to, the nature, extent, & duration, of the claimed emotional harm, in a manner, that portrays, a specific & discernable injury, then that testimony, alone may be-sufficient” &;*

Paragraph 2-M: That in light of paragraphs 2-A thru 2-L above, taken in any parts or as a whole, it is clear that it supports but one reasonable conclusion, which is that, Apln't should have been awarded summary vicarious liability on his IIED cause of action plus the undisputed actual damages (R. pp. 1169-1172 & for R. pp. 48-54; 928-943; 963-987; 1184-1201 & 1208, et al. as stated) &/or a jury trial to determine, 1st) the amount of actual damages &, 2nd) the amount of punitive damages & neither were done due to prejudicial & reversible court err, Apln't argues, & that; [Summary Judgment should be granted also when, "plain palpable & indisputable facts exist on which reasonable minds cannot differ",-- see--Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 240, 672 s.e.2d 799, 802 (Ct. App. 2009)];-----**(End Section 2 of 6; & ; Begin Section 3 of 6);**

Sec: 3 of 6: THE COURT ERR TO GRANT DEFENDANTS' SUMMARY MOTION

Review Standard--De Novo

Paragraph 3-A: Because--see arguments in sections #1 (1-A..1-G) & 2 (2-A..2-M) all above; &;

Paragraph 3-B: Because--Resps' summary 10-14-15 memorandums weren't timely receive to the court before or during hearing (trans. R. p. 628 L. 1-25; R. p. 629 L. 1-25; R. p. 630 L. 1-3; R. p. 631 L. 1-17; R. p. 612 L. 1-25; R. p. 613 L. 1-21; R. p. 716 L. 22-25; R. p. 717 L. 1-9), & which memorandums Apln't never received a copy of & could not therefore address any issues therein before or during the 10-14-15 dispositive hearing & for more reasons in (Aff'd: R. pp. 1160-1161); thus to rely on, consider & use said Resps' memorandums as the basis to grant summary to Respd's, was prejudicial & reversible court err, Apln't argues &;

Paragraph 3-C: Because Respd's raised only 3 issues for summary in their motion (R. pp. 90-91), (1).the graves amendment re para. 3-D below; (2).the lack of IIED expert testimony re para. 2-L above;

(3).re agency as to Rahal re para. 5-A below; & since no other Respd's memorandums was timely received to the court as stated in para. 3-B above, & therefore to award summary to Respd's & deny Aplnt's summary in light of the foregoing, was prejudicial & reversible court err, Appellant argues; and;

Paragraph 3-D: Because the "*Graves Amendment*" wasn't asserted as a defense in Respd's amended 7-1-14 answers (R. pp. 56-71) as required by SCRCP 12(b) (*in pertinent part that: every defense, in law or fact, to a cause of action in any pleading, shall be asserted in the responsive pleading thereto*) thus Respd's were barred from asserting such defense much later on & to allow it & base summary on it to Respd's is prejudicial & reversible court err, Apln't argues &;

Novel Question of Law re the Graves Amendment: 49 U.S.C. 30106(a)(2) (2005) Below:

Paragraph 3-E: Because-the court err in analyzing the graves amendment as the plain reading of it clearly shows that it, does not, bar claims for vicarious liability, based on negligence & criminal wrongdoing (graves sec. (a)(2); R. p. 12); therefore Respd's are liable for any & all (emotional injury, property, & IIED) damages, their negligence & criminal wrong doing caused 3rd parties i.e. Apln't in instant case. Thus--the court interpreting the graves amendment as (*"the graves amendment clearly bars any claim for vicarious liability"* R. p. 5 4th para. or L.15) & (*"Plaintiff's claims against El Cheapo & Mr. Rahal are dismissed because they are barred by federal law"* (Order; R. p. 14 L. 3-4) is prejudicial & reversible court err, Apln't argues &; Furthermore: Because in Respd's 5-12-15 summary motion they argued in para. # 1 therein that, "Respd's cannot be vicariously liable (*pursuant to the Graves Amendment*) to Apln't based on mere ownership or rental of the U-Haul truck" (Respd's sum mot: R. p. 90 para. 1); BUT Aplnt's argument is that Respd's are so liable because Rahal rented the said truck

to Reginald Morton (1).w/no license, (a criminal offense in SC. 56-1-580/500), (2).knew he had no license, (3).did it w/intent, (4).oversaw Reginald Morton forged-signed (a criminal offense in SC. 16-13-10) Odell Morton's name on the U-Haul rental documents & (5).has judicially admitted it all, (R. pp. 290-291 & R. pp. 919-927 & R. pp. 202-203 & R. pp. 210-211), & thus the graves amendment don't protect him against his admitted negligence & criminal wrongdoing. & the subject rulings just stated above p.15, is prejudicial & reversible court err, Apln't argues; & Furthermore: Because, when one stops & think about it, ref: the, "Graves Amendment", why would the United States Congress or anyone else-have an interest in protecting ones negligence & criminal wrongdoing? Elementary thinking says--that--couldn't have been the intent of the Graves Amendment when it was contemplated & passed into federal law, Appellant argues; and; Resp'd's arguing from beginning to present that it was; is an obvious, specious, & frivolous argument within the meaning of SCRCP 11 & S. C. Section 15-36-10, Appellant argues; & Note: negligence & criminal wrongdoing is exactly what Resp'd's are charged with--i.e.--renting Reginald Morton a u-haul truck--in a drug deal-w/ no driver's license-violating sc criminal section 56-1-580, knowing that he had no driver's license, doing it intentionally, & then oversaw Reginald Morton forge-sign-bed ridden-dying sick-Odell Morton's name on the u-haul truck 3 rental documents, to make it appear, as if though, Odell Morton had been there--& done it all; & Resp'd Rahal have admitted it all as stated many times before; & thus the Respd's--defense's argument from the beginning to now is that such is protected by the Graves Amendment-as was intended by Congress when it was contemplated & passed into federal law in 2005; & of course the Apln't argues to the contrary; & that's really the sum total of the whole difference in this case as to the summary judgment motions re law; & the lower court erroneously agreed w/ the Respd's. on this dispositive case turning point issue of the Graves Amendment, the main issue

to be resolve here on appeal; & the other main issue to be resolve here on appeal, being who Rahal rented the truck to--Reginald Morton or Odell Morton; & again the lower court erroneously agreed with Respd's on this case turning point issue of who (the court said--Odell Morton) Rahal rented the truck to--notwithstanding--Rahal's own repeated sworn testimony that he rented the truck to Reginald Morton (R. pp. 210-211 & 202-203) & even R. Morton's own early admissions that he rented it (R. p. 39) before later changing to (Order: R. p. 14 bot'm (1) of (3)) Apln't argues & in a case raising a novel question of law, as herein w/ the-US Graves Amendment--the Appellate Court is free to decide the question w/ no particular deference to the Lower Court--re: I'On, L.L.C. v. Town of Mount Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000); and;

Paragraph 3-F: Because the court err, as to SC valid driver's license law; in that it clearly state the particulars of when a person has a valid driver's license under S C law--controlling law in this case--(SC. sec. 56-1-20; 56-1-500) thus Odell Morton--a SC resident (Affd's: R. p. 1176 para. 1) & it's not even claim Odell Morton followed as required (SC DMV 90 DAYS LAW: R. p. 1183) thus it's self-evident that Odell Morton did not have a valid driver's license, as a matter of SC law, thus, it was prejudicial & reversible court err, to rule he did, Apln't argues; **but** assume he did; his whereabouts on morning the truck was rented 6-1-13--is still at home--bed ridden (Affd's: R. p. 1150 para. 1 & R. p. 1176 para. 6) thus at minimum this shows a jury factual issue, if it was possible-&-if Odell Morton was even capable/able (re para 4 p.2 above & R. p. 199 & 1176) to rent & drive such moving truck on 6-1-13-even if he had a valid driver's license under SC law, which he did not as shown, Apln't argues; thus it was prejudicial & reversible court err, to award summary to Respd's, to the exclusion of this evidence, & a jury trial, to decide the facts of the matter as to who in fact it was, Odell Morton or Reginald Morton, Rahal swore he rented said truck to on 6-1-13; **if** Rahal's sworn judicial admissions wasn't good enough for summary; a reasonable jury could have found it was Reginald Morton who rented it anyway;

& award vicarious liability to Apln't against Respd's for all Aplnt's proven damages suffered, (R. pp. 1169-1172 & 928-943 & 963-987 & 1184-1201 etc.) for their renting Reginald Morton a U-Haul truck w/ no driver's license-knowingly & intentionally (R. pp. 210-211) all Apln't argues; &;

Paragraph 3-G: Because the court err not finding forgery a felony under SC law 16-13-10-because if it had been properly found so, as defined under sc law sec. 16-13-10, then Respd's couldn't have been erroneously awarded summary judgment, at least not on Aplnt's, gross negligence claim-due to their overseeing /participation / enabling /of Reginald Morton's forgery of Odell Morton's name on the 3 U-Haul truck rental documents which was--judicially admitted--by Respd's Rahal in his sworn depo. (R. pp. 290-291 & p. 772 L. 1-16 & R. pp. 919-927), & interrog. (R. pp. 923-924) & if not summary to Apln't on that basis a reasonable jury could've found Respd's grossly negligent; thus vicariously liable to Apln't on his gross negligence claim for all resulting damages caused by Reginald Morton--be it property damages, NIED, IIED & or other such proven damages, & therefore to award summary judgment to Respd's, such was prejudicial & reversible court err, Apln't argues; & furthermore, if such forgery had been correctly found to be a felony as it is under SC law, Apln't would--himself--have been entitled to summary judgment on liability, on at least his vicarious gross negligence claim, due to said judicial admissions by Rahal (that Reginald Morton forge-sign as shown), Apln't argues, &;

Paragraph 3-H: Because--to consider, rely on, & use Reginald Morton's deposition throughout its summary Order; for reasons in (Aff'd: R. pp. 1151-1159 & R. p. 629 L 9-25 & 630 L 1-4) the court err using such depo., Apln't argues; see N C Supr. Ct. has recognized the right to cross-examine is "absolute & not just a privilege" & its denial is "prejudicial & fatal err" see State v. Short, 322 NC. 783, 791 (1988) (quoting Citizens Bank & Trust v. Reid Motor Co., 216 N.C. 432, 434 (1939)); and;

Paragraph 3-I: Because--contrary to any other argument-s on the subject, Reginald Morton himself "acknowledge" that he rented the subject truck in this U-Haul truck rental document (which pertinent part states: "I, Reginald Morton, ACKNOWLEDGE that I rented from the El Cheapo Plus #7 on 6/1/13 am, & contract no: 98200861..." see-with 6-9-14 amended comp. p. 13: (R. p. 39) & (see--Rahal judicial admission-s beginning 2-11-14 & in w/ 6-9-14 amended comp. p. 8: (R. p. 34) & sign by Rahal's counsels & (re-the false defense: R. p. 95-131 & Rahal depo: R. p. 200-203) & So the defense's foundational argument, in & for the subject order / judgment, that Reginald Morton, "didn't rent the truck", violates S.C. Rule 11 & 15-36-10, Apln't argues; & thus the court prejudicially & reversibly err, to award Respd's summary, Apln't argues; &

Paragraph 3-J: Because-Reginald Morton also reported his damage claim to U-Haul truck insurer Repwest (R. p. 301 & pp. 218-220) vs. what Morton change to in (Order: R. p. 14 ft. note #1-3 on that page) & (for more specific re Reginald Morton-see-para. 3-L-a below on bot'm p.23--p.25) &:

Paragraph 3-k: Because it is incorrect that, "Throughout the various iterations of the Complaint, Plaintiff alleges that, on June 1, 2013, Mr. Rahal, the manager of El Cheapo, rented a U-Haul truck to---Reginald Morton and Odell Morton"; as stated in the (Order p. 2 / 3rd para. L. 1-3. R. p. 8); Apln't never stated in his Complaint or otherwise anywhere in the record, that Rahal rented a truck to **Odell Morton**; that's claim as the Defense's defense; & Aplnt's suit is based on Rahal, by his own judicial admissions-rented the truck to Reginald Morton, etc. as stated; (see: R. pp. 202-203 & R. pp. 210-211 & R. p. 39 & R. pp. 290-291 & R. pp. 200-201) & it to was, judicially admitted-by counsel at hear'n (R. p. 622 L's 2-7 & 23-25 & R. p. 674 L.19-25 & 675 L.1-25); & as to Reginald Morton depo. see (R. pp. 618-621 & 716 L.17-22 & 1151-1152) Apln't argues &;

Paragraph 3-L: Because--the court err too, as to other fundamental, genuine, & material issues, pertaining to, Odell Morton, Reginald Morton, and Respondent Roy Rahal, as follows;

1st As to Odell Morton: as stated, he have not spoken "a word" in this case since it begin; & he could have confirm by now in an affidavit at any time before now that (yes-I did rent that U-Haul truck on 6-1-13 & here's a copy of my facially valid Maryland drv.'s license except (R. p. 36 3rd 1) & that no—I was not a SC. resident while living at Aplnt's house & (before there) on Plowden Mill Road in Sumter County SC. for years from 6-1-13 going back (Aff'd: R. p. 1176 para. 1); & that I had a valid driver's license before & on 6-1-13 under SC law, (section: 56-1-20), & that yes--I am that Odell Morton listed in that Maryland DMV document (R. p. 1034), & yes--the address in that document is where I was living on 6-1-13 (R. p. 1034 upper left address) & no--I was not at 334 Myrtle Bch Hwy in Sumter dying sick in bed on the morning of 6-1-13 (Aff'd: R. p. 1150 para.1); & (Aff'd: R. p. 1176 para. 6) & no--R. Morton didn't forge-sign my name on the rental documents because I sign those documents myself 6-1-13 (Aff'd: R. p. 1150 para. 1 & Aff'd: R. p. 1176 para. 6) **but again**, he (Odell Morton) haven't spoken a word in this case (re the record). One can only guess as to why, (besides not wanting to perjure himself--sc. sec. 16-9-10/ 20 & re his refusing to sit for deposition--see hear. trans. R. p. 598 L 21-25) given what's at stake in this case--all surrounding what he-Odell Morton, did or didn't do back on 6-1-13. The defense in this case--*have traveled all over*--spending money (hear'n transc: R. p. 714 L. 6-7) for the Defense i.e. U-Haul (see: section # 5) but could not get 1 aff'd or 1 copy of the "so call facial valid Maryland drv.'s license" except (R. p. 36 3rd 1) from their only-*alibi*-Odell Morton---why is that? So could a reasonable jury not; as just 1 example; interpret that to mean that--he (Odell Morton)--did not do what the defense said he did--& therefore, the Resp'd's rented the U-Haul truck to Reginald Morton as sworn to by Resp'd Rahal himself

(R. pp. 210-211 & p. 339 L. 22-25) & judicially admitted by the others too (R. p. 39 & p. 622 L. 2-7 & p. 675 L 17-25) & thus Respd's were gross negligent & thus vicariously liable for all Aplnt's resulting proven damages; from the U-Haul being rented to Reginald Morton knowingly with no drv.'s license (R. pp. 210-211 & p. 39); could a reasonable jury not have found that as above? Yes-Apln't believe, but for prejudicial & reversible court err, on summary to the Respd's, Apln't argues; and;

2nd As to Respondent Roy Rahal; as stated & shown throughout, he repeatedly judicially admitted he rented the U-Haul truck to Reginald Morton on 6-1-13 (R. p. 210-211 & p. 339 L.22-25 & p. 203); & as the Resp'd in this case being sued for millions of dollars in total damages, Rahal ought to know who he rented the truck to. Why would he swear under the penalty of perjury (sc. sec. 16-9-10) that he rented the U-Haul truck to Reginald Morton if he didn't? **Just Look at Resp'd Roy Rahal's own defense disputing him**-(re who Rahal rented the truck: R. p. 9 L.1-2) perjuring their own (Resp'd **Rahal** sworn testimony re who he rented the truck: R. pp. 210-211 & pp. 200-201) or perjuring their own witness (SC 16-9-10/20) Morton (R. p. 1021 L.14-15) & in (Order: R. p. 14 bot'm ft' note) who is a fugitive--Reginald Morton (R. p. 167) hiding out in Balt. Md. except from Respds. (Morton depo.) after jumping bail from SC (R. p. 950) on 6-1-13 with same U-Haul truck he forged Odell Morton's name on the rental documents to get (R. p. 290-291 & p. 339 L.22-25) & being the same Reginald Morton (who once bragged out of his own mouth when he lived next door that he never does anything without "getting paid-nothing" as he emphasized the nothing), which Reginald Morton that will do & say anything for money, to dodge the SC bounty hunter et al with; which bounty hunters every now & then, comes by here looking for him or where he lives, but Apln't can't give them a correct address because every address given in this case by the defense for Morton turn out to be a false one which Rahal say he had nothing to do with that one (R. p. 891 L.3-16 & pp. 988-989). But in any case,

if there were any dispute re *Rahal judicial admissions* (which admissions already ref many times before), the facts of the matter, was for a jury to decide, & again, Respds' summary motion should have been denied accordingly, Apln't argues; & that furthermore, the Aplnt's summary motion on at least his vicarious liability on his gross negligence claim should have been granted, as a matter of law--because--Rahal judicially admitted renting the U-Haul to Reginald Morton & knew he had no driver's license etc. (R. p. 210-211 & p. 763 L 22-25), Apln't argues; but that if there was any dispute, again, it was for a jury to decide the facts of the matter--which necessitated denying Respds' summary motion, & it was prejudicial & reversible court err, not to do so, Apln't argues, &

3rd As to Reginald Morton; the reason(s) why Appellant vicariously sued the herein Respondents, is because at 1st he tried suing Reginald Morton too, but he got wind of it somehow & alerted to dodge (like he was already dodging the SC bounty hunters--R. p. 167), all attempts at serving him up there in Baltimore; & therefore, Apln't had no other choice but to hold these Respd's liable vicariously (extending to u-haul by respds' "agency"--see--sec. 5 below) for his damages, all resulting from Respds' said judicial admissions that they rented Reginald Morton a U-Haul truck with no driver's license & knew that (R. p. 210-211 & 763 L 22-25) & thus to deny Apln't any possible theory (even under equitable one) of recovery (Order: R. p. 5-25) against anyone for all the damages he suffered (property, emotional, IIED & other)(R. pp. 48-54; 928-943; 963-987; 1184-1201 & 1208), all from their actions; & to look subjectively instead of objectively at the whole (record) to find that there's not at least 1 genuine & material issue of fact for a jury trial anywhere-in the whole 2 years old case-record, was prejudicial & reversible court err, all the Apln't argues; because among other things, a reasonable jury (by way of example-s not limitations) could've found Materially,

Genuinely, and Factually, that:

1. Rahal's judicial admissions is the truth (see: section 1 paragraph 1-A p. 4 above);
 2. Odell Morton was at Appellant's rental house sick in bed when the truck was rented (R. p. 1150 para 1);
 3. Reginald Morton forge-sign Odell Morton's name on truck rental documents to get it (R. pp. 290-291);
 4. Reginald Morton admitted that he rented the U-Haul truck (see: paragraph 3-I above; & R. p. 39);
 5. Even if Odell Morton had a valid driver's license, did he or Reginald Morton rent the truck, still was a genuine & material factual jury question—which a reasonably jury could have reasonably decided that Reginald Morton was the one who rented the truck as stated by Resp'd Rahal (R. pp. 210-211 & 34); and otherwise as shown / proven by Appellant (R. p's. all throughout);
 6. Appellant proved all the elements of his gross negligence claim (see: section 1 paragraph 1-B above);
 7. Appellant proved all the elements of his IIED claim (see section 2 paragraphs 2-A thru 2-M); and that
 8. Appellant proved all other genuine & material factual issues of his case-claims (This Brief and ROA);
 9. Appellant should be awarded all the damages he sought under each of his 2 claims (R. pp. 1193-1196);
 10. Appellant should be awarded punitive damages on each of his claims, then decided what amounts &;
- That, therefore-the Respondents' summary motion should have been denied, the Appellant argues; & that the court instead erroneously usurped the jury function as above & fact find for itself contrary to the immediate **1 through 10 etc.** above (Order: R. pp. 5-25) & that because the Appellant had a right to a jury trial & requested it (6-9-14 amended complaint: R. p. 27 top right) therefore the lower court prejudicially & reversibly err, Apln't argues; (most respectfully so re each argument); &;

Further on to get an idea who Reginald Morton really is-to focus appeal issue(s):

para. 3-L-a. This is the man who fled to SC from a murder situation in the first place-that happen on the DC. side of the Maryland line in which he was suspected in the shooting; mumbling out of his own mouth; later, he kept say that---"*they say I had something to do with that boy being killed*

but I had nothing to do with it”; (unbeknownst to Appellant at the time he rented house to them);

Para. 3-L-b. This is the man who was in a similar situation up there before that incident, where he himself was shot in the side & got some of his street friends to help him lie to convince the federal government to give him a monthly check, which presumably he still get, claiming he was injured otherwise—words out of his own mouth; and;

Para. 3-L-c. This is the same man who, when he lived here in my rental house, the Federal ATF Agents came and surrounded the house & hauled out there some drugs and all sorts of guns etc., and hauled him--Reginald Morton--out in handcuffs for trafficking, said one of the agents, and;

Para. 3-L-d. This is the same man, that about a month or so before the incident of this suit, 6-1-13, that Judge Kristy F. Curtis let him out of jail, on bail, for committing another crime (R. p. 950); and who later evicted them out of Appellant's rental house (R. p. 37), and;

Para. 3-L-e. This is the same man that jump that bail 6-1-13 to Baltmo. w/ U-Haul (R. p. 167) &;

Para. 3-L-f. This is the same man that still hides out there from the Sumter Sheriff Office & bail bondsman Jim Green's Bounty Hunters, where nobody can seem to find him, but the Respd's in this case & notice they're careful not to put Morton address in depo. notice as required (R.p.1155) & a decoy Morton address in this letter (R. p. 988) as evident by the return mail (R. p. 989) &; this' how it was throughout to keep Apln't from any discovery questions to Reginald Morton etc. & in re the false addresses see the false defenses & false statements made & sign in sec. 4 below &;

Para. 3-L-g. This is the same man for whom every address given in this case by the defense was

False, for which Resp'd Rahal says he had nothing to do with that one (R. p. 891 L. 3-16 & R. pp. 988-989) & note no Morton address in his own deposition in (R. p. 995-1037) &;

Para. 3-L-h. This is the same man that did not want to be question in his deposition by Apln't & Resp's made sure it didn't happen w/all the false addresses et al. etc. (Aff'd: R. pp. 1151-1159) &;

Para. 3-L-i. This is the same man that, even, the Respondent Rahal says he do not want Reginald Morton to testify for him (R. p. 238 L. 21-25 and p. 239 L. 1), and;

Para. 3-L-j. This is the same man from all information-have lived a life of nothing but crime from one penitentiary to another; all unbeknownst to Apln't when they got here--making the mistake of renting to them & this situation is what Apln't got for trying to be nice & helpful but in no way on earth could have imagine the Respd's would rent him a U-Haul truck with no license which he tore up Aplnt's rental house with & then jumped bail to Md. with whom Respd's defense now team up w/ to avoid paying for all the damages they caused Apln't; then they go on to use--abuse the court system to shield them--w/no defense but a frivolous one (see sec. 4) &;

Para. 3-L-k. Finally-this' the same Reginald Morton (R. p. 950 & p. 991) that's quoted repeatedly throughout the (Order: R. pp. 5-25) as a basis for summary judgment to Respd's Rahal & never seen nor heard from El Cheapo's Zaher Mohammad; w/ Reginald Morton's unchallenged word seemingly takes as the gospel truth solid enough to base summary judgment on, & disable Aplnt's claims, repeatedly referred to in same as, "bald assertions, etc. with no evidence etc", in spite of the evidentiary file *into* this (brief & ROA) & Apln't didn't know what to make of it all--except this appeal; (& again Reginald Morton rented truck--Rahal (R. pp. 210-211)) &;

Paragraph 3-M: Because-(*except #2 below*)-Respd's submitted no *admissible, competent, sufficient, &/or undisputed* evidence-SCRCP 56 & SCRE 901-to sufficiently support their being granted summary, & denying Aplnt's summary; what all respds' had re the 10-14-15 hearing for all purposes was:

- (1). respondents' summary memorandums—see—paragraph 3-B above;
- (2). *respondent Roy Rahal depo.-see--Rahal deposition (R. p. 721) the only admissible item of these 7;*
- (3). the 3 u-haul truck rental documents—see-----paragraph 3-G above;
- (4). respds' witness Reginald Morton depo.—see---paragraph 3-H above;
- (5). respondents' the Winkelman affidavit—see—paragraph 5F-5i below;
- (6). respondents' Maryland DMV document--see--paragraph 3-N below; &
- (7). respds' other 2 forge-sign by someone u-haul rental docu'mts introduce in the record (R. p. 1205-1206) submitted against Aplnt's summary motion & supporting Respds' summary judgment motion; & except for #2 above, none of the other 6 was *admissible, competent, sufficient, &/ or undisputed* evidence under SCRCP 56 & SCRE 901; & to deny Aplnt's summary & award Respds' summary judgment motion, based on such, is prejudicial & reversible court err, Apln't argues; and;

Paragraph 3-N: Because-the copy of supposedly Odell Morton's Maryland Driving Record (R. p. 1034) (a).it's not authentic-SCRE 901-as claimed-because no matching facially valid Md. driv.'s license-itself have ever been produced in this case to date--other than the Wash., D.C. facial Odell Morton's driv.'s license (R. p. 36 3rd 1); & (b).the address in that driving record is not for same Odell Morton at issue here, because the Odell Morton at issue here was a resident of SC. for years-including at least 1yr in Aplnt's rental house prior to 6-1-13 (Aff'd: R. p. 1176 para 1); & (c).in any case--that driving record (R. p. 1034) **is not** "a facial valid driver's license itself"; & therefore-**it**-cannot prove anything as to (d).Odell Morton wherea'bts. on mor'n. of 6-1-13 (Affd's: R. p. 1150 para. 1 & p.1176 para. 6); (e).Odell Morton health condition (Affd's: R. p. 1150 para 1 & p. 1176 para. 6); (f).Odell Morton SC residency on 26.

6-1-13 (Aff'd: R. p. 1176 para. 1); & (g).the forging of Odell Morton's name on 6-1-13 (R. pp. 919-927) & (h).cannot prove how it was obtained (the driving record: R. p. 1034) or who obtained it & when, &/or whether **it-itself** is a forgery or fake, **esp.**, because forgery of Odell Morton's name, on the U-Haul rental documents (5: R. pp. 290-291 & 1205-1206) was at issue in this case & that item--(the subject driving record) can't prove anything relevant in this case, but, only that it is the **driving record** of an Odell Morton of many in the Maryland-Washington DC. area; & as to who tore up Aplnt's house (see: Rahal: R. pp. 242-243) & therefore Rahal makes clear by his knowledge in this case that it wasn't Odell Morton; confirming instead that it was license-less Reginald Morton he rented to (R. p. 210 L. 3-5 & p. 211 L. 13-15 & p. 339 L. 22-25), so then, taken all together as a whole or individually &/ or otherwise, Odell Morton had no valid driver's license on 6-1-13 under SC. law--see—sect's. 56-1-20; 56-1-500; 56-1-440; 56-1-580; 56-1-620; & (SC 90 day law: R. p. 1183) which (laws controls in this case); thus the lower court prejudicially & reversibly err to rule otherwise, all Apln't argues; & because of the foregoing unclarity re the Md.'s DMV document's authenticity, it couldn't be "undisputed-competent-admissible" evidence under SCRCF 56 &/or SCRE 901--to award Respd's summary; thus it was prejudicial & reversible court err to do so, Apln't further argues, &

Paragraph 3-O: Because-Odell Morton couldn't have rented the U-Haul truck for these conclusive & specific reasons, (McBride Aff'd re Odell Morton whereabouts 6-1-13 morning: R. p. 1150 para. 1) & (re: awareness of the McBride aff'd: R. p. 597 L. 13-18 & R. p. 1150); & that therefore, among many other reasons, stated throughout, including Odell Morton was at home (in bed dying sick), re the McBride Affidavit; (all were factual jury questions among others); negating summary to the Respd's, notwithstanding all else, & thus, this is prima facie proof of prejudicial & reversible court err, the Apln't argues, & (as paramount supporting evidence--see--Reginald Morton's name as customer on all U-haul truck rental doc'mts: (R. p. 39 & 301 & 365 & 925 & 926 & p. 789 L. 4-13) &

Paragraph 3-P: Because--Respd's have repeatedly & constantly tried to make this a negligent entrustment case (Hearing trans: R. p. 580 L. 17-20) & re the (Order: R. p. 17 sec 3) & the order used such as a basis in its findings & rulings, but Apln't made it clear all along & in his amended complaint, & at hearing, he brought no such cause of action, (R. p. 27 at top & R. p. 701 L. 1-22), & basing the ruling on such non cause of action is prejudicial & reversible court err, Apln't argues &;

Paragraph 3 Q: That in light of paragraphs 3-A thru 3-P above, taken in any parts or as a whole, it is clear that it supports but one reasonable conclusion, which is that, the Respd's should not have been awarded summary judgment on neither Aplnt's gross negligence or IIED claim. That the whole record supported only Apln't being entitled to summary judgment &/or at a minimum, a jury trial on his gross negligence & infliction of emotional distress claims, Apln't argues, &;
[That Summary Judgment is appropriate only if there is no genuine issue of material fact & the moving party is entitled to judgment as a matter of law. E.g., Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994); & Summary Judgment should not be granted if there is dispute as to the conclusion to be drawn from the evidentiary facts, even where there is no dispute as to the facts. Tupper, 326, S.C. 318, 487 S.E.2d 187; & Since Summary Judgment is a drastic measure, it therefore should be cautiously invoked, so that a litigant will not be improperly deprived of trial by jury where requested, on any disputed factual issues. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537 (1991);.....(End Section 3 of 6; & ; Begin Section 4 of 6);

Sec: 4 of 6: THE COURT ERR TO DENY APPELLANT RULE 11 & SC SECTION 15-36-10
SANCTIONS MOTION

Review Standard—Equitable

Paragraph 4-A: Because-the false defense (see: Rahal: R. pp. 200-203 & 290-291 & R. p. 211) &;

the 12 false statements that was made & signed (R. pp. 95-131) was based on Respondent Rahal's own judicial admissions in sworn interrogatories (R. pp. 95-131) & sworn deposition testimony (R. p. 95-131) under oath, which entitled Apln't to summary as stated in sections #1 & #2 above; & denial of Respds' summary as stated in section 3 above; & thus to deny Appellant's rule 11 & SC. sec. 15-36-10 sanction motion, against the Respds'-defense, in this case, pursuant to their very own judicial admissions was prejudicial & reversible court err, Apln't argues; &;

Paragraph 4-B: Because-the said Rahal admitted false defense & false statements made & sign, & curiously not even mention what they actually did, (R. pp. 95-131 & pp. 200-203 & pp. 290-291 & R. p. 211), for sanctions in the (Order: R. p. 21-23) before subjectively denying the motion, is prejudicial and reversible court err, Appellant argues; and;

Paragraph 4-C: Because-but for the false defense & false statements made & sign by the Respds' defense (R.p. same false ones in para. 4-A above) Respd's couldn't have prevail to the extent they did, if at all, on all 5 motions re sections 1-6 herein-on this appeal, & did so only because the lower court prejudicially & reversibly err, in denying Aplnt's sanctions motion, Appellant argues, and;

Paragraph 4-D: Because--such violations of said rules & law, ought not be--*look the other way at* for any reason & such violations as false defenses & making & signing false statements should warrant the toughest & gravest of sanctions regardless to who's involved, lest such misconduct, if strategically placed in any litigation, could well throw the outcome to the perpetrator's favor, (*as in the instant case*), & thus it will contaminate the legal process, continue & spread, until it's almost everywhere, Appellant argues; *see (Runyon v. Wright 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) and (FCPSA)*; and;

Paragraph 4-E: Because--in S. C., sanction have been imposed, for far less culpable conduct, than false defenses (R. p. 200-203) & making & signing false statements, let alone 12 of them (R. p. 95-131) to support a wholly unsupportable defense on its own. In *Ex Parte Gregory*, 378 S.C. 430, 663 S.E. 2d 46 (2008), the Supreme Court upheld sanctions under the prior version of the FCPSA because the attorney had failed to conduct a proper investigation before filing a conversion action against another attorney. In *Rutland v. Holler, et al*, 371 S.C. 91, 637 S.E.2d 316 (Ct. App. 2006) sanctions were upheld, when the court found, based upon the procedural history, of serial dismissals, “it is inconceivable, that Rutland reasonably believed that his claims against Respondents were valid.” *Id.* At 98, 320. In *Russell v. Wachovia Bank*, 370 S.C. 5, 17, 633 S.E.2d 722, 728 (2006) sanctions were upheld from the point after which the litigant had access to affidavits & other evidence which should have led her to realize that the facts did not support her claims & when she had facts which demonstrated her claims to be without merit, she could no longer assert that she acted in, “good faith” in continuing to pursue them. *See*, also in; *In Re Young*, 366 S. C. 180, 621 S. E. 2d 359 (2007) [attorney disciplined for bringing action without research, with no factual basis, & for which he could not explain the legal basis]. As these cases demonstrate, a reasonable belief, in the merits & continuing merits of a claim, or defense, can be substantiated, only, on the basis of supporting law & the existence of favorable facts. In the instant case the Respondents’-Defense--had no legal or factual basis, from the outset, to support their defense, as is evident by the first set of reasonable attorneys quitting, etc. (R. p. 1207) & then the incoming-present ones manufactured a defense for Respondents i.e. U-Haul, (R. p. 580 L. 3-10 & R. p. 698 L. 6-10), & see: section 5-A--5-J below) by making & signing the necessary 12 false statements (R. p. 95-131, & the false defense R. p. 200-201) & in the process depriving & costing Apln’t as demonstrated in this appeal’s brief & ROA, & that they pursued the false & frivolous defenses on fact & law, they knew weren’t true,

(R. p. 200-201). Such false defenses was based on & sustain only by it & the 12 false statements made & sign, & the same facts & arguments set forth herein apply to all of the filings & arguments asserted in this case. The Supr. Ct. has sent a very clear message that litigants who pursues frivolous litigation, will be subject to sanctions, & that those sanctions include, litigation fees; In *Russell v. Wachovia Bank*, 370 S.C. 5, 633 S.E. 2d 722, 729 (2006), the Supreme Court affirmed an award of more than \$525,000.00 in fees & costs awarded as sanctions where the plaintiff in a will contest persisted in asserting claims of undue influence, after, being provided with numerous, affidavits affirming the testator's clear state of mind. The FCPSA specifically contemplates reimbursement of fees & costs incurred by litigants as a result of frivolous claim or defense being pursued, SC code 15-36-10-G (1); in instant case affd's provided w/all other evid. in (R. p. 1150 & 1165-1176 & 175-178) & the record show no response from them re said motion-charges in a manner prescribe by the FCPSA & their failure to respond to (letter: R. p. 1204) & motion (amend: R. p. 92-131) show their tacit admission, Apln't argues; & any defense not asserted in the pleadings will not be considered on appeal See--*Fraternal Order of Police v. S.C. Dept. of Revenue*, 352 S.C. 420, 574 S.E.2d 717 (2002 &

Paragraph 4-F: Because-when Respds'-Defense went to Baltimore, Md. 4-24-15 to depose Odell & Reginald Morton (R. p. 1155) Odell wouldn't perjure himself (R. p. 598 L. 21-24) but Reginald Morton ("just for nothing") would (R. p. 1021 L.14-15) vs. Rahal's (R. pp. 210-211 & 339 L 22-25) & thus as shown specifically as early date **Feb. 11, 2014** (R. p.34) they knew the truth (because Rahal told it to them--that he rented the truck to Reginald Morton & they sign it 2-11-14, R. p. 34) long before going to Baltimore but what was wanted & needed was for their witness R. Morton to falsify their Resp'd Rahal (Morton: R. p. 1021 being led L. 14-15 vs. Rahal R. p. 210--see--SC sec. 16-9-10 /20) & they went & got it- (their witness falsifying their resp'd) & return home & amend their motion for summary 5-12-15 (R. pp. 90-91) & then waited for the eventual summary hearing 10-14-15 at which

both were submitted to the court, as the sworn truth, & as to the, Reginald Morton, deposition see--paragraph 3-H above; & that all the foregoing is more sanctionable conduct, added to the false defense & 12 false statements made & sign, all done w/ the single aim of creating a defense, & what about fairness to Apln't & respecting the rules? Obviously they weren't concern, Apln't argues &;

Paragraph 4-G: Because-that once again-it's that important to remember here--that it was Resp'd Rahal-himself, (not the appellant), who, so to speak, blew the whistle, *under oath*, on the wrong doing on his own side; (evidently fearing the consequences, being a foreign national if he was caught taking part in perjury as respds' witness **Reginald Morton**--saying--*Rahal didn't rent the truck to me:* Order: R. p. 9 L 1-2 & Order: R. p. 14 *ft. note (1)* & R. p. 1021 L 14-15 vs. **Rahal himself saying-I rent the truck to Reginald Morton** R. p. 210 & 339 L 22-25; *by definition I committed perjury SC sec. 16-9-10/20 & both submitted by the defense in this case--litigation as the truth & both used as basis to deny Aplnt's & grant Respds' summary judgment & obviously both can't be true)* & it's Reginald Morton who obviously will do-say anything if paid money to help him keep hiding out from the law with--R. p. 950 & R. p. 167); also, Apln't ask not that his own word be taken here, but to just let the record speak for itself (Record on Appeal with Brief) as to the merits of the matter (Order "wholly without merit" R. p. 23 L. 1-2 re **Rahal's admitted** false defense (R. pp. 200-203) & false statements made & sign R. p. 95-131) thus it was prejudicial & reversible court err--abuse of discretion to deny Aplnt's rule 11 & s. c. sec. 15-36-10 sanctions motion, Apln't argues; & note that nowhere in the record--respds' defense even claim it's not true as charge or they didn't do it etc.; & that Apln't did write to them **1st** as required in 15-36-10 (R. p. 1204) but there was never a reply &;

Standard of Review re Awarding Sanctions under FCPSA

Paragraph 4-H: Because-the determination of whether sanctions should be awarded under the FCPSA
32.

is treated as an equitable proceeding; & accordingly, the Court of Appeals makes an independent review of the record, (Record on Appeal), then makes its own determination, of the preponderance of the evidence. Rutland v. Holler, Dennis, Corbett, Ormand and Garner, 371 S.C. 91, 637 S.E.2d 316, (Ct. App. 2006); and Father v. South Carolina Department of Social Services, 345 S.C. 57, 545 S.E. 2d 523 (Ct. App. 2001). Under the FCPSA, the lower court was to evaluate Appellant's claim of a frivolous defense & Respd's making & signing false statements (same ones in 4-A above) based upon an objective "reasonable attorney" standard, which the lower court failed to do; which then was prejudicial & reversible court err, because, in the instant case, it would have shown the Apln't to be entitled to summary judgment, as stated in sections 1 & 2 above & Respd's not entitled to summary judgment as stated in section 3A thru 3Q above, all Apln't argues; &;

Paragraph 4-I: Because--in the instant case--earlier on, the reasonable attorneys being Kuppens & Smith of the law firm of Nelson, Mullins, & Riley, P.A.--1st attorneys to represent /defend in this case; & when face w/ making &/or signing false statements for a frivolous defense or quitting; these reasonable attorneys quit the case (R. p. 1207) rather than initiate or perpetuate a frivolous defense, that no reasonable attorney would do or continue w/ because Respd's' liability re: case was basically already admitted as of 2-11-14 point-in-time (R. p. 39); when the quitting attorneys replacements (in this case) hired/paid by U-Haul (Rahal depo.: R. p. 856 L 16-23) signed Rahal's true admission 2-11-14 (R. p. 34), but afterwards--begin making & signing the necessary false statements in 4-A above on which to base a frivolous defense so as to prevail on later (Order: R. p. 5-25); & most importantly see this one again (Rahal depo.: R. p. 862 L.10-25 & R. p. 863 L. 1) Rahal's judicial admission; thus--the court prejudicially & fatally err, not to use correctly, the reasonable attorney standard; by which to evaluate the sought sanctions against Respondents'-Defense, Apln't argues; &;

Paragraph 4-J: That in light of paragraphs 4-A thru 4-I above, taken in any parts or as a whole, it is clear that it supports but one reasonable conclusion, which is that, Apln't should have been granted his Rule 11 & S. C. 15-36-10 sanctions motion against Respd's--Defense, but it was not done, due to prejudicial, & reversible court err, the Apln't argues; & that;

Because Respd's didn't come w/ or maintain clean hands (see: Wilson v. S.L. Ray, Inc. (1993) 17 Cal. App. 4th 234, 244, Kendall-Jackson Winery, Ltd. v. Superior Court (1999) 76 Cal. App. 4th 970, 978) it was Apln't, pursuant to same, that was entitle to all the relief just as prayed for, Apln't argues, &

[If a defense is pursued that a "reasonable attorney" would find not factually or legally meritorious, the defense is frivolous under the standard established by the FCPSA. If it is frivolous, the trial court "shall" impose sanctions. (S.C. Code 15-36-10(C)(1). The standard for determining frivolity is essentially the same under Rule 11 as it is under the FCPSA. Under Rule 11, an attorney must conduct a pre-filing investigation & his signature is a certification that there are good grounds to support the defense or the claim. It's not necessary to show bad faith in order to establish a violation of Rule 11, but only to show that the defense or the claim had "no chance of success under existing precedent". Gibbes v. Rose Hill Plantation Development Company, 794 F. Supp. 1327, 1340 (D. S.C. 1992) See, also; In Re Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004) cert. denied].....That in the instant case, but for the false 12 statements made & signed, with the false-defense, they had, "no chance of success under the existing precedent", except said court err(s), Apln't argues.....(End Section 4 of 6; & ; Begin Section 5 of 6);

Sec: 5 of 6: THE COURT ERR TO DENY APPELLANT'S RULE 15(b) MOTIONS.

Review Standard—Abuse of Discretion

Paragraph 5-A: Because--Apln't argues that, in light of all his arguments herein, that his 15-b-c motions should have been granted for reason stated in it (R. p. 132-145), & why was that important? Because it came to the attention of Apln't that *Palestinian /Jordanian /Syrian Rahal & Mohammad* have changed one of their store names from El Cheapo to Cheap-way & there were other red flags

that something was afoot--such as Resp'd Rahal quitting his job after this lawsuit (R. p. 871 L.2-3) prompting concern (R. p. 847 L 4-5 & p. 1202-1203) re their run back to Middle East & since Rahal refused to return to complete his depo's. (R. p. 151-153) &/he or Zaher Mohammad refuse to appear for the 30(b)(6) deposition (R. p. 154-155); & they both refused to be question any further every since then & that Rahal made it quite clear that, "*if you want to be compensated--you call u-haul & their lawyers & they'll...you deal with them*" (R. p. 802 L. 2-5); then Appellant realized that; if after; all that it's taking to get a judgment against these Respd's for what they did, & then they change corporate, sell out, & /or shut down, & flee back to the Middle East, the Apln't could never collect on any judgment, as to them, even if successful here on Appeal---then---what? Must Apln't travel over there to the Middle East, with an American Court Judgment in hand, knocking on doors---trying to locate them---to collect it? I would just leave it to everyone's own imagination as to what would likely happen if Apln't was bold enough to try that. Therefore then, That's mainly why--Apln't move to amend 15 b-c because Respd's & U-Haul too, belatedly & judicially admitted--that they are principal & agent, (agency), relationship in their renting of U-Haul trucks to the public--see--(R. p. 136-145) Apln't argues; & that furthermore, had the Respds' Defense not do what they did in the 1st place---to remove the other U-Haul entities (R. p. 132-135) this motion wouldn't have been necessary; & thus it was court err, to deny the Appellant's 15 (b-c) motions for all the said reasons, Appellant argues; and;

Paragraph 5-B: Because U-Haul claims now that their corporate structure prevents them, in effect, from agency liability (R. p. 1163-1164) or any U-Haul entity, but Apln't argues to the contrary herein & in his motion (R. p. 132-133) that one U-Haul entity or the other (*they can decide which*) does have liability via agency, (R. p. 137-145), for any judgment against these Respd's for what they

Did in renting a U-Haul truck to Reginald Morton with no driver's license, (R. pp 210-211), & knowingly; resulting in all Apln't damages (R. pp. 48-54 & 928-943 & 963-987 & 1184-1201 & 1208), he argues, &;

Paragraph 5-C: Because Apln't has repeatedly—constantly begged, (*yes begged*), Respd's for some modicum of compensation (R. p. 46) & providing them proof of the IIED effects via NOTICE 5 (R. p. 928 & R. p. 935 & R. p. 963 & R. p. 968 & R. p. 1184) for the damages they caused & Rahal response was made very clear—*in short part*--call U-Haul (R. p. 802 L 2-5) & their lawyers (hear. trans: R. p. 580 L 1-10) for compensation because "*I don't have \$15 million*" (Rahal depo: R. p. 805 L. 21) &; thus Respd's / Rahal was making it quite clear—any compensation for your damages must come from U-Haul, so add them pursuant to their agency or you are out of luck in the end, (Rahal), the Apln't argues; & note--u-haul own their trucks--Rahal: (R. p. 732 L 1-14 & R. pp.1163-1164)&;

Paragraph 5-D: Because---Mr. Soriano of Bryan Cave, LLP., (1 Defense Counsel Herein), made it clear in open court---that he represents U-Haul interest in this case & that he goes all over the country doing the same--re (hearing transcript: R. p. 580 L. 1 - 10 and R. p. 698 L. 6 - 10); so that's the evidence that U-Haul knew & knows it has agency liability in this case from beginning; 15 b-c amend or not, Apln't argues; & note--u-haul set all policies--Rahal depo: (R. p. 777 L. 1-8) &;

Paragraph 5-E: Because in more ref: to U-Haul's attempt to avoid their agency liability with the Winkelman affidavit (R. p. 1163-1164) just ask the question, who gets the bulk of the U-Haul truck rental money in the end? The answer is (R. pp. 141-142) U-Haul of course. So how does that square w/ the Winkelman affidavit, Apln't argues? It appears U-Haul square agency just fine, as long as

they are getting the truck rental money, but, when it comes to agency liability, well that's where the Winkelman affidavit comes in at, to solve that problem, as in this case, Apln't argues; &;

Paragraph 5-F: Because-the evidence Respd's offered--to get denial of Aplnt's motion, was 1 Winkelman aff'd (R. p. 1163-1164 & specifically referred to in order R. p. 9 para. 2 denying motion) BUT It--the Winkelman affidavit--was not timely served, as it was served to Apln't on October 14, 2014 (R. p. 1162) day of the dispositive hearing, & SCRCP 56 (c) required such affidavits be served no later than 2 day before the hearing; therefore, to consider, & to use, this affidavit upon which to deny Appellant's 15 (b-c) motion to amend, was court err, Appellant argues; &;

Paragraph 5-G: Because-even if the Winkelman affidavit was timely served etc., their argument therein have nothing to do with why Apln't wanted to amend 15 b-c; it was to attach U-Haul for agency liability purposes only (R. p. 137-145), which 15b motion is moot anyway, if, respondeat superior attaches U-Haul liability as a matter of law per facts of this case, Apln't argues, &;

Paragraph 5-H: Because---that as to the information in the Winkelman affidavit; it cannot--at the 10-14-15 dispositive hearing--belatedly be considered, & used, because that needed information, like so much other, was withheld (standard r. 33b interrog. serv. +) during the long (almost 2 years) discovery period & the Winkelman aff'd info. should've been--but wasn't provided, Apln't argues &;

Paragraph 5-I: Because---that as to the, U-Haul Co. of S. C., Inc., mentioned in the Winkelman p. 1 Aff'd (R. p. 1163) remember--that's the same U-Haul entity they argued for dismissal of before; effectively arguing they were not the proper entity to be sued (R. p. 134-135);

Now they are in effect---*in the Winkelman Affidavit*---saying that U-Haul Co. of S. C., *not*, U-Haul Intl. Inc.; *is* the one to be now joined--sued for agency the Winkelman Aff'd now argues, (R. p. 1163--1164). [N]ow this court can see the evidence directly for themselves, the kind of games Respd's have played on the disable Apln't all throughout the almost 2 yrs of discovery period in this case; & their withholding & failure to provide the Winkelman Aff'd info. during discovery, (SCRCP 33 esp. 33b etc---which led to this motion to amend), & just now putting it forth, is sanctionable conduct itself under the discovery rules, Apln't argues, &;

Paragraph 5-J: That in light of paragraph 5-A thru 5-I above, & all other paragraphs herein, taken in any parts or as a whole, it is clear that it supports but one reasonable conclusion, which is that, U-Haul Intl., Inc., or U-Haul Co. of SC. Inc., &/or whatever U-Haul entity they so designate, should have been or should be now, added for agency purposes to this suit for the reason-s stated & for the court to rule such was futile--in light of sec.'s 1-6 herein--is reversible court err, Apln't argues &; [Apln't sought to amend his 6/9/15 complaint pursuant to SCRCP 15b-c for stated reasons 5-A thru 5-I above & for the reasons stated in motion to amend & leave shall be freely given when justice requires & doesn't prejudice another party SCRCP 15(a)];.....(End Section 5 of 6; & ; Begin Section 6 of 6);

Sec: 6 of 6: THE COURT ERR TO HOLD IN ABEYANCE THE RESPONDENTS' MOTION SEEKING TO SANCTION APPELLANT FOR EXERCISING HIS RIGHT TO BRING AND LITIGATE THIS INSTANT CASE.

Review Standard—Abuse of Discretion

Paragraph 6-A: Because--their specific motion; "Respds' Motion to Dismiss (*appellant's case*) for Vexatious Litigation & Sanctions"; Simply look at what Respd's did to Apln't & the damages they caused him in the foregoing **sec.'s 1-5** above & ROA; **that's** Aplnt's defense to such a motion, & viewed in this light, the court simply err, to not dismiss such a motion, Apln't argues; &
38.

Paragraph 6-B: Because--it was Respd's that created the vexatious litigation conditions from the very beginning through to present, (see-this brief & ROA), so they can't turn around & ask for sanctions against Apln't--akin to invited err--for that which they caused--& in fact--it's Apln't who's entitled to vexatious litigation sanctions against Respd's (see-esp. sect. #4 above) Apln't argues-&

Paragraph 6-C: Because litigation is, vexatious by its very nature, & in any case, caused by the Respd's own actions & that of their 2nd defense team in this case re--specifically section 4 of 6 above, for Rule 11 & S.C. sec. 15-36-10 sanctions against them, thus Respd's are the ones responsible for vexatious IIED et al. litigation against disable Apln't in this case, (see-sect. #4 above), & indeed--see--this whole brief & R O A; & that furthermore; these Respd's brought such motion to the court with--unclean hands--see--sec. # 4 esp. & accordingly, was not only not entitled to any relief under such motion, under the clean hands doctrine, but more importantly, was not entitle to summary judgment (see-section #3 above) regardless to all else because Respd's had unclean hands-as stated under sect. #4 above et al--as related to R.11 & sc. sec.15-36-10 sanctions. "[H]e who comes into equity must come with & maintain clean hands" see *Wilson v. S.L. Ray, Inc. (1993) 17 Cal. App. 4th 234, 244, Kendall-Jackson Winery, Ltd. v. Superior Ct. (1999) 76 Cal. App. 4th 970, 978*; & pursuant to same, it was Apln't then, who was entitled to all relief he prayed for, he argues; &

Paragraph 6-D: Because--by the same logic, & upon the same grounds, as the Respd's asks in their motion for the dismissal of Aplnt's case because they are vexed & the motion held in abeyance; likewise; Apln't asks this court to award him this case in the amounts as pled for, based on Respd's having vexed him from the very beginning to now, Apln't argues; & the proof--see--(all in this brief, esp. sec. #4 re rule 11 & 15-36-10 sanctions, & ROA, Apln't argues). [As to Sec's 1-6 all above, the preponderance of the evidence (ROA) is against all the findings of the court, (R. p. 5-25) Apln't argues--see--Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011)] (End sec. 6 of 6);

CONCLUSION

That as it relates to section # 4 of 6 above; Apln't respectfully requests that this Court evaluate the evidence, as it is required to do, in light of the objective standards & factors to be considered under the FCPSA, & to find that the evidence establishes that the Respd's &/or their attorneys, initiated, & pursued, frivolous defense(s) & all other such corresponding litigation against the Apln't; & that Apln't also, further respectfully requests that the Court find that Apln't is accordingly entitled to reimbursement of all his costs, including the equal of reasonable attorney fees & expenses + all other damages suffered-as a result from when the frivolity 1st began (R. p. 39) after the quitting of the 1st set of Respd's attorneys, (R. p. 1207), to avoid the necessary frivolity for a defense in this case, onward to the present here, as appropriate sanctions; &, that lastly, on this issue, re: section #4, Apln't respectfully request, alternatively, that this case, in its entirety just as prayed for, be forfeited to Apln't as the ultimate sanction for (see sect. #4) & pursuant to: Wilson v. S.L. Ray, Inc. (1993) 17 Cal. App. 4th 234, 244; Kendall-Jackson Winery, Ltd. v. Superior Ct. (1999) 76 Cal. App. 4th 970, 978). The unclean hands doctrine protect judicial integrity & promote justice; & such case forfeiture will guarantee others want engage in conduct in sec. 4, Apln't argues, & /or;

That as it relates to the other sec's 1, 2, 3, 5, & 6 above; based on the foregoing in each section & in the above paragraph, the Apln't respectfully submit that the Lower Court should be reversed; & that Aplnt's summary judgment vicarious liability motion, against these Respd's (& the right u-haul entity) on his gross negligence house damages claim should be granted w/ the--undisputed by Respd's--at summary--actual & proven damages by a preponderance of the evidence \$175,700.00 (R. p. 1171 et al) + the continued loss rents \$650.00 per month (R. p. 1172) that's not added in yet for 11-1-2015 to the present, plus interest on whole total-(\$ total + % interest); & summary vicarious liability against Respd's on Aplnt's IIED claim should be granted with the--undisputed by Respd's--at summary--actual damages & the proven damages by a preponderance of the evidence,

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

Hon. George C. James, Jr., Circuit Court Judge

Appellate Case No: 2015-002481

Charles Taylor,.....Appellant

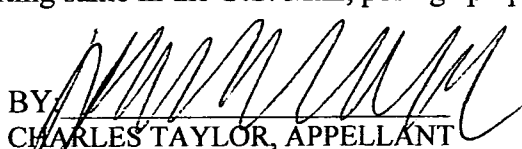
v.

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

PROOF OF FILING AND SERVICE

I certify that the Final Brief of Appellant was filed (1 original unbound & 14 bound copies) on the date below by hand delivery to this court's clerk office and same was served to lead counsel below, at his address below, by depositing same in the U.S. Mail, postage prepaid.

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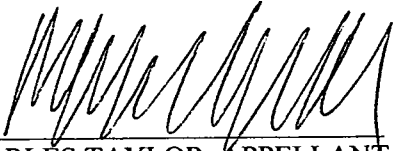
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CERTIFICATE OF COMPLIANCE BY APPELLANT

Appellant certifies that his Final Brief complies with Rule 211(b) SCACR.

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**THE STATE OF SOUTH CAROLINA
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**APPEAL FROM SUMTER COUNTY
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**The Honorable George C. James, Jr., Judicial Circuit Court Judge
Case No: 2013-CP-43-1808**

Appellate Case No: 2015-002481

Charles Taylor.....Appellant,

v.

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

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STATEMENT OF ISSUE ON APPEAL

- I. MAY APPELLANT RELY UPON FACTS AND ARGUMENTS THAT WERE NEVER PRESENTED TO, NOR CONSIDERED BY, THE CIRCUIT COURT?
- II. DO APPELLANT'S ARGUMENTS ALLEGING RESPONDENTS MADE JUDICIAL ADMISSIONS AND THE PRECLUSIVE EFFECT THEREOF FAIL AS A MATTER OF LAW?
- III. DID THE CIRCUIT COURT PROPERLY GRANT RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND PROPERLY DENY APPELLANT'S MOTION FOR SUMMARY JUDGMENT?
- IV. DID THE CIRCUIT COURT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR LEAVE TO AMEND PLEADINGS?
- V. DID THE CIRCUIT COURT PROPERLY DENY APPELLANT'S MOTION FOR SANCTIONS?
- VI. DOES APPELLANT'S CONTINUED VEXATIOUS LITIGATION CONDUCT ENTITLE RESPONDENTS' TO APPROPRIATE RELIEF?

INTRODUCTION

Unfortunately, this case centers upon one “argument” that Appellant asserts time and time again, in which he asks circuit courts and now this Court to accept his unsupported statements and allegations as true, while simultaneously asking the Court to deem all of the actual evidence submitted by Respondents Stop “N” Save, Inc., d/b/a El Cheapo Plus #7 and Roy Rahal (“Respondents”) as false. Each of Appellant’s motions before this Court consists of conclusory allegations and are entirely unsubstantiated by any evidence.

Appellant alleges he has suffered property damages, bodily injury and emotional distress damages associated with allegations of Respondents’ improper rental of the subject U-Haul rental truck (“U-Haul Truck”) to non-parties without driver’s licenses. However, the record evidence establishes that there is no genuine issue of material fact concerning Respondents’ actions in renting the U-Haul Truck. Moreover, the evidence and discovery history in this matter demonstrate a pattern of disregard for the circuit court’s instructions, abusive litigation tactics, and self-serving and evasive words and actions that have no basis in law or fact.

The circuit court’s order granting Respondents’ Motion for Summary Judgment, denying Appellant’s Motion for Summary Judgment, denying Appellant’s Motion to Amend, denying Appellant’s Motions for Sanctions, and holding in abeyance Respondents’ Motion to Dismiss for Vexatious Litigation should be affirmed. Initially, the grant of Respondents’ Motion for Summary Judgment and denial of Appellant’s Motion for Summary Judgment should be affirmed because Appellant’s claims are preempted and thus barred by the Federal Transportation Equity Act, specifically 49

U.S.C. § 30106 (2015), otherwise known as the Graves Amendment. Moreover, Appellant's claims otherwise fail as a matter of law as the proper record on appeal is devoid of any evidence to support Appellant's causes of action. There is no genuine issue of material fact demonstrating support for the elements of Appellant's causes of action, whether they are couched in terms of negligence, negligent entrustment, or intentional infliction of emotional distress.

Furthermore, the circuit court properly denied Appellant's Motion to Amend, as there is no basis to add U-Haul International, Inc. and any amendment would be futile. Additionally, the circuit court's denial of Plaintiff's Motion for Sanction was proper, as Appellant's Motion is unsupported by the facts, discovery and testimony to date. Finally, the circuit court's decision to hold its ruling on Respondents' Motion to Dismiss for Vexatious Litigation and Sanctions was not improper.¹ While Appellant has tried to raise a host of issues on appeal and insert improper and irrelevant assertions and documentation into the record, the only real question to be considered by this Court is whether the circuit court's order, which accurately and succinctly reflects the proper issues at hand, was correct.

Because Appellant has failed to demonstrate any legal or factual error by the circuit court's order, the circuit court's decision should be affirmed in its entirety.

¹ Although the circuit court held its ruling in abeyance, in light of Appellant raising the issue on appeal, Respondents certainly support a grant of the Motion to Dismiss or other remedies deemed just and necessary by this Court.

STATEMENT OF THE CASE

On October 9, 2013, Appellant filed a Summons and Complaint against U-Haul Co. of South Carolina, Inc. ("UHSC"), an unnamed U-Haul dealer, and two individual defendants, Reginald Morton and Dana Goins, alleging Reginald Morton and/or Dana Goins backed into Appellant's rental property with a U-Haul Truck rented from Respondent Stop "N" Save, Inc., d/b/a El Cheapo Plus #7 ("Respondent El Cheapo"). At a hearing on June 2, 2014, the circuit court dismissed UHSC. On December 4, 2013, Appellant filed an Amended Complaint naming Respondent El Cheapo as the previously unnamed "U-Haul Local Dealer" and adding allegations relating to Respondent El Cheapo. Thereafter, on June 9, 2014, Appellant filed an Amended Complaint naming Respondent El Cheapo's manager, Respondent Roy Rahal ("Respondent Rahal"), as a defendant. The Amended Complaint alleged gross negligence and intentional infliction of emotion distress and claimed various personal injuries associated with Respondents' failure to compensate Appellant for the property damage allegedly caused by the driver of the U-Haul Truck.

On April 27, 2015, Respondents filed a Motion for Summary Judgment. (R. pp. 88-89). On May 13, 2015, Respondent Rahal filed an Amended Motion for Summary Judgment. (R. pp. 90-91). On June 15, 2015, Appellant filed a Motion for Summary Judgment. (R. pp. 159-164). On August 3, 2015, Appellant filed a Motion for Sanctions. (R. pp. 92-93). On August 21, 2015, Appellant filed a Motion for Leave to Amend his complaint to name U-Haul International, Inc. ("UHI"). (R. pp. 132-133). On September 18, 2015, Respondents filed their Motion to Dismiss for Vexatious Litigation Conduct. (R. pp. 146-147).

A hearing was held on October 14, 2015 on the various motions, and by Order dated November 20, 2015, the circuit court denied Appellant's motions and granted Respondents' Motion for Summary Judgment. The court also held in abeyance its ruling on Respondents' Motion to Dismiss for Vexatious Litigation and Sanctions.

Appellant did not file a motion for reconsideration pursuant to Rule 59(e), SCRCP. Rather, Appellant filed a Notice of Appeal as to the Order in its entirety.

STATEMENT OF FACTS²

On October 9, 2013, Appellant filed a Summons and Complaint against UHSC, an unnamed U-Haul dealer, and two individual defendants, Reginald Morton and Dana Goins.” (R. pp. 72-75). On December 4, 2013, Appellant filed an Amended Complaint, naming Respondent El Cheapo as the previously-unnamed “U-Haul Local Dealer” and adding allegations relating to Respondent El Cheapo. (R. pp. 85-86). At a hearing on June 2, 2014, the Court dismissed UHSC from this case.³ (R. p. 28).

On June 9, 2014, Appellant filed an Amended Complaint against Respondent El Cheapo and Respondent Rahal, alleging causes of action for gross negligence and

² Appellant’s brief on appeal is replete with bald assertions disguised as “facts.” These purported “facts” find no support in the record, were not presented to the circuit court, and were not considered by the circuit court in any context. *See Becker v. Uhe*, 221 S.C. 334, 339, 70 S.E.2d 346 (1952) (“[F]acts improperly stated in the brief will not be considered.”); *see also* Rule 267(b), SCACR (“The signature of a party or attorney constitutes a certificate by him that he has read the document or paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.”). In addition, Appellant fails to include proper reference to the materials from which the statements are included. *See* Rule 208(b)(4), SCACR (“The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal . . . to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript.”); *see also First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (“Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court’s ruling.” (citation omitted)). Moreover, Appellant’s use of bold, italics, and underlining, in addition to his confusing paragraph delineation, is improper.

These blatant errors have impeded Respondents’ ability to properly respond to Appellant’s brief. However, for brevity, these issues and other deficiencies are more thoroughly addressed in Respondents’ Motion to Strike, which will be filed contemporaneously herewith. Further, Respondents expressly incorporate the Motion to Strike into this brief as if stated verbatim herein.

³ In addition to the U-Haul entities, Reginald Morton and Dana Goins have since been dismissed from the litigation.

intentional infliction of emotional distress (“IIED”) and claiming various personal injuries associated with Respondents’ failure to compensate Appellant for the property damage allegedly caused by the driver of the U-Haul Truck. (R. pp. 27-55). Respondent Rahal was the manager of Respondent El Cheapo at the time of the rental transaction and was the employee at Respondent El Cheapo who completed the rental transaction. (R. p. 728). Appellant based both of the claims in his Amended Complaint on allegations that Respondents’ rented a U-Haul Truck to Reginald Morton, despite the fact that Reginald Morton did not have a valid driver’s license at the time of the subject rental transaction. (R. p. 28). Appellant further alleged that neither Reginald Morton, Dana Goins, nor Morton’s father, Odell Morton, possessed a driver’s license at the time of the rental transaction. (R. p. 28). According to the Amended Complaint, the U-Haul Truck struck Appellant’s rental property and caused property damage. (R. p. 29). Appellant alleged he was not in the rental home at the time but was instead in his home next door where he allegedly witnessed the incident. (R. p. 29).

The record evidence, however, establishes that it was Odell Morton, Reginald Morton’s father, who rented the U-Haul Truck from Respondent El Cheapo. (R. pp. 748; 764-68; 1009-1013; 1017; 1021; 1034; 1180-82). Further, the record evidence demonstrates that Odell Morton possessed a valid Maryland driver’s license at the time of the rental transaction. (R. pp. 747; 1000; 1012-13; 1034). Both Reginald Morton and Respondent Rahal testified that while Reginald Morton paid for the rental of the U-Haul Truck, it was Odell Morton who rented the U-Haul Truck and agreed therein to drive the

U-Haul Truck. (R. pp. 767-68; 1009-1010).⁴ It is undisputed that Appellant was not present at Respondent El Cheapo when the rental transaction took place. (R. pp. 28; 1010; 1014).

Moreover, other than Appellant's unsupported allegations, there is no evidence in the record, whether in the form of pictures, estimates, or other supporting documentation, that the U-Haul Truck validly rented by Odell Morton ever made contact with Appellant's rental property. (R. pp. 1019; 1021).

ARGUMENT

For the reasons outlined below, the circuit court's order was proper and should be affirmed.

I. Appellant Cannot Rely Upon Facts And Arguments That Were Never Presented To, Nor Considered By, The Circuit Court.

Before delving into the merits of the circuit court's decision, it is important to note that Appellant's appeal and the issues raised therein are not properly before this

⁴ Appellant contends that the circuit court's reliance on Odell Morton's deposition testimony was prejudicial error because Appellant was denied the right to cross-examine Morton. (See App. Br. p. 18). This argument is without merit for several reasons. First, it is not preserved for appellate review, as it was never raised to or ruled upon by the circuit court, and Appellant did not file a motion to alter or amend. See Section I, *infra*. Moreover, Appellant was properly served with the notice of deposition and subpoena and chose to not attend the deposition, neither in person, via telephone, nor by any other means, and any assertion that he was precluded from attending and/or participating in the deposition is patently false.

Appellant also attempts to imply that lack of deposition testimony from Odell Morton indicates forgery, deceit, and a failure of proof supporting the Respondents' defense. (See App. Br. p. 20). While this assertion has no basis in law or fact, Respondents simply note that Appellant, not Respondents, has the burden of proof establishing his claims. Further, at his April 24, 2015 deposition, Reginald Morton testified that Odell Morton was unwell, unable to sit for a deposition and recently suffering from dementia since moving back to Maryland. (R. pp. 999-1000).

court and the appeal should therefore be dismissed. Appellant cannot rely upon “facts” and “arguments” that were never presented to, nor considered by, the circuit court.

The majority of arguments raised in Appellant’s brief on appeal present new arguments that were not previously raised to the circuit court. In his brief, Appellant has referenced so-called “facts” that were not previously before the circuit court. Additionally, Appellant raises new legal issues that were not raised to and/or ruled upon by the circuit court. Therefore, these issues should not be considered on appeal.

The law is clear that only issues “fairly and properly raised to the lower court and passed upon by that court” can be appealed. *State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) (internal quotations omitted). *See also Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006). For this Court to have “a platform for meaningful appellate review,” *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011), the circuit court must have had the opportunity *for each theory advanced by Appellant* “to rule properly after it has considered all relevant facts, law, and arguments,” *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Where a party raises an issue, but the issue is never ruled on by the trial court, and the party fails to file a motion to alter or amend, the issue is not preserved. *S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 544 S.E.2d 870 (Ct. App. 2001).

Appellant cannot keep “ace card[s] up [its] sleeve - intentionally or by chance - in the hope that an appellate court will accept th[ose] ace card[s] and, via a reversal, give [it] another opportunity to prove [its] case.” *I’On*, 338 S.C. at 422, 526 S.E.2d at 724. However, that is exactly what Appellant attempts to do in this appeal. Because these new

arguments are outside the scope of arguments presented to and considered by the circuit court, they are not on appeal.⁵

II. Appellant's Arguments Alleging Respondents Made Judicial Admissions and the Preclusive Effect Thereof Must Fail as a Matter of Law.

Throughout his brief and throughout the record below, Appellant repeatedly refers to Respondent Rahal's cherry-picked deposition testimony and an interrogatory response which was later clarified as "judicial admissions." Essentially, Appellant argues such "admissions" bar Respondents from defending their case or explaining the statements made therein and represent the main thrust for each of Appellant's motions. However, Appellant's arguments in this regard are unavailing for several reasons.

First, the circuit court did not rule on whether the statements were "judicial admissions." Thus, the argument Appellant attempts to make is not even properly before this Court. *See* Section 1, *supra*.

More importantly, neither deposition testimony nor answers to interrogatories are considered "judicial admissions," such that the party is barred from explaining or disproving said statements. A judicial admission is "[a] formal waiver of proof that [3] relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing." Black's Law Dictionary 54 (10th ed. 2014) (cited with approval by *McCray v. Valle*, Unpub. Op. No. 2014-UP-313, 2014 WL 3845087 (Ct. App. Aug. 6, 2014)). The Fourth Circuit has indicated a "judicial admission" is a representation that "'unless allowed by the court to be withdrawn, is

⁵ Respondents will note where arguments are not preserved below each issue discussed *infra*.

conclusive in the case.”” *Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261, 264 (4th Cir. 2004) (citing *Keller v. United States*, 58 F.3d 1194, 1199 n. 8 (7th Cir. 1995)). In *Keller*, cited by the Fourth Circuit Court of Appeals, the Seventh Circuit Court of Appeals stated:

Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them. They may not be controverted at trial or on appeal. Indeed, they are "not evidence at all but rather have the effect of withdrawing a fact from contention." Michael H. Graham, *Federal Practice and Procedure: Evidence* § 6726 (Interim Edition); see also John William Strong, *McCormick on Evidence* § 254, at 142 (1992). A judicial admission is conclusive, unless the court allows it to be withdrawn; ordinary evidentiary admissions, in contrast, may be controverted or explained by the party. *Id.* When a party testifying at trial or during a deposition admits a fact which is adverse to his claim or defense, it is generally preferable to treat that testimony as solely an evidentiary admission. *Federal Practice and Procedure* § 6726, at 536-37.

Furthermore, in *Wright v. Hiester Construction Co.*, 389 S.C. 504, 698 S.E.2d 822 (Ct. App. 2010), this Court distinguished between answers to interrogatories and answers to requests to admit:

The written admission during discovery was in response to interrogatories, rather than a request to admit. As such, it was correctly construed by the trial judge "as seeking current information as of the time the question is asked and answered." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 108, 410 S.E.2d 537, 541 (1991); see also Rule 33, SCRCP (concerning interrogatories to parties); Rule 36(b), SCRCP (concerning requests for admission and stating "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission").

Likewise, discovery deposition testimony of this nature is treated as evidentiary testimony, not judicial admissions. See *Managed Care Prof'ls v. Medlantic Healthcare Group*, No. 97-2158, 1998 U.S. App. WL 704458 (4th Cir. Oct. 1, 1998) (stating that "when a party testifying at trial or during a deposition admits a fact which is adverse to his claim or defense, it is generally preferable to treat the testimony as solely an

evidentiary admission”) (citing *Keller v. United States*, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995) (citing Michael H. Graham, Federal Practice and Procedure, § 6726 (Interim Ed. 1992)).⁶

Here, Appellant’s repeated citation to Respondent Rahal’s isolated deposition testimony and Respondents’ answer to an interrogatory,⁷ which was subsequently clarified and further explained, are simply not judicial admissions and certainly do not

⁶ Appellant relies on several cases from other jurisdictions to support his position that Respondent Rahal’s testimony and the interrogatory response were judicial admissions by which Respondents are bound. These cases are inapplicable for several reasons. First, Appellant’s reliance on *Zegarowicz for Ripati*, 77 A.D.3d 650 (N.Y. 2009), *Knauerhaze v. Nelson*, 836 N.E.2d 640 (Ill. Ct. App. 2005), *Underhill v. Jefferson County Appraisal District*, 725 S.W.2d 301 (Tex. App. 1987) is misplaced, as those cases address facts admitted in pleadings—at no time did Respondents admit the truck was rented to Reginald Morton in their pleadings. Moreover, Illinois law is not persuasive and even if it were, the statements made in Respondent Rahal’s deposition are not of the nature to be considered a judicial admission, even under Illinois law. *Compare Burns v. Michelotti*, 604 N.E.2d 1144 (Ill. Ct. App. 1992) (holding “a judicial admission is a clear and unequivocal statement which is made without reasonable chance of mistake about a matter within the speaker’s personal knowledge and finding party’s discovery deposition testimony not judicial admissions where the statements were not unequivocal and expressed a measure of uncertainty) with *Caponi v. Larry’s* 66, 601 N.E.2d 1347 (Ill. Ct. App. 1992) (“Although statements made during a discovery deposition are normally treated only as evidentiary admissions, which may be contradicted, such statements may be ‘so deliberate, detailed, and unequivocal, as to matter with the party’s personal knowledge’ that the statements will be held to be judicial admissions” and finding party repeatedly testified, *without equivocation*, about the condition of a brake pedal before an automobile collision) (internal citations omitted). Here, as evidenced by a reading of the entire Respondent Rahal deposition, Respondent Rahal repeatedly attempted to explain, despite Appellant’s attempts to limit his response, the Rental Agreement and the fact that although Reginald Morton paid for the rental, Odell Morton entered into the Rental Agreement as the authorized driver of the U-Haul Truck. Appellant’s assertions that Respondents are bound by isolated testimony purposefully contrived by Appellant’s questions are wholly unavailing.

⁷ The interrogatory answer was supplemented to explain that Respondent Rahal rented the U-Haul Truck to Odell Morton. Furthermore, in an answer to a request to admit, which Appellant has failed to cite, Respondents explained that Respondent Rahal rented the U-Haul Truck to Odell Morton. (R. pp. 1145-49).

have the preclusive effect Appellant seeks to impose. Thus, Appellant's arguments are wholly misplaced on this matter.

III. The Circuit Court Properly Granted Respondents' Motion for Summary Judgment and Properly Denied Appellant's Motion for Summary Judgment

The circuit court properly granted Respondents' Motion for Summary Judgment, while simultaneously denying Appellant's Motion for Summary Judgment, finding there was no basis in law or fact to support Appellant's claims. This holding should be affirmed.

A. Standard of Review

Summary judgment is appropriate where, as here, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(e), SCRPC and *Baughman v. Am. Tele. & Tel. Co.*, 306 S.C. 101, 111, 410 S.E.2d 537, 545 (1991). In determining the appropriateness of granting summary judgment, the circuit court is not "required to single out some one morsel of evidence...to create an issue of fact that is not genuine." *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993) (quoting *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984)).

Moreover, "[a] party opposing summary judgment must do more than rely on mere allegations." *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 307, 657 S.E.2d 67, 70 (Ct. App. 2008) (citing *Dyer v. Moss*, 208 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985)). Where a defendant establishes entitlement to judgment as a matter of law, the court must grant summary judgment. *Humana Hosp. Bayside v. Lightle*, 305 S.C. 214,

216, 407 S.E.2d 637, 638 (1991) and *Dyer*, 284 S.C. at 211, 325 S.E.2d at 70. “When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRPC.” *Fleming v. Rose*, 350 S.C. 488, 493-494, 567 S.E.2d 857, 860 (2002) (citing *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999)).

B. Summary Judgment in Favor of Respondents was Proper and the Circuit Court Should be Affirmed.⁸

The circuit court correctly determined that the Graves Amendment, 49 U.S.C. § 30106 (2015), bars Appellant’s claims under the theory of vicarious liability. Further, the circuit court properly held that Appellant’s claims of gross negligence against Respondents fail as a matter of law. The circuit court’s alternative ruling; holding that to the extent Appellant’s gross negligence claim could be interpreted as a negligent entrustment claim, the claim nevertheless failed as a matter of law, was correct. Finally, the circuit court’s ruling granting Respondents’ summary judgment as to Appellant’s IIED claim was proper.

Here, the Respondents’ demonstrated that they were entitled to judgment as a matter of law, and Appellant failed to present any law or *evidence* demonstrating the existence of a genuine issue of material fact that would defeat a grant of summary judgment on Respondents’ behalf. Despite his assertions to the contrary, none of the evidence that Appellant relies on in attempting to create a genuine issue of material fact demonstrates that Respondents are liable to him on any cause of action, whether for

⁸ To avoid redundancy, this section encompasses arguments related to the grant of summary judgment in favor of Respondents and the denial of Appellant’s motion for summary judgment.

vicarious liability, gross/negligence, negligent entrustment, or IIED. In contending that the circuit court incorrectly granted Respondents' motion, Appellant erroneously relies on facts and so-called evidence that still do not demonstrate that any of Respondents' actions were actionable and support a valid cause of action against them. The failure to present such evidence is fatal to Appellant's case. Therefore, because the circuit court properly entered summary judgment on behalf of Respondents as a matter of law and properly denied Appellant's Motion for Summary Judgment, this Court should affirm its rulings.⁹

i. The Circuit Court Properly Held That The Graves Amendment Bars Appellant's Claims For Vicarious Liability

The circuit court properly held that Appellant's claims against Respondents fail as a matter of law because the claims are claims of vicarious liability, which are barred by

⁹ Appellant argues in his brief that Respondents' memorandum in support of their summary judgment was untimely and that he failed to receive them prior to the hearing, such that the circuit court's reliance on them was prejudicial and reversible error. This argument fails for several reasons. Initially, Appellant never objected to the affidavit as untimely and never filed a motion to alter or amend the circuit court's order relying on the affidavit. Thus, the argument is not preserved for this Court's review. *See S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 544 S.E.2d 870 (Ct. App. 2001) (holding that where a party raises an issue, but the issue is never ruled on by the trial court, and the party fails to file a motion to alter or amend, the issue is not preserved).

In any event, Respondents sent a letter with supporting memorandums on October 9, 2015, to both the circuit court and Appellant. (R. pp. 612-13; 628; 631). Moreover, at the October 14, 2015 hearing, Appellant stated he had received the memorandums filed by Respondents at least the night before via an October 9, 2015 letter serving the same. (R. pp. 612-13). Furthermore, Rule 56(c), SCRCF imposes no requirement that memorandums be filed at all, let alone prior to the hearing. Finally, at the hearing, Respondents' counsel addressed in detail all of the arguments contained in the supporting memorandum, sufficiently permitting the circuit court to consider the memorialized arguments accordingly. Thus, Appellant's arguments regarding the memorandum are wholly without merit.

the Graves Amendment.¹⁰

The Graves Amendment, a section of the Federal Public Transportation Act of 2005, provides in relevant part as follows:

(a) In general – An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if--

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner). . . .

.....
(c) Applicability and effective Date – Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment.

49 U.S.C. § 30106 (2015).

Congress enacted the Graves Amendment for the explicit purpose of abolishing vicarious liability for those engaged in the business of renting and leasing motor vehicles based on mere ownership or leasing of a vehicle. The Congressional mandate of 49 U.S.C. § 30106 is clear and unambiguous. The affiliate of the owner of a leased vehicle

¹⁰ Appellant's assertion that the Graves Amendment is an affirmative defense is both unpreserved and without merit. *See* Section 1, *supra* (arguments must be raised to and ruled upon by the circuit court to be preserved for appellate review); *see also* Rule 8(c), SCRCF (delineating affirmative defenses that must be raised in a pleading).

"shall not be liable under the law of any state . . . by reason of being the owner of the vehicle for harm to persons or property that arises out of the use, operation or possession of the vehicle during the period of the rental or the lease..." 49 U.S.C. § 30106(c). By its express terms, 49 U.S.C. § 30106 "shall apply with respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment." 49 U.S.C. § 30106(c).

Although South Carolina's appellate courts have not addressed the precise issue, other state courts across the country have affirmed that the Graves Amendment abolishes vicarious liability for vehicle rental companies. *See Vargas v. Enter. Leasing Co.*, 60 So. 3d 1037, 1041 (Fla. 2011) *cert. denied*, 132 S. Ct. 769 (U.S. 2011) ("[W]e conclude that the present case falls into the third category [where a state law conflicts with a federal law] and agree with the district court that section 324.021(9)(b) 2, Florida Statutes (2007) conflicts with and thus is preempted by the Graves Amendment"); *Lazaridis v. Progressive N. Ins. Co.*, FSTCV116011100S, 2012 WL 5936218 (Conn. Super. Ct. Nov. 7, 2012) (holding that Graves Amendment precluded Hertz Corporation from being vicariously liable for the alleged negligence of driver); *Fuller v. Enter. Rent-a-Car Co. of Kentucky, LLC*, 2011-CA-001301-MR, 2012 WL 4839550 (Ky. Ct. App. Oct. 12, 2012), review denied (Aug. 21, 2013) (acknowledging that "Congress in 2005 enacted a law (the Graves Amendment) which exempts car rental companies from tort liability"); *Esposito v. Kiessling Transit, Inc.*, 060883A, 2007 WL 3014703 (Mass. Super. Sept. 6, 2007) ("The clear language of this Federal statute indicates that, when applicable, it expressly preempts State law that imposes liability on owners of motor vehicles engaged in

business of leasing or renting such vehicles simply due to ownership.”); *Meyer v. Nwokedi*, 777 N.W.2d 218, 223 (Minn. 2010) (“It is undisputed that’s vicarious liability claim fits within the scope of the express preemption clause of the Graves Amendment. Specifically, Enterprise is engaged in the business of renting motor vehicles, and did not engage in negligence or criminal wrongdoing”).

Initially, it should be noted that it does not appear South Carolina has ever imposed vicarious liability on vehicle rental companies. Respondents are unable to find a reported South Carolina case or statute that existed prior to the passage of the Graves Amendment that imposed vicariously liability on vehicle rental companies. Thus, it appears South Carolina preceded the Graves Amendment in refusing to recognize vicarious liability in these circumstances.

Furthermore, even assuming South Carolina at one time recognized vicarious liability in this context, the Graves Amendment extinguishes any doubt and expressly preempts the imposition of vicarious liability on vehicle rental companies. Although South Carolina courts have yet to address the Graves Amendment, perhaps for the reasons set forth above, South Carolina recognizes the doctrine of preemption, which is exactly what the Graves Amendment does. *See Priester v. Cromer*, 401 S.C. 38, 43, 736 S.E.2d 249, 252 (2012) (“The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution and provides that any state law that conflicts with federal law is “without effect.”). The Graves Amendment expressly eliminates and preempts vicarious liability for vehicle rental companies during the period of the vehicle’s lease.

Thus, Appellant’s claims against Respondents are barred by federal law. Appellant’s claims are, at their core, claims of vicarious liability founded upon the

alleged negligence (or intentional acts) of former defendants Reginald Morton and Dana Goins. Indeed, even Appellant refers to his claim as “[Appellant’s] (Vicarious Liability) Gross Negligence Claim” and admits he sued Respondents “vicariously.” (See App. Br. p. 4).¹¹

It is beyond dispute that Respondent El Cheapo was merely the renter of the U-Haul Truck, and Respondent Rahal was an employee of Respondent El Cheapo, working in the scope of his employment at the time that the rental transaction was completed. Appellant clearly alleges in his pleadings and improper “testimonial affidavits”¹² that Reginald Morton and Dana Goins rented the U-Haul Truck without a valid driver’s license, were operating the U-Haul Truck at the time of the incident, and Reginald

¹¹ Appellant accuses Respondents, Reginald Morton, and seemingly Respondents’ counsel of committing forgery with respect to Odell Morton’s signature on the Rental Agreement, thereby satisfying the criminal wrongdoing exception to the Graves Amendment. Again, this purported “fact” finds no support in the record and was not considered by the circuit court in any context. See *Becker v. Uhe*, 221 S.C. 334, 339, 70 S.E.2d 346 (1952) (“[F]acts improperly stated in the brief will not be considered.”); see also Rule 267(b), SCACR (“The signature of a party or attorney constitutes a certificate by him that he has read the document or paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.”).

Moreover, the circuit court failed to rule on Appellant’s forgery claim, therefore requiring Appellant to file a motion to alter or amend to preserve the issue for appellate review. Appellate failed to do so and the matter of forgery, a completely unsupported allegation, is not properly before this Court. See *S.E.C.U.R.E.*, 347 S.C. 333, 544 S.E.2d 870 (holding that where trial court did not rule on an issue, a party is required to file a motion to alter or amend to properly preserve issue for appellate review).

¹² Appellant was not present during the rental transaction of the U-Haul Truck from Respondent El Cheapo, which is the central issue in this case. In light of this, he cannot present bald assertions regarding the rental transaction under the guise of a “testimonial affidavit” for purposes of surviving a summary judgment motion. See Rule 56(e), SCRCPP (“Supporting and 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 therein.”) (emphasis added)).

Morton and Dana Goins negligently hit the house with the U-Haul Truck, thereby causing damage. (R. p. 28). Even if such allegations were true, which the record clearly refutes,¹³ Appellant has not made any allegations in his Amended Complaint asserting that Respondents were negligent in the repair, maintenance, or inspection of the U-Haul Truck or that the U-Haul Truck was unfit for rental. Furthermore, the record is devoid of any competent and admissible evidence supporting the same. Appellant seeks to impose vicarious liability on Respondents for the action of others during the lease of the U-Haul Truck—this is exactly the type of liability which the Graves Amendment expressly forbids and South Carolina has heretofore never recognized.

Thus, the circuit court properly held that because claims for vicarious liability are barred by the Graves Amendment, Appellant's vicarious negligence claims against Respondents fail. The circuit court's holding should be affirmed.

ii. The Circuit Court Properly Held that Appellant's Claim of Gross Negligence Fails as a Matter of Law.

Because the Graves Amendment preempts any alleged vicarious liability on the part of Respondents, Appellant must prove that Respondents were independently negligent in causing his damages. As discussed in section a, *infra*, Appellant's newfound arguments regarding a direct negligence claim are not preserved for appellate review. In any event, the circuit court properly held that Appellant's claim for gross negligence fails as a matter of law. To the extent these claims are even before this Court, this holding

¹³ The competent evidence in the record refutes the assertions that Reginald Morton or Dana Goins drove the U-Haul Truck and that the U-Haul Truck hit Appellant's rental house, causing damage. However, even if such allegations were actually in dispute, the veracity of such is not necessary to resolve the issue, as the Graves Amendment clearly preempts vicarious liability in such situations.

should be affirmed.

a. Appellant's Arguments Regarding Respondents' Negligence are Not Preserved.

As discussed in Section I, *supra*, Appellant's arguments regarding his gross negligence claim are not preserved. Appellant raises arguments regarding Respondents' independent negligence, including reference to the four required elements, for the first time on Appeal. In his memorandums to the circuit court, Appellant failed to argue with any specificity that Respondents were negligent. Instead, Appellant focused on his "vicarious liability" negligence claim. In an abundance of caution, Respondents' briefed arguments in opposition to a negligence claim, and the circuit court ruled on the issue. However, Appellant was required to file a motion to alter or amend the circuit court's ruling in order to preserve his arguments regarding negligence. For this Court to have "a platform for meaningful appellate review," *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011), the circuit court must have had the opportunity *for each theory advanced by Appellant* "to rule properly after it has considered all relevant facts, law, and arguments," *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Where a party raises an issue, but the issue is never ruled on by the trial court, and the party fails to file a motion to alter or amend, the issue is not preserved. *S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 544 S.E.2d 870 (Ct. App. 2001).

Appellant's failure to raise these newly formulated arguments is fatal to his appeal on the issue, and as such, the arguments regarding negligence are not preserved and the circuit court's order should be affirmed.

b. The Circuit Court Properly Found that Appellant's Gross Negligence Claim was Barred as a Matter of Law.

“To establish a negligence cause of action under South Carolina law, the plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty.” *J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 368-69, 635 S.E.2d 97, 101 (2006) (citations omitted). Gross negligence has been defined as “the failure to exercise a slight degree of care” and “when a person is so indifferent to the consequences of his conduct as not to give slight care as to what he is doing.” *Clark v. South Carolina Dept. of Public Safety*, 362 S.C. 377, 382, 608 S.E.2d 573, 576 (2005) (citations omitted).

“In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff.” *Huggins v. Citibank, N.A.*, 355 S.C. 329, 332 585 S.E.2d 275, 277 (2003) (citing *Faile v. South Carolina Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002)). “If there is no duty, the defendant is entitled to judgment as a matter of law.” *Id.* (citing *Simmons v. Tuomey Regional Med. Ctr.*, 341 S.C. 32, 533 S.E.2d 312 (2000)). “‘A tortfeasor's duty arises from his relationship to the injured party.’” *Ravan v. Greenville Cnty.*, 315 S.C. 447, 434 S.E.2d 296 (1993) (quoting *South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325-26 (1986)). “Where this relationship is ‘too attenuated,’ a duty will not arise.” *Id.* (citing *South Carolina State Ports Authority*, 289 S.C. at 377, 346 S.E.2d at 326.)

The only reasonable inference from the evidence presented is that Respondents

owed no duty to Appellant in these circumstances. The Amended Complaint does not allege and Appellant has not proven or set forth any evidence tending to prove that any special relationship existed between Appellant and Respondents either through contract, statute, or otherwise that would give rise to a duty owed to Appellant under these circumstances. Rather, Appellant's entire case is based upon his bald assertions, unsupported by any evidence, that Respondents rented a U-Haul rental truck to Reginald Morton, an individual without a driver's license. (R. p. 28). Thus, there is absolutely no evidence in the record demonstrating a duty owed by Respondents to Appellant.

Moreover, even assuming *arguendo* such a duty existed, which is denied, the circuit court properly found that Appellant's gross negligence claim nevertheless fails because Appellant failed to produce any evidence that Respondents breached any duty owed to Appellant. (R. pp. 16-17).

The record is devoid of any credible, admissible, and competent evidence demonstrating Respondents rented a U-Haul rental truck to an individual without a driver's license. The Rental Agreement and official records of the Maryland Department of Motor Vehicles demonstrate Respondents rented the U-Haul Truck to Odell Morton, who possessed and presented a facially valid driver's license. In fact, the license numbers on both documents are the same. (R. pp. 1034; 1180-82). Moreover, Respondent Rahal testified that he rented the U-Haul Truck to Odell Morton as the licensed driver. (R. pp. 748; 764-68). While Appellant harps on the fact that the Rental Agreement lists Reginald Morton as a party to the Rental Agreement, the Rental Agreement also shows, just as Respondent Rahal's testimony confirms, Odell Morton signed the Rental Agreement and presented a facially valid Maryland driver's license to

Respondent Rahal at the time of the rental transaction, while Reginald Morton paid for the rental. (R. pp. 748; 764-68). Furthermore, it is undisputed that Appellant was not present at Respondent El Cheapo when the rental transaction took place. Appellant presented no evidence that the procedure followed by Respondents violated any law, and more importantly, no evidence that Respondent breached any duty owed to Appellant, to the extent he hypothetically proved one existed. Furthermore, even assuming *arguendo* that Appellant could prove that Respondents rented a U-Haul rental truck to an unlicensed driver, which he cannot, he failed to introduce any evidence below demonstrating how Respondents' alleged actions violated any duty owed to Appellant.

In light of the utter lack of evidence to support Appellant's claims of the existence of a duty or breach thereof, the circuit court properly found that no genuine issue of material fact exists as to Appellant's gross negligence claim. Thus, Respondents were entitled to summary judgment on the gross negligence claim and the circuit court should be affirmed.

iii. To the Extent Appellant's Claim is Considered a Negligent Entrustment Claim, the Circuit Court Properly Granted Respondents Summary Judgment.

In an abundance of caution, Respondents argued that even if Appellant's gross negligence claim was a misguided attempt to bring a negligent entrustment action, the claim nevertheless failed. As discussed in section a, *infra*, Appellant disclaimed this cause of action for negligent entrustment at the hearing and in his initial brief. In any event, the circuit court properly held that Appellant's claim for gross negligence failed because there was no evidence in the record to support the claim, and thus no genuine issue of material fact. To the extent this claim is even before this Court, this holding

should be affirmed.

a. Appellant has Abandoned and/or Conceded the Circuit Court's Grant of Summary Judgment as to the Negligent Entrustment Interpretation of the Gross Negligence Claim.

Initially, Appellant has abandoned any argument related to circuit court's alternative ruling granting summary judgment to Respondents even if Appellant's gross negligence claim was determined to be a negligent entrustment claim. An issue is not preserved for appellate consideration if it has been conceded in the trial court. *State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000); *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998) (an issue conceded in the trial court cannot be argued on appeal).

At the summary judgment hearing, Appellant stated "I didn't bring entrustment because I don't know how the law [sic] they pushed that in there because I hear and keep talking about negligent entrustment, but that's not the charge I brought. I brought gross negligence. (R. p. 694, lines 17–22). Further, Appellant reinforces his abandonment of the negligent entrustment claim in his brief, stating "Appellant has made it clear all along and in his amended complaint and at the hearing, that he brought no [negligent entrustment] cause of action." (App. Br. p. 28). Thus, it is clear Appellant has abandoned this claim. In light of the clear application of the Graves Amendment and the failure of Appellant's common law gross negligence claim, his abandonment of the direct liability claim of negligent entrustment is fatal to his entire lawsuit. *See Judy v. Judy*, 384 S.C. 634, 682 S.E.2d 836 (Ct. App. 2009) (refusing to address conclusory arguments which are considered abandoned).

b. The Circuit Court Properly Found the Negligent Entrustment Claim Failed and Should be Affirmed.

To the extent the Court wishes to address the merits of the circuit court's holding regarding negligent entrustment, the holding was proper and should be affirmed. In order to prove a negligent entrustment claim in South Carolina, a party must prove: "(1) knowledge of or knowledge imputable to the owner that the driver was either addicted to intoxicants or had the habit of drinking, (2) that the owner knew or had imputable knowledge that the driver was likely to drive while intoxicated and (3) under these circumstances, the entrustment of a vehicle by the owner to such a driver." *Jones ex rel. Jones v. Enterprise Leasing Company-Southeast*, 383 S.C. 259, 264, 678 S.E.2d 819, 822 (Ct. App. 2009) (citing *McAllister v. Graham*, 287 S.C. 455, 458, 339 S.E.2d 154, 156 (Ct. App. 1986)).

Appellant submitted no evidence to support any of the essential elements of a negligent entrustment claim. Specifically, Appellant produced no evidence regarding the actual ownership of the vehicle, no evidence tending to indicate that Respondents possessed knowledge that the driver of the U-Haul Truck was addicted to intoxicants or had a habit of drinking, and no evidence that the Respondents knew or should have known that the driver was likely to drive while intoxicated. Moreover, Appellant failed to submit any evidence to show that Reginald Morton was the lessee of the U-Haul Truck. Instead, the record evidence demonstrates that Respondent El Cheapo actually rented the U-Haul Truck to Odell Morton as the driver, not Reginald Morton or Dana Goins. Reginald Morton merely paid for the rental of the U-Haul Truck. The evidence also shows that Odell Morton possessed a valid driver's license at the time of the rental

transaction.

As the circuit court found, Appellant simply failed to present evidence to create a disputed material fact. (R. p. 18). Moreover, though the circuit court refused to unequivocally rule on the scope of a negligent entrustment claim, the Supreme Court has expressly declined to expand the cause of action to circumstances beyond intoxicants and/or drinking. *See Gadson v. ECO Servs. of S.C., Inc.*, 374 S.C. 171, 176-177, 648 S.E.2d 585, 2007 (2007) ("We decline to adopt sections 308 and 390 of the Restatement [which extend liability to other circumstances]."). Thus, this Court should find that Appellant's allegations, even if taken as true, do not support a claim of negligent entrustment as a matter of law. *See Upchurch v. New York Times*, 314 S.C. 531, 538, 431 S.E.2d 558, 562 (1993) ("We may affirm the trial judge for any reason appearing in the record.") (citing Rule 220(c), SCACR)). No allegation is even suggested that the driver of the U-Haul Truck (Odell Morton) or anybody else for that matter, used intoxicants and/or was using alcohol at the time of the rental transaction of the U-Haul Truck (the only relevant time for a claim of this nature); instead the allegations solely relate to Reginald Morton not having a driver's license at the time of the rental transaction.

Therefore, the circuit court's grant of summary judgment to Respondents on this claim, to the extent it can be construed as negligent entrustment, was proper and should be affirmed.

iv. The Circuit Court Properly Granted Respondents Summary Judgment Regarding Appellant's IIED Claim.

The circuit court properly held that Appellant's claim for IIED failed as there was no evidence creating a genuine issue of material fact. Moreover, Appellant's new

arguments regarding the IIED claim are not preserved for review. To the extent this claim is even before this Court, this holding should be affirmed.

a. Appellant's Arguments Regarding IIED are Not Preserved for Appeal.

Seemingly for the first time on appeal, Appellant attempts to couch his IIED claim in terms of vicarious liability, essentially arguing that Respondents are vicariously liable for the actions of non-employee customer Reginald Morton. While this attempt is unsupported by the law or facts of this case, it is also not preserved for this Court's review. Furthermore, at no point below did Appellant address the elements of an IIED cause of action with the circuit court. As discussed in section I, *supra*, matters not raised to and ruled upon are not preserved for this Court's review. *See State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (holding that only issues "fairly and properly raised to the lower court and passed upon by that court" can be appealed) (internal quotations omitted)).

The circuit court did not have the opportunity to rule on each theory advanced by Appellant, and "to rule properly after it has considered all relevant facts, law, and arguments." *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (noting a party cannot hold "ace card[s] up [his] sleeve - intentionally or by chance - in the hope that an appellate court will accept th[ose] ace card[s] and, via a reversal, give [his] another opportunity to prove [his] case"); *see also State v. McCray*, 332 S.C. 536, 506 S.E.2d 301 (1998) (noting where the appellate argument differs from the ground for a party's trial objection, the issue is not preserved for review).

**b. The Circuit Court's Holding That Appellant's IIED Claim Fails
As a Matter of Law Was Proper And Should Be Affirmed.**

To the extent the Court finds Appellant's arguments appropriate, the circuit court's holding that Appellant's IIED claim failed as a matter of law was proper and should be affirmed. In order to recover for IIED under South Carolina law, a plaintiff must establish that:

- (1) the defendant intentionally or recklessly inflicted emotional distress; or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;"
- (3) the actions of the defendant caused plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Hansson v. Scalise Builders of South Carolina, 374 S.C. 352, 650 S.E.2d 68 (2007) (quoting *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981) (citations omitted)). In order to survive a motion for summary judgment, a plaintiff must establish a prima facie case as to each element of a cause of action for IIED. *Hansson*, 374 S.C. at 358, 650 S.E.2d at 71. Importantly, the *Ford* court emphasized the heightened burden of proof included in the second and fourth elements of the tort. *Ford*, 276 S.C. at 166, 276 S.E.2d at 780 (citations omitted). "It is for the court to determine in the first instance whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, and only where reasonable persons may differ is the question one for the jury." *Todd v. S.C. Farm Bur. Mut. Ins. Co.*, 283 S.C. 155, 321

S.E.2d 602 (Ct. App. 1984), *portion of opinion quashed on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985).

As to the resulting emotional distress, “a party cannot establish a prima facie claim for damages resulting from a defendant’s tortious conduct with mere bald assertions.” *Hansson*, 374 S.C. at 358, 650 S.E.2d at 72. “To permit a plaintiff to legitimately state a cause of action by simply alleging ‘I suffered emotional distress’ would be irreconcilable with [the] Court’s development of the law in this area.” *Id.* In addition, the *Ford* court noted, “where physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claim is not fictitious.” *Ford*, 276 S.C. at 166, 276 S.E.2d at 780 (citations omitted).

In *Todd*, this Court reversed a jury verdict in favor of the plaintiff on his outrage claim against the defendants despite evidence that could have been interpreted to show the defendants violated the State’s Polygraph Examiner’s Act by requiring the plaintiff to submit to numerous polygraph tests in the course of his employment as an insurance agent. *Todd*, 283 S.C. at 173, 321 S.E.2d at 612 (Ct. App. 1984). The plaintiff also presented evidence that the court conceded could have led to the inference that one defendant lied about the plaintiff’s performance on the polygraph examinations. *Id.* Importantly, this Court held that violation of a statute does not import moral turpitude or outrageousness so to give rise to an outrage or IIED cause of action. *Id.* The court also held that lying, in and of itself, is not outrageous conduct. *Id.* (citing *Jones v. Nissenbaum, Rudolph & Seidner*, 244 Pa.Super. 377, 368 A.2d 770 (1976); *Public Finance Corp. v. Davis*, 66 Ill.2d 85, 4 Ill.Dec. 652, 360 N.E.2d 765 (1976)).

Even assuming Appellant is able to prove his allegations that Respondents rented a U-Haul rental truck to an individual without a license, such act does not come close to rising to the level of outrageous, extreme or severe conduct that is necessary to support an IIED claim. This shortcoming is only made clearer when compared with other South Carolina cases where, despite more egregious conduct, the courts refused to find that the conduct at issue gave rise to an IIED cause of action. *See, e.g., Todd; Horton, supra.* Viewing the evidence in the light most favorable to Appellant and even assuming evidence exists to support Appellant's allegations, the conduct as alleged is not outrageous, extreme or severe. As the circuit court observed, these allegations "pale[] in comparison" to the conduct found insufficient in *TNS*. (R. p. 20). Under South Carolina jurisprudence, the only reasonable inference that can be drawn is that Respondents' alleged conduct was not so extreme and outrageous to exceed all possible bounds of decency. To hold otherwise ignores the heightened standard of proof established by *Ford*.

Finally, the circuit court properly held that the record is devoid of evidence demonstrating Respondents' actions caused any emotional distress to Appellant or that the distress suffered by Appellant was so severe that no reasonable man would be expected to endure it.¹⁴ (R. p. 21). While Appellant takes issue with the circuit court's

¹⁴ Appellant repeatedly pleads and states that he is entitled to damages because Respondents refused to pay his multi-million demands and have "forc[ed] tortuous and continuing litigation upon disabled [Appellant]." (R. p. 32). Such damages are not recoverable under South Carolina law. Although no South Carolina appellate court has addressed the issue, as stated in *Charles v. Bilson*, 186 Cal.App.3d 954, 231 Cal.Rptr. 155 (Ct. App. 1986), "[t]hese types of damages are not normally compensable. It has always been understood in our system that attorney's fees and the mental stress of litigation are burdens which the parties must ordinarily bear themselves."

use of the term “bald assertions” to describe his claims, the Supreme Court has held that “damages cannot be recovered for mental suffering the absence of bodily injury.” See *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 103 S.E.2d 265, 270 (1958) (“It is conceded by the respondent that under the law of this State damages cannot be recovered for mental suffering in the absence of bodily injury.”); see also *Doe v. Greenville Cnty. Sch. Dist.*, 274 S.C. 63, 68, 651 S.E.2d 305,307 (2007) (holding that, for an NEID claim, “the plaintiff’s emotional distress manifests itself by physical symptoms capable of objective diagnosis and be established by expert testimony”). Thus, the circuit court properly held that the record is devoid of evidence demonstrating Respondents’ actions caused any recoverable emotional distress.¹⁵

In light of the foregoing, the circuit court’s order granting summary judgment to Respondents on Appellant’s IIED claim should be affirmed.

IV. The Circuit Court Did Not Abuse its Discretion in Denying Appellant’s Motion for Leave to Amend Pleadings.

The circuit court properly denied Appellant’s Motion for Leave to Amend Pleadings, finding there was no basis in law or fact to support the naming of UHI in this lawsuit as a party defendant. This holding should be affirmed.

¹⁵ Appellant string cites numerous federal court cases for the proposition that expert testimony is not needed and a plaintiff’s own testimony regarding his emotional distress is sufficient. However, each of these cases cited by Appellant concern federal discrimination cases, including wrongful termination actions under the Americans with Disabilities Act and §1983, which contain their own, unique body of law. These cases are highly distinguishable from the present matter and have no bearing on South Carolina’s clear proof requirement for emotional distress.

A. Standard of Review

"It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and that the party opposing the motion has the burden of establishing prejudice." *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 232, 599 S.E.2d 462, 465 (Ct. App. 2004). "The trial judge's finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred." *Berry v. McLeod*, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (Ct. App. 1997). On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling." *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (citation omitted)). An abuse of discretion occurs when the decision of the trial judge is based upon an error of law or upon factual findings that are without evidentiary support. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 264 (2006).

First, it should be noted that Appellant has referenced the incorrect standard of review. Appellant's assertion that this Court's standard of review is "De Novo / Independent," without any citation to law or authority supporting such assertion, is in error and another example of the myriad of legal, factual, and practical errors with Appellant's appeal.

B. The Circuit Court Did Not Abuse Its Discretion in Denying Appellant's Motion for Leave to Amend Pleadings.

Rule 15(a), of the South Carolina Rules of Civil Procedure states in part, "[A] party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party."

In interpreting Rule 15(a), South Carolina courts have noted that, “[a]lthough leave to amend should generally be freely given, leave may be properly denied “where the proposed amendment would be futile.” See *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012) (holding that circuit court did not err in refusing to grant leave to amend complaint to add party defendant where amendment would be futile); *Higgins v. Med. Univ. of S. Carolina*, 326 S.C. 592, 604, 486 S.E.2d 269, 275 (Ct. App. 1997) (“any amendment of the Higginses' complaint which alleges the doctors were paid by UMA ultimately would be futile . . .”).

Here, Appellant's claims are based solely upon allegations that Respondents rented a U-Haul rental truck to Reginald Morton, who did not possess a valid driver's license at the time of the rental transaction. (R. pp. 27-55). Even assuming arguendo that this allegation is true, which Respondents deny, there is no basis for adding UHI to this lawsuit as a party defendant. Appellant's claims relate solely to the rental of the U-Haul Truck. The undisputed evidence in the record confirms, as the circuit court properly found, that UHI provides accounting, technical, and purchasing services to the U-Haul rental companies and does not engage in the rental of vehicles. (R. pp. 10; 375-76). UHI does not rent trucks or any other U-Haul rental equipment as part of its business. (R. p. 375). Instead, rentals of U-Haul trucks and trailers are made by U-Haul Rental

Companies, such as UHSC, or dealers, like Respondent El Cheapo, pursuant to contracts with those rental companies and/or dealers.¹⁶ (R. pp. 375-76).

The circuit court previously dismissed UHSC (a separate and distinct legal entity from UHI) from this litigation, finding that UHSC had no connection to the rental transaction at issue, as the rental was made by Respondent El Cheapo, an independent U-Haul dealer, and not UHSC. UHI is even further removed from this rental transaction than UHSC, and as such, Appellant cannot state a claim for relief against UHI. Thus, the circuit court did not abuse its discretion in finding that any amendment adding UHI as a party defendant would be futile, denying Appellant's Motion for Leave to Amend.

V. The Circuit Court Properly Denied Appellant's Motion for Sanctions and Should be Affirmed.

The circuit court properly denied Appellant's Motion Sanctions, finding there was no basis in law or fact to support Appellant's claims. This holding should be affirmed.

¹⁶ Appellant's assertion that the Winkelman affidavit was untimely and should not be considered in opposition to his motion because it was served the day of the October 14, 2015 hearing fails for several reasons. First, at the October 14, 2015 hearing, Appellant stated he had received the memorandums filed by Respondents at least the night before via an October 9, 2015 letter serving the same. (R. 612-13). Furthermore, Rule 56(c), SCRPC deals strictly with summary judgment motions. The Winkelman affidavit was submitted in opposition to Appellant's Motion for Leave to Amend Pleadings, and therefore Rule 56's timing requirements are not applicable. Nevertheless, to the extent it is applicable, it is clear the affidavit was *served* October 9, at least two days before the hearing and in compliance with the rule. Moreover, Appellant never objected to the affidavit as untimely and never filed a motion to alter or amend the circuit court's order relying on the affidavit. Thus, the argument is not preserved for this Court's review. See *S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 544 S.E.2d 870 (Ct. App. 2001) (holding that where a party raises an issue, but the issue is never ruled on by the trial court, and the party fails to file a motion to alter or amend, the issue is not preserved).

A. Standard of Review

The decision whether to impose sanctions under Rule 11 of the South Carolina Rules of Civil Procedure of the Frivolous Proceedings Act is treated as one in equity. *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004) (applying an equitable standard of review of factual findings in action for sanctions under Rule 11 and the Act); *see also Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003). (holding decision whether to impose sanctions under FCPSA “is a decision for the judge, not the jury, it sounds in equity rather than at law”). In an action in equity tried by the judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Beard*, 359 S.C. at 357, 597 S.E.2d at 838.

B. The Circuit Court Properly Denied Appellant’s Motion for Sanctions.

Attempting to decipher Appellant’s argument, Appellant appears to contend that defending a case in the face of out-of-context, isolated deposition testimony and a later supplemented interrogatory response can form the basis of a motion for sanctions.

As the circuit court properly found, Appellant has not and cannot show that he is entitled to sanctions against Respondents, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure or the South Carolina Frivolous Civil Proceedings Sanctions Act. (R. p. 22).

Rule 11(a), SCRCP provides:

Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. . . . The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge,

information and belief there is good ground to support it; and that it is not interposed for delay.

Under Rule 11, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). Similarly, the South Carolina Frivolous Civil Proceedings Sanctions Act provides that an attorney may be sanctioned for "filing a frivolous pleading, motion, or document" or a pleading "interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings." S.C. Code Ann. § 15-36-10 (Supp. 2011). Section 15-36-10(J) provides that the Act "shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law." Furthermore, a motion for sanctions pursuant to the Act may only be made if the party seeking sanctions prevailed at trial or in the case. *See* S.C. Code Ann. § 15-36-10(C) (providing the court shall determine if a claim or defense is frivolous under the Act at the conclusion of a trial or a case that has been dismissed upon the motion of the prevailing party)

Appellant woefully failed to demonstrate any valid grounds for the imposition of sanctions against Respondents under Rule 11 or S.C. Code Ann. § 15-36-10. First, the grant of summary judgment in Respondents' favor extinguishes any claim, however unsubstantiated, of sanctions under the Frivolous Proceedings Act. Moreover, Appellant continually contorted and mischaracterized the evidence below and continues to do so in his appellate brief. Essentially, Appellant has repeatedly taken the position that

Respondents improperly and illegally rented the U-Haul Truck to Reginald Morton, an individual without a driver's license, who then damaged Plaintiff's property with the U-Haul Truck, and that any assertions or facts to the contrary are untrue and improper. Appellant has continuously taken this position, despite that overwhelming evidence in the record that clearly shows that the U-Haul Truck was rented to Odell Morton, Reginald Morton's father, who presented a facially valid driver's license and signed for the U-Haul Truck.

The evidence actually presented to the circuit court not only supports summary judgment for Respondents, it also demonstrates Appellant's contortion of the record. Appellant harps on Respondent Rahal's statement, taken out of the context of the entirety of Respondent Rahal's deposition testimony, that he rented the U-Haul Truck to Reginald Morton. However, Appellant fails to acknowledge Respondent Rahal's testimony clarifying that it was actually Reginald's father, Odell Morton, who presented his driver's license for the rental of the U-Haul Truck, signed the Rental Agreement, and drove the U-Haul Truck from the premises following completion of the rental transaction, while Reginald Morton merely paid for the rental charges. (R. pp. 746-47; 763; 765-66). Appellant also continues to overlook the fact that Respondent has since supplemented its previous, imprecisely worded discovery responses, and clarified that, in fact, it was Odell Morton that presented his driver's license and signed for the rental of the U-Haul Truck. (R. pp. 1145-49). Respondents have never denied that the competent evidence shows that Reginald Morton paid for the rental charges but the U-Haul Truck was entrusted to and driven by Odell Morton, who had a facially valid driver's license at the time of the rental transaction.

Appellant improperly fails to accurately recount the facts, discovery, and testimony in the record, while simultaneously requesting that a court sanction Respondents for presenting a meritorious defense that necessarily disputes and refutes his bald allegations. The circuit court properly found that Appellant's motion for sanctions cannot pass muster and this Court should affirm.

IV. Appellant's Vexatious Litigation Conduct Entitles Respondents' to Appropriate Relief.

The circuit court held its ruling on Respondents' Motion to Dismiss for Vexatious Litigation and Sanctions in abeyance. However, because Appellant has raised the issue to this Court, and in light of the serious and continuing nature of Appellant's abusive and vexatious litigation tactics, Respondents briefly address their Motion, as the appellate court may affirm for any reason appearing in the record. *See Upchurch v. New York Times*, 314 S.C. 531, 538, 431 S.E.2d 558, 562 (1993) ("We may affirm the trial judge for any reason appearing in the record.") (citing Rule 220(c), SCACR).

For brevity, Respondents direct the Court to their Memorandum in Support of the Motion and accompanying exhibits, which were properly filed with and before the circuit court. (R. pp. 377-574). Further, despite repeated admonitions by the circuit court regarding Appellant's behavior, including at the October 14, 2015 hearing, Appellant's brief to this Court is full of more vitriol, abusive and offensive language, and not-so-subtle allegations of forgery, dishonesty, and unethical behavior on the part of both Respondents and the undersigned counsel. For example, Appellant repeatedly refers to Respondent Rahal and the owner of Respondent El Cheapo, Zaher Mohammad, as "Palestinian/Jordanian/Syranian" and implies that they have fled to the Middle East to

avoid a judgment. (App. Br. pp. 6; 35). He also references “false defense” and “false statements” made and signed by Respondents’ defense counsel, and implies that the undersigned have pursued false and frivolous defenses that the previous, “reasonable” attorneys refused to do. (App. Br. pp. 29-30; 33). Furthermore, he spends three pages associating Reginald Morton¹⁷ with murder, shootings, Federal ATF Agents, drugs, and guns, among others. (App. Br. pp. 23-25).

“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). While Respondents respect the circuit court’s decision to hold the decision on its Motion in abeyance, Respondents also urge this Court to examine the judicial, economical, and ethical consequences of Appellant’s vexatious litigation. Pro se litigations are not above the laws of civility and the rules of court. Appellant has abused and misused the judicial system and his privilege of appearing pro se as a license to harass Respondents and their counsel and clog the judicial machinery. Respondents respectfully request this Court take whatever action it deems necessary to address Appellant’s continued vexatious litigation conduct.

¹⁷ While Reginald Morton is not a party to this action, the offensive language used to describe him is beyond the bounds of decency and wholly unsupported by anything other than Appellant’s assertions.

CONCLUSION

Most, if not all, of Appellant's arguments on appeal or not preserved for appellate review for a variety of reasons and the appeal should be dismissed. Should the Court find the issues properly before it, the circuit court's order should nevertheless be affirmed in full. The circuit court properly granted Respondents' motion and entered summary judgment in their favor while simultaneously denying Appellant's motion for summary judgment. Viewing the record evidence in the light most favorable to Appellant reveals that he has failed to set forth a cognizable cause of action against Respondents and that even if he did, there is no evidence in the record to create a genuine issue of material fact in support of the claims.

Furthermore, the circuit court did not abuse its discretion in denying Appellant's motion for leave to amend pleadings, as there is no basis in law or fact to support the naming of UHI in this lawsuit as a party defendant. Additionally, the circuit court properly denied Appellant's motion for sanctions, finding neither the record nor South Carolina law supports imposition of sanctions against Respondents. Finally, with respect to Respondents' motion to dismiss for vexatious litigation, Respondents request the Court examine Appellant's abusive and offensive litigation tactics and take whatever action it deems necessary to prevent Appellant and other pro se litigants from abusing the court system, parties, and attorneys.

Therefore, Respondents respectfully request this Court affirm the circuit court's order in full.

Respectfully submitted,

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Columbia, South Carolina
June 13, 2016

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM SUMTER COUNTY
Court Of Common Pleas**

**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.**

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief of Respondents, Stop "N" Save, Inc., d/b/a El Cheapo Plus #7 and Roy Rahal, complies with Rule 211(b), SCACR.

Signature page to follow

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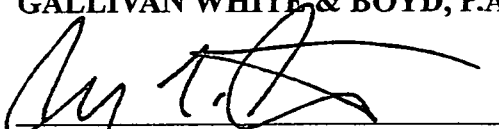
JUN 13 2015

SC Court of Appeals

Respectfully submitted,

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PROOF OF SERVICE

I, Laura Sabo, the undersigned employee of Gallivan, White & Boyd, P.A., attorneys for Respondents, hereby certify that on June 13, 2016; I served a copy of FINAL BRIEF OF RESPONDENTS, United States Mail, postage prepaid to the following:

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Pro Se Appellant



Laura Sabo

June 13, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

Hon. George C. James, Jr., Circuit Court Judge

Appellate Case No: 2015-002481

Charles Taylor,.....Appellant,

v.

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

FINAL REPLY BRIEF OF APPELLANT

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REPLY TO RESPONDENTS STATEMENT OF ISSUES ON APPEAL

1. That Respondents purposefully misstated &/or did not accurately state the 6 main issues Appellant raised on appeal, see (Appellant's Final Brief p. 1 and Respondents' Final Brief p. 1) & that therefore the court should strike, disregard, not consider the Respondents' *statement of issues on appeal*, consider only the Appellant's *statement of issues on appeal*, and/or consider Respondents' right to accurately state such *statement of issues on appeal* waived, see Hambros Reserve, Ltd. v. Faitz, (1992) CA4th 129, 11 CR 2d 638; essentially in pertinent part, that the failure to address each ground on appeal will be considered waived; & (The Respds' brief are limited to issues raised in Aplnt's brief), &
2. That because Respondents purposefully misstated and/or did not state accurately the 6 main issues Appellant raised on appeal, as stated above in number 1, therefore all Respondents' arguments flowing therefrom and/or made pursuant thereto and/or made thereon, are necessarily, purposefully, misstated, and/ or, not accurately stated; and likewise, as in number 1 above, the court should strike, disregard, not consider the Respondents' arguments, consider only the Appellant's arguments, and/ or consider Respondents' right to such Respondent arguments waived, see, same authority above and, Handy v. Shiells (1987) 190 CA3d 512, 519, 235 CR 543; and; Oliver v. Board of Trustees of Eisenhower Medical Center (1986) 181 CA3d 824, 832, 227 CR1; and; Wickham v. Southland Corp. (1985) 168 CA3d 49, 54, 213 CR 825; essentially in pertinent part, that on appeal, a Respondents' failure to state issues etc. accurately, the court can waive their arguments; and see Beckley v. Uhe, 221 S.C. 334, 339, 70 S.E. 2d 346 (1952) that ("[F]acts improperly stated in the brief will not be considered.").

REPLY TO RESPONDENTS INTRODUCTION

Regrettably, Resp's forges ahead with misstating (*see p.1 above*) the admitted facts et al. in this case--which came about due to facts that can't be overcome by even all the misstating by Respondents no matter how hard they try--from the date of this incident 6-1-13 to the present; which facts, among a plethora of others, the essential ones in a nutshell--that the Respondents asked the lower court and now the SC Court of Appeals to overlook are that the Respondents, on said date above, rented to third party, a Reginald Morton, a U-Haul truck in a drug deal with no driver's license & knew, by Rahal's own *judicial admissions*, that R. Morton had no driver's license; & with which truck, Reginald Morton proceeded to tear up Charles Taylor ("Appellant")'s rental house because he was seething mad because Appellant had them evicted by the Hon. Judge Kristy F. Curtis for Reginald Morton's drug dealing and gun running, and for non-rent payment; which rental house ultimately collapsed which Appellant had to clean it up and carry it off at his own expense. That one of the other central facts in this case *is* that, Respd's got together with Reginald Morton as stated (*who was just out of jail on bail on 6-1-13*) & forged sign his dying sick father (*here in the rental house in bed on 6-1-13*) name on the 3 U-Haul truck rental documents (*1.the rental contract, 2.the u-haul equipment damage responsibility requirement, and 3.the R & D Tag*) to make it appear that Odell Morton had been there and did it. The forgery was later *judicially admitted*, among others, in discovery by Respondent Roy Rahal himself. Thus, the renting of the U-Haul truck to Reginald Morton, with no driver's license, the forging of the 3 rental documents & their lying about it, *until Rahal's judicial admissions beginning 2-11-14, (R. p. 34), under oath and signed by counsel*, are central paramount admitted facts that the Respondents ask to be overlooked, and essentially, the lower

Court agreed-awarded Respondents summary judgment and denied Appellant's summary judgment in its order of Nov. 11, 2015 written Nov. 20, 2015, notwithstanding all the above etc., which Appellant assigns prejudicial & reversible court err. This appeal then followed, filed December 1, 2015, because, among other things, Appellant requested a jury trial but it was denied by way of the said summary judgment to Respondents. The foregoing is the gist of a few Aplnt's appeal issues to this court. Appellant would most respectfully now ask the court's attention here, to *see* Respds' introduction p. 2-3 in their brief for comparison re the misstating vs. this reply p. 2-3 (*for the flavor of the full appeal & really the main issues to be resolve especially reference Rahal's judicial admissions*); and the court will clearly see Respondents' strategy to win by complaining incessantly (*in the lower court & continues here*) of accusing Appellant of bad litigation tactics & his pleadings not in compliance with the rules, etc. etc., and note that the Appellant cites precisely (to the actual R. p. numbers) re the now completed Record On Appeal & final briefs.

¹ Note: That this footnote and any related thereto above, omitted, because such was resolved by this Court's 5-6-16 Order.

REPLY TO RESPONDENTS STATEMENT OF THE CASE

1. That, essentially & succinctly, this action was file 10-9-2013 & last amended 6-9-15, &;
2. That the nature of this action, in a few words here, is that the Respondents rented a third party, one Reginald Morton, a U-Haul Truck, in a drug deal, with no driver's license, with which truck he came and intentionally tore up Aplnt's rental house and fled north (jumped bail) to Baltimore, Maryland and Appellant only real option was to sue these Respds' (vicariously) for all his damages already shown/seen in the main brief total p.'s &;
3. That the 2 causes of action for damages in the amended 6-9-15 complaint are: (1).gross negligence & (2) IIED; seeking property \$175, 000.00+, and IIED \$25,000,000.00+, plus punitive damages & why these amounts + punitive damages, reasons in main brief p.4-9; &
4. That the nature of their Defense is basically, they claim they cannot be held liable for Reginald Morton damages (*in main brief p. 4 & 9*) under the Graves Amendment U.S.C. 30106 (2005) which states in pertinent part, that, auto rental companies can't be held (vicariously) liable (except for negligence and criminal wrongdoing) as charged in the instant case, see (Graves Amendment Respds' Brief p. 16) & (Aplnt's Brief p. 15-3 E), &
5. That the Court, after 10-14-15 motions hearing, awarded the Respondents summary on 11-11-2015 order written 11-20-15 & Appellant filed Notice of Appeal Dec. 1, 2015 and;
6. That Appellant did not file a motion for reconsideration because, among other reasons, all issues now raised on appeal was properly preserved for appeal, and that the court instructed / ordered the parties not to file anything further at end of the hearing on Appellant's 3 & Respondents' 2 motions including each's motion for summary judgment.

REPLY TO RESPONDENTS STATEMENT OF FACTS

That here the Respondents deliberately chose to misstates some of the facts that are most salient such as--(*Respondents says in their Brief p. 6-8 and Appellant replies*)--as follows;

1. Resp'd's, "*the record evidence, however, establishes that it was Odell Morton, Reginald Morton's father, who rented the U-Haul Truck from Respondent El Cheapo.*"; & to which Apln't replies, as to who Resp'd Rahal says he, himself, rented said truck to see (Rahal's Depo: (R. p. 754 L 19-25) and (R. p. 755 L 3-5) and (R. p. 759 L 8-13); and (R. p. 862 L 10-14 & 19-25) and (R. p. 863 L. 1) and (R. p. 746 L 13-15); and (R. p. 764 L 1-4 & 13-14); and (R. p. 793 L 14 -19); and (R. p. 788 L 24-25); and (R. p. 789 L 4-6 & 9-14 & 18-19) and (R. p. 794 L 4-5 & 8) and (R. p. 762 L 1-3 and 8-15 & 19-22); and (R. p. 795 L 5-12 & 19-25) and (R. p. 878 L 22 - 25); and (R p. 879 L 1-3 & 8-10) and add to above see (Respds' Interrog. Ans. R. p. 34); and Reginald Morton's own statement that he rented the truck, see (R. p. 39);

and thus the court can see, the foregoing was no "mere slip of the tongue", it's the truth seen with one's own eyes; which again, shows the intentional misstatements by the Respondents, as was their conduct all throughout and, as seen, continues on up to this court see (Aplnt's Main Brief sec. 4 of 6 p. 28-34 for sanctions for earlier violations), &;

5.

-
2. Reply to Respds' 3 qt. p. ft. notes-their brief p. 6, 8, 12, 15, 16, 19, 20, 32, 35, Apln't ask court to disregard them for combining w/all p.'s therein to violate SCACR 208(b)(5), by failing to comply with Rule 267, Respondents got an unfair advantage in briefing.

2. That as to who Respondent Rahal say, himself, forge sign the 3 U-Haul truck rental Documents i.e. *1.the rental contract, 2.the u-haul damage responsibility requirement,* and, *3.the R and D Tag*, see (Rahal's Depo: (R. p. 770 L 8 - 10 & 22 – 25) and (R. p. 771 L 1-8 & 14-25) and (R. p. 772 L 1-16) and (R. p. 762 L 1-3 & 8-15 & 19-22); and see the (3 U-Haul Truck Rental Documents R. pp. 920-924), and;
3. That Respondents says, "*Further, the record evidence demonstrates that Odell Morton possessed a valid Maryland driver's license at the time of the rental transaction*"; to which Apln't replies, see Aplnt's Main Brief p. 17 para. 3-F & see (R. p.36), proving that Odell Morton could not have had a valid driver's license on 6-1-13, and;
4. That Respondents says, in pertinent part here that, "*there is no evidence in the record, that the U-Haul truck made contact w/ Aplnt's house*" to which Apln't replies see letter from Repwest Ins. Co. to Reginald Morton re damages "*claim*" (R. p. 301) &;
5. That so, the Respondents, "*Statement of Facts*", is more accurately, "*Statement of Misfacts*," as , again, was their conduct all through this case--unabated--per above; & that the Respondents' conduct is so brazen and intentional, it boggles the mind &;
6. That despite Respondents misstating, ("*that there is none*"), the Aplnt's evidence was & is so clear that the only real issue this court will face will be deciding the, Graves Amendment, which it's believed S C Courts have not had an opportunity to address until now. see snapshot issue in (Appellant' Main Brief p. -i- at Bottom, and then in the Main Brief p. 15 sec. 3 para 3-E), w/ the Background Being, all else in that Brief.

REPLY TO RESPONDENTS ARGUMENTS

Incorporating same as in Appellant's Main Brief, and;

1. That Respondents' arguments didn't directly rebut Appellant's arguments on appeal;
because Respondents purposefully misstated &/or did not accurately state the 6 main issues Appellant raised on appeal, see (Appellant's Final Brief p.1 and Respondents' Final Brief p. 1), and that therefore, the court should strike, disregard, not consider the Respondents' *statement of the issues on appeal*, consider only the Appellant's *statement of the issues on appeal*, and / or consider Respondents' right to accurately state such *statement of issues on appeal* waived, see Hambros Reserve, Ltd. v. Faitz, (1992) CA4th 129, 11 CR2d 638; and (The Respondents Reply Brief is limited to issues raised in Appellant's Main Brief), and;

That because Respondents purposefully misstated and/or did not state accurately the 6 main issues Appellant raised on appeal, as stated in number 1 above, therefore all Respondents' arguments flowing therefrom and /or made pursuant thereto and / or made thereon, are necessarily, purposefully, misstated, and/or not accurately stated; and likewise, as in number 1 above, the court should strike, disregard, not consider the Respondents' arguments, consider only Appellant's arguments, and/or consider Respondents' right to such Respondents arguments waived, see same authority above and, Handy v. Shiells (1987) 190 CA3d 512, 519, 235 CR 543; and Oliver v. Board of Trustees of Eisenhower Medi. Center (1986) 181 CA3d 824, 832, 227 CR1; and; Wichham v. Southland Corp., (1985) 168 CA3d 49, 54, 213 CR 825; essentially in pertinent part, that on appeal, a respondent's failure to state issues etc., accurately,

the court can waive their arguments; and see Beckley v. Uhe, 221 S.C. 334, 339, 70 S.E.2d 346 (1952) that (“[F]acts improperly stated in the brief will not be considered.”); and that based on all the foregoing, Respondents’ arguments in their brief did not & could not rebut Aplnt’s main issues raised on appeal nor his subsequent arguments. Therefore all 6 main issues raised on appeal by the Appellant and all his subsequent arguments must stand as true because they were unrebutted and/or not properly and/or sufficiently rebutted by the Respondents in their brief as stated and shown above.

2. That Respondents’ *judicial admissions* was considered & ruled on, part & parcel of the whole case, through & through, as the *judicial admissions* was being used as the basis in and/ or for summary judgment, et al. etc. in whole and/or in part from the time the admissions was 1st made beginning *February 11, 2015 see (R. p. 34)* through the 10-14-15 hearing / *and in all Appellant’s filings etc. / right through to the present, see (Appellant’s Main Brief p. 3 para. 12 & onward throughout), and thus the *judicial admissions*’ issue is preserved for appeal (esp. because court order not to file anything further at the close of the Oct. 14, 2015 summary motions hearing), see (Hear. Trans. R. p. 716 L 17 - 22 and Appellant’s 10-26-15 Affidavit: R. p. 1160), and that; because the Respondents’ admissions were so unequivocal and repeated so many times (see p. 5 above) and signed by their own counsels, thus they were no “mere slip of the tongue”; they were accordingly, “*judicial admissions*”, notwithstanding the*

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3. That when such admissions are ‘so deliberate, detailed & unequivocal (*see p. 5 above*) as to matters in the party’s personal knowledge’ that such will be held to be judicial admissions. *see Caponi v. Larry’s 66, N.E.2d 1347 (Ill. Ct. App. 1992)* finding the party repeatedly testified, *unequivocally*, re condition of a brake pedal before an auto collision.

fact that the Respondents later tried to change them, and the court let them (*without a motion etc.*) for their summary and denial of Appellant's summary, *see* (11-11-15 and 11-20-15 Ct. Order: R. p. 5-25 and Appellant's Main Brief p. 3 para. 12 etc.), and notwithstanding the fact that the admissions were made in interrogatories & deposition (*both still sworn under oath though*), as Respondents now argue – excuses them, *see* (Resp'd's Brief p. 10-13) because they claim the admissions to be rather, “**evidentiary admissions**”, which is rather peculiar since their whole defense and resulting summary & denial of Aplnt's summary et al. etc., is premised on, they said, “no evidence to put before a jury or otherwise, etc.”; *see* (Resp'd's Brief / through & through) & now to get around their *judicial admissions* (*see* ft. note p. 8) they now admit, for the 1st time, there is & was, “**evidentiary admissions**” i.e. their “**judicial admissions**”, which alone & at a minimum would have negated summary, at least to Resp'd's, in favor of the Appellants', & /or a jury trial as had been requested by Appellant, & is now prima facie proof, judicially admitted by Respondents, for this court's reversal of the lower court's order, in its entirety, as had been urged by Appellant in the filing of his appeal, *see* (Aplnt's Main Brief). And again, the Respondents' *judicial admissions* were considered & ruled on in the manner stated at top of this paragraph #2, notwithstanding Respondents' arguments to the contrary, *see* (Resp'd's Brief p. 10-13), and therein same, the Respondents speaks of their “explaining” their *judicial admissions* so as to warrant their escape from being bound to them, but to this day, there have been no “explaining” from Respondents to anybody as far as Appellant is aware, except their hinting that their admissions was just a “*mere slip of the tongue*”, (*re p. 5 above*), and therefore it's a minor issue & no big deal & should be treated as *evidentiary admissions*

instead of *judicial admissions* but they didn't argue that position in the lower court & can't do so now for the 1st time on appeal, see State v. Knaffla, 309 Min. 246, 252, 243 N.W.2d 737, 741 (Min. 1976) essentially in pertinent relevant part; that the court of appeals, will not consider, for the first time on appeal, positions / arguments, etc. that were not raised or argued to the lower court; & see. State v. Grube, 531 N.W.2d 484, 489 (Min. 1995), in essential pertinent part, that, because this issue failed to be raised to the trial court, we decline to consider it for the first time on appeal; and see D'Amico v. Board of Medical Examiners, 11 Cal.3d 1 (1974) 520 P.2d 10 112 Cal. Rptr. 786, essentially in pertinent relevant part, that respondent may not assert new theory-argument on appeal to support a judgment, if otherwise proper, it would prejudice the appellant to do so; and see e.g. Kensington, 921 F.2d at 25, in essence & pertinent relevant part, that a vague reference to an issue will be deemed waived without expressly articulating argument and legal reasoning that flows from such; and see Onishea v. Hopper, 171 F.3d 1289, 1305 (11th Cir. 1999) essentially in pertinent relevant part, that Appellate Courts obviously will not consider new argument that conflicts with the theory presented in the lower court; having argued a related theory in the lower court will not preserve a new argument on appeal.; and;

But all that notwithstanding, there are no provisions in the law, the rules etc., allowing for Respondents to withdraw and/or change the truth see (p. 5, 6 above) even if it slipped out by a "*slip of the tongue*" or otherwise & replace it with a-falsehood; even if-as Respondents said, "*..interrogatory (not deposition) was subsequently clarified & explained / to whom they didn't say*), see (Resp'd's Brief p. 13 top para. L. 2-3); then

believing evidently that they could forever get away with using the falsehoods as the foundation for all Respondents' arguments etc., going from there forward & that no one would / could ever figure it all out; is exactly what happened from then to present.

But all that too aside; the Respondents have never admitted making a mistake in the 1st place, so then, why would they need to "*clarify & explain*" anything, see (Resp'd's Brief p. 13 L. 2-3), "*interrogatory (not deposition) was clarified & explained*" unless 1st admitting that, ooops, I/we made a mistake & I/we therefore need (ask) permission (*by motion to the court etc.*) to change it—none of which was ever done in this case and effectively, the Respondents ask the lower court and now this court to just overlook all that, et al. etc., and award and now confirm judgement in their favor; and to not even consider all the resulting damages that the Respondents teamed up with Reginald Morton to cause the Appellant, which he suffered, suffers, and will suffer until his death, for which he sought and seeks damages for in this case in the amounts of, see (Appellant's Main Brief p. 4 paragraph 1-A and p. 9 para. 2-A); and;

3. That the subject forgery, et al. etc., was considered & ruled on, part & parcel, of the whole case, for the same reasons etc., as are stated, in para. #2 on p. 8 above; and; thus preserved for appeal (esp. because court order not to file anything further at the end of the 10-14-15 motions hearing see hearing trans. R. p. 716 L. 17-22), and;

⁴. Reply to Respondents' Brief p.8 footnote 1st para. see (Aff'd: R. pp. 1151-1159 & R. p. 629 L. 9-25 & R. p. 630 L. 1-4 & Aplnt's Brief para. 3-H p. 18); Reply to 2nd para. Aplnt's ask court's attn. to see (App. Main Brf. p.14 para. 3-b) & re last 3-L's re Odell's dementia etc- it verifies re 6-1-13 see (App. Main Brf. p.17 3-F); & knees replace, ht pacemaker, prostate canc, see (R. Morton Depo: R. p. 1007 L 1-2).

Appellant is relying on nothing in this appeal that was not properly put to the lower court, but in the unlikely event this court finds an issue or two otherwise, that given the nature of this case and the issues Appellant raises on appeal, all in his brief, he asks this court to still address such anyway, because justice requires it, Appellant argues, see Singleton v. Wulff, 428 U.S. 106, 121 (1976), and Nat'l Ass'n of Social Workers v. Harwood, 69 F.3d 622, 627 (1st Cir. 1995), essentially in pertinent part, that, where justice requires it, the appeals court have the discretion to review and/or consider a matter, issue or argument, not otherwise properly preserved in the lower court; and see Whitaker Corp. v. Execuair Corp. 953 F.2d 510, 515 (9th Cir. 1992), essentially, in pertinent part, that in general, the touchstone is, whether the Appellant sufficiently apprised the trial court of the arguments, issues, and/or matter it is pressing on appeal, so that the trial court had an opportunity to consider it; and also see Kensington, 921 F.2d at 125 n.1., stemming from a policy of respecting the trial court's function as well as fairness to Appellant; & also see Bailey v. Int'l Bhd of Boilermaker, 175 F.3d 526, 529-30 (7th Cir. 1999), essentially, in pertinent part, that an appellate court can review any issue, even if a skeletal one, if fleshed out and emphasized on appeal where it is clear that the trial court recognized and considered the issue, matter, argument; & see Walton v. Mental Health Ass'n, 168 F.3d 661, 670 n.9 (3^d Cir. 1999), that essentially in pertinent part, that appeal courts generally agree that they will consider unpreserved issues, matters, arguments &/or waived matter, only under 'exceptional circumstances' such as where manifest injustice would result.

4. That Appellant's final briefs are substantially & sufficiently in compliance w/ SCACR &

Re the Court's 5-6-16 Order-resolving &/or negating anything further re this #4; and;

5. That Respondents' unreceived memorandums couldn't be objected to for said reasons;

in (Appellant's Main Brief p. 14 paragraph 3-B); and;

6. That Appellant's arguments etc., re his gross negligence and IIED claims and requisite

elements, are replete throughout the case / file / record, etc., beginning with the;

see (Aplnt's 6-9-15 Amend. Compl. p.1 top; R. p. 27 & Main Brief p. 9 & et al. etc.) &;

7. That replying further as to; Respds' Brief p. 8 says--*"that appellant cannot rely upon*

facts and arguments that were never presented to, nor considered by the circuit court;

Apln't replies--"that appellant are not relying upon facts and arguments that were

never presented to, nor considered by the circuit court, for all of the reasons stated in

this brief and / or in appellant's main brief on the subject matter and related thereto;

Respds' Brief p.10 says--*"appellant's arguments alleging respondents made judicial*

admissions & the preclusive effect thereof must fail as a matter of law; Apln't replies-

-*"that this must not fail as a matter of law for the myriad of reasons throughout this*

reply brief and appellant's main brief, and especially the last paragraph on bottom of

page 10 above; Respds' Brief p. 13 says—*“the circuit court properly granted respondents' motion for summary judgment and properly denied appellant's motion for summary judgment; Apln't replies--“for the same said myriad of reasons in Apln't briefs, Apln't respectfully assigns err to the lower court's rulings, improperly granting Respondents' motion for summary judgment and improperly denying appellant's motion for summary judgment; Respds' Brief p. 14 says—“summary judgment in favor of respondents was proper & the circuit court should be affirmed; Apln't replies—“summary judgment in favor of respondents was improper due to err and the circuit court should be reversed, for the same myriad of reasons in appellant briefs; Respds' Brief p. 16 says--“the circuit court properly held that the graves amendment bars appellant's claims for vicarious liability; Apln't replies—“the circuit court improperly held that the graves amendment bars appellant's claims for vicarious liability for all of the same said reasons in the appellant briefs; Respds' Brief p. 21 says—“the circuit court properly held that appellant's claim of gross negligence fails as a matter of law; Apln't Replies—“the circuit court improperly held that appellant's claim of gross negligence fails as a matter of law; Respds' Brief p. 21 says—“appellant's arguments regarding respondents' negligence are not preserved; Apln't Replies—“appellant's arguments regarding respondents' negligence are in fact preserved for all of the reasons in this brief on and /or relating to the subject matter, and the same as to appellant's main brief; Respds' Brief p. 22 says—“the circuit court properly found that appellant's gross negligence claim was barred as a matter of law; Apln't Replies—“the circuit court improperly found that appellant's*

gross negligence claim was barred as a matter of law for all of the reasons in this brief, relating to the subject matter, & same as to appellant's main brief; Respds' Brief p. 25 says—"to the extent appellant's claim is considered a negligent entrustment claim, the circuit court properly granted respondents summary judgment; Apln't Replies—"that he brought no such claim in the 1st instance, which he have repeated many times *see* (Am. Comp. p. 1 top right: R. p. 27) re the 2 causes of action, and thus believe it was court err, to rule on such non-issue-claim, and as to such in respondents' brief on p. 25(a) and 26(b), again, appellant brought no such claim and also says here, that it's indeed a wonder as to why Respondents' constantly tried to force upon appellant a claim for negligent entrustment and have kept up the drum beat—none stop—from beginning to present as seen; Respds' Brief p.28 says--"*the circuit court properly granted respondents summary judgment regarding appellant's iied claim*; Apln't Replies—"the circuit improperly granted respondents summary judgment regarding appellant's iied claim for all of the reasons in this brief and / or in appellant's main brief on the subject matter & relating thereto; Respds' Brief p. 28 says—"appellant's arguments regarding iied are not preserved for appeal; Apln't Replies—"that his arguments regarding the iied are in fact preserved for appeal for all of the reasons in this brief & / or in appellant's main brief on the subject matter & relating thereto; Respds' Brief p. 29 says—"the circuit court's holding that appellant's iied claim fails as a matter of law was proper and should be affirmed; Apln't Replies—"the circuit court's holding that appellant's iied claim fails as a matter of law was improper & should be reversed for all of the many reasons herein

15.

⁵. Note: As to Reginald Morton et al. *see* what's in Aplnt's main brief not disputed/refuted.

and / or in the appellant's main brief on the subject matter and relating thereto; Respds' Brief p.33 & 34 says—"the circuit court did not abuse its discretion in denying appellant's motion for leave to amend pleadings; Apln't Replies--"the circuit did abuse its discretion in denying appellant's motion for leave to amend pleadings, for all of the reasons in this brief &/or in appellant's main brief on the subject matter and relating thereto; Respds' Brief p.36 says—"the circuit court properly denied aplnt's motion for sanctions & should be affirmed; Apln't Replies--"the circuit court improperly denied appellant's motion for sanctions and should be reversed, for all of the reasons in this brief &/or in appellant's main brief on the subject matter and relating thereto; Respds' Brief p.39 says--"*appellant's vexatious litigation conduct entitles respondents' to appropriate sanctions relief*; Apln't simply here Replies—"see section 6 of 6 p.38 in appellant's main brief;

Respds' Brief p. 40 L.8-10 says in pertinent part--"*he spends three pages associating Reginald Morton with murder, shootings, Federal ATF Agents, drugs, and guns, among other*; Apln't Replies--"it's worse than that because if appellant had the time and space, the whole story would show Reginald Morton is a seasoned, unforgiving, lifelong and dangerous criminal who even the respondents themselves indicated they do not trust him--his word, and / or do not wanted him to testify on their behalf; so

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COURT OF COMMON PLEAS

Hon. George C. James, Jr., Circuit Court Judge

Appellate Case No: 2015-002481

Charles Taylor,.....Appellant

v.

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

PROOF OF FILING AND SERVICE

I certify Final Reply Brief of Appellant was filed, (1 original unbound & 14 bound copies), on the date below, by hand delivery to this court's clerk office, & same was served to lead counsel below, at his address below, by depositing same in the U.S. Mail, postage prepaid.

June 8, 2016

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CERTIFICATE OF COMPLIANCE BY APPELLANT

Appellant certifies that his Final Reply Brief complies with Rule 211(b) SCACR.

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