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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas  
Martha M. Rivers, Circuit Court Judge

Appellate Case No. 2025-000150  
Case No. 2022-CP-02-2323  
Case No. 2022-CP-02-2324

Heather Crespo ..... Respondent/Appellant,

v.

Rhett Riviere, Josee Riviere, Chase Enterprises, LLC  
and R.C. Riviere Properties, LLC ..... Defendants,

AND

Gabriel Crespo ..... Respondent/Appellant,

v.

Rhett Riviere, Josee Riviere, Chase Enterprises, LLC  
and R.C. Riviere Properties, LLC, ..... Defendants,

Of which

Rhett Riviere, Chase Enterprises, LLC and  
R.C. Riviere Properties, LLC, are the ..... Appellants/Respondents,

and

Josee Riviere is the ..... Respondent/Appellant.

**FINAL REPLY BRIEF OF APPELLANTS/RESPONDENTS**

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Columbia, South Carolina  
February 9, 2026

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## ARGUMENT

Respondents' brief fails to confront the central flaw in the trial court's rulings: this case was decided on emotion rather than evidence. By allowing the jury to view and hear about a torrent of explicit material—recordings of strangers, unrelated in time, place, and circumstance to the Crespos—the court transformed a narrow instance of invasion of privacy dispute into a referendum on Appellant Rhett Riviere's character. South Carolina law forbids that result.

Respondents defend the admission of nine additional sexually graphic videos and testimony about “thousands” of others as proof of intent and common plan. But they identify no logical connection between those recordings and the Crespos' 2001 rental, which occurred two decades earlier. They also ignore that this was a civil proceeding, where the permissible scope of other acts evidence is even narrower than in criminal prosecutions. The trial court's approach—permitting wide-ranging 404(b) evidence, speculative testimony about uncharged conduct, and cumulative inflammatory references—deprived Appellants of a fair trial and virtually guaranteed an excessive verdict.

At bottom, Respondents ask this Court to ignore or excuse a series of evidentiary rulings that would never withstand scrutiny if the facts were less sensational. The law, however, is not suspended by the alleged outrage. Each assignment of error identified in Appellants' opening brief remains unrebutted in substance. The judgment below should therefore be reversed and the matter remanded for a new trial.

**I. THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING NINE ADDITIONAL SEXUALLY GRAPHIC VIDEOS AND TESTIMONY ABOUT “THOUSANDS” OF OTHER RECORDINGS.**

This case concerns an alleged single hidden-camera setup used during the Crespo's 2001

rental of Riviere's property. Rule 404(b) forbids turning that narrow claim into a "morality" trial about alleged misconduct spanning decades. Yet the trial court admitted nine unrelated, sexually explicit clips and permitted testimony that "thousands" of other recordings existed—none involving the Crespos, and without any evidence of when, where and who were videotaped, or whether any of the individuals consented to being videotaped. Plaintiffs disingenuously asserted, in justification of the introduction of these irrelevant and prejudicial videos that Plaintiffs required their introduction under Rule 404(b) as evidence of a common scheme or plan in anticipation of Riviere's testimony, thought aware from the court's pre-trial rulings and the explicit representation from defense counsel that Riviere would assert his Fifth Amendment privilege as to substantive questions relating to the videotape of the Crespos.

Respondents attempt to justify the admission under Rule 404(b)'s exceptions for motive, intent, and common plan, or by calling the recordings "intrinsic evidence." (Respondents' Brief at 12-15). Those rationales fail. The other clips had no logical nexus to the 2001 event; they merely portrayed supposed character or propensity. *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923); *State v. King*, 424 S.C. 188, 818 S.E.2d 204 (S.C. 2018). Labeling dissimilar acts a "pattern" collapses the very line Rule 404(b) was designed to preserve.

Even if marginally relevant, the prejudice was overwhelming. Each clip was graphically sexual, and Agent Dove's testimony that "thousands" more existed invited jurors to punish Appellants for uncharged moral wrongs rather than decide liability for a single alleged recording. Rule 403 required exclusion once prejudice so clearly outweighed any probative value. The trial judge herself acknowledged the extraordinary prejudice—after the videos and cumulative testimony were already before the jury. During the trial, the court repeatedly faced mounting concerns that the

case had gone too far, with multiple objections and mistrial discussions. By that point, the court itself acknowledged on the record that the materials shown were extraordinarily prejudicial and expressed uncertainty about how to cure the damage. (**R. p. 1702**). After acknowledging on the record that the evidence was “horrendous,” the court nonetheless allowed it to go to the jury. The identical multimillion-dollar awards—wholly untethered to any proven injury—confirm that outcome. Because the trial court recognized the prejudice yet declined to exclude the evidence or declare a mistrial, a new trial absolute is required.

**II. THE TRIAL COURT ERRED IN RULING THAT CO-DEFENDANT JOSEE RIVIERE’S QUESTIONING “OPENED THE DOOR” TO OTHERWISE INADMISSIBLE BAD-ACT EVIDENCE AGAINST RHETT RIVIERE.**

Respondents defend the trial court’s ruling by asserting that a question posed by co-defendant Josee Riviere’s counsel—asking a witness whether she “didn’t like Rhett”—“opened the door” to the admission of extensive bad-act evidence against Rhett Riviere. That contention is legally and factually unsound. Nothing about the question altered the evidentiary landscape or justified admission of otherwise excluded material. Josee’s counsel’s isolated question did not place Rhett’s character at issue, did not mislead the jury, and could not waive Rhett’s independent evidentiary protections. The “open door” doctrine cannot override Rule 404(b)’s categorical limits. *State v. Williams*, 430 S.C. 136, 146–47, 844 S.E.2d 57, 62 (2020) (holding that a party may not use an “open door” theory to admit evidence otherwise barred by Rule 403 or 404).<sup>1</sup>

**A. The open-door doctrine cannot override Rule 404(b)’s limits or bind a separately represented party.**

Under *State v. Heyward*, the open-door doctrine allows rebuttal only to correct a specific

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<sup>1</sup> Both Defendants moved to sever their cases for trial, which request was denied by the Court.

misleading impression; it cannot be used to introduce otherwise inadmissible character evidence. 426 S.C. 630, 639, 828 S.E.2d 592, 597 (2019); see also *State v. Gill*, 355 S.C. 234, 584 S.E.2d 432 (Ct. App. 2003). Josee Riviere’s counsel’s passing question about a witness’s personal feelings did not mislead the jury about Rhett’s conduct or credibility—it merely revealed bias. That exchange provided no basis to revisit Rule 404(b) rulings.

More fundamentally, Rhett Riviere’s rights were separate and independently represented. The court’s ruling effectively punished Rhett for another party’s question in violation of *State v. Ellenburg*, 367 S.C. 66, 73, 625 S.E.2d 224 (2006) (“A defendant cannot be deprived of a fair trial because of the improper acts of a co-defendant.”). The open-door doctrine cannot impute a co-defendant’s supposed waiver to a party who neither participated in nor endorsed it; evidentiary rights are personal, not collective.

### **III. THE CUMULATIVE ADMISSION OF OTHER-ACTS EVIDENCE AND INFLAMMATORY TESTIMONY DEPRIVED APPELLANTS OF A FAIR TRIAL.**

Respondents minimize the cumulative-prejudice issue by dissecting each evidentiary ruling in isolation. (Resp. Br. 18–19). That approach ignores Rule 403’s central safeguard: courts must consider the combined effect of admitting marginally relevant but inflammatory evidence. *See State v. Scott*, 405 S.C. 489, 496, 748 S.E.2d 236, 240 (Ct. App. 2013). Here, the jury was exposed not to one isolated incident but to a barrage—graphic videos, references to “thousands” of recordings, assertions by Plaintiffs’ counsel of dissemination of videos, testimony from unrelated witnesses, repeated suggestions that Riviere was a sexual predator, assertions of child related pornography for which there was no evidence. No limiting instruction could neutralize that cumulative impact.

South Carolina precedent is clear: when the sheer volume of prejudicial evidence diverts the

jury from the actual issues, exclusion is mandatory. *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 473 (1983). The trial here became dominated by collateral material: hours of explicit testimony, insinuations of other “victims,” and descriptions of unproven conduct from different decades. Even Respondents’ own summary confirms that the trial’s focus shifted from the Crespos’ rental to Riviere’s alleged reputation and moral character.

Respondents argue that each item was independently admissible or cured by instruction, but Rule 403 demands a holistic analysis of cumulative prejudice. *See State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). The cumulative prejudice here was overwhelming. The jury heard more about uncharged conduct than about the claims actually before it, producing identical multimillion-dollar verdicts untethered to any measure of actual harm.

The court itself recognized this, stating on the record:

I just allowed [the jury] to see some of the most horrendous things I have seen in my career. And we all know that we get to see things people in the general public do not. I am loathe to do that, to put another panel through that. I can mistr[y] this case as to Mr. Riviere, or we can continue as-is with a curative instruction, of which I’m not sure how to craft. If I fix this for one defendant, I can’t fix it for the other.

**(R. p. 1702).**

Because the cumulative impact of this evidence rendered the proceeding fundamentally unfair, the trial court’s denial of a new trial was an abuse of discretion. *See Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996). A new trial absolute is warranted.

**IV. THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO SEVER OR DECLARE A MISTRIAL AFTER RECOGNIZING THAT THE JOINT TRIAL HAD BECOME IRREPARABLY PREJUDICIAL.**

Respondents describe the denial of severance and mistrial as an unremarkable exercise of discretion. (Resp. Br. 20–23). But discretion ends where fairness fails. Once the court permitted the

jury to view sexually graphic videos, hear references to “thousands” of other recordings, and listen to emotionally charged testimony about other “victims,” the joint trial had become incurably prejudicial.

**A. Severance was required to prevent guilt by association.**

This case involved multiple defendants with distinct defenses and separate alleged responsibilities. Josee Riviere’s interests conflicted with Rhett Riviere’s, and the corporate defendants’ liability depended on separate questions of ownership and agency. Yet all were tried together while the jury heard evidence—graphic videos, testimony about “thousands” of recordings, and speculation about uncharged victims—that applied, if at all, only to Rhett. *See Beekman*, 405 S.C. at 235, 746 S.E.2d at 488 (Ct. App. 2013) (severance required when evidence admissible against one defendant “spills over” to another). The inevitable result was guilt by association.

**B. The refusal to declare a mistrial left no remedy for acknowledged prejudice.**

A mistrial is warranted when prejudice is “so substantial that no other remedy can cure it.” *State v. Harris*, 382 S.C. 107, 114, 674 S.E.2d 532, 536 (Ct. App. 2009). Here, the court conceded the prejudicial impact of the evidence yet relied on perfunctory limiting instructions. But as this Court has held, when improper evidence is so graphic or emotional that jurors cannot disregard it, no instruction can un-ring the bell. *See State v. Fonseca*, 383 S.C. 640, 681 S.E.2d 1 (Ct. App. 2009). The jury had already heard that Riviere “needed to be stopped” and that “it could be any of you”—appeals to passion and community fear that no curative instruction could neutralize.

**C. The joint-trial structure magnified the prejudice.**

By trying all defendants together, the court ensured that every piece of inflammatory evidence against one tainted the others. *See State v. Torres*, 390 S.C. 618, 703 S.E.2d 226 (2010). The

supposed compartmentalization through jury instructions was unrealistic once the trial narrative became one of moral outrage. The resulting identical multimillion-dollar verdicts confirm that emotion, not evidence, drove the outcome.

Because the trial court recognized the prejudice yet refused to sever or halt the proceedings, its inaction magnified rather than mitigated the harm. The refusal to grant severance or mistrial was an abuse of discretion, and a new trial absolute is required.

**V. THE TRIAL COURT ERRED IN DENYING APPELLANTS' MOTIONS FOR DIRECTED VERDICT ON RESPONDENTS' CLAIMS FOR NEGLIGENCE AND NEGLIGENCE PER SE.**

Respondents defend the negligence verdicts by pointing to vague references to “physical manifestations” and by stretching a professional-licensing statute far beyond its purpose. Neither supports or saves the judgment. The record contains no competent proof of physical or property injury, and the Real Estate Practice Act does not supply a duty or standard of care relevant to voyeurism.

**A. The record contains no legally sufficient evidence of physical or property injury.**

South Carolina law is unequivocal that negligence requires proof of bodily or property injury, not emotional upset. *Sherrill v. S. Bell Tel. & Tel. Co.*, 260 S.C. 494, 497, 197 S.E.2d 283 (1973); *Brawley v. Richland Cnty.*, 415 S.C. 303, 309, 782 S.E.2d 98 (2016). Respondents point to the Crespos' testimony about anxiety, sleeplessness, and counseling sessions as proof of injury. **(R. pp. 1817, 1869-1871)**. But those fleeting references show only emotional distress—not physical injury within the meaning of South Carolina negligence law.

Recent authority reaffirms this rule. *K.S. ex rel. Seeger v. Richland Sch. Dist. Two*, holds that emotional distress is compensable only when parasitic to a physical impact or objectively verifiable

bodily harm. 445 S.C. 111, 120, 912 S.E.2d 240 (2025). There was none here. The Crespos offered no medical testimony, no objective diagnosis beyond a single telehealth session, and no proof of lasting impairment. Their therapist described Gabriel’s symptoms as “acute” and short-lived.

Nor does the return of rent constitute property damage or economic loss within negligence doctrine. That payment was consideration for the use of the premises, not a loss to tangible property. Treating it as compensable “damage” would convert every contract payment into a tort claim, contrary to *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 747 S.E.2d 468 (2013). Because the Crespos presented no competent evidence of physical or property injury, the trial court erred in denying a directed verdict.

**B. The Realtor-licensing statute cannot support negligence per se.**

Respondents’ negligence per se theory fares no better. They claim that Appellant Riviere’s failure to maintain a valid real-estate license violated S.C. Code Ann. §§ 40-57-5 and -20 and that this regulatory lapse proximately caused their injury. The argument fails both legally and factually.

First, the statute’s purpose is to ensure professional competency and consumer protection in real-estate transactions—not to prevent surreptitious surveillance or emotional harm. A statute may only serve as the standard of care if the plaintiff’s injury is “of the type the statute was intended to prevent.” *Trivelas v. S.C. Dep’t of Transp.*, 348 S.C. 125, 134, 558 S.E.2d 271, 276 (Ct. App. 2001). Nothing in the Real Estate Practice Act remotely contemplates hidden cameras or privacy violations.

Second, Respondents offered no causal link between Riviere’s licensing status and their alleged harm. Even assuming S.C. LLR had reviewed Riviere’s renewal, the trial court acknowledged it “could not speculate” that any administrative oversight would have prevented the

conduct. That finding alone forecloses negligence per se. *See Silva v. Wilcox*, 223 P.3d 127, 134 (Colo. App. 2009) (no claim where licensing statute not causally related to injury).

**C. The trial court’s denial of directed verdict distorted South Carolina negligence doctrine.**

By allowing a negligence claim based solely on emotional upset and a licensing statute unrelated to the alleged harm, the trial court blurred the distinction between negligence and intentional torts. That error inflated the verdict and invited duplicative recovery for the same alleged invasion. Properly applying *Babb*, the only permissible ruling was a directed verdict for Appellants on both negligence and negligence per se. 405 S.C. at 129, 747 S.E.2d at 468.

Because the record contains no legally sufficient evidence of physical or property injury and no statutory duty designed to prevent the alleged harm, the judgment must be reversed and a new trial absolute granted on these claims.

**VI. THE TRIAL COURT ERRED IN DENYING APPELLANTS’ MOTION FOR DIRECTED VERDICT ON THE CLAIMS FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.**

Respondents defend the IIED verdict by invoking the emotional nature of a privacy invasion, but *Hansson v. Scalise Builders of S.C.*, makes clear that even genuine indignation does not constitute “severe emotional distress.” 374 S.C. 352, 650 S.E.2d 68 (2007). The record contains no corroborated or enduring evidence that either Crespo suffered distress “so severe that no reasonable person could be expected to endure it.” *Id.* at 359, 650 S.E.2d at 72.

**A. The record does not establish distress as a matter of law.**

Respondents rely heavily on therapist testimony, but neither expert identified symptoms meeting the *Hansson* standard. Therapist Bill Trezza’s reference to “PTSD” came from a single telehealth session conducted years after the events and was based solely on self-reported anxiety, not

clinical testing or sustained treatment. **(R. pp. 1600,1623)**. Heather Crespo’s therapist, Tom Portney, described her as “embarrassed” and “agitated,” but admitted he could not distinguish normal stress from trauma. **(R. pp. 1400-1404)**. Both therapists provided only very brief counseling and acknowledged the Crespos resumed ordinary functioning shortly thereafter.

The trial court’s January 3, 2025, order cited their emotional demeanor and Heather’s temporary chest discomfort following her deposition as corroboration. But *Hansson* requires “something more”—objective evidence of long-term impairment, corroborated by medical findings or sustained psychological care. 374 S.C. at 359. No such evidence was presented here. The only concrete record of treatment was one telehealth visit for Gabriel and none for Heather. Short-term agitation and physical stress reactions during litigation cannot satisfy *Hansson*’s threshold.

**B. The verdict reflects passion, not proof.**

The jury awarded \$3 million in actual damages and \$1 million in punitive damages per plaintiff on the IIED claim alone—amounts that bear no rational relationship to the record. As in *Sabb v. S.C. State Univ.*, the magnitude of the award demonstrates that emotion, not evidence, drove the result. 350 S.C. 416, 567 S.E.2d 231 (2002). A single telehealth session and uncorroborated testimony of embarrassment cannot justify a combined \$8 million IIED verdict.

**C. Respondents conflate the nature of the act with proof of the harm.**

Respondents argue that because the conduct was “egregious,” the jury could infer extreme distress. That logic inverts the *Hansson* test: the severity of distress, not the outrageousness of conduct, determines liability. South Carolina courts consistently separate the two inquiries. *Hudson v. Zenith Engraving Co.*, 273 S.C. 766, 259 S.E.2d 812 (1979). Here, the evidence of harm is subjective and anecdotal. Without medical records, sustained therapy, or third-party corroboration

beyond friends' sympathy statements, the Crespos failed to show distress "no reasonable person could be expected to endure." The testimony established the alleged invasion of privacy occurred in 2001, went undiscovered until 2022, and was publicized only by Plaintiffs' public filings<sup>2</sup> and press statements.

**D. The denial of directed verdict blurred the line between IIED and invasion of privacy.**

The jury's identical multimillion-dollar awards for both invasion of privacy and IIED confirm duplicative recovery for a single alleged injury. Emotional distress is inherent in a privacy claim; IIED requires something "more." *Hansson*, 374 S.C. at 359. By allowing both claims to reach the jury on the same evidence, the court invited redundancy and inflated the verdict beyond the limits of South Carolina tort law.

Because Respondents failed to establish the legally required severity of distress and the awards reflect passion rather than evidence, the trial court erred in denying a directed verdict. Judgment should be entered for Appellants on the IIED claims.

**VII. THE TRIAL COURT ERRED IN DENYING A DIRECTED VERDICT ON RESPONDENTS' CLAIMS FOR CONSTRUCTIVE FRAUD.**

Respondents attempt to preserve the constructive fraud verdict by reframing a hidden-camera allegation as a "failure to disclose material facts." (Resp. Br. 31-32). That theory misstates both the record and the law. Constructive fraud arises only where a party, within a relationship of trust or confidence, makes a misrepresentation—or fails to disclose a material fact—upon which another reasonably relies to their detriment. *Sorin Equip. Co. v. The Firm, Inc.*, 323 S.C. 359, 364, 474 S.E.2d

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<sup>2</sup> Plaintiffs could have elected to proceed as John and Jane Doe, but chose instead to litigate in their own name, making public their identities and the existence of the videotape.

819, 822 (Ct. App. 1996). The Crespos rented a cottage for a short term, more than twenty years before trial. They identified no statement, promise, or representation by Rhett Riviere to induce that rental and no evidence of reliance.

Respondents' suggestion that nondisclosure of a hidden camera qualifies as a "failure to disclose a material fact" collapses criminal conduct into commercial fraud. Concealing a camera is not a business misrepresentation; it is the alleged tort of invasion of privacy. Extending constructive fraud to any undisclosed wrongdoing would erase the boundary between intentional torts and transactional misrepresentation—something no South Carolina precedent supports.

Nor did any fiduciary or special relationship exist to create a duty to disclose. Constructive fraud requires more than silence; it requires a legal or equitable duty to speak. *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). An arm's length rental transaction does not establish such a duty, and the Crespos cited no statute or contract imposing one.

The trial court's own order underscores the absence of proof. After trial, it reduced the constructive fraud damages to \$2,400—the rent paid—stating that amount reflected "the difference between the value represented and the value received." (**R. pp. 77-78; 89-90**). That reduction implicitly conceded that the record contained no evidence of fraudulent inducement or reliance—only the value of the brief rental itself. Once the court recognized the evidentiary insufficiency, it was required to grant a directed verdict or new trial, not rewrite the verdict. *S.C. State Highway Dep't v. Miller*, 237 S.C. 386, 117 S.E.2d 561 (1960).

Allowing this claim to proceed produced duplicative recovery for the same alleged harm already compensated under the invasion of privacy and SCUTPA verdicts. South Carolina law prohibits such double recovery. *Gastineau v. Murphy*, 331 S.C. 565, 503 S.E.2d 712 (1998). Because

the constructive fraud theory merely repackaged the same conduct and injury already redressed under other counts, the verdict cannot stand.

### **VIII. THE TRIAL COURT ERRED IN DENYING A DIRECTED VERDICT ON RESPONDENTS' SCUTPA CLAIMS.**

Respondents seek to preserve the SCUTPA verdict by recasting a purely private tort as a matter of public commerce. (Resp. Br. 32-34). That argument disregards the statute's limits. "A single transaction affecting only the parties involved will not satisfy the public-impact requirement." *Haley Nursery Co. v. Forrest*, 298 S.C. 520, 522, 381 S.E.2d 906, 908 (1989). But neither the alleged misconduct nor the claimed injuries fall within SCUTPA's scope. SCUTPA governs unfair or deceptive acts in the conduct of trade or commerce; it does not transform an alleged invasion of privacy into a matter of consumer regulation. Because the record shows neither a public impact nor an ascertainable economic loss, the trial court should have directed a verdict for Appellants.

Respondents first invoke "potential repetition," claiming that Riviere might have rented the cottage to others. But speculation does not establish public impact. Under *Noack Enters. v. Country Corner Interiors, Inc.*, a plaintiff must show actual or probable repetition of the same unfair practice in the marketplace. 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986). The Crespos' claim arose from a single short-term rental more than twenty years ago—an isolated, non-recurring incident between private parties. Nothing in the record suggests that any other consumers were affected or that the alleged conduct was likely to recur in a commercial context.

Even if public impact were shown, the claim fails for lack of an "ascertainable loss." SCUTPA permits recovery only for losses of money or property. S.C. Code Ann. § 39-5-140(a) (Supp. 2024). Emotional distress, humiliation, or embarrassment are non-economic injuries and

categorically outside the statute's reach. *Wright v. Craft*, 372 S.C. 1, 17, 640 S.E.2d 486, 495 (Ct. App. 2006). The Crespos offered no proof of financial harm—no invoices, diminution in value, or lost property. Their rental payment purchased precisely what the contract promises—temporary occupancy of the cottage. Any alleged invasion of privacy is a personal injury, not an economic one. *Bessinger v. Food Lion, Inc.*, 305 S.C. 10, 406 S.E.2d 165 (1991).

The trial court's own post-trial reduction confirms as much. By cutting the SCUTPA award to \$2,400—the rent paid—the court implicitly recognized that Respondents proved no measurable loss or market impact. Once the court determined that the verdict lacked evidentiary support, it was obligated to grant a directed verdict or new trial rather than substitute its own damages figure. *See Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 9, 518 S.E.2d 56, 60 (Ct. App. 1999).

Finally, Respondents' expansive reading of SCUTPA would transform every intentional tort into a statutory treble-damages claim. The General Assembly enacted SCUTPA to regulate market conduct, not moral misconduct. Courts have consistently refused to extend it to purely private disputes. *Key Co. v. Fameco Distribs., Inc.*, 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987). Because neither element of a SCUTPA violation was established, the trial court erred in substituting this claim to the jury. Judgment should be entered for Appellants.

#### **IX. THE TRIAL COURT ERRED IN DENYING DIRECTED VERDICTS FOR THE CORPORATE DEFENDANTS.**

Respondents concede that neither Chase Enterprises, LLC nor R.C. Riviere Properties, LLC owned, leased, or managed the cottage where the Crespos stayed. (Resp. Br. 34-35). They nonetheless argue that those entities were properly included because Rhett Riviere “operated through them” and they were his “alter egos.” That contention fails both factually and legally. The record

contains no evidence of ownership, participation, or veil-piercing factors sufficient to support liability.

A corporate defendant cannot be held liable absent proof that it owned or controlled the premises or that its agents directly participated in the alleged tort. *Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 (2003). Respondents introduced no deeds, leases, tax documents, or filings tying either corporate Appellant to the cottage, nor did any witness describe the corporations as managers or contracting parties. On this record, the corporate defendants were entitled to judgment as a matter of law.

Respondents' alternative theory of veil piercing is equally unsupported. South Carolina courts pierce the corporate veil only upon clear proof of abuse of the corporate form—such as undercapitalization, commingling, or use to perpetrate fraud or injustice. *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 817 S.E.2d 273 (2018). Respondents presented none of these elements. Their argument amounts to guilt by ownership: because Riviere held interests in the companies, they must share his liability. But “[v]eil piercing is not lightly invoked and never based on mere ownership or control.” *Huntington v. Miller*, 683 S.E.2d 269 (S.C. Ct. App. 2009). Corporate liability must rest on individualized proof, not association. *Riley v. Ford Motor Co.*, 414 S.C. 185, 777 S.E.2d 824 (S.C. 2015).

The jury's identical awards across all defendants confirms the prejudice. The verdict form made no distinction between Rhett Riviere and his companies, inviting the jury to impose collective liability rather than make individualized findings. South Carolina law forbids undifferentiated verdicts when evidence varies among defendants. *Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 237 S.E.2d 753 (1977).

Because the record contains no evidence that either corporate Appellant owned, managed, or profited from the property—or that the corporate form was abused—the trial court’s refusal to direct verdicts was error. Judgment should be entered for Chase Enterprises, LLC and R.C. Riviere Properties, LLC.

**X. THE VERDICT FORM’S STRUCTURE CREATED CONFUSION AND DUPLICATIVE DAMAGES WARRANTING REVERSAL.**

Respondents defend the verdict form as “clear.” (Resp. Br. 38-40). The record shows the opposite. By directing the jury to assign separate dollar amounts to overlapping torts addressing the same injury, the form produced internally inconsistent and duplicative awards. The trial court’s refusal to merge or correct those awards was reversible error.

**A. The verdict form fragmented a single injury into multiple recoveries.**

Each of the Crespos’ claims—invasion of privacy, IIED, negligence, constructive fraud, and SCUTPA—sought compensation for the same alleged invasion: being secretly recorded during their 2001 rental. The claimed damages were likewise identical—emotional distress, humiliation, and loss of dignity—yet the jury was told to value each claim separately. The result was a table of redundant multimillion-dollar awards untethered to distinct injuries or elements.

South Carolina law prohibits multiple recoveries for one injury under different labels. *Vinson*, 324 S.C. at 405, 477 S.E.2d at 723 (“A party is entitled to only one satisfaction for a single injury.”). By structuring the form around overlapping claims without clarifying that recovery could not be cumulative, the court invited the very duplication *Vinson* forbids.

**B. The trial court failed to correct the defect post-trial.**

When Appellants moved to correct the verdict or order a new trial, the court declined, reasoning that “the totals appear consistent.” But the problem was not arithmetic—it was structural.

Consistency of numbers does not cure duplication of recovery. Because the verdict form permitted the jury to award identical damages for the same injury under multiple theories, the resulting verdicts are legally unsustainable. *McCourt by & through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995).

Where a verdict form's structure prevents proper segregation of damages, remittitur cannot cure the prejudice. *Vinson*, 324 S.C. at 405, 477 S.E.2d at 723. The uniform, overlapping awards here reflect juror confusion, compounded by the pervasive prejudicial evidence admitted at trial.

**XI. THE TRIAL COURT ERRED IN DENYING A NEW TRIAL ABSOLUTE BECAUSE THE VERDICT WAS EXCESSIVE AND INFLUENCED BY PASSION AND PREJUDICE.**

Even apart from the verdict form's defects, the substance of the \$36 million verdict demonstrates that emotion, not evidence, controlled the outcome. The extraordinary size and symmetry of the awards—identical amounts for each plaintiff across every claim—show the jury was motivated by outrage rather than proof. The trial court's refusal to grant a new trial absolute was an abuse of discretion.

**A. The magnitude and uniformity of the awards prove they were punitive, not compensatory.**

Each plaintiff received the same award on each cause of action despite markedly different testimony about harm. The total award was more than ten times any amount supported by the record. *See Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 52, 691 S.E.2d 135, 151 (2010) (reversing excessive punitive damages). Such mathematical uniformity cannot be reconciled with individualized compensatory analysis. It reveals that the jury sought to punish, not to compensate. When a verdict "so shocks the conscience as to indicate it was the product of caprice or passion," a new trial absolute is required. *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 200, 638 S.E.2d 667,

674 (2006).

**B. The excessive verdict flowed directly from prejudicial evidentiary errors.**

The jury was inundated with explicit, emotionally charged evidence bearing little relevance to the Crespos' specific claims. Once exposed to that material, jurors understandably reacted with moral outrage rather than measured evaluation. The resulting awards—grossly exceeding any reasonable valuation—reflects prejudice, not proof. As this Court held in *Folkens v. Hunt*, 290 S.C. 194, 349 S.E.2d 606 (1986) when the evidence of prejudice and the excessiveness of the verdict are intertwined, a new trial absolute is the only proper remedy.

**C. The trial court's reliance on "jury discretion" was misplaced.**

The court declined to disturb the verdict, reasoning that "the jury heard the evidence and was entitled to assign value." But deference is not abdication. The court must act as a "gatekeeper against verdicts born of passion, prejudice, or improper motive." *O'Neal v. Bowles*, 431 S.C. 289, 307, 848 S.E.2d 579, 589 (2020). Here, the trial court acknowledged the "extraordinary magnitude" of the verdict yet refused relief because it could not "pinpoint" a single error. The cumulative effect of multiple prejudicial rulings was more than enough.

**D. Remittitur could not cure the underlying injustice.**

Even partial reductions—such as the court's later adjustments to the SCUTPA and fraud damages—cannot cure a verdict rooted in passion rather than evidence. Once a verdict is shown to have been "based on considerations outside the evidence," a full new trial—not remittitur—is required. *Folkens*, 290 S.C. at 200. Because the prejudice here was structural and pervasive, the only just remedy is a new trial absolute.

**XII. THE TRIAL COURT ERRED BY PRECLUDING RHETT RIVIERE'S FINANCIAL-CONDITION TESTIMONY UNLESS HE WAIVED HIS FIFTH**

## **AMENDMENT RIGHTS.**

Respondents defend the trial court's ruling that Rhett Riviere could not testify about his financial condition unless he also waived his Fifth Amendment privilege as to other topics. That position misconstrues both constitutional and evidentiary law. A defendant may invoke the privilege against self-incrimination on matters with criminal exposure while still testifying on unrelated, non-incriminating subjects such as net worth. By conditioning all testimony on a blanket waiver, the court deprived Appellants of their only meaningful opportunity to contest punitive damages.

### **A. The Fifth Amendment protects against self-incrimination, not the presentation of financial evidence.**

The Fifth Amendment bars compelled testimony that would “furnish a link in the chain of evidence” toward a criminal charge. *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (1994). Testifying about personal assets, liabilities, or income is not inherently incriminating. Rhett Riviere sought merely to explain that his finances were modest and that the punitive verdicts sought would ruin him—evidence relevant only to the amount of punishment, not to liability or guilt. The trial court's assumption that any mention of finances implicated the privilege had no legal basis.

### **B. The trial court's “all or nothing” approach violated due process.**

Forcing a defendant to choose between exercising a constitutional right and defending against punitive damages creates an impermissible penalty. The Supreme Court has long rejected that “Hobson's choice.” *Spevack v. Klein*, 385 U.S. 511 (1967); *Baxter v. Palmigiano*, 425 U.S. 308 (1976). Rhett Riviere consistently invoked the privilege only as to potential criminal conduct, not financial topics. By barring him from offering any financial evidence at all, the court effectively punished him for asserting his constitutional rights—an abuse of discretion and a violation of due process.

**C. Excluding financial-condition testimony ensured an unbalanced and excessive verdict.**

Respondents claim that allowing Riviere to testify about finances would have enabled “selective invocation” of the privilege. But Riviere consistently asserted the Fifth only on questions about the underlying conduct—not on civil matters or assets. Selective invocation occurs when a witness testifies to incriminating facts while refusing cross-examination on the same subject. *United States v. Parcels of Land*, 903 F.2d 36 (1st Cir. 1990). That concern is inapplicable where the proposed testimony concerns entirely distinct, non-criminal topics. The trial court’s broad prohibition conflated separate spheres of inquiry and thus exceeded its discretion.

**D. The exclusion of financial-condition evidence denied a fair assessment of punitive damages.**

Under South Carolina law, a defendant’s financial condition is a relevant—and often required—consideration when assessing punitive damages. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009). The court’s ruling left the jury with only Respondents’ untested assertions about Riviere’s supposed wealth and no factual basis to calibrate punishment to ability to pay. The predictable result was a series of disproportionate, multimillion-dollar punitive awards unmoored from reality. Because this constitutional error tainted the punitive damages phase, reversal and a new trial on that issue are required.

**XIII. THE TRIAL COURT EXCEEDED ITS AUTHORITY BY UNILATERALLY REDUCING THE JURY’S DAMAGES AWARDS INSTEAD OF GRANTING A NEW TRIAL OR NEW TRIAL NISI REMITTITUR.**

Respondents defend the trial court’s post-trial reduction of damages as a proper exercise of discretion. It was not. Once the court found that the jury’s verdict was excessive and unsupported, South Carolina law required it to grant a new trial or a new trial nisi remittitur—not to substitute its

own figures. By recalculating damages to reflect its personal assessment of the evidence, the court exceeded its authority and violated the right to trial by jury.

**A. The trial court’s findings triggered the duty to order a new trial.**

The trial judge expressly concluded that the jury’s SCUTPA and constructive-fraud awards lacked “any rational basis” and that the court could “only speculate” about how the amounts were reached. Having found the verdicts unsupported, the court was bound under *Vinson*, to grant a new trial absolute or a conditional new trial nisi remittitur. 324 S.C. at 405, 477 S.E.2d at 723. Instead, the court unilaterally reduced the awards to \$2,400 each—its own view of what the jury “should have” awarded. That procedure was legally impermissible.

**B. A trial court cannot “rewrite” a verdict under the guise of remittitur.**

Remittitur allows a court to offer a reduction *subject to the prevailing party’s consent*; it does not authorize the judge to impose a new figure unilaterally. *O’Neal v. Bowles*, 431 S.C. 289, 307, 848 S.E.2d 579, 589 (2020); *Mickens v. Robinson*, 348 S.C. 142, 148, 558 S.E.2d 271, 274 (Ct. App. 2001). The court’s action replaced the jury’s judgment with its own, effectively trying the damages issue anew without a jury. That violated both Rule 59 and Article I, § 14 of the South Carolina Constitution.

**C. Respondents’ inconsistent positions underscore the procedural defect.**

Respondents’ own arguments reveal the impropriety of the court’s approach. In their separate appeal, they assert that the court lacked authority to reduce the verdict; yet here they defend the same ruling as proper. Their contradiction underscores that the modification fell outside the bounds of remittitur and produced an inconsistent, unreviewable judgment.

**D. The selective reduction magnified, rather than cured, the verdict’s defects.**

By altering only certain awards while leaving others untouched, the court created a fractured, internally inconsistent judgment. The reduced amounts bore no coherent relationship to the jury's findings or to the evidence. This selective revision compounded the procedural and substantive errors already present and further demonstrated why the only proper remedy is a new trial absolute on all claims.

**XIV. THE TRIAL COURT ERRED IN DENYING A MISTRIAL AFTER RESPONDENTS' IMPROPER CLOSING ARGUMENT, AND THE CUMULATIVE ERRORS REQUIRE REVERSAL.**

Respondents attempt to downplay their counsel's improper closing argument as "isolated" and harmless. In context, however, those remarks were the final—and most damaging—act in a trial already saturated with calculated prejudicial statements by Plaintiffs' counsel, and questions posed to Riviere when called to the witness stand by Plaintiffs' counsel. Those questions were inflammatory, factually unsupported, objected to, but the trial court instructed the jury that it could infer adverse inferences to the improper questions. The closing argument appealed to sympathy and moral outrage, inviting the jury to punish Appellants rather than decide liability based on evidence. Under settled South Carolina law, when counsel's argument inflames the jury's passions or injects facts outside the record, a new trial is required.

**A. Counsel's closing remarks improperly appealed to sympathy and outrage.**

During closing, Respondents' counsel repeatedly invoked inflammatory themes outside the record—calling Appellants "serial predators," urging jurors to "send a message," and speculating about "countless other victims." None of these statements was grounded in evidence admitted for the Crespo rental. Such rhetoric was designed to arouse emotion, not to assist in factfinding. This Court has consistently held that an argument appealing "to prejudice or sympathy rather than reason"

constitutes reversible error. *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 480, 609 S.E.2d 286, 298 (2005). The trial court’s failure to intervene or instruct the jury to disregard those remarks allowed the prejudice to take root.

**B. The improper closing amplified preexisting prejudice from the evidentiary errors.**

The closing argument did not occur in isolation. By that point, the jury had been exposed to nine explicit recordings, references to “thousands” of other videos, and repeated insinuations of additional victims. Counsel’s closing remarks merely tied those themes together and urged the jury to punish. When cumulative prejudice already exists, an improper argument “tips the balance from error to reversible error.” *State v. Harris*, 382 S.C. 107, 114, 674 S.E.2d 532, 536 (Ct. App. 2009). That is precisely what occurred here.

**C. The trial court’s refusal to grant a mistrial was an abuse of discretion.**

A mistrial is warranted when improper argument creates “substantial and irreparable prejudice.” *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 473 (1983). Appellants immediately moved for mistrial after closing, preserving the issue. The trial court denied the motion, calling the remarks “argumentative but not prejudicial.” Given the magnitude of the verdict and the explicit appeals to passion, that assessment was untenable. Once the argument crossed from advocacy into emotional exhortation, the only adequate remedy was mistrial.

**D. The cumulative error doctrine mandates a new trial absolute.**

Even if no single error alone requires reversal, their combined effect demands it. The pervasive admission of 404(b) evidence, the denial of severance, the duplicative verdicts, and the inflammatory closing argument collectively denied Appellants a fair trial. The cumulative-error doctrine holds that “multiple errors, when considered together, may create a prejudicial effect

requiring reversal.” *Vinson*, 324 S.C. at 405, 477 S.E.2d at 723. The totality of these errors produced a verdict driven by emotion rather than evidence. A new trial absolute is the only just remedy.

### CONCLUSION

This case should have been tried on evidence, not outrage. Instead, the trial court permitted a cascade of inflammatory and irrelevant material that overwhelmed the limited issues properly before the jury. The resulting verdict—massive, inconsistent, and untethered to proof—reflects passion rather than reason. These were not isolated errors; they were cumulative, structural, and pervasive. Together, they denied Appellants the fair and impartial trial that South Carolina law guarantees.

For these reasons, Appellants Rhett C. Riviere, Chase Enterprises, LLC, and R.C. Riviere Properties, LLC respectfully request that this Court reverse the judgment below and remand for a new trial absolute on all claims, or in the alternative, enter judgment in Appellants’ favor on the claims for which directed verdicts should have been granted.

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