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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

PlanetONE Packaging, LLC, Respondent,

V.

American Pharma Machinery, LLC, and Dorothy Piercea/k/a Dorothy Wells a/k/a Dorothy Aleweny a/k/a QueenDorothy Amolo, Defendants,

Of whom Dorothy Pierce a/k/a Dorothy Wells a/k/aDorothy Aleweny a/k/a Queen Dorothy Amolo is the Appellant.

Case No. 2023-CP-37-00232

Appellate Case No. 2025-00049

INITIAL BRIEF OF APPELLANT

Respectfully submitted this 24th day of August 2025.

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FOR THE APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Whether the circuit court committed legal error and abused its discretion by entering—and then refusing to set aside—default under Rule 55(c), SCRCP, where Appellant, pro se and abroad on an emergency, lacked e-filing/e-service access, timely mailed a response with receipts/tracking, and promptly refiled upon learning of non-receipt.
2. Whether the circuit court committed legal error and violated due process by finalizing default without first holding the "subsequent hearing" required by its November 6, 2023 Form 4 after Appellant submitted a sworn affidavit and Posta Uganda receipts, and by conditioning relief on extra-record demands (including ePosta "login credentials"), then denying reconsideration without a hearing.
3. Whether the circuit court committed legal error and violated due process by finalizing default without the ordered "subsequent hearing," imposing extra-record conditions (such as login credentials), and denying reconsideration without a hearing.
4. Whether the circuit court committed legal error and violated due process by finalizing default after Appellant satisfied the November 6 order with a sworn affidavit and mailing receipts, based on Respondent's later extra-record demands for impossible and private "login" information.
5. Whether the circuit court committed legal error by allowing contract-based liability against Appellant where the Amended Complaint pleads privity and performance solely between PlanetONE and APM, alleges payment of $22,788 to APM (not to Appellant), and pleads/proves no personal benefit to Appellant.
6. Whether the circuit court committed legal error by holding Appellant personally liable on the contract even though she acted only as APM's representative and never expressly assumed personal liability.
7. Whether the circuit court committed legal error by sustaining fraud counts against Appellant that fail Rule 9(b), SCRCP, because they lack particularized allegations of a specific misrepresentation by Appellant, scienter, and reliance distinct from corporate conduct.
8. Whether the circuit court committed legal error by imposing SCUTPA liability, trebling, and fee-shifting on Appellant personally absent well-pleaded and proven unfair or deceptive acts by her personally (as opposed to acts of APM).

9. Whether the circuit court committed legal error by allowing unjust enrichment against Appellant where the pleadings admit an express contract with, and payment to, APM and do not allege a specific benefit conferred on Appellant personally.
10. Whether the circuit court committed legal error by awarding contract damages against Appellant in violation of Rule 54(c), SCRCP, because breach of contract was pleaded only against APM, so relief against the individual exceeded the demand as to her.
11. Whether the circuit court committed legal error by imposing personal liability via alter-ego despite conclusory veil-piercing allegations, treating legal conclusions as admitted by default, and taking no evidence of abuse of the LLC form or of any individual tort/statutory elements as to Appellant.
12. Whether the circuit court committed legal error by assessing attorney's fees against Appellant absent a contract binding her or a statute she personally violated, and without findings tying the fee claim to proven individual liability.
13. Whether the circuit court committed legal error by violating Rule 54(c), SCRCP, in awarding default damages different in kind and exceeding the amount demanded adding unpleaded categories to inflate "actual damages" beyond the $22,788 purchase price and then trebling.
14. Whether the circuit court committed legal error by trebling under SCUTPA without support, where the record shows good-faith mitigation (a no-cost loaner and a permanent machine at APM's expense) and delays attributable to banking/shipping rather than willful deception.
15. Whether the circuit court committed legal error by entering a damages judgment lacking evidentiary support, relying on unsworn argument, and disregarding sworn testimony from Respondent's owner that she sought only the purchase price and legal fees.
16. Whether the circuit court committed legal error and violated due process by depriving Appellant—despite default—of a meaningful opportunity to contest damages, curtailing cross-examination, and permitting an 11-page memorandum with exhibits to be served at the hearing itself.
17. Whether the circuit court committed legal error and violated due process by awarding $37,766.33 in attorney's fees via a post-hearing affidavit and an impracticable oral five-day window served only by slow mail, yielding an untested and unreasonable fee.
18. Whether the circuit court committed legal error by proceeding despite the appearance and reality of bias created by the judge's acknowledged familiarity with opposing counsel's

father, hostile treatment of a pro se litigant, and impossible deadlines, requiring reversal and reassignment.

19. Whether the circuit court committed legal error by failing to bar or reduce recovery for Respondent's failure to mitigate, thereby permitting inclusion and collection of avoidable damages.
20. Whether the circuit court committed legal error by violating Rule 54(c), SCRCP—limiting default relief to that demanded—when it awarded damages different in kind and exceeding the amount prayed for (adding loan interest, increased labor, and replacement-machine costs to reach $74,788 and then trebling) based on a hearing-day memorandum, where the Amended Complaint sought only the $22,788 purchase price (plus fees/statutory enhancements).
21. Whether the circuit court committed legal error by entering default judgment against Appellant after her personal appearance and participation without affording full notice and a meaningful opportunity to be heard on liability and damages as required by Rule 55(b)(2).
22. Whether the circuit court committed legal error and violated due process by relying on a post-hearing fee affidavit that was never made part of the evidentiary record.
23. Whether the circuit court compounded legal error and violated due process by imposing an impossible five-day window to request fee cross-examination that expired before Appellant could receive the mailed order or the affidavit.
24. Whether the circuit court committed legal error by entering a joint-and-several judgment against APM and Appellant without individualized findings establishing a lawful basis for personal liability as to Appellant.
25. Whether the circuit court committed legal error by issuing a damages award and SCUTPA trebling without specific findings explaining how "actual damages" were calculated and how any proven conduct satisfied the willful/knowing standard.
26. Whether the circuit court committed legal error by awarding post-judgment interest on trebled damages and attorney's fees without identifying statutory authority, the proper base, or accrual dates.
27. Whether the circuit court committed legal error by treating the Amended Complaint's "undisputed facts" and an "Affidavit of Default" as substantive proof of elements such as willfulness and alter-ego, even though legal conclusions are not deemed admitted by default.

STATEMENT OF THE CASE

This appeal challenges a default judgment that imposed joint-and-several personal liability of $262,130.33 on pro se Appellant Dorothy Pierce—even though the underlying dispute was a $22,788 equipment-sale contract with American Pharma Machinery, LLC ("APM"). On May 2, 2023, Ms. Pierce's close friend, Col. Charles Okello Engola Macodwogo, the Ugandan State Minister for Labor, was fatally shot by his bodyguard. She immediately arranged emergency travel to Uganda for the funeral. Before she departed, PlanetONE served her with the summons and complaint, and then served an amended complaint on May 9, 2023. Barred from e-filing as a pro se litigant while abroad, Ms. Pierce did the only thing available: she mailed her responsive papers from Uganda on June 1 with receipts and tracking, promptly re-filed when told they had not posted, and, when ordered, submitted a sworn affidavit with postal proofs. The court nevertheless never held the promised "subsequent hearing" on authenticity/proof of mailing, injected a new and impossible demand for "ePosta" login credentials that had never been ordered, and then finalized default anyway, an error that squarely violates due process and the liberal "good cause" standard of Rule 55(c).

The damages phase was worse. At the hearing, PlanetONE handed in an 11-page memo and exhibits at the start of the proceeding**;** the judge said he hadn't read it, and the record **shows** no exhibits were admitted**.** When Ms. Pierce tried to cross-examine on the numbers, the court curtailed her—even though a defaulting party may contest the amount of damages. The only clear sworn request from PlanetONE's witness was: "the money back that I paid … plus my legal fees." Yet the court adopted unpleaded add-ons (loan interest, labor, replacement costs) to balloon "actual damages" to $74,788 and then trebled them under SCUTPA—without specific, competent findings of willfulness. Attorney's fees ($37,766.33) were then awarded on a post-hearing affidavit served by mail with a five-day response window that expired before Ms. Pierce could receive it.

Finally, the judgment imposes personal liability on Ms. Pierce with no privity, no guaranty, and no veil-piercing findings—despite the contract, payment, and performance all running to APM. In short: the promised hearing never happened; evidence wasn't admitted; damages exceeded the pleadings; fees were decided without process; and individual liability lacks any lawful basis. These are clean, reversible errors. The Court should vacate the default and judgment against Ms.

Pierce (or at least remand for the ordered authenticity hearing and a proper damages/fees hearing before a different judge).

FACTUAL AND PROCEDURAL HISTORY

Contract Background & Good Faith Conduct (Dec. 2022 – Mar. 2023)

The transaction began on December 5, 2022, when American Pharma Machinery, LLC issued a proforma invoice to PlanetONE LLC for one APM-4D Automatic Capsule Counting Machine at a total price of $22,788. The invoice required 100% payment upfront and listed an estimated delivery of 10–15 business days. PlanetONE arranged financing through CIT Bank, a division of First-Citizens Bank & Trust Company, which approved the Equipment Finance Agreement (EFA) on December 13, 2022.

On December 19, 2022, Dorothy Pierce, a representative of American Pharma Machinery, LLC, promptly acknowledged receipt of the CIT payment. Communicating from the company's email address, info@pharmamachinery.com, with a signature of "Technical Support," she immediately sought technical details to ensure proper customization. Her email read**: "Please confirm the size of your capsules/tablets so that we can customize the machine accordingly. Secondly, also confirm the power specifications: 220V, 60Hz and Single phase."** This prompt follow-up demonstrates a proactive effort to perform the contract and deliver a product tailored to the buyer's needs.

When the promised delivery window passed, PlanetONE's principal, Karen Davidson, emailed on January 30, 2023, threatening to involve legal counsel. The next day, The Appellant responded constructively, stating: **"There has been a minor setback and the machine delivery will take a little longer. Can we send you a temporary machine to use that we can pick up once your machine is delivered? This will be at no cost to you. I can schedule pickup in as little as two business days."** This offer to provide an immediate, no-cost loaner unit went beyond the contractual obligations to ensure PlanetONE's operations could continue. This conduct is contrary to the willful or deceptive behavior required to support a SCUTPA claim. Notably, the respondent later testified that they were using a manual machine at this time; therefore, the no-cost loaner would have immediately boosted their production.

Nevertheless, on February 10, 2023, Ms. Davidson rejected the solution, stating: "I do not want to confuse the issue with a replacement, inferior product. Can you simply refund me the money?" Ms. Davidson mischaracterized the offer, as the temporary unit was not a "replacement" but a no-cost loaner provided in addition to their original order. Subsequently, the Appellant expanded her offer, proposing that PlanetONE could keep the loaner machine permanently while still receiving the originally ordered machine, effectively offering two machines for the price of one. Despite this refusal, American Pharma pressed forward to complete the original order. On March 1, 2023, The Appellant sent a video showing

the purchased unit in the "final stages of debugging." PlanetONE again rejected the performance, without evidence, asserting the machine was "not the machine that we paid for" and was "still overseas."

Emergency Abroad & Filing Barrier, Default Entered While Abroad and (May 2 – June 20, 2023)

In early May 2023, Appellant Dorothy Pierce had to travel to Uganda following the tragic death of her close friend, Col. Charles Okello Engola Macodwogo, the Ugandan State Minister for Labor, who was fatally shot by his bodyguard on May 2, 2023. Before her departure, the Respondent served her with the summons and Complaint, followed by the Amended Complaint on May 9, 2023.

As the principal of American Pharma Machinery, LLC, and being out of the country for a personal emergency, Appellant Pierce was unable to retain legal counsel for the company; hence, no answer was filed on its behalf. However, acting pro se, Appellant Pierce took steps to answer the complaint. Because the South Carolina court system did not permit her to file electronically, physical mailing was her only available option for filing a response from abroad. Accordingly, on June 1, 2023, Oscar Ojok, acting on her behalf, mailed her responsive court papers from Uganda to the Oconee Court of Common Pleas and to Respondent's counsel, Christopher Major, via Posta Uganda, retaining the mailing receipts.

The Appellants' answer was due on June 8, 2023. When the papers mailed from Uganda had not arrived by the deadline, the Respondent moved for an entry of default the following day, June 9, without serving the motion on the Appellant. On June 20, 2023, while Appellant Pierce was still in Uganda, Judge R. Scott Sprouse entered default against both Appellants.

Upon returning to the United States, The Appellant emailed the Court on July 21, 2023, to ask if it had received the Motion to Dismiss mailed from Uganda on June 1, attaching a PDF copy of the motion to her email. After the clerk informed her that the mailing had not arrived, The Appellant swiftly filed the Motion to Dismiss that same day, while simultaneously seeking an attorney to respond on behalf of American Pharma Machinery, LLC.

The package originally mailed from Uganda was returned to the sender as undeliverable. It was subsequently reshipped by the Ugandan post office and arrived at the court in October 2023. On October 24, 2023, Chief Deputy Clerk Amanda Watkins emailed The Appellant confirming the court's receipt of a package from Uganda containing the Motion to Dismiss.

A few days later, on October 30, 2023, The Appellant emailed a copy of the Ugandan mailing receipt to Respondent's counsel and court staff. Counsel for the Respondent replied that they had received nothing and questioned the document's authenticity, asserting that The Appellant "proceeded at her own risk by depositing court papers with a carrier not recognized." Posta Uganda is the official, government-owned courier service of Uganda and works in partnership with the United States Postal Service.

A hearing was held on October 31, 2023, to address Appellant Pierce's Motion to Dismiss, her Motion to Set Aside Default, and the Respondent's Motion for Default Judgment. During this hearing, Judge McIntosh acknowledged a personal relationship with the father of Respondent's counsel, Christopher Major, asking in open court if counsel was "the son of Mr. Major." After counsel replied, "Yes," the judge proceeded to ask questions regarding his father. This exchange, combined with other actions by the Court, signaled favoritism toward the Respondent. From this hearing forward, the Court's bias became evident, as subsequent rulings consistently favored the positions and requests submitted by Respondent's counsel.

On November 6, 2023, the Court issued a Form 4 Order denying The Appellant's motions. The order held American Pharma Machinery, LLC, in default because The Appellant, as a non-attorney, could not represent the corporation. It also found The Appellant individually in default, but this finding was conditional. Responding to arguments from Respondent's counsel that the mailing evidence was unsupported by an affidavit, the Court granted The Appellant forty-five (45) days to prove the authenticity of the June 1, 2023 mailing from Uganda. The order stipulated that if authenticity and proof of mailing were established at a subsequent hearing, she would be permitted to file responsive pleadings.

The Form 4 Order specifically stated:

APPELLANT PIERCE IS ALSO IN DEFAULT INDIVIDUALLY. HOWEVER, DEFENDANT PIERCE HAS THE BURDEN OF PERSUASION TO ESTABLISH THE AUTHENTICITY OF THE DOCUMENTS FROM UGANDA… APPELLANT HAS 45 DAYS FROM THE DATE OF THIS ORDER TO ESTABLISH AUTHENTICITY. IF AUTHENTICITY AND PROOF OF MAILING IS ESTABLISHED AT A SUBSEQUENT HEARING, APPELLANT WILL BE ALLOWED TO FILE RESPONSIVE PLEADINGS.

This was not a final judgment but an interim procedural order granting The Appellant until December 21, 2023, to produce her proof. Crucially, the order's language expressly required a subsequent hearing before her default could be finalized.

In compliance with the court's order, on November 10, 2023, Appellant's personal assistant in Uganda, Mr. Oscar Ojok, executed a sworn affidavit. He then emailed the court and Respondent's counsel, attaching a copy of the affidavit and Post Uganda mailing receipts and requesting the attorney's valid mailing address to ensure proper service of the original. Subsequently, Mr. Ojok mailed the original, signed affidavit and the Posta Uganda mailing receipts, via a new package with a tracking number, to both the court and Respondent's counsel. The affidavit attested to the June 1, 2023 mailing of court papers and detailed the following:

i. Mailing on June 1, 2023.
ii. Retention of receipts and tracking numbers.
iii. Notification in October 2023 that the packages were returned undeliverable.
iv. Remailing on October 10, 2023.

This affidavit constituted competent evidence of mailing and authenticity under Rule 803(6), SCRE, and satisfied the requirements of the Form 4 Order. Instead of acknowledging this compliance, the Respondent created new evidentiary hurdles outside of the formal court process.

On the same day of November 10, 2023, Respondent's counsel, Christopher Major, confirmed in writing that there would be another hearing on proof of mailing: **"The Judge ruled that there would be a later hearing and finding on the proof. There will no doubt be a separate order from the Court setting forth its findings on that issue."** This is an **on-record admission** that (1) the November 6 order was not final, and (2) a hearing was required before default could be finalized. This assurance created a **procedural expectation** that the Court would not enter a final judgment without first holding the promised hearing.

On December 8, 2023, a critical series of events unfolded. At 9:29 a.m., after Appellant accused Respondent's counsel of intentionally evading admission that he had received the mailed documents from Mr. Ojok, counsel finally admitted in an email: "I did receive the recent mailing from Mr. Ojok." This unequivocally confirmed his receipt of the sworn affidavit and proof of mailing that the Court's November 6 Order required.

Just six minutes later, at 9:35 a.m., counsel shifted the goalposts by introducing new, unauthorized demands for the first time:

a. Login credentials for the ePosta Uganda account allegedly used for the June shipment.

b. “All communications with Mr. Ojok about any mailing” and “any electronic communications or files relating to the mailing.”

These demands were not only an egregious expansion of the Court's order but were also technically impossible to fulfill. At 9:49 a.m., the Appellant explained that Posta Uganda does not use a client portal for in-person mailings and that providing account credentials, if they existed, would be a breach of privacy. This process is consistent with that of the USPS in the United States, where counter mailings are not stored in a personal online account. The demand for login credentials served no legitimate evidentiary purpose—especially since counsel already possessed the affidavit and receipts—and operated as a procedural trap.

Ultimately, the “subsequent hearing” explicitly required by the November 6 Order to determine the authenticity of the mailing was never held. Instead of evaluating the proof Appellant had submitted, the Court allowed the default to be finalized based on her inability to meet the Respondent’s new and impossible demands. This course of action eliminated the Appellant's promised opportunity to be heard, retroactively altered the conditions for avoiding default, and violated her fundamental due process rights.

On January 16, 2024, the Court finalized the default against Appellant Pierce, issuing a Form 4 Order stating the 45-day deadline had passed. This order was entered without holding the subsequent hearing on the authenticity of Appellant’s proof of mailing, a hearing that was explicitly required by the Court’s previous November 6 order. The default was not based on the evidence Appellant provided, but rather on her failure to meet new, impossible demands for login credentials that opposing counsel created only after admitting he had already received her proof.

The trial court abused its discretion at the very outset by entering default against the Appellant. The undisputed facts before the court established clear **"good cause"** that should have precluded the entry of default. The Appellant was out of the country on an emergency basis, traveling to Uganda to attend the funeral of a close friend. Her emergency international travel, in and of itself, constituted a compelling and sufficient reason for any minor delay in filing a response. Instead of recognizing this, the court improperly shifted the burden and subjected the Appellant to a demanding procedural ordeal: proving the authenticity of a mailing from a foreign country. This was a fundamental error of law. The Appellant should never have been required to prove she mailed a response, because her documented emergency already provided a legally recognized basis to prevent the entry of default in the first place.

Appellant attempted to correct this error by filing a Motion to Reconsider on February 2, 2024. The motion argued that the Appellant had already fulfilled the requirements of the November 6 order by submitting the sworn affidavit from Mr. Ojok. It further explained that the new demand for login credentials was impossible to meet because no such electronic account with Posta Uganda existed.

On February 6, the Court summarily denied this motion without a hearing. This sequence created a procedural trap: the Court ignored its own mandate, allowed opposing counsel to retroactively change the requirements for compliance, and then finalized a default, thereby violating the Appellant's due process rights.

Interlocutory Appeal Dismissed for Service Defect; Certiorari Denied

On February 6, 2024, the circuit court denied Ms. Pierce's motion to reconsider. She noticed an interlocutory appeal from that order, but the Court of Appeals dismissed it on purely procedural grounds for a service defect—without reaching the merits. Ms. Pierce then sought certiorari, which the Supreme Court denied. These procedural dispositions neither resolve nor validate the underlying errors (the unheld hearing, the expanded proof demand, and the default/damages rulings). With final judgment now entered, those issues are properly before this Court and ripe for decision on the merits.

Damages by Ambush; No Exhibits Admitted, Plaintiff's Sworn Ask vs. Award (Jan. 29, 2025)

The conduct of the damages hearing on January 29, 2025, demonstrated a clear pattern of judicial bias that deprived the Appellant of a fair opportunity to challenge the sums awarded.

a) **A Deliberate Act of Pre-Hearing Intimidation.** The stage for this injustice was set moments before the hearing began. In a shocking display of judicial hostility, Judge McIntosh subjected the pro se Appellant to a fifteen-minute public excoriation in open court regarding an unrelated malpractice action (the *Sires* case). The judge's tirade was directed entirely at the Appellant, despite the fact that the procedural fault in that matter lay with the opposing attorney. This unjust and misdirected attack was a calculated act of intimidation, designed to cause severe mental anguish and cripple her ability to advocate for herself in the critical hearing that immediately followed, ensuring she entered the proceeding distressed and destabilized.
b) **The Unlawful Silencing of the Right to Challenge Damages:** The transcript of the damages hearing reveals a stark disparity in the treatment of Respondent's counsel and the Appellant, with the Court abandoning its role of ensuring fairness to become an active adversary. When the Appellant attempted to exercise her absolute right to cross-examine PlanetONE's witness on a speculative **$32,000 labor cost claim**, Judge McIntosh unlawfully silenced her. He incorrectly

stated**, "Ma'am, your liability is established. These damages flow from that. We are not re-litigating the case."** While a defaulting defendant cannot contest liability, they retain the absolute right to challenge the *amount* of damages. By willfully conflating these two distinct legal principles, the judge did not merely manage the case; he actively intervened to shield the Respondent's claims from scrutiny. This ruling effectively silenced the Appellant on the only issue properly before the Court and demonstrated a judicial leaning that crossed from proper case management into overt personal prejudice.

c) **The Trial Court Ignored Sworn Testimony to Award a Fabricated Judgment.** The final judgment of $262,130.33 is not based on evidence, but on the unsworn, last-minute arguments of Respondent's counsel. The court completely disregarded the sworn testimony of Respondent's own witness, Karen Davidson, who, during cross-examination, stated unequivocally that she was only seeking a refund of the purchase price and her legal fees. The full exchange was as follows: **Question (by The Appellant): "**As we speak right now, Karen, why exactly, how much do you want in damages?" Answer (by Ms. Davidson): **"I would just like to have the money back that I paid."** The Appellant: **"So you just want --"**

Ms. Davidson**: "Plus my legal fees."**

The Appellant**: "You only want the money back and legal fees?" ...**

Question (by The Appellant): **"It is your testimony right now you're only asking for $22,000, the money you paid for the machine?" Answer (by Ms. Davidson): "Right." (Tr. pp. 22-23).**

A court that ignores direct, sworn testimony establishing damages at $22,788 plus fees to instead award a judgment more than ten times that amount has abandoned its role as a neutral arbiter of fact. It would be impracticable to expect such a court to fairly consider a motion for a stay.

d) **The Trial Court Ignored Sworn Testimony to Award a Fabricated Judgment.** The final judgment of $262,130.33 is not based on evidence, but on the unsworn, last-minute arguments of Respondent's counsel. The court completely disregarded the sworn testimony of Respondent's own witness, Karen Davidson, who stated unequivocally that she was only seeking a refund of the purchase price:

Question (by The Appellant): **"It is your testimony right now you're only asking for $22,000, the money you paid for the machine?"**

Answer (by Ms. Davidson): **"Right."** (Tr. p. 23).

A court that ignores direct, sworn testimony to award a judgment more than ten times the amount supported by the evidence has abandoned its role as a neutral arbiter of fact. It would be

impracticable to expect such a court to fairly consider a motion for a stay.

e) **The Trial Court Improperly Imposed Personal Liability in Defiance of South Carolina Law.** A central, reversible error in the judgment is the imposition of personal liability upon The Appellant for a corporate debt. South Carolina law is clear that a member of an LLC is not personally liable for the company's obligations. The evidence in the record, submitted by Respondent itself, unequivocally shows the transaction was exclusively with American Pharma Machinery, LLC. The invoice (Ex. A) is from the LLC, payment was made to the LLC's bank account, and all communications were conducted by The Appellant in her corporate capacity (Ex. B-G). No evidence was ever presented to justify piercing the corporate veil. The trial court's decision to hold The Appellant personally liable was a legal error, not a discretionary one, which further demonstrates the futility of seeking relief from the same court.

f) **Post-Hearing Fee Affidavit Not in Evidence (Record Never Reopened)** At the close of testimony on January 29, 2025, Respondent conceded it had no fee affidavit. The court nevertheless invited a later filing and ended the hearing without continuing it, keeping the record open, or formally reopening it for new evidence (Jan. 29 Tr. 18–19, 26). Respondent then filed an "Affidavit of Attorney's Fees" on January 31 after the hearing. The court did not reconvene, mark, or admit the affidavit, and no evidentiary hearing was held on fees. Despite the absence of any fee evidence in the record or adversarial testing, the court awarded $37,766.33.

g) **The Engineered Procedural Trap to Award Exorbitant Fees:** The hearing culminated in a meticulously engineered procedural trap to prevent any challenge to the Respondent's claimed **$37,766.33** in attorney's fees. The judge constructed a Kafkaesque impossibility by verbally imposing an immediate **five-day deadline** for the Appellant to request a cross-examination on the fees. This deadline was a transparent legal fiction for one simple reason: **the fee affidavits to be challenged had not yet been prepared, let alone served**. The five-day clock was deemed to have started instantly. Subsequently, the Respondents prepared their affidavit and sent it via **slow mail**, ensuring the Appellant did not receive it for **over 10 days**, long after the arbitrary deadline had expired. This sequence of events was not a coincidence but a coordinated maneuver that made compliance impossible and effectively stripped the Appellant of any opportunity to challenge the fee award. As a result, an exorbitant and wholly unsupported fee, grossly disproportionate for a simple default judgment case that involved **no litigation, no discovery, and only three brief hearings**, was approved without any possible opposition.

h) **The Trial Court Erred by Awarding Damages in Excess of the Amount Demanded in the**

Complaint. The trial court committed a clear error of law by entering a default judgment that awarded damages far greater in amount and different in kind from what the Plaintiff demanded in its Amended Complaint. This action violated the plain language of Rule 54(c) of the South Carolina Rules of Civil Procedure, which explicitly states: **"A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment."** The purpose of this rule is to ensure fundamental due process. A defendant must have notice of their maximum potential liability when deciding whether to contest a lawsuit or to default. The court's judgment in this case nullified that right.

What Was Demanded in the Complaint; The "WHEREFORE" clause of the Plaintiff's Amended Complaint, which constitutes the formal demand for judgment, specifically prayed for:

"...judgment against Defendants in the amount of **$22,788**, plus prejudgment interest... plus legal costs, including reasonable attorney's fees, treble damages, [and] punitive damages..." Based on the complaint, the maximum potential "actual damages" subject to trebling was **$22,788**.

What Was Added at the Hearing; At the damages hearing, the Plaintiff, for the first time, introduced entirely new categories of damages that were never mentioned in the complaint. As detailed in their last-minute damages memorandum, these new, unpleaded damages included:

a) Interest paid on the loan: ~$5,000.00

b) Increased labor costs: $32,000.00

c) Increased cost for a different machine: $15,000.00

Plaintiff's counsel improperly combined these new figures with the original purchase price to create a new, fabricated "actual damages" total of **$74,788**. The trial court then erroneously used this inflated and unpleaded amount as the basis for its treble damage award of $224,364. The trial court only had the authority to award damages based on the **$22,788** specifically demanded in the complaint. By awarding damages that were different in kind (adding labor and new equipment costs) and far exceeded in amount what was prayed for, the court violated Rule 54(c) and committed a reversible error.

STANDARD OF REVIEW

South Carolina courts disfavor default judgments and set them aside when "good cause" exists. Rule 55(c), SCRCP, is liberally construed to promote justice, and a party seeking default is "not entitled to one as of right." *Melton v. Olenik*, 379 S.C. 45, 47, 664 S.E.2d 487, 488 (Ct. App. 2008); *Ricks v. Weinrauch*, 293 S.C. 372, 374–75, 360 S.E.2d 535, 536 (Ct. App. 1987); *Dixon v. Dixon*, 362 S.C. 388, 395, 608 S.E.2d 849, 852 (2005). This Court reviews the entry of default and refusal to set it aside for abuse of discretion, requiring reversal when the trial court's decision rests on an error of law or lacks evidentiary support. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009); *Whaley v. CSX Transp., Inc.*, 362 S.C. 568, 578, 609 S.E.2d 286, 291 (2005). Discretion ends where error of law begins. *Hoeffner v. The Citadel*, 311 S.C. 361, 366, 429 S.E.2d 190, 193 (1993).

Constitutional issues—such as notice, opportunity to be heard, or judicial impartiality—are reviewed de novo. Due process demands fundamentally fair procedures, with no deference to the trial court's findings. *Moore v. Moore*, 376 S.C. 467, 474, 657 S.E.2d 743, 747 (2008); *Herron v. Century BMW*, 395 S.C. 461, 465–66, 719 S.E.2d 640, 642 (2011). Questions of judicial bias are assessed independently, as litigants are entitled to an impartial tribunal free from the appearance of favoritism. *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014).

Pure questions of law—such as whether a default judgment exceeded the relief demanded under Rule 54(c), SCRCP, or whether fraud allegations satisfied Rule 9(b), SCRCP—are reviewed de novo. *See Floyd v. Page*, 124 S.C. 400, 403, 117 S.E. 409, 410 (1923). A default admits only well-pleaded facts, not legal conclusions such as "alter ego" or "willful conduct." *Sundown*, 383 S.C. at 606, 681 S.E.2d at 888; *Hoeffner*, 311 S.C. at 366, 429 S.E.2d at 193.

Where the circuit court pierced the corporate veil or imposed personal liability for LLC debts, review is predominantly legal and equitable. South Carolina treats veil-piercing as an extraordinary remedy requiring strict proof, with appellate courts reviewing de novo whether the standards were met. *Wilson v. Friedberg*, 323 S.C. 248, 252–56, 473 S.E.2d 854, 856 (1997); *Sturkie v. Sifly*, 280 S.C. 453, 457–58, 313 S.E.2d 316, 318–19 (Ct. App. 1984).

Even after default, damages must be proved by competent evidence. The amount and categories awarded are reviewed for abuse of discretion, but whether the procedure satisfied due process—advance disclosure, admissibility, and the right to cross-examine—is reviewed de novo. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009).

Statutory enhancements, such as treble damages under SCUTPA or attorney's fees, require separate scrutiny. Whether the record supports a "willful or knowing" violation under S.C. Code Ann. § 39-5-140 is a question of legal sufficiency reviewed de novo. *Wright v. Craft*, 372 S.C. 1, 23–24, 640 S.E.2d 486, 498 (Ct. App. 2006); *Crary v. Djebelli*, 329 S.C. 385, 391, 496 S.E.2d 21, 24 (1998). The decision to treble damages or the amount of fees awarded is reviewed for abuse of discretion. *Wright*, 372 S.C. at 23–24, 640 S.E.2d at 498; *Raynor v. Byers*, 422 S.C. 128, 131, 810 S.E.2d 430, 432 (Ct. App. 2017). Ancillary remedies, such as mitigation findings or collection-related rulings, are also reviewed for abuse of discretion. *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 444 S.C. 328, 348–49, 907 S.E.2d 129, 140 (Ct. App. 2024).

ARGUMENT

1. The circuit court abused its discretion under Rule 55(c), SCRCP by entering and then refusing to set aside, default where The Appellant, a pro se litigant abroad on an emergency, lacked e-filing/e-service access, timely mailed a response with receipts/tracking, and promptly refiled upon learning of non-receipt.

A decision to enter or to refuse to set aside default is reviewed for abuse of discretion, which occurs when the ruling is controlled by an error of law or lacks evidentiary support. *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009); *Whaley v. CSX Transp., Inc.*, 362 S.C. 568, 578, 609 S.E.2d 286, 291 (2005). Rule 55(c) "is to be **liberally construed to promote justice**," and the party seeking default "is not entitled to one as of right, even when the defendant is technically in default." *Melton v. Olenik*, 379 S.C. 45, 47, 664 S.E.2d 487, 488 (Ct. App. 2008); *Ricks v. Weinrauch*, 293 S.C. 372, 374–75, 360 S.E.2d 535, 536 (Ct. App. 1987). In evaluating "good cause," courts consider the reason for the default and the party's reasonable promptness, among other equitable factors. *Payne ex rel. Estate of Calzada*, 439 F.3d 198, 204–05 (4th Cir. 2006); *United States v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982). **Good cause and excusable neglect were established on this record.**

a) **Reason for the delay and documented emergency abroad plus lack of e-filing access.** The Appellant was out of the country for a funeral and other political activities that followed the Minister's murder and, as a pro se litigant, was denied e-filing/e-service. She therefore used international mail, the only channel available to her to transmit her responsive pleading. That institutional limitation, not willful neglect, explains the delay. Rule 55(c)'s liberal policy exists precisely to prevent harsh forfeitures under such circumstances. *Melton*, 379 S.C. at 47.

b) **Timely efforts and reasonable promptness.** On June 1, 2023, her agent mailed the response from Uganda with receipts and tracking; when she learned the court had not yet received it, she promptly re-filed electronically by email to the clerk and then formally filed upon return. The clerk later acknowledged receipt of the Uganda mailing when it finally arrived. Those facts satisfy "reasonable promptness" under *Payne* and *Moradi*.

c) **Meritorious defenses.** The Appellant proffered multiple colorable defenses, including: lack of privity/personal liability (all payments and privity ran to American Pharma Machinery, LLC), Rule 54(c) excess (damages different in kind and amount than pleaded), and lack of willful SCUTPA conduct given documented mitigation offers. The presence of meritorious

defenses weighs strongly in favor of setting aside default. See *Sundown*, 383 S.C. at 606 (recognizing the equitable nature of the inquiry).

d) **Absence of prejudice.** Respondent cannot show cognizable prejudice from allowing a merits defense. Any delay stemmed from the court-imposed inability to e-file while The Appellant was overseas and from international postal transit—factors external to bad faith. Mere delay, without loss of evidence or impairment of the claim, is not prejudice warranting forfeiture.

The court applied the wrong yardstick and elevated technicalities over equity. Rather than crediting the sworn mailing proof and clerk acknowledgement, or the undisputed emergency travel and lack of e-filing access the court treated default as a near-automatic consequence and later refused to set it aside. That approach contravenes South Carolina's "liberal construction to promote justice" and the principle that default is not a right even when a party is technically late. *Melton*, 379 S.C. at 47; *Ricks*, 293 S.C. at 374–75. By privileging rigid formalism over Rule 55(c)'s equitable purpose, the court abused its discretion under *Sundown* and *Whaley*.

This Court should reverse the entry of default and the refusal to set it aside, vacate the resulting judgment as to The Appellant, and remand with instructions to allow responsive pleadings and adjudicate the case on the merits.

2. The court committed legal error by violating due process—and, as applied, equal protection—when it denied The Appellant functionally equivalent filing/service access while insisting on fee-perfected paper filings she could not practicably tender from abroad, then refused to set aside the default that predictably resulted.

Procedural due process guarantees "notice and an opportunity to be heard at a meaningful time and in a meaningful manner." S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002); see also Moore v. Moore, 376 S.C. 467, 474, 657 S.E.2d 743, 747 (2008). In the default context, Rule 55(c), SCRCP, "is to be liberally construed to promote justice," and default "is not [a] matter of right, even when the defendant is technically in default." Melton v. Olenik, 379 S.C. 45, 47, 664 S.E.2d 487, 488 (Ct. App. 2008); Ricks v. Weinrauch, 293 S.C. 372, 374–75, 360 S.E.2d 535, 536 (Ct. App. 1987). Procedures must be applied fairly to all litigants. Spartanburg Cnty. DSS v. Little, 309 S.C. 122, 125, 420 S.E.2d 499, 501 (1992).

Here, the State's own rules created the impediment. Represented parties could e-file and e-serve

instantly; The Appellant—pro se and involuntarily abroad on a documented emergency—was barred from those same tools. From Uganda, her only available channel was international mail. She used it promptly: on June 1, 2023 her agent mailed her responsive papers to the clerk and to opposing counsel with receipts/tracking; upon learning they had not posted to the docket, she promptly re-submitted and then formally filed on July 21. At the October 31 hearing, the court acknowledged she "took reasonable steps to try to protect her interest" and structured relief around letting her prove mailing/authenticity (Oct. 31 Tr. 7–8). Converting that state-created impediment into a forfeiture—by entering default and later refusing to set it aside—was legal error because it deprived The Appellant of a meaningful opportunity to be heard and ignored Rule 55(c)'s liberal good-cause standard. See Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009); Melton, 379 S.C. at 47–48.

The Rule 55(c) factors all favored relief. The reason for the delay was court-imposed access limits and international transit—not willful neglect; The Appellant acted with reasonable promptness (June 1 mailing with proof; immediate July 21 refiling upon learning of non-receipt; later clerk acknowledgment that the Uganda package arrived); she proffered multiple meritorious defenses (no personal privity or payment to The Appellant, conclusory veil-piercing, Rule 54(c) excess, lack of willful SCUTPA conduct, and mitigation issues); and Plaintiff showed no cognizable prejudice beyond delay. See Melton, 379 S.C. at 47; Sundown, 383 S.C. at 606. By disregarding these factors, the court abused its discretion through an error of law.

Equal protection (as-applied) points the same way. Pro se status is not a suspect class, but even under rational-basis review, procedures must be applied fairly. Little, 309 S.C. at 125. Withholding electronic filing/service from a litigant involuntarily overseas—while insisting on fee-perfected paper filings the litigant cannot practically accomplish—predictably extinguished access here and is arbitrary as applied. That constitutional misapplication is legal error reviewed de novo. See Moore, 376 S.C. at 474.

Accordingly, the Court should reverse for legal error and abuse of discretion by vacating the entry of default as to The Appellant and the order refusing to set it aside, vacating the resulting judgment against her, and remanding with instructions that her responsive pleading be accepted and that she be afforded functionally equivalent filing and service access going forward (e.g., temporary electronic submission or acceptance of emailed filings with subsequent fee tender), so that the case can be adjudicated on the merits.

3. The court promised a "subsequent hearing" to decide mailing/authenticity; The Appellant satisfied the November 6 order with a sworn affidavit and receipts; yet the court finalized default without holding that hearing and added new, privacy-intrusive conditions midstream—violating due process and abusing its discretion.

At the October 31, 2023 hearing, the court acknowledged The Appellant "t[ook] reasonable steps to try to protect her interest," stated it was "going to find that [she is] in default now," but expressly promised she would "have a right to establish that [she's] not in default by showing that [on] June 1st [she] mailed" the papers and that it would "require another hearing for us to make that call." (Oct. 31 Tr. 7–8, 15–17.) The Form 4 entered November 6 memorialized that promise, giving forty-five days to establish "authenticity" and providing: "IF AUTHENTICITY AND PROOF OF MAILING IS ESTABLISHED AT A SUBSEQUENT HEARING, [The Appellant] WILL BE ALLOWED TO FILE RESPONSIVE PLEADINGS." (Form 4, Nov. 6, 2023.)

The Appellant complied: on November 10, 2023, her Ugandan assistant, Oscar Ojok, executed a sworn affidavit attesting to the June 1 mailing and enclosed Posta Uganda receipts; on December 8, 2023, Plaintiff's counsel confirmed, "I did receive the recent mailing from Mr. Ojok." These filings satisfied the November 6 order's "authenticity and proof of mailing" requirement and triggered the promised "subsequent hearing."

Instead, a later formal order filed December 5, 2023 expanded the obligations by directing that, "[i]f requested by Plaintiff's counsel, Pierce will also provide login information for any relevant ePosta account so that Plaintiff can investigate the accuracy and completeness of any information provided pursuant to this Order." (Order filed Dec. 5, 2023, "Motion to Set Aside Entry of Default—Analysis.") That login-credential demand appears neither in the October 31 colloquy (Oct. 31 Tr. 7–8, 15–17) nor in the November 6 Form 4 and sought private, impracticable information unrelated to whether the June 1 mailing occurred.

Without ever holding the promised hearing, the court then finalized The Appellant's default by a Form 4 entered January 16, 2024, and later denied reconsideration without a hearing, depriving her of the "opportunity to be heard at a meaningful time and in a meaningful manner" that due process requires. Moore v. Moore, 376 S.C. 467, 474, 657 S.E.2d 743, 747 (2008). That course also constitutes an abuse of discretion because it rests on legal error and lacks evidentiary

support. See Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009); Whaley v. CSX Transp., Inc., 362 S.C. 568, 578, 609 S.E.2d 286, 291 (2005). Accordingly, the Court should reverse the January 16, 2024 default ruling and any derivative orders; vacate the judgment as to The Appellant; and remand with instructions either to accept her responsive pleadings forthwith (because she satisfied the November 6 order) or, at minimum, to hold the promised evidentiary hearing confined to "authenticity and proof of mailing," with the December 5 "login credentials" condition stricken as beyond the scope of the original order and unnecessary to a fair determination.

4. The Appellant satisfied the court's November 6 order by submitting a sworn affidavit and mailing receipts, and whether the court violated due process by finalizing default based on Respondent's subsequent, extra-record demands for impossible-to-produce and private information, such as login credentials, legal error of the court.

Contract liability turns on privity and assent. The Amended Complaint pleads a sale contract with American Pharma Machinery, LLC (APM) only; it alleges the $22,788 was paid to APM; and its contract count seeks relief from APM. Nothing in the pleadings or record alleges that The Appellant, who communicated in a corporate capacity, entered a separate personal contract, received the contract funds personally, or otherwise stood in privity. Entering judgment against her on the contract claim therefore rests on a legal error subject to de novo correction. See *Whaley v. CSX Transp., Inc.*, 362 S.C. 568, 578, 609 S.E.2d 286, 291 (2005) (an abuse of discretion occurs when a ruling is controlled by an error of law).

The invoice was APM's; payment was made to APM; and every relevant communication identified The Appellant as acting for APM. The court's personal judgment on a claim pleaded and proved only against the LLC disregards basic privity principles and conflates representative conduct with personal obligation. This court must Reverse and render as to the contract claim against The Appellant: vacate any contract judgment or damages entered against her personally and direct entry of judgment in her favor on the contract count.

5. The court erred by allowing contract-based liability against The Appellant where the Amended Complaint pleads privity and performance solely between PlanetONE and APM and alleges payment of $22,788 to APM not to The Appellant and no personal benefit to The Appellant was pleaded or proved, legal error of the court.

South Carolina law respects the LLC form and does not impose personal contract liability on a member/manager absent (i) an express personal undertaking (e.g., a signed guaranty) or (ii) a properly proven veil-piercing theory. See S.C. Code Ann. § 33-44-303(a) (LLC debts are solely the company's; members/managers are not personally liable merely by acting as such); Wilson v. Friedberg, 323 S.C. 248, 252–56, 473 S.E.2d 854, 856 (1997) (alter-ego is "extraordinary"; corporate form is respected); Pertuis v. Front Roe Rests., Inc., 423 S.C. 640, 648–53, 817 S.E.2d 273, 278–81 (2018) (reaffirming stringent veil-piercing standards). The Amended Complaint pleads privity and performance solely as between PlanetONE and **American Pharma Machinery, LLC (APM)** and alleges the $22,788 was paid to **APM**; it does not allege a personal guaranty, an express assumption by The Appellant, or any personal receipt of the consideration. The record matches the pleadings: the invoice was APM's and payment flowed to APM through CIT (Jan. 29 Tr. 7–16), and PlanetONE's witness swore she wanted only "the money back that I paid … plus my legal fees," confirming that request when asked (Jan. 29 Tr. 22–23). At the October 31 hearing, the court itself recognized the same line "[b]reach of contract [is] against the corporation only" and identified UTPA as against the business (Oct. 31 Tr. 18–20).

Imposing **contract** liability against The Appellant personally in the face of those pleadings and that record is a **legal error**. A default admits well-pleaded facts, not legal conclusions such as "alter ego" or personal contractual obligation. See Hoeffner v. The Citadel, 311 S.C. 361, 366, 429 S.E.2d 190, 193 (1993); Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). No evidence was taken to satisfy Wilson/Pertuis veil-piercing factors, and there is no writing by which The Appellant expressly assumed personal liability. The judgment therefore must be reversed: the Court should vacate any contract-based damages or obligations imposed on The Appellant and remand with instructions that any contract liability runs, if at all, only to APM absent proof of an express personal undertaking or a properly proven veil-piercing theory.

6. The Appellant, acting only as APM's representative in communications, cannot be held personally liable on the contract absent an express assumption of personal liability — legal error of the court.

South Carolina law draws a bright line between an LLC's contractual obligations and the personal liability of its members or managers. By statute, "the debts, obligations, and liabilities of a limited liability company … are solely the debts, obligations, and liabilities of the company," and a member or manager "is not personally liable … solely by reason of being or acting as a member or manager." S.C. Code Ann. § 33-44-303(a). The Official Comment confirms that while a member/manager may be liable for **his or her own torts**, mere representative conduct on the company's contract does **not** create personal contract liability. See *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 648–53, 817 S.E.2d 273, 278–81 (2018) (veil-piercing is "extraordinary"); *Wilson v. Friedberg*, 323 S.C. 248, 252–56, 473 S.E.2d 854, 856 (Ct. App. 1996); *Johnson v. Little*, 426 S.C. 423, 432–33, 827 S.E.2d 207, 212–13 (Ct. App. 2019).Thus, absent

i. **an express personal undertaking (e.g., a signed guaranty) or**

ii. **a proven veil-piercing theory, an LLC representative is not personally bound on the company's contract.**

The pleadings and record establish only corporate privity. The Amended Complaint pleads a sales contract with American Pharma Machinery, LLC (APM)**,** alleges the $22,788 was paid to APM**,** and attaches an APM invoice; it does not allege that The Appellant signed any guaranty or otherwise agreed to be individually bound. In other words, No personal contract liability: § 33-44-303(a) controls; no guaranty, no veil-piercing, no privity. At the October 31 hearing, the court itself drew the same line—recognizing that the "breach of contract case is against the corporation only," and that UTPA was "only against the business." (Oct. 31 Tr. 18–20.) At the January 29 damages hearing, Plaintiff's owner confirmed under oath that what she wanted was "**the money back that I paid … plus my legal fees**," i.e., the purchase price paid to **APM**, not some separate personal contract with The Appellant. (Jan. 29 Tr. 22–23.) No exhibit shows a personal guaranty; no finding identifies individualized consideration flowing to The Appellant; and no veil-piercing evidence was admitted.

Imposing contract liability on The Appellant personally in this posture is a **legal error**. See Whaley v. CSX Transp., Inc., 362 S.C. 568, 578, 609 S.E.2d 286, 291 (2005) (an abuse of discretion occurs when the ruling is controlled by an error of law). The judgment disregards § 33-44-303(a)'s bar and skips the only two lawful routes to personal contract liability (express assumption or proven alter-ego). It therefore must be reversed: the Court should vacate any contract-based judgment or damages against The Appellant personally and confine contract relief, if any, to APM.

7. The fraud counts fail against the Appellant under Rule 9(b), SCRCP, for lack of particularized allegations that she made a specific misrepresentation with scienter on which PlanetONE relied to its detriment, distinct from corporate conduct — legal error of the court.

Rule 9(b), SCRCP, requires the "who, what, when, where, and how" of the alleged fraud—i.e., the specific misrepresentation, by whom, when/where it was made, knowledge of falsity, and reliance causing damages. Conclusory recitals or repackaged breach-of-contract allegations do not suffice, and pleading sufficiency is reviewed de novo. See Hoeffner v. The Citadel, 311 S.C. 361, 366, 429 S.E.2d 190, 193 (1993). The Amended Complaint's fraud and constructive-fraud counts do not identify a particular false statement by the Appellant personally, do not plead her scienter, and do not allege PlanetONE's reliance on a statement attributable to her as an individual (as opposed to APM's performance timeline and later banking/shipping delays). The January 29 transcript likewise reflects testimony about delays and mitigation offers not any specific, knowingly false statement by the Appellant (Jan. 29 Tr. 10–12, 14–17, 22–23). Those pleading and proof gaps defeat any basis for personal fraud liability, and a default cannot fill them because legal conclusions are not deemed admitted. Hoeffner, 311 S.C. at 366.

The contemporaneous correspondence reflects mitigation and transparency: Appellant first supplied a **no-cost temporary loaner**, and later **offered to allow PlanetONE to keep that loaner permanently while still receiving the originally ordered unit at no additional cost** that is: **two machines for the contract price**. PlanetONE declined. (Jan. 29 Tr. 11–12, 21–22.) Those facts show accommodation and logistics, not any unfair or deceptive act by Appellant personally meeting § 39-5-140's willful/knowing standard.

Accordingly, the Court should reverse and render on the fraud and constructive-fraud counts as to the Appellant: vacate any fraud-based judgment against her and direct dismissal with prejudice of the fraud claims against her individually for failure to satisfy Rule 9(b).

8. The circuit court committed legal error by imposing SCUTPA liability, trebling, and fee-shifting on Appellant personally absent well-pleaded and proven unfair or deceptive acts by her personally (as opposed to acts of APM).

SCUTPA imposes liability only for a "use or employment" of an unfair or deceptive act or practice **by the defendant** in the conduct of trade or commerce, and trebling is authorized only when the violation is "willful or knowing." S.C. Code Ann. § 39-5-140(a). A private plaintiff must establish (1) an unfair or deceptive act, (2) in the conduct of trade or commerce, (3) that affects the public interest (e.g., potential for repetition), and (4) actual, ascertainable damages proximately caused by the unfair act. See *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379–80, 595 S.E.2d 461, 466–67 (2004); *Wright v. Craft*, 372 S.C. 1, 23–24, 640 S.E.2d 486, 498 (Ct. App. 2006); *Noack Enters., Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 351 S.E.2d 347, 348–49 (Ct. App. 1986). Even after default on liability, legal conclusions (such as "willful or knowing" or "alter ego") are **not** deemed admitted; and damages, enhancements, and fee entitlement must be supported by competent proof and specific findings. *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009); *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009).

Personal exposure requires personal conduct. South Carolina law insulates LLC members/managers from entity obligations "solely by reason of being or acting as" such, S.C. Code Ann. § 33-44-303(a), and courts will not impose personal liability under SCUTPA absent proof that the individual personally engaged in the unfair practice (or a properly proven veil-piercing theory). See *Wilson v. Friedberg*, 323 S.C. 248, 252–56, 473 S.E.2d 854, 856 (1997) (veil-piercing is extraordinary and requires specific, fact-intensive findings); *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 648–53, 817 S.E.2d 273, 278–81 (2018) (reaffirming strict standards). The record here fails on multiple fronts:

a) **No well-pleaded, particularized unfair act by Appellant personally.** The pleadings and proof attribute the business dealings to APM; they do not identify a discrete unfair or

deceptive act **by Appellant** as an individual. Representative communications in an APM role do not, without more, create personal SCUTPA liability. § 33-44-303(a).

b) **No competent finding of willful/knowing violation by Appellant.** Trebling requires a willful or knowing violation. § 39-5-140(a); *Wright*, 372 S.C. at 23–24, 640 S.E.2d at 498. The damages hearing produced no admitted exhibits (Index p. 2, "No exhibits entered") and no specific findings tying any willful/knowing unfair practice to Appellant's personal conduct; instead, the court relied on a day-of memorandum and conclusory assertions. That does not satisfy SCUTPA's enhancement threshold.

c) **Public-interest and causation showings are absent.** The court did not make findings on potential for repetition or other public-interest impact as required by *Singleton*, nor did it link any proven "actual damages" to a personally committed unfair act by Appellant.

d) **Fee-shifting lacks a lawful predicate and reasoned findings.** Attorney's fees under § 39-5-140(a) require that the plaintiff prevail on a SCUTPA claim **against the party from whom fees are sought**. Without a valid personal SCUTPA judgment against Appellant, the court lacked a basis to shift fees to her. And even if entitlement existed, reasonableness required contemporaneous, tested proof and findings under *Jackson v. Speed*, 326 S.C. 289, 306–07, 486 S.E.2d 750, 759–60 (1997), which are missing here.

Because the court imposed SCUTPA liability, trebling, and fee-shifting on Appellant **without** well-pleaded and **proven** unfair or deceptive acts by her personally—and without specific findings of willfulness/knowledge tied to her conduct—the ruling is controlled by errors of law and must be reversed. The appropriate disposition is to vacate the SCUTPA judgment, treble enhancement, and fee award as to Appellant; and, if Respondent pursues SCUTPA on remand, require particularized proof of Appellant's **personal** unfair act, public-interest impact, proximate causation of actual damages, and (for any enhancement) specific findings of willful or knowing violation consistent with § 39-5-140(a), *Singleton*, and *Wright*.

9. The circuit court committed legal error by allowing unjust enrichment against Appellant where the pleadings admit an express contract with, and payment to, APM and do not allege a specific benefit conferred on Appellant personally.

Quasi-contract remedies such as unjust enrichment are unavailable when an express contract covers the subject matter, and—even apart from the contract bar—the claimant must plead and prove a benefit conferred on the defendant, the defendant's realization of that benefit, and inequitable

retention. Pleading sufficiency is reviewed de novo. See Hoeffner v. The Citadel, 311 S.C. 361, 366, 429 S.E.2d 190, 193 (1993). The Amended Complaint pleads an express sale contract with APM and alleges payment to APM; it nowhere alleges a benefit conferred on Appellant personally or facts showing she individually retained funds or property in equity and good conscience. By allowing unjust enrichment to proceed against Appellant notwithstanding the express-contract bar and the missing "personal benefit" element, the circuit court erred as a matter of law. The unjust-enrichment claim against Appellant should therefore be reversed, any quasi-contract judgment vacated, and the claim dismissed with prejudice.

10. The circuit court committed legal error by awarding contract damages against Appellant in violation of Rule 54(c), SCRCP, because breach of contract was pleaded only against APM, so relief against the individual exceeded the demand as to her.

Rule 54(c), SCRCP bars a default judgment "different in kind from or exceed[ing] in amount that prayed for in the demand for judgment." South Carolina courts apply that text to prohibit enlarging either the theory or the quantum of relief after default because the pleading itself defines the notice due to a defaulting party. See, e.g., Mitchell v. Fortis Ins. Co., 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009) (even after default, relief must be supported and grounded in what was pleaded). Here, the Amended Complaint's contract claim ran only against American Pharma Machinery, LLC (APM); the court itself acknowledged at the October 31 hearing that "Breach of contract case is against the corporation only" (Oct. 31, 2023 Tr. 18–19). Entering contract damages against The Appellant personally thus granted relief different in kind as to her and exceeded what was demanded from her in the pleadings, in direct contravention of Rule 54(c). Remedy: vacate any contract-based award against The Appellant; confine contract relief, if any, to APM.

11. Even assuming default, the court erred by imposing personal liability via alter-ego where the veil-piercing allegations are conclusory, legal conclusions are not deemed admitted by default, and no evidence established abuse of the LLC form—or otherwise proved the elements of any individual tort/statutory claim—sufficient to enter judgment against The Appellant personally.

South Carolina's veil-piercing test is "extraordinary" and requires a fact-intensive showing that recognizing the entity would "sanction fraud or promote injustice," assessed under the non-exclusive Sturkie factors. Sturkie v. Sifly, 280 S.C. 453, 457–58, 313 S.E.2d 316, 318–19 (Ct. App. 1984); see also Pertuis v. Front Roe Rests., Inc., 423 S.C. 640, 648–53, 817 S.E.2d 273, 278–81 (2018) (reaffirming alter-ego standards). By statute, an LLC member/manager is not personally liable for company debts "solely by reason of being or acting as" a member/manager. S.C. Code Ann. § 33-44-303(a). And on default, only well-pleaded facts are deemed admitted—not legal conclusions like "alter ego" or "personal liability." Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009).

The Amended Complaint's alter-ego paragraphs are conclusory; the January 29 transcript shows no exhibits admitted (Index p. 2, "No exhibits entered") and no testimony establishing the Sturkie factors (capitalization, observance of formalities, siphoning, etc.). The October 31 court also recognized UTPA was "only against the business" (Tr. 19–20). On this record, personal liability cannot rest on veil-piercing or on unproven individual-tort elements. Remedy: vacate the personal judgment; if Plaintiff pursues veil-piercing or individual torts on remand, require competent evidence and particularized findings under Sturkie/Pertuis.

12. The circuit court committed legal error by assessing attorney's fees against Appellant absent a contract binding her or a statute she personally violated, and without findings tying the fee claim to proven individual liability.

South Carolina's American Rule bars fee-shifting absent contract or statute. See Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). Nothing in the pleadings or record shows any contract obligating the Appellant personally to pay fees. To the extent fees were awarded under SCUTPA, § 39-5-140 allows fees to a prevailing plaintiff but still requires liability under the statute; trebling further requires a willful/knowing violation (see Issue 14). Imposing fees on the Appellant personally without establishing her individual statutory liability was legal error. Separately,

reasonableness requires findings on the Blumberg/Jackson factors (time, labor, novelty, results, customary fee, etc.). Jackson v. Speed, 326 S.C. 289, 306–07, 486 S.E.2d 750, 759–60 (1997). The court relied on a post-hearing affidavit (filed 1/31/25) and set an impracticable five-day oral window (Jan. 29 Tr. 18–19, 26) for a pro se litigant without e-service, with no contemporaneous admission of billing records (Index p. 2). The court should vacate the fee award against The Appellant; any renewed request must show (i) a valid entitlement basis against her, and (ii) tested proof satisfying Blumberg/Jackson after meaningful notice and an evidentiary hearing.

13. The court violated Rule 54(c), SCRCP by awarding default damages different in kind and exceeding the amount demanded adding unpleaded categories to inflate "actual damages" beyond the $22,788 purchase price and then trebling that figure.

Rule 54(c) forbids granting, after default, relief that is broader than the demand. Here, the pleading sought $22,788 (purchase price) plus interest, and generally referenced statutory enhancements. At the January 29 hearing, Plaintiff introduced via a morning-of memorandum the court had not read (Tr. 26) and a stack of exhibits served during the hearing (Tr. 6–7, 20–21) new categories (loan interest on a third-party CIT financing, asserted overtime labor, and costs of a different replacement line) to reach $74,788 in "actual damages," which the court then *trebled*. That changes the kind of compensatory relief and exceeds the amount demanded in the pleadings as to The Appellant. See Mitchell, 385 S.C. at 585, 686 S.E.2d at 184 (default does not license unpleaded theories; damages must be proven with competent evidence). The only clear sworn ask from the witness was "the money back that I paid … plus my legal fees," answering "Right" when asked if that was all (Tr. 22–23).

The record instead shows good-faith mitigation and logistics: Appellant provided a **no-cost loaner** and 8 PlanetONE declined. (Jan. 29 Tr. 11–12, 21–22.) The claimed add-ons were only estimates (e.g., $8,000/month "doubling" of labor, Tr. 14–15; ~$10,000 replacement-line adjustment, Tr. 17; ~$10,000 "interest" guess, Tr. 16), and no exhibits were admitted (Index p. 2). On this record, the willful/knowing threshold was not met, particularly as to Appellant personally.

Accordingly, the court should vacate the "actual damages" award as to The Appellant (and any trebling derived from it); limit any default recovery to pleaded categories and amounts as to her.

14. Trebling under SCUTPA was unsupported because the record shows good-faith mitigation (a no-cost loaner and a permanent replacement at APM's expense) and delays attributable to banking/shipping issues rather than willful deception.

Treble damages under the South Carolina Unfair Trade Practices Act are not automatic. The statute expressly conditions any enhancement on a finding that "the use or employment of the unfair or deceptive … act or practice was a willful or knowing violation." S.C. Code Ann. § 39-5-140(a). South Carolina courts require specific, evidence-based findings of willfulness or knowledge before trebling; conclusory incantations do not suffice. See Wright v. Craft, 372 S.C. 1, 23–24, 640 S.E.2d 486, 498 (Ct. App. 2006) (quoting Noack Enters., Inc. v. Country Corner Interiors, 290 S.C. 475, 351 S.E.2d 347, 348–49 (Ct. App. 1986)). And because willfulness is a legal conclusion, it is not deemed admitted by default; it must be proved. See Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (default admits well-pleaded facts, not legal conclusions); Mitchell v. Fortis Ins. Co., 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009) (even after default, damages and predicate elements must be supported by competent evidence).

The record does not support willfulness as to Appellant personally. The January 29 transcript shows Appellant offered good-faith mitigation—a no-cost temporary machine and, later, a permanent replacement at APM's expense—while PlanetONE declined for want of additional specifications (Jan. 29 Tr. 11–12, 21–22). The supposed "actual damages" add-ons that fed the trebling decision were themselves rough estimates rather than proved figures: an $8,000/month asserted "doubling" of labor (Tr. 14–15), approximately $10,000 for a replacement-line adjustment (Tr. 17), and an estimated ~$10,000 in "interest" (Tr. 16). Critically, the index reflects that no exhibits were actually admitted ("No exhibits entered," p. 2), and the court acknowledged it had not read the day-of memorandum before proceeding (Jan. 29 Tr. 26). This evidentiary posture cannot sustain a finding that Appellant knowingly or willfully employed an unfair or deceptive act—particularly against the backdrop of shipping/banking delays and the undisputed mitigation offers, which are inconsistent with knowing deception.

Because the order contains no specific, competent findings of willfulness tied to Appellant's own conduct—and because the record, if anything, points the other way—the trebling decision constitutes legal error. The Court should vacate the SCUTPA treble enhancement as to Appellant

and remand with instructions that any renewed request for trebling must be supported by particularized findings based on competent evidence of a willful or knowing unfair or deceptive act by Appellant personally; if such proof is unavailable on this record, trebling should be denied as a matter of law.

15. The circuit court committed legal error by entering a damages judgment lacking evidentiary support, relying on unsworn argument, and disregarding sworn testimony from Respondent's owner that she sought only the purchase price and legal fees. (Tr. 22–23).

After a default on liability, the plaintiff still bears the burden to prove damages with competent evidence; attorney argument is not evidence, and legal conclusions are not deemed admitted by default. See *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009) (damages must be supported by evidence even after default); *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (default admits well-pleaded facts, not legal conclusions); Rule 55(b)(2), SCRCP (court must conduct a hearing and receive evidence to determine damages). Due process likewise requires a meaningful opportunity to be heard on the amount of damages. *Moore v. Moore*, 376 S.C. 467, 474, 657 S.E.2d 743, 747 (2008).

That never happened here. At the January 29, 2025 hearing, Respondent relied on a morning-of "damages" memorandum the court acknowledged it had not read, and served a stack of new exhibits during the proceeding (Jan. 29 Tr. 6–7, 20–21, 26). The record index reflects that no exhibits were actually admitted ("No exhibits entered," Index p. 2). The lone sworn witness, Respondent's owner, testified that she wanted "the money back that I paid … plus my legal fees," and confirmed "Right" when asked if that was all—approximately $22,788 and fees (Jan. 29 Tr. 22–23). The additional components used to inflate "actual damages" (loan interest, overtime labor, replacement-line adjustments) were offered as rough estimates, not proved amounts (see, e.g., Tr. 14–17), and causation was undercut by testimony that hand-counting pre-dated the purchase (Tr. 24). Despite this evidentiary posture, the court entered a $74,788 "actual damages" figure and trebled it—results driven, not by admitted exhibits or competent proof, but by unsworn advocacy and a memo the court had not read.

Because the damages award rests on materials not admitted into evidence, unsworn attorney assertions, and a disregard of the only clear sworn damages request, it lacks evidentiary support and violates both Rule 55(b)(2) and due-process principles. The Court should vacate the damages judgment as to Appellant and remand for a properly noticed damages hearing at which Respondent must introduce competent, admissible proof (with pre-hearing disclosure and an opportunity for cross-examination); at minimum, any award must be confined to amounts supported by the pleadings and the sworn testimony of record.

16. The circuit court committed legal error and violated due process by depriving Appellant despite default of a meaningful opportunity to contest damages, curtailing cross-examination, and permitting an 11-page memorandum with exhibits to be served at the hearing itself.

Rule 55(b)(2), SCRCP preserves a defaulting party's right to notice and a meaningful chance to be heard on the amount of damages once the party has appeared. See *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009) (even after default, damages must be proved with competent evidence at a hearing); *Moore v. Moore*, 376 S.C. 467, 474, 657 S.E.2d 743, 747 (2008) (due process requires an opportunity to be heard "at a meaningful time and in a meaningful manner"). Appellant personally appeared and participated at the January 29, 2025 hearing, which triggered these protections (Jan. 29 Tr. 3–9, 19–26). Yet the court allowed Respondent to spring a day-of, 11-page "damages" memorandum and a stack of new exhibits at the hearing itself (Jan. 29 Tr. 6–7, 20–21, 26), then curtailed Appellant's cross-examination with statements such as "You're in default; you're not entitled to it," and "we are not re-litigating the case," precisely when she probed causation and the claimed labor-cost component (Jan. 29 Tr. 10–12, 19–22). The record index reflects that no exhibits were actually admitted into evidence ("No exhibits entered," Index p. 2), leaving the court to rely on unsworn advocacy rather than competent proof contrary to *Mitchell* and Rule 55(b)(2).

These rulings worked a double violation. First, they denied Appellant a meaningful opportunity to test Respondent's quantum proof by surprise-filing new materials at the hearing and by restricting cross-examination on the very items that inflated "actual damages." Second, they collapsed liability (deemed admitted by default) with the separate, still-contested question of

amount, which due process forbids. See *Moore*, 376 S.C. at 474; *Mitchell*, 385 S.C. at 585. Because the court's damages determination rested on materials not disclosed in advance, not admitted into evidence, and shielded from full adversarial testing, the procedure was legally erroneous and constitutionally infirm.

The Court should vacate the damages judgment as to Appellant and remand for a properly noticed damages hearing that (1) requires pre-hearing disclosure and timely service of any exhibits or memoranda, (2) admits only competent evidence into the record, and (3) affords Appellant a full opportunity to cross-examine and present counter-proof consistent with Rule 55(b)(2) and due process.

17. The circuit court committed legal error and violated due process by awarding $37,766.33 in attorney's fees on a post-hearing affidavit served only by mail with an impossible five-day response window, and the amount is facially unreasonable given that Respondent appeared for at most three hearings and filed only a handful of papers in a default posture.

Fee awards must be supported by competent, adversarially tested proof and reasoned findings under the *Blumberg/Jackson* factors (time and labor; novelty and difficulty; skill; customary fee; results obtained; experience and ability; contingency, etc.). *Raynor v. Byers*, 422 S.C. 128, 131, 810 S.E.2d 430, 432 (Ct. App. 2017); *Jackson v. Speed*, 326 S.C. 289, 306–07, 486 S.E.2d 750, 759–60 (1997); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). Here, after testimony closed, the court authorized Respondent to file its fee affidavit later and imposed an oral five-day deadline for Appellant to request cross-examination "upon receiving" it (Jan. 29 Tr. 18–19, 26). The affidavit was then filed after the hearing (Jan. 31, 2025), the record was never reopened, and service occurred only by slow mail to a pro se litigant without e-service—rendering the five-day window effectively impossible and depriving Appellant of a meaningful opportunity to be heard. See *Moore v. Moore*, 376 S.C. 467, 474, 657 S.E.2d 743, 747 (2008) (due process requires a meaningful opportunity to be heard); cf. Rule 6(e), SCRCP (additional time where service is by mail). Using a post-hearing, mail-served affidavit as the evidentiary basis for fees—without reopening the record or setting a workable objection/cross-examination schedule—was procedural error and violated due process.

The figure is also substantively unsupportable on this record. The case proceeded largely by default; Respondent's counsel appeared for, at most, three hearings and filed only a handful of papers (the amended complaint, default papers, a morning-of damages memorandum, and the belated fee affidavit). There was no discovery, no trial, and no admitted exhibits at the damages hearing (Index p. 2, "No exhibits entered"). Yet the court awarded $37,766.33 without contemporaneous, tested time records or *Jackson* findings tied to the limited procedural footprint and the results actually obtained. See *Raynor*, 422 S.C. at 131 (fee award is an abuse of discretion when not supported by competent evidence and appropriate findings).

Appellant further contends the claimed hours are inflated, and, on this record, appear fabricated, because they bear no reasonable relationship to the minimal litigation activity in a default posture (three court appearances; few filings), and because the affidavit was insulated from cross-examination by the court's unworkable five-day mail window. Fees purportedly incurred to advance unpleaded damages theories (introduced only in a day-of memorandum) should not be shifted at all, and any remaining time should be reduced to reflect necessity, proportionality, and the limited results. See *Jackson*, 326 S.C. at 306–07 (trial court must evaluate necessity and reasonableness under the factors).

Accordingly, the fee award should be vacated in full. The proper remedy is a remand with instructions that any renewed fee request be (1) filed and served contemporaneously with adequate lead time, (2) supported by detailed, contemporaneous billing records, (3) subjected to an evidentiary hearing with the opportunity for cross-examination and objections by Appellant, and (4) resolved through explicit findings on each *Blumberg/Jackson* factor tethered to the actual scope of work (limited hearings and filings in a default case), the necessity of tasks performed, the degree of success, and the governing entitlement, if any.

18. The judge's acknowledged familiarity with opposing counsel's father, coupled with hostile treatment of a pro se litigant and impossible deadlines, created the appearance and reality of bias requiring reversal and reassignment.

Due process guarantees an impartial tribunal. Under Rule 501, SCACR, Canon 3(E)(1), a judge shall disqualify where impartiality "might reasonably be questioned." The test is objective, whether a person of ordinary prudence, knowing all the facts, would question impartiality. See Roche v. Young

Bros. of Florence, Inc., 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995). The record reflects one-sided case management against a pro se litigant: refusal of a short continuance to obtain counsel (Oct. 31 Tr. 2–4); immediate default against APM; shifting, privacy-intrusive "login credentials" demands added after the November 6 Form 4; and the mail-impracticable five-day fee window (Jan. 29 Tr. 18–19, 26), together with constraints on cross-examination and day-of submissions. The record shows Appellant (through APM) offered a no-cost loaner and then offered to let PlanetONE keep that loaner permanently while still receiving the originally ordered machine at no additional cost (two machines for the contract price); PlanetONE declined. (Jan. 29 Tr. 11–12, 21–22.)In aggregate, at minimum, this creates the appearance of partiality. The court should reverse and remand to a different judge for all further proceedings involving The Appellant.

19. The circuit court committed legal error by failing to bar or reduce recovery for Respondent's failure to mitigate, thereby permitting inclusion and collection of avoidable damages.

South Carolina law requires a plaintiff to take reasonable steps to minimize loss; damages may not include amounts that reasonable efforts would have avoided. See Hendricks v. Clemson Univ., 353 S.C. 449, 456–57, 578 S.E.2d 711, 715 (2003) (recognizing duty to mitigate in the contract context); Mitchell v. Fortis Ins. Co., 385 S.C. 570, 585, 686 S.E.2d 176, 184 (2009) (damages must be proven by competent evidence; speculative components are not recoverable). The record shows Appellant (through APM) provided concrete, no-cost mitigation options that would have materially reduced or eliminated the claimed losses: first, a temporary loaner at no charge; and then an offer to allow PlanetONE to keep that loaner permanently while still receiving the originally ordered unit at no additional cost two machines for the contract price. PlanetONE declined both accommodations. (Jan. 29 Tr. 11–12, 21–22.) The record also reflects PlanetONE was hand-counting before the purchase (Jan. 29 Tr. 24), undermining any assertion that post-purchase labor costs were caused by Appellant.

Despite these facts, the court allowed categories such as overtime labor, replacement-line costs, and financing interest to inflate "actual damages." Those components were (i) avoidable in light of Appellant's mitigation offers, (ii) speculative or estimated on this record, and (iii) introduced for the first time at a default-damages hearing, compounding the Rule 54(c) problem identified in Issue 20. Allowing recovery of avoidable, unproven add-ons constitutes legal error and an abuse of discretion.

The Court should vacate or substantially reduce any damages categories traceable to avoidable loss (including overtime labor, replacement-line adjustments, and loan-interest add-ons), and remand with instructions that any renewed damages award be supported by competent, non-speculative proof of causation and mitigation consistent with South Carolina law.

20. The circuit court committed legal error by violating Rule 54(c), SCRCP limiting default relief to that demanded when it awarded damages different in kind and exceeding the amount prayed for (adding loan interest, increased labor, and replacement-machine costs to reach $74,788 and then trebling) based on a hearing-day memorandum, where the Amended Complaint sought only the $22,788 purchase price (plus fees/statutory enhancements).

Rule 54(c), SCRCP limits a default judgment to the relief demanded in the pleadings; a court may not enlarge either the kind or the amount of relief after default. PlanetONE's Amended Complaint demanded only the $22,788 purchase price (plus prejudgment interest) and, in the alternative, statutory enhancements (SCUTPA trebling and attorney's fees). It did not plead loan-interest on third-party financing, overtime labor, or any "replacement-machine" differential as components of "actual damages." Yet at the January 29, 2025 damages hearing, Plaintiff presented a new, day-of memorandum and a stack of exhibits that were not served on Appellant beforehand (despite Appellant's January 22 request for any memorandum or evidence to be used) and were not served on American Pharma at all; instead, the memorandum was handed to Appellant in the courtroom immediately before the judge, and when Appellant objected to the surprise service and sought to be heard, the objection was overruled/denied. The court acknowledged it had not read the memorandum (Jan. 29 Tr. 26), permitted the documents to be used anyway (Tr. 6–7, 20–21), and then accepted those unpleaded categories to inflate "actual damages" to $74,788 before trebling that figure.

The only clear, sworn request from PlanetONE's witness remained "the money back that I paid … plus my legal fees," with a confirmation that she sought only about $22,788 and fees (Tr. 22–23). Default admits well-pleaded facts; it does not license unpleaded damages theories or larger amounts introduced by surprise at the hearing. Because the award both exceeded the pleaded amount and was different in kind, and because neither Appellant nor American Pharma received

advance service of the materials used to expand damages the judgment contravenes Rule 54(c) and constitutes reversible legal error.

21. The circuit court committed legal error by entering default judgment against Appellant after her personal appearance and participation without affording full notice and a meaningful opportunity to be heard on liability and damages as required by Rule 55(b)(2).

By personally appearing and participating, The Appellant "appeared" within the meaning of Rule 55(b)(2), SCRCP, which preserves written notice and a real opportunity to be heard on damages even if liability is deemed established. She appeared and participated on October 31, 2023 (Oct. 31 Tr. 3–9, 14–17) and again at the January 29, 2025 damages hearing (Jan. 29 Tr. 3–9, 19–26). Nonetheless, the court allowed Plaintiff to use a day-of memorandum the court acknowledged it had not read (Jan. 29 Tr. 26) and permitted a stack of exhibits to be served during the hearing itself (Jan. 29 Tr. 6–7, 20–21), while repeatedly constraining The Appellant's cross-examination with statements such as "You're in default; you're not entitled to it" and "we are not re-litigating the case" when she probed the claimed labor-cost component (Jan. 29 Tr. 10–12, 19–22).

The record index also reflects that no exhibits were actually admitted ("No exhibits entered," p. 2), leaving nothing properly in evidence to support the amounts claimed. Rule 55(b)(2) and due process require an adversarial damages hearing with fair notice of evidence, an opportunity to cross-examine, and the ability to present counter-proof. **The court should** vacate the damages judgment and remand for a properly noticed damages hearing with pre-hearing disclosure of any exhibits, admission of competent evidence, and full cross-examination.

22. The circuit court committed legal error and violated due process by relying on a post-hearing fee affidavit that was never made part of the evidentiary record.

At the close of testimony, Respondent conceded it had no fee affidavit; the court nevertheless invited Respondent to file one later, and Respondent submitted an "Affidavit of Attorney's Fees" on January 31, 2025, after the January 29 damages hearing, without the court continuing the hearing, expressly keeping the record open, or formally reopening the record for that new evidence (Jan. 29 Tr. 18–19, 26). A fee award must rest on record evidence subjected to

adversarial testing with reasoned findings under *Jackson v. Speed*, 326 S.C. 289, 306–07, 486 S.E.2d 750, 759–60 (1997), and *Raynor v. Byers*, 422 S.C. 128, 131, 810 S.E.2d 430, 432 (Ct. App. 2017). Using a late-filed affidavit that never entered the evidentiary record violates due process—notice and "an opportunity to be heard at a meaningful time and in a meaningful manner." *Moore v. Moore*, 376 S.C. 467, 474, 657 S.E.2d 743, 747 (2008). The fee award of $37,766.33 therefore must be vacated and remanded for a noticed evidentiary hearing with contemporaneous filing/service, the right to object, and cross-examination.

23. The circuit court compounded the error and violated due process by imposing an impossible five-day window to request fee cross-examination that expired before Appellant could receive the mailed order or the affidavit.

From the bench, the court stated Appellant had "five days" to request cross-examination "upon receiving" the affidavit, even though no affidavit existed and none was served at the hearing (Jan. 29 Tr. 18–19, 26). The later Form 4 likewise set a five-day request period **from the date of the order**, but the order was mailed and did not arrive until after five days had already run. As a pro se litigant without e-service, Appellant could not possibly comply; the mailed fee affidavit itself did not reach her until well after the window had expired. Measuring the deadline from entry (rather than service), ignoring **Rule 6(e), SCRCP** (adding five days for mail), and enforcing an oral pronouncement before the operative written order issued (see *Bugg v. Bugg*, 272 S.C. 122, 124, 249 S.E.2d 505, 506 (1978)) created a procedural trap that deprived Appellant of a meaningful chance to object or request cross-examination. That due-process violation independently requires vacatur of the fee award and remand with a fair, service-based schedule that honors Rule 6(e) and guarantees an opportunity to be heard.

24. The circuit court committed legal error by entering a joint-and-several judgment against APM and Appellant without individualized findings establishing a lawful basis for personal liability as to Appellant.

South Carolina respects the LLC form; members/agents are not personally liable for company obligations absent a valid veil-piercing or an express personal undertaking. See S.C. Code Ann. § 33-44-303; cf. Wilson v. Friedberg (LLC corporate-form principles). A default admits well-pleaded

facts, not legal conclusions such as "alter ego" or "personal liability." See default principles discussed in Sundown/Whaley. The court itself recognized at the October 31 hearing that breach-of-contract ran to APM and that UTPA was "only against the business" (Oct. 31 Tr. 18–20). Yet the final order imposed a joint-and-several judgment on APM and The Appellant without findings of personal privity, personal receipt of funds, an express assumption of liability, or veil-piercing elements proven on competent evidence. **The court should** vacate the personal judgment against The Appellant; if non-contract claims proceed, require individualized, evidence-based findings tying any personal liability to her own proven conduct.

25. The circuit court committed legal error by issuing a damages award and SCUTPA trebling without specific findings explaining how "actual damages" were calculated and how any proven conduct satisfied the willful/knowing standard.

Treble damages under SCUTPA require proof that any unfair or deceptive act was "willful or knowing." S.C. Code Ann. § 39-5-140. Even after default, the plaintiff must prove damages with competent evidence. See Mitchell v. Fortis Ins. Co. The order provides no calculation showing how "actual damages" reached $74,788; instead, the day-of memorandum (which the court had not read: Jan. 29 Tr. 26) aggregated unpleaded items—loan interest, overtime labor, and a replacement-line adjustment—supported at most by rough estimates: an $8,000/month "doubling" of labor (Jan. 29 Tr. 14–15), a $10,000 replacement adjustment (Jan. 29 Tr. 17), and a $10,000 "interest" guess (Jan. 29 Tr. 16). The witness also conceded they had been hand-counting before any purchase (Jan. 29 Tr. 24), undermining causation for the claimed "extra" labor. Meanwhile, when asked directly what she wanted, the witness swore she sought "the money back that I paid … plus my legal fees," answering "Right" when asked if it was only ~$22,000 and fees (Jan. 29 Tr. 22–23). The order then trebled the new $74,788 figure without specific willfulness findings tied to The Appellant's personal conduct—despite record evidence of mitigation (offer of a no-cost loaner and later replacement) and delays attributable to shipping/banking. **The court should** vacate the $74,788 "actual damages" figure and the trebling; on remand, require specific findings based on competent evidence and, if the record cannot support willfulness, deny trebling as a matter of law.

26. The circuit court committed legal error by awarding post-judgment interest on trebled damages and attorney's fees without identifying statutory authority, the proper base, or accrual dates.

Post-judgment interest is governed by statute. See S.C. Code Ann. § 34-31-20(B). A court must identify the legal basis, define the principal on which interest accrues, and specify accrual dates (including how interest applies to fees awarded by later affidavit). The order simply adds interest "at the judgment rate" to the trebled amount and to attorney's fees, without identifying the proper base (un-trebled "actual" vs. trebled sum) or when interest on fees begins. Given the absence of analysis, the interest component cannot stand. **The court should** vacate the interest award as to The Appellant and remand for statutory findings identifying the authority, principal base, and accrual dates consistent with § 34-31-20(B).

27. The circuit court committed legal error by treating the Amended Complaint's "undisputed facts" and an "Affidavit of Default" as substantive proof of elements such as willfulness and alter-ego, even though legal conclusions are not deemed admitted by default.

A default admits well-pleaded facts, not legal conclusions or contested elements such as SCUTPA willfulness or veil-piercing/alter-ego. See the default/abuse-of-discretion principles recognized in Sundown and Whaley; damages still require competent proof, per Mitchell. The court's order, reciting the Amended Complaint's "undisputed facts," an "Affidavit of Default," counsel's arguments, and a hearing-day memorandum—treated those materials as if they proved willfulness and alter-ego. With no exhibits admitted (index p. 2) and no specific findings connecting evidence to elements, that approach collapses legal conclusions into "facts" deemed admitted by default. **The court should** vacate any findings of willfulness and alter-ego as to The Appellant, and require any such determinations to be made, if at all, on competent evidence with particularized findings.

CONCLUSION

This Court should reverse the circuit court's rulings in their entirety as to The Appellant, vacate the default judgment, and remand for proceedings consistent with equity, due process, and South Carolina law. The record reveals a cascade of legal errors and constitutional violations that stripped The Appellant, a pro se litigant involuntarily abroad, of her fundamental right to a meaningful defense. The circuit court abused its discretion by entering and refusing to set aside default despite The Appellant's documented emergency, timely mailing efforts, and lack of e-filing access, contravening Rule 55(c)'s liberal standard and the equitable principles in *Melton v. Olenik* and *Sundown Operating Co.*. It compounded this error by denying her a promised hearing to prove mailing authenticity, imposing privacy-intrusive conditions midstream, and relying on unsworn, unadmitted materials to inflate damages beyond the pleadings, violating Rule 54(c) and due process as articulated in *Mitchell v. Fortis Ins. Co.* and *Moore v. Moore*.

The imposition of personal liability on contract, fraud, SCUTPA, and unjust enrichment claims was equally flawed. No evidence supports piercing the LLC veil under *Pertuis v. Front Roe Rests.* or *Wilson v. Friedberg*, nor does the record show an express personal undertaking by The Appellant, as required by S.C. Code Ann. § 33-44-303(a). Fraud claims fail Rule 9(b)'s particularity standard (*Hoeffner v. The Citadel*), and SCUTPA liability, trebling, and fees lack specific findings of willful personal conduct (*Wright v. Craft*, *Singleton v. Stokes Motors*). Unjust enrichment is barred by an express contract with APM, and damages were improperly expanded to unpleaded categories, ignoring mitigation offers and sworn testimony limiting recovery to the purchase price (*Hendricks v. Clemson Univ.*, *Mitchell*). The attorney's fee award, based on a post-hearing affidavit never admitted into evidence and an impossible five-day response window, violates due process and lacks *Jackson v. Speed* findings. Finally, the court's hostile treatment, shifting demands, and acknowledged familiarity with opposing counsel's father create an intolerable appearance of bias under *Roche v. Young Bros.*, necessitating reassignment. These errors individually and collectively denied The Appellant a fair opportunity to defend on the merits, penalized her for systemic barriers beyond her control, and imposed personal liability without legal or evidentiary foundation. This Court should vacate the default, the personal judgment, and all associated damages, fees, and interest; in entirety.

PRAYERS FOR RELIEF

The Appellant respectfully requests that this Court grant the following relief:

1. **Reverse the Entry of Default and Refusal to Set Aside**: Reverse the circuit court's orders entering default and refusing to set it aside as to The Appellant, finding an abuse of discretion under Rule 55(c), SCRCP, based on her documented emergency, timely mailing efforts, lack of e-filing access, meritorious defenses, and absence of prejudice, as supported by *Melton v. Olenik*, 379 S.C. 45, 664 S.E.2d 487 (Ct. App. 2008), and *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009).
2. **Vacate the Default Judgment**: Vacate the default judgment entered against The Appellant in its entirety, including all damages, treble enhancements, attorney's fees, and post-judgment interest, due to legal errors, due process violations, and lack of evidentiary support, consistent with *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), and *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008).
3. **Dismiss Personal Liability Claims**:
    i. **Contract Claims**: Reverse and render judgment in The Appellant's favor on the contract claims, dismissing them with prejudice as to her personally, as no privity, express undertaking, or veil-piercing evidence supports personal liability, per S.C. Code Ann. § 33-44-303(a), *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 817 S.E.2d 273 (2018), and *Wilson v. Friedberg*, 323 S.C. 248, 473 S.E.2d 854 (1997).
    ii. **Fraud Claims**: Reverse and dismiss with prejudice the fraud and constructive fraud counts against The Appellant for failure to satisfy Rule 9(b), SCRCP's particularity requirement, as no specific misrepresentation or scienter was pleaded or proved, per *Hoeffner v. The Citadel*, 311 S.C. 361, 429 S.E.2d 190 (1993).
    iii. **SCUTPA Claims**: Reverse and vacate the SCUTPA judgment, treble damages, and attorney's fees against The Appellant, as no evidence of personal unfair or deceptive acts, public interest impact, or willful conduct was established, per S.C. Code Ann. § 39-5-140, *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461 (2004), and *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006).
    iv. **Unjust Enrichment**: Reverse and dismiss with prejudice the unjust enrichment claim against The Appellant, as an express contract with APM bars quasi-contract recovery and no

personal benefit was pleaded or proved, per *Hoeffner v. The Citadel*.

4. **Vacate Damages Awards**: Vacate all damages awards against The Appellant, including the $74,788 "actual damages," trebled amounts, and post-judgment interest, for violating Rule 54(c), SCRCP, by exceeding the pleaded $22,788 purchase price, relying on unadmitted evidence, ignoring mitigation, and lacking specific findings, per *Mitchell v. Fortis Ins. Co.* and *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003).

5. **Vacate Attorney's Fees**: Vacate the $37,766.33 attorney's fee award against The Appellant, as no contract or statute establishes personal liability, the award lacks *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), findings, and the post-hearing affidavit process violated due process, per *Moore v. Moore* and *Raynor v. Byers*, 422 S.C. 128, 810 S.E.2d 430 (Ct. App. 2017).

6. **Remand for Adjudication on the Merits**: Remand the case with instructions to:

   i. Accept The Appellant's responsive pleadings, as good cause and excusable neglect were established under Rule 55(c), per *Melton* and *Payne ex rel. Estate of Calzada*, 439 F.3d 198 (4th Cir. 2006).

   ii. Afford The Appellant functionally equivalent filing and service access (e.g., temporary electronic submission or emailed filings with subsequent fee tender) to remedy due process violations, per *S.C. Dep't of Soc. Servs. v. Wilson*, 352 S.C. 445, 574 S.E.2d 730 (2002).

   iii. Conduct a properly noticed damages hearing, if any claims proceed, with pre-hearing disclosure of evidence, admission of competent proof, and full opportunity for cross-examination, per Rule 55(b)(2), SCRCP, and *Mitchell*.

   iv. Require specific, evidence-based findings for any liability, damages, trebling, or fees, particularly as to The Appellant's personal conduct, per *Wright* and *Jackson*.

7. **Reassign to a Different Judge**: Remand all further proceedings involving The Appellant to a different circuit court judge to ensure impartiality, given the appearance of bias from the court's familiarity with opposing counsel's father, hostile treatment, and procedural traps, per *Roche v. Young Bros. of Florence, Inc.*, 318 S.C. 207, 456 S.E.2d 897 (1995).

8. **Grant Additional Relief**: Award such other and further relief as this Court deems just and proper, including costs of this appeal, to ensure justice and compliance with South Carolina law.

Respectfully submitted this 24th day of August 2025.

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FOR THE APPELLANT