

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Shirley M. B. Williams, individually, and as)
 Personal Representative of the Estate of)
 Jason Lynn Williams, deceased.)
)
 Plaintiff,)
)
 v.)
)
 Lyft, Inc., Lyft Drives South Carolina, Inc.,)
 Kaitlyn Meadows)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 C/A NO. 2019-CP-10-3739

**ORDER GRANTING DEFAULT
 JUDGMENT AGAINST LYFT, INC.**



This matter originally came before the Court on May 6, 2021 and then again on June 25, 2021, for a damages hearing. Shirley M. B. Williams, individually, and as Personal Representative of the Estate of Jason Lynn Williams, deceased (“Plaintiff”) was represented by Brooklyn O’Shea, Karlen Senn, and Ian O’Shea of O’Shea Law Firm. Lyft, Inc. and Lyft Drives South Carolina, Inc. (“Lyft Defendants”) were represented by Sarah Eibling, Matt Austin, and Matt Bogan of Nelson Mullins. Also present were Worth Liipfert of Griffith, Freeman & Liipfert (counsel for Defendant Kaitlyn Meadows) and Tori Anderson of Clement Rivers (counsel for Zurich).

PROCEDURAL HISTORY

After Defendant Lyft was held in default,¹ Plaintiff requested a damages hearing. The matter came before the Court along with several motions on May 6, 2021. All parties were given notice and were present, including appellate counsel for Lyft and counsel for Zurich. Just prior to the hearing, on May 4, 2021, Lyft also filed a Notice of Proffer of Evidence as to Meritorious Defenses and Damages. Plaintiff argued Lyft was limited to the parameters of *Limehouse* as a

¹ See Orders issued by The Honorable Perry M. Buckner dated March 26, 2020 and April 23, 2020.

defaulting party.² The Court agreed and excused Lyft's witnesses, further noting the appropriate time to raise meritorious defenses would have been at or before the hearing on default. Accordingly, the Court has given no weight to the Notice of Proffer filed by Lyft in advance of the damages hearing.

The Court addressed the motions first and how they may have affected the damages hearing and then allowed the parties to hold the damages hearing in abeyance in light of the Court's discussions with counsel regarding the motions. The Court retained jurisdiction over the motions, including the damages hearing, with the consent of all parties. This was done with the understanding it would be rescheduled and that the undersigned would be retiring soon and would continue to retain jurisdiction and dispose of the pending matters. Counsel for Lyft, including appellate counsel, agreed the retirement and retention of jurisdiction would not be disputed.

Lyft was given timely notice of the hearing on June 25, 2021 and all parties were present. The sole issue before the Court was a determination of damages pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure. After hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, judgment is entered for the Plaintiff against Defendant Lyft.

LEGAL STANDARD

In cases involving default and unliquidated damages, the Court shall hold a hearing to determine the appropriate amount and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRCF. Although the defendant is in default as to liability, "the award

² *Limehouse v. Hulsey*, 404 S.C. 93, 114, 744 S.E.2d 566, 577–78 (2013) (citing *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998); *Solley v. Navy Fed. Credit Union*, 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012); and *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 274 S.E.2d 287 (1981)).

of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted.” *Id.* A defaulting defendant does not concede the amount of liability and the plaintiff must prove the amount of her damages by a preponderance of the evidence. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241–42, 246 S.E.2d 880, 882 (1978). In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence that the defendant’s misconduct was willful, wanton, or with reckless disregard for the plaintiff’s rights. S.C. Code Ann. § 15-33-135; *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 621 S.E.2d 363 (Ct. App. 2005).

A trial judge has considerable discretion regarding the amount of actual and punitive damages, therefore review on appeal is limited to the correction of errors of law. *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004). Questions regarding credibility and weight of evidence are exclusively for the trial judge in cases tried without a jury. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Liability

Lyft is deemed to have admitted every allegation of the Complaint and liability has been established by Lyft’s default. *See Complaint; March 26, 2020 & April 23, 2020 Orders; see also Harbor Island Owners’ Ass’n v. Preferred Island Properties, Inc.*, 369 S.C. 540, 546, 633 S.E.2d 497, 500 (2006) (explaining when a party defaults the party admits all allegations in the complaint concerning liability). *See Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (“By defaulting, a defendant forfeits his ‘right to answer or otherwise plead to the complaint.’ In essence, the defaulting defendant has conceded liability.” (quoting *Howard*, 271 S.C. at 242, 246 S.E.2d at 882)). The Court finds that the causes of action

have been sufficiently alleged and that Lyft's default makes it appropriate to enter judgment on liability.³

II. Damages

Recognizing liability has been admitted, Plaintiff must prove the amount of damages and such proof by a preponderance of the evidence. *Solley*, 397 S.C. at 204, 723 S.E.2d at 603 (citation omitted). Because of the nature of the damages claims, the Court conducted a hearing as part of its necessary and proper review to enter default judgment. *See* Rule 55(b)(1), SCRPC. Following an all day hearing on June 25, 2021, this Court finds that Plaintiff proved actual and punitive damages in her Complaint and through testimony and other exhibits presented at the hearing.

Turning first to actual damages, Plaintiff's claims were supported by a preponderance of the evidence. As set forth more fully in the record, the Court heard testimony from five witnesses on behalf of Plaintiff, including: Shirley Williams, Kimberly Reen, BSN, BS, RN, CLCP⁴, Stephanie Borzendowski, Ph.D., Perry Woodside, Ph.D., and Marshall White, MD.

Plaintiff Shirley Williams testified about the life of the decedent, her relationship with him, and the household income and support he provided. She also provided testimony regarding the medical bills and funeral and cremation expenses associated with the decedents injuries and death, her future needs, and loss of the comfort, security, and society she endured. Plaintiff also testified as to the damage to the decedent's personal property including his clothing, laptop, and

³ Although the Complaint asserts other causes of action, Plaintiff requested judgment arising out of claims alleged solely against Defendant Lyft and not Defendant Meadows. Nothing in this Order is intended to address or determine liability as to Defendant Meadows.

⁴ Lyft filed an 84-page Motion to Exclude the Testimony and Life Care Plan of Kimberly Reen during the hearing before her testimony or life care plan was proffered. The Court gave Plaintiff an opportunity to review the Motion and refrained from ruling on the Motion until the appropriate time, which was when Kimberly Reen's qualification as an expert and her life care plan were proffered.

smartphone. Plaintiff described the grief, sorrow, and wounded feelings she has endured. Plaintiff testified about her sorrow as she stayed with her son at the hospital while he was in a coma for nearly a week until she had to take him off life support and that she stayed by his side as he died. Photos of the decedent, his funeral bills, funeral program, and medical bills summary were admitted into evidence without objection.

Kimberly Reen, BSN, BS, RN, CLCP, prepared a life care plan for Plaintiff. The Court denied Lyft's Motion to exclude her testimony and life care plan. The Court found Kimberly Reen to be qualified as an expert and allowed her to testify about her life care plan, which was also admitted into evidence and considered by the Court. The life care plan outlined Plaintiff's future needs as she ages without the assistance of her son and caregiver now that he is deceased. The life care plan presented three care options and the costs of those options.

Stephanie Borzendowski, Ph.D. was qualified as an expert in human factors and testified as to the dangers of the Lyft mobile application, ways in which the Lyft mobile application causes distracted driving, and the dangers of cell phone use while driving.

Perry Woodside, Ph.D. was qualified as an expert economist and testified to the decedent's earning capacity and Plaintiff's pecuniary loss of those earnings. Dr. Woodside's report, prepared alongside and supported by Tricia Yount, CPA, MAFF, was admitted into evidence.

Neurologist and brain injury specialist, Marshall White, MD, testified as to the conscious pain and suffering of the decedent, Jason Williams. Dr. White testified that the injuries the decedent suffered such as broken bones and head trauma, are painful and that none of them would have rendered him immediately unconscious or dead. Dr. White testified that the decedent suffered consciously for a matter of minutes in the time between the impact and the arrival of EMS first responders.

As to Plaintiff's claim for punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. S.C. Code Ann. § 15–33–135 (*Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996)). The Court has considered the following factors in assessing punitive damages:

(1) character of defendant's acts; (2) nature and extent of harm to plaintiff which defendant caused; (3) defendant's degree of culpability; (4) punishment that should be imposed; (5) duration of the conduct; (6) defendant's awareness or concealment; (7) existence of similar past conduct; (8) likelihood award will deter defendant or others from like conduct; (9) whether award is reasonably related to harm likely to result from such conduct; and (10) defendant's wealth or ability to pay.

Austin, 298, 594 S.E.2d at 867 (Ct. App. 2004).

In analyzing punitive damages, the Supreme Court of the United States has “consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that compares actual *and potential* damages to the punitive award.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 582–83, 116 S. Ct. 1589, 1602–03, 134 L. Ed. 2d 809 (1996) (citing *TXO*, 509 U.S., at 458, 113 S.Ct., at 2720). The Court in *BMW of N. Am. Inc. v. Gore*, held:

Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine. It is appropriate, therefore, to reiterate our rejection of a categorical approach.

517 U.S. 559, 582–83 (1996); *see also*, *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 317, 529 S.E.2d 45, 62 (Ct. App. 2000). In evaluating the reasonableness of a punitive damages award, single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution for the defendant's misconduct. *Duncan v. Ford Motor Co.*, 385 S.C. 119, 682 S.E.2d 877 (Ct. App. 2009).

By defaulting, Lyft admitted all allegations in Plaintiff's Complaint, including that Lyft was directly aware of Meadows's driving record with prior issues and that Meadows had been working another job prior to starting her driving that day and that the app facilitated distracted and fatigued driving. *See* Complaint at ¶¶ 30; 88. Lyft was engaged in the design, marketing, and sale of transportation through its application/ product that it controlled. *Id.* at ¶¶ 9-16. Moreover, Lyft is in exclusive control of its platform and users (both drivers and passengers), requires its drivers to use a smartphone while driving, and sends notifications to the drivers, including Meadows, while they are transporting passengers, including Decedent. *Id.* at ¶¶ 29; 32; 41; 42; 45; 46; 88.

This Court finds that Lyft was highly culpable through the acts surrounding its platform, product, service, driver, business practice and scheme. *Id.* This is evidenced by the admission in the Complaint that Lyft is in exclusive control of who drives and rides, and the way the application and web portal function, including the design. Practically, Lyft controls the parameters of every transaction, i.e. ride, and does so for a profit. *Id.* at ¶ 28; 29; 34; 36; 88(nn). Lyft was aware that causing push notifications to appear on the driver's screen while driving is distracting and that using a screen in general while driving is distracting. *Id.* at ¶88. Moreover, Lyft was directly aware that its business scheme marketed trust and safety, yet allowed reckless, distracted, and fatigued driving. This is further evidenced by the admitted facts that Meadows was working a second shift at the time of the collision, had prior issues on her driving record, and was distracted by the use of the Lyft mobile application. *Id.* at ¶ 88 (ll, nn).

In awarding punitive damages, this Court looks to ensure that the award will deter future similar conduct.⁵ Given the gravity of loss and the fact that this circumstance is ripe for repetitive

⁵ While the Court need not rely on prior conduct to reach this award, it notes that SEC filings detail numerous cases where similar facts have been filed regarding trust and safety incidents. *See* SEC Filings for Lyft – 10-K dated December 31, 2020; Rule 201(d), SCRE.

occurrence given the nature and volume of Lyft's use. This Court has serious concerns about the public's reliance and the potential harm if course correction does not occur. The Court finds that punitive damages are warranted. In making this finding, the Court notes that the award must be reasonably related to the harm likely to result from this conduct if Lyft does not modify its current scheme and/or practice.

The Court also considers Lyft's awareness or concealment of its conduct. Lyft was aware of the dangers associated with its platform. *See* Complaint at ¶¶ 43; 44. Lyft's app and website⁶ promote trust and safety for riders and drivers, but its SEC filings make investors aware of more. Lyft acknowledges, "We are regularly subject to claims, lawsuits, investigations and other legal proceedings relating to injuries to, or deaths of, riders, drivers or third parties that are attributed to us through our offerings." *See* 2020 10-K at p. 33; Complaint at ¶¶ 27; 106 By ignoring and concealing known problems, Lyft places their drivers, passengers, and the general public in harm's way. *See* Complaint at ¶¶ 88(gg-ii). It is not lost on this Court that Lyft holds itself out as being the safe and responsible option for transportation. This reliance is one that fails to account or acknowledge this risk given Lyft's representations regarding safety. *Id.* at ¶¶ 27; 88; 106. Public policy favors protecting South Carolina citizens from a breach of the trust and safety Lyft markets. The need for protection and deterrence is heightened by the enormous dangers of promoting distracted and impaired driving and unqualified drivers being permitted to provide rides Lyft. *Id.* at ¶ 88; 2020 10-K at p. 29.

Further, Lyft enjoys the economic benefits when the public trusts Lyft to provide safe transportation services. The Lyft platform relies on marketing initiatives that lead customers/riders to perceive the transportation services and app to be safe for the company to grow and profit. *Id.*

⁶ <https://www.lyft.com/safety>

at p. 24; 27; 101; 106 (a-y). The Court finds that the wrongful conduct proven was “motivated primarily by financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved” by Lyft or on Lyft’s behalf pursuant to S.C. Code § 15-32-530. S.C. Code Ann. § 15-32-530 (B)(1). This is evidenced throughout the admitted allegations of the Complaint and Lyft’s own SEC filings where Lyft describes the ways in which the company gains and loses income. Complaint ¶¶ 9-52, 57-71, 82, 88-95, 97, 98, 100-104, 106-115, 117, 119, 122-125; Lyft’s 2020 10-K.

The Court is aware of Lyft’s ability to pay and has considered this factor. Lyft’s financials provide a net worth of \$1.6 billion with \$319 million in cash according to its 10-K Audited Annual Report filed with the SEC on December 31, 2020. According to Lyft’s 8-K quarterly filings (unaudited) with the SEC as of March 31, 2021, Lyft’s net worth is \$1.4 billion with \$312 million in cash. *See* SEC Filings for Lyft – 10-K dated December 31, 2020, and 8-K dated March 31, 2021; Rule 201(d), SCRE (providing that a Court may take judicial notice at any time). Lyft’s current market cap is also publicly available on Yahoo Finance.⁷ Lyft can easily pay the award.

For these reasons, the Court finds Plaintiff suffered actual damages in the amount of two million five hundred thousand dollars (\$2,500,000.00) and punitive damages in the amount of eight million dollars (\$8,000,000.00). This award is applicable to all claims.

III. Election of Remedies

The doctrine of election of remedies “involves a choice between different forms of redress afforded by law for the same injury or different forms of proceeding on the same cause of action.

⁷ <https://finance.yahoo.com/quote/LYFT?p=LYFT&.tsrc=fin-srch>

It is the act of choosing between inconsistent remedies allowed by law on the same set of facts. Its purpose is to prevent double recovery for a single wrong. *Taylor v. Medenica*, 324 S.C. 200, 218, 479 S.E.2d 35, 44–45 (1996) (citing *Thompson v. Watts*, 281 S.C. 504, 316 S.E.2d 393 (1984)). Election of remedies is not applicable where two separate causes of action, each based on different facts, exists. *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995). Here, the Plaintiff may only receive a single recovery for the damages suffered. Plaintiff has elected to recover for negligence, both individually and as Personal Representative of the Estate of Jason Williams.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the Plaintiff be awarded judgment against Defendant Lyft, for actual damages in the amount of ten million five hundred thousand dollars (\$10,500,000.00). Interest is to accrue on the judgment as provided by statute.

IT IS SO ORDERED!

Charleston, South Carolina
_____, 2021

The Honorable R. Markley Dennis
Presiding Judge
Ninth Judicial Circuit



Charleston Common Pleas

Case Caption: Shirley M B Williams , plaintiff, et al VS Lyft Inc , defendant, et al

Case Number: 2019CP1003739

Type: Order/Damages

R. Markley Dennis Jr., 2060

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