

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jun 11 2021

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Court of Appeals No. 2020-001695
(Filed February 11, 2021, Rehearing Denied May 12, 2021)

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff..... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ...Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Petitioners.

APPENDIX

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The South Carolina Court of Appeals

Mark Douglas Douglas Hill, III by and through his Duly
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and

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Jones, Deceased, Plaintiff, Respondent

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Appellate Case No. 2020-001695

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H B W J.
Paul W Thomas J.
D. Hail J.

Columbia, South Carolina

cc:

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Geoffrey William Gibbon, Esquire
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FILED
May 12 2021

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Gregory Jones, Sr., as the Father and Duly Appointed
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v.

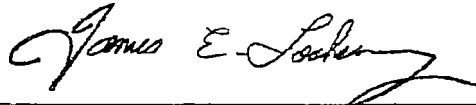
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ORDER

Because the underlying orders on appeal are not immediately appealable, Respondents' motion to dismiss is granted. *See* S.C. Code Ann. § 14-3-330 (2017); *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881–82 (1986) ("An order directing a party to participate in discovery is interlocutory and not directly appealable. . . . Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or

refuse to comply with the order and appeal after he is held in contempt for his failure to comply."). The remittitur will be sent as required by Rule 221, SCACR.



FOR THE COURT

Columbia, South Carolina

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Geoffrey William Gibbon, Esquire

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of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Appellants.

REPLY TO RESPONDENTS' RETURN TO PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellant Cranston Print Works Company
d/b/a Cranston Trucking Company ("Cranston") hereby replies to Respondents' return to its
Petition for Rehearing.

As an initial matter, the final paragraph of Subsection B to Respondents' return (pp. 8-9) should be stricken. First, the allegations made in that paragraph are unsupported by any evidence in the record. In addition, Respondents did not attach to their Return any support for their baseless accusations. Therefore, those matters are not properly before this Court for consideration. *See* Rule 240(c)(3), SCACR ("Where the Record on Appeal...has not been filed, the parties shall file affidavits and other documents in support of their positions"). Moreover, those claims, which are nothing more than speculation, unquestionably touch the boundary of zealous representation. *See In re White*, 391 S.C. 581, 588, 707 S.E.2d 411, 415 (2011) ("an attorney may not, as a means of gaining a strategic advantage, engage in degrading and insulting conduct that departs from the standards of civility and professionalism required").

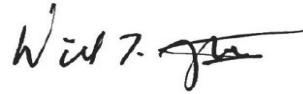
Second, Respondents offer no counterargument to Cranston's position that an aggrieved party is entitled to an appeal. Respondents incorrectly assert Cranston is disingenuous in contending that it could not comply with the order or face a contempt finding. To the contrary, Cranston's position on this point is demonstrated by the plain language of the appealed-from Orders, and as Cranston has asserted in its Petition, Cranston was forced to appeal those Orders now or be bound to their effect. Moreover, Respondents do not even attempt to counter the specified facts in this case establishing Cranston as an aggrieved party. As noted in Cranston's Petition for Rehearing, Cranston would be aggrieved irrespective of Burdette's response to the circuit court orders.

Finally, Respondents offer no practical solution for the situation a party such as Cranston finds itself. Their silence on that issue suggests no alternative method to appeal is available to Cranston. As a result, Cranston's current appeal of these matters is proper and should be heard at this time.

Based upon the foregoing, as well as the arguments contained in Cranston's Petition for Rehearing and the submissions by the other appellants, Cranston respectfully requests this Court grant rehearing and reverse the February 11, 2021 Order granting Respondents' motion to dismiss the appeal.

April 20, 2021

GALLIVAN WHITE BOYD



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**APPELLANT OPTIMUM STAFFING, INC. D/B/A OPTIMUM LOGISTIC
SOLUTIONS' REPLY TO RESPONDENTS' RETURN TO THE PETITION FOR
REHEARING**

On February 19, 2021, Appellant Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions (“Optimum”) timely filed its petition for hearing from this Court’s Order granting Respondents’ motion to dismiss this appeal. The Court instructed Respondents to respond with a Return to the Petition, which was filed on April 13, 2021. This Reply to the Return follows.

The majority of Respondents’ argument in the Return to the Petition for Rehearing is that the Circuit Court’s discovery Order does not require Respondent Jason E. Burdette’s answers to the Requests to Admit to be amended in any particular manner. However, the Order denying the motion to alter or amend specifically states that Burdette’s answers “should be amended to conform to his prior deposition testimony.” The differences between the questions posed at the deposition and the requests for admission were discussed at length in the motions hearing held in the Circuit Court and in the filings of the various parties on appeal. Burdette has consistently taken the position that his answers to the Requests to Admit were not inconsistent with his deposition testimony, or that where there was an inconsistency, it was the deposition testimony that was inaccurate. Nonetheless, the Circuit Court ordered the answers be amended.

On appeal, Respondents aver that Burdette is not precluded “from maintaining a denial to the request, denying the request as written, or offering a qualified denial.” If this is truly the outcome that Respondents sought and that the discovery Order intends, then amending the responses appears an exercise in futility, particularly in so much as Respondents argue that Burdette can simply maintain his denial in the amended answers. While Respondents state that the discovery Order is providing Burdette “the opportunity to amend his prior answers to the requests to admit,” the reality is that the Order is mandating amendment of Burdette’s answers.

Respondents further contend that Appellant Optimum is disingenuous in its argument that its position is unique in that it is unable to either comply or face contempt in order to appeal, since

the discovery Order is directed to Burdette, but the Order will nonetheless affect Optimum's defenses at trial. Respondents point to the prior representation of the various defendants by a single attorney as evidence that counsel for all of the parties could have refused to comply and faced contempt, as if then Optimum would be in any different position than it is presently. However, it is not counsel that would be held in contempt; it would be the offending party. See Rule 36, SCRCP; Rule 37(b)(2) and 37(c), SCRCP. Thus, no matter what action Burdette took in response to the discovery Order, Optimum would remain aggrieved by the discovery Order that, contrary to Respondents' repeated assertion otherwise, prematurely and erroneously requires that Burdette amend his answers to the Requests to Admit in a particular manner. Optimum will either be prevented from contradicting the admissions or placed in a forced position to appear contradictory to Burdette when, in fact, its defense with Burdette is unified in many respects.

For these reasons, as well as those arguments set forth in Optimum's original petition for rehearing, and the petitions for rehearing and any replies filed by the other Appellants that are not inconsistent herewith, Optimum respectfully requests this Court grant rehearing of its Order dismissing the appeal and allow this appeal to proceed.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

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Optimum Logistic Solutions, and Jason E. Burdette are the Appellants.

**REPLY TO RESPONDENTS' OPPOSITION TO
PETITION FOR REHEARING**

Pursuant to Rules 221 and 240, SCACR, Appellant Jason E. Burdette hereby replies to Respondents' opposition¹ to his Petition for Rehearing. Respondents' arguments are circular, internally contradictory and approach, if not cross the line of professional civility. Indeed, Respondents walk a very thin line between vigorously representing their clients with legal argument, and accusing prior counsel of nefarious intent—all in Respondents' counsel's attempt to gain litigation leverage. Their attempt to impute unseemly motives to prior counsel's handling of this case should not go unaddressed. *See In re White*, 391 S.C. 581, 588, 707 S.E.2d 411, 415 (2011) (“an attorney may not, as a means of gaining a strategic advantage, engage in degrading and insulting conduct that departs from the standards of civility and professionalism required”).

Respondents imply that Burdette has “conceded” some point by acknowledging that this is an interlocutory appeal, which it clearly is as the Order below did not finally resolve the dispute between the parties. However, what Respondents either ignore or misunderstand is that not all interlocutory appeals are impermissible and, in fact, because the Order affects Burdette's substantial rights by ordering him to re-write his responses to conform to Respondents' and the Circuit Court's view of his deposition testimony, this is a permissible interlocutory appeal. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011); *see also Wetzel v. Woodside Dev., Ltd. P'ship*, 374 S.C. 589, 592, 615 S.E.2d 437, 438 (2005).

In addition, the absurdity of Respondents' position is underscored by their internally contradictory assertion that, on one hand, Burdette “has suffered no harm, and

¹ While Respondents captioned their opposition as a “Reply,” their filing technically should have been titled a “Return,” to which this is Appellant's Burdette's Reply. *See* Rules 221(a) and 240(e) & (f), SCACR.

cannot show how re-answering the Requests for Admission *as he sees fit*,” will cause him harm, but on the other hand, acknowledging he must re-write his answers “*in conformance with his deposition testimony ...*” (Opposition p. 6) (emphasis added). Burdette answered the Requests for Admission “as he saw fit” and in conformance with his prior deposition testimony—what Respondents are seeking and what the Circuit Court requires is that Burdette re-answer the Requests for Admission in conformance with *their* view of his deposition testimony. As noted in his Petition, the questions posed to Burdette at his deposition were substantively different than the questions in the Requests for Admission at issue and, therefore, elicited different responses. By requiring Burdette to “conform” his responses to the Requests for Admission to parallel his deposition testimony—which was in response to different questions, as Respondents implicitly concede—the Circuit Court is requiring Burdette to produce sworn statements of fact that he did not make and which would not be accurate. These Court-ordered substantive revisions can and undoubtedly would be used against him in the litigation below. It is nonsensical to assert that this does not affect a substantial right.

Equally nonsensical is Respondents’ insistence that “Burdette is merely being offered a chance” to re-write his answers in order to conform to Respondents’ and the Circuit Court’s view of his “earlier sworn testimony, and to do so with a certification of the same.” The absurdity is self-evident because, as Respondents must admit, if Burdette simply refused to accept the “offer” of a chance to revise his responses, he could and likely would be held in contempt of court. If one can be held in contempt for refusing an “offer” to respond differently to Requests for Admission, then the “offer” is, in reality, an order with severe consequences for non-compliance, and not a mere offer or invitation.

Unquestionably, being placed in “contempt is a serious matter.” *Nash v. Byrd*, 298 S.C. 530, 534, 381 S.E.2d 913, 915 (Ct. App. 1989).

Respondents incongruously state that the Circuit Court’s Orders were “unambiguous” and “explicit” and, at the same time, argue that Appellant Burdette should have “sought clarification from the Circuit Court” as to what they meant. First, either the Orders unambiguously and explicitly required Burdette to “re-answer” the Requests for Admission so that his responses “conform to his prior deposition testimony,” (Oct. 8 Order p. 6) (Dec. 18 Order, p. 6), or else they were ambiguous and unclear and in need of clarification. Respondents’ attempt to straddle both sides of that argument is internally inconsistent. Second, Appellants did move to alter or amend the October 8 Order, which motion produced the December 18 Order and its requirement that Burdette conform his answers to the Court’s view of his deposition testimony.

Respondents chide Appellant Burdette for addressing only three of the problematic Requests for Admission, but they themselves only address one portion of one of the three Requests for Admission that demonstrate the effect of the Circuit Court’s Orders have on Burdette’s substantial rights. Consequently, Respondents’ silence as to Burdette’s objections to Requests for Admission Nos. 8 and 10 should be construed as their acknowledgement that these require him to re-write his responses in a manner that is incorrect and, in fact, contradicts his deposition testimony and other evidence in the case. In addition, Respondents only take issue with Burdette’s argument that Request for Admission No. 3 implies that he was using his cell phone immediately prior to the accident, and completely ignore the part of their request that asks him to admit he was communicating “with among other people, agents/employees of Defendant Cranston Print

Works Company d/b/a Cranston Trucking Company,” that morning prior to the accident which simply is not true.

Critically, this Court is urged to recognize the untenable position in which cases such as *Ex parte Whetstone*, 289 S.C. 580, 3467 S.E.2d 881 (1986) and *Davis v. Parkview Apts.*, 409 S.C. 266, 762 S.E.2d 535 (2014), place a party such as Burdette. Burdette either must comply with the Orders and lose any right to later appeal them, or refuse to comply and allow himself to be placed in contempt in order to appeal it now. This harsh dichotomous choice is especially unfair in this case where Burdette has not refused to participate in discovery, but has both testified at his deposition and responded fully and forthrightly to Respondents’ Requests for Admission. Forcing him to “re-write” his answers so that they conform to Respondents’ and the Circuit Court’s view of his deposition testimony affects a substantial right and must be heard at this point or else Burdette will be unable to effectively challenge those responses at trial.

CONCLUSION

For the above-stated reasons, this Court should grant rehearing and reverse the February 11, 2021 Order granting Respondents’ motion to dismiss the appeal.

Respectfully submitted,

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April 20, 2021

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Of Whom Jason E. Burdette, Cranston Print Works
Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc., d/b/a Optimum Logistic
Solutions are the.....Appellants.

**RESPONDENTS' REPLY TO APPELLANTS'
PETITION FOR REHEARING**

ARGUMENT

I. Appellants/Defendants have again failed to offer a proper basis for the continuation of this appeal.

While each of the Appellants has offered various erroneous arguments for why the instant Appeal should not be dismissed, they have again uniformly overlooked the fact that the instant appeal is improper as it is Interlocutory in nature. Further, each of the Appellants has misapplied and misunderstood the actual text, thrust and result of the Circuit Court's Orders. Namely, each of the Appellants has again asserted that the Orders requiring Appellant/Defendant Burdette to re-answer Requests for Admission to conform with his prior sworn testimony somehow means that he must admit the Requests as they were written. That simply is not accurate, and is not what the unambiguous explicit wording of the Court's Orders state. Further, enhancing the Respondents' position is the fact that Appellant/Defendant Burdette's current Counsel of Record has admitted that this matter is Interlocutory in nature. Nonetheless, Respondents will now turn to each of the Appellants unavailing arguments.

A. Appellant/Defendant Burdette has again failed to show that this interlocutory appeal affects a substantial right, and that he would somehow suffer irreparable harm.

Despite previously acknowledging its Interlocutory status, Appellant/Defendant Burdette has again attempted to continue this appeal for reasons that ring hollow. First and foremost, current Counsel for Appellant/Defendant Burdette seems to base her whole argument, like that of Counsel for the other Appellants/Defendants, around the premise that re-answering Requests for Admission will in effect foreclose on a defense at the trial on the merits of the underlying case. Such an assertion is baseless. The Circuit Court has not stated that any defense of Appellant/Defendant Burdette, or any other Appellant/Defendant, would be stricken or in any way effected by way of its Orders. The

Circuit Court has merely ordered an amendment of Appellant/Defendant Burdette's answers, and has not ordered that Appellant/Defendant Burdette admit anything.

If as Appellant's Counsel suggests Burdette has denied requests for admission because of the way that they are written, then amending their answers to state the same would cause them no harm, and certainly would not preclude any defense at the trial of this matter. Further, Appellant/Defendant Burdette's Counsel has again failed to state what particularly important defense would be affected at the trial of this case by amending and/or re-answering the requests for admission. While Appellant/Defendant Burdette's Counsel attempts to belittle Respondents' view of the explicit language of the Circuit Court's Orders, it does not change that the Orders at issue do not preclude Appellant/Defendant Burdette from maintaining a denial to the request, denying the request as written, or offering a qualified denial. Further, the Circuit Court's Orders generally hold that whereas here prior testimony of a party is later contradicted by a blanket denial without explanation, an amendment is warranted. Simply put, Appellant/Defendant Burdette's Counsel cannot and has not pointed to any portion of the Circuit Court's Orders where they are being forced to admit anything, or where they are being foreclosed from offering a robust defense to the allegations against them. Appellant/Defendant Burdette is merely being offered a chance to amend the Requests for Admission that were before him in good faith and in conformance to his earlier sworn testimony, and to do so with a certification of the same.

While Appellant/Defendant Burdette's current Counsel has cited several examples that she thinks represent an error by the Circuit Court, even her interpretation of these examples is flawed. For instance, Request for Admission Number 3 did ask Burdette to admit that, "Defendant Jason E. Burdette used his cellular phone on February 1, 2019, prior to impact with the vehicle Jessica A. Jones was traveling in, to communicate with among other people, agent/employees of Defendant Cranston

Print Works Company d/b/a Cranston Trucking Company.” To which, Appellant/Defendant Burdette answered with “Denied.” In the current Petition for Rehearing, Appellant Burdette’s Counsel stated that the blanket denial was warranted as “[H]e did not testify that he was using his cell phone immediately prior to impact, as the Request for Admission suggests.” Such a statement is imposing a supposition into a request that was not there. The request did not use the words immediately prior to impact, but rather merely stated prior to impact which is at any point prior to impact, to which Burdette undeniably admitted he was doing the same on the morning of the collision. Thus, requiring him to re-answer or amend a blanket denial that is in fact false on its’ face is not some sort of harsh medicine imposed upon Defendant/Appellant Burdette. Further, while Appellant/Defendant Burdette’s current Counsel raises merely three (3) examples which they contend proves their points, they are notably silent about the many others that do not, which were addressed by the Circuit Court in its Orders.

The above illustrates that Appellant/Defendant Burdette, by and through his prior Counsel of record while representing all Appellants/Defendants despite possible divergent interests, clearly provided answers to Requests for Admission that did not square with earlier sworn testimony. When presented with the opportunity to correct this error by way of an Amendment, Appellant/Defendant Burdette, by and through his then Counsel of Record, clearly chose to not participate in discovery by way of the explicit language of the Circuit Court’s Orders. Further, despite the fact that Appellant/Defendant Burdette’s current Counsel dislikes the state of the law concerning the Interlocutory nature of discovery Orders, the law of this state is clear. As was previously stated in the underlying Motion to Dismiss, former Chief Justice Pleicones aptly noted in a recent Concurring Opinion that “[I]t is well-settled that a party can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt.” See *Davis, v. Parkview Apartments*, 409 S.C. 266, 290-1, 762 S.E.2d 535, 548 (2014) (citing *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112

(2008)). Justice Pleicones' statements were echoed in the majority decision where it was stated that "to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding." *See Davis*, 409 S.C. at 280-1, 762 S.E.2d at 543 (citing *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881-2 (1986)). The Supreme Court clearly stated in *Ex Parte Whetstone* that "[A]n order directing a party to participate in discovery is interlocutory and not directly appealable." *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881-2 (1986). Thus, this appeal does not present a novel issue, as it is clear from the wording of the Orders and the language in Appellants'/Defendants' earlier filings, that the instant appeal is Interlocutory and improper. To the extent that Appellants/Defendants argue that simply because this matter deals with Requests for Admission that it changes the overarching requirements espoused above is simply not true, and they have cited to no controlling South Carolina case that stands for the same. Thus, the aforementioned standards regarding discovery Orders as being Interlocutory still hold true.

As was previously raised, requiring Appellant/Defendant Burdette to amend his answers does not presuppose upon him an answer, nor does it require a certain answer. This is the very thing that each Appellant/Defendant, especially Appellant/Defendant Burdette, has missed, and is the critical reason why Appellant/Defendant Burdette should have either attempted to comply with the Orders, sought clarification from the Circuit Court, or raised the issues at any hearing on a Motion to hold him in contempt for failure to comply with the Orders. Instead, Appellant/Defendant Burdette apparently determined that he would be precluded from offering an undefined defense at the trial of the case, changed his Counsel of record, and appealed. Appellants Optimum and Cranston have joined in this frivolous appeal with the same faulty logic, stating that the answers of one Defendant would somehow preclude these separate Defendants from offering their own evidence and defenses at the trial of this case.

As has been stated before in the underlying Motion, Appellant/Defendant Burdette, and his current Counsel of record, had the opportunity to revise their answers, maintain their denials, issue qualified denials, or admit the requests. However, they *chose not to do any of these*. No attempt was made by Appellant/Defendant Burdette, his prior Counsel of Record, or his current Counsel to in any way cooperate with the Court's Orders or to be held in contempt as is required prior to the initiation of an appeal. He has suffered no harm, and cannot show how re-answering the Requests for Admission as he sees fit, in conformance with his deposition testimony, will deprive him or any other Appellant/Defendant of anything, including defenses at the trial on the merits. Simply put, no party is being precluded from offering a robust defense to any of the allegations against them based upon the clearly Interlocutory Orders at issue.

B. Appellants/Defendants Optimum and Cranston have again failed to offer any basis for the continuation of this Appeal of the Interlocutory Circuit Court Orders.

Neither Appellant/Defendant Optimum nor Appellant/Defendant Cranston have standing to in any way challenge the Circuit Court's clearly Interlocutory Orders as to Appellant/Defendant Burdette, and can show no reason why this Appeal should be continued when it involves an Interlocutory issue. Appellants/Defendants Cranston and Optimum have put forth identical and unavailing arguments for why they somehow should be allowed to avoid the Interlocutory nature of the Circuit Court's Orders, and should be allowed to protest the Orders before this Honorable Court.

It is respectfully submitted that neither Appellant/Defendant Cranston nor Appellant/Defendant Optimum have or can show that they will suffer any harm based upon the Interlocutory Orders being affirmed by this Court. As has been addressed above, the explicit language of the Circuit Court's Orders does not preclude Appellant/Defendant Burdette from maintaining a denial to the request, denying the request as written, or offering a qualified denial. Further, the Court's

Interlocutory Orders generally hold that whereas here, prior testimony of a party is later contradicted by a blanket denial without explanation, an amendment is warranted. Simply put, Appellants/Defendants Cranston and Optimum have not and cannot point to any portion of the Circuit Court's Orders where Burdette is being forced to admit anything, or where he will somehow harm them. Appellant/Defendant Burdette is merely being offered a chance to re-answer the Requests for Admission that were before him in good faith and in conformance to his earlier sworn testimony, and to do so with a certification that the answers are actually his answers. As such, Appellants/Defendants Cranston and Optimum will be unaffected, and certainly despite their claims to the contrary, no issues regarding the merits of the case are involved in the instant dispute.

Appellant/Defendant Cranston's Counsel has argued firstly that their Appeal is proper because they were unable to either comply with the Order or face contempt, but would be affected by the Orders in their results. Such statements are somewhat disingenuous. While Counsel for Appellants/Defendants Cranston and Optimum state that they did not have a chance to properly comply with the Order or be held in contempt, and thus are outside of the scope in *Ex Parte Whetstone*, such a position should be examined given the unique position of Appellant/Defendant Cranston's Counsel in this case. It was in fact Appellant/Defendant Cranston's Counsel, who at the time of the Orders at issue, represented not just Appellant/Defendant Cranston, but also represented Appellants/Defendants Burdette and Optimum. As such, Counsel for Cranston was in fact in a position to comply with the Orders at issue, or to face contempt. Rather than do either of those things, the Appellants/Defendants divested the defense of the matter to different Counsel, and all appealed.

Thereafter, Appellants/Defendants Cranston and Optimum contend that the Circuit Court has somehow made factual determinations in the Orders at issue. It is respectfully submitted that a review of the Orders on their face show that the Circuit Judge in no way made any factual findings. Rather,

the Circuit Court's clear and unambiguous language merely ordered that Appellant/Defendant Burdette be given the opportunity to amend his prior answers to requests to admit, without ever stating what the amended answer had to be. In doing so, the Circuit Judge did exactly what is allowed under Rule 36(b) and allowed Appellant/Defendant Burdette to amend his answers. Neither Appellant/Defendant Cranston nor any other Appellant/Defendant is prejudiced or harmed by way of the Circuit Judge's Interlocutory Orders allowing for the amendment of an answer, where such an amendment is deemed necessary. The Circuit Judge's role in this matter like so many others is to help resolve discovery disputes, and to make sure that litigants are not abusing the discovery process to suit their own ends. That is what occurred here.

Finally, Appellants/Defendants Cranston and Optimum attempt to suggest that the Circuit Judge's Interlocutory Orders somehow place them in a Catch 22. While Appellants may be aligned on some issues, they clearly have divergent interests in others, and have since the beginning of this litigation. Despite such a posture, all Appellants/Defendants were represented by the same Counsel for a period of time. This multiparty representation of individuals with divergent interests by Counsel for Appellant/Defendant Cranston created the Catch 22 that each Appellant/Defendant now bemoans. This issue was not created by the Circuit Judge or the Interlocutory Orders at issue. As has previously been mentioned, this Honorable Court should not allow a litigant to state one thing under oath and then later determine that they wish to change their response when their Counsel, who is representing all co-Defendants, realizes that the earlier testimony if confirmed through Requests for Admission might harm his other clients. Clearly, this is precisely what occurred here. Appellant/Defendant Burdette, by and through his then Counsel of record, offered unqualified denials to Requests for Admission even where it was contradictory to Appellant/Defendant Burdette's earlier sworn testimony to benefit the other Appellants/Defendants, who had divergent interests from each other

and Burdette. However, this appeal is not the proper vehicle to attempt to clean up the Appellants'/Defendants' or their Counsels' mess, and certainly is inappropriate given the Interlocutory nature of the appealed Orders.

CONCLUSION

It is respectfully submitted that this instant Petition for Rehearing should be denied, as it has failed to raise any meaningful new issue or to have in any way pointed to something that this Honorable Court misunderstood. Further, Respondents believe that this Honorable Court correctly determined that this case was Interlocutory in nature, and the Orders at issue were unappealable. It is respectfully requested that this appeal should be dismissed as Interlocutory, improvident and improper.

RESPECTFULLY SUBMITTED,



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April 13, 2021
Spartanburg, South Carolina



The South Carolina Court of Appeals

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Re: Mark Douglas Hill, III v. Jason E. Burdette

Appellate Case No. 2020-001695

Dear Counsel:

This will acknowledge receipt of your Petition for Rehearing.

By copy of this letter, opposing counsel is requested to file an original of a return to this petition no later than ten (10) days from the date of this letter.

Very truly yours,

V. Claire Allen

CLERK

cc: Alexander Page Lewis, Esquire
William Blake Cummings, Esquire
Patrick E. Knie, Esquire

RECEIVED

Feb 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appeal No.: 2020-001695

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff..... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ...Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Appellants.

**APPELLANT OPTIMUM STAFFING, INC. D/B/A OPTIMUM LOGISTIC
SOLUTIONS' PETITION FOR REHEARING**

Pursuant to Rules 221 and 240, SCACR, Appellant Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions (“Optimum”) petitions this Court to rehear its Order granting Respondents’ motion to dismiss this appeal. Because this Court’s Order has the effect of dismissing the appeal, this Petition is proper pursuant to Rule 221(c), SCACR. Optimum received this Court’s Order on February 11, 2021.

Respondents’ motion to dismiss argued both that the underlying orders were not immediately appealable and that Appellant Optimum lacked standing to appeal from the orders. This Court’s Order dismissing the appeal did not address Respondents’ argument regarding lack of standing. Rather, this Court’s Order was based solely upon a determination that the underlying orders were not immediately appealable, citing to both S.C. Code Ann. § 14-3-330 and *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). This ruling was based upon the Court’s overlooking or misapprehending the nature of the underlying orders, their impact upon Optimum, and Optimum’s ability to take any further action prior to appeal from the orders.

As an initial matter, though not directly addressed by this Court, Optimum does not lack standing to appeal from the underlying Order. Optimum is an aggrieved party despite the fact that the underlying orders direct another party, Appellant Jason E. Burdette (“Burdette”), to submit amended Responses to Plaintiff’s Requests for Admission. Both the South Carolina Code and the South Carolina Appellate Court Rules allow for appeal to be taken by ***any party aggrieved by an order***, judgment, sentence, ***or decision***. See S.C. Code Ann. §18-1-30 (emphasis added); *see also* Rule 201(b), SCACR. By the plain language of these provisions, the right to appeal is not limited merely to those parties to whom an order or decision is addressed, but extends to any party aggrieved by the order. A party is aggrieved by an order when the order “operates on his rights of property or bears directly upon his interest, the word aggrieved

referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.” *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970). Accordingly, the right to appeal is premised not on the identity of the party to whom an order is directed, but rather on whose rights are adversely affected by the rulings contained therein.

The underlying Complaints in both cases have alleged that Optimum was negligent in the following particulars:

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing by its driver to follow the training received for his commercial driver’s license (CDL);
- (g) In failing to properly train its driver;
- (h) In failing to properly supervise and monitor its driver;
- (i) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359; [and]
- (j) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL...

See Complaints, Case No. 2019-CP-42-2212 and Case No. 2019-CP-42-2215. The driver of the eighteen-wheeler was Burdette such that Plaintiffs are attempting to hold Optimum vicariously liable for Burdette’s actions, in addition to allegations of negligent training and supervision. Accordingly, Optimum is aggrieved by the Order requiring Burdette to change his responses to Requests for Admission in a manner so as to conform to the evidence as prematurely and improperly assessed by the Circuit Court. *See, e.g., Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997) (reversing sanctions against one defendant that had practical effect on other defendant of unnecessarily foreclosing a decision on the merits of this

case). Optimum had no choice but to appeal because a failure to do so would result in Judge Kelley's orders being deemed as the law of the case. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013) ("An unappealed ruling is the law of the case and requires affirmance").

Thus, like Appellant Cranston Print Works Company d/b/a Cranston Trucking Company ("Cranston"), Optimum is in a unique position where it is aggrieved by orders directed to another party. As a result, neither of the options presented in *Ex parte Whetstone* are available to Optimum. Optimum cannot refuse to comply, be held in contempt, and then appeal the contempt order because the Orders at issue do not direct Optimum to do anything. It is impossible for Optimum to follow the procedure outlined in *Whetstone* because there is nothing contained in the Orders which Optimum can refuse. Moreover, Optimum has no ability to comply with the subject Orders and it would be negatively impacted by such compliance by Burnette, as discussed *infra*. As a result, the *Whetstone* prerequisites to appeal a discovery order are not applicable to a party in Optimum's position, who are unable to be held in contempt for a failure to comply with the orders at issue.

This Court has jurisdiction over "[a]ny intermediate judgment, order or decree in a law case involving the merits," as well as over "[a]n order affecting a substantial right made in an action when such order ... strikes out an answer or any part thereof or any pleading in any action." S.C. Code Ann. § 14-3-330. An order affects a substantial right when it, among other things, strikes out a defense such that the defense is lost. *Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993). Burdette aptly argues that complying with the Orders on appeal would result in Burdette answering these and other Requests for Admission in a manner that not only is inconsistent with his prior testimony, but

also incorrect. As explicated more fully in Optimum's Memorandum in Opposition to Respondents' Motion to Dismiss, the Circuit Court's determination of inconsistencies between Burdette's deposition testimony and original responses to the Requests for Admission was made without a view of the other evidence available and premature where discovery is not yet complete. By making factual determinations of matters in dispute, the trial court has improperly imposed its own view of the evidence into the case, usurping the jury's role as the sole finder of fact. The factual determinations by the trial court are detrimental to all of the Appellants—not just Burdette—and increase the likelihood a jury imposes liability against Burdette, which may be imputed to Optimum.

Further, the trial court's orders arguably serve to preclude Optimum from introducing evidence to rebut these highly disputed matters. Rule 36(b), SCRCF, states an admitted matter is "conclusively established" unless the court permits withdrawal or amendment. The requests to admit at issue raise specific matters connected to Optimum's training, monitoring, supervision, and compliance with Federal Motor Carrier Safety Regulations. Therefore, in taking the extraordinary steps to weigh evidence, decide facts at issue, and order a party to admit matters previously denied, the trial court has effectively struck Optimum's answer denying the allegations of direct negligence. Consequently, Optimum very well may be prevented from introducing any evidence at trial contrary to the inappropriate factual findings made by the trial court, thereby blocking Optimum from mounting a viable defense to those claims. If the trial court orders are allowed to stand, Optimum will be deprived of due process under the United States Constitution. "The Due Process Clause requires all parties be given an opportunity to be heard in a meaningful way. In cases where important decisions turn on questions of fact, due process at least requires an opportunity to present favorable witnesses." *Halsey v. Simmons*, 432

S.C. 54, 849 S.E.2d 578 (2020) (internal cites and quotation marks omitted). If left unchecked by this Court, the trial court orders will very likely deprive Optimum of its Constitutional right to due process, clearly establishing Optimum is an aggrieved party entitled to seek appellate review of this invasion of its substantial rights.

Even if Optimum is permitted to present evidence at trial to rebut the trial court's improper determination of the facts, Optimum would be in the untenable position of contradicting the (court-imposed) testimony of Burdette. While Optimum certainly recognizes there are instances in which parties with aligned interests are forced to take contrary positions on certain issues, those situations do not generally arise out of the trial court's decision to invade the jury's role at trial. If the trial court orders are allowed to stand and Burdette is required to change his accurate responses to less-than-accurate responses, Optimum will face the prospect of either not challenging factually-inaccurate testimony or attacking the credibility of a party who himself disagrees with the court's factual determinations but is prohibited from saying so. This cannot be the intention of the Rules of Civil Procedure or appealability jurisprudence. In sum, the trial court's orders plainly aggrieve Optimum, allowing Optimum the ability to seek appellate review of these rulings.

Because Optimum is an aggrieved party entitled to seek appellate review of the trial court orders affecting its substantial rights, and having demonstrated the *Whetstone* preconditions to appeal a discovery order are impossible for Optimum to satisfy, this Court should revisit its decision to dismiss the appeal. This Court's dismissal of the appeal eliminates Optimum's right to obtain appellate review of these orders, leaving Optimum at the mercy of Burdette's decision whether to comply with the orders or face contempt. The only way to avoid that result is to allow Optimum's appeal to proceed.

For these reasons, as well as those arguments set forth in any other Appellant's petition for rehearing not inconsistent herewith, Optimum respectfully requests this Court grant rehearing of its Order dismissing the appeal and allow this appeal to proceed.

Respectfully Submitted,

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February 19, 2021
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appeal No.: 2020-001695

RECEIVED

Feb 19 2021

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Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
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v.

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Burdette, Defendants,

And

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Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
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PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellant Cranston Print Works Company
d/b/a Cranston Trucking Company ("Cranston") petitions this Court to rehear its Order granting
Respondents' motion to dismiss this appeal. Because this Court's Order has the effect of

dismissing the appeal, this Petition is proper pursuant to Rule 221(c), SCACR. Cranston received this Court's Order February 11, 2021.

In opposing Respondents' motion to dismiss, Cranston raised several matters which were overlooked or misapprehended by this Court in dismissing the appeal. This Court failed to consider Cranston's unique position in the case at bar, where it is aggrieved by orders directed to another party. As a result, neither of the options presented in *Ex parte Whetstone* are available to Cranston. Cranston cannot refuse to comply, be held in contempt, and then appeal the contempt order because the Orders at issue do not direct Cranston to do anything. It is impossible for Cranston to follow the procedure outlined in *Whetstone* because there is nothing contained in the Orders which Cranston can refuse. Moreover, Cranston has no ability to comply with the subject Orders. As a result, the *Whetstone* prerequisites to appeal a discovery order are not applicable to a party in Cranston's position, who are unable to be held in contempt for a failure to comply with the orders at issue.

That is not to suggest Cranston lacks standing to appeal these orders. Both the South Carolina Code and the South Carolina Appellate Court Rules allow for appeal to be taken by *any party aggrieved by an order, judgment, sentence, or decision*. See S.C. Code Ann. §18-1-30; *see also* Rule 201(b), SCACR. By the plain language of these provisions, the right to appeal is not limited merely to those parties to whom an order or decision is addressed, but extends to *any party aggrieved by the order*. A party is aggrieved by an order when the order "operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970). Accordingly, statutory law, procedural laws, and established precedent unanimously recognize

the right to appeal is premised not on the identity of the party to whom an order is directed, but rather on whose rights are adversely affected by the rulings contained therein. Moreover, appellate courts have stressed the appealability of an order is controlled by the effect of the order, not the label attached to it. *See Wetzel v. Woodside Dev. Ltd. P'ship*, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005). As discussed in more detail herein, the effect of the trial court's orders allow for an immediate appeal pursuant to S.C. Code Ann. §14-3-330, as the intermediate orders involve the merits of the case and affect a substantial right of Cranston's by striking an answer or any part thereof. *See Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993).

Cranston is unquestionably aggrieved by these orders. Pursuant to the Federal Motor Carrier Safety Regulations, Cranston generally is responsible for negligent acts or omissions committed by Mr. Burdette while operating under Cranston's motor carrier authority. *See* 49 CFR §390.11. Consequently, Cranston is subject to vicarious liability for any finding of negligence at trial against Mr. Burdette. Accordingly, Cranston is without a doubt aggrieved by the trial court orders in multiple ways. First, by making factual determinations of matters in dispute, the trial court has improperly imposed its own view of the evidence into the case, usurping the jury's role as the sole finder of fact. The factual determinations by the trial court are detrimental to Burdette and Cranston and increase the likelihood a jury imposes liability against Burdette, which will be imputed to Cranston. This unquestionably reflects Cranston's rights being directly upon his interest, and therefore satisfying the definition of an aggrieved party under *Bivens*.

Second, the trial court's orders arguably serve to preclude Cranston from introducing evidence to rebut these highly disputed matters. Rule 36(b), SCRCF, states an admitted matter is

“conclusively established” unless the court permits withdrawal or amendment. In their Complaints, Plaintiffs allege Cranston negligently trained, supervised, and monitored Mr. Burdette and violated the Federal Motor Carrier Safety Regulations (*See* Exhibit A, Jones Complaint, para. 15; Exhibit B, Hill Complaint, para. 16). Cranston has denied these allegations of direct negligence (*See* Exhibit C, Amended Answer to Jones, para. 15; Exhibit D, Amended Answer to Hill, para. 16). The requests to admit at issue raise specific matters connected to Cranston’s training, monitoring, supervision, and compliance with Federal Motor Carrier Safety Regulations. Therefore, in taking the extraordinary steps to weigh evidence, decide facts at issue, and order a party to admit matters previously denied, the trial court has effectively struck Cranston’s answer denying the allegations of direct negligence. Consequently, Cranston very well may be prevented from introducing any evidence at trial contrary to the inappropriate factual findings made by the trial court, thereby blocking Cranston from mounting a viable defense to those claims. Therefore, if the trial court orders are allowed to stand, and Cranston is not permitted to challenge the erroneous factual findings of the trial court, Cranston will be deprived of due process under the United States Constitution. “The Due Process Clause requires all parties be given an opportunity to be heard in a meaningful way. In cases where important decisions turn on questions of fact, due process at least requires an opportunity to present favorable witnesses.” *Halsey v. Simmons*, 432 S.C. 54, 849 S.E.2d 578 (2020) (internal cites and quotation marks omitted). Being deprived of its Constitutional right to due process clearly establishes Cranston as an aggrieved party entitled to seek appellate review.

However, even if Cranston *is* permitted to present evidence at trial to rebut the trial court’s improper determination of the facts, Cranston would be in the untenable position of contradicting the (court-imposed) testimony of its own driver for whom it can be held

vicariously liable. While Cranston certainly recognizes there are instances in which parties with aligned interests are forced to take contrary positions on certain issues, those situations do not generally arise out of the trial court's willful decision to invade the jury's role at trial. If the trial court orders are allowed to stand and Burdette is required to change his accurate responses to less-than-accurate responses, Cranston will face the prospect of either not challenging factually-inaccurate testimony or attacking the credibility of a party who himself disagrees with the court's factual determinations but is prohibited from saying so. The Rules of Civil Procedure are neither designed nor intended to place parties in a Catch-22 situation, yet that is precisely what will occur if the trial court orders are allowed to stand. In sum, the trial court's orders plainly aggrieve Cranston.

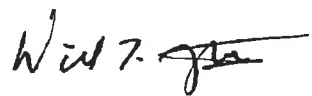
Appealability must be determined on a case-by-case basis. *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019). Because Cranston is an aggrieved party entitled to seek appellate review, and considering the *Whetstone* preconditions for appealing a discovery order are impossible for Cranston to meet, this Court overlooked the particular circumstances here which do not warrant a summary dismissal of Cranston's appeal. Where a party has the right to appeal, there must be some way for that party to do so. Cranston is obligated to seek appellate review of these orders now. Otherwise, the orders will be deemed the law of the case and not subject to review. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013) ("An unappealed ruling is the law of the case and requires affirmance"); *see also Walters v. Canal Ins. Co.*, 294 S.C. 150, 151, 363 S.E.2d 120 (Ct. App. 1987) ("Where no exception is taken to findings of facts or conclusions of law, they become the 'law of the case.'") (*quoting Ashy v. WeCare Distributors, Inc.*, 289 S.C. 526, 528, 347 S.E.2d 123, 125 (Ct. App. 1986)). A manifest injustice would occur if this Court were to refuse to hear an aggrieved party's appeal on

account of that party's inability to perform an impossible task. The only way to avoid that result is to allow Cranston's appeal to proceed. As this issue appears to be a matter of first impression in South Carolina, and because there is no possibility of appellate review of this issue at a later date, the logical conclusion is to allow the appeal to proceed.

In summary, this Court overlooked or misapprehended several key issues in dismissing this appeal, all of which may be attributed to overlooking Cranston's unique position in this matter. Even though Cranston's interests and rights are doubtlessly compromised and invaded upon by the trial court's rulings, this Court mistakenly presumed Cranston could be held in contempt for a failure to comply with the underlying discovery order. That is simply not the case. As an aggrieved party, Cranston has a right to seek appellate review. Moreover, if the trial court orders are not challenged at this time, the findings will become the law of the case and not subject to appellate review following a trial. For these reasons, as well as those arguments set forth in the other Appellants' petitions for rehearing, Cranston respectfully requests this Court rehear its Order granting Respondents' motion to dismiss and allow this appeal to proceed.

February 19, 2021

GALLIVAN WHITE BOYD



By: _____

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*Counsel for Appellant Cranston Print
Works Company d/b/a Cranston Trucking
Company*

Exhibit A

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Gregory Jones, Sr.,)
as the father and duly)
appointed Personal)
Representative of the)
Estate of Jessica Dawn)
Jones, Deceased,)

SUMMONS

Plaintiff,)

Jury Trial Requested

vs.)

C/A No. 2019-CP-42-_____

Cranston Print Works)
Company d/b/a Cranston)
Trucking Company, Ryder)
Systems, Inc., Optimum)
Staffing, Inc. d/b/a)
Optimum Logistic)
Solutions, and Jason E.)
Burdette,)

Defendants.)

TO: CRANSTON PRINT WORKS COMPANY d/b/a CRANSTON TRUCKING
COMPANY, RYDER SYSTEMS, INC., OPTIMUM STAFFING, INC. d/b/a
OPTIMUM LOGISTIC SOLUTIONS, AND JASON E. BURDETTE,
DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served upon
you, and to serve a copy of your Answer to the Complaint on the
undersigned at his office located at P.O. Box 5159, 250 Magnolia
Street, Spartanburg, S.C. 29304, within thirty (30) days after
the service hereof, exclusive of the day of such service, unless
you received your copy by certified mail, in which case you must
serve a copy of your answer on the subscriber within thirty-five
(35) days after the service hereof, exclusive of the day of such

service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

DATED at Spartanburg, South Carolina, on the 18th day of June, 2019.

PATRICK E. KNIE, P.A.

/s/ Patrick E. Knie

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG)

Gregory Jones, Sr.,)
 as the father and duly)
 appointed Personal)
 Representative of the) COMPLAINT
 Estate of Jessica Dawn)
 Jones, Deceased,)
)
 Plaintiff,) Jury Trial Requested
)
 vs.) C/A No. 2019-CP-42-_____
)
 Cranston Print Works)
 Company d/b/a Cranston)
 Trucking Company, Ryder)
 Systems, Inc., Optimum)
 Staffing, Inc. d/b/a)
 Optimum Logistic)
 Solutions, and Jason E.)
 Burdette,)
)
 Defendants.)

The Plaintiff, complaining of the Defendants, would show unto the Court:

1. The Plaintiff, Gregory Jones, Sr., is the father and duly appointed Personal Representative of the Estate of Jessica Dawn Jones, Deceased, and is a citizen and resident of the County of Cherokee, State of South Carolina.

2. The Defendant, Cranston Print Works Company d/b/a Cranston Trucking Company, hereinafter referred to as Cranston, is a corporation organized and existing under the laws of the State of Rhode Island, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

3. The Defendant, Ryder Systems, Inc., hereinafter referred to as Ryder, is a corporation organized and existing under the laws of a state other than South Carolina with its corporate headquarters in Miami, Florida, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

4. The Defendant, Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, is a corporation organized and existing under the laws of the State of Illinois, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

5. The Defendant, Jason E. Burdette, is a citizen and resident of Anderson County, South Carolina.

6. Venue is proper in Spartanburg County pursuant to SC Code 15-7-30(C)(2) in that the substantial part of the alleged acts or omissions giving rise to the cause of action occurred in Spartanburg County.

7. On or about February 1, 2019 at approximately 8:30 a.m., Jessica Dawn Jones was traveling as a passenger in a Kia Minivan owned and operated by her uncle, Mark Douglas Hill.

8. The minivan was traveling north on Business I-85 in Spartanburg, South Carolina near Interstate I-26 in the right-hand lane.

9. Because of heavy traffic, Mark Douglas Hill was forced to come to a stop for traffic stopped ahead of him.

10. At the same time, a 2016 Freightliner eighteen (18) wheel tractor-trailer, driven by the Defendant, Jason E. Burdette, traveling at a high rate of speed, was unable to stop and struck the Hill vehicle in the rear, knocking it forward and into a third vehicle.

11. As a result, Jessica Dawn Jones suffered severe injuries and damages and ultimately her tragic and untimely death.

12. The Plaintiff is informed and believes that at all times herein the eighteen (18) wheel tractor-trailer driven by the Defendant, Jason E. Burdette, was owned by Defendant Ryder and leased to the Defendant Cranston.

13. The Plaintiff is informed and believes that Defendants Cranston and Ryder had a contractual arrangement regarding the maintenance of the tractor-trailer.

14. The Plaintiff is further informed and believes that the Defendant, Jason E. Burdette, was employed by the Defendant Optimum which provided Defendant, Jason E. Burdette, to Defendant Cranston, to drive the eighteen (18) wheel tractor-trailer described herein.

15. The collision, the injuries and death of Jessica Dawn Jones, and the damages to her father and statutory heirs are the direct and proximate result of the combined and concurring willful, wanton, reckless, grossly negligent, negligent, and careless acts of the Defendants by and through

their respective agents in the following particulars:

AS TO DEFENDANT CRANSTON

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to maintain the eighteen wheeler;
- (g) In failing to make the proper pre-trip inspection of the eighteen wheeler;
- (h) In allowing a vehicle with a known or presumptively known safety defect onto the road;
- (i) In failing by its driver to follow the training received for his commercial driver's license (CDL);
- (j) In failing to properly train its driver;
- (k) In failing to properly supervise and monitor its driver;
- (l) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (m) In failing to use the degree of care and caution that would otherwise be used by a reasonably

prudent person with a CDL;
all of which were a direct and proximate cause of the injuries,
death, and damages complained of herein.

AS TO DEFENDANT RYDER

- (a) In failing to provide a safe and properly maintained vehicle to Defendant Cranston for its use and operation;
- (b) In failing to maintain the tractor and trailer supplied to the Defendant Cranston for its use and operation;
- (c) In failing to inspect the eighteen wheeler;
- (d) In failing to properly train its agents and employees on the proper maintenance of tractors and trailers provided to others for their and operation, or in the alternative, in failing to follow the procedures and guidelines provided in its training to its employees for the maintenance and operation of tractors and trailers provided to others for their use and operation;
- (e) In failing to warn Defendant Cranston of the safety issues with the tractor and trailer provided to Defendant Cranston for its use and operation;

all of which were a direct and proximate cause of the injuries,
death, and damages complained of herein.

AS TO DEFENDANT OPTIMUM

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing by its driver to follow the training received for his commercial driver's license (CDL);
- (g) In failing to properly train its driver;
- (h) In failing to properly supervise and monitor its driver;
- (i) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (j) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

all of which were a direct and proximate cause of the injuries, death, and damages complained of herein.

AS TO DEFENDANT BURDETTE

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;

- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to request maintenance of the eighteen wheeler;
- (g) In failing to make a proper pre-trip inspection of the eighteen wheeler;
- (h) In failing to report safety or maintenance issues with the eighteen (18) wheeler which he was operating;
- (i) In failing to follow the training he received for his commercial driver's license (CDL);
- (j) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (k) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

all of which were a direct and proximate cause of the injuries, death, and damages complained of herein.

16. Prior to Jessica Dawn Jones' death which was caused by the conduct of the Defendants as set forth herein, Jessica Dawn Jones was twenty-four (24) years old with a life

expectancy of 57.37 years.

FOR A FIRST CAUSE OF ACTION

Survival Action

17. Plaintiff brings this action in his fiduciary capacity under and by virtue of the authority and provisions of Section 15-5-90 of the South Carolina Code of Laws, 1976, to recover for the injuries and damages suffered and sustained by Jessica Dawn Jones prior to her death resulting from the accident complained herein.

18. Prior to her death on February 1, 2019, Jessica Dawn Jones suffered great and excruciating conscious physical and mental pain and suffering as a direct and proximate cause of the acts and omissions complained of in this Complaint. As a further result, the decedent incurred substantial medical and hospital bills.

19. As a result of the foregoing, her estate is entitled to recover her actual damages and such punitive damages as may be appropriate in this case.

FOR A SECOND CAUSE OF ACTION

Wrongful Death Action

20. Plaintiff brings this action in his fiduciary capacity under and by virtue of the authority and provisions of Section 15-51-10 of the South Carolina Code of Laws, 1976, on his behalf as the father of Jessica Dawn Jones, and on behalf of her statutory heirs.

21. By reason of the early and untimely death of Jessica Dawn Jones, her father and statutory heirs have been caused great mental shock and suffering by reason of this tragedy. They have in the past, and will forever, be caused grief and sorrow because of the loss of Jessica Dawn Jones' love, society, and companionship. They have been deprived of her services, experience, and judgment. They have suffered pecuniary loss as well.

22. As a further result, the father and statutory heirs of Jessica Dawn Jones have incurred medical bills, funeral, burial, and other related expenses.

FOR A THIRD CAUSE OF ACTION

23. Plaintiff brings this action in his fiduciary capacity to recover for the injuries and damages sustained by Jessica Dawn Jones prior to her death as a bystander to the injuries received by Mark Douglas Hill, Helen Casey Hill, and Mark Douglas Hill, III.

24. Jessica Dawn Jones was riding in the same vehicle with Mark Douglas Hill, Helen Casey Hill, and Mark Douglas Hill, III.

25. Jessica Dawn Jones, Mark Douglas Hill, Helen Casey Hill, and Mark Douglas Hill, III were closely related.

26. Jessica Dawn Jones contemporaneously perceived the collision.

27. The emotional distress suffered by Jessica Dawn

Jones manifested itself by physical symptoms.

28. As a result of the foregoing, her estate is entitled to recover her actual damages and such punitive damages as may be appropriate in this case.

AS TO ALL CAUSES OF ACTION

29. As a result of the foregoing acts, the father and statutory heirs of Jessica Dawn Jones have been damaged in actual damages and such punitive damages as may be appropriate in the case.

WHEREFORE, Plaintiff prays for actual damages, plus such punitive damages as may be awarded, for the costs of this action, and such other and further relief as to the Court seems just and proper.

PATRICK E. KNIE, P.A.

/s/ Patrick E. Knie

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ATTORNEYS FOR PLAINTIFF

June 18, 2019

Exhibit B

ELECTRONICALLY FILED - 2019 Jun 18 4:31 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202212

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Mark Douglas Hill, III,)
by and through his duly)
appointed Guardian ad)
Litem, Helen Kaci Hill,) SUMMONS
)
Plaintiff,) Jury Trial Requested
)
vs.) C/A No. 2019-CP-42-_____
)
Cranston Print Works)
Company d/b/a Cranston)
Trucking Company, Ryder)
Systems, Inc., Optimum)
Staffing, Inc. d/b/a)
Optimum Logistic)
Solutions, and Jason E.)
Burdette,)
)
Defendants.)

TO: CRANSTON PRINT WORKS COMPANY d/b/a CRANSTON TRUCKING
COMPANY, RYDER SYSTEMS, INC., OPTIMUM STAFFING, INC. d/b/a
OPTIMUM LOGISTIC SOLUTIONS, AND JASON E. BURDETTE,
DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served upon
you, and to serve a copy of your Answer to the Complaint on the
undersigned at his office located at P.O. Box 5159, 250 Magnolia
Street, Spartanburg, S.C. 29304, within thirty (30) days after
the service hereof, exclusive of the day of such service, unless
you received your copy by certified mail, in which case you must
serve a copy of your answer on the subscriber within thirty-five
(35) days after the service hereof, exclusive of the day of such
service, and if you fail to answer the Complaint within the time

aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

DATED at Spartanburg, South Carolina, on the 18th day of June, 2019.

PATRICK E. KNIE, P.A.

/s/ Patrick E. Knie

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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG)

Mark Douglas Hill, III,)
 by and through his duly)
 appointed Guardian ad)
 Litem, Helen Kaci Hill,) COMPLAINT
)
 Plaintiff,) Jury Trial Requested
)
 vs.) C/A No. 2019-CP-42-_____
)
 Cranston Print Works)
 Company d/b/a Cranston)
 Trucking Company, Ryder)
 Systems, Inc., Optimum)
 Staffing, Inc. d/b/a)
 Optimum Logistic)
 Solutions, and Jason E.)
 Burdette,)
)
 Defendants.)

The Plaintiff, complaining of the Defendants, would show unto the Court:

1. The Plaintiff, Helen Kaci Hill, is the mother of Mark Douglas Hill, III, age six (6) months, and is the duly appointed Guardian ad Litem for Mark Douglas Hill, III.

2. The Defendant, Cranston Print Works Company d/b/a Cranston Trucking Company, hereinafter referred to as Cranston, is a corporation organized and existing under the laws of the State of Rhode Island, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

3. The Defendant Ryder Systems, Inc., hereinafter referred to as Ryder, is a corporation organized and existing under the laws of a state other than South Carolina with its

corporate headquarters in Miami, Florida, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

4. The Defendant, Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, is a corporation organized and existing under the laws of the State of Illinois, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

5. The Defendant, Jason E. Burdette, is a citizen and resident of Anderson County, South Carolina.

6. Venue is proper in Spartanburg County pursuant to SC Code 15-7-30(C)(2) in that the substantial part of the alleged acts or omissions giving rise to the cause of action occurred in Spartanburg County.

7. On or about February 1, 2019 at approximately 8:30 a.m., the Plaintiff was traveling as a passenger in a Kia Minivan owned and operated by his father, Mark Douglas Hill.

8. The minivan was traveling north on Business I-85 in Spartanburg, South Carolina near Interstate I-26 in the right-hand lane.

9. Because of heavy traffic, Plaintiff's father, Mark Douglas Hill, was forced to come to a stop for traffic stopped ahead of him.

10. At the same time, a 2016 Freightliner eighteen (18) wheel tractor-trailer, driven by the Defendant, Jason E.

Burdette, traveling at a high rate of speed, was unable to stop and struck the Hill vehicle in the rear, knocking it forward and into a third vehicle.

11. As a result, Mark Douglas Hill, III suffered injuries and damages.

12. The Plaintiff is informed and believes that at all times herein the eighteen (18) wheel tractor-trailer driven by the Defendant, Jason E. Burdette, was owned by Defendant Ryder and leased to the Defendant Cranston.

13. The Plaintiff is informed and believes that Defendants Cranston and Ryder had a contractual arrangement regarding the maintenance of the tractor-trailer.

14. The Plaintiff is further informed and believes that the Defendant, Jason E. Burdette, was employed by the Defendant Optimum which provided Defendant, Jason E. Burdette, to Defendant Cranston, to drive the eighteen (18) wheel tractor-trailer described herein.

15. As a result of the collision, the Plaintiff has suffered medical expenses, serious bodily injury, physical and mental pain and suffering, mental anguish, and will continue to do so in the future, and further has suffered physical disability, and a loss of enjoyment of life.

16. The collision and Plaintiff's damages, injuries, and losses are the direct and proximate result of the combined and concurring willful, wanton, reckless, grossly negligent,

negligent, and careless acts of the Defendants by and through their respective agents in the following particulars:

AS TO DEFENDANT CRANSTON

all of which were a direct and proximate cause of the injuries and damages complained of herein.

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to maintain the eighteen wheeler;
- (g) In failing to make the proper pre-trip inspection of the eighteen wheeler;
- (h) In allowing a vehicle with a known or presumptively known safety defect onto the road;
- (i) In failing by its driver to follow the training received for his commercial driver's license (CDL);
- (j) In failing to properly train its driver;
- (k) In failing to properly supervise and monitor its driver;
- (l) In violating federal regulations including, but

not limited to, 49 CFR Sections 350-359;

- (m) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

AS TO DEFENDANT RYDER

- (a) In failing to provide a safe and properly maintained vehicle to Defendant Cranston for its use and operation;
- (b) In failing to maintain the tractor and trailer supplied to the Defendant Cranston for its use and operation;
- (c) In failing to inspect the eighteen wheeler;
- (d) In failing to properly train its agents and employees on the proper maintenance of tractors and trailers provided to others for their and operation, or in the alternative, in failing to follow the procedures and guidelines provided in its training to its employees for the maintenance and operation of tractors and trailers provided to others for their use and operation;
- (e) In failing to warn Defendant Cranston of the safety issues with the tractor and trailer provided to Defendant Cranston for its use and operation;

all of which were a direct and proximate cause of the injuries

and damages complained of herein.

AS TO DEFENDANT OPTIMUM

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to follow by its driver the training received for his commercial driver's license (CDL);
- (g) In failing to properly train its driver;
- (h) In failing to properly supervise and monitor its driver;
- (i) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (j) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

all of which were a direct and proximate cause of the injuries and damages complained of herein.

AS TO DEFENDANT BURDETTE

- (a) In operating an eighteen wheeler too fast for the

conditions then and there existing;

- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to request maintenance of the eighteen wheeler;
- (g) In failing to report safety or maintenance issues with the eighteen (18) wheeler which he was operating;
- (h) In failing to make a proper pre-trip inspection of the eighteen wheeler;
- (i) In failing to follow the training he received for his commercial driver's license (CDL);
- (j) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (k) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

all of which were a direct and proximate cause of the injuries and damages complained of herein.

17. As a result of the foregoing combined and concurrent acts and omissions of the Defendants and each of them,

Plaintiff is informed that he is entitled to actual damages, plus such punitive damages as the Court may award, and for such other and further relief as to the Court may seem just and proper.

WHEREFORE, Plaintiff prays for actual damages, plus such punitive damages as may be awarded, for the costs of this action, and such other and further relief as to the Court seems just and proper.

PATRICK E. KNIE, P.A.

/s/ Patrick E. Knie

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ATTORNEYS FOR PLAINTIFF

June 18, 2019

Exhibit C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. No.: 2019-CP-42-002215
Gregory Jones, Sr., as the father and duly	)	
appointed Personal Representative of the	)	
Estate of Jessica Dawn Jones, Deceased,	)	
	)	DEFENDANTS, CRANSTON PRINT
Plaintiff,	)	WORKS COMPANY D/B/A CRANSTON
	)	TRUCKING COMPANY AND JASON E.
v.	)	BURDETTE'S AMENDED ANSWER TO
	)	COMPLAINT
	)	
Cranston Print Works Company d/b/a	)	(Jury Trial Demanded)
Cranston Trucking Company, Ryder Truck	)	
Rental, Inc., Optimum Staffing, Inc. d/b/a	)	
Optimum Logistic Solutions, and Jason E.	)	
Burdette,	)	
	)	
Defendants.	)	
	)	

Defendants, Cranston Print Works Company d/b/a Cranston Trucking Company ("hereinafter "Cranston") and Jason E. Burdette, (collectively hereinafter "Defendants") answering the Plaintiff's Complaint alleges and will show unto the Court that:

FOR A FIRST DEFENSE AS TO ALL CAUSES OF ACTION

1. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's Complaint and therefore deny same.
2. In regards to paragraph 2 of Plaintiff's Complaint, Defendants admit so much as it relates to the corporate name and State of Incorporation. Defendants deny the remaining allegations.
3. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 3 of Plaintiff's Complaint and, therefore, deny same.
4. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 4 of Plaintiff's Complaint and, therefore, deny same.

5. Defendants deny the allegations contained in paragraph 5 of Plaintiff's Complaint.

6. Defendants would show that the allegations contained in paragraph 6 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

7. Upon information and belief, Defendants admit the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. Upon information and belief, Defendants admit so much of the allegations contained in paragraph 8 of Plaintiff's Complaint as allege Plaintiff was travelling North on I-85 Business at the time of the accident. The remaining allegations of paragraph 8 are denied.

9. Defendants deny the allegations contained in paragraph 9 of the Plaintiff's Complaint.

10. Defendants admit so much of paragraph 10 of Plaintiff's Complaint as allege that a collision occurred involving two other vehicles. The remaining allegations of paragraph 10 are denied.

11. Defendants admit so much of paragraph 11 of Plaintiff's Complaint as allege that Jessica Dawn Jones died, however, it denies to the extent it alleges conscious pain and suffering. The remaining allegations of paragraph 11 are denied.

12. Defendants admit the allegations contained in paragraph 12 of Plaintiff's Complaint.

13. Defendants admit the allegations contained in paragraph 13 of Plaintiff's Complaint.

14. Defendants admit so much of paragraph 14 of Plaintiff's Complaint as allege that Jason E. Burdette drove for Cranston through Optimum. The remaining allegations of paragraph 14 are denied.

15. Defendants deny the allegations contained in paragraph 15, including all subparts, of the Complaint.

16. Defendants would show that the allegations contained in paragraph 16 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

17. Defendants would show that the allegations contained in paragraph 17 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

18. Defendants deny the allegations contained in paragraph 18 of Plaintiff's Complaint.

19. Defendants deny the allegations contained in paragraph 19 of Plaintiff's Complaint.

20. Defendants would show that the allegations contained in paragraph 20 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

21. Defendants deny the allegations contained in paragraph 21 of Plaintiff's Complaint.

22. Defendants deny the allegations contained in paragraph 22 of Plaintiff's Complaint.

23. Defendants would show that the allegations contained in paragraph 23 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

24. Upon information and belief, Defendants admit the allegations contained in paragraph 24 of Plaintiff's Complaint.

25. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 25 of Plaintiff's Complaint and, therefore, denies same.

26. Defendants deny the allegations contained in paragraph 26 of Plaintiff's Complaint.

27. Defendants deny the allegations contained in paragraph 27 of Plaintiff's Complaint.

28. Defendants deny the allegations contained in paragraph 28 of Plaintiff's Complaint.

29. Each and every allegation of the Complaint not specifically admitted, explained, or modified herein is denied and strict proof demanded thereof.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION

30. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

31. Defendants allege that the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action upon which relief can be granted as against them and is, accordingly, barred.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

32. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

33. Defendants allege that insofar as the Plaintiff has failed to mitigate his damages in the manner provided for by law, such failure to mitigate is pled as a complete defense and bar to his claims.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

34. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

35. The Plaintiff's decedent's injuries and damages were a result of superseding and/or intervening causes beyond the control of these Defendants.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

36. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

37. Defendants allege that this accident was caused by a sudden emergency. Defendants further allege that when confronted with this sudden emergency, Defendant Burdette acted as a reasonable person under the circumstances then and there existing. As such, Defendants are not liable to the Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

38. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

39. Defendants allege that this accident and the Plaintiff's decedent's injuries and damages were caused by conduct on the part of persons or entities over whom they have no control and for whom they have no responsibility. They further allege that such conduct intervened and acted as the sole proximate cause of this accident and the Plaintiff's decedent's alleged injuries and damages. As such, his claims against Defendants are barred.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

40. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

41. Defendants allege that insofar as the Plaintiff's Complaint seeks punitive damages, such punitive damages are violative of both the U.S. and South Carolina Constitutions. As such, the Plaintiff's claim for punitive damages is barred and should be stricken from the Complaint.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

42. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

43. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A TWELVETH DEFENSE AS TO ALL CAUSES OF ACTION

44. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

45. Defendants asserts any award returned by the jury in this case for punitive damages must be capped in accordance with the provisions of South Carolina Code §15-32-530(A) and (B).

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed as against them with costs and for any such other and further relief as this court shall deem just and proper.

s/ T. David Rheney

T. David Rheney (S.C. Bar No. 13148)
William T. Young III (S.C. Bar No. 75153)
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Post Office Box 10589, F.S.
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(864) 271-9580

*Attorneys for Defendants Cranston Print
Works Company d/b/a Cranston Trucking
Company and Jason E. Burdette*

Greenville, South Carolina

July 24, 2019

Defendants demand a trial by jury.

s/ T. David Rheney

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. No.: 2019-CP-42-002212
Mark Douglas Hill, III by and through his	)	
duly appointed Guardian ad Litem, Helen	)	
Kaci Hill,	)	
	)	DEFENDANTS, CRANSTON PRINT
	)	WORKS COMPANY D/B/A CRANSTON
Plaintiff,	)	TRUCKING COMPANY AND JASON E.
	)	BURDETTE'S AMENDED ANSWER TO
	)	COMPLAINT
v.	)	
	)	(Jury Trial Demanded)
Cranston Print Works Company d/b/a	)	
Cranston Trucking Company, Ryder Truck	)	
Rental, Optimum Staffing, Inc. d/b/a	)	
Optimum Logistic Solutions, and Jason E.	)	
Burdette,	)	
	)	
Defendants.	)	
	)	

Defendants, Cranston Print Works Company d/b/a Cranston Trucking Company (hereinafter "Cranston") and Jason E. Burdette, (collectively hereinafter "Defendants") answering the Plaintiff's Complaint allege and will show unto the Court that:

FOR A FIRST DEFENSE AS TO ALL CAUSES OF ACTION

1. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's Complaint and therefore deny same.
2. In regards to paragraph 2 of Plaintiff's Complaint, Defendants admit so much as it relates to the corporate name and State of Incorporation. Defendants deny the remaining allegations.
3. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 3 of Plaintiff's Complaint and therefore deny same.
4. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 4 of Plaintiff's Complaint and therefore deny same.

5. Defendants deny the allegations contained in paragraph 5 of Plaintiff's Complaint.

6. Defendants would show that the allegations contained in paragraph 6 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

7. Upon information and belief, Defendants admit the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. Upon information and belief, Defendants admit so much of the allegations contained in paragraph 8 of Plaintiff's Complaint as allege Plaintiff was travelling North on I-85 Business at the time of the accident. The remaining allegations of paragraph 8 are denied.

9. Defendants deny the allegations contained in paragraph 9 of the Plaintiff's Complaint.

10. Defendants admit so much of paragraph 10 of Plaintiff's Complaint as allege that a collision occurred involving two other vehicles. The remaining allegations of paragraph 10 are denied.

11. Defendants deny the allegations contained in paragraph 11 of the Plaintiff's Complaint.

12. Defendants admit the allegations contained in paragraph 12 of the Plaintiff's Complaint.

13. Defendants admit the allegations contained in paragraph 13 of the Plaintiff's Complaint.

14. Defendants admit so much of the allegations of paragraph 14 of Plaintiff's Complaint as allege that Jason E. Burdette drove for Cranston through Optimum. The remaining allegations of paragraph 14 are denied.

15. Defendants deny the allegations contained in paragraph 15 of the Plaintiff's Complaint.

16. Defendants deny the allegations contained in paragraph 16, including all subparts, of Plaintiff's Complaint.

17. Defendants deny the allegations contained in paragraph 17 of the Plaintiff's Complaint.

18. Each and every allegation of the Complaint not specifically admitted, explained, or modified herein is denied and strict proof demanded thereof.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION

19. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

20. Defendants allege that the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action upon which relief can be granted as against them and is, accordingly, barred.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

21. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

22. Defendants allege that insofar as the Plaintiff has failed to mitigate his damages in the manner provided for by law, such failure to mitigate is pled as a complete defense and bar to his claims.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

23. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

24. The Plaintiff's injuries and damages were a result of superseding and/or intervening causes beyond the control of these Defendants.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

25. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

26. Defendants allege that this accident was caused by a sudden emergency. Defendants further allege that when confronted with this sudden emergency, Defendant Burdette acted as a reasonable person under the circumstances then and there existing. As such, Defendants are not liable to the Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

27. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

28. Defendants allege that this accident and the Plaintiff's injuries and damages were caused by conduct on the part of persons or entities over whom they have no control and for whom they have no responsibility. They further allege that such conduct intervened and acted as the sole proximate cause of this accident and the Plaintiff's decedent's alleged injuries and damages. As such, his claims against Defendants are barred.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

29. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

30. Defendants allege that insofar as the Plaintiff's Complaint seeks punitive damages, such punitive damages are violative of both the U.S. and South Carolina Constitutions. As such, the Plaintiff's claim for punitive damages is barred and should be stricken from the Complaint.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

31. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

32. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A NINETH DEFENSE AS TO ALL CAUSES OF ACTION

33. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

34. Defendants asserts any award returned by the jury in this case for punitive damages must be capped in accordance with the provisions of South Carolina Code §15-32-530(A) and (B).

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed as against them with costs and for any such other and further relief as this court shall deem just and proper.

s/ T. David Rheney

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*Attorneys for Defendants Cranston Print
Works Company d/b/a Cranston Trucking
Company and Jason E. Burdette*

Greenville, South Carolina

February 6, 2020

Defendants demand a trial by jury.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appeal No.: 2020-001695

RECEIVED

Feb 19 2021

SC Court of Appeals

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff..... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ...Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Appellants.

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellant Jason E. Burdette petitions this
Court to rehear its Order granting Respondents' motion to dismiss this appeal. Because

this Court's Order has the effect of dismissing the appeal, this Petition is proper pursuant to Rule 221(c), SCACR. Burdette received this Court's Order on February 11, 2021.

This Court overlooked and/or misconstrued the fact that the appealed Orders do not simply "direct[] a party to participate in discovery," as was the case in *Ex parte Whetstone*, 289 S.C. 580, 3467 S.E.2d 881 (1986). Instead, they involve the merits and affect a substantial right by binding Burdette to certain admissions that are incorrect, inconsistent with his testimony and would, if allowed to stand, preclude him from presenting contrary evidence at trial. This Court has recognized previously that it "should look to the *effect* of an interlocutory order to determine its appealability under section 14-3-330(2)(c)" and that "[a]n order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) (emphasis added); *see also Wetzel v. Woodside Dev., Ltd. P'ship*, 374 S.C. 589, 592, 615 S.E.2d 437, 438 (2005) (finding order setting aside entry of default immediately appealable because its effect was to end the action completely as to one party). Specifically, this Court overlooked or misconstrued the fact that, by ordering Burdette to revise his responses to various Requests for Admission to "conform" to the Circuit Court's and Plaintiffs' view of testimony on certain pages of his deposition transcript, the Orders affect Burdette's defenses and his ability to present certain evidence at trial. In short, the Orders involve the merits and affect a substantial right.

In addition, this Court failed to recognize the untenable position in which the application of *Whetstone* and its progeny places a party such as Burdette. Burdette either

must comply with the order and lose any right to later appeal it, or refuse to comply and allow himself to be placed in contempt in order to appeal it now. Furthermore, pursuant to *Davis v. Parkview Apts.*, 409 S.C. 266, 762 S.E.2d 535 (2014) and *Whetstone*, if Burdette did not appeal these severe Rule 37 sanction Orders now, Respondents undoubtedly would argue in any later appeal that the opportunity to do so had been waived.

Cases instructing that a party must “either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply,” *Davis*, 409 S.C. at 281, 762 S.E.2d at 543; *Whetstone*, 289 S.C. 480, 346 S.E.2d at 882, all involve a refusal or failure to respond to interrogatories or to produce documents or witnesses for depositions. None of these cases involve an order requiring a specific revision to a response to a request to admit that serves as a binding admission and limits the issues to be tried. To be clear, Burdette has not refused “to participate in discovery,” as was the case in *Whetstone* and its progeny that adopt the dichotomous choice of either complying with an order and losing the right to later appeal, or refusing to comply and be held in contempt in order to appeal immediately. Burdette attended his deposition and participated fully. When served with Requests for Admission, he answered them correctly as they were stated.

This Court also overlooked and/or misconstrued the fact that the questions eliciting responses at his March 20, 2020 deposition were worded differently from the Requests for Admission at issue here. It should come as no surprise, then, that Burdette’s responses to the Requests for Admission do not match up or “conform,” to certain pages of his deposition responses for the simple reason that the questions posed are worded differently in the two contexts. Request for Admission No. 3 asked Burdette to admit that, “Defendant

Jason E. Burdette used his cellular phone on February 1, 2019, **prior to impact** with the vehicle Jessica A. Jones was traveling in, **to communicate with among other people, agents/employees of Defendant Cranston Print Works Company d/b/a/ Cranston Trucking Company.**” (emphasis added). Burdette responded, “**Denied.**” The Circuit Court ordered Burdette to “re-answer” this admission to conform to page 119 of his deposition testimony. However, at page 119 of his deposition testimony, Burdette was asked, “what time, as close to the minute as you can, did you leave the Greenville Cranston Terminal,” and then, “based on the phone records I’ve shown you and your earlier testimony, can we agree that you were certainly using your cell phone while driving from Greenville to at least the Spartanburg area before the wreck,” to which Burdette responded, “Correct.” He did not testify that he was using his cell phone immediately “prior to impact,” as the Request for Admission suggests. Nor did he testify that he was communicating “with among other people, agents/employees of Defendant Cranston Print Works Company d/b/a/ Cranston Trucking Company.” (Exh. 1, Burdette Dep pp. 115-119). Other evidence confirms that he was not talking with any Cranston personnel prior to the accident. (Exh. 2, Heidt Affid.). Thus, the appealed Orders require Burdette to answer a Request for Admission in a manner contrary to his deposition testimony and other evidence.

Request for Admission No. 8 sought an admission that, “Defendant Jason E. Burdette was never given any safety instruction or underwent any safety training **while employed by** Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, prior to February 1, 2019,” (emphasis added), to which Burdette responded, “**Denied.**” The Circuit Court ordered Burdette to “re-answer” his admission to conform to page 71 of his

deposition transcript. While Burdette was asked, and what he testified to on page 71 of his deposition transcript was whether Optimum itself had provided any training, Request for Admission No. 8 is not limited to training provided directly by Optimum. In fact, Burdette testified correctly that he attended safety meetings with another employer he was leased to, Diamond Hill Plywood. (Exh. 1, Burdette Dep. p. 72, lines 3-21). He also testified that he underwent a road test with a different company, BI-LO, that he was assigned to work with. (*Id.* p. 85, lines 11-19; p. 87, lines 10-14). As a result, Burdette's response to Request for Admission No. 8, as written, is correct. By focusing on page 71 of his deposition and ignoring pages 72 and 85, the appealed Orders would have Burdette respond to a Request for Admission in a way that, in fact, contradicts his deposition testimony.

Request for Admission No. 10 sought an admission that, "Defendant Jason E. Burdette was never advised, **either orally or in writing** by any individual employed by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions of any corporate policies or procedures prohibiting the use of cellular phones while driving trucks as an employee of Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019," (emphasis added), to which Burdette responded "**Denied.**" The Circuit Court ordered Burdette to "re-answer" this admission to conform to pages 77-78 of his deposition transcript. However, on pages 77-78 of his deposition, Burdette was read a section of an Optimum policy concerning cell phone use and asked whether he was "aware of that **written policy** of Optimum Logistics," (emphasis added), which Burdette answered, "No, sir, I was not." In contrast, the Request for Admission covers both "orally or in writing." Burdette testified that he had had a discussion with Brian Connors with

Optimum Logistics, who advised that it was ok to use a cell phone “as long as you had a headset ... [a] hands free, you were fine.” (Exh. 1, Burdette Dep. p. 120, lines 8-22). Cranston had the same policy. “As long as you had a headset, you’re fine.” (*Id.* p. 120, lines 22-25).

In *Adams v. Orr*, the Supreme Court held the defendant was not deemed to have admitted certain facts where “the request for admissions as worded was subject to more than one reasonable interpretation.” 260 S.C. 92, 97, 194 S.E.2d 232, 234 (1973). Here, the Requests for Admission do not track the questions asked at Burdette’s deposition such that his responses are consistent and entirely correct. In other words, several of the Requests for Admission that are at issue are imprecisely worded, inarguably are “subject to more than one interpretation,” and Burdette’s responses to those Requests for Admission are correct as served. This Court overlooked the fact that the Circuit Court is compelling Burdette to answer these Requests for Admission contrary to his testimony and contrary to the facts, which is fundamentally different from a party simply refusing to participate in discovery and, consequently, the Orders are immediately appealable.

It is well-established that this Court has jurisdiction over “[a]ny intermediate judgment, order or decree in a law case involving the merits,” as well as over “[a]n order affecting a substantial right made in an action when such order ... strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330. An order affects a substantial right when it, among other things, strikes out a defense such that the defense is lost. *Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 n.4 (1993); *see also Thornton*, 391 S.C. at 304, 705 S.E.2d at 479 (“[a]n order affects a substantial right by striking a pleading if the order removes a material

issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial”). Complying with the Orders on appeal would result in Burdette answering these and other Requests for Admission in a manner that not only is inconsistent with his prior testimony, but also incorrect.¹

By binding Burdette to responses to Requests for Admission that are incorrect, inconsistent with his prior deposition testimony and the result of the Circuit Court’s engagement in fact finding, the Orders strike out various defenses that otherwise would be available to Burdett. To the extent he is required to “admit” he was using his cell phone “prior to impact” with Respondents’ vehicle, Burdette will be unable to present evidence to the contrary at trial, which will hamper his ability to dispute that he was not paying attention and/or keeping a proper lookout. Specific to Burdette, Plaintiffs allege that he was willful, wanton, reckless, grossly negligent and careless in, among other things, “failing to keep a proper lookout.” (Hill Complaint ¶ 16; Jones Complaint ¶ 15). Indeed, it would be difficult to prove he failed to keep a proper lookout if he could not present evidence that he was not communicating with Cranston personnel on “his cellular phone on February 1, 2019, **prior to impact** with” the Respondents’ vehicle. South Carolina and federal case law addressing the binding effect of a response to a request to admit makes

¹ Respondents nonsensically suggest that the Orders do “not preclude [Burdette] from maintaining a denial to the request, denying the request as written, or offering a qualified denial.” (Resp. Reply pp 2-3). If Burdette could comply with the Orders by simply denying the various Requests for Admission, as he already has done, there would be no point to the Orders themselves. Given how vigorously they fought to have the Requests for Admission revised in a manner that suits them, Respondents undoubtedly would object if Burdette provided the same denials in response to the Circuit Court Orders.

clear that such admissions are far more significant than are either interrogatory responses or deposition testimony, both of which can be contested before the factfinder.

The binding nature of a lower court ordering a party to respond to requests for admission with a particular answer demonstrates why this case is not controlled by *Whetsone* and its progeny, and why this Court should reverse the February 11 Order and allow this appeal to go forward. “An answer to a request under Rule 36 is unlike a statement of fact by a witness made in the course of oral evidence at a trial, or in oral pre-trial depositions, or even in written answers to interrogatories. *It is on the contrary a studied response, made under sanctions against easy denials, to a request to assert the truth or falsity of a relevant fact point out by the request for admission ...*” *Airco Indus. Gases, Inc. Div. of BOC Group, Inc. v Teamsters Health & Welfare Pens Fund*, 850 F.2d 1028, 1036 (3rd Cir. 1988).² This Court overlooked the fact that the express purpose of requests for admission, which are considered “judicial admission[s],” is to limit and define the facts at issue. *Id.*; *see also Scott*, 353 S.C. at 650, 579 S.E.2d at 157 (“[t]he purpose of Rule 36 is to allow parties to narrow the issues and determine which facts do not need to be proven because they are admitted”). Consequently, facts admitted in response to a request to admit “are conclusively admitted for the purposes of” the litigation in which they are made. *Id.* at 647, 579 S.E.2d at 155.

The practical effect of such an admission is that it “precludes the admitting party from arguing facts at trial contrary to its responses to a request to admit, absent an

² Our Rule 36 “is the language of current Federal Rule 36, as well as substantially the language of Circuit Court Rule 89.” Rule 36, SCRCF, Notes; *see also Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 649, 579 S.E.2d 151, 156 (Ct. App. 2003) (the federal rule on requests “for admissions is substantively similar to our rule”).

amendment to or revocation of the admission as allowed under the rules.” *Scott*, 353 S.C. at 648, 579 S.E.2d at 156. Critically, in *Airco*, the Third Circuit pointed out that an “admission is not merely another layer of evidence, *upon which the district court can superimpose its own assessment of weight and validity*. It is, to the contrary, an statement of fact that narrows the triable issues in the case,” even where a party “could point to conflicting testimonial evidence.” 850 F.2d at 1036-1037 (emphasis added). By binding Burdette to certain admissions that the Circuit Court deems consistent with his prior testimony, the Orders are immediately appealable because they involve the merits and affect a substantial right.

Frankly, given the discussion on page 2 of Respondents’ Reply that, “[s]imply put, Appellant Burdette is being offered a chance to re-answer the Requests for Admission that were before him in good faith and in conformance to his earlier sworn testimony, and to do so with a certification that the answers are actually his answers, **rather than that of his attorney**”) (emphasis added), Respondents’ entire effort to have Burdette revise his responses to various Requests for Admission appears to be an attempt to drive a wedge between Burdette and his legal counsel, hardly a laudable litigation tactic. As Burdette previously explained, a response to a request to admit is comparable to “[a] judicial admission, **deliberately drafted by counsel** for the express purpose of limiting and defining the facts in issue, [and] is traditionally regarded as conclusive.” *Airco* 850 F.2d at 1036 (emphasis added). In other words, it is not surprising or unusual for counsel to be deeply involved in responding to requests for admission, just as counsel drafts an answer, given the binding effect of both responses.

In addition, the Circuit Court exceeded its authority by weighing the evidence and requiring Burdette to change his answers to the Respondents' Requests for Admission to conform to its view of the evidence. Weighing the evidence is a function reserved to the factfinder. *See, generally, Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 174 (2010) (“[t]he jury serves as the fact finder and is charged with the duty of weighing the evidence admitted at trial ...”). Finally, the Circuit Court also exceeded its authority under Rules 36 and 37, SCRCP.

Burdette also joins in and adopts by reference the arguments raised in Appellant Cranston's and Optimum's Petitions for Rehearing, to the extent not inconsistent herewith.

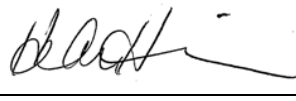
CONCLUSION

For all the reasons stated herein, this Court should grant rehearing and reverse the February 11, 2021 Order granting Respondents' motion to dismiss the appeal.

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE, LLC

February 19, 2021

By: 

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STATE OF SOUTH CAROLINA)
) IN COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Gregory Jones, Sr., as the father and
duly appointed Personal Representative
of the Estate of Jessica Dawn Jones,
Deceased,

Plaintiff,

VS.

CA No. 2019-CP-42-002215

Cranston Print Works Company
d/b/a Cranston Trucking Company,
Ryder Systems, Inc., Optimum
Staffing, Inc. d/b/a Optimum Logistic
Solutions, and Jason E. Burdette,

Defendants.

DEPOSITION OF JASON EDWARD BURDETTE

PURSUANT TO NOTICE and/or agreement of the parties, the within deposition was taken on the 20th day of March, 2020, commencing at the hour of 10:25 a.m. at the Gallivan White & Boyd, One Liberty Square, 55 Beattie Place, #1200, Greenville, South Carolina; attended by Counsel, as follows:

1 Meetings, the first sentence, "Quarterly safety meetings
2 will be held at each operation or terminal."

3 Do you remember any safety meetings while you were
4 there?

5 BY MR. YOUNG:

6 Object to the form.

7 BY THE DEPONENT:

8 Yes, sir.

9 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

10 Q. Okay. How many?

11 A. Well, now when I --- it was not done at their office or
12 anything to do with them.

13 Q. Okay.

14 A. It was done with the company that I was leased to.

15 Q. Which was?

16 A. Diamond Hill Plywood.

17 Q. Okay.

18 A. And which I was the only temp driver there.

19 Q. Okay.

20 A. During that time, and it was for their drivers, and I just
21 had to attend.

22 Q. Okay, and then under Guidelines for Determining
23 Preventability and Severity of Vehicle Collisions, do you
24 see that paragraph and that heading?

25 A. Yes, sir.

1 Then I got to --- as I work my way around to the
2 front of the truck, it gets it again, the same thing. I
3 go through and check everything again. Then I get in the
4 truck, and that's the pre-trip.

5 Q. And how much on time do you show for your pre-trip
6 inspection?

7 A. Fifteen minutes, sir. I can do all that in 15, do all
8 that and paperwork in 15 minutes proficiently.

9 Q. Okay.

10 Let's turn to page 18, which is OLS-243. Under
11 Company Policy you see the second paragraph from the
12 bottom, the Cell Phone Use?

13 A. Correct, sir.

14 Q. And let me read that paragraph: "Distracted driving is a
15 major contributor in vehicle accidents as such, cell
16 phones are not to be used while driving in any capacity
17 (voice, text, data or otherwise). Employees are
18 instructed to find a safe place to pull off the roadway
19 before using a cell phone. Hands free devices do not
20 alleviate or eliminate the driving distraction and are not
21 considered as a suitable alternative to pulling off the
22 highway to make or receive a call."

23 Did I read that correctly?

24 A. Yes, sir, that's what it says.

25 Q. And were you aware of that written policy of Optimum

1 Logistics?

2 A. No, sir, I was not.

3 Q. Well, but you said earlier, I believe you testified, you
4 had a copy of this safety manual?

5 A. Yes, sir, I got it yesterday.

6 Q. All right. Well, you got it before, didn't you?

7 A. No, sir, I never did.

8 Q. Okay.

9 A. I know there's a paper in there that I signed for it, but
10 I never got it. They said they was going to send it to me
11 later that I just needed to go ahead and sign for it now.
12 I'm like, "All right. Whatever."

13 Q. Well, then you signed something that was untruthful then,
14 didn't you?

15 A. Yes, sir, I did.

16 Q. Well, let's confirm that. Here's --- before we confirm
17 that, why don't you reconnect that last exhibit so we
18 don't get the papers within papers there.

19 A. Yes, sir.

20 (PLAINTIFF'S EXHIBIT NO. 13 MARKED PRIOR TO DEPOSITION)

21 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

22 Q. Okay. All right. So looking at Exhibit 13 I believe your
23 name is printed at the top? Do you need some time?

24 A. Yes, sir, please.

25 Q. Okay.

1 (OFF THE RECORD)

2 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

3 Q. We're looking at Exhibit No. 13.

4 A. Hang on one second, sir.

5 Q. Okay.

6 A. I want to get every --- I want to keep everything

7 together.

8 Q. That's fine.

9 A. Yes, sir.

10 Q. Which is OLS-44, and it is entitled Driver's Statement; is

11 that correct?

12 A. Yes, sir.

13 Q. And I believe it is your signed statement; is that

14 correct?

15 A. Yes, sir.

16 Q. And down in the lower half of the page you signed that

17 your initials that you received an employee handbook on

18 this date, which is 8/6/18; is that right?

19 A. Talking about right here, sir, or right, right here?

20 Q. Right here, Employee Handbook.

21 A. That is not my handwriting, sir. That is not my initials.

22 Q. Okay. That is your signature up above?

23 A. Correct, sir.

24 Q. Okay, and are you telling us that you didn't initial any

25 of those ---

- 1 A. Correct, sir.
- 2 Q. --- initials down below?
- 3 A. Correct, sir.
- 4 Q. But you did tell me earlier in the deposition that you
5 received the employee handbook and the safety manual and
6 you just weren't sure if you would be able to find them
7 but you probably had them somewhere?
- 8 A. Might have, sir.
- 9 Q. Okay, and then a minute ago you were saying that you saw
10 it yesterday?
- 11 A. Correct, sir. That's what I was talking about, yesterday.
- 12 Q. So are you telling me that what you said earlier is
13 incorrect that you did not receive those manuals?
- 14 A. Correct, sir.
- 15 Q. And you're changing your testimony?
- 16 A. I was understanding that you were saying --- asking if I
17 got the things. Yes, I did get them yesterday.
- 18 Q. Okay. I believe I asked you at the time of your
19 employment?
- 20 A. Oh, no, sir. I didn't hear you say time of employment,
21 because the only thing I remember you asking is if I had
22 just seen it.
- 23 Q. All right, and that's just like you didn't read that whole
24 sentence about prior accidents that you had in the last
25 five years?

1 Q. I know. I'm just ---

2 A. So ---

3 Q. --- asking you do you know if that was ever done?

4 BY MR. YOUNG:

5 Same objection.

6 BY THE DEPONENT:

7 I don't know what they did, sir, before I got there.

8 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

9 Q. And do you know what was done after you got there?

10 A. No, sir.

11 Q. Okay. Let's talk a little bit about your training process
12 with Optimum Logistics. Once you were hired, other than
13 providing you with a safety manual and an employee
14 handbook, did you have any classroom work?

15 A. Negative, sir.

16 Q. Did you have any road testing or road training?

17 A. I did have to go for a road test.

18 Q. Okay.

19 A. With one of the companies they had me with.

20 Q. But did Optimum Logistics give you any road testing?

21 A. No, sir, I did not. Okay. No, sir.

22 Q. But you indicated they did provide you with those
23 handbooks?

24 A. No, sir, I did not.

25 Q. That's not what your testimony just was?

1 A. I told you that I got that them --- I never got them
2 books.

3 Q. Okay.

4 A. I told you the signatures, the initials on that page was
5 not mine.

6 Q. Okay.

7 A. So I never received them books until yesterday.

8 Q. All right. Well, even if those initials weren't yours,
9 that doesn't establish that you didn't get those books; is
10 that right?

11 A. I'm telling you, sir, I did not get the books.

12 Q. Okay. So, what was your first assignment with Optimum?
13 Who did they assign you with?

14 A. BI-LO Warehouse.

15 Q. And how long did that assignment last?

16 A. Until September.

17 Q. All right. So that would be approximately a month?

18 A. Correct.

19 Q. And then in September where were you assigned?

20 A. Diamond Hill Plywood.

21 Q. And how long did that last?

22 A. Until January.

23 Q. Okay.

24 A. February, somewhere around --- yeah, January. End of ---
25 first of January, mid-January, somewhere around there.

- 1 Q. And then where were you next assigned?
- 2 A. There was a delay. I don't know how long. I can't ---
- 3 Q. Okay.
- 4 A. I know it was less than a month delay, but there was a
- 5 delay to keep me with some --- some heating and air
- 6 company for a short period, for like a short period of
- 7 time.
- 8 Q. Okay, and then where were you next assigned?
- 9 A. I was at Cranston.
- 10 Q. Now you said one of those assignments they put you through
- 11 a road test?
- 12 A. Correct.
- 13 Q. Which one?
- 14 A. BI-LO.
- 15 Q. When you went with Cranston, did they put you through a
- 16 road test?
- 17 A. No, sir.
- 18 Q. Did they give you any training?
- 19 A. No, sir.
- 20 Q. Did you have any safety meeting with them?
- 21 A. No, sir, I was only there a week. So I don't know if they
- 22 even had safety meetings or anything.
- 23 Q. Did Cranston supply you with any employee manual or safety
- 24 manual?
- 25 A. No, sir.

1 Q. Okay. Now we talked about communicating with a
2 dispatcher. What type of things would you routinely have
3 to communicate about with a dispatcher?

4 A. Where to go next. Where am I at? What am I doing? How
5 am I doing it? Who, what, when, where and why stuff.

6 Q. And is it a fair statement that on the days that you
7 worked you communicated frequently with the dispatcher?

8 A. Correct.

9 Q. Would you also talk to the dispatcher before the trip
10 started?

11 A. Yes.

12 Q. Would part of your discussion involve, you know, how many
13 legal hours I've got left this week, that type of thing?

14 A. No.

15 Q. So that, was that your job totally to keep up with that?

16 A. Correct.

17 (PLAINTIFF'S EXHIBIT NO. 22 MARKED PRIOR TO DEPOSITION)

18 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

19 Q. Let me show you Plaintiff's Exhibit 22. You recognize
20 this exhibit?

21 A. It's a phone record.

22 Q. And have you seen it before today? I mean were you shown
23 this record?

24 A. Yes, sir.

25 Q. When were you shown it?

1 A. Yesterday.

2 Q. And it says that it's the Verizon record for Betty Wrenn.

3 Were you in possession of a phone that was listed in that

4 name on February 1st, ---

5 A. Yes, sir, I was.

6 Q. --- 2019?

7 Explain the circumstances by which it was her

8 account that you happened to have it with you?

9 A. Okay. She had an account with Verizon. She got me a
10 phone on her account.

11 Q. Okay. Let's go to February 1st. There appears to be a
12 call at 5:38 in the morning. Do you recognize that phone
13 number?

14 A. No, sir, I do not.

15 Q. And then I gather you wouldn't recognize the one at 6:14?
16 That's the same number, correct?

17 A. It appears to be, yes, sir.

18 Q. And then at 6:16, that's the same number, correct?

19 A. Yes, sir.

20 Q. And you talked 71 minutes and you don't know who it was?

21 A. I don't really keep track of numbers. I have them in my
22 phone, so I don't know who.

23 Q. Do you have an idea who it might have been?

24 A. It could have been her.

25 Q. Who?

1 A. Betty.

2 Q. Okay.

3 A. It could have been. I don't know.

4 Q. And then on February 1st at 7:38 you talked to a 979 area
5 code. That was an incoming call. Do you know that was
6 for five minutes?

7 A. Not that I can recall at this time, sir.

8 Q. All right. Then at 8:04 you talked to a 864-245-5866. Do
9 you know ---

10 A. Yes, sir, I know who that is. I looked at that yesterday.

11 Q. Who is that?

12 A. That is a former fire instructor, former firefighter, a
13 friend of mine that's like a dad to me.

14 Q. Okay, and you talked ten minutes?

15 A. Yes, sir.

16 Q. And then at 8:32 you talked to 864-440-0626, do you know
17 ---

18 A. I reckon that might be Cranston. I'm not for sure.

19 Q. Okay. That was a call from Spartanburg to Greenville?

20 A. I reckon. I mean ---

21 Q. Okay.

22 A. --- I don't know.

23 Q. All right, and then the same number that you said you
24 talked to for 71 minutes you talked to at 8:34. Do you
25 see that or actually you left a voicemail? Do you see

1 that?

2 A. Yes, sir.

3 Q. And then you left four more, five more voicemails to the

4 same number?

5 A. It might not be a voicemail. It just might be where I

6 called and they didn't answer and I hung up.

7 Q. Okay. Well, it's showing VM.

8 A. Where do you see that at?

9 Q. Just --- well, the first one is 8:34 in the morning.

10 A. Okay.

11 Q. Spartanburg, and then keep coming across.

12 A. I see it now.

13 Q. Voicemail, and then you see there's four more underneath

14 it?

15 A. Right.

16 Q. And then it appears at 8:36 you had a successful call with

17 that number. Do you see that?

18 A. Yes, sir.

19 Q. And you think that was Betty Wrenn, I think you said

20 earlier, based on the 71-minute call that you had earlier

21 with that person?

22 A. Correct.

23 Q. Okay.

24 A. I mean I'm --- I'm assuming.

25 Q. All right, and so you hadn't denied it earlier. Have you

1 reviewed what you did that day and you know about what
2 time in the morning that you were driving from Greenville
3 to Spartanburg?

4 A. Correct.

5 Q. And that would be from statements that you made and other
6 documents that you reviewed; is that right?

7 A. Correct.

8 Q. And, as accurately as possible, based on that review and
9 refreshing your memory, what time, as close to the minute
10 as you can, did you leave the Greenville Cranston
11 Terminal?

12 A. Can I look back at the paperwork?

13 Q. Which paperwork do you want to look ---

14 A. The logs for February 1st.

15 Q. Sure. Go ahead.

16 A. (Reviewing documents.) Before 8:00, sir.

17 Q. All right, and as close in time as you can, when do you
18 believe was the time of the motor vehicle accident?

19 A. Roughly around 8:30, sir.

20 Q. And based on the phone records I've shown you and your
21 earlier testimony, can we agree that you were certainly
22 using your cell phone while driving from Greenville to at
23 least the Spartanburg area before the wreck?

24 A. Correct.

25 Q. Okay, and did any of those, during that 8:00 to 8:30,

1 appears to be calls to or from the dispatcher?

2 A. No, sir.

3 Q. Those would have all appeared to be personal calls of some
4 nature?

5 A. Correct.

6 Q. And were those calls necessary to your employment?

7 A. No, sir.

8 Q. And, again, you read the policy with me today of your
9 employer Optimum Logistics that prohibits cell phone use?

10 A. I've seen it for the first time today, sir.

11 Q. And you're saying that you were never told nor you never
12 read that you couldn't use your cell phone?

13 A. I was always told, even from Optimum Logistics their self,
14 as long as you had a headset.

15 Q. Okay.

16 A. A hands free, you were fine.

17 Q. Who told you that?

18 A. Brian Conners from Optimum Logistics.

19 Q. Okay.

20 A. He's --- he called me many a times while I was on the
21 road.

22 Q. Okay. What did Cranston tell you about their policy about
23 cell phone use?

24 A. The same thing. As long as you had a headset, you're
25 fine.

Exhibit A

ELECTRONICALLY FILED - 2020 Aug 07 3:30 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202212

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. No.: 2019-CP-42-02212
	)	
Mark Douglas Hill, III by and through his	)	
duly appointed Guardian ad Litem, Helen	)	
Kaci Hill,	)	
	)	<u>AFFIDAVIT OF BRETT HEIDT</u>
Plaintiff,	)	
	)	
v.	)	
	)	
Cranston Print Works Company d/b/a	)	
Cranston Trucking Company, Ryder Truck	)	
Rental, Inc., Optimum Staffing, Inc. d/b/a	)	
Optimum Logistic Solutions, and Jason E.	)	
Burdette,	)	
	)	
Defendants.	)	
	)	
Gregory Jones, Sr., as the father and duly	)	C.A. No.: 2019-CP-42-02215
appointed Personal Representative of the	)	
Estate of Jessica Dawn Jones, Deceased,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Cranston Print Works Company d/b/a	)	
Cranston Trucking Company, Ryder Truck	)	
Rental, Inc., Optimum Staffing, Inc. d/b/a	)	
Optimum Logistic Solutions, and Jason E.	)	
Burdette,	)	
	)	
Defendants.	)	

Brett Heidt, who hereby certifies the below statements are true and accurate to the best of his knowledge, and in accordance with the Supreme Court of South Carolina's Operation of the Trial Courts During the Coronavirus Emergency Order, App. Case No. 2020-000447 (S.Ct. Order filed April 22, 2020), deposes and states as follows:

1. My name is Brett Heidt. I am over the age of 18 years old and competent to testify to the matters set forth herein.
2. I am a resident of Greenville County, South Carolina and am employed by Cranston Print Works.
3. I have reviewed what I understand to be Jason Burdette's cell phone records of February 1, 2019.
4. Upon information and belief, the accident involving Mr. Burdette occurred at 8:30 am.
5. None of the telephone numbers listed on the cell phone record prior to 8:32 am on February 1, 2019, are associated with Cranston Print Works Company.
6. Everything contained herein is based upon my own personal knowledge, except that which is based upon information and belief, and to those matters it is so stated.

Further Affiant sayeth not.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Brett Heidt

August 6, 2020

Greenville, South Carolina

Affidavit of Brett Heidt

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2020-001695
Trial Court Case Nos. 2019-CP-42-02212 & 2019-CP-42-02215

Mark Douglas Hill, III by and through
his Duly appointed Guardian ad Litem,
Helen Kaci Hill, Plaintiff,.....Respondent,

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

and

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff,.....Respondent,

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

Of Whom Jason E. Burdette, Cranston Print Works
Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc., d/b/a Optimum Logistic
Solutions are the.....Appellants.

RECEIVED

Jan 25 2021

SC Court of Appeals

**RESPONDENTS' REPLY TO APPELLANTS' RETURNS
TO RESPONDENTS' MOTION TO DISMISS**

ARGUMENT

I. Appellants have improperly brought an appeal that is interlocutory in nature, and no permissible basis exists for the continuation of the instant appeal.

Based upon the Appellants' Returns, it is clear that this admittedly Interlocutory Appeal should be dismissed, as the Appellants have failed to point to a harm suffered from Appellant/Defendant Burdette re-answering requests for admission in such a way that it would conform to his prior sworn testimony. While each of the Appellants has offered various erroneous arguments for why the instant Appeal should not be dismissed, they have uniformly misapplied the Circuit Court's Orders to say something that they simply do not say. Namely, each of the Appellants has asserted that the Orders requiring Appellant/Defendant Burdette to re-answer Requests for Admission to conform with his prior sworn testimony somehow means that he must admit the Requests. That simply is not the case, and is not what the unambiguous explicit wording of the Court's Orders state. Further, enhancing the Respondents' position is the fact that Appellant Burdette's Counsel of Record admits that this matter is Interlocutory in nature.

Despite acknowledging its Interlocutory status, Counsel for Appellant Burdette suggests that the instant Motion should be rejected for several unavailing reasons. First and foremost, Counsel for Burdette seems to base her whole argument, like that of Counsel for the other Appellants, around the premise that re-answering Requests for Admission to comply with prior sworn testimony will in effect foreclose on a defense at the trial on the merits. Such an assertion is false. The Circuit Court has not stated that any defense of Appellant Burdette, or any other Appellant/Defendant, would be stricken or in any way effected, and in fact Counsel for Appellant Burdette has failed to state what particular defense would be impacted by his re-answering Requests for Admission in line with his prior sworn deposition testimony. Further, Appellant Burdette, like Appellants Cranston and Optimum, fails to appreciate that re-answering Requests for Admission in conformance with his deposition testimony

does not preclude him from maintaining a denial to the request, denying the request as written, or offering a qualified denial. It certainly does not mean that Appellant Burdette is being forced to admit the Request as written. Simply put, Appellant Burdette is being offered a chance to re-answer the Requests for Admission that were before him in good faith and in conformance to his earlier sworn testimony, and to do so with a certification that the answers are actually his answers, rather than that of his attorney. Requiring Burdette to do so does not presuppose upon him an answer, nor does it require a certain answer. This is the very thing that each Appellant has missed, and is the critical reason why Appellant Burdette should have either attempted to comply with the Orders, sought clarification from the Circuit Court, or raised the issues at any hearing on a Motion to hold him in contempt for failure to comply with the Orders. Instead, Appellant Burdette apparently determined that he would be precluded from offering an undefined defense at the trial of the case, and thus appealed. Appellants Optimum and Cranston have joined in the appeal with the same faulty logic, stating that the answers of one Defendant would somehow preclude these separate Defendants from offering their own evidence and defenses at the trial of this case.

This logic and course of action are clearly erroneous and contrary to the well-established common law in South Carolina. While Counsel for Burdette would have this Court believe that the appeal is on a novel issue, that simply is not true. As was noted by Respondents' Counsel in the instant Motion, former Chief Justice Pleicones aptly noted in a recent Concurrence that "[I]t is well-settled that a party can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt." *See Davis, v. Parkview Apartments*, 409 S.C. 266, 290-1, 762 S.E.2d 535, 548 (2014) (citing *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008)). Justice Pleicones' statements were echoed in the majority decision where it was stated that "to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt,

and appeal from the contempt finding.” *See Davis*, 409 S.C. at 280-1, 762 S.E.2d at 543 (citing *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881-2 (1986)). The Supreme Court clearly stated in *Ex Parte Whetstone* that “[A]n order directing a party to participate in discovery is interlocutory and not directly appealable.” *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881-2 (1986). Thus, this appeal does not present a novel issue, as it is clear from the wording of the Orders and the language in Appellants returns that the instant appeal is Interlocutory and improper. To the extent that Appellants argue that simply because this matter deals with Requests for Admission that it changes the overarching requirements espoused above is simply not true. The aforementioned standards still hold true.

Appellant/Defendant Burdette, by and through his Counsel of Record, has not and cannot show that through re-answering the Requests for Admission with denials, qualified denials and/or admissions that any defense at the trial of this matter would be precluded, foreclosed or waived. In examining the arguments presented, it is telling that Counsel for Appellant Burdette has failed to even remotely articulate which supposedly critical defense would be precluded from being raised at the trial on the merits if they had to actually conform their answers to prior sworn testimony. Such an omission is critical as it shows the true frivolous nature of this appeal. It is respectfully submitted that this Court should look through Appellants’ hollow arguments, and see this Appeal for what it is, yet another attempt to circumvent justice, abuse the rules of the Court, and to prolong this case from ever reaching a jury.

It is respectfully submitted that the spirit of the law, and the Rules of Civil Procedure is to require litigants to give truthful and accurate answers to deposition questions under oath, and in Requests for Admission. A litigant should not be allowed to state one thing under oath and then later determine that they wish to change their response when their counsel, who is representing all co-

Defendants, realizes that the earlier testimony if confirmed through Requests for Admission might harm his other clients. This is precisely what occurred here. Appellant Burdette, by and through his then Attorney William T. Young, III, when confronted with Requests for Admission that were in response to Burdette's earlier deposition testimony determined that he would offer unqualified denials even where it was contradictory to Burdette's earlier sworn testimony to benefit his other clients, who had divergent interests from each other and Burdette. It is respectfully submitted that this fact is born out when one reads between the lines in both Appellant Optimum and Appellant Cranston's Memoranda in Opposition to the instant Motion. Such a motivation also illustrates why the overall defense of each Appellant has finally been divested from one individual after the Circuit Court's Orders. However, this appeal is not the proper vehicle to attempt to clean up the Appellants' mess that was created from one attorney representing three parties with different interests.

While each Appellant has suggested that the Circuit Judge doled out some bitterly harsh medicine in asking litigants to play by the rules and truthfully answer both discovery requests and deposition questions, the undersigned would point out that the Circuit Judge's Orders simply allow Burdette the opportunity to offer new responses. The Circuit Judge never states that the old Answers must be changed to admissions, rather he states that they must be re-answered to conform to deposition testimony. How Appellant Burdette accomplishes that is left to his own discretion. The Circuit Judge simply states it must be consistent with the prior deposition testimony, and certified as his own answers. Nowhere in the Orders at issue did the Circuit Judge state that denials could not be given as revised answers, and certainly nowhere did he state that any defense was precluded. He simply stated that Burdette's answers must conform to the sworn deposition testimony. A simple concept that is in line with the idea that one who is under oath should tell the truth.

Again, Burdette's Counsel has not even stated which defense is somehow now eliminated by the Circuit Judge's Orders. The overarching premise of Appellants' appeals are thus reaching at best. In fact, Appellant/Defendant Burdette, and his current Counsel of record, had the opportunity to revise their answers, maintain their denials, issue qualified denials, or admit the requests. However, they chose not to do any of these. Rather, Appellant Burdette, or whomever is the person responsible for his defense, determined that he would hire a new attorney, file an appeal, and not even attempt to comply with the Circuit Court's Orders. He has suffered no harm, and cannot show how re-answering the Requests for Admission as he sees fit, in conformance with his deposition testimony, will deprive him or any other Appellant/Defendant of anything, including defenses at the trial on the merits. Certainly, if Optimum or Cranston disagree with Burdette's answers, they will have the opportunity at the trial on the merits to offer evidence to refute his sworn deposition testimony, or his new answers to Requests for Admission that are consistent with his earlier sworn testimony. Simply put, no party is being precluded from offering a robust defense to any of the allegations against them based upon the Orders at issue.

The Respondents would again respectfully request that this Honorable Court find that the Circuit Judge did not in anyway strike or preclude any defense in the underlying litigation, rather he simply Ordered that the answers to Requests for Admission be espoused in such a way as to conform to the earlier sworn deposition testimony of Burdette. There is no harm. Simply put, this is an admittedly Interlocutory Appeal on an issue where the Appellants have suffered no harm, and as such this appeal should be dismissed as Interlocutory, improvident and improper. The precedent on this matter is clear, and the result should be too.

CONCLUSION

Based on the foregoing, the Respondents would respectfully request that this Honorable Court grant the instant Motion, and dismiss the current Interlocutory appeal. Simply put, there presently are no issues that are properly ripe before this Honorable Court for adjudication.

RESPECTFULLY SUBMITTED,



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January 25, 2021
Spartanburg, South Carolina

Counsel for Plaintiffs/Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jan 21 2021

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Keith Kelly, Circuit Court Judge

Appeal No.: 2020-001695

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff..... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ...Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Appellants.

**APPELLANT OPTIMUM STAFFING, INC'S OPPOSITION TO
RESPONDENTS MOTION TO DISMISS APPEAL**

Pursuant to Rule 240, SCACR, Appellant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions (“Optimum”) opposes Respondents’ Motion to Dismiss (“Motion”) this appeal. Optimum adopts all arguments put forward by other Appellants, Cranston Print Works Company (“Cranston”) and Jason E. Burdette (“Burdette”) and incorporates their recitation of facts and their arguments by reference. Respondents incorrectly assert that Optimum knowingly filed an improper interlocutory appeal for the purpose of “prolong[ing] and delay[ing] the underlying litigation,” which Respondents assert justify sanctions. Furthermore, Respondents state that Appellant Optimum lacks standing to challenge the Orders of Judge Kelly as it pertains to Appellant Burdette. While this appeal could be interlocutory in nature, it falls within the category of permissible interlocutory appeals as it raises an issue that directly affects Optimum’s defenses in the underlying case. More specifically, and as is explained below, Judge Kelly’s October 19, 2020 Order improperly invades the role of the jury as the fact-finder.

Respondents assert Optimum lacks standing to appeal the Court’s Orders. SCACP 201(b) states: “Any party aggrieved by an order may appeal.” *See also* S.C. Code Ann. § 18-1-30. A party is aggrieved by an order when the order “operates on his rights of property or bears upon his interest...” *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970). In the Complaints in the instant case, the Plaintiff in both cases have alleged Optimum: 1) failed to properly train its driver; 2) failed to properly supervise and monitor its driver; and 3) violating federal regulations including, but not limited to, 49 CFP Sections 350-359. In other words, Plaintiff in both cases are looking to hold Optimum vicariously liable for Burdette’s actions. To concede that Optimum is not giving up a substantial right or interest by requiring Burdette to change his responses to Request to Admit conforming to the evidence as the Circuit Court believes the way it should is fundamentally unfair and invades the interest of Optimum. *See Karppi v.*

Greenville Terrazzo Co., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997), where the Court of Appeals determined the sanctions against one defendant affected (both positively and negatively) another defendant.

As stated above, Optimum is an aggrieved party. However, Optimum was not a party to whom the discovery orders were directed, and its current counsel just recently entered their Notice of Appearance in this case December 9, 2020. Counsel for Optimum had no choice but to appeal because if it failed to do so would result Judge Kelley's orders as being deemed as law of the case. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013) ("An unappealed ruling is the law of the case and requires affirmance"). Optimum submits to this Court that Judge Kelly's seemingly unilateral decision to determine the creditability of Burdette by ordering him to change his responses to Plaintiff's Request to Admit was premature because discovery has not been completed, no depositions of Optimum personnel have been taken, and his Orders have essentially undermined what a trial by jury is supposed to do, which is to weigh the creditability of the witnesses presented by each party.

Burdette was deposed on March 20, 2020. Thereafter, Respondents propounded Requests for Admission on Burdette, to which Burdette timely responded on May 19, 2020. Dissatisfied with Burdette's responses, Respondents moved to have certain matters deemed admitted, which Burdette opposed.

As the Request for Admission relate to Optimum and the specific requests that Judge Kelly ordered Burdette to re-answer, Request for Admission No. 8 sought an admission that, "Defendant Jason E. Burdette was never given any safety instruction or underwent any safety training while employed by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, prior to February 1, 2019," to which Burdette responded, "**Denied.**" The Circuit Court ordered Burdette

to “re-answer” his admission to conform to page 71 of his deposition transcript. However, while Burdette testified that Optimum itself did not provide any training, Request for Admission No. 8 is not limited to Optimum and, in fact, Burdette testified that he attended safety meetings with another employer he was leased to on behalf of Optimum, Diamond Hill Plywood. (Exh. 1, Burdette Dep. p. 72, lines 3-21). As a result, Burdette’s response to Request for Admission No. 8, as written, is correct. Request for Admission No. 7 sought an admission that, “Defendant Jason R. Burdette was neither provided an employee handbook nor a safety handbook by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019,” to which Burdette responded, “**Denied.**” The Circuit Court ordered Burdette to “re-answer” his admission to conform to pages 77 and 78 of his deposition transcript. However, there is documentation in his employee file kept by Optimum that showed Burdette signing for the handbook. (Exh. 1 to Burdette Memorandum in Opposition). It is reasonable to assume that Burdette could have forgotten that he received the employee handbook, or at a minimum the issue of whether Optimum gave Burdette a copy of the handbook should be an issue that goes to the jury. Burdette should not be ordered to change his answer to the Request for Admission as this decision is premature as no depositions of Optimum have taken place. If there is a question of fact as to whether Optimum provided the employee handbook to Burdette, it should be question for the jury and Burdette should not have to be required to admit that Optimum did not provide him an employee handbook where there is documentation to the contrary. Request for Admission No. 10 sought an admission that, “Defendant Jason E. Burdette was never advised, either orally or in writing, by any individual employed by Defendant Optimum Staffing Inc. d/b/a Optimum Logistic Solutions of any corporate policies or procedures prohibiting the use of cellular phones while driving trucks as an employee of Defendant Optimum Staffing d/b/a Optimum Logistic Solutions prior to February 1, 2019.” to

which Burdette responded, “**Denied.**” The Circuit Court ordered Burdette to “re-answer” his admission to conform to pages 77 and 78 of his deposition transcript. To request Burdette to change his answer to this Request to Admit is premature at this point as no deposition testimony has been elicited from Optimum. The same is true for Request to Admit No. 11, as no deposition testimony has been elicited.

By affirming Judge Kelly’s original October 8, 2020 Order, that is essentially precluding Optimum from introducing evidence to rebut these matters. Rule 36(b), SCRPC, states an admitted matter is “conclusively established” unless the court permits withdrawal or amendment. Essentially by requesting Burdette to amend his answers to the Request to Admit, Judge Kelly is requiring Optimum to admit factual issues that are not correct or to concede issues that are to the detriment to the defense of Optimum, which are not clearly established by law or fact.

For the foregoing reasons, Optimum requests that you deny Respondents Motion to Dismiss.

Respectfully Submitted,

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January 21, 2021

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EXHIBIT

“1”

STATE OF SOUTH CAROLINA

)

) IN COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

)

Gregory Jones, Sr., as the father and
duly appointed Personal Representative
of the Estate of Jessica Dawn Jones,
Deceased,

Plaintiff,

vs.

CA No. 2019-CP-42-002215

Cranston Print Works Company
d/b/a Cranston Trucking Company,
Ryder Systems, Inc., Optimum
Staffing, Inc. d/b/a Optimum Logistic
Solutions, and Jason E. Burdette,

Defendants.

DEPOSITION OF JASON EDWARD BURDETTE

PURSUANT TO NOTICE and/or agreement of the parties, the
within deposition was taken on the 20th day of March, 2020,
commencing at the hour of 10:25 a.m. at the Gallivan White &
Boyd, One Liberty Square, 55 Beattie Place, #1200, Greenville,
South Carolina; attended by Counsel, as follows:

1 Meetings, the first sentence, "Quarterly safety meetings
2 will be held at each operation or terminal."

3 Do you remember any safety meetings while you were
4 there?

5 BY MR. YOUNG:

6 Object to the form.

7 BY THE DEPONENT:

8 Yes, sir.

9 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

10 Q. Okay. How many?

11 A. Well, now when I --- it was not done at their office or
12 anything to do with them.

13 Q. Okay.

14 A. It was done with the company that I was leased to.

15 Q. Which was?

16 A. Diamond Hill Plywood.

17 Q. Okay.

18 A. And which I was the only temp driver there.

19 Q. Okay.

20 A. During that time, and it was for their drivers, and I just
21 had to attend.

22 Q. Okay, and then under Guidelines for Determining
23 Preventability and Severity of Vehicle Collisions, do you
24 see that paragraph and that heading?

25 A. Yes, sir.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jan 21 2021

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Keith Kelly, Circuit Court Judge

Appeal No.: 2020-001695

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff..... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ...Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Appellants.

APPELLANT CRANSTON PRINT WORKS
COMPANY'S OPPOSITION TO
MOTION TO DISMISS APPEAL

Pursuant to Rule 240, SCACR, Appellant Cranston Print Works Company (“Cranston”) hereby opposes Respondents’ Motion to Dismiss (“Motion”) this appeal. For the sake of brevity, Cranston hereby adopts all the factual recitation and arguments presented by other Appellants. Cranston further submits Burdette’s opposition, which provides a detailed procedural background of these matters, should be reviewed prior to Cranston’s submission.

Respondents incorrectly assert Cranston lacks standing to appeal the Court’s Orders. Any party aggrieved by an order may appeal. *See* Rule 201(b), SCACR; S.C. Code Ann. §18-1-30. A party is aggrieved by an order when the order “operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.” *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970). The orders being appealed bear directly upon Cranston’s interest, burden it, and deny Cranston rights. First, under the Federal Motor Carrier Safety Regulations, Cranston is generally responsible for negligent acts or omissions committed by Mr. Burdette while operating under Cranston’s motor carrier authority. *See* 49 CFR §390.11. Therefore, as Cranston is subject to being held vicariously liable for Mr. Burdette’s actions, the unprecedented decision by the trial court to act as a fact-finder in this case bears directly on Cranston’s interests, as the factual findings made by the trial court are in dispute and contrary to documentary evidence and a sworn affidavit from a Cranston employee.

Second, the trial court’s ruling does not merely (and improperly) determine factual issues in dispute. It arguably also serves to preclude Cranston from introducing evidence to rebut disputed matters. Rule 36(b), SCRCP, states an admitted matter is “conclusively established” unless the court permits withdrawal or amendment. In their Complaints, Plaintiffs have alleged Cranston negligently trained, supervised, and monitored Mr. Burdette and violated the Federal

Motor Carrier Safety Regulations (*See* Exhibit A, Jones Complaint, para. 15; Exhibit B, Hill Complaint, para. 16). Cranston has denied these allegations (*See* Exhibit C, Amended Answer to Jones, para. 15; Exhibit D, Amended Answer to Hill, para. 16). The requests to admit at issue specifically relate to Cranston's training, monitoring, supervision, and compliance with Federal Motor Carrier Safety Regulations. Therefore, in taking the extraordinary steps to weigh evidence, decide facts at issue, and order a party to admit matters previously denied, the trial court has effectively struck part of Cranston's answer. Specifically, Cranston is concerned the trial court's ruling would essentially strike its denial of the allegations relating to negligent training, monitoring, supervision, and compliance with the FMCSR. Correspondingly, Cranston anticipates being prevented from introducing evidence contrary to the factual findings made by the trial court, thereby preventing Cranston from mounting a defense to those claims. The result is Cranston is deprived of due process under the United States Constitution. "The Due Process Clause requires all parties be given an opportunity to be heard in a meaningful way. In cases where important decisions turn on questions of fact, due process at least requires an opportunity to present favorable witnesses." *Halsey v. Simmons*, 432 S.C. 54, 849 S.E.2d 578 (2020) (internal cites and quotation marks omitted). Accordingly, the trial court orders at issue give rise to an immediate appeal pursuant to S.C. Code Ann. §14-3-330(2) and (3).

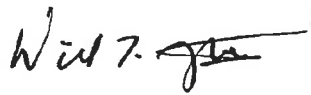
Finally, Cranston's appeal is appropriately taken following the denial of the motion to alter or amend. As established above, Cranston is clearly an aggrieved party entitled to appeal the orders. However, because Cranston was not a party to whom the discovery orders were directed, it could not refuse to comply and be held in contempt as suggested by Respondents. Cranston had no choice but to appeal the orders when it did, as a failure to timely appeal would result in these facts being deemed the law of the case. *See Shirley's Iron Works, Inc. v. City of*

Union, 403 S.C. 560, 743 S.E.2d 778 (2013) (“An unappealed ruling is the law of the case and requires affirmance”); *see also Walters v. Canal Ins. Co.*, 294 S.C. 150, 151, 363 S.E.2d 120 (Ct. App. 1987) (“Where no exception is taken to findings of facts or conclusions of law, they become the ‘law of the case.’”) (*quoting Ashy v. WeCare Distributors, Inc.*, 289 S.C. 526, 528, 347 S.E.2d 123, 125 (Ct. App. 1986)). Respondent’s accusation this appeal was taken merely in an attempt “to delay the underlying case” is nonsense. Appellants were obligated to seek appellate review of the trial court’s decision to usurp the jury’s fact-finding role, a result advocated for and invited by the Respondents. Stated another way, Respondents complain about the unforeseen (by them) consequence of inviting the trial court to invade upon the jury’s role at trial. Instead of recognizing this fact, they seek to blame Appellants for doing what Appellants are obligated to do under the law. Contrary to Respondents’ assertion, this appeal is properly before this Court at this time.

Accordingly, for the reasons discussed herein, as well as the arguments by the other Appellants, Respondents’ motion to dismiss and for sanctions should be denied.

January 21, 2021

GALLIVAN WHITE BOYD



By: _____

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*Counsel for Appellant Cranston Print
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Company*

Exhibit A

ELECTRONICALLY FILED - 2019 Jun 19 9:08 AM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202215

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Gregory Jones, Sr.,)
as the father and duly)
appointed Personal)
Representative of the) SUMMONS
Estate of Jessica Dawn)
Jones, Deceased,)

Plaintiff,) Jury Trial Requested

vs.) C/A No. 2019-CP-42-_____

Cranston Print Works)
Company d/b/a Cranston)
Trucking Company, Ryder)
Systems, Inc., Optimum)
Staffing, Inc. d/b/a)
Optimum Logistic)
Solutions, and Jason E.)
Burdette,)

Defendants.)

TO: CRANSTON PRINT WORKS COMPANY d/b/a CRANSTON TRUCKING
COMPANY, RYDER SYSTEMS, INC., OPTIMUM STAFFING, INC. d/b/a
OPTIMUM LOGISTIC SOLUTIONS, AND JASON E. BURDETTE,
DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served upon
you, and to serve a copy of your Answer to the Complaint on the
undersigned at his office located at P.O. Box 5159, 250 Magnolia
Street, Spartanburg, S.C. 29304, within thirty (30) days after
the service hereof, exclusive of the day of such service, unless
you received your copy by certified mail, in which case you must
serve a copy of your answer on the subscriber within thirty-five
(35) days after the service hereof, exclusive of the day of such

service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

DATED at Spartanburg, South Carolina, on the 18th day of June, 2019.

PATRICK E. KNIE, P.A.

/s/ Patrick E. Knie

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

Gregory Jones, Sr.,)
as the father and duly)
appointed Personal)
Representative of the) COMPLAINT
Estate of Jessica Dawn)
Jones, Deceased,)
Plaintiff,) Jury Trial Requested
vs.) C/A No. 2019-CP-42-_____
Cranston Print Works)
Company d/b/a Cranston)
Trucking Company, Ryder)
Systems, Inc., Optimum)
Staffing, Inc. d/b/a)
Optimum Logistic)
Solutions, and Jason E.)
Burdette,)
Defendants.)

The Plaintiff, complaining of the Defendants, would show unto the Court:

1. The Plaintiff, Gregory Jones, Sr., is the father and duly appointed Personal Representative of the Estate of Jessica Dawn Jones, Deceased, and is a citizen and resident of the County of Cherokee, State of South Carolina.

2. The Defendant, Cranston Print Works Company d/b/a Cranston Trucking Company, hereinafter referred to as Cranston, is a corporation organized and existing under the laws of the State of Rhode Island, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

3. The Defendant, Ryder Systems, Inc., hereinafter referred to as Ryder, is a corporation organized and existing under the laws of a state other than South Carolina with its corporate headquarters in Miami, Florida, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

4. The Defendant, Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, is a corporation organized and existing under the laws of the State of Illinois, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

5. The Defendant, Jason E. Burdette, is a citizen and resident of Anderson County, South Carolina.

6. Venue is proper in Spartanburg County pursuant to SC Code 15-7-30(C)(2) in that the substantial part of the alleged acts or omissions giving rise to the cause of action occurred in Spartanburg County.

7. On or about February 1, 2019 at approximately 8:30 a.m., Jessica Dawn Jones was traveling as a passenger in a Kia Minivan owned and operated by her uncle, Mark Douglas Hill.

8. The minivan was traveling north on Business I-85 in Spartanburg, South Carolina near Interstate I-26 in the right-hand lane.

9. Because of heavy traffic, Mark Douglas Hill was forced to come to a stop for traffic stopped ahead of him.

10. At the same time, a 2016 Freightliner eighteen (18) wheel tractor-trailer, driven by the Defendant, Jason E. Burdette, traveling at a high rate of speed, was unable to stop and struck the Hill vehicle in the rear, knocking it forward and into a third vehicle.

11. As a result, Jessica Dawn Jones suffered severe injuries and damages and ultimately her tragic and untimely death.

12. The Plaintiff is informed and believes that at all times herein the eighteen (18) wheel tractor-trailer driven by the Defendant, Jason E. Burdette, was owned by Defendant Ryder and leased to the Defendant Cranston.

13. The Plaintiff is informed and believes that Defendants Cranston and Ryder had a contractual arrangement regarding the maintenance of the tractor-trailer.

14. The Plaintiff is further informed and believes that the Defendant, Jason E. Burdette, was employed by the Defendant Optimum which provided Defendant, Jason E. Burdette, to Defendant Cranston, to drive the eighteen (18) wheel tractor-trailer described herein.

15. The collision, the injuries and death of Jessica Dawn Jones, and the damages to her father and statutory heirs are the direct and proximate result of the combined and concurring willful, wanton, reckless, grossly negligent, negligent, and careless acts of the Defendants by and through

their respective agents in the following particulars:

AS TO DEFENDANT CRANSTON

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to maintain the eighteen wheeler;
- (g) In failing to make the proper pre-trip inspection of the eighteen wheeler;
- (h) In allowing a vehicle with a known or presumptively known safety defect onto the road;
- (i) In failing by its driver to follow the training received for his commercial driver's license (CDL);
- (j) In failing to properly train its driver;
- (k) In failing to properly supervise and monitor its driver;
- (l) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (m) In failing to use the degree of care and caution that would otherwise be used by a reasonably

prudent person with a CDL;
all of which were a direct and proximate cause of the injuries,
death, and damages complained of herein.

AS TO DEFENDANT RYDER

- (a) In failing to provide a safe and properly maintained vehicle to Defendant Cranston for its use and operation;
- (b) In failing to maintain the tractor and trailer supplied to the Defendant Cranston for its use and operation;
- (c) In failing to inspect the eighteen wheeler;
- (d) In failing to properly train its agents and employees on the proper maintenance of tractors and trailers provided to others for their and operation, or in the alternative, in failing to follow the procedures and guidelines provided in its training to its employees for the maintenance and operation of tractors and trailers provided to others for their use and operation;
- (e) In failing to warn Defendant Cranston of the safety issues with the tractor and trailer provided to Defendant Cranston for its use and operation;

all of which were a direct and proximate cause of the injuries,
death, and damages complained of herein.

AS TO DEFENDANT OPTIMUM

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing by its driver to follow the training received for his commercial driver's license (CDL);
- (g) In failing to properly train its driver;
- (h) In failing to properly supervise and monitor its driver;
- (i) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (j) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

all of which were a direct and proximate cause of the injuries, death, and damages complained of herein.

AS TO DEFENDANT BURDETTE

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;

- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to request maintenance of the eighteen wheeler;
- (g) In failing to make a proper pre-trip inspection of the eighteen wheeler;
- (h) In failing to report safety or maintenance issues with the eighteen (18) wheeler which he was operating;
- (i) In failing to follow the training he received for his commercial driver's license (CDL);
- (j) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (k) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

all of which were a direct and proximate cause of the injuries, death, and damages complained of herein.

16. Prior to Jessica Dawn Jones' death which was caused by the conduct of the Defendants as set forth herein, Jessica Dawn Jones was twenty-four (24) years old with a life

expectancy of 57.37 years.

FOR A FIRST CAUSE OF ACTION

Survival Action

17. Plaintiff brings this action in his fiduciary capacity under and by virtue of the authority and provisions of Section 15-5-90 of the South Carolina Code of Laws, 1976, to recover for the injuries and damages suffered and sustained by Jessica Dawn Jones prior to her death resulting from the accident complained herein.

18. Prior to her death on February 1, 2019, Jessica Dawn Jones suffered great and excruciating conscious physical and mental pain and suffering as a direct and proximate cause of the acts and omissions complained of in this Complaint. As a further result, the decedent incurred substantial medical and hospital bills.

19. As a result of the foregoing, her estate is entitled to recover her actual damages and such punitive damages as may be appropriate in this case.

FOR A SECOND CAUSE OF ACTION

Wrongful Death Action

20. Plaintiff brings this action in his fiduciary capacity under and by virtue of the authority and provisions of Section 15-51-10 of the South Carolina Code of Laws, 1976, on his behalf as the father of Jessica Dawn Jones, and on behalf of her statutory heirs.

21. By reason of the early and untimely death of Jessica Dawn Jones, her father and statutory heirs have been caused great mental shock and suffering by reason of this tragedy. They have in the past, and will forever, be caused grief and sorrow because of the loss of Jessica Dawn Jones' love, society, and companionship. They have been deprived of her services, experience, and judgment. They have suffered pecuniary loss as well.

22. As a further result, the father and statutory heirs of Jessica Dawn Jones have incurred medical bills, funeral, burial, and other related expenses.

FOR A THIRD CAUSE OF ACTION

23. Plaintiff brings this action in his fiduciary capacity to recover for the injuries and damages sustained by Jessica Dawn Jones prior to her death as a bystander to the injuries received by Mark Douglas Hill, Helen Casey Hill, and Mark Douglas Hill, III.

24. Jessica Dawn Jones was riding in the same vehicle with Mark Douglas Hill, Helen Casey Hill, and Mark Douglas Hill, III.

25. Jessica Dawn Jones, Mark Douglas Hill, Helen Casey Hill, and Mark Douglas Hill, III were closely related.

26. Jessica Dawn Jones contemporaneously perceived the collision.

27. The emotional distress suffered by Jessica Dawn

Jones manifested itself by physical symptoms.

28. As a result of the foregoing, her estate is entitled to recover her actual damages and such punitive damages as may be appropriate in this case.

AS TO ALL CAUSES OF ACTION

29. As a result of the foregoing acts, the father and statutory heirs of Jessica Dawn Jones have been damaged in actual damages and such punitive damages as may be appropriate in the case.

WHEREFORE, Plaintiff prays for actual damages, plus such punitive damages as may be awarded, for the costs of this action, and such other and further relief as to the Court seems just and proper.

PATRICK E. KNIE, P.A.

/s/ Patrick E. Knie

Patrick E. Knie
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S.C. Bar No. 3564
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ATTORNEYS FOR PLAINTIFF

June 18, 2019

Exhibit B

ELECTRONICALLY FILED - 2019 Jun 18 4:31 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202212

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Mark Douglas Hill, III,)
by and through his duly)
appointed Guardian ad)
Litem, Helen Kaci Hill,) SUMMONS
)
Plaintiff,) Jury Trial Requested
)
vs.) C/A No. 2019-CP-42-_____
)
Cranston Print Works)
Company d/b/a Cranston)
Trucking Company, Ryder)
Systems, Inc., Optimum)
Staffing, Inc. d/b/a)
Optimum Logistic)
Solutions, and Jason E.)
Burdette,)
)
Defendants.)

TO: CRANSTON PRINT WORKS COMPANY d/b/a CRANSTON TRUCKING
COMPANY, RYDER SYSTEMS, INC., OPTIMUM STAFFING, INC. d/b/a
OPTIMUM LOGISTIC SOLUTIONS, AND JASON E. BURDETTE,
DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served upon
you, and to serve a copy of your Answer to the Complaint on the
undersigned at his office located at P.O. Box 5159, 250 Magnolia
Street, Spartanburg, S.C. 29304, within thirty (30) days after
the service hereof, exclusive of the day of such service, unless
you received your copy by certified mail, in which case you must
serve a copy of your answer on the subscriber within thirty-five
(35) days after the service hereof, exclusive of the day of such
service, and if you fail to answer the Complaint within the time

aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

DATED at Spartanburg, South Carolina, on the 18th day of June, 2019.

PATRICK E. KNIE, P.A.

/s/ Patrick E. Knie

Patrick E. Knie
pknie@knielaw.com
S.C. Bar No. 3564
P.O. Box 5159
250 Magnolia Street
Spartanburg, S.C. 29304
Telephone No. (864) 582-5118
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CUMMINGS & LEWIS

W. Blake Cummings
blake.cummings@cummingslewis.com
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Spartanburg, South Carolina 29302
Telephone No. (864) 573-9688
Fax No. (864) 573-6974

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Mark Douglas Hill, III,)
by and through his duly)
appointed Guardian ad)
Litem, Helen Kaci Hill,)

COMPLAINT

Plaintiff,)

Jury Trial Requested

vs.)

C/A No. 2019-CP-42-_____

Cranston Print Works)
Company d/b/a Cranston)
Trucking Company, Ryder)
Systems, Inc., Optimum)
Staffing, Inc. d/b/a)
Optimum Logistic)
Solutions, and Jason E.)
Burdette,)

Defendants.)

The Plaintiff, complaining of the Defendants, would show unto the Court:

1. The Plaintiff, Helen Kaci Hill, is the mother of Mark Douglas Hill, III, age six (6) months, and is the duly appointed Guardian ad Litem for Mark Douglas Hill, III.

2. The Defendant, Cranston Print Works Company d/b/a Cranston Trucking Company, hereinafter referred to as Cranston, is a corporation organized and existing under the laws of the State of Rhode Island, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

3. The Defendant Ryder Systems, Inc., hereinafter referred to as Ryder, is a corporation organized and existing under the laws of a state other than South Carolina with its

corporate headquarters in Miami, Florida, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

4. The Defendant, Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, is a corporation organized and existing under the laws of the State of Illinois, and at all times mentioned herein, doing business in Spartanburg County, South Carolina.

5. The Defendant, Jason E. Burdette, is a citizen and resident of Anderson County, South Carolina.

6. Venue is proper in Spartanburg County pursuant to SC Code 15-7-30(C)(2) in that the substantial part of the alleged acts or omissions giving rise to the cause of action occurred in Spartanburg County.

7. On or about February 1, 2019 at approximately 8:30 a.m., the Plaintiff was traveling as a passenger in a Kia Minivan owned and operated by his father, Mark Douglas Hill.

8. The minivan was traveling north on Business I-85 in Spartanburg, South Carolina near Interstate I-26 in the right-hand lane.

9. Because of heavy traffic, Plaintiff's father, Mark Douglas Hill, was forced to come to a stop for traffic stopped ahead of him.

10. At the same time, a 2016 Freightliner eighteen (18) wheel tractor-trailer, driven by the Defendant, Jason E.

Burdette, traveling at a high rate of speed, was unable to stop and struck the Hill vehicle in the rear, knocking it forward and into a third vehicle.

11. As a result, Mark Douglas Hill, III suffered injuries and damages.

12. The Plaintiff is informed and believes that at all times herein the eighteen (18) wheel tractor-trailer driven by the Defendant, Jason E. Burdette, was owned by Defendant Ryder and leased to the Defendant Cranston.

13. The Plaintiff is informed and believes that Defendants Cranston and Ryder had a contractual arrangement regarding the maintenance of the tractor-trailer.

14. The Plaintiff is further informed and believes that the Defendant, Jason E. Burdette, was employed by the Defendant Optimum which provided Defendant, Jason E. Burdette, to Defendant Cranston, to drive the eighteen (18) wheel tractor-trailer described herein.

15. As a result of the collision, the Plaintiff has suffered medical expenses, serious bodily injury, physical and mental pain and suffering, mental anguish, and will continue to do so in the future, and further has suffered physical disability, and a loss of enjoyment of life.

16. The collision and Plaintiff's damages, injuries, and losses are the direct and proximate result of the combined and concurring willful, wanton, reckless, grossly negligent,

negligent, and careless acts of the Defendants by and through their respective agents in the following particulars:

AS TO DEFENDANT CRANSTON

all of which were a direct and proximate cause of the injuries and damages complained of herein.

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to maintain the eighteen wheeler;
- (g) In failing to make the proper pre-trip inspection of the eighteen wheeler;
- (h) In allowing a vehicle with a known or presumptively known safety defect onto the road;
- (i) In failing by its driver to follow the training received for his commercial driver's license (CDL);
- (j) In failing to properly train its driver;
- (k) In failing to properly supervise and monitor its driver;
- (l) In violating federal regulations including, but

not limited to, 49 CFR Sections 350-359;

- (m) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

AS TO DEFENDANT RYDER

- (a) In failing to provide a safe and properly maintained vehicle to Defendant Cranston for its use and operation;
- (b) In failing to maintain the tractor and trailer supplied to the Defendant Cranston for its use and operation;
- (c) In failing to inspect the eighteen wheeler;
- (d) In failing to properly train its agents and employees on the proper maintenance of tractors and trailers provided to others for their and operation, or in the alternative, in failing to follow the procedures and guidelines provided in its training to its employees for the maintenance and operation of tractors and trailers provided to others for their use and operation;
- (e) In failing to warn Defendant Cranston of the safety issues with the tractor and trailer provided to Defendant Cranston for its use and operation;

all of which were a direct and proximate cause of the injuries

and damages complained of herein.

AS TO DEFENDANT OPTIMUM

- (a) In operating an eighteen wheeler too fast for the conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
- (c) In traveling at a speed in excess of the posted speed limit;
- (d) In failing to keep a proper lookout;
- (e) In failing to properly brake or slow down to stopped traffic directly ahead;
- (f) In failing to follow by its driver the training received for his commercial driver's license (CDL);
- (g) In failing to properly train its driver;
- (h) In failing to properly supervise and monitor its driver;
- (i) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
- (j) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

all of which were a direct and proximate cause of the injuries and damages complained of herein.

AS TO DEFENDANT BURDETTE

- (a) In operating an eighteen wheeler too fast for the

- conditions then and there existing;
- (b) In traveling at an excessive rate of speed;
 - (c) In traveling at a speed in excess of the posted speed limit;
 - (d) In failing to keep a proper lookout;
 - (e) In failing to properly brake or slow down to stopped traffic directly ahead;
 - (f) In failing to request maintenance of the eighteen wheeler;
 - (g) In failing to report safety or maintenance issues with the eighteen (18) wheeler which he was operating;
 - (h) In failing to make a proper pre-trip inspection of the eighteen wheeler;
 - (i) In failing to follow the training he received for his commercial driver's license (CDL);
 - (j) In violating federal regulations including, but not limited to, 49 CFR Sections 350-359;
 - (k) In failing to use the degree of care and caution that would otherwise be used by a reasonably prudent person with a CDL;

all of which were a direct and proximate cause of the injuries and damages complained of herein.

17. As a result of the foregoing combined and concurrent acts and omissions of the Defendants and each of them,

Plaintiff is informed that he is entitled to actual damages, plus such punitive damages as the Court may award, and for such other and further relief as to the Court may seem just and proper.

WHEREFORE, Plaintiff prays for actual damages, plus such punitive damages as may be awarded, for the costs of this action, and such other and further relief as to the Court seems just and proper.

PATRICK E. KNIE, P.A.

/s/ Patrick E. Knie

Patrick E. Knie
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CUMMINGS & LEWIS

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Fax No. (864) 573-6974

ATTORNEYS FOR PLAINTIFF

June 18, 2019

Exhibit C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. No.: 2019-CP-42-002215
Gregory Jones, Sr., as the father and duly	)	
appointed Personal Representative of the	)	
Estate of Jessica Dawn Jones, Deceased,	)	
	)	DEFENDANTS, CRANSTON PRINT
Plaintiff,	)	WORKS COMPANY D/B/A CRANSTON
	)	TRUCKING COMPANY AND JASON E.
v.	)	BURDETTE'S AMENDED ANSWER TO
	)	COMPLAINT
	)	
Cranston Print Works Company d/b/a	)	(Jury Trial Demanded)
Cranston Trucking Company, Ryder Truck	)	
Rental, Inc., Optimum Staffing, Inc. d/b/a	)	
Optimum Logistic Solutions, and Jason E.	)	
Burdette,	)	
	)	
Defendants.	)	
	)	

Defendants, Cranston Print Works Company d/b/a Cranston Trucking Company ("hereinafter "Cranston") and Jason E. Burdette, (collectively hereinafter "Defendants") answering the Plaintiff's Complaint alleges and will show unto the Court that:

FOR A FIRST DEFENSE AS TO ALL CAUSES OF ACTION

1. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's Complaint and therefore deny same.
2. In regards to paragraph 2 of Plaintiff's Complaint, Defendants admit so much as it relates to the corporate name and State of Incorporation. Defendants deny the remaining allegations.
3. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 3 of Plaintiff's Complaint and, therefore, deny same.
4. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 4 of Plaintiff's Complaint and, therefore, deny same.

5. Defendants deny the allegations contained in paragraph 5 of Plaintiff's Complaint.

6. Defendants would show that the allegations contained in paragraph 6 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

7. Upon information and belief, Defendants admit the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. Upon information and belief, Defendants admit so much of the allegations contained in paragraph 8 of Plaintiff's Complaint as allege Plaintiff was travelling North on I-85 Business at the time of the accident. The remaining allegations of paragraph 8 are denied.

9. Defendants deny the allegations contained in paragraph 9 of the Plaintiff's Complaint.

10. Defendants admit so much of paragraph 10 of Plaintiff's Complaint as allege that a collision occurred involving two other vehicles. The remaining allegations of paragraph 10 are denied.

11. Defendants admit so much of paragraph 11 of Plaintiff's Complaint as allege that Jessica Dawn Jones died, however, it denies to the extent it alleges conscious pain and suffering. The remaining allegations of paragraph 11 are denied.

12. Defendants admit the allegations contained in paragraph 12 of Plaintiff's Complaint.

13. Defendants admit the allegations contained in paragraph 13 of Plaintiff's Complaint.

14. Defendants admit so much of paragraph 14 of Plaintiff's Complaint as allege that Jason E. Burdette drove for Cranston through Optimum. The remaining allegations of paragraph 14 are denied.

15. Defendants deny the allegations contained in paragraph 15, including all subparts, of the Complaint.

16. Defendants would show that the allegations contained in paragraph 16 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

17. Defendants would show that the allegations contained in paragraph 17 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

18. Defendants deny the allegations contained in paragraph 18 of Plaintiff's Complaint.

19. Defendants deny the allegations contained in paragraph 19 of Plaintiff's Complaint.

20. Defendants would show that the allegations contained in paragraph 20 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

21. Defendants deny the allegations contained in paragraph 21 of Plaintiff's Complaint.

22. Defendants deny the allegations contained in paragraph 22 of Plaintiff's Complaint.

23. Defendants would show that the allegations contained in paragraph 23 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

24. Upon information and belief, Defendants admit the allegations contained in paragraph 24 of Plaintiff's Complaint.

25. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 25 of Plaintiff's Complaint and, therefore, denies same.

26. Defendants deny the allegations contained in paragraph 26 of Plaintiff's Complaint.

27. Defendants deny the allegations contained in paragraph 27 of Plaintiff's Complaint.

28. Defendants deny the allegations contained in paragraph 28 of Plaintiff's Complaint.

29. Each and every allegation of the Complaint not specifically admitted, explained, or modified herein is denied and strict proof demanded thereof.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION

30. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

31. Defendants allege that the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action upon which relief can be granted as against them and is, accordingly, barred.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

32. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

33. Defendants allege that insofar as the Plaintiff has failed to mitigate his damages in the manner provided for by law, such failure to mitigate is pled as a complete defense and bar to his claims.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

34. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

35. The Plaintiff's decedent's injuries and damages were a result of superseding and/or intervening causes beyond the control of these Defendants.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

36. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

37. Defendants allege that this accident was caused by a sudden emergency. Defendants further allege that when confronted with this sudden emergency, Defendant Burdette acted as a reasonable person under the circumstances then and there existing. As such, Defendants are not liable to the Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

38. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

39. Defendants allege that this accident and the Plaintiff's decedent's injuries and damages were caused by conduct on the part of persons or entities over whom they have no control and for whom they have no responsibility. They further allege that such conduct intervened and acted as the sole proximate cause of this accident and the Plaintiff's decedent's alleged injuries and damages. As such, his claims against Defendants are barred.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

40. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

41. Defendants allege that insofar as the Plaintiff's Complaint seeks punitive damages, such punitive damages are violative of both the U.S. and South Carolina Constitutions. As such, the Plaintiff's claim for punitive damages is barred and should be stricken from the Complaint.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

42. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

43. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A TWELVETH DEFENSE AS TO ALL CAUSES OF ACTION

44. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

45. Defendants asserts any award returned by the jury in this case for punitive damages must be capped in accordance with the provisions of South Carolina Code §15-32-530(A) and (B).

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed as against them with costs and for any such other and further relief as this court shall deem just and proper.

s/ T. David Rheney

T. David Rheney (S.C. Bar No. 13148)
William T. Young III (S.C. Bar No. 75153)
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 10589, F.S.
Greenville, South Carolina 29603
(864) 271-9580

*Attorneys for Defendants Cranston Print
Works Company d/b/a Cranston Trucking
Company and Jason E. Burdette*

Greenville, South Carolina

July 24, 2019

Defendants demand a trial by jury.

s/ T. David Rheney

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. No.: 2019-CP-42-002212
Mark Douglas Hill, III by and through his	)	
duly appointed Guardian ad Litem, Helen	)	
Kaci Hill,	)	
	)	DEFENDANTS, CRANSTON PRINT
	)	WORKS COMPANY D/B/A CRANSTON
Plaintiff,	)	TRUCKING COMPANY AND JASON E.
	)	BURDETTE'S AMENDED ANSWER TO
	)	COMPLAINT
v.	)	
	)	(Jury Trial Demanded)
Cranston Print Works Company d/b/a	)	
Cranston Trucking Company, Ryder Truck	)	
Rental, Optimum Staffing, Inc. d/b/a	)	
Optimum Logistic Solutions, and Jason E.	)	
Burdette,	)	
	)	
Defendants.	)	
	)	

Defendants, Cranston Print Works Company d/b/a Cranston Trucking Company (hereinafter "Cranston") and Jason E. Burdette, (collectively hereinafter "Defendants") answering the Plaintiff's Complaint allege and will show unto the Court that:

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2. In regards to paragraph 2 of Plaintiff's Complaint, Defendants admit so much as it relates to the corporate name and State of Incorporation. Defendants deny the remaining allegations.
3. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 3 of Plaintiff's Complaint and therefore deny same.
4. Defendants are without knowledge to form an opinion or belief as to the truth of the allegations contained in paragraph 4 of Plaintiff's Complaint and therefore deny same.

5. Defendants deny the allegations contained in paragraph 5 of Plaintiff's Complaint.

6. Defendants would show that the allegations contained in paragraph 6 constitute a legal conclusion for which no response is required. To the extent a response is deemed necessary, the same is hereby denied.

7. Upon information and belief, Defendants admit the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. Upon information and belief, Defendants admit so much of the allegations contained in paragraph 8 of Plaintiff's Complaint as allege Plaintiff was travelling North on I-85 Business at the time of the accident. The remaining allegations of paragraph 8 are denied.

9. Defendants deny the allegations contained in paragraph 9 of the Plaintiff's Complaint.

10. Defendants admit so much of paragraph 10 of Plaintiff's Complaint as allege that a collision occurred involving two other vehicles. The remaining allegations of paragraph 10 are denied.

11. Defendants deny the allegations contained in paragraph 11 of the Plaintiff's Complaint.

12. Defendants admit the allegations contained in paragraph 12 of the Plaintiff's Complaint.

13. Defendants admit the allegations contained in paragraph 13 of the Plaintiff's Complaint.

14. Defendants admit so much of the allegations of paragraph 14 of Plaintiff's Complaint as allege that Jason E. Burdette drove for Cranston through Optimum. The remaining allegations of paragraph 14 are denied.

15. Defendants deny the allegations contained in paragraph 15 of the Plaintiff's Complaint.

16. Defendants deny the allegations contained in paragraph 16, including all subparts, of Plaintiff's Complaint.

17. Defendants deny the allegations contained in paragraph 17 of the Plaintiff's Complaint.

18. Each and every allegation of the Complaint not specifically admitted, explained, or modified herein is denied and strict proof demanded thereof.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION

19. Defendants incorporate herein the allegations of their first defense not inconsistent herewith.

20. Defendants allege that the Plaintiff's Complaint fails to state facts sufficient to constitute causes of action upon which relief can be granted as against them and is, accordingly, barred.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

21. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

22. Defendants allege that insofar as the Plaintiff has failed to mitigate his damages in the manner provided for by law, such failure to mitigate is pled as a complete defense and bar to his claims.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

23. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

24. The Plaintiff's injuries and damages were a result of superseding and/or intervening causes beyond the control of these Defendants.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

25. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

26. Defendants allege that this accident was caused by a sudden emergency. Defendants further allege that when confronted with this sudden emergency, Defendant Burdette acted as a reasonable person under the circumstances then and there existing. As such, Defendants are not liable to the Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

27. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

28. Defendants allege that this accident and the Plaintiff's injuries and damages were caused by conduct on the part of persons or entities over whom they have no control and for whom they have no responsibility. They further allege that such conduct intervened and acted as the sole proximate cause of this accident and the Plaintiff's decedent's alleged injuries and damages. As such, his claims against Defendants are barred.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

29. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

30. Defendants allege that insofar as the Plaintiff's Complaint seeks punitive damages, such punitive damages are violative of both the U.S. and South Carolina Constitutions. As such, the Plaintiff's claim for punitive damages is barred and should be stricken from the Complaint.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

31. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

32. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A NINETH DEFENSE AS TO ALL CAUSES OF ACTION

33. Defendants incorporate herein the allegations of their defenses not inconsistent herewith.

34. Defendants asserts any award returned by the jury in this case for punitive damages must be capped in accordance with the provisions of South Carolina Code §15-32-530(A) and (B).

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed as against them with costs and for any such other and further relief as this court shall deem just and proper.

s/ T. David Rheney

T. David Rheney (S.C. Bar No. 13148)
William T. Young III (S.C. Bar No. 75153)
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 10589, F.S.
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(864) 271-9580

*Attorneys for Defendants Cranston Print
Works Company d/b/a Cranston Trucking
Company and Jason E. Burdette*

Greenville, South Carolina

February 6, 2020

Defendants demand a trial by jury.

s/ T. David Rheney

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jan 21 2021

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Keith Kelly, Circuit Court Judge

Appeal No.: 2020-001695

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff..... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ...Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Appellants.

**APPELLANT JASON E. BURDETTE’S OPPOSITION TO
MOTION TO DISMISS APPEAL**

Pursuant to Rule 240, SCACR, Appellant Jason E. Burdette (“Burdette”) hereby
opposes Respondents’ Motion to Dismiss (“Motion”) this appeal. Respondents

incorrectly assert that Burdette knowingly filed an improper interlocutory appeal for the purpose of “prolong[ing] and delay[ing] the underlying litigation,” which Respondents assert justify sanctions. While this appeal admittedly is interlocutory in nature, it falls within the category of permissible interlocutory appeals as it raises an issue that directly affects Burdette’s defenses in the underlying case. More specifically, and as is explained below, by limiting and binding Burdette to admissions other than admissions he timely served, the appealed Orders impose severe Rule 37 penalties, involve the merits and affect a substantial right. Furthermore, because the precise issue raised in this appeal is novel, not having been addressed previously by South Carolina courts, and because Appellant Burdette has compelling arguments as to why this issue is immediately appealable as well as to the substance of the appeal, sanctions clearly are unwarranted and should not be awarded.

BACKGROUND

On February 1, 2019, a collision occurred on Interstate I-85 in Spartanburg, South Carolina between Respondents’ vehicle and a truck being driven by Burdette. At the time of the accident, Burdette was employed by Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions (“Optimum”) and was driving a truck for Cranston Print Works Company d/b/a Cranston Trucking Company (“Cranston”). Respondents filed claims against various parties including Burdette.

Burdette was deposed on March 20, 2020. Thereafter, Respondents propounded Requests for Admission on Burdette, to which Burdette timely responded on May 19,

2020. Dissatisfied with Burdette's responses, Respondents moved to have certain matters deemed admitted, which Burdette opposed.¹

After a hearing on various motions, the Circuit Court ordered, *inter alia*, that a number of Burdette's responses to Requests for Admission be revised or "re-answer[ed]" based on his deposition testimony. However most if not all of the responses targeted by the Circuit Court are supported either by Burdette's deposition testimony, other evidence submitted to the court, or both. For example, Request for Admission #3 asked Burdette to admit that, "Defendant Jason E. Burdette used his cellular phone on February 1, 2019, prior to impact with the vehicle Jessica A. Jones was traveling in, to communicate with among other people, agents/employees of Defendant Cranston Print Works Company d/b/a/ Cranston Trucking Company." Burdette responded, "**Denied.**" The Circuit Court ordered Burdette to "re-answer" this admission to conform to page 119 of his deposition testimony. However, at his deposition, Burdette confirmed that he had made a number of phone calls the morning of the accident sometime prior to the accident, but could not remember who those calls were to. The only call he confirmed as being to Cranston occurred *after* the accident, at 8:32 a.m. (Exh. 1, Burdette Dep. pp. 115-119). In addition, a sworn affidavit from Brett Heidt, a Cranston employee, confirms that none of the numbers on the phone record for February 1, 2019 for calls prior to the accident are associated with Cranston. (Exh. 2). While Burdette admitted he was using his cell phone "while driving from Greenville to at least the Spartanburg area before the wreck," (*id.* p. 119, lines 8-24), he did not testify that any of those calls were to Cranston and,

¹ At that time, all Appellants were represented by the same counsel. Separate counsel was engaged for Burdette in December 2020.

furthermore, there is no admission that he was using his cell phone immediately “prior to impact” as is implied in Request for Admission No. 3.

Request for Admission No. 8 sought an admission that, “Defendant Jason E. Burdette was never given any safety instruction or underwent any safety training while employed by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, prior to February 1, 2019,” to which Burdette responded, “**Denied.**” The Circuit Court ordered Burdette to “re-answer” his admission to conform to page 71 of his deposition transcript. However, while Burdette testified that Optimum itself did not provide any training, Request for Admission No. 8 is not limited to Optimum and, in fact, Burdette testified that he attended safety meetings with another employer he was leased to, Diamond Hill Plywood. (Exh. 1, Burdette Dep. p. 72, lines 3-21). He also testified that he underwent a road test with a different company, BI-LO, that he was assigned to work with. (*Id.* p. 85, lines 11-19; p. 87, lines 10-14). As a result, Burdette’s response to Request for Admission No. 8, as written, is correct.

Request for Admission No. 10 sought an admission that, “Defendant Jason E. Burdette was never advised, either orally or in writing by any individual employed by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions of any corporate policies or procedures prohibiting the use of cellular phones while driving trucks as an employee of Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019,” to which Burdette responded “**Denied.**” The Circuit Court ordered Burdette to “re-answer” this admission to conform to pages 77-78 of his deposition transcript. However, those pages simply discuss Optimum’s written policy regarding cell phone use while driving, whereas the Request for Admission covers both “orally or

in writing.” Burdette testified that he had had a discussion with Brian Conners with Optimum Logistics, who advised that it was ok to use a cell phone “as long as you had a headset ... [a] hands free, you were fine.” (Exh. 1, Burdette Dep. p. 120, lines 8-22). Cranston had the same policy. “As long as you had a headset, you’re fine.” (*Id.* p. 120, lines 22-25).²

Despite Burdette’s opposition, and despite the imprecise wording of the various Requests for Admission, the Circuit Court took the remarkable step of ordering Burdette to rewrite or “re-answer” his May 19, 2020 responses to Respondents’ Request for Admission Nos. 3, 4, 5, 7, 8, 10 and 11, accepting Respondents’ argument that those responses were “directly contradicted” by his prior deposition testimony. The Circuit Court also denied Burdette’s and the other Appellants’ motions for reconsideration, and this appeal ensued.

ARGUMENT

Respondents cite to cases that correctly provide that, “[a]s a *general rule*, a discovery order is not immediately appealable because it is an interlocutory order.” *Ferguson v. Charleston Lincoln/Mercury*, 344 S.C. 502, 510, 544 S.E.2d 285, 290 (2001) (emphasis added).³ However, the very statement of that general rule presumes

² Requests for Admission Nos. 4, 5 and 11 all concern cell phone use. It is established from the phone records submitted in this case that Burdette was not using his cell phone at the time of the accident, a fact which Respondents have never disputed.

³ The cases relied on by Respondents involve orders compelling or refusing to compel a party to respond to discovery requests or produce a witness for a deposition, or sanctions based on a refusal to participate in discovery. None of the cases cited in the Motion involve a severe Rule 37, SCRCP, sanction that orders a party to rewrite or “re-answer” a Request for Admission based on the court’s or opposing party’s view of deposition testimony, as is the case here.

exceptions. Appellant Burdette submits that requiring a party to provide a particular answer a Request for Admission is precisely one of those exceptions.

This is because, pursuant to statute, appellate courts have jurisdiction over “[a]ny intermediate judgment, order or decree in a law case involving the merits” and, as well, over “[a]n order affecting a substantial right made in an action when such order ... strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330. The Supreme Court has instructed that “[t]he phrase ‘involving the merits’ means the order ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’” *Tucker v. Honda of S.C. Mfg.*, 354 S.C. 574, 576, 582 S.E.2d 405, 406 (2003), citing *Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). In addition, an order affects a substantial right when it, among other things, strikes out a defense such that the defense is lost. *Mid-state Distrib.*, 310 S.C. at 334 n.4, 426 S.E.2d at 780 n.4.⁴ South Carolina and federal case law addressing the binding effect of a response to a request to admit make clear that compelling a specific response to a request to admit is far more significant than are either interrogatory responses or deposition testimony, both of which can be contested before the factfinder. The Orders below, compelling a specific response from Burdette to certain Requests for Admission – which responses will constitute binding judicial admissions – involve the merits and affect a substantial right.

⁴ And, while Respondents are correct that the imposition of sanctions generally is left to the lower court’s discretion, *e.g.*, *Halverson v. Yawn*, 328 S.C. 168, 620, 493 S.E.2d 883, 884 (Ct. App. 1997), a sanction that deprives a party of a substantial right, such as precluding a defense or judicially finding certain facts that are key to a defense, is immediately appealable.

This Court has recognized that an order that effectively forecloses a party from contesting the case on the merits affects a substantial right and is immediately appealable. *McLaughlin v. Strickland*, 279 SC 513 at 516, 309 SE2d 787, 790 (Ct. App. 1983) (allowing appellant to contest a consent to adoption that did not comport with his intentions, which simply required the respondent to prove her case below). *Lowndes Prods, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1975), relied on by Respondents, states that “ordinarily, an order denying or compelling discovery is not directly appealable,” 262 S.C. at 434, 205 S.E.2d at 185, but recognizes an exception for orders that “have the effect of determining the scope of the issues at the trial.” *Id.* That is precisely what a response to a request for admission does – it effectively determines and limits the scope of issues that need to be tried.

Pursuant to Rule 36(b), SCRCP, “[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” The very purpose of requests for admission is to determine certain matters and thereby limit the issues needed to be addressed at trial. “An answer to a request under Rule 36 is unlike a statement of fact by a witness made in the course of oral evidence at a trial, or in oral pre-trial depositions, or even in written answers to interrogatories. *It is on the contrary a studied response, made under sanctions against easy denials, to a request to assert the truth or falsity of a relevant fact point out by the request for admission ...*” *Airco Indus. Gases, Inc. Div. of BOC Group, Inc. v Teamsters Health & Welfare Pens Fund*, 850 F.2d 1028, 1036 (3rd Cir. 1988).⁵ The express

⁵ Our Rule 36 “is the language of current Federal Rule 36, as well as substantially the language of Circuit Court Rule 89.” Rule 36, SCRCP, Notes; *see also Scott v. Greenville*

purpose of requests for admission, which are considered “judicial admission[s],” is to limit and define the facts at issue. *Id.*; *see also Scott*, 353 S.C. at 650, 579 S.E.2d at 157 (“[t]he purpose of Rule 36 is to allow parties to narrow the issues and determine which facts do not need to be proven because they are admitted”). Consequently, facts admitted in response to a request to admit “are conclusively admitted for the purposes of” the litigation in which they are made. *Id.* at 647, 579 S.E.2d at 155. Indeed, where “the language of the request for admission specifically goes to an issue in the pleadings, the admission resulting from a party’s failure to respond to the request may override the pleadings.” *Id.* at 650, 579 S.E.2d at 157.

“The efficacy of these admissions is akin to the doctrine of judicial estoppel: an admission precludes the admitting party from arguing facts at trial contrary to its responses to a request to admit, absent an amendment to or revocation of the admission as allowed under the rules Admissions under Rule 36 are treated as admissions in pleadings.” *Scott*, 353 S.C. at 648, 579 S.E.2d at 156. In fact, *Pulte Home Corp. v. Woodland Nursery & Landscapes*, cited in *Scott*, explains that a response to a request to admit “is comparable to an admission in pleadings or stipulation of facts and as such is generally regarded as a judicial admission rather than evidentiary admission of a party. A judicial admission, unless allowed to be withdrawn by the court, is conclusive whereas an evidentiary admission is not conclusive but is always subject to be contradicted or explained.” 230 Ga. App. 455, 496 S.E.2d 546, 548 (Ga. Ct. App. 1998); *see also Airco Indus.*, 850 F.2d at 1036 (a response to a request to admit is comparable to “[a] judicial admission, deliberately drafted by counsel for the express purpose of limiting and

Hous. Auth., 353 S.C. 639, 649, 579 S.E.2d 151, 156 (Ct. App. 2003) (the federal rule on requests “for admissions is substantively similar to our rule”).

defining the facts in issue, [and] is traditionally regarded as conclusive”). Critically, in *Airco*, the Third Circuit pointed out that an “admission is not merely another layer of evidence, *upon which the district court can superimpose its own assessment of weight and validity*. It is, to the contrary, an unassailable statement of fact that narrows the triable issues in the case,” even where a party “could point to conflicting testimonial evidence.” 850 F.2d at 1036-1037 (emphasis added). Thus, the Orders below are immediately appealable because they involve the merits and affect a substantial right.

In *Adams v. Orr*, the Supreme Court held the defendant was not deemed to have admitted certain facts where “the request for admissions as worded was subject to more than one reasonable interpretation.” 260 S.C. 92, 97, 194 S.E.2d 232, 234 (1973). As noted above, several of the Requests for Admission are worded such that Burdette’s responses are consistent with his deposition testimony, given the imprecise wording employed in those Requests. In other words, several of the Requests for Admission that are at issue are imprecisely worded and, as a result, inarguably are “subject to more than one interpretation,” and Burdette’s responses are correct as served.

Here, the Circuit Court exceeded its authority by weighing the evidence and requiring Burdette to change his answers to the Respondents’ Requests for Admission to conform to its view of the evidence. Weighing the evidence is a function reserved to the factfinder. *See, generally, Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 174 (2010) (“[t]he jury serves as the fact finder and is charged with the duty of weighing the evidence admitted at trial ...”).

In addition, the Circuit Court had no authority to require a party to revise their response to a request to admit. Pursuant to Rule 36(b), a “court *may permit withdrawal*

or amendment when the presentation of the merits of the action will be subverted thereby and the party who obtained the admissions fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.” Rule 36(b), SCACR (emphasis added). Here, the Court did not “permit” Burdette to either withdraw or amend his response to the subject Requests for Admission but, instead, *ordered* him to serve revised responses that better conform to the Court’s and Respondents’ view of his prior deposition testimony. Nor did the Court, upon a motion to determine the *sufficiency* of the responses, “order either that the matter is admitted or that an amended answer be served,” pursuant to the third paragraph of Rule 36(a), SCACR. The Court did not find that Burdette’s responses were *insufficient* but, instead, that they were *incorrect* based on the Court’s view of his deposition testimony. Nothing in Rule 36 authorizes a court to order a party to revise a response based on the court’s view of the evidence. As noted above, weighing the evidence is reserved for the factfinder. *Watson*, 389 S.C. at 445, 699 S.E.2d at, 174.

Consequently, if the Orders appealed herein are *not* immediately appealable, not only is Burdette deprived of a substantial right to assert certain defenses but, in addition, the goals of Rule 36 – “economy and efficiency in resolving disputes,” *Scott*, 353 S.C. at 649, 579 S.E.2d at 156⁶ – will be frustrated. In other words, if Burdette is forced to wait until after a trial (wherein the judicially-revised Requests to Admission preclude him from raising certain defenses) and a jury verdict is returned against him to appeal these Orders, and those Orders are overturned in that later appeal, this case will have to be

⁶ As is explained in *Scott*, “[i]f a point is conceded, litigants need not expend effort in investigations concerning it nor incur expense in presenting evidence to prove it.” *Id.*

remanded for a new trial based on Burdette's initial (and correct) responses to the Requests for Admission. There is nothing economical or efficient about such a process.

Respondents criticize Burdette for not waiting until he had been placed in contempt to file his appeal. However, where a party's defense is stricken in part or in whole by a court, there is no need for that party to wait until a contempt order has been issued in order to appeal. *See, e.g., Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997) (considering immediate appeal by defendant whose answer, counterclaim and cross-claim were stricken, putting that defendant in default). Cases instructing that a party must "either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply," *Davis v. Parkview Apts.*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014), *citing Ex parte Whetstone*, 289 S.C. 480, 346 S.E.2d 881, 882 (1986), all involve a refusal or failure to respond to interrogatories or to produce documents or witnesses for depositions. None of these cases involve requiring a specific response to a request to admit that serves as a binding admission and limits the issues to be tried. Furthermore, pursuant to *Davis*, a party "can either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply." 409 S.C. at 281, 762 S.E.2d at 543. In other words, if Burdette did not appeal these severe Rule 37 sanction Orders now, Plaintiffs likely would argue in any later appeal that the opportunity to do so had been waived.

This Court should recognize that this appeal raises a novel issue in South Carolina, and hold that an order directing a party to rewrite or "re-answer" a request for

admission to conform to the lower court's view of other evidence is immediately appealable, invades the province of the jury, and exceeds the court's authority.⁷

CONCLUSION

For all the reasons stated herein, this appeal is a permissible interlocutory appeal. As a result, this Court should not dismiss the appeal and, in any event, should not impose sanctions as requested by Respondents.

Respectfully submitted,

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January 21, 2021

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⁷ In addition, where an order involves an issue that is immediately appealable, all the matters decided in that order may be reviewed at the same time, *see Rice Hope Plantation v. S.C. Pub. Serv. Auth.*, 216 S.C. 500, 510-511, 59 S.E.2d 132, 135-136 (1950), *overruled on other gds*, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), making the other issues decided in the Orders reviewable at this point as well.

STATE OF SOUTH CAROLINA)
)
) IN COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Gregory Jones, Sr., as the father and
duly appointed Personal Representative
of the Estate of Jessica Dawn Jones,
Deceased,

Plaintiff,

VS.

CA No. 2019-CP-42-002215

Cranston Print Works Company
d/b/a Cranston Trucking Company,
Ryder Systems, Inc., Optimum
Staffing, Inc. d/b/a Optimum Logistic
Solutions, and Jason E. Burdette,

Defendants.

DEPOSITION OF JASON EDWARD BURDETTE

PURSUANT TO NOTICE and/or agreement of the parties, the within deposition was taken on the 20th day of March, 2020, commencing at the hour of 10:25 a.m. at the Gallivan White & Boyd, One Liberty Square, 55 Beattie Place, #1200, Greenville, South Carolina; attended by Counsel, as follows:

1 Meetings, the first sentence, "Quarterly safety meetings
2 will be held at each operation or terminal."

3 Do you remember any safety meetings while you were
4 there?

5 BY MR. YOUNG:

6 Object to the form.

7 BY THE DEPONENT:

8 Yes, sir.

9 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

10 Q. Okay. How many?

11 A. Well, now when I --- it was not done at their office or
12 anything to do with them.

13 Q. Okay.

14 A. It was done with the company that I was leased to.

15 Q. Which was?

16 A. Diamond Hill Plywood.

17 Q. Okay.

18 A. And which I was the only temp driver there.

19 Q. Okay.

20 A. During that time, and it was for their drivers, and I just
21 had to attend.

22 Q. Okay, and then under Guidelines for Determining
23 Preventability and Severity of Vehicle Collisions, do you
24 see that paragraph and that heading?

25 A. Yes, sir.

1 Then I got to --- as I work my way around to the
2 front of the truck, it gets it again, the same thing. I
3 go through and check everything again. Then I get in the
4 truck, and that's the pre-trip.

5 Q. And how much on time do you show for your pre-trip
6 inspection?

7 A. Fifteen minutes, sir. I can do all that in 15, do all
8 that and paperwork in 15 minutes proficiently.

9 Q. Okay.

10 Let's turn to page 18, which is OLS-243. Under
11 Company Policy you see the second paragraph from the
12 bottom, the Cell Phone Use?

13 A. Correct, sir.

14 Q. And let me read that paragraph: "Distracted driving is a
15 major contributor in vehicle accidents as such, cell
16 phones are not to be used while driving in any capacity
17 (voice, text, data or otherwise). Employees are
18 instructed to find a safe place to pull off the roadway
19 before using a cell phone. Hands free devices do not
20 alleviate or eliminate the driving distraction and are not
21 considered as a suitable alternative to pulling off the
22 highway to make or receive a call."

23 Did I read that correctly?

24 A. Yes, sir, that's what it says.

25 Q. And were you aware of that written policy of Optimum

1 Logistics?

2 A. No, sir, I was not.

3 Q. Well, but you said earlier, I believe you testified, you
4 had a copy of this safety manual?

5 A. Yes, sir, I got it yesterday.

6 Q. All right. Well, you got it before, didn't you?

7 A. No, sir, I never did.

8 Q. Okay.

9 A. I know there's a paper in there that I signed for it, but
10 I never got it. They said they was going to send it to me
11 later that I just needed to go ahead and sign for it now.
12 I'm like, "All right. Whatever."

13 Q. Well, then you signed something that was untruthful then,
14 didn't you?

15 A. Yes, sir, I did.

16 Q. Well, let's confirm that. Here's --- before we confirm
17 that, why don't you reconnect that last exhibit so we
18 don't get the papers within papers there.

19 A. Yes, sir.

20 (PLAINTIFF'S EXHIBIT NO. 13 MARKED PRIOR TO DEPOSITION)

21 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

22 Q. Okay. All right. So looking at Exhibit 13 I believe your
23 name is printed at the top? Do you need some time?

24 A. Yes, sir, please.

25 Q. Okay.

1 (OFF THE RECORD)

2 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

3 Q. We're looking at Exhibit No. 13.

4 A. Hang on one second, sir.

5 Q. Okay.

6 A. I want to get every --- I want to keep everything

7 together.

8 Q. That's fine.

9 A. Yes, sir.

10 Q. Which is OLS-44, and it is entitled Driver's Statement; is

11 that correct?

12 A. Yes, sir.

13 Q. And I believe it is your signed statement; is that

14 correct?

15 A. Yes, sir.

16 Q. And down in the lower half of the page you signed that

17 your initials that you received an employee handbook on

18 this date, which is 8/6/18; is that right?

19 A. Talking about right here, sir, or right, right here?

20 Q. Right here, Employee Handbook.

21 A. That is not my handwriting, sir. That is not my initials.

22 Q. Okay. That is your signature up above?

23 A. Correct, sir.

24 Q. Okay, and are you telling us that you didn't initial any

25 of those ---

- 1 A. Correct, sir.
- 2 Q. --- initials down below?
- 3 A. Correct, sir.
- 4 Q. But you did tell me earlier in the deposition that you
5 received the employee handbook and the safety manual and
6 you just weren't sure if you would be able to find them
7 but you probably had them somewhere?
- 8 A. Might have, sir.
- 9 Q. Okay, and then a minute ago you were saying that you saw
10 it yesterday?
- 11 A. Correct, sir. That's what I was talking about, yesterday.
- 12 Q. So are you telling me that what you said earlier is
13 incorrect that you did not receive those manuals?
- 14 A. Correct, sir.
- 15 Q. And you're changing your testimony?
- 16 A. I was understanding that you were saying --- asking if I
17 got the things. Yes, I did get them yesterday.
- 18 Q. Okay. I believe I asked you at the time of your
19 employment?
- 20 A. Oh, no, sir. I didn't hear you say time of employment,
21 because the only thing I remember you asking is if I had
22 just seen it.
- 23 Q. All right, and that's just like you didn't read that whole
24 sentence about prior accidents that you had in the last
25 five years?

1 Q. I know. I'm just ---

2 A. So ---

3 Q. --- asking you do you know if that was ever done?

4 BY MR. YOUNG:

5 Same objection.

6 BY THE DEPONENT:

7 I don't know what they did, sir, before I got there.

8 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

9 Q. And do you know what was done after you got there?

10 A. No, sir.

11 Q. Okay. Let's talk a little bit about your training process
12 with Optimum Logistics. Once you were hired, other than
13 providing you with a safety manual and an employee
14 handbook, did you have any classroom work?

15 A. Negative, sir.

16 Q. Did you have any road testing or road training?

17 A. I did have to go for a road test.

18 Q. Okay.

19 A. With one of the companies they had me with.

20 Q. But did Optimum Logistics give you any road testing?

21 A. No, sir, I did not. Okay. No, sir.

22 Q. But you indicated they did provide you with those
23 handbooks?

24 A. No, sir, I did not.

25 Q. That's not what your testimony just was?

1 A. I told you that I got that them --- I never got them
2 books.

3 Q. Okay.

4 A. I told you the signatures, the initials on that page was
5 not mine.

6 Q. Okay.

7 A. So I never received them books until yesterday.

8 Q. All right. Well, even if those initials weren't yours,
9 that doesn't establish that you didn't get those books; is
10 that right?

11 A. I'm telling you, sir, I did not get the books.

12 Q. Okay. So, what was your first assignment with Optimum?
13 Who did they assign you with?

14 A. BI-LO Warehouse.

15 Q. And how long did that assignment last?

16 A. Until September.

17 Q. All right. So that would be approximately a month?

18 A. Correct.

19 Q. And then in September where were you assigned?

20 A. Diamond Hill Plywood.

21 Q. And how long did that last?

22 A. Until January.

23 Q. Okay.

24 A. February, somewhere around --- yeah, January. End of ---
25 first of January, mid-January, somewhere around there.

- 1 Q. And then where were you next assigned?
- 2 A. There was a delay. I don't know how long. I can't ---
- 3 Q. Okay.
- 4 A. I know it was less than a month delay, but there was a
- 5 delay to keep me with some --- some heating and air
- 6 company for a short period, for like a short period of
- 7 time.
- 8 Q. Okay, and then where were you next assigned?
- 9 A. I was at Cranston.
- 10 Q. Now you said one of those assignments they put you through
- 11 a road test?
- 12 A. Correct.
- 13 Q. Which one?
- 14 A. BI-LO.
- 15 Q. When you went with Cranston, did they put you through a
- 16 road test?
- 17 A. No, sir.
- 18 Q. Did they give you any training?
- 19 A. No, sir.
- 20 Q. Did you have any safety meeting with them?
- 21 A. No, sir, I was only there a week. So I don't know if they
- 22 even had safety meetings or anything.
- 23 Q. Did Cranston supply you with any employee manual or safety
- 24 manual?
- 25 A. No, sir.

1 Q. Okay. Now we talked about communicating with a
2 dispatcher. What type of things would you routinely have
3 to communicate about with a dispatcher?

4 A. Where to go next. Where am I at? What am I doing? How
5 am I doing it? Who, what, when, where and why stuff.

6 Q. And is it a fair statement that on the days that you
7 worked you communicated frequently with the dispatcher?

8 A. Correct.

9 Q. Would you also talk to the dispatcher before the trip
10 started?

11 A. Yes.

12 Q. Would part of your discussion involve, you know, how many
13 legal hours I've got left this week, that type of thing?

14 A. No.

15 Q. So that, was that your job totally to keep up with that?

16 A. Correct.

17 (PLAINTIFF'S EXHIBIT NO. 22 MARKED PRIOR TO DEPOSITION)

18 DIRECT EXAMINATION CONTINUED BY MR. KNIE:

19 Q. Let me show you Plaintiff's Exhibit 22. You recognize
20 this exhibit?

21 A. It's a phone record.

22 Q. And have you seen it before today? I mean were you shown
23 this record?

24 A. Yes, sir.

25 Q. When were you shown it?

1 A. Yesterday.

2 Q. And it says that it's the Verizon record for Betty Wrenn.

3 Were you in possession of a phone that was listed in that

4 name on February 1st, ---

5 A. Yes, sir, I was.

6 Q. --- 2019?

7 Explain the circumstances by which it was her

8 account that you happened to have it with you?

9 A. Okay. She had an account with Verizon. She got me a
10 phone on her account.

11 Q. Okay. Let's go to February 1st. There appears to be a
12 call at 5:38 in the morning. Do you recognize that phone
13 number?

14 A. No, sir, I do not.

15 Q. And then I gather you wouldn't recognize the one at 6:14?
16 That's the same number, correct?

17 A. It appears to be, yes, sir.

18 Q. And then at 6:16, that's the same number, correct?

19 A. Yes, sir.

20 Q. And you talked 71 minutes and you don't know who it was?

21 A. I don't really keep track of numbers. I have them in my
22 phone, so I don't know who.

23 Q. Do you have an idea who it might have been?

24 A. It could have been her.

25 Q. Who?

1 A. Betty.

2 Q. Okay.

3 A. It could have been. I don't know.

4 Q. And then on February 1st at 7:38 you talked to a 979 area
5 code. That was an incoming call. Do you know that was
6 for five minutes?

7 A. Not that I can recall at this time, sir.

8 Q. All right. Then at 8:04 you talked to a 864-245-5866. Do
9 you know ---

10 A. Yes, sir, I know who that is. I looked at that yesterday.

11 Q. Who is that?

12 A. That is a former fire instructor, former firefighter, a
13 friend of mine that's like a dad to me.

14 Q. Okay, and you talked ten minutes?

15 A. Yes, sir.

16 Q. And then at 8:32 you talked to 864-440-0626, do you know
17 ---

18 A. I reckon that might be Cranston. I'm not for sure.

19 Q. Okay. That was a call from Spartanburg to Greenville?

20 A. I reckon. I mean ---

21 Q. Okay.

22 A. --- I don't know.

23 Q. All right, and then the same number that you said you
24 talked to for 71 minutes you talked to at 8:34. Do you
25 see that or actually you left a voicemail? Do you see

1 that?

2 A. Yes, sir.

3 Q. And then you left four more, five more voicemails to the

4 same number?

5 A. It might not be a voicemail. It just might be where I

6 called and they didn't answer and I hung up.

7 Q. Okay. Well, it's showing VM.

8 A. Where do you see that at?

9 Q. Just --- well, the first one is 8:34 in the morning.

10 A. Okay.

11 Q. Spartanburg, and then keep coming across.

12 A. I see it now.

13 Q. Voicemail, and then you see there's four more underneath

14 it?

15 A. Right.

16 Q. And then it appears at 8:36 you had a successful call with

17 that number. Do you see that?

18 A. Yes, sir.

19 Q. And you think that was Betty Wrenn, I think you said

20 earlier, based on the 71-minute call that you had earlier

21 with that person?

22 A. Correct.

23 Q. Okay.

24 A. I mean I'm --- I'm assuming.

25 Q. All right, and so you hadn't denied it earlier. Have you

1 reviewed what you did that day and you know about what
2 time in the morning that you were driving from Greenville
3 to Spartanburg?

4 A. Correct.

5 Q. And that would be from statements that you made and other
6 documents that you reviewed; is that right?

7 A. Correct.

8 Q. And, as accurately as possible, based on that review and
9 refreshing your memory, what time, as close to the minute
10 as you can, did you leave the Greenville Cranston
11 Terminal?

12 A. Can I look back at the paperwork?

13 Q. Which paperwork do you want to look ---

14 A. The logs for February 1st.

15 Q. Sure. Go ahead.

16 A. (Reviewing documents.) Before 8:00, sir.

17 Q. All right, and as close in time as you can, when do you
18 believe was the time of the motor vehicle accident?

19 A. Roughly around 8:30, sir.

20 Q. And based on the phone records I've shown you and your
21 earlier testimony, can we agree that you were certainly
22 using your cell phone while driving from Greenville to at
23 least the Spartanburg area before the wreck?

24 A. Correct.

25 Q. Okay, and did any of those, during that 8:00 to 8:30,

1 appears to be calls to or from the dispatcher?

2 A. No, sir.

3 Q. Those would have all appeared to be personal calls of some

4 nature?

5 A. Correct.

6 Q. And were those calls necessary to your employment?

7 A. No, sir.

8 Q. And, again, you read the policy with me today of your

9 employer Optimum Logistics that prohibits cell phone use?

10 A. I've seen it for the first time today, sir.

11 Q. And you're saying that you were never told nor you never

12 read that you couldn't use your cell phone?

13 A. I was always told, even from Optimum Logistics their self,

14 as long as you had a headset.

15 Q. Okay.

16 A. A hands free, you were fine.

17 Q. Who told you that?

18 A. Brian Conners from Optimum Logistics.

19 Q. Okay.

20 A. He's --- he called me many a times while I was on the

21 road.

22 Q. Okay. What did Cranston tell you about their policy about

23 cell phone use?

24 A. The same thing. As long as you had a headset, you're

25 fine.

Exhibit A

ELECTRONICALLY FILED - 2020 Aug 07 3:30 PM - SPARTANBURG - COMMON PLEAS - CASE#2019CP4202212

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. No.: 2019-CP-42-02212
	)	
Mark Douglas Hill, III by and through his	)	
duly appointed Guardian ad Litem, Helen	)	
Kaci Hill,	)	
	)	<u>AFFIDAVIT OF BRETT HEIDT</u>
Plaintiff,	)	
	)	
v.	)	
	)	
Cranston Print Works Company d/b/a	)	
Cranston Trucking Company, Ryder Truck	)	
Rental, Inc., Optimum Staffing, Inc. d/b/a	)	
Optimum Logistic Solutions, and Jason E.	)	
Burdette,	)	
	)	
Defendants.	)	
	)	
Gregory Jones, Sr., as the father and duly	)	C.A. No.: 2019-CP-42-02215
appointed Personal Representative of the	)	
Estate of Jessica Dawn Jones, Deceased,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Cranston Print Works Company d/b/a	)	
Cranston Trucking Company, Ryder Truck	)	
Rental, Inc., Optimum Staffing, Inc. d/b/a	)	
Optimum Logistic Solutions, and Jason E.	)	
Burdette,	)	
	)	
Defendants.	)	

Brett Heidt, who hereby certifies the below statements are true and accurate to the best of his knowledge, and in accordance with the Supreme Court of South Carolina's Operation of the Trial Courts During the Coronavirus Emergency Order, App. Case No. 2020-000447 (S.Ct. Order filed April 22, 2020), deposes and states as follows:

1. My name is Brett Heidt. I am over the age of 18 years old and competent to testify to the matters set forth herein.
2. I am a resident of Greenville County, South Carolina and am employed by Cranston Print Works.
3. I have reviewed what I understand to be Jason Burdette's cell phone records of February 1, 2019.
4. Upon information and belief, the accident involving Mr. Burdette occurred at 8:30 am.
5. None of the telephone numbers listed on the cell phone record prior to 8:32 am on February 1, 2019, are associated with Cranston Print Works Company.
6. Everything contained herein is based upon my own personal knowledge, except that which is based upon information and belief, and to those matters it is so stated.

Further Affiant sayeth not.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



Brett Heidt

August 6, 2020

Greenville, South Carolina

Affidavit of Brett Heidt

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JAN 12 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2020-001695
Trial Court Case Nos. 2019-CP-42-02212 & 2019-CP-42-02215

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff..... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

and

Gregory Jones, Sr., as the Father and Duly
appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

Of Whom Jason E. Burdette, Cranston Print Works
Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc., d/b/a Optimum Logistic
Solutions are the.....Appellants.

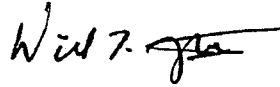
NOTICE OF APPEAL

Cranston Print Works Company D/B/A Cranston Trucking Company and Optimum Staffing,
Inc., D/B/A Optimum Logistic Solutions hereby appeal the Order of the Honorable R. Keith

Kelly, filed October 8, 2020, and the Order of the Honorable R. Keith Kelly denying Defendants' Motion to Alter or Amend, filed December 18, 2020. Appellants received written notice of entry of the Order denying Defendants' Motion to Alter or Amend on December 18, 2020.

January 5, 2021

GALLIVAN WHITE BOYD



By: _____

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AND

COLLINS & LACY, P.C.

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*Counsel for Optimum Staffing, Inc. d/b/a
Optimum Logistic Solutions*

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Counsel for Appellant Jason E. Burdette

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

JAN 12 2021

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2020-001695
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Mark Douglas Hill, III, by and through his
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v.

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Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

and

Gregory Jones, Sr., as the Father and Duly
appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

Of Whom Jason E. Burdette, Cranston Print Works
Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc., d/b/a Optimum Logistic
Solutions are the.....Appellants.

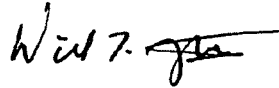
PROOF OF SERVICE

I certify that I have served the Notice of Appeal of Cranston Print Works Company d/b/a
Cranston Trucking Company, and Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions on

Mark Douglas Hill, III, by and through his Duly Appointed Guardian ad Litem, Helen Kaci Hill, and Gregory Jones, Sr., as the Father and Duly Appointed Personal Representative of the Estate of Jessica Dawn Jones, and other counsel of record by emailing and depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

January 8, 2021

GALLIVAN WHITE BOYD



By: _____

T. David Rheney
William T. Young III
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byoung@gwblawfirm.com

*Counsel for Defendants Cranston Print
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Other Counsel of Record:

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Greenville, South Carolina 29602-2980
(864) 239-4000

Counsel for Appellant Jason E. Burdette

January 8, 2021

RECEIVED
JAN 12 2021
SC Court of Appeals

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, SC 29302

Re: Mark Douglas Hill, III by and through his duly appointed Guardian ad Litem,
Helen Kaci Hill v. Cranston Print Works Company d/b/a Cranston Trucking
Company, Ryder Systems, Inc., Optimum Staffing, Inc. d/b/a Optimum Logistic
Solutions, and Jason E. Burdette

Gregory Jones, Sr., as the father and duly appointed Personal Representative of
the Estate of Jessica Dawn Jones, Deceased, v. Cranston Print Works Company
d/b/a Cranston Trucking Company, Ryder Systems, Inc., Optimum Staffing, Inc.
d/b/a Optimum Logistic Solutions, and Jason E. Burdette,

C.A. No.: 2019-CP-42-02212 and C.A. No.: 2019-CP-42-02215

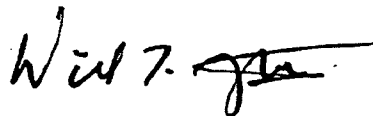
Dear Ms. Cox:

Enclosed, please find for filing the original and one (1) copy of Notice of Appeal in the
above-captioned cases.

By copy of this letter, I am serving counsel of record with the above-referenced Notice of
Appeal.

Please contact me with any questions you may have.

Sincerely,
GALLIVAN, WHITE & BOYD, P.A.



William T. Young III

Enclosures

cc: The Honorable Jenny Abbott Kitchings, S.C. Court of Appeals
Alexander P. Lewis, Esq.
W. Blake Cummings, Esq.
Patrick E. Knie, Esq.
Brandt Horton, Esq.
Geoffrey W. Gibbon, Esq.
Zachary S. Brown, Esq.
Robert M. Peele, Esq.
J. Lucas Richardson, Esq.

January 8, 2021

RECEIVED

JAN 12 2021

SC Court of Appeals

VIA ELECTRONIC AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: Gregory Jones, Sr., as the father and duly appointed Personal Representative of the Estate of Jessica Dawn Jones v. Cranston Print Works Company d/b/a Cranston Trucking Company, Ryder Truck Rental, Inc., Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, and Jason Burdette
C.A. No.: 2019-CP-42-02212 and 2019-CP-42-02215

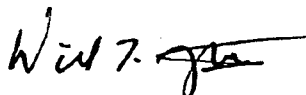
Dear Ms. Kitchings:

Enclosed for filing are the original and one copy of the Notice of Appeal in the above-referenced matter. Also, enclosed are the following:

- An original and one copy of Proof of Service of the Notice of Appeal on the Respondent;
- One copy of the Orders being appealed;
- Two copies of our correspondence to the Spartanburg County Clerk of Court notifying of the appeal; and
- A check in the amount of \$250.00.

Please file the original documents and return the clocked-in copies in the enclosed, self-addressed stamped envelope.

Sincerely,
GALLIVAN, WHITE & BOYD, P.A.



William T. Young III

cc: The Honorable Amy W. Cox, Spartanburg County Clerk of Clerk

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2020-001695
Trial Court Case Nos. 2019-CP-42-02212 & 2019-CP-42-02215

Mark Douglas Hill, III by and through
his Duly appointed Guardian ad Litem,
Helen Kaci Hill, Plaintiff,.....Respondent,

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

and

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff,.....Respondent,

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

Of Whom Jason E. Burdette, Cranston Print Works
Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc., d/b/a Optimum Logistic
Solutions are the.....Appellants.

**RESPONDENTS' MOTION TO DISMISS
AND MEMORANDUM IN SUPPORT OF MOTION**

ISSUES PRESENTED

The issues presented by way of this Motion and Memorandum in Support of Respondents' Motion to Dismiss are three-fold: (1) that all Appellants have knowingly filed an appeal that is interlocutory in nature; (2) that Appellants Cranston and Optimum lack standing to challenge the Orders of Judge Kelly as it pertains to Appellant Burdette; and (3) that all Appellants have knowingly filed the instant improper appeals in an attempt to prolong and delay the underlying litigation making the filing of the appeals subject to sanctions pursuant to Appellate Court Rule 269.

FACTUAL BACKGROUND

The instant litigation stems from a violent collision that occurred on February 1, 2019, between a tractor trailer that was driven by Appellant Burdette and a Kia Minivan that the decedent, Jessica Dawn Jones, and minor Mark Douglas Hill, III, were traveling in as rear seat passengers. Appellant Burdette was employed by Appellant Optimum at the time of the collision, and was leased from Optimum to Appellant Cranston.

Appellant Burdette was deposed on March 20, 2020. Following the deposition of Appellant Burdette, Counsel for the Respondents served Requests to Admit upon the Appellants' counsel of record based upon the aforementioned deposition testimony. Appellants, by and through their attorneys, provided Answers on May 19, 2020, signed by William T. Young, III, Esquire, a copy of the answers are attached hereto as Exhibit 1. Interestingly, in these Answers, Appellant Burdette offered objections to things he had already testified to, or outright denied things he had previously admitted to at his deposition. Critically, each of the denials were directly in apposite to the very testimony Appellant Burdette espoused at his deposition. At the time, Defense Counsel, William T. Young, III, Esquire, never made any efforts to qualify these denials or explain why they were different from the prior sworn testimony of Appellant Burdette.

Following the conflicting and evasive responses, the undersigned espoused additional Requests for Admission upon Appellants' then attorneys. Thereafter, Appellant Burdette, by and through his then counsel of record, answered these new requests for admission on June 26, 2020, a copy of which is produced herewith as Exhibit 2. Instead of answering the very simple questions regarding the very evidence provided by Appellant Burdette's then Counsel on behalf of his other client Appellant Optimum, William T. Young, III, Esquire, answered that the discovery sought was vague, and therefore refused to answer. Further, Appellants claimed an objection on the grounds of privilege.

Based upon the contradictory and obstructive positions of the Appellants, Respondents filed a Motion to Deem Certain Matters Admitted on July 16, 2020. The motion at issue was heard along with various other motions regarding discovery issues by the Honorable R. Keith Kelly via WEBEX on July 27, 2020. On October 8, 2020, the Circuit Court issued an Order wherein among other things they granted in part the Respondents' Motion to Deem Certain Matters Admitted, and critically stated that:

“The Court hereby Orders that each of the aforementioned Requests for Admission be re-answered in light of the sworn deposition testimony of Defendant Burdette, and that Defendant Burdette sign and attach a verification pursuant to Rule 11(c) of the South Carolina Rules of Civil Procedure when providing the new answers within ten (10) days.”

See Order Granting Mot. Deem Cert. Matters Admitted, Oct. 8, 2020, a copy of which is attached hereto as Exhibit 3. Also included in the Court's Order was a denial of Appellants' Motion to Compel Production of “raw video footage” of interviews that were obtained for the sole purpose of a mediation video which Respondents' made for use at the mediation. *Id.* Unsatisfied with the Circuit Court's Order, Appellant filed a Motion to Alter and/or Amend, along with a supporting Memoranda pursuant to Rule 59(e), SCRCP, on October 19, 2020. Critically, then counsel for all

Appellants only asked for reconsideration regarding the Court's Ruling on the Respondents' Motion to Deem Certain Matters Admitted, and the Appellant's Motion to Compel Production. Respondents' Counsel filed a responsive Memoranda on October 26, 2020. After considering the positions of each side, and upon review of the record before it, the Circuit Court issued an Order denying the Appellants' Motion to Alter and/or Amend on December 18, 2020. *See* Order Denying Mot. to Alt. or Amend, Dec. 18, 2020, a copy of which is attached hereto as Exhibit 4.

While awaiting the Circuit Court's ruling on Appellant's Motion to Alter and/or Amend, the underlying cases were placed on the status roster for November 23, 2020. On that date, all Counsel, including Appellants' Counsel at the time, agreed to place the Jones matter on the date certain roster for the term of court beginning April 5, 2021. Also, on December 8, 2020, Respondents' Counsel was informed that Geoffrey Gibbon, Esquire, would be assuming the defense of Appellant Burdette, and Robert Peele, Esquire would be assuming the defense of Appellant Optimum moving forward. Following the issuance of the Circuit Court's December 18, 2020 Order, Appellant Burdette's new attorney informed Respondents' Counsel that his client intended to appeal the Order rather than to comply with it, or in the alternative, face contempt for failure to comply. Ultimately, on December 30, 2020 by letter, Respondents' Counsel informed Appellant Burdette's Counsel of the impropriety of the instant Appeal and asked that it be withdrawn. All other counsel of record, including counsel for Appellants Optimum and Cranston, were copied on that correspondence. No response has been received to that correspondence, which included citations to the controlling legal precedent on the issue. On January 8, 2021, Respondents' Counsel received notice that Appellants Optimum and Cranston would be joining in Appellant Burdette's Appeal, the grounds for such were not specified, but since the same Orders from Judge Kelly were attached, it is assumed that any grounds raised therein would be based on

those clearly interlocutory Orders. As such, Respondents have been forced to bring the instant Motion to Dismiss.

LEGAL ARGUMENT

I. Appellant's have improperly brought an appeal that is interlocutory in nature, and at present they are not an aggrieved party entitling them to bring the appeal.

As a general rule, a discovery order is not immediately appealable. *Ferguson v. Charleston Lincoln/Mercury Inc.*, 344 S.C. 502, 510, 544 S.E.2d 285, 290 (Ct. App. 2001). Once a final order on the merits is issued, the prior discovery orders become appealable. *Hamm v. South Carolina Pub. Serv. Comm'n*, 312 S.C. 238, 439 S.E.2d 852 (1994). Further, an order refusing to compel discovery is interlocutory and not immediately appealable. *Lowndes Prods., Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974).

As has often been noted by this Honorable Court, “The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court.” *Downey v. Dixon*, 294 S.C. 42,45, 362 S.E.2d 317, 318 (Ct. App. 1987). Further, “an appellate court will not interfere with a trial court’s exercise of its discretionary powers with respect to sanctions imposed in discovery matters unless the court abuses its discretion.” *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014) (citing *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542, 489 S.E. 2d 679, 681 (Ct. App. 1997)) (citation omitted). An abuse of discretion may be found by an appellate court with respect to discovery sanctions where the appellant shows “that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and therefore, amounted to an error of law.” *Davis*, 409 S.C. at 282, 762 S.E. 2d at 543 (quoting *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)).

In seeking relief from an Order regarding discovery, former Chief Justice Pleicones aptly noted in his Concurrence that “[I]t is well-settled that a party can obtain review of the merits of a

discovery order only after refusing to comply and being held in contempt. *See Davis*, 409 S.C. at 290-1, 762 S.E.2d at 548 (citing *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008)). Justice Pleicones' statements were echoed in the majority decision where it was stated that "to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding." *See Davis*, 409 S.C. at 280-1, 762 S.E.2d at 543 (citing *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881-2 (1986)). The Supreme Court clearly stated in *Ex Parte Whetstone* that "[A]n order directing a party to participate in discovery is interlocutory and not directly appealable." *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881-2 (1986).

A review of the Orders upon which the instant appeal rests finds that the sanction that was imposed by the Circuit Judge was one wherein Appellant Burdette, by and through his then Counsel of record, was instructed to amend his prior Answers to Requests for Admission to conform to the prior sworn deposition testimony of Appellant Burdette. *See Exs. 3 and 4*. The Appellant Burdette did not comply with either Order, or suffer contempt from the Circuit Court by failing to comply with Orders. Rather, the Appellant, by and through their Counsel, filed this appeal. Such an appeal should clearly be barred as interlocutory based upon the aforementioned legal precedents. Further, to the extent that Appellants Optimum and Cranston have appealed these Orders on this issue, it is respectfully submitted that they lack standing given that they are unaffected by the Circuit Court's Orders on this issue, and their appeal should be dismissed.

To the extent that Appellants Optimum and Cranston are appealing the Trial Court's Order related to the denial of Appellants' Motion to Compel Production of the raw video footage, such an appeal should also be denied as untimely. The aforementioned legal precedents make clear that the Circuit Court's Order denying the compelling of production was a decision that rested solely in his discretion, and is not immediately appealable. The Appellants cannot make a showing that the denial

of their Motion to Compel is anything other than interlocutory, and as such any appeal on such a basis should be dismissed as improvident. *See Lowndes Prods., Inc., supra.*

The Appellants have each clearly taken such steps to delay the underlying case, which is currently pending on the date certain roster for the week of April 5, 2021. Appellant Burdette has been given every opportunity to unilaterally withdraw his appeal when confronted with the aforementioned case law, but to date has taken no such steps. Further, despite being copied on Counsel for Respondents' letter to Counsel for Appellant Burdette outlining the interlocutory nature of Judge Kelly's Orders, Appellants Optimum and Cranston still chose to ignore the law and file their instant appeal. As such, the undersigned would respectfully request that this Honorable Court Dismiss the instant appeal as improvident based upon its interlocutory status. Further, as the appeal appears to have been "taken solely for the purposes of delay" the undersigned would request that under Appellate Court Rule 269 that this Honorable Court consider the imposition upon the Appellants of "such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." SC R A CT 269.

CONCLUSION

Based on the foregoing, the Respondents would respectfully request that this Honorable Court grant the instant Motion, dismiss the current appeal, and find that Respondents are entitled to sanctions given the frivolous nature of the Appeal. Simply put, there presently are no issues that are properly ripe before this Honorable Court for adjudication.

-Signature Block on Following Page-

RESPECTFULLY SUBMITTED,



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January 11, 2021
Spartanburg, South Carolina

Counsel for Plaintiffs/Respondents

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-42-002215

Gregory Jones, Sr., as the father and duly
appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased,

Plaintiff,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder
Systems, Inc., Optimum Staffing, Inc. d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette,

Defendants.

**DEFENDANT, JASON E. BURDETTE'S
RESPONSES TO REQUEST FOR
ADMISSION**

TO: PLAINTIFFS AND THEIR ATTORNEYS:

Defendant, Jason E. Burdette, (hereinafter "Defendant") by and through its undersigned counsel, hereby responds, pursuant to Rule 35 of the South Carolina Rules of Civil Procedure, to Plaintiff's Request for Admission.

1. Defendant Jason E. Burdette performed a pre-trip inspection of the tractor trailer that he drove the morning of February 1, 2019, and that said inspection to the best of his knowledge is in the possession, custody and/or control of Defendant Cranston Print Works Company d/b/a Cranston Trucking Company.

RESPONSE: Defendant Burdette admits he performed a pre-trip inspection of the subject tractor and trailer. Defendant further admits he is not in possession of a copy of that inspection report. After conducting a reasonable search, defendant is without knowledge or

information sufficient to allow him to know the current whereabouts of the pre-trip inspection report or any copies of the same.

2. On the morning of February 1, 2019, prior to impact with the vehicle Jessica A. Jones was traveling in, Defendant Jason E. Burdette was using his cellular phone while driving the tractor trailer for Defendant Cranston while employed by Defendant Optimum.

RESPONSE: Defendant Burdette objects to plaintiffs' request to admit number 2 upon the grounds it is vague and ambiguous, as it does not specify a particular time in which he was using his cellular phone. Further responding, Defendant Burdette denies using his cellular phone at the time of the accident or in the moments immediately preceding the accident.

3. Defendant Jason E. Burdette used his cellular phone on February 1, 2019, prior to impact with the vehicle Jessica A. Jones was traveling in, to communicate with among other people, agents/employees of Defendant Cranston Print Works Company d/b/a Cranston Trucking Company.

RESPONSE: Denied.

4. Defendant Cranston Print Works Company d/b/a Cranston Trucking Company never advised Defendant Jason E. Burdette to not use his cellular phone while driving a tractor trailer for Defendant Cranston Print Works Company d/b/a Cranston Trucking Company.

RESPONSE: Denied.

5. Defendant Cranston Print Works Company d/b/a Cranston Trucking Company communicated via cellular phone on multiple occasions, other than February 1, 2019, with Defendant Jason E. Burdette, while Defendant Burdette was driving a tractor trailer for Defendant Cranston Print Works Company d/b/a Cranston Trucking Company.

RESPONSE: Denied.

6. Defendant Jason E. Burdette was never provided any safety and/or driver training by Defendant Cranston Print Works Company d/b/a Cranston Trucking Company prior to February 1, 2019.

RESPONSE: Admitted.

7. Defendant Jason E. Burdette was neither provided an employee handbook nor a safety handbook by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019.

RESPONSE: Denied.

8. Defendant Jason E. Burdette was never given any safety instruction or underwent any safety training while employed by Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, prior to February 1, 2019.

RESPONSE: Denied.

9. Defendant Jason E. Burdette was never advised, verbally or in writing, of any corporate policies or procedures for employees to follow while driving trucks as an employee of Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019.

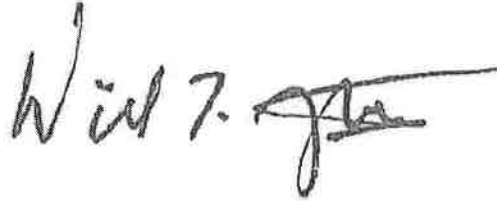
RESPONSE: Denied.

10. Defendant Jason E. Burdette was never advised, either orally or in writing, by any individual employed by Defendant Optimum Staffing Inc. d/b/a Optimum Logistic Solutions of any corporate policies or procedures prohibiting the use of cellular phones while driving trucks as an employee of Defendant Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions prior to February 1, 2019.

RESPONSE: Denied.

11. Defendant Optimum Staffing Inc. d/b/a Optimum Logistic Solutions knowingly communicated with Defendant Jason E. Burdette via cellular phone while he was driving a truck while employed by Defendant Optimum prior to February 1, 2019.

RESPONSE: Denied.

A handwritten signature in black ink, appearing to read "Will T. Young III", with a stylized flourish at the end.

T. David Rheney (S.C. Bar No. 13148)
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Attorneys for Defendants

Greenville, South Carolina
May 19, 2020

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Gregory Jones, Sr., as the father and duly
appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased,

Plaintiff,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder
Systems, Inc., Optimum Staffing, Inc. d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-42-002215

**DEFENDANT, JASON E. BURDETTE'S
RESPONSES TO REQUESTS TO ADMIT**

TO: PLAINTIFFS AND THEIR ATTORNEYS:

Defendant, Jason E. Burdette, (hereinafter "Defendant") by and through its undersigned counsel, hereby responds, pursuant to Rule 35 of the South Carolina Rules of Civil Procedure, to Plaintiff's Requests to Admit.

1. Defendant Jason E. Burdette on paperwork provided to the physician performing the DOT required physical on July 31, 2018 did state that he did not at that time, and had never had anxiety, depression, nervousness, or other mental health problems.

RESPONSE: Defendant Burdette objects to Paragraph 1 of Plaintiffs' second set of Requests to Admit upon the grounds the request seeks information specifically designated as privileged pursuant to S.C. Code Ann. §44-22-90. Defendant further objects upon the grounds the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further responds by showing it is unclear what documents are referenced and therefore can neither

admit nor deny the same, as “paperwork” is a generic term and the documents referenced were not included as exhibits to Plaintiffs’ Requests to Admit.

2. Defendant Jason E. Burdette on paperwork provided to the physician performing the DOT required physical on July 31, 2018 did state that he did not at that time have, and had never had a stroke, mini-stroke (TIA), paralysis, or weakness.

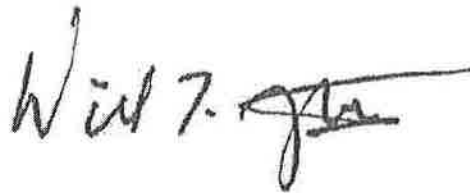
RESPONSE: Defendant Burdette objects to Paragraph 2 of Plaintiffs’ second set of Requests to Admit upon the grounds the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further responds by showing it is unclear what documents are referenced and therefore can neither admit nor deny the same, as “paperwork” is a generic term and the documents referenced were not included as exhibits to Plaintiffs’ Requests to Admit.

3. Defendant Jason E. Burdette on paperwork provided to the physician performing the DOT required physical on July 31, 2018 did state that he did not at that time have, and had never had dizziness, headaches, numbness, tingling or memory loss.

RESPONSE: Defendant Burdette objects to Paragraph 3 of Plaintiffs’ second set of Requests to Admit upon the grounds the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further responds by showing it is unclear what documents are referenced and therefore can neither admit nor deny the same, as “paperwork” is a generic term and the documents referenced were not included as exhibits to Plaintiffs’ Requests to Admit.

4. That Defendant Jason E. Burdette did attest that the information contained on the July 31, 2018, paperwork that was provided to the physician performing the DOT required physical was accurate and complete, and that he understood that inaccurate, false or missing information may invalidate the examination and the Medical Examiner's Certificate.

RESPONSE: Defendant Burdette objects to Paragraph 4 of Plaintiffs' second set of Requests to Admit upon the grounds the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further responds by showing it is unclear what documents are referenced and therefore can neither admit nor deny the same, as "paperwork" is a generic term and the documents referenced were not included as exhibits to Plaintiffs' Requests to Admit.



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Attorneys for Defendants

Greenville, South Carolina
June 26, 2020

EXHIBIT 3

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. Number: 2019-CP-42-02212

Mark Douglas Hill, III, by and through his)
Duly appointed Guardian ad Litem, Helen)
Kaci Hill,)

Plaintiff,)

ORDER

vs.)

Cranston Print Works Company D/B/A)
Cranston Trucking Company, Ryder Truck)
Rental, Inc., Optimum Staffing, Inc. D/B/A)
Optimum Logistic Solutions, and Jason E.)
Burdette,)

Defendants.)

Gregory Jones, Sr., as the Father and Duly)
Appointed Personal Representative of the)
Estate of Jessica Dawn Jones, Deceased,)

Plaintiff,)

C.A. Number: 2019-CP-42-02215

vs.)

Cranston Print Works Company D/B/A)
Cranston Trucking Company, Ryder Truck)
Rental, Inc., Optimum Staffing, Inc. D/B/A)
Optimum Logistic Solutions, and Jason E.)
Burdette,)

Defendants.)

These actions came before the Court on multiple motions for both the Plaintiffs and the Defendants. Specifically, the Plaintiffs filed Motions to: Compel the full and un-redacted medical records of Defendant Jason E. Burdette from the Veterans Administration; Deem Certain Matters Admitted; and Compel the Deposition of Certain Fact Witnesses. The Defendants filed a Motion to Compel raw video footage of certain individuals, and a Motion for a Protective Order of the

mental health portions of Defendant Burdette's medical records from the Veterans Administration. Patrick E. Knie, Esquire, W. Blake Cummings, Esquire and Alexander P. Lewis, Esquire appeared on behalf of the Plaintiffs. William T. Young, III, Esquire appeared on behalf of Defendants Cranston Print Works Company d/b/a Cranston Trucking Company, Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions, and Jason E. Burdette. All of these matters were heard at a hearing via WEBEX on July 27, 2020.

The Court has reviewed the submissions of the parties and the arguments of counsel, and for the reasons hereinafter set forth, makes the following rulings. As to the Plaintiff's Motion and the Defendant's Motion regarding the un-redacted mental health records of Defendant Jason E. Burdette from the Veterans Administration, the Court will hold the issue in abeyance until after it has time to review the records *in camera*, which shall be provided within ten (10) days. As to the Plaintiff's Motion to Compel the Depositions of Fact Witnesses the Motion is **GRANTED**. As to the Plaintiff's Motion to Deem Certain Matters Admitted it is **GRANTED IN PART**. As to the Defendants Motion to Compel the raw video footage of certain witnesses the motion is **DENIED**. Finally, the Court declines to address the various arguments that have been raised about sanctions under Rule 11 of the South Carolina Rules of Civil Procedure.

LEGAL STANDARDS

Rule 1 of the South Carolina Rules of Civil Procedure provides that the rules of civil procedure "govern the **procedure in all South Carolina courts in all suits of a civil nature. They shall be construed to secure the just, speedy, and inexpensive determination of every action.**" Rule 1, SCRCP (emphasis added). Further, the entire thrust of all discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. *See Samples v. Mitchell*, 329 S.C. 105, 113-4, 495 S.E.2d 213, 217 (Ct. App. 1997).

The Court of Appeals further stated that essentially the rights of discovery provided by the rules provide the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *See id.*

The South Carolina Rules of Civil Procedure provide that:

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence."

Rule 26(b)(1), SCRCF. Further, when discovery is expounded or answered, the Rules provide that:

"Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . The signature of the attorney or party constitutes a certification in accordance with Rule 11."

Rule 26(g), SCRCF.

A. The taking of Depositions

The South Carolina Rules of Civil Procedure provide that "After commencement of an action any party **may take the testimony of any person**, including a party, by deposition upon oral examination." *See* Rule 30(a)(1), SCRCF (emphasis added). Further, a party "**may** in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association . . . and describe with reasonable particularity the matters on which examination is requested." *See* Rule 30(b)(6), SCRCF (emphasis added).

B. Requests to Admit

Under Rule 36 of the South Carolina Rules of Civil Procedure, a party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relates to statements or opinions of fact or of the application of

law to fact. *See* Rule 36(a), SCRCRP. Additionally, the party who has requested the admissions may move to determine the sufficiency of the answers or objections. *Id.* Where a party provides an evasive or incomplete answer it is to be treated as a failure to answer. *See* Rule 37(a)(3), SCRCRP. Further, where a party fails to admit the genuineness of the truth of any matter under Rule 36, and if the party requesting admissions thereafter proves the genuineness of the truth, he may apply to the Court for an Order seeking sanctions. *See* Rule 37(c), SCRCRP.

C. **Protection of Materials Created Solely for the Purpose of Mediation**

Courts in South Carolina have adopted Court-Annexed Rules of Alternative Dispute Resolution. Under this set of rules, strict confidentiality guidelines are imposed on communications disclosed during a mediation “including, but not limited to oral, documentary, or electronic information. . . .” *See* Rule 8(a), SCADR. The Rule expressly notes that the parties and any other person present or participating shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any mediation communication disclosed in the course of a mediation. *See id.* Included in the items that were to be expressly held as confidential are “[A]ll records, reports, or other documents **created solely for use in the mediation** or received by a mediator while serving as a mediator.” *See* Rule 8(a)(5), SCADR (emphasis added).

CONCLUSIONS OF LAW

Turning to the merits of each Motion before the Court, Plaintiff seeks the disclosure of the mental health portions of Defendant Burdette’s medical records from the Veterans Administration. The Court will hold the matter in abeyance until such time as the un-redacted medical records from the Veterans Administration are provided to the Court. The Court hereby Orders Defense Counsel

to provide the un-redacted records from the Veterans Administration for *in camera* review within ten (10) days. Following said review, the Court will issue a ruling regarding the Motion.

As to the Defendants' Motion to Compel the production of certain raw footage of witnesses which were interviewed in connection with a video produced to the Defense by Plaintiffs' counsel in connection with the mediation of the instant litigation, the Court **DENIES** the Defendants' Motion. Based upon the arguments of Counsel, it is clear that the video was made solely for the purpose of use at the mediation of this matter between the parties. As noted above, Rule 8(a)(5) provides for the explicit protection of the disclosure of any materials that are created "solely for the use in mediation." *See* Rule 8(a)(5), SCARD. Plaintiffs' Counsel has certified that the only reason the video was produced was to aide in their presentation of damages at mediation, and that but for the mediation, the video would never have been created. As such, the materials clearly fall within the parameters of those items contemplated in Rule 8(a)(5) and as such the Defendants Motion to Compel the production of the raw footage is **DENIED**.

As to the Plaintiff's Motion to Deem Certain Matters Admitted, the Court **GRANTS** the Motion in part. Defendant Burdette was deposed on March 20, 2020, and the Court was provided with many pages of the transcript as Exhibits to the Motion. In reviewing the sworn deposition testimony of Defendant Burdette and comparing it to Answers that were provided on Defendant Burdette's behalf to the Plaintiffs' First Set of Requests for Admission the Court notes significant discrepancies between the sworn testimony and the Answers to the Requests for Admission. The fact that the testimony under oath was directly contradicted by the unqualified denials of Defendant Burdette requires that this Court consider such Answers as a failure to Answer under Rules 36 and 37 of the South Carolina Rules of Civil Procedure.

Specifically, the Court notes that in light of Defendant Burdette's deposition testimony at page 119 his Answer to Request to Admit Number 3 requires that he re-answer the question. Further, the discrepancies between his sworn testimony at pages 96 and 97 necessitate that he re-answer Requests to Admit Numbers 4 and 5. Burdette's deposition testimony at pages 77 and 78 necessitate that he re-answer Requests to Admit Numbers 7 and 10. With respect to Request to Admit Number 8, Burdette's testimony at page 71 of his deposition necessitate that it be re-answered. Finally, as to Request to Admit Number 11, Defendant Burdette will refer to his testimony at pages 119 and 120 of his deposition and re-answer the request. The Court hereby Orders that each of the aforementioned Requests for Admission be re-answered in light of the sworn deposition testimony of Defendant Burdette, and that Defendant Burdette sign and attach a verification pursuant to Rule 11(c) of the South Carolina Rules of Civil Procedure when providing the new answers within ten (10) days. Further, the Plaintiffs are instructed to rephrase and re-ask Request for Admission Number 9.

Finally, turning to the Plaintiffs' Motion to Compel the Depositions of Certain Fact Witnesses, the Court **GRANTS** the Motion. Specifically, the Plaintiffs sought a Motion allowing them to undertake the depositions of Joe Hemphill and Brian Conner, both employees of Defendant Optimum, under Rule 30(a). The Defendants asserted that Rule 30(b)(6) was the only vehicle for undertaking the deposition of these employees. Rule 30(a)(1) provides that "[A]fter commencement of an action any party **may take the testimony of any person**, including a party, by deposition upon oral examination." *See* Rule 30(a)(1), SCRCF (emphasis added). It makes no difference whether these individuals are employed by Defendant Optimum, where the evidence produced by Defendant Optimum indicates that these individuals are witnesses to the underlying facts surrounding the collision at issue. Therefore, the Court hereby Orders that the depositions of

these individuals and any other fact witness proceed as outlined by Rule 30(a)(1) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED THAT: Defendants' Motion to Compel the raw video footage of witnesses is **DENIED**.

IT IS FURTHER ORDERED THAT Plaintiffs' Motion to Compel the depositions of Joe Hemphill and Brian Conner pursuant to Rule 30(a)(1) of the South Carolina Rules of Civil Procedure is **GRANTED**.

IT IS FURTHER ORDERED THAT Plaintiffs' Motion to Deem Certain Matters Admitted is **GRANTED IN PART** as described more fully above.

IT IS FURTHER ORDERED THAT the Plaintiffs' Motion to Compel the full un-redacted medical records of Defendant Burdette and the Defendants' Motion for a Protective Order for the same is **HELD IN ABEYANCE** until the Court is able to review the records *in camera*. Defense counsel is directed to provide the records for review within ten (10) days of this Order.

AND IT IS SO ORDERED.

GIVEN under my hand and the Seal of this Court this 8th day of October 2020 at Gaffney, South Carolina.

The Honorable R. Keith Kelly
Circuit Judge, Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Gregory Jones, Sr., As Father & Pr Of Est. Jessica Dawn Jones, Dec'D
VS Cranston Print Works Company DbA Cranston Trucking Co., Etal
, defendant, et al
Case Number: 2019CP4202215
Type: Order/Discovery and Disclosure of Evidence

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2020-10-08 13:38:53 page 8 of 8

EXHIBIT 4

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill,)

Plaintiff,)

vs.)

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc. D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette,)

Defendants.)

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased,)

Plaintiff,)

vs.)

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc. D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette,)

Defendants.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. Number: 2019-CP-42-02212

ORDER

C.A. Number: 2019-CP-42-02215

The instant matter came before the Court on the Defendants' Motion to Alter or Amend this Court's Order of October 8, 2020. The Court has reviewed the instant Motion as well as considered the Memoranda of Counsel that was submitted and has determined that no additional hearing is necessary for adjudication of the instant Motion. After much contemplation and reflection with special attention paid to the Memoranda of both parties, the Court determines that

the Defendants' instant Motion to Alter or Amend is hereby DENIED, and the Court's earlier Order of October 8, 2020 remains in full effect.

LEGAL STANDARDS

It is clear that the proper procedure for correcting factual errors in an Order is to file a motion to alter or amend pursuant to the Rules of Civil Procedure. *See Doe v. Doe*, 324 S.C. 48, 552 S.E.2d 329 (Ct. App. 1996). The South Carolina Court of Appeals has made clear that a party cannot use a motion to alter or amend a judgment to present an issue that the party could have raised prior to the judgment but did not. *See Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009); *See also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009). Further, as it pertains to discovery disputes in general, a trial court's rulings on discovery matters will not be disturbed absent a clear abuse of discretion. *See Arthur v. Sexton Dental Clinic*, 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006). Abuse of discretion occurs when there is no evidence to support trial judge's factual conclusion or when the ruling is based upon error of law. *See Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).

CONCLUSIONS OF LAW

With respect to the instant Motion, the Court first takes note that the Defendants did not contend any error with several portions of the Court's Order of October 8, 2020. Specifically, the Defendants took no issue with respect to the Court's determination that Defendant Burdette's VA records were to be submitted to the Court for *en camera* review within ten (10) days of the Order of October 8, 2020. Additionally, the Defendants did not challenge the Order as it pertained to the taking of depositions of fact witnesses under Rule 30(a). The Defendants however did assert that

the Court's ruling as to the "raw video footage" of interviews for the purpose of a mediation video was improper, and that the Court erred in determining that Defendant Burdette should be required to correct his answers to Requests for Admission. The Court will address each of these contentions of error separately.

Production of "Raw Video Footage"

Turning to the Defendants' first contention of error, the Court notes that the Defendant has asserted that the Court should have allowed the discovery of the "raw video footage" of interviews conducted for the sole purpose of the Plaintiff's mediation video. For the foregoing reasons, the Court declines to adopt the Defendants' position. While the Defendants first contend that all recorded statements are discoverable under Rule 26 of the South Carolina Rules of Civil Procedure, they fail to appreciate that the purpose for which these particular interviews were taken is the very reason why they fall outside of the purview of Rule 26. Rule 8(a)(5) of the South Carolina Rules of Alternative Dispute Resolution is clear and unambiguous when it states that "[A]ll records, reports, or other documents **created solely for use in the mediation** or received by a mediator while serving as a mediator" are to be deemed as confidential. *See* Rule 8(a)(5), SCADR (emphasis added). Here there is no dispute by any party that these interviews were conducted solely for the purpose of creating a video for the use at mediation.

Additionally, Defendants, by and through their Motion and Supporting Memoranda of Counsel, seek to gut the express language of Rule 8(a)(5) in favor of the later added Rule 8(h). Such a position is unfounded and unsupported. Rule 8(h) which is entitled "Admissible Information" states that "[I]nformation that would be admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in a mediation." *See* Rule 8(h), SCADR. Defendants have argued that because Rule 8(h) was adopted after Rule

8(a)(5) that this somehow operates to preclude the express language of Rule 8(a)(5). However, nowhere in Rule 8(h) does it expressly state that it invalidates the protections afforded under Rule 8(a)(5). If the Court were to accept the position that Defendants are advancing, then it would render the clause or provision totally meaningless and violate the rules of statutory construction. *See Lightener v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Rule 8(h) prevents parties from simply using documents that have been produced in discovery at a mediation to shield them from admission at a trial. However, such a scenario is very different when the materials were created by a party solely for the purpose of mediation and otherwise would have never been created and thus subject to discovery.

Finally, the Defendants have argued that under Rule 26(b)(3), the footage should be discoverable. Again, such a position is unavailing. It is undisputed that Rule 26(b)(3) authorizes the production of protected information upon a showing of “substantial need of the material in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” *See* Rule 26(b)(3), SCRC. Here, the Defendants have made no showing that in any way comes close to satisfying the Rule. In fact, the Defendants possess the ability to depose each witness that was interviewed for the purpose of the mediation video; and, as such, no undue hardship exists. For each of the aforementioned reasons the Defendants’ Motion to Alter or Amend the Court’s Order of October 8, 2020, as it pertains to the “raw video footage” of the witness interviews in the Plaintiffs’ mediation video is **DENIED**.

Burdette’s Answers to Requests to Admit

Next, the Court addresses the Defendants’ Motion to Alter and/or Amend the Court’s Order regarding the required amendments of Defendant Burdette’s Answers to Requests to Admit. As

was previously noted, Rule 26(b)(1) of the South Carolina Rules of Civil Procedure makes clear that:

[P]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence.”

See Rule 26(b)(1), SCRCPP. Further, when discovery is expounded or answered, the Rules provide that:

“[E]very request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . The signature of the attorney or party constitutes *a certification in accordance with Rule 11.*”

Rule 26(g), SCRCPP (emphasis added). Rule 11(a) of the South Carolina Rules of Civil Procedure is clear that “[T]he 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. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction. . . .” See Rule 11(a), SCRCPP. Finally, the imposition of discovery sanctions is generally entrusted to the sound discretion of the trial judge. See *Halverson v. Yawn*, 328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1995). In determining the appropriateness of a discovery sanction, a court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. See *McNair v. Fairfield County*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008).

Under Rule 36 of the South Carolina Rules of Civil Procedure, a party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relates to statements or opinions of fact or of the application of law to fact. *See* Rule 36(a), SCRPC. Additionally, the party who has requested the admissions may move to determine the sufficiency of the answers or objections. *Id.* A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. *Id.* Where a party provides an evasive or incomplete answer it is to be treated as a failure to answer. *See* Rule 37(a)(3), SCRPC. Further, where a party fails to admit the genuineness of the truth of any matter under Rule 36, and if the party requesting admissions thereafter proves the genuineness of the truth, he may apply to the Court for an Order seeking sanctions. *See* Rule 37(c), SCRPC.

As noted above, this Court has the power to impose any sanction that it determines to be fair and equitable under the Rules. Here, the Court has determined that Burdette's Answers to Requests for Admission that were expounded upon him were directly in opposite to his earlier sworn deposition testimony. The Court thus takes the position that Defendant Burdette should not be allowed to use his Answers to Requests for Admission to materially alter his deposition testimony. As such, the Court has determined that Defendant Burdette's Answers to Request for Admission should be amended to conform to his prior deposition testimony. Such a sanction is appropriate under the law as outlined above; and, as such, the Defendants' Motion to Alter and/or Amend on this point is hereby **DENIED**.

IT IS THEREFORE ORDERED THAT: Defendants' Motion to Alter and/or Amend under Rule 59(e) is **DENIED**.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE TO FOLLOW



Spartanburg Common Pleas

Case Caption: Helen Kaci Hill, As Gal For Mark Douglas Hill Iii VS Cranston Print Works Company Dba Cranston Trucking Co., Etal , defendant, et al
Case Number: 2019CP4202212
Type: Master/Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2020-12-18 16:10:09 page 8 of 8



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 31, 2020

Ms. Helen F Hiser, Esquire
PO Box 650007
Mount Pleasant SC 29465

Re: Mark Douglas v. Jason E. Burdette
Appellate Case No. 2020-001695

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Mark Douglas Hill, III by and through his Duly appointed Guardian ad Litem,
Helen Kaci Hill, Plaintiff, Respondent,

v.

Cranston Print Works Company d/b/a Cranston Trucking Company, Ryder Tuck
Rental, Inc., Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions, and Jason
E. Burdette, Defendants,

and

Gregory Jones, Sr., as the Father and Duly Appointed Personal Representative of
the Estate of Jessica Dawn Jones, Deceased, Plaintiff, Respondent,

v.

Cranston Print Works Company d/b/a Cranston Trucking Company, Ryder Tuck
Rental, Inc., Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions, and
Jason E. Burdette, Defendants,

of whom Jason E. Burdette is the Appellant.

All future records in this matter should be changed to reflect this title. If you have
any questions, please do not hesitate to contact this office.

Very truly yours,


CLERK

cc: Geoffrey William Gibbon, Esquire
Alexander Page Lewis, Esquire
William Blake Cummings, Esquire
Patrick E. Knie, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Case Nos. 2019-CP-42-02212 & 2019-CP-42-02215

RECEIVED

Dec 29 2020

SC Court of Appeals

Mark Douglas Hill, III, by and through his
Duly Appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff Respondent,

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ... Respondent,

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

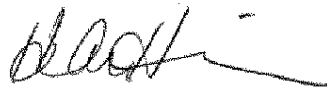
Of Whom Jason E. Burdette is the Appellant.

NOTICE OF APPEAL

Jason E. Burdette hereby appeals the Order of the Honorable R. Keith Kelly, filed October 8, 2020, and the Order of the Honorable R. Keith Kelly denying Defendants' Motion to Alter or Amend, filed December 18, 2020. Appellant received written notice of entry of the Order denying Defendants' Motion to Alter or Amend on December 18, 2020.

McANGUS GOUDELOCK & COURIE, LLC

December 28, 2020

By: 

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S.C. Bar No.: 76124
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Geoffrey W. Gibbon
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Attorneys for Appellant Jason E. Burdette

Other Counsel of Record:

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drheney@gwblawfirm.com
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*Counsel for Defendants Cranston Print Works Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc.*

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Counsel for Defendant Ryder Truck Rental, Inc.

**Reply To**

GEOFFREY W. GIBBON
Direct Dial: (864) 239-2088
ggibbon@mgclaw.com

December 28, 2020

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, SC 29302

RECEIVED

Dec 29 2020

SC Court of Appeals

RE: Mark Douglas Hill, III by and through his duly appointed Guardian ad Litem, Helen Kaci Hill v. Cranston Print Works Company d/b/a Cranston Trucking Company, Ryder Truck Rental, Inc., Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, and Jason E. Burdette / 2019-CP-42-02212

Gregory Jones, Sr., as the father and duly appointed Personal Representative of the Estate of Jessica Dawn Jones v. Cranston Print Works Company d/b/a Cranston Trucking Company, Ryder Truck Rental, Inc., Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, and Jason E. Burdette / 2019-CP-42-02215

Date of Incident: February 1, 2019

Carrier Claim No.: 501-831720

MGC File No.: 2094.20153

Dear Ms. Cox:

Please find enclosed for filing the original and one (1) copy of Notice of Appeal in the above-captioned case.

By copy of this letter, I am serving counsel of record with the above-referenced Notice of Appeal.

McANGUS GOUDELOCK & COURIE LLC

55 EAST CAMPERDOWN WAY
SUITE 300 (29601)
POST OFFICE BOX 2980
GREENVILLE, SC 29602

864.239.4000 PHONE
864.242.3199 FAX
WWW.MGCLAW.COM

The Honorable Dorothy Earle
December 28, 2020
Page 2

Thanking you in advance for your assistance, I am

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Gibbon', with a stylized flourish at the end.

Geoffrey W. Gibbon

Enclosures

cc: The Honorable Jenny Abbott Kitchings, S.C. Court of Appeals
Alexander P. Lewis, Esq.
W. Blake Cummings, Esq.
Patrick E. Knie, Esq.
Brandt Horton, Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Case Nos. 2019-CP-42-02212 & 2019-CP-42-02215

RECEIVED

Dec 29 2020

SC Court of Appeals

Mark Douglas Hill, III, by and through his
Duly Appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff Respondent,

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ... Respondent,

v.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

Of Whom Jason E. Burdette is the Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Mark Douglas Hill, III, by and through his Duly Appointed Guardian ad Litem, Helen Kaci Hill, and Gregory Jones, Sr., as the Father and Duly Appointed Personal Representative of the Estate of Jessica Dawn Jones, and other counsel of record by emailing and depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

Alexander P. Lewis, Esq.
W. Blake Cummings, Esq.
CUMMINGS & LEWIS, LLC
P.O. Box 5766
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(864) 573-9688
Alex.lewis@cummingslewis.com
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pknie@knielaw.com

Counsel for Plaintiffs

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William T. Young, III, Esq.
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drheney@gwblawfirm.com
byoung@gwblawfirm.com

*Counsel for Defendants Cranston Print Works Company d/b/a Cranston Trucking Company, and
Optimum Staffing, Inc.*

Brandt Horton, Esq.
YOUNG CLEMENT RIVERS
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P.O. Box 993
Charleston, South Carolina 29402
(843) 577-4000
bhorton@ycrlaw.com

Counsel for Defendant Ryder Truck Rental

December 28, 2020

s/Lisa Carducci
Lisa Carducci
Legal Assistant to Helen F. Hiser
McANGUS GOUDELOCK & COURIE LLC
735 Johnnie Dodds Blvd., Suite 200
PO Box 650007

Mount Pleasant, South Carolina 29465
(843) 576-2900

Attorneys for Appellant Jason E. Burdette

**Reply To**

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

December 28, 2020

RECEIVED**Dec 29 2020****SC Court of Appeals****VIA FACSIMILE AND U.S. MAIL**

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Gregory Jones, Sr., as the father and duly appointed Personal Representative of the Estate of Jessica Dawn Jones v. Cranston Print Works Company d/b/a Cranston Trucking Company, Ryder Truck Rental, Inc., Optimum Staffing, Inc. d/b/a Optimum Logistic Solutions, and Jason E. Burdette
Civil Action No.: 2019-CP-42-02215 (Spartanburg)
Date of Incident: February 1, 2019
Carrier Claim No.: 501-831720
MGC File No.: 2094.20153
Appeal No.: 2020-

Dear Ms. Kitchings:

Enclosed for filing are the original and one copy of the Notice of Appeal in the above-referenced matter. Also, enclosed are the following:

1. an original and one copy of Proof of Service of the Notice of Appeal on Respondent;
2. one copy of the Orders being appealed;
3. two copies of our correspondence to the Spartanburg County Clerk of Court notifying of the appeal; and
4. a Check in the amount of \$250.00.

Please file the original documents and return the clocked-in copies in the enclosed, self-addressed stamped envelope. Thanking you in advance for your assistance, I am

Yours truly,

cc: The Honorable Amy W. Cox, Spartanburg County Clerk of Court

McANGUS GOUDELOCK & COURIE LLC

735 JOHNNIE DODDS BLVD, STE 200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

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STATE OF SOUTH CAROLINA**COUNTY OF SPARTANBURG**Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill,

Plaintiff,

vs.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc. D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette,Defendants.Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased,

Plaintiff,

vs.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc. D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette,Defendants.**IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT**

C.A. Number: 2019-CP-42-02212

ORDER**RECEIVED****Dec 29 2020****SC Court of Appeals**

C.A. Number: 2019-CP-42-02215

These actions came before the Court on multiple motions for both the Plaintiffs and the Defendants. Specifically, the Plaintiffs filed Motions to: Compel the full and un-redacted medical records of Defendant Jason E. Burdette from the Veterans Administration; Deem Certain Matters Admitted; and Compel the Deposition of Certain Fact Witnesses. The Defendants filed a Motion to Compel raw video footage of certain individuals, and a Motion for a Protective Order of the

mental health portions of Defendant Burdette's medical records from the Veterans Administration. Patrick E. Knie, Esquire, W. Blake Cummings, Esquire and Alexander P. Lewis, Esquire appeared on behalf of the Plaintiffs. William T. Young, III, Esquire appeared on behalf of Defendants Cranston Print Works Company d/b/a Cranston Trucking Company, Optimum Staffing, Inc., d/b/a Optimum Logistic Solutions, and Jason E. Burdette. All of these matters were heard at a hearing via WEBEX on July 27, 2020.

The Court has reviewed the submissions of the parties and the arguments of counsel, and for the reasons hereinafter set forth, makes the following rulings. As to the Plaintiff's Motion and the Defendant's Motion regarding the un-redacted mental health records of Defendant Jason E. Burdette from the Veterans Administration, the Court will hold the issue in abeyance until after it has time to review the records *in camera*, which shall be provided within ten (10) days. As to the Plaintiff's Motion to Compel the Depositions of Fact Witnesses the Motion is **GRANTED**. As to the Plaintiff's Motion to Deem Certain Matters Admitted it is **GRANTED IN PART**. As to the Defendants Motion to Compel the raw video footage of certain witnesses the motion is **DENIED**. Finally, the Court declines to address the various arguments that have been raised about sanctions under Rule 11 of the South Carolina Rules of Civil Procedure.

LEGAL STANDARDS

Rule 1 of the South Carolina Rules of Civil Procedure provides that the rules of civil procedure "govern the **procedure in all South Carolina courts in all suits of a civil nature. They shall be construed to secure the just, speedy, and inexpensive determination of every action.**" Rule 1, SCRCP (emphasis added). Further, the entire thrust of all discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. *See Samples v. Mitchell*, 329 S.C. 105, 113-4, 495 S.E.2d 213, 217 (Ct. App. 1997).

The Court of Appeals further stated that essentially the rights of discovery provided by the rules provide the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *See id.*

The South Carolina Rules of Civil Procedure provide that:

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence."

Rule 26(b)(1), SCRPC. Further, when discovery is expounded or answered, the Rules provide that:

"Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . The signature of the attorney or party constitutes a certification in accordance with Rule 11."

Rule 26(g), SCRPC.

A. The taking of Depositions

The South Carolina Rules of Civil Procedure provide that "After commencement of an action any party **may take the testimony of any person**, including a party, by deposition upon oral examination." *See* Rule 30(a)(1), SCRPC (emphasis added). Further, a party "**may** in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association . . . and describe with reasonable particularity the matters on which examination is requested." *See* Rule 30(b)(6), SCRPC (emphasis added).

B. Requests to Admit

Under Rule 36 of the South Carolina Rules of Civil Procedure, a party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relates to statements or opinions of fact or of the application of

law to fact. *See* Rule 36(a), SCRCF. Additionally, the party who has requested the admissions may move to determine the sufficiency of the answers or objections. *Id.* Where a party provides an evasive or incomplete answer it is to be treated as a failure to answer. *See* Rule 37(a)(3), SCRCF. Further, where a party fails to admit the genuineness of the truth of any matter under Rule 36, and if the party requesting admissions thereafter proves the genuineness of the truth, he may apply to the Court for an Order seeking sanctions. *See* Rule 37(c), SCRCF.

C. Protection of Materials Created Solely for the Purpose of Mediation

Courts in South Carolina have adopted Court-Annexed Rules of Alternative Dispute Resolution. Under this set of rules, strict confidentiality guidelines are imposed on communications disclosed during a mediation “including, but not limited to oral, documentary, or electronic information. . . .” *See* Rule 8(a), SCADR. The Rule expressly notes that the parties and any other person present or participating shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any mediation communication disclosed in the course of a mediation. *See id.* Included in the items that were to be expressly held as confidential are “[A]ll records, reports, or other documents **created solely for use in the mediation** or received by a mediator while serving as a mediator.” *See* Rule 8(a)(5), SCADR (emphasis added).

CONCLUSIONS OF LAW

Turning to the merits of each Motion before the Court, Plaintiff seeks the disclosure of the mental health portions of Defendant Burdette’s medical records from the Veterans Administration. The Court will hold the matter in abeyance until such time as the un-redacted medical records from the Veterans Administration are provided to the Court. The Court hereby Orders Defense Counsel

to provide the un-redacted records from the Veterans Administration for *in camera* review within ten (10) days. Following said review, the Court will issue a ruling regarding the Motion.

As to the Defendants' Motion to Compel the production of certain raw footage of witnesses which were interviewed in connection with a video produced to the Defense by Plaintiffs' counsel in connection with the mediation of the instant litigation, the Court **DENIES** the Defendants' Motion. Based upon the arguments of Counsel, it is clear that the video was made solely for the purpose of use at the mediation of this matter between the parties. As noted above, Rule 8(a)(5) provides for the explicit protection of the disclosure of any materials that are created "solely for the use in mediation." *See* Rule 8(a)(5), SCARD. Plaintiffs' Counsel has certified that the only reason the video was produced was to aide in their presentation of damages at mediation, and that but for the mediation, the video would never have been created. As such, the materials clearly fall within the parameters of those items contemplated in Rule 8(a)(5) and as such the Defendants Motion to Compel the production of the raw footage is **DENIED**.

As to the Plaintiff's Motion to Deem Certain Matters Admitted, the Court **GRANTS** the Motion in part. Defendant Burdette was deposed on March 20, 2020, and the Court was provided with many pages of the transcript as Exhibits to the Motion. In reviewing the sworn deposition testimony of Defendant Burdette and comparing it to Answers that were provided on Defendant Burdette's behalf to the Plaintiffs' First Set of Requests for Admission the Court notes significant discrepancies between the sworn testimony and the Answers to the Requests for Admission. The fact that the testimony under oath was directly contradicted by the unqualified denials of Defendant Burdette requires that this Court consider such Answers as a failure to Answer under Rules 36 and 37 of the South Carolina Rules of Civil Procedure.

Specifically, the Court notes that in light of Defendant Burdette's deposition testimony at page 119 his Answer to Request to Admit Number 3 requires that he re-answer the question. Further, the discrepancies between his sworn testimony at pages 96 and 97 necessitate that he re-answer Requests to Admit Numbers 4 and 5. Burdette's deposition testimony at pages 77 and 78 necessitate that he re-answer Requests to Admit Numbers 7 and 10. With respect to Request to Admit Number 8, Burdette's testimony at page 71 of his deposition necessitate that it be re-answered. Finally, as to Request to Admit Number 11, Defendant Burdette will refer to his testimony at pages 119 and 120 of his deposition and re-answer the request. The Court hereby Orders that each of the aforementioned Requests for Admission be re-answered in light of the sworn deposition testimony of Defendant Burdette, and that Defendant Burdette sign and attach a verification pursuant to Rule 11(c) of the South Carolina Rules of Civil Procedure when providing the new answers within ten (10) days. Further, the Plaintiffs are instructed to rephrase and re-ask Request for Admission Number 9.

Finally, turning to the Plaintiffs' Motion to Compel the Depositions of Certain Fact Witnesses, the Court **GRANTS** the Motion. Specifically, the Plaintiffs sought a Motion allowing them to undertake the depositions of Joe Hemphill and Brian Conner, both employees of Defendant Optimum, under Rule 30(a). The Defendants asserted that Rule 30(b)(6) was the only vehicle for undertaking the deposition of these employees. Rule 30(a)(1) provides that "[A]fter commencement of an action any party **may take the testimony of any person**, including a party, by deposition upon oral examination." *See* Rule 30(a)(1), SCRCPP (emphasis added). It makes no difference whether these individuals are employed by Defendant Optimum, where the evidence produced by Defendant Optimum indicates that these individuals are witnesses to the underlying facts surrounding the collision at issue. Therefore, the Court hereby Orders that the depositions of

these individuals and any other fact witness proceed as outlined by Rule 30(a)(1) of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED THAT: Defendants' Motion to Compel the raw video footage of witnesses is **DENIED**.

IT IS FURTHER ORDERED THAT Plaintiffs' Motion to Compel the depositions of Joe Hemphill and Brian Conner pursuant to Rule 30(a)(1) of the South Carolina Rules of Civil Procedure is **GRANTED**.

IT IS FURTHER ORDERED THAT Plaintiffs' Motion to Deem Certain Matters Admitted is **GRANTED IN PART** as described more fully above.

IT IS FURTHER ORDERED THAT the Plaintiffs' Motion to Compel the full un-redacted medical records of Defendant Burdette and the Defendants' Motion for a Protective Order for the same is **HELD IN ABEYANCE** until the Court is able to review the records *in camera*. Defense counsel is directed to provide the records for review within ten (10) days of this Order.

AND IT IS SO ORDERED.

GIVEN under my hand and the Seal of this Court this 8th day of October 2020 at Gaffney, South Carolina.

The Honorable R. Keith Kelly
Circuit Judge, Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Gregory Jones, Sr., As Father & Pr Of Est. Jessica Dawn Jones, Dec'D
VS Cranston Print Works Company DbA Cranston Trucking Co., Etal
, defendant, et al
Case Number: 2019CP4202215
Type: Order/Discovery and Disclosure of Evidence

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2020-10-08 13:38:53 page 8 of 8

STATE OF SOUTH CAROLINA**COUNTY OF SPARTANBURG**Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill,

Plaintiff,

vs.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc. D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette,

Defendants.

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased,

Plaintiff,

vs.

Cranston Print Works Company D/B/A
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc. D/B/A
Optimum Logistic Solutions, and Jason E.
Burdette,

Defendants.

**IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT**

C.A. Number: 2019-CP-42-02212

ORDER**RECEIVED****Dec 29 2020****SC Court of Appeals**

C.A. Number: 2019-CP-42-02215

The instant matter came before the Court on the Defendants' Motion to Alter or Amend this Court's Order of October 8, 2020. The Court has reviewed the instant Motion as well as considered the Memoranda of Counsel that was submitted and has determined that no additional hearing is necessary for adjudication of the instant Motion. After much contemplation and reflection with special attention paid to the Memoranda of both parties, the Court determines that

the Defendants' instant Motion to Alter or Amend is hereby DENIED, and the Court's earlier Order of October 8, 2020 remains in full effect.

LEGAL STANDARDS

It is clear that the proper procedure for correcting factual errors in an Order is to file a motion to alter or amend pursuant to the Rules of Civil Procedure. *See Doe v. Doe*, 324 S.C. 48, 552 S.E.2d 329 (Ct. App. 1996). The South Carolina Court of Appeals has made clear that a party cannot use a motion to alter or amend a judgment to present an issue that the party could have raised prior to the judgment but did not. *See Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009); *See also Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009). Further, as it pertains to discovery disputes in general, a trial court's rulings on discovery matters will not be disturbed absent a clear abuse of discretion. *See Arthur v. Sexton Dental Clinic*, 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006). Abuse of discretion occurs when there is no evidence to support trial judge's factual conclusion or when the ruling is based upon error of law. *See Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).

CONCLUSIONS OF LAW

With respect to the instant Motion, the Court first takes note that the Defendants did not contend any error with several portions of the Court's Order of October 8, 2020. Specifically, the Defendants took no issue with respect to the Court's determination that Defendant Burdette's VA records were to be submitted to the Court for *en camera* review within ten (10) days of the Order of October 8, 2020. Additionally, the Defendants did not challenge the Order as it pertained to the taking of depositions of fact witnesses under Rule 30(a). The Defendants however did assert that

the Court's ruling as to the "raw video footage" of interviews for the purpose of a mediation video was improper, and that the Court erred in determining that Defendant Burdette should be required to correct his answers to Requests for Admission. The Court will address each of these contentions of error separately.

Production of "Raw Video Footage"

Turning to the Defendants' first contention of error, the Court notes that the Defendant has asserted that the Court should have allowed the discovery of the "raw video footage" of interviews conducted for the sole purpose of the Plaintiff's mediation video. For the foregoing reasons, the Court declines to adopt the Defendants' position. While the Defendants first contend that all recorded statements are discoverable under Rule 26 of the South Carolina Rules of Civil Procedure, they fail to appreciate that the purpose for which these particular interviews were taken is the very reason why they fall outside of the purview of Rule 26. Rule 8(a)(5) of the South Carolina Rules of Alternative Dispute Resolution is clear and unambiguous when it states that "[A]ll records, reports, or other documents **created solely for use in the mediation** or received by a mediator while serving as a mediator" are to be deemed as confidential. *See* Rule 8(a)(5), SCADR (emphasis added). Here there is no dispute by any party that these interviews were conducted solely for the purpose of creating a video for the use at mediation.

Additionally, Defendants, by and through their Motion and Supporting Memoranda of Counsel, seek to gut the express language of Rule 8(a)(5) in favor of the later added Rule 8(h). Such a position is unfounded and unsupported. Rule 8(h) which is entitled "Admissible Information" states that "[I]nformation that would be admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in a mediation." *See* Rule 8(h), SCADR. Defendants have argued that because Rule 8(h) was adopted after Rule

8(a)(5) that this somehow operates to preclude the express language of Rule 8(a)(5). However, nowhere in Rule 8(h) does it expressly state that it invalidates the protections afforded under Rule 8(a)(5). If the Court were to accept the position that Defendants are advancing, then it would render the clause or provision totally meaningless and violate the rules of statutory construction. *See Lightener v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017). Rule 8(h) prevents parties from simply using documents that have been produced in discovery at a mediation to shield them from admission at a trial. However, such a scenario is very different when the materials were created by a party solely for the purpose of mediation and otherwise would have never been created and thus subject to discovery.

Finally, the Defendants have argued that under Rule 26(b)(3), the footage should be discoverable. Again, such a position is unavailing. It is undisputed that Rule 26(b)(3) authorizes the production of protected information upon a showing of “substantial need of the material in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” *See* Rule 26(b)(3), SCRPC. Here, the Defendants have made no showing that in any way comes close to satisfying the Rule. In fact, the Defendants possess the ability to depose each witness that was interviewed for the purpose of the mediation video; and, as such, no undue hardship exists. For each of the aforementioned reasons the Defendants’ Motion to Alter or Amend the Court’s Order of October 8, 2020, as it pertains to the “raw video footage” of the witness interviews in the Plaintiffs’ mediation video is **DENIED**.

Burdette’s Answers to Requests to Admit

Next, the Court addresses the Defendants’ Motion to Alter and/or Amend the Court’s Order regarding the required amendments of Defendant Burdette’s Answers to Requests to Admit. As

was previously noted, Rule 26(b)(1) of the South Carolina Rules of Civil Procedure makes clear that:

[P]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence.”

See Rule 26(b)(1), SCRCPP. Further, when discovery is expounded or answered, the Rules provide that:

“[E]very request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . The signature of the attorney or party constitutes *a certification in accordance with Rule 11.*”

Rule 26(g), SCRCPP (emphasis added). Rule 11(a) of the South Carolina Rules of Civil Procedure is clear that “[T]he 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. . . . If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction. . . .” See Rule 11(a), SCRCPP. Finally, the imposition of discovery sanctions is generally entrusted to the sound discretion of the trial judge. See *Halverson v. Yawn*, 328 S.C. 618, 493 S.E.2d 883 (Ct. App. 1995). In determining the appropriateness of a discovery sanction, a court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. See *McNair v. Fairfield County*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008).

Under Rule 36 of the South Carolina Rules of Civil Procedure, a party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relates to statements or opinions of fact or of the application of law to fact. *See* Rule 36(a), SCRPC. Additionally, the party who has requested the admissions may move to determine the sufficiency of the answers or objections. *Id.* A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. *Id.* Where a party provides an evasive or incomplete answer it is to be treated as a failure to answer. *See* Rule 37(a)(3), SCRPC. Further, where a party fails to admit the genuineness of the truth of any matter under Rule 36, and if the party requesting admissions thereafter proves the genuineness of the truth, he may apply to the Court for an Order seeking sanctions. *See* Rule 37(c), SCRPC.

As noted above, this Court has the power to impose any sanction that it determines to be fair and equitable under the Rules. Here, the Court has determined that Burdette's Answers to Requests for Admission that were expounded upon him were directly in opposite to his earlier sworn deposition testimony. The Court thus takes the position that Defendant Burdette should not be allowed to use his Answers to Requests for Admission to materially alter his deposition testimony. As such, the Court has determined that Defendant Burdette's Answers to Request for Admission should be amended to conform to his prior deposition testimony. Such a sanction is appropriate under the law as outlined above; and, as such, the Defendants' Motion to Alter and/or Amend on this point is hereby **DENIED**.

IT IS THEREFORE ORDERED THAT: Defendants' Motion to Alter and/or Amend under Rule 59(c) is **DENIED**.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE TO FOLLOW



Spartanburg Common Pleas

Case Caption: Helen Kaci Hill, As Gal For Mark Douglas Hill Iii VS Cranston Print Works Company Dba Cranston Trucking Co., Etal , defendant, et al
Case Number: 2019CP4202212
Type: Master/Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2020-12-18 16:10:09 page 8 of 8

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Court of Appeals No. 2020-001695
(Filed February 11, 2021, Rehearing Denied May 12, 2021)

Mark Douglas Hill, III, by and through his
Duly appointed Guardian ad Litem, Helen
Kaci Hill, Plaintiff..... Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

And

Gregory Jones, Sr., as the Father and Duly
Appointed Personal Representative of the
Estate of Jessica Dawn Jones, Deceased, Plaintiff, ...Respondent,

v.

Cranston Print Works Company d/b/a
Cranston Trucking Company, Ryder Truck
Rental, Inc., Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E.
Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Petitioners.

CERTIFICATE OF COUNSEL

The undersigned certifies that this **Appendix** complies with Rule 242(e), SCACR.
The undersigned also certifies that this **Appendix** complies with the South Carolina
Supreme Court's April 16, 2014 Order re: Revised Order Concerning Personal Identifying
Information and Other Sensitive Information in Appellate Court Filings.

June 11, 2021

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Jun 11 2021

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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Burdette, Defendants,

of whom Cranston Print Works Company d/b/a
Cranston Trucking Company, Optimum Staffing, Inc., d/b/a
Optimum Logistic Solutions, and Jason E. Burdette are the Petitioners.

PROOF OF SERVICE

I certify that I have served Petitioner Jason E. Burdette's **Petition for Writ of Certiorari** and **Appendix** on counsel for Mark Douglas Hill, III, by and through his Duly Appointed Guardian ad Litem, Helen Kaci Hill, and Gregory Jones, Sr., as the Father and Duly Appointed Personal Representative of the Estate of Jessica Dawn Jones, and other counsel of record by emailing it as follows:

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June 11, 2021

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