

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

PlanetONE Packaging, LLC,

Plaintiff,

v.

American Pharma Machinery, LLC, and  
Dorothy Pierce a/k/a Dorothy Wells a/k/a  
Dorothy Aleweny a/k/a Queen Dorothy  
Amolo,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2023-CP-37-00232

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S DAMAGES FOR  
JANUARY 29, 2025 DAMAGES HEARING  
RELATIVE TO PLAINTIFF'S MOTION  
FOR DEFAULT JUDGMENT AS TO  
DEFENDANTS**

**RECEIVED**

**Aug 11 2025**

**SC Court of Appeals**

Plaintiff PlanetONE Packaging, LLC (“PlanetONE” or “Plaintiff”), by and through undersigned counsel, hereby respectfully submits this memorandum and accompanying exhibits in support of its damages sought against Defendants American Pharma Machinery, LLC (“American Pharma”) and Dorothy Pierce a/k/a Dorothy Wells a/k/a Dorothy Aleweny a/k/a Queen Dorothy Amolo (“Pierce”) (collectively “Defendants”), which is the subject of the Court’s Damages Hearing today, January 29, 2025 at 2:00pm. Defendants are both in default in this matter per prior court orders.

Plaintiff’s damages are, and will be, presented to the Court via the arguments, legal authority, and documents set forth herein this memorandum, as well as the arguments of counsel at the hearing, evidence and testimony presented by Plaintiff’s witness at today’s hearing – Karen Davidson, Owner of PlanetONE, and any other forthcoming evidence or applicable law.

**PERTINENT FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The background facts of this case are simple and have been briefed, at length, in the many motions filed in this matter by the parties, and Plaintiff. Additionally, because the

allegations of Plaintiff's amended complaint are deemed admitted by the Defendants in this matter, the pertinent factual evidence and background set forth herein and at today's hearing need only concern facts that establish the amount of Plaintiff's damages.

**Exhibit A** to the amended complaint and this memorandum contains Defendants' invoice for the "APM-4D Automatic Capsule Counting Machine" (the "Machine") in which Defendants made certain written representations to Plaintiff regarding the terms of the purchase of the Machine. This, along with the terms agreed and discussed between Pierce and PlanetONE prior to purchase establish the price paid for the Machine that Defendants, as alleged and now admitted by Defendants, fraudulently obtained, withheld, refused to refund, and refused to provide the contracted-for Machine.

As alleged, Plaintiff paid Defendants in full for the Machine and never received it; Plaintiff has suffered loss of the \$22,788.00 purchase price in addition to interest that it has paid, and will continue to pay, given that it financed the purchase of the Machine – a fact that Defendants were well-aware of at the time of sale. **Exhibit B** hereto contains an email thread starting December 12, 2022 between PlanetONE, Defendants, and PlanetONE's lender CIT, regarding payment of the full \$22,788.00 purchase price of the Machine as well as Defendants' receipt of that payment on or before December 19, 2022. **Exhibit B** also contains the CIT financing paperwork and documentation regarding the monthly payments required of PlanetONE for the financing of the Machine. Plaintiff's testimony at the damages hearing will further delve into these details, but the 60-month term, and monthly payments of \$1,247.40, have and will cost Plaintiff significant sums of interest that Plaintiff has had to pay on a machine it never received.

Testimony and evidence will show that PlanetONE's efforts to ascertain the status of the Machine delivery after payment on December 19, 2022 proved fruitless, and that Defendants

continual fraudulent conduct with respect to this transaction resulted in Plaintiff being without a machine that it purchased with the intent to keep its operations up to speed with demand and to conduct its business. For example, as shown in **Exhibit C** (emails from January 30, 2023 to February 8, 2023), **Exhibit D** (emails from February 9, 2023 to February 10, 2023), **Exhibit E** (email on February 10, 2023), **Exhibit F** (email on February 8, 2023), and **Exhibit G** (email on March 5, 2023), PlanetONE tried for months – well after the 10-15 business day for delivery window agreed per Exhibit A – to ascertain the whereabouts of the Machine.

Indeed, PlanetONE tried for months to obtain a status update on the Machine (that was not delivered but fully paid for from Defendants who were unresponsive and non-specific as to “setbacks” and “bugs” with the Machine, and from Defendants who attempted to provide a lesser product as a substitute—refusing to provide a refund to PlanetONE—without any detail or substantive communication with PlanetONE regarding the proposed alternative machine or basis for refusal to refund the purchase. Testimony will show how these actions of Defendants created an untenable situation for Plaintiff regarding the operation of its business without the needed Machine, lost revenue and business opportunity, and additional costs Plaintiff had to incur for both labor and in order to locate a different machine to try and meet the needs of the business after Defendants’ conduct.

Finally, both Defendants are unrepresented – American Pharma cannot proceed pro se and, thus, no cross-examination of plaintiff’s witnesses or objections to the damages evidence can be presented by American Pharma. Defendant Pierce is proceeding pro se in this matter and may only cross-examine Plaintiff’s witnesses and object to damages evidence at today’s damages hearing, and can only do so on her personal behalf and not American Pharma.

## **LEGAL STANDARD**

Pursuant to Rule 55(b), SCRPC, a Court may enter judgment against a defaulting defendant after damages are determined. A defendant in default admits liability but not the damages. . . .” *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct. App. 2014) (internal quotation marks and citation omitted). “The defaulting defendant has conceded liability. However, a defaulting defendant does not concede the [a]mount of liability.” *Id.* Therefore, “the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence.” *Palmetto Construction Grp., LLC v. Restoration Specialists, LLC*, 444 S.C. 328, 348-49, 907 S.E.2d 129, 140 (Ct. App. 2024).

“The trial judge has considerable discretion regarding the amount of damages, both actual or punitive.” *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004) (citations omitted). The defaulting defendant’s participation at the damages hearing, if any, is limited to cross-examining the plaintiff’s witnesses and objecting to evidence. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978); *Doe v. S.B.M.*, 327 S.C. 352, 357–58, 488 S.E.2d 878, 881 (Ct. App. 1997); *see also Palmetto Construction*, 444 S.C. at 349, 907 S.E.2d at 140 (“At the damages hearing, the defendant may only participate by cross-examining witnesses and objecting to evidence.”),

## **ARGUMENT**

This Court has already issued orders that the Defendants are in default. Defendant Pierce is in default (Form 4 Order Nov. 6, 2023 and Jan. 16, 2024) and Defendant American Pharma is in default (Form 4 Order Nov. 6, 2023, written order Dec. 5. 2023). What remains is an order regarding damages.

As previously found by this Court, Defendants failed to plead or otherwise defend the above-captioned action as provided by the South Carolina Rules of Civil Procedure, and, as a result, Plaintiff requests a judgment of default against Defendant for the relief requested in Plaintiff's Amended Complaint. Plaintiff asserted the following causes of action against Defendants: (i) breach of contract; (ii) fraud; (iii) constructive fraud; (iv) breach of contract accompanied by a fraudulent act; (v) unjust enrichment; (vi) violation of the S.C. Unfair Trade Practices Act (SCUTPA); and (vii) alter ego/piercing the corporate veil. All of these claims have been established given the Defendants' default.

**I. Plaintiff is entitled to money judgment against Defendants, jointly and severally.**

Plaintiff is entitled to a money judgment against Defendants for their breach of contract, unjust enrichment, fraudulent conduct, violation of SCUTPA, and the conduct of American Pharma and Pierce being such that they are one in the same (as alleged in the amended complaint). The amount of the money judgement sought is, at a minimum, as follows:

Purchase price of Machine, paid 12/19/22 but not delivered	\$22,788.00
Interest paid on loan for Machine purchase from 12/22 to 1/25 – 16 months	~\$5,000.00
Interest to be paid on loan for Machine purchase until purchase price is recovered	TBD
Increased labor costs for 4 months, required to try and maintain production of business due to missing Machine	\$32,000.00 (\$8,000 per month)
Increase cost required to purchase a different machine line, May 2023, due to missing Machine	\$15,000.00
Attorney's fees and costs from 2/17/23 to 1/1/25 ( <b>Exhibit H</b> ). Also note \$1,000.00 for fees has already been ordered by the Court of Appeals per 11/25/24 order.	\$29,781.75 <sup>1</sup>
Pre-judgment interest	TBD

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<sup>1</sup> Does not include fees incurred but not yet billed for Jan. 2025 which, at a minimum, will be \$5,000 or more pending final month-end bill, which Plaintiff will provide via supplemental filing to the court post-hearing.

To date, notwithstanding attorneys' fees/costs, pre-judgment interest, and costs to continue to pay interest on the loan, Plaintiff has suffered actual damages of at least \$74,788.00 as a result of Defendants' conduct regarding the contract and the Machine at issue.

Notably, however, among other causes of action, Plaintiff asserted a claim against both Defendants for violation of the South Carolina Unfair Trade Practices Act and alleged, inter alia, Defendants' "acted willfully in that [they] knew or should have known that their conduct constituted a violation of S.C. Code Ann. § 39-5-20 [SCUTPA]." *See* Am. Compl. at ¶ 47. Given that the Defendants are in default, this allegation, among all the rest in the pleading, is deemed admitted and, thus, Plaintiff is entitled to "three times the actual damages sustained" under SCUTPA. *See* S.C. Code Ann. § 39-5-140(a) ("If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper."). Based on the \$74,788 figure calculated above, treble damages owed to Plaintiff by Defendants here equals \$224,364.00.

Additionally, Plaintiff is also entitled to its reasonable attorneys' fees and costs given Defendants' violation of SCUTPA as alleged in the amended complaint. *See id.* ("Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.").

As noted above, these are only ascertained through January 1, 2025, and supplemental costs and fees are expected for the month of January 2025 and onward, as necessary, through the conclusion of this matter.

Therefore, Plaintiff is entitled to a judgment against the Defendants in the amount of \$224,364.00, plus attorneys' fees and costs, which currently total \$29,781.75

## CONCLUSION

Based on the foregoing, Plaintiff respectfully requests entry of default judgment against the Defendants, jointly and severally, for the following relief:

1. Money damages in the following amounts:
  - A. Two Hundred and Twenty-Four Thousand, Three-Hundred and Sixty-Four Dollars (\$224,364.00) in actual damages, trebled under SCUTPA;
  - B. Twenty-Nine Thousand Seven-Hundred and Eighty-One Dollars and Seventy-Five Cents (\$29,781.75) for attorneys' fees and costs through January 1, 2025;
  - C. Additional attorneys' fees and costs incurred for January 2025 and to be incurred through final resolution, to be supplemented via later affidavit.
2. For prejudgment interest at the statutory rate;
3. For punitive damages; and
4. For such other relief the Court deems just and proper.

### **HAYNSWORTH SINKLER BOYD, P.A.**

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*Attorneys for Plaintiff PlanetONE Packaging, LLC*

January 29, 2025

Greenville, South Carolina