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**Sep 18 2025**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable Martha M. Rivers

Case No. 2024-CP-40-03510

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Appellate Case No. 2024-001963

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Sherman and Claudia Howell,

Respondents,

v.

D.R. Horton, Inc.,

Appellant,

AND

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

Jenkins Plumbing Company, LLC, Caryl  
Mechanicals II, Inc., L&M Electric, Inc.,  
Unique Stone Creations, M&L General  
Construction, Inc., Alpha Omega Construction  
Group, Inc., and ASC Services and Supply, Inc.

Third-Party Defendants.

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**RESPONDENTS' OPPOSITION TO APPELLANT'S  
MOTION TO AMEND FINAL BRIEF AND SUPPLEMENT RECORD ON APPEAL**

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Respondents, through their undersigned counsel, respectfully oppose Appellant's motion to amend its final brief and supplement the record on appeal filed on September 9, 2025 pursuant to the following grounds: (1) Rule 211, SCACR, bars an amendment to the final brief to add citation to an unrelated federal court order; (2) Rules 210(c) and 212, SCACR, prohibit parties

from supplementing the record to cite to orders that were not entered in the underlying action; and (3) *Vriens v. Tip-Top Roofing & Construction, LLC*, Case No. 2:23-cv-06797-DCN, the case Appellant wishes to supplement to the record, is not controlling and is therefore not “pertinent or significant” to the issues raised in this appeal. Rule 208(b)(7), SCACR.

Respondents seek to amend their final brief and supplement the record on appeal to add arguments and citations to an order entered in an unrelated federal court action, *Vriens v. Tip-Top Roofing & Construction, LLC*, Case No. 2:23-cv-06797-DCN. The South Carolina Appellate Court Rules contemplate that the parties may provide notice of supplemental citations “[w]hen pertinent and significant authorities come to the attention of a party after his initial brief(s) has been served and filed.” Rule 208(b)(7), SCACR. The party may “promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations.” *Id.* In the letter to the Court, the party providing notice of the citation must “reference either the page of the brief or to an issue which the citations pertain, but the letter shall, without argument, state the reason for the supplemental citations.” *Id.* The opposing party may provide a response limited to the issues raised by the party providing notice of the supplemental citation. *Id.*

Conversely, Rule 211, SCACR, governs the final brief. Parties submitting their final briefs may only correct obvious typographical errors and misspellings which were contained in the initial brief. Rule 211, SCACR. However, “[n]o other changes may be made.” Moreover, Rule 211 does not contemplate that the parties may amend their final brief to add supplemental citations or analysis of those cases; instead, the proper procedure is outlined in Rule 208(b)(7). Namely, any party desiring to give notice of a supplemental citation may send a letter to the clerk of court with copy to opposing counsel summarizing the case and the issues implicated on appeal.

Similarly, Rules 210(c) and 212, SCACR, controls the record on appeal. Matters that may be designated include, but are not limited to, “orders, judgments, decrees, decisions, pleadings, transcripts, charges, and exhibits, and other materials or documents” that were presented or entered by the lower court. Rule 210(c), SCACR. However, Rule 210(c), SCACR, makes clear that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.”

Respectfully, the Appellant has already submitted the supplemental citations in this appeal by sending a letter to the Clerk and opposing counsel with a copy of the order in *Vriens v. Tip-Top Roofing & Construction, LLC*, Case No. 2:23-cv-06797-DCN.<sup>1</sup> The Appellate Court Rules do not permit Appellant to amend its final brief to add analysis of *Vriens* that was not included in the initial brief. Nor do the Appellate Court Rules grant the parties a blanket right to add analysis to a final brief, without specifically proposing the additional language that the party seeks to add. Here, the Appellant provided a copy of the *Vriens* order without indicating what analysis would be added to the final brief and should not be permitted to amend the final brief to reference the *Vriens* order.

Similarly, the Appellate Court Rules prohibit the designation of matters to be included in the record that were not presented to the lower court. Rule 210(c), SCACR. The record should contain orders, decrees, submissions, and documents that were considered by the lower court in issuing the order on appeal. The order in *Vriens*, filed in a separate federal court action, was not considered by the lower court and is not proper to designate in the record on appeal.

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<sup>1</sup> The Appellant’s notice of supplemental citations did not comply with Rule 208(b)(7) for the following reasons: 1) the notice did not specifically state the reasons that the Order in *Vriens v. Tip-Top Roofing & Construction, LLC*, Case No. 2:23-cv-06797-DCN is applicable; and 2) the cases cited are not “pertinent or significant” to the issues briefed in the appeal. Appellant addresses the deficiencies in the notice in a separate letter to the Court in accordance with SCACR, Rule 208(b)(7).

Finally, even if Appellate Court Rules permitted an amendment to the final brief to cite to and analyze the order in *Vriens v. Tip-Top Roofing & Construction, LLC*, Case No. 2:23-cv-06797-DCN, this Court should not allow such an amendment, because it is neither “significant or pertinent” to the issues on appeal. Rule 208(b)(7), SCACR. Pertinent is defined as “having a clear decisive relevance to the matter in hand.” *Pertinent*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/pertinent> (last accessed September 14, 2025); *see also Pertinent*, BLACK’S LAW DICTIONARY (defining pertinent as “applicable”). Significant is likewise defined as “having or likely to have influence or effect.” *Significant*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/significant> (last accessed September 14, 2025).

Here, the *Vriens* order is neither pertinent nor significant because it is not controlling authority. *Vriens* is a federal case from the District of South Carolina. While the issues addressed in *Vriens* are similar to the issues here, *Vriens* does not contribute any analysis that has not already been presented by Appellant. The more relevant authorities that are controlling are cited in the parties’ final briefs filed with the Court.

For the reasons stated above, Respondents respectfully request this court to deny Appellant’s motion to amend its pleading and supplement the record.

Respectfully submitted,

[Signature Page to Follow]

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