

SC-2025-0022

IN THE SUPREME COURT OF ALABAMA

ENVOY AIR, INC.,

Defendant/Appellant,

v.

JADA CREAGH,

Plaintiff/Appellee.

APPEAL FROM THE CIRCUIT COURT
OF MOBILE COUNTY, ALABAMA
NO. 02-CV-2019-902572

APPELLEE'S PRINCIPAL BRIEF

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellee, Jada Creagh (“Creagh”), does not believe oral argument is necessary inasmuch as the issues raised in this appeal are not novel and are governed by well-established legal precedent. Nonetheless, Rice would welcome the opportunity to present oral argument should the Court deem it beneficial.

TABLE OF CONTENTS

STATEMENT REGARDING ORAL ARGUMENT	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	vi
STATEMENT OF THE CASE.....	1
STATEMENT OF THE ISSUES.....	2
I. Whether Creagh presented substantial evidence of her claim for retaliatory discharge?	2
II. Whether the Trial Court’s ruling to allow Envoy’s initial response to Interrogatory No. 14 into evidence was reversible error?.	2
III. Whether Creagh presented substantial evidence of mental anguish sufficient to support the jury’s award of mental anguish damages?.....	2
IV. Whether Creagh presented clear and convincing evidence sufficient to support the jury’s award of punitive damages.	2
STATEMENT OF FACTS	3
I. Creagh presented substantial evidence that she was fired solely because she had a workers’ compensation claim.	3
A. Creagh had an employment relationship with Envoy.	3
B. Creagh suffered an on-the-job injury.....	3
C. Envoy had knowledge of Creagh’s on-the-job injury.	4
D. Atkinson fired Creagh solely because of her injury and worker’s compensation claim.	4
1. Atkinson was the sole decision-maker.....	13
II. Creagh presented substantial evidence of the nature, degree, and duration of her mental anguish.....	16
STATEMENT OF THE STANDARD OF REVIEW	18
SUMMARY OF THE ARGUMENT	20
ARGUMENT.....	22

I. Creagh presented substantial evidence sufficient to support her retaliatory discharge claim.	22
A. The jury’s finding that Atkinson made the decision to fire Creagh, not Wilson, is amply supported by the record.....	24
B. The jury’s determination that Atkinson fired Creagh solely because of her workers’ compensation claim is amply supported by the evidence.....	27
1. Evidence of the close proximity in time between the injury and termination of employment.....	29
2. Evidence of knowledge of the workers’ compensation claim by Atkinson.....	29
3. Evidence of the expression of a negative attitude toward the employee's injured condition.....	29
4. Evidence of a failure to adhere to established company policy.	31
5. Evidence that the stated reason for the discharge was false. ...	33
II. The Trial Court did not commit reversible error with its evidentiary rulings.....	36
A. The Trial Court was well within its discretion to admit Envoy’s initial response to Interrogatory #14.	36
B. The Trial Court did not err in allowing the Rule 30(b)(6) testimony of Anna De La Paz	43
C. Envoy is wrong that the Trial Court erred because it “allowed” Creagh’s counsel to improperly question Envoy witnesses regarding Creagh’s supposed constitutional right to due process prior to her termination.....	45
III. Creagh presented substantial and direct evidence of mental anguish sufficient to support the jury’s award of compensatory damages.	46
IV. Creagh presented clear and convincing evidence sufficient to support the jury’s award of punitive damages.	58
A. Reprehensibility of Envoy’s Misconduct.....	60
B. The Type of Harm.....	61

C. Indifference to or Reckless Disregard for the Rights of Others; Defendants’ Degree of Awareness of Hazard His Conduct Has or Is Likely to Cause.....	62
D. Indifference to or Reckless Disregard for the Vulnerability of Plaintiffs.	62
E. Repeated Actions v. Isolated Incident, Existence and Frequency of Past Similar Conduct and Duration of the Conduct as well as Alabama statutory factor of Failure to Take Corrective Actions/Remedy the Wrong.	63
F. Harm Resulted from Intentional Malice, Trickery or Deceit and <i>Concealment or Cover-up</i> of Hazard or Harm.....	65
G. Relationship of Punitive Damages to Harm That Occurred or is Likely to Occur.	66
H. Civil Penalties Authorized or Imposed in Comparable Cases.	67
I. Defendants’ Profit from Misconduct.	67
J. Defendants’ Financial Position.....	68
K. Cost to Plaintiff of the Litigation.	68
L. Whether Defendants have been Subject to Criminal Sanctions for Similar Conduct.....	69
M. Any other civil actions arising out of similar conduct.	69
CONCLUSION	69
CERTIFICATE OF COMPLIANCE	71
CERTIFICATE OF SERVICE.....	72

TABLE OF AUTHORITIES

Cases

<i>Ala. Power Co. v. Aldridge</i> , 854 So. 2d 554 (Ala. 2002)	28
<i>Alabama River Grp.</i> , 2017 WL 4324889.....	55
<i>Alfa Mut. Ins. Co. v. Northington</i> , 561 So.2d 1041 (Ala.1990)	55
<i>Alpine Bay Resorts, Inc. v. Wyatt</i> , 539 So.2d 160 (Ala.1988).....	18
<i>Amusement Indus., Inc. v. Antin</i> , 2007 Cal. App. Unpub. LEXIS 3447 (Cal. App. 2d Dist. Apr. 30, 2007).....	63
<i>Ashbee v. Brock</i> , 510 So.2d 214 (Ala 1987).....	18
<i>Bardis v. Oates</i> , 119 Cal. App. 4 th 1 (Cal. App. 2004)	64
<i>BMW of North America, Inc. v. Gore</i> , 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996)	58, 61, 65, 66
<i>Campbell v. State Farm Mut. Auto. Ins. Co.</i> , 98 P.3d 409 (Utah 2004). 64	
<i>Cariglia v. Hertz Equip. Rental Corp.</i> , 363 F.3d 77 (1st Cir. 2004).....	26
<i>Christiansen v. Hall</i> , 567 So.2d 1338 (Ala.1990).....	22
<i>Cooper & Co. v. Lester</i> , 832 So. 2d 628 (Ala. 2000)	68
<i>Culbreth v. Woodham Plumbing Co.</i> , 599 So. 2d 1120 (Ala. 1992).....	27
<i>Daniels v. E. Alabama Paving, Inc.</i> , 740 So.2d 1033 (Ala. 1999).....	54
<i>Day v. Ingle’s Market, Inc.</i> , 2006 Dist. LEXIS 100159 (E.D. Tenn. 2006)	63, 66
<i>Day v. Woodworth</i> , 54 U.S. (13 How.) 363 (1852).....	61
<i>Duck Head Apparel Co. Inc. v. Hoots</i> , 659 So.2d 897 (Ala. 1995)	63
<i>Flint Constr. Co. v. Hall</i> , 904 So. 2d 236, 246-247 (Ala. 2004)... 18, 22, 23	
<i>Ford Motor Co. v. Sperau</i> , 708 So.2d 111 (Ala. 1997)	54
<i>Fuller v. Preferred Risk Life Ins. Co.</i> , 577 So 2d 878 (Ala. 1991).....	58
<i>Gold Kist, Inc. v. Griffin</i> , 657 So.2d 826 (Ala.1994)	22
<i>Green Oil Co. v. Hornsby</i> , 539 So. 2d 218 (Ala. 1989)	58, 60
<i>Hammond v. City of Gadsden</i> , 493 So. 2d 1374 (Ala. 1986)	55, 58, 60
<i>Hill v. Lockheed Martin Logistics Mgmt.</i> , 354 F.3d 277 (4 th Cir. 2004) 27	

<i>Hornady v. Outokumpu Stainless USA, LLC</i> , 2024 U.S. App. Lexis 25712	38, 39
<i>Jawad v. Granade</i> , 497 So.2d 471 (Ala.1986).....	18
<i>Jordan v. Calloway</i> , 7 So. 3d 310 (Ala. 2008)	19
<i>King Motor Co. v. Wilson</i> , 612 So.2d 1153 (Ala.1992).....	22
<i>Kmart Corp. v. Kyles</i> , 723 So.2d 572 (Ala. 1998).....	51
<i>Lowder Realty Co. v. Sabry</i> , 542 So. 2d 1240 (Ala. 1989).....	55
<i>Lozier Corp. v. Gray</i> , 624 So.2d 1034 (Ala.1993).....	20, 62, 65, 67
<i>Lozier Corp.</i> , 624 So.2d at 1037 (Ala.1993).....	60
<i>McDowell v Key</i> , 557 So. 2d 1243 (Ala. 1990)	58
<i>Mobile Invs., LLC v Pharm. Servs., Inc.</i> , 2024 Ala. LEXIS (September 13, 2024).....	38
<i>Montgomery Coca-Cola Bottling Co. v. Golson</i> , 725 So. 2d 996 (Ala. Civ. App. 1998)	passim
<i>Moore v. Pac.</i> , 2023 U.S. Dist. LEXIS 198502 (N.D. Ala. 2023).....	52
<i>Motion Indus., Inc. v. Pate</i> , 678 So. 2d 724 (Ala. 1996)	23
<i>National Ins. Ass’n v. Sockwell</i> , 829 So. 2d 111 (Ala. 2002).....	55
<i>Norfolk S. Ry. Co., Inc. v. Bradley</i> , 772 So.2d 1147 (Ala. 2000).....	53
<i>Pitt v. Century II, Inc.</i> , 631 So. 2d 235 (Ala. 1993).....	56
<i>Prudential Ballard Realty Company, Inc. v. Weatherly</i> , 792 So.2d 1045 (Ala. 2000).....	54
<i>Reeves v. Sanderson</i> , 530 U.S. 133 (2000).....	27
<i>Rice v Merchants Foodservice</i> , 286 So. 3d 681 (Ala. 2019),	47
<i>Rosenberg, Minc & Armstrong v. Malillo & Grossman</i> , 798 N.Y.S.2d 322 (N.Y.S. 2005)	64
<i>Services Co. of Alabama, Inc. v. Barbour</i> , 592 So.2d 191 (Ala. 1991)....	58
<i>Shiv–Ram, Inc. v. McCaleb</i> , 892 So. 2d 299 (Ala. 2003)	60, 63, 67, 69
<i>State Farm Mutual Automobile Insurance Co. v. Campbell</i> , 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003).....	59
<i>Synergies3 Tec Servs., LLC v. Corvo</i> , 319 So. 3d 1263 (Ala. 2020)	57

<i>Volkswagen of America, Inc. v. Dillard</i> , 579 So.2d 1301 (1991).....	48
<i>Wal-Mart Stores, Inc. v. Goodman</i> , 789 So. 2d 166 (Ala. 2000)	51
Statutes	
Ala. Code, §13A -9-45	51
Rules	
Ala. R. App. P. 45	43
Rule 51, Ala.R.Civ.P.	55
<i>Wood v. Hayes</i> , 104 So. 3d 863 (Ala. 2012).....	43

STATEMENT OF THE CASE

Creagh's claim for retaliatory discharge under Ala. Code § 25-5-11.1 was tried before a duly appointed and impartial jury from September 10 to September 13, 2024. After careful consideration of the evidence, the jury correctly found that Envoy had fired Creagh solely because of her workers' compensation claim. The jury awarded Creagh compensatory damages of \$250,000.00 and punitive damages of \$425,000.00 for a total award of \$675,000.00. (C. 1919).

On September 17, 2024, the Circuit Court of Mobile County (the "Trial Court") entered final judgment (the "Final Judgment") consistent with the jury's verdict. (C. 1920). Envoy filed a renewed motion for judgment as a matter of law and, alternatively, new trial on October 17, 2024. (C. 2085-2149). On November 11, 2024, Creagh filed her response to these motions. (C. 2153-2172). The Trial Court denied Envoy's post-trial motions by order dated December 20, 2024. On January 13, 2025, Envoy filed its appeal of the Final Judgment. (C. 2232-33).

STATEMENT OF THE ISSUES

- I. Whether Creagh presented substantial evidence of her claim for retaliatory discharge?
- II. Whether the Trial Court's ruling to allow Envoy's initial response to Interrogatory No. 14 into evidence was reversible error?
- III. Whether Creagh presented substantial evidence of mental anguish sufficient to support the jury's award of mental anguish damages?
- IV. Whether Creagh presented clear and convincing evidence sufficient to support the jury's award of punitive damages.

STATEMENT OF FACTS

I. Creagh presented substantial evidence that she was fired solely because she had a workers' compensation claim.

A. Creagh had an employment relationship with Envoy.

Envoy does not dispute that Creagh presented substantial evidence that she was an employee of Envoy. (Appellant's Br. 18; R. 163). Creagh was an Envoy employee from June of 2018 until the date of her termination on January 7, 2019. (R. 163, 260, Def. Exh. 14). Envoy assigned her to work its terminal at the Mobile Airport where her job duties included working the ticket counter, the gate, baggage handling, and cleaning planes. The job required being able to lift, at least, fifty pounds. It also required a lot of pushing, pulling, and lifting. Cleaning the planes required pushing and pulling a heavy galley cart to collect trash. (R. 163-66, 455-56).

B. Creagh suffered an on-the-job injury.

Envoy does not dispute that Creagh presented substantial evidence of an on-the-job injury. (Appellants Br. 21-22). On October 25, 2018, Creagh was working the evening shift on the tarmac on a rainy night on the last flight of the night. A new employee was having trouble

positioning the jet bridge to the plane. As Creagh was climbing the stairs to assist, the new employee moved the jet bridge causing Creagh to slip and fall which resulted in injury. (R. 167-69).

C. Envoy had knowledge of Creagh's on-the-job injury.

Envoy does not dispute that Envoy had knowledge of Creagh's work related injury. (Appellant's Br. 22 ("Envoy submitted Creagh's workers' compensation claim and never questioned its validity.")).

D. Atkinson fired Creagh solely because of her injury and worker's compensation claim.

After falling from the jet bridge stairs, Creagh immediately went to the shift supervisor, Cody Arthur, and told him that she needed to report that she had fallen from the jet bridge stairs and been injured. (R. 170). His immediate response to Creagh was that the last person that reported an on-the-job injury was no longer there. (R. 169).

Envoy's policies required that a supervisor fill out an on-duty injury report within 2 hours of the injury to commence the workers' compensation process. (R. 463-465, 531, Pl. Exh. 16). Arthur was required to be familiar with Envoy's policies and procedures regarding on-duty injuries. (R. 531, Pl. Exh. 16). Envoy's policies further required that an outgoing shift supervisor prepare a transition report for the incoming

shift supervisor to apprise him or her of any important information regarding the prior shift. (R. 534-35). Arthur, who had discouraged Creagh from reporting her injury, admitted that he did not comply with either of these policies. (R. 527-528, 533-35).

Envoy's former director of HR, Bridgette Murrell, testified that failing to fill out the report of the injury within 2 hours or as soon as practical would be a violation of Envoy policy. She further testified that any supervisor telling Creagh that she shouldn't report her injury because other people who had reported injuries had been fired also would be a violation of Envoy policy. (to (R. 414, 463-467). She testified that not providing the assistance promised to Creagh in the bona fide offer of employment would be another violation of Envoy policy. (R. 467). Finally, she also testified that requiring Creagh to ask other employees for assistance would not be sufficient. (R. 468).

Creagh's injury occurred on October 28, 2018 at about 10:00 p.m.. The next day, October 29, 2018, at about 3:00 a.m., Creagh woke up still hurting. She called the Envoy supervisor on duty, Barry, before her next shift began at 4:00 a.m. to let him know that she could not work her shift. Barry told Creagh that he did not have any report of her being injured

while on duty the night before. He further stated that Arthur had not mentioned anything to him. Barry told Creagh that the shift was already short-staffed and she “needed” to come to work. (R. 170-171).

Creagh reported for her shift. Barry came to the gate about 6:20 a.m. and, realizing that Creagh was hurt, told her to go see a doctor. Creagh went to the hospital emergency room and was told her that she needed a workers’ compensation claim number before it would see her. When Creagh called Barry for the claim number, he advised her that it was not set up. She left the hospital and went to a walk-in clinic. She was seen by a nurse practitioner who gave her a sling for her arm. A few days later, Creagh went back to the hospital emergency room because she was still in pain. She did not have a workers’ compensation claim number yet and she was sent back home. (R. 171-73). Thereafter, a workers’ compensation nurse case manager finally contacted Creagh on behalf of Envoy. She had arranged for Creagh to see a physician selected by Envoy, Dr. Busbee. (R. 173).

On November 5, 2024. Dr. Busbee performed a physical exam, told Creagh to do two weeks of physical therapy, and gave her a slip to return-for November 16, 2024. (R. 173-74). The return-to-work slip restricted

Creagh from overhead lifting and lifting anything over 10 pounds. (Def. Exh.).¹ On November 16, 2024, Creagh received an offer to return to work (i.e. bona fide offer) that stated she would be starting that same day. The offer of work stated that Creagh would be provided assistance for any job duties that did not comply with her return-to-work restrictions, and she relied on that when accepting the offer. (Appellants' Br. 20; R. 174-750, 234, Def. Exh. 8, 234-237,).

In late November, Creagh went back to work on what was supposed to be limited duty. (R. 176). She was assigned to work her normal duties at the ticket counter, gate, baggage handling, and cleaning planes. Bridgette Atkinson was the Terminal Manager and Creagh's supervisor. (R. 166). Prior to her injury, Creagh got along well with Atkinson. She was friendly, they spoke in the mornings, complimented each other, and would laugh about things while passing. (R. 166-167). Creagh's relationship with Atkinson changed for the worse when she returned to work under physical restrictions. Atkinson was dry, no longer spoke to

¹ Creagh suffered numerous injuries from her fall, the worst being a torn labrum. Unfortunately, Creagh's torn labrum was not diagnosed until almost a year after her injury when she was finally given an MRI. She had surgery to repair the tear in March 2020. (R. 185-86).

Creagh in the morning as she had done before, she was agitated, and would walk past her without saying a thing (R. 177).

Atkinson was responsible for providing Creagh the assistance she was promised in the bona fide offer so she could work within her restrictions. To the extent Atkinson did not do this, she would be violating Envoy's policies (R. 561, Vol. 16, Broussard Depo., p 7, 11-13). Creagh had problems because Atkinson had not provided her with the assistance that Envoy had promised her regarding her restrictions. (R. 177-183, 188-89). Creagh had returned to work during the Thanksgiving and Christmas holidays, which is the busiest time of the year for airlines. The Mobile Terminal was short-staffed during the peak airline travel period in November/December 2018. (R. Vol. 15, Atkinson Transcript, p. 21). Atkinson put Creagh in a no-win situation of having to ask other employees, who were busy with their own job duties during the busiest time of the year, for help each time she needed assistance, which was frequent. This created friction between Creagh and her co-employees who were frustrated and sometimes did not help at all. (R. 177-183, 188-89).

On November 30, 2018, a Friday, Creagh was examined by Dr. Busbee and was given a doctor's note that listed the same restrictions as

before. After the examination, Creagh went to Atkinson's office and hand-delivered the doctor's note to her. Atkinson took the note, but did not speak a word. (R. 186-87, 244). When she returned to work the following Monday, December 3, 2018, Creagh went to Atkinson's office to talk to her about having to lift things in excess of 10 pounds, not getting the assistance she needed. and her co-employees complaining. Atkinson told her that she had been meaning to talk to her because her co-employees had reported that she was being combative. Creagh told Atkinson that she was merely asking busy co-employees for help. (R. 188-89).

Atkinson then abruptly asked Creagh whether Envoy was a good fit for her, whether she would be happier somewhere else, and maybe she should look for another job. (R. 189). Creagh said she liked working for Envoy, but just needed help until she was better. When Creagh rejected Atkinson's overture to find another job, Atkinson became mean spirited and visibly upset.² **Atkinson then told Creagh "I will find a way to**

² Envoy argues that, to the extent Creagh was being put in a position of having to violate her restrictions, the terms of Envoy's bona fide offer required her to report that to its HR department. Envoy is mistaken. The bona fide offer provides that Creagh should report it to her supervisor or the HR department. Creagh complied with the policy by reporting the situation to her supervisor, Atkinson. (R. 239, Def. Exh. 12A, R. 442, 444).

get rid of you.” (R. 189-190). Thereafter, Creagh still did not get meaningful assistance. (R. 188-89).

On December 28, 2018, Atkinson called Creagh into her office. Atkinson showed her a doctor’s note and started questioning her about it. Creagh told her that it was similar to the note she had given to her on November 30, 2018, but it was not the same one. When questioned about the hand-written Xs on the note, Creagh told Atkinson that she had not altered the note. Creagh denies that she told Atkinson that Dr. Busbee’s nurse had put the handwritten Xs on the note. (R. 258-59). Atkinson then gave Creagh a letter stating that she was suspended pending an investigation, that the investigation would be conducted expeditiously, and Creagh would be advised accordingly of the results. (R. 194-95). The suspension letter was signed solely by Atkinson. (R. 251-252, Def. Exh. 13).

Creagh testified that she believed that Atkinson had altered the note. (R. 247-48). She further testified that she gave Atkinson the exact note that she had received from the doctor’s office, which was not altered with handwritten Xs. (R. 246-47). Atkinson did not testify at trial to dispute Creagh’s testimony. Rather, the Parties offered excerpts from

Atkinson's video deposition. (R. 278). Atkinson testified that she had been a good and fair manager. She further testified that she was consistent in her management style and approach at all times. (R. Vol. 15, Atkinson Transcript, p. 10-12). Atkinson also testified that she had been fired by Envoy because she had failed a couple of compliance audits, not because of employee complaints and low employee morale. (R. Vol. 15, Atkinson Transcript, p. 13-15). Atkinson did not remember the subject of employee complaints about her coming up when she was fired, and that would have been something that she would have remembered. (R. Vol. 15, Atkinson Transcript, p. 14-15, 16).

By email dated January 4, 2019, Atkinson requested that Creagh return to work on January 7, 2019. (R. 196). On January 7, 2019, Atkinson called Creagh into her office and asked her whether she had enjoyed her vacation. Creagh said it wasn't a vacation; she had been suspended. Atkinson then fired Creagh, handing her a termination letter stating that she had been fired for altering the doctor's note in violation of Envoy's Guiding Principles, which require that all Envoy employees conduct themselves with the highest standards of honesty, fairness, and integrity. (R. 260-61, Def. Exh. 14; R. 197-98; 206, Def. Exh. 1A and). The

sole signature on the letter was Atkinson's. (Def. Exh. 14, R. Vol. 16, Atkinson Transcript, p. 29).

Envoy kept a scorecard on General Managers regarding whether they got planes out on time, which put managers under significant pressure. (R. Vol. 16, De La Paz Depo., p. 4-5). A single plane delay could cost Envoy \$40,000 or better. (R. 499-500, Pl. Exh. 7). The Mobile Station was short-staffed during the period Creagh worked there. (R. Vol. 16, De La Paz Depo., p. 3). Creagh observed Atkinson yelling during employee meetings and stating things like "if we don't start getting these planes out on time, there would no longer be a Mobile Station." (R. 167). Creagh testified that, based on her personal observations, Atkinson was mean, terrifying, and talked down to employees. On one particular occasion, Atkinson came out of her office yelling and screaming "where is everyone; no one should be taking off work; it doesn't matter what they have going on; they need to be here so that we can get things done. (R. 272-73).

Envoy's Rule 30(b)(6) corporate deponent Ann Marie De La Paz was proffered by Envoy to speak to Atkinson's management performance during the years 2018 and 2019 when Creagh worked there. (R. Vol. 16, De La Paz Depo., p. 2). De La Paz testified that Atkinson was not a good

manager. (R. Vol. 16, De La Paz Depo., p. 2, 6). Atkinson did not hold herself to the highest standards of fairness. (R. Vol. 16, De La Paz Depo., p. 7). De La Paz had fired Atkinson because of employee complaints against her, not because of failed audits. (R. Vol. 16, De La Paz Depo., p. 9-10, Pl. Exh. 29). .

Envoy's initial response to Interrogatory #14 provided a different reason than an altered doctor's note for Creagh's termination. It stated that Creagh had not been fired, but had voluntarily resigned. (R. 316, Pl. Exh. 155). Atkinson had dinged Creagh's attendance record with an unexcused absence during the period that Atkinson had suspended her. (R. 537-539). Envoy's records included an email stating that Creagh had been terminated due to attendance. (R. Vol 16, West Depo., p. 22, Pl. Exh. 17).

1. Atkinson was the sole decision-maker.

Envoy provided discovery responses in which it stated that “[t]he plaintiff was terminated by Bridgette Atkinson, Station Manager.” (R. 503, Pl. Exh. 178). Further, Atkinson was the only person who signed Creagh's suspension letter and termination letter. (Def. Exh. 14, R. Vol. 16, Atkinson Transcript, p. 29). Creagh testified that the only person who

ever talked to her about the altered note, her suspension, the investigation, and her firing was Atkinson. (R. 198). Inexplicably, Atkinson gave Creagh a suspension letter stating that an investigation was ongoing after Envoy contends that Wilson had already made the decision to fire Creagh. (R. 251-252, Def. Exh. 13; R. 455. Def. Exh. 120).

Envoy's Regional Director, Charles Davis, testified that a General Manager, like Atkinson, had the authority to fire an employee. (R. 484, 492-93). Atkinson testified that she just needed HR's authorization to fire Creagh, not that HR made the decision for her.³ (R. Vol. 16, Atkinson Transcript, p. 35). There is no mention of Wilson in the termination letter or, for that matter, any role played by him as a decision-maker. When asked if there was anywhere in the termination letter where it says that the decision to terminate Creagh was HR's, Atkinson testified: "No sir. Let me see that. That one was actually mine." (R. Vol. 16, Atkinson Transcript, p. 36).

³ The plain and ordinary meaning of authorization is permission to do something. Cambridge Dictionary. If Atkinson was not the decision-maker, then she would not need permission to exercise her discretion to fire Creagh.

Moreover, Envoy's job description for HR employees states that they are business partners and consultants who have the:

ability to conduct and manage complex investigations and **recommend** action; provide counsel and **recommendations** to supervisors and managers in matters of employee conduct, performance, corrective and disciplinary action, consistent with company policies and applicable federal and state labor laws."

(R. 509-510, Pl. Exh. 2)(emphasis added). The job description is accurate. HR employees provide advice and recommendations to station managers like Atkinson. (R. 391-93). Envoy's head of HR testified that she was "adamant [that HR] not give **advice** that wasn't in our lane. (R 414, 421) (emphasis added). Davis agreed that the job description says "recommendations," not final decision-maker. (R. 510). Josh Hernandez, Senior HR Business Partner, testified that HR employees were consultants who provide advice and recommendations regarding hiring and firing. (R. 592). He further testified that HR did not make hiring and firing decisions for Atkinson. (R. 592). He could not explain why Atkinson would be undertaking an investigation when she suspended Creagh after Wilson allegedly had already made the decision to fire Creagh. (R. 596-97). He admitted that no one from HR ever called Creagh to investigate and never investigated whether Atkinson had altered the doctor's note.

To the extent Wilson provided advice and recommendations to Atkinson regarding Creagh, he relied solely on what Atkinson had told him. (R. 600-01).

II. Creagh presented substantial evidence of the nature, degree, and duration of her mental anguish.

Creagh testified that, because Envoy had labeled her a forger concerning the doctor's note, she cried; she felt that the situation was not reality; she questioned how this could have happened to her; she thought her firing was a bad dream; she missed her job because she loved working at Envoy; she was paranoid; she lost trust in people; she did not eat for a couple days; she did not go out, much less do anything; she felt ashamed and embarrassed; she was in a depressive state; she was embarrassed and stigmatized when interviewing for jobs because she had to disclose the truth about her termination from Envoy to prospective employers when they asked about them; she had no confidence that anyone would hire her; she felt that she would be a burden to her boyfriend (current husband) because she did not have a job; she was an independent woman who worried that her boyfriend would think that he had to take care of her, she worried about being able to contribute towards the purchase of a new home that her fiancée was purchasing; she worried that her

boyfriend would leave her because she did not have a job; she had to pick herself up and keep fighting; her father gave her scripture to read to get through her suffering; she had never been accused of committing anything like falsifying a document before; and she had suffered and would continue to suffer embarrassment, anxiety and stigma until her name had been cleared by the jury. (R. 197-202;273).

STATEMENT OF THE STANDARD OF REVIEW

The Court applies the same standard of review to a ruling on a motion for a JML as the trial court used in initially deciding the motion. It is materially indistinguishable from the standard by which the Court would review a summary judgment. The Court must decide whether substantial evidence was presented to the jury, which, when viewed in the light most favorable to Creagh, would warrant a jury verdict in her favor. If so, the Trial Court did not err in denying Envoy's motions for a JML. The Court reviews the record at the time the motion for a JML was renewed at the close of all the evidence. *See e.g., Flint Constr. Co. v. Hall*, 904 So. 2d 236, 246-247 (Ala. 2004).

The standard of review regarding a ruling on a motion for new trial based solely on the weight of the evidence has been stated as follows:

a judgment based upon a jury verdict and sustained by the denial of a post-judgment motion for a new trial, will not be reversed on a weight-of-the-evidence ground unless it is "plainly and palpably" wrong.

Alpine Bay Resorts, Inc. v. Wyatt, 539 So.2d 160, 162 (Ala.1988) quoting *Ashbee v. Brock*, 510 So.2d 214, 215 (Ala 1987); *Jawad v. Granade*, 497 So.2d 471 (Ala.1986). On grounds other than a finding that the verdict is against the great weight of the evidence, the Court reviews a trial court's

ruling on a motion for new trial for an abuse of discretion. *Jordan v. Calloway*, 7 So. 3d 310, 313 (Ala. 2008).

SUMMARY OF THE ARGUMENT

Based on the substantial evidence presented at trial by Creagh, the jury saw through Envoy's charade that Wilson, not Atkinson, was the decision maker. The jury correctly determined that Atkinson had engaged in a malicious plot to frame Creagh for altering the doctor's note solely because of her workers' compensation claim. The weight of the evidence supports the jury's determination, as the Trial Court determined when it denied Envoy's post-trial motions.

Creagh also presented substantial evidence to support the jury's award of compensatory and punitive damages. Creagh presented her own direct testimony stating in detail the nature, severity, and duration of her mental anguish. Further, this Court has repeatedly held that punitive damages are especially appropriate in retaliatory discharge cases, based on "the gravity of wrongfully depriving [the employee] of what was [his] livelihood, [and] ... the chilling effect of retaliatory discharges." *Lozier Corp. v. Gray*, 624 So.2d 1034, 1037 (Ala.1993); *Montgomery Coca-Cola Bottling Co. v. Golson*, 725 So. 2d 996, 1000 (Ala. Civ. App. 1998). Here, Envoy issued no apology during trial and showed no remorse for its wrongful conduct. (R. 660). Under these circumstances,

the jury's decision to punish Envoy with punitive damages was fair and just based on the substantial evidence before it. The jury's verdict was not plainly or palpably wrong. Envoy has no legitimate grounds to argue that the Trial Court should have granted a judgment as a matter of law, a new trial, or remitted a penny.

ARGUMENT

I. Creagh presented substantial evidence sufficient to support her retaliatory discharge claim.

As an initial matter, the evidence must be viewed in Creagh's favor through the following prism:

Alabama's workers' compensation laws should be liberally construed in favor of the employee in order to advance and effectuate their beneficent purposes. If we were to say that, as a matter of law, the reason given by [the employer] is a conclusively legitimate reason, the beneficent purposes of § [25]-5-11.1 would be significantly undermined. An employer could almost always say either 'we hired someone to take your place,' or 'we no longer have enough business to continue your employment.' Thus, we think a jury question is presented as to whether [the employer's] asserted reason is a legitimate one or only a pretext.

Flint, 904 So. 2d at 251. “No ground for reversal of a judgment is more carefully scrutinized or rigidly limited than the ground that the verdict of the jury was against the great weight of the evidence.” *Christiansen v. Hall*, 567 So.2d 1338 (Ala.1990). The Court begins with the presumption that a judgment based on a jury verdict is correct. *King Motor Co. v. Wilson*, 612 So.2d 1153 (Ala.1992). That presumption is strengthened by the trial court's denial of a motion for new trial. *Gold Kist, Inc. v. Griffin*, 657 So.2d 826 (Ala.1994). A judgment based upon a jury verdict and sustained by the denial of a post-judgment motion for a new trial will not

be reversed unless it is plainly and palpably wrong. *Motion Indus., Inc. v. Pate*, 678 So. 2d 724, 732–33 (Ala. 1996).

"In order for an employee to establish a prima facie case of retaliatory discharge the employee must show: 1) an employment relationship, 2) an on-the-job injury, 3) knowledge on the part of the employer of the on-the-job injury, and 4) subsequent termination of employment based solely upon the employee's on-the-job injury and the filing of a workers' compensation claim. *Flint*, 904 So. 2d at 247. Envoy does not dispute that Creagh satisfied her evidentiary burden on the first three factors.

Envoy challenges the sufficiency of the evidence on the fourth factor. Envoy contends that Wilson, not Atkinson, made the decision to fire Creagh because he believed that she had altered a doctor's note, and there was no evidence that Wilson harbored any retaliatory animus towards Creagh's injury or workers' compensation claim. (Appellant's Br. 39-41). The jury, however, flatly rejected Envoy's position. It determined that Atkinson, not Wilson, was the decision-maker, and that her reason for firing Creagh was false. There is ample evidence in the record to support the jury's determination.

A. The jury's finding that Atkinson made the decision to fire Creagh, not Wilson, is amply supported by the record.

Envoy grossly misrepresents the record when it states that the evidence is “undisputed” that Wilson made the decision to fire Creagh. (Appellant’s Br. 40-41). First and foremost, Envoy’s discovery responses stated that “[t]he plaintiff was terminated by Bridgette Atkinson, Station Manager.” (R. 503, Pl. Exh. 178). Further, the only person who ever talked to Creagh about the altered doctor’s note, the investigation, her suspension, and her termination was Atkinson. (R. 198). Atkinson also was the only person who signed the suspension letter and the termination letter. (Def. Exh. 14, R. Vol. 16, Atkinson Transcript, p. 29).

The suspension letter, in particular, casted serious doubt on Envoy’s position that Wilson was the decision-maker. There is no dispute that Atkinson gave Creagh the suspension letter after Envoy contends that Wilson had already made the decision to fire Creagh. (R. 251-252, Def. Exh. 13; R. 455. Def. Exh. 120). However, Atkinson stated in her letter that Creagh was being suspended pending an investigation of the allegedly altered doctor’s note. Atkinson further stated in the letter that Creagh would be informed of the results of the investigation as soon as it was concluded. Envoy offered no plausible explanation why Atkinson

would still be conducting an investigation concerning the allegedly altered doctor's note if Wilson had already made the decision to fire Creagh. (R. 596-97).

Moreover, Atkinson testified that she just needed HR's "authorization" to fire Creagh, not that HR made the decision for her. (R. Vol. 16, Atkinson Transcript, p. 35). Similarly, Envoy's Regional Director, Charles Davis, testified that a manager, like Atkinson, had the authority to fire an employee on her own. (R. 484, 492-93). In the termination letter, signed solely by Atkinson, there is no mention of Wilson. When asked if there was anywhere in the termination letter where it says that the decision to terminate Creagh was Wilson's, Atkinson testified: "No sir. Let me see that. That one was actually mine." (R. Vol. 16, Atkinson Transcript, p. 36). In other words, Atkinson owned the actual, final decision to terminate Creagh.

Additionally, Creagh presented substantial evidence that HR employees merely provide hiring and firing recommendations to managers like Atkinson. Envoy's own job description for HR employees describes them as "business partners and consultants" who "provide counsel and recommendations to supervisors and managers in matters of

employee conduct, performance, corrective and disciplinary action” (R. 509-510, Pl. Exh. 2). Envoy’s former employee, Valerie Conerly, testified that the HR job description regarding recommendations is accurate. (R. 391-93).

Davis agreed, under the job description, HR provides “recommendations,” not final decisions. (R. 510). Josh Hernandez, Envoy’s Senior HR Business Partner, agreed that HR employees were consultants who only provide advice and recommendations, not decisions. (R. 592). Envoy’s former head of HR, Bridgette Murrell, testified that she was “adamant [that HR] not give **advice** that wasn’t in our lane. (R 414, 421) (emphasis added).

Hernandez admitted that no one from HR ever called Creagh to investigate, and HR never investigated whether Atkinson herself had altered the doctor’s note. (R. 600-01). The jury determined that HR’s involvement in the decision making process did not break the causal connection that Atkinson made the decision to fire Creagh based solely on her retaliatory animus towards Creagh’s injury and workers’ compensation claim. *See Cariglia v. Hertz Equip. Rental Corp.*, 363 F.3d 77, 87-88 & n.4 (1st Cir. 2004) (although there was no evidence that any

of the senior managers harbored bias against older workers, the supervisor's age bias could still be the "cause" of the termination.); *Hill v. Lockheed Martin Logistics Mgmt.*, 354 F.3d 277, 290 (4th Cir. 2004)(when a formal decisionmaker merely rubber-stamps a subordinate's report, it is not inconsistent to say that the subordinate is the actual decisionmaker or the one principally responsible for the contested employment decision); *Reeves v. Sanderson*, 530 U.S. 133 (2000) (although there was no evidence that the formal decisionmakers harbored discriminatory motivation, one of petitioner's superiors in the chain of authority was motivated by age-based animus and was *principally responsible* for petitioner's firing." 530 U.S. at 151 (emphasis added).

B. The jury's determination that Atkinson fired Creagh solely because of her workers' compensation claim is amply supported by the evidence.

Circumstantial evidence of a causal connection between a workers' compensation claim and an employee's discharge is appropriate in a retaliatory-discharge action. *Culbreth v. Woodham Plumbing Co.*, 599 So. 2d 1120 (Ala. 1992). The Court has identified certain factors that can be considered as circumstantial evidence of a causal connection between an

employee's filing a workers' compensation claim and that employee's discharge as follows:

- 1) knowledge of the compensation claim by those making the decision on termination,
- 2) expression of a negative attitude toward the employee's injured condition,
- 3) failure to adhere to established company policy,
- 4) discriminatory treatment in comparison to similarly situated employees,
- 5) sudden changes in an employee's work performance evaluations following a workers' compensation claim, and
- 6) evidence that the stated reason for the discharge was false.

Ala. Power Co. v. Aldridge, 854 So. 2d 554, 564-65 (Ala. 2002). The Court also has recognized that proximity in time between the filing of the workers' compensation claim and discharge is a persuasive factor in establishing a causal connection." *Aldridge*, 854 So. 2d at 565.

The Parties did not agree on much during trial, but one thing that they did agree on was that the case turns on the sixth factor – evidence that the stated reason for discharge was false. Indeed, Creagh's and Envoy's Counsel both argued in closing argument that the case "boils down to who you believe altered the doctor's note." (R. 686, quoting Envoy's Counsel's closing argument, R. 689). Creagh and Atkinson told two conflicting stories that could not be reconciled. One of them was not

telling the truth. The jury determined that Atkinson was the one who was not being truthful, which sealed Envoy's fate

1. Evidence of the close proximity in time between the injury and termination of employment.

Creagh presented substantial evidence of the close proximity in time between her injury and her termination. Creagh's injury occurred on October 28, 2018. (R. 163). Atkinson followed through with her threat to get rid of Creagh on January 7, 2019. (R. 260, Def Exh. 14).

2. Evidence of knowledge of the workers' compensation claim by Atkinson.

There is no dispute that Atkinson had knowledge of Creagh's workers' compensation claim at the time that she fired Creagh.

3. Evidence of the expression of a negative attitude toward the employee's injured condition.

Creagh presented substantial evidence that Envoy supervisors expressed a negative attitude towards Creagh's injured condition. Creagh promptly reported her injury to her shift supervisor, Arthur. His immediate response to Creagh was that the last person that reported an on-the-job injury was no longer there. (R. 169). The jury was free to infer that Arthur was telling Creagh to think twice before reporting her injury because of adverse consequences.

In late November, when Creagh returned to work, Atkinson assigned her to work her normal positions all of which required lifting over ten pounds. Prior to her injury, Creagh got along well with Atkinson. She was friendly, they spoke in the mornings, complimented each other, and would laugh about things while passing. (R. 166-167). Creagh's relationship with Atkinson changed for the worse when she returned to work while injured under work restrictions. Suddenly, Atkinson was dry, no longer spoke to Creagh in the morning as she had done before, she was agitated, and would walk past her without saying a thing (R. 177).

After Creagh's doctor visit on November 30, 2018, Atkinson did not speak a word to Creagh when she handed her the doctor's note, which kept her restrictions in place. (R. 186-87, 244). When she returned to work on December 3, 2018, Creagh went to Atkinson's office to talk to her about the problems she was having performing the job without assistance. Atkinson told her that she was being combative. (R. 188-89).

Atkinson then made not so subtle overtures regarding whether Envoy was a good fit for her, whether she would be happier somewhere else, and maybe she should look for another job. (R. 189). When Creagh rejected Atkinson's overtures, Atkinson became mean spirited and visibly

upset. **Atkinson then told Creagh “I will find a way to get rid of you.”** (R. 189-190). Atkinson never provided meaningful assistance. (R. 188-89).

Creagh further testified that she observed Atkinson yelling during employee meetings and stating things like “if we don’t start getting these planes out on time, there would no longer be a Mobile Station.” (R. 167). Creagh testified that, based on her personal observations, Atkinson was mean, terrifying, and talked down to employees. On one particular occasion, Atkinson came out of her office yelling and screaming “where is everyone; no one should be taking off work; it doesn’t matter what they have going on; they need to be here so that we can get things done. (R. 272-73). There also was evidence that Atkinson had dinged Creagh’s attendance record with an unexcused absence during the period that Atkinson had suspended her. (R. 537-539).

4. Evidence of a failure to adhere to established company policy.

On November 16, 2024, Creagh received a bona fide offer of employment from Atkinson stating that Creagh would be provided assistance for any job duties that did not comply with her return-to-work restrictions. (Appellants’ Br. 20; R. 174-750, 234, Def. Exh. 8, 234-237,).

Atkinson was responsible for providing Creagh that assistance. To the extent Atkinson did not do this, she would be violating Envoy's policies (R. 467-68, 561, Vol. 16, Broussard Depo., p 7, 11-13).

Creagh testified that Atkinson did not provide her with the promised assistance. (R. 177-183, 188-89). Creagh had returned to work during the Thanksgiving and Christmas holidays, which is the busiest time of the year for airlines. The Mobile Terminal was short-staffed during this peak airline travel period. (R. Vol. 15, Atkinson Transcript, p. 21). This created friction between Creagh and her co-employees. They were frustrated when they were asked to provide help and sometimes they did not help at all. (R. 177-183, 188-89).

Additionally, as the supervisor on duty, Arthur was required to prepare an on-the-job injury report within 2 hours of the injury and to prepare a shift transition report of same to the incoming supervisor. (R. 531, Pl. Exh. 16, 534-35). Arthur, who had discouraged Creagh from reporting her injury, admitted that he did not comply with either of these requirements. (R. 527-528, 533-35). Envoy presented no evidence that Arthur had been disciplined for his failure to adhere to company policy.

Rather, Arthur had been promoted to the position of General Manager. (R. 545-46).

Envoy's former director of HR, Bridgette Murrell, testified that failing to fill out the report of the injury within 2 hours or as soon as practical would be a violation of Envoy policy. She further testified that any supervisor telling Creagh that she shouldn't report her injury because other people who had reported injuries had been fired also would be a violation of Envoy policy. (to R. 414, 463-467). She testified that not providing the assistance promised to Creagh in the bona fide offer of employment also would be a violation of policy. (R. 467). Finally, she also testified that requiring Creagh to ask other employees for assistance would not be providing assistance. (R. 468).

5. Evidence that the stated reason for the discharge was false.

Creagh presented substantial evidence that Envoy's stated reason for firing Creagh was false. On December 28, 2018, when Atkinson called Creagh into her office to question her about the doctor's note, Creagh told her that the note she was being shown was the note that Creagh had given to her. Creagh told Atkinson that she had not altered the note. (R. 246-47). Creagh denied that she told Atkinson that Dr. Busbee's nurse

had put the handwritten Xs on the note. (R. 246-47, 258-59). Creagh further testified that she believed that Atkinson had altered the note. (R. 247-48). Atkinson did not testify at trial to dispute Creagh's testimony.

The evidence showed that Envoy kept a scorecard on managers regarding whether they got planes out on time, which put managers under significant pressure. (R. Vol. 16, De La Paz Depo., p. 4-5). Atkinson was aware that a single plane delay could cost Envoy \$40,000 or better. (R. 499-500, Pl. Exh. 7). The Mobile Station was short-staffed during the period Creagh worked there. (R. Vol. 16, De La Paz Depo., p. 3).

Atkinson's credibility was seriously undermined at trial. Atkinson testified that she had been a good and fair manager. She testified that she was consistent in her management style and approach at all times. (R. Vol. 15, Atkinson Transcript, p. 10-12). Atkinson also testified that she had been fired by Envoy because she had failed a couple of compliance audits, not because of employee complaints. (R. Vol. 15, Atkinson Transcript, p. 13-15). Atkinson would have remembered if employee complaints had come up as a reason for her termination. (R. Vol. 15, Atkinson Transcript, p. 14-15, 16).

De La Paz was proffered by Envoy to speak to Atkinson's management performance during the years 2018 and 2019 when Creagh worked there. (R. Vol. 16, De La Paz Depo., p. 2). De La Paz testified that Atkinson was not a good manager. (R. Vol. 16, De La Paz Depo., p. 2, 6). De La Paz had fired Atkinson because of employee complaints against her, not because of failed audits. (R. Vol. 16, De La Paz Depo., p. 9-10, Pl. Exh. 29). De La Paz did not believe that Atkinson comported to the highest standards of fairness espoused by Envoy's Guiding Principles. (R. Vol. 16, De La Paz Depo., p. 7).

Additionally, Creagh presented evidence of two documents that were inconsistent with Envoy's stated reason for Creagh's termination: 1) .Envoy's initial response to Interrogatory #14 and an email stating that Cheagh had been terminated due to attendance.. (R. 316, Pl. Exh. 155, Vol 16, West Depo., p. 22, Pl. Exh. 17). West testified that Bueno was a workers' compensation employee. He did not state that Bueno did not work for Envoy, as argued by Envoy at trial. (R. Vol 16, West Depo., p. 22, Pl. Exh. 17).

In summary, although Envoy carries a heavy burden on its appeal, that does not entitled it to argue the evidence in a light most favorable to

it, as it does throughout its Brief. The correct standard is that the evidence must be viewed in a light most favorable to Creagh. Creagh anticipates that Envoy will invite the Court in its reply brief to re-weigh the evidence and the inferences to be drawn therefrom in its favor. The Court should thoroughly reject that invitation. Simply put, Envoy has not demonstrated that the jury's determination that Atkinson had fired Creagh solely because of her workers' compensation claim was not plainly and palpably wrong.

II. The Trial Court did not commit reversible error with its evidentiary rulings.

A. The Trial Court was well within its discretion to admit Envoy's initial response to Interrogatory #14.

Envoy incorrectly argues that the Trial Court erred by admitting into evidence prejudicial aspects of the Parties' dispute over Envoy's response to Interrogatory #14. (Appellant's Br. 49-51). By way of background, the Trial Court granted a motion to compel on December 13, 2019 that ordered Envoy to respond to Creagh's first set of interrogatories which were served with her complaint. (C. 69, 45). Years later, Envoy claimed that its responses contained a forged verification signature. (C. 379-91). After Envoy dropped this bombshell, Creagh filed a motion for a

show cause order and a motion for sanctions. (C. 379-91, 545). Creagh argued that, if true, Envoy's service of a forged verification signature was a blatant violation of the Trial Court's compel order, and an egregious affront to the overall integrity of the discovery process and the administration of justice. Plaintiff sought a default judgment. The Trial Court issued a show cause order and referred the motion to a special master.

Ultimately, the Trial Court decided against entering a default judgment. However, as a lesser sanction, the Trial Court ruled that Plaintiff could admit Envoy's response to Interrogatory #14 since Envoy had, in fact, served the response as directed by the compel order.⁴ (R. 296-97, 727). The Trial Court's ruling to admit Envoy's first response to Interrogatory # 14 was well within its broad discretion under Rule 37 to fashion relief for discovery abuse. One thing is clear, the controversy over Envoy's discovery response was entirely of Envoy's and/or its counsel's

⁴ Envoy argues that Plaintiff should have known when it first received the response to Interrogatory #4 that it was wrong. However, Envoy's response was the only statement Plaintiff had received at that point that was sworn under oath. While Plaintiff understood that it conflicted with Envoy's stated reason in the termination letter, Plaintiff had the right to rely on the only sworn statement it had at the time. Moreover, Envoy took the position that the signature was a forgery, not Plaintiff.

own making. As recently as September 13, 2024 and October 11, 2024, this Court and the 11th Circuit, respectively, reaffirmed the principle that a party is accountable for the alleged discovery abuse of its attorney despite the party's contention that the attorney acted without its knowledge or consent. In *Mobile Invs., LLC v Pharm. Servs., Inc.*, 2024 Ala. LEXIS (September 13, 2024) a default judgment was entered due to the attorneys failure to respond to discovery. The Court reasoned that:

[I]t is well established that an attorney is the agent of his or her client, and the knowledge of the attorney is imputed to the client even if the client did not have actual knowledge of the facts and circumstances at issue.

* * *

Mobile Investments and TBG "cannot hide behind the alleged omissions of [their] former counsel." We therefore see no reason to hold that their willful disregard of the trial court's discovery orders could be justified on this basis.

* * *

Our discovery system is designed to operate through the good faith and professionalism of the attorneys and parties involved in an action without the need for intervention from our trial judges who are often very busy. Although attorneys for each side may properly argue about the details and scope of discovery (for instance, about privilege issues or dates for depositions or production of documents), ultimate compliance with proper discovery requests is not optional.

2024 Ala. LEXIS at *12-15. The entry of default was affirmed on appeal.

Similarly, in *Hornady v. Outokumpu Stainless USA, LLC*, 2024 U.S. App. Lexis 25712, Outokumpu appealed the entry of a default

judgment on the ground that it should not be sanctioned for the discovery abuse of its attorney. The 11th Circuit flatly rejected this argument stating:

This argument is wrong several times over. To start, it is generally not an abuse of discretion to charge [parties] personally with 'the consequences of the acts or omissions of their freely selected agent. There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. To hold otherwise would be wholly inconsistent with our system of representative litigation.

2024 U.S. App. LEXIS 25712, *17 (internal citations omitted).

Likewise, the Court should reject Envoy's position that it should be immune from any repercussions because of its hotly contested allegation that its former attorney acted intentionally and without its knowledge or consent. The Trial Court, presumably, considered Envoy's position since it declined to impose the ultimate sanction of a default when defaults have been granted for less egregious misconduct. Still, the Court was well within its discretion to, on the one hand, admit the response on the issue of pretext, allow Envoy to present evidence that it was incorrect, and that it had amended the response to correct it. While, on the other hand, restrict both parties from delving any further into the disputed issues of

who was to blame for the incorrect response and the verification signature. To be sure, Creagh, certainly, would have liked to have presented at trial relevant evidence that the verification signature was genuine, and allow the jury to decide whether it was authentic or a forgery.

Envoy's attempt to support its position by relying on the Special Master's findings in his Recommendation is misplaced. The Special Master had no authority under Rule 53 to make recommendations on evidentiary rulings and findings of fact that would pertain in any way to the jury trial. Even so, the Special Master strongly disagreed with Envoy's position stating:

The pivotal question for the jury at trial is whether Envoy wrongfully fired the plaintiff under Alabama law. Envoy's response to interrogatory 14 is relevant to that issue, and plaintiff should be allowed to use it at trial in a limited way.

The Trial Court's ruling was well within the bounds of its discretionary power.

Additionally, during trial, when Plaintiff first sought to admit the response, the Trial Court asked, "if anyone has any issues with how Interrogatory #14 is handled, if the Plaintiffs will concede that it does not

open the door to [Envoy's former Counsel's involvement with the verification signature], are you OK with this coming in?" Envoy's Counsel responded "Yes." (R. 295). The Trial Court further instructed that Plaintiff could comment that this was Envoy's initial response, Envoy could explain that the response was wrong, and Envoy had subsequently corrected it with a supplemental response. However, the Trial Court reiterated that the subject of the veracity of Conerly's verification signature was off-limits. (R. 301). As such, contrary to Envoy's contention, the Trial Court ruled against allowing either party to admit evidence regarding the alleged unduly prejudicial aspects of the discovery dispute. Moreover, the Trial Court ruled that it had not adopted the Special Master's finding that the verification signature had been forged. (R. 301).

During the direct examination of Murrell, Envoy's Counsel asked whether Envoy's response to Interrogatory #14 "would be the truth or not the truth?" The witness responded that it was "not the truth." (R. 457). As such, Envoy first called into question the veracity of Conerly's verification, not Plaintiff. The Trial Court admonished Envoy's Counsel, but ruled that she had not opened the door to evidence regarding the

authenticity of Conerly's verification signature. The Trial Court further held that Creagh's Counsel could mention in closing Murrell's testimony that Envoy's response to Interrogatory #14 was under oath and not the truth. (R. 478-481). Envoy did not take exception to this ruling.

Envoy also did not attempt to enter into evidence the alleged evidence "of how the incorrect response came about" or make a proffer of what the evidence would show. (Appellant's Br. 51). Regarding Plaintiff's Counsel's remarks in closing argument, the Trial Court gave a limiting instruction to the jury which he allowed Envoy's Counsel to prepare. (R. 642-45). Envoy did not take exception to this curative instruction. Envoy did not properly preserve the issue of the admissibility of Envoy's response to Interrogatory #14 for review. See *Pensacola Motor Sales, Inc. v. Daphne Auto, LLC*, 155 So.3d 930, 936-37 (Ala. 2013).

Finally, the burden of establishing that an erroneous ruling was prejudicial is on the appellant. Because the jury found against Envoy on the pivotal issue of who altered the doctor's note, Envoy now wants to argue that Interrogatory #14 was the devastating blow that sealed its fate. As demonstrated above, however, Envoy's Counsel argued in closing argument that the case "boils down to who you believe altered the doctor's

note.” (R. 686). Envoy’s Counsel even stated that just because “Envoy answered the interrogatory wrong and then corrected it [sic] doesn’t shed any light on whether she was terminated solely because she made a workers’ comp claim.” (R. 686).

The Trial Court gave a jury charge stating that “[a] party has a duty seasonably to amend a prior answer to an interrogatory that was incorrectly made. A party’s amended interrogatory answer supersedes the previous answer and becomes the operative answer. Ms. Creagh’s interrogatories and Envoy’s answers are in evidence. You should consider the answers just as if Envoy testified to them in court.” (R. 702-03). Envoy did not take exception to this charge. Envoy has not demonstrated that the admission of its response to Interrogatory #14 would have changed the outcome of the trial or has probably injuriously affected its substantial rights. Ala. R. App. P. 45; *Wood v. Hayes*, 104 So. 3d 863, 864 (Ala. 2012).

B. The Trial Court did not err in allowing the Rule 30(b)(6) testimony of Anna De La Paz

Envoy argues that the Court erred by allowing testimony from the Rule 30(b)(6) deposition of Anna De La Paz’s because it was inadmissible bad character evidence. Envoy is wrong that the evidence was admitted

as bad character evidence. First, De La Paz testified that she was chosen as a Rule 30(b)(6) witness to testify about the time-period when Atkinson was Creagh's manager, and the reasons for Creagh's termination. Atkinson had testified that she was a good and fair manager at all times, and the sole reason for her termination was that she failed a compliance audit.. The Court was incredibly careful to only allow De La Paz's general opinions during the time that Creagh worked for Envoy to impeach Atkinson's testimony. The Court did not allow testimony about specific complaints against Atkinson after Creagh was fired by Atkinson.⁵ (Def, Exh. 132; C. 319-371, 350-353, 617-21).

The Trial Court further ruled that De La Paz's letter terminating Atkinson was admissible with a limiting instruction and jury charge that it was admitted solely for impeachment. The Trial Court further instructed the jury that to the extent you heard evidence of a person's character, you may not consider that evidence for the purpose of proving that the person acted in conformity with that character. (R. 705). Envoy did not object to the limiting instruction or take exception to the jury

⁵ The excluded testimony included complaints that employees were in fear of asking to take time off due to Atkinson's hostility and retaliation.

charge. (R. 321, 335, 704).

Envoy also did not make a proffer of evidence at trial that De La Paz's admitted testimony did not relate to the relevant time period. (R. 352). Finally, De La Paz's testimony regarding Atkinson was cumulative of Creagh's testimony. In summary, Envoy did not demonstrate that the admission of De La Paz's testimony was error or that it has probably injuriously affected its substantial rights. Ala. R. App. P. 45; *Wood v. Hayes*, 104 So. 3d 863, 864 (Ala. 2012).

C. Envoy is wrong that the Trial Court erred because it “allowed” Creagh’s counsel to improperly question Envoy witnesses regarding Creagh’s supposed constitutional right to due process prior to her termination.

Envoy is wrong that the Trial Court erred because it “allowed” Creagh's counsel to improperly question its witnesses regarding Creagh's supposed constitutional right to due process. First, Creagh's counsel never questioned a witness regarding whether Creagh was entitled to constitutional due process by Envoy. Rather, Creagh's counsel asked whether principles of due process, such as those afforded by the Constitution, were consistent with Envoy's written Guiding Principles that call for all employees to conduct themselves with the highest standards of fairness. Creagh's Counsel never once framed a question to

suggest that an employee has a general right to constitutional due process in the employment setting. (R. 459, 474; Def. Exh 1A). Envoy's witness, certainly, was able to disagree that the highest standards of fairness in Envoy's Guiding Principles do not equate to affording constitutional due process to employees under investigation. It was a proper line of questioning since Envoy itself introduced its Guiding Principles as a basis for firing Creagh.

More importantly, however, the Trial Court did not "allow" this line of questioning. Envoy had the obligation to object in a timely manner if it considered the questioning objectionable, but did not do so. (R. 459, 474). Envoy should not now be heard to blame the Trial Court for "allowing" a line of questioning to which it did not timely object. When Envoy first raised the issue at the close of all the evidence, the Trial Court pacified Envoy by including a jury charge stating that due process guarantees do not apply to a private employer like Envoy. (R. 613-16, 705). Envoy did not take exception to this charge.

III. Creagh presented substantial and direct evidence of mental anguish sufficient to support the jury's award of compensatory damages.

Creagh presented substantial and direct evidence of the nature,

degree, and duration of mental anguish she suffered because of Envoy's retaliatory discharge. In *Rice v Merchants Foodservice*, 286 So. 3d 681 (Ala. 2019), the Court stated:

Our cases do not indicate that "direct evidence" means only evidence of something so severe as a mental breakdown or a suicide attempt. As *Kyles* and its progeny make clear, "direct evidence" of mental anguish means testimony from the plaintiff about the degree of mental suffering.

In this case, Rice testified to experiencing shock from the sudden and unexpected termination of his employment; frequent sleepless nights during his unemployment and occasionally after finding a job, a lot of anxiety about what he was going to do, embarrassment, irritability, and a loss of trust towards his fiancée, her two children, and others, including putting off a wedding originally scheduled for 2015 because of this loss of trust; he testified that the event changed his whole sense of who he was. Merchants is correct that Rice did not testify to receiving counseling or to taking medication as a result of the mental stress he experienced, but he certainly presented direct evidence that was more than the "scant" testimony described in *Kyles* and other cases in which this Court remitted mental-anguish awards. **Moreover, simple common sense dictates that a person who is wrongfully terminated from a job will suffer mental anguish.** We find no error in the trial court's affirmation of the jury's verdict on this subject.

Id. at 705. The *Rice* Court affirmed a \$314,862.88 general compensatory damage verdict that it said could be supported on mental anguish alone.

Against this backdrop, Envoy insinuates that Creagh's proof of mental anguish consisting of only her own testimony is somehow

insufficient. (Appellant's Br. P. 54). It argues that, because Creagh presented no evidence of physical harm, suffered no medical symptoms, and she was only "upset," the mental anguish award was excessive. (Appellant's Br. P. 16-17). However, *Rice* clearly teaches that medical records of mental anguish are not required. *Alabama Power v. Harmon*, 483 So.2d 386 (Ala. 1986) ("[c]laims for mental anguish need not be predicated upon the presence of physical symptoms."). Rather, mental anguish can be based on anxiety, embarrassment, anger, fear, frustration, disappointment, worry, annoyance, and inconvenience. *Volkswagen of America, Inc. v. Dillard*, 579 So.2d 1301 (1991).

Envoy grossly misrepresents the record when it states that Creagh's evidence of mental anguish amounted to little than "her feelings were hurt" and "she didn't eat for a couple of days." (Appellant's Br. P. 54). The evidence demonstrated that Jada took pride in being employed because she was raised with a strong work ethic. She grew up with her parents in Mount Vernon, Alabama. (R. 159) Her father worked in the infectious disease unit for the Alabama Department of Public Health, is a minister, worked for the Mobile County Housing Board, and did community outreach. Her mother worked for the Alabama Department

of Rehabilitation five days a week and put herself through school while also working a second job. (R. 160-161)

Jada started working when she was 16 years old; primarily involving customer service. (R. 161) After working for Mesa Airlines for two years, she moved back home to get her degree at Bishop State and worked at night for a hotel. (R. 162-163) Jada applied for a job at Envoy because she liked the aviation field and she could go home at night for a good work life balance. (R. 163) Jada Creagh was 28 years old when she was fired from Envoy in 2018. (R. 159).

The day Atkinson fired her, Atkinson asked Jada if she “enjoyed her time off” despite the fact that she had been suspended by Atkinson. (R. 197–198). Envoy tarred Jada as a forger of the doctor’s note. She cried, felt that she was not in reality, and that her firing was a bad dream. Jada missed her job because she loved working at Envoy. She did not eat for a couple days. She did not go out, much less do anything, because she felt ashamed and embarrassed which resulted in a depressive state. Her fiancée was going to buy a home in February 2019 and she felt that she would be a burden to him because she did not have

a job. Jada had always been an independent woman who did not want to be a burden to her fiancée. (R. 198-199).

When Jada applied for jobs after she was terminated, the question came up on the application as to whether a prospective employee had been terminated. She answered yes. During her interview, three managers asked her about the circumstances of her termination. She told them she was injured on-the-job and was terminated because of her worker's compensation claim. She was ashamed, embarrassed and felt stigmatized during the interview. The same inquisition happened when she applied for a job at Mississippi Power. (R. 200-202). She eventually picked herself up, dusted herself off, kept fighting for herself, and applied for jobs because she was raised that way by her parents. Because of her depressive state, her parents gave her scripture to read to get through it, and to let her know that she could trust in God. (R. 200).

Envoy erroneously contends that Creagh "elected" not to offer any proof of the duration of her alleged mental anguish. (Appellant's Brief, pp.16-17). Creagh was directly asked at trial, almost six years after her wrongful termination,

Q. *As you sit here today*, what still sticks with you?

A. I'm paranoid. I'm not as trusting of people. I have been labeled a criminal. I have never committed a crime a day in my life.”⁶

(R. 273). This evidence shows that the duration of Creagh’s mental anguish was not even remotely close to the “perhaps two days” that Envoy contends is all the record supports. (Appellant's Brief, p.62).

Next, Envoy argues that the Trial Court failed to subject Creagh’s mental anguish claim to the strict scrutiny standard under *Kmart Corp. v. Kyles*, 723 So.2d 572 (Ala. 1998). (Appellant’s Brief, pp. 58-65). As an initial matter, strict scrutiny under *Kyles* is tempered by the principle that the presumption that a jury's verdict is correct is strengthened by the trial court's denial of a motion for a new trial. *Wal-Mart Stores, Inc. v. Goodman*, 789 So. 2d 166, 178 (Ala. 2000). In applying a strict scrutiny analysis under *Kyles*, the Court distinguishes between indirect testimony of mental anguish lacking detail (i.e., it was humiliating)

⁶ Turning to the alleged forgery of the doctor’s note, Ala. Code, §13A -9-45 provides:

- (a) A person commits the crime of falsifying business records if, with intent to defraud, he:
 - (1) Makes or causes a false entry in the business records of an enterprise;"

versus direct testimony regarding the specific nature, severity and duration of the mental anguish suffered by the plaintiff. A jury's award of mental anguish damages that is based on direct testimony delving into the nature, severity and duration of the plaintiff's mental anguish is presumed correct and will not be overturned unless plainly and palpably wrong.

Envoy refers to this Court's decision in *Rice* as "practically useless" and shockingly wants this Court to change its decision, i.e., "the court might reevaluate its dicta in *Rice*." (Appellant's Br., pp.60-61). Envoy's tetchéd argument only serves to highlight its weakness. Any notion that *Rice* is "practically useless" in the context of this case has been debunked by the numerous cases that cite *Rice* when addressing the issue of damages for mental anguish.

For example, in *Moore v. Pac.*, 2023 U.S. Dist. LEXIS 198502 (N.D. Ala. 2023), the Court quoted *Rice* for the proposition that "[w]e recognize that mental anguish and emotional distress are not items for which a precise amount of damages can be assessed; thus, in considering whether a jury verdict for compensatory damages is excessive, we must view the evidence from the plaintiff's perspective and determine what

the evidence supports in terms of the plaintiff's suffering." *Rice*, 286 So.3d at 703. If any evidence supports the award, trial and appellate courts will not disturb the award unless it "shocks the conscience." *Moore*, at 121.

In *Moore*, the court set forth multiple mental anguish damage awards that the Court or the trial court expressly disagreed with, but did not shock the conscience, including:

- Affirming the trial court's denial of a motion to remit an award of mental anguish damages, even though "the jury's verdict is higher than a Justice of this Court, sitting as a juror, might have awarded," *Daughtery*, 840 So.2d at 163;
- Affirming the denial of a motion to remit an award of physical injury and mental anguish that did not "shock[] the conscience of this Court," even though both the trial court and the supreme court said they might have awarded a different amount if the judges were the fact finders, *Norfolk S. Ry. Co., Inc. v. Bradley*, 772 So.2d 1147, 1154-56 (Ala. 2000);
- Denying a request to remit an award of mental anguish damages on appeal because, even though "the damages award is high and borders on excessive," it did not "shock the conscious of this Court," *Goodman*, 789 So.2d at 179-80;
- Reversing the trial court's remittitur of mental anguish award that shocked the trial court's conscious because, "although they are high in most instances and very, very high with respect to Joyce, we cannot say that this Court's conscious is shocked—but we hasten to add that the

verdicts are on the borderline of excessive," *Daniels v. E. Alabama Paving, Inc.*, 740 So.2d 1033, 1050 (Ala. 1999).

Moore at 123; *See also, Prudential Ballard Realty Company, Inc. v. Weatherly*, 792 So.2d 1045 (Ala. 2000), (upheld a \$250,000 compensatory damage award based, on evidence of crying spells, depression, lost weight and stress caused by the defendants' actions which interfered with the marital relationship); *Ford Motor Co. v. Sperau*, 708 So.2d 111 (Ala. 1997) (a \$500,000 and \$200,000 mental anguish award for two plaintiffs where they experienced humiliation, shame, wounded pride, stress and grief.)

Next, Envoy complains about the trial court's pattern jury instructions on mental anguish. (Appellant's Brief, pp.16-17). However, Envoy failed to object to said instructions (R. 714-717) and, in fact, expressly stated on the record that it had no exceptions to the charges.

“THE COURT Any exceptions by the plaintiff?

MR. DAILEY No.

THE COURT Defendant?

MS. KAFFER We would ask that you also repeat the charge about how she can't recover for the on-the-job injury as such.

THE COURT I'm not going to offer that I will note that for the record I think I have covered what I feel like I need to cover given the nature of the question.

THE COURT: Any other exceptions other than that?

MS. KAFFER No.”

(R. 717). See Rule 51, Ala.R.Civ.P.; *Alfa Mut. Ins. Co. v. Northington*, 561 So.2d 1041 (Ala.1990). Moreover, the jury was properly instructed that it could only award compensatory damages for mental anguish and its award could “not be based on speculation, guess, or conjecture” which is a pattern instruction. (R.708-709).

Next, Envoy claims that the jury’s verdict awarding \$250,000 in compensatory damages for mental anguish was excessive. The Court’s authority to disturb a jury verdict on this ground is one that should be exercised with great caution. *Alabama River Grp.*, 2017 WL 4324889, *18-19 quoting *National Ins. Ass’n v. Sockwell*, 829 So. 2d 111, 133 (Ala. 2002) and *Hammond v. City of Gadsden*, 493 So. 2d 1374, 1378-79 (Ala. 1986)). Specifically, Envoy contends that the Trial Court erred because it did not conduct a meaningful review of the mental anguish award and reflect in the record, by an order, the reasons for its action citing *Hammond*. This argument is flawed for several reasons.

Post-*Hammond* cases address the review of the compensatory part of a verdict. In *Lowder Realty Co. v. Sabry*, 542 So. 2d 1240 (Ala. 1989), the Court stated that “we have noted that it was never our intention to automatically remand every case in which excessiveness was at issue.

Where the record on appeal is sufficient for this Court to review the excessiveness issue, a *Hammond* remand is not necessary.” *Lowder* at 1242. Envoy does not claim that the record is insufficient to review the excessiveness issue. In fact, they assert just the opposite by relying on the record to affirmatively show that the verdict was excessive. Further, Envoy never asked for a *Hammond* hearing at the trial court level nor does it ask for one before this Court via remand. At the Trial Court’s hearing regarding Envoy’s post-trial motions, Envoy simply submitted its motions on its briefs, declining oral argument. (R. 723 (“we don’t have anything to present other than what is in the papers”)).

Inexplicably, Envoy cites *Pitt v. Century II, Inc.*, 631 So. 2d 235 (Ala. 1993) in support of its excessiveness argument. In *Pitt*, the Court held that the scope of *Hammond* is narrowed so that a hearing is not mandatory where an award of compensatory damages is clearly supported by the record. *Pitt* at 238. *Pitt* also provides that where there is no evidence of any misconduct, bias, passion, prejudice, corruption, improper motive, or cause not consistent with the truth and the facts, there is no statutory authority to invade the province of the jury in awarding compensatory damages. *Pitt* at 240. Envoy made no assertion

that the compensatory damage award was flawed in any of these ways. It only argued these grounds regarding the jury's punitive damage award. (C. 2085-2149).

In *Synergies3 Tec Servs., LLC v. Corvo*, 319 So. 3d 1263 (Ala. 2020), the defendants requested a new trial or a remittitur. The trial court denied that motion, without holding the requested *Hammond* hearing. The defendants asserted that the trial court should have held a hearing regarding the mental anguish damage award. The Court stated that *Hammond* applies to punitive damage awards, not mental anguish damage awards. *Synergies3 Tec Servs., LLC*, 319 So. 3d at 1279 n. 10.

In summary, Creagh testified vividly regarding the nature, severity and duration of her mental anguish that she suffered and continued to suffer until her good name was cleared by a jury of her peers. Creagh's testimony was sufficiently detailed to allow for robust cross-examination by Envoy. The mental anguish award of \$250,000 is neither plainly nor palpably wrong, nor is it shocking to the conscience.

IV. Creagh presented clear and convincing evidence sufficient to support the jury's award of punitive damages.

The Court reviews the punitive damage award *de novo*. Generally, "the purpose of punitive damages is not to compensate the plaintiff but to punish the wrongdoer and to deter the wrongdoer and others from committing similar wrongs in the future." *Green Oil Co. v. Hornsby*, 539 So. 2d 218, 222 (Ala. 1989). Punitive damages "must not exceed an amount that will accomplish society's goals of punishment and deterrence." *Id.* A defendant bears the burden of proving excessiveness. *McDowell v Key*, 557 So. 2d 1243, 1249 (Ala. 1990). It is not sufficient for a defendant to merely allege excessiveness; it must prove it by submitting evidence that will justify interference with the jury's constitutionally protected verdict. *Fuller v. Preferred Risk Life Ins. Co.*, 577 So 2d 878, 886 (Ala. 1991); *Associates Financial Services Co. of Alabama, Inc. v. Barbour*, 592 So.2d 191, 198-99 (Ala. 1991).

The Court undertakes its review with an eye toward determining whether any one or more of the factors set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996), *Green Oil Co.*, 539 So. 2d at 222, *Hammond*, 493 So. 2d at 1378-

79, and their progeny reflect excessiveness and warrant remittitur. The

Gore factors are:

- (1) the degree of reprehensibility of the defendant's misconduct;
- (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and
- (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

See State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408, 418, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003). The *Hammond/Green*

Oil factors, which are similar to the *Gore* factors, are:

- (1) the reprehensibility of [the defendant's] conduct;
- (2) the relationship of the punitive-damages award to the harm that occurred, or is likely to occur, from [the defendant's] conduct;
- (3) [the defendant's] profit from [its] misconduct;
- (4) [the defendant's] financial position;
- (5) the cost to [the plaintiff] of the litigation;
- (6) whether [the defendant] has been subject to criminal sanctions for similar conduct; and
- (7) other civil actions [the defendant] has been involved in arising out of similar conduct.

Green Oil Co., 539 So. 2d at 222, *Hammond*, 493 So. 2d at 1378-79; *Shiv-Ram, Inc. v. McCaleb*, 892 So. 2d 299, 317 (Ala. 2003) (paraphrasing the *Green Oil* factors).

A. Reprehensibility of Envoy’s Misconduct.

Not surprisingly, nowhere in its Brief did Envoy consider it worthwhile to discuss the Court’s long-standing precedent that punitive damages are especially appropriate in a retaliatory discharge case, based on “the gravity of wrongfully depriving [the employee] of what was [his] livelihood, [and] ... the chilling effect of retaliatory discharges.” *Lozier Corp.*, 624 So.2d 1034, 1037 (Ala.1993); *Montgomery Coca-Cola Bottling Co.*, 725 So. 2d at 1000. Yet, that is the very prism through which the Court must view the jury’s punitive damage award.

Creagh presented clear and convincing evidence that Atkinson threatened to get rid of Creagh and then proceeded to alter a doctor’s note to blame Creagh as a pretext to fire her solely due to her workers’ compensation claim. At trial, Envoy was unapologetic, and showed zero remorse. In fact, Envoy’s Counsel defiantly told the jury that Envoy was not there to make any apologies because it did nothing wrong. (R. 660). The jury correctly determined that Atkinson’s intentional conduct

meets the very definition of retaliatory animus and malice. Although Envoy gives lip service to the *Hammond* and *Green Oil* factors, it does not focus on the most principal factor – the degree of reprehensibility of its misconduct. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996) (“the most important indicium of the reasonableness of a punitive-damages award” in most cases “is the degree of reprehensibility of the defendant’s conduct.”). Punitive damages “imposed on a defendant should reflect ‘the enormity of his offense.’” *Id.* (quoting *Day v. Woodworth*, 54 U.S. (13 How.) 363 (1852)).

B. The Type of Harm.

In a typical tort case, the reviewing court looks at whether the harm was physical as opposed to economic in nature, with “purely economic” harm assigned less protection in the punitive damage analysis. *Gore*, 517 U.S. at 576. The court’s assessment is simple in a car wreck or fraud case, yet such an assessment does not fit in a retaliatory discharge case. Although the physical harm may be limited to mental anguish, once again, the Alabama Supreme Court has routinely held that wrongfully depriving an employee of his livelihood and putting a chilling effect on the filing of workers compensation claims

is a particularly reprehensible offense warranting punitive damages. *Lozier Corp.*, 624 So.2d at 1037; *Montgomery Coca-Cola Bottling Co.*, 725 So. 2d at 1000.

C. Indifference to or Reckless Disregard for the Rights of Others; Defendants' Degree of Awareness of Hazard His Conduct Has or Is Likely to Cause.

In returning a verdict for Creagh, the jury necessarily decided that Atkinson altered the return-to-work slip herself – an intentional and heinous act that shows malice and reprehensibility to the highest degree. Envoy was unapologetic and displayed zero remorse or contrition for Atkinson's wrongful conduct. The very definition of indifference.

D. Indifference to or Reckless Disregard for the Vulnerability of Plaintiffs.

Envoy fired Creagh when she was as vulnerable as an employee could be. She had a torn labrum in her shoulder, and had just come off a period of reduced pay due to her injury. Nothing about this factor calls for remittitur.

E. Repeated Actions v. Isolated Incident, Existence and Frequency of Past Similar Conduct and Duration of the Conduct as well as Alabama statutory factor of Failure to Take Corrective Actions/Remedy the Wrong.

Courts in Alabama and other jurisdictions have found that a defendant's misconduct during legal proceedings is relevant in assessing a punitive damage award. *Shiv-Ram, Inc. v. McCaleb*, 892 So.2d 299, 317 (Ala. 2003). In *Duck Head Apparel Co. Inc. v. Hoots*, 659 So.2d 897, 914 (Ala. 1995), the court observed that the record showed that the defendant's officers and employees were often evasive and did not answer to the evidence of their wrongdoing. The court considered this relevant to the "culpability of the defendant's conduct support[ing] a substantial punitive damage verdict." *See also Day v. Ingle's Market, Inc.*, 2006 Dist. LEXIS 100159, *43 (E.D. Tenn. 2006) ("it is clear from the jury's decision that Ingle's acted deceitfully in providing false, misleading and incomplete testimony and evidence in [underlying proceeding]"). In *Amusement Indus., Inc. v. Antin*, 2007 Cal. App. Unpub. LEXIS 3447, *62-63 (Cal. App. 2d Dist. Apr. 30, 2007), the court found that the defendants' conduct satisfied the fourth and fifth reprehensibility criteria, with a record "full of examples of the high

degree of reprehensible conduct” including “duplicitous trial testimony” and “a continuous and continuing pattern of deceit, deception, falsehood and arrogant trickery, unabated by the slightest hint of contrition, remorse or repentance”) (emphasis added).

The record in this case is replete with Envoy’s inconsistent, evasive and incredulous conduct and testimony that continues to this day, long past the day it wrongfully fired Creagh. Even now, Envoy is still steadfast and defiant in its contention that it did nothing wrong. No one from Envoy “has ... voiced so much as a whisper of an apology or remorse. *Campbell v. State Farm Mut. Auto. Ins. Co.*, 98 P.3d 409, 416 (Utah 2004) (on remand from U.S. Supreme Court, approving a 9:1 ratio). See also *Bardis v. Oates*, 119 Cal. App. 4th 1, 22 (Cal. App. 2004) (finding award of punitive damages satisfied State Farm’s reprehensibility criteria when, among other things, the defendant “was unrepentant at trial”); and, *Rosenberg, Minc & Armstrong v. Malillo & Grossman*, 798 N.Y.S.2d 322, 331 (N.Y.S. 2005) (support for punitive damages found where defendant “has shown no remorse for his actions and, in light of the jury’s finding, has committed perjury in this action.”). Certainly, evidence that a defendant engaged in prohibited conduct while knowing

or suspecting that it was unlawful and then stubbornly maintaining it did nothing wrong at trial supports the proposition that **strong medicine is required to cure the defendant's disrespect for the law....**" *BMW of North Am.*, 517 U.S. at 576-77 (citations omitted) (emphasis added). If anything, the punitive damage to compensatory damage ratio of the jury's award is insufficient to ensure that Envoy does not repeat this wrongful conduct (a punitive damage award exceeding a 4:1 ratio is where constitutional due process concerns come into play). *Id.*

F. Harm Resulted from Intentional Malice, Trickery or Deceit and *Concealment or Cover-up* of Hazard or Harm.

As stated above, retaliatory discharge is an intentional tort directed at a vulnerable employee who has been injured on the job and is exercising his statutory rights. That is the very reason punitive damages are especially proper in a retaliatory discharge case. *Lozier Corp.*, 624 So.2d at 1037; *Montgomery Coca-Cola Bottling Co.*, 725 So. 2d at 1000. Plaintiff incorporates its arguments *supra* about Atkinson's intentional malice and Envoy's failure to independently investigate Atkinson to conceal and cover up her intentional wrongdoing.

G. Relationship of Punitive Damages to Harm That Occurred or is Likely to Occur.

The inquiry to determine whether there is a disparity between the punitive damages and compensatory damages awarded is “whether there is a reasonable relationship between the punitive damage award and the harm likely to result from the defendant’s conduct as well as the harm that actually has occurred.” *Gore*, 517 U.S. at 581. “A higher ratio may 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.” *Id.* at 582.

As discussed *supra*, *Day v. Ingle’s Market Inc.*, 2006 WL 239290 (Tenn. E.D 2006), is a malicious prosecution case in which the court denied defendants’ motion for remittitur of an award of \$500,000.00 in compensatory damages and \$2,500,000.00 in punitive damages. The Court stated:

Ingle’s has not cited any case... where a ratio of compensatory damages to punitive damages of five to one has been held to be *per se* unconstitutional... *[C]ases where injuries are without a ready monetary value, such as this case involving impairment to reputation and impairment of liberty rights, as well as emotional injuries, then higher ratios between compensatory and punitive damages are to be expected.*

Ingles, 2006 WL 239290 at * 14-15 (emphasis supplied). In this case, as in *Ingles*, Creagh’s mental anguish is without a ready monetary value. Creagh, however, was awarded far less than the plaintiff in *Ingles* despite similar, if not worse, conduct on the part of the defendants. Because the ratio of “actual harm” to punitive damages is well within what this Court has considered proper, this Court need not spend much time contemplating the “likely harm” that may have occurred because of Envoy’s misconduct.

H. Civil Penalties Authorized or Imposed in Comparable Cases.

There is no particular law providing for the imposition of civil penalties that would encompass the conduct in this case; thus, this factor is inapplicable. *Shiv-Ram, Inc. v. McCaleb*, 892 So. 2d 299, 317 (Ala. 2003).

I. Defendants’ Profit from Misconduct.

There is no way to figure out precisely how much money Envoy has saved on workers’ compensation claims that were not filed or where an injured employee prematurely returned to work because of the chilling effect of Atkinson’s retaliatory conduct. However, the Court has recognized the chilling effect as a grave concern calling for the imposition

of punitive damages. *Lozier Corp.*, 624 So.2d at 1037; *Montgomery Coca-Cola Bottling Co.*, 725 So. 2d at 1000.

J. Defendants' Financial Position.

Envoy conceded in its post-trial motions that it does not raise its financial position as a factor to be considered for remitting punitive damages. (C. 2085-94). Thus, this factor weighs against a finding of excessiveness.

K. Cost to Plaintiff of the Litigation.

Under this factor, "[a]ll the costs of litigation should be included, so as to encourage plaintiffs to bring wrongdoers to trial." *Green Oil*, 539 So. 2d at 223. This Court must consider whether the punitive damages award sufficiently rewards plaintiff's counsel for assuming the risk of bringing the lawsuit and encourages other plaintiffs to bring wrongdoers to trial. The fourth *Aldridge* factor makes retaliatory discharge cases extremely difficult to prove and causes many retaliatory discharge cases to be terminated on summary judgment. As a result, retaliatory discharge cases are not favored by the plaintiffs' bar.

Here, Merchant's hired a highly regarded regional employment law firm to litigate this case. The record demonstrates hard fought discover

disputes, lengthy depositions, pretrial motions, and a four-day trial. This factor weighs against a finding that the punitive damage award is excessive. *Cooper & Co. v. Lester*, 832 So. 2d 628, 644 (Ala. 2000).

L. Whether Defendants have been Subject to Criminal Sanctions for Similar Conduct.

Envoy has not been subject to any criminal sanctions for similar conduct. Envoy has not been criminally charged because of this case. As such, this factor is inapplicable. *Shiv-Ram, Inc. v. McCaleb*, 892 So. 2d 299, 319 (Ala. 2003).

M. Any other civil actions arising out of similar conduct.

Envoy has presented no evidence that it has been sued and punished for similar conduct in Alabama.

In summary, the applicable Gore/Hammond Green Oil factors decidedly support the jury's award of punitive damages.

CONCLUSION

For the foregoing reasons, the Final Judgment of the Trial Court is due to be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with the type-volume limitation set forth in Ala.R.App.P. 32(d) because (1) it contains a total of 13,711 words, excluding the portions of the brief which are exempt in accordance with Ala.R.App.P. 32(c), and that it was prepared in a proportionally spaced typeface using Microsoft Word, in 14 point Century Schoolbook type style.

/s/ Thomas M. O'Hara
THOMAS M. O'HARA

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing document by email on September 16, 2025 as follows:

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