NO.

IN THE

SUPREME COURT OF THE UNITED STATES

RONNIE R. ROLLAND - PETITIONER

VS.

CARNATION BUILDING SERVICES, INC -RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS TENTH CIRCUIT

FROM CASE NO. 17-1387

PETITION FOR WRIT OF CERTIORARI

RONNIE R. ROLLAND SR. PRO SE

15584 E. 12TH AVE. #102

AURORA,COLORADO 80011

PH#

QUESTION(S) PRESENTED FOR REVIEW

(I) .THE APPEALS COURT **REFLECTS A RULING THAT IS NOT IN ACCORDING** WITH PREVIOUS SUPREME/ OTHER SUPREME COURT'S DECISIONS ON SAME IMPORTANT MATTERS, AND CANNOT SURVIVE APPLICATION OF THE CORRECT LEGAL STANDARD,(IN PETITION HEREIN).

(ii) .DID DEFENDANTS ASSERTION OF **UNDISCLOSED ADDITIONAL MISCONDUCT CLAIMS** AGAINST ROLLAND, **AFTER HIS DISCHARGE**. CREATE AN INDEPENDENT TERMINATION REASON, ,FOR FIRING HIM? AT, (24-39).

(iii).DOSE THE " **HONEST GOOD FAITH BELIEF" STANDARD EXCUSE** DEFENDANTS INTENTIONAL DISCRIMINATION ON **DEFENSE OF MISTAKEN BELIEF**. WHILE BOTH STANDARDS REQUIRES THE SAME TO BE BASED ON PERSONAL KNOWLEDGE?AT, (22-81).

(iv) . CAN **SUBJECT-MATTER JURISDICTION** BE WAIVED ON A RETIALTION CLAIM THAT THE DISTRICT COURT PREVIOUSLY HAD BUT, DISMISSED BY STIPULATION UNINTENTIONALLY ? , AT, ( ).

(v).WAS PETITIONER DISCRIMINATORLY INTENTIONALY **DEPRIVED OF THE EQUAL** OPPO-**ORTUNITY** TO TAKE ADVANTAGE OF DEFENDANTS **UNWRITTEN POLICY** PROBLEM RESOL-LUTION AS **COMPARED AND EXTENTED TO OTHER DISABLITY EMPLOYEE'S? AT,(**32-35**).**

(vi). **ARE** CHARGING DOCUMENT THAT MAKE-UP PART OF THE APPEAL. REQUIRED TO **APPEAR IN THE RECORD ON APPEAL** RULE 10-F.A.R.P.? AT,(35 AND 26),

(vii). IS THE ELEMENTS TO ESTABLISH DISCRIMINATION UNDER THE **(ADAAA)** THE SAME TO BE ESTABLISHED UNDER THE **COLORADO ANIT-DISCRIMINATION ACT AGAINST DISABILED PERSONS.? AT,** (8-13 **).**

(VIII).WERE THE AFFIDAVITS OF DEFENDANTS WITNESS'S. GOOD FOR SUMMARY JUDGMENT, THAT WERE NEITHER, **SWORN ARE MADE UNDER PENALITY OF PERJURY**, AS TRUE AND CORRECT STATEMENTS/ **BASED ON INADMISSIBLE HEARSAY**? AT, (27-74).

(IX). WAS PLAINTIFF, WITH A DISABILITY (BACK-CONDICTION) **DISCRIMINATORY TREATED DIFFERENTLY** THAN OTHER EMPLOYEE'S OF DEFENDANTS THAT DECLINED" TO GO" ON LADDERS? AT, (43-45).

(XI). DID THE COURT OF APPEALS JUDGES COMMITTEE **REVERSALIBLE ERROR**, BY THE? **WEIGHING OF CREDIBILITY OF WITNESS'S/ REASONABLE DOUBTS** AND, DRAWING OF INFERENCES WHICH ARE **FUNCTION FOR A JURY, NOT A JUDGE? AT**, (56-59).

(XII). WAS ROLLAND DENIED A **REASONABLE ACCOMMODATION**/ A **REQUIRED INTERACTION PROCESS** BY DEFENDANTS. PURSUANT TO THE AMERICAN WITH DISABILITIES ACT AS AMENDED, 2008/EFFECTIVE JAN. 2009? AT, (50-79).

(XIII). **CAN IT BE INTERPRETED BY THIS COURT?** THAT DEFENDANTS CHANGE OF FACTUAL POSITION FOE ROLLANDS DISCHAGE, WAS **PROHIBITD BY DOCTRINE OF JUDICIAL ESTOPPEL**, FROM DISTRICT COURT. TO THE APPEALS COURT)? AT, (41-43).

(XIV). WAS DEFENDANTS INTENTIONAL DISCRIMINATORY, UNILATERAL DISCHARGE OF ROLLANDS EMPLOYMENT. **THE RESULT OF MALICIOUS MANIPULATION** OF AN EMPL-**OYEE OF ITS GENERAL CONTRACTOR AS A CONDUIT FOR ADVRSE ACTION? AT, (**60-81).

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30. F.R.C.P. 56 (C) AND 56 (E)(1), SUMMARY JUDGMENT..... (8).

ADA-42 U.S.C. SECTION 12203 (B).....

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JURISDICTIONAL STATEMENT

1..THE DATE, THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS MAY 14, 2018. THE COURTS ORDER AND JUDGMENT IS LOCATED IN APPENDIX ( ).

2. NO PETITION FOR REHEARING WAS TIMELY FILED IN MY CASE.

3. THIS COURT HAS BOTH ORIGINAL AND APPELLATE JURISDICTION. THE SAME IS INVOKED UNDER 28 U.S.C. SECTION 1254(1), AND TO REVIEW CASES FROM THE FEDERAL APPEALS COURT ON DISCRIMINATION UNDER THE AMERICAN WITH DISABILITY ACT, 2009,42 U.S.C. SECTION 12101 ET. SEQ., AND THE COLORADO ANIT-

DISCRIMINATION ACT, C. R. S. SECTION 24-34-40 ET SEQ. AND RETALIATION.

STATEMENT OF THE CASE AND AUTHOIRTIES

4. RONNIE R. ROLLAND-ACTING PRO SE, SUFFERS FROM A VARIETY OF MALAIES INCLUDING BRAIN DAMAGE, EPISODE SCIATICA, MEMORY LOSS, BACK AND LEG PAIN, ANXIETY AND DEPRESSION, THAT ARE PERMANENT. ROLLAND WAS DIAGNOSED WITH THESE **PERMANENT** DISABILITIES IN APRIL 25, 2012, BY THE SOCIAL SECURITY ADMINISTRATION. (FACTS SUPRA)- LOCATED IN , ROLLANDS EXHIBIT" L" ,LOCATED IN APPENDIX (C), OF PETITION.

5. ROLLAND-PETITIONER-WAS HIRED BY DEFENDANT ON MAY 14TH ,2014, AND TERMINATED BY DEFENDANTS ON 7-7-2014. AS INDICATED BY (FACTS SUPRA)-LOCATED IN THE COURT OF APPEALS ORDER AND JUDGMENT OF OPINION MAY 30TH , 2018, AT, P. 1 AND 2-LOCATED IN APPENDIX (A).

6 . PLAINTIFF FILED HIS CIVIL ACTION ON JANUARY 11TH 2016, IN THE UNITED STATES TENTH CIRCUIT DISTRICT COURT IN CIVIL ACTION **NO. 1: 16-CV-00057-CMA- STV**, AND ALLEGED THAT DEFENDANTS DISCRIMINATED AGAINST HIM ON THE BASIS OF DISABILITY AND THE COLORADO ANIT-DISCRIMINATION ACT- INTENTIONALLY AND WILLFULLY " WITH RECKLESS DISREGARED, MALICIOUS INSTIGATION OF HIS REMOVAL FROM THE SCHOOL BUILDING AND UNILATERALLY"AN RETALIATION,AND AGE DISCRIMINATION;

7. THE SAME IS-LOCATED AT, P. 1-10,OF U.S.TENTH CURCUIT DISTRICT COURTS ORDER GRANTING MOTION FOR SUMMARY JUDGMENT-COURT DOC # 142-(FACTS SUPRA)-LOCATED IN APPENDIX (B). (F.R.C.P. SUNNARY JUDGMENT-56 (C) AND 56 (E) (1).

ROLLAND ALSO REQUESTED A (**JURY TRIAL**)-SEE COURTS SCHEDULING ORDER IN-APPENDIX (C).

8.ROLLAND-PLAINTIFF,CLARIFIED THAT HIS CLAIMS CONCERN THE AMERICANS WITH DISABILITIES ACT (ADAAA) AND COLORADO ANIT-DISCRIMINATION ACT (CADA). PLAINTIFF REQUESTED "STATUTORY LIQUIDATED DAMAGAES OF BACK-PAY AND OTHER RELIEF" (FACTS SUPRA)-LOCATED IN DEFENDANTS FIEST MOTIN FOR SUMMARY JUDGMENTIN, APPENDIX (A)

9. WAS ROLLANDS UNTENTIONALLY DISMISSAL HIS CLAIM OF (RETALIATION) A **WAVER OF SUBJECT-MATTER JURISDICTION** WHILE THE FACTS HAVE NOT CHANGED CONCERING THAT DISMISSED CLAIM AS PART OF THIS CASE AS A **CASUAL CONNECTION, NOT SOLE REASON**. FOR DISCHARGE-(FACTS SUPRA)-LOCATED IN U.S. DISTRICT COURT ORDER GRANTING MOTION FOR SUMMARY JUDGMENT, AT, P. 2-3-LOCATED IN APPENDIX (A).

10. WITHIN ROLLANDS CHARGE OF DISCRIMINATION FILED WITH THE EEOC/CCRD-CHARGE(NO. E20150025 -FILED ON JULY 16TH , 2014) **UNDER STATEMENT OF DISCRIMINATRI**, " A PLAINTIFF CAN INDIRECTLY ESTABLISH A CAUSAL CONNECTION TO SUPPORT A.....RETALIATION CLAIM BY SHOWING THAT THE PROTECTED ACTIVITY WAS CLOSELY FOLLOWED IN TIME BY THE ADVERSE....ACTION.")

12. AS A RESULT OF ROLLAND FILING A COMPLAINT WITH THE (EEOC/OR CCRD) THAT HAS DUAL JURISDICTION. THE (EEOC) DETERMINED ON 3-27-15, IN A

DETERMINATION NOTICE LETTER. THAT ROLLAND WAS **CONCERED DISABLED**, HAD A **RECORD OF SUCH IMPAIRMENT**, HAD A HISTORY OF **SUBSTANTIALLY LIMITING IMPAIRMENT**, BASED ON MEDICAL DOCUMENTATION PRESENTED TO ( ) AND THAT, ROLLAND IS A MEMBER OF A PROTECTED CLASS. (FACTS SUPRA)- LOCATED IN ROLLADS EXHIBIT "R", AT, P. # 4,- LOCATED IN APPENDIX (C) .

> **IN CONFLECT WITH . 42 U. S. C.**, SECTION 12102 ET SEQ, (ADAAA), 2009-DEFINITION OF DISABILITY (A)-" A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE MORE MAJOR LIFE ACTIVITIES OF SUCH INDIVIDUAL; (B)—A RECORD OF SUCH AN IMPAIRMENT, OR (C)- BEING REGARDED AS HAVING SUCH AN IMPAIRMENT (AS DES-CRIBED IN PARAGRAPH (3)".

13. THE COURT OF APPEALS IN ITS JUDGMEMT AND ORDER OF MAY 30TH , 2018, IN CASE NO. 17-1387, AT, P.# 4, OF ITS ORDER. THE COURT STATED," WE NEED NOT WEIGH IN ON WHETHER ROLLAND HAS ESTABLISHED A PRIMA FACIE CASE OF DISABILITY DISCRIMINATION. WE ASSUME HE DID SO....." (FACTS SUPRA) ,THE COURTS JUDGMENT-LOCATED IN APPENDIX (A) .

> SEE, EEOC GADS, 733 F. 2d PAR. 34, 548 (10TH CIR.) AND FOR THE SAME, SEE, **LINDER VS. TRUMP'S CASTEL ASSOC**, 155 B. R. 102, 106 N. 7 (N.D. J. 1993,- WHEREIN THE COURT DIRECTLY STATED IN PART, " (A) PRESUMPTION CAN BE THOUGHT OF AS CREATING A PRIMA FACIE CASE OF THE PRESUMED FACT."

14. ON MAY 14TH, 2014, DEFENDANTS CARNATION BUILDING SERVICE, INC., HIRED ROLLAND AS A JANITOR TO WORK AT DIFFERENT CITY OF AURORA PUBLIC SCHOOLS- (RANGEVIEW HIGH SCHOOL AND GATEWAY HIGH SCHOOL). OF WHICH, ROLLAND WAS TRAINED AT RANGEVIEW HIGH SCHOOL AND PERMANETLY ASSIGNED TO GATEWAY HIGH SCHOOL;

15.- (FACTS SUPRA,- TO, # 44, LOCATED AT P. #7, LETTER, (C) OF DEFENDANTS FIRST AMENED MOTION FOR SUMMARY JUDGMENT OF APRIL 3, 2017 AND IN SUPPLEMENTAL AFFIDAVIT OF ROLLAND, DATED 1-5-15 FILED WITH EEOC, LOCATED IN APPENDIX (B).

16. AURORA PUBLIC SCHOOLS SYSTEM (APS) , A CARNATION CLIENT. AT THAT TIME, ROLLAND WAS **A PARTICIPANT IN THE SOCIAL SECURITY ADMINISTRATION'S (SSA) TICKET TO WORK PROGRAM,WHICH HELPS DISABLED INDIVIDUALS OBTAIN EMPLOMEMT**.(FACTS SUPRA, LOCATED AT TOP OF, P. #2, OF COURT OF APPEALS ORDER AND JUDGMENT 0F MAY 14, 2018-LOCATED IN APPENDIX (B).

17. ROLLAND WAS BROUGH TO CARNATION'S OFFICES BY A THIRD PARTY, MR. STEPHEN GEHRKE, A **CONTRACTOR REPRESENTIVE FOR THE SOCIAL SECURITY ADMINISTRATION TICKET TO WORK PR0GRAM**, TO APPLY FOR WORK. (FACTS SUPRA, LOCATED AT, P. # 7, AT, LETTER (B) OF DEFENDANTS FIRST AMENED MOTION FOR SUMMARY JUDGMENT. SUPPORTED BY DEFENDANTS EXHIBIT"6", DEP0SITION TRANSCIPT OF ROLLAND AT (TR. P. 68. 1. 1-19) AND,AT (TR. P. 69. 1. 9- 17). LOCATED IN APPENDIX (C) FOR REVIEW.

18. AT THAT TIME, **NO REPRESENTIVE OF CARNATION INTERVIEWED HIM** FOR THE JOB. NOR DID ROLLAND SPEAK TO ANYONE. MR. GEHRKE, DID ALL THE TALKING FOR ROLLAND AS A SOCIAL SECURITY REPRESENTIVE TO THE OWNER OF CARNATION IN A BACK- ROOM. (FACTS SUPRA ,LOCATED AT,P. # 7, AT, LETTER (B) OF DEFENDANTS FIRST MOTION FOR SUMMARY JUDGMENT AND SUPPORTED BY DEFENDANTS EXHIBIT "6", DEPOSITION TRANSCIPT OF ROLLAND AT, (TR. P. 69, 1.

(9-17), LOCATED IN APPENDIX ( ) FOR REVIEW, AND 42 U.S.C. CODE SECTION 12112.

> **IN CONFLECT WITH**-- "TITLE 1 OF THE ADAAA, 2009, UNDER PRE-EMPLOYMENT- 42 U.S.C. CODE SECTION 12112 (B), PROHIBIT A COVERE ENTITY FROM MAKING INQUIRY OF JOB APPLICANT AS TO WHETHER SUCH AN APPLICANT IS AN INDIVIDUAL WITH A DI--ABILITY OR AS TO THE NATURE OR SEVERITY OF SUCH DIS-ABILITY OR DURING EMPLOYMENT UNLESS IT IS JOB RELATED AND CONNSISTENT WITH BUSINESS NECESSITY"-ADAAA.

19. **ROLLAND INFORMED SHARON MORGAN, OF CARNATION, SUPRA, THAT HE WAS ON SOCIAL SECURITY DISABILITY** AND SHARON MORGAN, ACKNOWLEDGED THE SAME IN HER AFFIDAVIT DATED 11-24-14, ROLLANDS EXHIBIT " N",(COURT DOC # 1 37- P. 26 OF 29, AT, 3 (E), " MORGAN, " I KNEW HE WAS GETTING SOCIAL SECURITY, BUT I THOUGHT HE RETIRED EARLY". (FACTS SUPRA,- LOCATED IN AFFIDAVIT LOCATED IN, APPENDIX (C) FOR REVIEW.

20. **THE LEGAL STANDARD OF REQUIRMENT FOR RECEIVING ANY KIND OF SOCIAL SECURITY** IS THAT THE PERSON MUST HAVE A **DISABILITY** CONDITION-

FEDERAL STATUTES REGARDING SOCIAL BENEFITS IN CHAPTER 7 OF TITLE 42 OF THE UNITED STATES CODE (U.S.C.). (**SSDI**) IS DISCUSSED IN SELECTED SECTION OF 42 U.S,C, SECTION 401 T0 433.

> " WHETHER, MORGAN KNEW ROLLANDS EPISODE SCIATICA BACK PROBLEM WAS A DISABILITY WITHIN THE DEFINITION OF THE ADAAA,2009, IS OF NO CONSEQUENCE. THE EMPLOYER NEED ONLY KNOW THE UNDERLYING FACTS, NOT THE LEGAL SIGNIFICANCE OF THOSE FACTS. **IN CONFLECT WITH-**
> " **SCHMIDT VS. SAFEWAY INC**, 864 F. SUPP,

991 (1994)-UNITED STATES D. OREGON.

21. **THE LEGAL REQUIRMENT** FOR RECEIVING (**SSI**) IS DECUSSED IN SELECTED SECTION OF 42 U.S.C, SECTION 1381 TO 1385 **-CONCERING SCOIAL SECURITY RETIREMENT.** (" YOU CAN'T RECEIVE SOCIAL SECUITY RETIREMENT BENEFITS AND DISABILITY BENEFITS AT THE SAME TIME ") ;

22. WAS THE **MISTAKEN BELIEF OF SHARON MORGAN**, ROLLAND WAS RECEIVING RETIREMENT SOCIAL SECURITY, A TANTAMOUNTING INFERENCE ESTABLISHING ROLLAND WAS RECEIVING SOCIAL SECURITY BENEFITS FOR A **DISABLITY**;

23. WHILE MORGANS MISTAKEN BELIEF WAS NOT BASED UPON ANY **SUBSTANCE EVIDENCE**, CONDICTIONS OR CIRCUMSTANCES **GIVENING RAISE TO A HONEST MISTAKEN BELIEF**. THE SAME AMOUNTED TO SHARON MORGAN, **WRITING A " DOXASTIC BLANK CHECK".**

> " SUBSTANTIAL EVIDENCE HAS BEEN DEFINED AS " SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION". **IN CONFLECT WITH- RICHARDSON VS. PERALES**, 402 U.S. 389, 401, 91 S. Ct. 1420, COURT LANDMARK DECISION IN THE CASE OF **CONTRAN VS. ROLLINS HUDIG HALL INTERNATIONAL, INC**., 1998 CAL. LEXIS 1 (JANUARY 5, 1998)(THE COURT," IN APPLYING THE **REASONABLE GOOD FAITH BELIEF STANDARD**-AS INDICATED, **A KEY ELEMENT** OF THE SUPREME COURT TEST FOR GOOD CAUSE IS WHETHER THE EMPLOYER'S DECISION IS SUPPORTED BY " SUBSTANTIAL EVIDENCE", " **NOT JUST ANY EVIDENCE**". CONTRAN, SUPRA.

THE CORRECT LEGAL STANDARD AND (FACTS, SUPRA), ARE LOCATED AT NO.46 AND 47 OF THIS PETITION WITH ROLLANDS EXNIBIT " N". LOCATED IN APPENDIX ( ),

24. THE COURT OF APPEALS CONCLUDED IN ITS ORDER AND JUDGEMEMT OF MAY 30TH , 2018, THAT , ROLLAND-HAS NOT DEMONSTRATED MORGANS REASONS FOR TERMINATING

HIM WAS PRETEXTUAL-INCONNECTION WITH THE ASSERTED ADDITIONAL MISCONDUCT CHARGES AGAINST ROLLAND AFTER HIS TERMINATION, THAT **WERE NOT APART OF THE SAME INCIDENT.** SEE, (FACTS SUPRA)- DEFENDANT'S EXHIBIT'S "5"- LOCATED IN APPENDIX (C).

> " DEFENDANTS PRESENTED INCONSISTENT PRETEXUAL EXPLANINATIONS FOR ROLLANDS TERMINATION, **PRE-SENTING ISSUES FOR A JURY". IN CONFLECT WITH-** SEE. THE CASE OF, PANTOGA VS. AM NTN BEARING MFG. CORP. 195 L. 3d 804, 851 (7TH CIR. 2001); AND, **LOWDERNGLK VS. BEST PALLET CO**. 636 F. 3d 312, 318 (7TH CIR. 2011);ALSO SEE- **FLAGG VS. COLLER COUNTY**, 2003 U.S. DIST. LEXIS 1525580; CD FLA., 2003)

25. THE (FACTS SUPRA) ,SUPPORTING SAME, IS LOCATED IN THE COURT OF APPEALS ORDER AND JUDGMENT OF MAY 30, 2018, AT, P.# 9, FIRST PARAGRAPH, IN APPENDIX (B) AND DEFENDANTS EXHIBIT " 5", LOCATED IN APPENDIX (C).

26. **ROLLANDS, EMPLOYEE PERSONNEL FILE WITH DEFENDANTS IS VOID OF ANY WARNINGS OR DISCISIPLINARY FOR ANY ADDITIONAL MISCONDUCT BEHAVIOER** OTHER THAN WHAT WAS ALLEGED BY DEFENDANTS FOR ROLLANDS TERMINATION . NOT GIVING RAISE TO SUCH AN MISCONDUCT ASSERTED BELIEF- (FACTS SUPRA,- LOCATED IN ROLLANDS EXHIBIT" R", (EEOC DETERMINATION LETTER) DATED 3-27-15, COURT DOC # 137-2, FILED ON 4-24-17- U.S.D.C. AT, P.# 3, TOP OF PAGE, AND DEFENDANTS EXHIBIT"5", (LOCATED IN APPENDIX (C).

> **IN CONFLECT WITH**,- SEE, COURTS DECISION IN- **VENANCO VS. WHOLESALE -FLORIST** , 1 A. D. Ed 505 (2d DEPT. 2008), 767 N.Y.S. 2d 249-
> " THE COURT, THE ISSUES WHICH ARE TO BE PRESENTED MUST APPEARE IN PAPERS THAT WILL MAKE UP PART OF THE RECORD ON APPEAL".

27. **THE INADMISSIBLE HEARSAY AFFIDAVIT AND UNSWORN AFFIDAVTS** OF ITS WITNESS'S

THAT WERE NOT CONSISTENT WITH OPERATIVE FACT AND DESIGNATED AS DEFENDANTS EXHIBITS " 1"," 2", "3" AND PLAINTIFFS EXHIBIT "N"- (FACTS SUPRA) , LOCATED IN APPENDIX (C), AND THE COURT OF APPEALS ORDER AND JUDGMENT OF MAY 30, 2018, AT, P. # 6, SECOUND AND THIRD PARAGRAPH OF, P. #6, AT APPENDIX (A).

28. CONTRARY TO THE COURTS ASSERTION, **ROLLAND OFFERED NOTHING IN REBUTTAL** TO THE AFFIDAVIT OF **MR. SONNERMAKER**, AT, P.# 6-BOTTOM PARAGRAPH- OF ITS ORDER AND JUDGMENT OF MAY 30TH , 2018. **ROLLANDS ARGUMENT CONCERNING THE AFFIDAVITS OF DEFENDANTS WITNESS'S, BILLY SONNERMAKER, SHARON MORGAN AND BRIAN MORGAN;**

CONT: TOOK PLACE ON THE RECORD OF APPELLANT'S DEPOSITION OF ROLLANDS. (FACTS SUPRA)- LOCATED IN DEFENDANTS EXHIBIT"6",IN RELEVANT PORTIONS OF DEPOSITION TRANSCRIPT OF ROLLAND AT PAGES-(DOC# 122-1)(TR. P.57, 16-20);(DOC# 122-1)(TR. P. 86, 21-25);(DOC# 122-1)(TR. P.17-18) ; (DOC# 122-1)(TR.P. 87, 1-15);(DOC# 122-1)(P. 25 OF 29)(TR. P. 99, 17-18);(DOC# 122-1)(TR. P.88, 16-25)

VENANCO, FACTS SUPRA-LOCATED IN APPENDIX (C).

> **IN CONFLECT WITH**, SEE THE CASE **REVERA VS. CITY AND COUNTY OF DENVER ,** 365 F. 3d 912, CITIED BY THE COURT OF APPEALS IN AFFIRMINING PLAINTIFFS CASE ON OTHER ISSUE'S. IN THAT CASE," THE DEFENDANTS HAD INDEPENDENT DIRECT EVIDENCE OF PLAINTIFFS MISCONDUCT THOUGH AFFIDAVITS DISCRIBING THE CONDUCT **IN DETIAL** AND PRESENTING **FACTS CAPABLE OF BELIEF**, THOUGH OTHER PARTIES". (**A DEMONSTRATION OF PERTEXTUAL**).

29. **TO THE CONTRARY**, DEFENDANT'S OR DEFENDANT'S WITNESS'S **AFFIDAVITS DO NOT**,

DISCRIBE THE CONDUCT IN DETIAL OR PRESENT FACTS CAPBLE OF BELIEF - THAT ROLLAND COMMITTED MISCONDUCT OF FOUL LANGUAGE AND UNPROTECTED ACTIVITY OF REASONABLE ACCOMMODATION OR ANY ASSERTION OF ADDITIONAL MISCONDUCT APPENDIX (C);

(F). **DOSE** THE AFFIDAVIT OF DEFENDANTS WITNESS (**BRIAN M0RGAN**), AS DEFENDANTS EXHIBIT " 2", DECRIBE CONDUCT IN DETIAL, PRESENTING FACTS CAPABLE OF BELIEF AT NUMBER'S 12, 13, AND 14, THAT ROLLAND AND HIS CO-WORKERS DISPUITE WAS OVER LENGTH OF BREAKS BEING TAKEN ?- (FACTS SUPRA)- LOCATED IN APPENDIX (C).

(G). SEE. RELEVANT PORTIONS OF DEFENDANTS EXHIBIT"6"-DEPOSITION TRANSCRIPT OF ROLLAND ON THIS MATTER CONCERNING, DISPUITE BETWEEN ROLLAND AND CO-WORKER IN- (DOC# 122-1)(TR.P. 61, 1-25); (DOC# 122-1)(TR. P. 62, 1-25);(D0C# 122-1)(TR. P. 57, 13-18)- LOCATED IN APPENDIX (C).

(H). **DOSE** THE AFFIDAVIT OF (**BRIAN MORGAN**) , DENFENDANT EXHIBIT '2", AT. # 14. OF HIS AFIDAVIT- (FACTS SUPRA) LOCATED IN APPENDIX (C), CLARIFY THAT THE DISPUTE BETWEEN ROLLAND AND HIS CO-WORKER IN THE AFFIDAVIT OF, BILLY SONNERMAKER , ROLLANDS EXHIBIT " C", WAS OVER "**LENGTH OF BREAKS BEING TAKEN**" WHILE, MR. SONNERMAKERS AFFIDAVIT PRESENTS **NO FOUNDATION** OF PERSONAL KNOWLEDGE OF DETIALED FACTS CAPABLE OF BELIEF;

(I). THAT MR. SONNEMAKER WITENSSED ANY EVENTS OR RECEIVED ANY SUBSTANTIAL INFORMATION CONCLUDING HIS BELIEF IN HIS AFFIDAVIT, **BECAUSE HIS PERSONAL KNOWLEDGE WOULD BE THE AIM OF HIS BELIEF**. ?-LOCATED IN ROLLANDS EXHIBIT "C"- LOCATED IN APPENDIX (C).

(J). **IS THE** INADMISSIBLE HEARSAY AFFIDAVIT OF MR, WILLIAM "BILLY" SONNERMAKER, ROLLANDS EXHIBIT " C" - **AN EXCEPTION** TO THE " GOOD FAITH BELIEF STANDARD" ?- LOCATED IN APPEBDIX (C).

30. **THE CORRECT LEGAL STANDARD THAT SHOULD HAVE BEEN APPLIED TO THIS CASE WAS** STATED IN THE **COLORADO SUPREME COURT DECISION** IN THE CASE OF **PEOPLE VS. HERNANDEZ AND ASSOCIATES, INC.**, 736 P. 21, 1238 (1986) AND, NO. 85CA558 COLORADO COURT OF APPEALS, DIV. III, NOV. 26, 1986;

> (APPEAL OF SUMMARY JUDGMENT ORDER ON A HEARSAY AFFIDAVIT. AFFIDAVIT BASED UPON INADMISSIBLE HEARSAY ARE INSUFFICIENT TO SUPPORT SUMMARY JUDGMENT. CRE 802; **HARRIS VS. GRIZZLE,** 625 P. 2d 747 (WYO. 1981; SEE ALSO, **PEOPLE VS. HERNANDEZ**, 695 P. 2d 308 (COLO.APP.1984) (HEARSAY AFFIDAVIT CANNOT SUPPORT MOTION FOR NEW TRIAL. **HERNANDEZ SUPRA.**

31 . **THE MOST COMMON STANDARD IN THE CIVIL LAW IS;**

> "THE BURDEN OF SHOWING SOMETHING BY A " **PREPONDERANCE OF THE EVIDENCE** SIMPLY REQUIRES THE TRIER OF FACTS TO BELIEVE THAT THE EXISTENCE OF A FACT IS MORE PROBABLE THAN ITS NONEXISTENCE BEFORE HE MAY FIND IN FAVOR OF THE PARTY WHO HAS BURDEN TO PERSUADE THE JUDGE OF THE FACTS EXISTENCE". SEE, **IN RE WINSHIP**, 397 U. S. 358, 371-372, 90 S. CT. 1068, 1076, 25 L .ed 386 (1970)(HARLAN, J., CONCURRING) (BRACKETS IN ORIGINAL){OMITTED) " A FINDING IS CLEARLY ERRONEOUSLY WHEN ALTHOUGH THERE IS EVIDENCE TO SUPPORT IT THE REVIEWING BODY ON THE ENTIR.....THAT A MISTAKE HAS BEEN COMMITTED. SEE. **UNITED STATES VS. UNITED STATES GYPSUM, C0**., 333 U.S. 364, 595, 68 S. CT. 525, 542. 92 Led 746 (1948); FED. R. E. 802 (3) SPECICFICALLY DOSE NOT INCLUDE " A STATEMENT OF MEMORY OR BELIEF TO PROVE A FACT REMEBERED OR BELIEF TO PROVE A FACT REMEMBERED OR BEILEVE"

32. DEFENDANTS ASSERTED ON APPEAL OF THIS CASE THAT ROLLAND " **NEVER REQUESTED A REVIEW OF HIS JOB SEPERATION-** (FACTS SUPRA), LOCATED IN DEFENDANTS EXHIBIT "6", DEPOSITION TRANSCRIPT OF ROLLAND, AT, (TR.P.108, 1. 16-25; TR.P.109,

1 . 2-8 -STATEMENTS LOCATED IN DEFENDANTS FIRST AMENDED MOTION FOR SUMMARY JUDGMENT AT, P. # 8, FIRST PARAGRAPH-FACTS AND MOTION LOCATED IN APPENDIX (C).

33. WHILE DEFENDANTS ASSERT ROLLAND, NEVER TOOK ADVANTAGE OF ITS **UNWRITTEN POLICY** BUT FOR, DEFENDANTS WANTON RECKLESS DELIBERATE INDEFERENCE TOWARD ROLLAND AS EXTENTED, ALLOWED AND COMPARED TO OTHER DISABLED EMPLOYEE'S **WHETHER THEY TOOK ADVANTAGE** OF THE UNWRITTEN JOB SEPERATION POLICY **OR NOT**, IN ABESENCE OF ANY EMPLOYEE-HANDBOOK;

34. THE SAME (**IS A DEMONSTRATION OF INTENTIONAL DISCRIMINATION/ UNFAIRLY PREJUDICAL TO ROLLAND AFFECTING THE OUTCOME OF THE CASE**)- AS INDICATED IN ROLLANDS EXHIBIT"K", (FACTS SUPRA}—LOCATED IN ROLLANDS EXHIBIT" K", P. 22 OF 29-LOCATED IN APPENDIX (C).

35. THAT SUCH POLICY OR ADDITIONAL MISCONDUCT DOCUMENT CHARGES **WERE NOT MADE APART** OF THE RECORDS **ON APPEAL** AS REQUIRED BY FEDREAL RULE APPELLANT PROCEDURE **RULE 10**, ET. SEQ. THE DEFENDANTS ACTED CONTRARY TO AN UNWRITTEN POLICY OR CONTRARY TO COMPANY PRACTCE WHEN MAKING THE ADVERSE EMPLOYMENT DECISION AFFECTING ROLLAND.

> IN CONFLECT WITH. SEE-KENDRICK VS. PENSKE TRANSP. SERVICES,INC., NO. 99-3160-DECIDED AUGUST 8, 2000 (10TH CIR. COURT OF APPEALS WHEREIN THE COURT DIRECTLY STATED THAT," " A PLAINFF WHO WISHES TO SHOW THAT THE COMPANY ACTED CONTRARY TO AN UNWRITTEN POLICY OR TO COMPANY PRCTICE OFTEN DOSE SO BY PROVIDING EVIDENCE THAT HE WAS TREATED DIFFERENTLY".

36. THE CORRECT LEGAL STANDARD TO BE USED WAS THE CASE OF **McKENNOR VS. NASHVILL**

BANNER PUBLISHING, CO., 513 U.S. 352 (1995), WHERE THE U.S. SUPREME COURT HOLDS, " THE EMPLOYER IS STILL LIABLE UNDER THE " AFTER ACQUIRED EVIDENCE " DOCTRINE, IF THE DEFENDANTS CHOSE TO ASSERT ADDITIONAL MISCONDUCT CHARGES AGAINST A PERSON AFTER DISCHARGE AS A PRETEXT THE REASON FOR TERMINATION. **IN CONFLECT WITH**, SEE, INSUPPORT-**ADAM VS. AMERICA GUARANTER AND LIBILITY INS, CO**., 233 F.3d 1242, 1240,1246 (10TH CIR. 2000) DEFENDANTS STATED REASON FOR DISCHARGING PLAINTIFF WAS UNSUPPORTED BY ANY ADMISSION ABLE PROOF EVIDENCE, IN GOOD CONTENT OR SUBSTANCE".ADAM, SUPRA.

37. DEFENDANTS, INCONSISTENT ADDITIONAL MISCONDUCT CHAEGRS ARE, (FACTS SUPRA)- LOCATED AT, P.# 8, IN THE COURT OF APPEALS ORDER AND JUDGMENT OF MAY 30, 2018, AT,SECOUND PARAGRAPH, IN APPENDIX (C).

SEE. **IN CONFLECT WITH**- FASSBENDER VS. CORRECT CARE SOLUTION, LLC, -- F. 3d— N0. 17- 3054, 2018 WL. 220843, AT *8 (10TH CIR.MAY 15,2018 A JURY CAN REASONABLY INFER PRETEXT WHEN AN EMPLOYER IS INCONSISTENT IN THE REASONS IT PROVIDES FOR THE TERMINATION".

38. WAS DEFENDANTS, PROHIBITED BY **DOCTRINE OF JUDICIAL ESTOPPEL**, IN CHANGING ITS FACT POSITION FOF ROLLANDS TERMINATION IN TWO DIFFERENT COURTS. DEFENDANTS ALLEGED IN **FEDERAL DISTRICT COURT**," ROLLAND WAS TERMINATED AT THE REQUEST OF MR. WILLIAM SONNERMAKER OF AURORA PUBLIC SDHOOLS FOR (USIGN FOUL LANGUAGE/ DISPUITE WITH HIS CO-WORKER). SEE, (FACTS SUPRA)- IN ROLLANDS EXHIBIT "C"-LCATED IN APPENDIX (C).

39. DEFENDANTS ALLEGED AS AN **INCONSISTENT ADDITIONAL REASONS** FOR ROLLANDS TERMINATION IN **THE FEDERAL APPEALS** COURT THAT ROLLAND WAS TERMINATED FOR " ABSENTEEISM,ABERRANT BEHAVIOR,ARGUMENTATIVENESS, DEFIANCE, DISRUPTIVE CONDUCT, INTERFERENCE WITH COMPANY OPERATIONS AND IRREGULAR PRESENTATION {" BRUSHING HIS TEETH WITH BEN- GAY'} (**MR.**

ROLLAND" HAD NO TEETH");

40. AND THAT ROLLAND,CAUSED A DISTRACTION TO THE WORKPLACE ORDER". (FACTS SUPRA)- LOCATED IN ROLLANDS EXHIBIT "R", AT, P.# 7, AT, FIRST PARAGRAPH TOP OF PAGE OF THE (EEOC/OR CCRD) DETERMINATION LETTER-DATED 3-27-15. THAT WAS **WHOLLY UNRELATED** TO THERE FIRST REASON ALLEGED IN ROLLANS EXHIBIT "C"- FACTS SUPRA) LOCATED IN APPENDIX (C).

41 .DEFENDANTS, MAINTANED AND WAS SUCCESSFUL IN RECEVING SUMMARY JUDGMENT AGAINST ROLLAND IN THE **FEDERAL DISTRICT COURT** AND **THE FEDERAL APPEALS COURT**-PROCEEDINGS IN (USDC COLORADO-CASE NO. 1: 16-CV-00057-CMA-STV)/ IN, CASE NO.17-1387, ON THE TAKEN POSITION, ROLLANDS EMPLOYMENT TERMINATION WITH DEFENDANTS;

42. WAS THE RESULT OF A REMOVAL REQUEST- (MADE BY A JANITOR EMPLOYEE OF (APS)-AURORA PUBLIC SCHOOLS) A, MR. WILLIAM SONNERMAKER.(FACT SUPRA)-LOCATED IN ROLLANDS EXHIBIT"C", **A CHANGE OF POSITION**- (FACTS SUPRA)-LOCATED IN APPENDIX (C).

> INSUPPORT OF THIS ANALYST, SEE. **THE UNITED STATES SUPREME COURT** CASE OF **UNITED STATES VS. McCALL**, 219 F. SUPP. 2d 1208, 1211 (D. N. M. 2002). WHEREIN THAT COURT RECENTLY FOUND JUDICIAL ESTOPPEL TO BE A LIGITIMATE DOCTRINE TO BE UTILIZED BY COURTS, THEREBY **0VERRRULING THE TENTH CIRCUITS POSITION ON THIS MATTER**");
>
> FURTHER **ANALYST DICTATE** IN THE CASE OF **HELFAND**, 105 F. 3d. AT 535. THAT" THE GREATOR WEIGHT OF FEDERAL AUTHORITY.....SUPPORT THE POSITION THAT **JUDICIAL ESTOPPEL APPLIES** TO A PARTY'S STATED POSITION, REGARDLESS OF WHETHER IT IS AN **EXPRESSION OF INTENTION, A STATEMENT OF FACT, OR A LEGAL ASSERTIONS".**

SEE. ALSO, **EDWARDS**, 690 F. 2d AT 598" PREVENTS A LITIGANTS FROM **CONTRADICTING A POSITION** THAT HE TAKEN IN A **PRIOR PRPCEEDINDG"**.

SEE. INSUPPORT ALSO-THE CASE OF-**OKLAND OIL CO INC., VS. CONOCO INC**., 144 F. 3d 13O8, 1325 (10TH CIR.1998)-**UNDER COLORADO LAW, JUDICIAL ESTOPPEL HAS FIVE ELEMENTS: FIRST**, THE TWO POSITION MUST BE TAKEN BY THE SAME PARTY OR PARTIES IN PRIVITY WITH EACH OTHER; **SECOND**, THE POSITION MUST BE TAKEN IN THE SAME OR REALATED PROCEEDINGS INVOLVING THE SAME PARTIES OR PARTIES IN PRIVITY WITH EACH OTHER; **THIRD**, THE PARTY TAKING THE POSITION MUST HAVE BEEN SUCCESSFUL IN MAINTANING THE FIRST POSITION AND MUST RECEIVED SOME BENEFIT IN THE FIRST PROCEEDING; **FOURTH**, THE INCONSISTENCY MUST BE PART OF AN INTENTIONAL EFFORT TO MISLEAD THE COURT; AND **FIFTH**, TWO POSITIONS **MUST BE TOTALLY INCONSISTENT**-THAT IS, THE TRUTH OF ONE POSITION MUST NECESSARY PRECLUDE THE TRUTH OF THE OTHER". (**DID ROLLAMD DEMONSTRATE THE SAME**) ?.

43. WAS ROLLAND DISCRIMINATORY TREATED DIFFERENTLY THAN OTHER **DISABILITY EMPLOYEE'S WHO DECLINED TO GO ON LADDER BY DEFENDANTS** IN VIOLATION OF THE (ADAAA). SHARON MORGAN, STATED IN HER AFFIDAVIT-DATED-11-24-14, ROLLANDS EXHIBIT"N", AT, 3(C)-BOTTOM OF PAGE." **THE ONLY THING HE EVERY ASKED ME ABOUT WAS NOT MAKING HIM GO ON LADDRES. I TOLD HIM THE ONLY TIME WE SHOULD BEING USING A LADDER IS TO CHANGE LIGHT BUBS**" ?. **ROLLAND DID NOT REPLY.**

44. SHARON MORGAN (FACTS SUPRA)-, STATED THE SAME IN ROLLANDS EXHIBIT "N"- AFFIDAVIT OF 11-24-14, AT, 3 (I & J). " LYDIA WAS TRANSFERRED TO ANOTHER SCHOOL BECAUSE **SHE DECLINED TO USE LADDERS**"..... WAS ROLLAND, DISCRIMINATELY **TREATED DIFFERENTLY** THAN CARNATION EMPLOYEE (LYDIA), WHETHER **SHE WAS DISABLED" OR NOT"**.

45. **WHETHER DEFENDANTS REQUIRED ROLLAND TO GO ON LADDERS TO CHANGE**

LIGHT BUBS AT THAT TIME, "OR NOT", (**AS OPPOSED TO TRANSFERING**) HIM FOR **THE SAME** REASONS STATED BY(LYDIA), AFTER ROLLAND EXPRESSED TO SHARON MORGAN," **HE COULD NOT GO ON LADDERS** BECAUSE OF A BACK PROBLEM (DISABILITY). (FACTS SUPRA)-LOCATED IN APPENDIX- (C).

46 .**THE SUPREME COURT** ALSO HELD, THAT THE PROPER INQUIEY FOR THE JURY IN AN EMPLOYEE MISCONDUCT CASE IS, " WAS THE FACTUAL BASIS ON WHICH THE EMPLOYER CONCLUDED A DISCHARGEABLE ACT HAD BEEN COMMITTED REACH HONESTLY " **WITH A GOOD FAITH BELIEF" AFTER AN APPROPRIATE INVESTIGATION** AND FOR REASONS **THAT ARE NOT ARBITRARY OR PRETEXTUAL;**

47. AND THE SAME, MUST BE SUPPORTED BY **SUBSTANTIAL EVIDENCE** GATHERED THOUGH AN **ADEQUATE INVESTIGATION** THAT INCLUDES NOTICE OF { CLIAM MISCONDUCT AND A CHANCE FOR THE EMPLOYEE TO RESPOND". **ROLLAND,WAS NEVER GIVEN NOTICE OF ANY ADDITIONAL CHARGES AND A CHANCE TO RESPOND TO THE SAME.** SEE. DEFENDANTS EXHIBIT'S" 5"-DATED ,7-7-14- LOCATED IN APPENDIX (C). CONTRAN.

IN CONFLECT WITH- SEE. A LANDMARK SUPREME COURT DECISION IN **CONTRAN VS. ROLLIINS HUDIG HALL INTRENATIONAL, INC.,** (1998) CAL. LEXIS 1 (JANUARY 5, 1998}- (IN APPLYING THE GOOD FAITH BELIEF STANDARD)—AS INDICATED, A **KEY ELEMENT** OF THE SUPREME COURT TEST FOR GOOD CAUSE IS WHETHER THE EMPLOYER'S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE, **"NOT JUST ANY** " **EVIDENCE**. CONTRAN, SUPRA.

48. **ROLLANDS, EMPLOYEE PERSONNEL FILE WITH DEFENDANTS IS VOID OF ANY WARNINGS FOR ANY POOR JOB PREFORMANCE OR ADDITIONAL MISCONDUCT CHARGES** , FOR ROLLANDS TERMINATION, DEMONSTRATING PRETEXUAL- (FACTS SUPRA,

LOCATED IN ROLLANDS **EXHIBIT "R"**, (EEOC DETERMINATION LETTER) DATED 3-27-15, COURT DOC# 137-2 ,FILED O4-24-17 U.S.D.C., AT, P.#3, TOP OF PAGE, AND DEFENDANTS EXHIBIT "5", (LCCATED IN APPENDIX (C).

49. DEFENDANTS STATED IN RESPONSE TO THE (EEOC/OR CCRD) INVESTIGATION" THE RESPONDENT CLAIMS THAT THE CHARGING PARTY " **EXHIBITED PERFORMANCE ISSUES** HOWEVER, HIS PERSONNEL FILE IS VOID OF WARNINGS OR OTHER DOCUMENTS REFLECTING ANY PERFORMANCE ISSUES";

50. **IT CAN REASONABLE BE INFERED THAT THE PERFORMANCE ISSUES OBSERVED** BY DEFENDANTS WAS **IRRELEVANT TO ANY** JOB PERFORMANCE ISSUES CONCERNING **HIS JOB BUT,** REALATED TO ROLLANDS **DISABILITY BACK- PROBLEM.** FACTS SUPRA) – LOCATED- IN ROLLANDS EXHIBIT" R",(EEOC/OR CCRD) DETERMINATION LETTER, AT , P. #6, UNDER # 3, SECOND PARAGRAPH -.LOCATED IN APPENDIX (C).

51. DEFENDANTS, ALLOWED ROLLAND **EXTRA AND LONGER BREAKS** AS A **REASONABLE ACC-OMMODATION** FOR ROLLANDS DISABILITY, (FACTS SUPRA, LOCATED IN DEFENDANTS FIRST AMENDED MOTION FOR SUMMARY JUDGEMENT, AT, P. # 7 -C, THE HIRE, " **DEFENDANT DID, HOWEVER, AFFORD HIM LONGER BREAKS AT PLAINTIFF'S REQUEST".** THIS STATEMENT IS ALSO LOCATED IN THE DEPOSITION TRANSCRIPT OF DEFENDATS EXHIBIT "6". AT. (TR. P. 59, I. 13-14) AND THAT BOTH ARE LOCATED IN APPENDIX (C) AND (B).

52. INSUPPORT OF (FACTS SUPRA)-IN # 63, ABOVE- SEE, ALSO **IN CONFLECT WITH**- CASE OF , GOLDSMITH, 996 F. 2d AT, 1163 AND, GOLDSMITH VS. ATMORE, 966 F. 2d 1155, 1163 (11TH CIR. 1996)—THE COURT " DEFENDANTS AWARENESS OF PROTECTED ACTIVITY MAY BE ESTABLISHED BY

CIRCUMSTANTIAL EVIDENCE"; AND, CASE OF HENRY VS. WYETH PHAM, 616 F. 3d 134, 148 (2d CIR. 2010); EEOC VS. NEW BREED, 783 F. 3d 1057- THE COURT," DEFENDANTS HAD REQUISIT KNOWLEDGE OF PROTECTED ACTIVE OF REASONABLE ACCOMMODATION **BASED ON EVIDENCE PETITIONER ACTED UNDER INSTRUCTION FROM SUPERVISER**".(FACTS SUPRA)LOCATED IN #77 - OF THIS PETITION AND IN APPENDIX (B).

53 .FURTHER, DEFENDANTS **NEVER ASSERTED THEY DID NOT HAVE** A REASONABLE ACCOMMODATION **POLICY** AS A COMMITMENT TO THE LAW OF AMERCIAN WITH DISABILITY ACT AS AMENDED-AS DEFENSE TO PROVIDING ROLLAND WITH REASONABLE ACCOMMODATION BREAKS-NOR, DID DEFENDANTS ASSERT ANY **UNDUE HARSHIP CLAIM OR DISCIPLINE ROLLAND FOR TAKEN UNAUTHORIZED BREAKS**. ADAAA-2008;

" AN EMPLOYER **MAY NOT ASSERT** THAT IT NEVER RECEIVED A REQUEST FOR REASONABLE ACCOMMODATION, AS A DEFENSE TO A CLAIM OF FAILURE TO PROVIDE REASONABLE ACCOMMODATION, IF IT ACTIVELY DISCOURAGED AN INDIVIDUAL FROM MAKING SUCH A REQUEST. **IN CONFLECT WITH**, 42 U.S.CODE SECTION 12112.

SEE INSUPPORT OF HEREIN AND **IN CONFLECT WITH**, EEOC GUIDANCE, QUESTION 4; SEE ALSO, RALPH VS. LUCENT TECHNOLOGIES, INC., 135 F. 166, 1 (1ST CIR. 1998)(REASONABLE ACCOMMODATION REQUESTS CAN BE MADE WHEN AN EMPLOYEE LEARNS OF HIS NEED FOR THE REQUEST---**THEY NOT NEED TO BE MADE IN ADVANCE** (THE OBLIGATION TO PROVIDE A REASONABLE ACCOMMODATION IS A CONTINUING ONE). RALPH, SUPRA. FURTHER

54.. WHILE ROLLANDS DISPUITE WITH HIS CO-WORKER INVOLED HIM "YELLING BACK AT HIS COWORKER, WHILE ROLLAND WAS TAKEN HIS DISABILITY ACCOMMODATION BREAK"-

" **THAT ROLLAND WOULD CALL THE POLICE 0N HIM**". ROLLANDS CO-WORKER (**LIPFORD) WAS AWARE THAT ROLLAND WAS ON HIS ACCOMMODATIN BREAK.** (FACTS SUPRA),SEE. **AFFIDAVIT OF BRIAN MORGAN, DEFENDANTS EXHIBIT"2", AT,#**

14, AND ROLLANDS EXHIBIT"M," (THE COMPLAINT)-- COURT DOC# 137-1, AND, LOCATED IN APPENDIX (C), THE SAME WAS CONSIDERED **PROTECTED ACTIVITY;**

> **IN CONFLECT WITH,** SEE, SCARBOROUGH VS.BID. OF TRS. FLA. A&M UNIV, 504 F. 3d 1220, 1222 (11TH CIR. 2007) " THE COURT, CONCLUDING " A REASONABLE JURY COULD FIND THAT UNIVERSITY EMPLOYEE **ENGAGED IN PROTECTED ACTIVITY** INVOLVING CAMPOS POLICE AND **COULD NOT BE TERMNATED** BECAUSE OF CO-WORKER WHO ENGAGED IN WORKPLACE ASSAULLT **MOVIATED BY DISABILITY ACCOMMODATION".** ALSO SEE, INSUPPORT-THE CASE OF-SOLOMON VS. VILSACK, 763 F. 3d 1, 15 N. 69 (D.C. CIR. 2014)(EN BANC). **CITING RULINGS FROM EVERY FEDERAL JUDICIAL CIRCUIT** HOLDING THAT REQUEST FOR REASONABLE ACCOMMODATION ARE PROTECTED ACTIVITY); 9 LEX K. LARSON, EMPLOYMENT DISCRIMINATION SECTION 154, 10, AT, P. 134-105 ANON. 25 (2d Ed. 2014.

55.. SEE FURTHER INSUPPORT OF, THE CASE OF, PAPELINO VS. ALBANY COLL. OF PHARMACY OF UNIV, 633 F. 81, 92 (2d CIR. 2011-THE COURT," THE DEFENDANTS WITNESS'S , NON-KNOWLEDGE THAT PETITIONER WAS INVOLVED IN A PROTECTED ACTIVITY IS **IMMATERIAL,** THE**" KNOWLEDGE" REQUIREMENT IS MET** IF THE LEGAL ENTITY WAS ON NOTICE-(FACTS SUPRA, LOCATED AT, # 63, HEREIN). SEE, AFFIDAVIT OF BRIAN MORGAN, DEFENDANTS EXHIBIT"2", AT # 14 THEREIN;AND AFFIDAVIT OF WILLAM "BILLY" SONNERMAKER-ROLLANDS EXHIBIT" C", BOTH AFFIDAVITS LOCATED IN APPENDIX (C).

56. WITHIN THE COURTS ORDER AND JUDGMENT OF MAY 30TH ,2018-CASE NO. 17-1387, FROM (D.C. NO. 1:-16-CV-00057-CMA-STV). THE COURT MADE THE FOLLOWING ANALYSIS ON THE **WEIGHING OF THE CREDIBILITY AND REASONABLE DOUBT OF THE EVIDENCE.** THE COURT STATED IN ITS ORDER AT,P.5,THIRD PARAGRAPH-" **IT IS EXTREMELY DOUBTFUL** WHETHER MORGAN KNEW ROLLAND WAS DISABLED".

57. **EVEN AFTER** SHARON MORGAN, ADMITTED SHE KNEW ROLLAND WAS GETTING " SOCIAL SECURITY." AND, GAVE ROLLAND VERABLELY **REQUESTED REASONABLE ACCOMMODATION BREAKS FOR OVER A LONG PRIOR OF TIME.(FACTS SUPRA)-LOCATED AT # 77 AND # 55-OF THIS PETITION. ALSO SEE-ROLLANDS EXHIBIT "A"-THAT ROLLAND GAVE TO DEFENDANTS** PRIOR TO **ANY ADVERS ACTION,** AS ROLLANDS SOCIAL SECURITY WORK ACTIVITY- **REPORT.** INDICATING **NO HEAVY LIFTING OR CLIMBING LADDERS". LOCATED IN APPENDIX (C).**

> **IN CONFLECT WITH**- THE COURT DIRECTLY STATED IN CASE OF. **ANDERSON VS. LIBERTY LOBBY, INC., UNITED STATES SUPMEME COURT** NO. 84- 1602 (1985). HOLDING-"**CREDIBILITY DETERMINATIONS, THE WEIGHING OF THE EVIDENCE**, AND THE DRAWING OF LEGITIMATE INFERENCES FROM THE FACTS **ARE JURY FUNTIONS, NOT THOSE OF A JUDGE**, WHETHER **IT** IS **RULING ON A MOTION FOR SUMMARY JUDGMENT OR FOR A DIRECT VERDICT**"

58. THE COURT 0F APPEALS **ERRORED, BY WEIGHING** THE HEARSAY AFFIDAVIT OF MR. SONNERMAKER, (FACTS SUPRA)-ON P. # 6, PARAGRAPHS (1-3). AFECTING THE OUTCOME OFTHE CASE. THE APPEALS COURT CONCLUDED IN ITS MAY 30TH , 2018, ORDER AND JUDGMENT.THAT DEFENDANTS ASSERTED CLAIM ROLLAND ALLEGENTLY USED (FOUL LANGUAGE) **WAS NOT,** THE REASON FOR HIS DISCHARGE BUT, THE ALTERCATION ITSELF"-LOCATED IN APPENDIX (A).

59 .DID, THE COURTS DRAWING OF **CONFLICTING INFERENCES** FROM THE **COMBINED ASSERTIONS** WITHIN SAID AFFIDAVT, AS REASON FOR HIS TERMINATION (PRESENT/OR **CREATE A DISPUITED ISSUES OF FACT**) THAT WAS," **AMBIGUOUS** " TO, **TWO DEFFERENT INTERPRETATIONS** CONCERNING THE AFFIDAVIT AND REASON FOR

HIS REMOVAL/TRANSFER/ TERMINATION AND PROTECTED ACTIVITY?

IN CONFLECT WITH-SEE, CASE OF, **PAULE HAWKINS CO.**, **INC. VS. DENNIS**, 166 F. 2d 61 (5TH CIR. 1948)-" SUMMARAY JUDGMENT WILL BE DENIED IF THE EVIDENCE INDICATES THAT CONFLICTING INFERENCES COULD BE DRAW".

FURTHER IN CONFLICT WITH-SEE, CASE OF,**FERRAN VS. UNITED STATES**, 17 F.R.D. 211 (D.P.P. 1955)-" IF THE COURT HAS A REASONABLE DOUBT, THEN SUMMARY JUDGMENT WILL BE DENIED"

THE TERMINATION

60. **ON ROLLANDS LAST DAY OF WORK .ROLLANDS SUPERVISER OF CARNATION BUILDING SERVICE (SHARON MORGA, AS ONE OF THE DECSION MAKERS OF CARNATION, SUPRA**)- BECAUSE ROLLAND WAS NOT AN EMPLOYEE OF APS, FOR PURPOSE OF TERMINATION)- **MET ROLLAND IN THE HALLWAY AND ASKED FOR HER BAGE AND STATED THE FOLLOWING TO HIM"MORGAN, I KNOW YOU'RE OLD AND ON SOCIAL SECURITY, EVEN THOUGH YOU GET THE JOB DONE;**

61. **SHE SAID" WERE GOING TO END OUR WORKING RELATIONSHIP BECAUSE YOU'RE ALSO TO SLOW, AND YOU CAN PICK** UP YOUR CHECK".(FACTS SUPRA}-LOCATED IN DEFENDANTS EXHIBIT"6", IN DEPOSITION TRANSCRIPT OF ROLLAND BY DEFENDANTS, AT, (TR. P. 75, 1-25; (TR. P.76, 1-25; AND (TR.P. 77, 1-25) COURT DOC# 136-1-LOCATED IN APPENDIX (C).

62. **THE REBUTTAL**: THE ONLY REBUTTAL DEFENDANTS PROVIED TO ROLLANDS STATEMENT IN # 67, OF THIS PETITION, WAS THAT **ROLLAND WAS REQUESTED TO BE REMOVED** FROM THE (GATEWAY HIGH SCHOOL) **PART** OF DEFENDANTS **CONTRACT**, WITH (APS)," **ONLY". NOT TERMINATION FROM CARNATION, SUPRA.**

MR.SONNERMAKER, ONLY HAD **REMOVAL POWER** FOR THAT **ONE PARTICULAR SCHOOL** WERE HE WAS EMPLOYED. SEE. COPY OF **DEFENDANTS CONTRACT FOR APS**-LOACTED IN APPENDIX ( ).

63. **THERE IS'NT ANY FACTS IN THE RECORDS TO THE CONTRARY**. (FACTS SUPRA)-LOCATED IN ROLLANDS EXHIBIT"C"AND IN DEFENDANT'S FIRST AMENDED MOTION FOR SUMMARY JUDGMENT-AT #1,OF PAGE # 2, COURT DOC# 136); AND, AFFIDAVIT OF SHARON MORGAN, DATED 11-24-14, ROLLANDS EXHIBIT"N",LOCATED- UNDER, **REPLY TO MR. ROLLANDS REBUTTAL**, 7TH , PARAGRAPH,# 28 OF 29, COURT DOC# 137-1- ALL LOCATED IN APPENDIX (B) AND (C).

64. DEFENDANTS PRESENTED CONDICTORY REASON FOR ROLLANDS TERMINATI ON.(FACTS SUPRA)- LOCATED IN-ROLLANDS EXHIBIT"R"-IN APPENDIX (C)-ROLLANDS EXHIBIT"C"-LOCATED IN APPENDIX (C) AND DEFENDANTS **FALSE UNSUPPORTED CLAIM**-ROLLAND REQUESTED ANOTHER JOB FROM DEFENDANTS IN LIEU OF TERMINATION. WHILE MORGAN HAD ALREADY MADE THE DECISION AND **AGREEMENT** TO COMPLETELY TERMINATE ROLLAND **FROM ALL EMPLOYMENT WITH CARNATION**;

65. **IN A MEETING** WITH SONNERMAKER UNILATERALLY/MALICIOUSLY ON ROLLANDS DISABILITY -**DESPITE** THE **SINGLE REMOVAL REQUEST** FOR **(" ONE") SCHOOL,** BY JANITOR-SONNERMAKER. (FACTS SUPRA)-ALSO LOCATED IN ROLLANDS EXHIBIT"C ", AND,LETTER "q", OF SHARON MORGANS DEFENDANTS,EXHIBIT"1" –AFFIDAVIT-IN APPENDIX (C).

66. THE COURT OF APPEALS, BY OVER-SIGHT/OR MISTAKE IN ERROR. **OVER-LOOKED AN IMPORTANT ESSENTIAL ELEMENT** OF ROLLANDS CASE, THAT COULD HAVE MADE

THE DIFFERENCE BETWEEN THE COURT GRANTING OR DISMISSING THE CASE. IN THE COURTS ORDER AND JUDGMENT OF MAY 30TH, 2018, AT, P. # 6, OF PARAGRAPH #4,(FACTS SUPRA)- **THE COURT SUGGESTED-ROLLAND "OFFERED NOTHING TO REBUTT THE AFFIDAVIT OF SONNEMAKER** AS TO HIS REASONS FOR HIS REMOVAL". LOCATED IN APPENDIX (A).

67. TO CONTRARY, **ROLLAND DID OFFER A REASON** FOR MR. SONNERMAKERS REASONS FOR REQUESTING THE REMOVAL OF ROLLAND. (FACTS SUPRA)-ROLLAND ASSERTED IN HIS, APPELLANT OPENING BRIEF FILED ON 1-4-18, WITH THE COURT AT, P.# 6, AT, PARAGRAPH # 3, ROLLAND STATED" **SHARON MORGAN, PERSENTED MISINFORMATION,** OF THE CLAIM OF (FOUL LANGUAGE) TO MR. BILLY SONNERMAKER OF (APS);

68. MALIOUSLY AND INSTIGATIVELY AS A PRETEXTUAL COVER-UP CALCULATED **TO INFLUENCE MR. SONNEMAKERS DECISION (WHO WAS THEIR GENERAL** CONTRACTERS EMPLOYEE OF APS). SHARON MORGAN/ DEFENDANTS WITNESS'S **NON-KNOWLEDGE** THAT THEY WITNESSED OR OBSERVED ANY EVENT BETWEEN ROLLAND AND CO-WORKER **"AT BEST",** (CREATS A MATERIAL DISPUITED FACT ISSUES) ;

THE SAME IS DISPUITED WITHIN THE **UNSWORN** AFFIDAVIT OF SHARON MORGAN AT LETTER **"Q", OF** DEFENDANTS EXHIBIT" 1", DATED 8-10-16. QUOTE, MORGAN," **THIS EVENT WAS WITNESSED BY MR. BRIAN MORGAN, A CURRENT EMPOLYEE OF DEFENDANT'S AND MR. CHARLES RATLEY, AN AURORA PUBLIC SVHOOL NIGHT LEAD FOR GATEWAY HIGH SCHOOL".** (FACTS SUPRA), LOCATED IN APPENDIX (C).

DOSE THE "CATS PAW DOCTRINE" APPLLY IN THIS CASE?.SEE. THE CASE OF, LONG VS. EASTFIELD COLLEGE, 88 F. 3d. 300, 307 (5TH CIR.1996). WHEREIN, APS EMPLOYEE WAS MERELY A" **RUBBER STAMP OR CONDUIT**" FOR DEFENDANTS ADVERS DECISION.

69. SHARON MORGAN AND MR. SONNERMAKERS, NON- PERSONAL KNOWLEDGE OF ANY EVENTS OR CIRCUMSTANCES OF ANY DISPUITE BETWEEN ROLLAND AND HIS SUPRERVISER. IS A DEMONSTRATION OF THEIR OPTION OF **BELIEF NOT ACQUIRED BY THEIR EARNING IT THROUGH AN ADQUATE INVESITIGATION, BUT BY STIFLING THEIR DOUBTS**.

70. WHEN IN FACT, SHARON MORGA, **NEVER TOLD MR. SONNREMAKER**. THE ISSUES BETWEEN THE PARTIES WAS OVER A REASONABLE ACCOMMODATION BREAK. (FACT SUPRA)-LOCATED AT, # 77, OF PETITION HRERIN. SEE. STATEMENT BY **CAMBRIDGE PHILOSPHER WILLIAM KINGDON CLIFFORD** (1877), **ON ETHICS OF BELIEF**;

> " WITHIN THE ETHICS OF BELIEF: CAMBRIDGE PHILOSPHER WILLIAM KINGDON CLIFFORD (1877) " **IT IS WRONG ALWAYS, EVERYWHERE, AND FOR ANYONE TO BELIEVE ANYTHING ON INSUFFICIENT EVIDENCE."**

71. FURTHER, THE EVIDENCE IN THIS CASE **SUGGEST MR. SONNERMAKER DID NOT MAKER HIS OWN INDEPENDENT INVESITIGATION** ON THE ISSUES BETWEEN ROLLAND AND HIS CO-WORKER, AS DEMONSTRATED BY HIS LACK OF ANY DETIALS, FACTS OR CIRCUMSTANCES AS FOUNDATION FOR HIS AFFIDAVIT, ROLLANDS EXHIBIT"C".- LOCATED IN APPENDIX (C).

72. FURTHER, ROLLAND FILED AN APPLICATION MOTION FOR RELIEF RULE 27 MOTION OF THE **F. R.A.P.**, THAT WAS GRANTED BY THE COURT AND CONSTRUED AS A MOTION TO SUPPLEMENT THE RECORD. AS INDCATED AT, P. # 9, OF THE ORDER AND

JUDGMENT OF THE COURT ON MAY 30TH , 2018-(FACTS SUPRA)-LOCATED IN APPENDIX ( ).

73.WITHIN ROLLANDS, RULE 27 MOTION FOR RELIEF/OR MOTION TO SUPPLEMENT THE RECORDS,FILED BY ROLLAND ON 2- 23-18, ROLLAND ASSERTED THE FOLLOWING AT,# 21, P.#7, THIRD PARAGRAPH-IN PART, " ROLLAND'S EXHIBIT "C', AND DEFENDANTS EXHIBIT "1", (doc# 137-1)(p. 10 of 29),(INADMISSIBLE HEARSAY AFFIDAVIT OF MR. SONNREMAKER, THAT FAILS TO PRESENT ANY FOUNDATION OF BELIEF **IN HIS AFFIDAVIT**.(FACTS SUPRA)-LOCATED IN APPENDIX (C).

74 .FURTHER THERE WAS NOT ANY **HYPOTHETICAL PERSONAL KNOWLEDGE** THAT HE **WITNESSED** OR **OBSERVED** ANY EVENT WHICH WOULD HAVE A SUFFIENT INDICATION TO SHOW HE HAD PERSONAL KNOWLEDGE AND ANSWERING THE FOUNDATION QUESTION. (FACTS SUPRA) LOCATED- ROLLANDS EXHIBIT "{C")- IN APPENDIX (C).

75. CONTRARY TO THE APPEALS COURT DECISION THAT ROLLAND, REQUESTED A **LAST CHANCE AGREEMENT** WITH DEFENDANTS AS AN ALTERNATIVE DISCIPLINARY. THE SAME IS FALSE AND WAS MISCONSTRUED BY THE COURT-**ROLLAND NEVER REQUESTED** A LAST CHANCE AGREEMENT WITH DEFENDANTS. A LAST CHANCE AGREEMENTS " INVOLVE EXCUSING PAST PEFORMANCE OR CONDUCT PROBLEMS.

76. **ROLLANDS PERSONNEL FILE WITH DEFENDANTS** IS **VOID OF ANY PAST PEFORMANCE ISSUES OR CONDUCT PROBLEMS**..- (FACTS SUPRA)-LOCATED ROLLANDS EXHIBIT "K",AND IN THE COURT OF APPEALS ORDER AND JUDGMENT OF MAY 30, 2018, AT P.7, **SECOND PARAGRAPH**, AND ROLLANDS EXHIBIT"R," AT, P. # 3- TOP PARAGRAPH, COURT DOC# 137-1- ALL LOCATED IN APPENDIX (C).

77. THE COURT STATED IN ITS ORDER OF MAY 30TH, 2018, THAT DEFENDANTS ASSERTED THEY OFFERED ROLLAND ANOTHER (JOB), AS ALTERNATIVE DISCIPLINARY AND A **LAST CHANCE AGREEMENT**-(**WHICH IS FALSE**). **IF BELIEVED**, THE SAME WAS AN **INTENT TO IMPOSE** THE **SAME DISCRIMINATORY**, TO **COVER-UP** DEFENDANTS INTENTIONAL DISCRIMINATION AGAINST ROLLAND BASED ON DISABILITY;

78. ON UNSUBSTANTIATED UNCORROBORATING EVIDENCE OF DEFENDANTS-THAT WAS NOT MADE ON A—**HONEST GOOD FAITH BEILEF** OR SUBSTANTIAL EVIDENCE THAT HE COMMITTED ANY MISCONDUCT- THAT WAS NOT IN THE **ZONE** PROTECTED ACTIVITY- FACTS SUPRA) AT, P. # 7,OF COURT OF APPEALS-ORDER AND JUDGMENT-MAY 30TH , 2018-LOCATED IN APPENDIX (A).

JOHNSON VS. BABBITT, EEOC DOCKET NO. 03940100
(MARCH 28. 1996)-" **A LAST CHANCE AGREEMENTS " INVOLVE** EXCUSING **PAST PEFORMANCE OR CONDUCT PROBLEMS**". JOHNSON.

79. MR. SONNERMARKER HAD NO KNOWLEDGE ROLLAND WAS INVOLVED IN **PROTECTED ACTIVITY, OF A REASONABLE ACCOMMODATION**- AS SHARON MORGAN DID. OR THAT ROLLAND NEVER USED (FOUL) LANGUAE **AS TOLD TO HIM BY SHARON MORGAN- REFLECTED BY THE NON- DETAILES OF FACTS OR EVENTS** IN MR. SONNERMAKERS AFFIDAVIT. (FACTS SUPRA)-LOCATED IN ROLLANDS EXHIBIT"C', AND AT # 63 OF THIS PETITION.

80. DEFENDANTS ASSERTION OF ADDITIONAL UNDISCLOSED MISCONDUCT CLAIMS AGAINST ROLLAND AFTER HIS TERMINATION. DID NOT **CREATE A INDEPENDENT** REASON FOR HIS TERMINATION. OF WHICH, ROLLAND **WAS NEVER CHARGED WITH** IN ANY DOCUMENT FROM DEFENDANTS/OR THE OPPORTUNITY TO RESPOND TO AS

AFTER-ACQUIRED EVIDENCE.

81. FURTHERMOOR, **ROLLADS PERSONNEL FILE WITH DEFENDANTS IS VOID** OF ANY WARNNIGS OR DISCIPLINARY FOR ANY ADDITIONAL MISCONDUCT AS ALLEGED. AND **PROHIBITED BY JUDICIAL ESTOPPEL**. SEE DEFENDANTS EXHIBIT "5"-LOCATED IN APPENDIX (C).

STANDARD OF REVIEW

8 2. " PRETEXT CAN BE SHOWN BY SUCH WEAKNESSES, IMPLAUSIBILITIES, INCONSISTENCIES, INCOHERENCIES, OR CONTRADICTIONS IN THE EMPLOYER'S PROFFERED LEGITIMATE REASONS FOR ITS ACTION THAT A REASONABLE FACTFINDER COULD RATIONALLY FIND THEM UNWORTHY OF CREDENCE AND HENCE INFER THAT THE EMPLOYER DID NOT ACT FOR THE ASSERTED NON-DISCRIMINATION REASONS." **DEWITT**, 845 F. 3d AT 1307 (QUOTATION MARKS OMITTED)." A PLAINTIFF MAY ALSO SHOW PRETEXT BY DEMONSTRATING THE ACTED CONTRARY TO A UNWRITTEN COMPANY POLICY, OR A COMPANY PRACTICE WHEN MAKING THE ADVERSE EMPLOYMENT DECISION AFFECTING THE PLAINTIFF". **DEPAULA VS..EASTER SEALS EL MIRADOR**, 859 F. 3d 957, 970 (10TH CIR. 2017) (QUOTATION MARKS OMITTED).

83. THE NONMOVING PARTY MUST "SET" FORTH SPECIFIC FACTS THAT WOULD BE ADMISSIBLE IN EVIDENCE IN THE EVENT OF TRIAL FROM WHICH A RATIONAL TRIER OF FACT COULD FIND FOR THE NONMOVANT." **ADLER**, 144 F. 3d AT 671. " TO ACCOMPLISH THIS, THE FACTS MUST BE **IDENTIFIED BY REFERENCE TO AFFIDAVITS. DEPOSITION TRANSCRIPTS, OR SPECIFIC EXHIBITS INCORPORATION THEREIN."**

84. A FACT IS "MATERIAL" IF IT IS ESSENTIAL TO THE PROPER DISPOSITION OF THE CLIAM UNDER THE RELEVANT SUBSTANTIVE LAW. **WRIGHT VS. ABBOTT LABS. INC**., 259 F. 3d 1226.

1231-32 (10TH CIR. 2002). A DISPUTE IS " GENUINE" IF THE EVIDENCE IS SUCH THAT IT MIGHT LEAD A REASONABLE JURY TO RETURN A VERDICT FOR THE NONMOVING PARTY. **ALLEN VS. MUSKOGEE, OKLA**., 119 F. 3d 837, 839 (10TH CIR. 1997) **BARTIES BELOWROWN VS. BORE** (1999) 74 CAL. APP. 4TH CIR. 1303, " THE APPELLANT COURT **MAY APPLY THE CORRECT LAW** EVEN IF THE PARTIES BELOW DID NOT ARGUE IT IF AN ISSUES IS PROPERLY BEFORE THE COURT, **WHEN A PARTY APPEARED PRO SE** ".

85. THE SUPREME COURT HOLDS THAT A REASONABLE GOOD FAITH BELIEF THAT AN EMPLOYEE ENGAGED IN MISCONDUCT IS SUFFICIENT GROUND FOR A GOOD CAUSE TERMINATION- IN THE CASE OF ,**COTRAN VS. ROLLINS HUDIG HALL INTERNATIONAL, INC**, 1998 CAL. LEXIS 1 (JAN. 5. 1998. FURTHER, THE COURT REASONED THAT " THE EMPLOYEE INTEREST IN CONTINUED EMPLOYMENT WAS **PROTECTED BY AN OBJECTIVE STANDARD** THAT REQUIRED THE EMPLOYER TO MAKE AN HONEST DECISION REASONABLY BASED UPON SUBSTANTIAL EVIDENCE AFTER AN **ADEQUATE INVESTIGATION WITH A CHANCE FOR THE EMPLOYEE TO RESPOND**". **COTRAN**, SUPRA.

PLAUSIBILITY. – "**A CLAIM IS PLAUSIBLE ON ITS FACE** " WHEN THE PLAINTIFF PLEAD FACTUAL CONTENT THAT ALLOWS THE COURT TO DRAW THE REASONABLE INFERENCE THAT THE DEFENDANT IS LIABLE FOR THE MISCONDUCT ALLEGED". Id, AT 678 .

86. **EMPLOYER'S STANDARD OF PROOF ON AFTER-ACQUIRED EVIDENCE**". **THE SUPREME COURT ESTABILSHED** THAT AN EMPLOYER THAT SEEKS TO UTILIZE AFTER-ACQUIRED ENIDENCE TO LIMIT THE REMEDY IN A PARTICULAR CASE " MUST FIRST ESTABLISH THAT THE WRONGDOING WAS OF SUCH SEVERITY THAT THE EMPLOYEE IN FACT WOULD HAVE BEEN TERMNATED ON THOSE GROUNDS ALONE IF THE EMPLOYER HAD KNOWN OF IT AT THE TIME

OF THE DISCHARGED". SEE. **McKENNON VS. NASHVILLE BANNER PUBLISHING CO**., 513 U.S. 352 (1995).

87. THIS STANDARD WAS ELUCIDATED BY THE NINTH CIRCUIT IN, **McDONNELL DOUGLAS HELICOPTER CO., VS. O'DAY**, 79 F. 3d. 756 (9TH CIR. 1 960). THE COURT HELD THAT AN EMPLOYER MUST " PROVE BY A PREPONDERANCE OF THE **EVIDENCE THAT IT WOULD HAVE FIRED THE EMPLOYEE FOR THAT MISCONDUCT**". (**DEFENDANTS DID NOT POINT TO ANY EVIDENCE OF FACT**).

88. **THE JOB PR0TECTION ACT AND CIVIL RIGHTS ENFORCEMENT ACT**, C0LO. REV.STAT.REV.SECTION 24-34-405, ADDS COMPENSATORY DAMAGES, PUNITIVE DAMAGES AND ATTORNEYS'FEES TO THE REMEDIES THAT MAY BE AWARDED AGAINST EMPL0YMENTERS IN EMPLOYMENTDISCRIMINATION CASES BROUGHT UNDER STATE LAW WHERE INTENTIONAL DISCRIMINATIONIS PROVEN. PREVIOUSLY, THE LAW PERMITTED ONLY BACK PAY, REINSTATMENT OR FRONT

PAY,AND INJUNCTIVE RELIEF. THE NEW REMEDIES WILL APPLY TO CLAIMS THAT ACCRUE ON OR AFTER JANUARY 1, 2015.

89. MAKING A DETERMINATION UNDER 28 U.S.C. SECTION 1915 (D) , THE COURT MUST " LIBERALLY" CONSTURE THE COMPLAINT OF A PRO SE INDIGENT. SEE. **BOAG VS. Mc DOUGALL,** 454 U.S. 364, 365, 102 S.CT. 700. 701, (1982). SEE. **WHITE YORK INTERNATIONAL CORPORAT-ION**,45 F.3d 357, 360-61 (10TH CIR. 1995)(89). ROLLAND HAS DEMONSTRATED THE WEAKNESS, IMPLAUSIBLITY'S. INCONSISTENCIES. INCOHERENCIES, OR CONTRADICTIONS IN THE DEFENDANT'S PROOFED LEGITIMATE FACT FINDER COULD FINE THEM UNWORTHY OF CREDENCE."

90. THE VERY MISSION OF THE SUMMARARY JUDGMENT STANDARD IS TO **PIERCE THE PLEADINGS** AND TO ASSESS THE PROOF IN ORDER TO SEE WHETHER THERE IS A GENUINE NEED FOR TRIAL." F.R.C.P. 56 ADVISORY COMM. NOTE TO 1963 AMENDMENT.

TO STATE A PRIMA FACIE CASE OF DISABILITY DISCRIMINATION, A PLAINTIFF MUST ESTABLISH (1) HE WAS DISABLED, (2) HE WAS QUALIFED, WITH OR WITHOUT REASONABLE ACCOMMODATION, TO PERFORM THE ESSENTIAL FUNCTIONS OF HIS JOB, AND (3) THE DEFENDANT DISCRIMINATED AGAINST HIM BECAUSE OF THE DISABILITY, **ROBERT VS. Bd. OF CTY. COMM'RS OF BROWN CTY., KAN.,** 691 F. 3d 1211, 1216 (10TH CIR. 2012). IN THE SUMMARY JUDGMENT CONTEXT, " A PLAINTIFF INITIALLY MUST RAISE A GENUINE ISSUE OF MATERIAL FACT ON EACH ELEMENT OF THE PRIMA FACIE CASE." MACKENZIE, 414 F. 3d AT 1274.

91 FURTHER, THE COURT DIREICTLY STATED IN , **FERRAN VS. UNITED STATES**, 17 F. R. D. 211 (D.P.R.)(1955). " IF THE COURT HAS A **REASONABLE DOUBT**, THEN SUMMARY JUDGMENT WILL BE DENIED". FURTHER THE COURT STATED IN, **PAULE HAWKINSON CO., VS. DENNIS,** 166 F. 2d 61 (5TH CIR. 1948)-" SUMMARY JUDGMENT WILL ALSO BE DENIED IF THE EVIDENCE INDICATE THAT **CONFLICTING INFERENCES COULD BE DRAWN**". THE PARTY MOVING FOR SUMMARY JUDGMENT BEARS THE INITIAL BURDEN 0F SHOWING AN ABSENCE OF EVIDENCE TO SUPPORT THE NONMOVING PARTY'S CLAIM. **CELOTEX CORP. VS. CATRETT**. 477 U.S. 317, 325 (1986).

92. AFFIDAVITS BASED UPON INADMISSIBLE HEARSAY **ARE INSUFFICIENT TO SUPPORT SUMMARY JUDGMENT AND A NEW TRIAL. COLORADO SUPREME COURT** IN , **PEOPLE VS. HERNANDEZ AND ASSOCIATES, INC**., 736 P. 21, 1238 (1986) AND , NO. 85CA558 COLORADO COURT OF APPEALS, DIV. III, NOV. 26, 1986; **HARRIS VS. GRIZZLE**, 625 P. 2d 747 (WYO. 1981;

SEE. ALSO, **PEOPLE VS. HERNANDEZ**, 695 P. 308 (COLO.APP. 1984).

REASONS FOR GRANTING THE PETITION-WRIT OF CERTIORARY

93 . THE LOWER TENTH CIRCUIT COURT OF APPEALS FOR DISRICT OF COLORADO. **REFECTS A RULING THAT IS NOT IN ACCORDING WITH PROVIOUS SUPEME COURT/ OTHER SUPEME COURT DECISIONS** ON SAME IMPORTANT MATTERS, AND **CANNOT SURVIVE** APPLICATION OF THE CORRECT LEGAL STANDARD.

94. **THE CORRECT LEGAL STANDARD'S THE APPEALS COURT SHOULD HAVE APPLIED** TO ROLLANDS CASE ON SUMMARY JUDGMEMT ISSUE, WAS STATED BY THE UNITED STATES SUPEME COURT IN THE CASE OF, **ANDERSON VS. LIBERTY LOBBY, INC**.,--COURT NO. 84-1602 (1985).

95. THE APPEALS COURT DISREGARDED THE SUPEME COURTS DECISION, WEIGHED AND DETERMINED THE CREDIBILITY EVIDENCE OF MR. WILLIAM SONNERMAKERS HEARSAY AFFIDAVIT AND,. THE **CONFLECTING INFERENCES** DRAWED FROM THE FACTS OF THAT AFFIDAVIT. THE AFFIDAVIT **PRESENTED AMBIGUOUS INTERPRETATIONS** FOR DEFENDANTS PRETEXT TERMINATION OF ROLLAND, WHICH SHOULD HAVE BEEN MATTER FOR A JURY. (FACTS SUPRA)-LOCATED IN MAY 30TH , 2018, AND JUDGMENT OF COURT-CASE NO. 17-1387. **COURT COMMITTED REVERSAL ERROR**.

96. THE COURT CONCLUDED AT, P. # 6, PARAGRAPHS (3-4, AND, FOOT NOTE # 4, AT BOTTOM OF PAGE IN WEIGHING THE SAME. THE COURT OF APPEALS STATED IN FOOT NOTE # 4, " THE SCHOOL'S MOTIVE FOR REQUESTING HIS REMOVAL MATTER NOT A WHIT. **HOWEVER, IT SPEAKS VOLUMES AS TO WHETHER CARNATION'S REASON FOR HIS TERMINATION WAS PRETEXT FOR DISABILITY DISCRIMINATION**"..... **THIS STATEMENT**

ALONG, CREATES A MATERAL DISPUTED ISUESS OF FACT, CONCERNIG THE TERMINATION FOR-A JURY TO DECIDE, **NOT A JUDGE.. COURT COMMITTED REVERSAL ERROR.**

97, THE APPEALS COURT ERRONEOUSLY DISREGARDED THE LEGAL STANDARDS APPLIABLE TO THIS CASE LOCATED IN THIS PETITION AT, NUMBERS, 20, 21, 23, 30, 31, 36, 38, 42-**DOCTRNIE OF JUDICIAL ESTOPPEL**, 54-UNIFIED RULING FROM EVERY FEDERAL DISTRICT CIRCUIT THAT REQUEST FOR REASONABLE ACCOMMODATION ARE PROTECTED ACTIVITY.

CONCLUSION AND PRAY FOR RELIEF

98. ROLLAND, REQUEST THIS HONORABLE SUPREME COURT. GRANT HIS WRIT OF CERTIORARI IN THE INTEREST OF JUSTICE AND FAIRNESS, TO CORRECT INJUSTICE AND HARM. THANK YOU.

RESPECTFULLY SUBMITTED. DATED 8-5-19

RONNIE R. ROLLAND-PRO SE.

APPENDIX A.

100. UNITED STATES COURT OF APPEALS TENTH CIRCUIT. ORDER AND JUDGMENT IN CASE NO. 17-1387, OF MAY 3OTH , 2018.S BY PHILLIPS, MCKAY, AND O'BRIEN, CIRCUIT JUDGE IN- CASE # 17-1387-FROM UNITED STATES DISTRICT COURT CASE # (D.C. NO. 1: 16-CV-00057-CMA-STV (D. COLO). THE OPINION IS UNPUBLISHED AND HAVE NOT BEEN RELEASED FOR PUBLICATION. A PETITION FOR REHEARING IN THE COURT OF APPEALS WAS NOT FILED. ROLLAND VS. CARNATION BUILDING SERVICE, INC.